

DRAFT ORDINANCE #408 CITY OF OVERBROOK, KANSAS

AN ORDINANCE REGULATING ANIMAL CONTROL WITHIN THE CORPORATE LIMITS OF THE CITY OF OVERBROOK, KANSAS: PROVIDING CERTAIN PENALTIES AND REPEALING ORDINANCES NO. 78, 101, 130, 131, 145, 172, 206, 207, 288, 380, AND 383 IN THEIR ENTIRETY AND REPEALING THE FOLLOWING SECTIONS OF ORDINANCE #91: SECTION 309, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 622, 623, 624, 632, 635, 636, 637, 639, 641, AND 642;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERBROOK, KANSAS:

**CHAPTER II ANIMAL CONTROL AND REGULATION of Overbrook City Code 2018
ARTICLE 1. GENERAL PROVISIONS**

Purpose

The purpose of this Chapter is to promote harmonious relationships in the interaction between humans and animals by:

- A) Providing regulations that foster a reduced risk to residents from annoyance, intimidation, injury, and health hazards by animals;
- B) Protecting animals from improper use, abuse, neglect, exploitation, inhumane treatment and health hazards

Registration; Vaccinations;

- A) Every owner, keeper or harbinger of any dog or cat over six months of age shall register his or her name with the name, sex and description of each animal, provided that all animals belonging to the same household shall be registered in the name of the head of such household, and provided further, the city clerk or designated agent shall collect an annual license fee of \$5 for each spayed/neutered animal, and \$10 for each non-spayed/neutered animal. Replacement tags shall be issued for \$1.
- B) Upon registration, the owner, keeper or harbinger shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document.
- C) The license year shall be from January 1st through December 31st of each year.
- D) Any person acquiring a dog or cat over six months of age during the license year shall have 30 days to register the animal(s) without penalty. Any new resident shall have 30 days to register an animal or animals over six months of age after moving to town.
- E) It shall be the duty of the city clerk or designated agent, upon receipt of the license payment herein before required, to keep in a file suitable for the registration of animals,

the time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefor, and shall deliver to the owner or keeper of the animal a certificate in writing, stating the person has registered the animal and the number by which the animal is registered. It shall be unlawful for any person to take off or remove the city license tag from any animal belonging to another, or remove the strap or collar on which the same is fastened. Failure to exhibit a tag on an animal is a violation.

Violations and Penalties: 1st Offense – Register the animal(s) and pay registration fee for each animal. If after 30 days, from the time of notice, the animal(s) have not been registered then a fine of \$10 will be charged in addition to the registration fee. This fine will double each day following the 30 days up to the discretion of the court.

Kennels

A) It shall be unlawful for anyone to establish, operate or maintain a boarding kennel within the corporate limits of the City of Overbrook. A boarding kennel is defined as any place, building, tract of land, or abode in or on which 3 or more privately owned animals are kept at any one time for their owners in return for a fee or compensation.

B) It shall be unlawful for anyone to establish, operate or maintain a breeding kennel within the corporate limits of the City of Overbrook. A breeding kennel is defined as a location where an adult animal capable of breeding is kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 1 litter of animals are raised on the premises and sold to the public in a 36-month period.

Vicious Animals

A) It shall be unlawful for any person to keep, possess, or harbor a vicious animal within the city. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the police officer or animal control officer. If the animal presents a clear and present danger to the public health or safety, it shall be the duty of the police officer or animal control officer to impound such animal.

B) For purposes of this chapter a vicious animal shall include:

1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals;

Or

2) Any animal which attacks a human being or domestic animal without provocation;

3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting;

4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack any law enforcement officer while such officer is engaged in the performance of official duty.

C) Whenever a sworn complaint is filed in the municipal court against the owner of an animal alleging that such animal is vicious and in violation of this section, the municipal judge shall hold a hearing to determine whether or not the animal is vicious within the meaning of this section and thereby in violation of this section. The owner of the animal shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the municipal judge shall consider the following:

- 1) The seriousness of the attack or bite;
- 2) Past history of attacks or bites;
- 3) Likelihood of attacks or bites in the future;
- 4) The condition and circumstances under which the animal is kept or confined;
- 5) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

The municipal judge shall order the impoundment, the muzzling, and/or confinement of the animal accused of being in violation of this section in a manner and location that will insure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible or if prior court orders to restrain such animal have gone unheeded, the municipal judge may order the animal immediately destroyed in a humane manner by an animal shelter or veterinarian.

D) It shall be the duty of every owner, keeper or harbinger who has an animal which no determination has been made by the court pertaining to the animal's classification as vicious or non-vicious, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any animal within the city limits contrary to this section shall be guilty of a violation of this code.

E) Nothing in this chapter shall be construed to prevent the police officer or animal control officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious animal without notice to the owner.

F) If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by an animal shelter or veterinarian. Surrender of an animal by the owner thereof to the police officer or animal control officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.

Violations and Penalties: Any person violating or permitting the violation of any provision of this ordinance shall upon conviction in Municipal Court be fined a sum not less than \$200.00 plus court fees and not more than \$1,000.00 plus court fees. In addition

to the fine imposed the Court may sentence the defendant to imprisonment in the county jail for a period not to exceed thirty (30) days. In addition, the court shall order the registration of the animal revoked and the animal removed from the City. Should the defendant refuse to remove the animal from the City the municipal court judge shall find the defendant owner in contempt and order the immediate confiscation and impoundment of the animal. Each day that a violation of this ordinance continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this ordinance shall pay all expenses including shelter, food, handling, veterinary care, and testimony necessitated by the enforcement of this ordinance.

Animal Bites and Rabies Control

A) Every person shall promptly report to the police department

- 1) Any animal which bites a person;
- 2) Any rabid animal; or
- 3) Any animal suspected of being rabid.

B) An owner, upon demand by a police officer or animal control officer, shall surrender any rabid animal, any animal which has bitten a human or any animal suspected as having been exposed to rabies for supervised quarantine or destruction, which expense shall be borne by the owner, and such animal may be reclaimed by the owner if and when adjudged free of rabies and upon compliance with the permit provisions set forth.

C) The carcass of any dead animal exposed to rabies shall upon demand be surrendered to the police department.

Animals Running at Large

A) It shall be unlawful for the owner or harbinger of any animal to permit such animal; to run at large within the city at any time;

B) Any animal running at large within the city shall be subject to impoundment by the city. Citizens are to file complaints with the police department. Citizens are not allowed to directly impound animals.

C) A record of all dogs impounded shall be kept by the city containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.

D) No dog impounded shall be disposed of until after expiration of a minimum of three full business days of custody during which the public has clear access to inspect and recover the dog through time periods ordinarily accepted as usual business hours. During such time of custody, the city shall attempt to notify the owner or custodian of any dog impounded by such facility if the owner or custodian is known or reasonably

ascertainable. Such dog may at any time be released to the legal owner, moved to a veterinary hospital for treatment or observation, released in any manner, or euthanized by a licensed veterinarian if it appears to the veterinarian that the dog is diseased or disabled beyond recovery. If within three full business days the owner does not appear to claim the dog, then the dog may be sold, euthanized or otherwise disposed of.

E) If at any time before the sale or destruction of any dog impounded under the provisions of this article, the owner of an impounded dog appears and redeems the dog, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual costs of impoundment, and shall not apply to any dog alleged as being vicious or suspected of rabies.

F) The minimum impoundment fee shall be \$25.

G) Any dog impounded may not be released without a current rabies vaccination.

H) Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this article for violation of any of the provisions thereof; nor shall impoundment be a defense in any prosecution commenced hereunder.

I) The redemption of any dog impounded for a violation of any provision shall be prima facie evidence of the violation of such provision by the person redeeming the dog.

J) If any dog is not redeemed by its owner or harbinger within the time allowed for redemption as specified in Part D. above, the animal control officer, any authorized law enforcement officer, any authorized veterinarian or any duly authorized pound personnel may destroy such dog or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year.

K) No dog may be transferred to the permanent custody of a prospective owner unless:

- 1) Such dog has been surgically spayed or neutered before the physical transfer of the dog occurs; or
- 2) the prospective owner signs an agreement to have the dog spayed or neutered and deposits with the city not less than the lowest nor more than the highest cost of spaying or neutering in the community as determined by the city. Any funds deposited pursuant to such an agreement shall be refunded to such person upon presentation of a written statement signed by a licensed veterinarian that the dog has been spayed or neutered. If such person does not reclaim the deposit within six months after receiving custody of the dog, the city shall keep the deposit and may reclaim the unspayed or unneutered dog.

L) Nothing shall be construed to require sterilization of a dog which is being held by the city and which may be claimed by its rightful owner within the holding period established in Part D

Violations and Penalties for Animals Running at Large

1st offense – written notice

2nd Offense - \$50 + board + court costs

3rd Offense - \$50 + board + court costs

4th Offense - \$100 + board + court costs

5th Offense and beyond - \$200 + board + court costs

M) Any unspayed female dog in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dog or dogs may gain voluntary access to the confined animal except for purposes of planned breeding. Any animal that is in the state of estrus (heat) and that is not properly confined, or any such animal that is creating a neighborhood nuisance, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. The owner shall pay all expenses incurred as a result of the confinement. The owner of animals removed to the animal shelter shall be charged at the rate established from time to time by the animal shelter for routine confinement.

Barking Dogs

A) It shall be unlawful for any person to permit any dog or dogs under his or her charge, care, custody or control to emit any excessive noise after the police officer or animal control officer authorized by the city has issued a written notice advising the dog's or dogs' owner or custodian of the alleged noise. For purposes of this section, the term "excessive noise" shall mean noise which is unreasonably annoying, disturbing, offensive, or which unreasonably interferes with the comfortable enjoyment of life or property of one or more persons occupying property in the community or neighborhood, within reasonable proximity to the property where the dog or dogs are kept.

Violations and Penalties: 1st Offense – Written Notice

2nd Offense - \$10 plus court fees

3rd Offense - \$10 plus court fees

4 or more Offenses - \$100 plus court fees

Animal Confines; Shelters

A) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and offensive odors that annoys any neighbor, and devoid of rodents and vermin.

B) Excrement shall be removed at least once each week from any animal shelter, pen or yard area where animals are kept or more often if necessary to prevent or control odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal

owner, it shall be stored in adequate containers with fly-tight lids, and all such stored or accumulated wastes shall be disposed of at least once each week. No burning of excrement is allowed.

C) All animal shelter, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present. The fenced area should be greater than or equal to 60 square feet per animal and not less than 5 feet wide.

D) All animal shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.

E) All animals shall be provided with adequate shelter. Adequate Shelter means a structurally sound, properly ventilated, sanitary, and weatherproof shelter which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions.

F) No animal is to be outside during a period of extreme weather, including extreme heat or near-freezing temperatures, thunderstorms, or tornadoes without access to climate controlled shelter.

G) Barbed wire fences and electrically charged fences shall not be permitted for animal confines except on properties for which an agricultural classification permit is held or where the barbed wire fence or electrically charged fence is protected by an exterior fence. All underground electrical fences must be marked with signage.

H) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement office, or public health official. If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded immediately. Animals shall be released after fees are paid and cause for impoundment has been corrected.

I) It shall be unlawful for anyone to confine, harbor, keep or maintain an animal on property uninhabited by humans within the city limits.

Violations and Penalties: Any person in violation of this ordinance shall, upon conviction, be subject to a fine of not less than \$10.00 nor more than \$100.00 for each violation and each day of violation shall constitute a separate offense.

Cruelty to Animals

A) It shall be unlawful for any person to:

- 1) willfully or maliciously kill, maim, disfigure, torture, beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals except that reasonable force may be employed to drive off vicious animals;
- 2) have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition
- 3) possess, display, sell or give away any ducklings, chicks, fowls, or rabbits as playthings, novelties, gifts for advertising or sales promotional purposes, or to suffer or cause such animals or fowl to be dyed, colored or in any way artificially treated.
- 4) promote, stage, hold, manage, or in any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal;
- 5) leave any animal confined in a vehicle for more than five (5) minutes in extreme weather conditions, defined as less than thirty degrees Fahrenheit or more than 80 degrees Fahrenheit; unless the vehicle is running with appropriate climate control.
- 6) to transport any animal in the trunk of a vehicle
- 7) cause, instigate, or train any animal to attack another animal or human
- 8) except a licensed veterinarian, crop animal ears or dock animal tails

B) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency.

Violations and Penalties: Any person in violation of this ordinance shall, upon conviction, be subject to a fine of not less than \$10.00 nor more than \$100.00 for each violation and each day of violation shall constitute a separate offense.

Tethering of Animals

A) It shall be unlawful for a responsible party to tether a animal while outdoors, except when all of the following conditions are met:

- 1) The animal is in visual range of the responsible party, and the responsible party is located outside with the dog.
- 2) The tether is connected to the animal by a buckle-type collar or a body harness made of nylon or leather, not less than one inch in width.

- 3) The tether has the following properties: It is at least five times the length of the animal's body, as measured from the tip of the nose to the base of the tail; it terminates at both ends with a swivel; is reasonably free of tangles and is of a suitable weight for the animal's size.
- 4) The animal is tethered in such a manner as to prevent injury, strangulation, or entanglement.
- 6) The animal has access to water, shelter, and dry ground
- 7) The animal is at least six months of age.
- 8) The animal is not sick or injured.
- 9) Pulley, running line, or trolley systems are at least 15 feet in length and are less than 7 feet above the ground.

Violations and Penalties:

1st Offense – Written Notice with 30 days to comply. If an animal(s) is illegally tethered after 30 days notice, the law officer or animal control officer shall impound any animal(s). Whoever violates any provision of this section shall forfeit his right to license an animal in the City of Overbrook for one year in addition to any other penalty provided. Any ownership of such animal without benefit of a license shall be deemed an additional violation.

Death of Animals

A) All animals which die shall be disposed of by the owner or keepers within 24 hours by burial, incineration in an approved facility, by rendering or by other lawful means approved by the animal control or law officer. No dead animal shall be dumped on any public or private property.

B) It shall be unlawful for any person to put any dead animal in any street, avenue, alley, or other public place in the city and it shall be the duty of the owner, possessor and all persons having knowledge of any dead animal in the city to immediately report it to the city, giving the kind of animal and the place where such animal may be found.

C) It shall be the duty of the animal control or law officer, immediately upon the receipt of a report under this section, to remove or provide for the removal of the dead animal.

Violations and Penalties: If the owner does not assume responsibility for disposal of the animal within the allowed time frame, the Police Department will immediately dispose of the animal(s) and the costs for removal will be the responsibility of the owner.

Removal of Animal Feces Off the Owner's Property

The owner of any animal, when such animal is off the owner's property, shall be responsible for the removal of any feces deposited by such animal on public walks, streets, recreation area or private property, and it shall be a violation of this section for such owner to fail to remove or provide for the removal of such feces before taking such animal from the immediate area where such defecation occurred. Animals may not be

walked on public sporting venues and playgrounds.

Wild or Exotic Animals

A) It shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the City of Overbrook, Kansas:

- 1) Any warm-blooded, carnivorous or omnivorous, wild or exotic animal (including but not limited to non-human primates, raccoons, exotic fowl, skunks, foxes and wild or exotic cats;)
- 2) Any animal having poisonous bites.

B) It shall be unlawful for any person to injure, kill, maim, molest, torture or destroy any wild, or undomesticated animal in the city. If a wild or undomesticated animal has caused or is causing damage or destruction of property upon any private premises in the city, such animal or animals may be taken into custody and destroyed by an approved pest control firm or company. However, rats, mice, and like rodents infesting any private premises may be controlled and destroyed at any time without a permit.

Violations and Penalties: Violators of part A) will be given 30 days to rehome the animal(s), following legal stipulations, or the animal(s) will be confiscated by law enforcement. If no appropriate housing can be found, the animal will be humanely euthanized.

To Prohibit the Feeding of Waterfowl in the City of Overbrook, Kansas

A) Definitions:

Waterfowl: Any bird that frequents the water, or lives about rivers, lakes, etc., or on or near the sea; an aquatic fowl, including but not limited to geese, swans, ducks, heron and egrets.

B) Purpose:

It has been established and determined that the feeding of waterfowl is both detrimental to the birds and causes a public health nuisance and safety hazard that is detrimental to the health and general welfare of the public.

C) Feeding of waterfowl prohibited;

- 1) No person shall purposely or knowingly feed, bait, or in any manner provide access to food to any waterfowl within City parks, the Overbrook City Lake or the Overbrook Children's Pond, or on other publicly owned lands in the City of Overbrook.
- 2) Nothing in this section shall apply to any agent of the City of Overbrook, State of Kansas, Federal Agency, lawfully engaged in a wildlife or waterfowl management program.

D) Enforcement:

1) Animal Control Officers, Code Compliance Officers, and all Local, State and Federal Public Safety Officers are hereby granted full power and authority to enforce this ordinance.

Violations and Penalties:

- 1) Recognizing that it will take time to educate the community on this new ordinance, Law Enforcement will issue warnings for a period of time.
- 2) The fine for a first time violator shall be no less than \$25.00 plus court costs. The fine for a second violation shall be no less than \$50.00 plus court costs, or as set by the City Attorney and the court.

THAT this Ordinance shall take effect and be kept in force from and after its passage, approval and publication in the Official city newspaper as provided by law.

Passed this _____ Day of December, 2018.

/S Jon Brady, Mayor

ATTEST:

/S Jim Koger City Clerk