



City of Grand Island

Tuesday, August 11, 2009

Council Session

Item F1

#9228 - Consideration of Amendments to Chapter 5 of the Grand Island City Code Relative to Animals

Staff Contact: Wes Nespor

Council Agenda Memo

From: Wesley D. Nespor, Legal Department

Meeting: August 11, 2009

Subject: Amendments to Chapter 5 of the City Code

Item #'s: F-1

Presenter(s): Dale Shotkoski, City Attorney or Wesley D. Nespor, Attorney

Background

The City Council adopted a goal to monitor, review and update the City Code. These proposed revisions are part of that process.

Discussion

The amendments to Chapter 5 update rabies observation to mirror state law and incorporate changes suggested by the Animal Advisory Board after public input. Most of the revisions are relatively minor changes in wording to clarify the intent of the section. The word wire is being removed from the list of acceptable forms of restraint. The current code requires meetings of the Advisory Board during the first weeks of January and July. Since this is a volunteer board, greater flexibility is desirable. Requiring two meetings during the year is not necessary because the Board can be convened as needed.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Take no action
3. Postpone the issue to future date

Recommendation

City Administration recommends that the Council approve the amendments to Chapter 5 of the City Code.

Sample Motion

Move to approve the ordinance amending the City Code.

ORDINANCE NO. 9228

An ordinance to amend Grand Island City Code Chapter 5 Sections 5-1, 5-2, 5-15, 5-16, 5-25, 5-34, 5-37, and 5-43 regarding definitions, meeting dates, restraint, and rabies observation; to harmonize the code with State Statutes; to repeal sections in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Sections 5-1, 5-2, 5-15, 5-16, 5-25, 5-34, 5-37, and 5-43 of the Grand Island City Code are amended to read as follows:

§5-1. Definitions

As used in this chapter, the following terms mean:

Abandon. Means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

Animal. Any live, vertebrate creature other than human beings.

Animal Control Officer. Means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, Health Department employee, employee of the Animal Control Authority, or any other public official authorized by the City to enforce state or local animal control laws, rules, regulations, or ordinances.

Animal Control Authority. Shall mean an entity authorized to enforce the animal control laws of the City designated by the City Council.

Animal Shelter. Any facility operated by the City or the Animal Control Authority for the purpose of impounding or caring for animals held under the authority of this chapter.

Auctions. Any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this ordinance. This section does not apply to individual sales of animals by owners.

Birds. Any feathered vertebrate, including pigeons, but excluding poultry.

Bite. Any seizure with the teeth by an animal

Circus. A commercial variety show featuring animal acts for public entertainment.

Commercial Animal Establishment. Any pet shop, grooming shop, auction, riding school or stable, circus, performing animal exhibition, or kennel (this term shall not include a veterinary hospital or veterinary clinic).

Cruelly mistreat. Means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

Cruelly neglect. Means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

Dangerous Animal. Means an animal that (i) has killed a human being; (ii) has inflicted injury on a human being that requires medical treatment; (iii) has killed a domestic animal without provocation; or (iv) has been previously determined to be a potentially dangerous animal by an animal control authority or animal control officer, the owner has received notice of such determination, and the animal inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals. An animal shall not be defined as a dangerous animal hereunder if

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the individual was tormenting, abusing, or assaulting the animal at the time of the injury or has, in the past, been observed or reported to have tormented, abused, or assaulted the animal. An animal shall not be defined as a dangerous animal if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass, was committing any other tort upon the property of the owner of the animal, was tormenting, abusing, or assaulting the animal, or has, in the past, been observed or reported to have tormented, abused, or assaulted the animal, or was committing or attempting to commit a crime;

Domestic animal. Shall mean a cat, a dog, or livestock.

Enclosure. Any tract of land intended to restrain or contain an animal by means of a building, fence, or any other means.

Fowl. Any poultry, other than pigeons.

Grooming Shop. A commercial establishment where animals are bathed, clipped, plucked, or otherwise groomed.

Health Department. Means the Central District Health Department or any agency with which the City contracts to enforce the provisions of Chapter 5 - Animals of the Grand Island City Code related to public health and welfare.

Humane killing. Means the destruction of an animal by a method which causes the animal a minimum of pain and suffering.

Hybrid animal. Means any animal which is the product of the breeding of a domestic dog with a nondomestic canine species;

Kennel. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.

Livestock. Any hoofed animal commonly associated with domestic agricultural purposes, including but not limited to: horses, mules, donkeys, cows, sheep, goats, llamas, hogs.

Medical treatment. Means treatment administered by a physician or other licensed health care professional.

Mutilation. Means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Owner. Any person, partnership, or corporation owning, keeping, harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more or has exercised control or custody of the animal.

Performing Animal Exhibition. Any spectacle, display, act, or event other than circuses in which performing animals are used.

Pet. Any animal kept for pleasure rather than utility.

Pet Shop. Any person, partnership, or corporation, whether operated separately or in connection with another business except for a licensed kennel, that buys, sells, or boards any species of animal.

Potentially Dangerous Animal. Means (a) any animal that when unprovoked (i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (b) any specific animal with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

Repeated beating. Means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal.

Restraint. Any animal secured by a leash or lead, or under the control of a responsible person and obedient to that person's commands, or within the real property limits of its owner.

Residence. The structure used as a domicile by a person or a family.

Riding School or Stable. Any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule, or burro.

Running at Large. Running at large shall mean any dog or other animal off the premises of the owner and not under the immediate control of a person physically capable of restraining the animal by holding a leash, cord, chain, ~~wire~~, rope, cage or other suitable means of physical restraint or if the animal is out of doors on the premises of the owner, the animal shall be in an adequately fenced in area or securely fastened to a leash or chain to prevent the animal from leaving the owner's premises.

Scratch. Any scraping with the claws by an animal which causes an abrasion, puncture or wound of the skin.

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Serious injury or illness. Includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

Shelter. Any structure with a roof and walls designed and/or intended to house one or more animals.

Torture. Means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Veterinary Hospital or Veterinary Clinic. Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseased and injured animals.

Wild Animal. Any live animal normally found living in a state of nature and not normally subjected to domestication, including but not limited to: monkeys, raccoons, skunks, snakes, and lions, but excluding birds.

§5-2. Animal Advisory Board; Establishment

There is hereby established the Animal Advisory Board of the City of Grand Island, whose duty it shall be to advise the mayor and city council on all matters relating to this chapter. The board shall be composed of seven members: four members appointed by the mayor subject to confirmation by the city council; and the chief of police or his/her designee, the director of the Animal Control Authority or his/her designee, and the director of the department of health or his/her designee. Appointed members shall serve without compensation. The Animal Advisory Board shall meet during ~~the first week of January and the first week of July~~ of each year and/or such other occasions as may be established by said board. Attendance by any four or more members shall constitute a quorum.

§5-15. Enclosure Required

No owner shall fail to confine his or her animals within an enclosure of sufficient size and design to prevent the animal from escaping or to restrain said animal by a securely fastened rope, chain, or cordstake in such a manner as to prevent such animal from going onto any public property or onto the property of another.

§5-16. Enclosures; Requirements

(A) All enclosures and restraints required by §5-15 which are used to confine horses, mules, donkeys, cows, sheep, goats or llamas shall be no less than 150 feet from any residence other than the residence of the owner of said enclosure unless a waiver or variance is obtained as provided in subsection (C) below.

(B) All enclosures and restraints required by §5-15 which are used to confine rabbits, birds, chickens shall be at least fifteen (15) feet from any privately-owned property abutting the owner's property.

(C) The owner of any animal affected by subsection (A) may keep or maintain an enclosure within the prohibited distance by either obtaining a waiver from all property owners within the prohibited distance stating that said property owners do not object to the keeping of animals within the prohibited distance, and filing the same with the City Clerk, or obtaining a variance from the city council; provided, that no variance shall be granted by the city council for a distance less than 75 feet. The council shall consider the following factors in determining whether or not to issue a variance:

(1) That the variance, if allowed, is in harmony with the general purpose and interest of this animal ordinance;

(2) That there are practical difficulties or practical hardships in the way of carrying out the strict letter of this animal ordinance;

(3) For the purpose of supplementing the above requirements, the council in making the determination whether there are practical difficulties or particular hardships, shall also take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:

(i) that the majority of the applicant's neighbors have presented no objection to the proposed variance;

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(ii) that the variance, if granted, would not be a threat to the public health, safety, and welfare;

(iii) that the variance, if granted, would not materially reduce the marketability of surrounding real property.

(4) Upon the filing of a request for variance under this subsection, the city clerk shall cause notice of the time and place of the hearing for variance to be mailed to ~~the head of~~ all residences within one hundred fifty (150) feet of the enclosure for which the variance is sought.

§5-25. Accidents Involving Animals; Duties

No person who, as the operator of a motor vehicle, strikes an animal, shall fail to stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner, the police, or the animal control ~~authority~~ ~~agency~~ for the City.

§5-34. Running at Large; Restraint Required

It shall be unlawful for any owner to suffer or permit any dog or other animal to run at large within the corporate limits of the City of Grand Island. "Running at Large" shall mean any dog or other animal off the premises of the owner and not under the immediate control of a person physically capable of restraining the animal by holding a leash, cord, chain, ~~wire~~, rope, cage or other suitable means of physical restraint or if the animal is out of doors on the premises of the owner, the animal shall be in an adequate fenced in area or securely fastened to a leash or chain to prevent the animal from leaving the owner's premises. It shall be the duty of the city animal control officer or other appropriate city law enforcement officer to impound any dog found running at large within the City of Grand Island. Every dog found running at large in violation of this or any other section of the Grand Island City Code is declared to be a public nuisance and may be impounded.

§5-37. Dangerous ~~and Potentially Dangerous~~ Animals Restraint; Impoundment; Confiscation

(A) No owner of a dangerous or potentially dangerous animal shall fail to keep such animal securely muzzled and restrained by a leash or chain whenever off the owner's property.

(B) Any dangerous animal or potentially dangerous animal in violation of §5-36 or §5-37 of the Grand Island City Code may be immediately impounded by animal control officers. The owner shall be responsible for the costs incurred by the Animal Control Authority for the care of the dangerous or potentially dangerous animal confiscated by the Animal Control Authority or for the destruction of any dangerous or potentially dangerous animal if the action by the Animal Control Authority is pursuant to law.

(C) In the event an animal conforming to the definition of potentially dangerous animal inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals, the potentially dangerous animal shall be immediately confiscated by an animal control officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(D) An animal conforming to the definition of dangerous animal shall be immediately confiscated by an animal control officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(E) Disposition of any animal impounded under this chapter shall be governed by §5-44.

§5-43. Rabies Control; Reporting and Impoundment

(1) Any animal which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the animal control authority for a period of not less than ten days if:

(a) The animal is suspected of having rabies, regardless of the species and whether or not the animal has been vaccinated;

(b) The animal is not vaccinated and is of a species determined by the State of Nebraska to be a rabid species; or

(c) The animal is of a species which has been determined by the State of Nebraska to be a rabid species not amenable to rabies protection by immunization, whether or not such animal has been vaccinated. If, after observation and examination by a veterinarian, at the end of the ten-day period the

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animal shows no clinical signs of rabies, the animal may be released to its owner unless otherwise prohibited by law.

(2)(a) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an animal owned by another person, which animal has been vaccinated in accordance with State law or regulation or if such injury to a person is caused by an owned animal determined by the State of Nebraska to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such animal shall be confined by the owner or other responsible person as required by the animal control authority for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such ten-day period. If no clinical signs of rabies are found by the veterinarian, such animal may be released from confinement unless ownership of the animal is otherwise prohibited by law.

(b) A vaccinated animal owned by a law enforcement or governmental military agency which bites or causes an abrasion of the skin of any person during training or the performance of the animal's duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain ownership of and shall control and supervise the actions of such animal for a period of fifteen days following such injury. If during such period the death of the animal occurs for any reason, a veterinarian shall within twenty-four hours of the death examine the tissues of the animal for clinical signs of rabies.

(3) Any animal of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the ownership of which cannot be determined within seventy-two hours of the time of the bite or abrasion shall be immediately subject to any tests which the animal control authority believes are necessary to determine whether the animal is afflicted with rabies. The seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the animal to be destroyed.

~~(A) Any unvaccinated dog or cat suspected of biting or scratching any person or exposing an individual to the possibility of contracting rabies shall be taken into custody by an animal control officer or police officer and impounded in the animal shelter for a period of not less than ten days, or such additional period as directed by a licensed veterinarian or medical professional treating the aforementioned injury.~~

~~(B) Any dog or cat currently vaccinated for rabies which is suspected of biting or scratching any person shall be confined by the owner of the animal for a period of not less than ten days; provided, that impoundment in the animal shelter shall be required if the victim, victim's legal guardian, or the victim's physician requests such impoundment; and provided further, that if said owner has on any prior occasion of a dog or cat bite or scratch, failed or refused to confine the animal as required by this section, said animal shall be impounded at the animal shelter or a veterinary clinic of the owner's choosing.~~

~~(C) Any ferret suspected of biting any person or exposing an individual to the possibility of contracting rabies shall be taken into custody by an animal control officer or police officer for immediate euthanization for the determination of rabies. Any ferret suspected of scratching any person shall be taken into custody by an animal control officer or police officer for immediate euthanization for determination of rabies if there is reasonable cause to believe said ferret has exposed such person to the possibility of contracting rabies.~~

~~(D) No owner of an animal suspected of biting or scratching any person, upon information and notice of the incident, shall fail or neglect to immediately place the animal in the custody of an animal control officer or police officer for impoundment at the animal shelter. Upon request and authorization by the owner of any animal impounded for observation under subsections (A), (B) or (C) above, said animal may be placed in the custody of a licensed veterinarian for the requisite observation period.~~

~~(4E) All incidents of biting or scratching shall be reported in writing to the Animal Control Authority by the medical professional treating the injury, the injured party, or in the case of a minor child, the parent or guardian.~~

~~(F) The term "scratching" as used in this section shall include only those incidents which result from known or suspected aggressive action or attack by a dog, cat or ferret.~~

(5) In the case of domestic or hybrid animals known to have been bitten by a rabid animal, the following rules shall apply:

(a) If the bitten or exposed domestic or hybrid animal has not been vaccinated in accordance with State statute, such bitten or exposed domestic or hybrid animal shall be immediately destroyed unless the owner is willing to place such domestic or hybrid animal in strict isolation in a kennel under veterinary supervision for a period of not less than six months; and

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(b) If the bitten or exposed domestic or hybrid animal has been vaccinated in accordance with State statutes, such domestic or hybrid animal shall be subject to the following procedure: (1) Such domestic or hybrid animal shall be immediately revaccinated and confined for a period of not less than thirty days following vaccination; (2) if such domestic or hybrid animal is not immediately revaccinated, such domestic or hybrid animal shall be confined in strict isolation in a kennel for a period of not less than six months under the supervision of a veterinarian; or (3) such domestic or hybrid animal shall be destroyed if the owner does not comply with either subdivision (1) or (2) of this subdivision.

SECTION 2. The foregoing sections of Chapter 5 as existing prior to this amendment, and any ordinances or parts of ordinances in conflict herewith, are repealed.

SECTION 3. The validity of any section, subsection, sentence, clause, or phrase of this ordinance shall not affect the validity or enforceability of any other section, subsection, sentence, clause, or phrase thereof.

SECTION 4. That this ordinance shall be in force and take effect from and after its passage and publication in pamphlet form within fifteen days as provided by law.

Enacted: August 11, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
August 7, 2009	☒ City Attorney