

ORDINANCE NO. 1987

AN ORDINANCE AMENDING AND COMPLETELY REPLACING ARTICLE 2 OF CHAPTER II OF THE CODE OF THE CITY OF RUSSELL, KANSAS, CONCERNING THE IDENTIFICATION AND REGULATION OF DANGEROUS ANIMALS WITHIN THE CITY OF RUSSELL, KANSAS

BE IT ORDAINED by the Governing Body of the City of Russell, Kansas:

SECTION 1. That Article 2 of Chapter II of the Code of the City of Russell previously entitled "Dangerous Dogs" is amended to read "Dangerous Animals" and said Article 2 is hereby amended to read in full as follows:

**2-201. Authorization.** This article is enacted pursuant to the general police power, the authorities granted to cities by the Kansas State Constitution and applicable statutes.

**2-202. Purpose and Intent.** The purposes of this Article are to promote the public health, safety, and general welfare of the citizens of the City of Russell. It is intended to be applicable to "Dangerous Animals" as defined herein by ensuring responsible handling by their owners through registration, confinement, and liability insurance.

**2-203. Definitions.** When used in this Article, the following words, terms and phrases, and their derivations shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

a. "Animal Control Officer" means an employee or agent of the City, designated by the City Manager to administer and enforce the licensing, inspection and enforcement requirements contained within this Article.

b. "At Large" means that the animal is not on either the premises of the owner or custodian of the animal, nor on someone else's premises with the owner or occupant's consent and the animal is not under restraint.

c. "Dangerous Animal" means any animal that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings, other domestic animals, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to animals utilized by law enforcement officers in the performance of their duties. The term "Dangerous Animal" may include any animal that according to the records of the City, Animal Control, or any law enforcement agency:

1. Has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property or when unprovoked, has chased or approached a person upon a street, sidewalk, or any public grounds in a menacing fashion of apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by any of the above-referenced authorities;
2. Has more than once severely injured or killed a domestic animal while off the owner's property, or
3. Has been used primarily or in part for the purpose to fight, or is an animal trained for fighting.

d. "Direct Control" means immediate, continuous physical control of an animal such as by means of a leash, cord, secure fence, or chain of such strength to restrain the animal and controlled by a person capable of restraining the animal, or safe and secure restraint within a vehicle. If the controlling person is at all times

fully and clearly within unobstructed sight and hearing of the animal, voice control shall be considered direct control when the animal is actually participating in training or in an official showing, obedience, or field event. Direct control shall not be required of government police animals.

e. "Impoundment" means the taking into custody of an animal by any Police Officer, Animal Control Officer, or any authorized representative thereof.

f. "Muzzle" means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

g. "Owner" means any person, partnership, corporation or other legal entity owning, harboring or keeping any animal, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days. This definition shall not apply to any veterinary clinic or boarding kennel.

h. "Sanitary condition" means a condition of good order and cleanliness to minimize the possibility of disease transmission.

i. "Under Restraint" means that an animal is secured by a leash and led under the control of a person physically capable of restraining the animal or securely enclosed within the real property limits of the animal's owner or the person who has possession of the animal.

**2-204. Procedure for declaring an animal dangerous.**

a. An animal control officer or any adult person may request under oath that an animal be classified as dangerous as defined in Section 2-203(c) by submitting a sworn, written complaint on a form approved by the Chief of Police. Upon receipt of such complaint, the Chief of Police shall notify the owner of the animal that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.

b. If the Chief of Police cannot with due diligence locate the owner of an animal that has been seized pursuant to this Article, the Chief of Police shall cause the animal to be impounded for not less than five (5) business days. If after five (5) days, the owner fails to claim the animal, the Chief of Police may cause the animal to be humanely destroyed.

**2-205. Notification of Dangerous Animal declaration.**

a. If the Chief of Police determines an animal to be dangerous then within five (5) business days after such determination, the Chief of Police shall notify the owner by written notice of the animal's designation as a Dangerous Animal and the specific restrictions and conditions for keeping the animal in the City, as set forth in Section 2-208 of this Article. The Chief of Police shall also notify the City Manager of the designation of any animal as a Dangerous Animal. Such notification shall describe the animal and specify the particular requirements or conditions placed upon the animal owner.

b. The notice shall inform the animal owner that he or she may request, in writing, a hearing to contest the Chief of Police's finding and designation within five (5) business days after delivery of the Dangerous Animal declaration notice.

c. Failure of the animal owner to request a hearing shall result in the animal being finally declared a Dangerous Animal and subject the animal and its owner to the provisions of this Article.

**2-206. Hearing to contest Dangerous Animal declaration.**

a. The City's Municipal Court Judge shall hold a hearing within twenty (20) business days after the Police Chief's receipt of the animal owner's written request for such a hearing. The Clerk of the Municipal Court shall provide notice of the date, time and location of the hearing to the animal owner by written notice.

b. The hearing shall be a trial de novo and shall be a civil proceeding for the purpose of affirming or reversing the Chief of Police's determination of Dangerous Animal. At the hearing, all interested persons shall be given the opportunity to present evidence on the issue of the animal's dangerousness. Criteria to be considered in a hearing required by this Section shall include but not be limited to:

1. Provocations;
2. Severity of attack or injury to a person or domestic animal;
3. Previous aggressive history of the animal;
4. Observable behavior of the animal;
5. Site and circumstances of the incident; and
6. Testimony from interested parties.

c. A determination at the hearing that the animal is in fact a Dangerous Animal as defined in Section 2-203(c) shall subject the animal and its owner to the provisions of this Article. A determination that the animal is not a Dangerous Animal shall conclude the proceeding.

**2-207. Keeping of a Dangerous Animal.** The keeping of a Dangerous Animal as defined in Section 2-203(c) shall be subject to the following additional requirements:

a. **Confinement.** It shall be unlawful for any owner or keeper of a Dangerous Animal to allow the animal to be outside of its proper enclosure unless it is necessary for the animal to receive veterinary care or exercise.

b. **Leash and Muzzle.** No person having charge, custody, control or possession of a Dangerous Animal shall allow the animal to exit its kennel, pen or other proper enclosure unless such animal is securely attached to a leash not more than four (4) feet in length. No such person shall permit a Dangerous Animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person capable of controlling the animal is in physical control of the leash. In such cases, the animal shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the animal's breathing or vision.

c. **Enclosed Structure.** Except when leashed and muzzled as provided in this Section, a Dangerous Animal shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designated to prevent the animal from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:

1. The structure must have secure sides and a secure top, or all sides must be at least eight (8) feet high;
2. the structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and
3. The structure must be of such material and closed in such a manner that the animal cannot exit the enclosure on its own.

d. Indoor Confinement. No Dangerous Animal shall be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the animal from exiting the structure.

e. Liability Insurance, Surety Bond. The owner of a Dangerous Animal shall present to the Chief of Police proof that he/she has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars (\$100,000) covering any damage or injury that may be caused by such Dangerous Animal. The policy shall contain a provision requiring that the City be notified immediately by the insurance carrier in the event that the insurance policy is canceled, terminated or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a Dangerous Animal. The animal owner shall sign a statement attesting that he/she shall maintain and not voluntarily cancel the liability insurance during the twelve (12) month period for which a permit is sought, unless he/she ceased to own or keep the animal prior to the expiration date of the permit period.

f. Animals born of Registered Dangerous Animals. All offspring born of Dangerous Animals registered with the Chief of Police also must be registered with the Chief of Police within six (6) weeks of birth.

g. Notification of Escape. The owner or keeper of a Dangerous Animal shall notify the Chief of Police and/or animal control officer immediately if such animal escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the animal bites or attacked a person or domestic animal.

h. Failure to Comply. It shall be unlawful and a misdemeanor for any owner of a Dangerous Animal registered with the Chief of Police to fail to comply with the requirements and conditions set forth in this Section. Any animal found to be in violation of this Section shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this Article shall result in the revocation of the animal's license and the permit providing for the keeping of such animal.

#### **2-208. Permit and tag required for a Dangerous Animal.**

a. The owner of a Dangerous Animal, shall within three (3) business days after the classification of the animal as dangerous or upon acquisition of such an animal, obtain an annual permit from the Chief of Police to harbor the animal. The fee for such permit shall be fifty (\$50) dollars per year.

b. At the time the permit is issued, a red circular tag shall be issued to the owner of the Dangerous Animal. The tag shall be worn at all times by the animal to clearly and easily identify it as a Dangerous Animal.

c. The permit for maintaining a Dangerous Animal shall be presented to an animal control officer upon demand.

**2-209. Notification of intent to impound.**

a. When the Animal Warden or his/her designee intends to impound an animal declared to be dangerous for violation of Section 2-207 he/she shall notify the owner or custodian of the animal by written notice of the intended impoundment at least five (5) business days prior to the intended impoundment, except as provided in Section 2-210.

b. The notice of intent to impound shall inform the owner or custodian of the animal that he/she may request in writing, within five (5) business days prior to the intended impoundment, a hearing to contest the intended impoundment and finding of violation.

c. Upon request by the owner or custodian of the animal for a hearing pursuant to subsection (b), a hearing shall be held within ten (10) business days after the request for a hearing. Notice of the date, time and location of the hearing shall be provided in writing to the animal's owner or custodian requesting such hearing.

d. If the owner or custodian requests a hearing pursuant to subsection (b), no impoundment shall take place until conclusion of the hearing, except as authorized in Section 2-210.

**2-210. Immediate impoundment.**

a. An animal declared to be dangerous may be immediately impounded without a pre-impoundment hearing when a police officer or the Animal Control Officer or his/her designee determines such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for a violation of Section 2-207 or when the animal bites a person or domestic animal.

b. The owner or custodian of the animal immediately impounded pursuant to subsection (a) shall be notified of the impoundment by written notice within five (5) business days after the animal's impoundment.

c. The notice of impoundment shall inform the owner or custodian of the animal that he/she may request, in writing, a hearing to contest the impoundment. The written request for a hearing should be given to the Police Chief within five (5) business days after the mailing of the notice of impoundment.

d. Upon request by the owner or custodian of the animal for a hearing under subsection (c), a hearing shall be held within ten (10) business days after such request. Notice of the date, time and location of the hearing shall be provided in writing to the animal owner requesting the hearing.

**2-211. Impoundment Hearing.**

a. The hearing on impoundment shall be before the Chief of Police, or his/her designee, and if he/she finds no violation of Section 2-207, or that the animal has not bitten an individual, the animal shall be returned to its owner or custodian if already impounded, or shall not be impounded as intended.

b. Incident to the findings and conclusions made at the impoundment hearing, the Chief of Police or the chief's designee may impose reasonable restrictions and conditions for the maintenance of the animal to ensure the health and safety of the public and the animal. Such conditions may include, but shall not be limited to:

1. Posting of bond or other proof of ability to respond to damages;
2. Specific requirements as to size, construction and design of a kennel in which to house the animal;
3. Requirements as to type and method of restraint and/or muzzling of the animal;
4. Photo identification or permanent marking of the animal for purposes of identification; and
5. Payment of reasonable fees to recover the costs incurred by the City in ensuring compliance of this Article.

#### **2-212. Order of Destruction and Appeal.**

a. The Chief of Police or the Chief's designee may order the destruction of an animal that has been determined to be a Dangerous Animal whose owner is unable or unwilling to adequately restrain it.

b. The Chief of Police or the Chief's designee shall give written notice of his/her intention to destroy such animal to the owner or custodian of the animal, who may request in writing to the Clerk of the Municipal Court, within five (5) business days after the delivery of such notice, a hearing to contest the intended destruction. If the Chief of Police or Chief's designee orders a Dangerous Animal to be humanely destroyed, that decision shall be final unless the animal owner applies to the Municipal Court of Russell, Kansas, for a hearing within five (5) business days after receiving notice of the destruction order. If an appeal is timely filed, the Chief of Police shall suspend the destruction order pending the final determination of the court. The appeal hearing shall be a trial de novo and shall be a civil proceeding for the purpose to affirm or reverse the Chief of Police's destruction order.

c. If no hearing is requested pursuant to subsection (b), the animal shall be destroyed pursuant to applicable provisions of law.

d. If a hearing before the Municipal Court is requested pursuant to subsection (b), such hearing shall be held as soon as reasonably possible; and the animal shall not be destroyed prior to the conclusion of the hearing.

e. The animal owner shall be responsible for payment of all boarding costs and other fees as may be required for the City to humanely and safely keep the animal during any legal proceeding.

#### **2-213. Change of ownership.**

a. Any owner of a Dangerous Animal who sells or otherwise transfers ownership, custody or residence of a Dangerous Animal shall, within ten (10) business days after such change of ownership or residence, provide written notification to the Chief of Police of the name, address and telephone number of the new owner. The person transferring ownership or custody of the animal shall provide written notification of the animal's classification as dangerous to the person receiving the animal. The previous owner shall finish a copy of such notification to the Chief of Police along with written acknowledgement by the new owner of his/her receipt of such notification. The Chief of Police or the Chief's designee shall notify the City Manager of any changes of ownership, custody or residence of the animal within three (3) days after receiving the required information from the previous owner.

b. Any person receiving an animal classified as dangerous must obtain the required permit, tag and enclosure prior to acquisition of the animal. The new owner shall comply fully with the provision of this

7/ORDINANCE NO. \_\_\_\_\_

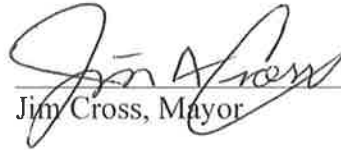
Article pertaining to obtaining liability insurance, payment of fees, and maintenance, control and ownership of a Dangerous Animal.

SECTION 2. Section 2-201 through Section 2-216, inclusive, of the Code of the City of Russell are hereby repealed and replaced by the Sections set out in Section 1 above.

SECTION 3. Publication and Effective Date. This ordinance shall take effect and be in full force and effect from and after its passage, signature and publication of a summary of this ordinance in the official city newspaper and posting of the full text of the ordinance on the city's website in compliance with K.S.A. 12-3007(b).

PASSED by the Governing Body of the City of Russell, Kansas, this 21st day of March, 2023.

APPROVED by the Mayor of the City of Russell, Kansas, this 21st day of March, 2023.

  
\_\_\_\_\_  
Jim Cross, Mayor

ATTEST:

  
\_\_\_\_\_  
Ashley Mai, City Clerk

