



CITY OF TOPEKA *City Attorney's Office*

Jackie Williams, CITY ATTORNEY

Kyle G. Smith, Assistant city Attorney

City Hall, 215 SE 7th St., Room 353

E-mail: ksmith@topeka.org

Topeka, KS 66603-3914

Tel.: (785) 368-3883

Tel.: (785) 368-9529

www.topeka.org

Proposed Ordinance on Animal Cruelty and Dangerous Dogs

IMPROVE SAFETY – SAVE TAX DOLLARS – SAVE ANIMALS

The Topeka Police Department and City Attorney's Office have reviewed the current city ordinances regarding animal control efforts. After consulting with animal control officers, Helping Hands Humane Society (HHHS), the municipal court, city prosecutors, and numerous volunteer experts, the proposed ordinance was prepared. This document explains the issues that need to be resolved and the reasoning behind the proposed changes.

Overview:

The proposed ordinance would revamp several animal control provisions to enhance public safety, protect animals and save taxpayers' dollars.

- The new Cruelty to Animals ordinance would resolve a conflict in laws and meld the best features of the state statute and existing Topeka City Code.
- The ordinance addresses dangerous dogs with an emphasis on protecting the public and holding the owner accountable for the dog's actions. The ordinance would direct resources to animals that are proven to show hostile and dangerous actions, rather than against all members of a breed, regardless of their temperament. Current 'Breed Specific' language would be repealed.
- The problem of feral cats would be addressed by authorizing, at no taxpayer expense, an innovative effort by private parties to sterilize and vaccinate the animals.

Frequently Asked Questions

FAQ #1 Does this ordinance increase tag fees?

No. That is a totally separate ordinance that will be taken up at a later date.

FAQ #2 Why do we need a new Animal Cruelty law?

Through an oversight in 2007, the City of Topeka adopted two different ordinances covering the same topic of Cruelty to animals, TCC 18-4 and U.P.O.C. 11.11. The court, prosecution, defense bar and citizens have been wrestling with reconciling the conflicting provisions of these two ordinances, and some otherwise valid cases have been dismissed due to these conflicts.

FAQ #3 Which Cruelty to Animals ordinance will be kept?

The new section is intended to incorporate the best of both ordinances. It closely follows the state statute/U.P.O.C to provide consistent rules and enforcement. Topeka provisions controlling tethering are maintained but modified to improve enforcement and better protect animals. Provisions for intentionally killing an animal is maintained however particularly cruel tortures of animals resulting in death, i.e. malicious, will have to be filed in District Court.

FAQ #4 What are the changes regarding tethering of dogs?

Tethering is controlled under the current “Cruelty to Animals” ordinance due to the risk of animals being left without shelter, knocking over food and water, or attacked and being unable to escape. Currently the Topeka City Code, 6.05.040, states:

“No person shall:

(A) Continuously tether a dog for more than one continuous hour, except that tethering of the same dog may resume after a hiatus of three continuous hours, for up to three hours total time on tether per day; provided, that for the purpose of tethering a dog, a chain, leash, rope or tether shall be at least 10 feet in length;

While the Animal Control Unit gets calls frequently of animals tethered without food, water or shelter prosecution is difficult due to the

need to prove beyond a reasonable doubt that the this has gone on for at least an hour – requiring the complaining party or the Animal Control Officer to sit and watch the animal for the hour, sometimes while it is suffering.

The proposed ordinance would allow unlimited supervised tethering as the owner would be able to address food, water needs and protect the animal. However, unsupervised tethering would be limited to 15 minutes – long enough for the animal to do its business but brief enough to ensure safety and allow for more efficient use of Animal Control Officers' time.

FAQ #5 Why change the law on Pit Bull Terriers?

Current Breed Specific ordinances have proven ineffective in reducing the number of pit bulls in Topeka or the number of dog bites. Breed Specific Legislation, i.e. targeting a particular breed such as American Pit Bull Terriers, has generally been discredited in actual experience of cities, professionals and academic research as being both ineffective and expensive. The American Veterinary Medical Association has taken a position in opposition to breed specific legislation as being unfounded in scientific studies.

- i. Studies show that cities with breed specific laws are not any safer. Stronger laws against aggressive and dangerous dogs which hold the owners responsible are seen as more effective.
- ii. Any breed of dog can be made vicious, and conversely, Pit Bulls can be excellent and safe pets.
- iii. Mixed breed dogs make the breed specific legislation difficult to enforce. Absent cost-prohibitive DNA testing, it is difficult to prove beyond a reasonable doubt the breed. One study using canine DNA testing when compared to shelter expert identification, showed 84% of dogs in a shelter were mislabeled.
- iv. Over the past 9 years the TPD's budget for operating Animal Control has run over budget an average of \$30,000 per year, for a total of \$272,751.55, plus vet bills.
 1. The vast majority of these budget overruns are caused by dogs being held as unlicensed pit bulls
 2. These are not dogs that exhibited vicious behavior, just running loose or otherwise in violation of our breed specific ordinances.
 3. The money that could be better spent on dogs that we can show are dangerous, rather than just punishing an entire breed.

FAQ #6 Is it true that adoptable dogs of other breeds are being killed to allow storage for dogs being held only because of their breed?

Yes. Sadly, Helping Hands Humane Society (HHHS) each year has to kill hundreds of adoptable dogs of other breeds in order to comply with the law regarding 'held' pit bulls. Dogs being held for the most part, not because they attacked anyone, but just because they resemble pit bull terriers.

FAQ #7 Are Pit Bulls more dangerous than other dogs?

Pit Bull Terriers are not inherently more dangerous than any other large breed of dog. Public outcry over several high profile cases in the media created a widespread fear of pit bull terriers and several cities, including Topeka in 1981, passed laws restricting or banning those breeds. As often happens facts slowly come out and the wisdom of such legislation is now in serious question. For instance, since 1965 there have been 11 fatal dog attacks in Kansas, by 8 different breeds of dogs.

Pit Bull Terriers were originally bred for handling livestock, they were, and are, like other breeds, used in illegal dog fighting and do maintain the strong jaws and heavy build from their original purpose. Scientific study comparing pit bull terriers and other suspect breeds, such as Rottweilers and Doberman Pinschers, found that they are no more aggressive than Golden Retrievers. Schalke et al., *"Is breed specific legislation justified? Study of the results of the temperament test of Lower Saxony"*, Journal of Veterinary Behavior, (2008) 3: 97-103. See also, Fordham Law Review, 2006 *"Attacking the Dog-bite Epidemic: Why Breed-Specific Legislation won't solve the Dangerous Dog Dilemma"*

FAQ #8 Why change the Vicious Dog Ordinance?

The proposal is to replace the current Vicious Animal ordinance with a similar, but broader 'Dangerous Dog' approach based on the same research that went in to the City of Lawrence's success with their ordinances. It was felt that a more comprehensive approach would improve safety while protecting the rights of both citizens and dog owners. The emphasis is on protecting the public and holding the owner accountable for the dog's actions.

The ordinance would direct resources to animals that are proven to

show hostile and dangerous actions, rather than against all members of a breed, regardless of their temperament.

The proposed ordinance would require and promoting sterilization of any animal found to be dangerous because policies promoting the sterilization of pets enhance public safety, save funds and avoid the problems of overpopulation.

- 97% of fatal dog attacks nationwide were by non-sterilized animals.
- Pet overpopulation is a major problem. Thousands of animals are euthanized every year by HHHS.

FAQ # 9 What would happen under the new ordinance if a dog attacks someone? Would it matter if the dog didn't break the skin?

Under the proposed ordinance the definition of a dangerous dog would be somewhat broader than the current 'vicious' classification. There are essentially four ways a dog could be found to be 'dangerous':

- (b) Dangerous dog shall mean any of the following:
- (1) Any dog with a known propensity tendency or disposition to attack, to cause injury, or otherwise threaten the safety of human beings or domestic animals; or
 - (2) Any dog which in a vicious or threatening manner, approaches any person in apparent attack upon the person while on the streets, sidewalks, or any public grounds or places; or on private property other than on the property of the owner; or
 - (3) Any dog which, unprovoked, attacks or bites, or has attacked or bitten a human being or domestic animal; or
 - (4) Any dog which was previously determined to be a vicious animal pursuant to the previous Topeka City Code 18.8 or 6.05.080; or

Obviously there is a range of actions, varying in severity and harm, that could bring the dog under the jurisdiction of the court. Some minor cases that in theory could fall under the ordinance may not result in a ticket (e.g. one dog snaps at another while both are on leashes) while a more severe outcome would result in the dog being seized and prosecution. The City Prosecution office has determined that they will consider diversion requests for first time offenses where no harm occurs.

If there is a conviction of an animal as a dangerous dog, the new ordinance would require, at a minimum, the animal be kept in a secured enclosure, walked on a leash no longer than 4 feet, be registered annually, micro-chipped, and sterilized. Once a dog has been found to be 'dangerous' second offenses would be more stringently enforced. For example, a dangerous dog running at large would have a minimum \$250 fine or an attack on a human by a dangerous dog could result in a fine up to \$1,000 and the destruction of the animal.

FAQ 10 What should a person expect would happen if a licensed dog is found loose?

The law on dogs running at large is not changed by this ordinance. If a dog is found running loose it will be seized. If the dog is properly tagged, Animal Control Officers will, resources allowing, try to notify the owner and return the dog. Otherwise the dog will be taken to Helping Hands Humane Society.

FAQ #11 What is the ordinance proposing to do about cats living in the wild?

Undomesticated, or 'feral' cats reproduce and expand wherever there is shelter and food available. Traditional efforts to trap and adopt these animals have been unsuccessful for two reasons:

- i. After an animal is removed, the population just expands to fill any locations that have food and shelter.
- ii. Feral cats, being wild animals, are rarely adopted. So after the expense of trapping and storing for the statutory 3 day minimum, the animals are destroyed, all at taxpayers' expense.

The ordinance adopts a procedure used successfully in other jurisdictions authorizing a program, not at taxpayer expense, where feral cats are trapped, neutered, vaccinated and their ears cropped to aide in ready identification. The cats are then released in their original locations, preventing other cats from filling the space, but not reproducing. In 3-4 years this approach should show reductions in feral cat numbers as well as enhance safety due to vaccinations.

FAQ #10 What if an ear-cropped cat is still a nuisance and I want it removed from my property?

It is probably best to think of feral cats as the wild animals that they are, not the cute, domesticated pets they look like. As with wild animals, homeowners should take reasonable steps to deter them, from removing food sources and shelter locations to the use of chemical and electronic deterrents. And one should keep in mind that a removed cat may likely be replaced by another cat, one that might not be sterilized and vaccinated. However, if a person is scratched or bitten by any cat, Animal Control should be called to deal with rabies and other health issues. While Topeka has no leash law for cats, nuisance cats can still be removed by an ACO.