

ORDINANCE NO. 2138

AN ORDINANCE AMENDING CHAPTER II OF THE CODE OF THE CITY OF CANEY, KANSAS, BY ADDING A NEW ARTICLE 3, RELATING TO DANGEROUS ANIMALS, AND REPEALING ANY ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CANEY, KANSAS, AS FOLLOWS:

Section One. That Chapter II of the Code of the City of Caney, Kansas, is hereby amended by adding a new Article 3, relating to dangerous animals, as follows:

ARTICLE 3. DANGEROUS ANIMALS

3-101. DEFINITIONS. For the purpose of this article, the following words shall have the following meanings:

Dangerous Animal means and includes any wild mammal, reptile or fowl which is not naturally tame or gentle but is of a wild nature or disposition and which, because of its size, vicious nature or other characteristics, would constitute a danger to human life or property.

Dangerous Dog means any dog with a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals; or (i) any dog which has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property; or (ii) any dog which, without provocation, approaches any person in a vicious or terrorizing manner or in an apparent attitude of attack upon any public or private property; or (iii) any dog which, without provocation, bites a human being or domestic animal; or (iv) any dog owned primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or (v) any dog that has more than once severely injured or killed a domestic animal. Notwithstanding the definition of a "dangerous dog" herein, when determining whether a dog is dangerous pursuant to this Code, the Court may consider as mitigating factors whether any injury or damage is sustained by a person or animal who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises owned or occupied by the owner of the dog; was teasing, tormenting, abusing or assaulting the dog; was committing or attempting to commit a crime; or whether the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault. This definition shall not apply to police dogs.

3-102. KEEPING DANGEROUS ANIMALS.

- A. Prohibitions: No person shall own or permit to be kept on such person's premises any dangerous animal. This subsection will not be construed to apply to zoological parks, performing animal exhibitions or circuses, bona fide licensed veterinary hospitals for treatment, or bona fide educational or medical institutions, museums where they are kept as live exhibits or for study.
- B. Seizure and Impoundment: If the animal control officer or a law enforcement officer has probable cause to believe that a person owns a dangerous animal on premises in the City, the animal control officer or law enforcement officer shall cause the animal to be immediately seized and impounded, or euthanized, if seizure and impoundment are not possible without risk of serious physical harm or death to any person. Upon seizure and impoundment, said animal may be euthanized or delivered to a place of confinement which may be with any organization which is authorized by law to accept, own, keep or harbor such animals. In lieu of seizure and impoundment, the animal control officer or law enforcement officer may order the animal immediately removed by the owner, if the officer has reason to believe that the owner can safely and promptly provide for the removal of the animal. The owner must provide the animal control officer or law enforcement officer with proof confirming the safe relocation of the animal upon request.
- C. Costs: Any reasonable costs incurred in seizing, impounding, euthanizing or confining any dangerous animal shall be the responsibility of the owner of such animal. Such costs shall be in addition to any fine or penalty provided for violation of this Chapter. Failure to pay said costs within ten (10) days after receipt of a written notice of the amount due shall be a violation of this Section.

3-103. DANGEROUS DOGS.

- A. Determination of a Dangerous Dog:
 - 1. If the animal control officer or a law enforcement officer has probable cause to believe a dog is dangerous, as defined in Section 3-101, the City Attorney may file a petition with the Municipal Court, verified by the animal control officer or law enforcement officer, seeking a determination that the dog is dangerous. If the City intends to seek an order from the Court that the dog be euthanized, the petition shall specifically identify that as the remedy requested.
 - 2. The City Attorney shall provide the owner of the dog with a copy of the petition, and written notice of the date, time, and location of the hearing.

3. When the animal control officer or a law enforcement officer has probable cause to believe that the subject dog may pose a threat of serious harm to human beings or other animals, the officer is authorized to seize and impound the dog pending the hearing and/or any appeal. If the subject dog has been impounded, the matter shall be scheduled for a hearing within ten (10) business days from the date of impoundment. If the dog is not impounded, the hearing shall be held within thirty (30) days from the date the petition is filed in the Caney Municipal Court. These deadlines may be extended by the Court for good cause shown.
4. The hearing shall be conducted by the Municipal Judge, who will sit as an administrative judge for purposes of this Section. As administrative judge, he or she is empowered to hold hearings, subpoena witnesses, take the testimony of persons under oath, and to require the production of any evidence relating to any matter being heard.
5. At the hearing, all interested parties shall be given an opportunity to present testimony and relevant materials on the issue of whether the dog in question is dangerous. The testimony and relevant materials may include but not be limited to animal control reports, the facts, circumstances, and seriousness of any attack or wound, past history of wounds inflicted by the dog in question, and the potential propensity of the dog to inflict wounds in the future. The hearing shall be civil in nature, informal in the presentation of the testimony, and open to the public.
6. If the Court, after hearing the testimony and reviewing the relevant materials, determines that the City has proven by a preponderance of the evidence that the dog meets the definition of dangerous dog, the dog shall be deemed dangerous. In addition, the Court has the authority to order the dog removed from the City, or destruction of the dog, as it deems appropriate. Future compliance hearings and/or the requirement to post bond to ensure compliance or to perfect an appeal may be ordered at the discretion of the Court. If the owner fails to comply with the provisions of this Section within the time frame ordered, unless stayed by the filing of an appeal, the dog shall be ordered destroyed.
7. If the dog is ordered to be removed from the City, the owner shall pay all applicable impoundment and boarding fees, before the dog may be released. If the owner appeals the Court's decision, the dog shall be impounded pending the determination on appeal, and all associated boarding costs shall be the responsibility of the owner. If the dog is determined not to be dangerous, it may be released to its owner immediately upon payment of all impoundment and boarding fees.
8. The failure of an owner to appear at a hearing, or the removal of the dog from the City prior to the scheduled hearing, does not preclude the Court

from holding a hearing and/or determining that the dog is dangerous. In addition to any other order, the Court may order the owner to provide animal control with the exact location, address, and contact information for the new owner of the dog (if moved), and require that the animal not be returned to the City.

9. If an owner desires to contest the Court's determination that a dog is dangerous, he or she may appeal to the district court. The owner shall file a notice of appeal with the municipal court clerk within ten (10) days of the Court's determination. If the dog has been impounded, the Court may require that the owner post a bond in an amount sufficient to pay for the animal's current impoundment and boarding fees, and a minimum of thirty (30) additional days boarding, which shall also be required within ten (10) days of the Court's determination. The dog shall remain impounded until a final determination is made on appeal. The municipal court clerk will prepare the record on appeal, similar to an appeal from a municipal court pursuant to K.S.A. 12-4602 and K.S.A. 22-3609, and amendments thereto, and submit the record to the district court. The district court shall review the matter de novo, and the City's burden of proof shall be the preponderance of the evidence.

B. Stipulations by Owner:

1. The owner of a dog subject to a petition seeking a dangerous determination may waive his or her right to a hearing and enter a stipulation that the dog is dangerous, or a stipulation that the evidence would be sufficient to sustain a finding that the dog is dangerous. Any such stipulation shall be reduced to writing and signed by the owner. A stipulation shall have the same legal effect as a determination by the Court that the dog is dangerous.
2. For purposes of this Chapter, a dog that is stipulated to be dangerous under this Section shall be synonymous with a dog determined to be dangerous by the Court. Further, entering into a stipulation is not an appealable order.

Section Two. That Sections 2-217 and 2-218, and the definition of "Pit Bull Dog" in Section 2-201(h) of the Code of the City of Caney, Kansas, be and are hereby repealed.

Section Three. This Ordinance shall be in force and effect from and after its adoption and approval by the Governing Body of the City of Caney, Kansas, and publication as required by law.

Passed and approved this 4th day of May 2015.

Carol S. McClure
Carol McClure, Mayor

ATTEST:

Debbie Morrison
Debbie Morrison, City Clerk