

ORDINANCE NO. 739

AN ORDINANCE AMENDING SECTION 2-115 OF THE CODE OF ORDINANCES,
REGULATING VICIOUS ANIMALS WITHIN THE CITY OF OGDEN, KANSAS

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

Section 1. That Section 2-115 of the Code of Ordinances of the City of Ogden, KS is hereby amended to read as follows:

2-115. VICIOUS ANIMALS. (a) Prohibited: It shall be unlawful for any person to keep, possess or harbor a vicious animal within the city, except as otherwise set forth in this section. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the 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 animal control officer or his or her agent to impound such animal.

(b) Defined: 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) Complaint: 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 in accordance with subsection (d) and/or the 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.

(d) Vicious Dog to be Muzzled: It shall be the duty of every owner, keeper or harborer of any dog in the city, which dog is vicious or has been known to bite, chase, or run after any person or animal in the streets, alleys, or any public place in the city, 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 dog within the city limits contrary to this section shall be guilty of a violation of this code.

(e) Immediate Destruction: Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement 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) Release of: 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 the animal shelter. Surrender of an animal by the owner thereof to the 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.

(g) Exceptions.

(1) Definitions.

(A) *Assistance Dog* means any guide dog, hearing assistance dog or service dog.

(B) *Guide dog* means a dog which has been specially selected, trained and tested for the purpose of guiding a person who is legally blind.

(C) *Hearing assistance dog* means a dog which is specially selected, trained and tested to alert or warn individuals who are deaf or hard of hearing to specific sounds.

(D) *Service dog* means a dog which has been specially selected, trained and tested to perform a variety of tasks for person with disabilities. These tasks include, but are not limited to: Pulling wheelchairs, lending balance support, picking up dropped objects or providing assistance in, or to avoid, a medical crises, or to otherwise mitigate the effects of a disability. The presence of a dog for comfort, protection or personal defense does not qualify a dog as being trained to mitigate an individual's disability and therefor does not qualify the dog as a service dog covered under the provisions of this section.

(2) Guide Dog. Every legally blind person shall have the right to be accompanied by a guide dog, specially selected, trained and tested for the purpose, in or upon any of the places listed in K.S.A. 39-1101, and amendments thereto, in the acquisition and use of rental, residential housing and in the purchase and use of residential housing without being required to pay an extra charge for the guide dog, except that such person shall be liable for any damage done to the premises or facilities by such dog.

(3) Hearing Assistance Dog. Every hearing impaired person has the right to be accompanied by a hearing assistance dog, specially selected, trained and tested for the purpose of hearing assistance, in or upon any of the places listed in K.S.A. 39-1101, and amendments thereto, in the acquisition and use of rental, residential housing and in the purchase and use of residential housing without being required to pay an extra charge for the hearing assistance dog. The hearing impaired person shall be liable for any damage done to the premises or facilities by such dog.

(4) Service Dog. Every person with a disability shall have the right to be accompanied by a service dog of any breed, specially selected, trained and tested for the purpose which shall include, but not be limited to, pulling a wheelchair, opening doors and picking up objects, in or upon any of the places listed in K.S.A. 39-1101, and amendments thereto, in the acquisition and use of rental, residential housing and in the purchase and use of residential housing without being required to pay an extra charge for the service dog. Such person shall be liable for any damage done to the premises by such dog.

(5) Application. Any dog that falls under this section 2-115(g) shall not be subject to the violations and penalties of 2-115 generally.

(6) Removal of an Assistance Dog. A public entity may ask an individual with a disability to remove an assistance dog from the premises if

(A) The dog is out of control and the animal's handler does not take effective action to control it; or

(B) The dog is not housebroken.

(7) Assistance Dog Properly Excluded. If a public entity properly excludes an assistance dog under sub-paragraph (6), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the assistance dog on the premises.

(8) Assistance Dog Under Handler's Control. An assistance dog shall be under the control of its handler. An assistance dog shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the assistance dog's safe, effective performance of work or tasks, in which case the assistance dog must be otherwise under the handler's control. (e.g., voice control, signals, or other effective means).

(9) Care or Supervision. A public entity is not responsible for the care or supervision of an assistance dog.

(10) Inquiries. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether a dog under this section qualifies as an assistance dog. A public entity may ask if the dog is required because of a disability and what work or task the dog has been trained to perform. A public entity shall not require documentation, such as proof that the dog has been certified, trained, or licensed as a service animal.

Generally, a public entity may not make these inquiries about an assistance dog when it is readily apparent that the dog is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual which is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

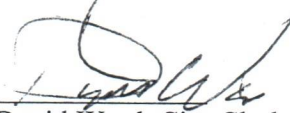
(h) Violations and Penalties. Any person violating or permitting the violation of any provision of this section shall upon conviction in municipal court be fined the sum of not less than \$200 and not more than \$1,000. In addition to the fine imposed, the court may sentence the defendant to imprisonment in the county jail for a period not to exceed 30 days. In addition, the court shall order the revocation of the registration of the subject animal 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 section continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this section shall pay all expenses, including shelter, food, handling, veterinary care, and testimony necessitated by the enforcement of these sections.

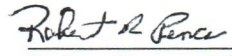
Section 2. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED AND APPROVED this 20th day of November, 2019.



ATTEST:


David Ward, City Clerk


Robert Pence, Mayor