

(First published in the Times-Sentinel _____, 2009

ORDINANCE NO. 612

AN ORDINANCE PROVIDING FOR REGULATIONS RELATING TO THE MAINTENANCE, CONFINEMENT, CONTROL AND CARE OF DOGS AND OTHER ANIMALS; PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF AND REPEALING ORDINANCE NO. 574.

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

SECTION #1. DEFINITIONS - For the purpose of this ordinance, the following words and phrases shall mean:

- A. Animals means all vertebrate and invertebrate animals such as but not limited to bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or in captivity.
- B. At-large means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or the authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be "At-large."
- C. Cat means any member of the species felis catus, regardless of sex.
- D. Dog means any member of the species canis familiaris, regardless of sex.
- E. Dangerous or Vicious Animal means any animal deemed to be vicious per section 8.
- F. Fowl means all animals that are included in the zoological class aves, which shall include, but not be limited, chickens, ducks, geese, turkeys, guineas and pigeons.
- G. Harbor means to allow any animal to habitually remain or lodge or to be fed within his or her home, yard, enclosure or place of business or any other premises where he or she resides or controls
- H. Immediate Control means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.
- I. Livestock includes, but not limited to cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.
- J. Own means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this ordinance, the head of the household of which such minor is a member shall be deemed to own such animal for the purpose of this ordinance.

K. Owner means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in subsection O above.

SECTION #2. ANIMAL CONTROL OFFICER; DUTY TO IMPOUND: CITATION ALTERNATIVE.

A. As an alternative to the provisions of this section, any law enforcement officer may issue a citation to the owner, harbinger or keeper of an animal in violation of this ordinance, and the person receiving the citation shall appear in the municipal court of the city to answer the charged violation.

SECTION #3. CAPTURE OR DESTRUCTION OF AN ANIMAL. When deemed necessary by law enforcement officers or animal control officers for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

- A.** Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this ordinance as creating a nuisance.
- B.** Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by law enforcement officers or animal control officers, in his or her discretion, to be of a danger to itself or to the public health and safety.
- C.** Use of firearms or other suitable weapons to destroy any rabid animal, any vicious animal defined in Section 8, or any animal creating a nuisance as defined in Section 10, where such animal is impossible or impractical to catch, capture or tranquilize.

SECTION #4. RIGHT OF ENTRY; UNLAWFUL INTERFERENCE.

- A.** The law enforcement officer or any animal control officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this ordinance.
- B.** It shall be unlawful for any person to interfere with a law enforcement officer or animal control officer in the exercise of his or her duties.

SECTION #5. KEEPING, HARBORING OR MAINTAINING ANIMALS.

A. It shall be unlawful for any person to keep, harbor or maintain more than twelve (12) rabbits, three (3) dogs, three (3) cats, or (3) of any other animal permitted pursuant to section #5(B)(1), below, within the city. This subsection shall apply only to mature animals that are fully weaned.

- (1) Additional dogs, cats, or other animals may be maintained with the consent of the City Council upon submitting a waiver request. The waiver request shall include the number and type of animals to be covered by waiver and the written consent of all property owners within 100 feet of all boundaries of the property where said animals will be maintained.
 - (2) The applicant shall comply with all other sections of this ordinance or the waiver may be revoked by action of the city council or the municipal court judge.
- B.** It shall be unlawful for the owner, lessee, occupant or person in charge of any premises in the city to possess and maintain any animal or fowl within the city or permit to be maintained thereon any stable, shed, pen or other place where horses, mules, cattle, sheep, goats or swine, or undomesticated animals may be kept. This subsection shall not apply to :

- (1) The maintaining of non-poisonous and non-vicious animals and fowl which are commonly kept as household pets, such as dogs, cats, rabbits, hamsters, parakeets, and comparable animals, when kept as household pets and in a safe and sanitary manner in accordance with Section 6 of this ordinance.
- (2) The transporting of animals through the city by ordinary and customary means.
- (3) Pet shops, zoos, circuses, carnivals, educational institutions, or medical institutions.
 - a. Their location conforms to the provision of the zoning ordinance of the city.
 - b. All animals and animal quarters are kept clean and so maintained as to eliminate objectionable odors.
 - c. Animals are maintained in quarters so constructed as to prevent their escape.

SECTION #6. NUISANCE; ANIMAL ACTIVITIES PROHIBITED

- A.** Molests or interferes with persons in the public right-of-way;
- B.** Attacks or injures persons, or other domestic animals;
- C.** Damage public or private property other than that of its owner or harbinger by its activities or with excrement;
- D.** Scatters refuse that is bagged or otherwise contained;

- E. Causes any condition which threatens or endangers the health or well-being of persons or other animals;

If a summons is issued charging a violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.

SECTION #7. NOISY ANIMALS.

- A. The keeping or harboring of any animal which by loud, frequent, and habitual barking, howling, yelping, mewing, or screeching which disturbs the peace of any neighborhood is hereby prohibited. It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner.

SECTION #8. VICIOUS ANIMALS: KEEPING PROHIBITED

- A. It shall be unlawful to keep, harbor, own or any way possess, within the corporate limits of the City of Garden Plain, Kansas:

- (1) Any warm-blooded, carnivorous or omnivorous, wild or exotic animal (including but not limited to non-human primates, raccoons, skunks, foxes and wild exotic cats; but excluding fowl, ferrets and small rodents of varieties used in laboratory purposes).
- (2) Any animal having poisonous bites.
- (3) Any pit bull dog; provided that pit bull dogs registered with the City on the date of publication of this ordinance may be kept within the City subject to the standards and requirements set forth in paragraph B. "Pit bull dog" is defined to mean:
 - A. The Staffordshire bull terrier breed of dog.
 - B. The American pit bull terrier breed of dog.
 - C. The American Staffordshire terrier breed of dog.
 - D. Any dog which has the appearance and characteristics of being predominantly of breeds of Staffordshire bull terrier, American pit bull terrier, American Staffordshire bull terrier; or any combination of any or these breeds.

- B. Keeping of Registered Pit Bulls.** The provisions of paragraph (A) of this ordinance are not applicable to owners, keepers or harbors of pit bulls, registered with the City of Garden Plain as of the effective date of this Ordinance. The keeping of such dogs, however, shall be subject to the following standards:

- (1) **Leash and Muzzle.** No person shall permit a registered pit bull dog to go outside its kennel or pen unless such dog is securely

leashed with a leash no longer than four feet in length. No person shall permit a pit bull dog to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all pit bull dogs on a leash outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.

- (2) **Confinement.** All registered pit bull dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine registered pit bull dogs must be locked with a key or combination lock when such animals are within the structures. Such structures must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground not less than two feet. All structures erected to house pit bull dogs must comply with all zoning and building regulations of the City. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- (3) **Confinement Indoors.** No pit bull dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.
- (4) **Signs.** All owners, keepers or harborers of registered pit bull dogs within the City shall within 10 days of the effective date of this ordinance display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog". In addition, a similar sign is required to be posted on the kennel or pen of such animal.
- (5) **Insurance.** All owners, keepers, or harborers of registered pit bull dogs must within 10 days of the effective date of this ordinance provide proof to the Garden Plain City Clerk of public liability insurance in a single incident amount of \$50,000.00 for bodily injury or death of any person or persons or damage to property owned by any persons which may result from the ownership, keeping or maintaining of such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless 10 days written notice is first given to the Garden Plain City Clerk.
- (6) **Identification Photographs.** All owners, keepers or harborers of registered pit bull dogs must within 10 days of the effective date of this ordinance provide to the City Clerk two color photographs of the registered animal clearly showing the color and approximate size of the animal.
- (7) **Reporting Requirements.** All owners, keepers or harborers of registered pit bull dogs must within 10 days of the incident, report the following information in writing to the Garden Plain City Clerk, as required hereinafter:
 - A. The removal from the City or death of a registered pit bull dog;

- B. The birth of offspring of a registered pit bull dog;
- C. The new address of a registered pit bull dog owner should the owner move within the corporate city limits.

- (8) **Sale or Transfer of Ownership Prohibited.** No person shall sell, barter, or in any other way dispose of a pit bull dog registered with the City to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such dog; provided that the registered owner of the pit bull dog may sell or otherwise dispose of a registered dog or the offspring of such dog to persons who do not reside within the City.
- (9) **Animals Born of Registered Dogs.** All offspring born of pit bull dogs registered within the City must be removed from the City within six weeks of the birth of such animal.
- (10) **Irrefutable Presumptions.** There shall be an irrefutable presumption that any dog registered with the City as a pit bull dog or any of those breeds prohibited by Section 8 of this ordinance is in fact a dog subject to the requirements of this ordinance.
- (11) **Failure to Comply.** It shall be unlawful for the owner, keeper, or harbinger of a pit bull dog registered with the City of Garden Plain to fail to comply with the requirements and conditions set forth in this ordinance. Any dog found to be the subject of a violation of this ordinance shall be subject to immediate seizure and impoundment. In addition, failure to comply will result in the revocation of the license of such animal resulting in the immediate removal of the animal from the City.
- (12) **Violations and Penalties.** Any person violating or permitting the violation of any provision of this section shall upon conviction in Municipal Court be fined a sum not less than \$200.00 and not more than \$500.00. 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 registration of the subject pit bull revoked and the dog removed from the City. Should the defendant refuse to remove the dog from the City, the municipal judge shall find the defendant owner in contempt and order the immediate confiscation and impoundment of the animal in addition to any sentence the judge may impose for contempt. 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 this section.

SECTION #9. RUNNING AT LARGE. It shall be unlawful for any person to willfully allow any animal under his or her control to run at large within the city. Any animal found at large shall be impounded.

SECTION #10. EXOTIC ANIMALS. It shall be unlawful for any person, firm, or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous

reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.

SECTION #11. PENALTY AND RESTRICTIONS. Any person who shall be convicted in municipal court of violating any provisions of this ordinance with the exception of Section 8, Paragraph B, shall be considered guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 or imprisonment for a period not to exceed 30 days or both such fine and imprisonment. Each day that the violation of this ordinance occurs shall constitute a separate offense and shall be punishable hereunder as a separate violation.

SECTION #12. SEVERABILITY. If any provision of this ordinance is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and its applicability to other persons and circumstances shall not be affected thereby.

SECTION #13. This ordinance shall take effect and be in full force and effect after its passage and publication once in the official city paper.

Passed and approved by the Governing Body of the City of Garden Plain, Kansas, this 1 day of April, 2009.

Approved by the Mayor this 1 day of April, 2009.

Tony Flax, Mayor

ATTEST:

Ronda Mollenkamp, City Clerk