



MEMORANDUM

To: Mayor and Members of the City Council

From: Rich Olson, City Manager
Vivian White, City Clerk

Date: September 22, 2016

Re: Consideration – Hold a public hearing to amend parts of Chapter 90 -
Animals of the City of Elizabeth City Code of Ordinances

BACKGROUND:

During the City Council meeting of August 8, 2016, the Council adopted and ordered published the 2016 codification of the City's Code of Ordinances. This edition of the City's Code is current through December 31, 2015. Through the codification process, staff identified a number of additional changes needed to further update the Code. However, legal opinion advised that public hearings were needed in order to make those changes.

ANALYSIS:

Staff has reviewed Chapter 90 – Animals, and is recommending that the City Council adopt the following amendments to several sections of that chapter:

Section 90.06

There have been questions regarding the determination of the limit placed on the number of animals allowed. It was not completely clear from the ordinance if animals kept within homes were included along with those kept outside the homes. Language is being suggested to change "no more than three animals" in "a" of Section 90.06 to clarify that the section applies to animals living inside a residence as well as those kept outside the home at any one time.

It is also suggested that 90.06 "c" be deleted.

Section 90.07(C)

This is to correct a typographical error of "fitter" rather than "litter."

Section 90.12

There was no definition provided in Section 90.12 for "beast of burden". Language has been included to do so.

Also in that section the word "police" is being changed to "Chief of Police or his designee."

Section 90.25

This section previously only addressed a dog being a nuisance when howling. It is suggested that the previous section be deleted in its entirety and an expanded nuisance section for nuisance dogs be added.

Section 90.29

It is suggested that in section "d," the previous "1" and "2", which allowed people to restrain dogs on a chain or rope, be deleted. A new section has been added to make this practice unlawful.

Section 90.31

Currently the City Code only addresses cruelty to beasts of burden. A new section is being proposed to provide for "Cruelty to Animals" in general.

LEGAL:

The City Attorney has reviewed the proposed ordinance amendments and approved each as to form and content.

ADVERTISEMENT:

During the City Council meeting held on September 12, 2016, the Council called for a public hearing to receive comment regarding the proposed amendments to Chapter 90. The public hearing has been advertised as required.

STAFF RECOMMENDATION:

AT THE CONCLUSION OF THE PUBLIC HEARING:

By motion, adopt the attached ordinance enacting the amendments to Chapter 90 - Animals of the City of Elizabeth City Code of Ordinances to be effective as of September 27, 2016.

Note: Since this is the first reading of the proposed ordinance, a unanimous vote of the Council is needed for adoption. Otherwise, if the Council directs, the matter will be brought back during the October 10, 2016 Council meeting for action.

RCO/vdw



Ordinance # 2016-09-_____
ENACTING AMENDMENTS TO
City of Elizabeth City Code of Ordinances
Chapter 90: Animals

WHEREAS, the City's Code of Ordinances establishes regulations and requirements with regard to animals kept within the City of Elizabeth City; and

WHEREAS, during recent codification of the City's Code of Ordinances amendments to Chapter 90 Animals were identified as needing to be made; and

WHEREAS, the City Council reviewed this matter during its September 12, 2016 meeting and called for a Public Hearing to receive citizen input; and

WHEREAS, the Public Hearing to effectuate this ordinance amendment was advertised on September 16, 2016 in The Daily Advance to be held on September 26, 2016, as required.

NOW THEREFORE BE IT ORDAINED THAT the City Council of the City of Elizabeth City hereby amends Chapter 90: Animals, Sections, 90.06, 90.07(c), 90.10, 90.12, 90.25, and 90.29 and adds a new Section 90.31 of the City of Elizabeth City Code of Ordinances, as recorded by the following add-delete formatted text:

SECTION I. CHAPTER 90 – ANIMALS

§ 90.06 LIMIT ON NUMBER OF ANIMALS.

(A) No person shall keep more than three animals at any given time within a residence or other enclosed space and/or in any yard or lot within the city, in order to protect the public health, safety and welfare.

(B) This section shall not apply to bees, nor to any poultry, nor to any animal under the age of five months.

~~_____ (C) This section shall not apply to any animal licensed or registered by the city as of 1-1-1989, nor to any animal brought into the city by annexation.~~

§ 90.07 PENS TO BE SANITARY.

(A) All animals kept within the city shall be kept in a clean and sanitary confine and shall be kept in such a manner as not to be injurious to the public welfare, safety and health of persons living in the community.

(B) No grazing animal shall be permitted to graze within 25 feet of any adjoining property line. The stable or building in which such animal is housed shall not be located closer than 40 feet to any adjoining property line.

(C) There shall not be allowed to be accumulated more than two days' dung, waste or ~~fitter-~~ litter in any cage, pen, building or running and grazing area; every cage, pen, building or running and grazing area shall be thoroughly cleaned of much other refuse at least every four days. Sufficient disinfectant, insecticide and deodorant shall be applied every day or as needed in order to prevent the accumulation of insects and the creation of odors.

§ 90.10 IMPOUNDMENT AND DISPOSITION OF ANIMALS AT LARGE OR HITCHED.

(A) Any animal named in this chapter which is found running at large or staked, hitched or fastened in violation of the provisions of this chapter shall be seized and impounded by the ~~Police-Chief~~ Chief of Police or his designee.

(B) Whenever a police officer shall find any feral/vicious animal (which includes any animal that has been separated from domestication), except a dog loose or running at large in the streets or other public places in the city, the officer shall take up such animal and put same in pens or lots kept for such purposes, and to notify the owner, if known. After three days' impoundment, such animal, if not claimed by its owner, shall be disposed of in any humane manner in the discretion of the ~~Police-Chief~~ of Police or his designee.

§ 90.12 CRUELTY TO BEASTS OF BURDEN.

For purposes of this section, Beast(s) of Burden is defined as a draught animal that carries or pulls heavy loads, such as a donkey, mule, llama, camel or ox; and by extension, any domesticated animal trained to perform tasks for humans, such as a herding dog.

(A) No person shall mistreat, drive or work, or allow to be worked, any beast of burden that is physically disabled for labor or work. The ~~police-Chief of Police or his designee~~ shall pass upon the physical condition and fitness of all beasts of burden for work, and inspect same.

(B) No person shall work or allow to be worked any beast of burden, or compel same to work after having been notified by the police to discontinue or stop the working of such animal, or after any animal has been condemned.

DOGS

~~§ 90.25 HOWLING DOG.~~

~~(A) Any person keeping a dog within the city limits which by prolonged and habitual barking, howling or whining causes serious annoyance to neighboring residents~~

~~and interferes with the reasonable use and enjoyment of the premises occupied by such residents, shall be guilty of maintaining a nuisance.~~

§ 90.25 DOG(S) CREATING NUISANCE.

(A) It shall be unlawful for any person to own, keep, possess or maintain a dog in a manner so as to constitute a nuisance.

(B) The actions of a dog constitute a nuisance when the dog disturbs the rights of, threatens the safety of or damages a member of the general public; or interferes with the ordinary use and enjoyment of private or public property. By way of example and not of limitation, the following acts or actions by an owner or possessor of a dog are hereby declared to be a nuisance and are therefore unlawful:

(1) Maintaining a dog that habitually or repeatedly disturbs, interferes with or annoys human beings;

(2) Maintaining a dog that tips over garbage pails or damages gardens, flowers or vegetables;

(3) Failing to confine in a building or secure enclosure a female dog while in estrus;

(4) Allowing or permitting a dog to bark, whine, howl or yowl in an excessive, continuous or untimely fashion, or to make other noise continuously and/or excessively for a period of ten minutes or more, or who barks, bays, cries, howls or makes any other noise intermittently for one-half hour or more to the disturbance of any person at any time;

(5) It shall not be a violation of this section if at the time the dog is barking, baying, crying, howling or making any other noise a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any legitimate cause which teased or provoked the dog;

(6) Any adult resident, owner, occupant or tenant of property upon which the dog is situated shall be deemed a person in charge or otherwise exercising control over the dog;

(7) Maintaining a dog that habitually or continuously loiters on public places;

(8) Maintaining a dog that chases, snaps at, attacks or otherwise molests or threatens pedestrians, bicyclists, motor vehicle passengers or domestic animals ; or

(9) Maintaining a dog that is diseased and dangerous to the health of the public unless under the care of a licensed veterinarian.

~~(B)-(C)~~ Upon complaint being made to the Police Department or Sheriff's Department or to the Animal Control Officer or their respective representatives, a representative of the respective department or the Animal Control Officer shall notify such person against whom the complaint is directed that a complaint has been

received; and, thereupon, such person shall abate the nuisance within 24 hours from the time of notification.

~~(C)~~ (D) It shall be unlawful for any person to fail or refuse to abate the nuisance declared herein within 24 hours from the time of notification.

§ 90.29 ADEQUATE FOOD, WATER, SHELTER AND PROPER RESTRAINT, WHEN USED.

(A) Adequate food. At suitable intervals, not to exceed 24 hours, a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition for the animal shall be provided. Such foodstuff shall be served in a receptacle, dish or container that is physically clean and in which agents injurious to health have been removed or destroyed to a practical minimum.

(B) Adequate water. A constant access to supply of clean, fresh water shall be provided in a sanitary manner.

(C) Adequate shelter.

(1) A shelter shall be provided which will keep an animal dry, out of the direct path of winds and out of the direct sun and at a temperature level that is healthful for the animal.

(2) The containment area for the animal shall be free of accumulated waste and debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris.

(3) A suitable method of draining shall be provided to rapidly eliminate excess water or moisture.

(D) Proper restraint, when used.

~~(1) If an unattended animal is restrained by a chain, leash or other like device, it shall be designed and placed to prevent choking or strangulation.~~

~~(2) Such restraint will not be less than ten feet in length and either on a swivel designed to prevent the animal from choking or strangling itself, or on a chain run.~~

Any dog shall be confined within an enclosed secure area and shall not be allowed outside the enclosed secure area unless securely leashed and under the control of a competent person as defined in §90.26(A). No person shall permit any dog to be kept on a chain, rope or other type of leash outside the enclosed secure area unless the person is in direct physical control of the leash. No dogs shall be leashed to any inanimate object such as a tree, post, stake, building, vehicle and the like.

§ 90.31 CRUELTY TO ANIMALS .

(A) It shall be unlawful for any person to molest, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, abandon or subject to conditions detrimental to its health or general welfare any animal, or to cause or procure said action. The words TORTURE, and TORMENT shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but the terms shall not be construed to prohibit an animal's owner, a veterinarian, the Health Officer, the Chief of Police or Animal Control Program representatives from destroying dangerous, unwanted or injured animals in a humane manner.

(B) Animal cruelty investigators may be appointed by the Chief of Police or the Pasquotank County Sheriff. An animal cruelty investigator(s) has the responsibility for carrying out the defined duties of an animal cruelty investigator as mandated by G.S. §§ 19A-46 and 19A-47.

SECTION II. EFFECTIVE DATE: This Ordinance shall take effect on September 27, 2016.

SECTION III. CODIFICATION. The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

SECTION IV. SEVERABILITY CLAUSE. If any section, or part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION V. All ordinances and sections of the Elizabeth City Code of Ordinances, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

READ, CONSIDERED, AND ADOPTED at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 26th day of September 2016.

Joseph W. Peel
Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk