

(Published in the Topeka Metro News October 17, 2016)

**ORDINANCE NO. 20031**

AN ORDINANCE introduced by City Manager Jim Colson, concerning dangerous dogs, amending City of Topeka Code § 6.05.010 and § 6.05.080 and repealing original sections.

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

Section 1. That section 6.05.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Definitions.**

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Animal shelter" means any premises designated by city administrative authority for the purpose of impounding and caring for animals held under authority of this title.

(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

27 (3) Any dog which, unprovoked, attacks or bites, or has attacked or  
28 bitten a human being or domestic animal; or

29 (4) Any dog which was previously determined to be a vicious animal  
30 pursuant to the previous Topeka City Code 18-8 or TMC 6.05.080; or

31 (5) Any dog owned or harbored primarily for the purpose of dogfighting  
32 shall only be considered dangerous if the dog is evaluated and dangerousness is  
33 concluded by a licensed veterinarian or a dog trainer certified by the Certification  
34 Council for Professional Dog Trainers with experience in evaluating dogs seized  
35 in similar cruelty cases.

36 (6) Notwithstanding the definition of a “dangerous dog” above, no dog  
37 may be declared dangerous if any injury ~~or damage is~~was sustained by a person  
38 ~~or animal who, at the time such injury or damage was sustained, was committing~~  
39 ~~a willful trespass or other tort upon premises occupied by the owner or keeper of~~  
40 ~~the dog, or was teasing, tormenting, abusing or assaulting the dog or was~~  
41 ~~committing or attempting to commit a crime~~under any of the following conditions:

42 (i) the person was committing a willful trespass or other tort  
43 upon the premises occupied by the owner or keeper of the dog;

44 (ii) the person was committing or attempting to commit a crime;

45 (iii) the person provoked, teased, or injured the dog; or

46 (iv) the dog was protecting itself, its owner, its offspring or  
47 another human being.

48 (7) No dog may be declared dangerous if any injury ~~or damage was~~  
49 sustained by a domestic animal ~~which at the time such injury or damage was~~

~~sustained was teasing, tormenting, abusing or assaulting the dog. No dog may be declared dangerous if the dog was protecting or defending a human being or if the dog was protecting or defending her litter of offspring or offspring on the owner's property, within the immediate vicinity of the dog, from an attack or assault~~under any of the following conditions:

(i) the domestic animal provoked, teased or injured the dog; or

(ii) the dog was protecting itself, its owner, its offspring or another human being.

(8) Nothing in this chapter shall be deemed to regulate or prohibit the lawful maintenance and use of dogs by law enforcement agencies or include actions by a law enforcement dog while on duty or while performing duties.

(c) "Domestic animal" means any vertebrate animal that is kept as a pet. "Domestic animal" includes, but is not limited to dogs, cats, rabbits, birds and domestic fowl.

(ed) "Exposed to rabies" means an animal which has been bitten by or subjected to danger, attack or harm by any creature known to have been infected with rabies.

(de) "Humane killing" means the painless administration of a lethal dose of an agent or method of euthanasia as prescribed in the Report of the American Veterinary Medical Association Panel on Euthanasia published in the Journal of the American Veterinary Medical Association, March 1, 2001 (or any successor version of that report), that causes the painless death of an animal. Animals must be handled prior to

administration of the agent or method of euthanasia in a manner to avoid undue apprehension by the animal.

(ef) “Humane society” means the Helping Hands Humane Society in the city or any animal shelter contracted with the city of Topeka which is licensed by the state of Kansas.

(fg) “Owner” means any person owning, keeping, possessing or harboring any animal, or any person operating a kennel. A parent or legal guardian shall be deemed to be an owner of dogs owned or maintained by children upon their premises.

(gh) “Secure enclosure” or “secure six-sided enclosure” shall mean a pen, kennel or structure with secure sides, a secure top attached to the sides and a secure bottom or floor attached to the sides of the pen or embedded in the ground no less than two feet. The secure enclosure must be at least six feet from any public sidewalk or street. The secure enclosure, other than a residence, must be locked with a key or combination lock when animals are within the enclosure. If the secured enclosure is a residence, then all doors, windows or other means of egress shall be secured in a manner to prevent an animal from escaping. All secure enclosures must comply with all zoning and building regulations of the city. All secure enclosures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(hi) “Supervision” means within visual and auditory range of the owner.

(ij) Tether. When used as a verb, “tether” or “tethering” shall mean fastening a dog or cat to a stationary object, pulley run line or a stake. When used as a noun, “tether” or “tethers” shall mean a chain, leash, rope, cable, chain, string, leather or nylon

strap, or any other material used to fasten a dog or cat to a stationary object, pulley run line or a stake.

(j)k) “Vicious” means a cross, ferocious or dangerous disposition or a habit, tendency or disposition to snap, attack or bite any person or domestic animal.

Section 2. That section 6.05.080, Dangerous dogs, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Dangerous dogs.**

(a) In the event that an animal control officer or law enforcement officer has probable cause to believe that a dog is dangerous, as defined by TMC 6.05.010, the animal control officer or law enforcement officer may seize and impound such animal at the humane society unless the owner agrees to impound the animal at the owner’s expense at any veterinarian in the city until the conclusion of any pending municipal court charge regarding the animal. If an animal is ordered to be impounded pursuant to this subsection, the person who owns, harbors, keeps or possesses such animal shall be entitled to a hearing in the municipal court within 14 days of such impoundment to review the propriety of such impoundment and whether a bond may be posted. Impoundment expenses shall be assessed as court costs against a convicted owner and any bond may be applied to such costs.

(b) Dogs seized in connection with dog fighting shall be housed in a secure enclosure with proper exercise and care and held as evidence in the case until the conclusion of the case and order from the court on the disposition of the dogs. Disposition and release of dogs is determined in accordance to K.S.A. ~~21-4314~~21-6412 and ~~21-4316~~21-6414 and any amendments thereto.

118 (c) Any police officer, reserve police officer or animal control officer of the city  
119 is authorized to issue a uniform complaint and notice to appear to any person who  
120 owns, harbors, keeps or possesses a dangerous dog when such officer has probable  
121 cause of an act or acts which are made unlawful by the provisions of this section have  
122 occurred.

123 (d) It shall be unlawful for any person to possess a dangerous dog or violate  
124 the provisions of this title. Any person found guilty of violating the provisions of this title  
125 shall be assessed, fined, and the animal disposed of, as provided below:

126 (1) If the municipal court judge determines that a dog is dangerous  
127 pursuant to this chapter, the owner of the dangerous dog shall be required to  
128 comply with the following:

129 (i) Registration and Microchipping. The owner shall annually  
130 register the dangerous dog with the city, on such forms designated by the  
131 police chief, and shall have a microchip inserted into the dog by the  
132 humane society. The microchip shall detail the dangerous dog registration  
133 and such other information as may be appropriate to determine the  
134 ownership of the dog. The owner shall pay a \$50.00 annual registration  
135 fee and shall pay all costs associated with the microchip procedure and  
136 registration of the dog. The owner shall be responsible for maintaining with  
137 the police department the address of the owner and the dangerous dog.  
138 The owner shall notify the police department within seven days of a  
139 change in address for the owner and dangerous dog.

(ii) Confinement. All dangerous dogs shall be confined in a secured enclosure. It shall be unlawful for any owner to maintain a dangerous dog upon any premises that does not have a secured enclosure. It shall be unlawful for any owner to allow a dangerous dog to be outside of the dwelling of the owner or outside the secured enclosure unless it is necessary for the owner to obtain veterinary care for the dangerous dog or for the limited purposes of allowing said dangerous dog to urinate or defecate or to sell or give away the dangerous dog or respond to such orders of law enforcement officials as may be required. In such event, the dangerous dog shall be securely muzzled and restrained with a leash not exceeding four feet in length, and shall be under the direct control and supervision of the owner of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(iii) Sterilization. The owner shall pay for a licensed veterinarian to spay or neuter the dangerous dog before it will be released to the owner.

(2) Upon conviction of keeping a dangerous dog, the owner shall comply with the provisions of this chapter within 15 days. The owner shall file proof of sterilization and microchipping, acceptable to the municipal court, with the clerk of the municipal court no later than 20 calendar days after conviction. Upon receipt, the clerk of the municipal court shall provide a copy of such proof

to the legal department and the dog may then be released. If the owner fails to comply with the provisions of this chapter within the time provided, the dog shall be destroyed. If the owner or keeper of the dog contests the determination, he or she may appeal within 14 days of the finding to the district court pursuant to law.

(3) The municipal court shall impose a fine of at least \$499.00 and not more than \$1000 on a person who has been convicted of possessing a dangerous dog for an attack on a human being pursuant to TMC 6.05.010(b)(3).  
The municipal court shall have no authority to suspend the fine or any portion of the fine.

(4) The municipal court shall impose a fine of \$250 on a person who has been convicted of possessing a dangerous dog for an attack on a domestic animal pursuant to TMC 6.05.010(b)(3). The municipal court shall have no authority to suspend the fine or any portion of the fine.

(e) Dangerous Dog At-Large. Any dog that has been found to be a dangerous dog, or vicious dog under the previous Topeka City Code 18-8 or TMC 6.05.080, that is not confined or registered as required pursuant to this chapter shall be impounded by an animal control officer or a law enforcement officer. Upon conviction, in addition to all costs for impoundment, the owner or keeper shall pay a fine of at least \$250.00 but not more than \$499.00. For a second offense within 24 months, in which the dog is not confined or registered as required pursuant to this section, in addition to all costs for impoundment, the owner or keeper shall pay a \$499.00 fine and the animal control officer or law enforcement officer is empowered to impound the dog, and the dog shall



185 be destroyed. The municipal judge shall have no authority to suspend the fine or any  
186 portion thereof.

187 (f) Dangerous Dog – Attack on Human. ~~If any dangerous dog or vicious dog~~  
188 ~~under the previous Topeka City Code 18-8 or TMC 6.05.080 shall attack, assault,~~  
189 ~~wound, bite, or otherwise injure or kill, or assist in such injury or killing, a human being,~~  
190 ~~upon conviction the owner shall pay a fine of at least \$499.00 and not more than \$1,000~~  
191 ~~and the animal control officer or law enforcement officer is empowered to impound the~~  
192 ~~dog, and the dog shall be destroyed. The municipal judge shall have no authority to~~  
193 ~~suspend the fine or any portion thereof.~~Upon conviction of TMC 6.05.080, a dog may be  
194 destroyed if the dog attacks a human being which results in great bodily harm or death.  
195 Upon conviction of TMC 6.05.080, the court may destroy a dog that has been previously  
196 determined to be a dangerous dog as defined at TMC 6.05.010(b).

197 (g) Dangerous Dog – Attack on Other Animal. ~~If any dangerous dog or vicious~~  
198 ~~dog under the previous Topeka City Code 18-8 or TMC 6.05.080 shall kill or wound, or~~  
199 ~~assist in killing or wounding, any domestic animal, upon conviction the owner shall pay~~  
200 ~~a \$250.00 fine, and the animal control officer or law enforcement officer is empowered~~  
201 ~~to impound the dog, and the dog shall be destroyed. The judge shall have no authority~~  
202 ~~to suspend the fine or any portion thereof.~~Upon conviction of TMC 6.05.080, a dog may  
203 be destroyed if the dog attacks a domestic animal which results in great bodily harm or  
204 death. Upon conviction of TMC 6.05.080, the court may destroy a dog that has been  
205 previously determined to be a dangerous dog as defined at TMC 6.05.010(b).

206           ~~(h) It shall be an affirmative defense to subsections (f) and (g) of this section that~~  
207           ~~the dog was provoked, teased, injured and was protecting itself, its owner, its offspring~~  
208           ~~or another human being.~~

209           (h) The impounded dog shall not be destroyed pending any appeals of  
210           convictions ~~under subsections (e), (f) and (g) of this section~~under this chapter. The dog  
211           shall remain impounded pending the determination of the complaint. If the court shall  
212           find that there shall not have been a violation, such dog shall be released to the custody  
213           of the owner. In addition to the fines provided in this section, the municipal judge shall  
214           have the authority to sentence the person adjudicated guilty of this chapter to serve up  
215           to a maximum of six months in jail.

216           (ji) Notwithstanding any other provision of this chapter to the contrary and  
217           irrespective of whether the dog has been declared dangerous pursuant to this chapter,  
218           the municipal judge may order any dog destroyed if the municipal judge determines that  
219           the dog is an immediate threat to public health and safety and that confinement and  
220           registration of the dog by the owner or keeper of the dog as provided in this chapter will  
221           not adequately protect public health and safety. No person shall harbor, own, or  
222           possess a dog that is an immediate threat to public health and safety. In making such  
223           determination the municipal judge may consider the severity of the attack and such  
224           other relevant information. The municipal judge shall have the authority to sentence the  
225           person adjudicated guilty of this section to serve up to a maximum of six months in jail  
226           and to pay a fine not to exceed \$1,000.

227           Section 3. That original § 6.050.010 and § 6.05.080 of The Code of the City of  
228           Topeka, Kansas, are hereby specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 5. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 6. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on October 11, 2016.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk