

HOME RULE RESOLUTION NO. HR-99-9

A RESOLUTION PROVIDING FOR THE REGULATION OF DANGEROUS ANIMALS IN THE UNINCORPORATED AREAS OF SHAWNEE COUNTY, KANSAS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, residential development and population growth are increasing in the unincorporated areas of Shawnee County; and

WHEREAS, such development has caused a burden upon rural residents, law enforcement agencies and animal control personnel with the introduction of domestic animals into rural open spaces, causing conflict between residential uses and existing agricultural uses; and

WHEREAS, animals with vicious tendencies roaming at large are recognized to constitute a genuine threat to the peaceful existence and physical safety of persons, livestock and other domestic animals within Shawnee County;

NOW, THEREFORE, the Board of County Commissioners of the County of Shawnee, Kansas, meeting in regular session this 22nd day of November, 1999, and intending to exercise its powers of home rule legislation pursuant to K.S.A. 19-101a, does hereby resolve as follows:

SECTION 1.0 – DEFINITIONS:

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

- a) **“At large”** means not confined in a manner consistent with the provisions of this resolution.
- b) **“Dangerous animal”** means:
- 1) Any animal which by virtue of its breeding, training, characteristics, or instincts, shows a propensity, tendency or disposition to:
 - a) Display violent or aggressive behavior;
 - b) Endanger the safety of persons, livestock or domestic animals;
 - c) Cause injury to any person, livestock or domestic animal;
and/or
 - d) Attack or attempt to attack any person, livestock or domestic animal.
 - 2) Any animal for which a law enforcement or animal control officer has issued a written warning directing the owner to keep the animal in a kennel or pen due to behavior listed in this section, or which any judicial or administrative body has determined to pose a danger to persons, livestock or domestic animals.
- c) **“Domestic Animal or Livestock”** includes any animal or fowl bred or raised in captivity which is the property of any person, and specifically excludes wild animals such as songbirds, squirrels, rabbits and deer.
- d) **“Leash”** means a tether or restraint attached to the collar or harness of an animal with a metal clasp, with a breaking strength of at least three hundred (300) pounds including the clasp, and a length of no more than five (5) feet.
- e) **“Muzzle”** means a device placed securely over an animal’s head and mouth which prevents the animal from biting or removing it without human aid.
- f) **“Owner”** as used herein, means any person who owns, keeps, possesses, harbors, or otherwise has primary responsibility for the care and maintenance of a dangerous animal.

- g) **“Person”** means any natural person, corporation, partnership, or other entity recognized in the law as a person.

SECTION 2.0 – APPLICABILITY:

- 2.1 Except as otherwise specifically provided, this resolution shall be applied to all unincorporated areas of Shawnee County.

SECTION 3.0 – MISCELLANEOUS PROVISIONS:

- 3.1 Nothing in this resolution shall be construed to apply to animals owned and used by law enforcement agencies or any branch of the military, whether state or federal.
- 3.2 No prosecution shall be brought pursuant to this resolution when any injury caused by a dangerous animal was sustained while the animal was preventing an act of violence, robbery, criminal trespass, theft or other crime against a person or property, or was apprehending any person engaged in committing such an act upon a premises owned by or under the control of the animal’s owner, or when the animal so acting was present on the premises at the request of or with the permission of the person or persons in control of the premises.
- 3.3 It shall be a defense to an action brought pursuant to this resolution in which an animal has exhibited or displayed violent or aggressive behavior, caused injury to a person, livestock or a domestic animal, or attacked or attempted to attack a person, livestock or domestic animal, that such behavior was initiated by undue or malicious provocation of the animal by the victim or other party.

SECTION 4.0 – FIGHTING ANIMALS:

- 4.1 It shall be unlawful for any person to sell, offer for sale, buy, attempt to buy, breed or possess any animal owned, harbored or kept primarily or in part for the purpose of fighting other animals for sport or any other purpose, or any animal which has been trained for or has participated in such activity.
- 4.2 It shall be unlawful to train, torment, abuse, tease, badger or otherwise provoke an animal for the purpose of encouraging or developing a propensity for such animal to unlawfully attack any person, livestock or domestic animal.

- 4.3 Violations of this section will be punished in accordance with the penalties established by law for convictions of Class B misdemeanors. Violators shall be fined a maximum of Two Thousand and No/100 Dollars (\$2,000.00). Unless needed as evidence in a case filed under this resolution, or other civil or criminal proceedings, any dogs covered under subsection 4.1 which have been trained for or have participated in dog fighting shall be seized and destroyed. Animals needed as evidence in any proceeding shall not be released or destroyed except upon an order of the court.

SECTION 5.0 – DANGEROUS ANIMALS AT LARGE:

- 5.1 It shall be unlawful for any person who owns, keeps, controls, harbors or in any manner possesses any animal which the person suspects, knows, has reason to know, or through reasonable inquiry could ascertain is a dangerous animal as defined herein to knowingly or through lack of diligence permit or allow such animal to be at large.

SECTION 6.0 – CONFINEMENT:

- 6.1 Any person who owns, keeps, controls, harbors or in any manner possesses any animal which the person suspects, knows, has reason to know, or through reasonable inquiry could ascertain is a dangerous animal as defined herein shall at all times maintain control over such animal in a manner hereafter stated:
- a) When any dangerous animal is not securely confined within a residence or other secure building, or within a kennel or pen, or when not directly supervised on private property within a fenced yard or other secure enclosure, such animal shall be muzzled and restrained with a collar of sturdy construction and a leash not to exceed five (5) feet in length.
 - b) KENNEL/PEN CONSTRUCTION STANDARDS. Any kennel or pen used to confine any dangerous animal shall be of sturdy construction, with sides and gates of wire or chain link construction with a minimum thickness of eleven and one-half gauge. The floor or the perimeters thereof shall be constructed of concrete, masonry or like material and resistant to digging, settling, erosion and other forces which could reasonably or foreseeably cause the enclosure to become unable to contain the animal. The sides of the kennel shall be securely connected to the floor at regular intervals sufficient to prevent escape, and the gate or gates shall be secured with a lock when the animal is unattended to avoid operation by children or other unauthorized individuals. Openings around a gate shall not allow an

animal to escape the enclosure by crawling through or by the manipulation of hinges or latches.

If the sides and gate(s) of the kennel or pen do not exceed six (6) feet in height measured from the floor of the kennel or pen, the kennel shall be enclosed on the top by materials which meet the standards for side and gate construction. If within any kennel or pen there exists any object or structure which the dog can stand or jump on, and if the vertical distance from the top of the object or structure to the top of the kennel or pen is less than six (6) feet, the kennel or pen shall be enclosed on the top by materials which meet the standards for side and gate construction. All kennels and pens shall be regularly inspected and repaired to prevent escape due to deterioration, disrepair or damage.

c) **COMMERCIAL OR BUSINESS PREMISES.** If any dangerous animal is kept on any commercial or business premises for the purpose of preventing trespass, burglary, theft or other crimes, the following provisions shall be followed:

- 1) During normal hours of operation, or when the business is open to the public, any dangerous animal shall be kept in a kennel or pen meeting the standards of construction contained in this resolution.
- 2) When the commercial or business premises is closed to the public, any dangerous animal may freely roam the premises within a secure fenced enclosure. Such enclosure shall be constructed so as to preclude an animal from escaping by clawing, digging, chewing, climbing, jumping or other behaviors which are reasonably expected from an animal, and shall be securely locked to prevent release of the animal by unauthorized persons. At regular intervals not to exceed twenty-five (25) feet around the perimeter of such enclosure shall be placed signs warning of the presence of the animal. Such signs shall be written in letters at least two (2) inches high, shall be brightly colored and clearly visible from all avenues of approach.

6.2 Regardless of any other provision of this resolution, any enclosure which allows an animal to escape through clawing, digging, chewing, climbing, jumping, pushing or other behaviors which are reasonably expected from such an animal, or which allows the animal to be released by unauthorized persons, shall constitute prima facie evidence that an enclosure was not secure and was in violation of this resolution.

- 6.3 Owners of animals covered by this resolution assume all responsibility for compliance with this section. This section shall not be construed to impose any liability upon the County of Shawnee, Kansas, its officers, employees or agents for inspecting or failure to inspect any animal enclosure, or for the escape or release of any animal from an animal enclosure.

SECTION 7.0 – IMPOUNDMENT AND CAPTURE:

- 7.1 Animals suspected in incidents involving injury to persons, livestock or other animals shall be quarantined as required by law. In any other case, any dangerous animal which is not confined as required herein may be captured and impounded at an appropriate location by any animal control or law enforcement officer. If at the time of capture the owner is not present and cannot be located to claim the animal, the animal shall be impounded. Any and all fees, costs or expenses incurred in capturing or boarding the animal shall be the responsibility of the owner or owners of the animal, and shall be paid before the impounded animal is released. Payment of any fee, cost or expense incurred when a dangerous animal is captured or impounded shall not release the owner or owners of such dog from prosecution under this resolution, or from any other civil or criminal liability. Any person may capture any dangerous animal which is found upon such person's property or public property when such person reasonably believes that such animal poses an imminent danger to any person, domestic animal or livestock and when the animal may be captured without risk of injury to persons or the animal. Any person capturing such an animal shall immediately notify and release the animal to an appropriate animal control or law enforcement agency. Any person who so captures such an animal does so at their own risk, and Shawnee County, its agents and employees assume no liability whatsoever for such actions.
- 7.2 The owner of an impounded dangerous animal shall be notified personally or by certified mail. Except as otherwise herein provided, if the owner of any animal impounded pursuant to this resolution does not claim the animal and pay any fees, costs or expenses due within five (5) days of notification or receipt or non-delivery of the certified letter, or if the ownership of the animal cannot be ascertained through reasonable effort within five (5) days of impoundment, the animal shall be destroyed.
- 7.3 Animals needed as evidence in a case filed under this resolution, or other civil or criminal proceedings shall not be released or destroyed except upon an order of the court.

SECTION 8.0 – PENALTIES:

8.1 Violations of this resolution shall accrue to the owner or owners of a dangerous animal or animals, and not to the animal individually. Violations of this resolution shall be a Class B misdemeanor, except that when any incident which would have been a violation of this resolution would also constitute a more serious offense under the laws of the State of Kansas, the more serious offense shall be charged. If any person is convicted of any violation of this resolution, except Section 4.0, the following fines and penalties shall be imposed:

- a) For the first violation, if the violation results in no injury to a person, domestic animal or to livestock, the owner or owners shall be fined One Hundred and No/100 Dollars (\$100.00).
- b) For the first violation, if the violation results in injury to a person, a domestic animal or livestock, the owner or owners shall be fined Five Hundred and No/100 Dollars (\$500.00) and the court may order the animal destroyed.
- c) For the second violation, if the violation results in no injury to a person, to a domestic animal or to livestock, the owner or owners shall be fined Two Hundred Fifty and No/100 Dollars (\$250.00) and the court may order the animal destroyed.
- d) For the third or any subsequent violation, if the violation results in no injury to a person, to a domestic animal or livestock, or for the second violation if the violation results in any injury to a person, domestic animal or livestock, the animal shall be destroyed, and the owner shall be fined up to Two Thousand and No/100 Dollars (\$2,000.00) and sentenced to up to six (6) months in jail.

SECTION 9.0 – SEVERABILITY:

9.1 If any part of this resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this resolution.

SECTION 10.0 – RESCISSION:

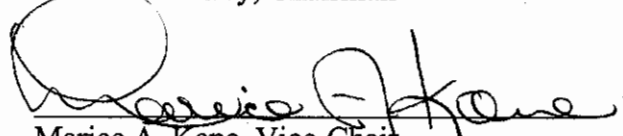
10.1 Shawnee County Home Rule Resolution No. 91-6 and Section II of Shawnee County Home Rule Resolution No. 81-6, and any resolution or sections of resolutions in conflict with this resolution, are hereby repealed.

SECTION 11.0 – EFFECTIVE DATE:

11.1 This resolution shall take effect upon publication in the official County newspaper.

BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS



Theodore Ensley, Chairman


Marice A. Kane, Vice-Chair


Michael J. Meier, Member



ATTEST:


Cynthia A. Beck, County Clerk

APPROVED AS TO FORM AND LEGALITY
BY THE SHAWNEE COUNTY COUNSELOR'S OFFICE
DATE 11/1999 BY 