

Agenda No# 4287

Sponsor: Council Member Shabazz

**AN ORDINANCE TO AMEND CHAPTER 3 OF THE WILMINGTON CITY CODE
RELATING TO THE TREATMENT, CARE, CONTROL AND LICENSING OF
ANIMALS**

WHEREAS, Chapter 3 of the City Code sets forth provisions regarding the treatment, care, control and licensing of domestic animals in the City of Wilmington, and relating to animal control; and

WHEREAS, the Delaware State Code has recently been amended to modify State requirements for the treatment, care, control and licensing of domestic animals in the City of Wilmington; and

WHEREAS, upon a comprehensive review by the City Administration and City Council, the Council deems it necessary and appropriate to amend Chapter 3 by modifying the provisions relating to animal control and licensing of domestic animals in the City of Wilmington to align and comply with Title 16, Chapter 30 of the Delaware State Code by modifying definitions; modifying dog licensing provisions; modifying provisions for seizure and impoundment of dangerous or potentially dangerous dogs; adding provisions related to findings required to declare a dangerous or potentially dangerous dog; and adding provisions regarding the liability of owner for cost of impoundment of a dangerous dog.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY
ORDAINS:**

SECTION 1. Chapter 3 of the City Code is hereby amended by deleting the stricken language and adding the underlined language:

Sec. 3-1. - Definitions.

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

~~*Animal control-welfare agency* means a governmental agency or a non-governmental entity acting alone or in concert with other governmental units legally authorized by the city through contract or agreement to enforce the provisions of this chapter.~~

~~*Animal welfare officer* means an individual employed by the State of Delaware Office of Animal Welfare or employed by an independent contractor of the Office of Animal Welfare for the purpose of enforcing dog control laws, rules, regulations, and ordinances. *Animal control officer* means any person employed by the entity or governmental agency with which the city has entered into a contract or agreement to enforce the provisions of this chapter as its enforcement officers and for purposes of this chapter, any city police officer whenever called upon to enforce any provisions of this chapter.~~

~~*Animal shelter* means a public or private facility which includes a physical structure that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals and is operated, owned, or maintained by an incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. *Animal shelter* does not mean individuals providing temporary foster care to animals in their home or animal rescue groups sheltering animals on an individual's private property. means any facility operated by a humane society, or municipal or other governmental agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.~~

~~*At large or running at large* means any dog which is off the property of his owner and not under the control of the owner (or a person acting for the owner) by means of a leash that is capable of physically restraining the movement of such dog. A dog located in a designated "off-leash" dog park or area and attended by his owner (or a person acting for the owner), but off his leash shall not be considered "at large."~~

~~*Dangerous dog* means any dog that the Justice of the Peace Court has declared to be dangerous under 16 Del. C. § 3076F or any potentially dangerous dog kept or maintained in violation of 16 Del. C. § 3077F(b). *Dangerous dog* means any dog declared to be dangerous by the dog control panel pursuant to 9 Del. C. § 925 or any potentially dangerous dog kept or~~

~~maintained in violation of 9 Del. C. § 926(b).~~ *Dog* means any animal which is classified as *canis lupus familiaris*.

~~*Dog control panel or panel* refers to the dog control panel established pursuant to 9 Del. C. § 921.~~

Domestic animal means a dog, cat, or other animal, the keeping of which is not otherwise prohibited, that has been raised or maintained in confinement or otherwise domesticated as to live in a tame condition.

Microchip means an identifying device consisting of a microchip or similar device that is humanely and permanently installed in or injected under the skin of an animal and is designed so that it provides when scanned by an electronic reader, provides readable information designed to locate the owner of the animal.

Owner means any person owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

Physical injury means the impairment of a physical condition or substantial pain.

~~*Potentially dangerous dog* means any dog that the Justice of the Peace Court has declared to be potentially dangerous under 16 Del. C. § 3077F. *Potentially dangerous dog* means any dog declared to be potentially dangerous by the dog control panel pursuant to 9 Del. C. § 926.~~

Public nuisance animal means any domestic animal or group of domestic animals which:

- (1) Is found at large more than four times in a consecutive 12-month period of time. Cats participating in a trap-neuter-return population control program do not have owners and shall not be considered "at large";
- (2) Significantly damages the property of anyone other than its owner;
- (3) While off its owner or custodian's property menaces passersby or chases passing vehicles, or exhibits behavior which requires a defensive action by any person to prevent physical contact, bodily injury or property damage when such person is

conducting himself peacefully and lawfully, or engages in an attack which results in property damage; or

- (4) Barks, whines, howls or emits any sound in an excessive or continuous fashion for a period of ten consecutive minutes or makes such noise intermittently for one-half hour or more; provided, however, that at the time the animal is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or that there is no other act by persons which teased or provoked the animal, whether intentional or unintentional.

Tethering means fastening or restraining with a rope, chain, cord or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

Restraint means any animal secured by a leash or lead, or within the real property limits of its owner; or within a vehicle being driven or parked on the streets.

Secure enclosure means a secure enclosure for an animal when it is not confined in a locked building or house shall mean a pen, or a fenced area, or a dog-run area, or other structure on the premises of its owner or of any other person authorized by the owner to harbor such animal suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen, structure, fenced area or dog-run area, shall be kept locked, all sides of which shall be six feet in height or, if less than six feet in height, shall have a secured top, and shall provide protection from the elements for the animal. If the pen, structure, fenced area or dog-run area has no bottom secured to the sides, then the sides shall be embedded into the ground to a depth of not less than two feet. Any such enclosure shall be subject to inspection by the department of licenses and inspections or by any animal ~~control~~-welfare officer in order to assure compliance with the provisions of this chapter.

Serious physical injury means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or impairment of the function of any bodily organ.

Wild animal means any live monkey, nonhuman primate, raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx or any other warm-blooded animal which can normally be found in the wild state.

(Code 1968, § 22-1; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 99-108(sub 1), § 1, 3-16-00; Ord. No. 00-040(sub 1), § 1, 4-13-00; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 3-2. - Interpretation.

This chapter is to be interpreted in a manner which allows the greatest protection of the citizenry of this city and the most humane treatment of animals, while allowing the greatest possible freedom to well-trained animals under control of a competent person.

(Code 1968, § 22-14(a); Ord. No. 92-053(sub 1), § 5, 7-2-92)

Sec. 3-3. - Inspection of buildings, dwellings, etc., generally; right of entry of animal ~~control~~ welfare officers.

- (a) The animal ~~control~~welfare officer shall have the right to enter upon any outside premises at all reasonable times for the purpose of discharging the duties imposed upon them by this chapter where they deem it necessary for the welfare of an animal.
- (b) The code official is hereby authorized to make inspections to determine the condition of buildings, dwellings, and premises including the land on which the same are located and including vacant lots, located within this city, in order that he may perform his duty of safeguarding the health and safety of the occupants of buildings, dwellings and land, and the general public. For the purposes of making such inspections, the code official is hereby authorized to enter, examine and survey between the hours of 8:00 a.m. and 5:00 p.m. all buildings, dwellings, lands and premises. The owner or occupant of every building, dwelling, land and premises, or the person in charge thereof, shall give the code official free access to such building, dwelling, land and premises during such time for the purpose of such inspection, examination and survey; provided, that such inspection, examination or survey shall not have for its purpose the undue harassment of

such owner or occupant and that such inspection, examination or survey shall be made so as to cause the least amount of inconvenience to such owner or occupant consistent with the efficient performance of the duties of the code official.

- (c) Nothing in this section shall be construed to prohibit the entry of the code official: (1) At any time when an actual emergency which tends to create an immediate danger to public safety exists, or (2) at any time when such an inspection, examination or survey may be requested by such owner or occupant; provided, however, that any such requested inspection, examination or survey is otherwise authorized and, further, that nothing herein shall be construed to mean that the code official is required to perform such requested inspection, examination or survey.
- (d) For purposes of this section and the enforcement provisions of this Code, "code official" shall mean and include the department of licenses and inspections, the city police department, or other designated authority charged with the administration and enforcement of this Code and chapter, and a duly authorized representative. The lead agency in the city government in enforcing this provision is the city police department.

(Code 1968, § 22-10; Ord. No. 94-002, § 3, 2-24-94; Ord. No. 99-108(sub 1), § 3, 3-16-00; Ord. No. 00-040(sub 1), § 3, 4-13-00; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-4. - Enforcement contract.

The city may enter into a contract or agreement with an entity or governmental agency organized to perform the duties of enforcing the provisions of this chapter.

(Code 1968, § 22-11; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-5. - Enforcement.

- (a) The animal ~~control~~ welfare agency ~~contracted to enforce~~ enforcing this chapter may establish whatever regulations it deems necessary to facilitate enforcement of the provisions of this chapter.
- (b) The city police department, department of licenses and inspections, and department of public works shall enforce any and all regulations established to facilitate enforcement of this chapter.

- (c) The animal ~~control~~ welfare officers shall have all powers and duties of police officers of the city, limited however to the powers and duties incident to the enforcement of this chapter and other statutes, ordinances and regulations concerning the licensing of dogs, the prevention of annoyance therefrom, the prevention of cruelty to animals, and the taking up and impounding of animals at large. These powers and duties shall include the power to issue summonses compelling appearance in the court having jurisdiction to answer charges for violations of this chapter.

(Code 1968, § 22-12; Ord. No. 99-108(sub 1), § 4, 3-16-00; Ord. No. 00-040(sub 1), § 4, 4-13-00; Ord. No. 06-054(sub 1), § 1, 10-19-06; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-6. - Necessary action in addition to penalties.

In addition to the penalties prescribed in this chapter, the court may take any action it deems necessary for the best interest of the animal involved and the welfare of the neighborhood in which that animal is harbored.

(Code 1968, § 22-13)

Sec. 3-7. - Impoundment of animals at large, nuisance animals, etc.; notification of owners; redemption fees; disposition of unclaimed animals; notice of violation.

- (a) Animals at large and nuisance animals may be taken by the police, or animal ~~control~~ welfare officers, and impounded in an animal shelter and there confined in a humane manner.
- (b) Any wild animal or any sick or injured animal other than a dog carrying a current license tag may be destroyed after impounding, provided that such action is approved by an authorized officer or employee of the animal ~~control~~ welfare agency ~~contracted to perform~~ performing animal ~~control~~ welfare services. Any other animal shall be held for five days.
- (c) If, by a license tag or other means, the owner of an impounded animal can be identified, the animal ~~control~~ welfare officer shall immediately upon impoundment notify the owner by written notice.

- (d) An owner reclaiming an impounded animal shall pay any applicable fees charged by the animal shelter or animal welfare agency for the boarding of the animal.
- (e) Any animal not reclaimed by its owner within five days shall become the property of the animal ~~control~~ welfare agency and shall be placed for adoption in a suitable home, transferred to another animal shelter or rescue, or humanely euthanized.
- (f) In addition to or in lieu of impounding an animal found at large or a public nuisance animal, the animal ~~control~~ welfare officer or police officer may issue to the known owner a criminal summons compelling the appearance of the offending owner in court.

(Code 1968, § 22-4; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 99-108(sub 1), § 5, 3-16-00; 00-020, § 1, 3-2-00; Ord. No. 00-040(sub 1), § 5, 4-13-00; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-7.1. - Public nuisance animals.

- (a) A reasonable attempt shall be made to notify the owner of any animal suspected of constituting a public nuisance.
- (b) Every public nuisance animal shall, upon demand, be delivered to the animal ~~control~~ welfare agency ~~contracted to perform~~ performing animal ~~control~~ welfare services. It shall be unlawful for the owner of a public nuisance animal to refuse to surrender such animal to a ~~control~~ welfare officer.
- (c) A public nuisance animal which has been impounded by the animal ~~control~~ welfare officer may be redeemed by the owner only upon the conditions established in this chapter. Any animal found unredeemable by the animal ~~control~~ welfare agency shall be disposed of in a humane manner.

(Code 1968, § 22-9; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Editor's note— Ord. No. 95-046(sub 1), § 1, adopted Aug. 31, 1995, renumbered former § 3-16 as 3-7.1.

Sec. 3-8. - Destruction of animals for humane reasons.

When, in the judgment of the animal ~~control~~ welfare agency ~~contracted to performing~~ animal ~~control~~ welfare services, it is determined that any animal should be destroyed for humane reasons, or to protect the public from imminent danger to persons or property, such animal may be destroyed without regard to any time limitations otherwise established in this chapter.

(Code 1968, § 22-5; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-9. - Licensing of dogs—Required; fees; exemptions; penalty for failure to license dogs.

Generally. No person shall own, keep, or harbor any dog over the age of six months within the city limits unless such dog is licensed by the State of Delaware pursuant to 16 Del. C. § 3042F. Newly acquired dogs over the age of six months or dogs belonging to people moving into the city must be licensed within 30 days of the event. ~~Written application for such license shall be made to the division of revenue or such agents as shall be designated by the city, and shall state the name and address of the owner and the name, breed, color, age, sex of the dog, the sterilization status of the dog, and the microchip number if the dog has been microchipped.~~

~~(b)~~

~~Payment of yearly license fee.~~

~~(1)~~

~~The yearly license fee shall be paid at the time of making application, a numbered receipt given to the applicant, and a numbered metallic tag or an alternative method of identification, such as, but not limited to, a microchip, shall be issued to the owner.~~

~~(2)~~

~~There shall be a yearly fee for licensing dogs in the city of \$10.00 per spayed or neutered animal or for a fee of \$20.00 a two-year license may be obtained for a spayed or neutered animal or for a fee of \$30.00 a three-year license may be~~

~~obtained for a spayed or neutered animal. The yearly licensing fee for dogs in the city that are not spayed or neutered shall be \$15.00 per animal or for a fee of \$30.00 a two-year license may be obtained for an animal that is not spayed or neutered or for a fee of \$45.00 a three-year license may be obtained for an animal that is not spayed or neutered. Any nonprofit entity approved by the finance department to issue a license shall be entitled to retain the license fees collected by them as reimbursement for their administrative costs and to enable the entity to promote the licensing of dogs in conjunction with the city's efforts.~~

~~(e)~~

~~*Proof of rabies inoculation required.* All owners applying for a license must show to the satisfaction of the licensing authority that the animal for which the license is being obtained has been inoculated against rabies and the inoculation is current, and shall remain current through the licensing period if the license sought to be purchased is greater than one year.~~

~~(d)~~

~~*Proof of spay, neuter.* Any owner claiming that his dog has been spayed or neutered must show to the satisfaction of the licensing authority that such operation has been performed.~~

~~(e)~~

~~*Exemptions from license fees.* License fees shall not be required for seeing eye dogs, government police dogs or dogs belonging to a nonresident of the city and kept within the boundaries of the city for not longer than 30 days; provided, that all dogs of nonresidents shall at the time of entry into the city be properly vaccinated against rabies, and while being kept within the city, shall meet all other requirements of this chapter. Any owner claiming either of these exemptions has the burden of proving to the satisfaction of the licensing authority that the dog in question is used in one of such capacities.~~

~~(Code 1968, § 22-2; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 02-122, § 1(sub 1), 1-16-03; [Ord. No. 15-027\(sub 1\), § 1, 7-9-15](#))~~

• **Sec. 3-10. – Same – License tags.**

~~(a)~~

~~Upon complying with the provisions of section 3-9, and unless an alternative method of identification, such as, but not limited to, a microchip, is issued, there shall be issued to the owner a numbered metallic tag, stamped with the number and the year for which issued. The shape or design of such tag shall be changed from year to year.~~

~~(b)~~

~~Every owner is required to see that the tag is securely fastened to the dog's chain, collar or harness which must be worn by the dog at all times.~~

~~(c)~~

~~If a metallic license tag issued for a dog shall be lost, the owner must obtain a replacement tag.~~

~~(d)~~

~~No person may use any license for any animal other than the animal for which it was issued.~~

~~(e)~~

~~No person shall remove from the neck of any dog the license tag issued pursuant to this section nor tamper or alter such tag in any manner.~~

~~(Code 1968, § 22-3; [Ord. No. 15-027\(sub 1\), § 1, 7-9-15](#))~~

Sec. 3-101. - Restraint and confinement; penalties for violation of section.

- (a) All dogs shall not only be kept under restraint at all times, but also, while on any public street, highway, lane, alley, or sidewalk, or in or on any part of any public park or parkland, public square, or other public space, or in or on any open space that is private property without the consent of the owner, shall be secured by a leash or chain not exceeding six feet in length and of sufficient tensile strength to restrain the particular animal and shall be securely muzzled as may be required by subsection (d)(1). If, in any park that is located partly or entirely in the city, there is a designated area for dogs to be without a leash or chain, but with their owners or other responsible persons, then the requirement of a leash or chain shall not apply but only within such designated area.
- (b) No owner shall fail to exercise proper care and control of his domestic animals to prevent them from becoming a public nuisance or a dangerous dog, including but not limited to permitting another individual who cannot reasonably control the actions of the dog to walk his or her dog. Whether it is the owner or another individual who

accompanies the dog while it is in a public space or private property, the owner of the dog shall be strictly liable for a violation of this section. Every female dog or cat in heat shall be confined in a building or other enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding.

(c)

(1) Every dog designated as a dangerous dog or potentially dangerous dog by the Justice of the Peace and permitted to remain with its owner shall be kept, maintained and confined by its owner consistent with 16 Del. C. § 3076F and 16 Del. C. § 3077F.

(2) In addition:

- a. It shall be unlawful for any animal to attack any person or another animal with or at the command of its owner, in which case, the intent of the owner to have the attacking animal injure the person or animal shall be presumed and the attack shall be deemed to be an assault. No one under the age of 18 years may own, control or attempt to control a dangerous animal.
- b. It shall be unlawful for any person under the age of 18 years to purchase any dog in the city. It shall be unlawful for any person regardless of age to sell or transfer the ownership of any dog without proof of required inoculations and a license that is valid at the time of such sale or transfer.
- c. It shall be the responsibility of the owner of any animal to exercise due diligence to move the animal away from others whenever on any city sidewalk or alley or other area of public access. It shall be unlawful for any owner to permit his or her animal to interfere with pedestrian traffic on any public sidewalk, road, street, alley or other public space. In that regard, any person who is a pedestrian walking without an animal, shall have and be afforded the right-of-way.

- d. No person shall own or harbor any animal for the purpose of animal-fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging such animal to perpetrate unprovoked attacks upon human beings or domestic animals.
- (d) Any person convicted of any violation of subsections (a) through (d) of this section, or the parent or guardian of a juvenile found to have violated any of subsections (a) through (d), shall pay a mandatory and nonsuspendable fine of at least the minimum fine for each offense as follows:
- (1) For a violation of subsection (a), a fine of not less than \$250.00 nor more than \$500.00 for the first offense, a fine of not less than \$500.00 nor more than \$1,000.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$2,500.00 for each subsequent offense, except that the owner of any animal, not within the property limits of its owner or within a vehicle being driven or parked on the public streets which, without provocation, bites a person shall be fined not less than \$250.00 nor more than \$1,000.00 for the first offense, shall be fined not less than \$500.00 nor more than \$2,500.00 for the second offense, and shall be fined not less than \$1,000.00 nor more than \$5,000.00 for each subsequent offense, unless the provisions of subsection (d) apply.
 - (2) For a violation of subsection (b), a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for each subsequent offense.
 - (3) For a violation of subsection (c), a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for the third offense.
 - (4) For violation of subsection (d) (1) of this section, the penalties and fines shall be consistent with 9-16 Del. C. § 9283079F.
 - (5) For any violation of subsection (d)(2)a. and subsection (d)(2)d., a fine of not less than \$500.00 nor more than \$1,000.00 for the first offense, and a fine of not less

than \$1,000.00 nor more than \$2,500.00 for each subsequent offense. Upon conviction in any court of an offense under subsection (d)(2)a. and subsection (d)(2)d., the court shall cause a report to be forwarded to the ~~state department of natural resources and environmental control~~ Division of Public Health Office of Animal Welfare. Such report shall contain the name of the defendant, the name of the animal, the license number of the animal, the date of the offense and the date of the conviction.

- (6) For a violation of subsection (d)(2)b. and subsection (d)(2)c., a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for the third offense.

(Code 1968, § 22-6; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 03-075(sub 1), § 1, 12-4-03; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-112. - Accumulation of dog, cat, pigeon or other animal or domestic bird fecal matter.

- (a) Every person owning, possessing, harboring, tolerating or having the care, charge, control or custody of one or more dogs, cats, pigeons or other animals or domestic birds shall take all reasonable measures to prevent accumulation of fecal matter of the same in the area in which such animals or birds are customarily kept or customarily are allowed to stay or remain. No such person shall allow animal or bird fecal matter to accumulate so as to create obnoxious or offensive odors.
- (b) This section shall be enforced solely by the department of licenses and inspections and the department of public works, whose authorized agents and employees shall have the power to issue citations for non-compliance herewith. A civil penalty shall be imposed for failure to comply with any provision of this section.
- (c) The owner of a property who allows fecal matter to accumulate or fails to remove an accumulation of animal fecal matter on his or her property, regardless of whether the owner actually resides in the property, shall be subject to and liable for a civil penalty in the amount of \$50.00. This civil penalty shall be doubled if not paid within 30 calendar

days from the date of the citation. Pursuant to title 25, chapter 29 of the Delaware Code, any civil penalty imposed under this section shall give rise to a lien. Any unpaid amount of such civil penalty shall be added to the city property tax billing for the property which was the subject of the citation. Each 24-hour period that the condition giving rise to the initial citation continues will be subject to a separate citation and an additional civil penalty in the amount of \$50.00.

- (d) Any citation issued for failure to comply with this section shall be mailed to the owner of the property that is the subject of the citation.
- (e) Appeals—The owner of a property aggrieved by any civil penalty imposed pursuant to this chapter may appeal to the commissioner of licenses and inspections by sending a detailed written explanation of the grounds for the appeal, along with a mandatory non-refundable administrative filing fee of \$15.00 to the commissioner of licenses and inspections within 21 business days of the date of the citation. The commissioner of licenses and inspections or his or her designee shall issue a written decision affirming, modifying, reversing, revoking or vacating the civil penalty within 45 calendar days of receipt of the written explanation of the grounds for the appeal. Such decision shall be final. Each citation received must be appealed separately. Any appeal to the commissioner of licenses and inspections shall act as a stay of the citation and civil penalty until a final decision on the appeal has been rendered. If during the pendency of the appeal additional citations are issued and civil penalties imposed regarding the same matter under appeal, the civil penalty shall be voided.
- (f) Proof of state of mind not required for strict liability—It is unnecessary to prove the violator's state of mind with regard to the failure to comply with this section, as the legislative purpose is to impose strict liability for such non-compliance.

(Code 1968, § 22-6.1; Ord. No. 03-075(sub 1), § 2, 12-4-03; Ord. No. 06-054(sub 1), § 1, 10-19-06; Ord. No. 12-020, § 1, 4-19-12)

Sec. 3-123. - Removal of fecal matter of dogs, cats, pigeons and other animals or domestic birds.

- (a) It shall be unlawful for any person owning, possessing, harboring, tolerating or having the care, charge, control or custody of any dog, cat, pigeon or other animal or domestic bird not to remove immediately, in a sanitary manner in an airtight bag or other closed container to be deposited in a trash receptacle or other closed or sealed container, any fecal matter deposited by such dog, cat, pigeon or other animal or domestic bird upon any street, sidewalk, or park, or upon any other public property, or upon any private property without the consent of the owner or tenant of such private property. The provisions of this section shall not apply to any person who by reason of loss or impairment of eyesight is accompanied by a dog described as a seeing eye dog or any dog educated by a recognized training agency or school and which is used as a leader or guide.
- (b) The complaining party shall file a complaint in a court of competent jurisdiction. Subsection (a) shall only be enforced if the complaining party produces a witness to the act that constitutes a violation of that subsection. It is not the intent of the section to require surveillance by the city police department, any other city department, or the animal control agency contracted to enforce this chapter. The city police department, department of licenses and inspections and the animal control agency contracted to enforce this chapter shall all have the authority to enforce subsection (a).
- (c) For any person, corporation, partnership, firm, or any other entity, any violation of this section shall be punished by a fine of not less than \$250.00 nor more than \$1,000.00 for the first conviction. For the second conviction, the penalty shall be a fine of not less than \$500.00 and not more than \$2,500.00. For a third or subsequent conviction, the penalty shall be a fine of not less than \$1,000.00 which shall not be suspended and not more than \$5,000.00, or imprisonment for not more than 30 days, or both. Each day any violation of this section shall continue shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty for each day shall be imposed.

(Code 1968, § 22-6.2; Ord. No. 02-010, § 1, 3-7-02; Ord. No. 03-075(sub 1), § 3, 12-4-03; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-134. - Proper and humane care of domestic animals required; penalties for violation of section.

- (a) No owner shall fail to provide his domestic animal with humane care and treatment, sufficient good and wholesome food and water, proper shelter and protection from the weather and veterinary care when needed to prevent suffering.
- (b) No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse a domestic animal, or cause, instigate or permit any dogfight, cockfight or other combat between domestic animals or between domestic animals and humans, or train said animal to do so.
- (c) No owner of an animal shall abandon such animal.
- (d) No person other than a licensed veterinarian shall crop a dog or other animal's ears.
- (e) No person shall give away any live animal, fish, reptile or bird as a prize for, or as an inducement to enter, any contest, game or other competition, or as an inducement to enter a place of amusement; or offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.
- (f) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner; if the owner cannot be ascertained and located, such operator shall at once report the accident to the city police or the animal welfare agency contracted to enforce this chapter.
- (g) No person shall place poison of any description in any place on his premises, or elsewhere where it may be easily found and eaten by domestic animals.
- (h) No person shall tether a dog for eight hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than ten acres, nor tether any dog for any amount of time if the dog is under four months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than ten acres.
- (i) Penalties for violations of this section are as follows:
 - (1) For violations of subsection (a), a minimum fine of \$250.00 up to \$1,000.00 for the first offense. For the second offense, the mandatory \$5,000.00, or up to 30

days imprisonment or by both such fine and imprisonment. No part of the minimum fine may be suspended.

- (2) For violations of subsection (b), a fine of not less than \$250.00 and not more than \$1,000.00, or imprisonment for up to 30 days, or both such fine and imprisonment. For a second offense, a minimum mandatory fine of \$500.00 and a maximum of \$2,500.00, or imprisonment of up to 30 days, or both such fine and imprisonment. Three or more offenses shall carry a mandatory minimum fine of \$1,000.00, which shall not be suspended, with a maximum of \$5,000.00, plus a minimum mandatory jail sentence of 14 days.
- (3) For violations of subsections (c), (d), (e), (f) and (g), minimum fines of \$250.00 and maximum fines of \$1,000.00 for the first offense shall be imposed. For the second offense, the minimum fine of \$500.00 and the maximum fine of \$2,500.00 shall be imposed. For subsequent offenses, the minimum mandatory fine shall be \$1,000.00 and up to \$5,000.00, which shall not be suspended, or imprisonment of up to 30 days, or by both such fine and imprisonment.

(Code 1968, § 22-7; Ord. No. 95-046(sub 1), § 1, 8-31-95; Ord. No. 03-075(sub 1), § 4, 12-4-03; Ord. No. 15-027(sub 1), § 1, 7-9-15)

State Law reference— Dog kennels, 7 Del. C. § 1703.

Sec. 3-145. - Keeping of wild animals, farm animals; exceptions; penalty.

- (a) No wild animal and no wild fowl may be kept within the city limits, except under such conditions as shall be fixed by the appropriate state agency; provided, however, that wild animals and wild fowl may be kept for exhibition purposes by circuses, zoos and educational institutions in accordance with such regulations as shall be established by the city or the appropriate state agency. Anyone keeping a wild animal pursuant to this section must do so in accordance with all applicable state laws.
- (b) It shall be unlawful for any person to keep, harbor or house, whether as a pet, or for eventual sale or consumption, or for any other purpose, any domestic animals or domestic fowl other than dogs or cats, commonly known as farm animals or fowl, including, but not limited to, chickens, chanticleers, roosters, ducks, geese, pigs, hogs,

donkeys, mules, horses, cattle, goats, sheep, oxen, or any other animal or fowl suitable for slaughter or for the production of milk, eggs or fiber within the boundaries of the city, except:

- (1) Any such animals or fowl kept for exhibition purposes by circuses, zoos and educational institutions in accordance with regulations established by the appropriate state agency;
 - (2) Horses of the police department;
 - (3) Fish or crustaceans, or both being raised or produced in tanks inside of buildings that are located in nonresidential zoning districts only and that are otherwise in compliance with applicable provisions of this Code;
 - (4) Livestock held or kept on a temporary basis for a period not to exceed 96 hours at an indoor inspection or resting facility that is related to the export of such livestock from the Port of Wilmington and that is located in a manufacturing zoning district and is otherwise in compliance with applicable provisions of this Code; and
 - (5) As otherwise provided in this chapter, chapter 42, article X (farmers' market).
- (c) A conviction of violation of the provisions of this section shall be punishable by a fine of not less than \$250.00 and not more than \$1,000.00 for the first offense, a fine of not less than \$500.00 and not more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 which shall not be suspended and not more than \$5,000.00 for the third and subsequent offenses. A corporation may be fined by the court in an amount not exceeding \$5,000.00.

(Code 1968, § 22-8; Ord. No. 03-075(sub 1), § 5, 12-4-03; Ord. No. 12-028, § 1, 6-21-12; Ord. No. 14-039, § 1, 11-20-14; Ord. No. 15-027(sub 1), § 1, 7-9-15)

Sec. 3-156. - Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner hearing procedures

- (a) An animal welfare officer shall seize and impound a dog suspected of being dangerous or potentially dangerous when the officer has reasonable cause to believe that the dog has engaged in 1 or more of the following:
- (1) Killed or inflicted physical injury or serious physical injury upon a human being.

- (2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.
- (3) Chased or pursued a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.
- (b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The animal welfare agency shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the animal welfare agency may dispose of the dog in accordance with this subchapter.
- (c) The owner of any seized and impounded dog has a right to a hearing to determine whether the dog is dangerous or potentially dangerous.
 - (1) The Justice of the Peace Court is the Court of original and exclusive jurisdiction for hearings under this subsection.
 - (2) The animal welfare agency shall file a civil action with the Justice of the Peace Court within 72 hours of the identification of the dog's owner and notice to the owner unless the owner agrees to proposed conditions.
- (d) The Justice of the Peace Court shall hold a hearing under this subsection within 30 days of the animal welfare agency filing of a civil action.
 - (1) All Justice of the Peace Court Civil Rules apply to proceedings under this subchapter, except where otherwise stated.
 - (2) The Justice of the Peace Court shall keep a record, sufficient for judicial review, of all evidence taken at hearings under this subchapter, according to the Court's rules regarding the recording of proceedings.
 - (3) A hearing shall be held within 30 days of the animal welfare agency filing a civil action. The dog may be released to its owner and the charges made under subsection (a) of this section may be dismissed, unless a delay is requested by the owner and approved by the animal welfare agency for good cause at the Court's discretion.

- (e) If the dog owner fails to appear for the hearing, the Justice of the Peace Court shall enter a default judgment. A motion to vacate a default judgment may be filed within 10 days of the entry of the default judgment. If no motion is filed, the animal welfare agency shall dispose of the dog in accordance with this chapter.
- (f) Nothing in this subchapter shall be construed to interfere with the provisions for protecting human health from rabies in Chapter 82 of Title 3.

Sec. 3-167. Exceptions

- (a) Notwithstanding Section 3-16 of this Article, no dog shall be considered dangerous or potentially dangerous if a physical injury or serious physical injury was sustained by any of the following:
 - (1) A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime.
 - (2) A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing, or assaulting the dog.
 - (3) A domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, and the injury was to a species or type of domestic animal appropriate to the work of the dog.
- (b) Notwithstanding § 3073F of this title, no dog shall be considered dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault.
- (c) Notwithstanding § 3073F of this title, no military, correctional, or police-owned dogs shall be considered dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.

Sec. 3-178. Finding to declare a dog dangerous; duties of owner

- (a) The Justice of the Peace Court may declare a dog to be dangerous if it finds by clear and convincing evidence that the dog has done any of the following:

- (1) Killed or inflicted physical injury or serious physical injury upon a human being.
 - (2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.
- (b) If the Justice of the Peace Court declares a dog to be dangerous, it shall be unlawful for any person to keep or maintain such dog unless all of the following occur:
- (1) The dog is spayed or neutered.
 - (2) The dog owner procures and maintains liability insurance in the amount of at least \$ 100,000, covering any damage or injury which may be caused by such dog.
 - (3) The dog is confined by its owner within a proper enclosure, and whenever outside of the proper enclosure the dog is securely muzzled and restrained by a substantial chain or leash, not exceeding 6 feet, and under the control of a responsible adult, or caged.
 - (4) The dog owner displays, in a conspicuous manner, a sign on the owner's premises warning that a dangerous dog is on the premises. The sign shall be visible and legible from the public highway or 100 feet, whichever is less.
 - (5) The dog owner immediately notifies the animal welfare agency when the dog is loose, unconfined, has attacked a human being or another domestic animal, has been moved to another address, or dies.
 - (6) The owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.
- (c) It shall be unlawful for the owner of a dangerous dog to sell, offer for sale, or give away said dog to any other person other than the animal welfare agency. If a dangerous dog is given to the animal welfare agency, the dog shall be disposed of by euthanasia in accordance with subchapter I of this chapter.

Sec. 3-189. Finding to declare a dog potentially dangerous; duties of owner

- (a) The Justice of the Peace Court may declare a dog to be potentially dangerous if it finds by clear and convincing evidence that the dog has done any of the following:
- (1) Attacked or inflicted physical injury upon a human being.

- (2) Attacked or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.
 - (3) Chased or pursued a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.
- (b) If the Justice of the Peace Court declares a dog to be potentially dangerous, it shall be unlawful for any person to keep or maintain the dog unless all of the following occur:
- (1) The dog is spayed or neutered, provided the Justice of the Peace Court ordered the spaying or neutering as part of its decision in declaring the dog to be potentially dangerous.
 - (2) While on the dog owner's property, the dog is kept indoors or within a securely fenced yard from which it cannot escape.
 - (3) When off the owner's premises, the dog is restrained by a substantial chain or leash, not exceeding 6 feet, and is under the physical control of a responsible adult.
 - (4) The owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.
- (c) If there are no additional instances of the behavior described in subsection (a) of this section within a 24- month period from the date the dog is declared potentially dangerous, the dog shall no longer be deemed a potentially dangerous dog.

Sec. 3-2019. Liability of owner for costs of impoundment.

If the Justice of the Peace Court declares a dog dangerous or potentially dangerous, the Court shall include in its judgment the costs associated with the care of the dog while in the custody of the animal welfare agency. Prior to reclaiming the dog, the owner must reimburse the animal welfare agency the amount indicated in the judgment or establish a payment plan approved by the Court. If a dog is determined to be nondangerous under § 3080F of this title, the owner shall not be liable for the costs of impoundment.

~~Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; request for hearing; exceptions.~~

~~(a)~~

~~An animal control welfare officer shall seize and impound a dog suspected of being dangerous or potentially dangerous when the officer has reasonable cause to believe that the dog has engaged in one or more of the following:~~

~~(1)~~

~~Killed or inflicted physical injury or serious physical injury upon a human being; or~~

~~(2)~~

~~Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or~~

~~(3)~~

~~Chased or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on two separate occasions within a 12-month period.~~

~~(b)~~

~~Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The animal control welfare agency shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within five days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the animal control welfare agency may dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code.~~

~~(c)~~

~~The owner of any seized and impounded dog shall be notified by the animal control agency by certified mail, return receipt requested, of the owner's right to a hearing before the dog control panel to determine whether the dog is dangerous or potentially dangerous. This notice shall require that the owner return within seven days of receiving such notice, by certified~~

~~mail or personal delivery, a signed statement indicating whether the owner wishes the hearing to be conducted or, if not, that the owner waives that owner's right to such hearing and agrees to abide by the findings and conclusions of the animal control agency or agrees to relinquish ownership of such dog, in which case the animal control agency shall dispose of the impounded dog in accordance with Chapter 30F of Title 16 of the Delaware Code. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter, or does not reply to the certified letter with a signed statement within seven days of receipt, the animal control agency shall dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code.~~

~~(d)~~

~~Within 20 business days of an animal control agency's receipt of a request for a hearing pursuant to subsection (c), a hearing shall be held by the panel in accordance with 9 Del. C. §§ 924—926. If a hearing is not held within that time frame, the dog shall be released to its owner and the charges made pursuant to subsection (a) shall be dismissed, unless a delay is requested by the owner and approved by the panel.~~

~~(e)~~

~~Notwithstanding subsection (a), no dog shall be considered dangerous or potentially dangerous if an injury was sustained by:~~

~~(1)~~

~~A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime; or~~

~~(2)~~

~~A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing or assaulting the dog; or~~

~~(3)~~

~~A domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, and the injury was to a species or type of domestic animal appropriate to the work of the dog.~~

~~(f)~~

~~Notwithstanding subsection (a), no dog shall be considered dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault.~~

~~(g)~~

~~Notwithstanding subsection (a), no military, correctional or police owned dogs shall be considered dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.~~

~~(h)~~

~~Any dog declared dangerous by the dog control panel which, after having been declared dangerous, kills, attacks or inflicts physical injury or serious physical injury, without provocation upon a human being or domestic animal, shall be seized and impounded by the animal control agency and disposed of by euthanasia in accordance with Chapter 30F of Title 16 of the Delaware Code.~~

~~(i)~~

~~If a dog is declared dangerous or potentially dangerous the owner of the dog shall, prior to reclaiming the dog, reimburse the animal control agency its regular standard fees charged for the care of the dogs while in the animal control agency's custody plus any reasonable veterinary fees incurred for the dog during the period of impoundment. Failure of the dog's owner to pay such fees within five days after a final determination of whether the dog is dangerous or potentially dangerous shall result in the ownership of the dog reverting to the animal control agency. The animal control agency shall then dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code. If a dog is determined to be neither~~

~~dangerous nor potentially dangerous, the owner shall not be liable for the costs of impoundment.~~

~~(Ord. No. 15-027(sub 1), § 1, 7-9-15)~~

~~Editor's note—Ord. No. 15-027(sub 1), § 1, adopted July 9, 2015, repealed and replaced § 3-16 in its entirety. Former § 3-16 pertained to pit bull terrier dogs, and was derived from Ord. No. 99-108(sub 1), § 2, adopted March 16, 2000; Ord. No. 00-040(sub 1), § 2, adopted April 13, 2000; Ord. No. 00-066(sub 1), § 1, adopted June 15, 2000 and Ord. No. 00-086, adopted July 27, 2000.~~

SECTION 2. Effective date. This Ordinance shall become effective on September 14, 2016.

First Reading. . . . November 3, 2016
Second Reading. . . November 3, 2016
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this

____ day of _____, 2016

Assistant City Solicitor

Approved this _____ day of _____, 2016

Mayor

SYNOPSIS: The ordinance amends Chapter 3, entitled “Animals,” by modifying provisions of the chapter to align with State law. Licensing of dogs is now conducted by the State of Delaware. The ordinance changes provisions for seizure and impoundment of dangerous or potentially dangerous dogs to align with State law and adds provisions related to findings required to declare a dangerous or potentially dangerous dog. The ordinance adds provisions regarding the liability of owner for cost of impoundment of a dangerous dog.