ORDINANCE NO. G-13-04

AN ORDINANCE AMENDING CERTAIN PROVISIONS OF CHAPTER 6, RELATING TO DANGEROUS ANIMALS, OF THE CODE OF ORDINANCES OF THE CITY OF COFFEYVILLE, KANSAS, AND REPEALING ANY ORDINANCES IN CONFLICT THEREWITH.

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

Section 1. That Chapter 6, Article I, Section 6.1 of the Code of Ordinances of the City of Coffeyville, be and is hereby amended to add the following definitions:

Dangerous Animal means and includes any wild mammal, reptile or fowl which is not naturally tame or gentle but is of a wild nature or disposition and which, because of its size, vicious nature or other characteristics, would constitute a danger to human life or property.

Dangerous Dog means any dog with a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals; or (i) any dog which has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property; or (ii) any dog which, without provocation, approaches any person in a vicious or terrorizing manner or in an apparent attitude of attack upon any public or private property; or (iii) any dog which, without provocation, bites a human being or domestic animal; or (iv) any dog owned primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or (v) any dog that has more than once severely injured or killed a domestic animal. Notwithstanding the definition of a "dangerous dog" herein, when determining whether a dog is dangerous pursuant to this Code, the Court may consider as mitigating factors whether any injury or damage is sustained by a person or animal who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises owned or occupied by the owner of the dog; was teasing, tormenting, abusing or assaulting the dog; was committing or attempting to commit a crime; or whether the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault. This definition shall not apply to police dogs.

Enclosure means a fence (not the perimeter fence of the property or yard) or structure of six feet (6') in height, forming or causing an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom, and shall be designed to prevent the animal from escaping from the enclosure. If such enclosure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot (1').

Tether or ***Tethering***, when used as a verb, shall mean fastening a dog or cat to a stationary object, pulley run line or a stake, and when used as a noun, 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.

Section 2. That Chapter 6, Article I, Section 6.1, be and is hereby further amended to delete the definition of ***Vicious Animal***.

Section 3. That Chapter 6, Article II, Section 6.37, be and is hereby amended as follows:

Sec. 6-37 Keeping Dangerous Animals.

A. Prohibitions: No person shall own or permit to be kept on such person's premises any dangerous animal. This subsection will not be construed to apply to zoological parks, performing animal exhibitions or circuses, bona fide licensed veterinary hospitals for treatment, or bona fide educational or medical institutions, museums where they are kept as live exhibits or for study.

B. Seizure and Impoundment: If the Animal Control Officer has probable cause to believe that a person owns a dangerous animal on premises in the City, the Animal Control Officer shall cause the animal to be immediately seized and impounded, or euthanized, if seizure and impoundment are not possible without risk of serious physical harm or death to any person. Upon seizure and impoundment, said animal may be euthanized or delivered to a place of confinement which may be with any organization which is authorized by law to accept, own, keep or harbor such animals. In lieu of seizure and impoundment, the Animal Control Officer may order the animal immediately removed by the owner, if the Animal Control Officer has reason to believe that the owner can safely and promptly provide for the removal of the animal. The owner must provide the Animal Control Officer with proof confirming the safe relocation of the animal upon request.

C. Costs: Any reasonable costs incurred in seizing, impounding, euthanizing or confining any dangerous animal shall be the responsibility of the owner of such animal. Such costs shall be in addition to any fine or penalty provided for violation of this Chapter. Failure to pay said costs within ten (10) days after receipt of a written notice of the amount due shall be a violation of this Section.

Sec. 6-37a. Dangerous Dogs.

A. Determination of a Dangerous Dog:

1. If the Animal Control Officer has probable cause to believe a dog is dangerous, as defined in Section 6-1, the City Attorney may file a petition with the Municipal Court, verified by the Animal Control Officer, seeking a determination that the dog is dangerous. If the City intends to seek an order from the Court that the dog be euthanized, the petition shall specifically identify that as the remedy requested.

2. The City Attorney shall provide the owner of the dog with a copy of the petition, and written notice of the date, time, and location of the hearing.

3. When the Animal Control Officer has probable cause to believe that the subject dog may pose a threat of serious harm to human beings or other animals, the Animal Control Officer or a law enforcement officer is authorized to seize and impound the dog pending the hearing and/or any appeal. If the subject dog has been impounded, the matter shall be scheduled for a hearing within ten (10) business days from the date of impoundment. If the dog is not impounded, the hearing shall be held within thirty (30) days from the date the petition is filed in the Coffeyville Municipal Court. These deadlines may be extended by the Court for good cause shown.

4. The hearing shall be conducted by the Municipal Judge, who will sit as an administrative judge for purposes of this Section. As administrative judge, he or she is empowered to hold hearings, subpoena witnesses, take the testimony of persons under oath, and to require the production of any evidence relating to any matter being heard.

5. At the hearing, all interested parties shall be given an opportunity to present testimony and relevant materials on the issue of whether the dog in question is dangerous. The testimony and relevant materials may include but not be limited to Animal Control reports, the facts, circumstances, and seriousness of any attack or wound, past history of wounds inflicted by the dog in question, and the potential propensity of the dog to inflict wounds in the future. The hearing shall be civil in nature, informal in the presentation of the testimony, and open to the public.

6. If the Court, after hearing the testimony and reviewing the relevant materials, determines that the City has proven by a preponderance of the evidence that the dog meets the definition of dangerous dog, the dog shall be deemed dangerous. In addition, the Court has the authority to order the dog removed from the City, or destruction of the dog, as it deems appropriate. If destruction or removal of the dog is not ordered, the owner shall have fourteen (14) days from the date of the Court's determination to comply with all of the requirements of this Code pertaining to dangerous dogs, or within such other time frame as the Court may require. Future compliance hearings and/or the requirement to post bond to ensure

compliance or to perfect an appeal may be ordered at the discretion of the Court. If the owner fails to comply with the provisions of this Section within the time frame ordered, unless stayed by the filing of an appeal, the dog shall be ordered destroyed.

7. If the dog was impounded prior to the hearing and is determined to be dangerous, the owner shall provide proof of compliance with all of the requirements of this Code pertaining to dangerous dogs to Animal Control, and pay all applicable impoundment and boarding fees, before the dog may be released. If the owner appeals the Court's decision, the dog shall remain impounded pending the determination on appeal, and all associated boarding costs shall be the responsibility of the owner. If the dog is determined not to be dangerous, it may be released to its owner immediately upon payment of all impoundment and boarding fees.

8. The failure of an owner to appear at a hearing, or the removal of the dog from the City prior to the scheduled hearing, does not preclude the Court from holding a hearing and/or determining that the dog is dangerous. In addition to any other order, the Court may order the owner to provide Animal Control with the exact location, address, and contact information for the new owner of the dog (if moved), and require that the animal not be returned to the City without first notifying Animal Control and verifying full compliance with this Chapter.

9. If an owner desires to contest the Court's determination that a dog is dangerous, he or she may appeal to the district court. The owner shall file a notice of appeal with the municipal court clerk within ten (10) days of the Court's determination. If the dog has been impounded, the Court may require that the owner post a bond in an amount sufficient to pay for the animal's current impoundment and boarding fees, and a minimum of thirty (30) additional days boarding, which shall also be required within ten (10) days of the Court's determination. The dog shall remain impounded until a final determination is made on appeal. The municipal court clerk will prepare the record on appeal, similar to an appeal from a municipal court pursuant to K.S.A. 12-4602 and K.S.A. 22-3609, and amendments thereto, and submit the record to the district court. The district court shall review the matter de novo, and the City's burden of proof shall be the preponderance of the evidence.

B. Stipulations by Owner:

1. The owner of a dog subject to a petition seeking a dangerous determination may waive his or her right to a hearing and enter a stipulation that the dog is dangerous, or a stipulation that the evidence would be sufficient to sustain a finding that the dog is dangerous. Any such stipulation shall be reduced to writing and signed by the owner. A

stipulation shall have the same legal effect as a determination by the Court that the dog is dangerous. The owner shall comply with all provisions of this Code regarding dangerous dogs within fourteen (14) days from the date of the stipulation, or some later time frame if agreed to by the City and approved by the Court. If the owner fails to come into compliance with the Code within the designated time frame, the dog shall be ordered destroyed.

2. For purposes of this Chapter, a dog that is stipulated to be dangerous under this Section shall be synonymous with a dog determined to be dangerous by the Court. Further, entering into a stipulation is not an appealable order.

C. Regulation of Dangerous Dogs: The following provisions shall apply to all dogs determined to be dangerous:

1. Confinement Required: All dangerous dogs shall at all times be confined in an enclosure, as defined in Section 6-1, or inside a structure. No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no dangerous dog shall be kept in a house or structure when the windows are open or when window screens or screen doors are the only obstacles preventing the dog from exiting the structure.

2. Confinement Exceptions: An owner of a dangerous dog will be allowed to have its dog outside of an enclosure or structure only for the following purposes: (1) to obtain necessary veterinary treatment; (2) to transfer ownership of the dog; (3) exercise; (4) elimination breaks; or (5) to comply with the commands of an Animal Control Officer. These exceptions apply only if the dangerous dog is securely muzzled, restrained with a leash of sufficient strength and not more than four feet in length, and is under the direct control of an adult capable of exercising control over the 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.

3. Registration: An owner of a dog determined to be dangerous shall register it with the City within fourteen (14) days of the determination, and annually thereafter in conjunction with its licensing schedule. The registration shall be on a form provided by the City and accompanied by a nonrefundable registration fee as provided by ordinance or resolution or as otherwise permitted. Such registration fee shall not be prorated if required for less than a full year, and shall be separate and distinct from license fees required by the Code. The registration form shall include the name, address, and telephone number of the owner; an alternate contact person by name, address, and telephone number; a picture or pictures of the dog showing its (1) face, (2) color, and (3) any distinctive markings; the

height, weight, breed, and approximate age of the dog; liability insurance carrier information; and any other information deemed necessary by the City.

4. Insurance Required: No dangerous dog shall be registered by the City unless the owner of such dangerous dog presents to the City proof that the owner has procured liability insurance in the amount of at least five hundred thousand dollars ($500,000.00) covering any damage or injury which may be caused by such dangerous dog. The City shall be listed as certificate holder, and shall be required to be notified of any cancellation, termination or expiration of the liability insurance policy. The owner shall maintain the liability insurance required by this subsection at all times, unless and until the owner shall cease to own the dangerous dog. The owner must provide proof to the City if he or she transfers ownership of the dog or if the dog dies.

5. Warning Signs: The owner of a dangerous dog shall display in a prominent place a clearly visible warning sign indicating that there is a dangerous dog on the premises. A similar sign is required to be posted on any enclosure used to confine the dangerous dog. All such signs shall comply with the City's sign ordinance.

6. Microchip Required: The owner of a dangerous dog shall have a microchip implanted into the dog for identification purposes, and the name of the microchip manufacturer and identification number of the microchip must be provided to the City. All costs related to the purchase, implantation, and registration of the microchip are the responsibility of the owner.

7. Spaying or Neutering Required: All dangerous dogs shall be spayed or neutered.

8. Tethering Prohibited: No dangerous dog may be leashed or tethered to an inanimate object.

9. Relocation:

    a. If an owner of a dangerous dog moves the animal to another location within the City, the owner shall, within five (5) days of any change in address, notify Animal Control and provide an updated registration form to the City.

    b. If an owner of a dangerous dog moves the animal out of the City, the owner shall provide Animal Control with the exact location and address of the dog's new residence.

c. A dog which has been determined or deemed by another jurisdiction to be dangerous, or some other comparable designation, with a similar definition and standards as found in Section 6-1, shall not be relocated into Coffeyville. However, if the dog was deemed dangerous solely based on breed, the dog may be allowed to relocate to Coffeyville.

10. Notification of Escape: The owner or keeper of a dangerous dog shall immediately notify Animal Control if such dog escapes from its enclosure or restraint and is at large. Immediate notification also shall be required if the dog bites or attacks a person or domestic animal.

11. Compliance; Violations: It shall be unlawful for any owner of a dangerous dog to fail to comply with any of the requirements and conditions set forth in this Section. Any dangerous dog found to be in violation of this Section may be subject to immediate seizure and impoundment. Upon conviction for a violation of this Chapter, in addition to any other penalty as allowed, the Court may order the dog euthanized. Any costs for impoundment, boarding, or euthanasia shall be the responsibility of the owner. Failure to pay said costs within ten (10) days after receipt of a written notice of the amount due shall be a violation of this Section.

12. Penalty: Any person found guilty of violating the provisions of this Section shall be punished as follows:

    a. A fine of not more than two thousand five hundred dollars ($2,500.00); or

    b. Imprisonment for not more than one (1) year; or

    c. Both such fine and imprisonment not to exceed subsections (a) and (b) of this Section.

    d. Each day that a violation continues is deemed to be a separate offense.

Section 4. That Chapter 6, Article I, be and is hereby amended to add a new Section 6-4a, as follows:

Sec. 6-4a. Tethering.

A. It shall be unlawful for any person to attach chains or other tethers, restraints or implements directly to a dog or cat without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal. No person shall:

B. No person shall:

1. Continuously tether a dog or cat for more than fifteen (15) minutes without supervision;

2. Use a tether that, due to weight, inhibits the free movement of the animal within the area tethered; or

3. Tether a dog or cat on a choke chain or in such a manner as to cause injury, strangulation, or entanglement of the dog on fences, trees, or other manmade or natural obstacles; or

4. Tether a dog or cat without access to shade when sunlight is likely to cause overheating, or appropriate shelter to provide insulation and protection against cold and dampness when the atmospheric temperature falls below 40 degrees Fahrenheit, or to tether a dog without securing its water supply so that it cannot be tipped over by the tether; or

5. Tether a dog or cat in an open area where it can be teased by persons or an open area that does not provide the dog or cat protection from attack by other animals; or

6. Tether a dog or cat in an area where bare earth is present and no steps have been taken to prevent the surface from becoming wet and muddy in the event of precipitation.

C. Penalty: Any person found guilty of violating the provisions of this Section shall be punished as follows:

1. A fine of not more than five hundred dollars ($500.00); or
2. Imprisonment for not more than thirty (30) days; or
3. Both such fine and imprisonment not to exceed subsections (a) and (b) of this Section.
4. Each day that a violation continues is deemed to be a separate offense.

Section 5. That Chapter 6, Article I, be and is hereby amended to add a new Section 6-20, as follows:

Sec. 6-20. Animal Cruelty.

A. It shall be unlawful for any person to recklessly or intentionally:

1. Kill, injure, maim, torture, burn or mutilate any animal;

2. Abandon or leave any animal in any place without ensuring provisions for its proper care;

3. Have physical custody of any animal and fail to provide such food, potable water, protection from the elements, opportunity for exercise adequate to maintain health, or other care as is needed for the health or well-being of such animal. For purposes of this Section:

    a. *Food* shall be wholesome, free from contamination, and of sufficient quantity and nutritive value to maintain the animal(s) good health. Animals shall be fed at least once a day except as dictated by veterinary treatment, normal fasts or other accepted practices. All food receptacles shall be kept clean.

    b. *Potable water* shall be adequate fresh water, which shall be made available to animals on a regular basis.

    c. *Protection from the elements* shall be natural or artificial shelter appropriate to the local climatic conditions for the species concerned. Animals kept outdoors shall be afforded protection to prevent severe discomfort of such animals. When sunlight is likely to cause overheating, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight. Owners of animals kept outdoors or in an unheated enclosure shall provide the animal with the following minimum standards of shelter: (i) it shall include a moisture proof and windproof structure of suitable size to accommodate the animal and allow retention of body heat and shall be made of durable material with a solid floor; (ii) it shall be provided with a sufficient quantity of clean, suitable bedding material consisting of hay, stray, cedar shavings, or the equivalent, to promote insulation and protection against cold and dampness and promote retention of body heat.

4. Cause, instigate, stage, or train any animal to fight or permit any animal to fight any other animal or human.

B. Penalty: Any person found guilty of violating the provisions of this Section shall be punished as follows:

    1. A fine of not more than five hundred dollars ($500.00); or

    2. Imprisonment for not more than thirty (30) days; or

    3. Both such fine and imprisonment not to exceed subsections (a) and (b) of this Section.

    4. Each day that a violation continues is deemed to be a separate offense.

C. The Animal Control Officer or a law enforcement officer may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in subsection (a) of this section and subsections thereto, pending further order of the Court. If the subject animal has been impounded, a hearing shall be scheduled within ten (10) business days from the date of impoundment to determine if the animal shall be returned to the owner, surrendered to an animal adoption agency, or euthanized. The owner shall be given reasonable notice of the hearing.

Section 6. This Ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed and approved this 13th day of August 2013.

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David George, Mayor

ATTEST:

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Cindy Price, City Clerk

APPROVED AS TO FORM:

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Paul Kritz, City Attorney