

1 (Published in the Topeka Metro News June 21, 2006)

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3  
4 ORDINANCE NO. 18658

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6 AN ORDINANCE introduced by Councilmember Lana Kennedy concerning the  
7 muzzling of vicious animals, amending Section 18-8 of the Code of  
8 the City of Topeka, Kansas and specifically repealing said original  
9 section.

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

12 Section 1. Topeka City Code Section 18-8, Vicious Animals, is hereby  
13 amended to read as follows:

14 **Vicious animals.**

15 (a) The animal control officer shall investigate each case of any animal  
16 reported as being vicious and, if probable cause exists to believe the animal is vicious,  
17 shall seize and impound such animal unless the owner agrees to impound the animal at  
18 the owner's expense at any veterinarian in the city until the conclusion of any pending  
19 municipal court charge regarding the animal. Impoundment expenses shall be assessed  
20 as court costs against a convicted owner.

21 (b) The owner shall report immediately to the public health officer any animal,  
22 which has actually bitten or scratched any person, regardless of the circumstances  
23 involved.

24 (c) Prohibited. It is unlawful for any owner, harborer, keeper or possessor who  
25 keeps any animal within the city limits to allow the following, and the same are declared  
26 to be public nuisances and prohibited:

27 (1) To permit such animal to attack or bite any person or animal that is  
28 not upon the premises of the owner, harborer, keeper or possessor.

29 (2) To permit such animal to attack or bite any person or animal that is  
30 upon the premises of the residence of such owner, harborer, keeper or  
31 possessor. It shall be an affirmative defense to this subsection (c)(2) that  
32 the use of such animal to attack or bite any person was necessary to  
33 prevent or apprehend a person engaged in committing an act of violence,  
34 robbery, criminal trespass or theft upon such property.

35 (3) To permit such animal kept by such owner, harborer, keeper or  
36 possessor within or upon the premises of any business establishment to  
37 attack or bite any person or animal upon such premises. It is an affirmative  
38 defense to this subsection (c)(3) that the use of such animal to attack or  
39 bite any person was necessary to prevent or apprehend a person  
40 engaged in committing an act of violence, robbery, criminal trespass or  
41 theft upon such property.

42 (d) Exceptions. The provisions of subsection (c) shall not apply to any law  
43 enforcement officer who uses or employs an animal while engaged in law enforcement  
44 activities, nor to any owner, harborer, keeper or possessor of any animal which attacks  
45 or bites a person engaged in physically attacking or striking such owner, harborer,  
46 keeper or possessor.

47 (e) Complaint and notice to appear.

48 (1) Any person who witnesses or has other personal knowledge that an  
49 act made unlawful by the provisions of this section has been committed in  
50 violation of such provisions may sign a complaint against the alleged  
51 violator.

52 (2) Any police officer, reserve police officer or animal control officer of  
53 the city is authorized to issue a uniform complaint and notice to appear to  
54 any person when such officer personally observes a violation of the  
55 provisions of this section or when information is received from any person  
56 who has personal knowledge that an act or acts which are made unlawful  
57 by the provisions of this section have occurred.

58 (f) Ex parte hearings and court orders. The municipal court of the city is  
59 empowered to hold ex parte hearings to determine whether there are reasonable  
60 grounds to believe that an animal may constitute a danger to any person if not  
61 impounded. After such hearing, if the court finds such reasonable grounds to exist, the  
62 court is empowered to enter orders, either on its own motion or on the motion of the city  
63 attorney, the city attorney's authorized representative, any police officer, reserve police  
64 officer or animal control officer, to seize and impound, or continue the impoundment of  
65 such animal until the completion of all trial and legal proceedings held in the municipal  
66 court of the city to determine whether there has been a violation of this section. If an  
67 animal is ordered to be impounded pursuant to this subsection, the person who owns,  
68 harbors, keeps or possesses such animal shall be entitled to a hearing in the municipal  
69 court within 14 days of such order to review the propriety of such impoundment. Costs  
70 of such impoundment shall be assessed to the owner, harborer, keeper or possessor of  
71 such animal.

72 (g) Punishment. Upon a first conviction of a violation of this section, a person  
73 shall be fined not less than \$250.00 nor more than \$499.00. The person convicted must  
74 pay at least \$250.00 before the person is granted suspension or reduction of sentence.

75 On a second or subsequent conviction of a violation of this section within seven years of  
76 the most recent conviction, a person shall be sentenced to not less than five days'  
77 imprisonment nor more than 30 days' imprisonment, and shall be fined not less than  
78 \$350.00 nor more than \$499.00. The person convicted must serve at least five days'  
79 imprisonment and pay at least \$350.00 before the person is granted suspension or  
80 reduction of sentence.

81 (h) Destruction of animal. Upon an initial conviction of a violation of this  
82 section, the judge of the municipal court of the city may order the owner, harborer,  
83 keeper or possessor of such vicious animal to destroy such animal. Upon a second or  
84 subsequent conviction, the judge shall order the owner, harborer, keeper or possessor  
85 to destroy the animal.

86 (i) Confinement of animal. Upon conviction of a violation of this section, the  
87 judge of the municipal court shall order the owner, harborer, keeper or possessor of  
88 such vicious animal to confine such animal in a secure enclosure as defined in 18-1(e).  
89 If the owner, harborer, keeper or possessor takes the vicious animal off the property,  
90 the judge shall order the animal to be under the direct physical control of some person  
91 by use of a chain, leash or similar device, and the animal shall be muzzled by a caged  
92 muzzle. Failure to comply with any such order shall be deemed a violation of this  
93 section and subject the violator to the penalties set forth in subsection (g).

94 (j) Microchipping of animal. Upon conviction of a violation of this section, the  
95 judge of the municipal court shall order the owner, harborer, keeper or possessor of  
96 such animal to have an identification microchip implanted in such animal by the humane  
97 society or a licensed veterinarian no later than 15 calendar days after the conviction.

98 The owner, harborer, keeper or possessor shall file proof of microchipping, acceptable  
99 to the municipal court, with the clerk of the municipal court no later than 20 calendar  
100 days after conviction. Upon receipt, the clerk of the municipal court shall provide a copy  
101 of such proof to the city attorney's office. Failure of the owner, harborer, keeper or  
102 possessor of such animal to have the microchip implanted in the animal or to file  
103 acceptable proof of microchipping with the clerk of the municipal court within 20 days  
104 after conviction shall be punished as contempt of court. Upon the commencement of  
105 contempt proceedings against the owner, harborer, keeper or possessor of such animal,  
106 the municipal court shall issue an ex parte order directing animal control officers to  
107 seize the animal, which shall be held and shall not be released until the conclusion of  
108 the contempt proceedings.

109 Section 2. Original City of Topeka Code Section 18-8 is hereby specifically  
110 repealed.

111 Section 3. This ordinance shall take effect and be in force after its passage,  
112 approval and publication in the official city newspaper.

113 PASSED and APPROVED by the City Council June 13, 2006.

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William W. Bunten, Mayor

ATTEST:

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Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE _____ BY _____
TO BE CODIFIED _____
NOT TO BE CODIFIED _____