

ORDINANCE NO. 422

AMENDING THE CODE OF ORDINANCES OF THE CITY OF EARLHAM, IOWA, 2017, BY AMENDING CHAPTER 55 ANIMAL PROTECTION AND CONTROL, CHAPTER 56 DOG LICENSE REQUIRED, AND CHAPTER 57 DANGEROUS AND VICIOUS ANIMALS

Be It Enacted by the City Council of the City of Earlham, Iowa:

SECTION 1. CHAPTER AMENDED. Chapter 55, Animal Protection and Control, of the Code of Ordinances of the City of Earlham, Iowa, 2017, is hereby repealed and the following adopted in its place:

CHAPTER 55 ANIMAL PROTECTION AND CONTROL

55.01 DEFINITIONS.

The following terms are defined for use in this chapter.

1. "Advertise" means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag or articulation.
2. "Animal" means a nonhuman vertebrate.
(Code of Iowa, Sec. 717B.1)
3. "At large" means off the premises of the owner and not under the control of a competent person, restrained within a motor vehicle, or housed in a veterinary hospital or kennel.
4. "Business" means any enterprise relating to any of the following:
 - A. The sale or offer for sale of goods or services.
 - B. A recruitment for employment or membership in an organization.
 - C. A solicitation to make an investment.
 - D. An amusement or entertainment activity.
5. "Fair" means any of the following:
 - A. The annual fair and exposition held by the Iowa State Fair Board pursuant to Chapter 173 of the *Code of Iowa* or any fair event conducted by a fair under the provisions of Chapter 174 of the *Code of Iowa*.
 - B. An exhibition of agricultural or manufactured products.
 - C. An event for operation of amusement rides or devices or concession booths.
6. "Game" means a "game of chance" or "game of skill" as defined in Section 99B.1 of the *Code of Iowa*.
7. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine or porcine species, ostriches, rheas and emus; farm deer as defined in Section 170.1 of the *Code of Iowa*; or poultry.
(Code of Iowa, Sec. 717.1)
8. "Owner" means any person owning, keeping, sheltering or harboring an animal.
9. "Pet" means a living dog, cat or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko or iguana.

55.02 ANIMAL NEGLECT.

It is unlawful for a person who impounds or confines, in any place, an animal, excluding livestock, to fail to supply the animal during confinement with a sufficient quantity of food or water, or to fail to provide a confined dog or cat with adequate shelter, or to torture, deprive of necessary sustenance, mutilate, beat, or kill such animal by any means which causes unjustified pain, distress or suffering.

(Code of Iowa, Sec. 717B.3)

55.03 LIVESTOCK NEGLECT.

It is unlawful for a person who impounds or confines livestock in any place to fail to provide the livestock with care consistent with customary animal husbandry practices or to deprive the livestock of necessary

sustenance or to injure or destroy livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

(Code of Iowa, Sec. 717.2)

55.04 ABANDONMENT OF CATS AND DOGS.

A person who has ownership or custody of a cat or dog shall not abandon the cat or dog, except the person may deliver the cat or dog to another person who will accept ownership and custody or the person may deliver the cat or dog to an animal shelter or pound.

(Code of Iowa, Sec. 717B.8)

55.05 LIVESTOCK.

It is unlawful for a person to keep livestock within the City except by written consent of the Council or except in compliance with the City's zoning regulations and Chapter 58 of this Code of Ordinances. Any person who keeps livestock by written consent of the Council, or is granted grandfathered status, who does not abide by the provisions of 55.03, will lose that consent as well as any grandfathered status.

55.06 AT LARGE PROHIBITED.

It is unlawful for any owner to allow an animal to run at large within the corporate limits of the City.

55.07 DAMAGE OR INTERFERENCE.

It is unlawful for the owner of an animal to allow or permit such animal to pass upon the premises of another thereby causing damage to, or interference with, the premises.

55.08 ANNOYANCE OR DISTURBANCE.

It is unlawful for the owner or custodian of a dog, to allow or permit such animal to 1) bark, bay, cry, howl, yelp, crow or make any other noise excessively, continuously, or intermittently, for any unreasonable period of time so as to create an annoyance or disturbance of any person at any time of day or night regardless of whether the animal is physically situated on property under the control of the owner or custodian of the dog, cat, or other household animal; and b) run after or chase persons, bicycles automobiles or other vehicles.

55.09 BOTHERSOME ANIMALS.

It is unlawful for any person to keep within the City bothersome animals such as bees, or domestic animals that may become bothersome by causing any offensive violations of an environmental nature such as sound, smell or sight, which tend to disrupt the peace and good order of the community. Such animals may be declared a nuisance.

55.10 NUMBER OF ANIMALS. *On hold*

1. No person shall, own, possess or keep within the City five (5) dogs over the age of three (3) months. All dogs kept must be licensed annually. Persons who own, possess, or keep more than five dogs per household on the effective date of the ordinance codified in this section, shall be permitted to continue to own, possess, or keep those animals only, but shall not be permitted to replace an animal which dies, is sold, transferred, or otherwise disposed of until the total number of animals per household is decreased to four. All violations will constitute a daily fine of \$25.00 for each animal over the limit.
2. Regardless of the number of dogs, any person who owns, possesses or keeps a dog(dogs), shall not create unhealthful or unsanitary conditions for the humans or animals occupying the premises, or create any other conditions constituting a nuisance. If such conditions exist, the enforcement officer is authorized to make an investigation and after notice and hearing to the person harboring or maintaining the animals, the enforcement officer may order such number of animals be moved from the residence or premises to remedy or correct the unhealthful, unsanitary or other conditions constituting a nuisance.

55.11 OWNER'S DUTY.

It is the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health or law enforcement official. It is the duty of physicians and veterinarians to report to the local board of health or law enforcement official the existence of any animal known or suspected to be suffering from rabies.

(Code of Iowa, Sec. 351.38)

55.12 CONFINEMENT.

If a local board of health or law enforcement official receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board or law enforcement official shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board or law enforcement official, and after 10 days the board may humanely destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. This section does not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

(Code of Iowa, Sec. 351.39)

55.13 IMPOUNDING

1. An unlicensed pet found at large, or any licensed dog found at large in violation of this chapter shall be seized and impounded or, at the option of the peace officer, a citation for the violation may be served on the owner.
2. A licensed dog can be recovered by its owner upon payment of an impoundment fee as follows:
 - A. \$25.00 for the first impoundment plus any and all veterinarian charges.
 - B. \$50.00 for the second impoundment plus any and all veterinarian charges.
 - C. \$100.00 for the third impoundment plus any and all veterinarian charges.

An owner recovering an impounded dog shall bear the burden of transporting it from its place of impoundment.

3. An impounded unlicensed pet may be recovered by the owner, upon proper identification, by payment of the license fee, impounding fee of \$25.00 plus boarding costs and/or the veterinarian charges, and the costs of vaccination.
4. Any dog impounded for a fourth or subsequent time within a 24-month period, whether licensed or unlicensed, shall be deemed a nuisance per se and may be disposed of by the City or its designated agent in a humane manner without notice to anyone.

55.14 DISPOSITION OF ANIMALS.

When an animal has been apprehended and impounded, written notice shall be provided to the owner within two days after impoundment, if the owner's name and current address can reasonably be determined by accessing a tag or other device that is on or part of the animal. Impounded animals may be recovered by the owner upon payment of impounding costs. If the owner fails to redeem the animal within seven days from the date that the notice is mailed, or if the owner cannot be located within seven days, the animal shall be disposed of in accordance with law or destroyed by euthanasia.

(Code of Iowa, Sec. 351.37, 351.41)

55.15 PET AWARDS PROHIBITED.

(Code of Iowa, Ch. 717.E)

1. Prohibition. It is unlawful for any person to award a pet or advertise that a pet may be awarded as any of the following:
 - A. A prize for participating in a game.
 - B. A prize for participating in a fair.
 - C. An inducement or condition for visiting a place of business or attending an event sponsored by a business.
 - D. An inducement or condition for executing a contract which includes provisions unrelated to the ownership, care or disposition of the pet.
2. Exceptions. This section does not apply to any of the following:

A. A pet shop licensed pursuant to Section 162.5 of the *Code of Iowa* if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.

B. Youth programs associated with 4-H Clubs; Future Farmers of America; the Izaak Walton League of America; or organizations associated with outdoor recreation, hunting or fishing, including but not limited to the Iowa Sportsmen's Federation.

55.16 PENALTY.

1. A police officer, or other enforcement official authorized by the City, upon determining that probable cause exists that an owner, as defined in this chapter, has violated any provision of this chapter, may issue a written summons to the owner for such violation. The summons shall include the owner's name and last known address, the date and approximate time of the violation, the location of the violation, a brief and concise description of the violation, the Code section violated, and the number or name of the police officer or other City enforcement official issuing the summons.
2. The owner, within 30 days of the date the summons is issued, shall pay to the City a fine of \$25.00 for all first offense violations of this chapter; a fine of \$50.00 for all second offense violations of this chapter; and a fine of \$100.00 for all third and subsequent violations of this chapter. The payment of the fine to the City within 30 days of the date the summons is issued shall be deemed an admission of the violation and no other costs or charges other than the fine shall be collected.
3. Violations that are not paid within 30 days of the date the summons is issued shall be deemed denied by the owner. In this event the City may thereupon charge the owner by the same or a similar written summons before the Magistrate Court in the same manner and procedure as traffic violations under Chapter 805 of the *Code of Iowa* and/or the Earlham Traffic Code, including the assessment of court costs as provided by that *Code of Iowa* chapter and/or the Earlham Traffic Code. All fines shall be increased by \$5.00 if not paid within 30 days of the date of the initial summons being issued by the City.
4. In determining if a violation charged is a second or subsequent offense for purposes of sentencing under this chapter, the Court shall consider a summons issued for a violation of this chapter as being one violation for purposes of sentencing; each previous summons for a violation on which conviction, or admission of violation, was entered prior to the date of the current violation charged shall be considered and counted as a separate previous offense; and any conviction, or admission of violation, entered more than six years prior to the date of the current violation charged shall not be considered and counted as a separate previous offense under this chapter. In addition, any violation of this chapter, or any provision thereof, shall be a municipal infraction subject to the provisions of Section 364.22 of the *Code of Iowa*, as amended.

SECTION 2. CHAPTER AMENDED. Chapter 56, Dog License Required, of the Code of Ordinances of the City of Earlham, Iowa, 2017, is hereby repealed and the following adopted in its place:

**CHAPTER 56
DOG LICENSE REQUIRED**

56.01 ANNUAL LICENSE REQUIRED.

1. Every owner of a dog over the age of six months shall procure a dog license. The annual license fee shall be \$2.00 for each dog. The license fee shall be due and payable March 1 of each year. Licenses become delinquent April 1 of each year and the penalty shall be \$1.00 per month not licensed, except in those cases where by reason of residence, or age the dog was not subject to licensing prior to the April 1 period. License renewal shall include all delinquent penalties accrued for each month past expiration of the last current license for each dog.

2. Upon payment of the license fee, the owner shall complete a Pet License Application, which contain: the name of owner, the owner's place of residence, home and cell telephone numbers, email address, and breed and color of pet. The Clerk shall keep the application as a public record.
3. Upon receipt of the license application, the Clerk shall issue to the owner a metal tag stamped with the number of the license and the year for which it is issued. The license tag shall be securely fastened to a collar or harness which shall be worn by the dog for which the license is issued.
4. Any dog found running at large without the license tag attached to its collar or harness shall be deemed unlicensed.

56.02 KENNEL DOGS.

Dogs in State or federally licensed kennels and which are kept or raised solely for the bona fide purpose of sale and which are kept under constant restraint are not subject to the licensing provisions of this chapter.

56.03 IMMUNIZATION.

All dogs six months old or older shall be vaccinated against rabies. Before issuance of the license, the owner shall furnish a veterinarian's certificate showing that the dog has been vaccinated and that the vaccination does not expire within six months from the effective date of the license. It is a violation of this chapter for any dog not to be vaccinated against rabies. A tag showing evidence of proper vaccination shall be worn by every dog when not confined.

56.04 PENALTY.

1. A police officer, or other enforcement official authorized by the City, upon determining that probable cause exists that an owner, as defined in Section 55.01(8) of this Code of Ordinances, has violated any provision of this chapter, may issue a written summons to the owner for such violation. The summons shall include the owner's name and last known address, the date and approximate time of the violation, the location of the violation, a brief and concise description of the violation, the Code section violated, and the number or name of the police officer or other City enforcement official issuing the summons.
2. The owner, within 30 days of the date the summons is issued, shall pay to the City a fine of \$25.00 for all first offense violations of this chapter; a fine of \$50.00 for all second offense violations of this chapter; and a fine of \$100.00 for all third and subsequent violations of this chapter. The payment of the fine to the City within 30 days of the date the summons is issued shall be deemed an admission of the violation and no other costs or charges other than the fine shall be collected.
3. Violations that are not paid within 30 days of the date the summons is issued shall be deemed denied by the owner. In this event, the City may thereupon charge the owner by the same or a similar written summons before the Magistrate Court in the same manner and procedure as traffic violations under Chapter 805 of the *Code of Iowa* and/or the Earlham Traffic Code, including the assessment of court costs as provided by that *Code of Iowa* chapter and/or the Earlham Traffic Code. All fines shall be increased by \$5.00 if not paid within 30 days of the date of the initial summons being issued by the City.
4. In determining if a violation charged is a second or subsequent offense for purposes of sentencing under this chapter, the Court shall consider a summons issued for a violation of this chapter as being one violation for purposes of sentencing; each previous summons for a violation on which conviction, or admission of violation, was entered prior to the date of the current violation charged shall be considered and counted as a separate previous offense; and any conviction, or admission of violation, entered more than six years prior to the date of the current violation charged shall not be considered and counted as a separate previous offense under this chapter. In addition, any violation of this chapter, or any provision thereof, shall be a municipal infraction subject to the provisions of *Code of Iowa* Section 364.22, as amended.

SECTION 3. SECTION AMENDED. Chapter 57, Dangerous and Vicious Animals, of the Code of Ordinances of the City of Earlham, Iowa, 2017, is hereby repealed and the following adopted in its place:

**CHAPTER 57
DANGEROUS AND VICIOUS ANIMALS**

57.01 DEFINITIONS.

For use in this chapter, the following terms are defined:

1. "Dangerous animal" means:
 - a) Any animal which is not naturally tamed or gentle, and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon or causing disease amount human beings or domestic animal and having known tendencies as a species to do so; or
 - b) Any animal declared to be dangerous by the Council; or
 - c) Any non-domesticated member of the order carnivore which as an adult exceeds the weight of 20 pounds; or
 - d) Any of the following animals which shall be deemed to be dangerous animals, per se: lions, tigers, jaguars, leopards, cougars, lynx, bobcats, wolves, coyotes, foxes, badgers, wolverines, weasels, skunks, mink; racoons, bears, monkeys and chimpanzees, bats, alligators, crocodiles and caimans, scorpions, snakes, and reptiles that are venomous, snakes that are constrictors over six feet in length, gila monsters, opossums, apes, baboons and mascques, and piranhas, pit bull terriers and/or crosses thereof.
2. "Vicious animal"
 - a. Any dog which has attacked a human being or domestic animal one or more times, without provocation;
 - b. Any dog with a history, tendency or disposition to attack, to cause injury to or to otherwise endanger the safety of human beings or domestic animals;
 - c. Any dog that snaps, bites or manifests a disposition to snap or bite;
 - d. Any dog that has been trained for dog fighting, animal fighting or animal baiting or is owned or kept for such purposes.
 - e. Any dog trained to attack human beings, upon command or spontaneously in response to human activities except dogs owned by and under the control of the Police Department, a law enforcement agency of the State or United States or a branch of the armed forces of the united states.
 - f. Depending on the severity of the attack, Chief of Police or Council can, after notice to the owner and opportunity to be heard before the Council, find that an animal is or is not vicious.

57.02 KEEPING OF DANGEROUS ANIMALS PROHIBITED.

No person shall keep, shelter or harbor any dangerous animal as a pet, or act as a temporary custodian for such animal, or keep, shelter or harbor such animal for any other purpose or in any other capacity within the City.

57.03 KEEPING OF VICIOUS ANIMALS PROHIBITED.

No person shall keep, shelter or harbor for any reason within the City a vicious animal as defined in this chapter, except animals kept under the control of a law enforcement or military agency.

57.04 SEIZURE, IMPOUNDMENT AND DISPOSITION OF VICIOUS ANIMALS.

1. The Mayor, in his or her discretion or upon receipt of a complaint alleging that a particular animal is a vicious animal, as defined herein, may initiate proceedings to declare such animal a vicious animal. A hearing on the matter shall be conducted by the Council. The person owning, keeping, sheltering or harboring the animal in question shall be given not less than 72 hours' written notice of the time and place of said hearing. Said notice shall set forth the description of the animal in question and the basis for the allegation of viciousness. The notice shall also state that if the animal is determined to be vicious, the Mayor will have it removed from the City or order it to be destroyed.

The notice shall be served upon any adult residing at the premises where the animal is located, or may be posted on those premises if no adult is present to accept service.

2. If, after hearing, the Council determines that an animal is vicious, the Mayor shall order the person owning, sheltering or harboring or keeping the animal to remove it from the City or to cause it to be destroyed in a humane manner. The order shall immediately be served upon the person against whom issued in the same manner as the notice of hearing. If the order is not complied with within three days of its issuance, the Police Chief is authorized to seize and impound the animal. An animal so seized shall be impounded for a period of fourteen (14) days. If at the end of the impoundment period, the person against whom the order of the Mayor was issued has not petitioned the District Court for a review of the order, the Mayor shall cause the animal to be destroyed.
3. Any animal which is alleged to be vicious and which is under impoundment or quarantine at the animal shelter shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be vicious. If the animal is not determined to be vicious, such impoundment or quarantine shall be paid by the City.
4. Failure to comply with an order of the Mayor issued pursuant hereto and not appealed, or of the Council after appeal, shall constitute a violation of this Code of Ordinances.
5. Any animal found at large which displays vicious tendencies may be processed as a vicious animal pursuant to the foregoing, unless the animal is so vicious that it cannot safely be apprehended, in which case law enforcement officer or animal control may immediately destroy it.
6. After order to remove the vicious dog from the city, the Chief of Police is authorized to search the residence of the owner of the vicious dog to verify that the dog is no longer located in the city of Earlham after issuance of a search warrant by the court based on probable cause that the dog may still be harbored in the city in violation of the order.

57.05 DESTROYING VICIOUS ANIMALS FOUND AT LARGE.

The City shall be under no duty to attempt the confinement or capture of an animal found at large which displays vicious tendencies, nor shall the City have a duty to notify the owner of such animal prior to its destruction. In the event that an animal is found at large and unattended upon public property, or upon the property of someone other than its owner, thereby creating a hazard to any person or property, such animal may, in the discretion of the law enforcement officer or animal control, be destroyed if it cannot be confined or captured without undue risk.

57.07 OWNER HELD LIABLE. In the case where a vicious or dangerous animal has attacked another animal, the owner of said vicious or dangerous animal shall be held liable for any and all veterinary charges incurred from injuries to the attacked animal.

57.08 HOLD HARMLESS. Absent a showing of reckless conduct, no person granted authority to enforce the provisions of this chapter shall be liable for damage to or destruction of any animal occurring during the course of enforcement of this chapter.

SECTION 4. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not effect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved by the City Council of Earlham, Iowa, this ____ day of _____.

Jeff Lillie, Mayor

ATTEST: _____
Mary Sue Hibbs, City Clerk/Treasurer

Passed First Reading: _____
Passed Second Reading: _____
Third Reading: _____

<u>Member</u>	<u>1st Reading</u>	<u>2nd Reading</u>	<u>3rd Reading</u>
Baskin			
Fredericksen			
Payne			
Petersen			
Swalla			

I certify that the foregoing Ordinance was published as Ordinance No. 422 on the ____ day of _____, 2020.

Mary Sue Hibbs, City Clerk/Treasurer