

Ordinance No. 770

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, AMENDING CHAPTER 6 “ANIMALS” IN THE TOWN CODE BY AMENDING SECTIONS 6-01-010 “DEFINITIONS,” 6-02-120 “BITING ANIMALS AND ANIMAL BITES,” AND 6-04-010 “ANIMAL CARE”; RENAMING AND AMENDING SECTIONS 6-02-010 “DANGEROUS DOGS” AND 6-05-020 “HEARING ON DISPOSITION OF ABUSED AND VICIOUS ANIMALS”; AND REPEALING AND REENACTING SECTION 6-05-030 “RESERVED” TO ADD NEW DEFINITIONS, EXEMPT CERTAIN ANIMALS FROM REGULATION AND SPECIFY APPROPRIATE PROCEDURES FOR DISPOSITION OF CRUELLY-TREATED AND/OR NEGLECTED ANIMALS, ALL IN ACCORD WITH RECENT AMENDMENTS TO ARIZONA REVISED STATUTES; PROVIDING THAT ALL OTHER SECTIONS OF THE TOWN CODE, NOT HEREIN REPEALED OR AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, the Mayor and Common Council of the Town of Prescott Valley, Arizona first adopted an animal regulation code on June 28, 1979; and

WHEREAS, the Arizona Legislature subsequently enacted provisions related to proper care, maintenance and destruction of impounded animals and disposition of abused and vicious animals; and

WHEREAS, in response the Town Council adopted Ordinance No. 746 (August 12, 2010) substantially revising Chapter 6 “ANIMALS” of the Town Code to focus on destruction of impounded animals, clarify the standard for appropriate animal care, and establish hearing procedures for disposition of abused and vicious animals; and

WHEREAS, the Legislature has again enacted provisions exempting certain animals from regulation and specifying procedures for disposition of cruelly-treated and neglected animals; and

WHEREAS, the Town Council desires now to amend Chapter 6 “ANIMALS” to correspond with these state provisions; and

WHEREAS, the Council finds that these amendments are designed to help preserve the peace, health and safety of the community;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That Section 6-01-010 “Definitions” in Article 6-01 “GENERAL ANIMAL CONTROL” in Chapter 6 “ANIMALS” of the Town Code of the Town of Prescott Valley, Arizona, be hereby amended to read as follows:

6-01-010 Definitions.

In this Chapter, unless the context requires otherwise:

A. “Aggressive dog” means any dog that has bitten a person or domestic animal without provocation or that has a known history of attacking persons or domestic animals without provocation.

A dog shall not be declared aggressive if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime.

B.A. "Animal" means any animal of a species that is susceptible to rabies, except man.

C.B. "Animal Control Officer" means that person who is responsible for the enforcement of this Chapter and the regulations promulgated thereunder.

D.C. "At large" means being neither confined by an enclosure nor physically restrained by a leash.

E.D. "Citation" means a document issued by the Police Department or the Animal Control Officer to a person who has violated the regulations of this Chapter, commanding that person to pay a fine or penalty by mail or to appear in the Magistrate Court or before an Administrative Hearing Officer on the violation at a specified date and time.

F.E. "Collar" means a band, chain, harness or suitable device worn around the neck of a dog to which a license may be affixed.

G. “Cruel mistreatment” means to torture or otherwise inflict unnecessary serious physical injury on an animal or to kill an animal in a manner that causes protracted suffering to the animal.

H. “Cruel neglect” means to fail to provide an animal with necessary food, water or shelter.

F. ~~“Dangerous Dog” means any dog that according to the Town records has:~~

- ~~1. Inflicted severe injury on a human being without provocation on public or private property;~~
- ~~2. Killed a domestic animal without provocation while off the owner's property; or~~
- ~~3. Been so declared after notice and a hearing before an Administrative Hearing Officer or the Magistrate Court, and exhaustion or expiration of all available appeals.~~

~~A dog shall not be declared dangerous if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime.~~

I.G. "Dog" means a member of the canis familiaris family.

J.H. “Exotic Animal” means wildlife or offspring of wildlife that is not native to North America.

K.I. “Hybrid Dog” means an offspring resulting from the mating of a wild species and a domestic species, or any dog whose ancestry contains a dog which is the result of such a breeding within

six (6) generations, or any dog that is represented by its owner or was represented upon its sale as being a hybrid.

LJ. "Impound" means the Animal Control Officer's act of taking or receiving into custody any dog or other animal for the purpose of confinement in a Town-authorized pound in accordance with the provisions of this Chapter.

MK. "Kennel" means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five (5) or more dogs on a temporary basis, not to exceed thirty (30) days, and not more than eight (8) dogs over 6 months of age on a permanent basis under controlled conditions. This applies to commercial or non-profit business establishments at which dogs and cats are bred or raised for sale, boarded, trained and/or cared for exclusive of dental, medical or surgical care or for quarantine purposes. "Kennel" does not include the keeping of animals on residential lots as household pets.

NL. "Livestock" means any horse, colt, mule, donkey, burro, ox, bull, cow, calf, hog, pig, sheep, or goat.

OM. "Owner" means any person, firm, corporation, organization or department, possessing, harboring, keeping, having an interest in, or having control over, or custody of, an animal.

PN. "Pound" means any establishment authorized by the Council for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the Animal Control Officer in the performance of his/her official duties.

QO. "Proper Enclosure" means that, any ~~dangerous~~ aggressive dog, wildlife or exotic animal, while on the owner's property, shall be securely confined indoors or in an enclosed and locked pen or structure that is not accessible to young children and is designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top and shall also protect the dog from the elements.

RP. "Severe Injury" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.

SQ. "Stray Dog" means any dog running at-large that is not wearing a valid license tag.

TR. "Under Control" means restrained by a leash, rope, cord or chain of not more than six (6) feet in length.

US. "Vaccination" means the administration, by a duly-licensed veterinarian, of an anti-rabies vaccine to animals.

VF. "Veterinary Hospital" means any establishment operated by a veterinarian licensed to practice in the State of Arizona that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it, or in conjunction with it, or as an integral part of it, pens, stalls, cages or kennels for quarantine, observation or boarding.

WU. "Vicious Animal" means any animal of the order carnivore that has a propensity to attack, to cause injury to or to otherwise endanger the safety of human beings without provocation, or that has been so declared after notice and a hearing before the Magistrate Court, and exhaustion or

expiration of all available appeals.

XV. “Wild” means, in reference to mammals and birds, those species which are normally found in a state of nature.

YW. “Wildlife” means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans, and fish, including their eggs or spawn.

(Ord. No. 95, Enacted, 02/09/84; Ord. No. 178, Rep&ReEn, 05/26/88; Ord. No. 375, Amended, 12/28/95; Ord. No. 746, Rep&ReEn, 09/09/10; Ord. No. 770, Amended, 10/25/12)

SECTION TWO. That Section 6-01-120 “Biting Animals and Animal Bites” in Article 6-01 “GENERAL ANIMAL CONTROL” in Chapter 6 “ANIMALS” of the Town Code be hereby amended to read as follows:

6-01-120 Biting Animals and Animal Bites.

...

F. This section does not apply to a dog that is used by any federal, state, county, city or town law enforcement agency and that bites any person if the bite occurs while the dog is under proper law enforcement supervision and the care of a licensed veterinarian, except that the law enforcement agency shall notify the Animal Control Officer if the dog exhibits any abnormal behavior and make the dog available for examination at any reasonable time.

(Ord. No. 746, Enacted, 09/09/10; Ord. No.770, Amended, 10/25/12)

SECTION THREE. That Section 6-02-010 “Dangerous Dogs” in Article 6-02 “SPECIAL ANIMAL REGULATIONS” in Chapter 6 “ANIMALS” of the Town Code be hereby renamed “Aggressive Dogs” and amended to read as follows:

6-02-010 Dangerous Aggressive Dogs.

A. It is unlawful for an owner to have an dangerous aggressive dog, as defined in this Chapter, in the Town without a certificate of registration issued under this Section. ~~This Section shall not apply to dogs used by law enforcement officials for police work.~~

B. The Animal Control Officer shall issue a certificate of registration to the owner of an dangerous aggressive dog if the owner presents to the Animal Control Officer sufficient evidence of:

1. A proper enclosure to confine an dangerous aggressive dog and the posting of the premises with a clearly visible warning sign that there is an dangerous aggressive dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of an dangerous- aggressive dog; and

2. A surety bond issued by a surety insurer in a form acceptable to the Town Attorney in the sum of at least one hundred thousand dollars (\$100,000.00), payable to any person injured by the dangerous aggressive dog, or a policy of liability insurance, such as homeowner's insurance, issued by a qualified insurer in the amount of at least \$100,000.00, insuring the owner for any personal injuries inflicted by the dangerous

aggressive dog.

- C. It is unlawful for an owner of an an dangerous aggressive dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person. The muzzle shall be made 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 person or animal.
- D. An dangerous aggressive dog shall be immediately confiscated by an Animal Control Officer, and the owner will be charged with a class 1 misdemeanor, if the:
 - 1. Dog is not validly registered under Subsection A of this Section;
 - 2. Owner does not secure the surety bond or liability insurance coverage required under this Section;
 - 3. Dog is not maintained in the proper enclosure; or
 - 4. Dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under the physical restraint of a responsible person.
- E. If an aggressive dangerous dog that was the subject of an owner's prior conviction under this Chapter attacks or bites a person or another domestic animal without provocation, the dog's owner will be charged with a class 1 misdemeanor. In addition, the dangerous aggressive dog shall be immediately confiscated by an Animal Control Officer, placed in quarantine for the proper period and confined until final disposition pursuant to Section 6-05-020 of this Chapter.
- F. The owner of any dog that aggressively attacks and causes severe injury or death of any human, irrespective of whether the dog has previously been declared an an dangerous aggressive dog, will be charged with a class 1 misdemeanor. In addition, the dog shall be immediately confiscated by an Animal Control Officer, placed in quarantine for the proper period and confined until final disposition pursuant to Section 6-05-020 of this Chapter.

(Ord. No. 8, Enacted, 06/23/79; Ord. No. 95, Ren&Amd, 02/09/84, 6-01-010,,6-01-020; Ord. No. 178, Ren&Amd, 05/26/88, 6-01-020,,6-01-030; Ord. No. 600, Amended, 07/22/04; Ord. No. 746, Rep&ReEn, 09/09/10; Ord. No. 770, Ren&Amd, 10/25/12)

SECTION FOUR. That Section 6-04-010 "Animal Care" in Article 6-04 "ANIMAL CARE" in Chapter 6 "ANIMALS" of the Town Code be hereby amended to read as follows:

6-04-010 Animal Care.

...

- D. The Animal Control Officer, on a reasonable belief that very prompt action is required to protect the health or safety of an animal or the health or safety of other animals may immediately impound any animal that appears to be cruelly neglected or otherwise cruelly mistreated as described in this Section. The Animal Control Officer shall then request a hearing pursuant to Section ~~6-05-020~~030 of this Chapter for the disposition of the impounded animal.
- E. Nothing contained herein shall prohibit or restrict any activity involving a dog, whether the dog is

restrained or not, if the activity is directly related to the business of shepherding or herding livestock and the activity is necessary for the safety of a human, the dog or livestock or is permitted by or pursuant to Title 3 of the Arizona Revised Statutes.

(Ord. No. 95, Enacted, 02/09/84; Ord. No. 178, Rep&ReEn, 05/26/88; Ord. No. 746, Rep&ReEn, 09/09/10; Ord. No. 770, Amended, 10/25/12)

SECTION FIVE. That Section 6-05-020 “Hearing on Disposition of Abused and Vicious Animals” in Article 6-05 “VIOLATIONS” in Chapter 6 “ANIMALS” of the Town Code be hereby renamed “Hearing on Disposition of Vicious Animals; Forfeiture” and amended to read as follows:

6-05-020 Hearing on Disposition of ~~Abused and Vicious Animals; Forfeiture.~~

- A. The Animal Control Officer or a peace officer who has impounded an animal pursuant to Section 6-02-010 ~~and/or Article 6-04~~ of this Chapter, on a showing of probable cause that the animal ~~has been cruelly mistreated or cruelly neglected, or that the animal is a dangerous dog or is vicious or may be a danger to the safety of any person or other animal,~~ shall request a disposition hearing before the Magistrate Court to determine whether the animal ~~has suffered cruel mistreatment or cruel neglect as defined in A.R.S. §13-2910 or is a dangerous dog or is~~ vicious. The hearing shall be set within fifteen (15) business days after the request for a disposition hearing has been filed.
- B. The Animal Control Officer or peace officer requesting the disposition hearing shall serve the order setting the hearing on the owner of the animal either by personal service or by leaving a copy of the order with a person of suitable age and discretion at the owner’s residence or place of business. Proof of service shall be filed with the Magistrate Court.
- C. ~~If the owner fails to appear at the hearing, or if the Magistrate Court determines that the animal is vicious, being cruelly mistreated or cruelly neglected,~~ the Magistrate Court shall order that the animal be forfeited to the Animal Control Officer to be made available for adoption or for transfer to a legally incorporated humane society or approved rescue agency to be humanely destroyed in accordance with Section 6-01-150 of this Chapter. The owner shall pay impound fees and any other costs for boarding or necessary veterinary care.
1. Notwithstanding the above, if the animal is an aggressive dog as defined in this Chapter, the Magistrate may order that the dog be returned to the owner to be maintained as an aggressive dog in accordance with Section 6-02-010 of this Chapter.
- ~~D. If the Magistrate Court determines that the animal is a dangerous dog as defined in this Chapter, the Magistrate Court shall order:~~
- ~~1. That the dog be returned to the owner to be maintained as a dangerous dog in accordance with Section 6-02-010 of this Chapter; or~~
- ~~2. That the dog be forfeited to the Animal Control Officer to be humanely destroyed in accordance with Section 6-01-150 of this Chapter.~~
- ~~The owner shall pay impound fees and other costs for boarding or necessary veterinary care.~~

- ~~E. If the Magistrate Court determines that an animal is vicious as defined in this Chapter, the Magistrate Court shall order the animal forfeited to the Animal Control Officer to be humanely~~

~~destroyed in accordance with Section 6-01-150 of this Chapter. The owner shall pay impound fees and other costs for boarding or necessary veterinary care.~~

D. If the Magistrate Court determines that the animal is not vicious, the Magistrate may order that the animal be returned to the owner, except that if the owner fails to appear at the hearing, the Magistrate may order that the animal be forfeited to the Animal Control Officer for transfer to a legally incorporated humane society or approved rescue agency and be made available for adoption or be humanely destroyed in accordance with Section 6-01-150 of this Chapter.

E. This Section does not apply to the seizure of an equine pursuant to A.R.S. §3-1721.

(Ord. No. 8, Enacted, 06/28/79; Ord. No. 95, Ren&Amd, 02/09/84, 6-03-030; Ord. No. 178, Rep&ReEn, 05/26/88; Ord. No. 257, Repealed, 06/27/91; Ord. No. 746, Enacted, 09/09/10; Ord. No. 770, Ren&Amd, 10/25/12)

SECTION SIX. That Section 6-05-030 “Reserved” in Article 6-05 “VIOLATIONS” in Chapter 6 “ANIMALS” of the Town Code be hereby repealed and reenacted to read as follows:

6-05-030 Reserved. Seizure of Abused or Abandoned Animals; Notification; Bonding; Hearing.

A. The Animal Control Officer or a peace officer who lawfully seizes an animal pursuant to Article 6-04 of this Chapter or A.R.S. §13-2910 shall affix a notice of seizure in a conspicuous place where the animal was found or personally deliver the notice of seizure to the owner or keeper of the animal, if known or ascertainable after reasonable investigation. The Animal Control Officer shall file proof of service with the Magistrate Court. If it is determined that the suffering of the animal does not require humane destruction, the notice shall include the following:

1. The name, business address and telephone number of the person providing the notice.
2. A description of the seized animal.
3. The authority and purpose for the seizure, including the time, place and circumstance under which the animal was seized.
4. A statement that in order to receive a post-seizure hearing the owner or person authorized to keep the animal, or the owner or person’s agent, shall request the hearing by signing and returning to the Magistrate Court an enclosed declaration of ownership or right to keep the animal within ten days, including weekends and holidays, after the date of the notice.
5. A statement that the owner is responsible for the cost of care for an animal that was properly seized and that the owner is required to post a bond in the amount of twenty-five dollars per animal with the Magistrate Court to defray the cost of care.
6. A warning that if the owner fails to post a bond within ten days after the seizure, the animal will be deemed abandoned and become the property of the seizing agency.

B. On receipt of a declaration of ownership and post-seizure hearing request, the Magistrate shall set a hearing date within fifteen business days. At the hearing, the Animal Control Office shall have the burden of establishing by a preponderance of evidence that the animal was subjected to cruel mistreatment, cruel neglect or abandonment in violation of Article 6-04 of this Chapter or A.R.S.

§13-2910 or will suffer needlessly if humane destruction is delayed. On this finding, the Magistrate Court may terminate the owner's rights in the animal and transfer the rights to the Animal Control Officer or a designated animal care agency and shall forfeit the bond to pay the expenses incurred for the housing, care and treatment of the animal. If at the conclusion of the hearing the animal is not forfeited under this section, the court shall order the bond exonerated and returned to the owner.

C. If the owner or person authorized to keep the animal fails to post bond as prescribed by this section, fails to request a hearing or fails to attend a scheduled hearing, the animal is deemed abandoned and all rights of the owner in the animal are transferred to the Animal Control Officer.

D. This section does not apply to any of the following:

1. Activities permitted by or pursuant to Title 3 of the Arizona Revised Statutes.

2. The seizure of an equine pursuant to A.R.S. §3-1721.

(Ord. No. 8, enacted, 06/28/79; Ord. No. 95, Ren&Amd, 02/09/84, 6-03-040; Ord. No. 178, Rep&ReEn, 05/26/88; Ord. No. 257, Repealed, 06/27/91; Ord. No. 746, Rep&ReEn, 09/09/10; Ord. No. 770, Rep&ReEn, 10/25/12)

SECTION SEVEN. That all other Chapters, Articles and Sections of the Town Code not herein repealed, re-enacted and amended shall remain in full force and effect.

SECTION EIGHT. That, if any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION NINE. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 25th day of October, 2012.

Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney