

ARTICLE 10. ANIMAL WELFARE ENFORCEMENT

DIVISION 1. GENERAL PROVISIONS

Sec. 5-116. - Investigation.

- (a) Animal Welfare Officers may investigate animals and persons believed to be in violation of this Chapter.
- (b) Animal Welfare Officers shall enter all citations, AWAs, notices, and photos in the approved case management system.
- (c) Any evidence collected shall be documented, logged, and stored in the approved case management system.
- (d) The Animal Resource Center Manager and Animal Welfare Officers shall cooperate with all city, county, state and federal law enforcement in investigations.
- (e) Criminal, inhumane or negligent treatment shall be reported to the South Bend Police Department and a report provided to the Animal Welfare Commission.

Sec. 5-117. - Inspections and entry on property.

- (a) Whenever it is necessary to make an inspection or investigation to enforce any of the provisions of or perform any duty imposed by this Chapter, or when there is probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this Chapter or State law, the Animal Welfare Officer is authorized at all reasonable times, to inspect the same for compliance with the provisions of this Chapter or any state law; provided the following:
 - (1) If the property is occupied, the officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefor; and
 - (2) If the property is unoccupied, the officer shall make a reasonable effort to locate the owner/guardian or other persons having control of the property and request entry explaining the reasons therefor.
 - (3) If entry is refused or cannot be obtained because the owner/guardian or other person having charge or control of the property cannot be found after reasonable search, the officer shall have recourse to secure lawful entry and inspection of the property via a warrant issued by a judge in good standing.

Sec. 5-118. Pursuit of stray animals, at large or danger or threat to public safety.

- (a) Animal Welfare Officers may pursue, with reasonable care, capture and impound animals believed to be a stray, at large, or a danger or threat to public safety.
 - 1) Animal Welfare Officers may proceed upon public property in pursuit of animals.
 - 2) Animal Welfare Officers may proceed upon private property in plain view. This authority does not extend to a privately-owned structures or enclosures without the consent of the owner, lessee or other occupant in control of the premises or without other legal process or authority.

- 3) Animal Welfare Officers may proceed upon vacant and abandoned properties.
- 4) If an animal is captured without the knowledge or consent of the known owner/guardian, harborer or occupant of the premises, then a notice shall promptly be affixed to said premises in an obvious location, directing the known owner/guardian, harborer or occupant to contact the Animal Resource Center and providing sufficient information as to the reason for the capture and disposition process.

Sec. 5-119. – Impoundment

- (a) Animals found in cruel, abusive or neglectful situations, animals trained, bred or kept for the purpose of animal fighting, animals considered potentially dangerous, dangerous or vicious, animals abandoned as a result of owner/guardian arrest, animals that have been abandoned, or to be a stray, at large or a danger or threat to public safety may be impounded and held at the Animal Resource Center or a designated facility.
- (b) When an animal is believed abandoned, the Animal Welfare Officer shall place on a conspicuous location on the premises two Animal Welfare Alert notices 24 hours apart that such animal appears abandoned and subject to impoundment. Each notice requiring the owner/guardian or harborer 24 hours to contact the Animal Resource Center to explain the condition and welfare of the animal. If the owner/guardian or harborer fails to contact the Animal Resource Center, then after the second 24 hour notice the animal may be impounded.
- (c) Any animal found in violation of Sec. 5-105 may be seized immediately in accordance with Indiana State Code and Department of Natural Resources Regulations.
 - (1) The animal will be held in protective custody for seven (7) calendar days to allow an owner/guardian to locate a new and appropriate owner/guardian or housing for the animal outside the city limits. If no arrangements have been made in seven (7) calendar days, the animal will become the property of the City and disposition may be made at that time. Notice of the protective custody, holding period, responsibility of costs and possible disposition must be served by first class mail and hand delivery to or posting at the premises of the last known address of the owner/guardian or harborer.
 - (2) The owner/guardian or harborer of any animal, which is impounded or relocated under this section, shall be held responsible for payment of any expenses so incurred by the Division of Animal Welfare. Fees will be paid prior to release or relocation of the animal.
 - (3) The housing and rehabilitation of native wildlife on public or private land shall be by a state, and/or federally, permitted or sub-permitted entity or individual. The permitted housing or shelter of wildlife shall not be any less than twenty (20) feet from neighboring property. Disease vectors such as raccoons and opossums are not permitted to be rehabilitated inside city limits.

Sec. 5-120. - Entering motor vehicle to remove domestic animal; partial liability for damage; conditions for partial immunity; persons not liable.

IC 34-30-30-3 is adopted herein, and states, as it may be amended, the following:

- (a) Sec. 3. (a) Except as provided in subsection (c), a person who forcibly enters a motor vehicle to remove a domestic animal from the motor vehicle:
- (1) is liable to the owner or lessee of the motor vehicle for one-half (1/2) of the cost of repairing the damage to the motor vehicle directly caused by the person's forcible entry, unless the owner or lessee of the motor vehicle waives the person's liability under this subdivision; and
 - (2) is immune from any other criminal or civil liability for other property damage resulting from the person's forcible entry of the motor vehicle; if all the conditions set forth in subsection (b) are satisfied.
- (b) For subsection (a)(1) and (a)(2) to apply to a person who forcibly enters a motor vehicle to remove a domestic animal from the motor vehicle, all the following conditions must be satisfied:
- (1) A domestic animal must be present in the enclosed space of the motor vehicle, and the person must reasonably believe that the domestic animal is in imminent danger of suffering serious bodily harm if the domestic animal remains in the motor vehicle.
 - (2) The person must determine that:
 - (i) the motor vehicle is locked; and
 - (ii) forcible entry of the motor vehicle is necessary to remove the domestic animal from the motor vehicle.
- (c) The person must call telephone number 911 or otherwise attempt to contact:
- (1) a law enforcement officer;
 - (2) a firefighter;
 - (3) an animal control officer; or
 - (4) another emergency responder;
- before the person forcibly enters the motor vehicle.
- (d) The person must use no more force than is reasonably necessary to enter the motor vehicle and remove the domestic animal from the motor vehicle.
- (1) The person must remain with the domestic animal until a law enforcement officer, firefighter, animal control officer, or other emergency responder arrives at the scene.
 - (2) Subsection (c) If any of the following persons, acting in the course and scope of the person's employment, forcibly enters a motor vehicle to remove a domestic animal from the motor vehicle, the person is not liable for the cost of repairing damage to the motor vehicle caused by the person's forcible entry:
 - (i) A law enforcement officer
 - (ii) A firefighter.
 - (iii) A government officer or employee whose primary duty is to ensure public safety.
 - (iv) An emergency responder other than those identified in subdivisions (1) through (3).
 - (v) An animal control officer.
 - (vi) A veterinarian who is licensed or otherwise authorized to practice veterinary medicine in Indiana under IC 25-38.1-3.
 - (vii) A veterinary assistant, as defined in IC 25-38.1-1-14.7.

For the purposes of this subsection, a law enforcement officer may be considered to be acting in the course and scope of the law enforcement officer's employment even if the law enforcement officer is off duty.

Sec. 5-121. - Interference with officer.

- (a) No person shall release or attempt to release an animal from the custody of the Animal Welfare Officer or release or attempt to release an animal from a humane trap which belongs to the Animal Resource Center.
- (b) Any person, who by word or act, resists, abuses, molests, obstructs or impedes an Animal Welfare Officer or who uses threatening language, uses force in order to intimidate, threatens to or attempts to do bodily harm toward such officer while engaged in the enforcement of this Chapter or while engaging in the performance of any duty or in the exercise of such authority shall be in violation of this Chapter.
- (c) It shall be unlawful for any person to knowingly provide false information, a false statement or false representation to an Animal Welfare Officer or hinder the investigation of any Animal Welfare Officer discharging or attempting to discharge any legal duty imposed by this Chapter.

Sec. 5-122. – Reckless animal owner.

- (a) If an Animal Welfare Officer has investigated and determined that there exists cause to reasonably believe that an animal owner/guardian or harbinger meets the definition of reckless animal owner as defined in Sec. 5-2, then the Animal Resource Center Manager may issue a notice of reckless animal owner status to the owner/guardian or harbinger requiring actions, restrictions and prohibitions relative to the violations of this Chapter, including, but not limited to:
 - (1) Surrender of any animals to the Animal Resource Center;
 - (2) Prohibiting ownership or harboring of animals for a certain period;
 - (3) Limiting or restricting ownership or harboring of animals; and
 - (4) Training in proper ownership and husbandry of animals as deemed necessary.
- (b) A rebuttable presumption exists that the owner/guardian or harbinger remains the animal's owner/guardian or harbinger of that animal residing in one household regardless of any assertion of transfer of ownership to another resident within the household or to another person.
- (c) The Division of Animal Welfare shall serve the notice of reckless animal owner status by first class mail and hand delivery to or posting at the premises of the last known address of the owner/guardian or harbinger.
- (d) The notice of reckless animal owner status must contain the following:
 - (1) The name and contact information of the person to whom the notice is issued.
 - (2) An explanation of the reasons for the notice, including the violations of this Chapter and factual support for the cause, and the description of the action, restrictions and prohibitions relative to the violations of this Chapter required of the owner/guardian or harbinger.
 - (3) The period of time in which the action, restrictions and prohibitions are required to be accomplished, measured from the time when the notice is served.

- (4) A statement that the notice of reckless animal owner becomes final seven (7) calendar days after notice is served, unless the owner/guardian or harbinger requests a hearing in writing, delivered to and received by the Animal Resource Center before the end of the seven (7) day period, for the owner/guardian or harbinger opportunity to show why the action, restrictions and prohibitions should not be imposed. The owner/guardian's or harbinger's request for hearing shall include a list of the reasons for asking for the hearing and a cash bond for the boarding fees in the amount as stated in the notice.
 - (5) A statement indicating what action can be taken by the Division of Animal Welfare if the owner/guardian or harbinger fails to comply with the notice of reckless animal owner.
 - (6) The name, address, and telephone number of the Division of Animal Welfare.
 - (7) A statement that, if a hearing is requested, a separate notice of the hearing date and process will be issued to the owner/guardian or harbinger.
- (e) The notice of reckless animal owner status must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice is served, to accomplish the required action, restrictions and prohibitions. If the notice allows more than thirty (30) days to accomplish the action, restrictions and prohibitions, the notice may require that a substantial start be made in accomplishing the action within thirty (30) days.
 - (f) The owner/guardian or harbinger shall contact the Division of Animal Welfare to schedule an inspection by the specified date in the notice to demonstrate compliance of all actions, restrictions and prohibitions. In addition, the owner/guardian or harbinger shall be subject to future inspections at the discretion of the Division of Animal Welfare.
 - (g) The owner/guardian's or harbinger's failure or refusal to comply with the action, restrictions or prohibitions within the time specified in the notice may result in immediate impoundment of any animal, fines to be issued in accordance with this Chapter, and ownership rights of any animal immediately waived. The Animal Resource Center or Division of Animal Welfare may also seek injunctive or other appropriate relief in a court of law against the owner/guardian or harbinger.
 - (h) If the owner/guardian or harbinger requests a hearing pursuant to Sec. 5-122(d), then the animal welfare officer or law enforcement officer may seize and impound the animal(s) pending the hearing determination. The owner/guardian or harbinger of the animal(s) shall be liable to the Animal Resource Center or Division of Animal Welfare for the costs and expenses of keeping the animal(s), unless the hearing determination rescinds the action, restrictions or prohibitions issued in the notice.
 - (i) Before issuing a reckless animal owner status notice to the owner/guardian or harbinger, the Animal Resource Center Manager may consult with the Animal Welfare Commission about their recommended improvements and changes for better animal care and responsibility relative to the violations of this Chapter.

Sec. 5-123. - Potentially dangerous animal.

- (a) If an Animal Welfare Officer has investigated and determined that there exists cause to reasonably believe that any animal meets the definition of potentially dangerous animal as

defined in Sec. 5-2, then the Animal Resource Center Manager may issue a notice of potentially dangerous animal status to the owner/guardian or harbinger requiring action and restrictions relative to the potentially dangerous animal. The required actions and restrictions may include, but not limited to, the following:

- (1) Requiring the owner/guardian or harbinger to obtain a permit approval to own or harbor a potentially dangerous animal from Animal Resource Center.
- (2) When leaving or off the owner/guardian's or harbinger's premises, the potentially dangerous animal must be muzzled (in accordance with Section 5-13) and restrained by a leash, of no more than six (6) feet in length, and under the control of a competent adult.
- (3) Requiring the owner/guardian or harbinger of the potentially dangerous animal to display, at all entry points to the premises where the animal is maintained, clearly visible signs warning that a potentially dangerous animal is being harbored on such property.
- (4) Requiring at least one (1) sign to be posted on the enclosure in which the animal is maintained.
- (5) Requiring all signs to inform both children and adults of the presence of a potentially dangerous animal on the property and be viewable from the public way and neighboring property from a distance of at least fifty (50) feet. The form and content of the warning signs shall be determined by the Resource Center.
- (6) Training. The Division of Animal Welfare may require the owner/guardian of the potentially dangerous animal and the animal to attend, complete, and pay all costs associated with an accredited obedience/training class or seminar. The Division of Animal Welfare shall pre-approve any choice of class by the owner/guardian of the animal, and proof of satisfactory completion of such training shall be provided to the Division of Animal Welfare upon completion, even if such type of training has been completed by the animal in the past.
- (7) The permit application to own or harbor a potentially dangerous animal shall be accompanied by the following:
 - (i) A current valid driver's license or state-issued pictured identification, showing owner/guardian's name and current address. Each applicant shall consent, in writing, to a personal criminal history search by a law enforcement agency and furnish all information required to commence the search;
 - (ii) Proof that the applicant is 18 years old or older with no prior felony convictions;
 - (iii) Four photographs of the animal from four different sides, not taken more than one month prior to the date of application;
 - (iv) A current immunization and health record of the animal showing the animal received a current rabies vaccine by a licensed veterinarian; and

(v) A current criminal background check clearing the owner/guardian or harborer from being convicted of a felony involving violence, drugs, animal cruelty or animal fighting.

(vi) No person shall be issued a potentially dangerous animal permit if he or she has been convicted of a felony involving violence, drugs, animal cruelty or animal fighting;

(8) Upon being approved for a potentially dangerous animal permit, the owner/guardian or harborer shall pay the designated fee for the permit. Any violation of any part of this Chapter after approval is reason to have this permit revoked.

(b) The Division of Animal Welfare shall serve the notice of potentially dangerous animal status by first class mail and hand delivery to or posting at the premises of the last known address of the owner/guardian or harborer.

(c) The notice of potentially dangerous animal status must contain the following:

(1) The name and contact information of the person to whom the notice is issued.

(2) An explanation of the reasons for the notice, including the violations of this Chapter and the factual support for the cause, and the description of the action and restrictions relative to the violations of this Chapter required of the owner/guardian or harborer.

(3) The period of time in which the action is required to be accomplished, measured from the time when the notice is served.

(4) A statement that the notice of potentially dangerous animal becomes final seven (7) calendar days after notice is served, unless the owner/guardian or harborer requests a hearing in writing, delivered to and received by the Animal Resource Center before the end of the seven (7) day period, for the owner/guardian or harborer opportunity to show why the action and restrictions should not be imposed. The owner/guardian's or harborer's request for hearing shall include a list of the reasons for asking for the hearing.

(5) A statement indicating what action can be taken by the Division of Animal Welfare if the owner/guardian or harborer fails to comply with the notice of potentially dangerous animal.

(6) A statement indicating the obligations created by the notice relating to notification of subsequent owner/guardians or harborers of the potentially dangerous animal.

(7) The name, address, and telephone number of the Division of Animal Welfare.

(8) A statement that, if a hearing is requested, a separate notice of the hearing date and process will be issued to the owner/guardian or harborer.

(d) The notice of potentially dangerous animal status must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial start be made in accomplishing the action within thirty (30) days.

(e) The owner/guardian or harborer of an animal classified as potentially dangerous shall contact the Division of Animal Welfare to schedule an inspection by the specified date in the notice

to demonstrate compliance of all action and restrictions relative to the potentially dangerous animal. In addition, the owner/guardian or harbinger shall be subject to future inspections at the discretion of the Division of Animal Welfare.

- (f) The owner/guardian's or harbinger's failure or refusal to comply with the action and restrictions within the time specified in the notice may result in immediate impoundment of the animal, fines to be issued in accordance with this Chapter, and ownership rights in the animal immediately waived. The Animal Resource Center or Division of Animal Welfare may also seek injunctive or other appropriate relief in a court of law against the owner/guardian or harbinger.
- (j) If the owner/guardian or harbinger requests a hearing pursuant to Sec. 5-123(c), then the animal welfare officer or law enforcement officer may seize and impound the animal(s) pending the hearing determination. The owner/guardian or harbinger of the animal(s) shall be liable to the Animal Resource Center or Division of Animal Welfare for the costs and expenses of keeping the animal(s), unless the hearing determination rescinds the actions and restrictions issued in the notice.
- (g) Before issuing a potentially dangerous animal notice to the owner/guardian or harbinger, the Animal Resource Center Manager may consult with the Animal Welfare Commission about their recommended improvements and changes for better animal care and responsibility relative to the violations of this Chapter.

Sec. 5-124. - Dangerous animal.

- (a) If an Animal Welfare Officer or a law enforcement officer has investigated and determined that there exists cause to reasonably believe that an animal meets the definition of dangerous animal as defined in Sec. 5-2, then the Animal Resource Center Manager may issue a notice of dangerous animal status to the owner/guardian or harbinger requiring action and restrictions relative to the dangerous animal.
- (b) If, upon investigation, it is determined by the Animal Welfare Officer or law enforcement officer that cause exists to believe the animal in question poses a threat to public safety, then the animal welfare officer or law enforcement officer may seize and impound the animal. The owner/guardian or harbinger of the animal shall be liable for the costs and expenses of keeping the animal.
- (c) The Division of Animal Welfare shall serve the notice of dangerous animal status by first class mail and hand delivery to or posting at the premises of the last known address of the owner/guardian or harbinger.
- (d) The notice of dangerous animal status to the owner/guardian or harbinger shall list the required action and restrictions relative to the dangerous animal. The required actions and restrictions may include, but are not limited to, the following:
 - (1) The owner/guardian or harbinger shall first submit a written application for and obtain from the Animal Resource Center a dangerous animal permit approval, and written proof of liability insurance in the minimum sum of \$300,000.00;

- (2) The dangerous animal owner/guardian or harborer must always maintains liability insurance covering possible injury or damages caused by the dangerous animal in the minimum amount of \$300,000.00. The owner/guardian or harborer shall notify the Resource Center within 24 hours, excluding Sundays and holidays, if this insurance coverage is cancelled or discontinued;
- (3) The dangerous animal may not be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition, except to a secured enclosure.
- (4) The dangerous animal is at all times confined in a six-sided escape-proof kennel with a minimum required fencing of 11 gauge wire and can have either a cement floor or brick floor, with a wood roof or wire roof, with a lock, bolt (which must be opened to remove the animal) and shall be kept locked at all times to prevent unintentional opening for the protection of the public. When outside and not in its kennel, the dangerous animal must be muzzled (in accordance with Section 5-13) and restrained by a leash not exceeding six (6) feet in length, with handgrip, to its owner/guardian or a person 18 year of age or older who is authorized by the owner/guardian to so control the dangerous animal. When the dangerous animal is housed in any dwelling or structure the owner/guardian shall take all necessary precautions to prevent and avoid the escape of the dangerous animal from the building, dwelling or structure;
- (5) The dangerous animal, at all times, wears the registration tag issued by the City designating the animal as a registered dangerous animal. This dangerous animal shall be microchipped by a licensed veterinarian or his or her designee and registered with the Animal Resource Center;
- (6) If the dangerous animal is lost or escapes, the owner/guardian or harborer shall immediately report the same to the South Bend Police Department and to the Resource Center;
- (7) The owner/guardian or harborer of a dangerous animal shall display clearly visible warning signs on all entry points to the premises on which the animal is maintained warning that a dangerous animal is being harbored on such property. In addition, at least one (1) sign shall be posted on the enclosure in which the animal is maintained. Signs must inform both children and adults of the presence of a dangerous animal on the property and be viewable from the public way and neighboring property from a distance of at least fifty (50) feet. The form and content of the warning signs shall be determined by the Resource Center;
- (8) The dangerous animal permit application shall be accompanied by the following:
 - (i) A current valid driver's license or state-issued pictured identification, showing owner/guardian's or harborer's name and current address. Each applicant shall consent, in writing, to a personal criminal history search by a law enforcement agency and furnish all information required to commence the search;
 - (ii) Proof that the applicant is 18 years old or older with no prior felony convictions;
 - (iii) Four photographs of the animal from four different sides, not taken more than one month prior to the date of application;

(iv) A current immunization and health record of the animal showing the animal received a current rabies vaccine by a licensed veterinarian; and

(v) A current criminal background check clearing the owner/guardian or harbinger from being convicted of a felony involving violence, drugs, animal cruelty or animal fighting.

(vi) No person shall be issued a dangerous animal permit if he or she has been convicted of a felony involving violence, drugs, animal cruelty or animal fighting;

(9) The dangerous animal must be spayed or neutered within 30 days of being deemed a dangerous animal. The animal must also be identifiable via a microchip implanted in to the skin of the animal, and such microchip number must be provided to the Division of Animal Welfare within fourteen (14) days of such classification;

(10) The enclosure shall be inspected and approved by the Division of Animal Welfare prior to its usage for confinement. Upon being approved for a dangerous animal permit, the owner/guardian or harbinger shall pay the designated fee for the permit;

(11) No person shall own, harbor, possess or have on his or her premises more than one animal that has been deemed dangerous according to this Chapter; and

(12) If the animal in question dies, or is sold or transferred, the owner/guardian or harbinger shall notify the Division of Animal Welfare of the changed condition and new location of the animal in writing within two (2) business days.

(13) Any violation of any part of this Chapter after permit approval is reason to have the dangerous animal permit revoked.

(e) The notice of dangerous animal status must contain the following:

(1) The name and contact information of the person to whom the notice is issued.

(2) An explanation of the reasons for the notice, including the violations of this Chapter and the factual support for the cause, and the description of the action and restrictions relative to the violations of this Chapter required of the owner/guardian or harbinger.

(3) The period of time in which the action is required to be accomplished, measured from the time when the notice is served.

(4) A statement that the notice of dangerous animal becomes final seven (7) calendar days after notice is served, unless the owner/guardian or harbinger requests a hearing in writing, delivered to and received by the Animal Resource Center before the end of the seven (7) day period, for the owner/guardian or harbinger opportunity to show why the action and restrictions should not be imposed. The owner/guardian's or harbinger's request for hearing shall include a list of the reasons for asking for the hearing and a cash bond for the boarding fees in the amount as stated in the notice.

(5) A statement indicating what action can be taken by the Division of Animal Welfare if the owner/guardian or harbinger fails to follow the notice.

(6) A statement indicating the obligations created by the notice relating to notification of subsequent owner/guardians or harborers of the dangerous animal.

(7) The name, address, and telephone number of the Division of Animal Welfare.

(8) A statement that, if a hearing is requested, a separate notice of the hearing date and process will be issued to the owner/guardian or harbinger.

- (f) The notice of dangerous animal status must allow a sufficient time, of not less than 10 days, but not more than 60 days, from the time when notice is served, to accomplish the required action. If the notice allows more than thirty (30) days to accomplish the action, the notice may require that a substantial start be made in accomplishing the action within thirty (30) days.
- (g) The owner/guardian or harbinger of an animal classified as dangerous shall contact the Division of Animal Welfare to schedule an inspection by the specified date in the notice to demonstrate compliance of all action and restrictions relative to the dangerous animal. In addition, the owner/guardian or harbinger shall be subject to future inspections at the discretion of the Division of Animal Welfare.
- (h) The owner/guardian's or harbinger's failure or refusal to comply with the action and restrictions within the time specified in the notice will result in immediate impoundment of the animal, fines to be issued in accordance with this Chapter, and ownership rights in the animal immediately waived. The Animal Resource Center or Division of Animal Welfare may also seek injunctive or other appropriate relief in a court of law against the owner/guardian or harbinger.
- (i) If the owner/guardian or harbinger requests a hearing pursuant to Sec. 5-124(e), then the animal welfare officer or law enforcement officer may seize and impound the animal(s) pending the hearing determination. The owner/guardian or harbinger of the animal(s) shall be liable for the costs and expenses of keeping the animal(s), unless the hearing determination rescinds the actions and restrictions issued in the notice.
- (j) Before issuing a dangerous animal notice to the owner/guardian or harbinger, the Animal Resource Center Manager may consult with the Animal Welfare Commission about their recommended improvements and changes for better animal care and responsibility relative to the violations of this Chapter.
- (k) A duly authorized member of the police or other law enforcement departments, including but not limited to game wardens, conservation officers and other law enforcement officers, shall be exempt from the provisions of this section in the performance of their law enforcement duties.

Sec. 5-125. - Vicious animal.

- (a) If an Animal Welfare Officer or a law enforcement officer has investigated and determined that there exists cause to reasonably believe that an animal meets the definition of vicious as defined in Sec. 5-2, then the Animal Welfare Officer or law enforcement officer may immediately seize and impound the animal. The owner/guardian or harbinger of the animal shall be liable for the costs and expenses of keeping the animal.
- (b) The Animal Resource Center Manager shall promptly issue a notice of vicious animal to the owner/guardian or harbinger and the notice must contain the following:
 - (1) The name and contact information of the person to whom the order is issued.
 - (2) An explanation of the reasons for the notice, including the violations of this Chapter and the factual support for the cause.

- (3) A statement that the notice of vicious animal becomes final seven (7) business days after notice is served, unless the owner/guardian or harbinger requests a hearing in writing, delivered to and received by the Animal Resource Center before the end of the seven (7) business day period, for the owner/guardian or harbinger opportunity to show why the animal is not vicious. The owner/guardian's or harbinger's request for hearing shall include a list of the reasons for asking for the hearing and a cash bond for the boarding fees in the amount as stated in the notice.
 - (4) A statement indicating what action can be taken by the Division of Animal Welfare if the owner/guardian or harbinger fails to request a hearing.
 - (5) The name, address, and telephone number of the Division of Animal Welfare.
 - (6) A statement that, if a hearing is requested, a separate notice of the hearing date and process will be issued to the owner/guardian or harbinger.
- (c) The Division of Animal Welfare shall serve the notice of vicious animal by first class mail and hand delivery to or posting at the premises of the last known address of the owner/guardian or harbinger.
- (d) A vicious animal is a significant threat to public health, safety and welfare and shall be euthanized by the Division of Animal Welfare after the expiration of the seven (7) business days to request a hearing and no hearing is requested. If the owner/guardian or harbinger timely requests a hearing, euthanasia shall be placed on hold and the animal will remain in custody of the Animal Resource Center, with the owner/guardian or harbinger liable for all costs of keeping the animal, until a concluding adjudication for the disposition of the animal.

Sec. 5-126. - Outside agency recognition of potentially dangerous animals, dangerous animals and vicious animals.

- (a) If an animal is determined to be a threat to the public health, safety and welfare, such as potentially dangerous, dangerous, vicious, or the equivalent, in an adjacent jurisdiction and is moved into the City, then the owner/guardian or harbinger of such animal shall upon moving into the City immediately contact and notify the Division of Animal Welfare of such animal's prior determination. The animal owner/guardian or harbinger has 30 days from the date of relocating into the City to file with the Animal Welfare Commission a request for review of the adjacent jurisdiction's classification of said animal to show cause why the determination no longer is applicable in the City. The appeal procedures as set forth in Sec. 5-75 apply to a request for review under this section. Should they fail to file a request for review, the animal shall be deemed as previously classified or its equivalent and all provisions and restrictions of this Chapter shall apply in the City.
- (b) Nothing in this section prohibits or limits the Animal Resource Center or Division of Animal Welfare from acting under this Chapter, or the application of this Chapter, to an animal that is moved into the City.

Sec. 5-127. - Penalties.

- (a) Any person violating any of the provisions of this Chapter shall be fined for each offense, in any sum not less than fifty dollars (\$50.00) and not more than two thousand five hundred (\$2,500.00) and each day's violation shall constitute a separate offense.

- (b) If an animal is retained at the Division of Animal Welfare because its owner/guardian or harborer has been in violation of this Chapter, then the person redeeming the animal by paying the prescribed fees shall also be required to pay the costs incurred by the Division of Animal Welfare for impoundment and caring for including but not limited to:
- (1) Surgeries,
 - (2) Vaccines,
 - (3) X-rays,
 - (4) Medications, exams, lab work,
 - (5) Boarding,
 - (6) Rescue equipment,
 - (7) Perishable personal protection equipment, and
 - (8) Grooming.
- (c) Violation of any provision of this Chapter may result in revocation of any permit(s) issued by the Animal Resource Center and may require a re-inspection prior to reinstatement upon approval.
- (d) Upon finding of violations of this Chapter, the City may choose at any time to seek enforcement through a court of competent jurisdiction which may order relinquishment of an animal(s) deemed to be a public safety risk or a repetitive public nuisance that has not been abated or an animal that is a victim of cruelty, neglect, or abandonment, to the Division of Animal Welfare for disposition. The owner/guardian or harborer of such animal(s) shall be liable to the City for all court costs, litigation costs and legal fees if the City prevails and as approved by the court, and the City may ask the court to require the issuance of a bond from owner/guardian or harborer to cover the costs of keeping any animal in custody of the Animal Resource Center.

DIVISION 2. HEARING PROCEDURE

Sec. 5-128. – Hearings for Reckless Animal Owner, Potentially Dangerous Animals, Dangerous Animals and Vicious Animals.

- (a) This section establishes the hearing procedure when the Animal Resource Center receives a timely request for a hearing from the owner/guardian or harborer about a notice issued regarding reckless animal owner status, potentially dangerous animal status, dangerous animal status or vicious animal status.
- (b) Within three (3) business days after receiving a timely request for hearing, the Animal Resource Center shall forward the request to the Department of Code Enforcement. Upon receipt of the request for hearing, the Department of Code Enforcement shall schedule a hearing, in coordination with the Hearing Officer and as applicable the Animal Welfare Commission, to be held within thirty (30) calendar days of the receipt of the request, unless the parties agree in writing to a different scheduling. When the hearing date is scheduled, the Department of Code Enforcement shall forward to the Hearing Officer, and as applicable to the Chair of the Animal Welfare Commission, a copy of the Animal Resource Center Manager's issued notice of reckless animal owner status, potentially dangerous animal status, dangerous animal status or vicious animal status and a copy of the owner/guardian's or harborer's request for hearing.

- (c) The Department of Code Enforcement will provide service for the notice of the hearing to the owner/guardian or harborer.
- (d) The notice of hearing must contain the following:
 - (1) The name and contact information of the Hearing Officer.
 - (2) Hearing date, time and location.
 - (3) A statement referencing and summarizing the hearing process under this section.
 - (4) A statement that the hearing is being scheduled at the request of the owner/guardian or harborer.
 - (5) A statement of the consequence for failure to appear for the hearing.
- (e) Manner of Serving Notice.
 - (1) Notice of hearing must be served upon the owner/guardian or harborer of the animal by mailing the notice certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested, and any two of the following other forms of notification: first class mail, hand delivery, or publication.
 - (2) The notice must be served at least fourteen (14) days before the hearing date. In computing the days for service, the day of service shall not be included.
- (f) The Hearing Officer, in his or her discretion, may entertain a timely request for a continuance of the scheduled hearing date and time.
- (g) Hearings shall be held on a business day and conducted by the Hearing Officer in an orderly and structured manner, similar to proceedings under the Indiana Rules of Court for Small Claims. The owner/guardian or harborer shall appear at the hearing and may have counsel present with him or her. The Animal Resource Center and the owner/guardian or harborer may present evidence, cross-examine opposing witnesses and present arguments.
- (h) Hearing Determinations.
 - (1) The Hearing Officer will make the reckless animal owner determinations. The Animal Welfare Commission will make the potentially dangerous animal, dangerous animal and vicious animal determinations by a majority vote. At the Commission's request, in the event of a tie vote, the Hearing Officer may recommend a course of action for the resolution of the hearing, including the issuance of the deciding vote.
 - (2) At the end of the hearing, the Hearing Officer or Animal Welfare Commission shall consider the evidence presented, particularly the owner/guardian's or harborer's burden of proof on the presentation of material and arguments as to why the notice issued for the actions, restrictions or prohibitions should not be imposed and do not have a reasonable and rational relation to protecting the public health, safety and welfare. The determination shall be based upon the preponderance of the evidence presented. Thereafter, no later than three (3) days after the hearing date, the Hearing Officer or Animal Welfare Commission shall submit a written determination to the Department of Code Enforcement. The written determination shall include findings of fact and affirm, rescind or modify, consistent with this Chapter, the Animal Resource Center Manager's issued notice of reckless animal owner status, potentially dangerous animal status, dangerous animal status or vicious animal status.

- (3) When an animal is determined to be potentially dangerous or dangerous, or a person determined to be a reckless animal owner, the owner/guardian or harbinger shall surrender the animal(s) to the Animal Resource Center within twenty-four (24) hours upon receipt of the written determination.
 - (4) All animals that are surrendered or impounded shall be held at the Animal Resource Center or its authorized agent continuously during the ten (10) day appeal period following the determination. During that ten (10) day period, the owner/guardian or harbinger will be responsible for all boarding costs and fees associated during that period and not covered by any bond posted for the initial hearing.
 - (5) If the owner/guardian or harbinger files an appeal of the written determination, the animal will be held at the Animal Resource Center or its authorized agent during the appeal process. The owner/guardian or harbinger shall be responsible for all boarding costs and fees associated during the appeal process.
- (i) Upon receipt of the written determination, the Department of Code Enforcement shall serve a copy of the written determination to the owner/guardian or harbinger by first class, certified mail or in person and provide a copy to the Animal Resource Manager. Along with a copy of the written determination, the Department of Code Enforcement shall include a bond statement giving notice to the owner/guardian or harbinger of the amount of cash bond necessary to post to cover the boarding fees and cost of care for at least 90 days if an appeal is filed.
 - (j) If the owner/guardian or harbinger fails to appear at the hearing, the Hearing Officer may find and determine the owner/guardian or harbinger in default, all ownership rights of the animals waived and the Animal Resource Center Manager's issued notice unopposed. In addition, the owner/guardian or harbinger shall be liable to the Animal Resource Center for the costs of the hearing process, such as but not limited to Hearing Officer expense, mailing costs, service costs and other administrative costs.

Sec. 5-129. - Appeal of the hearing determination.

- (a) Determinations are subject to review by the Circuit Court of St. Joseph County, as may be applicable under I.C 4-21.5-5.
- (b) The request for judicial review under this section must be filed by a verified complaint. The verified complaint must include a copy of the written determination and adhere to the Indiana Rules of Trial Procedure. The complaint must be filed within ten (10) calendar days of the Department of Code Enforcement's service of the written determination on the owner/guardian or harbinger. On the same day a verified complaint is filed, the owner/guardian or harbinger must post the cash bond with the Resource Center in the amount to cover the boarding fees and cost of care for at least 90 days.
- (c) In computing the time frame to file the verified complaint under this section, the day the Department of Code Enforcement serves the written determination shall not be included. The last day of the ten (10) period is to be included unless it is a Saturday, a Sunday, or a day the court is closed and in those situations the period runs until the end of the next day that is not a Saturday, a Sunday or a day on which the court is closed.
- (d) In addition to the cash bond posted at the time of filing the appeal, the City or the Animal Resource Center may petition the court for a bond as necessary, pursuant to IC 34-49 or other

applicable law, from owner/guardian or harborer to cover the costs of care of the animal while it is in the custody of the Animal Resource Center during the appeal process.

- (e) Any bonds posted for a request of hearing or for appeal, or during the appeal process, shall be deposited into the budget for the Animal Resource Center, in a subaccount specific for each case. The Animal Resource Center may draw on this account to cover the expenses incurred in the boarding and care of the animal. If the animal is returned to the owner/guardian or harborer after final adjudication and there are bond amounts remaining not needed for the cost of boarding and care, then that remaining amount not needed for the cost of boarding and care shall be returned to the owner/guarding or harborer.

Secs. 5-130 – 5-135. - Reserved

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