

1 (Published in the Topeka Metro News _____)
2

3 ORDINANCE NO. _____
4

5 AN ORDINANCE introduced by City Manager Dr. Robert M. Perez, concerning
6 Cruelty to Animals, amending § 6.05.100 of the Topeka Municipal
7 Code and repealing original section.
8

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

10 Section 1. That section 6.05.100, Cruelty to Animals, of The Code of the City
11 of Topeka, Kansas, is hereby amended to read as follows:

12 **Cruelty to animals.**

13 (a) It shall be unlawful for any person to recklessly or intentionally:

14 (1) Kill, injure, maim, torture, burn or mutilate any animal;

15 (2) Abandon or leave any animal in any place without ensuring provisions
16 for its proper care;

17 (3) Have physical custody of any animal and fail to provide such food,
18 potable water, protection from the elements, opportunity for exercise adequate to
19 maintain health, or other care as is needed for the health or well-being of such
20 animal.

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

26 (ii) Potable Water. Adequate fresh water shall be made available
27 to animals ~~on a regular basis~~ at all times.

28 (iii) Protection from the Elements. A shelter suitable for the
29 species and/or breed concerned and existing climatic conditions shall be
30 provided for all animals kept outdoors to afford them protection and
31 prevent severe discomfort of such animals.

32 (A) Shelters shall be made of durable material that is
33 moisture- and wind-proof, with a solid floor, and of suitable size to
34 accommodate the animal.

35 (B) Shelters shall contain clean, suitable bedding material
36 consisting of a sufficient quantity of hay, straw, cedar shavings or
37 the equivalent to promote insulation and protect the animal against
38 cold and dampness and promote retention of body heat.

39 (C) When sunlight is likely to cause overheating, sufficient
40 shade by natural or artificial means shall be provided to allow all
41 animals kept outdoors to protect themselves from direct sunlight.
42 Keeping an animal in a confined area, such as a garage, shed, or
43 extension of a dwelling, without adequate heating and appropriate
44 ventilation in winter months and adequate cooling and appropriate
45 ventilation in summer months is prohibited;

46 (4) Leave any animal confined in a vehicle for more than five minutes in
47 extreme weather conditions, with no requirement of a culpable mental state.
48 Extreme weather conditions shall be defined as more than 80 degrees
49 Fahrenheit or less than 40 degrees Fahrenheit as the heat or cold index taken in
50 the vehicle and shall create a legal, rebuttable presumption of violation of this

51 act;

52 (5) Use of a wire, pole, stick, rope or any other object to cause an equine
53 to lose its balance or fall, for the purpose of sport or entertainment;

54 (6) Cause, instigate, stage, or train any animal to fight or permit any
55 animal to fight any other animal or human, in violation of State statute; or

56 (7) Cause any physical injury other than the acts described in subsection
57 (a)(1) of this section.

58 (b) It shall be unlawful for any person, with no requirement of a culpable mental
59 state, to attach chains or other tethers, restraints or implements directly to a dog, cat or
60 miniature pot-belly pig without the proper use of a collar, harness, or other device
61 designed for that purpose and made from a material that prevents injury to the animal.

62 No person shall:

63 (1) Continuously tether a dog, cat or miniature pot-belly pig for more than
64 15 minutes without supervision; or

65 (2) Use a tether or any assembly or attachments thereto to tether a dog,
66 cat or miniature pot-belly pig that shall weigh more than one-eighth of the
67 animal's body weight, or, due to weight, inhibit the free movement of the animal
68 within the area tethered; or

69 (3) Tether a dog, cat or miniature pot-belly pig on a choke chain or near
70 stationary objects or fences in a manner that could potentially cause injury,
71 strangulation, or entanglement; or

72 (4) Tether a dog, cat or miniature pot-belly pig without access to shade
73 when sunlight is likely to cause overheating, or appropriate shelter to provide

74 insulation and protection against cold and dampness when the atmospheric
75 temperature falls below 40 degrees Fahrenheit, or to tether without securing the
76 animal's water supply so that it cannot be tipped over by the tether; or

77 (5) Tether a dog, cat or miniature pot-belly pig in an open area where it
78 can be teased by persons or an open area that does not provide the dog, cat or
79 miniature pot-belly pig protection from attack by other animals; or

80 (6) Tether a dog, cat or miniature pot-belly pig in an area where bare
81 earth is present and no steps have been taken to prevent the surface from
82 becoming wet and muddy in the event of precipitation.

83 (c) Any public health officer, animal control officer, law enforcement officer or
84 licensed veterinarian, or any officer or agent of any duly incorporated humane society,
85 animal shelter or other appropriate facility, may take into custody any animal, upon
86 either private or public property, which clearly shows evidence of cruelty to animals, as
87 defined in subsection (a) of this section and subsections thereto. Such officer, agent or
88 veterinarian may inspect, care for or treat such animal or place such animal in the care
89 of a duly incorporated humane society or licensed veterinarian for treatment, boarding
90 and other care or, if it appears, as determined by an officer of such humane society or
91 by such veterinarian, that the animal is diseased or disabled beyond recovery for any
92 useful purpose, the humane killing thereof. The owner or custodian, if known or
93 reasonably ascertainable, shall be notified in writing. If the owner or custodian is
94 charged with a violation of this section, the law enforcement agency, city attorney's
95 office, veterinarian or animal shelter may petition the Municipal Court to transfer
96 ownership of the animal at any time after 21 days after the owner or custodian is

97 notified, unless the owner or custodian of the animal files and maintains a renewable
98 cash or performance bond with the Topeka Municipal Court Clerk in an amount equal to
99 not less than the cost of care and treatment of the animal for 30 days. Such cash or
100 performance bond shall be maintained and renewed every 30 days as necessary to
101 cover the cost of care and treatment of such animal until disposition of the animal by the
102 court. If the owner or custodian is not known or reasonably ascertainable after 21 days
103 after the animal is taken into custody, the law enforcement agency, city attorney's office,
104 veterinarian or animal shelter may petition the Municipal Court to transfer ownership of
105 the animal. Upon receiving such petition, the court shall determine whether the animal
106 may be transferred.

107 (d) The owner of an animal killed pursuant to subsection (c) of this section shall
108 not be entitled to recover damages for the killing of such animal unless the owner
109 proves that such killing was unwarranted.

110 (e) Expenses incurred for the care, treatment or boarding of any animal taken
111 into custody pursuant to subsection (c) of this section, pending prosecution of the owner
112 of such animal for the crime of cruelty to animals, as defined in subsection (a) of this
113 section, shall be assessed to the owner as a cost of the case if the owner or custodian
114 is adjudicated guilty of such crime. Any costs collected by the court or through the cash
115 or performance bond described in subsection (c) shall be transferred to the entity
116 responsible for paying the cost of the care, treatment, or boarding of the animal.

117 (f) If a person is adjudicated guilty of the crime of cruelty to animals, as defined
118 in subsection (a) of this section, and the court is satisfied that an animal owned or
119 possessed by such person would be in the future subjected to such crime, such animal

120 shall not be returned to or remain with such person. Such animal may be turned over to
121 a duly incorporated humane society or licensed veterinarian for sale or other disposition.

122 (g) The provisions of this section shall not apply to:

123 (1) Normal or accepted veterinary practices;

124 (2) Bona fide experiments carried on by any research facility that is in
125 compliance with the Animal Welfare Act (7 USC Sections 2131 through 2159),
126 and any amendments thereto;

127 (3) Killing, attempting to kill, trapping, catching or taking of any animal in
128 accordance with the provisions of K.S.A. Chapter 32 or 47;

129 (4) Rodeo practices accepted by the Professional Cowboys Rodeo
130 Association;

131 (5) The humane killing of an animal which is diseased or disabled
132 beyond recovery for any useful purpose, or the humane killing of domestic
133 animals, by the owner thereof or by a licensed veterinarian at the request of the
134 owner thereof, or by any officer or agent of an incorporated humane society, law
135 enforcement officer, animal control officer, the operator of an animal shelter or
136 pound, a local or State health officer or a licensed veterinarian three business
137 days following the receipt of any such animal at such society, shelter or pound;

138 (6) With respect to farm animals, normal or accepted practices of animal
139 husbandry including the normal and accepted practices for the slaughter of such
140 animals for food or byproducts and the careful or thrifty management of one's
141 herd or animals, including animal care practices common in the industry or
142 region;

143 (7) The killing by any person of any domestic animal which is found
144 outside on private, owned, or rented property on which the domestic animal is
145 trespassing, and which the animal is found injuring, worrying, or posing an
146 immediate threat to any person, domestic animal, or farm animal;

147 (8) An animal control officer trained by a licensed veterinarian in the use
148 of a tranquilizer gun, or trained police officer or animal control officer using an
149 electronic control device, when such animal is vicious or could not be captured
150 after reasonable attempts using other methods;

151 (9) Laying an equine down for medical or identification purposes;

152 (10) Normal or accepted practices of pest control, as defined in K.S.A. 2-
153 2438a(x), and amendments thereto;

154 (11) Accepted practices of animal husbandry pursuant to regulations
155 promulgated by the United States Department of Agriculture for domestic pet
156 animals under the Animal Welfare Act, Public Law 89-544, as amended and in
157 effect on July 1, 2006; or

158 (12) In situations where delay would result in unnecessary and prolonged
159 suffering of an injured or rabid animal, law enforcement officers may utilize
160 alternative means to euthanize such animal.

161 (h) Violation of TMC 6.05.100 is a Class A nonperson misdemeanor.

162 Section 2. That original § 6.05.100 of The Code of the City of Topeka, Kansas,
163 is hereby specifically repealed.

164 Section 3. This ordinance shall take effect and be in force from and after its
165 passage, approval and publication in the official City newspaper.

