

2010 Legal and Public Notices

son employed, contracted, or appointed by the City Manager.

(e) "Animal control ordinances" refer to all of those ordinances found in Chapter 5 of the City of Yankton Code of Ordinances.

(f) An animal is "at large" if

(1) it is located on the real property of any party who has not consented to the animal's presence; whether or not the animal is leashed is not relevant; or

(2) it is off a leash on public property, unless it is within a City established dog park or reasonably contained at all times within a motor vehicle; or

(3) it is leashed, regardless of its location, but the leash is more than fourteen (14) feet in length, is not of sufficient strength under the circumstances, or the person holding the leash is not of sufficient size or strength to control the animal.

An animal is still "at large" despite the fact that the animal had an electric shock collar on at the time in question. An animal is not "at large" merely because it is located on the property of its owner or the real property of a third party, with its consent, and it is not leashed.

(g) "Cat" refers to *felis catus*.

(h) Within the "City" refers to the corporate City limits of Yankton.

(i) A "crime" is any act or omission that constitutes a federal, state, county or municipal local law that may be prosecuted and for which is punishable by law, other than a petty offense.

(j) A "dangerous animal" is any animal that, by itself or by environmental circumstances, after applying the dangerousness factors found at Sec. 5-103, is a threat to the physical well-being of other owned animals or humans. However, no animal may be declared dangerous if the injury or damage is sustained to any person or animal who is (a) committing a willful trespass, (b) committing another tort upon real property occupied by the owner of the animal, (c) teasing, tormenting, abusing or assaulting the alleged dangerous animal, or (d) committing or attempting to commit a crime. In addition, no dog is "dangerous" merely because it barks or growls at other animals or persons.

(k) "Dog" refers to *canis lupus familiaris*.

(l) A "domesticated animal" is any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind, such as a cat, dog, guinea pig, gerbil, hamster, chinchilla, degu, hedgehog, rat, mouse, sugar glider, rabbit, lizard (which are non-venomous), ferret, non-venomous snake (so long as they are less than four (4) feet long), turtle, fish, hermit crabs and domesticated birds (such as a canary, finch, parakeet, lovebird, dove, cockatiel, parrotlet, meow, Japanese button quail, and cockatoo). Livestock, including miniature livestock, fowl, and exotic animals, for purposes of the Animal Control Ordinances, are not domesticated animals.

(m) An "exotic animal" is (i) one that does not live naturally in the United States or South Dakota either currently or historically or (ii) one that is not a "domesticated animal," such as a mountain lion or bear. Alleged domestication of exotic animals shall not affect its status under this definition.

(n) "Fowl" refer to ducks, geese, turkeys, pheasants, guinea, pigeons and chickens.

(o) "Impoundment" refers to the City taking possession of an animal.

(p) The "inhumane treatment" of an animal is any act of mistreatment, torture, cruelty, or inhumane slaughter that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition, and type of animal.

(q) "Kennel" means any person (i) who possess four (4) or more adult dogs or six (6) or more adult, domesticated animals of any species and (ii) who possesses the animals for profit, professional breeding, exhibiting, or for a commercial business of boarding or trading for a fee on the premises, which shall not be a dwelling unit. Possession for "pleasure" is not a valid purpose. Not included within the definition of a kennel are (i) hospitals, clinics, pet shops, or other premises operated by a licensed veterinarian for the care and treatment of animals and (ii) the City of Yankton pound.

(r) "Leash" means a cord, thong, or chain by which an animal is controlled by the person accompanying it.

(s) "Livestock" refer to horses, mules, donkeys, hogs, cows, goats and sheep.

(t) The "mistreatment, torture, or cruelty" of an animal is any act or omission whereby unnecessary, unjustifiable, or unreasonable physical pain or suffering is caused, permitted, or allowed to continue including acts of mutila-

2010 Legal and Public Notices

tion.

(u) A "motor vehicle" is any automobile, motor truck, house trailer, trailer, and all other means of transportation propelled by power other than muscular power.

(v) "Neglect" of an animal refers to the failure to provide food, water, adequate shelter, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal.

(w) "Owner" is (i) a person(s) who possesses the exclusive right to hold, use, benefit from, enjoy, convey, transfer, and otherwise dispose of an animal, or (ii) any person(s) identified in (w)(i) above to whom the owner delivers temporary possession or designates (formally or informally) as the keeper of the animal in the owners absence.

(x) "Person" is either a natural human being or beings or an entity, such as a partnership, limited liability company or corporation.

(y) A "right of way" is any public street, alley, sidewalk, trail, or parking lot not privately owned.

(z) "Sterilized" refers to the neutering of a male dog/cat or the spaying of a female dog/cat.

(aa) "Stray" refers to an animal that is not owned by any person.

(bb) "Tort" refers to any wrongful act or an infringement of a right, other than under contract, which is prohibited by South Dakota statute or common law which leads to legal liability.

(cc) A "Trespass" occurs if a person, knowing that he or she is not privileged to do so, enters or remains on any real property owned by another.

Section 5-2 Authority To Enter or To Seize

(a) The Animal Control officer shall have authority to take possession, as set forth herein, of any animal, which is in violation of the Animal Control Ordinances, including no licenses or proof of vaccination.

(b) The Animal Control Officer shall have authority to take possession of any animal which is prohibited by the Animal Control Ordinances.

Section 5-3 Livestock & Fowl Prohibited.

(a) No person shall keep or possess any livestock within the City. Illegally possessing livestock is a class 2 misdemeanor.

However, when kept in the ordinary course of business, livestock may be temporarily kept at a public auction ring, livestock commission house, veterinary clinic and treatment facility, locker plant or hatchery. In addition, livestock may be transported through the City.

(b) No person may soak with water livestock at a time when loaded in any motor vehicle or trailer when in the City limits or within one (1) mile of the City limits. Illegal soaking is a class 2 misdemeanor.

(c) No person shall keep or possess any fowl within the City. Illegally possessing fowl is a class 2 misdemeanor.

However, a person may possess up to six (6) chicken hens so long as the hens are confined in a manner not visible to the traveling public or the surrounding property owners. In addition, when kept in the ordinary course of business fowl may be temporarily kept at a public auction ring, veterinary clinics and treatment facilities, locker plants and hatcheries. Fowl may also be transported through the City. The City does not keep or possess any fowl which reside at Westside Park. A person may possess up to six (6) homing pigeons.

Section 5-4 Exotic Animals Prohibited.

(a) The City finds that the prohibition of exotic animals, and their possible immediate impoundment and/or destruction, is warranted because of the immediate danger that said animals may pose to the public.

(b) No person shall keep or possess any exotic animal within the City. Illegally possessing an exotic animal is a class 2 misdemeanor.

In addition, no person may possess or sell within the City any animal designated as protected or endangered pursuant to any federal or state statute, regulation, or rule. Said animals shall be impounded and turned over to the appropriate agency.

(c) However, an exotic animal may be transported through the City or be temporarily kept at a legally authorized circus, menagerie, carnival, petting zoo, wildlife exhibitor licensed by federal or state agencies, education program, or any other event that has the prior approval of the City under the following circumstances:

(1) Each exotic animal shall wear a protective device which is adequate to prevent said animal from escaping and injuring the public;

(2) The animal only remains within the City for the time of said activity;

(3) If the animal's presence is temporary transportation, then the animals must be transported

2010 Legal and Public Notices

from one location to another and must transit the city by a common used route or state highway. While in transit they must be under the direct control of a driver, manager, or handler, and such passage must be done with all due speed and care; and

(4) The animal must be in a proper enclosure or, if not, then it shall be directly accompanied by its owner and confined or restrained in such a manner that, after investigation by the animal control officer, is reasonable. "Proper enclosure" is a secure confinement, as determined by the animal control officer or a peace officer, indoors or in a securely enclosed or locked facility, suitable in all respects to prevent an animal from escaping and to prevent any physical threat to the well-being of any other animal or human, while not constituting inhumane treatment.

(d) If the animal control officer suspects that an animal is an exotic animal, then the animal shall be seized.

(e) The animal control officer(s) has authority to enter, search, and investigate premises, to take testimony from owners and witnesses, and to seize, impound, or euthanize an exotic animal.

(f) It shall be the duty of the animal control officer to use all necessary means to control an exotic animal so as not to immediately jeopardize the health or safety of themselves or others. Any exotic animal that in the judgment of the animal control officer presents an immediate danger to the public may be immediately destroyed.

(g) The City shall provide written notice of impoundment to the owner within three (3) days after the actual impoundment. The notice shall include a notice of the hearing date, which shall occur within fifteen (15) days after the date of service of the notice of impoundment. The purpose of the hearing is to determine whether the animal in question is exotic.

(h) At the hearing, the City shall have the burden of proving by a preponderance of the evidence that the animal in question is exotic. If the animal is exotic, then the animal control officer has authority to dispose of the animal by any humane means. If the animal is not exotic, then the animal shall be returned to the owner, after it is determined that the owner in compliance with all other provisions of the animal control ordinances. The court shall issue a written order.

5-5 Injured Animal.

Whenever an animal control officer encounters an animal suffering pain, he or she shall take possession of the animal due to the exigent circumstances and deliver said animal to a veterinarian. If the suffering animal is unable to be treated due to the severity of the damages, then the City shall take immediate action to humanely euthanize the animal. The cost of any care or treatment shall be borne by the owner.

If ownership of the animal cannot be determined, then the animal control officer shall impound the animal for five (5) days unless it appears that a longer impoundment will lead to identification of the owner or caretaker. If the owner or caretaker cannot be located, then the animal shall be considered a stray and the City may humanely dispose of the animal.

5-6 Ordinance Interpretation.

(a) Unless the word "intent" or its derivative is expressly provided for, no ordinance shall be construed as making *scienter* an element of the offense.

(b) Unless the word "knowledge" or its derivative is expressly provided for, the knowledge or lack of knowledge of the person committing the act or violating any animal ordinance shall be considered immaterial.

(c) Each separate offense shall be deemed to have been committed once each day during which a violation occurs or continues.

5-7 Time.

(a) **Computation of time.** In computing any period of time prescribed or allowed within the animal control ordinances, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes those holidays listed in SDCL 1-5-1.

(b) **Additional time after service by mail.** Whenever the City or person has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

(c) **Service.** Whenever service is required or permitted to be

2010 Legal and Public Notices

made upon a person it shall be made by either delivering a copy to him in person or by mailing it to the person at his last known address. Service by mail shall be by first class mail and is complete upon mailing. A certificate of service, a written admission of service by the person or an affidavit shall be sufficient proof of service.

5-8 Nuisance. The following acts or omissions constitute a public nuisance:

(a) possession or keeping of any animal prohibited by the animal control ordinances, such as an exotic animal, a dangerous animal, livestock, fowl or a rabid animal; and

(b) possession or keeping of any animal in violation of the regulations established by the animal control ordinances, such as exceeding the number of permissible domesticated animals, or license, vaccination or leash law violations; and

(c) any of the actions prohibited in Chapter 5, Division 2 of the Yankton Code of Ordinances; and

(d) an unreasonable accumulation of animal waste on an owner's real property or improperly disposing of animal waste on public property.

5-9 Liability for fines, fees, costs, etc.

The City hereby establishes a policy that any fees, fines, costs or charges, whether they be seizure, transportation, impound or vaccination, shall be paid or reimbursed by the owner of all animals to the City.

In addition, the Court may order that the owner of the animal which has caused harm to a person, property or another animal shall pay restitution. This provision shall not affect the owner's right to recover civil damages. If the owner of the animal causing damages contests the amount of restitution order by the Court, then said owner is entitled to a hearing at which the Court shall determine the amount. When considering to award restitution, the Court may consider the facts found at SDCL 23A-28-5.

5-10 Public Records

Records found within the animal license, animal impound, animal bite, and dangerous animal registries, unless prohibited by State law such as personal identifying numbers or codes, constitute open records.

DIVISION 2. Offenses

5-20 Criminal Cases. Each of the offenses prohibited by Sec. 5-23 are class 2 misdemeanors and a violation of thereof is criminal in nature. If an offense within the animal control Code is not identified as a class 2 misdemeanor, then it is a petty offense.

5-21 Procedures. The City carries the burden of establishing the defendant's guilt beyond a reasonable doubt. The defendant is presumed to be innocent until proven otherwise.

5-22 Maximum Penalties.

The maximum penalty for a class 2 misdemeanor is a five hundred dollar (\$500.00) fine, thirty (30) days imprisonment in a county jail, or by both. The maximum penalty for a petty offense is a fine of Two Hundred Dollars (\$200.00).

If a person is convicted of a second infraction (which are identified in Sec. 5-23 herein) during any one-year period, then the Court shall impose a One Hundred and Fifty Dollar (\$150.00) fine. If a person is convicted of a third infraction (which are identified in Sec. 5-23 herein) during any one-year period, then the Court shall impose a Three Hundred Dollar (\$300.00) fine.

5-23 Offenses.

(a) **Animals Running at Large.** No owner shall permit his or her animal to run at large within the City. However, an animal may run at large in a City designated animal run area.

(b) **Restraint of Animal in Vehicle.** No owner shall permit an animal within a motor vehicle upon a public street or any parking lot within the City unless said animal is properly restrained so the animal cannot reach outside the confines of said motor vehicle. For purpose of this ordinance, a dog in the back of a pickup is restrained.

(c) **Striking Animal with Vehicle.** Striking Animal with Vehicle. No person who operates a motor vehicle within the City and knowingly strikes a dog or cat shall fail to stop at once, to report the collision to the animal control officer, and to remain at the scene until released by the animal control officer.

(d) **Animal Fighting.** No person within the City shall knowingly permit any animal to fight on any real property under his or her charge or control.

(e) **Training to Fight.** No person within the City shall knowingly permit any animal to be trained or used in an exhibition of fighting.

(f) **Poisoning Animal.** No person within the City shall intentionally expose any poisonous substance so that it may be taken by a domestic animal owned by another. However, a licensed veterinarian, or a municipality, with

2010 Legal and Public Notices

proper authority may euthanize the animal.

(g) **Injuring Another's Animal.** No person shall intentionally kill or injure another's animal within the City. It is an affirmative defense to this crime to reasonably act in defense of person, property or another person or domesticated animal. However, a licensed veterinarian, or a municipality, with proper authority may euthanize the animal.

(h) **Stray Animals.** No person shall harbor, keep or feed a stray animal within the City. A person who sees a stray animal shall immediately report the same to the animal control officer.

(i) **Abandoned Animals.** No person shall abandon an animal within the City.

(j) **Disturbing the Peace.** No owner shall permit within the City his or her animal to disturb the peace, such as barking, howling, whining, snarling, growling or making other such sound persistently and constantly, which shall be at least fifteen (15) minute period with periodic or short intervals between such sounds.

Any animal control officer may seize and impound any animal which is disturbing the peace when the owner cannot be located. In such instance, the animal control officer shall, if possible, leave on the premises of the owner (a) notice advising the owner of the impoundment and (b) the ticket for disturbing the peace.

(k) **Teasing Animals.** No person shall tease, bait or harass any domesticated animal within the City. "Baiting" is setting out food to capture another person's animal or permitting a dog to attack a chained or confined animal for sport.

(l) **Picketing.** No owner shall within the City stake out any animal in such manner as to permit said animal to go upon any right of way or to approach within five (5) feet of any property line if there is a structure used or occupied as a residence of any person other than that of the owner of the animal on the other side of said property line.

(m) **Animal Waste.** No owner within the City shall permit his or her animal to defecate on public or private property other than their own. If any animal does defecate upon public or private property, then the owner shall immediately and thoroughly clean the fecal material from such public or private property.

(n) **Failing to Follow Instructions of Animal Control Officer.** No person within the City shall refuse to comply with the lawful instruction of the animal control officer.

(o) **Interfering with Animal Control Officer.** No person within the City shall interfere with the animal control officer when he or she is engaged in carrying out the provisions of the animal control ordinance.

(p) **Interfere with Traps.** No person shall hinder, delay, obstruct or tamper with traps set by the animal control officer within the City when the trap is used in capturing, securing or impounding any animal.

(q) **Trapping.** No person, without prior written permission of the animal control officer, shall set, allow to be set, or use any trap for the intent of catching any animal, which trap within the City could injure or kill any such animal. This provision does not prohibit any person from using rodent traps in the exterior or interior of a building, a licensed fisherman in designated areas, or persons employed by or agents of the City.

(r) **Defacing Property.** No owner shall knowingly permit his or her animal to destroy or deface property of another within the City. Said owner of such animal shall be held responsible for the cost of repaying any damage to the property.

(s) **Inhumane Treatment of Animals.** No person shall inhumanely treat any animal within the City.

(t) **Neglect of Animals.** No person shall neglect any animal within the City. The City finds that leaving an animal unattended in a standing or parked motor vehicle in such a manner that endangers the health or safety of the animal is neglect of an animal.

The City hereby finds that exigent circumstances exist when an animal is unattended in a standing or parked motor vehicle in such a manner that endangers the health or safety of the animal. If the animal control officer reasonably believes that the animal is in immediate jeopardy of its life, then he or she may use reasonable force to open the motor vehicle to rescue the animal. No such officer may be held civilly or criminally liable for any damage or loss caused by removing such animal from a motor vehicle.

(u) **Public Disposal of Dead Animal.** No person shall dispose of any dead animal onto or upon any street, alley, park or sidewalk of the city.

(v) **Proper Disposal of Animal.** Each owner of a dead animal within the City shall properly dispose of the animal within twenty-four (24) hours after its death.

2010 Legal and Public Notices

DIVISION 3. Licenses & Vaccinations.

5-31 Licensing. No person who owns a dog or cat shall keep, maintain or have in his or her custody or control any dog or cat without first having obtained a license therefore.

However, the licensing requirement does not apply to (a) cats and dogs where the owners are nonresidents temporarily within the City or (b) cats or dogs under six (6) months of age kept on the owner's real property.

5-32 Term of License & Expiration. Each license shall begin on the date that it is issued. The term of the license shall be one (1) year, depending upon the length of time that the rabies vaccination certificate is effective. All licenses shall expire upon (a) the expiration date of the rabies vaccination, as shown on the furnished certificate of vaccination, or (b) the anniversary of the one-year issuance of the license, whichever date occurs first.

5-33 Application. Any person licensing his or her dog or cat shall make application to either the animal control officer, any licensed veterinarian in the City or the local Humane Society at any time during the year, but within fifteen (15) days after acquiring custody of the animal.

Such application shall be in writing stating (a) the name, (b) sex, (c) color, (d) breed, (e) and other distinguishing characteristics of such dog or cat and (f) the name and address of the applicant. As for dogs, based upon the applicant's knowledge on that date, each applicant shall also state whether or not the dog has any vicious propensities or has been declared to be dangerous or vicious by another other state, county or city. No person shall intentionally include a false fact within his or her application.

The application shall be accompanied with the fee and certificate of vaccination, as set forth herein.

5-34 Fee. Each license applicant shall pay a license fee at the time the application is submitted. The amount of the fee, which may be different for sterilized and unsterilized animals, shall be determined from time to time by Board of City Commissioners. If the application is made to any licensed veterinarian, then he or she may charge an additional five dollar (\$5.00) administration fee.

5-35 Certificate of Vaccination. At the time the application is submitted, the applicant shall also exhibit a certificate of vaccination issued by a registered veterinarian showing that his or her dog or cat has been inoculated against rabies and that such inoculation is effective at the time of application and through the term of the license. Any person authorized by the State of South Dakota may administer rabies vaccinations.

5-36 Vaccination. No person who owns a cat or dog shall fail to vaccinate said cat or dog as herein provided. However, no cat or dog under the age of six (6) months need be vaccinated.

5-37 Issuance of Tag. The animal control officer or the immunizing veterinarian shall furnish and deliver to the license applicant a metallic or plastic tag for each dog or cat for which such license is issued. The number of the license and the year for which such license is issued shall be stamped or engraved on the tag.

5-38 Replacement Tag. If a tag is lost, then the animal control officer or the immunizing veterinarian shall issue another tag upon payment of the actual cost of the replacement tag and upon satisfactory proof that such tag has been lost.

5-39 Wearing Tag. No owner of a dog or cat licensed under this division shall fail to place a collar around the neck of such dog or cat, on which collar shall be securely fastened the furnished tag.

5-40 Animal License Registry. There shall be one central animal license registry for all licensed cats and dogs. The animal license registry shall be maintained and kept accurate by the City. Each licensed veterinarian or the Humane Society who issues a tag under the provision of this division shall within a reasonable time after issuance provide the application and fee to the animal control officer.

All persons entering data into the animal license registry shall knowingly enter accurate information. No person shall intentionally include a false fact, or later alter a correct fact, in the animal license registry.

5-41 Kennel License. Any person operating a kennel shall pay an annual license fee as determined by the Board of City Commissioners. Persons operating kennels are required to obtain a kennel license annually before the 31st day of December each year, or within 15 days after establishing a kennel if that occurs after the 1st day of January of any year. Each license shall expire on the 31st day of December of that year. Persons operating such kennels are not required to license individual animals as provided in this chapter. Failure to obtain a kennel license is a class 2 misdemeanor.

The location and use of a kennel must be in compliance with the city zoning ordinances and