

**ORDINANCE NO. O2014.08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 6, ARTICLE II, TEMPE CITY CODE, RELATING TO ANIMALS AND FOWLS BY AMENDING SECTION 6-21 RELATING TO DEFINITIONS; BY ADDING NEW SECTION 6-32 RELATING TO ABANDONED ANIMALS; AND BY ADDING NEW SECTIONS 6-49, 6-50, 6-51, 6-52 AND 6-53 RELATING TO IMPOUNDMENT.**

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**Section 1.** That Chapter 6, Article II, Section 6-21 of the Tempe City Code is hereby amended to read as follows:

**Sec. 6-21. Definitions.**

As used in this article, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed in this section:

*ABANDONED ANIMAL* MEANS ANY ANIMAL THAT HAS BEEN FOUND OR PROVIDED TO THE POLICE DEPARTMENT, WHETHER THE OWNER IS KNOWN OR UNKNOWN, THAT IS NOT THE SUBJECT OF A PROSECUTION FOR ANIMAL CRUELTY.

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

*At large* means on or off the premises of the owner and not under control of the owner or other persons acting for the owner. Any dog in a suitable enclosure which actually confines the dog shall not be considered to be running at large.

*Department* means the state department of health services.

*Enforcement agent* means that person in each county who is responsible for the enforcement of this article and the regulations promulgated thereunder.

*Impound* means the act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound in accordance with the provisions of this article.

*Kennel* means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five (5) or more dogs under controlled conditions.

*Livestock* means neat animals, horses, sheep, goats, swine, mules and asses.

*Owner* means any person keeping an animal other than livestock for more than six (6) consecutive days.

*Pound* means any establishment authorized for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the enforcement agent in the performance of his official duties.

*Rabies quarantine area* means any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area.

*Rabies vaccination certificate* means a method of recording and duplicating rabies information that is in compliance with the county enforcement agent's licensing system and/or county enforcement agent's prescribed forms.

*Stray dog* means any dog ~~four (4)~~ THREE (3) months of age or older running at large which is not wearing a valid license tag.

*Vaccination* means the administration of an antirabies vaccine to animals by a veterinarian, or in authorized pounds by employees trained by a veterinarian.

*Veterinarian*, unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.

*Veterinary hospital* means any establishment operated by a veterinarian licensed to practice in this state 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.

*Vicious animal* means any animal that (a) has a propensity to bite without provocation; (b) has killed or inflicted injury on a human being on public or private property; or (c) has killed a domestic animal without provocation while the animal was off the owner's property. A determination that an animal is a vicious animal under this chapter may be declared only after a hearing before a justice of the peace or a city magistrate. This definition does not apply to a police animal under the command of its trainer.

**Section 2.** That Chapter 6, Article II, Division 1, of the Tempe City Code is hereby amended by adding Section 6-32 to read:

**SEC. 6-32. ABANDONED ANIMALS.**

(A) IF ANY ANIMAL HAS BEEN FOUND OR PROVIDED TO THE POLICE DEPARTMENT, THAT ANIMAL SHALL BE CONSIDERED AN ABANDONED ANIMAL.

- (1) IF NO PERSON IS IMMEDIATELY AVAILABLE, CAPABLE AND WILLING TO PROVIDE SHELTER AND CARE FOR AN ABANDONED ANIMAL, THE POLICE DEPARTMENT SHALL FACILITATE THE SHELTERING OF THAT ANIMAL THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER OR A SUITABLE HOME.
- (2) IF THE OWNER IS KNOWN, THE POLICE DEPARTMENT SHALL PROVIDE NOTICE TO THE OWNER THAT THE ANIMAL HAS BEEN PLACED PURSUANT TO THIS SECTION. THAT NOTICE SHALL INCLUDE THE CONTACT INFORMATION OF THE SHELTERING ENTITY.
- (3) IF THE OWNER IS NOT KNOWN, THE POLICE DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO IDENTIFY THE OWNER AND PROVIDE NOTICE TO THE OWNER. IF NO OWNER CAN BE IDENTIFIED, NO NOTICE IS NECESSARY.

(B) THE POLICE DEPARTMENT WILL NOT TAKE OWNERSHIP OR RESPONSIBILITY FOR AN ABANDONED ANIMAL, BUT SHALL FACILITATE THE PLACEMENT OF AN ABANDONED ANIMAL PURSUANT TO THE PROVISIONS OF THIS SECTION.

(C) ANY FACILITY SHELTERING AN ABANDONED ANIMAL PURSUANT TO THIS SECTION SHALL KEEP THE ABANDONED ANIMAL FOR NO LESS THAN SEVENTY-TWO (72) HOURS PRIOR TO PLACING THE ANIMAL FOR ADOPTION OR OTHERWISE DISPOSING OF THE ANIMAL.

- (1) THE POLICE DEPARTMENT SHALL ONLY BE RESPONSIBLE FOR THE FIRST SEVENTY-TWO (72) HOURS OF SHELTERING OR VETERINARY COSTS OF AN ABANDONED ANIMAL IF THE ANIMAL IS NOT RETRIEVED BY THE OWNER OR ADOPTED BY ANOTHER PERSON.
- (2) THE OWNER OF THE ABANDONED ANIMAL OR ANY PERSON ADOPTING AN ABANDONED ANIMAL SHALL BE RESPONSIBLE FOR ALL SHELTERING AND VETERINARY COSTS FOR THE ABANDONED ANIMAL.

**Section 3.** That Chapter 6, Article II, Division 2, of the Tempe City Code is hereby amended by adding Section 6-49 to read:

**SEC. 6-49. ANIMAL CRUELTY.**

(A) A PERSON COMMITS ANIMAL CRUELTY IF THE PERSON DOES ANY OF THE FOLLOWING:

- (1) INTENTIONALLY, KNOWINGLY OR RECKLESSLY SUBJECTS ANY ANIMAL UNDER THE PERSON'S CUSTODY OR CONTROL TO CRUEL NEGLECT OR

ABANDONMENT.

- (2) INTENTIONALLY, KNOWINGLY OR RECKLESSLY FAILS TO PROVIDE MEDICAL ATTENTION NECESSARY TO PREVENT PROTRACTED SUFFERING TO ANY ANIMAL UNDER THE PERSON'S CUSTODY OR CONTROL.
- (3) INTENTIONALLY, KNOWINGLY OR RECKLESSLY INFLECTS UNNECESSARY PHYSICAL INJURY TO ANY ANIMAL.
- (4) RECKLESSLY SUBJECTS ANY ANIMAL TO CRUEL MISTREATMENT.
- (5) INTENTIONALLY, KNOWINGLY OR RECKLESSLY KILLS OR ATTEMPTS TO KILL ANY ANIMAL UNDER THE CUSTODY OR CONTROL OF ANOTHER PERSON WITHOUT EITHER LEGAL PRIVILEGE OR CONSENT OF THE OWNER.
- (6) RECKLESSLY INTERFERES WITH, STRIKES, KILLS OR HARMS A WORKING OR SERVICE ANIMAL WITHOUT EITHER LEGAL PRIVILEGE OR CONSENT OF THE OWNER.
- (7) INTENTIONALLY, KNOWINGLY OR RECKLESSLY LEAVES AN ANIMAL UNATTENDED AND CONFINED IN A MOTOR VEHICLE AND PHYSICAL INJURY TO OR DEATH OF THE ANIMAL IS LIKELY TO RESULT.
- (8) RECKLESSLY ALLOWS ANY DOG THAT IS UNDER THE PERSON'S CUSTODY OR CONTROL TO INTERFERE WITH, KILL OR CAUSE PHYSICAL INJURY TO A SERVICE ANIMAL.
- (9) STRIKES ANY DOMESTIC ANIMAL WITH A VEHICLE RESULTING IN INJURY TO THE ANIMAL, AND LEAVES THE SCENE WITHOUT RENDERING AID AND ASSISTANCE IN THE CARE OF SUCH ANIMAL, IF SUCH ACTION CAN BE TAKEN WITH REASONABLE SAFETY. FOR PURPOSES OF THIS SECTION, "DOMESTIC ANIMAL" SHALL MEAN AN ANIMAL USUALLY DOMICILED WITH OR CARED FOR BY HUMANS, SUCH AS A CAT, DOG, HORSE OR CATTLE.
- (10) INTENTIONALLY OR KNOWINGLY POISONS OR ATTEMPTS TO POISON ANY DOMESTIC ANIMAL. FOR PURPOSES OF THIS SECTION, "POISON" OR "ATTEMPT TO POISON" INCLUDES THE ACT OF PLACING FOOD, WATER, OR LURE OF ANOTHER SORT WHICH CONTAINS POISON OR CONTAINS HEALTH THREATENING FOREIGN OBJECTS, SUCH AS GLASS OR METAL, IN A LOCATION WHERE ANY ANIMAL MAY BE ATTRACTED TO IT.
- (11) INTENTIONALLY, KNOWINGLY OR RECKLESSLY USES A BAITED TRAP OR MECHANICAL DEVICE TO CAPTURE AN ANIMAL, CAUSING IT INJURY OR DEATH.

(B) IT IS A DEFENSE TO SUBSECTION (A) ABOVE IF:

- (1) TO PROTECT HIMSELF OR HIS LIVESTOCK OR POULTRY, A PERSON DOES

THE FOLLOWING:

- A. EXPOSES POISON TO BE TAKEN BY A DOG THAT HAS KILLED OR WOUNDED LIVESTOCK OR BY PREDATORY ANIMALS ON PREMISES OWNED, LEASED OR CONTROLLED BY THE PERSON; AND
  - B. THE TREATED PROPERTY IS KEPT POSTED BY THE PERSON WHO AUTHORIZED OR PERFORMED THE TREATMENT UNTIL THE POISON HAS BEEN REMOVED; AND
  - C. THE POISON IS REMOVED AFTER THE THREAT TO THE PERSON OR THE PERSON'S LIVESTOCK OR POULTRY HAS CEASED TO EXIST.
  - D. THE POSTING REQUIRED SHALL PROVIDE ADEQUATE WARNING TO PERSONS WHO ENTER THE PROPERTY BY THE POINT OR POINTS OF NORMAL ENTRY. THE WARNING NOTICE THAT IS POSTED SHALL BE READABLE AT A DISTANCE OF FIFTY (50) FEET, SHALL CONTAIN A POISON STATEMENT AND SYMBOL AND SHALL STATE THE WORD "DANGER" OR "WARNING".
- (2) A PERSON USES POISONS IN AND IMMEDIATELY AROUND BUILDINGS OWNED, LEASED OR CONTROLLED BY THE PERSON FOR THE PURPOSE OF CONTROLLING RODENTS AS OTHERWISE ALLOWED BY THE LAWS OF THE STATE.
- (C) IT IS NOT A DEFENSE TO SUBSECTION (A) ABOVE IF:
- (1) THE ANIMAL WAS TRESPASSING ON PROPERTY OWNED OR CONTROLLED BY THE PERSON ALLEGED TO HAVE VIOLATED THIS SECTION.
  - (2) THE ANIMAL WAS NOT RESTRAINED IN COMPLIANCE WITH ANY LEASH LAW, INCLUDING § 6-30.
  - (3) THE PERSON ALLEGED TO HAVE VIOLATED THIS SECTION DID NOT KNOW THAT THE ANIMAL WAS UNDER THE CUSTODY OR CONTROL OF ANOTHER PERSON.
- (D) THIS SECTION DOES NOT PROHIBIT OR RESTRICT:
- (1) THE TAKING OF WILDLIFE OR OTHER ACTIVITIES PERMITTED BY OR PURSUANT TO A.R.S. TITLE 17.
  - (2) ACTIVITIES PERMITTED BY OR PURSUANT TO A.R.S. TITLE 3.
  - (3) ACTIVITIES REGULATED BY THE ARIZONA GAME AND FISH DEPARTMENT OR THE ARIZONA DEPARTMENT OF AGRICULTURE.
  - (4) 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.

(E) A PERSON WHO VIOLATES SUBSECTION (A) HEREIN IS GUILTY OF A CLASS 1 MISDEMEANOR.

(F) A PERSON CONVICTED OF VIOLATING SUBSECTION (A) HEREIN, SHALL BE REQUIRED BY THE COURT TO MAKE RESTITUTION TO THE OWNER OF THE ANIMAL IN THE FULL AMOUNT OF THE OWNER'S ECONOMIC LOSS, UNLESS THE CONVICTED PERSON IS THE OWNER.

- (1) THE FULL AMOUNT OF ECONOMIC LOSS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE COST OF VETERINARY CARE, BOARDING, AND NECROPSY; THE VALUE OF THE ANIMAL; COST OF A REPLACEMENT ANIMAL; COST OF TRAINING A REPLACEMENT ANIMAL; AND
- (2) IN THE CASE OF A WORKING OR SERVICE ANIMAL, ANY ADDITIONAL COSTS INCURRED TO REPLACE THE SERVICES OF THE WORKING OR SERVICE ANIMAL WHILE THE ANIMAL REMAINS UNAVAILABLE TO ITS OWNER.

(G) UPON CONVICTION OF A VIOLATION OF §§ 6-49 AND 6-50, INVOLVING AN ANIMAL THAT IS UNDER THE CONVICTED PERSON'S CUSTODY OR CONTROL, THE COURT SHALL ORDER THE VICTIMIZED ANIMAL FORFEITED TO THE CITY AND THE ANIMAL MAY THEN BE PLACED UP FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME, OR HUMANELY DESTROYED. FOR PURPOSES OF FORFEITURE, A CONVICTION MAY RESULT FROM A VERDICT OR PLEA, INCLUDING A NO CONTEST PLEA. ALL RIGHT, TITLE AND INTEREST TO THE ANIMAL IS DEEMED TO HAVE VESTED IN THE CITY ON THE COMMISSION OF THE ACT OR OMISSION GIVING RISE TO THE CONVICTION. THE COURT SHALL ORDER THE CONVICTED PERSON TO MAKE RESTITUTION TO THE CITY FOR THE CITY'S REASONABLE COSTS INCURRED IN HOUSING, CARE, FEEDING AND TREATMENT OF THE ANIMAL FROM THE TIME OF SEIZURE OR IMPOUNDMENT TO THE TIME OF CONVICTION.

(H) RESERVED.

(I) RESERVED.

(J) FOR THE PURPOSES OF THIS SECTION:

- (1) ANIMAL MEANS A MAMMAL, BIRD, REPTILE OR AMPHIBIAN.
- (2) CRUEL MISTREATMENT MEANS TO TORTURE OR OTHERWISE INFLICT UNNECESSARY SERIOUS PHYSICAL INJURY UPON AN ANIMAL OR TO KILL AN ANIMAL IN A MANNER THAT CAUSES PROTRACTED SUFFERING TO THE ANIMAL.
- (3) CRUEL NEGLECT MEANS TO FAIL TO PROVIDE AN ANIMAL WITH NECESSARY FOOD, WATER OR SHELTER.
- (4) HANDLER MEANS A LAW ENFORCEMENT OFFICER OR ANY OTHER PERSON WHO HAS SUCCESSFULLY COMPLETED A COURSE OF TRAINING

PRESCRIBED BY THE PERSON'S AGENCY OR THE SERVICE ANIMAL OWNER AND WHO USED A SPECIALLY TRAINED ANIMAL UNDER THE DIRECTION OF THE PERSON'S AGENCY OR THE SERVICE ANIMAL OWNER.

- (5) SERVICE ANIMAL MEANS AN ANIMAL THAT HAS COMPLETED A FORMAL TRAINING PROGRAM THAT ASSISTS ITS OWNER IN ONE OR MORE DAILY LIVING TASKS THAT ARE ASSOCIATED WITH A PRODUCTIVE LIFESTYLE AND THAT IS TRAINED TO NOT POSE A DANGER TO THE HEALTH AND SAFETY OF THE GENERAL PUBLIC.
- (6) WORKING ANIMAL MEANS A HORSE OR DOG USED BY A LAW ENFORCEMENT AGENCY, SPECIALLY TRAINED FOR LAW ENFORCEMENT WORK AND IS UNDER THE CONTROL OF A HANDLER.

**Section 4.** That Chapter 6, Article II, Division 2, of the Tempe City Code is hereby amended by adding Section 6-50 to read:

**SEC. 6-50. AUTHORITY TO REMOVE, IMPOUND AND FORFEIT ANIMALS; COST OF CARE.**

(A) A PEACE OFFICER, ENFORCEMENT AGENT OR COUNTY ANIMAL CONTROL OFFICER IS HEREBY AUTHORIZED AND EMPOWERED TO SEIZE AND IMPOUND ANY ANIMAL AS FOLLOWS:

- (1) ON PROCESS ISSUED PURSUANT TO THE PROVISIONS OF A.R.S. TITLE 13, INCLUDING A SEARCH WARRANT.
- (2) IF THE PEACE OFFICER, ENFORCEMENT AGENT OR COUNTY ANIMAL CONTROL OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT A VIOLATION OF § 6-49 HAS OCCURRED.
- (3) IF THE PEACE OFFICER, ENFORCEMENT AGENT OR ANIMAL CONTROL OFFICER HAS REASONABLE GROUNDS TO BELIEVE ANY OF THE FOLLOWING:
  - A. THAT AN ANIMAL IS IN DISTRESS CAUSED BY MISTREATMENT, LACK OF FOOD OR WATER, RESTRAINT, RESTRICTION OF MOVEMENT, CONFINEMENT, LACK OF SUFFICIENT EXERCISE SPACE, CONSTRICTIVE GEAR, INJURY, ILLNESS, PHYSICAL IMPAIRMENT OR PARASITES; OR
  - B. THAT AN ANIMAL'S WELL-BEING IS THREATENED BY A DANGEROUS CONDITION OR CIRCUMSTANCE; OR
  - C. THAT SEIZURE IS NECESSARY TO PROTECT THE HEALTH OR SAFETY OF THE ANIMAL OR THE HEALTH AND SAFETY OF OTHER ANIMALS; OR
  - D. THAT AN ANIMAL IS VICIOUS OR DESTRUCTIVE AND MAY BE A DANGER TO THE SAFETY OF ANY PERSON OR OTHER ANIMAL; OR

E. THAT AN ANIMAL IS AN ABANDONED ANIMAL.

(B) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE ATTORNEY FOR THE STATE, AFTER SEIZURE OF AN ANIMAL BY A PEACE OFFICER, ENFORCEMENT AGENT OR ANIMAL CONTROL OFFICER, FROM TAKING POSSESSION OF AND KEEPING THE ANIMAL WHEN THE ATTORNEY DEEMS THE ANIMAL TO BE OF EVIDENTIARY VALUE IN ANY CRIMINAL PROSECUTION RELATING TO THE CONDITION OF THE ANIMAL. IF THE ATTORNEY FOR THE STATE INTENDS TO TAKE POSSESSION OF AND RETAIN AN ANIMAL AS EVIDENCE IN ANY CRIMINAL PROSECUTION, THE ATTORNEY SHALL PROMPTLY PROVIDE WRITTEN NOTICE TO THE POLICE DEPARTMENT.

(C) THE CITY MAY CONTRACT WITH ANY PERSON, AGENCY OR SHELTER, INCLUDING VOLUNTEERS, TO HOUSE, CARE FOR AND TREAT AN ANIMAL THAT HAS BEEN SEIZED AND IMPOUNDED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(D) THE OWNER OR KEEPER OF AN ANIMAL PROPERLY SEIZED UNDER THIS SECTION IS LIABLE FOR THE COST OF HOUSING, CARING FOR AND TREATING THE ANIMAL. UNLESS THE SEIZURE OR IMPOUNDMENT OF AN ANIMAL IS FOR EVIDENTIARY PURPOSES, SUPPORTED BY A WRITTEN NOTICE OF INTENT AS REQUIRED BY SUBSECTION (B), OR THE COURT DETERMINES AT A POST-SEIZURE HEARING THAT THE SEIZURE OR IMPOUNDMENT WAS NOT JUSTIFIED, THE OWNER OR KEEPER SHALL POST WITH THE COURT A BOND IN THE FORM OF CASH OR A SURETY'S UNDERTAKING TO DEFRAY SOME OF THE COSTS OF HOUSING OF, CARING FOR AND TREATING THE ANIMAL. THE BOND SHALL BE IN THE AMOUNT OF \$25.00 PER ANIMAL. THE OWNER OR KEEPER SHALL POST THE BOND WITHIN TEN (10) DAYS OF THE DATE OF THE NOTICE PROVIDED UNDER § 6-51. THE OWNER OR KEEPER SHALL POST THE BOND WITHIN THREE (3) DAYS OF THE DATE OF THE SEIZURE IF PURSUANT TO § 6-50(A)(3)(E). IF THE OWNER OR KEEPER FAILS TO POST THE BOND WITHIN THE SPECIFIED TIME, THE OWNER OR KEEPER SHALL BE DEEMED TO HAVE ABANDONED THE ANIMAL. THE ANIMAL MAY THEN BE PLACED FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED.

(E) UPON FORFEITURE OF AN ANIMAL, THE COURT SHALL FORFEIT THE BOND TO PAY THE EXPENSES INCURRED IN THE HOUSING OF, CARING FOR AND TREATING THE ANIMAL. IF THE BOND EXCEEDS THE EXPENSES, THE COURT SHALL EXONERATE THE BOND AMOUNT AND ORDER THE SECURITY RETURNED TO THE OWNER OR KEEPER ONLY TO THE EXTENT THE BOND EXCEEDS THE EXPENSES INCURRED IN THE HOUSING OF, CARING FOR AND TREATMENT OF THE ANIMAL. THE COURT SHALL ORDER THE BOND EXONERATED AND THE SECURITY RETURNED TO THE OWNER OR KEEPER IF AT THE CONCLUSION OF THE CASE THE ANIMAL IS NOT FORFEITED UNDER THIS ARTICLE.

**Section 5.** That Chapter 6, Article II, Division 2, of the Tempe City Code is hereby amended by adding Section 6-51 to read:

**SEC. 6-51. POST-SEIZURE HEARINGS.**

(A) THE BURDEN OF PROOF IN THE SEIZURE HEARING PURSUANT TO THIS ARTICLE SHALL BE BY A PREPONDERANCE OF THE EVIDENCE. THE FORMAL RULES OF EVIDENCE SHALL NOT APPLY AND RELIABLE HEARSAY SHALL BE ADMISSIBLE. THE

COURT SHALL ORDER THE ANIMAL TO BE FORFEITED TO THE CITY TO BE PLACED FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED IF THE COURT FINDS FROM A PREPONDERANCE OF THE EVIDENCE THAT A VIOLATION OF § 6-49 OR § 6-50 HAS OCCURRED OR IF THE COURT FINDS THAT THE ANIMAL WILL SUFFER NEEDLESSLY IF HUMANE DESTRUCTION IS DELAYED.

(B) WHENEVER A PEACE OFFICER, ENFORCEMENT AGENT OR ANIMAL CONTROL OFFICER SEIZES OR IMPOUNDS AN ANIMAL BASED ON A REASONABLE BELIEF THAT A VIOLATION OF § 6-49 OR § 6-50 HAS OCCURRED OR THAT PROMPT ACTION IS REQUIRED TO PROTECT THE HEALTH OR SAFETY OF THE ANIMAL OR THE HEALTH AND SAFETY OF OTHER ANIMALS, THE OWNER OR KEEPER OF THE ANIMAL MAY REQUEST A POST-SEIZURE HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE OR IMPOUNDMENT OR BOTH. THE POST-SEIZURE HEARING SHALL BE COMMENCED AS FOLLOWS:

- (1) IF THE OWNER IS KNOWN, THE OWNER MAY SIGN A STATEMENT PERMANENTLY RELINQUISHING OWNERSHIP OF THE ANIMAL TO THE PEACE OFFICER OR ENFORCEMENT AGENT. THE STATEMENT SHALL INDICATE THAT THE ANIMAL WILL BE EITHER PLACED FOR ADOPTION, THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED ACCORDING TO LAW.
- (2) IF THE OWNER'S OR KEEPER'S WHEREABOUTS CANNOT BE DETERMINED, THE NOTICE SHALL BE MAILED TO THE OWNER OR KEEPER'S LAST KNOWN ADDRESS BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED.
- (3) THE POLICE DEPARTMENT, WITHIN FORTY-EIGHT (48) HOURS, EXCLUDING WEEKENDS AND CITY HOLIDAYS, OF THE SEIZURE OR IMPOUNDMENT, SHALL CAUSE A NOTICE TO BE AFFIXED TO A CONSPICUOUS PLACE WHERE THE ANIMAL WAS SITUATED OR PERSONALLY DELIVER A NOTICE OF THE SEIZURE OR IMPOUNDMENT, OR BOTH, TO THE OWNER OR KEEPER, IF KNOWN OR ASCERTAINABLE AFTER REASONABLE INVESTIGATION. THE NOTICE SHALL INCLUDE THE FOLLOWING:
  - A. THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE PERSON PROVIDING THE NOTICE.
  - B. A DESCRIPTION OF THE ANIMAL SEIZED, INCLUDING IDENTIFICATION UPON THE ANIMAL IF ANY.
  - C. THE AUTHORITY AND PURPOSE FOR THE SEIZURE, OR IMPOUNDMENT, INCLUDING THE TIME, PLACE AND CIRCUMSTANCES UNDER WHICH THE ANIMAL WAS SEIZED.
  - D. A STATEMENT THAT, IN ORDER TO RECEIVE A POST-SEIZURE HEARING, THE OWNER OR PERSON AUTHORIZED TO KEEP THE ANIMAL, OR HIS OR HER AGENT, SHALL REQUEST THE HEARING BY SIGNING AND RETURNING TO THE COURT AN ENCLOSED

DECLARATION OF OWNERSHIP OR RIGHT TO KEEP THE ANIMAL WITHIN TEN (10) DAYS, INCLUDING WEEKENDS AND CITY HOLIDAYS, OF THE DATE OF THE NOTICE. THE DECLARATION MUST BE RETURNED BY PERSONAL DELIVERY OR BY MAIL. THE DECLARATION WILL BE DEEMED RECEIVED AT THE TIME IT IS PERSONALLY SERVED OR, IF MAILED, UPON RECEIPT.

- E. A STATEMENT THAT THE OWNER OR KEEPER IS RESPONSIBLE FOR THE COST OF HOUSING, CARING FOR AND TREATING THE ANIMAL THAT WAS PROPERLY SEIZED AND IMPOUNDED.
  - F. A STATEMENT THAT THE OWNER IS REQUIRED TO POST A BOND WITH THE COURT TO DEFRAY THE EXPENSES OF HOUSING, CARING FOR AND TREATING THE ANIMAL THAT HAS BEEN PROPERLY SEIZED AND IMPOUNDED.
  - G. A WARNING THAT IF THE OWNER OR KEEPER FAILS TO POST THE BOND WITHIN TEN (10) DAYS OF THE SEIZURE, INCLUDING WEEKENDS AND HOLIDAYS, THE ANIMAL WILL BE DEEMED ABANDONED AND WILL BE PLACED FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY EUTHANIZED ACCORDING TO LAW.
  - H. A WARNING THAT IF THE OWNER OR KEEPER FAILS TO APPEAR AT THE HEARING, THE COURT SHALL ORDER THE ANIMAL FORFEITED TO THE CITY TO BE PLACED FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED ACCORDING TO LAW.
  - I. A WARNING THAT THIS CIVIL HEARING IS SEPARATE AND DISTINCT FROM ANY ANIMAL CRUELTY PROSECUTION, THAT ANYTHING THE PERSON TESTIFIES TO AT THE HEARING MAY BE USED AGAINST THEM IN THE CRIMINAL PROSECUTION, THAT THEY ARE NOT ENTITLED TO A PUBLIC DEFENDER, THAT IF THEY WISH TO BE REPRESENTED BY AN ATTORNEY AT THE SEIZURE HEARING THEY MUST RETAIN AN ATTORNEY AND THAT NO CONTINUANCES OF THE HEARING WILL BE GRANTED TO SECURE AN ATTORNEY.
- (4) THE COURT SHALL CONDUCT THE POST-SEIZURE HEARING WITHIN FIFTEEN (15) DAYS OF THE COURT'S RECEIPT OF THE REQUEST, EXCLUDING WEEKENDS AND CITY HOLIDAYS.
  - (5) FAILURE OF THE OWNER OR KEEPER, OR THE OWNER'S OR KEEPER'S AGENT, TO REQUEST OR TO ATTEND A SCHEDULED HEARING SHALL RESULT IN A FORFEITURE OF ANY RIGHT TO A POST-SEIZURE HEARING AND THE ANIMAL SHALL BE ABANDONED AND WILL BE EITHER PLACED UP FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED ACCORDING TO LAW.

- A. IN THE EVENT OF THE ACQUITTAL OR FINAL DISCHARGE WITHOUT A CONVICTION OF A PERSON WHO WAS CHARGED UNDER THIS ARTICLE, OR A DETERMINATION THAT THE ANIMAL IS NOT VICIOUS, THE COURT SHALL, UPON DEMAND, DIRECT THE RELEASE OF SEIZED OR IMPOUNDED ANIMALS THAT HAVE NOT BEEN FORFEITED UPON A SHOWING OF PROOF OF OWNERSHIP. ANY QUESTIONS REGARDING OWNERSHIP SHALL BE DETERMINED IN A SEPARATE HEARING BY THE COURT AND THE COURT SHALL HEAR TESTIMONY FROM ANY PERSONS WHO MAY ASSIST IN DETERMINING OWNERSHIP OF THE ANIMAL. IF THE OWNER IS DETERMINED TO BE UNKNOWN OR THE OWNER IS PROHIBITED OR UNABLE TO RETAIN POSSESSION OF THE ANIMAL FOR ANY REASON, THE COURT SHALL ORDER THE ANIMAL RELEASED FOR PLACEMENT WITH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY EUTHANIZED ACCORDING TO LAW. THIS SUBSECTION SHALL NOT BE CONSTRUED TO CAUSE THE RELEASE OF AN ANIMAL SEIZED OR IMPOUNDED PURSUANT TO ANY OTHER LOCAL, STATE OR FEDERAL LAW OR REGULATION.
  
- B. IT IS UNLAWFUL FOR A PERSON TO FAIL TO PRODUCE THE ANIMAL AT THE TIME OF THE HEARING IF THE ANIMAL WAS NOT INITIALLY SEIZED, MAKE ARRANGEMENTS WITH AND ALLOW THE POLICE DEPARTMENT TO VIEW THE ANIMAL UPON REQUEST, OR PROVIDE VERIFICATION THAT THE ANIMAL HAS BEEN HUMANELY DESTROYED.

**Section 6.** That Chapter 6, Article II, Division 2, of the Tempe City Code is hereby amended by adding Section 6-52 to read:

**SEC. 6-52. ENFORCEMENT; NONPRECLUSION OF OTHER ENFORCEMENT ACTION; APPEAL.**

(A) ANY PEACE OFFICER, ENFORCEMENT AGENT OR COUNTY ANIMAL CONTROL OFFICER IS HEREBY AUTHORIZED AND EMPOWERED TO ENFORCE THE PROVISIONS OF THIS ARTICLE AND TO ISSUE CITATIONS FOR THE VIOLATIONS THEREOF.

(B) IT SHALL BE UNLAWFUL FOR ANY PERSON(S) TO INTERFERE WITH ANY OFFICER AUTHORIZED TO ENFORCE THIS ARTICLE IN THE PERFORMANCE OF HIS DUTIES, OR TO RELEASE ANY ANIMAL DULY SEIZED AND/OR IMPOUNDED AND ANY PERSON GUILTY OF SUCH ACT SHALL BE GUILTY OF A CLASS 1 MISDEMEANOR.

(C) USE OF THE CIVIL PROCEDURES AND REMEDIES PROVIDED FOR IN THIS ARTICLE SHALL NEITHER REQUIRE NOR PRECLUDE OTHER ENFORCEMENT ACTION ON THE SAME FACTS, INCLUDING A CRIMINAL PROSECUTION OF THE OWNER. THE CIVIL PROCEDURES AND REMEDIES PROVIDED FOR IN THIS ARTICLE ARE REMEDIAL AND NOT PUNITIVE AND ARE NOT PRECLUDED BY AN ACQUITTAL OR CONVICTION IN A CRIMINAL PROCEEDING.

(D) APPEAL BY EITHER PARTY OF THE DECISION OF THE COURT SHALL BE BY WAY OF SPECIAL ACTION TO THE SUPERIOR COURT ON THE RECORD OF THE HEARING. THE COURT, AT THE HEARING, SHALL ISSUE AN ORDER THAT INCLUDES WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. IF EITHER PARTY CLAIMS THE RECORD TO BE INCOMPLETE OR LOST AND THE COURT WHO CONDUCTED THE HEARING SO CERTIFIES, A NEW HEARING SHALL BE CONDUCTED BEFORE THAT COURT. THE OWNER MUST POST A BOND EQUIVALENT TO SIXTY (60) DAYS OF IMPOUNDMENT COSTS IN ORDER TO PERFECT THE OWNER'S APPEAL. NOTICE OF THE AMOUNT DUE SHALL BE GIVEN TO THE OWNER BY THE COURT AT THE TIME OF THE SEIZURE HEARING IF FORFEITURE IS ORDERED. THE APPEALING PARTY SHALL BEAR THE COST OF PREPARING THE RECORD OF THE HEARING ON APPEAL. NO APPEAL SHALL BE TAKEN LATER THAN FIVE (5) DAYS AFTER THE DECISION.

(E) UNLESS GOOD CAUSE IS SHOWN, THE OWNER SHALL BE LIABLE FOR ALL VETERINARY, IMPOUND AND BOARD FEES RESULTING FROM THE ANIMAL'S IMPOUNDMENT UNTIL A FINAL DECISION BY THE COURT, INCLUDING THE PENDENCY OF AN APPEAL. THE OWNER SHALL NOT BE RESPONSIBLE FOR ANY FEES IF THE OWNER PREVAILS AT THE HEARING OR ULTIMATELY ON APPEAL.

**Section 7.** That Chapter 6, Article II, Division 2, of the Tempe City Code is hereby amended by adding Section 6-53 to read:

**SEC. 6-53. DISPOSITION OF ANIMALS.**

ANY ANIMAL FORFEITED, ABANDONED, OWNERLESS OR UNCLAIMED, AND ANY OTHER ANIMAL TO BE PERMANENTLY DISPOSED OF BY THE CITY SHALL BE PLACED FOR ADOPTION THROUGH MARICOPA COUNTY ANIMAL CARE AND CONTROL, AN ANIMAL WELFARE ORGANIZATION, AN ANIMAL SHELTER, A SUITABLE HOME OR HUMANELY DESTROYED.

**Section 8.** Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,  
ARIZONA this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Judith R. Baumann, City Attorney