

ORDINANCE NO. 017-25

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE CODE OF THE CITY OF GLENDALE, CHAPTER 6 (ANIMALS); AND SETTING FORTH AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Code of the City of Glendale, Chapter 6 (Animals) is hereby amended by adding Article III to read as follows:

Sec. 6-26. - Animal cruelty and neglect.

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 inflicts 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 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 not a defense to subsection A of this section 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 Section 6-6;
- (3) The person alleged to have violated this section did not know that the animal was under the custody or control of another person;

C. Neglect. The purpose of this subsection is to guarantee that animals under human custody or control are housed in healthy environments and are provided with proper food, water, shelter, medical care, exercise space and ventilation. Any person owning or having care, control or custody of any animal shall provide:

- (1) That the animal receives daily, food that is free from contamination and is of sufficient quantity and nutritive value to maintain the animal in good health;
- (2) That potable water is accessible to the animal at all times, either free-flowing or in a clean receptacle;
- (3) That, except for livestock, all animals have convenient access to natural or artificial shelter throughout the year. Any such artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements, and of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, shall not comply with this section. Any shelter, all bedding and any spaces accessible to the animal shall be maintained in a manner which minimizes the risk of the animal contracting disease, being injured, or becoming infested with parasites;
- (4) That the animal receives care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering;
- (5) That the animal is given adequate exercise space within an enclosure that shall be constructed of material, and in a manner, to minimize the risk of injury to the animal, and shall encompass sufficient usable space to keep the animal in good condition. With the exception of temporary tethering of horses, the use of tie-outs such as chains, leashes, wires, cables, ropes, or similar restraining devices for the purpose of animal confinement is hereby prohibited;

(6) That the animal has access to adequate ventilation and is protected from temperature extremes at all times. In this connection, it is unlawful for any person to keep any animal in a vehicle or other enclosed space in which the temperature is either so high or so low, or the ventilation is so inadequate, as to endanger the animal's life or health. Any peace officer or Animal Care officer is authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle or other enclosed space whenever it appears that the animal's life or health is endangered by extreme temperatures or lack of ventilation within the vehicle or other enclosed space.

(a) No peace officer or Animal Care officer shall be liable for damages to property caused by the use of reasonable force to remove an animal from such a vehicle or other enclosed space under such circumstances.

D. Subsection B paragraphs 1 and 2 of this section may be waived by any peace officer or an Animal Care officer if dictated by treatment under the direction of a licensed veterinarian.

E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

F. Penalties. A violation of any provision of this section is punishable by a fine of not less than one hundred dollars nor more than two thousand five hundred dollars, six months in jail, three years probation, or any combination thereof. No judge may grant probation in lieu of, or otherwise suspend, the imposition of the minimum fine prescribed herein. The judge may order that the owner shall not be permitted to own or control any animal for a period of up to three years, and the judge may order that the animal(s) which are the subject of this action be forfeited to the Arizona Humane Society or other suitable agency to be placed by adoption in a suitable home or humanely destroyed. The court also shall order the convicted person to make restitution to the City or to any person, agency, or volunteer who has contracted with the City to care for an animal that is seized and impounded pursuant to this or other provisions of this section for the cost of care for the animal incurred from the time of seizure or impoundment to the time of conviction. This shall not be construed to affect, in any way, the imposition of any mandatory minimum penalties provided herein.

G. In this section, unless the context otherwise requires:

(1) "Animal" means a mammal, bird, reptile or amphibian, but excludes rodents, which may be controlled as otherwise allowed by the law of the State of Arizona. The exclusion of rodents from the definition of animal shall not apply to rodents classified as fur-bearing animals as defined in section 17-101, Arizona Revised Statutes, or to any particular rodent known by the person alleged to have violated this section to be kept as a pet or any rodent clearly marked and denominated as being a pet, such as rodents wearing collars or harnesses.

- (2) "Cost of care" means any expense related to the care and treatment of a seized or forfeited animal, including but not limited to housing, feeding, and veterinary care.
- (3) "Owner" means a person who has an interest in an animal, whether legal or equitable. A person who holds an animal for the benefit of or as an agent for another is not an owner. An owner with power to convey an animal binds other owners, and a spouse binds his or her spouse, by his or her act or omission.

Sec. 6-27. Seizure of animals subjected to cruelty and or neglect; cost of care.

A. An animal subject to forfeiture under Section 6-26 may be seized:

- (1) By a Peace Officer on process issued pursuant to the provisions of title 13, Arizona Revised Statutes, including a search warrant;
- (2) By a Peace Officer upon reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of other animals. When a Peace Officer determines that prompt action is required under this paragraph, the officer shall immediately seize the animal and the Police Department and the Court shall comply with the post-seizure hearing requirements of Section 6-28.

B. In all cases where there is not a prior judicial determination of probable cause and the need for immediate seizure is not present as provided in paragraph A (2) above, the Police Department shall provide the owner or keeper of the animal with the opportunity for a hearing pursuant to Section 6-28 before any seizure or impoundment of the animal.

C. Nothing in this section shall be construed to prohibit the City, after seizure of an animal by a Peace Officer, from taking possession of and keeping the animal when the City deems the animal to be of evidentiary value in any criminal prosecution relating to the condition of the animal. If the City intends to take possession of and retain an animal as evidence in any criminal prosecution, the City shall promptly provide written notice to the Police Department.

D. The City may contract with any person or agency, including volunteers, to care for an animal that is seized and impounded for evidentiary purposes or pursuant to other provisions of this section.

E. The City shall be responsible for the cost of care incurred for a seized or impounded animal, if any of the following occur:

- (1) The City causes the animal to be seized or held for evidentiary purposes;
- (2) The Court determines in a post-seizure hearing held under Section 6-28, that the seizing officer did not have reasonable grounds to believe very prompt action,

including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of other animals;

- (3) The owner's interest in the animal is not forfeited pursuant to Section 6-26 or 6-28;

- F. Except as provided in subsection E, the owner of an animal properly seized and impounded under this section is liable for the actual cost of care for 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 C, or the Court determines at a post-seizure hearing that the seizure or impoundment was not justified, the owner shall post with the Court a bond in the form of cash or a surety's undertaking to defray some of the cost of care for the animal. The bond shall be in the amount of five hundred dollars per animal seized or impounded. The owner shall post the bond within ten days of the date of the notice provided under Section 6-28 (A) (1) or within five days after the conclusion of the pre-seizure or post-seizure hearing, whichever is later, excluding weekends and City holidays. If the owner fails to post the bond within the specified time, the owner shall be deemed to have abandoned the animal. The City may dispose of the abandoned animal as authorized in this Ordinance.
- G. Upon forfeiture of an animal, the Court shall forfeit the bond to pay the cost of care incurred for the animal. If the bond exceeds cost of care, the Court shall exonerate the bond amount and order the security returned to the owner only to the extent the bond exceeds the cost of care incurred for the animal. If at the conclusion of the case, the animal is not forfeited under Section 6-26 or Section 6-28 the Court shall order the bond exonerated and the security returned to the owner minus cost of care incurred for the animal.

Sec. 6-28. Pre-seizure and post-seizure hearings.

- A. Whenever a Peace Officer under Section 6-27 (A) (2) seizes or impounds an animal based on a reasonable belief that very prompt action is required to protect the health or safety of the animal or the health or 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 burden of proof in the seizure hearing pursuant to this article will be by a preponderance of the evidence. The formal rules of evidence will not be applied and reliable hearsay may be admissible. The post-seizure hearing shall be commenced as follows:
- (1) The Police Department or the City, prior to the commencement of any criminal proceedings authorized under Section 6-26 and within seventy - two 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 all of the following:

- (a) The name, business address, and telephone number of the person providing the notice;
 - (b) A description of the animal(s) seized, including any identification upon the animal(s);
 - (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 days, including weekends and City holidays, of the date of the notice. The declaration may 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 is responsible for the cost of care for an animal that was properly seized and impounded to protect the health or safety of the animal or the health or safety of other animals;
 - (f) A statement that the owner is required to post a bond with the court to defray the cost of care for an animal that has been properly seized and impounded to protect the health or safety of the animal or the health or safety of other animals;
 - (g) A warning that if the owner fails to post the bond within ten days of the seizure or five days after the conclusion of the post-seizure hearing, whichever is later, excluding weekends and City holidays, the animal will be deemed abandoned and disposed of by the City.
- (2) The Court shall conduct the post-seizure hearing within five days of the Court's receipt of the request, excluding weekends and City holidays.
- (3) 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 default and a forfeiture of any right to a post-seizure hearing.
- (4) Where there is not a prior judicial determination of probable cause and the need for immediate seizure under Section 6-27 (A)(2) is not present, the owner or keeper of an animal may request a hearing prior to any seizure or impoundment of the animal. The owner or keeper shall produce the animal at the time of the hearing unless, prior to the hearing, the owner or keeper has made arrangements with the Police Department to view the animal upon request of the Police Department, or unless the owner or keeper can provide verification that the

animal has been humanely destroyed by a licensed veterinarian, Animal Control Agency or Animal Welfare Organization. The pre-seizure hearing shall be commenced as follows.

- (5) The Police Department or the City Prosecutor, prior to the commencement of any criminal proceedings authorized under Section 6-26, shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice to the owner or keeper, if known or ascertainable after reasonable investigation, stating the grounds for believing the animal should be seized to protect the health or safety of the animal or the health or safety of other animals. The notice shall include all of the following:
 - (a) The name, business address, and telephone number of the person providing the notice.
 - (b) A description of the animal to be seized, including any identification upon the animal.
 - (c) The authority and purpose for the possible seizure or impoundment.
 - (d) A statement that, in order to receive a pre-seizure hearing, the owner or person authorized to keep the animal(s), or the owner's or keeper's agent, shall request the hearing by signing and returning to the court an enclosed declaration of ownership or right to keep the animal(s) within two days, excluding weekends and City holidays, of the date of the notice.
 - (e) A statement that the owner is responsible for the cost of care for an animal that is properly seized and impounded to protect the health or safety of the animal or the health or safety of other animals.
 - (f) A statement that the owner is required to post with the court a bond to defray the cost of care for an animal that has been properly seized and impounded to protect the health or safety of the animal or the health or safety of other animals.
 - (g) A warning that if the owner fails to post the bond within five days of the seizure, excluding weekends and City holidays, the animal will be deemed abandoned and disposed of by the City.
- (6) The Court shall conduct the pre-seizure hearing within forty-eight hours of the Court's receipt of the request, excluding weekends and City holidays.
- (7) 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 pre-seizure hearing.

- (8) The court, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.
- (a) In the event of an acquittal or final discharge without conviction of a person who was charged under Section 6-26 or animals have not been forfeited pursuant to Sec. 6-27, 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 the Court 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 to the appropriate public agency for lawful disposition. 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. The Court shall, upon demand, forfeit the bond to pay the cost of care incurred for the animal. If the bond amount exceeds cost of care, the Court shall exonerate the bond amount and order the security returned to the owner only to the extent the bond exceeds the cost of care incurred for the animal.
- (b) A person who violates subsection B by failing to produce the animal at the time of the hearing, make arrangements with and allow the Police Department to view the animal upon request, or provide verification that the animal has been humanely destroyed is guilty of a Class 1 misdemeanor.

Sec. 6-29 Disposition of seized or impounded animals.

- A. A Peace Officer who has seized or impounded an animal pursuant to Section 6-26 or Section 6-27, on a showing of probable cause that the animal has been cruelly mistreated as defined in Section 6-226 (A) or neglected as defined in Section 6-26 (B), may request a disposition hearing before a City Judge to determine whether the animal has suffered cruelty or neglect as defined in this section. The hearing shall be set within five business days after the request has been filed.
- B. The Peace Officer who has requested a hearing under subsection A of this section shall cause a notice to be affixed to a conspicuous place at the owner's residence. If the owner fails to appear at the hearing or if the City Judge determines by a preponderance of the evidence that the animal has been cruelly mistreated or cruelly neglected, the City Judge may order the animal forfeited to the officer or any person or agency, including volunteers, contracted with the City to care for an animal that is seized and impounded pursuant to other provisions of this section, or humanely destroyed. The owner shall pay cost of care. The hearing shall be recorded.

- C. The procedures and remedies provided for in this section shall neither require nor preclude other enforcement action on the same facts, including a criminal prosecution of the owner. The procedures and remedies provided for in this chapter are remedial and not punitive and are not precluded by an acquittal or conviction in a criminal proceeding. This section shall not be construed as precluding the destruction of any animal if destruction is otherwise authorized by law, nor shall anything in this section be construed as precluding the spaying or neutering of any animal. If any provision of this section is in conflict with any other provisions of this Code, the provisions of this section shall be controlling.
- D. Appeal by either party of the decision of the City Judge shall be by way of special action to the Superior Court on the record of the hearing. The appealing party shall bear the cost of preparing the record of the hearing on appeal. No appeal shall be taken later than five days after the decision, excluding weekends and City holidays.

SECTION 2. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

SECTION 3. The City Clerk is instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13th day of June, 2017.

Mayor Jerry P. Weiers

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

REVIEWED BY:

Kevin R. Phelps, City Manager