

ORDINANCE NO: 115-2017  
INTRODUCED BY: KUMIN

**AN ORDINANCE AMENDING SECTIONS 505.07(c), 505.071, 505.072, 505.17(a), AND 505.22(e) IN THE GENERAL OFFENSES CODE WITHIN THE CODIFIED ORDINANCES OF THE CITY OF RICHMOND HEIGHTS, OHIO, AND DECLARING AN EMERGENCY.**

WHEREAS, the Council has reviewed Chapter 505 of the General Offenses Code and determined that certain portions thereof be amended to avoid conflict with the general laws of the State of Ohio; and

WHEREAS, the State of Ohio adopted H.B. 60, revising Ohio Revised Code Sections 959.131, 959.132, 959.399, 2921.321, 2929.13, 2929.18, and 2931.18, declaring certain crimes related to animal abuse a felony offense; and

WHEREAS, the City of Richmond Heights cannot designate a criminal action as a lesser offense under the Codified Ordinances than the same action under State law; and

WHEREAS, the amendments to Chapter 505 herein will better protect dogs and provide for the health, safety, and general welfare of the City of Richmond Heights;

NOW, THEREFORE, Be It Ordained by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1. Section 505.07(c), "Cruelty to Animals Generally", in Part Five, "General Offenses", of the City's Codified Ordinances is hereby amended as follows:

**"505.07 CRUELTY TO ANIMALS GENERALLY.**

\* \* \*

(c) Whoever violates this section is guilty of a misdemeanor ~~felony~~ of the second ~~fifth~~ degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including, but not limited to, the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this subsection, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, shall be paid to the former owner of the animal.  
(ORC 959.99(D))"

Section 2. Section 505.071, "Cruelty To Companion Animals", in Part Five, "General Offenses", of the City's Codified Ordinances is hereby amended as follows:

**"505.071 CRUELTY TO COMPANION ANIMALS.**

(a) As used in this section:

(1) "Companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a "pet store" as defined in Ohio R.C. 956.01. "Companion animal" does not include livestock or any wild animal

(2) "Cruelty", "torment" and "torture" have the same meanings as in Ohio R.C. 1717.01.

(3) "Residential dwelling" means a structure or shelter or the portion of a structure or shelter that is used by one or more humans for the purpose of a habitation.

(4) "Practice of veterinary medicine" has the same meaning as in Ohio R.C. 4741.01.

(5) "Wild animal" has the same meaning as in Ohio R.C. 1531.01.

(6) "Federal animal welfare act" means the "Laboratory Animal Act of 1966", Pub. L. No. 89-544, 80 Stat. 350 (1966), 7 U.S.C.A. 2131 et seq., as amended by the "Animal Welfare Act of 1970", Pub. L. No. 91-579, 84 Stat. 1560 (1970), the "Animal Welfare Act Amendments of 1976", Pub. L. No. 94-279, 90 Stat. 417 (1976), and the "Food Security Act of 1985", Pub. L. No. 99-198, 99 Stat. 1354 (1985), and as it may be subsequently amended.

(7) "Dog kennel" means an animal rescue for dogs that is registered under Ohio R.C. 956.06, a boarding kennel or a training kennel.

(8) "Boarding kennel" has the same meaning as in Ohio R.C. 956.01.

(9) "Training kennel" means an establishment operating for-profit that keeps, houses, and maintains dogs for the purpose of training the dogs in return for a fee or other consideration.

(10) "Serious physical harm" **as used in this section does not have the same meaning as used in Section 505.22; "Serious Physical Harm"** means any of the following:

A. Physical harm that carries an unnecessary or unjustifiable substantial risk of death;

B. Physical harm that involves either partial or total permanent incapacity;

C. Physical harm that involves acute pain of a duration that results in substantial suffering or that involves any degree of prolonged or intractable pain;

D. Physical harm that results from a person who confines or who is the custodian or caretaker of a companion animal depriving the companion animal of good, wholesome food and water that proximately causes the death of the companion animal.

**(ORC 959.131(A))**

~~"Serious physical harm," as used in this section, does not have the same meaning as used in section 505.22.~~

(b) No person shall knowingly ~~cause serious physical harm to a companion animal or~~ torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal. **(ORC 959.131(B))**

(c) No person who confines or who is the custodian or caretaker of a companion animal shall negligently do any of the following:

- (1) Torture, torment, or commit an act of cruelty against the companion animal;
- (2) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate shelter;
- (3) Deprive the companion animal of necessary sustenance, or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation, or confinement. **(ORC 959.131(D))**

~~(d) No owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal shall knowingly do any of the following:~~

- ~~(1) Torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against the companion animal;~~
- ~~(2) Deprive the companion animal of necessary sustenance, or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation, or confinement;~~
- ~~(3) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it is reasonably expected that the companion animal would die or experience unnecessary or unjustifiable pain or suffering as a result of or due to the lack of adequate shelter.~~

(d) ~~(e)~~ No owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal shall negligently do any of the following:

- (1) Torture, torment, or commit an act of cruelty against the companion animal;
- (2) Deprive the companion animal of necessary sustenance or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water; if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation or confinement;

- (3) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate. (ORC 959.131(F))

(e)(f) Subsections (b), (c), and (d), ~~and (e)~~ of this section do not apply to any of the following:

- (1) A companion animal used in scientific research conducted by an institution in accordance with the federal animal welfare act and related regulations;
- (2) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate to do so under Ohio R.C. Chapter 4741;
- (3) Dogs being used or intended for use for hunting or field trial purposes, provided that the dogs are being treated in accordance with usual and commonly accepted practices for the care of hunting dogs;
- (4) The use of common training devices, if the companion animal is being treated in accordance with usual and commonly accepted practices for the training of animals;
- (5) The administering of medicine to a companion animal that was properly prescribed by a person who has been issued a license, temporary permit, or

(f)(g) Penalty:

- (1) Whoever violates subsections (b) or and (c)(d) hereof is guilty of a misdemeanor felony of the first~~first~~ degree on a first offense. On each subsequent offense such person is guilty of a felony and shall be prosecuted under appropriate State law. (ORC 959.99 (E)(1)(3))
- (2) Whoever violates subsection (d)(e) hereof is guilty of a misdemeanor of the first~~first~~second degree, on the first offense. On each subsequent offense such person is guilty of a misdemeanor the first degree. (ORC 959.99 (E)(5))
- (3) ~~Whoever violates subsection (e) hereof is guilty of a misdemeanor of the first degree.~~

(3)(4)

A. A court may order a person who is convicted of or pleads guilty to a violation of this section to forfeit to an impounding agency, as defined in Ohio R.C. 959.132, any or all of the companion animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time.

B. A court may order a person who is convicted of or pleads guilty to a violation of this section to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion animal that the agency impounded as a result of the investigation or prosecution of the violation, provided that the costs were not otherwise paid under Ohio R.C. 959.132.

~~(4)~~(5) If a court has reason to believe that a person who is convicted of or pleads guilty to a violation of this section suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court may ~~shall~~ order the offender to pay the costs of the evaluation or counseling. (ORC 959.99)”

Section 3. Section 505.072, “Neglect of Animals”, in Part Five, “General Offenses”, of the City’s Codified Ordinances is amended as follows:

“505.072 NEGLECT OF ANIMALS

\* \* \*

(e) Unlawful restraint of animals. The owner of an animal may restrain an animal on a tether for a reasonable period, provided adequate food, water and ~~she~~alter from the elements is provided. Except pursuant to Section 505.17, tFethering is prohibited:

- (1) Between the hours of 10:00 p.m. and 6:00 a.m.;
- (2) If a heat advisory has been issued by a local or state authority or jurisdiction;
- (3) If a tornado warning has been issued for the jurisdiction by the National Weather Service;
- (4) If the tether is less than 20 feet, provided the tether does not allow the animal to touch the fence or cross the property line or cross onto a public easement;
- (5) If the tether is attached by means of a pinchtype, prongtype, or choketype collar or if the collar is unsafe or is not properly fitted;
- (6) If the tether inhibits the animal's free movement or causes injury or entanglement;
- (7) If the animal does not have access to shade, dry shelter, and a tip-proof water supply

\* \* \*

(h) Whoever violates this section is guilty of ~~neglect of animals~~, a misdemeanor ~~felony~~ of the first ~~fifth~~ degree. The court may order the offender to forfeit the animal and may provide for its disposition, including, but not limited to, relinquishment of the animal to the society or association for the prevention of cruelty to and/or humane treatment of animals.

\* \* \*

~~(j) Whoever violates this section is guilty of a felony of the fifth degree. The court may order the offender to forfeit the animal and may provide for its disposition, including, but not limited to, relinquishment of the animal to the society or association for the prevention of cruelty to and/or humane treatment of animals."~~

Section 4. Section 505.17(a) "Vicious Dogs", in Part Five, "General Offenses", of the City's Codified Ordinances is amended as follows:

~~"505.17 VICIOUS DOGS.~~

~~(a) Definitions:~~

- ~~1. Any dog, excepting a "police dog" as defined in Section 505.22, with a propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of humans or domestic animals;~~
- ~~2. As the term is used in this section, "vicious" dog means:~~
  - ~~A. Any dog which has been judicially or administratively determined, pursuant to Section 505.20, to have a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or~~
  - ~~B. Any dog which has been judicially or administratively determined, pursuant to Section 505.20, to have attacked a human being or other domestic animal; or~~
  - ~~C. Any pit bull terrier, which shall be herein defined as any Terrier breed of dog or any mixed breed of dog which contains an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.~~
  - ~~D. No police dog shall be determined to be a vicious dog.~~

**505.17 NUISANCE, DANGEROUS AND VICIOUS DOGS; PENALTIES.**

**(a) As used in this section:**

**(1)(A) "Dangerous dog" means a dog that, without provocation, and subject to subsection (B), has done any of the following:**

**1. Caused injury, other than killing or serious injury, to any person;**

**2. Killed another dog;**

**Been the subject of a third or subsequent violation of Section 505.17(b).**

**(B) "Dangerous dog" does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.**

(2) “Menacing fashion” means a dog that would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3)(A) “Nuisance dog” means, subject to subsection (B), a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(B) “Nuisance dog” does not include a police dog that, while being used to assist one or more law enforcement officers in the performance of official duties, has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(4) “Police dog” means a dog that has been trained and may be used to assist one or more law enforcement officers in the performance of their official duties.

(5) “Serious injury” means any of the following:

(A) Any physical harm that carries a substantial risk of death;

(B) Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;

(C) Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;

(D) Any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.

(6)(A) “Vicious dog” means a dog that, without provocation and subject to subsection (B), has killed or caused serious injury to any person. “Vicious dog” does not include either of the following:

(B)(1) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(2) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

(7) “Without provocation.” A dog acts “without provocation” when it was not teased, tormented or abused by a person, or it was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

\* \* \*

Section 5. Section 505.22(e), “Assaulting Police Dog or Assistance Dog”, in Part Five, “General Offenses”, of the City’s Codified Ordinances is amended as follows:

“505.22 ASSAULTING POLICE DOG OR ASSISTANCE DOG.

\* \* \*

(e) Penalty:

(1) Whoever violates this section subsection (a) hereof is guilty of a misdemeanor in the first degree. If the violation results in the death of the police or assistance dog then then such person is guilty of a felony and shall be prosecuted under appropriate State law. (ORC 2921.321(E)) assaulting a police dog, and shall be punished as follows:

A. Except as otherwise provided in this section, assaulting a police dog is a misdemeanor of the second degree. If the violation results in the death of the police dog, assaulting a police dog is a felony of the third degree and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the violation results in serious physical harm to the police dog other than its death, assaulting a police dog is a felony of the fourth degree. If the violation results in physical harm to the police dog other than death or serious physical harm, assaulting a police dog is a misdemeanor of the first degree.

B. In addition to any other sanction imposed for assaulting a police dog, if the violation of subsection (a) hereof results in the death of the police dog, the sentencing court shall impose as a financial sanction a mandatory fine under Ohio R.C. 2929.18(B)(10). The fine shall be paid to the law enforcement agency that was served by the police dog that was killed, and shall be used by that agency only for one or more of the corresponding purposes enumerated under Ohio R.C. 2929.321.

C. After payment of the costs described in subsection (e)(1)(B) hereof, if applicable, payment of the cost of further training of the replacement dog that is needed to train it to the level of training that had been achieved by the dog that was killed.

(2) Whoever violates subsection (b) hereof is guilty of harassing a police dog, and shall be punished as herein described. Except as otherwise provided in this subsection, harassing a police dog is a misdemeanor of the second degree. If the violation results in the death of the police dog, harassing a police dog is a felony of the third degree. If the violation results in serious physical harm to the police dog, but does not result in its death, harassing a police dog, is a felony of the fourth degree. If the violation results in physical harm to the police dog, but does not result in its death or in serious physical harm to it, harassing a police dog is a misdemeanor of the first degree.

(3) Whoever violates subsection (c) hereof is guilty of assaulting an assistance dog, and shall be punished as herein described. Except as otherwise provided in this division, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, assaulting an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog other than its death, assaulting an assistance dog is a felony of the fourth degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree.



~~(4) Whoever violates subsection (d) hereof is guilty of harassing an assistance dog, and shall be punished as herein described. Except as otherwise provided in this division, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, harassing an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog, but does not result in its death, harassing an assistance dog is a felony of the fourth degree. If the violation results in physical harm to the assistance dog, but does not result in its death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree.~~

(2)(5) In addition to any other sanction or penalty imposed for the offense under this section, Ohio R.C. 2929, et seq., or any other provision of the Revised Code or this Chapter, whoever violates subsection (a), (b), (c), or (d) hereof is responsible for the payment of all of the following:

- A. Any veterinary bill or bill for medication incurred as a result of the violation by the Municipality regarding a violation of subsection (a) or (b) hereof or by the blind, deaf, hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of subsection (c) or (d) hereof;
- B. The cost of any damaged equipment that results from the violation;
- C. If the violation did not result in the death of the police dog or the assistance dog that was the subject of the violation and if, as a result of that dog being the subject of the violation, the dog needs further training or retraining to be able to continue in the capacity of a police dog or an assistance dog, the cost of any further training or retraining of that dog by a law enforcement officer or by the blind, deaf, hearing impaired, or mobility impaired person assisted or served by the assistance dog;
- D. If the violation resulted in the death of the assistance dog that was the subject of the violation or resulted in serious physical harm to the police dog or the assistance dog that was the subject of the violation to the extent that the dog needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog and of any further training of a new police dog or a new assistance dog by a law enforcement officer or by the blind, deaf, hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog that was the subject of the violation.

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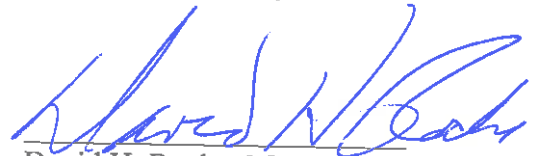
Section 6. Existing Sections 505.07(c), 505.071, 505.072, 505.17(a), and 505.22(e), in Part Five, "General Offenses", of the City's Codified Ordinances and any and all ordinances or parts thereof in conflict herewith are repealed.

Section 7. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal

action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

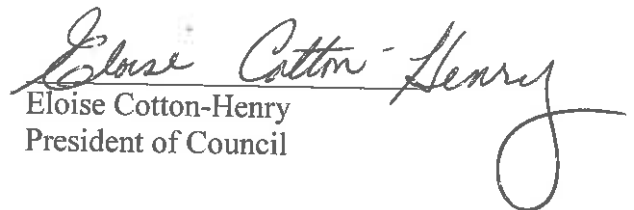
Section 8. This Ordinance is declared to be an emergency measure necessary for the preservation of the public health, safety and general welfare of the citizens of the City of Richmond Heights, and for the further reason that it is necessary to protect the public from nuisance, dangerous, and vicious dogs in compliance with the law of Ohio; wherefore, this Ordinance shall take effect and be in force immediately upon its passage by Council and its signature by the Mayor.

PASSED: 11/14/17

  
David H. Roche, Mayor

APPROVED: 11/14/17

ATTEST: Betsy Traben  
Betsy Traben  
Clerk of Council

  
Eloise Cotton-Henry  
President of Council