

ORDINANCE 2019 - ____

AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER FIVE OF THE COUNTY CODE OF ORDINANCES RELATED TO ANIMALS; AMENDING ARTICLE I, PROVIDING FOR PURPOSE AND DEFINITIONS; AMENDING ARTICLE II, PROVIDING FOR ANIMAL CONTROL AND ENFORCEMENT; AMENDING ARTICLE III, PROVIDING FOR TETHERING OF DOGS; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sec. 125.01, *Fla. Stat.*, authorizes the Board of County Commissioners (“Board”) to perform acts, not inconsistent with law, that are in the common interest of the people of the County; and

WHEREAS, Art. I, §18, *Fla. Const.*, prohibits the Board from imposing penalties except as authorized through enactments of the Legislature; and

WHEREAS, the Legislature authorized boards of county commissioners through Sec. 828.27, *Fla. Stat.*, to enact ordinances relating to animal control and cruelty, which ordinances are to be identical to Ch. 828, *Fla. Stat.*, except that the penalty for violation of such ordinances shall be civil, not criminal; and

WHEREAS, Sec. 828.03, *Fla. Stat.*, authorizes the Board to appoint animal control officers for the purpose of investigating violations of local animal control and cruelty ordinances or any other law of the state for the purpose of protecting animals; and

WHEREAS, Sec. 828.27, *Fla. Stat.*, further authorizes the County to require the mandatory court appearance for certain aggravated or repeat violations of the County’s animal control ordinances; and

WHEREAS, the Board desires to curtail repeat violators of animal control standards from ignoring citations issued by Flagler County Animal Services and to otherwise empower Animal Services to enforce the standards of proper animal care;

NOW THEREFORE, be it ordained by the Flagler County Board of County Commissioners as follows:

SECTION 1. FINDINGS

The above recitals are incorporated herein as true and correct and establish the legislative intent of this Ordinance.

SECTION 2. FLAGLER COUNTY CODE AMENDMENT

Chapter 5 of the Flagler County Code of Ordinances is hereby amended as follows (additions are shown in underline, and deletions are shown in ~~striketrough~~ format):

Chapter 5 – ANIMALS

ARTICLE I. – IN GENERAL

Sec. 5-1. – ~~Penalty~~Purpose, jurisdiction and scope.

This chapter is enacted pursuant to Florida law and is intended to regulate the possession, ownership, care and custody of animals in the interest of the health, safety and welfare of both the citizens and animals of the county. This chapter shall apply to, and be effective within, the unincorporated areas of the county.

Sec. 5-2. – ~~Inoculation of dogs; health certificate.~~Definitions.

~~(a) Each dog possessed or owned within the unincorporated area of the county shall be inoculated annually against the following diseases:~~

- ~~—(1) Canine distemper;~~
- ~~—(2) Infections hepatitis;~~
- ~~—(3) Leptospirosis;~~
- ~~—(4) Tracheobronchitis; and~~
- ~~—(5) Canine parvo virus.~~

~~(b) Dogs shall be vaccinated for rabies as required by Florida law.~~

~~(c) The person who owns or possesses a dog within the unincorporated area of the county shall, at all times, have available for inspection an official health certificate of the dog. As used in this section the term “official health certificate” means a certificate signed by a veterinarian to the dog and shall state that the animal has no contagious or infectious disease.~~

The following terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

Animal means any living dumb creature.

Animal abuse shall mean the commission of any act that constitutes the criminal offense of:

- (1) Euthanasia of dogs or cats under F.S. §828.058, or its successor, or the euthanasia of animals in violation of F.S. §828.065 or its successor;

- (2) Exposing poison under F.S. §828.08 or its successor;
- (3) Cruelty to animals under F.S. §828.12 or its successor;
- (4) Fighting or baiting animals under F.S. §828.122 or its successor;
- (5) Killing a dog or cat with the intent to sell or give away its pelt under F.S. §828.123 or its successor;
- (6) Killing or aggravated abuse of horse or cattle under F.S. §828.125 or its successor;
- (7) Sexual activities involving animals under F.S. §828.126 or its successor;
- (8) Abandonment or confinement of animals without sufficient food, water, or exercise under F.S. §828.13 or its successor.

Animal control officer means any person approved by the Board of County Commissioners and employed or appointed by Flagler County Animal Services to investigate civil infractions relating to animal control or cruelty and to issue citations pursuant to this chapter.

Animal Services means Flagler County Animal Services as the agent appointed by the Board of County Commissioners to investigate violations of this chapter and any other law of the state for the purpose of protecting animals or such other entity as the board may appoint as successor to Flagler County Animal Services.

Owner means any person, organization, or business entity possessing, harboring, keeping or having control or custody of an animal or, if the animal is owned by a person under the age of eighteen, that person’s parent or guardian.

Sec. 5-3.— ~~Inoculation of cats; health certificate~~

- ~~(a) Each cat possessed or owned within the unincorporated area of the county shall be inoculated annually against the following diseases:

 - ~~(1) Feline respiratory infection; and~~
 - ~~(2) Feline distemper.~~~~
- ~~(b) Cats shall be vaccinated for rabies as required by Florida law.~~
- ~~(c) The person who owns or possesses a cat within the unincorporated area of the county shall, at all times, have available for inspection an official health certificate of the cat. As used in this section the term “official health certificate” means a certificate signed by a veterinarian licensed by the state which shows the age, sex, breed, description and health record of the cat, and which shall list the date of all vaccines by the type and lot number administered by a licensed veterinarian to the cat and shall state that the animal has no contagious or infectious disease.~~

~~Sec. 5-4. – Reserved.~~

~~Secs. 5-55-3 – 5-25. Reserved.~~

ARTICLE II. – ~~RESERVED.~~ ANIMAL CONTROL AND ENFORCEMENT

Sec. 5-26. – ~~5-59. – Reserved.~~ Cruelty and Neglect Prohibited.

- (a) It shall be unlawful for any person to commit any act animal abuse as defined herein.
- (b) It shall be unlawful for any person to neglect or mistreat an animal. Such conduct shall include but is not limited to the following:
 - (1) Fail to supply an animal with a continuous supply of fresh water and sufficient quantity of wholesome food.
 - (2) Keep an animal in an enclosure without wholesome exercise, proper ventilation or lighting.
 - (3) Keep, house or maintain an animal in unsanitary conditions or conditions inconsistent with acceptable standards of care for the particular species.
 - (4) Entice or lure an animal off the property of its owner to molest or tease the animal.
 - (5) Failure to provide humane treatment or proper veterinary care or allowing an animal to suffer from illness or injury unnecessarily.
- (c) The owner of an animal shall ensure that the animal does not run at large or stray onto public property or the private property of another without permission from the property owner. Any animal that is off the property of its owner shall be restrained in a manner suitable for the type of animal such that it is under the direct control of the owner.
 - (1) An animal control officer may require an owner with three or more violations of this subsection to install physical restraints in order to prevent further violations of this subsection.
 - (2) This subsection shall not apply to law enforcement officers in the exercise of their duties.

Sec. 5-27. – Enforcement, Citations, and Penalty.

- (a) Animal control officers and law enforcement officers shall be responsible for enforcement of the provision of this chapter. Animal control officers shall be trained and certified in accordance with Florida law. Animal control officers, upon finding probable cause that a violation of the provisions of this chapter

has occurred, have the authority to investigate civil infractions relating to animals and take appropriate action as is reasonably necessary to enforce the provisions and accomplish the purposes of this chapter.

(b) This chapter is an additional, supplemental, and alternative means of enforcing county ordinances related to animals. This chapter does not prohibit the county from enforcing its ordinances by any other means, including the procedures provided in F.S. Ch. 162, or its successor, or as provided in section 1-6 of this Code.

(c) A violation of this chapter is a civil infraction. Law enforcement and animal control officers shall have the authority to issue citations to persons the law enforcement or animal control officer has probable cause to believe has committed an act in violation of any provision of this chapter. Any person who willfully refuses to sign and accept a citation issued pursuant to this chapter is guilty of a misdemeanor of the second degree, punishable as provided in F.S. §§775.082 or 775.083, or their successors. It is a violation of this chapter for any person to resist, obstruct, hinder, or interfere with a law enforcement or animal control officer in the enforcement of this chapter.

(1) The maximum civil penalty for violations of this chapter shall not exceed \$500. A civil penalty less than the maximum amount shall be assessed if the violator does not contest the citation. Animal Services shall establish a schedule of penalties for uncontested violations. The schedule shall include a surcharge of \$5 for each civil penalty for violation of this chapter. The proceeds from these surcharges shall be used to defray the costs of training for animal control officers. The Clerk of the Court and Comptroller shall remit the \$5 surcharge from each fine paid to Animal Services.

(i) All civil penalties shall be satisfied by payment made payable to and acceptable by the Clerk of the Court. All monies collected pursuant to this chapter, less the Clerk's administrative fee, shall be credited to Animal Services to be used solely for defraying the expenses of implementing this chapter, less any statutorily imposed fees for administrative handling of such sums.

(ii) Animal Services may refer judgments entered against violators of this chapter to a collection agency for processing, collection and notification of failure of payment to any credit bureau. Any expenses imposed on the owner by operation of this chapter which remain unpaid as of the time of judicial handling shall be ordered paid as part of the court's disposition. Animal Services may also seek payment of outstanding expenses as restitution in prosecuting any violation of this chapter, including for any companion or related criminal or civil prosecution. Nothing

herein shall relieve the owner of civil liability for injuries or damage which result from actions or inactions that are violations of this chapter.

(2) An alleged violator may pay the civil penalty indicated on the written citation at any time within 30 days of the date of issuance of the written citation. Payment of the civil penalty waives the alleged violator's right to a hearing to contest the citation and shall constitute an admission of the violation. An alleged violator may contest the validity of a citation by requesting a hearing before a judge of the Flagler County Court. The alleged violator shall request a hearing in writing within thirty days from the date of issuance according to the instructions on the citation.

(3) If an alleged violator fails to pay the civil penalty, fails to appear in court to contest the citation, or fails to appear in court as required by subsection (c) below, the court may issue an order to show cause upon the request of the law enforcement or animal control officer. This order to show cause shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court. It shall be a separate violation for any person who does not contest a citation issued under this chapter to fail to pay the citation.

(d) An animal control officer, after consultation with the county attorney, may issue a citation requiring the mandatory court appearance of an alleged violator for the following violations:

(1) Aggravated violations of any county ordinance resulting in the unprovoked biting, attacking, or wounding of a domestic animal;

(2) Violations resulting in the destruction or loss of personal property;

(3) Second or subsequent violations of the provisions of this chapter pertaining to animal cruelty; or

(4) Violations of any part of this chapter resulting in the issuance of a third or subsequent citation to a person.

Animal Services shall maintain records to prove the number of citations issued to the person. Citations issued pursuant to this subsection must clearly inform the person of the mandatory court appearance. Persons required to appear in court pursuant to this subsection do not have the option of paying the fine to avoid appearing before the court.

ARTICLE III. – CONFINEMENT OF DOGS; INNOCULATION OF DOGS, CATS

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Sec. 5-61. – Leashed/under control of owner and tethering.

(a) For purposes of this subsection:

~~(a)~~(1) All dogs shall be confined to their owner's property or leashed and under the control of the owner and may not run at large outside of the owner's property.

~~(b)~~(2) All dogs, except those otherwise exempted within this article and those identified as service animals as defined in F.S. § 413.08, or its successor, are prohibited at all times from active public recreation areas where organized recreational activities take place, including sports fields, ball fields, tennis and basketball courts, and adjacent spectator areas, except an owner shall be permitted to pass through these areas to access permissible areas.

~~(c)~~(3) This subsection shall not apply to designated dog parks; provided, however, that an owner may not knowingly permit a sick, dangerous, or rabid dog within, or to remain within, a dog park. All dogs within a dog park, as a condition of the use of the facility, shall be appropriately vaccinated, and an owner shall retain on his/her person such proof of ~~current~~current vaccinations in the form of the "official health certificate" consistent with section 5-69 of this chapter for the duration of the use of the dog park. An owner's failure or refusal to provide an official health certificate when requested by any animal control officer or sheriff's deputy shall be a violation of this provision and be subject to the penalties provided within this article.

(b) Except as otherwise provided herein, the unsupervised, unattended outdoor tethering of a dog is prohibited, whether or not the dog is otherwise inside a fenced or enclosed outdoor area. Where the dog is being held or kept outdoors, a tether may be used as a means of direct control of the dog, only if all of the following conditions are met:

(1) The dog is in visible range of the owner or responsible party, which person must also be outside with the dog at all times. In no event may the owner or responsible person leave the premises while a dog is left tethered, unattended, and outdoors. A dog may never be left tethered and unattended on vacant or abandoned property.

(2) Any tether must be of sufficient strength to prevent escape. The tether must be attached to the animal by a properly applied collar or harness, with a swivel hook, and configured so as to protect the animal from injury and prevent entanglement with other objects and/or animals. A leash or lead may not be attached directly to the animal's neck in lieu of

a manufactured collar or harness. Chain, choke or prong collars are prohibited during tethering of an animal. The tether shall not be attached to a stationary object or trolley at a point or location that would allow the animal to extend the tether over a fence or other object or edge in such manner that could result in the strangulation of or injury to the animal.

(3) Notwithstanding the exceptions provided below, a dog that is sick or injured cannot be tethered as a means of confinement by the owner nor may a puppy under the age of six months be tethered at any time unless the owner is present and attending to the puppy during the entire time the puppy is tethered.

(4) A dog classified as dangerous pursuant to F.S. Ch. 767, or its successor, may only be kept on a tether according to the foregoing requirements if it is otherwise secured within a proper enclosure as required by law.

(5) In accordance with F.S. §163.3162, or its successor, the provisions of this subsection do not apply to dogs that are kept or used on lands being used for a bona fide farm operation on lands classified as agricultural pursuant to F.S. §193.461 or its successor.

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Sec. 5-69.—Applicability and enforcement in unincorporated areas; definition. Inoculation of dogs; health certificate.

~~This article shall apply to and be enforced in the unincorporated areas of the county. For the purposes of this article, “owner” shall mean any person, firm, corporation or organization possessing, harboring, keeping or having control or custody of an animal or, if the animal is owned by a person under the age of eighteen (18), that person’s parent or guardian.~~

(a) Each dog possessed or owned within the unincorporated area of the county shall be inoculated annually against the following diseases:

- (1) Canine distemper;
- (2) Infections hepatitis;
- (3) Leptospirosis;
- (4) Tracheobronchitis; and
- (5) Canine parvo virus.

(b) Dogs shall be vaccinated for rabies as required by Florida law.

(c) The person who owns or possesses a dog within the unincorporated area of the county shall, at all times, have available for inspection an official health certificate for the dog. As used in this section the term “official health

certificate” means a certificate signed by a veterinarian to the dog and shall state that the animal has no contagious or infectious disease.

Sec. 5-70. – Enforcement. Inoculation of cats; health certificate.

~~The animal control officer, in conjunction with the sheriff of the county, shall be responsible for enforcement of the provisions of this article. It is a violation of this article for any person to resist, obstruct, hinder, or interfere with the animal control officer or the sheriff’s deputies in the enforcement of this article.~~

(a) Each cat possessed or owned within the unincorporated area of the county shall be inoculated annually against the following diseases:

(1) Feline respiratory infection; and

(2) Feline distemper.

(b) Cats shall be vaccinated for rabies as required by Florida law.

(c) The person who owns or possesses a cat within the unincorporated area of the county shall, at all times, have available for inspection an official health certificate for the cat. As used in this section the term “official health certificate” means a certificate signed by a veterinarian licensed by the state which shows the age, sex, breed, description and health record of the cat, and which shall list the date of all vaccines by the type and lot number administered by a licensed veterinarian to the cat and shall state that the animal has no contagious or infectious disease.

Secs. 5-71. – 5-72. Violation; penalty. Reserved.

~~A violation of this article is a civil infraction which carries a maximum civil penalty not to exceed five hundred dollars (\$500.00). If a person who has committed the civil infraction does not contest the citation, the civil penalty shall be less than the maximum civil penalty. Such lesser amount shall be set by the law enforcement officer or animal control officer. Any civil penalties assessed and paid shall be used solely for defraying the expenses, costs and contracts in implementing this article, less any statutorily imposed fees for administrative handling of such sums. Further, any expenses imposed on the animal’s owner by operation of this article that remain unpaid as of the time of judicial handling shall be ordered paid as part of the court’s disposition. The county may also seek payment of outstanding expenses as restitution in any companion or related civil or criminal prosecution. In the event of a violation of F.S. ch. 767, the animal’s owner shall be subject to applicable criminal penalties in addition to any civil infraction. Further, nothing herein shall relieve the owner of civil liability for injuries or damage that result from actions or inactions that are violations of the provisions herein.~~

Sec. 5-72. Issuance of citation; show cause order.

~~A law enforcement or animal control officer who has probable cause to believe that a person has committed an act in violation of this article may issue a citation to the person. Such a citation may be contested in the county court. If a person fails to pay the civil penalty or fails to appear in court to contest the citation, the court may issue an order to show cause upon the request of the law enforcement or animal control officer. This order shall require such a person to appear before the court to explain why action on the citation has not been taken. If any person who is used such an order fails to appear in response to the court's directive, that person may be held in contempt of court.~~

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~~**Sec. 5-74. Maximum surcharge imposed for violation; use of proceeds.**~~ Reserved

~~A surcharge in the maximum amount permitted by state law shall be imposed upon each violator receiving a civil penalty. The proceeds shall be used to defray the costs for required training courses for animal control officers.~~

SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS

- A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or re-lettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.
- B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 4. SEVERABILITY

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

[Signature Page To Follow.]

PASSED AND ADOPTED BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS, THIS 19TH DAY OF AUGUST 2019.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

ATTEST:

Donald T. O'Brien Jr., Chair

Tom Bexley, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney