

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 15-027**

**AN ORDINANCE TO AMEND CHAPTER 3 OF THE WILMINGTON CITY CODE RELATING TO THE TREATMENT, CARE, CONTROL AND LICENSING OF ANIMALS**

**Rev. #1  
#4070**

**Sponsor:**

**Council  
Member  
Shabazz**

**Co-Sponsors:**

**Council  
Members  
D. Brown  
Chukwuocha  
Prado  
Dorsey Walker  
M. Brown**

**WHEREAS**, Chapter 3 of the City Code sets forth provisions regarding the treatment, care, control and licensing of domestic animals in the City of Wilmington, together with provisions relating to animal control; and

**WHEREAS**, Chapter 3 of the City Code includes section 3-16 containing “breed specific” registration provisions about “pit bull terrier dogs;” and

**WHEREAS**, upon a comprehensive review by the City Administration and City Council, the Council deems it necessary and appropriate to amend Chapter 3 by modifying the provisions relating to animal cruelty to include a prohibition against “tethering;” modifying dog licensing provisions; modifying certain penalty provisions; deleting pit bull terrier dog registration requirements; aligning provisions related to the seizure, impoundment, determination and confinement of dangerous and potentially dangerous dogs with applicable State law; and prohibiting the feeding of pigeons on public property to abate the nuisance caused by the excessive gathering of pigeons and the resulting accumulation of fecal matter, together with other miscellaneous changes.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** Chapter 3 of the City Code is hereby amended by deleting the stricken language and adding the underlined language:

**Sec. 3-1. - Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Animal control agency* means a governmental agency or a non-governmental entity acting alone or in concert with other governmental units legally authorized by the City through contract or agreement to enforce the provisions of this chapter.

*Animal control officer* means any person employed by ~~the Delaware Society for the Prevention of Cruelty to Animals,~~ the entity or governmental agency with which the City has entered into a contract or agreement to enforce the provisions of this chapter as its enforcement officers and for purposes of this chapter, any Wilmington police officer whenever called upon to enforce any provisions of this chapter.

*Animal shelter* means any facility operated by a humane society, or municipal or other governmental agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

*At large or Running at Large* means any dog which is off the property of his owner and not under ~~restraint.~~ the control of the owner (or a person acting for the owner) by means of a leash that is capable of physically restraining the movement of such dog. A dog located in a designated "off-leash" dog park or area and attended by his owner (or a person acting for the owner), but off his leash shall not be considered "at large."

~~*Dangerous dog animal* means any dog or other animal that causes death or injury to a person or to another animal, or attacks a person causing physical contact, whether or not it results in injury to the person. Any such dog or other animal shall automatically be deemed dangerous, except only as provided herein, and all rules and regulations concerning dangerous animals shall be immediately enforced upon the owner. Records shall be kept by the Delaware S.P.C.A. and shall be forwarded to the Wilmington Police Department, each of which shall keep a separate file for animals deemed dangerous.~~

~~No animal shall be declared dangerous or a public nuisance, if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other crime upon the premises occupied by the owner of the animal, or was teasing, tormenting, abusing or assaulting the animal or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the animal, or at the time was committing or attempting to commit a crime. means any dog declared to be dangerous by the Dog Control Panel pursuant to 9 Del. C. §925 or any potentially dangerous dog kept or maintained in violation of 9 Del. C. §926(b).~~

*Dog* means any animal which is classified as canis lupus familiaris.

*Dog Control Panel or Panel* refers to the dog control panel established pursuant to 9 Del. C. §921.

Domestic Animal means a dog, cat, or other animal, the keeping of which is not otherwise prohibited, that has been raised or maintained in confinement or otherwise domesticated as to live in a tame condition.

Microchip means an identifying device consisting of a microchip or similar device that is humanely and permanently installed in or injected under the skin of an animal and is designed so that it provides when scanned by an electronic reader, provides readable information designed to locate the owner of the animal.

*Owner* means any person owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

Physical injury means the impairment of a physical condition or substantial pain.

Potentially dangerous dog means any dog declared to be potentially dangerous by the Dog Control Panel pursuant to 9 Del. C. §926.

~~*Pit bull terrier*~~ shall mean any and all of the following dogs:

- ~~(1) — Staffordshire bull terrier breed of dogs;~~
- ~~(2) — American Staffordshire terrier breed of dogs;~~
- ~~(3) — American pit bull terrier breed of dogs;~~
- ~~(4) — Dogs which have been registered at any time as any of the specified breeds; and~~
- ~~(5) — Dogs which have the appearance of being predominantly of the breed of dogs known as Staffordshire bull terrier, American Staffordshire terrier, or American pit bull terrier. A dog shall be deemed to have the "appearance of being predominately of the breed of dogs" if the dog exhibits the physical characteristics which substantially conform to the standards established by the American Kennel Club or the United Kennel Club for any of these breeds. If there is some question as to the dog's breed at the time of seizure, the determination shall be made by the state S.P.C.A. If officials classify the dog as a pit bull terrier, or as a mixed breed dog with pit bull characteristics, the owner must, within 48 hours of notification that the dog is deemed to conform to the above definition and before redemption of said animal from the state S.P.C.A., register the dog according to the requirements outlined in section 3-16 of this chapter.~~

*Public nuisance animal* means any domestic animal or group of domestic animals which:

- (1) Is repeatedly found at large more than four times in a consecutive twelve month period of time. Cats participating in a Trap-Neuter-Return population control program do not have owners and shall not be considered "at large";
- (2) Significantly dDamages the property of anyone other than its owner;
- (3) While off its owner or custodian's property mMenaces passersby or chases passing vehicles, or exhibits behavior which requires a defensive action by any person to prevent physical contact, bodily injury or property damage when such person is conducting himself peacefully and lawfully, or engages in an attack which results in property damage; or
- (4) Barks, whines, howls or emits any sound in an excessive or continuous fashion for a period of ten consecutive minutes or makes such noise intermittently for one-half hour or more; provided, however, that at the time the animal is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or that there is no other act by persons which teased or provoked the animal, whether intentional or unintentional.

Tethering means fastening or restraining with a rope, chain, cord or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

*Restraint* means any animal secured by a leash or lead, or within the real property limits of its owner; or within a vehicle being driven or parked on the streets.

*Secure enclosure* means a secure enclosure for an ~~vicious~~ animal when it is not confined in a locked building or house shall mean a pen, or a fenced area, or a dog-run area, or other structure on the premises of its owner or of any other person authorized by the owner to harbor such animal suitable to prevent the entry of young children and designed to prevent the animal from escaping. and which Such pen, structure, fenced area or dog-run area, shall be kept locked, all sides of which shall be six feet in height or, if less than six feet in height, shall have a secured top, and shall provide protection from the elements for the animal. If it the pen, structure, fenced area or dog-run area has no bottom secured to the sides, then the sides shall be embedded into the ground to a depth of not less than ~~one foot~~ two feet. Any such enclosure shall be subject to inspection by the department of licenses and inspections or by any animal control officer in order to assure compliance with the provisions of this chapter.

*Serious physical injury* means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or impairment of the function of any bodily organ.

*Wild animal* means any live monkey, nonhuman primate, raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx or any other warm-blooded animal which can normally be found in the wild state.

**Sec. 3-2. - Interpretation.**

This chapter is to be interpreted in a manner which allows the greatest protection of the citizenry of this city and the most humane treatment of animals, while allowing the greatest possible freedom to well-trained animals under control of a competent person.

**Sec. 3-3. - Inspection of buildings, dwellings, etc., generally; right of entry of animal control officers.**

- (a) The animal control officer shall have the right to enter upon any outside premises at all reasonable times for the purpose of discharging the duties imposed upon them by this chapter where they deem it necessary for the welfare of an animal.
- (b) The code official is hereby authorized to make inspections to determine the condition of buildings, dwellings, and premises including the land on which the same are located and including vacant lots, located within this city, in order that he may perform his duty of safeguarding the health and safety of the occupants of buildings, dwellings and land, and the general public. For the purposes of making such inspections, the code official is hereby authorized to enter, examine and survey between the hours of 8:00 a.m. and 5:00 p.m. all buildings, dwellings, lands and premises. The owner or occupant of every building, dwelling, land and premises, or the person in charge thereof, shall give the code official free access to such building, dwelling, land and premises during such time for the purpose of such inspection, examination and survey; provided, that such inspection, examination or survey shall not have for its purpose the undue harassment of such owner or occupant and that such inspection, examination or survey shall be made so as to cause the least amount of inconvenience to such owner or occupant consistent with the efficient performance of the duties of the code official.
- (c) Nothing in this section shall be construed to prohibit the entry of the code official: (1) At any time when an actual emergency which tends to create an immediate danger to public safety exists, or (2) at any time when such an inspection, examination or survey may be requested by such owner or

occupant; provided, however, that any such requested inspection, examination or survey is otherwise authorized and, further, that nothing herein shall be construed to mean that the code official is required to perform such requested inspection, examination or survey.

- (d) For purposes of this section and the enforcement provisions of this Code, "code official" shall mean and include the department of licenses and inspections, the city police department, ~~the state S.P.C.A~~ or other designated authority charged with the administration and enforcement of this Code and chapter, and a duly authorized representative. The lead agency in the city government in enforcing this provision is the city police department.

**Sec. 3-4. - Enforcement contract.**

The ~~council~~ City of Wilmington shall may enter into a contract or agreement with the ~~Delaware Society for the Prevention of Cruelty to Animals or other nonprofit corporation~~ an entity or governmental agency organized for similar purposes to perform the duties of enforcing the provisions of this chapter. ~~If the contracting party is an organization other than the Delaware Society for the Prevention of Cruelty to Animals, all references to the Delaware Society for the Prevention of Cruelty to Animals shall refer to the actual contracting party.~~

**Sec. 3-5. - Enforcement.**

- (a) ~~The Delaware Society for the Prevention of Cruelty to Animals~~ animal control agency contracted to enforce this chapter may establish whatever regulations it deems necessary to facilitate enforcement of the provisions of this chapter.
- (b) The city police department, department of licenses and inspections, and department of public works shall enforce any and all regulations established to facilitate enforcement of this chapter.
- (c) The animal control officers shall have all powers and duties of police officers of the city, limited however to the powers and duties incident to the enforcement of this chapter and other statutes, ordinances and regulations concerning the ~~registration~~ licensing of dogs, the prevention of annoyance therefrom, the prevention of cruelty to animals, and the taking up and impounding of animals at large. These powers and duties shall include the power to issue summonses compelling appearance in the court having jurisdiction to answer charges for violations of this chapter.

**Sec. 3-6. - Necessary action in addition to penalties.**

In addition to the penalties prescribed in this chapter, the court may take any action it deems necessary for the best interest of the animal involved and the welfare of the neighborhood in which that animal is harbored.

**Sec. 3-7. - Impoundment of animals at large, nuisance animals, etc.; notification of owners; redemption fees; disposition of unclaimed animals; notice of violation.**

- (a) Animals at large, ~~unrestrained animals~~ and nuisance animals shall ~~shall~~ may be taken by the police, or animal control officers, and impounded in an animal shelter and there confined in a humane manner.
- (b) Any ~~dangerous domestic animal, any wild animal, any dog or other animal used for fighting,~~ or any sick or injured animal other than a dog carrying a current license tag may be destroyed ~~immediately~~ after impounding, provided that such action is approved by an authorized officer or employee of the ~~Delaware S.P.C.A.~~ animal control agency contracted to perform animal control services. Any other animal shall be held for ~~three days, except that dogs carrying a current license tag shall be held for seven~~ five days. Under no circumstances shall a pit bull terrier which has not been properly licensed and registered in accordance with this section be released. If the state S.P.C.A. classifies a dog as a pit bull terrier or as a mixed breed dog with pit bull terrier characteristics, the owner must either register the dog within 48 hours of notification, exclusive of Sundays and holidays, and pay a \$150.00 redemption fee to the state S.P.C.A. prior to retrieving it. If the dog is not retrieved within that time period, the dog becomes the property of the state S.P.C.A., who may dispose of it at its discretion.
- (c) If, by a license tag or other means, the owner of an impounded animal can be identified, the animal control officer shall immediately upon impoundment notify the owner by ~~telephone or~~ written notice.
- (d) An owner reclaiming an impounded ~~eat~~ animal shall pay a any applicable fees charged by the animal shelter for the boarding of the animal of \$2.00 for the first day plus \$1.00 for each succeeding day the animal has been impounded.
- (e) ~~Any owner reclaiming an impounded dog shall pay a fee of \$8.00 for the first day plus \$3.00 for each succeeding day the animal has been impounded.~~
- (f) ~~An owner reclaiming any other type of impounded animal shall pay a fee of \$5.00 plus a sum determined by the Delaware Society for the Prevention of Cruelty to Animals in an amount comparable to the cost of boarding the animal for each day the animal has been impounded; however, such daily fee cannot be in excess of \$10.00 per day.~~
- (g)(e) Any animal not reclaimed by its owner within ~~seven~~ five days shall become the property of the ~~Delaware Society for the Prevention of Cruelty to Animals~~ animal control agency and shall be placed for adoption in a suitable home or humanely euthanized.

- (h)(f) In addition to or in lieu of impounding an animal found at large or a public nuisance animal, the animal control officer, humane officer or police officer may issue to the known owner ~~or affix securely to the door of the house or apartment from which the noise is emanating a notice of ordinance violation compelling appearance in municipal court.~~ In lieu of appearance in court, the ~~offending owner shall pay a minimum fine of \$5.00 for each violation.~~ a criminal summons compelling the appearance of the offending owner in court.

**Sec. 3-7.1. - Public nuisance animals.**

- (a) A reasonable attempt shall be made to notify the owner of any animal suspected of constituting a public nuisance.
- (b) Every public nuisance animal shall, upon demand, be delivered to the animal control agency contracted to perform animal control services Delaware Society for the Prevention of Cruelty to Animals. It shall be unlawful for the owner of a public nuisance animal to refuse to surrender such animal to a control officer. ~~Such refusal is punishable by a fine of \$20.00.~~
- (c) A public nuisance animal which has been impounded by the animal control officer may be redeemed by the owner only upon the conditions established in this chapter. Any animal found unredeemable by the ~~Delaware Society for the Prevention of Cruelty to Animals~~ animal control agency shall be disposed of in a humane manner.

**Sec. 3-8. - Destruction of animals for humane reasons.**

When, in the judgment of the ~~Delaware Society for the Prevention of Cruelty to Animals~~, animal control agency contracted to perform animal control services, it is determined that any animal should be destroyed for humane reasons, or to protect the public from imminent danger to persons or property, such animal may be destroyed without regard to any time limitations otherwise established in this chapter.

**Sec. 3-9. - Licensing of dogs—Required; fees; exemptions; penalty for failure to license dogs.**

- (a) *Generally.* No person shall own, keep, or harbor any dog over the age of six months within the city limits unless such dog is licensed. Newly acquired dogs over the age of six months or dogs belonging to people moving into the city must be licensed within 30 days of the event. Written application for such license shall be made to the division of revenue or such agents of the ~~Delaware Society for the Prevention of Cruelty to Animals or the Delaware Humane Society~~ as shall be designated by the city, and shall state the name and address of the owner and the name, breed, color, age, and sex of the dog,



the sterilization status of the dog, and the microchip number if the dog has been microchipped.

(b) *Payment of yearly license fee.*

(1) The yearly license fee shall be paid at the time of making application, a numbered receipt given to the applicant, and a numbered metallic tag or an alternative method of identification, such as, but not limited to, a microchip, shall be issued to the owner.

(2) There shall be a yearly fee for licensing dogs in the city of \$10.00 per spayed or neutered animal or for a fee of \$20.00 a two-year license may be obtained for a spayed or neutered animal or for a fee of \$25.00 \$30.00 a three-year license may be obtained for a spayed or neutered animal. The yearly licensing fee for dogs in the city that are not spayed or neutered shall be \$15.00 per animal or for a fee of \$30.00 a two-year license may be obtained for an animal that is not spayed or neutered or for a fee of \$40.00 \$45.00 a three-year license may be obtained for an animal that is not spayed or neutered. ~~The Delaware Humane Society and the Delaware Society for the Prevention of Cruelty to Animals and a~~ Any other nonprofit entity approved by the finance department to issue a license shall be entitled to retain ~~\$5.00 for each yearly license and \$10.00 for each three-year license fee~~ the license fees collected by them as reimbursement for their administrative costs and to enable the entity to promote the licensing of dogs in conjunction with the City's efforts.

(c) *Proof of rabies inoculation required.* All owners applying for a license must show to the satisfaction of the licensing authority that the animal for which the license is being obtained has been inoculated against rabies ~~within the last two years~~ and the inoculation is current, and shall remain current through the licensing period if the license sought to be purchased is greater than one year.

(d) *Proof of spay, neuter.* Any owner claiming that his dog has been spayed or neutered must show to the satisfaction of the licensing authority that such operation has been performed.

(e) *Exemptions from license fees.* License fees shall not be required for Seeing Eye dogs, government police dogs or dogs belonging to a nonresident of the city and kept within the boundaries of the city for not longer than 30 days; provided, that all dogs of nonresidents shall at the time of entry into the city be properly vaccinated against rabies, and while being kept within the city, shall meet all other requirements of this chapter. Any owner claiming either of these exemptions has the burden of proving to the satisfaction of the licensing authority that the dog in question is used in one of such capacities.

(f) *Penalties.* ~~Any owner harboring an unlicensed dog over the age of six months shall be fined \$50.00. If the matter is before the court, in addition to this fine,~~

~~the court shall order the defendant to obtain a license for the animal at the earliest possible time.~~

**Sec. 3-10. - Same—License tags.**

- (a) Upon complying with the provisions of section 3-9, and unless an alternative method of identification, such as, but not limited to, a microchip, is issued, there shall be issued to the owner a numbered metallic tag, stamped with the number and the year for which issued. The shape or design of such tag shall be changed from year to year.
- (b) Every owner is required to see that the tag is securely fastened to the dog's chain, collar or harness which must be worn by the dog at all times.
- (c) If a metallic license tag issued for a dog shall be lost, the owner ~~may~~ must obtain a replacement tag upon the payment of \$0.25.
- (d) No person may use any license for any animal other than the animal for which it was issued.
- (e) No person shall remove from the neck of any dog the license tag issued pursuant to this section nor tamper or alter such tag in any manner.
- ~~(f) Penalties for violations of this section are as follows:~~
  - ~~(1) For a violation of subsection (b) of this section, a fine of \$25.00.~~
  - ~~(2) For violation of subsection (d) or (e) of this section, a fine of \$50.00.~~

**Sec. 3-11. - Restraint and confinement; penalties for violation of section.**

- (a) All ~~animals~~ dogs shall not only be kept under restraint at all times, but also, while on any public street, highway, lane, alley, or sidewalk, or in or on any part of any public park or parkland, public square, or other public space, or in or on any open space that is private property without the consent of the owner, shall be secured by a leash or chain not exceeding 6 feet in length and of sufficient tensile strength to restrain the particular animal and shall be securely muzzled as may be required by subsection (d)(1) of this section. If, in any park that is located partly or entirely in the city, there is a designated area for dogs to be without a leash or chain, but with their owners or other responsible persons, then the requirement of a ~~leach~~ leash or chain shall not apply but only within such designated area.
- (b) No owner shall fail to exercise proper care and control of his domestic animals to prevent them from becoming a public nuisance- or a dangerous dog, including but not limited to permitting another individual who cannot reasonably control the actions of the dog to walk his or her dog. Whether it is the owner or another individual who accompanies the dog while it is in a public space or private property, the owner of the dog shall be strictly liable for a violation of this section.

- (c) Every female dog or cat in heat shall be confined in a building or other enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding.
- (d)
- (1) ~~Every dog designated as a dangerous animal dog or potentially dangerous dog by the Dog Control Panel and permitted to remain with its owner shall be kept, maintained and confined by its owner consistent with 9 Del. C. §925(b) and 9 Del. C. §926(b). or authorized agent of its owner within a building or secure enclosure and, whenever off the premises of its owner or the owner's agent, shall be securely muzzled and be restrained with a chain having a minimum tensile strength of 300 pounds and not more than three feet in length, or be caged. Every person harboring a dangerous animal is charged with an affirmative duty to confine his animal in such a way that children do not have access to such animal. No person shall own or harbor any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging such animal to perpetrate unprovoked attacks upon human beings or domestic animals.~~
- (2) In addition:
- a. It shall be unlawful:
- (i) ~~For any animal to attack any person or another animal with or without the command of its owner; or~~
- (ii) ~~F~~for any animal to attack any person or another animal with or at the command of its owner, in which case, the intent of the owner to have the attacking animal injure the person or animal shall be presumed and the attack shall be deemed to be an assault. No one under the age of 18 years may own, control or attempt to control a dangerous animal.
- b. It shall be unlawful for any person under the age of 18 years to purchase any dog in the city. It shall be unlawful for any person regardless of age to sell or transfer the ownership of any dog without proof of required inoculations and a license that is valid at the time of such sale or transfer.
- c. It shall be the responsibility of the owner of any animal to exercise due diligence to move the animal away from others whenever on any city sidewalk or alley or other area of public access. It shall be unlawful for any owner to permit his or her animal to interfere with pedestrian traffic on any public sidewalk, road, street, alley or other public space. In that

regard, any person who is a pedestrian walking without an animal, shall have and be afforded the right-of-way.

d. No person shall own or harbor any animal for the purpose of animal-fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging such animal to perpetrate unprovoked attacks upon human beings or domestic animals.

- (e) Any person convicted of any violation of subsections (a) through (d) of this section, or the parent or guardian of a juvenile found to have violated any of subsections (a) through (d), shall pay a mandatory and nonsuspendable fine of at least the minimum fine for each offense as follows:
- (1) For a violation of subsection (a) of this section, a fine of not less than \$250.00 nor more than \$500.00 for the first offense, a fine of not less than \$500.00 nor more than \$1,000.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$2,500.00 for each subsequent offense, except that the owner of any animal, not within the property limits of its owner or within a vehicle being driven or parked on the public streets which, without provocation, bites a person shall be fined not less than \$250.00 nor more than \$1,000.00 for the first offense, shall be fined not less than \$500.00 nor more than \$2,500.00 for the second offense, and shall be fined not less than \$1,000.00 nor more than \$5,000.00 for each subsequent offense, unless the provisions of subsection (d) of this section apply.
  - (2) For a violation of subsection (b) of this section, a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for each subsequent offense.
  - (3) For a violation of subsection (c) of this section, a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for the third offense.
  - (4) For any violation of subsection (d) (1) of this section ~~which shall be classified a misdemeanor, the penalties and fines shall be consistent with 9 Del. C. §928. a fine of not less than \$500.00 nor more than \$1,000.00 for the first offense, and a fine of not less than \$1,000.00 nor more than \$2,500.00 for each subsequent offense. Upon conviction in any court of an offense under subsection (d) of this section, the court shall cause a report to be forwarded to the state department of~~

natural resources and environmental control. Such report shall contain the name of the defendant, the name of the animal, the license number of the animal, the date of the offense and the date of the conviction. In addition, for each violation, there shall be a mandatory impoundment of the animal and discretionary review by the Delaware Society for the Prevention of Cruelty to Animals to determine whether the animal should be destroyed pursuant to section 3-8. The Delaware Society for the Prevention of Cruelty to Animals may consider any evidence material to whether such animal constitutes a threat to human beings or other animals.

- (5) For any violation of subsection (d)(2)a. and subsection (d)(2)d., a fine of not less than \$500.00 nor more than \$1,000.00 for the first offense, and a fine of not less than \$1,000.00 nor more than \$2,500.00 for each subsequent offense. Upon conviction in any court of an offense under subsection (d)(2)a. and subsection (d)(2)d. of this section, the court shall cause a report to be forwarded to the state department of natural resources and environmental control. Such report shall contain the name of the defendant, the name of the animal, the license number of the animal, the date of the offense and the date of the conviction.
- (6) For a violation of subsection (d)(2)b. and subsection (d)(2)c. of this section, a fine of not less than \$250.00 nor more than \$1,000.00 for the first offense, a fine of not less than \$500.00 nor more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 nor more than \$5,000.00 for the third offense.

**Sec. 3-12. - Accumulation of dog, cat, pigeon or other animal or domestic bird fecal matter.**

- (a) Every person owning, possessing, harboring, tolerating or having the care, charge, control or custody of one or more dogs, cats, pigeons or other animals or domestic birds shall take all reasonable measures to prevent accumulation of fecal matter of the same in the area in which such animals or birds are customarily kept or customarily are allowed to stay or remain. No such person shall allow animal or bird fecal matter to accumulate so as to create obnoxious or offensive odors.
- (b) This section shall be enforced solely by the department of licenses and inspections and the department of public works, whose authorized agents and employees shall have the power to issue citations for non-compliance herewith. A civil penalty shall be imposed for failure to comply with any provision of this section.
- (c) The owner of a property who allows fecal matter to accumulate or fails to remove an accumulation of animal fecal matter on his or her property,

regardless of whether the owner actually resides in the property, shall be subject to and liable for a civil penalty in the amount of \$50.00. This civil penalty shall be doubled if not paid within 30 calendar days from the date of the citation. Pursuant to title 25, chapter 29 of the Delaware Code, any civil penalty imposed under this section shall give rise to a lien. Any unpaid amount of such civil penalty shall be added to the city property tax billing for the property which was the subject of the citation. Each 24-hour period that the condition giving rise to the initial citation continues will be subject to a separate citation and an additional civil penalty in the amount of \$50.00.

- (d) Any citation issued for failure to comply with this section shall be mailed to the owner of the property that is the subject of the citation.
- (e) Appeals— The owner of a property aggrieved by any civil penalty imposed pursuant to this chapter may appeal to the commissioner of licenses and inspections by sending a detailed written explanation of the grounds for the appeal, along with a mandatory non-refundable administrative filing fee of \$15.00, to the commissioner of licenses and inspections within 21 business days of the date of the citation. The commissioner of licenses and inspections or his or her designee shall issue a written decision affirming, modifying, reversing, revoking or vacating the civil penalty within 45 calendar days of receipt of the written explanation of the grounds for the appeal. Such decision shall be final. Each citation received must be appealed separately. Any appeal to the commissioner of licenses and inspections shall act as a stay of the citation and civil penalty until a final decision on the appeal has been rendered. If during the pendency of the appeal additional citations are issued and civil penalties imposed regarding the same matter under appeal, the civil penalty shall be voided.
- (f) Proof of state of mind not required for strict liability—It is unnecessary to prove the violator's state of mind with regard to the failure to comply with this section, as the legislative purpose is to impose strict liability for such non-compliance.

**Sec. 3-13. - Removal of fecal matter of dogs, cats, pigeons and other animals or domestic birds.**

- (a) It shall be unlawful for any person owning, possessing, harboring, tolerating or having the care, charge, control or custody of any dog, cat, pigeon or other animal or domestic bird not to remove immediately, in a sanitary manner in an airtight bag or other closed container to be deposited in a trash receptacle or other closed or sealed container, any fecal matter deposited by such dog, cat, pigeon or other animal or domestic bird upon any street, sidewalk, or park, or upon any other public property, or upon any private property without the

consent of the owner or tenant of such private property. The provisions of this section shall not apply to any person who by reason of loss or impairment of eyesight is accompanied by a dog described as a Seeing Eye dog or any dog educated by a recognized training agency or school and which is used as a leader or guide.

- (b) The complaining party shall file a complaint in a court of competent jurisdiction. Subsection (a) of this section shall only be enforced if the complaining party produces a witness to the act that constitutes a violation of that subsection. It is not the intent of the section to require surveillance by the city police department, ~~the Delaware Society for the Prevention of Cruelty to Animals~~ or any other city department, or the animal control agency contracted to enforce this chapter. The city police department, department of licenses and inspections and ~~the Delaware Society for the Prevention of Cruelty to Animals~~ the animal control agency contracted to enforce this chapter shall all have the authority to enforce subsection (a) of this section.
- (c) For any person, corporation, partnership, firm, or any other entity, any violation of this section shall be punished by a fine of not less than \$250.00 nor more than ~~\$1,000.00~~ 1,000.00 for the first conviction. For the second conviction ~~occurring within 12 months of the date of the first conviction~~, the penalty shall be a fine of not less than \$500.00 and not more than \$2,500.00. For a third or subsequent conviction ~~occurring within 12 months of the date of the first conviction~~, the penalty shall be a fine of not less than \$1,000.00 which shall not be suspended and not more than \$5,000.00, or imprisonment for not more than 30 days, or both. Each day any violation of this section shall continue shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty for each day shall be imposed. ~~Notwithstanding any other provision of law, the court may not suspend the sentence of any person, corporation, partnership, firm, or any other entity convicted of a violation of this section.~~

**Sec. 3-14. - Proper and humane care of domestic animals required; penalties for violation of section.**

- (a) No owner shall fail to provide his domestic animal with humane care and treatment, sufficient good and wholesome food and water, proper shelter and protection from the weather and veterinary care when needed to prevent suffering.
- (b) No person shall beat, cruelly ill treat, torment, overload, overwork or otherwise abuse a domestic animal, or cause, instigate or permit any dogfight, cockfight or other combat between domestic animals or between domestic animals and humans, or train said animal to do so.
- (c) No owner of an animal shall abandon such animal.

- (d) No person other than a licensed veterinarian shall crop a dog or other animal's ears.
- (e) No person shall give away any live animal, fish, reptile or bird as a prize for, or as an inducement to enter, any contest, game or other competition, or as an inducement to enter a place of amusement; or offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.
- (f) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner; if the owner cannot be ascertained and located, such operator shall at once report the accident to the city police or the ~~Delaware Society for the Prevention of Cruelty to Animals~~ the animal control agency contracted to enforce this chapter.
- (g) No person, except a police officer or game warden, shall place poison of any description in any place on his premises, or elsewhere where it may be easily found and eaten by domestic animals.
- (h) No person shall tether a dog for 8 hours or more in any 24 hour period, except on land owned or leased by the dog's owner that is not less than ten acres, nor tether any dog for any amount of time if the dog is under four months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than ten acres.
- (i) Penalties for violations of this section are as follows:
  - (1) For violations of subsection (a) of this section, a minimum fine of \$250.00 up to \$1,000.00 for the first offense. For the second offense, the mandatory \$5,000.00, or up to 30 days imprisonment or by both such fine and imprisonment. No part of the minimum fine may be suspended.
  - (2) For violations of subsection (b) of this section, a fine of not less than \$250.00 and not more than \$1,000.00, or imprisonment for up to 30 days, or both such fine and imprisonment. For a second offense, a minimum mandatory fine of \$500.00 and a maximum of \$2,500.00, or imprisonment of up to 30 days, or both such fine and imprisonment. Three or more offenses shall carry a mandatory minimum fine of \$1,000.00, which shall not be suspended, with a maximum of \$5,000.00, plus a minimum mandatory jail sentence of 14 days.
  - (3) For violations of subsections (c), (d), (e), (f) and (g) of this section, minimum fines of \$250.00 and maximum fines of \$1,000.00 for the first offense shall be imposed. For the second offense, the minimum fine of \$500.00 and the maximum fine of \$2,500.00 shall be imposed. For subsequent offenses, the minimum mandatory fine shall be



\$1,000.00 and up to \$5,000.00, which shall not be suspended, or imprisonment of up to 30 days, or by both such fine and imprisonment.

**Sec. 3-15. - Keeping of wild animals, farm animals; exceptions; penalty.**

- (a) No wild animal and no wild fowl may be kept within the city limits, except under such conditions as shall be fixed by the ~~Delaware Society for the Prevention of Cruelty to Animals~~ appropriate State agency; provided, however, that wild animals and wild fowl may be kept for exhibition purposes by circuses, zoos and educational institutions in accordance with such regulations as shall be established by the city or the ~~Delaware Society for Prevention of Cruelty to Animals~~ appropriate State agency. Anyone keeping a wild animal pursuant to this section must do so in accordance with all applicable state laws.
- (b) It shall be unlawful for any person to keep, harbor or house, whether as a pet, or for eventual sale or consumption, or for any other purpose, any domestic animals or domestic fowl other than dogs or cats, commonly known as farm animals or fowl, including, but not limited to, chickens, chanticleers, roosters, ducks, geese, pigs, hogs, donkeys, mules, horses, cattle, goats, sheep, oxen, or any other animal or fowl suitable for slaughter or for the production of milk, eggs or fiber within the boundaries of the city, except:
  - (i) any such animals or fowl kept for exhibition purposes by circuses, zoos and educational institutions in accordance with regulations established by the ~~Delaware Society for the Prevention of Cruelty to Animals~~ appropriate State agency;
  - (ii) horses of the police department;
  - (iii) fish or crustaceans, or both being raised or produced in tanks inside of buildings that are located in nonresidential zoning districts only and that are otherwise in compliance with applicable provisions of this Code;
  - (iv) livestock held or kept on a temporary basis for a period not to exceed ninety-six hours at an indoor inspection or resting facility that is related to the export of such livestock from the Port of Wilmington and that is located in a manufacturing zoning district and is otherwise in compliance with applicable provisions of this Code; and
  - (v) as otherwise provided in this chapter, chapter 42, article X (farmers' market) of this Code.
- (c) A conviction of violation of the provisions of this section shall be punishable by a fine of not less than \$250.00 and not more than \$1,000.00 for the first offense, a fine of not less than \$500.00 and not more than \$2,500.00 for the second offense, and a fine of not less than \$1,000.00 which shall not be suspended and not more than \$5,000.00 for the third and subsequent offenses.

A corporation may be fined by the court in an amount not exceeding \$5,000.00.

**Sec. 3-16. — Pit bull terrier dogs.**

- (a) Only persons 21 years of age or older who have complied with the licensing and registration requirements as set forth in section 3-9 of this chapter by June 16, 2000, shall be allowed to own, keep or harbor a pit bull terrier inside the city limits. Such ownership is subject to the following conditions
- (1) All pit bull terriers in the city must be licensed and registered by June 16, 2000. Newly acquired pit bull terriers or pit bull terriers belonging to people moving into the city must be licensed and registered within 30 days of the event. Documentation showing acquisition of the new dog (bill of sale or adoption contract) and/or relocation to the city, as evidenced by a signed lease or purchase agreement, will be required to register a pit bull terrier after June 16, 2000. Persons who do not license and register their pit bull terrier by June 16, 2000, shall, in addition to complying with the registration requirements, be assessed an additional \$50.00 fee. For purposes of registration, the owner shall provide the following:
- a. A photograph of the animal showing its size and color;
  - b. A registration fee in the amount of \$30.00, ten dollars of which will go to the Delaware Humane Association if the dog is registered at that location;
  - c. Proof of owner's age through valid state issued identification card (e.g., driver's license) or certified birth certificate;
  - d. Proof of owner's address through two documents, one of which must contain a photograph, the other being in the form of a utility bill, mortgage payment or lease;
  - e. (1) Certification by a licensed veterinarian that the pit bull terrier has been neutered or is incapable of enduring neutering (in the case of a male dog) or the pit bull terrier has been spayed or is incapable of enduring spaying (in the case of a female dog). Under no circumstances shall a pit bull terrier who has not been neutered or spayed be registered, except where the dog meets the criteria of subsection (2) of this section. A provisional registration will be issued valid through the date the dog reaches six months of age if the pit bull terrier is incapable of enduring the procedure because it is too young as certified by a licensed veterinarian and all other registration requirements have been satisfied. The pit bull terrier shall be fully registered subject to undergoing the procedure within the

effective period of the provisional registration; veterinarian certification shall be provided no later than ten days after the procedure has been performed while the provisional registration is in effect; and

f. — Proof of home ownership (e.g., deed, homeowner's policy, mortgage coupon) or lease with express written permission from the landlord allowing said dog to be harbored on the premises.

- (2) — A provisional registration will be granted for a period of 12 months, subject to renewal, if the following criteria are met:
- a. — The dog is American Kennel Club (AKC) and/or United Kennel Club (UKC) registered and has actively competed as a show dog in either AKC or UKC sanctioned events within the past year;
  - b. — The dog has passed a dog obedience class;
  - c. — The dog is certified annually as a "canine good citizen" by the AKC; and
  - d. — The owner has complied with the registration requirements set forth in subsection (1)(a), with the exception of (1)(a)e.
- (3) — The tag issued under section 3-10 of this chapter shall be attached to the pit bull terrier's collar and the collar and tag shall be worn by the animal at all times.
- (4) — Upon registration, the document issued shall be carried by the owner at all times and the owner must produce it upon request. Whenever the pit bull terrier leaves the premises, the registration information must be carried by the person who is in possession of the dog.
- (5) — Whenever the pit bull terrier is in public, it shall at all times be kept in accordance with the requirements of section 3-11 except that pit bull terriers shall be secured by a leash or chain not to exceed six feet in length. Under no circumstances shall a person under the age of 21 accompany a pit bull terrier without the registered owner present unless the person and the dog are within 100 feet of the dog's residence and the dog is leashed in accordance with the provisions of this subsection. It shall be unlawful for the owner of any registered pit bull terrier to allow the pit bull terrier to enter any park located partly or entirely within the city without a muzzle, whether accompanied by the owner or not.
- (6) — The owner of a pit bull terrier must, within ten days of the incident, report in writing, the following information to the city:
- a. — The removal from the city or death of a licensed and registered pit bull terrier;

- b. ~~—The new address of the pit bull terrier owner should the owner move; or~~
- e. ~~—Transfer of dog ownership to another party. The new owner must comply with all requirements set forth herein for registration of pit bull terriers within 30 days of transfer, as set forth in subsection (a)(1).~~
- (b) (7) Breeding of pit bull terriers in the city is strictly prohibited. For violations of this provision, all puppies shall be seized and become the property of the state S.P.C.A. for appropriate disposition. The provisional registration of the animal shall be revoked unless immediate action is taken by the owner to comply with the spay/neuter requirement, and fines shall be levied pursuant to section 3-16(d).
- (c) ~~—The registration requirements of this section shall not apply to:~~
- (1) ~~—A person temporarily holding a pit bull terrier in the city for the purpose of showing the dog in a place of public exhibition, contest, or show sponsored by a dog club, association or similar organization. The sponsor of the exhibition or show must obtain written permission from the city and must provide protective measures adequate to prevent the dog from escaping or injuring the public. The dog shall, at all times during the transportation to and from the show or exhibition, be confined in a secure temporary enclosure.~~
- (2) ~~—A pit bull terrier owned by a governmental entity or by a licensed security service, provided the animal is trained and used to perform police, correctional, fire or search and rescue services, or any service dog trained by a certified guide dog agency and providing service to a handicapped individual.~~
- (3) ~~—Any dog housed at the Delaware Humane Association.~~
- (d) ~~—A violation of any provision of this section shall result in the pit bull terrier being confiscated and impounded. A fine of \$500.00 for any single or initial violation and of \$1,000.00 shall be assessed for each repeat or continuing violation.~~
- (e) (c) ~~The provisions of this section shall apply in addition to and not in lieu of the animal control provisions of this Code, including but not limited to provisions concerning the licensing of dogs, standards for keeping dogs and the keeping, confinement and impoundment of dangerous domestic animals or public nuisance animals.~~

**Sec. 3-17. ~~—Registration of dangerous animals and public nuisance animals.~~**

As determined by the state S.P.C.A., any dog of any breed, or mixed breed, meeting the criteria set forth in the definition of dangerous animals or public nuisance animals, subsections (1), (2), or (3), shall be registered according to the requirements

~~set forth in section 3.16(b) within ten days of being declared a dangerous animal or public nuisance animal, and enforcement provisions set forth in 3.16(d) and (e) shall apply.~~

**Sec. 3-16. – Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; request for hearing; exceptions.**

- (a) An animal control officer shall seize and impound a dog suspected of being dangerous or potentially dangerous when the officer has reasonable cause to believe that the dog has engaged in 1 or more of the following:
- (1) Killed or inflicted physical injury or serious physical injury upon a human being; or
  - (2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
  - (3) Chased or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.
- (b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The animal control agency shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the animal control agency may dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code.
- (c) The owner of any seized and impounded dog shall be notified by the animal control agency by certified mail, return receipt requested, of the owner's right to a hearing before the Dog Control Panel to determine whether the dog is dangerous or potentially dangerous. This notice shall require that the owner return within 7 days of receiving such notice, by certified mail or personal delivery, a signed statement indicating whether the owner wishes the hearing to be conducted or, if not, that the owner waives that owner's right to such hearing and agrees to abide by the findings and conclusions of the animal control agency or agrees to relinquish ownership of such dog, in which case the animal control agency shall dispose of the impounded dog in accordance with Chapter 30F of Title 16 of the Delaware Code. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter, or does not reply to the certified letter with a signed statement within 7 days of receipt, the animal control agency shall dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code.
- (d) Within 20 business days of an animal control agency's receipt of a request for a hearing pursuant to subsection (c) of this section, a hearing shall be held by

the Panel in accordance with 9 Del. C. §§924 - 926. If a hearing is not held within that time frame, the dog shall be released to its owner and the charges made pursuant to subsection (a) of this section shall be dismissed, unless a delay is requested by the owner and approved by the Panel.

- (e) Notwithstanding subsection (a), no dog shall be considered dangerous or potentially dangerous if an injury was sustained by:
  - (1) A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime; or
  - (2) A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing or assaulting the dog; or
  - (3) A domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, and the injury was to a species or type of domestic animal appropriate to the work of the dog.
- (f) Notwithstanding subsection (a), no dog shall be considered dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault.
- (g) Notwithstanding subsection (a), no military, correctional or police-owned dogs shall be considered dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.
- (h) Any dog declared dangerous by the Dog Control Panel which, after having been declared dangerous, kills, attacks or inflicts physical injury or serious physical injury, without provocation upon a human being or domestic animal, shall be seized and impounded by the animal control agency and disposed of by euthanasia in accordance with Chapter 30F of Title 16 of the Delaware Code.
- (i) If a dog is declared dangerous or potentially dangerous the owner of the dog shall, prior to reclaiming the dog, reimburse the animal control agency its regular standard fees charged for the care of the dogs while in the animal control agency's custody plus any reasonable veterinary fees incurred for the dog during the period of impoundment. Failure of the dog's owner to pay such fees within 5 days after a final determination of whether the dog is dangerous or potentially dangerous shall result in the ownership of the dog reverting to the animal control agency. The animal control agency shall then dispose of the dog in accordance with Chapter 30F of Title 16 of the Delaware Code. If a dog is determined to be neither dangerous nor potentially dangerous, the owner shall not be liable for the costs of impoundment.

**Sec. 3-17 – Feeding pigeons prohibited.**

It shall be unlawful for any person to feed or offer food to any pigeon in or on any sidewalk, street, highway or park, or upon any other public property, or upon any private property without the consent of the owner or tenant of such private property. The term “food” shall refer to grain, seed, greens, breadcrumbs or other miscellaneous food scraps.

**Sec. 3-18 - Violations and penalties generally.**

- (a) Except as otherwise specifically provided by this chapter, any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250.00 nor more than \$1,000.00 for each such offense, together with the costs and disbursements of prosecution, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment, for the first conviction. For any conviction of a violation that is the second conviction for the same violation as a previous violation, the minimum fine for any person or corporation shall be not less than \$500.00 nor more than \$2,500.00; for the third conviction not less than \$1,000.00 nor more than \$5,000.00, which shall not be suspended; for the fourth conviction \$1,500.00; for the fifth and subsequent conviction of the same violation that still has not been corrected, the minimum fine for each conviction shall be not less than \$5,000.00, which shall not be suspended. Upon conviction of a violation of this chapter, the court may order the defendant to correct the violation by a date certain. If the defendant fails to correct the violation by the court ordered date, the court may impose a fine of \$50.00 per day to be calculated from the date of conviction to the date by which the court had ordered the violation to be corrected.
- (b) Each day's failure to comply with any order of the commissioner of licenses and inspections based upon the provisions of this chapter or the provisions of any rule or regulation adopted by the department of licenses and inspections and approved by resolution of the city council for the enforcement and implementation of this chapter, and each day's failure to comply with any provision of this chapter or any such rule or regulation shall constitute a distinct and separate offense and be punishable as such.

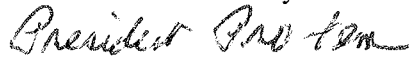
**SECTION 2.** Effective date. This Ordinance shall become effective on September 14, 2015.

First Reading. . . . . June 18, 2015  
Second Reading. . . . . June 18, 2015  
Third Reading . . . . . July 9, 2015

Passed by City Council, July 9, 2015



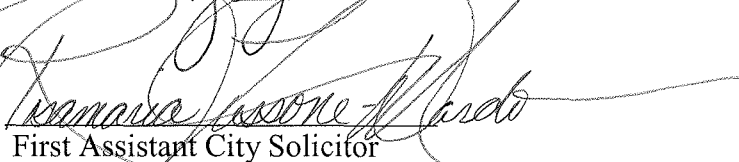
President of City Council




ATTEST:   
City Clerk

Approved as to form this

8<sup>th</sup> day of July, 2015

  
First Assistant City Solicitor

Approved this 10 day of  
July, 2015

  
Mayor

**SYNOPSIS:** The ordinance amends Chapter 3, entitled "Animals," by modifying provisions relating to cruelty to animals by adding a provision prohibiting the tethering of dogs for 8 hours or more. The ordinance increases licensing fees and provides for a three year license. The ordinance includes a general penalty provision which is consistent with other chapters of the Wilmington City Code enforced by the Department of Licenses and Inspections, and deletes certain miscellaneous penalty provisions located in specific sections of this chapter. The ordinance deletes the pit bull terrier dog registration requirements. The ordinance requires all dogs to be restrained by a leash not exceeding 6 feet in length while in public, and requires all owners to exercise proper care and control of their dogs while in public, including not permitting another individual who cannot reasonably control the actions of the dog to walk his or her dog. The ordinance modifies and/or adds provisions regarding the



definition, seizure, impoundment, determination and confinement of dangerous dogs and potentially dangerous dogs to align the City Code with the applicable Delaware State Code provisions. The ordinance adds a provision prohibiting individuals from feeding pigeons on public property. Lastly, the ordinance deletes certain miscellaneous provisions concerning various fees because the fees reflected therein are no longer accurate.