ORDINANCE NO. 100-12

AN ORDINANCE AMENDING SECTIONS 4-1 THROUGH 4-3; 4-7 THROUGH 4-8; 4-31 THROUGH 4-35; 4-38 THROUGH 4-39; 4-61 THROUGH 4-63; 4-86; 4-89 THROUGH 4-90; 4-93; 4-116 THROUGH 4-117; 4-119 THROUGH 4-120; 4-131 THROUGH 4-135; REPEALING SECTIONS 4-40 AND 4-41; AND ADDING SECTIONS 4-11; 4-64; 4-115; 4-121 THROUGH 4-122; 4-130; 4-136 THROUGH 4-137; TO THE FORT SMITH MUNICIPAL CODE TO AUTHORIZE CERTAIN CHANGES AND ADDITIONAL REGULATIONS PERTAINING TO DOMESTIC ANIMALS

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas, has determined that recommendations from the Animal Service Advisory Board regarding the amending of existing provisions to the City's regulations for domestic animals are necessary. Furthermore, additional provisions are needed to assist in the regulations related to domestic animals which threaten the health, safety, and general welfare of the citizens and residents of the City of Fort Smith; and,

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas, has determined that authorizing these amendments and additional regulations will help protect the health, safety, and general welfare of the citizens and residents of the City of Fort Smith, Arkansas,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH:

SECTION I: FORT SMITH MUNICIPAL CODE IS AMENDED TO READ AS FOLLOWS:

Sec. 4-1 – Definitions

The following words and phrases shall, for the purpose of this chapter, have the following meanings:

Aggressive animal shall mean any animal which displays or has a tendency, disposition or propensity to:

1. Bare its teeth or approach in a menacing manner a person or domestic animal that is not provoking the animal; or
2. Attack, chase, charge or bite a person or domestic animal (under circumstances not requiring medical attention to a person or domestic animal) in a menacing manner, or attempt to do so; or
3. Attack any person upon the streets, sidewalks, or any other public ground or place; or
4. Attack without provocation, human beings or domestic animals.

Animal control officer shall mean the person who shall be duly authorized by the board of directors as the agent of the city for the purpose of providing the services and fulfilling the responsibilities of the animal control officer as herein set out.

City approved/contracted impoundment facility shall mean the place provided for animal control for the impounding of dogs and other animals.

Collar shall mean any collar constructed of nylon, leather, or similar material specifically designed to be used for the animal for which it is intended.

Feral cat shall mean the offspring of lost or abandoned pet cats or other feral cats that are not spayed or neutered. They are not accustomed to contact with people and are typically too fearful and wild to be handled. Feral cats do not easily or may never adapt to living as pets in close contact with people. Their kittens, if they survive, will become feral without early contact with people.

Harness shall mean a restraint which encircles the neck and the torso of an animal with connecting straps between them for reinforcement.

Licensed veterinarian shall mean a practitioner of veterinary medicine who holds a valid license to practice his/her profession in any part of the United States.

Owner shall mean every person or entity having a right of property in a dog or other animal or who keeps or harbors a dog or other animal, routinely feeds or has it in his/her care, or acts as its custodian, or knowingly permits a dog or other animal to remain on or about any premises occupied by him/her.

Pen shall mean an enclosure for domestic animals meeting the following requirements:

Square Feet	Weight of animal in pounds	Additional Square Feet per animal
48	1-25	24
80	26-40	40
100	41-70	50
120	71-90	60
144	91+	72

1. In all pens, each domestic animal housed therein shall have room to stand, lie down, turn around and sit normally away from its own waste, and adequate coverage from inclement weather.
2. All pens shall be a minimum of six (6) feet in height.
3. All pens shall be surrounded on all sides by chainlink fencing of at least no. 9 gauge, with steel ties, maximum two and one-half (2 ½) inch mesh, with concrete or similar flooring or with side fencing buried eighteen (18) inches into the ground, and with gates padlocked.

Properly fitted shall mean:

1. With respect to a collar, to measure the circumference of an animal's neck plus at least one (1) inch additionally; and
2. With respect to a harness, to measure around the animal's chest and neck with an allowance for two (2) fingers to fit between the animal and the harness; and
3. Shall not be so tight as to cause discomfort or so loose that it can slide over the animal's head.

Run at large shall mean the state of freedom of any dog not confined on the premises of the owner within a secure enclosure, house or other building, or not restrained on the premises of the owner by a leash sufficiently strong to prevent the dog from escaping and restricting it to the premises, or not confined by a leash or confined within an automobile when away from the premises of the owner.

Secure enclosure shall mean a fenced area of structure that:

1. Is locked or has a self-locking gate(s) that is engaged at all times,
2. Is completely surrounded by a substantial fence or enclosure of sufficient strength, height, construction, materials, and design that is capable of preventing an animal from climbing, digging, jumping or otherwise escaping of its own volition,
3. Has all gates and the height of the fence and the size of openings in the fence appropriate for the type of dog confined within the fence,
4. Is appropriately maintained to prevent a dog from getting can get through, over, or under the fence, and
5. Is capable of preventing the unauthorized entry of the general public, including children.

Vaccination shall mean the injection, subcutaneously or otherwise, of antirabic vaccine, as approved by the United States Department of Agriculture or the state veterinarian and administered by a licensed veterinarian.

Vaccination certificate shall mean a written or printed certificate showing that the animal described thereon has received an inoculation of antirabic vaccine in an amount sufficient to produce immunity and bearing the signature of a licensed veterinarian.

Vicious animal shall, unless otherwise stated in Sec 4-7, mean any animal which:

1. Without provocation, bites or attacks a human being or domestic animal on public or private property,
2. Causes a life-threatening injury, broken bone, multiple sutures, or any injury requiring medical attention to a person or domestic animal, without provocation, on a public or private property,
3. Kills a domestic animal, without provocation, on public or private property,
4. Is owned or harbored primarily or in part for the purpose of fighting or is trained for fighting.

Sec. 4-2 – Interference with enforcement

It shall be unlawful for any person to interfere with or attempt to prevent the animal control officer or other authorized persons from seizing and impounding any animal which is authorized to be impounded under the provisions of this chapter. It shall be unlawful for any person to refuse to deliver any unlicensed or unvaccinated animal observed by an animal control officer to

be running at large to the animal control officer or other authorized person upon demand for impounding.

Sec. 4-3 – Livestock at large

Any horses, cattle, mules, goats, asses or other animals of like kind shall not be suffered or permitted to run at large or to be pastured or staked out, except in a securely fenced enclosure, within the limits of the city. It shall be unlawful to herd or drive the animals above enumerated, on the streets within the city limits, except those designated by the chief of police, unless such animals are on a lead.

Sec. 4-7 – Aggressive or vicious animals

A. The following procedure shall be followed for classifying an animal as vicious or aggressive.
    1. The animal control officer shall be authorized initially to classify an animal as aggressive or vicious. The animal control officer may find and declare an animal to be vicious or aggressive if the officer has probable cause to believe that the animal falls within the definition set forth in section 4-1. The finding must be based upon:
        a. The sworn written complaint of a citizen who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of section 4-1; or
        b. A report establishing probable cause filed with the animal control officer or any law enforcement officer; or
        c. Actions of the animal witnessed by the animal control officer or by any law enforcement officer.
    2. The classifying of an animal as vicious or aggressive shall be in writing and shall be served on the owner by one of the following methods:
        a. Certified mail to the owner's last known address; or
        b. Personally.

B. Appeal of determination. Any person who has received notice that his or her animal has been deemed a vicious or aggressive animal may appeal such decision to the Fort Smith Police Department's animal control unit supervisor. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

1. The supervisor shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to review the initial classification. The supervisor's decision shall be considered the final decision of the city as to whether the animal is a vicious or aggressive animal.
2. If the initial classification is not appealed or if the right to appeal is waived, the initial classification shall be considered the final decision of the city as to whether the animal is a vicious or aggressive animal.
3. An appeal from the decision of the supervisor may only be made to a court of competent jurisdiction.

C. During the entire appeal process, it shall be unlawful for the owner appealing the classification of vicious or aggressive animal to allow or permit the animal to :
   1. Be unconfined on the premises of the owner; or
   2. Go beyond the premises of the owner unless such animal is securely leashed and humanely muzzled or otherwise securely restrained.

D. The animal control officer or supervisor of the animal control unit may require temporary confinement of the animal pending the determination required in this section. If the owner does not comply immediately with the temporary confinement requirements, the animal shall be impounded as provided in section 4-32 of this Code.

E. No person shall own, possess or cause to be in the city any animal which has been determined to be an aggressive or vicious animal, unless it is restrained, confined or muzzled so that it cannot charge, attack, bite or cause injury to any person or domestic animal, and unless it is maintained at all times in compliance with any order of compliance issued under this article.

F. Upon determination that an animal is aggressive or vicious, the animal control officer shall issue an order of compliance requiring the owner immediately to confine, muzzle or restrain the animal sufficiently to protect all persons and domestic animals, and otherwise to comply completely with the terms of this article. Coming into full compliance with this article shall not exceed forty-five (45) business days from the date of issuance of the order of compliance.

G. The order of compliance may, in the reasonable discretion of the animal control officer, require that:

1. When outside of the walls of the owner's home, the dog shall be confined in a pen as set forth in the definition of "pen" in this section except when entering or exiting the pen.
2. It shall be unlawful for a vicious animal to be outside of a dwelling or enclosure unless it is necessary for the owner thereof to obtain veterinary care for the vicious animal or to sell or give away the vicious animal or to comply with commands or directions of the animal control officer with respect to the vicious animal. In such event, the vicious animal shall be securely muzzled and restrained with a chain leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of an individual capable of restraining and controlling the vicious animal.
3. The owner's home and the animal's pen shall be posted with firmly attached and prominently displayed signs warning the public that the dog is aggressive or vicious. These signs shall be furnished by the city and will be distributed upon payment of any license fee required to be paid pursuant to this section.
4. The owner of a vicious animal shall provide proof upon request by an animal control officer or law enforcement officer of liability insurance in the amount of one million dollars ($1,000,000.00) covering harm done by the dog.
5. The owner of a vicious animal shall provide proof upon request by an animal control officer or law enforcement officer that the animal has been spayed or neutered.

H. Upon a determination that an animal:

1. Is an aggressive animal, the owner shall present the animal for photographing by the animal control officer sufficient to identify the animal for city records and have a microchip identification implanted by a licensed veterinarian.
2. Is a vicious animal, the owner shall present the animal for photographing by the animal control officer sufficient to identify the animal, for city records, and have a microchip identification implanted by a licensed veterinarian.

I. By continuing to be an owner of an animal within the city, which has been determined to be aggressive or vicious, the owner shall be deemed to have given implied consent to reasonable inspections by the animal control officer of the animal, of the premises where it is kept, and of documents evidencing any required liability insurance.

J. If the owner fails to meet fully the animal control unit's requirements for temporary confinement and restraint, including any schedule of construction of pen or restraints, or fails to maintain full compliance with the order of compliance, the animal control officer may seize and impound the dog, and may after five (5) business days have it humanely euthanized; if, however, the owner has demonstrated full compliance with the requirements for temporary confinement and the order of compliance, then the animal may be returned to the owner after payment of all impoundment costs and fees.

K. A determination that an animal is aggressive or vicious shall stand until the Fort Smith Police Department's animal control unit determines otherwise by written finding.

L. No person shall be an owner of or cause to be in the city:

1. Any animal determined to be an aggressive animal by the animal control officer unless an annual special license fee of two hundred fifty dollars ($250.00) shall have been paid to the city, and the animal has been microchipped; or
2. Any animal classified vicious by the animal control officer unless an annual special license fee of one thousand dollars ($1,000.00) shall have been paid to the city. No such license shall be issued except upon proof of paid annual liability insurance in the amount of one million dollars ($1,000,000.00) as required by this section.
3. Any cat deemed vicious must also be confined to the home to maintain compliance; if the owner fails to maintain compliance, an animal control officer may seize and impound the cat and after five (5) business days have it humanely euthanized.

M. The owner of an animal in violation of any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by the assessment of a fine as specified in section 1-9 of this Code.

N. If a complaint has been filed in the municipal district court against the owner of an impounded animal for violation of this section, the animal shall not be released except on the order of the court, which order may also direct the owner to pay a fine and all impoundment fees. Upon finding that the animal is vicious, the court may order it to be euthanized in a humane manner. Surrender of an animal by the owner thereof to an animal control officer shall not render the owner exempt from the fines and fees of this article.

O. An owner of an aggressive or vicious animal, who desires to transfer possession of the animal shall, at least three (3) days prior to the transfer, complete and return to the animal control unit a notarized transfer form provided by the animal control unit.

P. Any notice required under this article shall be deemed delivered:

1. Five (5) business days after being mailed, first class postage prepaid, to the residential or business address of the owner;
2. Twenty-four (24) hours after being posted at the location where the animal is held, unless it is impounded by the city; or
3. Upon hand delivery to the owner.

Q. It shall be an affirmative defense to prosecution under this article that the animal:

1. Is owned by a law enforcement agency and used for law enforcement purposes; or
2. Directed its behavior at a person who was committing a willful trespass or other tort upon the property of the owner; or
3. Directed its behavior at a person who was committing a violent offense to the owner or animal when off the owner's property, but under restraint; or
4. At the time of its behavior was in custody of a veterinarian or an animal shelter.

Sec. 4-8 – Fowl and rabbits

A. It shall be unlawful to keep on any residentially zoned real property of less than one-half (½) acre or twenty-one thousand seven hundred eighty (21,780) square feet within the city any fowl or more than two (2) rabbits. If two (2) rabbits are kept, both rabbits shall be of the same sex or at least one of the rabbits shall be incapable of reproduction. School children actively enrolled in a 4-H, FFA or school-related projects involving the raising of fowl or rabbits shall be exempt from this section. Any person possessing a valid state or federal permit or license to possess wildlife shall also be exempt from this section.

B. Any person convicted of violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as set forth in section 1-9 of this Code.

Sec. 4-31 - Generally

The animal control unit may maintain a suitable building and kennels for the confinement of all animals impounded under the provisions of this chapter. Such buildings and kennels shall be kept in a sanitary condition and all animals taken up and impounded therein shall be properly

watered and fed while confined in such buildings and kennels. Male animals shall be kept separated from female animals, and quarantined animals shall be kept separated from other impounded animals.

Sec. 4-32 - Authority—Generally

It shall be the duty of an animal control officer to seize and impound, subject to the provisions of this article, all animals, whether domesticated or undomesticated, found in violation of the provisions of this chapter within this city, whether such animal shall be in the immediate presence of its owner or custodian or otherwise.

Sec. 4-33 - Same— City-approved animal impoundment facility

The city-approved animal impoundment facility is hereby authorized to receive and become a guardian of any and all animals found running at large in the city.

Sec. 4-34 - Right of citizens

Any person may take up and deliver to an animal control officer any animal which the animal control unit is, under the provisions of this chapter, authorized to impound.

Sec. 4-35 - Register

Upon impounding any animal, the animal control officer shall make a complete registry, identifying the breed, color and sex of the impounded animal and whether the owner of such animal can be identified. If the owner of the animal has been identified, the animal control officer shall enter the name and address of the owner.

Sec. 4-38 - Fees for animal control services

Should a local veterinary clinic request disposal of an animal carcass, the following fee schedule shall apply: Twenty dollars ($20.00) for disposal of any animal carcass that weighs fifty (50) pounds or less; forty dollars ($40.00) for disposal of any animal carcass weighing in excess of fifty (50) pounds; and, if two (2) or more carcasses are picked up during a service call to a

veterinary clinic, the foregoing fee shall apply to the first animal carcass and a fee of ten dollars ($10.00) shall be assessed for each and every additional carcass beyond the first carcass taken into custody and disposed.

Sec. 4-39 - Redemption of unvaccinated animal

In addition to the provisions of section 4-38, the owner of any impounded domesticated animal which has not been vaccinated as required by this chapter, upon satisfactory proof of ownership, may redeem his /her animal by making a deposit in the amount of fifty dollars ($50) with the Fort Smith police animal control unit and be allowed three (3) business days to get such animal vaccinated by a licensed veterinarian. If such owner fails to procure a vaccination certificate within such three (3) business days, the deposit shall be forfeited and the animal shall be impounded again. Upon presentation within such period of time of a certificate of vaccination issued under this chapter, the deposit shall be refunded.

Sec. 4-61 - Quarantine—Generally

A. Upon the request of any person who has been bitten by a dog or other animal within the corporate limits of the city (or by a parent or legal guardian of any person so bitten who is under a disability), the animal control officer shall take such dog or animal, or a plurality of same if they are reasonably suspected of the biting, into custody and confine it in quarantine under the supervision of a licensed veterinarian.
B. Any dog or animal having rabies, or symptoms thereof, or suspected of having rabies, or which has been exposed to rabies shall be immediately released by the owner or custodian of such dog or animal to the animal control officer, and the animal control officer shall confine such dog or animal in quarantine.

Sec. 4-62 - Same—Release

A. Any veterinarian who is given custody of an animal under the provisions of this article shall keep such animal in quarantine until he/she shall issue a certificate that:
    1. He/she has complied with the observation provisions of A.C.A. § 20-19-307; and
    2. The animal appears to be free of infection of rabies (hydrophobia).

B. When the licensed veterinarian supervising the quarantine of any animal quarantined under this article shall issue the certificate provided for in subsection (a), the owner of such animal may retake custody of it upon tender to such veterinarian and/or the city animal control unit of their customary and reasonable fees and charges for impounding, boarding and lodging, observing and testing. Provided, if a person who has been bitten by an animal (or the parent or legal guardian of such person) requests the confinement of the animal which has a current rabies vaccination and which, at the time of the biting incident, was in compliance with the running at large provisions of this chapter, and which the animal is subsequently found to be without rabies infection, the customary and reasonable fees and charges for impounding, boarding and lodging, observing and testing by the veterinarian and/or animal control unit shall be paid by the person who has been bitten (or by either parent or a legal guardian of such person) and the animal shall be released to the custody of the owner of such animal upon issuance of the certificate provided for in subsection (a).

Sec. 4-63 - Vaccination

It shall be unlawful for any dog or cat owner to knowingly keep, harbor or maintain any dog or cat four (4) months of age or more within the corporate limits of the city, unless the dog or cat owner shall have caused such dog or cat to be given a one (1) year or three (3) year vaccination against rabies by a licensed veterinarian. The veterinarian giving such vaccination shall issue to the owner of such vaccinated dog or cat a vaccination certificate describing such dog or cat, giving the date of vaccination and the name and address of the owner. The vaccination certificate shall be signed by the licensed veterinarian.

Sec. 4-86 - Definition

As used in this article, the term "pet shop" or "kennel" shall be construed to include any person engaged in the raising, boarding, training, breeding, grooming, riding for hire, impoundment, showing to the public or selling of any and all types of animals.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 4-89 - Minimum age for sale

It shall be unlawful for any person or pet shop or kennel to sell any mammal which is less than six (6) weeks of age.

State law reference— Municipal authority to prevent cruelty to animals, A.C.A. § 14-54-103(7).

Sec. 4-90 - Sale to minors

It shall be unlawful for any person or pet shop or kennel to sell any animal to any person who is less than eighteen (18) years of age without proof of age with government issued picture identification.

Sec. 4-93 - Isolation of diseased animals

The owner of any animal or any pet shop or kennel shall properly isolate and seek treatment for any animal having a disease contagious to animal or human life; provided, any animal which is diseased and past the state of recovery shall be humanely euthanized.

Sec. 4-116 - Running at large (Leash Law)

It shall be unlawful for any dog owner to allow his/her dog to run at large within the corporate city limits. A dog is considered running at large when it is off the owner's property unless under leash restraint. It is the owner's responsibility to reasonably secure confinement to prevent the dog from running at large. The following shall be the procedure in the event of a dog found in violation of this section:

A. In the case of the first offense, the animal control officer will make an attempt as set forth in section 4-36 to identify and return the dog; if this attempt fails, the dog is to be impounded. When the owner comes to claim the dog:
    1. The owner will pay a ten dollar ($10.00) fee plus a fifteen dollar ($15.00) per day fee to the city-approved animal impoundment facility.
    2. The owner will be issued a citation for violation of the running at large ordinance; the owner will receive a pamphlet as to the city's animal ordinances.
        a. The city of Fort Smith will hold the citation for fifteen (15) days to allow an inspection of the owner's property by an animal control officer, and

b. If the owner is found to have an unsecure enclosure, he/she will be given thirty (30) days to make the enclosure secure.

B. If upon subsequent impoundment, it is established that this is a second offense of running at large, the owner's dog shall be impounded until an animal control officer conducts an inspection of the owner's property. Upon assurance of future control:

1. The dog is to be released after the owner pays a ten dollar ($10.00) fee plus a fifteen dollar ($15.00) per day fee to the city-approved animal impoundment facility.
2. The owner is issued a citation for violation of this section. If the owner is found guilty:
   a. The owner shall be encouraged to spay or neuter an intact dog, and
   b. A fine, set forth in the table below, will be assessed.
   c. If proof of spay or neuter is provided within thirty (30) days, the fine may be reduced to that fine applicable for an altered dog.

C. If upon subsequent impoundment, it is established that this is a third offense of running at large, the dog will be impounded until an animal control officer conducts an inspection. Upon assurance of future control:

1. The dog shall be released after the owner pays the ten dollar ($10.00) fee plus a fifteen dollar ($15.00) per day fee to the city-approved animal impoundment facility.
2. A citation will be issued for violation of this section. If found guilty:
   a. The owner will be assessed a fine, and
   b. The court may mandate that the dog will be spayed or neutered.
   c. If proof of spay or neuter is provided within thirty (30) days, the fine may be reduced to that fine applicable for an altered dog.

D. If upon subsequent impoundment, it is established that this is a fourth offense of running at large, the dog will be impounded until an animal control officer conducts an inspection. Upon assurance of future control:

1. The dog shall be released and the owner pays a ten dollar ($10.00) fee plus a fifteen dollar ($15.00) per day fee to the city-approved animal impoundment facility.
2. A citation will be issued for violation of this section. If the owner is found guilty:
   a. A fine will be assessed.

b. The city prosecutor will ask the judge to consider mandating the permanent surrender of the dog.

The fines will be assessed as follows:

Number of offense	Intact dog	Spayed or neutered (altered) dog
First	100 + Court Costs	Waived Fine / Warning
Second	$200.00 + Court Costs	$50.00 + Court Costs
Third	$300.00 + Court Costs	$100.00 + Court Costs
Fourth	$400.00 + Court Costs	$200.00 + Court Costs

If the intact dog above on offenses 1-4 has a spay or neuter procedure within 30 days of the date of offense then the fine portion (not the court costs) is fully waived.

Payment of fines (and court costs as approved by the judge) can be replaced by working at a local animal shelter in hopes that education on the spay and neuter need to curb area animal overpopulation will occur.

All other provisions of this article notwithstanding, any previously declared vicious dog, for which an order of compliance has been issued, but which is thereafter found outside the confines of the owner's property, shall be humanely euthanized five (5) days from the time of notification of the owner as set forth in section 4-7 of the Fort Smith Municipal Code.

Sec. 4-117 – Barking and howling dogs

It shall be unlawful for any person to keep on his premises or under his/her control any dog which by loud and frequent barking or howling shall disturb the peace and quiet of any two (2) or more non-related persons or businesses in separate dwellings or locations who may reside within reasonable proximity of a place where such dog is kept. When the keeper of such a dog is convicted of violating the provisions of this section, such dog may be seized and impounded under the provisions of this chapter.

Sec. 4-119 - Kennels

Any person owning, keeping or harboring within the corporate limits of the city seven (7) or more dogs five (5) months of age or over (regardless of the spaying or neutering of the dogs) shall be prima facie evidence that such owner is operating a dog kennel. The burden of proof shall be on the owner to establish the age of dogs contended to be less than five (5) months of age. Dog kennels may be operated only within the zones permitted by the zoning code of the city, section 27-119 of the Code of Ordinances. The owner of any such dog kennel shall pay an annual license fee of thirty-five dollars ($35.00).

A person owning, keeping or harboring more than seven (7) dogs regardless of age, spayed or neutered, shall not be considered operating a kennel if it can be proven that the additional dogs are being temporarily maintained while a permanent home for the dog(s) is being sought (commonly referred to as "fostering"). Prima facie evidence of fostering can be proven by documentation inclusion of the animal(s) at an established physical animal adoption facility.

Sec. 4-120 - Regulations for tethering dogs

A. No person shall tether, fasten, chain, tie, or restrain a dog, or cause any dog to be tethered, fastened, chained, tied, or restrained to a dog house, tree, fence, or any other stationary object with the intent that the tethering will be the animal's primary means of permanent containment.
B. Notwithstanding subsection (a), a person may do any of the following:
    1. Attach a dog to a trolley system as long as the trolley system is not intended as a means of permanent containment; or
    2. Tether, fasten, or tie a dog to a stationary object no longer than is necessary for the person responsible for the dog to complete a temporary task (e.g., cutting the grass, washing a car, gardening). In such temporary event, the dog must have convenient access to a sheltered area and containers of food and water.
C. An acceptable trolley system is subject to the following requirements:
    1. The trolley system must be at least five (5) times the length of the dog's body, as measured from the tip of the nose to the base of the tail; it must terminate at both ends with a swivel; it must not weigh more than one-eighth (⅛) of the dog's weight; it must

be free of tangles; and, it must be attached at two (2) permanent points elevated four (4) to seven (7) feet off the ground in a manner that allows the tether to move freely along the length of the cable; and

2. The tether must be connected to the dog by a properly fitted, buckle-type collar or body harness of a size appropriate for the animal. A tether shall not be connected by means of a choke-type, pinch-type or prong type collar; and
3. The dog must be tethered to a trolley system in such a manner as to prevent injury, strangulation, or entanglement; and
4. The dog shall not be outside tethered to a trolley system during a period of extreme weather, including but not limited to, extreme heat or near-freezing temperatures, thunderstorms, or tornadoes; and
5. The dog must have access to food, water, shade and shelter or dry ground; and
6. Except as indicated hereafter, no person shall tether any dog outside to a trolley system unless the animal has been spayed/neutered. However, it is permissible to tether an intact dog when under the direct visual observation of the owner at all times the dog is tethered; it is also permissible to tether an intact dog if it is inside a completely fenced area that will prevent other dogs from coming into contact with the tethered intact dog; and
7. No more than one (1) dog at a time may be attached to the same trolley system.

D. An acceptable tether system for temporary purposes is subject to these requirements:

1. When tethered, fastened, chained, tied, or restrained to stationary object, the tether must allow the free and untangled movement of the dog.
2. The tether must be connected to the dog by a properly fitted harness (recommended) or collar appropriate for the dog. The harness or collar must fit in such a manner as to prevent injury, harm, and strangulation to the dog or allow the contained dot to escape,
3. The minimum length of a tether is ten (10) feet.
4. Except as indicated hereafter, no person shall tether any dog outside unless the animal has been spayed or neutered. However, it is permissible to tether an intact dog when under the direct visual observation of the owner at all times the dog is tethered; it is also permissible to tether an intact dog if it is inside a completely secured enclosure

that will prevent other dogs from coming into contact with the tethered intact dog; and

5. The dog is to be monitored periodically.

Sec. 4-131 - Damaging shrubbery, plants, etc.; impoundment

It is hereby determined to be unlawful for any owner, possessor or person who harbors any cat to permit such animal, whether or not running at large, to destroy, damage or injure any shrubbery, plants, flowers, grass, lawn, fence, vehicle or anything whatsoever upon any public or private property owned or occupied by a person other than the owner, possessor or keeper of such animal, and the same is hereby declared to be a public nuisance and prohibited. Any cat found to be violating this section is subject to impoundment.

Sec. 4-132 - County Humane Society designated impoundment facility

The facilities of the Sebastian County Humane Society (SCHS) are hereby designated as the city-approved animal impoundment facility for stray/feral cats which are impounded pursuant to the provisions of this article. The designation of the facilities of the SCHS as an animal impoundment facility shall continue during the term of the contractual agreement entered into by the city with the SCHS, which agreement has been approved initially on the date of adoption of the ordinance from which this article derives. The designation shall cease upon termination of such contractual agreement.

Sec. 4-133 - Redemption; disposal if not redeemed

Pursuant to the designation contained in section 4-131 above, the SCHS is authorized to receive the impoundment from members of the public any stray/feral cat trapped (utilizing humane traps provided by the SCHS) on the property of the providing member of the public. Upon impoundment, the SCHS shall follow the registration, notice and right to redeem provisions of sections 4-35, 4-36 and 4-37 of this Code. Any impounded stray/feral cat not redeemed pursuant to those provisions shall, upon the expiration of the time provided for in the provisions, become the absolute property of the SCHS.

Sec. 4-134 - Euthanasia policy for cats injured, diseased, etc.

Notwithstanding any provision of this article to the contrary, the Sebastian County Humane Society may follow the society's euthanasia policy regarding any cat impounded when the SCHS reasonably determines the cat has sustained an injury or disease which will likely result in maiming, prolonged and severe suffering or death.

Sec. 4-135 - City-approved animal impoundment facility responsible for impounding cats showing signs of rabies, other contagious disease

Notwithstanding any provision of this article or this Code to the contrary, the city-approved animal impoundment facility will continue to be responsible for impounding any cat which shows signs of rabies or other contagious disease or is impounded for use as evidence in a criminal prosecution.

SECTION II: THE FOLLOWING SECTIONS OF THE FORT SMITH MUNICIPAL CODE ARE HEREBY REPEALED:

Sec. 4-40 and 4-41.

SECTION III: THE FOLLOWING SECTIONS ARE HEREBY ADDED TO THE FORT SMITH MUNICIPAL CODE:

Sec. 4-11 – Licensing of venomous reptiles

It shall be unlawful to keep any venomous reptiles within the corporate city limits without proper licensing; licensing will be free of charge. Licenses must be kept up-to-date and must contain:

1. A list of what species are owned,
2. How many of each species are owned,
3. Owner name and address, and
4. A valid address which must be updated within ten (10) business days of any change in dwelling.

Sec. 4-64 – Visiting dogs and cats

Every person visiting the city for a period of thirty (30) days or less shall be deemed in compliance with Sec. 4-63, providing that a current and valid certificate of antirabic vaccination is furnished upon request by an animal control officer or law enforcement officer; otherwise, the animal must receive an inoculation by a licensed veterinarian.

Every animal within the city limits for more than thirty (30) days is considered relocated to the city and its owners must comply with all animal care and control ordinances of the city of Fort Smith.

Sec. 4-115 – Secure enclosure

A. It shall be unlawful for any person owning dog(s) to fail to provide a secure and appropriate enclosure on their property as a primary means of confinement to prevent the escape or release of the dog(s). Confinement must be humane for the animal as well as secure and safe. All secure enclosures must meet the following guidelines:
    1. Any and all gate(s) must be self-locking or have a lock that is engaged at all times; and
    2. The property or area must be completely surrounded by a substantial fence or enclosure of sufficient strength, height, construction, materials, and design capable of preventing a dog from climbing, digging, jumping or otherwise escaping of its own volition; and
    3. All gates and the height of the enclosure and the size of openings in the enclosure must be appropriate for the type of dog within the enclosure; and
    4. All enclosures must be maintained to prevent a dog from getting through, over or under the enclosure; and
    5. All enclosures must be secure in order to prevent the unauthorized entry of other animals and the general public, including children.

B. If an animal control officer picks up a dog running at large and the dog is found to be microchipped:

1. The dog will be taken to its owner.
2. An animal control officer will inspect the dog enclosure for compliance with this section.
3. If the owner is found to have an unsecure enclosure, he/she will be given thirty (30) days to make the enclosure secure.
4. If at the end of the thirty (30) days, the enclosure is still unsecure, a citation shall be issued to the owner of the dog.

C. If an animal control officer picks up a dog running at large and no microchip is found:

1. The dog shall be taken to the city-approved animal impoundment facility until the owner picks up the dog.
2. Once ownership is established, an animal control officer will go to the property where the animal is kept to inspect the enclosure for compliance.
3. If the owner is found to have an unsecure enclosure, he/she will be given thirty (30) days to make the enclosure secure.
4. If at the end of the thirty (30) days, the enclosure is still unsecure, a citation will be issued to the owner of the dog.

Sec. 4-121 – Identification

It shall be unlawful for any dog owner to possess a dog without some form of identification. Identification by collar, tag, or microchip must provide the following information:

1. The owner's name,
2. The owner's address,
3. The owner's phone number, and
4. The dog's name.

If a dog owner is cited for running at large as set forth in section 4-116 and the dog has no form of identification, a citation will be issued for lack of identification. If the owner receives citations for running at large and lack of identification simultaneously, it shall be mandated that the dog be microchipped. The city will hold the citation for fifteen (15) days; upon proof of microchipping, the city prosecutor may choose not to pursue charges for lack of identification.

Sec. 4-122 – Animals riding in cars and pickup trucks

When transporting an animal in an open air vehicle or truck bed, the animal must be secured in a container suitable to safely contain the animal to minimize harm in the event of an accident and prevent its escape when stopped or moving. The container must be securely fastened within the vehicle to prevent its movement. If a person is found in violation, the person shall receive a citation with the possibility to be granted nolle prosse of charges for purposes of maintaining a log of infractions to prevent the continual endangerment to the animal and persons in the vicinity and may be fined in accordance with other not in control provisions.

Sec. 4-130 – Animal Waste

It shall be unlawful for any person who owns, keeps, maintains, harbors or walks an animal to cause or permit such animal to be on any property, public or private, not owned or possessed by such person unless such animal is accompanied by a person who has in his/her possession a device for the removal of excrement and a depository for the transmission of excrement to a receptacle located upon property owned or possessed by such person.

It shall be unlawful for any person who owns, keeps, maintains, harbors or walks an animal to fail to immediately remove excrement left by such animal on property, public or private, not owned or possessed by such person. The excrement shall be removed to a proper receptacle.

No person shall allow animal excreta to accumulate in any yard, pen or premises in or upon which an animal shall be confined or kept to the extent that the stench becomes offensive to those residing in the vicinity or results in a health hazard or nuisance.

Sec. 4-136 – Cat identification

It shall be unlawful for any cat owner to possess a cat without some form of identification by collar, tag, or microchip which must provide the following information:

1. The owner's name,
2. The owner's address,
3. The owner's phone number, and
4. The cat's name.

If a cat is received into the city-approved animal impoundment facility and has no form of identification, a citation will be issued for lack of identification and it will be mandated to be

microchipped and spayed or neutered. Upon proof of microchipping and spaying or neutering, the city prosecutor may nolle prosse charges.

Sec. 4-137 – Condition of premises

It shall be unlawful for any person keeping or harboring cats to fail to keep the premises where such cats are kept free from offensive odors to the extent that such odors are disturbing to any person residing within reasonable proximity of the said premises; further, it shall be unlawful to allow such premises where cats are kept to become unclean and a threat to public health by failing to diligently and systematically remove all animal waste from the premises.

PASSED AND APPROVED THIS 27th **DAY OF** December **, 2012.**

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney
Publish One Time