BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

AN ORDINANCE ADOPTING THE DOUGLAS COUNTY ANIMAL RESCUE CHAPTER OF ORS 609.415 AND 609.420.

ORDINANCE No: 2017-12-02 First Reading: 12/20/2017
Second Reading: 1/03/2018 Effective Date: 4/16/2018

THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY ORDAINS AS FOLLOWS:

CHAPTER 6.18 ADOPTION: The County hereby ordains into law Ordinance No: 2017-12-02 which will comprise Chapter 6.18 (Animal Rescue Entities) of the Douglas County Code.

Dated: January 3, 2018

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

By
Chris Boice, 
By
Gary Left, Chair. 
By
Tim Freeman, Commissioner

Recording Secretary
By

Approved as to form:
By
County Counsel
Date 1-5-2018
Chapter 6.18

ANIMAL RESCUE ENTITIES

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6.18.010 Short title and purpose. This chapter shall be referred to as the Douglas County Animal Rescue Chapter of the Douglas County Code. Its purpose is to facilitate the operation of ORS 609.415 and 609.420, which provide for the regulation of animal rescue entities by agencies operating city or county dog licensing and control programs under ORS 609.305 to 609.110 (or city or county ordinances or regulations that operate in lieu of ORS 609.035 to 609.110) or by any other agency designated the enforcing agency by the city or county governing body. This chapter shall not be interpreted as limiting the County's authority to act under any other ordinance or law, whether criminal or civil, pertaining to the custody, care, or treatment of animals. The enforcing agency operating Douglas County's dog licensing and control program under Douglas County Code Chapter
6.04 is the animal control division (hereafter referred to as “Animal Control”) of the Douglas County Sheriff’s Office (“DCSO”).

6.18.020 Definitions. Words, terms, and phrases not specifically defined in this chapter shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular include the plural. The word “shall” is mandatory and not merely directory. Unless the context clearly indicates otherwise, the following words, terms, and phrases are defined as follows:

A. “Animal” means any nonhuman mammal, bird, reptile, amphibian, or fish.

B. “Animal Control,” a division of the Douglas County Sheriff’s Office (“DCSO”), is, for purposes of this chapter, the “enforcing agency” referred to in ORS 609.415 and 609.420. Except as expressly provided otherwise by this chapter, references to Animal Control in this chapter include, in addition to any designated DCSO animal control deputy, other DCSO deputies tasked by DCSO with assisting the animal control deputy in the enforcement of state laws and county ordinances pertaining to the regulation or protection of animals.

C. “Animal rescue entity” means an individual or entity of any kind, including but not limited to an animal control agency, humane society, animal shelter, animal sanctuary, or boarding kennel not subject to ORS 167.374, but excluding a veterinary facility, that keeps, houses, and maintains in its custody ten or more animals annually, whether on site or elsewhere, and that solicits or accepts donations in any form in connection with its animal rescue operations.

D. “County” means Douglas County, Oregon, a political subdivision of the State of Oregon.

E. “Hearings officer” means an individual appointed by the Board of County Commissioners to hear and determine violations of this chapter.

F. “Minimum care” means care sufficient to preserve the health and well-being of an animal subject to this chapter and, except for emergencies
or circumstances beyond the reasonable control of the owner of the animal, includes but is not limited to, each of the following requirements:

(1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight of the animals.

(2) Open or adequate access to potable water in sufficient quantity to satisfy the animals’ hydration needs. Access to snow or ice is not adequate access to potable water.

(3) Access to adequate shelter. For animals other than livestock or those which herd livestock, this requires access to an enclosed structure providing protection of the animals from wind, rain, snow, or sun and allowing animals to maintain normal body temperature.

(4) Access to adequate bedding, which is defined as bedding of sufficient quantity and quality to permit the animals to remain dry and reasonably clean and to maintain normal body temperature.

(5) Veterinary care deemed necessary by a reasonably prudent person to prevent or relieve the animals’ distress from injury, neglect, or disease.

(6) Continuous access to an area:
   a. with adequate space for exercise necessary for the health of the animals;
   b. with air temperature suitable for the animals; and
   c. that is kept reasonably clean and free from excess waste or other contaminants that could affect the animals’ health.

G. “Owner” means the licensee, operator, owner, or other person exercising control over an animal rescue entity and is responsible for its operations. As used in this chapter, “owner” is not limited to a person or entity that is the legal owner of an animal rescue entity.

H. “Violation” means any violation of this chapter for which a fine, condition, restriction, or other sanction may be imposed.

6.18.030 License required for animal rescue entities.
A. Any animal rescue entity operating in whole or in part in Douglas County shall apply for, obtain, and continuously maintain in force, for so
long as it operates as an animal rescue entity, an animal rescue entity license issued by Animal Control, which may make available an application form to facilitate the license application process.

B. Animal Control shall not issue or renew a license under this section unless the animal rescue entity demonstrates that it is in compliance with all requirements of this chapter.

C. Animal Control shall not issue to or renew the license of an animal rescue entity of which the owner(s), officer(s), or other personnel, whether serving in a paid or volunteer capacity, have been convicted of violating ORS 167.315 to 167.333, 167.337, 167.339, 167.340, 167.341, 167.349, 167.352(a), 167.355, 167.365, 167.370, 167.372, 167.374, 167.390 167.428, 167.431, 167.439, or a state or federal law pertaining to the abuse, neglect, or mistreatment of, or cruelty to, animals that is the statutory counterpart of any of the foregoing Oregon statutes.

D. Animal rescue entity license applicants and licensees must comply with ORS 609.415 and ORS 609.420 and all other applicable laws and regulations. An animal rescue entity license does not exempt the licensee from compliance with any other provision of the Douglas County Code or with zoning, permitting, or land use requirements, unless specifically provided for by law.

6.18.040 Fee for animal rescue entity license. Every animal rescue entity operating in Douglas County shall pay a reasonable licensing fee annually. The fee amount shall be established by order of the Douglas County Board of Commissioners. An animal rescue entity shall not be required to pay separate license fees for individual animals kept at a licensed facility as part of the animal rescue entity's operations. Animal rescue entity license fees shall be used to offset the costs of enforcement by Animal Control of this chapter.

6.18.050 Term and renewal of animal rescue entity license.

A. Any animal rescue entity operating in whole or in part in Douglas County shall apply for and continuously maintain in force, for so long as it continues to operate as an animal rescue entity, an animal rescue entity license.
B. An animal rescue entity license shall be valid for one year from the date of issuance. Renewal of the license shall be due on the last day of the same month in which the license was purchased one year from the date of purchase.

6.18.060 Requirements for issuance and retention of animal rescue entity license. Any animal rescue entity operating in whole or part in Douglas County shall:

A. Apply for, obtain, and maintain in force an animal rescue entity license;

B. Comply at all times with the provisions of this chapter;

C. Provide at all times to animals in the custody or control of the animal rescue entity minimum care as defined by this chapter;

D. Comply with all requirements of applicable federal, state and local laws and ordinances pertaining to the operation of animal rescue entities; and;

E. Commit no offense described in Subsection 6.18.030 C., above.

6.18.070 Transfer of animal rescue entity license. An animal rescue entity may transfer a license issued under this chapter to another person with the written consent of Animal Control, provided that the transferee otherwise qualifies to be licensed as an animal rescue entity under this chapter and rules applicable to the transferee and does not have a certified unpaid debt to the State of Oregon. The transferee shall submit a signed release to DCSO permitting the performance of a background investigation of the transferee, and DCSO shall conduct the background investigation. DCSO is authorized to charge the transferee a reasonable fee for the background check that does not exceed the actual costs to DCSO of completing the background check.

6.18.080 Limitations of animal rescue license. Except as expressly provided by this chapter or other applicable laws, possession of an animal rescue entity license does not in any way exempt the holder from its responsibility to comply with any other provisions of the Douglas County
Code or of federal, state, county, or municipal laws, regulations, or ordinances, including zoning and permitting requirements.

6.18.090 Animal rescue entity recordkeeping requirements. Every animal rescue entity operating in whole or in part in Douglas County shall:

A. Maintain a record for each animal that identifies:
   (1) The date of birth of the animal or, if the date of birth is unknown, the approximate age of the animal;
   (2) The date the animal rescue entity acquired possession, control, or charge of the animal and the source of the animal;
   (3) The number of offspring the animal produced while in the possession or control of the animal rescue entity, if applicable;
   (4) The disposition the animal rescue entity makes of each animal possessed by, controlled by, or in the charge of the animal rescue entity, including the date of disposition, manner of disposition and the name and address for any individual or organization taking possession, control, or charge of an animal;
   (5) The source of the animal, date of acquisition, age, sex, breed, type, and weight of the animal at intake; and
   (6) A photograph of the animal taken within 24 hours of intake by the animal rescue entity.

6.18.100 Inspection of animal rescue entities; admissibility of evidence found during inspection. Any animal rescue entity shall permit the following forms of inspection by Animal Control to determine whether such person or entity is in compliance with the provisions of this chapter:

A. Inspection of the records required by this chapter or Oregon or federal law and of any records indicating whether dogs that are or have been in the custody of the animal rescue entity have been vaccinated. Such inspection may occur either on-site or as otherwise arranged by Animal Control and the animal rescue entity.

B. On-site, walk-through inspection of the premises on which the animal rescue entity operates whenever Animal Control has reasonable grounds to believe that the animal rescue entity is operating without a
license or is otherwise not in compliance with the requirements of this chapter.

C. If, during the course of an inspection made under this chapter, an Animal Control deputy or other DCSO deputy acting under Animal Control's direction discovers evidence of an offense described in Subsection 6.18.030 C., above, the deputy shall seize the evidence for use in any subsequent criminal proceeding.

6.18.110 Entry onto private property. Before entering on to private property in enforcing the provisions of this Chapter, Animal Control and any employee, contractor, or agent of Animal Control or DCSO shall obtain consent to enter from a person with actual authority to provide such consent, unless the person(s) making entry has: (1) a criminal or administrative search warrant; or (2) probable cause to believe at the time of entry that imminently hazardous, unsafe, or dangerous conditions require immediate action to prevent death, serious injury, or serious damage to property (i.e., “exigent circumstances” as analyzed under Article I, Section 9 of the Oregon Constitution and the Fourth Amendment of the United States Constitution).

6.18.120 Citation; complaint; hearing process.

A. An Animal Control deputy or other DCSO deputy acting on behalf of Animal Control may issue and serve the owner or operator with a citation when the deputy has reasonable grounds to believe that a violation of this chapter has occurred. The citation shall serve as the County’s complaint and may include a fine payable to Douglas County.

B. A citation issued under this chapter shall be served by personal service or by certified mail with return receipt requested no later than six (6) months from the date the alleged violation occurred. When mailed, the date of mailing shall be considered the date of service.

C. In determining whether to issue a citation, an Animal Control deputy or other DCSO deputy acting on behalf of Animal Control may request consent or, if consent is not given and Animal Control has probable cause to believe that violations of this chapter are occurring, may seek an
administrative search warrant to enter onto private property in order to investigate suspected violations of this chapter.

D. Form of citation.

1. The citation shall include:
   a. The name and address of the person cited;
   b. The date(s) the violation(s) occurred;
   c. The number and title of the chapter section(s) violated and a concise verbal description of the violation(s);
   d. A concise description of the animal(s) involved, if known;
   e. The base fine, to be equal to the minimum fine, along with the maximum fine for each violation as authorized by this chapter;
   f. A statement providing notice of the penalties that could be imposed by the hearings officer;
   g. Whether appearance before a hearings officer is optional, or if mandatory, the date, time, and place at which the person is to appear;
   h. The procedure for the person to follow to admit the violation and pay the fine or to contest the citation and appear before the hearings officer;
   i. A statement that if the person fails to pay the fine within the time allowed or fails to appear before the hearings officer when required, the person shall have waived his or her right to contest the citation, and the hearings officer may enter a judgment against the person for an amount up to the maximum fine, in addition to any fees, costs, or expenses, conditions, or restrictions authorized by this chapter; and
   j. A statement that when appearance before the hearings officer is mandatory, the person cannot pay the fine in lieu of appearance and must appear before the hearings officer.

2. An error in transcribing information into a citation, when determined by the hearings officer to be non-prejudicial to the defense of the cited person, may be corrected prior to or at the time of the hearing with notice to the cited person. Except as provided in
this subsection, a citation that does not substantially conform to the requirements of this section shall be set aside by the hearings officer upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of the citation shall not be a basis for setting the citation aside. Nothing shall prohibit the hearings officer from amending a citation so long as amendment does not materially prejudice the person cited from presenting a defense to the citation.

E. Response to citation

1. Unless an appearance before the hearings officer is mandatory, an owner who has received a citation may respond as follows:
   a. Appear personally before the hearings officer on the cited appearance date and either admit or deny the violation; or
   b. Prior to the appearance date, return a signed copy of the citation to Animal Control admitting the violation(s), along with a check or money order payable to Douglas County for the total base fine amount stated in the citation. (Admission and payment does not relieve the owner from the requirement of correcting the violation.); or
   c. Prior to the appearance date, return a signed copy of the citation to Animal Control denying the violation and requesting a hearing. Animal Control then will notify the hearings officer and ask the hearings officer to set a time and place for the hearing and notify the person who has received the citation of the place, date, and time of the hearing.

2. Personal appearance before the hearings officer at the time and place indicated on the citation shall be mandatory when:
   a. The owner has been cited under this chapter two or more times within a twelve-month time period and Animal Control believes that the circumstances of the violation warrant mandatory appearance; (2) Animal Control has impounded or seeks forfeiture of animals under the control of the animal rescue entity; or (3) Animal Control seeks revocation of the animal rescue entity’s license under this chapter.
described in Subsection A.1., 2., or 3., above, exists. The owner shall have the opportunity to present evidence and argument to the hearings officer that license revocation is not supported by the evidence or is otherwise inappropriate under this chapter or other applicable laws.

D. Hearing Procedure. Hearings held under this chapter shall be governed by the following procedural rules:

1. Informal Disposition. Animal Control and the owner may agree to an informal and final disposition of any violation before the hearings officer issues a final order.

2. Representation.
   a. The owner may appear before the hearings officer either on his or her own behalf or with licensed legal counsel retained by the owner at the owner’s expense.
   b. The deputy who issued the citation to the owner shall appear before the hearings officer on behalf of Animal Control unless the owner is represented by legal counsel, in which case Animal Control may elect to appear with an attorney from the Douglas County Office of County Counsel or its designee.
   c. An owner who intends to appear with legal counsel shall provide timely notice to the hearings officer, Animal Control, and Douglas County Counsel.
   d. Upon good cause shown, the hearings officer may authorize Animal Control to appear with legal counsel regardless of whether the owner appears with counsel.
   e. In all cases, Douglas County Counsel or its designee may assist Animal Control in preparing its case for hearing and obtaining witnesses.

3. Burden of Proof. Animal Control shall have the burden of proving, by a preponderance of the evidence, that the violation(s) alleged by Animal Control occurred.

4. Testimony of Witnesses and Parties. The hearings officer shall have the authority to administer oaths or affirmations and take testimony of and question the witnesses and parties. The parties may offer witness testimony on their own behalf. Written witness testimony may be presented only in the form of sworn, notarized
affidavits and may be excluded by the hearings officer, either on the hearings officer's own motion or in response to objection by a party (on grounds other than that it violates the hearsay rule) in the hearings officer's discretion.

5. Cross-examination of Witnesses. Any of the following may cross-examine witnesses:
   a. The owner, if the owner appears without legal counsel;
   b. The deputy or other enforcement officer who issued the citation, if legal counsel does not appear on behalf of Animal Control; or
   c. Legal counsel for either party.

6. Evidence. Reliable and relevant evidence shall be admitted subject to the rules of privilege recognized by the Oregon Evidence Code. With the exception of the rules of privilege, the Oregon Evidence Code shall not apply, although the hearings officer shall have the authority to exclude evidence that he or she reasonably deems to be irrelevant, unreliable, unfairly prejudicial, or cumulative and may use the Oregon Evidence Code as non-binding guidance in making such determinations.

7. Records. Records developed, kept, and maintained during the normal course of business, including but not limited to law enforcement reports and veterinary records, shall be admissible provided the party offering the records establishes their authenticity through written or oral testimony. The hearings officer may in his or her discretion, either upon objection by the opposing party or of its own accord, exclude such records if the hearings officer has reasonable grounds to question their authenticity or completeness.

8. Procedures for the Presentation of Evidence. The hearings officer may establish procedures for the presentation of evidence to ensure that the hearing record reflects a full and fair inquiry into the facts necessary to determine the matter alleged. The hearings officer shall have the discretion to exclude any material or testimony that is cumulative, repetitious, irrelevant or immaterial.

9. Objections. Objections to the admission of evidence shall be noted in the record and considered with respect to the weight to
be given the particular evidence offered. The hearings officer shall have the discretion to admit or exclude any evidence presented and may reserve ruling on the admissibility or exclusion of evidence until a final order is issued.

10. Subpoenas. The hearings officer may issue subpoenas to parties when a request is supported by a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than peace officers involved in any manner in the investigation that led to issuance of the citation(s) that are the subject of the hearing, shall be paid by the party requesting or issuing a subpoena the same witness fees and travel mileage reimbursement allowed in civil cases in which the County is a party. Witness fees shall be paid when subpoenas are issued. The party requesting the subpoena shall be responsible for its service in accordance with the Oregon Rules of Civil Procedure.

11. Hearing Record. A verbatim record shall be made of all hearings. A party may arrange, at its own expense, for transcription of the record by a third-party transcriber approved by the hearings officer.

12. Final Order. At the conclusion of the hearing, the hearings officer shall issue a final order based upon reliable, relevant, and substantial evidence, which shall be the County’s final determination. A final order shall be effective on the date that it is issued unless otherwise provided by the hearings officer. The order may be oral or written but in all cases must be recorded in the hearing record. The hearings officer may impose fines, fees, costs, expenses, conditions, or restrictions and any other imposition authorized by this chapter. Monetary obligations are due and payable on the effective date of the final order unless otherwise ordered by the hearings officer.

13. Judicial review. Either party may seek review by Douglas County Circuit Court of a final order of the hearings officer by writ of review as provided in ORS 34.010 - 34.100.

14. Enforcement of final order. The County may maintain civil proceedings in law or equity in a court of competent jurisdiction to enforce any provision of a hearings officer’s final order.
6.18.140 Remedial action and penalties. Violation of any provision of this chapter may result in imposition of any of the following remedial actions and penalties:

A. Imposition of a fine. The maximum fine for any single violation of this chapter shall be $500. Animal Control may continue to issue citations for the same violation of this chapter weekly for so long as the violation continues to exist.

B. Imposition of an order to reimburse the County for the costs (excluding routine personnel, administrative, and operating expenses) reasonably incurred in addressing violation of the provisions of this chapter.

C. Surrender by the animal rescue entity to Animal Control of all animals under the animal rescue entity’s control for placement by Animal Control with other animal rescue entities or individuals able and willing to provide them with minimum care, or, if deemed appropriate by Animal Control, for euthanization.

D. Revocation of the animal rescue entity’s license to operate an animal rescue entity as provided in Section 6.18.130 of this chapter.

E. Fines, fees, costs, and expenses imposed by a hearings officer pursuant to the provisions of this chapter shall become a debt owing to Douglas County and may be collected in the same manner as any other debt allowed by law. If fines, fees, costs, or expenses are not paid within sixty (60) days after payment is ordered, the County may file and record the final order for payment in the County Clerk lien record as authorized by ORS 30.460.

F. If the hearings officer finds that an alleged violation of this chapter did not occur, the County shall reimburse the operator, owner, or other person exercising control over the animal rescue entity owner for fines, fees, costs, and expenses previously paid to the County by such person for the alleged violation.

G. Any condition or restriction imposed by the hearings officer must be complied with immediately unless otherwise ordered. Animal Control may request that the hearings officer order that the owner found in violation provide proof of compliance by a date certain.