



Ordinance 646

AN ORDINANCE AMENDING CHAPTER 71 OF THE CODE OF THE TOWN OF ELSMERE.

Sponsored By: 5th District Councilwoman Joann I. Personti

First and Second Reading: April 11, 2019 Council Meeting

Results: Passed 7 In Favor, 0 Opposed

Third and Final Reading: May 9, 2019 Council Meeting

Results: Passed 7 In Favor, 0 Opposed

ORDINANCE 646

AN ORDINANCE AMENDING CHAPTER 71 OF THE CODE OF THE TOWN OF ELSMERE.

WHEREAS, Chapter 71 of the Code of the Town of Elsmere set rules and regulations concerning animals throughout the Town; and

WHEREAS, the Mayor and Council have determined that some of these rules and regulations are outdated and ineffective; and

WHEREAS, some of the existing sections are now regulated by the State of Delaware Office of Animal Welfare; and

WHEREAS, The Mayor and Council wish to update Chapter 71 taking into consideration the changes made to the States Laws:

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, AS FOLLOWS:

That Chapter 71 Animals of the Code of the Town of Elsmere be deleted in its entirety and a new Chapter 71 be inserted as follows:

§ 71-1 Short title.

This chapter shall be known and may be cited as the "Town of Elsmere Animal Regulation Code."

§ 71-2 Definitions.

For the purposes of this chapter, the following terms shall have the meanings indicated. No attempt is made to define any words which are used in accordance with their establish dictionary meaning, except when necessary to avoid misunderstandings.

WILD ANIMAL:

Any nonhuman primate, raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, or any other animal so classified by the Delaware Code.

§ 71-3 Permitting animal to commit a nuisance.

A. Defecation.

- (1) It shall be a violation against the owner or one who harbors any animal which defecates upon:
 - (a) Any sidewalk or public street; or
 - (b) Any public park or other public property, other than in areas designated for that purpose; or

- (c) Any private property not belonging to the owner of the animal.
- (2) Notwithstanding the above, it shall not be a violation of this subsection if said person makes an immediate attempt to remove any feces deposited by the animal.
- B. The actions of an animal constitute a nuisance when the animal disturbs the rights or threatens the safety of or harms a member of the general public, damages the property of someone other than the animal's owner or trespasses upon the private property of another person not the owner of the animal.
- C. It shall be unlawful for any person to own, keep, possess, harbor or maintain an animal in such a manner as to constitute a public nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are hereby declared to be a public nuisance:
 - (1) Allowing or permitting any animal to bark, whine, howl, crow, cackle or make other loud disturbing noise which, due to the volume, continuance or hour of the day, results in a serious annoyance or interference to neighboring residents and their enjoyment of their property.
 - (2) Allowing or permitting an animal to continually damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damaging gardens, flowers, or other plant material or trespassing upon the property.
 - (3) Maintaining an animal with a medical condition that could lead to a widespread epidemic that would ultimately be dangerous to the public health, unless the animal is kept in a manner that minimizes the public health threat and is undergoing treatment for the disease in accordance with locally accepted veterinary standards.
 - (4) Maintaining an animal or animals in an environment of unsanitary conditions, which results in offensive odors or is dangerous to the animal or to the public health, welfare or safety or that of any neighboring property within 200 feet.
 - (5) Placing of any food, drink or other consumable item(s) intending that they be consumed by animals other than those owned by the person placing the items for consumption, which would draw animals not owned by the person to the area for the purpose of feeding or obtaining water or other consumable items. This section shall not include bird feeders.

§ 71-4 Harboring of stray animals.

It shall be a violation of this section for any person to harbor or feed any stray animal unless he or she has notified the Code Enforcement Officer within 48 hours of the presence of the stray animal. Upon receiving such notification, the Code Enforcement Officer may direct that such animal be placed with the State of Delaware Office of Animal Welfare. Refusal to surrender any such stray animal upon request of the Code Enforcement Officer shall be deemed an additional violation of this section.

§ 71-5 Interference with officer prohibited.

Any person who hinders, obstructs or otherwise interferes with an officer while discharging his or her duties under this chapter, or who takes or attempts to take any animal from any officer or from any vehicle used by the officer to transport any animal, or who takes or attempts to take any animal from the Town without proper authority, or knowingly interferes with any animal trap set by an officer or persons obtaining said traps from the Town shall be deemed in violation of this section.

§ 71-6 Ownership of wild animals prohibited.

- A. No person shall own or harbor any wild animal as a pet without the appropriate state permits or Town permits.
- B. Zoological parks, performing animal exhibitions and circuses, which utilize wild animals in their performances or exhibitions, shall be exempt from the provisions of this section.

§ 71-7 Dogs or cats prohibited in parks.

No person owning or having charge, care, custody or control of any dog or cat shall permit or allow the dog or cat into or upon any public park within the Town, unless in compliance with the Delaware Code or the Rules of the Town's Dog Park.

§ 71-8 Enforcement of violations.

- A. Any police officer or a law enforcement officer of the State of Delaware and any Code Enforcement Officer of the Town of Elsmere who has probable cause to believe that a person has committed an act in violation of this chapter shall have the authority to enforce this chapter.
- B. No person shall willfully refuse to sign and accept a citation issued by an officer or willfully refuse to sign for and accept delivery of a citation sent via certified mail/return receipt requested by the Town or any officer enforcing this chapter.
- C. In the event an animal is impounded for violation of this chapter and the owner of the animal abandons or surrenders the animal to the State of Delaware Office of Animal Welfare, the owner remains liable for the penalties imposed for violations of this chapter. In the event the animal runs away, is lost or is given away, the owner of the animal shall be liable for any penalty imposed for violations of this chapter.

§ 71-9 Violations and penalties.

- A. Any person cited for an infraction under this chapter shall pay the civil penalty specified for such infraction as set by resolution.
- B. In addition to any civil penalties, any person who fails to pay all penalties imposed within the ten-calendar-day payment period shall pay a delinquency fee as set by resolution.
- C. Any person who fails to come into compliance with any section of this chapter for which he or she is in violation within the ten-calendar-day payment period shall be subject to citation for second and subsequent offense violations of the same sections of this chapter.

§ 71-10 Animals in vehicles.

- A. No person shall leave an animal in a motor vehicle without adequate ventilation or in such a manner as to expose the animal to extremes of heat or cold.
- B. An officer may remove and impound an animal from a vehicle if its safety appears to be in immediate danger from heat or cold or lack of adequate ventilation. The officer is authorized to take steps reasonably necessary for the removal of such animal, including but not limited to breaking into the vehicle. Neither the officer nor his or her agency shall bear civil liability for damage.
- C. No person shall transport any animal in a motor vehicle unless the animal is safely enclosed within the vehicle, or if traveling in an unenclosed vehicle (including but not limited to convertibles, pickups and flatbed trucks) is confined by a container, cage, or other device that will prevent the animal falling from or jumping from the motor vehicle. Any such container or cage shall be anchored to the vehicle in order to prevent its jostling about.

§ 71-11 Farm animals and livestock prohibited.

- A. No person shall keep or harbor any animal commonly referred to as a "farm animal" or "livestock."
- B. For the purpose of this section, a farm animal or livestock shall include all breeds of the following but shall not be limited to any of the following:
 - (1) Horses.
 - (2) Cows.
 - (3) Chickens.
 - (4) Pigs.
 - (5) Hogs.
 - (6) Goats.
 - (7) Hens.
 - (8) Sheep.
 - (9) Ducks.
 - (10) Fowl.
 - (11) Mules.

§ 71-12 Exemptions to farm animals and livestock prohibition.

- A. Any person harboring or keeping an animal which would be prohibited by § 71-11 of this chapter and who believes that his/her particular animal has a real and legitimate medical, medicinal, psychological or emotional benefit to him/her or a member of his/her family residing in the residence may ask for a meeting with the Town Manager and request an exemption from the provisions of § 71-11.
- B. The Town Manager shall develop a list of criteria that the animal's owner must present at the meeting and a general procedure concerning how the meeting will be conducted.
- C. If at the conclusion of the meeting the Town Manager is convinced that the particular animal in question does in fact provide legitimate medical or medicinal benefit to the animal's owner or a member of his/her family residing in the residence and that harboring the animal would not adversely affect the general value of property within the area, nor adversely affect the right of other property owners to the safe and comfortable enjoyment of their property, the Town Manager may issue an exemption to § 71-11 of this chapter.
- D. If the Town Manager decides to issue an exemption he may make the issuance of the exemption contingent upon any terms, restrictions or conditions he feels appropriate.
- E. Any person aggrieved by the Town Manager's decision may appeal to the Board of Adjustment

First and Second Reading
April 11, 2019

Third and Final Reading
May 9, 2019

Eric Thompson, Mayor

Brian Hurst, Secretary

Approved as to form:

Town Solicitor

**SYNOPSIS
ORDINANCE 646**

This Ordinance replaces the existing Chapter 71.

Fiscal Impact:

This Ordinance is anticipated to have no fiscal impact.