

ORDINANCE NUMBER 09-396

ELKHART COUNTY ANIMAL ORDINANCE

Section 1. Definitions.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

A. ABANDON: To desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.

B. AGENT: Any person eighteen (18) years of age or older who is authorized by the animal's owner to have temporary or permanent custody of, shelter, have charge of, harbor, exercise control over, or otherwise act on such owner's behalf with respect to the owner's animal.

C. ALTERED: Any animal that has been physically altered to prevent it from procreating.

D. ANIMAL: A member of the animal kingdom, except humans.

E. ANIMAL CONTROL AGENCY: Any governmental or private entity charged with or subcontracted with for the implementation of animal control services for and on behalf of the County of Elkhart, Indiana.

F. ANIMAL CONTROL AGENT: A civilian person employed or appointed by an animal control agency for the purposes of carrying out the provisions of this Ordinance or any contract for animal control services.

G. ANIMAL CONTROL FACILITY: A facility or vehicle operated by an animal control agency for promoting animal welfare and humane treatment of animals. This may include not-for-profit entities incorporated for the purpose of promoting animal welfare.

H. AT LARGE: An animal that is:

- (1) Not on a leash and is off the property of its owner or the owner's agent;
- (2) On a leash that does not adequately confine the animal to the property of the owner or the owner's agent;
- (3) On a leash that is not otherwise under the immediate control of a person physically capable of restraining the animal; or
- (4) Otherwise not under the direct control of the owner or owner's agent.

Provided, however, an animal that is engaged in legal hunting or farming activities and is under the control and supervision of the owner or the owner's agent is not considered to be at large under this Ordinance.

I. BITE: To seize, tear, wound, cut with the teeth, resulting in a break in the skin. A bite does not include a nip or scratch.

J. COLONY: One or more free-roaming cats, whether managed or unmanaged, in a particular locale.

K. COLONY CARETAKER: A person who provides, food, water, and shelter for one or more free-roaming cats in a managed colony.

L. DANGEROUS ANIMAL:

(1) Any animal which:

- (a) Has seriously injured a human, domestic animal, or livestock;
- (b) Has without provocation attacked, bitten, attempted to attack, or belligerently pursued any human whether on or off the property of its owner or the owner's agent;
- (c) Has attacked or bitten a domestic animal or livestock while off the property of its owner or the owner's agent; or
- (d) Has been found to be at large and has been documented to be at large by an animal control agent or law enforcement officer on three (3) or more separate occasions in a twelve (12) month period and been documented to show aggressive behaviors, including those listed above.

(2) No animal shall be considered a dangerous animal if the animal causes injury or damage to a person while that person was:

- (a) Committing or attempting to commit, at the time, a trespass or other tort upon the premises lawfully occupied by the owner of the animal;
- (b) Provoking, tormenting, abusing or assaulting the animal or who can be shown to have repeatedly in the past provoked, tormented, abused, or assaulted the animal; or
- (c) Was committing or attempting to commit a crime.

(3) No animal shall be considered a dangerous animal if the animal causes injury or damage while:

- (a) Responding to pain or injury;
- (b) Protecting itself or its offspring; or
- (c) Protecting or defending a human within the immediate vicinity of the animal from an attack or assault.

- (4) K-9 patrol dogs and police dogs shall not be considered dangerous animals when used in the line of duty or for law enforcement purposes.

M. DESIGNEE: A person, organization, or entity selected, appointed, or nominated for a particular purpose or duty.

N. DOMESTIC ANIMAL: A non-wild, non-livestock animal commonly kept as a household pet including:

- (1) Dogs (*Canis familiaris*);
- (2) Cats (*Felis catus* or *Felis domesticus*);
- (3) Guinea pigs (*Cavia procavia*);
- (4) Hamsters (*Mesocricetus auratus*);
- (5) Gerbils (*Gerbillus*);
- (6) Pigeons, homing or racing; and
- (7) Ferrets.

O. FERAL CAT: A cat which has been born in the wild or has been separated from domestication through abandonment or loss and has adapted to life in the wild; an unsocialized cat.

P. FIGHT: A conflict between two or more animals that is intentionally organized for such purpose.

Q. FREE-ROAMING CAT: Any feral, homeless, stray, or untamed cat.

R. HARBOR: To habitually be lodged or to be within one's home, store, place of business, enclosure, or any premises on which such person resides or controls. An animal shall be presumed to be harbored if it is sheltered for six (6) consecutive days or more.

S. K-9 PATROL DOGS AND POLICE DOGS: A professionally trained dog used by law enforcement, military, or public safety officers for law enforcement or investigative purposes and activities.

T. LIVESTOCK: Non-wild animals and their kinds, commonly kept as farm animals, including those kept for commercial purposes, such as:

- (1) Cattle, bison, cows, and oxen;
- (2) Sheep;

(3) Llamas;

(4) Goats;

(5) Chickens, turkeys, geese, and ducks;

(6) Swine;

(7) Horses; and

(8) Donkeys.

U. LEASH: A cord, chain, tether, rope, strap, lead, or other such physical restraint.

V. MANAGED COLONY: A colony that is registered with a sponsoring animal control agency and is maintained by a colony caretaker using Trap-Neuter-Return ("TNR") methodology.

W. MICROCHIP: A tiny computer chip, implanted underneath the skin of an animal that contains identification information relating to that animal.

X. MUZZLE: A device constructed of strong, soft material or metal, designed to fasten over the mouth of an animal, without interfering with its vision or respiration or causing injury to the animal, to prevent the animal from biting any person or other animal.

Y. NIP OR SCRATCH: To pinch or squeeze with the teeth or claws, not breaking the skin or damaging any tissue.

Z. OFF THE PROPERTY: Beyond the legal boundaries of real property owned by the animal's owner or the owner's agent.

AA. OWNER: Any person eighteen (18) years of age or older having ownership rights to any animal covered by this Ordinance.

BB. PET: Any animal kept for pleasure rather than utility.

CC. PROVOCATION: To deliberately arouse, incite, or excite.

DD. RABIES VACCINATION. An injection, licensed by the U.S.D.A. and approved by the Indiana State Board of Health, given to a dog, cat, or other animal by a veterinarian to prevent the spread of rabies.

EE. RESTRAINT: The securing of an animal by leash or confining it within the real property limits of its owner or the owner's agent.

FF. SERIOUSLY INJURED:

(1) Any injury, which is caused by an animal and is officially documented, that:

- (a) Results in death;
- (b) Creates a substantial risk of death;
- (c) Causes permanent disfigurement or unconsciousness; or
- (d) Results in a permanent or protracted loss or impairment of a bodily member or organ.

(2) Seriously injured shall not include any nip or scratch from an animal.

GG. SERVICE ANIMAL: An animal that a person who is impaired by blindness or any other visual impairment, deafness or any other aural impairment, a physical disability, or a medical condition relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

HH. STRAY: Any animal that is not under restraint or, upon reasonable inquiry by a law enforcement officer or animal control officer, does not appear to have an owner.

II. TRAP-NEUTER-RETURN ("TNR"): A program pursuant to which free-roaming cats are trapped, neutered or spayed, vaccinated against rabies, recorded for identification, and returned to the location where they congregate and are provided with food, water, and shelter.

JJ. VETERINARIAN: Any person licensed and accredited to practice veterinary medicine in the United States.

KK. WILD ANIMAL: Not a domestic animal nor livestock and which is normally found in the wild state.

Section 2. General Animal Care Requirements.

Every owner and owner's agent residing within the unincorporated area of Elkhart County shall insure that each animal of the owner:

A. Is kept in a clean, sanitary, and healthy manner and is not confined so as to be forced to stand, sit, lie, or eat in its own excrement, except for normal and accepted animal husbandry practices and confined feeding operations for livestock;

B. Has sufficient and wholesome food and water, which is proper and nutritional for that species of animal;

C. If ill, diseased, or injured, receives proper veterinary care as necessary to promote the good health of the animal and prevent the transmittal of disease to other animals or humans;

D. Is not beaten, ill-treated, overloaded, over-worked, tormented, or otherwise abused or neglected, or involved in any dog fight, cockfight, bullfight, combat, or other fight between animals or between animals and humans;

E. Is not altered in any manner by anyone other than a veterinarian, except for normal and accepted animal husbandry practices;

F. Is not abandoned, neglected, or tortured;

G. Does not become a dangerous animal;

H. Is properly under restraint and not at large;

I. Is not induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a situation which will cause or is likely to cause excessive physical injury or suffering;

J. Does not, without provocation, molest, attack, or otherwise interfere with the freedom of movement of persons in a public right-of-way;

K. Does not chase or interfere with motor vehicles in a public right-of-way;

L. Does not wander off the property of its owner or owner's agent and attack other animals;

M. Does not damage, soil, defile, destroy, or defecate on any property other than that of its owner or owner's agent;

N. Remains under restraint when in heat so as to prevent unintentional breeding.

O. For livestock, has demonstrable protection from the elements to include windbreaks and shade;

P. For domestic animals:

- (1) lives in or has access to a structure which will protect the animal from the weather and allow the animal to stand, sit, turn around, and lie down without restriction;
- (2) has access to solid floor space in at least half of the cage if housed in a cage with a wire floor; and
- (3) is provided with reasonable opportunity for exercise at least two (2) times a day for not less than ½ hour each time.

Section 3. Animals in Motor Vehicles.

No animal shall be left in a motor vehicle when the conditions in that vehicle would constitute a health hazard to that animal, or when the weather would constitute a health hazard to such animal confined in said motor vehicle; nor shall any person transport any animal in an unenclosed truck bed or open section of any vehicle unless the animal is enclosed in a cage which is securely fastened to the vehicle. A law enforcement officer may act to remedy any such hazard by any means, including gaining entry to impound the endangered animal.

Section 4. Poisoning of Animals.

A. No person shall deposit, dispose, or place any poisonous substance on any public or private property within the unincorporated area of Elkhart County if a human or domestic animal is reasonably likely to consume or come into contact with such substance.

B. A person shall not be liable under Subparagraph (A) in this Section for leaving common rat/mouse/mole poisons or insecticides, in any form, on his or her property if the person exercises reasonable care in restricting other animal's access to such poisons so that only the targeted rodents or insects are exposed to said poisons.

Section 5. Planning and Zoning Requirements.

Every owner and owner's agent shall abide by the requirements of the Elkhart County Zoning Ordinance, as amended or replaced from time to time, and any applicable planned unit development ordinance, special use, conditional use, variance, or other land or use restriction established by Elkhart County with respect to prohibitions, restrictions, limitations, terms, or other provisions governing animals for the real estate affected by such provisions.

Section 6. Owners and Agents Responsible for Removing Animal Wastes.

Any owner and owner's agent taking the owner's domestic animal outside of the owner's real property limits must immediately remove any excrement deposited by the animal on any public or private property, except in the case of a service animal.

Section 7. Animal Bites.

A. Any person that is a victim of an animal bite shall immediately notify the Elkhart County Health Department or a law enforcement officer of the incident, provide a description of the animal, and identify the owner, if possible. Elkhart County's animal control agency should also be notified. When an animal is determined to have bitten a person, the animal shall be confined in quarantine for a period of not less than ten (10) days from the date of the bite or as otherwise required by applicable law.

B. A biting animal may be left in the charge of the owner, under quarantine, unless in the judgment of a law enforcement officer or animal control agent and based upon considerations of public safety, it is determined the animal should be removed to an animal control facility or veterinary hospital for the period of observation.

C. In addition to any other legal obligations prescribed by law, the owner shall pay for all costs incurred in the quarantine and/or impoundment of the animal before such animal will be released. If the owner is unable or unwilling to pay for said costs, the animal may be humanely euthanized, and the owner shall still remain liable for any costs incurred in said quarantine and/or impoundment.

D. If the owner of the quarantined animal cannot be determined, the animal shall be impounded under the authority and in the discretion of the law enforcement officer or animal control agent and confined in an approved animal control facility for the period of observation.

Section 8. Vaccination of Dogs, Cats and Ferrets Required.

A. No owner or owner's agent shall keep or harbor a dog, cat, or ferret over the age of three (3) months unless it has received a rabies vaccination with such frequency as is specified by state law.

B. The owner shall maintain proof of an animal's vaccination so that it can be presented to a law enforcement officer or animal control agent upon request.

Section 9. Confinement by other than County Officials: Notice Required.

Unless authorized by the owner of an animal, no person, other than a law enforcement agency or animal control agency, shall hold or retain possession of any animal of which he is not the owner for more than twenty-four (24) hours without first reporting the possession of the animal to a law enforcement officer or an animal control agency. When reporting possession of an animal, such person shall give his name and address, a description of the animal, a true and complete statement of the circumstances under which he took possession of the animal, and the precise location where the animal is confined.

Section 10. Animal Impoundment Procedures.

A. Any law enforcement officer or animal control agent may immediately pick up and impound any of the following animals:

- (1) Any animal at large;
- (2) Any unattended animal that is ill, injured, or otherwise in need of emergency care;
- (3) Any animal that is reasonably suspected of having rabies; or
- (4) Any unattended animal that is exhibiting aggressive or dangerous behavior and is not sufficiently confined to its own property.

B. Any law enforcement officer or animal control agent with probable cause may impound the animal involved under IC 35-46-3-6:

- (1) For which there has been a violation under IC 15-20-1-4; or
- (2) For which there has been a violation under IC 35-46-3.

C. If any dangerous animal is found at large and cannot be safely captured, a law enforcement officer may seek assistance or take action deemed appropriate, such as tranquilizing or killing said animal to prevent harm to individuals.

D. If stray animals are picked up by or turned in to an animal control facility, they shall be scanned by the animal control facility for an identifying microchip unless doing so presents an unnecessary hazard to the animal control agent. The animal's owner shall be notified by the end of the next business day of the animal control facility if identified. If an animal is bearing any other identification containing the owner's address and/or phone number, the animal control facility shall notify the animal's owner by the end of the next business day of the animal control facility.

E. If an animal bearing no identification or microchip is picked up or turned in to an animal control facility, and the owner's information is contained in the animal control facility's records, an attempt shall be made by the animal control facility to return the animal to its owner as soon as is practical after it is picked up or turned in. If the return of the animal is impossible or attempted without success, the animal control facility shall send a written notice to the owner at the address indicated in the records of the animal control facility and/or the microchip company if known. Such notice shall include the information that the animal control facility has the animal and that unless the animal is claimed by the owner within ten (10) days from the date of impoundment, the animal may be placed for adoption or humanely euthanized.

This process shall only apply for first time occurrences. On any subsequent occurrence, an impounded animal shall be kept for no fewer than five (5) days to permit the owner to claim it. After the fifth day, if the owner has not claimed the animal and paid the required fees, the animal may be placed for adoption or humanely euthanized.

F. Stray animals without any means of identification of their owners will be held at the animal control facility a minimum of three (3) days in order to permit any potential owner adequate time to reclaim them.

G. The animal control facility shall have authority to take whatever action is reasonably necessary, including humane euthanization, to deal with a sick or injured animal, to prevent unnecessary suffering of the animal.

H. Nothing contained herein shall limit the animal control facility's ability to take whatever action is reasonably necessary to provide veterinary care by a veterinarian for a sick or injured animal.

I. Any animal taken into an animal control facility, if not reclaimed by its owner as provided for herein, may be placed for adoption or placed with an animal rescue organization, and, if not adopted by the public or placed with an animal rescue organization, may be humanely euthanized.

Section 11. Dangerous Animal Requirements.

A dangerous animal may be impounded until the requirements of this Section are fulfilled. If, in the discretion of a law enforcement officer or animal control agent, the animal is too dangerous to keep in any home, dwelling, or enclosure, an emergency court order may be requested to have the animal humanely euthanized.

A. The owner shall be responsible for the costs of caring for the dangerous animal during the period of impoundment, including the costs of boarding, and veterinary treatment if necessary. If the owner institutes an appeal and the animal is ultimately determined not to be a dangerous animal, the owner shall not be charged the costs of boarding the animal.

B. Upon the impoundment of a dangerous animal pursuant to this Section, the owner shall be given forty-eight (48) hours to show proof of, or to complete, a dangerous animal registration.

C. If the owner fails to show proof of or to complete a dangerous animal registration within forty-eight (48) hours of impoundment, or if the owner waives in writing all ownership interests in the animal, the animal may be humanely euthanized.

D. If a conflict arises between the provisions of this Section and other Sections of this Ordinance, the provisions of this Section shall prevail due to the public health and safety concerns involved.

Section 12. Dangerous Animal Registration Requirements.

A. A person wishing to own, harbor, possess, or keep a dangerous animal shall be required to register with Elkhart County Code Enforcement and pay a registration fee of Five Hundred Dollars (\$500.00). As part of the registration process, the registrant shall provide:

- (1) A valid driver's license or government issued picture identification showing the owner's name and current address;
- (2) Proof that the applicant owns or has possessory rights to said animal and is eighteen (18) years of age or older;
- (3) One copy of the current immunization and health records for said animal showing that the animal has a current rabies vaccination;
- (4) Proof that the registrant has insurance coverage for not less than Three Hundred Thousand Dollars (\$300,000.00) for any injury, damage, or loss caused by said animal;

- (5) Four photographs of said animal from four different sides taken not more than one month before the date of the registration. Such photographs shall consist of a front, back, left, and right side view of the animal;
- (6) The name, address, and phone number of the animal's previous owner, if applicable;
- (7) Proof that the animal is spayed or neutered, or otherwise altered; and
- (8) Proof of microchip implanting and the identification information implanted.

B. Dangerous Animal Enclosure and Confinement

- (1) A dangerous animal shall be confined, at all times, within a habitable locked and secured dwelling and/or a locked and secured kennel. At any time, the secured area may be inspected by Elkhart County Code Enforcement or its designee and shall meet the following minimum requirements:
 - (a) If chain-link fencing is used for the kennel, it must be made of at least 11 gauge chain-link wire. Other fencing must be of such material that the animal cannot chew, dig, or otherwise free itself from inside the enclosure.
 - (b) The top must be chain-link or of an engineered roofing from which an animal cannot escape;
 - (c) The floor must be cement, brick, or engineered flooring from which an animal cannot escape;
 - (d) Sides of the enclosure must be buried at least two feet (2') into the ground or securely fastened to the floor;
 - (e) An outdoor enclosure must include an adequate structure to protect the animal from the elements, such as a doghouse;
 - (f) The enclosure must be kept locked at all times to prevent both escape and accidental entry; and
 - (g) Habitable dwellings, such as a house or garage, must be capable of being locked and secured. Such dwellings may be required to be modified on a case-by-case basis to ensure the dangerous animal cannot exit the dwelling of its own volition, such as when a door or window screen are the only obstacles that prevent the animal from exiting.
- (2) The enclosure for a non-dog dangerous animal must be adequate to contain the species of animal kept. It may be inspected on a case-by-case basis to ensure that it is indeed escape-proof, as well as a humane method for the type of animal to be kept. This inspection will be made by or with a person competent to evaluate the type of animal involved.
- (3) Except for medical treatment or examination, the owner will maintain the dangerous animal exclusively on the owner's property. When taken off of the owner's property for medical treatment or examination, a dangerous animal shall at all times be fitted with a securely attached muzzle.

- (4) If a dangerous animal is lost or escapes, the owner and owner's agent shall report said incident immediately to a law enforcement officer or animal control agency.
- (5) The owner of a dangerous animal shall post signs on the owner's property where such animal will be kept, clearly visible from the public roadway or from fifty feet (50'), whichever is less. These signs shall advise the general public about such animal's presence on the premises.
- (6) Elkhart County Code Enforcement personnel or designees may visually inspect the premises and enclosure where the dangerous animal is kept. The inspection may also include the placement of warning signs, the animal leash, the muzzle, and the locks. Elkhart County Code Enforcement personnel or designees must be satisfied that the owner has met all dangerous animal requirements. The animal may not be on the site while the inspection is being made.
- (7) K-9 patrol dogs and police dogs are exempt from the provisions of this Section.
- (8) The registrant shall have fourteen (14) days after registering to meet the dangerous animal requirements. If the requirements are not met within the fourteen (14) days, the animal may be impounded and humanely euthanized.
- (9) If the owner or owner's agent of a dangerous animal violates any provisions of this Ordinance, the dangerous animal may be impounded and held until a hearing is held. At such hearing, the court shall determine whether, in fact, a violation of this Ordinance has occurred. If the court determines that a violation of this Ordinance has occurred, it shall have the authority to impose a fine and/or order the animal humanely euthanized. A dangerous animal shall not be euthanized until after the court has rendered a final decision.
- (10) In the event that a dangerous animal changes owner, the new owner must meet the dangerous animal requirements of this Ordinance. The original owner shall notify Elkhart County Code Enforcement that ownership of the animal has been transferred and provide the name and address of the new owner.
- (11) The owner of a dangerous animal shall notify Elkhart County Code Enforcement if the address changes where the dangerous animal will be kept. The owner must report the new address so an inspection may be made of the premises.
- (12) The owner and owner's agent of a dangerous animal under this Ordinance shall notify law enforcement and the animal control agency immediately if the dangerous animal is running at large, has been stolen, or has attacked a person or an animal.

Section 13. Care of Free-Roaming Cats.

For purposes of this Ordinance, a colony caretaker shall not be considered nor deemed to be the

owner of the free-roaming cats cared for in the colony. Notwithstanding any of the terms and provisions of this Ordinance, this Ordinance shall not prohibit a colony caretaker from maintaining a managed colony.

Section 14. Impoundment Security.

In the event any legal proceeding is pending involving the impoundment of one or more animals, the owner or owner's agent may post a surety bond in favor of Elkhart County assuring that all costs, expenses, and fees incurred by Elkhart County or Elkhart County's animal control agency in maintaining the animal or animals during the period of impoundment shall be paid by the owner or the surety. If a surety bond is posted by the owner or owner's agent, the animal or animals involved will not be placed for adoption or humanely euthanized during the pendency of the proceeding without court approval. If a surety bond is not posted or if a surety bond expires and is not renewed, the animal or animals may be placed for adoption or humanely euthanized unless prohibited by court order.

Section 15. Penalties.

Any person who violates any of the provisions of this Ordinance shall be subject to a civil fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) together with court costs and costs of enforcement including legal fees. Any person found liable for a subsequent violation or violations of this Ordinance, within one (1) year after a violation, shall be subject to a civil fine of not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred (\$2,500.00) together with court costs and costs of enforcement including legal fees. For purposes of this Ordinance, each day's violation of any of the terms or provisions of this Ordinance shall be deemed a separate offense.

Section 16. Other Laws.

Compliance with the terms and provisions of this Ordinance does not obviate nor eliminate the need for any person to comply with and meet the requirements of any other federal, state, or local law or regulation with respect to animals. In the event of any conflict with this Ordinance, the terms and provisions which are more strict shall govern. The County of Elkhart, Indiana reserves, retains, and preserves for itself any and all rights and remedies available under any other applicable federal, state, or local law or regulation with respect to animals.

Section 17. Construction.


A. To the extent that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be pre-empted by any state or federal law, this Ordinance shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law.

B. Each provision of this Ordinance shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

Section 18. Effective Date.

This Ordinance shall be effective from and after the date of all legal publications as required by law, but in no event prior to January 1, 2010.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By: 
Terry Rodino, President

By: 
Mike Yoder, Vice-President

By: 
Frank Lucchese, Member

ATTEST:


David L. Hess, Elkhart County Auditor