

ORDINANCE NO. 2410

AN ORDINANCE RELATING TO THE OFFENSE OF CRUELTY TO ANIMALS; AMENDING SECTION 9.20.190 OF THE DERBY MUNICIPAL CODE AND REPEALING THE ORIGINAL SECTION 9.20.190 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Section 9.20.190 of the Derby Municipal Code is hereby amended to read as follows:

“9.20.190 – Cruelty to Animals.

A. Cruelty to animals is:

1. Knowingly abandoning any animal in any place without making provisions for its proper care;
2. Having physical custody of any animal and (a) knowingly failing to provide adequate care, such as food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal, (b) carrying any animal in or upon any vehicle in a cruel or inhumane manner. Any animal kept outside shall be provided with a structurally sound, weatherproof enclosure large enough to accommodate the animal;
3. Intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or
4. Knowingly but not maliciously killing or injuring any animal.

B. The provisions of this section shall not apply to:

1. Normal or accepted veterinary practices;
2. Bona fide experiments carried on by commonly recognized research facilities;
3. Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;
4. Rodeo practices accepted by the rodeo cowboys' association;
5. The humane killing of an animal that is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an animal shelter, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such shelter;
6. With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by-

products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

7. The killing of any animal by any person at any time that may be found outside of the owned or rented property of the owner or custodian of such animal and that is found injuring or posing a threat to any person, farm animal or property;

8. An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

9. Laying an equine down for medical or identification purposes;

10. Normal or accepted practices of pest control, as defined K.S.A. 2-2438a(x), and amendments thereto; or

11. Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the Animal Welfare Act, Public Law 89-544, as amended and in effect on July 1, 2006.

C. For purposes of this section, the following words shall have the following meanings:

1. *Adequate care* means normal care and prudent attention to the needs and welfare of an animal, including that care normally needed to maintain good health of the animal, including clean and dry bedding and resting surfaces, grooming, removal of manure; and

2. *Adequate food* means wholesome foodstuffs suitable for the animal provided at suitable intervals in a sanitary manner in quantities sufficient to maintain good health of the animal considering its age and condition; and

3. *Adequate health care* means provision to an animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal to rest and exercise sufficient to maintain good health; and provision to each sick, diseased or injured animal of necessary veterinary care or humane death; and

4. *Adequate shelter* means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the animal, considering the condition and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions; and

5. *Adequate water* means continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the condition of the animal.

D. Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (E), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.

E. Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, that clearly shows evidence of cruelty to animals. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of an animal shelter or licensed veterinarian for treatment, boarding or other care or, if an officer of such animal shelter or such veterinarian determines that the animal appears to be

diseased or disabled beyond recovery for any useful purpose, for humane killing. The owner or custodian, if known or reasonably ascertainable, shall be notified in writing. If the owner or custodian is charged with a violation of this section, the law enforcement agency, district attorney's office, county prosecutor, veterinarian or animal shelter may petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal at any time after 21 days after the owner or custodian is notified, unless the owner or custodian of the animal files and maintains a renewable cash or performance bond with the county clerk of the county in which the animal was taken into custody in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Such cash or performance bond shall be maintained and renewed every 30 days as necessary to cover the cost of care and treatment of such animal until disposition of the animal by the court. If the owner or custodian is not known or reasonably ascertainable after 21 days after the animal is taken into custody, the law enforcement agency, district attorney's office, county prosecutor, veterinarian or animal shelter may petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. Upon receiving such petition, the court shall determine whether the animal may be transferred.

F. If a person is adjudicated guilty of the crime of cruelty to animals, such animal shall not be returned to or remain with such person. Such animal may be turned over to an animal shelter or licensed veterinarian for sale or other disposition.

G. Cruelty to animals is a Class A violation on a first conviction.”

Section 2. Repeal

Original section 9.20.190 of the Derby Municipal Code is hereby repealed. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 3. Severability

Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

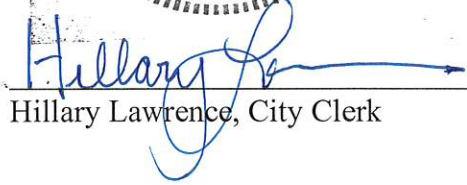
Section 4. Effective Date

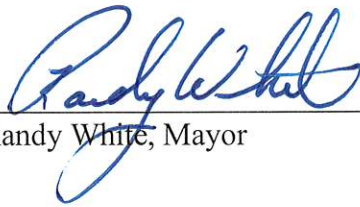
This Ordinance shall take effect and be in force from and after its passage and publication of the ordinance or a summary thereof once in the City's official newspaper as provided by State law.

PASSED by the City Council this 26th day of November, 2019 and **SIGNED** by the Mayor.

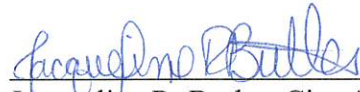


Seal
Attest:


Hillary Lawrence, City Clerk


Randy White, Mayor

Approved as to form:


Jacqueline R. Butler, City Attorney