

**Ordinance \_\_\_\_\_**

**An ordinance of the Missoula City Council amending Missoula Municipal Code Title 6, Chapter 6.07 entitled “Animal Ordinance” to clarify that following an Animal Welfare Hearing the Municipal Court has the authority to order the surrender of animals in cases of abuse or neglect or where the owner is not able or willing to provide for the necessary care of the animal.**

**Be it ordained that Section 6.07.1605 Missoula Municipal Code is hereby amended to read:**

**6.07.1605 Animal Welfare Hearing – Cost of Animal Care.**

A. When an animal is seized or impounded by a law enforcement officer or by an animal control officer upon an alleged violation of this Title or a violation of Sections 45-8-210, 45-8-211, or 45-8-217, the prosecutor may file a petition for an animal welfare hearing in Municipal Court.

B. The Petition must contain:

1. authority and purpose of the seizure, including the time, place and circumstances of the seizure and the purported facts regarding any animal neglect or cruelty;
2. a description of the animal, including its current condition and any facts demonstrating the animal’s extreme disease, injury, neglect or suffering;
3. the name and address of the respondent. If the name and address of the respondent are not available to the prosecutor after reasonable investigation, the petition must contain the address of the premises where the animal was seized; and
4. the evaluation of a licensed veterinarian if an evaluation by a veterinarian was provided.

C. The prosecutor shall serve a true and correct copy of the petition upon the respondent. If the name and address of the respondent are not available after reasonable investigation, the petition must be conspicuously posted by a law enforce or animal control officer.

D. The Court shall set the matter for hearing not more than 21 days after the petition was filed with the clerk of court. The Court shall provide both parties of the hearing date no less than 5 days before the hearing. if the name and address of the respondent are not available after reasonable investigation, the notice of hearing shall be posted by a law enforcement or animal control officer.

E. At the Hearing, the court shall consider the extent of the animals’ disease, injury, neglect or suffering, and shall no more than 5 days after the hearing, determine whether the animal will be:

1. released to respondent;
2. held and cared for by the county or by the City/County animal shelter pending disposition of the criminal proceeding initiated for an alleged violation of this Title or of Sections 45-8-210, 45-8- 211, or 45-8-217;

3. surrendered to the City/County animal shelter due to abuse or neglect, or where the owner is unable or unwilling to provide for the necessary care of the animal; or
  4. euthanized.
- F. In making a decision regarding release of an animal to respondent, the Court shall consider the following:
1. When determining whether the animal should be released to the respondent, the court shall consider all of the circumstances that result in the animal's seizure, the propriety of releasing the animal to the respondent given the facts regarding abuse or neglect, and whether the respondent is able and willing to provide necessary care for the animal.
  2. Before an animal may be released to the respondent, the respondent shall pay the reasonable costs of caring for the animal during the period of seizure.
- G. When determining whether the animal will be euthanized, the court shall consider the likelihood of viable treatment for the animal.
- H. In making a decision regarding the surrender or holding of the animal, the Court shall consider the following:
1. If the Court finds by a preponderance of the evidence submitted, that the respondent is not able or not willing to provide necessary care for the animal or determines that the animal was subject to neglect, cruelty or forced fighting, the court may not release the animal to the respondent. The Court may either order the immediate surrender of the animal to City/County animal shelter so that the animal may be put up for adoption or order the City/County animal shelter to hold the animal pending resolution of any criminal case related to the animal's care or treatment. In the event the Court orders the animal be held pending resolution of any criminal case, the Court shall set a renewable bond in an amount sufficient to cover the reasonable expenses expected to be incurred in caring for the animal for a period of 30 days, subject to the provisions of subsection J.
  2. In setting the amount of bond to be posted, the court shall consider all of the facts and circumstances of the seizure, including the need to care for the animal pending disposition of the criminal proceeding, the recommendations for the animal's current caretaker, and the estimated costs of caring for the animal.
  3. For the purposes of this section, "reasonable expenses" means the cost of providing care, including but not limited to food, water, shelter and veterinary care or necessary medical care, to an animal.
- I. Upon an order of the court that bond be posted, the amount of funds necessary for 30 day of the animals' care must be posted with the court. Unless the amount is adjusted pursuant to a hearing held as provided in subsection (J) the court shall order the respondent to deposit the same amount every 30 days until final disposition of the criminal proceedings.
- J. The respondent may request a hearing no fewer than 5 days before the expiration of the 30-day period, and the Court may, upon motion by a respondent, adjust the amount of reasonable expenses to be provided by the respondent.

- K. if the required funds are not deposited within 5 days of the issuance of the order setting the amount as provided in subsection H or 5 days after the expiration of the 30-day period, the ownership of the animal is forfeited to the Missoula City County Health Department Animal Control;
- L. once a security deposit or bond has been posted in accordance with this section, the entity caring for the animal may draw from the security deposit or bond the actual costs incurred in caring for the animal from the date of the seizure to the date of the final disposition of the criminal proceeding;
- M. Upon final disposition of the criminal proceeding, any remaining funds deposited with the Court must be returned to the depositor. If the disposition of the criminal proceeding is acquittal on all animal welfare counts, the full amount of the fund deposited shall be returned to the depositor
- N. Notwithstanding any other provision of this section, an animal seized from a person for an alleged violation of this Title or Sections 45-8-210, 45-8-211, or 45-8-217 may immediately be euthanized if, in the written determination of a licensed veterinarian, the animal is:
  - 1. experiencing substantial pain or suffering; or
  - 2. substantially injured or diseased and not likely to recover.
- O. Any testimony of the respondent in a hearing held as provided for in this section may not be used against the respondent in the criminal proceedings.

## **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

## **EFFECTIVE DATE**

This ordinance will be effective 30 days after passage.

First reading and preliminary adoption on the \_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_\_ yes ; \_\_\_\_ nays; \_\_\_\_ abstaining; and \_\_\_\_ absent.

Second and final reading and adoption on the \_\_\_\_ day of \_\_\_\_\_, 2019 by a vote of \_\_\_\_ayes; \_\_\_\_ nays; \_\_\_\_ abstentions; and \_\_\_\_ absent.

ATTEST:

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Martha L. Rehbein, CMC  
City Clerk

APPROVED:

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John Engen  
Mayor