

Gallehr, Tracy

From: Shannon Woods <Shannon.Woods@MRWLawFirm.Com>
Sent: Thursday, September 22, 2016 6:07 PM
To: Gallehr, Tracy
Cc: 'Polly Gault'; 'Hilleary Bogley'
Subject: Ordinance 4-9.1
Attachments: ORDINANCE - 4-9-1 Seized Animals rev 9-22-16.docx

Tracy:

Please see attached our revisions to Ordinance 4-9.1. As we discussed yesterday, the ordinance needs to require that the Fauquier County Animal Shelter is located in Fauquier County. Additionally, while I understand that Mutual Aid Agreements may include facilities outside of Fauquier County, there is no reason that these animals should be transported outside Fauquier County when there are available, capable shelters within Fauquier County.

Please review our revisions and let me know if you have any proposed language to address this issue.

N. For the purposes of this Chapter, the Fauquier County Animal Shelter means a facility located within Fauquier County and operated by Fauquier County for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animal, or a facility or facilities that are operated for the same purpose under a contract with Fauquier County. Animals seized or impounded under this Chapter shall be sheltered at a facility within Fauquier County, unless such facility lacks the resources necessary to accommodate said animals.

I have copied Hilleary Bogley and Polly Gault on this email and will let you know if they have any additional comments.

I look forward to hearing from you.

Sincerely,
Shannon Woods

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strictly prohibited. If you have received this e-mail in error, please immediately notify Morrison, Ross and Whelan at the above-listed number. Thank you.

ORDINANCE

AN ORDINANCE TO ADOPT SECTION 4-9.1 OF THE FAUQUIER COUNTY CODE DESIGNATING THE ANIMAL SHELTER TO HOUSE SEIZED ANIMALS AND REQUIRE A BOND FOR THEIR CARE

WHEREAS, *Code of Virginia* §§ 3.2-6543 and 3.2-6569 enables counties to adopt ordinances that are parallel to or more stringent than § 3.2-6569 which deals with the seizure, impoundment and disposition of animals; and

WHEREAS, the Board of Supervisors, after due notice and public hearing, has determined that it is in the best interest of the health, safety, and welfare of the citizens of Fauquier County to adopt this Ordinance; now, therefore, be it

ORDAINED, by the Fauquier County Board of Supervisors this ____ day of _____ 2016, That Section 4-9.1 of the Code of Fauquier County be adopted, which Section shall read as follows:

Fauquier County Code

Chapter 4 - Animals and Foul

Article I. – In General

Sec. 4-9.1. – Seizure, Impoundment, Disposition of Animal and Disposition of Proceeds upon Sale.

A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of Chapter 4 of the Fauquier County Code or the Comprehensive Animal Care Act (Chapter 65 of Title 3.2 of the *Code of Virginia*) that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. The seizure or impoundment of an equine resulting from a violation of clause (iii) of subsection A or clause (ii) of subsection B of *Code of Virginia* § 3.2-6570 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses as required by 9 C.F.R. Part 11.7.

B. Before seizing or impounding any agricultural animal, the humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or State Veterinarian's representative, who shall recommend to the person the most appropriate action for effecting the seizure and impoundment. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the Fauquier County Commonwealth's Attorney of the recommendation. The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer or animal control officer may seize the animal. If the State Veterinarian finds there is a need to administer emergency veterinary care, the humane investigator, law-enforcement officer or animal control officer shall arrange for appropriate veterinary care as recommended by the State Veterinarian. This may include arranging for emergency veterinary assistance where the animal is located or transportation to an appropriate facility where that care can be rendered. Once the need for emergency veterinary care has ceased, and deliver possession of the animal shall be given to the Fauquier County Animal Shelter. ~~in which case~~ Upon seizure of the animal the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the location of impoundment, and any other information required by the State Veterinarian.

C. Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the Fauquier County General District Court for a hearing. The hearing shall be not more than 10 business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

D. The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the *Code of Virginia* shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the courthouse wherein such hearing shall be held.

E. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 *et seq.*) of Chapter 15 of Title 19.2 of the *Code of Virginia*. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

F. If a seized or impounded animal is in need of immediate or emergency veterinary care, the humane investigator, law-enforcement officer, or animal control officer shall arrange for appropriate veterinary care. This may include arranging for emergency veterinary assistance where the animal is located or transportation to an appropriate facility where that care can be rendered. Once the need for emergency veterinary care has ceased, and deliver possession of the animal shall be given to the Fauquier County Animal Shelter which shall provide for such animal until the court has concluded the hearing. The owner of any animal held pursuant to this subsection for more than thirty days shall post a bond in surety with Fauquier County for the amount of the cost of boarding the animal for a period of time not to exceed nine months. The bond shall not be forfeited if the owner is found to be not guilty of the violation.

If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in either *Code of Virginia* § 3.2-6500 or Fauquier County Code Chapter 4, or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation of *Code of Virginia* § 3.2-6571, then the court shall order that the animal may be: (a) sold by the Fauquier County Animal Shelter, if not a companion animal; (b) disposed of by the Fauquier County Animal Shelter pursuant to subsection D of *Code of Virginia* § 3.2-6546, whether such animal is a

companion animal or an agricultural animal; or (c) delivered to the person with a right of property in the animal as provided in subsection G.

G. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

H. The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of such care.

I. The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under Chapter 4 of the Fauquier County Code, the Comprehensive Animal Care Act (Chapter 65 of Title 3.2 of the *Code of Virginia*) or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

J. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions of violating Chapter 4 of the Fauquier County Code or *Code of Virginia* § 3.2-6504 or 3.2-6570. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

K. Any person who is prohibited from owning or possessing animals pursuant to subsection I or J may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

L. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the County's fund used to defray the costs of the Fauquier County Animal Shelter, including efforts to promote sterilization of cats and dogs.

M. Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement officer, animal control officer, or licensed veterinarian.

N. For the purposes of this Chapter, the Fauquier County Animal Shelter means a facility located within Fauquier County and operated by Fauquier County for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals, or a facility or facilities that are operated for the same purpose under a contract with Fauquier County. ~~or a facility or facilities that are operated for the same purpose under a contract with Fauquier County.~~

(Ord. No. 16-____, ____ - ____-16)

State Law reference— Enabling legislation, *Code of Virginia* § 3.2-6543 & 3.2-6569.