

REVISED CODE
City of SCOTTSDALE, ARIZONA

Codified through
Ord. No. 3617, adopted May 17, 2005.
(Supplement No. 50, Update 2)

ARTICLE I. ANIMAL CRUELTY*

***Editor's note:** Ord. No. 3497, § 1, adopted June 2, 2003, amended art. I in its entirety to read as herein set out. Formerly, art. I pertained to similar subject matter as enacted by Code 1972, §§ 4-301--4-305. See the Code Comparative Table for a detailed analysis of inclusion.

DIVISION I. PURPOSE AND DEFINITIONS

Sec. 4-1. Purpose.

The purpose of the animal cruelty code is to ensure the proper care and keeping of animals, which is substantially related to and furthers the health, safety and welfare of the public and animals, and to provide a mechanism for prosecution in instances of animal cruelty.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-2. Definitions.

- (a) *Animal* means any nonhuman mammal, bird, reptile, amphibian or fish.
- (b) *Animal fighting* means owning, possessing, keeping or training any animal with the intent that such animal engage in an exhibition of fighting with another, for amusement or gain, causing any animal to fight with another, or causing any animal to injure another.
- (c) *Basic care* means care sufficient to sustain the health and well being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner or person in custody and control of the animal, includes the following requirements.
- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
 - (2) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Access to a swimming pool is not adequate access to potable water;
 - (3) Access to shelter or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun and that has adequate bedding to protect against cold and dampness;
 - (4) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease;
 - (5) Adequate space for exercise necessary to the health of the animal; and
 - (6) Freedom from overexposure to the elements, lack of adequate ventilation or drainage, lack of sanitation, unreasonable restraint or confinement, and parasites.
- (d) *Cost of care* for an animal for the purposes of sections 4-4 through 4-14 of this article includes, but is not limited to, transport, boarding, veterinary care, medication, and necropsy/euthanasia if necessary.
- (e) *Designated animal care facility* means facilities under city contract to provide animal rescue, control and care.

- (f) *Enforcement agent* means an individual employed by or volunteering for a designated animal care facility, or city peace officer.
- (g) *Injury* means physical trauma, impairment of condition or needless suffering.
- (h) *Livestock* means neat animals, horses, sheep, goats, swine, mules and asses.
- (i) *Necropsy* means autopsy.
- (j) *Rescue* means the act of impounding, taking or receiving into custody by the enforcement agent an animal for the purpose of confinement and care in accordance with the provisions of this article.
- (k) *Service animal* means a working animal that has completed a formal training program to assist humans in law enforcement or daily living functions, or an animal utilized in lawful laboratory research.

(Ord. No. 3497, § 1, 6-2-03)

DIVISION II. OFFENSES AND DEFENSES

Sec. 4-3. Animal neglect.

(a) A person commits the crime of animal neglect by abandoning the animal, or otherwise failing to provide basic care for an animal, as defined by this article, causing needless suffering or injury to the animal. Animal neglect includes confining an animal in a vehicle in a manner that may be detrimental to its health and safety.

(b) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-4. Animal cruelty.

(a) A person commits the crime of animal cruelty if the person intentionally, knowingly or recklessly causes physical injury to an animal, inflicts needless suffering on it, or causes an animal under the person's custody and control to harm another animal.

(b) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-5. Sexual assault of an animal.

(a) A person commits the crime of sexual assault of an animal by contacting, or causing an object or another person to contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying sexual desire.

(b) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-6. Participation in animal fighting.

(a) A person commits the crime of participation in animal fighting if the person attends, advertises or bets upon an animal fight, or offers to sell equipment for the training or handling of a fighting animal.

(b) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-7. Interference with a service animal.

A person commits the crime of interfering with a service animal if the person recklessly, or intentionally does any of the following.

(1) Interferes with a service animal by touching, impeding or distracting it;

(2) Injures or attempts to injure an animal the person knows or reasonably should know is a service animal; or

(3) Releases, steals or otherwise causes injury or death of any animal at or from a research facility.

(4) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-8. Production or sale of artificially colored chicks, ducklings or rabbits.

(a) It shall be unlawful for a person to artificially alter the natural color of chicks, ducklings, or rabbits, or transporting such animals into the city, for the purpose of offering them for sale.

(b) A violation of this subsection is a class one misdemeanor.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-9. Defenses.

This article does not prohibit or restrict the following.

(1) Conducting lawful activities governed under Arizona Revised Statutes Title 3 (Agriculture) or Title 17 (Game and Fish);

(2) Exposing a predatory animal to poison after the animal has killed or wounded persons, livestock, or poultry. Notice shall be posted on the affected property during treatment. It shall provide warning to persons who enter the property by points of normal entry. Notice shall be readable at a distance of fifty feet, and contain a poison statement and symbol, plus the word "danger" or "warning." the treatment shall be removed after the threat to health and safety subsides; or

(3) Using poison or traps on property for the purpose of rodent control, by a person who owns, leases or controls that property.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-10. No defense.

The following are not defenses to this article.

- (1) The animal was trespassing on property;
- (2) The animal was unlicensed, or out of compliance with leash laws; or
- (3) A person lacks funds to provide the animal with basic care.

(Ord. No. 3497, § 1, 6-2-03)

DIVISION III. PRE-CONVICTION PROCEDURE

Sec. 4-11. Rescue and impoundment; authority to enter property and seize animal prior to hearing.

(a) A peace officer or a city agent may enter property pursuant to a valid arrest or search warrant, under exigent circumstances or if an animal is in plain view, and the officer has probable cause to believe that an animal was subjected to or instrumental in a violation of this article.

(b) The officer shall post a notice in a prominent place on the premises, bearing clear instructions about how to claim the animal, and the potential for the termination of possessory rights under section 4-12 and 4-14 for failing to do so within the allotted time.

(c) Upon finding an animal in a motor vehicle and having reason to believe that every prompt action is required to protect its health and safety, a peace officer may forcibly enter the motor vehicle as necessary to remove the animal. the officer shall leave a

notice in a prominent place upon the motor vehicle, bearing clear instructions about how to claim the animal, and the potential for the termination of possessory rights under section 4-12 and 4-14 for failing to do so within the allotted time.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-12. Pre-conviction termination of possessory rights.

(a) *Termination automatic upon abandonment.* If an animal owner or person in custody and control fails to post a bond as required by section 4-13 and request a hearing, the animal is deemed abandoned and all the possessory rights of the owner in the animal are transferred to the designated agency. If the state fails to file a motion to terminate possession within ten days, the owner of the animal may reclaim it.

(b) *Termination upon possession hearing.*

(1) Upon receipt of a motion to terminate possessory rights for any reason other than abandonment, the court shall set a hearing. The hearing shall be conducted within fourteen (14) days after the filing of the motion, or as soon as practicable.

(2) At the hearing, the city shall have the burden of establishing by a preponderance of the evidence that the animal was subjected to, or instrumental in, a violation of this article, is a public nuisance or danger, or will suffer needlessly if humane destruction is delayed. Upon its finding, the court may terminate the owner's possessory rights in the animal and transfer such rights to the designated animal care agency.

(3) When ownership of the victim animal transfers to the designated agency for further disposition in accordance with accepted practices for humane treatment of animals, it may be placed by adoption or humanely destroyed.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-13. Bond.

(a) If an animal is seized under probable cause that a violation of this article has been committed, the owner or person in custody and control of an animal is liable for the cost of its care.

(b) If an animal is seized solely for evidentiary purposes, the owner or person in custody and control of an animal is not liable for the cost of its care.

(c) A person who is liable shall post a bond in the form of cash or a surety's undertaking with the court to defray the cost of care. The bond shall be calculated according to the number of animals seized. Under ten (10): Two hundred fifty dollars (\$250.00). Ten (10) to twenty (20): Five hundred dollars (\$500.00.) Twenty-one (21) to thirty (30): Seven hundred fifty dollars (\$750.00). Over thirty (30): One thousand dollars (\$1,000.00). The court shall draw down on the bond as needed during the animal's captivity to pay for the cost of care, without regard to whether the defendant is ultimately convicted or not. Funds so expended are not refundable.

(d) The owner shall post the bond within ten (10) days of the date of the notice of seizure.

(e) The court shall forfeit the bond to pay costs of care. If the bond exceeds expenses, the court shall exonerate the bond amount and order the security returned to the owner to the extent the bond exceeds the cost of care.

(Ord. No. 3497, § 1, 6-2-03)

DIVISION IV. POST-CONVICTION

Sec. 4-14. Sentencing.

(a) Upon conviction, the court shall impose the following.

[1] *Reimbursement to designated care agency.* Regardless of whether the court orders forfeiture, it may require the convicted defendant to repay reasonable costs of care for each animal subjected to the violation. Components of repayment may include, but are not limited to, the following: transport, veterinary care and medication, boarding and necropsy and or euthanasia.

(b) Upon conviction, the court may impose the following.

(1) *Termination of possessory rights.*

a. Rights in the animal. The court may require a defendant convicted to forfeit any rights in the victim animal, pursuant to the procedures set forth in section 4-12.

b. Rights in other property. The court may terminate possessory rights in any property used by the defendant as an instrumentality in the commission of the offense.

(2) *Restitution to the owner.* If a person is convicted of misdemeanor animal cruelty against an animal owned by another person, the court may require the person to make restitution to the owner. Components of restitution may include the following.

a. Care, boarding, necropsy/euthanasia expenses, if such expenses were incurred from a provider other than the designated agency;

b. Reasonable veterinary after care;

c. The cost of procuring, transporting, and licensing a comparable replacement animal;

d. In the case of a service animal, the cost of training a comparable replacement animal, a substitute during an animal's recovery or its replacement's training; and

e. Lost animal income.

(3) *Prohibition against future possession of an animal.* The court may bar a person from possessing an animal for a period of up to five years. Violating such an order is a

class one misdemeanor punishable by a fine of one thousand dollars (\$1,000.00) and forfeiture of the animal.

(Ord. No. 3497, § 1, 6-2-03)

Sec. 4-15. Reserved.