

Number

091403

Version

SUBSTITUTE 2

Reference**Sponsor**

ALD. KOVAC AND BAUMAN

Title

A substitute ordinance relating to a trap-neuter-release pilot program for feral cats.

Sections

78-1 rc

78-3-2 am

78-5-1 am

78-5-3 am

78-17-1 am

78-17-4 am

78-17-5 am

78-19-5 cr

78-20 cr

Analysis

This ordinance changes definitions in several sections of ch. 78 to distinguish between requirements relating to domesticated and feral cats and creates a new section to allow a pilot trap-neuter-release program for feral cats. The new section on the trap-neuter-release program includes the following:

1. Feral cat colonies shall be permitted and feral cat colony caretakers shall be entitled to maintain and care for feral cats by providing food, water and shelter.
2. The colonies and feral cat colony caretakers must be registered with a sponsor approved by the city.
3. Once a feral cat colony and colony caretaker is identified, all property owners within a circular area having a radius of 200 feet, centered on the premises on which the colony is located, shall be notified through first-class U.S. mail.
4. Property owners shall have 14 working days to file a written objection and request for a hearing to the commissioner if they object to the allowance of a colony.
5. If a timely written objection and request for a hearing has been submitted to the commissioner, the commissioner shall then hold a hearing within 14 days.
6. Within 10 days of completion of the hearing, the commissioner shall mail to the objector and sponsor his or her written determination on allowing the colony.
7. The feral cat colony caretakers shall take all appropriate and available steps to trap each feral cat in the colony to have the cat sterilized, vaccinated for rabies and ear-tipped to monitor for new feral cats that join the colony.
8. The feral cat colony caretaker shall keep in contact with the sponsor to report any illness, strange behavior, missing feral cats and kittens in the colony so that they and their mother can be trapped once weaned. The caretaker shall also report a census to the sponsor on an annual basis.
9. Any animal rescue or humane society that agrees to comply with the terms of the ordinance is eligible to be the sponsor.

10. The sponsor shall be determined by the commissioner of neighborhood services.
11. The sponsor shall oversee the trap-neuter-release program and report to the commissioner on an annual basis.

Within 4 ½ years of the effective date of this ordinance the commissioner shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance unless reauthorized by the common council.

Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 78-1 of the code is repealed and recreated to read:

78-1. Definitions. In this chapter:

1. **ANIMAL FANCIER** means any person in a residential dwelling unit who keeps, harbors, raises or possesses any combination of dogs or cats numbering not less than 4 nor more than 5 animals over the age of 5 months.
2. **APPROVED** means approved by the commissioner.
3. **AT LARGE** means an animal is off the premises of its owner and on any public street or alley, school grounds, a public park, or other public grounds or on private property without the permission of the owner or person in lawful control of the property. An animal shall not be deemed to be at large if:
 - a. It is attached to a leash not more than 6 feet in length which is of sufficient strength to restrain the animal and the leash is held by a person competent to govern the animal and prevent it from annoying or worrying pedestrians or trespassing on private property or trespassing on public property where such animals are forbidden; or
 - b. It is properly restrained within a motor vehicle; or
 - c. It is a dangerous animal that is in compliance with the requirements of s. 78-23-2.
 - d. If is considered a feral cat.
4. **BODILY HARM** means physical pain or injury or any impairment of physical condition.
5. **CARETAKER** means any person 16 years of age or older who, in the absence of the owner, temporarily harbors, shelters, keeps or is in charge of a dog, domesticated cat or any other domesticated bird or animal.
6. **COMMISSIONER** means the commissioner of health, his or her designated representative within the health department, or any other city official to whom the commissioner's functions or duties under this chapter have been delegated pursuant to a memorandum of understanding.
7. **COMMISSIONER OF PUBLIC WORKS** means the legally designated head of the department of public works of the city of Milwaukee or his or her authorized representative.
8. **DANGEROUS ANIMAL** means:
 - a-1. Any animal which, when unprovoked, bites or otherwise inflicts bodily harm on a person, domestic pet or animal on public or private property.
 - a-2. Any animal which chases or approaches a person in a menacing fashion or apparent attitude of attack without provocation upon the streets, sidewalks or any public grounds or on private property without the permission of the owner or person in lawful control of the property.
 - a-3. An animal with a known propensity, tendency or disposition to attack, to cause injury to, or to otherwise threaten the safety of humans or other domestic pets or animals.

b. The biting or injury of a person by an animal shall in the absence of contrary evidence be presumed to be due to an unprovoked attack. Provocation of the animal by the person or animal that is bitten or injured or the fact that the animal bit or injured another person or animal as a result of provocation shall be considered in mitigation and if the provocation is purposeful or substantial, the court may accept the alleged bite or injury as self-defense by the animal and not classify the animal as dangerous.

c. An animal shall not be deemed a dangerous animal if it bites, attacks or menaces any person or animal to:

c-1. Defend its owner, caretaker or another person from an attack by a person or animal.

c-2. Protect its young or another animal.

c-3. Defend itself against any person or animal which has tormented, assaulted or abused it.

c-4. Defend its owner's or caretaker's property against trespassers.

9. DEPARTMENT means the health department or any department to which health department functions or duties under this chapter have been delegated pursuant to a memorandum of understanding.

10. DOG means a domesticated member of canis familiaris.

11. DOMESTICATED ANIMAL means any bird or animal of any species which usually lives in or about the habitation of humans as a pet or animal companion. The term does not include a dangerous animal, a prohibited dangerous animal or a feral cat.

12. DOMESTICATED CAT means a cat that is socialized to humans and is appropriate as a companion for humans.

13. DWELLING UNIT means one or more rooms, including a bathroom and kitchen facilities, which are arranged, designed or used as living quarters for one family or household.

14. EAR-TIPPING means straight-line cutting of the tip of the left or right ear of a cat while the cat is anesthetized and has been sterilized and given a rabies shot. A cat with a tipped ear is considered to be sterile and immunized from rabies.

15. FERAL CAT means a cat that is born in the wild or abandoned to the wild and is not socialized or appropriate as a companion for humans.

16. FERAL CAT COLONY means a group of cats that congregate, more or less, together as a unit and, although every cat in a colony may not be feral, any cats that congregate with a colony shall be deemed to be a part of it. A single feral cat can also be considered a colony for the sponsor's purposes.

17. FERAL CAT COLONY CARETAKER means any person who provides food, water and shelter to and traps, sterilizes and vaccinates a feral cat or cats and who is approved by a sponsor to care for a feral cat colony.

18. FOWL means all domesticated birds and non-domesticated game birds ordinarily considered to be edible.

19. GROOMING means care or service provided to the exterior of an animal to change its looks or improve its comfort but does not mean the treatment of physical disease or deformities.

20. GROOMING ESTABLISHMENT means a business establishment in which a domesticated bird or animal is received for grooming.

21. KENNEL means an establishment in which more than 3 dogs or 3 cats, or any combination thereof, over the age of 5 months may be kept for boarding, breeding, safekeeping, convalescence, humane disposal, placement, sale or sporting purposes. This is the same type of facility referred to as an "animal boarding facility" in ch. 295.

- 22. MULTIPLE DWELLING** means a commercial or residential building consisting of 3 or more dwelling units.
- 23. OWNER** means any person owning, harboring, sheltering or keeping a dog, cat or any other domesticated bird or animal. Owner does not include a feral cat colony caretaker.
- 24. PERSON** means any individual, firm, corporation or other legal entity.
- 25. PET SHOP** means a business establishment, other than a kennel, where domesticated mammals, birds, fish or reptiles are kept for sale.
- 26. PIT BULL** means any dog which is one-half or more American staffordshire terrier, staffordshire terrier, American pit bull terrier, miniature bull terrier or staffordshire bull terrier.
- 27. PROHIBITED DANGEROUS ANIMAL** means:
- a. Any animal that is determined to be a prohibited dangerous animal under s. 78-25.
 - b. Any animal that, while off the owner's or caretaker's property, has killed a domestic pet or animal without provocation.
 - c. Any animal that, without provocation, inflicts substantial bodily harm on a person on public or private property.
 - d. Any animal brought from another city, village, town or county that is described under s. 78-5-2-b.
 - e. Any dog that is subject to being destroyed under s. 174.02(3), Wis. Stats.
 - f. Any dog trained, owned or harbored for the purpose of dog fighting.
- 28. ROTTWEILER** means any dog which is one-half or more rottweiler.
- 29. SPONSOR** means any animal rescue or humane society that agrees to comply with the requirements of this chapter for sponsors relating to feral cats and that provides written notice to the commissioner that it will serve as a sponsor, and is approved by the commissioner.
- 30. SUBSTANTIAL BODILY HARM** means bodily injury that causes a laceration that requires stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing.
- 31. TNR** means trap, neuter and return.
- 32. TNR PROGRAM** means a program in which feral and stray cats are humanely trapped, sterilized, vaccinated against rabies, ear tipped and then returned to the location that is their colony territory in accordance with this chapter.

Part 2. Section 78-3-2 of the code is amended to read:

78-3. Owner or Caretaker's Duty; Presumption.

2. The occupant of any premises on which a dog, >>domesticated<< cat or any other domesticated bird or animal remains or to which it customarily returns daily for a period of at least 10 days shall be presumed, for purposes of enforcement of this chapter, to be harboring, sheltering or keeping the animal.

Part 3. Section 78-5-1 and 3 of the code is amended to read:

78-5. Keeping of Animals Within City.

1. PERMITTED ANIMALS. No animal that is not a domesticated animal may be kept or brought into the city except as provided in ~~[[s-]]~~ >>ss. 78-20 and<< 78-23 or as otherwise authorized by the commissioner.

3. NUMBER PERMITTED. No person may keep, harbor, shelter or possess at any time more than 3 dogs or >>domesticated<< cats or any combination thereof which are over the age of 5 months unless the person holds a valid animal fancier permit, kennel permit, pet shop permit or grooming establishment permit. The keeping of more than 3 dogs or >>domesticated<< cats over the age of 5 months per dwelling unit in a multiple dwelling is declared to be a nuisance. No person in a multiple dwelling shall be granted an animal fancier permit. There shall be no more than one animal fancier permit issued to any qualified dwelling unit.

Part 4. Section 78-17-1, 4 and 5 of the code is amended to read:

78-17. Dog and Cat Licenses. 1. REQUIRED. Any person owning, keeping, harboring or having custody of any dog or >>domesticated<< cat over 5 months of age within the city of Milwaukee must obtain a license as provided in this section and in accordance with ch. 174, Wis. Stats., relating to dogs, and ch. 26, Milwaukee County Code of Ordinances, relating to cats. Any person obtaining a dog or >>domesticated<< cat that is older than 5 months of age shall have 30 days to apply for an original license, except this requirement will not apply to a nonresident keeping a dog or >>domesticated<< cat within the city for less than 30 days.

4. PAYMENT RESPONSIBILITY. The owner, harborer, shelterer or head of the family shall be liable for payment of the license fee of any dog or >>domesticated<< cat owned, harbored or kept by any member of the family.

5. ISSUANCE. Upon acceptance of the license application and fee, the Milwaukee area domestic animal control commission shall issue a tag and a license. The tag shall be securely attached by the licensee to a collar or harness and the collar or harness with the tag attached shall be kept on the dog or >>domesticated<< cat for which the license is issued at all times. This requirement does not apply to a dog or >>domesticated<< cat securely confined indoors or in a fenced area.

Part 5. Section 78-19-5 of the code is created to read:

78-19. Animals at Large; Animal Litter Nuisance.

5. EXCEPTION. Subsections 1 and 2 relating to animals at large does not apply to cats that are part of a feral cat colony that is part of a TNR program.

Part 6. Section 78-20 of the code is created to read:

78-20. Feral Cats.

1. FERAL CAT COLONIES. Feral cat colonies shall be permitted for a pilot program and feral cat colony caretakers shall be entitled to maintain and care for feral cats by providing food, water, shelter and other forms of sustenance if the colonies are registered with a sponsor approved by the city and if the colony caretakers take all appropriate steps to meet the provisions of this section.

2. FERAL CAT COLONY CARETAKERS.

a. It shall be the responsibility of a feral cat colony caretaker to do the following:

a-1. Register the feral cat colony with the sponsor.

- a-2. Take all appropriate and available steps to trap each feral cat in the colony, to have the cat sterilized, vaccinated for rabies and ear-tipped, and to monitor for new feral cats that join the colony. In the case of unweaned kittens, it is understood that caretakers shall wait until the kittens are weaned to trap both the kittens and their mother.
- a-3. Keep a written census of the colony that describes each cat, its color, breed and sex, and note the dates it was taken to a veterinarian for TNR through a TNR program.
- a-4. Provide food, water and, if necessary and feasible, shelter for the colony.
- a-5. Keep in contact with the sponsor to report any illness, strange behavior or missing feral cats in the colony.
- a-6. Report any kittens in the colony to the sponsor so they can be trapped after they are weaned and to observe the mother feral cat so that she can be trapped after the kittens are trapped.
- a-7. Acquire written approval of a property owner, or any authorized representative of the owner of any property, if the colony caretaker requires access in order to provide colony care.
- a-8. Report annually the following information to the sponsor on the colony including, but not limited to: colony location; number of feral cats; number of kittens; number of TNRs that have been done through the TNR program and total number of deaths of feral cats.
- b. If a feral cat colony caretaker is unable or unwilling to continue to perform the responsibilities required by this subsection, the colony caretaker shall give his or her sponsor a minimum of 30 days written notice of his or her intention to cease operating as a colony caretaker for the feral cat colony. The sponsor shall work to provide a replacement colony caretaker for the colony.

3. SPONSOR.

- a. Any animal rescue or humane society that agrees to comply with the requirements of this subsection shall be eligible to act as the sponsor of the pilot program. Any group intending to undertake the responsibilities of the sponsor shall so advise the commissioner in writing within 30 days of the effective date of this ordinance [3/19/2010]. The sponsor shall be determined by the commissioner within 30 days of this deadline.
- b. It shall be the responsibility of the sponsor to do the following:
 - b-1. Review and approve or disapprove feral cat colony caretakers.
 - b-2. Provide, at a minimum, written educational training for all feral cat colony caretakers addressing uniform standards and procedures for feral cat colony maintenance.
 - b-3. Once a feral cat colony and colony caretaker is identified, all property owners within a circular area having a radius of 200 feet, centered on the premises on which the colony is located, shall be notified through first-class U.S. mail.
 - b-4. Property owners shall have 14 working days from the mailing of the notification to file a written objection and request for a hearing to the commissioner relating to allowance of a colony.
 - b-5. If a timely written objection and request for a hearing has been submitted to the commissioner, the commissioner shall hold a hearing within 14 days.
 - b-6. Within 10 days of completion of the hearing conducted pursuant to par. b-5, the commissioner shall mail to the objector and sponsor his or her written determination on allowing the colony taking into consideration factors related to the ability of the cat colony caretaker to comply with the provisions of sub. 2-a and whether the permitting of a colony will have an adverse impact upon the public health, safety and welfare of the immediate neighborhood. Among factors to be considered in terms of impact are litter, noise and other problems related to feral cats being at large.
 - b-7. Maintain records provided by the feral cat colony caretakers including, but not limited to the following:

- b-7-a. Colony location.
- b-7-b. Number of feral cats.
- b-7-c. Number of kittens.
- b-7-d. Number of TNRs that have been done through the TNR program.
- b-7-e. Total number of deaths of feral cats.
- b-8. Report annually to the commissioner information provided by the feral cat colony caretakers including, but not limited to the information specified in subd. 7.
- b-9. Provide documentation necessary to allow feral cat colony caretakers to receive any public or private subsidies, medical care or other forms of assistance for their colonies.
- b-10. Use due consideration to prevent feral cat colonies from being maintained on lands managed for wildlife or other natural reserves where the presence of the colony is a proven threat to an endangered species and to attempt to move colonies to a safer and more acceptable areas.
- b-11. Resolve any complaints received by the sponsor over the conduct of a feral cat colony caretaker or of complaints about cats within a colony.
- b-12. Provide to the commissioner the location of feral cat colonies where feral cat colony caretakers have regularly failed to comply with this subsection.
- c. The department is authorized to issue administrative guidelines relating to the responsibilities of the sponsor pursuant to par. b and the relationship between the department and the sponsor pursuant to par. b.
- 4. PENALTY.** Failure of a feral cat colony caretaker or sponsor to follow the regulations set forth in this section, or failure to resolve a behavior situation that constitutes a nuisance is subject to a written order by the commissioner pursuant to s. 78-55-1.
 - a. If the violation identified in the order is not abated within the time given, the feral cat colony caretaker or sponsor committing the violation are subject to forfeitures of \$25 for each day the violation fails to be abated.
 - b. If the violation is not abated within 7 days following initiation of the forfeitures pursuant to par. a, the commissioner may order that the feral cats in the feral cat colony in violation be trapped by and taken by the organization designated for local animal control for disposition as it sees fit.

Part 7. Within 4 ½ years of the effective date of this ordinance [3/19/2010] the commissioner of neighborhood services shall evaluate the results and effectiveness of the pilot program and report to the common council these results and potential improvements to be made. The authorization of this pilot program shall expire 5 years from the effective date of the ordinance [city clerk to insert date] unless reauthorized by the common council.

LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

Attorney

IT IS OUR OPINION THAT THE ORDINANCE

IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Requestor

Drafter

MET

2/24/10

LRB09122-3

Clerical correction -- jro -- March 10, 2010