Ordinance 646

AN ORDINANCE AMENDING CHAPTER 71 OF THE CODE OF THE TOWN OF ELSMERE.

Sponsored By:

First and Second Reading: April 11, 2019 Council Meeting

Results:

Third and Final Reading: May 9, 2019 Council Meeting

Results:

ORDINANCE 646

AN ORDINANCE AMENDING CHAPTER 71 OF THE CODE OF THE TOWN OF ELSMERE.

WHEREAS, Chapter 71 of the Code of the Town of Elsmere set rules and regulations concerning animals throughout the Town; and

WHEREAS, the Mayor and Council have determined that some of these rules and regulations are outdated and ineffective; and

WHEREAS, some of the existing sections are now regulated by the State of Delaware Office of Animal Welfare; and

WHEREAS, The Mayor and Council wish to update Chapter 71 taking into consideration the changes made to the States Laws:

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, AS FOLLOWS:

That Chapter 71 Animals of the Code of the Town of Elsmere be deleted in its entirety and a new Chapter 71 be inserted as follows:

§ 71-1 **Short title.**
This chapter shall be known and may be cited as the "Town of Elsmere Animal ~~Care and~~ Regulation Code."

§ 71-2 **Definitions.**
For the purposes of this chapter, the following terms shall have the meanings indicated. No attempt is made to define any words which are used in accordance with their establish dictionary meaning, except when necessary to avoid misunderstandings.

~~**ABANDON**~~
~~To forsake an animal in a street, road, public or private place without providing for the care, sustenance, protection, and shelter of such animal.~~

~~**ADULT DOG OR CAT**~~
~~Any dog or cat that is four months of age or older.~~

~~**ANIMAL**~~
~~A living thing that is not a human being or plant.~~

~~**ANIMAL CARE OFFICER**~~
~~Any person employed by the Town, or such agents or employees as are designated by such officer, to perform the duties of such officer, who is authorized to investigate public or private property civil infractions relating to animal control or cruelty, and to issue citations provided herein. An animal care officer is not authorized to bear arms or make arrests.~~

~~AT LARGE~~

~~Not on the owner's property, and not under restraint or the direct control, custody, charge or possession of the owner, or other responsible person. "Direct control" shall mean immediate, continuous physical control of an animal at all times, such as by means of a fence, leash, cord or chain of sufficient strength to restrain the animal.~~

~~CITATION~~

~~A written notice issued to a person by an officer with probable cause to believe that the person has committed a civil infraction in violation of this chapter or an electronically generated notice issued to a person at a division facility or by certified mail/return receipt request.~~

~~COUNCIL~~

~~The Mayor and six individuals elected to represent the each of the six Council Districts of the Town of Elsmere or any combination of those individuals constituting a majority.~~

~~CONTROL~~

~~The regulation of the possession, ownership, care and custody of animals.~~

~~CRUELTY~~

~~Every act, omission or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is reasonable remedy or relief; except when done in the interest of medical science.~~

~~DANGEROUS DOG~~

~~Any dog that, according to the records of the Department of Public Safety or other law enforcement or animal control authority:~~

~~A. Has, when unprovoked, approached any person in a menacing fashion or apparent attitude of attack upon the streets, sidewalks, or any public grounds or places, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by an officer; or~~

~~B. Has more than once severely injured or killed a domestic animal while off the owner's property; or~~

~~C. Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; or~~

~~D. Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting.~~

~~HARBORING~~

~~The act of keeping and caring for an animal or of providing premises to which the animal returns for food, shelter or care for a period of at least 48 hours.~~

~~HEALTH DEPARTMENT~~

~~The State Department of Environmental Health.~~

~~HOME CONFINEMENT~~

~~The animal is kept isolated from the public within the owner's physical dwelling or attachment thereon or, if outside, chained in the owner's yard or under the immediate control of the owner or member of the owner's family.~~

~~INDIVIDUAL WITH DISABILITY~~

~~A person who is visually impaired, blind, hearing impaired, deaf, physically challenged or a similarly health-impaired person who by reason thereof is aided by a service animal.~~

~~JUVENILE DOG OR CAT~~

~~Any dog or cat that is at least two months of age but not older than four months of age.~~

~~KENNEL~~

~~Any place of business at which dogs and/or cats are kept for sale, breeding, boarding, treatment or grooming purposes as allowed by the zoning regulations of Town of Elsmere. "Kennel" shall not include any humane society, animal protection agency, veterinarian clinic or hobby breeder as defined herein.~~

~~OFFICER~~

~~Any law enforcement officer as defined in Title 11 of the Delaware Code, or a Code Enforcement Officer of the Town of Elsmere.~~

~~OWNER~~

~~Any natural person, firm, association or corporation who owns, keeps, harbors controls an animal, and the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation shall be held to be the knowledge and act of such corporation. If the owner is a minor as defined by statute, the minor's parent(s) or legal guardian shall be the "owner" for purposes of this chapter.~~

~~RABIES VACCINATION~~

~~The vaccination of a dog, cat or other domestic animal with an antirabies vaccine approved by the United States Department of Agriculture and administered by a veterinarian.~~

~~SERVICE ANIMAL~~

~~Any guide dog, signal dog, or other animal individually and specifically trained to provide assistance to an individual with a disability.~~

~~SEVERE INJURY~~

~~Any physical injury that results in a broken bone or bones, or in a bite or multiple bites or a disfiguring laceration or lacerations requiring sutures or reconstructive surgery.~~

~~UNPROVOKED~~

~~The victim who has been conducting himself or herself peacefully and lawfully has been bitten or chased in a menacing fashion or otherwise attacked by a dog.~~

~~VETERINARIAN~~

~~A veterinarian duly licensed and regulated by the State of Delaware in accordance with the Delaware Code.~~

WILD ANIMAL:

Any nonhuman primate, raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, or any other animal so classified by the Delaware Code.

~~§ 71-3 **Dogs at large prohibited.**~~

~~A. It shall be a violation of this section for any person to permit any dog to be at large as defined herein.~~

~~B. No dog shall be allowed to stray, run or go at large upon any public property or street, sidewalk, park, or on the private property of someone other that the animal's owner without the consent of the said property owner.~~

~~C. Any dog that is on private property without the consent of the property owner or resident may be captured in a humane trap or otherwise humanely confined. A person capturing an at-large dog will be responsible for the humane care of the dog until the captured dog is turned over to the Delaware SPCA **State of Delaware Office of Animal Welfare**, or other humane organization, or licensed wildlife trapper. A person shall not entice a dog to become at large for the purpose of trapping or apprehending when that dog would otherwise not be at large.~~

~~D. Any person confining or leashing a dog must do so in a manner that is not injurious to the dog's health.~~

~~E. In order for a dog to be allowed on a public street, road, park or other public property, unless otherwise specifically permitted, the dog shall be under the direct control of the owner or keeper, except during an obedience demonstration, show, trial, training exercise, competition, show and/or match or educational program, so long as sufficient precautions are taken by the owner of the dog and/or sponsor of the event to ensure the safety and protection of both the public and other animals.~~

~~F. Any dog at large that has attacked or bitten any person or domestic animal in an unprovoked attack shall be in violation of this section.~~

~~G. Any dog found by an officer to be at large may be seized and impounded, and, as an alternative or addition to impoundment, the officer finding said dog at large shall issue a citation as provided in § **71-29**.~~

~~§ 71-4 **Capture and removal of nuisance dogs and cats.**~~

~~A. Any person wishing to capture and remove a nuisance dog or cat from his or her property may obtain a live animal trap.~~

~~B. Any animal found to be a nuisance and removed and shall be impounded in accordance with § **71-5**.~~

~~§ 71-5 **Impoundment.**~~

~~A. When a dog or cat is impounded, it shall be held for a period of at least 72 hours, during which period the owner shall be notified, if possible. Reasonable diligence shall be exercised in ascertaining the ownership of said animal.~~

~~B. Any dog or cat which is wearing a license tag, or traceable identification, and which is impounded shall be held for a period of at least 120 hours, excluding legal holidays. The agency impounding said dog or cat shall make a reasonable effort to notify the owner of an impounded licensed dog or cat and that the animal may be picked up during normal business hours at the impounding agency. The final responsibility for locating an impounded animal shall be that of the owner.~~

~~§ 71-6 **Confinement during heat.**~~
~~Any unspayed female dog or cat in heat (estrus) shall be confined during such period of time in a house, building or secure enclosure. Such enclosure shall be constructed so that no other dog or cat may gain access to the confined animal, except for intentional breeding purposes.~~

~~§ 71-7 **Adoption and redemption of animals.**~~

~~A. All animals which have been impounded and are not suffering from or suspected to have an infectious or contagious disease, or which have not been injured to such an extent that it would cause unjustifiable pain or suffering, shall be held for redemption for a minimum of 72 hours for untagged animals, and 120 hours for tagged animals, excluding legal holidays. The agency housing the impounded animal or its designated representative shall attempt to contact the owner of an animal impounded and wearing a current tag before humane disposition of the animal. Those animals not claimed within the time limit specified become property of the agency housing the impounded animal and may be placed in adoption or may be disposed of in a humane manner.~~

~~B. Animals that have been impounded shall be released to their owners upon presentation of proof of ownership and upon payment of fees, including a reclaim fee, rabies vaccination and/or licensing and/or identification fee, and boarding fees if applicable. Said fees shall be established by the agency housing the impounded animal and approved by resolution of the Town of Elsmere.~~

~~C. All dogs and cats placed for adoption shall be vaccinated and before custody is relinquished.~~

§ 71-~~8~~ 3 **Permitting animal to commit a nuisance.**

A. Defecation.

(1) It shall be a violation against the owner or one who harbors any animal which defecates upon:

(a) Any sidewalk or public street; or

(b) Any public park or other public property, other than in areas designated for that purpose; or

(c) Any private property not belonging to the owner of the animal.

(2) Notwithstanding the above, it shall not be a violation of this subsection if said person makes an immediate attempt to remove any feces deposited by the animal.

B. The actions of an animal constitute a nuisance when the animal disturbs the rights or

threatens the safety of or harms a member of the general public, damages the property of someone other than the animal's owner or trespasses upon the private property of another person not the owner of the animal.

C. It shall be unlawful for any person to own, keep, possess, harbor or maintain an animal in such a manner as to constitute a public nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are hereby declared to be a public nuisance:

(1) Allowing or permitting any annual to bark, whine, howl, crow, cackle or make other loud disturbing noise which, due to the volume, continuance or hour of the day, results in a serious annoyance or interference to neighboring residents and their enjoyment of their property.

(2) Allowing or permitting an animal to continually damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damaging gardens, flowers, or other plant material or trespassing upon the property.

(3) Maintaining an animal with a medical condition that could lead to a widespread epidemic that would ultimately be dangerous to the public health, unless the animal is kept in a manner that minimizes the public health threat and is undergoing treatment for the disease in accordance with locally accepted veterinary standards.

(4) Maintaining an animal or animals in an environment of unsanitary conditions, which results in offensive odors or is dangerous to the animal or to the public health, welfare or safety or that of any neighboring property within 200 feet.

(5) Placing of any food, drink or other consumable item(s) intending that they be consumed by animals other than those owned by the person placing the items for consumption, which would draw animals not owned by the person to the area for the purpose of feeding or obtaining water or other consumable items. This section shall not include bird feeders.

~~§ 71-9~~**4 Unwanted animals.**

~~Owners of unwanted animals may bring such animals to the Delaware SPCA~~ **State of Delaware Office of Animal Welfare** ~~at no cost to the owner and may release the animal to the Delaware SPCA~~ **State of Delaware Office of Animal Welfare** ~~in accordance with its policies and procedures.~~

~~§ 71-10~~ **Rabies vaccination required for dogs and cats.**

~~A. Any person who owns or keeps a dog or cat four months of age or older shall have such dog or cat vaccinated annually against rabies by a licensed veterinarian. Evidence of such vaccination shall be signed by the veterinarian administering the vaccine and shall contain enough pertinent data to easily identify the animal. The owner of the animal receiving the vaccine shall retain proof of the required vaccinations and shall make those records available upon request by anyone authorized to enforce this chapter.~~

~~B. Vaccination is excused where:~~

(1) The owner or keeper can prove that the dog or cat has been vaccinated against rabies within the past 12 months by a veterinarian licensed to practice in any state; or

(2) If a licensed veterinarian certifies in writing that a vaccination would be injurious to the animal's health. However, such animal shall be vaccinated against rabies as soon as its health permits and shall wear a tag as required in this chapter. The cost of a rabies vaccination required by this section shall be the responsibility of the person owning the animal.

§ 71-11**8 Licensing of dogs; identification of cats.**

A. Any person who owns or keeps an adult dog or cat shall have such dog licensed by the Delaware SPCA **State of Delaware Office of Animal Welfare** and shall insure that any such cat wears an identification tag containing the name and address of the owner. Adult dog licenses may be obtained from the Delaware SPCA **State of Delaware Office of Animal Welfare** or an authorized representative. Adult cat identifications may be purchased at any location where dog licenses are available. A separate license or cat identification tag shall be issued for each dog or cat, and a license or identification tag issued for one dog or cat is not valid for any other dog or cat.

B. Any nonresident who brings a dog or cat four months of age or older into the Town of Elsmere with the intent to reside within the Town permanently, or temporarily for a period of at least three months, shall have such dog or cat licensed or an identification tag issued within 30 days of arrival.

C. The license required by this section shall be renewed as required by Delaware law.

D. The license tag or identification tag required by this section shall be worn by the dog or cat at all times, subject to the exceptions in this subsection. It shall be a violation of this chapter for any person to remove the license tag or identification tag of any licensed dog or identified cat within the Town of Elsmere except:

(1) When the dog or cat is participating in an organized exhibition, field trial or competition, or is in training for these events, or is engaged in a legal sport under supervision of its owner, or is undergoing grooming; or

(2) When the dog or cat is confined in a licensed kennel, grooming facility or a veterinary hospital, in which case the license tag number or identification tag information shall be recorded and readily identifiable with the dog or cat to which it belongs; if the animal is not licensed, the facility shall clearly indicate such on its records; or

(3) When a licensed veterinarian orders in writing that the license tag, identification tag, collar or harness be removed for the dog's or cat's health, in which case the dog or cat shall be confined in a building, kennel or secure enclosure until the veterinarian permits the collar, harness or tag to be planed on the dog or cat.

E. It shall be a violation of this chapter for any person to use or possess a stolen, counterfeit or forged license tag, identification tag, rabies vaccination certificate, or

any other documentation required by or issued pursuant this section.

§ 71-12 **Dangerous dogs.**

A. Definitions. For purposes of this section, the following term shall have the meaning indicated:

ENCLOSURE
The dog is securely confined indoors, or within a six-foot-high fence, or within a structure suitable to prevent the entry of young children and to confine a dangerous dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of the dangerous dog. Such enclosure shall have secure sides, top and bottom and shall be designed to prevent the animal from escaping over, under, or through the structure, shall be kept locked, and shall also provide protection from the elements.

B. In the event that an incident involving any dog that may be dangerous is reported, the Department of Public Safety alone or in conjunction with the Delaware SPCA shall conduct an investigation, which shall consist of an interview of the owner, if possible, and a sworn affidavit from any person, including the investigating officer, desiring to have a dog classified as dangerous. If the Department determines after such investigation that sufficient cause exists to classify the dog as dangerous, as defined in § **71-2** (see "dangerous dog"), the Department shall initially classify the dog as a dangerous dog and promptly notify the owner of the dog in writing of such initial classification by registered mail, certified hand delivery, or service of process.

C. If a dog is initially classified as dangerous and the owner does not contest such initial classification, the owner shall comply with the provisions of § **71-12F** within 14 calendar days of notification of the classification.

D. Appeal procedure.

(1) If the owner contests the initial classification, he or she shall, within seven calendar days of receipt of the notice of such initial classification, file a written request with the Chief of Police, or his or her designee, for a hearing to appeal the initial classification and confine the dog in a securely fenced or enclosed area pending a resolution of the appeal. The owner shall submit a cashier's check, payable to Town of Elsmere, in the amount set by resolution covering the Hearing Officer's fee at the time the request for a hearing is made. Said deposit will be used to pay the Hearing Officer should the owner be declared the losing party. Should the Hearing Officer's actual fee be less than the deposit amount, the remaining moneys will be returned to the owner within 14 calendar days of the Hearing Officer's ruling. If the Hearing Officer's fee exceeds the deposit; the losing party will be responsible for any and all additional fees. If the Department of Public Safety is declared the losing party, the entire deposit will be returned to the owner within 14 calendar days of the Hearing Officer's ruling. The victim shall not be required to pay a deposit to contest the Department of Public Safety's decision.

(2) The hearing shall be conducted in accordance with the Administrative Procedures Act of the State of Delaware. If the Department of Public Safety

has not impounded the dog, the owner shall provide the address where the dog is confined to the Department. No owner shall relocate or transfer ownership of a dog that is the subject of a dangerous dog investigation pending the outcome of the investigation or any hearings or appeals related to the determination of a dangerous dog classification. In the event that a dog is to be destroyed, the owner shall not relocate the dog or transfer ownership of the dog.

(3) The victim of any dog bite or attack may appeal the decision of the Department of Public Safety if the dog is not declared dangerous by the Hearing Officer.

E. In the event that the Chief of Police has sufficient cause to believe that a dog is dangerous and that the owner is unable or unwilling to securely confine the animal, the Chief may impound the dog pending the investigation if deemed necessary to protect the public. If the dog is subsequently classified dangerous, it shall remain impounded until the owner provides for its secure confinement in accordance with this section.

(1) The Department of Public Safety may arrange for the disposition of such an impounded dog in a humane manner at the expense of the owner if the owner does not make such provisions within 14 days of the latter of:

(a) The initial classification of dangerousness;

(b) The determination of dangerousness by the Hearing Officer; or

(c) The conclusion of any appeal, which is decided adversely to the owner.

(2) The owner shall be responsible for boarding fees, veterinary and other costs incurred by the Town to maintain the dog during such impoundment unless the owner prevails at the conclusion of all legal proceedings.

F. Notwithstanding the definition of "dangerous dog" as provided in this chapter, no dog may be classified dangerous if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or if lawfully on the property, was teasing, tormenting, abusing or assaulting the dog or its owner or a family member, or was committing or attempting to commit a crime. No dog maybe classified dangerous if an injury or damage was sustained by a domestic animal which at the time such injury or damage was sustained was teasing, tormenting, abusing or assaulting, the dog. No dog may be classified dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

G. Registration of dangerous dogs.

(1) No person shall own or keep a dangerous dog without registering the dangerous dog with the Code Enforcement Officer and obtaining a dangerous dog license permit within 14 calendar days of either the classification of dangerousness by the Department of Public Safety or, in the event an appeal of such classification is taken, the upholding of the classification by the Hearing Officer or a court of competent jurisdiction.

(2) Any owner of a dog declared dangerous by another jurisdiction who brings the dangerous dog into the Town of Elsmere shall register the dangerous dog within 14 calendar days of setting up residence in the Town. A late registration penalty as set by resolution shall be imposed if the dangerous dog is not registered within the 14 calendar days. The procedures and requirements for registering a dangerous dog are as follows:

(a) The owner or keeper shall complete a dangerous dog registration form for each dog so classified and pay a one-time dangerous dog registration fee as set by resolution for each dangerous dog being registered.

(b) A dangerous dog permit shall be obtained at the fee set by resolution. The dangerous dog permit must be renewed annually. Failure to renew the dangerous dog permit within 30 calendar days from the expiration of the previous tag will result in the assessment of a late renewal penalty as set by resolution and will subject the owner or keeper to citation for noncompliance of this chapter. In the event a current dangerous dog permit is lost, destroyed, or misplaced or otherwise missing, a replacement dangerous dog license tag must be obtained for a fee set by resolution for replacement dangerous dog permit.

(c) The owner or keeper shall display a sign on his or her premises warning that there is a dangerous dog on the premises. Said sign shall be of such a size that it is visible and capable of being read from the public highway or street.

(d) The owner or keeper shall comply with §§ **71-10** and **71-11** of this chapter, to the extent such sections do not conflict with this section. A dangerous dog is not required to wear an adult license tag but is required to wear a special dangerous dog license issued by the Town.

(e) The owner or keeper shall, on or before the effective date of such registration for which application is being made, have an enclosure for the dangerous dog on the property where the dangerous dog will be kept or maintained.

H. The owner or keeper of a dangerous dog shall:

(1) At all times ensure that the dog is securely confined indoors, or confined in an enclosure as defined herein. At any time that a dangerous dog is not so confined, the dog shall be muzzled in such a manner as to prevent it from biting or injuring any person or animal, and kept on a leash with the owner or custodian in attendance except for the following:

(a) While the dog is being transported within the cab or passenger portion of any motor vehicle, provided said vehicle has a roof, and the dog cannot escape through an open window.

(2) Notify the Code Enforcement Officer immediately if a dangerous dog is on the loose, is unconfined, has attacked another animal or has attacked a human being, or has died or has been sold or given away. If the dangerous dog has

~~been sold or given away, the owner or keeper shall also provide to the division the name, address and telephone number of the new owner of the dangerous dog.~~

~~(3) Notify the Code Enforcement Officer of any cancellation, modification, expiration or termination of the liability insurance policy or surety bond required by this section.~~

~~I. This section shall not apply to dogs owned and used by a law enforcement agency.~~

~~J. Any dangerous dog without a valid dangerous dog license tag as required in this section, or which is not maintained on property with an enclosure, or which shall be outside of the dwelling of the owner or keeper, or outside of an enclosure except as provided in Subsection **H(1)**, shall be confiscated by an officer, placed in quarantine if necessary, for the proper length of time, or impounded and disposed of in a humane manner after the expiration of 14 calendar days from the date written notice is provided to the owner that such dog has been confiscated. Notice shall be made by registered mail, certified hand delivery, or service of process. The fourteen-day time period shall allow the owner or keeper to request a hearing under § **71-13**.~~

~~(1) If any dog not previously classified as dangerous, when unprovoked, attacks and causes severe injury to or the death of a human being, an officer shall immediately confiscate and impound the dog and, after written notice to the owner and expiration of 10 business days from the date the owner receives the notice, arrange the disposal of such dangerous dog in a humane manner.~~

~~(2) If any dog previously classified as dangerous, when unprovoked, attacks or bites a human being or a domestic animal, an officer shall immediately confiscate and impound the dog and, after written notice to the owner and expiration of 10 business days from the date the owner receives the notice that the Town intends to dispose of such dangerous dog in a humane manner, shall arrange the humane disposal of the animal.~~

~~(3) Notice shall be effected by registered mail, certified hand delivery, or service of process. The ten-day time period shall allow the owner to request a hearing under § **71-13**. The owner shall be responsible for payment of all impounding and boarding fees, as well as veterinary fees, as may be required to humanely and safely keep the dog during any impoundment or any appeal procedure.~~

~~K. In the event that the owner or keeper of a dangerous dog is a minor, the parent or guardian of such minor shall be responsible for complying with the provisions of this section. No dangerous dog license shall be issued to any person under the age of 18 years.~~

~~§ 71-13 **Hearings.**~~

~~A. Hearing Officer. There is hereby created for the purposes of this chapter the position of Hearing Officer. Said Hearing Officer shall be a member in good standing of the Delaware Bar.~~

~~B. Notice of hearing. Upon receipt of a timely, written request for hearing, the Town~~

shall schedule a hearing to be held as soon as possible and shall provide the owner of the dog initially classified as dangerous pursuant to § **71-12**, or the owner of a dog confiscated pursuant to § **71-12J**, with no less than five calendar days' written notice of the time, date, and place of the hearing, which shall be held not more than 21 calendar days from the date the Town receives the owner's request. The notice of hearing shall be sent to the owner by certified mail, return receipt requested.

C. Hearing procedures.

(1) Each party shall have the following rights:

(a) To be represented by counsel;

(b) To call and examine witnesses;

(c) To introduce exhibits;

(d) To examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination;

(e) To impeach any witness regardless of which party first called the witness to testify.

(2) All hearings shall be conducted, insofar as is practicable, in accordance with the Delaware Administrative Procedures Act. However, the general nature of the hearing shall be conducted in an informal manner.

(3) Any interested party or person may make application and, upon good cause shown, may be allowed within the discretion of the Hearing Officer to appear in a proceeding pending before the Hearing Officer.

D. Subpoenas.

(1) The Hearing Officer has the power to issue subpoenas to compel the attendance of witnesses at a hearing upon the written request of any party or upon the Hearing Officer's own motion.

(2) A subpoena may be served by any person authorized by the Hearing Officer or by law to serve process.

(3) Any person subject to a subpoena may, before compliance and on timely petition, request the Hearing Officer having jurisdiction of the dispute to invalidate the subpoena.

(4) A party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the county court. Failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under Subsection **D(3)**.

(5) If a party willfully fails to testify when duly subpoenaed, the Hearing Officer

may:

(a) Order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) Render a judgment by default against the disobedient party.

E. Evidence.

(1) In any hearing before the Hearing Officer, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether such evidence would be admissible in a trial in the courts of Delaware. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding.

(2) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(4) The Hearing Officer shall ensure that a full record of the hearing is preserved, which record shall be public and open to inspection and transcription by any person.

F. Written determinations of the Hearing Officer.

(1) After due public hearing, the Hearing Officer shall issue a determination based upon a preponderance of the evidence. The Department of Public Safety shall bear the burden of establishing the dangerousness of the dog; and the owner shall bear the burden of establishing any legal defense to the classification of dangerousness.

(2) All determinations of the Hearing Officer shall be in writing, signed and dated by the Hearing Officer, shall contain findings of fact and conclusions of law, and shall be served upon the owner by registered mail, certified hand delivery, or service. If the Hearing Officer upholds the initial classification of dangerousness, the owner shall comply with the provisions of § **71-12** within 14 calendar days of the Hearing Officer's determination or, in the event of any appeal of said determination to a court of competent jurisdiction, within 14 calendar days of a decision adverse to the owner. Any owner may file a written request for a hearing in the Superior Court of the State of Delaware to appeal the determination of the Hearing Officer within 10 business days of receipt of the determination

G. Payment of Hearing Officer. The cost of the Hearing Officer shall be paid by the

losing party. If more than one item is in dispute, and if there are mixed results, a party shall only be responsible for the cost of the Hearing Officer's time that was applied to the losing item or items, which percentage of time shall be determined by the Hearing Officer.

§ 71-14 **Guard dogs.**

A. Definitions. For purposes of this section, the following terms shall have the meanings indicated:

GUARD DOG
Any type of dog used for the purpose of defending, patrolling, or protecting property or life at any commercial establishment or which resides on the commercial property. The term "guard dog" shall exclude any stock dogs used primarily for handling and controlling livestock or farm animals.

GUARD DOG SERVICE
Any person, firm or corporation which trains, sells, rents, leases or loans guard dogs for the purpose of defending, patrolling or protecting property or persons.

KENNEL
An establishment where guard dogs are lodged.

REGISTRATION
The process of presenting a guard dog to the Code Enforcement Officer is for purposes of obtaining a permit and documenting the existence of the guard dog in the Town of Elsmere.

B. No guard dog service or individual shall own or keep a guard dog without registering the guard dog with the Town and obtaining a guard dog permit. A late registration penalty as set by resolution shall be imposed if the guard dog is not registered within the time period specified in Subsection **C** below. The procedures and requirements for registering the guard dog are as follows:

(1) Prior to required registration, the owner of the guard dog service or the owner of the guard dog shall have the dog inoculated with an antirabies vaccine by a licensed veterinarian.

(2) The guard dog service or owner of the guard dog shall complete a guard dog registration form for each guard dog and pay a one-time guard dog registration fee as set by resolution for each guard dog being registered.

(3) A guard dog permit shall be obtained at the fee set by resolution. The guard dog license permit must be renewed annually. Failure to renew the guard dog permit within 30 calendar days from the expiration of the previous tag will result in the assessment of a late renewal penalty as set by resolution and will subject the owner of the guard dog service or owner of the guard dog to citation for noncompliance of this chapter. In the event a current guard dog permit is lost, destroyed, or misplaced or otherwise missing, a replacement guard dog permit must be obtained at the fee set by resolution for replacement guard dog permits.

(4) The owner of the guard dog service or the owner of the guard dog shall comply with §§ **71-10** and **71-11** of this chapter, to the extent such sections do not conflict with this section. A guard dog is not required to wear an adult license tag.

C. Guard dogs newly acquired by guard dog services shall be vaccinated for rabies and registered with the Code Enforcement Officer no later than 72 hours after acquisition.

D. The Code Enforcement Officer shall maintain records of all guard dogs registered with the Town. Immediately upon transfer of ownership, death, or disappearance of a guard dog, each guard dog service or owner shall notify the Code Enforcement Officer. Upon receipt of the information, the appropriate entry shall be made to the guard dog registration record. If the guard dog has disappeared, an entry should be made to reflect the locality and reason of such disappearance.

E. An officer shall, upon presentation of proper credentials, have the right to enter and inspect all kennels housing guard dogs and other premises where such dogs are in use for determination of compliance with this section.

F. It shall be unlawful for any person, firm or corporation to own or harbor any guard dog in the Town that has not been inoculated, registered, or licensed in accordance with this chapter.

G. Transportation of guard dogs.

(1) The vehicle of every guard dog service or owner transporting any guard dog must be clearly marked, showing that it is transporting a dangerous dog. A compartment separate from the driver is required which shall be arranged to ensure adequate ventilation for the animal.

(2) No guard dog shall be transported in the trunk of a car or in an unenclosed portion of a vehicle, including but not limited to convertibles, pickups, or flatbed trucks. However, a guard dog may be transported in an unenclosed portion of a vehicle if the animal is securely confined within a cage. The cage must be securely anchored to the vehicle in order to prevent its jostling about within the vehicle.

H. Use of guard dogs.

(1) Each business which hires or uses a guard dog shall provide adequate fencing or some other confining structure to keep the guard dog within the guarded area. The business owner or person responsible for managing each business that hires or uses a guard dog is responsible for each guard dog under his or her control.

(2) Each business which hires or uses a guard dog that is on the premises during that business's operating hours shall have the dog confined or restrained in such a manner so as not to have access to those areas open to the public or to otherwise pose a danger to the public.

(3) The business owner or person responsible for managing a business which hires or uses a guard dog shall be responsible for having at each entry point, and at fifty-foot intervals along the fence perimeter, a sign posted including the words "Guard Dog" or "Dangerous Dog" in black six-inch-high letters on a white background.

(4) Entry points shall have a sign posted with the telephone number of the dog's trainer or handler and owner in case of an emergency.

(5) Guard dogs shall be given a humane existence. Guard dogs that are confined in a cage shall have at least 1/2 hour of exercise within each 12 hours of confinement. It shall be unlawful for any person, owner, or manager keeping a guard dog to fail to provide clean, sanitary, safe and humane conditions; sufficient quantities of wholesome food daily; adequate quantities of visible, clean and fresh water available at all times; proper air ventilation and circulation; and medical attention and necessary veterinary care when it is sick, diseased, or injured.

(6) No dog which has been classified as dangerous pursuant to this chapter shall be used as a guard dog.

§ 71-15 **Reporting bites from animals.**

A. Any person who has been bitten or has knowledge of or treats any person bitten by any animal shall report the incident to the Elsmere Bureau of Police within 12 hours of the occurrence of the incident. Birds and reptiles are not considered to be transmitters of the rabies virus, and therefore bites from these animals are excluded from the reporting requirements of this section.

B. Owners of animals which have been reported to have bitten any person shall be subject to an investigation. A police officer will be dispatched to do a field investigation. The assigned officer is required to make a visit to the victim of the animal bite to verify the dog or cat bite or wound and obtain copies of all medical treatment provided by a hospital doctor treating the bite victim.

C. At the end of each quarantine period for rabies observation, owners of animals which have been reported to have bitten any person are required to verify to the Code Enforcement Officer that the animal reported to have bitten any person is alive and healthy to assure that it is free of rabies infection.

§ 71-16 **Suspected rabies cases.**

Whenever the Town is informed that any dog or cat has bitten any person or is suspected of having or showing suspicious symptoms of rabies, the Delaware SPCA shall insure that all applicable Delaware State laws are being adhered to.

§ 71-17 **Surrender of animals for quarantine.**

The owner of any dog or cat that has been report to have inflicted a bite on any person, or that has been reported as being suspected or of having or showing the symptoms of rabies, shall, on demand, produce the dog or cat for confinement or observation as prescribed in this chapter or by applicable Delaware law. Refusal to surrender said dog or cat shall be deemed a violation of this section. The owner of any other animal that has been reported to have inflicted a bite on any person and that is considered to be capable of transmitting rabies shall produce such animal for

~~testing as required by the Town or the State of Delaware.~~

~~§ 71-18 **Cruelty to animals.**~~
~~Any person who beats, cruelly ill-treats, torments, overloads, overworks or otherwise abuses an animal or intentionally causes such animal to be mutilated or inhumanely killed, or causes the same to be done, or otherwise treats an animal in a cruel or inhuman manner, shall be deemed to be in violation of this section.~~

~~§ 71-19 **Exposing animals to poison.**~~
~~It shall be deemed a violation of this section for any person to leave or deposit any poison or any substance containing poison in any common street, alley, lane or thoroughfare of any kind, or in any yard or enclosure other than the yard or enclosure occupied or owned by such person.~~

~~§ 71-20 **Abandonment of animals.**~~
~~It shall be deemed a violation of this section for any person to willfully abandon any animal for a period in excess of 24 hours without providing food, water, proper shelter and protection from the weather and necessary veterinary care for the animal.~~

~~§ 71-21 **Permitting animals to fight.**~~
~~It shall be deemed a violation of this section for any person to cause, instigate or encourage any dog or other animal to fight another of its own species or another of a different species, or to maintain a place where any dog or animal is permitted to fight for exhibition, for wager or for sport. The provisions of this section shall not apply to any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided that § **71-18** of this chapter prohibiting cruelty to animals is not violated.~~

~~§ 71-22 **Medical experimentation.**~~
~~It shall be deemed a violation of this section for any person, firm or corporation to deliver, sell, offer or give any animal to any organization for medical experimentation.~~

~~§ 71-23 **Report of injury to animal.**~~
~~It shall be the duty of any person who injures any animal by any means to promptly notify the owner of the animal if known, the Town, a local veterinarian, or appropriate law enforcement agency.~~

§ 71-~~24~~ 4 **Harboring of stray animals.**
It shall be a violation of this section for any person to harbor or feed any stray animal unless he or she has notified the Code Enforcement Officer within 48 hours of the presence of the stray animal. Upon receiving such notification, the Code Enforcement Officer may direct that such animal be placed with the ~~Delaware SPCA~~ **State of Delaware Office of Animal Welfare**. Refusal to surrender any such stray animal upon request of the Code Enforcement Officer shall be deemed an additional violation of this section.

~~§ 71-25 **Animals in state of pain and suffering.**~~
~~A. In the event any untagged animal shall be found in a state of pain and suffering or becomes so during confinement, the Code Enforcement Officer is authorized to dispose of such animal in a humane manner without complying with the seventy-two-hour waiting period set forth in § **71-5** of this chapter.~~

~~B. In the event any tagged animal shall be found in a state of pain and suffering or becomes so during confinement, the Code Enforcement Officer is authorized to dispose of such animal in a humane manner after a waiting period of 24 hours and a reasonable and diligent effort to contact the owner.~~

§ 71-~~26~~ 5 **Interference with officer prohibited.**
Any person who hinders, obstructs or otherwise interferes with an officer while discharging his or her duties under this chapter, or who takes or attempts to take any animal from any officer or from any vehicle used by the officer to transport any animal, or who takes or attempts to take any animal from the Town without proper authority, or knowingly interferes with any animal trap set by an officer or persons obtaining said traps from the Town shall be deemed in violation of this section.

§ 71-~~26~~ 6 **Ownership of wild animals prohibited.**

A. No person shall own or harbor any wild animal as a pet without the appropriate state permits or Town permits.

B. Zoological parks, performing animal exhibitions and circuses, which utilize wild animals in their performances or exhibitions, shall be exempt from the provisions of this section.

§ 71-~~28~~ 7 **Dogs or cats prohibited in parks.**
No person owning or having charge, care, custody or control of any dog or cat shall permit or allow the dog or cat into or upon any public park within the Town, unless in compliance with the Delaware Code or the Rules of the Town's Dog Park.

§ 71-~~29~~ 8 **Enforcement of violations.**

A. Any ~~animal care~~ police officer or a law enforcement officer of the State of Delaware and any Code Enforcement Officer of the Town of Elsmere who has probable cause to believe that a person has committed an act in violation of this chapter shall have the authority to enforce this chapter.

B. No person shall willfully refuse to sign and accept a citation issued by an officer or willfully refuse to sign for and accept delivery of a citation sent via certified mail/return receipt requested by the Town or any officer enforcing this chapter.

C. In the event an animal is impounded for violation of this chapter and the owner of the animal abandons or surrenders the animal to the ~~Town or the Delaware SPCA~~ **State of Delaware Office of Animal Welfare**, the owner remains liable for the penalties imposed for violations of this chapter. In the event the animal runs away, is lost or is given away, the owner of the animal shall be liable for any penalty imposed for violations of this chapter.

§ 71-~~30~~9 **Violations and penalties.**

A. Any person cited for an infraction under this chapter shall pay the civil penalty specified for such infraction as set by resolution.

~~B. Notwithstanding Subsection **A** herein, any person cited for an infraction of § **71-18**, Cruelty to animals, shall pay a penalty in the amount set by resolution.~~

~~C~~B. In addition to any civil penalties, any person who fails to pay all penalties imposed within the ten-calendar-day payment period shall pay a delinquency fee as set by resolution.

~~D~~C. Any person who fails to come into compliance with any section of this chapter for which he or she is in violation within the ten-calendar-day payment period shall be subject to citation for second and subsequent offense violations of the same sections of this chapter.

§ 71-~~31~~10 **Animals in vehicles.**

A. No person shall leave an animal in a motor vehicle without adequate ventilation or in such a manner as to expose the animal to extremes of heat or cold.

B. An officer may remove and impound an animal from a vehicle if its safety appears to be in immediate danger from heat or cold or lack of adequate ventilation. The officer is authorized to take steps reasonably necessary for the removal of such animal, including but not limited to breaking into the vehicle. Neither the officer nor his or her agency shall bear civil liability for damage.

C. No person shall transport any animal in a motor vehicle unless the animal is safely enclosed within the vehicle, or if traveling in an unenclosed vehicle (including but not limited to convertibles, pickups and flatbed trucks) is confined by a container, cage, or other device that will prevent the animal falling from or jumping from the motor vehicle. Any such container or cage shall be anchored to the vehicle in order to prevent its jostling about.

§ 71-~~32~~11 **Farm animals and livestock prohibited.**

A. No person shall keep or harbor any animal commonly referred to as a "farm animal" or "livestock."

B. For the purpose of this section, a farm animal or livestock shall include all breeds of the following but shall not be limited to any of the following:

(1) Horses.

(2) Cows.

(3) Chickens.

(4) Pigs.

(5) Hogs.

(6) Goats.

(7) Hens.

(8) Sheep.

(9) Ducks.

(10) Fowl.

(11) Mules.

§ 71-~~33~~12 **Exemptions to farm animals and livestock prohibition.**

A. Any person harboring or keeping an animal which would be prohibited by § **71-~~32~~11** of this chapter and who believes that his/her particular animal has a real and legitimate medical, medicinal, psychological or emotional benefit to him/her or a member of his/her family residing in the residence may ask for a meeting with the Town Manager and request an exemption from the provisions of § **71-~~32~~11**.

B. The Town Manager shall develop a list of criteria that the animal's owner must present at the meeting and a general procedure concerning how the meeting will be conducted.

C. If at the conclusion of the meeting the Town Manager is convinced that the particular animal in question does in fact provide legitimate medical or medicinal benefit to the animal's owner or a member of his/her family residing in the residence and that harboring the animal would not adversely affect the general value of property within the area, nor adversely affect the right of other property owners to the safe and comfortable enjoyment of their property, the Town Manager may issue an exemption to § **71-~~32~~11** of this chapter.

D. If the Town Manager decides to issue an exemption he may make the issuance of the exemption contingent upon any terms, restrictions or conditions he feels appropriate.

E. Any person aggrieved by the Town Manager's decision may appeal to the Board of Adjustment

First and Second Reading
April 11, 2019

Third and Final Reading
May 9, 2019

_____
Eric Thompson, Mayor

_____
Brian Hurst, Secretary

Approved as to form:

_____
Town Solicitor

SYNOPSIS
ORDINANCE 646

This Ordinance replaces the existing Chapter 71.

Fiscal Impact:

This Ordinance is anticipated to have no fiscal impact.