

CHAPTER 1. ADMINISTRATION

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ARTICLE 1. GENERAL PROVISIONS

- 1-101 CODE DESIGNATED. The chapters, articles and sections herein shall constitute and be designated “The Code of the County of Douglas, Kansas,” and may be so cited. The Code may also be cited as the “Douglas County Code.” (Code)
- 1-102 DEFINITIONS. In the construction of this Code and of all resolutions of the County, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Board of County Commissioners or the context clearly requires otherwise:
- a) Board, Board of County Commissioners, Commission, County Board, County Commission shall mean the Board of County Commissioners of Douglas County, Kansas.
 - b) Code shall mean “The Code of the County of Douglas, Kansas.”
 - c) Computation of Time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be a Saturday, Sunday or legal holiday, that day shall be excluded.
 - d) County means the County of Douglas in the State of Kansas.

- e) Delegation of Authority. Whenever a provision appears requiring or authorizing the head of a department or officer of the County to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.
- f) Gender. Words importing the masculine gender include the feminine and neuter.
- g) In the County shall mean and include all territory over which the County now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.
- h) Joint Authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.
- i) Month shall mean a calendar month.
- j) Number. Words used in the singular include the plural and words used in the plural include the singular.
- k) Oath. Oath includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the word "swear" is equivalent to the word "affirm."
- l) Officers, departments, etc. Officers, departments, boards, commissioners and employees referred to in this Code shall mean officers, departments, boards, commissioners and employees of the County, unless the context clearly indicates otherwise.
- m) Owner as applied to a building or land shall include not only the owner of the whole, but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.
- n) Person includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as in individual.
- o) Property includes real, personal and mixed property.
- p) Real Property includes lands, tenements, and hereditaments, and all rights thereto and interest therein, equitable as well as legal.
- q) Shall, May. "Shall" is mandatory. "May" is permissive.
- r) Sidewalk means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

- s) Signature, subscription includes a mark when the person cannot write, when his or her name is written near such mark and is witnessed by a person who writes his or her own name as a witness.
 - t) State shall be construed to mean the State of Kansas.
 - u) Street means and includes public streets, avenues, boulevards, highways, road, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the county.
 - v) Tenant or Occupant as applied to a building or land shall include any person holding a written or oral lease of or who occupies the whole or a part of such building or land, whether alone or with others.
 - w) Tenses. Words used in the past or present tense include the future as well as the past and present.
 - x) Writing or Written may include printing, engraving, lithography and any other mode of representing words and letter, except those cases where the written signature or the mark of any person is required by law.
 - y) Year means a calendar year, except where otherwise provided. (Code)
- 1-103 EXISTING RESOLUTIONS. The provisions appearing in this Code, so far as they are in substance the same as those of resolutions existing at the time of the effective date of this Code, shall be considered as continuations thereof and not a new enactment. (Code)
- 1-104 EFFECT OF REPEAL. The repeal of a resolution shall not revive a resolution previously repealed, nor shall such repeal affect any right which has accrued, any duty imposed, any penalty incurred or any proceeding commenced under or by virtue of the resolution repealed, except as shall be expressly stated therein. (Code)
- 1-105 CATCHLINES OF SECTIONS. The catchlines of the sections of this Code printed in capital letters are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted. (Code)
- 1-106 PARENTHETICAL AND REFERENCE MATTER. The matter in parenthesis at the ends of sections is for information only and is not a part of the Code. Citations indicating only the source and the text may or may not be changed by this Code. Reference matter not in parenthesis is for information only and is not a part of this Code. (Code)

- 1-107 AMENDMENTS; REPEAL. Any portion of this Code may be amended by specific reference to the section number as follows; "Section (article or chapter) ____ of the Code of the County of Douglas is hereby amended to read as follows: (the new provisions shall then be set out in full)...." A new section not heretofore existing in the Code may be added as follows: "The Code of the County of Douglas is hereby amended by adding a section (or article or chapter) which reads as follows: (the new provisions shall be set out in full)." All sections, articles, or chapters to be repealed shall be repealed by specific reference as follows: "Section (article or chapter) ____ of the Code of the County of Douglas is hereby repealed." (Code)
- 1-108 RESOLUTIONS; SUBJECT AND TITLE; AMENDMENT. No resolution shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of a resolution shall be amended unless the amending resolution contains the entire section or sections amended and the section or sections amended shall be repealed. (Code)
- 1-109 SAME; PUBLICATION; EFFECTIVE DATE. Resolutions, including amendments, additions or repeals to the Code, adopted by the Board of County Commissioners shall be published in the official County newspaper if such publication is required by State statute, or if the resolution requires such publication. Except when another effective date is stated in a resolution, published resolutions shall become effective upon publication or, if so required, final publication. All other resolutions shall become effective upon adoption, unless a different effective date is provided for therein. (Code)
- 1-110 SAME; RESOLUTION RECORDS. Following adoption of each resolution, the County clerk shall enter the same in the resolution records of the County. (Code)
- 1-111 ALTERING CODE. It shall be unlawful for any person, firm, corporation, or other group to change or amend, by additions or deletions, any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the County of Douglas to be misrepresented thereby. This restriction shall not apply to amendments or revisions of the Code authorized by resolution duly adopted by the Board of County Commissioners. (Code)
- 1-112 SCOPE. Any person convicted of doing any of the acts or things prohibited, made unlawful, or failing to do any of the things commanded to be done, as specified and set forth in this Code, shall be deemed in violation of the Code

and punished in accordance with Section 1-113. Each day any violation of this Code continues shall constitute a separate offense. (Code)

- 1-113 GENERAL PENALTY. Whenever any offense is declared by any provision of this Code, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with K.S.A. 19-101d (as amended). (Code)
- 1-114 SEVERABILITY. If, for any reason, any chapter, article, section, subsection, sentence, clause or phrase of this Code or the application thereof to any person or circumstance is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of the Code. (Code)

ARTICLE 2. BOARD OF COUNTY COMMISSIONERS

- 1-201 COMMISSION POWERS. The powers of Douglas County as a body politic and corporate shall be exercised by the Board of County Commissioners pursuant to K.S.A. 19-103 (1995). (Code)
- 1-202 SAME; NUMBER, DISTRICTS. The Board of County Commissioners shall consist of three (3) qualified electors. The Commission shall divide the County into three (3) commissioner districts as provided by law in K.S.A. 19-201 et. seq. (as amended). (Code)
- 1-203 REGULAR MEETINGS. The Board of County Commissioners shall meet at 9:00 a.m. on Monday and 6:35 p.m. on Wednesday every week at the County Courthouse Commission meeting room. When such meeting day shall be on a legal holiday (or any other day observed as a holiday by the County), the Board may fix the succeeding day not observed as a holiday as a regular meeting day. Upon a motion properly made and seconded, the board may cancel or reschedule any regular meeting of the Board or change the location of the meeting. All regular meetings will be convened pursuant to K.S.A. 75-4317 et seq and an agenda for each regular meeting will be prepared. (Code)
- 1-204 SPECIAL MEETINGS. The Board may meet in special session on the call of the Chairman for the transaction of any general or special business or at the request of a majority of the members on the Board. All special meetings will be convened pursuant to K.S.A. 75-4317 et seq and an agenda for each special meeting will be prepared. The nature of the business to be transacted at any called meeting shall be governed by the matters and things set out in the agenda for said meeting. (K.S.A. 19-209 (as amended)). (Code)

1-205 MEETING PROTOCOL. Meetings of the Board of County Commissioners will be convened by the Chairman at the time stated on the meeting agenda. The meetings will thereafter be conducted pursuant to Robert's Rules of Order.

- a) Agenda items will be generally reviewed as follows:
- b) Agenda item presented and explained by requesting party.
- c) Commissioner discussion and questions.
- d) Public input.
- e) Final discussion and action by commissioners.

Persons attending meetings may be allowed to address the Board on agenda items when they have been recognized by the Chairman. However, no person has a right to be disruptive.

1-206 After discussion of an agenda item, the Board may take action by formal motion. A formal motion must be stated, seconded, and voted on by public vote of each participating commissioner. No secret ballots are allowed.

1-207 EXECUTIVE SESSIONS. The Board of County Commissioners may hold executive sessions pursuant to K.S.A. 75-4319. In order to go into executive session the provisions of K.S.A. 75-3419(a) shall be followed.

1-208 ROUTINE BUSINESS, ABSENCE OF QUORUM. In the event that the temporary absence or illness of two members of the Board prevents a regularly scheduled meeting of the Board due to the lack of a quorum, the remaining Commissioner is hereby empowered to transact all routine administrative business of the Board. "Routine Administrative Business" shall include, but not be limited to:

- a) Approval of all valid claims, employee expense vouchers and payroll vouchers;
- b) Approval of all personnel actions consistent with the Douglas County Personnel Policy and other resolutions or policies of the Board;
- c) Approval of the purchase of supplies, equipment or contract services in accordance with the Douglas County Purchasing Guidelines, including the issuance of notices or solicitation of bids and approval of successful bids, when such purchases are necessary in order to:
 - 1) Avoid additional expense to the County; or
 - 2) Avoid undue delay in the completion of a project or activity that has received previous commissioner authorization; or

- 3) Avoid public inconvenience or a threat to the public health, safety or welfare; or
- 4) Any engineering, utility, right-of-way and construction contracts for County road and bridge projects that have received previous Commission authorization. (Res. 85-49)

1-209 SAME; REPORT AND RATIFICATION. At the next regularly scheduled meeting of the Board at which a quorum is present, the Commissioner who exercised the power delegated by Section 1-207 of the Code shall make a full report on the routine administrative actions taken pursuant thereto. Upon a motion properly made and seconded, all such actions may be ratified by the Board. (Res. 85-49)

ARTICLE 3. OFFICE OF COUNTY ADMINISTRATOR

1-301 OFFICE OF COUNTY ADMINISTRATOR; ESTABLISHED. There is hereby established the Office of the Douglas County Administrator. The County Administrator shall be selected on the basis of administrative and executive ability, education, experience and knowledge of government operations. The County Administrator shall be appointed and be subject to removal by a majority of the County Commission and the County Administrator shall receive all benefits received by County department heads and employees. The County Administrator shall serve in the "Classified-Exempt" service under the Douglas County Personnel Policy. (Res. 86-8-7, Sec. 1)

1-302 SAME; DUTIES. The County Administrator, as the chief administrative officer of the County, shall have the authority to organize the operation of the County consistent with, and subject to, all statutory and legal requirements, and subject to the supervision and discretion of the Board of County Commissioners.

[Res. HR-23-2-1, Sec. 1]

1-303 COUNTY COUNSELOR. The County Counselor shall be appointed by the County Commission and shall be responsible thereto. The County Counselor shall serve to protect the County's interest in all legal proceedings and matters and shall carry out the following duties:

- a) Provide direct legal counsel, advice and services to the County Commission, County Administrator, County department heads and elected officials; and

- b) Ensure County policies, programs and operations are in compliance with statutory and other legal requirements by providing review and oversight thereof; and
- c) Represent the County in all legal proceedings; and
- d) Carry out such other duties or projects of a legal nature as provided by law or as the County Commission or County Administrator may from time to time direct or request. (HR 86-8-7, Sec. 3)

ARTICLE 4. PERSONNEL POLICIES, REGULATIONS AND POSITIONS

1-401 POSITION CLASSIFICATION SYSTEM. The County Commission is hereby authorized to establish and adopt by ordinary resolution a position classification system for use in all the departments of Douglas County government. The position classification system may be amended by motion as needed from time to time and shall, at a minimum, consist of the following:

1-402 PAY PLAN.

- a) The County Commission is hereby authorized to adopt by ordinary resolution a pay plan containing appropriate pay grades and steps. The pay plan shall:
 - 1) Provide for equal compensation for work of equivalent responsibility;
 - 2) Establish a method of rewarding employees for continued service; and
 - 3) Establish pay rates which compare favorably with those of other public and private organization competing for well qualified employees for positions similar to those found in County government. The pay plan shall provide for the annual compensation of the individuals holding the offices of Clerk, Register of Deeds, Sheriff and Treasurer and the employees thereof.
- b) The pay plan may be amended by ordinary resolution as needed from time to time to keep the pay plan current. Policies for continuing administration of the pay plan also may be amended by ordinary resolution. (HR 86-7-6, Sec. 2)

1-403 RELATED COMPENSATION POLICIES. The County Commission is hereby authorized to adopt such related personnel and compensation policies as it deems necessary to effectuate the position classification system and pay plan. Such policies may include, but shall not be limited to, matters

concerning compensation for tenure of service (longevity), performance appraisal, probation, and limits on additional compensation. (HR 86-7-6, Sec. 3)

1-404 INCORPORATION OF PERSONNEL POLICY. There is hereby adopted and incorporated by reference the Douglas County Personnel Policy. This policy may be amended by motion of the Commission.

1-405 SAME; DISTRIBUTION. Each Douglas County department shall have a minimum of one (1) personnel policy manual accessible to employees within the department. It shall be the responsibility of the Assistant County Administrator to distribute such personnel policy manuals and to maintain a list of the location of all such manuals. (Res. 95-15, Sec. 2)

1-406 PUBLIC SAFETY EMPLOYEE SMOKING POLICY; DEFINITIONS. The following words and phrases when used in Sections 1-407– 1-408 of this Code shall, for the purposes of those sections, have the meanings respectively ascribed to them herein:

- a) Public Safety Employee means any employee eligible for coverage by the Kansas Police and Firemen's Retirement System.
- b) Smoke/smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or weed. Such terms also mean chewing, sniffing or otherwise using smokeless tobacco.
- c) Physical Fitness Test means a series of tests designed to measure an individual's overall physical fitness and approved by the County Administrator. (HR 98-2-2, Sec 2)

1-407 SAME; NON-SMOKING AS A CONDITION OF EMPLOYMENT. On and after the effective date of this resolution, all eligible public safety employees who are offered and accept employment with Douglas County shall agree as a condition of such employment to refrain from smoking during the scheduled workday and while off duty. A violation of this condition of employment shall constitute insubordination as defined by Sections 6.18 and 6.19 of the Douglas County Personnel Policy, as amended. Such violation shall be subject to the appropriate disciplinary action as provided therein. (HR 98-2-2, Sec. 3)

1-408 PHYSICAL FITNESS REQUIREMENTS.

- a) Pre-employment. On and after the effective date of this section, all final candidates for public safety positions shall be administered a physical fitness test. Candidates must achieve an overall score at or above the

40th percentile in order to be eligible for employment for a public safety position. In the event of extenuating circumstances, the County Administrator (or his/her designee) may make exceptions to the 40th percentile requirement. When such an exception has been granted, the individual shall be required to achieve the 40th percentile on the physical fitness test prior to the completion of the individual's first year of employment.

- b) Post-employment. Each public safety employee shall be required to take an annual physical test. In order to be eligible for a merit and/or bonus award for the calendar year, the employee must achieve at least the 40th percentile total score on the physical fitness test.
 - 1) Exceptions.
 - (a) Personal Medical Condition. Should an employee be unable to perform the physical fitness test due to a medical condition not caused by a work-related activity, the employee must submit a written note from his/her personal physician detailing (1) the condition preventing the employee from participating in the testing; (2) how long this medical condition is expected to continue. Should the condition be expected to continue beyond the calendar year, for the purposes of determining merit eligibility, the employee will be assigned the previous year's physical fitness test score. Should a public safety employee be unable to participate in physical fitness testing for two (2) or more consecutive years due to one (1) or more medical conditions, in addition to the physician's note as described above, the employee will be required to provide a statement from his/her personal physician that the employee is able to perform all the duties of the job as described in his/her job description, which is to be provided to the physician by the department head.
 - (b) If the medical condition is due to a work-related injury and treatment is being supervised by Douglas County, such medical notes will be requested by Douglas County of the treating physician.
 - 2) REFUSAL. Refusal to participate in the physical fitness testing program and/or refusal to provide a qualifying statement from a physician, shall be considered insubordination and shall be subject to the appropriate disciplinary processes as described in the Douglas County Personnel Policy. (HR 98-2-2)

- 1-409 OFFICES OF COUNTY AUDITOR AND ASSISTANT COUNTY AUDITOR ESTABLISHED. The offices of County Auditor and Assistant County Auditor are hereby established. The County Auditor and Assistant County Auditor shall be appointed by the Board for a term of two years commencing January 1 of odd-numbered years, to serve until December 31 of the following even-numbered year or until a successor is appointed and qualified. The appointment of the County Auditor and Assistant County Auditor shall be by motion and vote by the board and shall be placed in the minutes of the Board. (HR 89-4-1, Sec. 1)
- 1-410 SAME; COMPENSATION. The compensation of the County Auditor and Assistant County Auditor shall be as determined by the Board. Such offices may be held by persons who are also employed by Douglas County in some other capacity, and the Board shall determine whether the additional duties of such offices shall result in additional compensation. (HR 89-4-1, Sec. 2)
- 1-411 SAME; DUTIES.
- a) The duties of County Auditor shall be as directed by the Board and shall specifically include the duty to audit and approve claims pursuant to the “Uniform Procedure for Payment of Claims and Other Indebtedness” under K.S.A. 12-105a and K.S.A. 12105b. The Assistant County Auditor shall perform such duties in the absence of the County Auditor.
 - b) In the absence or other unavailability of the Assistant County Auditor to audit and approve claims, such duties shall be exercised by the County Counselor of Douglas County. (HR 89-4-1, Sec. 3)
- 1-412 CHARTER RESOLUTION 07-6-2. Sections 1-409, 1-410, 1-411 are amended by and subject to the provisions of Charter Resolution No. 07-6-2, which provides as follows:
- a) Section 1. Exemption. The County, by the power vested in it by K.S.A. 19-101b, hereby elects to exempt itself from and make inapplicable to it, the provisions of K.S.A. 19-620, K.S.A. 19-621, and K.S.A. 19-626.
 - b) Section 2. Substitute Provisions for K.S.A. 19-620. The County, by the power vested in it by K.S.A. 19-101b, hereby provides substitute and alternate provisions for K.S.A. 19-620 as follows:

The Board of County Commissioners shall have the power to appoint a person as the County Auditor, to serve at the pleasure of the Board of County Commissioners, until such person is removed from office or resigns from office, whichever occurs first. In addition to other duties authorized or required by law, the County Auditor shall perform such

duties as the Board of County Commissioners may, from time to time, prescribe.

- c) Section 3. Substitute Provisions for K.S.A. 19-621. The County, by the power vested in it by K.S.A. 19-101b, hereby provides substitute and alternate provisions for K.S.A. 19-621 as follows:

Within 10 days after being appointed as County Auditor, such person shall execute and file with the County Clerk, a surety bond in favor of the County, in the penal sum of \$20,000 or such greater amount as the Board of County Commissioners may require. The bond shall be conditioned that the County Auditor will faithfully perform the duties of his or her office. The bond and surety thereon shall be approved by the Board of County Commissioners, which approval shall be made a part of its records. A bond conditioned and approved as set forth above, and executed by a surety authorized to do business under the laws of the State of Kansas, shall constitute sufficient surety, and the premium on said bond shall be pay by the County.

- d) Section 4. Substitute Provisions for K.S.A. 19-626. The County, by the power vested in it by K.S.A. 19-101b, hereby provides substitute and alternate provisions for K.S.A. 19-626 as follows:

The Douglas County Auditor shall receive such salary, together with such cost of living adjustments, as the Board of County Commissioners may, from time to time, determine appropriate.

ARTICLE 5. PUBLIC RECORDS

- 1-501 PUBLIC RECORDS; FEES FOR ACCESS OR COPIES. The Board delegates to the County Administrator the authority and duty to adopt and, from time to time, amend a fee schedule for the various custodians of the records of Douglas County to use when assessing charges for access to and copies of the public records of Douglas County. The fee schedule, however, shall not assess charges in excess of those permitted by applicable law. (Res. 15-21, Sec. 1)
- 1-502 ADVANCE PAYMENT; WHEN NECESSARY. County records custodians may require advance payment of estimated fees when the total fees will exceed \$1.00, when the request is made through mail or electronic communication, or when it is determined by advance payment is advisable to ensure prompt payment of applicable charges. (Res. 15-21, Sec. 1)
- 1-503 DEPOSIT OF CHARGES. The records custodians of the various departments of Douglas County shall remit all money received pursuant to

Section 1-501 of this Code to the County Treasurer at least monthly. Upon receipt, the County Treasurer shall deposit the entire amount and credit the same to the general fund of the County, unless otherwise specifically provided by law. (Res. 15-21, Sec. 1)

1-504 LOCAL FREEDOM OF INFORMATION OFFICER. Pursuant to K.S.A. 45-226, the County Administrator shall appoint a freedom of information officer. The local freedom of information officer shall be available to the general public and records custodians to answer questions, resolve disputes, and assist in appropriately responding to requests for inspecting and copying public records. (Res. 15-31, Sec. 1)

1-505 OFFICIAL CUSTODIANS.

- a) APPOINTMENT. Except as otherwise provided by other applicable law, all department heads are official records custodians for public records on file in their respective departments.
- b) SUBORDINATE OFFICERS. Each of the official custodians appointed in subsection (a) of this section may designate any subordinate officers or employees to serve as record custodians. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.
- c) DUTIES OF CUSTODIANS. All Douglas County officers and employees appointed or designated under this section shall:
 - 1) Protect public records from damage and disorganization.
 - 2) Prevent excessive disruption of the essential functions of the Douglas County.
 - 3) Provide assistance and information upon request and ensure efficient and timely action and response to all written applications for inspection or copying of public records.
 - 4) Comply with the Kansas Open Records Act and carry out the procedures adopted for inspecting and copying public records.
- d) WRITTEN REQUESTS TO BE DIRECTED TO CUSTODIANS.
 - 1) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their written requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.
 - 2) Whenever any Douglas County officer or employee appointed or designated as a custodian under this section is presented with a

written request for access to, or copy of, a public record, which record the custodian does not possess and for which the custodian has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. The person making the request shall be informed as to which custodian the request should be addressed to, if such is readily known by the custodian receiving the request. (Res. 15-31, Sec. 1)

1-506 ACCESS AND COPYING PROCEDURES. The following procedures are adopted and shall be applied by each official custodian and record custodian.

- a) Consistent with the policy, duties and procedures established by the Kansas Open Records Act, all Douglas County record custodians shall provide full access and assistance in a timely and efficient manner to persons who request access to open public records in writing. Certain records, however, may be excluded from public access. These records are identified and K.S.A. 45-221(a).
- b) Record custodians may adopt and apply additional open public record access and copy procedures consistent with the policies of the Douglas County and with the provisions of the Kansas Open Records Act.
- c) Record custodians may adopt and apply procedures that will ensure the protection and preservation of public records with respect to the manner in which such records are inspected and copied.
- d) Record custodians shall take necessary measures, not inconsistent with their duties, to provide access to open public records and to ensure that the essential functions of the custodian's office, department or agency are not disrupted by requests for record inspection and copying.
- e) A records custodian may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by Kansas Open Records Act and this section, a records custodian shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A records custodian may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.
- f) Each written request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed

explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.

- g) If the written request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.
- h) The custodian may refuse to provide access to a public record, or to permit inspection, if a request is not in writing, places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.
- i) If access to public records or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or 45-230, and amendments thereto, the records custodian may require a person requesting the records or information therein to provide written certification that:
 - 1) The requester has a right of access to the records and the basis of that right; or
 - 2) The requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed. (Res. 15-31, Sec. 1)

ARTICLE 6. PURCHASING POLICIES AND SERVICE AGREEMENTS

- 1-601 ADMINISTRATION. There is hereby adopted and incorporated by reference for the purpose of establishing purchasing policies and procedures the document entitled the Douglas County Purchasing Policy. This policy may be amended by motion of the Commission.
- 1-602 CONTRACTS FOR PERSONAL PROPERTY TAX COLLECTION. The County Commission may employ or enter into such contract or contracts it deems advisable with attorneys or other persons to assist the County in the

collection of personal property taxes remaining unpaid from and after the date the same became a judgment of the County against the person or persons responsible therefor as provided in K.S.A. 1985 Supp. 79-2101, as amended. Any such contract shall be in writing and may be on a contingent fee basis, but in no event shall such fee exceed 50 percent of the amount collected. Any taxes so collected shall be credited ratably to the funds for which said taxes were levied. (HR 86-8-8, Sec. 1)

1-603 SAME; BOND, REPORT. Any person, other than the sheriff, with whom the County has contracted for the collection of personal property taxes shall furnish a good and sufficient bond, in an amount to be fixed by the County Commission, for the faithful discharge of his or her duties and for the payment to the County of all moneys collected pursuant to the contract. Such contract shall provide that the contract collector shall, at least monthly, on a date fixed in the contract, file with the County Treasurer a verified report and account of the taxes collected during the preceding month and at the same time, the contract collector shall pay to the County Treasurer the full amount collected during such month. (HR 86-8-8, Sec. 2)

1-604 TREASURER ACCEPT PARTIAL PAYMENTS. In order to facilitate the systematic collection and payment of delinquent personal property taxes, the County Treasurer is hereby authorized to accept any partial payments of personal property taxes that may be collected by the contract collector and paid to the County Treasurer. At his or her discretion, the County Treasurer also may accept such other partial payments as the Treasurer may deem advisable. The acceptance of any partial payments, however, shall not relieve the taxpayer of the obligation to pay the interest penalty prescribed by K.S.A. 79-2004a on the full amount of the personal property tax judgment until the tax debt is paid in full. (HR 86-8-8, Sec. 3)

ARTICLE 7. DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

1-701 DEPOSITORIES OF ACTIVE FUNDS.

- a) The Board of County Commissioners shall, from time to time, designate by official action recorded on its minutes, those financial institutions that shall serve as depositories of such of the County's funds that are required for payment of current claims and expenses of the County. Only those state and nationally chartered banks, savings and loan associations, and savings banks that are eligible to serve as depositories pursuant to K.S.A. 9-1401 and amendments thereto may be designated as depositories of such active funds. (Res. 11-10, Sec.1)

- b) The County Investment Officer and the Assistant County Administrator shall, from time to time, issue a request for bids to all financial institutions eligible to serve as a depository of County funds, requesting bids for the total cost of administering the County's active account. Upon receipt of such bids and analysis thereof by the County Investment Officer and the Assistant County Administrator, the Board of County Commissioners shall select a primary depository institution for such funds. (R-01-38, Sec. 1)
- c) If required by the Board of County Commissioners or the County Investment Officer, each official depository designated by the Board shall enter into a depository contract with the Board detailing the terms of the deposit of County funds therein. (Res. 11-10, Sec.1)

1-702 INVESTMENT OF IDLE FUNDS. The County Investment Officer shall deposit County funds not immediately required for the purposes for which collected or received in accordance with the provision of K.S.A. 12-1675 et seq., as amended and this Article. (R-01-38, Sec. 1)

1-703 INVESTMENT POLICY. In investing the County's funds, the primary objectives of the Board of County Commissioners are (in order of priority): (1) safety of principal, (2) maintenance of adequate liquidity, and (3) maximization of earnings from County funds. To satisfy the first two objectives and also satisfy the third objective, it is the policy of the Board of County Commissioners that an aggressive cash management program and investment policy be pursued to take advantage of investment interest as a viable and material revenue source for all operating and capital funds. It is further the policy of the Board of County Commissioners to invest its funds and use the earnings from the investment of its funds in a manner consistent with all applicable state and local laws. (R-01-38, Sec. 1)

1-704 COUNTY INVESTMENT OFFICER. The Douglas County Treasurer is hereby designated the official County Investment Officer. The County Investment Officer shall invest the County's funds in accordance with the provisions of this Article. In furtherance of this office, the County Investment Officer shall do the following: (1) Maintain economic forecasts and investment strategies; (2) solicit and evaluate possible investment opportunities; (3) prepare reports on collateral and ensure sufficient collateral has been established; and (4) in consultation with the Assistant County Administrator, prepare reports on the cash flow needs of the County and the County's available liquid funds to determine when additional idle funds will be available for investment or when invested idle funds will be needed. (Res. 11-10, Sec. 1)

1-705 (Repealed, Res. 11-10, Sec.1)

1-706 OVERSIGHT OF BOARD OF COUNTY COMMISSIONERS. The activities of the County Investment Officer under this Article shall be subject to the oversight and control of the Board of County Commissioners. (Res. 11-10, Sec. 1)

ARTICLE 8. ADVISORY COUNCILS AND BOARDS

1-801 LAWRENCE-DOUGLAS COUNTY ADVISORY COUNCIL ON ECONOMIC DEVELOPMENT.

- a) There is hereby established the Lawrence-Douglas County Advisory Council on Economic Development. The Council shall consist of seven members, three of whom shall be appointed by the Douglas County Board of County Commissioners and three of whom shall be appointed by the City of Lawrence. One member shall be jointly appointed.
- b) The individuals who are first appointed to serve on the Council shall serve for the following terms of office or until their successors are appointed and qualified: two City appointees and two County appointees shall serve initial terms of four years; the joint appointee and one City appointee and one County appointee shall serve initial terms of two years.
- c) After appointment of the initial members of the Advisory Council, all individuals appointed to the Council shall serve terms of office of four years. No person may serve more than two consecutive four year terms on the Council. Each appointee shall continue to serve on the Council until his or her successor is appointed and qualified.
- d) One City Commissioner, the City Manager, one County Commissioner and the County Administrator shall serve as non-voting ex-officio members of the council. (Res. 89-44, Sec. 1)

1-802 SAME; FUNCTIONS. The Advisory Council shall carry out the following functions and responsibilities:

- a) Meet at least on a quarterly basis with representatives of the economic development marketing program to review progress with the retention and recruitment of manufacturing and other businesses which may have a significant economic impact on the Lawrence-Douglas County area.
- b) Review the proposed budget of the economic development marketing program each year and recommend to the County and City a level of funding in support of the program for the next fiscal year; and

- c) Review on an ongoing basis the economic development policies of the City and County and advise the City and County thereon. (Res. 89-44, Sec. 2)
- 1-803 DOUGLAS COUNTY FAIR BOARD, ANNUAL APPOINTMENT. On or before November 1 of each year, the Board of County Commissioners shall appoint 10 residents of the County to serve on the Douglas County Fair Board. No more than one individual shall be appointed from each of the nine townships and the City of Lawrence. (HR 88-95, Sec. 1)
- 1-804 SAME; TERMS AND VACANCIES. Individuals appointed to serve on the Douglas County Fair Board by the Board of County Commissioners may serve a maximum of six one-year terms of office. Each such term shall commence on February 1 and conclude on January 31 of the following year. If a board member resigns, an appointment shall be made by the Board of County Commissioners to fill the unexpired one year term. Any such appointee shall be eligible to serve the remaining number of one-year terms of the person they replace, and at the end of such period that person may be considered by the Board of County Commissioners for appointment for six one-year terms. (HR 88-9-5, Sec. 2)
- 1-805 SAME; RESPONSIBILITIES. As provided in K.S.A. 2-133, the Douglas County Fair Board of its executive board shall have responsibility for the management and control of the business of the fair association and its property, subject to the approval of the Board of County Commissioners. At the December meeting, the Fair Board may invite the newly appointed members of the Fair Board whose terms of office shall commence on February 1 of the succeeding year to meet in joint session with the current Fair Board. Such joint meeting shall be held for the purpose of insuring continuity of board operations. (HR 88-9-5, Sec. 3)
- 1-806 TERM LIMITS FOR BOARDS AND COMMISSIONS.
- a) Neither the Board of County Commissioners nor any individual member of the Board of County Commissioners shall reappoint any individual to any particular board, authority, committee, commission, council, or other body, whether purely advisory, having specific authority or a combination of both, if such individual shall have already served two full consecutive terms or six full consecutive years, whichever is longer. For purposes of determining eligibility for reappointment, the unexpired term of an individual appointed to fill an unexpired term shall not count as a full term of service and the years in the unexpired term shall not count as years of service.

- b) The limitation of paragraph (a) shall not apply to the extent it is in conflict with term limits set forth in any applicable statute, resolution, interlocal agreement, or other governing document relating to the appointment of individuals to any particular board, authority, committee, commission, council or other body.
- c) The limitation of paragraph (a) shall not apply to limit the reappointment of employees or officials of Douglas County to any particular board, authority, committee, commission, council or other body or to limit the appointment of ex officio members to any such body. (HR 04-1-1, Sec. 1)

ARTICLE 9. SMOKING IN PUBLIC BUILDINGS AND VEHICLES

- 1-901 It shall be unlawful for any person to smoke within a building or vehicle which is owned or leased by Douglas County, Kansas.
- 1-902 There shall be no areas within buildings or vehicles which are owned or leased by Douglas County, Kansas, designated as smoking areas. The County Administrator may designate areas outside of buildings owned or leased by the County as areas in which smoking is permitted.
- 1-903 Smoking shall be defined as the use of cigarettes, cigars, pipes, and shall include nicotine delivery devices that create a smoke or vapor, such as e-cigarettes and vaporizers.
- 1-904 Violation of this Article shall be deemed to be in violation of the provisions of the Kansas Indoor Clean Air Act, K.S.A. 21-6109 through 21-6116, inclusive, as amended. To the extent that the prohibitions in this Article are broader than the foregoing act, violations may be prosecuted the same as violations of county codes and regulations, and the penalty shall be the same as for violations of K.S.A. 21-6110, as amended. (HR 14-10-3, Sec. 1)

ARTICLE 10. OFFICIAL COUNTY NEWSPAPER

- 1-1001 OFFICIAL COUNTY NEWSPAPER. The Lawrence Journal World is the official county newspaper.
- 1-1002 PUBLICATION OF QUARTERLY STATEMENTS. In addition to publication in the official county newspaper, all quarterly statements published by the county shall be published in The Baldwin Ledger and The Eudora News.

ARTICLE 11. ISSUANCE OF TEMPORARY NOTES

- 1-1101 FACTORS TO BE CONSIDERED TO DETERMINE WHEN NOTES WILL BE PURCHASED AS AN INVESTMENT. The Director of Assistant County Administrator or his/her designee will consult with the County Treasurer to determine the desirability of purchasing temporary notes of the County on a case by case basis. The factors to be considered shall include, but not be limited to, the amount of liquid funds available in the County treasury, the future cash needs of the County, the length of the term of the notes, and the amount of the notes. (Res. 96-46, Sec. 1)
- 1-1102 INTEREST PAID ON NOTES. One of the following formulas, at the discretion of the County Administrator or his/her designee, shall be used to determine the interest rate to be paid on notes purchased by the County:
- a) The annual interest rate, determined by the County Treasurer, shall be an amount equal to the Investment Rate established for the State of Kansas pursuant to K.S.A. 75-4210 not greater than two (2) weeks prior to the issuance of the temporary notes plus fifty (50) basis points.
 - b) The annual interest rate shall be an amount equal to the lowest of three (3) solicited rates from banks involved in the purchase of bank-qualified notes not greater than two (2) weeks prior to the issuance of the temporary notes. (Res 96-46, Sec. 1)

ARTICLE 12. DESIGNATION OF VEHICLES AS AUTHORIZED EMERGENCY VEHICLES

- 1-1201 APPLICATIONS. Prior to any vehicle being designated an authorized emergency vehicle the owner shall submit an application to the Sheriff of Douglas County, hereinafter call Sheriff. The application shall be on such form as the Sheriff provides.
- 1-1202 REVIEW OF APPLICATIONS. After receipt of an application the Sheriff shall review the application and make such further investigation as the Sheriff deems necessary.
- 1-1203 DESIGNATION OF VEHICLES. If, after review of the application, the Sheriff finds that the designation of such vehicle is necessary to the preservation of life or property or to the execution of emergency governmental function, the Sheriff shall issue, in writing, a designation of the vehicle as an authorized emergency vehicle.
- 1-1204 USE OF VEHICLES. The document furnished by the Sheriff designating a vehicle as an authorized emergency vehicle shall be carried in the vehicle at all times and shall be used in compliance with the statutes pertaining to

emergency vehicles. A vehicle designated as an authorized emergency vehicle shall be operated for the emergency purpose set out in the application for designation as an authorized emergency vehicle and shall at all times be used in compliance with the statutes pertaining to emergency vehicles.

1-1205 IMPROPER USE OF VEHICLE. Whenever the Sheriff shall receive information that a vehicle that has been designated as an emergency vehicle has been or is being operated in violation of the statutes pertaining to emergency vehicles or these regulations, if it is the first such violation by the owner or operator of said vehicle reported to the Sheriff, he shall send a warning notice by certified mail, return receipt requested, advising the owner of the violations complained of and admonishing the owner that any further violation will result in cancellation of the designation of the vehicle as an authorized emergency vehicle. Upon receipt of information of a subsequent violation of the statutes pertaining to emergency vehicles or of these regulations by an operator of the designated vehicle or another designated vehicle owned by the same owner, the Sheriff shall notify the owner of said vehicle of the purported violations by certified mail, return receipt requested, and shall give the owner ten (10) days from the date of mailing of the notice in which to show good cause why the designation should not be cancelled. Upon receipt of the response the Sheriff shall review the same if the Sheriff deems the response to be inadequate, or if no response is received within ten (10) days of the mailing of the notice, the Sheriff shall enter an order canceling the designation of the vehicle as an authorized emergency vehicle. A copy of the order of cancellation shall be mailed to the owner by certified mail, return receipt requested.

1-1206 DEFINITION. The term "owner" as used herein shall include any public official operating or causing to be operated any designated emergency vehicle.

ARTICLE 13. CEREAL MALT BEVERAGES AND ALCOHOLIC BEVERAGES

1-1301 SUNDAY SALES FOR ON PREMISES CONSUMPTION. Pursuant to K.S.A. 41-2704(b)(2), Sunday sale of cereal malt beverage is hereby authorized in Douglas County, Kansas at any place of business licensed to sell cereal malt beverage for consumption on premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises. (Res. 05-25, Sec. 1)

1-1302 SUNDAY SALES FOR OFF PREMISES CONSUMPTION. Pursuant to Section 9(a) of Senate Bill 298, 2005 Kansas Session Laws Chapter 201, the

Board hereby (i) expands permissible days of sale at retail of cereal malt beverage in the original package to allow such sale within the unincorporated area of Douglas County on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.; and (ii) expands permissible days of sale at retail of alcoholic liquor in the original package, to the extent licensing of such sale of alcoholic liquor is otherwise authorized within the unincorporated area of Douglas County, to allow such sale within the unincorporated area of the Douglas County on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor day. (Res. 06-10, Sec. 1)

- 1-1303 DEFINITIONS. The term cereal malt beverage used in Section 11302 shall have the same meaning as in the Kansas Cereal Malt Beverage Act; and the term “alcoholic liquor” used in Section 1-1302 shall have the same meaning as in the Kansas Liquor Control Act. (Res. 06-10, Sec. 2)

ARTICLE 14. ECO2 COMMISSION

- 1-1401 ESTABLISHMENT OF COMMISSION. The ECO2 Commission (pronounced “ECO Squared Commission”) is hereby established as a joint advisory commission to the City and the County. (Res. 04-22, Sec. 1)
- 1-1402 PURPOSE OF COMMISSION. The ECO2 Commission shall report to and advise both the City and the County on matters relating to its dual goals of (i) preservation, access, and management of open space, and (ii) acquisition of land, facilities and other supports to expand job opportunities in Douglas County, Kansas, including financing of both purposes. (Res. 04-22, Sec. 2)
- 1-1403 GUIDING PRINCIPLES. The ECO2 Commission shall be guided by the following three principles: (i) participation of landowners should be wholly voluntary and the ECO2 Commission shall not recommend the involuntary taking of private property; (ii) to the extent possible and in order to maximally leverage available funds, the ECO2 Commission shall emphasize partnerships with developers, land trusts, and other parties positioned to advance the dual goals of economic development and open space preservation; and (iii) the ECO2 Commission should not break the dual goals of economic development and open space preservation and pursue either separately. (Res. 04-22, Sec. 3)
- 1-1404 ADVISORY COMMISSION: ADDITIONAL DUTIES. The ECO2 Commission shall initially serve in an advisory capacity. The City, the County, and other incorporated cities within Douglas County may, by separate agreement

- between themselves, assign additional duties and responsibilities to the ECO2 Commission, including but not limited to preparing, approving and implementing the annual operating budget; managing acquired funding and real assets; hiring administrative staff; and entering into contracts in furtherance of the goals of the ECO2 Commission. (Res. 04-22, Sec. 4)
- 1-1405 NUMBER AND QUALIFICATIONS OF MEMBERS. The ECO2 Commission shall be comprised of eight members, each of whom shall reside within the geographic boundary of Douglas County, Kansas and none of whom shall hold either a salaried position or elective office with any City government in Douglas County or the County government; provided, however, that the initial appointments made to the ECO2 Commission in June of 2004 may include members who served on the ECO2 Initiative prior to adoption of the Joint Resolution that do not reside in Douglas County. Those members shall be exempt from the residency requirement until their initial term of appointment expires. Membership on the ECO2 Commission shall be voluntary and no member shall receive payment for service on the commission. (Res. 04-22, Sec. 5; Res. 05-14, Sec. 1)
- 1-1406 APPOINTMENTS. The Mayor of the City and the Chair of the County Commission shall jointly appoint the members to the ECO2 Commission upon recommendation of the ECO2 Commission. In each case, appointments shall be made with the consent of a majority of each respective body. The appointments shall consist of the following: three members representing economic development interests, three member representing open space interests, and two members representing farm advocacy interest. (Res. 04-22, Sec. 6)
- 1-1407 REGULAR TERMS: TERM LIMITS. ECO2 shall recommend to the City and County Commissions a staggered term structure that provides for both continuity and the periodic introduction of new members and ideas. (Res. 04-22, Sec. 7)
- 1-1408 INITIAL TERMS. ECO2 shall recommend to the City and County Commissions initial term lengths that set in motion the staggered term structure noted in Section 1-2207. (Res. 04-22, Sec. 8)
- 1-1409 INITIAL MEETING. The ECO2 Commission shall initially convene at such time and place as shall be fixed by the Chair of the County and the Mayor of the City and shall thereupon proceed to organize and elect a Chair and Vice-Chair and to fix and determine times and places of future meetings. (Res. 04-22, Sec. 9)

- 1-1410 **BYLAWS.** The ECO2 Commission shall prepare bylaws to govern the Commission's structure and decision making process and shall submit said bylaws to the City and County for joint approval. At a minimum, the bylaws shall require the same representative structure of the Commission's members as set forth in this Resolution and shall further require the affirmative vote of at least three-fourths of all then-current members appointed and serving on the Commission to recommend project funding or take other significant Commission-related action. Until such time that the bylaws are prepared and approved by the City and County, the Commission shall have a Chair who shall call and preside over all meeting of the Commission and a Vice-Chair who shall serve in the absence of the Chair. (Res. 04-22, Sec. 10)
- 1-1411 **OPEN MEETINGS AND OPEN RECORDS.** All meetings of the ECO2 Commission shall be held in compliance with the Kansas Open Meetings Act and its records shall be subject to the Kansas Open Records Act. (Res. 04-22, Sec. 11)
- 1-1412 **WITHDRAWAL BY CITY OR COUNTY.** Either the City or the County may withdraw its support of the ECO2 Commission and terminate the ECO2 Commission's role with respect to such body upon not less than thirty (30) days' notice to the other governmental body. (Res. 04-22, Sec. 12)
- 1-1413 **EVALUATION OF COMMISSION.** Both the County and City shall, approximately five years from the effective date of this Resolution, review whether the continued existence of the ECO2 Commission is necessary or desirable, and if so, whether any amendments should be made to this Resolution or to the responsibilities of the ECO2 Commission. If neither the County of the City takes formal action to terminate the continued existence of the ECO2 Commission or make any amendments to this Resolution or the ECO2 Commission's responsibilities, the ECO2 Commission shall continue according to the provisions of this Resolution. (Res. 04-22, Sec. 13)

ARTICLE 15. TOWING

- 1-1501 **TOWING/IMPOUNDING VEHICLES.**
- a) **Authority to Tow.** The Sheriff's Office and its members may cause any vehicle to be immediately towed under any of the following circumstances, without the prior consent or authorization of the owner or operator of the vehicle:
- 1) When a vehicle is unattended or abandoned upon a public road or public property and either is parked in a tow zone, interferes with

- the normal movement of traffic or public business, or otherwise poses a danger to the public health, safety or welfare; or
- 2) When a vehicle is unattended or abandoned upon a public road or public property for a period of 48 hours; or
 - 3) When a vehicle has been reported stolen or taken without the consent of its owner; or
 - 4) When the owner or operator of a vehicle is unable to provide for its custody or removal; or
 - 5) When a vehicle upon a public road or public property (or adjacent to a public road as a result of an accident) is so disabled or unsafe as a result of an accident or otherwise as to constitute an obstruction to traffic or otherwise poses a danger to the public health, safety or welfare, and the owner or operator of the vehicle is unable or refuses to provide for its custody or removal (the failure of the owner or operator to request a specific tow service provider that is willing and able to respond within the timeframe that the Sheriff's Office or its members determines necessary under the exigencies of the situation shall be deemed the refusal to provide for its removal); or
 - 6) When the person in charge of a vehicle has been arrested or otherwise taken into custody or detained for an alleged offense; or
 - 7) When a vehicle has been used in the commission of a crime or is otherwise subject to seizure as evidence in a criminal prosecution; or
 - 8) When a vehicle is subject to seizure or forfeiture under the laws of Kansas or the United States; or
 - 9) Any other reason authorized by applicable law.
- b) Authority to Impound. The Sheriff's Office and its members may cause any vehicle to be immediately impounded as they deem necessary within the normal course of business. Any vehicle so impounded for evidence shall be disposed of in accordance with any orders of a court having jurisdiction over the matter, or as otherwise allowed by law once the vehicle is no longer needed for evidentiary purposes. (Res. HR 12-9-2, Sec. 1)

1-1502 NOTICE TO OWNER OF TOWED VEHICLE. Whenever any vehicle is towed pursuant to the provisions of Section 1-1501 of this Article, as amended, the tow service provider shall comply with all notice provisions as outlined in

K.S.A. 8-1102 through 8-1104, and amendments thereto. (Res. HR 12-9-2, Sec. 1)

- 1-1503 **RELEASE OF TOWED VEHICLE.** Unless the vehicle is being held or seized as evidence, all vehicles towed pursuant to the provisions of this Article shall be released to the owner or authorized representative by the tow service provider upon satisfaction of the provisions as outlined in K.S.A. 8-1102 through 8-1108, and amendments thereto, except fees and charges shall not exceed those provided for in Section 1-1513 of this Article, as amended. Res. HR 12-9-2, Sec. 1)
- 1-1504 **SALE OF VEHICLE.** An authorized tow service provider may proceed to dispose of towed vehicles, or to foreclose any possessory lien created by operation of law, in the manner provided in K.S.A. 8-1102 through 8-1108, and amendments thereto, unless a hold has been requested for a particular vehicle by the Sheriff's Office or other law enforcement agency. (Res. HR 12-9-2, Sec. 1)
- 1-1505 **CONTRACT TOWING.** It is hereby declared and found by the Board of County Commissioners to be of vital importance to the safety of the traveling public for disabled or abandoned vehicles and vehicles found on public streets to be removed as promptly as possible; that delay in removal can impede the movement of traffic unnecessarily and can cause further accidents; that the solicitation of tows at accident scenes can lead to unnecessary traffic congestion and unsafe and chaotic conditions; and, as a result, that the towing of vehicles from public roads and public property is a matter affecting public safety. Consequently, vehicle tows should be subject to contracts with the County for the purpose of safeguarding the public.

It is further declared and found by the Board of County Commissioners that the practice of towing, removing and storing of vehicles are matters affecting public safety and require uniformity, efficiency, dependability, and consistency, and any person desiring to perform towing operations for the Sheriff's Office and other County officials shall enter into a Tow Service Provider Contract and comply with the provisions of this Article. The purpose of these Tow Service Provider Contracts and the provisions of this Article are to provide a uniform, efficient, dependable, and consistent system for obtaining services from tow companies which are engaged in or which intend to engage in the practice of towing, removing and storing of vehicles at the request of the Sheriff's Office and other County officials.

Any person desiring to perform tow services at the request of the Sheriff's Office or other County official and who meets the requirements of all other provisions of this Article and enters into a Tow Service Provider Contract shall be eligible to be placed on the County contract tow rotation list and be called on a rotation basis. (Res. HR 12-9-2, Sec. 1)

1-1506 TOWING SERVICE PROVIDER CONTRACT REQUIRED. Each tow service provider seeking placement on the County contract tow rotation list and designation as an authorized tow service provider to perform tow services at the request of the Sheriff's Office, the Emergency Communications Department, or other County official shall make written application to the County Administrator or his designee at least 30 days prior to the desired effective date and shall enter into a Tow Service Provider Contract with the County, in form and substance that the County Administrator approves. Each Tow Service Provider Contract shall generally be for a calendar year and renewal applications should be submitted at least 30 days prior to the expiration date of the then-current contract term. A tow service provider may terminate its designation as an authorized tow service provider, and therefore be removed from the County contract tow rotation list, by providing 5 calendar days advance written notice to the County Administrator. (Res. HR 12-9-2, Sec. 1)

1-1507 CONTRACT TOW REQUIREMENTS. The following requirements and criteria shall be met by any tow service provider desiring placement on the County contract tow rotation list and designation as an authorized tow service provider pursuant to a Tow Service Provider Contract:

- a) Exclusive of state recognized holidays, each authorized tow service provider shall have a representative available (by phone or at the premises where a towed vehicle is stored) from 8:00 a.m. to 5:30 p.m., Monday through Friday to release any towed vehicle within one hour of the owner's or authorized representative's request. No additional charge shall be assessed for releasing a vehicle during these days and hours. During all other times, the authorized tow service provider shall have a representative available by phone and able to meet the owner or authorized representative at the premises where the towed vehicle is stored or kept for releasing a vehicle. For a vehicle released during these other times, the authorized tow service provider may not assess a fee in excess of the maximum charges provided for in Section 1-1513 of this Article, as amended. Each authorized tow service provider shall conspicuously post a sign at the front of its business stating the business name and a telephone number where information can be obtained about

any vehicle towed or stored by the business. If an authorized tow service provider's phone number changes during the term of any Tow Service Provider Contract, the authorized tow service provider shall provide the County Administrator with the new number before the change becomes effective.

- b) Each authorized tow service provider shall have drivers and wrecker services available to respond to tow requests on a 24 hour per day, 7 days a week basis.
- c) Each authorized tow service provider shall clean-up accident debris including but not limited to dirt, broken glass, metal, and other car pieces associated with the vehicle being towed, including but not limited to the use of oil dry or a similar product to clean up any fluid spills, unless otherwise directed by an official overseeing or having jurisdiction of the accident.
- d) Each authorized tow service provider must have properly zoned adequate storage facilities within the County. Outside storage areas shall be fenced, with at least 6 foot high chain link or similar security fence and shall be adequately secured.
- e) Each authorized tow service provider must have available storage area which is totally enclosed within a building for the protection and security of vehicles with broken windows and valuable property left in vehicles.
- f) Each authorized tow service provider must agree to handle and tow abandoned vehicles in addition to tow requests received for damaged or disabled vehicles.
- g) Each authorized tow service provider must provide the County with proof of the following insurance protection:
 - 1) Public liability insurance indemnifying the public generally against damages arising out of the operation of the wrecker service. The authorized tow operator shall be responsible for entering the County on such policy or policies of insurance as a named insured. Such policy or policies of insurance shall be in an amount of at least \$500,000.00 for one person, \$500,000.00 for one accident, and \$500,000.00 property damage and a minimum aggregate limit of \$1,000,000.00. This coverage can be provided as a combined single limit.
 - 2) Garage keeper's minimum liability policy covering fire, theft or damage to or loss of property while in tow or otherwise in the care, custody and control of the authorized tow operator. Such policy or policies of insurance shall be in an amount of at least \$100,000.00

for each individual claim up to a maximum aggregate limit of \$200,000.00 per occurrence.

Proof of insurance must be furnished on standard Acord® certificate of insurance forms. The County is to be named as a named insured on all required insuring agreements and each certificate must state that the County will be given 10 days advanced written notice if the policy is canceled or changed.

- h) Each authorized tow service provider must enter into and sign a Tow Service Provider Contract with the County.
- i) Each authorized tow service provider must provide the County with proof that it has a valid certificate of public service issued from the Kansas Corporation commission. (Res. HR-12-9-2, Sec. 1)
- j) Each authorized tow service provider must be in compliance with all city, county, state, and federal laws. Any tow operator not in compliance with all city, county, state, and federal laws by the end of any given calendar year shall be required at that time to deliver to Douglas County such documentation evidencing progress toward compliance with any such incompliance.
- k) Each authorized tow service provider that is a legal entity formed by filing with the Kansas Secretary of State or any other state must be active and in good standing in the state of formation and, if a foreign entity, must be registered to do business in the State of Kansas.
- l) Each tow service provider entering into a Tow Service Provider Agreement and desiring to become an authorized tow service provider so as to be placed on the county tow rotation list must be separate and distinct from any other authorized tow service provider on the county tow rotation list, and cannot be affiliated with another authorized tow service provider having the effect of taking two slots on the county tow rotation list when, in fairness and reality, it should only take one slot. Evidence of separate and distinct tow operators includes, but is not limited to, separate certificate of public service from the Kansas Corporation Commission; separate insurance policies; separately owned equipment, such as trucks, dollies, etc.; separate offices or arm's length leases for share office space; separate storage facilities or arm's length leases for shared storage facilities; separate accounting records and income tax filings; financial independence, such that no authorized tow operator is dependent upon financing from another authorized tow service provider; and the ownership of each tow service provider, together with who benefits from operating profits and is burdened by operating losses, is substantially different. In the case of personnel, a stricter level of scrutiny will be used to determine if a tow operator is dependent upon

the personnel of another tow operator. To facilitate separation of operations within a sanctioned shared office space environment, clerical staff may be shared only in the event that separate phone numbers are maintained for each tow office and if written documentation exists representing the relationship between tow operators and shared personnel. In the event drivers or other non-clerical personnel are shared between tow operators, documentation evidencing the nature of the shared relationship may be requested. This documentation could be in the form of a contract or agreement and should include a description of the employee-employer relationship with details regarding how transitions from one tow operator employer to another transpire as well as how each company compensates the shared employee(s). Each tow operator desiring to become an authorized tow operator may be required to deliver to Douglas County such documentation as Douglas County reasonably requests to verify the independence of tow operators, including but not limited to motor vehicle titles and evidence of ownership of other equipment, lease agreements for use of office and storage space necessary to conduct towing operations, payroll information, and other documentation establishing that no tow operator is dependent upon the equipment or personnel of any other tow operator to provide its towing operations. Douglas County shall have the authority to suspend or revoke any Tow Service Provider Agreement if it determines that two or more authorized tow service providers are not separate and distinct from each other.

- m) The criteria and requirements set forth in this Subsection A through I of this Section shall not apply when the owner or operator of the vehicle to be towed requests services from a specific tow service provider and the vehicle is towed by that provider. (Res. HR 14-10-05, Sec. 1)

1-1508 COUNTY CONTRACT TOW ROTATION LIST. Based upon information provided by the County Administrator or his designee, the Emergency Communications Department shall maintain a list of authorized tow service providers to be used in providing rotation tow services for the County.

- a) When a tow is needed, the law enforcement officer will communicate the need for a tow to the dispatcher on duty. On receiving this communication, the dispatcher shall, as a general rule, call the next authorized tow service provider on the County contract tow rotation list to remove the vehicle and that authorized tow service provider shall then be moved to the bottom of the list. On each succeeding communication, the next tow service provider on the list is generally assigned. In the event an authorized tow service provider cannot be reached by the dispatcher or cannot provide the requested tow within the timeframe

required, that authorized tow service provider shall forfeit its turn, that authorized tow service provider shall be moved to the bottom of the list, and the dispatcher shall generally call the next succeeding authorized tow service provider on the list. If an authorized tow service provider at the top of the contract tow rotation list is dispatched and the dispatch does not result in a vehicle tow due to no fault of the authorized tow service provider, such authorized tow service provider shall be moved back to the top of the list. The dispatcher shall keep a continuous rotation of each authorized tow service provider on the master County contract tow rotation list.

- b) The County contract tow rotation list provided for in this Article may be used for tows that are initiated by law enforcement officers or other officials of other jurisdictions within the County if the governing body of that jurisdiction specifically requests the Emergency Communications Department to use such list for its tows, in which case, the provisions of this Article and the Tow Service Provider Contract shall apply to such tows.
- c) Placement on the County contract tow rotation list shall be by alphabetical order. In the event a new tow service provider becomes authorized, it shall be placed on the list in alphabetical order, regardless of its resulting place in the rotation.

The Sheriff's Office and other County officials shall not be obligated to use the County contract tow rotation list for any of the following:

- 1) special events where one or more tows may be necessary;
- 2) tows involving impounding of a vehicle for evidentiary or other criminal investigation or law enforcement purposes; or
- 3) tows involving County owned vehicles. Instead, the County may enter into an agreement with one or more tow service providers as needed for any such purposes. For purposes of this Section, special events shall include, but not be limited to, concerts, festivals, sobriety checkpoints, or any other similar event. (Res. HR 12-9-2, Sec. 1)

1-1509 **MAXIMUM FEES AND CHARGES.** No authorized tow service provider towing a vehicle pursuant to the County contract tow rotation list, and no any towing company towing a vehicle, without the prior consent or authorization of the owner or operator of the vehicle shall charge any towing, storage, or related fees in addition to or in excess of those provided for in Section 1-1513 of this Article, as amended. The County shall not be responsible for unpaid

towing charges for such contract tows except as agreed to in writing by a County official. (Res. HR 12-9-2, Sec. 1)

1-1510 SUSPENSION OR REVOCATION OF APPROVAL AND AUTHORIZATION;
GROUNDS.

- a) Suspension or Revocation. The County Administrator or his designee may order that the approval and authority of an authorized tow service provider be suspended or revoked. Any such suspension shall temporarily remove the tow service provider from the contract tow rotation list and may be effective a maximum of 60 calendar days after any noted deficiency is corrected, with the period of suspension to be determined by the County Administrator or his designee. Any such revocation shall permanently remove the tow service provider from the contract tow rotation list and shall terminate the Tow Service Provider Contract with the tow service provider. A revoked tow service provider may be reinstated after entering into a new Tow Service Provider Contract but only upon terms and conditions that lead the County Administrator or his designee to conclude that whatever problems or deficiencies had existed are permanently remedied. Such suspension or revocation may be based upon good cause, including but not limited to any one or more of the following:
- 1) The tow service provider obtained its authority as an authorized tow service provider by fraudulent conduct or false statements;
 - 2) The tow service provider has failed to comply with the provisions of this Article;
 - 3) The tow service provider violated the fee and charge schedule by overcharge;
 - 4) The tow service provider has consistently refused to respond to requests for services from the Emergency Communications Department or the Sheriff's Office or has consistently failed to answer telephone calls from them at the telephone number supplied by the tow service provider;
 - 5) The tow service provider has responded to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicited wrecker or towing business; and
 - 6) The County is not satisfied with the general services of the owner and/or employees of the tow service provider or with the cooperation it has received from such tow service provider or other justifiable cause.

- b) Appeal: Such suspension or revocation shall be by written notice to the tow service provider and shall contain the reasons for the suspension or revocation. The tow service provider may appeal such decision to the Board of County Commissioners or its designee by filing notice with the County Administrator within 10 calendar days of the notice of suspension or revocation. The Board of County Commissioners or its designee shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation.
- c) No Vested Rights: Nothing in this Article, the County's designation as an authorized tow service provider, the County's entering into a Tow Service Provider Contract with any tow service provider, or the County's utilization of any tow service provider for tows shall confer any vested property rights upon the tow service provider to continue as an authorized tow service provider, to remain on the County contract tow rotation list, or to tow any vehicle for the County. (Res. HR 12-9-2, Sec. 1)

1-1511 SOLICITATION PROHIBITED. No tow service provider or tow service provider's employee, driver or contractor shall stop, stand or park a tow truck at or near the scene of an accident or at or near a disabled vehicle within the unincorporated areas of the County for the purpose of soliciting an agreement for towing services, unless such tow service provider, employee, driver or contractor has been called to the scene by the Emergency Communications Department, the Sheriff's Office, another law enforcement agency, or by the owner or authorized representative of an involved vehicle. (Res. HR 12-9-2, Sec. 1)

1-1512 ACCESS TO PERSONAL PROPERTY. Any owner or authorized representative of a vehicle towed pursuant to this Article shall have access to personal property that is not affixed to such vehicle for up to 96 hours after such vehicle has been towed, and such personal property shall be released to said owner or authorized representative within one hour of the owner or authorized representative's request; except, however, if it is being held or seized as evidence. By becoming an authorized tow service provider and being placed on the County contract tow rotation list, each authorized tow service provider waives any possessory lien, to the extent it even has one, in any such personal property. The authorized tow service provider shall not charge any additional fee for retrieval of personal property during the hours and days specified in Section 1-1507 of this Article, as amended. For personal property released during other times, the authorized tow service provider may not assess a charge in excess of the maximum fee provided for in Section 1-1513 of this Article, as amended. (Res. HR 12-9-2, Sec. 1)

1-1513 MAXIMUM TOW, STORAGE, AND RELATED FEES.

- a) Charges for towing, storage and other related services in connection with any vehicle towed or impounded pursuant to the County contract tow rotation list or otherwise towed without the prior consent or authorization of the owner or operator of the vehicle shall not exceed the maximum fees and charges that the Board of County Commissioners adopts by resolution, as amended and in effect from time to time. These charges are the sole and exclusive charges that may be legally imposed for such towing, storage and other related services and it shall be unlawful to charge fees in addition to or in excess of such maximum fees and charges. All other charges not identified in this Article or by resolution are expressly prohibited, including, without limitation, fuel surcharges, gate fees or other similar unauthorized fees to retrieve vehicles or remove personal property.
- b) These fees include clean-up of all accident debris, including but not limited to the use of oil dry or a similar product to clean up any fluid spills.
- c) A tow service provider or other tow operator may charge a full day's storage fee for any portion of a day the vehicle is stored; provided, however, that no fee shall be charged if the owner or authorized representative retrieves the vehicle within the first 24 hours; provided further that no fee shall be charged for any additional day if a vehicle is stored for the additional day as a result of the tow service provider's or tow operator's failure to release the vehicle to the owner or authorized representative as required of authorized tow service providers in this Article. (Res. HR 12-9-2, Sec. 1)

1-1514 SEVERABILITY. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (Res. HR 12-9-2, Sec. 1)

1-1515 PENALTY.

- a) Anyone who directly or indirectly violates any provision of this Article shall be guilty of a misdemeanor fined not less than \$100 nor more than \$500, or by up to one month imprisonment in jail, or both such fine and imprisonment.
- b) Any penalty imposed by this provision shall be in addition to any other remedy at law or equity available to the County, including but not limited

to damages for any failure to comply with the provisions of a Tow Service Provider Contract.(Res. HR 12-9-2, Sec. 1)

CHAPTER 2. ANIMAL CONTROL

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ARTICLE 1. DEFINITIONS

- 2-101 As used in this Chapter, unless the context clearly indicates otherwise, the following words and terms shall have the following meanings:
- a) *Administrative Hearing Officer* means a hearing officer appointed by the Douglas County Board of Commissioners to hear and adjudicate violations of this Chapter through a finding and order.
 - b) *Animal* means any live vertebrate creature except a human.
 - c) *Animal Shelter* means the facility or facilities contracted with or operated by Douglas County for the purpose of impounding or caring for animals held under the authority of this chapter or state law.
 - d) *Bite injury* means any contact between an animal's mouth and teeth and the skin of a bite victim which causes visible trauma, such as a puncture wound, laceration, abrasion, bruise or other piercing of the skin.
 - e) *Cat* means any member of the species, *felis domesticus*.
 - f) *Commercial Kennel* means any agricultural or residential parcel where four or more dogs or cats, or both, are maintained overnight in any one week for boarding, training or similar purposes for a fee or compensation, or where dogs or cats are produced for sale or sold, as determined by an Enforcement Officer.
 - g) *Dangerous Dog* means any dog which has:
 - 1) Caused a bite injury, other than severe injury, to any person, or
 - 2) Killed another dog or cat, or
 - 3) Caused severe injury to, or killed, equine, or livestock.

- h) *Dog* means any members of the species, *canis familiaris*.
- i) *Enforcement Officer* means a law enforcement officer, deputy, or humane investigator, with jurisdiction to enforce this Chapter in Douglas County, KS.
- j) *Euthanasia* means the humane destruction of an animal that may be accomplished by any of those methods authorized by K.S.A. 47-1718.
- k) *Equine* means a horse, pony, mule, jenny, or donkey.
- l) *Exotic* animal means any non-human primate or prosimian (chimpanzees, monkeys), any venomous snake, or constricting snake fully grown over eight feet in length, any member of the *canidae*, *felidae*, *ursidae*, *macropodidae* or *proboscidae* families, including hybrids thereof, and which include:
 - 1) Any member of the dog (*canid*) family not customarily domesticated by man, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domestic dog, but not including domestic dogs (*Canis familiaris*);
 - 2) Any member of the cat family weighing over fifteen (15) pounds not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (*Felis catus*);
 - 3) Any member of the bear (*ursidae*) family, or any hybrids thereof; and
 - 4) Any member of the elephant (*proboscidae*) family, or any hybrids thereof.
- m) *Fowl* means domestic birds commonly kept for the production of meat, eggs, companionship, aesthetic, or feathers. Fowl shall include, but not be limited to, chickens, ducks, turkeys, geese, swans, peafowl, guinea fowl, ostriches, and emus.
- n) *Health director or director of health* means the director of the Lawrence-Douglas County Health Department. The term includes the director's authorized representative.
- o) *Livestock* means cattle, sheep, goats, pigs, llamas and alpacas. Livestock excludes fowl and equine.
- p) *Owner* means any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care or residence, or acts as its custodian. A parent or legal guardian shall be deemed to be an owner of animals owned or maintained by minors upon their premises.

- q) *Person* means any individual, corporation, partnership, organization, or institution commonly recognized by law as a unit.
- r) *Severe Injury* means disfigurement, protracted impairment of health, or impairment of the function of any bodily organ.
- s) *Vicious* animal means any animal which has caused severe injury to any person. (Res. No. 21-50, Sec. 1)

ARTICLE 2. ENFORCEMENT, IMPOUNDMENT AND KENNELS

- 2-201 Any animal found by an Enforcement Officer to be in violation of this Chapter may be impounded by an Enforcement Officer and placed in the Animal
- 2-202 All costs and fees associated with impounding, boarding, and medical care of an animal pursuant to this Chapter shall be paid to the Animal Shelter before the animal is released to the owner. Notwithstanding required hold times in other sections of this Chapter, if a known owner has not reclaimed their animal within 24 hours of notification, the Animal Shelter may send written notice to the known owner to immediately retrieve the animal from the shelter. If, 10 days after notice being provided, the animal is not retrieved, the animal shall become the property of the Animal Shelter. In the event that the owner of such animal fails to pay such costs and fees, the County or Animal Shelter shall be entitled to seek reimbursement of costs either in an independent civil proceeding or the costs may be requested as restitution as part of any applicable criminal proceeding.
- 2-203 The Douglas County Commission shall provide an Animal Shelter or shelters for the reception and humane care of animals impounded under this Chapter, and for this purpose may contract with any governmental entity, nonprofit organization, or association, or licensed veterinarian upon such terms and conditions as are mutually deemed appropriate.
- 2-204 Interference with Enforcement Officers Prohibited. It shall be unlawful for any person to knowingly obstruct, resist, or oppose an Enforcement Officer in the process or execution or the attempt to serve any summons, citation, writ, warrant, or order; conceal, destroy or materially alter evidence; or otherwise interfere with any person appointed or given authority under this Chapter in the performance of his or her official duties as prescribed herein. It shall be unlawful for any person to refuse to identify himself or herself by correct name and address when asked to do so by an Enforcement Officer when the officer has reasonable suspicion to believe that such person has violated this Chapter.

- 2-205 Refusal to Deliver Animals Prohibited. It is unlawful for a person to refuse to deliver an animal to an Enforcement Officer or to the Animal Shelter when requested to do so under impoundment provisions of this Chapter.
- 2-206 Removal of Animals from Enforcement Officers or Animal Shelter Prohibited. It is unlawful to remove an animal from the custody of an Enforcement Officer, Animal Shelter, or other location at which an animal is located when such animal has been impounded by such officer under the provisions of Chapter or state law when such removal is unauthorized.
- 2-207 No Limitation in Rabies Cases. The provisions of this Chapter shall not reduce or otherwise limit any applicable law that requires the impounding or holding of animals for observation following exposure by an animal that could possibly carry rabies or other communicable diseases. In addition, nothing in this Chapter shall prohibit the humane destruction of an animal suspected of carrying rabies if such destruction is done in compliance with other applicable law. In the event that an animal would otherwise be impounded under this Section, but is held at a different location for observation, the animal shall be impounded under this Section immediately upon expiration of the observation period.
- 2-208 Impoundment of At-Large Animals.
- a) A dog, cat or other animal found to be turned loose by an owner or at-large by an Enforcement Officer or person, within the boundaries or unincorporated area of Douglas County, may be impounded in the Animal Shelter.
 - b) The Animal Shelter shall make a record of all dogs, cats, or other animals so impounded with their description, date of impoundment and rabies vaccination number. The animal shall be listed and viewable for the public to inspect.
 - c) If the animal is microchipped or if the owner is known or reasonably ascertainable, the Animal Shelter shall provide notice of impoundment to the known owner. Providing notice does not extend the time in which the animal shall be held before release or disposition.
 - d) If the animal appears to be at-large with no owner and within 3 business days from the date any animal is impounded the owner of such animal does not claim his or her animal, the animal shall become the property of the Animal Shelter. (Ref. K.S.A. §47-1710)

- e) The owner or custodian of an animal disposed of pursuant to this Section shall not be entitled to recover damages for the disposition of such animal.
- 2-209 Any animal impounded pursuant to this Chapter, excluding Sec. 2-407 (Vicious Animal), may be released while the matter is pending in District Court or administrative hearing process upon the recommendation of an Enforcement Officer. If, in the opinion of an Enforcement Officer or Animal Shelter, the animal would constitute a menace to the health, safety or welfare of the public if released from custody, or may be subject to additional harm or violations, the animal may be held pending adjudication of the matter.
- 2-210 Enforcement. Enforcement Officers are empowered to enforce this Chapter and work with Code Enforcement to enforce any domestic animal-related inspections, conditional use permits, and site visits to aid in enforcement of other Chapters of the Douglas County Code, and abate any nuisances. It is unlawful to knowingly impede the duties of an Enforcement Officer.
- 2-211 Commercial Kennel.
- a) Noise. No person shall maintain any commercial kennel which, by creating a noise for frequent or prolonged periods of time by day or night, disturbs the peace and quiet of any person or family of ordinary sensitivity within the vicinity of the noise.
 - b) Odor. It shall be unlawful to maintain any commercial kennel which by the nature of its maintenance or by the numbers of the same shall create an offensive odor so as to be objectionable to any person of ordinary sensitivity living within the vicinity of the odor.
 - c) It shall be unlawful for any person to maintain a commercial kennel without first obtaining a conditional use permit from Douglas County Board of Commissioners.
 - d) It shall be unlawful for any person to maintain a commercial kennel without first obtaining a conditional use permit from Douglas County Board of Commissioners.
 - 1) Any pens, runs, cages or kennels shall be located at least 500 feet from any property lines.
 - 2) A minimum of 20 acres is required for a kennel.
 - 3) Adequate water supply must be provided for drinking and cleaning and appropriate sewage and waste management measures, approved by the Health Department, must be followed to eliminate odor.

- 4) The site plan must show contours so appropriate drainage of cleaning water and storm water runoff can be determined.
- 5) Shelters must be provided with heating and cooling units to protect the animals from extreme temperatures.
- 6) An exercise area such as an individual dog run or an exercise yard which may also be used for training and obedience classes must be provided.
- 7) Runs shall be adequately fenced and roofed to contain animals.
- 8) The building design, site layout, and/or other features must result in a facility that does not create noise which negatively impacts nearby properties.
- 9) There must be an occupied residential home on the property of the commercial kennel and the occupant's name and telephone number must be listed on the permit application and subsequent renewals. (ref. 12-306-23, and 12-306-23.01)

2-212 Penalties. Any person violating any of the provisions of this Article shall be issued a notice of violation and fine, and notice of hearing which shall be served not less than 10 days prior to the date of such hearing in front of the Administrative Hearing Officer. The Administrative Hearing Officer, upon finding and order, and after examining the record for any prior conviction, finding, order, or record to determine if the person has previously been found in violation of the same offense, may fine the person according to the following schedule:

- a) First violation, fine of \$100.
- b) Second or subsequent violation, fine of \$200 to \$500.

(Ref. K.S.A. §77-501 through 77-566, et. seq.)

(Res. No. 21-50, Sec. 1)

ARTICLE 3. EXOTIC ANIMALS

2-301 It is unlawful to own or possess an Exotic Animal in Douglas County, Kansas.

2-302 Exclusion, Zoos, and Other Facilities - The provisions of this Section shall not apply to properly maintained zoological parks accredited by the Association of Zoos and Aquariums; licensed or accredited medical institutions; accredited educational institutions; veterinary clinics or humane societies in possession of exotic animals for impoundment, treatment, or rehabilitation purposes; or

wildlife rescue facilities as designated by the Kansas Department of Wildlife and Parks.

2-303 Exclusion, Transitional Transporting - The provisions of this Section shall not apply to persons transporting exotic animals through Douglas County, provided that the transit time through Douglas County shall not be more than 6 hours, during which time, no exotic animal may be sold, exchanged, adopted, displayed, and no event or service that involves the exotic animal may occur. This includes any contact, whether direct or indirect, with the public.

2-304 Penalties. Any person violating any of the provisions of this Article shall immediately remove the animal from Douglas County. Any person violating any of the provisions of this Article shall be issued a notice of violation and fine, and notice of hearing which shall be served not less than 10 days prior to the date of such hearing in front of the Administrative Hearing Officer. The Administrative Hearing Officer, upon finding and order, and after examining the record for any prior conviction, finding, order, or record to determine if the person has previously been found in violation of the same offense, may fine the person according to the following schedule:

- a) First violation, fine of \$100.
- b) Second or subsequent violation, fine of \$200 to \$500.

(Ref. K.S.A. §77-501 through 77-566, et. seq.)
(Res. No. 21-50, Sec. 1)

ARTICLE 4. NUISANCE, DANGEROUS, AND VICIOUS ANIMALS

2-401 Property.

- a) It shall be unlawful for any person owning or possessing an animal to permit or allow such animal to go upon any road, trail, private lands or premises without the permission of the owner of such premises, and tear up, destroy, or damage the property therein. This is including, but not limited to, gardens, flowerbeds, agriculture, and outbuildings.
- b) It shall be unlawful to own, keep, harbor, or possess any dog or cat on a premises not occupied by persons as determined by an Enforcement Officer.
- c) It shall be unlawful to own or possess dogs or cats which, by creating a noise for frequent or prolonged periods of time by day or night, disturbs

the peace and quiet of any person or family of ordinary sensitivity within the vicinity of the noise.

- d) It shall be unlawful to own or possess dogs or cats which, by the nature of their maintenance or by the numbers of the same shall create an offensive odor so as to be objectionable to any person of ordinary sensitivity living within the vicinity of the odor.

2-402 Running at large—Prohibited; exceptions.

- a) It shall be unlawful for any person to own, keep or harbor any dog and to permit or allow the dog to run at large within the county. For the purpose of this section, any dog shall be deemed to have been permitted or allowed by its owner to run at large when a complaint is filed that alleges the animal is found outside the real property lines of the owner and not effectively under the control of its owner.
- b) Official use of dogs by any governmental unit shall be deemed in compliance with subsection (a) of this section.
- c) An owner, while participating in or training for obedience classes or trials, shall be deemed to be in compliance with subsection (a) of this section. Evidence of this shall be shown by the fact that the dog and owner are going through standard obedience exercises, the owner has a leash on the owner's person, and the dog is under immediate control. The dog's tags must be readily available on the owner's person.

2-403 Animal Injury.

- a) It shall be unlawful for any person to own, keep, or harbor an animal that, without provocation, causes injury to another domestic dog or owned cat, equine, or livestock, excluding severe injury or death as covered in Sec. 2-407 "Dangerous Dog," regardless of the purpose for which the livestock is owned. This section shall not apply to animals injured while willfully trespassing on the owner, keeper, or harbinger of the offending animal's premises.
- b) It shall be unlawful for any person to own, keep, or harbor an animal that, without provocation, causes death to any owned fowl. This section shall not apply to fowl found off the premises of the owner of the fowl.

2-404 Animals putting person in fear. No person shall own, keep or harbor any animal that without provocation, interferes with, chases, bites, or jumps upon any persons or animal, or behaves in a way that a reasonable person would find threatening, on a public right of way or off the property of the owner, keeper, or harbinger of the offending animal.

2-405 Nuisance Animals, Same—Declaration.

- a) Upon the Administrative Hearing Officer's finding and order for a third time involving the same animal in any 24-month period of subsections 401, 402, or 403 in any combination thereof, or first finding and order of violating of section 404 shall constitute a "Nuisance Animal." The Douglas County Clerk's Office shall create and maintain a list of Nuisance Animals upon final disposition of a Nuisance Animal declaration by the Administrative Hearing Officer.
- b) No animal may be declared a nuisance if, at the time of violations the person or animal was teasing, tormenting, abusing or assaulting the alleged Nuisance Animal. No animal may be declared a nuisance if the animal was protecting or defending a human being or animal within the immediate vicinity of the animal from what a reasonable person would perceive as an unjustified attack or assault.
- c) No person owning, harboring or having the care or custody of a Nuisance Animal shall suffer or permit such animal to go unconfined beyond the premises of such person unless such dog is securely leashed and muzzled or otherwise securely restrained.
- d) A Nuisance Animal is "unconfined" if while on the premises of its owner such animal is not securely confined indoors or confined in a securely enclosed and locked pen upon the premises of the person. Such pen must be adequate to ensure the confinement of such dog upon the premises.
- e) The owner of a Nuisance Animal shall attend and complete a training class approved by the Enforcement Officer that is designated to teach the owner how to manage or correct problem behavior. The class must be completed and receipt thereof sent to the Douglas County Clerk's Office within 60 days following finding and order of the triggering offense and Nuisance Animal declaration.
- f) Failure to keep a Nuisance Animal according to the above requirements shall be a separate violation of this Article.
- g) Upon the owner's request, the County may remove any animal from the list of Nuisance Animals if there are no additional instances of the behavior described in this Section within 24 months of the date of conviction and designation of a Nuisance Animal, and the owner has complied with all keeping restrictions outlined in this subsection without incident. Request shall be made to the County Clerk in writing and forwarded to the Administrative Hearing Officer for determination.

2-406 Dangerous Dogs.

- a) It shall be a violation of this section to own, keep, or harbor a Dangerous Dog. The Douglas County Clerk's Office shall create and maintain a list of Dangerous Dogs upon final disposition of a Dangerous Dog violation by the Administrative Hearing Officer.
- b) Notwithstanding the definition of a Dangerous Dog, no dog may be declared dangerous if any injury or damage is sustained by a person or animal who, at the time such injury or damage was sustained, was:
 - 1) Trespassing on the real property of the owner or keeper of the animal, or;
 - 2) A member of the household, or;
 - 3) Was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime, or;
 - 4) If the dog was protecting or defending a human being or animal within the immediate vicinity of the animal from what a reasonable person would perceive as an unjustified attack or assault.
 - 5) The provisions of this article shall not apply to a police dog being used to assist one or more Law Enforcement Officers acting in an official capacity.
- c) Notwithstanding the definition of a Dangerous Dog, no dog may be declared dangerous based solely on size or breed, or mix of breed; or if death to a dog or cat occurred solely due to a size disparity between the animals and there was no sustained vicious attack on the dog or cat.
- d) Any dog impounded under probable cause of being a Dangerous Dog and which in the judgment of the Enforcement Officer would constitute a menace to the health, safety or welfare of the public if released from custody, may be held pending the hearing of the violation of 2-406(a). If not so determined, the dog may, after having been held pursuant to K.A.R. 28-1-13, be returned to its owner until final determination is made by the Administrative Hearing Officer as to whether a violation of this section has occurred. If returned pending the final disposition of the case, the dog must be kept securely confined and must be muzzled while in public until final determination is made as to whether a violation of this section occurred.
- e) Within the notice of violation in 2-407, the Enforcement Officer shall include the following:
 - 1) A description of the animal; and,
 - 2) The name and address of the owner, keeper or harborer of the animal, if known; and,

- 3) The facts upon which the violation is based; and,
 - 4) The restrictions placed on the animal as a result of the violation pending the outcome of the hearing.
- f) Any violation of this section shall be punishable pursuant to the provisions of 2-407.
- g) Upon finding and order of owning, keeping, or harboring a Dangerous Dog, and the dog returning to its owner, the dog shall be kept subject to the following standards:
- 1) Leash and Muzzle. No person shall permit a Dangerous Dog to go outside its home, kennel, or pen unless such dog is securely leashed with a leash no longer than four feet in length. No person shall permit a Dangerous Dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate object such as trees, posts, or buildings. In addition, all Dangerous Dogs on a leash outside the dog's home or kennel must be muzzled by a muzzling device sufficient to prevent such animal from biting persons or other animals.
 - 2) Confinement. All Dangerous Dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel when not indoors, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine Dangerous Dogs must be locked with a key or other locking mechanism. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two feet. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition, and must not be the primary enclosure for keeping of the animal. Enforcement Officers shall have the authority to monitor and inspect the keeping of all Dangerous Dogs.
 - 3) Confinement Indoors. No Dangerous Dog may be kept on a porch, patio or in a part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog may be kept in a house or structure when screen doors are the only obstacle preventing the dog from exiting the structure.
 - 4) Signs. All owners of Dangerous Dogs within the county shall within 10 days of conviction, display in a prominent place on their premises a sign easily readable by the public, invitees, or

licensees, using the words Beware of Dog or Beware of Dangerous Dog.

- 5) Insurance. All owners of Dangerous Dogs must within 10 days of conviction provide to the Douglas County Clerk proof of liability insurance in a single incident amount of no less than \$200,000 for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such dog. The insurance policy will provide that no cancellation of the policy will be made unless 10 days written notice is first given to the Douglas County Clerk's Office.
- 6) Identification Photographs. All owners of Dangerous Dogs must within 10 days of conviction provide to the Douglas County Clerk's Office two color photographs of the registered animal clearly showing the color and approximate size of the dog.
- 7) Microchip. All owners of Dangerous Dogs must within 10 days of conviction microchip the animal if not already microchipped and provide microchip information to the Douglas County Clerk's Office to register the animal as dangerous.
- 8) Spaying/Neutering. All owners of Dangerous Dogs must within 10 days of conviction spay or neuter the animal and provide proof of sterilization to the Douglas County Clerk's Office.
- 9) Training Class. The owner of the Dangerous Dog shall attend and complete a training class approved by the Enforcement Officer that is designated to teach the owner how to manage or correct problem behavior. The class must be completed and receipt thereof sent to the Douglas County Clerk's Office within 90 days following conviction.
- 10) Sale or Transfer of Ownership Prohibited. Sale - No person shall sell, barter or in any other way dispose of a Dangerous Dog to any person within the county unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such dog; provided that the registered owner of a Dangerous Dog may sell or otherwise dispose of a registered dog or the offspring or such dog to persons who do not reside within the county. If the owner sells or transfers ownership outside of Douglas County, the owner shall notify the Douglas County Clerk's Office of the name and address of the transferee. The Douglas County Clerk's Office shall report the Dangerous Dog designation to the County in which the animal will be kept.

- 11) Removal from List. Upon the owner's written request, and approval by the Administrative Hearing Officer, the County may remove any dog from the list of Dangerous Dogs if there are no additional instances of the behavior described in this Section within 24 months of the date of conviction and designation of a Dangerous Dog and the owner has complied with all keeping standards outlined in this subsection.
- 12) Failure to Comply. It shall be unlawful for the owner of a dog deemed by the County to be a Dangerous Dog to fail to comply with the keeping standards and conditions set forth in this Section. Any dog previously found to be dangerous and which is found to be the subject of a violation of this Section shall be subject to immediate seizure and impoundment. Failure to comply with the provisions of this Section is deemed a separate offense. Upon finding and order, the Administrative Hearing Officer shall order the immediate removal of the animal from the county, may order the animal humanely euthanized, or may order the surrender of the animal to the Animal Shelter for disposition.

2-407 Penalties. Any person violating any of the provisions of this Article shall be issued a notice of violation and fine, and notice of hearing which shall be served not less than 10 days prior to the date of such hearing in front of the Administrative Hearing Officer. The Administrative Hearing Officer, upon finding and order, and after examining the record for any prior conviction, finding, order, or record to determine if the person has previously been found in violation of the same offense, may fine the person according to the following schedule:

- a) First violation of 2-401 and 2-402, fine of \$100.
- b) Second or subsequent violation of 2-401 and 2-402, fine of \$200 to \$500.
- c) First violation of 2-403, 2-404, 4-405, or 2-406, fine of \$200 to \$500.
- d) Second or subsequent violation of 2-403, 2-404, 4-405, or 2-406, fine of \$500 to \$1,000.
- e) Restitution. The Administrative Hearing Officer shall order reasonable restitution allowable by law in connection with any violation of this Article.
- f) Other Remedies. The County shall have such other remedies as are and as may be from time to time provided by other applicable law.

2-408 Bites; Confinement.

- a) **Dogs, Cats, or Ferrets Exposing Humans.** Any dog, cat, or ferret that causes any penetration of the skin by the teeth or any contamination of mucous membranes or fresh, open cuts in a person's skin with saliva shall be confined according to the following schedule, regardless of vaccination history:
- 1) **Owned or Wanted Dog, Cat, or Ferret.** Beginning on the day of the exposure, any owned or wanted dog, cat, or ferret shall be observed for ten (10) days pursuant to a Confinement Order prepared by an Enforcement Officer. The Confinement Order shall detail the facts of the incident including how the human was potentially exposed to rabies. If the incident did not cause severe injury and the owner has proof of current rabies vaccination, the Enforcement Officer, in his or her discretion, may determine that the animal may be confined at the residence of the owner. Any other confinement shall be done at the Animal Shelter or veterinary clinic. The exact period of confinement may be longer than ten (10) days at the discretion of the observing veterinarian. The owner shall be liable for all costs and fees incurred.
 - 2) **Unowned, Stray, or Unwanted Dog, Cat, or Ferret.** Any healthy unowned, unwanted, or stray dog, cat, or ferret shall be confined in the Animal Shelter for ten (10) days for observation. If the severity of the exposure to a person is such that it creates a high risk of potential rabies exposure, the Animal Shelter shall have the authority to waive any holding period and euthanize immediately for urgent testing.
- b) **Dogs, Cats, or Ferrets Exposed By Other Animals.** Any dog, cat, or ferret that has been exposed to rabies through any penetration of the skin by the teeth or any contamination of mucous, open cuts in the animal's skin with saliva by a bat or a wild terrestrial carnivore, as defined in the most current version of the Kansas Department of Health and Environment Investigation Guidelines, shall be reported to an Enforcement Officer. The Enforcement Officer will issue an Observation Order or Confinement Order according to the following schedule:
- 1) **Dogs, cats, and ferrets that have appropriate documentation of current rabies vaccination shall receive an immediate booster vaccination by a licensed veterinarian within 96 hours of exposure and shall be kept under the owner's control and observed for forty-five (45) days by an Observation Order. The Observation Order shall detail the facts of the exposure and the date and certification number of the current rabies vaccination. If the booster vaccination was given later than 96 hours after exposure, the Lawrence-**

Douglas County Health Department has the authority to extend the observation period and instruct the Enforcement Officer to issue the appropriate order.

- 2) Dogs and cats that are overdue for the rabies vaccination and have appropriate documentation of a previous vaccination shall receive an immediate booster vaccination by a licensed veterinarian within 96 hours of exposure and shall be kept under the owner's control and observed for forty-five (45) days by an Observation Order. If the booster vaccination was given later than 96 hours after exposure, the Lawrence-Douglas County Health Department has the authority to extend the observation period and instruct the Enforcement Officer to issue the appropriate order.
 - 3) Dogs and cats that are overdue for the rabies vaccination and have no documentation of a previous vaccination shall be reported to the Lawrence-Douglas County Health Department and may be required to be observed for forty-five (45) days or confined for up to four months. The Lawrence-Douglas County Health Department shall instruct an Enforcement Officer to issue the appropriate order.
 - 4) Ferrets that are overdue for the rabies vaccination shall be evaluated on a case-by-case basis by the Lawrence-Douglas County Health Department who shall then instruct an Enforcement Officer to issue the appropriate order.
 - 5) Dogs, cats, and ferrets that have never been vaccinated against rabies shall be euthanized immediately or, if the owner is unwilling to euthanize, shall receive an immediate booster vaccination by a licensed veterinarian within 96 hours of exposure. The dog or cat shall be confined at a licensed Animal Shelter or veterinary clinic for four (4) months, or six (6) months for ferrets pursuant to a Confinement Order prepared by an Enforcement Officer. If the booster vaccination was given later than 96 hours after exposure, the confinement period shall extend to six (6) months pursuant to a Confinement Order prepared by an Enforcement Officer. The owner shall be liable for all costs and fees incurred.
- c) Any owner who fails to comply with the provisions of this Section, within twenty-four (24) hours or one (1) business day of notification, shall be deemed in violation of this Article and the officer shall take such animal into custody and commit it for the above described confinement period.
 - d) Kansas Department of Health and Environment Rabies Control Requirements shall apply under this Section, unless the provisions of this Chapter require more stringent procedures. (Res. No. 21-50, Sec. 1)

ARTICLE 5. VICIOUS DOGS

2-501 Vicious Animals.

- a) It shall be a violation of this Section to own a vicious animal within the county.
- b) A vicious animal does not include an animal that has caused severe injury to any person while a person was committing a criminal offense, or willful trespass on the property of the owner of the animal that caused severe injury. The provisions of this article shall not apply to a police dog being used to assist one or more Law Enforcement Officers acting in an official capacity.
- c) Initiation of Criminal Proceeding. In addition to any other method of initiating a criminal proceeding under applicable law, any Enforcement Officer may, with probable cause, initiate a criminal proceeding under this Article by making an offense report and serving a citation and notice to appear in district court upon the alleged violator. The offense report shall be forwarded to the district attorney for prosecution.

2-502 Penalties. Any violation of this Article shall be heard in Douglas County District Court. Any person violating any of the provisions of this Article shall, upon conviction and after a court examination of any prior conviction record to determine if the person has previously been convicted of the same offense, be sentenced by the court according to the following schedule:

- a) First violation of 2-501 shall be a fine of up to \$1,000 or, confinement in the county jail not to exceed one year, or by both fine and imprisonment.
- b) Any second or subsequent violation of 2-501 shall be a fine of up to \$2,500 and, in addition, confinement in the county jail not to exceed one year, or by both fine and imprisonment.
- c) Each day's violation shall constitute a separate offense under this Article.
- d) After notice of violation under this Article, within 30 days of the animal being impounded, a disposition hearing shall be held in front of an Administrative Hearing Officer regarding the disposition of the animal.
 - 1) The Administrative Hearing Officer shall order that the animal be removed from the county or humanely euthanized, and direct the Animal Shelter or its veterinary designee to ensure that the order is enforced.
 - 2) If the Administrative Hearing Officer orders the animal to be humanely euthanized pursuant to this subsection, that decision

shall be final unless the owner appeals to the Douglas County District Court. If an appeal is timely filed, the district court shall suspend the euthanasia order pending the final determination of the underlying criminal charge by the court.

- 3) If the animal is ordered removed from the county, the address in which the animal will reside shall be reported to the Douglas County Clerk's Office. If the animal is sold or transferred out of Douglas County, the owner shall notify the Douglas County District Attorney's Office prior to the sale or transfer. The Douglas County District Attorney's Office shall report the vicious animal determination to the County in which the animal will be kept.
- e) Restitution. The court shall order reasonable restitution allowable by law in connection with any violation of this Article.
- f) Other Remedies. The County shall have such other remedies as are and as may be from time to time provided by other applicable law. (Res. No. 21-50, Sec. 1)

ARTICLE 6. RECKLESS PET OWNERS

- 2-601 Any person found in violation of Chapter 2 of the Douglas County Code three (3) or more times in a 24 (twenty-four) month period shall be declared a Reckless Pet Owner.
- 2-602 Any person found in violation of Chapter 2 of the Douglas County Code three (3) or more times in a 24 (twenty-four) month period shall be declared a Reckless Pet Owner.
- a) name and address of the person subject to the declaration, and;
 - b) the description, violation, and convictions that lead to the declaration, and;
 - c) the name and description of all pets subject to the effects of the declaration, and;
 - d) instructions on appealing the declaration to the Administrative Hearing Officer.
- 2-603 Once declared a Reckless Pet Owner, the person shall not own, keep, possess, or harbor any additional animals for a period of 3 (three) full years from the date of the declaration. (Res. No. 21-50, Sec. 1)

ARTICLE 7. INVALIDITY AND SEVERABILITY

- 2-701 Partial Invalidity. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.
- 2-702 Jurisdiction. The provisions of this Chapter shall apply to the unincorporated areas within Douglas County, Kansas and, in addition, shall apply within the city boundaries of any incorporated city located within Douglas County, Kansas, that adopts an ordinance or resolution or takes other formal action consenting to have this Chapter apply within such city's boundaries; provided, however, that any city's election to have this Chapter apply within such city's boundaries shall not, by implication, serve to repeal or invalidate any other animal control regulations otherwise applicable within such city. (Res. No. 21-50, Sec. 1)