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Pgs. 7
Filed: 04-07-15

Sponsored by: Stephens

COUNCIL BILL NO. 2015- 097

RESOLUTION NO. 10210

A RESOLUTION

1 APPROVING terms of an agreement under which pit bull dogs may be rescued from
2 the City Animal Shelter and put up for adoption.
3

4
5 WHEREAS, in late February 2015, the City Manager approved a pit bull rescue
6 policy (Exhibit A) for a six-month trial period; and
7

8 WHEREAS, the pit bull rescue policy provides that approved rescue groups will
9 be required to sign a waiver provided by the City to hold the City harmless for future
10 actions of the dog and to provide insurance; and
11

12 WHEREAS, the rescue groups found these requirements overbroad,
13 burdensome, and cost-prohibitive; and
14

15 WHEREAS, City staff and rescue groups have been unable to reach agreement
16 on contract provisions to govern their relationship with regard to the rescue of pit bull
17 dogs; and
18

19 WHEREAS, staff is seeking guidance from City Council and City Council desires
20 to facilitate the pit bull rescue policy by clarifying the circumstances under which pit bull
21 dogs may be rescued from the City Animal Shelter.
22

23 NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
24 SPRINGFIELD as follows, that:
25

26 Section 1 – The Director of Health, or his designee, is hereby authorized to enter
27 into a Dog Rescue Agreement, Release, and Waiver of Liability with animal rescue
28 organizations approved by said Director, said agreement to be substantially in the form
29 and content as that document attached hereto and incorporated by reference as “Exhibit
30 B.”
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32 Section 2 – This resolution shall be effective immediately upon adoption.
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34 Passed at meeting: April 13, 2015

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Robert H. Stephen
Mayor

Attest: Ante J. Catter, Acting City Clerk

Filed as Resolution April 13, 2015

Approved as to form: Sarah J. Kerner, Assistant City Attorney

Approved for Council action: Greg Burns, City Manager

EXPLANATION TO COUNCIL BILL NO: 2015- 097

FILED: 04-07-2015

ORIGINATING DEPARTMENT: LAW

PURPOSE: To approve the terms of an agreement under which pit bull dogs may be rescued from the City Animal Shelter and put up for adoption.

BACKGROUND INFORMATION: Due to some broad liability protection language in the pit bull rescue policy that was recently approved by the Director of Health, City staff and rescue organizations have not been able to reach an agreement on language that that City staff feels provides adequate legal liability protection for the city, while not imposing undue burden on the rescue organizations.

A compromise solution was proposed by one of the rescue organizations, and staff feels that it is appropriate to ask City Council, as the policy-making body for the City, to determine whether this solution is an appropriate balance of the risks and benefits of allowing pit bulls to be rescued and adopted out of the city animal shelter.

Key points of the agreement include:

- Dogs are screened for adoptability, but the City makes no warranty as to the temperament or health of Rescued Dogs.
- Rescue Organization waives claims against the City arising out of the agreement, including damages caused by Rescued Dogs.
- Rescue Organization will obtain waivers from its volunteers (who are not covered by its insurance) and persons adopting the Rescued Dogs, waiving claims against the City arising out of the agreement, including damages caused by Rescued Dogs.
- Rescue Organization carries \$1 million liability insurance to cover its contractual obligations.

Submitted by:



Sarah Kerner, Assistant City Attorney

Recommended by:



Dan Wichmer, City Attorney

Approved by:



Greg Burris, City Manager

Exhibit A

Requirements for Rescue of Dogs Regulated by Chapter 18, Article II, Division 3

1. The City will select at its sole discretion, a qualified individual(s) to perform temperament testing on Individual dogs for dog, people and food aggression. Dogs with any of these traits are not available for rescue. Any dogs with a previous bite history are not adoptable.
2. Shelter staff will provide input on the dog's behavior while at the shelter.
3. Dogs found acceptable in temperament and health are microchipped and vaccinated by animal control.
4. CARE and Halfway home will be the only rescues allowed to claim adoptable dogs.
5. At time of pick up or delivery, a representative for CARE or Halfway Home will be required to sign a waiver provide by the city to hold the city harmless for future actions of the dog.
6. All dogs claimed by rescue must be picked up within 7 days after the required hold time expires.
7. The waiver will also require that the rescue provide proof of spay/neuter within 30 days of pick up or delivery or a statement from a licensed veterinarian stating the reason why the dog cannot be spayed/neutered at this time.

Director of Health, Kevin Gipson

Date

City Manager, Greg Burris

Date

Exhibit B

ROUTING ORDER	(1) ORIGINATING DEPARTMENT	(2) RESCUE ORGANIZATION	(3) FINANCE DEPARTMENT
	(4) LAW DEPARTMENT	(5)	(6) CITY CLERK'S OFFICE
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER:	
() NEW CONTRACT		() RENEWAL OF CONTRACT No. _____	
CITY		RESCUE ORGANIZATION	
CITY OF SPRINGFIELD 840 BOONVILLE, P.O. BOX 8368 SPRINGFIELD, MO 65802		Name:	
		Address:	
Attention:		Attention:	
Department:		Phone:	
Phone:	Fax:	Fax:	

Dog Rescue Agreement, Release, and Waiver of Liability

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by the parties identified above.

WITNESSETH:

THAT, WHEREAS, the City of Springfield desires to allow trusted local animal rescue groups to claim otherwise unclaimed animals from the city animal shelter for the purpose of finding them an appropriate forever home; and

WHEREAS, the Rescue Organization desires to claim such animals; and

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Rescue Organization as follows:

1. **Rescue Dogs.** Rescue Organization shall cooperate with City to claim pit bull dogs from the City Animal Shelter that Rescue Organization believes it can place in a forever home (hereinafter "Rescued Dogs"). For the purposes of this Agreement, "Pit bull" means any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds.

2. **Term.** This Agreement shall be effective upon signature of both parties, and shall continue for one-year, automatically renewing terms until terminated by either party upon 7 days' written notice.

3. **Assurances from Rescue Organization.**

- a. Rescue organization will not adopt a Rescued Dog to an area where that breed is banned.
- b. Rescue organization will make every effort to ensure that Rescued Dogs will not be used for any illegal purposes and will NEVER be fought in any way.

4. **Spay/Neuter Requirement.** Rescue organization shall provide proof that each Rescued Dog has been spayed or neutered within 30 days of pick up or delivery, or shall provide the City with a statement from a licensed veterinarian stating the reason why the Rescued Dog cannot be spayed/neutered at that time.

5. **No Warranty.** City has attempted to screen out dogs that are not good candidates for adoption, whether due to health or temperament concerns. However, animals are unpredictable and therefore, City makes no warranty as to the temperament or physical condition of the Rescued Dogs. Rescued Dogs are claimed by Rescue Organizations as-is. All warranties with regard to

Rescued Dogs, including any implied warranty of merchantability and fitness for a particular purpose, where they are applicable, are hereby specifically disclaimed.

6. **Indemnification/No Liability:** Rescue Organization hereby releases City from any and all liability for personal injury, property damage, legal fees, or veterinary care, or any other expense or liability incurred by Rescue Organization, or by third parties as a result of this Agreement, including but not limited to damages caused by Rescued Dogs. Rescue Organization agrees to have its volunteers and any person adopting a pit bull canine execute a waiver of liability for the City, its employees, officers and agents on a form as approved by the City.

7. **Liability and Indemnity.** The parties mutually agree to the following:

a. In no event shall the City be liable to the Rescue Organization for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract.

b. Rescue Organization agrees that it will not make any claims against or sue City, its officers, agents, employees and/or volunteers for any injury or damage caused by any Rescued Dogs.

c. Rescue Organization hereby voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action for personal injury, property damage or wrongful death occurring to it or to third parties as a result of any action or activity of City pursuant to this Agreement.

d. If any portion of this Release is held invalid, it is agreed that the balance hereof shall continue in full legal force and effect.

e. **Insurance.** Without limiting any of the other obligations or liabilities of the Rescue Organization, the Rescue Organization shall secure and maintain at its own cost and expense, throughout the duration of this Contract, General Liability Insurance. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least One Million and no/100 Dollars (\$1,000,000.00) for all claims arising out of a single accident or occurrence. **Coverage must not exclude bodily injury or property damage arising out of direct physical contact with animals;** however, City recognizes that most insurance policies do not cover injuries to volunteers of Rescue Organization, and such coverage is not required *if Rescue Organization obtains signed waivers from its volunteers and adopting entities or persons that waive all claims against the City arising from the animals adopted under this Agreement*, said waiver to be in a form substantially similar to that attached hereto as Exhibit B.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, and volunteer waivers shall be filed with the City at the time that this contract is signed by the Rescue Organization. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to: Springfield-Greene County Health Department, c/o Contract Administrator, 327 E. Chestnut Expressway, Springfield, MO 65801-8368; and

Such policies shall name the City as an additional insured with limits of liability not less than set forth above. The Rescue Organizations shall furnish to the City prior to operating under this Agreement, the policy and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Springfield. Nothing in this Agreement or promises or covenants herein shall be construed to waive in any fashion any cap on damages, immunity, sovereign, official or any other kind, or any defense that either the City, its employees, officers and agents or CARE, its employees, officers or agents have available under Missouri or any other jurisdiction's law.

8. **Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

9. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

RESCUE ORGANIZATION:

CITY OF SPRINGFIELD, MISSOURI

By: _____

By: _____
Kevin Gipson, Director of Health

Name & Title: _____

APPROVED AS TO FORM

Assistant City Attorney