

2007

# Kanab City v. Jeff Popowich : Brief of Appellant

Utah Court of Appeals

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Van Mackelprang; Kanab City Attorney; Appellee's counsel.

Aric Cramer; Cramer Latham; Appellant's counsel.

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IN THE UTAH COURT OF APPEALS

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KANAB CITY,

Plaintiff/Appellee,

vs

JEFF POPOWICH,

Defendant/Appellant.

---

Case Number 20070768

APPELLANT'S BRIEF

-----

APPEAL FROM A JUDGMENT, IMPOSITION OF SENTENCE, AND ORDER OF  
PROBATION DATED October 5, 2007, THE HONORABLE DAVID L. MOWER, SIXTH  
DISTRICT COURT, SANPETE COUNTY, UTAH, PRESIDING

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Appellant's counsel

THE DEFENDANT/APPELLANT IS NOT INCARCERATED

FILED  
UTAH APPELLATE COURTS

**IN THE UTAH COURT OF APPEALS**

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KANAB CITY,

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**IN THE UTAH COURT OF APPEALS**

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KANAB CITY,

Plaintiff/Appellee.

vs

JEFF POPOWICH,

Defendant/Appellant.

Case Number 20070768

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**APPELLANT'S BRIEF**

APPEAL FROM A JUDGMENT, IMPOSITION OF SENTENCE, AND ORDER OF PROBATION DATED October 5, 2007, THE HONORABLE DAVID L. MOWER, SIXTH DISTRICT COURT, SANPETE COUNTY, UTAH, PRESIDING . (See Addendum 1.)

**JURISDICTION**

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann.

§ 78-2a-3(2)(e), and Utah R. App. P. 3(a).

**ISSUES AND STANDARD OF REVIEW**

1. Did the court fail to dismiss the charges against the Defendant at the end of the City's evidence when the Defendant moved for dismissal for failure of the City to make a *prima facie* case against the Defendant?

2. Did the court fail to rule correctly on the constitutionality of the Kanab City Ordinance?

Issue 1 is an issue of law. Therefore, the Court gives no deference to the findings of the

district court. Issue 2 is an interpretation of a statute, which is a question of law that this Court reviews for correctness. *Stephens v. Bonneville Travel, Inc.*, 935 P.2d 518, 519 (Utah 1997).

### **PRESERVATION OF THE ISSUE**

Issue 1 as to the preservation of the claim that the City had not made a *prima facie* case as against the Defendant was made at the close of the City's witnesses, after the City had rested. (See Transcript, ¶¶ 22 and 23.)

Issue 2 was preserved in the trial court at the same point in the record. (See Transcript, ¶¶ 22-27.)

### **CITATIONS TO DETERMINATIVE STATUTES, RULES OR CASES**

- A. Kanab City Ordinance Chapters 13-200 et al. (See Addendum 2.)
- B. United States Constitution, 14<sup>th</sup> Amendment. (See Addendum 3.)
- C. Utah Constitution, Article I, Sections 1, 7, 12, 24 and 27. (See Addendum 4.)

### **STATEMENT OF THE CASE**

The Defendant was initially charged with four counts of no dog license and one count of an illegal dog kennel on May 8, 2006. The Defendant entered a plea of guilty in the Kane County Justice Court on January 3, 2007. The Defendant then filed a Notice of Appeal de novo to the Sixth District Court on January 5, 2007. The case came to trial de novo in the district court on May 11, 2007. The trial was a bench trial due to the fact that the cases were filed as infractions.

The facts that are material to the consideration of the issues regarding the sufficiency of evidence are that Mr. Popowich, in 2005, had a license for his two dogs at his residence in Kane County, Utah. In 2006, no license was issued. Notices went to Mr. Popowich, but as of April 2006 he had not applied for licenses for his two dogs. In April of 2006, Cecil Campbell, the Animal

Control Officer received an anonymous phone call reporting dogs barking at the Defendant's address. Officer Campbel went to the address and observed through the front window inside the home four dogs. Officer Campbel never spoke with the Defendant, he did not observe the residence on any other date and cited the Defendant for four counts of failure to license the four dogs he observed, as well as citing him for an illegal kennel. These facts were testified to by Officer Campbel at bench trial. At the end of the City's evidence, the defense moved for a dismissal for the failure of the City to make a *prima facie* showing under the Kanab City Ordinance. The court did not rule on the issue there, but reserved it and required the defense go forward with its case. The Defendant then took the stand and testified that some of the dogs that were in the home were not his animals, and that he was not keeping a kennel, but merely dog sitting for a friend on the date that Officer Campbel observed the dogs in his home. At the end of the evidence, the Defendant moved the court find him not guilty and also argued the Ordinance was unconstitutional. The court took the matter under advisement and issued its Memorandum Decision on June 8, 2007. Sentencing on the case was held September 7, 2007.

### **MARSHALING**

The following evidence supports the court's findings in the case. Mr. Campbel, an animal control officer employed by Kanab City, was called in December of 2005 by an anonymous caller complaining of barking dogs and an illegal kennel at the Defendant's home at 213 East 330 North in Kanab. (See Transcript at ¶ 10.) Officer Campbel went and checked out the situation and observed four dogs on two different dates in December, those dogs being a Rottweiler, a Shepherd and two mixed breeds, specifically a black-and-white and a tri-color. These dogs were observed through the front window of the Defendant's home. (See Transcript at ¶ 11.) The Officer was able

to estimate the age of the dogs to be over one year old. (See Transcript at ¶¶ 12, 17 and 18.) In January of 2006, Officer Campbel sent out a notice to all residents who had previously owned dogs to come in and register them. (See Transcript at ¶ 13.) Officer Campbel also sent a follow up notice in February of 2006 for all those who had not yet complied. (See Transcript at ¶ 14.) Mr. Campbel then put a warning on the Defendant's door requiring him to comply. That notice told him he was in violation of having more dogs than he was allowed and having an illegal kennel and unlicensed dogs. (See Transcript at ¶¶ 14-16.) Evidence was then admitted that the Defendant had licensed two dogs in 2005, one being a Shepherd and the other being a Rottweiler. (See Transcript at ¶ 15, lines 11-19.) The witness testified he saw the same four dogs in the Defendant's window on the subsequent months of January, February, March and April of 2006. (See Transcript at ¶ 16, lines 1-6.) Defendant was then cited for the charges that are the topic of this appeal on April 13, 2006. (See Transcript at ¶ 16, lines 16-17.) The City then put into evidence a current dog license list that was accurate on August 15, 2006, upon which the Defendant's dogs were not listed. (See Transcript at ¶ 17, lines 15-21.)

Defendant took the stand and in his testimony indicated that he did not apply for the kennel license in 2006. (See Transcript at ¶ 35, lines 20-23.) He also testified that he did not license his dogs in the year 2006. (See Transcript at ¶ 35, lines 24-25, ¶ 36, lines 1-9 and ¶ 37, lines 5-11.) (See Addendum 5, Mr. Popowich's testimony.)

## **SUMMARY OF THE ARGUMENTS**

### Issue 1

Did the court fail to dismiss the charges against the Defendant at the end of the City's evidence when the Defendant moved for dismissal for failure of the City to make a *prima facie* case

against the Defendant? The City in its case, introduced evidence that the animal control officer, Mr. Campbel, observed four dogs at the Defendant's home in the months of January, February, March and April. Those observations were made on one day each of those months. In other words, Officer Campbel observed those dogs on one day in January, one day in February, one day in March and one day in April.

The statute requires that an animal is "harbored" if it is fed or sheltered for three consecutive days or more under the statute's definition of owner. The City did not provide any evidence on this element in its case in chief, nor did the City prove that the dogs were not exempt under the seeing eye dog, hearing dog, or dogs specifically trained to assist officials of government agencies exception. The City did not prove that the dogs that were observed by the Officer were property of a non-resident temporarily within the city for thirty days or less. Nor did they prove that the dogs were not brought in to the city for participating in a show or event. In the City's case in chief, they failed to meet the *prima facie* evidence for any of the five counts upon which the Defendant was ultimately convicted.

## Issue 2

Did the court fail to rule correctly on the constitutionality of the Kanab City Ordinance in that the court did not even analyze the Ordinance as requested by counsel at trial. The City contended that, due to the four dogs that Officer Campbel saw in Mr. Popowich's residence, that he was operating a kennel and he was cited for that. Therefore, if the Defendant is to be found guilty of not having a kennel permit, the permit sections of the City Ordinance would be applicable to the Defendant. The terms and restrictions of the Ordinances regarding kennels are both vague and overbroad in that there is vagueness in the meaning of what the Ordinance requires, and a possible

difference as to application. It is also not narrowly drawn to protect a compelling state interest.

## **ARGUMENT I**

Kanab City Ordinance, Chapter 13-200.01.010 Definitions, has the term “owner” defined as: “‘Owner’ means any person, partnership or corporation, owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.”

The terms person, partnership and corporation are not defined, but clearly refer to the commonly understood annotations and connotations of those words. The definition of harboring, however, is specifically spelled out. It requires that an animal be fed or sheltered for three consecutive days or more.

The Plaintiff’s case in chief indicated through testimony that the Officer Campbel did observe four animals of essentially the same description on one day each in the months of January through April of 2006. However, there is no evidence, even in the light most favorable to the Plaintiff, that Mr. Campbel came to Mr. Popowich’s residence on three or more consecutive days in any period of time ever. In the City’s case in chief, there was evidence that Mr. Popowich did license two animals meeting the general description of a Rottweiler and a Shepherd or a Shepherd mix in 2005 and 2007. (See Addendum 6, Mr. Campbel’s testimony.) However, no evidence was ever provided that the four dogs observed did not meet any of the exceptions under Ordinance, Chapter 13-200.02.010, Licensing. Notably, under paragraph five the Ordinance reads: “The provisions of this section shall not apply to dogs whose owners are nonresidents temporarily within the city for thirty (30) days or less, nor to dogs brought into the city for the purpose of participation in any show or event.”

Chapter 13-200.02.010(F)(1) states: “a. Seeing eye dogs properly trained to assist in blind persons, if such dogs are actually being used by blind persons to assist them in moving from place to place. b. Hearing dogs properly trained to assist deaf persons if such dogs are actually used by deaf persons to aid them in responding to an auditory stimulus. c. Dogs specifically trained to assist officials of governmental agencies in the performance of their duties and which are owned by such agencies.”

No evidence was submitted by the City that any of these exceptions did not apply. In fact, Mr. Campbel is also the meter reader for the City and he testified that he read the water meters once a month on the dates where he went to the Defendant’s residence to read the meter. (See Transcript at ¶ 19, lines 1-11.)

As to Count 5, violation of the kennel permit, the Ordinance Chapter 13-200.04.010 states: “Except as otherwise provided in this chapter, no more than two (2) dogs and/or three (3) cats which are three (3) months of age or older shall be kept at any residence at any time.” There is no definition in the definitions section of the Ordinance as to what defines a residence. However, Chapter 13-200.04.020, Permit Required, indicates that a kennel cannot be run except as laid out in the application terms provided thereafter in the Ordinance. The definition in Chapter 13-200.01.010 states: “‘Private Kennel’ means any residential premises where more than two dogs and/or three cats are raised, kept, housed; or any residential premises wherein any person engages in the business of breeding, buying, letting for hire, training for a fee or selling dogs or cats.”

The evidence in the case was the prosecution under the first part of the chapter of private kennel, a residential premise where more than two dogs. . . are raised, kept or housed. There is no definition of raised, kept or housed. However, in reading the Ordinance as a whole, there is a

definition of harboring that is defined under owner which has been discussed *supra*.

Chapter 13-200.04.020(3)(a) states: “A private kennel shall be located in a Residential Agricultural (RA) District, with a conditional use permit and shall not exceed more than three (3) dogs per acre. The location where the dogs or cats are kept, raised or housed, just be 200 feet away from any neighboring house, and must be 150 feet from any road.” The City introduced no evidence as to the legal ownership of the home or building at 213 East 330 North in Kanab. Nor was any evidence introduced as to the acreage of the home or the property described, nor is there any information as to whether it was 200 feet away from a neighboring house, nor if it was 150 feet away from any road.

The City argued that no application was ever filed so a conditional use permit could not be obtained, but that is merely circular logic. The requirement of the City is that they prove all elements of a crime beyond a reasonable doubt. They must prove that the address indicated in their evidence has 1.3 acres of land and that where the dogs were kept, raised, or housed must have been 200 feet away from a neighboring home and 150 feet from any road. It is not clear from the City’s evidence as to what type of structure this residence is. The residence could be anything from a one room shack or single-wide mobile home, to a multi-story mansion. In fact, the City never even proved that it was a residence, or that any people even lived in the home. It is clear it was used as a mailing address, that there was a water meter, a window and perhaps a couch on which the dogs stood, but beyond that no evidence was put before the court.

The standard of review has been laid out in *State v. Krueger*, 975 P.2d 489 (Utah Ct. App. 1999) and *State v. Hirschi*, 2007 UT App 255.

When a party moves for a directed verdict based on a claim of insufficiency of the

evidence, we will uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, we conclude that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.

The court has held in *Spanish Fork City v. Bryan*, 975 P.2d 501 (Utah 1999), that:

When reviewing a bench trial for sufficiency of evidence, we must sustain the trial court's judgment unless it is against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." *State v. Layman*, 953 P.2d 782, 786 (Utah Ct. App.) (Citations and quotation marks omitted), cert. Granted, No. 980150-SC (Utah 1998). However, "before we can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the [factfinder] may base its Conclusion of guilt beyond a reasonable doubt." *State v. Murphy*, 617 P.2d 399, 402 (Utah 1980). In addition, "[a] guilty verdict is not leally valid if it is based solely on inferences that give rise to only remote or speculative possibilities of guilt." *State v. Workman*, 852 P.2d 981, 985 (Utah 1993).

This standard has also been cited in cases from this Court since that time. See *State v. Larsen*, 999 P.2d 1252 (Utah 2000), *State v. Piep*, 84 P.3d 850 (Utah Ct. App. 2004), *Bountiful City v. Stewart*, 2006 UT App 483.

In this case it is clear that on the four counts of no city dog license, the City failed to prove every element of the crime. The court had not enough evidence from which a reasonable jury could find the elements of a crime had been proven beyond a reasonable doubt. The elements are that it is unlawful for 1) any person, 2) own, keep or harbor, 3) a dog, 4) over the age of three months, 5) within the city limits of this city, 6) without making application for that purpose and paying the city an annual registration fee.

The City presented no evidence as to which person was involved here. Officer Campbel never spoke to any person at the residence, ever. His interaction was picking up an anonymous phone call about barking dogs and violation of the kennel law, looking in a window at a residence

at this address and reading the meter at that address. There was no evidence in the Plaintiff's case as to the ownership of two of the dogs, the dogs unlicensed by Mr. Popowich in 2006, but licensed in 2005 and 2007. No evidence of keeping the dogs was submitted, nor of harboring the dogs (referring back to the City's own definition of harboring being three consecutive days).

Although there is evidence for reasonable inferences on the other elements, i.e. age of the dog, no application being made and being within the limits of Kanab City, all elements must have proof beyond a reasonable doubt or some evidence that a jury could infer that this crime was committed. In those four charges in the City's evidence on its case in chief, no evidence was submitted. Therefore, directed verdict should have been granted.

As to the fifth count, illegal kennel, elements to be proven are 1) except as otherwise provided in this chapter, 2) no more than two dogs, 3) which are three months of age or older, 4) shall be kept at any residence, 5) at any time. The Ordinance indicates that through statutory construction we are to review the entire Chapter 13 of the Kanab City Ordinances as one document and that there are exceptions. Notably the exceptions that were pointed out in the licensing ordinance discussed *supra*.

Again, on element 1) except as otherwise provided in this Chapter, the City provided no evidence as to that element. As to element 2) no more than two dogs, and element 3) which are three months of age or older, there is evidence that could go to a jury and that could be considered by a trier of fact on those elements. The other elements of 4) shall be kept at any residence, again refer to the arguments made herein above that there was insufficient or non-existent evidence that the Defendant kept these animals and that this address is, or was, a residence. Wherefore, the trial court erred in not granting directed verdict on this count as well.

## ARGUMENT II

Did the court fail to rule correctly on the constitutionality of the Kanab City Ordinance? In the court's written memorandum decision from which this Defendant appeals, the court stated that "generally a law may be challenged for vagueness either 1) on its face, or 2) as applied to the facts of a particular case." See *State v. Green*, 99 P.3d 820, 831 (Utah 2004). Here the Defendant cannot argue that the Ordinance is vague on its face because the Ordinance (specifically Chapter 13-200.04 Kennels) does not implicate constitutionally protected conduct. Id. Thus, the Ordinance must be vague as applied to the facts of this case to be unconstitutional. A vagueness challenge means that those who are trying to enforce and/or interpret the law, are left to guess at its meaning and differ as to its application. An ordinance needs to be narrowly drawn to protect a compelling state interest.

There seems to be no compelling state interest involved in the arbitrary drawing of lines as to how many dogs one residence may contain. There is perhaps a health interest in that the government does not want, for the health and welfare for residents in home, there to exist too many animals in one small area which may cause health or sanitation issues for the people in that residence. This, however, is not a compelling state interest. An as applied challenge asserts that under the facts of this particular case, the statute was applied in an unconstitutional manner. See *State v. Ansari*, 100 P.3d 231 (internal citations omitted) (Utah Ct. App. 2004). "It is the application of the (challenged statutes) to defendants by law enforcement officials we review in an 'as applied' examination. Defendants may not generalize beyond the conduct with which they are charged." See *United States v. LaHue*, 261 F.3d 993, 1007 (10<sup>th</sup> Cir. 2001). An as applied challenge "asks only that the reviewing court declare the challenged statute or regulation unconstitutional on the facts of the particular case." See *Sanjour v. EPA*, 56 F.3d 85, 92n. 10 (D.C. Cir. 1995).

Therefore, we must analyze the facts of this particular case in light of the statute.

The court held that the Defendant never applied for a license and was not facing inspections, so it is impossible to analyze whether the subsection about inspections is vague as applied to the facts in this case. Then the court promptly moved on to other issues in this case not relating to the constitutionality argument.

Two levels of the as applied challenge exist in these facts. First, as pointed out previously, there is no definition of residence in the statute. Even in the light and inferences most favorable to the City, no evidence was provided that Mr. Popowich used this address as a residence. No evidence was submitted that this is a residentially zoned area and, even given that, the Ordinance states that “not more than two dogs shall be kept at any residence at any time.” The court refused to read this Chapter as a whole which Mr. Popowich believes the court should have done on Defendant’s testimony on direct exam. His evidence about the ownership of the other dogs would prevent him from still being prosecuted under this Ordinance. Under a strict liability statute, there is no wording of a mental intent, the standard type of knowing, intentional, or reckless. Even the court during the trial observed this issue stating: “Where does your definition say if the dog’s at your house, you’re the owner of it?” (See Transcript at ¶ 30, lines 6-7.) The court observed this statute had a problem in that if someone brought their dog into your home, you could be considered the owner of it. Again, vagueness means that we have to guess at its meaning and reasonable people may differ as to its application. Here the City guessed that its meaning was that since Mr. Popowich’s girlfriend brought over her two dogs at some point on various days or dates that were not set out, the total number of dogs within that residence was to be applied to Mr. Popowich. It could just as easily been applied to his girlfriend or anybody else inside the home at the time yet only he was charged. Therefore, this

statute, by the very arguments that were made before the court and the responses the court made to counsel shows that it is vague as applied.

### **CONCLUSION**

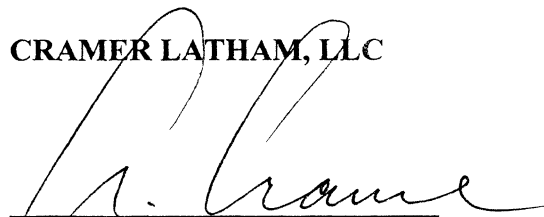
In conclusion, Mr. Popowich moves this Court to overrule the trial court's decision that there was sufficient evidence on which to go forward to trial. Mr. Popowich requests that this Court remand this case to the district court with an order for the court to dismiss the case on all five counts for the Plaintiff having failed to present enough evidence on all elements for a trier of fact to find Mr. Popowich guilty beyond a reasonable doubt.

In the alternative, Mr. Popowich argues that the Court should remand the case to the district court with an order dismissing counts 3, 4 and 5 for failure to find enough evidence at the end of the trial to convict Mr. Popowich for the dogs that were not his that were not licensed through no fault of his own due to a lack of evidence presented at trial.

In the third alternative, Mr. Popowich requests that this Court remand the case back to the district court with an order for the court to dismiss count 5 due to the fact that the Kanab City's Kennel Ordinance is unconstitutionally vague as applied to the facts of this case.

DATED this 23 day of January, 2008.

**CRAMER LATHAM, LLC**

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Eric Cramer  
Attorney for Defendant/Appellant

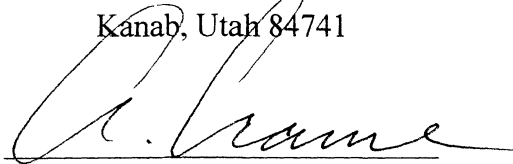
**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing instrument to the following parties of interest on the 23 day of January, 2008.

Clerk of the Court  
Utah Court of Appeals  
450 South State Street  
Salt Lake City, Utah 84114

Van Mackelprang  
Kanab City Attorney  
126 East 100 South  
Kanab, Utah 84741

Jeff Popowich  
213 East 350 North  
Kanab, Utah 84741

A handwritten signature in cursive script, appearing to read "A. Rame", is written over a horizontal line.

## **ADDENDUM 1**

OCT 09 2007

Clerk  
SIXTH DISTRICT COURT

VAN MACKELPRANG-A5996  
Kanab City Attorney  
126 East 100 South  
Kanab, Utah 84741  
435-644-5650

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IN THE SIXTH DISTRICT COURT  
IN AND FOR KANE COUNTY, STATE OF UTAH

---

Kanab City,	:	
	:	
Plaintiff,	:	
vs.	:	JUDGEMENT, IMPOSITION OF
	:	SENTENCE, AND ORDER OF
JEFF POPWICH,	:	PROBATION
	:	
	:	CASE NO. 071600013
	:	JUDGE DAVID MOWER
Defendant.	:	

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The above-entitled matter having come on for sentencing before the above-entitled Court on the 7<sup>TH</sup> day of September, 2007, the Plaintiff, Kanab City, being represented by Van Mackelprang, and the Defendant, JEFF POPWICH, was present, and was represented by counsel, Aric Cramer.

IT IS HEREBY FOUND, ADJUDGED AND DECREED that the Defendant, JEFF POPWICH was found guilty to the offenses of: COUNT I, NO CITY DOG LICENSE, AN INFRACTION, COUNT II, NO CITY DOG LICENSE, AN INFRACTION, COUNT III, NO CITY DOG LICENSE, AN INFRACTION, COUNT IV, NO CITY DOG LICENSE, AN INFRACTION, COUNT V, ILLEGAL KENNEL, AN INFRACTION.

IMPOSITION OF SENTENCE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, JEFF POPWICH pay a fine in the sum and amount of for COUNT I, SEVEN HUNDRED AND FIFTY(\$750.00)DOLLARS, COUNT II, SEVEN HUNDRED AND FIFTY (\$750.00)DOLLARS, COUNT III, SEVEN HUNDRED AND FIFTY(\$750.00)

DOLLARS, COUNT VI, SEVEN HUNDRED AND FIFTY(\$750.00)DOLLARS, COUNT V, SEVEN HUNDRED AND FIFTY(\$750.00)DOLLARS which include fines and surcharge.

STAY OF EXECUTION OF SENTENCE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the execution of all but COUNT I, FIFTY(\$50.00)DOLLARS, COUNT II, FIFTY(\$50.00)DOLLARS, COUNT III, FIFTY(\$50.00)DOLLARS, COUNT VI, FIFTY(\$50.00)DOLLARS, COUNT V, FIFTY(\$50.00)DOLLARS, of the fine is stayed upon successful completion of the terms of probation.

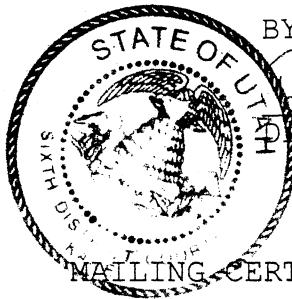
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant is hereby placed on bench probation for a period of one year starting from SEPTEMBER 7, 2007 to SEPTEMBER 7, 2008, strictly within the following terms, provisions and conditions:

1. That the Defendant shall make a fine payment of \$250.00 on or before November 2, 2007. Payments shall be mailed to the Kane County Justice Court, 76 North Main, Kanab, Utah 84741.
2. That the Defendant shall commit no law violations during the term of this probation, either state, local or federal.
3. That the Defendant shall notify the Court if there is an address change.
4. That the court retains jurisdiction over the defendant.

APPEAL

IT IS THE FURTHER ORDER OF THE COURT that the Defendant have (30) days in which to appeal the Judgment of this Court in the manner provided by law.

DATED THIS 5 day of Oct, 2007.



BY THE COURT

[Signature]  
District Court Judge

MAILING CERTIFICATE

I hereby certify that on the 9 day of October, 2007, I served a signed copy of the foregoing JUDGEMENT, IMPOSITION OF SENTENCE, STAY OF EXECUTION OF SENTENCE on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ARIC CRAMER  
90 E 100 S SUITE 201  
ST GEORGE UT 84770

VAN MACKELPRANG  
126 EAST 100 SOUTH  
KANAB UT 84741

[Signature: Holly Ramsay]

## **ADDENDUM 2**

**CHAPTER 13-200. ANIMALS.**

**Section 13-200.01. General Animal and Livestock Regulations.**

**Section 13-200.02. Dogs.**

**Section 13-200.03. Rabies Control.**

**Section 13-200.04. Kennels.**

**Section 13-200.01. General Animal and Livestock Regulations.**

**13-200.01.010. Definitions.**

**13-200.01.011 Purpose.**

**13-200.01.020. Premises Confining Animals and Fowl--Neat and Sanitary Condition Required.**

**13-200.01.030. Abandoning Sick, Diseased, or Disabled Animals.**

**13-200.01.040. Disposal of Animals.**

**13-200.01.141. Revocation of License or Permits.**

**13-200.01.050. Cruelty to Animals.**

**13-200.01.060. Excessive Noise.**

**13-200.01.070. Animals Running at Large.**

**13-200.01.080. Impound.**

**13-200.01.090. Keeping Certain Animals Unlawful.**

**13-200.01.100. Detention of Animals.**

**13-200.01.110. Intra seizure of Animals.**

**13-200.01.120. Animal Bites.**

**13-200.01.130. Defecation and Urination.**

**13-200.01.140. Enforcement.**

**13-200.01.141. Revocation of Licenses or Permits.**

**13-200.01.150. Interference with Officer.**

**13-200.01.160. Quarantine of Animals.**

**13-200.01.170. Licensing. (Registration of Animals Shall be Voluntary.)**

**13-200.01.180. Revocation of License -- Animals.**

**13-200.01.190. Female Cats in Heat/Season Running at Large.**

**13-200.01.200. Threatening Passers-By.**

**13-200.01.210. Penalties.**

**13-200.01.010. Definitions.**

For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, the following definitions shall apply:

“**Animal**” means any live, vertebrate creature, domestic or wild.

“**Animal at Large**” means any animal whether or not licensed, not under restraint

“**Animal Control Officer**” means any person designated by the State of Utah, a municipal government or a humane society as a law enforcement officer who is qualified to perform such duties under the laws of this state.

“**Animal Shelter**” means any facility operated by a humane society or political subdivision of the State of Utah for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

“**Animal Under Restraint**” means an animal on a leash or lead which is held by a person or attached to a stationary object or confined within a vehicle or confined upon the real property of the owner or custodian.

“**Attack**” means any biting or attempted biting or other action by an animal which places a person or another animal in danger of imminent bodily harm. Actual physical contact shall not be required to constitute an attack. Attack may include jumping upon, chasing, nipping, or otherwise threatening.

“**Bite**” An actual puncture, tear or abrasion of the skin, inflicted by the teeth of an animal.

“**Cat**” means any age feline of the domesticated types

“**Custodian**” means any person having the charge, care, custody or control of an animal which he/she does not own.

“**Dog**” means any age canis familiaris of the domesticated types

“**Domesticated Animal**” means any animal accustomed to live in or about the habitation of humans, including, but not limited to, cats, dogs, fowl, horses, swine, cattle, sheep and goats.

“**Euthanize**” means humane killing of an animal.

“**Grooming Parlor**” means any establishment, not part of a kennel, where animals are bathed, clipped or combed for a valuable consideration for the purpose of enhancing their aesthetic value.

“**Guard Dog**” means a dog used for the purpose of deterring crime.

“**Household Pet**” means any animal or fowl ordinarily permitted in a house and kept for company or pleasure and not for profit, such as: dogs, cats, canaries, fish, hamsters, mice, and other animals associated with human environments. Household pets shall not include wildlife, livestock, poultry or any animals which are capable of inflicting harm or discomfort or endangering the health, safety or welfare of any person or property.

**“Private Kennel”** means any residential premises where more than two dogs and/or three cats are raised, kept, housed; or any residential premises wherein any person engages in the business of breeding, buying, letting for hire, training for a fee or selling dogs or cats.

**“Public Kennel”** means any commercial premises where any dogs and/or cats are raised, kept, housed, or boarded; or any commercial premises wherein any person engages in the business of boarding, brooding, buying, letting for hire, training for a fee or selling dogs or cats.

**“Leash” or “Lead”** means any chain, rope, or device used to restrain an animal

**“License”** A properly completed and validated license and rabies certificate issued by the city or other city designated licensing agency.

**“License and Rabies Control Certificate”** The official license application form issued by the city

**“License Tag”** A piece of metal or other durable material inscribed with “Kanab City” and a number that has been issued by city or other city designated licensing agency

**“Licensed Animal”** An animal wearing its current license tag as required by this chapter

**“Microchipping”** Is a tool that makes it easier to identify the owner of a lost or stray dog. The microchip is implanted in between the shoulder blades of the dogs (this is actually not very painful) and acts as an identity tag - when the dog is found the information stored in the chip enables the City to clearly and quickly find out who the owner is.

**“Neutered”** Having had the testicles removed; a castrated animal.

**“Owner”** means any person, partnership or corporation owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

**“Pets”** A domesticated animal kept for pleasure rather than utility, including, but not limited to, birds, cats, dogs, fish, hamsters, mice and other animals associated with man’s environment.

**“Pet Shop”** means any establishment, not part of a kennel, containing cages or exhibition pens wherein dogs, cats, birds, or other pets for sale are kept or displayed.

**“Quarantine”** means the isolation of an animal in a substantial enclosure so that the animal is not subject to contact with other animals or unauthorized persons.

**“Spayed”** Having had the ovaries and uterus removed or extirpated; an ovariectomy

**“Stray”** Any “animal at large”.

**“Vaccinated Animal”** An animal inoculated with an approved, currently valid, antirabies vaccine, and wearing a current license tag indicating proof of such vaccination.

**“Veterinary Clinic”** means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, or treatment of diseases and injuries of animals.

**“Vicious Animal”** is an animal 1) with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals, 2) which attacks a human being or other domestic animal without provocation; or 3) which is trained or used to fight or to attack humans

**“Wild Animal”** means all animals commonly accepted as being “wild” and includes, but is not limited to, the following, no matter how domesticated they may be

(A) Alligators and crocodiles.

(B) Bears (ursidae).

(C) Cat family (felidae), except the commonly accepted domesticated cats.

(D) Coyotes, foxes and wolves.

(E) Porcupine (erethizontiade)

(F) Nonhuman primates (hominidae).

(G) Raccoon (prosyinnidae).

(H) Skunks.

(I) Venomous snakes or venomous lizards.

(J) Weasels (mustelidae).

(K) Ferrets.

### **13-200.01.011. Purpose.**

The city council finds that to adequately protect the citizens of the City of Kanab from dangerous or potentially dangerous animals, from rabid animals or from animals causing a nuisance, it is necessary to provide a management and licensing structure, pound facilities, and care requirements for animals within the city limits.

The city council further finds that regulations are necessary to ensure humane treatment for all animals within the city limits. The purpose of this chapter is to establish standards for the keeping of animals and fowl in a manner which will not endanger the health, peace, and safety of the citizens of the City of Kanab and which will assure that such animals and fowl are kept in clean and sanitary conditions and not subject to suffering, cruelty, or abuse

### **13-200.01.020. Premises Confining Animals and Fowl—Neat and Sanitary Condition Required.**

A. Wherever animals, including fowl and pigeons, may be tethered, corralled, confined and sheltered or fed, the premises shall be maintained in a neat and sanitary condition so that no nuisance due to unsightliness, odor or pest breeding or harborage shall be caused by such animals or premises

B. All barns or stables intended for or presently used to shelter livestock which are now erected and maintained or

may be erected, constructed, altered or repaired within the city shall conform to the requirements of the applicable zoning ordinance, the building code and all other applicable laws of the city.

**13-200.01.030. Abandoning Sick, Diseased, or Disabled Animals.**

It is unlawful for any person to abandon or to turn out at large any sick, diseased or disabled animal, but such animal shall, when rendered worthless by reason of sickness or other disability, be disposed of by the owner thereof in the manner as provided in section 13-200.01.040

**13-200.01.040. Disposal of Animals.**

It is unlawful for the owner of any animal or fowl that die or are killed within the limits of this city, to fail to remove or bury the carcass of such animal within ten hours after its death; provided that no horse, cow, ox, pig, sheep, goat, ostrich, llama, emu, any wildlife or other animal shall be buried within the limits of the city.

**13-200.01.050. Cruelty to Animals.**

A. Except as authorized by law, it shall be unlawful for any person to willfully or maliciously kill, injure, maim, disfigure, torture, beat, mutilate, burn or scald, overdrive or otherwise cruelly set upon any animal. Each such act shall constitute a separate violation and shall be guilty of a class B misdemeanor.

B. It shall be unlawful for any person to hobble livestock in such a way as to cause injury or damage to the animal.

C. It shall be unlawful for any person to carry or to confine any animals in or upon any vehicle in a cruel or inhumane manner, including, but not limited to, carrying or confining such animal without adequate ventilation.

D. Every operator of a motor vehicle or self-propelled vehicle within the city shall, immediately upon injuring, striking, maiming or running down any animal, fully comply with all requirements set forth in UCA Section 41-13-200-30.

E. Fights. It is unlawful for any person within the limits of the city to, in any manner whatsoever encourage or urge any animal to fight or urge them on after they commence to fight.

F. It shall be unlawful for any person to fail to provide any animal in his/her charge or custody with necessary sustenance, drink, and protection from the elements, or cause any of these acts to be done.

**13-200.01.060. Excessive Noise.**

It is unlawful to harbor or keep any animal which disturbs the peace by loud noises at any time of the day or night. It shall not be a violation of this section if the excessive noise is caused due to a person trespassing or threatening to trespass upon private property in or upon which the animal is situated.

**13-200.01.070. Animals Running at Large.**

It shall be unlawful for any animal to be at large at any time within the corporate limits of the city. The owner or custodian of any animal which is at large shall be in violation of this section, regardless of the precautions taken to prevent the escape of the animal and regardless of lack of knowledge of the offense at the time it occurs

**13-200.01.080. Impound.**

A. The animal control officer may apprehend and impound any animal found at large within the city. Any person apprehending any animal running at large on his/her property may deliver the same to any city police officer or animal control officer, which animal may then be impounded in the animal shelter. Any animal placed in the animal shelter shall be redeemed or euthanized.

B. Any animal impounded at an animal shelter shall be held five working days if it has a current year's license tag. After five working days, if the animal is not claimed or adopted, it shall be euthanized.

C. Any animal impounded at an animal shelter shall be held three working days if it has no current year's license tag. After three working days, if the animal is not claimed or adopted, it shall be euthanized.

D. Any animal voluntarily relinquished to the animal control officer or an animal shelter by the owner or custodian thereof for destruction or other disposition need not be kept for the minimum holding period, but shall be euthanized immediately.

E. The animal control officer or police officer shall have the sole discretion to determine serious injury or disease that will require euthanasia prior to three (3) working days.

F. Any wild animal placed in the animal shelter may be disposed of immediately.

**13-200.01.090. Keeping Certain Animals Unlawful.**

It shall be unlawful for any person to keep or harbor any animal which is prohibited to be kept or harbored by UCA 23-13-4, 23-20-3 or 23-20-4.

**13-200.01.100. Detention of Animals.**

It is unlawful for any person to detain or hold the animal of another without notifying the animal control officer or law enforcement agency within twenty four hours.

**13-200.01.110. Intraseizure of Animals.**

A. Whenever a police officer or an animal control officer shall have probable cause to believe that an animal has been abandoned, although confined upon private property, that is in violation of any of the provisions of Chapter 13-200 of the Kanab Municipal Code, or is a vicious animal, the officer shall be authorized to immediately seize the animal and may impound the same in the animal shelter and such officer shall have the right to enter upon whatever premises the animal may be kept for such purpose.

B. If an animal is summarily impounded without the knowledge of the owner or custodian, a notice that the animal has been impounded shall be given to the owner or custodian of the animal, if the same is known, by attaching the notice to the door at the residence thereof, or by mailing a notice to the last known address of the owner or custodian.

C. If no response is received to the notice of summary impoundment within the time frames established by the rules and regulations of the animal shelter, such animal shall be adopted or euthanized as an abandoned animal.

D. An animal summarily impounded as provided in this section may be recovered by the owner complying with the regulations of the animal shelter. If, in a subsequent court proceeding, the animal is determined not to be abandoned, vicious or a nuisance, the animal shall be released to the owner or custodian without any charge.

#### **13-200.01.120. Animal Bites.**

A. It shall be unlawful for any animal to bite or attack any person or domestic animal. It is no defense that the animal is chained or confined if the chaining or confining is on public or private property where the public has access to be on such property. The owner or custodian of any animal is in violation of this section regardless of the precautions taken to prevent the bite or attack and regardless of the lack of knowledge of the offense at the time it occurs.

B. It is unlawful for any person to keep, own, harbor, or have the control of any fierce or dangerous animal. It is prima facie evidence that an animal is a fierce or dangerous animal if it bites or attacks a person or domestic animal. Any police officer or animal control officer may apprehend such animal and may cause it to be impounded at the animal shelter.

#### **13-200.01.130. Defecation and Urination.**

It is unlawful to allow an animal to defecate or urinate upon private property not owned by the person owning or in control of such animal. The owner or custodian of any animal shall be responsible for the removal of any defecation deposited by such animal on public property, recreation areas, or private property not owned by the person owning or in control of such animal.

#### **13-200.01.140. Enforcement.**

In the enforcement of any provision of this chapter, any police officer or animal control officer is authorized to enter the premises of any person to take possession of a fierce, dangerous, or vicious animal or animals running at large, when in fresh pursuit of such animal at the time the animal goes onto the private property.

#### **13-200.01.141. Revocation of License or Permits.**

A. The Chief of Police may revoke any permit or license of a person holding a permit or license if he/she refuses or fails to comply with any section of chapter 13-200, the regulation promulgated by said authorities, or any law governing the protection and keeping of animals.

B. Any person whose permit or license is revoked shall, within ten days thereafter, humanely dispose of all animals owned, kept, or harbored by such person and no part of the permit or license fee shall be refunded.

3. It shall be a condition of the issuance of any permit or license that the licensing authorities, animal control officers, police officers, or humane officer, shall be permitted to inspect all animals and the premises where animals are kept at any time. If permission for an inspection is refused, the permit or license of the refusing owner or keeper shall be revoked.

4. If the applicant has withheld or falsified any information on the application, the licensing authorities shall refuse to issue a permit or license.

5. No person who has been convicted of cruelty to animals shall be issued a permit or license to operate a commercial animal establishment or kennel.

#### **13-200.01.150. Interference with Officer.**

A. It shall be unlawful for any person to interfere with, molest, hinder or prevent any police officer or animal control officer in the discharge of their duties as herein prescribed.

B. Any person who shall hinder, delay, interfere with or obstruct any police officer or animal control officer while engaged in capturing, securing or taking to the animal shelter any animal or animals liable to be impounded, or who shall break open or in any manner directly or indirectly aid, counsel or advise the breaking open of any animal control vehicle or other vehicle used for the collecting of any such animals shall be deemed guilty of a class B misdemeanor.

#### **13-200.01.160. Quarantine of Animals.**

Whenever any animal attacks or bites a person, the owner of the animal shall immediately notify the police department, which shall cause the animal to be impounded or otherwise quarantined for a period of ten days. At the end of the ten-day quarantine period, the animal may be released from quarantine, upon a veterinarian's examination that such animal

is free from rabies. The expenses incurred in the inspection of such animal shall be paid by the owner or person in control of such animal, in addition to any other fines or charges due. Such expenses shall be paid prior to the release of the animal. If the animal dies within the ten-day quarantine period, its brain shall be sent to the State Department of Health for examination for rabies.

**13-200.01.170. Licensing. (Registration of Animals (EXCEPT DOGS) Shall be Voluntary.)**

Any person owning an animal within the city limits may license such animal by following the provisions of this chapter

**A. Licensing, Fees, and Registration.**

1. All licenses and late fees required by this chapter shall be in amounts established by city council resolution

2. It shall be the duty of the animal control officer to register any animal on application of the owner or keeper and to issue a registration receipt and metallic registration tag on payment by the owner or keeper. Such registration receipt and metallic registration tag shall be valid and in force from the date issued until the expiration date

**B. Information Required for Registration.** Before receiving a registration receipt and metallic registration tag, each owner must state at the time of application for such a permit, the name and address of the owner and sex, breed, age and color of each animal to be registered. The owner must also present a certificate from a veterinarian stating that the animal has been vaccinated for the prevention of rabies. Such certificate must give the last date of vaccination and the number of the vaccination tag used by the veterinarian at the time of vaccination.

**C. Collar-Tag Attachment.** It shall be the duty of the owner or keeper of any animal so registered to provide a suitable collar for such animal to wear and to attach thereto the metallic registration tag having a number corresponding with the certificate of registry inscribed thereon.

**D. Removal of Collar and Registration Tag.** It is unlawful for any person other than the owner to remove the collar from any animal to which collar has been attached the metallic registration tag herein required, or to remove said metallic registration tag from the collar to which it has been attached

**13-200.01.180. Revocation of License -- Animals.**

If the owner of any animal is convicted of a violation of this chapter on two or more different occasions during any twelve (12) month period involving the same animal, the license of the animal involved shall be revoked. The animal control officer or other police officer shall be authorized to immediately impound and pick up any animal whose license has been revoked. Any animal impounded following revocation of its license shall be dealt with in accordance with the provisions of city ordinances for impounded animals. Under no conditions shall the animal be allowed to be brought back into the city.

**13-200.01.190. Female Cats in Heat/Season Running at Large.**

Females in Heat/Season Running at Large. The owners or custodians of female cats shall cause such cats, when in heat/season, to be penned or enclosed in such a manner as to preclude other cats from attacking such female cat or from being attracted to such female cat. It shall be unlawful for the owner or custodian of any female cat to cause, permit, or allow such cat to be at large, or to enter upon a street or sidewalk while such female cat is in copulating heat/season regardless of lack of knowledge of the offense at the time it occurs. If the female cat cannot be controlled by the owner during the copulating heat/season, such cat may be impounded by the animal control officer.

**13-200.01.200. Threatening Passers-By.**

It shall be unlawful for any animal to threaten passers-by by nipping, chasing, jumping upon, or attacking. The owner or custodian of such animal shall be guilty of a class C misdemeanor.

**13-200.01.210. Penalties.**

Unless otherwise specifically provided, every person whose animal violates any provision of this chapter is guilty of a class C misdemeanor.

**Section 13-200.02. Dogs.**

**13-200.02.010. Licensing.**

**13-200.02.020. Revocation of License -- Dogs.**

**13-200.02.030. Dogs Running at Large.**

**13-200.02.040. Female Dogs in Heat/Season Running at Large.**

**13-200.02.050. Cruelty to Dogs.**

**13-200.02.060. Dog Bites.**

**13-200.02.070. Intra-seizure of Dogs.**

**13-200.02.080. Dog Noise Disturbance.**

**13-200.02.090. Defecation and Urination.**

**13-200.02.100. Detention of Dogs.**

**13-200.02.110. Abandoning Sick, Diseased, or Disabled Dogs.**

**13-200.02.120. Disposal of Dogs.**

**13-200.02.130. Quarantine of Dogs.**

**13-200.02.140. Enforcement.**

**13-200.02.150. Interference with Officer.**

**13-200.02.160. Dogs in Prohibited Areas.**

**13-200.02.170. Allowable Number of Dogs.**

**13-200.02.180. Impound.**

**13-200.02.190. Threatening Passers-By.**

**13-200.02.200. Penalties.**

**13-200.02.010. Licensing.**

Any person owning a dog within the city limits shall license the dog pursuant to the following provisions:

**A. Licensing, Fees, and Registration.**

1. Registration--Required--Dogs only. It is unlawful for any person to own, keep or harbor a dog over the age of three months within the limits of this city without making application to the city for that purpose and paying to the city an annual registration fee.

2. A late fee shall be imposed unless a new license is purchased prior to the expiration of the current license.

Licenses for the following year may be purchased within ninety (90) days prior to the expiration date.

3. All licenses and late fees required by this chapter shall be in the amounts established by city council resolution.

4. It shall be the duty of the animal control officer to register any dog on application of the owner or keeper and to issue a registration receipt and metallic registration tag on payment by the owner or keeper. Such registration receipt and metallic registration tag shall be valid and in force from the date issued until the expiration date.

5. The provisions of this section shall not apply to dogs whose owners are nonresidents temporarily within the city for thirty (30) days or less, nor to dogs brought into the city for the purpose of participating in any show or event.

B. Information Required for Registration. Before receiving a registration receipt and metallic registration tag, each owner must state at the time of application for such a permit, the name and address of the owner and sex, breed, age and color of each dog to be registered. The owner must also present a certificate from a veterinarian stating that the dog has been vaccinated for the prevention of rabies. Such certificate must give the last date of vaccination and the number of the vaccination tag used by the veterinarian at the time of vaccination. It is unlawful for the owner to misrepresent the age of any dog for the purpose of avoiding the payment of the license required by this chapter.

C. Collar-Tag Attachment. It shall be the duty of the owner or keeper of any dog so registered to provide a suitable collar for such dog to wear and to attach thereto the metallic registration tag having a number corresponding with the certificate of registry inscribed thereon. All dogs not so registered and collared as prescribed by this chapter may be impounded by the animal control officer or any police officer or other designated official of the city.

D. Removal of Collar and Registration Tag. It is unlawful for any person other than the owner to remove the collar from any dog to which collar has been attached the metallic registration tag herein required, or to remove said metallic registration tag from the collar to which it has been attached.

E. The owner of any dog of registration age shall make application for permit and obtain a permit tag for such dog within ten (10) days after acquisition or age attainment.

**F. Licensing and Fee Exemptions.**

1. ~~The provisions of §13-200.02.010.(A)(1) shall not apply to:~~

a. ~~Seeing eye dogs properly trained to assist blind persons, if such dogs are actually being used by blind persons to assist them in moving from place to place.~~

b. ~~Hearing dogs properly trained to assist deaf persons if such dogs are actually used by deaf persons to aid them in responding to an auditory stimulus.~~

c. ~~Dogs specifically trained to assist officials of governmental agencies in the performance of their duties and which are owned by such agencies.~~

2. Nothing in this section (F)(1) shall be construed to exempt any dog from having a current rabies vaccination.

**13-200.02.020. Revocation of License -- Dogs.**

If the owner of any dog is convicted of a violation of this chapter on two or more different occasions during any twelve (12) month period involving the same dog, the license of the dog involved shall be revoked. The animal control officer or other police officer shall be authorized to immediately impound and pick up any dog whose license has been revoked. Any dog impounded following revocation of its license shall be dealt with in accordance with the provisions of city ordinances for impounded dogs. Under no conditions shall the dog be allowed to be brought back into the city.

**13-200.02.030. Dogs Running at Large.**

It shall be unlawful for any dog to be at large at any time within the corporate limits of the city. The owner or custodian of any dog which is at large shall be in violation of this section, regardless of the precautions taken to prevent the escape of the dog and regardless of lack of knowledge of the offense at the time it occurs.

**13-200.02.040. Female Dogs in Heat/Season Running at Large.**

The owners or custodians of female dogs shall cause such dogs, when in heat/season, to be penned or enclosed in such a manner as to preclude other dogs from attacking such female dog or from being attracted to such female dog. It shall

be unlawful for the owner or custodian of any female dog to cause, permit, or allow such dog to be at large, or to enter upon a street or sidewalk while such female dog is in copulating heat/season regardless of lack of knowledge of the offense at the time it occurs. If the female dog cannot be controlled by the owner during the copulating heat/season, such dog may be impounded by the animal control officer.

**13-200.02.050. Cruelty to Dogs.**

A. Except as authorized by law, it shall be unlawful for any person to willfully or maliciously kill, injure, maim, disfigure, torture, beat, mutilate, burn or scald, overdrive or otherwise cruelly set upon any dog. Each such act shall constitute a separate violation and shall be guilty of a class B misdemeanor.

B. It shall be unlawful for any person to carry or to confine any dog in or upon any vehicle in a cruel or inhumane manner, including, but not limited to, carrying or confining such dog without adequate ventilation.

C. Every operator of a motor vehicle or self-propelled vehicle within the city shall, immediately upon injuring, striking, maiming or running down any dog, fully comply with all requirements set forth in UCA Section 41-13-200-30.

D. Fights. It is unlawful for any person within the limits of the city to, in any manner whatsoever, encourage or urge any dog or dogs to fight or urge them on after they commence to fight.

**13-200.02.060. Dog Bites.**

A. It shall be unlawful for any dog to bite or attack any person or domestic animal. It is no defense that the dog is chained or confined if the chaining or confining is on public or private property where the public has access to be on such property. The owner or custodian of any dog is in violation of this section regardless of the precautions taken to prevent the bite or attack and regardless of the lack of knowledge of the offense at the time it occurs.

B. It is unlawful for any person to keep, own, harbor or have the control of any fierce or dangerous dog. It is prima facie evidence that a dog is a fierce or dangerous dog if it bites or attacks a person or domestic animal. Any police officer or animal control officer may apprehend such dog and may cause it to be impounded at the animal shelter.

**13-200.02.070. Inseizure of Dogs.**

A. Whenever a police officer or an animal control officer shall have probable cause to believe that a dog has been abandoned, although confined upon private property, that is in violation of any of the provisions of Chapter 13-200 of the Kanab Municipal Code, or is a vicious dog, the officer shall be authorized to immediately seize the dog and may impound the same in the animal shelter and such officer shall have the right to enter upon whatever premises the dog may be kept for such purpose.

B. If a dog is summarily impounded without the knowledge of the owner or custodian, a notice that the dog has been impounded shall be given to the owner or custodian of the dog, if the same is known, by attaching the notice to the door at the residence thereof or by mailing a notice to the last known address of the owner or custodian.

C. If no response is received to the notice of summary impoundment within the time frames established by the rules and regulations of the animal shelter, such dog shall be adopted or euthanized as an abandoned dog.

D. A dog summarily impounded as provided in this section may be recovered by the owner complying with the regulations of the animal shelter. If, in a subsequent court proceeding, the dog is determined not to be abandoned, vicious or a nuisance, the dog shall be released to the owner or custodian without any charge.

**13-200.02.080. Dog Noise Disturbance.**

Excessive Noise. It is unlawful for any person to harbor, keep, or own within the limits of the city any dog which barks, whines, howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion day or night. Any police officer or animal control officer may apprehend such dog and may cause it to be impounded in the animal shelter. A second conviction of this section by the same dog within a twelve month period shall be grounds for removal of the dog from the city, which dog will not be allowed to return.

**13-200.02.090. Defecation and Urination.**

A. It is unlawful to allow a dog to defecate or urinate upon private property not owned by the person owning or in control of such dog.

The owner or custodian of any dog shall be responsible for the removal of any defecation deposited by such dog on public property, recreation areas, or private property not owned by the person owning or in control of such dog.

B. Kennels and Runs. It is unlawful for the owner or occupant of any premises on which a kennel, run, or other structure or area for housing or keeping of dogs is situated, to allow such kennel, run, or other structure or area of the premises to become unsanitary, unclean, or to emit undue stench or odor. The owner or occupant of any premises permitting any such condition to exist that does not abate such condition within 24 hours after notice shall be issued a citation. If such a notice is given, the condition must remain abated on a permanent basis. Additional notices shall not be necessary prior to the issuance of a citation.

**13-200.02.100. Detention of Dogs.**

It is unlawful for any person to detain or hold the dog of another without notifying the animal control officer or law enforcement agency within twenty four hours.

**13-200.02.110. Abandoning Sick, Diseased, or Disabled Dogs.**

It is unlawful for any person to abandon or to turn out at large any sick, diseased or disabled dog, but such dog shall, when rendered worthless by reason of sickness or other disability, be disposed of by the owner thereof in the manner as provided in section 13-200.02.120.

**13-200.02.120 Disposal of Dogs.**

It is unlawful for the owner of any dog that dies or is killed within the limits of this city to fail to remove or bury the carcass of such dog within ten hours after its death.

**13-200.02.130. Quarantine of Dogs.**

Whenever any dog attacks or bites a person, the owner of the dog shall immediately notify the police department which shall cause the dog to be impounded or otherwise quarantined for a period of ten days. At the end of the ten-day quarantine period, the dog may be released from quarantine upon a veterinarian's examination that such dog is free from rabies. The expenses incurred in the inspection of such dog shall be paid by the owner or person in control of such dog in addition to any other fines or charges due. Such expenses shall be paid prior to the release of the dog. If the dog dies within the ten-day quarantine period, its brain shall be sent to the State Department of Health for examination for rabies.

**13-200.02.140 Enforcement.**

In the enforcement of any provision of this chapter, any police officer or animal control officer is authorized to enter the premises of any person to take possession of the registered or unregistered, fierce, dangerous or vicious dog or dogs running at large, when in fresh pursuit of such dog at the time the dog goes onto the private property.

**13-200.02.150 Interference with Officer**

A. It shall be unlawful for any person to interfere with, molest, hinder or prevent any police officer or animal control officer in the discharge of their duties as herein prescribed.

B. Any person who shall hinder, delay, interfere with or obstruct any police officer or animal control officer while engaged in capturing, securing or taking to the animal shelter any dog or dogs liable to be impounded or who shall break open or in any manner directly or indirectly aid, counsel or advise the breaking open of any animal control vehicle or other vehicle used for the collecting of any such animals shall be deemed guilty of a class B misdemeanor.

**13-200.02.160 Dogs in Prohibited Areas.**

A. It shall be unlawful for any person to take or to permit any dog, whether loose or on a leash or in arms, in or about any establishment or place of business where food or food products are sold or displayed as required by Utah State code, and it shall be unlawful for any person to allow any dog to enter or be in any place of worship during public services, and it shall be unlawful for any person to allow any dog to enter in or be upon any public park, school, cemetery or other city property where it is posted that no dogs are allowed.

B. An exception to this section shall be for any dog trained and used for physically handicapped persons, such as dogs for the blind or hearing impaired.

**13-200.02.170 Allowable Number of Dogs.**

A. Except as otherwise provided in this chapter, no more than two (2) dogs which are three (3) months of age or older shall be kept at any residence at any time.

B. Dog kennels, breeding kennels, veterinary hospitals, boarding kennels, catteries or any similar facilities which keep more animals than allowed by this section, are permitted within the City and exempt from this section only if licensed by the City and lawfully located pursuant to City Zoning Regulations.

**13-200.02.171 Amnesty Exception.**

A. There shall be a one time amnesty exception to section 13-200.02.170. Up to four dogs which are kept upon residential premises at the time of adoption of this ordinance may continue to be kept on the premises if the dogs are licensed with the City within 30 days of adoption of the ordinance. The dogs in excess of the two provided in subsection 13-200.02.170 A shall be "amnesty" dogs and the total dogs on the premises during the amnesty period shall not exceed four dogs over the age of three (3) months.

B. An amnesty dog may not be replaced upon its death or other disposition and shall be the oldest dog(s). Upon the death or other disposition of a nonamnesty dog(s) it shall be replaced by an amnesty dog.

C. Amnesty dogs shall be implanted with a microchip purchased by the owner from the City within 30 days of adoption of this ordinance.

**13-200.02.172 Microchipped Dogs.**

- A. The owner shall, at his/her own expense, have the dog permanently identified by having the licensing number assigned by the city to such dog and having the dog implanted with a microchip that the owner shall purchase from the city for the purpose of identifying dogs under the amnesty program.
- B. Owners shall assume the risk of nonidentification of all microchipped, unrestrained dogs that are subsequently impounded by animal control officers
- C. It is unlawful for any vendor of microchips to refuse to provide information to the City as to the identification of the owner or animal that has been microchipped.
- D. All "amnesty" dogs under section 13-200.01.171, in addition to being licensed pursuant to this chapter, shall be implanted with a microchip purchased from the City within 30 days of the adoption of this ordinance.

**13-200.02.180. Impound.**

- A. Any dog impounded at an animal shelter shall be held five working days if it has a current year's license tag and/or identifiable microchip information which is readable and has been registered with the City. After five working days, if the dog is not claimed or adopted, it shall be euthanized.
- B. Any dog impounded at an animal shelter shall be held three working days if it has no current year's license tag and/or identifiable microchip information which is readable and has been registered with the City. After three working days, if the dog is not claimed or adopted, it shall be euthanized.
- C. Any dog voluntarily relinquished to the animal control officer or an animal shelter by the owner or custodian thereof for destruction or other disposition need not be kept for the minimum holding period, but shall be euthanized immediately.
- D. The animal control officer or police officer shall have the sole discretion to determine serious injury or disease that will require euthanasia prior to three (3) working days.

**13-200.02.190. Threatening Passers-By.**

It shall be unlawful for any dog to threaten passers-by by nipping, chasing, jumping upon, attacking, or chasing any person, bicycle, or motor vehicle.

**13-200.02.200. Penalties.**

Unless otherwise specifically provided, every person whose dog violates any provision of this chapter is guilty of a class C misdemeanor.

**Section 13-200.03. Rabies Control.**

**13-200.03.010. Rabies Control.**

**13-200.03.020. Vaccination Required.**

**13-200.03.030. Penalties.**

**13-200.03.010. Rabies Control.**

- A. **Report of Bites.** All persons bitten and the parents or guardians of minor children bitten by a dog, cat, skunk, fox, bat, coyote, bobcat, or other animal known to constitute a serious threat of rabies shall notify the animal control officer immediately thereafter. Physicians treating such bites and other persons having the knowledge of such bites shall also be required to make such notification.
- B. **Report of Suspected Rabid Animals.** Any person who observes or has knowledge of an animal which shows symptoms of rabies or which acts in a manner which would lead to a reasonable suspicion that it may have rabies shall notify the animal control officer and comply with appropriate laws and regulations regarding suspected cases of rabies as directed by the state or city-county health departments.
- C. **Isolation of Biting or Suspected Rabid Animals.**  
Upon the reasonable order of the animal control or public health officer, a biting or suspected rabid animal shall be isolated, at the owner's expense if owned, in strict confinement under proper care and under the observation of a licensed veterinarian in an animal shelter or veterinary hospital in a manner approved by the animal control officer.
- D. **Examination of Head.** Any biting or suspected rabid animal may be humanely euthanized immediately, and such animal's undamaged and properly packaged and properly refrigerated head shall be delivered promptly to an approved medical facility having the capability of performing tests to demonstrate the presence of rabies.
- E. **Release.** Ten (10) days after the day of infliction of a bite by an animal, such animal may be released to its owner after a licensed veterinarian has examined that animal and in his/her opinion found it not to have had rabies in a transmittable stage on the day of infliction of the bite. Non-immunized animals shall be vaccinated for rabies before release.
- F. **Animals Possibly Exposed to Rabies.** Any animal of a species subject to rabies which has been bitten by a known rabid animal, or which has been in intimate contact with such an animal, shall be isolated, at the owner's expense if owned, in strict confinement in a place and manner approved by the animal control officer and observed by a licensed veterinarian for a period of six (6) months, or euthanized. Notwithstanding the foregoing, the following alternative is permitted in case of dogs and cats. If the dog or cat has been vaccinated against rabies at least thirty (30) days prior to the suspected exposure with a type of vaccine produced under U.S.D.A. license and within the time period approved by

the state veterinarian, the dog or cat may be re-vaccinated and isolated in strict confinement in a place and manner approved by the animal control officer and observed by a licensed veterinarian for a period of thirty (30) days.

**13-200.03.020. Vaccination Required.**

A. Dog owners shall obtain a rabies vaccination for each dog they own, keep, harbor or have custody of, within ten (10) days after it becomes three months of age, or within ten (10) days after obtaining any dog over three months of age. It shall be unlawful for any person or persons to own, keep, harbor or possess or to have in his or her care, charge or custody, any dog three months of age or over unless such dog has a current and valid rabies vaccination administered by any duly qualified and licensed veterinarian, with a rabies vaccine approved by the State Department of Health for use in dogs. Such vaccination shall be repeated at intervals specified by the State Department of Health in order to maintain adequate immunity.

B. In addition to the current years license, the vaccination tag shall be attached to or otherwise worn by the dog. It shall be unlawful for any person or persons to remove or cause to be removed the vaccination tag from any dog without the consent of the owner, keeper, or harborer thereof. The vaccination tag shall not be transferable from one dog to another.

**13-200.03.030. Penalties.**

Unless otherwise specifically provided, every person who violates any provision of this chapter is guilty of a class C misdemeanor.

**Section 13-200.04. Kennels.**

**13-200.04.010. Allowable Number of Dogs and Cats.**

**13-200.04.020. Permit Required.**

**13-200.04.030. Fees.**

**13-200.04.040. Violations - Permit Revocation.**

**13-200.04.050. Inspection.**

**13-200.04.060. Definition - Exception for Puppies/Kittens.**

**13-200.04.070. Penalties.**

**13-200.04.010. Allowable Number of Dogs and Cats.**

Except as otherwise provided in this chapter, no more than two (2) dogs and/or three (3) cats which are three (3) months of age or older shall be kept at any residence at any time.

**13-200.04.020. Permit Required.**

(1) Permit required. No person shall operate or maintain a kennel without first obtaining a permit from Kanab City.

(2) Application. All applications for permits to operate or maintain a kennel shall be submitted in writing upon printed forms provided for such purposes by the city. The application shall first be referred to the city animal control officer. Upon approval, the city shall issue the permit upon payment of the fee herein provided.

(3) Before the permit can be issued the following conditions concerning the location of the kennel must be met.

a. A private kennel shall be located in a Residential Agricultural (RA) District, with a conditional use permit and shall not exceed more than three (3) dogs per acre. The location where the dogs or cats are kept, raised or housed, must be 200 feet away from any neighboring house, and must be 150 feet from any road.

b. A public kennel shall be located in a permitted commercial district, with a conditional use permit.

(4) The following minimum standards shall be complied with to obtain and maintain a kennel permit.

a. Enclosure must be provided which shall allow adequate protection against weather extremes. Floors of buildings, runs and walls shall be of an appropriate material as required by the specific breed of animal and also to permit proper cleaning and disinfecting.

b. Adequate ventilation shall be maintained and an appropriate temperature provided as required by the specific breed of animal housed therein.

c. Each animal shall have sufficient space to stand up, lie down and turn around without touching the sides or tops of cages.

d. Runs shall provide an adequate exercise area and protection from the weather.

e. All animal quarters and runs are to be kept clean, dry and in a sanitary condition.

f. The food shall be free of contamination, palatable and of sufficient nutritive value as to meet the normal daily requirements for the condition and size of the animal.

g. Fresh water is to be available at all times. Water vessels shall be mounted or secured in a manner that prevents tipping and be of the removable type.

(5) Holders of existing kennel permits which do not meet the distance requirements required in this chapter shall be exempt from the distance requirements for their existing animals. As animals die, are sold, given away, or are otherwise removed from the property, they may not be replaced unless all of the conditions of this chapter are met. The city shall have the power to revoke the kennel permit in the event that the permit holder is convicted of any other violation of the provisions of this title.

**13-200.04.030. Fees.**

Any person conducting, operating or maintaining a kennel shall pay to the city for the privilege of conducting operating or maintaining such kennel an annual permit fee shall be in amounts established by city council resolution.

**13-200.04.040. Violations - Permit Revocation.**

Whenever the animal control officer or police officer finds or discovers any violations of any rule or regulation promulgated as herein provided by the city-county health department, it shall upon receipt of such notice immediately notify the owner or custodian of such kennel, to appear before the city council at a day and time certain to show cause why the permit should not be revoked for such violation

**13-200.04.050. Inspection.**

It shall be the duty of the animal control officer or police officer to periodically inspect all registered kennels, to see that the provisions of this chapter pertaining to the sanitation and care of such places are being observed

**13-200.04. 060. Definition - Exception for Puppies/Kittens.**

(A) Kennel as defined in §13-200.01 010 shall be applicable to this chapter

(B) This chapter shall not apply to the birth of puppies or kittens in a situation which is not an intentional commercial breeding business so long as the number of dogs or cats is reduced down to two (2) dogs and or three (3) cats or less within three (3) months from the birth of the puppies or kittens

**13-200.04.070. Penalties.**

Unless otherwise specifically provided, every person who violates any provision of this chapter is guilty of a class C misdemeanor

## **ADDENDUM 3**

## **United States Constitution - Amendment XIV.**

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## **ADDENDUM 4**

# Utah State Constitution

## ARTICLE I, SECTION 1 - [INHERENT AND INALIENABLE RIGHTS.]

Article I, Section 1 - [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

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# Utah State Constitution

## ARTICLE I, SECTION 7 - [DUE PROCESS OF LAW.]

Article I, Section 7 - [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

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# Utah State Constitution

## ARTICLE I, SECTION 12 - [RIGHTS OF ACCUSED PERSONS.]

### Article I, Section 12 - [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

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# Utah State Constitution

## ARTICLE I, SECTION 24 - [UNIFORM OPERATION OF LAWS.]

Article I, Section 24 - [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

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# **Utah State Constitution**

## **ARTICLE I, SECTION 27 - [FUNDAMENTAL RIGHTS.]**

Article I, Section 27 - [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

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## **ADDENDUM 5**

1 the case, then I guess now is the time to do that. So Mr.  
2 Cramer?

3 MR. CRAMER: Your Honor, ah, at this time I'd like  
4 to call Mr. Popowich to the stand.

5 THE COURT: Mr. Popowich, come up this way, would  
6 you, please. Raise your right hand and listen to the clerk.

7 DEFENSE WITNESS

8 JEFF POPOWICH

9 called by the Defendant, having been duly  
10 sworn, was examined and testified as follows:

11 THE CLERK: Do you solemnly swear that the testimony  
12 you are about to give in the matter now before the Court will  
13 be the truth, the whole truth, and nothing but the truth, so  
14 help you God?

15 WITNESS: I do.

16 THE COURT: Would you sit right here, please  
17 (Indicated).

18 Mr. Popowich, I want to make sure we get your name  
19 spelled right. How do you spell your first name?

20 THE WITNESS: J-e-f-f.

21 THE COURT: It's not a nickname?

22 THE WITNESS: Well, it's short for Jeffrey.

23 THE COURT: Jeffrey?

24 THE WITNESS: Yes.

25 THE COURT: E-r-y?

1 THE WITNESS: R-e-y.  
2 THE COURT: R-e-y. All right.  
3 Popowich is P-o-p-w-i- --  
4 THE WITNESS: P-o-p-o-w-i-c-h.  
5 THE COURT: P-o-p-o-w-i- --  
6 THE WITNESS: C-h.  
7 THE COURT: -- c-h. We've got your named spelled  
8 wrong in court papers. Sorry about that.  
9 How do you say your last name?  
10 THE WITNESS: Popowich.  
11 THE COURT: Popowich.  
12 THE WITNESS: It's spelled wrong all the time,  
13 ah-hm.  
14 THE COURT: What city or town do you live in?  
15 THE WITNESS: Kanab.  
16 THE COURT: Mr. Cramer, you've got the floor.  
17 MR. CRAMER: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. CRAMER:  
20 Q. Jeff, I'd like to draw your attention towards the,  
21 ah, issue of a kennel license. Would you tell the Court if  
22 you ever applied for a kennel license in 2006.  
23 A. I did not.  
24 Q. Why -- why did you not do that?  
25 A. Because in 2006 you were required to sign a piece of

1 paper consenting for searches of your house. And I didn't  
2 feel that was right, so I didn't license my two dogs.

3 Q. Well, I'm talking about the kennel. I'm not talking  
4 about the dogs.

5 A. That was for any dog license.

6 Q. For any dog license. For a kennel license --

7 A. Right.

8 Q. -- or a dog license.

9 A. Um-hm.

10 Q. So you did not apply for a kennel license.

11 A. No.

12 Q. Ah, speaking of, ah, two dogs that were seen in  
13 your, ah, home that, ah, you had not, ah, licensed ever, were  
14 you the owner of those hounds?

15 A. My two dogs? Or the other two that Cecil saw?

16 Q. The other -- the other two.

17 A. Those are my girlfriend's -- well, ex-girlfriend's  
18 dogs.

19 Q. Okay. What is her name?

20 A. Bonnie Allred.

21 Q. They did not belong to you.

22 A. No.

23 MR. CRAMER: That's all the questions I have of Mr.  
24 Popowich, Your Honor.

25 THE COURT: Mr. Mackelprang.

CROSS EXAMINATION

BY MR. MACKELPRANG:

Q. Yes. Now Mr. Popowich, what's your residence?

A. 213 East 330 North, Kanab.

Q. Okay. So did you license two of your dogs in 2005?

A. Yes.

Q. Okay. Ah, in 2006 did you license any dogs?

A. No.

Q. Okay. Were your two dogs living at your residence  
in 2006?

A. Yes.

Q. Okay. You say the other two dogs were your  
girlfriend's.

A. Correct.

Q. Did your girlfriend live at your residence with you?

A. She stayed there while I was out of town.

Q. Okay. Ah, were her dogs ever there, ah, three or  
more days at a time.

A. Yes.

Q. Okay. Now, ah, how old are your two dogs?

A. Six and four.

Q. Okay. How old are your girlfriend's dogs?

A. Three and I'm not sure.

Q. Okay.

A. Ballpark.

1 Q. Ah, so the two dogs that lived at your residence in  
2 2006, did you license those in 2007?

3 A. Yes.

4 MR. MACKELPRANG: Okay. Ah, no further -- well, let  
5 me just -- no further questions, Your Honor.

6 THE COURT: Mr. Cramer, back to you.

7 MR. CRAMER: Nothing further, Your Honor.

8 THE COURT: Thank you, Mr. Popowich. You can go  
9 back to your seat.

10 Who's next, Mr. Cramer?

11 MR. CRAMER: That's all of the witnesses I have,  
12 Your Honor.

13 THE COURT: Back to you, Mr. Mackelprang. Any  
14 rebuttal evidence?

15 MR. MACKELPRANG: Ah, no, Your Honor.

16 THE COURT: Mr. Mackelprang, you said earlier you  
17 had copies of the City Ordinances with you.

18 MR. MACKELPRANG: Yes, Your Honor.

19 THE COURT: Certified copies?

20 MR. MACKELPRANG: It's not a certified one, Your  
21 Honor, but it is a -- a copy.

22 THE COURT: All right. And these are copies of  
23 ordinances that were in affect on the dates in the  
24 information?

25 MR. MACKELPRANG: That's correct, Your Honor.

## **ADDENDUM 6**

1 Ah, so we'll -- we'll present evidence to show that.

2 PLAINTIFF'S WITNESS

3 MR. MACKELPRANG: I'd, like, to call Cecil Campbell  
4 as my witness, Your Honor.

5 THE COURT: Mr. Campbell, if you'd come up this way,  
6 please. Raise your right hand and listen to the clerk.

7 CECIL CAMPBELL

8 called by the Plaintiff, having been duly  
9 sworn, was examined and testified as follows:

10 THE CLERK: Do you solemnly swear that the testimony  
11 you are about to give in the matter now before this Court will  
12 be the truth, the whole truth, and nothing but the truth, so  
13 help you God?

14 WITNESS: I do.

15 THE COURT: Please come and sit right here, Mr.  
16 Campbell (Indicated).

17 Mr. Campbell, I want to make sure we get your name  
18 spelled right. How do you spell your first name?

19 THE WITNESS: C-e-c-i-l.

20 THE COURT: And Campbell C-a-m-p-b-e-l-l.

21 THE WITNESS: Yeah. That's correct.

22 THE COURT: You live in Kanab?

23 THE WITNESS: I live in Kane County.

24 THE COURT: Mr. Mackelprang, over to you.

25 DIRECT EXAMINATION

1 BY MR. MACKELPRANG:

2 Q. Okay. Mr. Campbell, who are you employed by?

3 A. Kanab City.

4 Q. What's your position?

5 A. I'm the Animal Control Officer.

6 Q. Okay. How long have you served in that capacity?

7 A. Fourteen plus years.

8 Q. Okay. Now, ah, do you recognize the defendant  
9 sitting next to his attorney to my right (Indicated)?

10 A. I do.

11 Q. And what's his name?

12 A. Jeff Popowich.

13 Q. Okay. Do you know where he lives?

14 A. Ah, the street address?

15 Q. Yes.

16 A. Can I check my notes?

17 Q. That's fine.

18 A. 213 East 330 North, Kanab.

19 Q. Okay. Now let's go back to December of 2005. Ah,  
20 did you, ah, receive some complaints concerning the  
21 defendant's dogs?

22 A. I did.

23 Q. Do you want to tell us what that entailed?

24 A. I received numerous anonymous complaints of, ah,  
25 dogs barking, ah, and that there was an illegal kennel, more

1       than two dogs.

2           Q.    Okay.  And that message stated that they were  
3       barking at what address?

4           A.    At the same address I did, 213 -- 213 East 330  
5       North.

6           Q.    Okay.  Which is where the defendant lives?

7           A.    Yes.  That's correct.

8           Q.    Okay.  So what did you do on these complaints?

9           A.    I, ah, went out and checked out the situation.  Ah,  
10       I observed four dogs on two different dates in December.  Ah,  
11       he was licensed for that year, so I proceeded with my regular  
12       policy.  I mailed out notices to everyone in the Kanab City  
13       limits.

14          Q.    Now -- now tell me, when you went out in December,  
15       tell me what these dogs looked like that you saw.  And where  
16       did you see 'em?

17          A.    Well, they were -- they were in the front window.  
18       To my recollection, there's no curtains in the window.  They  
19       were four large, ah, barking dogs, Rottweiler, I believe.  A  
20       Shepherd or Shepherd mix and two mixed breed.  A -- a  
21       black-and-white and a tricolor.

22          Q.    Now, you say you saw 'em through a window.  Was  
23       there a couch or something in front of the window that these  
24       dogs were on?

25          A.    They were on a couch and they were all right there

1 in the picture window.

2 Q. Okay. Ah, what were the ages of these dogs?

3 A. They were all mature --

4 MR. CRAMER: Objection, Your Honor. Foundation.

5 THE COURT: What about it, Mr. Mackelprang?

6 MR. MACKELPRANG: Well, Mr. Campbell, can you tell  
7 the age of a dog?

8 THE WITNESS: Yes, I can.

9 Q. How do you determine that?

10 A. By the size.

11 Q. Okay. And, ah, did you -- were you able to see  
12 these four dogs?

13 A. I saw them plainly.

14 Q. Okay. So based on your training and experience, ah,  
15 was it -- were these dogs over the age of three months of age?

16 A. Yes. They were.

17 Q. Okay. What would you estimate their age to be?

18 A. A year plus.

19 Q. Okay. Ah, now were you -- you are aware then that  
20 the defendant had licensed two dogs in 2005.

21 A. That's correct.

22 Q. Okay. Two of the dogs you saw there, did they match  
23 the description of two of those dogs that he licensed in --

24 A. They did.

25 Q. -- 2005?

1           A.    They did.

2           Q.    Okay.  Ah, can I have just a moment, Your Honor?

3           THE COURT:  Yes.

4           MR. MACKELPRANG:  Can I approach Mr. Campbell, Your  
5 Honor?

6           THE COURT:  Sure.

7           Q.    (BY MR. MACKELPRANG):  Okay, Mr. Campbell.  I'm gonna  
8 show you a plaintiff's exhibit marked No. 1.  Ah, can you tell  
9 me if you recognize that, and explain what it is?

10          THE WITNESS:  I do recognize it.  It's a notice I  
11 send to every resident in Kanab the first part of January.

12          Q.    Okay.  Now, that you sent it to those residents that  
13 have previously licensed dogs.

14          A.    I send one to every -- every resident.

15          Q.    Oh, you do every resident?  Okay.

16          Now, was Mr. Popowich, the defendant, sent this in  
17 January then of 2006?

18          A.    Yes.  He was.

19          Q.    Okay.  Ah, let me show you another exhibit.  This  
20 one's marked No. 2.  Do you want to tell us what that is?

21          A.    This is a follow-up notice, ah, reminding people, if  
22 they haven't licensed, that they need to do it within five  
23 working days.  If I don't get any response, initially, on the  
24 first notice, then I'll send these out.

25          Q.    Okay.  So Exhibit No. 2, when would you have sent

1 this to the defendant?

2 A. February.

3 Q. February. Okay. And then here's Plaintiff's  
4 Exhibit 3. Can you tell us what that is?

5 A. This is a warning that's placed on the door. It  
6 puts -- has their name, the violation date, ah, what the  
7 violation is. Ah, usually I'll put on there when I would like  
8 'em to comply with this. I'll put a compliance date and give  
9 'em a certain amount of time to comply.

10 Q. Okay. Did you put one of these notices on the  
11 defendant's door?

12 A. Yes. I did.

13 Q. What did you -- what did you write on the notice?

14 A. I told him that he was in, ah, violation of the  
15 having more dogs than he was allowed, an illegal kennel and  
16 unlicensed dogs.

17 Q. Okay. And so what did you write on the notice?

18 A. Well, I -- there's little boxes you can check in  
19 there what the violation is. I read the violation. I check  
20 the box and I write the violation number down -- or the  
21 ordinance number down on that.

22 THE COURT: Was that the answer to the question, Mr.  
23 Mackelprang?

24 MR. MACKELPRANG: Yes. Yes, Your Honor.

25 Okay. I would ask, Your Honor, that these three

1 exhibits, ah, be accepted by the Court.

2 MR. CRAMER: No objection.

3 THE COURT: 1, 2, and 3 are received.

4 (PLAINTIFF'S EXHIBIT NOS. 1, 2 & 3  
were received into evidence.)

5 Q. (BY MR. MACKELPRANG): Ah, now, Mr. Campbell, do you  
6 have copies of the records to show who, within Kanab City,  
7 licenses their dogs?

8 THE WITNESS: Yes, I do.

9 Q. Okay. Now, ah, in 2005, ah -- let me show you these  
10 Exhibits 4 and 5, and tell me if you recognize these.

11 A. Yes, I do. They're copies of the pet license form  
12 that we fill out for each dog.

13 Q. Okay. And then whose particular dogs would these  
14 be?

15 A. Jeff Popowich's.

16 Q. Okay. And, ah, do you want to tell us which of  
17 those two dogs is licensed in 2005 with those two documents?

18 A. Ah, I believe it's the, ah -- the Shepherd or the  
19 Shepherd mix and the Rottweiler.

20 Q. Okay. Now, can you tell us whether -- which you  
21 went out -- you made two trips to the defendant's house in  
22 December; is that correct?

23 A. That's correct.

24 Q. And tell us approximately the dates you made other  
25 trips to his house then.

1           A.   Well, subsequent months with January, February,  
2   March, April.

3           Q.   Okay.  On those occasions tell me what you saw, as  
4   far as dogs.

5           A.   I witnessed the same four dogs in the large window  
6   up till April of 2006.

7           Q.   Okay.  And, ah, at some point did the defendant ever  
8   talk with you or try to resolve, ah, the violations?

9           A.   No.

10          Q.   Okay.  So you finally gave him a citation.

11          A.   That's correct.

12          Q.   Okay.  Now, after you gave him the citation, did you  
13   observe the dogs at his house?

14          A.   I -- after the citation was issued, I didn't.  I  
15   might have saw 'em in May, but I haven't seen 'em since.

16          Q.   Okay.  And what date did you give him the citation?

17          A.   It was in April.  April 13th, I believe, --

18          Q.   Okay.

19          A.   -- 2006.

20          Q.   All right.  Now, do you want to tell us what Exhibit  
21   No. 6 is?  Plaintiffs Exhibit No. 6.

22          A.   This is an expired license list.  We keep track.  
23   Ah, this shows me people that have licensed the year before,  
24   but hadn't licensed, ah, in the current year.

25               THE COURT:  It's a -- looks like it's a list of

1 something.

2 THE WITNESS: It's called an expired license list.

3 Q. (BY MR. MACKELPRANG): So that lists all the dogs in  
4 the city that, ah, at least didn't relicense, for whatever  
5 reason, from 2005 to 2006

6 THE WITNESS: Yes. That's correct.

7 Q. And can you tell us what date this was printed on?

8 A. This one was November 15th, 2006.

9 Q. Okay. Does it show the defendant's dogs on that  
10 list?

11 A. It does.

12 Q. How many dogs does it show?

13 A. Two dogs.

14 Q. Okay. Thank you.

15 Now, ah, I've got a plaintiff Exhibit No. 7. Can  
16 you tell us what that is?

17 A. That's a current dog license list for the -- for the  
18 date is August 15th of 2006.

19 Q. Okay. So you just -- you see the defendant's dogs  
20 listed on that?

21 A. No. His dogs are not on here.

22 Q. Okay. Thank you.

23 Then I've got, ah, Plaintiff's Exhibit 8 and 9, if  
24 you can tell us what those are.

25 A. These are license forms filled out for the year

1 2007. The date is April 26, 2007.

2 Q. Okay. And, ah, which resident is that for?

3 A. That's for 213 -- yeah -- 213 East 330 North.

4 Q. So would that be the defendant's address?

5 A. Yes. That's correct.

6 Q. Okay. Now tell me the two dogs that it shows on  
7 that. Is that the same two dogs that he licensed in 2005?

8 A. Yes, it is. It's a Shepherd or Shepherd mix, tan  
9 and white, and a Rottweiler's listed here as black and tan.

10 Q. Okay. Thank you.

11 THE COURT: That was Exhibit 8; right, Mr.  
12 Mackelprang?

13 MR. MACKELPRANG: 8 and 9, Your Honor.

14 THE COURT: Oh, there are two different  
15 applications.

16 MR. MACKELPRANG: Ah, there's one for each dog.

17 THE COURT: Okay.

18 MR. MACKELPRANG: So I would ask that Plaintiff's  
19 Exhibits, ah -- let's see -- we're at, I think, 4 through 9,  
20 be admitted.

21 MR. CRAMER: No objection, Your Honor.

22 THE COURT: 4, 5, 6, 7, 8 and 9 are received.

23 (PLAINTIFF'S EXHIBIT NOS. 4 through 9  
were received into evidence.)

24 Q. (BY MR. MACKELPRANG): Okay. Ah, so, Mr. Campbell,  
25 is also one of -- one of your duties, besides the, ah, Animal

1 Control Officer, is it also to read meters for the city?

2 THE WITNESS: That's correct.

3 Q. Okay. Which meters do you read?

4 A. Water meters.

5 Q. Okay. So do you, ah, go to each resident in the  
6 city then at least once a month?

7 A. That's correct. Every residence.

8 Q. Okay. So on these dates when, other than the two  
9 dates in December, were you, ah, at the defendant's, ah,  
10 residence to read the meter?

11 A. Yes.

12 MR. MACKELPRANG: Okay. Ah, no further questions,  
13 Your Honor.

14 THE COURT: Mr. Cramer.

15 MR. CRAMER: Thank you.

16 CROSS EXAMINATION

17 BY MR. CRAMER:

18 Q. Ah, Mr. Campbell, let me ask you just a couple of  
19 questions about this period of time in 2006. You never spoke  
20 with the defendant personally now; is that correct?

21 A. No. I didn't.

22 Q. Okay. Ah, is my understanding correct that the  
23 police served Mr., ah, Popowich with a citation?

24 A. I couldn't locate him. That's correct, sir.

25 Q. Okay. Ah, is there a -- my understanding, there is

1 not a kennel application; is that correct?

2 A. There is.

3 Q. There is? Do you recall talking with someone  
4 yesterday about getting a kennel application?

5 A. No. I didn't.

6 Q. Okay. You didn't talk to someone and tell 'em that  
7 there was no kennel application.

8 A. Someone had inquired at the city office, and I  
9 didn't have a name. And -- and, ah, the receptionist in  
10 there, I've told her it was a difficult process, but it was  
11 possible.

12 MR. CRAMER: Your Honor, I have -- (Inaudible) --  
13 one, ah, piece of evidence. May I approach the witness?

14 THE COURT: Have it marked by the clerk where  
15 there's an exhibit number on it.

16 Q. (BY MR. CRAMER): I'm going to show you -- is it all  
17 right if I approach?

18 THE COURT: Yes.

19 Q. (BY MR. CRAMER): I'm going to show you what's been  
20 marked as Exhibit No. 10 -- would you -- for identification.  
21 Would you look at that document. Do you recognize, ah, that  
22 document?

23 THE WITNESS: No. I don't.

24 Q. Okay. So you aren't familiar with that form.

25 A. I -- I don't license the dogs any more. They went

1 to a new form and I don't -- I don't know.

2 Q. Okay. So you're not dealing with that form.

3 A. I'm not involved in the process of licensing.

4 Q. Okay. That's all the questions I have. Well,  
5 excuse me. One more.

6 Ah, you saw these dogs inside the home each time you  
7 saw them; correct?

8 THE WITNESS: That's correct. Yes.

9 MR. CRAMER: That's all the questions I have for Mr.  
10 Campbell, Your Honor.

11 THE COURT: Mr. Mackelprang?

12 MR. MACKELPRANG: No further questions. But I would  
13 reserve him for rebuttal, Your Honor.

14 THE COURT: Certainly. You can have anybody up the  
15 for rebuttal.

16 Mr. Campbell, you're done. Can you just take that  
17 piece of paper and lay it on the table there in front of you.  
18 Thank you very much.

19 THE WITNESS: Here (Indicated)?

20 THE COURT: That's good. Right there.

21 Mr. Mackelprang, who's next?

22 MR. MACKELPRANG: I have no other witnesses, Your  
23 Honor.

24 THE COURT: The plaintiff has rested.

25 Mr. Cramer, what's next?