

**City of Smiley**

**Animal Ordinance**

**2023**

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ORDINANCE NO. 01-24

**AN ORDINANCE OF THE CITY OF SMILEY, TEXAS, REPEALING AND REPLACING ORDINANCE 06.04.08; PROVIDING FOR THE FOLLOWING: RULES AND REGULATIONS GOVERNING OWNERSHIP, CARE, AND TRANSPORTATION OF ANIMALS WITHIN THE INCORPORATED AREA AND THE EXTRATERRITORIAL AREA OF THE CITY OF SMILEY, TEXAS; CERTAIN DEFINITIONS; DECLARING A NUISANCE; PROCEDURES FOR ENFORCEMENT INCLUDING CRIMINAL PENALTIES AND CIVIL FINES IN AN AMOUNT NOT LESS THAN ONE DOLLAR (\$1.00) AND NOT MORE THAN FIVE HUNDRED DOLLARS (\$500.00) PER VIOLATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of *the City of Smiley, Texas* ("City Council") seeks to provide for the regulation of animals within the corporate limits of *the City of Smiley, Texas* ("City"); and

**WHEREAS**, the City Council seeks to maintain the safety of *the City of Smiley* and its rural charm, which are the keystones of the City's quality of life, through a comprehensive animal regulatory program; and

**WHEREAS**, the City Council finds that the improper care, handling and transportation of animals can result in: hazardous conditions; unsafe circumstances; and an unattractive townscape; and

**WHEREAS**, the people who live in and near *the City of Smiley* value their safety and the security of their property; and

**WHEREAS**, *the City of Smiley* desires to protect the health, safety and welfare of the general public, and to protect the quality of life and economic well-being of the City; and

**WHEREAS**, these animal regulations will result in safer community; and

**WHEREAS**, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, the City Council finds that it is necessary and proper for the good government, peace or order of *the City of Smiley* to adopt an ordinance regulating animals.

**NOW, THEREFORE, BE IT ORDAINED by the City of Smiley, Texas City Council:**

**I. FINDINGS OF FACT; SHORT TITLE**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein. This Ordinance shall be known as the "Animal Ordinance."

## II. DEFINITIONS

All words or phrases not specifically defined herein shall have the same meaning and definition as defined by the Texas Penal Code, the Texas Health and Safety Code, and as generally defined by use in the English language. The herein-defined words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Animal*** means any member of the group of living beings of the subphylum Vertebrata, including, but not limited to, birds, fish, mammals and reptiles, but specifically excluding human beings. The term "animal" shall include both domesticated and wild, male and female, warm and cold blooded.

***Animal Control Authority*** means the person or entity designated by the City to enforce this Ordinance. In the absence of a designation, the City Marshal's Office shall serve as the Animal Control Authority.

***Animal Rescue Organization*** means a non-profit organization incorporated under the laws of any state, exempt from federal taxation under Section 501(c)(3) of the federal Internal Revenue Code, as amended, and whose principal purposes include preventing animal cruelty, rescuing sick, injured, abused, neglected, unwanted, abandoned, orphaned, lost, or displaced animals and adopting animals to responsible persons. This term does not include any organization breeding animals, located on the site of an animal breeder, has employees working for an animal breeder, receives other forms of payment that are not monetary, or facilitates the sale of animals obtained from an animal breeder.

***Animal Shelter*** means a public or private facility designated or recognized by the City for the purpose of impounding and caring for animals. The animal shelter shall be considered the designated caretaker of a stray, impounded or surrendered animal immediately upon intake at the shelter. In the absence of a designation, the County facilities, if available, shall be utilized.

***At Large*** means to be free of physical restraint beyond the boundaries of the premises of the owner or responsible party.

***Collar*** means a collar or harness constructed of nylon, leather, or similar material specifically designed to be used for a dog, cat or pot-bellied pig.

***Domestic Livestock*** means domestic animals generally used or raised on a farm for profit, work, or pleasure, including, but not limited to, horses, mules, asses, cattle, swine, sheep and goats. The term "domestic livestock" excludes pot-bellied pigs and poultry.

***Exotic Animal*** means any non-domesticated animal and any hybrid thereof, other than exotic livestock, which is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad.

***Exotic Livestock*** shall have the meaning as set forth in Texas Agriculture Code § 142 which typically will include grass-eating or plant-eating single-hoofed or cloven-hoofed ungulates; including animals from the horse, swine, cattle, deer, and antelope families, and any hybrid thereof, non-domesticated and that are non-indigenous, i.e., native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad.

***Fowl or Poultry*** means chickens, turkeys, geese, ducks, pigeons, quail, pheasant, and peacocks or similarly feathered domesticated members of the Aves class but excluding exotic birds, falcons and hawks.

**Guard Dog** means a dog maintained within secured designated premises for the purposes of protecting life or property.

**Hybrid** means a cross of two different animal species.

**Licensing Authority** means the City or any designated entity charged with administering the issuance and revocation of animal permits and licenses within the City.

**Owner** means any person who has a legal right of property or temporary or permanent custody of an animal.

**Pet Shop or Store** means a brick-and-mortar retail store where animals are kept, sold, or offered for sale on premises. This term includes any owner, operator, agent, or employee. An animal rescue organization or animal shelter is not a pet shop or store.

**Pot-bellied Pig** means any of the domesticated forms of the species *Suidae Sus scrofa* (miniature pigs under 100 pounds) originating in Southeastern Asia, and having a straight tail, potbelly, swayback, and black, white, or black and white coat.

**Rabies Control Authority** means the City's designated officer or contracted entity charged with carrying out the activities required or authorized under Texas Health and Safety Code CH. 826 and regulations relating thereto in acting as the City's local Rabies Control Authority. This includes following the proper procedures for quarantine, testing and vaccination protocols as may be required or authorized.

**Registered Owner/Responsible Party** means an owner or responsible party who is registered with the City.

**Responsible Party** means a person who controls, cares for or permits an animal to remain on or about a premises under their ownership or control for more than 72 hours or who otherwise chooses to become responsible for an animal, including an owner, except that those caring for feral cats that are part of a properly permitted managed feral cat colony shall not be considered owners for purposes of this Ordinance.

**Secured Enclosure** means a fence or structure of at least six feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a dangerous animal in conjunction with other measures which may be taken by the owner or responsible party. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping from the enclosure. The enclosure shall be posted with signs on all sides with conspicuous letters warning of the presence of a dangerous animal and shall include a symbol of a dangerous animal understandable by young children.

### **III. GENERAL REQUIREMENTS**

#### **A. Fees and Charges.**

All fees and charges referenced in this Ordinance shall be as established by the applicable authority charging said fees.

#### B. Responsibility.

Nothing in this Ordinance generally shall relieve an owner or responsible party from responsibility for such animal or liability for violations and any accrued charges or citations. Owners and responsible parties may each be determined to be duly responsible for such animal and liable for violations.

#### C. Vaccination.

All animals located within or passing through the City limits must be vaccinated as required by Texas law, including but not limited to, rabies, brucellosis, and equine infectious anemia, as applicable.

#### D. Infectious Disease Reporting.

It is unlawful for a person to fail to notify the appropriate authority when the person reasonably suspects an animal is rabid or capable of transmitting an infectious disease as set forth in Texas Health and Safety Code.

#### E. Microchipping, Tagging, and Branding.

All animals residing within the City limits shall be microchipped, tagged, or branded.

#### F. At Large.

- (1) Except as set forth herein, it shall be unlawful for any person to allow any animal under their control to be at large within the City.
- (2) Colonies of feral cats may be allowed if in accordance with a registered trap, neuter and release program approved by the City.

### **IV. GENERAL CARE**

#### A. Transporting Animals; Vehicular Confinement.

- (1) It shall be unlawful for a person to transport in an open bed pickup or an open flatbed truck or to tow in an open flatbed trailer on a public street or highway while a dog or other animal occupies the bed of the truck or trailer unless the animal is secured in a kennel or other secure vented enclosure, restrained by a harness manufactured for the purpose of restraining animals, or restrained using a chain, rope, or other device cross-tied to prevent the animal from falling or jumping from the motor vehicle or from strangling on a single leash.
- (2) It shall be unlawful for a person to confine an animal in a parked or standing vehicle or enclosed trailer in such a way as to endanger the animal's health, safety, or welfare. It is presumed that an animal's health, safety, or welfare is endangered when the animal is confined in an unventilated, parked or standing vehicle or enclosed trailer for a period of five or more minutes when the ambient outside air temperature measures at or above 85 degrees Fahrenheit or below 35 degrees Fahrenheit.
- (3) The Animal Control Officer, City Police Officer, or City Firefighter may take reasonable measures under the circumstances to remove an animal from a vehicle or trailer if said City official reasonably believes that an emergency exists to preserve the animal's health, safety, or welfare.

## **V. KEEPING OF CERTAIN ANIMALS PROHIBITED; NUISANCES**

### **A. Prohibited Animals.**

It shall be unlawful for a person to sell, offer for sale, barter, trade, keep, own, maintain, use or have in a person's possession or on premises under such person's control any of the following:

- (1) Dangerous Animals except as provided herein, pursuant to a final determination that the animal is dangerous; or
- (2) An animal that ownership of said animal creates or said animal engages in behavior constituting any of the following nuisances:
  - (a) Waste. An animal which soils, defiles or defecates on private property other than the owner's, responsible party's or on public areas, unless such waste is immediately removed and disposed of;
  - (b) Excessive Noise. An animal that creates a disturbance by excessive barking, howling, crowing, screeching or other noise that would offend a person of ordinary sensibilities under the same or similar circumstances;
  - (c) Chasing, Biting, and Scratching. An animal that chases, bites, scratches, molests, attacks, or interferes with persons or other domestic animals on public property or on the private property of others;
  - (d) Contagion for Disease. An animal that carries or poses an unreasonable threat of carrying or transmitting disease to other animals or to people;
  - (e) Staked Animal. An animal that is staked or tied upon any open or unfenced lot or land within the City so that the animal so tied or staked could get on, across or within eight feet of any public street, park or other public land, including within eight feet of any public sidewalk, right-of-way, or public building;
  - (f) Estrus. Allowing any female animal while in heat to attract other animals and not being confined in a building or enclosure in such a manner that she shall not be in contact with another of its species. This section shall not be construed to prohibit the intentional breeding of animals within an enclosed area with the consent of the animal owner or responsible party and on the premises of the owner or responsible party in accordance with the requirements as may be set forth in this Ordinance; or
  - (g) Health Hazard. Harboring, owning, maintaining or permitting an animal on a property so as to create a health hazard, offend a person of ordinary sensibilities living nearby or on, near or adjacent property because of an offensive odor or unreasonable attraction of flies and other insects. An owner or responsible party shall ensure the proper pickup and disposal of all animal feces.
- (3) Any animal not normally born and raised in captivity is prohibited, including, but not limited to, the following, unless expressly permitted herein or that person is a person exempted by Texas Health and Safety Code:

#### **(a) Class Reptilia.**

Family Helodermatidae (venomous lizards) and Family Hydrophiidae (venomous marine snakes); Family Viperidae (rattlesnakes, pit vipers and true vipers); Family Elapidae (coral snakes, cobras, and mambas); Family Columbridae-Dispholidus Typus (boomslang); Bioga Dendrophilia (mangrove snake) and Kirklandii (twig snake only); and Order Crocodilia (such as crocodiles and alligators).

#### B. Tethering of Animals; Unlawful Release.

- (1) In addition to any State laws regarding restraining an animal by a chain, rope, tether, leash, cable, or other device to a stationary object or trolley system, including those set forth in Texas Health and Safety Code CH. 821, the following requirements apply:
  - (a) Only one animal may be restrained to each cable run or appropriately partitioned to minimize tangling;
  - (b) There must be a swivel on at least one end of the restraint device to minimize tangling; and
  - (c) When a restraint system is used to keep an animal from running at large, the tether system must be of appropriate configuration to confine the animal to the subject property.
- (2) Except as otherwise provided in this section, it shall be unlawful for a person to confine an animal for a substantial portion of the day in an outdoor enclosure that provides less than 48 square feet of space for each animal that it contains that is at least six months old. It is presumed that an animal is being confined for a substantial portion of the day if a Police Officer, Animal Control Officer, Code Enforcement Officer, or the person charged with enforcing this Ordinance witnesses the animal in said enclosure at least twice on the same day at two separate times that are at least five hours apart.
- (3) It shall be unlawful to release a dog or cat that is lawfully tethered, leashed or stabled within a lot, pen or similar type of enclosure or confinement without the consent of the owner of such animal.

#### C. Sale of Animals.

- (1) A pet shop or store shall not sell lease, offer for sale, trade, give away or otherwise transfer a dog or cat, unless the animal was obtained from an authorized city or county animal shelter or an animal rescue organization.
  - (a) The pet shop or store must post on the enclosure for each dog or cat offered for sale the name, address, and contact information of the animal shelter or animal rescue organization from which the animal was obtained.
  - (b) The pet shop or store must retain for at least three (3) years after a sale of a dog or cat, documentation stating where the animal was obtained and the amount paid for the animal.
- (2) Except as may be allowed pursuant to other applicable law, the outdoor sale of animals is prohibited.

#### D. Trapping of Animals; Humane Live Traps.

- (1) It shall be unlawful for a person to use steel jaw or leg-hold traps except in the case of mouse and rat control.
- (2) It is unlawful to remove an animal from, inflict damage upon or remove a humane live trap set by the Animal Control Authority.

(b) Class Mammalia.

Order Carnivores. (i) Family Felidea (such as lions, tigers, bobcats, jaguars, leopards, cougars and savanah cats—hybrid of serval), except commonly domesticated cats; (ii) Family Canidae (such as wolves, dingos, coyotes, foxes and jackals), and any hybrid of an animal listed in this section except commonly domesticated dogs; (iii) Family Mustelida (such as weasels, skunks, martins, minks, badgers and otters) except ferrets; (iv) Family Procyonidae (such as raccoons and coati); (v) Family Ursidae (such as bears); (vi) Marsupialia (such as kangaroos, opossums, koala bears, wallabies, bandicoots, and wombats); (vii) Chiroptera (bats); (viii) Edentata (such as sloths, anteaters, and armadillo); (ix) Proboscidea (elephants); (x) Primata (such as monkeys, chimpanzees, orangutans, baboons, and gorillas); (xi) Rodentia (such as beavers and porcupines).

(c) Class Amphibi.

Poisonous frogs; does not include non-venomous reptiles or non-venomous snakes.

B. Exempt.

A prohibited animal is exempt from this section if:

- (1) The animal belongs to a bona fide zoological park, circus, educational institution, museum, licensed laboratory, publicly owned nature center, or animals kept by bona fide members of an educational or scientific association or society approved by the Animal Control Authority, or persons holding permits from an agency of the State or the United States for the care and keeping of animals for rehabilitation purposes. If a person holds a permit from the Texas State Department of Parks and Wildlife to operate a wildcare center in the City, the permit holder must also comply with all other applicable City Ordinances, as amended, and must keep any and all animals or reptiles in cages of sufficient size, construction and strength to restrain the animal or reptile at all times; or
- (2) The animal is an assistance or service animal as defined herein, that has been registered with the City and has provided to the Animal Control Authority:
  - (a) Records of vaccination appropriate for the species of animal;
  - (b) Documentation from a veterinarian that the animal is healthy;
  - (c) Proof of proper restraint for the animal; and
  - (d) Proof that the animal has been or is being trained to perform tasks of an assistance or service animal.

## **VI. IMPOUNDMENT**

A. Liability.

Disposal or redemption of an animal by any method specified herein does not relieve the animal owner or responsible party of liability for violations and/or accrued charges.

#### B. Causes for Impoundment.

Any animal found at large, found to be in violation of this Ordinance or which poses an immediate danger to the general public may be impounded by the Animal Control Authority and taken to the Animal Shelter.

#### C. Notification of Impoundment.

Upon impounding an animal, the Animal Control Authority shall make a reasonable effort to notify the registered owner or responsible party and inform that person of the conditions whereby custody of the animal may be regained. Notice shall be deemed sufficient if it is given pursuant to the information provided to the City for such registration or as indicated on the animal's microchip, if existing.

#### D. Redemption.

- (1) Any animal impounded may be redeemed by the registered owner or responsible party thereof within three days in which the shelter is open to the public during normal business hours upon payment of all applicable fees and signing of any citations that are to be issued. Payment of outstanding fees is not considered to be in lieu of a fine, penalty, or license fee.
- (2) Any animal confined for rabies quarantine, evidence, or other purposes, once such purposes no longer exist, may be redeemed by the registered owner or responsible party thereof upon payment of any fees and signing of any citations, as applicable.
- (3) No animal may be redeemed until such animal is properly licensed and vaccinated as required.

#### E. Unclaimed animals.

Animals not claimed by the registered owner or responsible party within a period of three days in which the Animal Shelter is open to the public during normal business hours shall be subject to disposal by adoption, transfer or humane euthanasia in accordance with the Animal Shelter's policies.

Notwithstanding the foregoing, the Animal Shelter may deviate from this timeframe consistent with this Ordinance when dealing with a sick, injured, diseased, dangerous, and/or feral animal and when acting pursuant to the mutual agreement of the Animal Shelter and the registered owner of the impounded animal, in a manner consistent with this Ordinance.

#### F. Animal Shelter Discretion.

If at any time during impoundment, the animal shelter determines an animal is in a state of disease, malnutrition, pain, suffering, or the like, the animal shelter may choose to euthanize such animal or have such animal assessed by a licensed veterinarian. When having the animal assessed by a licensed veterinarian, the animal shelter may make a determination as to the disposition of the animal after consideration of the cost of medical treatment, whether the owner or responsible party of the animal can be located, whether the owner or responsible party is willing or able to pay for such treatment and whether euthanasia is recommended to prevent further suffering of the animal.

## **VII. REGISTRATION**

Except for those animals excepted from being registered as set forth in this Ordinance, no person shall be an owner, or responsible party of any animal over four months of age within the City unless such animal is registered as set forth herein.

- (1) Application. An application for registration must be made to the Licensing Authority within 30 days after obtaining an animal over four months of age, moving into the City with an animal over four months of age, or an animal reaching four months of age.
- (2) The following information shall be provided upon registration application:
  - (a) Name, address and phone number of pet owner;
  - (b) Name and address of responsible party, if different than Owner;
  - (c) Description of the pet: species, type and gender;
  - (d) proof of vaccination;
  - (e) microchip, tag or brand identification information;
  - (f) Address and location of the enclosure in which the animal should normally be found.
- (3) Except as otherwise provided, the registration period shall be for one year. Each owner or responsible party shall obtain a new registration, pay the appropriate fee(s) as established by the Licensing Authority, and provide all required information annually;
- (4) Persons who fail to obtain registration as required shall be in violation of this ordinance.
- (5) Exceptions. The following are excepted from the registration provisions of this section:
  - (a) State Licensed research facilities or authorized animal shelters;
  - (b) An animal within the City for less than 30 days;
  - (c) A feral cat living in a registered feral cat colony where registration of the colony is substituted.

## **VIII. DOGS, CATS, RABBITS, FERRETS, AND REPTILES**

It shall be unlawful to own or be responsible for more than four dogs, cats, rabbits, ferrets or reptiles, in the aggregate, over the age of four months unless otherwise registered as set forth in this Ordinance and provided such land use is in accordance with the City's applicable land use regulations, as amended from time to time.

## **IX. DANGEROUS DOGS**

The determination and processing of dangerous dogs in the City shall commence with the making of a report of an incident meeting the definition of dangerous dog to the Animal Control Authority in accordance with Texas Health and Safety Code.

A. Dangerous dog incident.

A dangerous dog incident means an incident in which the dog:

- (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog is being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own, and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

B. Investigation.

The Animal Control Authority shall investigate all reports of dangerous dog incidents. The Animal Control Authority may accept sworn statements from all victims and witnesses to the attack.

- (1) If The Animal Control Authority reasonably determines a dog to be dangerous, the Animal Control Authority shall provide a sworn report describing the dangerous dog incident to the City Attorney's Office with all collected witness statements and evidence used by the Animal Control Authority to make the determination.
- (2) The City Attorney's Office shall evaluate the case and determine whether to initiate a dangerous dog proceeding with the Municipal Court ("Court"). If such a proceeding is initiated, the Court shall order the Animal Control Authority or designee to seize the dog and the Court shall issue a warrant authorizing the seizure. The Animal Control Authority shall seize the dog and shall provide for the impoundment of the dog in secure and humane conditions until the Court determines one of the following:
  - (a) That the dog is not a dangerous dog;
  - (b) That the dog is a dangerous dog and the Court or Animal Control Authority finds the owner has complied with the ownership of a dangerous dog as herein required; or
  - (c) That the dog should be humanely destroyed or is deceased.
- (3) If the court determines the dog to be a dangerous dog, the owner shall pay all costs and/or fees assessed by the Municipality related to the seizure and impoundment of the dog, including, but not limited to, boarding fees, microchip procedure, City registration, and rabies vaccination, and the cost of euthanasia of the dog if ordered by the Court.

C. Judicial determination that a dog is a dangerous dog.

- (1) The Court, after determining that the dog is a dangerous dog, shall order the Animal Control Authority to continue to impound the dangerous dog in secure and humane conditions until such time as:
  - (a) The Court orders the disposition of the dog and the dog is returned to the owner;
  - (b) The Court orders disposition of the dog and the dog is thereby humanely destroyed; or
  - (c) The dog is deceased.

- (2) The Court shall order the Animal Control Authority to humanely destroy the dog if the Court determines after notice and hearing that the owner has not complied with the dangerous dog requirements in accordance with this Ordinance and State law.
- (3) The Court shall order the Animal Control Authority to return the dog to the owner if the owner has fully complied with the dangerous dog requirements in accordance with this Ordinance and State law after a hearing or without a hearing based on the recommendation of the Animal Control Authority that the owner has complied said requirements.

#### D. Dangerous Dog Determination Appeal.

The owner of the dog may appeal the decision of the Court by following the appropriate procedures for appeal of a decision of the Municipal Court.

- (1) During the appeal period, the dog shall remain in the custody, care and control of the Animal Control Authority.
- (2) If the appeal is ultimately unsuccessful, the owner of the dog shall be responsible for the dog's impoundment fees during the period the case was being appealed.

#### E. Violations Declared.

- (1) It is a violation of this Ordinance if an owner, responsible party, or other person harbors, keeps, or maintains a dangerous dog in the City unless the owner complies with the requirements of this Ordinance and State statutes regulating dangerous dogs.
- (2) It is a violation of this Ordinance if an owner, responsible party, or other person harbors, keeps, maintains in the City, or brings to the City, a dog that has been declared dangerous outside of the City under one or more of the following:
  - (a) Texas Health and Safety Code;
  - (b) A local law or ordinance adopted in accordance with the Texas Health and Safety Code;
  - (c) A statute or ordinance that is substantially similar to the Texas Health and Safety Code and that was adopted by a political subdivision outside of the State.
- (3) It shall be a separate violation of this Code for any person to refuse or fail to surrender a dog subject to this article, or harbor, hide or secret, transport or secure the transport of a dog subject to this article, for the purpose of preventing its impoundment.

#### F. Requirements for the owner of a dangerous dog.

The owner of a dangerous dog shall pay all costs and/or fees assessed by the Municipality related to the seizure and impoundment of the dog, including, but not limited to, boarding fees, microchip procedure, City license, and rabies vaccination, and the cost of euthanasia of the dog if ordered by the Court. Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

- (1) Registration. Register the dangerous dog with the Animal Control Authority and pay an annual registration fee in the amount established by the authority;
- (2) Liability insurance. Obtain and maintain liability insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the Animal Control Authority;

- (3) Microchip implant. Implant and maintain a microchip on the dangerous dog. The dog's microchip shall be registered with a national registry. The cost of the national registry service shall be at the owner's expense;
- (4) (4)Required leash and collar. Restrain the dangerous dog on a leash and collar issued or approved by the City to ensure, among other things, the visibility of the dangerous dog when out in public, the security of the leash, the length of the leash, and the overall safety of the general public. Collars shall be worn by dangerous dogs at all times and collars shall remain visible at distances of at least 50 feet in normal daylight so that the dog can be readily identified as dangerous;
- (5) Physical control. Be in physical control of the dangerous dog when restrained on a leash and the person in physical control of the leash must be at least 17 years of age;
- (6) Required muzzle. Secure the dangerous dog with a muzzle in a manner that will not cause injury to the dog nor interfere with its vision or respiration but shall prevent it from biting any person or animal when the dangerous dog is taken off the property of the owner for any reason;
- (7) Secure enclosure. Restrain the dangerous dog at all times in a secure enclosure, as defined herein, when the dangerous dog is not restrained on a leash. The enclosure shall be posted with signs on all sides in four-inch letters warning of the presence of a dangerous dog and shall include a symbol of dangerous dogs understandable by young children;
- (8) Spay or neuter. Surgically spay or neuter the dangerous dog and show proof of such to the Animal Control Authority;
- (9) Rabies vaccinations and licenses. Maintain current rabies vaccinations and proper licenses on dangerous dogs;
- (10) Change of Ownership/Address or Deceased. Notify the Animal Control Authority within 14 days of a change of ownership or change of address of the dangerous dog or that the dangerous dog is deceased;
- (11) Notifications to third parties. Notify any boarding facility, caretaker, veterinary clinic, or animal trainer that the dog is dangerous before going to such location or person and shall notify the Animal Control Authority of the same;

#### **X. FERAL CAT COLONIES, KENNELS, FEEDLOTS OR BREEDERS**

An owner or responsible party shall register and receive a permit from the City to operate a Feral Cat Colony, Kennel, Feedlot, or as a Breeder. Permits for such activities and businesses shall be issued only in accordance with state law, the City's zoning and land use regulations, and this Ordinance.

- (1) Applications for permits shall be submitted to the City and must include the following information in addition to the information required by the animal registration process as established herein:
  - (a) The total number of animals sought to be included under the permit;
  - (b) the species, breed, gender, and age of each animal;
  - (c) A statement affirming that the applicant is familiar with the provisions of this Ordinance and a promise to maintain all animals in accordance with all state and local applicable legal requirements; and
  - (d) Any other information the City reasonably determines is necessary to issue a permit.

(2) Fees.

The applicant shall pay an application fee as well as registration and application fees as established by the City.

(3) Applicant Requirements.

- (a) The Owner, applicant, and responsible party cannot have been convicted of one or more violations of this Ordinance or of any law relating to the care and humane treatment of animals nor has failed to appear in court in response to such a charge within the past 12 months from date of application;
- (b) The Owner, applicant, or responsible party cannot have had a permit under this Ordinance previously revoked within the past 12 months from the date of application; and
- (c) The address to which the permit relates is not the same as one for which a permit has been revoked within the past 12 months.

(4) Revocation of Permit. A permit may be revoked in the event one or more of the following occur:

- (a) The application is incomplete, false or inaccurate;
- (b) The permit holder is convicted, receives deferred adjudication, or pleads guilty or no contest with respect to one or more sections of this Ordinance or any law relating to the care and humane treatment of animals or fails to appear in court to respond to such a charge; or
- (c) The Animal Control Authority determines that specific circumstances exist indicating that it is in the best interests of the health and safety of the public to revoke the permit.

## **XI. LIVESTOCK, FOWL, EXOTIC ANIMALS AND WILD ANIMALS**

### **A. Keeping of domestic livestock.**

Keeping domestic livestock is allowed in accordance with the zoning land use regulations of the City, as may be amended from time to time. When allowed pursuant to the zoning land use regulations of the City, the following additional requirements apply for domestic livestock:

- (1) Distance requirements. The structure or enclosure within which the livestock may be confined shall be not less than 100 feet from any structure used for human occupancy, except the dwelling occupied by the owner or responsible party of the domestic livestock.
- (2) Contact information. The owner of the livestock shall post their contact information or the information of the responsible party at all entrances to the livestock enclosure, including their name, address, and telephone numbers.

### **B. Fowl.**

It shall be the duty of the person owning, or having management or control of, any fowl, including, but not limited to, ducks, pheasants, quail, peacocks, doves, parrots, tropical birds, falcons, hawks, and similarly feathered animals, to keep same enclosed upon the person's premises in such manner that such

birds cannot go upon the public streets, highways, alleys, rights-of-way, parks or parkways of the City, or upon the private property of others unless first obtaining written permission from the property owner.

- (1) Any enclosure that houses fowl must be at least 50 feet from any dwelling other than the dwelling occupied by the owner or responsible party of the fowl according to the following provisions:

- (a) Any enclosure at 50 to 100 feet may house up to 6 fowl.

- (b) Any enclosure greater than 100 feet may house up to 12 fowl.

#### C. Hogs and Pigs Prohibited.

- (1) It shall be unlawful for any person to own, maintain, and keep any hog or pig within the City except for pot-bellied pigs or unless they are a registered breeder or feedlot in accordance with the zoning land use regulations of the City.

- (2) Pot-bellied pigs. Pot-bellied pigs are permitted to be in the City in accordance with the following provisions:

- (a) Pot-bellied pigs are permitted in only residentially or agriculturally zoned districts;

- (b) No more than two pot-bellied pigs may be kept on any one parcel or tract of land;

- (c) No such pigs may be bred without proper registration;

- (d) All pot-bellied pigs in the City shall be spayed or neutered, as applicable;

- (e) All pot-bellied pigs must have their tusks either surgically removed or trimmed so as to be blunted at all times.

#### D. Ostriches, Emus, and Rheas Prohibited.

Notwithstanding any provision to the contrary, it shall be unlawful for any person to maintain and keep any ostrich, emu, or rhea within the City limits except as a registered feedlot or breeder in accordance with the zoning land use regulations of the City.

#### E. Exotic Animals.

Unless expressly prohibited elsewhere in this Ordinance, exotic animals, including exotic livestock, shall be allowed in accordance with applicable laws, including zoning and land use regulations, provided they are vaccinated against communicable diseases and in accordance with general guidelines from the American Veterinary Medical Association.

## **XII. VARIANCES**

#### A. Authority to Grant Variances.

The City Council may grant a variance from the requirements of this ordinance. A variance may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety, welfare, and comfort may be secured, and substantial justice done. Pecuniary hardship to the applicant or owner, standing alone, shall not be deemed to constitute undue hardship. In granting a

variance, the City Council shall prescribe only to conditions that it deems necessary or desirable in the public interest.

#### B. Application Required.

All persons seeking a variance from this Ordinance are required to file an application with the City as follows:

- (1) The applicant shall submit to the City a preliminary application, on the City's form if available, and an application fee with a written explanation for each variance that is being requested by the applicant;
- (2) City staff shall determine if any additional variances are needed in reviewing the application and shall notify the applicant; and
- (3) The applicant shall submit to the City a final application, including a written explanation for each additional variance identified by City staff and any other additional documentation requested or recommended by City staff, along with the appropriate filing fee for each variance request as established by the City and set forth in the City's Fee Schedule. The City Council shall not consider any action on the final variance application until the fee for each variance requested has been paid.

#### C. Application Review Process.

A complete final application will be placed on the next regular Planning and Zoning Commission (the "P&Z") agenda per the City's agenda policy. The P&Z shall review the application and provide a recommendation to the City Council. After P&Z review, the application will be placed on the next regular City Council agenda per the City's agenda policy. At the City Council meeting a determination will be made as to each variance requested in the application based upon the findings as herein established.

#### D. Findings Required for Variances.

No variance shall be granted unless the City Council makes an affirmative finding as to all of the following:

- (1) That the granting of the variance will not be detrimental to the public health, safety, welfare, or comfort of other citizens or the public;
- (2) That granting the variance will not be injurious to other persons or property in the area; and
- (3) That the granting of the variance will not have the effect of preventing the orderly enforcement of this Ordinance or other ordinances on other persons or property.

In making the findings herein required, the City Council shall take into account the nature of the proposed variance, the potential impact, the existing animals, the daily residential or business populations, and the probable effect of such variance upon the public health, safety, convenience, welfare, and comfort in the City.

The findings of the City Council, together with the specific facts upon which such findings are based, shall be incorporated into the minutes of the City Council meeting at which each variance is granted.

#### E. Effect of Granted Variance.

An applicant shall not need to submit multiple variance applications for subsequent or parallel variance requests. Variances may be granted with conditions and restrictions, including but not limited to, expiration dates, and the applicant's or owner's continued ownership. A variance shall act as a permit and

be issued to only the current owner as the applicant, and only so long as the requested variance actions/activities continue.

### **XIII. ENFORCEMENT AND REMEDIES**

#### **A. Civil Legal Action.**

The City Attorney shall, when directed by the City Council, institute appropriate legal action in a Court of competent jurisdiction to enforce the provisions of this Ordinance or the standards referred to in this Ordinance with respect to any violation thereof that occurs within the City, within the extraterritorial jurisdiction of the City, or within any area subject to all or part of the provisions of this Ordinance.

#### **B. Criminal Penalty.**

Any person, corporation, or agency violating any provision of this Ordinance shall be guilty of a misdemeanor, and, upon conviction shall be fined an amount not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00). Each day that such a violation continues shall be a separate offense. Prosecution or conviction under this provision shall never be a bar to any other remedy, abatement, or relief for violations of this Ordinance.

#### **C. Remedies Non-Exclusive.**

The Enforcement provisions of this Ordinance are not exclusive. Furthermore, the city shall have all other rights and remedies with regard to nuisances, including, but not limited to, abatement, fine, and civil remedies pursuant to state law and other City ordinances.

Any actions by the City pursuant to this Ordinance shall not be deemed as a limitation upon the City to enforce this Ordinance.

### **XIV. IMPLEMENTATION**

#### **A. Savings Clause.**

This Ordinance shall remain in full force and effect until repealed, save and except as amended.

#### **B. Severability.**

If any provision, section, clause, sentence, or phrase of this ordinance is for any reason held to be unconstitutional, void, invalid, or un-enforced, such judgment shall not affect, impair, or invalidate the remaining provisions of this ordinance, but it shall be confined in its operation to the specific sections, sentences, clauses or parts of this ordinance held invalid, the invalidity of any section, sentence, clause or part of this ordinance in one or more instances shall not affect or prejudice in any way the validity of this ordinance in other instances, and the validity of the remainder of this ordinance or its application shall not be affected.

#### **C. Repealer.**

All other ordinances, sections, or parts of ordinances heretofore adopted by the City in conflict with the provisions set out in this Ordinance are hereby repealed or amended to the extent of such conflict.

D. Open Meeting.

This Ordinance was adopted at an open meeting of the City Council that was properly noticed under the laws of the State of Texas.

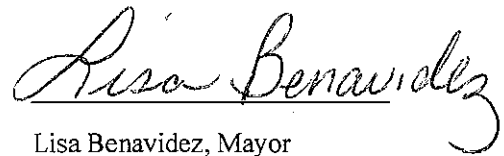
E. Publication.

The City Secretary is directed to cause this Ordinance caption to be published in a newspaper of general circulation according to the laws of the State of Texas.

F. Effective Date.

This ordinance shall become effective immediately after publication in accordance with state law.

PASSED AND APPROVED this 21 day of February, 2023 or 24

  
Lisa Benavidez, Mayor

ATTEST:

  
Scott Jewett, City Secretary

