

**ORDINANCE NO. 2022 - 335**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEVERS, TEXAS, REGULATING ANIMALS AND DANGEROUS DOGS WITHIN THE CITY**

**WHEREAS**, the City of Devers (the “City”) is a Type B, general law municipality that has the authority to regulate animals within the city limits; and

**WHEREAS**, Chapter 822 of the Texas Health and Safety Code governs dangerous animals within the state; and

**WHEREAS**, the City Council of the City of Devers finds it to be in the best interest of the citizens of Devers to regulate dangerous dogs within the city.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEVERS, TEXAS THAT:**

**SECTION 1.** The statements provided in the caption and the recitals are true and correct and are incorporated herein and made a part of this Ordinance.

**SECTION 2.** The City of Devers hereby adopts an animal control ordinance to regulate dangerous dogs as set forth below.

**DIVISION 1. GENERAL**

- I. **Definitions** – The following words and phrases shall have the definitions set forth below.

*Adequate shelter* means a sturdy structure:

(A) that provides the dog protection from inclement weather; and

(B) with dimensions that allow the dog while in the shelter to stand erect, sit, turn around, and lie down in a normal position.

*Animal* includes all living non-human creatures, domestic or wild, including livestock.

*Animal control officer* means the individual appointed by the Devers City Council to act in that capacity, any peace officer with jurisdiction within the City of Devers, or any officer the city contracts with to provide animal control services.

*Animal shelter* means a licensed animal shelter that the City of Devers contracts for usage of.

*At large* means not under restraint.

*Attack* means an unprovoked attack in an aggressive manner on a human in which the victim suffered a scratch, abrasion, bruise, or other physical injury; or on a domestic animal that causes death or injury that requires veterinary treatment.

*Confined* means securely confined indoors, or within an automobile or other vehicle solely for transportation and transported in a humane manner or confined in a securely enclosed and locked pen or structure or fence, electronic or otherwise, upon the premises of the owner of such animal. However, under no circumstances is an electronic or similar fence sufficient to confine an animal in heat or a vicious dog.

*Dangerous dog* means an animal that:

- (1) Makes an unprovoked attack on a person or another dog that causes bodily injury and occurs 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; 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.

*Dog* means a domesticated animal that is a member of the canine family.

*Guard or attack dog* means a dog trained to attack on command or to protect persons or property by attacking or threatening to attack, and who will cease to attack upon command.

*Impoundment* means the taking into custody of an animal by any police officer, animal control officer, or any authorized representative thereof.

*Kennel* means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs, puppies, cats, kittens or any other animal typically kept on such premises.

*Muzzle* means a device constructed of strong, soft material or metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or animal. Such device shall not interfere with the animal's ability to breathe.

*Owner* means any person having a right of property in an animal, or who keeps or harbors an animal or who has it in his or her care, or acts as its custodian, or who permits an animal to remain on or about the person's premises. If an animal has more than one owner, all owners are jointly and severally liable for the acts or omissions of an owner.

*Quarantine* means the humane confinement of an animal for the observation of symptoms for rabies, or other disease, in a secure enclosure that prevents the animal from coming into unplanned contact with any other animal or human being.

*Secure enclosure* means a fenced area that is:

- (1) Locked;
- (2) Capable of preventing the entry of the general public, including children;
- (3) Capable of preventing the escape or release of a dog;
- (4) Clearly marked as containing a dangerous dog;
- (5) Constructed with vertical boards six feet in length or higher if deemed appropriate by the animal control officer based upon the size of the dog to be kept in the fenced area and its anticipated ability to escape;
- (6) A structure or pen built upon a concrete slab with four sides and a top located in a fenced area at least five feet from the fence; or
- (7) A residential dwelling with all doors and windows closed.

*Serious bodily injury* means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization, without regard to whether the person actually sought medical treatment.

*Severe attack* means an unprovoked attack upon a human being in which the victim suffered a severe bite or was shaken violently, and which causes serious physical trauma or death.

*Shelter* means a clean and sturdy structure that provides an animal with protection from rain, hail, sleet, snow, subfreezing temperatures, sun and excessive heat and is large enough to allow the animal to stand erect, sit, turn around, and lie down in a normal manner.

*Unprovoked* means with respect to an attack or attempt to attack by a dog, means that the dog was not hit, kicked, or struck by a person with any object or part of the attacked person's body nor was any part of the body pulled, pinched, or squeezed or in any other manner provoked by the person attacked.

*Wild animal* means any live monkey, non-human primate, raccoon, skunk, deer, wildcat, possum, fox, leopard, panther, tiger, lion, lynx, bear, or any other warm-blooded animal that can normally be found in the wild state, and poisonous snakes and reptiles. The term "wild animal" does not include domestic dogs (excluding hybrids with wolves, coyotes, or jackals), domestic cats (excluding hybrids with ocelots or margays), livestock, rodents, nonpoisonous snakes and reptiles, and captive-bred species of common cage birds.

## **II. Penalty.**

Failure to comply with any provision of this chapter shall constitute a violation. Upon conviction, a person violating any provision of this chapter shall be fined in an amount not less than \$1.00 nor more than \$500.00. Each day a violation of any provision contained herein exists shall constitute a separate offense.

### **III. Right of Entry of Animal Control Officer.**

The animal control authority shall have authority, in accordance with the provisions of chapter 821 of the Texas Health and Safety Code, to obtain a warrant for seizure and impoundment of any animal the subject of an investigation for cruel treatment as defined by chapter 821 of the Texas Health and Safety Code, pending a hearing and order by the judge of the municipal court or other court of competent jurisdiction regarding disposition of the animal. Procedures regarding the disposition of the animal(s) shall be in accordance with the provisions of this chapter and chapter 821 of the Texas Health and Safety Code.

In the event the owner of a dangerous animal fails to deliver the animal to the animal control authority as required by this chapter, the animal control authority shall request from the municipal court the issuance of a warrant for seizure of the animal.

### **IV. Interference with Animal Control Officer**

It shall be unlawful for any person to interfere with, hinder or molest the animal control officer or their assistants in execution or performance of their duty under the provisions of this chapter.

### **V. Keeping Wild Animals.**

It shall be unlawful for any person to own or possess a wild animal within the city limits; provided, however, wild animals may be kept for exhibition purposes by circuses, zoos and educational institutions in accordance with all laws and regulations.

### **VI. Confinement of Certain Dogs.**

It shall be unlawful for the owner or any person in control of any dog of dangerous or vicious propensities, or any female dog in heat, to allow the dog to be upon any public street, highway, alley, court, square, park, sidewalk or other public ground or public property within the city.

Any dog that is found in violation of this section may be impounded by the city's animal control officer. Dogs impounded in the city's animal shelter shall be kept until retrieved by their owner, unless otherwise discussed in this ordinance. If the dog is not retrieved by its owner within five (5) days, the animal shall become the property of the city and it may be destroyed or placed for adoption.

### **VII. Basic Care for Dogs and Cats**

It shall be unlawful for the owner or custodian of any dog or cat to refuse or fail to provide such dog or cat with sufficient wholesome and nutritious food, potable water, veterinary care when needed to prevent suffering, humane care and treatment, and adequate shelter to protect such animal from hot, stormy, cold or inclement weather.

### **VIII. Refusal to quarantine or to deliver to humane officer.**

Any person who shall refuse to voluntarily quarantine his dog or cat upon notification by the humane officer of the necessity therefor, or who shall refuse to deliver any unvaccinated animal or other animal subject to impoundment under this article to the humane officer or any of his deputies, upon demand for impounding, shall be deemed guilty of a misdemeanor.

## **Division 2. DANGEROUS DOGS.**

### **IX. Requirements for Owner**

- (a) Not later than the 30th day after a person learns that he or she is the owner of a dangerous dog, the person shall:
  - (1) Register the dangerous dog with the City;
  - (2) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;
  - (3) Muzzle the dog when it is outside the secure enclosure;
  - (4) Obtain 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;
  - (5) Have the dangerous dog spayed or neutered.
- (b) For the purposes of this section, a person learns that he or she is the owner of a dangerous dog when:
  - (1) The owner knows of an attack described in the definition of "dangerous dog" hereinabove; or
  - (2) The owner is informed by the animal control officer that the dog is a dangerous dog.
- (c) If a person reports an incident described by in the definition of "dangerous dog" hereinabove, the animal control officer shall investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control officer determines the dog is a dangerous dog, he or she shall notify the owner of that fact in writing by certified mail or by delivering said notice to the owner by the animal control officer.
- (d) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the person is a dangerous dog, may appeal the determination of the animal control officer to the municipal court or any court with jurisdiction over the matter. An owner may appeal the decision of the court in the same manner for other civil cases. At a hearing, all interested parties shall be given the opportunity to present evidence on the issue of the dog's dangerousness. Criteria to be considered in the hearing shall include but not be limited to the following:
  - (1) Provocation;
  - (2) Severity of attack or injury to a person or animal;
  - (3) Previous aggressive history of the dog;
  - (4) Observable behavior of the dog;

- (5) Site and circumstances of the incident; and
- (6) Statements from interested parties.

#### **X. Registration**

- (a) The City shall annually register a dangerous dog if the owner presents proof of liability insurance or financial responsibility, current rabies vaccination, and proof of sterilization of the dangerous dog, and has a secure enclosure in which the dangerous dog will be kept that is inspected and approved by the animal control officer.
- (b) The owner of a dangerous dog shall pay an annual registration fee as set by the city council.
- (c) The animal control officer shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar. The collar must be fluorescent orange.
- (d) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control officer for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee, the animal control officer shall issue a new registration tag to be placed on the dangerous dog's collar.
- (e) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

#### **XI. Attack by Dangerous Dogs**

A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person. If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by the animal control officer or a licensed veterinarian.

#### **XII. Defenses**

- (a) It is a defense to prosecution under this division that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.
- (b) It is a defense to prosecution under this division that the person is an employee of the institutional division of the state department of criminal justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.
- (c) It is a defense to prosecution under this division that the person is a dog trainer or an employee of a guard dog company under the Private Security Act (V.T.C.A., Occupations Code, chapter 1702).

**XIII. Seizure of dog causing death of or serious bodily injury to person.**

(a) The municipal court shall order the animal control officer to seize a dog and shall issue an order authorizing the seizure:

(1) On the sworn complaint of any person, including the city attorney, animal control officer, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

(2) On a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person stated in the complaint.

(b) The animal control officer shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) Any expense associated with seizure of a dog under this section shall be the responsibility of the owner.

(d) The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the tenth day after the date on which the order of seizure is issued.

(e) The court shall give written notice of the time and place of the hearing to:

(1) The owner of the dog or the person from whom the dog was seized; and

(2) The person who made the complaint.

(f) Any interested party, including the city attorney, is entitled to present evidence at the hearing.

(g) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) Its owner;

(2) The person from whom the dog was seized; or

(3) Any other person authorized to take possession of the dog.

(h) The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) Its owner;

(2) The person from whom the dog was seized; or

(3) Any other person authorized to take possession of the dog.

- (i) The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person and:
  - (1) The dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:
    - a. The enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dog; and
    - b. The injured person was at least ten years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred.
  - (2) The dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least ten years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;
  - (3) The attack, bite, or mauling occurred during an arrest or other action of peace officer while the peace officer was using the dog for law enforcement purposes;
  - (4) The dog was defending a person from an assault or person's property from damage or theft by the injured person; or
  - (5) The injured person was younger than ten years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than ten years of age from entering.

#### **XIV. Destruction of dog causing death of or serious bodily injury to person**

- (a) The destruction of a dog under this division must be performed by:
  - (1) A licensed veterinarian;
  - (2) Personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or
  - (3) Personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.
- (b) The city will destroy the carcass of a dog destroyed under this section.
- (c) Any cost associated with the provisions of this section shall be the owner's responsibility.

#### **XV. Rabies Control**

The City of Devers hereby adopts all state laws and regulations regarding rabies control for dogs and cats.

**SECTION 3.** This Ordinance shall become effective in accordance with the laws governing ordinances. The City Secretary is authorized to publish a summary of the Ordinance along with the penalty in accordance with the City of Devers' Code of Ordinances and State law.

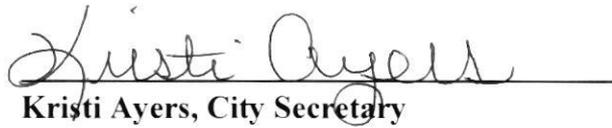
**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Devers, Texas this the 16<sup>th</sup> day of August, 2022.



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**STEVEN HORELICA, MAYOR**

**ATTEST:**



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**Kristi Ayers, City Secretary**