

ORDINANCE B-749-06

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS, REPEALING CHAPTER 3 OF THE BURLESON CITY CODE AND REPLACING IT IN ITS ENTIRETY; REPEALING SECTION 34-192 (3) OF THE BURLESON CITY CODE; ESTABLISHING REGULATIONS RELATING TO THE CARE AND CONTROL OF ANIMALS TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF BURLESON; PROVIDING THAT THIS ORDINANCE BE CUMULATIVE OF ALL OTHER ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATION OF THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council ("City Council") of the City of Burleson, Texas ("Burleson") finds that it will be advantageous, beneficial and in the best interest of the citizens of Burleson to amend Chapter 3, "Animal Care and Control" of the Burleson City Code, as provided below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS:

SECTION 1.

Chapter 3, "Animal Care and Control" of the Burleson City Code is amended to read as follows:

CHAPTER 3 ANIMAL CARE AND CONTROL

Sec. 3-1. Definitions.

Adult dog/cat shall mean any dog or cat four months of age or older.

Animal shall mean any living creature, including but not limited to, dogs, cats, pigs, horses, birds, fish, mammals, reptiles, insects, fowl and livestock, but specifically excluding humans.

Animal Control Authority shall mean the Animal Services Division of the City or its designee as determined by the City Council of the City of Burleson, which is authorized to represent and act for Burleson to receive reports of animal nuisances, animals at large, animal bites, and other animal matters, and to investigate bite reports, ensure quarantine of possibly rabid animals, carry out provisions of Texas law pertaining to control and eradication of rabies and otherwise enforce the provisions of this Chapter.

Animal Shelter shall mean any facility designated and/or operated by the City of Burleson for the purpose of impounding and caring for animals held under authority of this Chapter.

At Large shall mean any animal of any family or breed, other than a cat, which is:

1. *On premises of owner* and not confined to premises of owner by a building, wall, or substantial fence of sufficient strength, height and construction to prevent the animal from escaping therefrom, or secured on the premises, as described in Section 3-9 D of this Chapter, by a chain or leash sufficient in strength to prevent the animal from escaping the premises and so arranged that the animal will remain on the premises when the leash or chain is stretched to full length.
2. *Off premises of owner and is not either:*
 - a) Confined within the animal owner or handler's vehicle in such a manner as to preclude the animal from making any unsolicited contact with any person or their property, provided such confinement is in accordance with Section 3-9, J of this Chapter, or
 - b) Otherwise restrained by means of a leash or chain, as described in Section 3-9, D of this Chapter, or by other physical apparatus of sufficient strength and length to preclude the animal from making any unsolicited contact with any person or their property.

At Large Cat shall mean any cat which is off the premises of its owner and not secured within a vehicle and/or restrained by means of a crate, carrier, leash, or other physical apparatus to preclude the animal from making any unsolicited contact with any person, their clothing, their property, and/or their premises. Any cat intruding upon the property of any person other than the cat's owner shall be deemed at large.

Bodily Injury shall mean physical pain, illness, or any impairment of physical condition.

Cat shall mean a domesticated member of the Family Felidae (felis catus).

City shall mean the City of Burleson municipal government.

City Limits shall mean the corporate city limits of Burleson, Texas.

Cruel treatment shall mean any treatment to any animal in violation of the Texas Penal Code.

Currently Vaccinated shall mean vaccinated for rabies and satisfying the following criteria:

1. The animal must have been at least three months of age at the time of the rabies vaccination;
2. Not more than 12 months must have elapsed since the most recent rabies vaccination.

Dangerous Animal shall mean an animal that:

1. makes an unprovoked attack on a person or other domestic animal that causes serious bodily injury or death; or
2. is not in a secure enclosure or safely restrained as described in Section 3-9 D of this Chapter, and acts, unprovoked, in such a way as to cause a person to reasonably believe that the animal will attack and cause bodily injury, serious bodily injury, or death to that person or another domestic animal.

Dangerous Wild Animal shall mean an animal of a species, other than a common domestic species, that poses a potential physical or disease threat to the public regardless of state and duration of captivity, including but not limited to the following:

1. *Class Reptilia:* Family Helodermatidae (venomous lizards); Family Viperidae (rattlesnakes, copperheads, cotton mouths, other pit vipers and true vipers); Family Elapidae (coral snakes, cobras, mambas and other Elapid); the following listed species of Family Colubridae – Dispholidus typos (Bloom slang), Hydrodynastes gigas (water cobra), Boiga (mangrove snake) and Thelotornis (African twig snake) only; Order Phidia, Family Doidae (racers, boas, water snakes and pythons) and Order Crocodilia (crocodiles, alligators, caimans and gavials);
2. *Class Aves:* Order Falconiforms (such as hawks, eagles and vultures); Subdivision Ratitae (such as rheas, and cassowaines); and Order Sting forms (such as owls);
3. *Class Mammalia:* Order Carnivora, Family Felidae (such as lions, cheetahs, bobcats, lynxes, servals, caracals, ocelots, margays, tigers, jaguars, binturongs, leopards and cougars), except commonly accepted

domesticated cats; Family Canidae (such as wolves, dingoes, hyenas, coyotes, jackals or hybrids thereof), except domesticated dogs; Family Mustelidae (such as weasels, skunks, martins, mink and badgers), except ferrets; Family Procyonidae (raccoon); Family Ursidae (such as bears); Order Marsupialia (such as kangaroos and common opossums); Order Edentata (such as sloths, anteaters and armadillos); Order Proboscidae (elephants); Order Primata (such as monkeys, chimpanzees, orangutans, and gorillas); and Order Ungulata (such as antelope, deer, bison and camels, except where harbored on property which is zoned for Agricultural use and is at least five (5) acres); and

4. *Other dangerous animals not listed:* The animal control authority may declare any species of animal not listed in this definition as prohibited if the confinement of the animal within Burleson can be shown to constitute a threat to public health and/or safety.

Dog shall mean any domesticated member of the Family Canidae, but shall not include a wolf, jackal, coyote, fox or other dangerous wild animal of this family or hybrid thereof.

Fowl shall mean chickens, turkeys, pheasant, quail, geese, ducks, ostriches, emus, pigeons, or similar feathered animals regardless of age, sex or breed.

Hybrid shall mean the product of mating two different species of animal regardless of the number of generations born since that original mating.

Kennel shall mean any premises where any person engages in the business of boarding, breeding, buying, letting for hire, or selling dogs, cats, or other animals and that is located within the corporate limits of the City of Burleson on property zoned to allow such use as outlined in the City's zoning regulations.

Livestock shall mean horses, mules, donkeys, cattle, goats, sheep, emus, and ostriches, and any member of the Order Ungulata (such as antelope, deer, bison and camels) regardless of age, sex, size or breed.

Microchip shall mean an identification chip implanted under the skin of an animal for the purpose of identifying its owner.

Nuisance animal shall mean any animal which negatively impacts the health, safety, property, or environment of another animal or person, including, but not limited to, any animal which:

1. molests passersby or passing vehicles;
2. attacks other domestic animals;
3. trespasses on school grounds;
4. is repeatedly at large;
5. climbs upon a motor vehicle belonging to another;

6. damages private or public property not belonging to the animal's owner;
7. barks, whines, or howls in an excessive, continuous, or untimely fashion;
8. tears, punctures, or otherwise opens refuse containers, causing their contents to be emptied or exposed to the elements;
9. causes fouling of the air by odor, thereby creating an unreasonable annoyance or discomfort to a person of ordinary sensibilities in close proximity to the premises where the animal is kept or harbored, or
10. defecates on any property except that belonging to the animal's owner
11. interferes with refuse collection or other service personnel.

Owner shall mean any person, firm or corporation that has a right of property in an animal or that has care, control, custody or possession of an animal or that provides a premise to which the animal returns for food, shelter or care for a period of three consecutive days.

Performing animal exhibition shall mean any spectacle, display, or act or event other than circuses in which animals perform tricks, feats, or other exhibitions of training.

Person shall mean any individual, firm, association, syndicate, partnership, corporation, or other entity.

Pet shop shall mean an establishment offering small animals such as dogs, cats, birds, fish, ferrets, and similar animals which are not dangerous wild animals or livestock, for sale, and that is located within the corporate limits of the City of Burleson on property zoned to allow such use as outlined in the City's zoning regulations.

Registration shall mean the requirement for all dogs and cats and any animal declared to be dangerous to be registered annually with the City of Burleson, for all relevant fees to be paid, and for all animals to be wearing appropriate City-issued registration tag(s).

Secure enclosure shall mean a fenced area that is locked; capable of preventing the entry of the general public, including children; capable of preventing the escape or release of an animal; and, if applicable, clearly marked as containing a dangerous dog.

Serious bodily injury shall mean an injury characterized by bite wounds or ripping and tearing of muscle and/or bodily tissues 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.

Service personnel shall mean any person providing legitimate, authorized service to a property including, but not limited to, public safety personnel; utility

technicians; letter carriers, couriers, or delivery personnel; plumbers, electricians, lawn maintenance workers, pest control professionals, or contractors; and others in comparable service professions.

Spay or neuter shall mean a medical procedure removing the reproductive organs or otherwise rendering a dog or cat unable to reproduce.

Swine shall mean pigs, hogs, potbellied pigs, or any member of the family Suidae.

Unprovoked shall mean the animal was not hit, kicked, struck, pulled, pinched, squeezed, etc. by a person or an object, and the animal was not provoked or taunted in a manner that an ordinary person would find unreasonable or objectionable.

Vaccinated shall mean properly injected with a rabies vaccine licensed for use in that species by the United States Department of Agriculture and administered by a veterinarian licensed to practice in the State of Texas.

Sec. 3-2. Rabies Control.

- A. *Vaccinations.* An owner of a dog, cat, or other animal for which a rabies vaccination is commonly given shall keep the animal currently vaccinated against rabies. Any person moving into Burleson from a location outside of Burleson shall comply with this Section within ten days after moving into Burleson, except when the animal has inflicted a bite on a human within the previous ten days. In such case, the owner of the animal shall report the bite to the veterinarian and the Burleson animal control authority within twenty-four (24) hours of the animal's arrival in the Burleson city limits. No rabies vaccine shall be administered until after the ten-day observation period.
- B. *Certificate of vaccination.* Upon vaccination, the veterinarian shall execute and furnish to the owner of the animal as evidence thereof a vaccination certificate on a form furnished by the veterinarian. The veterinarian shall retain a duplicate copy. The certificate shall contain the following information:
 1. The name, address and telephone number of the owner of the vaccinated animal;
 2. The date of vaccination;
 3. The year and number of the rabies tag; and
 4. The breed, age, color and sex of the vaccinated animal.
- C. *Rabies tags.*
 1. Concurrent with the issuance and delivery of the certificate of vaccination referred to in section B above, the owner of the animal

shall:

- a) Outfit the animal with a collar or harness, and
 - b) Affix a metal tag, serially numbered to correspond with the vaccination certificate number, bearing the year of issuance and the name and address of the issuing veterinarian to the collar or harness, and
 - c) Require the animal to wear the collar or harness with the attached metal tag at all times.
2. Duplicate tags. In the event of loss or destruction of the original tag provided in subsection (c), the owner of the animal shall obtain a duplicate tag from the veterinarian who administered the vaccination. Vaccination certificates and tags shall be valid only for the animal for which they were originally issued.

D. *Animals exposed to rabies.* Any person having knowledge of the existence of any animal known to have been, or suspected of being, exposed to rabies shall report such knowledge to the animal control authority within twenty-four (24) hours, giving any information which may be required. Any animal that has been, or is suspected of having been, exposed to rabies shall be quarantined in accordance with Texas Health and Safety Code, Chapter 826.

Sec. 3-3. Animal bites to humans.

A. Reporting animal bites.

1. A person having knowledge of an animal bite to a human, except bites by rodents, rabbits, fowl, or reptiles, shall report the incident to the animal control authority as soon as possible, but no later than 24 hours after the time of the incident. The animal control authority will investigate each bite incident.
2. Any person moving into Burleson from a location outside the city limits and owning an animal which has inflicted a bite on any person in the last ten days, shall report such fact to the veterinarian and the Burleson animal control authority within twenty-four (24) hours of the animal's arrival in the Burleson city limits.

B. *Owner responsibility.* If the biting animal is owned, the owner shall place that animal in quarantine, as prescribed in Section 3-4 below, under the supervision of the animal control authority or a licensed veterinarian.

Sec. 3-4. Procedures for animal quarantine.

A. *Disposition of biting animals.* The owner of an animal subject to quarantine pursuant to this Chapter is required to quarantine the animal for a period of not less than ten days confinement from the date of the bite, at the owner's expense. The quarantine may be accomplished by:

1. Quarantine in the animal shelter, supervised by the local animal control authority;
 2. Quarantine at a veterinary clinic, supervised by a licensed veterinarian; or
 3. Home quarantine. The owner of the animal may request permission from the animal control authority for home quarantine, which may be granted if the animal control authority determines that:
 - a) Secure facilities are available at the home of the animal's owner and the animal control authority has approved them;
 - b) The animal is currently vaccinated against rabies as required by state law;
 - c) The nature of the bite is not severe;
 - d) A quarantine fee as specified in the fee schedule is paid to the City;
 - e) The animal has not been running at large at the time the bite occurred;
 - f) The animal has not been quarantined for a previous bite incident; and
 - g) The bite victim agrees to the home quarantine.
- B. *Observation of the animal.* The animal control authority or a licensed veterinarian must observe the animal at least on the first and last days of the quarantine period. If the animal becomes ill during the observation period, the person having possession of the animal shall notify the animal control authority as soon as the animal presents with symptoms of any illness.
- C. *Destruction of animal.* If the biting animal cannot be maintained in secure quarantine, it shall be humanely destroyed and the brain submitted to a Texas Department of State Health Services certified laboratory for rabies diagnosis. The owner of the animal may be requested to reimburse the expense of shipping the brain of the animal.
- D. *Interruption.* A person commits an offense if the person interrupts the observation period by removing an animal from the quarantine facility approved by the animal control authority. Any interruption of the quarantine by any person shall be just cause for seizure and impoundment of the quarantined animal by the animal control authority.
- E. *Release.*
1. An animal that has been quarantined may be released by the local rabies control authority under the following conditions:
 - a) At the end of the observation period, if the owner can provide proof that the animal is currently vaccinated,
 - b) When all applicable fees have been paid; and
 - c) If the animal is not being impounded for legal proceedings.
 2. If, by the end of the observation period, the owner cannot provide proof

that the animal is currently vaccinated, the animal control authority will conditionally release the animal with a voucher for rabies vaccination paid for by the animal's owner. The owner commits an offense if (s)he does not provide proof of vaccination to the animal control authority within one business day of the animal's release from quarantine.

- F. *Dangerous wild animals.* No dangerous wild animal will be placed in quarantine. Any dangerous wild animal involved in a biting incident will be humanely euthanized and the brain shall be submitted to a Texas Department of State Health Services certified laboratory for rabies diagnosis.
- G. *Disposition of unclaimed, quarantined animal.* If the owner of a quarantined animal does not take possession of the animal, it may be disposed of in accordance with Section 3-11, and Texas Code 826.043 (d).

Sec. 3-5. Reserved.

Sec. 3-6. Maximum number of dogs and cats.

- A. Except as provided by this section, no residence within the city shall harbor more than four (4) adult dogs, four (4) adult cats, or four (4) adult dogs and cats in any combination. No residence within the city shall harbor more than one (1) litter of puppies or one (1) litter of kittens at any given time.
- B. *Multi-pet permit.* Any person desiring to keep more than four (4) adult dogs and/or cats or more than one (1) litter of puppies or kittens at a residence may apply with the animal control authority for a multi-pet permit. The applicant shall pay an application fee at the time of filing.
 - 1. The animal control authority is authorized to issue such a permit if the following conditions are met:
 - a) An applicant provides the animal control authority with information concerning the maximum number of animals to be kept at any one time at such premises and a record search indicates that no enforcement action for violations of Chapter 3 of the Code of Ordinances dealing with nuisances has been necessary within the preceding twelve (12) months, and
 - b) The animal control authority inspects the property; inspection to include interviews with occupants of all immediately adjacent properties, and deems it appropriate for housing multiple pets based on criteria including, but not limited to:
 - i. Facilities shall be of sufficient size as to allow each animal to move about freely. Size of the facility shall be in proportion

- to the size of the individual animal's height and weight.
- ii. Adequate food and water must be provided so that each and all animals kept shall be maintained in good health and free of malnutrition and/or dehydration.
 - iii. The said premises shall be kept in a sanitary condition and reasonably free of animal waste, parasites, insects, and flies that could be harmful to the animal's health and/or to the health of the general public.
 - iv. The animals and the facility must be kept free of odor or stench which is offensive to a person of ordinary sensibilities.
 - v. The animals must be maintained in a manner which does not pose a danger to the health of the animals themselves or adjacent animals.
 - vi. The animals must not cause noise which is offensive or disturbing to a person of ordinary sensibilities on adjoining or adjacent premises.
 - vii. All animals must be vaccinated and must wear current tags at all times in accordance with this Chapter.
2. Fees for the issuance of a multi-pet permit shall be set by City Council.
 3. Such permit may be revoked by the animal control authority for cause, including but not limited to, violations of the provisions of Chapter 3 of the Code of Ordinances or the inability of the permit holder to keep the animals in a healthy or sanitary environment.
 4. Multi-pet permits must be renewed annually and each renewal will require inspection and approval by the animal control authority or its designee.
 5. Any person either denied a multi-pet permit, or who has had their permit revoked, may file an appeal with the City Manager. Such appeal must be made in writing within ten (10) days of receiving written notice from the animal control authority of the permit denial or revocation. If no appeal request is filed within the ten-day period, the denial or revocation of the permit becomes final. Upon receiving an appeal, the City Manager or his/her designee shall hold a hearing at a time and place of his/her designation. Based upon the recorded evidence of such hearing, the City Manager or his/her designee shall make a final finding.
 6. *Changes in residence or ownership.* Multi-pet permits are issued for specific owners of a specific property. Application for a new multi-pet permit will be required if:
 - a) The original permit holder moves to a new residence within the city limits and wishes to keep more than four (4) adult dogs/cats or more than one (1) litter of puppies/kittens on the new property, or if
 - b) Ownership of the property for which a permit was originally issued changes and the new owners desire to keep more than four (4)

adult dogs/cats or more than one (1) litter of puppies/kittens.

Sec. 3-7. Kennel/pet shop requirements.

- A. Kennels and pet shops shall be located and operated in accordance with the City's zoning regulations.
- B. *Kennel permits.* Kennels may only be operated within the city limits of Burleson if permitted by the City. The animal control authority is allowed to issue such a permit if:
 - 1. The property and facility are inspected by the animal control authority or its designee and are determined to meet the requirements of this Chapter as regards the care and treatment of animals, nuisance, and the prevention of zoonotic disease.
 - 2. The owner/operator of the kennel has paid the kennel permit fees established by City Council.
 - 3. Kennel permits must be renewed annually and each renewal will require inspection and approval by the animal control authority or its designee.
- C. A kennel permit may be revoked by the animal control authority for cause, including but not limited to, violations of the provisions of Chapter 3 of the Code of Ordinances or the inability of the permit holder to keep the animals in a healthy or sanitary environment.
- D. Kennels and pet shops must be operated and all animals must be cared for in accordance with the Texas Health and Safety Code and this Chapter.

Sec. 3-8. Prohibited animals.

- A. *Dangerous wild animals.* A person commits an offense if the person keeps a dangerous wild animal. It is an affirmative defense to prosecution for this violation that the dangerous wild animal is kept as part of a circus, performing animal exhibition, zoological park, or to individuals keeping wild animals as properly permitted wildlife rehabilitators, as required by state and federal regulations.
- B. *Swine.* A person commits an offense if the person keeps swine on any property within Burleson's corporate limits.
- C. *Livestock and fowl.* Livestock and fowl, that are kept, owned or harbored within a land use zoning classification allowing same shall constitute a nuisance if any such animal is kept, fenced, stabled, or pastured within 100 feet of an occupied building. The term "occupied building" as used herein shall mean a building occupied by any person, other than buildings and structures owned or controlled by the owner of the animals involved.

This subsection does not apply to "occupied buildings" constructed after the keeping of any livestock and/or fowl is in place, or if the land upon which the animals are maintained is zoned "A-Agriculture."

1. Any animal of the Order Ungulata (such as antelope, deer, bison and camels) may not be kept on parcels of land of less than five acres and which are not zoned for agricultural use.
2. The keeping of livestock and fowl within the zoning classification "SFE-Single Family Estate" is prohibited, except horses and mules.
3. Tracts or parcels of land of less than ten acres that are zoned as "SFE-Single Family Estate" may maintain horses and/or mules at a rate of two head for the first full acre under fence and an additional one head per fenced acre thereafter. Pasture fencing must be a minimum of five feet in height at its lowest point and cannot extend into the front yard between the main building structure and the street.
4. Horses and/or mules kept on land zoned as "SFE-Single Family Estate" shall be provided with a minimum of a three-sided roofed shelter, approved by the city, with a minimum of 300 square feet per animal.
5. Pigeons kept for purposes of competition and registered with a recognized association of pigeon fanciers shall be an exception to this section, provided that:
 - a) A person may not keep more than 100 pigeons at one location.
 - b) The enclosure for such birds is maintained in a sanitary and odor-free condition, and is located no less than 50 feet from an adjacent residential or commercial structure, excluding the residence or business of the owner.

Sec. 3-9. Care and humane treatment of animals.

- A. *Use of traps with holding mechanisms prohibited.* A person commits a Class A Misdemeanor offense under Section 42.09 of the Texas Penal Code, if within the city limits, the person sets up or allows to be set up on the person's property a steel jaw trap, a spring trap with teeth or perforated edges on the holding mechanism, or any type of trap with a holding mechanism designed to reasonably ensure the cutting, slicing, tearing or otherwise traumatizing of the entrapped prey.
- B. *Knowing exposure to poison prohibited.* A person commits a Class A Misdemeanor offense under Section 42.09 of the Texas Penal Code if the person knowingly exposes any known poisonous substance, whether mixed with food or not, so that the same may be eaten by any animal, excluding rodentia.
- C. *Care and treatment.* A person commits a Class A Misdemeanor offense under Section 42.09 of the Texas Penal Code if the person:
 1. deprives an animal of sufficient good and wholesome food and/or

- water, adequate shelter and protection from weather, veterinary care, and humane care and treatment; or
 2. beats, cruelly ill-treats, overloads, overworks or otherwise abuses an animal as described in Section 42.09 of the Texas Penal Code, as amended, or causes, instigates or permits any dog fight, cock fight, bull fight, or other combat between animals or between animals and humans; or
 3. abandons any animal in the person's custody.
- D. *Tying dogs and other animals.* A person commits an offense if the person ties or tethers a dog or other animal in an unenclosed front or back yard, or by a fixed point, chain, or tether so as to create, as determined by the animal control authority, an unhealthy situation for the animal or a potentially dangerous situation for a person or another animal. If an animal is tied:
1. The chain or tether must be at least 10 feet long, have swivels at each end, and be attached to a pulley or trolley.
 2. A person restraining a dog with a chain or tether shall attach the chain or tether to a properly fitting collar or harness, not wrap a chain or tether directly around an animal's neck, and not restrain an animal with a chain or tether that weighs more than 1/8 of the animal's body weight.
 3. A restrained animal must have access to water and shelter from the elements, have a chain or tether that does not become entangled, and stay within the owner's property.
- E. *Fences/enclosures.* A person commits an offense if the person keeps a dog or other animal within a fence/enclosure which is in such a state of disrepair that the animal may escape or be injured or may pose a threat to passers by.
- F. *Young rabbits and fowl.* A person commits an offense if the person sells, offers for sale, barter or gives away as toys, premiums or novelties, baby chickens, ducklings or other fowl under three weeks old and rabbits under two months old, unless the manner or method of display is first approved by the animal control authority.
- G. *Dyed Animals.* A person commits an offense if the person colors, dyes, stains or otherwise changes the natural color of any chickens, ducklings, other fowl or rabbits, or possesses, for the purpose of sale or to be given away, any of the above-mentioned animals which have been so colored.
- H. *Animals not to be used as prizes or inducement.* A person commits an offense if the person gives away or auctions any animal as a prize for, or as an inducement to enter any contest, game or competition, or as an inducement to enter a place of amusement, or offer such animal as an

incentive to enter into any business establishment whereby the offer was for the purpose of attracting trade.

- I. *Hunting and trapping.* No person may hunt, trap, wound, kill, maim, torture or otherwise threaten the health and safety of any indigenous wild animal in the city limits of Burleson, excluding the trapping of nuisance wildlife under the authorization and supervision of the animal control authority; also excluding any person who holds a seasonal hunting license for a species for which there exists a hunting season, and that person's hunting activities occur on property which is properly zoned, and property owner's permission has been granted for such activity; or a person holds proper permits issued by the animal control authority or Texas Parks and Wildlife.
- J. *Animals in parked vehicles.* A person commits an offense if the person leaves any animal in any standing or parked vehicle in such a way as to endanger the animal's health, safety or welfare. The animal control authority or peace officer is authorized to use reasonable force to remove an animal from a vehicle whenever it appears the animal's health, safety or welfare is or soon will be endangered, and said animal shall be impounded.
- K. *Seizure.* The animal control authority shall liberally utilize the authority granted by section 821.022 of the Texas Health and Safety Code to seize and impound any animal, if the animal control authority has reason to believe that an animal has been or is being cruelly treated, pending a hearing before the municipal court on the issues of cruelty and disposition of the animal. Seizure of the subject animal prior to receiving a warrant is hereby authorized if such delay endangers the life of or would unreasonably prolong the suffering of the subject animal.
- L. *Displaying for commercial purposes.*
 1. A person commits an offense if the person displays any live animal for a commercial purpose on any roadside, public right-of-way, or commercial parking lot. Commercial purpose shall include, but not be limited to; intent to sell, trade, barter, lease, rent, or give away, any live animal.
 2. A person commits an offense if the person receives any live animal through sale, trade, barter, lease, rent, or give away conducted on any roadside, public right-of-way, or commercial parking lot.

Sec. 3-10. Animals at large.

- A. *Generally.* An owner of any animal commits an offense if the animal is at large. For purposes of this section, an offense occurs without regard to any culpable mental state of the owner and there shall be an irrebuttable

presumption that any animal which is at large shall have become so by the permission of its owner or harborer.

- B. *Confinement during estrus.* Any unspayed female dog or cat in the state of estrus (heat) shall be confined during such period of time in a house, building, or secure enclosure, and such enclosure shall be so constructed that no other dog or cat from outside such enclosure may gain access to the confined animal, other than as intended for planned breeding. Owners not complying may be ordered by the animal control authority to remove the animal in heat to a boarding kennel, veterinary hospital, or animal shelter for the duration of estrus. All expenses incurred as a result of such confinement shall be the responsibility of the owner. Failure to comply with the removal order of the animal control authority shall be a violation of this chapter and the dog or cat may be impounded.
- C. *Impoundment.* The animal control authority is authorized to impound any animal at large.

Sec. 3-11. Impoundment.

- A. *Generally.* Any animal violating any provisions of this Ordinance may be impounded by the animal control authority.
- B. *Complainant.* If any animal named in this chapter is found at large upon the premises belonging to any person other than the animal's owner, the owner or occupant of the premises may confine such animal in a humane manner until he can notify the animal control authority to impound such animal. When so notified, it shall be the duty of the animal control authority to have such animal impounded, as soon as possible, as herein provided.
- C. *Impoundment period.* An impounded animal, including those released from quarantine, shall be kept for three days excluding the date of impoundment, except that any animal wearing a current tag or microchip shall be kept for five days excluding the date of impoundment. In calculating the length of time, the first day after impoundment shall be day one. If the owner of such impounded animal does not timely claim it, disposition will be in accordance with this subsection E below.
- D. *Redemption.*
 - 1. All impounded animals, including those released from quarantine, other than dangerous wild animals, shall be available for immediate redemption by the owner once the owner has presented the City with his/her photo identification and has paid all applicable fees.
 - 2. All animals reclaimed, except dangerous wild animals, shall be, at the owner's expense, microchipped and registered with the microchip company before leaving the animal shelter.

3. An impounded dangerous wild animal shall be available for immediate redemption by the owner or a person designated by the owner, if such owner or person holds a certificate of registration issued by an animal registration agency, as provided in Section 822.103 of the Texas Health and Safety Code, after the owner pays all applicable fees and signs an agreement with the City to immediately transport the dangerous wild animal outside the city limits, not to keep the dangerous wild animal at any time within the city limits, and authorizing the City to humanely destroy the dangerous wild animal if it comes inside the city limits again.

E. *Disposition of unclaimed animals.*

1. Any animal that is not timely claimed by its owner may be adopted, transferred to a nonprofit humane organization, humanely euthanized, or sold, as determined by the animal control authority.
2. All dogs and cats adopted from the Burleson Animal Shelter shall be microchipped and/or registered with the microchip company at the adoptive owner's expense.

F. *Disposal of dangerous wild animals.* Any dangerous wild animal may be immediately, humanely disposed of as deemed appropriate by the animal control authority if the dangerous wild animal cannot be safely impounded.

G. *Baby animals.* Any nursing baby animal impounded without the mother or where the mother cannot or refuses to provide adequate nutrition and the baby animal is suffering may be immediately euthanized or given to a nonprofit humane organization for the purpose of veterinary care, as determined by the animal control authority.

H. *Owner relinquishing responsibility.* An owner who no longer wishes responsibility for an animal may sign a written waiver supplied by the animal control authority allowing the animal to be immediately euthanized in a humane manner, adopted, sold, or care and custody may be transferred to a nonprofit animal welfare organization approved by the animal control authority.

I. *Injured animals.* Any impounded animal that appears to be suffering from injury or illness may be immediately euthanized in a humane manner or care and custody may be transferred to a nonprofit animal welfare organization, approved by the animal control authority, for the purpose of veterinary medical care, as determined by the animal control authority.

Sec. 3-12. Nuisance.

- A. *Offensive odors.* A person commits an offense if the person keeps any animal in such a manner as to endanger the public health, or to annoy a

person of ordinary sensibilities by the accumulation of animal wastes which cause foul or offensive odors or are considered to be a hazard to any other animal or human.

- B. *Animals defecating.* An owner of an animal commits an offense if the person permits, either willfully or through failure to exercise proper care and control, any animal to defecate upon the sidewalk or parkway or any public street, or upon the floor of any common hall in any entrance way, stairway or wall of any public place or building or any private property except the owner's. It shall be an affirmative defense to prosecution under this section if the owner immediately removes any excreta deposited by the owner's animal or the animals are performing in a parade or circus.
- C. *Noise.* A person commits an offense by keeping any animal or bird which, by causing frequent or long, continued noise, shall disturb the comfort of a person of ordinary sensibilities in the immediate vicinity.
- D. *Bees.* The keeping of bees in such manner as to deny the lawful use of adjacent property or endanger personal health and welfare is prohibited.
- E. *Nuisance complaints.*
 - 1. *Generally.* The presence of nuisance animals should be reported to the animal control authority.
 - 2. *Humane Traps.* If a person shall report a nuisance animal, the animal control authority may provide the person a trap to set for the animal. The animal control authority may, upon capture, impound the animal.
 - 3. *Nuisance barking or other animal noise.* Animal noise nuisances should be reported to the animal control authority or police department.
 - 4. In order for someone other than the animal control authority or a peace officer to file a formal complaint regarding an animal-related noise nuisance, that person must:
 - a) In the presence of either an animal control officer or a clerk of the Burleson Municipal Court, complete and sign an official, notarized complaint form, alleging that the animal's owner has committed the crime of violating the City's nuisance code.
 - b) If called, appear in municipal court as a witness on the date specified by the court.

Sec. 3-13. Dangerous animals.

- A. *Nuisance declared.* It is hereby declared to be a public nuisance for an owner to keep a dangerous animal within the city limits unless the owner complies with the requirements of this Section and with Chapter 822, Title 10. Health and Safety of Animals, of the Texas Health and Safety Code, as amended.

- B. *Dangerous animal investigation.* The animal control authority shall investigate all reports of an attack or unprovoked act by an animal.
- C. *Reporting of incident.*
1. A person shall report to the animal control authority within twenty-four (24) hours any incident in which an animal:
 - a) makes an unprovoked attack on a person or another domestic animal that causes bodily injury, serious bodily injury, or death; or
 - b) is not in a secure enclosure or safely restrained as described in Section 3-9 B of this Chapter, and acts, unprovoked, in such a way as to cause a person to reasonably believe that the animal will attack and cause bodily injury, serious bodily injury, or death to that person or another domestic animal.
 2. The animal control authority shall require sworn statements from all victims and witnesses of the unprovoked attack or act.
 3. No animal shall be considered dangerous because it causes bodily injury to another animal if both animals are running at large when the injury occurs or if the injured animal is running at large when the injury occurs.
- D. *Determination and delivery or seizure of dangerous animal.*
1. If the animal control authority determines that the animal is a dangerous animal, the animal control officer shall give the owner written notification of this determination.
 2. The animal control authority shall require the owner to deliver the dangerous animal to the animal control authority not later than five days after the date on which the owner receives the notice that the animal is a dangerous animal. If the owner fails to deliver the animal, the Municipal Court Judge shall order the animal control authority to seize the animal, and the municipal court shall issue a warrant authorizing the seizure.
- E. *Appeal of animal control authority's determination.*
1. The owner may appeal the animal control authority's determination that the animal is a dangerous animal by making a written appeal to the Burleson Municipal Court of record not later than 10 days after the owner receives notice from the animal control authority of the determination that the animal is a dangerous animal.
 2. The Municipal Court of record, upon receiving a written appeal as provided in subsection E, 1 above, shall set a time for a hearing. The hearing must be not later than 15 days after the owner receives notice from the animal control authority of the determination that the animal is a dangerous animal.
 3. The Municipal Court of record shall give written notice of the time and place of the hearing to:
 - c) the owner of the animal;

- d) the person who made the complaint;
- e) all witnesses.
- 4. Any interested party, including the city attorney, is entitled to present evidence at the hearing.
- 5. The Municipal Court of record shall issue its written decision within 10 days after the hearing.

F. *Impoundment of animal pending final determination.*

- 1. Any animal that the animal control authority determines is a dangerous animal shall be impounded in secure and humane conditions by the animal control authority pending final notice, as defined in subsection G, 2 below, regarding whether the animal is a dangerous animal.
- 2. Regardless of whether the animal is ultimately determined to be a dangerous animal, the owner shall pay all costs incurred in seizing and impounding the animal. The owner of a dangerous animal shall pay all costs incurred, if any, in euthanizing the dangerous animal.

G. *Requirements for owner of a dangerous animal.*

- 1. Not later than 10 days after the owner receives final notice that the animal is a dangerous animal, the owner shall:
 - a) obtain a registration certificate and identification tag, numbered and clearly marked with the text "dangerous animal", from the dangerous animal from the animal control authority; said dangerous animal to wear such identification tag at all times;
 - b) at the owner's expense, have the animal microchipped and registered with the microchip company, either through the animal control authority or a licensed veterinarian;
 - c) restrain the dangerous animal at all times on a leash in the immediate control of a person over the age of eighteen or in a secure enclosure that has secure sides and a secure top attached to the sides. Additionally:
 - i. If the pen or structure has no bottom secured to the sides, the ground beneath of the gate shall be secured by embedded posts and the sides must be embedded into the ground no less than one (1) foot, unless such pen has a concrete bottom.
 - ii. If the pen or structure has a concrete bottom, the sides need only be embedded two (2) inches deep into the concrete.
 - iii. All such pens or structures must be adequately lighted and kept in a clean or sanitary condition.
 - iv. Any sanitary enclosure or pen shall be at least two (2) square feet per pound, per animal so confined.
 - v. The structure must be species-appropriate.
 - d) at all times when the dangerous animal is taken off the property of the owner for any reason, secure the dangerous animal with a muzzle in a manner that will not cause injury to the animal nor

- interfere with its vision or respiration but that will prevent it from biting any person or animal;
- e) obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000 to cover damages resulting from an attack by the dangerous animal causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority; and
 - f) spay or neuter the dangerous animal within 30 days of final determination and provide proof of the alteration to the animal control authority within one business day after the surgery is performed, or
 - g) sell, convey or relocate the animal to a person who can comply with the requirements of this Section.
2. For purposes of subsection D, 1, a person receives final notice that the animal is a dangerous animal upon the latest of:
 - a) witnessing or otherwise knowing of an attack described in Section 3-13 C, 1 (a) or (b);
 - b) receiving notice that the animal control authority has determined that the animal is a dangerous animal;
 - c) receiving a written decision from the Municipal Court of record that the animal is a dangerous animal; or
 - d) receiving a final order from an appellate court that the animal is a dangerous animal.
 3. If the owner of a dangerous animal does not comply with subsection G 1, the animal control authority shall humanely destroy the dangerous animal.
- H. *Registration of a dangerous animal.* The animal control authority shall annually register a dangerous animal if the owner presents proof of:
1. Liability insurance or financial responsibility as required in subsection (G);
 2. Current rabies vaccination of the dangerous animal;
 3. The security of the enclosure in which the dangerous animal will be kept; and
 4. Payment of an annual registration fee, as established by City Council, to the City animal control authority.
- I. *Notifications.* The owner of a dangerous animal shall notify the animal control authority within 24 hours if the dangerous animal is at large, unconfined, has attacked a human being or another animal, has died, or has been sold or given away. If ownership of the dangerous animal changes, the former owner shall provide the animal control authority with the name, address, and telephone number of the new owner. If the new owner's address is within the city limits or if the dangerous animal is kept

within the city limits, the animal control authority shall notify the new owner by certified mail, return receipt requested, or in person that the animal has been determined to be a dangerous animal and provide the new owner a copy of the requirements contained in this Section. It shall be unlawful for new owners to fail to comply with any requirements of this section. The same reporting and registration requirements are imposed on any and all subsequent owners of the dangerous animal.

J. *Violations and defenses.*

1. A person who owns a dangerous animal commits an offense if:
 - a) the person fails to comply with any provision of this Section;
 - b) the dangerous animal makes an unprovoked attack on another person or domestic animal outside the animal's enclosure and causes bodily injury to the other person or domestic animal.
2. An offense under this section is a Class C misdemeanor, unless it is an attack by a dangerous dog, under J 1(b) above, that causes serious bodily injury or death to a person, in which event such attack by a dangerous dog is a Class A misdemeanor as provided by Section 822.044 of the Health and Safety Code.
3. It is a defense to prosecution under this section that:
 - a) the person is a veterinarian, a peace officer, or a person employed by the State, City, or a recognized animal shelter for the purpose of handling stray animals; has temporary ownership, custody, or control of the animal; and is acting within the course and scope of the person's official duties;
 - b) the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency; trains or uses animals for law enforcement or corrections purposes; and is acting within the course and scope of the person's official duties; or
 - c) the animal at issue is a trained working dog, recognized by the Texas Board of Private Investigators or an official law enforcement agency, in the performance of official duties while confined or under the control of its handler.

Sec. 3-14. Fees.

- A. *Generally.* The City Council shall establish fees for all animal-related services provided by Burleson's animal control authority, including those for adoption, immunization, and multi-pet permits.
- B. *Impoundment and boarding.* The owner must pay all fees for impoundment, quarantine, and boarding, as well as veterinary bills and other fees that are due to the designated animal shelter.

Sec. 3-15. Interference with city agents.

- A. A person commits an offence if the person interferes with or hinders any agent of the City in the performance of any duty pursuant to this Chapter, or seeks to release any animal in the custody of the City or its agents, except as provided in this Ordinance.
- B. A person commits an offense if the person fails to comply with any lawful order of the animal control authority in the performance of any duty pursuant to this Chapter.
- C. A person commits a Class B misdemeanor offense under Texas Penal Code Section 38.15 if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with an officer with responsibility for animal control while the officer is performing a duty or exercising authority imposed or granted under Chapter 821 or 822 of the Texas Health and Safety Code.

Sec. 3-16. Animal shelter advisory committee.

- A. *Creation.* There is hereby created, pursuant to the Texas Health and Safety Code, Section 823.005, an animal shelter advisory committee.
- B. *Purpose.* The purpose of the committee shall be to assist animal shelters located within the city limits regarding compliance with Chapter 823 of the Health and Safety Code. Additionally, upon request of the City Council, the committee may: (i) provide recommendations to the City regarding its compliance with the Texas Rabies Control Act and (ii) recommend ways to improve the efficiency and cost effectiveness of the City's animal control program.
- C. *Terms.* The committee shall consist of seven members appointed by a majority vote of the City Council. Committee members shall serve two-year terms except as provided below. Appointments shall be as follows:
 - 1. Places 1, 3, 5, and 7. Terms expire on October first, each odd-numbered year.
 - 2. Places 2, 4, and 6. Terms expire on October first, each even-numbered year.
- D. *Members.* The composition of the committee shall include at least one licensed veterinarian, at least one municipal official, at least one person whose duties include the daily operation of an animal shelter, and at least one representative from an animal welfare organization. The same person shall not be appointed to fulfill more than one of these requirements. It shall not be required for the representative of the animal welfare organization to reside within the city limits of Burleson or for the agency (s)he represents to be chartered in the city of Burleson. It shall

not be required for the licensed veterinarian to reside within the city limits of Burleson if his/her primary veterinary practice is located with the city limits of Burleson.

- E. *Vacancies.* Members of the committee shall be subject to removal at any time by the City Council. Any vacancy in the membership of the committee shall be filled by the City Council for the unexpired term of the member whose place has, by removal or otherwise, become vacant. Vacancies shall be filled within sixty days after the City Council removes the member or within sixty days after the City Council receives notice of the member's resignation.
- F. *Meetings.* The committee shall meet a minimum of three times per calendar year, as outlined in Texas health and Safety code 823.005.
- G. *Quorum.* A quorum of the committee shall consist of a majority of the members, excluding any vacancies. The presence of a quorum of the committee shall be required prior to a meeting being called to order.
- H. *Voting.* Approval of all items before the committee shall require a majority vote of those in attendance.
- I. *Rules.* The committee may adopt rules, subject to City Council approval, for conduct of its meetings.

SECTION 2.

This ordinance shall repeal section 34-192 (3) of the Burleson Code of Ordinances regarding noise nuisances created by animal or bird cries.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances and the Code of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and Code, in which event the conflicting provisions of such ordinances and Code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been

enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

- A. Save and except for the offenses described in Section 3-9 A, B, and C, Section 3-13 J, 2; and Section 3-15 C of this Chapter, any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a Class C misdemeanor, and upon conviction thereof shall be fined a sum not exceeding two thousand dollars (\$2,000.00) per day for violations involving public health and sanitation, and not exceeding five hundred dollars (\$500.00) per day for all other violations. Each continuing day's violation under this Ordinance shall constitute a separate offense.
- B. The penal provisions imposed under this Ordinance shall not preclude Burleson from filing suit to enjoin the violation. Burleson retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6.

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of the Burleson City Code or any other ordinances regulating animals that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

The City Secretary of the City of Burleson is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 8.

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

SECTION 9.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS 13th DAY OF APRIL, 2006

**S/B Ken Shetter
MAYOR**

ATTEST:

**S/B Mary J. Kayser
CITY SECRETARY**

PASSED AND APPROVED ON FIRST READING THIS 23rd DAY OF MARCH, 2006.

EFFECTIVE: April 27, 2006

APPROVED AS TO FORM AND LEGALITY:

**S/B Allen Taylor
CITY ATTORNEY**