



City Council Agenda Item Report

June 4th, 2013

Agenda Item No.

Contact – Bo Kidd, Chief of Police, 512-312-1001

SUBJECT: Deliberation and possible action regarding approval of amendments to existing animal control ordinances.

1. BACKGROUND/HISTORY

The existing animal control ordinances haven't been revised in many years. After receiving input from citizens and Council members, staff has made some recommended amendments that address some recent issues occurring within the City pertaining to animal care and control.

2. FINDINGS/CURRENT ACTIVITY

Staff has received frequent inquiries and complaints regarding issues with poultry and livestock that are not address in our current ordinances. Staff has also received numerous complaints regarding the care and restraint of animals that are not clearly addressed in our current ordinances. As a result, staff has made some recommended amendments to address these issues in Section 4.04 Animal Care and Control. In doing so, Staff had to revise Section 4.01 which lists the definitions within.

3. FINANCIAL IMPACT

None

4. ACTION OPTIONS/RECOMMENDATION

Staff is requesting Council approve or give further direction.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING CHAPTER 4 (ANIMALS), ARTICLE 4.04 (ANIMAL CARE AND CONTROL) OF THE CODE OF ORDINANCES OF THE CITY OF BUDA, TEXAS, BY ADDING REQUIREMENTS FOR THE CARE AND CONTROL OF ANIMALS WITHIN THE CITY; PROVIDING A PENALTY CLAUSE, REPEALER CLAUSE, SAVINGS CLAUSE, SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Buda adopted Ordinance No. 900605-1 which provided guidelines for proper care and control; and

WHEREAS, the City has decided to amend the Code as more specifically set forth herein; and

WHEREAS, the Council has determined that the provisions of this Ordinance will promote the health, safety, morals and the general welfare of the City of Buda and its surrounding areas; and

WHEREAS, the Animal Control Department held a public hearing and considered these proposed amendments, revisions, deletions and modifications at their April 11, 2013 meeting and recommended that the amendments, revisions, deletions and modifications set forth herein be approved by the City Council; and

WHEREAS, this ordinance was passed and approved at a meeting of the City Council of the City of Buda held in compliance with the Texas Open Meetings Act at which a quorum of the City Council Members were present and voting;

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

Article I. Section 4.04, Animal Care and Control, of the Code of Ordinances is hereby amended read as follows:

4.04.001 Restraint Requirements on Private Property

a) All ~~dogs, cats, and other~~ animals, with the exception of cats, shall be kept under restraint and not allowed to run at large ~~(stray)~~.

(b) The use of a buried electrical fence, invisible fence, electronic fence, or a wireless fence which transmits either a high frequency sound, pulse stimulus shock, will not be considered a means of restraint.

(c) Any animal in violation of this section may be subject to impoundment and its owner may be issued a citation.

~~(b) No owner shall fail to exercise proper care and control of his animal to prevent them from becoming a public nuisance.~~

~~(c) Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding.~~

Tethering

(a) It shall be unlawful for any person to tether, chain or fasten any animal in such a manner as to permit it to be upon any public sidewalk or street or to leave it unattended while tethered, chained or fastened on public property.

(b) It shall be unlawful for any person to tether an animal shall to a dog houses, trees, stakes, poles, fences, walls, or any other stationary objects outdoors or indoors as a means of confinement. If an animal is confined on a tether which is not attached to a stationary object as described above, the following conditions must be met:

a) Only one animal may be tethered to each cable run.

b) The tether must be attached to a properly fitting collar or harness worn by the animal, with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for purposes of tethering an animal to a cable run.

c) There must be a swivel on at least one end of the tether to minimize tangling of the tether.

d) The tether and cable run must be of adequate size and strength to effectively restrain the animal and must weigh no more than 1/18 of the animal's body weight.

e) The cable run must be at least fifteen (10) feet in length and mounted to either a swivel tie-out or to a cable/trolley/pulley system.

f) The cable must keep the animal (5) feet from any public sidewalk, street or enter upon public property other than the property owners.

g) The length of the tether from the cable run to the animal's collar should allow access to the maximum available exercise area and should allow continuous access to water, food, shelter, shade and a dry area. The animal must be able to have space to urinate or defecate in a separate area from the area where it must eat, drink or lie down. The tether system must allow the animal to be able to escape harm. The tether system must be of appropriate configuration to confine the animal to the owner's property, to prevent the tether from extending over an object or an edge that could result in injury or strangulation of the animal, and to prevent the tether from becoming entangled with other objects or animals.

h) Any animal tethered as described in subsections (a) through (g) above must be removed from the tether at least once a day for adequate exercise.

(c) The owner of the animal or the person actually tying or staking the animal shall be responsible for the offense.

4.04.002 ~~Vicious animal~~

~~(a) Any animal within the City that shall bite, scratch, or otherwise attack a person who is not at the time trespassing upon the property of the owner or person having control of such animal, not provoking or teasing such animal shall be deemed vicious or dangerous to a person or other animals, and the City of Buda may order, following the procedures listed below, that such animal be kept muzzled, or that such animal be kept within a sufficient enclosure, or that such animal be permanently removed from the corporate limits of the City of Buda, or that such animal be delivered to the Animal Control Officer or Humane Officer to be humanely euthanized.~~

~~(b) The City may receive a complaint from any Animal Control Officer, Law Enforcement Officer or any other responsible person concerning an animal which has bitten or scratched a human being or attacked and killed another animal. The City may also be the complainant concerning an individual animal which it has reason to believe has a dangerous disposition likely to be harmful to a human or other animals. A complainant must file with the City a written sworn complaint which contains the following information, as applicable:~~

- ~~(1) Name, address, and telephone number of the complainant and any other witnesses to the incident;~~
- ~~(2) Date, time, and location of the incident;~~
- ~~(3) Description of the animal;~~
- ~~(4) Name, address, and telephone number of the animal owner;~~
- ~~(5) A statement that the animal attacked and killed other animals;~~
- ~~(6) A statement that the animal attacked or bit a human being (refer to definition of vicious and provocation in Section 1);~~

- ~~(7) A statement that the animal exhibited vicious propensities in past conduct (if known); and~~
- ~~(8) Other facts or circumstances of the incident.~~

- ~~(c) After a sworn complaint is filed the City shall investigate the complaint and if there be sufficient evidence it may request the Animal Control Officer or designee to set a time and place for a hearing. The Animal Control Officer or designee shall give notice of the hearing to the animal's owner by personal service or certified mail, return receipt requested, at least ten (10) days prior to the hearing date.~~
- ~~(d) The Mayor shall appoint a hearing examiner who shall hold such hearing and determine at the hearing if the animal specified in the complaint should be ordered to be kept muzzled, kept within a sufficient enclosure, removed from the City limits, or destroyed for the protection of the public health, safety and welfare of the community. The hearing examiner shall receive testimony at the hearing concerning the incident under investigation.~~

~~(1) To order the removal or destruction of the animal for the public health, safety and welfare, the hearing examiner must find all the following facts to be true:~~

~~(i) The animal attacked or bit a human being or attacked and killed another animal without provocation;~~

~~(ii) The animal is the same animal which committed the acts in of this subsection;~~

~~(iii) Destruction of or removal of the animal is necessary to preserve the public health, safety and welfare of the community.~~

~~(2) To order the muzzling or keeping of an animal in sufficient enclosure for the public health, safety and welfare, the hearing examiner must find all the following facts to be true:~~

~~(i) The animal attacked or bit a human being or another animal; or animal has propensity to attack, bite or injure human beings or domesticated animals because of temperament, conditioning, or training, or it is demonstrated by the local health authority that the animal has dangerous disposition, likely to be harmful to humans or other animals;~~

~~(ii) The animal is the same animal which committed the acts in (1) of this subsection;~~

~~(iii) muzzling or keeping of the animal in a sufficient enclosure is necessary to preserve the public health, safety, and welfare of the community.~~

~~(3) — If the Mayor or his designee orders muzzling, keeping within a sufficient enclosure, destruction or removal of the animal and the owner is not present at the hearing, he shall notify the owner of the decision by personal service or certified mail, return receipt requested. If the hearing examiner does not order destruction or removal of the animal, the Animal Control Officer shall, if the animal was impounded and if any required rabies observation quarantine period has been completed, return the animal to the owner upon payment of any fees due, with the understanding that any muzzling or keeping within a sufficient enclosure orders must be followed as long as the animal remains within the city limits of Buda.~~

~~(h) — An owner of an animal may appeal an order imposed pursuant to Section 3.01 (g) to a court of competent jurisdiction within fifteen (15) days of the date of the order. Notice of intent to appeal must be delivered to the City within five (5) days of the decision or order. If the hearing examiner receives written notice of the intent to appeal within five (5) days of the decision, he shall suspend a destruction or removal order pending final determination of the court. If said appeal is perfected by the filing of a petition in a court of competent jurisdiction within fifteen (15) days of the order of destruction or removal, he shall suspend the destruction or removal pending the outcome of the appeal. In that event the animal if it was impounded, and if any required rabies observation quarantine period has been completed, and hold the animal is released to the owner and the animal must be kept muzzled or within a sufficient enclosure is so ordered. Failure to claim the animal within forty-eight (48) hours will result in the execution of the removal or destruction order or as otherwise determined by the court.~~

~~(i) — In the event that any animal is discovered in violation of any removal or destruction order described in (g) above, the animal shall be immediately seized and humanely euthanized. Any animal discovered in violation of any muzzling or keeping within a sufficient enclosure order shall be seized and impounded, and the owner shall be prosecuted under the provisions of (j) below.~~

~~(j) — It shall be unlawful for any person to harbor or keep on his premises or in or about his premises, or premises under his control, any vicious animal except as directed by this ordinance. Upon conviction, harboring a vicious animal in violation of this ordinance shall result in a fine of two hundred dollars (\$200.00).~~

~~(k) — No part of this ordinance shall preclude at any time the filing of complaint in the court of competent jurisdiction under the provisions of the State of Texas Vicious Dog Act, Section 42.12 of the Penal Code.~~

4.04.002 Vicious Animal Prohibited

(a) Except as provided by this article, a person may not keep, raise, harbor, use, possess, have on the person's property, or under the person's control or attempted control a vicious animal, unless:

- (1) the animal is being held in a zoo, shelter, museum or educational or medical institution;
- (2) the animal is part of a temporary public exhibition by a circus, carnival or other traveling exhibition;
- (3) the animal is at or in transit to a licensed veterinary clinic; or
- (4) the person in possession of the animal holds a license or permit by the Texas Parks and Wildlife Department that authorizes the person to attempt to rehabilitate the vicious animal.

4.04.003 Authority to Slay Animals Running At Large

If an animal found at large in violation of this ordinance cannot be safely taken up and impounded, such animal may, if deemed necessary, be slain by authorized Law Enforcement Officers or Animal Control Officer.

4.04.004 Animal Care

- ~~(a) No owner shall fail to provide his animal with sufficient wholesome and nutritious food, water in sufficient quantities, adequate ventilation, shelter space and protection from the weather, veterinary care when needed to prevent suffering, and humane care treatment.~~
- ~~(b) No person shall beat, cruelly treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dog fighting, cockfighting, bullfight, other combat between animals or between animals and humans.~~
- (c) No owner of an animal shall abandon such animal. If an owned animal has been impounded by the Animal Control Officer, no owner shall allow the animal to remain in the Animal Shelter beyond 72 hours maximum, for the purpose of adopting the animal at a lower cost than the fine fee (s).
- ~~(d) No person shall give away any live animals, fish, reptile, or bird as a prize for, or as inducement to enter any contest, game, or other competition; as an inducement to enter a place of amusement; or as an incentive to enter any business agreement whereby the offer was for the purpose of attracting trade.~~
- ~~(e) No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by the animal, provided that it shall be lawful for a person to expose on his own property common rat poison mixed only with vegetable substance.~~
- (f) No person, except a person licensed by the Texas Parks and Wildlife Department, shall place or set out a steel jaw leg and / or neck traps with the intent of trapping animals.
- (g) Any person who, as the operator of a motor vehicle, strikes and animal shall as soon as practicable report injury or death to the Animal Control Officer or the Humane Society so that the animal may be picked up.

- (a) An animal's owner shall keep the animal in a clean, sanitary, and healthy condition.
- (b) An animal's owner or handler shall provide for the animal:
 - (1) regular and adequate amounts of nutritious food that is appropriate for the species and that maintains the animal in good health;
 - (2) a constant and adequate supply of clean, fresh, potable water that keeps the animal hydrated for environmental conditions; and
 - (3) veterinary care and medical treatment for injuries, parasites, and diseases that is sufficient to maintain the animal in good health and minimize suffering.
- (c) An animal's owner shall provide the animal with shelter that:
 - (1) is large enough for the animal to enter, stand, turn around, and lie down in a natural manner; A structure with three sides, a roof and a floor that prevents rain or other precipitation from entering; or A structure of dome, or other, shape with a floor that provides the animal with shelter from all weather conditions.
 - (2) keeps the animal dry;
 - (3) provides the animal with natural or artificial shade from direct sunlight;
 - (4) protects the animal from excessive heat and cold and other adverse weather conditions; and
 - (5) is adequately ventilated.
 - (6) large livestock shall be exempted
- (d) An animal's owner may not confine the animal to the extent that it is forced to stand, sit, or lie in its own excrement.
- (e) An animal's owner shall regularly maintain the animal and its shelter to prevent odor or a health or sanitation problem.
- (f) An animal's owner shall provide the animal with exercise space that is large enough to prevent injury and keep the animal in good condition.
- (g) It is an affirmative defense to prosecution under this section that the animal's treatment was as directed by a licensed veterinarian.
- (h) or grooming when lack thereof would adversely affect the health of the animal

§ Safety of Animals in Motor Vehicles and Enclosed Spaces

- (a) A person may not transport an animal in a motor vehicle on a public roadway unless:
 - (1) the animal is safely enclosed within the vehicle; or
 - (2) If the animal is transported in an unenclosed vehicle, including a convertible, pick-up truck, flatbed truck, or motorcycle, the animal owner shall insure the animal will remain in the unenclosed vehicle. The owner shall remain with the animal if the unenclosed vehicle is parked upon public streets, parking lots or private property other than the owner.

(b) A person may not keep an animal in a motor vehicle or other enclosed space in which the animal's health or life is endangered by high temperature, low temperature, or inadequate ventilation.

(1) If a Peace Officer or Animal Control Officer determines that the animal(s) left in the vehicle is in danger of death or serious injury as a result of the confinement, may use any means reasonable to remove the animal. If professional services are required to remove the animal, the owner is responsible for the cost.

(2) A Peace Officer or Animal Control Officer who removes an animal from a vehicle in accordance with this subsection is not liable for any resulting property damage.

(c) Instances where occupants of motor vehicles are involved in a traffic accident or other vehicle-related incidents which result in animals being left uncontrolled or unattended, animal control or police officers of the city are authorized to take welfare custody of such unattended animals.

(1) In the interest of the health, safety or welfare of such animals, officers are authorized to transport such animals to the City's Animal Shelter, a veterinarian or an animal emergency clinic. Information shall be provided to the animal's owner as to the animals disposition.

(2) Animal owners shall bear full cost and expense incurred by the city in the care, medical treatment, impoundment costs or other associated costs.

Sec. 4.04.005 Keeping dogs, cats or other domestic animals

(a) Maximum number of dogs and cats. It shall be unlawful for any person to own, keep, or harbor more than five (5) dogs or (5) cats over three (3) months of age, or any combination of five dogs and cats at any one address or location within the city limits of Buda.

(b) Keeping dogs at location other than owner's residence. All persons residing in the City of Buda who own one or more dogs must keep such dog or dogs at the residential premises permanently occupied and inhabited by said dog owners. It shall be unlawful for said dog owners to keep their dog or dogs at any other location within the city limits of the City of Buda. **Animals found at a property where an owner does not reside will be considered abandoned and subject to impoundment.**

(c) ~~Keeping hogs. It shall be unlawful for any person who is the owner of any hog, or any person who has any hog under his management or control, to keep the same, or allow the same to remain, in any pen, or in any other place within the city limits.~~

(d) Exceptions. Subsections (a), (b), and ~~(c)~~ **keeping of Hogs, Swine, Pot-bellied or miniature Pigs** shall not apply to animal shelters, veterinary establishments, animal hospitals operated by a licensed veterinarian, or commercial animal establishments located on property zoned for such purposes. Such establishments, however, must meet sanitation requirements and keep animals securely caged or penned.

§ Keeping of Hogs, Swine, Pot-bellied or miniature Pigs

~~It shall be unlawful for any person who is the owner of any hog, or any person who has any hog under his management or control, to keep the same, or allow the same to remain, in any pen, or in any other place within the city limits of the City.~~

It shall be unlawful for any person to keep, harbor or raise adult pot-bellied pigs, hog, miniature pigs and swine in any residence or realty within the City of Buda.

4.04.006 Keeping of Wild Animals

- (a) No person shall own, possess, or have custody on his premises any wild or vicious animal (including a reptile) for display, training, or exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibition, circus, or veterinary hospitals.
- (b) No person shall keep or permit to be kept any wild animal, including a poisonous or otherwise dangerous reptile, as a pet, unless licensed to do so by the Texas Parks and Wildlife Department **Section 43**.

Sec. 4.04.007 Performing animal exhibitions

- (a) No person may sponsor, promote, train an animal to participate in, contribute to the involvement of an animal in, or attend as a spectator any activity or event in which any animal engages in unnatural behavior or is wrestled, fought, mentally or physically harassed, or displayed in such a way that the animal is abused or stressed mentally or physically, or is induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner that will cause or is likely to cause physical injury or suffering. This prohibition applies to events and activities taking place in either public or private facilities or property, and applies regardless of the purpose of the event, whether for free or for a fee to entrants or spectators.
- (b) All equipment used on a performing animal shall fit properly and be in good working condition.

4.04.008 Removal of Animal Waste

The owner of every animal shall be responsible for the removal of any excreta deposited by his animal(s) on public ~~walks, recreation~~ areas, or private property including the property of the owner.

§ Dumping of Dead Animals, Filth or Rubbish; Prohibited

No person shall deposit any dead animal or excrements or filth from privies or any hay, straw, dirt or rubbish of any kind or description or any filthy water or manure upon any streets, alleys or public or private property in the city.

4.04.009 Storage of Feed

All feed provided for animals shall be stored and kept in a ratproof, flytight building, box, container, or receptacle. Horse stables, kennels, catteries, shelters, veterinarian establishments must carry out a continuous, active ~~rat~~ pest control program to control the spread of diseases.

§ Livestock

Keeping generally; number of animals It shall be unlawful for any person to keep livestock within the corporate limits of the city unless the livestock is being kept in accordance with the following restrictions:

- a) Livestock shall be kept on a parcel of land that is at least one-half (1/2) acre in size and (50) feet from a residence other than the livestock owner.
- b) There shall be no more than one unit (as defined below) of livestock for the first one-half acre of land. There shall be no more than one additional unit of livestock for each additional one-half acre of land in the same parcel. For the purpose of this subsection, units of livestock shall be defined as follows:
 - 1) The following types of livestock shall be counted as one head equals one unit: horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jenny, llama, and all species of cattle.
 - 2) The following types of livestock shall be counted as one head equals one-fifth of a unit: emu, ostrich, rhea, all species of sheep, and all species of goats.
- c) Livestock shall be enclosed with adequate fences or barriers that will prevent such livestock from damaging shrubbery or other property situated on adjacent property. Such fences or barriers shall be sufficient to prevent the livestock from escaping the enclosure.
- d) The owner keeping any livestock shall keep all yards, barns, pens, stables, sheds or other enclosures in which such animals are confined in such a manner so as not to give off odors offensive to persons of ordinary sensibilities in the immediate vicinity, or to breed or attract flies, mosquitoes or other noxious insects or rodents, or in any manner to endanger the public health,

safety, or welfare, or to create a public nuisance. Barns, stables, corrals, sheds, pens or other similar structures or enclosures where livestock may be housed, fed, or confined shall not be located within 100 feet of any residence, business, or commercial establishment (other than the animal owner's residence, business, or commercial establishment).

e) Subsections a) through d) above shall not apply to a licensed veterinarian at the veterinarian's place of business or a riding stable/school or academy.

f) It is a defense to prosecution for an offense under this section that the person is enrolled in FFA/4-H and be in compliance with the programs guidelines.

§ Chickens

No person shall keep, feed, raise, or maintain chickens in a residential area within the city except under the following conditions:

a) The chicken shall be contained within and have access to sufficient shelter;

b) The sufficient shelter shall be located on the owner's property and kept 50 ft. from neighboring residences.

c) The maximum number of adult chickens that may be kept on any residential property or lot of one-half (½) acre or less is six (6).

d) If the residential property or lot is one acre or more a total of twelve (12) adult chickens may be kept on the property. In no event shall more than twelve (12) adult chickens be kept on any residential lot of an acre or more.

§ Roosters

No person shall keep, feed, raise, or maintain roosters in a residential area within the city unless granted a permit by the City.

a) A resident may apply for a permit to maintain one (1) rooster on the property for the purpose of breeding only. The permit may be revoked if there are any violations.

§ Keeping of Livestock near City Water Supply

It is unlawful and constitutes an offense for any person, whether for himself or as the agent or servant of another or others, to keep or to participate in keeping any animal (animal made to reference any horse, hog, cattle, sheep, goat, other livestock and/or fowl) in any pen or lot used to confine any such multiple animal operation within 500

feet of any water supply wells from which the City obtains its principal water supply as specified in the official Texas Administrative Code published under authority of the Secretary of State, Title 31, Natural Resources and Conservation, Section 290.41 (c)(1)(C)(D)(F).

§ Honeybees

No person shall construct, place or maintain any beehive within 300 feet of any residence other than that of the owner except with the consent of the occupants of all such residences.

§ Ferrets

- a) It shall be unlawful for any person to keep, harbor, or raise more than four (4) adult ferrets in any one (1) residence within the City.
- b) It shall be unlawful for any person to keep, harbor, or raise a ferret that has not received annual ferret rabies and distemper vaccinations and that is not spayed or neutered.
- c) Cages used for keeping of ferrets shall be made to prevent the animal from escaping

Section 2. This ordinance shall be cumulative of all other ordinances of the City of Buda, and this ordinance shall not operate to repeal or affect any other ordinances of the City of Buda except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Section 3. The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or 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 or invalid phrase, clause, sentence, paragraph or section.

Section 5. This Ordinance shall be effective immediately from and after its final passage and any publication in accordance with the requirements of the City of Buda and the laws of the State of Texas.

PASSED AND APPROVED on first reading by an affirmative vote of the City Council of the City of Buda, this ____ day of _____, 2013.

PASSED, APPROVED AND ADOPTED on second reading by an affirmative vote of the City Council of the City of Buda, this ____ day of _____, 2013.

APPROVED:

Todd Ruge, Mayor

ATTEST:

Danny Batts, City Secretary