



# City Council Agenda Item Report

July 2<sup>nd</sup>, 2013

## Agenda Item No.

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

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**SUBJECT: APPROVAL OF AN ORDINANCE OF THE CITY OF BUDA, TEXAS ON SECOND READING AMENDING CHAPTER 4 (ANIMALS) ARTICLE 4.01 (GENERAL PROVISIONS) OF THE CODE OF ORDINANCES, BY ADDING DEFINITIONS; A PENALTY CLAUSE, REPEALER CLAUSE, SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.**

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### 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. These items were presented at the June 4<sup>th</sup>, 2013 Council Meeting and are being brought back with recommended changes by Council. This version has been approved on 1<sup>st</sup> reading.

### 3. FINANCIAL IMPACT

None

### 4. ACTION OPTIONS/RECOMMENDATION

Staff is requesting Council approve or give further direction.

**ORDINANCE NO. XXXXXXXX**

**DISCUSS AND CONSIDER APPROVAL OF AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING CHAPTER 4 (ANIMALS), ARTICLE 4.01 (GENERAL PROVISIONS) 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 conducted public hearings regarding the need and desirability of amendments, revisions, deletions, and modifications; 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 4.01.001, *Definitions*, is hereby amended to read as follows:

As used in this ordinance, the following terms are defined below:

Abandon: means leaving an animal in the person’s custody without making reasonable arrangements for assumption of custody by another person.

Animal: means a domesticated living creature and wild living creature previously captured. “Animal” does not include an uncaptured wild creature or wild creature whose capture was accomplished by conduct at issue under this section.

Animal At Large: means an animal not

- a. On the premises of the owner and not tied, staked, or restrained securely within an enclosure or fence capable of fully and totally securing the animal; or
- b. Off the premises of the owner, and not on a leash or physical restraint and under the immediate physical control of a person physically capable of restraining the animal
- c. Or any cat which is creating a nuisance off the owner's property
- d. Any animal being contained by a fence that, because of the fence's lack of height or general disrepair, cannot properly restrict the animal, shall be considered at large

Animal Control: means the Animal Control Division of the City Police Department.

Animal Control Officer: means a person designated by the City of Buda who is qualified and/or certified by the Texas Department of Health to perform such duties as required by this ordinance and or state law.

Animal Shelter: means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

Auction: means a place or facility where animals are regularly brought, sold, traded, except for those facilities otherwise defined in this ordinance. This section does not apply to individual sales of animals by owner.

Bite: means a wound that is inflicted by an animal's bite or scratch that causes punctures, tears, scratches or laceration that results in a break of the skin.

Brand: means a mark made on the skin of any animal which indicates the ownership of the animal; typically used with livestock.

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

Cat: means Felis Catus as defined in V.T.C.A., Health and Safety Code § 826.002, as amended.

City Mayor: in this Title shall mean the City Mayor or his/her designee.

Circus: means a commercial variety show featuring animal acts for the public entertainment.

Contained: means kept in a fenced yard or pen with no roof which is sufficiently to prevent escape; or, kept in a pen or other coop or enclosure with a roof sufficient to prevent escape.

Commerce: an interchange of goods or commodities; sells, trades, barter, leases, rents, gives away, or displays.

Commercial Animal Establishment: Any pet shop or store, grooming shop, guard dog or obedience training center, animal training services, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, or boarding or breeding kennel, petting zoos, aviaries or any similar entrepreneurial relationship regarding animals.

Cruel Manner: means a manner that causes or permits unjustified or unwarranted pain or suffering.

Currently Vaccinated: Vaccinated and satisfying the following criteria:

- a. The animal must have been at least three (3) months of age at the time of vaccination and regular intervals thereafter;
- b. At least thirty (30) days have elapsed since the initial vaccination; and
- c. Not more than thirty-six (36) months have elapsed since the most recent vaccination.

Custody: means responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

Dog: means Canis Familiaris as defined in V.T.C.A., Health and Safety Code § 826.002, as amended.

Domestic Animal: means any animal normally adapted to living in intimate association with humans; includes livestock, caged or penned fowl, pigeons, normal household pets, such as but not limited to dogs, cats, cockatiels, ferrets, hamsters, guinea pigs, gerbils, rabbits.

Dangerous Dog: means a dog that:

- a. Makes an unprovoked attack on a person 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
- b. 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.

Dangerous Wild Animal: shall have the same meaning as defined in V.T.C.A., Health and Safety Code § 822.101(4) (a)-(t), as amended.

Enforcement officers: Those authorized to enforce the provisions of this chapter, including but not limited to the local health authority representative, any animal control officer, or any police officer.

Estray: means stray livestock, stray exotic livestock, and stray exotic fowl, as defined in V.T.C.A., Agriculture Code § 142.001, as amended

Exotic Animal: means any animal which is not naturally tame or gentle, and is generally not found in the wild in the continental United States, and those defined in V.T.C.A., Agriculture Code §142.001 (4) –(5), as amended.

Feral: means an animal that is free, wild, untamed or unaccustomed to human contact.

Fowl or Poultry: means any bird, wild or domesticated, such as but not limited to chickens, turkeys, ducks, geese, peacocks, pheasants, quail, or other fowl regardless of age or sex, except common household pets such as parakeets, parrots and etc.

Grooming Shop: means a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Guard or Attack Dog: means any dog professionally trained for the purpose of protecting persons or property by attacking or threatening to attack any person found within the area patrolled by the dog, and that dog is either securely enclosed within that area at all times or under continuous control of a trained handler or owner.

Habitual Offender or Habitually: means owner who has received two or more final convictions of this article or the owner of an animal who has been the subject of impoundment in the animal shelter three or more times during a 12-month period or any combination of convictions and impoundment totaling three incidents.

Harboring or Harbor: means the act of keeping and caring for an animal or providing a premises to which the animal returns for food, shelter or care for a period of three days.

Hen: mean any female chicken of the age of six (6) months or older.

Home Quarantine: means an animal owner who quarantines with an animal at their personal residence with an animal control control officer's permission and with compliance to set guidelines and requirements established by the animal control department.

Inoculated: means

- a. a dog, a dog that is injected with a vaccination on an annual basis to produce immunity against parvo, distemper; or

- b. a cat, that is injected with a vaccination on an annual basis to produce immunity against infectious feline diseases, for panleukopenia, viral rhino tracheitis, and calcivirus.

Intact: means an animal that has not been spayed or neutered.

Interfere: means to prevent a process or activity from being carried out properly; or obstruct the other's action or; hamper or hinder another's action or; take part in the affairs of others; or to meddle in another's life.

Impoundment: means to house an animal by the city, at the owner's expense, in a city-owned or city-designated facility or at the office of an area veterinarian approved by the director.

Kennel or Cattery: means any shelter where more than three dogs or more than three cats, or more than three dogs, bred, boarded, or held in return for payment. It includes the term "boarding kennel" or Cattery.

Licensed Veterinarian: means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states as defined in V.T.C.A., Health and Safety Codes § 826.002, as amended.

Livestock: means cattle, sheep, swine, goats, ratites, or poultry raised for human consumption: a horse, pony, mule, donkey, or hinny, native or nonnative hoofstock raised under agricultural practice, defined in V.T.C.A., Penal Code § 42.09, as amended.

Miniature Livestock: means livestock that meet the published breed definition for registration by a nationally recognized breeding association.

Microchip Implant: a passive electronic device that is injected into an animal by means of a hypodermic-type syringe device.

Microchip Reader: An electronic scanner with an operating frequency that is able to detect a microchip that has been implanted in an animal, and display the number of the microchip to its operator.

Multi-Pet Owner: means a person who keeps or harbors more than five cats or dogs or any combination of five cats and dogs. Puppies and kittens under three months of age shall not be counted for purposes of this definition.

Muzzle: means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

Observation Period: means a period in which the domesticated animal is kept in isolation at the animal shelter or home, under close observation for clinical signs of rabies or other zoonotic diseases that is set forth by the Texas Department of Health. The duration will start on the day of exposure and

continue in twenty four (24) hour increments until completed or testing is preformed and completed. The duration will be in compliance with the Texas Department of Health's guidelines for quarantine. As defined in Administrative Codes § 169.27, as amended.

Owner or presumed owner: means any person or persons, firm, association or corporation, having temporary or permanent custody of, sheltering or having charge of, care of, harboring, exercising control over, or having property rights to, or who knowingly allows an animal to remain on the person's property. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days.

Owner Surrender: means a voluntary surrender of animal(s) to Animal Control or the contracted shelter.

Premises: means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

Performing Animal Exhibitions: mean any spectacle, display, act, or event (other than circuses) in which performing animals are used. This shall include animal amusement venders, such as but not limited to, pony-go-round rides, commercial horseback pictures, etc.

Person: means an individual, corporation, or association.

Pet Shop: means any person, partnership, or corporation, whether operated separately or in a connection with another business enterprise (except for licensed kennels and veterinarian facilities), that buys, sells, or boards any species of animal.

Poison: means a substance having an inherent harmful property which renders it, when taken into the system, capable of destroying animal life.

Possible Exposure to Rabies: Receipt of a bite, scratch, or potential contact from any warm blooded animal, animal to human, or animal to animal.

Proof of Rabies Vaccination: Means documentation from a veterinarian license to practice in the State of Texas that the animal has been vaccinated with a rabies vaccine licensed for use in that species by the United State Department of Agriculture and/or the Texas department of Health.

Provocation: means any purposeful act that causes an animal to bite, scratch, or attack in protection of self or food, kennel, or nursing offspring, owner, or owner's premises. Entrance, in any manner, into an area where an animal is properly under restraint in compliance with city ordinances would be considered provocation, irrespective of the reason for such entrance unless performing a service to the owner's property with consent (call for service).

Unprovoked: means a dog attacks or attempts to inflict bodily injury on a person when the dog was not hit, kicked, or struck by the person with an object or a part of the person's body nor was any part of the dog's body pulled, pinched, or squeezed by the person, nor was the dog taunted or teased by the person.

Proper enclosure: means a house or a building, or in the case of a fence or structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured such that an animal cannot climb, dig, jump or otherwise escape of its own volition.

Public nuisance animal: means any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property.

Quarantine: means strict confinement of an animal specified in an order of the board or its designee: (a) on the private premises of the animals owner or at a facility approved by the board or its designee: and (b) under restraint by close cage or paddock in any other manner by board rule.

Quarantine Period: means a period used for observation of a domestic or pet animal to determine the health status of that animal in relation to the rabies virus.

Rabies: means the acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite or scratch.

Restraint: means any animal secured by a leash, lead, chain or tether and under the direct physical control of a responsible person. At all other times, a dog or other animal shall be confined to the realty or premises of the owner.

Rooster: means any male chicken of the age of six (6) months or older.

Riding School or Stable: means any place that has available for hire, boarding, and / or riding instruction, any horse, pony, donkey, mule, or burro; or any place that regularly buys, sells, or trains the above animal, including a racetrack, trotting track, or rodeo.

Scratch: means a scrape left by the claws or teeth of an animal that causes a break in the skin.

Sick or Injured Animal: means any animal that appears to be suffering from an infectious, contagious, or communicable disease; or that is showing evidence of a physical injury, physical disorder, or traumatic injury; or that has an elevated temperature, depressed heart rate, or inability to ambulate.

Service dog: means a dog that is specially trained or equipped to help a person with a disability.

Serious Bodily Injury: means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonable prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment. As defined in V.T.C.A., Health and Safety Code § 822.001, as amended.

Stray: means roaming with no physical restraint beyond the premises of an animal's owner or keeper.

Severe injury: means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

Small Animal: means an animal less than 5 pounds and kept domestically, including a rabbit, guinea pig, rat, mouse, hamster, or gerbil.

Sufficient shelter: mean reasonable shelter with a roof and three (3) solid sides that is capable of protecting the animal from the elements and shall be situated so there is a buffer area between it and neighboring property with sufficient access to allow the sufficient shelter to be effectively cleaned and which sufficient shelter shall be kept cleaned and not create an unsightly structure.

Tag: means a metal/plastic tag attached to a collar as required by this chapter or some other permanent identifying device attached to a collar or to an animal.

Tattoo: means a permanent mark which is made on the skin of an animal by puncturing the skin and inserting indelible color, and which is used to show ownership.

Tethering: means using a chain, rope, tether, leash, cable, or other device to attach a dog to a stationary object or trolley system.

Vaccinated: means properly injecting 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 in an amount sufficient to provide immunity.

Veterinary Hospital: means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Vicious Animal: means an animal that initiates an unprovoked attack upon a person or other animal, maintaining continuous physical contact and fails to retreat. The attack must result in bodily injury to the victim.

Vicious Dog: means any individual dog that has on three previous occasions, without provocation, attacked or bitten any person or other animal causing

bodily injury, or any individual dog which the Animal Control Department or his representative has reason to believe has a dangerous disposition likely to be harmful to humans or other animals.

Wild Animal: means any animal except the common domestic species (including, but not limited to, dogs, cats, horses, cattle, swine, sheep, and goats), regardless of the state or duration of captivity.

Wildlife: means a species, including each individual of a species that normally lives in a state of nature and is not ordinarily domesticated. This shall apply regardless of state or duration of captivity. The term shall include but is not limited to: foxes, cougars, coyotes, raccoons, and all forms of poisonous or constricting reptiles, and other like animals.

Zoological Park: means any facility operated by a person, partnership, corporation, or government agency, other than a pet shop or kennel, displaying or exhibiting one or more species of no domesticated animals.

#### **Section 4.01.002 Penalty**

Any person who shall violate any of the provisions of this ordinance, or fail to comply therewith any of the provisions thereof, shall be guilty of a misdemeanor, upon conviction shall be:

- 1) A person who violates this title commits a Class C misdemeanor punishable by:
  - a. a fine not to exceed \$500; or
  - b. if the person acts with criminal negligence, a fine not to exceed \$2,000.
- 2) Each day that a violation occurs is a separate offense.
- 3) Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.
- 4) Except as provided in Subsections (e) and (f), the minimum fine for an offense under this title is \$50.
- 5) The minimum fine for an offense under (*Dangerous Animals*) is \$100.
- 6) The minimum fine for an offense under (*Unrestrained Dog Prohibited*) is \$200 if the animal is not sterilized.
- 7) A person commits an offense if the person has been issued a citation and the person fails to enter a plea to a charge indicated on the citation on or before the appearance date indicated on the citation.
- 8) A person commits an offense if the person gives a false or fictitious name, address, or other information to the Enforcement Officer or designated

employee at the time the Enforcement Officer or designated employee issues the person a citation.

All fees for licensing, daily handling, impoundment, disposal, quarantine, lost or destroyed tags, and/or transfer to the animal shelter are stated on the schedule of fees to be revised from time to time by the Animal Control Department, Municipal Court and approved by the City council. A copy of the schedule of fees can be obtained from the local Animal Control Department, Municipal Court or the City Council.

**Section 1.** 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 2.** 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 3.** 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:

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Todd Ruge, Mayor

ATTEST:

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Danny Batts, City Secretary