

ORDINANCE NO. O-2011-05-09

AN ORDINANCE OF THE CITY OF NIXON, TEXAS, REGULATING DOMESTIC AND NON-DOMESTIC (WILD) ANIMALS WITHIN THE CITY LIMITS; REPEALING PRIOR ORDINANCES REGULATING DOMESTIC AND NON-DOMESTIC (WILD) ANIMALS WITHIN THE CITY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND AN OPEN MEETINGS CLAUSE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Nixon (the "City"), is by State law permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

WHEREAS, no ordinance now exists protecting private residents of the City from unwanted annoyance, nuisance, and danger from domestic and wild animals, protecting the peace in the community;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIXON, TEXAS, THAT;

Section. 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section. 2. Repealing. The City Council hereby repeals any prior Ordinance, other than the City of Nixon's Zoning Ordinance number O-08-11-10, previously enacted by the City that governs, controls or creates regulations with regards to animal control and domestic and wild animals within the City of Nixon, Texas. Should there be a direct conflict between Ordinance O-08-11-10 and this Ordinance, this Animal Control Ordinance shall control.

ANIMAL CONTROL ORDINANCE

Section. 3. Definitions

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Animal-at-Large. Any animal not under the restraint (as defined in this section) of a person capable of controlling the animal on or off the premises of the owner.

Animal Care and Control Officer. Any person designated by the City of Nixon as an enforcement officer who is qualified to perform such duties as required by this article and/or state law.

Animal Shelter. Any facility operated by a humane society, or municipal agency or its authorized agents, for the purpose of impounding animals under the authority of this article or state law for care, confinement, return to owner, adoption or euthanasia.

Auction. Any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this article. This definition does not apply to individual sales of animals by owners.

Bite. Puncturing or tearing of the skin by an animal's teeth.

Circus. A commercial variety show featuring animal acts for public entertainment.

Commercial Animal Establishment. Any pet shop, grooming shop, guard dog or obedience training center, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, or boarding or breeding kennel.

Currently Vaccinated. Vaccinated and satisfying the following criteria:

- (1) The animal must have been at least three months of age at the time of vaccination.
- (2) At least 30 days have elapsed since the initial vaccination.

(3) Not more than 3 years have elapsed since the most recent vaccination.

Dog. Any live or dead dog (*Canis Familiaris*), except hybrids.

Domestic Animal. Tame, domesticated, of or pertaining to the family or household.

Fowl. A bird of any kind, domestic cock or hen (*Gallus Gallus*).

Grooming Shop. A commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Guard Dog. Any professionally trained dog that will detect and warn its handler that an intruder is present in or near an area that is being secured.

Hybrid Animal. The cross between a normally domestic animal and an animal that is normally found in the wild. The offspring of such a mating is a hybrid animal.

Kennel. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs, and containing facilities for keeping more than four animals of the same species.

Licensed Veterinarian. A veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

Livestock. Domestic animals used or raised on a farm, especially those kept for a profit; including but not limited to: horses, ponies, mules, donkeys, cattle, goats, rabbits, sheep and swine, regardless of age, sex or breed.

Local Health Authority or Rabies Control Officer. The animal control officer shall be designated as the rabies control officer and shall handle all duties required under the Rabies Control Act of 1981 and all amendments to that act.

Observation Period. The 10 days following a bite incident during which the biting animal's health status must be monitored. The 10 day observation period will begin on the day of the bite incident (day one).

Owner. Any person, partnership, or corporation owning, keeping, or harboring one or more animals. An animal shall be deemed to be harbored if it is sheltered for three consecutive days or more, or if it returns to a residence or business on three separate

days.

Performing Animal Exhibition. Any spectacle, display, act, or event, other than circuses, in which performing animals are used. This shall include animal amusement vendors such as, but not limited to, pony-go-round rides, commercial horseback pictures and the like.

Person. Any individual, corporation, government or governmental subdivision, or agency, business trust, estate, partnership, association, or any other legal entity.

Pet or Companion Animal. Any animal kept for pleasure rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent on people for food and shelter.

Pet Shop. Any person, partnership, or corporation, whether operated separately or in connection with another business enterprise (except for a licensed kennel), that buys, sells, or boards any species of animal.

Possible Exposure to Rabies. Receipt of a bite or scratch from any warm blooded animal, animal to human or animal to animal, is reason to suspect exposure to rabies.

Provocation. Any purposeful act that causes an animal to bite, scratch, or attack in protection of self, 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 other than the delivery of mail by the United States Postal Service.

Public Nuisance Animal. Any animal or animals or fowl that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interfere with the rights of citizens, other than their owners, to enjoyment of life or property. Public nuisance animal shall mean and include, but is not limited to, any animal that:

- (1) Is repeatedly at large or stray;
- (2) Damages the property of anyone other than its owner;
- (3) Molests or intimidates pedestrians, postal workers or passersby;
- (4) Trespasses on school grounds;

- (5) Chases vehicles;
- (6) Excessively makes disturbing noises, including but not limited to continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (7) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (8) Causes unsanitary conditions in enclosures or surroundings where the animal or animals are kept or harbored;
- (9) Is offensive or dangerous to the public health, safety, or welfare by virtue of the number and/or types of animals maintained; or
- (10) Attacks other domestic animals.

Quarantine. Strict confinement, for the purpose of preventing the spread of disease, under restraint by closed cage, isolation kennel, rabies chamber, paddock, or in any other manner approved by the local health authority on the private premises of the owner or at a facility approved by the Texas Department of Health.

Quarantine Period. That portion of the observation period during which a biting animal is physically confined for observation as provided for under the quarantine method and testing section of this article.

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

Reptile. Any cold blooded, scaly vertebrate, such as a turtle, lizard or snake of any kind.

Restraint. Shall mean as follows:

- (1) Off-Premises. Secured by a leash or lead which shall be then attached to a collar around the dog's neck and shall be no longer than five (5) times the length of the dog from the tip of the nose to the buttocks and under the

control of a responsible person and obedient to the person's commands.

(2) On-Premises.

(A) Secured by a leash or lead which shall be then attached to a collar around the dog's neck and shall be no shorter than five (5) times the length of the dog from the tip of the nose to the buttocks and under the control of a responsible person; or

(B) Confined to the realty or premises of the owner of such dog or animal by a fence of sufficient strength, height and depth to prevent such dog or other animal from escaping therefrom; or

(C) Confined inside a house on such premises.

(3) Prohibitions. It shall be unlawful for the leash to be arranged in a manner that allows the dog or other animal to get on or across or within eight (8) feet of any street, park or other public land or within eight (8) feet of any sidewalk, public way, place or building, water, electric or gas meter or any receptacle used to accept mail or papers, when such leash is stretched to its full length. Any animal so arranged shall be considered dangerous to the public in general and declared a nuisance, and shall be impounded.

Riding School or Stable. 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 animals, including a racetrack, trotting track, or rodeo.

Scratch. A scrape left by the claws or nails of an animal and of sufficient severity to break the skin and draw blood.

Sick Animal. 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.

Stray. An animal running free or at large, with no physical or verbal restraint.

Un-owned Animal. Any animal for which an owner has not been identified.

Vaccinated. Properly injected with a rabies vaccine licensed for use in that species by the United States Department of Agriculture and administered by or under the direct

supervision of a licensed veterinarian.

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

Vicious Animal. Any animal that attacks, bites, or injures human beings or domesticated animals without adequate provocation, or which because of temperament, conditioning, or training, has a known propensity to attack, bite, or injure human beings or domesticated animals; or an individual animal which the local health authority has reason to believe has a dangerous disposition, likely to be harmful to humans or other animals.

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

Wildlife. Any animal that occurs naturally in the wild state.

Wild State. Living in its original, natural condition; not domesticated.

Zoological Park. 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 non-domesticated animals.

Section. 4. Animal Care and Control Officer

Animal control officers and/or City of Nixon employees shall be appointed to enforce all provisions of this chapter, including gathering up and impounding or quarantining any livestock, fowl, dogs, or other domestic and non-domestic animals found running at large (stray) within the city limits.

Section. 5. Restraint; Nuisances; Animal Bites

(a) All dogs, and other animals shall be kept under restraint and not allowed to run at large, stray.

- (b) An owner shall exercise proper care and control of his or her animals to prevent them from becoming a public nuisance.
- (c) Every female dog in heat shall be confined in a building or secure enclosure in such a manner that such female dog cannot come into contact with another animal of the same type but of the opposite sex, except for planned breeding.
- (d) 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, nor provoking or teasing such animal, shall be deemed vicious or dangerous to persons or other animals and the animal control officer may order that such animal be kept muzzled, or that such animal be kept within a sufficient enclosure to insure it cannot attack any person or other animal again, or may order that such animal be permanently removed from the corporate limits of the city, or that such animal be delivered to the animal control officer to be humanely euthanized.
- (e) Any peace officer or person may at any time report an attack by any dog upon themselves or any person. When such a report is taken, the animal control officer shall investigate such report, and if proven to be fact, shall inform the owner of the dog, if an owner can be located, of the attack. The dog will then be taken up and quarantined as per the laws of the state, Texas Health and Safety Code, Chapter 826.
- (f) If the attack upon any person is proven to be an unprovoked attack, the owner will be notified in person or in writing by the animal control officer within 30 days of the attack and the dog shall be declared a "vicious or dangerous dog." The owner of the dog shall then:
- (1) Register the dangerous dog with the animal control officer for the area in which the dog is kept;
 - (2) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure; and
 - (3) Obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person, as per the Texas Health and Safety Code, Chapter 822.
- (g) 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 article. Upon conviction, harboring a vicious animal in violation of this article is a Class "C" misdemeanor.

(h) No part of this article shall preclude at any time the filing of a complaint in the court of competent jurisdiction.

Section. 6. Impoundment; Violation Notice

(a) Unrestrained dogs and/or nuisance animals shall be taken by the animal control officer and/or any designated City of Nixon employee and impounded in an animal shelter and there confined in a humane manner. Any animal that poses a threat to public health and safety, any wild animal kept illegally, or any animal that has been cruelly treated or abused shall also be impounded. For purposes of discharging the duties imposed by the provisions of this article or other applicable laws, and to enforce the same, duly authorized representatives or employees may enter upon private property to the full extent permitted by law, which shall include but not be limited to entry upon private, unfenced property when in pursuit of any animal which he or she has reason to believe is subject to impoundment pursuant to the provisions of this article or other applicable laws.

(b) Licensed impounded dogs shall be kept for not fewer than 168 hours (seven days). After the seventh (7th) day, said impounded animals shall become the property of the City of Nixon, Texas and may be disposed and/or euthanized at the discretion of the animal control officer.

(c) Unlicensed impounded dogs, other domestic animals, and livestock shall be kept for not fewer than 72 hours (three days). After the third (3rd) day, said impounded animals shall become the property of the City of Nixon, Texas and may be disposed and/or euthanized at the discretion of the animal control officer.

(d) Wild dogs or other animals may be kept up to 72 hours at the discretion of the animal control officer.

(e) Obviously sick or injured animals may be taken up and humanely euthanized at the discretion of the animal control officer, if the animal is wearing no tag of any kind so

that the rightful owner cannot be notified of their animal's injuries.

(f) Any seriously injured or sick animal may be put down by the animal control officer as quickly and as humanely as possible to stop further suffering of the animal.

(g) If, by a vaccination tag or other means, the owner of an impounded animal can be identified, the animal control officer shall immediately upon impoundment notify the owner by direct contact, telephone, or other reasonable means.

(h) An owner reclaiming an impounded animal shall pay all impounding fees and vaccination fees as needed for animals before they shall be returned to the owner. Boarding fees shall also be charged to the owner at a rate of \$10.00 per day for food and housing for the animal. The impounding and pick up fee shall not exceed \$25.00 for a dog, and all other fees shall be charged at whatever costs are accumulated in impounding the animal (such as any trailer or help as may be contracted for to move the animal to the shelter).

(i) Subsequent impounding of the same animal occurring within a 12 month period shall be charged double the impound fee.

(j) Owners of animals that are known by the animal control officer to be the proper owner of that animal may be issued a citation for failure to restrain their animal and may be subject to a fine not to exceed \$500.00.

(k) No sick or injured animal shall be released to its owner until the animal control officer shall be satisfied that arrangements have been made for proper treatment of the sick or injured animal.

(l) Any animal impounded in the animal shelter for a period exceeding the times laid out in this article shall become the property of the local government authority and shall be placed for adoption or humanely euthanized. Any livestock kept over 72 hours may be sold or auctioned to cover the costs of impoundment and boarding.

(m) At any time within 14 calendar days from the date of the sale, the owner of any animal impounded and sold under the provisions of this article shall have the right to redeem the same by paying to the purchaser thereof double the amount paid by the purchaser for such animal in addition to any reasonable expenses incurred by the purchaser in keeping the same.

(n) In addition to, or in lieu of, impounding an animal found at large, the animal control officer or a police officer may issue to the known owner of such animal a notice of a violation of this article. Any person who is convicted of owning an animal at large shall pay a fine not to exceed \$500.00.

Section. 7. Authority to Slay Animals Running at Large

If any animal is found running at large in violation of this article, and after having received at least two complaints on the animal, and the animal cannot be safely caught and impounded, and the animal is determined to be a threat to public safety then the animal may be put down by the animal control officer and/or a City of Nixon employee using that force deemed necessary and taking into consideration the public health and safety.

Section. 8. Animal Care

(a) No owner shall fail to provide his animals with:

- (1) Sufficient wholesome and nutritious food;
- (2) Clean and sufficient quantities of water;
- (3) Adequate ventilation;
- (4) Shelter space and protection from the weather;
- (5) Veterinary care when needed to prevent suffering; and
- (6) Humane care and treatment.

(b) No person shall beat, cruelly treat, starve, torment, overload, overwork, or otherwise abuse an animal.

(c) No person shall cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.

(d) No owner of an animal shall abandon such animal. If an owned animal has been impounded by the animal control officer and/or City of Nixon employee, no owner shall allow the animal to remain in the animal shelter beyond the maximum time allowed (seven days), for the purpose of adopting the animal at a lower cost than the fine and/or fees due.

(e) Chickens, ducklings, or rabbits younger than eight weeks of age may not be sold in quantities of fewer than 25 to a single purchaser. This does not include local business establishments that would sell such animals or fowl in their normal course of business.

(f) No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter, any contest, game, or other competition; as an inducement to enter a place of amusement; or as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(g) 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 any animal, provided that it shall be lawful for a person to expose on his own property common rodent poison mixed only with vegetable substance.

(h) No person, except a person licensed by the Texas Parks and Wildlife department, shall place or set out steel jaw leg and/or neck traps with the intent of trapping any animal.

(i) Any person who, as the operator of a motor vehicle, strikes a domestic or non-domestic animal shall as soon as practicable report such injury or death to the animal control officer and/or City of Nixon employee so that the animal may be picked up.

Section. 9. Fowl and Livestock

(a) It shall be unlawful for any person who is the owner of any hog or pig of any kind, or any person who has any hog or pig under their 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.

(b) No person shall keep upon any tract of land or any lot within the city limits any livestock or farm animals of any kind, including but not limited to horses, sheep or

goats of any kind unless the tract of land or lot has a minimum of 20,000 square feet of surface. Up to one head of livestock may be kept for each 20,000 square feet of surface on the tract of land or lot excluding any dwelling or any part thereof. No fractional measurements of land will be allowed, nor shall the livestock be allowed to roam free, graze, or be kept within 500 feet of any food service establishment or food processing establishment, regardless of ownership or occupancy of such establishments. All persons keeping the livestock upon any tract of land or lot within the city limits will be held responsible for the cleanliness and upkeep of the land or lot so as not to allow it to become a public nuisance by the odor that may be created by the keeping of the livestock.

(c) No person shall keep upon any tract of land or lot within the city limits any domestic fowl, such as, but not limited to chickens, turkeys, guinea fowl, geese and/or ducks, unless the fowl are securely penned or tethered on the property of the owner and not be allowed to roam free. Any fowl of any kind found to be roaming free by the animal control officer within the city limits will be considered to be un-owned and may be taken up or disposed of as may be deemed necessary to prevent the fowl from becoming a public nuisance. All owners or keepers of the fowl within the city limits will be held responsible for the cleanliness and upkeep of the tract of land or lot upon which the fowl are being kept so as not to allow it to become a public nuisance by the odor that may be created by the keeping of the fowl.

(d) Subsections (a) and (b) above 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.

(e) Subsections (a), (b) and (c) above shall not apply to those students participating in 4-H or FFA who engage in the raising of livestock or fowl for the purpose of showing them in a livestock show.

(1) These persons shall be required, however, to register the keeping of such animals or fowl with the animal care and control department.

(2) There will be no fee for registering of livestock or fowl for the purpose of showing in a livestock show. Registration shall list the name and address of the student, the exact address and location where the animals or fowl are being kept, and period of time the animals or fowl will be kept at that

location.

(f) Any animal now being kept or harbored lawfully within the city as per the date of adoption of this article or at any location outside the city which may be annexed after the date, the distance and number requirements of subsections (a), (b) and (c) above shall not apply for a period of six months from the date after the passage of this article or the date of annexation, respectively.

Section. 10. Keeping of Wild Animals

(a) No person shall own, possess, or have custody on his premises of any wild or vicious animal (including any poisonous or otherwise dangerous reptile) for display, training, or exhibition purposes, whether gratuitously or for a fee, unless the person registers the animal or reptile with the animal care and control department. This registration may be made between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(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.

(c) Subsection (a) above shall not be construed to apply to zoological parks, performing animal exhibitions, circuses or veterinary hospitals.

Section. 11. 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.

Section. 12. Rental of Live Traps by the City to Citizens

Any small animal trap that is rented to any citizen of the City of Nixon by the animal control department will have a fee of \$10.00 per day charged to the citizen renting the

trap. In addition, a \$25.00 deposit will need to be paid by the citizen prior to assuming control of any trap rented pursuant to this section, and said deposit will be applied towards the daily use fees upon return of said trap to the City. The citizen is responsible for the upkeep and baiting of the trap while he or she is in possession of the trap. Any trap destroyed, lost, or stolen is the responsibility of the person renting the trap. If the trap is lost damaged or stolen, the full replacement cost of the trap shall be charged to the person renting the trap. All funds so generated will be used to purchase more traps or to replace worn out traps.

Section. 13. Chapter Compliance Does Not Relieve Other Compliance Requirements

The keeping of any animal in accordance with the provisions of this Ordinance shall not be construed to authorize the keeping of the same in violation of any zoning ordinance or any other ordinance of the city.

Section. 14. Enforcement; Interference With Animal Care and Control Officer

(a) The civil and criminal provisions of this article shall be enforced by those persons or agencies designated by municipal authority. The animal care and control officer shall have the authority to issue citations to anyone he finds in violation of this chapter, if said animal care and control officer is a certified peace officer in the State of Texas. If the animal care and control officer is not a certified peace officer in the State of Texas, he/she may employ the assistance of the Nixon Police Department for the issuance of citations pursuant to this Ordinance.

(b) It shall be a violation of this article to interfere with the animal control officer or the Nixon Police Department while in the performance of their duties to enforce this Ordinance.

Section. 15. Spay and Neuter Requirements

Any dog adopted from the animal shelter or the pet adoption center shall be spayed or

neutered prior to adoption, or if the animal is too young the adopter shall commit to have the animal spayed or neutered when it has reached the age of six months. The costs of spaying or neutering are to be borne by the adopters.

Section 16. Severability

It is hereby declared to be the intention of the City Council that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity 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 of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 17. Effective Date

This ordinance shall take effect immediately upon its approval and passage and publication as required by law.

Section 18. Open Meetings

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED on this 9th day of May 2011.

CITY OF NIXON, TEXAS

Bonnie Chessher, Mayor

ATTEST:

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Eduardo X. Escobar', written over a horizontal line.

Tanya Torres, City Secretary

Eduardo "Eddie" X. Escobar, City Attorney
