

ORDINANCE NO. 19-09

AN ORDINANCE AMENDING CHAPTER 14 “ANIMALS” OF THE CODE OF ORDINANCES OF THE CITY OF BROWNWOOD, TEXAS, BY AMENDING SECTION 14-1 “DEFINITIONS”; BY AMENDING SECTION 14-102 REGARDING RABIES VACCINATIONS; BY DELETING DIVISION 3 REQUIRING LICENSES AND TAGS FOR DOGS AND CATS IN ITS ENTIRETY; AMENDING AND REPLACING DIVISION 4 “DANGEROUS DOGS” IN ITS ENTIRETY AND RENUMBERING IT AS DIVISION 3; RENUMBERING DIVISION 5 “IMPOUNDMENT” TO DIVISION 4; AND ADDING A DIVISION 5 “CARE AND PROTECTION OF ANIMALS” REGULATING THE CARE AND HUMANE TREATMENT OF ANIMALS; REQUIRING SANITARY CONDITIONS FOR ANIMALS AND MAINTENANCE OF THE PREMISES UPON WHICH THEY ARE KEPT; REGULATING THE CONFINEMENT OF DOGS OR CATS IN MOTOR VEHICLES; PROHIBITING THE DEFECATION BY DOGS ON PRIVATE OR PUBLIC PROPERTY WITHOUT REMOVING OR DISPOSING OF THE EXCRETA; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Brownwood desires to more efficiently regulate and protect animals, including, without limitation, cats and dogs, kept in the City of Brownwood and finds that this ordinance is in the best interests of the citizens of the City; and

NOW THEREFORE, be it ordained by the Council of the City of Brownwood, Brown County,

Texas:

Section 1. ENACTMENT

A. The following definitions contained in Section 14-1 “Definitions.” are hereby added or deleted:

The definition of “Dangerous dog” is hereby deleted.

The definition of “Owner” is hereby amended to read: “Owner means the actual owner of an animal and/or the person who has the care, custody or control of such animal.”

The definition of “Secure enclosure” is hereby deleted.

B. Section 14-102, "Rabies Vaccination." is hereby amended in its entirety to read as follows:

"Sec. 14-102.- Rabies vaccination.

(a) An owner of a dog or cat commits an offense if:

- (1) the dog or cat is not currently vaccinated;
- (2) the dog or cat is not wearing a collar or harness with a current rabies tag securely attached to it; or
- (3) the owner fails to show a current certificate of vaccination and rabies tag for the dog or cat upon request by a peace officer or animal control officer.

(b) It is a defense to prosecution under Subsection (a) that:

- (1) the dog or cat is under four months of age;
- (2) the dog or cat is unable to be vaccinated due to health reasons as verified by a licensed veterinarian; or
- (3) the person charged produces to the court proof of vaccination from a licensed veterinarian showing the dog or cat was vaccinated at the time the citation was issued or not later than 20 days after the citation was issued.

(c) A licensed veterinarian who vaccinates a dog or cat for rabies shall issue to the owner of the animal a current rabies tag and a certificate of vaccination. The certificate of vaccination must contain the following information:

- (1) name, address, and telephone number of the owner;
- (2) animal identification, including species, sex, age, size (pounds), predominant breed, and color;
- (3) vaccine used (including whether it is a one-year or three-year rabies vaccine), producer, expiration date, and serial number;
- (4) date vaccinated and expiration date of the certificate of vaccination;
- (5) rabies tag number; and
- (6) veterinarian's signature and license number."

C. Division 3. "LICENSES AND TAGS," Sections 14-121, 14-122, 14-123, 14-124, 14-125 and 14-126, is hereby deleted in its entirety.

D. Division 4. "DANGEROUS DOGS," Sections 14-151, 14-152, 14-153 and 14-154 is amended, renumbered Division 3, and replaced in its entirety to read as follows:

"DIVISION 3. – DANGEROUS DOGS

Sec. 14-151. Authorization.

The general laws of the state, except as specifically provided through proper ordinances and regulations of the city, shall control the handling of dangerous dogs. There is adopted as part of this chapter all of the provisions of title 10, chapter 822, subchapter D, as amended, of the Texas Health and Safety Code, including, without limitation, Section 822.0422 et.seq., insofar as applicable.

Sec. 14-152. Definitions.

For the purposes of this article, the following words and/or phrases shall have the meanings respectively ascribed to them by the statute except as provided below:

“Dangerous dog” as defined in §822.041 of the Texas Health and Safety Code, is amended to include the additional definition of:

(C) Makes an unprovoked attack on a domestic animal that causes serious bodily injury or death 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.

Sec. 14-153. Seizure.

(a) If a person reports an incident described by §822.041(2) of the Texas Health and Safety Code as codified and amended by Section 14-152 of this ordinance, the animal control authority may seize and impound the dog pending investigation of the incident.

(b) The animal control authority shall release the dog to the owner if the animal control authority has not made a determination that the dog is a dangerous dog on or before the tenth (10th) business day after the seizure and impoundment of the dog, and if all fees have been paid as required under subsection (d). Release of the dog does not prohibit the animal control authority from receiving more information and subsequently declaring the dog a dangerous animal.

(c) If the animal control authority determines the dog is a dangerous dog, it shall continue to impound the dog until the owner complies with § 822.042 of the Texas Health and Safety Code, or until such time as the dog may legally be destroyed.

(d) The owner shall pay any cost or fee assessed by the animal control authority related to the seizure, acceptance, impoundment, or destruction of the dog. In the event that the dog is returned to the owner, all fees must be paid prior to release of the dog.”

E. Division 5 “IMPOUNDMENT” is hereby renumbered Division 4.

F. A Division 5 “CARE AND PROTECTION OF DOGS AND CATS” is hereby added and shall read as follows:

“DIVISION 5. – CARE AND PROTECTION OF ANIMALS

Sec. 14-188. Care and humane treatment of animals.

(a) For purposes of this section, “restraint” shall mean a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.

(b) It shall be unlawful for an owner or other person to:

(1) Fail to provide an animal with sufficient good and wholesome food and water, adequate housing consisting of a three-sided structure with a cover or roof, and a floor that is sufficient to keep the animals dry and ensure that they do not have to lay in water, shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment;

(2) Beat, torment, abuse, overload, seriously overwork, maim, disfigure, burn or scald, mutilate, or torture an animal;

(3) Carry or transport an animal in any vehicle or other conveyance in a cruel or inhumane manner;

- (4) Cruelly confine an animal;
- (5) Crop a dog's ears, dock a tail, remove dew claws, or perform other surgical procedures on a dog or cat, except as provided by the Veterinary Licensing Act;
- (6) Use steel jaw or leg-hold traps or snares;
- (7) Abandon an animal, including abandoning an animal in the owner's custody without making reasonable arrangements for the assumption of custody by another person;
- (8) Instigate or permit any dog fight, cock fight, or other combat between animals or between animals and humans;
- (9) Leave any animal in a standing or parked vehicle in such a way as to endanger the animal's health, safety, or welfare;
- (10) Secure by use of a restraint a dog or other animal to a stationary object for a period of time or in a location so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian.
 - (A) "Unhealthy situation" and "potentially dangerous situation for a pedestrian" shall include, but not be limited to:
 - (i) Leaving a dog unattended by use of a restraint that unreasonably limits the dog's movement:
 - a. Between the hours of 10:00 p.m. and 6:00 a.m.;
 - b. Within 500 feet of the premises of a school; or
 - c. In the case of extreme weather conditions, including conditions in which the actual or effective outdoor temperature is below 32 degrees Fahrenheit, a heat advisory has been issued by a local or state authority or jurisdiction, or a hurricane, tropical storm, or tornado warning has been issued for the jurisdiction by the National Weather Service.
 - (ii) Secure by use of a restraint an animal in such a manner as to permit the animal access upon any public "right-of-way";
 - (iii) Secure by use of a restraint an animal in such a manner that does not permit the animal to reach shelter, food, or water;
 - (iv) Secure by use of a restraint an animal in such a manner that it is subject to attacks by persons or other animals, stinging bites from outdoor insects, or other similar hazards that pose an unreasonable threat of injury to the animal;
 - (v) Failing to remove waste on a daily basis from the area in which the animal is restrained;
 - (vi) Using a choke-type collar to on an animal in conjunction with a restraint.
 - (B) It shall be minimally required that the tether used must be at least ten (10) feet in length, equipped with swivel ends, positioned in such a manner as to prevent the animal from becoming entangled with any obstruction, from partially or totally jumping any fence, or from leaving any part of its owner's property, and that is secured to the animal using a properly fitted collar or harness.
 - (C) For purposes of subsection (10), a restraint unreasonably limits a dog's movement if the

restraint: uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog; is a length shorter than the greater of five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail or 10 feet; is in an unsafe condition; or causes injury to the dog.

(D) Notwithstanding subsection (10) does not apply to:

(i) A dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;

(ii) A dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(iii) A dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;

(iv) A dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

(v) A dog restrained while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or

(vi) A dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

(11) Kill an animal, except as allowed by law;

(12) Expose an animal to any poisonous substance, whether mixed with food or not, so that the poison is likely to be ingested by an animal. Provided, however, it shall not be a violation of this section for a person, on his own property, to expose rats or mice to common rat poison intended for the purpose of exterminating the rats or mice;

(13) Cause any of the enumerated acts (1)–(12) to be done.

Sec. 14-189. Sanitary conditions; Maintenance of Premises.

(a) An owner of an animal commits an offense if he fails to:

(1) keep any cage, pen, enclosure, or other area in which the animal is kept in a sanitary condition; or

(2) remove all animal excreta from the cage, pen, enclosure, or other area in which the animal is kept as often as necessary to maintain a healthy environment.

(b) A person commits an offense if he permits any yard, ground, premises, or structure belonging to, controlled by, or occupied by him to become nauseating, foul, offensive, or injurious to the public health or unpleasant and disagreeable to adjacent residents or persons due to the accumulation of animal excreta.

Sec. 14-190. Confinement of dogs or cats in unattended motor vehicles.

(a) A person commits an offense if he or she knowingly confines a dog or cat in an unattended motor vehicle for more than five minutes under conditions that, in the opinion of a trained peace officer, animal control authority, or licensed veterinarian, endanger the health of the dog or cat due to extreme temperatures, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause the suffering, disability, or death of the dog or cat and as demonstrated by, but not limited to, the dog or cat's excessive drooling or panting, lethargic behavior, collapse, vomiting, or convulsions.

(b) A peace officer, animal control authority, or licensed veterinarian may, after reasonably attempting to locate the dog or cat's owner, remove the dog or cat from the motor vehicle using any reasonable means, including breaking a window or lock. If professional services are required to remove the cat or dog from the vehicle, the owner is responsible for the cost of professional services. A peace officer, animal control authority, or licensed veterinarian who removes a dog or cat from a motor vehicle in accordance with this section is not liable for any resulting property damage.

(c) This section does not create a cause of action for damages or enforcement of this section.

Sec. 14-191. Defecation of dogs on public and private property.

(a) An owner of a dog commits an offense if he knowingly permits, or by insufficient control allows, the dog to defecate in the city on private property or on property located in a public place.

(b) It is a defense to prosecution under Subsection (a) that the owner of the dog immediately and in a sanitary and lawful manner removed and disposed of, or caused the removal and disposal of, all excreta deposited on the property by the dog.

(c) It is a defense to prosecution under Subsection (a) that:

- (1) the property was owned, leased, or controlled by the owner of the dog;
- (2) the owner or person in control of the property had given prior consent for the dog to defecate on the property; or
- (3) the dog was a service dog being used in official law enforcement activities.

(d) This section does not apply to a service dog that is specially trained to assist a person with a disability and that was in the custody or control of that disabled person at the time it defecated or was otherwise present on private property or on property located in a public place.”

Section 2. Severability Clause.

If any word, section, article, phrase, paragraph, sentence, clause or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect, for any reason, the validity of the remaining portions of this ordinance and the remaining portions shall remain in full force and effect.

Section 3. Cumulative/Repealer Clause.

This ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Brownwood, Texas, whether codified or uncodified, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

Section 4. Savings Clause.

All rights and remedies of the City of Brownwood, Texas, are expressly saved as to any and all violations of the provisions of this ordinance or any other ordinance which 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 5. Penalty.

- (a) Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500.00.
- (b) Every act in violation of this Ordinance shall constitute a separate offense.
- (c) Unless otherwise specifically set forth herein, an allegation and/or evidence of culpable mental state is not required for the proof of an offense of this Ordinance.
- (d) The penal provisions imposed under this Ordinance shall not preclude the City of Brownwood from filing suit to enjoin the violation of this Ordinance. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 7. Effective Date.

This ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED on First Reading this the 13th day of August, 2019.
PASSED AND APPROVED on Second Reading this the 27th day of August, 2019.
PASSED AND APPROVED on Third/Final Reading this the 27th day of August, 2019.

ATTEST:

Christi Wynn
CHRISTI WYNN, City Secretary



Stephen E. Haynes
STEPHEN E. HAYNES, Mayor

APPROVED AS TO FORM:

Pat Chesser
PAT CHESSER, City Attorney