

ORDINANCE 19-06

AN ORDINANCE OF THE CITY OF WOODWAY, TEXAS; AMENDING CHAPTER 3, ANIMALS AND FOWL, OF THE CODE OF ORDINANCES OF THE CITY OF WOODWAY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE, AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED WAS NOTICED AND WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODWAY, TEXAS:

SECTION I

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article I, General Provisions, Section 3-1, Adoption of state law and rules, is hereby amended by adding the following:

For the purposes of the regulation of animals; Dogs that attack persons or are a danger to persons, the City of Woodway hereby adopts Title 10, Chapter 822 of the Texas Health and Safety Code; any conflicts existing between Title 10, Chapter 822 of the Texas Health and Safety Code and this ordinance, the provisions of the Texas Health and Safety Code shall prevail.

SECTION II

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article I, General Provisions, Section 3-2, Definitions, is hereby amended as follows:

At large: Shall mean an animal that is not restrained by some physical means to the premises of the owner. Provided, however, that an animal shall not be considered "at large" when held and controlled by some person by means of a leash or chain of proper strength and length to control the actions of the animal, or while confined within a vehicle or cage. An animal shall be deemed at large when not under restraint.

Unprovoked: With respect to an attack by an animal shall mean that the animal was not taunted or touched, hit, kicked or struck by a person with an object, or part of a person's body, or by another animal.

Dangerous animal, fowl or reptile:

(a) Any animal, fowl or reptile which, because of its physical nature and/or dangerous propensity, is capable of inflicting physical harm or death to human beings or would constitute a danger to human life or property and which has behaved in such a manner that the owner thereof knows or reasonably should know that the animal, fowl or reptile is possessed of tendencies to attack or to bite human beings, or other animals, fowl or reptiles;

SECTION III

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article I, General Provisions, Section 3-12, Redemption, Subsection (a) and (b) are hereby amended to read as follows:

- (a) The owner of any animal, fowl or reptile not affected with a contagious disease and impounded by the City of Woodway under the provisions of this ordinance and not alleged to be a dangerous animal, fowl or reptile may redeem the same before it is sold or otherwise disposed of by paying the poundage fees as set out by resolution of the Woodway City Council, from time to time, and paying any fine assessed by the City of Woodway for each violation of this chapter. All animals transferred to the Waco Animal Shelter by the City of Woodway, and all dogs or cats surrendered to the Waco Animal Shelter by a resident of Woodway, must meet the microchip and spay/neuter requirements and pay any costs that may be due to the City of Waco and/or City of Woodway before reclaiming.
- (b) Redemption of an animal, fowl or reptile alleged to be a dangerous animal, fowl or reptile is governed by the provisions of sections 3-29 and 3-30 of this chapter.

SECTION IV

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article III, Vicious Animals, Fowl or Reptile, is hereby amended to read as follows:

ARTICLE III. - DANGEROUS ANIMALS, FOWL OR REPTILE

SECTION V

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article III, Dangerous Animals, Fowl or Reptile, Section 3-26, Prohibition, is hereby amended as follows:

It shall be unlawful for any person to keep or harbor a dangerous animal, fowl or reptile, within the corporate limits of the city.

SECTION VI

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article III, Dangerous Animals, Fowl or Reptile, Section 3-27, Exception; Definition, is hereby amended as follows:

Dogs maintained lawfully as guard dogs or attack dogs as defined herein shall not be included in the definition of dangerous animals. As used in this chapter, the term guard dog or attack dog means any dog utilized to protect property and intended to attack intruders and that has completed such professional training and is so certified or has been comparably trained such that its attack can be stopped on command.

SECTION VII

That Chapter 3, Animals and Fowl, of the Code of Ordinances of the City of Woodway, Texas, Article III, General Provisions, Sections 3-29 through 3-37, are hereby amended, in their entirety, to read as follows:

Sec. 3-29. – Purpose of Sections

It is the intention of Sections 3-30 and 3-31 to provide a means of dealing with a dog that is dangerous, or by its conduct, has indicated that it may represent a danger in the future. In interpreting the definitions contained in these sections and in implementing their provisions, the animal control officer and the municipal

court shall recognize the right of a person to use an animal as a protector or as a guard. However, the animal control officer and the municipal court shall also take into consideration the right of a neighborhood to be free from fear that a dog may leave the premises of its owner or keeper and attack and injure a person or other domestic animal.

Sec. 3-30. – Dangerous Dogs Defined: Regulations

- (a) The term “dangerous dogs” shall include but is not limited to the following:
 - (1) Any dog which has inflicted severe injury or death on a human being without provocation Public or private property;
 - (2) Any dog which has killed or severely injured a domestic animal without provocation while off the owner’s property;
 - (3) Any dog which is trained or harbored for fighting, which may be determined based on whether the dog exhibits behavior and/or bears physical scars or injuries which indicate that the dog has been trained or used for the purpose of fighting.
- (b) The owning, keeping, or maintaining of a dangerous dog within the corporate limits of the city is hereby prohibited and declared unlawful unless such animal is confined at all times within a securely enclosed locked pen or structure upon the residence premises of the owner or other person responsible therefor. Such structure or pen shall not be deemed securely enclosed unless it has secure sides, top and bottom with top and bottom secured to sides. If such pen or structure has no bottom, sides must be imbedded in the ground at least two (2) feet. If any such dangerous dog is to be moved to or from such pen or structure, it shall be lawful to do so only if the animal is muzzled and leashed with a secure chain controlled by at least one person for each dog. This article is inapplicable to Texas licensed veterinarians and persons charged with the duty of animal control.
- (c) If a dog, as stated in (a)(1) or (a)(2) above is trained or harbored for fighting, the animal control officer shall impound the dog immediately if it is at large or, if it is in the possession of some person, the animal control officer may issue a notice requiring that the dog be taken to a designated location for impoundment. A dog which is impounded shall not be released until a final determination is made on the disposition of the dog. The animal control officer or municipal court may deem this article inapplicable and disregard it if the owner of the dog is in compliance with subsection (b) above and the animal control officer believes that no further remedial measures are necessary.
- (d) Notice shall be given to the owner that the animal control officer has determined that the dog is a dangerous dog. This notice shall also set out the remedial requirements which the owner must comply with. This notice shall be given to the owner by personal service or by certified mail, return receipt requested. The owner shall have (5) five working days from receipt of the notice to file a letter with the municipal court stating that he shall comply with the remedial requirements as stated in the notice or that he disagrees with the determination that the dog is dangerous or the remedial requirements and that he requests a hearing before the court.
- (e) If the owner of a dangerous dog cannot be determined after reasonable efforts to do so and after holding the dog for seventy two (72) hours, the dog may be disposed of in a humane manner. If the owner of a dangerous dog which has been impounded cannot be located for the delivery service of the notice required herein, either in person or by mail, the dog may be disposed of in a humane manner after all reasonable effort has been made to locate such owner.
- (f) If a dog’s behavior creates a more dangerous situation, even though the owner is complying with the remedial requirements, the court may again review the situation and prescribe additional or different remedial requirements.

Sec. 3 – 31 - Potentially Dangerous Dog

- (a) If persons in a neighborhood believe that a dog has exhibited behavior indicating that it represents a potential danger, said persons may initiate an action before the municipal court to determine whether or not the animal is potentially dangerous. A hearing shall be conducted. Pending the outcome of such hearing, the dog must be securely confined in a humane manner either on the premise of the owner, with a licensed veterinarian, or at the shelter.
- (b) If the animal control officer determines that a dog is potentially dangerous, the animal control officer shall give notice of that determination to the owner of the dog. This notice shall also set out the remedial requirements which the owner must comply with. This notice shall be given to the owner by personal service or by certified mail, return receipt requested. The owner shall have (5) working days from receipt of notice to file a letter with the municipal court stating that he shall comply with the remedial requirements as stated in the notice or that he disagrees with the determination that the dog is potentially dangerous or the remedial requirements and that he requests a hearing before the court.
- (c) A dog may be defined as potentially dangerous if it has engaged in the following conduct:
 - (1) When unprovoked, chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack;
 - (2) Has a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of human beings or domestic animals.
- (d) If a dog's behavior creates a more dangerous situation, even though the owner is complying with the remedial requirements, the municipal court may review the situation and prescribe additional or different remedial requirements.

Sec. 3 – 32 - Exceptions

- (a) No dog may be declared dangerous or potentially dangerous if the threat, injury, or damage was sustained by a person who, at the time:
 - (1) was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;
 - (2) was teasing, tormenting, abusing, or assaulting the dog or has in the past been observed or reported to have teased, tormented, abused, or assaulted the dog; or
 - (3) was committing or attempting to commit a crime.
- (b) Sections 3-30 and 3-31 shall not be applicable to dogs utilized by a law enforcement agency during the time such dogs are being actually utilized for law enforcement purposes.

Sec. 3-33. - Court proceedings against animal owner.

If a dangerous animal, fowl or reptile, or guard or attack dog is impounded pursuant to this chapter, the animal control officer may institute proceedings in the municipal court on behalf of the city against the animal owner, if known, charging the owner with violation of this chapter. However, if no proceedings are instituted against the owner within seven (7) days from the date of impoundment and the owner is known, the animal shall be released to said owner. Nothing herein shall be construed as preventing the animal control officer, a member of the police department or a complaining citizen from instituting a proceeding in the municipal court for violation of this chapter where there has been no impoundment or where the animal, fowl or reptile has been released to the owner.

Sec. 3-34. - Court findings; release of animal under this section.

- (a) If a complaint has been filed in the municipal court against the owner of a dangerous animal, fowl or reptile impounded for violation of this ordinance and before the animal, fowl or reptile is released, whether filed by a complaining citizen, by the animal control officer or a member of the police department, the animal, fowl or reptile shall not be released from impoundment or disposed of except on the order of the municipal judge who may also direct the owner to pay all impoundment fees,

boarding fees and treatment charges in addition to any penalties for violation of this section except as provided by other provisions of this chapter.

- (b) The municipal judge may, upon making a finding that such animal, fowl or reptile is dangerous pursuant to this ordinance, order the animal, fowl or reptile to be destroyed in a humane manner under the supervision of the animal control officer.
- (c) Surrender of an animal, fowl or reptile by the owner thereof to the animal control officer shall not relieve or render the owner immune from the decision of the court or from the fees and fines which may result from a violation of this chapter.

Sec. 3-35. - Complaints.

Should any person desire to file a complaint concerning an animal, fowl or reptile which is believed to be a dangerous animal, fowl or reptile, a sworn, written complaint must be filed with the department of public safety which contains the following:

- (1) Name, address and telephone number of complainant and other witnesses;
- (2) Date, time and location of any incident involving the animal, fowl or reptile;
- (3) Description of the animal, fowl or reptile;
- (4) Name, address and telephone number of the owner of such animal, fowl or reptile if known;
- (5) A statement regarding the animal, fowl or reptile which is believed to be a dangerous animal, fowl or reptile, stating the facts upon which such complaint is based;
- (6) A statement that the animal, fowl or reptile has exhibited dangerous propensities in past conduct if known;
- (7) Other facts or circumstances of the incident.

Sec. 3-36. - Exceptions by permit.

- (a) The city council may grant a special exception to any provision of this ordinance regulating: (i) the number of animals allowed; (ii) the location and/or distance requirements for housing or containment of an animal or animals; or (iii) the land surface area required to house or contain an animal or animals. The city council may, by ordinance, rule, resolution, or specification in the special exception, impose any term or condition upon any special exception granted pursuant hereto. After receiving an application for a special exception the city council shall hold a public hearing to determine the effect of such proposed special exception upon the other property owners and occupants of property in the general area and the property adjoining the property in question, neighborhood character, public health, public safety, and general welfare. Such public hearing shall be substantially the same, and notices shall be given in accordance with state statutes and city ordinances regulating rezoning of property. Each special exception shall be granted for a period of time set by the city council, but no such special exception shall be granted for a term longer than five (5) years and is subject to revocation at any time after one (1) year if the city council finds, after receipt of a written complaint delivered to the city secretary and after having conducted a public hearing (to be substantially the same as required by state statute and city ordinances regulating the rezoning of property) that any term and/or condition imposed upon the special exception by ordinance, rule, regulation, resolution or by imposition of terms and/or conditions by the city council as a condition of granting such special

exception, or the requirements of any state or federal statute, law, rule or regulation have been violated.

- (b) Each application for a special exception under the provisions of this ordinance shall be accompanied by a fee in an amount to be set by the city council, by resolution, from time to time. The information required for an application for a special exception shall be such as is promulgated by, and the same shall be provided on a form promulgated by, the city manager, from time to time.

ARTICLE IV. - GENERAL ADMINISTRATIVE PROVISION; PENALTIES

Sec. 3-37 - Interference.

No person shall interfere with, hinder or molest any agent of the city in the performance of any duty as herein provided.

Sec. 3-38. - Repeal of conflicting ordinances; severability.

All other ordinances of the city which are in conflict with this chapter are hereby repealed to the extent of such conflict. If any part of this chapter shall be held invalid, such part shall be deemed severable; and the invalidity thereof shall not affect the remaining parts of this chapter.

Sec. 3-39. - Designation of local health authority.

- (a) The city hereby adopts the provisions of Article 4477-6a, the Rabies Control Act of 1981, V.A.T.S., and the standards established by the board, as referred to therein.
- (b) The director of public safety is designated as the local health authority of the city pursuant to the provisions of Article 4477-6a, the Rabies Control Act of 1981, V.A.T.S., and any amendments thereto.

Sec. 3-40. - Penalties.

Any person, firm, corporation or entity violating, permitting any violation or participating in any violation of any provision of this Chapter 3, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than one dollar (\$1.00) and no more than five hundred dollars (\$500.00) for each separate offense. Each separate day a violation occurs shall be a separate offense. Each separate act, event, occurrence, condition or omission during each day shall be a separate offense.

Sec. 3-41. - Effective date.

This chapter shall be effective from and after the 1st day of January, 1999.

SECTION VIII

That if any provision of this ordinance is found by a Court of competent jurisdiction to be invalid, unconstitutional or unenforceable, or if the application of this ordinance to any person or circumstances is found to be invalid, unenforceable or unconstitutional, such invalidity, unenforceability or unconstitutionality shall not affect the other provisions or application of this ordinance which can be given effect without the invalid, unenforceable or unconstitutional provisions or application.

SECTION IX

That all ordinances, codes, regulations, policies and guidelines of and in the City of Woodway, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION X

That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by law.

PASSED AND APPROVED this 20th day of May 2019.

CITY OF WOODWAY, TEXAS

Bob Howard, Mayor

ATTEST:

Donna Barkley, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Charlie Buenger, City Prosecutor