

City of Houston, Texas, Ordinance No. 2022-44

AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO ANIMALS AND FOWL, CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, Chapter 6 of the City of Houston Code of Ordinances contains the City's regulations applicable to animals; and

WHEREAS, BARC animal services ("BARC") is the division of the Administration and Regulatory Affairs Department ("ARA") responsible for regulation and control of animals and the administration of the City's permits and registration related to the care and keeping of animals; and

WHEREAS, BARC underwent an intensive review of its management, organizational structure, and operations and has developed comprehensive revisions to its existing regulations; and

WHEREAS, BARC and ARA personnel worked with stakeholders in the various industries regulated by the provisions in Chapter 6 to develop the proposed revisions; and

WHEREAS, the proposed revisions to Chapter 6 encourage the responsible behavior of pet owners and citizens and provide BARC with additional tools to enhance enforcement of animal control; and

WHEREAS, the proposed revisions to Chapter 6 have been presented to the Quality of Life Committee of the City Council; **NOW, THEREFORE**,

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

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Chapter 6 of the Code of Ordinances, Houston, Texas, is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. That Subsection (14) of Section 2-504 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(14) Responsibility for supervision, administration, and management of BARC animal services, including the development, recommendation, and implementation of the necessary policies and procedures to ensure the efficient operation of all city services regarding animal regulation and care.”

Section 4. That the Director of ARA shall work with the Finance Department to revise the City Fee Schedule to conform with the revisions to the City Code made by this Ordinance.

Section 5. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the “Code”) to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 6. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 7. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 19th day of January, 2022.

APPROVED this 19th day of January, 2022.

David P. Martin _____
Mayor Pro Tem of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

Prepared by Legal Dept. _____
RAW:asw 2/8/2022 Assistant City Attorney
Requested by Tina Paez, Director, Department of Administration and Regulatory Affairs
L.D. File No. 0371600046001.

EXHIBIT A

**Chapter 6
ANIMALS AND FOWL**

ARTICLE I. IN GENERAL

DIVISION 1. MATTERS OF GENERAL APPLICABILITY

Sec. 6-1. Scope; definitions; penalty.

- (a) This chapter shall apply to animals or property found or located within the corporate limits of the city.
- (b) The following words, terms and phrases, when used in this chapter, shall have the same meanings as provided in this section, except where the context clearly indicates a different meaning:

Adoption means the sale of an animal that is owned by and in the custody of BARC animal services to a member of the general public in exchange for cash or other financial consideration.

Animal enforcement officer means an individual employed by the city who meets the definition and training requirements of Chapter 829 of the Texas Health and Safety Code.

BARC adoptions, education and outreach means the section of BARC animal services responsible for the processing of animal adoptions and education and outreach related to animal health, safety, and care.

BARC animal enforcement means the section of BARC animal services responsible for the enforcement of animal regulations.

BARC animal services means the division of the department of administration and regulatory affairs responsible for the city's animal shelter, animal adoptions, enforcement of animal regulations, and education and outreach related to animal health, safety, and care.

BARC animal shelter means the section of BARC animal services responsible for the operation of the city's animal shelter.

Commercial breeder means any person who:

- (1) Breeds dogs or cats for the purpose of selling; or

- (2) Sells or offers for sale unneutered or unspayed offspring of dogs or cats to another person.

Commercial pet service facility means any lot, enclosure, premises, residence, structure, or building where dogs or cats over the age of four months are kept or maintained for any commercial purpose. This term includes a mobile commercial pet service business. Provided, however, for purposes of article IV of this chapter only, commercial pet service facility shall not include commercial breeders, hobby/conformation breeders, non-commercial breeders, veterinarians, or veterinary hospitals.

Community cat means any unowned, socialized, or feral free-roaming domestic cat that may be cared for by one or more residents. Community cats that are ear-tipped have been sterilized and have received at least one vaccination against rabies. Community cats shall not be subject to provisions of this chapter that are directed at owned animals.

Community cat caretaker means a person, group, or humane organization approved by the director that provides services to community cats. Services may include, but are not limited to: food, shelter, and medical care. Community cat caretakers shall follow guidelines approved by the director.

Community cat program (CCP) means a program that allows community cat caretakers to manage free roaming community cats with the goal of improving the lives of and reducing the overall number of community cats. The program shall include the trap, neuter, and return program or any substantially similar type of program.

Current rabies vaccination means a rabies vaccination that was administered in compliance with the requirements of Chapter 826 of the Texas Health and Safety Code and Title 25 of Chapter 169 of the Texas Administrative Code and that has not expired under the terms thereof.

Department means the department of administration and regulatory affairs.

Direct physical control means the use of a tether or other bodily restraint by a person capable of controlling the animal to restrict the movements of an animal.

Director means the director of the department of administration and regulatory affairs or his designee.

Disposition means the relocation of an animal or termination of ownership of an animal by BARC animal shelter through adoption, transfer to a humane organization, or humane euthanasia.

Domestic animal means any beast or bird in common use that has been bred or trained to need and accept the care of humans and to live in a tame condition, including, but not limited to, livestock, goat, swine, dog, cat, fowl, or other beast or bird.

Domestic cat means *Felis catus*, *Felis domesticus*, or any domesticated member of the genus *Felis*.

Domestic fowl means birds of a breed developed or kept for the purpose of meat production, egg laying or purely for ornament or show, including, but not limited to, chickens, turkeys, geese, ducks, pea-fowl, and parakeets, canaries, parrots, cockatoos, macaws or similar birds.

Ear-tipping means a surgical procedure performed under anesthesia by a veterinarian that removes approximately 20 percent of a cat's left ear at the apex, and is a universally recognized method of identifying sterilized and vaccinated community cats in the field.

Extreme weather conditions means conditions in which the actual or effective outdoor temperature is below 32 degrees Fahrenheit or above 90 degrees Fahrenheit, or a hurricane, tropical storm, flood, flash flood, severe thunderstorm or tornado warning has been issued for the jurisdiction by the National Weather Service.

Feral animal means any untamed or free-roaming animal other than a domestic cat.

Hobby/conformation breeder means a person who:

- (1) Breeds personally-owned dogs or cats for the purpose of improving a breed, showing in a competitive venue, use in a sporting activity or working purposes, or other personal reasons;
- (2) Is a member in good standing with an organized national, regional, or local club established for the purposes listed above in item (1), as evidenced by a membership card or other proof of membership; and
- (3) Sells, trades, barter, distributes, or otherwise exchanges consideration for dogs or cats to other hobby/conformation breeders or conducts private sales to individuals. For purposes of this chapter, this term shall not include sales, trades, barter, distribution or the exchange of consideration to wholesalers or brokers.

Hearing officer means an individual employed by the municipal courts department of the city designated to conduct administrative hearings and enter

orders in the manner provided by this chapter, and who shall have no prior knowledge of the facts or circumstances regarding the matter at issue, except that he may receive a copy of the notice of the hearing prior to the hearing and may have conducted a prior hearing regarding a lesser penalty involving the same party.

Humane organization means any not-for-profit organization that rescues and places animals into permanent homes. *Humane organization* does not include an entity that breeds animals; or in exchange for payment or compensation, obtains any dog or cat from a person who either breeds dogs or cats or facilitates the sale of dogs or cats that were obtained from a person who breeds dogs or cats.

Livestock shall mean any sheep, llama, or any equine or bovine species.

Microchip means a chip encoded with a unique identification number that can be implanted in an animal for identification purposes, and is obtained from a manufacturer, a veterinary clinic, a pet services facility or BARC animal services.

Neuter refers to permanent sterilization to render male animals incapable of impregnating female animals by means of:

- (1) Surgery performed to remove the testicles; or
- (2) Chemical sterilization utilizing a drug approved by the United States Food and Drug Administration.

Non-commercial breeder means any person who allows a dog or cat in his possession to produce offspring.

Owner means any person who owns, harbors, or has custody or control of an animal but shall not include a person providing commercial or veterinarian services to an animal.

Police officer means any peace officer employed by the city's police department.

Rabies quarantine facility means a veterinary hospital or clinic that is able to properly confine and observe animals that have or may have been exposed to rabies.

Registration means the record in the BARC animal services office of the identification number of a microchip and the associated documentation of its implantation in an animal.

Running at large or to run at large means an animal that is allowed to go on public or private property without its owner or a person having direct physical

control over the animal; the terms include any animal that is staked, tied or hobbled in any manner as to allow the animal to access public streets or sidewalks.

Spay refers to permanent sterilization to prevent female animals from having estrus (heat) cycles and eliminating the ability to become pregnant by means of:

- (1) Surgery performed on an animal to remove the ovaries and uterus; or
- (2) Chemical sterilization utilizing a drug approved by the United States Food and Drug Administration.

Sterilized refers to a spayed or neutered dog or cat.

Sterilized pet registration means a current and valid registration for a microchip issued under this chapter for a dog or cat that has been spayed or neutered.

Trap, neuter, and return program means a program approved by the director in which community cats are humanely trapped, evaluated, vaccinated, sterilized, and marked by tipping of the left ear by a veterinarian and returned to the trap location.

Unsterilized refers to a dog or cat that has not been spayed or neutered.

Unsterilized pet registration means a current and valid registration for a microchip issued under this chapter for a dog or cat that has not been spayed or neutered.

Veterinarian means any person licensed to practice as a doctor of veterinary medicine by the state of Texas.

Veterinary hospital means any place where medical and surgical treatment is administered to animals by or under the supervision of a veterinarian.

- (c) The violation of any provision of this chapter is hereby declared to be unlawful. Provided, however, any violation of this chapter that constitutes an offense under Chapter 826 of the Texas Health and Safety Code or other applicable state laws shall be punishable as provided thereunder.

Sec. 6-2. Acceptance of donations, gifts or bequests.

The director is authorized to accept, on behalf of the city, donations, gifts and bequests, which shall be used solely for the care of the animals in the care and control of the city. Funds shall be used exclusively for the purpose for which they are donated.

Sec. 6-2.1. Administrative rules.

The director shall promulgate rules and regulations to administer the provisions of this chapter. The rules and regulations shall not conflict with any applicable provisions of this Code. The director shall post a copy of the rules and regulations on the BARC animal services website and maintain a copy of the rules and regulations for inspection in the office of the director and at the BARC animal shelter. The director shall provide copies for purchase to any person upon payment of the fees prescribed by law.

DIVISION 2. ANIMALS AT LARGE AND IMPOUNDMENT

Sec. 6-3. Owner's responsibility for animals at large.

An owner or any other person having the right of possession of an animal shall ensure that the animal does not run at large in violation of this chapter and shall be subject to punishment under this chapter without regard to whether the person was acting with a culpable mental state.

Sec. 6-4. Running at large of domestic animals or fowl prohibited.

- (a) The running at large of domestic animals or domestic fowl is hereby declared to be a nuisance. It is unlawful for an owner to permit any animal or fowl to run at large.
- (b) It shall be a defense to prosecution under subsection (a) above that the animal was:
 - (1) A dog in an off-leash site established under section 32-11 of this Code; or
 - (2) A feral cat that is a part of a trap, neuter, and return program.

Sec. 6-5. Impoundment of animal running at large; surrender of animals.

- (a) It shall be the duty of the department to establish an animal shelter in the city, at such place as may be designated by the city council, where all animals found running at large in violation of this chapter shall be received and taken care of in accordance with any applicable rules and regulations promulgated by the director.
- (b) The city, through the director, is the designated caretaker of every impounded animal on the date of impoundment, intake or surrender.

- (c) Immediately upon intake, the designated caretaker is authorized to provide each healthy, appropriate-aged, impounded animal with core immunizations as defined by the Association of Shelter Veterinarian guidelines, administered by a licensed veterinarian or by a person under the veterinarian's supervision who is familiar with the common infectious diseases affecting dogs and cats, along with any other necessary treatment the veterinarian determines to be appropriate for the animal.
- (d) The provisions of this section shall not apply to 'estrays' as defined in § 142.001 of the Texas Agriculture Code.

Sec. 6-5.1. Surrendering of animals upon owner's or citizen's request.

- (a) The director may accept a domestic non-livestock animal from its owner residing within the city limits of Houston for disposition by the BARC animal shelter. Ownership of all animals surrendered by the owner shall immediately transfer to BARC animal services. Disposition of such an animal shall be accomplished in the same manner as though the animal had been impounded and not redeemed as provided in section 6-138 of this Code. Proof of residence may be required.
- (b) The director may accept a stray injured or ill domestic non-livestock animal found in the city limits from an individual residing within the city limits of Houston who is not the owner or custodian of the animal and who surrenders it to the BARC animal shelter for disposition. The disposition of such an animal shall be accomplished in the same manner as though the animal had been impounded and not redeemed as provided in section 6-138 of this Code. Proof of residence may be required.

Sec. 6-6. Unauthorized impoundment of animals.

- (a) It is unlawful for any person, other than a police officer, an animal enforcement officer, a member or employee of a humane organization approved by the director, or a licensed employee of a licensed pest control service to engage in the catching or impounding of animals.
- (b) It is a defense to prosecution under this section that:
 - (1) The animal was unlawfully running at large upon property under the possession or control of the person catching it;
 - (2) The animal was caught and held in a humane manner; and
 - (3) The capture of the animal was promptly reported to BARC animal services for the pick-up and disposition of the animal as BARC animal services deems appropriate; provided, however, if the captured animal is a domestic animal, the animal was brought to BARC animal services for disposition as BARC animal services deems appropriate.

- (c) The provisions of this section shall not apply to “estrays” as defined in § 142.001 of the Texas Agriculture Code.
- (d) Notwithstanding anything to the contrary in this section, it is unlawful for anyone other than a police officer, an animal enforcement officer, a member or employee of a humane organization approved by the director, or a licensed employee of a licensed pest control service to engage in the use of a trap to capture animals under extreme weather conditions.

DIVISION 3. CARE, KEEP, AND USE OF ANIMALS

Sec. 6-7. General regulations as to care, keeping and using of animals.

Every owner, caretaker or user of any animal shall observe the following rules in connection with the care, keeping and using of the animal, and any person violating any provisions of this section shall be deemed guilty of an offense:

- (1) All stables or other enclosures in which the animal is kept and the ground upon which the stable or enclosure is situated shall be maintained in a clean and sanitary condition, and all stables and fences surrounding each lot where the animal is kept and the feed troughs and water troughs, with which such animals are fed and watered, shall be free from any conditions that may injure the animal. All stables and enclosures shall contain adequate space for an animal relative to the animal's species, size, weight, and age and must allow the animal to stand upright without touching any part of the structure and to move around unencumbered.
- (2) All stables containing horses shall meet the following minimum standards:
 - a. The size of the stable must be at least 100 square feet for horses weighing up to 1,000 pounds; stables for horses weighing over 1,000 pounds shall have a wall length of at least one and a half times the horse's length;
 - b. A ceiling height of at least ten feet, with a minimum clearance of a three feet and six inches above the horse's head. The ceiling height is measured from the floor to the lowest point of the ceiling of the stable, including any fixtures and beams;
 - c. The roof of the stable must be weatherproof and the structure must provide for adequate ventilation;
 - d. The walls or partitions of the stable must be flush to the floor and at least eight feet tall and made of solid plywood with metal horizontal edges or boards spaced no more than 1½ inches apart with center bracing. For stables containing multiple horses, the walls or partitions must have metal bars or heavy-gauge wire mesh

- extending to the ceiling to allow the horses to see each other. The bars must be at least $\frac{3}{4}$ of an inch to one inch in diameter and spaced no more than three inches apart. The heavy-gauge wire mesh must have openings of no more than two inches;
- e. Door openings must be at least seven feet in height and 45 inches wide; and
 - f. The flooring must be nonslip. Any concrete or pavers must have sufficient rubber mats or deep bedding to protect the legs and feet of the horse and must be sloped for drainage. All dirt flooring must be dug out and replaced once it is ammonia saturated.
- (3) The owner, caretaker or user shall feed all animals in his care with a quantity of good, wholesome food sufficient to keep the animals in a good, well-nourished condition, and shall serve the food in a clean, sanitary manner.
 - (4) The owner, caretaker or user shall feed all work and milk animals with salt at proper and regular intervals.
 - (5) The owner, caretaker or user shall ensure that all horses or mules worked or used have good substantial shoes upon each hoof.
 - (6) No person shall work or use an animal where there are any sores upon the animal's body, legs, head or shoulders.
 - (7) The owner, caretaker or user shall ensure that all harness used on any work animal is properly fitted to the animal and is free from any wire, rivets, break, tear or anything else that will irritate or make sores on the animal.
 - (8) No person shall hitch an animal to any wagon that is not well-greased or where the pole or the singletree is in such condition as may cause injury to the animal.
 - (9) No person shall drive an animal drawing a wagon or other loaded vehicle faster than at a walk.
 - (10) The owner, caretaker or user shall provide each animal with pure, clean water in sufficient quantities at all times.
 - (11) No person shall work or use a sick or crippled animal or lead or drive it on any street of the city.
 - (12) No person shall run, or participate in the running, of any horse race in, along or across any public road, public square or public street in the city.

- (13) No person shall leave a dog outside and unattended by use of a tether unless the person provides the dog access to:
 - a. Adequate shelter that is:
 - [1] Clean;
 - [2] Of sturdy construction;
 - [3] Able to protect the dog from direct sunlight, rain, snow, hail and subfreezing temperature; and
 - [4] Large enough for the dog to be able to sit, stand, lie down and turn around normally;
 - b. An area that allows the dog to avoid standing water; and
 - c. Pure, clean water.
- (14) No person may restrain a dog by a tether that:
 - a. Is less than ten feet in length or five times the length of the dog measured from nose to the base of the tail, whichever is longer;
 - b. Due to the weight or construction of the tether itself, causes injury or visible discomfort to the dog;
 - c. Is not attached to a properly fitted collar or harness; or
 - d. Is a chain.
- (15) The caretaker, owner, or user shall provide each animal sufficient and appropriate exercise for the requirements of the species.
- (16) The caretaker, owner or user shall ensure that each animal receives adequate grooming, treatment, transportation, and veterinary care when needed to prevent suffering or disease transmission.
- (17) The caretaker, owner, or user shall provide each animal sufficient and appropriate shelter for the requirements of the species.

Sec. 6-8. Destruction of wounded or feral animals.

- (a) When any animal shall be so wounded, maimed or injured as to render its recovery hopeless, or the animal is a feral animal and poses a threat to humans, domestic animals or property, it shall be the duty of the director to cause it to be humanely destroyed. The director shall humanely destroy the animal as soon as practicable after he discovers the injury or the feral animal's threat. Upon

destruction, the director shall direct or cause the carcass to be lawfully removed and disposed of. When the director causes any animal to be destroyed under this section, he shall prepare a report in writing of the destruction to be maintained in BARC animal services' electronic records. The report shall show:

- (1) A description of the animal destroyed, and the name of the animal's owner, if known; and
 - (2) The injury or situation that made destruction necessary, and in the case of injured animals, how the injury was inflicted, and by whom, if known.
- (b) The provision of subsection (a) of this section shall not apply to veterinarians or veterinary hospitals.

Sec. 6-9. Shooting or catching wild birds.

- (a) It is unlawful for any person to shoot or attempt to shoot or kill with any air rifle, bow and arrow, slingshot, firearm or other means, or to ensnare or catch by any means whatsoever any wild bird.
- (b) It is an affirmative defense to prosecution under subsection (a) of this section that the person ensnaring or catching a wild bird is:
- (1) A federal- or state-permitted bird rehabilitator authorized to take, transport and temporarily possess sick, injured or orphaned birds for rehabilitation purposes; or
 - (2) A federal, state, county or municipal employee capturing birds for testing purposes related to zoonotic diseases.

DIVISION 4. LIVESTOCK

Sec. 6-10. Breeding of livestock.

It is unlawful for any person to breed, or permit or cause to be bred, any livestock unless it is done within the confines of an enclosure. For the purposes of this section, an 'enclosure' shall be construed to mean a barn or other building conforming to any applicable requirements set forth in the Building Code.

Sec. 6-11. Driving livestock, hogs and goats through streets.

It is unlawful for any person to drive cattle, horses, mules, hogs, sheep or goats over the public streets and ways of the city unless the person has obtained prior written permission from the chief of police. Any person desiring permission shall make a written request to the chief of police designating the type and number of animals to be driven, the route upon which they will be driven, the means of control that will be employed and the time or times at which they will be driven. The chief of police shall grant permission

unless he affirmatively determines upon investigation of the request that it would pose a burden upon pedestrian or vehicular traffic or otherwise pose a danger to the safety or welfare of the public.

Sec. 6-12. Staking, hitching or hobbling animals.

- (a) It is unlawful for any person to stake, tie or hobble any animal on any property that is owned by another without the other person's written consent by way of a sworn or unsworn declaration.
- (b) It is unlawful for any person to obstruct any street or sidewalk by hitching or staking out any animal or to permit any animal to be so hitched or staked out that it can go upon or across any street or sidewalk.
- (c) It is unlawful for any person to tie or fasten any animal to any tree, or to the box around any tree, planted or growing in any street or public place, or to a fence or lamppost which is the property of another without such other person's written consent by way of a sworn or unsworn declaration.

Sec. 6-13. Keeping of swine and goats prohibited.

It is unlawful for any person to keep or maintain one or more hogs, swine, pigs, pot-bellied pigs, or goats.

Sec. 6-14. Restrictions on keeping livestock.

- (a) It is unlawful for any person to keep, possess, or maintain any livestock on any uncovered parcel of land unless the parcel has a minimum area of 5,000 square feet for the first animal and 2,500 additional square feet for each additional animal.
- (b) It is unlawful for any person to keep, possess or maintain any livestock within 100 feet of any actual residence or building used for human habitation (other than that of the owner of such animal), or any restaurant, cafe, or other public eating place, or any church, school or hospital. The distance shall be measured in a straight line from the nearest point of the shed, stable, barn, pen or fenced enclosure or area in which the animal is contained to the nearest point of the actual residence or building used for human habitation, restaurant, cafe or other public eating place, or church, school or hospital.
- (c) Any enclosure or structure used to contain livestock pursuant to this section shall be constructed in accordance with any applicable standards and requirements provided in section 6-7 of this Code and the Building Code. However, the requirements provided in item (2) of section 6-7 of this Code shall not be applicable to enclosures or structures with a valid building permit in existence on or before March 26, 2014; provided, however, that any alteration, remodeling, or reconstruction of the enclosure or structure must meet the requirements provided

in item (2) of section 6-7 of this Code. Additionally, the suspension or revocation of a valid building permit for any enclosure or structure subject to this special exemption shall result in the forfeiture of the privilege of use of the enclosure or structure and shall require compliance with the requirements provided in item (2) of section 6-7 of this Code.

Sec. 6-15. Exemption from Sections 6-13 and 6-14.

The provisions of sections 6-13 and 6-14 of this Code shall not prohibit:

- (1) The temporary keeping of the animals for slaughter by slaughterhouses, for treatment by veterinary hospitals or for exhibition at fairs, shows, and circuses; or
- (2) The temporary or permanent keeping of the animals mentioned in sections 6-13 and 6-14 of this Code for teaching or research purposes at a medical school, a veterinary school, a high school agricultural facility, a licensed hospital, or a nonprofit university or college providing a degree program; provided that the person in charge of the animals shall not be relieved of the operation of any of the other applicable provisions of this Code, including, without limitation, those governing sanitary conditions, nuisances, and noises. The exemption extended above to high school agricultural facilities shall apply only to facilities situated upon property that is owned and maintained by a public school district or a private school.
- (3) The city keeping or maintaining goats for the purpose of managing vegetation on city property.

Sec. 6-16. Storage, disposal, etc., of manure.

- (a) Any person owning or leasing any stable or other building or enclosure where any livestock is kept shall maintain a substantial and sufficient receptacle for manure, which must be so constructed and kept as to protect the contents from rain and so screened as to prevent access to flies, and the person must place all manure from the livestock in the receptacle.
- (b) Any person owning or leasing any stable, other building or enclosure where livestock is kept shall have all manure from the animals removed from their premises at least twice in each week, and at no time shall the person allow the manure to accumulate in such a manner as to be a nuisance.
- (c) It is unlawful for any person to throw or deposit any manure in any street or public place, or to allow manure from any animal under the person's care, control, or custody to remain in any street or public place. No person hauling manure through the streets shall permit the manure to litter the streets.

DIVISION 5. DISEASE CONTROL

Sec. 6-17. Rabies control, generally; quarantine; penalty.

- (a) The responsibility for the control of rabies within the city shall rest with the department, and the director of the department is duly designated as the local health authority for the purpose of the Rabies Control Act of 1981 (Chapter 826 of the Texas Health and Safety Code).
- (b) The following provisions apply to an incident in which an animal bites, scratches, or otherwise attacks a person in a manner in which rabies may be transmitted:
 - (1) The owner of any such animal shall, on demand of the director or any animal enforcement officer, immediately surrender the animal to BARC animal services or any other rabies quarantine facility approved by the director for observation for a period lasting not more than 10 days after the date of the incident.
 - (2) Except as provided in items (1) and (4) of this subsection, every such animal shall be seized at once and:
 - a. Humanely destroyed and sent to a laboratory for testing;
 - b. Held under observation by the director at the BARC animal shelter in quarantine for 240 hours from the date and time of the incident at the expense of the owner of the animal; or
 - c. Upon request by the owner of the animal, the animal may be confined for observation in a rabies quarantine facility approved by the director at the owner's expense for the same period of time as the animal would be confined for observation at the BARC animal shelter. The director shall approve a request upon the owner's showing that the rabies quarantine facility is willing and available to confine the owner's animal.
 - (3) If the animal is held in quarantine at the BARC animal shelter, the owner shall be responsible for payment of fees for impoundment and veterinarian services. Additionally, the owner shall be responsible for payment of fees for the following, as applicable: microchip implantation, registration, and sterilization. Upon release of the animal, payment of fees for the boarding of the animal is due. The fees described in this subsection are stated in the city fee schedule. If, by the date the animal is to be released from the BARC animal shelter, the owner does not pay all amounts due and owed, the owner shall relinquish ownership of the animal, and the animal shall become the property of BARC animal services for disposition as BARC animal services deems appropriate.

- (4) The following dogs and cats may be quarantined upon the approval of the director on the owner's premises for a period of 240 hours immediately following the date and time the animal has attacked a person if the animal had a current rabies vaccination at the time of the incident:
 - a. Dogs or cats confined in a building or secure enclosure;
 - b. Dogs or cats restrained on property that does not allow access to public sidewalks, streets and common areas; and
 - c. Dogs or cats under the direct physical control of the owner.
 - (5) All animals quarantined on the owner's premises must be examined by a veterinarian at a private veterinary clinic or a certified animal enforcement officer at the beginning of the quarantine period and examined a second time by a veterinarian or a certified animal enforcement officer at the end of the quarantine period. If the animal is examined by a veterinarian at any place other than the BARC animal shelter, the owner shall provide BARC animal enforcement with a written report from the veterinarian setting out the results of each examination within 24 hours after the examination has been made.
 - (6) Any owner of an animal subject to quarantine under this subsection who fails to keep the animal confined, fails to have the animal examined by a veterinarian or an animal enforcement officer, as applicable, or fails to provide BARC animal enforcement a veterinarian's report of the results of an examination when required to do so under the provisions of this subsection shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100.00 nor more than \$2,000.00.
 - (7) None of the provisions of this subsection apply to any dangerous dog surrendered to the director pursuant to article VI of this chapter.
- (c) No animal that has rabies shall be allowed at any time on the streets or public ways of the city. No animal that has been suspected of having rabies shall be allowed at any time on the streets or public ways of the city until the animal has been released from quarantine by the director or under his direction.
 - (d) The owner or person in charge of any animal that has rabies or symptoms thereof, or that has been exposed to rabies, or that has bitten, scratched or otherwise attacked any person in a manner in which rabies may be transmitted shall, on demand, turn over the animal to the director.
 - (e) Any person having knowledge of an animal considered to be a high risk for the rabies virus, which animal has bitten, scratched or otherwise attacked, contacted, or exposed any animal in a manner in which rabies may be transmitted, is required to report it immediately to the department. The owner or person in

charge of the animal shall, on demand, turn over the animal to the director for testing. For purposes of this subsection, animals considered to be a high risk for the rabies virus are animals that have a high probability of transmitting rabies, including skunks, bats, foxes, coyotes, and raccoons.

- (f) No person shall dispose of the body of any animal that has died of rabies except as directed by the director.
- (g) The director shall check and record all cases of rabies and of suspected rabies.
- (h) Any person having knowledge of an animal bite is required to report it immediately to the department.
- (i) The police and fire departments shall electronically transmit to BARC animal enforcement reports made to their respective departments of any animal that has:
 - (1) Rabies or symptoms thereof;
 - (2) Been exposed to rabies; or
 - (3) Bitten, scratched or otherwise attacked any person in a manner in which rabies may be transmitted.

The police and fire departments shall transmit the reports daily and shall include all relevant information gathered as a result of the response to the incident by the respective department.

- (j) It shall be unlawful for any person to fail or refuse to quarantine or present for quarantine or testing an animal that is required to be placed in quarantine or required to be presented for testing under this section.

Sec. 6-18. Microchip implantation.

No dog that is impounded, quarantined or examined as required pursuant to section 6-17 of this Code shall be released to its owner by the private veterinary hospital or by BARC animal shelter unless and until a microchip has been implanted in the animal and the identification number has been registered with BARC animal services. If performed by the city, the city's fee for microchip implantation is stated in the city fee schedule. Upon request, the director may deputize a private veterinarian to perform any microchip implantation required under this section for a dog under the veterinarian's care; no fee shall be collected by the city for any microchip implantation that is performed by a private veterinarian, and the veterinarian may impose any fee for his or her services as agreed between the veterinarian and his client.

Sec. 6-18.1. Mandatory sterilization.

- (a) Except as provided in subsection (b) of this section, any dog or cat that is quarantined at the BARC animal shelter pursuant to section 6-17 of this Code shall be sterilized at the BARC animal shelter, and the owner of the animal shall be responsible for payment of the sterilization fee specified in the city fee schedule.
- (b) Any dog or cat that has been approved by the director for quarantine on the owner's premises or that was quarantined at a private quarantine facility approved by the director pursuant to section 6-17 of this Code shall be exempt from the mandatory sterilization requirement set forth in subsection (a) of this section.

Sec. 6-19. Veterinarians to report communicable diseases.

Every veterinarian or other person who is called to examine or professionally attend any animal having glanders or farcy, rabies, tuberculosis, or any other communicable disease shall, within 24 hours, report in writing to the department the following facts:

- (1) The location of the diseased animal;
- (2) The name and address of the owner of the animal; and
- (3) The type and character of the disease.

DIVISION 6. ENFORCEMENT

Sec. 6-20. Powers of enforcement officers.

The director, the animal enforcement officers and other authorized employees of BARC animal services, along with any police officer, shall have full authority to enforce this chapter and other ordinances of the city relating to animals and fowl.

Sec. 6-21. Notice of violations.

All police officers, animal enforcement officers, and urban park rangers of the parks and recreation department are authorized to issue written citations to persons violating this chapter or any other ordinance governing the regulation of animals.

Sec. 6-22. Enforcement by neighborhood protection official.

The neighborhood protection official shall have concurrent authority with the director to enforce the provisions of articles I and II of this chapter. However, the neighborhood protection official shall not impound any animal or issue any permit under this chapter.

DIVISION 7. DOMESTIC ANIMALS GENERALLY

Sec. 6-23. Congregations of unconfined and stray cats and dogs.

- (a) It is unlawful for any person to intentionally cause, suffer or permit the maintenance of an attractive environment for the assembly of a congregation of unconfined and-stray cats or dogs by the placement of dog food or cat food. For purposes of this section a "congregation of unconfined stray cats or dogs" means any three or more dogs or cats that:
- (1) May, of their own volition, enter or leave the property on which the food is placed; and
 - (2) Are not part of a community cat or trap, neuter, and return program.
- (b) For purposes of this section, "cat food" or "dog food" means any commercially prepared cat or dog food or any other food item or product that is subject to consumption by dogs or cats.
- (c) It is an affirmative defense that the dogs or cats were free-roaming and that the person placed the food solely for the purpose of apprehending the dogs and cats and:
- (1) Delivering them to the BARC animal shelter;
 - (2) Delivering them to a humane organization;
 - (3) Delivering them to a licensed veterinarian for sterilization as part of a community cat or trap, neuter and return program; or
 - (4) Assuming ownership and obtaining a rabies vaccination and a current registration issued by the city for such animals.

Sec. 6-24. Defecation by dogs or cats.

- (a) Any person in control of a dog or cat is required to promptly remove and dispose of, in a sanitary manner, feces left by the dog or cat.
- (b) Any person in control of a dog or cat is required to be in possession of materials to remove feces left by the dog or cat.
- (c) It is an affirmative defense to prosecution under this section that the person in control of the dog or cat is the owner of the premises, or the owner's agent of the premises, where the dog or cat deposits feces.
- (d) Violation of this section is unlawful and any violation shall be punishable upon conviction by a fine of not less than \$75.00 or more than \$500.00. Each act in contravention of this section is a separate offense.

Sec. 6-25. Assuming responsibility for domestic animals.

Except as provided in the affirmative defenses as set forth in section 6-23 of this Code, any person who has encouraged the presence of any domestic animal on his property, residence, or premises by providing food and water or other care, or has otherwise accepted caretaker responsibility for the animal for longer than three consecutive days, and who is not part of a community cat program approved by the director, shall be considered to be the owner of the animal.

DIVISION 8. BARC FOUNDATION

Sec. 6-26. Name and purpose.

- (a) The name of this organization shall be the BARC Foundation, herein after called the "foundation."
- (b) The foundation shall, among other things:
 - (1) Receive and maintain real or personal property, or both, and use and apply the income therefrom and the principal thereof exclusively for charitable, scientific and educational purposes related to the care and humane treatment of animals;
 - (2) Solicit funds, gifts, and bequests for medical and kennel supplies and equipment for use at BARC animal shelters;
 - (3) Promote awareness to Houston area residents on responsible pet ownership, spay/ neuter practices, pet adoption and the humane treatment of all animals; and

- (4) Review and make advisory recommendations to the mayor and city council on responsible pet ownership, spay/neuter practices, pet adoption and the humane treatment of all animals.

Sec. 6-27. Composition; appointment and terms of members; filling of vacancies; fidelity bond.

- (a) The board of directors of the foundation shall, in addition to the ex officio members hereinafter provided for, consist of not more than 25 members to be nominated by the mayor and confirmed by the city council. Each member shall be appointed to a specific position, Position 1 through 25. Twenty of the members of the board of directors of the foundation shall be residents of the city. The remaining five members need not be residents of the city, provided they reside in one of the counties that make up the Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical Area as defined by the Office of Management and Budget in the Executive Office of the President of the United States.
- (b) The term for members of the board shall be two years. Odd-numbered positions shall have terms that expire December 31 of odd-numbered years. Even-numbered positions shall have terms that expire December 31 of even-numbered years.
- (c) The mayor, or his designee, and the director, shall be at all times ex officio nonvoting members of the board.
- (d) The board, by adoption of a resolution, may designate persons to serve as additional ex officio nonvoting members of the board or as nonvoting advisory directors of the board.
- (e) In the event of the death or resignation of any member of the board prior to the expiration of such member's term of service, the mayor shall nominate and the city council shall confirm a successor who shall serve out the remaining unexpired term and enter upon the duties of a member at the next regular meeting of the foundation.
- (f) Any member of the board serving in a position for which the term has expired shall continue to serve until the member's successor in that position is appointed and confirmed.
- (g) Any member of the board may be removed by the mayor for any of the following causes:
 - (1) Four consecutive absences from the regular meetings of the foundation;
 - (2) Failure to abstain in votes or activities of the foundation where direct or indirect conflicts of interest are, or may be, involved; or

- (3) Failure to meet any minimum requirements established by the foundation and imposed upon all members of the board.
- (h) The city shall maintain a blanket fidelity bond in the amount of \$10,000.00 for each member of the board. This requirement may be satisfied by amendment to the city's blanket fidelity bond for city employees so as to authorize inclusion of the board members.

Sec. 6-28. Compensation of members; conflicts of interest.

- (a) Members of the board shall serve without compensation from the city or any firm, trust, donation or legacy to or on behalf of the city; provided, however, that a member of the foundation, or the firm, company or corporation with whom the member is associated, shall not be precluded from receiving compensation from the city under any contract for services rendered which have no relation to the member's duties as a member of the board.
- (b) Each member of the board is a covered person for the purpose of article X of chapter 2 of this Code.
- (c) Members of the board shall abstain from voting upon matters in which they have a conflict of interest, and members of the board shall not participate in any activity of the foundation in which they have a conflict of interest. The provisions of this subsection shall be cumulative of any applicable foundation bylaws, resolutions adopted by the board or other documentation ratified by the board pertaining to compensation, conflicts of interest or any other documentation addressing the conduct of members of the board.

Sec. 6-29. Organization and meetings.

- (a) The foundation shall organize by electing from their membership a president, a vice president, a secretary and a treasurer, each of which officers shall hold office for one year, or until their successor shall have been elected and qualified. The foundation may adopt such administrative procedures as are necessary or convenient to accomplish the purposes set out in this article.
- (b) The foundation may employ any necessary staff, including an executive director, at salaries set by the foundation. Any staff of the foundation shall not be considered employees of the city for any purposes and shall not be entitled to any of the privileges or benefits of the city's employees.
- (c) Regular foundation meetings shall be held at least four times a year, at least one time each quarter. In addition, annual and special meetings may be held in accordance with such rules as the foundation may provide.
- (d) A majority of the members of the board shall constitute a quorum for the transaction of business; however, in the event of a vacancy on the board, a

majority of the remaining members of the board shall constitute a quorum for the transaction of business.

- (e) All meetings of the foundation shall be held in accordance with the Texas Open Meetings Act.

Sec. 6-30. Additional powers.

- (a) The foundation may cooperate with any trust created for a purpose similar to that of the foundation as set out in section 6-26 of this Code. In addition, the foundation may contract for financial management and investment services and may pay the reasonable fees therefor from solicited funds, gifts, bequests, and income therefrom; provided, the foundation shall exclude therefrom any solicited funds, gifts, or bequests when payment of a financial management and investment service fee would be contrary to the provisions of the grant.
- (b) Whenever funds are given to the foundation for a specific purpose, the board may exercise its sole discretion on how that purpose is accomplished; provided, however, if the purchase of any services is involved, such purchases shall be executed in accordance with any applicable local or state laws, rules or regulations, including but not limited to, the City of Houston Procurement Code.

Sec. 6-30.1. Financial records and annual financial report.

- (a) The financial books and records of the board shall be open to inspection and audit during regular business hours by authorized representatives of the city, or by independent certified public accountants employed by the city, or by board members themselves. Similarly, the financial books and records of any trust created for the benefit of or to cooperate with the foundation shall be open to inspection and audit.
- (b) The foundation shall file, at least annually, audited financial statements with the mayor, city council, the city controller, and the director of the department of finance.
- (c) All foundation financial and accounting procedures shall be approved by the director of the department of finance and comply with the city's policies, processes, and procedures for city nonprofit and local government corporations.

ARTICLE II. KEEPING OF FOWL, RABBITS AND GUINEA PIGS

Sec. 6-31. Location restrictions for fowl.

- (a) It is unlawful, except as provided in sections 6-33 and 6-34 of this Code, for any person to keep, possess or maintain in the city any chickens, turkeys, geese, ducks, pea-fowls, or any other bird or fowl, except parakeets, canaries, parrots, cockatoos, macaws or similar birds, or any pens, enclosures, or other structures

in which any such fowl are kept or possessed within 100 feet of any actual residence or habitation of human beings, or within 100 feet of any church, school or hospital, other than the residence of the possessor or owner of the fowl, the distance to be measured in a straight line from the nearest point of any pen, enclosure, or other such structure in which the fowl are kept to the nearest point of the actual residence or place of human habitation, or church, school or hospital.

- (b) Any enclosure or structure located outside of a residence that is used to contain fowl and satisfies the distance requirement set forth in subsection (a) of this section shall be constructed in accordance with any applicable standards and requirements set forth in the Building Code.

Sec. 6-32. Location restrictions for rabbits and guinea pigs.

- (a) It is unlawful, except as provided in section 6-33 of this Code, for any person to keep, possess or maintain in the city any rabbits or guinea pigs, or any pens, enclosures, hutches, cages or other structures in which any rabbits or guinea pigs are kept, possessed or maintained, within 100 feet of any actual residence or habitation of human beings, or within 100 feet of any church, school or hospital, other than the residence of the possessor or owner of the rabbits or guinea pigs, the distance to be measured in a straight line from the nearest point of any pen, enclosure, hutch, cage or other such structure in which such rabbits or guinea pigs are kept to the nearest point of the actual residence or place of human habitation, or church, school or hospital.
- (b) It is an affirmative defense to prosecution under subsection (a) of this section that rabbits or guinea pigs are kept inside the residence of the owner at all times and that the conditions within the residence are not unsanitary to the extent that the conditions create a possible medium for the transmission of disease to the animals kept there or to human beings.
- (c) Any enclosure or structure located outside of a residence that is used to contain rabbits or guinea pigs and satisfies the distance requirement set forth in subsection (a) of this section shall be constructed in accordance with any applicable standards and requirements set forth in the Building Code.

Sec. 6-33. Keeping for commercial purposes.

It is unlawful for the owner of any geese, ducks, turkeys, chickens or other domestic fowl or rabbits or guinea pigs, where the fowl or animals are kept for sale or commercial purposes, to allow the fowl or animals to roam in open pens on the ground; but the owner may keep the fowl or animals for sale or commercial purposes, provided he keeps the fowl or animals in batteries or coops arranged inside of buildings in a sanitary condition, and he shall remove all droppings from the buildings, batteries or

coops at least once each day, and disinfect and deodorize the buildings, batteries or coops at least once each day.

Sec. 6-34. Keeping for public showing.

Notwithstanding anything in this article, it shall be lawful for any person to keep, possess and maintain chickens, turkeys, geese, ducks, pea-fowls, guineas, rabbits and guinea pigs for the purpose of a legitimate showing of the fowl and animals for purely public exhibition, provided the conditions set forth in this article are observed.

Sec. 6-35. Limitation on number to be kept.

Any person keeping, possessing, or maintaining chickens, turkeys, geese, ducks, pea-fowls, rabbits, or guinea pigs in the city at least 100 feet from any actual residence or habitation of human beings, church, school or hospital, other than the residence of the possessor or owner of such animals, shall keep no more than 30 chickens, turkeys, geese, ducks, pea-fowls, rabbits, or guinea pigs. Additionally, no more than 40 of any combination of chickens, turkeys, geese, ducks, pea-fowls, rabbits and guinea pigs shall be kept upon any lot or enclosure of the size of 65 by 125 feet or less. In the event that the fowl or animals are kept in a larger enclosure, the number so kept and maintained may be increased only in the ratio that the above figures of 30 and 40 bear to the increase in the square footage of the larger enclosure.

Sec. 6-36. Maintenance of premises where kept.

- (a) Any person keeping pens, hutches, or houses or any enclosure in which fowl, rabbits or guinea pigs are kept must clean and disinfect the premises daily, lime the premises every two days and must keep the premises in a clean and sanitary condition at all times.
- (b) Litter and droppings from such fowl, rabbits and guinea pigs must be collected daily and stored in a flytight container and hauled away at intervals not to exceed seven calendar days. Rabbit and guinea pig hutches must have traps or floors to keep droppings or urine from such animals off the ground.

Sec. 6-37. Keeping guineas prohibited.

It is unlawful to keep or maintain any guinea fowl or guinea hens.

Sec. 6-38. Possession or sale of rooster prohibited.

- (a) It is unlawful for any person to be in possession or engaged in the sale of roosters or male chickens.
- (b) The director may seize any rooster possessed in violation of this section and impound the animal at the BARC animal shelter. The director, any animal enforcement officer or any police officer may enter any building or property to

seize a rooster that is possessed in violation of this section upon consent of an adult occupant of the building or property or one having the right of possession thereof, or under a warrant issued by a municipal judge.

- (c) The director shall impose a fee for the impoundment and daily boarding of a rooster and the amount of such fees shall be stated in the city fee schedule. All fees are payable by the owner of the rooster upon either redemption of the rooster from the BARC animal shelter or disposition of the rooster by BARC animal services.
- (d) The owner of an impounded rooster may redeem the rooster within 24 hours upon payment of all impoundment and daily boarding fees and the provision of a sworn statement stating that the owner will immediately remove the rooster from the city and will keep the rooster at an identified place where its possession is not unlawful.
- (e) An impounded rooster that is not claimed within 24 hours by its owner shall become the property of BARC animal services for disposition as BARC animal services deems appropriate.
- (f) It shall be a defense to prosecution under subsection (a) of this section that the rooster is:
 - (1) Owned by a governmental entity or participating in a health, research, educational or similar program conducted by a governmental entity; or
 - (2) Owned by a medical, educational, or research institution operating in compliance with all applicable federal, state, and local laws.

Sec. 6-39. Coloring of baby fowl and rabbits.

- (a) It is unlawful for any person to dye, stain or otherwise alter the natural color of any chicken, duckling, gosling or rabbit.
- (b) It shall be a defense to prosecution under subsection (a) of this section that the animal was dyed or stained for commercial use or breeding purposes, for scientific, educational or governmental purposes or any other purpose not related to its being furnished or kept as a pet.

Secs. 6-40—6-50. Reserved.

ARTICLE III. KEEPING OF WILD ANIMALS

Sec. 6-51. Wild animal defined.

As used in this article, the term *wild animal* shall mean any mammal, amphibian, reptile or fowl of a species that is wild by nature and that, because of its size, vicious

nature or other characteristics, is dangerous to human beings. Wild animals shall include, but not be limited to, lions, tigers, leopards, panthers, wild cat-domestic cat hybrids up to the third generation, bears, wolves, wolf-dog hybrids, cougars, coyotes, coyote-dog hybrids, raccoons, skunks (whether deodorized or not), apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants, rhinoceroses, alligators, crocodiles, caymans, fowl larger than a macaw, all forms of venomous reptiles and any snake that will grow to a length greater than eight feet. The term shall also include any animal listed as an 'endangered species' under the Federal Endangered Species Act of 1973, as amended, or any fowl protected by the Federal Migratory Bird Treaty Act. The term wild animal shall not include gerbils, hamsters, guinea pigs, mice and domesticated rabbits.

Sec. 6-52. Possession prohibited.

- (a) It is unlawful for any person to be in possession of a wild animal.
- (b) It is unlawful for the owner or other person in possession or control of any property, residence or business premises to knowingly permit any other person to be in possession of a wild animal upon the property, residence or business premises.
- (c) As used in this section, the term 'to be in possession' includes the harboring or keeping of any wild animal, whether on a temporary or permanent basis and includes, without limitation, holding or keeping the wild animal for the temporary and/or limited purpose of sale or transfer or offering of sale or transfer to another person.
- (d) It is an affirmative defense to prosecution under this section that the wild animal is in possession in accordance with all applicable state and federal laws and that:
 - (1) The wild animal is being kept for treatment in an animal hospital operated by a veterinarian;
 - (2) The wild animal is being kept at an institution that is accredited by a nationally recognized zoological association;
 - (3) The wild animal is being kept at a shelter operated by a state or federally recognized humane agency for the purpose of its transfer to a refuge or sanctuary;
 - (4) The wild animal is being kept for medical research or teaching purposes at a medical school or licensed hospital or by a university or college offering an accredited degree program;
 - (5) The wild animal is in the possession of an airline, motor freight agency, rail freight agency or other carrier, and its possession in the city is incidental

to transportation, provided that the wild animal is secured within a cage or other enclosure that is adequate to prevent its escape;

- (6) The wild animal is being kept or transported temporarily for a production in accordance with a permit or registration under section 6-54 of this Code; or
- (7) The wild animal is being transported for use in film making and other productions under section 6-58 of this Code.

Sec. 6-53. Penalty.

Violation of any provision of this article is a misdemeanor punishable by a fine of not less than \$500.00, nor more than \$2,000.00. Each wild animal possessed in violation of this article and each day on which it is possessed shall constitute and be punishable as a separate offense.

Sec. 6-54. Temporary permit; registration for productions.

- (a) In this section, the term 'production' means any temporary exhibition or use of a wild animal for purposes of a television, movie or stage production, circus or carnival performance, traveling zoo or animal exposition or other similar use.
- (b) A temporary and nonrenewable permit to possess a wild animal in the city for a period of not more than 30 calendar days may be obtained from the director for the purpose of a production. The applicant for a production permit shall demonstrate to the director that:
 - (1) The wild animal is required for the production;
 - (2) The wild animal will be in the direct charge of its trainer or another person who is familiar with the wild animal and has been trained in its handling and care;
 - (3) The applicant will, consistent with the size and characteristics of the wild animal, have additional handlers available as required to control the wild animal at any time that it is not confined;
 - (4) The owner of each place where the production will take place and the owner of each place where the wild animal will be kept, if different, has consented in writing to its presence;
 - (5) The applicant holds a policy of public liability insurance issued by a carrier authorized to write the policy under Texas law in an amount of not less than \$100,000.00, per occurrence, providing coverage in case of injury or death of any person or damage to any property that results from negligence in the control or handling of the wild animal; and

- (6) The wild animal will be kept in such manner as to prevent its escape and to prevent injury to persons not associated with the production.
- (c) Applications for permits shall be made in writing to the director upon forms promulgated for that purpose and shall be submitted to the director at least 20 calendar days before the commencement of the production. Each application shall be accompanied by the nonrefundable fee in the amounts stated in the city fee schedule for five or fewer wild animals, for six to ten wild animals or for 11 or more wild animals.
- (d) A permit issued under this section is valid only for the designated production and the keeping of a wild animal in the city for that limited purpose and shall only extend for the duration of the production.
- (e) The director shall have the right to inspect a wild animal at any time while it is being kept under a permit issued under this section.
- (f) If the director denies a permit application, he shall give the applicant notice of the reasons for denial and an opportunity for a hearing.

Following notice, the director may revoke a permit for any violation of this article or applicable state or federal laws. The permit holder shall be afforded an opportunity for a hearing before a permit is revoked. Pending the hearing, the director may suspend the permit if the actions of the permit holder appear to constitute a substantial hazard to public health or safety. Hearings and proceedings referenced in this subsection shall be conducted in the same manner as provided in division 4 of article IV of this chapter for denials, suspensions and revocations of breeder's permits.

- (g) The provisions of this section shall not be construed to require a person to obtain a city permit if the person holds a current and valid exhibitors license under the Federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or a current and valid circus, carnival or zoo operators license issued under chapter 2152 of the Texas Occupations Code and is conducting the production under authority of the state or federal license, provided that the person registers his production with the director at least 20 calendar days prior to the commencement of the production and provides the following information:
 - (1) A description of each wild animal to be kept;
 - (2) A copy of the state or federal license or other evidence that the person holds a current and valid state or federal license to keep and use the wild animals for the production;
 - (3) Evidence that each person on whose property the production will be presented or the wild animals will be kept has consented to the presence of the wild animals on the person's property; and

- (4) The name, local address and local telephone number of a person or persons who may be contacted for inspections conducted or notices given by the director or in case of any escape, attack or other incident involving the wild animal.

The director may conduct inspections of wild animals kept pursuant to registrations filed under this section and, in cooperation with responsible state and federal regulatory authorities, may take action as appropriate to ensure that wild animals are kept and exhibited in accordance with applicable state and federal requirements. Failure to complete the registration with the director prior to 20 calendar days before the commencement of the exhibition will result in a late fee in the amount stated in the city fee schedule.

Sec. 6-55. Impoundment.

- (a) The director shall seize any wild animal possessed in violation of this article and impound the animal at the BARC animal shelter or other suitable place. The director, any animal enforcement officer or any police officer may enter any building or property to seize a wild animal that is possessed in violation of this article upon consent of an adult occupant of the building or property or one having the right of possession of the building or property, or under a warrant issued by a municipal judge.
- (b) The director shall impose a per animal fee for the impoundment of a wild animal, and a daily boarding fee, per animal. The amounts of the fees shall be predicated upon the cost of impoundment, care and feeding of the type of wild animal impounded, and are stated in the city fee schedule.
- (c) A wild animal that has been impounded for the first time may be redeemed within seven calendar days by its owner if:
 - (1) The owner demonstrates that he holds any state or federal license or permit required to keep the animal;
 - (2) The animal is not believed to be infected with rabies or any other infectious disease; and
 - (3) The owner provides a sworn affidavit setting forth that the wild animal will immediately be removed from the city and will be kept at an identified place where its possession is not unlawful.

The director may require that a wild animal that is released under this subsection be tattooed or otherwise made identifiable in the event that it is again impounded.

- (d) Consistent with applicable state and federal laws and regulations, the director shall dispose of any wild animal that:

- (1) Is not timely redeemed following its first impoundment; or
- (2) Is impounded for a second time.

Disposal of a wild animal pursuant to this subsection shall occur by placing the wild animal in a public zoo or at a reserve, sanctuary or shelter operated by or under the auspices of a recognized humane organization. If a placement is not practicable and cannot be made within 30 calendar days following the date of impoundment, the wild animal may be humanely destroyed if destruction is not prohibited by state or federal law.

Sec. 6-56. Regulations promulgated by the director.

Consistent with the provisions of this Code and applicable state and federal laws, the director may adopt and implement regulations for the administration of this article and the keeping of wild animals. The director shall post a copy of the regulations on BARC animal services' website and maintain a copy of the regulations for inspection in the offices of the city secretary and the director. The director shall provide copies for purchase at for fees provided by law.

Sec. 6-57. Vaccine; use of live vaccine prohibited; keeping of animals vaccinated by same prohibited; exception.

- (a) No person shall vaccinate, or attempt to vaccinate, any wild animal against rabies except in strict compliance with any regulations promulgated and published by the Texas Department of State Health Services and in accordance with the current protocol published by the American Veterinary Medicine Association for the vaccination of wild animals.
- (b) Notwithstanding subsection (a) of this section, no person shall vaccinate, or attempt to vaccinate, any wild animal against rabies by the use of live vaccine.
- (c) Except as provided in subsection (d) of this section, no person shall possess, keep, permit, or allow any wild animal if such animal has been vaccinated against rabies with the use of live vaccine.
- (d) This section shall not apply to the use of live rabies vaccine for research purposes when the research is conducted by a medical school, licensed hospital or nonprofit university providing a degree program.

Sec. 6-58. Transport of wild animals used for film making, productions, etc.

- (a) It is an affirmative defense to prosecution under section 6-52 of this Code that the person cited was transporting the wild animal by vehicle upon the public streets and that the wild animal was secured within the vehicle being utilized for its transport in such a manner that it could not escape from the vehicle, it could not come into contact with any person who was not also within or upon the

vehicle, and it could not come into contact with the driver of the vehicle while the vehicle was in motion.

- (b) It is also an affirmative defense to prosecution under section 6-52 of this Code that, at the time of the alleged offense:
- (1) The person cited was actually utilizing the wild animal at a production site for the purposes of the production of a motion picture being made for viewing by the general public, or a film or tape designed for use in a television show or television advertisement and in which the use of the wild animal was specified by the script; and
 - (2) The person cited had the written permission of the person having the right of possession and control of the production site to use the wild animal on the site in the production; and
 - (3) The wild animal was in the immediate and direct charge of a person who had been trained in its care and handling and who was responsible to ensure that the animal could not come in contact with persons who had not affirmatively consented to be involved in the production, and who was responsible for the prevention of its escape or any injuries or damage that the animal might cause to persons or property at all times during its utilization at the production site, and who had under his control and supervision at all times the wild animal was present no fewer than four additional persons over 18 years of age who could assist if needed in controlling the animal; and
 - (4) The person cited had given the director five calendar days' prior written notice of his intent to utilize the wild animal, specifying the type of wild animal and production activity, the location of the production site, the address of the place where the wild animal would be kept when not in use at the production site, dates and times that the wild animal would be present at the site, and the name and a local address and telephone number at which the handler of the wild animal could be contacted during the production activity. The notice shall be either mailed, certified mail, return receipt requested, or hand-delivered to the Director, c/o Animal Enforcement Manager, BARC Animal Services, 2700 Evella, Houston, Texas 77026.
- (c) The provisions of section 6-52 of this Code shall be applicable to the wild animal when it is kept within the city while not being used in the production.

Secs. 6-59—6-75. Reserved.

ARTICLE IV. DOGS AND CATS

DIVISION 1. GENERALLY

Sec. 6-76. Number to be kept.

It is unlawful for any person to own, keep, possess or have control over four or more adult dogs, four or more adult cats, or any combination thereof exceeding three adult dogs and three adult cats on residential property within 100 feet of any other building used for human habitation. The distance shall be measured in a straight line from the nearest point of the structure or fenced enclosure where the animal is contained to the nearest point of the other building used for human habitation.

Secs. 6-77—6-84. Reserved.

DIVISION 2. MICROCHIPPING AND VACCINATION

Sec. 6-85. Microchip required.

No person shall own, possess or have control over any dog or cat that is four months of age or older unless the dog or cat has been implanted with a microchip.

Sec. 6-86. Registration required.

- (a) The owner or custodian of any dog or cat must register the animal by providing to BARC animal services the identification number of the implanted chip and a physical description of the animal before the animal attains four months of age, for an amount set in the city fee schedule. It is the duty of the owner or custodian of the animal to ensure that the animal's implanted microchip identification number is registered with the manufacturer of the microchip in addition to being registered with BARC animal services. If there is a change in contact information for the owner or custodian of the microchipped animal, the owner or custodian shall update the contact information with BARC animal services and the microchip manufacturer within 30 days after the date of the change in contact information. If there is a change in ownership of a microchipped animal, the initial owner or custodian shall be responsible for notifying BARC animal services and the microchip manufacturer of the change within 30 days after the date of change in ownership. The new owner or custodian shall be responsible for providing BARC animal services with the new owner's or custodian's name, address and telephone number within 30 days after the change in ownership.
- (b) It is a defense to prosecution under this section that:
 - (1) The animal owner is a nonresident of this city and is keeping the subject animal in the city for fewer than 30 days;

- (2) The animal owner has been a resident of this city for fewer than 30 days;
or
- (3) The animal had been abandoned or lost and the temporary owner has had the dog or cat for fewer than 30 days.

Sec. 6-87. Fees.

- (a) The following terms shall be applicable for microchip registrations for dogs and cats:
 - (1) If the cat or dog has been sterilized, the owner shall obtain a sterilized pet registration for each animal for an initial registration fee and the regular payment of a renewal fee.
 - (2) If a dog or cat has not been sterilized, the owner shall obtain an unsterilized pet registration for the animal for an initial registration fee and the regular payment of a renewal fee.
 - (3) Senior citizens 60 years of age or older shall obtain a sterilized pet registration for each sterilized dog or cat for an initial ~~license~~ registration fee and the regular payment of a renewal fee.
 - (4) A person who uses a service animal, as defined by federal or state law, that has been sterilized may, upon application, obtain a sterilized pet registration without paying any fee therefor except a registration renewal fee.
- (b) The amounts of the fees described in this section are stated in the city fee schedule.

Sec. 6-88. Special clinics; fees.

- (a) From time to time, the department may conduct special clinics for the vaccination, microchip implantation and registration of dogs and cats in cooperation with any group or association of veterinarians at the times and places designated by the director. Prior to each special clinic, the director shall provide a notice to the city secretary to be posted in a conspicuous place in City Hall.
- (b) The following provisions shall be applicable to any special clinic held pursuant to this section:
 - (1) The veterinarians shall agree to reduce their charges below the usual and customary fees for vaccinating a dog or cat at the clinic; and

- (2) The city's registration fee for each dog or cat vaccinated and registered at the clinic shall be the applicable fee set out in the city fee schedule, provided, however, that the director may establish a lesser fee amount in connection with periodic special programs designed to promote the adoption of dogs or cats.

Sec. 6-89. Duration; transfer.

- (a) Each sterilized pet registration and unsterilized pet registration shall expire upon the first occurrence of any of the following events:
 - (1) The expiration of the current rabies vaccination that was evidenced in the documentation furnished to obtain the registration;
 - (2) The death of the animal;
 - (3) The 30th calendar day following any change of ownership of the animal, unless the registration has been amended by that date;
 - (4) The 30th calendar day following any change of the address of the animal's owner unless the registration has been amended by that date;
 - (5) The anniversary of the issuance of the dog or cat's registration if the rabies vaccination is documented by a licensed veterinarian to be medically inadvisable for the dog or cat; or
 - (6) In order to partially defray the city's additional costs associated with late issuance and renewal of licenses, a late processing fee shall be added to the cost of the dog or cat license fees if the applicant fails to obtain both a current rabies vaccination and a renewed registration upon the expiration of the current vaccination and registration.
- (b) In the event of a change of ownership of the registered animal or in the event of a change of address of the registered animal's owner, the owner must submit an application for amendment to reflect the change of owner or address within 30 calendar days following the date of the change. The director may promulgate forms and administrative rules as required for the orderly administration of registration amendments and applications. The director shall post a copy of the administrative rules on BARC animal services' website and maintain a copy for public inspection in the offices of the director and the city secretary. No fee shall be imposed for an amendment.
- (c) An expired registration is of no force and effect. A new registration must be obtained on or before expiration if the animal remains subject to registration by the city hereunder.

Sec. 6-90. Rabies vaccination required prior to issuance; certification of sterilization.

- (a) Subject to the affirmative defenses provided in section 6-94 of this Code, the director shall not issue any animal registration unless there is exhibited to him a certificate by a veterinarian showing that the animal to be registered has been inoculated with a rabies vaccine approved by the U.S. Department of Agriculture's Veterinary Biologics Division in accordance with the recommendations of the manufacturer, and that the vaccination will not expire prior to the issuance of the registration.
- (b) The director shall not issue any animal registration for an animal as being a spayed or neutered animal unless there is also exhibited to him:
 - (1) A certificate by a veterinarian indicating that the animal has been spayed or neutered; or
 - (2) Other clear and convincing evidence that the animal has, in fact, been spayed or neutered.

Sec. 6-91. Records.

The department shall maintain a record of all registrations issued under this article, which shall show the name and address of each person issued a registration, a description of the dog or cat for which the registration is issued, the date of issuance, the fee paid, the place of issuance, the type of rabies vaccine administered and the date of inoculation, if applicable.

Secs. 6-92, 6-93. Reserved.

Sec. 6-94. When rabies vaccination required; evidence.

- (a) No person shall own, possess or have control over any dog or cat that is four months of age or older unless the dog or cat has a current rabies vaccination.
- (b) In any prosecution under this section, the burden shall be upon the defendant to prove that the animal is not required to be vaccinated because:
 - (1) The animal is less than four months of age;
 - (2) The animal was in fact vaccinated and such vaccination is not expired; or
 - (3) The vaccination against rabies is medically inadvisable for the animal.

A certificate duly signed by a veterinarian attesting either that he administered the vaccination required by this section, bearing the date and type of vaccine or that the vaccination against rabies is medically inadvisable shall be accepted as

valid proof, provided that the certificate contains the identification of the dog or cat by breed, color, and sex, the vaccination tag number, if applicable, and the name and address of the owner.

Sec. 6-95. Duty of veterinarian.

- (a) For purposes of this section, the following terms shall have the following meanings:

Information bulletin shall mean the informational bulletin that is described in subsection (b) of this section.

Registration application form shall mean the form prescribed by the city for a dog or cat registration application.

Vaccination tag shall mean any tag, disk or other item designed or intended to be attached to a dog or cat as evidence that the animal has received a vaccination for rabies.

For purposes of this section, a veterinarian shall be deemed to vaccinate an animal whether he personally administers vaccine to the animal or causes or allows the vaccine to be administered under his supervision or his control.

- (b) The director shall print information bulletins and microchip registration application forms. The information bulletins shall contain any information concerning the ordinances regulating dogs and cats that the director finds will aid in enforcement of the city's requirements for registering animals. The director shall make copies, without charge, of the information bulletin and the registration application form available for distribution to veterinarians and their employees in quantities sufficient to meet their needs. Copies of the information bulletin and registration application form shall also be available at the BARC animal shelter during regular business hours.
- (c) Each time a veterinarian vaccinates a dog or cat for rabies, the veterinarian is encouraged to furnish a copy of the information bulletin to the person presenting the animal for vaccination.
- (d) It shall be the duty of each veterinarian who vaccinates any dog or cat for rabies to furnish to the director, on or before the thirtieth (30th) calendar day following the administration of the vaccination, a copy of the veterinarian's rabies vaccination information for the animal, setting forth:
- (1) A description of the dog or cat, including its breed, age, color and sex;
 - (2) Whether the animal has been neutered (if known or determinable by the veterinarian);

- (3) The rabies vaccine manufacturer name and serial number;
- (4) The vaccination date and expiration (1 or 3 years);
- (5) The serial number of the vaccination tag furnished; and
- (6) The name and the current address of the person owning or keeping the animal.

Any information required to be provided above may be furnished to the office of the director by personal delivery, electronic transmission or by United States Mail properly addressed to the director. Mailed notices shall be deemed received upon their deposit with the United States Postal Service as evidenced by the postmark date, if legible, provided that they are in fact received by BARC animal services.

- (e) Each veterinarian, or his agent or employee, shall inform each person to whom he furnishes a vaccination tag that the vaccination tag does not constitute a city registration. The veterinarian shall provide this information in writing and in a manner that the information is clearly conspicuous to the reader of the writing.

Sec. 6-96. Unsterilized pet registration revocation; mandatory sterilization.

Any owner of an animal with an unsterilized pet registration whose animal is impounded for running at large in violation of this chapter two or more times shall have the unsterilized pet registration immediately revoked and shall be required to have the animal sterilized prior to redemption of the animal from the BARC animal shelter. Upon redemption of the animal from the BARC animal shelter:

- (1) The owner shall purchase a sterilized pet registration for the animal;
- (2) The owner shall pay the fee for the performance of sterilization at the BARC animal shelter; and
- (3) The owner shall pay any other applicable fees as set forth in section 6-137 of this Code.

Secs. 6-97—6-100. Reserved.

DIVISION 3. IMPOUNDMENT OF DOGS RUNNING AT LARGE

Sec. 6-101. Running at large prohibited.

- (a) It is unlawful for any person owning or having in his possession any dog to allow the dog to be at large without the owner or person in charge having direct physical control over the dog. An owner or person having in his possession a dog may allow the dog to be at large on property that does not provide the animal

with access to a sidewalk, street, or common areas of apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.

- (b) It is a defense to prosecution under subsection (a) of this section that the dog was in an off-leash site established under section 32-11 of this Code.
- (c) It is unlawful for any person owning or having in his possession a dangerous dog, as defined in section 6-151 of this Code, to allow that dog to be at large. A person who violates this subsection shall, upon conviction, be assessed a fine of not less than \$500.00 nor more than \$2,000.00. Each day that any violation of this subsection continues shall constitute and be punishable as a separate offense.
- (d) It is unlawful for any person owning or having in his possession an aggressive dog, as defined in section 6-151 of this Code, to allow that dog to be at large. A person who violates this subsection shall, upon conviction, be assessed a fine of not less than \$250.00 nor more than \$1,000.00. Each day that any violation of this subsection continues shall constitute and be punishable as a separate offense.
- (e) It is unlawful for any person owning or having in his possession a public nuisance dog, as defined in section 6-151 of this Code, to allow that dog to be at large. A person who violates this subsection shall, upon conviction, be assessed a fine of not less than \$200.00 nor more than \$1,000.00. Each day that any violation of this subsection continues shall constitute and be punishable as a separate offense.

Sec. 6-102. Impoundment generally.

- (a) It shall be the duty of the animal enforcement officers to take up and take charge of all dogs found to be running at large in contravention of section 6-101 of this Code, and to take the dogs to the BARC animal shelter or any other suitable place to be impounded and detained for a period as provided in subsection (b) or (c) of this section.
- (b) If a dog that has been delivered to the BARC animal shelter has a microchip or is wearing a city license tag not more than one year past the expiration date, a current local veterinarian's vaccination tag, or an identification tag, the director shall notify the owner of the dog by telephone, mail, email, or hand delivery that the dog has been received at the BARC animal shelter. The mailing or hand delivery of notice shall be deemed sufficient notice under this section if it is mailed or hand delivered to the owner at the address shown in the city's records for the license if the dog is wearing a city license tag, to the address shown in the local veterinarian's records if the animal is wearing a local veterinarian's tag, or to the address provided on the identification tag or obtained from the microchip.

Dogs wearing a current local veterinarian's tag or an identification tag, or implanted with a microchip, shall be held in designated pens for the owner for six calendar days from the date the owner was notified by telephone, mail, email, or hand delivery. If the notice is delivered by mail, the six calendar days will begin on the date that the notice is delivered to the owner. A notice delivered by mail shall be deemed to be received on the earlier of the date it is actually received, or the third day following the date upon which the notice was deposited, properly addressed and with proper postage attached, in custody of the U.S. Postal Service. On the seventh calendar day following notice, title and sole ownership of the dog transfers to BARC animal services, the dog becomes the sole property of BARC animal services, and becomes subject to disposition as BARC animal services deems appropriate.

- (c) Except as provided in section 6-138(6) of this Code, any dog without an identification tag, a microchip, or a current local veterinarian's vaccination tag, or any dog with a city license tag more than one year past the expiration date shall be held at a BARC animal shelter facility for a period of 48 hours, after which title and sole ownership of the dog transfers to BARC animal services, the dog becomes the sole property of BARC animal services, and becomes subject to disposition as the director deems appropriate.
- (d) The director is authorized to negotiate with other local government agencies for the handling of animals under the provisions of this Code. Any contract that is the subject of negotiations must be approved and its execution authorized by city council as in other contracts entered into by the city.

Secs. 6-103—6-110. Reserved.

DIVISION 4. BREEDING AND SELLING

Sec. 6-111. Permit required.

It is unlawful for any person to operate as any of the following types of breeders without a valid breeder's permit:

- (1) Commercial breeder;
- (2) Hobby/conformation breeder; or
- (3) Non-commercial breeder.

Sec. 6-112. Application for breeder's permit.

- (a) A person who wishes to operate as a commercial breeder shall apply to the director for a commercial breeder's permit. An application for a commercial breeder's permit shall include:

- (1) The name, address, and telephone number of the applicant;
 - (2) The name, address, and telephone number of the location where the breeding will be conducted;
 - (3) A description of the types of animals to be bred; and
 - (4) Any other information deemed necessary by the director.
- (b) A person who wishes to operate as a hobby/conformation breeder shall apply to the director for a hobby/conformation breeder's permit. An application for a hobby/conformation breeder's permit shall include the information contained in subsection (a) of this section. Additionally, the applicant shall submit the following documentation must be submitted with the permit application:
- (1) Ownership papers or a current pet registration issued pursuant to this chapter;
 - (2) Membership card or receipt for current dues being paid to an organized national, regional, or local club established for the purpose of improving a breed, showing in a competitive venue, use in a sporting activity or work purposes, or other personal reasons; and
 - (3) One of the following items:
 - a. Breed standard, if breeding is for the purposes of conforming or strengthening the lineage of a particular breed; or
 - b. A completed entry form for a competitive, sporting, or working event.
- (c) A person who wishes to operate as a non-commercial breeder shall apply to the director for a non-commercial breeder's permit. An application for a non-commercial breeder's permit shall include the information contained in subsection (a) of this section.
- (d) The director shall issue the commercial, hobby/conformation or non-commercial breeder's permit if the applicant meets the qualifications to obtain the permit. The director shall deny a commercial, hobby/conformation, or non-commercial breeder's permit if the applicant fails to:
- (1) Complete the application for a commercial, hobby/conformation or non-commercial breeders permit;
 - (2) Properly restrain the dogs and cats in his care and custody;
 - (3) Adequately care for and protect the dogs and cats in his care and custody;

- (4) Meet all requirements specified on the commercial, hobby/conformation or non-commercial breeder's permit; or
- (5) Pay all required fees pertaining to the commercial, hobby/conformation or non-commercial breeder's permit.

Sec. 6-113. Grounds for revocation.

The director shall revoke a commercial, hobby/conformation, or non-commercial breeder's permit if the permit holder fails to comply with the provisions set forth in subsection (d) of section 6-112 of this Code.

Sec. 6-114. Fees.

The annual fee for a commercial, hobby/conformation and non-commercial breeder's permit is stated in the city fee schedule. A permit shall expire one year from the date of issuance and must be renewed prior to its expiration. Failure to timely renew a permit will result in the assessment of the late fee stated in the city fee schedule against the permit holder.

Sec. 6-115. Notice of denial or revocation.

If the director denies an application or a request for renewal, or revokes an existing permit, he shall provide notice of the denial or revocation to the applicant or permit holder in writing not later than the tenth business day after his determination to deny an application or renewal or to revoke a permit. The notice of denial or revocation shall be sent to the permit holder or applicant by certified mail, return receipt requested, addressed to the permit holder or applicant.

Sec. 6-116. Appeal.

A person may appeal the denial or revocation of a permit by delivering a written request for an appeal to the director not more than ten calendar days after the first date of mailing written notice of denial or revocation.

Sec. 6-117. Hearing.

- (a) The director shall cause written notice to be given to the applicant or permit holder that a hearing on his appeal will be conducted. The notice shall include the following:
 - (1) The place where the hearing will be conducted; and
 - (2) The date and time of the hearing, which shall be not later than the tenth business day after the date the notice was sent to the applicant or permit holder; provided that the hearing officer may continue the hearing upon the written request of the applicant or permit holder.

- (b) All hearings shall be held by a hearing officer, who may, prior to the hearing, receive a copy of the notice given to the applicant or permit holder.
- (c) An assistant city attorney may be present at the hearing to advise the hearing officer as to procedural matters; however, the attorney shall not participate in any determination of the facts.
- (d) All hearings shall be conducted under rules consistent with the informal nature of the proceedings; provided, however, the following rules shall apply to all hearings:
 - (1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required;
 - (2) Each party may present witnesses in his own behalf;
 - (3) Each party has the right to cross examine all witnesses; and
 - (4) Only evidence presented before the hearing officer at the hearing shall be considered in rendering the decision.
- (e) The hearing officer may affirm or reverse a permit denial or a permit revocation. The decision of the hearing officer shall be final and shall be delivered in writing to the applicant or permit holder in the same manner as a notice under section 6-115 of this Code.

Sec. 6-118. Pet and live animal sales

- (a) It is unlawful for any person to sell, trade, barter, lease, rent, give away, or display for a commercial purpose a live animal on a roadside, public right-of-way, commercial parking lot, or at an outdoor special sale, swap meet, indoor or outdoor flea market, parking lot sale, or similar event.
- (b) This section does not apply to:
 - (1) An agent of a business that has a valid permit for a commercial pet service facility under section 6-121 of this Code;
 - (2) An event primarily for the sale of agricultural livestock such as hooved animals or animals or fowl commonly raised for food, dairy, or fiber products; or
 - (3) A tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals.
- (c) Notwithstanding anything to the contrary in this section, it is unlawful for anyone to sell or offer for sale in commercial or retail pet store, feed store, or other

related retail establishment, any canine or feline of any age that is not sourced from a municipal or county animal shelter, or a humane organization as defined in section 6-1 of this Code.

- (1) Commercial or retail establishments selling canines or felines shall keep a record of the animal shelter or humane organization that any canine or feline sold was sourced from. Such records must be kept for a minimum of one year from the date of the sale, and be available for inspection by BARC animal enforcement upon request.
- (2) It shall be an affirmative defense to this section, during the period from _____¹ until _____², that such an establishment was fully permitted under this division and in operation prior to _____³. Thereafter, commencing on _____⁴, this affirmative defense shall no longer apply. Anytime such an establishment allows for its permit to lapse or it is no longer compliant with section 6-111 of this Code, it must then comply with section 6-118(c) of this Code.

Sec. 6-119. Penalty.

A violation of this division shall constitute a Class C misdemeanor.

Sec. 6-120. Reserved.

DIVISION 5. COMMERCIAL PET SERVICE FACILITIES

Sec. 6-121. Commercial pet service facility license—Required; fee; exceptions.

- (a) Any person in the city conducting, managing or maintaining a commercial pet service facility shall obtain a license to do so from the department and pay an annual license fee, regardless of the number of animals kept. The annual license fee is stated in the city fee schedule.
- (b) The license fee shall be for the calendar year or any part thereof during which the commercial pet service facility is maintained, and shall be due and payable in advance on or before January first of each year.
- (c) The fee imposed under subsection (a) of this section shall not be applicable to a commercial pet service facility that is operated by a humane organization as a shelter facility. The foregoing fee exemption shall not be construed to exempt the humane organization from maintaining a valid license for any commercial pet

¹. The City Secretary shall insert the effective date of the adopting ordinance.

². The City Secretary shall insert date of the one-year anniversary of the effective date of the adopting ordinance.

³. The City Secretary shall insert date of the date of passage and approval of the adopting ordinance.

⁴. The City Secretary shall insert date one day after the date of the one-year anniversary of the effective date of the adopting ordinance.

service facility which it may operate or from compliance with any applicable ordinance governing the operation or location of a commercial pet service facility.

Sec. 6-122. Application.

- (a) Any person desiring to obtain a license shall make application on forms provided by the director and shall include information requested by the director for implementation of this division, including the following information:
- (1) The full name of the applicant, the street address where the business is to be located, and the residence address of each owner, manager and operator of the business;
 - (2) Whether any owner or operator is an individual, partnership, corporation, or other legal entity; provided, however, that the type of business organization shall include only those organizations recognized by the Texas Business Organizations Code ("BOC") and authorized to engage in the type of business covered by this article, and if the organization is a foreign entity required to register under Chapter 9 of the BOC, full and complete copies of the organization's current registration;
 - (3) If any owner or operator is a corporation, the names and addresses of all officers of the corporation; and if there are fewer than five shareholders, the names of all shareholders;
 - (4) If any owner or operator is a partnership, the type of partnership and names and addresses of all general partners, and for limited partnerships, the names and addresses of all members;
 - (5) If any owner or operator is an unincorporated association, the names and addresses of all officers of the association;
 - (6) If any applicant does business under an assumed name as that term is defined in Texas Business and Commerce Code § 71.002, all assumed names used;
 - (7) A declaration that the operation of a commercial pet service facility at the street address where the business is to be located will not violate any applicable deed restrictions enforceable by the city pursuant to article XV of chapter 10 of this Code;
 - (8) A description of the types of services to be provided at the facility;
 - (9) A declaration that the minimum standards regarding maintenance, sanitation and prevention of nuisances as set forth in the rules and regulations established by the director pursuant to section 6-123 of this Code have been met;

- (10) A declaration that the director may enter and inspect the facility at any reasonable time to ensure compliance with this division; and
 - (11) Any other information reasonably required by the director to ensure compliance with the requirements of this division.
- (b) Upon submission of a complete application and payment of the license fee, an applicant shall be entitled to receive a license. All licenses issued pursuant to this division are made expressly subject to applicable deed restrictions enforceable by the city pursuant to article XV of chapter 10 of this Code and no license shall be construed as authorizing any violation thereof.

Sec. 6-123. Minimum standards for operations.

The director shall establish rules and regulations for the minimum standards regarding maintenance, sanitation, and prevention of nuisances for the various types of commercial pet service facilities to be issued a license under this division. He shall base the rules and regulations on the standards set forth in 9 C.F.R. part 3, subpart A (Specification for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats), and any amendment or successor thereto. The director shall maintain a copy of the rules and regulations for public inspection in his offices and on the BARC animal services website. Each licensee shall maintain a commercial pet service facility in accordance with the applicable minimum standards set forth in such rules and regulations.

Sec. 6-124. Issuance and display of certificate; notification of changes.

- (a) The director shall issue a certificate to the person paying for a commercial pet service facility license, which certificate shall contain the information specified in section 6-125 of this Code. The licensees shall display the certificate at all times in a prominent place in the commercial pet service facility.
- (b) A licensee shall notify the director by personal delivery or certified mail of any change in the name, address, management, or substantial control or ownership of ten percent or more of the outstanding shares of stock as shown on the license application of his business or operation within ten calendar days of any such change.
- (c) A license issued under this division shall be personal to the applicant and shall not be transferrable or otherwise assigned.
- (d) A license issued under this division shall only be valid for the address of the facility provided in the application.

Sec. 6-125. Records to be kept.

The director shall keep a permanent record of all commercial pet service facility licenses issued under the terms of this chapter, which record shall show the following information:

- (1) The name and address of all persons being issued a commercial pet service facility license;
- (2) The name and address of the commercial pet service facility;
- (3) The number of the commercial pet service facility license,
- (4) The date the license was issued; and
- (5) The amount paid for the license.

Sec. 6-126. Suspension, revocation.

(a) *Grounds for suspension.* The director may suspend any commercial pet service facility license if any of the following conditions occur:

- (1) Animals at the commercial pet service facility are being deprived of necessary food, water, care or shelter;
- (2) Animals at the commercial pet service facility are being cruelly confined or are otherwise being cruelly treated;
- (3) Unsanitary conditions exist at the commercial pet service facility to such an extent that those conditions create a possible medium for the transmission of disease to the animals kept there or to human beings; or
- (4) The licensee or any agent or employee of the licensee responsible for the oversight or operation of the commercial pet service facility receives three or more convictions for violations of section 30-3 of this Code in relation to the operation of the commercial pet service facility in a 12-month period.

(b) *Written notice of suspension.* Prior to suspension, written notice shall be given to the licensee, the person in charge of the commercial pet service facility, or any employee or agent of the licensee. The notice shall set forth:

- (1) The specific conditions existing at the commercial pet service facility that are grounds for suspension of the license pursuant to subsection (a) of this section;
- (2) That a hearing will be held by a hearing officer;
- (3) The date, time and place of the hearing; and

- (4) That the licensee may appear in person and/or be represented by counsel and may present testimony and cross-examine all witnesses.

The hearing shall be held not later than seven business days after the date the licensee received notice of the suspension.

- (c) *Conduct of hearing.* All hearings shall be held by a hearing officer and shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to each hearing:
 - (1) All parties shall have the right to representation by a licensed attorney though an attorney is not required;
 - (2) Each party may present witnesses in his own behalf;
 - (3) Each party has the right to cross-examine all witnesses; and
 - (4) Only evidence presented before the hearing officer at the hearing may be considered in rendering the order.

If the licensee fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that conditions exist at the commercial pet service facility that are grounds for suspension of the license pursuant to subsection (a) of this section.

- (d) *Findings of hearing officer.* After completion of the hearing, the hearing officer shall make written findings as to whether grounds exist for suspension of the license. If the hearing officer finds that no grounds exist for suspension of the license, the hearing officer shall deny the request for suspension. If the hearing officer finds that grounds do exist for suspension of the license, he shall order the suspension of the license; provided, however, if the hearing officer finds that the needs of the animals and the public interest will be adequately protected by a warning, he may issue a warning and deny the request for suspension. A denial of a request for suspension of a license shall not preclude the director from seeking a revocation of the license as set forth below.

A copy of the written findings and order of the hearing officer shall be served on the licensee. If the address of the licensee is unknown or the notice has been sent certified mail, return receipt requested and has been returned undelivered, such notice shall be served on the person in charge of the commercial pet service facility or on any employee or agent of the licensee.

- (e) *Removal of animals upon suspension of license.* If the license is suspended, no one shall accept or place any animal in the commercial pet service facility and all animals at the commercial pet service facility on the date the license is suspended shall be removed by the licensee as soon as possible, but in no case no later than ten calendar days after receipt by the licensee, his agent or his

employee of the order of suspension from the hearing officer unless the license has been reinstated prior to that time.

- (f) *Correction of conditions; inspection; reinstatement of license.* Whenever the reason for a suspension no longer exists, the licensee or person in charge of the commercial pet service facility shall notify BARC animal enforcement that the conditions under which the license was suspended have been corrected and that an inspection is requested; provided, however, if the license was suspended under subsection (a)(4) of this section, the licensee or person in charge of the commercial pet service facility shall notify BARC animal enforcement that the conditions under which the convictions were received have been corrected and an inspection is requested. The director shall conduct the inspection as soon as possible after receiving the request and in no event later than three business days after the receipt of the request for an inspection. If the inspection shows that the conditions have been corrected, the director shall reinstate the license unless the director has given notice that he is seeking revocation of the license.
- (g) *Conditions for revocation.* The director may revoke a license to operate a commercial pet service facility if any of the following conditions occur:
- (1) Animals at the commercial pet service facility are being deprived of necessary food, water, care or shelter;
 - (2) Animals at the commercial pet service facility are being cruelly treated;
 - (3) Unsanitary conditions exist at the commercial pet service facility to such an extent that those conditions create a possible medium for the transmission of the disease to the animals kept at the commercial pet service facility or to human beings;
 - (4) Conditions stated in subsection (g)(2) and/or (g)(3) of this section have existed on two or more occasions at the commercial pet service facility after the officials of BARC animal enforcement have warned the commercial pet service facility of the conditions;
 - (5) The commercial pet service facility license has been suspended two or more times;
 - (6) The licensee is shown to have committed any offense involving cruelty to animals; or
 - (7) The licensee has knowingly employed any person at the commercial pet service facility or allowed any person to work at the commercial pet service facility who has been convicted of any offense involving cruelty to animals.

- (h) *Written notice of grounds for revocation.* Prior to revocation, the director shall give written notice to the licensee or person in charge. The notice shall set forth:
- (1) The specific conditions existing at the commercial pet service facility which are grounds for revocation of the license pursuant to subsection (g) of this section;
 - (2) That a hearing will be held by a hearing officer;
 - (3) The date, time and place of the hearing; and
 - (4) That the licensee may appear in person and/or be represented by counsel, may present testimony and may cross-examine all witnesses.

Each hearing shall be held in accordance with subsection (c) of this section not later than seven business days after the date the notice of revocation is received by the licensee. If the licensee fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that grounds in fact do exist for the revocation of the license.

- (i) *Findings of hearing officer.* After completion of the hearing, the hearing officer shall make written findings as to whether grounds exist for revocation of the license. If the hearing officer finds that no grounds exist for revocation of the license, the hearing officer shall deny the request for revocation. If the hearing officer finds that grounds do exist for revocation of the license, he shall order the revocation of the license; provided, however, if the city sought revocation for reasons under subsection (g)(1), (2) or (3) of this section and no grounds exist for revocation under (g)(4), (5), (6) or (7) of this section, the hearing officer may deny the request for revocation and either order the suspension of the license or issue a warning if he finds that the needs of the animals and the public interest will be adequately protected by a warning. The licensee of any license that is suspended under this subsection must comply with subsection (e) of this section regarding the removal of animals from the property. The license may be reinstated in accordance with subsection (f) of this section.

A copy of the written findings and order of the hearing officer shall be served on the licensee. If the address of the licensee is unknown or if the findings and order have been sent certified mail, returned receipt requested, and returned undelivered, the findings and order shall be served on the person in charge of the commercial pet service facility or on an agent or employee of the licensee.

- (j) *Removal of animals upon revocation of license.* If the license is revoked, no one shall accept or place any animal in the commercial pet service facility and all animals at the commercial pet service facility on the date the license is revoked shall be removed by the licensee as soon as possible, but in no case no later

than ten calendar days after receipt by the licensee, his agent or his employee of the order of revocation from the hearing officer.

- (k) *Service of notices.* Any notice provided for in this section may be served by personal delivery or by certified mail, return receipt requested.
- (l) *Nonrefundability of license fee; reinstatement of license.* In the event a license is revoked, the city shall not be liable to the licensee for any refund of any part of the license fee. Reinstatement of a license that has been revoked shall require application and payment of a license fee as if it were an initial application; provided, however, no license shall be issued to the same licensee if the licensee has been convicted of any offense involving cruelty to animals; no license shall be issued to the same licensee within one year of the date a license has been revoked; and no license shall be issued for the same location unless it is shown that adequate precautions have been taken so that the conditions under which the license was revoked shall not reoccur. If there is a dispute between the inspector and a person applying for a license for a place for which a license was revoked as to whether adequate precautions have been taken so that the conditions under which the license was revoked will not reoccur, the applicant may request a hearing before a hearing officer. The hearing shall be conducted under the same procedures as a hearing for a revocation of a license; however, the burden shall be on the applicant to show that adequate precautions have been taken so that the conditions under which the license was revoked will not reoccur.

Secs. 6-127—6-130. Reserved.

DIVISION 6. ANIMAL SHELTER ADVISORY COMMITTEE

Sec. 6-131. Committee created.

- (a) There is hereby created the animal shelter advisory committee ("the committee").
- (b) The committee shall perform the state law advisory committee functions contemplated in § 823.005 of the Health and Safety Code by rendering advice and assistance to the director regarding the city's compliance with the requirements of chapter 823 of the Health and Safety Code.

Sec. 6-132. Members; terms; offices.

- (a) The committee shall consist of six members, which membership positions shall be designated as positions one through six. The members in positions one through four shall be appointed by the city council in accordance with rule 19 of the city council's rules of procedure as codified in section 2-2 of this Code. The members in positions five and six shall be appointed by the mayor and confirmed by the city council. The following membership criteria shall apply:

- (1) Position one shall be filled by a veterinarian.
 - (2) Position two shall be filled by a municipal or county official.
 - (3) Position three shall be filled by a person whose duties include the daily operation of an "animal shelter" as that term is defined in § 823.001 of the Health and Safety Code.
 - (4) Position four shall be filled by a person who is an officer or employee of an animal welfare organization.
 - (5) Positions five and six shall be filled by residents of the city.
- (b) The members of the committee shall serve for two-year terms commencing on the first day of each even-numbered calendar year and ending on the last day of each odd-numbered calendar year, or until such time as their successors are appointed and qualified, whichever event shall occur later.
- (c) At the first meeting of each calendar year, the members of the committee shall select a chairperson. The member serving in position two of the committee shall be the ex officio, non-voting secretary of the committee.
- (d) Positions 1 through 4 need not be occupied by residents of the city, provided they reside in the Houston-Sugar Land-Baytown metropolitan statistical area, as defined by the Office of Management and Budget within the Executive Office of the President of the United States.

Sec. 6-133. Meetings; corporation; quorum.

The committee shall meet from time to time at the call of the chairperson, provided that the committee shall meet not less than three times per calendar year. A majority of the members of the committee shall constitute a quorum for the conduct of business. The director shall arrange for a city conference room to be provided for the conduct of meetings. Members shall not be compensated for service, provided that any member who is a city employee shall continue to receive his regular compensation while serving on the committee. All meetings of the committee shall be conducted in accordance with the Texas Open Meetings Act.

Secs. 6-134, 6-135. Reserved.

ARTICLE V. DISPOSITION OF IMPOUNDED ANIMALS

Sec. 6-136. Scope.

This article shall apply to the disposition of impounded animals, and the word 'animals' as used in this article shall mean all animals other than those subject to the

provisions of chapter 142 of the Texas Agriculture Code (estrays) and those subject to the provisions of article III of this chapter.

Sec. 6-137. After impoundment.

(a) *Redemption.* The person entitled to the possession of any animal delivered (the “claimant”) to the BARC animal shelter shall be entitled to have the animal delivered to him at the BARC animal shelter and shall meet the following conditions:

(1) ***Evidence of ownership.*** The claimant must present satisfactory evidence of ownership, as evidenced by the following:

- a. A registration issued pursuant to this chapter;
- b. A microchip indicating ownership of the animal;
- c. Receipt for purchase or adoption of the animal;
- d. Records from a veterinarian showing vaccinations administered within the previous 12 months;
- e. Receipts for payment to a veterinarian or commercial pet service facility for services rendered to the animal; or
- f. Photographic or videographic records showing the animal and individual asserting ownership at home or in other environments.

(2) ***Compliance with law.*** The claimant must also demonstrate proof of compliance with the following:

- a. *Sections 6-18 and 6-85 of this Code requiring microchip implantation.* If the animal does not have a microchip implanted and the claimant cannot show proof of otherwise complying with sections 6-18 or 6-85, BARC animal services shall perform the service, for which the claimant shall pay the fee stated in the city fee schedule.
- b. *Section 6-86 of this Code requiring registration of microchip identification number.* If the claimant has not registered the animal’s microchip identification number with BARC animal services or the microchip manufacturer, the claimant shall register the animal’s microchip identification number and pay the fee as provided in section 6-87 of this Code.
- c. *Section 6-90 of this Code requiring a certification of rabies vaccination.* If the claimant has not provided a certification of

vaccination and cannot show proof of otherwise complying with section 6-90, BARC animal service shall vaccinate the animal and the claimant shall pay the fee stated in the city fee schedule.

- d. Any other applicable ordinance or statute governing the release of an animal to the owner.
- (3) **Impoundment fee.** Except as otherwise provided in this chapter, the following fees in the amounts stated in the city fee schedule shall be charged for each category of animal listed below for the first, second, and third and each subsequent impoundment of the same animal in the BARC animal shelter:
- a. For sterilized dogs and cats;
 - b. For unsterilized dogs and cats;
 - c. For fowl; and
 - d. For other animals.
- (4) **Waiver of impoundment fee.** An animal implanted with a registered microchip under section 6-86 of this Code shall not be subject to the impoundment fee for the first six days of impoundment.
- (5) **Sterilization.** Unsterilized dogs or cats shall be sterilized at the BARC animal shelter, for which the claimant shall pay the amount stated in the city fee schedule, plus any additional fees that may be applicable in cases of surgical complications, unless:
- a. The animal has a valid unsterilized pet registration as of the time of the impoundment of the animal;
 - b. The officer in charge of the BARC animal shelter is able to determine by external examination that the animal has been sterilized;
 - c. The dog or cat is not yet of age to be sterilized; or
 - d. The owner presents a certificate from a veterinarian establishing either that the animal has been sterilized or that it has a serious medical condition that would make it medically inadvisable to sterilize the animal.
- (6) **Boarding fee.** Except as otherwise specifically provided in this chapter, the director shall impose and the claimant shall pay the per animal daily boarding fee stated in the city fee schedule. The director may promulgate

a schedule of boarding fees for various types of animals, including but not limited to dogs and cats, fowl, and other animals. The fees for boarding shall be based on the costs for care and feeding of the type of animal impounded—When a claimant seeks delivery of an animal on the first business day after a holiday observed by closure of city offices, no boarding fee shall be charged for the immediately preceding holiday unless the holiday was within the period of quarantine of the animal for rabies observation. No boarding fee shall be charged for the first six days for animals implanted with a registered microchip under section 6-86 of this Code.

- (7) **Veterinarian care fee.** The claimant shall pay reasonable expenses for the treatment of the animal for injury or illness. Any veterinarian of the BARC animal shelter is hereby specifically authorized to treat an animal for injury or illness when the treatment is found to be reasonably necessary in his judgment. The veterinarian in charge of the BARC animal shelter shall, from time to time, establish a uniform schedule of fees for treatment on the basis of the city's actual costs incurred in providing treatment. The director shall post a copy of the schedule on BARC animal service's website and maintain a copy for public inspection in the offices of the director and the city secretary. The minimum fee for veterinary services to any animal shall be not less than the minimum fee stated in the city fee schedule.

- (b) It shall be the duty of the officer in charge of the BARC animal shelter to offer for adoption any and all animals deemed medically and behaviorally appropriate by the BARC animal shelter staff that have become the property of BARC animal services pursuant to section 6-102 of this Code and to offer the animals for adoption for cash or other financial consideration for the amount of the accrued fees against the animal. Upon the adoption of the animal by any individual, title and sole ownership of the animal by BARC animal services ceases and transfers to the adopting individual.

- (c) No animals that have been taken to the BARC animal shelter shall be redeemed or adopted unless they are vaccinated for rabies, except in the following instances:
 - (1) The appropriate official has been furnished with satisfactory proof and evidence that the animal has been inoculated with a rabies vaccine approved by the U.S. Department of Agriculture's Veterinary Biologics Division, and that the immunization will not expire prior to the expiration of a registration issued for the animal upon release of the animal;
 - (2) The animal is less than four months of age;

- (3) The vaccination against rabies is medically inadvisable for the animal as evidenced by a certificate duly signed by a veterinarian attesting such and containing the identification of the dog or cat by breed, color, sex, and the name and address of the owner; or
 - (4) The animal cannot be inoculated for rabies due to illness, in which case, the owner must comply with subsection (g) of this section.
- (d) The owner of any animal impounded in the BARC animal shelter shall be required to redeem the animal as provided for in subsection (a) of this section and shall not be permitted to adopt the animal in lieu of paying the redemption fee.
 - (e) It is unlawful to remove animals from the BARC animal shelter except in accordance with the procedures established in this section and the regulations established by the director.
 - (f) Any dog or cat impounded in the BARC animal shelter that is claimed by the owner that has not been inoculated for rabies in accordance with article IV (dogs and cats) of this chapter and cannot be inoculated due to illness will be delivered to any veterinary hospital within the city, as designated by the animal's owner, for further treatment for the fee stated in the city fee schedule. In these instances, the veterinarian operating the veterinary hospital must agree to:
 - (1) Vaccinate the animal for rabies in accordance with article IV of this chapter prior to releasing the animal from the veterinary hospital; and
 - (2) Furnish a certificate evidencing the vaccination to BARC animal services.
 - (g) Under no circumstances may an animal that has been impounded be transferred or sold to a dealer as that term is defined in 7. U.S.C. § 2132.

Sec. 6-138. Disposal of impounded dogs, cats, other animals not redeemed or adopted.

Animals taken up and impounded under the terms of this chapter that are not redeemed as provided in this article shall be disposed of by the city as follows:

- (1) Any animal that is vaccinated and sterilized and is otherwise deemed suitable for adoption may be offered for adoption through a city facility. The director shall impose a per animal adoption fee in accordance with the city fee schedule. The director is authorized to offer an incentive program to promote the adoption of dogs, cats or other animals for one or more periods during which the director may reduce the adoption fee. Upon the adoption of the animal by any individual, title and sole ownership of the animal by BARC animal services ceases and transfers to the individual.

- (2) Any animal that is suitable for adoption as a pet and is not placed for adoption through city facilities may be placed for adoption through a humane organization. The director shall establish uniform criteria for the placement of adoptable animals through a humane organization and shall make surplus adoptable animals available to those organizations that meet the criteria. The criteria shall include requirements that animals be vaccinated and sterilized in accordance with law and that the animals be registered in the jurisdiction where they will be kept. Upon the transfer of the animal to the humane organization, title and sole ownership of the animal by BARC animal services ceases and transfers to the humane organization.
- (3) The director may authorize a third party not regularly employed by the city to offer animals for adoption and collect the adoption fees on behalf of the city if the third party demonstrates proof of financial responsibility for the fees to be collected and remitted in a form satisfactory to the director. A third party may not impose any fee in addition to that specified by this section. Upon the adoption of the animal by any individual, title and sole ownership of the animal by BARC animal services ceases and transfers to the individual.
- (4) All animals that are not placed for adoption shall be destroyed by use of humane euthanasia procedures as recommended by the American Veterinary Medical Association.
- (5) Under no circumstances may an animal be sold or donated for research or teaching purposes to a medical school, licensed hospital, or nonprofit university or college.
- (6) Notwithstanding any other provisions of this chapter, any animal under four months of age that is surrendered to BARC animal services at a BARC animal shelter facility or picked up by an animal enforcement officer shall become the sole property of BARC animal services upon delivery of the animal to a BARC animal shelter facility and shall be subject to disposition as BARC animal services deems appropriate.

Sec. 6-139. Reserved.

Sec. 6-140. Sterilization of dogs and cats offered for adoption or fostering.

- (a) In accordance with applicable state law, the director shall establish procedures to ensure that no unsterilized dog or cat is released from the city's animal enforcement facilities for adoption or fostering except under the terms of a sterilization agreement as required by chapter 828 of the Texas Health and Safety Code.

- (b) It shall be unlawful for an individual that signs a sterilization agreement in subsection (a) of this section to fail to comply with the terms of the sterilization agreement, including the presentation of proof of sterilization to BARC animal services within the timeframe specified in the sterilization agreement.

Sec. 6-141. Adoption or fostering of animals from BARC animal services; denial; appeal.

- (a) Except as provided in subsection (b) of this section, any person of at least 18 years of age may submit an application to the director to adopt or foster an animal.
- (b) No person who has been convicted of animal cruelty shall be permitted to adopt or foster animals from BARC animal services. If the director denies an application to adopt or foster an animal from BARC animal services due to the applicant's prior conviction of animal cruelty, the director shall give written notice by personal delivery or certified mail, return receipt requested, to the applicant at the address stated in the application. The decision of the director is final unless the applicant files a written appeal with the director not later than the fifth business day after the date the applicant received notice that the application was denied. If the applicant timely files a written appeal, the applicant shall be given notice of the date, time and place of the hearing for his appeal. A hearing officer shall conduct the hearing within ten business days of the director's receipt of the notice of appeal. The hearing shall be conducted informally and the hearing officer shall determine by a preponderance of the evidence whether grounds exist for the denial of the application. The hearing officer may consider city records used in the consideration of the application and affidavits, as well as any testimony or documentary evidence offered by the applicant. At the conclusion of the hearing, the hearing officer shall enter a written order with his findings as to whether or not the application should be denied. The written order shall be sent by personal delivery or certified mail, return receipt requested, to the applicant at the address stated in the application and shall be sent as soon after the conclusion of the hearing as practicable, but in no event more than 30 calendar days thereafter. The decision of the hearing officer shall be final.

Secs. 6-142—6-150. Reserved.

ARTICLE VI. DANGEROUS, AGGRESSIVE, AND PUBLIC NUISANCE DOGS

Sec. 6-151. Definitions.

As used in this article, the following words and phrases shall have the meanings provided below, unless the content of their usage clearly indicates another meaning:

Aggressive dog means a dog that meets one of the following conditions:

- (1) Bites, assaults, or otherwise attacks a person without provocation on the property of the owner and causes serious bodily injury to the person, provided that the person is on the property of the owner with the owner's consent or invitation;
- (2) Attacks and does bodily injury to domestic animals;
- (3) Has committed acts that cause a person of normal sensibilities to fear the dog will attack that person or a domesticated animal without provocation while inside an enclosure, and such enclosure is not sufficient to ensure the safety of persons or domesticated animals on adjoining property or the public at large; or
- (4) Has otherwise interfered with the freedom of movement of persons in a public right-of-way, regardless of whether the dog was on the property of its owner.

Bodily injury means physical pain, illness, or any impairment of physical condition that results from a bite or attack by a dog.

Dangerous dog has the same meaning as provided in § 822.041 of the Texas Health and Safety Code, as amended from time to time.

Owner has the same meaning as provided in § 822.041 of the Texas Health and Safety Code, as amended from time to time.

Public nuisance dog shall mean any dog that meets one of the following conditions:

- (1) Substantially interferes with the right to enjoyment of life or property by persons other than the owner by acts including, but not limited to, frequent, long, or continued barking or howling, repeated defecation on property other than that of the owner, or damaging property other than that of the owner;
- (2) Is documented by BARC animal enforcement, a police officer, a neighborhood protection official or a member of the public to be running at large three or more times in a 12-month period; or
- (3) Is one of a number of dogs or other animals maintained on the property owned or controlled by its owner so as to be dangerous to the public health, safety or welfare.

Secure enclosure means a fenced area or structure that is:

- (1) At least six feet in height with secure sides and a secure top; if the enclosure does not have a floor that is secured to its sides, the sides shall be embedded at least two feet into the ground;
- (2) Of sufficient size to allow the dog to move freely;
- (3) Locked;
- (4) Capable of preventing the entry of the general public, including children;
- (5) Capable of preventing the escape or release of a dangerous dog by any means, including digging, climbing, jumping, or chewing out of the enclosure;
- (6) Clearly marked as containing a dangerous dog; and
- (7) Located no less than five feet from another property line or fence adjoining the premises on which the enclosure is located.

Serious bodily injury has the same meaning as provided in § 822.001 of the Texas Health and Safety Code, as amended from time to time.

Unprovoked means action by a dog that is not:

- (1) In response to being tormented, abused, or assaulted by any person;
- (2) In response to pain or injury;
- (3) In protection of itself; or
- (4) In response to a person trespassing or committing a crime on the owner's property.

Sec. 6-152. Determination that dog is dangerous.

- (a) Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that a dog may constitute a dangerous dog, the director may conduct an investigation. At the conclusion of the investigation, the director may:
 - (1) Determine that a dog is not dangerous; or
 - (2) Determine that a dog is dangerous and order the registrant or owner to comply with the requirements for ownership of a dangerous dog set forth in this article and Subchapter D, Chapter 822 of the Texas Health and Safety Code.

- (b) The director shall notify the registrant or owner, either in person, by posting a determination notice on the last known residence of the owner or by certified mail, return receipt requested, of his determination. If a dog is determined to be dangerous, the notice of determination shall inform the registrant or owner of the following:
 - (1) That the dog is dangerous;
 - (2) That the registrant or owner must comply with requirements for ownership of a dangerous dog as set forth in this article and Subchapter D, Chapter 822 of the Texas Health and Safety Code; and
 - (3) That the registrant or owner has a right to appeal a determination of dangerousness in accordance with section 6-158 of this Code.

Sec. 6-153. Dog causing death or serious bodily injury to a person.

- (a) The provisions of this section for the seizure of a dog and subsequent hearing shall comply with Subchapter A, Chapter 822 of the Texas Health and Safety Code.
- (b) Any person may make a sworn complaint to a municipal court that a dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person.
- (c) Upon receipt of the complaint in subsection (b) of this Code and a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint, a municipal court shall order BARC animal enforcement to seize the dog and shall issue a warrant authorizing the seizure.
- (d) BARC animal enforcement shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.
- (e) The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued. The court shall give written notice of the time and place of the hearing to:
 - (1) The owner of the dog or the person from whom the dog was seized; and
 - (2) The person who made the complaint.
- (f) Any interested party, including the city attorney, is entitled to present evidence at the hearing.

- (g) The court shall order the dog to be humanely destroyed if the court finds that the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The court shall also order that the owner or registrant pay all fees incurred for the impoundment of the dog.
- (h) If the court does not find that the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person, the court shall waive any impoundment fees incurred and shall order the dog released to:
 - (1) Its owner;
 - (2) The person from whom the dog was seized; or
 - (3) Any other person authorized to take possession of the dog.
- (i) The court may not order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person and:
 - (1) The dog was being used for the protection of a person or person's property and the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:
 - a. The enclosure was constructed in such a manner and of such materials as to be reasonably certain to prevent the dog from leaving the enclosure on its own and notice of the presence of a dog was posted upon the enclosure; and
 - b. The injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;
 - (2) The dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;
 - (3) The attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;
 - (4) The dog was defending a person from assault or a person's property from damage or theft by the injured person; or
 - (5) The injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was constructed in such a manner and of such materials as

to be reasonably certain to keep a person younger than eight years of age from entering.

Sec. 6-154. Requirements for owner of a dangerous dog.

- (a) Not later than the 30th calendar day after the date a registrant or owner learns that he is the owner of a dangerous dog that is not to be humanely euthanized, the registrant or owner shall:
 - (1) Comply at all times with the requirements set forth in Subchapter D, Chapter 822 of the Texas Health and Safety Code;
 - (2) Permit the department to implant a microchip in the dog, at the registrant's or owner's expense, which will identify it as a dangerous dog;
 - (3) Obtain a dangerous dog license from the director for the fee stated in the city fee schedule and affix a city-issued "dangerous dog" tag to the dog's collar that must be worn by the dog at all times. The license and the accompanying tag must be renewed annually;
 - (4) Muzzle and restrain the dangerous dog at all times on a leash that is no longer than six feet in length, is of sufficient strength to control the dog, and is in the direct physical control of a person capable of controlling the dog at any time the dog is not in a secure enclosure;
 - (5) Confine the dog in a secure enclosure except as provided in item (4) of this subsection;
 - (6) Sterilize the dog; and
 - (7) Obtain liability insurance coverage 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 and provide proof of the required liability insurance coverage to the department. The proof of insurance must clearly indicate that the insurer is aware that the insured dog has been declared dangerous either by the inclusion of a statement on the coverage policy itself or in an original letter on the insurer's letterhead signed by the insurance agent issuing the policy.
- (b) The owner of a dangerous dog who does not comply with any part of subsection (a) of this section shall deliver the dog to BARC animal enforcement not later than the 30th calendar day after the owner learns that the dog is a dangerous dog.

Sec. 6-155. Failure to comply with requirements for ownership of a dangerous dog.

- (a) Any person may make application to a municipal court that the owner of a dangerous dog has failed to comply with the requirements for ownership of a dangerous dog as set forth in section 6-154 of this Code.
- (b) The court shall set a time for a hearing to determine whether the owner of the dog has complied with the requirements for ownership as set forth in section 6-154 of this Code. The hearing must be held within 10 calendar days after the date on which the dog was to be delivered to BARC animal enforcement or within 10 calendar days after the date of the application, whichever is later. The court shall give written notice of the time and place of the hearing to:
 - (1) The owner of the dog or the person from whom the dog was seized; and
 - (2) The person who made the complaint.
- (c) Any interested party, including the city attorney, is entitled to present evidence at the hearing.
- (d) The court shall determine whether the owner of a dangerous dog has complied with the requirements for ownership of a dangerous dog as set forth in section 6-154 of this Code.
 - (1) If the court determines that the owner has met all ownership requirements, the court shall waive any impoundment fees incurred and order the dog released to the owner.
 - (2) If the court determines that the owner has not met all ownership requirements, the court shall order the owner to come into compliance with all ownership requirements within 11 calendar days after the date the court issues the order and shall order the owner to pay all fees incurred for the impoundment of the dog. If all ownership requirements are met within 11 calendar days after the date the court issues the order, BARC animal services shall release the dog to the owner upon payment of all fees incurred for the impoundment of the dog. Except as provided in item (4) of this subsection, if the owner has not met all ownership requirements within 11 calendar days after the date the court issues the order, the court may order BARC animal enforcement to humanely destroy the dog and the owner to pay all impoundment fees incurred and any fees for the destruction of the dog.
 - (3) The court may order the humane destruction of a dog if the owner of the dog has not been located after the 15th calendar day after the date on which the dog was to be delivered to BARC animal enforcement.

- (4) The court may not order the destruction of a dog during the pendency of an appeal under subsection (h) of this section.
- (e) The court shall determine the estimated costs to house and care for the impounded dog during the appeal process set forth in subsection (h) of this section and shall set the bond for an appeal in an amount adequate to cover those estimated costs.
- (f) The order of the municipal court issued under subsection (f) of this section may be appealed in accordance with section 822.0424 of the Texas Health and Safety Code to a county court or county court at law in the county in which the municipal court is located. The appellant is entitled to a jury trial on request. Not later than the 10th calendar day after the date the municipal court order is issued, the appellant must file a notice of appeal, and if applicable, an appeal bond in the amount determined by the court from which the appeal is taken.

Secs. 6-156, 6-157. Reserved.

Sec. 6-158. Appeal from a determination as a dangerous dog.

If the director determines a dog is a dangerous dog under section 6-152 of this Code, that decision is final unless the licensee or owner files a written appeal in accordance with section 822.0421 of the Texas Health and Safety Code with a justice, county, or municipal court of competent jurisdiction not later than the 15th calendar day after the date the licensee or owner received notice that the dog is dangerous.

Sec. 6-159. Reserved.

Sec. 6-160. Dangerous dog owned or harbored by minor.

If the licensee or owner of a dangerous dog is a minor, the parent or guardian of the minor shall be liable for all injuries and property damage sustained by any person or domestic animal in an unprovoked attack by the dog.

Sec 6-161. Violations; defenses.

- (a) A person commits an offense if he violates, or fails to perform an act required by, a provision of this article or Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.
- (b) An offense under this article is a Class C misdemeanor.
- (c) Any defense to prosecution under Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended, is a defense to prosecution under this article.

- (d) Any defense to an order to euthanize under § 822.003(f) of the Texas Health and Safety Code, as amended, is a defense under this article.

Sec 6-162. Dangerous, aggressive, and public nuisance dog database; animal complaints investigated by the police department.

- (a) The department shall maintain a detailed database of all dogs deemed to be dangerous, aggressive, and public nuisances and shall make this information available to the police department. The database shall include, but not be limited to, information such as the registrant's, licensee's or owner's name, address, phone number, the dangerous dog case number, the assigned microchip identification number, and all identifying information regarding the dog.
- (b) Any reports involving complaints of animals investigated by the police department shall be electronically transmitted to BARC animal enforcement and shall include all relevant information gathered as a result of the response to the incident.

Sec. 6-163. Reserved.

Sec 6-164. Aggressive dog.

Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that any dog may be an aggressive dog, the director shall conduct an investigation. If upon investigation, the director reasonably believes that grounds exist to declare the dog an aggressive dog, he shall issue a written order containing the grounds for his determination to the registrant or owner of the dog by personal delivery, or by certified mail, return receipt requested. The order shall include all requirements for a registrant or owners of a dog determined to be aggressive as set forth in section 6-165 of this Code and the process for appeal of the determination.

Sec 6-165. Requirements for an aggressive dog; violation.

- (a) Not later than the 30th calendar day after the date a registrant or owner learns that he is the owner of an aggressive dog, the-registrant or owner shall:
 - (1) Permit the department, at the registrant's or owner's expense, to implant in the dog a microchip that will identify it as an aggressive dog;
 - (2) Obtain an aggressive dog license from the director for the fee stated in the city fee schedule and affix a city-issued "aggressive dog" tag to the dog's collar that must be worn by the dog at all times. The license and the accompanying tag must be renewed annually;
 - (3) Restrain the aggressive dog at all times on a leash of sufficient strength to control the dog, no longer than six feet in length and in the immediate control of a person capable of controlling the dog at any time the dog is

not in a fenced area or structure that meets the requirements set forth in the following item;

- (4) Except as provided in the preceding item, confine the dog in a fenced area or a structure that is:
 - a. At least six feet in height;
 - b. Of sufficient size to allow the dog to move freely;
 - c. Locked;
 - d. Capable of preventing the entry of the general public, including children;
 - e. Capable of preventing the escape or release of the dog; and
 - f. Clearly marked as containing an aggressive dog; and
 - (5) Sterilize the dog.
- (b) A person commits an offense if he violates or fails to perform an act required by this section. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.

Sec. 6-166. Appeal from a determination as an aggressive dog.

If the director determines a dog is an aggressive dog under section 6-164 of this Code, that decision is final unless the registrant or owner files a written appeal with the office of the director not later than five calendar days after the date the registrant or owner receives an order from the director stating that the dog is an aggressive dog. A hearing officer shall conduct the hearing within ten calendar days of the director's receipt of the notice of appeal. The hearing shall be conducted informally, and the hearing officer may consider city investigative reports, medical records, and affidavits, as well as any testimony or documentary evidence offered by the registrant or owner. At the conclusion of the hearing, the hearing officer shall enter a written order with factual findings as to whether the dog is an aggressive dog. The written order of the hearing officer shall be sent by personal delivery or certified mail, return receipt requested, to the registrant or owner as soon after the conclusion of the hearing as practicable, but in no event more than five business days thereafter. The decision of the hearing officer shall be final.

Sec. 6-167. Public nuisance dog.

- (a) Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that any dog may constitute a public nuisance, the director shall conduct an investigation. If upon investigation, the director reasonably believes

that grounds exist to declare the dog a public nuisance dog, he shall issue a written order containing the grounds for his determination to the registrant or owner of the dog by personal delivery, or by certified mail, return receipt requested. The order shall include all requirements for a registrant or owner of a dog determined to be a public nuisance as set forth in section 6-168 of this Code and the process for the appeal of the determination.

- (b) For purposes of this section, if a dog is documented to be at large three or more times in a 12-month period by a member of the public, such documentation must consist of photographic evidence with a date and time stamp and in which the dog can be clearly identified.

Sec. 6-168. Requirements for a public nuisance dog; violation.

- (a) Not later than the 30th calendar day after the date a registrant or owner learns that he is the owner of a public nuisance dog, the registrant or owner shall take all measures necessary to abate the nuisance that served as the basis for the determination of the dog as a public nuisance dog.
- (b) A person commits an offense if he violates or fails to perform an act required by this section. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.

Sec. 6-169. Appeal from a determination as a public nuisance dog.

If the director determines a dog is a public nuisance dog under section 6-167 of this Code, that decision is final unless the registrant or owner files a written appeal with the office of the director not later than five calendar days after the date the registrant or owner receives an order from the director stating that the dog is a public nuisance dog. The hearing shall be conducted and the written order from the hearing officer shall be issued in the same manner as set forth in section 6-166 of this Code. The decision of the hearing officer shall be final.

Sec. 6-170. Penalties; appeal.

- (a) If a licensee, registrant or owner of a dog receives the specified number of convictions for the following offenses within a 12-month period, the director may order the dog at issue removed from the city:
 - (1) One or more convictions for allowing an aggressive dog to be at large in violation of subsection 6-101(d) of this Code;
 - (2) One or more convictions for allowing a public nuisance dog to be at large in violation of subsection 6-101(e) of this Code; or
 - (3) Two or more convictions for violations of section 6-165 or section 6-168 of this Code.

The removal order shall be issued in writing to the licensee, registrant or owner of the dog at issue by personal delivery or by certified mail, return receipt requested. The notice shall include the reason for the order and shall inform the licensee, registrant or owner of his right to appeal the order.

- (b) If the director orders a dog removed from the city, that decision is final unless the licensee, registrant or owner files a written appeal with municipal court not later than five calendar days after the date the licensee, registrant or owner received notice that the dog has been ordered removed from the city. A municipal court judge shall hold the hearing within ten calendar days of the director's receipt of the notice of appeal. The judge may consider city investigative reports, medical records, and affidavits, as well as any testimony or documentary evidence offered by the licensee, registrant or owner. At the conclusion of the hearing, the municipal court judge shall enter a written order upholding or overruling the director's order to remove the dog at issue from the city. The written order shall be sent by personal delivery or certified mail, return receipt requested, to the licensee or owner as soon after the conclusion of the hearing as practicable, but in no event more than five business days thereafter. The decision of the municipal court judge shall be final.