

## ORDINANCE

**AN ORDINANCE AMENDING CHAPTER 6 "ANIMAL CARE AND CONTROL" OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS; PROVIDING A DEFINITION FOR "STERILIZATION"; PROVIDING THAT CERTAIN ABUSE AND NEGLECT OF ANIMALS IS A CLASS C MISDEMEANOR; PROVIDING PROVISIONS RELEVANT TO ANIMALS OF PRISONERS; PROVIDING A REQUIREMENT FOR ANIMALS TO BE STERILIZED AND/OR VACCINATED PRIOR TO ADOPTION FROM THE ANIMAL CONTROL AUTHORITY SHELTER; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, the Texas Penal Code makes certain egregious mistreatment of animals a Class A misdemeanor for which the animal control authority and the Municipal Court have no authority; and

**WHEREAS**, the City Council has determined that it is reasonable and appropriate to take action to protect animals in the City from abuse, mistreatment, and/or cruelty that does not meet the elements for prosecution as a Class A misdemeanor; and

**WHEREAS**, the City Council has determined that in order for the City to have greater control in dealing with such issues at the local level, it is necessary to classify as Class C misdemeanors those acts that amount to abuse, mistreatment, and/or cruelty to animals but that do not meet the criteria for prosecution under state law; and

**WHEREAS**, the City Council has also determined that it is appropriate authorize the animal control authority to determine the degree of mistreatment and whether to pursue prosecution under this ordinance or to refer the issue for prosecution under the more enhanced state law provisions; and

**WHEREAS**, pursuant to Texas Health and Safety Code Chapter 828, the City may not release a dog or cat for adoption from its shelter unless the animal has been sterilized or the release is made to a new owner who signs an agreement to have the animal sterilized; and

**WHEREAS**, the animal control authority has observed that many individuals who adopt animals from the City's shelter do not comply with the agreement to have the animal sterilized; and

**WHEREAS**, the City has determined that the unintended or uncontrolled breeding of dogs and cats within the City leads to many dogs, cats, puppies, and kittens being unwanted, becoming strays, suffering privation and death, being impounded and euthanized at great expense to the community, and constituting a public nuisance and public health hazard; and

**WHEREAS**, in an effort to decrease the number of these unwanted pets, the City has determined that it is appropriate to require that all dogs and cats adopted from the shelter be spayed or neutered prior to being released for adoption; and

**WHEREAS**, the City has also determined that it is in the City's best interest to provide for the care, custody, or humane disposition of animals in the possession of individuals who become incarcerated; and

**WHEREAS**, the City Council finds that regulations addressing these concerns are advantageous, beneficial, and in the best interest of the the citizens of Burleson; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS:**

#### **SECTION 1.**

That Section 6-1 "Definitions" of Chapter 6 "Animal Care and Control" of the Burleson Code of Ordinances is hereby amended by adding a definition in alphabetical order for the term "Sterilization" to read as follows:

*Sterilization* shall mean the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods or technologies approved by the United States Food and Drug administration or the United States Department of Agricultural to permanently render the animal unable to reproduce.

#### **SECTION 2.**

That Section 6-9 "Care and humane treatment of animals" of Chapter 6 "Animal Care and Control" of the Burleson Code of Ordinances is hereby amended to read as follows:

##### **Sec. 6-9. - Care and humane treatment of animals.**

- (a) *Owner's duty to provide food, shelter, and care.* The owner or person who has custody or control of any animal shall:

- (1) keep the animal in clean, sanitary, and healthy condition; and
  - (2) provide the animal sufficient nutritious and wholesome food, served to the animal in clean containers, to maintain the animals good health; and
  - (3) provide the animal constant and adequate supply of fresh, clean, potable water served from a clean container that keeps the animal hydrated for environmental conditions; and
  - (4) provide the animal care and veterinarian medical treatment for injuries, parasites, and disease that is sufficient to maintain the animal in good health and minimize and prevent suffering; and
  - (5) maintain the animals shelter (pens, kennels, coops, fenced areas and enclosures of any kind) in sanitary condition, including but not limited disposing all animal waste promptly, and all pens and enclosures shall be cleaned as needed to prevent odors and not attract insects or other vermin or create a nuisance; and
  - (6) provide the animal with adequate shelter that:
    - a. is large enough for the animal to enter, stand, turn around, and lie down in a natural manner; and
    - b. keeps the animal dry; and
    - c. provides the animal natural or artificial shade form direct sunlight, and;
    - d. protects the animal from excessive heat and cold and other adverse weather conditions; and
    - e. is adequately ventilated.
- (b) *Abuse of Animals Prohibited.* No person shall beat, cruelly ill treat, torment, mentally abuse, overload, overwork, or otherwise abuse an animal, or cause, instigate or permit any dog fight, cock fight, or other combat between animals or between animals and humans.
- (c) *Abandoning an Animal.* It shall be unlawful for an owner or other person having custody or control of any animal to abandon such animal, including the abandonment of any animal at the animal control facility.

- (d) *Cropping, Docking, or Castrating.* It shall be unlawful person other than a licensed veterinarian crop a dog's ears docks an animal's tail; or castrates an animal; provided, however, that this subsection shall not apply to normal livestock operations occurring within the city.
  - (e) *Striking animal with vehicle.* The operator of any motor vehicle which strikes or injures a domesticated animal shall stop and immediately render aid and report such incident to the animal control authority or the police.
  - (f) *Tying dogs and other animals.* A person commits an offense if the person ties or tethers a dog or other animal in an unenclosed front or back yard, or by a fixed point, chain, or tether so as to create, as determined by the animal control authority, an unhealthy situation for the animal or a potentially dangerous situation for a person or another animal. A person restraining a dog with a chain or tether shall attach the chain or tether to a properly fitted collar, not wrap a chain or tether directly around the animal's neck.
- (1) An owner may not leave an animal outside and unattended by use of a restraint that unreasonably limits the animal's movement:
    - a. Between the hours of 10:00 p.m. and 6:00 a.m.;
    - b. Within 500 feet of the premises of a school; or
    - c. In the case of extreme weather conditions, including conditions in which:
      - 1. The actual or effective outdoor temperature is below 32 degrees fahrenheit;
      - 2. A heat advisory has been issued by a local or state authority or jurisdiction; or
      - 3. A hurricane, tropical storm, or tornado warning has been issued for the jurisdiction by the National Weather Service.
  - (2) A restraint unreasonably limits an animal's movement if the restraint:
    - a. Uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the animal;
    - b. Is a length shorter than the greater of:
      - 1. Five times the length of the animal, as measured from tip of the animal's nose to the base of its tail; or
      - 2. Ten feet.

- c. Is in an unsafe condition; or
- d. Causes injury to the animal.

(3) *Exceptions.* Subsections (2)b.1. and (2).b.2. above do not apply to:

- a. An animal restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;
- b. An animal restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;
- c. An animal restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the animal to be restrained;
- d. An animal restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the state if the activity for which the license is issued is associated with the use or presence of the animal;
- e. An animal restrained while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or
- f. An animal restrained while the owner is engaged in conduct directly relating to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the animal.

(4) A restrained animal must have access to water and shelter from the elements, have a restraint that does not become entangled, and stay within the owner's property.

(5) *Penalty.*

- a. A peace officer or animal control officer who has probable cause to believe that an owner is violating this section shall provide the owner with a written statement of that fact. The statement must

be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.

- b. A person commits an offense if the person is provided a statement as described in subsection (5)a. and fails to comply with this section within 24 hours of the time the owner is provided the statement. An offense under this section is a class C misdemeanor.
  - c. A person commits an offense if the person violates this section and has previously been convicted of an offense under this section. An offense under this subsection is a class B misdemeanor as provided in § 821.079, Health and Safety Code.
  - d. If a person fails to comply with this subsection with respect to more than one animal, the person's conduct with respect to each animal constitutes a separate offense.
  - e. If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.
- (6) *Hand-held leashes.* This section does not prohibit a person from walking an animal with a hand-held leash.
- (g) *Fences/enclosures.* A person commits an offense if the person keeps a dog or other animal within a fence/enclosure which is in such a state of disrepair that the animal may escape or be injured or may pose a threat to passers by.
- (h) *Young rabbits and fowl.* A person commits an offense if the person sells, offers for sale, barter or gives away as toys, premiums or novelties, baby chickens, ducklings or other fowl under three weeks old and rabbits under two months old, unless the manner or method of display is first approved by the animal control authority.
- (i) *Dyed animals.* A person commits an offense if the person colors, dyes, stains or otherwise changes the natural color of any chickens, ducklings, other fowl or rabbits, or possesses, for the purpose of sale or to be given away, any of the above-mentioned animals which have been so colored.
- (j) *Animals not to be used as prizes or inducements.* A person commits an offense if the person gives away or auctions any animal as a prize for, or as an inducement to enter any contest, game or competition, or as an inducement to enter a place of amusement, or offer such animal as an incentive to enter into

any business establishment whereby the offer was for the purpose of attracting trade.

- (k) *Hunting and trapping.* No person may hunt, trap, wound, kill, maim, torture or otherwise threaten the health and safety of any indigenous wild animal in the city limits of Burleson, excluding the trapping of nuisance wildlife under the authorization and supervision of the animal control authority; also excluding any person who holds a seasonal hunting license for a species for which there exists a hunting season, and that person's hunting activities occur on property which is properly zoned, and property owner's permission has been granted for such activity; or a person holds proper permits issued by the animal control authority or Texas Parks and Wildlife.
- (l) *Animals in parked vehicles.* A person commits an offense if the person leaves any animal in any standing or parked vehicle in such a way as to endanger the animal's health, safety or welfare. The animal control authority or peace officer is authorized to use reasonable force to remove an animal from a vehicle whenever it appears the animal's health, safety or welfare is or soon will be endangered, and said animal shall be impounded.
- (m) *Seizure.* The animal control authority shall liberally utilize the authority granted by § 821.022 of the Texas Health and Safety Code to seize and impound any animal, if the animal control authority has reason to believe that an animal has been or is being cruelly treated, pending a hearing before the municipal court on the issues of cruelty and disposition of the animal. Seizure of the subject animal prior to receiving a warrant is hereby authorized if such delay endangers the life of or would unreasonably prolong the suffering of the subject animal.
- (n) *Displaying for commercial purposes.*
  - (1) A person commits an offense if the person displays any live animal for a commercial purpose on any roadside, public right-of-way, or commercial parking lot. Commercial purpose shall include, but not be limited to; intent to sell, trade, barter, lease, rent, or give away, any live animal.
  - (2) A person commits an offense if the person receives any live animal through sale, trade, barter, lease, rent, or give away conducted on any roadside, public right-of-way, or commercial parking lot.
- (o) *Class A misdemeanors.* A person commits a Class A misdemeanor offense if that person violates Texas Penal Code §§ 42.09, 42.091, or 42.092, as currently written or as may be amended.
- (p) *Class C misdemeanors.* The animal control authority shall determine whether to file a violation of this section as a Class C misdemeanor or Class A misdemeanor depending on the degree of abuse or neglect.

- (q) *Other law.* The actions prohibited by this section are in addition to any prohibitions existing elsewhere in this code or any applicable state or federal law. Nothing in this section shall be construed to limit any duty imposed on an owner by any other provisions of this code or any applicable state or federal law.

### SECTION 3.

That Section 6-11 "Impoundment," of Chapter 6 "Animal Care and Control" of the Burleson Code of Ordinances is amended by adding subsection (d) (4) "Adoption of animals" to read as follows:

(d) *Redemption.*

(4) Adoption of animals

- a. The animal control authority or the contracted veterinarian shall be the sole judge as to whether a cat or dog is healthy enough for adoption, and its health and age adequate for vaccination. However, such decision by the animal control authority shall not constitute a warranty of the health or age of the animal.
- b. All dogs and cats which are adopted through the city animal shelter shall be sterilized / altered to prevent reproduction in that animal provided the animal is eight weeks or older or two pounds or more in body weight.
- c. All dogs and cats which are adopted through the city animal shelter and are over four (4) months of age shall be vaccinated for rabies.
- d. If an animal is already sterilized (spayed or neutered), the animal can be released from the shelter the same day of the adoption.
- e. A person adopting an animal from the animal control authority does not have legal ownership of the animal until the animal is sterilized (spayed or neutered) and claimed by adopter from the contracted veterinarian.
- f. If the animal is rejected for sterilization and a person is approved to take the animal home on a spay/neuter waiver, that person will be *required* to return when the animal is healthy and have the surgery completed, as indicated in the signed contract at the time of adoption, have the surgery completed.
- g. The animal control authority personnel will schedule the animal(s) for the sterilization and vaccination.



- h. The animal control authority will transport the animal(s) to an available contracted veterinarian. The person adopting the animal(s) will be required to pick-up the animal at the contracted veterinarian office.
- i. If an animal is not eligible for sterilization before leaving the shelter due to age or medical condition, the animal shelter authority shall accept verification from a licensed veterinarian.
- j. Failure of an adopter to comply with the terms outlined in this section will result in the refusal by the animal control authority to release the adopted animal still in the possession of the animal shelter.
- k. The animal control authority reserves the right to refuse to adopt any animal if it is believed that the adoption may create a risk to the animal's health and safety.
- l. Failing to comply with the terms of the adoption contract will constitute violation of this section.
- m. The fee for the adoption(s) will be collected in accordance to the fee schedule.

#### **SECTION 4.**

That Section 6-11 "Impoundment," of Chapter 6 "Animal Care and Control" of the Burleson Code of Ordinances is amended by adding subsection (j) "Animals of prisoners" to read as follows:

(j) *Animals of prisoners.*

- 1. Any person who is taken into the custody of the Burleson Police Department or other law enforcement personnel and having in his/her possession an animal shall be notified that the animal will be transferred to the animal control authority shelter.
- 2. During confinement of said person, the animal will be taken care of by the animal control authority. The animal must be redeemed from impoundment within 5 business days from the time of the incarceration of the owner, at no charge to the owner. If the animal has not been redeemed within the 5 day period, then the animal becomes the property of the City of Burleson and may euthanized in a humane manner, adopted, sold, or transferred to a nonprofit animal welfare organization approved by the animal control authority.

3. No person shall be able to redeem an animal taken possession of pursuant to this section, except the owner or owner's duly authorized designee.
4. An animal may be kept at the animal control authority shelter for a period of time exceeding five (5) business days if, in the discretion of the animal control authority, there is a possibility of reuniting the animal with its owner within a reasonable amount of time.

#### **SECTION 5.**

That Chapter 6 "Animal Care and Control" of the Burleson Code of Ordinances is hereby amended by adding Section 6-17 "Penalty" to read as follows:

#### **Sec. 6-17. – Penalty.**

Except as provided herein, any person who shall violate the provisions of this chapter shall, for each violation, be deemed guilty of a misdemeanor and shall be fined not more than \$500.00, and each violation shall be construed to constitute a separate offense.

#### **SECTION 6.**

This ordinance shall be cumulative of all provisions of ordinances and the Code of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and Code, in which event the conflicting provisions of such ordinances and Code are hereby repealed.

#### **SECTION 7.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 8.**

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such

ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 9.**

- (a) Unless otherwise provided herein, any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor and fined no more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.
- (b) The penal provisions imposed under this Ordinance shall not preclude Burleson from filing suit to enjoin the violation. Burleson retains all legal rights and remedies available to it pursuant to local, state and federal law.

#### **SECTION 10.**

The City Secretary of the City of Burleson is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

#### **SECTION 11.**

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

**SECTION 12.**

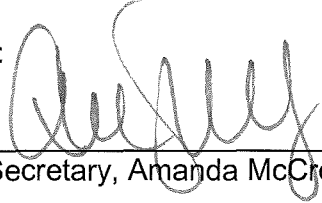
This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED this the 8th day of September, 2015.



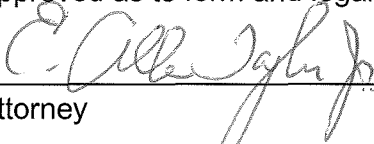
Mayor, Ken Shetter

Attest:



City Secretary, Amanda McCrory

Approved as to form and legality:



Attorney

Allen Taylor

Printed Name

