

5/29/14

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ORDINANCE NO. 7461

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 8-2, ARTICLE I, SECTIONS 8-2-1 AND 8-2-6 REGARDING DEFINITIONS AND VARIOUS OFFENSES OF INHUMANE TREATMENT, UNLAWFUL RESTRAINT OF DOG, PRESUMPTIONS, INVESTIGATION AND PROSECUTION OF OFFENSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

*Published
6/6/14
6/13/14
Effective
6/23/14*

WHEREAS, the Animal Control Advisory Board recommends the adoption of this ordinance revising the animal cruelty provisions of the Municipal Code of Ordinances; and,

WHEREAS, the City Council now finds that:

- Providing better definitions will enable better compliance by Animal owners;
- Providing presumptions will enable more effective prosecution of violators;
- Tethering of a dog is not illegal when done humanely in accordance with state law, and this ordinance which provides further protections and restrictions relative to tethering ;
- Children or adults who inadvertently step off of the public sidewalk should not thereby be exposed to immediate risk of attack from a dog on a too long tether;
- Ear cropping and Tail docking are controversial but nonetheless recognized in some breed standards; therefore these practices should be reasonably regulated to assure it is performed humanely; and,

WHEREAS, the City Council finds the provisions of this ordinance will promote and protect the public health, safety and welfare, while also promoting proper and humane care of Animals;

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

SECTION 1. the Amarillo Municipal Code, Chapter 8-2. Article I, Section 8-2-1 is hereby amended in part, as to selected definitions, to read as follows:

Sec. 8-2-1. Definitions.

* * *

Owner: ~~Any~~ (1) A person who owns, keeps, harbors, controls, (physically or by verbal or hand commands), feeds, shelters or aids any Animal; or ~~any~~ (2) A person who is the owner's agent left in charge of an Animal; or (3) or any A person who states that he or she will be responsible for an Animal. If the owner of an Animal is under the age of 17 years, then the head of the household of such person under age 17 is deemed to be an owner and responsible for the Animal. There is a rebuttable presumption that any person who owns, keeps, harbors, controls, feeds, shelters or aids any Animal for three (3) consecutive days or more is an owner for purposes of this Article.

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Restrain: Any Animal shall be deemed to be restrained when it is:

(1) Confined on the Premises of the Owner within a fenced enclosure, capable of confining the Animal;

(2) Fastened, tethered, or of picketed by a lead, rope, ~~or chain~~ cable, strap, or other non-chain material so as to keep the Animal on the Premises and at least three feet from the edge of any public sidewalk, as measured from the interior edge of the sidewalk being opposite from the curbside of the sidewalk, to the end of the lead, rope, or tether;

(3) Under the control of a person by a leash;

(4) Within a vehicle being driven or parked; or

(5) On the premises of the owner or keeper and is obedient to and under the control of oral command.

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SECTION 2. The current text of Amarillo Municipal Code, Section 8-2-6, be and hereby is REPEALED.

SECTION 3. The Amarillo Municipal Code, Chapter 8-2, Article I, Section 8-2-6 be and hereby is RE-ENACTED to now read as follows:

Sec. 8-2-6. Inhumane treatment; Unlawful Restraint; statutes; presumptions; definitions, enforcement.

a. Inhumane treatment.

1. The provisions of Texas Penal Code sections 42.09, 42.091, and 42.092, each as amended, are hereby incorporated into this Article. Where any provision of this Article conflicts with these incorporated State laws and cannot be harmonized, then state law shall prevail.

2. To supplement and aid the incorporated statutory provisions and definitions of state law, the following definitions are enacted to further inform and define such Penal Code offenses occurring within the City limits, when such is prosecuted pursuant to this Article:

(a). Water. Liquid water; reasonably free of algae blooms, dirt, and debris.

(b). Shelter. Access to structure that is suitable for the species, age, condition, size, and type of each Animal; and, protects each Animal from rain, sleet, snow, hail, and direct sunlight; with no accumulation of excrement, wasted food, or other debris; and, for dogs and cats, provides a solid surface, resting platform, pad, floor mat, or similar device that is large enough

for the Animal or Animals intended to occupy to be able to lie upon in a normal manner and can be maintained in a sanitary manner.

(c). Food. Provision of such food as is appropriate in approximate quantity and type, suitable for the Animal's species, size, and age, as to sustain good health.

3. Presumptions. For violations arising under this Section, there is a rebuttable presumption that:

(a). Food that is inaccessible to the Animal's mouth is neither adequate nor the necessary food as required by the incorporated statute or this Article.

(b). Water that is either frozen, exhibits unreasonable algae bloom or dirt, or is located so as to be inaccessible to the Animal's mouth is neither adequate nor necessary water as required by the incorporated statute or this Article.

(c). Shelters with wire, grid, or slat floors that: (i) permit the Animal's feet to pass through the openings; or (ii) sag under the Animal's weight; or (iii) otherwise do not protect the Animal's feet or toes from injury, is neither adequate nor necessary shelter as required by the incorporated statute or this Article.

4. Ear cropping and Tail docking.

(a) For purposes of this section: Ear cropping means the re-shaping of an Animal's ear by removing any part thereof by surgery or other means; and, Tail docking means the amputation of all or part of an Animal's tail by cutting, crushing, or other means. Subject to the stated exception, Ear cropping and Tail docking are each declared to be cruel and inhumane treatment of an Animal.

(b) It is an offense:

(1). For any person to perform Ear cropping or Tail docking, except as allowed in this subsection.

(2). For an Animal owner to perform or allow Ear cropping or Tail docking of his or her Animal, except by a person authorized in this subsection.

(c) Exception: It is not an offense when Ear cropping or Tail docking are performed by a licensed veterinarian or one acting under the supervision of a veterinarian in a clinical setting.

b. Unlawful restraint; Tethering

1. Texas Health and Safety Code, Chapter 821, Subchapter D, "Unlawful Restraint of Dog," as amended, is hereby incorporated into this Article. Where any provision of this Article conflicts with this

incorporated State law and cannot be harmonized, then state law shall prevail.

2. To supplement and aid the incorporated statutory provisions and definitions, the following definitions and restrictions are enacted to further inform and define such offense occurring within the City limits, when such is prosecuted pursuant to this Article:

(a). *Restraint.* In addition to the requirements of incorporated statute, a rope, tether, cable or other similar device or material must: have a swivel at each end and not unreasonably interfere with the dog's access to water, food and shelter;

(b). *Attachment.* The restraint or tether shall be attached to the dog by a harness or properly fitted collar. However, in no event shall a restraint tether be attached to a dog by a choke collar, prong collar, or chain used as a collar.

(c). *Chain.* Chain is not an acceptable material for purposes of a tether restraint and such is hereby prohibited. This prohibition does not apply to a handheld leash used while walking a dog.

3. *Negation of Defense or Excuse.*

Tethering is one available technique for confining an Animal to avoid it from being At-Large. The failure of any component of a tether system to restrain an Animal is not an defense to an Animal At-Large offense. Such a failure does not relieve or excuse an Owner from the legal duty to prevent an Animal from being At-Large.

c. *Investigation and Prosecution.* Upon discovering or being notified by any person that an Animal is or may be treated cruelly or inhumanely, or that a dog is unlawfully restrained or tethered, then an Animal Control Officer or peace officer shall investigate such report. If probable cause is found for an allegation of cruelty to an Animal or unlawful restraint of a dog, then the Animal Control Officer or peace officer may issue a citation for violation of this ordinance for prosecution in municipal court, or refer the matter to the county or district attorney for prosecution, or seize the Animal pursuant to Texas Health and Safety Code chapter 821, or a combination of these.

d. *Procedures.* The Animal Control Officer shall follow Texas Health and Safety Code chapter 821, Subchapter B, as amended, or successor statute, as it relates to hearings, seizure, appeals, and disposition of allegedly cruelly treated Animals is hereby incorporated by this reference into this Article for use by the Animal Control Officer. The provisions of the several statutes incorporated by reference in this Article are cumulative of remedies for violation of this Code of Ordinances, and the use of one does not preclude use of another, unless otherwise provided by law.

SECTION 4. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

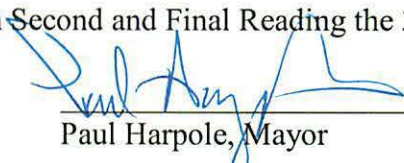
SECTION 5. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 6. Continuation. That nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance, and such prior law is continued in effect for purposes of such pending matter.

SECTION 7 Penalty. A violation of this ordinance is an offense punishable in accordance with Section 1-1-5 of this code of ordinances, as amended.


SECTION 8. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 27th day of May, 2014; and PASSED on Second and Final Reading the 3rd day of June, 2014.



Paul Harpole, Mayor

ATTEST:



Frances Hibbs, City Secretary