

ORDINANCE 2022-05-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS
AMENDING CHAPTER 10 – ANIMALS; AMENDING ARTICLE I – IN GENERAL;
AMENDING ARTICLE IV – DANGEROUS ANIMALS; PROVIDING FOR AN
UPDATED DANGEROUS DOG DETERMINATION PROCESS AND DEFINITIONS.**

WHEREAS, the Animal Advisory Board is composed of community members who advise the City Council on policy decisions that affect the health and safety of animals within the City; and

WHEREAS, the Animal Advisory Board has recommended changes to the City Council regarding City processes for dangerous dog determination that will provide enhanced public safety and animal welfare within the City; and

WHEREAS, it is deemed by the City Council to be in the best interest of the City to amend the current animal ordinances as recommended by the Animal Advisory Board.

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

**SECTION I
FINDINGS OF FACT**

Chapter 10 – Animals is hereby amended to reflect the changes hereto attached as Exhibit “A.” The premises attached as Exhibit “A” are hereby found to be true and correct legislative and factual findings of the City Council of the City of Alpine and are hereby approved and incorporated herein as findings of fact.

**SECTION II
CUMULATIVE CLAUSE**

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conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

**SECTION III
SEVERABILITY CLAUSE**

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

SECTION IV

PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION V
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by State and Local law.

PASSED AND ADOPTED THIS 7TH DAY OF JUNE 2022 BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS.

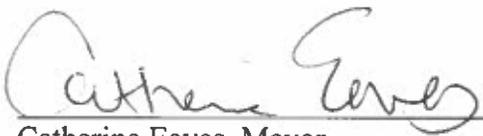
INTRODUCTION AND FIRST READING

MAY 17, 2022

SECOND AND FINAL READING

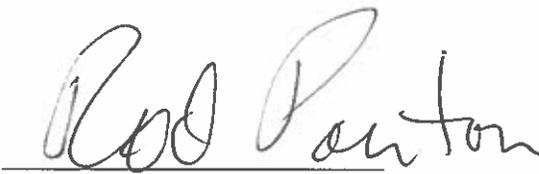
JUNE 7, 2022

ATTEST:


Catherine Eaves, Mayor


Geoffrey R. Calderon, City Secretary

APPROVED AS TO FORM:


Rod Ponton, City Attorney



EDITOR'S NOTE:

Additions are highlighted in Yellow and Underlined. Omissions appear in Red Strikethrough Text. Previous Editor's notes and codification references are Italicized in Red.

EXHIBIT "A"

Chapter 10 ANIMALS

ARTICLE I. IN GENERAL¹

Sec. 10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Altered animal means an animal having been spayed or neutered.

Animal means any living vertebrate creature except human beings and with the exclusion of fish, amphibians, reptiles, caged birds and small rodents when kept as pets in a private residence, or enclosed in a commercial enclosure. The word "animal" shall mean only a mammal when referring specifically to the control of rabies.

Animal control officer or *ACO* means a duly authorized person responsible for the enforcement of this chapter including peace officers.

Animal shelter means any premises designated or operated by the city for the purpose of impounding and caring for animals under the authority of this chapter.

Attack means definite vigorous, aggressive action by a dog directly against a person or other animal which results in the infliction of bodily injury, or the threat of bodily injury, by such dog to a person or other animal.

Bee, bee keeping and bee hives means any of numerous hairy-bodied insects including social and solitary species, the cultivation of bees on any commercial scale for the production of honey or bees, and a hive is a manmade receptacle that houses a swarm of bees.

Bite means an abrasion, scratch, puncture, tear or piercing of the skin actually or suspected of being caused by the mouth of any animal.

City or *City of Alpine* means officials of the City of Alpine including, but not limited to, the city manager, the animal control officer, and any City of Alpine peace officer.

Collar means a band, chain, harness or other suitable device worn about the neck of an animal to which a current rabies vaccination registration tag can be affixed.

Continual noise or frequent or long continued noise means noise pollution, unwanted or excessive sound, a nuisance that interferes with activities, for example owning an animal that causes frequent or long-continued noise, by barking or howling, that disturbs the comfort of any person.

Current vaccination means vaccinated and satisfying the following:

- (1) The animal must have been at least three months of age at the time of vaccination.
- (2) At least 30 days have elapsed since the initial vaccination.
- (3) Not more than 12 months have elapsed since the most recent vaccination.

Dangerous animal means any animal that:

- (1) Has inflicted severe injury on a human being without provocation;
- (2) Has injured or killed a domestic animal without provocation; or
- (3) Has been previously found to be potentially dangerous, the owner having received notice of such and the animal again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

Potentially dangerous animal means any animal that when unprovoked:

- (1) Inflicts injury on a human or a domestic animal; or
- (2) Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or
- (3) Has a known propensity, tendency, or disposition to attack, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

Dangerous dog means a dog that:

- (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and such acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

Dilapidated means a building, structure or material that has fallen into partial ruin by neglect or misuse or into a condition of partial decay.

Dog means any member of the canis familiaris species.

Domestic animals means animal species which generally have their breeding controlled by people and which by their long association with people have been developed into breeds or types for specific uses by people.

Domesticated means a tame animal that is subject to the dominion and control of an owner and accustomed to living in or near human habitation without requiring extraordinary restraint or unreasonably disturbing such human habitation.

Dwelling means any building or portion thereof which is designed and used for residential purposes. An attached garage shall be deemed to be part of a dwelling.

Enclosed structure means a building or other similar structure that is fully enclosed with a roof in place to provide a degree of protection, and does not include a yard or fence.

Euthanasia means putting to death of an animal in a manner and method which does not cause pain nor take longer than one minute to effect unconsciousness or death, and is in compliance with the provisions of V.T.C.A., Health and Safety Code ch. 823. Shooting firearms into a pen or enclosure containing multiple animals is prohibited by the Texas Health and Safety Code and shall not satisfy the requirement under the definition of euthanasia or humane destruction of animals. Lethal injection and efficiently operating carbon monoxide chambers shall, throughout this chapter, be presumed to be the method of euthanasia employed by the city.

Euthanize means to kill in a humane manner.

Exotic animal means any animal that is not livestock or a domesticated animal and includes, but is not limited to, no matter how well-trained: all alligators and crocodiles; all bears; all cats other than the commonly accepted domesticated cats, including but not limited to cheetah, leopard, lion, lynx, panther, cougar, mountain lion, bobcat, and tiger; all dogs other than domesticated dogs, including but not limited to wolf, part wolf, fox, part fox, coyote, and part coyote; all porcupines; all nonhuman primates; all raccoons; all skunks; all venomous fish and piranha; all venomous snakes and lizards; and all weasels other than ferrets.

Exposed to rabies means an animal which has been exposed to rabies if it has been bitten by another animal or has been in contact with any animal known to be or suspected of being infected with rabies.

Feral animal means formerly domesticated animals and their offspring which have roamed at large for a sufficient period of time and with sufficient success at survival as to be deemed no longer domesticated.

Feral cat means a domestic cat who has been born and raised without contact with humans, or a cat who has not had contact with humans for a significant period of time and has become unsocialized. It can also mean a free-roaming domestic cat which is not owned.

Feral cat colony means any group of feral cats which have a keeper who is maintaining and caring for the feral cats by providing food and water and other forms of sustenance.

Feral keeper means any person or organization, harboring, regularly feeding or having in his or her possession any feral cat. A person becomes a "keeper" when any person has possession of or control over the animal and has fed the cat for three or more consecutive days. Also, a "keeper" can be any individual who permits a cat to habitually be or remain on or be lodged or fed within such persons property or premises.

Food means bread products, corn, fruit, oats, hay, nuts, wheat, alfalfa, salt blocks, feed, grain, vegetables, and commercially sold wildlife feed, or livestock feed, but excludes live naturally growing shrubs, live crops, plants, flowers, vegetation, gardens, trees, and fruit or nuts that have fallen on the ground or are within reach of wildlife.

Fowl means any domesticated bird used as food by people, such as chickens, ducks, turkeys, geese, guinea fowl, peafowl or pigeons.

Horse means any member of the equine family.

Humanely destroy means to cause the death of an animal by a method which:

- (1) Rapidly produces unconsciousness and death without visible evidence of pain or distress; or
- (2) Utilizes anesthesia produced by an agent which causes painless loss of consciousness and death following such loss of consciousness.

Keep or harbor means to have charge, custody or control of an animal or fowl, or permitting the animal or fowl to habitually remain or be lodged or fed within the house, store, yard, enclosure or place of the owner or occupant of the premises.

Kennel means any premises on which four or more dogs or four or more cats, four months of age or older, are kept; or where the business of buying, selling, breeding, grooming, training or boarding of dogs or cats is conducted. The term "kennel" does not include veterinary hospitals or humane societies.

Large livestock animal means cattle, horses, mules, beasts of burden, or any other similar domesticated animal.

License, registration or permit means a printed authorization issued by the city allowing the holder to keep the animal described within the corporate limits.

Livestock means domestic animals of the equine, bovine, ovine, caprine or porcine genera.

Nuisance means disturbing the peace, emitting noxious or offensive odors or otherwise endangering or being offensive to the environment of the city.

Own means to own, keep, harbor or have charge, custody or control of an animal or fowl.

Owner means any person who owns, harbors, keeps or causes or permits to be harbored or kept, or has in his care, an animal or bird on or about his premises or any person keeping, harboring, having charge or control of, or permitting to habitually be or remain on such person's premises any animal for a period of six consecutive days or more.

Pet animal means dogs, cats, birds, guinea pigs, hamsters, mice, snakes, iguana and turtles. Pet animal shall also include any domesticated animal that a person owns or that is sold or offered for sale for the purpose of being kept indoors as household pets.

Provoke, provoking, or Provocation means that:

(1) A situation or action that encourages, provokes or incites a dog to bite someone. It can also be actions that excite a dog or cause it to feel defensive, regardless of a person's intent.

Quarantine means to place an animal in a secure enclosure which precludes physical contact with any other animal.

Rabies means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

Restrained or confined means an animal restricted to the property of the owner or under the direct physical control of a competent person.

Retail sale means the business of selling pet animals directly to consumers of the public.

Run at large means free of physical restraint beyond an enclosed or fenced area; includes any animal that is not under the actual control of its owner.

Small livestock animal means swine, sheep, goats or any other domesticated or wild animal of smaller stature, except pet animals or fowl.

Stray means any animal running free with no physical restraint beyond the premises of the owner.

Swine means any member of the Suidae species.

Unaltered animal means an animal that has not been spayed or neutered.

Vaccination means the inoculation of an animal with a vaccine that is licensed by the United States Department of Agriculture, and which is administered by a veterinarian for the purpose of immunizing the animal against rabies.

Veterinarian means a veterinarian holding a current and valid license to practice veterinary medicine in the state.

Wild animal means any non-domestic animal.

Wildlife means any undomesticated animals living in the wild.

(Ord. No. 2008-11-01, § 1, 1-6-09; Ord. No. 2015-11-01, Exh. A, 6-21-16; Ord. No. 2021-03-02, § 1(Exh. A), 3-16-21; Ord. No. 2021-05-03, § 1(Exh. A), 7-20-21)

Cross reference(s)—Definitions generally, § 1-2.

ARTICLE IV. DANGEROUS ANIMALS

Sec. 10-186. Dangerous dogs and animals deemed hazardous to public health and safety.

- (a) It shall be unlawful for any person to own, keep or harbor any dangerous animal within the city provided this section shall not apply to animals under the control of a law enforcement or military agency. For the purpose of this chapter, a dog may be declared dangerous by an animal control officer or his or her designee (hereinafter referred to as "animal control officer"), after the occurrence of an "incident" defined as either a dog attack causing bodily injury or the dog undertaking an action that causes one to reasonably believe that the dog would attack and cause bodily injury.
- (b) Dangerous dog determination.
 - (1) Once the city becomes aware of an alleged incident, an animal control officer shall complete a thorough investigation process that includes:
 - a. Within ten business days of the city becoming aware of an alleged incident, an animal control officer sending a notification to the dog owner describing the alleged incident, the fact of the initiation of an investigation, and an offer to afford the owner an opportunity to meet with the animal control officer prior to the making of a determination;
 - b. The animal control officer gathering any medical or veterinary evidence and interviewing witnesses; and
 - c. The animal control officer making a detailed written report.
 - (2) No dog shall be deemed a "dangerous dog" if the animal control officer determines the conduct of the dog during the incident was justified because:
 - a. The incident occurred as the result of a person who at the time was committing a crime or offense upon the owner or custodian of the dog, including crimes and offenses of willful trespass or other tort upon the premises or property occupied by the owner of the animal;

- b. The incident occurred as the result of a person abusing, assaulting, or physically threatening the dog or its offspring;
 - c. The dog was responding to pain or injury or was protecting itself **and was not being provoked by its owner, custodian, or a member of its household.** ~~its owner, custodian, or a member of its household, kennel or offspring; or~~
 - d. The testimony of a certified applied behaviorist, board-certified veterinary behaviorist, or another recognized expert indicates to the satisfaction of the animal control officer that the dog's behavior was justified pursuant to the provisions of this section.
- (3) If the information gathered by the animal control officer's investigation shows by a preponderance of the evidence that the dog should be deemed a "dangerous dog," the owner shall be sent immediate notification of the determination by registered or certified mail that includes a complete description of:
- a. The ownership requirements for a dangerous dog;
 - b. The dog owner's right of appeal; and
 - c. The option and process to surrender the dangerous dog.
- (c) Ownership requirements. If the dog is determined to be dangerous, the owner must:
- (1) Within 24 hours, register the dog with an animal control officer and pay a \$100.00 fee;
 - (2) Immediately restrain the dog at all times on a leash in the immediate control of a person or enclose the dog either indoors, or in a secure enclosure, being a locked structure of sufficient height and design to prevent the dog's escape and to prevent direct contact with, or entry by, minors, adults or other animals;
 - (3) Within 24 hours, post signs around the secure enclosure with the words "dangerous dog" in font size 72 or larger; and
 - (4) Within 72 hours, obtain liability insurance coverage or show financial responsibility 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 or financial responsibility to the animal control officer.
- (d) Appeal of dangerous dog determination.
- (1) The owner of a dog found to be a dangerous dog by an animal control officer pursuant to this chapter may file a petition for review of the dangerous dog determination against the city in municipal court within ten days of receipt of notification of the determination for a de novo review of the determination.
 - a. The court shall give written notice of the time and place of any hearing to both the owner of the dog and the animal control officer.
 - b. The proceeding shall be conducted pursuant to the Texas Rules of Civil Procedure and Texas Rules of Evidence.
 - c. Any interested party, including the city attorney, is entitled to present evidence at the proceeding.
 - (2) After hearing all evidence, the court shall determine by preponderance of the evidence whether the dog is dangerous.

- (3) During the municipal court appeal process, the owner shall comply with the ownership requirements set forth in this chapter.
- (4) A dog owner or the city may appeal the decision of the municipal court in the manner described by V.T.C.A., Health and Safety Code § 822.0424.
- (e) The animal control officer may cause the muzzling, secure confinement, removal from the city or humane destruction of any animal for any of the following reasons:
 - (1) Whenever an animal has committed an unprovoked attack upon any person or animal on more than one occasion.
 - (2) Whenever a lawful patron or visitor of a business is jeopardized by a guard dog which is not securely confined during hours such business is open to the public.
- (f) Any dog which by an attack and regardless of circumstances causes the death of a person shall be deemed hazardous to public health and safety.
- (g) The owner of any dog deemed to be a hazard to public health and safety shall be held liable for all medical expenses and all other legally allowable damages incurred as a result of an attack by such dog upon a person.
- (h) The owner of any dog deemed to be a hazard to public health and safety shall be held liable for all veterinary medical expenses and all other legally allowable damages incurred as a result of an attack by such dog upon an owned domestic animal.
- (i) Any dog deemed to be a hazard to public health and safety shall be surrendered by the owner of such dog immediately upon demand to the city for purposes of euthanizing or shall be delivered by the owner of such dog to a licensed veterinarian for euthanizing, and the owner shall deliver a statement of euthanasia by the veterinarian to the city within 24 hours of receipt of request for the dog by the city.
- (j) Any dog maintained as a guard dog for purposes of property protection by the owner of such dog at a recognized business establishment and that bites or threatens to bite any person on the property of the business establishment at times other than the normal posted hours of operation of the business establishment shall not be considered a hazard to public health and safety provided such dog is physically securely confined to the boundaries of the property of the business establishment.
- (k) Dangerous dog removal fee. Any person given the option of removing an aggressive animal from the within the city limits instead of being humanely destroyed shall pay a fee of \$100.00 and all other assessed fees involving the dangerous animal.
- (l) Owner liability. Any owner or custodian of a dog or other animal is guilty of a:
 - (1) Class B misdemeanor if the dog previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person.
 - (2) Class A misdemeanor if the dog previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury, thereby rendering the dog a hazard to public health and safety.

- (3) Class A misdemeanor if any owner or custodian whose willful act or omission in the care, control, or containment of a dog or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person, thereby rendering the dog a hazard to public health and safety.
- (4) Class A misdemeanor if the owner of any animal that has been found to be a dangerous dog willfully fails to comply with the requirements of this section, thereby rendering the dog a hazard to public health and safety.

(Ord. No. 2008-11-01, § 1, 1-6-09; Ord. No. 2020-10-01, § 1(Exh. A), 10-20-20)