

ORDINANCE NO. 2024-05-032

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 26, "ANIMAL CONTROL," BY AMENDING SECTION 26-1, "DEFINITIONS," TO DEFINE "WATERFOWL," AND AMENDING SECTION 26-38 TO PROHIBIT THE FEEDING OF ANIMALS OTHER THAN PETS AND WATERFOWL ON CITY PROPERTY; PROVIDING A PENALTY; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code, and the City's Home Rule Charter; and

WHEREAS, the City adopted the Code of Ordinances, City of McKinney, Texas ("City Code") for the protection of the public health and general welfare; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), is of the opinion that the Animal Control Chapter, Chapter 26 of the Code of Ordinances, City of McKinney, Texas, should be amended to prohibit the feeding of animals, other than a normal household pet or waterfowl, on city property, subject to certain conditions; and

WHEREAS, the City Council finds that the adoption of updated provisions of the City's regulations concerning animals is in the best interest of the health, safety and welfare of the citizens of the City.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are hereby incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 26, "Animal Control," of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 26-1, entitled "Definitions," by inserting in alphabetical order a definition for the phrase "Waterfowl" to hereafter read as follows:

"Waterfowl means a duck, goose, or swan."

Section 3. From and after the effective date of this Ordinance, Chapter 26, "Animal Control," of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 26-38 by deleting said section in its entirety and replacing it with a new Section 26-38 to hereafter read as follows:

"Sec. 26-38. Unlawful acts enumerated.

(a) It shall be unlawful for a person to treat an animal in an inhumane or cruel manner as defined by V.T.C.A., Penal Code § 42.09, as amended, V.T.C.A., Penal Code § 42.091, as amended, V.T.C.A., Penal Code § 42.092, as amended, or V.T.C.A., Health and Safety Code ch. 821, as amended.

(b) It shall be unlawful for a person to knowingly own, harbor, train, sell, or offer for sale any animal that is to be used for the purpose of

fighting; or to be trained, tormented, badgered or baited for the purpose of causing or encouraging said animal to attack human beings or animals when not provoked, except that this section shall not apply to guard dogs.

- (c) It shall be unlawful for a person to mutilate any animal, whether such animal is dead or alive. This subsection does not apply to medical or veterinary medical research, medical or veterinary medical autopsies, or biology class use of animals for educational purposes.
- (d) It shall be unlawful for a person to cause an animal to fight another animal or person.
- (e) It shall be unlawful for a person to transport an animal in a motor vehicle unless the animal is
 - (1) safely enclosed within the vehicle, or
 - (2) if the animal is transported in an unenclosed vehicle including a convertible, pick-up truck, flatbed truck, or motorcycle, confined in a secured, appropriately sized, and vented container or otherwise effectively secured in a manner that prevents the animal from falling, jumping from the vehicle, or otherwise being injured.
- (f) It shall be unlawful for a person operating a motor vehicle that strikes a domestic animal or livestock within the city to fail to report the accident to the animal control department as soon as practicable.
- (g) It shall be unlawful for a person to tether a dog in a manner that prevents the animal from access to adequate shelter, food, and water, or in such a manner that the animal could become entangled or injured,
- (h) It shall be unlawful for a person to confine an animal in such a manner that prevents the animal from being able to stand to its full height, to stretch out, to turn around and lie down, or to make normal postural adjustments comfortably for an unreasonable amount of time.
- (i) It shall be unlawful for a person to confine an animal in such a way that the animal is forced to stand or lay in its own feces, urine, standing water, or other unsanitary conditions.
- (j) It shall be unlawful for a person to crop a dog's ears, dock a tail, remove dew claws, or perform other surgical procedures on a dog or a cat except as provided by the veterinary licensing act.
- (k) It shall be unlawful for a person to sell or deliver live chickens, ducklings, goslings, or rabbits less than eight (8) weeks of age to any person in quantities of less than five (5).
- (l) It shall be unlawful for a person to sell, offer for sale, barter or display any living chickens, rabbits, ducks or any other fowl or animal that has been dyed, colored or otherwise treated so as to impart to them an artificial color.
- (m) It shall be unlawful for a person to give away any live animal as a prize or inducement for the purpose of attracting trade or business.
- (n) It shall be unlawful for a person to use steel jaw or leg-hold traps except in the case of mouse or rat control.

- (o) It shall be unlawful for any person to beat, starve, overwork, or to otherwise abuse any animal.
- (p) It shall be unlawful for an owner or other person having care and control of any animal to abandon said animal.
- (q) It shall be unlawful for a person to confine an animal in a parked or standing vehicle, a trailer, or an enclosure under such circumstances and for such a time as to endanger the animal's health, safety, or welfare. Public safety officers, including officers in the city environmental health, animal control, code compliance, fire, and police departments may, after attempting to locate the animal's owner, remove the animal from a vehicle or enclosed space using any reasonable means, including breaking a window or lock. If professional services are required to remove the animal, the owner is responsible for the cost. Public safety officers, including officers in the city environmental health, animal control, code compliance, fire, and police departments who removes an animal from a vehicle or enclosed space in accordance with this subsection is not liable for any resulting property damage.
- (r) It shall be unlawful for a person to intentionally feed or otherwise make food available to an animal on city property, including a city park. This prohibition shall not apply to:
 - (1) the feeding of a normal household pet, such as a dog or cat, or the feeding of waterfowl, so long as the feeding does not:
 - a. threaten the health and safety of the public;
 - b. generally interrupt the tranquility of the location; or
 - c. otherwise cause a public nuisance.
 - (2) a feeding that is specifically authorized by the city.
- (s) 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 provision of this code or any applicable state or federal law.
- (t)
 - (1) Public safety officers, including officers in the city environmental health, animal control, code compliance, fire, and police departments, shall have the authority to seize any animal that is the subject of any violation of this section if doing so is believed to be necessary to protect the animal's health, safety, or welfare.
 - (2) If said officer personally witnesses a violation of any provision of this section occurring in plain view from or on public property or from private property where the officer has the permission of the owner or occupant to be, the officer may seize the animal without seeking issuance of a warrant even if doing so requires entering onto or into private property.
 - (3) If an animal is seized without a warrant under subsection (t)(2), above, a timely hearing shall be held in the municipal court to satisfy the constitutional requirements of due process.
- (u) Nothing in this section shall be construed to prevent public safety officers, including officers in the city animal control, environmental

health, code compliance, fire, and police departments from euthanizing animals when authorized to do so by any statute, ordinance, or law, or when such action is in the interest of the public health and safety.”

- Section 4. Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the City’s Code of Ordinances; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.
- Section 5. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.
- Section 6. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- Section 7. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.
- Section 8. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.
- Section 9. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

[Signature Page Follows]

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS ON THE 21ST DAY OF MAY, 2024.

CITY OF McKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney