

ORDINANCE NO. O-2016-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 14, "ANIMALS", ARTICLE I, "IN GENERAL", BY AMENDING THE IMPOUNDMENT PROCEDURES TO AUTHORIZE IMPOUNDMENT OF AN ANIMAL WHEN THE OWNER OR OTHER PERSON IN CONTROL IS ARRESTED, IF NO PERSON CAN BE FOUND TO TAKE IMMEDIATE POSSESSION; UPDATING THE REFERENCE FROM "SUPERVISOR" TO "ANIMAL SHELTER MANAGER", AMENDING THE CITATION PROVISIONS TO PROVIDE GREATER ENFORCEMENT DISCRETION TO ANIMAL CONTROL OFFICERS AND ENFORCING OFFICIALS, REMOVING UNNECESSARY WORDING RELATED TO NUMBER OF DAYS TO APPEAR AT MUNICIPAL COURT; AND MAKING OTHER MINOR CLARIFICATION AND WORDING CHANGES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced,

in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Texas Health and Safety Code Section 826.015(a) provides that the governing body of a municipality may adopt ordinances or rules that establish a local rabies control program and set local standards that are compatible with and equal to or more stringent than the ordinances or rules adopted by the county in which the municipality is located, and that the program established pursuant to Chapter 826 and the Department of State Health Services rules adopted under Chapter 826; and

WHEREAS, Texas Health and Safety Code Section 826.015(b) states that the municipal ordinances or rules adopted under Section 826.015 supersede ordinances or rules adopted by the county in which the municipality is located, Chapter 826, and the Department of State Health Services rules adopted under Chapter 826 within the municipality so that multiple enforcement will not occur; and

WHEREAS, Texas Health and Safety Code Section 826.017(a) provides that the governing body of each municipality shall designate an officer to act as the local rabies control authority for purposes of Chapter 826; and

WHEREAS, under Texas Health and Safety Code Section 826.033(a)(1), the governing body of a municipality may adopt ordinances or rules under Section 826.015 to require that each dog or cat be restrained by its owner; and

WHEREAS, under Texas Health and Safety Code Section 826.033(a)(2), the governing body of a municipality may adopt ordinances or rules under Section 826.015 to require that each stray dog or cat be declared a public nuisance; and

WHEREAS, under Texas Health and Safety Code Section 826.033(a)(3), the governing body of a municipality may adopt ordinances or rules under Section 826.015 to require that each

unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee; and

WHEREAS, under Texas Health and Safety Code Section 826.033(a)(4), the governing body of a municipality may adopt ordinances or rules under Section 826.015 to require that each stray dog or cat be impounded for a period set by ordinance or rule; and

WHEREAS, under Texas Health and Safety Code Section 826.033(a)(5), the governing body of a municipality may adopt ordinances or rules under Section 826.015 to require that a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period; and

WHEREAS, pursuant to State law, the City of Tyler has appointed a local rabies control authority, established a local rabies control program, and has adopted animal restraint, impoundment, vaccination and quarantine provisions, in Tyler City Code Chapter 14; and

WHEREAS, Tyler City Code Section 14-6.a. ensures that any animal impounded pursuant to City Code Chapter 14 shall be held in safe and humane custody for a minimum of three (3) days after the time of impound; and

WHEREAS, it is important to update reference to "Supervisor" by changing it to the "Animal Shelter Manager"; and

WHEREAS, it is important to amend the wording regarding issuance of citations to provide greater discretion to Animal Control Officers and Enforcing Officials; and

WHEREAS, it is important to remove unnecessary wording related to the number of days to appear at Municipal Court; and

WHEREAS, it is important to make other minor clarification and wording changes;

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

PART 1: That Tyler City Code Chapter 14, "Animals", Article I., "General", is hereby amended by amending Sections 14-2, 14-3, 14-4 and 14-5 to read as follows:

Sec. 14-2. Local Rabies Control Authority designated; duties.

* a. The City Council has designated the City of Tyler Animal Shelter Manager as the Local Rabies Control Authority pursuant to state law.

b. The duties of the Animal Shelter Manager and the Local Rabies Control Authority shall include but are not limited to:

1. Enforcement of all ordinances and/or rules of the City pertaining to rabies and animal control;

2. Enforcement of the provisions of state law and administrative rules of the Texas Department of State Health Services pertaining to rabies and animal control.

c. The City may employ such Animal Control Officers or inspectors as are necessary and feasible to carry out the purposes of this chapter. (Ord. No. O-96-13, 2-21-96) (Ord. No. 0-2014-85; 9/24/14) (Ord. No. 0-2016-16; 2/24/16)

Sec. 14-3. Designation, operation of animal shelter.

- a. The City Council shall select and establish, by contract or otherwise, facilities for impoundment, maintenance, shelter and disposition of stray, surrendered, diseased, injured, or vicious animals.
- b. The Supervisor shall insure that any facility so selected or designated by the City Council shall, at all times, comply with Federal, State, City or Association of Shelter Veterinarians' regulations and guidelines.
- c. Any such facility shall require proof of rabies vaccination prior to the release of any dog or cat. In the absence of a current rabies vaccination, the shelter facility shall:
 1. Require vaccination on the shelter premises prior to release of the animal; or
 2. Collect from the owner an amount equal to the cost of vaccination and issue a credit voucher therefor to such owner; and
 3. In addition, the Animal Shelter Manager or designee or any Animal Control officer or other authorized person may write a citation to the owner, harbinger, or other person in control of the animal, which may be served at the time of release.

The owner may then present the credit voucher provided under part c.2. above to any participating Veterinary clinic as payment for a current rabies vaccination. In turn, the inoculating veterinarian may present the credit voucher to the shelter facility for reimbursement of the costs of providing such inoculation. (Ord. No. O-96-13, 2-21-96) (Ord. No. 0-2014-85; 9/24/14) (Ord. No. 0-2015-19; 1/28/15) (Ord. No. 0-2016-16; 2/24/16)

Sec. 14-4. Citation of person in control; interference or false reports unlawful.

- a. Whenever an animal is found in violation of this chapter and when ownership is known to an Animal Control Officer, a peace officer or other authorized official, such person enforcing this Chapter may elect, in lieu of or in addition to impounding such animal, to issue a citation to the owner, harbinger, or other person in control of the animal which shall require the person to appear in the Municipal Court within a specified time to answer a charge of violation of this chapter.

- b. The signature of the owner, harborer or other person in control on a citation shall constitute only a promise to appear at the appointed date and shall not be construed as an admission of guilt.
- c. It is unlawful for any person, upon being issued a citation for violation of this chapter, to fail to provide proof of identification, or provide a false name, address, or other false information concerning an animal or its ownership to
an Animal Control Officer or other enforcing official.
- d. It is unlawful for any person to interfere with, hinder or obstruct an Animal Control Officer or other official engaged in the enforcement of this chapter, including but not limited to the failure to release an animal for impoundment
or any manner of interference with such impoundment.
- e. It is unlawful for any person to make a false report or complaint concerning a violation of this chapter to any Animal Control Officer or to any other enforcing official. (Ord. No. O-96-13, 2-21-96) (Ord. No. 0-2004-79; 10/13/04) (Ord. No. 0-2014-85; 9/24/14) (Ord. No. 0-2016-16; 2/24/16)

Sec. 14-5. Authority to impound or destroy certain animals.

- a. The Animal Shelter Manager, the Police Chief, or their designee are hereby authorized to:
 - 1. Impound any stray animal found running at large within the City limits or within five thousand (5,000) feet thereof, or any animal being kept in violation of this chapter;
 - 2. Impound any animal which is diseased and endangers thereby the health of a person or another animal;
 - 3. Impound any animal which has bitten a human or which has acted in a vicious manner as described herein;
 - 4. Destroy humanely, an animal posing an imminent danger to persons or property under circumstances of emergency, or an animal that has bitten or scratched a person above the shoulders.
 - 5. Impound for treatment or, in the alternative, humanely destroy an animal that is injured to a degree presenting little or no likelihood of recovery.
 - 6. Impound any animal pursuant to the arrest of the owner or person in control, if no person can be found to take immediate possession of the animal.
- b. If an animal running astray is found upon the premises of any person, the owner or occupant thereof shall have the right to confine the animal temporarily in humane fashion pending notification and response by the City of Tyler Animal

Control or other authority. (Ord. No. O-96-13, 2-21-96) (Ord. No. 0-2004-79, 10/13/04) (Ord. No. 0-2014-85; 9/24/14) (Ord. No. 0-2016-16; 2/24/16)

PART 2: That Tyler City Code Chapter 14, "Animals", Article IV., "Rabies Control", is hereby amended by amending Section 14-32 to read as follows:

Sec. 14-32. Impoundment, quarantine of animals; redemption by owner. *

- a. Pursuant to state law, the Animal Shelter Manager or designee is authorized to impound and/or quarantine an animal when there is probable cause to believe that a person may have been exposed to rabies.
- b. A quarantined animal with rabies or rabies symptoms shall be confined in the City animal shelter or a veterinary hospital and disposition shall be made in accordance with state law.
- c. In the case of other animals quarantined, the Animal Shelter Manager or designee shall determine whether to confine the animal in the City shelter, a veterinary hospital, or on the premises of the owner.
- d. Home quarantine on the premises of the owner shall be permissible where:
 1. The owner is a City resident;
 2. The owner possesses facilities adequate to restrain the animal so as to prevent exposure of persons or other animals;
 3. Adequate documentation exists that the animal was vaccinated against rabies in the preceding twelve-month period; and
 4. The animal currently possesses no apparent symptoms of rabies.
- e. It is unlawful for any person to remove an animal from the premises of the owner following issuance of an order for home quarantine.
- f. During confinement, an animal may be inspected at any time by the Animal Shelter Manager, the Local Rabies Control Authority, or designee.
- g. The Animal Shelter Manager or designee shall determine the length of confinement and safety procedures. A licensed veterinarian shall make a determination of whether or not the animal is free of rabies pursuant to state law.
- h. If a licensed veterinarian determines that the animal does not show the clinical signs of rabies, the animal may be reclaimed by the owner upon satisfaction of applicable vaccination requirements pursuant to state law. (Ord. No. O-96-13, 2-21-96) (Ord. No. 0-2014-85; 9/24/14) (Ord. No. 0-2016-16; 2/24/16)

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 26, 2016.

PASSED AND APPROVED this 24th day of February, A. D., 2016.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY