

ORDINANCE NO. O-2021-40

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 14, "ANIMALS," OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS BY CLARIFYING ANIMAL NUISANCE REGULATIONS, INCLUDING DISTANCE AND SETBACK REQUIREMENTS FOR CONFINING FOWL; 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, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; 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 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 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 express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed by 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 of 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 Local Government Code Section 217.042(a) provides that a home rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance;

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 II., "Prohibited Acts", is hereby amended by amending Section 14-13 to read as follows:

Sec. 14-13. Keeping of livestock, fowl, and swine prohibited, exceptions.

- a. Livestock. It is unlawful to own, keep, or harbor, any livestock within the City limits except as follows:

1. Numerical limitation: In an area zoned AG, no more than one livestock animal per fenced in acre may be kept; however, no hogs or swine may be kept. In all other zoning districts, no more than one livestock animal per fenced in acre may be kept up to a maximum of three animals, however no hogs or swine may be kept;

2. Restraint: The acreage on which such livestock are maintained must be enclosed by a fence of sufficient height, strength, and construction to keep such livestock from escaping from the premises; said fence shall be at least fifty (50) feet from any adjoining property line.

3. Pens and structures: All livestock kept under this Section shall be provided a stable, shed, pen, or other structure of adequate size for the storage, shelter, and safekeeping of such animals;

4. Location of pens and structures: Every such stable, shed, pen, or other structure for the storage, shelter, and safekeeping of livestock shall be at least one hundred (100) feet from any property line.

- b. Fowl. It is unlawful to own, keep, or harbor any fowl within the City limits except as

follows:

1. Numerical limitation: In an area zoned AG, no more than six (6) fowl may be kept per acre. In all other zoning districts, no more than six (6) fowl may be kept per household regardless of lot size;

2. Restraint: All fowl kept under this Section shall be confined in a pen, coop, or other structure sufficient to prevent their escape;

3. Location of pens and structures: Every pen, coop or other structure required for the confinement of fowl under this Section shall be located at least fifteen (15) feet distance from the side and rear property lines of the property on which the pen, coop or structure is located, and must be located behind the front yard setback of the property on which the pen, coop or structure is located. (Ord. No. O-2021-40; 5/12/21)

c. Hogs and Swine. No hogs nor swine may be kept within City limits.

d. Sanitation requirements. Every such stable, shed, pen or other structure used for the storage or shelter of livestock or fowl under this Section shall be cleaned and maintained so as to prevent the escape of noxious odors or substances to adjacent properties or the creation of any health hazard or nuisance to adjacent property owners, as required by Section 14-10.

e. The prohibitions and restrictions set out in subsections a. through c. of this Section shall not apply to:

1. A zoo, zoological park or animal park;

2. An accredited research institution;

3. A qualified researcher utilizing such livestock or fowl in connection with defined research objectives;

4. An animal exhibition operating under a contract, lease, or special event permit, or otherwise duly approved by the City;

5. Someone lawfully engaged in the transport of livestock or fowl in an enclosed vehicle in accordance with state law;

6. Someone engaged in the transport or receipt of livestock or fowl for processing in connection with the operation of a cattle auction, slaughterhouse or like facility;

7. An animal shelter, veterinary clinic or similar facility for the treatment and temporary shelter of animals in connection therewith.

f. Nothing in this Section shall be interpreted so to prohibit a service animal as defined in federal law, or an assistance animal defined in State law, that is specially trained or equipped to assist persons with disabilities.

g. Areas on which agricultural operations are conducted or livestock are kept that are annexed into the City shall remain as legal uses pursuant to state law. State law requires that regulations of agricultural operations or livestock in such newly-annexed areas can only be applied if the City Council, by resolution, makes findings that such regulations are necessary to

protect the public health. (Ord. No. O-96-13, 2-21-96) (Ord. No. O-2012-80; 9/26/12) (Ord. No. O-2021-40; 5/12/21)

PART 2: 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 3. 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 after 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 May 14, 2021.

PASSED AND APPROVED this 12th day of May, A. D., 2021.



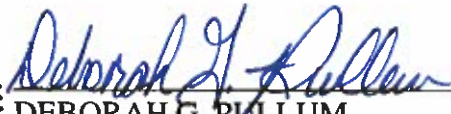
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



DEBORAH G. PULLUM,
CITY ATTORNEY