

ORDINANCE #728

AN ORDINANCE REPEALING ORDINANCE NO. 545; NOW CODIFIED AS CODE OF ORDINANCE OF THE CITY OF HOWE, CHAPTER 2, ANIMAL CONTROL; REGULATING THE KEEPING OF DOGS AND CATS IN THE CITY OF HOWE, TEXAS PROVIDING FOR THE ANNUAL VACCINATION OF DOGS BY A LICENSED VETERINARIAN; PROVIDING FOR THE ISSUANCE OF DOG TAGS, EVIDENCING SUCH VACCINATION AND ID; PAYMENT OF AN ANNUAL LICENSE FEE; PROVIDING FOR THE IMPOUNDMENT OF ANIMALS AND THE DISPOSAL OF ANIMALS IF NOT REDEEMED; PROVIDING FOR THE IMPOUNDAGE AND CONFINEMENT OF ANIMALS SUSPECTED OF RABIES; DETAINING DANGEROUS, VICIOUS, FIERCE AND MISCHIEVOUS DOGS; MAKING IT AN OFFENSE FOR ANY OWNER OR OTHER PERSON TO OWN, KEEP OR HARBOR WITHIN THE CITY LIMITS OF SAID CITY ANY DANGEROUS, VICIOUS, FIERCE OR MISCHIEVOUS DOG AS DEFINED IN SAID ORDINANCE AND CONTAINING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AND PROPERLY PUBLISHED FOR HEARING AS REQUIRED BY LAW; CONTAINING A CONFLICT LIMITATION CLAUSE; AND CONTAINING A REPEALER CLAUSE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF HOWE, GRAYSON COUNTY, TEXAS:

SECTION 1. DEFINITIONS;

1. "Abandon shall mean to dump, desert, or leave any animal on public or private property with the intent of terminating any further responsibility for said animal; and shall also mean failing to properly redeem any animal impounded or quarantined by the City.
2. "Animal Control Officer" shall mean a person assigned to the City of Howe or to the Police Department and designated by the City Administrator as primary enforcement officer of ordinances regulating animals and owners of animals and for the enforcement of all Texas State Statutes pertaining to the care and control of animals.
3. "Cat shall mean a domesticated animal that is a member of the Felidae (feline) family but does not include a lion, tiger, bobcat, jaguar, panther, leopard, cougar, or other wild animal of this family or hybrids.
4. "Dangerous or Vicious Dog" shall mean a dog that:
 - A. Makes an unprovoked attack on a person that causes bodily injury and the attack occurs in the place other than a 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
 - B. 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 those acts caused a person to reasonably believe that the dog will attack and cause bodily injury to that person.
5. "Dog" shall mean a domesticated animal that is a member of the Canidae (Canine) family but does not include a wolf, jackal, fox, coyote or other wild animal of family or hybrids.
6. "Hybrid" shall mean the product of the mating of two different species of animals regardless of the number of generations born since that original mating.
7. "Local Rabies Control Authority" shall mean a certified Animal Control Officer designated by the City Administrator in accordance with Section 826.017 of the Texas Health and Safety Code (Vernon Supp. 1996).
8. "Owner" shall mean any person owning, keeping or harboring an animal, including members of the same household.

9. "Quarantine Facility" shall mean a facility approved by the Texas Department of Health for the strict confinement of an animal for rabies observations, as defined in Section 826.051 Subchapter F. of the Texas Health and Safety Code.
10. "Running at Large" shall mean not completely confined by a building, wall or fence of sufficient strength or construction to restrain the animal, except when such animal is either on a leash, or held in the hands of the owner or keeper. Any animal not confined within the cabin of an automobile or other vehicle shall be deemed running at large.
11. "Secure enclosure" means a fence area or structure that is:
 - A. Locked;
 - B. Capable of preventing the entry of the general public, including children;
 - C. Capable of preventing the escape or release of a dog;
 - D. Clearly marked as containing a dangerous dog; and;
 - E. In conformance with the requirements for enclosures established by the animal control officer.
 - F. Secure enclosure does not mean a wireless or electric fence.
12. "Serious Bodily Injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment. (Section 822.001 Texas Health and Safety Code).
13. "Unprovoked" means action by an animal that is not:
 - A. In response to being tormented, abused, or assaulted by any person;
 - B. In response to pain or injury; or
 - C. In protection of itself or its food, kennel, immediate territory, or nursing offspring.
14. "Vaccination" shall be an injection of a type of vaccine approved by the Texas Health and Safety Code and administered by a veterinarian licensed under the state law.
15. "Wild Animal" shall mean any animal except the common domestic species: (dogs, cats, horses, livestock and other common farm animals) regardless of the state or duration of captivity.

SECTION 2. ENFORCEMENT;

1. The City Administrator shall designate **an** employee as the Animal Control Officers.
2. The Animal Control Officer shall have power in the enforcement of this chapter and no person shall interfere with, hinder, molest, or abuse this officer in the exercise of such powers and such acts shall constitute a violation.
3. The Animal Control Officer or a Police Officer shall have the authority to issue citations for any violation of this chapter. If the person is not present, the Animal Control Officer or Police Officer may mail the citation to the alleged violator by certified mail, return receipt requested.
4. The Animal Control Officer is authorized to:
 - A. Impound any animal in violation of this Chapter;
 - B. Issue citations for any violation of this Chapter or applicable state Law.
5. The Animal Control Officer shall have the right of entry onto any unenclosed lots or lands for the purpose of enforcing the provision of this chapter; provided. however, the Animal Control Officer shall not have the right of entry to enclosed dwellings or fenced enclosures used for residential purposes, except when pursuing an at-large animal that has entered said enclosure while fleeing the Animal Control Officer or for the purpose of examining or obtaining any animal suspected of having rabies, having been exposed to rabies or having bitten a person or another animal and or any suspicion of cruelty or neglect from the owner.
6. The City Council shall establish the fees required by the Chapter by resolution from time to time.

SECTION 3. RUNNING AT LARGE / RESTRAINT;

1. It shall be unlawful for an owner of any dog without regard to mental state, to fail to keep a dog from running at large as defined in the Chapter.
2. It shall be unlawful to restrain on a leash any unattended animal within five (5) feet of a public sidewalk, street, or roadway without being immediately supervised by the owner.

SECTION 4. DAMAGE, TRESPASS OR DESTRUCTION OF PROPERTY;

1. It shall be unlawful for the owner or harbinger to allow any animal to trespass upon, damage, or destroy any public or private property, not their own, while restrained or at-large.

SECTION 5. VACCINATION;

1. The owner of a dog shall have the animal vaccinated against rabies by a licensed veterinarian when the animal is six (6) months of age and within each subsequent thirty six-month interval. After immunization the designated veterinarian will issue a certificate of vaccination, which contains the following information:
 - A. Name address and phone number of owner;
 - B. Animal identification including species, sex, age, size, predominant breed and colors.
 - C. Type of vaccination.
2. Concurrent with the issuance of the certificate of vaccination, the Animal Control Officer shall provide the owner of the dog a metal/rabies tag serially numbered showing the date of vaccination, the name and address and phone number of the owner; and shall be attached to the collar or harness of the vaccinated animal and worn at all times.
3. A person commits an offense without regard to mental state, if the person owns, keeps, or harbors a dog over six (6) months of age without having such dog vaccinated for rabies. A person committing an offense will be guilty of a class C Misdemeanor.

SECTION 6. IMPOUNDMENT;

1. The following animals may be impounded:
 - A. Dogs not exhibiting evidence of vaccination,
 - B. Any animal kept under conditions which can endanger the public or an animal's health.
 - C. Any animal that has rabies or symptoms thereof or that a person could reasonably suspect of having rabies or that bites, scratches, or otherwise creates a condition which may have exposed or transmitted the rabies virus to any human being or animal, or that required observation for rabies as determined by the Animal Control Officer.
 - D. Any animal at large.
 - E. Any animal treated in a manner determined in violation of Texas Penal Code, Chapter 42.09: Animal Cruelty, as amended.
 - F. Any animal in violation of a provision of this Chapter.
 - G. Any animal reasonably suspected of having inflicted bodily harm on any human being or animal and that poses a threat to public safety or constitutes a public nuisance.
 - H. Any prohibited animal.
2. If any animal is found on the premises of any person, that person may confine such animal in a humane manner until the Animal Control Officer impounds such animal. When so notified, it shall be the duty of the Animal Control Officer to have such animal impounded.
3. Impoundment, quarantine, maintenance, and destruction of animals will be contracted through the City of Sherman.
4. Reasonable effort shall be made by the Animal Control Officer to contact the owner of any animal impounded, which is wearing a current vaccination tag. However, the final responsibility for an impounded animal is that of the owner.

SECTION 7. REDEMPTION OF AN ANIMAL;

1. The owner may redeem an impounded animal upon payment of all applicable impoundment fees, handling fees, and any veterinarian bills or other cost incurred by the City for the impoundment, care and welfare of the animal and upon proof of compliance with the vaccination requirements of this Chapter. Any animal being held under quarantine; or observation for rabies shall not be redeemed until released from quarantine by the Animal Control Officer.
2. Impounded animals shall be held for 72 hours after the date of impoundment except any animal wearing a current vaccination tag shall be impounded for five days; If the owner of an impounded animal does not redeem it within the period of impoundment, disposition will be in accordance with this Chapter.

SECTION 8. DISPOSITION OF ANIMALS;

1. Except as provided herein, any animal not redeemed within the stated time periods after impoundment, or release from quarantine, shall become the property of the City of Sherman and shall be humanely destroyed at their discretion.
2. Disposition of animals impounded on the grounds of cruel or inhumane treatment shall be determined by a court of competent jurisdiction.
3. Any nursing baby animal impounded without the mother or where the mother cannot or refuses to provide care for the baby may be immediately destroyed to prevent further suffering. Any impounded animal that appears to be suffering from extreme injury or illness may be immediately destroyed to prevent further suffering.
4. Animals appearing to be feral, uncontrollable, or vicious and not wearing an identification tag, collar or vaccination tag can, at the discretion of the animal control officer or police officer, may be destroyed.

SECTION 9. ANIMAL QUARANTINE;

1. Any animal that has rabies or may have been exposed, by physical contact; with a rabid animal, or suspected rabid animal. or exhibits symptoms which could reasonably indicate rabies or that bites, scratches or otherwise creates a condition which may expose or transmit the rabies virus to a human being shall be impounded immediately. Upon notification. the owner shall surrender the animal to the Animal Control Officer for quarantine at the City's designated quarantine facility, or with approval from the Animal Control Officer deliver the animal to a state-approved veterinarian quarantine facility for quarantine at the owner's expense. Quarantine shall be for a minimum of then (10) days beginning on the date the incident occurred or longer as the Animal Control Officer may deem necessary. Animal quarantine shall be in accordance with any applicable rules and regulations adopted by the Texas Department of Health.
2. Quarantine shall be subject to the following conditions:
 - A. Any quarantined animal showing clinical signs of rabies shall be immediately destroyed and the head submitted to the nearest Texas Department of Health Laboratory for testing.
 - B. The animal placed in quarantine shall not be released without prior notification to and written approval from the Animal Control Officer.
 - C. Home quarantine at the residence of the owner, if approved by the Animal Control Officer, must satisfy the following conditions.
 - a. Secure facilities are available and approved by the Animal Control Officer.
 - b. The animal is currently vaccinated against rabies.
 - c. The owner of the animal shall notify the Animal Control Officer if the animal escapes, becomes or appears to become sick, or dies; and, in case of death of the animal while under quarantine; shall immediately surrender the dead animal to the Animal Control Officer for diagnostic purposes.
 - d. The animal was not running at large at the time of the incident
 - e. The animal is being isolated from all other animals, and human beings other than

the individual(s) who own the animal.

3. A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid shall report the incident or animal to the Animal Control Officer. The report shall include the name and address of the victim and owner of the animal, and any other information relating to the incident or animal.
4. The owner shall submit for quarantine an animal that:
 - A. Is reported rabid or has exposed an individual to rabies; or
 - B. The owner knows or suspects is rabid or has exposed an individual to rabies; or
 - C. Has bitten, scratched or otherwise created a condition which may have exposed or transmitted the rabies virus to any human being.
5. When submitted for quarantine, the owner shall provide the name, address and any other relevant information about the animal.
6. The owner of a quarantined animal shall pay all reasonable costs of the quarantine and disposition of the animal, including charges for shipment of animal tissues, if required, to the Texas Department of Health Laboratory for testing.
7. An animal that has been quarantined may be released by the Animal Control Officer after a licensed veterinarian determines that the quarantined animal does not show clinical signs of rabies and under the following conditions:
 - A. At the end of the observation period upon proof of vaccination prior to release from quarantine.
 - B. When all applicable fees have been paid.
 - C. If the animal is not being held up for legal proceedings.
 - D. If appropriate City registration has been completed.
8. It shall be unlawful for any person to interrupt the observation period or otherwise interfere with quarantine.
9. It shall be unlawful for any person to destroy or remove from the City any animal that has bitten a person or other animal or that has been placed under quarantine, except when necessary to protect the life of any person or other animal or otherwise approved by the Animal Control Officer.
10. The carcass of a dead animal exposed to rabies or suspected of having been rabid, shall, upon demand, be surrendered to the Animal Control Officer.
11. Wild animals shall not be placed in quarantine. Wild animals shall be humanely destroyed in such a manner the brain is not mutilated. The brain will then be submitted to a Texas Department of Health laboratory for testing.
12. No person shall fail or refuse to surrender an animal for quarantine or for destruction when ordered by the Animal Control Officer.

SECTION 10. ANIMAL NUISANCE;

1. The keeping of an animal in such a manner as to endanger the public health; by the accumulation of animal waste, which causes foul and offensive odors is considered to be a hazard to other animals or human beings.
2. To permit or allow an animal to defecate upon private or public property other than the property of the owner of said animal; and to fail to remove and dispose or in a sanitary manner any feces left by such animal.
3. Property not kept free from decaying animal carcasses.
4. No person shall willfully or knowingly keep or permit any dog on their premises, or in or about their premises, or premises under their control, that barks or howls continually for more than 30 minutes in such a manner as to disturb the peace and quiet of the neighboring occupant.
 5. Any animal running at large in the city limits more than 72 hours which is impractical or impossible to capture and is causing property damage, endangering persons or other

domestic animals shall be deemed a nuisance and may be destroyed by a trained experienced Animal Control Officer Police Officer.

SECTION 11. RESTRICTION ON NUMBER PER HOUSEHOLD;

1. It shall be unlawful for any person to keep or cause to be kept over four (4) dogs and/or cats per household on, at or within the city limits with the only exception being a female dog or cat, which has given birth. Under such circumstances the animal owner will have one hundred twenty (120) days from the animal's date of birth to reduce the required number of animals to the required number of four (4).
2. It shall be unlawful for any person to keep or cause to be kept over two (2) ferrets per household within the city limits.
3. It shall be unlawful for any person to keep or cause to be kept over two (2) rabbits per household within the city limits.

SECTION 12. DETERMINING THAT A DOG IS DANGEROUS;

1. If a person reports an incident defined in Section d (A) of this ordinance, a police officer or the Animal Control Officer will investigate the incident. If after receiving a sworn statement from the person and witnesses, the municipal court shall issue a warrant to seize the animal and it shall be impounded by the Animal Control Officer or police officer. If impoundment cannot be made safely, the dog may be destroyed without notice to the owner or harborer.
2. The municipal court shall set a time for a hearing to determine whether the animal is a dangerous dog as defined in this ordinance. The hearing must be held not later than the tenth day after the date on which the warrant is issued.
3. The municipal court shall give written notice of the time and place of the hearing to:
 - A. The owner of the dog or the person from whom the dog was seized; and
 - B. The person who made the complaint;
 - C. Any interested party, including the city attorney, is entitled to present evidence at the hearing
4. At the hearing the municipal court shall determine whether the animal is a dangerous dog as defined in Section 1 (d).
 - A. If the dog is found not to be deemed a dangerous dog, the dog will be returned to the owner or harbinger after the owner or harbinger satisfies all applicable requirements for impoundment and vaccination.
 - B. If the dog is found to be deemed a dangerous dog, the owner must comply with Section 822.042 of the Texas Health and Safety Code and remove the dog from the corporate city limits of Howe within 24 hours or the dog will be destroyed at a place of confinement or at the place of impoundment and the owner or harbinger shall be responsible for all applicable requirements of impoundment and euthanization.

SECTION 13. SEIZURE OF A DOG CAUSING DEATH OR SERIOUS BODILY INJURY;

1. A municipal court, justice court, or county court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:

- A. On the sworn complaint of a person, including the county attorney, the city attorney, a peace officer or an animal control officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and
 - B. On a showing of a probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.
2. The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.
 3. A dog attacking a person may be destroyed by an Animal Control Officer or Police Officer to prevent injury to a person:
 - A. Provided the dog is at large
 - B. Provided vocal and physical attempts to stop the dog from attacking have been made by the person being attacked or by the Animal Control Officer or Police Officer.
 - C. While restrained or in an enclosure if the attack is being made on a child 8 years of age or younger.

SECTION 14. HEARING;

1. The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the tenth day after the date on which the warrant is issued.
2. The court shall give written notice of the time and place of the hearing to:
 1. The owner of the dog or the person from whom the dog was seized; and
 2. The person who made the complaint.
3. Any interested party, including the City Attorney, is entitled to present evidence at the hearing.
4. The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:
 - A. Its owner;
 - B. The person from whom the dog was seized; or
 - C. Any other person authorized to take possession of the dog.
5. The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:
 - A. Its owner
 - B. The person from whom the dog was seized; or
 - C. 3. Any other person authorized to take possession of the dog.
6. The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person; and
 - A. The dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept; and
 - a. The enclosure was reasonably certain to prevent the dog from leaving the

- enclosure on its own and provided notice of the presence of a dog; and
- b. The injured person was at least eight years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred.
 - B. The dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least 8 years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;
 - C. The attack, bite, mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;
 - D. The dog was defending a person from an assault or person's property from damage or theft by the injured person; or
 - E. The injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

SECTION 15. DESTRUCTION OF A DOG;

- 1. The destruction of a dog under this ordinance must be performed by:
 - A. A licensed veterinarian
 - B. Personnel of a recognized animal shelter or humane society who are trained the humane destruction of animals; or
 - C. Personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.

SECTION 15. PROVOCATION OF ATTACK IRRELEVANT;

- 1. Except as provided in Section 14(6), this subchapter applies to any dog that causes a person's death or serious bodily injury by attacking, biting, or mauling the person, regardless of whether the dog was provoked and regardless of where the incident resulting in the person's death or serious bodily injury occurred.

SECTION 16. REPEAL;

- 1. This ordinance specifically repeals Ordinance No. 545.

SECTION 17. VIOLATION AND PENALTY;

- 1. It shall be unlawful for any person, organization, association, or cooperation to violate any provision of this ordinance. Any person, organization, association, or cooperation who violates this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and may be fined not more than \$1000. Each day a violation continues may constitute a separate offense and punishable as such.

SECTION 18. SEVERABILITY;

- 1. If any section, subsection, paragraph sentence, clause, phrase, or word in this ordinance or the application thereof to any person or circumstances is held invalid by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance, and the City Council hereby declares that it would have passed such remaining portions of the ordinance despite such invalidity.

SECTION 19. CONFLICT WITH OTHER LAWS;

1. This ordinance shall not be construed so as to conflict with any state or federal statute.

SECTION 20. CONFLICT WITH OTHER PROVISIONS;

1. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed. This ordinance shall not be construed so as to conflict with any state or federal statute.

PASSED AND APPROVED THIS _____ DAY OF _____, 2013.

Jeff Stanley, Mayor

ATTEST:

Joy Stevens, City Secretary

