

ORDINANCE NO. 826

AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES BY REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 3 TITLED "ANIMALS AND ANIMAL CONTROL REGULATIONS"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the ordinances governing the regulation of animals within the City are in need of updating in order to protect the health, safety and general welfare of humans and animals within the City; and

WHEREAS, Chapter 3 of the City of Everman Code of Ordinances provides for such regulation; and

WHEREAS, the City Council of the Everman desires to implement a new Chapter 3 providing updated animal regulation provisions;

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

Section 1 - The City of Everman Code of Ordinances is hereby amended by repealing and replacing in its entirety Chapter 3 titled "amending Chapter 7 titled "Animals and Animal Control Regulations" to read as follows:

"CHAPTER 3

ANIMALS AND ANIMAL CONTROL REGULATIONS

Sec. 3.1 Definitions

When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

"*Adequate shelter*" means a sturdy structure:

- (A) that provides the dog protection from inclement weather; and
- (B) with dimensions that allow the dog while in the shelter to stand erect, sit, turn around, and lie down in a normal position.

"*Animal*" means a living creature, including but not limited to dogs, cats, fish, reptiles, fowl, insects, mammals, marsupials, native or not, wild or domesticated, but specifically excluding human beings.

"Animal control authority" means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office

"At large" shall mean:

(A) On Premises of Owner - Any animal not confined to the premises of the owner by some physical means of sufficient height, strength, length and/or manner of construction to preclude the animal from leaving the premises of the owner.

(B) Off Premises of Owner - Any animal which is not physically and continually restrained by some person by means of a leash or chain of proper strength and length that precludes the animal from making any unsolicited contact with any person, their clothing, their property and/or their premises.

(C) Provided, however, that any animal confined within a cage, automobile, truck or any other vehicle of its owner shall not be deemed at large.

"Bee" means any domesticated honeybee of the *Apis Mellifera* (western honeybee) species or subspecies thereof.

"Cat" means *Felis catus*.

"Collar" means a band of material specifically designed to be placed around the neck of a dog.

"Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or subjected to conduct prohibited by Section 21.09, Penal Code.

"Dog" means *Canis familiaris*.

"Dangerous dog" means a dog that:

(A) 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

(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 cause a person to reasonably believe that the dog will

attack and cause bodily injury to that person.

"Dangerous wild animal" means:

- (A) a lion;
- (B) a tiger;
- (C) an ocelot;
- (D) a cougar;
- (E) a leopard;
- (F) a cheetah;
- (G) a jaguar;
- (H) a bobcat;
- (I) a lynx;
- (J) a serval;
- (K) a caracal;
- (L) a hyena;
- (M) a bear;
- (N) a coyote;
- (O) a jackal;
- (P) a baboon;
- (Q) a chimpanzee;
- (R) an orangutan;
- (S) a gorilla; or
- (T) any hybrid of an animal listed in this subdivision.

"Harness" means a set of straps constructed of nylon, leather, or similar material, specifically designed to restrain or control a dog.

"Inclement weather" includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

"Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

"Livestock" means an animal raised for human consumption or an equine animal.

"Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose:

- (A) the prevention of cruelty to animals; or
- (B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

"Owner" includes a person who owns or has custody or control of an animal.

"Properly fitted" means, with respect to a collar or harness, a collar or harness that:

(A) is appropriately sized for the dog based on the dog's measurements and body weight;

(B) does not choke the dog or impede the dog's normal breathing or swallowing; and

(C) does not cause pain or injury to the dog.

"Quarantine" means strict confinement of an animal specified in an order of the department or its designee:

(A) on the private premises of the animal's owner or at a facility approved by the department or its designee; and

(B) under restraint by closed cage or paddock or in any other manner approved by department rule.

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

"Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.

"Secure" means to take steps that a reasonable person would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

"Secure enclosure" means a fenced 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 local animal control authority.

"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.

"Stray" means roaming with no physical restraint beyond the premises of an animal's owner or keeper.

"Trap-Neuter-Return Program" means a nonlethal population control practice in which an animal is:

(A) trapped;

(B) evaluated by a veterinarian;

- (C) if unvaccinated, vaccinated by a veterinarian;
- (D) if unsterilized, sterilized by a veterinarian;
- (E) marked by a veterinarian, whether by notching or tipping one ear or otherwise; and
- (F) returned to the trap location.

Sec. 3.2 Animal Control Duties and Enforcement

- A. There shall be and is hereby created the office of Municipal Animal Services for the City of Everman, Texas.
- B. The Municipal Animal Services Lead Animal Control Officer or, if none, the City Manager or his designee shall act as the local rabies control authority for the purposes of Chapter 826 of the Texas Health and Safety Code.
- C. The animal control officers of the city shall have the authority to issue citations for any violations of this chapter and any other powers or duty stated within the terms of this chapter.
- D. The local rabies control authority or any animal control officer, or any peace officer is authorized to:
 - (1) Kill an animal which poses an imminent danger to a person or property, or a real or apparent immediate necessity exists for the destruction of an animal;
 - (2) Impound an animal which is diseased or endangers the health of a person or another animal;
 - (3) Impound any animal found to be running at large or to be a stray within the city;
 - (4) Euthanize an impounded animal if the animal is suffering from injury, disease or illness;
 - (5) Euthanize any animal suspected animal of having rabies;
 - (6) Euthanize, adopt or give to a nonprofit humane organization any impounded animal that an owner has not been located after being impounded for seventy-two (72) hours; and
 - (7) Authorize the immediate euthanizing of any animal impounded considered by the animal control officer to be feral.
- E. The animal control officer(s) or peace officer(s) has the right to pursue and apprehend animals running at large onto private property while enforcing the provisions of this chapter.
- F. The Municipal Animal Services Lead Animal Control Officer shall employ officers to assist him in the carrying out of his duties.
- G. A person commits an offense if he knowingly prevents, interferes with, or obstructs the Municipal Animal Services Officer in the performance of his duties.
- H. Filing A False Claim

- (1) A person commits an offense if he knowingly initiates, communicates or circulates a claim of ownership for an animal with the Municipal Animal Services Officer that he knows is false or baseless.
 - (2) A person commits an offense if he knowingly initiates, communicates or circulates a report of a violation of City ordinance or State law with the Municipal Animal Services Officer that he knows is false or baseless.
- I. Authority to carry tranquilizer guns. When acting in the course and scope of his employment, the animal control officer shall be and is hereby authorized to carry on his person or in his city vehicle loaded tranquilizer guns approved by the lead animal control officer who oversees Municipal Animal Services.

3.03 - Animal Identification and Restraint

Sec. 3.03.01 Restraint, Impoundment and Disposition of Dogs and Cats

- A. Any dog or cat may be impounded by any Municipal Animal Services; Animal Control Officer in any of the following circumstances:
- (1) Any dog or cat running at large;
 - (2) Any dog not having affixed to and wearing on a collar or harness a valid rabies vaccination tag furnished by a veterinarian showing that said dog is currently vaccinated against rabies;
 - (3) A dog or cat that is suspected of having inflicted bodily injury on any human being or animal, or poses a threat to public safety; or
 - (4) A dog or cat that has rabies or symptoms thereof, or that a person could suspect as 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.
- B. Disposition of Impounded Dogs and Cats.
- (1) If any dog or cat impounded under this Section is not called for by the owner within seventy-two (72) hours after notification of the impoundment or within seventy-two (72) hours of impoundment where the owner cannot be reasonably ascertained, the dog or cat shall be placed for adoption, transferred to a rescue organization or euthanized;
 - (2) Each stray dog or cat be declared a public nuisance;
 - (3) Each unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee;
 - (4) A humane disposition shall be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.

Sec. 3.03.02 Defense to this section

It is a defense to prosecution under this section 3.03 that a cat at large is a part of a Trap-

Neuter-Return program.

Sec. 3.03.03 Restraint; Criminal Penalty.

A person commits an offense if the person fails or refuses to restrain a dog or cat owned by the person. An offense under this section is a Class C misdemeanor.

Sec. 3.04 Rabies and Zoonosis

Sec. 3.04.01 Adoption of State Standards

The City of Everman has, through adoption of this ordinance or otherwise, adopted the Texas Health and Safety Code 826, Texas Administrative Code Title 25 Part 1 Chapter 169A and the standards adopted by the executive commission of the Department of State Health Services.

Sec. 3.04.02. Vaccination of Dogs and Cats Required

- A. Except as otherwise provided by department rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by department rule.
- B. A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the executive commissioner.

Sec. 3.04.03 Vaccination; Criminal Penalty

- A. A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under Texas Health and Safety Code Section 826.021 and department rules.
- B. An offense under this section 3.04 is a Class C misdemeanor.
- C. If on the trial of an offense under this section 3.04 the court finds that the person has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

Sec. 3.04.04 Reports of Rabies

- A. 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 local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.
- B. The report must include:
 - (1) the name and address of the victim and of the animal's owner, if known; and
 - (2) any other information that may help in locating the victim or animal.

C. The local rabies control authority shall investigate a report filed under this section.

Sec. 3.04.05 Quarantine; Criminal Penalty

A. A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

- (1) is required to be placed in quarantine or presented for testing under Section 826.042 and department rules; or
- (2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

B. An offense under this section is a Class C misdemeanor.

Sec. 3.05 Treatment of Animals and Unlawful Restraint

3.05.01 Care and Humane Treatment of Animals

A. A person commits an offense if he fails to continuously and routinely provide an animal, which is in his care, custody or control or which is owned or harbored by him, with:

- (1) good and wholesome food and potable water sufficient to maintain good health;
- (2) adequate shelter;
- (3) veterinary care when needed to prevent suffering; and
- (4) with humane care and treatment.

B. A person commits an offense if he causes or allows an animal, which is in his care, custody or control or which is owned or harbored by him, to be at risk of being:

- (1) beaten, tormented, mentally abused, overloaded, overworked, maimed, disfigured, burned or scalded, mutilated or needlessly killed; or
- (2) carried or transported in any vehicle or other conveyance in a cruel or inhumane manner; or
- (3) kept in its own filth; or
- (4) neglected or purposefully disregarded to the extent that the animal is significantly at risk for injury, illness, suffering or cruel treatment.

C. A person commits an offense if he crops a dog's ears, docks a tail, removes dew claws or performs other surgical procedures on a dog or cat except as provided by the Veterinary Licensing Act.

D. A person commits an offense if he uses a steel jaw or leg-hold trap to hold or capture an animal. The Animal Services Lead Animal Control Officer or designee may confiscate the trap or traps to be held as evidence in the case for the offense.

E. A person commits an offense if he abandons an animal which had been in his care, custody or control or owned or harbored by him. The offense of abandonment occurs at the location where the animal was abandoned and includes, but is not limited to, a

residence after the person was evicted or from which the person has moved.

- F. A person commits an offense if he causes or allows an animal, which is in his care, custody or control or which is owned or harbored by him, to be at risk for being trained or used for combat between animals or between animals and humans or if he has access to dog fighting or cockfighting equipment or paraphernalia causing the animal to be at risk for such combat.
- G. A person commits an offense if he transports or carries on any public roadway any animal in a motor vehicle unless the animal is safely enclosed within the vehicle; and if traveling in an unclosed vehicle (including but not limited to convertibles, pickup trucks, jeeps, and flatbed trucks), the animal is safely confined by a vented container or cage, by chain, rope or other device cross-tied to prevent the animal from falling or jumping from the motor vehicle or from strangling on a single leash.
- H. A person commits an offense if he leaves any animal in a standing or parked vehicle in such a way as to endanger the animal's health, safety, or welfare.

Sec. 3.05.06 Unlawful Restraint of Dog

- A. A person commits an offense if he uses a chain, rope, tether, leash, cable, or other device to attach a dog to a stationary object or trolley system. This section does not prohibit a person from walking a dog with a hand-held leash.
- B. It is a defense to prosecution under this section that:
 - (1) the dog is being tethered during a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity; or
 - (2) the dog tethering is required to protect the safety or welfare of a person or the dog, and the dog's owner maintains direct physical control of the dog; or
 - (3) the dog tethering is due to force majeure and the dog is tethered for less than one hour within a twenty-four period; or
 - (4) the dog tethering:
 - (a) occurs while the dog is within the owner's direct physical control; and
 - (b) prevents the dog from advancing to the edge of any public right-of way.
 - (c) The defenses under this section are only available if the following specifications are met:
 - (1) The chain, rope, tether, leash, cable, or other device is attached to a properly fitted collar or harness worn by the dog;
 - (2) The chain, rope, tether, leash, cable, or other device is not placed directly around the dog's neck;
 - (3) The chain, rope, tether, leash, cable, or other device does not exceed 1/20th of the dog's body weight;
 - (4) The chain, rope, tether, leash, cable, or other device, by design and placement allows the dog a reasonable and unobstructed range of motion without entanglement; and
 - (5) The dog has access to adequate shelter and clean and wholesome water.

Sec.3.06 Dangerous Dogs

Sec. 3.06.01 Knowledge of Dangerous Animal

For purposes of this article, a person learns he is the owner of a dangerous dog when:

- A. The owner knows of an attack described in the definition of “dangerous dog;”
- B. The owner is notified by the Lead Animal Control Officer that the dog is a dangerous dog;
- C. The owner is notified by the Court that the dog is a dangerous dog; or
- D. The owner is notified by the Court that, after appeal, the Court has upheld the Lead Animal Control Officer determination that the dog is a dangerous dog.

Sec. 3.06.02 Dangerous Dog Report

- A. The Lead Animal Control Officer may receive a report concerning a dangerous dog. Such report and supporting witness statements shall be in writing and sworn to on a form prescribed by the Lead Animal Control Officer.
- B. The Lead Animal Control Officer shall investigate all reports filed under this section and may issue sworn reports based on the Lead Animal Control Officer or observation.

Sec. 3.06.03 Dangerous Dog Determination

The City of Everman Municipal Court may determine that a dog is a dangerous dog under Section 3.06.01 (A). The Lead Animal Control Officer may declare that an animal, including a dog, is a dangerous animal under Section 3.06.01 (B). Regarding a dangerous dog incident, the Lead Animal Control Officer has discretion to proceed under either Section 3.06.01(A) or 3.06.01(B).

A. Municipal Court:

- (1) The City of Everman Municipal Court may determine that a dog is a dangerous dog in compliance with Texas Health and Safety Code, Section 822.0422. The Animal Services Lead Animal Control Officer may file a sworn report describing a dangerous dog incident with the Court. The sworn report shall present probable cause that the dog described in the report committed an attack described in Definitions, “Dangerous Dog.”
- (2) The Lead Animal Control Officer shall furnish written notice to the owner of the animal, as identified in the complaint, to inform the owner that a dangerous dog report has been filed with the Court. The notice to the owner shall require the owner to deliver the dog immediately to the Lead Animal Control Officer upon receiving the notice, provided that the Lead Animal Control Officer may, in his discretion, accept proof that the animal is impounded with a licensed veterinarian according to the terms of Section

3.06.13(B). The notice to the owner shall have attached to it a copy of this Article. The notice to the owner shall also contain a statement that the owner will be notified by the Court of the date and time for the hearing. Notice to the owner by the Lead Animal Control Officer shall be provided as required by Section 3.06.03(B)(3).

- (3) If the owner fails to deliver the dog as required by Subsection (B)(2), the Court shall order the Lead Animal Control Officer to seize the dog and shall issue a warrant authorizing the seizure. The Lead Animal Control Officer shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions at the owner's expense until the Court orders the disposition of the dog. The Court shall determine, after notice and hearing as provided in Section 3.06.04, whether the dog is a dangerous dog.

B. Lead Animal Control Officer:

- (1) The Lead Animal Control Officer may determine that a dog is a dangerous dog after investigation of a dangerous dog incident. The Lead Animal Control Officer shall furnish written notice to the owner of the dog as identified in the complaint to inform the owner that a dangerous dog report has been received. The owner will have five (5) calendar days from the date the owner is notified to provide the Lead Animal Control Officer information regarding the report. The Lead Animal Control Officer may consider additional information from other sources in the course of the investigation.
- (2) If, after investigating a dangerous dog report, the Lead Animal Control Officer finds that the dog is a dangerous dog, the Lead Animal Control Officer shall provide notice to the owner of that fact. The notice to the owner shall also contain a statement that the owner has a right to appeal and shall have attached to it a copy of this article.
- (3) Notice to the owner shall be mailed certified mail, return receipt requested, to the owner's last known mailing address, or delivered in person by the Lead Animal Control Officer. If the notice is mailed to the owner and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered. If the notice is given by mail, the date of notice is the date of delivery. If the date of delivery is not known, then notice given by mail is deemed to be delivered three (3) days after the date it is placed in a mail receptacle of the United States Postal Service. Notice that is delivered in person is deemed received on the date of in-hand delivery or on the date that the notice is left firmly affixed on or near the front door of each building on the property at the owner's address.

- (4) An owner, not later than fifteen (15) calendar days after the date the owner is notified that a dog owned by him is a dangerous dog, may appeal the determination of the Lead Animal Control Officer to the City of Everman Municipal Court or as otherwise allowed by law. An owner may appeal the decision of the Municipal Court as allowed by law.

Sec. 3.06.04 Hearing

- A. After the Court receives a sworn report of an incident involving a dangerous dog under Section 3.06.03(A)(1) or a report of a dangerous dog's owner's non-compliance with requirements under Section 3.06.05, the Court shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of a dangerous dog has not complied with the requirements of Section 3.06.05. The hearing must be held not later than ten (10) calendar days after the date on which the dog or animal is seized or delivered.
- B. 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;
 - (2) The person who made the report; and
 - (3) The Lead Animal Control Officer.
- C. Any interested party, including the city attorney, is entitled to present evidence at the hearing.
- D. An owner or the person who made the report may appeal the decision of the Municipal Court as allowed by law.

Sec. 3.06.05 Requirements for Owners of Dangerous Dogs

- A. Not later than fifteen (15) calendar days after a person learns that he is the owner of a dangerous dog, the owner shall:
 - (1) Register the dangerous dog with the Lead Animal Control Officer and maintain current registration at all times;
 - (2) Restrain the animal in a secure enclosure inspected and approved by the Lead Animal Control Officer;
 - (3) Acquire and maintain liability insurance coverage that includes coverage for animal attacks in an amount of at least One Hundred Thousand Dollars and No Cents (\$100,000.00) to cover damages resulting from an attack by the dangerous dog and provide proof of the required liability insurance coverage to the Lead Animal Control Officer. The owner shall notify the Lead Animal Control Officer immediately if a lapse in insurance coverage occurs or if the coverage ceases or is reduced at any time for any reason. The owner shall include in the policy provisions requiring the insurance provider to provide notice to the Lead Animal Control Officer not less than thirty (30) days prior to cancellation or any material change in coverage, and naming the Municipal Animal Services as a certificate holder;

- (4) Microchip and register the dangerous dog for its life with a national registry, and present proof to the Lead Animal Control Officer. The cost shall be at the owner's expense. The owner of the dangerous dog shall microchip the dog by implanting a microchip identification device on the animal within seven (7) calendar days after being notified by the Lead Animal Control Officer or the Court that such dog is dangerous or within forty-eight (48) hours of an unsuccessful appeal;
 - (5) Present proof to the Lead Animal Control Officer that the animal has been sterilized so as to prevent reproduction;
 - (6) Comply with all applicable regulations, requirements, and restrictions on dangerous animals; and
 - (7) Obtain written extension from the Lead Animal Control Officer to complete the registration requirements if necessary. All requests for extensions shall be in writing and, if granted by the Lead Animal Control Officer, shall total no more than 30 additional days.
 - (8) The owner shall pay any cost or fee assessed by the Municipal Animal Services in the amount set by resolution that is related to the seizure, acceptance, impoundment, compliance inspection or re-inspection, or destruction of the dangerous animal.
- B. An appeal of a dangerous dog determination by the Court under 3.06.03(A) or of a dangerous dog declaration by the Lead Animal Control Officer under Section 3.06.03(B) shall not act to stay the requirements of Subsection (A) except regarding implantation of a microchip as noted in Subsection (A)(4).
- C. The owner of a dangerous dog shall deliver the dog to the Lead Animal Control Officer immediately upon learning that the animal is a dangerous animal, if the animal is not already impounded.
- D. The owner of a dangerous dog who falls out of compliance with an owner's requirement of Subsection (A) shall deliver the dog to the Lead Animal Control Officer immediately.
- E. The Court may issue a warrant to seize the subject animal at any time the Court finds that probable cause of violation or non-compliance exists, including any time otherwise allowed for voluntary compliance. If, on application of the Lead Animal Control Officer, the Court finds, after notice and hearing as provided by Section 3.06.04, that the owner of a dangerous dog has failed to comply with or has fallen out of compliance with an owner's requirement of Subsection (A), the Court shall order the Lead Animal Control Officer to seize the animal and shall issue a warrant authorizing the seizure.
- F. The Court shall order the Lead Animal Control Officer to humanely destroy the dangerous dog if the owner has not timely complied with Subsection (A) and no perfected appeal is pending.

H. The Court shall order the Lead Animal Control Officer to humanely destroy the dangerous dog if the owner falls out of compliance with an owner's requirement of Subsection (A) and fails to renew compliance within ten (10) calendar days after the dog is seized or delivered to the Lead Animal Control Officer and no perfected appeal is pending. The Court may order the Lead Animal Control Officer to return the dangerous dog to the owner if the owner renews compliance with Subsection (A) within said ten (10) calendar days or the Court may order the Lead Animal Control Officer to humanely destroy the dangerous animal if the owner falls out of compliance with an owner's requirement of Subsection 3.06.05, 3.06.07 or 3.06.08. No dangerous dog shall be returned to its owner after renewed compliance more than one (1) time.

Sec. 3.06.06 Registration

A. The Lead Animal Control Officer shall annually register a dangerous dog if the owner is in compliance with the owner's requirements of Section 3.06.05. The owner shall present proof of compliance satisfactory to the Lead Animal Control Officer and shall pay an annual registration fee in accordance with the City of Everman Fee Schedule

B. The Lead Animal Control Officer shall provide to the owner registering a dangerous dog a dangerous dog registration tag. Such tag shall be of a bright distinguishing color, shall contain the year of registration engraved on its face and shall be larger than a normal license tag issued to dogs and cats. A dangerous dog registration shall be valid for one (1) year from the date of issuance.

C. The owner of a registered dangerous dog shall attach the tag to the dog's collar, or similar device, and shall place such collar or device on the dog. The owner of a registered dangerous dog shall display current registration on the dog in this manner at all times.

D. If the owner of a registered dangerous dog sells or gives away the dog or moves the dog to a new address, the owner, not later than the fourteenth day after the date of the sale, gift or move, shall notify the Lead Animal Control Officer of the animal's new address and new owner if applicable.

E. If the owner of a registered dangerous dog sells or gives the animal to another person, the owner shall notify the other person at the time of the sale or gift that the dog is a registered dangerous animal.

F. If a new owner keeps the dog within the City of Everman, he shall register the dog with the Lead Animal Control Officer within ten (10) calendar days after receiving it.

G. The owner of a dog, which has been deemed dangerous in another jurisdiction, shall

not harbor the animal within the territorial limits of the City of Everman.

- H. The Lead Animal Control Officer shall re-register a dangerous dog with a new owner if such owner is in compliance with this Chapter. Such owner shall present proof of compliance satisfactory to the Lead Animal Control Officer and shall pay a re-registration fee in accordance with the City of Everman Fee Schedule
- I. If a dangerous dog's registration is expired when a new owner attempts to re-register it, the new owner shall follow the owner's requirements of Subsection (A) of this section 3.06.06.
- J. A re-registration shall be valid only for the time remaining on the prior registration.
- K. When the Lead Animal Control Officer is informed that a dangerous dog has been moved to another jurisdiction, he should notify the animal control authority for such jurisdiction of this information.
- L. In the event that a registered dangerous dog dies, the owner must present dispositive proof to the satisfaction of the Lead Animal Control Officer or his designee or present written verification by a licensed veterinarian, in order to verify the identity of the dangerous animal by microchip.

Sec. 3.06.07 Owner Notifications of Attack

- A. The owner of a registered dangerous dog shall notify the Lead Animal Control Officer of all attacks the animal makes on humans.
- B. Additionally, the owner of a registered dangerous dog shall notify the Lead Animal Control Officer of all attacks made by the dog on domestic animals and domestic fowl.

Sec. 3.06.08 Offenses

- A. A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure, and the attack causes bodily injury to the other person.
- B. A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on a domestic animal or domestic fowl while said dog is at large, and the attack causes bodily injury or death to the domestic animal or domestic fowl.
- C. A person commits an offense if the person is the owner of a dangerous dog or the new owner of a dangerous dog and performs an act prohibited or fails to perform an act required by this Article.

Sec. 3.06.09 Defense and Affirmative Defenses

- A. It is an affirmative defense to prosecution under Section 3.06.08 that the person is a veterinarian, a peace officer, a person employed by a recognized animal services center or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody or control of the animal in connection with that position.
- B. It is an affirmative defense to prosecution under Section 3.06.08 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.
- C. It is an affirmative defense to prosecution under Section 3.06.08 that the person is a dog trainer or an employee of a guard dog company under the Private Investigators and Private Security Agencies Act (Article 4413[29bb], Vernon's Texas Civil Statutes), and is not the actual owner of the dog.
- D. It is a defense to prosecution under Section 3.06.08 that the person injured was teasing, tormenting, abusing, or assaulting the animal or has, in the past, been reported to have teased, tormented, abused, or assaulted the animal.
- E. It is a defense to prosecution under Section 3.06.08 that the person injured was committing or attempting to commit a crime.
- F. It is a defense to prosecution under Section 3.06.08 that the animal was protecting or defending a person while in the person's control, from an unjustified attack or assault.

Sec. 3.06.10 Muzzle and Restraint of Dangerous Animals

An owner of a dangerous dog shall not permit a dangerous dog to be outside the secure enclosure unless the dog is muzzled and restrained by a substantial chain or leash, no longer than six (6) feet in length, and a capable person is in immediate physical control of the leash. Such dog shall not be leashed to any inanimate object such as a tree, post, building, or other object. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or dog.

Sec. 3.06.11 Additional Penalties for Violation of this Article

- A. If a person is found guilty of an offense under Section 3.06.08(A) or 3.06.08(B), the Court may order the Lead Animal Control Officer to impound and destroy the dog immediately in addition to other penalties.
- B. The Lead Animal Control Officer may obtain a search and seizure warrant if the owner of a registered dangerous dog falls out of compliance with the owner's requirements of Section 3.06.05. The dog will remain impounded until proof as

required by Section 3.06.055 has been satisfied and is approved by the Lead Animal Control Officer or the dog is destroyed.

- C. If impoundment of a dangerous dog is being attempted away from the premises of the owner and the impoundment cannot be made with safety, the dog may be destroyed without notice to the owner or harborer. If an attempt is made to impound a dangerous animal from the premises of the owner or harborer and the impoundment cannot be made with safety, the owner or harborer will be given twenty-four (24) hours' notice that if said animal is not surrendered to Municipal Animal Services within said twenty-four (24) hour period, then the dog will be destroyed wherever it is found. After this notice, the dangerous dog may be destroyed during an attempt to impound if impoundment cannot be made with safety, wherever the impoundment is attempted. Notice under this Section shall be in writing. A written notice left at the entrance to the premise where the dangerous dog is harbored will be considered valid notice as of the date and time of posting. In lieu of surrendering the animal to Municipal Animal Services, an owner may permanently remove said animal from the City, if written proof of destination is provided to the Lead Animal Control Officer and transport is made in compliance with this Article.
- D. A dangerous dog impounded pursuant to this section and not reclaimed by its owner under the requirements of this section within ten (10) calendar days from the date of notice of impoundment shall be deemed abandoned and, at the discretion of the Lead Animal Control Officer, euthanized in a humane manner.
- E. In addition to criminal prosecution, a person who commits an offense under this section is liable for a civil penalty not to exceed \$10,000. An attorney having civil jurisdiction for a municipality where the offense occurred may file suit in a court of competent jurisdiction to collect the penalty. Penalties collected under this subsection shall be retained by the municipality.

Sec 3.06.12 Status of Animal

- A. The owner shall deliver the dog to the Lead Animal Control Officer immediately upon notification that a dangerous dog report has been filed with the Court under Section 3.06.03(A)(2).
- B. The owner shall deliver the dangerous dog to the Lead Animal Control Officer immediately upon notification that the Lead Animal Control Officer has declared that the animal is a dangerous animal under Section 3.06.03(B)(2).
- C. The owner shall deliver the dangerous dog to the Lead Animal Control Officer immediately upon notification that the animal is a dangerous animal, as required by Section 3.06.05(C).
- D. The owner shall deliver the dangerous dog to the Lead Animal Control Officer

immediately when the owner falls out of compliance with any requirement of an owner of a dangerous dog, as required by Section 3.06.05(D).

- E. If the owner fails to deliver the subject animal as required in this Article, the Court shall order the Lead Animal Control Officer to seize the dog and shall issue a warrant authorizing the seizure, as provided in Section 3.06.05(E).
- F. No dangerous dog shall be returned to its owner at any time unless authorized by this Article and all owner's requirements are fulfilled.

Sec. 3.06.13 Impoundment and Destruction of Dog

- A. The Lead Animal Control Officer shall seize the subject dog according to a warrant or shall order such seizure and shall accept the dog into custody when delivered by the owner.
- B. The Lead Animal Control Officer shall provide for impoundment of the subject dog in secure and humane conditions until the Court orders the disposition of the subject dog. The Lead Animal Control Officer may accept proof of impoundment from a licensed veterinarian if such proof and impoundment are satisfactory to the Lead Animal Control Officer.
- C. The owner shall pay any costs and fees incurred by the Municipal Animal Services related to the seizure, impoundment, and destruction of a dangerous animal.
- D. The Court shall order the Lead Animal Control Officer to humanely destroy the dangerous dog if the owner of the dog has not been located within ten (10) calendar days after the seizure and impoundment of the animal and if no other statute or ordinance has allowed or required the animal's earlier destruction.
- E. The Court shall order the Lead Animal Control Officer to humanely destroy the dangerous dog if the owner has not timely complied with the owner's requirements, according to Section 3.06.05(F).
- F. The Court shall order the Lead Animal Control Officer to humanely destroy the dangerous dog if the owner falls out of compliance with an owner's requirement and fails to renew compliance within ten (10) calendar days, according to Section 3.06.05(G).
- G. The Court shall order the Lead Animal Control Officer to humanely destroy a dangerous dog that can no longer be returned to its owner under this Article.

Section 3.06.14 Compliance Re-inspections

The owners of dangerous dogs shall comply with all applicable regulations, requirements and restrictions on dangerous animals and may be re-inspected four (4) times per year by the Lead Animal Control Officer for compliance. For each inspection, the owner shall

pay to the City a compliance re-inspection fee. The compliance re-inspection fee shall be in an amount set by resolution of City Council and is due to the City within thirty (30) days from the date of billing.

Section 3.07 Wild Animals / Bees

Sec. 3.07.01 Placement and baiting of animal traps and poison

- A. Humane traps shall be used to trap animals within the city, whether on public or private property.
- (1) The person who places the trap, or who requests its placement, shall be responsible for checking the trap, the care of the animal while it is in the trap, and the notification to the department of any captured animal.
 - (2) All traps shall be checked at least daily.
 - (3) No traps shall be placed upon public property without written permission from the Municipal Animal Services. It shall be the responsibility of the person setting the trap to properly label the trap indicating the name and contact information for the owner and the date permission was obtained from the department.
- B. All captured domesticated animals shall be turned over to the department unless the animal is captured as part of a feral animal neutering program that has obtained written permission from the Lead Animal Control Officer to place traps within the city. All captured wild animals shall be turned over to the department, a wildlife educational center, or state-licensed wildlife rehabilitator within twenty-four (24) hours.
- C. Offenses A person commits an offense if he:
- (1) Places, or places and baits, or allows the placing or placing and baiting, of an steel-jawed trap (commonly known as a "bear trap", "wolf trap", "leg hold trap", or "coyote trap"), a body hold trap (commonly known as "connibear trap"), any snare trap, any noose-type trap, or any other trap designed, used, or adapted to be lethal or cause serious bodily injury or death of an animal;
 - (2) Places or allows the placing of any substance, article, or bait that has in any manner been treated with any poisonous or toxic substance, including anti-freeze, or any drug in any place accessible to human beings, birds, dogs, cats, or other animals with the intent to kill or harm animals;
 - (3) Fails to check a trap he has placed, placed, and baited, or allowed to be placed or placed and baited at least once every twenty-four (24) hours;
 - (4) Places, or places and baits, or allows the placing or placing and baiting of any trap when the overnight low temperature is expected to be below forty (40) degrees Fahrenheit without first obtaining written permission from the department;

- (5) Places, or places and baits, or allows the placing or placing and baiting of any trap under conditions which may endanger the health of the animal due to exposure to rain, snow, extreme temperatures, lack of food or water, or under other circumstances that may cause bodily injury, serious bodily injury or death of the animal, whether or not such injury occurs;
 - (6) Euthanizes, kills, or attempts to euthanize or kill a trapped animal in a manner other than one specifically allowed in this chapter;
 - (7) Places or places and baits a trap or allows the placing or placing and baiting of any trap designed for trapping animals in any highway, street, alley, or other public place within the incorporated limits of the city unless specific written permission by the Lead Animal Control Officer has been granted. This subsection shall not apply to a city enforcement agent or an agency working in compliance with written permission from the department for placing the trap on public property;
 - (8) Removes, alters, damages, or otherwise tampers with a trap or equipment belonging to or placed at the request of the department; or
 - (9) Places, or places and baits a trap, other than a commercially available trap solely designed to exterminate mice, rats, or insects, for commercial profit, without identifying the trap with the name, telephone number, and Texas Department of Agriculture structural pest control applicator license number of the applicator who placed or placed and baited the trap.
- D. Any trap found to be set in violation of this chapter may be confiscated by a city enforcement agent and held as evidence in the case for the offense.
- E. This section shall not be interpreted to restrict the extermination of rats, mice, or insects, through the use of traps, poisons, or other commercially available means when used in that person's residence, property, accessory structure, or commercial establishment and in accordance with the manufacturer's directions as long as reasonable precautions are taken to ensure that no human, pet, or wild animal, other than the targeted species, comes into contact with the traps, poisons, or other means and that does not violate any other section of this chapter.

Sec. 3.07.02 Dangerous Wild Animals

- A. All dangerous wild animals as set forth in this chapter's definition are prohibited in the City of Everman.
- B. It is an affirmative defense to prosecution that:
 - (1) The person is or is acting on behalf of:
 - (a) A county, municipality, or agency of the state or an agency of the

- United States or an agent or official of a county, municipality, or agency acting in an official capacity;
- (b) A research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act; or
 - (c) An organization that is an accredited member of the American Zoo and Aquarium Association.
- (2) The Dangerous Wild Animal is: a. injured, infirm, orphaned, or abandoned, and is being transported for care or treatment;
 - (3) The Dangerous Wild Animal is injured, infirm, orphaned, or abandoned, and is being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;
 - (4) The Dangerous Wild Animal is owned by and in the custody and control of a licensed circus, carnival, or zoo, acting in compliance with all city ordinances including but not limited to, the Zoning Chapter of the City Code of Ordinances; or
 - (5) The Dangerous Wild Animal is in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state.

Sec. 3.07.03 Bees

- (A) A person commits an offense if he keeps or allows bees, their hives, or any abandoned hives within the city limits not meeting any one or more of the following requirements:
 - a. All hives shall be surrounded by barriers placed at least ten (10) feet from the hive and not less than eight (8) feet in height that change the flight path of the bees as they leave the hives;
 - b. There shall be no more than three (3) hives per city lot;
 - c. There is an adequate source of water within twenty (20) feet of all hives;
 - d. There may be maintained one (1) nucleus for each two (2) colonies. The nucleus shall not exceed one (1) ten-frame hive body. Each nucleus shall be disposed of within sixty (60) days after it is acquired;
 - e. Each hive must be re-queened at least once every twenty-four (24) months; and
 - f. The owner notifies the city enforcement agent, in writing, of the location and number of hives in his possession. Additionally, the owner shall keep purchase receipts and written records of the exact dates he re-queens each hive for at least two (2) years.
- (B) A person commits an offense if he owns, harbors, or possesses bees and refuses, upon request by the department, to make his bees, premises, facilities, or equipment available for inspection during reasonable hours.

Section 3.08 Animal Nuisance

Sec. 3.08.01 Nuisances

The following shall constitute public nuisances when caused, allowed, maintained or suffered to exist within the territorial limits of the City of Everman:

- A. Any at large animal;
- B. Any animal that molests, chases or attacks passersby, passing vehicles or other animals;
- C. Any dog or cat over four (4) months of age that does not have a microchip implanted;
- D. Failing to confine a female dog or cat while in season in a building or secure enclosure in such a manner that she cannot come into contact with another dog or cat, or create a nuisance by attracting other animals; provided this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of an animal which is being bred;
- E. Any prohibited animal as defined in this Chapter;
- F. Any dangerous animal as defined in this Chapter;
- G. Maintaining animals or property in an environment of unsanitary conditions or lack of cleanliness that results in offensive odor or is dangerous to the public health, welfare, or safety or a failure to maintain animals in a condition of good order and cleanliness so as to reduce the probability of transmission of disease;
- H. Harboring, breeding, keeping or raising any animal or bird which, by causing frequent or long-continued noise disturbs the peace and quiet of persons in the neighborhood or the occupants of adjacent premises who have and possess normal nervous sensibilities;
- I. Defecation - Removal and Disposal Required; Implements Required
 - (1) An owner or person who has care, custody or control of an animal commits an offense if, he permits or by insufficient control allows an animal to defecate on private property not his own or on property located in a public place without immediately removing and disposing of the defecation material in a sanitary and lawful manner.
 - (2) An owner or person who has care, custody or control of an animal commits an offense if, he permits or by insufficient control allows an animal to enter or remain on private property not his own or on property located in a public place without having in his possession materials or implements that, either alone or in combination with each other, can be used immediately in a sanitary and lawful manner to remove and dispose of defecation the animal

may deposit on such property.

- (3) It is an affirmative defense to prosecution under this section that:
 - (a) The animal is a police service animal under the supervision of a police officer in the performance of his official duties;
 - (b) The animal is a “service dog” performing duties of assisting the disabled;
 - (c) The animal is a waterfowl at a municipality owned facility; or
 - (d) The owner of the private property has given consent or permission for the animal to defecate on his property.

J. The keeping of more than the maximum number of animals permitted by this chapter, or the zoning ordinance, as amended, shall be a public nuisance.

K. It shall be unlawful to keep or harbor more than four (4) dogs and four (4) cats in the aggregate three (3) months of age or older on any premises used or zoned for residential purposes, unless otherwise restricted by the zoning ordinance.

Section 3.09 Miscellaneous Animal

Sec. 3.09.01 Disposal of Dead Animals

- A. Dead animals, excluding those intended for human or animal consumption shall be disposed of as follows:
 - (1) Animals weighing fifty (50) pounds or less may be buried on the owner's premises at a depth of not less than twelve inches (12”).
 - (2) Animals weighing twenty (20) pounds or less may be placed for trash collection if they are first wrapped securely in newspaper and put in a bag of a type approved by the Lead Animal Control Officer.
 - (3) Animals may be disposed of at the landfill, sold or given to a renderer, or buried in a properly zoned pet cemetery.
 - (4) If requested by the owner, dogs and cats will be picked up by the City and disposed of at the landfill or incinerated. There shall be a fee for this service at an amount set by resolution of the City Council.
 - (5) The Landfill Manager shall have the right to refuse a dead animal if placing such animal in the landfill would pose a health risk.
 - (6) The Animal Services Lead Animal Control Officer shall have the right to refuse to accept any dead animal if he determines that transporting such animal would cause a health risk to humans or to animals at the Municipal Animal Services Shelter.
- B. A person commits an offense if he disposes of a dead animal in a manner other than as provided by this Section.
- C. The owner of an animal which has died commits an offense if he fails to properly dispose of such animal within twenty-four (24) hours of its death.

3.09.02 Dog and Cat Microchipping Required

- A. The owner of any dog or cat must have the animal implanted with a registered microchip before the animal attains four (4) months of age.

- B. The owner of a microchipped dog or cat shall maintain current registration with a microchip registration company.
- C. If there is a change in contact information of an owner of a registered microchipped dog or cat, the owner shall update contact information, including new address or telephone number, with the microchip registration company within thirty (30) days of the date of the change in contact information.
- D. If there is a change in ownership of a registered dog or cat, the previous owner shall be responsible for ensuring that the microchip is no longer registered in the previous owner's name within thirty (30) days of the date of change in ownership. The new owner shall be responsible for re-registering the microchip to include any new address and telephone number and have the registration information transferred to the new owner's name within thirty (30) days after the change in ownership.
- E. A person commits an offense if the person owns, keeps, harbors or has custody of any dog or cat over four months of age without complying with this Ordinance.

3.09.03 Sale of Animals

- A. A person commits an offense if a person sells, exchanges, trades, barter, leases, rents, gives away, or displays, without a valid permit, any live animal on any roadside, public right-of-way, parkway, median, park, playground, swimming pool, other recreation area, or commercial or retail parking lot that is generally accessible by the public, regardless of whether such access is authorized.
- B. It is an affirmative defense to prosecution under subsection (A) that the person is an employee of or is acting in his or her capacity as an employee of: a veterinary clinic; an animal hospital; a business that has a certificate of occupancy from the building inspection division authorizing the occupancy of the premises purposes of operating a business selling pets; an animal shelter; an animal welfare, rescue, or adoption agency that is a registered non-profit entity; a bona fide zoological park; an educational institution; a museum; an event being conducted primarily for the sale of agricultural livestock such as hoofed animals or animals or fowl commonly raised for food, dairy, or fiber products; a licensed laboratory; a publicly owned nature center; a bona fide member of an educational or scientific association or society approved by the Lead Animal Control Officer; persons holding permits from an agency of the state or the United States for the care and keeping of animals for rehabilitative purposes; an animal establishment in compliance with the this Chapter; or a person caring for animals in his or her private residence in compliance with this Chapter.

3.09.04 Spay / Neuter of Animals

- A. All animals within the City of Everman are required to be spayed/neutered unless they are under the control of an individual.
- B. All impounded animals are required to be spayed/neutered within thirty (30) days of release from impoundment.
- C. It is an affirmative defense to prosecution under subsection (B) above that the owner of the animal has provided proof to the satisfaction of the Lead Animal Control Officer to establish that:
 - (1) The owner of the animal is a member of a club which is associated with a

national registry, a national breed club, or a local all-breed club; and the owner does not sell twelve (12) or more intact animals per year. Proof may be provided in the form of a sworn affidavit from an officer, director, or person of similar managerial authority in the organization, indicating that the organization falls under the criteria of the affirmative defense in this subsection, and that the owner does not sell twelve (12) or more intact animals per year.

- (2) The animal was at large and impounded due to force majeure.
- (3) The animal was at large and impounded due to fire, criminal or negligent acts of a third party who does not reside at the animal owner's residence. Additionally, verification of the incident must be presented to the Lead Animal Control Officer in the form of a police or fire report, or the sworn testimony or affidavit of police or fire personnel.”

Section 2. All ordinances of the City of Everman in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Everman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3. An offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances and ordinances of the City, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 4. If any section, paragraph, sentence, subdivision, clause, phrase or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of the remainder of this ordinance or any other provision of the ordinances of the City of Everman.

Section 5. This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS ON THIS THE _____ DAY OF _____, 2024.

APPROVED:

Ray Richardson, Mayor

APPROVED AS TO FORM:

ATTEST:

Victoria Thomas, City Attorney

Mindi Parks, City Secretary

