

ORDINANCE 10-15

AN ORDINANCE OF THE CITY OF NEWTON, NEWTON COUNTY, TEXAS, ANIMAL CONTROL OF THE CODE OF ORDINANCES OF THE CITY OF NEWTON; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON TEXAS:

ARTICLE I.

Section 1: Purpose and Scope

A .It is the purpose of this chapter:

1. To provide regulations by which the transmission of rabies to human beings and other animals can be prevented and controlled within the city;
2. To encourage responsible animal ownership;
3. To protect the public health, safety and welfare of the city;
4. To provide regulations by which the transmission of any disease from one animal to another;

B. The provisions of this chapter shall not be construed to authorize the keeping of any animal in violation of any other city ordinance, state or federal statute or law.

Section 2: Definitions

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

A. **Animal Control** means the animal control division of the police department.

B. **Animal Control Officer** means any person designated by the City Council and Chief of police, or his designated representative within the police department, to represent and act for the city in impounding animals, controlling animals running at large, and to enforce all regulations including as authorized by the state under the provisions of, but not limited to, the Rabies Control Act.

- C. Animal nuisance** means the keeping of any animal in such a manner as to endanger the public health. To annoy neighbors through noise, through the accumulation of animal waste which causes foul and offensive odors, is a hazard to any other animal or human being, or any animal that by its presence interrupts or otherwise interferes with the quality of life of those individuals in its proximity.
- D. Animal Pound Pen/Animal Shelter** means the city facility OR ANY FACILITY that keeps or legally impounds.
- E. Cruelty** means to inflict pain or suffering and includes any act of neglect or abandonment.
- F. Dangerous Animal** means any animal that:
1. Makes or Commits an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own; and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to that person.
 2. Has attacked and bitten another animal without provocation on one (1) previous occasion.
- G. Estray act** means the state requirements relating to livestock control.
- H. Exotic Animal** means any and all species of animals which commonly exist in a natural, unconfined state, are usually not domesticated and can pose a potential physical threat to the public or that is protected by international, federal or state regulations. This definition shall apply regardless of state or duration of captivity.
- I. Fowl** means all of those birds commonly called poultry, but not limited to chickens, ducks, geese, guinea fowl, turkeys, pigeons, and all the relatives of those birds which can be kept in pens, coops, cages, or enclosures of any kind.
- J. Humanely destroy** means to cause the death of an animal by a method which:
1. Rapidly produces unconsciousness and death without visible evidence of pain or distress;
 2. Utilizes anesthesia produced by an agent, which causes painless loss of consciousness with death following such loss of consciousness.

- K. **Kennel** means any place or premises wherein any person boards, breeds, buys, lets for hire, trains for a fee, trades, or sells animals.
- L. **Observation period** means the ten (10) days following a biting incident during which an animal's health status must be monitored.
- M. **Owner** means any person of or persons who has, harbors, owns, possesses or shelters or keeps any animal in his care, or who permits an animal to remain on or about his premises.
- N. **Tether** means to tie up by rope, chain or any other means.
- O. **Provoke** means to arouse or stir up purposely, to incite or to invoke attack.
- P. **Restraint** means secured by a leash, lead, or enclosure.
- Q. **Running at large** means:
- A. Off premises. Any animal which is not restrained. Off of the owner's property.
 - B. On premises. Any animal not confined on premises of owner by a substantial fence of sufficient strength and height to prevent the animal from escaping there from.
- R. **Vaccination** means an injection of United States Department of Agriculture approved vaccine administered in accordance with applicable state regulations by a licensed veterinarian.
- S. **Victim** means a person or any animal that has been attacked by another animal.

Section 3: Enforcement of Animal Control Regulations

The Chief of police, any police officer of the city, and the animal control officers shall have the right to enforce any of the provisions of this chapter. The chief of police is hereby delegated the authority to appoint any person to aid and assist him in carrying out such enforcement.

Section 4: Livestock Running at Large Prohibited

It shall be unlawful for any person to permit any horse, donkey, mule, sheep, cow, hog or goat owned or kept by him to run at large within the corporate limits of the city.

Section 5: Keeping of Livestock

It shall be unlawful, for any person to keep a cow, horse, donkey, mule, goat, sheep or other livestock on any premises of which the overall area is less than one (1) acre for each livestock kept or to keep more than can be cared for under sanitary conditions so as not to create a public nuisance, and in no event exceed the permitted number of adults and their young up to six (6) months of age. The number of livestock permitted shall not exceed one (1) adult per fenced one (1) acre for the first acre and two (2) adults per acre for each additional acre. When such livestock is kept on unplatted and undeveloped land within the city limits and such land exceeds three (3) acres in size, then permit must be issued from the City.

In addition, it shall be unlawful to keep or maintain any livestock within three hundred feet (300') of any dwelling or public place within the city limits unless a specific use permit has been granted by the City Animal Control officer or Chief of Police.

Section 6: Fowl Running at Large Prohibited

It shall be unlawful for any person to permit chickens or any other fowl owned or kept under his control to run at large within the City limits.

Section 7: Keeping of Poultry, Fowl, and/or Small Fur-Bearing Animals

It shall be unlawful for any person to keep or have on his premises more than two (2) or one (1) litter of chickens, turkeys, ducks, geese, pigeons or other poultry or domestic fowl or more than two (2) or one (1) litter of rabbits, guinea pigs, hamsters, gerbils, mink, ferrets or other small fur-bearing animals within two hundred feet (200') of any dwelling or public place within the city limits unless a specific use permit has been granted by the city. This provision does not apply to undeveloped land within the city limits that exceeds three (3) acres in size.

Section 8: Keeping of Swine

A. It shall be unlawful for any person to keep or have on his premises any hogs or pigs within the city limits unless a specific use permit has been granted by the city.

B Requirements for Keeping Potbellied Pigs

It shall be unlawful for any person to keep, harbor or raise more than two (2) adult potbellied pigs in any one (1) household within the City.

- C. It shall be unlawful for any person to keep or maintain potbellied pigs outdoors for a brief periods, as necessary for exercise or for the elimination of waste. The outdoor area used for exercise and waste elimination must be a secure area from which the potbellied pig may not escape. Potbellied pigs are subject to all other sections of this chapter, including, but not limited to, the sections on restraint of animals.
- D. All potbellied pigs kept within the city must be either spayed or neutered. Under no circumstances may a person engage in the pro-pagation or breeding of potbellied pigs within the city limits.
- E. All potbellied pigs kept within the city must be vaccinated against Erysipelas, parvo virus and leptospirosis in accordance with all applicable state regulations.
- F. All potbellied pigs kept within the city must be registered with the animal control officer within fourteen (14) days from the time the animal is taken to its place of residence. The following requirements shall apply to registration of all potbellied pigs;
 - a. The filing of a health certificate from a licensed veterinarian.
 - b. Payment of an annual fee of seventy-five dollars (75.00) to the City .
 - c. Obtaining a registration tag from the animal control officer.
- G. All locations where potbellied pigs are kept shall be kept in a clean and sanitary condition. Exercise areas shall be cleaned of swine excrement on a daily basis.

Section 9: Keeping of Bees

It shall be unlawful to keep bees in any residential, commercial or developed area of the city. This section does not apply to undeveloped land within the city limits that exceeds three (3) acres in size.

Section 10: Keeping of Wild and Exotic Animals/Reptiles Prohibition

It shall be unlawful to harbor, keep or maintain any wild or exotic animals within the city limits including, but not limited to, poisonous reptiles, bats, skunks, coyotes, foxes, wolves, alligators, lions, tigers, leopards, and monkeys. Further, the chief of police, or his designated representative within the police department, may declare any species of animal not listed in this section as “prohibited” if the confinement of the animal within the city can be shown to constitute a threat to the public health and safety. The city council, however, may grant exceptions from time to time, such as for special events.

Section 11: Dangerous Animals

- A. A person commits an offense if the person is the owner of a dangerous animal and the animal makes an unprovoked attack on another person or animal or attempts to attack a person or animal outside the animal's enclosure and causes bodily injury to the other person or animal.
- B. It shall be unlawful for any person to own, keep or harbor a dangerous animal within the city limits. For purposes of this chapter, a person learns that the person is the owner of a dangerous animal when the owner knows of an unprovoked attack committed by the animal that causes bodily injury to a person or another animal, or when the owner is informed by animal control that the animal is a dangerous animal.
- C. Once an animal has been determined to be dangerous it must be:
 - 1. Removed from the city within twenty-four (24) hours of the owner learning that the animal is dangerous or upon quarantine clearance, whichever is later; or
 - 2. Surrendered for euthanasia to an animal control officer or a veterinarian, as approved by animal control within twenty-four (24) hours of the owner learning that the animal is dangerous or upon quarantine clearance, whichever is later.
- D. It is an affirmative defense to the determination that an animal is dangerous when it can be shown that:
 - 1. The threat, injury or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal; or
 - 2. The person was teasing, tormenting, abusing, or assaulting the animal or has, in the past been observed or reported to have teased, tormented, abused, or assaulted the animal; or
 - 3. The person was committing or attempting to commit a crime; or
 - 4. The animal attacked or killed was at the time teasing, tormenting, abusing or attacking the alleged dangerous animal; or
 - 5. The animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault; or
 - 6. The animal was injured and responding to pain.

Section 12: Dangerous Animal Complaints

- A. Should any person desire to file a complaint concerning an animal which is believed to be a dangerous animal, a sworn, written complaint must first be filed with a police officer or an animal control office of the city as follows.
1. Name, address and telephone number of complainant and any witnesses;
 2. Date, time and location of any incident involving the animal;
 3. Description of the animal;
 4. Name address and telephone number of the animal's owner if known;
 5. A statement describing in detail the facts upon which such complaint is based; and
 6. A statement describing in detail any incidents where the animal has exhibited dangerous propensities in the past if known.
- B. After a sworn complaint is filed, it shall be referred for disposition to the chief of police or his representative who shall set a time and place for a hearing not to exceed twenty (20) days from the time the complaint is received. The animal control officer shall give notice of the hearing to the animal's owner at least ten (10) days prior to the hearing date. After the owner of the animal is notified, the owner shall keep such animal at the animal shelter, until the chief of police or his designee holds such hearing. After the owner of the animal receives notice, the animal control officer shall impound the animal specified in the complaint if such animal is found at large.
- C. The chief of police or his designee shall receive testimony at the hearing to determine if the animal specified in the complaint is a dangerous or vicious animal and should be permanently removed from the city or destroyed for the protection of the public health, safety and welfare of the citizens of the city. In order to determine if either of the above actions are necessary, the chief of police or his designee must find the following facts to be true:
1. The animal is a vicious or dangerous animal;
 2. The removal or destruction of the animal is necessary to preserve and protect the public health, safety and welfare of the citizens of the city.

- D.. If the chief of police or his designee orders the destruction or removal of the animal and the owner was not present at the hearing, the owner shall be given notice of the decision. If removal or destruction of the animal is not ordered, the animal control officer shall return the animal to the owner upon payment of all applicable fees. If the chief of police or his designee orders the animal removed from the city, he shall allow the owner ten (10) days to do so. The owner shall furnish the chief of police or his designee evidence of such removal within ten (10) days there of. Once the animal has been ordered to be removed from the city and the owner has done so, it shall be unlawful for the animal to be allowed into the city for any purpose.
- E. A person commits an offense if he knowingly possesses and fails to release to the animal control officer or a veterinarian, as approved by animal control, an animal that has been charged by sworn complaint as provided in paragraph B of this ordinance and whose destruction or removal has been ordered by the chief of police or his designee; provided that such destruction or removal has not been appealed.

Section 13: Dangerous Animal Appeals

An owner may appeal a destruction or removal order to the municipal court for a substantial evidence review within five (5) days of the decision. If the chief of police or his designee receives written notice of appeal within five (5) days of the decision, the destruction or removal order shall be suspended pending final determination of the municipal court judge, provided that, during the pendency of the appeal, the owner shall keep such animal at the animal shelter. The municipal court judge may affirm, modify, or reverse such decision. The chief of police shall furnish the municipal court judge with all reports, memoranda, and other tangible evidence received by him as well as a summary of the evidence and his findings. The decision of the municipal court judge will be made by the application of the substantial evidence rule.

Section 14: Impoundment of Animals-Generally

- A. Any animal found in violation of any provision of this chapter or any animal that is treated in a cruel or inhumane manner may be impounded by the city and placed in the city's animal shelter. Any such animal shall be held for at least five (5) days. Any impounded animal that is found to be vicious or wild may be immediately and appropriately disposed of provided there is no evidence that said animal has an owner.
- B. A reasonable effort will be made by animal control or chief of Police to contact the owner of any impounded animal. However, the ultimate responsibility for the location of an impounded animal is that of the owner.

Section 15: Reclaiming Impounded Animal

The owner can resume possession of any impounded animal upon payment of an impoundment fee to be determined by the city council for each day or fractional part of a day that the animal was impounded and any veterinary bills incurred. Such impoundment fee shall be charged for the care and feeding of the animal. However, if any animal has not been currently vaccinated in accordance with this ordinance, the owner must first secure them at his expense before the animal may be released to his custody.

Section 16: Unclaimed Animals

A. Any animal except dangerous animals, not reclaimed by the owner may be humanely euthanized after being impounded for five (5) days, except for any animal wearing a current registration or vaccination tag shall be impounded for ten (10) days before euthanizing it.

B. Any impounded animal not wearing a current registration and/or vaccination tag, other than animals under quarantine or found to be dangerous, may be given up for adoption or given to a nonprofit humane organization after five (5) days.

C. Any impounded animal wearing a current registration and/or vaccination tag, other than animals under quarantine or found to be dangerous, may be given up for adoption or given to a nonprofit humane organization after ten (10) days.

Section 17: Public Nuisances

A. It shall be unlawful and constitute a public nuisance for any person to maintain any animal or fowl in such a manner or allow any pen, enclosure, yard, or similar place used for the keeping of animals or fowl to become unsanitary, offensive by reason of odor, or create a condition that is a breeding place for fleas, flies or other vector and which is offensive to persons of ordinary sensibilities residing in the vicinity thereof or is determined to be a public nuisance by the animal control authority.

B. It shall be unlawful and constitute a public nuisance for any person to maintain any animal which repeatedly roams at large in violation of this chapter on public or private property; attacks another animal (s); or damages public or private property.

C. Animals defecating and urinating in certain places prohibited removal of excreta.

1. Prohibited. It shall be unlawful for the person controlling to permit, either willfully or through failure to exercise due care or control, any dog or animal to urinate or defecate upon the sidewalk or parkway of any public street, or upon the floor of any common hall in any entranceway, stairway, or wall immediately abutting on a public office building or other buildings used in common by the public or upon the floor, stairway, entranceway, office, lobby, foyer, or patio used in common by the public. For the purpose of this section, the term “parkway” shall mean the portion of a public street other than a roadway or a sidewalk.

2. Removal of excreta. It shall be unlawful and an offense for any person to fail to promptly remove and dispose of, in a sanitary manner, feces left by a dog, cat, or other animal being handled or controlled by the person upon public works, parks, recreation areas, sidewalks, parkways, or public streets or any other public areas specified in subsection 1 of this section, or upon any private property other than the premises of the owner, handler, or controller of such animal.

D. It shall be unlawful and constitute a public nuisance for the owner of any animal to allow any excreta deposited by his animal to remain on public or private property. Any condition injurious to public health caused by the lack of or improper disposal of animal waste will be considered a violation of this section.

E. It shall be unlawful for any person to allow any animal to remain a public nuisance as defined herein.

F. It shall be unlawful for any person to permit the carcass of any dead animal to be or remain, upon any property under his control for more than twenty-four (24) hours after the death of the animal.

Section 18: Enforcement

A. Representatives of the police department shall enforce the provisions of this chapter. Police officers and animal control officers shall have the authority to issue citations to persons violating the provisions of this chapter. If the person is not present, an animal control officer shall have the authority to send the citation to the alleged offender by registered or certified mail.

B. It shall be unlawful for any owner or person to interfere with a police officer or an animal control officer in the performance of this duties as prescribed by this chapter.

C. Police officers and animal control officers shall have the right to pursue and apprehend animals running at large onto private property while enforcing the provisions of this chapter.

Section 19: Penalties

A. Any person found to be in violation, disobedience, omission, neglect, failure or refusal to comply with the enforcement of any of the provisions of this chapter shall be punished by a fine not to exceed two-thousand dollars (\$2,000.00) for each violation. Each day that a violation is permitted to exist shall constitute a separate offense.

B.If any owner is found guilty of having violated any provision of this chapter, such violation may result in the revocation of such owner’s authorization to keep or maintain the animal (s) in question.

ARTICLE II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

ARTICLE III

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutional shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted without such unconstitutional phrase, clause, sentence, paragraph or section.

ARTICLE IV

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

Passes and approved on first reading this the _____ day of _____ 2010.

Passes and adopted on 2nd reading this the _____ day of _____ 2010.

Molly Will, City Secretary
City of Newton

Mark Bean, Mayor
City of Newton

