

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 10, "ANIMALS," OF THE CODE OF ORDINANCES, CITY OF BRYAN, TEXAS, ESTABLISHING STANDARDS FOR SEIZURES AND IMPOUNDMENT OF ANIMALS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; FINDING; DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that there is a need to codify rules set by statute and by case law governing seizure and impoundment of animals and to replace sections of the Code in conflict with state law; and

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

1.

Section 10-1 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-1. - Definitions.

Animal control authority shall mean the person or persons designated by the city manager or applicable state law to enforce this chapter, including a duly licensed peace officer.

Impound shall mean the act of placing an animal in the City's animal control facility.

Seize shall mean the act of taking physical possession of an animal.

2.

Section 10-2 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-2. - Enforcement.

- (a) It shall be the duty of the animal control authority to carry out all applicable provisions of this chapter and to seize and impound all animals found to be in violation of this chapter.
- (b) Any offense of this chapter will be considered a nonculpable offense, unless the article or section specifically sets out the necessary culpability for the offense.
- (c) It shall be unlawful for persons to interfere with, hinder or molest any agent of the animal control authority in the performance of any duty as herein provided. It shall also be unlawful for any person to remove an animal from or inflict damage upon a humane live trap set by the animal control authority.

3.

Section 10-3 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-3. -Seizure and Impoundment.

- (a) The animal control authority shall have the power to seize an animal with a warrant or court order if he or she has probable cause to believe one of the following conditions exist.
 - (1) The animal is found at large and/or has been abandoned.
 - (2) The animal is exhibiting symptoms of rabies, has been exposed to a rabid animal, or has bitten or scratched a human being.
 - (3) The animal meets the definition of a dangerous animal as defined in this chapter.
 - (4) The animal is being treated cruelly in violation of this chapter or state law.
 - (5) The animal control authority is authorized to seize the animal based on, or pursuant to, other state law.
- (b) The animal control authority shall have the power to seize an animal without a warrant or court order if he or she has probable cause to believe one of the conditions listed in (a)(1)-(5) exist and under the following conditions:
 - (1) On public property, in all cases;
 - (2) On private property if
 - (i) The consent of the resident or property owner is obtained; or
 - (ii) The animal control authority reasonably believes there is imminent danger of serious bodily injury or death to the public, other animals, or the animal in question and there is insufficient time to obtain a warrant.
 - (3) Upon the request of a peace officer if the owner of the animal is not available and there is no one eighteen (18) years of age or older to accept responsibility for the animal.
- (c) The animal control authority is authorized to use necessary force to make lawful seizures of animals pursuant to this chapter.
- (d) Any animal that has been seized pursuant to section (a)(2) must be impounded and quarantined, and disposition of the animal shall only be permitted, as required by Chapter 826 of the Texas Health and Safety Code and Title 25 of the Texas Administrative Code Chapter 169, Subchapter A, as may be amended.
- (e) For any animal seized pursuant to section (a)(4), the animal shall be impounded and a hearing shall be scheduled in the City of Bryan municipal court within ten (10) days of the seizure (or warrant authorizing same), and disposition of the animal shall be determined in accordance with Chapter 821 of the Texas Health and Safety Code, as may be amended.

4.

Section 10-21 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-21. - At large—Animals generally.

- (a) It shall be unlawful for an animal to be at large within the city. When an animal is found at large and its ownership is verified by the animal control authority, the authority may exercise the option of serving the owner with a citation, returning the animal to the owner without impounding it, and/or impounding the animal. Impounded animals not claimed by the owner within three full days during which the shelter is open to the public shall become the property of the animal shelter. Wild animals (which are not protected by federal law) and which are seized by the animal control authority shall become the property of the animal shelter upon impoundment. The animal shelter shall be entitled to dispose of such animals by adoption, foster, rescue, humane euthanasia, or any other manner allowed by law.

- (b) The city shall establish a prima facie case by proving the ownership of the animal and that the animal was at large.
- (c) The animal control authority shall have the right to pursue and apprehend a free roaming animal onto private property without first requesting permission from the owner of the property or without obtaining a search warrant.
- (d) This section shall not apply to community cats.

5.

Section 10-54 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-54. - Impoundment.

- (a) Notification of owner; unclaimed animals. Any dog or cat found at large, excluding community cats, may be impounded by the animal control authority in an animal shelter. Community cats may be impounded if they are causing a nuisance as defined in Section 10-53(c), or are sick, injured, or on property without the owner's consent. Immediately upon impounding a dog or cat, excluding community cats, the animal control authority shall make every reasonable effort to notify the owner and inform such owner of the conditions whereby custody of the animal may be regained. Dogs and cats not claimed by their owners within a period of three full days in which the shelter is open to the public shall become the property of the animal shelter. Community cats impounded on a nuisance complaint may be relocated to another community cat colony by a community cat caregiver, or humanely euthanized after a minimum hold period of three full days during which the shelter is open to the public. Community cats may be held longer, as space is available in the shelter. Community cats that bite or scratch a person shall undergo rabies observation or testing and shall be euthanized in accordance with law. Community cats impounded for biting or scratching a person may not be released to a community cat caregiver, returned to their original location or relocated to another community cat colony.
- (b) Pursuit of dog or cat onto private property. The animal control authority shall have the right to pursue and apprehend a free roaming dog or cat onto private property without first requesting permission from the owner of the property or without obtaining a search warrant.
- (c) Citation of owner. When a dog or cat is found at large and its ownership is verified by the animal control authority, the authority may exercise the option of serving the owner with a citation, returning the animal without impounding it, and/or impounding the animal. The city shall establish a prima facie case by proving the ownership of the animal and that it was at large.
- (d) Disposal not to relieve owner of liability. Disposal of a dog or cat by any method specified herein does not relieve the owner of liability for violations and any accrued charges or citations.
- (e) Subsections (c) and (d) do not apply to community cats.

6.

Section 10-92 of the City of Bryan Code of Ordinances is amended as follows:

Sec. 10-92. - Dangerous animal impoundment.

Any animal that the animal control authority has probable cause to believe is a dangerous animal, which has been lawfully seized by the animal control authority, may be impounded until disposition of

such animal is determined by a court. When an animal is found to be in violation of this article, such animal need not be impounded if no human injury has occurred but the animal control authority may issue a complaint and summons to the owner to appear in municipal court to answer the charges of violation of this article, or inform the owner in writing that the animal is a dangerous animal.

7.

That this ordinance shall be cumulative of all provisions of ordinances of the City of Bryan, except where the provisions of this ordinance are in direct conflict therewith, in which case the prior ordinance or parts thereof are hereby repealed to the extent of the conflict.

8.

That all rights or remedies of the City of Bryan, Texas are expressly saved as to any and all violations of the provisions of Chapter 10 of the City Code which have accrued at the time of the effective date of this ordinance; and, as to all such accrued violations, and all pending litigation, both civil or criminal, whether pending in court or not, under such chapter and/or other ordinances same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

9.

That 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 void, ineffective, or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph or section.

10.

That it is the intention for the city council that this ordinance shall become a part of the Bryan City Code of Ordinances and it may be renumbered and codified therein accordingly.

11.

That it is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Chapter 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

12.

This ordinance shall go into effect immediately after its second and final reading.

PRESENTED AND GIVEN first reading the 15th day of December, 2015 at a regular meeting of the City Council of the City of Bryan, Texas; and given a second reading, **PASSED AND APPROVED** on the ___ day of _____ 2016 by a vote of _____ yeses and _____ noes at a regular meeting of the City Council of Bryan, Texas.

ATTEST:

CITY OF BRYAN, TEXAS:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney