

ORDINANCE NO. 2020-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF WACO, TEXAS, AMENDING SECTION 5-1 "DEFINITIONS," SECTION 5-92 "ANIMAL AT LARGE," SECTION 5-96 "NUISANCE ANIMALS," SECTION 5-97 "HONEYBEES," SECTION 5-123.1 "PROPER RESTRAINT," SECTION 5-131 "SALE OF ANIMALS IN PUBLIC PLACE," AND SECTION 5-181 "FEES" OF CHAPTER 5 "ANIMALS" OF THE CODE OF ORDINANCES OF THE CITY OF WACO, TEXAS, TO ESTABLISH PARAMETERS FOR PRIVATE BEEKEEPING, PROHIBIT THE RETAIL SALE OF CATS AND DOGS, AUTHORIZE THE CITY MANAGER OR HIS OR HER DESIGNEE TO EXERCISE DISCRETION IN ASSESSING ANIMAL SHELTER FEES, AND REVISE ADDITIONAL PROVISIONS FOR CONSISTENCY IN APPLICATION AND ENFORCEMENT OF THESE REVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING A SAVINGS CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WACO, TEXAS:**

**Section 1.** That the following sections of Chapter 5 "Animals" of the Code of Ordinances of the City of Waco, Texas, shall be and are hereby amended to read as follows (additions, ~~deletions~~):

Sec. 5-1. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandonment* means leaving an animal unattended for more than 24 hours, without making reasonable arrangements for assumption of custody by another person.

*Abuse* shall mean to mistreat through intent or neglect any animal in a manner that causes or is likely to cause stress or physical injury or as otherwise stated in this chapter.

*Animal* shall mean any living creature other than a Homo sapiens. Unless indicated otherwise, the term shall include livestock, fowl, reptiles, amphibians, and wildlife, as well as dogs, cats and other creatures commonly owned as pets.

*Animal care officer* ("ACO") shall mean the officer of the city primarily responsible for the enforcement of regulations regarding the control of animals.

*Animal shelter* shall mean a facility designated by the city council to be used for the impoundment of animals taken up by the ACO. The shelter shall be the designated caretaker of all animals upon intake.

*Animal welfare group* shall mean an association or nonprofit corporation which has as one of its purposes providing for the welfare and/or protection of animals of any kind.

*Authority* shall mean the local rabies control authority as defined in this section.

*Bee means any stage of the common domestic honeybee, Apis mellifera species.*

*Brand* shall mean a mark made on the skin of any animal which indicates the ownership of the animal; typically used with livestock.

*Cat* shall mean the male and the female of any domesticated member of the feline species of animals.

*Colony means a hive and related equipment and appurtenances including bees, comb, honey, pollen, and brood.*

*Community Cat* shall mean any free-roaming cat, regardless of socialization or sociability, cared for by one or more known or unknown residents of the immediate area.

*Circus* shall mean a commercial variety show featuring animal acts for the public.

*Distance between structures*, where a minimum setback or distance between any enclosure for an animal from a residence is required, shall mean the most direct line distance between the two structures, unless otherwise provided.

*Dog* shall mean the male and the female of any domesticated member of the canine species of animal.

*Domestic animal* shall mean an animal that has been tamed and kept by humans as a work animal, food source, or pet, especially a member of those species that have, through selective breeding, become notably different from their wild ancestors.

*Ear tip (cat)* shall mean a surgical process performed on a cat during neutering as part of the trap-neuter-return process by a licensed veterinarian in which a one-quarter-inch diagonal cut is made to remove the point of a cat's ear, and is preferably, but not exclusively, on the cat's left ear.

*Fish* shall mean any of the cold-blooded animals that extract oxygen from water through the use of gills.

*Fowl* shall include all birds, e.g., chickens, turkeys, pheasants, quail, guineas, geese, ducks, peafowl and other domestic feathered creatures and nondomestic feathered creatures, regardless of age or sex.

*Governmental entity* shall mean an agency or political subdivision of the state or an agency or department of the federal government.

*Harbor* shall mean to feed, provide shelter, or otherwise maintain an animal for 72 hours or more.

*Health statement* shall mean a statement from a veterinarian stating that an animal is healthy, free from signs of infectious or contagious diseases, and up to date on vaccinations. It shall include: the animal's microchip number, the animal identification such as the species, age or date of birth, sex, sterilization status and breed and must be dated within the last 24 months.

*Hive means a structure intended to house a colony.*

*Holding period* shall mean 72 hours starting at the time an animal is impounded, but not including hours that fall on days the shelter is closed to the public.

*Livestock* shall include, regardless of age, sex, or breed, horses and all equine species, including mules, donkeys, and jackasses; cows and all bovine species; sheep and all bovine species; llamas; goats and all caprine species; and pigs and all porcine species.

*Local rabies control authority* shall mean the senior ACO, or an officer he designates to act in his place when he is temporarily unable to act for any reason.

*Marine animal* shall mean any animal, other than a mammal or bird, which lives in a marine environment.

*Neutered* shall mean any animal, male or female, rendered incapable of breeding or being bred, i.e., castration in the male and spaying or ovariectomy in the female.

*Owner* shall mean any person who has purchased or who owns, keeps, maintains, harbors, or has care, custody, control, or management of one or more animals.

*Performing animals* shall mean any spectacle, display, act, or event in which animals perform.

*Pet shop means a for-profit retail establishment or place of business other than a private residence not generally open to the public, an animal shelter, or a facility operated by a nonprofit animal welfare group, where dogs or cats are sold, traded, auctioned, exchanged, bartered or offered for sale to the general public at retail.*

*Poison* shall mean a substance having an inherent harmful property which renders it, when taken into the system, capable of harming or destroying animal life.

*Premise* shall mean a definite portion of real estate or land, together with any appurtenances or buildings.

*Residence* shall mean any place of human habitation at any time, day or night, including, but not limited to, any single- or multi-family dwelling, church, school, convalescent center, or nursing home.

*Restrained* shall mean any animal secured by a leash of some sort or confined within the property limits of its owner.

*Tag* shall mean a vaccination tag attached to a collar as required by this chapter or some other permanent identifying device attached to a collar or to an animal.

*Tattoo* shall mean a permanent mark which is made on the skin of an animal by puncturing the skin and inserting indelible color, and which is used to show ownership and or sterilization.

*Vaccination* shall mean an injection of a rabies vaccine which is approved by the U.S. Department of Agriculture, Veterinary Biologics Division, State Veterinarian and administered by a licensed veterinarian or at an approved antirabies clinic.

*Veterinarian* shall mean any person duly licensed to practice veterinary medicine by the Texas State Board of Veterinary Medicine Examiners.

*Wild animal or wildlife* shall mean any nondomestic creature (mammal, amphibian, reptile or fowl) which is of a species which is wild by nature, which can normally be found in a wild state, and which is not naturally tame or gentle, or which, because of its size, vicious nature, and other characteristics, constitutes a danger to human life or property. Such creatures shall include, but are not limited to, all animals prohibited by the state or federal law and shall include, but are not limited to, the following animals:

- (1) Class mammalia: Order Carnivora, family felidae (such as lions, tigers, jaguars, leopards, and cougars) except commonly accepted domesticated cats and hybrids involving same; family Canidae (such as wolves, coyotes, and foxes) except domesticated dogs and hybrids involving same; family Mustelidae (such as weasels, martins, fishers, skunks, wolverines, mink, and badgers) except ferrets; family Procyonidae (such as raccoons); family Ursidae (such as bears); order Primata (such as monkeys and chimpanzees); and order Chiroptera (such as bats).
- (2) Poisonous reptiles, cobras, and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotalidae, Viperidae); Boonslang, and Kirtland's tree snakes; Gila monsters (Helodermatidae); and crocodiles, alligators, and their allies (order Loricata).
- (3) Brown recluse (*Loxosceles*) and black widow (*Lactrodectus*) spiders.

*Zoological park or zoo* shall mean any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of animals, operated by a person or under the auspices of a governmental entity.

Sec. 5-92. - Animal at large.

- (a) It shall be unlawful for any person who owns, harbors, or otherwise has control over any animal within the city to allow or permit such animal to be at large within the city.
- (b) The prohibition against an animal being at large shall not apply to:
- (1) A cat which has been vaccinated as required by this chapter and which is wearing the required vaccination tags;
  - (2) A cat that can be identified as having an owner or caregiver by collar and tags, microchip, identifying tattoo, or has a left ear tip indicating trap-neuter-return; ~~or~~
  - (3) If the owner or caregiver can provide documentation of the free-roaming cat's sterilization; or
  - (4) A bee kept in compliance with Sec. 5-97.
- (c) An animal shall be considered to be at large if it is not under the control of its owner by either a leash, chain, cord, or other suitable material attached to a collar or harness, or not restrained on the property of the owner by a leash, chain, cord or fence. An animal inside a vehicle parked in a public place shall be considered to be at large unless it is restrained in such a manner that it cannot exit the vehicle of its own volition.
- (d) The ACO for the city may impound any animal observed to be at large, whether the animal is on public or private property. If the ACO observes an animal on property which is owned by a person other than the owner of the animal, and observes the animal return to property of its owner, the ACO may impound the animal or issue a citation for the animal at large.
- (e) Proof that an animal was found at large in violation of this section, together with proof that the defendant was the owner of such animal at the time, shall constitute prima facie evidence that the defendant allowed or permitted the animal to be at large.

Sec. 5-96. - Nuisance animals.

- (a) As used in this article, a nuisance animal shall be defined as any animal other than a bee or bee colony kept pursuant to Section 5-97 which commits any of the following acts listed herein:
- (1) molests or chases pedestrians, passersby, or passing vehicles, including bicycles; ;
  - (2) makes unprovoked attacks on other animals of any kind; ;
  - (3) is repeatedly at large; ;
  - (4) damages private or public property; ;
  - (5) defecates on property not belonging to or under the control of its owner; ;
  - (6) barks, whines, howls, crows, crackles, or makes any noise excessively and continuously, and such noise disturbs a person of ordinary sensibilities; ; or
  - (7) is unconfined when in heat or in estrus.
- (b) As used in this article, a bee colony kept pursuant to Section 5-97 is a nuisance when bees from the colony:
- (1) make unprovoked attacks on people or other animals of any kind; or

(2) substantially interfere with a property owner's reasonable enjoyment of his or her property.

(bc)The keeping of any animal in a manner that endangers the public health, annoys neighbors by the accumulation of animal wastes which cause foul and offensive odors, or poses a hazard to any other animal or human being is considered to be a nuisance under this chapter.

(ed)If the ACO determines that any animal is a nuisance, the ACO may issue an order requiring that the owner meet certain remedial requirements to correct the conduct of the animal. The order shall be given to the owner by personal service or by certified mail, return receipt requested. The owner may file an appeal to this order as provided in article II of this chapter.

(de)Persons residing within 600 feet of a person who harbors an animal, including a bee colony, which they believe to be a nuisance may initiate an action before the board as provided for in section 5-33.

#### Sec 5-97. – ~~Honeybees~~Beekkeeping.

~~No person shall construct, place, or maintain any beehive within 300 feet of any residence other than that of the owner except with the consent of the adult occupants of all such residences.~~

(a) A person who keeps bees shall:

1. Maintain each colony in a healthy state;
2. Maintain the grounds near each hive in a sanitary manner;
3. Ensure that a convenient source of water is available to each colony at all times;  
and
4. Mark each hive with the name and telephone number of the beekeeper.

(b) A person who keeps a colony within 10 feet of the property line of a tract, as measured from the nearest point of a hive to the property line, shall establish and maintain a flyway barrier parallel to the property line. A flyway barrier created under this section must:

1. consist of a solid wall, fence, dense vegetation, or combination of these materials at least six feet high; and
2. extend at least 10 feet beyond the hives on each end of the colony.

(c) No person may keep bees within 150 feet of an institution of higher education, playground, school, or youth center as those terms are defined by Texas Health and Safety Code Section 481.134, as amended, or within 150 feet of the property of an established church, synagogue, mosque, temple, or other established place of religious worship.

(d) A person keeping bees shall immediately replace the queen in a colony that exhibits aggressive characteristics, including stinging or attempting to sting without provocation, or a disposition towards swarming. A person required to replace a queen under this subsection shall select the replacement from bee stock bred for gentleness and non-swarming characteristics.

#### Sec. 5-123.1. - Proper restraint.

- (a) An owner of an animal commits an offense if he fails to restrain the animal at all times in a fenced yard, in an enclosed pen or structure, or by a tether or leash.
- (b) It is a defense to prosecution under subsection (a) that:
- (1) The animal was a dog in an off-leash area;
  - (2) The animal was a dog and was tethered in a manner complying with section 5-123 of this chapter; ~~or~~
  - (3) The animal was an ear-tipped cat; or
  - (4) The animal was a bee kept in compliance with section 5-97 of this chapter.

Sec. 5-131. – Sale of animals in public place.

- (a) It shall be unlawful for any person to sell, trade, barter, lease, rent, give away, or convey the ownership of any animal on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center, or outdoor public place.
- (b) It shall be unlawful for any person to display any animal for a commercial purpose on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center, or outdoor public place.
- (c) This section shall not apply to any tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals or any organization recognized by the animal authority.
- (d) Any animal being conveyed in a manner in violation of this Code shall be subject to seizure and impoundment at the discretion of the authority and subject to applicable codes for disposition of impounded animals.
- (e) A pet shop may only display, sell, trade, deliver, barter, lease, auction, give away, transfer, offer for sale or transfer, or otherwise dispose of dogs or cats that the pet shop has obtained from or displays in cooperation with an animal shelter or an animal welfare group, as defined.
- (f) All pet shops shall maintain records sufficient to document the animal shelter or animal welfare group source of each dog or cat on the premises and make it available upon request to animal care officers, law enforcement, code enforcement officers, or any other city employee charged with enforcing the provisions of this section.

Sec. 5-181. – Fees.

- (a) The city council by resolution or as part of the annual budget shall approve a list of fees to redeem any animal impounded by the city. Such fees may include a fee for capturing the animal and a daily board fee.
- (b) Notwithstanding any other provision in these ordinances, the city manager or his or her designee may reduce, refund, or waive any fee under this chapter.

**Section 2.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 3.** That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Waco, Texas, which shall be a fine of not less than \$1.00 and no more than \$500.00, and each day a violation exists shall be a separate offense.

**Section 4.** That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 5.** That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

**Section 6.** That this ordinance shall take effect upon its passage as provided by the City Charter of the City of Waco.

**Section 7.** That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

**Section 8.** That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

**FIRST READING:** This 7th day of January, 2020.

**SECOND READING:**

\_\_\_\_\_  
Kyle Deaver, Mayor  
City of Waco, Texas

**ATTEST:**

\_\_\_\_\_  
Esmeralda Hudson, City Secretary

**APPROVED AS TO FORM & LEGALITY:**

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Jennifer Richie, City Attorney