

**ORDINANCE O-00X-11**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, AMENDING THE CITY OF BORGER'S CODE OF ORDINANCES, CHAPTER 2, ANIMAL CONTROL; PROVIDING FOR THE ESTABLISHMENT OF COMPREHENSIVE RULES AND REGULATIONS RELATING TO THE CONTROL OF ANIMALS; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Borger, Texas has determined that the current animal control ordinance does not provide the desired level protection of the public's health, safety, and welfare; and,

**WHEREAS**, the City Council desires to adopt comprehensive rules and regulations pertaining to the control of animals thereby increasing the level of protection of the public's health, safety, and welfare for humans and animals alike; and,

**WHEREAS**, the City Council has discussed and considered such comprehensive rules and regulations and has determined that it is in the best interest of the City to amend the Code of Ordinances by replacing in its entirety Chapter 2, Animal Control, with the following rules and regulations relating to the control of animals.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS:**

**SECTION 1.**

**THAT**, the facts and matters set forth in the preamble of this Ordinance is hereby found to be true and correct.

**THAT**, the Code of Ordinances of the City of Borger, Texas is hereby amended by repealing in its entirety, Chapter 2, Animal Control, and replacing said Chapter with the following Articles relating to the control of animals, which shall read:

## Chapter 2 Animal Control

### Article 2.01 - Administrative Provisions

#### Sec. 2.02.001 Purpose.

It is the intent and purpose of this Ordinance to provide a safe and healthy environment within the City for both people and animals with the recognition that while persons may own and keep animals within the City, the conduct of those animals should be controlled for public safety and the conditions in which they are kept should be appropriate so as to protect the animals and avoid infringement on the peace and enjoyment of surrounding property, homes, and property owners.

#### Sec. 2.01.002 Definitions.

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

*Abuse.* To mistreat through intent to abuse, or the knowing or reckless neglect of any animal in a manner that causes or is likely to cause physical injury or significant physical stress to the animal.

*Adoptable.* An animal that exhibits sound aggression-free and inordinate temperaments, is in good health, copes medically and behaviorally with the shelter environment, and is old enough for vaccination protection but will typically be under the age of six years.

*Adoption.* The acquisition of a dog, cat or other animal from the City of Borger Animal Shelter in accord with the provisions of this chapter.

*Adult dog/cat.* Any dog or cat that is one (1) year or older.

*Altered or sterilized.* See spayed or neutered.

*Animal.* Any living creature other than hominids. Unless specifically 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 Control Authority.* The Chief of Police of the City of Borger and, as necessary to enforce the provisions of this ordinance and the laws of the State of Texas pertaining to animal control and protection, those Animal Control Officers, Animal Control

Technicians, Animal Control Veterinary Technicians, peace officers and any such other persons as may be duly designated by the Chief of Police of the City of Borger.

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*Animal shelter.* The City of Borger Animal Shelter and any facility designated and operated by the City of Borger, Texas for the purpose of keeping or impounding stray, homeless, abandoned, unwanted, neglected, abused or seized animals and caring for all animals held under the authority of this ordinance.

*Animal welfare organization.* An association, organization or non-profit corporation which has as one of its purposes the humane care for and protection of animals of any kind.

*Bite.* Puncturing or tearing of human or animal skin by an animal's teeth.

*Bodily injury.* Any injury other than "serious bodily injury," including but not limited to physical pain, illness, or any impairment of physical condition.

*Breeder.* A facility, kennel or residence in which one or more specific breeds of dogs or cats are bred and raised for sale on a routine basis.

*Cat.* The male and female of any domesticated member of the Family Felidae (felis catus).

*Cattery.* See kennel or cattery.

*City.* The City of Borger, Texas.

*City limits.* The corporate city limits of the City of Borger, Texas.

*Commercial animal enterprise.* As permitted by the zoning regulations of the city, an activity or venture, with a commercial purpose, where animals are raised, trained, boarded, harbored, maintained, groomed, displayed and/or offered for sale and shall include, but is not limited to, kennels, pet shops, grooming shops, animal clinics, animal hospitals, animal research centers, zoological parks, petting zoos, livestock auctions, guard dog or obedience training centers, horse stables or riding facilities, farms or ranches, or performing animal exhibitions as defined in this ordinance.

*Commercial purpose.* Any display, event or activity the intended result of which is the sale, trade, barter, exchange or other transfer of possession or ownership of a live animal, whether for monetary or other pecuniary gain or not.

*Companion animal.* See pet.

*County.* Hutchinson County, Texas as designated by its geographic boundaries.

*Cruel treatment.* Any treatment to any animal in violation of this chapter, the Texas Penal Code or the laws of the United States.

*Currently vaccinated.* Vaccinated for rabies and satisfying the following criteria:

1. The animal must have been at least four (4) months of age at the time of the vaccination;
2. At least thirty (30) days have elapsed since the initial vaccination;
3. Not more ~~time than the then current interval as prescribed by rule of the Texas Board of Health or its successor agency~~, must have elapsed since the most recent rabies vaccination.

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*Dangerous dog.* A dog that:

1. Makes an unprovoked attack on a person or another dog that causes bodily injury and that 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
2. 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.* An animal of a species, other than a common domestic species, that poses a potential physical or disease threat to the public regardless of state and duration of captivity, including but not limited to the following:

1. Class Reptilia: Family Helodermatidae (venomous lizards); Family Viperidae (rattlesnakes, copperheads, cotton mouths, other pit vipers and true vipers); Family Elapidae (coral snakes, cobras, mambas and other Elapid); the following listed species of Family Colubridae – *Dispholidus typos* (Bloom slang), *Hydrodynastes gigas* (water cobra), *Boiga* (mangrove snake) and *Thelotornis* (African twig snake) only; Order Phidia, Family Doidae (racers, boas, water snakes and pythons) and Order Crocodilia (crocodiles, alligators, caimans and gavials);
2. Class Aves: Order Falconiforms (such as hawks, eagles and vultures); Subdivision Ratitae (such as rheas, and cassowaines); and Order Sting forms (such as owls);
3. Class Mammalia: Order Carnivora, Family Felidae (such as lions, cheetahs, bobcats, lynxes, servals, caracals, ocelots, margays, tigers, jaguars, binturongs, leopards and cougars), except commonly accepted domesticated

cats; Family Canidae (such as wolves, dingoes, hyenas, coyotes, jackals or hybrids thereof), except domesticated dogs; Family Mustelidae (such as weasels, skunks, martins, mink and badgers), except ferrets; Family Procyonidae (raccoons); Family Ursidae (such as bears); Order Marsupialia (such as kangaroos and common opossums); Order Edentata (such as sloths, anteaters and armadillos); Order Proboscidae (elephants); Order Primata (such as monkeys, chimpanzees, orangutans, and gorillas); and Order Ungulata (such as deer, bison and camels except where harbored on property which is zoned "EA" for Estate and Agricultural use and is at least five (5) acres in area); and

4. Other dangerous animals not listed but hereafter determined by the Animal Control Authority, or court of competent jurisdiction to constitute a threat to public health and or safety.

*Destroy.* The taking of an animal's life in an emergency situation where necessary to prevent attack, to protect against serious bodily injury, to prevent the destruction of another animal, or to end the prolonged suffering of a severely injured animal.

*Dog.* Any male or female domesticated member of the Family Canidae but specifically excluding a wolf, jackal, coyote, fox or other dangerous wild animal of this family or hybrid thereof.

*Domestic animal.* Any animal normally adapted to live in intimate association with humans, or for the advantage of humans. It includes, but is not limited to, the following: dogs, cats, livestock, fowl or other tame or domesticated animal of or pertaining to the family or household which can be vaccinated against rabies with an approved rabies vaccine.

*Estray.* When used in this ordinance, the term "estrays" shall have the meaning assigned by Chapter 142 of the Texas Agricultural Code as it exists on the date of adoption of this ordinance or as it may hereafter be amended and includes stray livestock, stray exotic livestock or stray exotic fowl.

*Estrus.* A regular period of sexual excitement in many female mammals, during which the animal seeks to mate.

*Exotic animal.* Any animal, reptile, fish or bird born, or whose natural habitat, is considered to be outside the continental United States, and specifically including but not limited to those animals defined by the Texas Department of Parks and Wildlife as exotic.

*Fowl.* Birds commonly considered poultry and including, but not limited to chickens, turkeys, pheasant, quail, geese, guinea, peafowl, ducks, ostriches, emus, or similar feathered animals regardless of age, sex or breed. For purposes of this ordinance, the term "fowl" shall not include canaries, parakeets, parrots, cockatiels or other birds commonly maintained in households within cages.

*Gender.* A word importing only the masculine or the feminine gender shall extend and be applied to and include the opposite gender and the neuter.

*Guard or attack dog.* Any dog professionally trained for the purpose of protecting persons or property by attacking or threatening to attack any person found within the area patrolled by the dog, and that is either securely enclosed within that area at all times or under continuous control of a trained handler. Dogs employed by a governmental agency or the military are excluded.

*Harbor.* Any of the following acts shall give rise to a rebuttable presumption that an animal is being harbored by a person:

1. To provide, shelter, food and/or water for an animal on the provider's property for a period of three (3) days or more;
2. To provide encouragement in any form to an animal to remain on, live at, or frequently visit the property of a person for a period of three (3) days or more; or
3. To refuse the Animal Control Authority access to property owned or controlled by the person for the purpose of seizing an animal.
4. A presumption that a person is harboring an animal may be rebutted by evidence that the person reported the animal to the Animal Control Authority for removal or by overt act of the person to remove the animal from the person's property.

*Herding dog or working animal.* An animal specifically trained or inherently designed to assist in maintaining and working livestock, or providing assistance to any person with a disability, or providing a service to a governmental agency or private rescue and tracking organization. This does not include guard dogs for personal property.

*Horse lot.* The area used exclusively for quartering horses (the term "horses" shall include all equine animals) and containing at least 10,000 square feet for the first one to four horses and 2,000 square feet for each horse thereafter with a limit of eight horses per acre.

*Humanely euthanize.* To cause the death of an animal by a humane method which:

1. Rapidly produces unconsciousness and death without visible evidence of pain or distress; or
2. Utilizes anesthesia produced by an agent that causes painless loss of consciousness, and death following such loss of consciousness.

*Hutch.* Any detached accessory building or shelter used for the purpose of housing fowl or rabbits.

*Hybrid.* The product of mating two different species of animals regardless of the number of generations born since the original mating.

*Inhabited building.* Any structure where humans either reside or periodically work, play or assemble, save and except structures occupied by the animal owner, his/her immediate family, employees or people under his/her direct control, but not excepting rental structures occupied by bona fide tenants.

*Inoculated.*

1. A dog that is injected on an annual basis for parvo and distemper at a minimum; or
2. A cat that is injected on an annual basis to prevent infectious feline diseases, for panleukopenia, vira rhino tracheitis, and calcivirus at a minimum.

*Intact.* A dog or a cat that has not been spayed or neutered.

*Isolation.* The separation of an animal exposed or potentially exposed to rabies.

*Kennel or cattery.* Any premises where any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats or other animals; and/ or a facility for keeping more than six (6) animals of the same species which is located within the city limits of the City of Borger on property zoned to permit such use as provided in the City's comprehensive zoning ordinance.

*Litter.* All of the offspring of one animal at one birth.

*Livestock.* Domestic animals including horses, mules, donkeys, burros, cattle, goats, sheep, emus, ostriches, and any member of the Order Ungulata (such as antelope, deer, bison and camels) regardless of age, sex, size or breed, or any crossbreeding of such species, or any domestic animal raised for business or commercial purposes or animals commonly associated with farm and ranch enterprises. Fowl, except for emus and ostriches, and exotic animals are not included in the definition of livestock.

*Local Rabies Control Authority (LRCA).* The Chief of Police of the City of Borger and, as necessary to enforce the provisions of this ordinance and applicable state law pertaining to rabies control, those Animal Control Officers, Animal Control Technicians, Animal Control Veterinary Technicians, peace officers or other personnel duly designated by the Chief of Police of the City of Borger.

*Low risk animal.* A warm blooded mammal that has a low risk of carrying the rabies disease as determined by the Texas Department of State Health Services and includes

gerbils, guinea pigs, all rodents and rabbits, shrews, prairie dogs, beavers, gophers, nutria, squirrels, hamsters, opossums, and armadillos.

*Microchip.* An identification chip implanted under the skin of an animal for the purpose of identifying its owner.

*Neglect.* To disregard, ignore or overlook the care, health and well-being of an animal under a person's care and control whether that person is the owner or not. The term "neglect" shall include, but is not limited to, failure to provide adequate food, water or other substance, or failure to ensure that the animal has sufficient shelter to prevent exposure to extreme environmental conditions, or any act which a reasonable person would conclude placed the animal's health and safety at risk.

*Observation period.* The ten (10) day period following a bite incident during which the biting animal's health status must be monitored. The ten (10) day observation period commences with the day of the bite incident and concludes on the tenth consecutive day following that date.

*Owner.* Any person, partnership, corporation, association, or legal entity that harbors; shelters; maintains; controls (physically or orally); manages; displays; possesses; has care, custody, control, shared possession of or a property right in an animal; or that provides premises to which the animal returns for food, shelter or care for a period of three (3) or more consecutive days. There may be more than one person or legal entity responsible as an owner for an animal.

*Pen/Lot.* A dedicated area or space containing 10,000 square feet for one to four head of livestock. An additional 2,000 square feet of area or space shall be provided for each head of livestock thereafter with a limit of eight livestock per acre.

*Performing animal exhibition.* Any display, act or event, other than circuses or rodeos, in which animals are displayed, shown, exhibited and/or perform tricks, feats, or other exhibitions of training. The term shall include, but is not limited to, dog shows, cat shows, animal exhibitions of any animal, pony rides, commercial photographic events, and educational or informative displays or exhibitions, regardless of whether sponsored or facilitated by a not for profit entity or by a for-profit entity.

*Permit.* An official document on the form prescribed and signed by the Animal Control Authority, or his designated agent or representative, allowing certain activities or other events involving animals and specifying the commencement date; the expiration date; and the terms and conditions of the conduct of the permitted activity or event. Permits shall be valid for periods of time as provided in this ordinance and as evidenced on the face of the permit. See also Temporary permit.

*Person.* Any individual, firm, association, syndicate, partnership, corporation or other entity.

*Pet or companion animal.* Any animal kept for pleasure rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent on people for food and shelter. The term specifically includes, but is not limited to, domesticated dogs, domesticated cats, canaries, parakeets, parrots, cockatiels and other birds commonly maintained in households in cages, hamsters, gerbils, guinea pigs, rabbits, nutria, and vietnamese pot belly or miniature pigs.

*Pet shop.* Any person or establishment, whether operated separately or in connection with another business enterprise (except for a licensed kennel), that offers for sale small animals such as dogs, cats, birds, fish, ferrets, and similar animals which are not dangerous wild animals or livestock, and that is located within the city limits of the City of Borger on property zoned to permit such use as provided in the City's Comprehensive Zoning Ordinance.

*Poisonous substance.* A substance having an inherent harmful property which is capable of causing the death of an animal when ingested into the system of the animal.

*Pot belly or miniature pig.* A variety of swine that is not more than eighteen (18) inches in height at the shoulder level when full grown and has short erect ears and a straight tail.

*Prohibited animals.* Any animal, the possession, harboring, keeping or other maintenance of which is prohibited by state or federal law, and including but not limited to, the following species and/or subspecies of the following animals: lions, tigers, ocelots, bobcats, lynx, cougars, leopards, cheetahs, jaguars, hyenas, bears, lesser pandas, ferrets born in natural habitats, binturong, elephants, any member of the Family Suidae (except Vietnamese pot belly pigs or miniature pigs), apes or such other non-domesticated species of animal not indigenous to nor common to Hutchinson County.

*Proof of rabies vaccination.* Documentation from a veterinarian, licensed to practice within one of the 50 states of the United States, verifying that the animal has been vaccinated as prescribed by rule of the Texas Board of Health or its successor agency, with a rabies vaccine licensed for use in that species by the United States Department of Agriculture or the Texas Department of State Health Services.

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*Provocation.* Any purposeful act that causes an animal to bite, scratch, or attack in protection of self, the animal's owner, or the animal's owner's premises. Entrance, in any manner, into a secure enclosure (as defined in this ordinance) or another area where an animal is properly under restraint in compliance with the provisions of this ordinance shall be considered provocation regardless of the reason for such entrance.

*Quarantine.* A period of ten (10) days of strict confinement of an animal, on the order of the Animal Control Authority or by order of the Texas Department of State Health Services or its designee, at the sole expense of the owner of the animal and on the terms specified in this ordinance or otherwise ordered by the appropriate authority, for

observation of the animal to determine the health status of the animal with respect to the rabies virus.

*Rabies.* An acute viral disease of humans and animals, which affects the central nervous system and can be transmitted by an animal bite, saliva, or other contaminated bodily fluids.

*Registration.* The requirement for any animal declared to be a dangerous animal, as provided herein, to be registered annually with the City, for all relevant fees to be paid, and for all such animals to exhibit at all times appropriate registration tag(s).

*Restrain.* To control an animal by physical means so that it remains on the premises of the owner, or when off the owner's premises, by means of a cage, or leash or rope under the direct control of a person of sufficient strength to control the animal.

*Riding school or stable.* Any facility that has available for hire, boarding and or riding instruction, any horse, pony, donkey, mule, or burro; or any facility that regularly buys, sells or trains the above animals, including a racetrack or a trotting track. This definition specifically excludes rodeos.

*Scratch.* A scrape left by the claws or nails of an animal to a human and of sufficient severity to break the skin and draw blood.

*Secure enclosure.* A pen, cage, container, structure or building, or fence of sufficient strength and height to prevent the subject animal(s) from escaping there from. The enclosure must be free of defects, disrepair or any other deficiencies that would give rise to a reasonable conclusion that a dog or other animal would likely be able to escape as determined by the Animal Control Authority. .

*Serious bodily injury.* An injury characterized by severe bite wounds or severe ripping and tearing of muscle and or bodily tissues that would cause a reasonably prudent person to seek treatment from a medical professional or would require hospitalization without regard to whether the person actually sought medical treatment. In addition, it means any form of injury that creates a substantial risk of death; permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ, or that causes any such condition.

*Service personnel.* Any person providing legitimate, authorized service to a property including, but not limited to, public safety personnel; utility technicians; letter carriers, couriers, or delivery personnel, plumbers, electricians, lawn maintenance workers, pest control professionals, or contractors; and others in comparable service professions.

*Sick.* Any animal that appears to be suffering from an infectious, contagious, or communicable disease or that is showing evidence of a physical injury, physical disorder, or traumatic injury or that has an elevated temperature.

*Spay or neuter.* The surgical removal of the reproductive organs of a dog or cat or the use of non-surgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

*Stable.* A barn, pen or any place where any horse, cow, goat or other livestock is fed and watered or kept. *Also see “riding school” and “commercial animal enterprise.”*

*Stray.* An animal for which there is no identifiable owner or harborer and which is found to be running free or at large within the corporate limits of the City.

*Strict Liability.* The legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. Control, ownership, damages, and/or injury are sufficient to hold the owner liable even without proof of specific negligent acts or omissions.

*Swine.* Pigs, hogs, potbellied pigs or any member of the Family Suidae.

*Temporary permit.* An official document on the form prescribed and signed by the Animal Control Authority, or his authorized designees, allowing certain activities or events involving animals and which specifies the commencement date and the date that the activity must cease. A temporary permit, shall not be valid for a period of more than fifteen (15) consecutive days under any circumstances.

*Tether.* To chain, tie, fasten or otherwise secure an animal to a fixed point so that it can move or range within certain restricted limits.

*Tranquilizer.* A drug injected into an animal, either by a gun designed to shoot darts, or administered by hand injection or orally, for the purpose of temporarily immobilizing said animal.

*Unprovoked.* Action by an animal that is not:

1. In response to being tormented, hit, kicked, molested, abused or assaulted by any person;
2. In response to pain or injury; or
3. In protection of itself or its food, kennel or nursing offspring.

*Vaccinated.* An injection with United States Department of Agriculture-approved rabies vaccine administered as prescribed by rule of the Texas Board of Health or its successor agency by a licensed veterinarian.

*Vehicle.* Includes all forms of motor vehicles, bicycles, skateboards, wagons, carts, trailers and any other constructed or manufactured device utilized for carrying and moving property, persons or animals along public right of ways.

**Comment [e1]:** In tort law strict liability has traditionally been applied for damages caused by animals. Because animals are not governed by a conscience and possess great capacity to do mischief if not restrained, those who keep animals have a duty to restrain them. In most jurisdictions the general rule is that keepers of all animals, including domesticated ones, are strictly liable for damage resulting from the trespass of their animals on the property of another. Owners of dogs and cats, however, are not liable for their pets' trespasses, unless the owners have been negligent or unless strict liability is imposed by statute or ordinance.

For purposes of liability for harm other than trespass, the law distinguishes between domesticated and wild animals. The keeper of domesticated animals, which include dogs, cats, cattle, sheep, and horses, is strictly liable for the harm they cause only if the keeper had actual knowledge that the animal had the particular trait or propensity that caused the harm. The trait must be a potentially harmful one, and the harm must correspond to the knowledge. In the case of dogs, however, some jurisdictions have enacted statutes that impose strict liability for dog bites without requiring knowledge of the dog's viciousness.

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*Veterinarian.* A person duly licensed to practice veterinary medicine within the United States. Any veterinarian practicing in the State of Texas must be licensed in the State of Texas.

*Wild animal or wildlife.* Any non-domesticated creature (mammal, amphibian, reptile or fowl) which is of a species that is wild by nature, which is normally found in a wild state, and which is not naturally tame or gentle, or which, because of its size, vicious nature or other characteristics, constitutes a danger to human life or property including, but not limited to, all animals defined herein as prohibited animals or dangerous wild animals.

*Working animal.* See “herding dog.”

*Worming.* The process by which an animal is treated for roundworms, hook worms, and tape worms.

## Sec. 2.02 - Authority

Sec. 2.02.001 ~~Establishment and designation of the Animal Control Authority; the Local Rabies Control Authority; duties and enforcement authority,~~

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- a. The Chief of Police of the City of Borger is hereby designated and established as the Animal Control Authority for the City of Borger.
- b. The Chief of Police of the City of Borger is hereby designated ~~to~~ act as the Local Rabies Control Authority for purposes of enforcement of animal health and animal control laws of the State of the Texas as follows:
  1. Chapter 826 of the Texas Health and Safety Code and the state rules that comprise the minimum standards for rabies control;
  2. The rules adopted by the state under the area rabies quarantine provisions of section 826.045 of the Texas Health and Safety Code; and
  3. The ordinances or rules of the city pertaining to rabies control.
- c. The provisions of this ordinance may be enforced by Animal Control Officers, Animal Control Technicians, Animal Control Veterinary Technicians, peace officers and any such other persons as may be duly designated by the Chief of Police (see “*Animal Control Authority*”). Nothing herein is intended to, nor shall be considered to, preempt or otherwise negate any statutory duty or authority of any federal, state, or other entity or official charged with animal control, animal health issues, stray, impoundment or other animal related issues.

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- d. Persons authorized to enforce the provisions of this ordinance are hereby authorized to issue citations for violations of this ordinance. The power and authority to issue citations shall exist regardless of whether the animal made the subject of the citation has been impounded.
- e. In the exercise of authority to enforce this ordinance, Animal Control Authority personnel shall have the authority to impound animals as provided in this ordinance.
- f. In the exercise of authority to enforce this ordinance, Animal Control Authority personnel shall have the authority to kill or otherwise disable an animal in order to protect themselves, a third person or another animal from attack or threat of imminent injury or to prevent an animal from enduring further pain or suffering as a result of injury or disease. The said officers and duly designated personnel shall also have the authority to tranquilize or trap any animal, fowl, livestock or wildlife in a humane manner.
- g. In the exercise of authority to enforce this ordinance, Animal Control Authority personnel shall have the authority to euthanize an animal under any of the following circumstances:
  - 1. if an impounded animal is suffering from injury, disease or illness without reasonable hope of recovery;
  - 2. if an animal is suspected of having rabies or manifests an apparent disposition to bite or attack a human or other animal and the Animal Control Authority has made reasonable, but unsuccessful efforts to capture the dangerous animal;
  - 3. if an animal has been determined to be a dangerous animal as provided in this ordinance and there is no reason to believe the animal has an owner;
  - 4. if an animal is a wild animal, as defined in this ordinance or by other law, as long as such act does not violate any state or federal law specifically pertaining to such type of wild animal;
  - 5. if a nursing baby animal has been impounded either without the mother or under circumstances where the mother cannot or refuses to provide nutrition to the baby animal and euthanization is necessary to prevent suffering of the baby animal;
  - 6. if an animal's owner executes a consent and authorization, in the form prescribed by the Animal Control Authority, surrendering ownership of and responsibility for the animal and requesting the animal be humanely euthanized by the Animal Control Authority or his duly designated personnel;
  - 7. in accord with the provisions of Section 2.09.006 of this ordinance regarding disposition of unclaimed animals after impoundment.
- h. Nothing herein shall be construed to limit or negate the authority of the Animal Control Authority to transfer ownership of an animal to an animal welfare organization, as defined herein, when, in the sole discretion of the Animal Control

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Authority, circumstances render such transfer appropriate and in the best interest of the animal.

- i. To aid in the efficient administration of this ordinance, the Chief of Police for the City of Borger shall be authorized to adopt administrative policies and operational procedures consistent with the purpose and intent of this ordinance.

Sec. 2.02.002 General offenses; strict liability; presumption of ownership

- a. A person commits an offense if he violates, disobeys, or fails to comply with a term or provision of this ordinance. Unless specifically provided otherwise herein, an offense under this ordinance does not require proof of a culpable mental state. It is the intent of this ordinance to impose “*strict liability*” for violation or failure to comply with the provisions of this ordinance.
- b. For purposes of enforcement and prosecution under this ordinance, a rebuttable presumption of ownership exists with respect to each adult resident of premises upon which an animal that is the subject of a prosecution is kept, maintained, harbored or possessed on the date of the violation alleged.
- c. A person commits an offense if he interferes with, obstructs, or resists Animal Control Authority personnel authorized to enforce this ordinance while such person is in the course of his or her duties hereunder including, but not limited to, the apprehension and impoundment of animals or conducting an investigation of any violation of this ordinance or other applicable state law.
- d. A person commits an offense if he takes or attempts to take from Animal Control Authority personnel authorized to enforce this ordinance, any animal in the control or custody of the officer or other personnel or from any vehicle used by the officer or other personnel to transport animals in the exercise of authority under this ordinance.
- e. A person commits an offense if, with intent to deceive, he knowingly makes to the Animal Control Authority personnel, a false report or statement, either verbal or written, which is material to an investigation of an alleged violation of this ordinance. A false report or statement under this provision shall include, but not be limited to, a report of the occurrence of a violation or incident which the reporting person knows did not occur.

Sec. 2.02.003 Fees.

The City Council shall, from time to time, by resolution adopt fees to be assessed pursuant to the provisions of this ordinance, such fees to include, but are not limited to, the fees for issuance of permits under this ordinance and fees for care and expenses of animals incurred during impoundment at the Animal Shelter. It is the intent of this ordinance that the owner of the animal(s) bear the costs of such animal's care in those circumstances in which care is provided at the Animal Shelter or other appropriate facility. The City shall be authorized to recover, in addition to any fines imposed in a prosecution under this ordinance, all fees and costs incurred by the City for the care and welfare of the animal made the subject of the prosecution. Nothing herein shall be construed to limit or negate the authority of the Animal Control Authority, under appropriate circumstances, to waive redemption fees or expenses where such waiver is in accord with policies and procedures adopted by the Chief of Police.

Sec. 2.02.004 Applicability of zoning regulations.

Nothing in this ordinance shall be considered to negate or supersede any provision of the Comprehensive Zoning Ordinance of the City of Borger. In the event of a conflict between a specific provision of this ordinance and a provision(s) of the Comprehensive Zoning Ordinance, the Comprehensive Zoning Ordinance shall control in all instances.

Sec. 2.02.005 Permits

a. Permits; revocation or denial of permits; appeal process

1. Unless specified as a temporary permit, a permit issued under the provisions of Section 2.03.003 of this ordinance for multiple pets, under Section 2.05 for additional fowl or rabbits, or under Section 2.11 for a commercial animal enterprise, shall be valid for a period of twelve (12) months from the date of issuance. A person desiring to renew a permit shall be required to apply for renewal and all conditions and procedures for original application shall apply to a renewal application including the right of physical inspection of the premises.
2. Temporary permits may be issued by the Animal Control Authority as authorized by this ordinance and shall be valid for the number of days stated thereon not to exceed fifteen (15) consecutive days. No person may apply for more than three (3) temporary permits under this ordinance within a twelve (12) consecutive month period.
3. Any permit issued pursuant to this ordinance may be revoked or denied at any time by the Animal Control Authority for cause including, but not limited to, violations of this ordinance or, in the determination of the Animal Control

**Comment [e2]:** While I have not made any changes under the ordinance on the term of a multiple pet permit; I plan on including in the Resolution which sets the fee that as long as the location, specific pets, or ownership has not changed, subsequent renewals will be at no charge.

Authority, the inability of the permit holder to keep the animals in a healthy or sanitary environment.

- a. Notice of denial of either an annual or temporary permit shall be in writing from the Animal Control Authority to the person who has requested such a permit.
  - b. Notice of the revocation of either an annual or temporary permit shall be in writing from the Animal Control Authority to the permit holder; and
  - c. A notice of revocation or denial shall set forth, in general terms, the deficiencies, violations or other conditions considered in the decision to revoke or deny the permit.
4. Persons receiving a notice of revocation or denial of permit shall have the right, within ten (10) days of the date that the notice is postmarked or hand delivered, to appeal, by written notice of appeal, the decision of the Animal Control Authority to the Chief of Police. The Chief of Police shall have ten (10) days from the date of receipt of the written appeal to render a final determination in writing.
5. Any person having their permit revoked may not apply for another permit under this ordinance for a period of one (1) year from the date of revocation.
6. The provisions of this ordinance requiring permits shall not apply to the City of Borger Animal Shelter, Borger High School's agriculture department, or Frank Phillips College's agriculture department.

**Deleted:** City Manager

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#### Sec. 2.02.006 Registration.

Any owner, who harbors an animal requiring registration within the city limits as hereinafter authorized, shall register said animal with the Animal Control Authority and shall be subject to unannounced health and sanitation inspections.

**Deleted:** The cost of any such inspections shall be borne by the registrant and payable to the City of Borger Animal Control Department.

#### Sec. 2.02.007 Penalty.

Any person, partnership, corporation, association or legal entity found to have violated any provision of this ordinance or to have failed to comply with any provision of this ordinance shall, upon conviction, be fined in accordance with Section 1.01.009 of this Code. The imposition of a fine shall be in addition to all other remedies provided in this ordinance. Each day that a violation exists shall constitute a separate offense.

**Article 2.03 - GENERAL REGULATIONS**

Sec. 2.03.001 Running at large.

- a. A person commits an offense if he owns, keeps, harbors or otherwise has control over any animal within the City and allows or permits such animal to run or be at large upon any public highway, street, alley, court, square, park, sidewalk, or any other public or private grounds not owned by the animal’s owner or property within the corporate limits of the City. The terms of this section shall not apply to working or herding animals when they are in the performance of their assigned tasks.
- b. An animal, off the premises of its owner, shall be deemed to be running at large under circumstances where the animal is not, either restrained by means of a leash, chain or other physical restraint of sufficient strength to control the animal while off the premises of its owner, or is not under the immediate control of the owner or other responsible person present with the animal and immediately obedient to that person’s commands. An animal shall be deemed to be running at large, on its owner’s premises, under circumstances where the animal is not confined within a secure enclosure as defined in this ordinance or is not restrained by a leash, rope, chain or other tethering device sufficient to restrain the animal to the owner’s premises. An animal shall be deemed to be running at large if the animal is left unattended in a motor vehicle or the bed of a pickup truck and is not tethered or confined, in compliance with the provisions of this ordinance, so as to prevent the animal from exiting the vehicle of its own volition or posing a risk to passersby.
- c. The Animal Control Authority may impound any animal observed to be at large, whether the animal is on public or private property not owned by the animal’s owner, subject to applicable provisions of the law. If the Animal Control Authority observes an animal to be at large and observes the same animal to return to the property of its owner, the Animal Control Authority may issue a citation to the owner for the **observed violation**. The Animal Control Authority is specifically authorized to enter onto private property, other than a private dwelling, for the purpose of issuance of a citation to the owner of the animal.
- d. In a prosecution under this section, evidence that an animal was found running at large in violation of this ordinance together with proof that the defendant was the owner of such animal at the time of the violation, shall constitute prima facie evidence that the defendant allowed or permitted the animal to be running at large.

**Deleted:** <#>An animal is not considered to be running at large, either on or off the premises of its owner, if the animal is being physically held by the owner or other responsible person of competent strength or is in the immediate presence of the owner or other responsible person and is immediately obedient to that person’s command. An animal is not considered to be running at large if it is confined within a motor vehicle or secured within the confines of the bed of a pickup truck, in compliance with the provisions of this ordinance, in such manner that it cannot exit the vehicle by its own volition.¶

**Deleted:** impound the animal for the observed violation and may

**Deleted:** animal running at large

**Deleted:** impoundment of an animal observed to be or to have been running at large or for the purpose of

**Deleted:** or both

Sec. 2.03.002 Confinement during estrus.

Any female dog or cat, which has not been spayed or neutered and which is in the state of estrus shall be required to be confined during such period of time within a secure enclosure sufficient to prevent any other dog or cat to gain access to the confined animal other than may be intended for planned breeding of the animal. Owners failing to comply with the provisions of this section may be ordered by the Animal Control Authority to place the animal, in the state of estrus, in a boarding kennel, veterinary clinic or hospital or in the Animal Shelter for the duration of estrus. All expenses incurred as a result of such confinement shall be the sole responsibility of the owner. Failure to comply with an order for removal of an animal pursuant to this section shall be a violation of this ordinance and such dog or cat shall be subject to impoundment.

Sec. 2.03.003 Maximum number of pets; multiple pet permits.

- a. Except as specifically authorized herein, a person ~~is in violation of this ordinance~~ if he owns or harbors, on the premises of a single residence within the City, more than four (4) pets or companion animals, as defined herein, in any combination. A person commits an offense if he owns or harbors, on the premises of a single residence within the City, in addition to the permissible number of pets or companion animals, more than one (1) litter of pets or companion animals at any given time.
- b. It is an exception to prosecution under this section if the owner has been issued and possesses a valid ~~multiple pet permit, as hereinafter described in this section,~~
- c. A person desiring to keep more than four (4) pets or companion animals in any combination on the premises of a single residence shall apply to the Animal Control Authority for a multiple pet permit.
- d. The issuance of a multiple pet permit shall be within the discretion of the Animal Control Authority and, under no circumstances, shall a permit be issued for the keeping on the premises of a single residence within the City, of more than eight (8) pets or companion animals in any combination. Under no circumstances shall a permit be issued for the keeping, on the premises of a single residence within the City, of more than three (3) litters of pets or companion animals at any given time.
- e. ~~Nothing herein shall be construed to require the Animal Control Authority to issue a multiple pet permit and the discretion for issuance of such permit shall rest solely with the Animal Control Authority.~~ The Animal Control Authority shall be authorized to require the following in connection with the application for a multiple pet permit;

**Deleted:** commits an offense

**Deleted:** issued by the Animal Control Authority, authorizing the owner to keep or harbor pets or companion animals in numbers greater than provided in subsection (a) above and the owner has not exceeded the permitted number of animals there under

**Deleted:** ; however, nothing herein shall be construed to require the Animal Control Authority to issue a multiple pet permit and the discretion for issuance of such permit shall rest solely with the Animal Control Authority.

1. the applicant must provide the complete address of the residence for which the multiple pet permit is made;
2. the applicant must provide the Animal Control Authority with full information concerning the breed, gender and number of animals requested to be kept on the premises of the single residence;
3. the applicant, or any member of the applicant's household, must not have been charged with any animal control violation in the twelve-month period immediately preceding the date of the application;
4. the applicant must permit the Animal Control Authority, upon reasonable notice, full access to the residence and premises for the purpose of physical inspection of the premises;
5. the Animal Control Authority shall have the right to interview occupants of all immediately adjacent properties in connection with the request for issuance of a multi-pet permit;
6. the premises must meet, both upon initial inspection and upon any subsequent inspection, the following minimum criteria:
  - a. facilities shall be of sufficient size as to allow each animal to move about freely. Size of the facility shall be in proportion to the size of each individual animal's height and weight;
  - b. adequate food and water must be provided so that all animals kept shall be maintained in good health and free of malnutrition and or dehydration;
  - c. the premises shall be kept in a sanitary condition and reasonably free of animal waste, parasites, insects, and flies that could be harmful to the animal's health and or to the health of the general public;
  - d. the animals and the facility must be kept free of odor or stench so as to avoid offense to a person of ordinary sensibilities;
  - e. the animals must be maintained in a manner that does not pose a danger to the health of the animals themselves or adjacent animals;
  - f. the animals must not cause noise that is offensive or disturbing to a person of ordinary sensibilities on adjoining or adjacent premises; and
  - g. all animals must be duly vaccinated and exhibiting vaccination tags.
- f. Multiple pet permits shall be valid for a period of twelve (12) months from the date of issuance and shall be maintained and displayed to the Animal Control

Authority or other officer upon request. Each application for renewal of a multiple pet permit shall be made in accord with the provisions of subsection (e) above.

- g. Multiple pet permits are issued to specific owners, ~~for specific~~ animals, and for the specific premises identified therein. An application for a new multiple pet permit will be required if:
  - 1. the original permit holder moves to a new residence within the City and proposes to move to that new residence more than four (4) pets or companion animals or combination thereof, or more than one (1) litter of pets or companion animals; or
  - 2. ownership of the permitted premises changes and the new property owners propose to keep or maintain on the property more than four (4) pets or companion animals or a combination thereof, or more than one (1) litter of pets or companion animals at the new residence.
- h. A multiple pet permit is subject to revocation by the Animal Control Authority for cause, including but not limited to a violation by the permit holder of provisions of this ordinance, or failure of the premises upon inspection to meet the minimum criteria established herein for animal and public health and safety. Appeals from the denial or revocation of a permit shall be in accord with the provisions of Section 2.02.005 of this ordinance.

Deleted: of

Sec. 2.03.004 ~~Noise violations.~~

Comment [e3]: The following was moved from the "Live Stock" Section. Seems like it is more appropriate here!

A person commits an offense if he keeps, harbors, possesses, or otherwise maintains an animal or animals that bark, whine, howl, crow, cackle or makes any noise excessively and continuously and such noise is such as to disturb a reasonable person of ordinary sensibilities.

It is a defense to prosecution under this section that the owner of the animal eliminates the noise violation within twenty-four (24) hours of the issuance of a citation for the violation or receipt of notice of the violation and no noise violation occurs for a period of fifteen (15) days from the date of the issuance of the citation.

Sec. 2.03.005 Animal nuisances.

- a. The following shall constitute nuisances subject to the issuance of a corrective notice by the Animal Control Authority:

1. an animal which is determined to be running at large three (3) or more times within a twelve (12) consecutive month period;
  2. an animal which, without provocation, attacks another animal of any kind regardless of whether injury is inflicted on the other animal;
  3. an animal which damages, soils or defiles public or private property other than property belonging to or under the control of the animal's owner;
  4. an animal which produces offensive odors or unsanitary conditions sufficient to annoy a reasonable person of ordinary sensibilities living in the vicinity; or
  5. an animal which chases pedestrians, passersby or passing vehicles, including bicycles.
- b. If the Animal Control Authority determines that a nuisance, as provided above, exists, the Animal Control Authority may issue to the owner of the animal a notice for correction or abatement providing reasonable requirements to correct the conduct of the animal or the circumstances or situation created by the animal and a reasonable time period for correction or abatement. The notice for correction shall be on a form prescribed by the Animal Control Authority, which may be in the form of a warning citation, and may be served upon the owner by personal service or by certified mail, return receipt requested, with duplicate mailing by regular mail. In the event the owner of the animal refuses the notice for correction forwarded by certified mail and the notice for correction forwarded by regular mail is not returned by the United States Postal Service, it shall be presumed that the owner of the animal received the notice for correction.
- c. The owner of the animal made the subject of a notice for correction may, within ten (10) days of service of the order, file with the Animal Control Authority a written appeal of the order clearly stating the reasons for the appeal. In the event no appeal is timely filed, an order for correction will be deemed final.

Sec. 2.03.006 Failure to abate animal nuisance.

A person commits an offense if he fails to comply, within the time prescribed, with the terms of a final notice for correction or abatement of animal nuisance issued pursuant to the provisions of this Section. Upon failure by the owner to abate the animal nuisance, the Animal Control Authority may issue a citation or file a formal complaint in Municipal Court.

Sec. 2.03.007 Animals held pending complaint.

In the event an animal has been properly impounded pursuant to this ordinance for a violation of the ordinance and a complaint is pending in the Municipal Court arising from that violation, the Municipal Judge may order that the animal remain impounded pending disposition of the Municipal Court case. In the event the owner of the animal is found guilty of the violation for which the animal was impounded, the Municipal Judge may, in addition to fines and court costs, assess all impoundment fees against the owner of the animal.

**Article 2.04 - Wild animals, wildlife, or dangerous**

**wild animals; prohibited animals.**

Sec. 2.04.001 Wild animals, wildlife, or dangerous wild animals

- a. A person commits an offense if he owns, harbors, possesses or otherwise has care, custody or control of a wild animal or wildlife or a dangerous wild animal (as defined in this ordinance) within the City except as specifically authorized herein.
- b. A person commits an offense if he transports, conveys, imports or otherwise delivers or brings into the City a wild animal or wildlife or dangerous wild animal except as specifically authorized herein.
- c. It is an exception to this section if the wild animal, wildlife or dangerous animal is within or maintained by a permitted zoological park, performing animal exhibition, circus or other duly permitted commercial animal enterprise or if the wild animal, wildlife or dangerous wild animal is exhibited or displayed at a primary or secondary school, college or university campus or facility of a governmental entity. It is an exception to this section if the person holds a valid certificate of registration issued by an animal registration agency as provided by Section 822.103 of the Texas Health & Safety Code for a dangerous wild animal.
- d. It is a defense to prosecution under this section that the animal possessed or harbored within the City is an infant or injured animal which is not capable of surviving on its own and is kept within the City for only such reasonable time as is necessary to permit the transfer of the animal to an appropriate wildlife rehabilitator or back to the wild.

Sec. 2.04.002 Prohibited.

A person commits an offense if he owns, harbors, possesses, or otherwise has care, custody or control of a prohibited animal (as defined in this ordinance) within the City.

### **Article 2.05 - Fowl and rabbits**

#### **Sec 2.05.001 Fowl**

- a. A person commits an offense if he keeps; harbors or maintains on the premises of a single residence within the City more than four (4) fowl and one litter of fowl at any one time. It is an exception to prosecution under this section that the owner has been issued and possesses a valid permit issued by the Animal Control Authority under the provisions of Section 2.03.003 authorizing the keeping of fowl in excess of the limits of this section and the owner has not exceeded the permissible number of fowl thereunder. It is an exception to prosecution that the owner of the fowl and the subject premises meet the requirements of subsection (c) below. Fowl shall be kept within pens, coops or hutches which meet the requirements of this ordinance and are maintained in compliance with the provisions of this ordinance. A fenced yard shall not qualify as a pen, coop, or hutch for purposes of this section.
- b. All pens, coops, or hutches for the keeping of fowl shall be maintained a minimum of 100 feet from any residence or commercial building, excluding the residence or commercial building of the person keeping or harboring the fowl, except as specifically provided herein. If the fowl kept are pigeons, registered with a recognized association of pigeon fanciers and kept for purposes of competition, the enclosures for such pigeons may be located no less than fifty (50) feet from any residence or commercial building, excluding the residence or commercial building of the person keeping or harboring the pigeons.
- c. Within a district classified by the Comprehensive Zoning Ordinance as “EA – Estate and Agricultural”, a person may keep and harbor, without the necessity of a multiple pet permit, up to 150 fowl, including litters of fowl, at any one time.

#### **Sec. 2.05.002 Rabbits**

- a. A person commits an offense if he keeps, harbors, or maintains on the premises of a single residence within the City more than four (4) rabbits and one litter of rabbits at any one time. It is an exception to prosecution under this section that the owner has been issued and possesses a valid permit issued by the Animal Control Authority under the provisions of Section 2.03.003 authorizing the keeping of rabbits in excess of the limits of this section and the owner has not exceeded the permissible number of rabbits there under. It is an exception to

prosecution that the owner of the rabbits and the subject premises meet the requirements of subsection (d) below.

- b. Rabbits shall be kept within pens, coops, or hutches which meet the requirements of this ordinance. A fenced yard shall not qualify as a pen, coop or hutch for purposes of compliance with this subsection.
- c. All pens, coops or hutches for the keeping of more than four (4) rabbits shall be maintained a minimum of 100 feet from any residence or commercial building, excluding the residence or commercial building of the person keeping or harboring the rabbits.
- d. Within a district classified by the Comprehensive Zoning Ordinance as “EA – Estate and Agricultural”, a person may keep and harbor, without the necessity of a multiple pet permit, up to 150 rabbits, including litters of rabbits, at any one time.

#### **Article 2.06 - Livestock**

##### **Sec. 2.06.001 Compliance with this article.**

No person shall keep livestock of any kind within the city limits except in accord with the provisions of this article.

##### **Sec. 2.06.002 Other than horses and mules.**

- a. A person commits an offense if he keeps, harbors, possesses or maintains livestock, other than horses and mules as provided herein, within the City on property in a district which is zoned other than “EA – Estate and Agricultural; LI – Light Industrial; or HI – Heavy Industrial” under the Comprehensive Zoning Ordinance.
- b. The following are excepted from application of this section provided their operations are conducted in accord with applicable zoning ordinances and applicable state law and regulations: animal slaughterhouses; animal processing plants; animal rendering plants; livestock auctions; livestock shows or events; rodeos; livestock related activities or businesses; and animal shelters run by governmental entities or private animal welfare organizations.

##### **Sec. 2.06.003 Maximum number of livestock.**

- a. A dedicated area or space containing 10,000 square feet for one to four head of livestock. An additional 2,000 square feet of area or space shall be provided for each head of livestock thereafter.
- b. The area used exclusively for quartering horses (the term “horses” shall include all equine animals) and containing at least 10,000 square feet for the first one to four horses and 2,000 square feet for each horse thereafter with a limit of eight horses per acre.

Sec. 2.06.004 Deer, bison, and camels.

A person commits an offense if he keeps, fences, stables, pastures or otherwise keeps livestock of the Order Ungulata (including deer, bison and camels) on a tract or parcel of land of less than five (5) acres.

Sec. 2.06.005 Spacing from occupied structures and residential zoning districts.

- a. A person commits an offense if he stables, stalls or pens livestock within one hundred (100) feet of an occupied building or structure other than a building or structure occupied or controlled by the owner of the livestock. It is a defense to prosecution for violation of this section that the occupied building or structure of a person other than the owner of the livestock was built or erected at or after the time at which the livestock was already kept, fenced, stabled or pastured on the property of the owner of the livestock.
- b. It is an exception to applicability of this subsection that the owner of the livestock had erected and existing on the owner’s property a stable, stall, pen or other enclosure for livestock which was, on the effective date of this ordinance, situated within one hundred (100) feet of an occupied building or structure other than a building or structure occupied or controlled by the owner of the livestock. Nothing herein, however, shall be construed to except the said existing stable, stall, pen or other enclosure from all other requirements of this ordinance.
- c. A person commits an offense if he stables, stalls or pens livestock within two hundred fifty (250) feet of a property line of the nearest residence in a residential zoned district and the pen/lot contains five (5) or more acres in accordance with Chapter 14, Zoning. It is a defense to prosecution for violation of this section that the residence of a person other than the owner of the livestock was built or erected at or after the time at which the livestock was already kept, fenced, stabled or pastured on the property of the owner of the livestock.

- d. It is an exception to applicability of this subsection that the owner of the livestock had erected and existing on the owner's property a stable, stall, pen or other enclosure for livestock which was, on the effective date of this ordinance, situated within one hundred (100) feet of an occupied building or structure other than a building or structure occupied or controlled by the owner of the livestock. Nothing herein, however, shall be construed to except the said existing stable, stall, pen or other enclosure from all other requirements of this ordinance.
- e. The keeping of horses and mules is specifically authorized to be kept, harbored, possessed or maintained on property within the City zoned "EA – Estate and Agricultural; LI – Light Industrial; or HI – Heavy Industrial under the following terms and conditions:
  - 1. on any tract or parcel of land of five (5) acres or more, a person may maintain no more than two (2) horses or mules (or combination thereof) for the first fenced acre of such tract and no more than one (1) horse or mule for each additional fenced acre;
  - 2. pasture fencing provided for horses and mules must be a minimum of five (5) feet in height at its lowest point and shall not extend into the front yard between the main building structure and the street or street right of way; and
  - 3. horses and mules kept on property shall be provided with a minimum of a three-sided roofed shelter meeting the sanitation requirements of this ordinance, all applicable zoning requirements, and providing adequate protection for the animal(s) from the elements.

Sec. 2.06.006 Honeybees.

A person commits an offense if he constructs, places, or maintains a beehive within three hundred (300) feet of any residence other than his own. It is a defense to prosecution under this section that the person who placed or maintained the beehive within three hundred (300) feet of the residence(s) of other persons obtains the written consent of the occupants of all such residences.

Sec. 2.06.007 Swine and pigs.

A person commits an offense if he keeps, harbors, possesses or maintains swine, pigs or any member of the Family Suidae within the City, except Vietnamese pot belly or miniature pigs.

**Article 2.07 – Animal Protection**

Sec. 2.07.001 Animals in motor vehicles.

- a. A person commits an offense if he intentionally, knowingly, recklessly or with criminal negligence leaves an animal unattended in any standing or parked vehicle in such a way as to endanger the animal’s physical health, safety or immediate welfare. In the event that a person is found guilty of this offense, the Municipal Court shall, in addition to any fine and court costs assessed, assess any and all fees and expenses incurred pursuant to the provisions of subsection (b) below.
- b. In the event that an animal is left unattended in any standing or parked vehicle in such a way as to endanger the animal’s physical health, safety or immediate welfare, an animal control officer or police officer shall make a reasonable attempt to locate the owner or person in control of the vehicle. In the event that the owner of the vehicle cannot be located after reasonable attempt, an animal control officer or police officer is authorized to use reasonable force and measures to remove the animal from the vehicle to secure the animal’s physical health and safety. An animal removed from a vehicle under these circumstances shall be taken to the City of Borger Animal Shelter, or to a veterinarian if the animal is determined to be in physical distress, and a written notice shall be attached to the vehicle by the animal control officer or police officer advising that of the telephone number and address of the location from which the animal may be claimed. The City of Borger shall have no responsibility for any damage sustained to a vehicle in the course of securing the safety of an animal under this section.
- c. A person commits an offense if he intentionally, knowingly, recklessly or with criminal negligence transports an animal in a motor vehicle, trailer or other conveyance, in a cruel, inhumane or unsafe manner or fails to effectively and humanely restrain the animal so as to prevent the animal from jumping from or being thrown from the vehicle, trailer or other conveyance during its normal operation.

Sec. 2.07.002 Tethering of animals.

A person commits an offense if he tethers, chains or otherwise secures an animal by or under any of the following methods or circumstances:

- 1. to tether an animal in such a way that it is capable of moving within 15 feet of any public right of way, park, or other public land, including sidewalks, or within five (5) feet of any privately or commercially owned property line when such tether or line is stretched to its full length;

**Deleted:** Sec. 2.06.008 Noise violations.¶

¶ A person commits an offense if he keeps, harbors, possesses, or otherwise maintains an animal or animals that bark, whine, howl, crow, cackle or makes any noise excessively and continuously and such noise is such as to disturb a reasonable person of ordinary sensibilities. ¶

¶ It is a defense to prosecution under this section that the owner of the animal eliminates the noise violation within twenty-four (24) hours of the issuance of a citation for the violation or receipt of notice of the violation and no noise violation occurs for a period of fifteen (15) days from the date of the issuance of the citation. ¶

¶ Sec. 2.06.009 . Failure to abate animal nuisance.¶

¶ A person commits an offense if he fails to comply, within the time prescribed, with the terms of a final order for correction or abatement of animal nuisance issued pursuant to the provisions of Section 2.06.010 of this ordinance. Each day that an animal nuisance continues after a final order for correction or abatement shall constitute a separate offense. ¶

¶ Sec. 2.06.010 Animal nuisances.¶

¶ <#>The following shall constitute nuisances subject to the issuance of corrective orders by the Animal Control Authority:¶

¶ <#>an animal which is determined to be running at large three (3) or more times within a twelve (12) consecutive month period;¶

¶ <#>an animal which, without provocation, attacks another animal of any kind regardless of whether injury is inflicted on the other animal;¶

¶ <#>an animal which damages, soils or defiles public or private property other than property belonging to or under the control of the animal’s owner;¶

¶ <#>an animal which produces offensive odors or unsanitary conditions sufficient to annoy a reasonable person of ordinary sensibilities living in the vicinity; or¶

¶ <#>an animal which chases pedestrians, passersby or passing vehicles, including bicycles.¶

¶ <#>If the Animal Control Authority determines that a nuisance, as provided above, exists, the Animal Control Authority may issue to the owner of the animal an order for correction or abatement providing reasonable requirements to correct the conduct of the animal or the circumstances or situation created by the animal and a reasonable time period for correction or abatement. The order for correction shall be on a form prescribed by the Animal Control Authority, which may be in the form of a warning citation, and may be served upon the owner by personal service or by certified mail, return receipt requested with duplicate mailing by regular mail. In the event the owner of the animal refuses the order ...

2. to tether any animal in such a manner as to cause the animal injury or pain or not to permit the animal to reach shelter, food and or water or otherwise create an unsafe or unhealthy situation;
3. to tether any animal in such a manner as to permit the animal to leave the owner's property;
4. to tether any animal in a manner whereby the animal is subject to harassment, stings or bites from outdoor insects, or attacks by other animals;
5. to tether any animal with a tether that is not equipped with swivel ends and which is not also attached to a pulley or a trolley;
6. to tether any animal in such a manner that does not prevent the animal from becoming entangled with any obstruction, from partially or totally jumping any fence, or from leaving its owner's property;
7. to fail to remove waste from the area within which the animal is tethered on a reasonable basis so as to avoid a health hazard;
8. to tether any animal without using a properly fitted collar or harness which prevents the tether from being directly wrapped around the animal's neck;
9. to tether with a choke-type collar of any sort; and
10. to use a tether weighing more than 1/8 of the animal's body weight.

Sec. 2.07.003 Trapping or shooting; hunting.

- a. It is unlawful for a person to set, trigger, activate or otherwise use, or cause to be set, triggered, activated or used, any steel-jawed, leg-hold trap to capture an animal. It is unlawful for any person, other than the Animal Control Authority, to set or otherwise use other trapping devices, including "live traps", for the purpose of capturing any animal. Consistent with the provisions of this ordinance, the Animal Control Authority is authorized to utilize humane "live traps" and may conduct humane trapping operations and may also provide or authorize the use of humane trapping devices for use by persons within the City as may be necessary. Nothing in this provision is intended to prohibit the prudent use of traps on a person's own property to control rodents.
- b. It is unlawful for a person to hunt, shoot, intentionally injure or kill any wild bird, animal, or mammal within the City. It is unlawful for any person to hunt, shoot, kill, intentionally injure or kill any domestic bird, animal, mammal, reptile or pet

**Deleted:** an Animal Control Officer, Animal Control Technician, Animal Control Veterinary Technician, peace officer, or other individual specifically authorized by

in the City which animal is not owned by such person. Nothing in this provision is intended to prohibit the destruction of poisonous snakes or to prohibit the Animal Control Authority from utilizing firearms in emergency field situations where such actions are authorized by law or policy.

- c. It is a defense to prosecution for the shooting of a domestic animal that the animal shot was a vicious animal which posed an immediate threat to personal or public safety or to the safety of livestock or a domestic pet or other domesticated animal.
- d. It is an exception to prosecution that the person engaging in hunting is on property within the City upon which state law prohibits the City's restriction of hunting rights and the hunter has a valid hunting license and is on the property with the property's owner's permission and with permission to engage in hunting.

Sec. 2.07.004 Animal fighting.

- a. A person commits an offense if he intentionally, knowingly, recklessly or with criminal negligence causes, instigates or permits an animal to fight with another animal or human or allows or otherwise permits to be used property that he owns or controls for the purpose of conducting fights between animals or between animals and humans. For purposes of this section, "animal" shall mean a domesticated living creature and a wild living creature previously captured.
- b. It is a defense to prosecution under this section that the person caused a dog to fight with another dog in order to protect a person, livestock, or other property from the other dog and for no other purpose.

Sec. 2.07.005 Use of poisonous substances.

A person commits an offense if he administers a poisonous substance to an animal belonging to another without express authority of that other person or the owner's effective consent for administration of the poisonous substance. A person commits an offense if he leaves exposed or accessible to domestic animals or persons any poisonous substance, whether mixed with food or otherwise.

Sec. 2.07.006 Abandonment.

A person commits an offense if he abandons an animal in his custody.

Sec. 2.07.007 Cruel treatment.

- a. A person commits an offense if he beats, clubs, mutilates, torments, physically abuses, mentally abuses, overloads, overworks or otherwise harms or abuses an animal.
- b. A person commits an offense if he fails to provide for animals in his ownership or control at all times adequate food, potable water, appropriate shelter, protection from inclement weather conditions and veterinary care when required to prevent suffering.
- c. A person commits an offense if he owns, keeps, shelters, or harbors any animal having a potentially life-threatening infestation of fleas, ticks or other parasites; any obvious life threatening illness; or a communicable illness transmissible to other animals or humans, and fails to seek and obtain treatment for the animal from a licensed veterinarian for such infestation or illness.
- d. A person commits an offense if he kills a dog or cat for the skin or fur of the animal.
- e. A person commits an offense if he attaches a collar or harness to an animal that is of inadequate size for the animal such that it restricts the animal's growth or causes damage to the animal's skin.
- f. A person commits an offense if he engages or permits another person to engage in any sexual act with an animal.
- g. The Animal Control Authority shall have authority, in accord with the provisions of Chapter 821 of the Texas Health and Safety Code, to obtain a warrant for seizure and impoundment of any animal that is the subject of an investigation for cruel treatment, as defined herein or as defined by Chapter 821 of the Texas Health and Safety Code, pending a hearing and order by the Judge of the Municipal Court or other court of competent jurisdiction regarding disposition of the animal. Procedures regarding the disposition of the animal(s) shall be in accord with the provisions of this ordinance and Chapter 821 of the Texas Health and Safety Code.

Sec. 2.07.008 Removing young from mother.

Unless specifically authorized by permit issued by the Animal Control Authority, no person may physically remove from the mother any animal less than six (6) weeks of age for the purpose of offering same for sale, trade, barter or for giving same away for commercial purposes.

Sec. 2.07.009 Sale of animals in public places.

- a. In this section, the term “public place” shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to streets, highways, public right-of ways, city parks, sidewalks, open air markets, flea markets, trade days, parking areas and parking lots, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- b. A person commits an offense if he sells; offers for sale; barter; trades; exchanges; or gives away an animal in a public place as defined herein.
- c. Exception. It is an exception to the provisions of Section 2.07.010(b) that the person or entity is an authorized animal shelter maintained by a governmental entity or recognized animal welfare organization and offers the animals for adoption at no profit. The Animal Control Authority is hereby authorized to enter onto premises utilized by any animal shelter or animal welfare organization for adoption of animals for the purpose of inspection of the premises for compliance with the provisions of this ordinance.
- d. The Animal Control Authority shall have authority to remove or cause to be removed from the public place on which the animal is offered for adoption any animal which, in the determination of the Animal Control Authority, poses a risk to the health or safety of the public or of other animals.

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Sec. 2.07.010 Minimum requirements for pens and enclosures; sanitary requirements.

It is a violation of this ordinance if a person keeps, harbors or otherwise maintains an animal in a pen, cage, enclosure, fenced area or other shelter which is not in compliance with the provisions of this section.

**Moved (insertion) [1]**

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- a. Requirements for pens and enclosures. All pens, enclosures or cages used to confine animals shall be of sufficient size to maintain the animal(s) within in reasonable comfort and health. All pens, enclosures or cages used to confine animals shall provide protection from precipitation, inclement weather and extreme weather conditions and shall be adequately ventilated. In the event of cold temperatures, the pen, enclosure or cage must be sufficient to permit the animal to maintain its body heat.
  - 1. Plastic shipping containers and/or pet carriers shall not be sufficient as outdoor animal enclosures or shelters.
  - 2. The Animal Control Authority shall have authority to determine the adequacy of pens, cages and enclosures under this ordinance.

b. Sanitary requirements. Owners of animals shall be required to maintain and keep all pens, cages, enclosures and fenced areas for animals in a sanitary condition which shall require, but not be limited to, the following:

1. all animal waste shall be disposed of promptly and all pens and enclosures shall be cleaned as necessary to prevent odor, insects and vermin infestation or other nuisance;
2. approved spray or other treatments shall be used at reasonable intervals as necessary to maintain the premises free of flies, mosquitoes, fleas, ticks or other insects;
3. adequate food and water supply for the animal must be readily available to the animal in the enclosure or accessible in the area and must be maintained in a sanitary condition.

**Moved up [1]:** A person commits an offense if he owns, keeps, harbors or otherwise maintains an animal in a pen, cage, enclosure, fenced area or other shelter which is not in compliance with the provisions of this section.

#### Article 2.08 – Dangerous Animals

Sec. 2.08.001 Purpose and election to implement remedies of state law.

It is the intent of this section to provide appropriate procedures and means for dealing with animals, including but not limited to, dogs which are dangerous or which, by their actions, represent a danger to the public health and safety in the future. In interpreting the provisions of this section, the Animal Control Authority shall take into consideration the right of an individual to possess and utilize an animal for security or guard purposes and shall also take into consideration the right of the public to be free from fear of attack and injury by a dog or other animal. Further, it is the intent and purpose of this section to promote public safety with respect to dangerous wild animals while providing means for the safe exhibition of certain animals for public entertainment and education. It is the specific intent of this provision to elect adoption of Texas Health and Safety Code Chapter 822, Subchapter D, Dangerous Dogs as it exists at the time of adoption of this ordinance or as it may hereafter be amended.

Sec. 2.08.002 Definitions.

*Dangerous animal.* For purposes of this ordinance, a dangerous animal is defined as an animal which:

1. makes an unprovoked attack on a person which results in bodily injury to the person and which occurs in a place other than a secure enclosure in which the animal was being kept;

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**Deleted:** and which was reasonably certain to prevent the animal from leaving the enclosure of its own volition

2. commits unprovoked acts in a place other than a secure enclosure in which the animal was being kept and those acts by the animal cause a person to reasonably believe that the dog will attack and cause bodily injury to that person;
3. has killed or seriously injured a domestic animal without provocation while in a place other than a secure enclosure in which the attacking animal was kept;
4. is kept, harbored or trained for fighting or used for the purpose of fighting;
5. is an animal known to carry or be susceptible to the rabies virus and which cannot be effectively vaccinated against that virus with any vaccine approved by the Texas Department of State Health Services; or
6. is determined by the Animal Control Authority, due to temperament, condition, training and/or observed behavior of the animal, to be a danger to persons or to other animals.

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*Secure enclosure.* For purposes of this ordinance, the term “secure enclosure” means a fenced area or structure to prevent the animal from leaving the enclosure of its own volition which meets the following minimum requirements:

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1. locked;
2. capable of preventing the entry of the general public, including children;
3. capable of preventing the escape or release of the animal(s) kept therein;
4. clearly marked with notice that the area or structure contains a dangerous animal;
5. adequately lit and ventilated and maintained in a clean and sanitary condition;
6. of a minimum area of two (2) square feet per pound of weight of the animal to be secured; and
7. in compliance with all requirements of this ordinance, and regulations adopted pursuant to this ordinance, for animal enclosures.

*Final determination or finally determined.* For purposes of this ordinance, the terms “final determination” or “finally determined” shall mean a written notice issued by the Animal Control Authority, that an animal is a dangerous animal, which is not timely and properly appealed in accord with this ordinance, or, the written decision of the Municipal Court determining, on appeal, that an animal is a dangerous animal as defined by this ordinance.

Sec. 2.08.003 Reporting of incidents involving dangerous animals; disposition of animals pending investigation.

- a. A person shall report to the Animal Control Authority an incident or observation of an animal potentially meeting the criteria described in Section 2.08.002 (1) through (5) above. The Animal Control Authority shall investigate all such reports and shall make a determination as to whether the animal is a dangerous animal as defined herein.
- b. Pending the investigation and determination of the Animal Control Authority as to whether the animal is a dangerous animal, the Animal Control Authority shall have the authority to require the owner to, within twenty-four (24) hours of receipt of notice of the order, deliver the animal to the City of Borger Animal Shelter (or other appropriate facility designated by the Animal Control Authority) for impoundment in secure and humane conditions. In the event that the owner of an animal made the subject of a report under this section cannot be located after reasonable effort and the animal poses a threat to the public health and safety if not immediately impounded, the Animal Control Authority shall be authorized to impound the animal pending investigation of the report. In the event that the owner of an animal made the subject of a report under this section cannot, after reasonable effort, be located for service of written notice by the Animal Control Authority, the Animal Control Authority shall be authorized to humanely euthanize the animal after five (5) days.

Sec. 2.08.004 Determination of dangerous animal by Animal Control Authority; appeal of determination.

- a. The Animal Control Authority shall investigate reports made pursuant to Section 2.08.003 above. Such investigations may include the interviewing of individuals, the taking of sworn statements, examination of the animal and other review of other relevant information. If, at the conclusion of the investigation, the Animal Control Authority determines that the animal is a dangerous animal, as defined herein, the Animal Control Authority shall provide notice, in writing, of that determination to the owner of the animal. The written notice may be delivered in person or by certified mail, return receipt requested, with concurrent mailing by regular mail. In the event the owner of the animal refuses the written notice by certified mail, it shall be presumed that the owner received the written notice forwarded by regular mail.
- b. In the event that the animal made the subject of the investigation has not been impounded pending the investigation, upon determination by the Animal Control Authority that the animal is a dangerous animal, the written notice of that determination shall be accompanied by a written directive from the Animal

Control Authority to deliver the animal to the Animal Control Authority, within five (5) days of the issuance of the written notice, for agreed registration in accord with the provisions of this ordinance or the determination of the Municipal Court regarding the disposition of the animal.

- c. In the event the owner fails to deliver the animal to the Animal Control Authority as required by this subsection, the Animal Control Authority shall request from the Municipal Court the issuance of warrant for seizure of the animal. The Animal Control Authority shall, promptly upon issuance of the warrant for seizure, seize the animal and provide for its impoundment in secure and humane conditions pending the Municipal Court's order regarding disposition of the dog. The owner of the animal shall be responsible for all costs incurred in seizing the dog and the costs and fees for impoundment of the animal.
- d. The owner of an animal which has been determined by the Animal Control Authority to be a dangerous animal may, within ten (10) days following issuance of the written notice of the determination as a dangerous animal, appeal the determination of the Animal Control Authority to the Municipal Court by filing with that court a written notice of appeal of the determination. The written notice of appeal must plainly state the grounds of the appeal of the determination and have attached a true and correct copy of the written notice issued by the Animal Control Authority which is appealed. A written notice of determination as a dangerous animal issued by the Animal Control Authority and not timely appealed as provided in this subsection shall be considered, in all respects, final upon the 11<sup>th</sup> day following its issuance.
- e. The Municipal Court shall, upon receipt of a written appeal as provided above, set the matter for hearing. The hearing must be set not later than ten (10) days from the date of the filing of the written appeal. The Court shall provide written notice of the date and time of the disposition hearing to: (1) the owner of the animal; (2) the Animal Control Authority; and (3) the City Attorney's Office. The written determination of the Animal Control Authority that the animal is a dangerous animal shall give rise to a rebuttable presumption that the animal is a dangerous animal. Any interested person may present competent evidence to the Court to rebut the presumption of the animal's status. The Municipal Court shall render its decision in writing within ten (10) days of the date of the hearing. Copies of the decision shall be forwarded to the owner and to the City Attorney's Office. In the event the decision of the Municipal Court affirms the Animal Control's Authority that the animal is a dangerous animal, the owner shall be required to comply with the registration requirements set forth below and the animal shall remain impounded pending the owner's compliance with those registration requirements.

Sec. 2.08.005 Registration of dangerous animals.

- a. Not later than ten (10) days from the date of the issuance of a written notice by the Animal Control Authority that an animal is a dangerous animal, or in the event of appeal of such written notice by the Animal Control Authority, not later than ten (10) days from the date of a written decision of the Municipal Court affirming the determination that an animal is a dangerous animal, the owner of the animal shall:
  1. register the animal with the Animal Control Authority and obtain from the Animal Control Authority a tag supplied by the Animal Control Authority clearly identifying the animal as a “dangerous animal”;
  2. ensure that the identification tag is placed on and worn on the animal at all times;
  3. provide to the Animal Control Authority documentation confirming that the animal has been fitted with a microchip identification device registered with the microchip company and fitted by a licensed veterinarian or, alternatively, reimburse the City for the costs of the microchip device fitted by the Animal Control Authority;
  4. provide to the Animal Control Authority documentation confirming that the owner has in effect liability insurance coverage in a minimum amount of \$100,000.00 to cover damages resulting from an attack by the animal causing bodily injury to a person;
  5. provide documentation to the Animal Control Authority confirming that the animal made the subject of the written determination has been spayed or neutered or provide written consent for the spay or neuter of the animal while impounded by the City; and
  6. permit inspection of the owner’s premises where the animal is proposed to be kept for the purpose of ensuring that a secure enclosure, as defined herein, is provided for the animal.
- b. The registration required by this subsection is specific and valid as to only the animal made the subject of the registration and the owner identified in the registration certificate. A registration certificate issued pursuant to this section may not be transferred, sold or otherwise conveyed to another person.
- c. The registration required by this subsection shall be valid for a period of twelve (12) months from the date of its issuance and the owner shall be required to re-register the dangerous animal at the expiration of its registration period. Re-registration of a dangerous animal shall require compliance with each of the above provisions. In the event an owner fails to timely re-register an animal finally determined to be a dangerous animal subject to registration, the Animal Control Authority shall be authorized, without hearing or warrant, to immediately

seize the animal; notify the owner of the seizure; and impound the animal until such time as the owner properly re-registers the animal. In the event the owner fails to properly re-register a dangerous animal impounded pursuant to this provision within fifteen (15) days of its impoundment, the Animal Control Authority shall be authorized to humanely euthanize the animal.

- d. An animal finally determined, by notice of the Animal Control Authority or by the Municipal Court, to be a dangerous animal shall not be released from impoundment until each of the requirements of Section 2.08.005(a)(1-6) has been met by the owner and all fees and costs incurred in connection with the care, impoundment and other required procedures for the animal have been paid to the City. A finding by the Animal Control Authority that an owner of a dangerous animal is no longer in compliance with the provisions of this ordinance shall constitute grounds for revocation of the animal's registration and seizure and impoundment of the animal as provided in subsection (b) above. In the event the owner of an animal finally determined to be a dangerous animal fails to comply with the requirements of Section 2.08.005(a)(1-6) within thirty (30) days of the final written determination, the Animal Control Authority shall be authorized to humanely euthanize the animal.

Sec. 2.08.006 Requirements for restraint of dangerous animal.

The owner of an animal finally determined to be a dangerous animal shall:

1. at all times when the animal is on the owner's property, restrain the animal on an adequate leash in the immediate control of a person eighteen (18) years of age or older, or restrain the animal in a secure enclosure as defined in this ordinance; and
2. at all times when the animal is taken off the owner's property, restrain the animal with a muzzle which will prevent it from biting any person or other animal but which will not cause injury to the animal nor interfere with its vision or respiration.

Sec. 2.08.007 Requirements for notification by owner of dangerous animal.

- a. The owner of an animal finally determined to be a dangerous animal shall notify the Animal Control Authority within twenty-four (24) hours of any of the following:
  1. the animal is running at large;

2. the animal has attacked a human being or other animal;
  3. the animal has died; or
  4. the animal has been sold or given away.
- b. If the owner of the dangerous animal sells or gives away the animal, the owner shall provide the Animal Control Authority with the name, address, and telephone number of the animal's new owner. If the new owner resides within the City or if the dangerous animal is kept or maintained in the City by the new owner, regardless of the new owner's residence, the Animal Control Authority shall notify the new owner by certified mail, return receipt requested, and by regular mail that the new owner is required to comply with the requirements of this section. Failure of the new owner to properly register the animal with the Animal Control Authority within fifteen (15) days of the issuance of such notice to the new owner shall authorize the Animal Control Authority to seize and impound the animal until such time as the new owner complies with the requirements of this section. In the event the new owner fails to properly register the impounded animal within fifteen (15) days of its impoundment pursuant to this provision, the Animal Control Authority shall be authorized to humanely euthanize the animal.

Sec. 2.08.008 Offenses; defenses to prosecution.

- a. *Offense.* A person who owns, keeps or otherwise has care, custody or control of a dangerous animal, as defined in this ordinance, commits an offense if the person fails to comply with any provision of this ordinance pertaining to the regulation of dangerous animals.
- b. A person commits an offense if he owns, keeps or otherwise has care, custody or control of a dangerous animal, as defined in this ordinance, and the animal makes an unprovoked attack on a person or domestic animal outside the animal's secure enclosure and causes bodily injury to a person, or domestic animal.
- c. It is a defense to prosecution under subsections (a) and (b) above, that the person keeping or in care or control of the animal is a veterinarian, a peace officer, a person employed by a duly organized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals or animal control and has temporary ownership, custody or control of the animal in connection with that position.
- d. It is a defense to prosecution under subsections (a) and (b) above, 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 animals for law enforcement or correction purposes.

- e. It is a defense to prosecution under subsections (a) and (b) above, that the person is a dog trainer or an employee of a guard dog company under Chapter 1702 of the Texas Occupations Code.

### **Article 2.09 – Impoundment**

#### Sec. 2.09.001 General provisions.

- a. Animals found to be in violation of this ordinance or found to be in circumstances in which impoundment is authorized by the provisions of this ordinance shall be taken into the custody of the Animal Control Authority and impounded at the City of Borger Animal Shelter or other appropriate facility designated by the Animal Control Authority.
- b. The owner of an impounded animal(s) is responsible for and required to pay to the City all fees, costs and expenses incurred in the seizure and impoundment of the animal. These fees, costs and expenses shall include, but not be limited to, daily impoundment fees, veterinarian fees, and costs of medications required for the animal's care while impounded.
- c. An owner of an animal may voluntarily relinquish ownership and control of the animal to the Animal Control Authority by execution of a relinquishment document in the form prescribed by the Animal Control Authority. Upon execution of the relinquishment document and surrender of the animal, the Animal Control Authority shall have authority to make any disposition of the animal authorized by Section 2.09.005. An owner relinquishing a sick or injured animal may be held responsible for the payment of all veterinary or medication fees incurred for the care of the animal.

#### Sec. 2.09.002 Tampering with shelter facilities or animal control vehicles.

A person commits an offense if he, without effective consent or authority, breaks into, opens or otherwise intrudes into the City of Borger Animal Shelter or other facility used by the City to impound or keep animals. A person commits an offense if he turns out, releases; causes to be turned out or released; or aids or abets the turning out or release of any animal from the City of Borger Animal Shelter, any facility used by the City for impoundment of animals, or any vehicle used or utilized by the City or Animal Control Authority for the seizure and transport of animals.

#### Sec. 2.09.003 Impoundment periods.

An impounded animal, not exhibiting an identification tag or microchip, shall be kept for three (3) full days excluding the date of impoundment. An impounded animal exhibiting an identification tag or microchip shall be kept for five (5) full days excluding the day of impoundment during which period the Animal Control Authority will notify the owner, if determinable, of the impoundment of the animal. If the owner of an impounded animal does not claim the animal within the prescribed period, disposition of the animal will be made as provided in Section 2.09.005.

Sec. 2.09.004 Disposition of animals prior to expiration of impoundment period.

In the event that a nursing baby animal is impounded without its mother or where the mother is unable to provide adequate nutrition for the baby animals causing the baby animals to suffer, the Animal Control Authority shall have immediate authority to transfer the baby animals to a non-profit humane organization or to humanely euthanize the baby animals. In the event that an impounded animal is suffering from injury or illness, the Animal Control Authority shall have the authority to immediately transfer the animal to a non-profit humane organization or animal welfare organization or to humanely euthanize the animal. If an animal subject to impoundment cannot be moved from the location where it is found due to injury or illness, the Animal Control Authority shall be authorized to dispose of the animal in the most expedient, humane manner possible to avoid prolonging its suffering.

Sec. 2.09.005 Redemption of impounded animal.

- a. Except as may be specifically provided otherwise in this ordinance, the owner of an impounded animal may reclaim the animal, during normal hours of operation of the City of Borger Animal Shelter, on the following conditions:
  1. satisfactory proof of ownership of the animal;
  2. photo identification by the person reclaiming the animal;
  3. proof of current vaccination of the animal, if vaccination of the animal is required by the provisions of this ordinance;
  4. payment of all impoundment fees and other costs and expenses incurred by the City in keeping the animal and/or attempting to locate the owner of the animal.

- b. If an impounded dog or cat has not been spayed or neutered and has previously been impounded on four (4) or more occasions, the Animal Control Authority may, require the animal to be spayed or neutered prior to release of the animal to the owner. If the Animal Control Authority imposes a spay or neuter requirement, the owner will have thirty (30) days to provide the Animal Control Authority proof that the spay or neuter requirement has been satisfied or will be in violation of this Ordinance..
- c. A dangerous wild animal may be reclaimed only under the following conditions:
  - 1. proof that the person reclaiming the animal holds a valid certificate of registration for the animal issued by an animal registration agency in compliance with the provisions of Texas Health & Safety Code Section 822.103; and
  - 2. the execution of a written agreement by the owner of the animal to immediately remove the animal from the City limits.
- d. Nothing herein shall be construed to authorize the release or re-claiming of an animal subject to quarantine until completion of the quarantine period.

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Sec. 2.09.006 Disposition of unclaimed animals.

All impounded animals not claimed by an owner, within the periods prescribed in Section 2.09.003 shall, in the sole discretion of the Animal Control Authority, be adopted, transferred to a non-profit humane organization, sold, or humanely euthanized.

Sec. 2.09.007 Adoption of animals.

- a. Animals may be adopted from the City of Borger Animal Shelter under the following conditions:
  - a. the animal is classified as adoptable by this ordinance and by the Animal Control Authority;
  - b. the person proposing to adopt has not been cited within the past twelve (12) months for any violations under this ordinance;
  - c. the person proposing to adopt has never been charged with any violation of this ordinance or state law pertaining to cruel treatment of animals;

Comment [e4]: Adoptable defined

- d. the dog or cat to be adopted has to be spayed or neutered within thirty (30) days of adoption or when it is six (6) month of age;
  - e. the dog or cat has received all vaccinations required by this ordinance and/or state law;
  - f. the person proposing to adopt has appropriate facilities to provide for the animal;
  - g. all adoption fees and other fees authorized by this ordinance are tendered to the City.
- b. The requirements for payment of adoption fees shall not apply where cooperative agreements exist between the City and an animal welfare group or humane organization **established** for the placement and care of animals; nor shall the adoption fees apply to transfers of animals made under cooperative agreements between the City and other governmental entities.

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Sec. 2.09.008 Disposition of estray.

Upon receipt by the Animal Control Authority of a report of estray within the City or upon discovery by the Animal Control Authority of estray within the City, the Animal Control Authority shall, as soon as practicable, notify the Sheriff of Hutchinson County to report the presence of the estray, a description of the estray and the location where the estray may be found. If circumstances permit, the Animal Control Authority shall refer the impoundment and disposition of the estray to the Sheriff of Hutchinson County. If circumstances do not permit such a referral, the Animal Control Authority shall be authorized to assist the Sheriff in the seizure and impoundment of the estray pending the disposition of the estray by the Sheriff of Hutchinson County in accord with the provisions of Chapter 142 of the Texas Agriculture Code.

**Article 2.10 – Rabies Control**

Sec. 2.10.001 General standards and procedures.

Except as may be otherwise specifically provided in this ordinance, the minimum standards and procedures for control of rabies set forth in Chapter 826 of the Texas Health and Safety Code are hereby adopted by the City as those standards and procedures exist on the date of adoption of this ordinance and as they may hereafter be amended by the legislature or the Texas Board of Health.

Sec. 2.10.002 Animal vaccinations; offense.

- a. All dogs or cats four (4) months of age or older within the City shall be vaccinated against rabies. All such vaccinations shall be repeated at the intervals prescribed by rule of the Texas Board of Health or its successor agency.
- b. A person establishing residence in the City shall, within fifteen (15) days of establishing residency, comply with the provisions of this ordinance regarding vaccination.
- c. A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of the animal a vaccination certificate on a form approved by the Texas Department of State Health Services. The veterinarian shall also issue to the owner a metal tag serially numbered to correspond with the vaccination certificate and with the veterinarian's address and the year of the vaccination stamped thereon. The veterinarian shall retain a duplicate copy of the certificate of vaccination which shall contain the following information:
  1. the name, address and telephone number of the owner of the vaccinated animal;
  2. the date of vaccination;
  3. the type of rabies vaccine used;
  4. the year and number of the rabies tag issued; and
  5. the breed, age, color and sex of the vaccinated animal.
- d. The owner of the vaccinated dog or cat shall cause to be attached to the animal's collar or harness the metal tag issued by the veterinarian in connection with the vaccination. In the event a metal tag confirming vaccination is lost, the owner of the animal shall obtain a duplicate tag and cause same to be attached to the animal's collar or harness.
- e. A person commits an offense if he owns, keep, harbors, possesses or allows any dog or cat which is not currently vaccinated in compliance with this ordinance to remain upon the person's premises under his control,.
- f. It is a defense to prosecution under this section that the owner provides to the Municipal Court a valid and current certificate of vaccination for the animal made the subject of a citation or formal complaint for violation of this section. Upon proof of current vaccination in accord with the provisions of this ordinance, the case shall be dismissed upon payment of any required administrative fees imposed by the Court.

Sec. 2.10.003 Vaccination of impounded animals.

In the event an owner desires to re-claim from impoundment an animal required to be vaccinated by this ordinance and the owner is not able to provide proof of current vaccination of the animal, the Animal Control Authority shall have authority to cause the animal to be vaccinated against rabies and shall assess the costs of such vaccination to the owner for payment prior to re-claiming of the animal.

Sec. 2.10.004 Duty to report animal bites or rabies exposure.

- a. Any person, including the owner of the animal, having knowledge of an animal bite or scratch to a human or to another animal by an animal which the person has reason to believe may be or is rabid shall report that incident to the Animal Control Authority within twenty-four (24) hours of the occurrence of the bite or scratch incident.
- b. Any veterinarian who clinically diagnoses rabies or believes an animal has been exposed to rabies and any other person who reasonably suspects rabies in an animal or believes an animal has been exposed to rabies shall immediately report that information to the Animal Control Authority.
- c. Any person who is bitten or scratched by an animal shall report the occurrence to the Animal Control Authority within twenty-four (24) hours of the occurrence. If the person bitten or scratched is under the age of seventeen (17) years, the parent or guardian of the minor, if he has knowledge of the bite or scratch, shall report the occurrence to the Animal Control Authority within twenty-four (24) hours of obtaining such knowledge.
- d. A person who owns, keeps, or harbors an animal within the City and has knowledge that the said animal has bitten a person outside of the City within the last ten (10) days shall report the bite incident to the Animal Control Authority.
- e. A report required to be made under this section shall include, if known to the reporting person, the following information:
  1. the location within the City (or other jurisdiction) where the bite or scratch occurred;
  2. the location where the animal, which committed the act or is suspected to have rabies, may be located;

3. the name and address of any person who was bitten or scratched;
4. the name and address of the person who owns, keeps, harbors or has control over the premises where the animal may normally be found;
5. the name(s) and address(es) of the person(s) who owns, keeps or harbors an animal(s) which may have been exposed to rabies.

Sec. 2.10.005 Investigation of reports.

The Animal Control Authority shall investigate reported bite and scratch incidents in accord with state law and the procedures and recommendations of the Texas Department of State Health Services.

Sec. 2.10.006 Submission of animal to quarantine; offense.

- a. The owner of any dog or cat which has been reported to have inflicted a bite or scratch on any person shall, upon request by the Animal Control Authority, immediately surrender the animal for quarantine to the Animal Control Authority, or to a designated facility as directed by the Animal Control Authority, in accordance with Sec. 2.10.009
- b. A person commits an offense if he owns, keeps, harbors, possesses or allows to remain on premises under his control an animal made the subject of quarantine notice by the Animal Control Authority and fails to produce or surrender the animal to the Animal Control Authority upon request. Each day a person continues to fail to produce or surrender the animal shall constitute a separate offense.
- c. Failure of an owner to surrender an animal in accord with a notice of quarantine by the Animal Control Authority shall render the animal subject to immediate impoundment by the Animal Control Authority for such purpose.

Sec. 2.10.007 Quarantine period.

A dog or cat whose owner is known and which is required to be quarantined under this provision shall be observed for a minimum period of ten (10) days from the date of bite. The location and conditions of quarantine during this observation period shall be determined by the Animal Control Authority in accord with the provisions of this ordinance and applicable state law.

Sec. 2.10.008 Quarantine period of stray animals.

A stray dog or cat, or an animal whose owner cannot be located after reasonable effort, which is required to be quarantined under this provision shall be maintained by the Animal Control Authority for a period of seventy-two (72) hours after which time, if no owner has been located, the animal may be humanely euthanized and the brain of such animal submitted for rabies examination.

Sec. 2.10.009 Terms and conditions of quarantine.

- a. In the sole determination of the Animal Control Authority, a period of quarantine under this provision may be accomplished:
  1. by quarantine in the City of Borger Animal Shelter under the supervision of the Animal Control Authority;
  2. by quarantine at an approved veterinary clinic under the supervision of a licensed veterinarian and in accord with requirements of state law;
  3. by quarantine by owner where permitted by state law and approved by the Animal Control Authority which approval may only be granted under the following conditions:
    - a. the owner provides the Animal Control Authority with documentation of current rabies vaccination and the Animal Control Authority determines that the owner has not been cited for any animal control violations in the City in the past twelve (12) months;
    - b. the animal must be maintained within a secure enclosure (as defined in this ordinance) approved by the Animal Control Authority for such purpose and must remain therein for a minimum of ten (10) consecutive days;
    - c. the animal must have no contact with other animals or people save and except those in the immediate household of the animal;
    - d. the animal may not, under any circumstances, be removed from the corporate limits of the City during the quarantine period;

- e. the owner must notify the Animal Control Authority immediately if the animal exhibits symptoms of disease or behavioral changes during the quarantine period;
  - f. the owner must not permit any medical procedure, including vaccination of any sort, on the animal during the quarantine period without written consent of the Animal Control Authority;
  - g. the owner must permit the Animal Control Authority or a licensed veterinarian to examine the animal on the first day of quarantine; upon reasonable notice, during the quarantine period; and on the final day of the quarantine period.
- b. Nothing herein shall be deemed to require or mandate the Animal Control Authority to permit quarantine by owner. Quarantine by owner may be terminated by the Animal Control Authority and/or the Local Rabies Control Authority at any time during the quarantine period for failure of the owner to comply with any of the requirements herein and, in such event, the Animal Control Authority shall have the immediate right to seize the animal and effect quarantine of the animal at an appropriate designated facility at the sole cost and expense of the owner of the animal.

Sec. 2.10.010 Costs of quarantine.

All costs of quarantine, regardless of where accomplished, shall be the sole responsibility of the owner of the animal subject to quarantine. In the event an animal is quarantined at the City of Borger Animal Shelter, all quarantine fees and expenses shall be paid to the City prior to the animal's release to the owner.

Sec. 2.10.011 Disposition of certain animals during quarantine.

In the event, that due to the conduct and behavior of the animal, it is not possible for the Animal Control Authority to maintain the animal securely in quarantine, or if the animal has inflicted serious bodily injury on a person, or if the animal exhibits such severe symptoms of rabies as to cause distress and suffering to the animal, the Animal Control Authority shall be authorized to immediately humanely euthanize the animal and have the animal's brain submitted for rabies testing.

Sec. 2.10.012 Interference with or interruption of quarantine period.

A person commits an offense if he interrupts the quarantine period of an animal required by this provision by removing the animal from the quarantine facility or conditions. Interruption of a quarantine period shall authorize the Animal Control Authority to immediately impound the animal and complete quarantine in accord with this provision under the supervision of the Animal Control Authority.

Sec. 2.10.013 Release of animal from quarantine.

- a. An animal which has been quarantined under these provisions may be released from quarantine under the following conditions:
  1. the full ten (10) day observation period has expired with no indication of rabies in the animal;
  2. the owner provides proof of current vaccination of the animal;
  3. all applicable fees and expenses of quarantine have been paid; and
  4. the animal is not subject to impoundment for other violations or legal proceedings.
- b. In the event all of the above terms and conditions are met save and except proof of current vaccination, the Animal Control Authority shall cause the animal to be vaccinated, recover the costs of that vaccination from the owner and the animal may be released to the owner.

Sec. 2.10.014 Disposition of unclaimed animals.

In the event the owner of an animal subject to quarantine under this provision fails or refuses to reclaim the animal upon completion of the quarantine period, the animal will be humanely disposed of in accord with this ordinance and the provisions of Texas Health & Safety Code Section 826.043 (d).

Sec. 2.10.015 Disposition of domestic animals potentially exposed to rabies.

- a. Domestic animals currently vaccinated for rabies and potentially exposed to rabies shall, in the sole discretion of the Animal Control Authority, either be provided a rabies vaccination booster immediately and placed in isolation under the supervision of the Animal Control Authority for forty-five (45) days or, alternatively, the animal will be humanely euthanized.

- b. Domestic animals not currently vaccinated for rabies and potentially exposed to rabies shall, in the sole discretion of the Animal Control Authority, either be provided a rabies vaccination immediately, placed in strict isolation for 180 days and provided rabies vaccination boosters during the third and eighth weeks following exposure; or, alternatively, be humanely euthanized.

Sec. 2.10.016 Enforcement.

For purposes of discharging the duties imposed by these provisions, the Animal Control Authority and/or any police officer of the City of Borger is authorized to enter onto private property, other than a private dwelling upon which an animal is kept or harbored and to require proof of current vaccination of such animal as required by this ordinance. The owner of an animal is required to produce vaccination information for each animal in his ownership upon request by the Animal Control Authority or a peace officer.

Deleted: upon premises

### **Article 2.11 – Commercial Animal Enterprises**

Sec. 2.11.001 Definition.

As permitted by the zoning regulations of the City, a Commercial Animal Enterprise is an activity or venture with a commercial purpose where animals are raised, trained, boarded, harbored, maintained, groomed, displayed and/or offered for sale and shall include, but is not limited to, kennels, pet shops, grooming shops, animal clinics, animal hospitals, animal research centers, zoological parks, petting zoos, livestock auctions, guard dog or obedience training centers, horse stables or riding facilities, farms or ranches, or performing animal exhibitions as defined in this ordinance.

Sec. 2.11.002 General operational requirements.

All commercial animal enterprises shall be operated and animals cared for in compliance with all applicable provisions of the Texas Health & Safety Code and this ordinance.

Sec. 2.11.003 Permits; offense.

- a. In addition to and not in lieu of compliance with all applicable zoning regulations and permit requirements under other applicable ordinances, commercial animal enterprises shall be required to obtain operational permits from the Animal

Control Authority as provided herein. A person commits an offense if he operates, causes to be operated or otherwise engages in a commercial animal enterprise, for which the issuance of permit is required under this ordinance, without a valid permit issued by the Animal Control Authority for such commercial animal enterprise.

- b. Annual operational permits from the Animal Control Authority shall be required for:
  - 1. kennels;
  - 2. private animal shelters;
  - 3. private animal fostering facilities;
  - 4. private animal boarding facilities;
  - 5. horse stables or riding facilities;
  - 6. grooming shops or facilities;
  - 7. pet stores or shops; and
  - 8. private petting zoos.
- c. Temporary operational permits from the Animal Control Authority shall be required for:
  - 1. performing animal exhibitions;
  - 2. animal amusement vendors;
  - 3. circuses or carnivals with acts involving animals; or
  - 4. any other transitory or temporary commercial animal enterprise seeking to do business in the City.
- d. In addition to all other applicable requirements of this ordinance or state law, private animal shelters, private animal fostering facilities, and private animal boarding facilities for dogs and/or cats must comply with the following criteria as a condition of issuance and maintenance of an annual operational permit:
  - 1. all animals must be maintained on a non-porous or sealed surface which provides for proper drainage, sanitation and disposal of waste;

2. all animals must be provided access to an enclosure consisting of at least three (3) sides and capable of providing shade and protection from the elements;
3. all animal enclosures must be adequately ventilated; and
4. all animal enclosures must be supplied with facilities for daily washing and sanitation of the premises.

Sec. 2.11.004 Exceptions to permit requirements.

- a. The following facilities and enterprises are exempt from the requirement of an operational permit by the Animal Control Authority, same being subject to regulation and oversight by other appropriate agencies and organizations:
  1. animal hospitals;
  2. veterinary clinics, including temporary sites set up by a licensed veterinarian to provide low cost vaccinations or other treatment;
  3. private or governmental research facilities where animals are maintained;
  4. education facilities where animals are maintained;
  5. animal shelters, impounds or facilities maintained by governmental entities, political subdivisions of the state or governmental agencies;
  6. rodeos and rodeo-affiliated livestock shows;
  7. livestock auction facilities;
  8. equestrian or cutting horse events sponsored by a recognized association or organization;
  9. facilities maintained by non-profit humane or animal welfare organizations, including but not limited to the American Humane Society and the Society for Prevention of Cruelty to Animals; and
  10. the seasonal sale of brooder rabbits, chicks, ducklings or other fowl by feed stores or agricultural supply enterprises for agricultural purposes where such activity is otherwise authorized by applicable zoning ordinances and state health regulations.

Sec. 2.11.005 Issuance of permits; conditions; revocation; appeals.

The provisions of Section 2.02.005 of this ordinance shall control, in conjunction with all terms and conditions of this subchapter, regarding the issuance, denial or revocation of operational permits. Nothing herein shall be construed to supersede any provision of any applicable zoning regulation or permit requirement of any other applicable municipal code.

Sec. 2.11.006 Inspections.

The Animal Control Authority shall, in connection with the application for and issuance of permits pursuant to this subchapter, have the authority to inspect all premises on which commercial animal enterprises subject to permit are or will be conducted. Additionally, the Animal Control Authority shall have the authority to enter upon and inspect, at all reasonable times, any premises on which a permitted commercial animal enterprise is conducted.

Sec. 2.11.007 Revocation of operational permit; offense.

- a. If the Animal Control Authority determines that any term or condition of an operational permit issued under this subchapter has been violated, the Animal Control Authority shall be authorized to revoke the operational permit. Notice to the permit holder shall be provided in accord with the provisions of Section 2.02.005.
- b. A person commits an offense if he continues, causes to continue or otherwise engages in a commercial animal enterprise after final revocation of an operational permit previously issued for that enterprise. Each day that a person continues to engage in a commercial animal enterprise after final revocation of an operational permit shall constitute a separate offense.

**Article 2.12 – Exemptions from Article**

- a. The provisions of this article shall not apply to a licensed veterinarian so long as any of the animals covered hereunder are in his custody or kept for the purpose of professional care by reason of illness.
- b. The provisions of this article shall not affect the lawful keeping of horses, cows, goats, or other livestock within Johnson Park, provided the owner of such animals for show, display or similar activity shall conform with rules of the department of state health serviced for cleanliness and sanitation requirements.

c. The provisions of this article shall not affect the lawful keeping of swine, horses, cows, goats, or other livestock in the Borger High School and Frank Phillips College Vocational Agriculture Facilities within the city limits; however, all animals kept in these facilities shall be subject to all health, sanitation and such other requirements as the health department may deem necessary to protect the health of the citizens of the city.

d. The provisions of this article not apply to any traveling circus or show which remains within the city limits for a period not to exceed five consecutive days.

## **SECTION 2 REPEALER**

With the exception of the Comprehensive Zoning Ordinance all other provisions of the ordinances of the City of Borger in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Borger, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

## **SECTION 3 SEVERABILITY**

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any article, section, clause, provision, part, or portion of any article, section, clause, provision, or part of this Ordinance shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

## **SECTION 4 PENALTY**

Any person, partnership, corporation, association or legal entity found to have violated any provision of this ordinance or to have failed to comply with any provision of this ordinance shall, upon conviction, be fined in accordance with Section 1.01.009 of this Code. The imposition of a fine shall be in addition to all other remedies provided in this ordinance. Each day that a violation exists shall constitute a separate offense.

**SECTION 5  
EFFECTIVE DATE**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

**INTRODUCED**, on this the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code §551.001. et. seq. at which meeting a quorum was present and voting.

**PASSED, APPROVED AND ADOPTED** on this the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code §551.001. et. seq. at which meeting a quorum was present and voting.

\_\_\_\_\_  
Jeff Brain, Mayor

**ATTEST:**

\_\_\_\_\_  
Stella Sauls, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_

Angelique Weaver, City Attorney

