

Ordinance No. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS CODE OF ORDINANCES AMENDING CHAPTER 5, ANIMALS, ARTICLE I. IN GENERAL AND ARTICLE II. GENERAL REGULATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Kyle, Texas (hereinafter “City Council”) has investigated and determined that it would be advantageous and beneficial to the City of Kyle, Texas (hereinafter “City”) to establish comprehensive rules and regulations for animal control in the City; and

WHEREAS, the proper care, regulation and control of animals is necessary for the health, safety and quality of life of the citizens of the City; and

WHEREAS, the establishment of reasonable requirements for the care and control of dogs, cats, animals, fowl and livestock is necessary to protect such animals and the general public; and

WHEREAS, upon review of all things considered, including the recommendations of staff, the City Council deems it in the best interest of the health, safety and quality of life of the citizens of the City to amend Chapter 5, Animals, of the City of Kyle Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE:

SECTION 1. AMENDMENT. That the Code of Ordinances of the City of Kyle, Texas is hereby amended by amending Chapter 5, “Animals,” Article I, “In General,” and Article II “General Regulations” which shall hereinafter read as follows:

Sec. 5-1. - Definitions.

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

Abuse means to mistreat through intent abuse or reckless neglect of any animal in a manner that causes or is likely to cause stress or physical injury or as otherwise stated in this chapter.

Animal means any living creature other than hominids. Unless indicated otherwise, the term shall include livestock, miniature livestock, fowl, reptiles, amphibians, and wildlife, as well as dogs, cats and other creatures commonly owned as pets. The term shall exclude fish and other small aquarium-maintained creatures, not herein prohibited or restricted, where the owner only maintains no more than three aquariums having a total capacity of 90 gallons. The term also means a domesticated living creature and wild living creature previously captured, other than a dog.

Animal control division, animal control authority or animal control officer means the animal control division of the city police department, its animal control officers and/or peace officers.

Animal shelter or city kennel means a facility designated by the city council to be used for the impoundment of animals taken up by the animal control officers or other similar facility that may be temporarily contracted or designated by the chief of police for animal impoundment under the provisions of this chapter.

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

Apiary means a place where a bee colony is kept.

Authority means the local rabies control authority as defined in this section.

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

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

Cat means the male and the female of any domesticated member of the feline species of animal.

Chapter or this chapter means chapter 5 of the Kyle, Texas, Code of Ordinances.

Chief of police means the chief of police or the chief of police's designee responsible for the administration of this chapter.

Circus means a commercial variety show featuring animal acts for the public at a fee or a part of a charity.

Code means the Kyle, Texas, Code of Ordinances.

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

Commercial animal enterprise means and includes, but [may] not be limited to, enterprises operating in public places where hens, other fowl, and rabbits are offered for sale to the public, enterprises such as kennels, pet shops, riding stables, animal actions, performing animal exhibitions, animal training services, grooming shops, petting zoos, aviaries or any similar entrepreneurial relationship regarding animals.

Constrictor means a snake that kills its prey by coiling tightly around it, causing suffocation.

Dangerous wild animal shall have the same meaning as defined in V.T.C.A., Health and Safety Code §§ 822.101—822.116, as amended.

Day means a workday including Saturday and excluding Sunday and city holidays.

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

Dog means the male and the female of any domesticated member of the canine species of animal.

Domestic animal means any animal whose physiology has been determined or manipulated through selective breeding and does not occur naturally in the wild; any animal which can be vaccinated against rabies with an approved rabies vaccine; and any animal which has an established rabies quarantine observation period.

Estray has the same meaning as defined in V.T.C.A., Agriculture Code ch. 142 as amended, defining stray as stray livestock, stray exotic livestock, and stray exotic fowl.

Exotic species means any animal or reptile, fish, or bird, born or whose natural habitat is considered to be outside the continental United States, including nonvenomous reptiles and fish.

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

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

Governmental entity means an agency or political subdivision of the state or an agency or department of the federal government.

Habitual offender or habitually means or refers to, an owner who has received two or more final convictions of this chapter or the owner of an animal who has been the subject of impoundment in the animal shelter three or more times during a 12-month period or any combination of convictions and impoundment totaling three incidents.

Harbor means to possess while in the act of keeping and caring for an animal; or of providing a premises to which the animal returns for food, shelter or care for a period of three days or longer.

Hen means a female chicken.

Hive means a structure intended to house a colony.

Keep or keeping or kept means the care and control of animals for a period of longer than five days.

Kennel means an establishment designed or used for the selling, breeding, or overnight boarding of animals where more than three dogs and two cats or three cats and two dogs or a combination of five other animals are to be boarded, sold, or bred.

Livestock means and includes, regardless of age, sex or breed, horses and all equine species, including mules, donkeys and jackasses; cows and all bovine species; sheep and all ovine species; llamas; goats and all caprine species; and pigs and all swine species.

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

Marine animal means any animal, other than a mammal or bird, that lives in a marine environment.

Miniature livestock means a dwarfed variety or a species bred to be smaller than its standard counterpart, excluding uncastrated males. Whether a particular variety or species is miniature livestock may be validated by reference to the published breed definition for registration by a nationally recognized breeding association of a particular variety or species.

Multi-pet owner means a person who keeps or harbors five or more cats or dogs or any combination of five or more cats and dogs. Puppies and kittens under four months of age shall not be counted for purposes of this definition.

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

Nonregisterable dangerous dog means any dog which:

- (1) When unprovoked, severely attacked or inflicts serious injury or death to a person, whether on public or private property; or
- (2) Has been deemed nonregisterable by the animal control officer and upheld or unchallenged by any court of jurisdiction.

Owner or presumed owner means any person who has purchased or who owns, keeps, maintains, harbors or has care, custody or control of one or more animals. Ownership may be determined by identifying an adult resident of the premises upon which the animal is kept, maintained, harbored or otherwise resides and such adult shall constitute the owner of the animal upon such premises. Each actual resident of the premises shall be the owner or presumed owner and charged with responsibility for the animals thereon maintained or harbored.

Performing animals means any spectacle, display, act or event in which animals perform.

Person means and includes an individual human, partnership, copartnership firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, trust, estate, governmental entity, association or corporation or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

Poison means a substance having an inherent harmful property which renders it, when taken into the system, capable of destroying animal life.

Policy means the policies and procedures adopted consistent with this chapter and applicable to the animal control division of the city police department.

Premises means a definite portion of a legal lot of real estate or land, together with any appurtenances or buildings.

Prepackaged outlet means a store, shop or other retailer that sells prepackaged fowl and rabbits to the public from an established storefront or retail location, such as supermarkets, grocery stores, butcher shops, etc.

Prohibited animals means any animal prohibited by state or federal law and including any individual species and/or subspecies of the following animals: antelope, lions, tigers, ocelots, bobcats, lynx, cougars, leopards, cheetahs, jaguars, hyenas, bears, lesser pandas, ferrets born in natural habitats, binturong, ostriches, emus, elephants, Vietnamese pot belly pigs, miniature pigs, apes or such other nondomestic species of animal not common to this area.

Proper enclosure for a registered dangerous dog means a house or a building, or in the case of a fence or structure/pen, the fence or structure/pen must be at least six feet in height. The structure/pen must also have minimum dimensions of 150 square feet. The fence or structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured such that an animal cannot climb, dig, jump or otherwise escape of its own volition. The enclosure shall be securely locked at all times and have secured sides to prevent a dangerous animal or registered dangerous dog from escaping from the enclosure. The structure/pen shall provide protection from the elements for the animal. The structure must have a secure top and a concrete floor. Invisible fences or similar technology shall not constitute proper enclosure.

Proper outdoor enclosure for a dog means a fence or structure must be at least four feet in height. The structure/pen must also have a minimum dimension of 150 square feet. The fence or structure/pen must form an enclosure secured such that an animal cannot climb, dig, jump, or otherwise escape of its own volition. The structure shall provide protection from the elements for the animal. Invisible fences or similar technology shall not constitute proper enclosure.

Public place means any place open to the public and to which the public has access. It shall include, but is not limited to, shops, stores, outdoor locations and markets and flea markets. A commercial animal enterprise open to the public or to which the public has access is a public place under this definition.

~~*Qualified residence* means for purposes of this chapter an R-1-1 single family residence as defined and regulated by article II, division 2 of the zoning ordinance.~~

Qualified zone property means all classifications of zoning under the zoning ordinance except all residential districts, hospital services district, and recreational vehicle park district.

Quarantine means a period of ten days used for observation of a domestic or pet animal to determine the health status of that animal in relation to the rabies virus.

Quarantine by owner means an animal owner who quarantines with animal control officer's permission under the following conditions:

- (1) Animal must have current rabies vaccination and be registered with animal control;
- (2) Animal must be inside an enclosed structure, i.e., house or garage, and must remain there for ten days;
- (3) If maintained outside, animal must be behind a fence from which it cannot escape and on a chain from which it cannot break loose or inside a covered pen or kennel from which it cannot escape. The length of the chain must prevent the animal from making contact with the fence in which it is kept;
- (4) Animal must be kept away from other animals and people except those in the immediate household;

- (5) Animal may not be removed from the corporate city limits while under quarantine;
- (6) Owner shall notify animal control officer immediately if animal becomes sick or displays any behavioral changes;
- (7) Owner shall not subject the animal to any medical procedure without first notifying the animal control officer. This includes any vaccination;
- (8) Animal must be examined by the local rabies control authority or designee by the first day of home quarantine and again on the final day of quarantine. Upon final examination the authority may declare the animal to be free of the rabies virus or under questionable circumstance differ such examinations to a licensed veterinarian. In such instances, owner shall be responsible for all associated costs and when required produce proof of such veterinarian examinations;
- (9) Owners who are deemed habitual offenders as defined herein shall not be allowed home quarantine;
- (10) Owner must allow animal control, with reasonable notice, to view and confirm the health of the animal during the rabies quarantine period.

Rabies vaccination means the vaccination of a dog, cat or other domestic animal with an antirabies vaccine approved by the state department of health and administered by a veterinarian licensed by the state.

Registered dangerous dog means any dog registered with the city in compliance with V.T.C.A., Health and Safety Code §§ 822.041—822.047, and with article IV of this chapter, pertaining to registered dangerous dogs.

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

Restrained means:

- (1) With respect to a dog:
 - a. Kept under direct physical control of the animal's owner or handler by a tether, leash, cord, chain, or similar direct physical control; or
 - b. Confinement through fencing or similar enclosed structure within the property limits of its owner.
- (2) With respect to any other animal:
 - a. Secured by a tether, leash, rope, or chain of some sort; or
 - b. Confinement through fencing or similar structure within the property limits of its owner.

Restricted animals means any individual species and/or subspecies defined herein as prohibited animals that have been registered and permitted in compliance with the procedures set out in section 5-132.

Running at large or animals at large means:

- (1) *Off premises*. Off-premises as follows:
 - a. Any animal, except pet cats, which is not restrained by means of a leash, chain, or other physical apparatus of sufficient strength and length to control the actions of such animal while off-premises;
 - b. Any cat which is creating a nuisance off the owner's property.
- (2) *On-premises*. On-premises as follows:
 - a. Any animal, except pet cats, not confined to the premises of the owner by a substantial fence of sufficient strength and height to prevent the animal from escaping;

- b. Any animal, except dogs, secured on the premises by a tether, chain, or leash sufficient in strength to prevent the animal from escaping from premises and so arranged that the animal will remain upon the premises when the tether, leash, or chain is stretched to full length;
- c. An animal intruding upon the property of another person other than the owner's shall be termed "at large;"
- d. Any animal within a vehicle in a manner that would prevent that animal's escape or contact with other persons or animals shall not be deemed "at large."

Seller means a person who offers for sale and sells live hens, other fowl, and rabbits in a public place to the public, but this definition does not include or apply to a prepackaged outlet.

Serious injury means bodily injury resulting from severe attack or severe bite from an animal which produces severe pain, trauma, loss of blood or tissue, and which requires medical treatment of wounds inflicted by the animal.

Severe attack means an attack in which the animal repeatedly bites or vigorously shakes its victim, and the victim, or a person intervening, has extreme difficulty terminating the attack.

Severe bite means a puncture or laceration made by an animal's teeth which breaks the skin, resulting in a degree of trauma which would cause most prudent and reasonable people to seek medical care for treatment to the wound, without considerations of rabies prevention alone.

Stray animal (including estray) means any animal, of which there is no identifiable owner or harbinger, which is found to be at large within the corporate limits of the city.

Tag means a vaccination tag attached to a collar as required by this chapter or some other permanent identifying device attached to a collar or to an animal and also means implanting or placement of a microchip or similar device for purposes of identification of an animal, except that the procedure of implanting or placing a microchip or similar device for said purposes shall be performed only by a licensed veterinarian, by a person duly authorized and supervised by a licensed veterinarian, or by a person duly and professionally trained in said procedure.

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

Tract means a contiguous parcel of land under common ownership.

Undeveloped property means any property that is not improved or under improvement for human use or occupancy, including property developed as a street or highway, or used for a commercial agricultural purpose.

Unprovoked attack means that the animal was not hit, kicked, teased, molested or struck by a person with an object or part of a person's body, nor was any part of the animal's body pulled, pinched or squeezed by a person.

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

Veterinarian means any person duly licensed to practice veterinary medicine by the state board of veterinary examiners, or who is exempt from such licensing.

Wild animal or wildlife means any nondomestic creature (mammal, amphibian, reptile or fowl) which is of a species which is wild by nature, which can normally be found in a wild state, and which is not naturally tame or gentle, or which, because of its size, vicious nature and other characteristics, constitutes a danger to human life or property including all animals identified herein as prohibited.

Workday means a day from Monday through Saturday, excluding city holidays, with each respective day's work hours beginning at 8:00 a.m. and continuously operating until 8:00 p.m.; defining the public's routine access to administrative fees and impound release transactions authorized by this chapter.

Zoning ordinance means the Kyle, Texas, Code of Ordinances, chapter 53.

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

(Ord. No. 287-1, § 1, 2-1-2005; [Ord. No. 713](#), § 1, 11-20-2012; [Ord. No. 818](#), § 2, 8-19-2014; [Ord. No. 822](#), § 2, 10-8-2014)

Sec. 5-44. - Hens, other fowl and rabbits.

- (a) No more than six hens and/or two other fowl and/or two rabbits may be kept at a ~~qualified~~ residence.
- (b) All hens, other fowl, and rabbits kept at a ~~qualified~~ residence shall ~~be kept in~~ have a pen, coop or hutch constructed ~~so as to securely confine~~ and available to such hens, other fowl and rabbits. All hens, other fowl, and rabbits must remain on owner's property behind a fence, on a leash, or on a tether. ~~A fenced yard or other fenced-off area shall not qualify as a pen, coop or hutch.~~
- (c) The pen, coop, or hutch shall be at least 20 feet from neighboring residences and at least 10 feet from the owner's residence.
- ~~(e) No hens, other fowl, or rabbits may be kept at a residence that is not a qualified residence as defined herein.~~
- (d) No more than six hens and/or two fowl and/or two rabbits may be kept at qualified zone property as defined herein unless the property operates as and qualifies as a commercial animal enterprise.
- (e) The keeping of roosters at a residence, ~~qualified residence~~ or qualified zone property, including a commercial animal enterprise, is prohibited.

(Ord. No. 287-1, § 38, 2-1-2005; [Ord. No. 713](#), § 1, 11-20-2012; [Ord. No. 818](#), § 4, 8-19-2014)

Editor's note— [Ord. No. 818](#), § 4, adopted Aug. 19, 2014, amended the catchline of § 5-44 from "Pens and coops; location" to "Hens, other fowl and rabbits."

Sec. 5-45.1. - Miniature livestock—General provisions.

- (a) An owner of miniature livestock may keep or harbor no more than two head of miniature livestock at an owner's ~~qualified residence or~~ qualified zone property if the following conditions are met by the owner:
 - (1) The miniature livestock are not used as performing animals nor part of a commercial animal enterprise operated at the owner's ~~qualified residence or~~ qualified zone property unless the qualified zone property is permitted as a commercial animal enterprise.
 - (2) All miniature livestock shall be secured from dawn to dusk in a pen, corral, barn or other enclosure sufficient and adequate to restrain such miniature livestock.
 - (3) Two head of miniature livestock shall be pastured in no less than one-third acre of land per head.
 - (4) Acreage that serves as pasture shall be enclosed by fencing or other security structures along the pasture perimeter in order to prevent miniature livestock from straying or otherwise leaving an owner's pasture acreage.
- (b) It shall be unlawful for any owner of miniature livestock to:
 - (1) Cause or permit any miniature livestock to be pastured, herded, stacked or tied in any street, lane, alley, park or other public place; or

- (2) Tie, stake or pasture or permit the tying, staking or pasturing of any miniature livestock upon any private property within the city without the consent of the owner or occupant of such property, or in such a way as to permit any miniature livestock to trespass upon any street or other public place or upon any private property.

([Ord. No. 818](#), § 6, 8-19-2014)

~~Sec. 5-45.3. Same—In qualified residential area; restrictions.~~

~~Miniature livestock shall not be kept or harbored at a qualified residence if restricted or prohibited by a qualified residence's deed restrictions, covenants running with the land, or regulations of a homeowners' association or neighborhood association governing the location of the qualified residence. An association may adopt regulations addressing the keeping and harboring of miniature livestock after the adoption of this ordinance.~~

([Ord. No. 818](#), § 6, 8-19-2014)

SECTION 5. REPEALING CLAUSE. The remainder of Chapter 5 in the City's Code of Ordinances remains unchanged. The Code of the City of Kyle, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. SAVINGS CLAUSE. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict with all remaining portions not conflicting being saved from repeal herein.

SECTION 7. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

SECTION 8. PUBLICATION. It is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by Section 551.001 et seq., Texas Government Code and that advance public notice of the time, place and purpose of said meeting was given.

SECTION 9. EFFECTIVE DATE. The Ordinance shall take effect immediately upon its second reading as required by the City Charter, Section 3.11 and the publication of the caption of said ordinance as the law in such cases provides.

**PRESENTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KYLE,
TEXAS THIS ____ DAY OF _____, 2017.**

R. Todd Webster, Mayor

ATTEST:

Jennifer Vetrano, City Secretary

APPROVED AS TO LEGAL FORM:

Frank Garza, City Attorney

DRAFT