

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, AMENDING THE CITY OF KELLER CODE OF ORDINANCES CHAPTER 3 – ANIMALS, FOWL, INSECTS AND REPTILES REGARDING REGULATIONS OF DANGEROUS ANIMALS; PROVIDING A MAXIMUM PENALTY OF \$500; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

- WHEREAS,** the City of Keller, Texas, is a home-rule municipality having full powers of self-government and may enact ordinances relative to its citizens' health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and
- WHEREAS,** the City of Keller City Council (the "City Council") finds and determines that the passage of this ordinance as necessary to protect the public, health, safety, and welfare; and
- WHEREAS,** the City Council has determined the City's current dangerous dog provisions in the code of ordinances should be replaced in order to comply with and better utilize the statutory provisions provided by Chapter 822, Subchapter D of the Texas Health and Safety Code; and
- WHEREAS,** the City Council is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance, including but not limited to the Open Meetings Act.

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

- Section 1: THAT the above findings are hereby found to be true and correct and are incorporated herein in their entirety.
- Section 2. THAT the City of Keller Code of Ordinances Chapter 3 – Animals, Fowl, Insects and Reptiles, Section 3-100 - Definitions is hereby amended by replacing the term and definition of "Animal control authority" with the terms and definition of "*Animal control authority or animal services*" and by replacing the term and definition of "Dangerous Animal" with the term and definition of "Dangerous dog," both of which shall read as follows:

Animal control authority or animal services. The Colleyville, Keller, Southlake, and Roanoke Regional Animal Services.

Dangerous dog. Means a dog that:

- (1) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than a private enclosure;
- (2) commits unprovoked acts toward a person in a place other than a private enclosure and those acts cause that person to reasonably believe that the animal will attack and cause bodily injury to that person; or

- (3) makes an unprovoked attack on a domesticated animal that causes bodily injury to the animal and occurs in a place other than a private enclosure, commercial kennel, animal shelter, or city-designated dog park.

Section 3. THAT the City of Keller Code of Ordinances Chapter 3 – Animals, Fowl, Insects and Reptiles, Section 3-100 - Definitions is hereby amended by adding the term and definition of “Private enclosure” which shall be placed in the appropriate alphabetical order within the existing terms and shall read as follows:

Private enclosure. A fenced area, building, structure, or dwelling unit on private property where a dog is being kept, which is not open to the general public and is reasonably certain to prevent the dog from leaving the enclosure on its own. Commercial kennels, animal shelters, and city-designated dog parks are specifically excluded from the definition of *private enclosure*.

Section 4: THAT the City of Keller Code of Ordinances, Chapter 3 – *Animal, Fowl, Insects and Reptiles*, Section 3-220. – *Dangerous Animals; procedures and hearing* is hereby amended and replaced, which shall read as follows:

Sec. 3-220. – Dangerous dogs; determination; appeal hearing.

- (a) Report of attack. If a person reports an incident involving a dangerous dog, the animal control authority may investigate the incident. To report an incident involving a dangerous dog, a written sworn statement must be submitted to the animal control authority and must contain the following information if known:
 - (1) name, address, and telephone number of the person submitting the statement;
 - (2) the identity of any other witnesses;
 - (3) date, time and location of the incident;
 - (4) a complete description of the alleged dangerous dog (breed, if known, as well as color and size);
 - (5) name, address and telephone numbers of owners, if known, or the premises where the dog or animal is located;
 - (6) a detailed statement describing how the alleged dangerous dog attacked a person or animal;
 - (7) a statement indicating whether the alleged dangerous dog has exhibited vicious propensities in its past conduct; and
 - (8) any other facts and circumstances relating to the incident.
- (b) After a sworn statement is filed, the animal control authority is authorized to investigate the incident to determine if the dog is a dangerous dog. The animal control authority shall notify the owner of the dog in writing of its determination.

- (c) If a dog is found to be dangerous, the animal control authority shall notify the owner of the determination by personal service or certified mail - return receipt request. The notification will advise the owner of the right to appeal.
- (d) A owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to the municipal court. To file an appeal, the owner must:
 - (1) file a notice of appeal of the animal control authority's dangerous dog determination with the municipal court;
 - (2) attach a copy of the determination from the animal control authority; and
 - (3) serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service.
- (e) The animal control authority is authorized to seize a dangerous dog and provide for the impoundment of the dog in secure and humane conditions while an appeal is pending or until the owner complies with Sec. 3-225. If the owner refuses to voluntarily surrender the dog upon request, the municipal court is authorized to issue a warrant for such seizure. The animal control authority shall return the dog impounded pursuant to the section upon:
 - (1) a determination by the municipal court that the dog is not dangerous; or
 - (2) the owner's compliance with Sec. 3-225 and payment of all applicable costs and fees related to the seizure impoundment of the dog.
- (f) Appeal hearing.
 - (1) The court, on receiving a request for a hearing pursuant to subsection (d), shall set a time for a hearing to determine whether the dog is a dangerous dog.
 - (2) The court shall give written notice of the time and place of the hearing to the owner or harbinger of the dog, to animal services, and to the person who made the complaint.
 - (3) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.
 - (4) At the hearing, the municipal court may receive testimony concerning the incident under investigation and/or consider the affidavits and/or complaints on file.
 - (5) The municipal court shall make a determination, based on the preponderance of evidence presented, whether the dog is a dangerous dog as defined by this chapter.
 - (6) If the owner or harbinger of the dog does not appear at the hearing, the municipal court may proceed with evidentiary findings without the owner's or harbor's presence.
 - (7) If the dog or animal is found dangerous, the municipal court shall order compliance with Sec. 3-225.
 - (8) The owner may appeal the decision of the municipal court in the manner described by Health and Safety Code § 822.0424, as amended. During the pendency of such

appeal, animal services will retain custody of the dangerous dog. The municipal court shall determine the estimated costs to house and care for the impounded dangerous dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.

Section 4: THAT the City of Keller Code of Ordinances, Chapter 3 – *Animal, Fowl, Insects and Reptiles*, is hereby amended by adding Section 3-225, which shall read as follows:

Sec. 3-225. – Dangerous dogs; requirements; failure to comply hearing.

- (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:
 - (1) register the dangerous dog with the animal control authority;
 - (2) restrain the dangerous dog or animal at all times on a leash in the immediate control of a person who is at least seventeen (17) years of age or in a secure enclosure as defined by this chapter;
 - (3) obtain and provide proof to the animal control authority of liability insurance coverage in an amount of at least one hundred thousand dollars (\$100,000.00) to cover damages resulting from an attack by the dangerous dog causing bodily injury or other damage to a person;
 - (4) post on the exterior of the fence that houses the dangerous dog signs that state in bold letters “DANGEROUS DOG,” which will be provided by the animal control authority; and
 - (5) attach onto the dog a dangerous dog collar and dangerous dog tag as provided by animal control authority, which shall be worn by the dangerous dog at all times.
- (b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.
- (c) For purposes of this section, a person learns that the person is the owner of a dangerous dog:
 - (1) when the owner is informed by the animal control authority that the dog is a dangerous dog pursuant to this chapter and the owner does not file a timely appeal to the municipal court; or
 - (2) when the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog pursuant to this chapter.
- (d) Upon determination by the animal authority that an owner or harbinger has failed to keep a dangerous dog in compliance with this chapter, the animal control authority may request a hearing before the municipal court to determine the disposition of the dangerous dog.
- (e) Animal services is authorized to seize and impound any dangerous dog that is not kept in compliance with this chapter until a hearing is held pursuant to this section.

- (f) Compliance hearing.
- (1) The municipal court, on receiving a request for a hearing pursuant to this section, shall set a time for a hearing to determine whether the dog is a dangerous dog.
 - (2) On receiving a request for a hearing under this section, the court shall set a time for a hearing to determine whether the owner or harbinger of a dangerous dog has complied with all the requirements of this division. If the dog is seized prior to the hearing, the hearing must be held not later than the tenth day after the date on which the dangerous dog is seized or delivered.
 - (3) The municipal court shall give written notice of the time and place of the hearing to the owner or harbinger of the dangerous dog and to animal services.
 - (4) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.
 - (5) If the owner or harbinger of the dangerous dog does not appear at the hearing, the municipal court may proceed with evidentiary findings without the owner's or harbor's presence.
 - (6) The municipal court shall make a determination, based on the preponderance of evidence presented, whether the owner or harbinger of the dangerous dog has complied with all the requirements of this section.
- (g) If the municipal court finds that the owner or harbinger of a dangerous dog has failed to comply with the requirements of this section, the municipal court shall order:
- (1) the animal control authority to seize the dog, if the dangerous dog has not been seized prior to the hearing, and
 - (2) one of the following:
 - a. the humane destruction of the dangerous dog on or after the eleventh day after the date of the order;
 - b. the immediate removal of the dangerous dog from the city, provided that if such dog is found at any time to be within the city on or after the eleventh day after the date of the order, the court will order animal services to seize the dangerous dog after issuing a warrant authorizing the seizure, and order the humane destruction of such dangerous dog; or
 - c. the return of the dangerous dog to the owner or harbinger upon full payment of the cost of seizure, impound, and care to animal services.
- (h) An order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal pursuant to Health and Safety Code § 822.0424. The court may not order the destruction of a dog during the pendency of such appeal. The court shall determine the estimated costs to house and care for the impounded dangerous dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.

- (i) The municipal court may issue orders and warrants for the seizure, impoundment, and disposition of a dangerous dog as authorized by this section.

Section 5: THAT the City of Keller Code of Ordinances, Chapter 3 – *Animal, Fowl, Insects and Reptiles*, Section 3-230. – *Failure to release or remove dog* is hereby amended and replaced, which shall read as follows:

Sec. 3-230. – Dangerous dog violations.

- (a) Any person who owns or keeps custody or control of a dangerous dog and fails to comply with Sec. 3-225 commits an offense under this chapter.
- (b) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person or domesticated animal outside a private enclosure and such attack causes bodily injury.
- (c) If a person is found guilty of an offense under subsection (b), the court may order the dangerous dog humanely destroyed.

Section 6: THAT this Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Keller, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in such event the conflicting provisions of the other ordinances are hereby repealed.

Section 7: THAT any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon final conviction thereof, be fined in an amount not to exceed five hundred dollars (\$500.00). Each and every day any such violation continues shall constitute a separate offense and shall be punishable as such hereunder.

Section 8: THAT if any section, paragraph, clause, phrase, or provision of this Ordinance, shall for any reason be held to be invalid or unenforceable, the validity or unenforceability of such section, paragraph, clause, phrase, or provision shall not effect any of the remaining provisions of this Ordinance.

Section 9: THAT this Ordinance shall become effective upon its adoption and publication provided by law.

AND IT IS SO ORDAINED.

PASSED AND APPROVED this the _____ day of _____, 20____.

CITY OF KELLER, TEXAS

Armin Mizani, Mayor

Attest:

Kelly Ballard, City Secretary

Approved as to Form:

L. Stanton Lowry, City Attorney