

ORDINANCE NO. 2011- 031

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE IX (GENERAL REGULATIONS) TO ADD CHAPTER 97 (ANIMAL REGULATIONS) TO PROVIDE FOR REGULATIONS RELATING TO THE INTENTIONAL FEEDING, CONFINEMENT IN VEHICLES, TETHERING AND SALE OF DOGS AND CATS IN THE CITY OF WIMBERLEY; PROVIDING A PENALTY, FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, each year dogs and cats are euthanized due to overpopulation and some irresponsible breeders; and,

WHEREAS, the retail sale of dogs and cats in parking lots and on the side of the road is dangerous to both humans and animals; and,

WHEREAS, the City Council finds the amendments herein are reasonable to carry out the purposes and goals of this ordinance; and,

WHEREAS, the City is authorized to regulate the public health, safety and welfare of its citizens, and the regulations provided in the this ordinance are a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to Texas Local Government Code chapters 51 and 52.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS, THAT:

**Section 1. Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**Section 2. Amendment.**

THAT the City of Wimberley Code of Ordinances, title IX (General Regulations) is amended to add Chapter 97 (Animal Regulations) to read as follows:

**"Chapter 97 ANIMAL REGULATIONS**

**§ 97.01 PURPOSE**

(A) *Purpose.* The purpose of this chapter is to:

- (1) Regulate the retail sale of cats and dogs on- and off- site from the location where they were bred;
- (2) Prohibit the sale of animals in parking lots or on the roadside; and,
- (3) Protect both animal and human life within the City of Wimberley.

## § 97.02 DEFINITIONS

- (A) ANIMAL means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.
- (B) DOG or CAT, unless otherwise specifically set forth with an age limit, shall include a “puppy” or “kitten”, and the terms are interchangeable.
- (C) PET TRADER means a person who exchanges for consideration more than five dogs or cats, including puppies and kittens, regardless of age of the dog or cat or both, or any other animal in a year. The term excludes an animal shelter or person who makes an exchange that is not for profit or a not for profit 501(c)(3) animal welfare organization registered with the City.
- (D) OFF-SITE RETAIL SALE means the exchange of consideration for a cat or dog, regardless of the age of the cat or dog, at a location other than where the cat or dog was bred.
- (E) RETAIL SALE means the exchange for consideration for a cat or dog, regardless of the age of the cat or dog.

## § 97.03 COMMERCE IN LIVE ANIMALS

- (A) A pet trader commits an offense if the pet trader conducts a retail sale in violation of Subsections (E) through (F) of this section.
- (B) A pet trader commits an offense if the pet trader conducts an off-site retail sale.
- (C) A person commits an offense if the pet trader sells, trades, barter, leases, rents, gives away, or displays for commercial purpose a live animal on a roadside, public right-of-way, or commercial parking lot, or at an outdoor special sale, swap meet, flea market, parking lot sale, or similar event.
- (D) This section does not apply to:
  - (1) A not for profit 501(c)(3) animal welfare organization registered with the City and which receives prior written approval from the City for such sale, give away or display; or
  - (2) An event primarily for the sale of agricultural livestock such as hooved animals or animals or fowl commonly raised for food, dairy, or fiber products; or
  - (3) An adoption at which consideration is paid, if it occurs at a mobile pet adoption establishment that is operated by an organization that is exempt pursuant to paragraph (D)(1) of this section.
- (E) Prior to the exchange of a dog or cat, a pet trader shall implant an identification microchip in the dog or cat before an exchange. Registration information regarding the microchip shall be provided to the new owner.
- (F) This subsection prescribes requirements for disclosure of information by a pet trader to a recipient of a dog or cat.
  - (1) A pet trader shall deliver to a recipient for disclosure of information by a pet trader to a recipient of a dog or cat;
    - (a) The breeder’s name and address, and license information if the breeder is licensed by the United States Department of Agriculture; if known, and if the person from whom the dog or cat is obtained is a dealer licensed by the United

States Department of Agriculture, the dealer's name, address, and federal dealer identification number;

- (b) The date of a dog or cat's birth, if known, and the date the pet trader received the dog or cat;
  - (c) The breed, sex, color, and identifying marks at the time of exchange, if any;
  - (d) A record of each inoculation and worming treatment administered, if any, to the dog or cat, including the date of administration and the type of vaccine or worming treatment;
  - (e) A record of veterinarian treatment or medication received by the dog or cat while in the possession of the pet trader including a receipt or other documentation from a licensed veterinarian documenting the dog or cat was spayed or neutered, if the dog or cat was spayed or neutered; and
  - (f) A document signed by a veterinarian licensed in the State of Texas:
    - (i) Stating that the dog or cat has no known disease or illness and that the dog or cat has no known congenital or hereditary condition that adversely affects the health of the dog or cat at the time of the exchange or that is likely to adversely affect the health of the dog or cat in the future; or
    - (ii) Describing any known disease, illness, or congenital or hereditary condition that adversely affects the health of the dog or cat, or that is likely to adversely affect the health of the dog or cat in the future; and
    - (iii) Documenting that the veterinarian spayed or neutered the dog or cat, if the veterinarian performed this surgery.
- (2) A pet trader shall sign the completed form to certify the accuracy of the information, and the recipient of the dog or cat shall sign the completed form to acknowledge receipt of the information.
- (3) In addition to providing the completed and signed form to the recipient, the pet trader shall verbally disclose the information on the form to the recipient.
- (4) A pet trader shall:
- (a) Retain a copy of each completed and signed form for a period of not less than two years after the exchange of the dog or cat; and
  - (b) Make each completed and signed form available for inspection or copying by an employee of the City, animal control officer, or law enforcement officer during business hours.

#### **§ 97.04 INTENTIONAL FEEDING**

- (A) Except as provided in subsection (C), a person commits an offense if the person intentionally feeds uncaptured wild living creatures or animals not owned or in the possession of the person or makes food available for consumption by animals on public property within the territorial limits of the city.
- (B) No person shall intentionally feed uncaptured wild living creatures or animals not owned or in the possession of the person on private property in such a manner that creates a public nuisance or poses a risk to public health and safety.
- (C) A person shall be presumed to have intentionally fed uncaptured wild living creatures or animals, or made food available for consumption by uncaptured wild living creatures or animals not owned or in the possession of the person, if the person places food, or causes

food to be placed, on the ground outdoors or on any outdoor platform that stands fewer than five (5) feet above the ground.

- (D) This section does not apply to an animal control officer, veterinarian, peace officer, City employee, federal or state wildlife official, or property owner who is authorized by a local, state, or federal government to treat, manage, capture, trap, hunt, or remove an animal and who is acting within the scope of the person's authority.
- (E) **AFFIRMATIVE DEFENSE.** It is an affirmative defense to prosecution under this chapter if a person places food, in good faith, for the purpose of feeding domestic livestock or pets located on the property.

#### **§ 97.05 CONFINEMENT IN VEHICLES**

- (A) No person shall leave or confine an animal in any unattended enclosed motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.
- (B) Nothing in this section shall prevent a peace officer or an animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.
- (C) A peace officer or animal control officer who removes an animal from a motor vehicle shall take it to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment.
- (D) A peace officer or animal control officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort to locate the owner or other person responsible.
- (E) A peace officer or animal control officer who removes an animal from a motor vehicle shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. The animal may be claimed by the owner only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.
- (F) Nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep, poultry or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

#### **§ 97.06 TETHERING OF DOGS**

No person shall, at any time, fasten, tether, chain or tie any dog or cause such dog to be fastened, chained or tied in any manner to a fixed object or to a moving motor vehicle or bicycle. Except a dog may be tethered in the bed or rear of non-commercial truck or trailer, or to allow for the cleaning of its enclosure or while the owner is outside with the dog and is in visual contact with the dog at all times, and must be released immediately upon completion of cleaning its enclosure.

#### **§ 97.07 ENFORCEMENT**

- (A) A person may report a violation of this chapter to the City Administrator.
- (B) The City Administrator may enforce this chapter and may seek injunctive relief.
- (C) The City Administrator may authorize a City employee conducting an inspection under any provision of the city code to also inspect for compliance with this chapter and issue a citation for violation of this chapter.

**§ 97.08 PENALTY**

A person who violates this chapter commits an offense. An offense under this chapter is a Class C misdemeanor punishable as provided in section 10.99 (*General Penalty*).”

Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

**Section 3.** All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

**Section 4.** Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

**Section 5.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

**Section 6. Open Meetings.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov’t. Code.

**PASSED AND APPROVED ON FIRST READING** this 17<sup>th</sup> day of November, 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**PASSED AND APPROVED ON SECOND READING** this 1<sup>st</sup> day of December, 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

**CITY OF WIMBERLEY, TEXAS**



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Bob Flocke, Mayor

ATTEST:

Cara McPartland  
Cara McPartland, City Secretary

APPROVED AS TO FORM:

C. Crosby  
C. Crosby City Attorney

