

RESOLUTION NO. R-71-2004

INTERLOCAL COOPERATION AGREEMENT BETWEEN HAYS COUNTY AND THE VILLAGE OF WIMBERLEY RELATING TO ANIMAL CONTROL

**STATE OF TEXAS §
 §
COUNTY OF HAYS §**

This Interlocal Cooperation Agreement ("Agreement" is made by and between Hays County, a political subdivision of the State of Texas ("County"), represented by County Judge Jim Powers, and the Village of Wimberley, a municipal corporation ("City"), represented by Mayor Stephen J. Klepfer.

RECITALS:

WHEREAS, the County and City are Authorized to enter into this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, Section 791.001 et seq; and,

WHEREAS, the County has enacted Ordinance No. 17901, the Hays County Animal Control Ordinance, pursuant to Chapters 822 and 826 of the Texas Health and Safety Code; and

WHEREAS, the County and City have determined that it is in the best interest of the citizens of Hays County to provide animal control services to protect the public health and safety; and

WHEREAS, the County has in the past and is currently providing animal control services within the corporate limits of the City:

NOW THEREFORE the County and City agree as follows:

I. OBLIGATION OF THE COUNTY

The County shall continue to provide animal control services to the City pursuant to the County's Animal Control Ordinance, and according to the terms and conditions described in Exhibit "A" attached hereto and incorporated herein for all purposes.

II. OBLIGATIONS OF THE CITY

The City shall pay to the County the sum of \$6,000.00 annually for the animal control services to be provided by the County. The City shall pay for the performance of the services provided by the Country from current revenues available to the City.

III. TERM

The term of this agreement will commence on the effective date as evidenced by the last signature provided below and subsequent to approval by the governing bodies of both parties and will continue until September 30, 2004.

IV. COOPERATION

The County and the City agree to cooperate with each other in good faith at all times during the term of this agreement in order to achieve the purposes and intent of this agreement.

V. ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding this subject. This agreement may not be modified or amended except by written agreement duly executed by the parties.

VI. INTERPRETATION

The parties acknowledge and confirm that this agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act. All terms and provisions hereof are to be construed and interpreted consistently with that Act.

VII. SEVERABILITY

Any clause, sentence, paragraph or article of this agreement which is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect shall not be deemed to impair, invalidate, or nullify the remainder of this agreement if the agreement can be given effect without the invalid portion.

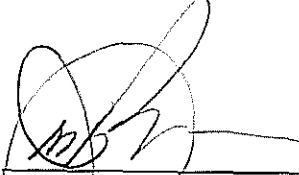
VIII. APPLICABLE LAWS

This agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

IX. AUTHORIZATION

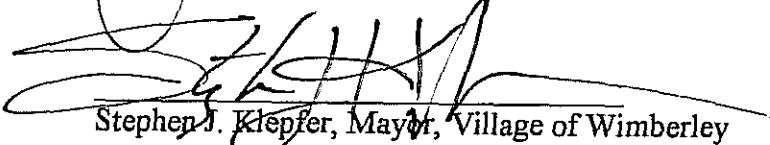
Each party hereto acknowledges and represents that this agreement has been duly authorized by its respective governing body.

PASSED AND APPROVED at a meeting of the Commissioners' Court of Hays County, Texas on the 3 day of February, 2004, and the City Council of the Village of Wimberley, Texas on the 15th day of January, 2004.



Jim Powers, Hays County Judge

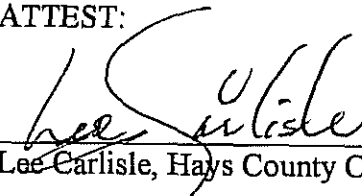
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Stephen J. Klepfer, Mayor, Village of Wimberley

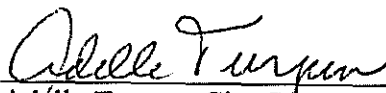
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ATTEST:

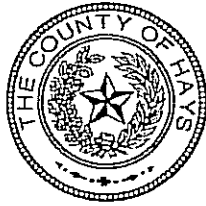


Lee Carlisle, Hays County Clerk

ATTEST:



Adelle Turpen, City Secretary
Village of Wimberley



FOURTH AMENDED

**HAYS COUNTY ANIMAL CONTROL ORDINANCE
NO. 20893**

AN ORDINANCE OF THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, TO ESTABLISH A RABIES CONTROL PROGRAM, REQUIRE THE LICENSING AND RESTRAINT OF CERTAIN ANIMALS, DESIGNATE A LOCAL ANIMAL CONTROL AUTHORITY, REGULATE DANGEROUS DOGS, DECLARE A PUBLIC NUISANCE AND PROVIDE PENALTIES PURSUANT TO CHAPTERS 822 AND 826 OF THE TEXAS HEALTH & SAFETY CODE.

WHEREAS, the Commissioners' Court of Hays County is authorized by Chapter 822 of the Texas Health & Safety Code to enact a local ordinance to regulate the registration and restraint of animals; and

WHEREAS, the Commissioners' Court of Hays County is authorized by Chapter 826 of the Texas Health & Safety Code to enact a local ordinance to require rabies vaccinations and other measures as a means to prevent the dangerous spread of rabies; and

WHEREAS, it is the intent of the Commissioners' Court to enact this animal control ordinance in an effort to protect the public health and safety of Hays County residents and encourage the humane treatment of animals;

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, THAT: The following provisions were adopted the 18th day of **MARCH, 2003.**

SECTION 1. INTENT AND AUTHORITY

Section 1.1. Authority. These regulations are adopted by the Commissioners' Court of Hays County, Texas, acting in its capacity as the governing body of Hays County, Texas as authorized by Chapters 822 and 826 of the Texas Health & Safety Code.

Section 1.2. Intent. It is the intent of the Commissioners' Court of Hays County, Texas, to enact this ordinance in order to protect the public health and safety of the citizens of Hays County and the Commissioner's Court hereby declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety. This ordinance is further intended to encourage the humane treatment of animals and prevent cruelty to animals.

Section 1.3. Strict Liability. Unless otherwise indicated, any person who violates a section of this ordinance shall be strictly liable for such violation and shall be subject to the penalties herein established.

Section 1.4. Municipal Ordinances to Supersede. This ordinance shall not prevent a corporate municipality within the county from establishing any rules and regulations to control animals within its corporate limits. Any such ordinance established by said corporate municipalities shall supersede this ordinance thereby preventing dual enforcement. In such cases, this ordinance will not be enforced within the corporate limits of any municipality.

SECTION 2. DEFINITIONS

As used in this ordinance, the following words and phrases shall have the following meanings:

Section 2.1. Animal Control Officer. Any person designated by the Hays County Sheriff or his designee to perform the duties outlined in this ordinance.

Section 2.2. Animal Owner. Any person who owns, keeps, or has custody or control of an animal for a period of ten (10) days or more.

Section 2.3. Bite. Any puncturing, tearing, or scratching of the skin caused by an animal's teeth.

Section 2.4. Cat. Felis Catus.

Section 2.5. Dangerous Dog. A dog is dangerous if it:

- a) makes an unprovoked attack on a person causing bodily injury and the attack occurs in a place other than an enclosure in which the dog is being kept; or
- b) commits unprovoked acts in a place other than an enclosure in which the dog is being kept and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

Section 2.6. Dog. Canis Familiaris.

Section 2.7. Domestic Animal. Any animal that is owned, kept or controlled by a person.

Section 2.8. Holiday. Those days designated as official holidays by the Hays County Commissioners' Court.

Section 2.9. Inhumane Treatment. Any treatment of an animal which deprives the animal of necessary sustenance, including necessary food, clean water and adequate shelter for protection from weather, or any treatment which constitutes torment, physical abuse, mutilation, or lack of proper veterinary care.

Section 2.10. Public Nuisance. Any animal or animals that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interfere with the rights of citizens, other than their owners, to the enjoyment of life or property. The term public nuisance shall mean and include, but not be limited to, any animal that:

- a) repeatedly is at large or stray;
- b) damages the property of anyone other than its owner;
- c) molests or intimidates pedestrians or passersby;
- d) chases vehicles or bicycles;
- e) excessively and repeatedly makes unprovoked disturbing noises including, but not limited to, continuous and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to the neighbors or others in close proximity to the premises where the animal is kept or harbored;
- f) attacks other domestic animals;

Section 2.11. Restraint. An animal shall be deemed to be under restraint if it is:

- a) tied in such a way as to prevent it from leaving the owner's premises and from being within ten (10) feet of any public right-of-way;
- b) totally enclosed in a fence constructed in such a way as to prevent it from leaving the owner's premises. The use of a wireless fence which transmits either a high frequency sound or a pulse stimulus shock and that is intended to train the dog to stay on the premises will not be considered a means of restraint; or
- c) accompanied by a responsible person who is able to control it with a leash.

Section 2.12. Running At Large. Not completely confined by a building, wall, or fence of sufficient strength or construction to restrain the animal except when a dog subject to these regulations is under the direct supervision of the owner and is:

- a) on a leash;
- b) held in the hands/arms of the owner or within the limits of the owner's private property and is obedient to that owner's verbal commands;
- c) within an automobile or vehicle of its owners and properly restrained; or
- d) participating in a field trial, dog show, or obedience classes.

Section 2.13. Secure Enclosure. A fenced area or structure that is:

- a) locked;
- b) capable of preventing the entry of the general public including children;
- c) capable of preventing the escape or release of a dangerous dog;
- d) clearly marked as containing a dangerous dog; and
- e) conforms to the requirements for enclosures established by the Animal Control Authority.

Section 2.14. Serious Bodily Injury. An injury characterized by severe bite wounds or severe ripping and tearing of muscle or tissue that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

Section 2.15. Stray. Any animal subject to these regulations that is roaming without physical restraint and whose ownership is not readily ascertainable shall be deemed a stray and a nuisance. Absence of a current rabies tab and/or a tag identifying the owner on any animal subject to these regulations is evidence of its status as a stray.

Section 2.16. Vaccinated. An animal which has been currently and properly injected with a rabies vaccine, licensed for use in that species by the United States Department of Agriculture and administered by a veterinarian licensed by the State of Texas.

Section 2.17. Wild Animal. All species of animals that naturally exist in an unconfined state and are usually not domesticated shall be deemed wild. This definition shall apply whether or not the wild animal has been confined for any duration in any fashion.

SECTION 3. LOCAL ANIMAL CONTROL AUTHORITY

Section 3.1. Designation of Animal Control Officer. The Commissioners' Court of Hays County, Texas, hereby designates the Hays County Sheriff as the local health authority and creates the position of Animal Control Officer within the Sheriff's Department to assist with the following:

- a) formulation of rules and procedures to be approved by Commissioners' Court for the enforcement of this ordinance;
- b) supervising the implementation, administration and enforcement of this ordinance.

Section 3.2. Duties of Animal Control Officer. The Animal Control Officer or his authorized designee will be responsible for, but not limited to, the following duties as set forth in this ordinance and to carry out provisions of the State laws pertaining to control and eradication of rabies.

- a) Animal bites – receive and investigate reports or animal bites within Hays County in a timely manner. Bites occurring within municipalities having animal control ordinances will be referred to the proper municipal authority.
- b) Quarantine – perform immediate and proper quarantine procedures for animals suspected of having rabies. Animals may be placed in approved animal shelters, approved veterinary hospitals or owners' approved premises.
- c) Impoundment – the Animal Control Officer or his authorized designee will humanely capture and transport an animal to the County's designated animal shelter or kennel for violations set forth in this ordinance.
- d) Destruction – perform immediate, if warranted, proper and humane destruction of certain animals described in this ordinance.
- e) Citations – Issuance of citations for various violations and offenses set forth.
- f) Records – Provide necessary data and reports on a periodic basis as required by the Commissioners' Court.

Section 3.3. Interference with the Animal Control Officer and Penalty. It shall be unlawful for any person to intentionally or knowingly, by act or omission, physically interfere with, molest, hinder, or prevent the Animal Control Officer from the official discharge of the duties herein prescribed. Any person who violates a provision of Section 3 shall be guilty of a Class C misdemeanor.

SECTION 4.
LICENSING AND REGISTRATION

Section 4.1 Animals Required to be Licensed. All dogs older than three (3) months which are kept, possessed, or controlled within Hays County shall be licensed at a rate of \$7.50 per year. If the animal has been spayed or neutered the owner shall be required to pay a one-time license fee of \$7.50. No person may use a license for any dog other than the dog for which it was issued.

Section 4.2 Cooperation with Local Veterinarians. In an effort to encourage the registration of dogs, licenses veterinarians who register any Hays County animal are authorized to retain \$2.50 for every \$7.50 collected in an effort to offset any expense incurred in registering the animal. Any fees collected by the County relating to the registration of dogs shall be used to administer the animal control program for the County.

Section 4.3 Exceptions. Owners of the following categories of dogs are not required to obtain a license.

- a) dogs possessed by animal breeders operating under a business name and possessing a sales tax permit.
- b) sheltered and impounded animals housed by licensed veterinarians.
- c) dogs certified and trained to assist the physically handicapped.
- d) dogs trained to assist law enforcement.
- e) dogs with a valid license from a municipality within Hays County in which the animal resides.
- f) Non-resident dogs remaining within Hays County for less than sixty (60) days.

Section 4.4. Penalty. Any person who violates a provision of Section 4 shall be guilty of a Class C misdemeanor.

SECTION 5.
RABIES CONTROL PROGRAM

Section 5.1. Rabies Vaccination. No person shall own, keep, or harbor within the county any dog or cat over the age of three (3) months unless such dog or cat has a current rabies vaccination. Every domestic dog or cat must be revaccinated against rabies at a minimum of at least once every three years. Any person moving into the county shall comply with this section within ten (10) days after having moved into the county.

Section 5.2. Certificate of Vaccination. Upon vaccination, the veterinarian shall execute and furnish to the owner of the dog or cat a certificate using a form furnished by the veterinarian. The veterinarian shall retain a duplicate copy. Such certificate shall contain the following information.

- a) the name, address and telephone number of the owner of the vaccinated dog or cat;
- b) the date of vaccination;
- c) the type of rabies vaccine used;
- d) the year and number of rabies tag; and
- e) the breed, age, color, and sex of the vaccinated dog or cat.

Section 5.3. Rabies Tag. Concurrent with the issuance and delivery of the certificate of vaccination, the veterinarian shall furnish to the owner of the vaccinated dog or cat a metal tag. The owner of the dog or cat shall attach the metal tag to the collar or harness of the vaccinated dog or cat, serial numbered to correspond with the vaccination certificate number, and bearing the year of issuance and the name of the issuing veterinarian and his/her address. The owner shall have the collar or harness, with the metal tag attached, on his/her dog or cat at all times. Any other methodology approved and accepted by the Texas Department of Health for identification purposes will be considered by the Animal Control Officer.

Section 5.4. Duplicate Tags. In the event of loss or destruction of the original tag provided in Section 5.3, the owner of the animal shall obtain a duplicate tag. Vaccination certificates and tags shall be valid only for the animal for which it was originally issued. Duplicate tags may be purchased from any practicing veterinarian in Hays County.

Section 5.5. Proof. It shall be unlawful for any person who owns a vaccinated dog or cat to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this order.

Section 5.6. Unvaccinated Animal. It shall be unlawful for any person to own a dog or cat which has not been vaccinated against rabies, as provided herein, which cannot be identified as having a current vaccination certificate.

Section 5.7. Animals Exposed to Rabies.

- a) Any person who has reason to believe that any animal, whether or not currently vaccinated, has been exposed to rabies must immediately report the incident to the Animal Control Authority.
- b) Any such animal shall be impounded and placed in isolation in a facility approved by the Animal Control Authority, for such time as is necessary, depending upon all relevant circumstances, for a licensed veterinarian to determine that the animal has not contracted rabies.
- c) If the owner of the animal cannot provide an approved isolation facility or does not agree to pay for the facility, the animal shall be humanely destroyed at the owner's expense.
- d) If the animal's owner cannot be identified or located within seventy-two (72) hours from the time of impoundment, not counting weekends and holidays, the animal shall be humanely destroyed.
- e) In addition to any impound fees, any costs directly associated with the examination, treatment, and/or vaccination of the animal shall be due prior to release of the animal.

Section 5.8. Penalty for Violation.

- a) Any person who violates a provision of Section 5 shall be guilty of a Class C misdemeanor.
- b) It is a defense to prosecution under this section that the person charged produces proof of vaccination that was valid at the time the offense is alleged to have occurred.

SECTION 6.
REPORTING BITES FROM ANIMALS SUSCEPTIBLE TO RABIES

Section 6.1. Report Required. Any person having knowledge of a bite to a human by any warm-blooded animal shall report the incident to the Animal Control Officer as soon as possible.

Section 6.2. Quarantine Required. The owner, if any, of the biting animal shall place the animal in quarantine as prescribed in Section 7 under the supervision of the Animal Control Officer.

Section 6.3. Investigation. The Animal Control Officer shall investigate each bite incident reported.

SECTION 7.
QUARANTINE PROCEDURES

Section 7.1. Rabies Quarantine.

- a) When an Animal Control Officer has probable cause to believe that the owner of an animal that has bitten a human has been identified, the owner, if any, will be required to produce the animal for ten (10) days confinement at the owner's expense.
- b) Refusal to produce said animal constitutes a violation of this section.
- c) The ten (10) day observation period begins on the day the animal is produced for quarantine.
- d) The animal must be placed in an animal control facility or a veterinary hospital approved for that purpose by the Texas Department of Health.

Section 7.2. Owner Refuses Quarantine. If the biting animal cannot be maintained in a secure quarantine or if the owner chooses not to pay for the quarantine, the animal shall be humanely destroyed, and the brain shall be submitted to a Texas Department of Health (TDH) certified laboratory for rabies diagnosis, at the owner's expense.

Section 7.3. Wild Animals. No wild animals will be placed in quarantine. All wild animals involved in biting incidents shall be humanely killed in such a manner that the brain is not mutilated and the brain shall be submitted to a TDH-certified laboratory for rabies diagnosis.

Section 7.4. Penalty for Violation.

- a) Any person who violates a provision of Section 7 shall be guilty of a Class C misdemeanor.
- b) If it is shown on trial that a person has been previously convicted under this section; no portion of a fine imposed for subsequent violations may be deferred, suspended or probated.
- c) Each day an animal is not produced for quarantine shall constitute a separate offense.

SECTION 8.
PROHIBITION OF A NUISANCE

Section 8.1. Dogs Prohibited from Running at Large.

- a) When the owner of a dog running at large is determined and the owner can be located, the animal shall be returned to its owner and the owner shall be cited for violation of this order.
- b) If ownership is in question or if the animal is a stray, the animal shall be impounded for seventy-two (72) hours, not counting weekends and holidays.
- c) An owner may claim the animal within this time period after paying all incurred costs and impoundment fees.
- d) Upon failure of the owner to claim the animal during that period, the Animal Control Officer may order the animal destroyed without compensation to the owner.

Section 8.2. Elimination of Stray Animals.

- a) When practical, the Animal Control Officer shall impound any animal subject to these regulations which is found to be a stray.
- b) The animal may be impounded for seventy-two (72) hours, not counting weekends and holidays.
- c) Subject to citation for violation of this order, an owner may claim the animal within this time period after paying all incurred costs and impoundment fees.
- d) Upon failure of the owner to claim the animal during that period, the Animal Control Officer may order the animal destroyed without compensation to the owner.

Section 8.3. Prohibition of Inhumane Treatment.

- a) Any inhumane treatment of any type of animal shall be deemed a nuisance.
- b) It shall be unlawful for a person to intentionally, knowingly, recklessly or with criminal negligence, by act or omission, treat an animal inhumanely.

Section 8.4. Animals Creating a Public Nuisance.

- a) In addition to the items contained in Section 2.10 hereof, It shall be a public nuisance and unlawful for an owner to intentionally, knowingly or recklessly keep, possess, or control any animal that:

- 1) Excessively makes disturbing noises, including, but not limited to continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.
 - 2) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.
 - 3) Causes unsanitary conditions in enclosures or surroundings in which the animal is kept or harbored.
 - 4) Damages the personal or real property of anyone other than its owner.
 - 5) Attacks or worries other domestic animals.
- b) Any animal that is a public nuisance may be confiscated and impounded by the Animal Control Officer for seventy-two (72) hours, not counting weekends and holiday.
 - c) Subject to citation for violation of this order and approval by the Animal Control Officer of a plan to eliminate the public nuisance caused by the animal, an owner may claim the animal within the 72 hour time period after paying in full all incurred costs and impoundment fees.
 - d) Upon failure of the owner to contact the Animal Control Officer during the 72 hour time period, the Animal Control Officer may order the animal destroyed without compensation to the owner.
 - e) Upon contact with the Animal Control Officer within the 72 hour time period, reasonable arrangements may be made to continue to impound the animal, at the owner's sole expense, while a plan to eliminate the public nuisance caused by the animal is devised by the owner and approved by the Animal Control Officer.
 - f) If a plan to eliminate the public nuisance caused by the animal is not submitted within the 72 hour time period, or once submitted, is not approved by the Animal Control Officer, the Animal Control Officer may order the animal destroyed without compensation to the owner.

Section 8.5. *Penalty for Violation.* Any person who violates a provision of Section 8 shall be guilty of a Class C misdemeanor.

SECTION 9. **OWNERSHIP OF DANGEROUS DOGS**

Section 9.1. *Requirements for Ownership of a Dangerous Dog.* An owner of a dangerous dog must:

- a) Register the dangerous dog with the Hays County Animal Control Officer for the area in which the dog is kept.
- b) Pay an annual fee of \$100.00 to the Animal Control Officer.
- c) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure which has been approved by the Animal Control Officer.
- d) Post a sign on his/her premises warning that there is a dangerous dog on the property. This sign shall be visible and be capable of being read from a public street or highway.
- e) Spay or neuter the dangerous dog.

- f) Obtain necessary insurance or show financial responsibility in the amount of at least \$100,000 to cover damages to persons and property resulting from a dog attack.

Section 9.2. Limitation of Ownership of Dangerous Dogs.

- a) Only one dangerous dog may be owned per household.
- b) No more than two dangerous dogs may remain at any residence for more than seven days.

Section 9.3. Declaration of a Dangerous Dog.

- a) Animal Control may find and declare a dog to be dangerous or potentially dangerous if Animal Control has probable cause to believe that a dog committed any acts described in the definition of Dangerous Dog (Section 2.5) or that the dog repeatedly bit or vigorously shook its victim and the victim, or a person intervening, had difficulty terminating the attack; or
- b) Upon receipt of an affidavit of complaint signed by one or more individuals, made under oath before an individual authorized by law to take sworn statements or made at the Animal Control Office, setting forth the nature and the date of the act, the location of the event, the name of the owner of the dog, the address of the owner, and the description of the dog doing such act, Animal Control shall investigate the complaint and determine if a dog is dangerous.

Section 9.4. Notification of Declaration of Dangerous Dog.

- a) Within five (5) working days of declaring any dog dangerous or potentially dangerous, Animal Control will notify, by regular mail and by certified mail, return-receipt requested, the owner of the dog(s) designated as a dangerous dog. Animal Control shall also post a written notice at the entrance of the premises where the dog is harbored.
- b) Receipt of said notice shall be presumed upon proof of either of the following occurrences:
 - 1) Return of an executed return-receipt;
 - 2) Affidavit by Animal Control of deposit of a correctly addressed notice into United States mail; or
 - 3) Affidavit by Animal Control of posting of the notice at the premises where the dog was harbored.
- c) An owner may appeal this declaration to a justice court of competent jurisdiction. If the dog is declared to be dangerous, the notice shall inform the owner of the dog that a determination hearing may be requested to contest the declaration. The request for a determination hearing must be in writing and must be received by the appropriate Justice of the Peace no later than ten (10) working days from receipt of notice by the owner of the dog. Failure to appeal the declaration within ten (10) working days shall result in Animal control's decision becoming final.

Section 9.5. Determination Hearing.

- a) Upon written request for a determination hearing by the owner of a dog declared dangerous, the dog in question will be subject to any behavior assessment test or any other means available to Animal Control. The results of any tests will be presented at the determination hearing and be taken into consideration for the final determination. The owner shall be responsible for any costs incurred for the test or tests to be conducted and fees of the animal behaviorist to analyze the video test or tests.
- b) The owner shall be notified of the hearing by placing the notice in the United States mail addressed to the owner. Failure of the owner of the dog to appear at the determination hearing shall result in the Animal Control's declaration becoming final. Pending the outcome of the determination hearing, the dog must be securely confined in a humane manner at a licensed veterinarian facility or in an animal shelter. The costs of securing the dog pending the determination hearing shall be borne by the owner.
- c) The court shall determine by a preponderance of the evidence whether the declaration that the dog is dangerous is proper based upon the evidence, affidavits, and testimony presented at the hearing.

Section 9.6. Defense to Declaration of Dangerous Dog. It is a defense to the determination of any dog as dangerous and to the prosecution of the owner of the dog:

- a) If the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the dog;
- b) If the person was teasing, tormenting, abusing, or assaulting the dog;
- c) If the person was committing or attempting to commit a crime;
- d) If the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault; or
- e) If the dog was injured and responding to pain.

Section 9.7. Exemptions. It is a defense to prosecution that a person is:

- a) A veterinarian, a peace officer, a person employed by a recognized animal shelter or a person employed by the state or a political subdivision of the State to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position;
- b) An employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; or
- c) A dog trainer or an employee of a guard dog company under the Private Investigators and Private Security Agencies, Tex. Rev. Civ. Stat. Art. 4412 (29BB).

Section 9.8. Confiscation.

- a) Until the owner of a dog determined to be dangerous has met the requirements placed on that owner by Section 822.042, Texas Health & Safety Code and this order, the Animal

- Control Officer or his designee shall confiscate the dog whether it be found on public or private property.
- b) The Animal Control Officer shall have no authority to confiscate any dog unless he has first delivered to the owner of the dog, a written notice of the determination that the dog is a dangerous dog. The notice may be delivered either in person or by certified mail, return receipt requested, directed to the last known mailing address of the owner.
 - c) The Animal Control Officer shall be required to obtain a search and seizure warrant only if the dangerous dog is located within a residence.
 - d) If an attempt is made by the Animal Control Officer to impound a dangerous dog and the impoundment cannot be made safely, the owner shall be notified and given twenty-four (24) hours to surrender the dog to the Animal Control Officer. The notice shall include a warning that failure to surrender the dog may result in destruction of the dog if it cannot be safely impounded on any subsequent attempt;
 - e) The dog thus confiscated shall be ordered sheltered by the Animal Control Officer for a period of seventh-two (72) hours, not counting weekends and holidays, to allow the owner to claim the dog upon satisfaction of the provisions of Section 822.042 and 822.042 of the Texas Health & Safety code and this ordinance. Upon failure of the owner to reclaim the dog during that period, the Animal Control Officer may humanely destroy the dog without compensation to the owner.
 - f) In addition to the fees required for registration of the dog, the owner must prior to the dog's release, satisfy all above-referenced provisions.

Section 9.9. Penalty for Violation.

- a) Any person who violates a provision of Section 9 shall be guilty of a Class C misdemeanor.
- b) If it is shown on trial that a person has been previously convicted under this Section, no portion of a fine imposed for subsequent violations may be deferred, suspended or probated.
- c) Each day that a person owns a dangerous dog in violation of this section shall constitute a separate offense.
- d) An offense under this section is a Class B misdemeanor if the defendant has previously been convicted under this section.
- e) If a person is found guilty of an offense under this section, and the offending dog caused death or serious bodily injury, the Court may order the dangerous dog destroyed by Animal Control in a humane manner.
- f) In addition to criminal prosecution, a person who commits an offense under this section is liable for a civil penalty not to exceed \$10,000. The Hays County Criminal District Attorney or Special Counsel to the Hays County Commissioners' Court under the direction of the Hays County Criminal District Attorney may file suit in a court of competent jurisdiction to collect the penalty. Penalties collected under this subsection shall be retained by the county to be used to defray the cost of administering this ordinance.

SECTION 10.
ATTACKING DOMESTIC ANIMALS

Section 10.1 Dogs That Attack Domestic Animals.

- a) A dog that is attacking, is about to attack, or has recently attacked sheeps, goats, calves, or other domestic animals or fowls may be killed by any person witnessing or having knowledge of the attack.
- b) A person who kills a dog as provided by this section is not liable for damages to the Owner of the dog.
- c) A dog known or suspected of having killed sheep, goats, calves, or other domestic animals or fowls is a public nuisance. Any person may detain or impound the dog until the dog's owner is notified and all damage done by the dog has been determined and paid to the property persons.
- d) The owner of a dog that is known to have attacked sheep, goats, calves, or other domestic animals or fowls shall kill the dog. A sheriff, deputy sheriff, constable, police officer or magistrate may enter the premises of the owner of the dog and kill the dog if the owner fails to do so.

Section 10.2 Protection of Domestic Animals.

- a) The owner of any sheep, goats, calves, or other domestic animals that are subject to the ravages of sheep-killing dogs may place poison on the premises where the animals are kept.
- b) The owner must post notice of the poison at each entrance to the premises before placing the poison.

Section 10.3 Criminal Penalty

- a) A person commits an offense if the person intentionally:
 - (1) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so, under Section 10.
- b) An offense under the above Section 10 is a class B misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 30 days, or both.

SECTION 11.
IMPOUNDMENT FACILITIES AND FEES

Section 11.1. Animal Facilities. The Hays County Commissioners' Court may enter into contracts or agreements with public, private entities, or animal shelters to provide for the impoundment of animals under this ordinance or to carry out other activities required or authorized by this ordinance. Any animal adopted from an animal facility that has entered into a contract with Hays County shall require that all animals adopted be spayed or neutered within forty-five (45) days of the adoption.

Section 11.2 Impoundment Fees. An owner of an animal that has been impounded under any section of this ordinance shall pay all applicable impoundment fees, as established by the animal facility and approved by the Animal Control Officer, before retrieving the animal.

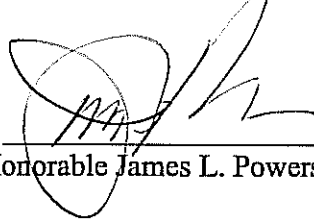
Section 11.3 Severance Clause. If any section, sentence, or clause of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 11.4 Repealer. This ordinance is intended to repeal and replace Animal Control Ordinance No. 10429 enacted by the Hays County Commissioners' Court on September 24, 1990 and all other orders and ordinances in conflict with this ordinance are hereby repealed.

Section 11.5 Effective Date. This ordinance shall become effective upon passage by a majority vote of the Hays County Commissioners' Court.

PASSED AND APPROVED this the 18TH day of MARCH, 2003.

HAYS COUNTY COMMISSIONERS' COURT



Honorable James L. Powers, Hays County Judge

ATTEST:



Lee Carlisle, Hays County Clerk