

ORDINANCE # 2017-027

AN ORDINANCE REPEALING CHAPTER 18, ANIMALS OF THE CODE OF ORDINANCE OF THE CITY OF CLUTE, TEXAS; ADOPTING A NEW CHAPTER 18 REGULATING THE KEEPING OF ANIMALS IN THE CITY OF CLUTE, TEXAS; CONTAINING DEFINITIONS OF TERMS USED IN THIS ORDINANCE; PROVIDING FOR ENFORCEMENT OF THIS ORDINANCE BY THE ANIMAL CONTROL OFFICER OR POLICE OFFICER; PROHIBITING ANIMALS FROM RUNNING AT LARGE; PROVIDING FOR THE ANNUAL VACCINATION OF DOGS AND CATS BY A LICENSED VETERINARIAN; PROVIDING FOR HUMANE TREATMENT OF ANIMALS; PROHIBITING CERTAIN ANIMALS AND ESTABLISHING MAXIMUM NUMBERS FOR OTHERS; PROVIDING FOR THE IMPOUNDMENT OF ANIMALS AND THE DISPOSAL OF ANIMALS IF NOT REDEEMED; PROVIDING FOR THE IMPOUNDAGE AND CONFINEMENT OF ANIMALS SUSPECTED OF RABIES, RUNNING AT LARGE OR NUISANCE ANIMALS; PROVIDING FOR IMPOUNDAGE, REGULATION AND DESTRUCTION OF DANGEROUS DOGS AND VICIOUS ANIMALS; MAKING IT AN OFFENSE FOR ANY OWNER OR OTHER PERSON VIOLATE THIS ORDINANCE AND CONTAINING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AND PROPERLY PUBLISHED FOR HEARING AS REQUIRED BY LAW, CONTAINING A CONFLICT LIMITATION CLAUSE, AND CONTAINING A REPEALER CLAUSE.

WHEREAS, the public health and safety of the City of Clute is endangered by the running at large of animals; and

WHEREAS, there is a real and present danger of the spread of rabies as a consequence of dogs and cats without current rabies vaccinations; and

WHEREAS, it has come to the attention of the City Council that animals are being kept within the City limits in a manner which is disturbing and dangerous to the residents of the City; and

WHEREAS, pursuant to Texas Local Government Code ANN. §51.001 the City is authorized to adopt regulations that are for the good government, peace, or order of the City; and

WHEREAS, the City Council finds that many of the violations of the animal control regulations included in this ordinance occur as a result of nuisance on the part of the owner or person in control of the animal and that such nuisance can and should be prevented by the regulations set forth below;

WHEREAS, the City Council finds that pursuant to Section 822.0422 of the Health and Safety Code the City is authorized to adopt a procedure requiring delivery of a dog to the Animal Control Officer within five days of the date of written notice that such dog is a dangerous dog;

WHEREAS, the City Council of the City of Clute has determined, based upon the findings stated above, that the regulations established by this Ordinance are necessary for the good government, peace, and order of the City; and

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act); and

WHEREAS, the City has previously adopted and amended Ordinances related to Animal Control and now desires to restate and amend these regulations in the manner set forth in this Ordinance;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLUTE, BRAZORIA COUNTY, TEXAS:

First, Chapter 18 of the Code of Ordinances of the City is hereby repealed, revised, rewritten, and new provisions added so that hereafter Chapter 18, entitled "Animals", shall read as follows:

CHAPTER 18 - ANIMALS

ARTICLE I. - IN GENERAL

SECTION 18-1. DEFINITIONS.

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

Abandon means to dump, desert, or leave any animal on public or private property with the intent of terminating any further responsibility for said animal; and shall also mean failing to properly redeem any animal impounded or quarantined by the City.

Adequate Shelter for domestic animal means a shelter that would allow the domestic animal to remain protected from heat, cold, rain or other environmental conditions that pose a danger to its health. This definition shall be taken together with any specific shelter requirements contained herein for specific types of animals.

Animal Control means control of domesticated and wild animals in accordance with Texas Local Government Code ANN. §51.001 and the regulations contained in this ordinance.

Animal Control Officer means a person or persons assigned to the City of Clute or to the Police Department and designated by the Chief of Police as primary enforcement officer of ordinances regulating animals and owners of animals and for the enforcement of all Texas State Statutes pertaining to the care and control of animals.

Animal Shelter means the Southern Brazoria County Animal Shelter or animal shelter that the City of Clute may designate from time to time for the purpose of housing animals impounded pursuant to the provisions of this Chapter.

Board means the Texas Department of State Health Services.

Cat means a domesticated animal that is a member of the Felis catus species and does not include a lion, tiger, bobcat, jaguar, panther, leopard, cougar, or other wild animal of this family or hybrids.

Dangerous Dog means a dog that:

- A. Makes an unprovoked attack on a person that causes bodily injury and the attack occurs in the place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- B. Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts caused a person to reasonably believe that the dog will attack and cause bodily injury to that person.

Dog means a domesticated animal that is a member of the species Canis familiaris and does not include a wolf, jackal, fox, coyote or other wild animal of family or hybrids.

Domesticated Fowl means chickens, turkeys, pheasants, quail, guineas, geese, ducks, peafowl and other domestic feathered creatures, regardless of age or sex.

Foul, Offensive, or Obnoxious Odor means an odor that unreasonably disturbs or interferes with the peace, comfort, and repose of neighboring persons of normal sensibilities.

Fowl means all members of the bird family commonly considered as fowl, including but not limited to chickens, ducks, geese, and turkeys.

Habitual Offender or Habitually means or refers to, an owner who has received two or more final convictions of this Ordinance 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.

Handler means a person other than the owner of the animal who has temporary legal possession of the animal, including but not limited to a dog walker, or an employee of a veterinarian clinic, a dog grooming business or a dog kennel.

Harbor means to possess while in the act of keeping and caring for an animal; or of providing premises to which the animal returns for food, shelter or care for a period of five (5) days or longer.

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

Livestock means all animals commonly considered as livestock, including but not limited to horses, mules, donkeys, burros and jacks; cattle; swine, hogs and pigs; goats; sheep; and domesticated wild animals.

Local Rabies Control Authority means certified Animal Control Officer designated by the Chief of Police in accordance with Section 826.017 of the Texas Health and Safety Code (Vernon Supp. 1996).

Mammal means any member of the class Mammalia, a class of warm-blooded higher vertebrates susceptible to rabies infections, which includes canines, cats, ferrets, armadillos, skunks, pigs, raccoons, bats and opossums, but does not include rabbits or other rodents.

Owner means any person owning, keeping or harboring an animal, including members of the same household.

Quarantine Facility means a facility approved by the Texas Department of Health for the strict confinement of an animal for rabies observations, as defined in Section 826.051 Subchapter F. of the Texas Health and Safety Code.

Running at Large means when an animal is:

- a. On public property except when it is on a leash, kept in a container or crate, or held in the hands of its owner;
- b. On the private property of another, not the animal's owner, without specific permission to be on the property; or
- c. Not effectively restricted on the property of the animal's owner by a building, wall, fence, or physical structure of sufficient strength or construction to restrain the animal;

Secure enclosure means a fence area or structure, such as a barn, shed, or fence, constructed of wood, masonry, chain-link or any combination, sufficient to contain any animal kept in such enclosure 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 dog;
- d. Clearly marked as containing a dangerous dog; and;
- e. In conformance with the requirements for enclosures established by the Animal Control Officer.
- f. Secure enclosure does not mean a wireless or electric fence.

Serious Bodily Injury means an injury characterized by severe bite wounds or severe ripping and tearing of muscle 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 822.001 Texas Health and Safety Code).

Unprovoked means action by an animal that is not:

- a. In response to being tormented, abused, or assaulted by any person;
- b. In response to pain or injury; or
- c. In protection of itself, a person, or its food, kennel, immediate territory, or nursing offspring.

Vaccination means the administration of a vaccine approved by the Texas Health and Safety Code and administered by a veterinarian licensed under the state law. Prima facie evidence of a current rabies vaccination for an animal shall include the presence of a current rabies vaccination tag from a veterinarian or a current SPCA tag attached to such animal.

Vicious Animal means an animal, which is not a wild animal, that:

- a. Makes an attack on another animal, which is not a wild animal, that causes injury or death to such other animal and the attack occurs in a place other than the enclosure in which the attacking animal was being kept; or
- b. Commits a vicious act or acts in a place other than the secure enclosure in which the animal, which is not a wild animal, was being kept and those acts caused a human witness to reasonably believe that such animal would attack and cause bodily injury to another animal or to a human being nearby.
- c. Is determined to be a vicious animal by the Animal Control Officer under Section 18-6 below.

Wild Animal means any animal except the common domestic species regardless of the state or duration of captivity.

SECTION 18-2. ENFORCEMENT.

- A. **Animal Control Officer.** The chief of police is directed to designate an employee or employees as the Animal Control Officer for the city whose duty it shall be to enforce the provisions of this article.
- B. **Authority.** The Animal Control Officer or a Police Officer shall have the authority to:
 1. Issue citations for any violation of this chapter or applicable state law as provided in Section 38-40 of the City of Clute Code of Ordinances. If the person is not present, the Animal Control Officer or any Police Officer of the City may mail the citation to the alleged violator by certified mail, return receipt requested or post a copy of a citation on the front door of the alleged violator.
 2. Impound any animal in violation of this Chapter pursuant to the provisions of this chapter.

- C. **Power to Enforce.** The Animal Control Officer or any Police Officer of the City shall have power to enforce this chapter or applicable state law and no person shall interfere with, hinder, molest, or abuse this officer in the exercise of such powers and such acts shall constitute a violation.

- D. **Right of Entry.**
 - 1. The Animal Control Officer or any Police Officer of this city who has probable cause to believe that a violation of this chapter has occurred, shall have the right of entry onto any unenclosed lots or lands for the purpose of enforcing the provision of this chapter.

 - 2. The Animal Control Officer or any Police Officer shall not have the right of entry to buildings or fenced enclosures without first securing a search warrant of the premises for the animal, which shall be served in the manner provided by law.

 - 3. The Animal Control Officer or any Police Officer shall have the right of entry to buildings or fenced enclosures without the necessity of securing a search warrant:
 - a. When pursuing an at-large animal that has entered said enclosure while fleeing the Animal Control Officer or Police Officer;
 - b. For the purpose of examining or obtaining any animal suspected of having rabies, having been exposed to rabies or having bitten a person or another; or
 - c. When pursuing an animal trespassing on the property of another, not the owner.

- E. **Fees.** The City Council shall by resolution, adopted from time to time establish the fees required by this Chapter.

SECTION 18-3. RUNNING AT LARGE / RESTRAINT.

- A. It shall be unlawful for an owner or handler of any animal, to fail to keep the animal from running at large as defined in Section 18-1.

- B. It shall be unlawful for an owner or handler of any animal to restrain on a leash, chain, rope or other tether any unattended animal so that the animal can come within fifteen (15) feet of a public sidewalk, street, or roadway.

- C. All persons having one or more dogs with them upon the public streets or in public places shall have the dog(s) on a leash and shall keep the animal under control at all times.

- D. All persons having one or more animals with them upon the public streets or in public places shall have the animal restrained by their hands, leash, cage, or other device to prevent uninvited contact with persons of the general public.

- E. Officers with the department of police or the Animal Control Officer are authorized to destroy any animal found running at large pursuant to the provisions Section 18-10, 18-11 and the other applicable provisions of this chapter.

- F. The provisions of this section shall not apply to assistance dogs when being used as such by persons with documentation of total or partial disability.
- G. Section A above regarding the prohibition of animals running at large shall not apply cats, that have been spayed or neutered and otherwise comply with the provisions of this Chapter.

SECTION 18-4. DAMAGE, TRESPASS, DESTRUCTION OF PROPERTY, OR ILLEGAL RELEASE OF AN ANIMAL.

- A. It shall be unlawful for the owner or handler of any animal to allow such animal to trespass upon, damage, or destroy any public or private property, not their own, while restrained or at-large.
- B. Whoever shall without proper authority break into, open, pull down the trap or enclosure of, or make any opening into any trap or enclosure belonging to or used by the city for the purpose of impounding animals, or shall turn out or release any animal from such trap or enclosure, shall be guilty of a violation of this Chapter.

SECTION 18-5. SEIZURE AND IMPOUNDMENT.

- A. The following animals may be seized and impounded by the Animal Control Officer or, at the direction of the chief of police, by any police officer of the City:
 - 1. Dogs and cats not exhibiting evidence of a current rabies vaccination.
 - 2. Any animal kept under conditions which can endanger the public or such animal's health.
 - 3. Any animal, which is a mammal, that has rabies or is exhibiting symptoms thereof or that a person could reasonably suspect of having rabies or that bites, scratches, or otherwise creates a condition which may have exposed or transmitted the rabies virus to any human being or animal, or that required observation for rabies as determined by the Animal Control Officer.
 - 4. Any animal running at large.
 - 5. Any animal treated in a manner suspected by the Animal Control Officer or any Police Officer of the City to be in violation of Texas Penal Code, Chapter 42.09: Animal Cruelty, as periodically amended.
 - 6. Any animal in violation of a provision of this Chapter.
 - 7. Any animal reasonably suspected of having inflicted bodily harm on any human being or animal and that poses a threat to public safety or constitutes a public nuisance.
 - 8. Any prohibited animal or wild animal.
 - 9. Any animal not under the supervision of an owner or handler who appears to be in immediate need of veterinary care.

- B. If the owner of any animal that may be seized under this Chapter, refuses voluntary entry upon private property or an enclosed area where the animal is being kept, the Animal Control Officer, Chief of Police, or any other police officer of the City, may enter and seize the animal pursuant to a warrant issued in accordance with law.
- C. If any animal is found on the premises of any person, that person may confine such animal in a humane manner until the Animal Control Officer impounds such animal. When so notified, it shall be the duty of the Animal Control Officer to have such animal impounded.
- D. Impoundment, quarantine, maintenance, and destruction of animals will be contracted through the City of Clute In accordance with this Chapter.
- E. **Reasonable effort** shall be made by the Animal Control Officer to contact the owner of any animal impounded, which is wearing an identification tag or implanted with a microchip, which shall include promptly utilizing the information printed on the tag or scanned from the microchip to obtain telephone or address information of the owner of the animal and upon obtaining such contact information making a reasonable attempt to contact the owner by telephone or by any other reasonable means that the Animal Control Officer deems to be appropriate, including the option of attempting to make direct contact with the owner. However, the final responsibility for an impounded animal is that of the owner.

SECTION 18-6. VICIOUS ANIMALS.

- A. **Vicious Animals Prohibited.** It shall be unlawful for any person within the corporate limits of the city to own, keep, possess, harbor or allow to remain upon any premises under such person's control any vicious animal.
- B. **Determining Whether Vicious.** In determining whether or not an animal is vicious, the following shall be taken into consideration by the Animal Control Officer:
 - 1. Whether or not the animal has bitten or injured any person at any time other than the occasion which gave rise to the proposed confinement of the animal;
 - 2. The circumstances surrounding the occasion giving rise to the proposed confinement of the animal indicating the temper or ferocity of the animal;
 - 3. The reputation of the animal in the community with regard to its temper or ferocity; and
 - 4. The general menace of the animal to the public.
- C. **Exception:** It is an exception to the application of subsection (A) of this section if such animal has been determined by the Animal Control Officer to be a vicious animal under the provisions of subsection (B) of this section of this article and such animal is at all times kept confined in a secure enclosure in the manner required by the Animal Control Officer.

- D. **Confinement as determined by Animal Control:** If the Animal Control Officer is of the opinion that any animal is vicious, although not affected with rabies, the Animal Control Officer shall, in addition to the procedure prescribed in section 18-50 (if such animal has not bitten any person), or in lieu of such procedure (if such cat or dog has bitten any person), order the person who owns or has custody of the cat or dog to keep the cat or dog confined at all times in such manner as the Animal Control Officer may direct in order to prevent it from biting or having the opportunity to bite any person, lawfully on the premises where the cat or dog is confined, until further orders of the Animal Control Officer.

In any prosecution in the municipal court of the city or any other court of competent jurisdiction for a violation of subsection (A) of this section, the complaint charging an offense need not negate such exception; but the same may be raised by any defendant in such prosecution by way of defense; and proof that any animal has bitten any person shall be prima facie evidence that such animal is vicious unless rebutted by other competent evidence.

- E. Not later than the tenth (10th) day after a person learns that the he or she is the owner of a vicious animal the person shall either surrender the vicious animal to the Animal Control Officer or:
1. Register the vicious animal with the Animal Control Officer; and
 2. Restrain the vicious animal at all times on a leash or harness in the immediate control of a person or restrain such vicious animal in a secure enclosure, as approved by the Animal Control Officer.
 3. Provide the Animal Control Officer annual proof of liability insurance coverage in an amount of at least \$30,000 to cover expenses resulting from any attack by the vicious animal upon domestic animal or human in the future.
- F. For purposes of this section, a person learns that the he or she is the owner of a vicious dog when either:
1. The owner personally knows of an attack by such animal as described in Section 18-1 of the definition of Vicious Animal; or
 2. The owner is informed in writing by the Animal Control Officer that the animal has been determined to be a vicious animal.
- G. If a person in the City reports an incident to the Animal Control Officer involving a vicious animal as that term is defined by Section 18-1, such officer shall investigate the incident. If after receiving the sworn statements of any witnesses, the Animal Control Officer determines the animal is a vicious animal, as defined herein, the Animal Control Officer shall give written notice of such determination to the owner of such vicious animal.
- H. An owner, not later than the thirtieth day after the date the owner is notified that an animal owned by the owner is a vicious animal, may appeal the determination of the

animal control authority to the municipal court of the city for an evidentiary hearing to determine whether the animal is a vicious animal as defined by Section 18-1 of this Chapter.

SECTION 18-7. – HUMANE CARE. Any owner or handler of an animal within the city shall provide humane conditions and care for such animals as follows:

1. **Enclosure.** Any dogs confined within a fenced yard must have at least 100 square feet for each dog kept at that address for the dog's use and exercise. Where dogs are kept or housed on property without a fenced yard, the owner of such dogs, or persons having custody of such dogs, shall provide an enclosure containing not less than 100 square feet per dog for each dog kept at that address for the dog's use and exercise. Such enclosure shall be constructed of chain-link fencing or similar type materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping from such enclosure.
2. **Shelter.** The owner or other person having custody of an animal must provide a shelter for the animal. The shelter must be constructed and maintained in such a manner to allow the animal to remain dry and protected from the elements, including the sun. Such shelter shall be fully enclosed on three sides, roofed and have a solid floor with bedding appropriate to the season. The shelter shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and maintained in good repair.
3. **Sanitary Premises.** The premises shall be appropriately maintained and kept in a sanitary condition, reasonably free of animal waste, parasites, insects, flies, and hazards that could be harmful to the animal's health and/or the health of the public.
4. **Food/Water.** The owner or other person having custody of an animal must provide wholesome and nutritious food appropriate for the age and size of the animal. Fresh clean water must be available at all times. The water container must be of adequate size and affixed in a manner such that it cannot easily be accidentally emptied.
5. **Abandonment.** It shall be unlawful for any person to abandon any animal on any street, road, highway or public place, or on any private property.
6. **Animals in Vehicles.**
 - a. It shall be unlawful for a person to leave any animal in a standing or parked vehicle in such a way as to endanger the animal's health, safety, or welfare, including but not limited to allowing adverse air temperature or air circulation conditions to occur inside such vehicle.
 - b. The Animal Control Officer or a Police Officer is authorized to use reasonable force, including but not limited to the breaking of a side window of the vehicle to remove

the animal from the vehicle whenever it appears the animal's health, safety, or welfare is, or will be endangered, if the owner of the vehicle cannot be located after reasonable attempts have been made.

- c. Any animal removed from a vehicle under this Chapter shall be taken to the Animal Shelter, or to a veterinarian if the animal is in distress and appears to need immediate medical care.
- d. A written notice shall be attached to a vehicle where an animal has been removed. The notice shall include the name of the Animal Control Officer or Police Officer, a telephone number where the Animal Control Officer or Police Officer can be contacted, and the location where the animal may be claimed by the owner.
- e. A person in violation of this Article shall be responsible for the full cost and expenses incurred by the City for the care, medical treatment, impoundment, and disposal of the animal, including any damage caused to a vehicle or property, during the removal of the animal from the vehicle.
- f. It shall be unlawful for a person to transport any animal in an open bed or open trunk of a vehicle upon any roadway or parking lot where the animal is either unsecured or unrestrained or in a manner that presents a significant risk of harm to the animal or to other persons.
- g. It shall be unlawful for a person to transport any animal in the cargo area/bed of a truck upon any roadway or parking lot where the animal is directly on a metal or similar surface without sufficient protection when temperatures are at or above 90 degrees Fahrenheit.

7. Reptile General Care and Other Guidelines

- a. Constrictors exceeding 10 feet in length, that are housed in homes with children of any age shall be kept under at least one of the following conditions to make certain that children cannot have access to snakes without adult supervision:
 - 1) Enclosures shall have locked (keyed or combination) doors;
 - 2) Enclosures shall be kept in a locked room.
- b. Cleanliness levels that pass inspection from an Animal Control Officer or veterinarian shall be maintained or exceeded at all times.
- c. Sick reptiles shall be isolated from other animals with proper veterinary care conducted immediately.
- d. Newly-acquired reptiles shall be properly isolated and quarantined.

- e. Water bowls shall be kept clean and free of contaminants.
- f. Disinfectant use shall be implemented properly.
- g. The area housing reptiles shall be free of clutter to provide a safe environment for animals and people.
- h. Constrictors exceeding 10 feet in length, shall be kept in enclosures that are accessed easily with a minimum of 4' of clearance between cage fronts and other heavy objects (those not easily moved by one person), caging, etc.
- i. Reptiles that are of potentially dangerous size shall be handled by an appropriate number of people to ensure both animal and human safety.
- j. When allowing public interaction with these reptiles, at least one additional qualified individual shall be present. Out of responsibility to the reptiles and people involved, the handling of large snakes shall only be performed in a manner that prevents the likelihood of any accident or incident.
- k. Safe procedures shall be adopted for handling and feeding.
- l. Tools shall be readily available for safe handling including but not limited to, snake hooks which offer sufficient support for the snakes.
- m. A spray bottle filled with rubbing alcohol, Listerine or similar product shall be readily available if needed to encourage a snake to release from a bite.
- n. Labels identifying species shall be affixed to the reptile enclosures.
- o. If a reptile escapes, local law enforcement shall be notified immediately and educated on the species by the owner or handler of the reptile.
- p. Owners of reptiles shall be liable for the medical costs of treating injuries, as well as additional financial damages caused by their animals.
- q. Records of purchases and sales shall be maintained by purchasers at sellers of reptiles.
- r. An enclosure shall be provided with an environment or devices that allow for temperature regulation necessary to ensure the well-being of the reptiles.
- s. The environment or devices shall be non-injurious and may include under tank heaters, light sources, radiant heat panels, heat tape, facility/room temperature regulators, or other appropriate heating/lighting devices and sources.

- t. An enclosure shall be provided with non-injurious substrate such as newspaper, processed wood shavings, indoor-outdoor carpet, or other equivalent material. The substrate shall be disposed of or sanitized at intervals sufficient to ensure the health of the reptiles.
- u. An enclosure for a snake shall be constructed in a manner that offers enough space and complexity to allow free movement and access to varying thermal gradients as follows:
 - 1) The square footage (length by width in feet) of the enclosure must be equal to or greater than the length of the snake;
 - 2) For each additional snake permanently housed in an enclosure, the length of the enclosure shall be increased by at least twenty-five (25) percent of the length of an enclosure that permanently houses only one snake;
 - 3) It is not recommended to permanently house two or more constrictor snakes together. If cohabitating, snakes should be of similar size and never fed together in the same cage.
 - 4) An enclosure shall be constructed of material that securely and effectively contains the snakes.
 - 5) The material used to construct the enclosure may include high density plastic, tempered or laminated glass, wood, or other material of equivalent strength.
 - 6) The enclosure shall have surfaces that are nonporous and that can be thoroughly and repeatedly cleaned and disinfected.
 - 7) Among other types of enclosures that do not meet the prior conditions, aquariums with screen tops shall not be used as enclosures for large constrictor snakes.
 - 8) The door or lid of an enclosure shall have at least one secure latch or lock attached to the exterior of the enclosure that when latched or locked prevents a snake from leaving the enclosure.

- 8. **Notification of Violation.** If the Animal Control Officer or Police Officer of the City of Clute determines that any owner, or handler of an animal is in violation of this section relating to the humane care of animals, he or she will notify the owner of the animal of the violation by door tag, personal service or certified mail, and to immediately remedy the violation, specifying a time for compliance, not to exceed three days following which, if the person has not complied with the requirements of the Enforcement Officer, the person may be formally charged with a violation of this section. After the second conviction within any six-month period, the Animal Control Officer or Police Officer of the City of Clute may apply to the Municipal Judge for a warrant to seize such animal to be impounded at the city Animal Shelter. Whenever such a warrant is served, written notice of a court hearing to be held no earlier than 72 hours thereafter to determine disposition of such animal shall be given to the owner or handler of the animal by hand delivery or by door tag and shall include the place, date and time of said hearing. The Municipal Judge will hold a hearing at the place, date and time noticed and at the Judge's sole discretion make a determination concerning the disposition of the impounded animal, to order

delivery to the owner of the animal, to a humane organization designated by the Animal Control Officer, or to the Animal Shelter.

SECTION 18-8. REDEMPTION OF AN ANIMAL.

- A. **The owner may redeem an impounded animal** upon payment of all applicable impoundment fees, handling fees, and any veterinarian bills or other cost incurred by the City or Animal Shelter for the impoundment, care, and welfare of the animal and upon proof of compliance with the vaccination requirements of this Chapter. Any animal being held under quarantine; or observation for rabies shall not be redeemed until released from quarantine by the Animal Control Officer.

- B. **Impounded animals shall be held for 72 hours after the date and time of impoundment** except any animal that is microchipped or wearing a current identification tag shall be impounded for 120 hours after the date and time of impoundment; If the owner of an impounded animal does not redeem it within the period of impoundment, disposition will be in accordance with Section 18-10.

SECTION 18-9. ANIMAL QUARANTINE.

- A. Any animal that is classified as a mammal that has rabies or may have been exposed, by physical contact with a rabid animal, or suspected rabid animal, or exhibits symptoms which could reasonably indicate rabies, or that bites or otherwise creates a condition which may expose or transmit the rabies virus to a human being shall be impounded immediately. Upon notification, the owner shall surrender any such animal that is classified as a mammal to the Animal Control Officer for quarantine at the City's designated quarantine facility, or with approval from the Animal Control Officer, shall deliver the animal to a veterinarian quarantine facility for quarantine at the owner's expense. If such animal suspected of rabies, has documentation of a current rabies vaccination, then the owner or harbinger of such animal may request to quarantine such animal at home, subject to the Animal Control Officer's approval and at his sole discretion. Quarantine shall be for a minimum of ten (10) days beginning on the date the incident occurred or longer as the Animal Control Officer may deem necessary. Animal quarantine shall be in accordance with Title 25, Chapter 169 of the Texas Administrative Code as updated and any applicable rules and regulations adopted by the Texas Department of Health Services.

- B. **Quarantine shall be subject to the following conditions:**
 - 1. Any quarantined animal showing clinical signs of rabies shall be immediately destroyed and the head submitted to the nearest Texas Department of Health Laboratory for testing by the Animal Control Officer or veterinarian.

 - 2. The animal placed in quarantine shall not be released without prior notification to and written approval from the Animal Control Officer.

3. If approved by the Animal Control Officer, home quarantine at the residence of the owner must satisfy all of the following conditions:
 - (a) Secure facilities are available and approved by the Animal Control Officer.
 - (b) The animal is currently vaccinated against rabies.
 - (c) The owner of the animal shall notify the Animal Control Officer if the animal escapes, becomes or appears to become sick, or dies; and, in the case of death of the animal while under quarantine; shall immediately surrender the dead animal to the Animal Control Officer for diagnostic purposes.
 - (d) The animal was not running at large at the time of the incident.
 - (e) The animal is kept isolated from all other animals, and humans other than the individual(s) who own the animal.
- C. Any person having knowledge of a potential rabies exposure to a human including but not limited to an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid shall report the incident or animal to the Animal Control Officer, or to the Clute Police Department as soon as possible, but not later than 24 hours from the time of the incident. The report shall include the name and address of the victim and owner of the animal, and any other information relating to the incident or animal.
- D. It shall be unlawful for the owner or handler of an animal to fail to submit for quarantine as soon as reasonably possible an animal that:
 1. Is reported rabid or has exposed an individual to rabies; or
 2. The owner knows or suspects is rabid or has exposed an individual to rabies; or
 3. Has bitten, scratched or otherwise created a condition which may have exposed or transmitted the rabies virus to any human being.
- E. When submitted for quarantine, the owner shall provide the name, address and any other relevant information about the animal. The owner shall be given the option to choose a qualified quarantine facility approved by the Animal Control Officer. Only the Animal Control Officer or animal shelter staff may transport the animal to and from the quarantine facility for purposes of quarantine or vaccination.
- F. The owner of a quarantined animal shall pay all reasonable costs of the quarantine up front at the beginning of the quarantine period. Reasonable costs of quarantine include, but are not limited to: the cost charged by the quarantine facility, the cost of vaccinations required at the end of the quarantine period and disposition of the animal, including charges for shipment of animal tissues, if required, to the Texas Department of Health Laboratory for testing.

- G. An animal that has been quarantined may be released upon approval by the Animal Control Officer after the Animal Control Officer determines that the quarantined animal does not show clinical signs of rabies and under the following conditions:
 - 1. At the end of the observation period upon proof of vaccination prior to release from quarantine.
 - 2. When all applicable fees have been paid.
 - 3. If the animal is not being held pending legal proceedings.
 - 4. If appropriate City registration has been completed.
- H. It shall be unlawful for any person to interrupt the observation period or otherwise interfere with quarantine.
- I. It shall be unlawful for any person to destroy or remove from the City any animal that has bitten a person or other animal or that has been placed under quarantine, except when necessary to protect the life of any person or other animal or otherwise approved by the Animal Control Officer.
- J. The carcass of a dead animal exposed to rabies or suspected of having been rabid, shall, upon demand, be surrendered to the Animal Control Officer.
- K. Wild animals shall not be placed in quarantine. Wild animals suspected of rabies exposure shall be humanely destroyed in such a manner that the brain is not mutilated. The brain will then be submitted by the Animal Control Officer to the Texas Department of Health laboratory for testing.
- L. No person shall fail or refuse to surrender an animal for quarantine or for destruction when ordered by the Animal Control Officer.

SECTION 18-10. DISPOSITION OF ANIMALS.

- A. Except as provided herein, any animal not redeemed within the time periods stated in Section 18-8 after impoundment, or release from quarantine, shall become the property of the Animal Shelter and may be transferred to a new owner or humanely euthanized at their discretion. All rights of any prior owners to possession of the animal are immediately terminated upon the expiration of the time periods stated herein.
- B. Disposition of animals impounded on the grounds of cruel or inhumane treatment shall be determined by a court of competent jurisdiction.
- C. Any nursing baby animal impounded without the mother or where the mother cannot or refuses to provide care for the baby may be immediately euthanized to prevent further suffering. Any impounded animal that appears to be suffering from extreme injury or illness may be immediately euthanized to prevent further suffering.

- D. Animals appearing to be feral, uncontrollable, or vicious and not wearing an identification tag, collar or vaccination tag can, at the discretion of the Animal Control Officer or police officer, may be destroyed.
- E. Euthanasia of animals under this Chapter must be performed by:
 - 1. A licensed veterinarian.
 - 2. Personnel of a recognized animal shelter or humane society who are state certified to perform animal euthanasia; or
 - 3. Personnel of a governmental agency responsible for animal control who are state certified to perform animal euthanasia.

SECTION 18-11. ANIMAL NUISANCE.

- A. The commission of any of the following acts, or permitting any of the following conditions to exist shall constitute a nuisance to the health, safety, and general welfare of the city and its inhabitants and shall be unlawful, to-wit:
 - 1. The keeping of an animal, including cats, in such a manner, as to endanger the public health; by the accumulation of animal waste, which causes foul and offensive odors and is considered to be a hazard to other animals or human beings.
 - 2. To permit or allow an animal, including cats, to defecate upon private or public property other than the property of the owner of said animal, and to fail to remove and dispose of in a sanitary manner any feces left by such animal.
 - 3. The keeping of any animal that enters the property of another without permission of the property owner.
 - 4. The keeping of an animal that commits any act that disturbs any person of ordinary sensitivity, including but not limited to the act of continual barking, howling or yowling that continues for more than 10 minutes.
 - 5. Failing to keep property free of decaying animal carcasses.
 - 6. A person willfully or knowingly keeping or permitting any animal, livestock, or fowl on their premises, or in or about their premises, or premises under their control, that barks, howls, yowls or makes other animal noises for more than 10 minutes in such a manner as to disturb the peace and quiet of a neighboring occupant of ordinary sensibilities.
 - 7. To harbor an animal that is an animal nuisance as defined in this section.
- B. Any animal running at large in the city limits more than 72 hours which is impractical or impossible to capture and is causing property damage, endangering persons or other domestic animals shall be deemed a nuisance and may be killed by a trained, experienced Animal Control Officer or Police Officer at any location where it is found within the City.

SECTION 18-12. RESTRICTIONS ON ANIMALS.

A. MAXIMUM NUMBER OF ANIMALS PERMITTED.

1. **Domesticated Fowl (including Chickens):** It shall be unlawful for any person to keep or cause to be kept over six (6) domesticated fowl as defined in Section 18-1 per household within the city limits, with the only exception being a female, which has given birth. Under such circumstances, the animal owner will have one hundred twenty (120) days from the animal's date of birth to reduce the required number of animals to the required number of six (6). Roosters are not permitted.
2. **Affirmative Defense – Domesticated Fowl (including Chickens):** It shall be an affirmative defense to the prohibition against the keeping of domesticated fowl as defined in Section 18-1 within the city if the domesticated fowl in question are kept in a suitable pen or enclosure situated not less than one hundred fifty feet (150') from any inhabited dwelling, so that no part of said pen or enclosure shall be closer than one hundred fifty feet (150') and the domesticated fowl cannot approach closer than said distance to such inhabited dwelling; provided that this distance requirement shall not apply to the dwelling of the domesticated fowl owner. Before any domestic fowl are allowed to be kept or maintained within the city, such animals must be checked for diseases; and a licensed veterinarian must certify that such animals have been inspected and are free from psittacosis (ornithosis). This affirmative defense does not apply to roosters.

B. HONEYBEES.

No person shall construct, place or maintain any beehive within 300 feet of any residence other than that of the owner except with the consent of the occupants of all such residences.

C. PROHIBITED ANIMALS.

No person may possess a prohibited animal within the City limits. Prohibited animals include dangerous dogs or vicious animals as determined by this Chapter that are not in compliance with provisions of this Chapter. Prohibited animal further includes but is not limited to:

1. **Any venomous reptile**
2. **Wild Animals:** skunks, wolves, coyotes, jackals, foxes, cougars, bobcats, leopards, panthers, jaguars, tigers, lions, mountain lions, bears, lynxes, wild-pigs, chimpanzees, baboons, orangutans, gibbons, gorillas.
3. **Wildfowl:** ostriches, rheas, cassowaries and emus.
4. **Insects/Arachnids:** Brown recluse (*Loxosceles*) and black widow (*Latrodectus*) spiders.
5. **Venomous Animals:** Any class, order, species, or a hybrid of the Animal Kingdom which is venomous to human beings, whether its venom is transmitted by a bite,

- sting, touch or other means, excepting the honeybee, which does not include any strain of Africanized bee (A.m. scutella)
6. **Pigs/Hogs/Swine:** It shall be unlawful for the owner of any premises located within the city to permit any pigs or hogs to be kept on such premises or for the owner of any pigs or hogs to keep them within the city. The keeping of any pigs or hogs within the city is declared to be a public nuisance and shall be abated by the institution of appropriate legal proceedings.
 7. **Exception – Zoos/Circuses:** This section shall not apply to city approved zoological parks or circuses and individuals having state certified educational permits. Nor shall this section apply to primary and secondary schools, colleges and universities, zoological parks owned or operated by a governmental entity or any animal assisting physically handicapped persons.
 8. **Exception - Injured Animals:** This section shall not apply to animals being kept that was an infant or injured animal which was not capable of surviving on its own and that such animal was kept for three days or less, or for such reasonable time as was necessary before giving the animal to a licensed wildlife rehabilitator.
 9. **Exception - Pigs:** It shall be an exception to the prohibition against the keeping of pigs within the city contained in this section if the pig in question is a domesticated miniature pot-bellied pig and if the following conditions are met:
 - a. No more than one such pig may be kept at the same time on any one premises within the city;
 - b. Any such pig kept within the city may not exceed 16 inches in height;
 - c. The owner of any such pig so kept shall have it tested by a veterinarian licensed to practice in the state for pseudorabies and brucellosis prior to it being brought into the city and shall maintain at all times proof that such testing has been performed;
 - d. Any premises in the city on which any such pig is kept shall, if such pig is allowed to be unattended in the yard of such premises, have a fence constructed and maintained in such manner as to keep such pig from being at large;
 - e. Good sanitation shall be maintained on any premises in the city at which any such pig is kept, and such pig shall be provided with good health care; and
 - f. For purposes of applying the exception in this subsection, any such pig kept within the city shall be considered to be at large if such pig is:
 1. Unattended by the owner of such pig or such owner's designee in an unfenced area of the premises on which it is kept;
 2. If such pig, without being restrained by its owner or such owner's designee, is allowed to enter upon the private property or premises of another without the prior consent of the owner or person in possession of such other premises; or
 3. If such pig, without being restrained by its owner or such owner's designee, is allowed on any publicly owned property or facilities.
 4. The exception contained in this section shall not be available to the owner of any such pig if it is shown that any of the conditions specified

in subsection section have not been met on three or more occasions within any 12-month period.

5. It shall be the duty of the Animal Control Officer to see that any such pig found running at large is impounded and disposed of in the same manner as any dog is impounded and disposed of under the applicable provisions of article II of this chapter without the necessity of anyone filing a complaint. Any such pig so impounded that has not been spayed or neutered shall be spayed or neutered at the expense of its owner prior to being released to such owner.

SECTION 18-13. DEAD ANIMALS AND FOWL.

It shall be unlawful for any person in the City to cause to be placed or to place, or allow to remain at any location in the City, any dead animal, either wild or domesticated, or any dead fowl, either wild or domesticated, for any reason other than temporary deposit pending final disposal within 24 hours. The carcass of any animal or fowl found dead on any premises within the city from disease or other cause not slaughtered for food shall be removed and disposed of by the owner of such animal or fowl, if known, and if not known, the owner of the premises where such dead animal or fowl is found, at his own expense within 24 hours after such death, according to such method as may be approved by the Animal Control Officer.

SECTION 18-14. TRAPPING OF ANIMALS OR FOWL PROHIBITED; EXCEPTIONS.

- A. It shall be unlawful for any person to trap by any means any animal or fowl within the corporate limits of the city.
- B. Affirmative defense. It is an affirmative defense to the prosecution of the violation in subsection (A) of this section if:
 1. The trap in question is a live trap containing nothing which might produce injury to the person using the trap the animal or fowl sought to be trapped, and any animal that might be accidentally caught therein or any third person; and further , the trap is placed in a location safe from the elements to prevent harm or injury to any trapped animal from exposure to the elements, or
 2. The trap is being used by or under the specific direction of the Animal Control Officer designated by the chief of police in accordance with the provisions of section 18-2.

SECTION 18-15. DISEASES COMMUNICABLE FROM ANIMAL TO MAN.

- A. **Reports.** Any veterinarian or another person who shall find any animal within the city afflicted with a disease transmissible from animal to man shall immediately report to the Animal Control Officer such case together with the name and address of the owner and the location of the premises where such animal can be found.

- B. **Investigation/Control of Disease.** Upon receipt of the report required by subsection (A) of this section, the health officer shall immediately investigate the case and shall take such steps as necessary to eliminate the possibilities of further spread of this disease. The health officer shall keep a record of each such case showing all information concerning the informer, the disease, and its control.

SECTION 18-16. – PRIMA FACIE EVIDENCE.

In any prosecution under this chapter in the municipal court or any other court of competent jurisdiction, proof that any premises situated within the city are listed on the tax rolls of the city in the name of any person shall be prima facie proof that such person is the owner of such premises and proof that any animal or fowl mentioned in this chapter is found in the possession of any person or has been kept on any premises shall be prima facie proof that the person having possession of such animal or fowl or the owner of such premises is the owner of such animal or fowl. However, the prima facie proof herein provided for may be rebutted by the defendant in any such prosecution.

ARTICLE II. - DOGS & CATS

DIVISION 1. – DOGS & CATS - GENERALLY

SECTION 18-17. LICENSE TAGS REQUIRED.

- A. It shall be unlawful for any person to own, keep, possess, harbor, or allow to remain, on any premises under such person's control within the City, any dog or cat without having such animal licensed. All dogs and cats six months of age or older shall be licensed and a license tag attached to the collar or harness of the animal at all times, and the absence of such a license tag attached to a dog or cat six months of age or older shall constitute a rebuttable presumption that such dog or cat is not currently vaccinated for rabies.
- B. License tags may be obtained from the city, a local participating veterinarian, or the Southern Brazoria County Animal Shelter. Proof of rabies vaccination shall be required before issuance of license tag. A reasonable fee shall be charged for the tag and the fee shall be used toward the operational costs of the Southern Brazoria County Animal Shelter.

SECTION 18-18. REMOVAL OF TAGS AND COLLARS.

It shall be unlawful for any person, to remove any tag or any collar from any dog or cat, without the written consent of the owner of such dog or cat. It is an exception to this provision if the person is an Animal Control Officer, Police Officer, animal shelter staff or veterinarian.

SECTION 18-19. VACCINATION OF DOGS AND CATS

- A. **Rabies Vaccination Required.** The owner of a dog or cat shall have the animal vaccinated against rabies by a licensed veterinarian when the animal is four (4) months of age and maintain current rabies vaccination status in accordance with common veterinarian standards, and the absence of a license tag attached to the collar or harness of a dog or cat four (4) months of age or older shall constitute a rebuttable presumption that such dog or cat is not currently vaccinated for rabies.
- B. A person commits an offense under this Chapter, if the person owns, keeps, or harbors a dog over four (4) months of age without having such dog vaccinated for rabies.

DIVISION 2. – DANGEROUS DOGS

SECTION 18-20. COURT DETERMINATION THAT A DOG IS DANGEROUS. Pursuant to Section 822.0422(a) by which the governing body of the City has adopted expedited reporting procedures for dangerous dogs, if a person in the City reports an incident involving a dangerous dog as that term is defined in Section 18-1 of this Chapter, a police officer or the Animal Control Officer will investigate the incident. If after receiving a sworn statement from the person and witnesses, the municipal court shall issue a letter to the owner of the dog instructing the owner to deliver the dog to the animal control authority not later than the fifth day after the date on which such letter is received by the owner. If the owner fails to so deliver the dog reported to be dangerous by the fifth day after the date of receipt of said letter from the court, the court shall order the Animal Control Officer to seize the dog reported to be dangerous and issue a warrant authorizing seizure of the animal and it shall be seized and impounded by the Animal Control Officer or police officer until the court orders disposition of the dog under this Chapter and the dog either returned to the owner or destroyed if impoundment by warrant is required then the owner shall pay all costs incurred in seizing the dog. If impoundment cannot be made safely due to the dangerousness of the dog, the dog may be destroyed without any further procedures or notice being required. If the dog reported to be dangerous is found running at large it may be destroyed without further prior notice to the owner.

- A. **Court Hearing Set/Notice.** The municipal court shall set a time for a hearing to determine whether the animal is a dangerous dog as defined in this Chapter.
 - 1. The hearing must be held not later than the tenth day after the date on which the dog was seized or voluntarily delivered by for impoundment.
 - 2. The municipal court shall give a written notice of the time and place of the hearing to:
 - a. The owner of the dog or the person from whom the dog was seized; and
 - b. The person who made the complaint;
 - c. Any interested party, including the city attorney, is entitled to present evidence at the hearing.

- B. Court Proceedings.** At the hearing, the municipal court shall determine whether the animal is a dangerous dog as defined in Section 18-1 and issue a written decision.
1. If the dog is found not to be a dangerous dog, the dog will be returned to the owner after the owner satisfies all applicable requirements for impoundment, vaccination and regarding any expenses of seizure under warrant, if a warrant was required.
 2. If the dog is found by the court to be a dangerous dog, the owner must file a notice of appeal by the 10th calendar day after the date such written decision is issued by the municipal court in accordance with Section 822.0424 Health and Safety Code. Upon Notice of Appeal to a Brazoria County Court at Law, the municipal court will set an appeal bond in the amount of the estimated costs to house and care for the dog during the appeal process. If the owner fails to file a timely appeal, Sections 822.042 and 822.043 Health and Safety Code specify the qualifications, including a \$100,000 in liability insurance on the dangerous dog, required for the owner to register the dangerous dog with the animal control authority of the City. If the owner of a dangerous dog who failed to appeal, also fails to meet the qualifications to register the dangerous dog by the 11th day after the day on which the dog was seized or voluntarily surrendered to the City, then Section 822.042(d) Health and Safety Code states that the court shall order the humane destruction of such a dangerous dog. The owner of a dog determined to be dangerous, shall be ordered by the court to pay any costs or fees associated with the seizure acceptance, impoundment, or destruction of the dog in accordance with Section 822.042(d) Health and Safety Code.
 3. It is an affirmative defense to a finding of dangerousness:
 - a. If the person who was threatened or attacked by the animal at the time of the injury was committing a willful trespass or another tort upon the premises occupied by the owner of the animal or was committing or attempting to commit a crime.
 - b. If the person was teasing, tormenting, abusing or assaulting the animal or has, in the past, been reported to have teased, tormented, abused or assaulted the animal and is older than eight years of age at the time of the attack;
 - c. If the dog was protecting or defending a person while in that person's control from an unjustified attack or assault; or
 - d. If the dog was injured and responding to pain.
 - e. If the animal was an animal in the performance of duty specifically trained to assist police and other law-enforcement personnel in their work, with duties including but not limited to searching for drugs and explosives, searching for lost people, looking for crime scene evidence, and protecting their handlers.

SECTION 18-21 REQUIREMENTS FOR OWNER OF DANGEROUS DOG

- 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 Officer for the City of Clute;
 - (2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;
 - (3) obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000, to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the Animal Control Officer; and
- B. The owner of a dangerous dog who does not comply with Subsection A. shall deliver the dog to the Animal Control Officer not later than the 30th day after the owner learns that the dog is a dangerous dog.
 - C. If, on application of any person, the municipal court finds, after notice and hearing as provided in Section 18-20, that the owner of a dangerous dog has failed to comply with Subsection A or B, the court shall order the Animal Control Officer to seize the dog and shall issue a warrant authorizing the seizure. The Animal Control Officer shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions.
 - D. The owner shall pay any cost or fee assessed by the city related to the seizure, acceptance, impoundment, or destruction of the dog.
 - E. The court shall order the Animal Control Officer to humanely destroy the dog if the owner has not complied with Subsection A before the 11th day after the date on which the dog is seized or delivered to the Animal Control Officer, except that, notwithstanding any other law, the court may not order the destruction of a dog during the pendency of an appeal under Section 18-20. The court shall order the Animal Control Officer to return the dog to the owner if the owner complies with Subsection A before the 11th day after the date on which the dog is seized or delivered to the Animal Control Officer.
 - F. The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.
 - G. for the purposes of this section, a person learns that the person is the owner of a dangerous dog when:
 - (1) the owner knows of an attack described in 18-1 Dangerous Dog;
 - (2) the owner receives notice that a justice court, county court or municipal court has found that the dog is a dangerous dog under 18-20; or
 - (3) the owner is informed by the Animal Control Officer that the dog is a dangerous dog.

SECTION 18-22. SEIZURE OF A DOG CAUSING DEATH OR SERIOUS BODILY INJURY.

- A. A municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:
 1. On the sworn complaint of a person, including the county attorney, the city attorney, a Police officer or an Animal Control Officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

2. On a showing of a probable cause to believe that the dog caused the death of or serious bodily injury to the persons stated in the complaint.
- B. The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.
 - C. A dog attacking a person may be destroyed by an Animal Control Officer or Police Officer to prevent injury to a person:
 1. Provided the dog is at large.
 2. Provided vocal and physical attempts to stop the dog from attacking have been made by the person being attacked or by the Animal Control Officer or Police Officer.
 3. While restrained or in an enclosure if the attack is being made on an 8 year of age or younger.

SECTION 18-22. HEARING OF A DOG CAUSING DEATH OR SERIOUS BODILY INJURY.

- A. The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the tenth day after the date on which the warrant is issued.
- B. The court shall give a written notice of the time and place of the hearing to:
 - (1) The owner of the dog or the person from whom the dog was seized; and
 - (2) The person who made the complaint.
- C. Any interested party, including the City Attorney, is entitled to present evidence at the hearing.
- D. The court shall order the dog destroyed if the court finds that the dog caused serious bodily injury or the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:
 - (1) Its owner.
 - (2) The person from whom the dog was seized; or
 - (3) Any other person authorized to take possession of the dog.
- E. The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person; and

- (1) The dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept; and
- (2) The enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dangerous dog, by prominently displaying a sign stating "Beware of Dog" or "Dangerous Dog"; and
 - (a) The injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred.
 - (b) The dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least 8 years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;
 - (c) The attack, bite, mauling occurred during an arrest or other action of a Police Officer while the Police Officer was using the dog for law enforcement purposes;
 - (d) The dog was defending a person from an assault or person's property from damage or theft by the injured person; or
 - (e) The injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

ARTICLE III. – LIVESTOCK.

DIVISION 1. – LIVESTOCK – GENERALLY

SECTION 18-23. SPACE AND ENCLOSURE REQUIREMENTS.

1. **Livestock.** All horses, cattle, goats, sheep, mules and other livestock kept within the city shall be kept in an enclosure located at least 150 feet from any dwelling occupied for residence purposes, whether such dwelling is located on the premises on which such enclosure is located or on any adjoining premises, and the premises on which any such enclosure is located shall consist of at least one-half acre of land for one such animal so kept and at least one additional acre of land for each additional such animal kept on the same premises.
 - A. **Building Permit Required:** A building permit must be acquired for the erection of any shed, barn, and/or building erected for the occupancy of any livestock.
 - B. **Clean and Sanitary Buildings Required:** All barns, sheds, buildings, and enclosures erected for the occupancy of any livestock must be erected in such manner as will

facilitate cleaning and must be sanitary in all respects, and no accumulations of animal excreta or filth shall be permissible. Caution shall be taken to maintain cleanliness in all yards, barns, sheds, buildings, and enclosures to prevent bugs and lice; all structures will be treated weekly with a City approved insecticide spray or powder. All enclosures located within the city in which any horses, cattle, goats, sheep, mules or other livestock are kept shall be maintained in a clean and sanitary manner and all accumulations of excreta or filth shall be removed from such enclosure within a reasonable time.

SECTION 18-24. VACCINATION; CLEANLINESS OF ENCLOSURES; REPORTS.

Before any livestock are allowed to be kept or maintained within the city, such animals must be free of the following diseases and proof of the following current vaccinations shall be shown to the Animal Control Officer upon request:

1. Horses, mules, donkeys, burros and jacks shall be vaccinated against sleeping sickness (equine encephalomyelitis) with Eastern and Western strain vaccine.
2. Cows, bulls, and calves shall be free of tuberculosis (tuberculin test required); Bang's disease (brucellosis); mastitis; and cowpox.
3. Goats and sheep shall be free of tuberculosis (tuberculin test required); and brucellosis (Malta fever).
4. All livestock must be given an anthrax vaccination annually.
5. Any offspring of the livestock must be checked, certified and vaccinated as above provided as soon as necessary age is attained for testing and vaccination, such age to be determined by an ethical veterinary procedure.

SECTION 18-25. VIOLATION AND PENALTY.

- A. A person who violates this Chapter commits a criminal offense involving public safety for which proof of a culpable mental state may be dispensed with in the charging instrument when a complaint is filed. An offense under this Chapter is a misdemeanor punishable upon conviction by a fine not to exceed \$500.00, unless proof of a culpable mental state is pled in the complaint, in which case the fine upon conviction shall not exceed \$2,000.00.
- B. The minimum penalty for a conviction of a first offense in this chapter shall be by a fine of not less than \$50.00, the minimum penalty for a conviction of a second offense within any 12 month period under this chapter shall be by a fine of not less than \$100.00, and by a fine of not less than \$300.00 upon a third or subsequent conviction within any 12-month period; , provided, however, that where the offense is one for which a penalty is fixed by state law, the penalty for such offense shall be the same as fixed by state law.
- C. Each day a violation occurs or continues shall constitute a separate offense and punishable as such.

Second, nothing contained in this ordinance shall cause any rights heretofore vested to be altered, affected or impaired in any way and all such rights may be hereafter enforced as if this ordinance had not been adopted.

Third, this ordinance is cumulative of and in addition to all other ordinances of the City on the same subject and all such ordinances are hereby expressly saved from repeal. Provided, however, where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent regulations or penalties, as the case may be, shall prevail.

Fourth, no offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this ordinance is to be affected by the adoption of this ordinance but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this ordinance had not been adopted.

Fifth, in the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

Sixth, this ordinance shall not be construed so as to conflict with any state or federal statute. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Seventh, this ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this 12th day of October, 2017.

Calvin Shiflet, Mayor

ATTEST:

Approved as to form and legality:

Rosie Poitevint, City Clerk

Christopher Duncan, City Attorney