

ORDINANCE NO. 24-003

AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES FOR THE CITY OF MARLIN, TEXAS IN ITS ENTIRETY BY ADOPTING THIS ORDINANCE TO BE KNOWN AS THE ANIMAL CONTROL REGULATIONS OF THE CITY OF MARLIN; ADOPTING ANIMAL CONTROL REGULATIONS DESIGNED TO PROTECT THE PUBLIC HEALTH AND SAFETY; PROVIDING COMPREHENSIVE REQUIREMENTS FOR THE KEEPING AND CARE OF ANIMALS AND FOWL; PROVIDING FOR THE CONTROL, REGULATION, LICENSING, PERMITTING AND VACCINATION OF DOGS AND CATS; PROVIDING REGULATIONS AND REQUIREMENTS FOR OTHER ANIMALS, FOWL, LIVESTOCK AND WILD AND EXOTIC ANIMALS; PROVIDING FOR IMPOUNDING AND DISPOSITION OF ANIMALS RUNNING AT LARGE OR OTHERWISE IN VIOLATION OF THIS ORDINANCE; PROVIDING PROCEDURES FOR RABIES REPORTING AND CONTROL; PROVIDING CERTAIN EXEMPTIONS; PROVIDING FINES AND PENALTIES; REPEALING ALL PARTS OF ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the proper care, regulation and control of animals, fowl and livestock is necessary for the health, safety and quality of life of the citizens of the City of Marlin, Texas (herein the "City");

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

WHEREAS, it is necessary for the City to adopt requirements and regulations which will enable the officers and employees of the City to respond in a manner consistent with State law to unusual circumstances and conditions that arise from time to time with respect to the keeping, care and control of domestic, wild and exotic animals; and

WHEREAS, the rules, regulations and requirements established by Ordinance may not be inconsistent with State law;

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this Ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Animal Control Regulations Adopted. The City Council hereby adopts the "Animal Control Regulations" for the control and regulation of animals within the City of

Marlin to read as set forth in and attached hereto entitled "Animal Control Regulations of the City of Marlin" attached to and incorporated in this ordinance as though fully transcribed herein for all purposes.

Section 3. Repeal of Ordinances. All prior ordinances inconsistent with this Ordinance are repealed to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 4. Savings Clause. All rights and remedies of the City of Marlin are expressly saved as to any and all violations of the provisions of any ordinances affecting animals, licensing and registration within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 5. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 6. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.


Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

FIRST READING on the 9 day of July, 2024.

SECOND READING on the 20 day of August, 2024.


PASSED AND APPROVED on this the 20 day of August, 2024.

ATTEST:



Mary Ann Waddle, City Secretary

THE CITY OF MARLIN, TEXAS



Susan Byrd, Mayor

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ARTICLE I. GENERAL TERMS AND PROVISIONS

Section 1. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

"Animal" shall mean any living creature other than a Homo sapiens. Unless indicated otherwise, the term shall include livestock, fowl, reptiles, amphibians, and wildlife, as well as dogs, cats and other creatures commonly owned as pets. The term shall exclude a fish and other small aquarium maintained creatures, not herein prohibited or restricted, where the owner only maintains no more than three aquariums having a total capacity of ninety gallons.

"Animal Control Officer" or "Animal Control Authority" or "Animal Control Office" shall mean the officer or office of the City primarily responsible for the enforcement of regulations regarding animals, including the officers of the police department.

"Animal Services Director" shall mean and refer to the Police Chief fo the City of Marlin, Texas.

"Animal shelter" shall mean a facility designated by the City Council to be used for the impoundment of animals taken up by the Animal Control Officers.

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

"Authority" shall mean the local rabies control authority as defined in this section.

"Boarding Kennel" means an establishment used for the purpose of boarding pet animals on a temporary basis and where no animals are bred or sold.

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

"Breeding kennel" means an establishment designed or used for the boarding, selling or breeding of animals where more than three dogs and two cats or three cats and two dogs or a combination of five other animals are to be boarded, sold or bred. Grooming parlors where no animals are to be kept overnight and veterinary clinics shall not be considered kennels.

"Cat" shall mean the male and the female of any domesticated member of the feline species of animals.

"Circus" or "Theatrical Exhibit" shall mean a commercial variety show featuring animal acts for the public at a fee or a part of a charity.

"Dangerous Dog" shall mean and have the same definition as provided for in Chapter 822 of the Texas Health & Safety Code.

"Dangerous Wild Animal" shall mean and refer to those animals defined as a Dangerous Wild Animal under Subchapter E of Chapter 822 of the Texas Health & Safety Code.

"Day" shall mean a workday and shall exclude Saturday, Sunday and City holidays.

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

"Dog" shall mean the male and the female of any domesticated member of the canine species of animal.

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

"Estray" means any stray horse, stallion, mare, gelding, filly, colt, mule, jenny, jack, jennet, hog, sheep, goat, confined and domesticated hares and rabbits, or any species of cattle.

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

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

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

"Governmental entity" shall mean an agency or political subdivision of the state or an agency or department of the federal government.

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

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

"Local rabies control authority" shall mean the senior Animal Control Officer, or an officer he designates to act in his place when he is temporarily unable to act for any reason.

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

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

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

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

"Performing animals" shall mean any spectacle, display, act or event in which animals perform.

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

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

"Premise" shall mean a definite portion of a legal lot of real estate or land, together with any appurtenances or buildings.

"Proper Enclosure" means a house or a building, or in the case of a fence or structure/pen, the fence or structure/pen must be at least four feet in height. The structure/pen must also have minimum dimensions of five feet by ten feet. The fence or structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured such that an animal cannot climb, dig, jump or otherwise escape of its own volition. The enclosure shall be securely locked at all times and have secured sides to prevent a dangerous animal or registered dangerous dog from escaping from the enclosure. The structure/pen shall provide protection from the elements for the animal. The Animal Control Officer may require a fence higher than four feet or require a secure top and/or a secure bottom to the structure/pen if the need is demonstrated.

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

"Quarantine by Owner" means an animal owner who quarantines with Animal Control Officer's permission under the following conditions:

- (a) Animal must have current rabies vaccination and be registered with Animal Control;
- (b) Animal must be inside an enclosed structure, i.e., house or garage, and must remain there for ten days;
- (c) If maintained outside, animal must be behind a fence from which it cannot escape and on a chain from which it cannot break loose or inside a covered pen or kennel from which it cannot escape. The length of the chain must prevent the animal from making contact with the fence in which it is kept;
- (d) Animal must be kept away from other animals and people except those in the immediate household;
- (e) Animal may not be removed from corporate City limits of Marlin while under quarantine;
- (f) Owner shall notify Animal Control Officer immediately if animal becomes sick or displays any behavioral changes;
- (g) Owner shall not subject the animal to any medical procedure, without first notifying the Animal Control Officer. This includes any vaccination;
- (h) Animal must be examined by a licensed veterinarian by the first day of home quarantine and again on the final day of quarantine. Owner shall be responsible for producing proof of the veterinarian examinations;
- (i) No animal that is at large or unleashed at the time of exposure may be quarantined by owner;
- (j) Owner must allow Animal Control, with reasonable notice, to view and confirm the health of the animal during the rabies quarantine period.

"Rabies Vaccination" means the vaccination of a dog, cat or other domestic animal with an anti-rabies vaccine approved by the Texas Department of Health and administered by a veterinarian licensed by the State of Texas.

"Registered Dangerous Dog" means any dog registered with the City in compliance with Chapter 822, Texas Health and Safety Code, Subchapter D, and with the section of this title addressing registered dangerous dogs.

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

"Restrained" shall mean any animal secured by a leash, rope or chain of some sort or confined through fencing or otherwise within the property limits of its owner.

"Restricted Animals" means any individual species and/or subspecies of the following animals: antelope, lions, tigers, ocelots, cougars, leopards, cheetahs, jaguars, hyenas, bears, lesser pandas, ferrets born in natural habitats, binturong, ostriches, emus, miniature pigs, apes or such other nondomestic species of animal not common to this area.

"Running at large" (animals at large)

(a) Off-premises:

1. Any animal, except pet cats, which is not restrained by means of a leash, chain, or other physical apparatus of sufficient strength and length to control the actions of such animal while off-premises;
2. Any cat which is creating a nuisance off the owner's property.

(b) On-premises:

1. Any animal, except pet cats, not confined to premises of owner by a substantial fence of sufficient strength and height to prevent the animal from escaping therefrom, or secured on the premises by a chain or leash sufficient in strength to prevent the animal from escaping from premises and so arranged that the animal will remain upon the premises when the leash is stretched to full length;
2. An animal intruding upon the property of another person other than the owner's shall be termed "at large";
3. Any animal within a vehicle in a manner that would prevent that animal's escape or contact with other persons or animals shall not be deemed "at large."

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

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

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

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

"Tag" shall mean a vaccination tag attached to a collar as required by this Ordinance or some other permanent identifying device attached to a collar or to an animal.

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

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

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

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

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

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

Section 2. Purpose. It is the intent and purpose of this Ordinance to provide a safe and healthy environment within the City for both animals and people. While a person may own and keep animals within the City, the conduct of those animals and the conditions that the animals are kept in should be safe and healthy and should not infringe on the surrounding homes and their inhabitants.

Section 3. Animal Services Director. The Animal Services Director shall have supervision and control over all aspects of the Animal Shelter, and shall supervise and appoint Animal Control Officers and will make final determinations and decision on the all matters regarding the enforcement of this Ordinance

Section 4. Enforcement. (a) The provisions of this Ordinance may be enforced by the Animal Services Director, the Animal Control Officers, police officers, and such other persons as are designated by the City.

(b) It shall be unlawful for any person to interfere with, obstruct, resist or oppose any Animal Control Officer or other person authorized to enforce the provisions of this Ordinance while such person is apprehending an animal or performing any other duties or investigation. It shall be unlawful to take or attempt to take any animal from any Animal Control Officer or from

any vehicle used by the officer to transport any animal or to take or attempt to take any animal from the animal shelter or other kennel or confinement area used to impound an animal.

(c) In all instances of a violation of any provision of this Ordinance, whether the animal is impounded or not, the owner or keeper of such animal may be cited by an officer who has the authority to enforce this Ordinance for any violation of this Ordinance.

(d) In the enforcement of this Ordinance, Animal Control Officers and police officers shall have the authority to shoot or otherwise disable any animal to protect themselves, to protect a third person or to protect another animal from attack or threat of imminent injury or to prevent such animal from enduring further pain or suffering as a result of disease or injury. They shall also have the authority to tranquilize or trap any animal, fowl, livestock or wildlife consistent with humane policies adopted by the animal control office.

(e) Unless specifically provided in this Ordinance, an offense under this Ordinance shall not require a culpable mental state. It is the intent of this Ordinance to impose strict liability for violation of the requirements of this Ordinance.

Section 5. Powers and Duties of Citizens. Any person who finds an animal which he does not own on property that he owns or exercises control over or on public property may take control of said animal if it is running at large (as provided in Section 92) and may deliver the animal to an Animal Control Officer, the animal shelter, or an animal emergency medical facility. If the animal is not delivered to an Animal Control Officer, the animal shelter, or an animal emergency medical facility, the person must report that he had taken control of the animal to an Animal Control Officer or the animal shelter within seventy-two (72) hours. If animal is wearing a tag of any kind or has a tattoo, brand, or other identifying mark, that information shall be included in the report to the Animal Control Officer or animal shelter.

Section 6. Penalty. (a) Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(b) A person commits an offense if, with intent to deceive, he knowingly makes a false report or statement, either verbal or written, that is material to an investigation of an alleged violation of this Ordinance to an Animal Control Officer or other person authorized to enforce provision of this Ordinance.

(c) A person commits an offense if he reports to a person authorized to enforce provisions of this Ordinance an offense or incident within that person's concern knowing that the offense or incident did not occur.

Section 7. Prima Facie Evidence. In any prosecution charging a violation of this Ordinance, governing the abuse, neglect or ownership of an animal or failure to license an animal as

herein required, proof that the particular property described in the complaint was the premises upon which the animal resided, was harbored or maintained and a violation of any Section of this Ordinance occurred involving said animal, together with proof that the defendant named in the complaint was, at the time of such complaint or at the time when the animal was in violation of this ordinance, the registered owner of such animal or the person with legal rights to reside on said property, shall constitute in evidence a prima facie presumption that the registered owner of such animal or the person with legal rights to reside on said property was the owner of the animal and the person who failed to comply with the ordinance.

Section 8. Abatement of Conditions not Complying with Ordinance. Whenever any premises where animals are kept in an unsanitary conditions, or the facilities are not in keeping with provisions of this ordinance or any other regulations herein or if any health ordinance or law is not observed, the City Health Officer or his/her representative, by written notice to the person responsible for the condition of the premises, may order the abatement of the conditions which are not in accordance with the ordinance or other regulations, or conditions which constitute a nuisance. Failure to comply with such order shall, in addition to any criminal or administrative proceedings, be grounds for and entitle the City to obtain relief by injunction.

Section 9. Compliance with Ordinance not Relief from Compliance with Other Regulations. The keeping of any animal in accordance with provisions of this ordinance shall not be construed to authorize the keeping of the same in violation of the zoning ordinance or any other ordinance of the City.

Section 10. Fees. The fee schedule attached as Appendix "A" shall apply to all animals within the City limit. In no instance shall the City be required to bear the costs of any animal that has an owner. The owner shall reimburse the City for any actual expenses and shall be responsible for all fees set forth in attached Appendix "A". The City may recover all fees, costs and damages incurred as a result of the animal as restitution in a criminal proceeding under the provisions of this ordinance or the State statute in addition to a fine being charged.

Secs. 11--60. Reserved.

ARTICLE II. RABIES CONTROL

Section 61. Vaccinations. (a) All dogs or cats four months of age or older within the City shall be vaccinated against rabies. Such vaccinations shall be repeated at the intervals prescribed by rule of the state department of health, or its successor.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of such dog or cat a vaccination certificate in a form approved by the State Department of Health. The veterinarian shall also issue a metal tag with the veterinarian's address and the year of the vaccination stamped thereon. Upon vaccination, the veterinarian shall execute and furnish to the owner of the dog or cat as evidence thereof, a certificate of vaccination. The veterinarian shall retain a duplicate copy of the certificate and one copy shall be filed with the owner. Such certificate shall contain the following information.

1. The name, address and telephone number of the owner of the vaccinated dog or cat;
2. The date of vaccination;
3. The type of rabies vaccine used;
4. The year and number of the rabies tag; and
5. The breed, age, color and sex of the vaccinated dog or cat.

(c) Concurrent with the issuance and delivery of the certificate of vaccination, the owner of the dog or cat shall cause to be attached to the collar or harness of the vaccinated animal a metal tag, serially numbered to correspond with the vaccination certificate number and bearing the year of issuance.

(d) It shall be unlawful for any person within the City to own, keep, possess, harbor or allow to remain upon premises under his control any dog or cat which has not been vaccinated as required herein. Any person establishing residence within the City shall comply with this title within ten days of establishing such residency.

Section 62. Vaccination of impounded animals. (a) After impoundment, all animals which are required to be vaccinated by this Article which are redeemed by an owner from the animal shelter must be vaccinated against rabies in accordance with the requirements of this Article, or the owner thereof must present a veterinarian's certificate showing a current vaccination.

(b) In order for an animal not vaccinated in accordance with the requirements of this Article to be released, such owner must sign a statement giving the name of the owner and the address where the animal is to be immediately taken and confined and stating that the owner will have the animal vaccinated in accordance with the requirements of this Article. Within seven days of the release of the animal, a certificate of vaccination shall be presented to the animal shelter. Failure to present the vaccination certificate to the animal shelter within the stated time shall be grounds for the immediate return of the animal to the animal shelter, and such animal may be destroyed immediately or otherwise disposed of. Such failure shall also constitute a misdemeanor punishable as set out in section 5, except that the minimum fine shall be \$200.00.

Section 63. Proof of vaccination; dismissal; fine. The failure of a dog or cat to wear a vaccination tag on a collar shall be prima facie evidence of the failure to vaccinate the animal as required by this Article. To prove that a dog or cat was vaccinated at the time of the offense, the owner of the dog or cat must present a copy of the vaccination certificate issued by the veterinarian that shows the date the vaccination was administered. The offense shall be dismissed upon verification that the animal alleged in the offense was vaccinated on the date of the offense with the payment of a \$20.00 administrative fee.

Section 64. License Required. (a) *License Issuance.* All animals four (4) months of age or older which are kept, harbored or maintained within the corporate limits of the City shall be

licensed. Licenses shall be provided by the Animal Control Officer or his agent upon payment of the required fee for each animal. Before a City license will be issued for a cat or dog, the owner must present a certificate from a licensed veterinarian showing that such cat or dog has been vaccinated for rabies within the preceding 12 months. The owner shall state his/her name and address, and the breed, color and sex of the animal to be licensed. Such license shall be valid for one year from date of issuance.

(b) *Tag and Collar.* Upon payment of the license fee, where applicable, the City shall issue to the owner a license certificate and metal tag having stamped thereon the number corresponding with the number of the certificate. Such tag shall at all times be securely attached to a collar or harness around the neck of the animal. In case a tag is lost, a duplicate will be issued by the Animal Control Officer or his agent upon presentation of the receipt showing the payment of license fee for the calendar year. Tags shall not be transferable from one animal to another, and no refunds shall be made.

(c) *Livestock.* All livestock shall be tagged or tattooed and the tag or tattoo will be the identifying tag required to be worn and will be shown on the license.

Section 65. Revocation of License. (a) The Municipal Judge may revoke any license after a hearing for any one or more of the following reasons:

1. Impoundment of the animal by the City more than two times during a 12-month period;
2. More than two final convictions of a person for violating this Ordinance when such convictions relate to the animal being considered for revocation of its license certificate;
3. Any combination of subsections (a)(1) and (a)(2) of this section, totaling three incidents; or
4. Upon a determination that the animal is a nonregisterable dangerous animal, as defined herein.

(b) Upon revoking the license of any animal, the Animal Control Officer shall notify the owner of the animal of such action in writing. Written notification shall be deemed made when a certified letter, return receipt requested, addressed to the last known mailing address of the animal's owner and deposited in the U. S. mail.

(c) Upon the expiration of ten days after written notification of revocation is deposited in the U.S. mail, as provided above, no animal which has had its license revoked shall be kept, maintained or harbored within the City limits and each 24-hour period shall constitute a separate violation.

(d) Upon revocation of a license, owner of animal with revoked license shall notify the Animal Control Officer of the location to which the animal is being removed.

Section 66. Counterfeiting; destruction of tags, certificates. (a) It shall be unlawful for any person to intentionally or knowingly counterfeit a rabies vaccination tag or certificate or a license.

(b) It shall be unlawful for any person to intentionally or knowingly destroy a rabies vaccination tag or certificate.

Section 67. Reporting rabid animals or rabies exposure. (a) It shall be the duty of all animal owners, veterinarians, physicians or any other person to report to the Animal Control Officer all cases of rabies with which he comes in contact or to which his attention has been directed. This report shall be made immediately upon diagnosis or suspicion of a case of rabies.

(b) Any person having knowledge of an animal bite or scratch to an individual or to another animal by an animal which the person suspects is rabid shall report that incident to the Animal Control Officer within 24 hours.

(c) Every physician or other medical practitioner who treats a person or persons for any animal bite/scratch that occurred within the City shall within 12 hours report such treatment to the Animal Control Officer giving the name, age, sex and precise location of the bitten/scratched person or persons and such other information as the officer or agency may require.

(d) Any veterinarian who clinically diagnoses rabies or any person who suspects rabies in a dog, cat or other domestic or wild animal shall immediately report the incident to the Animal Control Officer stating precisely where such animal may be found.

(e) If a known suspected rabid animal bites or scratches a domestic animal, such incident shall also be reported immediately to the Animal Control Officer.

Section 68. Animal bites and scratch reports; submission to quarantine.

(a) *Report of Victim.* Any person who is bitten or scratched by an animal shall report that fact to the Animal Control Officer within 24 hours. If the person bitten or scratched is a minor under the age of 17, the parent or guardian of such minor, if he has knowledge of the incident, shall report that fact to the Animal Control Officer within 24 hours.

(b) *Report of Owner.* A person who owns, keeps, harbors or allows an animal to remain on premises under his control and who has knowledge of a bite shall report to the Animal Control Officer within 24 hours any incident where such animal bit or scratched any person.

(c) *Custody.* The animal committing the act shall be submitted to the Animal Control Officer for quarantine. When the local rabies control authority goes to the premises where the animal that bit or scratched any person is being kept, the Animal Control Officer may take immediate custody of the animal. Where suitable arrangements are made, the local rabies control authority may permit the animal to be transferred to another location for the

remainder of the quarantine period. This duty to submit the animal to quarantine shall apply to any person who owns, keeps, harbors, has possession of or allows an animal to remain on premises under his control. If convicted of violating this section, a minimum fine of \$100.00 shall be imposed by the municipal court.

(d) *Observation.* Any owned dog or cat having bitten or scratched a person shall be observed for a period of ten days from the date of the bite. The procedure and place of observation shall be designated by the investigating officer or responsible agency in compliance with State law. If the dog or cat is not confined on the owner's premises for owner's quarantine, confinement shall be by impoundment in the animal shelter, or at a veterinary hospital of the owner's choice. Such confinement shall be at the owner's expense.

(e) *Strays.* Stray dogs and cats, or those animals whose owners cannot be located shall be confined in the animal shelter for a period of 96 hours and if unclaimed may be destroyed and the brain of such animal immediately submitted to a qualified laboratory for rabies examination at the victim's expense.

(f) *Surrender of Animal.* The owner of any dog or cat that has been reported to have inflicted a bite on any person shall on demand produce the dog or cat for impoundment, as prescribed in this ordinance.

(g) *Home Quarantine.* Home quarantine may be allowed only in those incidents where permitted by State law and agreed to by the Animal Control Officer. Refusal to produce such dog or cat constitutes a violation of this section, and each day of such refusal shall constitute a separate and individual violation.

(h) *Other Animals.* Any wild, exotic or dangerous animal that is considered high risk by State law or regulation and which has bitten or scratched a person shall be caught and humanely killed and the brain submitted for rabies examination. Those wild animals which are classified as low risk animals shall be handled as dictated by State law.

Section 69. Contents of required reports. When an individual is placed under a duty to report an incident in which an animal has bitten or scratched some person or some animal or to report an animal known or suspected to be rabid, that report to the Animal Control Officer shall include, if the person making the report knows, the following information:

- (a) The location where the bite or scratch occurred.
- (b) The location where the animal which committed the act or which is known or suspected to have rabies or have been exposed to rabies can be located.
- (c) The name and address of any person who was bitten or scratched.
- (d) The name and address of the person who owns, keeps, harbors or has control over the premises where the animal committing the act normally can be found.

- (e) The names and addresses of the persons who own, keep or harbor any other animal exposed to rabies can be found.

Section 70. Quarantine and release. (a) When an animal is required to be placed in quarantine, the animal shall be submitted for quarantine at the animal shelter. Only with the prior approval of the local rabies control authority may the animal be held in quarantine at any other location.

- (b) Any animal quarantined shall be held for a period of ten days from the date of the bite. The animal shall not be released from quarantine until such release has been approved by the local rabies control authority.
- (c) Upon release of an animal from quarantine, if the ownership of the animal is known, such owner has 48 hours to claim the animal. If the ownership of the animal is unknown, the animal may be disposed of as provided in section 189 without waiting for an additional 72 hours.

Section 71. Submission of head for rabies diagnosis. (a) If the animal biting or scratching a person is a wild animal, the animal shall be humanely destroyed in such a manner that the brain is not mutilated. The head shall then be submitted to a laboratory certified by the State Department of Health for rabies diagnosis.

(b) If an animal being quarantined becomes ill, it may be humanely destroyed in such a manner that the head is not mutilated. The head shall then be submitted to a laboratory certified by the State Department of Health for rabies diagnosis. The head of each animal dying while in quarantine shall also be submitted for rabies diagnosis.

Section 72. Cost of quarantine or rabies diagnosis. (a) If, at the end of the required quarantine period, a quarantined animal is found to be free of rabies, the local rabies control authority shall order the release of the animal to the owner if the rabies vaccination provisions of this Article have been complied with and any impoundment fees have been paid by such owner.

(b) If a head is submitted to the State Department of Health for rabies diagnosis, the cost of removing the head and shipping it shall be paid by the owner of the animal.

(c) The local rabies control authority may order that all impoundment fees for the quarantine be paid by the person bitten or scratched if:

1. The animal has a rabies vaccination certificate,
2. The animal was on property under the control of the animal's owner when the bite or scratch occurred, and
3. The bite or scratch occurred when the animal was acting to defend its owner or the property, or after provocation.

If the animal is a wild animal, the local rabies control authority may order that all fees be paid by the person who was bitten or scratched.

Section 73. Enforcement. For the purposes of discharging the duties imposed by this Article and to enforce its provisions, any peace officer or Animal Control Officer is empowered to enter upon any premises upon which an animal is kept or harbored and to demand the exhibition by the owner of such animal or the license for such animal in accordance with the provisions of this Article, to include random City-wide canvassing and checks for compliance with the Article. The owner of any animal is required to produce the license and vaccination information for each animal in his ownership upon demand by an Animal Control Officer or peace officer.

Secs. 74--80. Reserved.

ARTICLE III. KENNELS AND MULTIPLE ANIMAL OWNERSHIP

Section 81. Permit Required. (a) Permits shall be required for all kennels and multi-animal owners. Five or more animals maintained on any one lot, parcel, or home within the City shall be considered a multi-animal owner or kennel. No person shall maintain, harbor or care for more than five animals of any species without having obtained a multi-animal owner or kennel permit, excluding fish.

(b) Private breeders shall be issued a private breeder disposal permit in order to sell or give away any puppies or kittens, on public or private property within the City limits.

(c) Private breeders are not permitted within or on any lot or parcel located within any residentially zoned district within the City.

Section 82. Permits. (a) Permits shall be valid for one year from date of issuance. The permit fee shall be according to the schedule established in Appendix "A".

(b) No multi animal or kennel permit shall be issued to permit or allow a kennel or multi-animal ownership to be located on any lot or parcel located with any area zoned for residential use.

(c) The Animal Control Officer may file an application with the Municipal Judge to revoke any permit issued under this ordinance. The Municipal Judge may suspend any permit pending a full hearing if such action is determined reasonably necessary to protect the public health or the safety of any animal.

Section 83. Kennel Facility Requirements. Upon inspection of the premises by the Animal Control Officer, the permit shall be issued if the following conditions are met:

(a) The facility must be adequate for the number and type of animals to be kept.

1. Facility must be of sufficient size as to allow animals to move about freely. This shall apply to each animal kept. Size of facility shall be in proportion to the size of the individual animal's height and weight.
2. Adequate food and water must be provided so that each and all animals kept shall be maintained in good health and free of malnutrition and/or dehydration.
3. The premises shall be kept in a sanitary condition and reasonably free of animal waste, parasites, insects and flies that could be harmful to the animal's health and/or to the health of the general public.

(b) The animals and the facility must be kept free of odor or stench which is offensive to a person of ordinary sensibilities.

(c) The animals must be maintained in a manner which does not pose a danger to the health of the animals themselves or to adjacent animals.

(d) The animals must not cause noise which is offensive or disturbing to a person of ordinary sensibilities on adjoining, adjacent or neighboring premises.

(e) The applicant or holder of the permit shall not have been issued citations for violation of this ordinance on two separate occasions, or animals covered by or to be covered by the permit have not been impounded on two separate occasions.

(f) In the case of a boarding kennel, no animal may be bred or sold therein.

Section 84. Private Breeder Disposal Permit. No private breeder may sell or give away any dog, cat or pet animal in the City limits without a private breeder disposal permit issued by the Animal Control Officer. Animal Control shall determine the basic health of the animals before a permit is issued.

Section 85. Multi-Animal Ownership. All animals to be covered by a multi-animal owner permit shall be kept in a facility and under the conditions as specified in Section 83.

Section 86. Revocation or Suspension of Kennel or Multi-Pet Ownership Permits. Any kennel or multi-pet owner permit may be revoked if the owner's facility is found to be in violation of any zoning law, health law or any other applicable ordinance of the City or of the State of Texas, or the facility is maintained in such a manner as to be detrimental to the health, safety or peace of mind of persons residing in the immediate vicinity.

Section 87. Commercial Sales Permit. (a) All persons engaged in the commercial sale of any animals, domestic or otherwise, including but not limited to, pet stores and stores in which pets and animals are not the central item of sale within the store, such as department stores, drugstores and convenience stores, must apply for a commercial sales permit from the Animal Control Officer. The commercial sales permit shall be issued provided the applicant meets all the provisions of this

section. The fee shall be set by the City Council and shall be valid for one year from the date of issuance. Those persons currently engaged in the selling of animals in the aforementioned manner are required to apply for the commercial sales permit immediately. This section shall not be applicable to persons buying, selling and trading cattle, horses, ~~hogs~~, sheep, goats and similar livestock within the City that are raised and kept outside of the City in the course of a farming, ranching or agricultural business or trade; provided that this section shall be applicable to any business establishment located within the City and engaged in the buying, selling or trading of livestock for delivery or holding within the City.

(b) Upon inspection of the premises where the animals are to be sold by the Animal Control Officer, the permit shall be issued if the conditions specified in Section 83 are met.

(c) The commercial sales permit may be revoked by the Animal Control Officer if upon investigation, it is determined that the permit holder has failed to adhere to any of such conditions. Once the permit has been revoked, the store whose permit has been revoked may not reapply for a period of six months and shall not engage in the sale of animals in the manner described in this section for that period.

(d) Upon revocation of the commercial sales permit, the owner of the animals covered in the revoked permit is to remove those animals from the City limits within ten days and notify the Animal Control Officer of the location to which they will be moved. If the owner does not comply with removal of animals within the ten-day period, the Animal Control Officer shall have the authority to remove the animals for the purpose of impoundment.

Secs. 88--90. Reserved.

ARTICLE IV. GENERAL REGULATIONS

Section 91. Identification for animals. Except as provided herein, all animals within the City shall be marked by some type of identifying license, tag, band, tattoo or brand by which the animal's owner can be identified. Animals exempted from this requirement are mice, rats, rabbits, guineas, hamsters, gerbils, ferrets, fowl and snakes.

Section 92. Animals at large; Running at large. (a) *Responsible Party.* It shall be unlawful for any person who owns, keeps, harbors or otherwise has control over any animal within the City to intentionally, knowingly, recklessly or with criminal negligence allow or permit such animal to run or be at large within the City.

(b) *Cats.* The prohibition against an animal running at large shall not apply to a domestic cat which has been vaccinated as required by this Ordinance and which is wearing the required vaccination tags. The prohibition shall apply to all other cats.

(c) *Restraint Required.* An animal shall be considered to be at large if it is not under the control of its owner by either a leash, chain, cord or other suitable material attached to a collar or harness, or not restrained on the property of the owner by a leash, chain, cord or fence.

An animal inside a vehicle parked in a public place or in the open bed of a moving or parked vehicle in a public place shall be considered to be at large unless it is restrained in such a manner that it cannot exit the vehicle of its own volition.

(d) *Snakes.* It shall be unlawful for any person to have a snake in any park or other public place unless it is within some type of cage, pen or enclosure.

(e) *Impoundment.* The Animal Control Officer for the City may impound any animal observed to be at large, whether the animal is on public or private property, subject to the applicable provisions of the law. If the Animal Control Officer observes an animal on property which is owned by a person other than the owner of the animal, and observes the animal return to property of its owner, the Animal Control Officer may impound the animal or issue a citation for the animal running at large. In the event the animal is on private property or property of the animal's owner the Animal Control Officer, his/her agent, or peace officer may enter the property, other than a private dwelling for the purpose of impoundment or issuance of a citation, or both, subject to the applicable provisions of the title and law. If an animal is at large, or is reasonably expected to become at large only as a result of or as an incident to an arrest of the person in control or in possession of the animal, the Animal Control may impound the animal as authorized in this subsection.

(f) *Prima Facie Evidence.* Proof that an animal was found at large in violation of this section, together with proof that the defendant was the owner of such animal at the time, shall constitute prima facie evidence that the defendant allowed or permitted the animal to be at large.

Section 93. Confinement During Estrus. (a) *Secured Enclosure Required.* Any unspayed female dog or cat in the state of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure and the area of enclosure shall be so constructed that no other dog or cat may gain access to the confined animals except for controlled breeding permitted by the owner of the female.

(b) *Chaining or Tethering.* Additionally, the female dog or cat shall not be chained or tethered, except in a secured enclosure, and if chained or tethered within a secured enclosure, the female dog or cat may not be chained or tethered in a manner that prevents her from defending herself or from avoiding a male.

(c) *Removal of the Animal.* Owners who do not comply shall be ordered to immediately remove the animal in heat to a veterinary hospital or the animal shelter. Failure to comply with the removal order of the Animal Control Officer shall be a violation of this ordinance and the dog or cat will then be impounded as prescribed herein. All expenses incurred, as a result of this confinement, shall be paid by the owner.

Section 94. Animal defecation prohibited in certain areas. (a) It is unlawful for the owner or person in control of an animal to intentionally, knowingly, recklessly or with criminal negligence allow or permit such animal to defecate on any public property or improved private property other than that of the owner of the animal. That the animal was at large at the time it

defecated on any property shall constitute a prima facie evidence that the owner or person in control of the animal allowed or permitted the animal to so act.

(b) *Defense.* It shall be a defense to prosecution under this section that the owner or person in control of the animal immediately removed and cleaned up such animal's feces from public or private property.

Section 95. Wild animals or wildlife. (a) No person shall possess, keep or have care, custody or control of a prohibited animal wild animal or wildlife within the City except as provided herein.

(b) All persons shall be prohibited from selling, giving, transferring or importing into the City any wild animal.

(c) This section shall not apply to approved zoological parks, performing animal exhibitions or circuses. 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.

(d) It shall be a defense to prosecution under this section that the animal being kept 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.

Section 96. Nuisance animals. (a) As used in this Article, a nuisance animal shall be defined as any animal that commits any of the acts listed herein:

1. Molests or chases pedestrians, passersby or passing vehicles, including bicycles, or molests, attacks or interferes with other animals or persons on public property or private property other than the owners;
2. Makes unprovoked attacks on other animals of any kind or engages in conduct which establishes such animal as a "Dangerous Animal";
3. Is repeatedly at large; specifically, three or more times per 12-month period (excluding domestic cats);
4. Damages, soils or defiles public property or private property, other than property belonging to or under the control of the owner;
5. Defecates on property not belonging to or under the control of its owner, unless such waste is immediately removed and properly disposed of by the owner of the animal;

6. Barks, whines, howls, crows, crackles or makes any noise excessively and continuously, and such noise disturbs a person of ordinary sensibilities;
7. Produce odors or unclean conditions sufficient to annoy persons living in the vicinity; or
8. Is unconfined when in heat.

(b) If the Animal Control Officer determines that any animal is a nuisance, the Animal Control Officer may issue an order requiring that the owner meet certain remedial requirements to correct the conduct of the animal. The order shall be given to the owner by personal service or by certified mail, return receipt requested. The owner may file an appeal to this order as provided in Article II of this Ordinance.

(c) Persons residing within 600 feet of a person who harbors or keeps an animal that they believe to be a nuisance may initiate an action before the board as provided for in section 33.

Section 97. 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.

Section 98. Pens and coops; location. (a) All fowl and rabbits shall be kept within a pen, coop or hutch. A fenced yard shall not qualify as a pen or coop.

(b) Any person keeping or harboring any animal, other than livestock, shall locate any pen, coop, hutch or other housing at least 50 feet from any residence, excluding the residence of the person keeping or harboring the animals.

Section 99. Livestock. (a) It shall be unlawful for any person owning or having care, custody or control over any livestock to:

1. Cause or permit any livestock to be pastured, herded, staked or tied in any street, lane, alley, park or other public place; or
2. Tie, stake or pasture or permit the tying, staking or pasturing of any animal upon any private property within the City without the consent of the owner or occupant of such property; or in such a way as to permit any livestock to trespass upon any street or other public place or upon any private property; or
3. Permit any livestock to be or remain during the nighttime secured by a stake, or secured in any manner other than by enclosing such animal in a pen, corral or barn sufficient and adequate to restrain such livestock.

(b) It shall be unlawful for any person to keep or harbor any livestock within the City in a pen or other enclosure situated at any point closer than 200 feet to any residence, excluding the residence of the person keeping or harboring the livestock.

(c) It shall be unlawful for any person to keep or harbor any livestock within the City in a pen or other enclosure which has less than 600 square feet of area for each livestock.

Section 100. Storage of feed. All feed provided for animals, other than hay, shall be kept in an enclosed building or container except when being used to feed an animal.

Section 101. Other Restrictions. (a) *Hogs and Swine.* The keeping of hogs, pigs or any swine within the City is prohibited.

(b) *Keeping of Animals Near City Water Supply.*

1. It is unlawful and constitutes an offense for any person, whether for himself or as the agent or servant of another or others, to keep or to participate in keeping any horse, cattle, sheep, goat, other livestock and/or fowl in any pen or lot used to confine any such multiple animal operation within 500 feet of any water supply wells from which the City obtains its principal water supply as specified in the official Texas Administrative Code published under authority of the Secretary of State, Title 31, Natural Resources and Conservation, Section 290.41 (c)(1)(C)(D)(F).
2. "Keeping" means the care and control of the livestock or fowl in question for a period of longer than five days.

(c) *Keeping of Animals and Fowl - Restricted.* It is unlawful and constitutes a nuisance to keep any horse, cattle, sheep, goat, rabbit or other livestock, including fowl, at any place within the City, when the place where the same are kept is within 200 feet of any private residence or dwelling place or within 500 feet of any building or establishment open to the public, with the exception of park land, or if the animal or fowl in question is kept in a manner and under conditions wherein by reason of the odors emanating therefrom, the noise made by it or from any other cause pertaining to it or pertaining to the manner or to the place at which it is kept is reasonably calculated to annoy, offend or disturb the reasonable sensibilities of inhabitant of a private residence, or person(s) occupying or visiting an establishment open to the public. The distance provisions do not apply to park land; however, other requirements of this section relating to the manner in which animals are kept shall apply to such park land.

(d) *Keeping of Animals and Fowl - Proof Constitutes Prima Facie Case.* Proof that one dozen or more of such fowl or animals as described in subsection C above, or any combination thereof, are being kept at any one time at a place within the City that is within 200 feet of the private residence of another, or within 500 feet of any building or establishment open to the public, shall be sufficient to make out a prima facie case, and unless such prima facie case is overcome by sufficient evidence, it shall warrant a conviction under the provisions of this section.

(e) *Keeping of Animals and Fowl - Exceptions to Distance Restrictions.* The distance restrictions of this ordinance do not apply to property zoned as Agricultural and Residential, as expressly set forth in the zoning regulations, only as set forth in the zoning regulations of the City of Marlin, or to property properly zoned or used (as in continuing use) as veterinary clinics or facilities or established kennels that are for the purposes of care or boarding animals.

(f) *Dead Animals and Fowl.* It is unlawful for any person in the City to cause to be placed or place, or allow to remain in or near his premises or the premises of any other person, or in any of the streets or other public ways, any dead animal, either wild or domesticated, or any dead fowl, either wild or domesticated.

Section 102. Animals Held on Complaint. If a complaint has been filed in Municipal Court of the City against the owner of an impounded animal for a violation of this title the animal shall not be released except on the order of the Municipal Judge or Animal Control Officer which may also direct the owner to pay any penalties for violation of this ordinance in addition to all impoundment fees. Surrender of an animal by the owner thereof to the Animal Control Officer does not relieve or render the owner immune from the decision of the court nor from the fees and fines which may result from a violation of this ordinance.

Section 103. Removal of Animals from Confinement. (a) *Removal of Animals from Confinement.* It shall be unlawful for any person to remove or allow to escape from any place of confinement any dog or cat which has been confined or ordered to be confined by the City, without the consent of the impounding agency.

(b) *Release of Confined Animals.* It shall be unlawful for any person to knowingly or intentionally enter upon the property of another persons for which the person is not given specific permission to enter for the purpose of releasing a confined, chained or tethered animal.

(c) *Impounding - Interfering with Officers.* It shall be unlawful for any person to interfere or attempt to interfere with the Animal Control Officer or to interfere or attempt to interfere with any person acting for the City in the taking up and impounding of animals in the City.

Secs. 104--120. Reserved.

ARTICLE V. ANIMAL PROTECTION PROVISIONS

Section 121. Animals in motor vehicles. No person shall leave any animal in any standing or parked vehicle in such a way as to intentionally, knowingly, recklessly, or with criminal negligence endanger the animal's health, safety or welfare. An Animal Control Officer, police officer or park ranger is authorized to use reasonable force to remove the animal from the vehicle whenever it appears that the animal's health, safety or welfare is or will be endangered if the owner of the vehicle cannot be located after reasonable attempts. The animal shall be taken to the animal shelter or to a veterinarian if the animal is in distress. A written notice bearing the name of the officer removing the animal, a telephone number where he can be contacted and the location where the animal may be claimed by the owner shall be attached to the vehicle. Any

person violating this section shall bear the full cost and expense incurred by the City in the care, medical treatment, impoundment cost and disposal of the animal, including the removal from a vehicle.

Section 122. Duty of motor vehicle operator to report accident involving animals. (a)

Any person who, as the operator of a motor vehicle within the City, strikes any animal shall report the accident to the police department within a reasonable time if the animal stricken is on or near the roadway so that it constitutes a potential traffic hazard. It shall be an affirmative defense to any violation under this section that the incident occurred while the operator was responding to an emergency and that the incident was reported as soon as possible.

(b) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or the local humane society.

Section 123. Unlawful restraint of dog; exceptions; penalties for violation. (a)

It shall be unlawful for any person to tether, chain or fasten any animal in such a manner as to permit it to be upon any public sidewalk or street or to leave it unattended while tethered, chained or fastened on public property. It shall be unlawful to tether, chain or fasten an animal in such a manner as to cause it injury or pain or not permit it to reach shelter, food and water.

(b) An owner may not leave a dog outside and unattended by use of a restraint that unreasonably limits the dog's movement:

1. between the hours of 10 p.m. and 6:00 a.m.;
2. within 500 feet of the premises of a school; or
3. in the case of extreme weather conditions, including conditions in which:
 - (A) the actual or effective outdoor temperature is below 32 degrees Fahrenheit;
 - (B) a heat advisory has been issued by a local or state authority or jurisdiction; or
 - (C) a hurricane, tropical storm, or tornado warning has been issued for the jurisdiction by the National Weather Service.

(c) In this section, a restraint unreasonably limits a dog's movement if the restraint:

1. uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;
2. is a length shorter than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet;

3. is in an unsafe condition; or

4. causes injury to the dog.

(d) This section shall not apply to:

1. a dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;

2. a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

3. a dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;

4. a dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

5. a dog restrained while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or

6. a dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

7. a person from walking a dog with a hand-held leash

(e) A person commits an offense if the person knowingly violates this section. A violation under this section may be enforced or prosecuted as follows:

1. A peace officer or animal control officer who has probable cause to believe that an owner is violating this subchapter shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.

2. A person commits an offense if the person is provided a statement described by Subsection (e)(1) and fails to comply with this section within 24 hours of the time the owner is provided the statement.
3. If a person commits an offense under this section and has previously been convicted of an offense under this section, the offense is punishable as provided for under Subchapter D of Chapter 821, Texas Health and Safety Code.
4. If a person fails to comply with this subchapter with respect to more than one dog, the person's conduct with respect to each dog constitutes a separate offense.
5. If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.
6. Unless otherwise expressly provided by state law, an offense under this section is a Class C misdemeanor.

Section 124. Selling dyed animals. No animal or fowl of any kind that has been dyed or otherwise colored artificially may be sold or offered for sale, raffled, offered or given as a prize, premium or advertising device or displayed in any store, shop, carnival or other public place.

Section 125. Giving animals as prizes or inducements. (a) No person shall give away any live animal, reptile, fowl, livestock or wildlife as a prize for or as an inducement to enter any contest, game or other competition; or as an inducement to enter a place of amusement; or as an incentive to enter into any business agreement whereby the offer is for the purpose of attracting trade. This prohibition shall apply to carnivals, fairs and circuses.

(b) The prohibition contained in this section shall not apply to fish or to animals given as prizes at a rodeo contest or livestock show or as part of an FFA, 4-H or similar project.

Section 126. Trapping and shooting. (a) *Trapping Prohibited.* It shall be unlawful to set, trigger, activate or otherwise use, or cause to be set, triggered, activated or used, any steel-jawed, leg-hold trap to be used for the capture of any animal. This section is not intended to prohibit the prudent use of traps on one's own property to control rodents.

(b) *Hunting Prohibited.* It shall be unlawful for any person to hunt, shoot, intentionally injure or kill any wild bird, animal, mammal or reptile within the corporate limits of the City. It shall be unlawful for any person to hunt, shoot or kill, within the City, any domestic bird, animal, mammal, reptile or pet that is not owned by such person. Except this section shall not be construed or interpreted to prohibit the shooting and destruction of snakes and skunks, and it shall be a defense to prosecution that the only animal or reptile shot or destroyed was a snake or a skunk that was upon property owned or occupied by the person charged, or upon property occupied by a third party that requested the person charged to shoot or destroy the snake or skunk.

(c) *Domestic Animals.* It shall be unlawful for any person to shoot a domestic animal within the corporate limits of the City. It shall be a defense to prosecution that the domestic animal shot was a vicious animal upon the property owned or occupied by the person charged, or upon property occupied by a third party that requested the person charged to shoot or destroy the domestic animal due to an immediate threat to the safety

Section 127. Molesting animals. It shall be unlawful for any person to in any manner tease, annoy, disturb, molest or irritate an animal that is confined to the owner's premises.

Section 128. Pens; enclosures; sanitary requirements; minimum cage size; overcrowding.

(a) The owners of any animal shall maintain and keep all pens, coops, kennels, fenced areas and enclosures of any kind in a sanitary condition. This shall include the following:

1. All animal wastes shall be disposed of promptly and all pens and enclosures shall be cleaned as needed to prevent odors, and not draw insects or other vermin or create a nuisance.
2. The premises upon which animals are kept shall be clean and free from noxious and unpleasant odors.
3. Some standard spray or other chemicals shall be used at reasonable intervals to keep the premises free of flies, mosquitoes, ticks, fleas and other vectors.

(b) Cages, pens or enclosures used to confine animals shall be of sufficient size to maintain all of the animals within such pen or enclosures comfortably and in good health.

Section 129. Negligent care. (a) It is unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, drink, shade, adequate shelter, veterinary care when needed to prevent suffering, grooming when lack thereof would adversely affect the health of the animal, and with humane care and treatment.

(b) To provide "adequate shelter" for a dog or cat kept outdoors, a person must provide a shelter accessible to the dog or cat meeting the following standards:

1. The shelter must provide protection from the weather, i.e., sun, wind, precipitation (in whatever form), or other inclement weather conditions.
2. If there are no artificial heat sources, the structure shall be small enough to allow the dog or cat to warm the interior of the structure and maintain its body heat, but large enough to permit normal postural adjustments, or standing.
3. Plastic air shipping containers and/or pet carriers shall not be used as outdoor shelters.

(c) A notice of violation requiring that the condition be corrected within a specified time period shall be issued to a person before any notice to appear at the municipal court may be issued or before a complaint may be filed with the municipal court.

Section 130. Animal in state of pain or suffering. (a) If any animal without a license tag or other identifying marker is found in a state of pain and suffering or becomes so during confinement, the City or its agent may dispose of the animal in any humane manner without complying with the three-day (72-hour) waiting period as set out in section 189.

(b) If the owner or keeper of an animal found in a state of pain or suffering refuses to assume responsibility to care for the animal, the Animal Control Officer may dispose of the animal in a humane manner.

Section 131. Sale of animals in public place. (a) If an animal is offered for sale in a public place within the City, the person offering the animal for sale, the owner of the animal, the manager of the property which is the public place on which the offer is being made, and the owner of the property which is the public place on which the offer is being made, shall be responsible for ensuring that sections 124, 125, 128 and 129 are complied with in regard to the animal offered for sale in a public place during the time the animal is in the public place.

(b) The term "public place" as used herein shall mean any place to which the public or a substantial group of the public has access. It shall include, but is not limited to, shops, stores and flea markets.

(c) If an animal offered for sale in a public place is kept within a cage or pen of any type, such cage or pen shall comply with the following requirements:

1. The cage or pen must be large enough for the animal to stand on all of its legs and hold its head in a natural position and not be in a crouched position. The cage or pen must also have enough room for the animal to turn around or move without stepping on another animal, animal feces or food or water provided for the animal.
2. The cage or pen must either have room for water and food or have water and food situated so that the animal has access to it through the cage.
3. The cage or pen must be situated so that air may circulate through it, so that any animal kept within the cage or pen is not exposed to extreme heat. During cold or inclement weather, cages or pens should be situated so that animals contained therein may stay warm and stay dry.

Section 132. Animal fights and fighting paraphernalia. (a) It shall be unlawful for any person to intentionally, knowingly, recklessly, or with criminal negligence use, or allow or permit to be used, property that he owns or has control over for the purpose of conducting animal fights. For purposes of this section, "animal" shall mean a domesticated living creature and wild living creature previously captured, other than a dog.

(b) It shall be unlawful for any person to possess animal fighting equipment within the City. As used herein, the term "animal fighting equipment" means any equipment used for training, handling, housing, feeding or transporting fighting animals. The term also includes animals being used, trained or bred for fighting or intended to be used, trained, or bred for fighting.

Section 133. Slaughtering of animals. Animals may be slaughtered for human or animal consumption within the City, provided it is done at a location that is shielded from sensory perception of the general public, and provided it is done in a manner designed to cause the animal's death as quickly as possible without needless suffering.

Section 134. Use of poisonous substances. (a) It shall be unlawful for any person to administer poison to an animal belonging to another without legal authority or the owner's effective consent. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any domestic animal or person.

(b) It shall be unlawful for any person to recklessly or with criminal negligence injure another's animal by leaving a poisonous substance of any kind in any place within the City.

(c) The provisions of subsection (a) and (b) shall not apply to an exterminator using poisons as part of a pest control program, nor shall it apply to persons using commercial insecticides and rodent baits used to control insects and wild rodents. For purposes of this section, the term "exterminator" shall mean an individual licensed by the Texas Structural Pest Control Board, unless he or she is exempt from such licensing.

Section 135. Cruel Treatment. No person shall beat, cruelly ill treat, torment, mentally abuse, overload, overwork or otherwise abuse an animal or cause, instigate or permit any dog fight, cock fight, bull fight or other combat between animals or between animals and humans. The definition for 'cruelly treated' and 'animal' shall be as defined in Chapter 821 of the Texas Health & Safety Code.

Section 136. Seizure of cruelly treated animal. (a) If a peace officer or the animal control officer has reason to believe that an animal has been or is being cruelly treated, the animal control officer may apply to the judge of the municipal court in for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within ten (10) days of the date of issuance for a hearing in the municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Section 137. Hearing after seizure of a cruelly treated animal. The hearing on whether an animal has been cruelly treated shall be conducted after the seizure of an animal. The hearing shall be conducted as required and in accordance with Chapter 821 of the Texas Health & Safety Code.

Section 138. Abandonment. No person shall abandon an animal in his/her custody.

Section 139. Creating a Health Hazard. Any person who shall harbor or keep animals on his/her premises, or in or about a premises under his/her control, and who allows such premises to become a hazard to the general health and welfare of the community, or who shall allow such premises to give off obnoxious or offensive odors due, to the activity or presence of such animals, shall be guilty of a Class "C" misdemeanor.

Section 140. Tampering with Traps and Equipment. No person shall remove, alter, damage or otherwise tamper with a trap or equipment belonging to or set out by the Animal Control Officer.

Secs. 141--150. Reserved.

ARTICLE VI. DANGEROUS ANIMALS

Section 151. Purpose of Article. It is the intention of this Article to provide a means of dealing with an animal that is dangerous or, by its conduct, has indicated that it may represent a danger in the future. In interpreting the definitions contained in this Article and in implementing its provisions, the Animal Control Officer and the board shall recognize the right of a person to use an animal as a protector or as a guard; however, the Animal Control Officer and the board shall also take into consideration the right of a neighborhood to be free from fear that an animal may leave the premises of its owner or keeper and attack and injure a person or other domestic animal.

Section 152. Dangerous animals. (a) A dangerous animal, which does not include a dangerous dog as that term is defined by this ordinance and state law, shall be defined as an animal other than a dog which:

1. Has inflicted injury on a human being without provocation on public or private property; or
2. Has killed or severely injured a domestic animal without provocation while off the owner's property; or
3. Is trained or harbored for fighting which may be determined based on whether the animal exhibits behavior and/or bears physical scars or injuries which indicate that the animal has been trained or used for the purpose of fighting; or

4. Is a warm-blooded mammal which is known to carry or be susceptible to the rabies virus and which can not be effectively vaccinated against that virus with any vaccine approved by the Texas Department of Health; or
5. Is a hybrid animal or any pet wildlife which has attacked a human or which is apprehended or observed unrestrained; or
6. Is a venomous or carnivorous fish or reptile or any fish or reptile that grows over six feet in length.

(b) If an animal acts as stated in subsection (a) of this section, the Animal Control Officer shall impound the animal immediately if it is at large; or, if it is in the possession of some person, the Animal Control Officer may issue a notice requiring that the animal be taken to a designated location for impoundment. An animal which is impounded shall not be released until a final determination is made on the disposition of the animal.

(c) Notice shall be given to the owner that the Animal Control Officer has determined that the animal is a dangerous animal. This notice shall also set out the remedial requirements which the owner must comply with. This notice shall be given to the owner by personal service or by certified mail, return receipt requested. The owner shall have five working days from receipt of the notice to file a letter with the City secretary stating that [s]he shall comply with the remedial requirements as stated in the notice or that [s]he disagrees with the determination that the animal is dangerous or the remedial requirements and that [s]he requests a hearing before the board. Such hearing shall be conducted as provided for in Article II of this Ordinance.

(d) If the owner of a dangerous animal cannot be determined after reasonable efforts to do so and after holding the animal for 72 hours, the animal may be disposed of in a humane manner. If the owner of a dangerous animal which has been impounded cannot be located for the delivery service of the notice required herein either in person or by mail, the animal may be disposed of in a humane manner after all reasonable effort has been made to locate such owner.

(e) If the animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the board may again review the situation and prescribe additional or different remedial requirements.

Section 153. Potentially dangerous animals. (a) If the Animal Control Officer or a neighborhood believes that an animal has exhibited behavior indicating that it represents a potential danger, the Animal Control Officer or residents of an area as provided in section 33(b) may initiate an action before the board to determine whether or not the animal is potentially dangerous. Any such hearing shall be conducted as provided for in Article II of this Ordinance. Pending the outcome of such hearing, the animal must be securely confined in a humane manner either on the premises of the owner, with a licensed veterinarian or at the animal shelter.

(b) An animal may be defined as "potentially dangerous" if it has engaged in the following conduct:

1. When unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack; or
2. Has a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise threaten the safety of human beings or domestic animals.

(c) If an animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the board may again review the situation and prescribe additional or different remedial requirements.

Section 154. Exceptions. (a) No animal may be declared dangerous or potentially dangerous if the threat, injury or damage was sustained by a person who at the time:

1. Was committing a willful trespass or other tort upon the premises occupied by the owner of the animal; or
2. Was tormenting, abusing or assaulting the animal or has in the past been observed or reported to have tormented, abused or assaulted the animal and the animal was not at large at the time of the offense; or
3. Was committing or attempting to commit a crime.
4. If the dog was protecting or defending a person while in that person's control from an unjustified attack or assault; or
5. If the dog was injured and responding to pain.

(b) The provisions of this Article shall not apply to animals under the control of a law enforcement or military agency.

(c) The provisions of this Article shall not apply to a dog whose conduct has brought it within the coverage of the V.T.C.A., Health and Safety Code Chapter 822, to the extent that said Chapter preempts local regulation of the dog's conduct.

Section 155. Dangerous dogs. Chapter 822 of the Texas Health & Safety Code shall apply for the procedures and process to determine whether a dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person and whether the dog is a dangerous dog; for definitions of animal control authority; cases involving serious bodily injury or death to a human; dangerous dog determinations; the authority to seize a such a dog; and the requirements to secure a dangerous dog.

Section 156. Determination of dangerous dog. Chapter 822 of the Texas Health & Safety Code shall apply for the procedures and process to determine whether a dog is a dangerous dog. The

animal control officer or animal control authority, as appropriate, shall notify the owner in writing of the determination.

Section 157. Hearing and notice regarding dangerous dog. (a) A hearing shall be set to determine to determine whether a dog that 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 10th day after the date on which a warrant for the seizure of the dog is issued, or if no warrant, not later than the 10th day after the date on which the dog was seized by the animal control authority.

(b) The requirements and procedures governing the hearing shall be as established and set forth Section 822.003 of the Texas Health & Safety Code.

Section 158. Defense to determination. The defenses that may be asserted in a hearing under Section 157 are the defenses described and set forth in Section 822.003 of the Texas Health & Safety Code.

Section 159. Disposition of a dangerous dog. Chapter 822 of the Texas Health & Safety Code shall apply to the disposition of a dog found to be Dangerous Dog after a hearing as provided for under Section 822.003 of the Texas Health & Safety Code.

Section 160. Registerable dangerous dog. The determination of whether a dog is a registerable dangerous dog under this ordinance shall be determined in accordance with and in compliance with Subchapter D of Chapter 822 of the Texas Health & Safety Code.

Section 161. Determination of a registerable dangerous dog. A dog is determined to be a registerable dangerous dog if it meets the definition of a dangerous dog as provided under Subchapter D of Chapter 822 of the Texas Health & Safety Code, or after a hearing as provided in Subchapter D of Chapter 822 of the Texas Health & Safety Code.

Section 162. Notification of declaration of registerable dangerous dog. (a) The animal control officer or animal control authority, as appropriate, shall notify the owner in writing of the determination.

(b) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control officer to the Marlin municipal court.

(c) To file an appeal under Subsection (b), the owner must:

1. file a notice of appeal of the animal control authority's dangerous dog determination with the court;
2. attach a copy of the determination from the animal control authority; and

3. serve a copy of the notice of appeal on the Animal Control Officer by mailing the notice through the United States Postal Service.

(d) An owner may appeal the decision of the Marlin municipal court in the manner permitted in Subchapter D of Chapter 822 of the Texas Health & Safety Code.

Section 163. Status of dog on appeal. Pending the outcome of the appeal, the animal must be confined at a licensed veterinary clinic or at the animal shelter, the cost of which shall be borne by the owner of the dog in question. If the dog in question is not in the possession of the animal shelter or a veterinary clinic at the time of the determination, the owner must surrender the dog to the Animal Control Officer when ordered to do so. If the owner fails to immediately surrender the dog, the Animal Control Officer shall have the right to take the dog into its possession from the premises of the owner or elsewhere, wherever the dog may be found within the City limits. If the dog can not be taken into custody by the Animal Control Officer, it may be taken into custody under a search warrant for contraband issued by the Municipal Judge.

Section 164. Defense to determination of registerable dangerous dog. The defenses identified and provided or available under Chapter 822 of the Texas Health & Safety Code shall be available as a defenses to the determination of a dog as a registerable dangerous dog and to the prosecution of the owner of that dog.

Section 165. Disposition of a registerable dangerous dog. (a) If the Municipal Court upholds the determination by the Animal Control Officer, the owner shall, no later than thirty (30) days after the hearing, comply with the provisions of this Ordinance for the keeping of a registered dangerous dog in the City and the dog shall be returned to the owner provided all costs involved in the impoundment, holding and medical treatment of the dog are paid.

(b) In the event the Municipal Court reverses that determination, the dog in question shall be returned to or released to its owner provided the owner has paid all veterinary medical costs administered to such dog while in the custody of the Animal Control Officer, seizure and impoundment fees, and additional costs for maintaining the dog while the dog was in the custody of the Animal Control Officer.

(c) The owner of a dangerous dog who does not comply with Subsection (a) or (c) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(d) If, the municipal court judge finds, after notice and hearing as provided in Subchapter D of Chapter 822 of the Texas Health & Safety Code, that the owner of a dangerous dog has failed to comply with Subsection (a) or (c), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. 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.

(e) 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 authority. If the owner

complies with the requirements of section (a) before 11th day after the date on which the dog is seized or delivered to the animal control authority, the court shall order the animal control authority to return the dog to the owner.

(f) Subject to subsection (g), the court shall order the animal control authority 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 authority the court shall order the authority 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 authority.

(g) Any order to destroy the dog under this section is stayed for a period of ten (10) calendar days from the date the order issued, during which period the dog's owner may file a notice of appeal, and if an appeal is filed the dog may not be destroyed during the pendency of the appeal.

(h) If the Animal Control Officer has information or belief, or has determined that a court of competent jurisdiction has ever made or upheld a determination or declaration that a dog is dangerous, or if the Animal Control Officer has determined that a declaration or determination of dangerous dog became final for failure to appeal or any other reason, under previous or other ordinances of this City or other cities or State law, the Animal Control Officer shall notify the person owning or keeping such dog in writing that the owner shall no later than ten (10) days after the date of the notice comply with the provisions of this title for the keeping of a registered dangerous dog in the City of Marlin.

(i) 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.

(j) For 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 as described in Subchapter D of Chapter 822 of the Texas Health & Safety Code;
2. the owner receives notice that a the municipal court has found that the dog is a dangerous dog under Subchapter D of Chapter 822 of the Texas Health & Safety Code; or
3. the owner is informed by the animal control authority that the dog is a dangerous dog under Subchapter D of Chapter 822 of the Texas Health & Safety Code.

Section 166. Requirements for registration and possession of registered dangerous dog.

The owner must register the dog with the Animal Control Officer, and pay the annual registration fees as required by Subchapter D of Chapter 822 of the Texas Health & Safety Code and further comply with all provisions of Subchapter D of Chapter 822 of the Texas Health & Safety Code.

Section 167. Attack by registered dangerous dog. The owner of a dangerous dog shall notify the Animal Control Officer of any attacks the dog makes on people or animals.

Section 168. Appeal from municipal court. Any appeal of the decision or order of the Municipal Court of Marlin shall be made within ten days in the same manner as appeal from civil cases originating in the Justice of the Peace Courts of this State. The Municipal Court shall order the appellant to post a supersedeas bond payable to the City in an amount not less than \$10,000.00. The form of the bond shall be as prescribed in the laws pertaining to civil appeals originating in the Justice of the Peace Courts in this State. The appellant shall be responsible for the cost of appeal.

Section 169. Defense to prosecution for violation of registered dangerous dog. It is a defense to prosecution that the person possessing a dangerous dog is:

(a) Veterinarian, peace officer, or employee of the City, and the harboring of the dog was in the performance of his/her duties;

(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, while in the performance of his/her duties, under the Private Investigators and private Security Agencies Act.

Section 170. Aggressive dogs. (a) The animal control officer may investigate any incident where a dog is accused of attacking, injuring, or killing any other animal. If, after receiving the statements of any witnesses and conducting an investigation of any incident involving a dog attacking, injuring, or killing any other animal, the animal control authority may make a determination that the dog committing the attack is an aggressive dog.

(b) The animal control officer or animal control authority, as appropriate, shall notify the owner in writing of the determination that the dog is an aggressive dog.

(c) An Animal control officer shall have the authority to seize a dog that has been determined to be an aggressive dog in accordance with Chapter 822 of the Texas Health & Safety Code if the Animal Control Officer reasonably believes that the aggressive dog represents a threat to the public if the dog is not seized.

(d) A hearing shall be set to determine whether the dog is an aggressive dog because of attacking, injuring, or killing any other animal. The hearing must be held not later than the 10th day after the date on which either a warrant for the seizure of the dog is issued, or if no warrant, not later than the 10th day after the date on which the dog was seized by the animal control authority.

(e) A dog is determined to be an aggressive if it meets the definition of a dangerous dog as provided under Subchapter D of Chapter 822 of the Texas Health & Safety Code, or after a hearing as provided in Subchapter D of Chapter 822 of the Texas Health & Safety Code.

(e) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is an aggressive dog, may appeal the determination of the animal control officer to the Marlin municipal court.

(f) To file an appeal under Subsection (b), the owner must:

1. file a notice of appeal of the animal control authority's dangerous dog determination with the court;
2. attach a copy of the determination from the animal control authority; and
3. serve a copy of the notice of appeal on the Animal Control Officer by mailing the notice through the United States Postal Service.

(g) An owner may appeal the decision of the Marlin municipal court in the manner permitted in Subchapter D of Chapter 822 of the Texas Health & Safety Code.

(h) The disposition of an aggressive dog pending appeal and the final disposition of an aggressive dog with regard to requiring the aggressive dog to be confined to a secure enclosure shall be determined in the same manner as provided for registered dangerous dogs under Subchapter D of Chapter 822 of the Texas Health & Safety Code. The municipal court may make any other reasonable orders with regard to an aggressive dog as provided under Chapter 822 of the Texas Health & Safety Code.

Section 171. Penalties for violation of this article. A violation of any provision of this Article shall be punishable as provided for in Chapter 822 of the Texas Health & Safety Code.

Section 172. Exhibitions of certain animals prohibited. No person shall keep, or permit to be kept, on his premises any dangerous wild animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed so as to apply to a theatrical exhibit or circus, as defined in Section 1.

Section 173. Prohibited animals. No person may possess a prohibited animal within the City limits. Such prohibited animals shall include, but are not limited to, all animals prohibited by the state or federal law and shall include, but are not limited to, the following animals or any hybrid of these animals or such other class of animals as may be determined to be dangerous by Animal Control Officer or any other dangerous animal which may be added in the future to the list as a high risk animal in the Texas Rabies Control Act, as amended:

(a) Class mammalia: family Canidae (such as wolves, coyotes and fox) except domesticated dogs and hybrids involving same; family Mustelidae (such as weasels, martins,

fishers, skunks, wolverines, mink and badgers) except ferrets; family Procyonidae (such as raccoons); family Ursidae (such as bears); and order Chiroptera (such as bats).

(b) Poisonous reptiles, cobras and related species (Elapidae, Hydrophiidae); vipers and related species (Crotalidae, Viperidae); Boonslang and Kirtland's tree snakes; Gila monsters (Helodermatidae); and crocodiles, alligators and their allies (order Loricata) and nonvenomous reptiles over six feet in length; provided that nonvenomous reptiles, not to exceed twelve feet in length, may be kept for the purposes of wholesale breeding operations only in accordance with this Ordinance.

(c) Brown recluse (*Loxosceles*) and black widow (*Lactrodectus*) spiders.

(d) Any animal defined as a dangerous wild animal under Subchapter E of Chapter 822 of the Texas Health & Safety Code.

Section 174. Restricted animals. No person may possess any individual species and/or subspecies of the following animals: antelope, Order Carnivora, family felidae (such as lions, tigers, jaguars, leopards and cougars, leopards, cheetahs, jaguars), hyenas, bears, lesser pandas, ferrets from natural habitats, order Primata (such as monkeys, chimpanzees, apes); binturong, miniature pigs, elephants, Vietnamese pot belly pigs, or such other nondomestic species of animal not common to this area without a permit issued by and through the Animal Control Officer.

Section 175. Permit requirements for restricted animal ownership. A person may not own, harbor, or have custody or control of a Prohibited Animal, Restricted Animal, or any wild animal for any purpose unless the person holds a permit to keep or harbor that animal issued by the Animal Services Director based upon policies and guidelines established by state law or as approved by the City Council. For purposes of this Section, a certificate of registration shall be considered as a permit. All applicable requirements for obtaining a certificate of registration are set forth in Subchapter E of Chapter 822 of the Texas Health & Safety Code.

Section 176. Violation of permit requirements. Failure to comply with the permit requirements shall constitute a violation of this ordinance and each day of noncompliance shall constitute a separate offense.

Section 177. Exemptions. (a) This Article does not apply to those entities or organizations who are not subject Subchapter E of Chapter 822 of the Texas Health & Safety Code provides pursuant to Section 822.102 of the Texas Health & Safety Code.

(b) This ordinance does not apply to an animal that is an FFA or 4-H project and that is and remains in good standing and on an official list of such authorized projects filed with the City by the authorized sponsor of such FFA or 4-H program; provided that such exemption shall be withdrawn upon the sponsor of the applicable FFA or 4-H program notifying the Mayor that such animal is not being maintained and cared for in compliance with the standards of such FFA or 4-H program, or is, otherwise, no longer an authorized FFA or 4-H project.

Section 178. Guard dogs. (a) All dogs which are trained by a certified professional and kept solely for the protection of persons and property, residential, commercial or personal, shall obtain a permit from the Animal Control Officer. The annual fee for this permit shall be set by the City Council. The area or premises in which such dog is confined shall be conspicuously posted with warning signs bearing letters not less than two inches high, stating "Guard Dog On Premises."

(b) The area of premises shall be subject to inspection by the Animal Control Officer to determine that the animal in question is maintained and secured at all times in such a manner so as to prevent its coming in contact with the public.

(c) Dogs used by Federal, State, County, or municipal law enforcement agencies are exempt from this section.

Secs. 179--185. Reserved.

ARTICLE VII. IMPOUNDMENT OF ANIMALS

Section 186. Impoundment generally. (a) Animals owned or harbored in violation of this ordinance or law of the State of Texas shall be taken into custody by an Animal Control Officer or other designated official and impounded under the ordinance.

(b) Owners of impounded pets are required to pay all fees related to the impoundment as set in Appendix "A".

(c) Under this Article, after the expiration of any required impoundment period, or immediately after being voluntarily released by its owner, an animal shall become the property of the City, all ownership rights for the animal shall transfer to the City, and the Animal Control Authority may dispose of the animal by any method provided under this Ordinance, taking into consideration factors that may include, but not be limited to, the animal's behavior, aggressive tendencies, feral characteristics, health, and housing space availability within the sole discretion of the Animal Control Officer.

Section 187. Tampering with animal shelter or impoundment vehicle. It shall be unlawful for any person in the City without proper authority to break into, open, pull down the enclosure of or make any opening into the animal shelter or any enclosure belonging to or used by the City to impound or keep animals. It shall also be unlawful for any person to turn out or release, or cause to be turned out or released, or aid or abet the turning out or release of any animal from the animal shelter, from an impoundment vehicle or from any enclosure used by the City for the impoundment of animals.

Section 188. Redemption of impounded animal. (a) Except as may be provided elsewhere in this Ordinance, the owner of any animal impounded in accordance with this Ordinance may reclaim such animal upon showing satisfactory proof of ownership and paying all impoundment fees and any other expenses incurred by the City or its agent in keeping the animal or attempting to locate the owner of the animal.

1. If the owner does not pay these fees, the animal may be sold or otherwise disposed of by the City or its agent as provided for in Section 189. However, these fees may be waived by the City if the owner signs an agreement to attend and actually does attend a pet education seminar within ninety (90) days of redeeming his animal from the animal shelter. The City may establish guidelines or requirements for determining which animal owners will be allowed to take the pet education seminar in exchange for waiving the impoundment fees and other expenses. The City may establish a registration fee for the seminar that must be paid at the time the animal is returned to the owner.
2. If the owner does not attend the seminar, the City may seek to collect the impoundment fees and any other expenses incurred by the City. It shall be unlawful for any person to fail to attend a pet education seminar within the required time in exchange for waiving the impoundment fees and other expenses, unless prior to expiration of the time period the person had obtained an extension to complete the seminar from the field supervisor for animal control office or has paid all of the fees that would have been required at the time the animal was redeemed from the animal shelter. A complaint for failure to attend the seminar may be filed in the municipal court.

(b) If a dog or cat has been impounded on two prior occasions, the dog or cat must be spayed or neutered before being released to the owner if impounded on a third occasion. The owner of the dog or cat will be responsible for arranging for the spay or neuter surgery. The dog or cat will be transported to the veterinarian by an Animal Control Officer or an employee or agent of the animal shelter. The cost to spay or neuter the dog or cat shall be paid by the owner, along with the impoundment fees, either to the animal shelter or to the veterinarian in advance of transporting the animal for the surgery. After the surgery is performed, the veterinarian may release the dog or cat to the owner.

Section 189. Disposition of impounded dogs and cats. All references to ‘animal’ in this Section shall mean that term as defined in this Ordinance.

(a) *Dogs and Cats with No Identification.*

1. All dogs and cats impounded by the Animal Control Officer or brought to the animal shelter by a person, other than the harbinger or owner of that animal shall be held for a minimum of seventy-two (72) hours during which time period the owner may present proof of ownership at the shelter. After paying all applicable fees, that owner may reclaim the animal.
2. In the event that the dog or cat is not claimed after the dog or cat has been in the animal shelter for seventy-two (72) hours, or has otherwise been impounded by the city for at least seventy-two (72) hours, the impounded dog

or cat shall then become the sole property of the City and the animal may then be disposed of or adopted as provided in this Article.

(b) *Dogs and Cats with Identification.*

1. Unless earlier claimed by the owner, all dogs and cats impounded by the Animal Control Officer, or brought to the animal shelter by a person other than the harborer or owner of that animal, which are wearing traceable identification, or where an owner is known, shall be held in the animal shelter for a minimum of seven (7) days from the date the dog or cat enters the facility. During this seven (7) day period, the Animal Control Officer will make reasonable efforts to notify the owner of the impoundment of the dog and cat. If the address for the owner is known, the Animal Control Officer will provide written notice to the owner for the owner to retrieve that animal by a certain specific date. The notice shall specify that the owner must notify the Animal Control Officer in writing of the date by which the owner will retrieve their dog and cat.
2. If the owner fails or refuses to provide any response stating when the owner will reclaim and retrieve the owner's dog and cat within five (5) days after being provided with the written notice, or any other notice reasonably informing the owner of the impoundment of the owner's animal, the impounded animal shall become the sole property of the City as provided in this Article. If the owner does provide a written response to the Animal Control Officer, but either does not provide a date by which the owner will retrieve the animal or the owner fails to retrieve the animal by the date specified by the owner, the impounded animal shall become the sole property of the City as provided in this Article.

(c) *Animals Surrendered by the Owner/Harborer.* All animals surrendered by the owner/harbinger to the Animal Control Officer shall become the property of the City immediately upon completion of the owner/harbinger surrender form.

(d) *Animals Other Than Dogs, Cats or Estrays Impounded.* All animals other than dogs, cats, estrays or animals, holding current restricted animal permits, that are impounded by the Animal Control Officer or brought to the animal shelter by a person other than the owner/harbinger shall become the property of the City unless such ownership is prohibited by State or Federal law.

(e) *Disposition of Animals.* Any animal that cannot be adopted or transferred to a proper and appropriate agency shall be euthanized by an injection of substances approved for euthanasia by the American Veterinary Medical Association and/or the Texas Veterinary Medical Association to be administered in compliance with the laws of the State. All animals listed as endangered or protected shall be transferred to the proper authority at the earliest possible date.

(f) *City Ownership of Animals.* After the expiration of any required impoundment period, or immediately after any animal has been voluntarily released by its owner, that animal

shall become the sole property of the City and all ownership rights for that animal shall transfer to the City. Upon transfer of all ownership rights in an animal as provided in this Section, the City may in the sole discretion of the Animal Services Director either dispose of the animal or authorize the adoption of the animal by another person taking into consideration factors that may include, but are not limited to: the animal's behavior, the animal's aggressive tendencies, feral characteristics, the animal's health, and housing/spacing availability.

Section 190. Adoption of animals. (a) All animals which are adopted from the animal shelter shall be surgically altered to prevent reproduction in that animal. The person adopting the animal shall sign an adoption contract stating that he/she will have the animal surgically altered and the date by which the surgery must be performed, if the animal has not been altered before it leaves the animal shelter.

(b) It shall be the responsibility of the person adopting to provide proof of altering to the Animal Control Officer.

(c) Failure to comply with this section or failure to comply with the terms of the adoption contract shall give the Animal Control Officer the right to recover the adopted animal in question and revoke the owner's adoption contract. Such failure shall also constitute a violation of this ordinance.

(d) The adoption fee shall be set by resolution of the City Council, to render neutral the cost of surgically altering, medicating, vaccinating and preparing the animal for adoption. The person adopting the animal shall be provided a list of fees related to the adoption prior to the agreement being signed.

Section 191. Estray and other livestock. Falls County has sole jurisdiction over estray and livestock and the disposition of any seized estray and livestock.

Appendix "A"

FEE SCHEDULE

There is hereby fixed and assessed the following fees to defray the cost of managing an Animal Control Program and for the protection of the public health, against the owner or keeper of every animal kept in the City:

(a) *Standard licensing fee:*

(1)	Unneutered dog or cat-one time fee of	\$ 5.00
(2)	Neutered dog or cat--one time fee of	\$ 3.00
(3)	Other animals – one time fee of	\$ 3.00
(3)	Renewal-----per annum fee of	\$ 2.00

(b) *Permits:* A permit shall be issued after payment of the applicable fee:

(1)	Kennel or multi-owner authorized to house fewer than ten animals	\$ 50.00
(2)	Kennel or multi-owner authorized to house ten to forty-nine animals	\$100.00
(3)	Kennel or multi-owner authorized to house fifty or more animals	\$150.00
(4)	Pet shop	\$100.00
(5)	Riding stable	\$100.00
(6)	Auction	\$100.00
(7)	Zoological park	\$200.00
(8)	Circus	\$200.00
(9)	Performing animal exhibition	\$50.00
(10)	Grooming shop	\$50.00
(11)	Petting zoo	\$150.00
(12)	Guard dog training center	\$200.00
(13)	Obedience training center	\$50.00
(14)	Aviary	\$50.00
(15)	Renewal-----per annum fee of	\$5.00

(c) *Impoundment fee:* An impoundment fee must be paid for each animal captured:

	<u>First</u> <u>Time</u>	<u>Second</u> <u>Time</u>	<u>Third</u> <u>Time</u>
(1) Unneutered dog or cat	\$45.00	\$150.00	\$300.00
(2) Neutered dog or cat	\$45.00	\$90.00	\$200.00
(3) Fowl or other small animal	\$25.00	\$50.00	\$100.00
(4) Livestock	\$50.00	\$200.00	\$350.00

(5) Zoological and/or
circus animal \$100.00. \$200.00 \$500.00

(6) More than 4 violations by any pet or combination thereof owned by the same person in three years or less shall be \$500.00 for each impoundment thereafter.

(d) *Boarding fee:* In addition to the impoundment fee, a boarding fee must be paid for each animal confined by the Animal Shelter. Owners must pay fees established by the Animal Shelter for the housing and care of the animals before their animals are released to them.

(e) *Expenses of Animal.* In addition to other fees, the owner shall also pay for any veterinarian or drug fees incurred for the animal(s) while in the custody of the Animal Control Officer or Animal Shelter.