

## REGULAR CITY COUNCIL MEETING

December 2, 2014

7:00 P.M.

**A Regular City Council Meeting was held on Tuesday, December 2, 2014, at 7:00 p.m. in the City Council Chambers located at 201 East Nash Street, Terrell, Texas with the following members present:**

**COUNCILMEMBER #1 HAL RICHARDS  
COUNCILMEMBER #2 TOMMY SPENCER ABSENT (EXCUSED)  
COUNCILMEMBER #3 SANDRA WILSON  
COUNCILMEMBER #4 CHARLES WHITAKER  
COUNCILMEMBER #5 D.J. ORY**

**1. Call to order.**

Mayor Hal Richards, called the meeting to order.

**2. Invocation.**

Deputy Mayor Pro Tem Charles Whitaker gave the opening prayer.

Mayor Hal Richards recognized TVCC Students attending Council Meeting.

**3. Discuss and Consider approval of meeting minutes of Special City Council Meeting and Workshop of November 18, 2014, and Regular City Council Meeting of November 18, 2014.**

Councilmember Sandra Wilson made a motion to approve Meeting Minutes of Special City Council Meeting and Workshop of November 18, 2014 and Regular City Council of November 18, 2014. Deputy Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None. Motion carried.

**4. Hear Remarks from Visitors.**

*This time is set aside on the agenda to invite any person to address the Council on issues not subject to a public hearing. Routine administrative matters are best discussed with the appropriate City Staff before bringing them to the Council. Speakers should limit their comments to 3 minutes and are asked to speak into the microphone provided, identifying themselves for the record. The total amount of time set aside for this place on the agenda is 15 minutes. Comments of a personal nature directed at the Council or Staff are inappropriate.*

There were no remarks from visitors.

Mayor Hal Richards recognized Jack Jones attending the Council Meeting.

## NEW BUSINESS

5. Discuss and Consider Approval of Lease of Property between Union Pacific Railroad Company and the City of Terrell, Texas.

Mary Gayle Ramsey, City Attorney presented to Council for discussion and consideration Approval of Lease of Property between Union Pacific Railroad Company and the City of Terrell, Texas. Mayor Pro Tem D.J. Ory made a motion to authorize the City Manager to execute and negotiate the Approval of Lease of Property between Union Pacific Railroad Company and the City of Terrell, Texas. Deputy Mayor Pro Tem Charles Whitaker seconded the motion. Ayes - All. Nays - None.

6. Discuss and Consider Appointments to the Terrell Park Board.

Mayor Pro Tem D.J. Ory made a motion to table appointments to the Terrell Park Board. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

7. Discuss and Consider Appointments to the Zoning Board of Adjustments.

Deputy Mayor Pro Tem Charles Whitaker made a motion to appoint Dawn Steil to the Zoning Board of Adjustments. Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None.

8. Discuss and Consider Appointments to the Building and Standards Commission.

Mayor Pro Tem D.J. Ory made a motion to appoint Stephen Austin to the Buildings and Standards Commission. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

## CONSENT AGENDA

Mayor Pro Tem D.J. Ory made a motion to consent agenda to adopt on Second Reading Ordinance No. 2617. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

9. Discuss and Consider on Second Reading Approval of Ordinance No. 2617; An Ordinance of the City of Terrell, Kaufman County, Texas, Amending Chapter 7, Health and Sanitation, by the addition of Section 11: Sale of Electronic Cigarettes to Minors; Providing for Repeal of Conflicting Ordinances; Providing a Penalty; Providing for Severability; and Providing an Effective Date:

## ORDINANCE NO. 2617

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 7, HEALTH AND SANITATION, BY THE ADDITION OF SECTION 11: SALE OF ELECTRONIC CIGARETTES TO MINORS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE:**

**WHEREAS**, the City of Terrell (the "City") is permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

**WHEREAS**, electronic cigarettes are devices that convert liquid nicotine into a gas that is inhaled by the consumer; and

**WHEREAS**, the National Institute for Occupational Safety and Health and the Center for Disease Control and Prevention have prepared emergency response information addressing the dangers associated with liquid nicotine. Nicotine affects the nervous system and heart and is addictive. Exposure to relatively small amounts of liquid nicotine can rapidly be fatal; and

**WHEREAS**, the Federal Drug Administration published an article in July 2009 warning of the dangers posed by electronic cigarettes, which include nicotine addiction and the appeal to young people due to the different flavors (such as chocolate, strawberry and mint); and

**WHEREAS**, the American Medical Association addressed the risks associated with the use of electronic cigarettes and adopted a policy recommendation that electronic cigarettes be classified as a drug delivery device, subject to the FDA's regulations and approval;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:**

**ARTICLE I.**

That Chapter 7, Health and Sanitation, shall be amended by the addition of Section 11 as follows:

**Sec. 7-11 Sale of Electronic Cigarettes to Minors**

(a) Definitions. As used in this section:

Electronic cigarette or "E cigarette" means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices.

Liquid nicotine means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or similar substances and manufactured for use with an e-cigarette to be converted into a gas for inhaling.

Minor means a person less than 18 years of age.

Person means any natural person, individual, corporation, limited liability company, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business of any kind.

Photographic identification means state, district, national or other equivalent government driver's license, identification card, or military card, in all cases bearing a photograph and a date of birth or a valid passport.

(b) Sale of Electronic Cigarettes to Minors Prohibited.

(1) A person commits an offense in violation of this section if he/she gives, distributes, transfers, sells, markets, or offers electronic cigarettes, their components or samples to any minor.

(2) A person commits an offense in violation of this section if he/she sells or permits to be sold electronic cigarettes or their components through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited.

(3) A minor commits an offense in violation of this section if, in an attempt to acquire an electronic cigarette, he/she states to any person engaged in the business of selling such products that such minor is not a minor, or to present to any such person a document or writing that purports to establish that such minor is not a minor.

(c) Affirmative defense.

It shall be an affirmative defense to prosecution for an offense committed under subsection (b) above if a minor purchased or possessed an electronic cigarette product in the presence of an adult parent, guardian, spouse, or other adult to whom the minor has been committed by a court.

(d) Penalty

An offense under this section is punishable by a fine not to exceed \$500.00 for each offense.

## **ARTICLE II**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

## **ARTICLE III.**

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, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**ARTICLE IV.**

This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 18th day of November, 2014.

PASSED AND ADOPTED THIS the 2nd day of December, 2014.

Mayor Pro Tem D.J. Ory made a motion to consent agenda to adopt on Second Reading Ordinance No. 2618. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

10. Discuss and Consider on Second Reading Approval of Ordinance No. 2618; An Ordinance of the City of Terrell, Kaufman County, Texas, Regulating the Acceptance of Donations to the City of Terrell by Adding Chapter 25: Donations to Section 1, General Provisions of the Code of Ordinances of the City of Terrell, Texas.

**ORDINANCE NO. 2618**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS, REGULATING THE ACCEPTANCE OF DONATIONS TO THE CITY OF TERRELL BY ADDING CHAPTER 25: DONATIONS TO SECTION 1, GENERAL PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF TERRELL, TEXAS**

- 25.1 Purpose.
- 25.2 Definitions.
- 25.3 Funds – Accounting.
- 25.4 Acceptance of donations in general – Donor’s desired use or conditions.
- 25.5 Acceptance of monetary donations.
- 25.6 Acceptance of nonmonetary donations.

**WHEREAS**, the City of Terrell Texas, shall accept donations to be applied to City services and to assist in the operation of City government; and

**WHEREAS**, the City of Terrell benefits from this generosity and the City Council wishes to encourage citizen involvement in government and recognize their generosity; and

**WHEREAS**, the City Council hereby adopts an Ordinance to allow donations to the City and to instruct staff on the proper disposition of donated funds.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS; THAT**

**Chapter 25 Donations be added to Section 1, General Provisions of the Code of Ordinances of the City of Terrell, Texas:**

## 25.1 Purpose

The purpose of this chapter is to authorize the acceptance of donations to the City of Terrell for any public purpose,

## 25.2 Definitions

“**Department head**” includes the head of any City department or their designee.

“**Donation**” is defined as any monetary or nonmonetary gift, grant, devise or bequest to the City of Terrell Texas. A monetary donation includes cash, check, money order or other negotiable instrument. A nonmonetary donation includes real or personal property. In the event of a stock donation, since a government entity is not legally able to own stock, such a donation would be liquidated and turned into cash or another liquid asset and treated as a monetary donation.

“**City Manager**” means the City Manager of the City of Terrell Texas or their designee.

## 25.3 Funds – Accounting

The City Manager is responsible for the deposit and financial administration of any donation to the City. If necessary, the City Manager shall track the proposed use of any such donation and shall maintain separate records of accounts showing receipts and disbursements. The City Manager may establish further rules and regulations for the accounting and administration of donations, consistent with this chapter, as deemed necessary by the City Manager.

## 25.4 Acceptance of donations in general – Donor’s desired use or conditions.

The City has the discretion to accept or decline any proposed donation, whether conditioned or not, subject to the provisions of this chapter. In the event a department head has reason to believe a donation could cause or result in an appearance of impropriety, the department head shall consult with the City Attorney prior to accepting the donation. Conditioned donations shall be assigned to a project or existing fund consistent with the donor’s desired use, as long as such condition(s) do not conflict with the Ordinances or Charter of the City of Terrell, state or federal law, in which case the City shall ask that the condition(s) be removed or decline the donation.

## 25.5 Acceptance of monetary donations.

A. Donations **Under \$5,000**. The City Manager or department heads are hereby authorized to accept any monetary donation of less than \$5,000 on behalf of the City and shall deposit such monies with the finance department.

B. Donations **Greater than \$5,000**. Donations of any amount greater than \$5,000 must first be approved by the City Council so that the City can evaluate any policy implications associated with the donation.

C. **Conditioned Donations**. In the event that a monetary donation is conditioned or donated for a specific purpose, prior to acceptance, the City Manager, department heads or City Council (depending on who is accepting the donation under subsections A and B of this section) should consider the long-term impacts of the donation, particularly where there could be significant future or ongoing operations and maintenance or capital costs associated with the donation. Where the proposed donation is conditioned on the contribution to a City program, purpose or activity that has not first been approved by City Council, the City Manager or department heads shall defer to the City Council for any such decisions.

D. **City Council Notification**. Staff should notify the City Council of all accepted donations so that the donor's generosity can be officially acknowledged by the City Council.

### **25.6 Acceptance of Nonmonetary Donations.**

- A. **Donations of Personal Property Valued at \$5.00 to \$5,000.** All donations of personal property with a current value greater than \$5.00 and less than \$5,000 may be accepted by the Mayor or the City Manager or department heads, except as follows. In the event of a donation of personal property which could require future maintenance or repair (e.g., office equipment), the department head should first assess all related future costs and submit the assessment of expenses to the City Manager for approval prior to acceptance of the donation. In addition, if a conditioned donation could have long-term impacts, such as significant operations and maintenance or capital costs, the department head or City Manager shall consult with the City Council prior to accepting the donation.
- B. **Donation of Personal Property Valued at Over \$5,000.** All donations of personal property with a current value of \$5,000 or more must first be approved by the City Council. If the personal property could require future maintenance or repair, the City Manager should first assess all related future costs and submit the assessment of expenses to the City Council for approval. For conditioned donations, the City Manager should also provide the City Council with an assessment of long-term impacts, such as significant operations and maintenance or capital costs.
- C. **Donations of Real Property.** All donations of real property, whether conditioned or unconditioned, must first be approved and accepted by the City Council by resolution.

### **Section 2**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

### **Section 3**

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, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted without such unconstitutional phrase, clause, sentence, paragraph or section.

### **Section 4**

This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

**PASSED AND APPROVED** on first reading this the 18th day of November, 2014.

**PASSED AND ADOPTED** on second reading this the 2nd day of December, 2014.

Mayor Pro Tem D.J. Ory made a motion to consent agenda to adopt on Second Reading Ordinance No. 2619. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

11. Discuss and Consider on Second Reading Approval of Ordinance No. 2619; An Ordinance of the City of Terrell, Kaufman County, Texas, Amending Chapter 7, Health And Sanitation, Section 10: Smoking Regulations; Providing for Repeal of Conflicting Ordinances; Providing a Penalty; Providing for Severability; and Providing an Effective Date.

### **ORDINANCE NO. 2619**

#### **AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING CHAPTER 7, HEALTH AND SANITATION, SECTION 10: SMOKING REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Terrell is permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

**WHEREAS**, cumulative scientific data indicates that exposure to second-hand smoke in indoor areas is dangerous to human health; and

**WHEREAS**, according to a 2010 U.S. Surgeon General's Report, even occasional exposure to secondhand smoke is harmful; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in unregulated areas of the workplace, within public restaurants and within other public buildings and areas; and

**WHEREAS**, studies undertaken across the country demonstrate that there is no significant adverse economic impact as a result of smoking regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS:**

#### **ARTICLE I.**

That Chapter 7, Health and Sanitation, Section 10, Smoking Regulations, shall be amended as follows:

##### **Sec. 7-10 Smoking Regulations.**

(a) *Definitions.* As used in this section:

*Administrative area* means the area of an establishment not generally accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges or meeting rooms.

*Director* means the director of the department designated by the city manager to enforce and administer this section or the director's designated representative.

*Food products establishment* means any establishment defined as such in the City of Terrell Code of Ordinances which is required by state law to have a health food permit and subject to annual inspections.

*Bar/Private Club* means any establishment licensed or permitted under the provisions of the Texas Alcoholic Beverage Code.

*Retail and service establishment* means any establishment which sells goods or services to the general public.

*Public service area* means any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy prepared in compliance with this section.

*Electronic cigarette or "E cigarette"* means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices.

*Liquid nicotine* means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or similar substances and manufactured for use with an e-cigarette to be converted into a gas for inhaling.

(b) *Smoking prohibited in certain public areas.*

A person commits an offense in violation of this section if he/she smokes or possesses an electronic cigarette containing nicotine products or derivatives, burning tobacco, weed or other plant product in any form in any of the following indoor and/or enclosed areas:

- 1) Public or private preschools, primary or secondary schools, public or private colleges or universities, child-care facilities; or
- 2) Elevators, museums, libraries, galleries, public transportation facilities open to the public and service lines of establishments doing business with the general public; or
- 3) Any property or any portion thereof that is owned or leased by the city and/or used for city purposes including, but not limited to, city buildings, city parks and city owned vehicles; or
- 4) Any building which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other event whenever open to the public, including all restrooms and any area commonly referred to as a lobby; or
- 5) Any retail or service establishment serving the general public, including but not limited to, any food products establishment, department store, restaurant, grocery store, private club, bingo parlor, bowling center, drug store, shopping mall, hair styling salons, including service lines; or
- 6) All restrooms open for public use; or
- 7) All areas in a Laundromat open to and available to use by the public; or
- 8) Within all areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not

limited to, commercial, financial and professional offices, including banks, hotels and motels; or

- 9) Within 25 linear feet of any entrance of any establishment or facility where smoking is prohibited including, but not limited to, outdoor patio areas where food or alcoholic beverages are served; or
- 10) In any public area of a health care facility or hospital, including, but not limited to, clinics, physical therapy facilities, doctor's offices, nursing and convalescent homes, residential treatment centers/homes and dentist's offices except in bed space areas of health facilities if all patients within the room are smokers and such smoking is ordered on the health care facility's admission form by an attending physician, in keeping with the guidelines by the facility; or
- 11) Any establishment or facility, or any portion thereof, that has been designated as nonsmoking by the owner, operator, manager, or other person who controls any establishment or facility.

(c) *Affirmative defense.*

It shall be an affirmative defense to prosecution for an offense committed under subsection (b) above that the establishment or facility in which the offense takes place has not conspicuously displayed a sign or signs that smoking is prohibited.

(d) *Posting of signs.*

The owner, operator, manager or person in charge of an establishment or facility in which smoking is prohibited in all or a portion thereof shall conspicuously post signs informing the public that smoking is prohibited in the establishment or facility. The manner of such posting shall be at the discretion of the owner, operator, manager or person in charge of an establishment or facility so long as the signs are conspicuous and state that smoking is prohibited and that an offense is punishable by a fine.

(e) *Locations where smoking is not prohibited.*

Smoking is not prohibited in the following establishments or facilities, or portions thereof, unless designated as nonsmoking by the owner, manager or person in control of the establishment or facility:

- 1) Private residences, except when used as a licensed child care or health care facility; or
- 2) Up to twenty five percent of hotel and motel rooms rented to guests, provided each room so designated is on the same floor and/or contiguous to each other as much as possible and has a sign on the front door showing it is a smoking room; or
- 3) Retail tobacco stores (which means establishments that derive at least fifty one percent of their annual gross receipts from the sale of tobacco and tobacco accessories) that have an enclosed, separately ventilated smoking room that exhausts directly to the outside environment; or
- 4) Any area exterior to an establishment or facility that is not in violation of any other provision of this section; or
- 5) Any bar, private club, or other establishment or facility that does not have a food permit and whose gross receipts for alcohol sales are in excess of fifty percent of the total gross receipts of the establishment or facility.
  - i. If the ownership or operator of an establishment or facility changes, but the sale of alcoholic beverages continue on the premises, smoking is not prohibited unless said owner or operator designates the premises as nonsmoking.
  - ii. A non-conforming establishment or facility may be renovated provided it is not enlarged or expanded.

- iii. If a non-conforming establishment or facility is damaged or destroyed to an extent of less than sixty percent of its fair market value by fire, explosion, act of God, or other action beyond the control of the owner or operator, the establishment or facility may be reconstructed, but not expanded or enlarged.
- iv. If the sale of alcoholic beverages is discontinued for any reason for a period of one year, then the establishment or facility is no longer exempt under subsection (7) from the application of the smoking prohibition.

(f) *Enforcement.*

The City Manager shall designate the director of the department or the director's designated representative that shall be responsible for compliance with this section. The director, building official, health inspector, police department or fire department may, while an establishment is undergoing mandated or routine inspections, inspect for compliance with this article. In addition, if a person is observed smoking in a nonsmoking area, the person may be cited for violating this section.

(g) *No duty or obligation.*

In undertaking the enforcement of this section, the City is assuming an undertaking only to promote the general health, safety and welfare of its citizens. The City is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that the City and/or one of its officers and/or employees breached any such obligation and the breach proximately caused injury.

(h) *Penalty for Violation*

Any person violating any of the provisions of this section shall be subject to a fine not to exceed \$500.00 for each offense.

## **ARTICLE II.**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

## **ARTICLE III.**

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, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

## **ARTICLE IV.**

This Ordinance will take effect on February 2, 2015 from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 18th day of November, 2014.

PASSED AND ADOPTED THIS the 2nd day of December, 2014.

Mayor Pro Tem D.J. Ory made a motion to consent agenda to adopt on Second Reading Ordinance No. 2620. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

## **ORDINANCE NO. 2620**

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 3, ANIMAL CONTROL OF THE REVISED CODE OF ORDINANCES OF THE CITY OF TERRELL; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS:**

### **ARTICLE I.**

That the Revised Code of Ordinances of the City of Terrell, Chapter 3, Animal Control, Sections 1 through 26 shall be deleted in its entirety and replaced with the following:

#### **Section 1: Purpose and Scope**

A. It is the purpose of this chapter:

To provide regulations by which the transmission of rabies to human beings and domestic animals can be prevented and controlled within the City;

2. To decrease the number of unwanted and stray dogs and cats within the City;

3. To encourage responsible animal ownership;

4. To protect the public health, safety and welfare of the City;

B. The provisions of this chapter shall not be construed to authorize the keeping of any animal in violation of any other City Ordinance, state or federal statute or law.

#### **Section 2: Definitions**

When used in this chapter the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

A. **Animal Control** means the Animal Control Division of the Police Department.

B. **Animal Control Officer** means any person designated by the Chief of Police, or his designated representative within the Police Department, to represent and act for the City in impounding animals, controlling animals running at large and, to enforce all regulations including as authorized by the state under the provisions of, but not limited to, the Local Rabies Control Authority.

C. **Animal nuisance** means the keeping of any animal in such a manner as to endanger the public health, to annoy neighbors through the accumulation of animal

wastes which cause foul and offensive odors, is a hazard to any other animal or human being, or any animal that by its presence interrupts or otherwise interferes with the quality of life of those individuals in its proximity.

D. **Animal Shelter** means the City facility that keeps or legally impounds stray, homeless or abandoned animals picked up within the City limits by an Animal Control Officer.

E. **Cruelty** means to inflict pain or suffering and includes any act of neglect or abandonment.

F. **Vicious Animal** means any animal with dangerous propensities that, without provocation, displays behaviors of biting, snarling, charging aggressively toward and individual or animal, growling with curled lips, popping of teeth or barking with raised hackles.

G. **Dangerous Animal** means any animal that:

1. Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure or tethering area in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure or tethering area on its own; or
2. Commits unprovoked acts in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to that person; or
3. Has attacked and bitten another animal without provocation on one (1) previous occasion; or
4. The animal is determined by a veterinarian appointed by the City to have dangerous propensities; or
5. A Police Officer or Animal Control Officer has reason to believe the animal has dangerous propensities or a dangerous disposition likely to be harmful to humans or animals, regardless of whether it has attacked, bitten or injured an individual or animal. Reasonable belief may stem from sworn affidavit from citizen describing display of dangerous propensities.

H. **Dangerous Propensities** means without provocation, any one, or a combination of, the animal behaviors of biting, snarling, charging aggressively toward an individual or animal, growling with curled lips, popping of teeth or barking with raised hackles; otherwise referred to as a vicious animal.

I. **Estray act** means the state requirements relating to livestock control.

J. **Exotic Animal** means any and all species of animals which commonly exist in a natural, unconfined state are usually not domesticated and can pose a potential physical threat to the public or that is protected by international, federal or state regulations. This definition shall apply regardless of state or duration of captivity.

- K. **Fowl** means all of those birds commonly called poultry, but not limited to chickens, ducks, geese, guinea fowl, turkeys, pigeons and all the relatives of those birds which can be kept in pens, coops, cages, or enclosures of any kind.
- L. **Humanely destroy** means to cause the death of an animal by a method which:
- (1.) Rapidly produces unconsciousness and death without visible evidence of pain or distress; or
  - (2.) Utilizes anesthesia produced by an agent, which causes painless loss of consciousness with death following such loss of consciousness.
- M. **Intact Animal** means a dog or a cat with its reproductive organs intact and capable of reproduction.
- N. **Kennel** means any place or premises wherein any person boards, breeds, buys, lets for hire, trains for a fee, trades or sells dogs or cats. This term shall not be construed to include an owner who sells a single dog or cat one year or older or an owner who sells a single litter of dogs or cats in any one calendar year which belongs to such owner as a private individual.
- O. **Observation period** means the ten (10) days following a biting incident during which an animal's health status must be monitored.
- P. **Owner** means any person or persons, corporately, having title to any animal, or a person or persons, corporately, who has, harbors, or keeps, or who causes or permits to be harbored or kept, any animal in his care, custody or control or who permits an animal to remain on or about his premises, including multiple and separately addressed properties.
- Q. **Pet shop** means any establishment where dogs and cats are bought, sold or traded. The terms include all establishments selling dogs or cats exclusively or buying, selling or trading dogs or cats along with other animals or fowls.
- R. **Without provocation** means not to arouse or stir up purposely, to incite or to invoke attack as a result of:
- a. a response to pain or injury; or
  - b. protection of itself or its food, eating or sleeping area, or nursing offspring.
- S. **Restraint** means secured by a leash, lead or enclosure.
- T. **Running at large** means:
- (1) Off premises. Any animal which is not restrained by means of a leash or chain of sufficient strength not more than six feet (6') in length to control the actions of such animal while off the owner's property.
  - (2) On premises. Any animal not confined on 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 metal chain or leash of sufficient strength to prevent the animal from escaping therefrom and in accordance with applicable state law regarding the tethering of animals.

U. **Substantial enclosure** means an enclosure that meets the following requirements:

- (1) Maintained within a home with all doors and windows closed or when outside on a leash held by the dog owner or harborer or other responsible persons; or
- (2) A fence type enclosure that shall be a minimum of six (6) feet in height measured from the ground inside the enclosure and constructed from durable materials such as wood planking at least one-half inch thick or chain-link fencing that is 11 gauge or thicker. The fencing material must be sturdy and chain-links may not have gaps greater than two inches and wood planks may not have gaps greater than two inches. Bracing posts for such fencing shall be buried in concrete to a depth of no less than eighteen inches in depth below ground level. Fencing may be required to extend below ground level if there is evidence that animals are attempting to dig under the fencing. All enclosure materials shall be maintained in good condition and must be free from damage or defects that may weaken the fence and facilitate escape of the dangerous animal. Entrances/exits to the enclosure, other than doors leading into buildings, shall be equipped with a locking device that keeps the gate securely closed at all times.

V. **Vaccination** means an injection of United States Department of Agriculture approved rabies vaccine administered in accordance with applicable state regulations by a licensed veterinarian.

W. **Victim** means a person or any domestic animal that has been attacked by any animal.

X. **Working dog** means a dog which is

- (1) Registered as a guard dog with the City.
- (2) Under the control of a person working as a law enforcement officer or commissioned security officer; or
- (3) An assistance dog as defined under §121.002 of the Texas Human Resources Code.

Y. **Bite** means any abrasion, scratch, puncture, tear or piercing of skin actually or suspected of being caused by an animal.

### **Section 3: Enforcement of Animal Control Regulations**

The Chief of Police, any Police Officer of the City, and the Animal Control Officers shall have the right to enforce any of the provisions of this chapter. The chief of police is hereby delegated the authority to appoint any person to aid and assist him in carrying out such enforcement.

#### **Section 4: Livestock Running at Large Prohibited**

It shall be unlawful for any person to permit any horse, donkey, mule, sheep, cow, hog or goat owned or kept by him to run at large within the corporate limits of the City.

#### **Section 5: Keeping of livestock.**

- A. It shall be unlawful, subject to the provisions of sections 7 and 8 of this chapter, for any person to keep a cow, horse, donkey, mule, goat, sheep or other livestock on any premises of which the overall fenced grazing area for livestock is less than one acre for the first adult animal and one-third of an acre for each additional livestock kept or to keep more than can be cared for under sanitary conditions so as not to create a public nuisance and in no event exceed the permitted number of adults and their young up to six months of age. When such livestock is kept on unplatted and undeveloped land within the City limits and the number of livestock exceeds seven (7) adult animals, then the maximum number of livestock shall not exceed one adult animal per acre.
- B. In addition, it shall be unlawful to construct or maintain any livestock shelters or barns within 200 feet of any adjacent dwelling or public place or within forty-five feet (45') of any property line or residential structure on site within the City limits.
- C. When the number of livestock on any property exceeds seven (7) adult animals, the fenced grazing area for such animals shall not be located closer than 200 feet of any adjacent dwelling or public place or within 100 feet of a residential structure on site.
- D. All rules regarding the tethering of animals, as stated in Section 11, paragraphs D through I, of this Ordinance, shall apply to the keeping of livestock.
- E. All livestock shall have current vaccinations and health certifications, such as, negative Coggins tests for horses, etc.
- F. Barbed wire shall not be used to enclose areas for livestock except on areas larger than three acres in size. Barbed wire is prohibited within 300 feet of any residential district boundary line except Agricultural Districts.
- G. Feed Lot operations for livestock production are strictly prohibited within the corporate City limits of Terrell.
- H. See Section 13 for exceptions and/or permits.

#### **Section 6: Fowl Running At Large Prohibited**

It shall be unlawful for any person to permit chickens or any other fowl owned or kept by him or under his control to run at large within the corporate limits of the City.

#### **Section 7: Keeping of poultry, fowl, and/or small fur-bearing animals.**

- A. It shall be unlawful for any person to keep or have on his premises more than four adult poultry of any kind or combination thereof, or more than one litter of chickens, turkeys, ducks, geese, pigeons or other poultry or domestic fowl or more than six adult small fur-bearing animals of any kind or combination thereof or more than one litter of rabbits, guinea pigs, hamsters, gerbils, mink, ferrets or other small fur-bearing animals within 100 feet of any adjacent dwelling or public place or within thirty-five FEET (35') of any property line or residential structure on site in any residential zoning district within the City limits, except in the Agricultural Districts.
- B. The keeping of poultry on property zoned for Agricultural (AG) shall be limited to a maximum of 50 poultry of any kind or combination thereof per acre.

Commercial poultry production operations are strictly prohibited within the corporate City limits of Terrell.

C. The keeping of small fur-bearing animals shall be restricted as pets only on property of 3 acres or less and shall not be bred for sale or resale, unless located in an Agricultural District.

D. See Section 13 for exceptions and/or permits.

**Section 8: Keeping of swine.**

A. It shall be unlawful subject to the provisions of subsection (b) below, for any person to keep or have on his premises any hogs or pigs within the City limits unless the property is undeveloped and zoned Agriculture (AG) and is a minimum of ten (10) acres in size. A pen, shelter, barn or other structure or enclosure that confines the swine shall not be located within 1000 feet of any adjacent property line or residential structure on site, except for Terrell ISD Ag Barn.

B. Requirements for keeping potbellied pigs.

1. It shall be unlawful for any person to keep, harbor or raise more than two adult potbellied pigs in any one household within the City.

2. It shall be unlawful for any person to keep or maintain potbellied pigs outdoors in a pen, shelter or other enclosure within forty-five (45') feet of a property line or residential structure on site. A person may permit potbellied pigs outdoors for brief periods, as necessary for exercise or for the elimination of waste. The outdoor area used for exercise and waste elimination must be a secure area from which the potbellied pig may not escape. Potbellied pigs are subject to all other sections of this chapter, including, but not limited to, the sections on restraint of animals.

3. All potbellied pigs kept within the City must be either spayed or neutered. under no circumstances may a person engage in the propagation or breeding of potbellied pigs within the City limits.

4. All potbellied pigs kept within the City must be vaccinated against erysipelas, parvo virus and leptospirosis in accordance with all applicable state regulations.

5. All potbellied pigs kept within the City must be registered with the Animal Control Officer within 14 days from the time the animal is taken to its place of residence. The following requirements shall apply to registration of all potbellied pigs:

a. The filing of a health certificate from a licensed veterinarian;

b. Payment of an annual fee of \$75.00 to the City secretary;

c. Obtaining a registration tag from the Animal Control Officer.

(6) All locations where potbellied pigs are kept shall be kept in a clean and sanitary condition. Exercise areas shall be cleaned of swine excrement on a daily basis.

C. See Section 13 for exceptions and/or permits.

**Section 9: Keeping of Bees**

It shall be unlawful to keep bees in any residential, commercial or developed area of the City. This section does not apply to undeveloped land within the City limits that exceeds three (3) acres in size.

**Section 10: Keeping of Wild and Exotic Animals/Reptiles Prohibited**

It shall be unlawful to harbor, keep or maintain any wild or exotic animals within the City limits including, but not limited to, poisonous reptiles, bats, skunks, coyotes, foxes, wolves, alligators, lions, tigers, leopards, and monkeys. Further, the Chief of Police, or his designated representative within the Police Department, may declare any species of animal not listed in this section as “prohibited” if the confinement of the animal within the City can be shown to constitute a threat to the public health and safety. The Animal Control Officer, however, may grant exceptions from time to time, such as for special events (a Temporary Animal Permit is required - see Section 13).

**Section 11: Dogs and Cats - Generally**

A. It shall be unlawful for the owner or harbinger of any dog or cat to permit such dog or cat to run at large within the City limits.

1. Any intact animal found running at large within the City limits on three (3) or more occasions shall be considered a public nuisance.
2. If the intact animal is found running at large within the City limits on three (3) or more occasions by the Animal Control Department or the Police Department, the animal must be spayed or neutered by the owner, at the owner’s expense, within ten (10) days of return of the animal.
3. The owner of an intact animal that has been declared a public nuisance under this section violates this Ordinance and commits an offense if the owner fails to have the at large nuisance animal spayed or neutered within ten (10) days of reclaiming the animal and receiving written notice of such at large nuisance declaration.
4. The owner of an intact animal declared an at large nuisance, upon proof of a previous conviction under this section may be fined an additional One Hundred Dollars (\$100.00) for each subsequent conviction under this section.

B. It shall be unlawful for any person or owner, as defined in this Ordinance, to keep within the City limits more than three (3) adult dogs or cats and one (1) litter. For purposes of this subsection, an adult dog or cat shall be defined as any dog or cat of six (6) months of age or over or any dog weighing more than thirty (30) pounds. The provisions of this subsection shall not apply to any properly zoned veterinarian hospital, clinic, or kennel.

C. No person shall willfully or knowingly keep or permit any dog on his premises or in or about his premises that, in the opinion of a Police Officer or Animal Control Officer, barks or howls repeatedly in such a manner as to disturb the peace and quiet of the neighborhood or the occupants of adjacent premises.

- D. No person shall tether or otherwise stake-out an unattended animal for a protracted period of time or a period of time to exceed three (3) hours duration, on any public property, such as City parks or utility easements, including alley-way easements, or on privately owned property openly accessible to the public, typically described as a vacant lot, a vacant residential property or undeveloped lot or unfenced yards, or any other plot or tract where the public has unrestricted access and regardless if the property is owned by the actor or not.
- E. No person shall tether an animal without providing unrestricted, continuous access to both shade, cover from the weather and water.
- F. No person shall tether an animal for more than three (3) hours without providing unrestricted, continuous access to a wind and weatherproof shelter.
- G. No person shall tether an animal in such a manner that they tethering device may become entangled in trees, shrubs, poles or other obvious obstacles, including legs, limbs or other body part of the animal itself, and thereby prevent the access to shade, water or shelter by the animal.
- H. No person shall tether an animal in the City of Terrell that is in any manner in violation of the state law regarding the tethering of animals.
- I. Tethering - Exceptions to the Application of this Ordinance:
  - 1. An animal tethered to a running line, pulley or trolley system and that is not tethered to the running line, pulley or trolley system by means of pinch-type, prong-type, choke-type or improperly fitted collar.
  - 2. An animal tethered for a reasonable period, not to exceed three (3) hours in a 24-hour period and no longer than is necessary for the owner to complete a temporary task that requires the animal to be tethered;
  - 3. An animal tethered while the owner is engaged in, or actively training for an activity that is conducted pursuant to a valid license issued by the state if the activity for which the license is issued is associated with and requires the use or presence of the animal.
  - 4. An animal tethered while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or
  - 5. An animal tethered while the owner is engaged in conduct related to the business of cultivating agricultural products, if the use of the tether is reasonably necessary for the safety of the animal.
- J. Harboring Stray Dogs and Cats:
  - 1. An person commits an offense if he or she feeds a stray cat or dog or feral cat or dog for more than three consecutive days. After three consecutive days of providing life-sustaining care in the way of food and water, the actor becomes responsible for the animal and shall be required to vaccinate and register the animal with the City of Terrell and still must not exceed the maximum number of animals permitted per residence.

2. Proper management and control of stray and feral animals is complicated and made more difficult when citizens informally "adopt" these animals by providing them food and water over a period of several days. The intent of this Ordinance is to educate the public regarding strays and ferals and encourage them to not feed or water these animals, but rather call the Animal Control Department to pick them up.

K. Vehicle Confinement:

1. A person shall not place or confine an animal or allow an animal to be placed or confined in a motor vehicle or in a trailer under such conditions or for such a period of time as may endanger the health of the animal due to heat, lack of food or water, or such other circumstances as may cause injury or death to the animal.

2. It is presumed that an animal's health, safety or welfare is endangered when the animal is confined in a parked or standing vehicle, without the engine running or climate control system engaged, or in trailer for a period of five (5) minutes or more when the ambient outside air temperature measures above eighty-five (85) degrees Fahrenheit or below thirty-five (35) degree Fahrenheit. When the ambient temperature is verified by an Animal Control Officer utilizing handheld temperature detection device, it shall be deemed prima facie evidence of a violation of this Ordinance..

3. If an Animal Control Officer or Police Officer investigating this situation determines the animal in question must be removed from the vehicle immediately or risk damage or injury to the health, safety or welfare of the animal, the Animal Control Officer or Police Officer may use reasonable force to remove the animal from the vehicle. Appropriate intervention shall be administered to the animal immediately, with all associated costs being the responsibility of the person having care or custody of the animal and who is responsible for the confinement in the vehicle or trailer.

4. It shall be the responsibility of the person having care or custody of the animal, who placed or confined the animal in the vehicle or trailer, to repair any damage resulting from the use of reasonable force to intervene on the behalf of the animal.

**Section 12: Dog and/or Cat Registration Required**

A. The owner, keeper or harbinger of any dog or cat within the City shall make application to the Chief of Police or his designated representative for a registration permit for such dog or cat. Such application shall contain information on the dog's or cat's description, date of vaccination and name, address and telephone number of the owner, as well as proof of sterilization, as applicable. As a part of the above registration, the owner, keeper or harbinger shall present to the Chief of Police or his designated representative a current certificate of vaccination.

B. Dog and/or Cat Registration shall be designated as one of the following:

1. Intact Animal Registration;

2. Sterilized Animal Registration\*;
3. Elderly Owner Registration; or
4. Dangerous Animal Registration.

\*Note: Sterilization will be confirmed as designated on the Rabies Vaccination Certificate, which is corroborated by the Veterinarian when administering the vaccine. If the certificate does NOT indicate the animal is sterilized, it shall be assumed intact and charged a higher fee.

- C. The categories of registration shall be paid per the Animal Control Department Fee Schedule, attached as Exhibit 1, adopted with this Ordinance, including the prorated fee schedule should a citizen need to register a pet during a partial year. The fee will be prorated, as determined by the quarter of the year the pet is registered.
- D. The City of Terrell issued Registration Tag and the Veterinarian issued Rabies Vaccination Tag shall be affixed to the pet's collar and worn on the pet at all times while the pet is outdoors. It is a violation of this Ordinance to fail to display the registration tag or the vaccination tag in this manner.
- E. If ownership of a registered animal is transferred and the animal remains within the City of Terrell, the new owner shall report the transfer of ownership to the Animal Control Department within 10 days. No fee will be charged for the transfer.
- F. Police Service Dogs, Hearing Impaired or Visually Impaired Service Dogs and other certified service dogs must still be registered with the City of Terrell and demonstrate rabies vaccination; however, there will be no fee for this registration.
- G. As available, the City of Terrell will allow the purchase of registrations via electronic media and will accept payments by on-line credit card transaction, as available and developed by the City Secretary. In such cases, it shall be a violation of this Ordinance to submit false or fictitious rabies certificates or any of document required to complete the registration process.
- H.. If an owner or harbinger of an animal that has been declared a Dangerous Animal, with dangerous propensities, wishes to maintain the animal within the City limits, the owner or harbinger must make application to the Chief of Police to register the animal with the City as a Dangerous Animal. The fee, as specified by the City Council, must be paid and renewed annually. Additionally, the harbinger or owner of said declared Dangerous Animal with dangerous propensities shall provide proof the animal is maintained in a substantial enclosure, as well as provide proof of required liability insurance against any unprovoked attack made by that animal.
- I. A fee established by the City Council shall accompany the above application including an additional fee for registration of a vicious animal as specified above.
- J. Upon the owner's compliance with the above provisions of this section, the Chief of Police or his designated representative shall register the dog or cat and issue a metal registration tag, which

shall be attached to the dog's or cat's collar, and which shall be worn by the dog or cat at all times.

K. Registration shall be valid for (1) year from the date of issue.

L. If a tag issued under this section is lost or stolen, it may be replaced by payment of the appropriate fee established by the City Council and presentation of the registration record.

M. Any false statement in a rabies certification or application for a permit under this section shall render null and void the permit issued for such dog or cat and shall subject the dog or cat to being impounded in accordance with the provisions of this chapter. Further, any failure to keep and maintain proper registration and/or liability insurance for any Dangerous Animal with dangerous propensities in the manner described above shall subject said animal to being impounded and, following a hearing before the Chief of Police or his designated representative, subject said Dangerous Animal to be either humanely destroyed or permanently removed from the City.

### **Section 13: Permits and Tags - Exceptions**

- A. The fees specified in section 12B above shall not be required for any animal specifically trained to assist any auditory or visually impaired or handicapped person nor for government police dogs.
- B. The Animal Control Officer may issue a Temporary Animal Permit valid for a period not to exceed one year for exceptions to the rules regarding the keeping of animals, for example: special events, educational purposes (i.e. 4-H projects, etc.), or other valid purposes in which the issuance of such permits will not result in nuisances, endangering animals or compromising public health, safety and welfare.
- C. The fee for a Temporary Animal Permit shall be adopted on amended Fee Schedule, See Exhibit 1.
- D. The issuance of a Temporary Animal Permit is at the discretion of the Animal Control Officer and appeals to his/her decision shall be made to the Zoning Board of Adjustments with the payment of a \$100.00 application fee.

### **Section 14: Registration Revocation**

Animal Control may revoke any permit or license of any person regulated by this chapter if the person holding the permit or license refuses or fails to comply with this chapter or any law governing the protection and keeping of animals.

### **Section 15: Vaccination of Animals**

The owner of any animal capable of transmitting rabies shall have such animal vaccinated by the age of four (4) months and thereafter as prescribed by the Texas Board of Health against rabies with a vaccine approved by the United States Department of Agriculture and administered by a licensed veterinarian, who shall issue to the owner of the animal a vaccination certificate. The owner shall retain such certificate until the vaccination is renewed. At the time of vaccination, a metal tag shall be issued by the veterinarian showing the name of the veterinary clinic, the tag number and the year of issuance.

## **Section 16: Rabies Control**

It shall be the duty of the owner or harbinger of any animal or practicing veterinarian to report to Animal Control and to the Texas Department of Health all suspected cases of rabies. The report shall be made immediately upon diagnosis or suspicion of rabies in animals. The Animal Control Officers are designated as the Local Rabies Control Authority in the City of Terrell.

## **Section 17: Bites by Animals**

A. Animal Control shall investigate reports in which animals have bitten, and/or scratched persons or animals. It shall be the responsibility of Animal Control to obtain details on the bite cases and to conduct an investigation of the animal to determine if it is suffering from rabies.

B. Any animal suspected of biting a person shall be placed under quarantine to determine if the animal is capable of transmitting or exposing humans or other persons and/or animals to rabies. This quarantine shall be for a period of not less than ten (10) days after the biting of such person.

C. The owner of the animal required to be quarantined under subsection B shall surrender the animal to the Animal Control Officer immediately, or otherwise arrange for the Animal Control Officer to pick up and retain such animal, in a separate kennel at the Animal Shelter, or in quarters supervised by a veterinarian whose facility is located within the City limits of Terrell for the period of the quarantine. Should the animal be released to the Animal Control Officer to be retained at the Animal Shelter, the owner of the animal held in quarantine shall be charged a fee for every day or fraction of a day the animal is at the Animal Shelter. This fee is in addition to any impoundment fee. Upon release from quarantine, the owner may redeem the animal from the Animal Shelter or other quarters by payment of the applicable fees.

D. It shall be unlawful for any person to interfere with the enforcement of this section or fail or refuse to surrender to an Animal Control Officer any animal involved or suspected of being involved in a bite case, or otherwise fail or refuse to provide for the quarantine of animals as may be authorized by this chapter.

E. If an owner fails or refuses to surrender an animal to the Animal Control Officer for quarantine under this chapter, the Animal Control Officer may apply to the Judge of the Municipal Court of the City for a warrant to seize the animal. The officer executing the warrant shall cause the animal to be impounded at the City Animal Shelter.

## **Section 18: Dangerous Animals**

A. A person commits an offense if the person is the owner of a dangerous animal and the animal makes an unprovoked attack on another person or animal or attempts to attack a person or animal outside the animal's enclosure and causes bodily injury to the other person or animal.

B. It shall be unlawful for any person to own, keep or harbor a dangerous animal within the City limits. For purposes of this chapter, a person learns that the person is the owner of a dangerous animal when the owner knows of an unprovoked attack committed

by the animal that causes bodily injury to a person or another animal, or when the owner is informed by Animal Control that the animal is a dangerous animal.

C. Once an animal has been determined to be dangerous it must be:

1. Removed from the City within twenty-four (24) hours of the owner learning that the animal is dangerous or upon quarantine clearance, whichever is later; or

2. Surrendered for euthanasia to an Animal Control Officer or a veterinarian, as approved by Animal Control within twenty-four (24) hours of the owner learning that the animal is dangerous or upon quarantine clearance, whichever is later; or

3. The owner or harbinger of the Dangerous Animal, with Dangerous Propensities, may register the animal as a Dangerous Dog with the Animal Control Department and:

- a. Sign an agreement to keep the animal in a substantial enclosure at all times while within the City limits;
- b. Provide the address where the dangerous animal will be kept;
- c. Notify the Animal Control Department within (5) five days of the address where the dangerous animal will be maintain, should the location change at any time; and
- d. Provide proof of liability insurance coverage on the dangerous dog in the amount of \$250,000.00, which will also be required each year upon renewal of the Dangerous Animal Registration.

D. It is an affirmative defense to the determination that an animal is dangerous when it can be shown that:

1. The threat, injury or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal; or

2. The person was teasing, tormenting, abusing or assaulting the animal or has, in the past been observed or reported to have teased, tormented, abused or assaulted the animal; or

3. The person was committing or attempting to commit a crime; or

4. The animal attacked or killed was at the time teasing, tormenting, abusing or attacking the alleged dangerous animal; or

5. The animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault; or

6. The animal was injured and responding to pain.

**Section 19: Dangerous Animal Complaints**

A. Should any person desire to file a complaint concerning an animal which is believed to be a Dangerous Animal, a sworn, written complaint must first be filed with a Police Officer or an Animal Control Officer of the City as follows:

1. Name, address and telephone number of complainant and any witnesses;
2. Date, time and location of any incident involving the animal;
3. Description of the animal;
4. Name address and telephone number of the animal's owner if known;
5. A statement describing in detail the facts upon which such complaint is based;  
and
6. A statement describing in detail any incidents where the animal has exhibited dangerous propensities in the past if known.

B. After a sworn complaint is filed, if the complaint alleges an unprovoked attack on a human or against another animal it shall be referred for disposition to the clerk of the Municipal Court who shall set a time and place for a hearing not to exceed twenty (20) days from the time the complaint is received. The clerk of the Municipal Court and/or the Animal Control Officer shall give notice of the hearing to the animal's owner at least ten (10) days prior to the hearing date. After the owner of the animal is notified, the owner shall keep such animal at the Animal Shelter or at a veterinarian's clinic whose facility is located within the City limits of Terrell until the Municipal Court hold such hearing. After the owner of the animal receives notice, the Animal Control Officer shall impound the animal specified in the complaint if such animal is found at large.

C. The Judge of the Municipal Court shall receive testimony at the hearing to determine if the animal specified in the complaint is a dangerous animal and should be permanently removed from the City or destroyed for the protection of the public health, safety and welfare of the citizens of the City. In order to determine if any of the above actions are necessary, the Judge of the Municipal Court must find the following facts to be true:

1. The animal is a dangerous animal;
2. The removal or destruction of the animal is necessary to preserve and protect the public health, safety and welfare of the citizens of the City.

D. If the Judge of the Municipal Court orders the destruction or removal of the animal and the owner was not present at the hearing, the owner shall be given notice of the decision. If removal or destruction of the animal is not ordered, the Animal Control Officer shall return the animal to the owner upon payment of all applicable fees. If the Judge of the Municipal Court orders the animal to be permanently removed from the City, he shall allow the owner ten (10) days to do so. The owner shall furnish the Municipal Court evidence of such permanent removal within ten (10) days thereof. In the event the animal has been ordered to

- be permanently removed from the City and the owner has done so, it shall be unlawful for the animal to be allowed back into the City for any purpose. The decision of the Judge of the Municipal Court shall be final.
- E. A person commits an offense if he knowingly possesses and fails to release to the Animal Control Officer or a veterinarian, as approved by Animal Control, an animal that has been charged by sworn complaint as specified above and whose destruction or removal has been ordered by the Judge of the Municipal Court.
- F. If the complaint does not allege an unprovoked attack, but rather dangerous propensities against the animal, the chief of police or his designee shall receive testimony at the hearing to determine if the animal specified in the complaint is a vicious animal and should be properly registered as a vicious animal, be properly restrained within a fenced area of sufficient height and strength to prevent the animal from escaping, requiring the owner to keep and maintain liability insurance in an amount sufficient to cover any injuries that may occur as a result of owning, keeping or harboring said vicious animal, or require that the vicious animal be permanently removed from the City or destroyed for the protection of the public health, safety and welfare of the citizens of the City. In order to determine if any of the above actions are necessary, the chief of police or his designee must find the following facts to be true:
1. The animal is a dangerous animal;
  2. The confinement, special registration, liability insurance requirement and/or removal or destruction of the animal is necessary to preserve and protect the public health, safety and welfare of the citizens of the City.
- G. If the chief of police or his designee orders the confinement, destruction or removal of the animal and the owner was not present at the hearing, the owner shall be given notice of the decision. If removal or destruction of the animal is not ordered, the Animal Control Officer shall return the animal to the owner upon payment of all applicable fees. If the chief of police or his designee orders the animal to be confined or removed from the City, he shall allow the owner ten (10) days to do so. The owner shall furnish the chief of police or his designee evidence of such confinement within a fenced area in the manner described above or removal as the case may be within ten (10) days thereof. In the event the animal has been ordered to properly confined within a fenced area in the manner described above or to be removed from the City and the owner has done so, it shall be unlawful for the animal to be outside the above described fenced are or to be allowed back into the City, as the case may be, for any purpose.
- H. A person commits an offense if he knowingly possesses and fails to release to the Animal Control Officer or a veterinarian, as approved by Animal Control, an animal that has been charged by sworn complaint as specified above and whose confinement, destruction or removal has been ordered by the chief of police or his designee provided that such confinement, destruction or removal has not been appealed.

**Section 22: Impoundment of Animals - Generally**

A. Any animal found in violation of any provision of this chapter or any animal that is treated in a cruel or inhumane manner may be impounded by the City and placed in the City's Animal Shelter. Any such animal shall be held for at least three (3) days, except that any dog or cat wearing a current vaccination tag and/or a City registration tag shall be held for ten (10) days before any measure of disposition of such animal shall be taken. Any impounded animal that is found to be vicious or wild may be immediately and appropriately disposed of provided there is no evidence that said animal has an owner.

B. A reasonable effort will be made by Animal Control to contact the owner of any impounded animal that is wearing a current registration tag; however, the ultimate responsibility for the location of an impounded animal is that of the owner.

C. All stray pets brought into the Animal Shelter shall be scanned for a microchip and should a microchip be found, the animal shall be treated

**Section 23: Reclaiming Impounded Animals**

The owner can resume possession of any impounded animal upon payment of an impoundment fee, as cited in the Fee Schedule, Exhibit 1, for each day or fractional part of a day that the animal was impounded and any veterinary bills incurred. Such impoundment fee shall be charged for the care and feeding of the animal. However, if any animal has not been currently vaccinated in accordance with this Ordinance or if any dog has no valid registration license tag, the owner must first secure either or both of them at his expense before the animal may be released to his custody.

**Section 24: Unclaimed Animals**

A. Any animal, except dangerous animals, not reclaimed by the owner may be humanely euthanized after being impounded for three (3) days, except for any animal wearing a current registration, vaccination tag or microchip shall be impounded for ten (10) days before euthanizing it or adopting to a new owner.

B. Any impounded animal not wearing a current registration and/or vaccination tag, other than animals under quarantine or found to be dangerous, may be given up for adoption or given to a nonprofit humane organization after three (3) days.

C. Any impounded animal wearing a current registration and/or vaccination tag, other than animals under quarantine or found to be dangerous, may be given up for adoption or given to a nonprofit humane organization after ten (10) days.

**Section 25: Animal Control Shelter Advisory Committee**

A. Animal Control Shelter Advisory Committee Created. In accordance with the provisions of Texas Health and Safety Code §823.005, there is hereby created an Animal Control Shelter Advisory Committee composed of five (5) members, each of whom shall be appointed by the City Council. One member shall be a licensed veterinarian, one member shall be a municipal official, one member shall be an individual whose duties include the daily operation of an Animal Shelter, and two members shall be a

representative from an animal welfare organization. The members of the committee shall serve without remuneration for their service. Additionally, the Chief of Police, or his designated representative, shall serve as an ex-officio member of the committee.

B. General Duties of the Committee. The Animal Control Shelter Advisory Committee shall advise the City Council and local health authorities in complying with the rules and regulations pertaining to Animal Shelters as specified by the Texas Department of Health.

C. Meetings. The Animal Control Advisory Committee shall meet at least three times each year or upon notice from the Chair of the Committee with a total of three (3) members constituting a quorum.

D. Committee Chairperson. The municipal official shall serve as the Chair of the Committee.

E. Terms of Office. Following their appointment by the City Council, each member of the Animal Control Advisory Committee shall serve a four (4) year term and may be re-appointed for additional terms as deemed appropriate by the City Council.

## **Section 26: Public Nuisances**

A. It shall be unlawful and constitute a public nuisance for any person to maintain any animal or fowl in such a manner or allow any pen, enclosure, yard, or similar place used for the keeping of animals or fowl to become unsanitary, offensive by reason of odor, or create a condition that is a breeding place for fleas, flies or other vector and which is offensive to persons of ordinary sensibilities residing in the vicinity thereof or is determined to be a public nuisance by the Animal Control authority.

B. It shall be unlawful and constitute a public nuisance for any person to maintain any animal which repeatedly roams at large in violation of this chapter on public or private property; attacks another animal(s); or damages public or private property.

C. Animals defecating and urinating in certain places prohibited removal of excreta.

1. Prohibited. It shall be unlawful for the person controlling to permit, either willfully or through failure to exercise due care or control, any dog or animal to urinate or defecate upon the sidewalk or parkway of any public street, or upon the floor of any common hall in any entranceway, stairway, or wall immediately abutting on a public office building or other buildings used in common by the public or upon the floor, stairway, entranceway, office, lobby, foyer, or patio used in common by the public. For the purpose of this section, the term "parkway" shall mean the portion of a public street other than a roadway or a sidewalk.

2. Removal of excreta. It shall be unlawful and an offense for any person to fail to promptly remove and dispose of, in a sanitary manner, feces left by a dog, cat or other animal being handled or controlled by the person upon public works, parks, recreation areas, sidewalks, parkways, or public streets or any other public areas specified in subsection 1 of this section, or upon any private property other than the premises of the owner, handler, or controller of such animal.

D. It shall be unlawful and constitute a public nuisance for the owner of any animal to allow any excreta deposited by his animal to remain on public or private property. Any condition injurious to public health caused by the lack of or improper disposal of animal waste will be considered a violation of this section.

E. It shall be unlawful for any person to allow any animal to remain a public nuisance as defined herein.

F. It shall be unlawful for any person to permit the carcass of any dead animal to be or remain, upon any property under his control for more than twenty-four (24) hours after the death of the animal.

1. If the dead animal is a dog or cat, the owner must bag the carcass in a plastic trash capable of containing the carcass, seal it and place the bagged carcass next to the edge of the roadway in front of the property so it may be picked up by the Animal Control Department.
2. The owner shall immediately notify the Animal Control Department of the bagged carcass in order for it to be picked up as quickly as possible.
3. Should the carcass be of such size that it cannot be reasonably bagged and/or deposited next to the roadway for pickup; the owner must notify the Animal Control Department of this hardship within twenty four (24) hours of discovering the carcass.
4. If the owner is over the age of sixty five (65) or physically incapable of bagging the carcass, the owner shall notify the Animal Control Department within twenty four (24) hours of discovering the carcass and formally request assistance in the removal of same.
5. An owner who fails to bag and place the carcass for pickup, or fails to notify the Animal Control Department of a hardship as described in paragraphs 3 or 4 above, violates this section of this Ordinance.

### **Section 27: Enforcement**

A. Representatives of the police department shall enforce the provisions of this chapter. Police Officers and Animal Control Officers shall have the authority to issue citations to persons violating the provisions of this chapter. If the person is not present, an Animal Control Officer shall have the authority to send the citation to the alleged offender by registered or certified mail.

B. It shall be unlawful for any owner or person to interfere with a Police Officer or an Animal Control Officer in the performance of these duties as prescribed by this chapter.

C. Police Officers and Animal Control Officers shall have the right to pursue and apprehend animals running at large onto private property while enforcing the provisions of this chapter.

D. It is a violation of this Ordinance if a person moves, relocates, disengages or otherwise tampers with an animal trap set by an officer with the Animal Control Department or moves, relocates, disengages or allows for the release of an animal being held in the animal trap or held in a Animal Control Department vehicle.

E. If an animal is in the care, custody and control of a minor child, the parents or guardians of the minor child are responsible for all actions required of an "owner" in this Ordinance and shall be liable for any violations of this Ordinance.

### **Section 28: Penalties**

A. Any person found to be in violation, disobedience, omission, neglect, failure or refusal to comply with the enforcement of any of the provisions of this chapter shall be punished by a fine not to exceed two thousand dollars (\$2,000.00) for each violation. Each day that a violation is permitted to exist shall constitute a separate offense.

B. If any owner is found guilty of having violated any provision of this chapter, such violation may result in the revocation of such owner's authorization to keep or maintain the animal(s) in question.

C. Unclaimed animals or animals whom the owner has not come forward or cannot be identified, shall become the property of the City of Terrell Animal Control Department after the animal has been in the City's care for 72 hours. The City is then free to dispose of the animal as deemed appropriate.

D. The Chief of Police or designee of the Animal Control Department may, at his/her discretion, waive any accumulated fees or any portion of accumulated fees, provided the Chief of Police or designee believes it is in the best interest of the animal, the owner and the City of Terrell to do so. Only the Chief of Police or designee can authorize a discretionary waiver of the fees, as described.

## **ARTICLE II**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

## **ARTICLE III**

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, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted without such unconstitutional phrase, clause, sentence, paragraph or section.

**ARTICLE IV**

This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

**PASSED AND APPROVED THIS the 18th day of November, 2014.**

**PASSED AND ADOPTED THIS the 2nd day of December, 2014.**

**Exhibit A**

**Fee Schedule**

<u>Service</u>	<u>Fee</u>
<b>Dog and/or Cat Registration</b>	
- Intact Animal	\$ 15.00
- Sterilized Animal	\$ 10.00
- Senior 65 and over Pet Registration	\$ 5.00
- Dangerous Animal Registration	\$ 50.00
- At Adoption From Shelter	\$ -
- Prorated Schedule Per Quarter	<b>See Chart Below</b>

**Shelter Fees**

Stray Surrender Fee - City of Terrell \$ 10.00

**Impoundment Fee - Intact Animal \$ 20.00**

**Impoundment Fee - Sterile Animal \$ 10.00**

Daily Storage Fee - Intact Animal \$ 20.00

Daily Storage Fee - Sterile Animal \$ 10.00

Daily Quarantine Fee \$ 20.00

Pot Bellied Pig Permit Fee \$ 75.00

Temporary Animal Permit \$ 30.00

**Dangerous Animal Seizure \$ 50.00**

Microchip \$ 10.00

<b>Prorated Registration Schedule</b>	<b><u>1st Qtr</u></b>	<b><u>2nd Qtr</u></b>	<b><u>3rd Qtr</u></b>	<b><u>4th Qtr</u></b>
<b>Dog and/or Cat Registration</b>				
- Intact Animal	\$ 15.00	\$ 11.25	\$ 7.50	\$ 3.75
- Sterilized Animal	\$ 10.00	\$ 7.50	\$ 5.00	\$ 2.50
- Elderly Owned Pet Registration	\$ 5.00	\$ 3.75	\$ 2.50	\$ 1.25
- Dangerous Animal Registration	\$ 50.00	\$ 37.50	\$ 25.00	\$ 12.50

12. Discuss and Consider on Second Reading Approval of Ordinance No. 2620; An Ordinance of the City of Terrell, Kaufman County, Texas Amending Chapter 3, Animal Control of the Revised Code of Ordinances of the City Of Terrell; Providing for the Repeal of Conflicting Ordinances; Providing For Severability And Providing An Effective Date.

13. Adjourn.

There were no other matters discussed or acted on at this meeting. There being no further business the meeting was adjourned.

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**Hal Richards, Mayor**

**Attest:**

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**John Rounsavall, City Secretary**