

ORDINANCE NO. 1231

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLEMAN, TEXAS, AMENDING CHAPTER 2 OF THE COLEMAN CODE OF ORDINANCES; AMENDING SECTION 2.01.001 DEFINITIONS; AMENDING SECTION 2.01.005 TO REGULATE VICIOUS ANIMALS; AMENDING SECTION 2.01.006 TO REGULATE PUBLIC NUISANCE ANIMALS; AMENDING SECTION 2.01.007 TO PROVIDE FOR THE REQUIREMENTS FOR A PUBLIC NUISANCE ANIMAL; AMENDING SECTION 2.01.008 TO PROVIDE FOR AN ORDER OF REMOVAL FROM THE CITY IF AN ANIMAL RECEIVES A SPECIFIED NUMBER OF CONVICTIONS FOR CERTAIN OFFENSES; AMENDING SECTION 2.01.009 TO PROVIDE FOR AUTHORITY TO IMPOUND A VICIOUS ANIMAL OR A PUBLIC NUISANCE ANIMAL; RENUMBERING THE EXISTING SECTIONS 2.01.006. FERRETS, THROUGH SECTION 2.01.011. PENALTY AS FOLLOWS: SEC. 2.01.010. FERRETS; SEC. 2.01.011. DEFECATION OF ANIMALS ON PUBLIC OR PRIVATE PROPERTY; SEC. 2.01.012. NOISE.; SEC. 2.01.013. NO FEEDING OF STRAY ANIMALS OR FERAL CATS ON PUBLIC PROPERTY.; SEC. 2.01.014. EXCEPTIONS.; AND SEC. 2.01.015. PENALTY.; AMENDING THE RENUMBERED 2.01.015 PENALTY CLAUSE TO PROVIDE FOR MINIMUM FINES IN THE AMOUNT OF \$250.00 FOR A FIRST CONVICTION, \$350.00 FOR A SECOND CONVICTION OF THE SAME OFFENSE, \$500.00 FOR A THIRD CONVICTION OF THE SAME OFFENSE; AMENDING SECTION 2.03.001 REGULATING THE IMPOUNDMENT OF ANIMALS; REPEALING ALL PRIOR ORDINANCES OR ORDINANCE PROVISIONS IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING AN OPEN MEETINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS ORDINANCE.

WHEREAS, the City of Coleman (the “City”) is a home-rule municipality created pursuant to Article XI Section 5 of the Texas Constitution with powers of self-government, including the power to adopt and enforce ordinances necessary to preserve good government, order, and security to the City and its inhabitants as authorized in Texas Local Government Code Chapter 51 and Chapter 54; and

WHEREAS, the effective regulation, management, and control of animals, including dogs, within the City of Coleman are essential to the public health, safety and welfare of the City’s citizens;

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

I. Amendment and Enactment. That this Ordinance, and the provisions contained herein, shall amend the Coleman Code of Ordinances, Chapter 2, Section 2.01.001, Definitions, by adding and/or amending the definitions contained therein which shall read as follows:

Sec. 2.01.001 Definitions

Animal means any living vertebrate creature, domestic or wild, excluding human beings.

City means the city of Coleman.

Dangerous dog. A dog defined by section 822.041(2), Texas Health and Safety Code, as amended by item (3) below and means a dog that:

- (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.
- (3) Makes an unprovoked attack on a domestic animal that causes serious bodily injury or death and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own.

Dog means a domestic animal that is a member of the canine family.

Domestic animal means an animal which is naturally tame and gentle or which by long association with man has become thoroughly domesticated and is now reduced to such a state of subjection to his will that they no longer possess a disposition or inclination to escape.

Public nuisance animal. Any animal that unreasonably annoys humans, endangers the life or health of other animals or humans, or substantially interferes with the rights of citizens, other than its owner, to the enjoyment of life or property. The term “public nuisance animal” shall mean and include, but is not limited to, any animal that:

- (1) Is documented by the local health authority or a member of the public to have been at large, as defined in Section 2.01.001 of this chapter, three (3) or more times in a twelve (12) month period;
- (2) Damages the property of anyone other than its owner;
- (3) Chases vehicles;
- (4) Excessively makes disturbing noises, including, but not limited to, continued and repeated howling, barking, whining, or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

- (5) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the dog is kept or harbored;
- (6) Causes unsanitary conditions in enclosures or surroundings where the dog is kept or harbored; or
- (7) Commits an unprovoked attack on a person or other domestic animal while at large as defined in this chapter.

Serious bodily injury means, regarding an attack on a domestic animal, an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person who owns and/or is caring for the injured animal to seek treatment from a veterinarian without regard to whether the person actually sought treatment for the injured animal.

Vicious animal means an animal: (a) that has committed unprovoked attacks on two previous occasions on a person or other animal while at large as defined in this chapter; (b) which the local health authority or their representative has reason to believe has a dangerous disposition likely to be harmful to humans other animals; or (c) that has committed an unprovoked attack on a person or other animal after being declared by the local health authority, or judicially determined by the City's municipal court, to be a dangerous dog as provided by Texas Health and Safety Code Chapter 822 and this chapter.

II. Amendment and Enactment. That this Ordinance and the provisions contained herein shall amend the Coleman Code of Ordinances, Chapter 2, Section 2.01.005. Vicious animals; Section 2.01.006. Public nuisance animals; Section 2.01.007. Requirements for a public nuisance animal; Section 2.01.008. Order of removal from the City for certain violations; Section 2.01.009. Authority to impound vicious animals and public nuisance animals; renumbering the existing Sections 2.01.006. Ferrets through Section 2.01.011. Penalty, as follows: Sec. 2.01.010. Ferrets; Sec. 2.01.011. Defecation of animals on public or private property; Sec. 2.01.012. Noise; Sec. 2.01.013. No feeding of stray animals or feral cats on public property; Sec. 2.01.014. Exceptions; and Sec. 2.01.015. Penalty, and shall amend the renumbered Sec. 2.01.015. Penalty, which shall read as follows:

Section 2.01.005. Vicious animals; order by local health authority; appeal of order; offense.

- (a) Upon receipt of a sworn, written complaint by any person, in a form approved by the local health authority, that any animal may constitute a vicious animal, the local health authority shall conduct an investigation. If upon investigation, the local health authority reasonably believes that grounds exist to declare the animal a vicious animal, they shall issue a written order containing the grounds for their determination to the owner of the animal, by personal delivery or by certified mail, return receipt requested. The order shall include the reason for the order and may order that the owner of the vicious animal comply with the requirements for the owner of a dangerous dog as provided in Section 2.05.005, in addition to ordering the animal be sterilized at the owner's expense, or order that the animal be removed from the City

and shall inform the owner of his right to appeal the order.

- (b) An order declaring an animal a vicious animal and ordering that the owner of the vicious animal comply with the requirements for the owner of a dangerous dog as provided in Section 2.05.005 of this chapter or the vicious animal's removal from the City is final unless the owner files a written appeal with the City municipal court not later than five (5) calendar days after the date the owner received the order. The municipal court shall conduct a hearing within ten (10) business days of receipt of the notice of appeal to determine whether the preponderance of the evidence supports the vicious animal determination by the local health authority, The municipal court judge may consider investigative reports, medical records, affidavits, as well as any testimony or documentary evidence offered by the owner and other relevant witnesses. At the conclusion of the hearing, the municipal court judge shall enter a written order with factual findings as to whether the animal is a vicious animal and upholding or overruling the local health authority's order, in whole or in part, declaring the animal to be a vicious animal and ordering the owner of the vicious animal comply with the requirements for the owner of a dangerous dog as provided in Section 2.05.005 of this chapter, ordering sterilization, or ordering the animal to be removed from the City. The written order shall be sent by personal delivery or certified mail, return receipt requested, to the owner as soon after the conclusion of the hearing as practicable, but in no event more than five (5) business days after the hearing. The decision of the municipal court judge shall be final.
- (c) If the order for removal of the vicious animal from the City is not appealed or is upheld after appeal, then the owner shall remove the vicious animal from the City immediately or deliver the animal to the local health authority to be humanely euthanized. If the vicious animal has been impounded pursuant to Section 2.03 of this chapter, the owner shall: (i) pay all applicable fees related to the impoundment, including sterilization fees; and (ii) show written documentation of the relocation of the vicious animal outside the City, including written consent of the owner of the property where the vicious animal will be located, before the animal will be returned to the owner for removal of the vicious animal from the City.
- (d) The owner of a vicious animal that does not comply with the requirements for the owner of a dangerous dog as provided in Section 2.05.005 of this chapter or the required sterilization of the animal, commits an offense. A person commits a separate offense for each day or part of a day during which a violation is committed or continued.

Sec. 2.01.006. Public nuisance animals; order by local health authority; appeal.

- (a) Upon receipt of a sworn, written complaint by any person, in a form approved by the local health authority, that any animal may constitute a public nuisance, the local health authority shall conduct an investigation. If upon investigation, the local health authority reasonably believes that grounds exist to declare the animal a public nuisance animal, they shall issue a written order containing the grounds for their

determination to the owner of the animal, by personal delivery or by certified mail, return receipt requested. The order shall include all requirements for an owner of an animal determined to be a public nuisance as set forth in Section 2.01.007 of this chapter and the process for the appeal of the determination.

- (b) For purposes of this section, if an animal is documented to be at large three or more times in a 12-month period by a member of the public, such documentation must consist of photographic evidence with a date and time stamp and in which the animal can be clearly identified.
- (c) An order declaring an animal a public nuisance animal is final unless the owner files a written appeal with the City municipal court not later than five (5) calendar days after the date the owner received the order. The hearing shall be conducted and the written order from the municipal court judge shall be issued in the same manner as set forth in Section 2.01.005(b) of this chapter. The decision of the municipal court judge shall be final.

Sec. 2.01.007. Requirements for a public nuisance animal; offense.

- (a) Not later than the 30th calendar day after the date the owner learns that they are the owner of a public nuisance animal, the owner shall take all measures necessary to abate the nuisance that served as the basis for the determination of the dog as a public nuisance animal.
- (b) A person commits an offense if they violate or fail to perform an act required by this section. A person commits a separate offense each day or part of a day during which a violation is committed or continued.

Sec. 2.01.008. Order of removal from City; appeal.

- (a) If an owner of an animal receives the specified number of convictions for the following offenses within a twelve (12) month period, the local health authority may order the animal at issue removed from the City:
 - (1) One or more convictions for allowing a dangerous dog to be at large in violation of Section 2.02.001 of this chapter;
 - (2) One or more convictions for allowing a vicious dog to be at large in violation of Section 2.02.001 of this chapter;
 - (3) One or more convictions for allowing a public nuisance animal to be at large in violation of Section 2.02.001 of this chapter;
 - (4) Two or more violations for violations of Section 2.01.005(d), Section 2.01.007, or Section 2.05.005 of this chapter.

- (b) The removal order shall be issued in writing to the owner of the animal at issue, by personal delivery or by certified mail, return receipt requested. The order shall include the reason for the order and shall inform the owner of their right to appeal the order.
- (c) The removal order is final unless the owner files a written appeal with the City municipal court not later than five (5) calendar days after the date the owner received the order. The municipal court shall conduct a hearing within ten (10) business days of receipt of the notice of appeal to determine whether the preponderance of the evidence supports the removal determination by the local health authority, The municipal court judge may consider investigative reports, medical records, affidavits, as well as any testimony or documentary evidence offered by the owner and other relevant witnesses. At the conclusion of the hearing, the municipal court judge shall enter a written order upholding or overruling the local health authority's order. The written order shall be sent by personal delivery or certified mail, return receipt requested, to the owner as soon after the conclusion of the hearing as practicable, but in no event more than five (5) business days after the hearing. The decision of the municipal court judge shall be final.
- (d) If the order for removal of the animal from the City is not appealed or is upheld after appeal, then the owner shall remove the animal from the City immediately or deliver the animal to the local health authority to be humanely euthanized. If the vicious animal has been impounded pursuant to Section 2.03 of this chapter, the owner shall:
 - (i) pay all applicable fees related to the impoundment; and
 - (ii) show written documentation of the relocation of the animal outside the City, including written consent of the owner of the property where the animal will be located, before the animal will be returned to the owner for removal of the animal from the City.

Sec. 2.01.009. Authority to impound a vicious animal or a public nuisance animal.

In the event that the local health authority determines that an animal is vicious or a public nuisance animal, they are authorized to immediately impound the animal and keep the animal impounded through the pendency and resolution of the appeal hearings provided in Sections 2.01.005(b) and 2.01.006(c).

Sec. 2.01.015. Penalty.

- (a) Any person who violates any of the provisions of this chapter shall be guilty of misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$500.00. Each day of violation or portion of a day that the violation exists, each separate animal and each incident of violation of this chapter shall constitute a separate offense.
- (b) Notwithstanding the foregoing, any person who violates any of the provisions of this chapter shall pay the following minimum fines: (i) for the first conviction that person shall pay a minimum fine of \$250.00; (ii) for the second

conviction of the same offense that person shall pay a minimum fine of \$350.00; and (iii) for the third conviction of the same offense that person shall pay a minimum fine of \$500.00.

- (c) The payment of fines shall not be exclusive and shall not prevent the local health authority from issuing removal orders as provided herein.
- (d) The City may bring suit in a court of appropriate jurisdiction to enforce the provisions of this chapter. The City is not required to give bond as a condition to the issuance of injunctive relief.

III. Amendment and Enactment. That this Ordinance and the provisions contained herein shall amend the Coleman Code of Ordinances, Chapter 2, Article 2.03, Section 2.03.001, Generally, and shall read as follows:

Sec. 2.03.001. Generally; length of impoundment; notification of owner; mandatory sterilization.

- (a) The local health authority shall take into custody any animal found at large in the City and shall impound the animal in the custody of the animal control officer, the local health authority's designated place of animal detention, or the animal shelter as defined by Section 2.01.001 of this chapter.
- (b) Except for animals impounded as subjects or probable subjects of a proceeding pursuant to Texas Health and Safety Code Chapter 822, a vicious animal determination, a public nuisance animal determination, a rabies observation, or other administrative procedures, impounded animals must be kept for not less than three (3) working days from the date of impoundment. In calculating the length of this time period, the first working day (non-weekend day) after impoundment is considered day one.
- (c) If the owner of the impounded animal can be identified, the local health authority shall, as soon as practicable after impoundment, notify the owner in person or by telephone, if reasonably possible, advising that, if the impounded animal is not redeemed within three (3) working days from the date of impoundment, disposition of the animal will be made in accordance with this chapter.
- (d) Dogs that are found to be at large and that are determined to be a dangerous dog, a vicious animal, or a public nuisance animal, shall be subject to mandatory sterilization at the owner's expense before the animal is returned to the owner, except if the owner of the dog can establish one of the following exemptions:
 - (i) was a member of a national breed club, local breed club, local all-breed club, sporting, or hunting club, or was regularly shown during the six-month period immediately preceding impoundment;
 - (ii) was at large due to a natural disaster; or

- (iii) was at large due to the criminal or negligent acts of a third party.
- (e) At the end of the impoundment period, if the animal has not been claimed and the fees associated with the impoundment, including sterilization fees, have not been paid to the City, the animal may be disposed of through adoption or disposal. Disposal may include the humane euthanization of the animal.

IV. Repealing Provision. The City Council of the City of Coleman declares that any prior ordinance or any provision in any prior ordinance, as may be applicable, is hereby repealed to the extent that such ordinance or provision of an ordinance conflicts or contradicts the amendments and provisions enacted herein.


V. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, or ineffectiveness or such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

VI. Notice. It is hereby officially found and determined that the meeting at which this Ordinance was adopted 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, Chapter 551, Gov't. Code*.

VII. Effective Date. This Ordinance shall take effect and be in full force and effect from and after the date of its passage on the second and final reading and publication of the caption of the Ordinance in a newspaper of general circulation within the City, as may be required by law.

PASSED AND APPROVED on first reading on this 5th day of Jan, 2023.

PASSED, APPROVED AND ADOPTED on second reading on this 19th day of Jan, 2023.


Tommy Sloan, Mayor

ATTEST:


Betty Bivins, City Secretary

Approved as to form:

Pat Chesser by Betty Burns
William P. Chesser, City Attorney