

ORDINANCE 21-28

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, AMENDING CHAPTER 2-4 OF THE MANATEE COUNTY CODE RELATING TO ANIMALS; AMENDING SECTION 2-4-2 DEFINITIONS; CREATING ARTICLE II RETAIL SALES OF DOGS AND CATS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the humane treatment of animals is an important public purpose; and

WHEREAS, the Animal Welfare Act (“AWA”), 7 U.S.C. §§2131-2159, establishes federal standards for the humane care and treatment of certain animals sold at wholesale or through a broker, publicly exhibited, used in biomedical research, or transported commercially; and

WHEREAS, the U.S. Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (“APHIS”) has an Animal Care program, which is responsible for implementing and enforcing animal welfare regulations pursuant to the AWA; and

WHEREAS, the AWA regulates the activities of dog breeders, unless the breeder qualifies as a “hobby breeder,” and requires non-exempt breeders and brokers to maintain a license with the USDA, which requires that they agree to follow specific standards for the care of animals; and

WHEREAS, the AWA expressly provides that a state or a political subdivision of a state may promulgate standards regarding the handling, care, treatment and transportation of animals, if those standards are more restrictive than the standards promulgated by the USDA; and

WHEREAS, some commercial animal breeders operate unsanitary and inhumane breeding facilities for dogs in which the health of the dogs is disregarded; and

WHEREAS, some Retail Pet Sales establishments purchase animals from commercial breeders that operate unsanitary and inhumane breeding facilities.

WHEREAS, Board of County Commissioners of Manatee County wishes to amend Chapter 2-4 of the Manatee County Code to regulate the retail sale of dogs and cats; and

WHEREAS, the Board of County Commissioners of Manatee County finds that the provisions of this Ordinance are in the best interests of the County, its citizens, taxpayers and business community.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Manatee County:

Section 1. Article I of Chapter 2-4 of the Manatee County Code is hereby amended as set forth in Exhibit “A” to this Ordinance.

Section 2. Article II of the Chapter 2-4 of the Manatee County Code is hereby created as set forth in Exhibit "B" to this Ordinance.

Section 3. For purposes of codification of any section of the Manatee County Code herein amended, words **underlined** represent additions to original text, and words **~~stricken~~** are deletions from the original text.

Section 4. Pursuant to Section 125.68(1), F.S., the Codifier shall codify the substantive amendments to the Manatee County Code contained in Section 1 and Section 2 of this Ordinance as provided therein, and shall not codify any other sections not designated for codification.

Section 5. If any section, subsection, sentence, clause, provision or word of this Ordinance is held invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of County Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 6. This Ordinance shall take effect immediately upon filing with the State of Florida Department of State.

DULY ADOPTED with a quorum present and voting this _____ day of _____, 20____.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESE
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

EXHIBIT "A"

ARTICLE I

Sec. 2-4-2. - Definitions.

The following terms shall have the meanings as indicated. No attempt is made to define any words which are used in accordance with their established dictionary meaning, except when necessary to avoid misunderstanding. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include words in the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall," "will," and "must" are mandatory and the word "may" is permissive.

Abandon or *abandonment* shall mean the desertion of an animal or the failure, neglect, or refusal of an animal's owner or custodian to care for and maintain such animal.

Adequate food and water shall mean food and water which is sufficient in amount and appropriate by nature for a particular type of animal to prevent starvation, dehydration, or a significant risk to the animal's health from a lack of food or water consistent with the size, health, and age of each particular animal in issue.

Adoption Fee means remuneration to recover the costs of feeding, sheltering, and providing care for an animal without profit.

Affidavit shall mean a written declaration made under oath before a notary public or other authorized officer.

Animal shall mean any living dumb creature that is a member of the mammalian, avian, reptilian, or amphibian species, except that sections of this article controlled by statute shall be governed by the statutory definition of animal.

Animal services center shall mean any facility maintained by Manatee County or any municipality within Manatee County for the confinement and maintenance of domesticated animals that, pursuant to the provisions of this article, come into the custody of Manatee County or a municipality within Manatee County.

Animal services division or *division* shall mean the division of Manatee County government established by the board and authorized to enforce this article.

Animal services officer shall mean any law enforcement officer, animal services officer, code enforcement officer, or individual employed, contracted with, or appointed by the county who is appropriately trained and authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations. Animal services officers are not authorized to bear arms or make arrests, but are otherwise empowered as provided for in Section 828.27, Florida Statutes, as amended.

Animal Shelter means any state, county, or municipal animal shelter, or animal control facility devoted to the rescue, care and adoption of stray, abandoned, or surrendered Animals, and which does not breed Animals.

Animal Welfare Organization means a duly incorporated non-profit organization that has tax exempt status under Section 501 of the United States Internal Revenue Code.

whose mission is devoted to the welfare, care, and adoption of stray, abandoned, or surrendered Animals, and which does not breed Animals or obtain, in exchange for consideration of any kind, animals from a breeder. An Animal Welfare Organization does not include a commercial establishment.

At large shall mean any dog or cat on the owner's premises, not in the control of the owner or custodian; or any dog or cat off the premises of the owner or custodian and not under the physical control of the owner or custodian.

Baiting shall mean to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in fights, with or among other animals.

Bite shall mean any cut, puncture, or breakage of the skin or tissue made with the teeth or fangs of any animal.

Board of county commissioners or *board* shall mean the board of county commissioners of Manatee County, Florida.

Boarding facility shall mean any premises wherein six (6) or more adult animals are kept for the purpose(s) of boarding, training, or any other similar business purposes.

Cat means, but is expressly not limited to domestic cats, *Felis catus*, and any genetic hybridization thereof, including, but expressly not limited to, ocelot hybrids and bobcat hybrids, that is not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Certificate of Source means a document which includes the following information about the Dog or Cat involved in any Retail Sale at a Commercial Establishment:

- (1) the name, address, telephone number, and email address of any breeder, wholesaler, and transporter;
- (2) breed;
- (3) color;
- (4) age;
- (5) approximate weight; and
- (6) the signatures of the breeder, wholesaler, and transporter.

Chicken shall mean a female member of *Gallus domesticus* or a hen. *Chicken* shall not include the following:

- (1) Any male chicken or rooster; or
- (2) Any duck, goose, turkey, peafowl, or other poultry or fowl.

Chief shall mean the person in charge of the day-to-day administration of the division of animal services, or his or her designee.

Citation shall mean a written notice issued to a person by an officer when the officer has probable cause to believe that the person has committed a civil infraction in violation of this article.

Commercial Establishment shall mean a business which is open to the public, whether by appointment or during reoccurring business hours, and that engages in a Retail Sale.

Community cat shall mean a free-roaming cat who may be cared for by one or more residents of the immediate area who is/are known or unknown; a community cat may or may not be feral. Community cats are ear tipped and sterilized, and have received at least one vaccination against rabies. Community cats are exempt from any licensing, stray, abandonment and at-large provisions directed towards animals owned by individuals. Community cats also include cats that are found outside and brought to an animal shelter, even though it is not yet ear-tipped or sterilized.

Community cat caregiver shall mean a person who, in accordance with a good faith effort to conduct trap-neuter-return, provides care to one or more community cat. This care includes providing food, shelter, or medical care to a community cat. However, community cat caregivers are not the owner, harborer, controller, or keeper of a community cat.

Community cat diversion program shall mean a program authorized by the article by which a cat that is found outside is sterilized, ear-tipped and vaccinated appropriately for the cat's age and size, and then its original location as opposed to admitting the animal to a shelter, unless the original location is unsafe or there is no location, in which case the cat may become a working cat, as defined herein.

Confine or *confinement* shall mean to humanely, safely, and securely hold or restrict an animal in a designated area or to keep an animal within certain parameters.

Control shall mean the regulation of the possession, ownership, care, custody, and supervision of an animal.

County shall mean Manatee County, a political subdivision of the State of Florida.

County administrator shall mean that person appointed by the board of county commissioners to manage the operational affairs of the county.

Cruelty shall mean any act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief, unless excepted by law.

Dangerous dog shall be defined in accordance with Section 767.11, Florida Statutes, as amended, except that a dog that bites, attacks, endangers, injures, or kills a chicken shall be excluded from this definition.

Direct control shall mean immediate and continuous control of an animal at all times by means such as a fence, animal carrier or cage, leash, tether, cord, or chain of sufficient strength to restrain the animal or the animal shall be within the unobstructed sight, attended, and supervised by a competent person by use of hand or voice control when

on the property of the owner or custodian, or property which the owner or custodian of the animal has the right to use.

Dog means, but is expressly not limited to, domestic dog, *Canis familiaris*, and any genetic hybridization thereof, including, but expressly not limited to, wolf hybrids and coyote hybrids, that is not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Domestic animal shall mean and include any equine or bovine animal, dog, cat, goat, sheep, swine, poultry, or other domesticated beast or bird.

Ear-tipping shall mean the removal of the distal one-quarter of a community cat's left ear, which is approximately $\frac{3}{8}$ -inch, or one centimeter, in an adult and proportionally smaller in a kitten. This procedure is performed under sterile conditions while the cat is under anesthesia, in compliance with any applicable federal or state law, and under the supervision of a licensed veterinarian. Ear-tips are designed to identify a community cat as being sterilized and lawfully vaccinated for rabies.

Enclosure shall mean a movable structure with a covered roof and sides, such as kennel or cage or in the case of chickens, a chicken coop or poultry house.

Fence shall mean an effective and reliable pet containment system constructed of chain link, wood, or similar material with the ability to confine the animal to the property. This shall also include containment systems wherein a constructed fence is not visible and the animal is wearing an electronic collar manufactured for the system, provided such system is in working order.

Fenced area shall mean an area on the ground surrounded on all sides by a secure fence and covered on the top by a secure fence or roof.

Feral cat shall mean a cat that:

- (1) Has an uncared for condition, such as rough haircoat, underweight, or poor general health; or
- (2) Cannot be handled without injury to the cat or a person; or
- (3) Displays violent or aggressive behavior; or
- (4) Has no indication of ownership or identification, such as a tag, microchip, or tattoo.

Ferret shall mean any member of the domestic ferret species, *Mustela putorius furo*, regardless of age.

Front yard shall have the same meaning as set forth in the Manatee County Land Development Code.

Harbor shall mean to perform any acts of providing care, shelter, protection, refuge, food, or nourishment in such a manner as to control the animal's actions.

Humane or *humanely* shall mean the responsible practice of good animal husbandry, management, and care in regard to feeding, watering, ventilation, space and confinement, exercise, lighting, shelter with protection from the elements, handling, and treatment in a

manner consistent with the physical and behavioral needs of the species. The definition also includes the provision of euthanasia consistent with lawful practices.

Impound or impoundment shall mean the taking of an animal into custody through lawful means by the division.

Intact shall mean any dog or cat that has not been spayed or neutered.

License certificate shall mean a document evidencing registration and vaccination for rabies of a dog, cat, or ferret residing in the county which contains at a minimum the information required by Section 828.30, Florida Statutes, as amended.

Motor vehicle or vehicle shall mean any vehicle which is self-propelled, including a vehicle propelled by electric power, including, but not limited to, mopeds, go-carts, motorcycles, dune buggies, boats, recreational vehicles, trucks, trailers, semi-trailers, truck-tractors, semi-trailer combinations, or any other attachment to such a vehicle, operated on the roads of the county.

Nuisance shall mean a condition that disturbs the peace or interferes with the enjoyment of life or property, by persistent or repetitive barking, yelping, whining, howling, meowing, squealing, screaming, or causing other objectionable noise for a period of time, or dog feces left on public property, a public walkway, recreations areas or private property of others.

Occupied shall mean residential occupancy by the owner of the real property or by a tenant or lessee.

Officer shall mean any law enforcement officer as defined in Section 943.10, Florida Statutes, as amended, or any animal services officer as defined herein.

Official certificate of veterinary inspection shall be defined in accordance with Section 828.29(3)(b), Florida Statutes, as amended.

Owner or custodian shall mean any person owning, harboring, possessing, or otherwise keeping or exercising control or custody of any animal, or if the animal is owned by an individual under the age of eighteen (18), that individual's parent or guardian. Knowledge and acts of agents and employees of the owner in regards to animal transportation, employment or custody shall be held to be the knowledge and acts of the owner. Owner or custodian shall not include a community cat caregiver.

Owner release and surrender statement shall mean an animal release form or statement signed by the owner, or his or her authorized agent, which relinquishes all ownership and possessory rights and vests those rights in the county.

Person shall mean any individual, child, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, entity, or any group or combination thereof.

Pest shall include but shall not be limited to any rodent, snake, or other vermin.

Physical control shall mean the immediate and continuous control of an animal at all times by means such as an animal carrier or cage, leash, cord, or chain of sufficient strength to restrain the animal when off the property of the owner or custodian or on public property. The leash, cord, or chain shall not exceed eight (8) feet in length.

Proper enclosure shall mean securely enclosed and locked pen or structure, suitable to prevent the entry of other dogs, cats, or young children and designed to prevent the dog or cat from escaping over, under, or through the structure and shall also provide protection from the elements in a humane manner.

Public Common Area shall mean an outdoor area open to the public such as parks or recreation areas.

Public Thoroughfare, Public Common Area, and Flea Market Sales means the sale or transfer, offer for sale or transfer, auction, barter, display, advertisement for sale, giving away or otherwise disposing of any live Dog or Cat on any public thoroughfare, public common area, roadside area, in any parking lot, or in any flea market, to any member of the public.

Quarantine shall mean the strict, humane confinement, isolation, and observation of an animal suspected of carrying or being infected with rabies or some other contagious disease or dangerous condition.

Rabies exposure shall mean an action whereby a potentially rabid animal has bitten, scratched, or put its saliva in contact with the mucous membrane or an open lesion of another animal or human being.

Rabies vaccination shall mean the vaccination of a dog, cat, ferret, or other domestic animal with an anti-rabies vaccine approved by the U.S. Department of Agriculture (USDA) and administered by a licensed veterinarian.

Rear yard shall have the same meaning as set forth in the Manatee County Land Development Code.

Registration shall mean filing a county license certificate for an animal with the division informing them of ownership and for license tag purposes.

Residential property shall mean a parcel of real property that contains an occupied single-family detached dwelling located in a zoning district designated as residential single family (RSF) or planned development residential (PDR) under the Manatee County Land Development Code.

Retail Sale means the auction, barter, display for sale, offer for sale, or selling of any animal.

Severe injury shall mean any physical injury that results in broken bones, multiple punctures, or disfiguring lacerations requiring sutures or reconstructive surgery, regardless of the permanency of any disfigurement.

Shelter shall mean provision of and access to a three-dimensional structure having a roof, walls, and a floor, which is dry, sanitary, clean, weatherproof, and made of durable material. At a minimum, the structure must be:

- (1) Sufficient in size to allow each sheltered animal to stand up, turn around, lie down, and stretch comfortably;

- (2) Designed to protect the sheltered animal from the adverse effects of the elements and provide access to shade from direct sunlight and regress from exposure to inclement weather conditions; and
- (3) Free of standing water, accumulated waste and debris, protect the sheltered animal from injury, and have adequate ventilation. Structures with wire, grid, or slat floors which permit the animal's feet to pass through the openings, sag under the animal's weight or which otherwise do not protect the animal's feet or toes from injury are prohibited except for birds where perches are provided.

Side yard shall have the same meaning as set forth in the Manatee County Land Development Code.

Sterilized shall mean rendered permanently incapable of reproduction such as by surgical or chemical means.

Sustenance shall mean access to and the provision of palatable nourishment appropriate for the type of animal which is to eat it, free from contamination and provided in a clean and sanitary manner. Food shall be of sufficient nutritional value to maintain the animal in good health and shall be provided at suitable intervals for the species, age and condition of the animal, but not less than once daily, except as otherwise prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal to the species.

Tag shall mean a current county issued or approved animal license tag.

Tether shall mean to restrain an animal by tying the animal to any object or structure, including without limitation, chain, rope, cord, leash, running line, or other binding material. Tethering shall not include using a leash to walk an animal.

Torment shall mean every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief; except when done in the interest of medical science pursuant to and in compliance with the applicable law.

Transfer shall mean to convey or shift ownership from one person or authorized rescue partner with or without the exchange of money or other consideration.

Trap-neuter-return shall mean the nonlethal process of humanely trapping, sterilizing, vaccinating for rabies, ear-tipping, and returning community cats to their original location.

Unjustifiable pain or suffering shall mean the character of an act which cannot reasonably be excused, defended, or vindicated (such as in connection with the practice of veterinary medicine, law enforcement activities, to end needless suffering, or in defense of persons or other animals).

Unprovoked means that the victim, who has been conducting himself or herself peacefully and lawfully, and has done no act to induce an animal to act, has been bitten, chased in a menacing fashion, or attacked by an animal.

Veterinarian shall mean an individual who is licensed to engage in the practice of veterinary medicine in the State of Florida or is exempt from the state licensure requirements under the authority of Chapter 474, Florida Statutes, as amended.

Water shall mean provision of and access to clean, fresh, and potable water of a drinkable temperature which is free from contamination and provided in a suitable manner, in sufficient volume, and at suitable intervals to maintain normal hydration for the age, species, condition, size and types of each animal, except as otherwise prescribed by a veterinarian or as dictated by naturally occurring states of hibernation. An animal confined outdoors shall have a continuous supply of clean, fresh, and potable water, unless the animal is under the direct supervision of a responsible person who shall ensure sufficient water is provided to the animal in order to maintain normal hydration for the species of the animal.

Working cat program shall mean an adoption program that involves matching a working cat with a property owner that has property deemed appropriate by the division for a working cat to keep rodents away, such as a barn, warehouse, corporate campus or plant nursery, in exchange for the working cat's food, shelter and medical care.

Working cats shall mean a definable member of the community cat diversion program. Community cats that cannot be returned to the original location where they were found, may be designated by the division as working cats. Cats that qualify for the designation as working cats will generally possess one or more of the following characteristics, and can benefit people by keeping rodents away from their property:

- (1) Social, but too feisty for human interaction as a domesticated pet; and/or
- (2) Shy or fearful of people and prefer the company of other cats and animals; and/or
- (3) Litterbox habits which make them unsuitable to live indoors (and for whom medical issues have been ruled out).

Yard shall have the same meaning as set forth in the Manatee County Land Development Code.

EXHIBIT "B"

ARTICLE II – RESERVED RETAIL SALE OF DOGS AND CATS.Sec. 2-4-32. – Title. Animal Sale Prohibitions and Requirements.(a) *Prohibitions:*

- (1) It shall be unlawful for any Commercial Establishment to engage in the Retail Sale of a Dog or Cat.
- (2) It shall be unlawful for any person to engage in the Retail Sale of Dog or Cat from a Public Thoroughfare, Public Common Area, or Flea Market Sale.

(b) *Exemptions.* The following shall be exempt from the prohibitions in subsection (a) this section:

- (1) Animal Shelters.
- (2) Animal Welfare Organizations.

(c) *Amortization Period.* Any existing Commercial Establishment that is lawfully operating on or before August 10, 2021 shall be permitted to continue the Retail Sale of live Dogs or Cats for 1 year. As a condition of continued operation during the amortization period, a Commercial Establishment shall not increase or enlarge its floor space. A Commercial Establishment shall provide proof of its Retail Sales existing as of August 10, 2021, to the Animal Services Division through sales receipts, franchise agreements, leases, or other documentation readily authenticated as true and correct documents. Any Commercial Establishment that voluntarily abandons Retail Sale for a period of more than 30 days or ceases Retail Sale as a result of destruction by fire or other peril, shall lose its nonconforming status.(d) *Adoption of Animals.* Nothing in this Article shall prevent a Commercial Establishment from providing space to any Animal Welfare Organization or Animal Shelter for the purpose of showcasing a dog or cat for adoption to the public.(e) *Certificate of Source.* During the Amortization Period above, Commercial Establishments within Manatee County shall post and maintain in a conspicuous place, a Certificate of Source of each live Dog or Cat offered for sale or transfer, and shall provide a copy of such certificate to the purchaser or transferee of any Dog or Cat sold or transferred.