

ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 6 ANIMALS, RELATED TO THE SALE OF CATS AND DOGS IN RETAIL PET SHOPS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels is a home-rule city and is authorized under the Local Government Code to adopt and employ regulatory ordinances for the regulation the sale of, and protection of the health and welfare of, dogs and cats within commercial animal establishments, and

WHEREAS, the New Braunfels Humane Society has decreased the number of cats and dogs that are euthanized in recent years as a result of its large-scale effort to spay and neuter cats and dogs, but has had to continue to euthanize cats and dogs every month due to lack of space and overpopulation of cats and dogs; and

WHEREAS, a significant number of dogs and cats sold in retail pet shops are procured from large-scale, commercial breeding facilities; and

WHEREAS, overbreeding, inbreeding, lack of adequate veterinary care, lack of adequate space, and lack of adequate exercise are endemic to commercial breeding facilities; and

WHEREAS, current Federal, State, and Local regulations do not properly address the health and safety of cats and dogs that come from commercial breeding facilities and are sold in retail pet shops; and

WHEREAS, prohibiting retail pet shops from procuring cats and dogs from commercial breeding facilities is likely to help reduce the overpopulation of cats and dogs; and

WHEREAS, the City Council of the City of New Braunfels, Texas deems it necessary to amend its ordinances to protect the health and safety of cats and dogs in the City of New Braunfels; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting these amendments, including Action 3.6: Pro-actively provide a

regulatory environment that remains business and resident friendly; and Action 3.35: Support local non-profits whose mission includes Envision New Braunfels goals; and

WHEREAS, the City Council has directed that ordinances dealing with the care of pets be reviewed by the Animal Services Advisory Board to make recommendations concerning improving those regulations; and

WHEREAS, the Animal Services Advisory Board held separate public hearings on these amendments on October 27, 2021, December 16, 2021, March 3, 2022, and May 4, 2022 and recommended approval of the proposed amendments; and

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

SECTION 1

THAT the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2

THAT Chapter 6, Animals, Section 6-1 Definitions, is hereby amended with additions as underlined and deletions as stricken:

ARTICLE I. – IN GENERAL

Sec. 6-1. – Definitions.

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

Abandon means left without the needed protection, care, or support by the owner, a person, partnership, or corporation.

Altered or sterilized means the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

Animal means every nonhuman species of animal, both domestic and wild.

Animal at large means any animal not under the restraint (as defined in this section) of a person capable of controlling the animal on or off the premises of the owner.

Animal Care means the responsible practice of good handling, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when deemed necessary by an Animal Control Officer to prevent suffering or impairment of health.

Animal control officer or humane officer means any person designated by the city as a law enforcement officer who is qualified to perform such duties as required by this chapter and/or state law.

Animal shelter means any facility operated by a humane society, or municipal agency or its authorized agents, for the purpose of impounding stray, homeless, abandoned or unwanted animals under the authority of this chapter or state law for care, confinement, return to owner, adoption or euthanasia.

~~*Animal welfare group* means any not-for-profit group with 501(c)(3) status whose primary mission includes animal welfare.~~

Animal Welfare Organization means any non-profit organization that has tax-exempt status under United States Internal Revenue Code section 501(c)(3) and takes unwanted, abandoned, abused, or stray animals and places them into permanent or foster homes. Animal Welfare Organization does not include an entity who breeds animals; or in exchange for payment or compensation, obtains any cat or dog from a person or entity who either breeds cats or dogs or facilitates the sale of cats or dogs that were obtained from a person or entity that breeds cats or dogs.

Auction means any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this chapter. This definition does not apply to individual sales of animals by owners.

Bite means puncturing or tearing of the skin by an animal's teeth.

Bullhook means a tool or device, also known as an elephant goad or an ankus, used in handling and training elephants, consisting of a spike, hook or combination thereof, attached to a shaft or handle.

Cat means any live or dead felis catus.

Circus means a commercial variety show featuring animal acts for public entertainment.

Commercial Animal Establishment means any retail pet shop, grooming shop, guard dog or obedience training center, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, or boarding or breeding kennel.

Cruel manner includes a manner that causes or permits intentional pain or suffering.

Currently vaccinated means vaccinated and satisfying the following criteria:

- (1) The animal must have been at least three months of age at the time of vaccination;

- (2) At least 30 days have elapsed since the initial vaccination;
- (3) Not more than 12 months have elapsed since the most recent vaccination.

Designated Custodian means a person who has possession or control or responsibility of an animal in their direct supervision and is performing veterinary treatment, grooming, training, law enforcement activity, or any other animal related service where the owner and the custodian have agreed to the animal related service or activity.

Dog means any live or dead *canis familiaris*.

Domestic animal means tame, domesticated, of or pertaining to the family or household.

Ear tipping means the painless removing of the tip of the left ear of a cat while the cat is anesthetized by a licensed veterinarian.

Feral cat means any unowned, homeless, wild, or untamed cat which is too poorly socialized to be handled (and therefore must be trapped and sedated for examination) and which cannot be placed into a typical home as a domestic pet.

Feral cat colony means a group of cats that congregate together, more or less as a unit, who are fed and cared for by a feral cat colony caregiver.

Feral cat colony caregiver means a person who is approved by a sponsor who feeds feral cats, performs trap-neuter-return, and provides long-term care and monitoring for adult feral cats.

Food means access to food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, except as prescribed by a veterinarian.

Fowl means a bird of any kind; domestic cock or hen (*gallus gallus*).

Grooming shop means a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Guard dog means any professionally trained dog that will detect and warn its handler that an intruder is present in or near an area that is being secured.

Identification means any acceptable method such as micro-chipping, registration tag, or tattoo readily traceable to the current owner.

Kennel or *cattery* means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats; and/or a facility for keeping more than four animals of the same species.

Licensed veterinarian means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

Livestock means domestic animals used or raised on a farm, especially those kept for a profit; specifically, horses, ponies, mules, donkeys, cattle, goats, rabbits, sheep and swine, regardless of age, sex or breed.

Local health authority or rabies control officer. The city sanitarian shall be designated as the rabies control officer and shall handle all duties required under the Rabies Control Act of 1981 (V.T.C.A., Health and Safety Code § 826.001 et seq.).

Microchip implant means a passive electronic device that is injected into an animal by means of a hypodermic-type syringe device. Each microchip shall contain a unique and original number that is read by an electronic scanning device for the purposes of animal identification and recovery by the animal's owners.

Observation period means the ten days following a bite incident during which the biting animal's health status must be monitored. The ten-day observation period will begin on the day of the bite incident (day one).

Owner means any person, partnership, or corporation owning, keeping, or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more, or if it returns to a residence or business on three separate days.

Performing animal exhibition means any spectacle, display, act, or event, in which performing animals are used. This shall include animal amusement vendors such as, but not limited to, pony-go-round rides, commercial horseback pictures, etc.

Pet or companion animal means any animal kept for pleasure rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent on people for food and shelter.

~~*Pet shop* means any person, partnership, or corporation, whether operated separately or in connection with another business enterprise (except for a licensed kennel), that buys, sells, or boards any species of animal.~~

Retail Pet Shop means a for-profit retail establishment or place of business, where cats or dogs are sold, leased, offered for sale, traded, or given away for consideration. This does not include a private residence not generally open to the public, an animal shelter, or a facility operated by an animal welfare organization.

Possible exposure to rabies means the receipt of a bite or scratch from any warm-blooded animal, animal to human or animal to animal, is reason to suspect exposure to rabies.

Properly fitting means, with respect to a collar or harness used for a dog, a collar or harness that: does not impede the dog's normal breathing or swallowing; and is attached to the dog in a manner that does not allow for escape and does not cause injury to the dog.

Provocation means any purposeful act that causes an animal to bite, scratch, or attack in protection of self, owner, or owner's premises. Entrance, in any manner, into an area where an animal is properly under restraint in compliance with city ordinances would be considered provocation, irrespective of the reason for such entrance.

Public nuisance means any animal or animals that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interfere with the rights of citizens, other than their owners, to enjoyment of life or property. The term "public nuisance animal" means and includes, but is not limited to, any animal that:

- (1) Is repeatedly at large or stray;
- (2) Damages the property of anyone other than its owner;
- (3) Molests or intimidates pedestrians or passersby;
- (4) Trespasses on school grounds;
- (5) Chases vehicles;
- (6) 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;
- (7) 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 animal is kept or harbored;
- (8) Causes insanitary conditions in enclosures or surroundings where the animal is kept or harbored;
- (9) Is offensive or dangerous to the public health, safety, or welfare by virtue of the number and/or types of animals maintained; or
- (10) Attacks other domestic animals.

Quarantine means strict confinement, for the purpose of preventing the spread of disease, under restraint by closed cage, isolation, kennel, rabies chamber, paddock, or in any other manner approved by the local health authority on the private premises of the owner or at a facility approved by the state department of health.

Quarantine period means that portion of the observation period during which a biting animal is physically confined for observation as provided for under section 6-109.

Rabies means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

Registered feral cat colony means a managed feral cat colony registered with a sponsor and meeting all requirements of this chapter.

Releasing agency means a public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

Restraint means that an animal is secured by a leash or lead and under the control of a responsible person and obedient to that person's commands. At all other times, a dog or other such animal shall be confined to the realty or premises of the owner of such dog or other animal by a substantial fence of sufficient strength and height to prevent such dog or other animal from escaping therefrom; or inside a house on such premises; or secured on such premises by a leash consisting of a material of sufficient

strength to prevent such dog or other animal from escaping from such premises. It shall be unlawful for the leash to be arranged in a manner that allows the dog or other animal to get on or across or within eight feet of any street, park, or other public land or within eight feet of any sidewalk, public way, place or building when such leash is stretched to its full length. Any animal so arranged shall be considered dangerous to the public in general and declared a nuisance and shall be impounded. Although cats shall be exempt from the leash requirement while on the premises of the owner, any cat straying on the property of anyone except its owner shall be deemed a public nuisance animal and will be subject to impoundment.

Riding school or stable means any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule, or burro; or any place that regularly buys, sells, or trains the above animals, including a racetrack, trotting track, or rodeo.

School zone means a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.

Scratch means a scrape left by the claws or nails of an animal and of sufficient severity to break the skin and draw blood.

Shelter means provision of and access to housing that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry; during hot weather, is properly shaded and does not readily conduct heat; during cold weather, has a windbreak at its entrance and provides a quantity of bedding material consisting of hay, cedar shavings, or the equivalent that is sufficient to protect the animal from cold and promote the retention of body heat; and, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

Sick animal means any animal that appears to be suffering from an infectious, contagious, or communicable disease; or that is showing evidence of a physical injury, physical disorder, or traumatic injury; or that has an elevated temperature.

Sponsor is any animal welfare group partnered with and approved by the city that agrees to comply with the requirements of the ordinance from which this definition derives for sponsors and provides written notice to the city that it will serve as a sponsor.

Stray means animal running free or at large, with no physical or verbal restraint.

Tether means any leash, chain, cord, rope, or other means of restraining an animal or the act of chaining, tying, fastening or otherwise securing an animal to a fixed point so that it can move, lie down or range only within certain limits.

Traceable identification means a type of identification, such as a tag, microchip, or tattoo that can be readily used by an animal control officer or animal welfare personnel to identify the current ownership of an animal.

Trap, neuter and return (TNR) program shall mean a nonlethal, humane alternative to deal with the feral cats which are captured, vaccinated, altered and returned back to their location in order to encourage the stabilization of the free-roaming feral cat population in the city.

Unowned animal means any animal for which an owner has not been identified.

Vaccinated means properly injected with a rabies vaccine licensed for use in the subject species by the United States Department of Agriculture and administered by or under the direct supervision of a licensed veterinarian.

Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Vicious animal means any animal that attacks, bites, or injures human beings or domesticated animals without adequate provocation, or which, because of temperament, conditioning, or training, has a known propensity to attack, bite, or injure human beings or domesticated animals; or an individual animal which the local health authority has reason to believe has a dangerous disposition, likely to be harmful to humans or other animals.

Water means provision of and access to clean, fresh, drinkable water that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian.

Wild animal means any animal except the common domestic species (including, but not limited to, dogs, cats, horses, cattle, swine, sheep, and goats), regardless of the state or duration of captivity.

Wild state means living in its original, natural condition; not domesticated.

Wildlife means any animal that occurs naturally in the wild state.

Zoological park means any facility operated by a person, partnership, corporation, or government agency, other than a pet shop or kennel, displaying or exhibiting one or more species of no domesticated animals.

(Code 1961, § 3-1; Ord. No. 2006-51, § 1, 6-12-06; Ord. No. 2014-58, § 2, 8-11-14; Ord. No. 2019-54, § 2, 8-13-19)

Cross reference— Definitions generally, § 1-2.

State Law reference— Definitions pertaining to rabies, V.T.C.A., Health and Safety Code § 826.002.

SECTION 3

THAT Chapter 6, Animals, Section 6-27, Commercial Animal Establishment Permits, is hereby amended with additions as underlined and deletions as stricken:

ARTICLE II. LICENSES AND PERMITS

Sec. 6-27. Commercial animal establishment permits.

- (a) No person shall operate a commercial animal establishment, kennel or cattery unless the establishment is located in a properly zoned area and unless a permit has first been obtained in compliance with this section.
- (b) The city shall promulgate regulations for the issuance of permits for commercial animal establishments and shall include requirements for humane care of all animals and for compliance with the provisions of this chapter and other applicable laws. The city may amend such regulations from time to time as deemed desirable for public health and welfare and for the protection of animals.
- (c) A retail pet shop may not sell, lease, offer for sale, trade, give away for consideration or otherwise transfer a cat or dog unless the cat or dog was obtained by the retail pet shop from an animal shelter or animal welfare organization.
- (d) From October 24, 2022 to October 24, 2023 it is an affirmative defense to prosecution under subsection 6-27(c) that the retail pet shop was in operation and primarily engaged in the sale of cats or dogs on October 24, 2022 and that the operation of the retail pet shop has not ceased for more than seven (7) days since October 24, 2022.
- (e) Retail pet shops shall maintain a record of each cat and dog sourced from an animal shelter or animal welfare organization for at least one year from the date of sale or transfer for the cat or dog from the animal shelter or animal welfare organization to the retail pet shop. Retail pet shops must make such records available to the city upon request.
- ~~(e)~~ When an applicant for a permit under this section has shown that ~~he~~the applicant is willing and able to comply with the regulations promulgated by the city, a permit shall be issued upon payment of the applicable fee.
- ~~(e)~~ The permit period for commercial animal establishments shall begin with the calendar year and shall run for one year. Renewal applications for permits may be made 30 days prior to, and are due at, the start of the calendar year. Application for a permit to establish a new commercial animal establishment under the provisions of this chapter may be made at any time. The fees for a new establishment shall be prorated per the number of months left in the calendar year.
- ~~(e)~~ If there is a change in ownership of a commercial animal establishment, the new owner must apply for a new permit. Permits are not transferable.
- ~~(f)~~ No person shall train any dog to be used as a guard or sentry dog without possessing a valid state license and a valid city license. This section shall not apply to the city/county government or any of its agencies. The application for a

guard or sentry dog training license shall state the name, address, and phone number of the owner and trainer, location of the facility, and the maximum number of dogs to be housed at the training facility.

- (g) Annual permits for commercial animal establishments shall be issued upon payment of the applicable fee as listed in the fee schedule in section 6-4.
- (h) Every facility regulated by this chapter shall be considered a separate enterprise requiring an individual permit.
- (i) ~~Persons~~Individuals operating kennels for the breeding of dogs or cats may elect to license such animals individually.
- (j) No fee may be required of any veterinary hospital, animal shelter, government operated zoological park, school district, civic or charitable organization, or Comal County Fair Association (except for lease stables), but all other applicable regulations of this chapter shall apply.
- (k) Failure to obtain a permit before opening any facility covered in this section shall result in a fine as provided in section 6-5.
- (l) Any person who has a change in the category under which a permit was issued shall be subject to a reclassification of the permit fee.

(Code 1961, § 3-4)

SECTION 4

THAT 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 should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 5

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 6

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 7

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 8

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this the 10th day of October, 2022.

PASSED AND APPROVED: Second reading this the 24th day of October, 2022.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

DRAFT