

CITY OF FORNEY, TEXAS

ORDINANCE NO. 20- _____

AN ORDINANCE OF THE CITY OF FORNEY, TEXAS, AMENDING CHAPTER 2, ARTICLE 2.01, "GENERAL PROVISIONS," OF THE CODE OF ORDINANCES OF THE CITY OF FORNEY, TEXAS, BY AMENDING THE DEFINITIONS RELATED TO THE FENCE REQUISITE TO CONFINE AN ANIMAL, AND ARTICLE 2.06 "DANGEROUS DOGS," OF THE CODE OF ORDINANCES OF THE CITY OF FORNEY, TEXAS, BY AMENDING PERTINENT SECTIONS OF THE ARTICLE; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING AND SEVERABILITY CLAUSES; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Forney, Texas (the "City") is a home-rule municipality organized under the laws of the State of Texas; and

WHEREAS, the City Council of the City of Forney (the "City Council") has the authority and power to adopt and amend ordinances that regulate animals within the City's incorporated limits; and

WHEREAS, pursuant to the Texas Health and Safety Code, Title 10, Section 822.047, the City of Forney may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions are not specific to one breed or several breeds of dogs; and are more stringent than restrictions provided by this subchapter; and

WHEREAS, the City Council has investigated and determined that it is advantageous, beneficial, and in the best interest of the public health, safety, and welfare to adopt the regulations set forth herein.

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

Section 1. FINDINGS INCORPORATED

All of the above premises are found to be true and correct factual and legislative determinations of the City of Forney and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. AMENDMENT OF ARTICLE 2.01 "GENERAL PROVISIONS"

From and after the effective date of this Ordinance, Chapter 2, Article 2.01, of the Code of Ordinances of the City of Forney, Texas, is hereby amended by amending the pertinent definitions of Section 2.01.002 "Definitions," to read as follows:

Sec. 2.01.002 Definitions

At large or running at large. An animal that is not:

- (1) Confined to the premises of its owner by a physical fence of sufficient strength and height to prevent the animal from escaping therefrom;

- (2) Confined within a house, Building, or other enclosure; or
- (3) Secured on said premises by a leash of sufficient strength to prevent the animal from escaping from the premises, and so arranged that, when the leash is stretched to full length in any direction, the animal will remain upon said premises and not be able to reach a roadway, right-of-way, sidewalk, alleyway or common-use area.

Secure enclosure. A physically fenced area or structure that:

- (1) Is kept locked;
- (2) Prevents the entry of the general public, including children;
- (3) Prevents the escape or release of an animal;
- (4) Is clearly marked as containing a dangerous animal; and
- (5) Conforms to all other requirements established by the local animal services authority for a secure enclosure.

Section 3. AMENDMENT OF ARTICLE 2.06 “DANGEROUS DOGS”

From and after the effective date of this Ordinance, Chapter 2, Article 2.06, of the Code of Ordinances of the City of Forney, Texas, is hereby amended to read as follows:

Sec. 2.06.001 Definitions

(a) Except where a term is otherwise defined in subsection (b) of this section, the definitions contained in subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, are incorporated into this article by reference.

(b) In this article:

(1) *Bodily injury.* Physical pain, illness, or any impairment of physical condition visible trauma, such as puncture wound, laceration, or other piercing of skin.

(2) *Dangerous dog.* A dog that:

(A) 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

(B) 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) *Serious bodily injury.* An injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek

treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

- (4) Unprovoked. An action by a dog that is not:
- (A) In response to being tormented, abused, or assaulted by any person;
 - (B) In response to pain or injury;
 - (C) In protection of itself or its food, kennel, immediate territory, or nursing offspring; or
 - (D) In response to an assault or attempted assault on a person.
- (5) Vicious Dog. A dog that without provocation or justification bites or attacks a person and causes serious bodily injury or death or is declared vicious under this Article.

Sec. 2.06.002 Applicability of state law; animal control authority

- (a) The provisions of subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, are incorporated into this article, and a violation of any provision of subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, is an offense under this article.
- (b) The animal services officer shall serve as the animal control authority for the city for purposes of administering and enforcing this article and subchapter D, chapter 822 of the Texas Health and Safety Code, as amended.
- (c) Seizure, impoundment, and humane destruction of a dog that has caused death or serious bodily injury to a person is governed by subchapter A, chapter 822 of the Texas Health and Safety Code, as amended.

Sec. 2.06.003 Determination as ~~dangerous dog~~ of dog's status

- (a) Upon receipt of a sworn, written complaint by any person of an incident described in [section 2.06.001\(b\)\(2\)\(A\) or \(B\)](#) of this article, the animal services officer shall investigate and conduct a hearing to determine if a dog is dangerous or vicious. The sworn, written complaint must contain the name and address of owner, a description of the dog, location of the dog, date of the incident, and facts upon which the complaint is based. The hearing must be conducted within 30 days after receipt of the complaint.
- (b) The animal services officer shall provide notice of the date, time, and location of a hearing to the dog owner, either in person or by certified mail, return receipt requested, and to the complainant by regular mail. A hearing must be conducted not less than 10 days after notice has been mailed or delivered to the dog owner. At a hearing, all interested persons will be given the opportunity to present evidence on the issue of the dog's dangerousness or viciousness.
- (c) If a dog has caused bodily injury to any person, the animal services officer may seize and impound the dog at the owner's expense pending the hearing and a determination of whether the dog is a dangerous or vicious dog. If the animal services officer cannot, with due diligence, locate the owner of the dog that has been seized under this subsection, the animal services officer shall impound the dog. If the owner of the dog has not been located before the

15th day after seizure and impoundment, the animal services officer may order the dog to be humanely destroyed. If, during the time the dog is impounded, the owner claims the dog, the owner shall be served with notice of a hearing as provided in subsection (b) of this section.

(d) At the conclusion of a hearing required by this section, the animal services officer shall:

(1) Determine that the dog is not dangerous or vicious and, if the dog is impounded, waive any impoundment fees incurred and release the dog to its owner;

(2) Determine that the dog is dangerous and order the owner to comply with the requirements for ownership of a dangerous dog set forth in [section 2.06.005](#) of this article and in subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, and, if the dog is impounded, release the dog to its owner after compliance with all applicable requirements of subsection (f) of this section; or

(3) Determine that the dog is dangerous and order the owner to permanently remove the dog from the city within a designated period of time.

(4) Determine that the dog is vicious and comply with the requirements set forth in section 2.06.010.

(e) A dog may be declared dangerous under this section if the dog has within a twelve-month period attacked and killed a domestic animal on more than one occasion. For purposes of this subsection only, a domestic animal does not include any feral animal or does not apply where the attack was upon a domestic animal that was at large or upon a domestic animal that was tormenting or attacking the dog.

(f) Dogs shall not be declared dangerous or vicious if 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 dog, or was tormenting, abusing, provoking or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, provoked or assaulted the dog or was committing or attempting to commit a crime.

(g) If a dog is determined to be dangerous, the animal services officer shall notify the dog owner, either in person or by certified mail, return receipt requested:

(1) That the dog has been determined to be a dangerous dog;

(2) Whether the dog must be permanently removed from the city and the date by which the dog must be removed;

(3) What the owner must do to comply with requirements for ownership of a dangerous dog that is allowed to remain in the city and to reclaim the dog, if impounded; and

(4) That the owner has a right to appeal the determination of dangerousness or any order to remove the dog from the city.

(h) An impounded dog determined by the animal services officer to be dangerous must remain impounded, or confined at a location approved by the animal services officer, and will not be released to the owner until the owner pays all fees incurred for impoundment of the dog

and:

(1) If and while the dog is allowed to remain in the city, complies with all requirements for ownership of a dangerous dog set forth in this article and subchapter D, chapter 822 of the Texas Health and Safety Code, as amended; or

(2) If the dog is ordered permanently removed from the city, provides the animal services officer, in writing, with the street address, telephone number, and name of the person in control of the location outside of the city where the dog will be relocated or other evidence satisfactory to the animal services officer that the dog will be permanently removed from the city.

(i) If the owner of an impounded dog has not complied with subsection (f) (h) within 30 days after a final determination is made that an impounded dog is dangerous, the animal services officer may file a complaint in municipal court under [section 2.06.005](#) of this article.

Sec. 2.06.004 Appeals

If, under [section 2.06.003](#) of this article, the animal services officer determines that a dog is dangerous or orders a dangerous dog to be permanently removed from the city, that decision is final unless the dog owner files a written appeal with a justice, county, or municipal court of competent jurisdiction within fifteen (15) days after receiving notice that the dog has been determined to be dangerous or ordered to be removed from the city. The appeal standard is a substantial evidence review and is a civil proceeding for the purpose of affirming or reversing the animal services officer's determination of dangerousness or affirming, reversing, or modifying the animal services officer's removal order. If the municipal court allows a dangerous dog to remain in the city, the court shall order that the dog owner comply with the ownership requirements set forth in [section 2.06.005](#) of this article and may order additional conditions for maintaining ownership of a dangerous dog in the city.

Sec. 2.06.005 Requirements for owner of dangerous dog; noncompliance hearing

(a) In addition to complying with the requirements of subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, a person shall, not later than the 30th day after learning that he is the owner of a dangerous dog:

(1) Have an unsterilized dangerous dog spayed or neutered;

(2) Register the dangerous dog with the animal services officer and pay to the animal services officer a dangerous dog registration fee in the amount established by [appendix A](#) of this code;

(3) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(4) Obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal services officer;

(5) Place and maintain on the dangerous dog a collar or harness with a current

dangerous dog registration tag securely attached to it;

(6) Have the dangerous dog injected with a microchip implant and registered with a national registry for dogs; and

(7) Post a sign at each entrance to the enclosure in which the dangerous dog is confined stating "BEWARE DANGEROUS DOG."

(8) Provide to Animal Control two color photographs of the registered dog clearly showing the color and approximate size of the dog.

(b) The owner of a dangerous dog shall renew registration of the dangerous dog with the animal services officer annually and pay an annual dangerous dog registration fee to the animal services officer in the amount established by [appendix A](#) of this code.

(c) The owner of a dangerous dog who does not comply with subsection (a) shall deliver the dog to the animal services officer not later than the 30th day after learning that the animal is dangerous.

(d) The owner of a dangerous dog that has been ordered removed from the city shall relocate the dog to a place outside of the city within the time designated in the order. Within five days after the expiration of the time ordered for the dog's removal, the owner shall provide the animal services officer with proof of the removal and relocation, or other disposition, of the dog. Such proof must include the owner's written sworn affidavit stating:

(1) That the dog is no longer located in the city; and

(2) The name, street address, and telephone number of the person outside of the city in possession of the dog or the details of any other disposition of the dog.

(e) Upon receipt of a sworn, written complaint by any person that the owner of a previously determined dangerous dog has failed to comply with subsection (a) of this section or has failed to remove the dog from the city as required by order of the animal services officer or the municipal court, the municipal court shall conduct a hearing to determine whether the owner is in compliance with subsection (a) or with an order of removal, whichever applies. The hearing must be conducted within 30 days after receipt of the complaint, but, if the dog is already impounded, not later than ten (10) days after the date on which the dog was seized or delivered. The municipal court shall provide, either in person or by mail, written notice of the date, time, and location of the hearing to the dog owner and to the complainant. Any interested person may present evidence at the hearing.

(f) At the conclusion of the hearing, the municipal court shall:

(1) Find that the owner of a dangerous dog is in compliance with subsection (a) of this section or with an order of removal, whichever applies, and, if the dog is impounded, order the animal services officer to waive any impoundment fees incurred and release the dog to its owner; or

(2) Find that the owner of a dangerous dog is not in compliance with subsection (a) of this section or with an order of removal, whichever applies, and order the animal services officer to seize and impound the dog (if the dog is not already impounded) and

to:

(A) Humanely destroy the dog if the animal services officer determines that the owner has not complied with subsection (a) of this section by the 11th day after the date the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later, or release the dog to the owner if the animal services officer determines that the owner has complied with subsection (a) before the 11th day;

(B) Release the dog to the owner if the animal services officer determines that the owner will permanently remove the dog from the city before the 11th day after the date the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later, and reseize, impound, and humanely destroy the dog if the owner has not permanently removed the dog from the city by the 11th day; or

(C) Humanely destroy the dog if:

(i) The animal services officer determines that the owner will not comply with subsection (a) of this section by the 11th day after the date the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later;

(ii) The animal services officer determines that the owner will not permanently remove the dog from the city before the 11th day after the date the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later; or

(iii) The owner of the dog cannot be located before the 15th day after the date the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later.

(g) The owner of the dangerous dog is responsible for all costs of seizure, acceptance, and impoundment, and all costs must be paid before the dog will be released to the owner.

Sec. 2.06.006 Attacks by dangerous dog

(a) If a previously determined dangerous dog commits an act described in [section 2.06.001\(b\)\(2\)\(A\)](#) or (B) of this article, the animal services officer may seize and impound the dangerous dog at the owner's expense pending a hearing before the municipal court in accordance with this section.

(b) Upon receipt of a sworn, written complaint by any person of an incident described in [section 2.06.001\(b\)\(2\)\(A\)](#) or (B) of this article, the municipal court shall conduct a hearing to determine whether a dangerous dog committed an act described in [section 2.06.001\(b\)\(2\)\(A\)](#) or (B) of this article. The hearing must be conducted within thirty (30) days after receipt of the complaint, but, if the dog is already impounded, not later than ten (10) days after the date on which the dog was seized or delivered. The municipal court shall provide, either in person or by mail, written notice of the date, time, and location of the hearing to the dog owner and the complainant. Any interested person may present evidence at the hearing.

(c) At the conclusion of the hearing, the municipal court shall:

(1) Find that the dangerous dog did not commit an act described in [section 2.06.001\(b\)\(2\)\(A\)](#) or (B) of this article, and, if the dog is impounded, order the animal services officer to waive any impoundment fees incurred and release the dog to its owner;

(2) Find that the dangerous dog did commit an act described in [section 2.06.001\(b\)\(2\)\(A\)](#) or (B) of this article, and order the animal services officer to seize and impound the dog (if the dog is not already impounded) and to:

(A) Humanely destroy the dog;

(B) Humanely destroy the dog if the animal services officer determines that the owner has not complied with [section 2.06.005\(a\)](#) within a period of time designated by the court, or release the dog to the owner if the animal services officer determines that the owner has complied with [section 2.06.005\(a\)](#) within the designated period of time;

(C) Release the dog to the owner if the animal services officer determines that the owner will permanently remove the dog from the city within a period of time designated by the court and reseize, impound, and humanely destroy the dog if the owner has not permanently removed the dog from the city within the designated period of time; or

(D) Humanely destroy the dog if the owner of the dog has not been located before the 15th day after the municipal court issues an order under this subsection or the dog is seized and impounded, whichever occurs later.

(d) The owner of a dangerous dog is responsible for all costs of seizure, acceptance, and impoundment, and all costs must be paid before the dog will be released to the owner.

Sec. 2.06.007 Prohibition on owning dog determined dangerous by another jurisdiction

(a) A person commits an offense if he owns a dog in the city that has been determined to be a dangerous dog by any other jurisdiction under guidelines similar to those in this Article.

(b) It is a defense to prosecution under subsection (a) that the person owned the dog in the city on April 30, 2012.

Sec. 2.06.008 Surrender of dangerous dog

A person who owns a dog that has been ordered to be seized or impounded under this article commits an offense if the person does not surrender the dog to the animal services officer within the time period ordered by the animal services officer or the municipal court, whichever applies.

Sec. 2.06.009 Dog owned or harbored by minor

If the owner of a dangerous dog is a minor, the parent or guardian of the minor is liable for all injuries sustained by any person or another animal in an unprovoked attack by the dog.

Sec. 2.06.010 Vicious dogs

- (a) It is unlawful to keep, possess, or harbor a vicious dog within the City limits.
- (b) The animal services officer may order a dog euthanized that has been declared vicious.
- (c) The owner of a dog that the animal services officer declares to be vicious may appeal the determination to a justice, county, or municipal court of competent jurisdiction within 15 days of the declaration. If an appeal is timely filed, the order to destroy the animal is suspended pending the final determination of the Board except when the animal services officer declares that public health and safety require the immediate destruction of the animal as in the case of rabies.
- (d) The owner of a vicious dog shall be liable for and shall pay all costs associated with impoundment, removal, or euthanasia of said animal. The owner shall pay any other associated costs incurred.

Sec. 2.06.011 Defenses

Any defense to prosecution under subchapter D, chapter 822 of the Texas Health and Safety Code, as amended, is a defense to prosecution for a violation under this article.

Sec. 2.06.012 Declassification

- (a) Declassification of dangerous dogs will occur and the requirements under Sec. 2.06.005(a) may be removed after two years and when the following conditions have been met:
 - (1) The owner and offending dog has no subsequent violations of this Article;
 - (2) The owner of the dog has complied with all of the requirements under Sec. 2.06.005(a) for a period of two years; and
 - (3) The owner provides proof to the animal control officer successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist certified through the American College or Veterinary Behaviorists (ACVB) or equivalent training.
- (b) If the animal control officer finds sufficient evidence that the dog owner has complied with all of the conditions in this section, the application shall be forwarded to the Municipal Court to rescind the dangerous dog designation.

Section 4. SAVINGS CLAUSE

All rights and remedies of the City of Forney, Texas, are expressly saved as to any and all violations of the provisions of the Ordinance or any other ordinance which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 5. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections 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 of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 6. REPEALER CLAUSE

Any provision of any prior ordinance of the City, whether codified or uncodified, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 7. PENALTY CLAUSE

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed Two Thousand Dollars (\$2,000.00).

Section 8. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Forney, Texas, on this the _____ day of _____, 2020.

Mary Penn, Mayor

ATTEST:

Dorothy Brooks, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Jon Thatcher, City Attorney