

ORDINANCE NO. 2104

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS, AMENDING CHAPTER 10, "ANIMALS," SECTION 10-71 "VICIOUS ANIMAL," AND SECTION 10-72 "DANGEROUS DOGS," OF THE CODE OF ORDINANCES OF THE CITY OF EULESS, TO PROHIBIT DESTRUCTION OF A VICIOUS ANIMAL OR DANGEROUS DOG DURING THE PENDENCY OF AN APPEAL; PROVIDING FOR APPEALS FROM THE MUNICIPAL COURT FOR DECISIONS CONCERNING VICIOUS ANIMALS OR DANGEROUS DOGS; PROVIDING FOR AN APPEAL BOND IN AN AMOUNT SUFFICIENT TO COVER COSTS OF IMPOUNDMENT DURING APPEAL; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Euless, Texas is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has previous adopted an ordinance regulating dangerous dogs and vicious animals; and

WHEREAS, the legislature recently passed House Bill 1436 clarifying and amending the proceedings involving a dangerous dog determination; and

WHEREAS, the City Council finds that the current ordinance should be amended to comply with the state law requirements; and

WHEREAS, the City Council finds that regulations and amendments set forth herein are in the best interest of the health, safety and welfare of the citizens of Euless.

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

SECTION 1.

Chapter 10, "Animals", Article III, "Care and Control", of the Code of Ordinances of the City of Euless, Texas is hereby amended by revising Sections 10-71 and 10-72 to read as follows:

"Section 10-71. Vicious animal.

(a) *Determination of vicious animal by complaint to municipal court*

- (1) A person may report an incident described by the definition of vicious animal as contained in Section 10-2 of this Chapter to the Municipal Court by filing a sworn complaint detailing the incident. The Judge of the Municipal Court shall review each report filed pursuant to this section and shall issue a warrant authorizing animal control to seize the animal in question only upon a showing of probable cause to believe that the animal complained of meets the definition of vicious animal.
- (2) Upon receipt of a warrant from the Judge of the Municipal Court issued pursuant to subsection (a)(1) of this Section, the animal control officer shall seize the animal and impound the animal in secure and humane conditions until the Municipal Court orders the disposition of the animal.
- (3) The Municipal Court shall set a time for a hearing to determine whether the animal is a vicious animal. The hearing must be held not later than the 10th day after the date on which the animal was seized. The Municipal Court shall give written notice of the time and place of the hearing to:
 - a. The owner of the animal or the person from whom the animal was seized; and
 - b. The person who made the sworn complaint.
- (4) Any interested party, including the city attorney, may present evidence at the hearing.
- (5) The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.
- (6) Upon a determination that the animal complained of is a vicious animal, the Judge may order any of the following:
 - a. the owner of the animal to restrain the animal at all times on a leash, harness, or other restraining device, with a muzzle, or within a fenced enclosure secure enough to prevent the animal's escape; and/or

the owner of the animal to obtain liability insurance coverage or show financial responsibility in an amount of at least \$100,000 and provide proof of the required liability insurance coverage or financial responsibility to the animal control department;
 - b. the animal to be removed from the City of Euless within a certain time period; or

- c. the animal to be humanely destroyed, except that, notwithstanding any other law or local regulation, the court may not order the destruction of a dog during the pendency of an appeal.
- (7) Upon a determination that the animal complained of is not a vicious animal, the Judge shall order the animal control officer to release the animal back to its owner or the person from whom the animal was seized.
 - (8) The owner of an animal or the person making the complaint may appeal the decision of the municipal court in the manner described by Texas Health and Safety Code Section 822.0424.
- (b) *Authority of animal control to impound.*
- (1) If a person reports an incident described by the definition of vicious animal in Section 10-2 of this Chapter, the animal control officer may investigate the incident. If the animal control officer determines the animal is an immediate danger to persons or pet animals, the animal control officer shall notify the owner of that fact in writing and may impound the animal in secure and humane conditions.
 - (2) The animal control officer shall then request a hearing pursuant to subsection (a) of this Section to determine whether the impounded animal is a vicious animal.
 - (3) If impoundment cannot be done safely, nothing in this Chapter shall impair, restrict or remove the authority of an animal control officer or a peace officer to destroy an animal who is determined to be an immediate danger to a person or domestic animal.
- (c) *Violations.*
- (1) A person commits an offense if the person is the owner of an animal and the person, with criminal negligence, fails to secure the animal and the animal makes an unprovoked attack that causes injury or death to a pet animal at a location other than the owner's real property or in or on the owner's motor vehicle or boat.
 - (2) A person commits an offense if the person is the owner if an animal determined to be vicious under this section and the owner fails to comply with an order issued by the Judge pursuant to Section 10-71(a)(5).
 - (3) An offense under this section is a class C misdemeanor.

- (4) If a person is found guilty of an offense under this section, the Judge of the Municipal Court may order the attacking animal destroyed.
- (5) It is a defense to prosecution under this subsection that:
 - a. The person charged is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the animal in connection with that position.
 - b. The person charged is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.
 - c. The person charged is a dog trainer or an employee of a guard dog company under Texas Occupations Code, chapter 1702.”

Section 10-72. Dangerous Dogs.

(a) Determination that a dog is dangerous.

- (1) If a person reports an incident described by the definition of dangerous dog as contained in Section 10-2 of this Chapter, the animal control officer may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control officer determines the dog is a dangerous dog, it shall notify the owner of that fact in writing.
- (2) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control officer to the municipal court whereupon a hearing will be held pursuant to subsection (c).

(b) Reporting of incident.

- (1) A person may report an incident described by the definition of dangerous dog as contained in Section 10-2 of this Chapter to the municipal court. The owner of the dog shall deliver the dog to the animal control officer not later than the fifth day after the date on which the owner receives notice that the report has been filed. The animal control officer may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.
- (2) If the owner fails to deliver the dog as required by subsection (b)(1) of this section, the animal control officer may report this failure to the municipal

court whereupon the judge may issue a warrant authorizing seizure of the dog. The animal control officer shall seize the dog and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

- (3) The judge shall determine, after notice and hearing as provided in subsection (c) of this Section, whether the dog is a dangerous dog.
- (4) The judge, after determining that the dog is a dangerous dog, may order the animal control officer to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog and the dog is returned to the owner, ordered removed from the City, or destroyed.
- (5) The owner shall pay any cost or fee associated with the continued impoundment under subsection (b)(4).
- (6) The City of Euless, by the adoption of this subsection, hereby elects to be governed by V.T.C.A., Health and Safety Code § 822.0422.

(c) *Hearing.*

- (1) The court shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with subsection (d) of this Section. The hearing must be held not later than the tenth day after the date on which the dog is seized or delivered.
- (2) The court shall give written notice of the time and place of the hearing to:
 - a. The owner of the dog or the person from whom the dog was seized; and
 - b. The person who made the report.
- (3) Any interested party, including the city attorney, may present evidence at the hearing.
- (4) The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.
- (5) The owner of a dog or the person making the report may appeal the decision of the municipal court in the manner described by Texas Health and Safety Code Section 822.0424.

(d) *Requirements for owner of dangerous dog.*

- (1) Unless an appeal is pending pursuant to Section (a)(2); not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:
 - a. Register the dangerous dog with the city animal control department;
 - b. Restrain the dangerous dog at all times on a leash, harness, or other restraining device, and with a muzzle in the immediate control of a person or in a secure enclosure, as defined by V.T.C.A., Health and Safety Code § 822.041;
 - c. 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 control officer for the area in which the dog is kept; and
 - d. Comply with all applicable city or state regulations, requirements, or restrictions on dangerous dogs.
- (2) In addition to or in lieu of the requirements of subsection (d)(1) of this section, unless an appeal is pending, the animal control officer or the judge may order that the dog be permanently removed from the city within said 30-day period.
- (3) The owner of a dangerous dog who does not comply with subsection (d)(1) of this Section shall deliver the dog to the animal control officer not later than the 30th day after the owner learns that the dog is a dangerous dog.
- (4) If the judge finds, after notice and hearing provided by subsection (c) of this section, that the owner of a dangerous dog has failed to comply with subsection (d)(1) (2) or (3), the judge shall order the animal control officer to seize the dog and shall issue a warrant authorizing the seizure. The animal control officer shall seize the dog and shall provide for the impoundment of the dog in secure and humane conditions.
- (5) The owner shall pay any cost or fee assessed by the city related to the seizure, acceptance, impoundment, or destruction of the dangerous dog.
- (6) The court shall order the animal control officer to humanely destroy the dog if the owner has not complied with subsection (d)(1) of this section before the 11th day after the date on which the dog is seized or delivered

to the animal control officer except that, notwithstanding any other law or local regulation, the court may not order the destruction of a dog during the pendency of an appeal. The court shall order the animal control officer to return the dog to the owner if the owner complies with subsection (d)(1) of this section before the 11th day after the date on which the dog is seized or delivered to the authority.

- (7) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.
- (8) For purposes of this subsection, a person learns that the person is the owner of a dangerous dog when:
 - a. The owner knows of an attack described by the definition of dangerous dog as contained in this Chapter;
 - b. The owner received notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog; or
 - c. The owner is informed by the animal control officer that the dog is a dangerous dog under this Section.

(e) *Registration.*

- (1) The animal control officer shall annually register a dangerous dog if the owner:
 - a. presents proof of:
 - i. Liability insurance or financial responsibility, as required by subsection (d)(1)(c) of this Section;
 - ii. Current rabies vaccination of the dangerous dog; and
 - iii. The secure enclosure in which the dangerous dog will be kept; and
 - b. Payment of an annual registration fee as set forth in Section 30-4 of this Code.
- (2) The animal control officer shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

- (3) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority of the new address where the dog is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee as set forth in section 30-4 of this Code, the animal control officer shall issue a new registration tag to be placed on the dangerous dog's collar.
- (4) An owner of a registered dangerous dog shall notify the animal control officer of any attacks the dangerous dog makes on people.

(f) *Attack by dangerous dog.*

- (1) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.
- (2) An offense under this section is a Class C misdemeanor.
- (3) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in V.T.C.A., Health and Safety Code § 822.004.

(g) *Violations.*

- (1) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with subsection (d) or (e)(1) of this section.
- (2) An offense under this section is a Class C misdemeanor.

(h) *Defenses.*

- (1) It is an affirmative defense to prosecution under subsection (f) or (g) of this section that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.
- (2) It is an affirmative defense to prosecution under subsection (f) or (g) of this section that the person is an employee of the institutional division of the state department of criminal justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

- (3) It is an affirmative defense to prosecution under subsections (f) and (g) of this section that the person is a dog trainer or an employee of a guard dog company under V.T.C.A., Occupations Code Chapter 1702.

(i) *Authority of animal control officer.*

- (1) In addition to any other authority conferred by the Euless Code of Ordinances or state law, an animal control officer or a peace officer shall have the authority to immediately seize and impound any animal that bites a person.
- (2) If impoundment cannot be done safely, nothing in this Chapter shall impair, restrict or remove the authority of an animal control officer or a peace officer to destroy an animal who is determined to be an immediate danger to a person.”

SECTION 2.

CUMULATIVE CLAUSE. This Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Euless, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 3.

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

SECTION 4.

PENALTY CLAUSE. Any person, firm or corporation violating any of the terms and provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in accordance with Chapter 1, Section 1-12, Euless Code of Ordinances. Each such violation shall be deemed a separate offense and shall be punishable as such hereunder.

SECTION 5.

SAVINGS CLAUSE. All rights and remedies of the City of Euless are expressly saved as to any and all violations of the provisions of the City Code or any other ordinances regulating dangerous dogs or vicious animals that 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 6.

PUBLICATION. The City Secretary of the City of Euless is hereby directed to publish the caption, penalty clause and effective date of this ordinance in the official newspaper of the City of Euless, as required by Section 12 of Article II of the Charter of the City of Euless.

SECTION 7.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PRESENTED AND PASSED ON FIRST AND FINAL READING at a regular meeting of the Euless City Council on the ___ day of _____ 2016, by a vote of ___ ayes, ___ nays and ___ abstentions.

APPROVED:

APPROVED AS TO FORM:

Mary Lib Saleh
Mayor

Wayne K. Olson
City Attorney

ATTEST:

Kim Sutter, TRMC
City Secretary