

ORDINANCE NO 212

AN ORDINANCE OF THE CITY OF PELICAN BAY, TEXAS--REPEALING ORDINANCE # 193, PROVIDING FOR A NEW ORDINANCE, PROVIDING FOR THE CONTROL OF ANIMALS, PURSUANT TO TEXAS HEALTH AND SAFETY CODE TITLE 10, CHAPTERS 821, 822, 823, 826, AND 828, PROVIDING FOR A REPEALER CLAUSE, PROVIDING FOR SEVERABILITY, PROVIDING FOR ENGROSSMENT AND ENROLLMENT, PROVIDING FOR A PENALTY CLAUSE, PROVIDING FOR PUBLICATION, AND SETTING AN EFFECTIVE DATE.

WHEREAS, in order to provide for the public health, safety and welfare of its citizens and animals, it is necessary for the City of Pelican Bay to enact an ordinance providing for the control of animals.

WHEREAS, the Pelican Bay Animal Control Officer and the Pelican Bay Police Department Officers shall abide by all city, state and federal regulations and laws providing for animal control, but not limited to: prevention, destruction, control, registration, and impoundments.

THEREFORE, the City of Pelican Bay Council approves repealing Ordinance # 193; and providing a new ordinance for animal control

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELICAN BAY, TEXAS:

SECTION 1 \*\* DEFINITIONS.

For the purposes of the City of Pelican Bay Animal ordinance, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Animal Control Officer:** A person designated by the city council to represent and act for the city, to receive reports of animals at large, animals bites and to investigate bite reports, animal nuisances, animals at large, and other animal matters, insure quarantine of possibly rabid animals and otherwise carry out provisions of the Texas law pertaining to control eradication of rabies and otherwise enforce the provisions of this ordinance. A Pelican Bay Police Officer is also considered an animal control officer for the purpose of this ordinance.

**Animal Control Authority:** means the city council and or their designee as determined by the city council.

**City:** City of Pelican Bay, Texas

**Animal:** means any living creature including, but not limited to, dogs, cats, horses, birds, fish, mammals, reptiles, insects, fowl and livestock, but specifically excluding humans.

**Animal Shelter:** means any facility designated and/or operated by the city for the purpose of impounding and caring for animals under the authority of this ordinance.

**At Large:** means not completely confined by a building, wall, or fence of sufficient strength, height or construction to restrain the animal, except when such animal is either on a leash or held in the hands of the owner or under direct supervision of the owner within the limits of the owner's private property. An animal is also at large if chained to a stake in the ground, where either the stake or the chain is insufficient to insure the animal is restrained and can not escape

easily. An animal within an automobile or other motor vehicle including, but not limited to, convertibles, pick up trucks, jeeps and flatbeds trucks, shall be deemed to not be "at large" if:

- (1) The owner's proximity to the animal is sufficient for the owner to exercise control and supervision of the animal; or
- (2) The owner has taken appropriate and adequate action to confine the animal within the automobile or other motor vehicle.

**Bodily injury:** means any injury other than a serious bodily injury.

**Seriously bodily injury:** means an injury characterized by severe bite wounds or severe ripping and tearing of muscles 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.

**Cat:** means a domesticated member of the Family Felidae (felis catus), either dead or alive.

**Nuisance cat:** means and includes, but not limited to, a cat:

- (1) Defecating upon the property of another;
- (2) Attacking or harassing other animals;
- (3) Climbing upon a motor vehicle belonging to another; or
- (4) Tearing, puncturing or otherwise opening trash or garbage bags causing its contents to be emptied.

**Dog:** means any domesticated member of the Family Canidae, either dead or alive, but shall not include a wolf, jackal, coyote, fox or other dangerous wild animal of this family or hybrid thereof.

**Dangerous dog:** means that:

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

**Kennel:** means any premises where any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs, cats, or other animals.

**Dangerous wild animals:** means an animal, of a species other than a common domestic species and regardless of state and duration of captivity that poses a potential physical or disease threat to the public including, but not limited to, the following:

- (1) Class Reptilia. Family Helodermatidae (venomous lizards); Family Viperidae (rattlesnakes, copperheads, cottonmouths, and other pit vipers and true vipers); Family Elapidae (coral snakes, cobras, mambas and other Elapid); the following listed species of Family Colubridae--Dispholidus typos (Bloom slang), Hydrodynastes gigas (water cobra), Boiga (mangrove snake), and Thelotornis (African twig snake) only; Order Phidippidae, Family Dipsosaurus (racers, boas, water snakes and pythons) and Order Crocodylidae (crocodiles, alligators, caimans and gavials);
- (2) Class Aves. Order Falconiformes (such as hawks, eagles, and vultures); Subdivision Ratitae (such as rheas and cassowaries); and Order Strigiformes (such as owls);
- (3) Class Mammalia. Order Carnivora, Family Felidae (such as lions, cheetahs, bobcats, lynxes, servals, caracals, ocelots, matgays, tigers, jaguars, binturongs, leopards and cougars), except commonly accepted domesticated cats; Family Canidae (such as wolves, dingoes, hyenas, coyotes, jackals or hybrids thereof), except domesticated dogs; Family Mustelidae (such as weasels, skunks, martins, mink and badgers), except ferrets; Family Procyonidae (raccoon); Family Ursidae (such as bears); Order

Marsupialia (such as kangaroos and common opossums); Order Edentata (such as sloths, anteaters and armadillos); Order Proboscidea (elephants); Order Primata (such as monkeys, chimpanzees, orangutans, and gorillas); and Order Ungulata (such as antelope, deer, bison and camels); and

- (4) Other dangerous animals not listed. The animal control officer or Police officers may declare any species of animal not listed in this definition as prohibited if the confinement of the animal within the city can be shown to constitute a threat to public health and/or safety.

**Fowl:** means chickens, turkeys, pheasant, quail, geese, ducks, ostriches, emus, guineas, peacocks or similar feathered animals regardless of age, sex or breed.

**Hybrid:** means the product of mating to two different species of animal regardless of the number of generations born since that original mating.

**Livestock:** means horses, mules, donkeys, cattle, goats, sheep, emus and ostriches, regardless of age, sex or breed.

**Cruel treatment:** means any treatment to any animal in violation of Texas Penal Code 42.09.

**Spay/or neuter;** means the surgical removal of the reproductive organs of a dog or cat to render the animal unable to reproduce.

**Swine:** means pigs, hogs, potbellied pigs, or any member of the family Suidae.

**Owner:** means any person, firm, or corporation that has the right of property in an animal or that has care, custody, or possession of an animal or that provides a premise to which the animal returns for food, shelter or care for a period of five consecutive days.

**Person:** means any individual, firm, association, syndicate, partnership, corporation, or other entity.

**Secure enclosure:** means a fenced area that is locked; capable of preventing the entry of the general public, including children; capable of preventing the escape or release of an animal; and, if applicable, clearly marked as containing a dangerous dog.

**Unprovoked:** means the animal was not hit, kicked, struck, pulled, squeezed, etc. by a person or an object, and the animal was not provoked or taunted in a manner that an ordinary person would find unreasonable or objectionable.

**Vaccinated:** means properly injected with a rabies vaccine licensed for use in the species by the United States Department of Agriculture and administered by a veterinarian licensed to practice in the state of Texas.

**Currently vaccinated:** means vaccinated and satisfying the following criteria:

- (1) The animal must have been at least 3 (three) months of age at the time of the vaccination.
- (2) At least 30 days must have elapsed since the initial vaccination; and
- (3) Not more than 12 months (or time deemed appropriate by the State Department of Health) must have elapsed since the most recent vaccination.

## SECTION 2 \*\* RABIES CONTROL

### A. VACCINATIONS.

An owner of a dog, cat, or other animal for which a rabies vaccination is commonly given shall keep the animal currently vaccinated against rabies. Any person moving into the city from a location outside of the city shall comply with this section within 10 (ten) days after moving into Pelican Bay. If the animal has inflicted a bite on a person or another animal within the last 10 (ten) days, the owner shall report such fact to the veterinarian, and no rabies vaccine shall be administered until after the ten-day observation period.

## **B. CERTIFICATE OF VACCINATION.**

Upon the vaccination, the veterinarian shall execute and furnish to the owner of the animal as evidence thereof a vaccination certificate on a form by the veterinarian. The veterinarian shall retain a duplicate copy. The certificate shall contain the following information:

- (1) The name, address and telephone number of the owner of the vaccinated dog or cat;
- (2) The date of vaccination;
- (3) The year and number of the rabies tag; and
- (4) The breed, age, color and sex of the vaccinated dog or cat.

## **C. RABIES TAGS.**

Concurrent with the issuance and delivery of the certificate of vaccination referred to in section 2, subsection B, the owner of the animal shall cause to be attached to the collar or harness of the vaccinated dog or cat a metal tag, serially numbered to correspond with the vaccination certificate number, bearing the year of issuance and the name and address of the issuing veterinarian. The owner shall cause the collar or harness with the attached metal tag to be worn by the animal at all times.

## **D. DUPLICATE TAGS.**

In the event of loss or destruction of the original tag provided for in section 2, subsection C, the owner of the animal shall obtain a duplicate tag. Vaccination certificates and tags shall be valid only for the animal for which they were originally issued.

## **E. ANIMALS EXPOSED TO RABIES.**

Any person having knowledge of the existence of any animal known to have been, or suspected of being exposed to rabies shall immediately report such knowledge to an animal control officer and/or Police department, giving any information which may be required. Any animal that has been, or is suspected of having been exposed to rabies shall be quarantined in accordance with section 2, subsection G.

## **F. REPORTING BITES TO HUMANS.**

- (1) *Reporting animal bites.* Person having knowledge of an animal bite to a human, except bites by rodents, rabbits, fowl, or reptiles, shall report the incident to an animal control officer as soon as possible, but no later than 24 hours after the time of the incident.
- (2) *Owner responsibility.* The owner of the biting animal shall place that animal in quarantine, as prescribed in section 2, subsection G, under the supervision of an licensed veterinarian, at the owner's expense.
- (3) *Investigation.* The animal control officer or the Police department shall investigate each bite incident.

## **G. QUARANTINE PROCEDURES FOR ANIMALS.**

(1) *Disposition of biting animals.* The owner of an animal subject to quarantine pursuant to this chapter is required to produce the animal for a period of not less than 10 (ten) days' confinement at the owner's expense. However, the owner of the animal may request permission from the animal control officer or the Police department for home quarantine, if the animal control officer or the Police department determines that:

- (a) Secure facilities are available at the home of the animal's owner and the animal control officer or the Police Department has approved them.
- (b) The animal is currently vaccinated against rabies.

- (c) The nature of the bite is not severe.
- (d) A quarantine fee of \$50.00 (fifty dollars) is paid to the city.
- (e) The animal has not been running at large at the time the bite occurred.
- (f) The animal has not been quarantined for a previous bite incident.

(2) **Observation of the animal.** The animal control officer or a licensed veterinarian must observe the animal at least on the first and last days of the quarantine period. If the animal becomes ill during the observation period, the person having possession of the animal shall notify the animal control officer or the Police department.

(3) **Destruction of animal.** If the biting animal cannot be maintained in secure quarantine, it shall be humanely destroyed and the brain submitted to a state Department of Health certified laboratory for rabies diagnosis. The owner of the animal shall be responsible for the expense of shipping the brain of the animal.

(4) **Interruption.** A person commits an offense if the person interrupts the observation period. Any interruption of the quarantine by any person shall be just cause for seizure and impoundment of the quarantined animal by animal control or the Police department.

(5) **Release.** An animal that has been quarantined may be released by the local rabies control authority under the following conditions:

- (a) At the end of the observation period, upon a written release from a licensed veterinarian and proof of vaccinations or receipt of vaccination prior to the release from quarantine;
- (b) When all applicable fees have been paid; and
- (c) If the animal is not being impounded for legal proceedings.

(6) **Dangerous wild animals.** No dangerous wild animal will be placed in quarantine. Any dangerous wild animal involved in a biting incident will be humanely euthanized and the brain shall be submitted to a state Department of Health certified laboratory for rabies diagnosis, if the dangerous wild animal is determined to be the property of the owner, laboratory testing will be at the expense of the owner.

(7) **Disposition of unclaimed quarantined animal.** If the owner of a quarantined animal does not take possession of the animal, it may be disposed of in accordance with section 2, subsection G(3); at the expense of the owner.

## **H. ANIMALS AT LARGE.**

(1) **Generally.** An owner of any animal commits an offense if the owner fails to restrain the animal by leash, or within a fenced yard, motor vehicle, or enclosed structure. For purpose of this section, an offense occurs without regard to any culpable mental state of the owner.

(2) **Impoundment.** The animal control officer or Police department is authorized to impound any animal at large, other than a cat. Notwithstanding, the animal control officer or Police officer may impound a cat under conditions specified in section 2, subsection H(3).

(3) **Cats.** The provisions of subsection (1) of this section do not apply to the owner of a cat who fails to restrain the cat by leash or within a fenced yard, motor vehicles, or enclosed structure unless there is a persistent laxness in the supervision of cats so that their being at large results in an unreasonable disturbance to a person of ordinary sensibilities.

## **SECTION 3 \*\* IMPOUNDMENT**

### **A. IMPOUNDMENT.**

(1) **Generally.** Any animals violating any provisions of this ordinance may be impounded.

(2) **Complainant.** If any animal named in this ordinance is found at large upon the premises of any person other than the premises of the animal's owner, the owner or occupant of the premises

may confine such animal in a humane manner until he can notify the animal control officer or Police officer to impound such animal. When so notified, it shall be the duty of the animal control officer or Police officer to have such animal impounded as herein provided.

**(3) Impoundment period.** An impounded animal, including those released from quarantine, shall be kept for three days from the date of impoundment, except that any animal wearing a current tag shall be kept for five days from the date of impoundment. In calculating the length of time, the first day of impoundment shall be day one. If the owner of such impounded animal does not timely claim it, disposition will be in accordance with this ordinance.

**(4). Fees.**

**(1) Generally.** The owner must pay all fees for impoundments, as well as veterinary bills and other fees that are due to the city. The amount owed is the amount the city may be billed for impounds, care, feed, etc. by the council approved and designated veterinary clinic or other outside animal control agencies.

**(2) Daily Handling fees.** Any animal impounded, including those released from quarantine, the owner shall be charged a daily handling fee of \$7.50, beginning the first day, then for every day that the animal is impounded within the city. These fees are in addition to impound fees.

**(3) Impound fees.** If the animal is impounded by a facility outside of the city or by a veterinarian, the owner shall be responsible for all expenses incurred. Animals that are impounded within the city, the owner shall be charged at the rate described, plus the daily handling fee:

- (a) \$50.00 for first impoundment in 12 months.
- \$55.00 for second impoundment in 12 months.
- \$60.00 for third impoundment in 12 months.
- \$65.00 for fourth impoundment in 12 months.

**(5). Redemption.** An impounded animal, including those released from quarantine, other than dangerous wild animals, shall be available for immediate redemption by the owner by presenting photo identification of the owner and paying all applicable fees. An impounded dangerous wild animal shall be available for immediate redemption by a person designated by the owner, if such person holds a Certificate of Registration issued by an animal registration agency, as prescribed in Texas Health And Safety Code, 822.103, after the owner pays all applicable fees and signs an agreement with the city to immediately transport the dangerous wild animal outside the city, to not keep the dangerous wild animal at any time in the city, and authorizing the city to humanely destroy the dangerous wild animal if it comes inside the city again.

**(6) Disposal of unclaimed animals.** Any animal that is not timely claimed may be humanely euthanized, sold, adopted or given to a nonprofit humane organization, as determined by the animal control officer or a Police officer.

**(7). Disposal of dangerous wild animals.** Any dangerous wild animal may be immediately disposed of as deemed appropriate by the animal control officer or Police officer, if the dangerous wild animal, in the animal control officer's or Police officer's sole discretion, cannot be safely impounded.

**(8) Baby animals.** Any nursing baby animal impounded without the mother or where the mother cannot or refuses to provide adequate nutrition and the baby animal is suffering, may be immediately euthanized or given to a nonprofit humane organization for the purpose of veterinary care, as determined by the animal control or Police officers.

**(9) Owner relinquishing responsibility.** An owner who no longer wishes responsibility for an animal may sign a written waiver supplied by the animal control or Police officers allowing the animal to be immediately euthanized in a humane manner, adopted, sold, or given away to a nonprofit organization.

*(10) Fees for relinquishing animal responsibility:* Any owner who willingly relinquishes responsibility or ownership of any animal by signing a written waiver with the animal control officer or Police Department, shall be charged a fee as specified in section 3, subsection 12.

*(11) Injured animals.* Any impounded animal that appears to be suffering from injury or illness may be immediately euthanized or given to a nonprofit humane organization for the purpose of veterinary medical care, as determined by an animal control or Police officer.

*(12) Euthanasia and/or disposal fee.* The animal control authority, the city and/or Police Department shall charge a fee for requested euthanasia and/or disposal of an animal equal to the amount billed to the city by the council approved and designated veterinary clinic, or another animal agency. The owner or requestor must reside within the city limits at the time of the request for euthanasia and/or disposal.

#### **J. REGISTRATION.**

All dogs and cats shall be registered with the city, and renewed yearly that the animal remains within the city, with the following requirements:

- (1)* Completing a city required registration form.
- (2)* Registration fees shall be \$7.50 per animal and is required at the time of registration
- (3)* Current photograph or picture, in color and no larger than a 3 1/2" X 5", of animal for identification purposes.
- (4)* Required rabies vaccinations as specified in section 2, subsection B.
- (5)* Metal registration tags, supplied by the city, with the tag number, city address and phone number, shall be attached to the animal's collar or harness at all times.
- (6)* No registered animal owner shall be younger than 17 years of age at the time of registration.
- (7)* Multiple animal permits shall be required at time of registration, if required by section 2, subsection K.

#### **K. MAXIMUM NUMBER OF DOGS AND CATS.**

- (1)* A person commits an offense if the person keeps, at the person's residence, any combination in the number of dogs and cats such that their total exceeds 5 (five). An offense under this section is a class C misdemeanor.
- (2)* No person shall keep, house or maintain, in any combination in the number of dogs and cats greater than 3 (three) without a valid permit issued by the city.
- (3)* Any person's who maintains the total of 5 (five) animals shall be required to apply for a multiple animal permit with the city; identifying the location and paying a \$30.00 fee thereof.
- (4)* When the number of dogs and cats exceeds the limit of any combination of 3 (three), after the initial registration, the owner shall notify the city within 10 (ten) days and a multiple animal permit shall be required.

### **SECTION 4--DANGEROUS DOGS**

#### **A. PURPOSE.**

This Section provides a procedure for determining whether a dog is a danger to the people of Pelican Bay, and if deemed dangerous, for a fair and responsible resolution to the safety concern.

## **B. APPLICATION.**

Dog attacks on people are the primary focus of this Section, though a dog attack on another animal or that does not result in bodily injury, may give rise to a reasonable concern for the public safety and application of this Section.

## **C. REPORTING OF INCIDENT.**

- (a) A person shall report to the animal control officer and/or the Pelican Bay Police Department, as soon as is practical, any incident in which a dog:
- (1) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving on its own; or  
**ATTACKS WITHOUT CAUSING BODILY INJURY BUT THAT CREATES A REASONABLE BELIEF THAT THE DOG *WILL* CAUSE BODILY INJURY TO THAT PERSON.**
  - (2) commits an unprovoked act 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 on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.
- (b) The animal control officer or Police officer shall require sworn statements from all victims and witnesses of the unprovoked attack or act. If bodily injury has occurred, the animal control officer or Police officer may also obtain a sworn complaint from the victim for purposes of seizing the dog.

## **D. INVESTIGATION.**

The animal control officer or Police officer shall investigate all reports of an attack or unprovoked act by a dog.

## **E. SEIZURE OF DOG.**

- (a) In the event bodily injury has occurred as a result of the dog attack incident, the animal control officer or Police officer shall obtain a sworn complaint of any person, including the City Attorney, peace officer, or victim describing the incident and the injuries inflicted.
- (b) On the showing of probable cause to believe that the subject dog caused the serious bodily injury to the person stated in the complaint, the Municipal Court shall issue a warrant authorizing the seizure and impoundment of the subject dog. Such warrant must include the subject dog's owner's name and location for the purposes of notice.
- (c) The owner of the subject dog shall receive notice of the warrant by in-person delivery, certified mail, or delivery to any person of their household 18 years or age or older.
- (d) Any dog seized based on the allegation of being a dangerous dog shall be impounded in secure and humane conditions by the animal control officer or Police department pending hearing and a final determination whether the dog is dangerous per this Section.
- (e) Regardless of whether the dog is ultimately determined to be a dangerous dog, the owner shall pay all costs incurred in seizing and impounding the dog. The owner of a dangerous dog shall pay all costs incurred, if any, in euthanizing the dangerous dog.

## **F. HEARING.**

- (a) The Pelican Bay Municipal Court shall set and conduct a hearing to determine whether the subject dog is, by law, a dangerous dog. The hearing shall:
  - (1) be set and held at the next regular monthly Municipal Court date;



- (2) provide written notice by regular or certified mail, or in-person delivery, to all parties involved;
  - (3) be conducted by the Pelican Bay Municipal Court;
  - (4) be continued only for good cause.
- (b) If any party is unable to appear at the scheduled and noticed hearing time, they may appear by written and sworn affidavit for purposes of determining whether the subject dog is dangerous.
- (c) If a dangerous dog determination has not been made within 45 days of its impoundment, the animal control officer or Police officer shall return the subject animal to its owner, the person from whom the dog was seized or any other person authorized to take possession of the dog. However, the subject dog is not immune from being subsequently deemed dangerous through hearings or otherwise.
- (d) Any dangerous dog determination hearing shall be, by from, informal with use of the TEXAS RULES OF EVIDENCE advised, but not required.
- (e) An owner or person filing the dangerous dog determination action, may appeal the court's decision in the manner provided for the regular appeal of cases from the court.

#### **G. DETERMINATION.**

If the court determines the dog is a dangerous dog, the court shall give the owner a written order determining the dangerous dog.

#### **H. REQUIREMENTS FOR OWNER.**

- (a) Not later than 5 (five) days after the owner receives final notice that the dog is a dangerous dog, the owner shall:
- (1) Remove the dangerous dog from the city limits;
  - (2) If the owner shall obtain the same breed or species of dangerous dog, the owner shall be required to 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 a 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, Police Department and the city.
- (b) For the purposes of subsection (a) of this section, a person receives final notice that the dog is a dangerous dog upon latest of:
- (1) Receiving a written decision from the Municipal Court that the dog is a dangerous dog;
  - Or
  - (2) Receiving a final order from the appellate court that the dog is a dangerous dog.
- (c) If the owner of a dangerous dog does not comply with the subsection (a) of this section, the animal control officer or the Police Department shall humanely destroy the dangerous dog at the expense of the owner.

#### **I. NOTIFICATIONS.**

The owner of a dangerous dog shall notify the animal control officer and the Police Department within 24 hours if the dangerous dog is at large, unconfined, has attacked a human being or another animal, has died, or has been sold or given away. If ownership of the dangerous dog changes, the former owner shall provide the animal control officer, the Police Department and the city with the name, address and telephone number of the new owner. The new owner shall not reside within the city and the new owner shall be notified that the dog has been determined to be a dangerous dog and that the determined dangerous dog shall not be permitted to reside within the city. The same reporting requirements are imposed on any and all subsequent owners of the

dangerous dog.

#### **J. NUISNACE DECLARED.**

It is hereby declared to be a public nuisance for an owner to keep a dangerous dog within the city limits.

#### **K. VIOLATIONS AND DEFENSES.**

- (a) A person who owns a dangerous dog commits an offense if:
  - (1) The person fails to comply with any provisions of this article or the court order;
  - (2) The dangerous dog makes an unprovoked attack on another person outside the dog's enclosure and caused bodily injury to another person.
- (b) An offense under this section is a class C misdemeanor, unless an attack under subsection (a)(2) of this section causes serious bodily injury, in which event the offense is a third degree felony or causes death, in which the offense is a second degree felony as provided by TEXAS HEALTH AND SAFETY CODE 822.005.
- (c) It is a defense to prosecution under this article that:
  - (1) The person is a veterinarian, a peace officer, or a person employed by the state, city, or a recognized animal shelter for the purpose of handling stray animals; has temporary ownership, custody or control of the dog; and is acting within the course and scope of the person's official duties.
  - (2) The person is an employee of the institutional division of the State Department of Criminal Justice or law enforcement agency; trains or uses dogs for law enforcement or corrections purposes; and is acting within the scope of the person's official duties; or
  - (3) The dog at issue is a trained guard dog in the performance of official duties while confined or under the control of its handler.

#### **L. DANGEROUS WILD ANIMALS.**

A person commits an offense if the person keeps a dangerous wild animal. It is an affirmative defense to prosecution for this violation that the dangerous wild animal is kept as part of a circus, performing animal exhibition, zoological park and/or commercial animal establishment. *An offense under this section is a class C misdemeanor.*

- (a) Dangerous wild animals are prohibited within the city.

#### **M. LIVESTOCK AND FOWL.**

- (1) Livestock and fowl that are kept, owned or harbored within a land use zoning classification allowing same shall constitute a nuisance if any such animal is kept, stabled, or pastured within 100 feet of an occupied building. The term "occupied building" as used herein shall mean a building occupied by any person, other than building and structures owned or controlled by the owner of the animals involved. This section does not apply to "occupied buildings" constructed after the keeping of any livestock and/or fowl is in place, or if the land upon which the animals are maintained is zoned A agriculture.
- (2) The keeping of livestock and fowl within the zoning classification SFE single-family estate is prohibited, except horses and mules.
- (3) Tracts or parcels of land of less than 10 (ten) acres that are zoned as SFE single-family estate may maintain horses and/or mules at a rate of two head for the first full acre under fence and an additional one head per fenced acre thereafter. Pasture fencing must be a minimum of 5 (five) feet in height at its lowest point and cannot extend into the front yard between the main building structure and street.

- (4) Horses and/or mules kept on land zoned SFE single-family estate shall be provided with a minimum of a three-sided roofed shelter, approved by the city, with a minimum of 300 square feet per animal.

**N. KENNELS.**

No property in the city shall be used as a kennel unless such property is zoned for such use.

**SECTION 5 \*\* NUISANCES.**

**A. OFFENSIVE ORDERS.**

A person commits an offense if the person keeps any animal in such a manner as to endanger the public health, or to annoy neighbors by the accumulation of animal wastes which cause foul or offensive odors or are considered to be a hazard to any animal or human. *An offense under this section is a class C misdemeanor.*

**B. ANIMALS DEFECATING.**

An owner of an animal commits an offense if the person permits, either willfully or through failure to exercise proper care and control, any animal to defecate upon the parkway, or any public street, or upon the floor of any common hall in any entrance way, stairway or wall of any public place or building or any private property except the owner's. It shall be an affirmative defense to prosecution under this section if the owner immediately removes any excreta deposited by the owner's animal or the animals are performing in a parade or circus. *An offense under this section is a class C misdemeanor.*

**C. BEES.**

The keeping of bees in such manner as to deny the lawful use of adjacent property or endanger personal health and welfare is prohibited.

**D. SWINE.**

It shall be unlawful to keep swine, of any size, age or breed within the city. Under no circumstances shall a person engage in propagation or breeding of swine within the city. A person commits an offense if the person keeps swine. *An offense under this section is a class C misdemeanor.*

**SECTION 6 \*\* CARE AND HUMANE TREATMENT**

**A. USE OF TRAPS WITH HOLDING MECHANISMS.**

A person commits an offense, if within the city limits, the person sets up or allows to be set up on the person's property a steel jaw trap, a spring trap with teeth or perforated edges on the holding mechanism, or any type of trap with a holding mechanism designed to reasonably ensure the cutting, slicing, tearing or otherwise traumatizing of the entrapped prey. *An offense under this section is a class C misdemeanor.*

**B. TYING DOGS AND OTHER ANIMALS.**

A person commits an offense if the person ties or tethers a dog or other animal to a stationary object in a location so as to create, as determined by the animal control officer or a Police officer, an unhealthy situation for the animal or potentially dangerous situation for the pedestrian or child

living or playing nearby. *An offense under this section is a class C misdemeanor.*

**C. FENCED ENCLOSURES.**

A person commits an offense if the person keeps a dog or other animal within a fenced enclosure in which the fence is in a state of disrepair such that the animal may escape or be injured, or may pose a threat to passersby. *An offense under this section is a class C misdemeanor.*

**D. YOUNG RABBITS AND FOWL.**

A person commits an offense if the person sells, offers for sale, barter or gives away as toys, premiums or novelties, baby chickens, ducklings or other fowl under three weeks old and rabbits under two months old, unless the manner or method of display is first approved by the animal control officer or Police officer. *An offense under this section is a class C misdemeanor.*

**E. DYED ANIMALS.**

A person commits an offense if the person colors, dyes, stains, or otherwise changes the natural color of any chickens, ducklings, other fowl or rabbits, or to possess, for the purpose of sale or to be given away, any of the above-mentioned animals which have been so colored.

**F. LIMIT OF FOWL.**

A person commits an offense if the person keeps more than 5 (five) fowl, except when the same are kept more than 150 feet from any property line. *An offense under this section is a class C misdemeanor.*

**G. ANIMALS NOT TO BE USED AS PRIZES OR INDUCEMENT.**

A person commits an offense if the person gives away or auctions any animal as a prize for, or as an inducement to enter any contest, game, or competition, or as an inducement to enter a place of amusement, or offer such animal as an incentive to enter into any business establishment whereby the offer was for the purpose of attracting trade. *An offense under this section is a class C misdemeanor.*

**H. KNOWING EXPOSURE TO POISON.**

A person commits an offense if the person knowingly exposes any known poisonous substance, whether mixed with food or not, so that the same may be eaten by any pet or domestic animal. *An offense under this section is a class C misdemeanor.*

**I. ANIMALS IN PARKED CARS.**

A person commits an offense if the person leaves any animal in the standing or parked vehicle in such a way as to endanger the animal's health, safety or welfare. Any animal control officer or Police officer is authorized to use reasonable force to remove an animal from a vehicle whenever it appears the animal's health, safety or welfare is or soon will be endangered, and said animal shall be impounded. *An offense under this section is a class C misdemeanor.*

**J. SALE OF ANIMALS.**

A person commits an offense if the person sells, trades, barter, leases, rents, gives away, or displays for a commercial purpose, any live animal on any roadside, public right-of-way, or commercial parking lot. *An offense under this section is a class C misdemeanor.*

**K. SEIZURE.**

The animal control officer or Police Department shall liberally utilize the authority granted by TEXAS HEALTH AND SAFETY CODE 821.022 to seize and impound any animal, if the animal control officer or Police Department has reason to believe that an animal has been or is being cruelly treated, pending a hearing before the Municipal Court on the issues of cruelty and disposition of the animal. Seizure of the subject animal prior to receiving a warrant is hereby authorized if such delay endangers the life of or would unreasonably prolong the suffering of the subject animal requiring immediate veterinary care.; at which time the owner shall be responsible for all fees incurred, either by being billed by the city or veterinarian clinic.

**L. CARE AND TREATMENT.**

The City of Pelican Bay will not tolerate and will pursue to the fullest extent of the law criminal charges against any person who:

- (1) Deprives an animal of sufficient good and wholesome food and/or water, adequate shelter and protection from the weather, veterinary care (when needed to prevent suffering), and humane care and treatment;
- (2) Beats, cruelly ill treats, overloads, overworks, or otherwise abuses an animal as described in TEXAS PENAL CODES 42.09, 42.10, AND 42.092, as amended, or causes, instigates or permits any dog fight, cock fight, bull fight or combat between animals or between animals and humans; or
- (3) Abandons any animal in the person's custody.

**SECTION 7 \*\* MISCELLANEOUS PROVISIONS.**

**A. AUTHORITY TO EMPLOY/CONTRACT.**

The city council has the authority to employ/contract animal care and control services, namely a certified animal control officer, to work in the city to enforce Pelican Bay's Animal Coeds and/or ordinance and to promote the general welfare of the city's animal population, including, but not limited to: impoundment, inspections, investigations, consulting, etc. This authority to employ/contract is limited to \$500.00 (five hundred) monthly. Any amount in excess of \$500.00 must have council approval.

**B. ANIMAL CONTROL ENFORCEMENT FUNDS.**

All fines paid for offenses, and other fees derived from the Pelican Bay Animal control ordinance shall be allocated to the city's general fund for the purpose of paying fees to contract/employed animal control officers and to be applied to paying for impoundment fees to contracted shelters and/or organizations. Any money dispensed from the general fund shall be first approved by the city council and may be used for the purposes they see fit, but as a guiding principle should be for the improvement, maintenance and expenses of the City's animal control enforcement.

**C. INTERFERENCE WITH CITY AGENTS.**

A person commits an offense if the person interferes with or hinders any agent of Pelican Bay in the performance of any duty pursuant to this ordinance of such agent, or seeks to release any animal in the custody of the city or its agents, except as provided in this ordinance. An offense under this section is a class C misdemeanor.

**SECTION 8 \*\* REPEALER CLAUSE**

All ordinances or parts of ordinances not consistent or conflicting with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

**SECTION 9 \*\* SEVERABILITY CLAUSE.**

That it is hereby declared to be the intention of the City Council that the sections, articles, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable and if any phrase, clause, sentences, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, subsections, articles, or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article or section.

**SECTION 10 \*\* ENGROSSMENT AND ENROLLMENT CLAUSE**

The City Secretary of the City of Pelican Bay is hereby to engross and enroll this ordinance by copying the caption, penalty clause, publication clause and effective date clause in the minutes of the City Council and filing the ordinance in the ordinance records of the city.

**SECTION 11 \*\* PUBLICATION CLAUSE**

The City Secretary is hereby directed to post or publish in an official newspaper for the city, the caption, penalty clause, publication clause and effective date clause of this ordinance in one issue of the official newspaper for the city, provided that the official newspaper is a weekly paper, as authorized by Section 52.011 of the TEXAS LOCAL GOVERNMENT CODE.

**SECTION 12 \*\* PENALTY**

Any person, firm, or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor and/or felony and upon final conviction thereof fines in an amount not to exceed \$500.00 (five hundred dollars), with exception of fines that are accessed by law. Each day any such violations shall be allowed to continue shall constitute a separate violation and punishable hereunder.

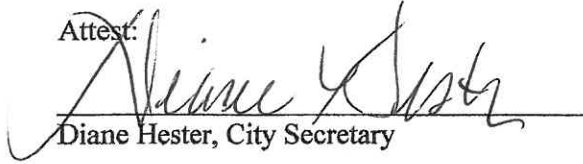
**SECTION 13 \*\* EFFECTIVE DATE**

This ordinance shall be effective after final passage and publications as required by law.

PASSED AND APPROVED THIS DAY 25 OF Oct, 2008  
BY A VOTE OF \_\_\_\_\_ NAYS AND 5 AYES.

Thomas Tolbert, Mayor of Pelican Bay, Texas

Attest:

  
Diane Hester, City Secretary

Approved as to form and legality:

Cass Callaway, Attorney for the City Pelican Bay, Texas

Applicable fees:

Impoundments:

Within the city; \$50. First impoundment in 12 months

\$55. Second impoundment in 12 months

\$60. Third impoundment in 12 months

\$65. Fourth impoundment in 12 months

Outside of city: Owner is responsible for all fees incurred, in addition to other fees

Quarantine: \$50.00 to city, {PLUS all incurred veterinary expenses, impoundment, fines/fees, etc.}

Daily handling; \$7.50 per day {from day one and as long as animal is in shelter

Euthanasia, Disposal, Relinquishing ownership: {equal to amount billed by vet/other animal agency.}

Registrations: \$7.50 per animal per year (max-combination of three)

Multiple permit: \$30.00, per year, (not to exceed combination of five, and identifying location )

Owners are responsible for other fees which may be billed to the city, but not limited to; laboratory testing, (if applicable), veterinary care, removal, sheltering, etc.