

## ORDINANCE NO 275

**AN ORDINANCE OF THE CITY OF PELICAN BAY, TEXAS, AMENDING ORDINANCE #246, 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,** it is the intent and purpose of this chapter to provide a safe and healthy environment within the city for both people and animals with the recognition that while persons may own and keep animals within the city, the conduct of those animals should be controlled for public safety and the conditions in which they are kept should be appropriate so as to protect the animals and avoid infringement on the peace and enjoyment of surrounding property, homes, and property owners.

**WHEREAS,** the Pelican Bay Animal Control Officer and the Law Enforcement 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 amending Ordinance #246;

**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:*** 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 Control Authority:*** means the City Council and/or their designee as determined by the City Council.

***Animal Control Officer:*** A person designated by the City Council and/or Law Enforcement Agency to represent and act for the City, to receive reports of animals-at-large, animal 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 and eradication of rabies and otherwise enforce the provisions of this ordinance. A Law Enforcement Officer is also considered an animal control officer for the purpose of this ordinance.

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**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. See City's leash law. 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 cannot escape easily. An animal within an automobile or other motor vehicle including, but not limited to, convertibles, pickup trucks, jeeps and flatbeds trucks, shall be deemed to not be "at-large" if:

- (a) The owner's proximity to the animal is sufficient for the owner to exercise control and supervision of the animal; or
- (b) The owner has taken appropriate and adequate action to confine the animal within the automobile or other motor vehicle.
- (c) Animal is running loose with owner present.

**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:

- (a) Defecating upon the property of another;
- (b) Attacking or harassing other animals;
- (c) Climbing upon a motor vehicle belonging to another; or
- (d) Tearing, puncturing or otherwise opening trash or garbage bags causing its content to be emptied.

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

**Class C Misdemeanor/General Penalty:** General penalty for violations of code; continuing violations (a) whenever this code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense of a misdemeanor or whenever in this code or such ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this code or any such ordinance shall be punished by a fine of not exceeding five hundred dollars (\$500.00)

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

**Dangerous dog:** means a dog that:

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

**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.

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***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:

- (a) Class Reptilia. Family Helodermatidae (venomous lizards); Family Veiira (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 Colubride-Dispholidus typos (Bloom slang), Hydrodynastes gigas (water cobra), Boiga (mangrove snake), and Thelotornis (African twig snake) only; Order Phidia, Family Ooidae (racers, boas, water Snakes and pythons) and Order Crocodilia (crocodiles, alligators, caimans and gavials);
- (b) Class Aves. Order Falcon forms (such as hawks, eagles, and vultures); Subdivision Ratitae (such as rheas and cassowaries); and Order Sting forms (such as owls);
- (c) 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 Proboscides (elephants); Order Primata (such as monkeys, chimpanzees, orangutans, and gorillas); and Order Ungulata (such as antelope, deer, bison and camels); and
- (d) Other dangerous animals not listed. The animal control officer or Police officers may declare any species of animal not listed in this definition as dangerous 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, (hens) and ducks. All other fowl species are prohibited.

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

***Injury.***

- (a) Bodily Injury: means any injury that causes pain.
- (b) 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.

***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.

***Leash Law:*** Household dogs must be under control on a leash when not secured in the house or in a fenced yard.

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

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

**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.

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

**Secure enclosure:** means a fence or structure of at least four (4) to six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a dangerous animal in conjunction with other measures which may be taken by the owner. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom, and shall be designed to prevent the animal(s) from escaping from the enclosure. The enclosure shall be posted with signs on all sides in four-inch letters warning of the presence of a dangerous animal understandable by young children.

**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:

- (a) The animal must have been at least 3 (three) months of age at the time of the vaccination.
- (b) At least 30 days must have elapsed since the initial vaccination; and
- (c) 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

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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 8, 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 a 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

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- 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 as stated in the City's leash law, 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).

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- (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 damage to property or injury to persons or other animals.

### 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 law enforcement officer to impound such animal. When so notified, it shall be the duty of the animal control officer or law enforcement 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.**

(a) **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.

(b) **Daily Handling fees.** Any animal impounded, including those released from quarantine, the owner shall be charged a daily handling fee of \$10.00, beginning the first day, then for every day that the animal is impounded within the city. These fees are in addition to impound fees.

(c) **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:

\$50.00 for first impoundment in 12 months.

\$60.00 for second impoundment in 12 months.

\$75.00 for third impoundment in 12 months.

\$100.00 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

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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 officers 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 department.

(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 requester must reside within the city limits at the time of the request for euthanasia and/or disposal.

### B. 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 spayed and neutered animal and \$10.00 per non-spayed and non-neutered animal and is required at the time of registration.
- (3) Required rabies vaccinations as specified in section 2, subsection B.
- (4) 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.
- (5) No registered animal owner shall be younger than 17 years of age at the time of registration.
- (6) Multiple animal permits shall be required at time of registration, if required by section 3, subsection C.



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### C. MAXIMUM NUMBER OF DOGS

- (1) A person commits an offense if the person keeps, at the person's residence, more than three (3) dogs. *An offense under this section is a class C misdemeanor.*
- (2) Any person(s) prior to this ordinance who maintains more than 3 (three) dogs shall be required to apply for a multiple animal permit with the city; identifying the location and paying an additional \$30.00 fee thereof, not to exceed 5 (five) dogs.
- (3) No person shall keep, house, or maintain, more than 3 (three) dogs without a valid permit issued by the city.

### 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, although a dog attack on another animal or person may not result in bodily injury, it may give rise to a reasonable concern for the public safety and application of this Section.

#### C. REPORTING OF INCIDENT

- (1) A person shall report to the animal control officer and/or the law enforcement officer, or dial 911 as soon as is practical, any incident in which a dog:
  - 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 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.
  - b. 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.
- (2) The animal control officer or law enforcement officer shall require sworn statements from all victims and witnesses of the unprovoked attack or act. If bodily injury occurs, the animal control officer or law enforcement officer may also obtain a sworn complaint from the victim for purposes of seizing the dog.

#### D. INVESTIGATION

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

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

- (1) In the event bodily injury has occurred as a result of the dog attack incident, the animal control officer or the 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.
- (2) On the showing of probable cause to believe that the subject dog caused the 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.
- (3) 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.
- (4) 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.
- (5) Regardless of whether the dog is ultimately determined to be a dangerous dog, the owner shall pay all costs incurred during seizing and impounding the dog. The owner of a dangerous dog shall pay all costs incurred, if any, in euthanizing the dangerous dog.
- (6) The owner shall meet and follow all requirements in subsection H before the dangerous dog can be released from impoundment.

### **F. HEARING**

- (1) 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:
  - (a) be set and held at the next regular monthly Municipal Court date;
  - (b) provide written notice by regular or certified mail, or in-person delivery, to all parties involved;
  - (c) be conducted by the Pelican Bay Municipal Court;
  - (d) be continued only for good cause.
- (2) 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.
- (3) 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.
- (4) Any dangerous dog determination hearing shall be, by from, informal with use of the TEXAS RULES OF EVIDENCE advised, but not required.
- (5) 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.

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

- (1) Not later than 5 (five) days after the owner receives final notice that the dog is a dangerous dog, the owner shall:
  - (a) Re-register the dangerous dog providing proof and inspection of:
  - (b) an obtained liability insurance coverage/policy 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 or animal and provide proof of the required liability insurance coverage or financial responsibility to the animal control officer, Police Department, and the city; and
  - (c) provide current rabies vaccination of the dangerous animal if such vaccination is available for the species; and
  - (d) verification or inspection of the secure enclosure for the animal
  - (e) pays an additional yearly registration fee of \$50.00
  - (f) place and maintain the tag on the animal's collar
  - (g) notify the animal control authority within 24 hours if the dangerous animal is at large, unconfined, has attacked a human being or another animal, has died, has been sold, or given away. If the animal has been sold or given away, the former owner shall provide the animal control office with the name, address, and telephone number of the new owner. If the new owner's address is in the city of if the animal is kept in the city, the animal control authority shall notify the new owner by certified mail, return receipt requested, or in person that a determination has been made the animal is dangerous and provide the new owner a copy of the requirements contained in this ordinance. The new owner must be given notice to comply with the requirements for owners of dangerous animals, if the animal is physically located for any time within the city. It shall be unlawful for new owners to fail to comply with any requirements that are imposed on all subsequent owners of the dangerous animal.
- (2) For the purposes of subsection (a) of this section, a person receives final notice that the dog is a dangerous dog upon latest of:
  - (a) Receiving a written decision from the Municipal Court that the dog is a dangerous dog; or
  - (b) Receiving a final order from the appellate court that the dog is a dangerous dog.
- (3) 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 FOR DANGEROUS DOGS**

The owner of a dangerous dog shall notify the animal control officer and the law enforcement officer immediately upon discovery of incident but not later than 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 law enforcement officer 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.

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### J. NUISANCE DECLARED

It is hereby declared to be a public nuisance for an owner to keep a dangerous dog within the city limits without meeting requirements of the owner listed in section H.

### K. VIOLATIONS AND DEFENSES

- (1) A person who owns a dangerous dog commits an offense if:
  - (a) The person fails to comply with any provisions of this article or the court order;
  - (b) The dangerous dog makes an unprovoked attack on another person outside the dog's secure enclosure and caused bodily injury to another person.
- (2) *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.*
- (3) It is a defense to prosecution under this article that:
  - (a) 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.
  - (b) 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;
  - (c) 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.*

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

### M. FOWL

- (1) 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 fowl is in place.
- (2) The keeping of livestock, roosters, and drakes within the City is prohibited.

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### **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. NOISE VIOLATIONS**

A person commits an offense if he keeps, harbors, possesses, or otherwise maintains an animal or animals that bark, whine, howl, crow, cackle or makes any noise excessively and continuously and such noise is such as to disturb a reasonable person of ordinary sensibilities. *An offense under this section is a class C misdemeanor.*

#### **B. 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.*

#### **C. 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.*

#### **D. BEE**

The keeping of bees in such a manner as to deny the lawful use of adjacent property or endanger personal health and welfare is prohibited. *An offense under this section is a class C misdemeanor.*

#### **E. 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*

## ORDINANCE NO 275

### 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 unlawfully restrains a dog as defined in TEXAS HEALTH AND SAFETY CODE 821.077. Additionally, 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 poses 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) chickens (hens) or ducks, except when the same are kept more than 100 feet from any property line. *An offense under this section is a class C misdemeanor.* Registration with the City is required. (see fee on Summation of Fees page.)

#### **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.*

## ORDINANCE NO 275

### 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-a-way, or commercial parking lot. *An offense under this section is a class C misdemeanor.*

### K. SEIZURE

The animal control officer or law enforcement officer 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 law enforcement officer 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 STATE LAW, as amended, or causes, instigates or permits any dogfight, cock fight, bullfight or combat between animals or between animals and humans; or
- (3) Abandons any animal in the person's custody.

## ORDINANCE NO 275

### 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 codes 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.

#### **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 officer(s) 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 void, ineffectiveness, or unconstitutionality shall not affect 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.



## **ORDINANCE NO 275**

### **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 - CITY PROCESS OF NOTIFICATION**

Upon receiving a complaint, the animal control officer will make an attempt to notify the homeowner by certified return receipt requested letter and by a posted notice on front door or window. Homeowner must respond to notice within 10 days. If homeowner fails to contact the City, the homeowner will be issued a citation that could result in a fine up to \$500.00.

### **SECTION 13 - 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 assessed by law. Each day any such violations shall be allowed to continue shall constitute a separate violation and punishable hereunder.

### **SECTION 14 - EFFECTIVE DATE**

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

## ORDINANCE NO 275

### Summation of Fees:

#### Impoundments:

Within the city: \$50.00 First impoundment in 12 months  
\$60.00 Second impoundment in 12 months  
\$75.00 Third impoundment in 12 months  
\$100.00 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: \$10.00 per day per animal.

Euthanasia, Disposal, Relinquishing ownership: (\$100.00 and/or equal to amount billed by vet/ or another animal agency.)

Registrations: \$10.00 per animal per year (max-combination of three) per non-neutered and non-spayed animal.  
\$7.50 per animal per year per neutered and spayed animal.  
\$50.00 per animal per year for dogs deemed dangerous  
\$10.00 flat fee for up to five (5) chickens (hens)

Multiple permit: \$30.00, per year, (not to exceed combination of five (5), 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.

**ORDINANCE NO 275**

PASSED AND APPROVED THIS 25<sup>th</sup> DAY OF October, 2022

BY A VOTE OF 3-0

**CITY OF PELICAN BAY**

By:   
Tamra Olague, Mayor

ATTEST:

  
Cynthia Daniels, City Secretary