

ORDINANCE 2008-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, REPEALING ARTICLE 5, COMMERCIAL ANIMAL ESTABLISHMENTS, OF CHAPTER 18 BUSINESSES, AND AMENDING CHAPTER 6, ANIMALS, REPEALING MOST OF THE PRESENT SECTIONS AND PROVIDING NEW SECTIONS TO MODERNIZE THE CHAPTER AND TO HARMONIZE THE CHAPTER WITH CURRENT STATE LAW; PROVIDING FOR CRIMINAL PENALTIES, AND PROVIDING AND EFFECTIVE DATE.

RECITALS:

1. The orderly and safe keeping of animals is an important part of San Marcos community. Further, the proper care of animals is a critical public health and safety issue.
2. Through interlocal agreements, the City's Animal Services Facility has taken on an expanded role as a regional facility by taking part in the care and control of animals located throughout Hays County. A recent expansion of the facility allows for better care of housed animals and a better means to decrease the number of animals euthanized. A revision of the San Marcos Animal Control Ordinances was explicitly anticipated as part of the interlocal agreements.
3. During the last two legislative sessions there have been changes in state regulations that need to be incorporated into the City's animal ordinances.
4. The proposed changes to the City's Animal Control Ordinance modernizes the ordinance and brings it into harmonization with present state law.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**SECTION 1.** Chapter 28, Businesses, Article 5, Commercial Animal Establishments, is repealed in its entirety.

**SECTION 2.** Chapter 6, Article 1, Sections 6.001 through 6.003 of the San Marcos Code of Ordinances are amended as follows (underlining indicates added text, ~~striketrough~~ indicates deleted text:

**ARTICLE 1. IN GENERAL – TREATMENT OF ANIMALS**

Sec. 6.001. Definitions.

For the purposes of this chapter certain terms and words are defined. Words used in the present tense include the future, the singular number includes the plural, and the plural the singular;

reference to male gender includes the female, and references to any person or animal without specifying gender includes both male and female; the word “shall” is mandatory and directory wherever it is used in this chapter. Other words defined are:

~~In this chapter:~~

*Adequate Food* means food that provides a nutritionally complete diet for the animal being fed with said food being free from mold, insect infestation, rancidity, or otherwise compromised in a manner that would be harmful to the animal.

*Adequate Shelter* means a shelter that has at least a roof, three sides, a clean floor, is ventilated, is constructed in a manner to protect an animal from inclement weather, including the provision of bedding when necessary to protect the animal from cold or inclement weather.

*After hours* means after 5:00 p.m. and before 8:00 a.m. on weekdays, and anytime on weekends.

*Animal* means any vertebrate creature, whether domestic or wild living creature, except human beings, classified as a member of the Kingdom Animalia including, but not limited to, mammals, birds, reptiles and fish.

*Animal Control Officer* means the City of San Marcos Animal Services Manager, an authorized representative designated by the Animal Services Manager, or any person designated by the city to enforce city ordinances and state laws pertaining to animals.

*Animal Services Manager* means the person designated by the City of San Marcos as the manager of Animal Services and the Animal Services Facility.

*Animal Services and Animal Services Facility* means the City of San Marcos animal facility and all services related to the operation of that facility.

*Animal shelter* means any facility operated by ~~the city or~~ a humane society for the purpose of impounding or caring for animals under the authority of this chapter or state law.

*Animal dealer* means any person, partnership or corporation engaging in the business of buying, selling or trading animals to others; including, but not limited to, sales of any animal at a roadside stand, booth, flea market, or other temporary site. This definition does not include non-profit animal shelters, rescue groups, or government operated animal shelters.

*Animal Establishment* means any facility or business that has custody or control of animals within the City of San Marcos including, but not limited to, pet shops, pet grooming facilities or commercial kennels. This term does not include veterinary or medical facilities, research or other facilities licensed by governmental agencies.

*Animal Exhibition* means any exhibition or act featuring performing animals, including circuses, temporary animal exhibits, petting zoos and private zoos. Such exhibitions shall not include

resident or non-resident dog and cat shows, and other animal shows sponsored or sanctioned by Hays County held at the Hays County Exhibition Center.

Assistant Animal means any animal professionally trained to assist a person with disabilities.

At large means an animal (excluding sterilized and registered cats) that meets one (1) of the following criteria:

(1) On premises of owner: Any animal not confined to the premises of the owner by some physical means of sufficient height, strength, length, or manner of construction to preclude the animal from leaving the premises of the owner. Any animal being contained by a fence that, because of the fence's lack of height or general disrepair, cannot properly restrict the animal, shall be considered at large.

(2) Off premises of owner: Any animal which is not physically and continually restrained by some person by means of a leash or chain of proper strength and length that precludes the animal from making unsolicited contact with any person, their clothing, their property, or their premises.

(3) The term shall not include animals that are within the boundary of any City owned or sanctioned dog park.

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

~~*Breeder* means any person that breeds pets or fowl animals for the purpose of selling or trading that animal or for purposes of competition.~~

Cat means any live or dead cat (*Felis catus*)

Cats and related terms are defined as follows:

Ear tipping means a technique for painless removing of a quarter-inch off the top of a feral cat's left ear by a licensed veterinarian while the cat is anesthetized for spay/neutering for the purpose of permanently identifying a feral cat that has been evaluated, vaccinated, and sterilized.

Feral Cat means any cat which is too poorly socialized to be handled (and therefore must be trapped and sedated for examination) and cannot be placed into a typical pet home.

Feral Cat Caregiver means a person who feeds feral cats, performs Trap-Neuter-Return, and provides long-term care and monitoring for adult feral cats that are returned.

Feral Cat Colony means three or more cats, "loosely owned," "quasi-owned," or "marginally owned" who have been fed and cared for at some level but are not claimed by any one person.

Free Roaming Cat means cats which are not confined to the house or an enclosure and are at large.

Managed Feral Cat Colony means a group of feral cats living together and having strong blood ties in which all cats have been sterilized and vaccinated and are provided daily food and shelter by a feral cat caregiver. The caretaker follows the most structured form of Trap, Vaccinate, Alter, Return and Manage (“TVARM”).

Registered Feral Cat Colony means registered at the San Marcos Animal Services and meeting all requirements of this Chapter.

Stray Cat means cats which are currently or recently owned which may be lost from their homes.

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

*City veterinarian* means a veterinarian, licensed in the state of Texas, and employed or designated by the city to serve as its veterinarian.

Commercial Establishment means establishments that engage in activities that include animal dealer, animal establishment, and animal exhibition, as those terms are defined herein.

Dangerous Animal means:

(1) Any individual animal which, because of its physical nature or vicious propensity, would constitute a danger to human life or property; or any animal that is possessed of tendencies to attack or to injure human beings or other animals;

(2) An animal that commits an unprovoked attack on a human being that causes bodily injury and occurs 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 the enclosure on its own;

(3) An animal that 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 the enclosure on its own, and those acts cause a person reasonably to believe that the animal will attack and cause bodily injury to that person; or,

(4) An animal that makes an unprovoked attack on a domestic animal or domestic fowl that causes bodily injury or death; and which occurs when such animal is at large.

Dangerous wild animal means any animal not normally considered domesticated which, because of its size, vicious nature, or other natural characteristic would constitute a danger to human life, property or domestic animals, or any animal that is restricted from ownership by any state or federal law including, but not limited to, the following animals:

(1) Reptiles: venomous reptiles, crocodiles or alligators;

(2) Birds: emus, ostriches, rheas, and any species illegal to own under federal or state law;

(3) Mammals: ocelots, lions, tigers, jaguars, leopards, cougars, bobcats, wolves, dingoes, coyotes, jackals, elephants, weasels, martins, minks, badgers, pandas, bears, raccoons, bats, foxes, skunks, cheetahs, servals, caracals, hyenas, baboons, chimpanzees, orangutans, gorillas or any species illegal to own under federal or state law, and any animal which is, or may be hereafter, listed as a “high risk” animal in the Texas Rabies Control Act;

(4) Marsupials, kangaroos, kinkajous; or,

(5) Any hybrid of any animal classified as Dangerous Wild Animal.

*Estray* means any unbranded sheep, cattle, horses or mules found running at large, or any branded sheep, cattle, horses or mules found running at large, or any swine found running at large; but it does not mean nor include any unweaned animal specified in this section that is running with its mother.

~~*Feral* describes a dog or cat that is a domestic breed but was born and/or raised in the wild and exhibits wild characteristics.~~

*Fowl* includes chickens, turkeys, pheasants, ducks, geese, pigeons and all similar domestic birds and poultry, whether kept for use or pleasure.

*Government-operated facility* means any facility owned or operated by a governmental entity at which animals are handled, kept or displayed.

*Grooming shop* means any facility where animals are bathed, clipped, plucked or otherwise groomed.

*Handler* means any person having immediate responsibility for or control of an animal.

*Identification* means any acceptable method such as microchipping, registration tag, or tattoo readily traceable to the current owner.

*Impound* means the placing of an animal in the City’s animal services facility, or, the taking into custody of an animal for the purposes of transportation to the city’s animal services facility.

*Inhumane treatment of animals* means any treatment of an animal prohibited by any provision of law, including federal, state and local laws, ordinance or rules.

~~Kennel~~ *Kennels, commercial* for the purpose of this chapter only, means any establishment facility where a person, partnership or corporation keeps dogs or cats primarily for the purpose of

~~used for the business of boarding, breeding, buying, selling, trading, showing, or training dogs or cats for a fee such animals.~~

*Livestock* means or includes, regardless of age, sex or breed, horses of all equine species including, mules, donkeys and jackasses, ~~eattle~~ cows consisting of all bovine species, sheep consisting of all ovine species, llamas or alpacas, goats consisting of all caprine species, and pigs consisting of all swine species. ~~swine, except miniature swine, and all similar domestic animals, whether kept for use or pleasure.~~

*Miniature swine* means any swine that has been bred to attain a maximum shoulder height of 18 inches and a maximum weight of 90 pounds.

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

*Microchip reader* means an electronic scanner with an operating frequency that is able to detect a microchip that has been implanted in an animal and display the number of the microchip to its operator. The microchip reader shall be of a type that activates and displays the number of a microchip manufactured by multiple vendors.

*Neutered* means any animal, male or female, rendered incapable of breeding or being bred.

*Owner* means any person, ~~who owns or has responsibility for the care and control of an animal.~~ A person is deemed to be the owner of an animal if the person feeds or shelters the animal for three consecutive days or more, or if the animal apparently resides at the person's residence or business on three separate days partnership, corporation, association or legal entity that harbors, shelters, keeps, controls, manages, possesses or has whole or part interest in any animal. The occupant, owner or head of household of any premises where an animal remains for seventy-two (72) hours or more shall be rebuttably presumed to be the owner of such animal, unless the animal has been reported to the City Animal Services as a stray animal. An occupant of any premises on which a dog or cat remains or customarily returns is a person responsible for it under this chapter. If a person under the age of seventeen (17) years owns an animal subject to the provisions of this chapter, the head of the household of which such person under the age of seventeen (17) years is a member shall be the person responsible for the animal under this chapter. Such household head may himself be under the age of seventeen (17) years and therefore subject to prosecution under this chapter. There may be more than one person responsible for an animal.

*Person* means an individual, corporation, animal establishment, partnership, or any other legal entity.

*Pet animal* means any animal that may be kept as a pet within the City of San Marcos so long as all the required provisions of this Ordinance are met, and is not a Dangerous Wild Animal or a Wild Animal, including but not limited to the following animals:

(1) Reptiles – Any non-venomous reptile that is not protected from ownership by any federal or state law;

(2) Birds – Any birds commonly kept as pets that are not protected from ownership by any state or federal law, or any bird kept for falconry purposes by a state and federally permitted falconer;

(3) Fish – Any fish commonly kept as pets that are not protected from ownership by any state or federal law;

(4) Mammals – includes any mammal commonly kept as pets including dogs, cats, ferrets, rabbits, guinea pigs, hamsters, hedgehogs, rats, mice, chinchillas, and sugar gliders but not limited to these.

(5) Livestock – includes any single livestock temporarily kept as part of a bona fide school project, such as for Future Farmers of America.

~~*Pet* means any domestic animal kept for pleasure rather than utility.~~

~~*Pet shop* means any place or facility used for the business of buying, selling or trading pets.~~

~~*Pony ride* means the use of any horse, pony, mule, donkey or burro to provide rides to, or to pull wagons containing, individual s other than the animals' owners, whether gratuitously or for a fee.~~

~~*Private owned animal sale* means the individual sale of a pet animal by private owners to other private owners that occurs at the residence of either the seller or the buyer.~~

~~*Public Health Administrator* means the Director of the City of San Marcos D Director of Community Services or designee.~~

~~*Public nuisance animal* means any animal that exhibits one or more of the following characteristics the conduct of any owner in allowing an animal to :~~

~~(1) Threatens, chases or attacks passing persons or vehicles.~~

~~(2) Attacks other animals.~~

~~(3) Trespasses on school grounds.~~

~~(4) Is repeatedly loose or unrestrained.~~

~~(5) Damages private or public property.~~

~~(6) Barks, whines, howls or otherwise creates noise in an excessive, continuous or untimely fashion.~~

(1) Engage in conduct which establishes such animal as a “dangerous animal”;

- (2) Damage, soil, defile or defecate on private property other than the owner's or on public property, unless such waste is immediately removed and properly disposed of by the owner of the animal;
- (3) Be "at large" (excluding sterilized and registered cats that are identified by some means of traceable identification);
- (4) Cause a disturbance by excessive barking or noise making near the private residence of another or to the extent that the barking or noise disturbs the peace or quiet of any neighborhood or can be heard from within the residence of another;
- (5) Produce odors or unclean conditions sufficient to offend a person of normal sensibilities or which creates a condition conducive to the breeding of flies or other pests;
- (6) Chase vehicles, or molest, attack or interfere with other animals or persons, or is at-large on public or private property (except at a designated dog park); or
- (7) Create a condition that is dangerous to human life or health, renders the ground, the water, the air or the food a hazard or injurious to human life or health or that is offensive to the senses, or that is detrimental to public health.

Quarantine means strict confinement, for the purpose of preventing the spread of disease, within a closed cage, isolation kennel, rabies chamber or in any other manner approved by the local rabies control authority to take into custody, place in confinement, and isolate from human beings and other animals. The quarantine period for a dog, cat, or domestic ferret for rabies observation is ten (10) days or 240 hours from the date and time of the bite, scratch or other exposure, or as recommended by the regional veterinarian from the Texas Department of State Health Services.

Rabies Control Authority means the Animal Services Manager or other designee of the Public Health Administrator.

Registration means a rabies certificate issued by a licensed veterinarian and an identification tag recognized by Animal Services from an approved issuing agent.

*Rabies* means an acute viral disease of persons and animals affecting the central nervous system, usually transmitted by an animal bite or saliva.

Restraint means the securing of an animal by a leash or lead or by physical confinement by a fence made of wood, metal, stone or plastic within the real property limits of its owner. to control an animal by physical means sufficient for that animal so that it remains on the premises of the owner, or, when off the owner's premises, by means of a cage, or leash or rope under the direct control of a person of sufficient strength to control the animal. Physical confinement does not include confinement by a radio fence.

*Riding school or stable* means any place or facility used for the business of hiring out, boarding or giving instructions for riding upon any horse, pony, mule or donkey.

*Small animal facility* means any place or facility used for the business of breeding or raising rats, mice, hamsters, rabbits, minks, guinea pigs or other similar small animals for profit.

*Sterilized* means an animal rendered incapable of reproduction by means approved by the American Veterinary Medical Association.

*Tether* means to chain, tie, fasten or otherwise secure an animal to a fixed point so that it can move or range only within certain limits.

*Traceable identification* means a type of identification, such as a tag, microchip, or tattoo, that can be readily used by an Animal Control Officer or Animal Services to identify the current ownership of an animal.

*Vaccination* means the inoculation of an animal with a rabies vaccine that is licensed by the United States Department of Agriculture for use in that species and which is administered according to the label's directions by a veterinarian for the purpose of immunizing the animal against rabies.

*Veterinarian* means a veterinarian licensed to practice in the state of Texas.

*Veterinary hospital* means any facility operated by a licensed veterinarian for the diagnosis and treatment of animal injuries and illnesses.

~~*Vicious animal* means any animal which:~~

- ~~(1) Because of its physical nature and vicious propensity is capable of inflicting serious physical harm or death to persons;~~
- ~~(2) Has behaved in a manner so that its owner knows or should reasonably know that the animal has tendencies to attack or to bite persons or other animals;~~
- ~~(3) Has been certified by a veterinarian, after observation, as posing a danger to persons, animals or property upon the basis of a reasonable medical probability; or~~
- ~~(4) Threatens or commits an unprovoked attack upon a person or animal on public or private property.~~

~~*Wild animal* means any animal normally found in the wild state, including snakes and other reptiles.~~

*Wildlife educational center* means an organization that has met all of the state and federal requirements to possess wildlife for educational purposes.

*Zoological park* means any place or facility, other than a pet shop, kennel, or wildlife education center, where wild animals are kept for the purpose of display or exhibition displaying or exhibiting one or more species of non-domesticated animals, and operated by a person, partnership, corporation or governmental entity..

Sec. 6.002 Fees; Exemptions

(a) All fees, including any fee for licenses, registration, or permits required under ~~in~~ this chapter will be set by the San Marcos city council. A schedule of fees is kept on file for public inspection in the office of the city clerk and the animal control office.

(b) Prosecution or payment of fines under this chapter shall in no way interfere with the animal shelter's collection of fees from the person prosecuted or fined.

(c) Exemption from fees, including licenses, may be issued for the following:

(1) Police or sheriff's department dogs;

(2) Service animals trained to work for persons with visual or auditory disabilities.

(d) Eligibility for fee-exempt licensing does not relieve the owner of any responsibility under other sections of this Chapter.

Sec. 6.003. Office of Animal Services Manager; Duties; Enforcement.

(a) The director of community services will select an Animal Services Manager. The animal services manager will select the animal services staff members including Animal Control Officers. The animal services staff will be under the supervision and control of the director of community services.

(b) The Animal Services Manager shall act as the local rabies control authority for the purpose of enforcing animal health and control laws in the State of Texas.

~~(c) The Animal Services Manager will enforce all sections of this chapter relating to the care, control and impoundment of animals and will establish policies for the operation of the city animal shelter.~~

~~(c) The animal services manager and every animal control officer are authorized to issue a citation to the owner of any animal found to be in violation of this chapter or applicable state laws.~~

~~(d) No person shall interfere with or hinder the animal services manager or any animal control officer in the performance of his or her official duties.~~

(c) It shall be the duty of the Animal Services Manager and designees to:

(1) Administer and enforce all state and federal laws pertaining to animals which authorize the local rabies control authority or animal control officers to enforce the same;

(2) Administer and enforce the animal ordinances of the city when a nuisance or health problem is caused by one (1) or more animals;

(3) Supervise the animal services operations of the city; and,

(4) Aid the state health department in the enforcement of area quarantines.

(d) The Animal Services Manager, a licensed peace officer, or any animal control officer of the city shall have the authority to issue citations for any violation of this chapter and any other power or duty stated within the terms of this chapter. If the person being cited is not present, the animal control officer may send the citation to the alleged offender by registered or certified mail, return receipt requested, by depositing the same in the U.S. Mail, postage prepaid.

(e) It shall be unlawful for any person to knowingly prevent, interfere with, or obstruct the Animal Services Manager or an animal control officer in the performance of their duties. It shall be unlawful for any person to fail to comply with any lawful order of the local rabies control authority officer or any animal control officer of the city.

(f) The local rabies control authority, any animal control officer, or any peace officer is authorized to, including but not limited to:

(1) Humanely euthanize an animal which poses an imminent danger to a person or property or when a real or apparent immediate necessity exists for the destruction of the animal;

(2) Impound an animal which is diseased or endangers the health of a person or another animal;

(3) Impound any animal found to be running at large within the city;

(4) Humanely euthanize an impounded animal if the animal is suffering from injury, disease, or illness;

(5) Humanely euthanize any animal suspected of having rabies, or which animal manifests a disposition to bite, when such animal(s) is found at large after having made a reasonable, but unsuccessful effort to capture the animal;

(6) Humanely euthanize any impounded dangerous animal immediately upon impoundment, unless there is reason to believe that it has an owner;

(7) Humanely euthanize any wild animal immediately upon impoundment, so long as such act does not violate state or federal laws;

(8) Humanely euthanize any nursing baby animal impounded without the mother, or where the mother cannot or refuses to provide nutritious milk, to prevent further suffering;

(9) Humanely euthanize an animal when an owner no longer wishes responsibility for an animal or believes the animal to be in an ill or injured condition upon the owner signing a waiver, supplied by the animal shelter, allowing the animal to be immediately euthanized.

(10). Humanely euthanize or transfer to a humane organization any impounded animal that is to be destroyed as a result of the animal being impounded more than seventy-two (72) hours.

(g) In any complaint, action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter; and the burden of proof of any such exception, excuse, proviso, or exemption shall be on the owner or defendant as an affirmative defense.

(h) The City shall be entitled to pursue all other criminal and civil remedies to which it is entitled to under the authority of federal, state, or local law.

(i) No person shall interfere in any manner or give false information to the local rabies control authority, local health director, the animal control officers, and other authorized employees of the City in the performance of their duties.

**SECTION 3.** Article One – Sections 6.004 – 6.012 are repealed and replaced as follows:

#### 6.004 Use of Poisons

No person shall use or otherwise cause to expose any poisonous substance, whether mixed with food or not, so that the substance is liable to be eaten by any animal. This prohibition does not apply on a person's own property to legally available rat poison mixed only with vegetable substances.

#### 6.005. Duty of person striking animal.

Any person who, as the operator of a motor vehicle, strikes any animal on a public roadway shall, as soon as practicable report the occurrence to animal services or the police department.

#### 6.006. Relation to Land Development Code

The keeping of any animal in accordance with this Chapter shall not be construed to authorize the keeping of the animal in violation of any zoning rules or restrictions set forth in the City's Land Development Code.

#### 6.007. Bird Sanctuary

(a) It is unlawful for a person to intentionally trap, hunt, or shoot any wild bird or fowl, or to intentionally destroy the eggs or nests of any wild bird or fowl in the city.

(b) It is an exception to the application of this section that the destruction of eggs or a nest occurs as an unintended consequence of an otherwise lawful activity, such as the trimming or clearing of trees or shrubbery.

(c). It is an exception to the application of this section that the wild birds or fowl in question are destroyed after they have congregated in such numbers at a location that they are determined, by the City Health Department, to constitute a nuisance or public health threat.

(d) Employees of the city, peace officers, park rangers, emergency personnel and state personnel are exempt from this section to the extent that it conflicts with their official duties.

#### Section 6.008. Inducement.

(a) It shall be a violation of this chapter for any person to give away any live animal as a prize or as an inducement to enter any contest, game, raffle, or other competition or an inducement to enter a place of business or to offer such animal as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(b) This section shall not be interpreted to restrict any animal from being offered for sale at auction, provided that such sale does not otherwise violate any other section of this Ordinance.

#### Sec. 6.009. Inhumane Treatment of Animals.

(a) An Animal Control Officer, or a licensed peace officer, shall utilize the authority granted by federal, state and local laws to lawfully seize and impound any animal if the investigating Animal Control Officer or police officer has reason to believe that an animal has been, or is being cruelly treated, pending a hearing before any Justice of the Peace or any Municipal Court Judge on the issues of cruelty and disposition of the animal. Seizure of the subject animal prior to receiving a warrant is hereby authorized if a delay in seizure might endanger the life or well-being of the animal, or if it would unreasonably prolong the suffering of the animal needing immediate attention.

(b) Animals shall be cared for, treated, maintained, and transported in a humane manner and not in violation of any provision of law, including federal, state, and local laws, ordinances, and administrative rules.

(c) In addition, a person commits an offense if:

(1) A person, other than a licensed veterinarian, docks an animal's tail or removes dew claws of a puppy over five (5) days of age, or crops an animal's ears of any age;

(2) A person physically removes from its mother by selling, giving away, delivering, trading, or bartering any dog, cat, ferret, or rabbit less than six (6) weeks old or any other animal that is not yet weaned, except as advised by a licensed veterinarian;

- (3) A person dyes or colors chicks, ducks or rabbits;
- (4) A person sells, gives away, delivers, trades or barter chickens, ducks, or rabbits within two (2) weeks prior to Christmas or Easter;
- (5) A person abandons or dumps any animal, or leaves an animal in a dwelling that has had no running water or electricity for a period of 24 hours or more;
- (6) A person overdrives, overloads, drives when overloaded or overworks any animal;
- (7) A person tortures, cruelly beats, mutilates, clubs, shoots or attempts to shoot with any air rifle, bow and arrow, slingshot, or firearm, or by any other means needlessly kills or injures any animal, wild or owned, within the city limits;
- (8) A person forces, allows, or permits any animal to remain in its own filth;
- (9) A person keeps, shelters or harbors any animal having a potentially life-threatening infestation of ticks, fleas, or other parasites, any other obvious life threatening illness, or injury, or any other communicable illness transmissible to animal or human without having sought and obtained proper treatment from a licensed veterinarian for such infestation or illness;
- (10) A person causes an animal to fight another animal or person;
- (11) A person fails to provide, at all times, their animal with adequate food and potable water, proper shelter and protection from inclement weather, and veterinary care when needed to prevent suffering;
- (12) A person raises or kills a dog or cat for the skin or fur;
- (13) A person mutilates any animal, whether such animal is dead or alive (medical or veterinary medical research, medical or veterinary medical necropsy, and biology class use of animals shall not be considered mutilation);
- (14) A person attaches a collar or harness to an animal that is of an inadequate size so that it restricts the animal's growth or causes damage to the animal's skin;
- (15) A person engages or allows another to engage in any sexual act with an animal;
- (16) A person allows a stray animal to remain on their property without notifying the city Animal Services Facility of such act within twenty-four (24) hours;
- (17) A person who owns or is in control of an animal permits such animal to be at large within the City of San Marcos;

(18) A person breeds or causes to be bred, any animal within the public view;

(19) A person creates, maintains, permits or causes a public nuisance, as defined in this chapter;

(20) A person owns, keeps, harbors, or possesses horses, cattle, or other livestock in any manner that is a violation of this Ordinance;

(21). A person fails to publish the person's Animal Dealer or Animal Establishment permit number in ay advertisement offering an animal for sale.

(d) This section shall not be interpreted to restrict the extermination of rats, mice, insects, other vermin, or any such animal deemed a nuisance by state law, through the use of traps, poisons, or other commercially available means when used in accordance with the manufacturer's directions as long as reasonable precautions are taken to ensure that no human, pet, or wild animal, other than the targeted species, comes into contact with the traps, poisons, or other means and that such use does not violate any other section of this Ordinance.

(e) This section shall not be interpreted to restrict rodeos, 4H Clubs, or FFA Club activities and operations.

#### Section 6.010. Leaving Animal Unattended in Vehicle.

A person having charge or custody of an animal shall not place or confine such animal or allow such animal to be placed or confined in a motor vehicle or trailer under such conditions or for such a period of time as may endanger the health of the animal due to heat, lack of food or water, or such other circumstances as may cause injury or death of the animal. Animal Control Officers, or any licensed peace officer, finding an animal being held in violation of this provision may cite the owner for violating this Ordinance, obtain a search warrant. pursuant to state or federal law, or use reasonable force to remove an animal from a vehicle whenever it appears the animal's health or safety is, or soon will be, endangered and said neglected or endangered animal shall be impounded and held pending a hearing. It shall be the responsibility of the animal's owner to repair any damage caused by the removal of the animal from the dangerous situation by a City Animal Control Officer or peace officer.

#### Section 6.011. Tethering Dogs and Other Animals.

It shall be unlawful for any person to tie or tether a dog or other animal to a stationary object for a period of time or in a location so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian as determined by the Animal Control Officer. The terms "unhealthy situation" and "potentially dangerous situation" shall include, but not be limited to the following:

(1) To tether any animal in such a manner as to permit the animal access upon any public right-of-way;

(2) To tether any animal in such a manner as to cause the animal injury or pain or not to permit the animal to reach shelter, food or water or otherwise create an unsafe or unhealthy situation;

(3) To tether any animal in such as manner as to permit the animal to leave the owner's property;

(4) To tether any animal in an area that is not properly fenced so as to prevent any person or child from entering the area occupied by said animal;

(5) To tether any animal in a manner whereby the animal is subject to harassment, stings or bites from outdoor insects, or attacks by other animals;

(6) To tether any animal with a tether that is shorter than the greater of ten feet or five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail.

(7) To tether any animal with a tether that is not equipped with swivel ends;

(8) To tether any animal in such a manner that does not prevent the animal from becoming entangled with any obstruction, from partially or totally jumping any fence, or from leaving part of its owner's property.

(9) To fail to remove waste from the tethered area on a daily basis;

(10) To tether any animal without using a properly fitted collar or harness;

(11) To use choke-type collars to tether any animal;

(12) To use a tether that weighs more than one fifth (1/5) of the animal's body weight; or,

(13) To allow an animal to remain tethered during a severe weather event. A severe weather event includes conditions in which: (a) the actual or effective outdoor temperature is below 32 degrees Fahrenheit; (b) a heat advisory has been issued by local or state authority or jurisdiction; or, (c) a hurricane, tropical storm or tornado warning has been issued for the jurisdiction by the National Weather Service.

#### Section 6.012. Abatement and Imminent Threat; Right of Entry; Search Warrants.

(a) Animal Control Officers or other law enforcement officers shall have the power to impound animals which create an animal nuisance per se for the purpose of abating a nuisance and in cases where Animal Control Officers have reason to believe an animal has been or is being cruelly treated, has rabies or exhibits other violations of law as follows:

(1) On public property, in all cases;

(2) On private property, if:

- a. The consent of the resident or property owner is obtained;
- b. The officer reasonably believes there is immediate and imminent danger or peril to the public if the animal in question is not impounded; or
- c. Authorized by appropriate courts of law.

(3) The officer has the right to pursue and apprehend animals running at large onto private property while enforcing the provisions of this chapter.

(b) Any animal observed by an Animal Control Officer or peace officer to be in immediate danger, in the officer's opinion, may be removed from such situation by the quickest and most reasonable means available. It shall be the responsibility of the animal's owner to repair any damage caused by the removal of the animal from the dangerous situation by the Animal Control Officer or peace officer.

(c) The Health Director, Animal Services Manager, or assigned designee, may order the abatement of the conditions which are not in accordance with this ordinance, other applicable state or federal regulations or laws, or which otherwise constitute a nuisance. Failure to comply with the written notice constitutes grounds for the city to obtain any relief available by law, including, but not limited to relief by injunction. Additionally, failure to comply with the written notice may subject the violator to administrative proceedings and criminal charges.

#### Section 6.013. Defecation by Dogs on Public and Private Property.

(a) An owner, harborer, or other person in possession of a dog commits an offense if he knowingly permits, or by insufficient control allows, the dog to defecate in the city on private or public property and fails to remove and dispose of any excreta the dog deposits.

(b) An owner, harborer, or other person in possession of a dog commits an offense if he:

(1) Knowingly permits the dog to enter or be present on private property located in a public place; and

(2) Fails to have in his possession materials or implements that, either alone or in combination with each other, can be used to immediately and in a sanitary and lawful manner both remove and dispose of any excreta the dog may deposit on the property.

(c) It is an affirmative defense to prosecution under subsection (a) or (b) that:

(1) The property was owned, leased, or controlled by the owner, harborer, or person in possession of the dog at the time it defecated;

(2) The dog was specifically trained to assist a person with a disability and was in possession of that disabled person at the time it defecated or was otherwise present on the property;

(3) The owner of the property or person in control of the property had given prior consent for the dog to defecate on the property; or

(4) The dog is a police canine being used in official law enforcement activities.

#### Section 6.014. Unabated Nuisances.

(a) A "continuing public nuisance" is defined as a public nuisance that, after notice as described in subsection (c) to the owner of an animal(s) or person in control of an animal(s), continues unabated as determined by the Animal Services Manager.

(b) The Animal Services Manager, or his designee, may determine that a public nuisance exists through an investigation of any reported or perceived public nuisance, and may interview witnesses or conduct such hearings as he may determine are necessary, formally or informally. He shall make a determination based on the necessity to preserve the public health, safety and welfare of the community.

(c) Upon such determination, the Animal Services Manager, or designee, shall notify the animal owner or the person in control of the animal(s). This notice shall be in writing and shall contain a statement that such person has a right to appeal. The notice shall set forth the noncompliance and order the owner to abate the public nuisance described in such notice within seven (7) days. Notice of a public nuisance shall include, but not be limited to, written notice of the existence of a public nuisance delivered by personal service, certified mail, return receipt requested, or left at the entrance to the premises where the animal(s) is harbored. A notice that is mailed is deemed received five (5) days after it is placed in a mail receptacle of the United States Postal Service.

(d) If such owner fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication the Animal Services Manager, or designee, may order the abatement of the public nuisance by one of the following means:

(1) Impoundment of the animal(s) that is the source of the continuing public nuisance and the adoption of the animal(s) as provided in this chapter, except that the owner, his agents or representatives, or family members may not adopt the animal(s) adjudged a continuing public nuisance;

(2) Impoundment and humane destruction of the animal(s) that is the source of the continuing public nuisance; or

(3) Exclusion from the City Limits of San Marcos an animal(s) determined to be a continuing public nuisance.

(e) An owner or person in control of the animal(s), not later than seven (7) days after the date such person is notified that an animal is a continuing public nuisance, may appeal the determination of the Animal Services Manager to the San Marcos Municipal Court of Record. Upon receiving an appeal, the Municipal Court shall hold a hearing. Based upon the record evidence of such hearing, the Court shall make a final finding.

(f) The owner or person in control of the animal(s) determined to be a continuing public nuisance shall remove such animal(s) from the city within forty-eight (48) hours of an unsuccessful appeal. The failure to remove such animal(s) shall be an offense and each day thereafter that such person fails to remove such animal(s) shall constitute a separate offense. If the owner or person in control of such animal(s) fails to remove such animal(s) as provided for by the order of the Animal Services Manager or the court, such animal(s) may be impounded and put up for adoption in accordance with Subsection (d) of this Section or humanely destroyed.

(g) The owner or person in control of such animal(s) must report the disposition and exact address or relocation of such animal(s) to the Animal Services Manager in writing within ten (10) days after the expiration date for removal of such animal(s) from the city. Failure to report the disposition and address of such animal is an offense, and each day thereafter that such information is not provided shall constitute a separate offense.

(h) The Animal Services Manager, or a designee, shall be authorized, after due process, to obtain a search and seizure warrant for the purposes of enforcing this section.

#### Section 6.015. Filing of False Claims or Reports.

(a) A person commits an offense if he knowingly initiates, communicates, or circulates a claim of ownership for an animal with an Animal Control Officer that he knows is false or baseless.

(b) A person commits an offense if he knowingly initiates, communicates, or circulates a report of a violation of city ordinance or state or federal law to an Animal Control Officer he knows is false or baseless.

#### Section 6.016. Number of Animals at Residences, Multi-Pet Permit.

(a) Except as provided by this section, no residence within the city shall harbor more than four (4) adult dogs, and no more than seven total animals (the number of total animals does not include fish or birds other than fowl). A residence within the city shall harbor no more than one (1) litter of puppies or one (1) litter of kittens.

(b) Any person desiring to keep more than four (4) adult dogs, seven animals, or more than one (1) litter of puppies or kittens at premises occupied by them shall apply to the Animal Services Manager for a multi-pet permit. The applicant shall pay an application fee at the time of filing.

(c) The Animal Services Manager is authorized to issue such a permit under the following conditions:

(1) No inspection required - If an applicant provides the Animal Services Manager with information concerning the maximum number of animals to be kept at any one time at such premises and record search indicates that no enforcement action for any violation of Chapter 6 of the Code of Ordinances has been necessary during the preceding twenty-four (24) months, a permit may be issued by mail without prior inspection.

(2) Inspection required - If an applicant provides the Animal Services Manager with information concerning the maximum number of animals to be kept at any one time at such premises and a record search indicates that enforcement action for violations of Chapter 6 of the Code of Ordinances has been necessary within the preceding twenty-four (24) months, a permit may be issued after an inspection of the premises to determine compliance with the animal services regulations. A permit shall not be issued if it is found that the animals cannot be maintained without creating noise or odor nuisances, otherwise being detrimental to the public health, safety and welfare, or in a healthy or sanitary environment.

(d) Such permit may be revoked by the Animal Services Manager for cause, including but not limited to, violations of the provisions of Chapter 6 of the Code of Ordinances or the inability of the permit holder to keep the animals without creating noise or odor nuisances, otherwise being detrimental to the public health, safety and welfare, or in a healthy or sanitary environment.

(e) All multi-pet permits issued under this section shall be valid indefinitely, unless the Animal Services Manager revokes the permit. When issued, the permit shall remain the sole property of the city and shall be valid only as to the applicant and location for which it was originally issued. The permit may not be sold or transferred, voluntarily or involuntarily, to any other person or entity.

(f) Any person either denied a multi-pet permit, or who has had their permit revoked, may file an appeal with the Municipal Court of Record. Such appeal must be made in writing within ten (10) days of receiving written notice from the Animal Services Manager of the permit denial or revocation. If no appeal request within the ten-day period, the denial or revocation of the permit becomes final. Upon receiving an appeal, the Municipal Court of Record shall hold a hearing at a time and place of their designation. Based upon the recorded evidence of such hearing, the Municipal Court of Record shall make a final finding.

#### Section 6.017. Feral Cat Management.

(a) The Animal Services Manager is responsible for maintaining the registry of approved registered feral cat colony locations. Animal Services Manager will assist registered caregivers in the management of registered feral colonies.

(b) A feral cat colony can be registered when the Animal Services Manager determines that a volunteer caregiver(s) can meet the following minimum requirements:

(1) Regular feeding will be maintained throughout the year;

- (2) Adult cats and kittens 8 weeks of age will be neutered and vaccinated;
- (3) Every attempt will be made to remove kittens from the colony before 8 weeks of age for domestication and placement;
- (4) Stray cats will be released or placed into the custody of Animal Services;
- (5) Sick or injured cats will be removed from the colony for immediate veterinary care or humane euthanasia;
- (6) Cats will be earmarked and micro chipped for recognition as members of a registered feral cat colony;
- (7) Responsibility for managed feral cat colonies can be transferred, by written document, to another feral cat caregiver with the Animal Services Manager's approval only;
- (8) Location of a feral cat colony requires the approval of property owner or owners and the Animal Services Manager;
- (9) Relocation of a feral cat colony requires the approval of property owners and the Animal Services Manager;
- (10) Cat caretaker assumes all responsibility of humane trapping, maintenance, and management of their approved registered colony; and,
- (11) Records of sterilization, vaccination, micro chipping, and animal identification will be provided to Animal Services upon request.

(c) The Animal Services Manager is authorized to issue citations, revoke registered cat colony permission, or issue citations to a feral cat caregivers or obtain a search and seizure warrant if there is probable cause to believe any requirements of this section are violated.

#### Section 6.018. Donations Fund Established.

The City shall create a special revenue fund, labeled "Donations Fund", for Animal Services purposes to account for the collection and spending of donations to the City. This fund will provide an accurate accounting of the sources and uses of these monies to demonstrate, to the donor, that the funds are used for their intended purposes. Expenditures of these monies will require City Council approval through the normal budgeting process.

Sections 6.019 - 6.029 Reserved.

**SECTION 4.** Chapter 6, Articles 2, 3, 4, 5 and 6 are repealed in their entirety, and replaced as follows:

## ARTICLE II. IMPOUNDMENT

### Section 6.030. Impoundment and Redemption.

#### (a) Impoundment:

(1) It is the duty of an Animal Control Officer to capture and impound such animals as are running at large or which are required to be impounded pursuant to other laws or ordinances or to protect public safety. Any officer or citizen of the city is authorized to take up and deliver in a humane manner to the Animal Services Facility any animal that may be found running at large in the city.

(2) The Animal Control Officer shall impound and quarantine all dogs, cats and other animals exposed to, suspected to be exposed to, or infected with rabies, whether the dog, cat or other animal to be impounded is at large, on a leash, or confined to its owner's premises or whether it is currently vaccinated. Any animal which a licensed veterinarian suspects of having rabies shall be humanely euthanized. Any animal exposed to a rabid animal shall be humanely euthanized or quarantined at the owner's expense for a period mandated by the Texas Department of State Health Services Zoonosis Control Division, not less than ten (10) days from the date of last known exposure.

(3) The Animal Control Officer shall impound an animal at the request of a peace officer when the owner of the animal has been arrested, hospitalized, is missing, or has died, and there is no person present, eighteen (18) years of age or older, who will assume the legal responsibility of providing food, water and shelter for such animal.

#### (b) Identification of impounded animals:

(1) The city enforcement agent, or his deputies, upon receiving an animal for impoundment, shall make a complete registry, including the species, breed, color and sex of such animal, whether it has traceable identification, and the time and place of taking custody. If the animal has traceable identification, he shall enter the name and address of the veterinary clinic, year, the number of the registration tag, and any other pertinent information. When kennel space allows, animals with traceable identification shall be kept separate from animals that do not have identification. All animals impounded shall be scanned with a microchip reader.

(2) If, by registration tag or microchip, the owner of an impounded animal can be identified, the city animal control officer shall, as soon as possible, notify the owner by telephone or mail; however, it is the responsibility of the owner to visit the shelter before the expiration of the designated holding period to reclaim lost pets.

(3) Impounded animals with no means of traceable identification shall be kept for not less than three (3) days, unless earlier reclaimed by the owner under acceptable conditions or earlier euthanized as allowed by this Ordinance. It is the responsibility of the owner to visit the shelter before the expiration of the designated holding period to reclaim lost pets.

(4) Animals with any type of traceable identification shall be kept for not more than five (5) business days, or not less than three (3) days from the time the owner is notified of their animal being impounded, whichever is the shorter time period, unless earlier reclaimed by the owner under acceptable conditions or earlier euthanized as allowed by the Ordinance. If an animal has a tag that does not list the owner's phone number or address, and the person or business that is in possession of the owner's contact information will not release it to the Animal Control Officer, then for the purposes of this section it shall be the responsibility of that person or business to notify the owner of the animal being impounded, and the animal shall be held for three (3) days after the Animal Control Officer contacts the person or business in possession of the owner's contact information. It is the responsibility of the owner to visit the shelter before the expiration of the designated holding period to reclaim lost pets.

(c) Retention of impounded animals:

(1) An animal impounded at the request of a peace officer as required by this Ordinance shall be kept for not less than five (5) business days unless earlier reclaimed by the owner under acceptable conditions or earlier euthanized as allowed by the Ordinance. It is the responsibility of the owner to visit the shelter before the expiration of the designated holding period to reclaim such pets.

(2) An impoundment period is not required for an animal voluntarily released to the Animal Control Officer by its owner.

(d) Redemption of impounded animals:

(1) Any owner of an animal that has been impounded under this chapter who wishes to have it returned to him shall personally visit the Animal Services Facility where it is impounded. The Animal Control Officer shall return the animal if the owner can provide sufficient proof of being the animal's owner and if such release will not impair the safety of the public or the animal. The owner of the animal must pay any and all fees assessed in accordance with the City's fee schedule, must agree to abide by all of the requirements of this Chapter. It is the responsibility of the owner to visit the shelter before the expiration of the designated holding period to reclaim lost pets.

(2) Any person whose pet has been impounded for abuse or neglect or has been impounded more than two times for running at large will be required to attend the Animal Service's responsible owner program before the animal is returned. Completion of the Responsible Ownership Program may be used as a requirement to have a citation for violation of this chapter dismissed by deferred adjudication.

(3) If an animal that requires a permit or registration is impounded by the Animal Control Officer for violating this chapter and the owner cannot prove that he is in possession of all required permit(s) or registration(s), the owner must meet all requirements of the required permit(s) or registration(s) and must purchase said permit(s) or registration(s) before the animal may be released from the Animal Services Facility.

(4) If an animal that requires a rabies vaccination is impounded by the Animal Control Officer for violating this chapter and the owner cannot prove that the animal has a current rabies vaccination, a citation for failing to vaccinate will be issued. The owner shall then have five (5) days to provide proof of obtaining a current rabies vaccination to the Animal Control Officer or else he shall be cited again for violation of this Ordinance. Each subsequent day that passes after the five (5) day period shall be considered a separate offense. For the purposes of this section, a rabies tag alone is not sufficient proof of an animal's current rabies vaccination.

(5) If an animal is impounded by an Animal Control Officer for violating this chapter and the owner cannot prove that the animal has been previously microchipped, the owner must purchase a microchip before the animal may be released from the Animal Services Facility. The identification number provided by the microchip, shall be maintained on file at the Animal Services Center or with a nationally recognized registry, for future identification purposes.

(6) If an animal is impounded for running at large, for a second time, the owner must have the animal neutered as a further requirement for return. The procedures for returning and neutering such animal will be the same as those set forth in Section 6.031 for adoption of an animal.

(7) An owner whose animal is impounded for running at large shall remain liable for all fees whether the owner claims the animal or chooses to abandon the animal at the shelter.

#### Section 6.031. Disposition of Animals.

(a) The Animal Services Manager may dispose of impounded animals after the expiration of any required impoundment period by any of the following methods:

(1) Adoption:

a. The Animal Service Manager, or designee, shall be authorized to place for adoption dogs or cats impounded by the City under the following conditions:

(i) The Animal Services Manager, or designee, shall determine whether a dog or cat is healthy enough for adoption and if its health and age are adequate for vaccination. However, such decision shall not constitute a warranty of the health or age of the animal.

(ii) There will be an adoption fee for all dogs and cats at an amount set by the San Marcos City Council. The fee will include the cost of sterilization, rabies vaccination, blood test, implantation of a microchip, and city registration.

(iii) All animals adopted from the Animal Services Facility shall be implanted with a microchip, vaccinated against rabies, and sterilized before ownership of the animal is transferred to the adopter. If, in the opinion of a licensed veterinarian, there is a legitimate health risk justifying the delay of this surgery, the person adopting the animal shall sign a written agreement stating that they will have the animal sterilized. A person who signs a sterilization agreement commits an offense if he fails to have the animal sterilized on or before the sterilization completion date stated in the agreement. For the purposes of this section, a legitimate health risk cannot be based solely on the animal's age.

b. If an adopted animal dies on or before the sterilization completion date, the adopting person must provide written documentation to the Animal Services Manager that the animal is deceased.

c. If an adopted animal is lost, stolen, or transferred to another owner before the sterilization date, the adopting person must provide written documentation to the Animal Services Manager stating that the animal is lost or stolen and a police report verifying the report of theft, or the identity of the new owner if transferred. The letter shall be delivered not later than the seventh day after the date of the animal's disappearance and shall describe the circumstances surrounding the disappearance and the date of disappearance.

d. An Animal Control Officer may reclaim an adopted animal if the Animal Services Manager has not received confirmation of the sterilization as required.

(2) The Animal Services Manager may offer the animal to an animal welfare group that has a signed Transfer Agreement for Dogs and Cats that is on file with the City Animal Services Facility provided that the group sterilizes and microchips the animal prior to placing it into an adoptive home;

(3) The Animal Services Manager may temporarily place the animal in a foster home that has a signed Foster Agreement for Dogs and Cats that is on file with the City Animal Services Facility;

(4) An Animal Control Officer may humanely euthanize the animal by methods approved by the American Veterinary Medical Association or the Texas Department of State Health Services.

(b) The choice of which of these options to use shall be made at the sole discretion of the Animal Services Manager unless otherwise mandated by a court order.

(c) Any impounded registered or unregistered animal which appears to be suffering from serious injury or disease and which is in great pain and suffering and probably will not recover or which appears to have an infectious disease which is a danger to humans or to other animals in the opinion of the Animal Services Manager or which, due to its extremely violent nature, poses a substantial risk of bodily harm to the safety of Animal Services staff, may be humanely euthanized at any time during its holding period by the Animal Control Officer. In the event such an animal is wearing an identification tag on its collar or harness, the Animal Control Officer shall attempt to notify the owner by telephone before taking action.

(d) It shall be an affirmative defense to prosecution of the owner if he or she can show that, at the time of its impoundment, the animal that was at large due to a major natural disaster, fire, criminal or negligent acts of a third party who was not residing at the animal owner's residence. In such event, the owner shall only be subject only to the provisions of this chapter that require a current rabies vaccination and city registration. An owner's claim of a fire or the criminal or negligent acts of a third party must be proven in one (1) or more of the following manners:

(1) A certified copy of a city police or fire report verifying the incident; or

(2) The affidavit of city police or fire personnel with direct knowledge of the incident.

(e) It shall be unlawful for a person to fail or refuse to deliver an unregistered or unvaccinated animal to a City Enforcement Agent or police officer upon demand for impounding.

Sections 6.032-6.039 Reserved

### ARTICLE III. RABIES AND ZONOSIS CONTROL AND CITY REGISTRATION

Section 6.041. State Regulations Adopted.

The City of San Marcos hereby adopts by reference the Texas State Rabies Control Act, as amended, and the standards established by the appropriate state agency or rule-making board as minimum standards for rabies control and quarantine provisions within the City of San Marcos. In addition thereto, all of the rabies control provisions of this chapter, which are adopted pursuant to the Texas Health and Safety Code, shall have application in the City of San Marcos.

Section 6.042. Report of bite cases.

(a) It shall be the duty of every physician or other practitioner to report to the Animal Services Department the names and addresses of persons treated for bites inflicted by a mammal, together with such other information as will be helpful in rabies control.

(b) It shall be the duty of every person owning or having custody of a mammal, which has bitten a human being, to report the same to the Animal Services Department.

Section 6.043. Quarantine.

(a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing, an animal that is suspected of being involved in a bite. A person may be issued a citation for non-compliance or violating this provision. The Animal Services Manager shall be authorized to obtain a search and seizure warrant if there is reason to believe any requirements of this section are violated.

(b) Should a potential outbreak of rabies within the city be suspected and the danger to the public safety from rabid animals be reasonably imminent, the health director is hereby authorized to issue a quarantine proclamation, ordering persons owning, keeping, or harboring dogs, cats or other mammals to muzzle the same or confine them for such time as may be specified in such quarantine proclamation. Upon the publication of such proclamation by local newspapers, persons owning or harboring such animals shall confine them to premises unless they are effectively muzzled and under the control of an adult person by leash, cord, chain, or rope. Animals found at large in violation of this subsection may be destroyed by an officer of the city if such officer is unable with reasonable effort to apprehend such animals for impoundment.

Section 6.044. Identification/Registration Microchip Required.

(a) It is a violation of this chapter if any person owning, keeping, harboring or having custody of a dog or cat over the age of four (4) months within the City of San Marcos does not register such animal as provided herein. Police dogs or assistance animals shall be exempt from the Identification/Registration fee; however they must be in compliance with all other provisions of this chapter. This section does not apply to animals temporarily within the city limits for a period not to exceed fourteen (14) days.

(b) The Animal Services Manager is hereby authorized to appoint Issuing Agents as his deputies for the limited purpose of issuing pet animal Identification/Registration Microchips. Identification/Registration Microchips shall be on forms and microchips approved by the Animal Services Manager and shall be issued subject to the provisions of this chapter and any other rules, regulations or ordinances relating to the issuance of such microchips.

(c) An Issuing Agent may not issue an animal Identification/Registration microchip that is not currently vaccinated against rabies; and, an Issuing Agent shall not issue an animal Identification/Registration microchip for a miniature swine unless it has a current erysipelas vaccine and current veterinarian's statement verifying the animal's size.

(d) Each Issuing Agent shall report the unique Identification/Registration microchip number issued to the Animal Services Manager within thirty (30) days and shall remit all Identification/Registration microchip fees and information collected at least once monthly.

(e) All dogs and cats four (4) months of age or older must wear traceable identification.

(f) Any owner who fails to obtain a city animal registration shall be deemed guilty of a misdemeanor.

(g) No person may use a city Identification/Registration microchip, tag, or rabies certificate on an animal other than for which it was issued.

(h) The Identification/Registration microchip shall be a permanent registration for the life of that animal, and will not require annual renewal. The existence of a permanent Identification/Registration microchip does not excuse a person from having their animals vaccinated for rabies in accordance with subsection (i) below.

(i) Rabies vaccination certificates will be valid for either one (1) year or three (3) years from the date of vaccination as determined by the veterinarian that provided the vaccination.

#### Section 6.045. Confidentiality of Certain Information in Dog and Cat Registry.

The City shall comply with all state laws regarding the confidentiality of information in the dog and cat registry.

#### Section 6.046. Rabies Clinics.

The Animal Services Manager may sponsor rabies vaccination clinics. In response to a rabies outbreak or some other public health threat, the Animal Services Manager or Public Health Director may authorize rabies vaccination clinics in the interest of protecting public health.

#### Section 6.047. Veterinarians Required to Report.

It shall be the duty of every licensed veterinarian to report to the Animal Services Department their diagnosis of any animal observed as a rabies suspect. Any licensed veterinarian who diagnoses, examines, or treats any animal diagnosed to have, or suspected to have, anthrax, avian influenza, brucellosis, campylobacteriosis, Escherichia coli 0157:H7, hantavirus, leptospirosis, Lyme Disease, monkeypox, plague, Q-fever, rabies, Rocky Mountain Spotted Fever, Salmonellosis, Tularemia, West Nile or any other zoonotic encephalitis, or other unusual zoonotic diseases transmissible to humans, shall immediately report their findings to the City of San Marcos's Public Health Administrator.

#### Section 6.048. Animal Assistance Program.

(a) The department shall establish and use an Animal Assistance Program to establish and implement an animal population control program pursuant to this statute. The purpose of this program shall be to reduce the population of unwanted and stray dogs and cats by encouraging the owners of dogs and cats to have them sterilized, thereby reducing potential threats to public health and safety.

(b) If sufficient budgeted funds exist or are so allocated, any resident of the City of San Marcos, who owns a dog or cat and who is eligible to receive any type of financial assistance from the government due to the owner's lack of income may participate.

(c) The Animal Services Manager, with permission from the Public Health Director, may allow members of the general public to participate in this program for limited times or for special promotions. The program's first priority shall always be to assist low-income pet owners.

(d) It shall be a violation of this ordinance for any person to knowingly falsify proof of eligibility for, or participate in, any program under this chapter, or to furnish any licensed veterinarian with inaccurate information concerning the ownership of an animal submitted for a sterilization procedure, or to furnish an Animal Control Officer with false information concerning an animal sterilization fee schedule or an animal sterilization certificate submitted pursuant to this section, or to otherwise violate any provision of this section.

(e) The Animal Services Manager, with the approval of the Public Health Director, shall adopt rules relative to the format and content of all forms required under this chapter, proof of eligibility, administration of the program, and any other matter necessary for the administration of this program.

#### Section 6.049. Veterinarian Participation.

(a) Any veterinarian licensed in this state may participate in the Animal Assistance Program or any other programs established under this chapter or by Animal Services. Only chemical or surgical procedures approved by the American Veterinary Medical Association may be employed for sterilization.

(b) Veterinarians who choose to participate in any program shall sterilize, provide an anti-rabies vaccination, and microchip each animal. The city shall reimburse participating veterinarians, to the extent funds are available, for each rabies vaccination and animal sterilization procedure performed and will waive the fee for the microchip registration. To receive this reimbursement, the veterinarian shall submit an animal sterilization certificate which shall be signed by the veterinarian and the owner of the animal and any other documentation deemed necessary by the Animal Services Manager in accordance with this chapter.

#### Sections 6.050-6.059 Reserved

### ARTICLE IV. ANIMAL ESTABLISHMENTS

#### Section 6.060. Standards for Animal Establishments.

All animal establishments within the city shall be constructed and operate in conformance to the General Design Standards, Specifications, and Operating Procedures for Animal Establishments promulgated by the City of San Marcos Department of Environmental Health, which rules are adopted hereby and made a part of this chapter by reference. A copy of such rules shall be placed

on file with the city secretary and a copy shall be maintained by the city health department, which copies shall be made available for inspection by members of the public during the normal business hours of the offices in which they are maintained. In the event of a conflict between such rules and an ordinance of the City of San Marcos or state law then the ordinance or state law shall prevail over the rules.

#### Section 6.061. Animal Exhibitions.

(a) All Animal Exhibitions, except those held at the County Exhibition facilities, shall, in addition to other requirements of this ordinance, comply with the minimum standards of this Chapter. All of the Exhibition facilities shall be subject to inspection by the Animal Service Manager, or his designee, upon his request during reasonable hours. Exhibitions held at the County Exhibition facilities shall, at a minimum, abide by all existing County rules and regulations. All Animal Control Officers shall have the authority to enforce all applicable rules and regulations as such apply to the County Exhibition facilities.

(b) The presenter of an Animal Exhibition must contact San Marcos Animal Services at least seven (7) days before the performance or display and provide dates, times, and exact location of each performance or display.

(c) It shall be a violation for any person who owns, manages, or represents an Animal Exhibition that requires a permit or registration to refuse, upon request by the department, to make his/her animal(s), premises, facilities, equipment, and any necessary registration(s) or permit(s) available for inspection for the purpose of ascertaining compliance with the provisions of this chapter. All animal exhibitions must be compliance with all applicable state and federal regulations.

#### Section 6.062. Wildlife Educational Centers.

(a) All Wildlife Educational Centers, as defined herein, shall be exempt from City regulations so long as they comply with minimum federal and state regulations.

(b) It shall be a violation for any Wildlife Educational Center to refuse, upon request by the department, to make his/her animal(s), premises, facilities, equipment, and any necessary registration(s) or permit(s) available for inspection during the establishment's regular business hours or at any other reasonable hour for the purpose of ascertaining compliance with the provisions of this chapter.

(c) Failure to meet these standards or violating this chapter in any other way shall be grounds for the issuance of a citation subjecting the owner to penalties provided in this chapter.

#### Section 6.063. Animal Establishments and Animal Dealers.

(a) All Animal Establishments and Animal Dealers, as defined herein, shall, in addition to the other requirements of this ordinance, comply with the minimum standards of this section. Persons wishing to operate an Animal Establishment or to become an Animal Dealer within the

City of San Marcos must apply in writing to the Animal Services Manager who will issue a permit if all of the state and federal requirements are met.

(b) It shall be a violation for any business or person to sell, offer for sale, give away, offer to give away, or otherwise transfer ownership of any animal without first obtaining an Animal Establishment or Animal Dealer Permit, unless such activity is authorized by some other section of this chapter.

(c) It shall be a violation for any Animal Establishment or Animal Dealer to refuse, upon request by the Animal Services Manager, or his designee, to make his/her animal(s), premises, facilities, equipment, and any necessary registration(s) or permit(s) available for inspection during the establishment's regular business hours or at any other reasonable hour for the purpose of ascertaining compliance with the provisions of this chapter.

(d) Failure to meet these standards, or violating this chapter in any other way, shall be grounds for the issuance of a citation subjecting the owner to penalties provided in this chapter, or revocation of the owner's Animal Establishment or Animal Dealer permit at the Animal Services Manager's discretion.

(e) All advertisements for the sale of animals shall include publication of the Animal Establishment's or Animal Dealer's permit number.

(f) All Animal Dealers who are breeding an animal for the sale or trade of offspring shall have the breeding female(s) certified as healthy by a licensed veterinarian prior to the sale of any of that animal's offspring.

#### Section 6.064. Private Animal Sales.

It shall be a violation for any person to offer, sell, trade, barter, lease, rent, give away, or display any live animal, on any roadside, public right-of-way, commercial parking lot, or any flea market. This provision does not prohibit the sale or purchase of animals from a person's private residence.

Sections 6.065-6.069 Reserved.

### ARTICLE V. OTHER ANIMALS

#### Section 6.070. Complaint About a Dangerous Animal.

(a) Upon receipt of a written complaint by any person, animal control officer, or other law enforcement officer charging that a particular animal is a dangerous animal, the public health director or his designee shall initiate proceedings with the Municipal Court of Record to conduct a hearing to determine whether such animal is dangerous; unless the matter is resolved by agreement of all parties prior to such hearing. Such written complaints shall contain at least the following information:

(1) Name, address and telephone number of complainants and witnesses;

(2) A brief description of the incident or incidents which cause the complainant to believe such animal is a dangerous animal, including date, time and location;

(3) A description of the animal and the name, address and telephone number of the owner of the animal, if known; and

(4) Any other facts that the complainant believes to be important.

(b) A hearing to determine if an animal is a dangerous animal shall be conducted within fifteen (15) days after receipt of the complaint, impoundment, or seizure of the animal, whichever occurs later, unless continued for good cause. Any animal awaiting such hearing which was impounded for being at large, was at-large when the incident that causes the dangerous animal complaint to be filed occurred, or which has bitten or scratched any other person or animal, shall be boarded at the owner's expense at the Animal Services Facility or any other state approved quarantine facility pending the outcome of the hearing and determination of whether such animal is a dangerous animal.

(c) If the animal is quarantined at a facility other than the Animal Services Facility, the facility shall be found to be in violation of this chapter if the animal is released to any person, lost, stolen, or otherwise not able to be accounted for unless the quarantine facility first obtains written permission from the Animal Services Manager to release the animal.

(d) Notice of hearing shall be provided by the public health director or his designee to the owner of the animal or by the Clerk of the Municipal Court, by certified mail, return receipt requested, and to the complainant by regular mail. At a hearing all parties shall be given opportunity to present evidence on the issue of whether the animal is dangerous.

(e) Upon conclusion of a hearing to determine if an animal is a dangerous animal, if the Court finds that the animal is not dangerous it shall be promptly returned to its owner's custody after all impound and board fees have been paid. If the Court finds that the animal is a dangerous animal the Court shall order that the owner comply with one or more of the following requirements:

(1) Removal of the dangerous animal from within the city limits. In which case, the owner must provide, in writing, the destination address of where the animal is to reside and proof that the owner has alerted the agency responsible for animal services in that area to the Animal Services Manager prior to the animal being released from the Animal Services Facility; or

(2) Humane euthanasia of the dangerous animal; or

(3) Registration and compliance with all of the following requirements, at the owner's expense, before the animal is released from the Animal Services Facility or other state approved quarantine facility.

i. Obtaining liability insurance coverage or showing financial responsibility in an amount of at least two hundred and fifty thousand dollars (\$ 250,000.00) to cover damages resulting from an attack by the dangerous animal causing bodily injury to a person or for damages to any person's property resulting from the keeping of such dangerous animal. A certificate of insurance or other evidence of meeting the. above requirements shall be filed with the Animal Services Director.

ii. Registering with the City of San Marcos by providing the name and address of the owner; the breed, age, sex, color and any other identifying marks of the animal; the location where the animal is to be kept if it is not at the address of the owner; and two (2) color photographs that clearly identify the dangerous animal;

iii. Having the animal sterilized;

iv. Constructing a cage, pen or enclosure for the dangerous animal that has secure sides; a secure top attached to the sides; and a secure bottom which is either attached to the sides or else the sides of the structure must be embedded in the ground no less than two (2) feet. The pen or enclosure must be completely encircled by a fence constructed in such a manner as to prevent a person or child from being able to reach the animal's pen or enclosure;

v. Not allowing the animal to go outside of its cage, pen or enclosure unless the animal is under physical restraint. No person shall permit a dangerous animal to be kept outside of its cage, pen or enclosure on a chain, rope or other type of leash unless a person is in physical control of the chain, rope or leash and the person is of competent strength to control the animal at all times. Dangerous animals shall not be tethered or otherwise leashed to inanimate objects, such as trees, posts, buildings, etc. All dangerous animals outside their cage, pen or enclosure must be securely fitted with a muzzle that will not cause injury to the animal nor interfere with its vision or respiration but shall prevent the animal from biting other animals or human beings.

vi. Posting signs giving notice of a dangerous animal in the area or on the premises in which such animal is confined. Such signs shall be conspicuously posted at both the front and rear property entrances and shall bear letters not less than two (2) inches high, stating "DANGEROUS ANIMAL, ON PREMISES." Such signs shall also display a symbol that is understandable by small children, that warns of the presence of a dangerous animal;

vii. Providing the animal with a fluorescent yellow collar visible at fifty (50) feet in normal daylight and attaching a fluorescent orange tag provided by the Animal Services Division to the collar that is worn at all times so that the animal can be easily identified;

viii. Implanting a microchip into the animal and registering it for life with the city's Animal Services Division and a recognized national registry; and

ix. Paying the appropriate dangerous animal permit fee annually.

(f) Any animal that is deemed a dangerous animal that was not previously impounded or otherwise in possession of the Animal Services Facility or any other state approved quarantine facility, shall immediately be impounded and boarded at the owner's expense until such time as the owner complies with all of the required conditions as set forth by the Court's ruling. The animal shall be held at the owner's expense pending the outcome of any appeal. It shall be a violation of this section for the owner to refuse to turn the animal over as required and for the purposes of enforcement; each day for each animal in question shall be considered a separate offense.

(g) The owner shall have fifteen (15) days from the declaration of the animal as dangerous to comply with all of the required conditions as set forth by this chapter. If the owner fails to meet all of the requirements, the animal may be humanely euthanized on the sixteenth (16th) day by an Animal Control Officer or a licensed veterinarian.

(h) In the event that a registered dangerous animal escapes its cage, pen or enclosure or attacks a human being or another animal, the owner of the dangerous animal shall immediately notify the Animal Services Division. For the purposes of this chapter, immediately shall mean within thirty (30) minutes of the owner becoming aware of the escape or attacks.

(i) In the event that a registered dangerous animal dies, the owner must present the body of the animal to the City Enforcement Agent or a licensed veterinarian for verification by microchip identification before disposal of its body.

(j) Prior to transferring ownership in any way or moving a registered dangerous animal, either inside or outside the city limits, the owner must obtain, in writing, permission from the Animal Services Manager to transfer ownership or move the animal. If ownership of the animal is being transferred, the new owner will be required to comply with all provisions of this chapter before the animal can be moved from the previous owner's custody. If the animal is being moved from the city limits, the owner must provide, in writing to the Animal Services Manager, the destination address of where the animal is to be moved to and proof that the owner has alerted the agency responsible for animal services in that area.

(k) In the event that any owner of an animal declared to be dangerous violates any part of the Court's Order, the animal may be immediately seized and impounded by an Animal Control Officer. In addition, the animal shall be seized immediately if the animal bites, injures, or attacks a human being or another animal. Any animal already declared to be dangerous which is impounded due to any violation of this chapter or seized for causing injury to a human being or another animal shall immediately become the property of the City of San Marcos and shall not continue to be a registered dangerous animal.

(l) If the dangerous animal makes an unprovoked attack on a person or another animal outside the animal's enclosure and causes bodily injury to the person or other animal, the owner of the

dangerous animal will be charged with a misdemeanor, unless the attack causes serious bodily injury or death, in which event the offense is a felony.

(m) If an owner of a dangerous animal is found guilty of an offense under this section, the Public Health Director or his designee may order the dangerous animal be humanely euthanized by an Animal Control Officer or a licensed veterinarian.

(n) No animal shall be declared a dangerous animal if the threat, injury or damage caused by the animal was the result of a willful trespass upon another's property, or the person injured was tormenting, abusing or assaulting the animal or its owner, or was committing or attempting to commit a crime at the time of injury.

(o) Orders of the Municipal Court pertaining to dangerous animals may be appealed to the Hays County Court by filing a written notice of appeal within ten (10) days with the Municipal Court Clerk, and by following all of the procedures set forth in Chapter 55 of the San Marcos Code of Ordinances. During the pendency of such appeal, the order of the public health director shall be suspended, and the animal shall remain impounded at the owner's expense at the Animal Services Facility or other state approved quarantine facility for observation. If a proper appeal is not filed and perfected the Municipal Court's Order shall be a final Order.

(p) It shall be a violation for any owner of a permitted dangerous animal to refuse, upon request by the department, to make his/her animal(s), premises, facilities, equipment, and any necessary permit(s) available for inspection for the purpose of ascertaining compliance with the provisions of this chapter.

(q) The owner of an animal that has been determined to be dangerous by another jurisdiction is prohibited from bringing such animal into the city limits.

(r) The Animal Services Manager shall be authorized to obtain a search and seizure warrant if there is reason to believe any requirements of this section are being violated.

#### Section 6.071. Keeping of Dangerous Wild Animals.

(a) It shall be unlawful to keep any wild animal within the city limits of San Marcos, with the following exceptions:

(1) if a person and his or her facility housing such dangerous wild animal(s) has complied with all applicable federal, state, and local laws and regulations, including, but not limited to, the acquisition and retention of all applicable permits, prior to final adoption of this ordinance, said person may retain dangerous wild animals(s) in the above-described facility in compliance with all federal, state and local laws, including, but not limited to Chapter 822 of the Texas Health and Safety Code, as amended;

(2) a governmental agency or entity acting in an official capacity;

(3) a government-operated zoological park.;

(4) a permitted Wildlife Educational Center, animal exhibitions with valid state or federal permits; or

(5) a holder of an Animal Dealer or Animal Establishment with a Wild Animal permit.

The possessor of any Dangerous Wild Animal shall have all applicable state and federal permits to possess the species in question.

(b) Animal Establishments or Animal Dealers who hold a Dangerous Wild Animals Permit shall make written application to the Animal Services Manager to permanently keep each dangerous wild animal in their possession. The application must include the species and location of the animal, at least two pictures that clearly identify the animal, and proof that the establishment, center, or person is in possession of the necessary state and federal permit(s) to possess such species.

#### Section 6.072. Sale of Wild Animals.

(a) It shall be a violation for any person to sell, offer to sell, give away, offer to give away, or otherwise transfer or attempt to transfer ownership of a Dangerous Wild Animal, unless specifically allowed by some other provision of this Chapter. Any person who finds a dangerous wild animal that is at large must immediately notify an Animal Control Officer. This section shall not be interpreted to restrict a person from giving ill, injured, or orphaned wildlife to a state or federally licensed wildlife rehabilitator or to a permitted Wildlife Educational Center.

(b) For the purposes of this chapter, the Animal Services Manager shall make the determination of whether any animal in question is a Pet Animal, a Wild Animal, or a Dangerous Wild Animal. In addition, for the purposes of this chapter, immediately shall mean within thirty (30) minutes of the person finding that a wild animal or dangerous wild animal is at large.

#### Section 6.073. Bee-Keeping.

(a) It shall be unlawful for any person to keep or allow bees, their hives, or any abandoned hives within the city limits, except honey bees may be kept if all of the following conditions are met:

(1) All hives shall be located a minimum of thirty (30) feet from any property line and enclosed in a fenced area;

(2) There shall be no more than four (4) hives per city lot;

(3) There is an adequate source of water within twenty (20) feet of all hives;

(4) The owner notifies the Animal Services Director, in writing, of the location and number of hives in his possession.

(b) It shall be a violation for any person who owns, harbors, or possesses bees to refuse, upon request by the Animal Services Manager, or his designee, to make his/her bees, premises, facilities, equipment, and any necessary permit(s) available for inspection for the purpose of ascertaining compliance with the provisions of this chapter.

Section 6.074. Keeping of Other Animals; Nuisance Conditions.

(a) No person shall engage in keeping livestock within the corporate limits of the city, except in conformance with and only to the extent so permitted by the zoning ordinances of the city; and unless:

(1) The pens, stalls, or other facilities for keeping the livestock or fowl, other than fenced open pastures that are at least one (1) acre, are located so that the livestock or fowl cannot come within one hundred (100) feet of any existing dwelling or business building owned, used, or maintained by any person other than the keeper;

(2) The pens, stalls, or other facilities for keeping the livestock or fowl, other than fenced open pastures that are at least one (1) acre, are located so that the livestock or fowl cannot come within five hundred (500) feet of any existing food service establishment or food processing establishment, regardless of ownership or occupancy of the establishment;

(3) The fenced open pasture, which is at least one (1) acre, has a means of preventing the livestock or fowl from coming within twenty-five (25) feet of any property line that abuts an existing residence.;

(4) A student residing in a residence within the City of San Marcos is enrolled in bona fide program, such as 4H or FFA may keep a single livestock animal, during one school year, as part of a bona fide project related to their enrolment in the program.

(b) The keeping or causing to be kept any livestock, chickens, geese, ducks, guineas, pigeons, rabbits or any other such animals in those areas appropriately permitted by the zoning ordinances of the city in pens or enclosed areas in such a manner as to become offensive to other persons living nearby is hereby declared to be a nuisance.

(c) It shall be unlawful for any person to park or leave standing any truck, trailer, or other vehicle that has been used for the hauling of livestock, animals or fowl in the city limits when notified by an Animal Control Officer that such vehicle is creating a nuisance due to odors, gases or fumes. Upon such notification, the owner, operator, driver or other person responsible for such vehicle shall move such vehicle to a location outside of the city limits.

(d) All manure and other excrement shall be disposed of in such a manner as to prevent it from becoming offensive to other persons living nearby. It shall be unlawful for any person to transport slop, garbage or other refuse over any alley, street or highway within the corporate limits of the city for the purpose of feeding hogs or swine within the city.

Section 4-37. Keeping of Hogs or Swine.

(a) It shall be unlawful for any person to keep any live hog within the city limits for a longer period than twenty-four (24) hours. This does not apply to miniature swine.

(b) Subsection (a) of this section does not apply to animal shelters, veterinary establishments, government agencies, exhibitions at the County facilities, or commercial animal establishments located on property zoned for those purposes. Such establishments, however, must meet sanitation requirements and keep all animals securely caged or penned.

Section 6.075. Estray.

It shall be unlawful for any person, firm, or corporation to allow an estray(s) to be unattended upon any public street, alley, thoroughfare or upon the property of another in the corporate city limits of San Marcos. The person, firm, or corporation having ownership or right to immediate control of such estray(s) shall have the burden to keep such estray(s) off the public streets, alleys, and thoroughfares or the property of another in the City.

Section 6.076. Placement and Baiting of Animal Traps.

(a) It shall be unlawful for any person to place or place and bait or to permit the placing or placing and baiting of any trap designed for trapping animals in any highway, street, alley or other public place within the corporate limits of the city unless specific permission by Animal Services has been granted. However, nothing in this chapter shall prohibit a city enforcement agent from placing such traps on public or private property as may be necessary to capture animals running at large.

(b) It shall be unlawful for any person to remove, alter, damage or otherwise tamper with a trap or equipment belonging to, or set out by Animal Services.

(c) Residents of San Marcos wishing to trap unwanted animals on personal private property may do so with the use of humane cage traps. Traps may be obtained from Animal Services. Any trapping program must have prior written approval of the land manager or owner and notification of activities to the Animal Services Manager, or his designee.

(d) Any traps mentioned in this article found upon public property are hereby declared to be abandoned traps and any city enforcement officer is hereby authorized and directed to impound any such trap and process the same as abandoned property in accordance with the applicable provisions of this Code.

(e) It shall be unlawful for any person to place or place and bait or to permit the placing or placing and baiting of any steel jawed trap (commonly known as a "bear trap," "wolf trap," "leg hold trap," or "coyote trap") within the corporate limits of the city.

(f) No person shall place any substance or article that has in any manner been treated with any poisonous substance in any place accessible to human beings, birds, dogs, cats, or other animals

with the intent to kill or harm animals. This shall include anti-freeze purposely left exposed to poison animals. This section, however, does not preclude the use of commercially sold poisons when applied in accordance with the manufacturer's directions for such use, in that person's residence, accessory structure, or commercial establishment, provided that such use does not violate any other section of this Ordinance, or any other applicable federal or state law.

Sec. 6.077. Display of Commercial Permits Required

(a) All Commercial Establishments, as defined in this Chapter, shall at all times prominently display, in a public area, a copy of their current permit(s).

(b) It shall be a violation for any person who owns, harbors, or possesses an animal that requires a permit, or for any holder of a special use permit, to refuse, upon request by the department, to make his/her animal(s), premises, facilities, equipment, and any necessary registration(s) or permit(s) available for inspection for the purpose of ascertaining compliance with the provisions of this chapter.

**SECTION 5:** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 6:** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 7:** Any person violating any provision of this ordinance commits a misdemeanor and is subject to the penalty provided in Section 1.015 of the San Marcos City Code upon conviction.

**SECTION 8:** This Ordinance will take effect on April 1, 2009, The City Clerk will publish notice of its adoption in a newspaper of general circulation in the City.

PASSED on first reading on December 2, 2008

PASSED, APPROVED AND ADOPTED on December 16, 2008

Susan Narvaiz  
Mayor

Attest:

Approved:

Sherry Mashburn  
City Clerk

Michael J. Cosentino  
City Attorney