

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING CHAPTER 5, CODE OF ORDINANCES, TO PROHIBIT CHAINING AND TETHERING OF DOGS AS A METHOD OF RESTRAINT; PROVIDING STANDARDS FOR ENCLOSURES; PROVIDING EXCEPTIONS; AND PROVIDING FOR RELATED MATTERS.

Whereas, the proper care, regulation and control of animals is necessary for the health, safety and quality of life of the citizens of the City of Kyle, Texas (herein the "City"); and

Whereas, the establishment of reasonable requirements for the care and control of animals is necessary to protect such animals and the general public;

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Amendment of Section 5-1, Definitions of “Proper Enclosure”, “Restrained” and “Running at large” or “animals at large”. The definitions of “Proper enclosure”, “Restrained”, and “Running at large” or “animals at large” set forth in Section 5-1, City of Kyle Code of Ordinances (the “Code”) are hereby amended to read as follows:

Proper enclosure means a house or a building, or in the case of a fence or structure/pen, the fence or structure/pen must be at least four feet in height. The structure/pen must also have minimum dimensions of 150 square feet of space for each dog 6 months or older and shall otherwise comply with Section 5-79. The fence or structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured such that an animal cannot climb, dig, jump or otherwise escape of its own volition. The enclosure shall be securely locked at all times and have secured sides to prevent a dangerous animal or registered dangerous dog from escaping from the enclosure. The structure/pen shall provide protection from the elements for the animal. The animal control officer may require a fence higher than four feet or require a secure top and/or a secure bottom to the structure/pen if the need is demonstrated. Invisible fences or similar technology shall not constitute proper enclosure.

Restrained means:

- (1) With respect to a dog:
 - a. Kept under the direct physical control of the animal’s owner or handler by a tether, leash, cord, chain or similar direct physical control; or

- b. Confinement through fencing or similar enclosed structure within the property limits of its owner.
- (2) With respect to any other animal:
 - a. Secured by a tether, leash, rope or chain of some sort; or
 - b. Confinement through fencing or similar structure within the property limits of its owner.

Running at large or animals at large means:

- (1) *Off premises.* Off-premises as follows:
 - a. Any animal, except pet cats, which is not restrained by means of a tether, leash, chain, or other physical apparatus of sufficient strength and length to control the actions of such animal while off-premises;
 - b. Any cat which is creating a nuisance off the owner's property.
- (2) *On-premises.* On-premises as follows:
 - a. Any animal, except pet cats, not confined to the premises of the owner by a substantial fence of sufficient strength and height to prevent the animal from escaping therefrom;
 - b. Any animal, except dogs, secured on the premises by a tether, chain or leash sufficient in strength to prevent the animal from escaping from premises and so arranged that the animal will remain upon the premises when the tether, leash, or chain is stretched to full length;
 - c. An animal intruding upon the property of another person other than the owner's shall be termed "at large;"
 - d. Any animal within a vehicle in a manner that would prevent that animal's escape or contact with other persons or animals shall not be deemed "at large."

Section 3. Amendment of Section 5-38(c). Section 5-38(c) of the Code is hereby amended in its entirety to read as follows:

- (c) *Restraint required.* An animal shall be considered to be at large if it is:
 - 1. Not under the control of its owner by either a tether, leash, chain, cord or other suitable material attached to a collar or harness;
 - 2. In the case of an animal other than a dog, not restrained on the property of the owner by a tether, leash, chain, cord; or
 - 3. Not restrained on the property of the owner by a fence.
 - 4. An animal inside a vehicle parked in a public place or in the open bed of a moving or parked vehicle in a public place shall be considered to be at large unless it is restrained in such a manner that it cannot exit the vehicle of its own volition.

Section 4. Amendment of Section 5-39. Section 5-39 of the Code is hereby amended in its entirety to read as follows:

- (b) *Chaining or tethering.* Additionally, the female dog or cat shall not be chained or tethered.

Section 5. Amendment of Section 5-74. Section 5-74 of the Code is hereby amended in its entirety to read as follows:

- (a) It shall be unlawful for any person to tether, chain or fasten any animal in such a manner as to permit it to be upon any public sidewalk or street or to leave it unattended while tethered, chained, or fastened on public property. It shall be unlawful to tether, chain, or fasten an animal in such a manner as to cause it injury or pain or not permit it to reach shelter, food, and water.
- (b) Except as provided in subsection (c), a person may not restrain a dog with a chain, leash, cord, tether, or similar restraint unless the person is holding the chain, leash, cord, tether, or restraint.
- (c) The prohibition of subsection (b) does not apply:
 - 1. To a temporary restraint during a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity;
 - 2. To a temporary restraint that is required to protect the safety or welfare of a person or the dog, if the dog's owner or handler remains with the dog throughout the period of restraint; or
 - 3. To a dog that is restrained while quarantined by the owner, as defined by this Chapter, with the permission of and for the period of time authorized by the animal control officer.
- (d) A person restraining a dog with a chain, leash, cord, tether, or other restraint shall attach the chain, leash, cord, tether, or restraint to a properly fitting collar or harness worn by the dog. A person may not wrap a chain, leash, cord, tether or other similar restraint directly around a dog's neck. A person may not restrain a dog with a chain, leash, cord, tether, or other similar restraint that weighs more than 1/18 of the dog's body weight, except as authorized for registered dangerous dogs. A chain, leash, cord, tether, or other restraint used to restrain a dog must, by design and placement, be unlikely to become entangled.

Section 6. Amendment of Section 5-79. Section 5-79 of the Code is hereby amended by adding subsection (c) to read as follows:

- (c) An outdoor enclosure used as the primary living area for a dog or used as an area for a dog to regularly eat, sleep, drink, and eliminate must have at least 150 square feet of space for each dog six months of age or older.

Section 7. Amendment Of Conflicting Ordinances. Chapter 5 of the Code is hereby amended as provided herein and all ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 8. Savings Clause. All rights and remedies of the City of Kyle are expressly saved as to any and all violations of the provisions of any ordinances affecting animals within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 9. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 10. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 11. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading this ____ day of _____, 2011.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2011.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Lucy Johnson, Mayor