

ORDINANCE NO O-2010-181

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, ESTABLISHING TERMS, CONDITIONS AND REGULATIONS OF THE ANIMAL POPULATION, INCLUDING BUT NOT LIMITED TO LIVESTOCK, FOWL, DOGS, AND CATS WITHIN THE CITY LIMITS; ESTABLISHING THE NUMBER OF LIVESTOCK AND FOWL WITH REGARD TO SPACE AND MANAGEMENT REQUIREMENTS; ESTABLISHING PROCEDURES FOR DECLARING AN ANIMAL DANGEROUS; ESTABLISHING REGULATIONS REGARDING THE HOUSING OF DANGEROUS ANIMALS; AUTHORIZING AND DIRECTING THE PLACEMENT OF A DANGEROUS ANIMAL IN COUNTY DOG POUND; ESTABLISHING RULES FOR DETERMINING AN ANIMAL A PUBLIC NUISANCE; PROVIDING A PENALTY OF AN AMOUNT OF NOT LESS THAN FIFTY DOLLARS (\$50.00) NOR MORE THAN TWO THOUSAND DOLLARS (\$2,000) FOR VIOLATION OF ANY PROVISION HEREOF, WITH EACH DAY OF VIOLATION CONSTITUTING A SEPARATE OFFENSE; REPEALING ORDINANCE NO. 346 PASSED, APPROVED, AND ADOPTED ON THE 27TH DAY OF JULY, 2004 AND ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the City Council of the City of Magnolia, Texas (the "City") recognizes that the regulation of the animal population within the City is in the best interest of the health, safety and welfare of its citizens; and

WHEREAS, the City Council desires to implement regulations to control and eradicate the spread of rabies within the City; and

WHEREAS, the City Council intends, through this ordinance, to establish regulations defining and controlling dangerous animals within the City; now, therefore,

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

Section 1. The facts and matters set forth in the preamble are hereby found to be true and correct and are incorporated herein as if set forth at length.

Section 2. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shall mean a mammal.

Animal Control Officer shall mean any person employed or appointed who is authorized to investigate and enforce violations relating to animal control or cruelty under the provision of this article.

Animal establishment shall mean a pet shop, grooming shop, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, or kennel.

Animal shelter shall mean any facility operated by the health district, a humane society, municipal agency, or any other governmental entity or their authorized agents for the purpose of impounding or caring for animals held under the authority of this article or state law.

Assistance animal shall mean an animal that is specially trained or equipped to help a person with a disability and that:

- (1) Is used by a person with a disability who has satisfactorily completed a specific course of training in the use of the animal; and
- (2) Has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide animals with training of this type.

At large shall mean a dog or other animal is not under the direct control of the owner.

Auction shall mean any place or facility whose animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this division. This does not apply to individual sales of animals by owners.

Cat shall mean all domestic species or varieties of the genus *Felis*, male or female.

Dog shall mean all domesticated members of the species *Canis familiaris*, male or female.

Dangerous dog Any dog that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties. The term "dangerous dog" includes any dog that according to record of the City, the Police Department, the City Municipal Court, animal control agency, or any law enforcement agency:

- (1) Has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property or when

unprovoked, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by any of the above –referenced authorities.

- (2) Has more than once severely injured or killed a domestic animal while off the owner's property.
- (3) Has been used primarily or in part for the purpose of dog fighting, or is trained for dog fighting.

Circus shall mean a commercial variety show featuring animal acts for public entertainment.

Confined or confinement of an animal shall mean confined within a building or home, or within a mechanical or visible fenced yard or premises built to contain the animal and also to keep anyone from entering into the animal's area, so that the animal cannot escape from the building, house, or fenced yard or premises without human assistance.

Direct control shall mean immediate, continuous physical control of a dog such as by means of a leash, cord, secure fence, or chain of such strength to restrain the dog and controlled by a person capable of restraining the dog, or safe and secure restraint within a vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog, voice control shall be considered direct control when the dog is actually participating in training or in an official showing, obedience, or field event. Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or to government police dogs.

Exotic animal shall mean the same as "wild animal."

Fowl shall mean any member of the bird family.

Grooming shop shall mean a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Hobby breeder shall mean any person engaged in the part-time recreational activity of raising or breeding animals or birds to further develop the species. This can include the occasional sale or trade of offspring as a means to recover expenses and reduce the population of the animals housed. Qualifications as a hobby breeder shall be determined by the animal control officer.

Inhumane treatment shall mean any treatment of any animal which deprives the animal of sustenance, including food, water or protection from weather, or any treatment of any animal such as overloading, overworking, tormenting, beating,

mutilating or teasing, or other abnormal treatment as may be determined by a public health official, animal control officer, veterinarian, or a law enforcement officer.

Kennel shall mean any lot, enclosure, premises, structure or building whereon three or more dogs and/or cats over the age of four months are kept or maintained for any purpose whatsoever, except a veterinary hospital operated by a graduate veterinarian duly licensed by the state board of veterinary examiners, or an impound facility operated by government.

Licensing authority shall have the same meaning as “regulatory authority.”

Livestock shall mean any horse, cow, cattle, donkey, jack, jenny, mule, sheep, goat, pig, swine or hog, chicken, turkey, guinea, duck or goose.

Multiple dwelling shall mean any structure designed and intended to accommodate more than one family and includes but is not limited to duplex buildings and apartment buildings.

Muzzle shall mean a device constructed of strong soft material or of metal designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

Owner shall mean any person who owns, harbors, shelters, keeps, controls, manages, possesses or has part interest in any dog, cat or other animal. The occupant of any premises on which a dog or cat remains for a period of seven days or to which it customarily returns daily for a period of ten days is presumed to be harboring, sheltering or keeping such dog or cat within this definition. Under no circumstances are the normal and ordinarily accepted definitions of the terms harboring, sheltering or keeping to be limited to the words of such presumption. If a minor owns a dog, cat or other animal subject to the provisions of this chapter, the head of the household of which such minor owner is a member shall be deemed to be the owner of such dog, cat or animal for the purpose of this chapter and shall be responsible as the owner, whether or not such household head is himself a minor. If not a member of a household, such minor owner shall himself be directly subject to the provisions of this chapter.

Person with a disability shall mean a person who has a mental or physical disability, including mental retardation, hearing impairment, deafness, speech impairment, visual impairment, or any health impairment that requires special ambulatory devices or services.

Pet shop shall mean any person, whether operated separately or in connection with another enterprise except for a licensed kennel, that is in the business of buying, selling or boarding any species of animals.

Pit Bull Dog shall mean and shall include the following dogs:

- (1) The Staffordshire bull terrier breed of dogs.
- (2) The American Staffordshire terrier breed of dogs.
- (3) The American Pit Bull Terrier breed of dogs.
- (4) Dogs that have the appearance and characteristics of being predominately of the breeds of dogs known as Staffordshire bull terrier, American Pit Bull Terrier, or American Staffordshire terrier.

Quarantine shall mean complete and total isolation in a state department of health approved facility for no less than ten complete days following the bite date.

Regulatory authority shall mean the City or County.

Residential area shall mean any area of the City where the primary land use is the construction of structures used for the habitation of people.

Riding school or stable shall mean any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule or burro.

Running at large or at large shall mean that any animal is not under the control of the owner, or that of a person authorized by the owner to care for the animal, either by cord, leash, chain, or confinement.

Running at large shall mean:

- (1) *Off-premises.* Any dog which is not restrained by means of a leash or chain of sufficient strength and not more than 15 feet in length to control the action of such animal while off premises; or any cat which is off the owner's property.
- (2) *On-premises.* Any dog not confined by the premises of the owner by a substantial fence of sufficient strength and height to prevent the animal from escaping there from, or secured on the premises by a metal chain or leash sufficient in strength to prevent the animal from escaping from the premises and so arranged that the animal will remain upon the premises when the leash is stretched to full length, or held in the hands of the owner or keep, or under the direct supervision of the owner or keeper within the limits of the owner's private property. Dogs and cats on private property under the direct supervision of the owner shall be obedient to the owner's command and shall not be allowed to leave the private property without being leashed. A dog intruding upon the property of another person other than the owner shall be termed "at large." Any animal within an automobile or other vehicle of its owner or owner's agent shall not be deemed "at large."

A female dog in heat that is not enclosed shall be considered "at large," whether on or off premises.

Sanitary Condition A condition of good order and cleanliness to minimize the possibility of disease transmission.

T.D.H. shall mean the Texas Department of Health.

Under Restraint shall mean an animal is secured by a leash, led under the control of a person physically capable of restraining the animal and obedient to that person's commands, or securely enclosed within the real property limits of the owner's premises.

Veterinary hospital shall mean any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Wild Animal shall mean and includes any mammal, amphibian, reptile or fowl which is of a species which is wild by nature, and of a species which, due to size, vicious nature or other characteristic is dangerous to human beings. Such animals shall include but not be limited to lions, tigers, leopards, panthers, lynx, wolves, raccoons, skunks (whether deodorized or not,) apes, gorillas, monkeys of a species where average adult weight is 20 pounds or more, foxes, elephants, rhinoceroses, alligators, crocodiles, and all forms of poisonous reptiles, and any other animal that is not indigenous to the City. The term "wild animal" shall not include gerbils, hamsters, guinea pigs, mice or rabbits.

Zoological park shall mean any facility, other than a pet shop or kennel, which displays or exhibits one or more species of non-domesticated animals operated by a person, partnership, corporation or government agency.

Section 3. Keeping of animals generally.

(a) It shall be unlawful and constitute a public nuisance for any person to keep any livestock, barnyard or domestic animal, wild animal or reptile within the City unless such animal is penned, or any place within the City in which manure or liquid discharge of such animal shall collect and accumulate.

(b) Any person keeping or maintaining any such animal shall be required to make provision for the periodic sanitary disposal of manure and other excretion resulting from such keeping and shall prevent a condition which would constitute a breeding place for flies.

(c) All enclosures or buildings in which any livestock is kept or permitted to remain within the City shall be kept in a reasonably clean and sanitary condition. Such enclose, pen, corral or other restricted area shall be filled with

dirt and/or gravel of sufficient depth to prevent water from standing or accumulating, and manure shall be removed there from at regular intervals so as to prevent the accumulation of filth or providing a breeding place for flies, but in no event shall any removal occur less than once every ten (10) days. Each such enclosure, pen corral or other restricted area shall be sprayed with some type of effective disinfectant designed for the prevention of flies at intervals not to exceed thirty (30) days.

Section 4. **Restraint**

- (a) All animals shall be kept under restraint at all times while in the City.
- (b) An owner shall exercise proper care and control of his animals to prevent such animals from becoming a public nuisance.
- (c) Every female dog or cat in season (estrus) shall be kept securely confined in such a manner that it cannot come in contact with the male dog or cat except for planned breeding.

Section 5. **Keeping noisy animal or bird.** It shall be unlawful for any person within the City to keep any animal or bird which shall make excessive or unusual noise, reasonably calculated to disturb the comfort or repose of persons of ordinary temper, sensibility or disposition.

Section 6. **Treatment and care of animals.**

- (a) Prohibited acts. It shall be unlawful for a person to intentionally or knowingly:
 - (1) Beat, cruelly treat, torment, torture, overload, overwork or otherwise abuse any animal.
 - (2) Fail unreasonably to provide necessary water, food, care, shelter and ventilation for an animal in his custody.
 - (3) Abandon unreasonably an animal in his custody.
 - (4) Transport or confine an animal in a cruel manner.
 - (5) Kill, injure, or administer poison to an animal. (This does not apply to rodent control or pets brought to the animal facility or veterinarian for euthanasia.)
 - (6) Cause or instigate an animal to fight with another.

- (7) Give away any live animal, fish, reptile or bird as a prize for, or an inducement to enter, any contest, game, or other competition, a place of business, or business agreement.
- (8) Fail to stop and render assistance or to report an injury or death of a domestic animal to the owner, police department or animal control officer when one has struck the animal with a vehicle.
- (9) Trap an animal by means of steel jaw leg or neck traps.

(b) Seizure and disposition of cruelly treated animals. The procedures for the seizure and disposition of a cruelly treated animal are set out in Texas Health and Safety Code, chapter 821, subchapter B (V.T.C.A., Health and Safety Code § 821.021 et. seq.) and are the basis for this section.

- (1) If an animal control officer has reason to believe that an animal has been or is being cruelly treated, he may apply to the Municipal Court for a warrant to seize the animal.
- (2) On showing probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within ten days of the date of issuance for a hearing in the court to determine whether the animal has been cruelly treated.
- (3) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.
- (4) If the court finds the animal's owner has not cruelly treated the animal, the court shall order the animal returned to its owner.
- (5) If the court finds the animal's owner has cruelly treated the animal, the court shall:
 - a. Order a public sale of the animal by auction
 - b. Order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals; or
 - c. Order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

- (6) The court may order that the animal disposed of under subsection (5) a or (5) b be spayed or neutered at the cost of the receiving party.
- (7) The owner of the animal may appeal the order. While the appeal is pending, the animal may not be sold, destroyed, or given away.
- (8) Notice of the auction shall be posted where all public notices are posted.
- (9) At the auction, a bid by the former owner of the owner's representative shall not be accepted.
- (10) Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and in conducting the auction. Any excess proceeds shall be paid to the court, which shall return the excess proceeds to the former owner of the animal.
- (11) If the officer is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of the animals.

Section 7. Duties of owners and persons in control and protection of animals.

It shall be unlawful for any owner or person to:

- (a) Fail to prevent any animal from running at large within the corporate limits of the City.
- (b) Perform, do, or carry out any inhumane treatment of any animal.
- (c) Keep, possess, own, control, maintain, use or otherwise exercise dominion over any animals which by reason of noise, odor or sanitary conditions become offensive to a reasonable and prudent person of ordinary tastes and sensibilities, or which constitute or become a health hazard.
- (d) Keep or harbor any dangerous, vicious, or wild animals within the corporate limits of the City.
- (e) Keep, maintain, own or operate a dog kennel or cat kennel in any residential area within the corporate limits of the City.

- (f) Fail to keep or maintain a horse in the city unless it has been vaccinated with *anti-Venezuelan Equine Encephalomyelitis vaccine*.
- (g) Fail to have a dog or cat vaccinated against rabies by the time the dog or cat is three months of age, and the rabies vaccine shall be administered by a duly licensed veterinarian. The immunization shall be for a period of up to one year and is required to be updated every three years following the initial vaccination.
- (h) Fail to obtain a certificate of vaccination from the vaccinating veterinarian, stating the name and address of the owner, description of the dog or cat, the date of vaccination, and the number of the rabies vaccination tag.

ARTICLE II. LIVESTOCK AND FOWL

Section 8. Keeping of livestock.

- (a) Pigs and hogs shall not be kept under any condition within the City.
- (b) For the maintenance of the public health and welfare and in order to prevent the spread of disease, it shall be unlawful for any person to keep, own, maintain or possess any livestock larger than 150 pounds within the city closer than 50 feet to the exterior limits of any dwelling, resided in by anyone other than the person so keeping, owning, maintaining or possessing such livestock, unless the area involved is greater than 8,000 square feet. To keep such animal for more than 48 hours, the area of open land available to the animal must exceed on-quarter acre per horse and one acre per head for any other kind of livestock.
- (c) For the purpose of determining whether or not the property contains one acre in area, any areas containing a single-family residence or other building, swimming pool, or structure, shall not be taken into consideration. The one acre must be devoted entirely to pasture land.
- (d) If a single family residence is constructed and certificate of occupancy is acquired adjacent to an area where livestock are being kept, the owner of the livestock shall have 60 days in which to comply with the terms of this section. If a tract or parcel of land adjacent to an area where livestock are being kept is platted in single-family residential lots, the owner of the livestock shall have 60 days in which to comply with the terms of this section.

Section 9. **Livestock at large.** It shall be unlawful and is hereby declared to be a nuisance for any livestock to be at large within the city. Any person owning or having control of any livestock who shall knowingly permit it to be at large, unattended within the City shall be deemed guilty of a misdemeanor.

Section 10. **Number of livestock and fowl allowed; space and management requirements.**

- (a) Permitted animals. Animals which are normally and customarily kept as pets, and not prohibited elsewhere in this chapter, are allowed provided that such animal(s) are kept in accordance with the requirements of all federal, state, or local regulations. The animals authorized by this subsection include pigeons, chickens, pheasants, quail, cows, horses, sheep, goats and other livestock.
- (b) Pigeons. A maximum of 25 pigeons is permitted on a single lot, parcel or tract of land. All pigeons shall be confined at all times in a clean, sanitary cage or loft located at least 50 feet from any residence or adjacent property not owned by the owner of the pigeons.
- (c) Livestock. A minimum of 8,000 square feet of land is required to keep livestock. The maximum number of animals allowed per acre is as follows:
 - (1) Farm animals (horses, cows, sheep, or goats, etc.): Four on any one acre tract, one additional animal is permitted for each additional full acre.
- (d) Livestock and fowl shall not be housed within 25 feet of any residence or adjacent property line. No livestock or fowl shall be allowed to roam, graze, or be housed within 200 feet of any food service establishment or food processing establishment.
- (e) Exclusions. Subsections (b) and (c) shall not apply to animal control facilities, veterinarian, or commercial animal establishments, animal hospitals operated by a licensed veterinarian, or commercial animal establishments. Such establishment, however, must meet sanitation requirements and keep animals securely caged or penned. The said clauses shall not be construed to prohibit any person engaged in operating any abattoir, packing house or stockyard from keeping livestock for a reasonable length of time while awaiting their use.

Section 11. Sanctioned youth agricultural programs.

- (a) Sanctioned programs. Youth agricultural programs shall include but not limited to Future Farmers of America and 4-H clubs.
- (b) Agricultural projects. When not prohibited by restrictive covenants or deed restrictions applicable to such property, the periodic keeping (raising) of livestock, rabbits or fowl within the City for the purpose of competitively exhibiting and selling project animals in various local, county, or state livestock events as part of a sanctioned program defined in § 11(a) above shall be permitted.

ARTICLE III. DOGS AND CATS

Section 12. Procedure for declaring a dog dangerous.

- (a) The Chief of Police, police officers, an animal control officer or any adult person may request under oath that a dog be classified as dangerous as defined in section 2 by submitting a sworn, written complaint on a form approved by the Municipal Court Judge. Upon receipt of such complaint, the municipal court shall notify the owner of the dog that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.
- (b) At the conclusion of the investigation, the judge of the Municipal Court may:
 - (1) Determine that the dog is not dangerous and, if the dog is impounded, waive any impoundment fee incurred and release the dog to its owner; or
 - (2) Determine that the dog is dangerous and order the owner to comply with the requirements for keeping dangerous dogs set forth in Section 14, and if the dog is impounded, release the dog to its owner after the owner has paid all fees incurred for the impoundment. If all impoundment fees have not been paid within ten (10) business days after the final determination that a dog is dangerous, the judge may cause the dog to be humanely destroyed.

Section 13. Notification of dangerous dog declaration.

- (a) Within five (5) business days after declaring a dog dangerous, the Chief of Police or his designee shall notify the owner by certified mail of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set forth in Section 16 of this ordinance. The Chief of Police or his designee also shall

notify the Mayor and the Municipal Court Judge of the designation of any dog as a dangerous dog. Such notification shall describe the dog and specify any particular requirements or conditions placed upon the dog owner.

- (b) The notice shall inform the dog owner that he may request, in writing, a hearing to contest the Municipal Judge's finding and designation within five (5) business days after delivery of the dangerous dog declaration notice.
- (c) If the Chief of Police cannot with due diligence locate the owner of a dog that has been seized pursuant to this article, the Chief of Police shall cause the dog to be impounded for not less than five (5) business days. If after five (5) days the owner fails to claim the dog, the Chief of Police may cause the dog to be humanely destroyed.

Section 14. Hearing on dangerous dog declaration.

- (a) The Municipal Court Judge shall hold a hearing within fifteen (15) business days after receiving the dog owner's written request for such a hearing. The Municipal Court Clerk shall provide notice of the date, time and location of the hearing to the dog owner by certified mail and to the complainant by regular mail.
- (b) At a hearing, all interested parties shall be given the opportunity to present evidence on the issue of the dog's dangerousness. Criteria to be considered in a hearing required by this section shall include but not be limited to the following:
 - (1) Provocation;
 - (2) Severity of attack or injury to a person or domestic animal;
 - (3) Previous aggressive history of the dog;
 - (4) Observable behavior of the dog;
 - (5) Site and circumstances of the incident; and
 - (6) Statements from interested parties.
- (c) A determination at a hearing that the dog is in fact a dangerous dog as defined in Section 2 shall subject the dog and its owner to the provisions of this article.

- (d) Failure of the dog owner to request a hearing shall result in the dog being finally declared a dangerous dog and shall subject the dog and its owner to the provisions of this article.

Section 15. **Appeal from dangerous dog declaration.** If the judge of the municipal court determine that the dog is dangerous at the conclusion of a hearing conducted under Section 14, that decision shall be final unless the dog owners applies to a court of competent jurisdiction of any remedies that may be available within ten (10) days after receiving notice that the dog has been finally declared dangerous. The appeal must be a trail de novo and shall be a civil proceeding for the purpose of affirming or reversing the Municipal Court Judge's determination of dangerous.

Section 16. **Keeping of dangerous dogs.** The keeping of dangerous dogs as defined in Section 2 shall be subject to the following requirements:

- (a) Leash. No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen or other proper enclosure unless such dog is securely attached to a leash not more than four (4) feet in length. No such person shall permit a dangerous dog to be kept on a chain rope or other type of leash outside its kennel or pen unless a person capable of controlling the dog is in physical control of the leash.
- (b) Muzzle. It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.
- (c) Confinement. Except when leashed and muzzled as provided in this section, a dangerous dog shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light, and

ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:

- (1) The structure must have secure sides and a secure top, or all sides must be at least eight (8) feet high;
 - (2) The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and
 - (3) The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.
- (d) Indoor Confinement. No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacles preventing the dog from exiting the structure.
- (e) Signs. All owners, keepers, or individuals harboring dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog."
- (f) Liability Insurance, Surety Bond. The owner of a dangerous dog shall present to the police department proof that he has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars (\$100,000.00) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing the policy in the event that the insurance policy is cancelled, terminated, or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve-month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period. In the event that the owner(s) prove to the satisfaction of the Municipal Court Judge that insurance is not available, he may pay a nonrefundable case fee in the amount of one thousand dollars (\$1,000.00) to the City.
- (g) Notification of Escape. The owner or keeper of a dangerous dog shall notify the police department if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.

- (h) Failure to Comply. It shall be unlawful and a misdemeanor for any owner of a dangerous dog registered with the police department to fail to comply with the requirements and conditions set forth in this section. Any dog found to be in violation of this section shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this article shall result in the revocation of the dog's license and the permit providing for the keeping such animal.

Section 17. Permit and tag required for a dangerous dog.

- (a) The owner of a dangerous dog shall, within three (3) business days after the classification of the dog as dangerous or upon acquisition of such a dog, obtain an annual permit from the City to harbor the dog. The annual fee for such permit shall be set by the City Council.
- (b) At the time the permit is issued, a red circular tag shall be issued to the owner of the dangerous dog. The tag shall be worn at all times by the dog to clearly and easily identify it as a dangerous dog.

Section 18. Pit bull presumed dangerous. There shall be an irrefutable presumption that any dog registered with the City as a pit bull dog is a dangerous dog and is therefore subject to the requirements of this article.

Section 19. Destruction.

- (a) The Chief of Police or his designee may order the destruction of a dog that it determines to be extremely dangerous to public health or safety, a dog that has made an extremely vicious attack upon an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.
- (b) The Chief of Police or his designee shall give written notice by certified mail of its intention to destroy such dog to the owner or custodian of the dog who may request in writing, within ten (10) business days after delivery of such notice, a hearing to contest the intended destruction.
- (c) If no hearing is requested pursuant to subsection (b), the dog shall be destroyed pursuant to the applicable provisions of the law.

- (d) If a hearing is requested pursuant to subsection (b), such hearing shall be held within ten (10) business days after the request and the dog shall not be destroyed prior to the conclusion of the hearing.
- (e) The dog owner shall be responsible for payment of all boarding costs and other fees as may be equipped for the City to humanely and safely keep the animal during any legal proceeding.

Section 20. **Appeal from order of humane destruction.** If the Chief of Police or his designee orders a dangerous dog to be destroyed pursuant to Section 19, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) days after receiving notice of the destruction order. If an appeal is timely filed, the Chief of Police shall suspend the destruction order pending the final determination of the Court. The appeal hearing must be a trail de novo and shall be a civil proceeding for the purpose of affirming or reversing the director's destruction order.

Section 21. **Change of ownership.**

- (a) Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog shall, within ten (10) business days after such change of ownership or residence, provide written notification to the Chief of Police of the name, address, and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the police department along with written acknowledgement by the new owner of his receipt of such notification. The Chief of Police or his designee shall notify the Municipal Court Judge and Mayor of any changes of ownership, custody or residence of the dog within three (3) business days after receiving the required information from the previous dog owner.
- (c) Any person receiving a dog classified as dangerous must obtain the required permit, tag and enclosure prior to acquisition of the dog. The new owner shall comply fully with the provisions of this article pertaining with obtaining liability insurance, payment of fees, and maintenance, control and ownership of a dangerous dog.

Section 22. **Continuation of dangerous dog declaration.** Any dog that has been declared dangerous by the Chief of Police or Municipal Court Judge, another municipality, county, or state shall be subject to the provisions of this article for the remainder of the dog's life. The person owning or having custody of any dog designated as a dangerous dog by a municipality, county, or state government shall notify the police department of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City. The restrictions and conditions of maintenance of any dog declared dangerous by this City or another municipality, county, or state shall remain in force while the dog remains in the City.

Section 23. **Public nuisance.**

- (a) The following definitions are in addition to those set out in Section 2 of this chapter.

Public nuisance, as used in this section, shall include City of Magnolia Ordinance No. 295, adopted the 12th day of February, and shall mean a condition which injures or endangers the public health, safety, and welfare, gives offense to the senses, gives material annoyance, inconvenience, or discomfort to a person of ordinary sensibilities, or interferes with the reasonable use and enjoyment of public property.

Owner of fowl shall mean a person, partnership, or corporation owning, keeping or harboring fowl. Fowl shall be deemed to be harbored if it is fed, sheltered or allowed or permitted to remain on a person's property under the control of said person for three or more days.

- (b) Failure to exercise proper care prohibited. Failure of an owner to exercise proper care and control of his animal(s) or fowl and the premises where said animal(s) or fowl are kept to prevent them from becoming a public nuisance is prohibited.

- (c) Condition constitutes nuisance.

- (1) Animals. All of the following conditions, situations, or occurrences are hereby declared to be a public nuisance and constitute a failure of

the owner to exercise proper care and control of his animal and/or the premises where said animal are or have been kept:

- a. Any animal which turns over garbage containers or scatters garbage or which otherwise damages private or public property;
- b. Any dog or livestock at large or free-roaming off of private property owned or controlled by the owner, keeper, or person in charge of said dog or livestock;
- c. Any animal that barks, whines, howls, or makes other sounds or noises in excessive continuous, or untimely fashion; or
- d. Any building, room, cage, kennel, yard, run, stable, pen, fenced pasture, or other place or facility where animals are kept or harbored is not maintained in a clean or sanitary condition so as to prevent obnoxious odors, the attraction, breeding or potential breeding of flies, the attraction, harboring or breeding of rodents or potential breeding of rodents, or the creation of any other public nuisances.

(2) Fowl. All of the following conditions, situations or occurrences are hereby declared to be a public nuisance and constitute a failure of the owner to exercise proper care and control of his fowl and/or the premises where said fowl are or have been kept.

- (a) Any fowl at large or free-roaming off of private property owned or controlled by the owner, keeper, or person in charge of said fowl; or
- (b) Any fowl that makes sounds or noises in an excessive, continuous, or untimely fashion; or
- (c) Any building, room, cage, yard, shed, pen, or any other place or facility where fowl are kept or harbored which is not maintained in a clean and sanitary condition so as to prevent obnoxious odors, the attraction, breeding or potential breeding of rodents, or the creation of any public health nuisances.
- (d) Abatement.

- 1. Notice. Notice shall be pursuant to City of Magnolia Ordinance No. 295.

Section 24. **Penalty.** Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision contained in this Ordinance, or who shall commit or perform any act declared herein to be unlawful, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not less than fifty dollars (\$50.00) not to exceed two-thousand dollars (\$2,000.00). Each day of violation shall constitute a separate offense.

Section 25. **Repealed.** Ordinance No. 346 passed, approved, and adopted on the 27th day of July, 2004, and all other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

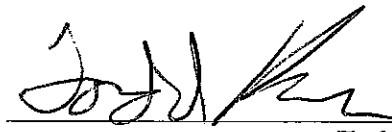
Section 26. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 27. The City Secretary or that office designee is instructed to provide a Copy of this Ordinance to the Municipal Code Corporation.

Section 28. 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, Chapter 551, Texas Local Government Code.

Section 29. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code. This Ordinance takes effect when the publication requirements are satisfied.

PASSED, APPROVED, AND ADOPTED this 10th day of August, 2010.



Todd Kana, Mayor

ATTEST:



Debra Brent, City Secretary