

CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 214

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS AMENDING ORDINANCE NO. 157 OF THE CITY REGARDING THE REGULATION OF ANIMALS BY ADDING CERTAIN DEFINITIONS THERETO; ADDING TO ORDINANCE NO. 157 A NEW SUBSECTION C. TO SECTION 12 THEREOF RELATING TO KENNELS, PROHIBITING A KENNEL EXCEPT AS ALLOWED BY THE CITY'S ZONING ORDINANCE, REQUIRING A KENNEL PERMIT IN ORDER TO OPERATE A KENNEL, AND PROVIDING STANDARDS AND CONDITIONS FOR THE ISSUANCE AND REVOCATION OF A KENNEL PERMIT; ADDING A NEW SUBSECTION C. TO SECTION 12 THEREOF RELATING TO KENNELS, PROHIBITING A KENNEL EXCEPT AS ALLOWED BY THE CITY'S ZONING ORDINANCE, REQUIRING A KENNEL PERMIT IN ORDER TO OPERATE A KENNEL, AND PROVIDING STANDARDS AND CONDITIONS FOR THE ISSUANCE AND REVOCATION OF A KENNEL PERMIT; ADDING TO ORDINANCE NO. 157 A NEW SECTION 8A THEREOF RELATING TO THE KEEPING OF MULTIPLE PETS, REQUIRING A PERMIT THEREFOR, AND PROVIDING STANDARDS AND CONDITIONS FOR THE ISSUANCE AND REVOCATION OF A MULTIPLE PET OWNER PERMIT; ADDING TO ORDINANCE NO. 157 A NEW SECTION 8B THEREOF RELATING TO THE REGISTRATION WITH THE CITY OF DOGS THAT HAVE RECEIVED GUARD DOG OR ATTACK DOG TRAINING, PROVIDING THAT SUCH A DOG THAT IS FOUND AT LARGE AND THAT EXHIBITS AGGRESSIVE BEHAVIOR MAY BE DESTROYED, AND PROVIDING OTHER PROVISIONS REGARDING SUCH DOGS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR ANY OFFENSE, AND AN OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

**Section 1. Amendment.** Ordinance No. 157 of the City of Lowry Crossing, Texas (the "City") is hereby amended in the following particulars, and all other provisions of Ordinance No. 157 are not amended but are hereby ratified and affirmed:

A. Section 1, Definitions, of the said Ordinance No. 157 is amended by adding thereto a new subsection I-1 and a new subsection J-1 to read as follows:

I-1. *Kennel* means any lot, building, structure, enclosure, or premises wherein four or more dogs, four or more cats, or four or more dogs and cats in the aggregate, are kept or

maintained at any time for the purpose of engaging in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs and/or cats. The term “kennel” does not include a grooming parlor, where no animals are kept overnight, or a veterinary clinic.

J-1. *Multiple pet owner* means a person who keeps or harbors more than five dogs or five cats or any combination of five cats and dogs; provided, however, that litter of puppies or kittens under four months of age shall be excluded from the count.

B. Section 12, Sanitary Conditions and Animal Care, of the said Ordinance No. 157 is amended by adding a new subsection C to read as follows:

C. *Kennels*. A kennel is not allowed in any zoning district of the City except as may be authorized by the zoning ordinance(s) of the City. Where the same is so authorized, a kennel may not be operated until such time as a permit for the operation thereof has been issued by the City.

1. Standards: A kennel shall comply with all of the following:

(a) Shall be of sufficient size so as to allow each animal to move about freely, and the size of the facility shall be in proportion to the size of each individual animal’s height and weight;

(b) Shall be kept in a sanitary condition at all times to allow for healthy conditions and treatment of each animal, free from waste, parasites, insects, and flies that could be harmful to an animal’s health and/or to the health of the general public;

(c) Shall be free of odor or stench which would be offensive to a person of ordinary sensibilities;

(d) Shall be located no closer than 400 feet from any residence, other than the residence of the kennel owner or operator (if the kennel is located in the residence of the kennel owner or operator);

(e) Shall be subject to inspection by an authorized representative of the City at reasonable times to determine compliance with the provisions of a kennel permit, this section and any applicable law, rule regulation;

(f) Adequate food and water shall be provided at all times for all animals kept within a kennel, so that each animal is maintained in good health and free from malnutrition and/or dehydration;

(g) Must provide proper and adequate protection from the elements, that is, rain, heat, cold, and similar elements.

2. Permit. A kennel permit may be issued in accordance with and subject to the following:

(a) *Application.* If a person desires to operate a kennel within the City, the person shall apply for a permit to operate the same from the City. The application shall be submitted to the City Secretary on a form provided by the City, which form shall include, among other things, the following (and each of the following shall remain true and correct at all times following the issuance of the permit and while the kennel is being operated):

(1) a statement by the applicant that all dogs and cats in the kennel that are four months of age or older will be, at all times fully vaccinated against rabies and dewormed;

(2) a drawing of the kennel (to show, among other things, the types of materials to be used and all kennel dimensions) and the property on which the kennel is to be located, showing the proposed location of the kennel and all improvements on the property, and the location and distance from the kennel to the nearest adjacent residence (other than the residence, if any, in which the kennel will be located);

(3) a statement that the applicant will at all times be the sole owner of the kennel;

(4) a statement that the kennel will at all times be kept in a clean and sanitary state;

(5) a statement that the applicant understands and agrees that the kennel is subject to inspection by an authorized representative of the City at reasonable times for the purpose of determining compliance with the provisions of a kennel permit, this section and any applicable law, rule regulation;

(6) a statement that the applicant acknowledges understands the provisions of this section (as existing or as may be amended from time to time) and will abide by and comply with the same at all times.

(b) *Inspection; Issuance.* The City's animal control or code enforcement officer shall, within ten days of the receipt by the City Secretary of the application that has been fully completed, review the application and inspect the premises and property where the proposed kennel is to be located. If the application and the premises and property (after inspection) is determined to comply with the requirements for the application and the kennel set forth herein, the City's animal control officer or code enforcement officer shall issue a kennel permit. The permit shall include the drawing of the kennel and surrounding property and premises submitted with the application and as approved by the City.

The kennel shall be constructed and operated only as shown on such drawing; no modification or changes thereto are permitted without the approval by the City of an amendment to the permit.

If a permit is denied, the applicant may appeal the denial by filing with the City Secretary, within 10 days following the date that the applicant receives notice of the denial, a written appeal of the denial to the City Council. The City Council shall schedule consideration of the appeal within a reasonable period of time, but in any event not later than 30 days after the date the written appeal is received by the City Secretary. If an appeal is filed, the decision of the City Council regarding the application for a permit shall be final.

(c) *Duration; Non-Assignable.* A kennel permit shall be valid for a period of one (1) year from the date of its issuance. A kennel permit is not transferable or assignable. No permit fee is required.

(d) *Revocation; Reinstatement.* Once issued, a kennel permit may be revoked by the City's animal control officer or code enforcement officer if the officer determines that:

- (1) any of the animals kept or harbored pursuant to the kennel permit repeatedly or regularly cause a stench or odor which is offensive to a person of ordinary sensibilities;
- (2) any animal kept or harbored pursuant to the kennel permit is kept or harbored in a manner which is dangerous to the health of the animal or to any other animal, including, without limitation, depriving an animal of necessary food, care or shelter or the cruel treatment of any animal;
- (3) any animal kept or harbored pursuant to the kennel permit repeatedly or regularly causes noise which is offensive or disturbing to a person of ordinary sensibilities on adjoining, adjacent or neighboring premises or property;
- (4) unsanitary conditions exist at the kennel to such an extent that those conditions create a possible medium of the transmission of disease to the animals kept there or to human beings; or
- (5) the kennel is not regularly maintained in accordance with the terms of the kennel permit and this section.

Prior to revocation, written notice shall be given to the permittee or the person in charge of the kennel. Such notice shall set forth:

- (1) the grounds upon which the City will seek revocation of the permit;

- (2) the specific conditions upon which the City will rely in seeking revocation of the permit;
- (3) that a hearing regarding the revocation will be held before the City Council;
- (4) the date, time and place of such hearing;
- (5) that the permittee may appear in person and/or be represented by counsel, may present testimony and may cross-examine all witnesses.

At such hearing, all parties shall have the right to representation by a licensed attorney; each party may present witnesses in his own behalf; each party has the right to cross-examine all witnesses; and only evidence presented before the hearing officer at such hearing may be considered in rendering the order. If the permittee fails to appear at the hearing at the time, place and date specified, the City shall present sufficient evidence to establish a prima facie case showing that conditions exist at the kennel which are grounds for suspension of the permit as set forth above.

After completion of the hearing, the City Council shall make written findings as to whether or not grounds exist for revocation of the permit. If the City Council finds that grounds do exist for revocation of the permit, the City Council may revoke the permit; however, in lieu of revoking the permit, the City Council may (i) deny the request for revocation if the Council finds that the needs of the animals and the public interest will be adequately protected by a warning, or (ii) defer its revocation decision and (A) establish conditions consistent with this section regarding the kennel and a period of time (not to exceed 60 days following the date of the hearing) for the permittee to comply with the same, (B) set a date for a hearing (which hearing shall be conducted as set forth in the immediately preceding paragraph) and determination by the City Council as to whether or not the permittee has complied with such conditions, and (C) at such subsequent hearing, if the City Council finds that the permittee has not complied with the conditions, the City Council may revoke the permit. A copy of the written findings shall be provided to the permittee.

If a permit is revoked, no animal shall be accepted or placed in the kennel and all animals at the kennel on the date the permit is revoked shall be removed therefrom as soon as possible, but in any case no later than ten days after notice that the permit has been revoked was served on or given to the permittee.

In the event a permit is revoked, the City shall not be liable to the permittee for any refund of any part of the permit fee, if any.

Reinstatement of a permit that has been revoked shall require application and payment of a permit fee as if it were an initial application; provided, however, no permit shall be issued to the same permittee if the permittee has been convicted of any offense involving cruelty to animals; no permit shall be issued to the same permittee within 60 days of the date a permit has been revoked; and no permit shall be issued for the same location unless it is shown that adequate precautions have been taken so that the conditions under which the permit was revoked shall not reoccur. If there is a dispute between the City's inspector and a person applying for a permit for a location for which a permit was revoked as to whether adequate precautions have been taken so that the conditions under which the permit was revoked will not reoccur, the applicant may request a hearing before the City Council. Such hearing shall be conducted under the same procedures as a hearing for a revocation of a permit, however the burden shall be on the applicant to show that adequate precautions have been taken so that the conditions under which the permit was revoked will not reoccur.

3. A notice or other delivery provided for in this section may be served or given by personal delivery, or by certified mail, return receipt requested, or by posting the notice or delivery on or near the front door of the premises where the kennel is located if personal service cannot be obtained and the notice or delivery has been sent certified mail, returned receipt requested, and returned undelivered.

C. A new Section 8A. to the said Ordinance No. 157 is added to read as follows:

**SECTION 8A. MULTIPLE PETS.**

A. Multiple Pet Owner Permit Required. No person shall keep or harbor more than five (5) dogs or five (5) cats or any combination of five (5) dogs and cats in any residential dwelling without obtaining a multiple pet owner permit. For purposes of this subsection, a maximum of one litter of puppies or kittens less than four months of age may be excluded from the count.

B. Standards: A residential dwelling for which a multiple pet permit is issued shall comply with all of the following:

(1) Shall be of sufficient size so as to allow each animal to move about freely, and the size of the facility shall be in proportion to the size of each individual animal's height and weight;

(2) Shall be kept in a sanitary condition at all times to allow for healthy conditions and treatment of each animal, free from waste, parasites, insects, and flies that could be harmful to an animal's health and/or to the health of the general public;

(3) Shall be free of odor or stench which would be offensive to a person of ordinary sensibilities;

(4) Shall be subject to inspection by an authorized representative of the City at reasonable times to determine compliance with the provisions of a multiple pet owner permit, this section, and any applicable law, rule or regulation;

(5) Adequate food and water shall be provided at all times for all animals, so that each animal is maintained in good health and free from malnutrition and/or dehydration;

(6) The animals must be maintained in a manner that does not pose a danger to the health of the animals themselves, or to animals on adjacent property;

(7) The animals must not cause noise that is offensive or disturbing to a person of ordinary sensibilities;

(8) Must provide proper and adequate protection from the elements, that is, rain, heat, cold, and similar elements.

C. Permit. A multiple pet owner permit may be issued in accordance with and subject to the following:

(1) *Application.* Any person the age of eighteen years or older who desires to keep or harbor more than five (5) dogs or five (5) cats, or more than five (5) dogs and cats in any combination, in a residential dwelling may apply for a multiple pet owner permit from the City. The application shall be submitted to the City Secretary on a form provided by the City, which form shall include, among other things, the following (and each of the following shall remain true and correct at all times following the issuance of the permit and while the person is a multiple pet owner):

(a) a statement by the applicant that all dogs and cats that are four months of age or older will be, at all times fully vaccinated against rabies and dewormed;

(b) a statement that the applicant understands and agrees that the residential dwelling with respect to which a permit is issued may be inspected by an authorized representative of the City at reasonable times to determine compliance with the provisions of a kennel permit, this section and any applicable law, rule regulation;

(c) a statement that the applicant acknowledges understands the provisions of this section (as existing or as may be amended

from time to time) and will abide by and comply with the same at all times;

(d) the applicant shall not have been issued citations for violation of this section on (2) two separate occasions, or animals covered by or to be covered by permit have not been impounded on (2) two separate occasions.

(2) *Inspection; Issuance.* The City's animal control officer or code enforcement officer shall, within ten days of the receipt by the City Secretary of the application that has been fully completed, review the application and inspect the premises and property which is the subject of the application. If the application, and the premises and property following inspection by the City, are determined to comply with the requirements set forth herein and all of the provisions set forth in this section, the City's animal control officer or code enforcement officer shall issue a multiple pet owner permit.

If a permit is denied, the applicant may appeal the denial by filing with the City Secretary, within 10 days following the date that the applicant receives notice of the denial, a written appeal of the denial to the City Council. The City Council shall schedule consideration of the appeal within a reasonable period of time, but in any event not later than 30 days after the date the written appeal is received by the City Secretary. If an appeal is filed, the decision of the City Council regarding the application for a permit shall be final.

(3) *Duration; Non-Assignable.* A multiple pet owner permit shall be valid for a period of one (1) year from the date of its issuance. A multiple pet owner permit is not transferable or assignable, and is limited to the premises for which it is issued. No permit fee is required.

(4) *Revocation; Reinstatement.* Once issued, a multiple pet owner permit may be revoked by the City's animal control officer or code enforcement officer if the officer determines that:

(a) any of the animals kept or harbored pursuant to the multiple pet owner permit repeatedly or regularly cause a stench or odor which is offensive to a person of ordinary sensibilities;

(b) any animal kept or harbored pursuant to the multiple pet owner permit is kept or harbored in a manner which is dangerous to the health of the animal or to any other animal, including, without limitation, depriving an animal of necessary food, care or shelter or the cruel treatment of any animal;

(c) any animal kept or harbored pursuant to the multiple pet owner permit repeatedly or regularly causes noise which is

offensive or disturbing to a person of ordinary sensibilities on adjoining, adjacent or neighboring premises or property;

(d) unsanitary conditions exist at the premises applicable to multiple pet owner permit to such an extent that those conditions create a possible medium of the transmission of disease to the animals kept there or to human beings; or

(e) the premises applicable to the multiple pet owner permit are not regularly maintained in accordance with the terms of the multiple pet owner permit and this section.

Prior to revocation, written notice shall be given to the permittee. Such notice shall set forth:

(1) the grounds upon which the City will seek revocation of the permit;

(2) the specific conditions upon which the City will rely in seeking revocation of the permit;

(3) that a hearing regarding the revocation will be held before the City Council;

(4) the date, time and place of such hearing;

(5) that the permittee may appear in person and/or be represented by counsel, may present testimony and may cross-examine all witnesses.

At such hearing, all parties shall have the right to representation by a licensed attorney; each party may present witnesses in his own behalf; each party has the right to cross-examine all witnesses; and only evidence presented before the hearing officer at such hearing may be considered in rendering the order. If the permittee fails to appear at the hearing at the time, place and date specified, the City shall present sufficient evidence to establish a prima facie case showing that conditions exist at the kennel which are grounds for suspension of the permit as set forth above.

After completion of the hearing, the City Council shall make written findings as to whether or not grounds exist for revocation of the permit. If the City Council finds that grounds do exist for revocation of the permit, the City Council may revoke the permit; however, in lieu of revoking the permit, the City Council may (i) deny the request for revocation if the Council finds that the needs of the animals and the public interest will be adequately protected by a warning, or (ii) defer its revocation decision and (A) establish conditions consistent with this section regarding the premises applicable to the multiple pet owner

permit and a period of time (not to exceed 60 days following the date of the hearing) for the permittee to comply with the same, (B) set a date for a hearing (which hearing shall be conducted as set forth in the immediately preceding paragraph) and determination by the City Council as to whether or not the permittee has complied with such conditions, and (C) at such subsequent hearing, if the City Council finds that the permittee has not complied with the conditions, the City Council may revoke the permit. A copy of the written findings shall be provided to the permittee.

If a multiple pet owner permit is revoked, the number of dogs and/or cats that had been kept or harbored on the premises for which the permit was issued shall be reduced so that there are no more than five (5) dogs or five (5) cats, or any combination of five (5) dogs and cats, kept or harbored at such premises. Such reduction shall be accomplished as soon as possible, but in any case no later than ten days after notice that the permit has been revoked was served on or given to the permittee.

In the event a permit is revoked, the City shall not be liable to the permittee for any refund of any part of the permit fee, if any.

Reinstatement of a permit that has been revoked shall require application and payment of a permit fee as if it were an initial application; provided, however, no permit shall be issued to the same permittee if the permittee has been convicted of any offense involving cruelty to animals; no permit shall be issued to the same permittee within 60 days of the date a permit has been revoked; and no permit shall be issued for the same location unless it is shown that adequate precautions have been taken so that the conditions under which the permit was revoked shall not reoccur. If there is a dispute between the City's inspector and a person applying for a permit for a location for which a permit was revoked as to whether adequate precautions have been taken so that the conditions under which the permit was revoked will not reoccur, the applicant may request a hearing before the City Council. Such hearing shall be conducted under the same procedures as a hearing for a revocation of a permit, however the burden shall be on the applicant to show that adequate precautions have been taken so that the conditions under which the permit was revoked will not reoccur.

D. A notice or other delivery provided for in this section may be served or given by personal delivery, or by certified mail, return receipt requested, or by posting the notice or delivery on or near the front door of the premises where the kennel is located if personal service cannot be obtained and the notice or delivery has been sent certified mail, returned receipt requested, and returned undelivered.

D. A new Section 8B. to the said Ordinance No. 157 is added to read as follows:

**SECTION 8B. REGISTRATION OF CERTAIN DOGS.**

Except for dogs used in law enforcement by law enforcement agencies, every person having care, control or custody of any dog that has received guard dog or attack dog training must register such dog with the City Secretary Animal Control. Any such dog that has received guard dog or attack dog training and that exhibits aggressive behavior or threatens the life of any person may be destroyed when such dog is found running at large. An identification collar identifying the dog as a guard dog must be worn at all times, and the dog must wear a muzzle at all times when out of confinement. A person having care, control or custody of such a dog shall place a sign in a conspicuous place on the premises where the dog is located advising the public that the guard dog is on the premises.

A registration is valid for a period of one year from the date of issuance, and shall be renewed annually. No registration fee is required.

**Section 2. Savings; Repealer.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

**Section 3. Severability.** The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

**Section 4. Penalty.** It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

**Section 5. Effective Date.** This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

**PASSED AND APPROVED** by the City Council of the City of Lowry Crossing, Texas  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Derek Stephens, Mayor

ATTEST:

By: \_\_\_\_\_  
Janis Cable, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill