

ORDINANCE 2021 - 10

AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING CHAPTER 10, ARTICLE VI, SECTION 10-1 OF THE CITY OF COMMERCE CODE OF ORDINANCES BY AMENDING SECTION 10, TITLED "ANIMAL CONTROL ORGANIZATION, ENFORCEMENT, AND PROTECTION" TO INCLUDE A SECTION ESTABLISHING THE PROCESS FOR CLASSIFYING A DOG AS "DANGEROUS" AND ESTABLISHING A PROCESS FOR AN OWNER POSSESSING A DANGEROUS DOG WITHIN THE CITY OF COMMERCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

Sec. 10-1. - Purpose.

The animal regulations as herein established have been made for the purpose of promoting the health, safety, morals and general welfare of the citizens of the City of Commerce. This chapter contains standards regulating the location, maintenance, registration, confinement, euthanasia and harboring of certain animals. The intent of the regulations, prohibitions, and provisions is to protect values within the city, to enhance the quality of life of persons, pets, and other animals, and to protect the general public from damage and injury that may be caused by unregulated animals.

Definition:

Add:

Proper enclosure means a house or a building, or structure/pen. The structure/pen must have minimum dimensions of five feet by ten feet and of durable construction. The structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured so that an animal cannot climb, dig, jump, or otherwise escape of its own volition. The enclosure shall be securely locked at all times. The structure/pen shall provide adequate shelter and protection from the elements for the animal. The City of Commerce may require additional accommodations if a need is demonstrated.

ARTICLE III. DANGEROUS DOGS

Sec. 10-141. - Nuisance declared.

It is hereby declared to be a public nuisance for an owner or other person to harbor, keep, or maintain a dangerous dog as defined in section 10-2 of this chapter in the City of Commerce unless the owner complies with the requirements of this article and state statutes regulating dangerous dogs. It is hereby declared to be unlawful and a public nuisance for an owner or other person to harbor, keep, or maintain in the city or bring into the city a dog which has been declared dangerous under one or more of the following:

- (1) V.T.C.A., Health and Safety Code chapter. 822 of the Texas Health and Safety Code;

- (2) A local law or ordinance adopted in accordance with [V.T.C.A., Health and Safety Code] chapter. 822 and governing dangerous animals; or
- (3) A statute or ordinance that is substantially similar to [V.T.C.A., Health and Safety Code] chapter. 822 and that was adopted by a political subdivision outside of the State of Texas.

Sec. 10-142. - Determination of a dangerous dog.

- (a) A dog is determined to be a dangerous dog if it meets the requirements found in section 10-2, "dangerous dog", and
 - (1) The owner of the dog knows of such an attack as defined in this article; or
 - (2) A person reports a dangerous dog incident as defined in section 10-2 to the Animal Control Officer or to the Commerce Police Department and provides an adult statement in writing made under oath before an individual authorized by law to take sworn statements or made at the Animal Control Division before a certified Animal Control Officer, setting forth an act described in section 10-2 and set forth as follows:
 - a. Nature and the date of the act described in section 10-2; and
 - b. The location of the event; and
 - c. The name and address of the owner of the animal in question; and
 - d. The description of the animal in question; or
 - (3) The Animal Control Division has been notified by another agency that the dog has been determined to be dangerous under the state law or applicable ordinance of the notifying city.
- (b) The Animal Control Officer or Police Officer shall evaluate the case and determine whether the dangerous dog determination should apply.

Sec. 10-143. - Notification of dangerous dog determination.

- (a) The Animal Control Officer shall notify the owner that the dog has been deemed dangerous. Notice shall be given by registered certified mail and regular mail, or hand delivery to the owner of the dog or in person. If the owner cannot be located, notice shall be delivered to any adult at the dog owner's last known physical address or to any adult at the residence where the dog is believed to be kept, if at a location different than the owner's physical address.
- (b) An owner, not later than the fifteenth day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the Animal Control Officer to the Commerce municipal court or as otherwise allowed by law. If an owner appeals the determination of the Animal Control Officer, a hearing shall be held pursuant to section 10-144.
- (c) The Animal Control Officer may seek a determination by the court that a dog be declared to be a dangerous dog and that the court consider ordering euthanizing the dog or microchipping and banning the dog from the city.

Sec. 10-144. - Hearing for dangerous dog determination.

- (a) The court, on receiving a report that an owner of a dangerous dog has not complied with section 10-146 or a request for a determination under subsection 10-143(c) or an appeal pursuant to section 10-142 shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner has complied with section 10-146, or whether the dog should be determined to be dangerous and the action to be ordered. The hearing must be held

not later than the tenth day after the date on which the dog is seized or delivered or notice is given to the owner pursuant to section 10-142.

- (b) The court shall give written notice of the time and place of the hearing to:
 - (1) The owner of the dog or the person from whom the dog was seized;
 - (2) The person who made the complaint; and
 - (3) Any witnesses including the Animal Control Division.
- (c) Any interested party, including the city attorney, is entitled to present evidence at the hearing.
- (d) The court, after determining that the dog is a dangerous dog or determining that the owner of the dangerous dog has failed to comply with the requirements of section 10-146 or any order of the court, shall order the Animal Control Officer to impound or continue to impound the dangerous dog in secure and humane conditions until such time as:
 - (1) The court orders disposition of the dog and the dog is returned to the owner to be maintained as provided in section 10-146,
 - (2) The court orders disposition of the dog and the dog is thereby humanely destroyed,
 - (3) The court orders disposition of the dog and the dog is microchipped and is removed from the city; or
 - (4) The dog is deceased.
- (e) The owner may appeal the decision of the court by following the appropriate procedures for appeal of a decision of Commerce municipal court. During the appeal period, the dog shall remain in the custody, care and control of Commerce Animal Control. If the appeal is ultimately unsuccessful, the owner of the dog shall be responsible for the dog's impoundment fees during the period the case was being appealed.
- (f) The court shall issue its ruling within 24 hours from the conclusion of the hearing.

Sec. 10-145. - Failure to surrender dog.

It shall be a separate violation of this article for any person to refuse or fail to surrender a dog subject to this article, or harbor, hide or secret, transport or secure the transport of a dog subject to this article, for the purpose of preventing its impoundment.

Sec. 10-146. - Requirements for owners of a dangerous dog.

- (a) Not later than the fifteenth day after a person learns that the person is the owner of a dangerous dog, the person shall:
 - (1) Register the dangerous dog with the Animal Control Officer and pay an annual registration fee of \$500.00.
 - (2) Restrain the dangerous dog at all times on a leash in the immediate control of a person or in a proper enclosure as defined in section 10-2 of this chapter with the requirement that the enclosure be posted with signs, that may be purchased at the Animal Control Division, on all sides in four-inch letters capable of being read from the public street or highway warning of the presence of a dangerous dog and shall include a symbol of dangerous dogs understandable by young children;
 - (3) Obtain and maintain liability insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the Animal Control Division each year at the time of annual registration or upon request.

- (4) Secure the dangerous dog with a muzzle in a manner that will not cause injury to the dog nor interfere with its vision or respiration but shall prevent it from biting any person or dog when the dangerous dog is taken off the property of the owner for any reason;
 - (5) Provide the dangerous dog with a fluorescent orange or yellow collar, that may be purchased at the Animal Control Division, with the word "danger" inscribed on the collar to be worn by the dog at all times and to be visible at 50 feet in normal day light so that the dog can be identified;
 - (6) The dog shall be spayed or neutered prior to being returned to the owner and the cost of the service shall be at the owner's expense; and
 - (7) The Animal Control Officer shall implant a microchip identification device on the dog immediately after the court has ruled in a hearing pursuant to section 10-144 that such dog is dangerous. The dog's microchip shall be registered with a national registry. The cost of the service shall be at the owner's expense; and
 - (8) The owner shall agree to be inspected annually or more frequently at the Animal Control Officer's discretion to determine compliance with this section or any order of the court as applicable.
- (b) The owner of a dangerous dog shall notify the Animal Control Officer within 12 hours if the dangerous dog is at large, unconfined, has attacked a human being or another animal, has died, or has been sold or given away.
 - (c) If an owner of a dangerous dog that is required to be registered moves the dog to a new address, the owner, not later than the fifth business day after the date of the move, shall notify the Animal Control Division in writing of the new address and shall be subject to inspection by the Animal Control Officer if the new address is located within the City of Commerce.
 - (d) If an owner of a dangerous dog that is required to be registered sells the dog or gives the dog to a new owner, not later than the fourteenth day after the date of the sell, the new owner of the dangerous dog is responsible for contacting the Animal Control Division for the transfer of ownership and acceptance of associated responsibilities.
 - (e) Dogs declared dangerous by another jurisdiction are not permitted to reside within the Commerce City limits.

Sec. 10-147. - Proof of compliance.

- (a) The Animal Control Division may, in their discretion, request the owner of a dangerous dog to show proof, on a quarterly basis, of compliance with this article. If the Animal Control Division determines that the owner of a dangerous dog has failed to comply with any requirement listed in subsection 10-146(a), the Animal Control Officer shall issue notice of non-compliance to the owner of the dangerous dog and said owner shall deliver the dog immediately to the Animal Control Officer.
- (b) If the Animal Control Officer is not in receipt of the dog immediately after delivery of the notice, then the court shall order the Animal Control Officer or designee to seize the dog and the court shall issue a warrant authorizing the seizure. The Animal Control Officer shall seize the dog and shall provide for the impoundment of the dog in secure and humane conditions. After the expiration of three days, if the owner of the dangerous dog has not sufficiently presented proof to the Animal Control Officer that he or she is in compliance with subsection (a), the Animal Control Officer shall refer the case to the municipal court for notice and hearing.

- (c) Upon proof to the court of the dangerous dog owner's non-compliance, the court shall enter, no later than the day of the hearing, a final order for the humane destruction of the dog or an order for the removal of the dog from the city.
- (d) The owner shall pay all costs and or fees assessed by the municipality related to the seizure and impoundment of the dog, including, but not limited to, boarding fees, microchip procedure, city license and rabies vaccination.

Sec. 10-148. - Attack by a dangerous dog.

- (a) A person commits an offense if the person is the owner or is in possession of a dangerous dog and the dog makes an unprovoked attack on a person or another animal outside the dog's enclosure and causes bodily damage to the person or other animal(s).
- (b) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by the Animal Control Division or a licensed veterinarian.
- (c) Nothing in this chapter should be construed to prohibit a victim or victim's family from filing a claim against the owner of a dangerous dog or any dog, cat, or ferret that inflicts injury upon a person, their pet animal, livestock or fowl.

Sec. 10-149. - Violations.

- (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with any section of this article.
- (b) An offense under this section is a Class C misdemeanor.

Sec. 10-150. - Defenses.

- (a) It is a defense to prosecution under this article that the person is a veterinarian, a peace officer, a person employed by a recognized Animal Control Division or person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody or control of the dog; provided, however, that for any person to claim a defense under this section, that person must be acting within the course and scope of his or her official duties with regard to the dangerous dog.
- (b) It is a defense to prosecution under this article that the person is an employee of the institutional division of the Texas Department of Criminal Justice or of a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; provided, however, that for any person to claim a defense under this section, that person must be acting within the course and scope of his or her official duties with regard to the dangerous dog.
- (c) It is a defense to prosecution under this article that the dog at issue is a trained guard dog in the performance of official duties while confined or under the control of its handler.

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

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional, illegal or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City of Commerce hereby declares that it would have passed this Ordinance,

and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

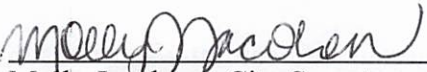
SECTION 3. Effective Date. This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED on the first reading at a regular meeting of the City Council of the City of Commerce, Texas on this the 16th day of February 2021.

PASSED AND APPROVED on the first reading at a regular meeting of the City Council of the City of Commerce, Texas on this the 16th day of March 2021.

ATTEST:

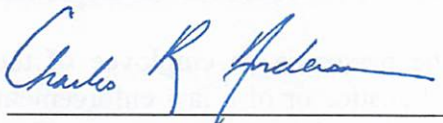
CITY OF COMMERCE:


Molly Jacobsen, City Secretary


Wyman Williams, Mayor

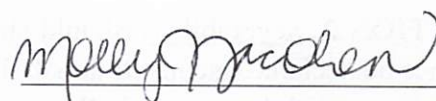
(seal)

Approved as to Form:


Charles Anderson, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a Resolution, and that the same has not been repealed and is in full force and effect.

(Seal)


Molly Jacobsen, City Secretary