

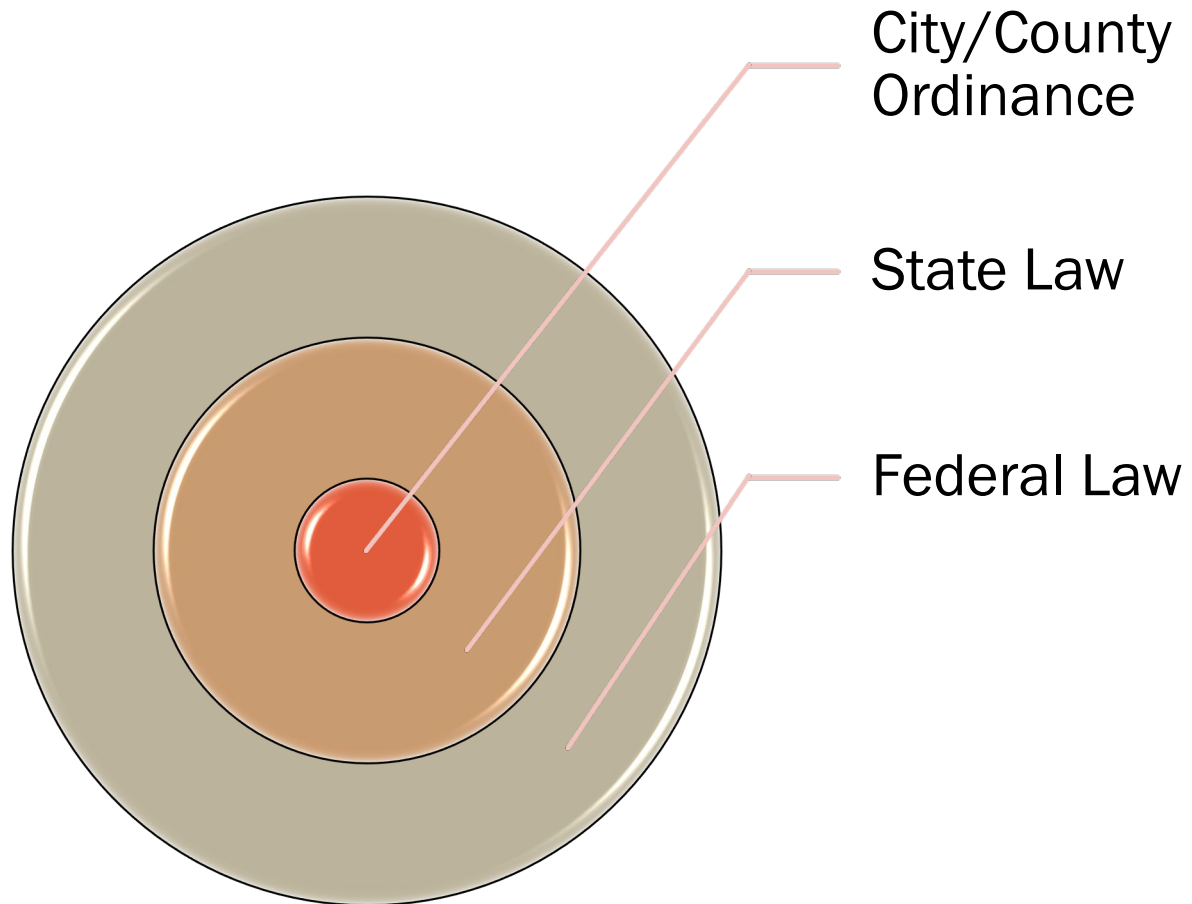
# BEST PRACTICES FOR DRAFTING MUNICIPAL ORDINANCES

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## HOW DO ORDINANCES FIT INTO OUR LEGAL SYSTEM?





## POLL 1

- What type of ordinance does your role/position work with primarily?
  - County ordinances
  - City ordinances



## WHAT ARE ORDINANCES?

- Laws, rules, or regulations passed by a political subdivision smaller than a state or nation that do not conflict with state law or federal law
- Different than a resolution—more cumbersome
- Can be created by municipalities or counties (yes!)
  - Counties often have more limited authority
  - Might be spelled out in your state Constitution (TX, CO, NJ, ...), which makes counties functional agents of the state—so limited to what is spelled out in the Constitution and in laws passed by the Legislature
- Commonly seen **county** ordinances (TX unless otherwise noted)
  - Regulation of alcohol sales near schools, churches, and hospitals (TABC)
  - Cell phone usage (TTC)
  - Bowhunting (LGC)
  - Noise ordinances (LGC)
  - Rabies Control and Animal Restraint (HSC) – Chpts. 822 and 826 HSC
  - Retail pet stores \* (Orange County, FL)
  - Fireworks (Arapahoe County, CO)
  - Utility rates (Lee County, FL)
- Commonly seen **city/municipality** ordinances
  - Hoarding (Limiting # of animals)
  - Requiring food, water, and shelter
  - Animals in truck beds
  - Animals in cars

**WHO HAS THE  
AUTHORITY TO  
ENACT  
ORDINANCES?**

- County – Commissioners Court
  - County Attorney works on this
  - Comm’s Court passes them
- City – City Council typically
  - City Legal (Asst. City Attys review)
  - Council passes them

## CITY ORDINANCES: WHAT TYPE ARE YOU?

Governed by  
City Charter  
and state  
statute

Depends on what type of City

- Home Rule, General Law?
- For Home Rule cities – caption and penalty must be published; can do much more than General Law
- General Law – no charter and may only exercise those powers specifically granted or implied by statute

Charter may  
require multiple  
readings – be  
sure to check!

# MUSTS AND MAYS

MUST	MAY
Caption	Effective Date
Ordaining Clause	Recitals (“Whereas”)
Penalty Provision – differs by state allowance; typically \$500-\$1000, but for public health and safety can be up to \$2000 in many states	Severability Clause -- legal verbiage preserving parts that a Court has not found unconst. or illegal
Culpable Mental State (unless strict liability*)	Repealing Provision – new ordinance conflicts with current
Enactments	

\*This varies by state and charter, but generally best practices

The following ordinance illustrates these seven components:

**Ordinance No. 125**

AN ORDINANCE OF THE CITY OF ANYWHERE, TEXAS ESTABLISHING WATER CONSERVATION REQUIREMENTS AND PROVIDING A PENALTY FOR VIOLATIONS.

CAPTION

WHEREAS, because of the conditions prevailing in the City of Anywhere, the general welfare requires that the water resources available to the City be put to the maximum beneficial use and that the waste or unreasonable use be prevented; and WHEREAS, lack of rain has resulted in a severe reduction in the available water supply to the City, and it is therefore deemed essential to the public welfare that the City Council adopt the water conservation plan hereafter set forth.

PREAMBLE

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANYWHERE, TEXAS:

ORDAINING CLAUSE

**SECTION 1. AUTHORIZATION.**

The City Manager or his designee is hereby authorized and directed to implement the applicable provisions of this Ordinance upon his determination that such implementation is necessary to protect the public welfare and safety.

**SECTION 2. APPLICATION.**

The provisions of this Ordinance shall apply to all persons, customers, and property served with City of Anywhere water wherever situated. No customer of the City of Anywhere water system shall knowingly make, cause, use, or permit the use of water received from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this ordinance, or in an amount in excess of that use permitted by the conservation stage in effect pursuant to action taken by the City Manager or his designee in accordance with the provisions of this Ordinance.

BODY

**SECTION 3. CONSERVATION REQUIREMENTS.**

From May 1 to September 30 of each year and upon implementation by the City Manager and publication of notice, the following restrictions shall apply to all persons:

(a) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on a designated day which shall be once every five days, and only then during the hours of 8:00 p.m. and 12:00 noon. Provided, however, irrigation of lawns, gardens, landscaped areas, trees, shrubs or other plants is permitted at anytime if: (i) a hand-held hose is used; (ii) a hand-held, faucet filled bucket of five (5) gallons or less is used; or (iii) a drip irrigation system is used.

(b) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment, the refilling or

adding of water to swimming and/or wading pools and the use of water for irrigation of golf greens and tees is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 noon.

(c ) The washing or sprinkling of foundations is prohibited except on designated irrigation days between the hours of 8:00 p.m. and 12:00 midnight.

(d) The following uses of water are defined as "waste of water" and are absolutely prohibited: (i) allowing water to run off into a gutter, ditch, or drain; (ii) failure to repair a controllable leak; and (iii) washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate fire hazards.

BODY (CONTINUED)

**SECTION 4. PENALTY.**

Any person, corporation or association violating any provision of this Ordinance shall be deemed guilty of an offense, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00). The violation thereof shall be deemed a separate offense, and shall be punished accordingly. Provided, however, compliance may be further sought through injunctive relief in the District Court.

PENALTY CLAUSE

PASSED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 20\_\_

/s/ \_\_\_\_\_  
Mayor

ATTEST:

/s/ \_\_\_\_\_  
City Secretary/ Clerk

APPROVED AS TO FORM:

/s/ \_\_\_\_\_  
City Attorney

CONCLUSION



## MORE EFFECTIVE ORDINANCE TIPS IN GENERAL

- Third person, singular (not plural, no “you,” no “I”)
- Use present tense (actor before verb)
- No pronouns
- Active voice
- Less is more (concise)
- Use commas correctly (before “and” or “or”) in a series
  - **Shall not sell dogs, cats or rabbits**
  - **Shall not sell dogs, cats, or rabbits**
- Start with general...move towards specific
- First state the rule, then state exceptions/defenses (affirmative defenses are NOT exceptions)
- Definitions are important
- Talk with your city/county prosecutor! They would be the ones enforcing in court.

# ANIMAL RELATED: ORDINANCE CATEGORIES & EXAMPLES

## Legal Requirements:

- Hoarding (Limiting # of animals)
- Requiring food, water, and shelter (this is also criminal offense) – consistency is key
- Licensing
- Rabies
- Microchipping

## Dangerous/Vicious Animals

- Seizure of....consistent with state
- Due process
- Do NOT destroy an animal if the appellate window has not run, or if under appeal!

# ANIMAL RELATED: ORDINANCE CATEGORIES & EXAMPLES (CONT'D)

## Operation of Animal Control

- Authority of
- Advisory Board

## Prohibited Acts:

- Dogs/animals in truck beds (Austin, Ft. Worth, Galveston, League City, many others)
  - \*CA, CT, ME, MA, NH, RI outlawed (WA/OR sort of)
  - Steamboat Springs, CO; Ft. Worth, TX; Austin, TX; Fayetteville, AR; Atlanta, GA)
  - Texas Police Association supports these ordinances-
- Animals in cars (Austin, San Marcos, Ft. Worth, Dallas, TX; Boise, ID; Santa Fe, NM; Chicago, IL) – 31 states prohibit or provide immunity
- Roadside animal sales
- Pet stores
- Nuisances
- Cruelty (also used for hot cars, trucks, etc.)
- Tethering (23 states impose limitations/minimum reqs)

## TETHERING ORDINANCES

- Yep! Can still have them—they just need to be at least as stringent as the state law (Tex. Health and Safety Code Sec. 821.101, et. al)
- Can you prohibit tethering all together? YES
- Can you prohibit tethering unless on a trolley system? YES
- Can you limit tethering to certain times of the day? YES
- Examples: Orange County, NC (for county ordinance); Marion County, FL (county); Arlington, VA (county); Madison, WI; San Marcos, TX; Indianapolis, IN; Kyle, TX

## PUBLIC NUISANCE EXAMPLE #1 (NEW HANOVER COUNTY, NC)

### *Public nuisance means:*

- (1) A public nuisance is that which annoys and disturbs rights and privileges common to the public or to all the people of the community, rendering their ordinary use or occupation of their property physically uncomfortable to them, or constituting a health hazard to any person.
  
- (2) Enumerated in this definition, by way of example, and not limited to, certain types of animals, are actions involving animals, or conditions maintained or permitted by the animals' owners or possessors which shall constitute prima facie evidence of a public nuisance, whether such animals are located or such acts are committed on or off the owner's or possessors' premises:
  - (a) Any animal which is found at large off the premises of its owner and not under the restraint of a competent person.
  - (b) Any animal which damages the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damaging gardens, flowers or vegetables.
  - (c) Any animal which is a vicious animal.
  - (d) Maintaining animals in an environment of unsanitary condition is in violation of section 5-15.
  - (e) Any act which by virtue of number or type and location is offensive or dangerous to the public health, safety or welfare.
  - (f) Any animal which barks, whines or howls in an excessive, continuous or untimely manner.
  - (g) Any animal which is diseased and/or dangerous to the public health.
  - (h) Any animal which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicycles or vehicles, and is not in an enclosure or under restraint.
  - (i) Failure to confine a female dog or cat while in heat in such a manner that she will not be in contact with another dog or cat, nor create a nuisance; but this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of an animal which is being bred.



## PUBLIC NUISANCE EXAMPLES (#2 AND #3)

- Any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of persons, other than its owner(s), to enjoyment of life or property. – City in TX located in Hays County just outside Austin, TX
  - What can make it stronger?
- No person, having possession, custody or control of any animal, shall knowingly or negligently permit any dog or other animal to commit any nuisance upon any gutter, street, driveway, alley, curb or sidewalk in the City, or upon the floors or stairways of any building or place frequented by the public or used in common by the tenants, or upon the outside walls, walkways, driveways, alleys, curbs or stairways of any building abutting on a public street or park, or upon the grounds of any public park or public area, or upon any private property, including the property of the owner of such animal. –PA city ordinance
  - What is wrong here?

## POLL #2

What was wrong with that last drafted ordinance?

1. Too verbose?
2. Not specific enough?
3. Uses the word “nuisance” in the definition?
4. All of the above?

## **RESTRICTIONS ON SOME ANIMALS/LIVESTOCK**

BSL discrimination prohibited in many states (TX, FL—woohoo! 2023– SB 942), and about 15 more

- Miami, for example, will need to repeal that

ADA (does NOT apply to housing) and FHA (applies to housing—what you will typically see; this is what allows ESAs in houses)

- “Barnyard animals” typically do not qualify as a support animal under FHA unless the disabled person can meet the “substantial burden of demonstrating a disability- related therapeutic need for that specific type of animal.”
- Can ask for evidence; owner has burden of proof
- You can’t seize these animals, but you can issue citations
- Ex) City ordinance not allowing livestock. Person lives in a house and has a goat (ESA).

**CASE LAW YOU  
SHOULD KNOW IN  
YOUR  
COUNTY/CITY:  
TITLE TRANSFER**

- Lira v. Greater Houston German Shepherd Dog Rescue, Inc., 488 S.W.3d 300 (Tex. 2016)
  - Holy grail in TX!
  - GSD in Houston was found as a stray—no microchip, no tags, HW+, poor condition
  - City shelter holds dog—lists dog with photograph (but incorrect breed)
  - Dog was fostered by Greater Houston GSD Rescue
  - Original owner (Lira) asked rescue to return dog—rescue refused
  - Liras sued non-profit rescue
  - Trial court sided with original owners, rescue appealed and COA reversed
  - TX Supreme Court review ownership—came down to Houston’s ordinance
  - Authority to create ordinance limiting stray hold is HSC § 826.033
  - In the City’s ordinance, there was NO indication of transfer of ownership to the City

## THE GOOD, THE BAD, AND THE UGLY: EXAMPLES

### Examples of wording to address title transfer:

- “After the expiration of any required impoundment period or immediately after being voluntarily released by its owner, the **animal shall become the property of the city, all ownership rights for the animal shall transfer to the city, and the department may dispose of the animal by any of the following methods**, taking into consideration factors that may include, but not be limited to, the animal's behavior, aggressive tendencies, feral characteristics, health, and housing space availability, within the sole discretion of the animal services director...”

City of Plano, Sec. 4-63(c)

- “Except as provided in subsection (D), the health authority shall hold an impounded animal not surrendered by its owner for a period of three business days following impoundment of the animal for owner reclamation. **On the fourth business day, an impounded animal is the property of the health authority.**”

City of Austin, Sec. 3-1-25(C)

- “Animals not claimed by the registered owners within a period of three days in which the animal shelter is open to the public during normal business hours shall be subject to disposal by adoption, transfer or humane euthanasia.”

Unnamed city—not well-written



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**FOLLOW THE  
CASE LAW AND  
LEAVE NO ROOM  
FOR VAGUENESS**

Moral? Check your ordinances—must divest ownership from unknown owner to municipality

Check for due process

MANY cities STILL have old ordinances, and an animal shelter recently ran into this

- Ended in a settlement—costing the city \$
- Press coverage, revamped ordinance

## **SERIOUS BODILY INJURY AND DANGEROUS DOG V. “ANIMAL ON ANIMAL”**

- In Texas, two Subchapters (A and D) authorize these proceedings
- These are NOT dogs attacking other dogs cases (usually....always a caveat- see HSC § 822)
- Cities can create their own “aggressive animal,” “vicious animal,” etc. ordinance- DO NOT name it “Dangerous Dogs” if your state has a limited DD law
- Another option could be to enact a public nuisance animal—to avoid the extreme words
- Strongly encourage not zeroing in on dogs....roaming cats can wreak havoc as well
- Create an appellate process. **PROPERTY IS AT STAKE!**

## **APPELLATE PROCEDURE: DUE PROCESS ISSUES**

- For ALL ordinances involving depriving an owner of his property rights, your cities and counties MUST incorporate appellate procedures into all respective ordinances
  - Ordinances that mandate a dog leave jxn must indicate a right to appeal
  - Ordinances that create a euthanasia order
  - Ordinances that mandate regulations on keeping the animal
- Suggest drafting similar to the dangerous dog statutory schema for appellate procedure
- In any proceeding involving an appeal, DO NOT euthanize an animal until all appeals have been exhausted and the time to appeal has passed.

## ATTORNEY GENERAL RULINGS ON ORDINANCES RELATED TO ANIMALS

- **TX, JC-0048** – A city may not by ordinance forbid killing of feral pigeons, but "pigeon shoot" may constitute cruelty to animals. Prohibition by ordinance of organized pigeon shoot may be, but is not necessarily preempted by Penal Code preemption provision unless ordinance is in conflict with cruelty to animals statute. Killing of feral pigeons is explicitly authorized by Parks and Wildlife Code.
- **TX, GA-0660** – **Dangerous dog**, a municipal court's jurisdiction to adjudicate compliance hearings under Health and Safety Code section 822.042 and appeals from dangerous-dog determinations under section 822.421.
- **TX, KP-0278** – **Estray laws** are to be **enforced by the county sheriff** whether the county has adopted a local-option stock law or remains an open-range area.
- **TX, KP-0284** – **Sworn complaints authorizing seizure of dangerous dogs** under Health & Safety Code section 822.002 **do not require personal knowledge**, and the fact that the attack was unprovoked is not a required element for dog destruction under section 822.003. **The section 822.003 10-day hearing deadline is for both setting and conducting the hearing, but no provision in chapter 822 deprives a court of jurisdiction if a hearing is held outside of the 10-day deadline.**
- **Georgia, 2019-2**—related to City of Canton **prohibiting sale of dogs/cats preempted by state law**
- **Missouri, SB391**— related to **preventing local municipalities from regulating CAFOs more than state allows**
- **Mississippi, 2010-00516** — related to **municipal court's authority to remove/impound under DD ordinance**

## AG RULING KP-274 – RE: DANGEROUS DOGS (SUBCHAPTER D, CH. 822 OF THE HEALTH AND SAFETY CODE

- A municipality cannot adopt an ordinance that conflicts with or is inconsistent with state law.
- Section 822.042 allows thirty days for an owner to comply with the applicable requirements for owning a dangerous dog. A municipal ordinance imposing a shorter compliance deadline cannot be harmonized with the statute and therefore the municipal ordinance provision would fall.
- Subsection 822.0423(c-1) provides for an appeal bond in an amount established by the court. A municipal ordinance seeking to change the amount of an appeal bond is unenforceable. The section does not, however, purport to limit other fees or costs that a municipality may impose on an owner.
- Though a municipal ordinance providing for the destruction of a dog running at large could be a valid exercise of a municipality's police power, the government's impoundment or destruction of personal property invokes the constitutional protection of due process of law. **A municipal ordinance affording an owner no process to redeem the dog or to appeal certain determinations whatsoever would likely fail a procedural due process challenge.** Moreover, section 822.0424 provides a right to appeal certain determinations made with respect to a dangerous dog and its owner. And subsection 822.042(e) expressly protects a dangerous dog from destruction during the pendency of such an appeal. A municipal ordinance providing for the destruction of a dangerous dog during the appeal is contrary to the statute and is unenforceable.
- A municipality may exercise its powers only within its corporate limits unless its power is extended by law to apply to areas outside those limits. Nothing in subchapter D authorizes a city to extend its dangerous dog ordinance outside of its city limits.



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## OTHER SUGGESTIONS...

Check your ordinance for BSL—can't do it, folks!

Understanding what “possession” and “ownership” means

- Who owns the animal for at-large, no rabies, no collar, etc. citations?



I'd consider this to be cruel and unusual punishment...

**Thank you!**

**Any questions?**