



SHADY SHORES TOWN COUNCIL  
WORKSESSION  
SEPTEMBER 12, 2022; 7:00 PM  
101 S.SHADY SHORES ROAD  
SHADY SHORES, TX 76208

TO VIEW THE MEETING LIVE  
<https://shadyshorestx.civicclerk.com/>

**CALL TO ORDER**

**ROLL CALL**

Establish a quorum.

**WORKSESSION**

Library Services- Conduct a worksession relative to library services and options for residents for the 2023/2023 Fiscal Year.

Right of Way Ordinance-Conduct a worksession relative to adopting a right-of-way management ordinance, amending the Town of Shady Shores Code of Ordinances, establishing regulations for construction, placement and excavation of rights-of-way and public easements; amending the master fee schedule to adopt fees for the administration of the right-of-way management ordinance.

Animal Control Ordinance- Conduct a worksession relative to proposed changes to the Animal Control Ordinance.

**EXECUTIVE SESSION:**

Pursuant to the provisions of Chapter 551, Texas Government Code, Vernon's Texas Codes Annotated, The Town Council may hold a closed meeting.

**FUTURE AGENDA ITEMS AND STAFF DIRECTION**

**ADJOURN**

\*\*\*\*\*

The Town Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberation about Real Property), 551.073 (Deliberation about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development).

I, Wendy Withers, Town Administrator, of the Town of Shady Shores do hereby certify that the above notice of the Regular Town Council Meeting was posted on the bulletin board at the Community Center, 101 S. Shady Shores Road, Shady Shores, Texas on 9th Day of September 2022, at 8:35 A .M.

Wendy Withers  
Wendy Withers, Town Administrator



## AGENDA MEMORANDUM

**DATE:** September 12, 2022  
**TO:** Town Council  
**FROM:** Wendy withers, Town Administrator  
**SUBJECT:** **Library Services- Conduct a worksession relative to library services and options for residents for the 20232/2023 Fiscal Year.**

---

### **BACKGROUND/INFORMATION:**

Earlier this year, the city of Lake Dallas proposed the closing of the Lake Dallas Library. It was announced after the Lake Dallas City Council meeting in July of this year that the library would remain open for another year. The Town of Shady Shores has historically supported the Lake Cities Library. For the last five years, the support level was \$29,046. There are currently 215 active card holders. At the August 8, 2022 Town Council worksession staff was directed to look at alternatives for Library services for Shady Shores Residents.

Alternatives to supporting the Lake Dallas Library:

### **Lewisville Library**

Any resident of Texas is eligible for a free full-privilege Lewisville Public Library card. A valid government-issued photo ID and proof of Texas address are required to establish a library account.

#### **Acceptable government-issued photo IDs include:**

- Texas Driver's License
- Texas State ID
- Passport
- Military ID
- Green Card/Resident Alien Registration/Mexican Consular Card
- LISD Student ID (for student cards only)

If the address on the ID is current, it may be used as proof of current address.

#### **Acceptable proof of address in card holder's name include:**

- Current utility bill
- Official rent receipt, rental agreement, contract, or lease
- Car or vehicle insurance or registration
- Personalized check, savings passbook, bank or credit union statement
- Voter registration card
- Paycheck stub
- Recent postmarked mail (within 30 days)

#### **Age Requirements:**

- Adult, age 18+
- Teen, age 12-17
- Juvenile, age 5-11

Children are eligible for their first library card when they turn five years old.

Children ages 5-17 must be accompanied by a parent or guardian with the identification described above in order to receive a full-privilege library card in their name. Other caregivers who are not legal guardians are encouraged to sign up for a card for themselves and then check out items for use by the children in their care.

- **City of Denton Public Library**
  - Town of Shady Shores could enter into an interlocal agreement with the City of Denton that would allow residents to secure a Denton Public Library Card for \$25 instead of \$50 and the City of Denton would bill the Town of Shady Shores for the additional \$25 each month.
- The City of Denton currently offers a limited card to individuals up to age 17 that reside in Denton County.

Non-residents can purchase a library card for \$30 at the Lake Dallas Library and \$50 at the City of Denton Library. The Town could budget a suitable amount to reimburse residents who wish to purchase a library card.

| <b>Current Users</b> | <b>Current Cost</b>     | <b>If Reimbursed</b> |
|----------------------|-------------------------|----------------------|
| 215                  | \$29,046/\$135 per card | \$25/\$5,375         |

The current FY2022 Library Budget for Lake Dallas is \$291,745, the current contribution from the Town of Shady Shores is \$29,046, which is approximately 9.95% of the overall budget. The draft budget posted on the Lake Dallas website has a proposed a budget reduction of 28% including the reduction of staff, hours and programs.

**FINANCIAL IMPLICATIONS:**

\$10,000 Budgeted for Library Services

**RECOMMENDATION/ACTION DESIRED:**

Direct Staff to pursue an interlocal agreement with the City of Denton for the reimbursement of Library Cards up to \$25. Develop a policy to reimburse residents for a Lake Dallas Public Library Card/up to \$25.

**ATTACHMENTS/SUPPORTING DOCUMENTATION:**

None

**REVIEWED BY:**



## AGENDA MEMORANDUM

**DATE:** September 12, 2022

**TO:** Town Council

**FROM:** Wendy withers, Town Administrator

**SUBJECT:** **Right of Way Ordinance-Conduct a worksession relative to adopting a right-of-way management ordinance, amending the Town of Shady Shores Code of Ordinances, establishing regulations for construction, placement and excavation of rights-of-way and public easements; amending the master fee schedule to adopt fees for the administration of the right-of-way management ordinance.**

---

### **BACKGROUND/INFORMATION:**

Conduct a worksession relative to a Right of Way Ordinance. The Right of Way Ordinance would define regulations and create a permit process and review of proposed work to be performed in the Right of Way(s) of Shady Shores. The number of requests for work to be done in the right of way has increased. In addition, the Dark Fiber Ring will require work to be done in the Right of Way. Attached is a **sample/draft** Ordinance for discussion purposes only. The Ordinance is currently being reviewed by the Town Engineer and Town Attorney.

### **FINANCIAL IMPLICATIONS:**

### **RECOMMENDATION/ACTION DESIRED:**

### **ATTACHMENTS/SUPPORTING DOCUMENTATION:**

1. ROW Ordinance Draft-Sample

### **REVIEWED BY:**

## ORDINANCE NO.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SHADY SHORES, TEXAS, ADOPTING A RIGHT-OF-WAY MANAGEMENT ORDINANCE TO THE TOWN CODE OF ORDINANCES; ESTABLISHING REGULATIONS FOR CONSTRUCTION, PLACEMENT, AND EXCAVATION IN RIGHTS-OF-WAY AND PUBLIC EASEMENTS; AMENDING THE MASTER FEE SCHEDULE TO ADOPT FEES FOR THE ADMINISTRATION OF THE RIGHT-OF-WAY MANAGEMENT ORDINANCE; AMENDING OR REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the Town of Shady Shores is a Type A General Law located in Denton County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas ("Town"); and

WHEREAS, the Town is charged with maintaining control of and access to the right-of-way in order to protect the public health, safety, and welfare; and

WHEREAS, the Town Council of the Town (the "Town Council") has determined that excavations in Town streets may significantly interfere with the public use of the streets and result in negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the Town Council finds excavations in paved streets significantly degrades and shortens the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the Town Council has determined that substantial public funds have been invested to build, maintain and repair the Town streets and utilities and the Town holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of Town streets and safeguard the value of the public investment of the benefit of Town residents by providing incentives to reduce the number of excavations in Town streets, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the Town Council has determined that adoption of a right-of-way ordinance will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certificated Telecommunications Providers as well as the Texas Utilities Code and Chapter 284 of the Texas Local Government Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SHADY SHORES, TEXAS:

**SECTION 1: Findings Incorporated.** The findings set forth above are incorporated as if fully set forth herein.

**SECTION 2: Addition of Chapter 95, Sections 221-402 (Right-of-Way Management) to Chapter 95 (Streets and Sidewalks) of the Code of Ordinances of the Town of Shady Shores, Texas.** The Code of Ordinances of the Town of Shady Shores, Texas, is hereby amended by the addition *of Sections 221-402 Right-of-Way Management to Chapter 95 Streets and Sidewalks to* read in its entirety as follows:

***CHAPTER 95 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES***

**ARTICLE VII RIGHT-OF-WAY MANAGEMENT**

**DIVISION 1 STANDARDS**

**Sec. 95-221 Thoroughfare and circulation design standards**

Ordinances concerning the establishment of engineering design standards and construction design requirements in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

**Sec. 95-222 Construction standards for paving and drainage facilities**

Ordinances concerning general construction standards for paving and drainage facilities, in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

**Sec. 95-223 Exclusive control of streets**

No entity, including other political subdivisions of the state, may extend a street into the Town's corporate limits or connect a street to an existing Town street without the prior written approval of the Town council. This section shall not apply to any state or federal designated roadways or the Town's construction of or improvements to the Town's own roadways. This section also shall not apply to existing roads being rebuilt, expanded or realigned by another Town with Town financial participation as defined in a council approved interlocal agreement with that other Town.

(a) Application to extend street or connect to existing Town street. To be eligible for Town council approval for the extension of a street into the Town's corporate limits or connection to an existing Town street (the "proposed street(s) and/or connection(s)") an application must first be filed with the Town Administrator. The following shall be attached to or incorporated within the application:

- (1) A schematic showing the proposed street(s) and/or connection(s);

- (2) A schematic showing at least one alternative route for the proposed street(s) and/or connection(s);
- (3) A summary explaining why the proposed street(s) and/or connection(s) is needed and will benefit the Town and the region;
- (4) A statement of the method by which the applicant shall:
  - a. Coordinate public and private investment in the proposed street(s) and/or connection(s);
  - b. Minimize conflicts between land uses;
  - c. Influence and manage the development of property that would foreseeably use the proposed street(s) and/or connection(s);
  - d. Increase the benefits and cost-effectiveness of the public investments;
  - e. Predict infrastructure and service needs in advance of demand; and
  - f. Ensure that adequate community facilities and public infrastructure are available and located to best serve the needs of the Town and the region.
- (5) Complete engineering plans for the design and construction of the proposed street(s) and/or connection(s), in accordance with the requirements of all Town ordinances;
- (6) A study, which demonstrates, to Town council's satisfaction, that the proposed street(s) and/or connection(s) will not adversely affect the health, safety and general welfare of the citizens of the Town and will provide reasonable protection to properties within the Town that will be impacted by the additional traffic projected to come into the Town by virtue of the proposed street(s) and/or connection(s). This study shall consider and discuss the impact of the proposed street(s) and/or connection(s) at the date of application, through the construction phases, up until the ultimate build-out of both private and public development in the area;
- (7) A traffic impact study, prepared by a licensed professional engineer in the State of Texas, shall determine the effect that the of street(s) and/or connection(s) into the Town's transportation system will have on the Town's existing and planned streets, including, but not limited to, the projected level of service that will occur on Town streets and intersections, the mobility and access of traffic on the Town streets, any bottleneck considerations, whether the projected traffic is consistent with adjacent land uses through which traffic will pass, and whether the projected

traffic is consistent with the Town's comprehensive plan. These impacts must be quantified. The traffic impact study shall also include an arterial and intersection analysis;

(8) Payment of the application fee, which shall be the same as the amount required for a **planned development zoning change**. The applicant shall also deposit with the Town **\$10,000.00** to be used for direct and indirect expenses in reviewing the application. Any of those deposited funds not expended for review shall be refunded to the applicant after Town council has made a final decision relating to the application;

(9) Any other information that the Town Administrator or his/her designee deems necessary.

(b) Incomplete applications. Any application that does not provide all of the required information or documents as set forth in this section, shall be deemed incomplete and returned to the applicant. Rights under V.T.C.A., Local Government Code sec. 245 shall not vest for any incomplete application that is returned. If the applicant resubmits the application with/without additional information, that resubmitted application shall be treated as a completely new application.

(c) Staff review. Within 30 business days of receiving a complete application and before the application may be placed on any planning and zoning commission or Town council agenda for consideration, the Town Administrator or his/her designee shall hold a staff review conference with the applicant, where the Town may ask for additional information from the applicant regarding the proposed street(s) or connection(s). Within 30 additional business days of receiving all of the additional information requested at the staff review conference, the Town Administrator or his/her designee shall place the application on an agenda for the next planning and zoning commission meeting. The Town Administrator or his/her designee shall also prepare a written report that advises planning and zoning commission and Town council about any concerns he/she may have regarding the application and the proposed street(s) and/or connection(s).

(d) Public hearing. The planning and zoning commission and the Town council shall consider the application in a public hearing after publishing notice as required for zoning cases. The planning and zoning commission will recommend and the Town council will determine whether the proposed street(s) and/or connection(s) promote the general health, safety, and welfare of the citizens of the Town of Shady Shores. In making this determination, the planning and zoning commission and the Town council may consider all of the information incorporated in or attached to the application as well as the impact that the proposed street(s) and/or connection(s) would have on traffic, mobility, land uses, property values, the Town's transportation system, the Town's budget, the comprehensive plan, the thoroughfare plan, and any other information the planning and zoning commission and/or the Town council deems relevant. Town council may approve or reject the application as submitted. The Town shall not approve a proposed street or connection until sufficient remedial measures have been

provided for by the applicant

DRAFT

to address the impacts that the proposed street(s) and/or connection(s) will have on the Town's transportation system. Such remedial measures are listed in subsection (e)(3). Remedial measures shall not be required for Town-sponsored or Town-initiated projects relating to the construction or improvement of the Town's own roads.

(e) Remedial payments and mitigation.

- (1) Pursuant to the Town's police powers existing under state law and consistent with the Texas Constitution, Article XI, sec. 5, the applicant shall provide sufficient funds or contributions to offset the impact directly attributable and roughly proportional to the proposed street(s) and/or connection(s).
- (2) The Town may require the execution of a development agreement setting forth any and all remedial measures by the Town.
- (3) Remedial measures may include, but are not limited to:
  - a. The applicant's payment of funds necessary for the Town to upgrade its existing Town streets to handle the adverse impacts caused by the proposed street(s) and/or connection(s) on the Town's transportation system. This may include capital improvements to existing roadways located within the Town; and
  - b. The applicant's acquisition of right-of-way (at their own cost) on streets already existing in the Town in order to accommodate the additional traffic generated by the proposed street(s) and/or connection(s); and
  - c. The applicant's installation (at their own cost) of traffic signals, signs, and other traffic control devices for movement and safety of traffic when such signals, signs, and traffic control devices are necessitated by and attributable to the proposed street(s) and/or connection(s).
- (4) The applicant shall be required to reimburse the Town for any and all costs and expenses relating to required dedications, capital improvements, roadway improvements such as turn lanes and signal timings, when such costs and expenses are necessitated by and attributable to the proposed street(s) and/or connection(s).
- (5) The applicant shall be responsible for the construction of any extension, modification, and/or completion of Town streets shown on the thoroughfare plan, when such extension, modification, and/or completion are necessitated by and attributable to the proposed street(s) and/or connection(s). If such construction is deemed impractical by the Town, then the applicant shall provide sufficient escrow funds to the Town in lieu of the construction, modification, and/or completion of such Town streets.

(f) Engineering and permitting after approval. If Town council approves the application, no proposed street(s) and/or connection(s) may be constructed unless the applicant gets approval of their engineering plans by the Town Administrator or his/her designee. The applicant shall schedule a preconstruction meeting with the Town Administrator or his/her designee. The Town Administrator or his/her designee shall approve the engineering plans if:

(1) The applicant submits to the Town plans and schematics that show that the proposed street(s) and/or connection(s) shall be constructed in accordance with the Town Design Manual, and all other applicable codes and ordinances of the Town, from the point of touching the existing roadway to the Town limits or the end of the radius of the curb return outside the Town, whichever is further; and

(2) The applicant submits to the Town plans and schematics that show that the proposed street(s) and/or connection(s) will include the required paving, curbs, and gutters, for the entire length and width of the proposed street(s) and/or connection(s); and

(3) The applicant pays an inspection deposit equal to 3% of construction cost to pay for the Town's cost of inspecting the construction of the proposed street(s) and/or connection(s). Inspection of construction shall be at an hourly rate shown in the current professional engineering services contract. The inspection deposit shall be used to pay for inspection of construction. Any funds not expended shall be refunded to the applicant after the street and/or connection is approved and accepted by the Town. Any additional fees shall be the responsibility of the applicant. Streets and connections that will have to be maintained by the Town upon completion shall be subject to the same inspection fees as defined in the subdivision ordinance; and

(4) The applicant submits to the Town a good and sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the Town, to indemnify the Town against any repairs, which may become necessary to any part of the construction work performed in connection with the proposed street(s) and connection(s), arising from defective workmanship or materials used therein. The maintenance bond shall cover a full period of two years from the date of final acceptance of the entire project relating to the proposed street(s) and/or connection(s). The bond shall cover 100 percent of the value of the work to be done in constructing the proposed street(s) and/or connection(s). Final acceptance by the Town will be withheld until said maintenance bond is furnished to the Town attorney for approval.

(g) Final approval rights. Upon completion of construction of the proposed street(s) and/or connection(s) ("the project"), the applicant shall submit as-built drawings to the Town. The Town shall then inspect the project, and shall have the right to reject the project if the construction fails to meet the requirements set forth in this section and any related

development agreements adopted pursuant to this section. The Town shall not unreasonably withhold approval and acceptance of the project.

## **DIVISION 2 RIGHT-OF-WAY MANAGEMENT**

### **Sec. 95-241 Administration**

The Town Administrator, or his/her designee, shall appoint a right-of-way manager, who is the principal Town official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto. The right-of-way manager may delegate any or all of the duties hereunder. The right-of-way manager shall have the duties, responsibilities and authority as specified for the right-of-way manager stated herein.

### **Sec. 95-242 Definitions**

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee charged by the Town to recover its costs incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of the right-of-way restoration; revoking right-of-way permits and other costs the Town may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means that area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means the following:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated Telecommunications Provider or "CTP" means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider

certificate of operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code ch. 283 or "the Act".

*Town* means the Town of Shady Shores, Texas and the Town's officers and employees.

*Town project* means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the Town, or its designee, in the public right-of-way or on any Town utilities or Town facilities.

*Town utilities* means any water, sewer or drainage line or services owned and operated by the Town.

*Compaction* refers to consolidating backfill material in a trench to prevent future settlement.

*Comprehensive plan* means the Town's comprehensive plan, as it exists or may be amended.

*Construction* means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the right-of-way.

*Contractor* means any public or private person, subcontractor or organization, other than the Town.

*Day* means business day unless otherwise specified.

*Department* means the Town department of public works or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

*Emergency operations* are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

*Excavation* means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

*Facilities* means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, handholes and wires located under, on, or above the surface of the ground within the right-of-way, and related facilities and equipment used or useful for the provision of utility services.

*FCC* means the Federal Communications Commission.

*Governing body* means the mayor and the Town council of the Town of Shady Shores, Texas.

Governmental entity means any county, township, Town, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday shall refer to days in which Town offices are closed in observance of a holiday.

Main line shall refer to lines other than service connections used to convey the right-of-way user's product.

Major project means any project, which includes 300 or more linear feet of excavation or any excavation under pavement.

Pavement shall refer to streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a street and their underlying subgrade and base.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the Town.

Public inconvenience penalty shall refer to a penalty assessed to the right-of-way user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means the Public Utility Commission of Texas.

Registration means the annual application process of the right-of-way user to use any portion of the right-of-way.

Registration certificate shall refer to the document provided by the Town, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of way or public right-of way means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the Town or over which the Town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the Town, but shall specifically exclude private property.

Right-of way manager means the right-of-way manager of the Town, or his designee.

Right-of way user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection shall refer to the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the right-of-way, whether fee or easement, that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface mounted markers refers to any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Thoroughfare means all roadways and streets classified on the Town's comprehensive plan, as it exists or may be amended, including but not limited to as a highway, tollway, major thoroughfare, minor thoroughfare, major collector, minor collector or local collector.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Traffic control representative shall refer to the designated representative of the right-of-way user who is responsible for work zone safety and compliance with TMUTCD. The right-of-way user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Trench shall refer to excavation deeper than 12 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act shall refer to the V.T.C.A., Utilities Code sec. 251.001 et seq. as it exists or may be amended.

Utility means any privately or publicly owned entity which uses right-of-way to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility location in order to further identify the site.

#### **Sec. 95-243 Utility coordinator**

Each utility and right-of-way user shall name a utility coordinator who shall be the representative and point of contact for all communications from the Town and who shall meet with the right-of-way manager when so requested.

#### **Sec. 95-244 Field utility coordination**

(a) The right-of-way user shall notify the department at each of the following times during a project:

- (1) Forty-eight hours before the start of construction;
- (2) Upon completion of the initial backfill; and
- (3) Upon completion of the project.

The right-of-way user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act. (do we know what this is)

(b) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of "nonwashable" markers is prohibited.

(c) Compliance with the Texas Utilities Code, as amended, is required at all times.

(d) All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the right-of-way user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or right-of-way user or subcontractor, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the sole discretion of the right-of-way manager in the event the traffic control equipment is not owned by the permittee or right-of-way user.

#### **Sec. 95-245 Maps and records of registrants**

(a) Within 30 days of passage of this article, each right-of-way user shall provide the Town an accurate map of their service area. The map shall be in electronic format overlaid over the Denton County and North Central Texas Council of Governments digital map, as applicable. In dual coverage areas, the Town may request additional information to enable identification of right-of-way users.

(b) Each right-of-way user must maintain accurate maps and records of its facilities. If available, the **Town's road network may be provided in digital format upon request**. The right-of-way user is encouraged to maintain their system maps geo-referenced to the Town's geodetic network, which is on the Denton County digital map or the North Central Texas Council of Governments digital map, as applicable. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The right-of-way user will provide the Town with digital information within 90 days of a request for maps from the Town for any user with less than 50 miles of utilities within the Town. All other right-of-way users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the Town on an annual basis by January 1.

(c) If the maps and records submitted in response to any request by or requirement of the Town include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the Town and its agents, employees, or other representatives may not disclose that information to the public without the consent of the right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a right-of-way user to designate all matters in its maps and records as confidential or as trade secrets.

#### **Sec. 95-246 Notice**

Notice for purposes of this article shall be made to the Town via electronic message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the department, or United States mail return receipt required.

#### **Sec. 95-247 Registration**

(a) Nothing in this section relieves a right-of-way user and/or utility from obtaining a permit under this article to perform work in the right-of-way.

(b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the right-of-way must register with the right-of-way manager in accordance with the following requirements:

- (1) The registration must be on a form furnished by the right-of-way manager and made in the name of the right-of-way user that owns the facilities.
- (2) Registration expires December 31 of the following year after the first registration occurs. If the utility fails to renew registration by that date, the Town will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.
- (3) If information provided as part of the registration changes, the utility must inform the right-of-way manager, in writing, not more than 30 days after the date the change occurs.
- (4) The utility shall also include the following registration:
  - a. The name of the utility using the right-of-way, including any business name, assumed name, or trade name the utility operates under or has operated under in the Town within the past five years.
  - b. If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
  - c. The ordinance number of any franchise or license issued by the Town that authorizes the utility to use the right-of-way.
  - d. The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
  - e. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.
  - f. The name, address and telephone number of any contractor or subcontractor, who will be working in the right-of-way on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the right-of-way by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.
  - g. The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the Town having to pay long distance telephone or toll charge.

h. Proof of existing insurance that complies with Division 4.

(c) Upon completion of registration, the Town will provide the right-of-way user a registration certificate valid until the end of the calendar year during which the registration was completed. The right-of-way user may make as many photocopies of the registration certificate as necessary. The right-of-way user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(f) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

#### **Sec. 95-248 Traffic handling training**

The right-of-way user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic control representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The traffic control representative shall ensure employees on the job site have adequate training.

#### **Sec. 95-249 Reporting obligations**

All right-of-way users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the Town, state, or federal government, or railroad or pipeline company, including a description of the right-of-way user's intended use of the right-of-way, information sufficient to determine whether the right-of-way user is subject to franchising or licensing by the Town, and information to determine whether the right-of-way user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC. Right-of-way user shall provide all such other information as may be reasonably required by the Town to complete the registration statement.

#### **Sec. 95-250 Surface mounted markers**

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.

#### **Sec. 95-251 Relocation of facilities for Town projects and public improvements**

(a) In the exercise of governmental functions, the Town has first priority over all uses of the right-of-way. The Town reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in street facilities in across, along, over, or under a public street, alley or right-of-way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.

(b) The right-of-way user must relocate its facilities, at its own expense and in accordance with Section 95-295, prior to the start of construction of a Town project. Failure to comply with this provision shall subject the right-of-way user to the enforcement provisions contained herein.

- (c) A permit will be required when making facility adjustments in preparation for Town projects.

#### **Sec. 95-252 Permit required**

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a thoroughfare without first having made application and obtained a permit therefor in compliance with the Public Right-of-Way Permitting and Construction Manual, promulgated and amended by the right-of-way manager, except for as allowed by this section. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the right-of-way manager a permit in compliance with this article.

- (1) Before issuing a permit, the right-of-way manager shall have been provided a written application, on a form furnished by the right-of-way manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with Town specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.
- (2) At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in the master fee schedule of the Town.
- (3) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the right-of-way manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.
- (4) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any right-of-way to relocate the facilities, at no cost to the Town, subject to state law, if applicable, in the event that relocation is required by the Town to accommodate a proper governmental use of the right-of-way.
- (5) Combinations of permits shall be permitted at the sole discretion of the right-of-way manager. Fees shall be assessed based on the excavations permitted.

- (6) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.

#### **Sec. 95-253 Exceptions to required permit**

(a) The right-of-way manager reserves the right in his discretion to require a right-of-way permit on service connections. Unless otherwise required by the right-of-way manager, service connections do not require a permit if all of the following conditions are met:

- (1) The service connection excavation shall not exceed four feet inside the right-of-way to property line;
- (2) All excavation shall be in accordance with service connection drawings;
- (3) The address for the service connection is on the Town provided form, which is submitted to the right-of-way manager via e-mail. Work shall not begin until the electronic form is transmitted to the right-of-way manager;
- (4) The excavation required is less than 12 inches in depth;
- (5) The excavation is no wider than two inches or is hand dug; and
- (6) The service connection does not require boring.

(b) Irrigation system installation requires a permit per existing Town codes.

#### **Sec. 95-254 Permit application**

(a) Application for a permit shall be addressed to the right-of-way manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavating, which will exceed five feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.

(b) A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new right-of-way permit.

(c) Fees shall apply to all right-of-way users unless governed by an existing agreement with the Town. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the

permit fee. Applicants must agree among themselves as to the portion each shall pay. The Town will recognize only one point of contact.

(d) Permits will be issued or denied within ten (10) days of the Town receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The Town may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the Town prior to the permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

(e) An expedited permit may be requested, and shall be issued or denied within five (5) days of application upon a showing of good cause, as solely determined by the right-of-way manager.

#### **Sec. 95-255 Issuance of permit**

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the right-of-way manager, it shall be his duty to issue the permit, when the provisions of this article have been complied with.

(1) Upon receiving a written application for a permit and a plan prepared in accordance with the Town specifications, the right-of-way manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Excepting only emergency excavations, at least forty-eight (48) hours prior to the start of work, the applicant shall notify the right-of-way manager the date the work will commence when traffic control devices are necessary on a thoroughfare.

(2) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.

(3) Each permit shall state a time period for completion of all the work to be done hereunder. The right-of-way manager may in his sole discretion, grant extensions of time.

(4) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation is/are corrected or a plan for correction is approved by the right-of-way manager. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the Town at law or equity.

- (5) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

**Sec. 95-256 Posting of signs**

The right-of-way user and contractor (if used) shall be identified by three feet by three feet information signs on all work requiring a permit. The signs shall state the name and phone number of the right-of-way user and contractor (if used). The signs shall be placed in the right-of-way on each approach to the location where construction is occurring from the time of the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring.

**Sec. 95-257 Excavation to be under supervision of the right-of-way manager**

(a) Any right-of-way user engaged in making or backfilling any excavation in any right-of-way shall, at all times while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide of the same, when requested by any authorized Town employee. At all times while the work is in progress, the right-of-way user shall also maintain, at the job location, a sign, barricade or other device bearing the right-of-way user's name.

(b) The right-of-way user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The right-of-way user shall determine the boundary of the right-of-way.

(c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of right-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the Town pursuant to the policy and regulatory powers of the Town necessary to provide for public convenience. The right-of-way user shall not trespass upon private property. The right-of-way user shall determine the boundary between right-of-way and private property and place stakes/markers indicating the boundary to remain in place for the duration of the work.

(d) The Town reserves the right to among others, lay, and allow to be laid, electric, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the Town, in, across, along, over or under any right-of-way or public place occupied by a right-of-way user and to change any curb or sidewalk or the grade of any street and to maintain all of the Town's facilities. In allowing such work to be performed by others, the Town shall not be liable to a right-of-way user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a right-of-way user by such third party.

(e) All transmission and distribution structures, lines, equipment and facilities erected by a right-of-way user within the Town shall be so located as to cause minimum interference with the proper

use of the right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the right-of-way.

(f) If the Town requires a right-of-way user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the Town, to use, or to use with greater convenience, any right-of-way or public place, the right-of-way user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a right-of-way user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a right-of-way user's facilities; provided, however, that the Town shall never be liable for such reimbursement.

#### **Sec. 95-258 Registration certificate required**

It is unlawful for any person, its agents, servants or employees to perform construction in the right-of-way without first having made either application and obtained a permit therefor or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with this article. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided the activity complies with Section 95-253.

#### **Sec. 95-259 Hours of operation for nonemergency work**

(a) Excavation and boring shall be conducted between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No excavation or boring shall be performed on holidays. Or weekends

(b) All other work requiring an inspection shall be done between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No work shall be performed on holidays. A right-of-way user may work on Saturday subject to the approval of the right-of-way manager and a notification no later than noon on Thursday before the Saturday in which the work is to be performed. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed.

#### **Sec. 95-260 Denial of permit**

A permit may be denied or suspended for any of the following reasons:

- (1) Failure to provide proof of a surety bond or liability insurance acceptable to the Town or notice of termination of the same.
- (2) Failure to secure a contractor's license or other required license.
- (3) Failure to perform in accordance with the requirements of this article.

- (4) The excavation would be in a street and not otherwise permitted by this article.
- (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the right-of-way manager.
- (6) The proposed activity would violate any Town ordinance or state or federal law, rule, regulation or statute.
- (7) The permit application contains false or misleading information.
- (8) The activity would cause a public health or safety hazard.
- (9) The right-of-way user is not authorized within the Town.
- (10) The right-of-way user is in violation of this article relative to work in progress.
- (11) The right-of-way user has not compensated the Town, unless the user is not legally obligated to compensate the Town by contract, by agreement or by law, for using the public property; or the right-of-way user has failed to timely make required payments.

#### **Sec. 95-261 Appeal**

A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had a permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (1) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the right-of-way manager within five business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The right-of-way manager shall provide a written decision within five business days. Failure to render a decision within five business days shall constitute a denial.
- (2) If a further denial is given, the appellant may thereafter file a written notice of appeal to the Town Administrator within five business days of receipt of the right-of-way manager's written decision. The Town Administrator shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.

### **DIVISION 3 TECHNICAL SPECIFICATIONS**

#### **Sec. 95-281 Lawful use of right-of-way**

- (a) The use of the right-of-way in any manner which violates federal, state, or local laws, or Town codes, ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the Town.
- (b) The permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches.
- (c) If a permittee excavates any contaminated, regulated or hazardous materials in the right-of-way, such permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the Town, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the right-of-way, and within eight hours provide the aforementioned information to the Town in writing. The permittee must consult with and receive written authorization from the Town before undertaking any of the steps/actions set forth in this subsection.

#### **Sec. 95-282 Compliance with safety regulations**

The permittee and right-of-way user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

#### **Sec. 95-283 Conformance with the thoroughfare plan**

A right-of-way user should consult the Town's thoroughfare plan prior to the acquisition of any interest in real property in the Town for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All right-of-way users are charged at all times with constructive notice of the thoroughfare plan. The Town shall, at a minimum, have no liability for the value of or loss by a right-of-way user of any improvements constructed in the area shown on the thoroughfare plan, except as provided herein. Typical locations of Town facilities are depicted in in the Town standard details.

#### **Sec. 95-284 Tree trimming and graffiti abatement**

Permission is granted to a right-of-way user, subject to the requirements of this code, as it exists or may be amended from time to time, to trim trees upon and overhanging the right-of-way, so as to prevent the branches of such trees from coming in contact with a right-of-way user's facilities. When so directed by the Town, the tree trimming shall be done under the supervision and direction of the Town. The right-of-way user shall make the necessary repairs or restoration, including, but

not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven days after the right-of-way user discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

#### **Sec. 95-285 Employee communication**

The right-of-way user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently.

#### **Sec. 95-286 Routing and spatial assignment**

The Town reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way. The Town reserves the right to reserve space for future utilities.

#### **Sec. 95-287 Commencement and completion**

After obtaining the permit and prior to commencing the work, the permittee shall notify the right-of-way manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the right-of-way manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

#### **Sec. 95-288 Notification of affected property owners**

Except in the case of an emergency, whenever excavation is required in the right-of-way adjacent to an occupied property, the right-of-way user shall notify the property owner of the activity through use of a door hanger, which shall include the following information:

- (1) Permit number;
- (2) Identify of the contractor and the right-of-way user, including a contact name and phone number by which more information regarding the project could be obtained and a 24-hour a day emergency phone number; and
- (3) The anticipated duration of the construction work.

#### **Sec. 95-289 Safe conduct of work**

Every permittee and right-of-way user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or right-of-way where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation, in accordance with TMUTCD. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and nonhazardous manner.

## **Sec. 95-290 Revocation or suspension of permit**

The Town reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other Town ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (1) The violation of any provision of the permit.
- (2) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens.
- (3) Any material misrepresentation of any fact in the permit application.
- (4) The failure to meet insurance, surety bond or indemnification requirements.
- (5) The failure to complete the work as specified in the permit.
- (6) The failure to correct a condition indicated on an order issued pursuant to this article.
- (7) Repeated traffic control violation(s).
- (8) Failure to protect facilities or repair facilities damaged in the right-of-way.
- (9) Violation of any part of this article.
- (10) Recognition by the right-of-way manager that a permit was issued in error.
- (11) Failing to comply with an order of the right-of-way manager on the permit and any other valid permit held by the right-of-way user.
- (12) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the right-of-way manager.

If the right-of-way manager determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the right-of-way manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The right-of-way manager may, in his discretion, revoke the permit, provide specifications to cure the breach, or both. Within two business days of receiving notification of the breach, permittee shall contact the right-of-way manager with a plan, acceptable to the right-of-way manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

## **Sec. 95-291 Work not in accordance with permit declared unlawful**

(a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the right-of-way manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the right-of-way manager may, in his sole discretion, grant a waiver to take the circumstances into account.

(b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the right-of-way manager has approved alternative requirements.

#### **Sec. 95-292 Work done without a permit**

No cut, excavation, grading or disturbing of the right-of-way or wires on poles, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. No person or right-of-way user shall, at any time, open or encumber more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner.

#### **Sec. 95-293 Cessation of work**

At any time, the right-of-way manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The right-of-way manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or wellbeing of the public.

#### **Sec. 95-294 Violations of standards; notice**

The right-of-way manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within five days after issuance of written notice, the permittee shall present proof to the right-of-way manager that the violation has been corrected. If such proof has not been presented within the required time, the right-of-way manager may revoke the permit.

#### **Sec. 95-295 Location and relocation of facilities**

Subject to applicable federal, state, and local laws, the right-of-way user shall, upon the request of the Town, which shall be in writing, locate and/or relocate its facilities situated within any right-of-way, at no expense to the Town, where reasonable and necessary to accommodate any Town project. The written request provided by the Town shall state the date by which the relocation by the right-of-way user shall be completed and a reasonable amount of time shall be provided by the Town. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the Town will reimburse applicant for its proportionate share from funds provided to the Town in such reimbursements.

#### **Sec. 95-296 Relocation facilities for the Town**

In the event the Town finds it necessary to move a right-of-way user's facilities to protect the right-of-way, any Town utilities and/or street, the Town shall notify the local representative of the right-of-way user. Right-of-way user shall promptly move or facilitate the relocation of the subject facilities at right-of-way user's sole expense.

#### **Sec. 95-297 Abandoned facilities**

(a) A right-of-way user owning abandoned facilities in the right-of-way shall:

- (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The right-of-way manager may allow some or all facilities to remain if the right-of-way manager determines same is in the best interest of the public to do so; or
- (2) Provide information satisfactory to the Town that the right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user.

(b) The facilities of the right-of-way user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the Town receives written confirmation and reasonable evidence, as solely determined by Town, that the right-of-way user intends to use the facilities. The Town may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the right-of-way user at the right-of-way user's sole expense.

#### **Sec. 95-298 Underground service requirements**

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by other law or an existing franchise agreement between the right-of-way user and the Town or a PUCT tariff. This does not prohibit replacing existing poles for maintenance purposes.

#### **Sec. 95-299 Location of poles and conduits**

All poles in the right-of-way shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the Town shall be subject to the reasonable and proper control, direction and approval of the Town. Placement of poles and anchor guys along curvilinear streets shall comply with Town ordinances and regulations.

#### **Sec. 95-300 Size and location of aboveground facilities**

The maximum dimensions for ground mounted utility structures above the ground in the right-of-way adjacent to streets are seven feet long (parallel to the road), two feet wide (perpendicular to the road) and six feet in height. For structures three feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the right-of-way adjacent to streets, unless otherwise approved in writing by the right-of-way manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening.

#### **Sec. 95-301     Height of overhead line**

The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

#### **Sec. 95-302     Attachments to poles**

- (a) Nothing shall obligate or restrict a right-of-way user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the Town.
- (b) A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
- (c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.
- (d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.
- (e) If the existing pole already has more than two existing risers/drops, the pole must be replaced with a metal pole and all wires and cables must be run in conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color.

#### **Sec. 95-303     Temporary rearrangement of aerial wires**

The right-of-way user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall, pay the reasonable and necessary expense of such temporary rearrangements. The right-of-way user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the Town. The right-of-way user may invoice the requesting parties for the cost of this work, where applicable.

## **Sec. 95-304 Street closures**

- (a) All lane closures on any thoroughfare shall comply with **TMUTCD**, and shall include a lane closure exhibit to be submitted with the permit to the right-of-way manager. The right-of-way manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares.
- (b) **Except in an emergency, no thoroughfare shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. or outside normal working hours of the Town. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.**
- (c) All lane closures require 24-hour notification of the police and fire departments prior to closing

## **Sec. 95-305 Site maintenance during construction and prior to full restoration**

- (a) Erosion control and stormwater management. The right-of-way user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with Town, state and federal guidelines. Requirements shall include, but not limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of right-of-way manager, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.
- (b) Dust control. The right-of-way user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- (c) Traffic control safety. In the event of noncompliance with the TMUTCD, the right-of-way user shall be notified of the violation. In the event of continued noncompliance, the right-of-way manager may revoke the permit, in addition to any other remedies available to the Town. At any time the right-of-way manager determines the work threatens public safety, he may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.
- (d) Responsibility for signs, barricades and warning devices. The right-of-way user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The right-of-way user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.
  - (1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.

- (2) The right-of-way user must either: (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name of employees to the right-of-way user manager for approval prior to the work commencing. The right-of-way user must also submit a traffic control plan for review when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.
- (3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic control representative.
- (4) All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the right-of-way user.
- (5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the right-of-way manager may place the necessary devices as required, and the right-of-way user shall reimburse the Town for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.
- (6) All traffic control devices must be removed immediately upon completion of work.
- (e) **Duty to barricade.** At all times during construction activity, the contractor and/or right-of-way user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

#### **Sec. 95-306 Inspection**

The permittee shall make the work site accessible to the Town, and others as authorized by law, for inspection at all reasonable times during performance of the work.

#### **Sec. 95-307 Materials testing**

The Town will require testing of materials used in construction in or near the right-of-way to determine conformance with Town construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the Town. The right-of-way user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates

the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

#### **Sec. 95-308 Duties of persons making excavations or creating obstructions**

Any person who shall cause to be made any excavation or obstruction in any street or right-of-way shall not allow the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or right-of-way so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation.

#### **Sec. 95-309 Emergency excavations**

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or right-of-way by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the right-of-way manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

#### **Sec. 95-310 Excavation in streets**

Except in case of an emergency there shall be no excavation in any street without the prior written approval of the right-of-way manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the right-of-way manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the right-of-way manager.

(1) Excavation in Portland cement concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full the thickness of the concrete or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in the Town's standard details.

(2) Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the pavement or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to

the first cut to full thickness of the pavement and excavated to undisturbed soil. Further criteria is set forth in the Town's standard details.

(3) Jacking and boring. A permittee or right-of-way user shall perform all work in conformance with methods approved by the Town and in such a manner as to not interfere or disturb existing or planned infrastructure.

(4) Responsibility of excavated area maintenance. A permittee or right-of-way user shall warrant and be responsible for its repairs in the right-of-way for two years from the completion date of any repair.

#### **Sec. 95-311 Backfill of excavated area**

(a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily in conformance with Town requirements. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the right-of-way manager of the time the backfill will begin.

(b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by right-of-way manager. Outside of pavement surfaces, compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698, and be smoothed, raked, and topsoil and grass or other landscaping installed to match the surrounding conditions.

#### **Sec. 95-312 Right-of-way restoration requirements**

(a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the right-of-way manager may, in his sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.

(b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the Town, and damaged, disturbed, or removed by a right-of-way user shall be fully repaired promptly by the right-of-way user, at its sole expense, to the reasonable satisfaction of the right-of-way manager with material approved by the Town.

(c) After any excavation, the right-of-way user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than

it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall be covered by a maintenance bond for two years from the completion date of any repair.

(d) In the event the right-of-way user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the Town may, at its option, serve written notice upon the right-of-way user that, unless within five days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way by the right-of-way user, the Town may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the right-of-way user, and right-of-way user, and its surety, shall be liable to the Town for any and all cost incurred by the Town by reason of such prosecution an completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the Town.

(e) If any excavation cannot be backfilled immediately, the right-of-way user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(f) In all right-of-way restoration, the right-of-way user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the right-of-way user shall, in the event of any failure of the restoration, and upon notification from the right-of-way manager, reimburse the Town for pavement restoration costs as provided for in this article. Additionally, the right-of-way user, in the event of such failure, shall within 48 hours of notice from the Town, repair the subject trench envelope.

(g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the Town, the right-of-way user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more right-of-way users have made repairs in the exact same location, the last right-of-way user to excavate shall be responsible for the two-year guarantee in that location, unless the right-of-way manager determines, in his sole discretion, that a failure was most likely a result of work performed by another right-of-way user. That right-of-way user shall be responsible for the two-year maintenance period.

(h) All street excavations shall be perpendicular excavations, as possible, unless otherwise approved by the right-of-way manager. Excavations in streets, which are not perpendicular excavations require block-to-block and curb-to-curb pavement reconstruction, or other method of repair approved by the right-of-way manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

(i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same workday before sunset. Any variance from this requirement must be granted in writing from the right-of-way manager prior to work beginning.

#### **Sec. 95-313 Restoration of pavement**

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, right-of-way or other public place shall be performed by the permittee.

- (1) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the right-of-way manager.
- (2) All excavations shall comply with the Town construction standards, as amended, and requirements of this article. Unless otherwise required by Town standards, as amended, or if unusual conditions are encountered, the right-of-way manager may require new standards for compaction, backfill and pavement restoration.
- (3) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the right-of-way user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the right-of-way manager.
- (4) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

#### **Sec. 95-314 Permanent pavement repairs**

The right-of-way user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The right-of-way user shall make the final repairs within seven days on thoroughfares that are classified as major and within 30 days on residential, local and alley streets after the right-of-way manager makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user.

#### **Sec. 95-315 Substandard repair of pavement of right-of-way**

In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the right-of-way user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the Town of the cost to restore the street and/or right-of-way.

#### **Sec. 95-316 Failure to complete work within specified time**

In the event any work governed by this article is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the right-of-way manager, the right-of-way manager may cause such work to be performed as is necessary to secure

the work area to a safe and passable condition. The right-of-way user shall reimburse the Town for the costs of securing the site.

#### **Sec. 95-317     Removal and reconstruction where work is defective**

All construction work in the streets, right-of-ways, sidewalks and public places of the Town is declared to be subject to the exclusive control of the Town, and whenever, in the sole opinion of the right-of-way manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the right-of-way manager, then upon written demand or notice from the right-of-way manager, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the right-of-way manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or right-of-way user shall fail or refuse to do so within a reasonable time to be specified by the right-of-way manager, then, if required by the right-of-way manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the Town, in such a manner as in the opinion of the right-of-way manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the right-of-way manager, and the contractor or right-of-way user shall reimburse Town for any and all cost incurred by the Town performing the work described in this subsection.

#### **Sec. 95-318     Cleanup of right-of-way**

In every case, and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the right-of-way user. The right-of-way user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work. Streets shall be cleaned by use of a vacuum street sweeper. The right-of-way user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the right-of-way manager, sufficient reason therefore having been given to his satisfaction, grants a written extension of time.

#### **Sec. 95-319     Reporting Completion of Work**

When the work under permit hereunder is completed, the permittee shall notify the Town in accordance with the requirements placed on the permit. The Town will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

#### **Sec. 95-320     Effect of article on persons engaged in construction**

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of Town ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

## **DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY**

### **Sec. 95-341 Liability of right-of-way user**

To the extent allowed by law, the right-of-way user shall be liable to the Town for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the right-of-way user shall fully indemnify, hold harmless and defend the Town, its councilmembers, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the Town, its councilmembers, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The Town shall promptly notify a permittee, or right-of-way user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the Town and alleging negligent or wrongful conduct by the permittee or right-of-way user in connection with an excavation.

### **Sec. 95-342 Insurance**

- (a) It shall be unlawful for any person, unless exempt under this Chapter, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the Town without having first executed and delivered to the Town a current policy of liability insurance in an amount determined by the Town, and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the Town harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work. The Town shall have no duty to perform under this article until such certificate has been delivered to the department.
- (b) The Town shall be entitled, upon request and without expense before issuing a permit, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Town, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the Town, the right-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (c) Right-of-way user shall notify the Town in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten days notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance.
- (d) Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons (including

death) or property resulting from the right-of-way user's, or its subcontractors', performance of the work performed in the public right-of-way.

- (e) The Town owned utilities shall not be required to provide the insurance specified herein.
- (f) With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage, the Town right-of-way manager may, in his discretion, allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to show the user has sufficient assets and history of performance to justify the user to self-insure.

#### **Sec. 95-343 Performance/assurance bond**

Before a permit shall be issued, the right-of-way manager may, in his discretion, may require the applicant and/or the person or entity for which the applicant is performing, to execute and deliver to the Town, to be kept on file with the Town, a good and sufficient bond of performance or assurance, in the sum to be determined by the Town and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the Town, its councilmembers, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the Town.

#### **Sec. 95-344 Liability of contractor and sureties for maintenance and repair work**

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the right-of-way user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the Town retains the right and option to terminate the right-of-way user's guaranty, upon written notice to the right-of-way user. In such event, the right-of-way user shall reimburse the Town for its direct costs associated with the repair of the failure of the restoration work.

#### **Sec. 95-345 When additional security required**

In the event the right-of-way manager reasonably believes the contractor's or right-of-way user's solvency is threatened, the right-of-way manager may, at any time, make written demand on a contractor and/or right-of-way user for bonds, and the contractor and/or right-of-way user shall immediately furnish such additional bond or bonds to the Town.

**Sec. 95-346 Decision of right-of-way manager binding on contractor, right-of-way user and sureties**

If any question arises as to when any work was actually begun or other specific dates, the decision of the right-of-way manager shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds.

**DIVISION 5. VARIANCES AND EXEMPTIONS**

**Sec. 95-351 Variance/exemptions**

A permittee or right-of-way user may request a variance from any of the requirements of this article by filing a written request with the right-of-way manager stating the requirement and the basis for the variance. The right-of-way manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

- (1) Any request for a variance from any right-of-way restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- (2) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.
- (3) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- (4) The department shall grant or deny an application for a variance and/or exemption within ten days of receipt of the application for variance and/or exemption.
- (5) Denial of the variance may be appealed in accordance with Section 95-261.

**DIVISION 6. CERTIFIED TELECOMMUNICATION PROVIDERS**

**Sec. 95-381 Certificated telecommunications providers authority required/nonexclusive use**

A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. The CTP's right to use and occupy the public right-of-way shall not be exclusive, and the Town shall have the right to exercise its police powers and manage its public right-of-way, based on the Act and all other state or federal laws.

**Sec. 95-382 Transfer and notice**

A CTP shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the CTP uses the right-of-way.

#### **Sec. 95-383 Exemption from fees**

CTPs are exempted from the following fees provided for in this article:

- (1) Permit application fee, including expedited application fee and permit expiration fee;
- (2) Additional permit fee;
- (3) Saturday inspection fee;
- (4) Registration fee.

#### **Sec. 95-384 Waiver bonds**

Unless determined otherwise by the right-of-way manager a CTP will be exempt from the bonding requirements of this chapter, however, in the event that the right-of-way manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the right-of-way manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the right-of-way manager requires a bond of a CTP and it has not been necessary for the Town to seek performance under the bond, then a bond will no longer be required pursuant to this section.

#### **Sec. 95-385 CTP indemnity**

A CTP shall indemnify the Town as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A., Local Government Code sec. 283.057, as amended.

### **DIVISION 8. NETWORK PROVIDERS**

#### **Sec. 95-391 Network providers authority required/nonexclusive use**

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public right-of-way. The network provider's right to use and occupy the public right-of-way shall not be exclusive, and the Town shall have the right to exercise its police powers and manage its public right-of-way, based on the Texas Local Gov't Code §284 and all other state or federal laws.

**Sec. 95-392 Transfer and notice**

A network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the network uses the right-of-way.

**Sec. 95-393 CTP indemnity**

A network provider shall indemnify the Town as specified by Texas Local Government Code, as may be amended.

**Sec. 95-394 Compliance with Design Manual**

A network provider shall comply with the Town Wireless Services (Small Cells) Design Manual, as amended by the right-of-way manager.

**DIVISION 8. MISCELLANEOUS**

**Sec. 95-401 Bridge weight limit violation**

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travel on the bridge.

**Sec. 95-402 Penalty provision**

Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the Town from filing suit to enjoin the violation. The Town retains all legal rights and remedies available to it pursuant to local, state and federal law. (check this against the proposed fee schedule, not sure which makes sense)

**SECTION 3: Addition of (Right-of-Way) to Article (Master Fee Schedule) of ) of the Code of Ordinances.**

\_\_\_\_\_ is hereby amended by the addition of Section 1.13.009 Right-of-Way of the Code of Ordinances (and the renumbering of the other Sections of \_\_\_\_\_ Master Fee Schedule of the Code of Ordinances of the Town of Shady Shores, Texas) to read in its entirety as follows:

| STREETS, SIDEWALKS AND OTHER PUBLIC PLACES |        |
|--------------------------------------------|--------|
| Right-of-way Management                    |        |
| Permit application fee                     | 100.00 |

| Expedited application fee                                                                                                                                                                                                                                                                                                                                                                                                                                     | 250.00                                                                                     |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------|--------------|-------------------|------------|--|--|--|--|------------|------------|-------------|------------|----------|-----------------|----------|----------|----------|----------|----------|----------|---------|---------|----------|----------|
| Saturday inspection fee; each Saturday                                                                                                                                                                                                                                                                                                                                                                                                                        | 200.00                                                                                     |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Permit expiration fee; each permit for incomplete work on expiration date if not extended                                                                                                                                                                                                                                                                                                                                                                     | 30.00                                                                                      |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Electronic maps submittal fee; per hour of labor necessitated by hard copy submittal in lieu of electronic format (minimum fee of 2 hours)                                                                                                                                                                                                                                                                                                                    | 80.00                                                                                      |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Registration per right-of-way user per year                                                                                                                                                                                                                                                                                                                                                                                                                   | 50.00                                                                                      |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Inspection fee                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$1.00/LF or \$150/day of anticipated construction time, whichever is greater              |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Small cell application fee (This penalty shall not exceed and is capped by statutory limits)                                                                                                                                                                                                                                                                                                                                                                  | \$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Small cell user fees (this penalty shall not exceed and is capped by statutory limits)                                                                                                                                                                                                                                                                                                                                                                        | \$250.00 annually for each network node; \$20.00 per year for Town pole attachment         |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Public inconvenience penalty                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                            |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| <table><tr><th>Type of Facility</th><th>Unit of Cost</th><th colspan="4">Penalty (Per day)</th></tr><tr><td></td><td></td><th>31-75 days</th><th>79-90 days</th><th>90-100 days</th><th>&gt;&gt;100 days</th></tr><tr><td>Sidewalk</td><td>Per square foot</td><td>\$0.0026</td><td>\$0.0052</td><td>\$0.0078</td><td>\$0.0104</td></tr><tr><td>Driveway</td><td>Per each</td><td>\$39.00</td><td>\$78.00</td><td>\$117.00</td><td>\$156.00</td></tr></table> |                                                                                            | Type of Facility  | Unit of Cost | Penalty (Per day) |            |  |  |  |  | 31-75 days | 79-90 days | 90-100 days | >>100 days | Sidewalk | Per square foot | \$0.0026 | \$0.0052 | \$0.0078 | \$0.0104 | Driveway | Per each | \$39.00 | \$78.00 | \$117.00 | \$156.00 |
| Type of Facility                                                                                                                                                                                                                                                                                                                                                                                                                                              | Unit of Cost                                                                               | Penalty (Per day) |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                            | 31-75 days        | 79-90 days   | 90-100 days       | >>100 days |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Sidewalk                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Per square foot                                                                            | \$0.0026          | \$0.0052     | \$0.0078          | \$0.0104   |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Driveway                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Per each                                                                                   | \$39.00           | \$78.00      | \$117.00          | \$156.00   |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |
| Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the department for repair. This penalty shall not exceed and is capped by statutory limits.                                                                                                                                                                            |                                                                                            |                   |              |                   |            |  |  |  |  |            |            |             |            |          |                 |          |          |          |          |          |          |         |         |          |          |

**SECTION 4: SEVERABILITY.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional 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. Shady Shores 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 5: SAVINGS/REPEALINGS.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 6: PENALTY.** It is the intent of the Town Council of the Town of Shady Shores in adopting this Ordinance that an offense under this Ordinance be a strict liability offense; in the prosecution of an offense under this Ordinance, no pleading or proof of intent shall be required to establish the guilt of an accused. Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the Town from filing suit to enjoin the violation.

**SECTION 24: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon and after its passage and publication as provided by law.



## AGENDA MEMORANDUM

**DATE:** September 12, 2022  
**TO:** Town Council  
**FROM:** Wendy withers, Town Administrator  
**SUBJECT:** **Animal Control Ordinance- Conduct a worksession relative to proposed changes to the Animal Control Ordinance.**

---

**BACKGROUND/INFORMATION:**

The Town of Shady Shores will be contracting with the Town of Hickory Creek through the City of Corinth Police Department for Animal Control Services. Conduct a review of the Animal Control Ordinance to ensure the Ordinances are compatible in order for the Hickory Creek officer to enforce Animal Control with the Town of Shady Shores. To include discussion of the addition of an animal registration.

**FINANCIAL IMPLICATIONS:**

**RECOMMENDATION/ACTION DESIRED:**

**ATTACHMENTS/SUPPORTING DOCUMENTATION:**

1. CHAPTER 2\_\_ANIMAL\_CONTROL (1)
2. ANIMAL CONTROL SHADY SHORES WITH MARK-UPS

**REVIEWED BY:**

## CHAPTER 2

### ANIMAL CONTROL

#### ARTICLE 2.01 GENERAL PROVISIONS<sup>\*</sup>

##### **Sec. 2.01.001 Right to keep animals; compliance**

It shall be unlawful for any person to keep, own, maintain, use or have in his possession or on premises under his control within the town any livestock, fowl, pet, or other animal, except in compliance with the provisions of this chapter. (Ordinance 273-11-14, sec. I, adopted 11/3/14)

##### **Sec. 2.01.002 Definitions**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**Adult.** An animal over the age of six months.

**Animal.** Any living creature, including but not limited to dogs, cats, cows, horses, birds, fish, mammals, reptiles, insects, fowl and livestock, but specifically excluding human beings.

**Animal control officer.** Any person(s) designated by the town council, through written agreement or otherwise, to enforce the provisions of this chapter, and who is authorized to receive reports of animal bites, investigate bite reports, administer euthanasia, ensure quarantine of suspect rabid animals, and otherwise carry out provisions of the ordinances of the town and the laws of the state that relate to animals, including, without limitation, rabies control and eradication.

**Animal premises.** An area of a residential or agricultural property, including pens, corrals, and pastures, for the primary use of animals.

**Assistance animal or therapy animal.** An animal that is specially trained or equipped to help a human being with a disability when:

- (1) The person with the disability has satisfactorily completed a specific course of training in the use of the animal; and
- (2) Where the animal 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 or running at large.** An animal that is not confined to the premises of its owner by a building, wall or fence of sufficient strength or construction to restrain said animal is "at large." An animal that is not on the premises of its owner, or held in the hands of the owner or keeper, or held by means of a leash or chain of proper strength and length to control the actions of the animal, or while such animal is confined in a vehicle or cage, said animal shall be deemed "running at large." The exception to this definition of at large and running at large is the domestic house cat.

**Cat.** Any domesticated member of the feline family.

**Commercial kennel.** Any lot, building, structure, enclosure or premises where six (6) or more dogs or cats six (6) months of age or over are kept or maintained for direct or indirect sale or exchange; or where commercial boarding, breeding, grooming or training is conducted.

**Cow.** Any bovine animal, including but not limited to cows, bulls, steers, yearlings, and calves, regardless of age, breed or sex.

**Dangerous animal.** Any animal which without reasonable provocation habitually attacks other animals, or has without provocation bitten or physically attacked a human being or has behaved in such a manner that the owner thereof knows or should reasonably know that the animal is possessed of tendencies to attack or bite, but does not include an animal which bites, attacks or menaces a trespasser on the property of its owner or harms or menaces anyone who has tormented, tortured or exhibited cruelty to such animal. This definition also includes any animal defined as a "dangerous wild animal" "prohibited animal," or "dangerous dog" by this chapter.

**Dangerous dog.** The provisions of Texas Health and Safety Code chapter 822, subchapter D, as amended, entitled "Dangerous Dogs," are adopted by the town and incorporated within this chapter. The provisions of subchapter D include the following:

- (1) "Dangerous dog" means a dog that:
  - (A) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
  - (B) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.
- (2) "Secure enclosure" means a fenced area or structure that is:
  - (A) Locked;
  - (B) Capable of preventing the entry of the general public, including children;
  - (C) Capable of preventing the escape or release of a dog;
  - (D) Clearly marked as containing a dangerous dog; and
  - (E) In conformance with the requirements for enclosures established by the local animal control authority.
- (3) "Owner" means a person who owns or has custody or control of the dog.

**Dangerous wild animal.** The town adopts title 10, Health and Safety of Animals, chapter 822, Regulation of Animals, subchapter E, Dangerous Wild Animals, of the Texas Health and Safety Code. Dangerous wild animals shall be considered vicious animals. "Dangerous wild animals" include but are not limited to:

- (1) A lion;
- (2) A tiger;
- (3) An ocelot;
- (4) A cougar;
- (5) A leopard;
- (6) A cheetah;
- (7) A jaguar;
- (8) A bobcat;
- (9) A lynx;
- (10) A serval;
- (11) A caracal;
- (12) A hyena;
- (13) A bear;
- (14) A coyote;
- (15) A jackal;
- (16) A baboon;
- (17) A chimpanzee;
- (18) An orangutan;
- (19) A gorilla; or
- (20) Any hybrid of an animal listed in this definition.

**Dog.** Any domesticated member of the canine family.

**Domesticated animal.** An animal that has been tamed by generations of breeding to live in close association with human beings as a pet, work animal or food source.

**Euthanize.** The humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death.

**Fowl.** Any species of feathered animals which are normally kept or used on a farm, a ranch, or similar setting for

agricultural purposes. The following and similar species shall be considered to be fowl: chickens, game hens, guineas, peafowl, turkeys, pheasant, quail, geese, ducks, swans or other similar feathered animals regardless of age, breed or sex.

Goat. Any caprine animal, regardless of age, breed or sex.

Harbor. The act of keeping and caring for animals or of providing premises to which the animal returns for food, shelter or care for a period of at least ten (10) days.

Horse. Any member of the equine family, including but not limited to horses, mules, ponies and donkeys, regardless of age, breed or sex.

Impoundment. The seizing, taking, collecting, confining, or capturing of an animal.

Livestock. Common farm animals such as but not limited to: horses, mules, donkeys, cattle, goats, sheep, llamas, alpacas, and swine, regardless of age, breed or sex. And not including potbelly pig or pot-bellied pig as below in "Potbelly pig or pot-bellied pig."

Owner. A person who owns or has custody or control of the animal.

Pen or corral. An enclosure in which livestock is kept. This shall not be interpreted to include a grazing area.

Pet. Any animal that has commonly been kept as a pet in family households in the U.S. for pleasure rather than utility, such as dogs, cats, guinea pigs, rabbits, and hamsters.

Pig. All swine animals, regardless of age, breed or sex.

Potbelly pig or pot-bellied pig. A breed of domesticated miniature Vietnamese, Chinese or Asian pig not exceeding one hundred and fifty pounds.

Premises. A developed residentially zoned lot or a parcel of land owned, leased or controlled by the same person, persons or entity.

Prohibited animal. An animal normally found in a wild state and not normally considered domesticated (with the exception of assistance or therapy animals), including but not limited to the following:

- (1) Any animal defined as a wild animal or dangerous wild animal in this chapter.
- (2) All venomous reptiles such as poisonous snakes, gila monsters and beaded lizards.
- (3) All constrictor snakes such as pythons, boa constrictors and anacondas.
- (4) All crocodilians or alligators.
- (5) Any animal that is listed as protected, threatened or endangered by the state, the U.S. Endangered Species Act and/or the U.S. Migratory Bird Treaty Act of 1918, as amended.

Rabbit. All members of the leporine family, regardless of age, breed or sex.

Sanitary. Any condition of good order and cleanliness which precludes the probability of disease transmission.

Sheep. All ovine animals, regardless of age, breed or sex.

Stray animal. Any animal found roaming with no physical restraint beyond the premises of an animal's owner or keeper.

Vaccination. An injection of a vaccine approved by the U.S. Department of Agriculture, Bureau of Animal Industry, and administered to produce or artificially increase immunity to a particular disease.

Vaccination certificate. An official vaccination certificate issued by the vaccinating veterinarian, containing certain standard information as follows:

- (1) Owner's name, address and telephone number;
- (2) Animal identification. Species, sex, age (3 months to 1 year; 1 year or older), size (lbs.), predominant breed, and colors;
- (3) Vaccine used, producer, expiration date and serial number;
- (4) Date vaccinated;
- (5) Rabies tag number, in the case of a rabies vaccination; and
- (6) Veterinarian's signature and license number.

Wild animal. An animal that is normally found in a wild state, and not normally considered domesticated.

Wild state. An animal living in its original natural condition; not domesticated.

(Ordinance 273-11-14, sec. II, adopted 11/3/14)

### **Sec. 2.01.003 Penalty**

Any person, firm or corporation (collectively referred to as "person") violating any of the provisions of this chapter shall be subject to the penalty as provided herein, and upon conviction shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense. Each and every day such violation shall continue shall be deemed to constitute a separate offense. (Ordinance 273-11-14, sec. IX, adopted 11/3/14)

### **Sec. 2.01.004 Enforcement; impoundment**

(a) Notice of violation. A notice shall be sent to the owner of the animal reported to be in violation of the provisions of this chapter, or to the owner and/or occupant of the premises whereupon said violation exists. The notice shall state:

- (1) The nature of the violation; and
- (2) The amount of time given to correct the alleged violation.

(b) Failure to correct violation. If the violation is not corrected within the specified time period, a citation may be issued and/or the animal impounded, per procedures described herein.

(c) Immediate impoundment. The following animals may immediately be impounded:

- (1) Any animal running at large, as defined herein;
- (2) Any animal infected or kept under conditions which could endanger the public or animal health; or
- (3) Any animal that has bitten a human being or needing to be placed under observation for rabies determination, as determined by the local health authority.

(d) Authority to issue citation.

(1) The town's animal control officer or police officer shall have the authority to issue citations for any violation of this chapter.

(2) If the person being cited is not present, the town's animal control officer or police officer may send the citation to the alleged offender by registered or certified mail.

(e) Impoundment procedures.

(1) The town council may select and establish a place for impounding all animals under any provision of this chapter.

(2) Reasonable effort shall be made by the town to contact the owner of any animal impounded which is wearing a current vaccination tag; however, final responsibility for location of an impounded animal is that of the owner.

(3) The owner can resume possession of any impounded animal upon payment of any and all impoundment fees and any veterinary bills incurred by animal control for the welfare of the animal, and upon compliance with the vaccination and registration provisions of this code, except where prohibited by state law or this chapter.

(4) Any nursing baby animal impounded without the mother, or where the mother cannot or refuses to provide nutritious milk, may be immediately euthanized to prevent further suffering, or given to a nonprofit humane organization for the purpose of care, as determined by the town.

(5) Any impounded animal that appears to be suffering from extreme injury or illness may be euthanized or given to a nonprofit humane organization for the purpose of veterinary medical care, as determined by the town.

(6) An owner who no longer wishes responsibility for an animal, or believes the animal to be in an ill or injured condition, may sign a written waiver, supplied by the town, allowing the animal to be immediately euthanized in a humane manner, provided that:

(A) No animal that has bitten a human being shall be euthanized before expiration of the ten-day quarantine period.

(B) The owner certifies that the animal is their legal property and the owner pays the town for all euthanization costs.

(f) Interference with animal control officer in performance of duties. It shall be unlawful for any person to forcibly interfere with an animal control officer in order to hinder the performance of his duties.

(Ordinance 273-11-14, sec. VIII, adopted 11/3/14)

**State law reference**—Restraint, impoundment and disposition of dogs and cats, V.T.C.A., Health and Safety Code, sec. 826.033.

#### **Sec. 2.01.005 Dogs, cats and ferrets**

It shall be unlawful for any person to keep or to permit the keeping of dogs, cats, and/or ferrets on premises owned by him or under his control except as follows:

- (1) Running at large. Any person who owns, possesses or harbors a dog and/or ferret within the corporate limits of the town commits an offense if he allows said dog and/or ferret to run at large.
- (2) Rabies vaccination. All dogs, cats, and/or ferrets which are kept, harbored or maintained within the corporate limits of the town shall be vaccinated against rabies by a licensed veterinarian in accordance with Texas Health and Safety Code section 826.021.
- (3) Commercial kennels prohibited. Commercial kennels are prohibited.
- (4) Dangerous dogs prohibited. Dangerous dogs, as defined above, are prohibited within the town.
- (5) Maintenance of premises. Areas of premises used by animals must be maintained in clean and sanitary conditions at all times.

(Ordinance 273-11-14, sec. III(A), adopted 11/3/14; Ordinance adopting Code)

#### **Sec. 2.01.006 Livestock**

It shall be unlawful for any person to keep or to permit the keeping of livestock on premises owned by him or under his control except as follows:

- (1) Minimum area. No livestock shall be kept on any premises of less than one (1) acre.
- (2) Number of animals. For each premises one (1) acre or larger, an owner may keep one head of adult livestock for each one-half acre of grazing area. Grazing area includes fenced pasture, pens, and stables where livestock are fed and sheltered.
- (3) Distance from residences. It shall be unlawful to erect a structure, pen or corral for the keeping of livestock closer than two hundred (200) feet from any building located on another's property that is used for habitation.
- (4) Distance requirement for pigs. The distance requirement is five hundred (500) feet in the case of pigs, with the exception of "potbelly pig or pot-bellied pig," which are not defined as livestock. The distance limitation is 100 feet from the grazing area on premises occupied by potbelly pigs or pot-bellied pigs.
- (5) Exceptions to distance provisions.
  - (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which livestock are kept and maintained prior to:
    - (i) The passage of this chapter.
    - (ii) The time a residential structure was erected on another's property so as to cause a violation of the distance requirements stated above.
  - (B) The provisions of this subsection (5) expire if:
    - (i) Livestock are not kept on the property for any period of six months or more;
    - (ii) The premises are found to violate the town nuisance ordinance as it relates to animals;
    - (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the passage of this chapter.
- (6) Running at large. It shall be unlawful for any person to allow any livestock to run at large.
- (7) Fences. Fences for pens, corrals and grazing areas must be of sufficient height and strength to retain said animal.
- (8) Cleanliness of premises. Premises must be maintained in clean and sanitary conditions at all times.
- (9) Disposal of dead animals. It shall be unlawful for an owner of any dead livestock on private property to fail to lawfully dispose of the dead animal within twenty-four (24) hours of its discovery by the owner.

(Ordinance 273-11-14, sec. III(B), adopted 11/3/14)

**State law reference**—Authority of municipality to prohibit or otherwise regulate the keeping of livestock and swine, V.T.C.A.,

**Sec. 2.01.007 Fowl and rabbits**

It shall be unlawful for any person to keep or to permit the keeping of fowl and/or rabbits on premises owned by him or under his control except as follows:

- (1) Minimum area. No fowl and/or rabbits shall be kept on any premises of less than one-third (1/3) acre.
  - (2) Number of animals. For each premises one-third (1/3) acre or larger an owner may keep five (5) adult fowl or rabbits for each one-third (1/3) acre. Except that it shall be unlawful for any person to keep more than ten (10) adult fowl and/or rabbits on a property less than one (1) acre.
  - (3) Roosters. No roosters (male chickens) over the age of three (3) months shall be allowed on properties less than one (1) acre.
  - (4) Distance from residences. It shall be unlawful to erect a structure, pen or other enclosure for the keeping of fowl and/or rabbits closer than twenty-five (25) feet from any building on another's property that is used for human habitation.
  - (5) Exceptions to distance provisions.
    - (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which fowl and/or rabbits are kept and maintained prior to:
      - (i) The passage of this chapter.
      - (ii) The time a residential structure was erected on another's property so as to cause a violation of the distance requirements stated above.
    - (B) The provisions of this subsection (5) expire if:
      - (i) Livestock [Fowl and/or rabbits] are not kept on the property for any period of six months or more;
      - (ii) The premises are found to violate the town nuisance ordinance as it relates to animals; or
      - (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the passage of this chapter.
  - (6) Running at large. It shall be unlawful for any person or persons to permit fowl and/or rabbits kept or possessed by them, or under their control, to run at large.
  - (7) Cleanliness of pens and enclosures. All structures, pens or other enclosures for the keeping of fowl and/or rabbits must be maintained in clean and sanitary conditions at all times.
  - (8) Coloring animals. It shall be unlawful to color, dye, stain or otherwise change the natural color of any chickens, ducklings or other fowl or rabbit.
- (Ordinance 273-11-14, sec. III(C), adopted 11/3/14)

**Sec. 2.01.008 Potbelly pigs**

It shall be unlawful for any person to keep or to permit the keeping of potbelly pigs on any premises owned by him, or under his control, within the corporate limits of the town, except as follows:

- (1) Minimum area. No potbelly pig shall be kept on any premises of less than one-half (1/2) acre.
- (2) Premises two acres or less. For each premises two (2) acres or less, an owner may keep two (2) head of adult potbelly pigs.
- (3) Premises larger than two acres. For each premises larger than two (2) acres, an owner may keep two (2) head of adult potbelly pigs for each acre.
- (4) Distance from residences. Any accessory structure, pen or corral housing potbelly pigs shall be located at least one hundred (100) feet from any neighboring residential structure and shall be screened from view.
- (5) Exceptions to distance provisions.
  - (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which potbelly pigs are lawfully kept and maintained prior to:
    - (i) The passage of this chapter.
    - (ii) The time a residential structure was erected on another's property so as to cause a violation of the

distance requirements stated above.

(B) The provisions of this subsection (5) expire if:

- (i) Potbelly pigs are not kept on the property for any period of six months or more;
- (ii) The premises are found to violate the town nuisance ordinance as it relates to animals; or
- (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the passage of this chapter.

(6) Vaccinations. All potbelly pigs shall be vaccinated by a licensed veterinarian by the time they are four (4) months of age and within each subsequent twelve (12) month interval thereafter. A vaccination certificate must be issued to the owner and maintained as proof of vaccination. Required vaccinations are:

- (A) Rabies;
- (B) Erysipelas; and
- (C) Leptospirosis.

(7) Requirements for male animals. Male potbelly pigs over the age of three (3) months and kept on premises two (2) acres or less must be neutered and must have their tusks trimmed at least once per year.

(8) Requirements for female animals. Female potbelly pigs over the age of three (3) months and kept on premises two (2) acres or less must be spayed.

(9) Allowing animals to go upon premises of another. It shall be unlawful for any person or persons to permit potbelly pigs kept or possessed by them, or under their control, to wander in, or upon, or invade the premises of any other person.

(10) Cleanliness of pens and enclosures. All structures, pens or other enclosures for the keeping of potbelly pigs must be maintained in clean and sanitary conditions at all times.

(Ordinance 273-11-14, sec. III(D), adopted 11/3/14)

#### **Sec. 2.01.009 Keeping bees**

No person shall keep bees in such a manner as to deny the lawful use of adjacent property or to endanger the health and welfare of anyone in the town. (Ordinance 273-11-14, sec. III(E), adopted 11/3/14)

#### **Sec. 2.01.010 Animals running at large**

(a) It is unlawful for any person to allow any animal to run at large within the corporate limits of the town.

(b) The town's animal control officer is authorized to pursue onto private and public property and to impound animals running at large.

(c) If any animal is found upon the premises of any person, the owner or occupant of the premises shall have the right to confine such animal, until the rightful owner or the town can be notified and the animal picked up. But in so doing, the property owner confining such animal shall be responsible for the humane care of the animal while it is in his care.

(d) Any animal, except dangerous or wild animals, not reclaimed by the owner may be humanely euthanized or released for adoption after being impounded for 96 hours.

(e) Any impounded dangerous or wild animal may be immediately disposed of as may be deemed appropriate by the town.

(Ordinance 273-11-14, sec. III(F), adopted 11/3/14)

**State law references**—Animals at large, V.T.C.A., Local Government Code, sec. 215.026; restraint, impoundment and disposition of dogs and cats, V.T.C.A., Health and Safety Code, sec. 826.033.

#### **Sec. 2.01.011 Dangerous animals**

(a) General requirements. The owner of a dangerous animal may be required, after the appropriate hearing or trial before the municipal court, to do any or all of the following:

(1) Restrain the dangerous animal at all times on a leash in the immediate control of the owner, or in a secure pen or enclosure as prescribed for dangerous animals herein.

(2) Not later than the 30th day after a person learns that the person is the owner of a dangerous animal (learns of an unprovoked attack on a person that causes bodily injury made by the animal or receives notice that a justice court, county court or municipal court has found that the animal is a dangerous animal), the person shall:

(A) Have the dangerous animal implanted with a microchip identifying the owner of said animal.

(B) Obtain liability insurance in the amount of not less than \$100,000.00 covering bodily injury or death to any person, or for damages to any person's property, resulting from the keeping of such dangerous animal.

(C) Register the dangerous animal with the town animal control officer, providing the animal control officer with:

(i) The name and address of the owner;

(ii) The breed, age, sex, color and any other identifying marks of said animal;

(iii) The location where the animal is to be kept;

(iv) Two color photographs of the animal;

(v) The microchip number of the animal;

(vi) A copy of the aforementioned certificate of liability insurance; and

(vii) The required registration fee.

(D) The animal control officer shall provide the owner a registration tag designating the animal as dangerous.

(E) The owner must place the tag on the animal's collar and must insure that the animal wears such tag and collar at all times.

(b) Confinement. All dangerous animals shall be securely confined either indoors or in a securely enclosed and locked kennel, pen or structure outdoors as provided herein. Such kennel, pen or structure shall meet the following standards:

(1) All kennels, pens or structures shall comply with all zoning and construction regulations of the town.

(2) All kennels, pens or structures must be of sufficient design and construction to prevent unauthorized entry and to restrain said dangerous animal at all times.

(3) At no place within the kennel, pen or structure shall a dangerous animal be able to put his mouth outside of the enclosure.

(4) All kennels, pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the enclosures.

(5) All gates or doors opening through such enclosures shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

(6) All kennels, pens or structures must be adequately lighted and ventilated and must be maintained in a clean and sanitary condition.

(7) Signs giving notice of the dangerous animal shall be prominently displayed so that all persons entering such premises are immediately notified a dangerous animal is being kept at the location.

(8) The owner of a dangerous animal shall, at all reasonable times, allow the town's animal control officer, or a designated licensed veterinarian, to enter the premises where the animal is kept and to inspect the animal, the primary enclosure or secure enclosure for the animal, and the owner's records relating to the animal, to ensure compliance with this section.

(c) Leash and muzzle.

(1) It shall be unlawful for any person to permit a dangerous animal to go outside its kennel or place of enclosure unless said animal is securely leashed with a leash no longer than four (4) feet in length and unless said animal is muzzled by a muzzling device sufficient to prevent said animal from biting persons or other animals.

(2) An owner shall be in physical control of a leashed dangerous animal at all times, and it shall be unlawful for said owner to leave such animal tied on a chain, rope or other type leash outside of its kennel or place of enclosure to an inanimate object such as a tree, post, building, car or truck.

(d) Violations.

(1) In the event that the owner of any dangerous animal is found in violation of any provision of this section by a justice court, county court or municipal court, such court shall order the animal control authority to seize the animal and shall issue a warrant authorizing the seizure.

(2) The authority shall seize the animal and provide for the impoundment of the animal in secure and humane conditions.

(3) The owner shall pay any cost or fees assessed by the municipality related to the seizure.

(4) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with the provisions of this section before the 11th day after the date on which the animal is seized or delivered to the authority.

(5) The court shall order the authority to return the animal to the owner if the owner complies with the provisions of this section before the 11th day after the date on which the animal is seized or delivered to the authority.

(e) Animal found dangerous by other jurisdiction. Any animal that that has been declared or found dangerous by the animal control authority or court of another jurisdiction shall be conclusively presumed to be vicious in this jurisdiction.

(Ordinance 273-11-14, sec. III(G), adopted 11/3/14)

**State law reference**—Dangerous dogs, V.T.C.A., Health and Safety Code, sec. 822.041 et seq.

**Sec. 2.01.012 Keeping, sale or possession of prohibited animal**

It is unlawful for a person to sell, offer for sale, barter, trade, keep, own, harbor, maintain, use, or have in a person's possession a prohibited animal within the corporate limits of the town. (Ordinance 273-11-14, sec. III(H), adopted 11/3/14)

**State law reference**—Dangerous wild animals, V.T.C.A., Health and Safety Code, sec. 822.101 et seq.

**Sec. 2.01.013 Animal care; rabies control**

The following are established as guidelines for animal care and are not intended to contravene the provisions for animal cruelty in the Texas Penal Code:

(1) All animals shall be fed with a quantity of good wholesome food sufficient to keep them in a well-nourished condition, and such food shall be served to said animals in a clean and sanitary manner.

(2) All animals shall be provided with pure, clean water in sufficient quantities at all times.

(3) All animals shall be provided with proper shelter and protection from the weather.

(4) All stables, pens, corrals, yards or enclosures in which animals reside shall be kept and maintained in a clean and sanitary condition.

(5) All animals shall be provided with veterinary care when needed to prevent suffering.

(6) No person shall beat, cruelly treat, torment, torture, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans. If a peace officer or the town animal control officer has reason to believe that an animal has been or is being cruelly treated, the officer may apply to the town's municipal court for a warrant to seize the animal, and disposition of such animal shall be handled as outlined in title 10, Health and Safety of Animals, chapter 821, Treatment and Disposition of Animals, subchapter B, Disposition of Cruelly Treated Animals, of the Texas Health and Safety Code.

(7) No person shall intentionally or knowingly confine or allow to be confined any animal in a motor vehicle or trailer under such conditions, or for such a period of time, as may endanger the health or well-being of the animal due to heat, lack of food or water or any other circumstance which causes suffering, disability or death of said animal.

(8) It shall be unlawful for any person to knowingly bring into the town any animal having any infectious or contagious disease.

(9) It shall be unlawful for any person to sell or give away any animal under four (4) weeks of age.

(10) It shall be unlawful for any person to keep more than (10) adult animals, excluding fish, on a property of less than one (1) acre.

(11) The town adopts title 10, Health and Safety of Animals, chapter 826, Rabies, of the Texas Health and Safety Code, also known as the Rabies Control Act of 1981.

(A) Any person moving into the town from a location outside of the town shall comply with this chapter within ten days after having moved into the town.

(B) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall immediately report the incident or animal to the animal control officer of the town.

(C) The animal control officer shall quarantine, have quarantined, and/or test any animal when there is probable cause to believe the animal is rabid, may have been exposed to rabies, or may have exposed a person to rabies, following the

rules set out in Texas Administrative Code title 25, Health Services, rule 169.27, Quarantine Method and Testing.

(Ordinance 273-11-14, sec. IV, adopted 11/3/14)

**State law references**—Cruelty to livestock animals, V.T.C.A., Penal Code, sec. 42.09; cruelty to nonlivestock animals, V.T.C.A., Penal Code, sec. 42.092; rabies reports and quarantine, V.T.C.A., Health and Safety Code, sec. 826.041 et seq.

#### **Sec. 2.01.014 Public nuisances**

(a) Noise. No person shall willfully or knowingly keep or harbor on his premises, or elsewhere in the town, any animal or fowl of any kind that makes or creates an unreasonable disturbance of the neighbors or the occupants of adjacent premises or persons living in the vicinity thereof, or permit such animal to make or create disturbing noises by howling, barking, crowing, bawling or otherwise. A person shall be deemed to have willfully and knowingly violated terms of this section if such person shall have been notified by an elected official of the town, or by the town's designated animal control officer, or by any peace officer, of such disturbance and shall have, within twenty-four (24) hours, failed or refused to correct such disturbance and prevent its recurrence.

(b) Odors. The owner or person in possession of animals shall keep yards, pens and enclosures in which such animals reside in such a manner so as not to give off odors offensive to persons of ordinary sensibilities residing in the vicinity, or to breed or attract flies, mosquitoes or other noxious insects, or in any manner to endanger the public health or safety.

(c) Failure to remove animal feces.

(1) All animal manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance. An owner or other person having care, custody, or control of an animal commits an offense if he knowingly permits, or by insufficient control allows, the animal to defecate in the town:

(A) On private property other than property owned, leased or controlled by the owner or person having care, custody or control of the animal.

(B) On public property or any other place to which the public or a substantial group of the public has access, including but not limited to a street, sidewalk, alley, park or playground, or any common area of a school.

(2) It is a defense to a prosecution under this subsection that:

(A) The owner or other person having care, custody, or control of the animal immediately and in a sanitary manner removed and disposed, or caused the removal and disposal of, all excreta deposited on the property by the animal;

(B) The animal was an assistance animal or therapy animal, as defined in this chapter, and was in the care, custody, or control of that disabled person at the time it defecated on the property;

(C) The owner or person in control of the property had given prior consent for the animal to defecate on the property; or

(D) The animal was being used in official law enforcement activities.

(Ordinance 273-11-14, sec. V, adopted 11/3/14)

#### **Sec. 2.01.015 Abandonment of animals prohibited**

It shall be unlawful for any person to intentionally or knowingly abandon any animal within the corporate limits of the town. (Ordinance 273-11-14, sec. VI, adopted 11/3/14)

**State law references**—Cruelty by abandoning livestock animal, V.T.C.A., Penal Code, sec. 42.09(a)(3); cruelty by abandoning nonlivestock animal, V.T.C.A., Penal Code, sec. 42.092(b)(4).

**Sec. 2.01.016    Poisoning animals prohibited**

No person shall poison any domestic animal or livestock or distribute poison in any manner whatsoever with the intent or for the purpose of poisoning a domestic animal or livestock. (Ordinance 273-11-14, sec. VII, adopted 11/3/14)

**State law references**—Cruelty by poisoning livestock animals, V.T.C.A., Penal Code, sec. 42.09(a)(5); cruelty by poisoning nonlivestock animals, V.T.C.A., Penal Code, sec. 42.092(b)(2).

## ARTICLE 2.01 GENERAL PROVISIONS<sup>\*</sup>

### Sec. 2.01.001 Right to keep animals; compliance

It shall be unlawful for any person to keep, own, maintain, use or have in his possession or on premises under his control within the town any livestock, fowl, pet, or other animal, except in compliance with the provisions of this chapter. (Ordinance 273-11-14, sec. I, adopted 11/3/14)

### Sec. 2.01.002 Definitions

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**Adult.** An animal over the age of six months.

**Animal.** Any living creature, including but not limited to dogs, cats, cows, horses, birds, fish, mammals, reptiles, insects, fowl and livestock, but specifically excluding human beings.

**Animal control officer.** Any person(s) designated by the town council, through written agreement or otherwise, to enforce the provisions of this chapter, and who is authorized to receive reports of animal bites, investigate bite reports, administer euthanasia, ensure quarantine of suspect rabid animals, and otherwise carry out provisions of the ordinances of the town and the laws of the state that relate to animals, including, without limitation, rabies control and eradication.

**Animal premises.** An area of a residential or agricultural property, including pens, corrals, and pastures, for the primary use of animals.

**Assistance animal or therapy animal.** An animal that is specially trained or equipped to help a human being with a disability when:

- (1) The person with the disability has satisfactorily completed a specific course of training in the use of the animal; and
- (2) Where the animal 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 or running at large.** An animal that is not confined to the premises of its owner by a building, wall or fence of sufficient strength or construction to restrain said animal is "at large." An animal that is not on the premises of its owner, or held in the hands of the owner or keeper, or held by means of a leash or chain of proper strength and length to control the actions of the animal, or while such animal is confined in a vehicle or cage, said animal shall be deemed "running at large." The exception to this definition of at large and running at large is the domestic house cat.

**Cat.** Any domesticated member of the feline family.

**Commercial kennel.** Any lot, building, structure, enclosure or premises where six (6) or more dogs or cats six (6) months of age or over are kept or maintained for direct or indirect sale or exchange; or where commercial boarding, breeding, grooming or training is conducted.

**Cow.** Any bovine animal, including but not limited to cows, bulls, steers, yearlings, and calves, regardless of age, breed or sex.

**Dangerous animal.** Any animal which without reasonable provocation habitually attacks other animals, or has without provocation bitten or physically attacked a human being or has behaved in such a manner that the owner thereof knows or should reasonably know that the animal is possessed of tendencies to attack or bite, but does not include an animal which bites, attacks or menaces a trespasser on the property of its owner or harms or menaces anyone who has tormented, tortured or exhibited cruelty to such animal. This definition also includes any animal defined as a "dangerous wild animal" "prohibited animal," or "dangerous dog" by this chapter.

**Dangerous dog.** The provisions of Texas Health and Safety Code chapter 822, subchapter D, as amended, entitled "Dangerous Dogs," are adopted by the town and incorporated within this chapter. The provisions of subchapter D include the following:

- (1) "Dangerous dog" means a dog that:
  - (A) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(2) "Secure enclosure" means a fenced area or structure that is:

(A) Locked;

(B) Capable of preventing the entry of the general public, including children;

(C) Capable of preventing the escape or release of a dog;

(D) Clearly marked as containing a dangerous dog; and

(E) In conformance with the requirements for enclosures established by the local animal control authority.

(3) "Owner" means a person who owns or has custody or control of the dog.

**Dangerous wild animal.** The town adopts title 10, Health and Safety of Animals, chapter 822, Regulation of Animals, subchapter E, Dangerous Wild Animals, of the Texas Health and Safety Code. Dangerous wild animals shall be considered vicious animals. "Dangerous wild animals" include but are not limited to:

(1) A lion;

(2) A tiger;

(3) An ocelot;

(4) A cougar;

(5) A leopard;

(6) A cheetah;

(7) A jaguar;

(8) A bobcat;

(9) A lynx;

(10) A serval;

(11) A caracal;

(12) A hyena;

(13) A bear;

(14) A coyote;

(15) A jackal;

(16) A baboon;

(17) A chimpanzee;

(18) An orangutan;

(19) A gorilla; or

(20) Any hybrid of an animal listed in this definition.

**Dog.** Any domesticated member of the canine family.

**Domesticated animal.** An animal that has been tamed by generations of breeding to live in close association with human beings as a pet, work animal or food source.

**Euthanize.** The humane destruction of an animal accomplished by a method that produces rapid unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death.

**Fowl.** Any species of feathered animals which are normally kept or used on a farm, a ranch, or similar setting for agricultural purposes. The following and similar species shall be considered to be fowl: chickens, game hens, guineas, peafowl, turkeys, pheasant, quail, geese, ducks, swans or other similar feathered animals regardless of age, breed or sex.

**Goat.** Any caprine animal, regardless of age, breed or sex.

**Harbor.** The act of keeping and caring for animals or of providing premises to which the animal returns for food,

shelter or care for a period of at least ten (10) days.

**Horse.** Any member of the equine family, including but not limited to horses, mules, ponies and donkeys, regardless of age, breed or sex.

**Impoundment.** The seizing, taking, collecting, confining, or capturing of an animal.

**Livestock.** Common farm animals such as but not limited to: horses, mules, donkeys, cattle, goats, sheep, llamas, alpacas, and swine, regardless of age, breed or sex. And not including potbelly pig or pot-bellied pig as below in "Potbelly pig or pot-bellied pig."

**Owner.** A person who owns or has custody or control of the animal.

**Pen or corral.** An enclosure in which livestock is kept. This shall not be interpreted to include a grazing area.

**Pet.** Any animal that has commonly been kept as a pet in family households in the U.S. for pleasure rather than utility, such as dogs, cats, guinea pigs, rabbits, and hamsters.

**Pig.** All swine animals, regardless of age, breed or sex.

**Potbelly pig or pot-bellied pig.** A breed of domesticated miniature Vietnamese, Chinese or Asian pig not exceeding one hundred and fifty pounds.

**Premises.** A developed residentially zoned lot or a parcel of land owned, leased or controlled by the same person, persons or entity.

**Prohibited animal.** An animal normally found in a wild state and not normally considered domesticated (with the exception of assistance or therapy animals), including but not limited to the following:

- (1) Any animal defined as a wild animal or dangerous wild animal in this chapter.
- (2) All venomous reptiles such as poisonous snakes, gila monsters and beaded lizards.
- (3) All constrictor snakes such as pythons, boa constrictors and anacondas.
- (4) All crocodilians or alligators.
- (5) Any animal that is listed as protected, threatened or endangered by the state, the U.S. Endangered Species Act and/or the U.S. Migratory Bird Treaty Act of 1918, as amended.

**Rabbit.** All members of the leporine family, regardless of age, breed or sex.

**Sanitary.** Any condition of good order and cleanliness which precludes the probability of disease transmission.

**Sheep.** All ovine animals, regardless of age, breed or sex.

**Stray animal.** Any animal found roaming with no physical restraint beyond the premises of an animal's owner or keeper.

**Vaccination.** An injection of a vaccine approved by the U.S. Department of Agriculture, Bureau of Animal Industry, and administered to produce or artificially increase immunity to a particular disease.

**Vaccination certificate.** An official vaccination certificate issued by the vaccinating veterinarian, containing certain standard information as follows:

- (1) Owner's name, address and telephone number;
- (2) Animal identification. Species, sex, age (3 months to 1 year; 1 year or older), size (lbs.), predominant breed, and colors;
- (3) Vaccine used, producer, expiration date and serial number;
- (4) Date vaccinated;
- (5) Rabies tag number, in the case of a rabies vaccination; and
- (6) Veterinarian's signature and license number.

**Wild animal.** An animal that is normally found in a wild state, and not normally considered domesticated.

**Wild state.** An animal living in its original natural condition; not domesticated.

(Ordinance 273-11-14, sec. II, adopted 11/3/14)

#### **Sec. 2.01.003 Penalty**

Any person, firm or corporation (collectively referred to as "person") violating any of the provisions of this chapter shall be subject to the penalty as provided herein, and upon conviction shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense. Each and every day such violation shall continue shall be deemed to constitute a separate offense. (Ordinance 273-11-14, sec. IX, adopted 11/3/14)

**Sec. 2.01.004 Enforcement; impoundment**

(a) Notice of violation. A notice shall be sent to the owner of the animal reported to be in violation of the provisions of this chapter, or to the owner and/or occupant of the premises whereupon said violation exists. The notice shall state:

- (1) The nature of the violation; and
- (2) The amount of time given to correct the alleged violation.

(b) Failure to correct violation. If the violation is not corrected within the specified time period, a citation may be issued and/or the animal impounded, per procedures described herein.

(c) Immediate impoundment. The following animals may immediately be impounded:

- (1) Any animal running at large, as defined herein;
- (2) Any animal infected or kept under conditions which could endanger the public or animal health; or
- (3) Any animal that has bitten a human being or needing to be placed under observation for rabies determination, as determined by the local health authority.

(d) Authority to issue citation.

(1) The town's animal control officer or police officer shall have the authority to issue citations for any violation of this chapter.

(2) If the person being cited is not present, the town's animal control officer or police officer may send the citation to the alleged offender by registered or certified mail.

(e) Impoundment procedures.

(1) The town council may select and establish a place for impounding all animals under any provision of this chapter.

(2) Reasonable effort shall be made by the town to contact the owner of any animal impounded which is wearing a current vaccination or registration tag; however, final responsibility for location of an impounded animal is that of the owner.

(3) The owner can resume possession of any impounded animal upon payment of any and all impoundment fees and any veterinary bills incurred by animal control for the welfare of the animal, and upon compliance with the vaccination and registration provisions of this code, except where prohibited by state law or this chapter.

(4) Any nursing baby animal impounded without the mother, or where the mother cannot or refuses to provide nutritious milk, may be immediately euthanized to prevent further suffering, or given to a nonprofit humane organization for the purpose of care, as determined by the town.

(5) Any impounded animal that appears to be suffering from extreme injury or illness may be euthanized or given to a nonprofit humane organization for the purpose of veterinary medical care, as determined by the town.

(6) An owner who no longer wishes responsibility for an animal, or believes the animal to be in an ill or injured condition, may sign a written waiver, supplied by the town, allowing the animal to be immediately euthanized in a humane manner, provided that:

(A) No animal that has bitten a human being shall be euthanized before expiration of the ten-day quarantine period.

(B) The owner certifies that the animal is their legal property and the owner pays the town for all euthanization costs.

(f) Interference with animal control officer in performance of duties. It shall be unlawful for any person to forcibly interfere with an animal control officer in order to hinder the performance of his duties.

(Ordinance 273-11-14, sec. VIII, adopted 11/3/14)

**State law reference**—Restraint, impoundment and disposition of dogs and cats, V.T.C.A., Health and Safety Code, sec. 826.033.

**Sec. 2.01.005 Dogs, cats and ferrets**

It shall be unlawful for any person to keep or to permit the keeping of dogs, cats, and/or ferrets on premises owned by him or under his control except as follows:

- (1) ~~(4)~~ — Running at large. Any person who owns, possesses or harbors a dog and/or ferret within the corporate limits of the town commits an offense if he allows said dog and/or ferret to run at large.

It shall be unlawful for any person who owns, keeps, harbors, possesses or otherwise has control over any animal, including but not limited to dogs, cats, livestock, fowl, reptiles or wildlife, within the town to allow or permit such animal, to run or be at-large within the city as is defined in section 2.01.001. (this is from Hickory Creek Ordinance)

**Commented [WW1]:** Out of curiosity, why just dogs and ferrets? Seems like a weird combination

Use of tranquilizer guns.

When acting in the course and scope of his employment, the animal control officer shall be and is authorized to carry on his person, or in the town vehicles, loaded tranquilizer guns approved by the chief of police and not in violation of any provision of the Texas Penal Code or any other applicable state law.

(1999 Code, § 2.1305)

**Commented [WW2]:** This is in Hickory Creek Ordinance, I can see it causing a problem for us we need to decide what to do about it.

- (2) ~~(2)~~ — Rabies vaccination. All dogs, cats, and/or ferrets which are kept, harbored or maintained within the corporate limits of the town shall be vaccinated against rabies by a licensed veterinarian in accordance with Texas Health and Safety Code section 826.021.

Currently vaccinated. The owner or custodian (excluding animal shelters) of each domestic dog or cat shall have the animal vaccinated against rabies by four months of age and satisfying the following criteria:

**Commented [WW3]:** HC in red - do we need to have this agree if we are using their shelter for release of animals.

- (3) (1) The owner or custodian of each domestic dog or cat shall have the animal vaccinated against rabies by four months of age.
- (4) (2) The animal must receive a booster within the 12-month interval following the initial vaccination to be considered current. If the animal is not given a booster within the 12-month period, the initial vaccination must be given again, with a booster given within 12 months. After those requirements are met, an animal is deemed current to then go to a three-year rabies vaccination regimen.
- (5) (3) Every domestic dog or cat must be revaccinated against rabies at a minimum of at least once every three years with a rabies vaccine licensed by the United States Department of Agriculture.

Registration

Required.

No person shall own, keep, harbor, or have custody of any dog or cat over four months of age within the town's corporate limits without obtaining registration from the town on an annual basis.

#### Application.

Application for registration of any dog or cat shall be made to the animal control officer or his/her representative, which application shall include the name, address, and phone number of the applicant, and the description of animal. Upon payment of the prescribed fee and presentation of a current vaccination certificate, a license may be issued.

It shall be unlawful to make false statements in applications for registration, and if deemed necessary, in the sole judgment of the animal control officer, such action may cause the subject animal to be impounded and/or the license revoked under the provisions of this division.

#### Term; renewal.

If not revoked, registration for the keeping of dogs and cats shall be valid for one year from date of issue and must be renewed annually.

#### Fees.

(a) Registration fees shall not be required for dogs trained to assist the auditory or visually impaired person, nor for police dogs in government services.

(b) Fees shall be established from time to time by resolution of the town council. Lost tags may be replaced by the payment of a replacement fee, also to be established by resolution of the town council.

(c) The town secretary shall be responsible for collecting all fees established and levied in accordance with this division. Under no circumstances will there be refunds of any fees.

#### Tags.

Upon acceptance of the application, vaccination certificate and fee, the animal control officer or his/her representative shall issue a metal tag, stamped with an identifying number, and indicating its issuance by the town.

(b) A metal registration tag, issued by animal control, must be affixed to a collar or harness and must be worn at all times.

(c) Dogs and cats must wear rabies/license tags at all times when off the premises of their owners.

(d) The animal control officer or his/her representative shall maintain a record of the identifying number of all tags issued and make this information available to the public.

#### Transferability.

(a) It shall be unlawful for any person to use any registration for any animal other than the animal for which it was issued.

(b) Registration shall not be transferable among animals or their owners.

False statements.

Any false statement in a rabies certification, or application for registration, shall cause said registration to be rendered null and void and shall subject such dog or cat to being impounded in accordance with the provisions of this chapter.

Revocation.

(a) The animal control officer may revoke registration of any animal if the person holding the registration fails to comply with this division or any law governing the protection and keeping of animals.

(b) The animal control officer shall have the right to order the humane disposition of animals when registration is revoked.

Reserved.

- (3) Commercial kennels prohibited. Commercial kennels are prohibited.
- (4) Dangerous dogs prohibited. Dangerous dogs, as defined above, are prohibited within the town.
- (5) Maintenance of premises. Areas of premises used by animals must be maintained in clean and sanitary conditions at all times.

(Ordinance 273-11-14, sec. III(A), adopted 11/3/14; Ordinance adopting Code)

**Sec. 2.01.006 Livestock**

It shall be unlawful for any person to keep or to permit the keeping of livestock on premises owned by him or under his control except as follows:

- (1) Minimum area. No livestock shall be kept on any premises of less than one (1) acre.
- (2) Number of animals. For each premises one (1) acre or larger, an owner may keep one head of adult livestock for each one-half acre of grazing area. Grazing area includes fenced pasture, pens, and stables where livestock are fed and sheltered.
- (3) Distance from residences. It shall be unlawful to erect a structure, pen or corral for the keeping of livestock closer than two hundred (200) feet from any building located on another's property that is used for habitation.
- (4) Distance requirement for pigs. The distance requirement is five hundred (500) feet in the case of pigs, with the exception of "potbelly pig or pot-bellied pig," which are not defined as livestock. The distance limitation is 100 feet from the grazing area on premises occupied by potbelly pigs or pot-bellied pigs.
- (5) Exceptions to distance provisions.
  - (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which livestock are kept and maintained prior to:
    - (i) The passage of this chapter.
    - (ii) The time a residential structure was erected on another's property so as to cause a violation of the distance requirements stated above.
  - (B) The provisions of this subsection (5) expire if:
    - (i) Livestock are not kept on the property for any period of six months or more;
    - (ii) The premises are found to violate the town nuisance ordinance as it relates to animals;
    - (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the

passage of this chapter.

- (6) Running at large. It shall be unlawful for any person to allow any livestock to run at large.
  - (7) Fences. Fences for pens, corrals and grazing areas must be of sufficient height and strength to retain said animal.
  - (8) Cleanliness of premises. Premises must be maintained in clean and sanitary conditions at all times.
  - (9) Disposal of dead animals. It shall be unlawful for an owner of any dead livestock on private property to fail to lawfully dispose of the dead animal within twenty-four (24) hours of its discovery by the owner.
- (Ordinance 273-11-14, sec. III(B), adopted 11/3/14)

**State law reference**—Authority of municipality to prohibit or otherwise regulate the keeping of livestock and swine, V.T.C.A., Local Government Code, sec. 215.026(b).

**Sec. 2.01.007 Fowl and rabbits**

It shall be unlawful for any person to keep or to permit the keeping of fowl and/or rabbits on premises owned by him or under his control except as follows:

- (1) Minimum area. No fowl and/or rabbits shall be kept on any premises of less than one-third (1/3) acre.
  - (2) Number of animals. For each premises one-third (1/3) acre or larger an owner may keep five (5) adult fowl or rabbits for each one-third (1/3) acre. Except that it shall be unlawful for any person to keep more than ten (10) adult fowl and/or rabbits on a property less than one (1) acre.
  - (3) Roosters. No roosters (male chickens) over the age of three (3) months shall be allowed on properties less than one (1) acre.
  - (4) Distance from residences. It shall be unlawful to erect a structure, pen or other enclosure for the keeping of fowl and/or rabbits closer than twenty-five (25) feet from any building on another's property that is used for human habitation.
  - (5) Exceptions to distance provisions.
    - (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which fowl and/or rabbits are kept and maintained prior to:
      - (i) The passage of this chapter.
      - (ii) The time a residential structure was erected on another's property so as to cause a violation of the distance requirements stated above.
    - (B) The provisions of this subsection (5) expire if:
      - (i) Livestock [Fowl and/or rabbits] are not kept on the property for any period of six months or more;
      - (ii) The premises are found to violate the town nuisance ordinance as it relates to animals; or
      - (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the passage of this chapter.
  - (6) Running at large. It shall be unlawful for any person or persons to permit fowl and/or rabbits kept or possessed by them, or under their control, to run at large.
  - (7) Cleanliness of pens and enclosures. All structures, pens or other enclosures for the keeping of fowl and/or rabbits must be maintained in clean and sanitary conditions at all times.
  - (8) Coloring animals. It shall be unlawful to color, dye, stain or otherwise change the natural color of any chickens, ducklings or other fowl or rabbit.
- (Ordinance 273-11-14, sec. III(C), adopted 11/3/14)

**Sec. 2.01.008 Potbelly pigs**

It shall be unlawful for any person to keep or to permit the keeping of potbelly pigs on any premises owned by him, or under his control, within the corporate limits of the town, except as follows:

- (1) Minimum area. No potbelly pig shall be kept on any premises of less than one-half (1/2) acre.
- (2) Premises two acres or less. For each premises two (2) acres or less, an owner may keep two (2) head of adult potbelly pigs.

- (3) Premises larger than two acres. For each premises larger than two (2) acres, an owner may keep two (2) head of adult potbelly pigs for each acre.
- (4) Distance from residences. Any accessory structure, pen or corral housing potbelly pigs shall be located at least one hundred (100) feet from any neighboring residential structure and shall be screened from view.
- (5) Exceptions to distance provisions.
- (A) The distance provisions of this section shall not apply to a structure, pen or other enclosure in which potbelly pigs are lawfully kept and maintained prior to:
- (i) The passage of this chapter.
- (ii) The time a residential structure was erected on another's property so as to cause a violation of the distance requirements stated above.
- (B) The provisions of this subsection (5) expire if:
- (i) Potbelly pigs are not kept on the property for any period of six months or more;
- (ii) The premises are found to violate the town nuisance ordinance as it relates to animals; or
- (iii) The premises do not comply with the terms of Ordinance 93 as it regulated animals prior to the passage of this chapter.
- (6) Vaccinations. All potbelly pigs shall be vaccinated by a licensed veterinarian by the time they are four (4) months of age and within each subsequent twelve (12) month interval thereafter. A vaccination certificate must be issued to the owner and maintained as proof of vaccination. Required vaccinations are:
- (A) Rabies;
- (B) Erysipelas; and
- (C) Leptospirosis.
- (7) Requirements for male animals. Male potbelly pigs over the age of three (3) months and kept on premises two (2) acres or less must be neutered and must have their tusks trimmed at least once per year.
- (8) Requirements for female animals. Female potbelly pigs over the age of three (3) months and kept on premises two (2) acres or less must be spayed.
- (9) Allowing animals to go upon premises of another. It shall be unlawful for any person or persons to permit potbelly pigs kept or possessed by them, or under their control, to wander in, or upon, or invade the premises of any other person.
- (10) Cleanliness of pens and enclosures. All structures, pens or other enclosures for the keeping of potbelly pigs must be maintained in clean and sanitary conditions at all times.

(Ordinance 273-11-14, sec. III(D), adopted 11/3/14)

**Sec. 2.01.009 Keeping bees**

No person shall keep bees in such a manner as to deny the lawful use of adjacent property or to endanger the health and welfare of anyone in the town. (Ordinance 273-11-14, sec. III(E), adopted 11/3/14)

**Sec. 2.01.010 Animals running at large**

- (a) It is unlawful for any person to allow any animal to run at large within the corporate limits of the town.
- (b) The town's animal control officer is authorized to pursue onto private and public property and to impound animals running at large.
- (c) If any animal is found upon the premises of any person, the owner or occupant of the premises shall have the right to confine such animal, until the rightful owner or the town can be notified and the animal picked up. But in so doing, the property owner confining such animal shall be responsible for the humane care of the animal while it is in his care.
- (d) Any animal, except dangerous or wild animals, not reclaimed by the owner may be humanely euthanized or released for adoption after being impounded for 96 hours.

(e) Any impounded dangerous or wild animal may be immediately disposed of as may be deemed appropriate by the town.

(Ordinance 273-11-14, sec. III(F), adopted 11/3/14)

**State law references**—Animals at large, V.T.C.A., Local Government Code, sec. 215.026; restraint, impoundment and disposition of dogs and cats, V.T.C.A., Health and Safety Code, sec. 826.033.

**Sec. 2.01.011 Dangerous animals**

(a) **General requirements.** The owner of a dangerous animal may be required, after the appropriate hearing or trial before the municipal court, to do any or all of the following:

(1) Restrain the dangerous animal at all times on a leash in the immediate control of the owner, or in a secure pen or enclosure as prescribed for dangerous animals herein.

(2) Not later than the 30th day after a person learns that the person is the owner of a dangerous animal (learns of an unprovoked attack on a person that causes bodily injury made by the animal or receives notice that a justice court, county court or municipal court has found that the animal is a dangerous animal), the person shall:

(A) Have the dangerous animal implanted with a microchip identifying the owner of said animal.

(B) Obtain liability insurance in the amount of not less than \$100,000.00 covering bodily injury or death to any person, or for damages to any person's property, resulting from the keeping of such dangerous animal.

(C) Register the dangerous animal with the town animal control officer, providing the animal control officer with:

(i) The name and address of the owner;

(ii) The breed, age, sex, color and any other identifying marks of said animal;

(iii) The location where the animal is to be kept;

(iv) Two color photographs of the animal;

(v) The microchip number of the animal;

(vi) A copy of the aforementioned certificate of liability insurance; and

(vii) The required registration fee.

(D) The animal control officer shall provide the owner a registration tag designating the animal as dangerous.

(E) The owner must place the tag on the animal's collar and must insure that the animal wears such tag and collar at all times.

(b) **Confinement.** All dangerous animals shall be securely confined either indoors or in a securely enclosed and locked kennel, pen or structure outdoors as provided herein. Such kennel, pen or structure shall meet the following standards:

(1) All kennels, pens or structures shall comply with all zoning and construction regulations of the town.

(2) All kennels, pens or structures must be of sufficient design and construction to prevent unauthorized entry and to restrain said dangerous animal at all times.

(3) At no place within the kennel, pen or structure shall a dangerous animal be able to put his mouth outside of the enclosure.

(4) All kennels, pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the enclosures.

(5) All gates or doors opening through such enclosures shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

(6) All kennels, pens or structures must be adequately lighted and ventilated and must be maintained in a clean and sanitary condition.

(7) Signs giving notice of the dangerous animal shall be prominently displayed so that all persons

entering such premises are immediately notified a dangerous animal is being kept at the location.

(8) The owner of a dangerous animal shall, at all reasonable times, allow the town's animal control officer, or a designated licensed veterinarian, to enter the premises where the animal is kept and to inspect the animal, the primary enclosure or secure enclosure for the animal, and the owner's records relating to the animal, to ensure compliance with this section.

**(c) Leash and muzzle.**

(1) It shall be unlawful for any person to permit a dangerous animal to go outside its kennel or place of enclosure unless said animal is securely leashed with a leash no longer than four (4) feet in length and unless said animal is muzzled by a muzzling device sufficient to prevent said animal from biting persons or other animals.

(2) An owner shall be in physical control of a leashed dangerous animal at all times, and it shall be unlawful for said owner to leave such animal tied on a chain, rope or other type leash outside of its kennel or place of enclosure to an inanimate object such as a tree, post, building, car or truck.

**(d) Violations.**

(1) In the event that the owner of any dangerous animal is found in violation of any provision of this section by a justice court, county court or municipal court, such court shall order the animal control authority to seize the animal and shall issue a warrant authorizing the seizure.

(2) The authority shall seize the animal and provide for the impoundment of the animal in secure and humane conditions.

(3) The owner shall pay any cost or fees assessed by the municipality related to the seizure.

(4) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with the provisions of this section before the 11th day after the date on which the animal is seized or delivered to the authority.

(5) The court shall order the authority to return the animal to the owner if the owner complies with the provisions of this section before the 11th day after the date on which the animal is seized or delivered to the authority.

(e) Animal found dangerous by other jurisdiction. Any animal that that has been declared or found dangerous by the animal control authority or court of another jurisdiction shall be conclusively presumed to be vicious in this jurisdiction.

(Ordinance 273-11-14, sec. III(G), adopted 11/3/14)

**State law reference**—Dangerous dogs, V.T.C.A., Health and Safety Code, sec. 822.041 et seq.

**Sec. 2.01.012 Keeping, sale or possession of prohibited animal**

It is unlawful for a person to sell, offer for sale, barter, trade, keep, own, harbor, maintain, use, or have in a person's possession a prohibited animal within the corporate limits of the town. (Ordinance 273-11-14, sec. III(H), adopted 11/3/14)

**State law reference**—Dangerous wild animals, V.T.C.A., Health and Safety Code, sec. 822.101 et seq.

**Sec. 2.01.013 Animal care; rabies control**

The following are established as guidelines for animal care and are not intended to contravene the provisions for animal cruelty in the Texas Penal Code:

(1) All animals shall be fed with a quantity of good wholesome food sufficient to keep them in a well-nourished condition, and such food shall be served to said animals in a clean and sanitary manner.

(2) All animals shall be provided with pure, clean water in sufficient quantities at all times.

(3) All animals shall be provided with proper shelter and protection from the weather.

(4) All stables, pens, corrals, yards or enclosures in which animals reside shall be kept and maintained in a clean and sanitary condition.

(5) All animals shall be provided with veterinary care when needed to prevent suffering.

(6) No person shall beat, cruelly treat, torment, torture, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans. If a peace officer or the town animal control officer has reason to

believe that an animal has been or is being cruelly treated, the officer may apply to the town's municipal court for a warrant to seize the animal, and disposition of such animal shall be handled as outlined in title 10, Health and Safety of Animals, chapter 821, Treatment and Disposition of Animals, subchapter B, Disposition of Cruelly Treated Animals, of the Texas Health and Safety Code.

(7) No person shall intentionally or knowingly confine or allow to be confined any animal in a motor vehicle or trailer under such conditions, or for such a period of time, as may endanger the health or well-being of the animal due to heat, lack of food or water or any other circumstance which causes suffering, disability or death of said animal.

(8) It shall be unlawful for any person to knowingly bring into the town any animal having any infectious or contagious disease.

(9) It shall be unlawful for any person to sell or give away any animal under four (4) weeks of age.

(10) It shall be unlawful for any person to keep more than (10) adult animals, excluding fish, on a property of less than one (1) acre.

(11) The town adopts title 10, Health and Safety of Animals, chapter 826, Rabies, of the Texas Health and Safety Code, also known as the Rabies Control Act of 1981.

(A) Any person moving into the town from a location outside of the town shall comply with this chapter within ten days after having moved into the town.

(B) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall immediately report the incident or animal to the animal control officer of the town.

(C) The animal control officer shall quarantine, have quarantined, and/or test any animal when there is probable cause to believe the animal is rabid, may have been exposed to rabies, or may have exposed a person to rabies, following the

rules set out in Texas Administrative Code title 25, Health Services, rule 169.27, Quarantine Method and Testing.

(Ordinance 273-11-14, sec. IV, adopted 11/3/14)

**State law references**—Cruelty to livestock animals, V.T.C.A., Penal Code, sec. 42.09; cruelty to nonlivestock animals, V.T.C.A., Penal Code, sec. 42.092; rabies reports and quarantine, V.T.C.A., Health and Safety Code, sec. 826.041 et seq.

#### Sec. 2.01.014 Public nuisances

(a) **Noise.** No person shall willfully or knowingly keep or harbor on his premises, or elsewhere in the town, any animal or fowl of any kind that makes or creates an unreasonable disturbance of the neighbors or the occupants of adjacent premises or persons living in the vicinity thereof, or permit such animal to make or create disturbing noises by howling, barking, crowing, bawling or otherwise. A person shall be deemed to have willfully and knowingly violated terms of this section if such person shall have been notified by an elected official of the town, or by the town's designated animal control officer, or by any peace officer, of such disturbance and shall have, within twenty-four (24) hours, failed or refused to correct such disturbance and prevent its recurrence.

(b) **Odors.** The owner or person in possession of animals shall keep yards, pens and enclosures in which such animals reside in such a manner so as not to give off odors offensive to persons of ordinary sensibilities residing in the vicinity, or to breed or attract flies, mosquitoes or other noxious insects, or in any manner to endanger the public health or safety.

(c) **Failure to remove animal feces.**

(1) All animal manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance. An owner or other person having care, custody, or control of an animal commits an offense if he knowingly permits, or by insufficient control allows, the animal to defecate in the town:

(A) On private property other than property owned, leased or controlled by the owner or person having care, custody or control of the animal.

(B) On public property or any other place to which the public or a substantial group of the public has access, including but not limited to a street, sidewalk, alley, park or playground, or any common area of a school.

(2) It is a defense to a prosecution under this subsection that:

Commented [WW4]: This is slightly different as well, need to update?

- (A) The owner or other person having care, custody, or control of the animal immediately and in a sanitary manner removed and disposed, or caused the removal and disposal of, all excreta deposited on the property by the animal;
- (B) The animal was an assistance animal or therapy animal, as defined in this chapter, and was in the care, custody, or control of that disabled person at the time it defecated on the property;
- (C) The owner or person in control of the property had given prior consent for the animal to defecate on the property; or
- (D) The animal was being used in official law enforcement activities.

(Ordinance 273-11-14, sec. V, adopted 11/3/14)

**Sec. 2.01.015 Abandonment of animals prohibited**

It shall be unlawful for any person to intentionally or knowingly abandon any animal within the corporate limits of the town. (Ordinance 273-11-14, sec. VI, adopted 11/3/14)

**State law references**—Cruelty by abandoning livestock animal, V.T.C.A., Penal Code, sec. 42.09(a)(3); cruelty by abandoning nonlivestock animal, V.T.C.A., Penal Code, sec. 42.092(b)(4).

**Sec. 2.01.016 Poisoning animals prohibited**

No person shall poison any domestic animal or livestock or distribute poison in any manner whatsoever with the intent or for the purpose of poisoning a domestic animal or livestock. (Ordinance 273-11-14, sec. VII, adopted 11/3/14)

**State law references**—Cruelty by poisoning livestock animals, V.T.C.A., Penal Code, sec. 42.09(a)(5); cruelty by poisoning nonlivestock animals, V.T.C.A., Penal Code, sec. 42.092(b)(2).