

ORDINANCE NO. 2014- 58

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 6, ANIMALS, OF THE CITY OF NEW BRAUNFELS CODE OF ORDINANCES, BY AMENDING ARTICLE I, SECTION 6-1 "DEFINITIONS", SECTION 6-4, "FEE SCHEDULE", AMENDING ARTICLE II, SECTION 6-26, "LICENSING OF DOGS AND CATS", AMENDING ARTICLE III, SECTION 6-51, "RESTRAINT", AND SECTION 6-52, "IMPOUNDMENT AND VIOLATION NOTICE", CREATING A NEW SECTION IN ARTICLE II, SECTION 6-56, "FERAL CAT COLONY MANAGEMENT", AMENDING ARTICLE IV, SECTION 6-77 "KEEPING OF DOMESTIC ANIMALS", AND AMENDING SECTION 6-82, "INSPECTION OF ANIMALS AND PREMISES"; AMENDING SECTION 6-106, "RABIES VACCINATION"; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels is a home rule municipality given broad discretionary powers under the Texas Constitution to regulate for the public peace, health, safety and general welfare of its citizens; and,

WHEREAS, feral cats currently exist in large numbers and roam free throughout the City of New Braunfels with no effective means of controlling their population; and

WHEREAS, the City currently addresses nuisances caused by feral cats through trapping and humane euthanasia; and

WHEREAS, the City recognizes the potential for a well-managed trap-neuter-return (TNR) program as a mechanism to reduce the existing and ever perpetuating feral cat over population, and move towards a reduction in the euthanasia rate of such feral cats in our community;

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

Section 1

The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2

That Chapter 6, "Animals", as it currently exists is amended to read as follows:

Chapter 6, "Animals", Article I "In General", Section 6-1 "Definitions" of the Code of Ordinances is hereby amended to add new definitions to read as follows:

Animal Welfare Group means any not-for-profit group with 501(c)(3) status whose primary mission includes animal welfare.

Ear tipping means the painless removing of the tip of the left ear of a cat while the cat is anesthetized by a licensed veterinarian.

Feral cat means any unowned, homeless, wild, or untamed cat which is too poorly socialized to be handled (and therefore must be trapped and sedated for examination) and which cannot be placed into a typical home as a domestic pet.

Feral cat colony caregiver means a person who is approved by a Sponsor who feeds feral cats, performs trap-neuter-return, and provides long-term care and monitoring for adult feral cats.

Feral cat colony means a group of cats that congregate together, more or less as a unit, who are fed and cared for by a feral cat colony caregiver.

Microchip implant means a passive electronic device that is injected into an animal by means of a hypodermic-type syringe device. Each microchip shall contain a unique and original number that is read by an electronic scanning device for the purposes of animal identification and recovery by the animal's owners.

Identification means any acceptable method such as micro-chipping, registration tag, or tattoo readily traceable to the current owner.

Traceable identification means a type of identification, such as a tag, microchip, or tattoo that can be readily used by an animal control officer or animal welfare personnel to identify the current ownership of an animal.

Trap, neuter and return (TNR) program shall mean a nonlethal, humane alternative to deal with the feral cats which are captured, vaccinated, altered and returned back to their location in order to encourage the stabilization of the free-roaming feral cat population in the city.

Registered feral cat colony means a managed feral cat colony registered with a Sponsor and meeting all requirements of this chapter.

Sponsor is any Animal Welfare Group partnered with and approved by the City that agrees to comply with the requirements of this Ordinance for Sponsors and provides written notice to the City that it will serve as a Sponsor.

Section 3

Chapter 6 "Animals", Article I "In General", Section 6-4, Fee Schedule, of the Code of Ordinances is hereby amended to provide that a Feral Cat that is otherwise in accordance with the City's Trap, Neuter, and Release Program shall not be subject to fine by the City merely for being at large, to read as follows:

Section 6-4 (c) Impoundment fee. An impoundment fee must be paid for each animal captured, as follows:

(7) A Feral Cat that is otherwise in a Sponsor approved Trap, Neuter, and Return feral cat colony shall not be subject to impoundment fees under this section.

Section 4

Chapter 6 "Animals", Article II, Licenses and Permits, Section 6-26, Licensing of dogs and cats, of the Code of Ordinances is hereby amended to provide an affirmative defense to prosecution for failing to license a cat or to fail to display a license for a cat, to read as follows:

(l) Defenses. It shall be an affirmative defense to prosecution that the animal is a Feral Cat in a Sponsor approved Trap, Neuter, and Return feral cat colony program.

Section 5

Chapter 6 "Animals", Article III, Animal Control, Section 6-51, Restraint, of the Code of Ordinances is hereby amended to provide an affirmative defense to prosecution for failing to keep a cat from roaming beyond the boundaries of a person's premises, to read as follows:

(a) All dogs, cats and other animals shall be kept under restraint and not allowed to run at large or stray. This section shall not be so construed as to prohibit trained dogs that are a part of a canine unit operated by a law enforcement agency from being

unrestrained while in the performance of their law enforcement and public safety functions within the city limits.

It shall be unlawful for a person having charge, care, or ownership of a cat to fail to keep the cat from roaming beyond the boundaries of the person's premises. It shall be an affirmative defense to prosecution under this Section that the cat is a Feral Cat in a Sponsor approved Trap, Neuter, and Return feral cat colony program.

Section 6

Chapter 6 "Animals", Article III, Animal Control, Section 6-52, Impoundment and violation notice, of the Code of Ordinances is hereby amended to provide an affirmative defense to prosecution for failing to keep a cat from roaming beyond the boundaries of a person's premises, to read as follows:

(a) Unrestrained dogs, cats, and nuisance animals shall be taken by the police, animal control officers, or humane officers and impounded in an animal shelter and there confined in a humane manner. Any animal that poses a threat to public health and safety, any wild animal kept illegally, or any animal that has been cruelly treated or abused shall also be impounded. For purposes of discharging the duties imposed by the provisions of this chapter or other applicable laws, and to enforce such provisions, duly authorized representatives or employees may enter upon private property to the full extent permitted by law, which shall include but not be limited to entry upon private, unfenced property when in pursuit of any animal which they have reason to believe is subject to impoundment pursuant to the provisions of this chapter or other applicable laws. If, by traceable identification, the owner of an animal found at large can be identified, the animal control officer may return an animal found at large to the known owner in lieu of impounding the animal. It shall be an affirmative defense to prosecution under this Section that a Feral Cat that is otherwise in a Sponsor approved Trap, Neuter, and Return feral cat colony program shall not be subject to capture and impoundment by the City for violation of this section.

Section 7

Chapter 6 "Animals", Article III, Animal Control, Section 6-56, Feral cat management, the Code of Ordinances is hereby promulgated to provide for, develop and administer a

Trap, Neuter, and Return (TNR) Program designed to reduce the number of Feral Cats which are euthanized, to establish standards for the management of Feral Cats, and to provide for the minimization and abatement of nuisances caused by Feral Cats.

Section 6-56. Feral cat colony management.

(a) Feral Cat Colonies may be permitted and Feral Cat Colony Caretakers so permitted may maintain and care for Feral Cats by providing food, water, shelter and other forms of sustenance, provided that the Feral Cat Colonies are registered with a City approved partnered Sponsor, as defined herein, and that the Feral Cat Colony Caretaker takes all appropriate and available steps to meet the terms and conditions of this Ordinance.

(b) Sponsorship of Colony TNR Programs. Any Animal Welfare Group that agrees to comply with the requirements of this Ordinance for Sponsors may apply to act as a Sponsor. Any Animal Welfare Group intending to undertake the responsibilities of Sponsor shall so advise the City in writing and provide its address and telephone number, and electronic mail address if applicable.

Sponsor Requirements. It shall be the duty of the Sponsor to:

1. Review and, in its discretion, approve of Feral Cat Colony Caretakers.
2. Help to resolve any complaints over the conduct of a Feral Cat Colony Caretaker or of cats within a colony.
3. Maintain records provided by Feral Cat Colony Caretakers on the size and location of the colonies as well as the vaccination, and spay and neuter records of cats in the Sponsor's colonies.
4. Provide, at a minimum, written educational training for all Caretakers addressing uniform standards and procedures for colony maintenance.
5. Report annually to the City on the following:
 - (i) number and location of colonies for which it acts as a Sponsor in the City;
 - (ii) total number of cats in each of its colonies;

(iii) number of cats from its colonies vaccinated, and spayed and neutered pursuant to the TNR program and number of cats and kittens from its colonies placed in permanent homes.

6. Provide any forms or other documentation necessary to allow Feral Cat Colony Caretakers to receive any public or private subsidies, medical care or other forms of assistance for their Feral Cat Colonies which may be available to them;

7. Provide to the City the location, by address, of Feral Cat Colonies where Feral Cat Colony Caretakers have regularly failed to comply with this Ordinance or where the Sponsor has been unable to resolve a nuisance behavior situation.

(c) Feral Cat Colony Caretaker Responsibilities. In order to be an approved managed Feral Cat Colony Caretaker, said Caretakers shall be responsible for the following:

1. Registering the colony with the Sponsor.

2. Taking all appropriate and available steps to vaccinate the colony population for rabies with an approved three-year vaccine and to update the vaccinations as reasonably possible or warranted.

3. Taking all appropriate and available steps to have the colony population spayed or neutered by a licensed veterinarian.

4. Ear tipping the left ear of a colony cat that has been vaccinated and spayed or neutered so that colony cats can be readily identified.

5. Providing the Sponsor with descriptions of each cat in the colony and copies of documents demonstrating that the cats have been vaccinated, and spayed or neutered.

6. Providing food, water and, if feasible, shelter for colony cats.

7. Obtaining proper medical attention for any colony cat that appears to require it.

8. Observing the colony at the frequency established by the Sponsor, keeping a record of any illness or unusual behavior noticed in any colony cat.

9. Obtaining the written approval of the owner of any property, or any authorized representative of the owner, to which the Caretaker requires access to provide colony care.

10. Taking all reasonable steps to (1) remove kittens from the colony after they have been weaned, (2) place the kittens in homes or foster homes for the purpose of subsequent permanent placement, and (3) capture and spay the mother cat.

11. Report to the Sponsor (1) the location of the colony, (2) the number and gender of all cats in the colony, (3) the number of cats that died or otherwise ceased being a part of the colony; (4) the number of kittens born to colony cats and their disposition, (5) the number of cats placed in animal shelters or in permanent homes as companion cats, (6) the number of cats vaccinated, and (7) the number of cats spayed or neutered.

12. Taking appropriate measures to assist in the elimination of nuisances when identified or declared.

(d) Withdrawal of Feral Cat Colony Caretaker or Sponsor. In the event that a Feral Cat Colony Caretaker is unable or unwilling to continue in that role, he or she shall notify his or her Sponsor. In the event a Sponsor is unable or unwilling to continue to perform its role, it shall so advise the City or its designated agent. The Sponsor shall work with the City or its designated agent to obtain a replacement Sponsor. If no new Sponsor is found within 30 days, the Sponsor shall immediately notify the City or its designated agent.

(e) Disposition of Feral Cat Colony cats.

1. An Animal Control Officer who has trapped a cat whose left ear has been tipped indicating that it belongs to a Feral Cat Colony, shall take reasonable steps to notify a Sponsor of the description and sex of the cat, and if available, the address or location where the cat was trapped. The Sponsor shall then take all appropriate and available steps to identify the Feral Cat Colony Caretaker of this cat or a Feral Cat Colony Caretaker who will take responsibility for managing this cat.

2. If the Feral Cat Colony Caretaker is not able to immediately take custody of the cat, the Officer shall transport the cat for impoundment. The Feral Cat Colony Caretaker

shall be responsible for retrieving the cat from impoundment within three (3) business days or advising the impoundment site if he or she does not intend to retrieve the cat.

(f) Enforcement. The City in order to encourage the stabilization of the Feral Cat population in the City of New Braunfels, shall have the following rights, which shall be exercised at its reasonable discretion:

1. The right to trap in a humane manner and remove any cats that (1) have not been vaccinated against rabies or which are demonstrating signs of the disease, (2) are not spayed or neutered, or (3) otherwise for public health or public safety concerns.

(i) If no issue of public health or safety exists, or if any issues of public health and safety can be addressed by the removal and relocation of the cat to another area, the City may direct a Sponsor to arrange to have the cat spayed or neutered, ear tipped, and vaccinated against rabies by a licensed veterinarian. The Sponsor may then arrange for the cat to be adopted or placed in a Feral Cat Colony.

(ii) If a Feral Cat is demonstrating signs of having rabies, or has a severe illness or injury, or presents a hazard to public health or safety, or to its own person, that cat may be humanely destroyed.

2. The right to remove or to direct a Sponsor to remove a Feral Cat that is creating a nuisance if the Sponsor has failed to adequately resolve a nuisance within 30 days after being given written notice thereof. In the event that the City directs the Sponsor to remove the cat, the Sponsor shall have 30 days to do so. Failure of the Sponsor to remove the cat within said time period (or such longer time as the City may specify) shall constitute grounds for the City to remove the cat.

3. The right to remove a Sponsor if a Sponsor fails to perform its responsibilities as defined in this Ordinance, the City may notify the Sponsor that it must comply with the requirements of this Ordinance within 30 days. If the Sponsor fails to do so, the City may remove this Sponsor from the list of City approved Sponsors, and may reassign the Feral Cat Colonies from this Sponsor to another Sponsor.

4. The right to humanely remove all or part of a Feral Cat Colony. If a Feral Cat Colony Caretaker regularly fails to comply with this Ordinance, the Sponsor may notify the Feral Cat Colony Caretaker that he or she has 30 days to make all reasonable efforts to fulfill

the responsibilities specified in this Ordinance. If the Feral Cat Colony Caretaker fails to comply within that time period, the Sponsor may identify and obtain replacement Feral Cat Colony Caretakers for the Feral Cat Colonies of the non-compliant Feral Cat Colony Caretaker. If no other Feral Cat Colony Caretaker can be found within 30 days, the Sponsor shall notify the City's designee and the City may humanely remove all, or parts of, a Feral Cat Colony.

Section 8

Chapter 6 "Animals", Article IV, Care and Keeping, Section 6-77(a), Keeping of domestic animals, of the Code of Ordinances is hereby amended to provide an affirmative defense to prosecution for exceeding the allowable number of cats housed at a residence, to read as follows:

(a) It shall be unlawful for any person to own, keep, or harbor more than four dogs or cats over three months of age at any one address or location within the city limits. It shall be an affirmative defense to prosecution under Section 66-7 (a), that the cats are Feral Cats in a Sponsor approved Trap, Neuter, and Return feral cat colony program.

Section 9

Chapter 6 "Animals", Article IV, Care and Keeping, Section 6-82, Inspection of animals and premises, of the Code of Ordinances is hereby amended to provide for inspection of Feral Cat Management program locations, to read as follows:

6-82. Inspection of animal premises.

Animals and premises whereon animals are kept or maintained shall be subject to inspection by the local health authority, or his authorized representative or employees, or an animal control officer, at any reasonable hour, or at any hour in cases of emergency. This section includes all locations and premises approved under Section 6-56, Feral cat colony management, operated by affiliated Sponsors and caretakers of feral cat colonies and rescuers affiliated with recognized rescue organizations approved by the City.

Section 10

Chapter 6 "Animals", Article IV, Rabies Control, Section 6-106, Rabies vaccination tag, of the Code of Ordinances is hereby amended to provide an affirmative defense to prosecution by permitting the administration of a multi-year rabies vaccination for feral cats in the City's Trap, Neuter, and Return Program, to read as follows:

(a) It shall be unlawful for any person to own, keep, harbor, or have custody or control of a dog or cat over 120 days of age within the city unless such dog or cat is currently vaccinated against rabies by the injection of antirabies vaccine by or under the direct supervision of a licensed veterinarian. It shall be an affirmative defense to prosecution under this Section that a Feral Cat that is otherwise in a Sponsor approved Trap, Neuter, and Return feral cat colony program is subject to rabies vaccination at least every three (3) years with an approved multi-year vaccine and updated as is reasonably practical or warranted.

Section 11

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 12

All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

Section 13

All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Section 14

In accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

Section 15

This Ordinance will take effect upon the second and final reading in accordance with the provisions of the Charter of the City of New Braunfels.

~~PASSED AND APPROVED: First reading this 28th day of July, 2014.~~

PASSED AND APPROVED: Second reading this 11th day of August, 2014.

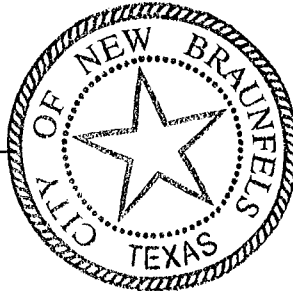
CITY OF NEW BRAUNFELS, TEXAS

By: _____

Barron Casteel, Mayor

ATTEST:

Patrick D. Aten, City Secretary



APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney