

Ordinance No. 2010.11.2

AN ORDINANCE AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF FLATONIA, TEXAS, BY AMENDING APPLICABLE SECTIONS OF CHAPTER 2 TO CHANGE THE NAME OF ENFORCEMENT OFFICER FROM ANIMAL WARDEN TO ANIMAL CONTROL OFFICER; BY ADDING A NEW SECTION, SECTION 2.01.005 RELATING TO DISTURBANCES BY ANIMALS AND PROVIDING FOR AN EFFECTIVE DATE AND PENALTY FOR THE VIOLATION THEREOF OF A FINE OF NOT MORE THAN \$1,000.00 FOR A FIRST OFFENSE AND NOT MORE THAN \$2,000.00 FOR A SECOND OR SUBSEQUENT OFFENSE; AND BY ADDING TWO NEW SECTIONS, SECTION 2.03.083, PROHIBITING THE KEEPING OF ROOSTERS WITHIN THE CITY LIMITS EXCEPT AS PERMITTED THEREIN AND SECTION 2.03.084 PROVIDING FOR A PENALTY OF A FINE OF NOT MORE THAN \$500.00 FOR THE VIOLATION OF ANY PROVISION OF DIVISION 3 OF CHAPTER 2, PROVIDING FOR A GRACE PERIOD AND FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Flatonia has heretofore, by ordinance, regulated the keeping of animals, livestock, swine and fowl within the city limits of the City of Flatonia, Texas; and

WHEREAS, the City Council has had its attention directed by city staff to the need to update terminology used in its Code of Ordinances to refer to city personnel who enforce code provisions relating to animal control; and

WHEREAS, the City Council has had its attention directed to the nuisances created by unreasonable noise and resulting disturbances to the citizens of Flatonia by the keeping of animals, livestock, swine and fowl within the city limits of the City of Flatonia; and

WHEREAS, the City Council has also had its attention directed by city staff and citizens to the particular nuisance created by crowing roosters and to the need to prohibit the keeping of roosters within the city limits of the City of Flatonia so as to prevent such nuisance; and

WHEREAS, the City Council recognizes that exceptions to the banning of roosters within the city limits exist; and

length of time, that the animal, livestock, swine or fowl caused the disturbance, and the name and address of the owner, as defined in Section 2.02.001, of the animal, livestock, swine or fowl causing the disturbance, if known to the complainant.

(c) The animal enforcement officer or police officer taking the complaint shall mail, by certified mail, return receipt requested, to the owner a notice that a disturbance complaint has been received, including the name and address of the complainant, the address of the unreasonable disturbance, the type of animal, livestock, swine or fowl causing the disturbance, the times, including the length of time, that the animal, livestock, swine or fowl caused the disturbance. Such notice, if of a first disturbance complaint, shall constitute a warning.

(d) A person knowingly commits an offense under this Section if, after receiving notice of the receipt of a disturbance complaint by the city, continues to allow the animal, livestock, swine or fowl to cause the disturbance, or shall have refused, for a period of 24 hours, to correct such disturbance and prevent its recurrence. And the person who is disturbed by said unreasonable noise, upon the filing of a disturbance complaint, in writing, in the same manner set forth in subsection (b), the animal enforcement officer or the police officer receiving the complaint, shall issue a citation to the owner for the violation of this section.

(e) Any person who has not previously been convicted of an offense under this Section and violates any portion of this Section is guilty of a misdemeanor and shall, on conviction, be subject to a fine of not less than \$35.00 nor more that \$1,000.00. For the second or subsequent conviction within a twelve month period, said person shall be fined not less than \$70.00 nor more than \$2,000.00.

Section 3. That Chapter 2, Animal Control, Article 2.03, LIVESTOCK AND FOWL, Division 3. Fowl, be amended by adding two new sections thereto, Section 2.03.083, Keeping of Roosters Prohibited, and Section 2.03.084, Penalty, to hereafter read as follows:

Article 2.03 LIVESTOCK, SWINE AND FOWL

Division 3. Fowl

2.03.083 Keeping of Roosters Prohibited

(a) In this section, *Rooster* means an adult male of the domestic fowl

(b) Notwithstanding the provisions of Section 2.03.082 permitting the keeping of fowl,

no person may knowingly own and keep or keep a live rooster on any premises within the corporate limits of the city except as follows:

(1) the rooster is being raised for exhibition at a fair or livestock show, providing the owner or person keeping the rooster, if different from the owner, has given written notice to the animal control officer of his or her intent to keep and raise the rooster for such period of time as is necessary to exhibit the rooster in a fair or livestock show, stating the location (address) where the rooster will be kept, the length of time the rooster will be kept at said location, the name and date of the fair or livestock show where the rooster will be exhibited.; or

(2) the rooster is owned by a medical, educational, or research institution operating within the corporate limits of the city in compliance with all city ordinances and state and federal laws; and

(3) the owner or person keeping the rooster, if different from the owner, has complied with the provisions of subsection (e) of this section.

(c) The animal control officer, upon receipt of a completed notice as set forth in subsection (b) (1) of this section, shall acknowledge, in writing, that the requisite notice has been received, with a copy of the notice attached to such acknowledgment and date stamped with the date of receipt.

(d) It is a defense to prosecution under subsection (b) if the owner or person keeping the live rooster is in possession of the notice and acknowledgment required in subsection (b)(1) and subsection (c) of this section.

(e) A person who owns and keeps or keeps a live rooster within the corporate limits of the city in accordance with subsections (b) and (c) of this section commits an offense if he or she:

- (1) fails to comply with any of the requirements of Section 2.03.082 of this article;
- (2) fails to confine the rooster at all times within an enclosure that is of sufficient height, width and strength to retain the rooster;
- (3) confines the rooster to an enclosure that is wholly or partially located less than 20 feet from any adjacent property line;
- (4) maintains the enclosure in which the rooster is confined in a manner that creates offensive odors, fly breeding, or any other nuisance or condition that is injurious to the public health, safety or welfare; or
- (5) allows the rooster to violate the noise restrictions of section 2.01.005 of this Chapter.

(f) No person may keep more than one rooster in accordance with the provisions of subsections (b), (c) and (e) of this section.

2.03.84. Penalty

Any person, firm or corporation that shall violate any of the provisions of this division shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as provided for in the general penalty provision found in section 1.01.009 of this code. Each day's violation shall constitute a separate offense.

Section 4. Grace period for compliance. Any person who owns and keeps or who keeps roosters on premises within the corporate limits of the city as of the date of the passage of this ordinance shall have until December 31, 2010 to comply with the provisions of Section 2.03.083. Thereafter, any person found in violation of any provision of Section 2.03.083 during the period January 1 through January 31, 2011, inclusive shall be issued a warning citation for the first violation thereof. After the first violation or after January 31, 2011, whichever occurs first, any person found in violation of any provision of Section 2.03.083 shall be issued a citation.

Section 5. The amendments to Chapter 2, Animal Control, Code of Ordinances, City of Flatonia shall be effective upon their publication in accordance with Section 1.03.005 of the Code of Ordinances, City of Flatonia.

Section 6. Chapter 2, Animal Control, Code of Ordinances, City of Flatonia, Texas, shall, except as amended herein, remain in full force and effect.

Section 7. Any articles, sections or subsections of the Code of Ordinances, City of Flatonia, Texas, inconsistent with the provisions hereof are hereby expressly repealed.

PASSED AND APPROVED on this 9th day of November, 2010.

CITY OF FLATONIA, TEXAS



BY: Scott Mica
Scott Mica
Mayor

ATTEST:

Melissa Brunner
Melissa Brunner, TRMC, CMC
City Secretary