

HEWITT TEXAS

NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Dinner Workshop** meeting of the governing body of the City of Hewitt will be held on the **21st day of October, 2013 at 5:30 PM** in **Hewitt City Hall, 105 Tampico Drive**, Hewitt, Texas, at which time the following subjects will be discussed:

1. City Manager's update on municipal business:
 - a. Report from City Engineer including review and discussion of Capital Improvement Projects.
 - b. Briefing and discussion concerning proposed Charter revision.
 - c. Briefing and discussion concerning masonry in commercial and industrial zoning districts.
 - d. Briefing and discussion concerning request by Steve Patrick concerning sewer rate charges.
 - e. Briefing and discussion concerning Public Safety Facility Project.
 - f. Briefing and discussion concerning Public Safety operations – Police & Fire
2. Review regular meeting agenda items.
3. Convene Executive Session pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:
 - Pursuant to § 551.087 – Deliberation regarding Economic Development Negotiations.
4. Close Executive Session.
5. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 2:00 AM/PM on October 18, 2013.

CITY OF HEWITT



Lydia Lopez, TRMC
City Secretary

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Hewitt City Secretary at (254) 666-6171 at least 24 hours prior to the meeting, so that appropriate arrangements can be made.

HEWITT TEXAS

NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Regular** meeting of the governing body of the City of Hewitt will be held on the **21st day of October, 2013 at 7:00 PM in the City Council Room at Hewitt City Hall, 105 Tampico Drive, Hewitt, Texas**, at which time the following subjects will be discussed:

1. Pledge of Allegiance to the U.S. Flag
2. Consider approval of minutes of the Council Dinner Workshop/Regular Meeting of October 7, 2013.
3. Hear visitors on matters pertaining to city business.
4. Consider award of bid for construction of Commerce Park 1MG Elevated Tank to Phoenix Fabricators and Erectors in the total amount of \$2,457,240.
5. Consider and act on an ordinance amending Chapter 10 "Animals" of the Code of Ordinances to regulate spay and neutering and microchipping of dogs and cats, to address tethering of animals, and to revise other provisions.
6. Consider and act on an ordinance of the City of Hewitt, Texas providing that the Code of Ordinances be amended by revising Section 38-61(a) in Chapter 38 "Floods" of said Code.
7. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 2:00 AM ~~PM~~ on October 18, 2013.

CITY OF HEWITT


Lydia Lopez, TRMC
City Secretary

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WORKSHOP ITEM #1 a.

HEWITT TEXAS

CITY ENGINEER'S REPORT

October 16, 2013

Note: All schedules, dates and references to completion dates are approximate and subject to change.

Street Improvements:

Devonshire Street & Drainage Improvements

The contractor has finished asphalt paving on Devonshire. They are now working on the related concrete pilot channel in the detention pond. Recent rains will delay work for several days. All work should be complete by the end of October.

I-35 Widening - Utility Adjustments:

Under construction; Lift Station No. 1 – The contractor is getting ready to make the final piping connections. If everything goes smoothly, the new lift station may be in operation sometime next week. Work is finishing on the sewer and water line relocations and that work should be complete by the end of October. This project is under contract with TXDOT as is the completion timeline.

Water Utility Improvements:

Commerce Park Water Plant:

Bids were opened on Oct. 16, 2013 for the 1 Million Gallon Composite Elevated Storage Tank. Four bids were received, with lowest bid being submitted by Phoenix Fabricators & Erectors in the amount of \$2,377,240.00 for the base bid and \$80,000.00 for the additive alternate bid for logo lighting. Bids will be presented to the Council for award at their Oct. 21, 2013 meeting.

Ritchie Road Plant and Well Electrical System Improvements:

Ever since the Ritchie Road Well was placed into operation there have been numerous well pump motor failures. Seldom has a motor lasted 12 months. We have strongly suspected unbalanced incoming power, but have been unable to prove that was the case. Recently the well pump contractor has said he is not going to be able to keep replacing the motors under warranty because there is every indication of power supply problems. The City has obtained the services of an electrical engineer, James Schultz, from Austin, and Jim recommends the following:

1. Convert the plant service from 2,300 volt to 480 volt to allow use of a more standard variable frequency drive.
2. Install a variable frequency drive (VFD) and transformer for the well pump motor.

Jim has had good experience with adding VFD's in similar situations in other cities. The VFD will level out unbalanced incoming power and greatly reduce the damage to the motor. Our opinion of the probable cost for this work is \$156,000. In addition to that amount, there will be a charge from Oncor for the change to 480 volt power.

HEWITT TEXAS

We are having James Schultz develop plans and specification for this project so that we can advertise for bids for the construction.

Wastewater Utility Improvements:

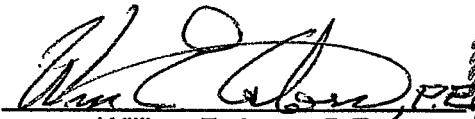
Lift Station No. 2 Replacement:

The pre-construction conference will be held October 18, 2013 and the issuing of a work order to the contractor. Actual work should start before the end of the month.

Patriot Court – Street, Drainage and Water/Sewer Utilities:

We are finalizing the plans and specifications. We are working to be ready to advertise for bids in October and ask the Council for award of a contract in November, 2013. We have been coordinating the design of the streets with the site work elevations and drainage for the proposed new police/fire building with Barnett Engineering, RBDR and K4.

By:


William E. Aston, P.E.




Miles W. Whitney, E.I.T.

HEWITT TEXAS II

WORKSHOP ITEM #1 b.

HEWITT TEXAS

MEMORANDUM

FROM: Adam Miles, City Manager
TO: Mayor and City Council
DATE: October 18, 2013
RE: Proposed Charter Amendment Language

Based on the input received from Council at the October 7th meeting, a ballot proposition to amend the City Charter would have voters consider term limits. In essence, voters would be asked to decide if future Council members would be allowed four (4) consecutive two (2) year full terms.

The following is suggested amended language for your consideration: [Language double underlined denotes changes to the current Charter.]

Sec. 2.2. Election of Council Members, Terms and Compensation.

The 2014 regular election and all subsequent regular elections shall be for a term of office of two (2) years. Starting with the regular election in 2014, no person may be elected to serve on the City Council for more than four (4) consecutive full terms. Terms served pursuant to elections conducted before the 2014 regular election shall not count towards the four consecutive term limitation.

A candidate for Council who has served four (4) consecutive terms in office must wait a minimum of one (1) term (approximately two [2] years) before becoming eligible to hold office again.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 21, 2013

AGENDA ITEM #: 2

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider approval of minutes of the Council Dinner Workshop/Regular Meeting of October 7, 2013.

STAFF RECOMMENDATION/ITEM SUMMARY:

Attached is a draft copy of the minutes of the meeting. Please review and advise if any corrections are needed.

ATTACHMENTS:

Draft minutes

HEWITT TEXAS

**MINUTES OF A CITY COUNCIL
DINNER WORKSHOP/MEETING
HEWITT CITY HALL – 105 TAMPICO DRIVE
October 7, 2013 - 5:30/7:00 PM**

Members Present: Mayor Ed Passalugo (presiding); Mayor Pro Tem Wilbert “Walky” Wachtendorf; Council Members Bill Fuller, James Vidrine, Travis Bailey, Ronnie McNiell and Alex Snider

Staff Present: City Attorney Charlie Buenger, Engineer In Training (EIT) Miles Whitney, City Manager Adam Miles, Assistant City Manager James Barton; Finance Director Lee Garcia, Utilities Director James Black, Library Director Waynette Ditto, Police Chief Jim Devlin, Fire Chief Lance Bracco, HR/Civil Service Director Susana Garcia-Gilmore, and City Secretary Lydia Lopez

Staff Absent: City Engineer Bill Aston

Workshop – 5:30 PM

1. City Manager presented an update on municipal business:
 - a. Report from City Engineer including review and discussion of Capital Improvement Projects.
 - b. Briefing and discussion was held concerning proposed Charter revision.
 - c. Briefing and discussion was held concerning Water Tower painting.
 - d. Briefing and discussion was held concerning joint workshop with the Planning & Zoning Commission on the regulations of residential accessory structures.
 - e. Briefing and discussion was held concerning proposed Animal Control Ordinance.
 - f. Briefing and discussion was held concerning request by Steve Patrick concerning sewer rate charges.
 - g. Briefing and discussion concerning was held concerning the Public Safety Facility Project.
 - h. Briefing and discussion was held concerning Public Safety operations – Police & Fire
2. The Regular meeting agenda items were reviewed.
3. **NOTE: EXECUTIVE SESSION WAS NOT HELD**
Convene Executive Session pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:

- Pursuant to § 551.071(1)(A), Consultation with Attorney regarding pending or contemplated litigation.
 - Pursuant to § 551.087 – Deliberation regarding Economic Development Negotiations.
4. Close Executive Session.
 5. Adjourn. *A motion was made by Bill Fuller and seconded by Travis Bailey to adjourn the Dinner Workshop at 6:52 pm.*

REGULAR SESSION – 7:00 PM

1. **PLEDGE OF ALLEGIANCE TO THE U.S. FLAG** - Mayor Passalugo invited Council Member Alex Snider to lead the Pledge of Allegiance.
2. **PRESENTATION OF PROCLAMATION IN RECOGNITION OF THE 100TH ANNIVERSARY OF THE DAUGHTERS OF THE NILE.** Mayor Passalugo presented the proclamation to Mary Anna Roch.
3. **SPECIAL PRESENTATION TO OUTGOING MEMBER OF THE LIBRARY BOARD OF DIRECTORS – BETH OAKLEY.** Mayor Passalugo presented a plaque to Mrs. Oakley.
4. **CONSIDER APPROVAL OF MINUTES OF THE SPECIAL CALLED DINNER WORKSHOP/MEETING OF SEPTEMBER 16, 2013.** *A motion was made by Wilbert “Walky” Wachtendorf and seconded by Travis Bailey to approve the minutes as submitted but allow for additional corrections; all seven in favor, motion passed.*
5. **HEAR VISITORS ON MATTERS PERTAINING TO CITY BUSINESS.**
None
6. **CONSIDER REQUEST TO GRANT A SPECIAL EXCEPTION TO THE TEMPORARY MORATORIUM ON RESIDENTIAL ACCESSORY STRUCTURE AT 908 REGINA DRIVE.** *A motion was made by Alex Snider and seconded by James Vidrine to grant special request; seven in favor, motion passed.*
7. **CONSIDER AND ACT ON A RESOLUTION AUTHORIZING A 60 DAY EXTENSION OF THE TEMPORARY MORATORIUM ON RESIDENTIAL ACCESSORY STRUCTURES.** *A motion was made by Bill Fuller and seconded by Alex Snider to grant special request; all seven in favor, motion passed.*

8. **CONSIDER AND ACT ON A RESOLUTION SUBMITTING CANDIDATE NOMINATIONS FOR THE MCLENNAN COUNTY APPRAISAL DISTRICT BOARD OF DIRECTORS FOR THE YEARS 2014-2015.** *A motion was made by Bill Fuller and seconded by Travis Bailey to approve; all seven in favor, motion passed.*
9. **CONSIDER AND ACT ON AN ORDINANCE APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORPORATION, MID-TEX DIVISION REGARDING THE COMPANY'S 2013 ANNUAL RATE REVIEW MECHANISM FILING AND ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT.** *A motion was made by Bill Fuller and seconded by James Vidrine to approve ordinance; all seven in favor, motion passed.*
10. **ADJOURN.** *A motion was made by Bill Fuller and seconded by Ronnie McNiel to adjourn the meeting at 7:12 p.m., all seven in favor, motion passed.*

Approved: October 21, 2013

Lydia Lopez, City Secretary

Ed Passalugo, Mayor

HEWITT TEXAS

ITEM #3 – HEARING OF VISITORS

CITIZEN PARTICIPATION AT MEETINGS

1. All citizens are encouraged to discuss matters of concern with the staff and individual council members prior to placing items on the agenda. Many times this will expedite a resolution or allow proper investigation of the matter for presentation to the entire council.

NO CITIZEN NOR STAFF MEMBER MAY SPEAK NOR OTHERWISE INTERRUPT ANY MEETING UNTIL RECOGNIZED BY THE PRESIDING OFFICER.

2. To maintain decorum at public hearings, the mayor will ask the citizens present if they wish to speak for or against the item on the agenda. If so, they will be given an opportunity to do so at the proper time, when recognized by the chair. If more than five citizens wish to address the council on any single agenda item, those citizens are advised to select spokespersons to present their case.
3. Citizens who wish to bring up a matter that pertains to city business or address an item on the agenda may do so, but only under the agenda item "Hear Visitors." **The council is prohibited by law from discussing or acting on any item that has not been posted on the agenda.**
4. **Citizens addressing the city council on items not on the agenda shall be limited to five minutes each. Total time for presentations on any one item or topic shall be limited to twenty-five minutes. The city council members shall not enter into discussion on any subject not properly placed on the agenda; however, the council members may ask questions for clarification purposes.**
5. As a general rule, citizens may not participate in the discussion of the council workshop session.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 21, 2013

AGENDA ITEM #: 4

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider award of bid for the construction of Commerce Park 1MG Elevated Tank to Phoenix Fabricators and Erectors in the total amount of \$2,457,240.

STAFF RECOMMENDATION/ITEM SUMMARY:

Sealed bids were received and opened on October 16, 2013 for the construction of Commerce Park 1MG Elevated Tank. Phoenix Fabricators and Erectors is the lowest bidder meeting qualifications. City staff recommends award of the bid to Phoenix Fabricators and Erectors in the total amount of \$2,457,240.

ATTACHMENTS:

Letter from City Engineer
Bid Tabulations

Duff Consulting Engineers, Inc.
Texas Registered Engineering Firm F-400

4201 No. 19TH St. - WACO, TEXAS 76708
(254)756-5414 FAX: (254)753-2642

E-Mail: b.aston@duffengineering.com

October 16, 2013

Honorable Mayor Passalugo and City Council
City of Hewitt
Via: E-mail

Re: Commerce Park 1 MG Elevated Storage Tank – Bids

Dear Mayor and City Council:

Bids were opened for the one million gallon, composite, elevated storage tank today. Four bids were received with the lowest bid being submitted by Phoenix Fabricators and Erectors in the amount of \$2,377,240.00 for the base bid and an additive alternate bid \$80,000.00 for logo lighting. The tabulation of the four bids is attached.

Our most recent opinion of the probable cost was \$2,500,000, therefore the Phoenix bid, with the additive alternate, is within our opinion of the probable cost.

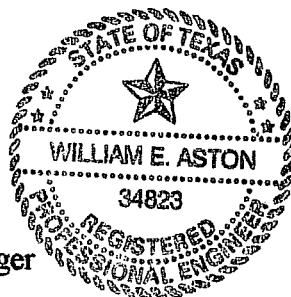
The additive alternate will provide pole mounted lights to illuminate the City's logo on two sides of the tank. The illumination is to make the logo visible for a distance of 3,000 feet on a clear night.

Phoenix Fabricators and Erectors built the City's elevated storage tank on Ritchie Road and has been the tank builders on many of our projects.

It is our recommendation that the contract be awarded to Phoenix Fabricators and Erectors for the base bid, and if the City so elects, to also include the additive alternate for the logo lighting.

Sincerely:


William E. Aston, P.E.



cc: Adam Miles, City Manager

BID TABULATION: CITY OF HEWITT - COMMERCE PARK IMG ELEVATED TANK Project No. 2013-01-W
Bid Date: October 16, 2013, 10:30 a.m., City Hall, Hewitt, Texas

BASE BID:

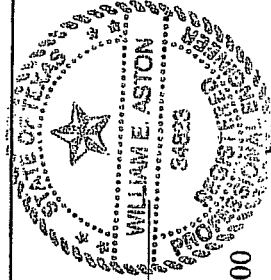
ITEM NO.	EST. QTY. & UNIT	DESCRIPTION	PHOENIX LUMP SUM	LANDMARK LUMP SUM	CB & I LUMP SUM	CALDWELL LUMP SUM
1.	L.S.	Furnish all Materials and Construct a 1,000,000 Gallon Composite Elevated Water Storage Tank, including All Tank Appurtenances and Electrical, as shown on the Plans.	\$ 2,156,240.00	\$ 2,513,000.00	\$ 2,657,000.00	\$ 2,576,000.00
2.	L.S.	Furnish all Materials and Perform All Site Work, including Piping, Grading and Appurtenances, as shown on the Plans	180,000.00	149,000.00	105,000.00	250,000.00
3.	L.S.	Furnish and Utilization of a Trench Safety Protection System	1,000.00	1,000.00	1,000.00	1,000.00
4.	L.S.	Mobilization, Bonds and Insurance (Shall not exceed 5% of the Total Bid)	40,000.00	100,000.00	120,000.00	142,000.00
TOTAL AMOUNT OF BID:			\$ 2,377,240.00	2,763,000.00	\$ 2,883,000.00	\$ 2,969,000.00
ADDITIVE ALTERNATE:						
A1.	L.S.	The additional cost to Design, Furnish, and Install Appropriate Pole Mounted Tank Logo Lighting as Specified. This item includes all necessary Wiring, Mounting Brackets, Light Fixtures, Conduit, Aluminum Poles, Pole foundations, and other Necessary Equipment to Construct a fully functioning Logo Lighting System	\$ 80,000.00	\$ 60,000.00	\$ 61,000.00	\$ 35,000.00

Prepared By:

William E. Aston
 William E. Aston, P.E. #34823

Date: October 16, 2013

Texas Registered Engineering Firm - F-400



DUFF CONSULTING ENGINEERS, INC.

4201 N. 19th St., Waco, Tx 76708 (254)756-5414 FAX: (254)753-2642

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 21, 2013

AGENDA ITEM #: 5

SUBMITTED BY: Jim Barton, Assistant City Manager

ITEM DESCRIPTION:

Consideration of and action an ordinance of the City of Hewitt, McLennan County, Texas amending Chapter 10 "Animals" of the Code of Ordinances to regulate spay and neutering and microchipping of dogs and cats, to address tethering of animals, and to revise other provisions; repealing all ordinances in conflict herewith; providing for an effective date; providing for a penalty.

STAFF RECOMMENDATION/ITEM SUMMARY:

Staff is recommending approval of this ordinance.

ATTACHMENTS:

Ordinance

ORDINANCE NO. 2013-10-21-1

AN ORDINANCE OF THE CITY OF HEWITT, MCLENNAN COUNTY, TEXAS; AMENDING CHAPTER 10 “ANIMALS” OF THE CODE OF ORDINANCES TO REGULATE SPAY AND NEUTERING AND MICROCHIPPING OF DOGS AND CATS, TO ADDRESS TETHERING OF ANIMALS, AND TO REVISE OTHER PROVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

Section 1. That Chapter 10 “Animals” of the Code of Ordinances of the City of Hewitt, Texas, shall be and is hereby amended to read as follows:

Chapter 10 - ANIMALS

ARTICLE I. - IN GENERAL

Sec. 10-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment means leaving an animal unattended for more than 24 hours, releasing the animal upon public highways or public or private lands, or failure to provide proper or adequate food, water, exercise ,shelter or medical care.

Abuse shall mean to mistreat through intent or neglect any animal in a manner that causes or is likely to cause stress or physical injury or as otherwise stated in this chapter.

Animal shall mean any living creature other than a Homo sapiens. Unless indicated otherwise, the term shall include livestock, fowl, reptiles, amphibians, and wildlife, as well as dogs, cats and other creatures commonly owned as pets.

Animal control officer or *animal control office* shall mean the officer or office of the city primarily responsible for the enforcement of regulations regarding animals.

Animal shelter shall mean a facility designated by the city council to be used for the impoundment of animals taken up by the animal control officers.

Authority shall mean the local rabies control authority as defined in this section.

Brand shall mean a mark made on the skin of any animal which indicates the ownership of the animal; typically used with livestock.

Cat shall mean the male and the female of any domesticated member of the feline species of animals.

Circus shall mean a commercial variety show featuring animal acts for the public.

Day shall mean a workday and shall exclude Saturday, Sunday and city holidays.

Distance between structures, where a minimum setback or distance between any enclosure for an animal from a residence is required, shall mean the most direct line distance between the two structures, unless otherwise provided.

Dog shall mean the male and the female of any domesticated member of the canine species of animal.

Domestic animal shall mean an animal, such as a dog or cat, that has been tamed and kept by humans as a work animal, food source, or pet, especially a member of those species that have, through selective breeding, become notably different from their wild ancestors.

Ear tip (cat) shall mean a surgical process performed on a cat during neutering as part of the Trap Neuter Return process by a licensed veterinarian in which a 1/4" diagonal cut is made to remove the point of a cat's ear, and is preferably, but not exclusively, on the cat's left ear.

Fish shall mean any of the cold-blooded animals that extract oxygen from water through the use of gills.

Fowl shall include all birds, e.g., chickens, turkeys, pheasants, quail, guineas, geese, ducks, peafowl and other domestic feathered creatures and nondomestic feathered creatures, regardless of age or sex.

Governmental entity shall mean an agency or political subdivision of the state or an agency or department of the federal government.

Harbor shall mean to feed, provide shelter, or otherwise maintain an animal for three or more days.

Health Statement shall mean a statement from a veterinarian stating that an animal is healthy, free from signs of infectious or contagious diseases, and up to date on vaccinations. It shall include: the animal's microchip number, the animal identification such as the species, age or date of birth, sex, sterilization status and breed and must be dated within the last 24 months.

Livestock shall include, regardless of age, sex or breed, horses and all equine species, including mules, donkeys and jackasses; cows and all bovine species; sheep and all ovine species; llamas; goats and all caprine species; and pigs and all swine species.

Local rabies control authority shall mean the senior animal control officer, or an officer he designates to act in his place when he is temporarily unable to act for any reason.

Marine animal shall mean any animal, other than a mammal or bird, which lives in a marine environment.

Neutered shall mean any animal, male or female, rendered incapable of breeding or being bred, i.e., castration in the male and spaying or ovariectomy in the female.

Owner shall mean any person who has purchased or who owns, keeps, maintains, harbors or has care, custody or control of one or more animals.

Performing animals shall mean any spectacle, display, act or event in which animals perform.

Premise shall mean a definite portion of real estate or land, together with any appurtenances or buildings.

Poison shall mean a substance having an inherent harmful property which renders it, when taken into the system, capable of destroying animal life.

Residence shall mean any place of human habitation at any time, day or night, including, but not limited to, any single or multifamily dwelling, church, school, convalescent center or nursing home.

Restrained shall mean any animal secured by a leash of some sort or confined within the property limits of its owner.

Tag shall mean a vaccination tag attached to a collar as required by this chapter or some other permanent identifying device attached to a collar or to an animal.

Tattoo shall mean a permanent mark which is made on the skin of an animal by puncturing the skin and inserting indelible color, and which is used to show ownership.

Vaccination shall mean an injection of a rabies vaccine which is approved by the U.S. Department of Agriculture, Veterinary Biologics Division, state veterinarian and administered by a licensed veterinarian or at an approved antirabies clinic.

Veterinarian shall mean any person duly licensed to practice veterinary medicine by the state ACO of veterinary examiners, or who is exempt from such licensing.

Wild animal or *wildlife* shall mean any nondomestic creature (mammal, amphibian, reptile or fowl) which is of a species which is wild by nature, which can normally be found in a wild state, and which is not naturally tame or gentle, or which, because of its size, vicious nature and other characteristics, constitutes a danger to human life or property. Such creatures shall include, but are not limited to, all animals prohibited by the state or federal law and shall include, but are not limited to, the following animals:

- (1) Class mammalia: Order Carnivora, family felidae (such as lions, tigers, jaguars, leopards and cougars) except commonly accepted domesticated cats and hybrids involving same; family Canidae (such as wolves, coyotes and fox) except domesticated dogs and hybrids involving same; family Mustelidae (such as weasels, martins, fishers, skunks, wolverines, mink and badgers) except ferrets; family Procyonidae (such as raccoons); family Ursidae (such as bears); order Primata (such as monkeys and chimpanzees); and order Chiroptera (such as bats).
- (2) Poisonous reptiles, cobras and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotalidae, Viperidae); Boonslang and Kirtland's tree snakes; Gila monsters (Helodermatidae); and crocodiles, alligators and their allies (order Loricata).

(3) Brown recluse (*Loxosceles*) and black widow (*Lactrodectus*) spiders.

Zoological park or *zoo* shall mean any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of animals, operated by a person or under the auspices of a governmental entity.

Sec. 10-2. - Purpose.

It is the intent and purpose of this chapter to provide a safe and healthy environment within the city for both animals and people. While a person may own and keep animals within the city, the conduct of those animals and the conditions that the animals are kept in should be safe and healthy and should not infringe on the surrounding homes and their inhabitants.

Sec. 10-3. - Enforcement.

- (a) The provisions of this chapter may be enforced by animal control officers, police officers, and such other persons as are designated by the city.
- (b) It shall be unlawful for any person to interfere with, obstruct, resist or oppose any animal control officer or other person authorized to enforce the provisions of this chapter while such person is apprehending an animal or performing any other duties. It shall be unlawful to take or attempt to take any animal from any animal control officer or from any vehicle used by the officer to transport any animal or to take or attempt to take any animal from the animal shelter or other kennel or confinement area used to impound an animal.
- (c) In all instances of a violation of any provision of this chapter, whether the animal is impounded or not, the owner or keeper of such animal may be cited by an officer who has the authority to enforce this chapter for any violation of this chapter.
- (d) In the enforcement of this chapter, animal control officers and police officers shall have the authority to shoot any animal to protect themselves, to protect a third person or to protect another animal from attack or threat of imminent injury or to prevent such animal from enduring further pain or suffering as a result of disease or injury. They shall also have the authority to tranquilize or trap any animal, fowl, livestock or wildlife.
- (e) Unless specifically provided in this chapter, an offense under this chapter shall not require a culpable mental state. It is the intent of this chapter to impose strict liability for violation of the requirements of this chapter.

Sec. 10-4. - Powers and duties of citizens.

Any person who finds an animal which he does not own on property that he owns or exercises control over or on public property may take control of said animal if it is running at large (as provided in section 10-92) and may deliver the animal to an animal control officer, the animal shelter, or an animal emergency medical facility. If the animal is not delivered to an animal control officer, the animal shelter, or an animal emergency medical facility, the person must report that he has taken control of the animal to an animal control officer or the animal shelter within 72 hours. If animal is wearing a tag of any kind or has a tattoo, brand, or other

identifying mark, that information shall be included in the report to the animal control officer or animal shelter.

Secs. 10-5—10-30. - Reserved.

Sec. 10-31-35 - Reserved.

Sec. 10-36. - Remedial requirements.

- (a) Where the ACO finds against the person who harbored or owned the animal, it may place certain remedial requirements upon such person. These remedial requirements may include one or more of the following items:
- (1) *Leash and muzzle.* The owner shall not permit the animal to go outside the kennel or pen unless such animal is securely leashed with a leash no longer than four feet in length which is in the physical control of a person 18 years of age or older. Such animal may not be leashed to inanimate objects, such as trees, posts, buildings, etc. Additionally, such animal must be muzzled by a muzzling device sufficient to prevent the animal from biting persons or other animals.
 - (2) *Confinement outdoors.* The animal shall be securely confined in an enclosed and locked pen or kennel except when on a leash and muzzled or when confined indoors. Such pen or kennel must have secure sides and a secure top attached or have sides that measure eight feet from the ground. The structure must be locked with a key or combination lock if an animal held to be dangerous is within the structure. The structure must have a secure bottom or floor attached to the sides of the structure, or the sides of the structure must be embedded in the ground no less than two feet. All structures erected to house the animal must comply with all zoning and building regulations. Such structures must also be adequately lighted and ventilated and be kept in a clean and sanitary condition.
 - (3) *Relocation of confinement area.* The owner may be required to relocate on his property the confinement area in which the animal is kept so that the animal does not annoy, disturb or in some other manner offend neighbors.
 - (4) *Confinement indoors.* The animal may not be kept on a porch, patio or in any part of a house or other structure that will allow the animal to exit such building or structure on its own volition. In addition, no such animal, except a cat, may be kept in a house or structure when the windows or screen doors are the only obstacle preventing the animal from exiting the structure.
 - (5) *Signs.* The owner of an animal held to be dangerous shall display in prominent places on the premises where the animal is kept a sign easily readable by the public which states "Beware of _____." A similar sign shall also be posted on the kennel or pen of the animal.
 - (6) *Insurance.* The ACO may require that the owner acquire insurance in an amount deemed reasonable to insure against bodily injury or property damage caused by the animal.

- (7) *Restitution.* The ACO may require the payment of restitution for damages or injury caused by the animal.
 - (8) *Training.* The ACO may require that the person and animal engage in training necessary to eliminate the problem. The ACO may designate a specific training program to be followed or utilized.
 - (9) *Removal from city.* For an animal other than one held to be dangerous, the ACO may require that the animal be removed from the city.
 - (10) *Limit or prohibit animal ownership.* The ACO may set a limit on the number of animals which an individual may keep on property within the city. This limitation may be imposed for a specified time period or permanently. The ACO may also prohibit the person from acquiring or keeping within the city any other animal for a period of time up to five years. In connection with this prohibition, the ACO may require the person to sell, give away or otherwise humanely dispose of the animals at issue in the hearing.
 - (11) *Spay or neuter.* The ACO may require that an animal which is being returned to an owner or which an owner shall be allowed to keep within the city be spayed or neutered.
 - (12) *Destruction.* The ACO may order that an animal shall be humanely destroyed.
 - (13) *Other.* Such other remedial requirements that under the circumstances the ACO finds will serve the interests of the owner in keeping an animal and gives consideration to the peace, safety, and welfare of the neighborhood as well as the health and welfare of the animal.
- (b) In requiring that remedial requirements be followed, the ACO shall also state a time frame within which the owner must comply with the required action. For good cause, the time period to comply may be extended by the ACO.

Sec. 10-37. - Return of animal.

- (a) If an animal is in the custody of the animal control officer, an inspection of the premises where the animal is to be kept may be made prior to the animal's return if such is necessary to determine if the remedial requirements have been met. The animal control officer shall have the right to inspect such premises in the future at reasonable times to ensure continued compliance with the remedial requirements.
- (b) As a condition of returning an animal which has been in the custody of the animal control officer to its owner, the ACO may require that all or a portion of the expenses incurred by the animal control officer to keep such animal be paid by the owner.

Sec. 10-38. - Reporting significant events.

- (a) The owner of an animal declared dangerous shall report any of the following events within five days to the animal control officer:
 - (1) Permanent removal of the animal from the city.
 - (2) Death of the animal.

- (3) The birth of any offspring, including the number, markings, color and sex.
 - (4) Change of location within the city.
 - (5) Transfer of ownership, including the name and address of the new owner and the location where the animal is to be kept.
- (b) The owner of an animal declared dangerous shall report within 24 hours to the animal control officer the escape of the animal or an attack or biting of a person or other animal.

Sec. 10-39. - Violation of remedial requirements.

It shall be unlawful for the owner of an animal to violate or fail to comply with the remedial requirements placed on him by the ACO (animal control officer). If such person fails to comply or violates any remedial requirement or any other provision of this chapter, the disposition of the animal may be referred back to the ACO for reconsideration. Such reconsideration shall require a hearing as provided for under this chapter. In lieu of seeking reconsideration by the ACO, a complaint for violating the order of the ACO may be filed in the municipal court. In addition to the remedies provided herein, a civil action may be filed to enforce the requirements of this chapter.

Secs. 10-40—10-60. - Reserved.

ARTICLE II. - RABIES CONTROL

Sec. 10-61. - Vaccinations.

- (a) All dogs or cats four months of age or older within the city shall be vaccinated against rabies. Such vaccinations shall be repeated in accordance with state law.
- (b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of such dog or cat a vaccination certificate in a form approved by the state department of health. The veterinarian shall also issue a metal tag with the veterinarian's address and the year of the vaccination stamped thereon. The metal vaccination tag may be fastened to the dog or cat in some manner by the owner.
- (c) It shall be unlawful for any person within the city to own, keep, possess, harbor or allow to remain upon premises under his control any dog or cat which has not been vaccinated as required herein.

Sec. 10-62. - Vaccination of impounded animals.

- (a) After impoundment, all animals which are required to be vaccinated by this article which are redeemed by an owner from the animal shelter must be vaccinated against rabies in accordance with the requirements of this article, or the owner thereof must present a veterinarian's certificate showing a current vaccination.
- (b) In order for an animal not vaccinated in accordance with the requirements of this article to be released, such owner must sign a statement giving the name of the owner and the address

where the animal is to be immediately taken and confined and stating that the owner will have the animal vaccinated in accordance with the requirements of this article. Within seven days of the release of the animal, a certificate of vaccination shall be presented to the animal shelter. Failure to present the vaccination certificate to the animal shelter within the stated time shall be grounds for the immediate return of the animal to the animal shelter, and such animal may be destroyed immediately or otherwise disposed of. Such failure shall also constitute a misdemeanor which may be punished by a fine as set out in section 1-12, except that the minimum fine shall be \$100.00.

Sec. 10-63. - Proof of vaccination.

The failure of a dog or cat to wear a vaccination tag on a collar shall be prima facie evidence of the failure to vaccinate the animal as required by this article. To prove that a dog or cat has been vaccinated, the owner of the dog or cat must present a copy of the vaccination certificate issued by the veterinarian that shows the date the vaccination was administered.

Sec. 10-64. - Counterfeiting; destruction of tags, certificates.

- (a) It shall be unlawful for any person to intentionally or knowingly counterfeit a rabies vaccination tag or certificate.
- (b) It shall be unlawful for any person to intentionally or knowingly destroy a rabies vaccination tag or certificate.

Sec. 10-65. - Reporting rabid animals or rabies exposure.

- (a) It shall be the duty of all animal owners, veterinarians, physicians or any other person to report to the animal control officer all cases of rabies with which he comes in contact or to which his attention has been directed. This report shall be made immediately upon diagnosis or suspicion of a case of rabies.
- (b) Any person having knowledge of an animal bite or scratch to an individual or to another animal by an animal which the person suspects is rabid shall report that incident to the animal control officer within 24 hours.

Sec. 10-66. - Animal bites and scratch reports; submission to quarantine.

- (a) Any person who is bitten or scratched by an animal shall report that fact to the animal control officer within 24 hours. If the person bitten or scratched is a minor under the age of 17, the parent or guardian of such minor, if he has knowledge of the incident, shall report that fact to the animal control officer within 24 hours.
- (b) A person who owns, keeps, harbors or allows an animal to remain on premises under his control and who has knowledge of a bite shall report to the animal control officer within 24 hours any incident where such animal bit or scratched any person.
- (c) The animal committing the act shall be submitted to the animal control officer for quarantine. When the local rabies control authority (Hewitt Animal Control Officer, ACO)

goes to the premises where the animal that bit or scratched any person is being kept, the animal control officer may take immediate custody of the animal. Where suitable arrangements are made, the local rabies control authority may permit the animal to be transferred to another location for the remainder of the quarantine period. This duty to submit the animal to quarantine shall apply to any person who owns, keeps, harbors, has possession of, or allows an animal to remain on premises under his control. If convicted of violating this section, a minimum fine of \$100.00 shall be imposed by the municipal court.

Sec. 10-67. - Contents of required reports.

When an individual is placed under a duty to report an incident in which an animal has bitten or scratched some person or some animal or to report an animal known or suspected to be rabid, that report to the animal control officer shall include, if the person making the report knows, the following information:

- (1) The location where the bite or scratch occurred.
- (2) The location where the animal which committed the act or which is known or suspected to have rabies or have been exposed to rabies can be located.
- (3) The name and address of any person who was bitten or scratched.
- (4) The name and address of the person who owns, keeps, harbors or has control over the premises where the animal committing the act normally can be found.
- (5) The names and addresses of the persons who own, keep or harbor any other animal exposed to rabies can be found.

Sec. 10-68. - Quarantine and release.

- (a) When an animal is required to be placed in quarantine, the animal shall be submitted for quarantine at the animal shelter. Only with the prior approval of the local rabies control authority may the animal be held in quarantine at any other location.
- (b) Any animal quarantined shall be held for a period of ten days from the date of the bite. The animal shall not be released from quarantine until such release has been approved by the local rabies control authority.
- (c) Upon release of an animal from quarantine, if the ownership of the animal is known, such owner has 48 hours to claim the animal. If the ownership of the animal is unknown, the animal may be disposed of as provided in section 10-179 without waiting for an additional 72 hours.

Sec. 10-69. - Submission of head for rabies diagnosis.

- (a) If the animal which bit or scratched a person is a wild animal, the animal shall be humanely destroyed in such a manner that the brain is not mutilated. The head shall then be submitted to a laboratory certified by the state department of health for rabies diagnosis.

- (b) If an animal which is being quarantined becomes ill, it may be humanely destroyed in such a manner that the head is not mutilated. The head shall then be submitted to a laboratory certified by the state department of health for rabies diagnosis. The head of each animal which dies while in quarantine shall also be submitted for rabies diagnosis.

Sec. 10-70. - Cost of quarantine or rabies diagnosis.

- (a) If, at the end of the required quarantine period, a quarantined animal is found to be free of rabies, the local rabies control authority shall order the release of the animal to the owner if the rabies vaccination provisions of this article have been complied with and any impoundment fees have been paid by such owner.
- (b) If a head is submitted to the state department of health for rabies diagnosis, the cost of removing the head and shipping it shall be paid by the owner of the animal.
- (c) The local rabies control authority may order that all impoundment fees for the quarantine be paid by the person bitten or scratched if:
 - (1) The animal has a rabies vaccination certificate,
 - (2) The animal was on property under the control of the animal's owner when the bite or scratch occurred, and
 - (3) The bite or scratch occurred when the animal was acting to defend its owner or the property, or after provocation.

If the animal is a wild animal, the local rabies control authority may order that all fees be paid by the person who was bitten or scratched. This order may be appealed to the Hewitt City Court except that the appeal must be filed within one day and the Court shall hear the case as soon as possible thereafter.

Secs. 10-71—10-90. - Reserved.

ARTICLE III. - GENERAL REGULATIONS

Sec. 10-91. - Identification for animals.

Except as provided herein, all animals within the city shall be marked by some type of identifying license, tag, band, tattoo or brand by which the animal's owner can be identified. Animals exempted from this requirement are mice, rats, rabbits, guineas, hamsters, gerbils, ferrets, fowl, and snakes.

Sec. 10-92. - Running at large.

- (a) It shall be unlawful for any person who owns, keeps, harbors or otherwise has control over any animal within the city to allow or permit such animal to run or be at large within the city.
- (b) The prohibition against an animal running at large shall not apply to:

- (1) a cat which has been vaccinated as required by this chapter and which is wearing the required vaccination tags; or
 - (2) a cat that can be identified as having an owner or caregiver by collar and tags, microchip, identifying tattoo, or has a left ear tip indicating Trap-Neuter-Return; or
 - (3) if the owner or caregiver can provide documentation of the free-roaming cat's sterilization.
- (c) An animal shall be considered to be at large if it is not under the control of its owner by either a leash, chain, cord, or other suitable material attached to a collar or harness, or not restrained on the property of the owner by a leash, chain, cord or fence. An animal inside a vehicle parked in a public place shall be considered to be at large unless it is restrained in such a manner that it cannot exit the vehicle of its own volition.
 - (d) The animal control officer for the city may impound any animal observed to be at large, whether the animal is on public or private property. If the animal control officer observes an animal on property which is owned by a person other than the owner of the animal, and observes the animal return to property of its owner, the animal control officer may impound the animal or issue a citation for the animal running at large.
 - (e) Proof that an animal was found at large in violation of this section, together with proof that the defendant was the owner of such animal at the time, shall constitute prima facie evidence that the defendant allowed or permitted the animal to be at large.

Sec. 10-93. - Animal in heat.

Any person who owns, harbors or keeps any female dog or cat shall, during the period that such animal is in heat or in estrus, shall keep such dog or cat in a secured area that prevents a male dog or cat from having access to such female except for controlled breeding permitted by the owner of the female. Additionally, the female dog or cat shall not be chained or tethered in a manner that prevents her from defending herself or from avoiding a male.

Sec. 10-94. - Animal defecation prohibited in certain areas.

- (a) It is unlawful for the owner or person in control of an animal to intentionally, knowingly, recklessly, or with criminal negligence allow or permit such animal to defecate on any public property or improved private property other than that of the owner of the animal. That the animal was at large at the time it defecated on any property shall constitute a prima facie evidence that the owner or person in control of the animal allowed or permitted the animal to so act.
- (b) It shall be a defense to prosecution under this section that the owner or person in control of the animal immediately removed and cleaned up such animal's feces from public or private property.

Sec. 10-95. - Wild animals or wildlife.

- (a) No person shall possess, keep or have care, custody or control of a wild animal or wildlife within the city except as provided herein.
- (b) All persons shall be prohibited from selling, giving, transferring or importing into the city any wild animal.
- (c) This section shall not apply to any person involved in temporary wildlife exhibition and who holds the appropriate state and federal wildlife permits, or approved zoological parks, performing animal exhibitions or circuses. Nor shall this section apply to primary and secondary schools, colleges and universities, zoological parks owned or operated by a governmental entity or any animal assisting physically handicapped persons.
- (d) It shall be a defense to prosecution under this section that the animal being kept was an infant or injured animal which was not capable of surviving on its own and that such animal was kept for three days or less, or for such reasonable time as was necessary before giving the animal to a licensed wildlife rehabilitator.

Sec. 10-96. - Nuisance animals.

- (a) As used in this article, a nuisance animal shall be defined as any animal which commits any of the acts listed herein:
 - (1) Molests or chases pedestrians, passersby or passing vehicles, including bicycles.
 - (2) Makes unprovoked attacks on other animals of any kind.
 - (3) Is repeatedly at large; specifically, three or more times per 12-month period.
 - (4) Damages private or public property.
 - (5) Defecates on property not belonging to or under the control of its owner.
 - (6) Barks, whines, howls, crows, crackles or makes any noise excessively and continuously, and such noise disturbs a person of ordinary sensibilities.
 - (7) Is unconfined when in heat.
- (b) If the animal control officer determines that any animal is a nuisance, the animal control officer may issue an order requiring that the owner meet certain remedial requirements to correct the conduct of the animal. The order shall be given to the owner by personal service or by certified mail, return receipt requested. The owner may file an appeal to this order as provided in article II of this chapter.
- (c) Persons residing within 600 feet of a person who harbors or keeps an animal which they believe to be a nuisance may initiate an action before the ACO.

Sec. 10-97. - Honeybees.

No person shall construct, place or maintain any beehive within 300 feet of any residence other than that of the owner except with the consent of the occupants of all such residences.

Sec. 10-98. - Pens and coops; location.

- (a) All fowl and rabbits shall be kept within a pen, coop or hutch. A fenced yard shall not qualify as a pen or coop.
- (b) Any person keeping or harboring any animal, other than livestock or fowl, shall locate any pen, coop, hutch, or other housing at least 50 feet from any residence, excluding the residence of the person keeping or harboring the animals.

Sec. 10-99. - Livestock.

- (a) It shall be unlawful for any person owning or having care, custody or control over any livestock, to:
 - (1) Cause or permit any livestock to be pastured, herded, staked or tied in any street, lane, alley, park or other public place; or
 - (2) Tie, stake or pasture or permit the tying, staking or pasturing of any animal upon any private property within the city without the consent of the owner or occupant of such property; or in such a way as to permit any livestock to trespass upon any street or other public place or upon any private property; or
 - (3) Permit any livestock to be or remain during the nighttime secured by a stake, or secured in any manner other than by enclosing such animal in a pen, corral or barn sufficient and adequate to restrain such livestock.
- (b) It shall be unlawful for any person to keep or harbor any livestock or fowl within the city in a pen or other enclosure situated at any point closer than 200 feet to any residence, excluding the residence of the person keeping or harboring the livestock. This section does not apply to a person who keeps or harbors livestock or fowl on property five acres or larger in size.

Sec. 10-100. - Storage of feed.

All feed provided for animals, other than hay, shall be kept in an enclosed building or container except when being used to feed an animal.

Secs. 5-101. -Abandonment.

- (1) A person commits the crime of animal abandonment if the person leaves a domestic animal or an equine unattended for more than 24 hours, releases the animal upon public highways or public or private lands, or fails to provide proper or adequate food, water, exercise ,shelter or medical care.
- (2) It is no defense to the crime defined in subsection (1) of this section that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

- (3) The release of an ear tipped cat into an area where food, shelter and monitoring are provided on a regular basis does not constitute abandonment within the meaning of this ordinance.

Secs. 10-102. —10-120. - Reserved.

ARTICLE IV. - ANIMAL PROTECTION PROVISIONS

Sec. 10-121. - Animals in motor vehicles.

No person shall leave any animal in any standing or parked vehicle in such a way as to intentionally, knowingly, recklessly, or with criminal negligence endanger the animal's health, safety or welfare. An animal control officer, or police officer is authorized to use reasonable force to remove the animal from the vehicle whenever it appears that the animal's health, safety or welfare is or will be endangered if the owner of the vehicle cannot be located after reasonable attempts. The animal shall be taken to the animal shelter or to a veterinarian if the animal is in distress. A written notice bearing the name of the officer removing the animal, a telephone number where he can be contacted and the location where the animal may be claimed by the owner shall be attached to the vehicle. Any person violating this section shall bear the full cost and expense incurred by the city in the care, medical treatment, impoundment cost and disposal of the animal, including the removal from a vehicle.

Sec. 10-122. - Duty of motor vehicle operator to report accident involving animals, fowl, livestock.

Any person who, as the operator of a motor vehicle within the city, strikes any animal shall report the accident to the police department within a reasonable time if the animal stricken is on or near the roadway so that it constitutes a potential traffic hazard. It shall be an affirmative defense to any violation under this section that the incident occurred while the operator was responding to an emergency and that the incident was reported as soon as possible.

Sec. 10-123. - Tethered animals.

(a) It shall be unlawful for any person to tether, chain or fasten any animal in such a manner as to permit it to be upon any public sidewalk or street or to leave it unattended while tethered, chained or fastened on public property.

(b) An owner of an animal commits an offense if he tethers the animal or allows the animal to be tethered in any manner or by any method that:

- (1) allows the animal to become entangled;
- (2) does not allow the animal access to food, water, and appropriate shelter if outside; or

(3) does not meet the requirements for tethering under Subsection (c) of this section.

(c) The following requirements apply to an animal tethered within the city:

(1) The animal must be properly fitted with and wearing a harness or collar made of leather or nylon.

(2) The tether must be attached to the animal's harness or collar and not directly to the animal's neck.

(3) The tether must be at least 10 feet long and does not allow the animal to exit the property.

Sec. 10-123.1. – Proper Restraint.

(a) An owner of an animal commits an offense if he fails to restrain the animal at all times in a fenced yard, in an enclosed pen or structure, or by a tether or leash.

(b) It is a defense to prosecution under Subsection (a) that:

(1) the animal was a dog in an off-leash area;

(2) the animal was a dog and was tethered in a manner complying with Section 10-123 of this chapter; or

(3) the animal was an ear tipped cat.

Sec. 10-124. - Selling dyed animals.

No animal or fowl of any kind that has been dyed or otherwise colored artificially may be sold or offered for sale, raffled, offered or given as a prize, premium or advertising device or displayed in any store, shop, carnival or other public place.

Sec. 10-125. - Giving animals as prizes or inducements.

(a) No person shall give away any live animal, reptile, fowl, livestock or wildlife as a prize for or as an inducement to enter any contest, game or other competition; or as an inducement to enter a place of amusement; or as an incentive to enter into any business agreement whereby the offer is for the purpose of attracting trade. This prohibition shall apply to carnivals, fairs and circuses.

(b) The prohibition contained in this section shall not apply to fish or to animals given as prizes at a rodeo contest or livestock show or as part of an FFA, 4-H or similar project.

Sec. 10-126. - Trapping.

It shall be unlawful to set, trigger, activate or otherwise use, or cause to be set, triggered, activated or used, any steel-jawed, leg-hold trap to be used for the capture of any animal. This

section is not intended to prohibit the prudent use of traps on one's own property to control rodents.

Sec. 10-127. - Molesting animals.

It shall be unlawful for any person to in any manner tease, annoy, disturb, molest or irritate an animal that is confined to the owner's premises.

Sec. 10-128. - Pens and enclosures; sanitary requirements; minimum cage size; overcrowding.

- (a) The owners of any animal shall maintain and keep all pens, coops, kennels, fenced areas and enclosures of any kind in a sanitary condition. This shall include the following:
 - (1) All animal wastes shall be disposed of promptly and all pens and enclosures shall be cleaned as needed to prevent odors, and not draw insects or other vermin or create a nuisance.
 - (2) The premises upon which animals are kept shall be clean and free from noxious and unpleasant odors.
 - (3) Some standard spray or other chemicals shall be used at reasonable intervals to keep the premises free of flies, mosquitoes, ticks, fleas and other vectors.
- (b) Cages, pens, or enclosures used to confine animals shall be of sufficient size to maintain all of the animals within such pen or enclosures comfortably and in good health.

Sec. 10-129. - Negligent care.

- (a) It is unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, drink, shade, adequate shelter or veterinary care as may be necessary for diseased or injured animals.
- (b) To provide adequate shelter for a dog or cat kept outdoors, a person must provide a shelter accessible to the dog or cat meeting the following standards:
 - (1) The shelter must provide protection from the weather, i.e., sun, wind, precipitation (in whatever form), or other inclement weather conditions.
 - (2) If there are no artificial heat sources, the structure shall be small enough to allow the dog or cat to warm the interior of the structure and maintain its body heat, but large enough to permit normal postural adjustments, or standing.
 - (3) Plastic air shipping containers and/or pet carriers shall not be used as outdoor shelters.
- (c) A notice of violation requiring that the condition be corrected within a specified time period shall be issued to a person before any notice to appear at the municipal court may be issued or before a complaint may be filed with the municipal court. Any person issued a notice of violation may appeal that notice to the city judge.

Sec. 10-130. - Animal in state of pain or suffering.

- (a) If any animal without a license tag or other identifying marker is found in a state of pain and suffering or becomes so during confinement, the city or its agent may dispose of the animal in any humane manner without complying with the three-day (72-hour) waiting period as set out in section 10-179
- (b) If the owner or keeper of an animal found in a state of pain or suffering refuses to assume responsibility to care for the animal, the animal control officer may dispose of the animal in a humane manner.

Sec. 10-131. - Sale of animals in public place.

- (a) It shall be unlawful for any person to sell, trade, barter, lease, rent, give away or convey the ownership of any animal on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center or outdoor public place.
- (b) It shall be unlawful for any person to display any animal for a commercial purpose on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center, or outdoor public place.
- (c) This section shall not apply to any tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals or any organization recognized by the animal authority.
- (d) Any animal being conveyed in a manner in violation of this Code shall be subject to seizure and impoundment at the discretion of the authority and subject to applicable codes for disposition of impounded animals.

Sec. 10-132. - Animal fights and fighting paraphernalia.

- (a) It shall be unlawful for any person to intentionally, knowingly, recklessly, or with criminal negligence use, or allow or permit to be used, property that he owns or has control over for the purpose of conducting animal fights. For purposes of this section, "animal" shall mean a domesticated living creature and wild living creature previously captured, other than a dog.
- (b) It shall be unlawful for any person to possess animal fighting equipment within the City of Hewitt, Texas. As used herein, the term "animal fighting equipment" means any equipment used for training, handling, housing, feeding, or transporting fighting animals. The term also includes animals being used, trained, or bred for fighting or intended to be used, trained, or bred for fighting.

Sec. 10-133. - Slaughtering of animals.

Animals may be slaughtered for human or animal consumption within the City of Hewitt, provided it is done at a location that is shielded from sensory perception of the general public, and provided it is done in a manner designed to cause the animal's death as quickly as possible without needless suffering.

Sec. 10-134. - Use of poisonous substances.

- (a) It shall be unlawful for any person to administer poison to an animal belonging to another without legal authority or the owner's effective consent.
- (b) It shall be unlawful for any person to recklessly or with criminal negligence injure another's animal by leaving a poisonous substance of any kind in any place within the city.
- (c) The provisions of subsection (a) and (b) shall not apply to an exterminator using poisons as part of a pest control program, nor shall it apply to persons using commercial insecticides and rodent baits used to control insects and wild rodents. For purposes of this section, the term "exterminator" shall mean an individual licensed by the Texas Structural Pest Control Board, unless he or she is exempt from such licensing.

Sec. 10-135. – Health Statement Required for Transfer or Sale of Dogs and Cats.

- (a) The owner of any dog or cat that is sold or exchanged for valuable consideration or given away must provide to the new owner prior to completion of the transaction a health statement, as defined herein, from a licensed veterinarian issued within 30 days prior to the sale or exchange.
- (b) The original health statement must be given to the purchaser.
- (c) Copies of the health statement must be retained by the veterinarian and original owner/seller for a minimum of three years.

Secs. 135—150. - Reserved.

ARTICLE V. - DANGEROUS ANIMALS

Sec. 10-151. - Purpose of article.

It is the intention of this article to provide a means of dealing with an animal that is dangerous or, by its conduct, has indicated that it may represent a danger in the future. In interpreting the definitions contained in this article and in implementing its provisions, the animal control officer shall recognize the right of a person to use an animal as a protector or as a guard; however, the animal control officer shall also take into consideration the right of a neighborhood to be free from fear that an animal may leave the premises of its owner or keeper and attack and injure a person or other domestic animal.

Sec. 10-152. - Dangerous animals.

- (a) A dangerous animal shall be defined as an animal which:
 - (1) Has inflicted injury on a human being without provocation on public or private property; or
 - (2) Has killed or severely injured a domestic animal without provocation while off the owner's property; or

- (3) Is trained or harbored for fighting which may be determined based on whether the animal exhibits behavior and/or bears physical scars or injuries which indicate that the animal has been trained or used for the purpose of fighting.
- (b) If an animal acts as stated in subsection (a)(1) or (a)(2) of this section or is trained or harbored for fighting, the animal control officer shall impound the animal immediately if it is at large; or, if it is in the possession of some person, the animal control officer may issue a notice requiring that the animal be taken to a designated location for impoundment. An animal which is impounded shall not be released until a final determination is made on the disposition of the animal.
- (c) Notice shall be given to the owner that the animal control officer has determined that the animal is a dangerous animal. This notice shall also set out the remedial requirements which the owner must comply with. This notice shall be given to the owner by personal service or by certified mail, return receipt requested. The owner shall have five working days from receipt of the notice to file a letter with the city secretary stating that he shall comply with the remedial requirements as stated in the notice or that he disagrees with the determination that the animal is dangerous or the remedial requirements and that he requests a hearing in municipal court.
- (d) If the owner of a dangerous animal cannot be determined after reasonable efforts to do so and after holding the animal for 72 hours, the animal may be disposed of in a humane manner. If the owner of a dangerous animal which has been impounded cannot be located for the delivery service of the notice required herein either in person or by mail, the animal may be disposed of in a humane manner after all reasonable effort has been made to locate such owner.
- (e) If the animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the animal control officer may again review the situation and prescribe additional or different remedial requirements.

Sec. 10-153. - Potentially dangerous animals.

- (a) If the animal control officer or a neighborhood believes that an animal has exhibited behavior indicating that it represents a potential danger, the animal control officer may initiate an action before the city judge to determine whether or not the animal is potentially dangerous. Pending the outcome of such hearing, the animal must be securely confined in a humane manner either on the premises of the owner, with a licensed veterinarian or at the animal shelter.
- (b) An animal may be defined as "potentially dangerous" if it has engaged in the following conduct:
 - (1) When unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack; or
 - (2) Has a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise threaten the safety of human beings or domestic animals.

- (c) If an animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the ACO may again review the situation and prescribe additional or different remedial requirements.

Sec. 10-154. - Exceptions.

- (a) No animal may be declared dangerous or potentially dangerous if the threat, injury or damage was sustained by a person who at the time:
 - (1) Was committing a willful trespass or other tort upon the premises occupied by the owner of the animal; or
 - (2) Was teasing, tormenting, abusing or assaulting the animal or has in the past been observed or reported to have teased, tormented, abused or assaulted the animal; or
 - (3) Was committing or attempting to commit a crime.
- (b) The provisions of this article shall not apply to animals under the control of a law enforcement or military agency.
- (c) The provisions of this article shall not apply to a dog whose conduct has brought it within the coverage of the V.T.C.A., Health and Safety Code ch. 822, to the extent that said chapter preempts local regulation of the dog's conduct.

Secs. 10-155—10-175. - Reserved.

ARTICLE VI. - IMPOUNDMENT

Sec. 10-176. - Impoundment generally.

It shall be the duty of the local rabies control authority, the animal control officer or their agents to seize and impound all animals found in violation of any provision of this chapter.

Sec. 10-177. - Tampering with animal shelter or impoundment vehicle.

It shall be unlawful for any person in the city without proper authority to break into, open, pull down the enclosure of or make any opening into any enclosure belonging to or used by the city to impound or keep animals. It shall also be unlawful for any person to turn out or release, or cause to be turned out or released, or aid or abet the turning out or release of any animal from the animal shelter, from an impoundment vehicle or from any enclosure used by the city for the impoundment of animals.

Sec. 10-178. - Redemption of impounded animal.

Except as may be provided elsewhere in this chapter, the owner of any animal impounded in accordance with this chapter may reclaim such animal upon showing satisfactory proof of ownership and paying all impoundment fees and any other expenses incurred by the city or its agent in keeping the animal or attempting to locate the owner of the animal. If the owner

does not pay these fees, the animal will become the property of the City after three days, whereby the City may transfer ownership to another individual or rescue group, or the City or its agent may humanely destroy the animal.

Sec. 10-179. - Disposition of dogs and cats.

If a dog or cat that is not micro chipped is not claimed by its owner within 72 hours of impoundment, the city or its agent may dispose of the dog or cat by transferring ownership to an appropriate home through adoption or placing the animal with an appropriate rescue group or by humanely euthanizing it.

Sec. 10-180. - Disposition of other animals.

- (a) If the animal has some type of brand indicating ownership, the animal control officer or his agent shall make a search for the owner of the animal in the county register of recorded brands. If the search does not reveal the owner, and if there is no other information from which an effort to locate the owner of the animal can be made, a notice of the impoundment of the animal shall be published in a newspaper of general circulation in the county at least twice during the next 15 days and posted in a public place at city hall and at such other places as are deemed reasonable by the animal control officer.
- (b) The notice referred to in subsection (a) of this section regarding the impoundment of an animal shall include the following information: the location where the animal was found; the location where the animal has been impounded; and a description of the animal, including its breed, if known, color, sex, size, markings of any kind and other identifying characteristics. The notice shall also state the date by which the animal must be claimed or it will be sold or otherwise disposed of.
- (c) If the owner of the animal is identified and is given notice, either orally or in writing, that the animal has been impounded at the animal shelter, the owner must reclaim the animal as provided for in section 10-178 within three days of such notice or within 15 days of impoundment, whichever time period is shorter. If the owner of the animal is not identified or not given notice of the impoundment, the animal shall be held for redemption for three days after the date of the final advertisement required by subsection (a) of this section. If an animal is not reclaimed as provided herein, the city shall have title to the animal and shall cause the animal to be sold by it or an agent at a sale conducted at the animal shelter or at a public auction licensed by the United States Department of Agriculture. Title shall be considered vested in the city for the purposes of passing good title, free and clear of all claims, to the purchaser at the sale. A purchaser may take possession of the animal upon payment of the purchased price.
- (d) Within one year after the date of the sale of an animal under this article, the original owner may recover the net proceeds from the sale of the animal if such owner provides the animal control officer with satisfactory proof of ownership. The net proceeds from the sale shall be the funds remaining after subtracting all costs and expenses incurred in the impoundment

and sale of the animal. If the funds are not claimed within this time period, they shall be considered to have been forfeited to the city.

- (e) If an animal cannot be sold as prescribed in this section, the city or its agent may either give the animal to some person capable of humanely caring for it or humanely euthanize the animal.
- (f) No animal owner may be permitted to adopt his or her own animal, he or she must comply with the provisions of section 10-178 in order to reclaim an animal that has been impounded pursuant to state law or this chapter.

Sec. 10-181. - Fees.

The city council by resolution or as part of the annual budget shall approve a list of fees to redeem any animal impounded by the city. Such fees may include a fee for capturing the animal and a daily ACO fee.

Secs. 10-182—10-204. - Reserved.

ARTICLE VII. - MICROCHIPS

Sec. 10-205. - Definitions.

The following definitions shall apply throughout this chapter:

Microchip means a small radio frequency identification device that is inserted between the shoulder blades of an animal and is inert until activated by a scanner. The microchip provides specific information about an animal's identity.

Sec. 10-206. - Microchip required.

- (a) All dogs or cats in the City of Hewitt corporate City Limits must be micro chipped.
- (b) All dogs or cats will be micro chipped prior to leaving the animal shelter.
- (c) All impounded dogs or cats shall have a microchip inserted between its shoulder blades before being released to its owner. The owner of the dog or cat shall pay the cost for this procedure in addition to the impoundment fees.
- (d) Any dog or cat that is adopted from the animal shelter shall have a microchip inserted between its shoulder blades and the animal's new owner shall pay the cost for this procedure.
- (e) The microchip fee is not refundable and may be used only for the dog or cat for which it was issued.
- (f) Subsections (a) and (b) do not apply to a community ear tipped cat.

ARTICLE VIII. - Reserved

ARTICLE IX. SPAY/NEUTER

Sec. 10-210.

- (a) All dogs or cats, in the City of Hewitt corporate City Limits shall be spayed/neutered. The owner of such animals must retain documentation of the spay/neuter of their animals.
- (b) All dogs or cats impounded within the corporate city limits of the City of Hewitt, will be spayed/neutered prior to being released to the owner. The cost to spay/neuter the animal shall be paid by the owner along with the impound fees.
- (c) The following animals will not be spay/neutered as directed under subsection (a):
 - (1) The animal is under four (4) months of age;
 - (2) A licensed veterinarian certifies that the dog or cat should not be spayed/neutered for health reasons or is permanently non-fertile; or
 - (3) The animal is a trained animal used by or under the authority of a governmental agency in police or rescue work.
 - (4) Animals transferred to another animal shelter that provides a written agreement to the City of Hewitt that the animal will be sterilized before being placed into a new home located within the corporate limits of the City of Hewitt.
 - (5) animals, picked up for the first time, belonging to a breeder that has:
 - (a) the animal's microchip number; and
 - (b) a copy of the animal's health statement; and
 - (c) paid the fee for first offense and all other fees associated with the impoundment of the animal. Should the animal be impounded a second time it will be spay/neutered prior to being released to the owner.

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Hewitt, which shall be a fine of not less than \$1.00 and no more than \$500.00, and each day a violation exists shall be a separate offense.

Section 4. That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other

section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 5. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Hewitt, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 6. That this ordinance shall take effect upon its passage as provided by the City Charter of the City of Hewitt.

Section 7. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 8. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

PASSED AND APPROVED THIS _____ day of _____, 2013.

CITY OF HEWITT, TEXAS

Ed Passalugo, Mayor,

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM & LEGALITY:

Charlie Buenger, City Attorney



COUNCIL AGENDA ITEM FORM

MEETING DATE: October 21, 2013

AGENDA ITEM #: 6

SUBMITTED BY: Jim Barton, Assistant City Manager

ITEM DESCRIPTION:

Consider and act on an ordinance of the City of Hewitt, Texas providing that the Code of Ordinances be amended by revising Section 38-61(a) in Chapter 38 "Floods" of said Code.

STAFF RECOMMENDATION/ITEM SUMMARY:

Section 38-61 (Floodplain Administrator) of the Hewitt Code of Ordinances states the "chief building inspector is appointed the floodplain administrator". The staff recommends this be changed to read "the city manager or his designee is appointed floodplain administrator". This will allow the city manager to appoint the person that will be best suited for the position.

ATTACHMENTS:

Draft ordinance

ORDINANCE NO. 2013-10-21-2

AN ORDINANCE OF THE CITY OF HEWITT, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF HEWITT BE AMENDED BY REVISING SECTION 38-61(A) IN CHAPTER 38 "FLOODS" OF SAID CODE; PROVIDING A SAVINGS CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

Section 1. That pursuant to Section 38-61(a) in Chapter 38 "Floods" of the Code of Ordinances of the City of Hewitt, Texas, be amended as follows: (additions/deletions)

- (a) The City Manager or his designee ~~chief building inspector~~ is appointed the floodplain administrator to administer and implement this article and other appropriate sections of 44 CFR (National Flood Insurance Program regulations) pertaining to floodplain management.

Section 2. That if any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 3. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED this ____ day of _____, _____.

CITY OF HEWITT, TEXAS

Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM & LEGALITY:

O. Charlie Buenger, City Attorney