

A photograph of three dogs in a grassy yard. A black dog stands in the background, a tan dog lies in the middle ground, and a white dog lies in the foreground. A metal bowl sits on the ground in the lower left. The image has a semi-transparent dark overlay.

# COMMON ISSUES RELATED TO ANIMALS THAT CITIES ENCOUNTER

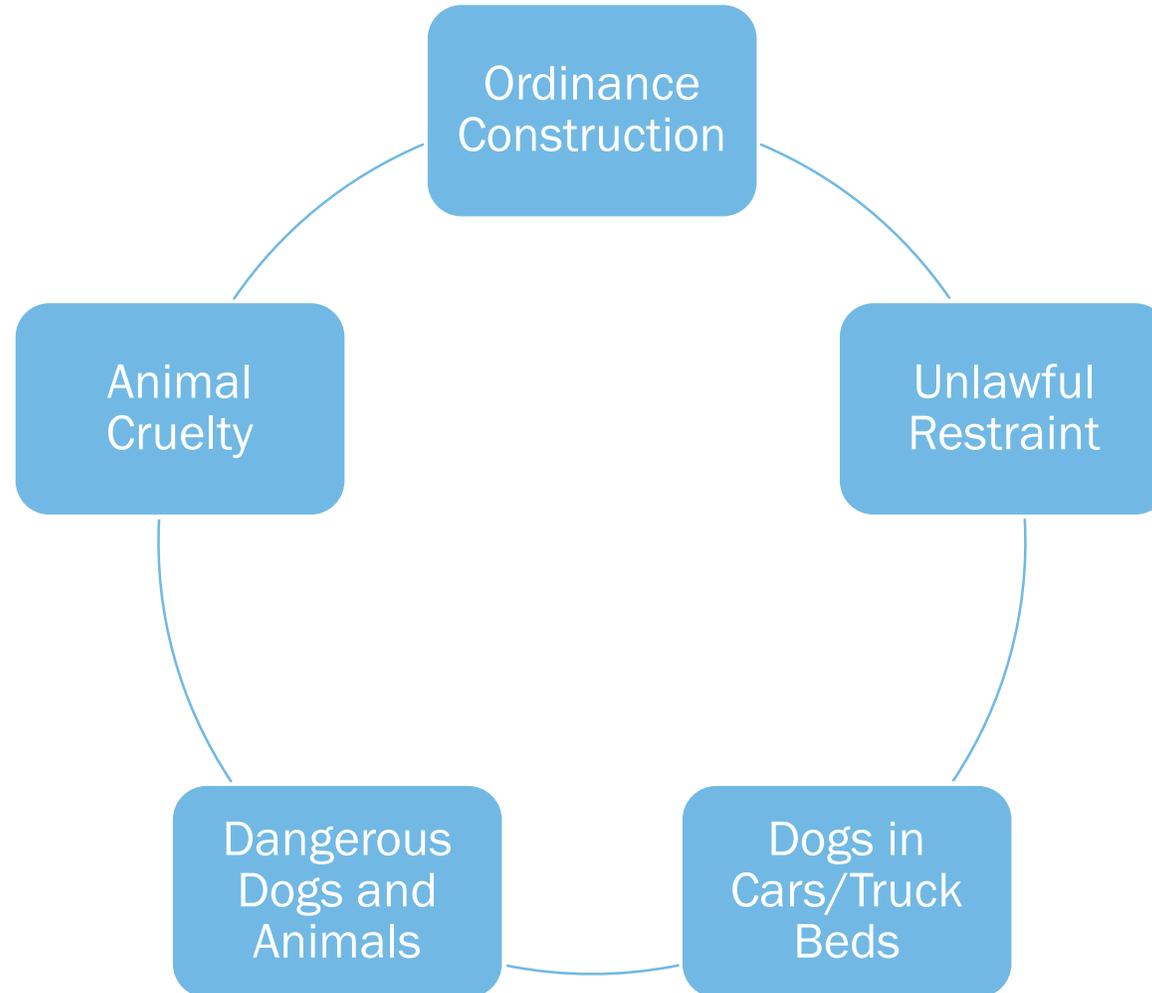
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## NON-EXHAUSTIVE LIST...



## ANIMAL CRUELTY ISSUES

- Isn't this for the County Attorney's and District Attorney's Offices?
  - For cities without an exiting animal control department, county handles it usually through AC or SO
- It often starts at the city level
- Common state statutes to become familiar with:
  - TX Penal Code § 42.09 (Livestock)
  - TX Penal Code § 42.092 (Non-Livestock/Companions)
  - TX Health and Safety Code
    - § 821.002
    - § 821.021
    - §§ 821.022 and 821.023
    - § 821.025 (Right to Appeal)
    - § 821.077
- Local Ordinances
  - Hoarding (Limiting # of animals)
  - Requiring food, water, and shelter
  - Animals in truck beds
  - Animals in cars

## ANIMAL CRUELTY ISSUES: PENAL CODE AND HSC

- TX Penal Code § 42.09 (Livestock) and TX Penal Code § 42.092 (Non-Livestock/Companions)
  - Most will be Class A and higher penalties, *but the seizure aspect will often run through municipal court judge*
- TX Penal Code § 42.105(b)(6)
  - Spectator at cockfight (Class C, unless previously convicted, then Class A)
  - Most common in S Texas and rural areas
- TX Health and Safety Code
  - § 821.002 (also relates to shelters; shall supply animal with sufficient wholesome food and water during confinement)
  - § 821.021 (definitions—including “cruelly treated” and “owner”)
    - Cruelly treated means tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or subjected to conduct prohibited by § 21.09, Penal Code
    - Owner includes a person who owns **OR** has custody **OR** control of an animal

## ANIMAL CRUELTY ISSUES: HSC

- §§ 821.022 and 821.023
  - Civil seizures—preference over criminal for animal cruelty cases
  - “reason to believe” standard for a warrant to seize
  - Must show PC “to believe that the animal has been OR is being cruelly treated”
  - SHALL issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing to determine whether cruelly treated
  - Officer who executes warrant must give written notice to owner of time/place of hearing
  - At the hearing, look to definition of cruelly treated in § 821.021(1)
  - Torture means unjustifiable pain/suffering....it is conduct that can be shown when a dog is emaciated, extremely thirsty due to failure to water, has no shelter (Winter Storm Uri), on a short and/or heavy chain, etc.
  - Each interested party can present evidence—this means a LOT of people (including community members)
  - Result is divesting of ownership to city or county shelter
- Work with law enforcement, County Attorney, and District Attorney—civil seizures are the preference! NOT criminal seizures (lower burden, costs city/county less \$ housing animals, animals get care they need more quickly)

## ANIMAL CRUELTY ISSUES: HSC

- § 821.025 (Right to Appeal)
  - Owner can appeal to county court
  - Must do so by the 10<sup>th</sup> calendar day after the order is issued
  - Appeal to county is last appeal
  - If appealed, DO NOT EUTHANIZE OR ADOPT OUT ANIMAL! Must hold onto it
- § 821.077 (Unlawful Restraint)
  - Hot topic at this leg session...SB 474
  - Educate your LEO on this! Many aren't aware
  - Limits when dogs can be restrained outside, under certain conditions, using certain collars, length of ties
  - Officer provides notice to owner, then returns 24 hours later and can issue citation
  - Important to take these seriously and get convictions, because if previously convicted, next is Class B (county court)
  - Each dog is a SEPARATE offense
  - Can prosecute under this section, AND another (§ 42.092, ordinance, etc.)

# ANIMAL CRUELTY ISSUES: ORDINANCES

- Local Ordinances
  - Hoarding (Limiting # of animals)
  - Requiring food, water, and shelter (this is also in Penal Code)
  - Dogs/animals in truck beds (Austin, Ft. Worth, Galveston, League City, many others)
    - Texas Police Association supports these ordinances--  
[http://www.texaspoliceassociation.com/safetytips.php?id=7&display\\_article=yes](http://www.texaspoliceassociation.com/safetytips.php?id=7&display_article=yes)
  - Animals in cars (Austin, San Marcos, Ft. Worth, Dallas, and more)
  - All Class C misdemeanors

## SHELTER ISSUES

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

# SHELTER ISSUES

- Moral? Check your ordinances—must divest ownership from unknown owner to municipality
- MANY cities STILL have old ordinances, and a Central Texas animal shelter recently ran into this
  - Ended in a settlement—costing the city \$
  - Press coverage, revamped ordinance
- Effective ordinance tips:
  - Use present tense
  - Third person, singular (not plural)
  - No pronouns
  - Active voice
  - Less is more (concise)
  - Use commas correctly (before “and” or “or”) in a series
  - Start with general...move towards specific
  - First state the rule, then state exceptions/defenses
  - Definitions are important

## SHELTER ISSUES

### Examples of wording to address title transfer:

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

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

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

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

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

Unnamed city—not well-written

**DOGS ATTACKING  
PERSONS OR  
DANGEROUS DOG  
CASES: HSC  
822.001-.004**

- Two Subchapters (A and D) authorize these proceedings
- §§ 822.001-.004 governs seizure and disposition of dogs causing death or SBI
  - SBI = severe bite wounds or severe ripping/tearing of muscle requiring hospitalization (even if person didn't seek medical tx).
  - Muni court (or JP/County) SHALL order the seizure of the dog with a warrant authorizing the same
    - Must have sworn complaint of ANY PERSON....victim, County Atty, City Atty, LEO
    - Dog caused death or SBI to a person by (manner and means to satisfy statute)
    - Must show PC that the dog caused this
    - Animal control authority (might be police in certain cities) must impound animal until court orders disposition

# DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES: HSC 822.001-.004

- § 822.003 (hearing and disposition)
- Must hold a hearing by the 10<sup>th</sup> day after warrant issued (not necessarily seized)
  - Court can't limit testimony—"any interested person" is entitled to present evidence
  - If court finds dog caused death—**shall** order euthanized
  - Court **may** order euthanized if court finds SBI
  - If court does not find SBI nor death, **shall** order dog released back
  - Court **may NOT** order euthanasia if (defenses):
    - Dog was protecting person or property, the attack happened where dog was being kept, there was notice a dog was there, hurt person was 8+ years old, person was trespassing when attack occurred.
    - Dog was not being used to protect property or person, but attack happened where dog was being kept, hurt person was 8+, and was trespassing
    - Hurt person was under 8, the attack happened where dog was being kept, but where the dog was held was reasonably certain to keep a kid under 8 from entering

# DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES: HSC 822.001-.004

Example:

- Sandy, 12 years old, has friend over (also 12 years old)
- Dog is in backyard as usual in locked dog run
- Friend is told not to enter backyard and not to go near dog
- Friend goes into backyard, sticks fingers in dog run, and dog bites friend's finger off

Should you prosecute? Consider defenses from statute...(enclosure, on own property, trespassing)

- Civil action maybe—but not a violation under this Section
- Often argued that “enclosure” is a fenced backyard or even a house—so if one didn't have permission to enter house or backyard, and gets attacked—a good defense
- Good idea to talk with victim and dog owner to get all the facts—work with responding officers

# DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES

- §§ 822.041-.047 governs registration and regulation of “Dangerous Dogs”
  - Key words/phrases:
    - Unprovoked attack, bodily injury, other than enclosure where dog kept OR
    - Unprovoked acts, other than enclosure where dog kept, reasonably believe dog will attack and cause bodily injury to person
    - Owner is person who owns OR has custody OR control of dog
  - Sequence of events:
    - Dog breaks off of leash, attacks person/Dog gets out of fence, attacks person/Dog gets out of fence and causes person to believe dog will attack her
    - Person reports it—animal control investigates
      - How? Gathers sworn witness statements (critical), unilaterally determines if dog is dangerous based upon evidence
    - Animal control notifies owner in writing the dangerous dog determination—see § 822.0422 for cities who adopted this section regarding surrendering dog within 5 days after receiving notice—or warrant issued)
    - Owner has 30 days to comply with dangerous dog requirements (§ 822.042 or by ordinance if stricter)
    - Owner has 15 days to appeal to municipal court (or JP or county...depends)
    - Owner can appeal the municipal court’s decision to county court and request a JT, and can continue to appeal

## DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES (HYPOS)

Bob's fence is in disrepair. Dog "escapes" and runs aggressively up to Sarah who is walking her 30lb dog on a leash. Sarah screams for help as dog jumps up on her and her dog. Sarah sustains scratches. Neighbor Scott runs and holds onto "escapee" until authorities arrive.

- What kind of injury was sustained?
- Does DD statute apply?
- Does §§ 822.001-.004 apply?
  - No! No SBI or death
  - Analysis stops at DD hearing
  - Results in following DD requirements of statute and city (if ordinance)
  - Not subject to euthanasia—no authority for court to order this under these facts
- This fact pattern is common—please consider your individual muni's community standards and your moral compass when going down the DD route—many ramifications for small potatoes
- Is the juice worth the squeeze? Lots of room to negotiate.

## **DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES (HYPOS)**

Tenny likes to walk his dog with no leash—because Jersey “listens and would never harm a fly.” Judd is picking weeds in his front yard, and Jersey lifts his leg up and does his business right there. Judd proceeds to walk aggressively over to Jersey and begins to kick him (Jersey is on the sidewalk). Jersey bites Judd’s leg several times, down to the muscle.

- What kind of injury was sustained?
- Does DD statute apply?
- Does §§ 822.001-.004 apply?

## **DOGS ATTACKING PERSONS OR DANGEROUS DOG CASES (HYPOS)**

Bob's fence is in disrepair. Fido "escapes" and runs aggressively ONLY up to Sarah's dog. Sarah drops her leash and Fido mauls the dog.

- Does DD statute apply?
- Does §§ 822.001-.004 apply?
- Your municipality can pass ordinances governing animal on animal attacks, but technically animal on animal are NOT dangerous dog cases and should not be treated as such under the statute. HSC § 822.047
- Check your ordinances—a dog that injures or kills another dog should NOT be called a "dangerous dog" unless a human fits within § 822.041(2)(B)
- Be very careful about animal-on-animal ordinances. Consider due process rights, and the potential rights to appeal
- Consider "aggressive animal" ordinances, and do NOT discriminate based upon breed
- Usually- civil suits as painful as this may be

## OTHER DO'S AND DON'TS...

- Check your ordinance for BSL—can't do it, folks! HSC § 822.047(1)
- Educate your LEO—more access to you than to CA/DA
- Ensure shelter staff are following laws (§ 823.003)—S Texas shelter under fire
- Understanding what “possession” and “ownership” means
  - Who owns the animal for at-large, no rabies, no collar, etc. citations?
- Dangerous Dog Cases—ONLY dog on human—not dog on another animal (unless...)—HSC § 822
  - Not always euthanasia...work with local reputable rescues/agencies
  - Adopt the HSC section to make things easier—but make sure to mimic it
  - DO NOT name your animal-on-animal ordinance “Dangerous Dogs”—and create an appeal process. PROPERTY IS AT STAKE!



I'd consider this cruel...

**Thank you!**

**Any questions, feel free to email:  
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