

2019

ANIMAL CONTROL HANDBOOK

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio Street, Austin, Texas 78701

Honorable Larry Gallardo

Hidalgo County Constable & Association President

Susan M. Redford

Executive Director

PREPARED BY ASSOCIATION LEGAL DEPARTMENT

Katherine Howard

Associate General Counsel

Laura V. Garcia

Associate General Counsel

Paul Miles

Associate General Counsel

Mike Thompson, Jr.

Associate General Counsel

Kristi Shepperson

Operations Manager and Paralegal

Monica Nuñez

Paralegal



LEGAL RESEARCH

Toll Free Helpline: (888) 275-8224 • Direct Fax: (512) 478-3573

or visit our website at www.county.org

Helping counties with legal research for 30 years.

THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Each public officer is responsible for determining duties of the office or position held. Any question regarding such duties should be directed to competent legal counsel for a written opinion.

TABLE OF CONTENTS

INTRODUCTION.....	1
ANIMAL CONTROL OFFICERS	2
ANIMAL SHELTERS	2
TREATMENT OF ANIMALS.....	3
REGISTRATION AND REGULATION OF DOGS GENERALLY	5
REGULATION OF DOGS DANGEROUS TO PERSONS.....	6
UNLAWFUL RESTRAINT OF DOGS.....	9
REGULATION OF DOGS & COYOTES DANGEROUS TO ANIMALS.....	10
RABIES CONTROL.....	11
DANGEROUS WILD ANIMALS.....	12
KEEPING OF WILD ANIMALS	13


ANIMAL CONTROL HANDBOOK¹

Introduction

A county's authority to regulate animals is extensive.² Within its unincorporated areas, a county may operate an animal shelter, enforce laws against cruelty toward animals, require the registration of certain domestic animals, prohibit certain dogs from running at large, seize dangerous dogs, and regulate or prohibit the keeping of wild animals.

Generally, the commissioners court must adopt orders to exercise its authority. In one instance, approval at a countywide special election is required before the court may implement a local registration program. Criminal and civil penalties are prescribed for violations of the laws establishing a county's authority over animals within its jurisdiction. Injunctive relief is also available under certain statutes.

This publication is intended to provide a summary of the laws generally applicable to counties relating to animal treatment and regulation, including information about a county's duty and authority regarding domestic and wild animals.³ Additional information about regulation of estrays and livestock may be found in the Legal Department publication: Stock Laws, available on the Texas Association of Counties website, www.county.org.

The  symbol indicates sections that have been updated since the previous publication.

¹ This Handbook includes changes adopted by the 86th Legislature during the Regular Session (2019).

² Additionally, the commissioners court is required to cooperate with the Texas Animal Health Commission in protecting livestock, domestic animals and domestic fowl from communicable diseases under Agriculture Code §161.003.

³ Generally, a municipality has parallel duties and authority regarding animals within its jurisdiction. This handbook does not include statutory references to municipalities.

ANIMAL CONTROL OFFICERS

Source law: Health and Safety Code, Chapter 829.

Scope: Chapter 829 requires animal control officers who are **not peace officers** to comply with the training and continuing education requirements established by the chapter pursuant to standards and curricula prescribed by the Department of State Health Services. §§829.002 and 829.003. A person may not perform the duties of an animal control officer unless the person satisfies the educational requirements of Chapter 829. §829.002.

Applicability: Applies to all counties with a population in excess of 75,000. Also applies to counties of 75,000 or less, unless the commissioners court adopts an order exempting the county from the Chapter. §829.0015

ANIMAL SHELTERS

Source law: Health and Safety Code, Chapter 823.

Scope: With limited exceptions, each shelter operated in the state must comply with the requirements of Chapter 823, the housing and sanitation standards adopted under Chapter 826, the cat and dog sterilization mandate under Chapter 828, and animal control officer training adopted under Chapter 829. §823.003.

Applicability: Does not apply to a county with a population of less than 75,000; a veterinary medicine clinic; or to a livestock commission facility. §823.002.

Definition: “Animal shelter” means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals. §823.001.

Authority: The commissioners court in a county in which an animal shelter is located must appoint an advisory committee consisting of at least four persons to assist the shelter operator in complying with the requirements of Chapter 823. §823.005(a). At least one county official and one veterinarian must be appointed to the advisory committee. §823.005(b).

The county may enforce the requirements of Chapter 823 at an animal shelter located in the county, except for a shelter operated by a municipality. §823.008.

Euthanization of an animal in an animal shelter must be performed in accordance with Ch. 821, Subchapter C. §821.052.

A county with a population in excess of 20,000 may not release a dog or cat from an animal shelter unless the county complies with the requirements of Health and Safety Code Chapter 828, *Dog and Cat Sterilization*. §828.013(4).

Penalty: Both criminal and civil penalties are prescribed. An offense under Chapter 823 is a Class C misdemeanor. §823.003(f).

A civil penalty of not less than \$100 or more than \$500 may be imposed for each violation and for each day of a continuing violation. §823.009

A violation of the chapter may also be prohibited by injunction. §823.007 and §823.009.

ANIMALS: TREATMENT

Source law: Health and Safety Code, Chapter 821.

Scope: Chapter 821 governs the treatment of all living nonhuman creatures and authorizes certain county officials to seize an animal that is being “cruelly treated.”

Definition: “Cruelly treated” includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, water, care, or shelter, cruelly confined, or caused to fight with another animal. §821.021. The acts prohibited under the bestiality provision in Penal Code §21.09 add to the definition of cruel treatment under Chapter 821 of the Health & Safety Code.

“Nonprofit animal welfare organization” means a nonprofit organization that has as its purpose:

- 1) the prevention of cruelty to animals; or
- 2) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals. §821.021

“Owner” includes a person who owns or has custody or control of an animal. §821.021

Authority: A peace officer or animal control officer may seek a warrant from a justice court or magistrate in the county to seize an animal that the officer has reason to believe has been or is being cruelly treated. §821.022(a).

The officer executing the warrant shall impound the animal and give written notice to the owner of the time and place of the hearing. §821.022(c).

A hearing must be held within 10 days of the date the warrant is issued. §821.022(b).

A person divested of ownership of an animal may appeal the order to a county court or county court at law. A party to an appeal is entitled to a jury trial on request. The decision of the county court or county court at law is final, and no further appeal may be taken. §821.025.

As a condition of perfecting an appeal, the owner of the animal must file a notice of appeal and a cash or surety bond in an amount set by the court under §821.023(e-2) not later than the 10th calendar day after the date the order is issued. §821.025(b).

An animal found by the court to have been cruelly treated may be sold at a public auction, given to an animal shelter or nonprofit animal welfare organization, or humanely destroyed. §821.023(d). At an auction authorized by §821.023(d), a bid by the animal’s former owner or that person’s agent may not be accepted. §821.024.

Proceeds: The proceeds from the sale of an animal are applied first to the expenses of caring for the animal during its impoundment and then to the administrative costs of investigation of the case, expert witnesses, and auction expenses. Any excess proceeds are returned to the former owner. §821.024(b).

Penalty: A person who mistreats an animal is subject to prosecution in county court under §42.09 Penal Code (relating to livestock) or §42.092 (relating to nonlivestock). §821.023. Violations range from a Class A misdemeanor to a 3rd degree felony. Penal Code §§42.09 and 42.092. An individual who

engages in the acts prohibited by the bestiality provision in §21.09 of the Penal Code can also be prosecuted under that provision.

DOGS: REGISTRATION AND GENERAL REGULATION

Source law: Health and Safety Code, Chapter 822, Subchapter C.

Scope: Subchapter C authorizes certain counties, after petition and an election, to adopt a dog registration program, impose a registration fee between \$1 and \$5, and prohibit an unregistered or untagged dog over the age of 6 months from running at large.

Applicability: This subchapter **applies only** to a county that adopts the subchapter after an election at which a majority of the voters approve the proposition authorizing the registration of dogs and the imposition of a fee.

The subchapter **does not apply** to a county that enacts or has enacted registration or restraint laws under Health and Safety Code, Chapter 826 (Rabies Control Act of 1981). §822.021.

Election: The commissioners court must order an election on the registration of dogs in the county upon receipt of a valid petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less. §822.022. If the ballot proposition is approved, the dog registration requirement takes effect on the 10th day after the election result is declared. §822.025. The county judge shall issue and require the publication or posting of the vote. §822.025.

If the proposition fails, another dog registration election may not be held sooner than six months after the date of the first election. §822.026(a).

An election to repeal a dog registration requirement under Chapter 822 may not be held sooner than two years after the date of the election adopting the requirement. §822.026(b).

Authority: In a county that adopts a registration requirement:

- (1) the owner must register a dog that is six months of age or older;

and

- (2) the county treasurer must assign a registration number to each dog registered and provide the dog's owner with an identification tag and certificate. §§822.027 and 822.030.

Fee: Annually, the county treasurer shall collect a fee for each dog registered. The fee must be at least \$1, but the commissioners court may set a higher fee not to exceed \$5. §822.028(a). The fees must be deposited in a special fund to be used only:

- (1) to defray the costs of administering the registration program; and
- (2) upon order of the commissioners court, to reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed by a dog not owned by the person seeking reimbursement. §822.029(a).

Prohibition: The owner or person having control of a dog at least six months old may not allow the dog to run at large unless the dog is registered and the dog's tag is attached around its neck. An unregistered dog is prohibited from running at large. §822.031.

A person commits an offense if the person intentionally fails or refuses to register a dog as required by Subchapter C or fails or refuses to allow a dog to be killed when ordered by proper authorities to do so. §822.035.

Penalty: A violation of this subchapter is a misdemeanor punishable by a fine not to exceed \$100 or confinement in jail for not more than 30 days, or both a fine and confinement. §822.035.

DOGS THAT ATTACK OR ARE DANGEROUS TO PERSONS



Source law: Health and Safety Code, Chapter 822, Subchapters A and D⁴.

Definitions: "Animal control authority" in Subchapters A and D means a county animal control office with authority over the area in which a dog is kept or the sheriff if the area does not have an animal control office. §§822.001 and 822.041.

⁴ A request for opinion was recently submitted to the Attorney General asking questions as to the construction of statutes related to procedures addressing dangerous dogs under Health and Safety Code, Chapter 822. As of this writing, Tex. Att'y Gen. RQ-0294-KP was still pending review.

“Dangerous dog” means:

- (1) a dog that makes an unprovoked attack on a person that causes bodily injury to the person and that occurs outside of a secure enclosure intended to prevent the dog’s escape or release; or
- (2) a dog that commits unprovoked acts in a place other than a secure enclosure and the acts cause a reasonable person to believe that the dog will attack and cause bodily injury to that person. §§ 822.001 and 822.041.

“Secure enclosure” means a fenced area or structure that is locked, capable of preventing entry by the general public, including children, capable of preventing escape or release of a dog, clearly marked as containing a dangerous dog, and in conformance with the enclosure requirements established by the local animal control authority. §§822.001 and 822.041.

“Serious bodily injury” means an injury characterized by severe bite wounds or severe ripping or tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment. §822.001.

Scope: Subchapter A of Chapter 822 governs the seizure and disposition of a dog that causes death or a serious bodily injury to a human.

Subchapter D of Chapter 822 governs the registration and regulation of a dangerous dog.

Authority: Under §822.002(b), a justice or county court shall order the animal control authority to seize and impound a dog that caused the death or a serious bodily injury to a human.

On a determination by the court that a dog caused the death of a person, the court **shall** order the dog destroyed. §822.003(d).

The court **may** order the destruction of a dog found to have caused serious bodily injury to a person by attacking, biting, or mauling. §822.003(e).

The county may impose additional local requirements or restrictions on dangerous dogs that are more stringent than the restrictions prescribed by Subchapter D and that are not specific to a particular breed or breeds. §822.047.

Prohibition: An owner of a dangerous dog who does not comply with the registration, restraint and liability insurance or financial responsibility requirements of Subchapter D of Chapter 822 of the Health & Safety Code and any additional county regulations or restrictions on dangerous dogs shall deliver the dog to the animal control authority not later than the 30th day after learning that the dog is a dangerous dog. §822.042(b).

Enforcement: The animal control authority shall administer and enforce this subchapter and any additional local rules adopted by the county. The authority shall register a dangerous dog if the owner presents statutorily required information to the authority and pays an annual registration fee of \$50. §822.043.

A justice or county court that finds the owner of a dangerous dog has failed to comply with §822.042(a) or (b) shall order the animal control authority to seize and impound the dog. §822.042(c).

A justice or county court shall order the animal control authority to humanely destroy a dangerous dog if the owner has not met the registration, restraint and liability insurance or financial responsibility requirements of § 822.042(a) before the 11th day after the date the dog is seized or delivered to the authority. A justice or county court may not order the destruction of a dog during the pendency of an appeal taken pursuant to §822.0424.

Fee: The commissioners court may assess fees against a dog owner to defray the cost of seizure, impoundment, or destruction of a dangerous dog. §822.042(d).

Offenses: The owner of a dangerous dog commits an offense if the dog makes an unprovoked attack on another person outside the dog's enclosure and the dog causes **bodily injury** to the other person. §822.044(a).

An offense under this section is a Class C misdemeanor. §822.044(b).

The owner of a dog commits an offense if:

- (1) with criminal negligence, the owner fails to secure the dog and it makes an unprovoked attack on another person, at a location other than the owner's property, that causes **serious bodily injury or death**; or
- (2) knows the dog to be a dangerous dog, and the dog makes an unprovoked attack on another person, at a location other than a secure enclosure, and that causes **serious bodily injury or death**. §822.005

An offense under §822.005 is a third degree felony if the dog causes serious bodily injury and a second degree felony if the dog causes death. §822.005 (b).

DOGS: UNLAWFUL RESTRAINT

Source law: Health and Safety Code, Chapter 821 Subchapter D.

Scope: Subchapter D of Chapter 821 provides criminal penalties for the unlawful restraint of dogs.

Definitions: "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system. §821.076(4).

"Unlawful restraint" means to keep a dog outside and unattended under certain circumstances, including extreme weather conditions, by use of a restraint that unreasonably limits the dog's movements. §821.077.

Authority: A peace officer or animal control officer with probable cause to believe that a dog owner is unlawfully restraining a dog shall issue a written statement to the owner of the violation of Subchapter D. §821.079(b).

Penalty: An owner who fails to comply with Subchapter D within 24 hours after receiving the written statement commits an offense punishable as a Class C misdemeanor. §821.079(c). Increased penalties are prescribed for repeated violations. §821.079(d). Conduct that constitutes an offense under this provision that also constitutes an offense under any other law, may be prosecuted under either law or both laws. §821.079(f).

Exception: Subchapter D does not prohibit a person from walking a dog with a hand-held leash. §821.081.

Disposition: The clerk of a court that collects a penalty under Subchapter D shall remit the penalty for deposit in the county's general fund. §821.080.

DOGS & COYOTES DANGEROUS TO ANIMALS

Source law: Health and Safety Code, Chapter 822, Subchapter B.

Scope: Prohibitions on dogs and coyotes known to be dangerous to certain animals from running at large.

Applicability: Subchapter B applies to all counties.

Prohibition: In all counties, the owner or keeper of a dog or coyote that the person knows will chase or kill livestock, domestic animals, or fowl may not allow the dog or coyote to run at large. §822.012. "Dog or coyote" includes a crossbreed between a dog and a coyote. §822.011(1).

A dog or coyote that attacks livestock, domestic animals, or fowl may be killed by any person who witnesses the attack or by the attacked animal's owner or a person acting on the owner's behalf, if the owner or other person knows about the attack. §822.013(a).

A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, domestic animals, or fowls may detain the dog or coyote and return it to its owner or deliver it to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote and all damage done by the dog or coyote. §822.013(c).

The owner of a dog or coyote known to have attacked livestock, domestic animals, or fowl shall control the dog or coyote in a manner approved by the local animal control officer. §822.013(d).

Penalty: The owner of a dog or coyote who permits the animal to run at large in violation of Subchapter B commits an offense punishable by a fine not to exceed \$100. §822.012.

RABIES CONTROL

Source law: Health and Safety Code, Chapter 826 (the Rabies Control Act of 1981).

Scope: Chapter 826 establishes the minimum standards for the control of rabies and requires the periodic vaccination of dogs and cats against the disease. §§826.012 and 826.021.

Authority: The commissioners court is authorized to adopt Chapter 826. §826.013. Alternatively, the court may adopt ordinances and rules for a local rabies control program and set standards that do not conflict with and are at least as stringent as Chapter 826 and the rules adopted by the Texas Board of Health (Board) under the chapter. §826.014(a). The local rules may require the registration, restraint, and impoundment of dogs and cats, and the quarantine of any animal that is believed to be rabid or to have exposed an individual to rabies. §§826.014; 826.031; 826.033; and 826.044.

Local rules and ordinances supersede Chapter 826 and rules adopted by the Board. §826.014(b).

The commissioners court may contract with public or private entities to perform the acts required or authorized by Chapter 826. §826.016.

Duty: Each commissioners court is required to designate an officer to act as the local rabies control authority. §826.017(a). The designated officer is required to enforce Chapter 826, Board rules, and the county's local rules and ordinances. §826.017(c).

Penalty: The owner of a dog, cat, or other animal commits an offense if the person fails or refuses to comply with the vaccination, registration, and quarantine requirements adopted under the Board's or county's rules. Offenses for violations range from Class C to Class B misdemeanors. §§826.022(b) and (c); 826.032(b); 826.034 (b); and 826.044(b).

Fee: The commissioners court may set a fee for the registration of dogs and cats. §826.031(c). The rabies control authority may collect the fees, which may only be used to defray the cost of the county's rabies control program. §826.031(c).

Limitation: Certain information contained in a vaccination certification or a dog and cat registry relating to the identity of the animal’s owner is confidential. §§826.0211(a) and 826.0311(a). The certificate may not contain the owner’s social security number or driver’s license number. The unauthorized disclosure of the information is an offense punishable by a fine, confinement in jail, or both a fine and confinement. §§826.0211(c) and 826.0311(c).

WILD ANIMALS: DANGEROUS

Source law: Health and Safety Code, Chapter 822, Subchapter E.

Scope: The subchapter governs the regulation and registration of dangerous wild animals. The subchapter does not prevent a county from prohibiting or regulating the ownership, possession, confinement, or care of a dangerous wild animal in the county in accordance with Local Government Code §240.002. §822.116.

Definition: “Dangerous wild animal” means a lion, a tiger, an ocelot, a cougar, a leopard, a cheetah, a jaguar, a bobcat, a lynx, a serval, a caracal, a hyena, a bear, a coyote, a jackal, a baboon, a chimpanzee, an orangutan, a gorilla, or any hybrid of one of these animals. §822.101(4).

Exclusion: In a county west of the Pecos River that has a population of less than 25,000⁵, Subchapter E does not apply to a cougar, bobcat, or coyote in the possession or custody of a person that has trapped the animal as a part of a predator or depredation control activity. §822.102(a)(12).

Authority: The commissioners court of a county that does not prohibit the keeping of wild animals under Local Government Code §240.002 is required to adopt an order to implement and administer a certificate of registration program for dangerous wild animals. §822.103. The order must have been adopted no later than December 1, 2001. Tex. Att’y Gen. Op. No. JC-552 (2002).

Duty: The animal control office, or the sheriff if there is no animal control office, shall issue a certificate of registration to a person who is keeping a dangerous wild animal in the county. §822.103.

⁵ Counties in the bracket include Brewster, Culberson, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves and Terrell.

- Fee:** The animal control office or the sheriff may charge an annual fee not to exceed \$50 for each dangerous wild animal and a fee not to exceed \$500 for each person registering an animal. §822.103(c). The fees collected may only be used to administer and enforce Subchapter E. §822.103(c).
- Offense:** A person commits an offense if the person fails: to register a dangerous wild animal, to display the registration certificate, or to report an attack on a human or the escape of the animal. A person commits an offense if the person knowingly transfers ownership of a dangerous wild animal to a person who does not have a certificate of registration for that animal. An offense is a Class C misdemeanor. §822.113.
- Penalty:** A civil penalty may also be imposed by the county on a person who fails to obtain a certificate of registration. A penalty in the amount of at least \$200 and not more than \$2000 may be collected with respect to each dangerous wild animal and for each day a violation continues. §822.114.

WILD ANIMALS: KEEPING

- Source law:** Local Government Code Chapter 240, Subchapter A.
- Scope:** The subchapter governs county regulation of certain non-domestic animals.
- Definition:** “Wild animal” means a non-domestic animal that the commissioners court of a county determines is dangerous and in need of control in that county. §240.001.
- Authority:** The commissioners court by order may prohibit or regulate the keeping of a wild animal in the county.
- Limitation:** An order adopted by the commissioners court to prohibit or regulate the keeping of wild animals does not apply inside the limits of a municipality. §240.002(b).
- Enforcement:** The county’s attorney may file an action to enjoin a violation or a threatened violation of an order adopted under this subchapter. §240.004.

Penalty: A person commits an offense if the person violates an order adopted under Subchapter A, if the order defines the violation as an offense.
§240.003(a). An offense under the subchapter is a Class C misdemeanor.
§240.003(c).