



**NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**



Monday, May 8, 2017 - 5:30 PM

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Councilmember Nina Morris

PROCLAMATION: Motorcycle Safety and Awareness Month

CITIZENS' COMMENTS:

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.

CONSENT AGENDA:

Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.

1. Consider approval of minutes from the City Council Regular Meeting held on April 24, 2017.
2. Consider a resolution of the City Council of the City of Lancaster approving an agreement between the City of Lancaster and Great Lakes Recycling Inc. d/b/a Simple Recycling to permit the collection of soft recyclable materials from residential customers within the City.

ACTION:

3. Discuss and consider resolution supporting 85th Texas Legislature House Bill (H.B.) 1156, House Bill (H.B.) 2390, Senate Bill (S.B.) 1084, and Senate Bill (S.B.) 1090 related to animal services.

EXECUTIVE SESSION:

4. The City Council shall convene into closed executive session pursuant to Section §551.074 (a)(1) of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, to wit: interview candidates for the position of City Attorney.
5. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

ADJOURNMENT

EXECUTIVE SESSION: The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on May 4, 2017 @ 5:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Sorangel O. Arenas
City Secretary

LANCASTER CITY COUNCIL

City Council Regular Meeting

1.

Meeting Date: 05/08/2017

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Consider approval of minutes from the City Council Regular Meeting held on April 24, 2017.

Background:

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held on April 24, 2017.

Attachments

April 24, 2017 Minutes

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF APRIL 24, 2017

The City Council of the City of Lancaster, Texas, met in a called Regular session in the Council Chambers of City Hall on April 24, 2017 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Mayor Pro Tem Carol Strain-Burk
Deputy Mayor Pro Tem Stanley Jaglowski
Marco Mejia
Spencer W. Hervey Jr.
Clyde C. Hairston
Nina Morris

City Staff Present:

Opal Mauldin-Robertson, City Manager
Rona Stringfellow, Assistant City Manager
Dori Lee, Human Resources Director
Sean Johnson, Managing Director of Quality of Life & Cultural Services
Shane Shepard, Director of Economic Development
Jermaine Sapp, Equipment and Facilities Services Director
Fabrice Kabona, Assistant to the City Manager
Jim Brewer, Director of Public Works
Robert Franklin, Fire Chief
Sam Urbanski, Police Chief
Alton Dixon, Purchasing Agent
Mark Divita, Airport Manager
Than Nguyen, City Engineer
Robert E. Hager, City Attorney
Sorangel O. Arenas, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on April 24, 2017.

Invocation:

Pastor Potts gave the invocation.

Pledge of Allegiance:

Councilmember Hairston led the pledge of allegiance.

Citizens' Comments:

Mary Davenport, 500 Rolling Hills Place, shared her concern about the need for public transportation. She was informed that years ago citizens voted against public transportation. She expressed her opinion for the need for transportation to assist the citizens especially, the senior citizens and the disabled individuals.

Jennifer Escobar, 1959 Crepe Myrtle Drive, requested the status of the 2017 Citizen Survey and when the results will be shared with the public. After analyzing the survey, she wants to know the Councils' plan of action. Also, she asked how citizens may collaborate with staff too, hopefully, expedite Councils' vision for the City. Lastly, Ms. Escobar shared her concern of the number of Dollar Stores operating within the City. Mayor Knight advised Ms. Escobar that staff will obtain her contact information to keep her and her neighbors informed.

Consent Agenda:

City Secretary Arenas read the consent agenda.

1. **Consider approval of minutes from the City Council Regular Meeting held on April 10, 2017.**
2. **Consider a resolution accepting the 2016 Racial Profiling Analysis Annual Report.**
3. **Consider an ordinance granting a franchise for the collection and removal of industrial solid waste and recyclable materials to HD Waste & Recycling, LLC.**
4. **Consider an ordinance granting a franchise for the collection and removal of industrial solid waste and recyclable materials to Moore Disposal Inc.**
5. **Discuss and consider a resolution amending the City of Lancaster Tax Incentive Policy to include incentives for lodging facilities.**

Mayor Pro Tem Strain-Burk pulled item 5.

MOTION: Mayor Pro Tem Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve consent items excluding item 5. The vote was cast for 7, 0 against.

5. **Discuss and consider a resolution amending the City of Lancaster Tax Incentive Policy to include incentives for lodging facilities.**

Mayor Pro Tem Strain-Burk requested additional staff comments.

Director of Economic Development Shepard advised Council that staff has researched opportunities and strategies for pursuing the development of a nationally branded hotel/convention center in Lancaster. He shared that the model that has been implemented has withstood legal challenges is one which, utilizes hotel occupancy tax funds as an incentive to construct a lodging facility to include conference and convention amenities.

Mayor Pro Tem Strain-Burk inquired if the upcoming hotel has qualified for a tax incentive. Director of Economic Development Shepard communicated that the hotel does qualify.

MOTION: Mayor Pro Tem Strain-Burk made a motion, seconded by Councilmember Hairston to approve consent item 5. The vote was cast for 7, 0 against.

6. **Discuss and consider a resolution approving a loan of \$750,000 from the Lancaster Economic Development Corporation (LEDC) to the City of Lancaster to pay for a portion of a new airport terminal.**

Director of Economic Development Shepard shared that item 6 is to consider a resolution approving a loan of \$750,000 from the Lancaster Economic Development Corporation (LEDC) to the City of Lancaster to pay for a portion of a new airport terminal. The Lancaster Regional Airport received a grant for \$600,000 from the State of Texas for a terminal building in 2015. The grant requires a dollar-for-dollar match and funds were allocated by the City and sent to the State for the project. The State designed and went for bid on the project. The cost estimates were \$750,000 higher than the cumulative \$1.5 million. After one year, the State has requested that the airport either come up with the remainder needed or lose the grant. He shared that a new terminal building is the next step recommended on the Airport Master Plan. The terminal building is often how the first place corporate leaders will discover a community. On April 11, 2017, this item was presented to

the Lancaster Economic Development Corporation Board. The Board members voted in favor of approving a loan.

Councilmember Mejia shared that \$750,000 is a large amount of money to withdraw from the Lancaster Economic Development Corporation (LEDC) but the airport is an important asset that must be maintained and developed as the City continues to grow.

Councilmember Hervey thanked all involved for obtaining the grants. He communicated that the Comprehensive Plan is one of the most important tools that Lancaster can leverage to determine the future of the community and the plan is available to the public.

Mayor Pro Tem Strain-Burk stated that the Lancaster Regional Airport is a valuable asset and expressed her appreciation to Lancaster Economic Development Corporation (LEDC) for supporting item 6.

Deputy Mayor Pro Tem Jaglowski expressed his gratitude to staff and to the Lancaster Economic Development Corporation (LEDC) for their efforts.

MOTION: Councilmember Hairston made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve item 6. The vote was cast for 7, 0 against.

7. Consider a resolution approving the terms and conditions of a professional services agreement with Dal-Tech Engineering, Inc. (Dal-Tech) to perform services in connection with the project known as Pleasant Run Road for limited street improvements from IH35E to Dallas Avenue (SH 342); in an amount not to exceed \$199,000.00.

Councilmember Hairston requested additional staff comments.

City Engineer Nguyen shared staff is recommending approval of an agreement with Dal-Tech Engineering, Inc. (Dal-Tech) to perform services for the Project known as "Pleasant Run Road". The Project was listed on the 2007 Bond Program for full depth concrete patching of the major areas of failure. The purpose is to improve the level of service and extend the life and use of the existing pavement. The construction cost estimate is approximately \$1.8 million for removal and replacement of existing concrete pavement for major failures. The Project limits will be from IH35E to Dallas Avenue (SH342). The design engineers, Dal-Tech Engineering, Inc., have a wide range of experience in street improvement projects.

Councilmember Hairston inquired the location of the street repairs. City Engineer Nguyen responded the improvements will be from IH35E to Dallas Avenue (SH 342).

Councilmember Hervey inquired as to the end goal for this Project. City Engineer Nguyen stated the Project is to replace the sections of public roadways that have deteriorated.

Mayor Knight clarified that item 7 is to consider approval of engineering design services to the City of Lancaster, in connection with the Pleasant Run Road Street Improvement Project. He advised that there will be another item to consider approval for the construction agreement.

City Manager Mauldin-Robertson shared that staff will bring forth the bids for construction at a later date. Dal-Tech Engineering, Inc. (Dal-Tech) is to provide the necessary professional engineering services related to the preparation of plans and specifications for the Pleasant Run Road project and establish the specifications needed to proceed for bid.

Deputy Mayor Pro Tem Jaglowski inquired the estimated time of the process. Mayor Knight advised the overall schedule is to be completed in twelve (12) weeks.

Mayor Pro Tem Strain-Burk inquired the length of time on the start of construction. City Engineer Nguyen advised about six (6) to seven (7) months.

MOTION: Mayor Pro Tem Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve item 7. The vote was cast for 7, 0 against.

8. Discuss and consider a resolution declaring certain board, commission and committee position(s) vacant due to excessive absences and consider appointment(s) to the Lancaster Planning and Zoning Commission.

Mayor Knight shared that there is a particular board that has excessive absences.

Mayor Pro Tem Strain-Burk shared that the position is to fill an unexpired term ending December 2017.

Councilmember Morris inquired if the board member was notified of the absences. City Secretary Arenas shared that the attendance policy is provided to the board members which states "Absences from three (3) consecutive meetings or a total of five (5) absences within a twelve month period shall constitute excessive absences."

Mayor Knight advised that the policy has been violated by the specific individual and is up to the governing body to decide how to proceed.

Councilmember Hervey shared that he has previously served ten (10) years on three different boards and commissions. He indicated that staff provides a thorough orientation for new members and staff communicates verbally and electronically on upcoming meetings. He expressed that if a violation has accrued them Council must follow the policy created.

Deputy Mayor Pro Tem Jaglowski inquired how and when the members receive the agenda packet. City Manager Mauldin-Robertson shared that an electronic copy is provided via electronic mail (e-mail) and a printed packet is delivered to their residence. The members will receive the packet 72 hours prior to the posting of the meeting.

Councilmember Morris requested to revisit the policy since the members are participating volunteering.

Councilmember Mejia requested to deny the resolution to leave Commissioner Earle on the Planning and Zoning Commission.

MOTION: Mayor Pro Tem Strain-Burk made a motion, seconded by Councilmember Hervey to declare a vacancy. The vote was cast for 5, 2 against [Mejia and Morris].

Nominated for the vacant position on the Planning and Zoning Commission with a term expiring in 2017, was Jeremy Reed.

Nominated for the vacant position on the Planning and Zoning Commission with a term expiring in 2017, was Ronald Anthony.

Jeremy Reed appointed to fill the unexpired term ending December 2017. The vote was cast for 5, 2 against [Mejia and Morris].

Executive Session:

9. **The City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the City Attorney regarding development of property commonly known as Danieldale Resubdivision of Tracts 1 to 5 of Oak Cliff Farms Addition, an addition to the City of Lancaster, Texas.**
10. **Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.**

The City Council recessed for Executive Session at 7:58 p.m. and reconvened into open session at 8:24 p.m.

No action taken.

MOTION: Councilmember Morris made a motion, seconded by Councilmember Hairston to adjourn. The vote was cast for 7, 0 against.

The meeting was adjourned at 8:24 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL

City Council Regular Meeting

2.

Meeting Date: 05/08/2017

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Financially Sound Government
Healthy, Safe & Vibrant Community

Submitted by: Fabrice Kabona, Assistant to the City Manager

Agenda Caption:

Consider a resolution of the City Council of the City of Lancaster approving an agreement between the City of Lancaster and Great Lakes Recycling Inc. d/b/a Simple Recycling to permit the collection of soft recyclable materials from residential customers within the City.

Background:

Great Lakes Recycling Inc. d/b/a Simple Recycling is in the business of and has the expertise, experience, resources and capability to perform the collecting, identifying, packaging, hauling, recycling and/or disposing of clothing, durable goods, small furniture and appliances, hereinafter referred to as "Soft Recyclables".

On August 10, 2015, council received the first presentation regarding Simple Recycling, a non-profit company that provides curbside textile recycling collection services for municipalities. On March 20, 2017, council received a second presentation regarding the proposed agreement. Simple Recycling has partnered with eleven cities in Texas (six of which are located within the DFW area) and 2 municipal districts.

Textiles and small household items such as, clothing, shoes, purses, hats, toys, pictures, mirrors and other soft recyclable materials make up 85% of the materials in the landfill. These are items that are not collected through our current recycle program. Simple Recycling offers a residential-based "free" curbside recycling solution that would supplement the services offered through the traditional solid waste and recycling program.

Operational Considerations:

This request is in support of the City's current solid waste services. The City Manager's office will oversee the management of this recycling company in addition to solid waste contract.

The terms of proposed agreement are as follows:

Initial Term. The proposed agreement shall commence and become effective on the Effective Date, and, unless extended or terminated earlier in accordance with the provisions of this Agreement, shall end four (4) years after the Effective Date (the "Initial Term").

Renewals. This Agreement may be renewed for four (4) additional periods of one (1) year each ("the Renewal Period" or collectively "the Renewal Periods") by mutual written agreement of the Parties. The City of Lancaster shall provide Contractor written notice of intent to renew no later than thirty (30) days before the end of the Initial Term or the applicable Renewal Period. Notwithstanding the notice period

set forth above, nothing herein shall be construed as prohibiting the Parties from mutually agreeing to an extension of this Agreement even if the City of Lancaster provides later notice to Contractor of the desire to renew the term for the next Renewal Period. Except where otherwise indicated, each Renewal Period shall be subject to the same provisions of this Agreement.

Collection Schedule.

Contractor shall divide the Service Area into collection areas to coincide with the City of Lancaster collection dates. Collections shall be made from Service Recipients on a regular schedule on the same day every week in accordance with the existing recycling pickup schedule; however, Contractor reserves the right to alter the frequency of the scheduled pickups on an as needed basis.

Collection. During the term, Contractor shall have the sole and exclusive rights to pick up Soft Recyclables in the Service Area through municipal contracted pick up. Contractor shall collect all acceptable set-outs of Soft Recyclables set-out for recycling and collection by Residential Customers. The decision of what is an "acceptable" Soft Recyclable shall be made in the reasonable discretion of Contractor. No service is provided to Commercial Customers

Set Out Procedures. Residents shall place Soft Recyclables into Containers and place Containers at Curbside for collection. Overflow material shall be placed adjacent to the Container(s) in plastic bags or other easily handled container. Soft Recyclables shall not be set out in tied bundles. Contractor must collect all Soft Recyclables that are set out in this manner and are placed within seven (7) feet of the Curbside. Containers shall be placed in a manner that will not interfere with or endanger the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Containers shall be placed as close as practicable to an access point for the collection vehicle. Contractor may decline to collect any Soft Recyclables not set out in accordance with this paragraph.

Missed Collections and Complaints. Service Recipients shall be instructed by the City of Lancaster to report missed collections and complaints to Contractor. The Program Brochure and other program information shall include contact information for the Contractor to facilitate communication from Service Recipients. Contractor shall give prompt and courteous attention to all reported missed collections and complaints.

Public Information and Education Program. Contractor may prepare and distribute its own promotional materials subject to City of Lancaster approval. Contractor shall participate in the City of Lancaster directed promotion and education efforts as outlined below:

1. During the course of the routine recycling pick up, provide and distribute notices regarding rejected materials and proper set out procedures.
2. Training of employees to deal courteously with customers on the telephone and on-route to promote the collection service and explain proper material preparation.
3. Coordinate with the City of Lancaster for distribution of written promotional and instructional materials directly to Service Recipients.
4. Be available a minimum of two times per year to participate in promoting the collection service at an area fair, neighborhood association program, school, or community event.
5. Provide advice to the City of Lancaster on promotion and education material content and presentation.

Legal Considerations:

The City Attorney has reviewed and approved the resolution as to form.

Public Information Considerations:

This item is being considered at a regular meeting posted in accordance with the Texas Open Meetings Act.

Fiscal Impact:

In accordance to the proposed agreement, Simple Recycling shall pay to the City of Lancaster a contract fee of One Cent (\$0.01) per pound of gross receipts of Soft Recyclables in the Service Area. Payments shall be made to the City of Lancaster not less than thirty (30) days following the close of each calendar month during the term of this Agreement. Weight shall be collected and documented upon completion of each collection day. Under no circumstance will the City of Lancaster, its residents or Service Recipients incur any fees, charges or assessments to the Contractor for Contractor's delivery of services under this Agreement.

Options/Alternatives:

1. City Council may approve the resolution, as presented.
2. City Council may deny the resolution and direct staff.

Recommendation:

Staff recommends approval of the resolution as presented.

Attachments

Resolution
Exhibit "A"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AN AGREEMENT BETWEEN THE CITY OF LANCASTER AND GREAT LAKES RECYCLING INC. D/B/A SIMPLE RECYCLING TO PERMIT THE COLLECTION OF SOFT RECYCLABLE MATERIALS FROM RESIDENTIAL CUSTOMERS WITHIN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Great Lakes Recycling Inc. d/b/a Simple Recycling is in the business of and has the expertise, experience, resources and capability to perform the collecting, identifying, packaging, hauling, recycling and/or disposing of clothing, durable goods, small furniture and appliances, hereinafter referred to as "Soft Recyclables"; and

WHEREAS, the City desires to limit and restrict the quantity of Soft Recyclables that are deposited in the landfill; and

WHEREAS, the City Council has determined that it is in the best interest of the citizens and the City to enter an agreement with Great Lakes Recycling Inc. d/b/a Simple Recycling to permit the collection of Soft Recyclable materials from residential customers within the corporate limits of the City of Lancaster, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. The agreement between the City of Lancaster and Great Lakes Recycling Inc. d/b/a Simple Recycling permitting the collection of soft recyclable materials from residential customers within the corporate limits of the City of Lancaster, Texas is hereby approved in the form which is attached hereto and incorporated herein by reference as Exhibit "A";

SECTION 2. The City Manager is authorized to execute such contract after approval by the City Attorney.

SECTION 3. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 5. This resolution shall become effective immediately upon its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of May, 2017.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

EXHIBIT A

AGREEMENT FOR COLLECTION OF SOFT RECYCLABLES

This Agreement for the Collection of Soft Recyclables (“Agreement”) is made and entered as of the Effective Date by and between the City of Lancaster, Texas, a Texas home-rule municipal corporation with an address at 211 N. Henry Street, Lancaster, Texas 75146 (herein referred to as “LANCASTER”), and Great Lakes Recycling, Inc. d/b/a Simple Recycling, an Ohio corporation with a business address at 5425 Naiman Parkway, Solon, OH 44139 (together which with its successors and assigns, herein referred to as "Contractor").

WITNESSETH:

WHEREAS, Contractor is skilled and experienced in the collection and efficient recycling and disposition of Soft Recyclables; and

WHEREAS, LANCASTER desires to limit and restrict the quantity of Soft Recyclables which are deposited in the landfill; and

WHEREAS, LANCASTER has selected Contractor to collect, identify, haul, recycle and/or dispose of Soft Recyclables in the Service Area; and

WHEREAS, Contractor can provide such services and is in the business of and has the expertise, experience, resources and capability to perform the collecting, identifying, packaging, hauling, recycling and/or disposing of clothing, durable goods, small furniture and appliances, hereinafter referred to as Soft Recyclables; and

NOW THEREFORE, in consideration of the premises and material promises set forth below and other consideration the receipt and sufficiency of which is hereby acknowledged by the parties, Contractor and LANCASTER (herein collectively called the “Parties”) hereby agree as follows:

1. Term.

A. **Initial Term.** This Agreement shall commence and become effective on the Effective Date, and, unless extended or terminated earlier in accordance with the provisions of this Agreement, shall end four (4) years after the Effective Date (the “Initial Term”).

B. **Renewals.** This Agreement may be renewed for four (4) additional periods of one (1) year each (“the Renewal Period” or collectively “the Renewal Periods”) by mutual written agreement of the Parties. LANCASTER shall provide Contractor written notice of intent to renew no later than thirty (30) days before the end of the Initial Term or the applicable Renewal Period. Notwithstanding the notice period set forth above, nothing herein shall be construed as prohibiting the Parties from mutually agreeing to an extension of this Agreement even if LANCASTER provides later notice to Contractor of the desire to renew the term for the next Renewal Period. Except where otherwise indicated, each Renewal Period shall be subject to the same provisions of this Agreement.

2. Termination and Breach.

A. **Termination.** Either party may terminate this Agreement without cause upon forty-five (45) days written notice. Should LANCASTER elect to terminate this Agreement without cause under the aforementioned provisions or if CONTRACTOR terminates this agreement for-cause, it shall not enter into any other Soft Recyclables program in the Service Area for a period of one (1) year unless undertaken with the Contractor, unless said restriction is waived in advance, in writing by the Contractor. However, should LANCASTER elect to terminate this Agreement for-cause due to an uncured breach of the Contractor, LANCASTER shall not be precluded from entering into any other agreements for the collection, identification, packaging, hauling, recycling and/or disposing of Soft Recyclables.

B. **Breach.** In the event of a breach of the terms and conditions of this Agreement by either Party hereunder, the non-breaching Party may elect to terminate this Agreement upon providing the defaulting Party with a written notice of such default, and allowing the breaching Party a period of thirty (30) days from and after the date of such notice to cure the breach complained of to the satisfaction of the non-breaching Party. In the event said breach is not cured within said thirty (30) day period, this Agreement shall be terminated (for-cause) as of the last day of said period. In the event LANCASTER is the non-defaulting party, Contractor agrees to furnish services under this Agreement until another Soft Recyclables collection and disposal contractor can be selected by LANCASTER.

3. Collection Schedule.

A. Contractor shall divide the Service Area into collection areas to coincide with LANCASTER collection dates. Collections shall be made from Service Recipients on a regular schedule on the same day every week in accordance with the existing recycling pickup schedule; however, Contractor reserves the right to alter the frequency of the scheduled pickups on an as needed basis.

B. Contractor shall not be required to perform any service under this Agreement on Holidays. Upon execution of this Agreement and every January 1st during the Term thereafter, LANCASTER shall provide Contractor with a list of all holidays observed by LANCASTER. Following all Holidays, each Service Recipient shall receive collection service on the day following its normally scheduled collection with the weeks work to be finished by Saturday. For a Monday Holiday, Monday through Friday collection shall be rescheduled for Tuesday through Saturday. For a Thursday Holiday, Thursday and Friday collection shall be rescheduled for Friday and Saturday. For a Friday Holiday, Friday collection shall be rescheduled for Saturday.

4. **Collection.** During the term, Contractor shall have the sole and exclusive rights to pick up Soft Recyclables in the Service Area through municipal contracted pick up. Contractor shall collect all acceptable set-outs of Soft Recyclables set-out for recycling and collection by Residential Customers. The decision of what is an "acceptable" Soft Recyclable shall be made in the reasonable discretion of Contractor. No service is provided to Commercial Customers and in

no event shall Contractor be required to accept any Excluded Items (excluded items include, but are not limited to the following items: garbage, hazardous waste, carpet, newspapers, mattresses, large furniture, large appliances, yard waste). Contractor must collect all Soft Recyclables set out in the Recycling Container. Contractor shall *not* be responsible for collecting Soft Recyclables which have fallen or been placed Curbside but are not in a Container. Contractor agrees to operate collection vehicles in such a manner to prevent materials from being blown from the vehicle. If at any time during collection and transport, Soft Recyclables are spilled onto a street, sidewalk, or private property, Contractor shall clean up and place in the collection vehicle all Soft Recyclables before the vehicle proceeds to the next stop on the collection route or shall promptly make all other reasonably necessary arrangements for the immediate clean-up of spilled Soft Recyclables. Contractor agrees to remove and dispose of all Soft Recyclables at no cost to LANCASTER. Contractor may interrupt the regular schedule and quality of service because of street repairs, snow or other closures of public routes, which in Contractor's reasonable discretion make the pick-up of the Soft Recyclables from a Service Recipient impracticable under the circumstances.

5. Contamination and Improper Set Out. If Contractor encounters any improperly packaged Soft Recyclables or other contaminants in the Container, Contractor may leave those materials in the Container or remove them from the Container and leave them Curbside. Contractor must place a tag on the contaminant(s) that is not collected, collect the acceptable items, and leave contaminants at Curbside.

6. Set Out Procedures. Residents shall place Soft Recyclables into Containers and place Containers at Curbside for collection. Overflow material shall be placed adjacent to the Container(s) in plastic bags or other easily handled container. Soft Recyclables shall not be set out in tied bundles. Contractor must collect all Soft Recyclables that are set out in this manner and are placed within seven (7) feet of the Curbside. Containers shall be placed in a manner that will not interfere with or endanger the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Containers shall be placed as close as practicable to an access point for the collection vehicle. Contractor may decline to collect any Soft Recyclables not set out in accordance with this paragraph.

7. Ownership. Soft Recyclables set out for collection on the regularly scheduled collection day shall belong to Contractor from the time of its set out. Soft Recyclables physically collected by Contractor shall be deemed acceptable Soft Recyclables for the purposes of its obligations under this Agreement.

8. Inventory of Containers. During the term of this Agreement, Contractor shall purchase (at its sole cost) and maintain an inventory of acceptable and approved Containers for distribution to Service Recipients. Prior to commencement of this Agreement, Contractor shall provide new Containers to each Service Recipient. Containers shall initially be delivered to Service Recipients with an informational brochure on the recycling collection program (of Soft Recyclables) produced and printed by Contractor and approved by LANCASTER (the "Program Brochure").

9. Missed Collections and Complaints. Service Recipients shall be instructed by LANCASTER to report missed collections and complaints to Contractor. The Program Brochure and other program information shall include contact information for the Contractor to facilitate communication from Service Recipients. Contractor shall give prompt and courteous attention to all reported missed collections and complaints.

10. Contractor's Cost and Equipment. Contractor agrees to furnish all labor, equipment, tools, and services required and necessary for the collection and disposal of Soft Recyclables within the Service Area and provide qualified supervisory personnel to direct the activities of Contractor under this Agreement. All equipment used by Contractor shall be kept and maintained in a clean and professional manner.

11. Contractor's Fee. Contractor shall pay to LANCASTER a contract fee of One Cent (\$0.01) per pound of gross receipts of Soft Recyclables in the Service Area. Payments shall be made to LANCASTER not less than thirty (30) days following the close of each calendar month during the term of this Agreement. Weight shall be collected and documented upon completion of each collection day. Under no circumstance will LANCASTER, its residents or Service Recipients incur any fees, charges or assessments to the Contractor for Contractor's delivery of services under this Agreement.

12. Public Information and Education Program. LANCASTER shall plan and coordinate a public education and information program to inform Service Recipients of this recycling program the contents of which and the dates shall be approved in advance by Contractor. Contractor may prepare and distribute its own promotional materials subject to LANCASTER approval. Contractor shall participate in LANCASTER directed promotion and education efforts as outlined below:

A. During the course of the routine recycling pick up, provide and distribute notices regarding rejected materials and proper set out procedures.

B. Training of employees to deal courteously with customers on the telephone and on-route to promote the collection service and explain proper material preparation.

C. Coordinate with LANCASTER for distribution of written promotional and instructional materials directly to Service Recipients.

D. Be available a minimum of two times per year to participate in promoting the collection service at an area fair, neighborhood association program, school, or community event.

E. Provide advice to LANCASTER on promotion and education material content and presentation.

13. Telephone and Customer Service. Contractor shall maintain and adequately staff a local toll-free telephone number where complaints of Service Recipients shall be received, recorded and handled to the best of Contractor's abilities, between the hours of 9:00 AM and 4:30 PM Monday through Friday excluding Holidays. Typically, all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, Contractor shall make subsequent attempts on the next working day after the original call. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. All attempts to contact the caller shall be recorded on the log kept by Contractor.

14. Marketing and Disposition of Recyclable Material. Contractor shall be solely responsible for the marketing and sale of collected Soft Recyclables, and shall be solely responsible for the storage and disposition of the Soft Recyclables in the event it is unable to sell the Soft Recyclables in a timely manner.

15. Insurance. During the term of this Agreement Contractor agrees to keep in force, with an insurance company licensed to transact business in the state of Texas, an "occurrence

basis" insurance policy or policies indemnifying, defending and saving harmless LANCASTER from all damages (except for damages caused by LANCASTER'S own negligence, willful misconduct or failure) which may be occasioned to any person, firm, or corporation, whether damages are by reason of any willful or negligent act or acts on part of Contractor, its agents or employees, with limits no less than:

A. General Liability: One Million and no/100 Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage.

B. Vehicle Liability: Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage.

C. Worker's Compensation/Industrial Insurance: Limits as required by the State of Texas.

The general liability provisions in automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) LANCASTER, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor.
- (ii) Contractor's insurance coverage shall be primary insurance as LANCASTER, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by LANCASTER, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to LANCASTER, its officers, officials, employees, or volunteers.
- (iv) Contractor's insurance shall apply separate to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, nor reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to LANCASTER.

16. INDEMNIFICATION AND HOLD HARMLESS. EXCEPT FOR LANCASTER'S OWN NEGLIGENCE, WILLFUL MISCONDUCT OR FAILURES, CONTRACTOR SHALL SAVE, KEEP, AND HOLD HARMLESS LANCASTER, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS FROM ALL DAMAGES, COSTS, OR EXPENSES IN LAW OR EQUITY THAT MAY AT ANY TIME ARISE OR BE SET UP BECAUSE OF DAMAGES TO PROPERTY OR PERSONAL INJURY

RECEIVED BY REASON OF OR IN THE COURSE OF PERFORMING WORK WHICH MAY BE OCCASIONED BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSIONS OF CONTRACTOR, ANY OF CONTRACTOR'S EMPLOYEES, OR ANY SUBCONTRACTOR. IN THE EVENT OF LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY TO PERSONS OR DAMAGES TO PROPERTY CAUSED BY OR RESULTING FROM THE CONCURRENT NEGLIGENCE OF CONTRACTOR AND LANCASTER, ITS MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS, CONTRACTOR'S LIABILITY HEREUNDER SHALL BE ONLY TO THE EXTENT OF CONTRACTOR'S NEGLIGENCE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

17. **Taxes.** Contractor agrees to save LANCASTER harmless from any and all taxes or assessments of any kind or nature levied by any political subdivision upon Contractor by reason of services rendered for Soft Recyclables and disposal for LANCASTER.

18. **Employee Conduct.** All Contractor personnel must maintain a courteous and respectful attitude toward the public at all times. At no time must they solicit, request or receive gratuities of any kind. Contractor must direct its employees to avoid loud and/or profane language at all times during the performance of duties. Any employee of Contractor who engages in misconduct or is incompetent or negligent in the proper performance of duties or is disorderly, dishonest, intoxicated, or discourteous must be removed from service under this contract by Contractor.

19. **Monthly Reports.** Contractor shall provide monthly project status reports. These reports will be due within fifteen (15) days of the close of the month being reported. At a minimum, the reports shall include detailed data to allow analysis of collection and processing efficiencies including pounds of Soft Recyclables collected in the prior month and the payment of the required fee to LANCASTER.

20. **Inspections.** Upon reasonable advanced request, LANCASTER reserves the right to inspect the facilities, equipment and operations of Contractor to assure itself of the appearance and compliance with contractual provisions of this Agreement. Upon reasonable advance request, LANCASTER reserves the right to review the records kept on the Soft Recyclables collected under the terms of this Agreement to test and validate the weights claimed. LANCASTER agrees to notify Contractor, in writing, at least forty-eight (48) hours prior to such inspections and shall indicated the reasonable basis for requesting the inspection.

21. **Meetings and Communications.** In order to minimize problems and to provide thereafter a forum for discussing and resolving any issues that may arise, the parties agree to meet on a regular basis and to adopt communications procedures as follows:

A. **Meetings After Collection Begins.** After the Collections begin, meetings shall be held at least on a quarterly basis, unless otherwise mutually agreed to, between representatives of the parties. Such meetings shall be held for the purpose of reviewing and discussing day-to-day operations, promotion, public information and public relations.

B. Designation of Representatives. Each party shall send at least one representative to each meeting. LANCASTER shall send to each meeting at least one staff member with operation expertise. Each party shall designate one, and only one, representative as its Lead Representative. If a party sends only one representative to any meeting, that person shall be conclusively presumed to be its lead representative.

22. Compliance with Laws and Regulations. Contractor agrees that, in performance of work and services under this contract, Contractor will qualify under and comply with any and all known federal, State and local laws and regulations now in effect, or hereafter enacted during the term of this contract, which are applicable to Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

23. Severability. Should one or more of the provisions of this Agreement be held by any to court to invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect, provided that the continuation of such remaining provisions does not materially change the original intent of this Agreement.

24. Independent Contractor Status. In the performance of services pursuant to this Agreement, Contractor shall be an independent contractor and not an officer, agent, servant or employee of LANCASTER. Contractor shall have exclusive control over the details of the service and work performed and over all persons performing such service and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, Contractors and subcontractors, if any. Neither Contractor nor its officers, agents, employees or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to LANCASTER employees and Contractor expressly waives and claim it may have or acquire to such benefits.

25. No Assignment. This Agreement, or any interest herein, shall not be transferred, sold, nor assigned by either Party to any person, firm, or corporation, without the prior written consent of the other Party.

26. Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement.

27. Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

28. Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

29. Recitals. The recitals to this Agreement are incorporated herein.

30. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

31. **Definitions.**

Commercial Customer: The term "Commercial Customer" means non-residential customers, including businesses, public or private schools, institutions, governmental agencies and all other users of commercial-type Garbage collection services.

Container: The term "Container" means Contractor supplied bag, box or bin for the Residential Customer to place Soft Recyclables.

Contractor: The word "Contractor" means Great Lakes Recycling, Inc. dba Simple Recycling which has contracted with LANCASTER to collect and dispose of Soft Recyclables.

Curb or Curbside: The words "Curb" or "Curbside" relate to the homeowners' property, within five (5) feet of the Public Street or Private Road without blocking sidewalks, driveways or on-street parking. If circumstances preclude, such a Curbside shall be considered a placement suitable to the resident, convenient to Contractor's equipment, and mutually agreed to by LANCASTER and Contractor.

Effective Date: The term "Effective Date" means the date the Agreement is signed by authorized representatives of all of the Parties.

Excluded Items: The term "Excluded Items" means Garbage, Hazardous Waste, large furniture, large appliances such as refrigerators, stoves, washers and dryers, magazines, newspapers, car seats, cribs, mattresses, paint, tires, cleaners, etc. and any item heavier than fifty (50) pounds.

Garbage: The term "Garbage" means all putrescible and non-putrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, grass, yard debris, leaves, swill, demolition and construction wastes, dead animals piles of debris, car parts, construction or demolition debris, any item that would be considered Hazardous Waste, or stumps.

Hazardous Waste: The term "Hazardous Waste" means any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in any existing or future local, state or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to any substance that is defined as hazardous by 40 C.F.R. Part 261 and regulated as hazardous waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments ("HSWA") of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or any other federal statute

or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA or any Texas statute or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by federal law.

Holiday: The term “Holiday” means the following days: New Year’s Day, Martin Luther King’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day and Christmas Day and any other day observed by LANCASTER as a holiday.

Private Road: The term "Private Road" means a privately owned and maintained way that allows for access by a service truck and that serves multiple Residences.

Public Street: The term "Public Street" means a public right-of-way used for public travel, including public alleys.

Residence: The term “Residence” means a living space individually rented, leased or owned.

Residential Customer: The term “Residential Customer means individuals residing in a Residence.

Service Area: The term "Service Area" means all of LANCASTER’S curbside, residential trash and recycling collection area, as it may be amended from time to time.

Service Recipients: The term “Service Recipients” means Residential Customers in the Service Area.

Soft Recyclable: The term “Soft Recyclable” means items of an individual weight less than fifty (50) pounds and can be carried by one person. Soft Recyclables include primarily men’s, women’s and children’s clothing as well as items such as jewelry, shoes, purses, hats, toys, pictures, mirrors, blankets, drapes and curtains, pillows, rags, sewing scraps, sleeping bags, small furniture, small appliances, irons, radios and audio equipment, TVs and video equipment, cameras, lamps, hairdryers, tools, toasters, microwaves, coffee makers, computers and household or consumer electronics, silverware, dishes, pots and pans, glasses and the like.

33. Additional Services. The Contractor shall establish a drop-box for Soft Recyclables at LANCASTER’S recycling drop-off facility. The type of drop-box shall be approved by the Contractor, with the appearance subject to the mutual agreement of the Parties to this Agreement. The drop-box shall be viewed by the Contractor no less frequently than every week and shall be emptied of its contents on a schedule determined by the Contractor, but with sufficient frequency to avoid creating an unseemly appearance.

34. **Service Modifications.** To avoid confusion with the LANCASTER'S existing collector for trash and recycling, the Parties agree that the Contractor will not collect any material set outside of the Container, such as small furniture, small appliances, televisions and other items which do not fit into the Container. The Contractor and LANCASTER agree to discuss this service modification at the quarterly meetings set forth under Section 21 herein, with a goal of allowing the Contractor to collect and recycle these materials for the LANCASTER as soon as practicable.

[SIGNATURE PAGE TO FOLLOW]

SIGNED AND AGREED this ____ day of _____, 2017.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin-Jones, City Manager

SIGNED AND AGREED this ____ day of _____, 2017.

GREAT LAKES RECYCLING, INC DBA
SIMPLE RECYCLING

By: _____
Adam Winfield, President

LANCASTER CITY COUNCIL

City Council Regular Meeting

3.

Meeting Date: 05/08/2017

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community

Submitted by: Fabrice Kabona, Assistant to the City Manager

Agenda Caption:

Discuss and consider resolution supporting 85th Texas Legislature House Bill (H.B.) 1156, House Bill (H.B.) 2390, Senate Bill (S.B.) 1084, and Senate Bill (S.B.) 1090 related to animal services.

Background:

As prescribed in the City Council rules and procedures as amended September 2016, Section D. City Council Agenda Process Subsection 1.b., Deputy Mayor Pro Tem Jaglowski requested the below proposed bills currently being deliberated in the 85th Texas Legislature Session be submitted for council consideration and support. If approved by council, these proposed bills will be added to the legislative priority list established by council in December of 2016; Accordingly, staff will closely monitor the progress of said bills and mail out support letters to committee members.

H.B. 1156 (S. Davis) - Dog Restraint would (1) with certain exceptions, prohibit a dog owner from leaving the dog outside and unattended: (a) by use of a restraint, unless the owner provides the dog access to adequate shelter, a dry place to stand, shade, and potable water; and (b) by use of a restraint that is a chain, has weights attached, is not of a certain length, is not attached to a properly fitted collar or harness, or causes pain or injury to the dog; (2) provide that a violation of (1) is a class C misdemeanor, except that an offense is a class B misdemeanor if the person has previously been convicted; and (3) provide that the unlawful restraint prohibitions in (1) do not affect the applicability of any law, rule, order, or ordinance of a city or prevent a city from 105 prohibiting or further regulating by ordinance the ownership, possession, restraint, confinement, or care of a dog.

H.B. 2390 (E. Rodriguez) - Animal Shelters would provide for the medical treatment and care of animals by certain persons in animal shelter settings and releasing agencies (collectively, referred to here as shelters) and:

- A. require that, before an animal adoption becomes final, a shelter provide the proposed new owner with a written history showing if the animal has been screened or tested for diseases and conditions common to the species along with any test dates and results;
- B. allow a veterinarian acting on behalf of a shelter that has taken possession of an animal to: (a) perform sterilization of a dog or cat that shows no evidence of ownership, is surrendered by the owner, or that remains unclaimed for the designated hold period; (b) prescribe or administer a vaccine or medication; and (c) provide any other treatment the veterinarian reasonably believes will promote the health and well-being of the animal or alleviate the pain, suffering, or discomfort of the animal;
- C. allow an unlicensed employee, volunteer, or agent acting on behalf of a shelter that takes possession of an animal to provide nonsurgical care or treatment to the animal: (a) under the authorization and general supervision of a veterinarian; or (b) pursuant to a protocol approved by a veterinarian;

- D. authorize an employee, volunteer, or agent acting on behalf of a shelter that has taken possession of an animal to provide emergency veterinary care or treatment to an animal;
- E. provide that a veterinarian who provides treatment on behalf of a shelter may deliver or cause to be delivered a medication to an unlicensed employee, volunteer, or agent who may then administer the medication in accordance with the veterinarian's instructions, and that the veterinarian must comply with the State Board of Veterinary Medical Examiners recordkeeping system for controlled substances;
- F. provide that the Veterinary Licensing Act be construed in favor of veterinarians and others who are acting in good faith to save animals' lives;
- G. establish no-kill benchmarks for those shelters that declare an intent to satisfy the benchmarks in writing;
- H. except a veterinarian treating an animal on behalf of a shelter from the veterinarian client-patient relationship requirement; and
- I. provide that controlled substance records may be maintained in a daily log or in billing records and that employees, volunteers, or agents acting under the general supervision or protocol of a veterinarian may contribute to the records; and
- J. provide the disciplinary standard for those treating or caring for animals in an animal shelter setting.

S.B. 1084 is a companion bill to H.B. 2390 and proposes the same changes.

S.B. 1090 (Meyer) - Misuse of Information would (1) prohibit, with certain exceptions, a person who owns or has custody or control of a dog: (a) from leaving the dog outside and unattended by use of a restraint unless the owner provides the dog adequate shelter, a dry area, shade, and potable water; and (b) from restraining a dog outside and unattended by use of certain restraints; (2) make a knowing violation of the prohibitions in (1) a Class C misdemeanor or a Class B misdemeanor if the person has previously been convicted; and (3) provide that the provisions of the bill do not preempt a local regulation relating to the restraint of a dog or affect the authority of a city to adopt or enforce an ordinance or requirement relating to the restraint of a dog that is equal to or more stringent than its provisions.

Operational Considerations:

Staff will mail a letter to our representatives to advocate the position of the city related to House Bill (H.B.) 1156, House Bill (H.B.) 2390, Senate Bill (S.B.) 1084, and Senate Bill (S.B.) 1090.

Legal Considerations:

There are no legal requirements at this time.

Public Information Considerations:

This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. Council may approve the resolution as presented.
2. Council may reject the resolution.

Recommendation:

There is no staff recommendation as this is a Councilmember request.

Attachments

Resolution

Exhibits A, B, C, & D

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE LANCASTER, TEXAS, SUPPORTING 85TH TEXAS LEGISLATURE HOUSE BILL 1156, HOUSE BILL 2390, SENATE BILL 1084, AND SENATE BILL 1090 RELATED TO ANIMAL SERVICES; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, House Bill 1156 (H.B. 1156), the introduced version of which is attached hereto as Exhibit A and currently being deliberated in the 85th Texas Legislature, would: (1) with certain exceptions, prohibit a dog owner from leaving the dog outside and unattended: (a) by use of a restraint, unless the owner provides the dog access to adequate shelter, a dry place to stand, shade, and potable water; and (b) by use of a restraint that is a chain, has weights attached, is not of a certain length, is not attached to a properly fitted collar or harness, or causes pain or injury to the dog; (2) provide that a violation of (1) is a class C misdemeanor, except that an offense is a class B misdemeanor if the person has previously been convicted; and (3) provide that the unlawful restraint prohibitions in (1) do not affect the applicability of any law, rule, order, or ordinance of a city or prevent a city from 105 prohibiting or further regulating by ordinance the ownership, possession, restraint, confinement, or care of a dog;

WHEREAS, House Bill 2390 (H.B. 2390), the introduced version of which is attached hereto as Exhibit B and currently being deliberated in the 85th Texas Legislature, would provide for the medical treatment and care of animals by certain persons in animal shelter settings and releasing agencies (collectively, referred to here as shelters) and:

- A. require that, before an animal adoption becomes final, a shelter provide the proposed new owner with a written history showing if the animal has been screened or tested for diseases and conditions common to the species along with any test dates and results;
- B. allow a veterinarian acting on behalf of a shelter that has taken possession of an animal to: (a) perform sterilization of a dog or cat that shows no evidence of ownership, is surrendered by the owner, or that remains unclaimed for the designated hold period; (b) prescribe or administer a vaccine or medication; and (c) provide any other treatment the veterinarian reasonably believes will promote the health and well-being of the animal or alleviate the pain, suffering, or discomfort of the animal;
- C. allow an unlicensed employee, volunteer, or agent acting on behalf of a shelter that takes possession of an animal to provide nonsurgical care or treatment to the animal: (a) under the authorization and general supervision of a veterinarian; or (b) pursuant to a protocol approved by a veterinarian;
- D. authorize an employee, volunteer, or agent acting on behalf of a shelter that has taken possession of an animal to provide emergency veterinary care or treatment to an animal;
- E. provide that a veterinarian who provides treatment on behalf of a shelter may deliver or cause to be delivered a medication to an unlicensed employee, volunteer, or agent who may then administer the medication in accordance with the veterinarian's instructions, and that the veterinarian must comply with the State Board of Veterinary Medical Examiners recordkeeping system for controlled substances;
- F. provide that the Veterinary Licensing Act be construed in favor of veterinarians and others who are acting in good faith to save animals' lives;
- G. establish no-kill benchmarks for those shelters that declare an intent to satisfy the benchmarks in writing;
- H. except a veterinarian treating an animal on behalf of a shelter from the veterinarian client-patient relationship requirement; and
- I. provide that controlled substance records may be maintained in a daily log or in billing records and that employees, volunteers, or agents acting under the general supervision or protocol of a veterinarian may contribute to the records; and 10. provide the disciplinary standard for those

treating or caring for animals in an animal shelter setting.

J. provide the disciplinary standard for those treating or caring for animals in an animal shelter setting.

WHEREAS, Senate Bill 1084 (S.B. 1084), the introduced version of which is attached hereto as Exhibit C and currently being deliberated in the 85th Texas Legislature, is a companion bill to H.B. 2390 and proposes the same changes therein.

WHEREAS, Senate Bill 1090 (S.B. 1090), the engrossed version of which is attached hereto as Exhibit D and currently being deliberated in the 85th Texas Legislature, would: (1) prohibit, with certain exceptions, a person who owns or has custody or control of a dog: (a) from leaving the dog outside and unattended by use of a restraint unless the owner provides the dog adequate shelter, a dry area, shade, and potable water; and (b) from restraining a dog outside and unattended by use of certain restraints; (2) make a knowing violation of the prohibitions in (1) a Class C misdemeanor or a Class B misdemeanor if the person has previously been convicted; and (3) provide that the provisions of the bill do not preempt a local regulation relating to the restraint of a dog or affect the authority of a city to adopt or enforce an ordinance or requirement relating to the restraint of a dog that is equal to or more stringent than its provisions.

WHEREAS, the City Council of the City of Lancaster, Texas, believes that the changes proposed in H.B. 1156, H.B. 2390, S.B. 1084, and S.B. 1090 will benefit animal services provided by and in the City of Lancaster, Texas and will benefit the health, safety, and welfare of the animals and citizens of the City of Lancaster.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. The City Council of the City of Lancaster, Texas, supports H.B. 1156, H.B. 2390, S.B. 1084, and S.B. 1090, which are all being currently deliberated by the 85th Texas Legislature, said bills being attached hereto and incorporated herein as Exhibits A, B, C, and D.

SECTION 2. This support for H.B. 1156, H.B. 2390, S.B. 1084, and S.B. 1090 and any similar legislation be communicated to members of the Texas Legislature and the Texas Governor’s office.

SECTION 3. This Resolution shall become effective from and after its date of passage in accordance with law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of May, 2017.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit A

85th Texas Legislature, House Bill 1156

A BILL TO BE ENTITLED

AN ACT

relating to the unlawful restraint of a dog; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 821, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. UNLAWFUL RESTRAINT OF DOG

Sec. 821.101. DEFINITIONS. In this subchapter:

(1) "Adequate shelter" means a clean and sturdy structure that:

(A) allows the dog protection from rain, hail, sleet, snow, and subfreezing temperatures; and

(B) is large enough to allow the dog to stand erect, sit, turn around, and lie down in a normal manner.

(2) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(3) "Harness" means any harness constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(4) "Owner" means a person who owns or has custody or control of a dog.

(5) "Properly fitted" means, with respect to a collar or harness used for a dog, a collar or harness that:

(A) is the appropriate size for the dog based on the dog's size and body weight;

(B) does not choke the dog or impede the dog's normal breathing or swallowing; and

(C) is attached to the dog in a manner that does not allow for escape and does not cause pain or injury to the dog.

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

Sec. 821.102. UNLAWFUL RESTRAINT OF DOG. (a) An owner may not leave a dog outside and unattended by use of a restraint unless the owner provides the dog access to:

(1) adequate shelter;

(2) an area that allows the dog to avoid standing water;

(3) shade from direct sunlight; and

(4) potable water.

(b) An owner may not restrain a dog outside and unattended by use of a restraint that:

(1) is a chain;

(2) has weights attached;

(3) is shorter in length than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet;

(4) is not attached to a properly fitted collar or harness; or

(5) causes pain or injury to the dog.

Sec. 821.103. EXCEPTIONS. (a) Section 821.102 does not apply to:

(1) a dog restrained in a public camping or recreational area in compliance with the requirements of the public camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(2) a dog restrained while the owner and dog are engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

(3) a dog restrained while the owner and dog are engaged in conduct directly related to the business of shepherding or herding cattle or livestock;

(4) a dog restrained while the owner and dog are engaged in conduct directly related to the business of cultivating agricultural products; or

(5) a dog left in an open-air truck bed for no longer than necessary for the owner to complete a temporary task that required the dog to be left in the truck bed.

(b) Section 821.102(b)(3) does not apply to a restraint that is attached to a trolley system that allows a dog to move along a running line for a distance that equals or exceeds the lengths specified under that subdivision.

(c) This subchapter does not prohibit a person from walking a dog with a handheld leash.

Sec. 821.104. OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly violates this subchapter. The restraint of each dog with respect to which there is a violation is a separate offense.

(b) An offense under this subchapter is a Class C misdemeanor, except that the offense is a Class B misdemeanor if the person has previously been convicted under this subchapter.

(c) If conduct constituting an offense under this subchapter also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Sec. 821.105. EFFECT OF SUBCHAPTER ON OTHER LAW. (a) This subchapter does not affect the applicability of any law, rule, order, ordinance, or other legal requirement of this state or a political subdivision of this state.

(b) This subchapter does not prevent a municipality or county from prohibiting or further regulating by ordinance or order the ownership, possession, restraint, confinement, or care of a dog.

SECTION 2. Subchapter D, Chapter 821, Health and Safety Code, is repealed.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for

that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2017.

Exhibit B

85th Texas Legislature, House Bill 2390

A BILL TO BE ENTITLED

AN ACT

relating to the medical treatment and care of animals by certain persons in animal shelters and releasing agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sec. 823.001, Health and Safety Code, is amended by adding a new subsection as follows:

(5-a) "Releasing agency" has the meaning assigned by Section 828.001, Health and Safety Code.

SECTION 2. Sec. 823.003, Health and Safety Code, is amended by adding a new subsection as follows:

(e-1) Before an animal adoption becomes final, an animal shelter or releasing agency must provide the proposed new owner with a written history that shows if the animal has been screened or tested for diseases and conditions that are common to that species. If the animal has been tested, the written history should include the dates and results of each test.

(e-2) The State Board of Veterinary Medical Examiners shall promulgate forms that an animal shelter or releasing agency may use to comply with subsection (e-1). An animal shelter or releasing agency may use an alternative form, so long as it complies with subsection (e-1).

(e-3) Nothing in this section requires an animal shelter or releasing agency to provide certain screens or tests.

SECTION 3. Chapter 823, Health and Safety Code, is amended by adding Section 823.004 to read as follows:

Sec. 823.004. TREATMENT OF ANIMALS ON BEHALF OF ANIMAL SHELTERS AND RELEASING AGENCIES. (a) Notwithstanding any other law, once an animal shelter or releasing agency takes possession of an animal:

(1) A veterinarian acting on behalf of the animal shelter or releasing agency may:

a. Perform a surgical or nonsurgical sterilization of:

i. A dog or cat that shows no evidence of ownership; or

ii. A dog or cat that is surrendered by its owner or whose owner

has not claimed the animal within the hold period as designed by local law;

b. Prescribe or administer a vaccine or medication for or to the animal; and

c. Provide any other treatment that the veterinarian reasonably believes will promote the health and wellbeing of the animal or to alleviate the pain, suffering, or discomfort of the animal;

(2) An unlicensed employee, volunteer, or agent acting on behalf of the animal shelter or releasing agency may provide nonsurgical veterinary care or treatment to the animal:

a. Under the authorization and general supervision of a veterinarian; or

b. Pursuant to a protocol approved by a veterinarian; and

(3) Any employee, volunteer, or agent acting on behalf of the animal shelter or releasing agency may provide emergency veterinary care or treatment to the animal.

(b) Notwithstanding any other law, a veterinarian who provides treatment on behalf of an animal shelter or releasing agency may deliver or cause to be delivered a medication to an unlicensed employee, volunteer, or agent of an animal shelter or releasing agency. The unlicensed employee, volunteer, or agent may then administer the medication in keeping with the veterinarian's instructions. A veterinarian who delivers or causes to be delivered a controlled substance under this section must comply with Section 801.359, Occupations Code.

SECTION 4. Subchapter A, Chapter 801, Occupations Code, is amended by adding Section 801.0011 to read as follows:

Sec. 801.0011. POLICY; CONSTRUCTION. (a) The Legislature hereby finds that the public's attitude towards animal shelters and releasing agencies has shifted since this chapter was first enacted. As a result of this shift, many animal shelters and releasing agencies now seek to save the life of as many stray, homeless, abandoned, or unwanted animals as possible. The Legislature intends to promote this practice.

(b) This chapter should be construed in favor of licensed veterinarians and unlicensed persons who care for stray, homeless, abandoned, or unwanted animals that would be killed but for their care so

long as they are acting with a good faith intent to save animals' lives and with reasonable consideration of animals' pain.

SECTION 5. Sec. 801.002, Occupations Code, is amended by adding subsections (0), (5-a), and (5-b) to read as follows:

(0) "Animal shelter" has the meaning assigned by Section 823.001, Health and Safety Code;

(5-a) "Releasing agency" has the meaning assigned by Section 828.001, Health and Safety Code;

(5-b) "Safety net shelter" means an animal shelter that:

(A) Accepts animals without regard to their breed or size;

(B) Attempts to rehome or provide hospice care to all of the animals it receives;

and

(C) During its latest full calendar year, satisfied the no-kill benchmarks in Section 801.0021.

SECTION 6. Subchapter A, Chapter 801, Occupations Code, is amended by adding Section 801.0021 to read as follows:

Sec. 801.0021. NO-KILL BENCHMARKS. (a) To satisfy the no-kill benchmarks, an animal shelter must first declare its intent to satisfy the no-kill benchmarks in writing to the department.

(b) During the first two years after an animal shelter declares its intent under subsection (a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 30% or less of the animals it takes ownership of in a year.

(b) During the third and fourth years after an animal shelter declares its intent under subsection (a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 20% or less of the animals it takes ownership of in a year.

(c) Beginning on the four-year anniversary of the date the animal shelter declared its intent under subsection(a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 15% or less of the animals it takes ownership of in a year.

SECTION 7. Sec. 801.004, Occupations Code, is amended to read as follows:

Sec. 801.004. APPLICATION OF CHAPTER. (a)Except as provided by Section 801.4021, this chapter does not apply to:

(1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;

(2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:

(A) castrating a male animal raised for human consumption;

(B) docking or earmarking an animal raised for human consumption;

(C) dehorning cattle;

(D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;

(E) treating an animal for disease prevention with a nonprescription medicine or vaccine;

(F) branding or identifying an animal in any manner;

(G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

(H) shoeing a horse;

(3) the performance of a cosmetic or production technique to reduce injury in poultry intended for human consumption;

(4) the performance of a duty by a veterinarian's employee if:

(A) the duty involves food production animals;

(B) the duty does not involve diagnosis, prescription, or surgery;

(C) the employee is under the direction and general supervision of the veterinarian; and

(D) the veterinarian is responsible for the employee's performance;

(5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine if the act is performed under the direct supervision of a veterinarian;

(6) an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training in accordance with Chapter 829, Health and Safety Code;

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program;

(8) a person who, without expectation of compensation, provides emergency care in an emergency or disaster; or

(9) a consultation given to a veterinarian in this state by a person who:

(A) resides in another state; and

(B) is lawfully qualified to practice veterinary medicine under the laws of that state.

SECTION 8. Section 801.351, Occupations Code, is amended by adding a new subsection as follows:

(d) This section does not apply to a person who provides treatment on behalf of an animal shelter or releasing agency.

SECTION 9. Section 801.359, Occupations Code, is amended as follows:

Sec. 801.359. [~~CONTROLLED SUBSTANCES RECORDS~~] RECORDKEEPING REQUIREMENTS. (a) The board shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.

(b) The records required to be maintained under subsection (a) are subject to review by a law enforcement agency or board representative.

(c) The records required to be maintained under subsection (a) may be maintained in a daily log, or in billing records, provided that the treatment information that is entered is adequate to substantiate the identification of the animals treated and the medical care provided. Animal shelter or releasing agency employees, volunteers, or agents who are not veterinarians but who act under the general supervision or protocol of a veterinarian may contribute to the records.

SECTION 10. Sec. 801.402, Occupations Code, is amended to read as follows:

Sec. 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. Except as provided by Section 801.4021, a person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

(1) presents to the board dishonest or fraudulent evidence of the person's qualifications;

(2) commits fraud or deception in the examination process or to obtain a license;

(3) is chronically or habitually intoxicated, chemically dependent, or addicted to drugs;

(4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;

(5) is convicted of a felony under the laws of this state, another state, or the United States;

(6) engages in practices or conduct that violates the board's rules of professional conduct;

(7) permits another to use the person's license to practice veterinary medicine or to practice equine dentistry in this state;

(8) fraudulently issues a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine or the practice of equine dentistry that relates to the presence or absence of animal disease;

(9) issues a false certificate relating to the sale for human consumption of inedible animal products;

(10) commits fraud in connection with the application or reporting of a test of animal disease;

(11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary or equine dental services or goods;

(12) performs or prescribes unnecessary or unauthorized treatment;

(13) orders a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;

(14) refuses to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;

(15) fails to keep the person's equipment and business premises in a sanitary condition;

(16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or the practice of equine dentistry;

(17) is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction;

(18) is convicted for an offense under Section 42.09, 42.091, or 42.092, Penal Code;

(19) represents the person as a veterinarian without a license issued under this chapter;

(20) practices veterinary medicine or assists in the practice of veterinary medicine without a license issued under this chapter; or

(21) violates Section 801.353 or a rule adopted by the board related to confidentiality.

SECTION 11. Subchapter I, Chapter 801, Occupations Code, is amended by adding Section 801.4021 to read as follows:

Sec. 801.4021. DISCIPLINE FOR TREATMENT OR CARE PERFORMED ON BEHALF OF AN ANIMAL SHELTER OR RELEASING AGENCY. (a) Notwithstanding any other law, the board may not deny a license or take disciplinary action against an unlicensed person for providing treatment or care in accordance with Section 823.004, Health and Safety Code.

(b) The board may not deny a license or take disciplinary action against a veterinarian for providing treatment or care to an animal on behalf of an animal shelter or releasing agency unless the veterinarian acted without regard for the animal's health or safety or intended to cause the animal pain.

(c) It is an affirmative defense to an action under subsection (b) that the veterinarian:

(i) provided the treatment or care in question on behalf of a safety net shelter;

(ii) had a reasonable belief that the treatment or care provided would enable the animal to survive an illness or injury; and

(iii) gave reasonable consideration to the animal's pain.

(d) In making a determination under subsection (b) or (c), the board

(i) may not rely solely on:

(A) allegations made by a person who lacks personal knowledge of the underlying events; or

(B) the fact that the treatment or care provided is new, innovative, low-cost, or results in the animal's death; and

(ii) shall consider:

(A) the policy statement in Section 801.0011;

(B) the veterinarian's intent; and

(C) the size, sophistication, and fiscal constraints of the animal shelter or releasing agency.

(e) Notwithstanding any other law, a veterinarian or unlicensed person working on behalf of an animal shelter or releasing agency is not liable for a violation of this chapter or any applicable rules unless the violation is committed by:

(i) the veterinarian or unlicensed person; or

(ii) a person under the direct or immediate supervision of the veterinarian or unlicensed person.

SECTION 12. Section 801.410, Occupations Code, is amended to read as follows:

Sec. 801.410. VENUE AND STANDARD OF REVIEW FOR APPEALS. An appeal of an action of the board must be filed in a district court in Travis County and is reviewed by trial de novo.

SECTION 13. This Act takes effect September 1, 2017.

Exhibit C

85th Texas Legislature, Senate Bill 1084

A BILL TO BE ENTITLED

AN ACT

relating to the medical treatment and care of animals by certain persons in animal shelters and releasing agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sec. 823.001, Health and Safety Code, is amended by adding a new subsection as follows:

(5-a) "Releasing agency" has the meaning assigned by Section 828.001, Health and Safety Code.

SECTION 2. Sec. 823.003, Health and Safety Code, is amended by adding a new subsection as follows:

(e-1) Before an animal adoption becomes final, an animal shelter or releasing agency must provide the proposed new owner with a written history that shows if the animal has been screened or tested for diseases and conditions that are common to that species. If the animal has been tested, the written history should include the dates and results of each test.

(e-2) The State Board of Veterinary Medical Examiners shall promulgate forms that an animal shelter or releasing agency may use to comply with subsection (e-1). An animal shelter or releasing agency may use an alternative form, so long as it complies with subsection (e-1).

(e-3) Nothing in this section requires an animal shelter or releasing agency to provide certain screens or tests.

SECTION 3. Chapter 823, Health and Safety Code, is amended by adding Section 823.004 to read as follows:

Sec. 823.004. TREATMENT OF ANIMALS ON BEHALF OF ANIMAL SHELTERS AND RELEASING AGENCIES. (a) Notwithstanding any other law, once an animal shelter or releasing agency takes possession of an animal:

(1) A veterinarian acting on behalf of the animal shelter or releasing agency may:

a. Perform a surgical or nonsurgical sterilization of:

i. A dog or cat that shows no evidence of ownership; or

ii. A dog or cat that is surrendered by its owner or whose owner

has not claimed the animal within the hold period as designed by local law;

b. Prescribe or administer a vaccine or medication for or to the animal; and

c. Provide any other treatment that the veterinarian reasonably believes will promote the health and wellbeing of the animal or to alleviate the pain, suffering, or discomfort of the animal;

(2) An unlicensed employee, volunteer, or agent acting on behalf of the animal shelter or releasing agency may provide nonsurgical veterinary care or treatment to the animal:

a. Under the authorization and general supervision of a veterinarian; or

b. Pursuant to a protocol approved by a veterinarian; and

(3) Any employee, volunteer, or agent acting on behalf of the animal shelter or releasing agency may provide emergency veterinary care or treatment to the animal.

(b) Notwithstanding any other law, a veterinarian who provides treatment on behalf of an animal shelter or releasing agency may deliver or cause to be delivered a medication to an unlicensed employee, volunteer, or agent of an animal shelter or releasing agency. The unlicensed employee, volunteer, or agent may then administer the medication in keeping with the veterinarian's instructions. A veterinarian who delivers or causes to be delivered a controlled substance under this section must comply with Section 801.359, Occupations Code.

SECTION 4. Subchapter A, Chapter 801, Occupations Code, is amended by adding Section 801.0011 to read as follows:

Sec. 801.0011. POLICY; CONSTRUCTION. (a) The Legislature hereby finds that the public's attitude towards animal shelters and releasing agencies has shifted since this chapter was first enacted. As a result of this shift, many animal shelters and releasing agencies now seek to save the life of as many stray, homeless, abandoned, or unwanted animals as possible. The Legislature intends to promote this practice.

(b) This chapter should be construed in favor of licensed veterinarians and unlicensed persons who care for stray, homeless, abandoned, or unwanted animals that would be killed but for their care so long as they are acting with a good faith intent to save animals' lives and with reasonable consideration of animals' pain.

SECTION 5. Sec. 801.002, Occupations Code, is amended by adding subsections (0), (5-a), and (5-b) to read as follows:

(0) "Animal shelter" has the meaning assigned by Section 823.001, Health and Safety

Code;

(5-a) "Releasing agency" has the meaning assigned by Section 828.001, Health and

Safety Code;

(5-b) "Safety net shelter" means an animal shelter that:

(A) Accepts animals without regard to their breed or size;

(B) Attempts to rehome or provide hospice care to all of the animals it receives;

and

(C) During its latest full calendar year, satisfied the no-kill benchmarks in

Section 801.0021.

SECTION 6. Subchapter A, Chapter 801, Occupations Code, is amended by adding Section 801.0021 to read as follows:

Sec. 801.0021. NO-KILL BENCHMARKS. (a) To satisfy the no-kill benchmarks, an animal shelter must first declare its intent to satisfy the no-kill benchmarks in writing to the department.

(b) During the first two years after an animal shelter declares its intent under subsection (a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 30% or less of the animals it takes ownership of in a year.

(b) During the third and fourth years after an animal shelter declares its intent under subsection (a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 20% or less of the animals it takes ownership of in a year.

(c) Beginning on the four-year anniversary of the date the animal shelter declared its intent under subsection(a), an animal shelter satisfies the no-kill benchmarks if it euthanizes 15% or less of the animals it takes ownership of in a year.

SECTION 7. Sec. 801.004, Occupations Code, is amended to read as follows:

Sec. 801.004. APPLICATION OF CHAPTER. (a)Except as provided by Section 801.4021, this chapter does not apply to:

(1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;

(2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:

(A) castrating a male animal raised for human consumption;

(B) docking or earmarking an animal raised for human consumption;

(C) dehorning cattle;

(D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;

(E) treating an animal for disease prevention with a nonprescription medicine or vaccine;

(F) branding or identifying an animal in any manner;

(G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

(H) shoeing a horse;

(3) the performance of a cosmetic or production technique to reduce injury in poultry intended for human consumption;

(4) the performance of a duty by a veterinarian's employee if:

(A) the duty involves food production animals;

(B) the duty does not involve diagnosis, prescription, or surgery;

(C) the employee is under the direction and general supervision of the veterinarian; and

(D) the veterinarian is responsible for the employee's performance;

(5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine if the act is performed under the direct supervision of a veterinarian;

(6) an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training in accordance with Chapter 829, Health and Safety Code;

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program;

(8) a person who, without expectation of compensation, provides emergency care in an emergency or disaster; or

(9) a consultation given to a veterinarian in this state by a person who:

(A) resides in another state; and

(B) is lawfully qualified to practice veterinary medicine under the laws of that state.

SECTION 8. Section 801.351, Occupations Code, is amended by adding a new subsection as follows:

(d) This section does not apply to a person who provides treatment on behalf of an animal shelter or releasing agency.

SECTION 9. Section 801.359, Occupations Code, is amended as follows:

Sec. 801.359. ~~[CONTROLLED SUBSTANCES RECORDS]~~ RECORDKEEPING REQUIREMENTS. (a) The board shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.

(b) The records required to be maintained under subsection (a) are subject to review by a law enforcement agency or board representative.

(c) The records required to be maintained under subsection (a) may be maintained in a daily log, or in billing records, provided that the treatment information that is entered is adequate to substantiate the identification of the animals treated and the medical care provided. Animal shelter or releasing agency employees, volunteers, or agents who are not veterinarians but who act under the general supervision or protocol of a veterinarian may contribute to the records.

SECTION 10. Sec. 801.402, Occupations Code, is amended to read as follows:

Sec. 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. Except as provided by Section 801.4021, a person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:

(1) presents to the board dishonest or fraudulent evidence of the person's qualifications;

(2) commits fraud or deception in the examination process or to obtain a license;

(3) is chronically or habitually intoxicated, chemically dependent, or addicted to drugs;

(4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;

(5) is convicted of a felony under the laws of this state, another state, or the United States;

(6) engages in practices or conduct that violates the board's rules of professional conduct;

(7) permits another to use the person's license to practice veterinary medicine or to practice equine dentistry in this state;

(8) fraudulently issues a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine or the practice of equine dentistry that relates to the presence or absence of animal disease;

(9) issues a false certificate relating to the sale for human consumption of inedible animal products;

(10) commits fraud in connection with the application or reporting of a test of animal disease;

(11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary or equine dental services or goods;

(12) performs or prescribes unnecessary or unauthorized treatment;

(13) orders a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;

(14) refuses to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;

(15) fails to keep the person's equipment and business premises in a sanitary condition;

(16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or the practice of equine dentistry;

(17) is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction;

(18) is convicted for an offense under Section 42.09, 42.091, or 42.092, Penal Code;

(19) represents the person as a veterinarian without a license issued under this chapter;

(20) practices veterinary medicine or assists in the practice of veterinary medicine without a license issued under this chapter; or

(21) violates Section 801.353 or a rule adopted by the board related to confidentiality.

SECTION 11. Subchapter I, Chapter 801, Occupations Code, is amended by adding Section 801.4021 to read as follows:

Sec. 801.4021. DISCIPLINE FOR TREATMENT OR CARE PERFORMED ON BEHALF OF AN ANIMAL SHELTER OR RELEASING AGENCY. (a) Notwithstanding any other law, the board may not deny a license or take disciplinary action against an unlicensed person for providing treatment or care in accordance with Section 823.004, Health and Safety Code.

(b) The board may not deny a license or take disciplinary action against a veterinarian for providing treatment or care to an animal on behalf of an animal shelter or releasing agency unless the veterinarian acted without regard for the animal's health or safety or intended to cause the animal pain.

(c) It is an affirmative defense to an action under subsection (b) that the veterinarian:

(i) provided the treatment or care in question on behalf of a safety net shelter;

(ii) had a reasonable belief that the treatment or care provided would enable the animal to survive an illness or injury; and

(iii) gave reasonable consideration to the animal's pain.

(d) In making a determination under subsection (b) or (c), the board

(i) may not rely solely on:

(A) allegations made by a person who lacks personal knowledge of the underlying events; or

(B) the fact that the treatment or care provided is new, innovative, low-cost, or results in the animal's death; and

(ii) shall consider:

(A) the policy statement in Section 801.0011;

(B) the veterinarian's intent; and

(C) the size, sophistication, and fiscal constraints of the animal shelter or releasing agency.

(e) Notwithstanding any other law, a veterinarian or unlicensed person working on behalf of an animal shelter or releasing agency is not liable for a violation of this chapter or any applicable rules unless the violation is committed by:

(i) the veterinarian or unlicensed person; or

(ii) a person under the direct or immediate supervision of the veterinarian or unlicensed person.

SECTION 12. Section 801.410, Occupations Code, is amended to read as follows:

Sec. 801.410. VENUE AND STANDARD OF REVIEW FOR APPEALS. An appeal of an action of the board must be filed in a district court in Travis County and is reviewed by trial de novo.

SECTION 13. This Act takes effect September 1, 2017.

Exhibit D

85th Texas Legislature, Senate Bill 1090

A BILL TO BE ENTITLED

AN ACT

relating to the unlawful restraint of a dog; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 821, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. UNLAWFUL RESTRAINT OF DOG

Sec. 821.101. DEFINITIONS. In this subchapter:

(1) "Adequate shelter" means a clean and sturdy structure that:

(A) allows the dog protection from rain, hail, sleet, snow, and subfreezing temperatures; and

(B) is large enough to allow the dog to stand erect, sit, turn around, and lie down in a normal manner.

(2) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(3) "Harness" means any harness constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(4) "Owner" means a person who owns or has custody or control of a dog.

(5) "Properly fitted" means, with respect to a collar or harness used for a dog, a collar or harness that:

(A) is the appropriate size for the dog based on the dog's size and body weight;

(B) does not choke the dog or impede the dog's normal breathing or swallowing; and

(C) is attached to the dog in a manner that does not allow for escape and does not cause pain or injury to the dog.

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

Sec. 821.102. UNLAWFUL RESTRAINT OF DOG. (a) An owner may not leave a dog outside and unattended by use of a restraint unless the owner provides the dog access to:

(1) adequate shelter;

(2) an area that allows the dog to avoid standing water;

(3) shade from direct sunlight; and

(4) potable water.

(b) An owner may not restrain a dog outside and unattended by use of a restraint that:

(1) is a chain;

(2) has weights attached;

(3) is shorter in length than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet;

(4) is not attached to a properly fitted collar or harness; or

(5) causes pain or injury to the dog.

Sec. 821.103. EXCEPTIONS. (a) Section 821.102 does not apply to:

(1) a dog restrained in a public camping or recreational area in compliance with the requirements of the public camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(2) a dog restrained while the owner and dog are engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

(3) a dog restrained while the owner and dog are engaged in conduct directly related to the business of shepherding or herding cattle or livestock;

(4) a dog restrained while the owner and dog are engaged in conduct directly related to the business of cultivating agricultural products; or

(5) a dog left in an open-air truck bed for no longer than necessary for the owner to complete a temporary task that required the dog to be left in the truck bed.

(b) Section 821.102(b)(3) does not apply to a restraint that is attached to a trolley system that allows a dog to move along a running line for a distance that equals or exceeds the lengths specified under that subdivision.

(c) This subchapter does not prohibit a person from walking a dog with a handheld leash.

Sec. 821.104. OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly violates this subchapter. The restraint of each dog with respect to which there is a violation is a separate offense.

(b) An offense under this subchapter is a Class C misdemeanor, except that the offense is a Class B misdemeanor if the person has previously been convicted under this subchapter.

(c) If conduct constituting an offense under this subchapter also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Sec. 821.105. EFFECT OF SUBCHAPTER ON OTHER LAW. This subchapter does not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter.

SECTION 2. Subchapter D, Chapter 821, Health and Safety Code, is repealed.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by

the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2017.

LANCASTER CITY COUNCIL

City Council Regular Meeting

4.

Meeting Date: 05/08/2017

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

The City Council shall convene into closed executive session pursuant to Section §551.074 (a)(1) of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, to wit: interview candidates for the position of City Attorney.

Background:

Executive Session matters.

LANCASTER CITY COUNCIL

City Council Regular Meeting

5.

Meeting Date: 05/08/2017

Policy Statement: This request supports the City Council 2015-2016 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

Background:

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.