

ORDINANCE NO. 2019-029

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 5, "ANIMALS," SECTIONS 5-1, "PURPOSE," 5-2, "DEFINITIONS," 5-7, "PROHIBITION OF CRUELTY TO ANIMALS," AND AMENDING SECTION 5-8, "WILD ANIMALS," TO AMEND THE TITLE TO READ "WILD ANIMALS, WATERFOWL, AND RELATED NUISANCES," AND TO ACCOUNT FOR ADDITIONAL PROVISIONS PERTAINING TO NUISANCE WILDLIFE, SPECIFICALLY TO PROHIBIT THE KEEPING OR FEEDING OF WILDLIFE AND WATERFOWL, IDENTIFY NUISANCE CONDITIONS, PROVIDE FOR ENFORCEMENT AND PRESUMPTION OF VIOLATIONS, TRESPASS AND PENALTIES FOR VIOLATION, AND UPDATE RELATED DEFINITIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coconut Creek has determined that the feeding or keeping of wildlife and waterfowl within the City constitutes a health and safety hazard for City residents, business owners, domesticated animals (pets), and existing native wildlife populations and can create a nuisance and hazard to the health, safety, and welfare of the community; and

WHEREAS, while an individual animal or group of animals may create a nuisance, the City is mindful that the law does not assign the label of nuisance wildlife to an entire species, nor does the Florida Fish and Wildlife Conservation Commission ("FWC") compile an exhaustive list of possible suspects, thus the City must assess the situation on a case-by-case basis; and

WHEREAS, the FWC has created a baseline for identifying nuisance wildlife within Rule 68A-9.010, of the Florida Administrative Code (F.A.C.), that generally provides that nuisance wildlife refers to an animal or animals that exhibits behavior that causes (or is about to cause) property damage, presents a threat to public safety, or causes an annoyance within, under, or upon a building; and

WHEREAS, it is widely accepted that feeding wildlife can create unintended consequences, leading to the creation of a public nuisance; and

WHEREAS, to that end, it is illegal in the state of Florida to feed certain species, such as bears, coyotes, foxes, raccoons, pelicans, alligators, crocodiles, sandhill cranes, and wild monkeys; and

WHEREAS, FWC advocates that some negative effects of feeding wildlife include reducing the wild animal's fear of humans which can result in aggressive behavior toward humans, and unnatural proliferation of the species that causes overcrowding and the potential to spread disease; and

WHEREAS, currently, the City faces an issue with nuisance wildlife, specifically non-native waterfowl congregating within and damaging property located in the City's Sabal Pines Park, and finds that people feeding the wildlife is not only creating and exacerbating a public nuisance, but is also detrimental to the health, socialization, and life of the waterfowl, as it:

- habituates the animals to humans, encouraging them to associate with humans without regard to the intent of the human;
- inhibits the development of essential survival skills;
- provides unhealthy diets, which can lead to physical deformities;
- promotes unnatural congregation and clustering supporting the unnatural spread of disease due to the increased numbers and close proximity of the waterfowl; and

WHEREAS, as recent experience dictates, feeding nuisance wildlife anywhere in the City, but particularly within close proximity to parks, playgrounds, and athletic fields, leads to heavy quantities of excrement deposited on sidewalks, children's play areas, and athletic fields, creating unsafe footing for pedestrians and unsanitary conditions for children, athletes and pets; and

WHEREAS, the City Commission is charged with protecting the health, safety, and welfare of its residents, and visitors to the City and believes this ordinance to be in the best interest of the residents and visitors.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

Section 2: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 5, “Animals,” Sections 5-1, “Purpose,” 5-2, “Definitions,” 5-7, “Prohibition of cruelty to animals,” and 5-8, “Wild animals,” to read as follows:

Chapter 5 - ANIMALS

Sec. 5-1. - Purpose.

The purpose of this chapter is to control the keeping and feeding of domestic and agricultural animals so as to prevent the creation of nuisances, ~~and to~~ protect the animals from harm and cruelty, and address issues created by the presence of wild animals within the City’s boundaries.

Sec. 5-2. - Definitions.

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

Agricultural or farm animals means those animals such as horses, cattle, pigs, sheep, goats and fowl that are kept by an owner within those areas zoned agricultural for the purposes of raising, breeding or selling them for profit or that are kept within those residential districts permitting such animals.

At large means off the premises of the owner and not under the control, custody, charge or possession of the owner, or some other responsible person.

Domestic animal means those animals normally kept as household pets within a residence such as dogs, cats, rabbits, guinea pigs, hamsters, parrots, parakeets or turtles.

Feed or feeding means the placing, exposing, depositing, distributing, or scattering, directly or indirectly of shelled, shucked, or un-shucked corn, wheat, meal or other grain, sorghum, alfalfa, bread, salt, food, garbage, food scraps, fruits, nuts, honey, vegetables, or any other food or animal byproducts, or nutritive substances, in any manner or form, so as to constitute a lure, attraction, or enticement to, on, or over any such area where such feed items have been placed, exposed, deposited, distributed, or scattered, out of doors, or inside any structure, whether in a container or otherwise, where such substance is accessible to or used by any animal.

Keep or keeping means the act of sheltering, holding in confinement, offering refuge or protection, or feeding in such a manner as to establish regular congregation, travel or visitation patterns.

Kennel means an establishment for the breeding, boarding or selling of cats and dogs or any place where four (4) or more dogs or cats, or any combination, over four (4) months of age are kept unless such kennel is maintained in compliance with applicable zoning and licensing requirements of this Code.

Owner means any person owning, boarding, harboring, keeping or controlling an animal within the city.

Tether shall mean the restraining of an animal by the tying to any object or structure, including, without limitation, a house, tree, fence, post, garage, weight or shed, by any means, including, without limitation, a chain, rope, cord, leash or running line, but shall not include the use of a leash used to walk the animal or to forms of restraint used in the transportation of animal.

Waterfowl means a water bird, particularly swimming birds including but not limited to swans, geese, ducks, anhinga, and cormorants.

Wild animal or wildlife means any non-domesticated animal whether native or non-native, protected or non-protected, or any non-human primate, raccoon, feral cat, skunk, fox, ferret, poisonous snake, leopard, panther, tiger, lion, lynx or any bird, amphibian, fish, invertebrate, mammal or reptile so classified by the Florida Fish and Wildlife Conservation Commission or such successor agency.

Sec. 5-7. - Prohibition of cruelty to animals.

- (c) It shall be unlawful for any person within the city to shoot, ~~trap~~ or in any manner kill, wound or maim any bird of any kind, to throw at any birds any type of projectile, or to disturb ~~their eggs or their young or their nests~~ unless explicitly granted a permit from the Florida Fish and Wildlife Conversation Commission, or its agents, to conduct such activity. To the extent permitted by law, ~~t~~The city or its designee shall be exempt from this provision when it is managing wildlife or waterfowl, necessary for the health, safety and welfare of the residents or for the protection of ~~wild birds and fowl to remove or destroy eggs, nests, or the birds themselves.~~

Sec. 5-8. – Wild animals, Waterfowl, and Related Nuisances.

(a) Prohibitions.

- (1) No person shall keep or feed any wild animal or waterfowl within the city limits without first obtaining a permit from the Florida Fish and Wildlife Conservation Commission, or its agents, unless within specifically designated wildlife sanctuaries, when applicable. Actions which fall within the purview of this section but do not require a permit from Florida Fish and Wildlife Conservation Commission, are hereby prohibited.
- (2) No person shall keep or feed any animal, wildlife or waterfowl within the city limits, with or without a permit, in such a manner as to create a nuisance. The City Manager, or designee, shall determine a nuisance exists when the animal, wildlife or waterfowl:
 - a. causes or is about to cause property damage;
 - b. presents a threat to public safety;
 - c. causes an annoyance within, under, or upon a building; or
 - d. as identified by the Florida Fish and Wildlife Conservation Commission, or its agents, or Florida law.
- (3) No person shall release any wild animal or waterfowl upon city property owned or leased by the City.

~~(c) Any person cited for a violation of this section shall be charged with a fine in the amount of five hundred dollars (\$500.00) per animal per violation. If a violation is deemed irreparable or irreversible in nature by order of the special magistrate, same shall be subject to a fine not to exceed five thousand dollars (\$5,000.00) per violation.~~

~~(d) Any person who willfully refuses to sign and accept a citation issued by a law enforcement officer or code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided by F.S. §§ 775.082 and/or 775.083, as amended from time to time.~~

(b) Enforcement.

- (1) In addition to standard enforcement procedures pursuant to the City's Code, an investigation of an alleged violation of this section shall commence upon the receipt of:
 - a. one (1) sworn affidavit of complaint signed by one (1) City employee other than a Code Enforcement Officer (including but not limited to a utility worker or park ranger); or
 - b. two (2) sworn affidavits of complaint signed by two (2) unrelated residents living in separate dwellings in the close vicinity of the alleged violation.
- (2) The affidavit(s) shall specify a description of the violation, the address or location of the alleged violation, the nature, time and date(s) of the act, the name and address of the person alleged to have committed the violation, if known, and a description of the animal(s), if known.

- (3) Upon receipt of the required affidavits, enforcement procedures pursuant to section 2-230, "Enforcement Procedure", of this Code may be instituted against the individual alleged to have acted in violation of this section.
- (4) Evidence of two (2) or more of the following shall create a rebuttable presumption that a violation of this section has occurred:
- a. Affidavit(s) pursuant to paragraph (b)(1) above;
 - b. Evidence of feeding such as food debris, seed hulls, shells or other food or food container remains is found at the location of the alleged violation;
 - c. Wildlife or waterfowl are seen congregating more than three (3) times in any given five (5) day period on a property, including waterward of a waterfront property within the area lying between the side property lines if they were extended to the water's edge; or
 - d. Wild animal or waterfowl excrement is found in large quantities within a concentrated area indicative of multiple wild animals congregating in a single area more than three (3) times in any given five (5) day period, on any given property, including waterward of a waterfront property within the area lying between the side property lines if they were extended to the water's edge.
- (5) Penalty. In addition to the trespass penalties provided in paragraph (c), below, any person found guilty for a violation of this section shall be charged with a fine in the amount of one hundred dollars (\$100.00) per incident. A second violation shall be charged with a fine in the amount of two hundred fifty dollars (\$250.00) per incident. Third and subsequent violations shall be charged with a fine in the amount of five hundred dollars (\$500.00) per incident. If any given violation is deemed irreparable or irreversible in nature by order of the Special Magistrate, same shall be subject to a fine not to exceed five thousand dollars (\$5,000.00) per incident. For purposes of continuing violations of this section, each day that a violation exists shall constitute a separate violation

(c) Trespass Authority.

- 1) Property in lawful possession of the City. The City hereby authorizes any on-duty City employee who personally observes an individual keeping or feeding nuisance wildlife or waterfowl, or releasing any wildlife or waterfowl upon City-owned or leased property, to communicate by verbal warning to the individual that he/she must cease and desist that activity and must not remain upon City-owned or leased property. If after receiving the verbal warning, the individual remains on City-owned or leased property (even if the individual has ceased his/her prohibited activity), the individual is subject to arrest for the criminal offense of trespass pursuant to section 810.09, Fla. Stat., as may be amended from time to time.
- 2) Authorized persons to warn of trespass on private property within the City. An owner of private property located within the City, his or her agent, or a community association authorized as an agent for the owner, may give written authorization to the Coconut Creek Police Department to communicate a verbal order to an individual observed violating this Section upon private property to

immediately leave the private property or be subject to arrest for the criminal offense of trespass pursuant to section 810.09, Fla. Stat., as may be amended from time to time.

- 3) Effect of Trespass Warning. Once an individual is given a verbal warning not to remain on the particular property as provided herein, that individual must leave the premises immediately and must not return to that property, for any reason, for a period not less than forty-eight (48) hours, rounded to a full day's use of the property, or be subject to arrest for trespassing upon the property without authorization, license, or invitation to be there. The City will maintain a list of individuals so warned, the location of the warning, and the timeframe within which such individuals are trespassed.

(d) Nothing contained in this section shall prevent the enforcement actions authorized by the City's Code independent of this section.

Section 3: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 5: Codification. That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 8TH DAY OF AUGUST, 2019.

PASSED SECOND READING THIS 12TH DAY OF SEPTEMBER, 2019.

Sandra L. Welch, Mayor

Attest:

Leslie Wallace May, City Clerk

	<u>1st</u>	<u>2nd</u>
Welch	<u>Aye</u>	<u>Aye</u>
Sarbone	<u>Aye</u>	<u>Absent</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Belvedere	<u>Absent</u>	<u>Aye</u>
Rydell	<u>Aye</u>	<u>Aye</u>

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Keeping or Feeding Wildlife 7.20.19.docx
EML/KMM
7/21/19

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A line of *** indicates existing text not shown.