

ORDINANCE 24-22

AN ORDINANCE AMENDING CHAPTER 4 OF THE ROSWELL CITY CODE

WHEREAS, Chapter 4 of the Roswell City Code regulates animals and fowl within the City limits; and

WHEREAS, The City Council wishes to update and reorganize Chapter 4 of the Roswell City Code in order to promote clarity and improve implementation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 4 –Chapter 4 of the Roswell City Code is amended and shall provide as follows:

Chapter 4 ANIMALS

ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

(a) Except as otherwise provided, the following definitions shall apply to this entire chapter:

Abandonment means leaving an animal for which the individual is the responsible party for more than 24 hours without providing appropriate and adequate food, water and/or shelter during the responsible party's absence. Abandonment shall include willfully leaving unattended an animal for which the party is responsible on or in any street, road, highway, or public place, or on private property of another without that property owner's permission.

Altered means to have an animal rendered incapable of reproduction through either surgical or chemical means.

Animal means any member of the Animal Kingdom excluding humans.

Animal services officer or *ACO* means any person authorized by the city to enforce this chapter and other applicable animal services laws, orders, and regulations.

Animal services facility means premises designated by the city for the purpose of impounding and caring for animals coming into the city's custody.

Animal services means the animal services department of the City of Roswell.

Breeding means allowing, either intentionally or unintentionally, a dog, cat, or other domesticated animal to produce offspring.

Cat means *Felis Catus*

District health officer means the district personnel having jurisdiction within the local health office of the State of New Mexico.

Dog means *Canis lupus familiaris*

Domesticated means an animal that has been tamed to serve as a domesticated animal to humans, a work animal for humans, or for human consumption.

Ear-tip removing approximately a quarter-inch off the tip of the cat's ear in a straight line cut, the universal sign of a sterilized, unowned cat. If these requirements are met, the ear-tipped cat is exempt from licensing, certain stray and at-large provisions of this chapter and may be exempt from other provisions directed toward owned animals.

Exotic animal means any animal that is not native to New Mexico or not typically identified as a domestic pet.

Foster means to keep and care for any domesticated animal, under the supervision of an animal rescue organization, for a period of 6 months or less and without taking ownership of the animal, with the purpose of locating a permanent home for the animal.

Guard dog means a dog trained to attack on command or to protect persons or property and who will cease to attack upon command.

Harbor means to allow, either intentionally or unintentionally, any stray domesticated animal to linger on or about one's premises, for three consecutive days or more, by feeding or sheltering such domesticated animal without making all effective provisions for such domesticated animals required by this chapter. Any person harboring a domesticated animal shall be treated as its responsible party and subject to the applicable provisions of this chapter.

Impoundment means the taking into custody and commitment by an animal services officer or peace officer of any animal to the animal services facility or other appropriate facility, including a kennel, shelter, veterinary hospital, lot, premise, or building maintained, contracted or utilized by the city for the care and custody of animals.

Livestock means all animals that have been domesticated for cultivation and/or domesticated animals that are used for human consumption and includes horses, asses, mules, cattle, bison, buffalo, beefalo, camelids, ostriches, emus, rheas, sheep, goats, swine, peafowl, poultry, farmed cervidae, and bees, but excludes cats and dogs.

Microchipped means to have implanted in a dog or cat a working identification microchip which stores a unique identification number corresponding to the responsible party's contact information for the microchipped animal and which is registered with animal services or an approved third party. The microchip must be compatible with an ISO/Universal Scanner.

Neglect means failure by the responsible party to provide a domesticated animal in his or her possession with all necessities, including appropriate and adequate food, water, shelter, and veterinary care.

Poultry means domesticated chickens, ducks, quail, and turkeys.

Premises means a single contiguous parcel of real property located within the city and owned by one or more individuals.

Quarantine means the strict isolation of a potential rabies suspect domesticated animal for a ten-day observation period at a place and in a manner designated by the animal services officer and approved by a district health office.

Responsible party means any party having ownership, possession, care or custody of a domesticated animal.

Run at large means a domesticated animal that is free of physical restraint beyond the premises of the responsible party, except as specifically permitted in this chapter.

Sexual abuse of animals means intentionally engaging in sexual intercourse, cunnilingus, fellatio, or anal intercourse with an animal or the causing of penetration, to any extent and with any object, of the genital or anal openings of an animal, whether or not there is any emission.

Tether means any chain, rope, leash, tie out, cable, or wire attached to an animal and is also attached to a stationary or non-stationary object as a means of restraint.

Dwelling unit means an individual apartment unit, townhouse, condominium or other dwelling structure.

Stray means any domesticated animal, livestock or poultry running at large.

Vicious dog means any dog that constitutes a physical threat to persons or to other domesticated animals by causing serious injury, meaning any physical injury, that does not rise to the level of great bodily harm, that results in broken bones or lacerations that require medical attention involving multiple sutures or comparable methods for wound closure or cosmetic surgery.

Vermin means any wild animal injurious to humans or domesticated animals or to personal or real property, not otherwise protected under New Mexico or United State law.

Wild animal means any animal under the jurisdiction of the New Mexico Department of Game and Fish.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-2. Animal services facility.

The city manager is authorized to establish an animal services facility on behalf of the city, to be operated by animal services by and through its animal services officers, who shall have the authority to enforce the provisions of this chapter, or the city manager may, subject to the approval of the governing body, contract with a public or private person or organization for operation of the animal services facility for and on behalf of the city.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-3. Enforcement.

- (a) Violation of any section of this chapter shall constitute a petty misdemeanor.
- (b) It shall be unlawful for any person to interfere with, hinder, molest or obstruct any animal services officer or peace officer in the discharge of official duties under this chapter.
- (c) An animal services officer or peace officer is authorized to pursue vicious dogs, domesticated animals or livestock running at large or any animal exhibiting symptoms of rabies.
- (d) Upon determination that any animal has been kept, maintained or harbored in violation of any provision of this chapter, an animal services officer may determine the responsible party or parties for such animals and cite such persons for the violations and institute appropriate proceedings in a court of competent jurisdiction on behalf of the city.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-4. Records.

Animal services shall maintain, or cause to be maintained, accurate records of all dogs and cats registered and all permits issued hereunder, and shall further maintain records of the disposition, release, return or redemption of any animal impounded by the city, reflecting a general description of the animal, the date of redemption, the name and address of the person to whom released, the microchip number and fees paid.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-5. Cruelty to animals.

- (a) It shall be unlawful to commit cruelty to any animal, consisting, without limitation, of:
- (1) Negligently mistreating, injuring, killing without lawful justification or tormenting an animal, including:
 - a. Neglecting or abandoning a domesticated animal by the responsible party;
 - b. Driving or working any animal beyond its physical capacity or working any animal that is unfit for the labor;
 - c. Hobbling livestock or other animals by any means which may cause injury or damage to the animal;
 - d. Making accessible to any animal a substance which has been treated or prepared with harmful or poisonous material which may harm or kill an animal;
 - e. Placing or confining an animal or allowing an animal to be placed or confined or to remain in or upon a motor vehicle under such conditions or for such period of time as may endanger the health or well-being of the animal due to heat/cold, lack of food or drink, or other circumstances as may reasonably be expected to cause suffering, disability or death;
 - (2) Sexually abusing an animal;
 - (3) Setting a steel leg-hold trap in order to trap an animal; or
 - (4) As elsewhere provided for in this chapter.
- (b) As used in this section, "lawful justification" means:
- (1) Humanely destroying a sick or injured animal; or
 - (2) Protecting a person or domesticated animal from death or injury due to an attack by another animal.
- (c) Nothing herein shall prohibit:
- (1) Any animal services officer from using a tranquilizer gun, snare, or trap to humanely capture domesticated animals as reasonably necessary for the services of such animal;
 - (2) Destroying a vicious or rabid dog as otherwise permitted hereunder; or

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- (3) The eradication by an individual of vermin which present a danger to the health and safety of any human or animal or to personal or real property.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-6. Unlawful retention of stray animals.

It shall be unlawful for any individual to keep, harbor, hold or retain possession of any stray domesticated animal for more than 24 hours without notifying the responsible party, if known, or otherwise reporting the animal to animal services.

- (1) The report shall contain the person's name and address, a true and complete statement of the circumstances under which the animal was obtained, and the precise location where the animal is confined or located. Should the animal be returned to the responsible party, animal services will be contacted to close out the report.
- (2) If the responsible party does not come forward within four days, the person in custody of the animal may take ownership of said animal, subject to any and all requirements of keeping such animal provided for by this chapter.
- (3) Prior to taking ownership of the animal as provided for herein above, no person having a stray animal in his or her possession shall refuse to immediately surrender the animal to an animal services officer or to the responsible party upon request.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-7. General care and maintenance requirements.

The responsible party for a domesticated animal shall provide such care as to maintain the good health and well-being of the animal and in particular, shall provide:

- (1) Adequate amounts, and with adequate frequency, of fresh potable water and food sufficient and appropriate for the species, life stage, and medical condition of the animal;
- (2) An enclosure of species appropriate size maintained free of garbage, feces, and other debris, as well as insect infestations, including ant-hills, wasp nests, flea, tick and maggot infestations, that might endanger the animal's health or safety, and which is sufficiently enclosed to protect the animal from predators;
- (3) Adequate shelter consisting of a structurally sound, species appropriate, weatherproof housing or enclosure with elevated flooring and proper ventilation, with at least three walls and a roof to protect from injury, rain, sleet, snow, hail, and direct sunlight, and large enough to accommodate the animal comfortably;
- (4) In winter months, clean species appropriate bedding or safe heating device to ensure warmth;
- (5) Adequate shade from direct sunlight in addition to the shelter referenced above; and
- (6) Professional veterinary care and necessary grooming as to maintain the animal's good health and protection from extreme weather elements and parasites.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-8. Abandoned domesticated animals.

- (a) It shall be unlawful for the responsible party to abandon a domesticated animal.
- (b) Whenever an animal services officer finds that any domesticated animal in or upon any premises has been abandoned, the ACO may enter onto the premises where said animal is located and impound the domesticated animal for its safety and welfare, provided that if the animal is not in immediate distress and the abandonment of the animal is not clear to the ACO, the officer will leave a notice giving the owner of the premises 24 hours to respond before taking the animal into protective custody.
- (c) If a domesticated animal is to be left at a premises by the responsible party but with adequate provision for its welfare during the absence, the responsible party may contact animal services ensure an abandonment notice is not placed. The responsible party may call and leave their information and the information of the caretakers so that calling parties will be informed that an animal that appears to be abandoned is not. This service by animal services is free of charge to anyone within the city limits.
- (d) It shall constitute abandonment for any responsible party to fail to reclaim or to otherwise leave a domesticated animal impounded by animal services at the animal services or other facility, without providing either notification of intent to reclaim the animal or a release of ownership of the animal in writing and payment of any and all applicable fees, except where animal services or a court determines that return of the animal is not permitted. In addition, failure to reclaim a domesticated animal by the responsible party after providing notification of intent to reclaim shall further constitute abandonment.
- (e) Animal services may, but under no circumstances is required to, accept domesticated animals dropped off at the animal services facility or provide for pickup of a live domesticated animal in the possession of the responsible party within the city as its capabilities and space may permit, for a fee. In the event that the animal services accepts a domesticated animal under this section, the responsible party shall provide a release of ownership of the animal in writing.
- (f) Leaving or suffering an animal to remain in or upon a motor vehicle unattended for any length of time under such conditions sufficient to constitute a danger to the health and safety of the animal shall constitute abandonment. An animal services officer or peace officer who finds an animal who appears to be in distress in or upon a motor vehicle may enter the motor vehicle if necessary to remove the animal and impound the said animal. An officer may use reasonable force to enter a locked and unattended vehicle in order to prevent death or serious injury to any animal left unattended in a vehicle. The impounding officer shall make reasonable efforts to notify the responsible party of the impoundment, including by leaving written notice of the impoundment in a prominent place upon the vehicle.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-9. Unsecured animals in vehicles.

- (a) In order to ensure the health, safety and welfare of the pedestrian public, any animal in or upon a motor vehicle shall be secured so as to prevent it from protruding beyond the confines of the vehicle or interfering with the operation of the vehicle by the driver, whether the vehicle is moving or parked.

(b) No animal shall be left unattended or permitted to ride or remain unrestrained in the bed of any truck, whether regular or flatbed.

(1) For purposes of this subsection, an animal shall be deemed restrained if it secured to the bed such that it is prevented from protruding beyond the side or edge of the bed.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-10. Exotic and wild animals.

(a) It shall be unlawful to own, harbor, maintain, breed, sell or distribute any wild or exotic animal in the city unless such animal is allowed to be sold in the pet trade in the state. Notwithstanding the foregoing, no person shall be permitted to keep, breed, or deal in any wild or exotic animal identified as a high incident rabies carrier by the state's department of health. Anyone maintaining, breeding or dealing in exotic or wild animals under this section shall be properly licensed, as appropriate, to do so by the U.S. Fish and Wildlife Services and New Mexico State Game and Fish Department, and shall otherwise comply with all local, state and federal regulations applicable to such animals.

(b) Every person keeping, breeding or dealing in wild or exotic animals hereunder shall submit a health certificate from a veterinarian to animal services within 14 working days from acquisition of the animal. The health certificate must certify that the animal is in good health and has been vaccinated as appropriate for the species.

(c) Any wild or exotic animal found to be in violation of this section, or maintained in such a manner as to constitute a public nuisance, may be impounded as provided for elsewhere herein.

(d) Notwithstanding the above, zoological parks, veterinary hospitals, humane societies, shelters, research facilities and educational and scientific facilities are excluded from the provisions of this section, provided that the excluded facilities use protective devices adequate to prevent the exotic and wild animals from escaping or injuring the public or constituting a public nuisance.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-11. Disposition of dead animals.

Except in the case of animals suspected of rabies, which is provided for elsewhere herein, animal services may, upon request of the responsible party, provide for disposition of a dead animal in the possession of such responsible party within the city limits, as its capabilities may permit, for a fee. Whenever animal services is unable to provide for the disposition of a dead animal, the responsible party for the animal shall do so in the manner directed by animal services. Every animal shall be disposed of within 24 hours after its death. It shall be unlawful for the responsible party to permit a dead animal to remain on his or her premises for more than 12 hours.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-12. Running at large.

It is unlawful for the responsible party to intentionally or negligently permit or suffer any domesticated animal to run at large within the city.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-13. Public nuisances.

- (a) It shall be unlawful for the responsible party to keep, maintain or otherwise harbor any animal in a manner constituting a public nuisance, which shall consist of any of the following:
- (1) The keeping, maintaining or harboring of any animals classified as livestock or as wild or exotic animals, except as otherwise permitted in this chapter;
 - (2) Permitting or causing significant damage or destruction by domesticated animal of public property, or of private property when the property rights of a large segment of the neighboring community are affected thereby, whether such public or private property is real, personal, or mixed;
 - (3) Permitting or causing barking, howling, whining, mewling or other domesticated animal noises to the extent that the public peace and quiet is ~~regularly~~ or continuously disturbed; This provision shall not apply to public Zoos and approved and properly zoned animal shelters;
 - (4) Permitting, creating or maintaining unsanitary conditions due to animal excrement, diseased animals or the bodies of dead animals, which conditions affect the public health and welfare;
 - (5) Depositing or leaving animal feces on public property or on the property of another;
 - (6) Failing to confine any animal in estrus;
 - (7) Keeping, maintaining or harboring any domesticated animal which has not been inoculated against rabies or for which an appropriate license has not been acquired pursuant to the provisions of this chapter;
 - (8) Maintaining a commercial kennel in a residentially zoned area, unless properly permitted; or
 - (9) Breeding and/or selling animals in a residentially zoned area, unless properly permitted.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-14. Fines.

- (a) The following offenses shall be subject to the penalties set forth herein:
- (1) Running at large:
 - a. First offense: No less than \$50.00

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- b. Second offense (in calendar year): No less than \$75.00
 - c. Third offense (in calendar year): No less than \$150.00
 - (2) Cruelty:
 - a. No less than \$500.00
 - (3) Abandonment:
 - a. First offense: No less than \$125.00
 - b. Second offense: No less than \$25.00
 - c. Third offense: No less than \$425.00
 - (4) Public nuisance:
 - a. First offense: No less than \$100.00
 - b. Second offense (in calendar year): No less than \$200.00
 - c. Third offense (in calendar year): No less than \$300.00
 - (5) Vicious dog: No less than \$100.00 and no more than \$500.00
 - (6) Care and maintenance:
 - a. First offense: No less than \$75.00
 - b. Second offense (in calendar year): No less than \$125.00
 - c. Third offense (in calendar year): No less than \$225.00
 - (7) Failure to Chip and register \$50.00
 - (8) Unvaccinated animal \$50.00
 - (9) Advertising or selling without a permit:
 - a. First offense: \$300.00
 - b. Second offense (in calendar year): \$400.00
 - c. Third offense (in calendar year): \$500.00
 - (10) Keeping more than five animals without a permit:
 - a. First offense: No less than \$50.00
 - b. Second offense (in calendar year): No less than \$100.00
 - c. Third offense (in calendar year): No less than \$150.00
 - (11) Unlawful tethering:
 - a. First offense: No less than \$100.00
 - b. Second offense: No less than \$250.00
 - c. Third offense: No less than \$500.00

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- (b) In addition to fines, any person convicted of abandonment shall be prohibited from animal ownership within the City limits for 5 years.
 - (c) Unless otherwise stated in this subsection, the maximum allowable penalty for violation of any provision of this chapter shall be up to 90 days incarceration and/or a \$500.00 fine.

(Ord. No. 20-01 , § 1, 1-9-2020)

Secs. 4-15—4-30. Reserved.

ARTICLE II. LIVESTOCK

Sec. 4-31. Keeping prohibited in residential areas.

Except as otherwise provided for herein, it shall be unlawful to keep, maintain, breed, sell or harbor any livestock in any area of the city zoned as residential. Nothing in this article shall be construed to abrogate or otherwise affect any contractual limitations on the keeping of livestock within city limits, including, without limitation, any restrictions found in restrictive covenants, homeowners' association agreements or regulations, or other obligations running with the land.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-32. Leading and driving of livestock.

It shall be unlawful for any person to ride, drive or lead any livestock through or over any street or alley in the city without having such animal under complete services and securely fastened with a rope or halter. If any person shall ride, drive or lead any such animal as aforesaid without having the animal securely fastened or if any such animal while being so ridden, driven or lead shall break any tree or shrub or go upon or injure the property of another or shall injure any person, the person so riding, driving, or leading such animal shall be guilty of a violation of this section, and the responsible party for such animal shall be liable to the person injured or to the owner of the property injured for all such damages.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-33. Rabbits.

Up to Three (3) domesticated rabbits of the same sex may be kept on any premises within areas zoned R-1, R-2, R-3, provided they are permanently housed in one or more cages or secure enclosures that prevent their escape and are not permitted to run at large upon the responsible party's premises or anywhere else in the city. Such cages and secure enclosures shall comply with the general care and maintenance requirements of this chapter, shall be located ten feet from the nearest property line, and shall further conform to zoning and building requirements. Nothing in this provision shall be construed to permit the keeping of wild rabbits, including, without limitation, cottontail rabbits or jackrabbits.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-34. Poultry.

Female poultry only may be kept in residentially zoned areas of the City upon the following conditions, in addition to the general care and maintenance requirements of this chapter:

- (1) The maximum number of female poultry that may be kept on any individual premises is as follows:
 - a. Up to six chickens, four ducks, six quail, or four turkeys, or any combination thereof, not to exceed 6 in total, for premises less than 0.4 acres;
 - b. Up to ten for premises between 0.4 and one acres;
 - c. Up to 25 per acre for premises greater than one acre;
- (2) All poultry kept hereunder shall be permanently housed in one or more cages or secure enclosures that prevent their escape and shall not be permitted to run at large upon the responsible party's premises or anywhere else in the city;
- (3) Cages or secure enclosures shall be located ten feet from the nearest property line as well as any other structure, and must also conform to zoning and building requirements; and
- (4) Cages or secure enclosures shall further allow for species specific behaviors including but not limited to roosting, scratching, dusting, and nesting, and in particular roosting areas shall provide no less than two square feet per bird.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-35. Pigeons.

Nothing in this chapter shall be construed as prohibiting the keeping within any part of the city of homing pigeons, defined as Antwerp messenger or homing pigeons, also commonly called "carrier pigeons," subject to the following conditions, in addition to the general care and maintenance requirements of this chapter:

- (1) No more than 40 homing pigeons shall be kept at any premises;
- (2) Every pigeon so kept shall bear upon a leg a seamless band or ring with the name or initials of the responsible party or with an identification or registration number stamped thereon;
- (3) Pigeons kept hereunder shall at all times be kept confined in proper cages or lofts except when released for necessary exercise and training under restraint and services of the responsible party and shall not be permitted to alight upon buildings and property of others; and
- (4) Cages or lofts for homing pigeons shall be located at least ten feet from the nearest property line and shall be in conformity with applicable zoning and building requirements.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-36. Vietnamese pigs.

One Vietnamese pig, also known as an Asian potbellied pig, weighing less than 100 pounds, may be kept per premises or dwelling unit in the city, subject to the general care and maintenance requirements of this chapter. In addition, the responsible party shall obtain a permit from animal services for any such pig kept in the city. Prior to issuance of the permit, the responsible party shall furnish registration papers, an annual certificate of health (indicating the absence of pseudorabies, brucellosis, and leptospirosis), and proof of current inoculation against leptospirosis and rabies for the animal.

(Ord. No. 20-01 , § 1, 1-9-2020)

Secs. 4-37—4-50. Reserved.***ARTICLE III. DOGS AND CATS*****Sec. 4-51. Keeping of dogs and cats.**

- (a) Up to five (5) dogs or cats, or any combination thereof, may be kept on any premises or in any dwelling unit within the city, subject to the following conditions, in addition to the care and maintenance requirements of this chapter:
 - (1) Each domesticated animal kept hereunder shall be inoculated against rabies by a veterinarian by the age of three months old and the responsible party shall maintain evidence thereof;
 - i. Dogs shall also be inoculated against parvovirus, distemper, and hepatitis.
 - ii. Cats shall also be inoculated against feline rhinotracheitis, feline calicivirus, and feline panleukopenia.
 - (2) Except in the case of appropriately permitted breeders, each domesticated animal kept shall be altered prior to six months of age, subject to other provisions set forth herein; unless a veterinary appointment for sterilization cannot be obtained before the animal reaches 6 months of age. The responsible party shall have the animal sterilized as soon as a veterinary appointment for sterilization can be arranged.
 - (3) Animals deemed not medically fit for sterilization or vaccination shall be exempt with written documentation from a licensed veterinarian.
 - (4) Each domesticated animal shall be microchipped, and properly registered with the Animal Services or a third party approved by the Animal Services.
- (b) Every responsible party shall comply with the above requirements for the keeping of dogs and cats within 30 days of acquiring the animal or bring such animal into the city.
- (c) Nothing hereunder shall permit the keeping or harboring of coyotes, wolves, or other wild canids, nor of any type of wild feline, nor of any hybrid of a domesticated and wild dog or cat, any and all of which shall be deemed for purposes of this chapter as wild animals.
- (d) Provided that nothing in this sub-section permits breeding of an animal without the appropriate permit, any cat or dog kept hereunder may be exempted from the requirement of

being altered and the responsible party for the animal shall not be required to obtain a breeder's permit to keep the animal if:

- (1) It is certified in writing by a veterinarian that the procedure would constitute a danger to the health and wellbeing of the animal;
- (2) The dog is registered as purebred by the United Kennel Club or the American Kennel Club, and such paperwork has been provided to animal services;
- (3) The responsible party has applied, paid for and obtained an alteration exemption from animal services.
 - a. Alteration exemptions may be granted at the discretion of animal services based upon a showing of necessity and shall be revoked upon a determination that the responsible party has bred the animal without obtaining a litter or breeder's permit or has permitted the animal to run at large.
- (e) It is unlawful to keep, maintain or harbor more than five (5) dogs or cats, or any combination thereof, without first obtaining an applicable permit from animal services.
- (f) Non-residents who keep dogs or cats within the city limits for less than 90 days shall not be required to obtain a microchip or register the animal with animal services, but in no circumstances shall any individual bring into the city any unvaccinated or unaltered dog or cat, unless otherwise permitted specifically herein.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-52. Additional care and maintenance requirements.

(a) A person owning or having charge, custody, care, or control over an animal, must keep the animal upon his or her own premises within a secure enclosed area containing a fence or wall surrounding the perimeter of the property, an enclosure that meets the standards found in subsection (b), or by keeping the animal inside a house. The fence or wall must be of sufficient strength, height and size to accommodate the animal and prevent escape.

- (1) It shall be illegal to tether an animal to any stationary or non-stationary object, including but not limited to a dog house, tree, fence, or tire, for the purpose of containment.
 - a. An animal shall not be considered enclosed by a fence or restrained when and if the animal can pass through, under or over the fence, or the gate of the fence is not securely latched.
 - b. A dog that can snap or bite a person through a fence shall not be considered enclosed by the fence or restrained.
 - c. Tethering may be permitted with a written opinion of a New Mexico licensed veterinarian that finds that such condition humane.
- (2) Tethering shall not include using a leash or lead to walk an animal. A dog is permitted on the street and in other public places only if on a secure leash not exceeding six feet in length. Fixed point tethering of any animal to stationary objects is permitted in limited circumstances such as lawful animal events, veterinary treatment, grooming, training, law enforcement activity, or gatherings in a park. A dog may be tethered when it is in visual

range of the owner or custodian, and the owner or custodian is located outside with the tethered animal.

- (3) Any tether used to temporarily confine an animal while attended by its owner or custodian as provided above, must be attached to a properly fitted collar or harness and shall not be wrapped directly around the dog's neck. Choke or prong type collars shall not be used while such animal is tethered. Such tethers shall not be excessively heavy or weighted so as to inhibit the dog's movement.
 - (4) Where an officer authorized to enforce this section observes a dog being kept on a tether in violation of this section, the officer may notify the owner of the violation in person or by means of a notice placed at the entry to the property. If the owner does not comply with this section within seven 7 days of issuance of this notice, the dog may be impounded and the owner shall be fined as set forth in Section 4-14.
- (b) The area provided for dogs and cats kept under this article, whether in secure runs, kennels or security perimeter fence must be as follows:
- (1) Eighty square feet of area shall be provided per each dog weighing less than 30 pounds;
 - (2) One hundred square feet of area shall be provided per each dog weighing between 30 and 59 pounds;
 - (3) One hundred twenty square feet of area shall be provided per each dog weighing over 60 pounds;
 - (4) Twenty-five square feet of area shall be provided per each cat, excluding the area occupied by the litter box.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-53. Dogs and cats running at large.

- (a) A dog shall be deemed to be running at large if:
 - (1) The dog is not in the immediate services of the responsible party and restrained by a leash; or
 - (2) The dog is unrestrained on the responsible party's premises, where the premises is not fenced in a manner to prevent the dog from escaping said premises.
- (b) The foregoing notwithstanding, a dog which is released and kept within the confines of a dog park designated by animal services shall not be deemed to run at large.
- (c) Cats otherwise complying with the requirements of this chapter, including the requirements of alteration, registration, microchipping, and inoculation, may be permitted to roam beyond the responsible party's premises, and shall not be deemed to run at large or be abandoned or neglected, so long as the responsible party maintains the health, nutrition and welfare of the cat and the cat does not constitute a nuisance to the surrounding property owners or community.

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- (d) Nothing in this chapter shall prohibit animal services from instituting a "neuter/spay and release" program for stray cats and any cat roaming free pursuant to such a program shall not be deemed to run at large or be abandoned, so long as they are microchipped, ear-tipped or bear other indication of participation in such program.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-54. Vicious dogs.

- (a) It shall be unlawful for any person to keep, maintain or harbor a vicious dog, where the individual knows or has reason to know that the animal is vicious.
- (b) Every animal services officer or peace officer shall impound any dog which he or she reasonably determines to be vicious. In the event that such officer reasonably determines that the vicious dog cannot be safely apprehended and constitutes an immediate danger to any person or domesticated animal, the officer is authorized to destroy such dog immediately without further notice to any responsible party.
- (c) In any case in which the court adjudicates by a preponderance of the evidence that a dog is vicious, the court shall forthwith order the destruction of such dog, regardless of whether the responsible was found guilty of knowingly keeping such animal, subject to any applicable right of appeal. Under no circumstances shall a dog determined to be vicious be returned to the responsible party or adopted by any individual.
- (d) No dog shall be determined to be vicious where:
- (1) The dog was used by a law enforcement official for legitimate law enforcement purposes;
 - (2) The threat, injury or damage was sustained by a person or domestic animal who was:
 - a. Trespassing upon premises occupied by the owner or the dog;
 - b. Provoking, tormenting, abusing or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or
 - c. Committing or attempting to commit a crime; or
 - (3) The dog was:
 - a. Responding to pain or injury;
 - b. Protecting itself or its offspring; or
 - c. Protecting or defending a human being or domestic animal from attack or assault.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-55. Guard dogs.

Premises with guard dogs shall be posted with warning signs that are at least 12 inches long on each side. The warning signs shall state "Guard Dog" and "Guardia" and shall show a picture of an "aggressive" dog. The warning signs shall be posted not more than 50 feet apart on the

exterior of the fences or walls surrounding the site and shall be posted at all exterior corners of the site and at every entrance indoor and outdoor to the site.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-56. Multiple Domesticated Animals permit.

- (a) Nothing to the contrary herein withstanding, more than five (5) dogs or cats or any combination thereof, may be kept at a premises or dwelling unit, if the person has obtained a multiple dog and cat permit domesticated from animal services. Animal services shall not issue such a permit hereunder except upon a showing that the responsible party is in compliance with all other requirements hereunder for keeping of dogs and cats. The maximum number of animals which may be permitted by a multiple dog and cat permit shall be ten domesticated animals at a given premises or a dwelling unit.
 - (1) Animal services shall retain discretion to refuse, limit or revoke any multiple Domesticated Animals-permit upon a determination that the premises or dwelling unit is not suitable, the responsible party is not able to maintain the health, safety and welfare of the animals, the domesticated animals would constitute a public nuisance or danger, or the responsible party has violated any provision of this chapter.
- (b) The following shall be exempt from the necessity of obtaining a multiple domesticated animal ~~dog and cat~~ permit and shall not be subject to the maximum animal limitation, provided they are otherwise in compliance with the requirements of this chapter and all applicable state and federal laws:
 - (1) Certified charitable animal rescue organizations operating a professional dedicated kennel facility;
 - a. Individuals fostering dogs or cats at a private residence may be exempted from obtaining a multiple dog and cat permit but shall be subject to the maximum animal limitation. Unless they are foster caring for a mother and litter.
 - (2) Sellers and breeders of cats and dogs, otherwise appropriately permitted hereunder;
 - (3) Competitive sporting events;
 - (4) Individuals or groups holding an applicable state or federally regulated permit.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-57. Breeding prohibited without a permit.

- (a) Except as otherwise provided for herein, it is unlawful to keep, maintain or harbor unaltered dogs or cats, or to breed such animals, within the city without a breeder's permit issued by animal services. Animal services may condition issuance of a breeder's permit upon membership, accreditation or other recognition of the responsible party by an appropriate nationally recognized breeder's club or organization. Animal services shall not issue such a permit hereunder except upon a showing that the responsible party is in compliance with all other requirements hereunder for keeping of dogs and cats. Every responsible party holding a breeder's permit shall be subject to inspection by animal services, upon reasonable notice.

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- (b) A responsible party who unintentionally breeds a dog or cat and who does not have a current breeder permit shall obtain a litter permit for any such resulting litter, subject to the following:
- (1) Except in the case of fosters, no person shall be issued more than one litter permit per year;
 - (2) A litter permit is valid for six months from date of issue and must be obtained no later than one week after the birth of the litter;
 - (3) An individual who fosters or takes ownership of a dog or cat which is already pregnant shall also be required to acquire a litter permit, but may be exempted from the payment of any associated fees if such individual is not otherwise responsible for the animal breeding;
 - (4) A responsible party who has obtained a litter permit shall be exempt from the requirement of a multiple dog and cat permit and the maximum animal limitation, with regard to the resulting litter, for the duration of the permit;
 - (5) The responsible party shall be permitted to sell, barter or give away the kittens or puppies of the litter covered by the permit only, without the necessity of obtaining a seller's permit, provided the applicable litter permit number is displayed legibly in all advertisements and furnished upon demand by any potential recipient.
- (c) Every holder of a breeder's or litter permit shall be responsible for registering, microchipping, inoculating, and, when age-appropriate, altering, each and every pup or kitten birthed pursuant to the permit.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-58. Sale prohibited without a permit.

- (a) It shall be unlawful to sell, offer for sale, barter, give away or otherwise dispose of a dog or cat in the city without an appropriate seller's permit issued by animal services.
 - (b) Animal services shall not issue such a permit hereunder except upon a showing that the responsible party is in compliance with all other requirements hereunder for keeping of dogs and cats and has obtained an applicable business license. Every seller's permit shall specify the location and the types of animals (dogs and/or cats) which may be sold, and the total number of inventory of such animals that may be maintained at the location at any time. Every responsible party holding a seller's permit shall be subject to inspection by animal services, upon reasonable notice.
 - (c) The permit number of the applicable seller's permit issued by animal services shall be displayed legibly on or in all advertisement and furnished to any potential recipient upon request.
 - (d) It shall be the responsibility of the transferring party to document and notify animal services of the sale, transfer or rehoming of every dog or cat, including the recipient of such animal. No one shall sell, transfer or rehome any dog or cat which is not already registered, microchipped, inoculated and, when age-appropriate, altered.
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- (e) It shall be unlawful under any circumstances to offer a dog or cat, or any other domesticated animal sold in the pet trade in the state, as a prize, gift, give-away, or award for a contest, game, sport or as an incentive to purchase merchandise.
 - (f) No dog or cat under eight weeks of age shall be sold or transferred, except with the mother, unless the mother is dead or missing.
 - (g) The following shall be exempt from the requirement of obtaining a seller's permit:
 - (1) Transfers to and by certified city-recognized charitable animal rescue organizations; and
 - (2) One-time re-homing, on a non-commercial basis, of five animals or less over the age of six months old, for no greater than \$25.00 per animal, provided that the transfer of ownership shall be registered with animal services and subject to any reasonable transfer fees imposed by animal services.

(Ord. No. 20-01 , § 1, 1-9-2020)

Secs. 4-59—4-70. Reserved.

ARTICLE IV. IMPOUNDMENT

Sec. 4-71. Impoundment authorized.

- (a) Every animal services officer or peace officer is hereby authorized to impound any animal determined by such officer to be running at large, abandoned, neglected, vicious, injured, infected by rabies or other illness, or otherwise kept, maintained or harbored in violation of this chapter.
- (b) In the event that a responsible party refuses to release any animal subject to lawful impoundment to an animal services officer or peace officer upon demand, such officer may obtain a warrant based upon probable cause from a court of competent jurisdiction specifying the animal to be seized and the location of the animal, permitting the officer to enter onto such property and impound such animal.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-72. Proceedings against responsible party.

- (a) When an animal is impounded, the apprehending officer may cite and institute proceedings in a court of competent jurisdiction, as appropriate, against the responsible party or parties for any violations of this chapter determined by the officer, as provided for elsewhere herein, in addition to impoundment of the animal.
- (b) The court shall set a hearing as soon as possible, but no later than seven days after initiation of proceedings against the responsible party, in order to determine whether the animal is to be held in impoundment pending resolution of the violation or may be released to the responsible party and shall issue an order upon completion of the hearing releasing the animal from court supervision or directing animal services to hold the animal until further order of the court. No animal shall be released pending resolution in cases alleging viciousness, neglect, abandonment or abuse.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-73. Notice to responsible party.

As soon as practical after impoundment of a domesticated animal, the animal services shall cause to be posted in a conspicuous place in the office of the animal services facility for three consecutive days a notice of impoundment, which notice shall set forth a general description of animal impounded, the location where the animal was taken, the date of impoundment, and disposition. In addition, the officer shall make reasonable efforts to determine and locate the responsible party in order to provide notice of the impoundment. Notice upon the responsible party may be made by posting a copy at the last known address of the responsible party.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-74. Reclamation.

- (a) The responsible party shall reclaim his or her animal immediately upon notice that such animal has been impounded hereunder, however, the animal shall not be returned to the responsible party where it was impounded based on viciousness, abandonment, cruelty or suspicion of rabies, or it has not been released by a court, as provided for above. Under such circumstances, animal services shall retain the animal pending further order of the court, final adjudication of the alleged violation of this chapter, or determination regarding rabies. Home impoundment is allowed in suspicion of rabies cases.
- (b) No animal found by the court by a preponderance of the evidence to be vicious, or to have been abandoned or subjected to cruelty by the responsible party shall be returned to such individual.
 - (1) The forgoing notwithstanding, a court may order return of an animal in cases involving negligence of the responsible party, but not including cases of vicious dogs, upon satisfaction by the responsible party of such requirements as the court may deem appropriate for the maintenance of the wellbeing of the animal.
- (c) Animal services shall have the right but not the obligation to alter, microchip and/or vaccinate, as appropriate, any animal before releasing it back to the responsible party and the responsible party may be required to pay all applicable fees for such services. The City Manager, Deputy City Manager, Animal Services management, or their designee can reduce and/or waive fees to increase lifesaving or to save taxpayer money.
- (d) Animal services shall hold an impounded domesticated animal for reclamation by the responsible party for four days, after which time, the animal shall be subject to adoption, transfer, return, or destruction as provided for herein below, provided however that animal services shall release the animal to the responsible party at any time such party comes forward after the reclamation period but prior to adoption or destruction, if release is otherwise permitted by this section.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-75. Adoption.

- (a) Any animal which has not been reclaimed by the responsible party within four days of its impoundment or release from court supervision may be adopted by another person or a charitable rescue organization but they must satisfy all requirements for keeping, including microchipping, altering, and inoculating the animal, as well as payment of any applicable adoption fees. The City Manager, Deputy City Manager, Animal Services management, or their designee can reduce and/or waive to increase lifesaving, or to save taxpayer money.

Animal services may, but is not required, to provide vaccination and alteration services by a licensed veterinarian at the animal services facility prior to adoption, at the adopting party's expense.

- (b) Upon adoption, animal services shall proof of adoption and transfer of ownership to the adopting party, which shall constitute conclusive proof of ownership of the animal and any previous responsible party having failed to timely reclaim the animal shall have no recourse.
- (c) No person shall adopt an animal, or knowingly allow an animal to be adopted for the purpose of research, experimentation, breeding without a permit or fighting. No person shall adopt an animal from Roswell Animal Services for the purpose of selling or auctioning the animal to another party except as otherwise permitted hereunder.
- (d) Animal services, at its sole discretion, may require a home inspection of an adopter to verify appropriate conditions for the animal's welfare.
- (e) Animal services may refuse to permit adoption of an animal to any party it deems, in its absolute discretion, to be unfit for any reason including, without limitation:
- (1) Previous adjudication of animal cruelty, abandonment, or other offense involving abuse of an animal;
 - (2) Incapacitation due to substance abuse; or
 - (3) Inability to keep the animal in compliance with the care and maintenance requirements of this chapter or the specific needs of the particular animal as determined by Animal Services.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-76. Unclaimed Domesticated animals.

- (e) Domesticated Animals not reclaimed by the responsible party shall be transferred, returned, or held for adoption, as provided for above, by animal services at the animal services facility or other appropriate facility based upon animal services policies and procedures. Such animals shall be retained by animal services until such time as space is no longer available or the animal is deemed unadoptable, based upon animal services' standard operating procedures.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-77. Sick, injured and dying animals.

An animal services officer may impound any animal that is sick, injured or dying when the responsible party cannot be immediately located, provided that any potentially contagious animal

shall be quarantined. In the event of sickness or injury of an impounded animal, either upon the ACO's own evaluation or upon the instruction of a licensed veterinarian, the ACO may take such action as called for to prevent undue pain and suffering or spread of contagion, including humanely destroying the animal.

(Ord. No. 20-01 , § 1, 1-9-2020)

Secs. 4-798—4-90. Reserved.

ARTICLE V. RABIES SERVICES

Sec. 4-91. Possession of rabid animals prohibited.

- (a) It shall be unlawful for any person to keep, maintain or harbor any animal which is known or believed by such individual to be infected with rabies.
- (b) A responsible party may surrender any animal suspected of rabies into the custody of animal services immediately. A domesticated animal suspected of rabies may be quarantined at home.
- (c) It shall be unlawful to remove any animal suspected of rabies from the city, or to secret or hide such animal from animal services.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-92. Mandatory reporting of rabid animals.

Any person who is bitten or injured by an animal that the person suspects to be rabid, or who otherwise suspects an animal to be infected by rabies, shall report such animal-to-animal services immediately.

(Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-93. Disposition of rabid animals by animal services.

- (a) Any animal services officer or peace officer who suspects any animal of being rabid shall immediately impound and quarantine such animal if the officer may do so safely or require that the domesticated animal be quarantined at home. In the event the officer reasonably determines that the suspected rabid animal cannot be safely apprehended and constitutes an immediate danger to any person or domesticated animal, the officer is authorized to destroy such animal immediately without further notice to any responsible party.
- (b) Any officer impounding any animal pursuant to this section shall immediately report such animal to the district health officer and cause such animal, if it is domesticated, to be quarantined at animal services or at another location deemed to be safe and suitable for quarantine and at the responsible party's expense.
 - (1) Quarantine shall be continued for a ten-day period or as the district health officer shall direct or deem necessary. The animal shall not be released from quarantine except upon authorization of the district health officer and upon payment by the responsible

party thereof of the charges for its care and feeding, together with all other expenses and costs incident to custody and observation.

- (2) Should the animal show any signs of rabies within the ten-day period the animal shall be humanely destroyed and the head sent to a laboratory for rabies testing.
- (c) Any wild animal not born or reared in captivity that bites a person or otherwise shows any sign of rabies shall be destroyed immediately and the head sent to a laboratory for testing.
- (Ord. No. 20-01 , § 1, 1-9-2020)

Sec. 4-94. Carcass of animal dying of rabies.

The carcass of any animal which has died of rabies or has been suspected of having such disease shall be surrendered immediately to the district health officer for disposition.

(Ord. No. 20-01 , § 1, 1-9-2020)

SECTION 3. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 4. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 5. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED _____, _____.

CITY SEAL

Timothy Z. Jennings, Mayor

ATTEST

Amalia Martinez, City Clerk