

ORDINANCE 395

ANIMAL CONTROL

This ordinance supersedes Ordinance 348 and replaces any and all previously adopted ordinances related to regulation of dogs and/or cats and control rabies within the municipal boundaries as defined on the date of adoption.

Article 1. Rabies Control

- 1-1 Disposition of animal bitten by rabid animal.
- 1-2 Notice to district health director of affected, etc., animal or an animal bitten by a rabid animal.
- 1-3 Confining animal which has bitten some person.
- 1-4 Examination of animal which has been bitten.
- 1-5 Suspected rabid animal may be killed; submission of animal head to laboratory.
- 1-6 Permit to release confined or impounded animals.
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- 2-2 Impoundment, Definition of Nuisance
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ARTICLE 1. RABIES CONTROL

Sec. 1-1. Disposition of animal bitten by rabid animal

Unvaccinated dogs, cats or other animals bitten by a known rabid animal should be destroyed immediately. If the owner is unwilling to have this done, the unvaccinated animal shall be vaccinated immediately with an approved rabies vaccine and placed in strict confinement and isolation at the owners expense, in a manner directed by the animal control supervisor or the animal control officer and in accordance with regulations of the New Mexico Health and Environment Department, for a six-month period. It shall be vaccinated with an approved rabies vaccine one (1) month before being released. If the animal has been previously vaccinated with an approved rabies vaccine and it is within the recognized period of immunity for the vaccine, it shall be revaccinated immediately and confined and isolated at the owners expense for at least sixty (60) days in a manner directed by the animal control supervisor or animal control officer and approved by the district health officer.

Sec. 1-2. Notice to district health director affected, etc., animal or an animal bitten by a rabid animal.

Whenever a dog, cat or other animal is affected by rabies or is suspected of being affected by rabies, or has been bitten by an animal known or suspected to be affected by rabies, the owner of the animal or any person having knowledge thereof shall forthwith notify the animal control supervisor or district health director, or other person designated by regulations of the health and environment department, giving a description of the animal and stating precisely where the animal may be found.

Sec. 1-3. Confining animal which has bitten some person

The village shall serve notice upon the owner of a dog, cat or other animal which has bitten a person so as to cause penetration of the skin to confine the animal at the owners home or, upon orders of the animal control supervisor, at the village animal shelter, a veterinary hospital, or at some other place designated in the order, for at least ten (10) days after the animal has bitten a person. The costs of such confinement, regardless of location, shall be borne by the owner under all circumstances and no other animal shall be released from confinement until such costs are paid in full.

Sec. 1-4. Examination of animal which has bitten a person

(a) The animal control supervisors or other duly authorized agent of the village shall be permitted, by the owner of the dog, cat or other animal which has bitten a person, to examine the animal at any time during the ten (10) days confinement period to determine whether the animal shows signs of rabies.

(b) No person shall refuse, obstruct or interfere with the animal control supervisor or his duly authorized agent in making the examination.

(c) Any animal which has bitten a person shall be examined by the animal control supervisor or his duly authorized agent at least twice, once at the beginning and once at the end of the ten (10) day observation.

Sec. 1-5. Suspected rabid animal may be killed: submission of animal head to laboratory

During the ten (10) day confinement period, the owner may elect to have the animal killed. If the animal is killed or dies while confined, the animal control supervisor shall immediately send the head of the animal, under suitable refrigeration, to the scientific laboratory division of the New Mexico Health and Environment Department in Albuquerque for pathological examination and shall notify the New Mexico District Health Office of the diagnosis made of the suspected animal.

Sec. 1-6. Permit to release confined impounded animals.

An animal confined for observation under order of the village shall not be released until a certificate of release has been issued by the animal control supervisor or by order of the court.

Sec. 1-7. Quarantine.

When a quarantine order has been issued by the district health officer or animal control supervisor or the supervisors designee, and animals continue to run at large, uncontrolled by owners or persons responsible for their control, any law enforcement officer shall have the right, after reasonable effort has been made on the part of the animal control supervisor or his agents, to apprehend and impound such dogs running at large, to kill such dogs and properly dispose of their bodies.

ARTICLE 2. ANIMAL SHELTER, IM POUNDMENT AND DISPOSITION**2-1. Animal Shelter**

There is hereby created a municipal animal shelter for the purpose of carrying out and enforcing the provisions of this chapter. Such animal shelter shall provide the following services and facilities:

- (a) Adequate pickup and impounding of all stray, ownerless and at large animals, cruelly treated animals, vicious animals, and animals otherwise in violation of the provisions of this chapter.
- (b) Individual isolation facilities for sick, vicious, rabid and suspected rabid animals.
- (c) Facilities for the humane destruction of unclaimed animals, rabid animals and animals which are so ill or injured as to be beyond reasonable medical assistance.
- (d) Records and facilities for adoption and other disposition of animals.
- (e) Adequate facilities and personnel for the proper housing, feeding, watering and other care of animals.

Sec. 2-2. Impoundment

The animal control supervisor or animal control officers shall pick up and impound every animal found running at large, suspected of rabies, obviously injured or diseased, believed to have been cruelly treated, or known to be vicious or a public nuisance. It is unlawful for any person to own, keep, harbor or possess any animal which, by loud or frequent habitual barking, yelping, braying or other noise, causes a nuisance to the neighborhood or to any person in the vicinity. The animal control officer may, in his or her discretion,

return an animal found running at large, may give a warning or may cite such owner for allowing his or her animal to run at large, rather than impounding the animal. Diseased animals may be humanely and immediately destroyed if, in the discretion of the animal control supervisor, the animal's condition is a threat to other animals or the public welfare. Domestic cats are expressly excluded from the prohibition against animals running at large but are included in other categories stated above and may be impounded if suspected of rabies, believed to have been cruelly treated or known to be vicious.

Sec. 2-3 Notification of owner of impounded animal.

Upon the impounding of any animal, it shall be the duty of the animal control supervisor or other animal control personnel to notify the owner of the animal impounded if the owner is known or can be learned from a vaccination tag or other identification. Such notice shall be by telephone, by certified mail or by any means provided by law to serve process in a civil action.

Sec. 2-4. Period of impoundment; subsequent disposal.

(a) Unless sooner redeemed by the owner, all impounded animals shall be kept for a minimum period of (3) three days. A fraction of a day shall be computed as being a full day for the purpose of this section. Animals which bear tags or whose owner is otherwise known shall be kept for a period of (5) five working days from notification of the owner. If notification is by mail, an additional (3) three days, not including holidays, Saturdays or Sundays, will be added to the required five-day period.

(b) After the period of impoundment as described above has been completed, any impounded animal may be sold, adopted or humanely destroyed at the discretion of the animal control supervisor.

Sec. 2-5. Redemption of impounded animals.

It is the duty of the animal control supervisor and other animal control personnel to release any animal from the village animal shelter to the owner thereof upon receipt of satisfactory proof of ownership and payment of the required fees and deposits as set forth herein. Any citation issued must also be signed by the owner. However, the impounded animal shall not be released to its owner if the animal has been cruelly treated, until the matter has been heard by the magistrate court and the court has ordered such release, or any other disposition, including destruction, if the court finds such disposition to be in the best interest and welfare of the village.

Sec. 2-6. Adoption of impounded animals.

After notice to the owner has been given and the number of days specified in this article have passed, any animal may be released to any person upon payment of the fees or deposits accruing as a result of impoundment.

Sec. 2-7. Fees and deposits.

The owner of an animal impounded pursuant to this chapter or a prospective adoptive owner shall pay the fees and costs established by regulations issued by the animal control supervisor. Such regulations, and changes or amendments thereto, shall be reviewed by the city council and shall be binding and valid only after approval by the city council. When adopted and/or amended the fee for impound or confinement is \$50.00 per offense.

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Sec. 2-8. Enforcement by animal control officers.

(a) Animal Control Officers appointed or agents authorized by animal control officers are responsible for the administration and maintenance of the animal shelter and for the administration and enforcement of this chapter.

(b) Animal Control Officers and/or police officers shall have the authority to enter onto privately owned property within the village as needed to carry out the provisions of this chapter or to protect the life or health of an animal that is in immediate danger if either the owner nor the occupant of the property is present on the premises.

(c) Duty of officer: It shall be the duty of the director of business license and the animal regulation officer to enforce the provisions of this title, and it shall be the duty of every police officer in the county while on duty to enforce the provisions of this title. Interfering or resisting: No person shall interfere with or oppose or resist the sheriff or any of his officers, the animal regulation officer, or health officer, or any member or employee of the health department while engaged in the performance of the duties pertaining to the enforcement of this title, all of which said officers, members and employees are hereby empowered to enforce all of the provisions of this title.

(d) Violation-Penalty: Any person owning, possessing or having the care custody and control of an animal, who willfully refuses, fails or neglects to:

1. Furnish to the animal regulation officer or director of the department of business license the required information as provided herein,
2. Cause the animals to be registered and pay the registration fee at the time and in the manner herein provided, or
3. Perform any act or pay any other fee or charge required by this title to be performed or paid; and

Or Any person who;

1. Willfully resists. Interferes with or prevents the animal regulation officer or any of his assistants in the exercise of their duties; or

2. Violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and may be fined or imprisoned as provided by law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Sec. 2-9. Disposal of dead animals.

(a) When any animal lies dead upon private property within the village, it shall be primarily the duty of the animal's owner, or if the owner is unknown, then the occupant or person in charge of such property, to forthwith remove, or cause to be removed, said dead animal from such property to the village dump or other appropriate place of disposal. No person shall deposit or otherwise place any dead animal or portion of any dead animal for collection by sanitation personnel.

(b) If any dead animal is found upon city streets or other public places within the village, acting through its employees or through contract with private individuals, shall cause said dead animal to be removed and disposed of in a proper manner. However, animal control personnel are not required to remove horses, cows or other large animals.

(c) The owner or occupant of private property wherein a dead animal is found shall place such animal in a plastic bag, or similar container, which is securely, fastened shut. The secured plastic bag or container may be disposed of by animal control personnel.

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ARTICLE 3. REGULATION OF ANIMALS

Sec. 3-1. Regulating animals.

It shall be a misdemeanor and a violation of this chapter for any person to do any of the following:

(a) To willfully abandon an animal within the village limits.

(b) To allow a dog or other animal (except cats) to run at large within the village.

(c) To allow an animal (except guide dogs for the visually or hearing impaired or dogs used by peace officers in the prevention of crime) to be in a public place or building where food or drink is sold or served.

(d) To own a dog or cat over the age of six (6) months which has not been vaccinated for rabies at least once in each twelve month period.

(e) To own a dog or cat which does not have a tag affixed to a collar or harness indicating the date of the most recent vaccination of that animal.

(f) To own or harbor a dog which annoys others by constant, consistent, loud or frequent barking, howling, yelping or similar noise; (a written complaint must be filed to initiate official action)

1. Scratches or digs about any flower bed, garden, tilled soil, shrubbery or small plants;
2. Habitually prowls around, on or through premises which do not belong to its owner;
3. Overturns garbage cans or scatter the contents of garbage cans;
4. Chases or kills any domesticated animals or domesticated birds; or
5. Habitually chases motor vehicles, bicycles, or other vehicles.

(g) To own, harbor or maintain a female dog in heat (estrus) which is not confined in a building or secure enclosure in such a manner as to avoid contact with a male dog, except for intentional breeding purposes

(h) Neighborhood request for stricter controls;

1. Upon receipt of a written request setting forth the legal description of a proposed "Stricter Animal Control Area"; signed by adjoining property owners within 1000 feet who certify that they own real property or reside within the boundaries of the proposed "Stricter Animal Control Area", which the City Council may designate in its discretion any such restrictions as may be requested.

Sec. 3-2. Vicious dogs

The owner of every vicious dog shall confine such dog within a building, fenced yard or secure enclosure unless such a dog is muzzled and leashed or retained in a metal cage from which it cannot escape. A vicious dog is defined as a dog which has, on at least one (1) prior occasion, attacked or bitten another animal or person without provocation or without legal justification such as protection of persons.

Sec. 3-3. Guard dogs.

Nothing contained in this article shall prevent persons from owning or harboring guard dogs which have been trained to protect persons or property, provided such guard dogs are restrained within a fenced enclosure or within a building in such a manner that the guard dog will not have access to persons lawfully in or upon or adjacent to the guarded premises. Provided further, that the owner or user of such guard dogs shall prominently post at least two (2) written warnings of the presence of such guard dogs.

Sec. 3-4. General cleanliness of premises where animals are kept; spraying of enclosures.

(a) No person who is the owner, tenant or person in possession and control of any stable, corral, lot, pasture, stall, shed, apartment, yard or premises in the village in which any animal (including, but not limited to horses, cows, livestock, domestic fowl, dogs, cats and all other animals) is kept or maintained shall allow the accumulation of manure, water, moisture, animal droppings, or liquid discharges of animals which create a stench or emit offensive odors or which are otherwise injurious to the public health and safety; however, nothing in this section shall be construed to include temporary manure deposits upon any private property for the purpose of fertilizing or composting.

(b) Stalls or stables, corrals, lots or pastures shall be kept sprayed with disinfectant to kill germs and to prevent the premises from becoming a breeding place for flies, mosquitos or other insects.

(c) The animal control supervisor and all animal control officers are authorized to go into or upon and inspect the premises of kennels and pet stores, during regular business hours, to determine compliance with this section. Failure to comply is a misdemeanor.

Sec. 3-5. Detaining animals at large.

(a) It shall be illegal for any person to hold, for resale purposes any animal running at large which such person has detained, believing such animal to be lost.

(b) Any person detaining an animal running at large, which such person believes to be lost, shall either surrender such animal to animal control personnel or else shall contact the animal control officer, giving a description of such animal, where such animal is being detained, and when contact can be made concerning inquiries on such animal. The person detaining the lost animal shall advertise in local news media the information provided to animal control personnel, provided such advertisement is without cost.

(c) Animal control officers shall remove and impound animals running at large when such animals have been trapped in traps or devices approved by the animal control supervisor. Animal control officers may, but are not required to, remove animals in non-approved traps.

(d) For purposes of this chapter, an animal will be considered to be at large if it is off the premises of the owner or care-provider and is not securely and physically restrained by means of a chain, cord, harness, leash, rope or other device required to restrain such animal; provided that a dog shall be considered to be physically restrained if at "heel" beside a competent person and obedient to that persons commands. An animal will be considered at large (if it is not restrained, secured or at heel) if it is on a sidewalk or public way.

Sec. 3-6. Kennel license required.

(a) Any person who keeps or operates or proposes to establish a kennel shall apply to the city clerk for a business license pursuant to the provisions of Ordinance 235, Business Regulation Ordinance. It shall be unlawful for any person to operate a kennel in the village without obtaining a license as herein provided.

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ARTICLE 4. CRUELTY PROHIBITED

Sec. 4-1. Animal fights prohibited.

It is unlawful for any person to promote, stage, hold, manage, conduct or attend any game, exhibition, contest or fight in which one (1) or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal. The use of hunting dogs in lawful pursuit of game shall not be considered to be included within this section.

Sec. 4-2. Food and shelter required.

(a) It shall be unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, drink, shade, care, or shelter, or to carry any in or leave any animal in a vehicle in a cruel or inhumane manner, or to fail to provide necessary medical care.

(b) The animal control supervisor shall inspect each kennel within the village, licensed as required herein, at least annually, in order to determine if the kennel is being kept in a clean condition and all animals are being treated humanely. Based on these inspections, the animal control supervisor shall recommend to the city clerk whether the license shall be renewed. In the event the animal control supervisor shall recommend to the city clerk that such license should be suspended, revoked or that it should not be renewed, the licensee shall have the right to appeal this decision to the appointed city council.

(c) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this section.

(d) A kennel is defined as an establishment engaged in the commercial business of breeding, selling or boarding dogs, cats, any other mammals, birds, reptiles, or fish, excluding insects and livestock.

Sec. 4-3. Judicial disposition upon finding of cruel treatment.

If a magistrate or district court finds that an animal has been cruelly treated, and further finds that such treatment is likely to continue, the court may order that the animal has been forfeited by the owner; the court may cause the animal to be placed with an adoptive agency or humane society, if such agency or society is willing to accept custody of the animal and has adequate facilities therefor; or the court may order such other disposition as is appropriate under the circumstance.

ARTICLE 5. PENALTY

Sec. 5-1. Misdemeanors created.

(a) Any violation of any provision of this Resolution and Ordinance not involving bodily injury to any person by a dog or other pet animal shall be a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment in a detention facility for not more than 90 days, or both, for each separate offense. The following violations are not involving bodily injury to any person by dog or other pet animal may be handled by issuance of a penalty assessment notice, and the following penalties shall apply. In the event the Animal Control Officer chooses not to issue a penalty assessment notice or if penalty assessment procedure is not authorized, the violator shall be issued a summons and complaint to appear in court and shall be subject to the penalties set forth in 5-1.

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Name and Section Of Offense	First Offense	Second Offense	Third and Subsequent Offense
Abandonment of animal (3-1(a))	\$100.00	\$200.00	\$300.00
Animal running at large (3-1(b))	\$25.00	\$50.00	\$75.00
No vaccination (3-1(d))	\$25.00	\$50.00	\$75.00
No tags (3-1(c))	\$25.00	\$50.00	\$75.00
Barking dog(s) (3-1(f))	Warning	\$50.00	\$100.00

Nuisance animal (3-2)	\$25.00	\$50.00	\$75.00
Vicious animal (3-2)	\$50.00	\$100.00	\$150.00
Animal neglect (4-2)	Warning	\$50.00	\$100.00

(b) Definitions: Each day's violations shall be deemed a separate offense.

Sec. 5-2. Authorization to issue citations.

Upon observing or upon investigation of a complaint, authorized animal control officers or police officers may issue a citation noting the offense, the fine, and/or a summons to appear before the magistrate court if the accused wished to present a defense. In the case of a warning citation abatement, conditions should be stated in writing. The magistrate court is the agent to receive uncontested fines or fines levied upon conviction.

Sec. 5-3. Penalty not exclusive.

Impoundment, adoption, destruction or other disposition by animal control officers shall not preclude the imposition of other penalties for violation of this chapter. Imposition of a fine or penalty for violation of any section of this chapter shall not preclude impoundment, adoption, destruction or other disposition. Punishment for failure to pay imposed fines or penalties for violations of this ordinance shall be at the discretion of the magistrate court.

ARTICLE 6. SEVERABILITY

Sec. 6-1. Severability clause.

It is the intention of the city council that each article, section or part thereof in this chapter is severable; and if any article, section or part thereof be declared unconstitutional by a court of competent jurisdiction, such unconstitutionality shall not affect any remaining article, section or part.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2012.

Mayor Pro-Tem

ATTEST:

Clerk