

CITY OF ELEPHANT BUTTE
ORDINANCE NO. 154

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO, AMENDING SECTIONS 91, 155.026, 155.027, 155.028 and 155.033 OF THE CITY MUNICIPAL CODE RELATING TO THE LIMITED KEEPING OF CHICKEN HENS IN CERTAIN ZONING DISTRICTS, ESTABLISHING PERMIT AND ENFORCEMENT REQUIREMENTS.

WHEREAS, Chapters 91 and 155 of the City of Elephant Butte Municipal Code provides for limited keeping of domesticated animals; and

WHEREAS, the Municipal Code has heretofore not recognized chicken hens as an allowable accessory use; and

WHEREAS, the keeping of hens in a controlled and sanitary environment can offer various health benefits without nuisance to the community at-large; and

WHEREAS, there are numerous rural and large urban municipalities that have recently adopted ordinances allowing for the limited keeping of hens; and

WHEREAS, it is in the community's best interest to allow the keeping of hens for enhanced livability of the community; and

WHEREAS, amendments to the zoning code may be authorized upon review of the proposed amendments by the Planning & Zoning Commission and after the governing body has conducted a public hearing on the proposed amendments; and

WHEREAS, the proposed amendments were reviewed and favorably recommended by the Planning & Zoning Commission on June 2, 2015 and the governing body did conduct a duly advertised public hearing on June 17, 2015.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Elephant Butte, that Sections 91, 155.026, 155.027, 155.028 and 155.033 of the Code of Ordinances be amended as follows:

Section one. Chapter 91, Animals, is amended by adding the following in with additions indicated in **Bold, underlined font**:

§ 91.29 RESTRAINING ANIMALS AND RESTRAINT DEVICES.

(D) *Proper control and care.* No owner or custodian shall fail to exercise proper care and control of an animal to prevent it from becoming a public nuisance.

(1) Chickens. Owners keeping chickens, where permitted in specified zoning districts within Chapter 155, shall not allow chickens to roam outside of the enclosures required within Chapter 155. Failure to properly control and care for such chickens as

the Code provides shall constitute a violation subject to the provisions within this Chapter.

§ 91.38 LIVESTOCK.

Non-commercial livestock may be permitted in the R-A (Residential-Agricultural) Zone, and are prohibited in all other zones. **Except where female chickens are not prohibited in specific zoning districts as permitted in Chapter 155** (See Zoning, Ch. 155).

Section two. Chapter 155, Zoning – Section 155.005 is amended by adding the following with additions indicated in **Bold, underlined font**:

§155.005 DEFINITIONS.

Fowl and game birds shall be defined as chickens, turkeys, geese, ducks, guineas, quail, pheasant, doves, pigeons, ostriches, peacocks and emus.

Section three. Chapter 155, Zoning – Section 155.026 is amended by adding the following with additions indicated in **Bold, underlined font**:

§155.026 R-1-A Single-Family Residential

(G) *General restrictions.*

(1) No commercial lot less than 1.5 acres in size and without access and connection to a public sewer line may be subdivided for any purpose other than to increase the size of an adjacent lot.

(2) All lavatories and toilets shall be built indoors and connected with outside septic tank until such time as a sewer system shall be available, at which time said facility shall be connected thereto within the time limit as established by the City of Elephant Butte by ordinance.

(3) No basement, tent, shack, garage, or other outbuilding may be used as a primary residence, temporary or permanent. No tent or non-structural cover may be used as a permanent accessory building.

(4) Display, storage or parking of vehicles, equipment, goods and other property shall not be permitted in the public right-of-way.

(5) No livestock including but not limited to pigs, goats, rabbits, poultry or other wild or domesticated fowl, shall be kept or permitted to remain on any of the land or part thereof **except as follows.**

(a) Veterinarian hospitals where a duly licensed veterinarian is actively engaged in, and in charge of operations;

(b) Duly licensed wholesale or retail pet shops operated in areas where such businesses are permitted under the City Zoning Code;

(c) Small domestic animals, fish or birds other than those defined as fowl and game birds, which are customarily kept in the dwelling for non-commercial purposes and do not constitute an animal nuisance. Notwithstanding any other provision of this chapter, the keeping of swine of any description and roosters shall not be permitted within the corporate limits of the city.

(d) The prohibition against keeping fowl or game birds shall not apply to the keeping of chicken hens, which shall be allowed by permit, subject to the following conditions:

- a. A maximum of five (5) female chickens (hens) are permitted so long as the lot size measures at least 10,000 square feet.
- b. There shall be no age restrictions on keeping of female chickens (hens).
- c. No roosters may be kept.
- d. No person shall slaughter any agricultural animals on the premises or use its products for commercial purposes.
- e. All chickens with clipped wings shall be confined at all times within a fully-enclosed yards with fences or walls at least 4 feet in height.

(e) The limitation on the number of chickens permitted to be kept shall not apply to school or agricultural extension sponsored programs on their owned or leased property, as long as such keeping is in accordance with state law. A permit will still be required and compliance with the conditions for keeping chickens as described herein shall apply.

(6) Standards for keeping of chickens; permits, setbacks and enforcement.

- a. Permits required. A Chicken Keeping Permit shall be required for the keeping of any chicken in accordance with the provisions of this Chapter and issued by the Zoning Administrator. The permit obtained by the property owner and applicant shall be subject to the terms and conditions described herein this section.
 - i. Before issuing such permits, a one-time fee of \$25.00 shall be made payable to the City of Elephant Butte; and the Zoning Administrator and/or Code Enforcement Officer shall determine that the keeping of chickens is done in such a manner that the standards of this section are complied with; and, the keeping of chickens shall not likely constitute a nuisance to adjoining neighbors; and, the Zoning Administrator and/or Code Enforcement Officer may make such permits subject to restrictions as to sanitary conditions, number of chickens up to a total of five female chickens, location of the same, availability and condition of enclosures or shelters, availability of food and water, and other conditions as he may deem necessary.

- ii. Permits for the keeping of chickens are subject to randomly announced inspections by City staff. Permits for the keeping of chickens can be revoked at any time by the Zoning Administrator for failure to comply with the described conditions contained herein.

- b. Requirement for enclosure, coop. All chickens shall additionally be provided an enclosed accessory building which shall be in the form of a predator-proof coop. The enclosure must contain a "chicken house" or coop so that each chicken shall have a location to roost. Before utilizing a coop for chickens, the owner of the chickens shall comply with all state regulations related to the raising of chickens as provided in Chapter 91.
 - i. A coop shall be defined as an enclosure, cage, or pen, usually with bars or wires, in which fowls or other small animals are confined with total dimensions no less than four square feet per chicken and designed to be easily accessed, cleaned and maintained by the owners with both a top and bottom; and
 - ii. No pen or coop may be closer than 20 feet to any property.
 - iii. The outdoor chicken enclosure shall be located in the backyard or side yard of the lot and may not be located in the front yard as defined in Section 155.005.
 - iv. Each pen or coop must be kept clean, free of all odors and materials that can attract rodents.
 - v. Electrical connections to a coop shall require a building permit and meet state Construction Industries Division permit requirements, as applicable.
 - vi. Animal waste shall be removed from the premises on a regular basis, to comply with Chapters 90 and 135 of the City Code.

Section four. Chapter 155, Zoning – Section 155.027 is amended by adding the following with additions indicated in **Bold, underlined font**:

§155.027 R-1-B Single-Family Residential

(G) *General restrictions.*

(1) No commercial lot less than 1.5 acres in size and without access and connection to a public sewer line may be subdivided for any purpose other than to increase the size of an adjacent lot.

(2) All lavatories and toilets shall be built indoors and connected with outside septic tank until such time as a sewer system shall be available, at which time said facility shall be connected thereto within the time limit as established by the City of Elephant Butte by ordinance.

(3) No basement, tent, shack, garage, or other outbuilding may be used as a primary residence, temporary or permanent. No tent or non-structural cover may be used as a permanent accessory building.

(4) Display, storage or parking of vehicles, equipment, goods and other property shall not be permitted in the public right-of-way.

(5) No livestock including but not limited to pigs, goats, rabbits, poultry or other wild or domesticated fowl, shall be kept or permitted to remain on any of the land or part thereof **except as follows.**

(a) Veterinarian hospitals where a duly licensed veterinarian is actively engaged in, and in charge of operations;

(b) Duly licensed wholesale or retail pet shops operated in areas where such businesses are permitted under the City Zoning Code;

(c) Small domestic animals, fish or birds other than those defined as fowl and game birds, which are customarily kept in the dwelling for non-commercial purposes and do not constitute an animal nuisance. Notwithstanding any other provision of this chapter, the keeping of swine of any description and roosters shall not be permitted within the corporate limits of the city.

(d) The prohibition against keeping fowl or game birds shall not apply to the keeping of chicken hens, which shall be allowed by permit, subject to the following conditions:

- f. A maximum of five (5) female chickens (hens) are permitted so long as the lot size measures at least 10,000 square feet.**
- g. There shall be no age restrictions on keeping of female chickens (hens).**
- h. No roosters may be kept.**
- i. No person shall slaughter any agricultural animals on the premises or use its products for commercial purposes.**
- j. All chickens with clipped wings shall be confined at all times within a fully-enclosed yards with fences or walls at least 4 feet in height.**

(e) The limitation on the number of chickens permitted to be kept shall not apply to school or agricultural extension sponsored programs on their owned or leased property, as long as such keeping is in accordance with state law. A permit will still be required and compliance with the conditions for keeping chickens as described herein shall apply.

(6) Standards for keeping of chickens; permits, setbacks and enforcement.

- c. Permits required. A Chicken Keeping Permit shall be required for the keeping of any chicken in accordance with the provisions of this Chapter and issued by the Zoning Administrator. The permit obtained by the property owner and applicant shall be subject to the terms and conditions described herein this section.
- i. Before issuing such permits, a one-time fee of \$25.00 shall be made payable to the City of Elephant Butte; and the Zoning Administrator and/or Code Enforcement Officer shall determine that the keeping of chickens is done in such a manner that the standards of this section are complied with; and, the keeping of chickens shall not likely constitute a nuisance to adjoining neighbors; and, the Zoning Administrator and/or Code Enforcement Officer may make such permits subject to restrictions as to sanitary conditions, number of chickens up to a total of five female chickens, location of the same, availability and condition of enclosures or shelters, availability of food and water, and other conditions as he may deem necessary.
 - ii. Permits for the keeping of chickens are subject to randomly announced inspections by City staff. Permits for the keeping of chickens can be revoked at any time by the Zoning Administrator for failure to comply with the described conditions contained herein.
- d. Requirement for enclosure, coop. All chickens shall additionally be provided an enclosed accessory building which shall be in the form of a predator-proof coop. The enclosure must contain a "chicken house" or coop so that each chicken shall have a location to roost. Before utilizing a coop for chickens, the owner of the chickens shall comply with all state regulations related to the raising of chickens as provided in Chapter 91.
- vii. A coop shall be defined as an enclosure, cage, or pen, usually with bars or wires, in which fowls or other small animals are confined with total dimensions no less than four square feet per chicken and designed to be easily accessed, cleaned and maintained by the owners with both a top and bottom; and
 - viii. No pen or coop may be closer than 20 feet to any property.
 - ix. The outdoor chicken enclosure shall be located in the backyard or side yard of the lot and may not be located in the front yard as defined in Section 155.005.
 - x. Each pen or coop must be kept clean, free of all odors and materials that can attract rodents.

- xi. Electrical connections to a coop shall require a building permit and meet state Construction Industries Division permit requirements, as applicable.
- xii. Animal waste shall be removed from the premises on a regular basis, to comply with Chapters 90 and 135 of the City Code.
- xiii. **Section three.** Chapter 155, Zoning – Section 155.026 is amended by adding the following with additions indicated in **Bold, underlined font**:

Section five. Chapter 155, Zoning – Section 155.028 is amended by adding the following with additions indicated in **Bold, underlined font**:

§155.028 R-1-C Single-Family Residential

(G) *General restrictions.*

- (1) No commercial lot less than 1.5 acres in size and without access and connection to a public sewer line may be subdivided for any purpose other than to increase the size of an adjacent lot.
- (2) All lavatories and toilets shall be built indoors and connected with outside septic tank until such time as a sewer system shall be available, at which time said facility shall be connected thereto within the time limit as established by the City of Elephant Butte by ordinance.
- (3) No basement, tent, shack, garage, or other outbuilding may be used as a primary residence, temporary or permanent. No tent or non-structural cover may be used as a permanent accessory building.
- (4) Display, storage or parking of vehicles, equipment, goods and other property shall not be permitted in the public right-of-way.
- (5) No livestock including but not limited to pigs, goats, rabbits, poultry or other wild or domesticated fowl, shall be kept or permitted to remain on any of the land or part thereof **except as follows.**
 - (a) Veterinarian hospitals where a duly licensed veterinarian is actively engaged in, and in charge of operations;**
 - (b) Duly licensed wholesale or retail pet shops operated in areas where such businesses are permitted under the City Zoning Code;**
 - (c) Small domestic animals, fish or birds other than those defined as fowl and game birds, which are customarily kept in the dwelling for non-commercial purposes and do not constitute an animal nuisance. Notwithstanding any other provision of this chapter, the keeping of swine of any description and roosters shall not be permitted within the corporate limits of the city.**

(d) The prohibition against keeping fowl or game birds shall not apply to the keeping of chicken hens, which shall be allowed by permit, subject to the following conditions:

- k. A maximum of five (5) female chickens (hens) are permitted so long as the lot size measures at least 10,000 square feet.
- l. There shall be no age restrictions on keeping of female chickens (hens).
- m. No roosters may be kept.
- n. No person shall slaughter any agricultural animals on the premises or use its products for commercial purposes.
- o. All chickens with clipped wings shall be confined at all times within a fully-enclosed yards with fences or walls at least 4 feet in height.

(e) The limitation on the number of chickens permitted to be kept shall not apply to school or agricultural extension sponsored programs on their owned or leased property, as long as such keeping is in accordance with state law. A permit will still be required and compliance with the conditions for keeping chickens as described herein shall apply.

(6) Standards for keeping of chickens; permits, setbacks and enforcement.

- e. *Permits required.* A Chicken Keeping Permit shall be required for the keeping of any chicken in accordance with the provisions of this Chapter and issued by the Zoning Administrator. The permit obtained by the property owner and applicant shall be subject to the terms and conditions described herein this section.
 - i. Before issuing such permits, a one-time fee of \$25.00 shall be made payable to the City of Elephant Butte; and the Zoning Administrator and/or Code Enforcement Officer shall determine that the keeping of chickens is done in such a manner that the standards of this section are complied with; and, the keeping of chickens shall not likely constitute a nuisance to adjoining neighbors; and, the Zoning Administrator and/or Code Enforcement Officer may make such permits subject to restrictions as to sanitary conditions, number of chickens up to a total of five female chickens, location of the same, availability and condition of enclosures or shelters, availability of food and water, and other conditions as he may deem necessary.
 - ii. Permits for the keeping of chickens are subject to randomly announced inspections by City staff. Permits for the keeping of chickens can be revoked at any time by the Zoning Administrator for failure to comply with the described conditions contained herein.

- f. Requirement for enclosure, coop. All chickens shall additionally be provided an enclosed accessory building which shall be in the form of a predator-proof coop. The enclosure must contain a "chicken house" or coop so that each chicken shall have a location to roost. Before utilizing a coop for chickens, the owner of the chickens shall comply with all state regulations related to the raising of chickens as provided in Chapter 91.
- xiv. A coop shall be defined as an enclosure, cage, or pen, usually with bars or wires, in which fowls or other small animals are confined with total dimensions no less than four square feet per chicken and designed to be easily accessed, cleaned and maintained by the owners with both a top and bottom; and
- xv. No pen or coop may be closer than 20 feet to any property.
- xvi. The outdoor chicken enclosure shall be located in the backyard or side yard of the lot and may not be located in the front yard as defined in Section 155.005.
- xvii. Each pen or coop must be kept clean, free of all odors and materials that can attract rodents.
- xviii. Electrical connections to a coop shall require a building permit and meet state Construction Industries Division permit requirements, as applicable.
- xix. Animal waste shall be removed from the premises on a regular basis, to comply with Chapters 90 and 135 of the City Code.

Section six. Chapter 155, Zoning – Section 155.033 is amended by adding the following with additions indicated in **Bold, underlined font**:

§155.033 Establishment of Official Commercial Zoning District Map, Zoning Districts and Boundaries.

(K) *General restrictions.*

(1) No commercial lot less than 1.5 acres in size and without access and connection to a public sewer line may be subdivided for any purpose other than to increase the size of an adjacent lot.

(2) All lavatories and toilets shall be built indoors and connected with outside septic tank until such time as a sewer system shall be available, at which time said facility shall be connected thereto within the time limit as established by the City of Elephant Butte by ordinance.

(3) No basement, tent, shack, garage, or other outbuilding may be used as a primary residence, temporary or permanent. No tent or non-structural cover may be used as a permanent accessory building. No tent or non-structural cover may be used as a permanent accessory building.

(4) Display, storage or parking of vehicles, equipment, goods and other property shall not be permitted in the public right-of-way.

(5) No livestock including but not limited to pigs, goats, rabbits, poultry or other wild or domesticated fowl, shall be kept or permitted to remain on any of the land or part thereof **except as follows.**

(a) Veterinarian hospitals where a duly licensed veterinarian is actively engaged in, and in charge of operations;

(b) Duly licensed wholesale or retail pet shops operated in areas where such businesses are permitted under the City Zoning Code;

(c) Small domestic animals, fish or birds other than those defined as fowl and game birds, which are customarily kept in the dwelling for non-commercial purposes and do not constitute an animal nuisance. Notwithstanding any other provision of this chapter, the keeping of swine of any description and roosters shall not be permitted within the corporate limits of the city.

(d) The prohibition against keeping fowl or game birds shall not apply to the keeping of chicken hens, which shall be allowed by permit, subject to the following conditions:

p. A maximum of five (5) female chickens (hens) are permitted so long as the lot size measures at least 10,000 square feet.

q. There shall be no age restrictions on keeping of female chickens (hens).

r. No roosters may be kept.

s. No person shall slaughter any agricultural animals on the premises or use its products for commercial purposes.

t. All chickens with clipped wings shall be confined at all times within a fully-enclosed yards with fences or walls at least 4 feet in height.

(e) The limitation on the number of chickens permitted to be kept shall not apply to school or agricultural extension sponsored programs on their owned or leased property, as long as such keeping is in accordance with state law. A permit will still be required and compliance with the conditions for keeping chickens as described herein shall apply.

(6) Standards for keeping of chickens; permits, setbacks and enforcement.

- g. Permits required. A Chicken Keeping Permit shall be required for the keeping of any chicken in accordance with the provisions of this Chapter and issued by the Zoning Administrator. The permit obtained by the property owner and applicant shall be subject to the terms and conditions described herein this section.
- i. Before issuing such permits, a one-time fee of \$25.00 shall be made payable to the City of Elephant Butte; and the Zoning Administrator and/or Code Enforcement Officer shall determine that the keeping of chickens is done in such a manner that the standards of this section are complied with; and, the keeping of chickens shall not likely constitute a nuisance to adjoining neighbors; and, the Zoning Administrator and/or Code Enforcement Officer may make such permits subject to restrictions as to sanitary conditions, number of chickens up to a total of five female chickens, location of the same, availability and condition of enclosures or shelters, availability of food and water, and other conditions as he may deem necessary.
 - ii. Permits for the keeping of chickens are subject to randomly announced inspections by City staff. Permits for the keeping of chickens can be revoked at any time by the Zoning Administrator for failure to comply with the described conditions contained herein.
- h. Requirement for enclosure, coop. All chickens shall additionally be provided an enclosed accessory building which shall be in the form of a predator-proof coop. The enclosure must contain a "chicken house" or coop so that each chicken shall have a location to roost. Before utilizing a coop for chickens, the owner of the chickens shall comply with all state regulations related to the raising of chickens as provided in Chapter 91.
- xx. A coop shall be defined as an enclosure, cage, or pen, usually with bars or wires, in which fowls or other small animals are confined with total dimensions no less than four square feet per chicken and designed to be easily accessed, cleaned and maintained by the owners with both a top and bottom; and
 - xxi. No pen or coop may be closer than 20 feet to any property.
 - xxii. The outdoor chicken enclosure shall be located in the backyard or side yard of the lot and may not be located in the front yard as defined in Section 155.005.
 - xxiii. Each pen or coop must be kept clean, free of all odors and materials that can attract rodents.

xxiv. Electrical connections to a coop shall require a building permit and meet state Construction Industries Division permit requirements, as applicable.

xxv. Animal waste shall be removed from the premises on a regular basis, to comply with Chapters 90 and 135 of the City Code.

Section seven. All other provisions of Chapters 91 and 155 not specifically amended in sections one through six herein, shall remain unchanged and in full force and effect as written.

Section eight. Effective date. This ordinance shall become effective five days following publication.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this _____ day of _____, 2015.

Eunice Kent, Mayor

Attest:

Karen Rieth, City Clerk