



# CITY OF ELEPHANT BUTTE

## **Ordinance Amendment**

Request for an Ordinance Amendment to Ordinance No. 134 Animal Control

- Registration of all animals within the City Limits
- Protection of Code Enforcement and Animal Control against attacks
- Consistency in Current Code

CITY OF ELEPHANT BUTTE

ORDINANCE NO. 179

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO, AMENDING SECTIONS III, IV, V, VI, VIII and IX OF ORDINANCE NO. 131, ENTITLED "ANIMAL CONTROL ORDINANCE," PROVIDING FOR AMENDMENTS TO THE DEFINITIONS AND TO THE PROVISIONS FOR CONTAINMENT OF ANIMALS, REGISTRATION AND VACCINATION REQUIREMENTS, ENFORCEMENT, PENALTIES AND OTHER REGULATORY PROVISIONS, ADDING A TABLE OF CONTENTS, AN EFFECTIVE DATE, PROVISIONS FOR MINOR CORRECTIONS AND CODIFICATION, AND REPEALING ALL ORDINANCE AND CODE PROVISIONS INCONSISTENT WITH THIS ORDINANCE.

ORDINANCE NO. 131

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO, PROVIDING FOR THE REPEAL OF DOMESTIC ANIMAL CONTROL ORDINANCES 66 AND 69 AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT, AND CREATING A NEW ORDINANCE TITLED ANIMAL CONTROL ORDINANCE THAT INCLUDES LANGUAGE REQUIREING REGISTRATION OF CERTAIN CLASSIFICATIONS OF ANIMALS; REGULATING ANIMALS TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF CITIZENS; ANIMAL WELFARE; AND ENFORCEMENT;

As amended by

ORDINANCE NO. 134

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO, AMENDING SECTIONS III, IV, V, VI, VIII and IX OF ORDINANCE NO. 131, ENTITLED "ANIMAL CONTROL ORDINANCE," PROVIDING FOR AMENDMENTS TO THE DEFINITIONS AND TO THE PROVISIONS FOR CONTAINMENT OF ANIMALS, REGISTRATION AND VACCINATION REQUIREMENTS, ENFORCEMENT, PENALTIES AND OTHER REGULATORY PROVISIONS, ADDING A TABLE OF CONTENTS, AN EFFECTIVE DATE, PROVISIONS FOR MINOR CORRECTIONS AND CODIFICATION, AND REPEALING ALL ORDINANCE AND CODE PROVISIONS INCONSISTENT WITH THIS ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELEPHANT BUTTE:

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**SECTION I. TITLE.**

This ordinance shall be known as the Animal Control Ordinance.

**SECTION II. PURPOSE AND INTENT.**

The purpose of this code is to encourage control and welfare of all domestic animals within the city limits to ensure the health, safety and general welfare of the city.

**SECTION III. STATUTORY AUTHORITY AND JURISDICTION.**

This ordinance is created and adopted pursuant to the authority set forth in §§ 3-18-3; 77-1-1 through 77-1-20; 77-1A-1 through 77-1A-6; and 28-11-1.1 through 28-11-5, N.M.S.A. (1978).

**SECTION IV. DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

***ABANDONMENT OF ANIMALS.*** To leave the animal behind without proper care and protection, to give up said animal to fend for itself, regardless of age or condition.

***ANIMAL CONTROL AUTHORITY.*** An entity authorized to enforce the animal control laws of a city, county, or state, whether acting alone or in concert with other governmental authorities.

***ANIMAL CONTROL OFFICER.*** Any person authorized by the City Manager, and certified as may be required by state law, to enforce the animal control laws of the city, county and state

**ANIMALS AT LARGE.** Animals outside the property of the owner or not controlled on a leash. Except as otherwise specified herein, a leash shall be not more than eight (8) feet in length and shall be of sufficient strength to control the actions of such animal while off premises.

**BREEDING.** Permitting, either intentionally or unintentionally, a female animal to Produce offspring.

**BURIED ELECTRONIC FENCE OR INVISIBLE FENCE.** A commercially available system, which uses a buried wire along the perimeter of premises that transmits a signal to a receiver, attached to the collar of the dog, which gives the dog an electronic shock or other warning when the dog approaches the buried perimeter.

**CANINE HYBRID.** Any canine that has or had a pure wolf or pure coyote as a parent or grandparent or is the offspring, cross, mix, or hybrid of a wolf or coyote within the preceding two generations, or any animal due to its pure wolf or pure coyote ancestry cannot be vaccinated effectively against rabies.

**CAT.** Any member of the family Felis domestica.

**CRUELTY.** The crime of inflicting physical pain, suffering, or death on an animal, usually a tame one, beyond necessity for normal discipline. Cruelty can include neglect to the extent that an animal suffers, dies, or is put in imminent danger of death.

**DANGEROUS ANIMAL.** An animal that has a documented and verified history in the form of an Animal Control Authority report, police report, finding by any court of law, or a medical report of having caused a serious injury to a person, domestic animal, or livestock when the animal was not provoked or threatened or defending its territory. A snake or lizard, which, because of its poisonous bite, is a significant hazard to the public.

**DANGEROUS DOG.** A dog that has caused the death of or serious injury to a person or a domestic animal.

**DOG.** Both male and female, and includes each mammal of the dog family in the City.

**EXOTIC ANIMAL.** Any animal that is not native to New Mexico and not typically identified as a domestic pet.

**FULL TIME RESIDENT.** A person residing inside the City limits over 90 (ninety) days within a 12 (twelve) month period. The 90 (ninety) days may or may not be consecutive.

**GERMAN SHEPHERD.** The term "German Shepherd" as used in this ordinance shall refer to any dog which exhibits those distinguishing characteristics which:

- (1) Substantially conforms to the standards established by the American Kennel Club for German Shepherds;
- (2) Technical deficiencies in the dogs' conformance to the standards described by the American Kennel Club shall not be construed to indicate that the subject dog is not a German Shepherd under this article;
- (3) Dogs that are one-half or more German Shepherd;
- (4) Testimony by a veterinarian, zoologist, animal behaviorist, or animal control officer that a particular dog exhibits distinguishing physical characteristics of a German Shepherd shall establish a rebuttable presumption that the dog is a German Shepherd.

**GUARD DOG.** A dog that has undergone specialized guard dog training and is used to protect a commercial property, but excludes a dog used exclusively to guard livestock.

**HARBOR.** To feed, shelter, or maintain an animal for 3 (three) consecutive days or more.

**HOARDING.** The possession of a number of animals in a quantity such that the owner fails or is unable to provide minimum care including nutrition, fresh potable water, shelter, space, sanitation, and necessary veterinary care for all of the animals and, due to the failure or inability to provide minimum care, the animals' living conditions negatively impact their health and well-being resulting in animal death, bodily injury, or other serious adverse health consequences. The possessor of the animals displays an inability to recognize or understand the nature of, or has a reckless disregard for, the harmful nature of the animals' living conditions and the deleterious impact of those living conditions on the health and well-being of the animal.

**KENNEL (COMMERCIAL).** Any premises on which 5 (five) or more dogs or 5 (five) or more cats or any combination of 8 (eight) or more dogs and cats 4 (four) months of age or older are kept and/or where the business of buying, selling, breeding, training, or boarding of dogs and/or cats is conducted. This definition does not apply to veterinary hospitals, human societies, animal shelters, or pounds approved by a governmental agency.

**LIVESTOCK.** Horses, cattle, burros, mules, llama, pigs, sheep, goats, rabbits, fowl, or any other domestic animals typically used in the production of food, fiber; or other products or activities defined by the City as agricultural.

**MICROCHIP.** A passive transponder which can be implanted in an animal by injection.

**MULTIPLE ANIMAL SITE.** A site including private residences, commercial properties, and any other site with 5 (five) or more of one species, or any combination of 8 (eight) or more domesticated dogs, cats, ferrets, rabbits, guinea pigs, or other domesticated mammal, including livestock, allowed in the city limits over the age of 4 (four) months.

**MUZZLE.** A leather, wire, or device that, when fitted over an animal's snout, prevents biting and eating.

**NEGLECT.** Withholding or not giving an animal proper nutrition, water, shelter, sanitation, or veterinary care.

**OWNER.** Any person or persons, firm, association, or corporation having the right of property or custody of an animal or who keeps, maintains and/or feeds, or harbors an animal or knowingly permits an animal to remain on or about any premises occupied by said person or persons, firm, association, or corporation for a period of three (3) days or more. The term shall also include any member of the immediate family and any employee.

**PIT BULL.** The term "put bull dog" as used in this ordinance shall refer to any dog which exhibits those distinguishing characteristics which:

- (1) Substantially conforms to the standards established by the American Kennel Club for American Staffordshire Terriers or Staffordshire Bull Terriers;
- (2) Substantially conforms to the standards established by the United Kennel Club for American Pit Bull terriers;
- (3) Miniature bull terriers;
- (4) Technical deficiencies in the dogs' conformance to the standards described by these organizations shall not be construed to indicate that the subject dog is not a "put bull dog" under this article;
- (5) Dogs that are one-half or more of any Staffordshire Bull Terrier, American Pit Bull Terrier, American Staffordshire Terrier, or miniature bull terrier breed of dog;
- (6) Testimony by a veterinarian, zoologist, animal behaviorist, or animal control officer that a particular dog exhibits distinguishing physical characteristics of a pit bull shall establish a rebuttable presumption that the dog is a pitbull.

**POTENTIALLY DANGEROUS DOG.** A dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- (1) Causing an injury to a person or domestic animal that is less severe than a serious injury;
- (2) Chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or

- (3) Acting in a highly aggressive manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

Potentially Dangerous Dogs include canine Hybrids and the following breeds and mixed breeds defined as one-half or more of the following: Pit bull dogs, Rottweilers, and German Shepherds. Under NMSA 1978 § 77-1A-3 a dog shall not be declared a dangerous or potentially dangerous dog if:

- (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 the 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;
  - (c) Committing or attempting to commit a crime;
- (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.

**PROPER ENCLOSURE.** Applicable to dogs individually classified as potentially dangerous, a secure confinement indoors or outdoors, including a locked, fenced yard, locked pen, or other locked structure that is designed to prevent the animal from escaping the confined area and keeping young children from entering the confined area. Proper enclosure does not include a buried electronic fence or invisible fence, chaining, restraining, or otherwise affixing the animal to a stationary object.

**PUBLIC NUISANCE.** Public Nuisance occurs where an animal owner fails to prevent its animal from urinating, defecating, disturbing the peace, emitting noxious odors, or otherwise endangering or offending the well-being of the inhabitants of the City while:

- (1) Trespassing on school grounds, public property, or private property;
- (2) Being found running at large;

- (3) Damaging private or public property; or
- (4) Barking, whining, or howling in an excessive or continuous fashion.

**QUALIFIED ASSISTANCE ANIMAL.** As used in the assistance Animal Act Section 28-11-3 NMSA 1978, a qualified assistance animal is:

- (1) A dog trained or being trained by a recognized school for training dogs to assist persons with disabilities;
- (2) An animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990; or
- (3) Any other animal approved by the governor's committee on concerns of the handicapped as acceptable in public places trained to provide some special assistance to a person with a disability.

**ROTTWEILER.** The term "Rottweiler" as used in this ordinance shall refer to any dog which exhibits those distinguishing characteristics which:

- (1) Substantially conforms to the standards established by the American Kennel Club for Rottweilers; or
- (2) Substantially conforms to the standards established by the Allgemeiner Deutscher Rottweiler Klub;
- (3) Technical deficiencies in the dogs' conformance to the standards described by these organizations shall not be construed to indicate that the subject dog is not a "Rottweiler" under this article.
- (4) Dogs that are one-half or more of any Rottweiler breed of dog;
- (5) Testimony by a veterinarian, zoologist, animal behaviorist, or animal control officer that a particular dog exhibits distinguishing physical characteristics of a Rottweiler shall establish a rebuttable presumption that the dog is a Rottweiler.

**SERVICE DOG.** "Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly

related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." Any dog used primarily as a service animal or in training as a service animal where the owner or keeper establishes the service animal's function as an assistance animal under the Americans with disabilities Act, 42 USC 12101 et seq.

**SERIOUS INJURY.** A physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

**STRAY ANIMAL.** A dog, cat, other domesticated animal, or livestock found running at large.

**TORMENTING OF ANIMALS.** The act of bothering, annoying, distracting, or agitating an animal.

**VICIOUS ANIMAL.** Any animal that bites or in other manner attacks or attempts to attack any person or animal within the City, except that an animal that bites, attacks, or attempts to attack any person who is unlawfully upon the animal's owner's or keeper's premises, or which is provoked to attack, shall not be deemed a vicious animal.

**VIOLATION.** This is defined to occur when a written complaint is received by the City and the complaint is found to have merit.

**WILD LIFE.** Any animal that occurs naturally in a wild state.

## **SECTION V. ADMINISTRATION AND ENFORCEMENT.**

### **(A) Animal Control Officer Authority and Duties.**

(1) *Enforcement officials.* Animal Control Officers as defined herein and designated by the City Manager are authorized to enforce the provisions of this ordinance and to issue warnings and citations for violations of this ordinance. The City may contract with outside entities for animal control and impounding.

(2) *Interference Prohibited.* It is illegal for any person to interfere with, hinder, molest, resist, prevent, or oppose an Animal Control Officer in the performance

of his or her duties in enforcing any provision of this Ordinance, or to secrete any animal from them that requires attention.

(3) *Right to Inspect Premises.* The Animal Control Officer in performance of his/her duties is authorized to inspect premises. If the owner or occupant of the premises objects to inspection, the Animal Control Officer shall obtain a warrant from a court of competent jurisdiction prior to inspection. No warrant shall be necessary if probable cause exists that an emergency requiring inspection or investigation is believed to occur.

(4) *Right of Entry to Pursue Animals at Large.* The Animal Control Officer, in the performance of his/her duties, may without permission enter upon private property except into a private residential structure, for the purpose of apprehending animals running at large and stray animals.

(5) *Restraint of Animals at Large.* The Animal Control Officer has the authority to capture and restrain animal's at large using necessary force and non-injurious equipment. The officer has the authority to return a stray non-vicious animal to its rightful owner or keeper or to impound the animal.

(6) *Use of Lethal Force by Peace Officer.* A peace officer, pursuant to the provisions of § 77-1-9, N.M.S.A. (1978), may use such lethal force as is necessary against an animal to prevent injury to the peace officer, other persons, domestic animals, or livestock. *A code enforcement or animal control officer, in performing their normal duties, may use such lethal force as is necessary against an animal to prevent injury to the officer, other persons, domestic animals, or livestock.*

(7) *Notification of Offense.* Citizens who have personal knowledge of a violation to this ordinance may make complaints to the City or Sierra County Sheriff's Office Dispatch. The City's Code Enforcement Officer may investigate the complaint and may refer the matter to the Sheriff's Department for Animal Control. False complaints are illegal.

(8) *Enforcement.* The civil and criminal provisions of this chapter shall be enforced by those persons or agencies designated by the City Manager.

## SECTION VI. GENERAL REGULATIONS.

### (A) *Registration of Animals, Permits, and Annual Permit Renewals.*

- (1) *Registration.* Registration of animals with in the city is ~~not~~ required ~~except~~ as specified herein.
- (2) **Annual Registration Renewal.** Between July 1 and July 31 of each year, the owner or keeper of an animal shall renew the animal's City registration and pay an annual registration fee.
- (3) **Registration Fees**
  - (a) Intact animals will be 5.00 annually
  - (b) Spay or Neuter animals will be 3.00 annually
- (4) *Required Permits.* Full time residents (people residing within the city limits over ninety

(90) days within a twelve (12) month period shall register the following animals and activities with the city and shall be in violation of this ordinance if found to be harboring these animals or conducting activities specified below without obtaining a city permit.

- (a) Owners of Pit Bull dogs, Rottweilers, German Shepherds, and dogs with one-half or more of these three breeds shall register their animals with the city annually and obtain a city permit in order to harbor such animals within the city limits.
- (a) Owners of multiple animals shall be required to obtain an annual city- issued Multiple Animal Site Permit.
- (b) Owners of dogs trained as guard dogs used on commercial properties shall register their guard dogs annually with the city and obtain a city- issued Guard Dog Permit.
- (c) Owners and keepers of Canine Hybrids shall register their animals with the city annually and obtain an annual city-issued Canine Hybrid Permit.
- (d) Owners and keepers of wild and/or exotic animals, including wolves and coyotes, shall register their animals with the city annually and obtain a city- issued Wild or Exotic Animal Permit.
- (e) Owners of dogs determined to be "dangerous or potentially-dangerous dogs" are required to apply for an annual permit in order to keep the dog within city limits.
- (f) Owners of dogs determined to be a nuisance because the dog has
  - been at large or without a leash resulting in citations issued by either the Code Enforcement Officer or Animal control authority a minimum of three (3) times; complaints about uncontrolled barking, whining, or howling; unsanitary conditions; nuisance odors from animal waste; or a dog that has damaged private or public property.
- (g) Animal Service Providers shall apply for an annual Animal Service Provider Permit.
- (h) Organizations holding dog shows, training events, or other approved events for dogs or other animals shall apply for a City Permit for each event.

***(BJ) Animal Vaccination and Tags.***

All domestic animals shall be vaccinated as provided for in §§ 77-1-3 through 77-1-5, N.M.S.A. (1978), as amended from time to time, together with such administrative rules as may be adopted from time to time and other applicable statutes and rules.

**(CJ Multiple Animal Site Permit.**

- (1) *Permit required.* No person shall operate a multiple animal site without a valid Multiple Animal Site Permit. A Multiple animal Site is defined as a site including private residences, commercial properties, and any other site with five (5) or more of one species, or any combination of eight (8) or more domesticated dogs, cats, ferrets, rabbits, guinea pigs, or other domesticated mammal, including livestock, allowed in the city limits over the age of four (4) months.
- (2) *Permit Inspection.* A person may obtain a permit after satisfactorily passing a city permit inspection, payment of the appropriate permit fee, and proof of business registration, if applicable. The operator shall post the permit in a conspicuous place on the premises. Permits are not transferable.
- (3) *Routine Inspections.* Permittees shall submit to routine inspections by the Animal Control Officer and shall post the permit and permit inspections on the premises.
- (4) *Annual Registration Renewal.* Between July 1 and July 31 of each year, the Multiple Animal Site Permittee shall renew the Multiple Animal Site Permit and pay an annual registration fee.
- (5) *Site Standards.* Operators of the site shall provide the following for animals at all times:
  - (a) The facility shall be maintained in good repair kept clean.
  - (b) Maintain animals in suitable enclosures.
  - (c) Animals maintained in pens, cages, runs, or confined areas shall be provided with adequate space to prevent overcrowding and to maintain adequate exercise according to species. Such cages holding cats and ferrets shall contain a litter box. Cages shall not be stacked in such a manner as to allow excrement or waste to enter other cages.
  - (d) Provide adequate weatherproof housing with proper ventilation and temperature, and sufficient lighting and shade.
  - (e) Restrain animals by adequate fencing maintained at all times to contain the animals.

- (f) Make provisions for the removal and proper disposal of animal and food waste, soiled bedding, dead animals and debris. Animals shall be removed from cages and protected from water and cleaning agents during cleaning. Disposal facilities shall be operated in a manner which will minimize vermin infestation, odors and disease. Adequate drainage shall be maintained.
  - (g) Eliminate excessive animal noise.
  - (h) Segregate by sex un-neutered adult animals, except where otherwise indicated for health, welfare or breeding purposes. Animals shall be housed in compatible groups.
  - (i) Segregate diseased or injured animals.
  - U) Provide all animals with clean, fresh, sufficient and wholesome food and potable water. Such water shall be available at all times. Food and water containers shall be kept clean.
  - (k) Provide sanitary, pest-free storage of food and bedding.
  - (l) Observe each animal daily. Programs for disease control and prevention shall be maintained. Sick, diseased, injured, lame, or blind animals shall be provided with appropriate veterinary care. Humane euthanasia will be provided when necessary. The person in charge who suspects an animal of being rabid shall immediately notify the Animal Control Officer and segregate the animal.
  - (m) Spay or neuter all cats and dogs that are not intended to be bred.
  - (n) Professional animal establishments shall maintain a record of animal inventory, disposition, and inoculations.
- (6) *Violation.* A Multiple Animal Site Permit may be denied, suspended, or revoked by the Animal control Officer upon determination that the operator is in violation of this section.

**(D) Neutering and Spaying.**

The city encourages pet owners to spay and neuter their pets in order to control the city's animal population, prevent strays from roaming neighborhoods and becoming a nuisance, prevent disease and unsanitary conditions, and prevent unnecessary euthanasia of strays that cannot be provided a home.

**(E) Animal Service Providers.**

- (1) *Required Permit.* Any person intending to conduct business as an Animal Service Provider shall first obtain a City issued Animal Service Provider Permit.
- (2) *Providers.* Grooming Parlors, Animal Day Care, Boarding Kennels, Pet Stores, Veterinary Clinics and Hospitals, Humane Societies, Animal Shelters, Pounds, and other businesses serving pets, animals, or their owners are considered Animal Service Providers.
- (3) *Business License.* The applicant shall have a Tax Identification Number and a City Business License.
- (4) *Annual Renewal.* This permit shall be renewed annually, and shall be non-refundable and non-transferable.
- (5) *Accurate Records.* The Animal Service Provider establishment shall maintain a thorough and accurate record of each animal service patron that passes through the establishment. Records shall be maintained and kept for three (3) years and shall be made available to the Animal Control Officer on demand.

**(F) Qualified Assistance Animals/Service Dogs.**

- (1) *State Statute.* This ordinance refers to §§ 28-11-1 through 28-11-5, N.M.S.A. (1978).
- (2) *Admission of Service Dogs into Establishments Open to the Public.* Dogs trained to assist the blind, partially blind, deaf, hearing impaired, mobility impaired, people with psychiatric and neurological disabilities, and those otherwise impaired or disabled shall be allowed in public places. It is illegal for any person owning, operating, or maintaining any public place of business or conveyance into which the general public is invited for any business purpose to debar or exclude therefrom or intentionally interfere with the use of any dog which has been trained to assist people needing Service Dog assistance provided that such dog be in the company of such person whom it was trained to assist in conformance with § 28-11-3, N.M.S.A. (1978).
- (3) *Interference with Assistance Animal.* It is illegal to intentionally fail or refuse to control a person's unrestrained dog that interferes with or obstructs the owner or trainer of the qualified assistance animal or the qualified assistance animal in accordance with § 28-11-5, N.M.S.A. (1978).

- (4) *Private Property Not Open to the Public Exempt from Provisions.* The provisions of this section shall not apply to unrestrained dogs on private property not open to the public.
- (5) *No Certification Required.* There is no certification required for Service Dogs. A public establishment may ask a patron with a service dog if the dog has been trained as a service dog.
- (6) *Compliance with State and Federal Law.* The provisions of this ordinance relating to Qualified Assistance Animals and Service Dogs shall be construed to comply with all state or federal statutes or regulations as amended from time to time.

**(G) *Guard Dogs on Commercial Property.***

Guard dogs are allowed on commercial and industrial property only and are not allowed on residential property.

- (1) The city prohibits Pit Bull Dogs and Rottweilers from being trained as guard dogs or acting as trained guard dogs.
- (2) No more than two (2) guard dogs are allowed per commercial property.
- (3) *Permit Inspection.* The owner or keeper of a guard dog may obtain a permit after satisfactorily passing a city permit inspection, payment of the appropriate permit fee, and proof of business registration. The operator shall post the permit in a conspicuous place on the premises. Permits are not transferable.
- (4) *Permit Required.* Within ninety (90) days of the effective date of this ordinance, every owner of a dog that has undergone specialized guard dog training and is used to guard commercial or industrial property shall register the guard dog with the city in order to obtain a city-issued Guard Dog Permit.
  - (a) Registration shall include the following:
    - (i) Name, address, and telephone number of the dog's owner;
    - (ii) Address where the dog is harbored if different from the owner's address;
    - (iii) Complete identification of the dog including the dog's sex, color, and any other distinguishing physical characteristics;
    - (iv) Two recent color photographs of the dog;

- (v) Proof of one-hundred thousand dollars (\$100,000.00) liability insurance for damage, bodily injury, or death of a person;
- (vi) Proof of a current rabies vaccination (rabies tag number);
- (vii) Veterinary record of neutering or spaying of dog older than six (6) months of age;
- (viii) Tattoo number with a photograph of the tattoo or microchip number for a microchip containing owner identification information that is also provided to the Animal Control Authority;
- (ix) Copy of the guard dog-training certificate.
- (x) City-approved guard dog warning sign displayed on premises;
- (xi) Registration tag or collar issued by the city that shall be worn by the dog at all times.
- (xii) Veterinarian's name and telephone number;
- (xiii) Annual registration fee paid in full;
- (xiv) A written plan describing how the guard dog is to be confined on the property;
- (xv) A signed statement that the owner or keeper of the dog shall keep the dog under control at all times;
- (xvi) A signed statement that the owner or keeper of the dog shall immediately notify the Animal Control Officer in the event of any of the following and that failure to provide notification is illegal under state law, § 77-1A-6, N.M.S.A. (1978):
  - Immediate notification of the dog's escape from confinement;
  - Immediate notification of attack by the dog upon a human being, a domestic animal, or livestock;
  - Notification within five (5) business days of the dog's death; and
  - Notification within twenty-four (24) hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog.

(xvii) A signed statement agreeing to abide with state law, § 77-1A-6, N.M.S.A. (1978) that it is illegal to:

- Fail to surrender the dog to an Animal Control Authority for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety; and
- Fail to comply with special handling or care requirements for the dog that a court ordered.

(xviii) The owner or keeper of the dog shall provide the certificate of registration to the Animal Control Officer upon request.

- (b) Between July 1 and July 31 of each year, the owner or keeper of a guard dog shall renew the dog's city permit and pay an annual registration fee.
- (5) *Warning signs Required.* Commercial property using a guard dog shall have city-approved warning signs at least twelve (12) inches long that shall state "Guard Dog" and "Guardia" or similar language and shall show a picture of an aggressive dog that shall be posted not farther than two-hundred (200) feet apart on the exterior of the fences and walls surrounding the property.
- (6) *Containment of guard Dog on the Property.* Commercial property with a guard dog shall ensure the area where the guard dog is used shall be secured in such a manner as to prevent its escape and shall include fencing at least six (6) feet high or higher if necessary to prevent the dog from jumping over the fence and a minimum of two (2) feet in depth to prevent the dog from digging under the fence, and constructed of un-chewable and non-climbable materials.
- (7) *Guard Dogs confined to Property.* It is illegal to allow trained guard dogs off the owner's property unless the dog is being transported in an enclosed vehicle for medical treatment, examination, training, or boarding in a registered facility.
- (8) *Transporting Guard Dogs.* Guard dogs transported in motor vehicles shall be confined in a secure crate in a closed, locked vehicle to prevent opportunities for escape and in a manner sufficient to prevent the public from coming into contact with the dog through an open window in the vehicle.
- (9) *Notification of Escape.* The owner or keeper of a guard dog shall immediately notify the City Code Enforcement Officer and the Animal

Control Authority by calling the Sheriff's Office Dispatch in the event the dog escapes confinement.

- (10) Notification of Attack. The owner or keeper of a guard dog shall immediately notify the City code enforcement Officer and the Animal Control Authority in the event the dog attacks a human being, a domestic animal, or livestock.
- (11) *Routine Inspections.* Owners or keepers of guard dogs shall submit to routine inspections by the Animal control Officer and shall post the permit and permit inspections on the premises.

***(HJ) Wild Canine and Canine Hybrid.***

- (1) *Wolves and Coyotes Illegal without Permit.* It is illegal for any person to possess a full-blood wolf, coyote, or other wild canine breed in the city without a city-issued Wild or Exotic Animal Permit.
  - (2) *Canine Hybrids Allowed with Permit.* No person shall possess a canine hybrid without a valid Canine Hybrid Permit. See registration provisions under SECTION VI (I) *Breed Specific Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, Dangerous Dogs, and Potentially Dangerous Dogs Regulations.*
  - (3) *Diet Restrictions.* It shall be illegal to feed Canine hybrids raw meat or live animals. Prepared commercial or veterinarian prescribed diets will be the only acceptable form of canine hybrid feeding.
- (I) Breed specific Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, Dangerous Dogs, and Potentially Dangerous Dogs Regulations.***

- (1) *Legislative Intent to Protect the Public from Dangerous Dogs and Potentially Dangerous Dogs.* This subsection is intended to utilize the authority and powers of the city in order to secure for the citizens the protection of their health, safety, and welfare. It is intended to be applicable to dogs commonly referred to as "Pit Bulls," "Rottweilers," "German Shepherds," "Canine Hybrids," and animals considered vicious, dangerous, or potentially dangerous as defined in the Definitions Section of this Ordinance. This subsection is designed to regulate aforementioned dogs and to ensure responsible handling by their owners through confinement, registration, and liability insurance. Due to the unique history, nature, and characteristics of said dogs, the City Council has determined that Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, and dogs individually classified as either Dangerous or Potentially

Dangerous require the special regulations and provisions contained within this subsection as reasonable and necessary to protect the public.

- (2) *Restrictions on Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, and Individually Classified Dangerous and Potentially Dangerous Dogs.*
  - (a) According to the Centers for Disease Control, Pit Bull dogs, Rottweilers, and German Shepherds are listed as the top three (3) dog breeds and Canine Hybrids are listed as the top cross-breed involved in dog-bite-related fatalities of humans.
  - (b) With the exception of registered breeders, no property may harbor more than two (2) dogs in any combination from the following list: Pit Bull Dogs or Pit Bull mix breeds, Rottweilers or Rottweiler mix breeds, German Shepherds or German Shepherd mix breeds, Canine Hybrids, dogs individually classified as dangerous, and dogs individually classified as potentially dangerous.
- (3) *Requirements for Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, dogs Individually Classified as Dangerous, and Dogs Individually Classified as Potentially Dangerous.* All Pit Bull Dogs, Rottweilers, German Shepherds, Canine Hybrids, and Dogs Individually Classified as Dangerous or Vicious residing inside the city limits shall be subject to the following regulations and enforcement and shall have ninety (90) days from the effective date of this ordinance to comply.
  - (a) *Confinement.* Because dangerous dogs, Pit Bull Dogs, Rottweilers, German Shepherds and Canine Hybrids have a propensity to attack other animals, and because of the danger posed to humans and animals when running loose or while running together in a pack, the aforementioned dogs shall at all times be securely confined by the following enclosures:
    - (i) If the dog is kept indoors, the dog shall be kept in a house or structure that prevents the dog from exiting the structure through open windows, open doors, screen windows, and screen doors on its own volition.
    - (ii) If the dog is kept outside and is not attended by a competent adult, the dog shall be confined in a securely and totally enclosed, locked and secured four (4) foot to six (6) foot high pen or dog run made of non-chewable materials with a concrete floor to prevent digging, four secure sides attached to the concrete floor, a secured top attached to all sides, and locked with a key or combination lock when the dog is within the structure. In addition, the property shall

be enclosed by a secure six (6) foot high fence, or higher if necessary to contain the dog, that is made of non-climbable and non-chewable material; that has a concrete footer sunk a minimum of two (2) feet below the ground level or similar barrier approved by the Code Enforcement Officer to prevent digging under the fence; that is at least three (3) feet from any alley, sidewalk or private or public right-of-way; that the dog cannot climb over, jump over, or dig under to prevent escape of the dog from the property. All objects that a dog can use to climb on and jump over the fence (doghouses, woodpiles, cars, etc.) shall be moved away from the fence. Keeping a dangerous dog, potentially dangerous dog, Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid on a chain or leash in the yard shall not be considered proper confinement and tethering is illegal.

(iii) In accordance with § 77-1A-6, N.M.S.A. (1978), in the event a dangerous dog, dog classified as potentially dangerous, Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid escapes confinement, the owner or keeper of the dog shall immediately notify the city Code Enforcement Officer and the Animal Control Officer by calling the Sierra County Sheriff's Office Dispatch.

(b) *Confinement of Dogs Individually Classified as Potentially Dangerous.* Owners of dogs individually classified as potentially dangerous shall provide a proper enclosure as defined herein for the dog. The city's approval of the owner's confinement plan is required as part of the annual registration process.

(c) *Leashing.* At any time that a Pit Bull Dog, Rottweiler, German Shepherd, mix of these three breeds, Canine Hybrid, or any dog individually classified as dangerous or potentially dangerous is not confined as required in the subsection above, the dog shall be kept on a leash no longer than four (4) feet in length with the responsible owner or custodian in attendance who is physically and mentally capable of managing the dog.

(d) *Potentially Dangerous Dog Transportation.* The owner of a dog individually classified as a potentially dangerous dog by the Animal Control Authority or any court of law, a breed, mixed breed, or hybrid determined by this ordinance to be potentially dangerous including Pit Bull Dogs, Rottweilers, German Shepherds, and Canine Hybrids, shall provide proper care in transporting the dog in a closed vehicle to prevent escape or contact with the public.

(e) *Dangerous Dogs Confined to Property.* It is illegal to allow dogs individually classified as a dangerous dog off of the owner's property unless the dog is being transported in an enclosed vehicle for medical treatment, examination, or boarding in a registered facility.

(f) *Transporting Dangerous dogs.* Individually classified dangerous dogs transported in motor vehicles shall be confined in a secure crate in a closed, locked vehicle to prevent opportunities for escape and in a manner sufficient to prevent the public from coming into contact with the dog through an open window in the vehicle.

(g) *Exceptions to Confinement Requirements.* An exception to these confinement requirements is hereby provided for any Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid not individually classified as a dangerous dog, in attendance at, and participating in, any lawful dog show, contest, or exhibition sponsored by a dog club, association, society, or similar organization registered with the city.

(h) *Liability Insurance Requirement.* In order to protect the public and to afford relief from the severe harm and injury which is likely to result from a dangerous dog, every owner of a dog individually classified as dangerous shall maintain and be able to provide evidence of property owners or renters liability insurance to respond to damages up to and including the amount of \$100,000.00 (one-hundred thousand dollars) for bodily injury or death of any person or damage to property which may result from the ownership, keeping, or maintenance of such dog.

(i) *Registration.* Within ninety (90) days of the effective date of this ordinance, every owner of a dog individually classified as a dangerous dog, potentially dangerous dog, Pit Bull dog or mix breed, Rottweiler or mix breed, German Shepherd or mix breed, or Canine Hybrid in the city shall comply with the provisions of this ordinance and shall register the dog with the City Code Enforcement Officer to obtain a valid permit. It is a violation of state law not to comply with the registration and handling requirements for the dog based on the Dangerous Dog Act, §§ 77-1A-5 & 77-1A-6, N.M.S.A. (1978). Registration with the city shall include the following:

- (i) Name, address, and telephone number of the dog's owner;
- (ii) Address where the dog is harbored if different from the owner's address;

- (iii) Complete identification of the dog including the dog's sex, color, and any other distinguishing physical characteristics;
- (iv) Two recent color photographs of the dog;
- (v) For dangerous dogs, proof of \$100,000.00 (one-hundred thousand dollars) liability insurance for damage, bodily injury, or death of a person;
- (vi) Written permission of the property owner or homeowner's association where the dog will be kept, if applicable;
- (vii) Proof of a current rabies vaccination (rabies tag number);
- (viii) Veterinary record of neutering or spaying of dog older than six (6) months of age unless indicated on registration form of intent to breed animal and breeding fee paid;
- (ix) City-approved "Beware of Dog" sign displayed on premises;
- (x) A bright and identifiable collar or tag that shall be worn by the dog at all times.
- (xi) A written description of the method of compliance with the confinement requirements and containment plan provided for herein, subject to approval by the City.
- (xii) Veterinarian's name and telephone number;
- (xiii) Annual registration fee paid in full;
- (xiv) A signed statement that the owner or keeper of the dog shall keep the dog under control at all times;
- (xv) A signed statement indicating acknowledgement that the applicant's property used for housing the registered animal is subject to routine inspection by the Animal Control Officer;

(xvi) A signed statement that the owner or keeper of the dog shall immediately notify the City Code Enforcement Officer and the Animal Control Authority in the event of any of the following and that failure to provide notification is illegal under state law, § 77-1A- 6, N.M.S.A. (1978):

- Immediate notification of the dog's escape from confinement;
- Immediate notification of attack by the dog upon a human being, a domestic animal, or livestock;
- Notification within five (50 business days of the dog's death; and
- notification within twenty-four (24) hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog;

(xvii) A signed statement agreeing to abide with state law, § 77- 1A-6, N.M.S.A. (1978), that it is illegal to:

- Fail to surrender the dog to an Animal Control Authority for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety; and
- Fail to comply with special handling or care requirements for the dog that a court ordered;

(xviii) The owner or keeper of the dog shall provide the certificate of registration to the Animal control Officer upon request.

0) *Annual Registration Renewal.* Between July 1 and July 31 of each year, the owner or keeper of a dog classified as a dangerous dog, potentially dangerous dog, Pit Bull Dog, Rottweiler, German shepherd, or Canine Hybrid shall renew the dog's City permit and pay an annual registration fee.

(k) *Failure to Register.* Failure to register a dog classified as a dangerous dog, potentially dangerous dog, Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid as required by this ordinance within the ninety (90) day grace period and in the manner

prescribed shall be prima facie evidence that the dog shall be considered illegally harbored within the city limits.

- (l) *Potentially Dangerous Dog Behavior and Registration.* If a dog previously determined individually to be a potentially dangerous dog has not exhibited any of the behaviors specified in § 77-1A- 2(D), **N.M.S.A.** (1978) of the Dangerous Dog Act for thirty-six (36) consecutive months, the owner may request the Animal Control Authority in the jurisdiction to lift the requirements for registration pursuant to this section. If the Animal Control Authority has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.
- (4) *Public Notification that the city has classified Pit Bull Dogs, Rottweilers, German Shepherds, and canine Hybrids as Potentially Dangerous.* The city shall post the following sign stating in English and Spanish the following text: "Both pure and mixed-breed Pit Bull dogs, Rottweilers, German Shepherds, and Canine Hybrids are classified as potentially dangerous. Failure to register and confine a Pit Bull Dog, Rottweiler, German Shepherd, or Canine hybrid is a violation of the law subject to sever penalty according to Chapter 91 of the Municipal Code as amended. If you or your family is at risk because someone living near you illegally keeps a Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid, contact the City Code Enforcement Officer.
- (5) *Inspection of Premises.* The Animal Control Officer has the authority to inspect the premises where a dog individually classified as dangerous or potentially dangerous, Pit Bull Dog, Rottweiler, German Shepherd, or Canine Hybrid is kept or harbored and to issue citations if confinement facilities are in violation of this ordinance or if proper care of the dog is in violation of city code.
- (6) *Seizure of Dog in Violation of Ordinance.* Based on § 77-1-3, N.M.S.A. (1978), if an animal control Officer has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, or that a dog is a potentially dangerous dog and poses a threat to public safety, or that a Pit Bull Dog, Rottweiler, German Shepherd, mix of the three aforementioned dogs, Canine Hybrid, or dog previously classified as dangerous or potentially dangerous is in code violation the Animal Control Authority may apply to a court of competent jurisdiction in the county where the animal is being harbored for a warrant to seize the animal.
- (7) *Impounding.* According to§ 77-1A-4, N.M.S.A. (1978), after seizure, the Animal Control Authority shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of

registration pursuant to the provisions of § 77-1A-5, N.M.S.A. (1978) of the Dangerous Dog Act.

- (8) *Seizure of a Dangerous Dog by the Animal Control Authority.* When the Animal Control Authority, acting upon a code violation, seizes a dog that has previously been determined to be a dangerous dog, or that the Animal control Authority classifies as a dangerous dog or potentially dangerous dog, one of the following may occur:
- (a) The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration.
  - (b) The Animal Control Authority may, within fourteen (14) days after seizure of the dog, bring a petition in court seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within thirty (30) days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to its owner;
  - (c) If the owner does not admit that the dog is dangerous or potentially dangerous and the animal Control Authority does not bring a petition in court within fourteen (14) days of seizure of the dog, the court shall immediately order the release of the dog to its owner.
  - (d) If the owner admits that the dog is dangerous and transfers ownership of the dog to the Animal Control Authority, the Animal Control Authority may humanely destroy the dog.
  - (e) An Animal control Authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to abide by the conditions for registration, confinement, or handling set forth in this section.
  - (f) A determination that a dog is not dangerous or potentially dangerous shall not prevent an Animal Control Authority from making a subsequent application for seizure based on the dog's subsequent behavior.

- (9) *Violation.* Violation of this ordinance may result in the city-issuance of a civil violation notice, a summons to appear in municipal court or court of competent jurisdiction, and humane destruction of the dangerous dog, potentially dangerous dog, Pit Bull Dog, Rottweiler, German Shepherd, mix breed of the aforementioned three breeds, or Canine Hybrid by order of the municipal court or court of competent jurisdiction.

**(J) *Restraining Animals and Restraint Devices.***

- (1) *Restraint of Animals.* Unless otherwise specified in this Ordinance or in the City Code, every person owning or having charge, custody, or care or control of any animal shall keep such animal exclusively upon his own premises.
- (2) *Restraint When Off Property.* Unless otherwise specified in this Ordinance or in the City Code, a dog shall be permitted on the street or in public only when accompanied by a competent person to handle the dog who has control of the dog on a leash or restraint device not to exceed 8 (eight) feet in length. Dogs shall not be on the streets or in public places under voice command without a restraint device.
- (3) *Female Dogs or Cats in Mating Season to be Confined.* Any person in control of a female dog or cat in estrus or during mating season shall confine such dog or cat as to preclude other dogs or cats from attacking or being attracted to such female animal except for intentional breeding purposes.
- (4) *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.
- (5) *Trespassing Animals.* Any animal trespassing upon private or public property shall be deemed prima facie not to be under the immediate control of the animal owner or keeper, and the Animal Control Officer may issue a citation to the owner or keeper, or impound the animal, or both.
- (6) *Cats.* It is unlawful for any owner, possessor or keeper of any cat in the City to permit it to run at large within the City. Cats found outside the owner's property are considered stray or running at large, are considered a nuisance, and are subject to impoundment.

**(K) *Animals Transported in Vehicles.***

- (1) *Transport Animals in Safe and Humane Manner.* It shall be illegal for a person to carry an animal in or upon any vehicle in a cruel, inhumane, or unsafe manner. Animals carried in the open bed of a truck must be crated or restrained upon a non-metal mat so they cannot fall or jump from the truck.
- (2) *Rescue of animals from Vehicles Permitted if in Immediate Danger.* If an Animal Control Officer determines that an animal in a closed vehicle is in immediate danger of serious injury or death, the officer may enter the vehicle, by whatever means necessary, and impound the animal into protective custody. .

**(L) *Injury to Animals by Motorists.***

Every operator of a motor or self-propelled vehicle upon the city's streets and ways shall, upon injuring, striking, maiming or running down any animal, provide immediate notification to the Animal Control Officer and furnish sufficient facts relative to the incident.

**(M) *Animal Bites, Attacks, Rabies.***

- (1) *Department of Health Guidelines.* The city shall follow the New Mexico Department of Health's guidelines to help protect against rabies located on the Web at <http://nmhealth.org/ERD/HealthData/rabies.shtml>.
- (2) *State Law Reference.* The state law reference regarding rabies and animal bites is § 77-1-6, N.M.S.A. (1978).
- (3) *Reporting Wild animals that are Sick or Dead.* If a person sees a sick or dead wild animal or a wild animal that is acting abnormally in this area, report it to the New Mexico Department of Game and Fish at (575) 532- 2100. Rabid animals may show no fear of people and may even seem friendly or become aggressive.
- (4) *Rabid Animal.* An animal that has rabies or shows signs of having rabies, and every animal bitten by another animal afflicted with rabies or exposed to rabies, shall be confined at once in a secure place by the owner. The person observing such animals shall immediately contact and report the observations to the Code Enforcement Officer, who will report the observations to the Animal Control Authority.
  - (a) If the animal shows signs of sickness or abnormal behavior, or if the animal escapes confinement, the person shall immediately notify the code Enforcement Officer, who will contact the Animal Control Authority.

(b) If the animal dies during confinement, the person having custody shall notify the Code Enforcement Officer and immediately surrender the animal's carcass to the Animal Control Officer upon notification by the Code Enforcement Officer.

(5) *Animal Biting a Person.* The owner or person who has custody of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Code Enforcement Officer and Animal Control Officer within twenty-four (24) hours. If deemed necessary by the Animal Control Officer, the owner of an animal that bites a person shall surrender said animal to the Animal Control Officer, who will impound said animal for a period of observation. The Animal Control Officer may order the owner of such animal to place the animal in quarantine on the owner's premises.

(N) ***Impounding.***

(1) *Stray Animals May Be Impounded.* An Animal Control Officer may detain and impound in the designated Animal Control Authority facility a stray or any animal kept or maintained contrary to the requirements of this chapter.

(a) The animal may be confined in accordance with the facility's regulations.

(b) The owner shall be responsible for all impound fees, boarding fees, and other costs whether or not the animal is reclaimed.

(c) Any stray which is not reclaimed and cannot be adopted may be euthanized in accordance with the impound facility's regulations.

(2) *Nuisance Animals May Be Impounded.* An animal that continues to be an alleged nuisance may be impounded by the Animal Control Officer until such time as a judgment is made by the municipal court.

(O) ***Lost and Found Animals.***

(1) *Lost and Found Animal Protocol.* No person will, without the knowledge and consent of the owner, hold or retain possession of any animal for more than twenty-four (24) hours without first reporting the possession of the animal to the city, and provide name and address and a true and complete statement of the circumstances under which the animal came under possession, a description of the animal and the precise location where such animal is confined.

- (2) *Found Animals Shall Be Surrendered Upon Request by Authority.* No person having such an animal in his possession shall refuse to immediately surrender the animal to an Animal Control Officer upon demand.

***Wild or Exotic Animals.***

- (P) *Prohibited and Protected Animals Prohibited.* No person shall keep an
- (1) animal of a species prohibited or protected by Title 50 of Code of Federal Regulations or by the appropriate state regulations or statutes.

- (2) *Wild, Dangerous, Venomous Animals Regulations.* No person shall keep any animal that is considered exotic in the state or which is wild, fierce, dangerous, venomous, noxious, or naturally inclined to do harm, including but not limited to carnivores such as tigers, lions, jaguars, cougars, bobcats, lynx, cheetahs, leopards, all other wild cats, bears, wolves, foxes, coyotes, badgers, and other wild animals including but not limited to porcupine, nonhuman primates, alligators, crocodiles, vipers, venomous snakes, and venomous lizards, except for the following:

- (a) A proper and valid city Wild and Exotic animal Permit is obtained;
- (b) Adequate protective devices are provided to prevent such animals from escaping or injuring the public;
- (c) Such wild animals shall be kept in the following facilities and shall not be kept in private residences or business establishments:
- (i) zoological park;
  - (ii) pet shop;
  - (iii) veterinary hospital;
  - (iv) animal shelter;
  - (v) public laboratory;
  - (vi) circus;
  - (vii) amusement show;
  - (viii) educational facility;

(ix) scientific facility; or

(x) In the control of a humane society.

- (3) *Regulations of Poisonous Snakes and Rare and Endangered Species Listed by State.* The keeping of poisonous snakes and rare or endangered species listed by the state is prohibited without a permit from the state department of wildlife and registration with the local jurisdiction.
- (4) *Federal Law Governs Rare and Endangered Species on Federal List.* The keeping of rare or endangered species listed by the federal government is regulated by federal law.

**(Q) *Dead Animal Disposal.***

- (1) *Burial or Disposal.* Within twenty-four (24) hours of death of an animal, the owner shall dispose of the carcass by burial at least three (3) feet underground in a suitable location, or by other means approved by the animal Control Authority.
- (2) *Disposal of dead animals by animal Control Authority.* At his/her discretion, the Animal Control Officer is authorized to pick up and dispose of all dead animals immediately upon discovery or notification. He/she is entitled to charge a reasonable fee established by the city council for such services to the owner. The Animal Control Officer shall make reasonable efforts to notify the owner of the death of the animal.
- (3) *Dead Animal Removal on Roads.* Dead animals on city and county roads shall be removed by the Animal Control Authority upon notification.
- (4) *Request of Removal of dead Animals from Private Property.* At the request of the owner, the Animal Control Officer may, at his own discretion, given the constraints of city resources, remove the carcass of dogs and cats from private property for a fee established by city council.

**(R) *Vietnamese Pigs or Potbellied Pigs.***

Swine commonly referred to as Vietnamese Pigs, or Asian Potbellied Pigs, or potbellied pigs are viewed as pets. A person may maintain within the City limits such animals subject to the following restrictions.

- (1) There cannot be more than one (1) animal of this classification on the property at one time over the age of four (4) months except in the Residential-Agricultural Zone which allows up to eight (8) pigs under 4-H.

or FFA supervision (Reference: Residential-Agricultural Zone in the Zoning Ordinance);

- (2) Except in the Residential-Agricultural Zone, the weight of the pig cannot exceed one hundred (100) pounds;
- (3) The owner is required to provide upon request by a City employee, Animal Control Officer, or Law Enforcement an annual certificate of health (indicating the absence of pseudorabies, brucellosis, and leptospirosis), and proof of current inoculation against leptospirosis.

### **SECTION VII. LIVESTOCK.**

Non-commercial livestock may be permitted in the R-A (Residential-Agricultural) zone, and are prohibited in all other zones. (Reference Zoning Ordinance).

**(AJ) *Hobbling in Cruel Manner Unlawful.***

It is unlawful for any person to hobble, chain, or stake livestock or other animals by any means which may cause injury, damage, or entanglement to said animal or prevent the animal from gaining access to any and all care and maintenance items required.

**(BJ) *Stray Livestock.***

It is unlawful for livestock to stray outside the property boundaries.

**(CJ) *Livestock Confined to Property.***

It shall be unlawful for any person to stake out, graze, or herd any animal upon any unenclosed private lot or parcel of land in a manner that such animal may be or go beyond the boundary of such lot or land.

### **SECTION VIII. PROHIBITED ACTIVITIES.**

**(AJ) *Abandonment.***

- (1) *Abandonment Illegal.* It is illegal for any person to abandon an animal within the city limits.
- (2) *Animal Control Authority Duty.* When it is reported that domestic animals or livestock have been abandoned, without shelter, food and/or water, for more than twenty-four (24) hours, the Animal Control Authority will be contacted for removal of animal(s) and the owner or caretaker of the

animal(s) will be fined a penalty and/or cost assessed with removal and care of the animals(s).

- (3) *Desert Haven animal Refuge.* Qualifying domestic companion animals and birds that need care may be dropped off at the Desert Haven Animal Refuge, a no-kill facility operated by the Sierra County Humane Society, Inc., located in Williamsburg. Call Desert Haven at (575)-894-2778 for hours of operation or for an appointment. Desert Haven is located at mile marker 34 on Highway 187, two miles south of the 1-25 exit number 75.

**(BJ) Cruelty or Neglect.**

- (1) *Physical Abuse.* It is illegal for any person to willfully or maliciously kill; injure; maim; disfigure; torture; torment; beat with a stick, chain, club or other object; mutilate, burn or scald with any substance; overdrive or otherwise cruelly set upon any animal except that necessary force may be employed to drive off vicious or trespassing animals.
  - (a) *Exemptions.* (Reference: 2005 NM HB 878)
    - (i) Hunting, fishing, trapping, or falconry in accordance with the law;
    - (ii) The treatment of animals used on farms and ranchers for the production of food and fiber in accordance with common animal husbandry.
    - (iii) Commonly accepted Mexican and American rodeo practices.
    - (iv) Research facilities licensed pursuant to the provisions of 7 U.S.C. § 2136 when adhering to legally recognized protocol.
- (2) *Tethering.* It is illegal to tether a dog within the city limits.
- (3) *Animal Poisoning.* It is illegal for any person by any means to make accessible to any animal, with the intent to cause harm or death, any substance that has in any manner been treated or prepared with any harmful poisonous substance. It is not the intent of this section to prohibit the use of poisonous substances for the control of vermin of significance to the public health.
- (4) *Care and Maintenance.* It is illegal for any person to fail, refuse, or neglect to provide any animal in his charge or custody, as owner or otherwise, with adequate food, drink, shade, ventilation, care, sanitation, or shelter to maintain good health.

- (5) *Animal Hoarding.* It is illegal and considered cruelty and neglect and a public nuisance and sanitation violation to hoard animals and collect stray animals for the purpose of hoarding.
- (6) *Animal Control Authority Duty.* When it is reported that domestic animals or livestock have been neglected or treated cruelly, the Animal Control Authority will be contacted for removal of animal(s) and the owner or caretaker of the animal(s) will be fined a penalty and/or cost assessed with removal and care of the animal(s).

**(C) *Animal Waste, Noxious Odors, and Unsanitary Conditions.***

- (1) *Noxious Odors.* It is illegal and considered a public nuisance for any person to keep or maintain animals in such a manner as to disturb others by noxious or offensive odors, or otherwise endanger the health and welfare of the inhabitants of the city. The provisions of this section shall not apply to livestock.
- (2) *Defecation Outside Owner's Property.* It is illegal and considered a public nuisance for the owner of any animal to permit, either willfully or through failure to exercise due care or control, any such animal to defecate on public and private rights-of-way, public or private property other than their own, unless said owner immediately cleans up and properly disposes of such defecation.

**(D) *Nuisance Barking and Noise.***

It is illegal and considered a public nuisance for any person to allow any animal to persistently or continuously bark, howl, whine, or make noise common to its species, or otherwise to disturb the peace and quiet of the inhabitants of the city.

**(E) *Animals Running at Large.***

(1) *Running at Large in the City Illegal.* It is illegal and considered a public nuisance for any person to allow or permit any animal to run at large in or on any street, alley, sidewalk, vacant lot, public property, other unenclosed place in the city, or private property without the permission of the owner thereof.

(2) *Running at Large in Common Areas Illegal.* It is illegal for an owner, manager, agent, or governing board of any multiple dwelling unit, including mobile home parks and gated communities, to permit any animal to run at large upon the common areas of the multiple dwelling unit.

(3) *Provisions Applicable to Livestock.* The provisions of this subsection shall apply to livestock.

(4) *Enforcement.* Any animal permitted to run at large in violation of this section is declared to be a nuisance and a menace to the public health and safety, and any Animal Control Officer has the authority to capture the animal, return the animal to the owner with a warning or citation, or impound any dog, cat, or other animal found running at large unaccompanied by and not under the control of the owner or handler.

**(F) *Dog Fighting and Cockfighting.***

It is illegal for any person to knowingly cause, sponsor, train, arrange, equip, stage, attend, transport, hold, manage, conduct, or participate in any game, exhibition, contest, or fight between dogs, cocks, or any other animal for the purpose of injuring, killing, maiming, or destroying themselves or any other animals or for monetary gain or entertainment. Any person violating the provisions of state law § 30-18-9, N.M.S.A. (1978) as it pertains to dogs, is guilty of a fourth degree felony.

**SECTION IX. PENALTY AND IMPOUNDMENT.**

**(A) *Violation Reference.***

Any person violating any provision of this chapter shall be subject to the general penalty provisions of § 10.99 of this code, as may be modified by any schedule of fines adopted by the governing body, and provided, that for a first offense, the offender may be issued a warning in lieu of a citation.

**(BJ) *Impoundment.***

(1) *Additional Fees Imposed When Animal Impounded.* Whenever any animal is impounded, whether or not the owner collects the animal, the City may charge the owner an additional fee that the City shall establish by resolution as a reference to this ordinance and other fees incurred to reimburse the Animal Shelter for care, vaccination, and neutering or spaying of the animal.

(2) *Impoundment of Dangerous or Potentially Dangerous Dogs.* The animal control officer may apply to a court of competent jurisdiction for seizure of a dangerous dog or a potentially dangerous dog according to the provisions of the Dangerous Dog Act, §§ 77-1A-1 through 77- 1A-6, N.M.S.A. (1978). The owner shall be liable for any impoundment fees according to the provisions of this subsection.

**SECTION X. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

**SECTION XI. EFFECTIVE DATE.**

**PASSED, APPROVED AND ADOPTED** by the Governing Body of the City of Elephant Butte, New Mexico, this \_\_\_\_day of January 2019.

\_\_\_\_\_  
**Eunice Kent, Mayor**

**Attest:**

\_\_\_\_\_  
**Attest City Clerk**

