

ORDINANCE 1590 AMENDING CHAPTER 7 OF THE ALAMOGORDO CODE OF ORDINANCES REGARDING ANIMAL CONTROL

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that the ordinances regarding Animal Control have not been updated in many years;

WHEREAS, the City Commission wishes to strengthen and update its ordinances to be more in line with the needs of animal control today; and

WHEREAS, the City Commission recognizes animals as important and in need of protection;

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 7 of the *Code of Ordinances* be amended as follows:

Chapter 7 - ANIMAL CONTROL

ARTICLE 7-01. - IN GENERAL

7-01-010. - Definitions.

Adjoining lot or parcel of land means any lot or parcel of land which in any way and at any point abuts, adjoins or otherwise meets the property line of another lot or parcel of land and includes a lot or parcel of land which is divided by a dedicated street, alley or other public right-of-way, and which but for the street, alley or public-right-of-way would be abutting, adjoining or otherwise meeting the property line of another lot or parcel of land.

Adequate food means access to and the provision of food that is appropriate to the species and sufficient quantity to maintain each animal in good health; is easily accessible to each animal; is provided in a clean and sanitary manner.

Adequate living area means adequate space for exercise suitable to the age, size, species, and breed of the animal and includes adequate shelter and water.

Adequate shelter means provision of and access to shelter that is suitable for species, age, condition, size, and type of each animal.

(1) Shelter for animals shall consist of one of the following:

- a. Inside the residence of the animal's owner.
- b. A shelter that is an enclosed structure of appropriate dimensions for the breed and size of the animal, consisting of 3 solid walls, a solid roof, a floor that is raised off of the ground, and suitable insulation protecting the animal from the elements. The shelter shall be structurally sound and of solid construction with no cracks, open seams, or holes and the entire structure shall be leak proof. The shelter shall be maintained in good repair to protect the animal from injury. The shelter shall be free of standing water or mud, unless such standing water or mud is appropriate to maintain good health. The shelter shall contain suitable bedding as appropriate to species and/or insulation suitable for the breed when the outdoor temperature is below 45 degrees unless the shelter is heated. The shelter shall have adequate

ventilation. The shelter shall be sufficient in size to allow each animal to stand up, turn around, lie down, and stretch comfortably. Areas beneath a car, truck, mobile home, or machinery do not qualify as shelter.

Adequate water means constant access to a supply of unfrozen, potable water provided in a sanitary manner suitable for the species, in sufficient amounts to maintain good health.

Africanized honey bee means any hybrid bee that is a cross between *Apis mellifera* and *Apis mellifera scutellata*.

Animal is any living nonhuman mammal, bird, reptile, or amphibian.

Apiary means the assembly of one (1) or more colonies of bees at a single location.

At large means any animal free from physical restraint beyond the boundaries of the owner's fenced in premises.

Beekeeper means a person who owns or has charge of one (1) or more colonies of bees.

Beekeeping equipment means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.

Bite means an actual puncture or tear of the skin inflicted by the teeth of an animal.

Colony or hive means an aggregate of bees consisting principally of workers, but having, when perfect, one (1) queen and at times many drones, including brood, combs, honey and the receptacle inhabited by the bees.

Exotic animal is any:

- (1) Carnivore weighing over fifteen (15) pounds other than a domestic dog or domestic cat;
- (2) Venomous reptile;
- (3) Hoofed mammal not defined as livestock; or
- (4) Other animal, the keeping of which may pose a danger to the animal, other animals, or humans.

Feral Animal means an individual animal of a domesticated species that is not behaviorally compatible with humans, and is therefore not suitable to serve as a pet, companion animal, or work animal. Feral cats include all cats that by physical aspect and behavior are deemed to be un-owned and have been trapped for purposes of improving public health and limiting reproduction.

Harbor means to allow, wither intentionally or unintentionally, any stray animal to linger on one's premises by feeding such animal without making all effective provisions for such animal as required by this chapter. Persons harboring an animal shall be subject to the provisions of this chapter applicable to a person owning or having custody, the care, or control of the animal.

Honeybee means all life stages of the common domestic honey bee, *Apis mellifera* species.

Household is one (1) or more persons occupying the premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel.

Keeper is a person in charge of or having control of an animal, regardless of ownership.

Kennel, commercial is any commercial establishment or commercial premises where five (5) or more animals, over four (4) months of age are boarded, kept or maintained for any purpose whatsoever, with the exception of state inspected veterinary hospitals, seeing eye dog sites, pet shops, grooming parlors, or the city animal control shelter.

Licensed veterinarian means an individual with a doctor of veterinary medicine degree who is licensed to practice in the state.

Livestock is any horse, donkey, cow, sheep, goat, pig (except for Vietnamese miniature potbelly pigs or pygmy goats weighing fifty (50) pounds or less) or any similar animal.

Nonresidential district means any zoning district in which residences cannot be established by right, except for accommodations for bona fide shift workers in conjunction with a legally established industrial use.

Owner is any person who acknowledges ownership of an animal or who harbors, keeps, or knowingly causes or knowingly permits any animal to be harbored, kept, or has care of an animal or who permits an animal to remain on or about that person's premises for five (5) or more consecutive days.

Owner impound means the owner of an animal in which he or she relinquishes all rights and title of the animal to the animal control facility.

Pet means any dog, cat, rabbit, amphibian, reptile, caged bird, aquarium fish, and caged rodent or caged ferret.

Pet shop is any person, partnership or corporation engaged in the business of breeding, buying, selling or exchanging animals of any species.

Poultry is any chicken, duck, goose, turkey or similar bird.

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

Residential district means any zoning district in which residences can be established by right.

Restraint means any of the following

- (1) To be under the immediate control of a capable person.
- (2) To be secured by a tether confining the animal within the owner's premises.
- (3) To be secured within an escape-proof enclosure within the owner's premises.

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 individual'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.

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.

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

Sterilized means to be rendered permanently incapable of reproduction.

Tract means a contiguous parcel of land under common ownership.

Vicious animal is any animal that attacks, bites or physically injures human beings or domestic animals without adequate provocation, or which, because of temperament or training, has a known propensity to attack, bite, or physically injure human beings or domestic animals. Any animal that without provocation has bitten or attacked a human being or other animal shall be prima facie presumed vicious.

Wildlife is any non-domesticated animal that is indigenous to region.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 2, 12-12-94; Ord. No. 1180, § 1, 12-9-03; Ord. No. 1447, § 1, 10-22-13; Ord. No. 1493, art. 1, 4-14-15)

7-01-020. - Keeping restrictions.

(a) Except as otherwise provided in this section, it is unlawful to keep any livestock, poultry, exotic, or wild animals in the city.

(b) Subsection (a) shall not apply to:

(1) The keeping of 3 Vietnamese miniature potbelly pigs or 3 pygmy goats weighing no more than fifty (50) pounds or a mix of no more than 3 total, 3 female chickens or 3 ducks or a mix of no more than 3 total, or the operation of pet stores, veterinary offices or hospitals, commercial kennels, or livestock in zoning districts where the use or keeping is specifically permitted.

(2) Public zoos, or carnivals and circuses licensed as such.

(3) Fairs, petting zoos or other special events lasting less than two (2) weeks.

(4) The keeping of any animal at an approved research institution.

(c) Vicious animals. It is unlawful for any person to keep or harbor any vicious animal. Any person attacked by a vicious animal may use reasonable force to repel the attack. After a judicial determination that an animal is vicious, the owner or keeper of such vicious animal shall destroy it humanely or release such animal to the animal control center for destruction.

(d) Restrictions on the keeping of bees. Except as otherwise provided in this article, it is hereby declared to be a nuisance and it shall be unlawful for any person to keep bees on any lot or parcel of land keep within the city. The authorized keeping of bees, and associated beehives, shall be governed by the following regulations.

(1) General regulations.

a. Apiary registration. No person may own or maintain an apiary within the city without first registering all apiaries with the city. Registration shall be made in writing and upon such form or in such format as established by the city, and shall be accompanied by the prescribed registration fee in the amount established from time to time by resolution of the city commission. Non-property owners that wish to own or maintain an apiary on property that the non-property owner is renting, or otherwise occupying with the permission of the property owner, must include written permission from the property owner or landlord that explicitly indicates that the non-property owner has permission to own or maintain an apiary on the subject property. Such written permission shall be supplied to the city as part of the apiary registration.

b. Hive type. No beekeeper shall keep or maintain bees in any hive other than a modern movable frame hive which permits thorough examination of every comb.

c. Fencing of flyways. In each instance in which any colony is situated within twenty-five (25) feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least six (6) feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends ten (10) feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six (6) feet above ground level over the property lines in the vicinity of the apiary.

d. Water. Each beekeeper shall ensure that a convenient source of water is available to the bees at all times during the year so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths or other water sources where they may cause human, bird or domestic pet contact.

e. General maintenance. Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

f. Queens. All colonies shall be maintained with marked queens. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, it shall be the duty of the beekeeper to promptly re-queen the colony with another marked queen. Queens shall be selected from European stock bred for gentleness and non-swarming characteristics.

g. Prohibitions. No Africanized bees may be kept on a property under the regulations of this section unless kept for the purpose of propagating beneficial bees.

h. Marking hives. The beekeeper shall conspicuously post a sign setting forth his name and telephone number.

i. Application to code enforcement. Anyone proposing to keep bees on a property in the city or to expand such use shall apply for approval from the code enforcement department, which shall determine if the application is in compliance with regulations regarding permitted placement of beehives, flyway barriers, and other structures used in the keeping of bees and whether the property is occupied by a condemned building.

(2) In residential districts. In residential districts, the following regulations shall apply.

a. Notification required. Any person proposing to keep an apiary on any property located in the city, or to expand any such use, shall first provide, by mail or personal delivery, written notice to the owner of all adjoining lots or parcels of land prior to registering the apiary as required by section 7-01-020(c)(1)A of this article and shall certify the same to the city at the time of registration.

b. Colony densities. It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:

1. Less than two thousand four hundred (2,400) square feet in area—no colonies.
2. One-quarter ($\frac{1}{4}$) acre or less tract size—two (2) colonies.
3. More than one-quarter ($\frac{1}{4}$) acre but less than one-half ($\frac{1}{2}$) acre tract size—four (4) colonies.
4. More than one-half ($\frac{1}{2}$) acre but less than one (1) acre tract size—six (6) colonies.
5. One (1) acre or larger tract size—eight (8) colonies.
6. Regardless of tract size, where all hives are situated at least two hundred (200) feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.

For each two (2) colonies authorized under this section, colony densities there may be maintained upon the same tract one (1) nucleus colony in a hive structure not exceeding one (1) ten-frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within thirty (30) days after the date is acquired.

a. Location and setbacks. No beehive shall be kept closer than five (5) feet to any lot line and ten (10) feet to a dwelling or the permitted placement of a dwelling on another parcel, and no beehive shall be kept in a required front yard or side street yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.

b. Lots without a primary residence. Notwithstanding the provisions of chapter 29 of the Alamogordo Code of Ordinances regarding accessory uses, bee keeping is a permitted accessory use and may be kept on a lot that is vacant or has no occupied residence.

c. Written permission; revocation.

1. Written permission required by section 7-01-020(c)(1)a is revoked under any of the following circumstances: i. The occupant who has given written permission gives up legal possession of the residence or property.

2. The owner of property who has given written permission transfers or is otherwise divested of all interest in the property.

3. The owner or occupant of property who has given written permission files a signed revocation of written permission with the code enforcement department.

4. In non-residential districts. In zoning districts other than residential districts, all regulations applicable in residential districts shall apply except that the number of beehives shall be limited to one (1) for each one thousand (1,000) square feet of lot area unless the nonresidential zoned lot is located within two hundred (200) feet from any residentially zoned lot in which case the density restrictions for residential districts shall apply.

5. Variances. The board of appeals may vary the regulations of this section as they apply to a particular property if it determines that such variance will be consistent with the stated purpose of this section.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 3, 12-12-94; Ord. No. 1180, § 2, 12-9-03; Ord. No. 1447, § 2, 10-22-13; Ord. No. 1493, art. 2, 4-14-15)

7-01-030. - Animals at large.

A. No owner or person having control of any animal shall permit it to run at large in the city unless the animal is contained within a park specifically designated for the animal's species.

B. Any animal outside the fenced yard of the owner or keeper must be under control of a leash or other device by which it may be led except during the time the animal is confined within a park specifically designated for the animal's species.

C. No owner or keeper of any animal shall permit it to be chained, staked, grazed or herded on any unenclosed premises so that any part of the animal extends onto or over a sidewalk, street, alley, or other public property or beyond the owner or keeper's property or in a common area accessible to the public. Any chained animal must have a chain of at least sufficient length to allow the animal access to food, water, shelter and shade, but not so long as to enable the animal to harm itself.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 4, 12-12-94; Ord. No. 1180, § 3, 12-9-03; Ord. No. 1271, 5-23-06)

7-01-040. - Freeing impounded animals.

It is unlawful to release any animal confined pursuant to this chapter, or break open, aid or assist in breaking open any pen, enclosure or animal control vehicle, with intent of releasing any animal confined pursuant to this chapter.

(Ord. No. 682, § 2, 8-14-84)

7-01-050. - Animal nuisances prohibited.

(a) Any animal or animals, including dogs or cats, that are kept or maintained in such a manner or in such numbers as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the

inhabitants of the city are defined as an "animal nuisance." It is unlawful for any person to keep, harbor or maintain an animal nuisance.

(b) No owner or keeper of any animal shall allow that animal to defecate upon public property or upon any private property other than the property of the owner of the animal without thoroughly and immediately removing and disposing of the feces.

(c) Any unspayed female dog or cat in heat not securely confined in the owner's yard, pen or other enclosure is hereby declared to be a nuisance.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 995, 11-12-96; Ord. No. 1180, § 4, 12-9-03)

7-01-060. - Cruelty to animals.

(a) Cruelty to animals consists of:

(1) Torturing, tormenting, poisoning, cruelly beating, mutilating, cruelly killing or overdriving any animal including wildlife.

(2) Depriving of shelter necessary to protect from rain, snow, wind and direct rays of the sun;

(3) Unnecessarily failing to provide any animal with proper food or drink;

(4) Abandoning an animal;

(5) Permanently coloring, painting, staining or dyeing any animal; an animal may be tattooed for identifying purposes.

(6) Placing or leaving any animal in an unattended motor vehicle without adequate ventilation or in such a manner as to subject the animal to extreme temperatures which may adversely affect the health of the animal; or

(7) Placing or leaving any animal in a condition whereby there is a substantial possibility the animal's life will be threatened pursuant to 7-03-070.

(8) Carrying an animal in or upon any vehicle in a cruel, inhumane or unsafe manner. An animal carried in the bed of a truck must be crated or restrained so it cannot fall or jump from the truck or be strangled.

(9) Taking part in any sexual abuse of an animal.

(10) Failing to maintain grooming standards.

(b) It is unlawful for any person to commit the offense defined in this section.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 5, 12-12-94; Ord. No. 1180, § 5, 12-9-03)

7-01-065. - Protective care.

If any animal control officer finds that any animal is or will be without proper care because of its caretaker's injury, illness, incarceration, other absence of the owner or keeper, or other reason that leaves the animal without adequate care, the animal control officer may take the animal for protective care.

While in protective care, the animal control officer may take such action as a licensed veterinarian advises is necessary to prevent undue pain and suffering of the animal. If the animal is in protective care for ten (10) days without contact from the owner or the person responsible for the care of the animal, the animal may be placed for adoption or otherwise disposed of according to the provisions of this chapter. Animal control will take reasonable efforts to contact the owner or other person responsible for the animal in protective care to determine their wishes concerning the animal's care. All expenses involved in providing protective care are chargeable to the owner or person in charge of the animal's care.

(Ord. No. 1180, § 6, 12-9-03)

7-01-067. – Striking animals with vehicles.

Every operator of a motor or self-propelled vehicle upon the streets and ways of the city shall, upon injuring, striking, maiming or running down any animal provide immediate notification to animal control, furnishing sufficient facts relative to the incident or shall immediately transport the animal to a facility where it can receive treatment for its injuries. Such animal shall be deemed an uncared for animal within the meaning of this chapter. Emergency vehicles engaged in an emergency response are excluded from this provision but are required to inform dispatch of the incident.

(Ord. No. 1328, § 1, 5-13-08)

7-01-070. - Barking dogs.

A person owning or having the care, custody or control of an animal shall not permit that animal to howl, bark, or create noise which disturbs the comfort and repose of any person of ordinary sensibilities in the vicinity. It shall be a violation of this section if the howling, barking, or noise is frequent or long-continued; is audible beyond that property line of the premises on which the animal is located for more than ten minutes; and is attested to by:

a. Complaints from two or more separate properties no more than 100 yards from the animals premises.

b. A complaint from a separate property and verified by and audio/video recording which records the howling, barking, or noise for more than a continuous ten minutes.

c. An animal control officer or other law enforcement officer.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 1180, § 7, 12-9-03)

ARTICLE 7-02. - HEALTH AND LICENSING PROVISIONS

7-02-010. – Rabies and exposure requirements.

- (a) A person owning or having care, custody, or control over a dog or cat judged to be three months of age or older shall have the animal vaccinated against rabies.
 - (1) The vaccine shall be administered by or under the supervision of a veterinarian.
 - (2) The veterinarian shall issue for each administration a serially numbered certificate and a metal tag bearing the certificate number.
 - (3) The certificate shall contain the name and address of the owner of the animal, a description of the vaccinated animal, the date of vaccination, and the expiration date of the vaccination.
- (b) Rabies tag. A person owning or having care, custody, or control over a dog or cat judged to be three months of age or older shall maintain a current rabies vaccination tag affixed to a collar or harness worn by the animal at all times.
 - (1) The tag may be removed while the animal is undergoing treatment by a veterinarian or being groomed.
 - (2) A person shall not remove or transfer any legitimate rabies tag from one animal to another.
- (c) Rabies certificate. A person owning or having care, custody, or control over a dog or cat judged to be three months of age or older shall exhibit the vaccination certificate upon request by an animal control officer.
- (d) Exposure; owner/patient responsibility. When any person is bitten by an animal, it is the duty of such person or their parent or guardian, or any person having knowledge of the whereabouts of the animal, to immediately notify the animal control office.
- (e) Exposure; Physician responsibility. A physician who renders professional treatment to a person bitten by an animal shall report to the animal control office such treatment immediately after the initial treatment.
 - (1) The physician shall report the name, address, and phone number (if known) of the person bitten as well as the type and location of the bite.
 - (2) The physician shall report the name and address of the owner of the animal that inflicted the bite (if known), and any other facts or details that may assist the animal control officer in ascertaining the immunization status of the animal.
- (f) Exposure; domesticated animal. Any mammal that bites or otherwise exposes a person to rabies shall be either destroyed and the head sent to the laboratory for rabies testing, or placed in isolation immediately at the owner's expense of a ten-day observation period at a place and in a manner designated by the animal control officer.
 - (1) The isolation and observation period shall end ten days following the date and time of the potential rabies exposure.
 - (2) If the mammal shows signs or symptoms of rabies during the ten-day isolation and observation period, it shall be destroyed and the head sent to the laboratory for testing.

(g) Exposure; wild animal. Any skunk, bat, raccoon, coyote, bobcat, or other wild animal not born or reared in captivity (with the exception of rodents or rabbits) that bites or otherwise exposes a person to rabies, shall be destroyed immediately and the head be sent to the laboratory for testing.

(1) Rabbits and rodents do not normally transmit rabies, but may be submitted for testing with the consent of the Infectious Disease Epidemiology Bureau (IDEB), part of the Epidemiology and Response Division of the New Mexico Department of Health.

(h) Home quarantine; the animal control officer may consent to confinement and isolation on the owner's premises of the dog or cat that bites a person.

(1) The premises where the home isolation is to occur shall be inspected and approved for such purpose by the animal control officer.

(2) The owner of the animal shall be required to enter into an indemnity agreement on a form approved and prescribed by the animal control supervisor for such home confinement.

(3) The owner shall immediately notify the animal control office if the animal shows signs of sickness or abnormal behavior, if the animal escapes confinement, or if the animal dies within the quarantine period.

(i) If any of the provisions of this section are in conflict with, or materially inconsistent with, regulations for the reporting of animal bites, confinement and disposition of rabies-suspect animals, rabies quarantine, and the disposition of dogs and cats exposed to rabies in the interest of public health and safety prescribed by the New Mexico Department of Health pursuant to NMSA Sec. 77-1-6, and as amended, the state regulations shall control.

(j) If the animal control officer deems that an in house quarantine is necessary and the animal does not have the rabies vaccination, then proof of the rabies vaccination shall be given to the officer or the animal control officer no later than 72 hours after the quarantine ends.

(Ord. No. 1328, § 2, 5-13-08)

Editor's note— Ord. No. 1328, § 2, adopted May 13, 2008, amended the Code by repealing former 7-02-010, and adding a new 7-02-010. Former 7-02-010 pertained to adoption of state provisions regarding animal control, and derived from Ord. No. 682, adopted August 14, 1984.

7-02-020. - Licensing.

(a) No person shall own, keep or harbor any dog or cat within the city unless the dog or cat is licensed (pet shops and commercial kennels exempted). Written application for the license shall be made to the animal shelter and shall state the name and address of the owner and the name, breed, color and sex of the dog or cat. The license fee shall be paid to the animal shelter (or the city's designee) upon the owner's furnishing a current certificate evidencing the rabies vaccination of the dog or cat.

(b) The yearly license fee for each dog or cat which is neutered or spayed or under six (6) months of age is five dollars (\$5.00) and for any other dog or cat is twenty-five dollars (\$25.00).

(c) An animal which has received a multi-year rabies vaccination may be licensed concurrent with the rabies certificate. The fee for a multi-year license will be the annual fee times the number of years for which the animal is vaccinated.

(d) If there is a change in ownership of a licensed dog or cat, the new owner may have the current license transferred to his name upon payment of a transfer fee of one dollar (\$1.00).

(e) The licensing fee is waived for service animals.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 725, 12-8-87; Ord. No. 933, § 6, 12-12-94; Ord. No. 1180, § 8, 12-9-03)

7-02-030. - Tag and collar.

(a) With a license required by section 7-02-020, there shall be delivered to the owner a metallic tag stamped with number of the license and the year for which issued. The shape, color or both, of such tags shall be changed each year.

(b) The owner shall see that the dog or cat wears at all times a collar or harness to which such tag shall be attached.

(c) If such tag is lost or destroyed, the owner may obtain a duplicate upon the presentation of the license and payment of a fee of one dollar (\$1.00) for the duplicate, tag.

(d) No person shall use for any dog or cat a license, vaccination certificate or license tag issued for a different dog or cat.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 682, § 2, 8-14-84)

7-02-035. - Notice.

Veterinarians who administer anti-rabies vaccinations or pet shops and kennels within the city shall post and maintain a notice informing the public that dogs and cats must have anti-rabies vaccinations and city licenses. The animal control center will provide one free sign to each location. Each location shall post a notice in a location which is clearly visible to the public. Replacement notices must be purchased from the animal control center or approved by the animal control manager.

(Ord. No. 933, § 7, 12-12-94)

7-02-040. - Exemptions.

(a) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this article, except the duty to report rabies cases and to comply with the provisions specifically naming duties and responsibilities of licensed veterinarians in relation to animal regulation and rabies control.

(b) The licensing requirements of this article shall not apply to any dog or cat belonging to a nonresident of the city or a pet shop and kept within the city for not longer than thirty (30) days, if the dog or cat is at all times while in the city confined within a building, enclosure or vehicle, or under restraint by the owner.

(c) The licensing fee shall not apply to service animals.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 8, 12-12-94)

ARTICLE 7-03. - ANIMAL CONTROL OFFICERS

7-03-010. - Authority.

There are hereby appointed one or more animal control officers who shall be authorized and commissioned to enforce the provisions of this chapter. However, no person not employed by the city department of public safety shall be commissioned to make arrests as a peace officer. The city may, by contract, provide for the appointment, supervision or control of the animal control officers, and, unless the context requires otherwise, references in this chapter to "animal control officer" shall include the entity to whom this contract is let.

(Ord. No. 682, § 2, 8-14-84)

7-03-020. - Impoundment.

(a) If any animal is found running at large contrary to the provisions of section 7-01-030, any animal control officer may take it up and confine it in a secure place or other place provided for that purpose.

(b) Any animal taken up and confined shall not be released until the owner or person entitled to the possession thereof shall pay to the officer having such animal in his keeping according to the fee schedule set out in section 7-03-050 of this chapter.

(c) Any dog or cat seized and not redeemed by the owner within three (3) working days thereafter, may be humanely destroyed or placed in the custody of some person deemed suitable who will agree to become the responsible owner thereof and comply with the provisions of this article. If an impounded dog or cat is licensed, reasonable effort shall be made to promptly notify its owner if the dog is one as to which the respective rights of the owner and the person in possession or custody are determined by state law, such law shall be complied with.

(d) Owner impound; the animal control officer may, but is not obligated to, detain and deliver to the animal control shelter, any animal impounded by its owner.

(1) An owner requesting to relinquish ownership of an animal to the city of Alamogordo animal control shall be required to complete and sign a release of ownership at the time of detainment or impoundment, by signing the release of ownership, the owner shall:

a. Affirmatively represent in writing that he or she is the legal owner of the animal.

b. Transfer ownership of the animal to the city of Alamogordo animal control.

c. Direct in writing that the animal be placed in the custody of the city of Alamogordo animal control or other suitable facility for disposition as the city of Alamogordo animal control or facility sees fit.

d. Agree that he or she will indemnify and hold the city of Alamogordo animal control and/or other suitable facility harmless from any loss or damage he or she may sustain, including attorney's fees, by reason of the destruction or placement for adoption of said animal.

(2) The animal control officer may, but is not obligated to, provide for the transport of the animal to the animal control shelter.

(e) The animal being impounded shall be free of any illness. The animal control shall make the determination based on the animal's health. If the animal control shelter determines that the animal being impounded needs to be seen by a veterinarian before the impoundment can occur, then the owner of the animal is responsible for all veterinarian costs that occur.

(Ord. No. 682, § 2, 8-14-84)

7-03-025. - Sterilization.

Every dog and cat adopted or reclaimed from the city animal control center shall be spayed or neutered by a licensed veterinarian at the expense of the adopting party/owner. In addition to any other lawful fees due, any person reclaiming, adopting, or buying a dog or cat from the city shall pay a sterilization fee equivalent to the city's actual cost for the sterilization, plus a five percent administrative fee for the sterilization service. An animal control officer shall transport the animal to a licensed veterinarian of the adopting party/owners choosing on the next business day for the sterilization procedure. An owner reclaiming their own animal that is of pure breed can purchase a one time "intact" license if the animal is registered through a nationally recognized breeder's foundation. The animal will be returned to the owner upon presentation of the proper registration certificate and the purchase of the "intact" license and a sworn statement from the city establishing the owner as a hobby breeder. A hold can be placed on the animal up to five days for the owner to acquire the proper registration certificate. The "intact" license will only be valid for the first offense. If the animal returns to the city animal control center a second time the "intact" license will no longer be valid and the animal will have to be sterilized in accordance with this section. If the animal is deemed to young for sterilization, a "too small" agreement shall be drawn up and all fees associated with the sterilization will be paid by the adopting party/owner to have the animal sterilized at an appropriate date. The animal control center will contact a licensed veterinarian of the adopting party/owners choosing and set a date for the sterilization procedure to occur.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 933, § 9, 12-12-94; Ord. No. 1180, § 9, 12-9-03; Ord. No. 1328, § 3, 5-13-08)

7-03-030. - Auctions of animals.

(a) If the owner or person entitled to the possession of a dog or cat, or an animal other than a dog or cat, does not pay the charges and take it away within three (3) working days from the time it is taken into custody pursuant to section 7-03-020, the animal control officer may sell the animal at public auction. Before the auction, at least three (3) days' notice of the time and place of the sale must be given by publishing or by posting notice in five (5) public places in the city as well as serving a copy of such notice upon the owner or possessor, if known, of such animal. The animal may be redeemed at any time before the date of sale by payment to the officer in charge or his assistant of any fees, expenses and charges provided in this article.

(b) If the animal is not sold at the auction provided for in this section, it may be humanely destroyed or placed for adoption.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 1180, § 10, 12-9-03)

7-03-040. - Disposition of revenue from sale of impounded animals.

In case any animal sold pursuant to the provisions of section 7-03-030 is sold for more than is sufficient to pay the fees and charges, and a claim is made for the excess, the officer shall pay the excess to the owner of such animal or animals or to the person entitled to the possession of the same within one year from the date of sale. If no claim is made, the funds shall be disposed of as provided in section 7-03-090.

(Ord. No. 682, § 2, 8-14-84)

7-03-050. - Fees.

The commission will adopt a resolution setting appropriate fees for services provided by the animal control division as appropriate.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 10, 12-12-94; Ord. No. 967, 12-21-95; Ord. No. 1180, § 11, 12-9-03; Ord. No. 1328, § 4, 5-13-08)

7-03-060. - Investigation.

If there is reasonable cause to believe a violation of this chapter has occurred, any animal control officer may require the owner of an animal to exhibit any required license, vaccination certificate or other required documentation. Failure to exhibit any such documentation is a petty misdemeanor.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, §11, 12-12-94)

7-03-070. - Entry of pens, vehicles; etc.

Where it is necessary to protect the life of an animal from imminent danger, any animal control officer may enter any pen, enclosure, yard or vehicle and remove any animal so endangered. The means used shall be the least drastic possible. Nothing in this section or in section 7-03-060 shall authorize the warrantless entry into any dwelling or any building used for business purposes.

(Ord. No. 682, § 2, 8-14-84)

7-03-080. - Interference.

No person shall interfere with, hinder or molest any animal control officer in the performance of any duty required by this article.

(Ord. No. 682, § 2, 8-14-84)

7-03-090. - Records and fee dispositions.

(a) It shall be the duty of the animal control officer to keep or cause to be kept accurate and detailed records of the vaccination, licensing and impoundment of dogs and cats.

(b) It shall be the duty of the animal control officer to keep or cause to be kept accurate and detailed records of all bite cases reported to him, and of his investigation of the same. The report of a bite involving a rabid animal shall be immediately transmitted to the district health officer.

(c) The records required by this section shall be audited annually in the same manner as other city records are audited, and shall be open to inspection as public records at all reasonable times.

(d) All fees received by the animal control officer shall be turned over to the city daily, except as otherwise provided by contract.

(Ord. No. 682, § 2, 8-14-84)

ARTICLE 7-04. - ANIMAL SALES

7-04-010. - Licensing.

(a) It shall be unlawful for any person, firm or corporation to offer dogs or cats for sale for profit or as a hobby within the city unless such person, firm or corporation shall have first obtained from the city clerk a license therefore as provided in this article.

(b) The fee for a license to sell a single litter of dogs or cats within a year shall be fifty dollars (\$50.00). The fee for a license to sell more than a single litter of dogs or cats within a year shall be one hundred fifty dollars (\$150.00).

(c) All licenses expire on the first day of January of each year.

(d) The license application shall contain the following information at a minimum:

- (1) Name of applicant;
- (2) Address of applicant;
- (3) Telephone number of applicant;
- (4) The proposed location from which the animals will be sold;
- (5) The clerk may require such other information as is deemed necessary in order to determine whether to approve or deny a license under this article.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 1328, § 5, 5-13-08)

7-04-020. - Requirements.

Every licensee will comply with each of the following conditions:

(1) Every dog or cat offered for sale must be examined by a veterinarian and be certified free of congenital defects, distemper, worms, skin disease, skin and ear mites and other diseases or conditions which would be injurious to the animal or a potential owner.

(2) Every dog or cat offered for sale will have been vaccinated against distemper by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the purchaser at the time of sale.

(3) No dog or cat will be transported by a licensee unless housed in a container designed for that purpose including provisions for adequate ventilation and food and water.

(4) No licensee will allow the whelping of more than one litter per female dog or cat during the license term.

(Ord. No. 1328, § 6, 5-13-08)

7-04-030. - Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 1328, § 7, 5-13-08)

ARTICLE 7-05. - PIGEON NUISANCE ABATEMENT

7-05-010. - Findings and intent.

- (a) The commission finds that the urban feral pigeon population is expanding and the droppings associated with large flocks of feral pigeons interfere with use and enjoyment of private and public outdoor facilities, create undesirable conditions and may have an economic impact on the city.
- (b) The commission finds that pigeon droppings damage and depreciate property, make walkways unsafe and unsanitary, and potentially represent a public health hazard due to parasites or disease that may be associated with accumulation of pigeon droppings.
- (c) The commission finds that supplemental feeding of pigeons by humans, whether deliberate or through negligence, is a substantial cause of the overpopulation of pigeons in the city.
- (d) The commission finds that providing readily available food sources for pigeons allows their numbers to increase in a manner that negatively impacts safe and comfortable use of commercial and residential areas, and that research has demonstrated that restricting access to food is an important factor in maintaining urban feral pigeon populations at acceptable levels.
- (e) It is not the intent of the commission to eradicate the feral pigeon population; this article is intended to address public nuisance associated with large numbers of pigeons.
- (f) It is the intent of the commission that the city place an emphasis on disseminating information about, and assisting citizens with, effective measures for preventing and abating pigeon nuisance in a manner that promotes effective management of pigeon populations.

(Ord. No. 1472, 8-25-14)

7-05-020. - Definitions.

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

Feeding. Providing food to pigeons. Food may include, but is not limited to grain, seed, greens, breadcrumbs and other miscellaneous food scraps, including garbage not properly disposed of or contained.

Linger. For purposes of this article, "linger" means to be slow in departing.

Owner. That person holding the legal title to real property as shown by the records of the county assessor.

Person. An individual, partnership, association, syndicate, company, firm, trust, corporation, or any other entity recognized by law.

Pigeon. The common pigeon, *Columba livia*, also known as the rock dove or rock pigeon. For the purposes of this article, "pigeon" refers to any wild state (feral) pigeon, and does not include domestic pigeons used for recreation or show.

Pigeon harborage. Any condition which provides shelter or protection for pigeons; thus, favoring their multiplication and continued inhabitation in, under, outside a structure or premise at a location where there exists a pigeon nuisance. Housing or shelter provided for injured or ill pigeons that are being rehabilitated is not considered pigeon harborage.

Pigeon nuisance. The excessive congregation of pigeons at a location when such congregation of pigeons results in the accumulation of pigeon droppings or other pigeon related waste. In addition, the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus that may be damaging to the property, pose a threat to public health and welfare or contribute to polluted storm water runoff to the river.

Property. Real property including buildings structures and land regardless of use for residential, commercial or other purposes.

Responsible party. That person or those persons who hold that legal or equitable interest in real property which empowers them to take appropriate actions to abate a pigeon nuisance found to exist on that real property. This may include, but not be limited to, a person with ownership, condominium rights, time-share rights, leasehold rights or an easement, license, contractual right, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing. The owner of real property shall be presumed to be the responsible party.

Roost. For purposes of this article, "roost" is defined as settling down for rest or sleep.

(Ord. No. 1472, 8-25-14)

7-05-030. - Unlawful acts.

(a) It shall be unlawful for any person to:

(1) Intentionally feed feral pigeons on any public or private property within Alamogordo city limits.

(2) Permit or allow the placement or discard of food, food by-products, vegetables, garbage or animal food of any kind in a manner that such person knows will reasonably result in the lingering, roosting and/or congregating of feral pigeons.

(3) Encourage the lingering, roosting and/or congregating of feral pigeons by offering or providing food, food by-products, vegetables, garbage or animal food of any type.

(4) Create, permit or allow the existence of a pigeon harborage.

(b) This prohibition does not extend to domesticated birds used for show or for racing, or to injured pigeons that are kept at all times in cages or are prevented from creating pigeon nuisance conditions on nearby properties.

(c) This prohibition does not extend to bird seed set out in bird feeders or otherwise provided to birds other than pigeons, provided that the seed does not attract significant numbers of pigeons or create conditions that constitute a pigeon nuisance.

(d) Each act in violation of this section shall constitute a public nuisance and a separate violation. Any person who violates this section shall be subject to:

(i) The first violation of this section shall result in a written warning. This warning will provide the details of the violation and will specify corrective action.

(ii) Any person violating any provision of this article a second time, and for any subsequent violation, shall be guilty of a petty misdemeanor for each violation or each day of a continuing violation.

(Ord. No. 1472, 8-25-14)

7-05-040. - Other acts prohibited.

(a) It shall be unlawful for any person to create or foster any condition or allow any condition to exist or continue which in any way harbors a number of feral pigeons or results in an infestation of feral pigeons that would constitute a pigeon nuisance, as defined herein.

(b) It shall be unlawful for any person to allow the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus that would constitute a pigeon nuisance, as defined herein, on property where the person is the owner or occupant.

(Ord. No. 1472, 8-25-14)

7-05-050. - Additional remedies.

Nothing in this article shall be construed to preclude the city from seeking any other remedy available in law or equity.

(Ord. No. 1472, 8-25-14)

7-05-60. – Keeping a seriously sick or injured animal.

- (a) It is unlawful for a person to have, keep, or harbor an animal which is seriously sick or injured or starved, without providing proper care through a licensed veterinarian.
- (b) The Animal Control Officer may require the owner to provide a letter of health evaluation from a licensed veterinarian describing the condition of the animal and the treatment provided.
- (c) In the absence of veterinary care, the Animal Control Officer may place the animal into protective custody in accordance with provisions of this chapter.

7-05-70. – Unlawful use of rabies tag and city license.

It is unlawful for any person to remove or transfer any rabies tag or city license from one animal to another. It is unlawful for any person to manufacture or cause to be manufactured or to have in his or her possession or under his or her control a stolen, counterfeit, or forged city license, rabies tag, or vaccination certificate or other form of licensing or permit required under this chapter.

7-05-80. – Deceased animal disposal requirements.

- (a) Owner responsibility. A Person owning or having care, custody or control of an animal carcass shall be responsible for its removal within 24 hours of death if the animal is not to be used for human consumption.
 - (1) An animal carcass may be disposed of at the animal control shelter.
- (b) Removal. The animal control officer may remove any animal carcass from the roadway or other public property. The officer shall make reasonable efforts to notify the animal's owner if known in the event of the animal's death.
 - (1) The officer may dispose of the animal carcass at the animal control shelter as authorized after microchip scanning and making reasonable efforts to notify the animal's owner.
 - (2) The officer shall turn over any tags or other identification found on an animal carcass to the animal control shelter.
- (c) Removal fee. The animal control unit may, but is not obligated to, provide for the removal of an animal carcass from property at the request of the animal owner or property owner for a set fee.
 - (1) The fee amount shall be established by City Commission resolution.

7-05-090. – Multiple dog and cat permit.

No person or household shall own, possess, harbor, or keep more than a combined total of 5 dogs or cats or any combination thereof over the age of three months without a valid breeder permit or a multiple dog and cat permit.

- (a) Any person intending to exceed the maximum limit of dogs and cats in a household as defined in this section shall obtain a multiple dog and cat permit.
- (b) All dogs and cats over the number allowed in this section at a multiple dog and cat permit site shall be spayed or neutered. The only exception is any dog or cat which is unable to be

sterilized due to medical reasons, is owned by a breeder with a breeder permit or is a dog or cat that is registered by a nationally recognize kennel club. The owner must present a valid veterinary certificate stating the medical reason(s) why a dog or cat may not be sterilized.

- (c) Fostering a pregnant dog or cat and the offspring of the fostered dog or cat will be considered a temporary exception to this section.
- (d) No person shall keep or maintain more that ten dogs or cats or any combination thereof at any multiple dog and cat permit site location.
- (e) Permits may be suspended for failure to comply with the requirements of this section, as well as for violation of other applicable laws, regulations, and ordinances.
- (f) Rescue organizations and owners who have the custody and care of a rescue dog or cat shall be exempt from the requirements for multiple dogs and cats while the rescue dog or cat is in the custody and care of the organization or owner. Accurate records shall be kept and maintained by the rescue organization and the organization shall permit the City of Alamogordo animal control personnel or other city officials to inspect such records upon reasonable notice and shall permit the inspection of the rescue dog or cats living conditions at the rescue organization facility.
- (g) The following individuals or groups are exempt from the requirements of the multiple dog and cat permit requirements:
 - a. Individual or groups holding a State of New Mexico regulated permit or a federally regulated permit.
 - b. Events sponsored by a municipal zoo or aquarium facility.
 - c. Competitive sporting events.
 - d. Persons involved in an exempt activity shall comply with all other applicable requirements of this chapter.
 - e. Qualified service dogs or cats shall be exempt from the requirements of the multiple dog and cat requirements.