

CITY OF ESPANOLA

ORDINANCE NO. 534

AN ORDINANCE RELATING TO ANIMALS AND FOWL; ORDAINING AN ANIMAL CONTROL ORDINANCE; PROVIDING FOR A SHORT TITLE; GENERAL PROVISIONS; ADMINISTRATION; ANIMAL CONTROL CENTERS; OWNER’S DUTIES; KENNELS, GROOMING PARLORS, PET SHOPS, AND SHELTERS; PROHIBITED ACTIVITIES; CRUELTY TO ANIMALS; SALE; EXOTIC ANIMALS, GUARD DOGS; NON-PROFIT SHELTER CONTRACTS; PENALTIES AND REPEALING CERTAIN SECTIONS OF THE ESPANOLA MUNICIPAL CODE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ESPANOLA:

Section 1. The following new articles and sections of the Espanola Municipal Code are hereby ordained to read:

ARTICLE 1: ANIMALS AND FOWL, GENERALLY

SEC. 7-1. SHORT TITLE, PURPOSE OF ORDINANCE.

- (a) This Chapter may be cited as the “Animal Control Ordinance”.
- (b) It is the intent of the governing body that this chapter protect animals from cruelty, neglect and abuse; protect residents from annoyance and injury, assist in providing housing for animals in a control center, finance the functions of licensing and recovery, and to establish a program for the sterilization of animals.

SEC. 7-2. DEFINITIONS. As used in the Animal Control Ordinance:

- (a) “animal” means any vertebrate member of the animal kingdom excluding human beings;
- (b) “animal control center” means the facility maintained and operated pursuant to the provisions of the Animal Control Ordinance;
- (c) “animal control officer” means an employee of the city, designated as such by the director, who has the authority of a peace officer to issue citations for violations of the Animal Control Ordinance and performs such other duties relating to animal control as prescribed by the city manager or respective department head;
- (d) “anti-escape provision” means any housing, fencing or device which a guard dog cannot go over, under, through or around;
- (e) “bite” means an actual puncture or tear of the skin inflicted by the teeth of an animal;
- (f) “commercial kennel” means any commercial establishment or premises where ten or more dogs or cats, over

- three months of age, are boarded, kept or maintained for any purpose whatsoever with the exception of state-inspected veterinary hospitals and shelters;
- (g) “commercial property” means:
 - (1) a portion of land, buildings or land and buildings in the city, zoned for, or utilized for commercial or business uses, including temporary sites; and
 - (2) any vehicle utilized for commercial or business purposes in the city;
- (h) “director” means the division director of the animal control division or his duly authorized representative;
- (i) “enclosed lot” means a parcel of land or portion thereof in private ownership around the perimeter of which a wall or fence has been erected;
- (j) “establishment” means a place of business together with its grounds and equipment;
- (k) “grooming parlor” means any establishment, or part thereof, or premises maintained for the purpose of offering animal cosmetological services for profit;
- (l) “guard dog” means any dog that is utilized to protect commercial property, as defined above;
- (m) “handler” means a person who trains dogs for socialization or dog shows or trials or a security person capable of controlling guard dogs;
- (n) “handler breeder” or “hobby breeder” means any person involved in controlled breeding of animals which are approved by a nationally recognized animal breeding organization, and are eligible to be so registered. Animals under the age of three months are not required to be registered. Handler breeders or hobby breeders are subject to the professional animal permit requirements;
- (o) “hobby kennel” means any private, non-profit premises operated by a person for the purpose of bringing aid and comfort to more than four but not to exceed 15 animals, which will be used for the purpose of breeding;
- (p) “housing” means any location where the guard dog is kept when not used for protection purposes;
- (q) “impound” means to take-up and confine an animal in a humane manner;
- (r) “kennel” means any commercial establishment or premises where ten or more dogs or cats, over three months of age, are boarded, kept or maintained for any purpose whatsoever, with the exception of state-inspected veterinary hospitals and shelters;
- (s) “licensed veterinarian” means a person with a doctor of veterinary medicine degree, licensed to practice in the state;
- (t) “nuisance” means, but is not limited to defecation, urination, disturbing the peace, emitting noxious or offensive odors or otherwise endangering or offending the well-being of the inhabitants of the city;
- (u) “owner of animal” means a person who owns, harbors or keeps, or knowingly permits an animal to be har-

- bored or kept, or has an animal in his care, or who permits an animal to remain on or about his premises;
- (v) “person” means any individual, household, firm, partnership, corporation, company, society, association, and every officer, agent or employee thereof;
 - (w) “pet shop” means any commercial establishment or premises or part thereof maintained for the purchase, sale, exchange or hire of animals of any type, except that the term shall not include livestock auctions;
 - (x) “police dog” means any dog owned by a public agency and used in law enforcement activities under the direction of a handler;
 - (y) “Premises” means a parcel of land and the structure thereon;
 - (z) “quarantine” means to detain or isolate an animal suspected of having a contagious disease;
 - (aa) “running at large” means not to be confined within a building, shelter, walled or fenced area or secured by a leash, rope, chain or other restraining device, unless under the direct control of the owner/handler or keeper;
 - (bb) “shelter” means any establishment owned and operated by a nonprofit humane organization licensed to do business in the state;
 - (cc) “stray animal” means any animal found running at large beyond the boundaries of the premises of the owners;
 - (dd) “vaccination” means protection provided against rabies by inoculation with anti-rabies vaccine recognized and approved by the state;
 - (ee) “vicious animal” means any animal which shall bite or in any other manner attack or attempt to attack any person or animal, except that any animal that bites, attacks, or attempts to attack any person or animal unlawfully upon its owner’s or keeper’s premises, without provocation, shall not be deemed a vicious animal; and
 - (ff) “wild or exotic animal” means any animal not normally considered domesticated and shall include, but not be limited to;
 - (1) class reptilia; order phidia such as racers, boas, water snakes and pythons, and order loricata, such as alligators, caymans and crocodiles;
 - (2) the following members of the class aves; order falconiforms, such as hawks, eagles and vultures, and subdivision ratitae, such as ostriches, rheas, cassowaries and emus; and
 - (3) class mammalia; order carnivora; family felidae, such as ocelots, amrgays, tigers, jaguars, leopards and cougars, except commonly accepted domesticated cats; the family canidae, such as wolves, dingos, coyotes and jackals, except commonly domesticated dogs, family mustelidae, such as weasels, martins, mink, badgers, family procynnidae, such as raccoons; family ursidae, such as bears; and order marsupialia, such as kangaroos and common opossums; order edentata, such as sloths, anteaters

and armadillos; order proboscidea, such as elephants; order primata, such as monkeys, chimpanzees and gorillas; order rodenta, such as porcupines; and order unglata, such as antelope, deer, bison and camels.

SEC. 7.3. ADMINISTRATION OF ORDINANCE.

The director is responsible for the administration of the Animal Control Ordinance. Reasonable rules and regulations shall be prescribed by the director and approved by the city manager to carry out the intent and purpose of the Animal Control Ordinance. The director may delegate authority to his duly appointed control officers as he deems expedient to carry out the provisions of the Animal Control Ordinance.

SEC. 7.4. CONTROL OFFICERS, PEACE OFFICERS, CITATIONS.

The city police, the director and animal control officers have the authority of peace officers to issue citations for violations of the Animal Control Ordinance and to perform such other duties as are prescribed by the city manager. An animal control officer shall wear a uniform, and a badge, and a name tag identifying him as an animal control officer. The badge shall be returned to the director upon the termination of his employment.

SEC. 7.5. CONTROL OFFICERS, RIGHT OF ENTRY.

Animal control officers, in the performance of their duties, may enter upon private property, except a private residence, for the purpose of apprehending animals running at large and stray animals.

(editor’s note: there is no Article 2 in this ordinance)

**ARTICLE 3:
ANIMAL CONTROL CENTERS**

Sec. 7.6. ANIMAL CONTROL CENTER ESTABLISHED.

There is established an animal control center in such location as designated by the city.

Sec. 7.7. CONTROL CENTER HOURS OF BUSINESS.

The animal control center shall be kept open to the public for the transaction of business during the hours set by the department head.

Sec. 7.8. IMPOUNDMENT.

It is the duty of the animal control officers to take-up and impound in the animal control center any estray or any animal kept or maintained contrary to the Animal Control Ordinance.

SEC. 7.9. IMPOUNDMENT, SURRENDER OF STRAY ANIMALS, DISPOSITION OF ANIMALS, COSTS, RECORDS.

- (a) No person shall hold or retain possession of any animal of which he is not the owner, without the knowledge or consent of the owner, for more than twenty-four hours without first reporting the possession to the director or his designee, giving his name and address, a true and complete statement of the circumstances, a description of the animal and the precise location where such animal is confined.
- (b) It is unlawful for any person taking-up an animal to fail to give the notice required in subsection (a) of this section, and for any person having such animal in his possession to fail to refuse to immediately surrender such animal to the director or his designee upon demand.
- (c) A licensed stray shall be confined at the animal control center for a period of at least five days during which time the owner shall be notified. If identification or notification of the owner is not possible, the animal control center may dispose of said animal, without notice, one day after the required impoundment period and may either place the animal in an adoptive home, or may destroy said animal in a humane fashion, as the director may deem proper.
- (d) An unlicensed stray animal shall be confined at the animal control center for a period of at least three days. One day after the required impoundment period of at the director may either place the animal in an adoptive home, or may destroy said animal, in a humane fashion, as the center may deem proper.
- (e) No animal that has been impounded by the animal control center will be adopted-out for the purpose of breeding or sale. Every dog or cat adopted from the center shall be neutered by a licensed veterinarian. A fee for the operation shall be paid to the animal control center or its designee by the person purchasing the dog or cat, prior to the release of the animal. Nothing in this section shall be construed as applicable to any dog or cat returned to the owner.
- (f) Any stray aviane, bovine, equine, ovine, porcine or caprine animal which cannot be adopted may be destroyed following notice to the state livestock board. The time and place where the animal is to be destroyed shall be posted for five days at the center and published once in a newspaper of general circulation. Any other stray animal not redeemed by its owner or placed with a new owner may be disposed of by the animal control center, at its discretion.
- (g) It is the responsibility of an owner of an animal legally impounded to pay for boarding and other costs. The city shall establish appropriate fees by resolution and procedures for their collection. In addition, the owner shall pay any license fees due. cost of inoculations, fines imposed or other costs incurred in the care and maintenance of the animal. The animal control center shall not release any animal impounded at the center

until such fees, fines and costs are paid.

- (h) The animal control center shall maintain records for a reasonable period of time, as determined by the city, of all animals impounded in the center. The record shall contain at least the following:
 - (1) a complete description of the animal;
 - (2) the manner and date of its acquisition by the center;
 - (3) the date and manner of disposal;
 - (4) the name and address of the purchaser of any animal; and
 - (5) all fees received.

ARTICLE 4: OWNERS DUTIES

SEC. 7-10. RABIES VACCINATIONS.

- (a) It is the duty of all persons owning or keeping a dog or cat over the age of three months to have such animals vaccinated against rabies. The rabies vaccination shall be given in an amount sufficient to provide immunity from rabies for one year and shall be administered by a licensed veterinarian. A certificate from a licensed veterinarian shall be evidence of vaccination. The director may require other animals to receive rabies vaccinations.
- (b) The veterinarian administering anti-rabies vaccine to any animal shall issue to the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the e and address of the owner or keeper of the animal, a description of the animal vaccinated, the date of the vaccination and the expiration date of the period of immunity.
- (c) It is unlawful for the owner or keeper of any dog or cat to fail to exhibit its certificate of vaccination upon demand by the director or by the animal control officer.

SEC. 7-11. RABID ANIMAL.

An animal that has rabies or shows signs of having rabies and every animal bitten by another afflicted with rabies or that has been exposed to rabies shall be confined at once in a secure place by the owner. A person who knows or who has reason to know that an animal is infected with rabies or has been exposed to rabies shall, immediately upon learning of the infection, notify the animal control center and the state health and environment department as to the place where the animal is confined and shall surrender said animal to the animal control center upon demand. The animal control center shall then deal with the rabid animal pursuant to state law.

SEC. 7-12. BITING DOG OR OTHER BITING ANIMAL.

- (a) The owner of an animal that bites a person, and a person bitten by an animal, shall report that occurrence to the animal control center and to the district health officer of the state health and environment department within twenty-four hours. The owner of an animal that bites a person shall surrender said animal to the animal

control center if the director deems it necessary to impound said animal for a period of observation.

- (b) A physician who renders professional treatment to a person bitten by an animal shall report that fact to the animal control center and to the district health officer of the state health and environment department within twenty-four hours of his first professional attendance. The physician shall report the name, sex and address of the person bitten, as well as the type and location of the bite. The physician shall give 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 director in ascertaining the immunization status of the animal.
- (c) An animal that bites a person shall be confined securely at a place and for a period of time deemed necessary by the director. The owner of the animal shall bear the cost of confinement. The director may consent to confinement on the owner's premises but only if the animal had a current rabies vaccination at the time the bite was inflicted. The premises where the home confinement is to occur shall be inspected and approved for such purposes by an animal control officer. The owner of the animal shall be required to enter into an indemnity agreement on a form approved and prescribed by the director before consent may be given for such home confinement.
- (d) A person who has custody of an animal that has bitten a person shall immediately notify the director if the animal shows any signs of sickness, abnormal behavior, or if the animal escapes confinement. If the animal dies while it is in confinement, the person having custody of the animal shall notify the director or an animal control officer and relinquish any claims to said animal.

SEC. 7-13. RESTRAINT OF ANIMALS, LEASHES.

- (a) It is unlawful to permit dogs in the streets or public places unless on a secure leash not exceeding eight feet in length and under the immediate physical control of the person having custody thereof. No dog, cat or other member of the canine or feline families is allowed upon a public playground or on the premises of a public swimming pool or upon a school yard.
- (b) The above provisions do not apply when such an animal is in a bona fide animal show or training program authorized by law or appropriate school authority.

SEC. 7-14. DOG LICENSES.

- (a) Any person owning, possessing or harboring any dog three months of age or over shall obtain a license for such animal. Licenses may be obtained from the animal control center. A current rabies vaccination certificate shall be presented at the time of the application for license. The license fee for a tag and certificate, shall be two dollars (\$2.00) for a neutered animal and five dollars (\$5.00) for an un-neutered animal. In the event a tag is lost, replacement tags costing one dollar (\$1.00)

shall be purchased. The license shall expire one year from the date of issue and shall be renewed annually. A late renewal charge (more than 1 month beyond renewal date) will be one dollar (\$1.00) per animal.

- (b) A current license tag shall be affixed to the licensed dog at all times in a reasonable manner, unless the licensed dog is being kept in an approved kennel, veterinary hospital, grooming parlor, is appearing in an approved show or is being trained; provided, that the person who is training a dog shall have in his personal possession the valid license tag for each dog and shall immediately display such upon request by an animal control officer, animal shelter personnel or other law enforcement officers.
- (c) Animals belonging to nonresidents who do not keep said animals within the corporate limits of the city for thirty consecutive days shall be exempt from this section; provided, however, that all the other provisions of this ordinance must be complied with.
- (d) The license fees shall not apply to guide or hearing ear aid dogs trained to assist, and, in fact, used to assist the blind or deaf, nor to any police dog.

SEC. 7-15. MANDATORY SPAYING AND NEUTERING

- (a) No person shall own or harbor within the City of Espanola any dog or cat over the age of six months which has not been spayed or neutered, unless that person obtains from the Animal Control Department at the cost of \$25.00 annually a permit to keep an unaltered dog or cat.
- (b) Proof of neutering, if not apparent upon visual inspection, may be made by certificate or receipt from a licensed veterinarian, or by affidavit of the animal's owner.
- (c) Proof of unaltered dog or cat permit must be available upon reasonable demand of an animal control officer or the owner of said animal will be cited for violation of the ordinance and the animal may be impounded pursuant to Sec. 7. 8. Impoundment of this ordinance.

ARTICLE 5: KENNELS, GROOMING PARLORS, PET SHOPS AND SHELTERS

Sec. 7-16. KENNELS, GROOMING PARLORS, PET SHOPS AND SHELTERS; PURPOSE.

The City declares it to be conducive to the promotion of the health and general welfare of the inhabitants of the city to require a professional animal care permit to operate a kennel, grooming parlor, pet shop or shelter, and to impose certain regulations and inspection fees on those engaged in operating, maintaining or owning a kennel, grooming parlor, pet shop or shelter.

SEC. 7-17. PERMITS GENERALLY.

- (a) Persons operating kennels, grooming parlors, pet shops

or shelters shall obtain a professional animal care permit from the director. It shall be unlawful to operate a kennel, grooming parlor, pet shop or shelter without a current valid professional animal care permit.

- (b) When a permit is applied for, an inspection of the kennel, grooming parlor, pet shop or shelter shall be conducted by the director to determine compliance with the Animal Control Ordinance. If inspection reveals that the premises comply with the law and regulations, a professional animal care permit will be issued. Said permit is only valid for the approved premises. Permittees who keep animals confined, shall at the option of the permittee, be exempt from the animal license requirements of the Animal Control Ordinance and will not be issued any license tags unless the required animal license fee is paid.
- (c) Permits are not transferable from one person to another person or place. A valid permit shall be posted in a conspicuous place in every kennel, grooming parlor, pet shop and shelter.
- (d) A permit holder shall notify the director of any change in his operations which may affect the status of his permit and shall keep the director informed of any change in name or location of his business.
- (e) Persons in charge of a kennel, grooming parlor, pet shop or shelter shall be responsible for complying with the Animal Control Ordinance. There shall be kept at each kennel, grooming parlor, pet shop or shelter a record of all animals received and of their final disposition.
- (f) The professional animal care permit shall expire December 31 of each calendar year, and shall be renewed by February 1 of the following year. New professional animal care permits, but not a renewal, shall be issued with professional animal care permit fees prorated on a semiannual basis. Professional animal care fees shall be established by the director and approved by the governing body of the city.

SEC. 7-18. SPECIFICATIONS AND MAINTENANCE OF FACILITIES.

- (a) Animal housing facilities shall be constructed of non-toxic materials and in a structurally sound design. Interior floors shall be smooth, easily cleanable construction and impervious to water. The facility shall be kept in good repair and kept clean and sanitary at all times, so as to protect the animals from disease and injury.
- (b) Animals maintained in pens, cages or runs for periods exceeding twenty-four hours, shall be provided with adequate space to prevent overcrowding and to maintain normal exercise, according to species.
- (c) Indoor housing shall be provided for in all pet shops, grooming parlors, shelters and commercial kennels. These facilities shall be sufficiently temperature-controlled and ventilated to provide for the animal's comfort and health.
- (d) Sufficient lighting shall be provided by either artificial

or natural means.

- (e) Outside housing shall be sufficient to protect animals from sunlight, rain, snow or cold weather that may be detrimental to the animal's health.
- (f) Provisions shall be made for the removal and proper disposal of animal and food waste, bedding, dead animals and debris.
- (g) Adult animals shall be segregated by sex, except where otherwise indicated for health, welfare or breeding purposes and vicious or quarantined animals shall be removed and caged by themselves.
- (h) Animals shall be provided with clean, fresh, sufficient and wholesome food and water. Food and water containers shall be kept clean.
- (i) Each animal shall be observed daily by the animal caretaker in charge or his representative. Sick, diseased, injured, lame or blind animals shall be provided with proper veterinary care. Any person operating or employed at a kennel, grooming parlor, pet shop or shelter who observes an animal which he suspects of being rabid shall at once notify the director and the state department of health and environment and segregate such animal for a period of ten days, unless examined and released by written statement of a veterinarian and then only at the discretion of the director.

SEC. 7-19. INSPECTION GENERALLY.

The director or his duly appointed agent shall be permitted to enter at any reasonable time, any kennel, grooming parlor, pet shop or shelter for the purpose of making inspections to determine compliance with the Animal Control Ordinance. The director shall make as many inspections and re-inspections as necessary for the enforcement of the Animal Control Ordinance.

SEC. 7-20. PERMIT VIOLATIONS, SUSPENSIONS AND REVOCATIONS.

- (a) If the director makes an inspection of a kennel, grooming parlor, pet shop or shelter and discovers a violation of the Animal Control Ordinance, he shall notify the permit holder, or operator, of the violation by means of an inspection report form or other written notice. The notification shall:
 - (1) set forth the specific violation found;
 - (2) establish a specific and reasonable period of time for the correction of the violation found;
 - (3) state that failure to comply with any notice issued in accordance may result in immediate suspension of the permit; and
 - (4) state that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the director, within five days.
- (b) Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in

charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last-known address of the permit holder. A copy of the notice shall be filed with the records of the animal control center.

- (c) Permits may be suspended temporarily by the director for failure of the holder to comply with the requirements of the Animal Control Ordinance or other applicable laws or regulations. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of the Animal Control ordinance, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the director by the permit holder. Notwithstanding the other provisions of the Animal Control ordinance, when the director finds unsanitary or other conditions in the operation of a kennel, grooming parlor, pet shop or shelter, which, in his judgment, constitute a substantial hazard to public health, he may, without warning or hearing, issue a written notice to the permit holder or operator citing such conditions and specifying the corrective action to be taken. If deemed necessary, the order shall state that the permit is immediately suspended and all operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately.
- (d) For serious or repeated violations of any of the requirements of the Animal Control Ordinance, or for interference with the director in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the director. Prior to such action, the director shall notify the permit holder, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five days following service of such notice, unless a request for a hearing is filed with the director by the permit holder within the five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

SEC. 7-21. PERMIT VIOLATIONS, SUSPENSIONS AND REVOCATIONS, REVIEW.

- (a) The hearings provided for shall be conducted by the city manager at a time and place designated by him. Based upon the record of the hearing, the city manager shall make a finding, and shall sustain, modify or rescind any official notice or order considered in the hearing. The actions of the city manager may be appealed to the governing body. A written report of the hearing decision shall be furnished to the permit holder by the director. This subsection shall not preclude the city from institution of court action, as otherwise provided by law.
- (b) Any person whose permit has been suspended, may at any time, make application for an inspection for the

purpose of reinstatement of the permit. Within five days following a request for reinstatement, the director shall make an inspection. If the applicant is complying with the requirements of law and regulations, the permit may be reinstated.

ARTICLE 6: PROHIBITED ACTIVITIES, GENERALLY.

SEC. 7-22. ANIMALS RUNNING AT LARGE.

- (a) It is unlawful for any person to allow or permit an animal to run at large, as defined in the Animal Control Ordinance, in or on any street, alley, sidewalk, vacant lot, public or private property.
- (b) A notice of impoundment will be left in each case that an animal is impounded from private property. An attempt will be made by the animal control officer to contact the owner.
- (c) The animal control officers have the right to impound animals that are destroying public property or endangering the welfare of any person or animal who is lawfully on public or private right-of-way. Any animal in violation of this section is declared to be a nuisance, a menace to the public health and safety and shall be impounded as provided in Sections 7.6 through 7.9 of this chapter. Further, the animal control officer shall destroy any dog if it is in the act of pursuing or wounding livestock or wounding and killing poultry or attacking humans (Section 77-1-9 NMSA 1978).

SEC. 7-23. ENCLOSURE FOR BREEDING ANIMALS.

It is unlawful for any person to let any female animal to any male animal except within an enclosure so arranged as to obstruct the animals completely from the view of all who have no propriety interest in the breeding of the animals.

SEC. 7-24. ANIMALS ON UNENCLOSED PREMISES.

It is unlawful for any person to chain, stake-out, graze or herd any animal on any unenclosed premises in such a manner that the animal may go beyond the property line.

SEC. 7-25. VICIOUS ANIMALS.

It is unlawful for any person to keep or harbor any vicious animal. Any person attacked by a vicious animal while on public property may use reasonable force to repel the attack. After a judicial determination that an animal is vicious the owner or keeper of the vicious animal shall destroy it humanely or turn the animal over to the animal control center for destruction.

SEC. 7-26. ANIMAL DISTURBING THE PEACE.

It is unlawful for any person to allow any animal to persistently or continuously bark, howl or make noise common to the species, or otherwise to disturb the peace and quiet of the inhabitants of the city or to keep or maintain animals in such a manner as to disturb by noxious or offensive odors, or oth-

erwise endanger the health and welfare of the inhabitants of the city.

SEC. 7-27. NUISANCES.

It is unlawful for the owner of an animal to permit, either willfully or through failure to exercise due care or control, the animal to commit any nuisance upon any property other than that of the owners of the animal, and then only so long as no other provisions of the Animal Control Ordinance is violated.

SEC. 7-28. UNLAWFUL USE OF LICENSE TAGS.

It is unlawful for any person to remove any license tag from one animal to another or to remove a license tag from an estray without lawful permission. It is unlawful for any person to manufacture or cause to be manufactured or to have in his possession or under his control, a stolen, counterfeit or forged animal license tag, rabies vaccination certificate or other form of animal or premises license.

SEC. 7-29. BREAKING INTO CENTER, SHELTER OR VEHICLES.

It is unlawful for any person to break open any pound, center or animal control vehicle wherein animals are impounded by the city, or in any other way to remove or assist in the removal of any animal from the pound, center or vehicle without lawful permission.

SEC. 7-30. DOGS TRAINED TO ASSIST THE BLIND OR DEAF IN PUBLIC PLACES.

It is unlawful 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 any guide or hearing ear aid dog which has been trained to assist the blind or deaf provided that such dog is in the company of the blind or deaf person whom it was trained to assist in conformance with the state law.

SEC. 7-31. CONFINING ANIMALS IN MOTOR VEHICLES, RESPONSIBILITY OF MOTOR VEHICLE OWNER.

No person having control over a motor vehicle shall place or confine an animal or allow an animal to be placed or confined or to remain in a motor vehicle under such conditions or for such period of time as may endanger the health or well-being of such animal due to heat, lack of food or drink, or such other circumstances as may reasonably be expected to cause suffering, disability or death.

SEC. 7-32. CONFINING ANIMALS IN MOTOR VEHICLE, EXCEPTIONS - TRANSPORTATION OF ANIMALS.

Nothing in the Animal Control Ordinance shall be deemed to prohibit the transportation of horses, cattle, sheep, poultry or other agricultural livestock in trailers or other vehicles designed and constructed for such purpose.

SEC. 7-33. CONFINING ANIMALS IN MOTOR VEHICLES, REMOVAL OF ANIMALS FROM MOTOR VEHICLES, AUTHORITY OF ANIMAL CONTROL OFFICERS OR PEACE OFFICER.

An animal control or peace officer who finds an animal in a motor vehicle in violation of the Animal Control Ordinance may enter into the motor vehicle if necessary to remove the animal. The officer removing the animal shall take the animal to an animal control center or other place of safe keeping. If a vehicle is entered, left unsecured and cannot be re-secured, an animal control or peace officer shall stay with the vehicle until the owner arrives. In the event the person having custody cannot be contacted, the officer shall leave in a prominent place in the motor vehicle a written notice bearing his name and office and the address where the animal may be claimed by the owner. The animal will be surrendered to the owner if the owner claims the animal within five days from the time the animal was impounded. The owner shall pay all reasonable charges that have accrued for the maintenance of the animal. If the owner fails to claim the animal within five days after its removal from the motor vehicle, animal control center will make reasonable effort to contact the owner and give notice that the animal is in custody. In the event the owner cannot be contacted or expresses no interest in claiming the animal within five days after contact or efforts of contact, the animal control center may dispose of the animal in any reasonably humane manner.

ARTICLE 7: CRUELTY TO ANIMALS PROHIBITED

SEC. 7-34. CRUELTY, GENERALLY.

It is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, kick, beat with a stick, chain, club or other object, mutilate, burn or scald with any substance any animal, except that reasonable force may be employed to drive off vicious or trespassing animals.

SEC. 7-35. WORK CRUELTY.

It is unlawful for any person to drive or work any animal cruelly.

SEC. 7-36. NEGLECT.

It is unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, drink, shade, care or shelter, or to carry an animal in or upon any vehicle in a cruel or inhumane manner. Any animal habitually kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal.

SEC. 7-37. ABANDONMENT.

It is unlawful for any person having charge, custody or ownership to abandon any animal. All animals which are to be abandoned may be turned over to the animal control center or the animal shelter for adoption.

SEC. 7-38. POISONING.

It is unlawful for any person by any means to make accessible to any animal, with the intent to cause harm or death, any substance which has in any manner been treated or prepared with any harmful or 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.

SEC. 7-39. PROTECTIVE CARE BY DIRECTOR.

When the director finds that any animal is or will be without proper care because of injury, illness, incarceration or absence of the owner or person responsible for the care of the animal, the director may take up the animal for protective care; and, in the event of sickness or injury, upon the advice of a licensed veterinarian, the director may take such action as called for to prevent undue pain and suffering including immediate destruction of the animal.

SEC. 7-40. INJURY BY MOTORISTS.

- (a) every operator of a motor vehicle or other self-propelled vehicle upon the streets and ways shall immediately, upon injuring, striking, maiming or running down any animal, give aid as is reasonably able to be rendered. In the absence of the owner, he shall immediately notify the animal control center, furnishing sufficient facts relative to the injury.
- (b) Every such operator shall remain at or near the scene until the appropriate authorities arrive, and upon the arrival of the appropriate authorities, the operator shall immediately identify himself to them. Alternatively, in the absence of the owner, a person may give aid by taking the animal to a veterinary hospital or the animal control center. The animal shall be deemed an abandoned animal within the meaning of Section 7-37 of this chapter. This provision does not apply to operators of emergency vehicles.

SEC. 7-41. HOBBLING LIVESTOCK.

It is unlawful to hobble livestock or other animals by any means which may cause injury or damage to any animal.

SEC. 7-42. KEEPING OF DISEASED OR PAINFULLY CRIPPLED ANIMALS.

It is unlawful to have, keep or harbor any animal which is infected with any dangerous or incurable or painfully crippling condition except as provided in the Animal Control Ordinance. The director may impound the diseased or painfully crippled animal in accordance with the provisions of the Animal Control Ordinance. All such animals impounded, following examination and approval by a veterinarian may be destroyed humanely as soon thereafter as is conveniently possible. In the case of destruction of an animal, the director shall not be required to give any of the notices provided in the Animal Control Ordinance. This section shall not be construed to include veterinary hospitals or animals under active veterinary care.

SEC. 7-43. ANIMAL FIGHTS.

It is unlawful for any person to promote, stage, hold, manage, conduct, carry on or attend any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming or destroying themselves or any other animal.

SEC. 7-44. CONFINING OR CRATING OF FOWL.

It is unlawful for any person to confine, or the director to confine or impound any wild or domestic fowl or bird unless provisions are made for the proper feeding and the furnishing of water to the fowl or bird at intervals not longer than twelve hours; and unless provisions are made that the crate, box or other enclosure in which fowl or bird is confined or impounded permits the fowl or bird to stand in a naturally erect position.

SEC. 7-45. BIRDS.

It is unlawful to willfully kill any bird, as to molest or rob the nest of a bird.

ARTICLE 8: SALE**SEC. 7-46. USE OF PUBLIC PROPERTY.**

It is unlawful to display, sell or offer for sale, give away or otherwise dispose of any animal upon any street, sidewalk or public park.

SEC. 7-47. RABBITS OR FOWL.

It is unlawful to sell, offer for sale, barter or give away any unweaned baby rabbits or fowl under four weeks of age. Raising of such rabbits and fowl by an individual for his personal use and consumption is not prohibited provided that he shall maintain proper brooders and other facilities for the care and containment of the animals and fowl while they are in his possession. The sale of young fowl by commercial breeders is not prohibited.

SEC. 7-48. ANIMALS -USE AS PREMIUMS OR NOVELTIES.

No person shall offer as a premium, prize, award, novelty or incentive to purchase merchandise, any live animal.

ARTICLE 9: EXOTIC ANIMALS, GUARD DOGS**SEC. 7-49. WILD OR EXOTIC ANIMALS.**

- (a) It is unlawful to be in charge of, possess or own:
 - (1) any exotic animal or species prohibited by federal or state law;
 - (2) any exotic animal or species when kept in such numbers or in such a way as to constitute likelihood of harm to the animals themselves, to human beings or to the property of human beings, or which constitutes a public or private nuisance;

- (3) bats; or
- (4) skunks, except those owned by individuals on the effective date of the Animal Control ordinance and provided that any exotic animal permit is obtained for the skunks within sixty days of the effective date.
- (b) It is unlawful to receive, purchase, own or keep any exotic animal without first applying to and receiving from the director a permit to do so. Notwithstanding, those persons in possession of an exotic animal when they become residents of the city in future or who possess said animal on the effective date of the Animal Control ordinance have a sixty-day period in which to apply for the permit before the penalty provisions of this ordinance become enforceable.
- (c) No person shall apply for an exotic animal permit without first obtaining any required state or federal permits.
- (d) The application for a permit shall contain the name of the applicant; his address, the address of the proposed location of the exotic animal if different from the applicant's; a brief description of the applicant's plan for keeping the exotic animal which shall include the species of animal, the number of individuals qualified to care for the animal desired or that have agreed to advise or assist the applicant in the proper care and treatment of the animal and who would be willing to recommend the person applying for the permit; and the list of publications which the applicant has studied in order to qualify for a permit for said animal.
- (e) Upon receipt of the application, the director shall inspect the facilities where the animal is to be housed and shall make whatever other investigations he deems necessary.
- (f) If the director approves the application, the twenty five dollar (\$25.00) initial exotic animal permit fee shall be paid and the permit issued whenever, in any given permit year, there are new exotic animals in a collection due to the reproduction of members of the collection or to replacement in the same number and zoological species as the members replaced, the new animals do not require an additional permit during the year, provided the director is notified in writing of the new exotic animals within thirty days of acquisition. When a new exotic animal or collection is added, a new permit must be secured and new fee shall be due and payable at the time of issuance of the permit and shall be a prerequisite of the issuance.
- (g) The exotic animal permit shall be valid for one year, and must be reviewed within sixty days after expiration and inspection is required prior to the renewal of the permit. The annual fee for the renewal of the permit is ten dollars (\$10.00). If, during the preceding year, more than one initial permit has been issued an applicant, the former permit may be consolidated so that only one renewal permit is required; provided, however, that the renewal date for the consolidated permit shall be the date of the issuance of the earliest initial permit. The animal control center may deny the application for renewal for cause.
- (h) Individuals authorized to acquire an exotic animal shall, within fourteen days of acquisition, submit to the animal control center, a health certificate from a qualified veterinarian stating that the animal is in good health and has been vaccinated in accordance with applicable time schedules.
- (i) It is unlawful to receive, purchase, own or keep exotic animals unless:
 - (1) housing is sufficiently spacious, ventilated and temperature-controlled, clean and sanitary at all times;
 - (2) the exotic animal is provided with proper food, water and attention;
 - (3) the exotic animal is kept and cared for in such a way as not to endanger the safety of any person or property; and
 - (4) the exotic animal permittee notifies the director when changing his residence or location of the exotic animal, or selling or otherwise disposing of the exotic animal for which the permit was issued.
- (j) Permits issued pursuant to the provisions of this section shall be surrendered for inspection upon the request of the director. The premises on which an exotic animal is maintained shall be open at any reasonable hour and in a reasonable manner for inspection by the director.
- (k) For failure to have a permit in advance of obtaining an exotic animal or to renew said permit within sixty days of the expiration date, or upon suspension of an exotic animal permit, the director shall have the authority to enter the premises where the exotic animal is kept, at any reasonable hour, and to impound said animal. The animal shall be surrendered upon the demand of the director. Procedures for the reclamation and destruction of impounded exotic animals shall be followed pursuant to Sections 7-8 and 7-9 of this chapter, and for penalties, pursuant to Section 7-52 of this chapter. The exotic animal may be returned to its owner if the problem for which it was impounded is corrected within the time period allotted by the director and all penalties are paid.
- (l) Notwithstanding the above, a valid zoological park, veterinary hospital, humane society, shelter, public laboratory, circus, sideshow, educational or scientific facility, provided protective devices adequate to prevent the animal from escaping or injuring the public are provided, are excluded from the above portions of this section.
- (m) Upon application to the director, the keeping of these prohibited animals may be permitted for educational or scientific purposes; providing there is no conflict with state and federal regulations. In lieu of licensing each animal, an exotic animal permit may be issued in accordance with this section.
- (n) No person shall keep, conduct or operate any traveling animal show, petting zoos, circus, pony rides, animal

acts or miscellaneous animal or reptile exhibits without first obtaining a special animal permit from the director as follows:

- (1) Each application for a special animal permit shall be in writing upon a form to be furnished by the director and shall contain such information as the director shall require. The fee for each special animal permit is twenty-five dollars (\$25.00);
- (2) All special permits issued by the director shall be for a specified period of time but not to exceed one year unless revoked or suspended, or unless the holder of the permit changes the location of his place of business, or sells, assigns, transfers or otherwise disposes of his business or his interests therein; and
- (3) Upon the filing of each application, either for an original permit or renewal, the director shall make an investigation as he deems proper. The director shall then issue a permit to the applicant if it is found that the animals, or the conduct or operation of the business for which the permit is requested will not constitute a menace to the health, peace or safety of the citizens; and the premises and condition and [sic] that the animals will not be subject to needless suffering, unnecessary cruelty or abuse and that the applicant has not had a permit revoked within one year prior to the date of application.

SEC. 7-50. PERMITS AND HOUSING OF GUARD DOGS.

- a) It is conducive to the promotion of the health and general welfare of the inhabitants of this city to require permits for guard dogs, used on commercial property, and to establish regulations for the proper and safe use of guard dogs used for protecting commercial property.
- (b) Permits:
 - (1) Unless a guard dog permit is in effect for each commercial property where guard dogs are to be used, they shall not be used. Procedures for permit application, inspection of guard dog facilities, and issuance of dog identification tags will be established by the director. Permits for both permanent and temporary locations may be transferred to a new location operated by the same business firm during the license year. However, such transfers shall not be effective until the director or his designee has inspected and approved required facilities at the new location and the information required below for permit applications has been recorded. Applicants must provide five working days' advance notice to the animal control center for permit transfers.
 - (2) Permit applications shall include the following information: the business name, address and telephone number of the commercial property where guard dogs are to be used; the name, address and telephone number of the handler who can be

reached at any time during the day or night; the number of dogs to be used and general description of their use; the location where dogs are to be housed; and any other information that the director deems necessary by rule and regulation. Permit holders shall notify the animal control center if any information recorded as part of the permit application is changed during the course of the period for which the permit is issued.

- (3) The director or his designee shall inspect the facilities where the guard dog is to be used and housed when the guard dog permit is applied for and when it is renewed.
- (4) If the inspection reveals that all the requirements of law and regulation are met, a fee of \$15.00 shall be paid and a guard dog license and special guard dog identification tags for the approved commercial property shall be issued by the animal control center. The permit shall be displayed at the approved commercial property and an identification tag shall be affixed to the collar of each dog used. Holders of the guard dog permits shall be exempt for the guard dogs from the license fee requirements of section 14-8.
- (5) The guard dog permit shall be valid for one year and must be renewed annually within 30 days after the renewal date. The renewal fee shall be \$15.00.
- (6) The guard dog permit must be obtained prior to housing or utilizing guard dogs at the commercial property; provided that for those commercial properties where guard dogs were in use when the article from which this ordinance is derived became effective, there shall be a 90-day period in which to obtain the permit without penalty.
- (c) Standards for keeping. Whenever there is a guard dog on the premises, the standards of this section, in addition to the other requirements of law and regulations, shall be complied with, as follows:
 - (1) Housing shall have anti-escape fences completely surrounding it or be an anti-escape building sufficient to house guard dogs.
 - (2) All gates and entrances to the area where the guard dog is housed, used or trained shall be locked when not in use.
 - (3) Additional measures found necessary by the director shall be taken to protect the public from accidental contact with any guard dog.
 - (4) Where guard dogs are used outside buildings, the area must be enclosed by at least a six-foot chain link fence or other fence of equal security, wall or adequate wood fence, to which anti-escape devices have been added. The adequacy of the fencing shall be subject to the approval of the director.
 - (5) In order to control noise, the director may require a sight barrier which breaks the dog's line-of-sight.
 - (6) In buildings where guard dogs are housed, exterior glass must be adequate, or additional protective

measures must be taken by the owner, as required by the director, to prevent the dog from jumping through it.

- (7) The building and yard in which a guard dog is housed must be posted with bilingual, English and Spanish, or visual guard dog signs, approved by the director that shall not be more than two hundred feet apart, and shall be at all property corners and at every entrance into the area.
- (8) For guard dogs either transported or used in vehicles, measures must be taken to protect the public from accidental contact with a guard dog.
- (9) A handler is required to be physically present while guard dogs are being used at temporary sites which do not comply with this section.
- (d) Exemption. Dogs which are used as private guard dogs on the property of their owner's private residence, shall be excluded from the provisions of this section unless said residence is located on premises used for commercial purposes. Guard dogs kept in a kennel with a valid professional animal permit are also excluded.

(Editor's note: there is no Sec. 7-51.)

SEC. 7-52. VIOLATIONS, SUSPENSIONS AND REVOCATIONS UNDER PROFESSIONAL ANIMAL CARE PERMIT, THE EXOTIC ANIMAL PERMIT AND THE GUARD DOG PERMIT — APPEAL PROCEDURES.

- (a) If the director makes an inspection of a kennel, grooming parlor, pet shop, shelter, facility for exotic animals or commercial property where guard dogs are used, and discovers a violation of law or regulations, he shall notify the permit holder, or operator, of such violations by means of an inspection report form or other written notice. The notice shall:
 - (1) set forth the specific violation found;
 - (2) establish a specific and reasonable period of time for correction of the violation found;
 - (3) state that failure to comply with any notice issued in accordance with the provisions of the Animal Control Ordinance may result in immediate suspension of the permit; and
 - (4) state that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the director within five days of the receipt of the notification.
- (b) Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally or mailed by registered or certified mail, return receipt requested, to the permit holder, person in charge, or alleged violator. A copy of such notice shall be filed with the records of the director.
- (c) Hearings provided for in this section shall be conducted by the director at a time and place designated by him. Based upon the record of such hearing, the director shall make a finding and shall sustain, modify or

rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the director. This subsection shall not be intended to preclude the institution of court action as provided elsewhere in the Animal Control Ordinance.

- (d) Permits may be suspended by the director for failure of the holder to comply with the requirements of law or regulations. The director may notify a permit holder in writing that the permit or license is, upon receipt of the notice, immediately suspended, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the director within five days of receipt.
- (e) Notwithstanding the notice requirements herein, when the director finds unsanitary or other conditions in the operation of a kennel, grooming parlor, pet shop, shelter, exotic animal facility, or site where guard dogs are used, which, in his judgment, constitute a substantial hazard to public health, he may, without notice or opportunity to be heard, issue a written notice to the permit holder or operator citing such condition and stating the corrective action to be taken. If deemed necessary, the permit shall be immediately suspended and all operations immediately discontinued. Any person to whom such an order is issued shall comply forthwith.
- (f) For repeated violation of any of the requirements of law or regulations or for interference with the director in the performance of his duties, the violator's permits may be permanently revoked after an opportunity for a hearing has been provided by the director. The individual whose professional animal, exotic animal or guard dog permit is revoked shall not apply for another permit or license for the period of one year. Prior to such action, the director shall notify the permit holder in writing, stating the reasons for which the permit is proposed to be revoked at the end of five days following service of such notice, unless a request for a hearing is filed with the director by the permit holder or licensee, within such five-day period.
- (g) if the exotic animal permit is revoked, the owner of the exotic animal shall give away, sell or surrender the animal to the animal control center within five days of the effective date of revocation. If within seven days thereafter, the director finds the former permittee is in compliance with law and regulations, the permit shall be renewed.
- (h) Any person whose professional animal or guard dog permit has been suspended, shall cease the previously permitted activity. Said person may, at any time, make application for inspection for the purpose of reinstatement of the permit. Within five days of a request for reinstatement, the director shall make an inspection. if the applicant is complying with the requirements of law and regulations, the permit may be reinstated.
- (i) Any person aggrieved by any decision of the director may, within five days of receipt of his decision, file

written notice of appeal to the city manager. The hearing of the city manager shall be conducted within thirty days of receipt of the notice of appeal. The actions of the city manager may be appealed to the governing body.

ARTICLE 11: PENALTIES

SEC. 7-53. PENALTIES.

Any person who violates any of the provisions of the Animal Control Ordinance shall be punished according to the provisions of section 1-10 of the Espanola Municipal Code. Each day this ordinance is violated shall be considered a separate offense.

- (a) The following is a schedule of mandatory fines:
 - (1) for redemption of impounded animals:
 - first offense, five dollars (\$5.00); - second offense, ten dollars (\$10.00); - third offense, twenty dollars (\$20.00); - fourth offense, confiscation of animal;
 - (2) unlicensed dogs, fifteen dollars (\$15.00) plus license fee;
 - (3) running at large, or animals disturbing the peace:
 - first offense, ten dollars (\$10.00); - second offense, twenty dollars (\$20.00);
 - third offense, thirty dollars (\$30.00); - fourth offense, citation for court action as pursuant to Subsection (b) of this section; and
 - (4) no rabies vaccination, ten dollars (\$10.00) plus cost of vaccination.
- (b) Any violation of the Animal Control ordinance other than those listed in subsection (a) of this section shall be punished as provided in section 1-10 of the Espanola Municipal Code. If any person is convicted of cruelty or mistreatment of an animal, that animal shall be removed from his custody and placed with the director.
- (c) In addition to the mandatory fines for impounded animals pursuant to Subsection (a) of this section, an additional boarding fee will be charged by the animal control center.

SECTION 2. SEVERABILITY

If any section, subsection, sentence, clause, word, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The governing body hereby declares that it would have passed this ordinance and each section, sentence, clause, word and phrase thereof, irrespective of any one or more sections, subsections, sentence, clause, word or phrases being declared unconstitutional or otherwise invalid.

SECTION 3. REPEALER

Sections 7-1 through 7-22, 7-34 through 7-43, 7-56 through 7-74 through 7-83 EMC 1979 (being Ordinance No. 316)

and all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. EFFECTIVE DATE

This ordinance will become effective five days after publication by title and general summary.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Espanola New Mexico, on this 28th day of March, 1995.