

AN ORDINANCE OF THE CITY OF ROSWELL PROVIDING THAT THE CODE OF ORDINANCES, CITY OF ROSWELL, NEW MEXICO, BE AMENDED REVISING SECTION 4-1 BY INSERTING ADDITIONAL DEFINITIONS; CLEANING UP EXISTING SECTIONS; CREATING NEW SECTIONS; PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND FIXING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that from time to time a review of ordinances require review to clarify, update and make them more applicable to today's society; and

WHEREAS, the City Council had determined that the following changes and additions are necessary; and

WHEREAS, the City Council has determined that the public interest will best be served by enacting this ordinance.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE GOVERNING BODY, THE CITY COUNCIL, OF ROSWELL, NEW MEXICO, that:

Section 1. The Roswell City Code Chapter 4 is hereby amended to read as follows:

4-1 Cruelty to Animals

(a) Definitions. Except as otherwise provided, these definitions shall apply to this entire chapter.

Animal means a vertebrate member of the animal kingdom other than humans.

Abandonment means to desert deliberately and/or to relinquish the supervision or care of an animal.

Altered (alter, alteration) means animal that is spayed or neutered.

Animal Control Division means that division of the City which is specifically charged with regulating and enforcing laws dealing with animal control within its jurisdiction.

Animal Control Officer or ACO means that person duly appointed to the position by the City. The officer's duties are defined in the job description for such position, which is on file with the City personnel director.

Animal Control Shelter/Facility/Center means any premises designated by the City for the purpose of impounding and caring for animals coming into the City's custody.

Animal Control Supervisor means the person or agency-designated supervisor of the animal control shelter/facility.

Bite means any abrasion, scratch, puncture, tear or piercing of the skin actually or suspected of being caused by an animal's mouth.

Cat means any member of the family *Felis domestica*.

City means the City of Roswell.

City tag means tags supplied by Animal Control when an animal is licensed and proof of rabies vaccination has been provided.

Collar means a band, harness or other suitable device worn around the neck of an animal to which current rabies vaccination and registration tags can be affixed.

Commercial animal establishment means any pet shop, grooming shop, auction, zoological park, kennel or small animal facility. This term shall not include animal shelters or veterinary hospitals.

County means Chaves County.

Dangerous dog means any dog that caused a serious injury to a person or domestic animal.

Dog means any member of the family *Canis familiaris*.

Enclosure Size means space adequate to prevent overcrowding and to maintain normal exercise according to the size of the animal.

Exotic animal means any animal that is not native to New Mexico or not typically identified as a domestic pet.

Feces means excrement and other waste matter discharged from the bowels of an animal.

Fowl means chickens, turkeys, ostriches, emus, rheas, pheasants, ducks, geese, pigeons, and all similar domestic birds and poultry, whether kept for use or pleasure.

Guard Dog means a dog that is used to protect commercial property.

Health Officer or authority means the district health officer or Department of Health officer having jurisdiction.

Harbor means any animal fed, sheltered or maintained for three (3) consecutive days or more.

Heat or Season means a regularly recurring state of estrus during which the female animal is capable of attracting and accepting the male for breeding or is capable of conceiving.

Humane Society means any organization for the prevention of cruelty to animals incorporated under the laws of the state.

Hybrid means animals bred between domestic and wild animals.

Kennel means any building, premise, or portion thereof in which more than three (3) animals over six (6) months of age are kept, maintained, boarded, bred, or cared for in return for remuneration or are kept for the purpose of sale.

Licensed Veterinarian or Veterinarian means a Doctor of Veterinary Medicine licensed to practice in the State of New Mexico.

Livestock includes horses, mules, donkeys, cattle, sheep, goats, hogs, and all similar domestic animals, whether kept for use or pleasure.

Microchip means a passive transponder which can be implanted in an animal by injection.

Owner means a person who owns or has responsibility for the care and control of an animal or who permits an animal to remain on or about his premises.

Pet means any animal kept for pleasure rather than utility.

Pet shop means any place or facility used for the business of buying, selling, or trading pets.

Public nuisance animal means any animal determined to constitute a public nuisance in accordance with this chapter.

Refuge means an establishment owned or operated by a New Mexico incorporated non-profit organization whose sole function is to aid and comfort more than four but no more than 12 animals.

Releasing agency means any public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

Restraint means the securing of an animal by a leash or lead, or by physical confinement within the real property limits of its owners or confined within a motor vehicle.

Serious injury means a physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

Stray means an animal which is not physically restrained or controlled and is beyond the boundaries of the premises of the owner.

Unaltered means an animal that has not been spayed or neutered.

Vicious animal means any animal that constitutes a physical threat to persons or to other animals.

Wild animal means any animal normally found in the wild state and all reptiles (including snakes) that are poisonous or exceed eight (8) feet in length.

Section 4-38. Public nuisances

- (a) With respect to the owning, harboring or maintaining of animals, a public nuisance shall consist of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which either:
- (1) Is injurious to public health, safety, morals or welfare; or
 - (2) Interferes with the exercise and enjoyment of public rights.
- (b) Without limitation on the foregoing criteria, public nuisances shall include the owner or custodian of animals:
- (1) Permitting, creating or maintaining unsanitary conditions due to animal excrement, diseased animals or the bodies of dead animals, which conditions affect the public health and welfare.
 - (2) Permitting or causing barking, howling, whining, mewling or other animal noises to the extent that the public peace and quiet is regularly or continuously disturbed.
 - (3) Permitting or causing the destruction of public property or the destruction of private property when the property rights of a large segment of the neighboring community are affected, whether such public or private property is real, personal or mixed.
 - (4) Permitting defecation, urination, or the emitting noxious or offensive odors that disturbs the peace.
 - (5) The owner or custodian, harboring or maintaining a dog or cat which has not been inoculated against rabies or for which an appropriate license has not been acquired pursuant to the provisions of this article,
 - (6) Owning, harboring or maintaining a vicious dog, as defined in this chapter,

(7) Maintaining a kennel in a residentially zoned district;

Exception: A dog or cat breeder may obtain a "Breeder's Permit" which will allow the breeder to maintain, board, breed or care for in return for remuneration or kept for the purpose of sale up to but not exceed eight (8) animals over six (6) months of age. The location will be inspected by an Animal Control Officer to ensure at a minimum that: there is adequate space for the animals; adequate security to prevent the animals from running loose in violation of this chapter and ensure the applicant is aware of the various sections within this chapter regarding the care and upkeep the animals. The "Breeder's Permit" will be issued without charge, however if more than three violations of this chapter are substantiated by court action within a twelve month period, the permit will be forfeited. The "Breeder's Permit" is valid only for the calendar year it is issued. This permit is only valid for animals that are American Kennel Club registered or similar nationally recognized organization.

(8) Selling or offering for sale animals at any location not belonging to the seller or offeror.

- (c) Whoever commits a public nuisance in violation of this section with regard to the owning, harboring or maintaining of a dog or cat shall be guilty of a misdemeanor.
- (d) For the purposes of this section, prior warning of violation of any subsection or paragraph hereof shall raise a rebuttable presumption of knowledge on the part of any person owning, harboring or maintaining a dog or cat with respect to any and all subsequent violations of that particular subsection or paragraph, when such warning has been issued, orally or in writing, by an animal control officer, a police officer, the city attorney, the city manager or any other person designated by the city manager.

Section 4-39. Vicious Animals

- (a) It shall be unlawful for any person, owning, possessing or keeping any animal within the City which is known to be vicious or dangerous to persons, to permit it to run loose in such manner as to endanger life or limb of any person lawfully upon public or private property.
- (b) For the purposes of this section a vicious animal is a dog that without provocation bites or attacks human beings or other animals or, in a vicious or terrorizing manner approaches any person in apparent readiness and attitude of attack.
- (c) Animal control officers or police officers shall cause vicious animals to be impounded. In the event a vicious animal cannot be impounded without danger of personal injury from such animal, the impounding officer may destroy the animal without notice to the owner, possessor or keeper thereof.
- (d) Vicious Animals shall be released only upon the order of the Court. The court may order the owner to pay for the animal's impoundment in addition to any fines, penalties or fees imposed. All fines, penalties and fees shall be paid by the owner prior to the time the animal is released. The court may order the owner to pay for the animal to be tattooed by a licensed veterinarian at owner's expense within three (3) days of release.
- (e) Whoever commits a public nuisance in violation of this section with regard to the owning, harboring or maintaining of a dog or cat shall be guilty of a misdemeanor.

Section 4-41. Unlawful Retention of Stray Animals.

No person shall, without the knowledge and consent of the owner, hold or retain possession of any animal for more than twenty-four (24) hours without first reporting the possession of the animal to Animal Control in person or by telephone.

- (a) The report shall contain the person's name and address, a true and complete statement of the circumstances under which the animal was obtained, and the precise location where the animal is confined.
- (b) No person having such an animal in his possession shall refuse to immediately surrender the animal to an animal control officer upon demand.

Section 4-46. Required

- (a) The owner, possessor or keeper of any dog within the City shall procure a license for such dog from locations authorized by the City of Roswell within thirty (30) days after the dog reaches the age of three (3) months. New residents of the City shall have thirty (30) days after becoming residents to procure licenses for their dogs.
- (b) If an adopted or reclaimed animal does not have either a City license or rabies vaccination certificate and is already altered, the owner of the animal shall obtain the City license and rabies vaccination within ninety-six (96) hours of release of the animal from the City of Roswell Animal Shelter. If the animal is not altered at the time of the adoption or reclaim, the rabies vaccination will be obtained at the time the animal is altered.
- (c) If the owner of a reclaimed or adopted animal fails to procure a vaccination certificate within ninety-six (96) hours, is guilty of a misdemeanor.
- (d) Exemptions:
 - (1) Dogs belonging to non-residents, who keep dogs and cats within the confines of the boundaries of the City for less than ninety (90) consecutive days shall be exempt from this Section, provided, however, that all other provisions of this Ordinance are complied with by the owner.
 - (2) Service animals as specified in Federal and State statutes shall be licensed by the City at no charge.

Section 4-48. Schedule of Fees, Fines and Charges

(a)	<u>Licensing</u>	<u>Amount</u>
(1)	Unaltered:	\$ 10.00
(2)	Altered:	\$ 5.00
(3)	Duplicate or Replacement Tags:	\$ 5.00
(b)	Euthanasia at the request of owner	None*
	* An evaluation shall be made to determine if the animal's condition is due to cruelty or neglect. If either is the case, appropriate action shall be taken.	
(c)	<u>Impoundment Fees</u>	
(1)	Dogs	
	(a) Per occurrence	\$ 10.00
	(b) Custody fees	\$ 40.00
(2)	Cats	
	(a) Per occurrence	\$ 10.00
	(b) Custody fees	\$ 30.00
(3)	Other Animals	
	(a) Per offense	\$ 10.00
	(b) Custody fees	\$ 40.00

(d) Fines or Violations:

- (1) Dogs: Running at Large, Trespassing, Nuisance, Non-Restraint, Disturbing the Peace:
 - (a) First Offense (in calendar year)-no less than \$ 25.00
 - (b) Second Offense (in a calendar year)-no less than \$ 50.00
 - (c) Third Offense or more (in calendar year) - no less than \$100.00
- (2) Cats: Running at Large, Trespassing, Nuisance, Non-Restraint, Disturbing the Peace (see 4-36(b)): not greater than \$150.00
- (3) Neglect, Care and Maintenance:
 - (a) First Offense - no less than \$ 50.00
 - (b) Second Offense - no less than \$100.00
 - (c) Third Offense or more - no less than \$200.00
- (4) Cruelty:
 - (a) First Offense - no less than \$100.00
 - (b) Second Offense - no less than \$200.00
 - (c) Third Offense or more - no less than \$400.00
- (5) No License: \$ 25.00
- (6) No Rabies Vaccine: \$ 25.00
- (7) Vicious Animal - no less than \$100.00

Section 4-49. Tags

- (a) It shall be the duty of the animal control officer to deliver or cause to be delivered to each person making application for a dog a dog tag for each dog licensed and inoculated upon payment of the license fee and presentation of a valid certificate of inoculation as required.
- (b) Only those persons who own, possess or keep a dog duly licensed and inoculated as required by ordinance shall be permitted to possess a dog tag.
- (c) Dog tags shall be of such size, shape, color and material as may be deemed suitable by the City, provided, that the color of the tag shall be changed each year. Each tag shall bear a number engraved thereon in successive numerical order, commencing with number one, together with the year of issue in bold and legible figures and the name of the City spelled out thereon.
- (d) Every owner, possessor or keeper of a dog within the City shall place upon such dog a collar or harness of durable material to which the tag shall be attached.
- (e) No person shall affix to the collar or harness of any dog or permit to remain so affixed any tag evidencing licensing and rabies inoculation, except the bona fide tag issued to the particular dog at the time of issuance of its license.
- (f) It shall be the duty of the animal control officer to maintain or cause to be maintained accurate records reflecting the date of issuance of all dog tags; the name and address of the person to whom such tag is issued, the number thereof and approximate age, color and breed of dog for which license is issued. If the dog tag is lost or destroyed a duplicate tag may be had from the animal control officer upon payment of fees designated by the City. In the event ownership or possession of a licensed dog shall be changed, a new dog tag must be obtained from the animal control officer upon proof of compliance with the licensing requirements of this article and payment of the fees designated by the City.

Section 4-58. Notice to owner

As soon as practical after impoundment of a dog or cat, the animal control officer shall cause to be posted in a conspicuous place in the office of the animal control facility for three (3) consecutive days a notice of impoundment, which notice shall set forth a general description of

the dog or cat impounded, the location where the animal was taken, the date of impoundment and disposition.

Section 4-59. Redemption

Any owner, possessor or keeper of a dog or cat, desiring to redeem it from the custody of the animal control facility, shall pay to the animal control officer the specified assessed fees, plus any unpaid license or inoculation fees therein.

Section 4-60. Adoption

- (a) Any dog or cat which has not been redeemed by its owner within four (4) days of its impoundment may be adopted by another person upon payment to the City the redemption fees for the animal.
- (b) The animal control officer shall execute and deliver in the name of the City a bill of sale to the person adopting any dog or cat under this section.
- (c) No person shall adopt an animal, or knowingly allow an animal to be adopted for the purpose of research, experimentation, breeding or fighting. No person shall adopt an animal from Animal Control for the purpose of selling or auctioning the animal to another party.
- (d) The Animal Control Officer shall have the right to deny adoption to any party deemed to be unfit or unable to take possession of any animal in the shelter based upon the following guidelines.
 - (1) The adopting party or any person residing with the adopting party has been convicted on a charge of animal cruelty, abuse to an animal, or domestic violence in any court in the United States.
 - (2) The adopting party is either adopting the animal for another party or the animal is being adopted but shall not remain on the premises of the adopting party.
 - (3) The adopting party is intoxicated or under the influence of drugs based upon the reasonable belief of the Animal Control Officer.
- (e) Every dog or cat adopted or reclaimed from Animal Control shall be altered by a licensed veterinarian at the expense of the adopting or reclaiming party. Animal Control will deliver the animal to a City licensed veterinarian, as designated by the owner or custodian, and the adopting or reclaiming party will be responsible for pickup of the animal upon release by the veterinarian. Any additional fees assessed by the veterinarian shall be paid by the adopting or reclaiming party.
- (f) Exceptions:
 - (1) A statement from a licensed veterinarian that it would be detrimental to the animal's health to be spayed or neutered.
 - (2) Proof of registration from a nationally or internationally recognized association such as the American Kennel Club.
 - (3) The adopting or reclaiming party may petition the Municipal Court to waive altering of the animal.

Section 4-61. Intentionally left blank

Section 4-62. Unclaimed animals

Any dog or cat impounded by the City which is not redeemed or adopted within seven (7) days of its impoundment shall be disposed of in any humane manner as shall be prescribed by the American Veterinary Medical Association.

Section 4-67. Animals biting persons

- (a) If an animal bites a person, or is reported to have bitten a person, or is suspected of having bitten a person, the owner or the person having the care, custody or possession of the same shall immediately notify the police department, the animal control officer or the county health officer, and deliver and surrender the animal to a police officer of the City or to any representative of the animal control officer or the county health officer for observation for rabies.
- (b) A person injured by an animal shall report such injury to the animal control officer, who shall forthwith render a full and complete report of the investigation therein.
- (c) Any officer taking any animal pursuant to this section shall cause such animal to be confined in the animal control facility or at any other safe and suitable place as the owner or keeper thereof shall direct at his own expense, which place of confinement shall be approved by a licensed veterinarian or the county health officer. In no event shall the animal be placed in any enclosure with animals of any kind. Confinement of the animal shall be continued for a period of fourteen (14) days or such other time, not less than ten (10) days, as the county health officer shall direct or deem necessary, so as to avoid all danger to life or health of the public, during which time the animal shall be observed by a licensed veterinarian or county health officer to determine whether or not it is afflicted with rabies. The animal shall not be released from confinement except upon the authorization of the county health officer and upon payment by the owner or custodian thereof of the charges for its care and feeding, together with all other expenses and costs incident to custody and observation.
- (d) It shall be unlawful for any person owning or having custody of an animal which has bitten a person within the City to remove it from the City within fourteen (14) days after it has bitten a person.
- (e) Repeat offense: If the Roswell Animal Control has substantiated reports indicating the animal has bit a person(s) on more than one occasion, the City may confine the animal at the animal control facility. The animal shall not be released to the owner without a court order. If the court order releasing the animal is not issued within fourteen days, it will be disposed of as specified within this chapter.

Section 4-69. Procedure when dogs suspected of rabies

- (a) The animal control officer shall take into custody and confine for observation, by a licensed veterinarian or the county health officer, in the manner provided for in section 4-67 any dogs at large on the public streets or property suspected of or showing any symptom of rabies. In the event the dog is infected with rabies or madness, the animal control officer or police officer, before destroying or disposing of the dog, shall first obtain authorization from the county health officer. No dog confined for observation for rabies shall be destroyed or disposed of except after the required observation and upon authorization of the county health officer.
- (b) In no event shall an officer of the City go upon private property for the purpose of taking a dog suspected of or showing symptoms of madness or rabies without first having obtained the consent (*see Sec. 4-40 Right of Entry*) of the property owner or having obtained, upon showing of good and probable cause therefor, a proper search warrant issued for that purpose.

Section 4-72. Unsecured Animals in Vehicles

Enforcement of this section shall be with the Roswell Police Department or the Roswell Animal Control Officers.

In order to ensure the health, safety and welfare of the pedestrian public, an animal(s) shall be secured so as to prevent it from protruding beyond the confines of a parked vehicle.

Section 4-73 Court Disposition

If an animal is being held at the animal control facility while awaiting a review before the court, the court shall schedule a hearing within thirty (30) days of impoundment.

Section 4-74 Exotic and Wild Animals

- (a) Exotic and wild animals shall be legal in the City of Roswell if allowed to be sold in the pet trade in the State of New Mexico with the exception of animals identified as high incident rabies carriers by the State of New Mexico's Department of Health. Anyone selling or breeding exotic or wild animals must have a valid license as required by the U.S. Fish and Wildlife Services and New Mexico State Game and Fish Department to trade, transport and sell exotic and wild animals in the State of New Mexico except as noted in Section "Keeping Venomous Reptiles and Amphibians."
- (b) No person shall own, harbor or keep any species of exotic and wild animals in violation of Federal or New Mexico law, except those that may be qualified for use as a service animal for disabled persons.
- (c) Exotic animal owners must submit a health certificate from a veterinarian to Animal Control within fourteen (14) working days from acquisition of the animal. The health certificate must certify that the animal is in good health and has been vaccinated as appropriate for the species.
 - (1) In addition to the facilities and care standard requirements for permitted premises required by this article, exotic animals shall be kept and cared for in a manner which does not constitute a nuisance or endanger the safety of any person or property, or animal.
 - (2) The City may impound an exotic animal for its owner's failure to comply with this article and shall use the impound procedure set out in this article or, if the exotic animal may be a danger to the public, use a procedure which protects the public.
 - (3) Notwithstanding the above, zoological parks, veterinary hospitals, humane societies, shelters, research facilities and educational and scientific facilities are excluded from the provisions of this section, provided that the excluded facilities use protective devices adequate to prevent the exotic and wild animals from escaping or injuring the public, or animals.

4-76 Guard Dog Premises

Commercial premises with guard dogs shall be posted with warning signs that are at least twelve (12) inches long on each side. The warning signs shall state "Guard Dog" and "Guardia" and shall show a picture of an aggressive dog. The warning signs shall be posted not more than 50 feet apart on the exterior of the fences or walls surrounding the site and shall be posted at all exterior corners of the side and at every entrance indoor and outdoor to the site.

Section 4-77 Penalty

Except as herein otherwise provided, it is unlawful for any person to willfully or maliciously commit any of the acts described herein or in Section 4-1 of the Roswell City Code as cruelty to animals.

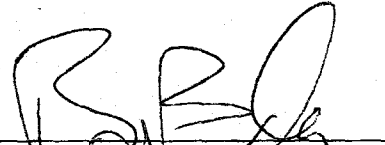
Section 2. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 3. If any section, paragraph, clause or provision of this ordinance for any reason shall be held to be invalid or nonenforceable, the invalidity or nonenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

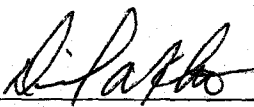
Section 4. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED AND APPROVED the 9th day of March, 2006.

CITY SEAL


Bill B. Owen, Mayor

ATTEST:


David Kunko, City Clerk