

ORDINANCE NO. 2017-10

**AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES,
CITY OF CARLSBAD, NEW MEXICO REGARDING ANIMALS.**

WHEREAS, members of the public requested the Chapter 6 of the Code of Ordinances, City of Carlsbad, New Mexico regarding animals be reviewed and updated to address a number of issues including the staking or chaining of dogs, pet shops, and dangerous dogs; and

WHEREAS, a redraft of the entire chapter was prepared; and

WHEREAS, concerned citizens, staff, animal control officers, and the operator of the City's animal shelter have been provided with the proposed new provisions; and

WHEREAS, a draft was provide to the Ordinance Committee.

NOW THEREFORE, be it ordained by the Governing Body of the City of Carlsbad, County of Eddy, State of New Mexico, as follows:

Chapter 6 of the Cod of Ordinances, City of Carlsbad, New Mexico is hereby replaced with the following:

ARTICLE I. IN GENERAL

Sec. 6-1. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shall mean any vertebrate member of the animal kingdom excluding humans.

Animal shelter shall mean any animal control center, pound, animal shelter, kennel, veterinary hospital, lot, premise, or building maintained or contracted by a municipality or county for the care and custody of animals.

Bite shall mean any skin break including but not limited to a puncture or tear of the skin inflicted by the teeth of an animal.

Cat shall mean any member of the feline family.

Confined shall mean restriction of an animal at all times by an owner to an escape proof building or other enclosure away from other animals and the public.

Destroy shall mean the administration of an agent which will cause the death of an animal. Such method shall not destroy brain tissue necessary for laboratory examination for rabies.

Dog shall mean any member of the canine family.

Exposure to rabies shall mean the exposure resulting from a bite by an animal susceptible to rabies or from contact with the saliva of such animal with any break or abrasion of the skin.

Hazardous animal shall mean any member of the animal kingdom which, because of its poisonous bite or sting, would constitute a significant hazard to the public, or any non-domesticated animal which, due to its size or strength, would constitute a significant hazard to the public. The term shall not include native or indigenous animals naturally existing on a person's premises, or those animals kept at properly accredited, licensed, or permitted educational institutions, zoological parks, or museums.

Isolation shall mean the confinement of an animal in an escape proof run or cage so that there is no possibility of direct contact with other animals or humans. The method and place of confinement must be reviewed and approved by an Animal Control Officer prior to beginning the isolation.

Owner shall mean any person who owns, harbors, keeps, or knowingly permits an animal to be harbored or kept, or permits an animal to remain on his or her premises.

Person shall mean any individual, household, firm, partnership, company, corporation, society, or association, and every member, officer, agent, or employee thereof.

Pet store shall mean any commercial establishment or premises or part thereof that acquires live animals and offers these animals to the public or other commercial outlets for purchase, sale, exchange, barter, trade, transfer, or hire. The term shall not apply to the premises used exclusively for the sale of livestock, livestock auctions, or livery stables.

Potentially vicious animal shall mean any domestic animal that may be assumed to pose a threat to a person, domestic animal or livestock as demonstrated by engaging in any of the following behaviors without provocation:

- (1) Causing an injury that is less serious than a severe injury; or
- (2) Causing an indirect severe injury; or
- (3) Chasing in a threatening manner; or

- (4) Acting in a highly aggressive manner within a fenced yard, enclosure, or while on a leash or tether and appearing to be able to escape the yard, enclosure, leash or tether.

An animal is not a potentially vicious animal if:

- (1) The animal was used by a law enforcement official for law enforcement purposes; or
- (2) The person or domestic animal who was injured, damaged, or threatened by the animal:
 - a. was trespassing upon the premises occupied by the owner of the animal;
 - b. had provoked, tormented, abused, or assaulted the animal either at the time of the incident or repeatedly in the past; or
- (3) The animal was responding to pain or injury, protecting itself or its offspring, or protecting or defending a human being or domestic animal from attack or assault.
- (4) The person who was threatened, injured, or damaged was committing or attempting to commit a crime at the time of the incident.

Primary enclosure shall mean a pen, run, cage, or room in which a domestic animal normally spends most of its time. This is the area in which the animal eats, drinks, eliminates, rests and sleeps.

Professional Animal Permit shall mean a permit issued by Animal Control to a person or group of persons who intend to operate a pet store.

Proper shelter for a dog shall mean a structure with one entrance, a roof, and a solid floor. The shelter shall be free of protruding nails or other sharp items that could cut or wound the dog. The shelter shall be of an appropriate size for the dog. The dog shall be able to easily stand, sit, lie down, turn around and make all normal body movements in a comfortable, normal position for the dog. It must be wind and moisture-proof and of proportionate size to allow the natural body heat of the dog to be retained in cold weather. Metal drums shall not be considered proper shelter.

Qualified service animal shall mean any animal meeting the requirements for a qualified service animal as set forth in Chapter 28, Article 11, NMSA 1978, as it may be amended from time to time.

Quarantine shall mean the strict containment of all specified animals upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include any other measures as ordered by the City Administrator, the Chief of

Police, and the Animal Control Supervisor, or their designees to control the spread of rabies.

Running at large shall mean free of physical restraint beyond the premises of the owner.

Sanitation shall mean the maintenance of conditions conducive to health and involves bedding changes (as appropriate), cleaning and disinfection. Cleaning removes excessive amounts of dirt and debris; disinfection reduced or eliminates unacceptable concentration of microorganisms.

Sanitize shall mean to make physically clean and to the maximum degree practical, remove and destroy agents injurious to health.

Severely injure or *severe injury* shall mean a physical injury that results in broken bones, multiple bites, lacerations requiring sutures, corrective or reconstructive surgery or any injury resulting in permanent or protracted loss or impairment of the function of any member or organ of the body.

Veterinarian shall mean any person who is licensed as a doctor of veterinary medicine by the New Mexico Board of Veterinary Medicine pursuant to the Veterinary Practice Act (61-14-1, NMSA 1978).

Vicious animal shall mean any domesticated animal which, at any time without provocation;

- (1) Bites or attacks any person who was peacefully conducting himself or herself where he or she lawfully, resulting in a severe injury; or
- (2) kills or severely injures a domesticated animal or livestock, but it does not include an animal which bites, attacks, injures, or kills a domesticated animal or livestock which is unlawfully upon its owner's premises; or
- (3) based upon a combination of behaviors or actions a reasonable person would have probable cause to believe the animal is vicious.

Working dog means any dog, regardless of breed, that is being trained or used for the purpose of livestock herding, detection, search and rescue, dog sports, qualified assistance dogs, or assistance of the police.

Zoonosis and Zoonotic Disease shall mean any disease which may be found in animals that is transmissible from an animal to a human.

Sec. 6-2. Keeping in city generally; penalties.

It shall be unlawful for any person to own or keep any animal, other than as permitted by all applicable ordinances, laws, rules, and regulations. Any person who lawfully owns, keeps, or maintains any animal within the city must comply in all respects with the vaccination and licensing requirements of the city. A violation of any provision of this chapter is a misdemeanor and is punishable as permitted by the specific section or, if no punishment is specified by the section violated, then the punishment shall be as permitted by § 1-6 of this Code, as it may be amended from time to time, provided however, that as part of any sentence, the Court shall order the defendant to reimburse any and all expenses reasonably related to the care and maintenance of the animal or animals. Such expenses shall include, but are not limited to, veterinary care, shelter costs, and transportation.

Sec. 6-3. Sanitation regulations.

- (a) Any person who may lawfully own or keep any animal shall provide proper shelter, and adequate and sanitary housing facilities for such animal. Stagnant water shall not be permitted to accumulate. All structures used for the housing of an animal and all yards, cages and runs provided for the animal shall be cleaned daily and shall be treated with a pesticide at intervals frequent enough to prevent the breeding of ticks, fleas, flies and other pests and insects. Once every 24 hours, all animal feces shall be collected, removed, and disposed of in a sanitary manner or otherwise removed to a lawful place for deposit. Any feces placed in a city trash container shall be first securely wrapped in plastic.
- (b) Any person who may lawfully own or keep any animal within the city shall keep the same in such a manner that it will not be unreasonably annoying, unpleasant or obnoxious to any other person, and failure to so keep any such animal, is hereby declared to be a nuisance and unlawful.
- (c) Whenever there is reasonable cause to believe that an unhealthful, unsanitary, or dangerous condition exists on any premises at which an animal is located, the animal control officer or the officer's designee shall have the right to enter such premises and thoroughly investigate and inspect the premises, unless permission to enter and make such investigation and inspection is explicitly refused by the owner or occupant of the premises. If the owner or occupant explicitly refuses permission, the animal control officer or designee may obtain a court order permitting the entry onto the premises.

Sec. 6-4. Keeping pet birds.

- (a) A person may keep pet birds as pets within the city, and a commercial establishment may keep pet birds for the purpose of the sale of such birds within the city, subject to all applicable ordinances, laws, rules, and regulations, including but not limited to zoning ordinances. Such pet birds shall be kept in pens or cages and not permitted to run at large. Such pet birds shall be kept in a manner and way so as to not constitute a

nuisance or endanger the general health and sanitation of the community or the health and welfare of the animal. The environmental services officer or the officer's designee shall determine the general health and sanitation of the community. The animal control officer or the officer's designee shall determine the health and welfare of the animal or animals.

- (b) The term "pet birds" shall include small caged birds such as, but not limited to, parrots, cockatoos, parakeets, cockatiels, canaries, lovebirds, mynah birds, and finches. The term shall not include barn and farm animals such as, but not limited to, chickens, ducks, geese, and turkeys; falconiforms such as, but not limited to, hawks, eagles, and vultures; nor ratitae such as, but not limited to, ostriches, rheas, cassowaries, and emus.

Sec. 6-5. Sale of baby chicks, ducks, geese, turkeys, and rabbits.

- (a) It shall be lawful for a commercial establishment to sell baby chickens, ducks, geese and turkeys, subject to all applicable ordinances, laws, rules, and regulations, including but not limited to zoning ordinances. Such fowl shall be kept in pens or cages and not permitted to run at large. Such fowl shall be kept in a manner and way so as not to constitute a nuisance or endanger the general health and sanitation of the community or the health and welfare of the animals. The environmental services officer or the officer's designee shall determine the general health and sanitation of the community. The animal control officer or the officer's designee shall determine the health and welfare of the animal or animals.
- (b) No chick, duckling, gosling or rabbit that has been dyed or otherwise colored artificially may be sold or offered for sale, raffled, offered or given as a prize, premium, or advertising device, or displayed in any store, shop, carnival or other public place.

Sec. 6-6. Disposal of dead animals and care of injured animals.

- (a) The owner of a dead animal shall be responsible for properly disposing of the animal carcass. No animal shall be disposed of by burning within the city limits.
- (b) A dead animal may be buried on its owner's property if it is buried:
 - (1) at least two (2) feet below the surface of the ground, if the animal weighs no more than thirty (30) pounds; or
 - (2) at least three (3) feet below the surface of the ground, if the animal weighs more than thirty (30) pounds but less than one hundred (100) pounds; or
 - (3) at least six (6) feet below the surface of the ground, if the animal weighs one hundred (100) pounds or more; or
 - (4) may be disposed of by any other means authorized by law.

- (c) Any dead animal must be properly disposed of within 12 hours of its death. No animal shall be buried on public property or on the property of another without the explicit permission of the owner of the property.
- (d) The operator of a motor vehicle who strikes or runs down a dog or cat shall immediately notify an animal control officer or the police department of the injury and shall provide the facts regarding the accident and the injuries sustained by the animal. The operator of the motor vehicle shall remain at or near the scene until such time as the owner of the animal, an animal control officer, or a police officer arrives. In case of severe injury to the animal, the motor vehicle operator may give aid by taking the animal to a veterinary hospital. If the operator of the motor vehicle chooses to transport the animal to a veterinary hospital, they will be responsible for the costs incurred. Emergency vehicles engaged in an emergency response are excluded from this provision. Nothing in this provision shall supersede the motor vehicle operator's obligations under Article IV of the New Mexico Uniform Traffic Ordinance.

Sec. 6-7. Injury to a police dog, police horse, or fire dog.

- (a) As used in this section:
 - (1) Fire dog means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;
 - (2) Police dog means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection;
 - (3) Police horse means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.
- (b) Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:
 - (1) Striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or
 - (2) Throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.
- (c) Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor.
- (d) A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

Sec. 6-8. Care and maintenance of animals.

No person or owner shall:

- (a) Fail, refuse, or neglect to provide an animal of which he or she is the owner or which is in his or her charge or custody with proper food, potable water, shade, ventilation, necessary medical care, basic grooming which is necessary for the health of the animal, or proper shelter, which shelter shall be a weatherproof and structurally sound enclosure large enough to properly accommodate the animal;
- (b) Leave an animal enclosed in a vehicle or upon a vehicle or trailer for a length of time which could result in danger to or death of the animal. If the animal control officer determines that an animal in an enclosed vehicle or trailer is in immediate danger, the animal control officer may enter the vehicle or trailer by whatever means is necessary, without being liable to the owner of the vehicle or trailer, and take the animal into protective custody; or
- (c) Carry an animal in or upon any vehicle in a cruel, inhumane, or unsafe manner. An animal carried in the open bed of a truck or other vehicle must be crated, caged, or restrained upon a non-metal mat so it cannot fall or jump from the truck or be strangled.
- (d) Any person who shall violate the provisions of this section shall be punished in accordance with section 1-6 of this Code, provided however, that as part of the sentence, the Court shall order the defendant to reimburse any and all expenses reasonably related to the care and maintenance of the animal or animals. Such expenses shall include, but are not limited to, veterinary care, shelter costs, and transportation.

Sec. 6-9. Animals committing damage or nuisance.

It is unlawful for the owner of an animal to cause, allow, or permit the animal to commit any damage or nuisance to a person, upon the property of any other person, or upon a public street, alley, sidewalk, park or other public place.

Sec. 6-10. Restraint devices.

- (a) Direct point or a trolley or cable run system using rope, chain, or other devices may be used to restrain an animal, provided the following criteria are met:
 - (1) The device must be affixed to the animal by use of a non-abrasive, comfortably fitted collar or harness, or other device designed for that purpose. The device and collar or harness shall be of appropriate size and weight so as to not cause sores or abrasions.
 - (2) Choke collars, prong collars and pinch collars are prohibited for the purposes in this section. The tether shall weigh no more than one eighth (1/8) of the animal's weight;
 - (3) The device must be fastened so the animal can sit, walk, and lie down comfortably, and must be unobstructed by objects that may cause the device

or animal to become entangled or strangled. All chains or tethers shall have swivels on both ends;

- (4) The animal must have easy access to proper and sufficient food, potable water, adequate shade, ventilation, and proper shelter;
- (5) All animal feces shall be removed, and the area where the animal is confined shall be kept as required by section 6-3;
- (6) No animal under six months of age, or in heat or estrus, or which is sick or injured may be tethered;
- (7) Only one dog may be tethered to each direct point or trolley or cable system;
- (8) The restraint device shall not permit the animal to be in violation of section 6-11.

(b) Direct point tethering systems must also meet the following criteria:

- (1) The device must be at least 12 feet long and shall not violate section 6-11.

(c) Trolley or cable systems must also meet the following criteria:

- (1) The trolley or cable must be at least 15 feet long and shall not violate section 6-11.
- (2) The difference between the length of the tether and the height of the trolley or cable system must be a minimum of 12 feet long and shall not violate section 6-11.

Sec. 6-11. Animals on unenclosed premises.

It is unlawful for any person to chain, stake out, graze, or herd any animal on any unenclosed premises so that the animal or any part of it extends or can extend onto or over a sidewalk, alley, street, or other public property or beyond the owner's property line or in a commonly held area accessible to the public.

Sec. 6-12. Keeping potentially vicious or vicious animals.

(a) It is unlawful for any person or owner to fail to confine a potentially vicious or vicious animal except;

- (1) An animal confined within an enclosed automobile, truck, or other vehicle not being used as a public conveyance.
- (2) An animal shipment on a public conveyance and properly confined in a shipping container conspicuously labeled "vicious animal" and constructed in such a manner as to prevent the animal from biting or attacking humans or other animals.

(b) An owner who knowingly keeps a potentially vicious or vicious animal shall post conspicuous warning signs, containing a warning both in words and in symbol that a dangerous animal is on the premises. The signs shall be posted where the animal is kept and must be visible from the nearest public roadway or fifty feet, whichever is less.

- (c) An owner of a potentially vicious animal shall not permit or allow the animal to be upon any public park. An owner of a potentially vicious animal shall not permit or allow the animal to be upon any sidewalk, alley, street or any other public property unless the animal is on a leash no longer than four feet in length and the leash is held at all times by a person capable of controlling the potentially vicious animal.
- (d) An owner of a vicious animal shall not permit or allow the animal to be upon any sidewalk, alley, street, public park or any other public property.
- (e) An owner of a potentially vicious animal or a vicious animal shall not keep, permit or allow the animal on the property of another without first obtaining the explicit consent of the property owner.
- (f) If a person is found by the court, to have failed to confine and/or control any potentially vicious animal as required herein shall be ordered to:
 - (1) Keep the animal as required herein.
 - (2) Obtain a potentially vicious animal license.
 - (3) Permit Animal Control to inspect the property at which the animal is kept and inspect all animals kept thereon.
 - (4) Claim their animal within seven (7) days of the court ruling. Owners will be responsible for a daily boarding fee of ten dollars per day to be paid to the animal shelter upon release. Animals not claimed within seven days will be considered abandoned.
 - (5) Provide proof that the animal has been spayed or neutered, or, if the animal is not spayed or neutered, the court shall order the animal to be spayed or neutered.
 - (6) Provide proof that the animal has been implanted with a microchip containing the owner's identification, or, if it is not implanted with a microchip, the court shall order the animal to be implanted with a microchip.
 - (7) Provide proof the animal has been vaccinated against rabies, or, if the animal is not vaccinated against rabies, the court shall order the animal to be vaccinated against rabies.
 - (8) Immediately notify Animal Control if the animal escapes, attacks or injures a person or domestic animal. The owner shall notify Animal Control if the animal dies. A potentially vicious animal may only be sold or given away to a recipient who has obtained a potentially vicious animal license for the animal. The owner of the animal shall disclose the animal's previous behavior to the intended recipient.
 - (9) Immediately surrender the animal to Animal Control if it is determined that the animal has become vicious.
 - (10) Keep no more than one potentially vicious or vicious animal at a time.
 - (11) No person who has been convicted of a violent felony, a dog fighting offense, aggravated cruelty to animals, or a felony involving trafficking any illegal drugs may own, keep, or live on the premises where a potentially vicious animal is owned or kept.

- (g) If an animal that has been found by the court to be potentially vicious commits a subsequent offense pursuant Subsection (a) of this section, the court may order the owner to surrender the animal to Animal Control or order the animal to be destroyed.
- (h) If an animal is found to be a vicious animal pursuant to Subsection (a), the court shall order the animal to be destroyed.
- (i) If a potentially vicious animal or vicious animal has bitten a person or animal, the animal shall be treated as required by all applicable laws, rules and regulations.

Sec. 6-13. Keeping hazardous animals.

It is unlawful for the owner of a hazardous animal to maintain or dispose of it in a manner which constitutes a threat to any person or other animal. In the event a hazardous animal is confiscated or comes into the possession of the animal shelter, the animal may be released to a properly accredited, licensed, or permitted educational institution, zoological park, museum, rescue, or it may be euthanized.

Sec. 6-14. Animals prohibited in Pecos River.

- (a) It shall be unlawful for any person or owner to allow or permit an animal to swim in the Pecos River at any point where either side of the river abuts a public park at any point south of the flume near Calloway Drive and north of the Bataan (Greene Street) Bridge.
- (b) It shall be unlawful for any person to release any nonnative species of fish, reptile, amphibian, mollusk, crustacean, or waterfowl into the Pecos River, except as authorized by the appropriate government agency.

Sec. 6-15. Habitual animal howling, barking, and other noises.

- (a) It is unlawful for anyone to own, keep, or harbor any animal which habitually howls, yelps, whines, barks, or makes other noises in a manner which tends to disturb the public peace unreasonably. Any such animal shall be deemed a nuisance.
- (b) Any person who violates the provisions of this section shall be punished in accordance with the terms of section 1-6 of this Code, as it may be amended from time to time.
- (c) In addition to the penalties stated in subsection 6-2, above, a city animal control officer or police officer may impound any animal which is in violation of this section when such officer has probable cause to believe that:
 - (1) The owner or custodian of such animal is unavailable, or unwilling, or unable to control the animal; and
 - (2) Such animal will continue to disturb the public peace unreasonably.
- (d) If any person refuses to let such a city officer or employee enter the place where the animal is located, or refuses to let such officer or employee take possession of the animal, such city officer or employee shall obtain a court order permitting the entry onto the premises and the taking of such animal.

Sec. 6-16. Seizure of animals.

- (a) A peace officer or an animal control officer may apply to the municipal court for a warrant to search for and seize an animal or animals when that officer reasonably believes that:
 - (1) The life or health of the animal is endangered;
 - (2) An owner of a potentially vicious animal fails to comply with any part of Section 6-12 or 6-97; or
 - (3) An animal is a vicious animal as defined by this chapter.
- (b) The municipal court may issue a warrant for the seizure of the animal or animals, if the court finds probable cause that:
 - (1) The life or health of the animal is endangered;
 - (2) An owner of a potentially vicious animal fails to comply with any part of Section 6-12 or 6-97; or
 - (3) The animal is a vicious animal as defined by this chapter.
- (c) The officer seizing animals under the warrant shall give to the person from whose possession or premises the animals were taken a copy of the affidavit for the search warrant, the search warrant, and a copy of the inventory of the animal or animals taken. If the owner of the animals cannot be determined or cannot be located, the officer seizing the animals under the warrant shall conspicuously post copies of the affidavit for the search warrant, the search warrant, and the inventory of the animals taken at the place from which animals were seized at the time the seizure occurs.
- (d) The court shall schedule a hearing on the matter as expeditiously as possible within 30 days unless good cause is shown by the city for a hearing at a later date.
- (e) Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animals. The court may order publication of the notice of the hearing in a newspaper in general circulation in the city.
- (f) At the option and expense of the owner, the seized animals may be examined by a licensed veterinarian of the owner's choice.

Sec. 6-17. Sale of animals.

- (a) No person shall sell, offer for sale, buy, offer to buy, barter, give away, transfer, or otherwise dispose of an animal upon a street, sidewalk, public park, or parking lot except that a nonprofit entity's pet adoption event approved in writing by the City.
- (b) Pet Store Regulations
 - (1) Permit Required
 - a. Any person who intends to operate a pet store shall obtain a business registration from the City Clerk's office and a professional animal permit from the Animal Control Division of the Police Department.
 - b. When a professional animal permit is applied for, an inspection of the facility or premises used by a business shall be conducted by the Chief

of Police, or his authorized agent, to determine compliance with relevant city ordinances.

1. If the inspection reveals that the premises and the operation comply, a permit for the professional animal facility shall be issued. Permits are only valid for the approved premises. Permits are not transferable.
- c. A current permit shall be posted in a conspicuous place in every pet store.
- d. Professional animal permits shall be issued annually and shall be renewed by the owner or custodian during the anniversary month of the permit.
- e. A professional animal permit holder shall notify the Animal Control Division of any change in operations which may affect the status of the permit and shall keep the Animal Control Division informed of any change in name or location of the business.

(2) Facility and maintenance standards

a. General

1. All animal housing areas shall be structurally sound and constructed of nontoxic materials and the entire pet store shall be maintained in a clean and sanitary condition.
2. Interior and exterior floors and all animal contact areas shall be smooth, impervious to water, and able to be easily cleaned and sanitized.
3. Facilities shall be maintained in good repair and kept clean and sanitary at all times so as to protect animals from disease and injury and shall be secure enough to ensure containment of the animals within the pet store to minimize the risk of theft of the animal(s).
4. All enclosures such as pens, cages, runs, aquariums, terrariums and display areas shall provide adequate space to prevent overcrowding and to permit adequate exercise according to the requirements of the species.
5. Lighting shall be provided, whether natural or artificial or a combination of both, for a minimum of eight hours per day, at a sufficient level for inspection of the animals, routine cleaning and sanitation, and proper animal care.
6. Sufficient ventilation shall be provided to minimize odors and moisture and ensure the health and comfort of the animals.

7. Reliable and adequate electric power and/or gas shall be provided for lighting, air circulation, heating and cooling.
8. No animal shall be housed over a 24-hour period in an airline-type container.
9. No animal shall be confined to a window display area after business hours.
10. Wire flooring in cages is prohibited with the two following exceptions:
 - a) Rabbits housed in cages with wire mesh flooring shall be provided with a resting area that is solid and large enough for the rabbit to fully stretch out on. The mesh flooring shall be of small enough diameter so that the animal's foot cannot slip through and become injured; and
 - b) Sugar glider cages shall be no smaller than 36 by 24 by 36 inches with a mesh no larger than one inch by one-half inch wide. Mesh sizes shall be smaller for cages housing nursing females and their offspring so as to keep the offspring from falling or escaping through the mesh. The cage shall have at least one nest box per animal and that box shall be no smaller than six by six inches with a circular entrance and hinged lid. The floor of the nest box shall be lined with species-appropriate bedding. The nest box shall be cleaned at least weekly. Branches and shelves shall be provided at different levels of the cage.

b. Indoor facilities

1. Buildings shall include four solid walls to protect animals from weather conditions and prevent entry of unauthorized persons.
2. Indoor housing shall be provided with sufficient heating and cooling to protect the housed animals from extreme temperatures and to provide for their health and comfort at all times. The ambient temperature shall be consistent with the needs of the animal species kept at the store.
3. Indoor housing for animals should be adequately ventilated with fresh air to minimize odors and moisture and to provide for the health and comfort of the animals at all times.

4. In order to prevent cross contamination or nose-to-nose contact by animals, the enclosures shall either be physically separated or solid dividers shall be required between each enclosure.
 5. Indoor enclosures must be constructed so that water runoff does not enter adjacent enclosures and is rapidly eliminated from the floor.
- c. Outdoor facilities
1. Outdoor facilities are prohibited except securely fenced exercise areas in which animals are allowed to exercise under direct supervision of a store employee.
- d. Primary enclosures and display area.
1. All animals housed at the pet store shall be confined to a primary enclosure at all times unless under the direct supervision of employees of the pet store.
 2. Primary enclosures and display areas shall not have wire flooring with the two exceptions listed in subsection (b) of this section.
 3. Primary enclosures shall have a solid resting area large enough for each animal housed in that enclosure to stretch out on and lay down.
 4. Primary enclosures and display areas shall be large enough and cleaned on a schedule (no less than daily) so that the animal can stay dry and avoid contact with excrement.
 5. Primary animal enclosures shall be cleaned daily and sanitized between animals. Animals shall be removed from the enclosures during the cleaning process.
 6. Each primary enclosure and display area shall display an identification tag for each animal or animal litter contained therein with the exception of aquariums housing schools of fish.
 7. A primary enclosure which houses an avian(s) shall have at least two perches of different diameters which are appropriate for that avian.
 8. Primary enclosures and display areas shall be constructed so as to:
 - a) Restrict contact with the public unless supervised by the pet store staff; and
 - b) Minimize the risk of injury to the animal; and
 - c) Minimize the risk of injury to the public; and
 - d) Minimize the risk of theft of the animal.

9. The primary enclosure for a cat shall not be less than two and one-half square feet per cat. The height of the primary enclosure shall not be less than two feet. The primary enclosure for a cat must contain at least one elevated resting area for each cat.
 10. The primary enclosure for a cat shall have at least one litter pan per two cats.
 11. Primary enclosures housing nursing cats with litters shall provide more space and resting areas than the minimum required for a single cat.
 12. Space requirements for dogs:
 - a) A dog weighing less than 15 pounds shall have a minimum of four square feet of flat floor space.
 - b) A dog weighing 15 to 30 pounds shall have a minimum of eight square feet of flat floor space.
 - c) A dog weighing more than 30 pounds shall have a minimum of 12 square feet of flat floor space.
- e. Waste disposal.
1. Provisions shall be made for the removal and proper disposal of animal food, waste, bedding, dead animals and debris.
 2. Disposal facilities shall be provided and operated so as to minimize vermin infestation, odors and disease hazards.
 3. Waste systems shall meet state and local regulations.
- (3) Program and operation standards.
- a. General.
 1. Dogs or cats shall be purchased from USDA certified breeder and the pet store shall be required to have the animal inspected by a veterinarian and found to be in good health before purchase and documentation shall be kept for one year after sold date of the animal. A pet store shall maintain documentation of approved USDA licensed breeder.
 2. Mammals of different species shall not be housed or displayed together in the same primary enclosure or display area.
 3. Avian, reptiles, amphibians and fish may be housed or displayed in mixed species groups only if they are behaviorally and ecologically compatible and they do not present a disease transmission hazard to each other.
 4. Compatibility of animals housed in groups shall be ascertained prior to leaving animals unattended and shall be monitored periodically.

5. Nursing dams and their offspring shall be housed in an enclosure that provides an area that is not visible to the public and is large enough for the animal to nurse all of the young at one time.
 6. A pet store shall not sell, adopt or transfer an animal that is showing signs of a suspected contagious or zoonotic disease, nutritional disease, signs of parasitism or fractures or congenital abnormalities affecting its general health.
 7. Prior to the sale or transfer, a pet store shall provide to the new owner written disclosure of the condition if the pet store sells or transfers an animal suffering from a health condition.
 8. A pet store shall accept for refund or exchange any animal found within seven days of sale or transfer to be suffering from an undisclosed health condition as documented by a licensed veterinarian.
 9. Written instructions for feeding, training, care and grooming of the animal shall be provided by the pet store to the new owner.
 10. A pet store shall not exhibit, sale, or offer for sale any of the following:
 - a) Foxes (*Urocyon eineroarg-enteus*; *Vulpes fulva*);
 - b) Raccoons (*Procyon Lotor*);
 - c) Skunks (*Mephitis*);
 - d) Crocodiles, alligators, caimans, gharials (*Crocodylia*);
 - e) Venomous reptiles;
 - f) Venomous amphibians;
 - g) Venomous arachnids;
 11. A pet store shall report to the police department all animals which are or are suspected to be lost, missing, stolen or to have escaped.
 12. A pet store shall not buy dogs or cats from a puppy mill. The fine for violation shall be \$250 per animal. A pet store shall maintain official documentation identifying the supplier of the cats and dogs in accordance with this section.
- b. Food and water.
1. Sufficient wholesome food and potable water shall be provided to the animals, according to the needs of the species. The food shall be free from contamination, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age of the animal.

2. Food storage areas shall be physically separated from the animal housing area as well as from the cleaning supply storage and from equipment cleaning area.
 3. Food shall be stored off the floor and in such a manner to avoid spoilage, contamination, and vermin.
 4. Open bags of kibble shall be stored in sealed containers.
 5. Open containers of canned food shall be sealed and kept refrigerated.
 6. Food containers shall be emptied and sanitized daily.
 7. Animals housed in groups shall be monitored during feeding time to ensure that all animals are able to eat adequately. Separation of the animals into different areas and/or use of crates may be necessary to ensure that this occurs.
 8. Water containers shall be emptied, sanitized and refilled with fresh potable water daily. Care shall be taken so that the water bowl does not present a hazard to the animal, especially young animals. Care shall also be taken to ensure that the water containers cannot be overturned during the normal activity of the animals.
 9. Food and water containers shall be clean and made of materials that can be sanitized or that are disposed of after each use.
- c. Veterinary care.
1. Each animal shall be observed daily by the animal caretaker in charge for signs of disease, injury, or distress.
 2. An isolation area shall be provided for containment of animals suspected of suffering from an infectious disease. An animal suspected of having an infectious disease shall be immediately separated from other susceptible animals and placed in the isolation area. Except nursing dams, an ill or injured animal shall be housed singly in a primary enclosure within the isolation area.
 3. Sick, diseased or injured animals shall be provided with proper veterinary care within a reasonable amount of time. No animal shall be allowed to suffer due to lack of or delay of veterinary care.
 4. A written veterinary-approved program shall be developed and updated at least annually. The minimum requirements for this program include parasite preventative program, vaccination programs, procedures to minimize disease transmission, disease and injury recognition training, as well as emergency

care and procedures. This program shall also contain protocols for monitoring the effectiveness of the parasite program as well as a disease surveillance program.

5. A written program shall be instituted which details the procedures to follow in the case of an animal or environmental emergency.
6. Medical records shall be kept for each animal treated at the pet store. Every treatment an animal receives shall be recorded and made available to the new owner when sold.
7. Any animal suspected of showing symptoms of rabies infection shall be immediately segregated and reported to Animal Control.
8. A pet store shall employ or contract with a veterinarian to provide medical treatment, program consultation, and emergency care for the store animals.

d. Records.

1. Written or electronic records shall be maintained for a period of 365 days from the animal's sale date:
 - a) Purchase date and source of the purchase, including the United States Department of Agriculture (USDA) dealer license number if applicable;
 - b) Sale date and new owner's address and telephone number;
 - c) A description of the animal including species, breed, sex, color, distinctive markings, physical condition and health, age and USDA animal identification number if applicable;
 - d) Vaccination date(s) and vaccine label information;
 - e) Parasite control medications and dates of administration;
 - f) Medical records;
 - g) The disposition of the animal if not sold or transferred, including euthanasia and method, mortality and cause, if known, escape or other specific circumstance, and the date thereof.
2. A written or electronic record required by this section shall be documented within seventy-two (72) hours of the event being documented.
3. This record requirement excludes fish hatched at the pet store. Records for groups of animals that are commonly delivered to pet stores as litters such as pinkies and feeder rodents can be maintained in the form of litter records rather than individual animal records.

4. Records required by this section shall be readily available for inspection by any designated agent of the City.
 - e. Prior to selling any pet food products, the business owner shall ensure that the food product is registered with the New Mexico Department of Agriculture.
- (4) Inspections
- a. Animal control officers shall be permitted to enter, at any reasonable time, for the purpose of inspecting any premises operating under authority of a professional animal permit, to determine compliance with this chapter.
- (5) Compliance required
- a. Compliance with this chapter shall not exempt any pet store from the provisions of:
 1. Chapter 28 of this code; and
 2. Chapter 6 of this code.
- (6) Violations; Suspensions and Revocation
- a. A permit may be denied or suspended by the Animal Control Division upon a determination that the holder of the permit is in violation of the provisions of this chapter.
 - b. Upon inspection of premises, if an ACO discovers what, in his professional judgment, is a violation, the officer shall notify the permit holder in writing. The notification shall:
 1. State the specific violation found;
 2. Establish a specific and reasonable period of time for correction of the violation; and
 3. State that failure to comply with notice issued could result in suspension or revocation of the permit.
 - c. If an ACO finds any violation, unsanitary or other conditions in the operation of a pet store which, in his professional judgment, constitutes a substantial hazard to animal or public health, the officer may, without prior warning or hearing, issue a written notice to the permit holder or operator citing the conditions and specifying the corrective action to be taken. If deemed necessary, the notice shall state that the permit is immediately suspended and all operations are to be immediately discontinued. Any permit holder or operator to whom an order is issued shall comply with the notice immediately.
 - d. An opportunity for an appeal on any denial or suspension shall, upon written notification within 30 days to the City Clerk, be provided. The time and place will be determined by the City Manager. Based upon

the record of the hearing, the governing body shall make a finding and shall sustain, modify or rescind the action considered at the hearing.

- e. For serious or repeated violations of the requirements of this chapter, or upon interference with an animal control officer in the performance of duties, a permit may be denied or suspended after an opportunity for hearing has been provided. Prior to the action, the Police Department shall notify the applicant or permit holder, in writing, of the reason for which the permit is subject to denial, suspension or revocation and that the action shall be taken at the end of five days following service of the notice, unless a request for a hearing is filed with the governing body by the permit holder within five days of receipt of written notice.

(7) Penalty

- a. Failure to obtain a license required by this chapter shall constitute a violation. Any person conducting activities required to be licensed under this chapter who has not obtained such license shall be fined \$300 and shall either obtain the required license under this chapter or cease conducting such activities.
- b. Any person required to be licensed under this chapter who violates any of the provisions of this section shall be fined as follows:
 - 1. If such violation results in injury to an animal in the course of the activity required to be licensed, and the person required to be licensed has not obtained such license, the fine shall be \$300.
 - 2. If such violation results in injury to an animal in the course of the activity required to be licensed, and the person required to be licensed has such license, the fine shall be \$200.
 - 3. If such violation does not result in injury to an animal in the course of the activity required to be licensed, and the person required to be licensed has such license, the fine shall be \$100.

Sec. 6-18. Abatement of pigeon nuisance.

(a) Definitions.

The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abate shall mean to reduce, stop or prevent a Pigeon Nuisance

Feeding shall mean 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 contained or disposed of. Feeding shall not include the providing of food to Pigeons as part of an appropriate population control or flock reduction program.

Pigeon shall mean *Columba livia*, also known as the Rock Pigeon or Rock Dove. For the purposes of this section, “Pigeon” includes any feral pigeon and does not include domestic pigeons used for recreation, racing, or show.

Pigeon Harborage shall mean any condition which provides shelter, nesting sites, or protection for Pigeons; thus favoring their multiplication and continued inhabitancy in, under, or outside a structure or premise. Housing, care, or shelter provided for injured or ill Pigeons that are being rehabilitated is not considered Pigeon Harborage.

Pigeon Nuisance shall mean the 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, Pigeon Nuisance shall include the accumulation of Pigeon excrement, nesting materials, Pigeon carcasses, and/or other Pigeon-related detritus that may be damaging to property, pose a threat to public health and welfare.

Pigeon-proofing shall mean actions taken to abate a Pigeon Nuisance. The actions may include, but are not limited to:

- (1) construction to prevent the ingress of Pigeons into or under buildings or structures from the exterior;
- (2) steps taken to prevent the congregation of Pigeons in a given location including the addition of anti-roosting spikes, mesh, or other materials to prevent roosting; or
- (3) the removal or covering of sources of food for Pigeons.

Property shall mean real property and/or improvements including land, buildings, and structures regardless of use for residential, commercial, or other purposes.

Responsible Party shall mean the person or persons who hold legal or equitable interest in Property which empowers them to take appropriate actions to Abate a Pigeon Nuisance found to exist on that 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 interests. The owner of real property shall be presumed to be a Responsible Party.

(b) Investigation and Abatement of a Pigeon Nuisance.

- (1) There shall be an investigation of any complaint made to the City Administrator or the City Administrator’s designee to determine if a Pigeon

Nuisance exists. In addition, the City Administrator or the City Administrator's designee may initiate an investigation to determine if a Pigeon Nuisance exists when there has been no complaint made.

- (2) The City Administrator or the City Administrator's designee shall determine if a Pigeon Nuisance exists.
- (3) The City Administrator or the City Administrator's designee shall attempt to contact the property owner and any person on the property who appears to be a Responsible Party to notify them that a Pigeon Nuisance has been determined to exist.
- (4) An Abatement Agreement may provide for the use of any Pigeon-proofing method agreed upon by the City Administrator or the City Administrator's designee and the Responsible Party. If the Abatement and/or Pigeon-proofing involves the removal of accumulations of Pigeon excrement, nesting materials, Pigeon carcasses or other Pigeon-related detritus, the method selected for such removal shall protect human health and ensure that ground water, surface water and real property are not contaminated by the waste.
- (5) If the City Administrator or the City Administrator's designee determines that the Responsible Party is in violation of this ordinance and is unwilling to comply with this ordinance, or if the Responsible Party fails to act on or complete the terms and conditions agreed to in an Abatement Agreement by the time or times set forth in the Agreement, the City Administrator or the City Administrator's designee may proceed to seek the penalties provided in Section 1-6 of the Code of Ordinances.

(c) Inspection of Buildings, Premises and Vacant Lots.

- (1) The City Administrator or the City Administrator's designee is authorized, by obtaining consent of the owner or occupant, and at reasonable times, to make such inspections of property as is necessary to perform a thorough investigation. For the purpose of making such inspections, the City Administrator or the City Administrator's designee is authorized to enter onto premises to examine and/or survey property only after reasonable notice to and consent from the owner and any person occupying the property. Such entry shall be made in a manner as to cause the least reasonably possible inconvenience to the person in control of the property. In the event that entry is denied the City Administrator or the City Administrator's designee shall obtain a court order for this purpose from a court of competent jurisdiction.

(d) Pigeon Feeding Violations and Penalties.

- (1) It is a violation of this ordinance for any person to intentionally Feed Pigeons on any public or private property within the City of Carlsbad.
- (2) It is a violation of this ordinance for any person to 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 persons knows will reasonably result in the Feeding, lingering, roosting, and/or congregating of Pigeons.

- (3) This prohibition does not extend to domesticated birds used for recreation, racing, or show, or to injured or ill Pigeons that are being rehabilitated and are kept at all times in cages or that are prevented from creating Pigeon Nuisance conditions.
- (4) This prohibition does not extend to birdseed or bird food set out in bird feeders or otherwise provided to birds other than Pigeons, provided that the birdseed or bird food does not attract significant numbers of Pigeons or create conditions that constitute a Pigeon Nuisance.
- (5) 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 the penalties set forth in Section 1-6 of the Code of Ordinances.

(e) Pigeon Nuisance Violations and Penalties.

- (1) No person shall create or foster any condition or allow any condition to exist or continue which in any way harbors a number of Pigeons or results in an infestation of Pigeons that would constitute a Pigeon Nuisance.
- (2) No person shall allow the accumulation of Pigeon excrement, nesting materials, Pigeon carcasses and/or other Pigeon-related detritus that would constitute a Pigeon Nuisance on property where the person is the owner or occupant.
- (3) 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 the penalties set forth in Section 1-6 of the Code of Ordinances.

(f) Additional Remedies.

- (1) Nothing in this ordinance shall be construed to preclude the City from seeking any other remedy available in law or equity.

Secs. 6-19--6-35. Reserved.

ARTICLE II. ANIMAL SHELTER
DIVISION 1. GENERALLY

Sec. 6-36. Establishment and maintenance.

An animal shelter or shelters shall be established and maintained at such place or places as may be determined by the governing body of the city. Animal shelter facilities or services or animal adoption services may be provided for by agreement with a veterinary hospital, a kennel, an animal shelter, a qualified organization or individual, or in cooperation with other municipalities or counties. Such agreement shall be at such terms

and conditions as the governing body of the city may deem desirable. At any time such a contract exists, the names and addresses of such organizations or individuals will be available at the animal shelter and the city clerk's office.

Sec. 6-37. Impoundment authorized.

An animal shelter is provided for the following animals:

- (a) Except as permitted in § 6-71, all owned and unowned animals susceptible to rabies which have bitten a person or exposed a person to rabies shall be impounded in the animal shelter. Such animals shall be either destroyed or confined in isolation for a period of at least ten days. If the animal dies or is destroyed during the confinement period, the carcass shall be treated as required by all applicable laws, rules, and regulations.
- (b) Animals found to be running at large, abandoned animals, animals released to the city by their owners, vicious animals, potentially vicious animals, hazardous animals, and animals attacking livestock may be impounded in the animal shelter.
- (c) Any animal not maintained in accordance with any provision of this chapter may be impounded in the animal shelter.
- (d) If any animal found running at large has a current city license tag, the animal control officer shall make a diligent effort to identify and contact the owner of such animal.

Sec. 6-38. Treatment of impounded animals.

During the period any animal is impounded, it shall be supplied with proper food and potable water to be furnished by the animal shelter and shall be treated in a humane manner. Animals which, in the opinion of the city or animal shelter staff, are or become sick or injured while at the animal shelter may be destroyed.

Sec. 6-39. Disposition of impounded animals.

- (a) An animal eligible for release may be redeemed by its owner upon the owner's provision to the shelter of adequate proof of ownership.
- (b) Any impounded animal not redeemed by its owner within four days after it becomes eligible for release may be:
 - (1) Placed for adoption;
 - (2) Placed with a foster home or animal rescue organization approved by the city or the entity operating the shelter;
 - (3) Released to the wild, if appropriate;
 - (4) Disposed of as directed by any applicable law, rule, or regulation; or
 - (5) Destroyed in accordance with the provisions of this chapter.
- (c) An animal is not eligible for release if:
 - (1) The animal is or is suspected of being a vicious animal or a hazardous animal;

- (2) The animal is or is suspected of being rabid, exposed to rabies, or having exposed a person or animal to rabies;
 - (3) The owner has been cited with a violation of this chapter;
 - (4) The animal is being held subject to a court order; or
 - (5) As otherwise required by any applicable ordinance, law, rule, regulation, or order.
- (d) Livestock shall be disposed of in the manner provided for in any applicable laws of the state. If there are no applicable laws of the state, the livestock may be sold or otherwise disposed of according to the terms of this chapter.

Sec. 6-40. Adoption of impounded animals.

- (a) Any animal eligible for release and considered by the animal shelter to be suitable for adoption may be held in the shelter for adoption if not redeemed by the owner within four days of the animal's intake. Any animal brought by the owner into the shelter for adoption may be placed for adoption at once. Animals which, in the opinion of the city or animal shelter, are sick, injured, or considered to be unadoptable may be destroyed.
- (b) Any person over the age of 18 years may apply to adopt an animal eligible for adoption. The city and the operator of the shelter shall have the discretion to review and approve or disapprove the application and/or the applicant.
- (c) Any person adopting an animal shall be required to pay the established adoption fee for each animal so adopted, any applicable sterilization deposit, and any costs or expenses incurred. All dogs and cats adopted from the animal shelter shall be, at the adopter's expense, immunized against rabies and licensed as required.
- (d) No impounded animal shall be adopted for the purpose of breeding or resale. No animal shall be sold or given to or used for medical laboratory use. Every dog or cat adopted from the animal shelter shall be spayed or neutered by a licensed veterinarian at the expense of the adopting party. The animal being adopted may be held at the shelter until it is altered, or the shelter may make arrangements to have all or part of the cost of altering the animal paid to the city by the adopting party to insure compliance with this section. Any individual who qualifies may apply for financial assistance to help pay the cost of altering through a reduced cost spay/neuter program, if such program is available.

Sec. 6-41. Adoption and redemption fees.

- (a) Any owner redeeming an animal shall be required to pay:
 - (1) The established redemption fee for each animal redeemed;
 - (2) Any applicable sterilization deposit;

- (3) At the redeemer's expense, having a pet microchip implanted in the animal at the shelter or other location approved by the shelter, if the animal does not already have a microchip; and
 - (4) Any costs and expenses incurred including but are not limited to, veterinary care, shelter costs, and transportation.
- (b) Any person adopting an animal shall be required to pay:
- (1) The established adoption fee for each animal adopted; and
 - (2) Any applicable sterilization deposit.
- (c) All dogs and cats adopted or redeemed from the animal shelter shall be, at the adopter's or redeemer's expense immunized against rabies and licensed as required.

Secs. 6-42--6-50. Reserved.

DIVISION 2. ANIMAL CONTROL OFFICER

Sec. 6-51. Employment generally.

- (a) An animal control officer shall be employed by the city at such salary or other compensation as may be determined by the governing body of the city.
- (b) The animal control officer shall be deputized to enforce animal control laws, orders, ordinances, and regulations and shall perform all the duties prescribed by this chapter. The animal control officer shall prevent and control the spread of rabies within the city, including but not limited to the capture and confinement or disposition of rabies suspect animals, the enforcement of quarantine orders, the destruction or confinement of animals exposed to rabies, and the enforcement of pet skunk regulations.
- (c) The animal control officer shall be under the supervision and direction of the chief of police.

Sec. 6-52. Disposal of dead animals from public places.

The animal control officer shall remove and dispose of all dead animals found on any streets or other public places.

Sec. 6-53. Disposal of animals for individuals.

The animal control officer, on request of the owner and upon payment of the required fee, may remove and dispose of any dead or live animal lawfully in the possession of such owner.

Sec. 6-54. Pursuit of animals.

In carrying out the provisions of this chapter, every deputized animal control officer is authorized to pursue a straying animal, or potentially vicious or vicious animal, or dog molesting livestock or any animal with symptoms of rabies onto private premises unless permission to make such pursuit is explicitly refused by the occupant. If the occupant

explicitly refuses permission, the animal control officer may obtain a court order permitting the entry onto the premises.

Sec. 6-55. Dogs, destruction by peace officer or animal control officer.

- (a) Any peace officer or animal control officer may impound any dog found running at large unaccompanied by and not under the control of the owner or handler, and further, the peace officer or animal control officer may destroy the dog if it is in the act of pursuing or wounding livestock or wounding and killing poultry or attacking humans.
- (b) Any peace officer or animal control officer may kill any dog in the act of pursuing or wounding any livestock or wounding or killing poultry or attacking humans whether or not the dog wears a rabies tag required by law. There shall be no liability of the peace officer or animal control officer in damages or otherwise for such killing.

Sec. 6-56. Unlawful to obstruct or interfere with an animal control officer.

It shall be unlawful for any person to obstruct or interfere with an animal control officer in the performance of his or her duties. Any person who shall violate the provisions of this section shall be punished in accordance with section 1-6 of this Code, provided however, that, upon first conviction pursuant to this section, a person shall be sentenced to pay a fine of not less than \$200.00 which fine may be suspended in whole or in part or deferred by discretion of the judge. Upon a subsequent conviction pursuant to this section, the mandatory minimum fine of \$200.00 shall be increased by no less than \$50.00 for each such subsequent offense, no part of which total fine shall be deferred or suspended by the judge. No single fine provided by this subsection may exceed the jurisdictional limit of a fine which may be imposed by the municipal court.

Sec. 6-57. Unauthorized removal of animals.

No person shall remove or release an impounded animal from an animal control officer, an animal control vehicle, a police officer, a police vehicle, or animal shelter without proper authorization.

Secs. 6-58--6-65. Reserved.

ARTICLE III. DOGS AND CATS AND RABIES CONTROL DIVISION 1. GENERALLY

Sec. 6-66. Dogs running at large generally.

- (a) It shall be unlawful for the owner of any dog to cause, allow, or permit the dog to run at large in or on any public property or in or on any other property without the permission of the owner of the property. Any dog running at large in violation of this

section may be taken up and impounded by an animal control officer. A citation may be issued to the owner whether or not the dog is impounded.

- (b) Any person who shall violate the provisions of subsection (a) of this section shall be punished in accordance with section 1-6 of this Code, provided however, that:
 - (1) If the owner is unable to provide written proof, satisfactory to the Court, that the dog has been both spayed or neutered and is currently vaccinated against rabies, then:
 - a. Upon first conviction pursuant to this section, a person shall be sentenced to pay a fine of not less than \$200.00 which fine may be suspended in whole or in part or deferred by discretion of the judge with the condition that the owner will provide the court with written proof that the dog has been spayed or neutered or currently vaccinated against rabies within a time set by the court.
 - b. Upon a subsequent conviction pursuant to this section, the mandatory minimum fine of \$200.00 shall be increased by no less than \$25.00 for each such subsequent offense, no part of which total fine shall be deferred or suspended by the judge.
 - (2) If the owner provides written proof, satisfactory to the Court, that the dog has been both spayed or neutered and currently vaccinated against rabies, then:
 - a. Upon first conviction pursuant to this section, a person shall be sentenced to pay a fine of not less than \$80.00 which fine may be suspended in whole or in part or deferred by discretion of the judge.
 - b. Upon a subsequent conviction pursuant to this section, the mandatory minimum fine of \$80.00 shall be increased by no less than \$25.00 for each such subsequent offense, no part of which total fine shall be deferred or suspended by the judge.
 - (3) No single fine provided by this subsection may exceed the jurisdictional limit of a fine which may be imposed by the municipal court.
 - (4) In addition to the above prescribed fines, the judge has discretion to imprison the violator for a period of up to 90 days for each offense.
- (c) Upon conviction for any violation of this section, when the animal has bitten any person, the judge having jurisdiction thereof may impose the conditions pursuant to Sec. 6-12 in addition to all other fines and penalties which may be imposed for such violation.

Sec. 6-67. Restraint of dogs.

- (a) Dogs which are not qualified service animals shall not be allowed upon playgrounds, athletic fields, upon the grounds of public swimming pools, golf courses or the Carlsbad Municipal Beach swimming area.

- (b) No dog shall be allowed upon streets, alleys, sidewalks, or other public property unless it is at all times on a secure leash not exceeding eight feet in length and under the immediate physical control of a person capable of controlling the dog.
- (c) Dogs may be walked in public parks other than those areas listed in subsection (a) of this section. Dogs being walked in permitted public park areas shall be in compliance with the following regulations:
 - (1) Dogs must have current rabies tags and current city licenses, if applicable, attached to their collars or harnesses;
 - (2) Dogs must be on a leash at all times with such leash no longer than eight (8) feet in length, and such leash shall be held by a person capable of controlling the dog;
 - (3) Dogs shall not be left unattended or chained or tied to an object; unattended dogs may be taken up and impounded by an animal control or peace officer; and
 - (4) Dogs shall not interfere with or impede the use and enjoyment of those facilities and parks by others.
 - (5) Dogs shall not commit any damage or nuisance.
 - (6) No person shall allow a dog to defecate upon a public park without thoroughly removing and properly disposing of the feces. Any feces placed in a dumpster shall be first wrapped securely in plastic.
 - (7) Potentially vicious or vicious animals are not permitted in public parks.
 - (8) Persons walking dogs on the sidewalk in the public parks shall give the right of way to pedestrians allowing enough space for pedestrians to pass freely without contact with the dog.
 - (9) No dogs are allowed in the Lake Carlsbad Recreation Area during the Fourth of July holiday.
- (d) Dogs are permitted to use and be off-leash within the fenced area of the Carlsbad Dog Park in the Bataan Recreation Area north of East Lea Street. All dogs at the Carlsbad Dog Park shall be accompanied at all times by the dog's owner or other responsible person. The owner or responsible person must be capable of restraining the dog. No dog shall be unaccompanied at any time within the Carlsbad Dog Park. If a dog is at the Carlsbad Dog Park without a person capable of restraining the dog, that dog will be considered to be unaccompanied and may be taken and impounded by an animal control or peace officer. Persons and dogs using the Carlsbad Dog Park shall obey all posted instructions and rules at the Carlsbad Dog Park. While coming or going from the Carlsbad Dog Park, dogs shall be in compliance with the following regulations:
 - (1) Dogs must have current rabies tags and current city licenses, if applicable, attached to their collars or harnesses;

- (2) Dogs shall be on a leash at all times with such leash no longer than eight (8) feet in length, and such leash shall be held by a person capable of controlling the dog;
 - (3) Dogs shall not be left unattended or chained or tied to an object; unattended dogs may be taken up and impounded by an animal control or peace officer; and
 - (4) Dogs shall not interfere with or impede the use and enjoyment of those facilities and parks by others.
 - (5) Dogs shall not commit any damage or nuisance.
 - (6) No person shall allow a dog to defecate upon a public park without thoroughly removing and properly disposing of the feces. Any feces placed in a dumpster shall be first wrapped securely in plastic.
 - (7) Potentially vicious or vicious animals are not permitted in public parks.
 - (8) Persons walking dogs on the sidewalk in the public parks shall give the right of way to pedestrians allowing enough space for pedestrians to pass freely without contact with the dog.
- (e) In addition to all other fines or penalties, the judge having jurisdiction thereof may ban a person in violation of this section from bringing any dog into any public park or other public place.
- (f) A leash shall not be required when the dog is participating in a bona fide animal show which has been authorized by the city administrator, or the city administrator's designee.

Sec. 6-68. Dog defecation, cleanup.

No person shall allow a dog to defecate upon public property or upon any private property other than the property of the owner of the dog without thoroughly removing and properly disposing of the feces. Any feces placed in a dumpster shall be first wrapped securely in plastic.

Sec. 6-69. Return of found dogs and cats.

A person who finds a dog or cat shall make a valid effort to find the animal's owner, including having the animal scanned for a microchip and filing a found animal report with the animal shelter. If the animal has a microchip or an identification tag, the animal shall be placed with the shelter.

Sec. 6-70. Dog or cat in heat or estrus to be confined.

An owner shall confine his or her female dog or cat in heat or estrus so that other dogs or cats are not attracted to the animal in heat or estrus and so that the animal in heat or estrus can only come into contact with dogs or cats intended to be bred with it.

Sec. 6-71. Vaccination of dogs and cats required.

- (a) The owner of any dog or cat shall have the dog or cat vaccinated against rabies as required by all applicable regulations of the state department of health or its successor agency. All anti-rabies vaccines shall be administered by or under the supervision of a licensed veterinarian who shall also issue a serially numbered certificate and tag for each such administration.
- (b) The veterinarian who administers anti-rabies vaccine to any dog or cat shall issue to the owner of the animal a serially numbered vaccination certificate containing:
 - (1) The name and address of the veterinarian;
 - (2) The type of vaccine used;
 - (3) The initials of the producer of the vaccine;
 - (4) The name and address of the owner of the animal;
 - (5) A description of the animal vaccinated;
 - (6) The date of vaccination; and
 - (7) The expiration date of the period of immunity.
- (c) The veterinarian who administers the anti-rabies vaccine to any dog or cat shall also furnish the owner with a metal tag bearing the certificate number and the year of vaccination. The tags shall be affixed by the owner to a collar or harness which shall be worn by the animal for which the certificate is issued at all times.
- (d) Any dog or cat brought into the city shall be securely confined by the owner until vaccinated against rabies and until licensed by the city. The anti-rabies vaccination shall be administered and the license secured within one week after the entry into the city. A current certificate of vaccination issued by a licensed veterinarian in another city, state or foreign country that conforms to all applicable requirements of the city and the State of New Mexico shall be accepted as proof of vaccination.
- (e) The owner of a dog or cat shall exhibit the animal's certificate of anti-rabies vaccination upon demand by an animal control or police officer.

Sec. 6-72. Animal bites on persons; notice; and procedure.

- (a) When any person is bitten or exposed to rabies by an animal, it is the duty of such person or his or her parent or guardian and any person having knowledge of the whereabouts of the animal to immediately notify the police department or an animal control officer.
- (b) Every physician shall, within 24 hours after his or her first professional attendance upon a person exposed to rabies or bitten by any animal, report to an animal control officer or the police department the name, age, sex, telephone number, and address of the person bitten, as well as the type and location of the bite on the victim's body.
- (c) Any animal that has bitten a person or is suspected of having exposed a person to rabies shall either be destroyed and the carcass handled as required by all applicable laws, rules, and regulations, or the animal shall be immediately confined and isolated for observation at a place and in a manner designated by an animal control officer for a period of at least ten (10) days. If the owner cannot or does not confine and isolate

the animal as required, an animal control officer may seize and confine the animal. The animal's owner shall be responsible for and shall bear all costs and expenses of confinement.

- (d) The animal may be confined and isolated upon the owner's premises only if the owner can prove to the city's satisfaction that the animal has a current anti-rabies vaccination, and the premises are inspected and approved for rabies confinement by an animal control officer. The owner of the animal shall agree to indemnify the city for any damages which may arise as a result of the animal's confinement or escape, and shall enter into an indemnity agreement on a form approved and required by the city before any confinement on the owner's property.
- (e) A person who has custody of an animal that has bitten a person or exposed a person to rabies shall immediately notify an animal control officer if the animal shows any signs of sickness, abnormal behavior, or if the animal escapes confinement. If the animal dies while in confinement, the person having custody of the animal shall notify an animal control officer immediately and surrender the carcass of the animal to an animal control officer.
- (f) If the animal shows any signs or symptoms of rabies during its confinement and observation period, it shall be destroyed and the carcass shall be handled as required by all applicable laws, rules, and regulations.

Sec. 6-73. Animals exposed to rabies.

When circumstances indicate an animal has been bitten by a known rabid animal or exposed to rabies, or when an animal is showing signs of having rabies, the following procedures shall apply:

- (a) Any person who has knowledge of such an animal shall immediately notify the police department or an animal control officer of the animal's condition and location.
- (b) The owner shall immediately confine the animal and shall surrender it to an animal control officer upon demand.
- (c) The animal shall be dealt with in accordance with all applicable ordinances and state laws, rules, and regulations.

Sec. 6-74. Redemption of confined animals.

The owner of any animal confined in the animal shelter for observation of rabies pursuant to this chapter may redeem such animal after confinement, if it is found to be free of rabies symptoms, and if it is eligible for release, by paying the established confinement fee, any costs and expenses incurred during its confinement, and obtaining a current city license, if applicable.

Sec. 6-75. Keeping an unvaccinated dog or cat or rabid animal; procedure following death of animal from rabies.

- (a) It is unlawful to own or keep any unvaccinated dog or cat or any animal which has shown any symptoms of rabies, except that, if such animal has bitten a human being, a dog or cat may be confined as permitted by all applicable ordinances, laws, rules, and regulations. If the animal dies during the confinement period, the head shall be immediately sent to a laboratory by an animal control officer.
- (b) The head of any animal suspected of having died of rabies shall be immediately sent to a laboratory designated by the Department of Health of the State of New Mexico, Division of Epidemiology, Evaluation and Planning, under such procedures as are specified by the division or its successor in authority.

Sec. 6-76. Rabies quarantine.

The City Administrator or his or her designee may declare a quarantine against rabies within the city when, in his or her judgment, rabies exists to the extent that it is a danger to public health. Upon such declaration, all designated animals within the city shall be quarantined as directed. After reasonable effort to apprehend any dog or cat running at large and uncontrolled by its owner during a period of quarantine, any animal control officer or police officer may destroy the dog or cat and properly dispose of the body. The City Administrator or his or her designee may order other measures as may be necessary to prevent the spread of rabies. A quarantine shall not be removed except on order of the City Administrator or his or her designee.

Sec. 6-77. Failure to license, vaccinate, report animal bites declared misdemeanor.

It is a misdemeanor for any person who is the owner of an animal to fail to have the same vaccinated against rabies and licensed as required by this chapter. It is a misdemeanor for any physician to fail to report a person bitten by an animal.

Secs. 6-78--6-90. Reserved.

DIVISION 2. LICENSE

Sec. 6-91. City animal license required.

The owner of a dog or cat over the age of three months shall obtain and continuously maintain a current, valid city animal license for the animal. Persons who do not reside in the city and who keep a dog or cat in the city for both fewer than 30 consecutive days and for fewer than 90 days in total in any one year shall be exempt from this licensing requirement.

Sec. 6-92. Licensing of qualified service dog or cat.

Every owner of a qualified assistance dog or cat shall have such animal licensed as provided in this article. The city shall charge no license fee for the licensing of qualified assistance animals. Qualified assistance animals shall include all categories of animals as defined in the laws of the state.

Sec. 6-93. Term for City animal license and potentially vicious animal license; fees.

- (a) A city animal license and/or potentially vicious animal license shall become effective as of the date and time of its issuance and shall terminate on the expiration date stated on the certificate. Failure to renew a City animal license within 30 days after its expiration shall result in the imposition of a late fee in addition to all other fees. Failure to renew a potentially vicious animal license prior to expiration shall result in the imposition of a late fee in addition to all other fees.
- (b) The fees for city animal and potentially vicious animal licenses shall be set from time to time by the governing body of the city. A schedule of such fees is on file in the city clerk's office.

Sec. 6-94. Issuance: receipt.

- (a) The City animal licenses required by this division may be issued by either the city clerk or at other locations designated by the governing body of the city. Such other locations may include city animal shelters and veterinary practice locations. Veterinarians may accept city license fee payments and may issue city licenses only if they have entered into a current agreement with the city to do so.
- (b) The potentially vicious animal license may be issued by the city clerk upon approval of an animal control officer.
- (c) The city license and potentially vicious animal tags and certificates shall be serially numbered and the certificates shall contain the name and address of the animal's owner, a description of the animal, proof of rabies vaccination, and the expiration date of the license.

Sec. 6-95. Anti-rabies vaccination required.

No city animal license or potentially vicious animal license shall be issued unless the owner presents a rabies vaccination certificate showing that the animal is currently vaccinated against rabies as required by all applicable regulations of the state department of health or its successor agency.

Sec. 6-96. New license required for adopted dog or cat.

If the person adopting any dog or cat from the city animal shelter lives within the city of Carlsbad, that person shall obtain a city license for each animal adopted.

Sec. 6-97. Potentially vicious animal license.

If a person is found by the court, to have failed to confine and/or control any potentially vicious animal as required by Sec. 6-12, to retain their animal, they shall obtain a potentially vicious animal license.

- (a) Prior to the issuance of a potentially vicious animal license, the owner of the animal shall permit Animal Control to inspect the property at which the animal is

kept and inspect all animals kept thereon. No license will be issued without the approval of the Animal Control Division.

- a. Animal Control shall ensure the designated enclosure or restraint device is suitable for containing and controlling the animal from escape or public access.
- b. Animal Control shall ensure conspicuous warning signs, containing a warning both in words and in a symbol that a dangerous animal is on the premises is posted and clearly visible to the public.
- c. Animal Control shall also ensure there are no other safety concerns before approving the issuance of the potentially vicious animal license.
- d. Animal Control shall ensure the owner and other occupants of the property are free of disqualifying criminal convictions.
- e. The owner's history of violations of this Chapter shall be considered before a potentially vicious animal license is issued. An owner with a significant history of violations of this Chapter shall not be approved.

(b) Failed inspections

- a. If an applicant of a potentially vicious animal license fails to pass the property inspection, Animal Control shall provide the applicant, in writing, a detailed description of the items needing corrective action. A copy of the recommendations shall be forwarded to the court and a copy will be maintained in the Records Division of the Police Department.
- b. Animal Control will allow the applicant five days to remedy the issues before inspecting the property again.
- c. Upon a subsequent, the court may order the owner of a potentially vicious animal to surrender the animal to Animal Control.

Sec. 6-98. Tag--Issuance; permanent attachment to collar.

City license and potentially vicious animal license tags shall bear an identifying number. The license tag shall be permanently and securely affixed to the collar or harness to be worn at all times by the dog or cat so licensed. The license tag need not be worn when the dog or cat is confined in a commercial kennel or veterinary hospital, is appearing in a bona fide animal show, or is being trained so long as the person who is keeping, showing, or training the animal has the tag readily available in his or her possession and immediately displays the tag upon the request of a police officer or animal control officer.

Sec. 6-99. Duplicates.

If a city license or potentially vicious animal tag is lost or stolen, the owner of the dog or cat may procure a duplicate license tag from the city clerk on payment of the fee set therefor.

Sec. 6-100. Unlawful use of rabies vaccination certificate, tag, city license or tag or potentially vicious animal license or tag.

No person shall affix an anti-rabies tag, a city license tag or potentially vicious animal license tag to the collar or harness of any animal other than the animal for which the tag was properly issued. No person shall keep, manufacture, or use a stolen, counterfeit, or forged animal anti-rabies vaccination certificate or tag, city license or tag or potentially vicious animal license or tag.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2017.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK