

CITY OF HOBBS

ORDINANCE NO. 1024

AN ORDINANCE REPEALING TITLE 6 CHAPTER 6.04
OF THE HOBBS MUNICIPAL CODE AND
ESTABLISHING A NEW TITLE 6 "ANIMALS"

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS,
NEW MEXICO, that Title 6, Chapter 6.04 of the Hobbs Municipal Code is repealed
in its entirety and is replaced to read as follows:

6.04.010 Short title

This chapter shall be known and may be cited as the "Hobbs Animal Ordinance."

It is the intent of the City Commission that enactment of this chapter will protect animals from neglect and abuse, will protect residents from annoyance and injury, will encourage responsible ownership of animals as pets, will assist in providing housing for animals in an adoption center and will partially finance the Animal Protection Department's functions of adopting, housing, licensing, enforcement and recovery. It is the intent of the City Commission to organize and utilize advisory groups to assist with improving public awareness about subjects pertaining to the enactment of this chapter.

6.04.020 Definitions

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

"Abandon" means to leave an animal for more than 24 hours without making effective provisions for its proper feeding and care.

"Animal" means any vertebrate member of the animal kingdom except humans.

"Animal Protection" means the staff, facility, programs, kennels, lot, premises, and buildings maintained by the City for the implementation of the protection and care of animals.

"Animal Protection Officer" means a City of Hobbs Animal Protection officer or supervisor.

"Animal Fighting Paraphernalia" means equipment that any reasonable person would ascertain is used for animal fighting purposes which includes, but is not limited to (1) instruments designed to be attached to the leg of a bird, such as a boxing gloves, knife, gaff, or other sharp instrument, (2) items to train and condition animals to fight including, but not limited to, hides or other material used as hanging devices to strengthen and/or condition dogs, wooden sticks or handles used to pry open dog's jaws, performance enhancing drugs or substances, or food or water additives, and (3) the presence of any

animal that appears to be a fighting animal alone or together with animals suspected of being used as bait animals including but not limited to rabbits, cats, and other dogs.

"Bait Animal" is an animal used to train and/or condition other animals to fight and includes but is not limited to dogs, cats, and rabbits exposed to attack by other animals used or trained to be used in fighting or to make the attacking animal more confident and aggressive.

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

"Bona Fide Animal Show" includes events sanctioned by organizations such as the American Kennel Club (AKC) or North American Dog Agility Council (NADAC), generally organized by local clubs, and including conformation events or performance events such as obedience, agility, and tracking,

"Breeding" means permitting, either intentionally or unintentionally, a female dog or cat to produce offspring.

"Canine hybrid" means

- a) Any canine which has or had a pure wolf or pure coyote as a parent or grandparent; or
- b) An animal represented by its owner to an Animal Protection Officer, law enforcement officer, or to a veterinarian to be the offspring, cross, mix, or hybrid of a wolf or coyote within the preceding two generations; or
- c) Any animal which, because of its pure wolf or pure coyote ancestry, cannot be vaccinated against rabies.

"City" means the area within the jurisdictional boundaries of the City of Hobbs, including privately owned land, excluding the area within the jurisdiction of the United States Government or the State of New Mexico.

"City Manager" means the City Manager of the City of Hobbs or his designated representative(s).

"Commission" means the Mayor and City Commissioners.

"Confinement" means detainment or isolation of an animal.

"Dangerous animal" means any of the following:

- a) An animal which, when unprovoked, engages in behavior that requires a defensive action by a person to prevent bodily injury to a person or another animal which is off the property of the owner of the animal in question.
- b) An animal which, when unprovoked, injures a person in a manner which does not result in muscle tears or disfiguring lacerations, or require extensive corrective or cosmetic surgery.
- c) An animal which, because of its poisonous sting or bite, would constitute a significant hazard to the public.

"Designee or designated representative" means the Animal Protection Supervisor or other appropriate staff.

"Enclosed" means a parcel of land completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain animals within, or by an electric or invisible fencing that has been approved by the City Manager.

"Establishment" means a place of business together with its grounds and equipment.

"Fowl" means turkeys, geese, ducks, guineas, chickens and all other domesticated fowl.

"Grooming parlor" means an establishment or part thereof maintained for the purposes of performing cosmetological services for animals.

"Guard dog" means a dog that is used to protect a commercial property, but excludes a dog used exclusively to guard livestock.

"Hobby breeder site" means a non-commercial animal facility or premises operated by a person involved in voluntary or involuntary breeding of dogs or cats and the resultant offspring are not sold for resale to commercial outlets or for the purpose of research, testing, or laboratory experimentation.

"Household" means the collection of individuals, related or not, who reside at one street address.

"Kennel" means a commercial establishment operating for intended profit where dogs or cats are boarded, kept, or maintained.

"Kennel area" is a secure space within which an animal is housed that is of sufficient height and strength to contain the animal within and provide sufficient room for the animal to comfortably move around within the structure. This includes all area available to the animal during a 24-hour period.

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

"Livestock" means horses, cattle, pigs, sheep, goats, rabbits, fowl, or any other domestic animals typically used in the production of food, fiber, or other products or activities defined by the City Manager as agricultural.

"Lot" means a parcel or plot of ground with common ownership. To be one lot all the ground contained within said plot or parcel must be contiguous.

"Multiple Animal Site Permit" means permit issued to an individual/household who does not qualify as a shelter, refuge, professional animal establishment, or hobby breeder but who wishes to keep dogs or cats in excess of the maximum allowed under this Ordinance.

"Owner" means a person 18 years of age or older or the parent or guardian of a person under 18 years of age who owns, harbors, keeps an animal, has one in his care, or permits an animal to remain on or about the premises owned or controlled by him.

"Person" means an individual, household, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

"Permitted Premises" means the establishment, household, property or site for which a valid permit has been issued by the City for use as a kennel, grooming parlor, pet shop, refuge, shelter, hobby breeder site or multiple animal site.

"Pet shop" means any premises, or part thereof, open to the public which engages in the purchase, sale, exchange or hire of animals of any type, except the term shall not apply to premises used exclusively for the sale of livestock.

"Premises" means a parcel of land and the structures thereon.

"Professional animal establishment" means any kennel, grooming parlor, or pet shop, with the exception of state inspected veterinary hospitals and federally inspected laboratory facilities and zoos.

"Qualified assistance animal" means:

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

"Quarantine" means detention or isolation of an animal in order to observe for rabies or other communicable diseases.

"Refuge" means an establishment owned or operated by a non-profit organization whose sole function is to aid and comfort more than four animals, and where animals are not bred.

"Rescue Animal" means animals that are rescued by a bona fide humane society or other recognized rescue organization or by an individual who received prior written recognition by the City Manager to rescue and temporarily care for animals in order to place them into permanent homes.

"Residential Neighborhood" means an area where at least ninety percent (90%) of the lots in the block containing the subject lot and the block facing the subject lot are single or multi-family residences or vacant.

"Shelter" means a non-profit animal facility operated by an individual or group or member of a recognized animal humane association for the purpose of bringing aid and comfort to dogs or cats, and where animals are not bred.

"Show animal" means a dog or cat, which is registered with a recognized registry organization, or is a member of a breed which is not eligible to be registered if that breed has been approved by the City Manager and which is involved in bona fide animal shows.

"Sterilized" means to be rendered permanently incapable of reproduction.

"Stray" means a dog, canine hybrid or livestock found running at large.

"Supervisor" means the Supervisor of the Animal Protection Department of the City of Hobbs.

"To run or running at large" means any dog, canine hybrid or livestock free from physical restraint beyond the boundaries of the owner's premises.

"Trap, Neuter and Return (TNR)" is the practice of humanely trapping un-owned cats, having them evaluated, vaccinated, sterilized and ear-tipped by a veterinarian and returning them to the location where they were trapped.

"Trolley" means a cable strung between two fixed and stable points, to which a dog on a tether is attached, allowing for freedom of movement.

"Vaccination" means protection provided against rabies by inoculation with a vaccine as required by NMSA 1978 § 77-1-3 (1979).

"Vicious animal" means an animal which kills or seriously injures a person or domesticated animal; resulting in muscle tears or disfiguring lacerations, requiring multiple sutures or extensive corrective or cosmetic surgery. Vicious animal does not include an animal which bites, attacks or injures a person or animal that is unlawfully upon its owner's premises. The provocation of an animal by a person is an affirmative defense to a charge of keeping or harboring a vicious animal.

"Weatherproof enclosure" means an enclosure designed to protect the animal against disagreeable or harmful atmospheric conditions, i.e. storm, rain, snow, etc.

6.04.030 Rules and regulations

Reasonable rules and regulations may be prescribed by the City Manager to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. The City Manager may delegate his powers to the Supervisor as he may deem expedient. The Supervisor may delegate such powers to the duly appointed Animal Protection Officers as he may deem expedient. An Animal Protection Officers shall wear a uniform and shall carry appropriate identification. Identification is to be surrendered to the City upon cessation of employment.

6.04.040 Procedures for complaints

A. A complaint alleging any violation of this chapter may be filed with the City by a person who has personal knowledge of such violation and who can identify the owner of the animal involved or the premises where the animal is located. The City Manager may require the complainant to provide his name and address and swear to and affirm the complaint.

B. It is unlawful for any person to intentionally make a report to the City Manager, which that person knows to be false at the time of making it, alleging a violation by another person of any violation of the Hobbs Animal Ordinance.

6.04.050 Procedure for City Manager and Animal Protection Officers

A. The City Manager, Supervisor and Animal Protection Officers shall have the authority, and are directed to investigate upon probable cause, any alleged violation of this chapter or of any law of the State of New Mexico relating to the care, treatment, control and prevention of cruelty to animals.

B. Animal Protection Officers are authorized to inspect premises as necessary to perform their duties. If the owner or occupant of the premises objects to inspection, a warrant shall be obtained from a court of competent jurisdiction prior to inspection. No warrant shall be necessary if probable cause exists to believe that there is an emergency requiring such inspection or investigation.

C. Whenever the City Manager has probable cause to believe that a person has violated this chapter, the City Manager may prepare a criminal complaint to be filed with the appropriate court or prepare a citation for the alleged violator to appear in court. The citation shall contain the name, address and telephone number, if known, of the person violating this chapter, the driver's license number of such violator, if known, the code section allegedly violated, and the date and place when and where such person allegedly committed the violation, and the location where such person shall appear in court and the deadline for appearance. The City Manager shall present the citation to the person he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign a copy of the citation. The City Manager shall deliver a copy of the citation to the person promising to appear.

D. If the alleged violator refuses to give his written promise to appear, the City Manager shall file a criminal complaint with the City of Hobbs Municipal Court.

E. Neither the City Manager nor the Supervisor nor the Animal Protection Officers shall have the authority to dismiss a citation.

6.04.060 Waiver

A. The City Manager shall have the authority to grant waivers.

B. Any person seeking a waiver pursuant to this ordinance shall file a written application with the City Manager. The written application shall contain information which describes the ordinance section for which a waiver is requested and the reason for the waiver.

C. Any person seeking a waiver shall indicate in his application to the City Manager the specific reason why he should not be required to meet the established ordinance criteria. The applicant shall also include a written statement that he has personally contacted all residents and owners of properties within 400 feet of the property in question and none oppose the waiver being requested.

D. In determining whether to grant or deny the application, the City Manager shall balance the hardship to the applicant, the community and other persons of not granting the waiver against the potential adverse impact on the animals and residents affected.

E. Waivers shall be granted by notice to the applicant and all residents and owners of properties within 400 feet and may include all necessary conditions, including time limits, on the permitted activity. The waiver shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the waiver shall terminate it and subject the person holding it to those provisions of this ordinance.

6.04.070 Fees, permits and licenses

A. Fees for licenses, services and permits required pursuant to this chapter shall be established through resolution adopted by the Commission.

B. A permit is not a property right.

C. The City Manager can refuse to issue, revoke, suspend or modify permits and impose conditions or limits upon the issuance of permits, including the declaration of moratoria regarding issuance of permits.

D. Permits expire on December 31st of each year, unless otherwise specifically provided in this Ordinance.

E. Permit fees paid after July 1st in initial year of purchase will be prorated by the month. Permit renewals shall not be prorated.

F. A late fee of \$50 or fifty percent (50%) of the permit fee, whichever is less, shall be charged for all permit renewals after January 31st of each year.

G. Permits are not refundable or transferable except as provided for in this Ordinance.

6.04.080 City animal protection facilities

A. There are established one or more City animal protection facilities which shall be located in such numbers and at such sites as shall be designated by the Commission.

B. The animal protection facilities shall be operated to provide service to the general public during the hours set by the City Manager.

6.04.090 Impounding animals

A. An Animal Protection Officer may take up and impound in any designated animal protection facility stray animals or livestock or any animal or livestock kept or maintained contrary to the requirements Hobbs Municipal Code.

B. The animal shall be confined in accordance with the City's regulations.

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

D. Reclaim of animal and payment of fees or presentment of valid permit does not waive prosecution for violations under this chapter.

E. The owner shall be required to pay a Reclaim Fee to reclaim any unsterilized dog or cat.

a) An unsterilized dog or cat reclaimed by its owner shall be released without assessment of Reclaim Fee upon presentment of a valid Hobby Breeder Permit plus payment of impound fees, boarding fees and other costs imposed by the City.

b) Reclaim fee shall be reduced by 50%, but shall not be less than \$100 for first time reclaim of an animal. This reduced fee is per household per calendar year.

c) Reclaim Fee will be waived for the second reclaim of a specific dog or cat within one calendar year. Full Reclaim fee will be charged for third and subsequent reclaim.

d) Reclaim Fee will be refunded to the owner of any dog or cat that is sterilized within thirty days after release. To obtain a refund the owner must provide a written certificate from a licensed veterinarian stating the animal has been neutered or spayed containing sufficient description to match reclaimed animal.

e) Owner may pay sterilization fee in lieu of Reclaim Fee to have dog or cat spay or neutered by City prior to release.

f) Canine hybrid will not be released unsterilized.

g) Owner must provide proof that they possess a current City license (or proof of non-residency) and rabies vaccination for the animal.

F. A sterilized dog with current rabies vaccination, current City license, and a microchip may be reclaimed without owner being cited for running at large once each calendar year. Owner shall be responsible for impound and boarding fees.

G. Any animal which is not reclaimed becomes the property of the City and may be placed for adoption or humanely destroyed in accordance with City's policy and procedures.

H. The Animal Protection Department may require inspection of enclosures for livestock prior to reclaim.

I. The City Manager is hereby authorized to place for adoption unclaimed livestock that has been impounded by the City and to execute adoption papers to the purchaser at the end of a 10-day waiting period.

a) Adoption of large livestock may be done after submitting a sealed bid to the Animal Protection Department.

b) Adoption of small livestock may be done after paying an adoption fee to the Animal Protection Department.

J. The Supervisor shall maintain, for a reasonable period of time or as required by law, a record of all animals impounded. At least the following information shall be included:

- a) complete description and picture of the animal;
- b) manner and date of its acquisition;
- c) date, manner, and place of impoundment;
- d) impoundment number;
- e) date, manner, and description of final disposition

K. Owner relinquishing an animal shall be required to complete an owner's release at the time of impoundment.

L. An Animal Protection Officer may take possession of a stray animal not wearing a current rabies tag, if required, who is deemed critically injured or critically ill for euthanizing. A report must be filed with the City Manager.

M. Whenever the City Manager finds that any animal is or will be without adequate care because of injury, illness, incarceration or other absence of the owner or person responsible for the care of such animal, the City Manager may take up such animal for protective care. The owner of the animal may reclaim the animal after paying all required fees and costs imposed by the City. If the animal is unclaimed at the end of the protective custody period, the animal will become the property of the City and may be placed for adoption, be humanely destroyed or otherwise disposed of by the City.

State law references: Sterilization agreement and sterilization deposit required, NMSA 1978, § 77-1-20 (1993).

6.04.100 Seizure and Disposition of Animals

A. A Peace Officer or Animal Protection Officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court, or the municipal court for a warrant to search for and seize an animal or animals.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the City.

C. The officer seizing animals under the warrant shall give a copy of the affidavit for the search warrant, the search warrant, and a copy of the inventory of the animal or animals seized to the person from whose possession or premises the animals were taken.

D. If the owner of the animal cannot be located or cannot be determined, a copy of the affidavit for the search warrant, the search warrant, and the inventory of the animals

seized shall be conspicuously posted at the place where the animals were seized at the time the seizure occurs.

E. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

F. At the option and expense of the owner, the seized animals may be examined by a licensed veterinarian of the owner's choice.

G. If the court finds that the seized animal is not being cruelly treated, and the animal's owner is able to adequately provide for the animal in a manner consistent with this ordinance, the court shall return the animal to its owner.

H. If the court finds that the seized animal is being cruelly treated or that the animal's owner is unable to adequately provide for the animal in a manner consistent with this ordinance; the court shall hold a hearing to determine the disposition of the animal.

I. Upon conviction, the court may place the animal for adoption with the City Animal Adoption Center program or provide for humane destruction of the animal.

J. Upon conviction, the defendant shall be liable for the cost of boarding the animal and all necessary veterinary examinations and care provided to the animal.

K. Any person with a conviction for cruelty to animals cannot own, possess, harbor, keep or have custody of any animal or allow, cause, or permit any animal to be harbored or kept on his property within the City limits. Animal Protection Officers shall immediately remove any animal found to be harbored or kept for any reason upon said person's property. A seized animal will be handled pursuant to Sec. 6.04.090 of this chapter titled Impounding Animals.

L. In the absence of a conviction, the City shall bear the cost of boarding the animal and all necessary veterinary examinations and care during the pendency of the proceedings.

M. Cruelty to animals

a) It is unlawful for a person to recklessly, willfully or maliciously kill, maim, disfigure or torture; beat with a stick, chain, club or other object; mutilate, burn or scald with any substance, overwork, torment, harass or otherwise cruelly set upon any animal, except that reasonable force may be used to drive off vicious, dangerous or trespassing animals.

b) It is unlawful for a person to fail to provide necessary sustenance, fail to provide necessary basic or emergency medical care, maintain an animal in an enclosed environment without adequate provisions to prevent pain or suffering, and perform procedures such as ear-cropping, de-barking, tail docking on an

animal, or otherwise endanger an animal's well-being. Procedures completed by a licensed veterinarian in accordance to their standard practices shall not be considered cruelty.

Cross Reference: State law reference, Seizure of Animals, NMSA 1978, § 30-18-1.1 (1999).

6.04.110 Retention of strays or owner-surrendered animals

A. No person shall, without the knowledge and consent of the owner, hold or retain possession of any animal for more than 24 hours without first reporting the possession of the animal to the Animal Protection Department.

a) The report shall contain the person's name and address, a true and complete statement of the circumstances under which he took up the animal, 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 Protection Officer upon demand.

B. Duly incorporated humane societies or the rescue arms of accredited dog and cat clubs or horse organizations capable of providing proper confinement, shelter, and care for stray, lost or owner-surrendered animals shall be allowed to assume the care of such animals.

a) The owner of a stray animal wearing a rabies tag or other form of identification shall be notified that the animal has been impounded.

b) If the owner is not located within three working days the society may assume responsibility for finding the animal a new home.

6.04.120 General provisions

A. No person shall operate a hobby breeder site, shelter, refuge or professional animal establishment, without a valid permit. A person may obtain an annual permit under the following conditions:

a) Payment of an annual permit fee at the office of the Animal Protection Department. Failure to renew the permit within 30 days of the expiration date shall result in the assessment of a penalty fee in addition to the cost of the permit.

b) The permit application shall contain the following information at a minimum:

- 1) Name of applicant/organization;
- 2) Address of applicant/organization;
- 3) Telephone number of applicant/organization;

- 4) Federal Tax Identification Number (not applicable to hobby breeder);
 - 5) The location where the animals will be kept;
 - 6) Maximum number of animals expected to be kept on site;
 - 7) Plot plan of location showing placement and sizing of kennel area and runs;
 - 8) The City Manager may require such other information as is deemed necessary in order to determine whether to approve or deny a permit under this article.
- c) Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection on an annual basis or upon reasonable notice. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.
- d) Kennel area facilities shall be structurally sound and constructed of nontoxic materials. Interior floors shall be smooth, easily cleanable construction and impervious to water. The premises shall be kept clean, sanitary and in good repair in a manner which will protect animals from disease and injury.
- e) Animals maintained in pens, cages or runs for periods exceeding 24 hours shall be provided with adequate space to prevent overcrowding and to maintain normal exercise according to species. Such cages holding cats must contain a litter box.
- f) Permit shall be posted in a conspicuous place on the premises.
- g) Permits are not transferable.
- h) Adequate weatherproof housing shall be provided in all permitted premises with proper ventilation and temperature, and sufficient lighting and shade.
- i) Outside housing shall protect animals from weather that may be detrimental to the health of the animals.
- j) Restraint of animals shall be accomplished by adequate pens, cages, runs or fencing maintained at all times to contain the animals.
- k) Provisions shall be made for the removal and proper disposal of animal and food waste, soiled bedding, dead animals and debris. Animals shall be removed from cages and protected from water and cleaning agents during cleaning. Disposal facilities shall be operated in a manner which will minimize vermin infestation, odors and disease. Adequate drainage shall be maintained.
- l) Excessive and night-time noise shall be eliminated.

- m) Unsterilized adult animals shall be segregated by sex when in mating season, except where otherwise indicated for health, welfare or breeding purposes. Animals shall be housed in compatible groups.
- n) Vicious, diseased or injured animals and animals that have bitten a person shall be individually caged.
- o) Animals shall be provided with clean, fresh, sufficient and wholesome food and water. Food and water containers shall be kept clean.
- p) Sanitary, pest-free storage of food and bedding shall be provided.
- q) Each animal shall be observed daily by the person in charge. Programs for disease control and prevention shall be maintained and available for examination by an Animal Protection Officer. Sick, diseased, injured, lame or blind animals shall be provided with appropriate veterinary care. Humane euthanasia will be provided when necessary in accordance with New Mexico Administrative Code, Title 16, Chapter 24, Parts 1 through 5. The person in charge who suspects an animal of being rabid shall immediately notify the City Manager and segregate the animal.
- r) Every dog or cat offered for sale, adoption, barter, to be given away or any other transfer or conveyance shall have been given age appropriate vaccinations by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the recipient at the time of transfer.

6.04.130 Shelter-Refuge-Professional Animal Permit and Hobby Breeder Permit

A. The number of adult dogs or cats, or any combination thereof, which a hobby breeder site, may keep is established by the following factors:

- a) The area of the permitted hobby breeder site shall be limited to ten percent of the total area of the premises.
- b) Within the kennel area of a hobby breeder site, 75 square feet of area shall be provided for each dog weighing less than 30 pounds; 100 square feet for each dog weighing between 30 and 59 pounds, 125 square feet per dog over 60 pounds, and 25 square feet of space per cat excluding the area occupied by the litter box.
- c) In the kennel area the animal must be able to stand and walk freely and have room for shelter (for outdoor facilities), food, water, and litter boxes for cats.

B. The number of adult dogs or cats, or any combination thereof, which a shelter, refuge, professional animal site may keep is established by the following factors:

- a) The kennel area must provide at least 75 square feet of area for each dog weighing less than 30 pounds; 100 square feet for each dog weighing between 30 and 59 pounds, 125 square feet per dog over 60 pounds, and 25 square feet of space per cat excluding the area occupied by the litter box.

b) In the kennel area the animal must be able to stand and walk freely and have room for shelter (for outdoor facilities), food, water, and litter boxes for cats.

c) A record shall be kept of animal inventory, disposition, and inoculations and shall be available for examination by an Animal Protection Officer.

C. Hobby breeders must continue to care for or otherwise provide for adoption, rescue or some other type of sanctuary for animals no longer being used for breeding. Site records must reflect compliance with this provision.

6.04.140 Pet Store

A. Pet Stores shall not sell dogs, canine hybrids or cats but may sell other living creatures including, but not limited to, fish, birds, rodents, insects, arachnids, reptiles and other permissible exotic animals.

B. No Pet Store shall conduct business in the City without a Shelter-Refuge-Professional Animal Site Permit.

C. Applicant for a permit must have a valid New Mexico Tax ID Number and a City business registration.

D. Animals must be kept and maintained in a humane manner with adequate food, water and shelter. Animals must be housed and displayed in such a way to provide adequate enclosure space based on the size and habitat requirements of the animal.

E. No permit holder may sell or offer for sale any animal from a mobile facility or at a site away from the permitted site without obtaining a mobile business registration from the City Clerk.

F. A permit holder shall be liable for the medical costs including medicine, up to the amount received for the sale of the animal, for any animal that is diagnosed as sick by a veterinarian qualified for the species within one week from the date of sale.

a) Permit holder shall reimburse purchaser the costs associated with the sick animal.

b) Purchaser shall be allowed to keep the animal.

c) Permit holder or Purchaser may appeal to the City Manager if there is a dispute regarding the fact or the illness or the amount of the charges.

G. Permit holder shall keep thorough and accurate records for each animal sold. Records shall be kept for three years. Records shall be made available for inspection upon demand by the City Manager. Records shall include, but are not limited to:

a) Date of sale

b) Purchaser's name, address and telephone number

c) Description and picture of animal

d) Origin of animal

H. Animals with known or suspected communicable diseases shall be isolated, as appropriate, and treated as soon as possible.

I. The daily use of antibiotics for preventative purposes, and not to treat a specific illness or condition, is prohibited whether administered in food, water or by any other method.

6.04.150 Guard Dog Site

A. A guard dog may be used at commercial property only.

B. No person shall use a guard dog without having a New Mexico Tax ID number and a Hobbs Business Registration.

C. Owner of unsterilized guard dog must have a Hobby Breeder Permit.

D. A guard dog shall not be used for property in a residential neighborhood or within 250 feet of a school.

E. The area where the guard dog is to be used shall be secured in such a manner as to prevent its escape.

a) The outside area where the guard dog is on duty must be enclosed by a secure fence at least six feet in height with a 45 degree angled top which extends back into the enclosure. Such extension shall not be included in the measurement of the fence height and shall not be made of barbed wire or other similar material which would harm the dog. Enclosure shall be designed effectively contain the animal at all times.

b) The doors, windows, and all other openings to the outside of a building in which a guard dog is on duty shall be secured to prevent its escape.

F. The property using a guard dog shall be posted with warning signs at least 24 x 12 inches with 3 inch letters.

a) The warning signs shall state "guard dog" and "guardia" and shall show a picture of an aggressive dog.

b) The warning signs shall be posted not more than 50 feet apart on the exterior of the fences or walls surrounding the property and shall be posted at all exterior corners of the site and at every entrance to the site.

G. The escape of a guard dog from a Guard Dog Site is a violation of this section and can constitute a basis for seizure of the dog.

H. A guard dog shall have a current rabies tag and a valid license tag securely affixed to its collar or harness.

I. If the City Manager determines it is necessary to control noise at the Guard Dog Site, the City Manager may require the owner of the site or owner of the guard dog to construct a barrier which breaks the guard dog's line of site to the exterior and adequately buffers the noise.

J. Vehicles used to transport guard dogs shall be secured so the public is protected from injury, shall be constructed or modified to ensure that the guard dog is transported in a safe and humane manner that does not violate this Ordinance, and shall be posted with warning signs on each side of the vehicle.

K. No breeding of animals is allowed at a guard dog site.

6.04.160 Litter Permit

A. An owner who intentionally or unintentionally breeds a dog or cat and who does not have a current Shelter-Refuge-Professional Animal Permit or Hobby Breeder Permit shall purchase a Litter Permit for each litter. A female dog or cat shall have no more than one (1) litter and each household shall be limited to no more than four (4) litters in any calendar year. A Litter Permit will not be issued and owner will be in violation of this section, if found to have had a female dog or cat with more than one (1) litter or more than four (4) litters in the household in a calendar year.

B. The Litter Permit application shall contain the following information at a minimum:

- a) Name of applicant
- b) Address of applicant
- c) Telephone number of applicant
- d) Description and picture of female animal
- e) The City Manager may require such other information as is deemed necessary in order to determine whether to approve or deny a license under this article.

C. Litter Permit is good for six (6) months from date of issue and must be obtained no later than one week after the birth of the litter.

D. The owner shall not advertise, barter for, sell, or give away any puppy or kitten unless the applicable permit number is displayed legibly in all advertisements. The owner shall furnish the Litter Permit number to any potential recipient upon request. Failure to list permit number or advertising without prior purchase of permit is a violation of this section.

E. Puppies and kittens can only be bartered for, sold, given away or other transfer or conveyance from the applicant's address as listed on the Litter Permit. Puppies or kittens being bartered for, sold, given away or other transfer or conveyance on public or commercial property even with the property owner's permission are in violation of this ordinance.

F. Every dog or cat offered for sale, barter, given away, adopted or any other transfer or conveyance will have been given age appropriate vaccinations by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the recipient at the time of transfer.

6.04.170 Reduced cost spay and neuter program

The City of Hobbs has a targeted dog or cat spay and neuter program aimed at assisting those citizens most in need: the elderly, disabled, or very low income.

A. Participants must meet one of following requirements (income information is subject to verification):

- a) Elderly (70 or more years of age);
- b) Disabled (qualify for Social Security disability income payments); or
- c) Low income (eligible for LIHEAP).

B. Cost to participants required pursuant to this section shall be established and adopted through resolution adopted by the Commission.

C. Spay and neuter program includes the surgery, vaccinations (FVRCP & Rabies/cat or DHLPP & Rabies/dog), one night's hospitalization, and return visit for suture removal, if needed.

D. There shall be a charge to participants who fail to keep an appointment or do not provide four business days notice to cancel an appointment. This charge shall be established and adopted through resolution.

E. Minimum age of dog or cat at time of surgery is 3 months.

F. Dogs must be restrained on a leash and cats must be in a carrier upon arrival at the Hobbs Animal Adoption Center.

G. If the animal needs to be treated for flea and tick infestation prior to surgery, the additional days of care will be charged the "Boarding Fee" rate.

H. City Manager reserves the right to postpone surgery or refuse to perform surgery if the animal is not healthy enough to undergo surgery.

6.04.180 Discount spay or neuter certificates

A. Animal Protection Department shall make available to citizens of Hobbs a certificate to spay or neuter one cat or dog which may be used at any veterinary clinic accepting such certificate.

B. Certificate shall be limited to one per household per year based on annual funding.

C. Certificate shall expire 60 days after issue and shall not be renewed.

D. Proof of City residency is required. Acceptable proof includes, but is not limited to:

- a) Current utility bill showing service address within Hobbs city limits
- b) Voter registration card showing Hobbs address
- c) Written statement from a City Commissioner verifying residency within their district

E. Proof of current rabies vaccination and valid City License is required for dog or cat to be sterilized.

F. Certificate holder is responsible for contacting veterinary clinic to arrange for surgery.

G. Certificate holder is liable to veterinary clinic for all charges and services in excess of face value of certificate.

6.04.190 Adoption of dogs and cats

A. No dog or cat over the age of three months shall be adopted to a forever home unless it has been spayed or neutered.

B. Persons adopting a dog or cat under three months of age shall sign an agreement to return the animal to the adoption center at a set date for sterilization or before date for sterilization, provide proof the animal has been sterilized by a licensed veterinarian. Proof must include a picture and clearly describe the animal.

C. Failure to return animal for sterilization at the adoption center or to provide proof animal has been sterilized is a violation of this Chapter.

6.04.200 Animals biting persons

A. The owner of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Animal Protection Department within 24 hours of the occurrence. The owner of an animal that bites a person shall surrender said animal to an Animal Protection Officer if the officer deems it necessary to impound said animal for a period of observation.

B. A physician who renders professional treatment to a person bitten by an animal shall report to the City Manager that he has rendered professional treatment within 24 hours of his first professional attendance. The physician shall report the name and address of the person bitten as well as the type and location of the bite. The physician shall report the name and address of the owner of the animal that inflicted the bite, if known and any other facts or details that may assist the Animal Protection Officer in ascertaining the immunization status of the animal.

C. An animal that bites a person shall be confined and observed for a period of ten (10) days from the date of the bite at the animal adoption center, a veterinary hospital or an approved kennel. However, if the animal has a current vaccination for rabies, the City Manager may permit quarantine of such animal at the owner's home. Home confinement shall not be permitted unless the premises have been inspected and approved for such purpose by the Animal Protection Officer. If observance of the animal is denied or prevented, the animal shall immediately be confined at the animal adoption center for the remainder of the quarantine period. The owner of the animal shall bear the cost of confinement. The owner of the animal shall be required to enter into an indemnity agreement on a form approved and prescribed by the City Manager for such home confinement.

D. If the animal shows signs of sickness, abnormal behavior, or if the animal escapes confinement, the person shall immediately notify the Animal Protection Department. The person having custody of an animal that dies during the confinement period shall notify the Animal Protection Department and surrender the carcass of the animal to an Animal Protection Officer.

E. If an officer deems it necessary to impound an animal for observation for violation of the above conditions and/or severity of the bite, the owner cannot remove the animal from observation until the observation period is complete. The owner shall bear the cost of confinement.

F. The owner of any animal over 3 months of age that has bitten a person shall be required to pay the Reclaim Fee, sterilization fee or provide proof of sterilization before the animal will be released from impound restrictions.

G. It is unlawful for a person to keep an animal known to have bitten any person on two separate incidents. The owner has a duty to destroy said animal humanely or surrender such an animal to the Animal Protection Department for proper humane euthanizing upon the order of the court. This does not include an animal which bites, attacks, or injures a person unlawfully upon its owner's premise.

6.04.210 Animal license

A. It is unlawful for any person to own or harbor a dog, canine hybrid or cat over the age of three months without obtaining a license for such animal. Persons who are not City residents and who keep such an animal in the City for less than 15 consecutive days or less than 30 days in a calendar year shall be exempt from this license requirement.

B. Applications for licenses shall be made on forms provided by the Animal Protection Department. All applications shall include the name of the legal owner of the animal, the mailing address and physical address of the owner. It is unlawful for any person to knowingly falsify information concerning animal ownership, the owner's address, animal description, or any other information required on the application.

C. Licenses shall be purchased for one year. A three-year license may be purchased if the animal has a current three-year rabies certificate, which is good for at least two-thirds of the licensing period. A one-year or three-year license must be renewed upon its expiration date. Failure to renew the license within 30 days of the expiration date shall result in the assessment of a penalty fee in addition to the cost of the license.

D. A current rabies certificate must be presented at the time of applying for a license.

E. Pet identification is mandatory. Identification techniques may be used that reflect technological advances, such as microchip technology, if owner information is obtainable by an Animal Protection Officer, Shelter, Veterinarian, or other appropriate organization. Methods of identification should include one of the following, but is not

limited to, microchip, license tags, identification tags, or tattoos applied by a veterinarian.

- a) If the only means of identification used is a tag, the current license tag shall be securely affixed to the collar or harness which shall be worn by the animal at all times unless the animal is being housed in a kennel or veterinary hospital, or appearing in a bona fide animal show, or is being trained; provided, however, that the person who is training the animal shall have in his personal possession a valid license tag for each animal and shall immediately display the license upon request by the Animal Protection Department.
 - b) Identification methods must be kept up to date and current with owner information.
- F. License tags shall not be transferred from animal to animal.
- G. The license fee shall not apply to qualified service animals. All other licensing requirements shall apply.
- H. Shelters facilities, refuge establishments and approved rescue foster homes are exempt.
- I. License expires December 31st of year purchased or third year as applicable.

6.04.210 Number of animals allowed

A. No person or household shall own, harbor or keep more than a combined total of five dogs or cats or any combination thereof over the age of three months without a valid Shelter-Refuge-Professional Animal Permit, Hobby Breeder Site Permit or Multiple Animal Site Permit.

- a) A household may have up to five dogs or cats or any combination thereof provided that all of the animals shall be sterilized.
 - 1) A medical waiver certificate may be acceptable in cases when the sterilization of an animal would pose a substantial threat to the health of the animal. The certificate shall be on official letterhead from a licensed veterinarian and shall contain the name and address of the owner of the animal, a description of the animal, the medical condition prohibiting sterilization, and the date upon which the animal may be sterilized. A medical waiver certificate must be resubmitted annually. This does not waive the Reclaim Fee.
- b) No person or household shall permit or allow the breeding of a dog or cat in the absence of a valid Hobby Breeder Site Permit or Litter Permit.
- c) No person or household may own, harbor or keep more than four canine hybrids, all of which must be sterilized, and such ownership of canine hybrids shall not result in a combined number of dogs, cats or canine hybrids totaling more than five.

6.04.230 Multiple Animal Site Permit

- A. Any person intending to exceed the maximum limit of dogs and cats in a household as defined in section 6.04.210 shall obtain a Multiple Animal Site Permit.
- B. All dogs and cats at a multiple animal site shall be licensed, spayed or neutered and have current vaccinations. The only exception would be an animal which is unable to be sterilized due to medical reasons. The owner must present valid veterinary certificate as defined in § 6.04.210(A)(a)(1) of this Chapter. This does not waive the Reclaim Fee.
- C. Fostering a pregnant dog or cat and her eventual offspring is a temporary exception to this rule.
- D. Adjoining property owners may petition the City Manager for a revocation, modification or suspension of a Multiple Animal Site Permit if the adjoining property owner is reasonably aggrieved by any effects of the multiple animal site.
- E. No person shall keep or maintain more than 15 dogs or cats or any combination thereof at any Multiple Animal Site Permit location, no more than two of which can be unsterilized.
- F. The area provided for the dogs and cats whether in secure runs, kennels or security perimeter fence must be as follows:
- a) 75 square feet of area shall be provided for each dog weighing less than 30 pounds;
 - b) 100 square feet for each dog weighing between 30 and 59 pounds;
 - c) 125 square feet per dog over 60 pounds; and
 - d) 25 square feet of space per cat excluding the area occupied by the litter box.
- G. Dogs may not be secured on a trolley system.
- H. Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection on an annual basis or upon reasonable notice. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances
- I. Rescue Animals shall be exempt from the fee for a Multiple Animal Site Permit while in the custody and care of the rescue organization or individual. Accurate records shall be kept and maintained by the rescue organization or individual, and a City of Hobbs Animal Protection Officer or other City official shall be permitted at any reasonable time to inspect such records and the rescue animals' living conditions.

6.04.240 Restraint of dogs

- A. A person owning or having charge, custody, care, or control over a dog, shall keep the dog upon his or her own premises by either a secure run or kennel area, an

enclosure surrounding the perimeter of the property, or on a trolley device, or any other acceptable means. Direct point chaining to stationary objects is prohibited. Any dog not deemed dangerous and not within a secure enclosure may be restrained by means of a trolley system, or a tether attached to a pulley on a cable run on its owner's property, subject to the following conditions:

- a) No canine hybrid can be tethered to a trolley system.
- b) Trolley system shall not be used for any dog that has not been sterilized.
- c) Only one dog per household may be tethered to a trolley system.
- d) There must be a swivel on each end of the tether to minimize tangling.
- e) The tether and cable run must be of adequate size and strength to effectively restrain the dog. The size and weight of the tether must not be excessive, as determined by the Animal Protection Officer, considering the age, size and health of the dog.
- f) The cable run must be at least ten (10) feet in length and mounted either at ground level or at least four (4) feet above ground level.
- g) The trolley system must be designed to prevent the dog from being within four (4) feet of the property boundary.
- h) A dog attached to a trolley system shall be surrounded by a barrier on each side adjoining a public access. The barrier shall be sufficient to prevent children from accidentally coming into contact with the dog.
- i) The tether must be at least ten (10) feet in length unless such length allows the dog to move within four (4) feet of the legal boundary of the property, in which case the tether shall be no less than eight (8) feet in length. If the size of the property will not allow a tether of no less than eight (8) feet, a trolley system shall not be used.
- j) The tether must be affixed to the dog by use of a non-abrasive, comfortably fitted harness. Prong-type, pinch-type, or choke collars shall not be used.
- k) The device must be fastened so that the dog can sit, walk, and lie down comfortably, and must be unobstructed by objects that may cause the device or dog to become entangled or strangled.
- l) The dog must have easy access to adequate shelter, shade, food, and potable water.
- m) The area where the dog is confined must be kept free of garbage and other debris that might endanger the animal's health or safety. Feces shall be cleaned up daily.
- n) The area where the dog is confined must be kept free of insect infestation, such as anthills, wasps' nests, and infestations of fleas, ticks or maggots.

B. Any dog deemed dangerous shall be confined as defined in Chapter 6.05 of this Ordinance, but does not include chaining, restraining, or otherwise affixing the animal to a stationary object.

C. The use of a crate is prohibited as a means of outdoor confinement.

D. Secure run or kennel area must provide, as a minimum 75 square feet of area for each dog weighing less than 30 pounds; 100 square feet for each dog weighing between 30 and 59 pounds, 125 square feet per dog over 60 pounds.

E. A dog is permitted on the street and in other public places only if on a secure leash not exceeding six feet in length. Longer retractable leashes may be used, provided the person with the dog is capable of controlling the dog. All other animals must be secured in a fashion acceptable for the species of animal. A person physically capable of controlling and restraining the animal must exercise immediate custody. This section does not apply when an animal is participating in a bona fide animal show authorized by the City or appropriate authorities.

F. Nothing in this section shall be construed as allowing any animal under physical restraint to commit any act defined as unlawful in this chapter.

G. A person who uses electric or invisible fencing designed to confine an animal to his property must clearly post a notice in two separate locations upon the property that such a device is in use.

State law references: Authority to prohibit the running at large of animals, NMSA 1978, §§ 3-17-1 (1993), 3-18-3(A)(2) (1971), 77-1-12 (1979).

6.04.250 Vaccinations

A. It is the duty of a person owning or keeping a dog or cat over the age of three months to have the animal vaccinated against rabies as prescribed by NMSA 1978, § 77-1-3 (1979). The City Manager may require that other animals have annual rabies vaccinations.

B. The veterinarian administering anti-rabies vaccines to any animal shall issue the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the name and address of the owner of the animal, a description of the animal vaccinated, the date of vaccination, and the date immunity expires.

C. The veterinarian shall also furnish the owner or keeper with a metal tag bearing the certificate number. A current rabies tag shall be affixed by the owner or keeper to a collar or harness worn by the animal at all times unless the animal is being kept in an approved kennel or veterinary hospital, is being trained by a professional trainer or is appearing in an approved show.

D. It is unlawful for the owner of any dog or cat or any other member of the canine or feline family to fail to exhibit its certificate of vaccination upon demand by the City Manager. This subsection does not apply to any animal under control of the shelters.

E. For licensing purposes a medical waiver certificate may be acceptable in cases when the rabies vaccination of an animal would pose a substantial threat to the health

of the animal. The certificate shall be on official letterhead from a licensed veterinarian and shall contain the name and address of the owner of the animal, a description of the animal, the medical condition prohibiting vaccination, and the date upon which a vaccination may be given. A medical waiver certificate must be resubmitted annually.

Cross references: Health and Sanitation, Ch. 42. State law reference Rabies Control Generally, NMSA 1978, §§ 77-1-5 (1973), 77-1-6 (1979), 77-1-10 (1979).

6.04.260 Abandonment

It is unlawful for a person to abandon an animal. Abandonment does not apply to the trap, neuter and return (TNR) of feral cats. A person or organization managing un-owned cats by trap, neuter and return is not deemed the owner, keeper, holder or possessor of such cats.

6.04.270 Admission of qualified assistance animals to public places

Notwithstanding any other provision of law, a qualified assistance animal shall be admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters; provided that the qualified assistance animal is under the control of a person with a disability or a trainer of assistance animals. No person shall be required to pay any additional charges for his qualified assistance animal, but shall be liable for any damage done by his qualified assistance animal.

State law references: Similar Provisions, Assistance Animal Act, NMSA 1978, §§ 28-11-1.1 through 28-11-4 (2005).

6.04.280 Animals disturbing the peace

A. It is unlawful for a person to allow an animal to persistently or continuously bark, howl or make noise common to their species or otherwise disturb the peace and quiet of inhabitants of the City. Persistent, continuous or loud intermittent noise between the hours of 9:00 pm and 7:00 am which can be heard more than fifty (50) feet from the source of the noise is prima facie evidence of violation of this subsection.

B. It is unlawful to keep or maintain an animal in such an unclean or unsanitary manner that it disturbs others by noxious or offensive odors.

6.04.290 Animals killing or injuring livestock or protected wildlife

A. It is unlawful for a person to keep an animal known to have killed or injured livestock or protected wildlife. The owner has a duty to destroy said animal humanely or surrender such an animal to the Animal Protection Department for proper humane euthanizing upon the order of the court.

B. An owner of livestock shall have the right to kill an animal that has injured or killed livestock or protected wildlife while it is upon property controlled by the owner of the livestock.

6.04.300 Dogs or livestock on unenclosed properties

It is unlawful for a person to harbor, tether, stake out, or herd a dog or livestock on an unenclosed premise in such a manner that may allow the animal to go beyond the property line.

6.04.310 Animal poisoning

A. It is unlawful for a person to make accessible to any animal, with the intent to cause harm or death, any substance which has been treated or prepared with a harmful poisonous substance.

B. This section does not apply to placement of such substance(s) in order to control vermin of significance to the public health.

6.04.320 Dogs or livestock running at large

A. It is unlawful for a person to allow or permit any dog or livestock to run at large in or on any alley, street, sidewalk, vacant lot, public property, other unenclosed place in the City, or private property without the permission of the property owner.

B. A dog or livestock permitted to run at large in violation of this section is declared to be a nuisance and a menace to the public health and safety. Such animal may be taken up and impounded. An Animal Protection Officer may go upon private property in pursuit of an animal which is running at large unless permission to make such pursuit is explicitly refused by the occupant. An officer may not enter a private building or residence in pursuit of an animal.

C. A working dog performing such acts as herding or search and rescue that is under the control and supervision of the owner or handler shall not be considered as unleashed while performing its duties. A hunting, obedience, tracking or show dog that is under the control and supervision of the owner or handler shall not be considered as unleashed while performing in those capacities.

D. It is unlawful for an owner, manager, agent, or governing board of any multiple dwelling unit, including mobile home parks and gated communities, to permit any animal to run at large upon the common areas of the multiple dwelling unit.

6.04.330 Injury to animals by motorists

Every operator of a motor or self-propelled vehicle upon the streets and ways of the City shall immediately upon injuring, striking, maiming or running down any animal provide immediate notification to the Animal Protection Department, furnishing sufficient facts relative to the incident. Such animal shall be deemed an uncared for animal within the meaning of section 6.04.090(K) of this chapter.

6.04.340 Animals transported in vehicles

Animals must be kept safe during transport.

A. Pickup Trucks. Animals that are transported in the bed of a pickup truck must be protected from extreme temperatures and provided with a non-metal surface to sit or stand on.

a) Crate. If an animal is put in a crate or other enclosure, the crate or enclosure must be securely fastened to the bed or sides of the truck so that the crate or enclosure cannot, slide, turn over or fall out.

b) Protection from weather. No animal shall be left in the bed of a truck whether in a crate or not when the weather is such that the animal will be exposed to extreme heat, cold or rain.

B. Cars, Vans and RVs. Animals riding inside vehicles that are not in crates or other enclosures must not be allowed access to a window opened wide enough for the animal to jump or fall. Animals riding in open topped or open sided vehicles must be secured in a humane manner to insure the animal cannot jump or fall.

C. Transporting more than one animal. In addition to all other regulations in this article, animals should never be overcrowded when being transported. If the animals are crated or kept in any enclosure, they may be allowed to share a crate but each animal should be able to stand up, move around, lie down and stretch out naturally. If crates or enclosures are stacked, they must be attached securely to prevent the crates or enclosures from falling or turning over. If crates or other enclosures are stacked, the crates or enclosures must have solid bottoms to prevent urine or feces from passing between crates and enclosures.

D. No person shall intentionally, knowingly or recklessly leave an animal unattended in a closed vehicle for any length of time without providing adequate ventilation to prevent the temperature in the vehicle from rising high enough such that any reasonable person would know that the animal would suffer from heat exposure. An animal left in a closed vehicle without the interior of the vehicle being air conditioned when the ambient temperature is over 80 degrees, shall be prima facie evidence of a violation of this chapter. If the City Manager determines that an animal in a vehicle is in immediate danger, the City Manager or police officer may enter the vehicle by whatever means necessary, without being liable to the owner of the vehicle for any damage, and seize the animal. The animal's owner shall be responsible for all expenses related to the removal of the animal, emergency veterinary treatment and impoundment. If the City Manager or police officer cannot determine who confined the animal, the registered owner of the vehicle will be cited.

6.04.350 Animal waste

It is unlawful to permit an animal to defecate on public or private property other than the property of the owner of the animal unless such animal waste is immediately removed and properly disposed of by the person having custody of the animal.

6.04.360 Breaking into animal protection facilities or vehicles

It is unlawful for a person to break into any pound, center, facility, kennel or vehicle wherein animals are impounded, or to in any manner remove or assist in the removal of any animal or equipment from such.

6.04.370 Care and maintenance

A. It is unlawful for a person to fail, refuse or neglect to provide any animal in his charge or custody such care and husbandry as to maintain the good health and well-being of the animal. Such care and husbandry shall include, but not be limited to, adequate food appropriate to species, potable water, adequate living area, professional veterinary care and necessary grooming to maintain good health and protection from extreme weather elements. Animals shall be provided adequate space to prevent overcrowding and to maintain normal exercise according to species, size and temperament.

B. Any animal habitually kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal and to provide proper ventilation, temperature and sufficient shade.

C. For livestock, it is unlawful for a person to fail, refuse and/or neglect to provide any livestock in his charge or custody with such care and husbandry as to maintain the good health and well-being of the animal. Such care and husbandry shall include, but not be limited to, nutritious food in sufficient quantity provided daily, fresh clean potable water available at all times, clean adequate space, necessary veterinary care, necessary hoof care, and a proper shelter or protection from weather.

6.04.380 Confinement of female dogs or cats in mating season

A. A person in control of a female dog or cat in mating season shall confine such dog or cat so as to prevent other dogs or cats from attacking or being attracted to such female animal, except for intentional breeding purposes.

B. It shall be unlawful to maintain a female dog or cat in mating season in any manner that creates a public nuisance.

6.04.390 Concealment of Animal

It is unlawful for any person to conceal any animal from the officers charged with the enforcement of this chapter.

6.04.400 Fights

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

- a) It is unlawful for any person to sell, receive, possess, transport, loan, or give away any animal fighting paraphernalia.
 - b) It is unlawful for any person to raise, train, condition, sell, receive, possess, transport, loan, or give away animals for fighting purposes whether or not the fight is to be conducted inside or outside the jurisdiction of the City of Hobbs.
 - c) No person shall provoke or entice an animal from the property of its owner for the purpose of engaging the animal in an animal fight.
- B. Nothing in this section shall prohibit a person from engaging in legal hunting practices as allowed by state wildlife authorities.

State law references: Dog Fighting and Cockfighting, NMSA 1978, §30-18-9 (2007).

6.04.410 Fowl; impounding or crating

It is unlawful for a person to confine any wild or domestic fowl or birds unless provisions are made by such person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than 12 hours. No person shall impound wild or domestic fowl or birds in a crate, box or other enclosure unless such fowl or bird is in a natural erect position unless such position causes injury or damage to the fowl or bird.

6.04.420 Interference with the City manager in the performance of his duties

- A. No person shall attack, assault or in any way threaten or interfere with the City Manager in the performance of the duties required by this chapter.
- B. No person shall conceal one's true name or identity or disguise oneself with the intent to obstruct due execution of the law or with the intent to intimidate, hinder or interrupt an Animal Protection Officer in the legal performance of his or her duties.
- C. No person shall interfere with or tamper with any equipment used by Animal Protection Officers, including release of animals contained in such equipment.
- D. No person shall engage in conduct that would agitate, obstruct, oppose, or distract an Animal Protection Officer in the legal performance of his or her duties.

6.04.430 Keeping a seriously sick or injured animal

- A. It is unlawful for a person to have, keep or harbor an animal which is seriously sick or injured, including starvation, without providing proper veterinary care.
- B. The City Manager may require the owner to provide a letter of health evaluation from a licensed veterinarian describing the condition of the animal and the treatment provided. The Animal Protection Department may evaluate the condition of an animal.
- C. In the absence of proper veterinary care, the City Manager may impound such a seriously sick or injured animal in accordance with the provisions of this chapter.

D. Any such animal impounded may be destroyed humanely or otherwise disposed of according to the normal procedures of the impound facility as soon thereafter as is conveniently possible.

6.04.440 Keeping domesticated livestock and fowl

A. It is unlawful to keep, harbor or maintain within the City limits any horses, mules, burros, cows, pigs, goats, sheep, swine and all other domesticated animals used in the production of food, fiber, or other products except as provided in Ordinance 1018 "Rural and Open Space Planning Districts".

B. It is unlawful to keep more than one fowl except as provided in Ordinance 1018 "Rural and Open Space Planning Districts".

6.04.450 Sale and display of animals

A. A person shall only sell, offer for sale, barter, give away or otherwise dispose of an animal at the physical address listed on the appropriate permit issued by the City Manager. The applicable permit number is to be displayed legibly in all advertisements and furnished to any potential recipient upon request. Shelters shall be allowed off-site adoption events, with permission of site owner and while preserving appropriate care and maintenance of animals.

B. No person shall offer for sale, sell, barter or give away turtles except in conformance with the appropriate federal regulations.

C. No person shall offer an animal as a prize, giveaway or award for a contest, game, sport or as an incentive to purchase merchandise.

D. Animal exhibits.

a) No person shall operate, conduct, or maintain a permanent or temporary commercial animal show, circus, animal exhibition, animal ride, petting zoo or carnival without first having obtained a permit from the Animal Protection Department. Conditions for permit approval include provisions for the humane care and treatment of the animals and the protection of public safety. Permits shall not be issued upon verification that within the preceding 12 months the applicant has been convicted of charges of animal cruelty, abuse, or neglect, or has violated the Federal Animal Welfare Act.

b) No person shall operate, conduct or maintain any animal exhibit under conditions that pose a danger to the public or the animals. Specific requirements shall be available upon request to the Animal Protection Department.

c) The following are exempt from the requirements of this section:

- 1) Individuals or groups holding a State of New Mexico regulated permit or a federally regulated permit.
- 2) Events sponsored by a municipal zoo or aquarium facility.
- 3) Competitive sporting events.

d) Persons involved in these exempt activities shall comply with all other applicable sections of this chapter.

E. The sale of live cats and dogs at pet stores is prohibited unless the store has an approved Shelter-Refuge-Professional Animal Permit.

6.04.460 Sterilization agreements/contracts

It shall be unlawful for a person to possess any unsterilized animal when such animal is required to be sterilized under the terms of any applicable sterilization agreement or contract originating from any municipal or non-profit shelter.

6.04.470 Unlawful use of rabies tag

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

6.04.480 Improper disposal of animals

Deceased animals shall be properly disposed of in accordance with this article. Following the death of an animal, the owner shall be responsible for removing the corpse immediately and disposing of the body by either private burial or taking the animal to the Hobbs Animal Adoption Center. It is unlawful to dispose of the body of any animal by dumping the corpse on public or private property, roads or rights-of-way.

6.04.490 Vicious or dangerous animals

A. It is unlawful for any person to keep or harbor a vicious animal. When an Animal Protection Officer has probable cause to believe that an animal is vicious, the officer may take up and impound the animal into protective custody awaiting appropriate court proceedings. Following judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this chapter, shall, in addition to any fine or imprisonment imposed for violation of this section, order the owner or keeper of such vicious animal to destroy it humanely or turn such animal over to the City Manager for destruction.

B. It shall be unlawful to maintain a dangerous animal in a manner which constitutes a threat to any person or other animal.

C. Any dog that is deemed dangerous by admission of owner or by court determination shall register the dog with Animal Protection Department by obtaining a Dangerous Dog Permit.

Chapter 6.05 Dangerous Dog

6.05.010 Short title

This chapter may be cited as the "Dangerous Dog Chapter".

6.05.020 Definitions

As used in the Dangerous Dog Chapter:

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

"Owner" means a person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of eighteen, that person's parent or guardian.

"Potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by one or more of the following behaviors:

- a) Causing an injury to a person or domestic animal that is less severe than a serious injury.
- b) Chasing or menacing a person or domestic animal in an aggressive manner and without provocation.
- c) Acting in a highly aggressive manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure or on a trolley system.

"Proper enclosure" means secure confinement indoors or outdoors in a kennel, pen or structure with secure sides and a secure top and bottom attached to the sides, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or otherwise tethering the animal.

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

6.05.030 Exceptions

A dog shall not be declared a dangerous or potentially dangerous dog if:

- a) The dog was used by a law enforcement official for legitimate law enforcement purposes.
- b) The threat, injury or damage was sustained by a person or domestic animal that was:
 - 1) trespassing upon premises occupied by the owner of the dog
 - 2) provoking, tormenting, abusing or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog
 - 3) committing or attempting to commit a crime
- c) Or the dog was:

- 1) responding to pain or injury
- 2) protecting itself or its offspring
- 3) protecting or defending a human being or domestic animal from attack or assault

6.05.040 Seizure of dog; petition to court

- A. If an Animal Protection Officer has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the Animal Protection Officer may apply to a court of competent jurisdiction in the City where the animal is located for a warrant to seize the animal.
- B. If an Animal Protection Officer has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the Animal Protection Officer may apply to a court of competent jurisdiction in the City where the animal is located for a warrant to seize the animal.
- C. After seizure, the Animal Protection Officer shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for maintaining a dangerous or potentially dangerous dog in this Chapter.
- D. After seizure:
- a) the owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for maintaining a dangerous or potentially dangerous dog pursuant to Section 6.05.050 of the Dangerous Dog Act; or
 - b) the Animal Protection Department may, within fourteen days after seizure of the dog, bring a petition in court seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within thirty days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to the owner.
- E. If the owner does not admit that the dog is dangerous or potentially dangerous and the Animal Protection Department does not bring a petition in court within fourteen days of seizure of the dog, the court shall immediately order the release of the dog to its owner.
- F. If the owner admits that the dog is dangerous and transfers ownership of the dog to the Animal Protection Department, the Department may humanely destroy the dog.
- G. A determination that a dog is not dangerous or potentially dangerous shall not prevent an Animal Protection Officer from making a subsequent application for seizure based on the dog's subsequent behavior.

6.05.050 Registration and handling requirements for dangerous and potentially dangerous dogs

A. Animal Protection Department shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes that:

- a) The owner is able to keep the dog under control at all times.
- b) A City license has been issued.
- c) The dog has a current rabies vaccination.
- d) The owner has a proper enclosure for the dog which shall be kept locked at all times when the vicious dog is within the structure.
- e) The owner has paid an annual fee, if applicable, established by the Animal Protection Department to register a potentially dangerous dog.
- f) The dog has been spayed or neutered.
- g) The dog has been implanted with a microchip containing owner identification information that is also provided to the Animal Protection Department.
- h) The owner has entered the dog in a socialization and behavior program approved or offered by the Animal Protection Department.

B. If a dog previously determined to be potentially dangerous has not exhibited any of the behaviors which define a potentially dangerous dog for thirty-six consecutive months, the owner may request the Animal Protection Department to lift the requirements for registration pursuant to this section. If the Animal Protection Department has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.

C. Animal Protection Department shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of paragraph A of this section, establishes that:

- a) The owner has paid an annual fee, if applicable, established by the City to register a dangerous dog;
- b) The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;
- c) The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;
- d) When the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times;
- e) The dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and

f) A clearly visible warning sign with a conspicuous warning symbol indicating that there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty feet, whichever is less.

D. Animal Protection Department may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to abide by the conditions for registration, confinement or handling set forth in this section.

6.05.060 Prohibited acts; penalties

A. It is unlawful for an owner of a dangerous or potentially dangerous dog to:

- a) Keep the dog without a valid certificate of registration.
- b) Violate the registration and handling requirements for the dog.
- c) Fail to notify the Animal Protection Department immediately upon:
 1. the escape of the dog
 2. an attack by the dog upon a human being or a domestic animal
 3. fail to notify the Animal Protection Department of the dog's death within five business days
 4. fail to notify the Animal Protection Department within twenty-four hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog
 5. fail to surrender the dog to an Animal Protection Officer for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety
 6. fail to comply with special handling or care requirements for the dog that a court has ordered

B. Whoever violates a provision of paragraph A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of the City of Hobbs Municipal Code.

State law references: Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to 77-1A-6 (2005).

Chapter 6.06

WILD ANIMALS; CANINE HYBRIDS; VIETNAMESE POTBELLIED PIGS

Sec. 6.06.010 Wild animals

A. It shall be unlawful for a person to own, harbor, keep or exhibit on any private or public property in the City any wild animal of a species that in its natural life is dangerous or ferocious. Such animals, though they may be trained and domesticated, remain a danger to others, and include:

- a) Wolves, foxes, coyotes, dingoes, and other members of the non-domestic canine families.
- b) Lions, pumas, panthers, mountain lions, wild cats, and other members of the non-domestic feline families.
- c) All bears (ursidae), including grizzly bears, black bears, brown bears, etc.
- d) Raccoons (procynnidae), including eastern raccoon, desert raccoon, ring tailed cat, etc.
- e) Primates (hominidae), including all non-human great apes other than qualified service animals.
- f) Skunks.
- g) Bats.
- h) Non-indigenous poisonous snakes.
- i) Alligators, crocodiles, caimans, or poisonous lizards.
- j) Venomous fish and piranha.
- k) Elephants (elephantidae).

B. This section shall not apply to municipal zoos and aquarium facilities, veterinary facilities, or individuals or organizations holding a State of New Mexico regulated permit or a federally regulated permit.

Sec. 6.06.020 Canine hybrids

A. No person shall purchase, sell, offer for sale, or advertise for sale any animal that is represented to be the offspring, cross, mix, or hybrid of a wolf or coyote.

B. No person shall possess a canine hybrid without a valid canine hybrid permit. A person may apply for such a permit under the following conditions:

- a) Submission of a permit application.

- b) Submission of written proof from a licensed veterinarian that all animals over the age of six months for which a permit is requested have been spayed or neutered.
 - c) All owners of permitted property shall grant reasonable access to permitted premises. Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.
 - d) Payment of the annual permit fee.
- C. A permit shall not be issued until the applicant provides an adequate physical enclosure that completely and effectively confines all animals to the property of the owner. An Animal Protection Officer shall determine the adequacy of the enclosure.
- a) A minimum livable area of 400 square feet must be provided for up to two canine hybrids, with an additional 100 square feet per animal for each additional hybrid. An exception to this subpart may be granted if the animal owner submits a written plan of adequate housing and exercise to the Animal Protection Department and such plan is approved by the department.
 - b) Permanent chaining or tethering may not be used as a method to contain a canine hybrid to the property of the owner. The canine hybrid must be contained with the use of a kennel, run or secure perimeter fencing.
- D. A canine hybrid permit will not be issued for the ownership of more than four canine hybrids.
- E. Each canine hybrid must wear a collar or harness displaying an identification tag bearing the name, address, and phone number of the owner at all times while it is on and off of the owner's premises. While off of the owner's premises the hybrid shall be on a secure leash not more than six feet in length and in the immediate custody of a person physically capable of controlling and restraining the animal.
- F. Nothing in this section shall relieve the holder of a permit from complying with all other applicable sections of this chapter.

6.06.030 Vietnamese Potbellied Pigs or potbellied pigs

- A. It is unlawful for any person to receive, purchase, own, maintain, harbor or keep Vietnamese potbellied pigs or potbellied pigs without first applying for and receiving from the City an exotic livestock permit to do so.
- B. It is unlawful to keep more than one Vietnamese potbellied pig or potbellied pig.
- C. The applicant must provide evidence of knowledge and facilities for the proper care and feeding of potbellied pigs. The City Manager is permitted to enter the permitted premises hereunder at any reasonable time for the purpose of inspection or reinspection to determine compliance with this section.

- D. The animal shall not be in excess of sixty-five (65) pounds in weight.
- E. All Vietnamese potbellied pigs or potbellied pigs must have received all necessary vaccinations, and a copy of vaccination certificates must be available at all times for inspection by an Animal Protection Officer. The name and address of attending veterinarian and all health certificates must be available at all times.
- F. It is unlawful for any keeper to allow Vietnamese potbellied pigs or potbellied pigs to be left outdoors unattended or not under restraint.
- G. The City Manager may deny, revoke or suspend a permit for failure to comply with this section.

Chapter 6.08
SPECIAL USE PERMIT FOR HORSE
RACETRACKS AND APPURTENANT USES

6.08.010 Requirements

- A. These provisions permit uses which are special because of the unusual nature, dimensions, frequency of occurrence, effect on surrounding property or other reasons.
- B. Special Use Permit is required for horse racetracks and appurtenant use areas that have been annexed.
- C. Application for Special Use Permit must:
 - a) Describe the proposed use in detail.
 - b) Have a plot plan showing location, dimensions of property, drainage, traffic flow, signage, and other specifications significant to the use.
 - c) Contain other information requested by the Planning Board.
- D. Application will be reviewed by Planning Board.
 - a) If approved or approved with conditions, the application and conditions shall be forwarded to the City Commission for final approval.
 - b) If denied, applicant may modify the application and re-submit to the Planning Board or appeal to the City Commission.
- E. Applicant shall be provided a copy of approved plan and/or conditions for approval.

Chapter 6.09
PENALTIES

6.09.010 Penalty

Except as provided in this chapter, violations of this chapter are punishable as provided in the City of Hobbs Municipal code.

6.09.020 Suspensions, revocations of permits

A. When the City manager discovers that a permitted premises is in violation of this chapter, he shall give notice of the violations to the permit holder, operator or person in charge by means of an inspection report or other written notice. The notification shall:

- a) Set forth each specific violation.
- b) Establish a specific and reasonable period of time for the correction of the violation.
- c) State that failure to comply with a notice issued in accordance with the provisions of this chapter may result in immediate suspension or revocation of the permit.
- d) State that an opportunity for appeal from a notice or inspection findings will be provided if a written request for a hearing is filed with the City Manager within five days of receipt of the notice.
- e) Notices under this section shall be deemed properly served and received when the original inspection report or other notice has been personally served on the person in charge, or sent by registered or certified mail to the last known address of the permit holder.
- f) Permits may be suspended for failure of the holder to comply with the requirements of this chapter or other applicable laws, ordinances or regulations. The suspension may be lifted when the City Manager determines the violations have been corrected.
- g) Permits may be revoked for serious or repeated violations of the requirements of this chapter, or for violation of other applicable laws, ordinances or regulations. A permit shall be revoked for one year. The permit shall be surrendered to the City Manager upon suspension or revocation.
 - 1) A person whose permit has been suspended may apply for an inspection of the premises for the purpose of reinstating the permit. If the applicant and the site are in compliance with the requirements of this chapter and all other applicable laws, ordinances and regulations, the permit shall be reinstated. The reinstated permit shall expire on the date of expiration of the previously-suspended permit.
 - 2) If an exotic or wild animal permit is suspended or revoked, all animals received, purchased, owned or kept under the authority of the

permit shall be surrendered to the City Manager for impoundment. After a period of at least seven days, if the violations of this chapter which resulted in suspension or revocation of the permit have not been corrected, the City Manager may sell or dispose of the animal(s) as provided in this chapter. The applicant may appeal the suspension or revocation in the manner provided in section 6.09.030 of this chapter.

6.09.030 Appeal procedures for permit denial, suspension or revocation

A. A person whose application for a permit or permit renewal has been approved on condition or denied and a permit holder, whose permit has been suspended or revoked, may submit to the City Manager a written request for a hearing. The written request must be received within five days of the applicant's receipt of the written notice from the City. The hearing shall be conducted within a reasonable time after the City Manager receives the request for a hearing.

B. Hearings shall be conducted by a hearing officer at a time and place designated by the City Manager and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time and place of the hearing shall be mailed to the applicant and the City Manager.

C. The applicant shall be afforded a fair hearing which provides the basic safeguards of due process which shall include:

a) The opportunity to examine before the hearing and, at the expense of the applicant, to copy all documents, records and regulations of the City Manager that are relevant to the hearing. Any document not made available by the City Manager, after written request by the applicant, may not be relied upon by the City Manager at the hearing.

b) The right to be represented by counsel or other persons chosen as his representative.

c) The right to present evidence and arguments in support of his appeal to controvert evidence relied on by the City Manager, and to confront and cross-examine all witnesses on whose testimony or information the City Manager relies.

d) A decision based solely and exclusively upon the facts presented at the hearing.

D. The hearing officer shall prepare a written report of his findings and decision within ten days after the hearing and shall provide copies to the parties.

E. A party who is aggrieved by the decision of the hearing officer may appeal to the City Commission.

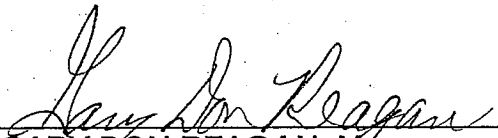
a) The notice of appeal shall be filed in the office of the City Clerk within fifteen (15) days after the written decision is issued. If notice is filed by mail, date of receipt by Clerk shall control timeliness of appeal.

- b) A copy of the appeal shall be forwarded by the City Clerk to the Animal Protection Department Supervisor.
- c) The Commission shall set a date for a hearing on the appeal as soon as practicable, but in any event within thirty (30) days of receipt of notice by the City Clerk.
- d) The Commission shall review the written findings and decision of the hearing officer, review the evidence for and against the decision and, if necessary, hear statements from the aggrieved party and the prevailing party.
- e) The Commission shall determine if the decision should be affirmed or rescinded.
- f) The decision of the Commission shall be final.

6.09.040 Severability clause

If any section, paragraph, sentence, clause, word or phrase of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this chapter. The commission hereby declares that it would have passed this chapter and each division, section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

PASSED, ADOPTED AND APPROVED this 2nd day of October, 2009, to become effective December 1, 2009.


GARY DON REAGAN, Mayor



ATTEST:


JAN FLETCHER, City Clerk