

Henry P. Roybal  
Commissioner, District 1

Anna Hansen  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Anna T. Hamilton  
Commissioner, District 4

Ed Moreno  
Commissioner, District 5

Katherine Miller  
County Manager

*Office of the County Attorney*

**MEMORANDUM**

**DATE:** January 11, 2017

**TO:** Board of County Commissioners

**FROM:** Rachel Brown, Deputy County Attorney *RB*  
Cristella Valdez, Assistant County Attorney *CV*

**RE:** First Public Hearing on an Ordinance Amending Ordinance No. 1991-6, the Santa Fe Animal Control Ordinance, to Increase Fees; Prohibit Fixed Point Tethering; Conform Rabies Vaccination Requirements to State Law and Regulations; Set Forth a Process for Revocation of Permits Issued; Incorporate the Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to -6; and Establish Penalty Provisions that Comport with State Law

---

On November 29, 2016, the Board of County Commissioners ("BCC") authorized publication of title and general summary of an ordinance ("Proposed Ordinance") that proposes to amend Ordinance No. 1991-6, which governs the licensing of animals, prohibited activities involving animals, and the administration of Animal Control Services. The amendments address the request the BCC made, by motion, on October 25, 2016, for the Sheriff's Department to propose amendments to Ordinance No. 1991-6 to prohibit chaining, increase fees, and bring the ordinance into compliance with State law.

Since publication of title and general summary, no public comments regarding the Proposed Ordinance have been received. However, some minor revisions to the Proposed Ordinance have been suggested by staff. The Proposed Ordinance with revisions is attached hereto as Exhibit A. Proposed revisions are noted using strikethroughs and underscoring. The proposed revisions are as follows:

## **Section 2.**

Animal Control Officer is the phrase defined and used to describe individuals appointed to that position throughout Ordinance 1991-6. Accordingly, for consistency the phrase "Animal Services Officer" has revised to "Animal Control Officer."

## **Section 4.**

An "or" has been inserted into Section 4 of the Proposed Ordinance. The BCC directed that the Proposed Ordinance incorporate provisions from Bernalillo County's animal control ordinance regarding fixed point tethering. Section 6-43 of Bernalillo County's Animal Care Ordinance, states that:

"Fixed point tethering of any companion animal to stationary objects is permitted in limited circumstances such as picnics or gatherings in a park or open space, for emergency purposes to permit an individual to render aid to a human or another animal and only when the owner is immediately present."

As written in Bernalillo County's ordinance, tethering for the rendering of aid can only be done in limited circumstances, such as picnics or gatherings in a park when an emergency occurs that requires the owner to render aid. It appears that this section is missing an "or" prior to "for emergency purposes." The addition of an "or" allows individuals to temporarily tether their dog while at picnics and gatherings when the owner is present or while rendering aid. The addition of a comma after "limited circumstances" and prior to "such as picnics or gatherings" clarifies the intent of the exemption.

## **Section 7.**

The Proposed Ordinance has been revised so that the final sentence of Section 7-2(A) of Ordinance 1991-6 will not be repealed. The final sentence of that section requires the permits for wild and exotic animals to be renewed annually, at the cost established in Appendix A. This provision should be preserved so that it is clear that the permit must be renewed and to establish the cost for renewal.

## **Section 8.**

The Article and Sections of Ordinance 1991-6 that are amended have been changed. The amendments will be to Article 10, Section 10-1 of Ordinance 1991-6 and not to Article 9, Section 9-1 of that Ordinance.

## **Section 11.**

The proper citation for the New Mexico statute governing the effective date of county ordinances has been added.

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2017 – \_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 1991-6, THE SANTA FE COUNTY ANIMAL CONTROL ORDINANCE, TO INCREASE FEES; PROHIBIT FIXED POINT TETHERING; CONFORM RABIES VACCINATION REQUIREMENTS TO STATE LAW AND REGULATIONS; SET FORTH A PROCESS FOR REVOCATION OF PERMITS ISSUED; INCORPORATE THE DANGEROUS DOG ACT, NMSA 1978, §§ 77-1A-1 to -6; AND ESTABLISH PENALTY PROVISIONS THAT COMPORT WITH STATE LAW**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 1991-6 IS HEREBY AMENDED AS FOLLOWS:**

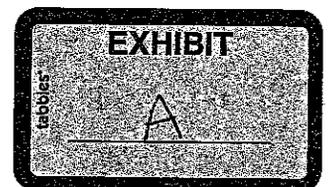
**Section 1.** Article 1, Section 1-2(T) is hereby repealed and replaced with the following:

“T. “vaccination” means the protection provided against rabies by inoculation with anti-rabies vaccine recognized and approved by the U.S. Department of Agriculture, Bureau of Animal Industry, and the State of New Mexico Department of Health pursuant to NMSA 1978, § 77-1-3 as amended.”

**Section 2.** Article 4, Section 4-1, is hereby repealed and replaced with the following:

“4-1 Rabies Vaccination

- A. Any owner of a dog, cat, or ferret over the age of three (3) months shall have the dog, cat, or ferret vaccinated as prescribed by NMSA 1978, Section 77-1-3 and New Mexico Department of Health regulations.
- B. Any owner of a dog, cat, or ferret over the age of three (3) months shall exhibit its certificate of vaccination issued by a licensed veterinarian administering the rabies vaccine upon demand by a Sheriff's Deputy or Animal Services Control Officer.
- C. Any owner of a dog, cat or ferret over the age of three (3) months shall securely confine the dog, cat, or ferret until it is vaccinated against rabies, which vaccination shall be administered within one week after entry into the County, unless the owner has a certificate of vaccination issued by a veterinarian licensed and practicing either within New Mexico or in another state or foreign country, and the vaccination conforms to the requirements of the State of



New Mexico and this Ordinance. A titer test is not an acceptable alternative to a rabies vaccination.”

**Section 3.** Article 5, Section 5-1, is hereby repealed and replaced with the following:

“5-1 Dogs Running at Large

A person owning or having charge, custody, care, or control over a dog, shall keep the dog upon his or her own premises within a secure enclosed pen, or in an area containing a fence or wall of sufficient height surrounding the perimeter of the property.”

**Section 4.** Article 5, Section 5-2(A), is repealed and replaced with the following:

“A. It shall be unlawful to tether a dog as a form of confinement. Fixed point tethering of any dog to stationary objects is permitted in limited circumstances, such as picnics or gatherings in a park or open space, or for emergency purposes to permit an individual to render aide to a human or another animal and only when the owner is immediately present.”

**Section 5.** Article 5, Section 5-4 is repealed and replaced with the following:

“5-4 Vicious Animals; Dangerous Dogs

- A. It is unlawful for any person to keep or harbor a known vicious animal in the County. Any attack by a vicious animal or any animal displaying traits of a vicious animal may be repelled by the use of reasonable force. After a judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this Ordinance, upon hearing of such complaint, may, in addition to any fine or imprisonment which may be imposed for violation hereof, order the Animal Control Officer to have such animal destroyed as set forth in Section 3-4 of this Ordinance.
- B. When an Animal Control Officer has probable cause to believe that a dog is dangerous or potentially dangerous and poses an imminent threat to public safety, the Animal Control Officer may apply for a warrant to seize the dog and petition the court for a declaration that the dog is dangerous or potentially dangerous pursuant to NMSA 1978, § 77-1A-4.
- C. Any owner of a dog declared by a court of competent jurisdiction to be a dangerous or potentially dangerous dog or is deemed dangerous or potentially dangerous by admission of the owner pursuant to the Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to -

6, shall comply with all the registration and handling requirements as set forth in NMSA 1978, §77-1A-5 and pay the registration fee set forth in Appendix A.”

**Section 6.** Article 6, Section 6-12(A) is repealed and replaced with the following:

“A. Three or more violations of any one or any combination of Section 6 offenses shall constitute an act of cruelty, punishable as set forth in Section 11-1 and Appendix A.”

**Section 7.** Article 7, Section 7-2 is hereby amended to ~~repeal the final sentence of that Section and replace it with~~ add the following as a final sentence to that Section:

“Revocation of a permit shall follow the procedures set forth in Section 10-1(G).”

**Section 8.** Article ~~10~~ 9, Section ~~10-1~~ 9-1, is amended to add the following:

“G. All revocations of permits issued pursuant to this Ordinance shall follow the procedures set forth below:

1. Notice of proposed revocation shall precede any permanent revocation of a permit issued under this Ordinance.
2. The notice of proposed revocation shall specify the following:
  - a. The specific violation or violations alleged, including dates and times of the alleged violation or violations, and any specific section or subsection of this Ordinance or state law that is alleged to have been violated;
  - b. A specific date by which the alleged violations shall be corrected to avoid further revocation proceedings, if the violation is of a nature that may be corrected;
  - c. A warning that failure to correct the violation or request a hearing shall result in revocation of the permit; and
  - d. Procedures for requesting a hearing regarding the alleged violation and proposed revocation of the permit.

3. If the period of time during which the permit holder was allowed to correct the violation passes without correction of the violation, and the permit holder has not requested a hearing as described in this Section, the Animal Control Division shall issue a notice of revocation. The revocation shall be effective thirty (30) days from service of the original notice of proposed revocation.
4. A permit holder may appeal the proposed revocation by requesting a hearing. The request for hearing shall be made within five (5) days of service of the notice of proposed revocation. The request for hearing shall be in writing, sent by certified mail, return receipt requested. The request for hearing shall briefly state the reasons why the permit holder believes the revocation is not justified under the circumstances.
5. The Animal Control Division shall give written notice of the date, time, and place of the hearing to the permit holder. The date of the hearing shall be not less than ten (10) days or more than thirty (30) days from the date of service of the notice of the hearing. The Animal Control Division may designate a County employee other than one employed in the Sheriff's Department or any other suitable individual to be the hearing officer.
6. The hearing officer may uphold, modify, or reverse the permit revocation. In conducting the hearing, the hearing officer shall not be limited by formal rules of evidence; evidence may be considered which is of a type upon which responsible people are accustomed to rely in the conduct of serious affairs. Within fifteen (15) business days of the hearing, the hearing officer shall send written findings and conclusions to the permit holder, by certified mail, return receipt requested. Permit holders may be represented by counsel at the hearing.
7. A person aggrieved by the hearing officer's decision may appeal the decision as by filing a petition for writ of certiorari pursuant to Rule 1-075 NMRA.
8. Notices provided for under this subsection shall be deemed served when the notice is delivered personally or mailed by registered or certified mail, return receipt requested, to the address on record for the permit holder.

9. During the pendency of the appeal, the Animal Control Division may take such action as is deemed appropriate for the health and safety of the animals and the general public, including temporarily suspending the permit and prohibiting the permit holder from operating under the permit pending resolution of the revocation proceeding.
10. A permit holder whose permit has been revoked shall not be eligible to apply for another permit for a period of one year after the revocation of the permit.
11. Upon revocation of a permit, the permit holder shall cease operating under the permit within five (5) days of the effective date of revocation. If necessary, the permit holder shall give away, sell, or surrender all animals previously covered by the permit in compliance with relevant laws, regulations, and in a manner satisfactory to the Animal Control Division.”

**Section 9.** Article 11, Section 11-1 is hereby repealed and replaced with the following:

“11-1 Penalty Clause

Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction of violating this Ordinance, shall be punished by a fine not exceeding \$300 and/or imprisonment for a period not exceeding 90 days. Fines for violations of specific sections of this Ordinance may be set forth in Appendix A. However, the fines set forth in Appendix A shall not preclude punishment by imprisonment as provided in this Section. Each day this Ordinance is violated shall constitute a separate offense.”

**Section 10.** Appendix A is hereby replaced with the document identified as Appendix A attached hereto as Exhibit 1.

**Section 11. EFFECTIVE DATE.** This Ordinance shall take effect thirty days after it is recorded by the County Clerk, pursuant to NMSA 1978, § 4-37-9, except that Section 3 and Section 4 of this Ordinance shall not take effect until six months after recordation.

**PASSED, APPROVED, AND ENACTED** this \_\_\_\_ day of \_\_\_\_\_, 2017, by the Board of County Commissioners of Santa Fe County.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Henry Roybal, Chair

**ATTESTATION:**

---

Geraldine Salazar, Santa Fe County Clerk

**APPROVED AS TO FORM:**

---

Gregory S. Shaffer, County Attorney

APPENDIX A

LICENSING FEES	
Altered Dogs	\$10.00 annually
Unaltered Dogs	\$25.00 annually
Duplicate Tag	\$5.00
PERMIT FEES	
To operate a cat kennel annually	\$50.00
To operate a Kennel able to house 20 dogs or less	\$50.00
To operate all other Kennels	\$200.00
To keep an exotic animal annually	\$200.00
To keep a potentially dangerous or dangerous dog	\$200.00
IMPOUNDMENT FEES	
1 <sup>st</sup> impoundment	\$10.00
2 <sup>nd</sup> impoundment	\$20.00
3 <sup>rd</sup> impoundment	\$40.00
4 <sup>th</sup> impoundment	\$80.00
Subsequent impoundments	The fee shall be double the previous impoundment
FEE FOR RETRIEVAL OF ANIMAL CARCASS BY ACO - \$50.00	
FINES FOR VIOLATIONS OF THIS ORDINANCE	
No Rabies Vaccination	\$15.00 + proof of vaccination
Restraint of Animals/Running at Large/Trespassing/Nuisance/Disturbing the Peace	
1 <sup>st</sup> Offense in calendar year	\$25.00
2 <sup>nd</sup> Offense in calendar year	\$60.00
3 <sup>rd</sup> Offense and each offense thereafter in calendar year	\$100.00
Neglect/Care/Maintenance	
1 <sup>st</sup> Offense	\$50.00
2 <sup>nd</sup> Offense	\$200.00

APPENDIX A

3 <sup>rd</sup> Offense and each offense thereafter	\$300.00
Cruelty	
1 <sup>st</sup> Offense	\$50.00
2 <sup>nd</sup> Offense	\$200.00
3 <sup>rd</sup> Offense and each offense thereafter	\$300.00
All Other Fines	\$200

- a. In addition to the fines due to the County, the pet owner shall also be responsible for any and all boarding fees accrued at the shelter and the state spay/neuter deposit if applicable



