

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: HEALTH AND SANITATION; NUISANCES

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GENERAL PROVISIONS**§ 90.01 DEFINITION.**

(A) The definitions listed in § 130.04 of this code of ordinances shall apply to this chapter.

(B) For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC NUISANCE. Knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

(a) Injurious to public health, safety, morals or welfare; or

(b) Interferes with the exercise and enjoyment of public rights, including the right to use public or private property.

(NMSA § 30-8-1) (Ord. 89, passed 7-17-1979)

SPECIFIC NUISANCES**§ 90.15 ABANDONMENT OF DANGEROUS CONTAINERS.**

Abandonment of dangerous containers consists of any person:

(A) Abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container which is no longer in use, without having the attached doors, hinges, lids or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or

(B) Who, being the owner, lessee or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container to remain upon the premises in a condition whereby anyone may be imprisoned therein.

(NMSA § 30-8-9) (Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.16 CONDUCT OFFENSIVE TO PUBLIC WELL-BEING.

Conduct offensive to public well-being consists of any person who is the owner or tenant in possession of any premises located within the city limits permitting any privy or cesspool upon the premises owned or occupied by him or her, to become a menace to public health or constitute a condition offensive to the public.

(NMSA § 30-8-12) (Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.17 OBSTRUCTION ON SIDEWALKS.

(A) All sidewalks shall be kept clean from rocks and other obstructions, including ice and snow, and in a state of good repair by the owners, occupants or agents in charge of the adjoining property. A sidewalk in good repair shall be free of cracks, floats, obstructions, depressions and any and all other defects and shall have a uniform longitudinal and transverse gradient.

(B) All areas directly over sidewalks, to a height of eight feet, shall be maintained free of vegetation or other obstruction by the owners, occupants or agents in charge of the adjoining property.

(C) The sidewalk setback area and all plantings therein shall be maintained by the owners, occupants or agents in charge of the adjoining property.

(D) No item of street furniture or other item which would obstruct pedestrians or effectively reduce the width of a sidewalk shall be placed in, on, over or under the sidewalk.

(E) When it has been determined that there is a violation of the provisions of this section, notice shall be served by the Chief of Police or his or her designee upon the owners or agents in charge of the property adjoining the sidewalk or sidewalk setback area, directing that removal of obstruction be made within a designated period of time, which shall not be more than 30 days. If the owners or agents in charge of the property fail to comply with the order within the time prescribed, the village shall cause the removal of obstructions be made at the cost and expense of the owners or agents in charge of the property in accordance with state law and the cost of the removal of obstruction shall constitute a lien against the property and shall be foreclosed in the same manner provided by law for the foreclosure of municipal liens. (Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.18 ACCUMULATION OF REFUSE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

REFUSE.

(a) Any article or substance:

1. Which is commonly discarded as waste; or
2. Which, if discarded on the ground, will create or contribute to an unsanitary, dangerous, offensive or unsightly condition.

(b) ***REFUSE*** includes, but is not limited to the following items or classes of items: waste food; waste paper and paper products; cans, bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

(NMSA § 30-8-3)

(B) It shall be unlawful for any person to:

- (1) Allow any refuse to collect or accumulate on any lot or other premises within the city of which he or she is owner, tenant, lessee, manager or occupant;
- (2) Throw, place, discard or conduct, in any manner, any refuse into any public thoroughfare or other public place, or upon any private property, whether owned by the person, other than by placing the refuse in proper containers; or
- (3) Throw, place or conduct in any manner, any refuse into any ditch within the city limits.

(C) (1) When it has been determined that there is a violation of this section, notice shall be served by the Chief of Police or his or her agent, upon the owners or agents in charge of the property directing that removal of refuse be made within a designated period of time which shall not be less than five days, nor more than 90 days.

(2) If the owners or agents in charge of the property fail to comply with the order within the time prescribed, the village shall cause the refuse to be removed at the expense of the owners of the property in accordance with state law and the cost of the removal shall constitute a lien against the property which shall be enforced by foreclosure by the Village Attorney.

(Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.19 ATTACHMENT OF ITEMS TO UTILITY POLES.

It shall be unlawful for any person, firm or corporation to attach any wireless, telephone or telegraph apparatus, wire, metal, wood or other substance to any telephone, telegraph, electric light, electric power or electric railway pole or cross-arm or its attachments belonging to any other person, firm or corporation, without the consent of the person, firm or corporation given in writing.

(Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.20 ABANDONMENT OF SHOPPING CARTS; REMOVAL.

(A) (1) No person shall remove, from the premises of any food store, market or other mercantile establishment in the village, any shopping cart, wagon or similar device unless the person is the owner or the owner's employee or agent or unless the person was authorized to remove the cart, wagon or device by the owner thereof or his or her authorized agent or employee.

(2) Premises shall be construed to include parking lots adjacent thereto.

(B) No person shall abandon or leave any cart, wagon or similar device which has been removed from the owner's premises upon any public street, alley, sidewalk, parkway or other public place or upon any private property, except that of the owner of the cart, wagon or device, not under the exclusive control of the person abandoning or leaving any cart, wagon or other similar device.

(C) The managers, operators or owners of any food store, market or other mercantile establishment in the village shall post the essential details of this code in a conspicuous place for the general information of the public leaving the premises.

(D) The managers, operators or owners of any food store, market or other mercantile establishment in the village shall stamp or affix to each shopping cart, wagon or similar device with the name and address of the food store, market or other mercantile establishment which owns the shopping cart, wagon or similar device.

(Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.21 FIREWORKS.

Unlawful possession of fireworks consist of either selling, offering to sell, owning, possession or discharging within the village limits except within an area 300 feet south of ROW line of U.S. Highway 70 between Brittany Road and Stella Road any:

(A) Aerial device that, upon ignition, propels itself or an insert a significant distance into the air, but does not include a firework that produces a shower of sparks;

(B) Ground audible device intended to function on the ground that produces an audible effect; or

(C) Device which is not deemed permissible under the Fireworks Licensing and Safety Act, NMSA §§ 60-2C-1 to 60-2C-11, as the Act may be amended from time to time. (Ord. 90, passed 9-18-1979; Am. Ord. 146, passed 5-5-1992; Am. Ord. 214, passed 6-14-2005) Penalty, see § 90.99

§ 90.22 OPEN BURNING.

(A) It shall be unlawful for any person to burn any material in an open fire upon his or her land or that of another within the village limits, except that:

(1) Open burning is permitted for barbecuing, for heating purposes in fireplaces, for the noncommercial cooking of food for human consumption and for warming by small wood fires at construction sites; and

(2) Open burning is permitted for the following purposes when a permit or other proper authorization is obtained from the Village Clerk-Treasurer: weed abatement; prevention of fire hazards; instruction and training of bona fide fire-fighting and fire rescue personnel; civil defense; conservation; game management; control of vegetation in irrigation ditches and canals; clearance and maintenance of watercourses and flood control channels to eliminate flood hazards; and other special circumstances, provided that no permit shall be issued to burn leaves within the village limits.

(B) A permit to burn shall not be issued if the Village Clerk-Treasurer determines that:

- (1) A practical alternative to burning exists;
- (2) The health or welfare of any person may be detrimentally affected; or
- (3) Ambient air quality of property may be detrimentally affected.

(C) Any person seeking a permit to open burn shall do so by submitting a request to the Village Clerk-Treasurer. The Clerk-Treasurer may require the application to be written and contain the following information:

- (1) The requester's name, address and telephone number;
- (2) The location where the burning is to be conducted;
- (3) The type and quantity of material to be burned;
- (4) The date and time when the burning is to be conducted;
- (5) The methods that will be followed to ignite, maintain and control the burning;

(6) Reasons why the requester believes the burning is necessary; and

(7) The alternatives to burning and the reasons why the requester believes them not to be feasible.

(Ord. 139, passed 3-5-1991) Penalty, see § 90.99

§ 90.23 PUBLIC DANCES.

(A) It shall be unlawful for any person to hold, conduct, operate, sponsor or permit a dance which is open to the general public, or to which the general public is invited, whether or not a charge is made for the dance, after the hour of 1:00 a.m. and before the hour of 8:00 a.m.; provided that the Village Chief of Police shall have the authority to close down a public dance prior to 1:00 a.m. in the event of any violation of law during the conduct of the dance.

(B) Any person, planning to sponsor or conduct a public dance shall notify the Chief of Police thereof at least one week prior to the dance, and shall, at his, her or their own expense, retain the services of at least two peace officers, approved by the Chief of Police, to police and maintain order at the dance at all times.

(C) The peace officer shall be under the control and supervision, at all times, of the person sponsoring or conducting the dance. The person sponsoring or conducting the dance shall agree, in writing, to hold the village harmless from any and all liability of the village as a result of the conduct of the peace officers in maintaining peace and order at the dance.

(Ord. 90, passed 9-18-1979) Penalty, see § 90.99

§ 90.24 LOITERING.

The following shall be public nuisances:

(A) Loiter or remain in a public place for the purpose of begging;

(B) Loiter or remain in a public place for the purpose of committing, attempting to commit or soliciting another person to commit, a lewd or sexual act;

(C) Loiter or remain in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there, and not having written permission for a school administrator; and

(D) Loiter or prowl in a place, at a time or in a manner not used for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether the alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself of any object. Unless flight by the actor or other circumstances make it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor the opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at a trial that the explanation given by the actor was true and, if believed by the peace officer, did not comply with the preceding sentence, or if it appears at a trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm. (^75 Code, § 3-1-31) (Ord. 89, passed 7-17-1979; Am. Ord. 90, passed 9-18-1979) Penalty, see § 90.99

WEED CONTROL

§ 90.35 DEFINITIONS.

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

LOT. Any occupied or unoccupied piece of land of one-half acre or less which is located within one-quarter mile, 1,320 feet, of an occupied structure.

TRACT. Any piece of occupied or unoccupied land with an area of more than one-half acre.

WEEDS.

(1) All rank, noxious, poisonous, harmful, unhealthful vegetation or any growth whatsoever of an offensive or unsightly nature, or which is deleterious to health, and shall include, but is not limited to the following named plants: Pigweed (*Amaranthus retroflexus*) Russian Thistle (*Salsola pestifer*) Ragweeds (*Ambrosia* spp.) Lambsquarter (*Kenopodium* spp.) Kochia.

(2) The Police Chief is hereby authorized and delegated the authority and duty to determine if any other plant, due to their unhealthy or unsightly attributes or consequences, should be placed on the list of **WEEDS**, as defined herein, and shall put the plants on the list if it appears that the plants do come within the meaning of the term **WEEDS**, as herein defined.

(Ord. 89, passed 7-17-1979)

§ 90.36 UNLAWFUL GROWTH OR ACCUMULATION ON LOTS.

It shall be unlawful for any owner, lessee or occupant or any agent, servant, representative or employee of any owner, lessee or occupant having charge or control of any lot within the village to permit or maintain on any lot, including the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, and the area located ten feet outside the property line where there is no curb, any growth of weeds to a greater height than six inches, or any other accumulation of weeds. It shall also be unlawful for a person having charge or control of any tract within the village to allow any growth of weeds to a greater height than four inches on curbs and sidewalks located on their property as well as the area adjacent to and five feet back of the curbs, sidewalks and streets.

(Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.37 UNLAWFUL GROWTH OR ACCUMULATION ON TRACTS.

It shall be unlawful for any owner, lessee or occupant or any agent, servant, representative or employee of any owner, lessee or occupant having charge or control of any tract within the village to permit or maintain on any tract, including the area located between the property line and the middle of the alley adjacent to, the property line and curb and the area located ten feet outside the property line where there is no curb, any accumulation of weeds, which in the opinion of the Police Chief constitute a fire hazard. It shall also be unlawful for a person having charge or control of any tract within the village to allow any growth of weeds to a greater height than four inches on curbs and sidewalks located on their property as well as the area adjacent to and five feet back of the curbs, sidewalks and streets.

(Ord. 89, passed 7-17-1979) Penalty, see § 90.99

§ 90.38 REMOVAL BY CITY.

When it has been determined that there is a violation of this section, notice shall be served by certified mail addressed to the owner's or agent's last known address by the Chief of Police, directing that the cutting of weeds and removal of cuttings be made within five days. If the owners or agents in charge of the property fail to comply with the order within the time prescribed, the village shall cause the cutting of weeds and removal of cuttings at the expense of the owners or agents in charge and the cost of the removal shall constitute a lien against the property, which shall be enforced by foreclosure by the Village Attorney, as provided by state law.

(Ord. 89, passed 7-17-1979)

INSECTS**§ 90.50 DEFINITIONS.**

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

***LESSEE* or *TENANT*.** If the land is leased or rented, then the person having the right to possession of the land.

OWNER. The person having the right to possession of the land.

PERSON HAVING THE RIGHT OF POSSESSION. If the property is unoccupied, any agent having authority to lease, rent, sell, manage or take care of the land.

PROHIBITED SPECIES. The cocoon (otherwise called bags) of all members of the genus Thyridopteryx (commonly known as bagworms), and the webs (otherwise called nests) of all members of the genus Malacosoma of the family Lasiocampidae (commonly called tent caterpillars) and of all members of the genus Hyphantria of the family Arctiidae (commonly called webworms) and all members of the genus Pyrrhalta Luteola (Maler) (commonly called Elm Leaf Beetle).

(^75 Code, § 4-3-1)

§ 90.51 DECLARATION OF PUBLIC NUISANCE.

The bagworm nests, Elm Leaf Beetles and other tree pests, described in § 90.50 hereof, are hereby declared to be nuisances and are prohibited within the village.

(^75 Code, § 4-3-2) Penalty, see § 90.99

§ 90.52 PREMISES TO BE KEPT CLEAN AND FREE.

The person having the right to possession of any land within the village shall keep the property free of the cocoons, bags, webs and nests prohibited in § 90.50, and shall destroy cocoons, bags, webs and nests, all larvae therein and all insects.

(⁷⁵ Code, § 4-3-3) Penalty, see § 90.99

§ 90.53 DESTRUCTION OF LARVAE.

Every person who removes any cocoon, bag, web or nest prohibited herein, or who removes or cuts down any tree, branch or any other plant to which any larvae are therein, shall not in any manner dispose of the cocoon, bag, web, nest, tree or plant until all larvae have been destroyed.

(⁷⁵ Code, § 4-3-4) Penalty, see § 90.99

§ 90.54 USE OF INSECTICIDES.

Any person or official required by this subchapter to destroy cocoons, bags, webs, nests and such insects may, at his or her option, in lieu thereof destroy the bagworms, tent caterpillars, webworms and insects by spraying with insecticide generally recognized as suitable for the purpose, and if the destruction is successfully accomplished, it shall be deemed sufficient compliance with this subchapter.

(⁷⁵ Code, § 4-3-5) Penalty, see § 90.99

§ 90.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 130.99.

(B) Any person who shall fail and neglect to cut the weeds and remove the cuttings or any accumulation of weeds, as provided in §§ 90.35 through 90.38, or who shall fail, neglect or refuse to comply with the provisions of any section of §§ 90.35 through 90.38 or of any notice herein provided for, or who shall violate any of the provisions of §§ 90.35 through 90.38 whatsoever or who shall resist or obstruct the Chief of Police or his or her authorized representatives in the cutting of weeds or the removal of cuttings or the removal of the accumulation of the weeds shall, upon conviction thereof, be subject to a fine of not more than \$300 or imprisonment for not more than 90 days or both. Each day on which a violation continues shall constitute a separate offense.

(Ord. 89, passed 7-17-1979)

CHAPTER 91: FAIR HOUSING

Section

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§ 91.01 POLICY.

It is the policy of the village to provide, within constitutional limitations, for fair housing throughout the village.
(Ord. 167, passed 4-16-1996)

§ 91.02 DEFINITIONS.

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

DISCRIMINATORY HOUSING PRACTICE. An act that is unlawful under §§ 91.03 through 91.05.

DWELLING. Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure or portion thereof.

FAMILY. A single individual.

PERSON. One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

TO RENT. To lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.
(Ord. 167, passed 4-16-1996)

§ 91.03 UNLAWFUL PRACTICE.

(A) Subject to the provisions of division (A)(2) below and § 91.07, the prohibitions against discrimination in the sale or rental of housing set forth in this section shall apply to:

- (1) All dwellings, except as exempted by division (B) below; or
- (2) Nothing in this section shall apply to:

(a) Any single-family house sold or rented by an owner; provided, that the private individual owner does not own more than three single-family houses at any one time; provided further, that in the case of the sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this section shall apply only with respect to one sale within any 24-month period; provided further, that the bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time; provided further, that the sale or rental of any single-family house shall be excepted from the application of this title only if the house is sold or rented without the use in any manner of the sales or rental facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person and without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 91.03, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other professional assistance as necessary to perfect or transfer the title; or

(b) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his or her own residence.

(B) For the purposes of division (A)(2) above, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He or she has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He or she has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He or she is the owner of any dwelling designed or intended for occupancy, or occupied by, five or more families.

(Ord. 167, passed 4-16-1996) Penalty, see § 91.99

§ 91.04 DISCRIMINATION IN SALES OR RENTALS.

As made applicable by § 91.03 and except as exempted by §§ 91.03(A)(2) and 91.07, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, handicap or familial status;

(B) To discriminate against any person in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin, handicap or familial status;

(C) To make, print or publish or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitations or discrimination based on race, color, religion or national origin, or an intention to make any preference, limitations or discrimination;

(D) To represent to any person because of race, color, religion or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is, in fact, so available; or

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion or national origin.

(Ord. 167, passed 4-16-1996) Penalty, see § 91.99

§ 91.05 DISCRIMINATION IN FINANCING OR HOUSING.

It shall be unlawful for any person whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration or other terms or conditions of the loan or other financial assistance, because of race, color, religion, national origin, handicap or familial status of the person or of any person associated with him or her in connection with the loan or other financial assistance or the purposes of the loan or other financial assistance, or of the present or prospective dwellings in relation to which the loan or other financial assistance is to be made or given; provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 91.03(A)(2).

(Ord. 167, passed 4-16-1996) Penalty, see § 91.99

§ 91.06 DISCRIMINATION IN BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization or facility relating to the business of selling or renting dwellings or to discriminate against him or her in the terms or conditions of the access, membership or participation, because of race, color religion, national origin, handicap or familial status. (Ord. 167, passed 4-16-1996) Penalty, see § 91.99

§ 91.07 EXEMPTION.

Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to the persons unless membership in the religion is restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(Ord. 167, passed 4-16-1996)

§ 91.08 ADMINISTRATION.

(A) The authority and responsibility for administering this Act shall be in the Mayor of the village.

(B) The Mayor may delegate any of these functions, duties and powers to employees of the village or to boards of the employees, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this chapter. The Mayor shall, by rule, prescribe the rights of appeal from the decisions of his or her hearing examiners to other hearing examiners or to other officers in the village, to boards of officers or to himself or herself, as shall be appropriate and in accordance with law.

(C) All executive departments and agencies shall administer their programs and activities relating to Housing and Urban Development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the Mayor to further such purposes.

(Ord. 167, passed 4-16-1996)

§ 91.09 EDUCATION AND CONCILIATION.

Immediately after the enactment of this chapter, the Mayor shall commence the educational and conciliatory activities as will further the purposes of this chapter. He or she shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and his or her suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.

(Ord. 167, passed 4-16-1996)

§ 91.10 ENFORCEMENT.

(A) (1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur thereafter (person aggrieved) may file a complaint with the Mayor.

(2) Complaints shall be in writing and shall contain such information and be in such form as the Mayor requires.

(3) Upon receipt of a complaint, the Mayor shall furnish a copy of the same to the person or persons who allegedly committed or is about to commit the alleged discriminatory housing practice. Within 30 days after receipt of a complaint or within 30 days after the expiration of any period of reference under division (C) below, the Mayor shall investigate the complaint and give notice in writing to the person aggrieved whether he or she intends to resolve it.

(4) If the Mayor decides to resolve the complaints, he or she shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of the informal endeavors may be made public or need as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(B) If, within 30 days after a complaint is filed with the Mayor, the Mayor has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within 30 days thereafter, file a complaint with the New Mexico Human Rights Commission at Santa Fe, New Mexico. The Mayor will assist in this filing. A copy of the complaint shall, at the same time, be forwarded to the Equal Opportunity Division of the Regional Office of the Department of Housing and Urban Development in Dallas, Texas, and the New Mexico Human Rights Commission.

(Ord. 167, passed 4-16-1996)

§ 91.11 INTERFERENCE, COERCION OR INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 91.03 through 91.06.

(Ord. 167, passed 4-16-1996) Penalty, see § 91.99

§ 91.99 PENALTY.

Whoever is determined to be in violation of this chapter may be fined not more than \$500 or imprisoned not more than 90 days, or both.

(Ord. 167, passed 4-16-1996)

CHAPTER 92: LITTERING

Section

- 92.01 Definitions
- 92.02 Unlawful behavior
- 92.03 Condition of violation; suspension

§ 92.01 DEFINITIONS.

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

LITTERING. Consists of discarding refuse:

(1) On public property in any manner other than placing the refuse in a receptacle provided for that purpose by the responsible governmental authorities or otherwise in accordance with lawful direction; or

(2) On private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant thereof.

REFUSE.

(1) Any article or substance:

(a) Which is commonly discarded as waste; or

(b) Which, if discarded on the ground will create or contribute to an unsanitary offensive or unsightly condition.

(2) **REFUSE** includes, but is not limited to the following items or classes of items: waste food; paper and paper products; cans, bottles or other containers; junk household furnishings or equipment; junk parts or bodies of automobiles or other metallic junk, scrap or tires; portions of carcass of dead animals; the collection of ashes, dirt, yard trimmings or other rubbish.

(Ord. 192, passed 8-17-1999; Am. Ord. 204, passed 5-20-2003)

§ 92.02 UNLAWFUL BEHAVIOR.

It is hereby declared unlawful to commit the offense of littering and the use of uniform traffic or non-traffic citations is authorized for the enforcement of this section.
(Ord. 192, passed 8-17-1999) Penalty, see § 10.99

§ 92.03 CONDITION OF VIOLATION; SUSPENSION.

The Court may, to the extent permitted by law, as a condition to suspension of any penalty provided by law, require a person who commits littering to pick up and remove from any public place or any private property, with prior permission of legal owner, any litter deposited thereon.
(Ord. 192, passed 8-17-1999)

CHAPTER 93: ABANDONED VEHICLES

Section

- 93.01 Violation
- 93.02 Definitions
- 93.03 Prohibited acts
- 93.04 Exceptions
- 93.05 Permit
- 93.06 Removal of vehicles

§ 93.01 VIOLATION.

The presence of a dismantled, partially dismantled or inoperable vehicle or motor vehicle or parts thereof on any street, occupied or unoccupied land within the village limits in violation of the terms of this section is a public nuisance.

(Ord. 89, passed 7-17-1979) Penalty, see § 10.99

§ 93.02 DEFINITIONS.

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

DISMANTLED OR PARTIALLY DISMANTLED VEHICLE. Any motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.

INOPERABLE MOTOR VEHICLE. Any motor vehicle, which by reason of dismantling, disrepair or other cause, is incapable of being propelled by its own power and/or any motor vehicle which does not have lawfully affixed thereto both an unexpired license plate or plates and a current motor vehicle safety inspection certificate.

MOTOR VEHICLE. Any wheeled vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to automobiles, buses, motorbikes, motorcycles, motorscooters, motorhomes, trucks, tractors, go-carts, campers and trailers.
(Ord. 89, passed 7-17-1979; Am. Ord. 204, passed 5-20-2003)

§ 93.03 PROHIBITED ACTS.

It is unlawful for any person, firm or corporation to store on, or permit to be stored or placed on or allowed to remain on any public or private property or street or highway within the village limits a dismantled, partially dismantled or inoperable motor vehicle or any parts of a motor vehicle unless the vehicle is in an enclosed building or on property which is enclosed with a fence or wall and the vehicle is not visible from adjoining or surrounding property or from the street or streets or public ways. This section shall not apply to a vehicle or vehicles on the premises of a duly licensed business in zones where the activity is within the contemplated purposes of the duly licensed business under the provisions of the zoning code of the village.

(Ord. 89, passed 7-17-1979) Penalty, see § 10.99

§ 93.04 EXCEPTIONS.

An owner or tenant may store, permit to be stored or allow to remain upon his or her premises any dismantled, partially dismantled or inoperable motor vehicle or parts thereof for a period not to exceed 15 days if the motor vehicle is registered in his or her name; provided further, that any owner or tenant may, in the event of hardship, secure a permit from the Clerk-Treasurer to extend the period of 15 days for an additional period not to exceed 45 days.

(Ord. 89, passed 7-17-1979)

§ 93.05 PERMIT.

Upon application by the registered owner of a motor vehicle covered by this section, and upon the proof of hardship, the Clerk-Treasurer is hereby authorized to issue the permit provided hereby and shall require the payment of \$1 for each permit issued.

(Ord. 89, passed 7-17-1979)

§ 93.06 REMOVAL OF VEHICLES.

The Department of Public Safety is hereby authorized to tow or have towed away, at the owner's expense, any vehicle left under circumstances which are in violation of this chapter.

(Ord. 89, passed 7-17-1979)

CHAPTER 94: NOISE REGULATIONS

Section

- 94.01 General provisions
- 94.02 Excessive noise prohibited
- 94.03 Excessive noises enumerated

§ 94.01 GENERAL PROVISIONS.

It is found and declared that:

(A) The making and creation of loud, unnecessary or unusual noises within the limits of the village is a condition which has existed for some time and the extent and volume of the noises is increasing;

(B) The making, creation or maintenance of the loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the village; and

(C) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the village and its inhabitants.

(75 Code, § 3-2-1)

§ 94.02 EXCESSIVE NOISE PROHIBITED.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the village.

(75 Code, § 3-2-2) Penalty, see § 10.99

§ 94.03 EXCESSIVE NOISES ENUMERATED.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the enumeration shall not be deemed to be exclusive, namely:

(A) The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the village, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound, and the sounding of any device for an unnecessary and unreasonable period of time;

(B) Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, in any dwelling, hotel or other type of residence or of any persons in the vicinity;

(C) The discharge into the open air of the exhaust of any motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

(D) The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in a manner as to create loud and unnecessary grating, grinding, rattling or other noise;

(E) The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of the institution, or which disturbs or unduly annoys patients in the hospital;

(F) The playing of any radio, tape player, compact disc player, television, phonograph, musical instrument or other sound producing machine in a manner or with an unreasonable volume so as to disturb the quiet comfort or repose of persons in any dwelling, motel, hotel, hospital or sanatorium;

(G) The playing of any radio, tape player, compact disc player, television, phonograph, musical instrument or other sound producing machine while operating a motor vehicle within the village in a manner or with an unreasonable volume so as to disturb, distract or otherwise annoy any person in or out of a motor vehicle or in such a manner so as to prevent the operator of a motor vehicle from hearing outside sounds normally conducive to the safe operation of a motor vehicle; and/or

(H) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, air compressor equipment, dynamic braking device, Jake brake, motor vehicle or other power device, which is not equipped with an adequate muffler in constant operation and properly maintained to prevent any unnecessary noise, and no muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device.

(^75 Code, § 3-2-3) (Am. Ord. 158, passed 8-16-1994) Penalty, see § 10.99

CHAPTER 95: ANIMALS

Section

General Provisions

- 95.01 Definitions
- 95.02 Licensing dogs; tags and collars
- 95.03 Guide dogs
- 95.04 Restraint
- 95.05 Disposition of dead animals

Prohibited Activity

- 95.15 Animals at large
- 95.16 Cruelty; poisoning
- 95.17 Public nuisances
- 95.18 Riding or driving animals on sidewalks

Administration and Enforcement

- 95.30 Enforcement
- 95.31 Impoundment
- 95.32 Rabies; procedure
- 95.33 Investigation
- 95.34 Interference with police officer
- 95.35 Records
- 95.36 Animal shelter

Dangerous and Potentially Dangerous Dogs

- 95.50 Short title
- 95.51 Findings and intent
- 95.52 Definitions
- 95.53 Exceptions
- 95.54 Seizure of dog; petition to District Court
- 95.55 Dangerous and potentially dangerous dogs; registration required
- 95.56 Prohibited acts

- 95.99 Penalty

GENERAL PROVISIONS**§ 95.01 DEFINITIONS.**

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

EXPOSED TO RABIES. An animal has been exposed to rabies within the meaning of this chapter if it has been bitten by any other animal or if it has been in contact with any animal known or reasonably suspected to be infected with rabies.

LIVESTOCK. Any horse, donkey, cow, sheep, goat, pig, except for Vietnamese miniature potbelly pigs and pygmy goats weighing 50 pounds or less or any similar animal.

OWNER. Any person, owning, keeping or harboring an animal.

POULTRY. Any chicken, duck, goose, turkey or similar bird.

SPAYED FEMALE DOGS. A female dog certified by a licensed veterinarian to have been spayed.

VACCINATION. An injection of vaccine approved by the State Veterinarian and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.
(^75 Code, § 4-1-1) (Am. Ord. 191, passed 8-17-1999)

§ 95.02 LICENSING DOGS; TAGS AND COLLARS.

(A) (1) No person shall own, keep or harbor any dog within the village unless the dog is licensed, as herein provided. Written application for the license shall be made to the Village Clerk-Treasurer and shall state the name and address of the owner and the name, breed, color and sex of the dog. The license fee shall be paid to the Village Clerk-Treasurer at the time of making the application. The license shall be issued by the Village Clerk-Treasurer upon the owners furnishing a current certificate evidencing the vaccination of the dog and shall state the owner's name and address and the amount paid and shall describe the dog.

(2) The yearly license fee shall be \$10 for each dog, male or female.
(^75 Code, § 4-1-3)

(B) (1) With the license, there shall be delivered to the owner a metallic tag stamped with the number of the license and the year for which issued. The shape of the tags shall be changed each year.

(2) The owner shall see that the dog wears, at all times, a collar or harness to which the tag shall be attached.

(3) If the tag is lost or destroyed, the owner may obtain a duplicate upon the presentation of the license and payment of a fee of \$2 for the duplicate tag.
(^75 Code, § 4-1-4) (Am. Ord. 137, passed 1-3-1991; Am. Ord. 204, passed 5-20-2003) Penalty, see § 10.99

§ 95.03 GUIDE DOGS.

The provisions of § 95.02 shall not apply with respect to guide dogs trained to lead a blind person.
(^75 Code, § 4-1-5)

§ 95.04 RESTRAINT.

(A) (1) The owner shall keep his or her dog under restraint at all times and shall not permit the dog to run at large off the premises or property of the owner.

(2) Failure to keep a dog under restraint, as defined above, is hereby declared to be a violation of this chapter.

(B) It shall be unlawful for any owner of a dog to allow his or her dog to bark excessively during the night hours between 10:00 p.m. and 6:00 a.m. and thereby disturb the peace of others. Any person whose rest and peace has been disturbed by the uninhibited barking of any dog shall have the right to file a complaint against the owner of the dog.
(^75 Code, § 4-1-6) Penalty, see § 10.99

§ 95.05 DISPOSITION OF DEAD ANIMALS.

(A) The carcass of any animal that shall die within the village shall, within 24 hours, be removed at least two miles beyond the village limits by the owner of the animal and the owner shall bury the animal in some place outside of the limits of the village at a depth of not less than six feet.

(B) In no case shall any carcass be buried within the village limits, nor shall the owner permit the carcass to remain in the open air in the village until it becomes offensive in smell.
(^75 Code, § 4-1-24) Penalty, see § 10.99

PROHIBITED ACTIVITY**§ 95.15 ANIMALS AT LARGE.**

It shall be unlawful for any livestock, poultry, cattle, horses, mules, burros, goats, sheep, swine or any other animal to run at large within village limits, except under the terms and conditions set forth herein.

(^75 Code, § 4-1-7) (Am. Ord. 191, passed 8-17-1999) Penalty, see § 10.99

§ 95.16 CRUELTY; POISONING.

No person shall torture, cruelly beat, mutilate, cruelly kill, poison, override or overdrive any animal, or unnecessarily fail to provide the same with proper food or drink or cruelly drive or work the same when unfit for labor.

(^75 Code, § 4-1-7) Penalty, see § 10.99

§ 95.17 PUBLIC NUISANCES.

(A) (1) It shall be unlawful for any person to maintain or keep upon his or her premises any livestock, poultry, horse, cow, burro or other animal which shall disturb the peace and quiet of any person or neighborhood. Any person having knowledge of any nuisance, as set forth above, may file a complaint in the Municipal Court against the person maintaining the nuisance, provided that neither a warrant of arrest shall issue nor the person be arrested unless the person shall fail to cause the nuisance to cease within 24 hours after filing of the complaint and notice thereof.

(2) No owner or person having control of any animal shall allow that animal to defecate upon public property or upon any private property other than the property of the owner of the animal without thoroughly and immediately removing and disposing of the feces.

(^75 Code, § 4-1-9) (Am. Ord. 191, passed 8-17-1999)

(B) (1) The Police Department and the custodian of the animal shelter, upon complaint made or on view, shall investigate any alleged or suspected violation of this chapter, and, if in the opinion of the investigating officer, the violation or nuisance exists, it shall be the duty of any officer to take up and deliver to the shelter any animal found in violation. If the violation constitutes a nuisance, the officer shall, if the owner or keeper refuses to abate the nuisance, take the offending animals to the animal shelter; provided, however, that if the nuisance shall consist of dangerous, fierce or vicious dogs or animals which it shall be impossible to take into custody without serious danger of personal injury, then and, in that event, the animal may immediately be killed.

(2) All animals taken into custody under the provisions of this section shall be held in the animal shelter under the terms of this chapter; provided, however, that nothing herein shall prevent or impair the right of the owner of the animal to a hearing in any proper court by any proper means upon the question whether in fact the nuisance exists or not; provided further, that nothing herein contained shall prevent or impair the right of any person aggrieved by the nuisance to any other remedy, in court or otherwise, allowed him or her by law.

(3) In the event that, in any proceeding referred to in this section, it shall be held by any proper court that the nuisance complained of does not in fact exist, then and in that event the animals shall be released and the owner thereof shall not be required to pay any of the charges referred to in this chapter.

(^75 Code, § 4-1-11) Penalty, see § 10.99

§ 95.18 RIDING OR DRIVING ANIMALS ON SIDEWALKS.

It shall be unlawful for any person to ride or drive any team, horse or other animal upon or along any of the sidewalks of the village.

(^75 Code, § 4-1-11) Penalty, see § 10.99

ADMINISTRATION AND ENFORCEMENT

§ 95.30 ENFORCEMENT.

The provisions of this chapter shall be enforced by the Chief of Police.

(^75 Code, § 4-1-2)

§ 95.31 IMPOUNDMENT.

(A) Animals not licensed or vaccinated pursuant to the provisions of this chapter shall be seized and impounded. Any person who may find any animals running at large within the village contrary to the provisions of this chapter may take the animal to the animal shelter. All animals shall be received and held at the shelter, as herein provided. Within 48 hours after any animal shall be received at the animal shelter, its owner or keeper, if the person can be identified by tags or other identifications on the animal, shall be notified. If the owner or keeper cannot be found or the animal not claimed within 72 hours from the time the animal was received at the animal shelter, the custodian of the animal shelter shall kill the animal in a humane manner. A notice describing the animal, stating the time and place when and

where it will be killed and informing the owner that he or she may reclaim possession of the animal before the time fixed by paying to the custodian of the animal shelter all costs and fees in connection with the impounding of the animal shall be posted at the Village Police Station at least 24 hours prior to the custodian of the animal shelter killing the animal.

(^75 Code, § 4-1-12)

(B) If the owner or keeper of any animal detained at the animal shelter wishes to redeem the animal prior to the sale or disposal thereof, as provided herein, the owner or keeper shall be entitled to redeem the animal by securing rabies shots and license tags and paying to the custodian of the animal shelter the sum of \$15, plus \$2 per day for each day, or fraction thereof, that the animal has been so confined to the animal shelter. All redemption fees so collected by the custodian of the animal shelter shall be immediately reported and paid over to the Village Clerk-Treasurer. Any person who shall turnover an animal to the custodian of the animal shelter and request that the animal be destroyed shall pay a fee of \$10 for the first animal and \$1 for each additional animal which is turned over at the same time as the first.

(^75 Code, § 4-1-13)

(C) In the event that an animal shall be neither reclaimed by its owner in accordance with provisions in this chapter or reclaimed by some other person by payment of the redemption fees, then 72 hours from the time the animal was received by the animal shelter, the custodian of the animal shelter shall kill and dispose of the animal in a humane manner.

(^75 Code, § 4-1-14)

(Am. Ord. 129, passed 8-15-1998)

§ 95.32 RABIES; PROCEDURE.

(A) Any person who owns or keeps, within the village, any dog or cat over the age of three months shall have the animal vaccinated against rabies with a vaccine approved by the Director of the Health and Social Services Department. All anti-rabies vaccine shall be administered by or under the supervision of a licensed veterinarian.

(^75 Code, § 4-1-15)

(B) The owner shall confine, within a building or enclosure, every fierce, dangerous or vicious dog and every female dog in heat. The confinement shall be in such manner that the dog cannot come in contact with any person or animal, except for breeding purposes.

(^75 Code, § 4-1-16)

(C) (1) Every dog, cat or other animal exposed to rabies shall be immediately confined by the owner, who shall then promptly notify the Police Department. The Police Department shall immediately notify the County Health Officer of the place of confinement and the reason therefore. The owner shall not permit the dog or animal to come into contact with any person or animal and shall surrender

possession of the dog or animal to the Police Department, upon demand, for the purpose of supervision and quarantine. The owner shall pay any cost of the quarantine or the owner may, at his or her option and expense, have the animal quarantined at the hospital of a licensed veterinarian. The dog or animal shall not be released from quarantine without written authorization of the Police Department, nor until it has been certified by a licensed veterinarian to be free of rabies.

(2) No person shall kill a rabid dog or other animal or dog or other animal exposed to rabies, nor remove same from the village without permission of the Police Department, except when it is necessary to kill the dog or animal to prevent it from escaping or biting any person or animal.

(3) The Police shall oversee the disposition of any dog or animal found to be afflicted with rabies.

(4) The carcass of any dead dog or animal exposed to rabies shall be surrendered to the Police Department upon demand.

(5) No person shall fail or refuse to surrender a dog or animal for quarantine or destruction, as required herein, when demand therefor is made by the Police Department.

(6) This section shall be administered pursuant to any applicable laws of the state.
(^75 Code, § 4-1-17)

(D) When any person is bitten by any animal, it should be the duty of the person or his or her parent or guardian and the owner or keeper of the animal to immediately notify the Police Department thereof. Immediately, the owner or keeper of the animal shall confine it securely for ten days at a place designated by the Chief of Police, the confinement to be at the expense of the owner or keeper of the animal. Every physician shall, within 24 hours after his or her first professional attendance upon a person bitten by any animal having or suspected of having rabies, report to the Police Department the name, age, sex and address of the person bitten as well as the name and address of the owner or keeper of the animal if known to the physician.
(^75 Code, § 4-1-18)

(E) (1) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this chapter, except the duty to report rabies cases and to comply with the provisions specifically naming duties and responsibilities of licensed veterinarians in relations to animal regulation and rabies control.

(2) The licensing and vaccination requirements of this chapter shall not apply to any animal belonging to a non-resident of the village and kept within the village for not longer than 30 days, provided all animals shall, at all times while in the village, be confined within a building, enclosure or vehicle or be under restraint by the owner.
(^75 Code, § 4-1-19)

§ 95.33 INVESTIGATION.

For the purpose of discharging the duties imposed by this chapter and to enforce its provision, any police officer is hereby authorized to enter upon any premises upon which an animal is kept or harbored during the daylight hours, and to demand the exhibition, by the owner of the animal, of the license or vaccination certificate for the animal, and further to investigate and file a complaint against the owner of any animal for violation of any of the provisions of this chapter; provided, however, that in the event any dog, cat or other animal has been exposed to rabies, or when any person has been bitten by any dog, cat or other animal, any police officer is hereby authorized to enter upon any premises upon which the dog, cat or other animal is kept or harbored, during the daylight hours, for the purpose of investigating and enforcing the provisions of this chapter.

(^75 Code, § 4-1-20)

§ 95.34 INTERFERENCE WITH POLICE OFFICER.

No person shall interfere with, hinder or molest any police officer in the performance of any duty required by this chapter.

(^75 Code, § 4-1-21) Penalty, see § 10.99

§ 95.35 RECORDS.

(A) It shall be the duty of the Chief of Police to keep or cause to be kept accurate and detailed records of the vaccination, licensing and impoundment of dogs.

(B) It shall be the duty of the Chief of Police to keep or cause to be kept accurate and detailed records of all bite cases reported to him or her and of his or her investigation of the same. Should the report of a bite involve a rabid dog or animal it shall be immediately transmitted to the county health officers.

(C) The aforesaid records shall be audited annually in the same manner as other village records are audited and shall be open to inspection as public records at all reasonable times.

(^75 Code, § 4-1-22)

§ 95.36 ANIMAL SHELTER.

The village shall establish and maintain an adequate animal shelter which shall be under the control and management of the Chief of Police or his or her duly authorized agent or custodian. The agent or custodian so designated by the Chief of Police shall have full charge of the management and conduct of the shelter and shall be charged with the enforcement of the provisions of this chapter relative to animals

at large and the impounding of animals. He or she shall pick up and impound all stray animals running at large in the village contrary to the provisions of this chapter and, upon complaint made, shall investigate any nuisance, as hereinbefore defined, and shall also investigate all violations of this chapter. He or she shall have the duty to take charge of all animals involved in the violation of this chapter or who shall constitute a nuisance, as heretofore defined, and shall confine the animals violating this chapter to the animal shelter for disposition in accordance with the provisions hereof.

(^75 Code, § 4-1-23)

DANGEROUS AND POTENTIALLY DANGEROUS DOGS

§ 95.50 SHORT TITLE.

This subchapter may be known and shall be cited as the dangerous dog ordinance.
(Ord. 228, passed 4-15-2008)

§ 95.51 FINDINGS AND INTENT.

(A) Every year innocent people, predominantly children, are injured and sometimes killed as a result of the actions of dangerous dogs.

(B) No person has an absolute right to keep or harbor a dangerous or potentially dangerous dog within the village.

(C) The ordinance codified in this subchapter will protect the inhabitants of the village from the actions of dangerous or potentially dangerous dogs.

(D) The ordinance codified in this subchapter will provide for the proper registration and tracking of dangerous or potentially dangerous dogs within the village.

(E) The ordinance codified in this subchapter will assist in providing control over dangerous and potentially dangerous dogs.

(Ord. 228, passed 4-15-2008)

§ 95.52 DEFINITIONS.

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

ANIMAL CONTROL AUTHORITY. The law enforcement officers of the village that are charged with addressing animal control issues within the village who shall carry out the duties of the animal control authority under the dangerous dog ordinance.

DANGEROUS DOG. A dog that caused a serious injury to a person or domestic animal.

OWNER. A person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of 18, that person's parent or guardian.

POTENTIALLY DANGEROUS DOG. A dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- (1) Causing an injury to a person or domestic animal that is less severe than a serious injury;
- (2) Chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or
- (3) Acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

PROPER ENCLOSURE. Secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure, 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 affixing the animal to a stationary object.

SERIOUS INJURY. A physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.
(Ord. 228, passed 4-15-2008)

§ 95.53 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 or 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; or

(C) The dog was:

(1) Responding to pain or injury;

(2) Protecting itself or its offspring; or

(3) Protecting or defending a human being or domestic animal from attack or assault.

(Ord. 228, passed 4-15-2008)

§ 95.54 SEIZURE OF DOG; PETITION TO DISTRICT COURT.

(A) If an animal control authority has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the animal control authority may apply to the district in the county where the animal is located for a warrant to seize the animal.

(B) If an animal control authority has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal control authority may apply to the district court in the county where the animal is located for a warrant to seize the animal.

(C) After seizure, the animal control authority shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of § 95.55.

(D) After seizure:

(1) The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to § 95.55; or

(2) The animal control authority may, within 14 days after seizure of the dog, bring a petition in the district 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 and poses an imminent threat to public safety 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 30 days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this division, the court shall immediately order the release of the dog to its owner.

(E) If the owner does not admit that the dog is dangerous or potentially dangerous and the animal control authority does not bring a petition in court within 14 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 control authority, the animal control authority may humanely destroy the dog.

(G) A determination that a dog is not dangerous or potentially dangerous shall not prevent an animal control authority from making a subsequent application for seizure based on the dog's subsequent behavior. (Ord. 228, passed 4-15-2008)

§ 95.55 DANGEROUS AND POTENTIALLY DANGEROUS DOGS; REGISTRATION REQUIRED.

(A) Upon application, an animal control authority shall issue a certificate of registration to the owner of a dangerous or potentially dangerous dog if the owner establishes that:

- (1) The owner is able to keep the dog under control at all times;
- (2) A license, if applicable, has been issued pursuant to the requirements of the village;
- (3) The dog has a current rabies vaccination;
- (4) The owner has a proper enclosure for the dog;
- (5) The owner has paid an annual fee of \$100 to register a dangerous or potentially dangerous dog;
- (6) The dog has been spayed or neutered;
- (7) The dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
- (8) The owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.

(B) If a dog previously determined to be dangerous or potentially dangerous has not exhibited any of the behaviors specified in § 95.52(D) for 36 consecutive months, the owner may request the animal control authority in the village to lift the requirements for registration pursuant to this section. If the animal control authority 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) An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of division (A) of this section, establishes that:

(1) The owner has paid an annual fee of \$100, as established by the animal control authority to register a dangerous dog;

(2) The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;

(3) The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;

(4) 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;

(5) 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

(6) A clearly visible warning sign with a conspicuous warning symbol indicating there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from 50 feet, whichever is less.

(D) An animal control authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to comply with the conditions for registration confinement or handling set forth in this section.

(Ord. 228, passed 4-15-2008)

§ 95.56 PROHIBITED ACTS.

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

(1) Keep the dog without a valid certificate of registration;

(2) Violate the registration and handling requirements for the dog;

(3) Fail to notify the animal control authority immediately upon:

(a) The escape of the dog;

(b) An attack by the dog upon a human being or a domestic animal;

(4) Fail to notify the animal control authority of the dog's death within five business days;

(5) Fail to notify the animal control authority within 24 hours if the dog has been sold or given away and to provide the name, address and telephone number of the new owner of the dog;

(6) Fail to surrender the dog to an animal control authority for safe confinement pending a determination of the case where there is reason to believe that the dog poses an imminent threat to public safety; or

(7) Fail to comply with special handling or care requirements for the dog that a court has ordered.

(B) Whoever violates a provision of division (A) of this section shall be charged in the Magistrate Court in the county where the animal is located with a violation of the State Dangerous Dog Act, and upon conviction shall be sentenced in accordance with the provisions of § 31-19-1 NMSA 1978, and the State Dangerous Dog Act.

(Ord. 228, passed 4-15-2008) Penalty, see § 95.99

§ 95.99 PENALTY.

(A) No homeowner shall be allowed to own three dogs that have been deemed dangerous or potentially dangerous in accordance with §§ 95.50 through 95.56.

(B) Once a dog is deemed dangerous or potentially dangerous by the courts in accordance with §§ 95.50 through 95.56, owners will be required to carry a \$100,000 liability insurance or be able to secure the dog with a bond.

(C) The courts may impose a fine of up to \$500, a jail term of up to 90 days, and/or require spaying or neutering of any dog deemed dangerous or potentially dangerous.

(D) The court may impose a fine of up to \$500 and/or a jail term of up to 90 days if any dog is deemed dangerous or potentially dangerous that is at large without a muzzle or a leash.

(Ord. 228, passed 4-15-2008)

CHAPTER 96: CLEAN INDOOR AIR

Section

- 96.01 Short title
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- 96.03 Definitions
- 96.04 Smoking prohibited
- 96.05 Smoking-permitted areas
- 96.06 Prohibition of smoking near entrances, windows and ventilation systems
- 96.07 Responsibilities of employers
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§ 96.01 SHORT TITLE.

This chapter may be cited as the Clean Indoor Air Chapter.
(Ord. 224, passed 8-21-2007)

§ 96.02 PURPOSE.

Whereas one of the duties of government is to protect the public health, safety and welfare of its citizens, the Tularosa governing body recognizes environmental tobacco smoke as detrimental to the public health and declares as the purpose of this chapter to protect the public health and safety by prohibiting smoking in indoor public places and indoor workplaces.
(Ord. 224, passed 8-21-2007)

§ 96.03 DEFINITIONS.

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

BAR. An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

CIGAR BAR. An establishment that:

- (1) Is a bar as defined above in this section; and

(2) Is engaged in the business of selling cigars for consumption by patrons on the premises and generates 10% or more of its total annual gross revenue or at least \$10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10% of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall not be defined as a **CIGAR BAR** and shall not thereafter be known as such regardless of sales figures. A **CIGAR BAR** shall agree to provide adequate information to demonstrate to the village's satisfaction compliance with this definition.

DEPARTMENT. The Department of Health.

DESIGNATED OUTDOOR SMOKING AREA. An area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place, provided that the following conditions are maintained:

(1) Smoking shall not be permitted near any building entrance, including a door, window or ventilation system of any facility where smoking is prohibited under the provisions of this chapter, so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and

(2) Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

EMPLOYER. An individual, a partnership, a corporation or the state that employs the services of one or more individuals and includes the Village of Tularosa.

ENCLOSED. Any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows.

INDOOR PUBLIC PLACE. The enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business meetings or hearings occur at any given time.

INDOOR WORKPLACE. Any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time.

PRIVATE CLUB. An organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of § 501 of the Internal Revenue Code of 1986, as amended.

RESTAURANT. A coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises.

RETAIL TOBACCO STORE. A retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental, including smoke shops, cigar shops or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises.

SECONDHAND SMOKE. Smoke emitted from lighted, smoldering or burning tobacco when the smoker is not inhaling, smoke emitted at the mouthpiece during puff-drawing and smoke exhaled by the smoker.

SMOKE-FREE AREA. Any building or other enclosed space where smoking is prohibited.

SMOKING. Inhaling, exhaling, burning, carrying or holding any lighted tobacco product, including all types of cigarettes, cigars and pipes and any other lighted tobacco product.

SMOKING-PERMITTED AREA. Any building or other enclosed space where smoking may be permitted, provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to this chapter.

(Ord. 224, passed 8-21-2007)

§ 96.04 SMOKING PROHIBITED.

It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted pursuant to this chapter.

(Ord. 224, passed 8-21-2007)

§ 96.05 SMOKING-PERMITTED AREAS.

Notwithstanding any other provision of this chapter, smoking-permitted areas include the following:

(A) A private residence, except during hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those activities;

(B) A retail tobacco store;

(C) A cigar bar;

(D) The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing or marketing; or

(E) A theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production.
(Ord. 224, passed 8-21-2007)

§ 96.06 PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS AND VENTILATION SYSTEMS.

Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by this chapter. An individual who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of this chapter shall establish a smoke-free area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to ensure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.
(Ord. 224, passed 8-21-2007)

§ 96.07 RESPONSIBILITIES OF EMPLOYERS.

(A) Employers shall provide that their places of employment meet the requirements of this chapter.

(B) An employer shall adopt, implement, post and maintain a written smoking policy pursuant to this chapter.
(Ord. 224, passed 8-21-2007)

§ 96.08 POSTED SMOKE-FREE AND SMOKING-PERMITTED AREAS.

(A) To advise persons of the existence of smoke-free areas or smoking-permitted areas, signs shall be posted as follows:

(1) For each indoor workplace or indoor public place where smoking is prohibited pursuant to this chapter, a ***NO SMOKING*** sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. Posting of ***NO SMOKING*** signs is the responsibility of the owner, operator, manager or other person having control of the indoor workplace or indoor public place; and

(2) For each indoor workplace or indoor public place where smoking is permitted pursuant to this chapter, a ***SMOKING PERMITTED*** sign shall be posted where it is clear, conspicuous and easily

legible at each public entrance, unless an owner, operator or manager chooses to prohibit smoking in all or part of an indoor workplace or indoor public place where smoking is otherwise permitted.

(B) Nothing in this chapter shall be construed so as to require the posting of signs at a residence, except during the hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those.

(Ord. 224, passed 8-21-2007)

