

WORK SESSION  
OF THE CITY COUNCIL  
OF THE CITY OF RUIDOSO DOWNS  
CITY COUNCIL ROOM  
APRIL 1, 2010  
5:00 P.M.

The Council of the City of Ruidoso Downs met in a Work Session on April 1, 2010. Mayor Armstrong called the meeting to order at 5:00 p.m. and asked Councilor Holman to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Hood  
Councilor Holman

Councilor Williams  
Councilor Olivo

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a quorum.

Also present:

Carol Virden, City Clerk/Treasurer  
Alfred Ortiz, Police Chief  
Peggy Lu Jane, Animal Control Officer  
Zach Cook, City Attorney

REVIEW AND DISCUSSION OF ANIMAL CONTROL ORDINANCE NO. 2010-01

Mayor Armstrong stated next item on the agenda was Review and Discussion of Animal Control Ordinance No. 2010-01.

Carol Virden, City Clerk/Treasurer said she would be brief in the statement that she was making. She said a Work Session is a working session for the governing body and it is not to take action on any items. According to the city council they meet periodically in a work sessions. The work session is the meeting of a quorum of the city council which does not involve any formal action by the city council.

Mayor Armstrong said this is our Animal Control Ordinance last adopted in 1993 and it has been a long time since it has been looked at. Mayor Armstrong said he would hereby open the meeting for discussion.

Councilor Olivo asked Mayor Armstrong if this has not been changed since 1993?

Mayor Armstrong said it was 1993.

Councilor Olivo asked if there had been any changes made since then?

Mayor Armstrong said not that he was aware of.

Carol Virden, City Clerk/Treasurer said under 6-9-2 "Vaccination" was amended in 2003. She said that was the only section of the Animal Control Ordinance that was amended that was recorded since 1993

Councilor Hood asked when that was?

Carol Virden, City Clerk/Treasurer said in 2003 under Ordinance 2003-02.

Councilor Williams said he had brought forth some discussion items as they go through the ordinance and they are for the governing body and of course the attorney got one. He said he also had copies for the audience if they would like to look through it.

Councilor Williams said he would like to go through each article and have a discussion on it. He said it would be on the ordinance as it is and possible changes.

Mayor Armstrong read the proposed changes, additions and modifications marked in "**Bold lettering**" submitted by Councilor Williams as follows:

6-9-1 Definitions (add) \* **previously added**

**Animal:** any vertebrate member of the animal kingdom excluding humans \*

**Animal Control Officer:** a person designated to enforce animal control ordinances at the local, state and federal levels; to assist other animal related agencies in the performance of their duties; designated to protect the health and safety of animals and to protect the community against free-roaming, nuisance, fractious, or diseased animals; to issue animal related citations and act as prosecutor in animal control related criminal complaints in court; the animal control officer acts as a spokesperson at public programs and educates citizens about the responsibilities of proper pet care; the animal control officer is also charged with other duties as required by their supervisor to assist law enforcement. \*

Mayor Armstrong asked if there were any questions? He asked Councilor Williams if he wanted to go by each one of these?

Councilor Williams asked if everyone had a copy of the ordinance? Carol Virden said she made them a copy for everyone. Councilor Williams said unless there were questions by the members

Mayor Armstrong said the following changes were made:

Item D for “Cat” they changed a female feline.

Item H for “Nuisance” they changed Village to City.

Item I for “Neutered Male” they marked out “that such an operation has been performed.”

Item K for “Running at Large” they added “a dog shall be deemed to be running at large when not under restraint.”

Item L for “Secure Enclosure” they modified it to read “shall mean an enclosure from which an animal cannot escape and which other animals cannot enter, it must be covered by material sufficiently strong to prevent entry or exit by animals and must have a strong footing to prevent an animal from digging its way in or out.

Item O they addressed “Wild Animal” in the ordinance but they didn’t have a definition for it so they gave it the definition of “shall mean any live raccoon, skunk, fox, wolf, poisonous snake or any snake exceeding (3) feet in length, leopard, panther, tiger, bear, lion, ring-tailed cat, lynx, bobcat, coyote or any other cold-or-warm blooded animal which can normally be found in the wild state.”

Councilor Williams said now that they have gone through the definitions he would like to tell the council and members of the audience a couple that he would like them to consider to be added. He said one is:

**City:** jurisdictional boundaries of Ruidoso Downs

Councilor Williams said another one is:

**Licensed Veterinarian:** a person with a Doctor of Veterinary medicine degree licensed to practice in the State of New Mexico.

Councilor Williams said another one is:

**Neutered:** any animal which has been spayed, castrated or otherwise surgically altered so that it is incapable of reproduction. Replace “G” (neutered male) and “K” (spayed female)

Councilor Williams said another one is:

**Patrol Dog:** shall mean a trained, human handled dog with certified canine skills in performance of tracking, crowd control, scent detection of narcotics or explosives and building searches.

Councilor Williams said another one is:

**Quarantine:** shall mean detention and isolation of an animal in order to observe for rabies and other communicable diseases.

Councilor Williams said another one is:

**Secure Enclosures:** shall mean an enclosure surrounded by a wall or fence of sufficient height and strength to contain animals wherein. Enclosure should be secured to prevent entry or exit of animals.

Councilor Williams said another one is:

**Vicious animals:** shall mean an animal which kills or seriously injures a person or domesticated animal.

Mayor Armstrong asked if there was any discussion on these?

Zach Cook, City Attorney asked Councilor Williams if he could imagine any other situation where observing rabies or any other communicable diseases that he would want to quarantine an animal to expand that definition?

Councilor Williams said he just came up with what he could and other language could be added to it if need be.

Councilor Hood asked what other type of disease do animals carry that would cause it to be quarantined? He said there might be other reasons.

Chief Ortiz said anytime an animal is quarantined would be because the animal has bitten or attacked an individual irregardless whether that animal has tags.

Zach Cook, City Attorney said he would suggest the following language:

“quarantine shall be the detention and isolation of an animal in order to observe for rabies and other communicable diseases or for any other reason to protect the safety and welfare of the community.”

Councilor Hood said he didn't have a problem with that.

Mayor Armstrong said the next one was “Secured Enclosure.”

Councilor Williams said he wanted to remove the language of what was there originally stating cement because a lot of people may not have this. If it is secured with fencing and such it should be okay by us.

Mayor Armstrong said anything equally secure would be alright. If they dig out or they dig in you would need something there.

Councilor Williams said a lot of people have chain link fences.

Mayor Armstrong said a wall or fence sufficiently high enough or has the strength to contain the animal within. He asked if a 4-foot fence was high enough?

Councilor Williams said the height isn't that important. He said it is up to the citizens how they want to secure their animal and not be regulated by any strong language.

Peggy Lu Jane said "secure enclosure" is only used in such cases when a judge or some other person has deemed the animal vicious.

Mayor Armstrong said he has seen animals climb out of a fence but didn't have a problem with the "secure enclosure."

Zach Cook, City Attorney asked if "concrete" was too restrictive?

Councilor Williams said no and in fact his neighbor has a concrete wall with fencing on top of it and their animals can climb on top of the concrete wall to get on top of the fence so it should be up to the owner how much security they want to put on their property.

Zach Cook, City Attorney said what if they change the language to:

"A secure enclosure of which an animal cannot escape and which other animals cannot enter. It must be covered by materials sufficiently strong enough to prevent entry or exit by animals and must have a footing strong enough to prevent animals from digging in or out."

Councilor Williams said he just didn't like the term "concrete."

Mayor Armstrong said the next one was "6-9-2 Vaccination." In the old ordinance which was amended in 2003. He asked if there was any discussion?

Councilor Hood said he didn't have any changes.

Mayor Armstrong said the next one was "Licensing."

Councilor Williams said the changes he would like to make were as follows:

- (A) remove "within" in the last sentence**
- (B) mark out "village" in the 6<sup>th</sup> sentence**
- (H) Veterinarian fee collected – what is it used for**
- (I) remove paragraph-replace with new penalty schedule**

**following 6-9-4**

Carol Virden, City Clerk/Treasurer said for Item H-the fees collected for each and every animal license is receipted into the General Fund. There is an Animal Control Department that does have expenses so a portion of that would go toward that.

Councilor Williams asked if it would more so go toward that than the General Fund?

Carol Virden, City Clerk/Treasurer said the General Fund is for general purposes such as the Police Department, Animal Control, Planning & Zoning, Finance and those areas.

Councilor Williams said since this is for the Animal Control Ordinance the fees collected should go toward Animal Control.

Carol Virden, City Clerk/Treasurer said although the Animal Control Office does have a department within the General Fund.

Mayor Armstrong said he had a question about the Veterinarian Clinics they have and when they have those there are no fees collected and nothing paid from the City to the veterinarian nor from the veterinarian to the City of Ruidoso Downs.

Peggy Lu Jane said when the veterinarian's started these clinics we did ask them to start selling our licenses for us they would get \$1.00 for the money they received on the license.

Councilor Williams said on Item I he suggested removing the paragraph because later on he would like to see the addition to that that he had written for a paragraph containing penalties. He said he wanted to take it out in lieu of replacing it with his.

Mayor Armstrong said the next one was "6-9-4 Tag and Collar." There were no changes.

Mayor Armstrong said the next on was "6-9-5 Penalty."

Councilor Williams said before that he would like to create a new paragraph after "Tag and Collar" and designate that as "6-9-5 and that would be the Penalty paragraph outlined specifically of the four types of offenses and the type of fine that would be included on each one and all of the following paragraphs would have to be changed.

Chief Ortiz asked Councilor Williams under that same penalty under the 2<sup>nd</sup> Offense if he meant to charge \$50.00 within 1 year of the 1<sup>st</sup>? Councilor Williams said yes, if they don't have another offense within a year. Chief Ortiz asked if the word "offense" would also be included? Councilor Williams said yes.

Zach Cook, City Attorney asked that they give him time to restructure that language. He asked if those amounts for the penalties were what they wanted because that was a policy call? Councilor Williams said that was just a suggestion on his part and was open for discussion.

Councilor Williams said he liked what Councilor Williams was suggesting.

Mayor Armstrong asked if they were setting the fee for what, no tag?

Councilor Williams said it would be for any violation of this Animal Control Ordinance.

Wayne Williams from the audience asked Mayor Armstrong if he was going to open the meeting to the public?

Mayor Armstrong said he was not and this was meeting for the councilors.

Mayor Armstrong said they need to look at the penalty issue because there are already state statutes involved with this through the Humane Society.

Mayor Armstrong said the next one was “6-9-6 Impounding of Animals.”

Councilor Williams said the paragraphs will change and this would now be “6-9-7 Prohibited Acts – Animal Nuisances.”

Councilor Williams said in the current ordinance under (A) it says “It shall be unlawful for any person owning, harboring or having custody or possession of any animal to cause or allow such animal to:” He asked if they want to specify “**dog or cat**” because of what they defined as “animal.”

Councilor Williams said he would also like to modify Item A1 that would add “**which by loud, frequent or habitual barking, yelping or howling causes annoyance to a neighborhood.**” He said there is nothing in the ordinance that addresses this.

Mayor Armstrong said they have a Nuisance Ordinance that actually acts upon that and it even goes so far as loud and amplified music, hammering on metal.

Councilor Williams said this would be specific to the Animal Control Ordinance. He said the additional sentences would be pushed back because he wanted to change the old A1 to the new A1. The sequence of the sentences would change as they go through it and the old A1 would then be identified as A2. Then A2 would read as follows:

“permit the same to run at large within the City. A dog “**or cat**” shall be deemed to be running at large when not under restraint.”

Councilor Williams asked the Animal Control Officer if she picks up cats quite frequently?

Peggy Lu Jane said she used to but hasn’t for about five months because they are trying to keep the number cats going into the shelter down

Zach Cook, City Attorney said he was comparing the old and new A1. He said the old A1 covers the same and the language is cleaner and more effective.

Councilor Williams said they need his opinion and his were only suggestions and would ask them not to consider the new A1 under the attorney's opinion but they would still like to add the word "**cat**" if possible.

Mayor Armstrong said he didn't know how you would confine a cat when they are outside.

Councilor Williams said these were just suggestions.

Councilor Williams said under the new A4 he would like to add the following language:

**"all feces excrement from any public or private premises in a timely manner in order to prevent noxious or offensive odors."**

Zach Cook, City Attorney said by putting the period here you would cover any reason why the owner would remove that.

Councilor Williams said under A5 he would like the second "**within**" in the paragraph.

Councilor Williams said under A6 he would like to modify leash length minimum from six feet and a maximum to twelve feet such as found on sports retractable leashes.

Mayor Armstrong said when it gets to twelve feet it is so long the dog can actually go into the yard.

Councilor Williams said that is why he wanted to put the language "retractable" because then the owner has control of the leash.

Zach Cook, City Attorney said to clarify that the length can only read twelve foot maximum if it is retractable. Councilor Williams said yes.

Peggy Lu Jane said they should keep it at six feet in public places but it should be allowed up to twelve foot retractable in the forest and large open areas.

Mayor Armstrong said the next one was "6-9-7 Impounding of Animals."

Councilor Williams said this has been a widely discussed portion of the ordinance. He said he would like to add and modify under "A" as follows:

**"The Animal Control Officer or any other peace officer will issue written citations to an owner or keeper of a dog or cat that is in violation of any provision of this Article. It is lawful for the animal Control Officer or any other peace officer having probable cause of a violation of this Article, go upon private**

property for the purpose of **impounding an animal when;**

- or
1. **retrieving or restraint of a vicious dog that has caused injury to a person**
  2. **domesticated animal**
  3. **a dog or cat that is suspected or diagnosed as rabid**
  3. **there is an appearance of abuse or abandonment of dog or cat**

Councilor Williams suggested adding new language under “B” to read as follows:

**“In lieu of impounding a dog or cat with an expired license or vaccination tag, the Animal Control Officer or any other peace officer will issue a citation of an ordinance violation to known owner or keeper. The owner or keeper must have the dog or cat licensed within 72 hours with the Planning & Zoning-Licensing and Permitting Department.”**

Councilor Hood said he thought they should state in this ordinance why they are going on private property.

Councilor Williams suggested modifying the language under “C” as follows:

**“If the dog or cat is not licensed within 72 hours, the animal will be impounded by the Animal Control Officer or any other peace officer. The animal may be released to the owner or keeper upon payment of subsequent fines listed in this Article and fees associated with the Contracted Impoundment Facility.”**

Councilor Williams suggested modifying and adding language under “D” as follows:

**“At the end of the minimum confinement period, (3) days for unlicensed or (5) days for licensed dogs or cats, not counting the first day of confinement, the animal may be adopted or if not adopted may be humanely destroyed. The animal may be kept for adoption beyond the minimum confinement period at the discretion of the Contractual Impoundment Facility.”**

Councilor Williams suggested modifying and adding language under “E” as follows:

**“Any person finding an animal upon his/her property to his/her injury or annoyance may take up the same and remove it to any private or contracted animal shelter that will take possession of. If the contracted animal shelter is unable to accept the animal, he/she may hold such animal in his/her own possession and as soon as possible notify the Animal Control Officer or any other peace officer of his/her custody, giving a description of the animal and name of the owner, if known.”**

Councilor Williams suggested adding and item for “A” and “B” under 6-9-8 “Animals Which Have Bitten a Person to be Confined” as follows:

- A. When any person is bitten by a dog or cat, it is the duty of such person is keeper of the animal immediately notify the District Health Office. The owner or keeper of the animal immediately and at his/her own expense, confine **such animal** securely for ten (10) days at a private or contracted animal shelter.
- B. **A physician who renders professional treatment to a person bitten by an animal has a duty to report the occurrence to the District Health Office within 24 hrs. The physician shall report the name and address of the person bitten. Any animal that has bitten a person shall be confined until confirmation of current rabies vaccination.**

Councilor Williams said he would like to add some language to 6-9-9 “Filing of Complaint in Municipal Court” as follows:

- (A) If a dog or cat is impounded, the Animal control Officer or any other peace officer may institute proceedings in the Municipal Court on behalf of the City against the owner or keeper of such dog or cat, if **he/she** is known, charging the owner of keeper with the violation of **Section 6-9-7 (1) (3) of this Article.**
- (B) Nothing herein contained shall be construed as preventing the Animal Control Officer or any other peace officer or any citizen from instituting a preceding in Municipal Court of the City for violation of **Section 6-9-7 (1) (3) of the Article.**

It was agreed that they would hold off on these changes until Zach Cook, City Attorney researches 6-9-7 “Impounding of Animals.”

Councilor Hood said they should make this ordinance as clear as possible.

Councilor Williams said he would like to modify language and add to in 6-9-10 “Release of Impounded /**Destruction of an Animal**” and the modifications suggested are as follows:

- (A) If a complaint has been filed in the Municipal Court of the City against the owner or keeper of any impounded dog or cat for violation of **Section 6-9-7 (3) of the Article** the dog or cat shall not be released from impoundment except by order of the Municipal Court . In addition to penalties outlined in **Section 6-9-5, additional fees and fines from the Contracted Impoundment Facility shall apply.**
- (B) **If a dog or cat is impounded for violations of licensing, tags, vaccination or nuisances, if the owner or keeper is known, shall be released to the**

**owner following payment of fines from the City and Contracted Impoundment Facility.**

- (C) **a vicious dog who has bitten or injured a person and constitutes a clear and present danger to the citizens of the community may be humanely destroyed at the Contracted Impoundment Facility by order of the Municipal Court.**

Councilor Williams said he would like to modify 6-9-11 “Disposal of Dog or Cat of Unknown Owner or Keeper as follows:

If a complaint has not been filed in the Municipal Court because the owner or keeper of an impounded animal is not known or cannot be located and such dog or cat has not been claimed within a minimum of three (3) days for unlicensed and five (5) for licensed, not counting the first day of impoundment, **the dog or cat may be humanely destroyed by the Contracted Impoundment Facility.** Any impounded animal not claimed by its legal owner or **keeper** within the minimum confinement period **may be adopted by another person upon payment of adoption and associated fees set forth by the Contracted Impoundment Facility.**

Councilor Hood said he didn’t have any problem with the modifications.

Councilor Williams said he didn’t have any changes to 6-9-12 “Dogs Trained to Assist The Blind, Allowed In Public Places.”

Councilor Williams said he had some new categories to insert as 6-9-13 “Abuse or Interference with a Police Patrol Dog” and would be reflected as follows:

- (A) **willfully or maliciously torturing, tormenting, beating, kicking, striking, mutilating, disabling or killing any animal used by a peace officer in the performance of his/her duties or functions.**
- (B) **violations of this section is guilty of a petty misdemeanor and shall be punished by a fine not exceeding that authorized by state law. State Law Ref: NMSA 1978 30-18-13.**

Councilor Williams said he would like to add new language to 6-9-14 “Care and Maintenance of Animals” as follows:

No person shall:

- (A)– add the last sentence to read: properly accommodate the animal, **yards and cages cleaned regularly and animal feces disposed of**

- (C) – Leave an animal in an enclosed or upon a vehicle or trailer for a length of time, which could result in danger to or death of the animal. If the Animal Control Officer **or any other peace officer** determines that an animal in an enclosed vehicle or trailer is in **danger from poor ventilation or extreme temperatures, must make a reasonable effort to locate the owner of the vehicle of the violation, if not able**, may enter the vehicle or trailer by whatever means necessary, without being liable to the owner of the vehicle or trailer and take the animal into protective custody.

Councilor Williams said he would like to include new language in 6-9-15 “Cruelty to Animals” under (C) as follows:

In sentence 6 “a licensed veterinarian, the Animal Control Officer **or any other peace officer** may take such” and then add **State Law Ref: NMSA 1978 30-18-1 Cruelty and NMSA 1978 3-18-3 (A) (1) Municipality authority to prevent cruelty**

Councilor Williams said he would like to include a new category for 6-9-16 “**Striking by Vehicle**” and it would read as follows:

**Any person who as the operator of a motor vehicle strikes any warm blooded animal shall immediately report such injuries or death to the Animal Control Officer or any other peace officer.**

Councilor Williams said he would like to include a new category for 6-9-17 “**Declaration of Quarantine**” (A) and (B) and this would replace Section 6-9-14 “Confinement or Muzzling of Dogs During Rabies Danger-Impounding of Dogs Not Confined or Muzzled.” The new category 6-9-17 would read as follows:

(A) **The Governing Body may declare a quarantine within the City limits on the recommendation from the District Health Office of a reported rabies incident. This Declaration allows the City to implement restrictions on animals for public health and safety. During this time all animals must be confined on the owner’s or keeper’s premises or in a licensed veterinary hospital or an approved private or public animal shelter.**

(B) **Any animal running at large within the City within the City will be impounded immediately by the Animal Control Officer or any other peace officer.**

(C) **A quarantine shall remain in effect until rescinded by the Governing Body.**

Councilor Williams said he would like to add some new language in sentence 2 in 6-9-18 “Female Dogs or Cats in Heat/Estrus as follows:

“confined during such period in the owner’s or **keeper’s** yard.”

Councilor Williams said he would like to add some new language and change the paragraphs in 6-9-19 “Vicious Dogs” as follows:

- (A) No person shall own, keep or harbor a vicious dog within the City. As Used within this Article, a vicious dog is a dog that bites, attacks **or injures a person** or other animals without provocation either on public or private property.
- (B) **Any dog that approaches a person or other animal in a threatening manner on streets, sidewalks or other public places will be impounded by the Animal Control Officer or any other peace officer.**
- (C) **A dog which bites, attack or injures a person or animal that bites, attacks or injures a person or animal that is unlawfully upon its owner’s premises or which is provoked by taunting or tossing of objects is not considered a vicious animal. Visual “beware of dog” or “no trespassing” signs should be displayed.**
- (D) In the event that a vicious dog cannot be impounded **safely or** without the Animal Control Officer or any other peace officer’s **personal safety is threatened, may humanely destroy such dog** without notice to the owner or keeper thereof.

Zach Cook, City Attorney said he would want to be sure about the definition of “vicious and under which circumstances.”

Councilor Williams said he would like to change some of the language in sentence 5-6 in 6-9-20 “Dog Killing or Injuring Livestock” as follows:

“dog after it is known that the dog **has previously killed or injured livestock or** liable to kill livestock and it shall be the duty of the owner to **humanely destroy** the dog upon the”

Councilor Williams said he would like to change the term “police officer” to “peace officer” in 6-9-21 “Interference with Animal Control Officer or other Peace Officer Performing Duties.”

Councilor Williams said he would like to add “**State Law Ref: NMSA 1978 30-18-9**” in 6-9-22 “Instigating Or Encouraging Dog Fights, Prohibited:”

Councilor Williams said he would like to change the language in sentence 2 of 6-9-23 “Failure to Kill-Penalty” as follows:

“keeping of which is unlawful, to cause such an animal to be **humanely destroyed**”

Councilor Williams said he would like to remove Section 6-9-24 “Establishment of a Pound.”

Councilor Williams said he did not have any changes to Section 6-9-25 “Keeping of Wild Animals Prohibited.”

ADJOURNMENT

There being no further business to attend to; Mayor Armstrong entertained a motion to adjourn.

Councilor Williams moved to adjourn at 8:20 p.m. Seconded by Councilor Hood. All were in favor and the meeting adjourned.

  
Tom E. Armstrong, Mayor

ATTEST:

  
Carol Virden, City Clerk/Treasurer