



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SUPPLEMENTAL MEMO – TITLE 7 ANIMAL REGULATIONS
DATE: June 22, 2007

SUPPLEMENTAL MEMO

On June 19, 2007, the City Council discussed and approved the proposed ordinance amending Title 7 with additional clarifying and technical changes. During public comment at the Council meeting, two issues were raised relating to “animal events” and the scope of a private cause of action for a public nuisance.

Based on staff’s recommendation and Council discussion, the intent of regulating “animal events” is to limit the number of events a person may have in a calendar year. Clarifying changes have been made to Section 7.60.010.A to limit each person, including persons acting in concert, to one permit a year.

Under the current “public nuisance” provision (Section 7.08.410), a private person may maintain an action in court for a violation of that section which prohibits, in part, any person from allowing an animal to defecate or urinate on another person’s private property without immediately cleaning up the waste, permitting an animal to disturb other people’s reasonable and comfortable use of their property, or maintaining a dangerous dog in violation of the dangerous dog maintenance requirements. In Section 7.40.010.C of the proposed ordinance, a typographical error inadvertently expanded the scope of a private cause of action to all violations of the Title. Clarifying changes have been made to Section 7.40.010.C to reflect the current law.

Attached is the proposed ordinance with the clarifying and technical changes in underscore or ~~strikethrough~~ to facilitate review. The proposed ordinance is scheduled for Council consideration for adoption on June 26, 2007, under Agenda Item No. 2.2(h). If the proposed ordinance is adopted on June 26, 2007, the effective date will be August 1, 2007.

RICHARD DOYLE
City Attorney

By 
Rosa Tsongtaataki
Deputy City Attorney

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 7 OF
THE SAN JOSE MUNICIPAL CODE IN ITS ENTIRETY, RELATING TO
ANIMAL CARE AND CONTROL**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 7 of the San José Municipal Code is hereby amended in its entirety,
to be numbered, entitled and to read as follows:

**TITLE 7
ANIMAL CARE AND CONTROL
CHAPTER 7.10
GENERAL PROVISIONS AND DEFINITIONS
Part 1
Definitions**

7.10.005 Definitions

The definitions set forth in this Part govern the application and interpretation of this Title.

7.10.010 Abandon

“Abandon” means to fail to provide any animal proper and adequate food, water, shelter, or veterinary care for a period of more than forty-eight (48) hours.

7.10.015 Administrator

“Administrator” means the person authorized by the City Manager, by designation, delegation or contract, to administer and enforce the provisions of this Title and applicable State laws pertaining to the care, destruction, impoundment, licensing, and treatment of animals, or his or her authorized representative.

7.10.020 Animal

“Animal” means any live vertebrate creature, domestic or wild, except fish.

7.10.025 Animal Event

“Animal Event” means any temporary activity involving the display, use, or performance of a live animal **primarily** for **the** entertainment or enjoyment of the public. For the

purpose of this definition, “temporary” means fourteen (14) or fewer consecutive days and no more than two (2) separate occasions of fourteen (14) or fewer consecutive days within a twelve (12) month period. An Exhibition is not an Animal Event.

7.10.030 Animal Facility

“Animal Facility” means any Pet Shop, Commercial Kennel, Private Kennel, Pet Grooming Business, Animal Menagerie, Animal Shelter, or Horse Establishment.

7.10.035 Animal Menagerie

“Animal Menagerie” means any place where dangerous animals are kept or maintained for any purpose, including places where dangerous animals are boarded, exhibited, trained, or kept for hire.

7.10.040 Animal Rescuer

“Animal Rescuer” means any person that provides temporary housing and care for domestic animals with the purpose of placing those animals with a new and permanent owner/guardian and that provides evidence satisfactory to the Administrator of a history of active placement or an affiliation with a recognized organization with a history of active placement.

7.10.045 Animal Services Officer

“Animal Services Officer” means any person authorized by the Administrator to enforce the provisions of this Title and applicable State laws pertaining to the care, destruction, impoundment, licensing, and treatment of animals.

7.10.050 Animal Shelter

“Animal Shelter” means a facility operated by a public entity or by an accredited, tax-exempt humane organization for the purpose of impounding, harboring, selling, placing, or destroying seized, stray, distressed, homeless, abandoned, or unwanted animals.

7.10.055 Attractant

“Attractant” means any substance which could reasonably be expected to attract a wild animal or does attract a wild animal, including, but not limited to, garbage, food products, pet food, feed, grain, or salt.

7.10.060 Bees

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“Bees” mean honey-producing insects of the species *Apis Mellifera*, including the adults, eggs, larvae, pupae, or other immature states thereof, together with such materials as are deposited into hives by their adults, except honey and rendered beeswax.

7.10.065 Building

“Building” means a fully enclosed permanent structure that is constructed with permits and conforms to standards of the Building, Electrical, Fire, Mechanical, Plumbing, and Zoning Codes.

7.10.070 Cat

“Cat” means any domestic cat (*Felis Catus*). An adult cat is over four (4) months of age.

7.10.075 Collar

“Collar” means a well fitted device, worn around the neck, appropriate to the age and size of the animal.

7.10.080 Commercial Kennel

“Commercial Kennel” means any person who (1) maintains more than the maximum number of cats and dogs allowed under Section 7.40.020 and such animals are maintained for engaged in the commercial breeding of dogs or cats, or both, for to salesell, individually or in litter lots; (2) allows the parturition or rearing of more than two (2) litters from all dogs and cats on the premises in any twelve (12) consecutive months; or (3) the-boardsing, train~~ing~~, -sale, or hire~~s~~ of dogs and/or cats for compensation. Animal hospitals with a valid veterinary premise permit maintained by a veterinarian licensed by the State of California as part of the practice of veterinary medicine, Animal Shelters, or Private Kennels are not Commercial Kennels.

7.10.085 Dangerous Animal

“Dangerous Animal” means any wild, exotic, or venomous animal or other animal which, because of its size, disposition, or other characteristic, would constitute a danger to persons or property.

7.10.090 Dangerous Dog

“Dangerous Dog” means any dog other than a Police Dog that has committed or meets any one of the following:

- A. Killed or caused the death of another domestic animal.

- B. Bitten a person which resulted in an injury that is less than a severe injury.
- C. Threatened the safety of a person or animal and caused an injury to the person that is less than a severe injury.
- D. Been declared a dangerous or vicious dog in another jurisdiction.
- E. Been determined to be, and is currently designated as a potentially dangerous dog which, after its owner/guardian or person with a right to control the dog has been notified of this determination:
 - 1. Commits any of the behavior described in Section 7.10.180; or
 - 2. Is maintained in violation of Section 7.30.910.

7.10.095 Dog

“Dog” means any domestic dog (Canis Familiaris). An adult dog is over four (4) months of age.

7.10.100 Euthanasia

“Euthanasia” means the humane destruction of an animal by a method involving instantaneous loss of consciousness and immediate death or painless loss of consciousness and death during the loss of consciousness.

7.10.105 Exhibition

“Exhibition” means any organized animal conformation or agility type competition registered or chartered with a nationally recognized organization.

7.10.110 Feral Cat

“Feral Cat” means any homeless stray, wild, or untamed cat.

7.10.115 Grooming

“Grooming” means to clean, trim, brush, manicure, or remove foreign object(s) from an animal’s skin or fur.

7.10.120 Grooming Business

“Grooming Business” means any commercial place including mobile facilities that provide grooming services for animals.

7.10.125 **Intentionally left blankGuardian.**

“Guardian” as used in this Title means an owner of an animal with the same duties and obligations under this Title as an owner.

7.10.130 **Health Officer**

“Health Officer” means the head of the Santa Clara County Public Health Department.

7.10.135 **Hearing Officer**

“Hearing Officer” means the person described in Section 1.15.080 of Title 1 of the San José Municipal Code, as may be amended.

7.10.140 **Hives**

“Hives” mean any receptacle or container made or prepared by a natural person for the intended use of bees or storage of honey or brood, or box or similar container of which bees have taken possession.

7.10.145 **Homing Pigeon**

“Homing Pigeon” means a bird of the family Columbidae maintained and housed in a pigeon enclosure or structure and identified by a leg band.

7.10.150 **Horse Establishment**

“Horse Establishment” means any location where three (3) or more horses, donkeys, mules, jack, hinnies, jennies, burros, or ponies are maintained for hire to be ridden or driven; giving riding instruction; or boarding with compensation.

7.10.155 **Livestock**

“Livestock” means all domestic or domesticated bovine (cattle type), equine (horse type), ovine (sheep type), porcine (swine type), corvine (deer like), caprine (goat type), and ratite (ostrich type) animals.

7.10.160 **Owner**

“Owner” means any person who has title to or a legal interest in, or acknowledges title to or a legal interest in an animal.

7.10.165 Person

“Person” means any natural person, business entity, establishment, firm, association, organization, partnership, trust, corporation, committee, or company, or any other organization or group of persons acting in concert.

7.10.167 Person With A Right To Control

“Person With A Right To Control” means any natural person who harbors or has control, custody, or possession of an animal.

7.10.170 Pet Shop

“Pet Shop” means a business establishment whose activities are conducted wholly inside a building where animals are displayed for sale, offered for sale, exchanged, given away, bartered, or hired.

7.10.175 Police Dog

“Police Dog” means any dog that is officially used by a peace officer in the course of law enforcement duties.

7.10.180 Potentially Dangerous Dog

“Potentially Dangerous Dog” means any dog other than a Police Dog that has committed any of the following acts:

- A. Threatened the safety of persons, on at least two (2) occasions, which required the threatened persons to take defensive action.
- B. Injured a domestic animal to the extent that the domestic animal required veterinary care.

7.10.185 Private Kennel

“Private Kennel” means any person who (1) maintains ~~location~~ within or adjoining a private residence more than the maximum number of cats and dogs allowed under Section 7.40.020 and such animals where four (4) or more adult dogs, or six (6) or more adult cats or more than a combined total of five (5) adult dogs and cats, are maintained for recreational use or for exhibition in conformation shows, field or obedience trials and where the sale of offspring is not the primary function of the kennel; or (2) allows the parturition or rearing of two (2) litters from all dogs and cats on the premises in any twelve (12) consecutive months.

7.10.190 Quarantine

“Quarantine” means isolation of an animal in a place and manner approved by the Administrator.

7.10.195 Severe Injury

“Severe Injury” means any physical injury to a human being that results in muscle tears or disfiguring lacerations, or requires multiple sutures or corrective or cosmetic surgery.

7.10.200 Service Dog

“Service Dog” means any guide dog, signal dog, search and rescue dog, or dog otherwise specially trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, alerting individuals with impaired hearing to intruders or sounds, guiding individuals with impaired sight to obstacles, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

7.10.205 Small Animals

“Small Animals” means rabbits, chickens, turkeys, geese, ducks, doves, pigeons, game birds, or other fowl.

7.10.210 Vicious Dog

“Vicious Dog” means any dog other than a Police Dog that has committed or meets any one of the following:

- A. Been seized under Penal Code Section 599a, as may be amended, where either the dog owner/guardian or person with a right to control the dog has been convicted under Penal Code Section 597.5(a), as may be amended.
- B. Caused a severe injury to or killed a human being.
- C. Been previously determined to be, and currently designated as a dangerous dog which, after the dog owner/guardian or person with a right to control the dog has been notified of this determination:
 - 1. Commits any of the behavior described in Section 7.10.090; or
 - 2. Is maintained in violation of Section 7.30.920.

7.10.215 Wild Animal

“Wild Animal” means coyotes, opossums, skunks, fur bearing mammals as defined by Fish and Game Code Section 4000, as may be amended, and game mammals as defined by Fish and Game Code Section 3950, as may be amended.

7.10.220 Wild Swarms of Bees

“Wild Swarms of Bees” mean any colony of bees which becomes established upon a lot or parcel, outside of a Hive, or in anything other than a Hive.

7.10.225 Wildlife Rehabilitation Facility

“Wildlife Rehabilitation Facility” means a site where activities are undertaken to restore to a condition of good health, for the purpose of release to the wild, animals occurring naturally and not normally domesticated in this State, and with a valid permit or license from the State Department of Fish and Game.

7.10.230 Wildlife Rehabilitator

“Wildlife Rehabilitator” means any person acting on behalf of a Wildlife Rehabilitation Facility.

**Part 3
Enforcement Authority**

7.10.300 Authority of Administrator and Animal Services Officer

- A. The Administrator and an Animal Services Officer are authorized to:
1. Enforce the provisions of this Title and State laws relating to the care, treatment, impoundment, and destruction of animals.
 2. Arrest any person who violates any provision of this Title deemed a misdemeanor pursuant to Penal Code Section 836.5, as may be amended.
 3. Issue citations pursuant to Corporations Code Section 14503, as may be amended.
 4. Act as a public officer pursuant to Section 7 of the Food and Agricultural Code, as may be amended.
- B. The Administrator is authorized to establish rules and regulations in conformity with and for the purpose of carrying out the intent of this Title.

- C. An Animal Services Officer is authorized, during the course and within the scope of his or her employment, to arrest any person who violates this Title or State law pursuant to Penal Code Section 830.9, as may be amended.

7.10.310 Inspection Authority

The Administrator and any employee of the City authorized to enforce the provisions of this Title may enter upon and inspect any premises, where any animal is kept or harbored, to the extent permitted and in the manner provided by law, when such entry is reasonably necessary to enforce the provisions of this Title.

**Part 5
Other Laws**

7.10.500 Other Laws

Nothing in this Title is intended to supersede the provisions of the City of San José zoning code or other applicable codes, federal or state statutes, and county ordinances.

**CHAPTER 7.20
ANIMAL CARE AND KEEP
Part 1
Care and Keep of Animals**

7.20.010 Proper and Adequate Care Requirement

It is unlawful for any person to keep, use, or maintain any animal without proper and adequate care in violation of any of the provisions in this Part.

7.20.020 Shelter and Shelter Maintenance Requirements

- A. Any animal maintained outdoors must have adequate shade or shelter such that the animal can protect itself from the direct rays of the sun when the sunlight is likely to cause overheating or discomfort, and the animal can remain dry during the rain;
- B. The shelter for any animal must be:
1. Accessible to the animal at all times;

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2. Situated to prevent exposing the animal to unreasonably loud noise, or teasing, abuse or injury by another animal or person;
3. Constructed with at least five (5) sides including a roof and floor. The floor must be raised off the ground; be free of cracks, depressions and rough areas where insects, vermin or eggs for internal parasites may lodge; and protect the animal's legs and feet from injury;
4. Of adequate size inside and outside the shelter to allow the animal to stand up, sit, turn around freely or lie down in a normal position; defecate or urinate away from its confinement; and safely interact with any other animal;
5. Adequately lighted to provide regular diurnal lighting cycles of natural or artificial light uniformly diffused throughout the shelter, and sufficient illumination for routine inspections and care of the animal;
6. Supplied with clean and dry bedding material or other means of protection from the weather elements to maintain the shelter at a temperature that is not harmful to the health of the animal;
7. Cleaned and maintained in a manner designed to insure sanitary conditions and to control for insects, ectoparasites, and other pests. Carcasses, debris, food waste, and excreta must be removed from the shelter as often as necessary to minimize unreasonably obnoxious odor, allergen, pests, and the risk of disease. If the animal is confined within the shelter during cleaning, the animal may not be exposed to any cleaning agents or water. Rugs, blankets, or other bedding material must be kept clean and dry.

7.20.030 Water Requirement

- A. The animal must have access to clean potable water at all times unless restricted for veterinary care.
- B. If the water is kept in a container, the container must be designed to prevent tipping and spilling of the water or be secured to either a solid structure or the ground.
- C. Water containers must be clean and must be emptied and refilled with fresh water every twenty four (24) hours or alternatively if the water is provided by an automatic or demand device, the water supply connected to the device must function twenty four (24) hours a day.

7.20.040 Food and Feeding Requirements

- A. The animal must be provided food that is wholesome and contains sufficient quantity and nutritive value to maintain a healthy body weight and meet the normal daily requirements for the condition and size of the animal.
- B. The food receptacle must be accessible to the animal and placed in a location to minimize contamination from excreta and insects. Feeding pans must be durable and kept clean. Disposable food receptacles may be used and must be discarded after each feeding. Self-feeders may be used for dry food and must be sanitized regularly to prevent molding, deterioration, or the dense compaction of food.
- C. Spoiled or contaminated food must be disposed of in a sanitary manner.

7.20.050 Veterinary Treatment Requirement

The animal must receive veterinary treatment from a veterinarian licensed by the State of California when such treatment is necessary to alleviate the animal's suffering or prevent the transmission of disease.

7.20.060 Exercise Requirement

The animal must be provided the opportunity to exercise in order to maintain normal muscle tone and mass for the age, size, and condition of the animal.

7.20.070 Transportation Requirement

The animal must be handled, moved, or shipped in a manner consistent with Section 7.40.090 and to insure the health and safety of the animal.

7.20.080 Dog Confinement Requirement

- A. No dog may be tethered, fastened, chained, tied, or restrained to a shelter, tree, fence, or any other stationary object, except in accordance with Penal Code Section 597t, as may be amended.
- B. If a dog is confined in compliance with Subsection A, the dog owner/guardian and person with a right to control the dog may:
 - 1. Attach a dog to a running line, pulley, or trolley system except no dog may be tethered to a running line, pulley, or trolley system by means of a choke collar or pinch collar;

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2. Tether, fasten, chain, tie, or otherwise restrain a dog pursuant to the requirements of a camping or recreational area;
3. Tether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period;
4. Tether, fasten, chain, or tie a dog while engaged in or actively training for, an activity that is conducted pursuant to a valid license issued by the State of California if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in Section 7.20.080.B.4 prohibits a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity;
5. Tether, fasten, chain, or tie a dog while actively engaged in conduct that is directly related to the business of shepherding or herding cattle or livestock, or directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

7.20.090 Fenced Premises Requirement

If a fence is the primary means of confining the animal, the fence must be maintained in a manner to prevent the animal from running at large in violation of Section 7.40.030.

Part 3 Miscellaneous Care and Keep Provisions

7.20.300 Diseased or Dangerous Animals

- A. The owner/guardian of a dangerous animal or person with a right to control a dangerous animal must confine it within a building or secure enclosure, except that the animal may be permitted off the premises only when securely muzzled, leashed, and under the direct physical restraint of a person eighteen (18) years of age or older and who is physically capable of restraining the animal.
- B. If an owner/guardian of the animal or a person with a right to control the animal knows that the animal is infected with any disease transmittable to humans, he or she is prohibited from allowing the animal to be or remain within the City other than at an approved veterinary hospital unless an Animal Services Officer approves an alternative means of confinement.
- C. An Animal Services Officer may seize any animal the officer reasonably believes to be dangerous or infected with any disease transmittable to humans. The officer may impound such animal for a period sufficient to observe, examine, and

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determine whether the animal is diseased or dangerous so as to be a menace to public health or safety.

- D. Diseased or dangerous animals that are a danger to public health or safety may be destroyed pursuant to Section 7.50.070.

7.20.310 Dead Animals

- A. Upon the death of any animal, the owner/guardian of the animal or person with a right to control the animal must provide for the burial, incineration, or other disposition of the body. If the owner/guardian of the dead animal or person with a right to control the dead animal is unable to provide for burial or other disposition, he or she may request that the City dispose of the body for a fee.
- B. Upon learning that the body of a dead animal has not been disposed of in a safe and sanitary manner, an Animal Services Officer may dispose of such body as soon as practical; provided, however, that an Animal Services Officer may not be required to remove and dispose of bodies of dead animals on State highways or on State property. Either the owner/guardian of the animal or person with a right to control the animal must pay a fee for the disposal.
- C. Any fee authorized by this Section must be set forth in the schedule of fees adopted by resolution of the City Council.

7.20.320 Chain Collar Prohibited

It is unlawful for any person to use a chain as a collar for any animal except during training sessions under the direct supervision of the owner/guardian or person with a right to control the animal.

Part 5 Licensing and Vaccination

7.20.500 Vaccination of Dogs and Cats

- A. Every person who owns, maintains, or boards a dog or cat, four (4) months of age or older, must cause that dog or cat to be vaccinated and revaccinated with a state-approved anti-rabies vaccine within the time periods prescribed by State law or regulation.
- B. A veterinarian must certify the vaccination in accordance with Section 7.20.510.
- C. Compliance with the provisions of this Section is a condition precedent to the issuance or renewal of any dog or cat license.

7.20.510 Vaccination Certificate

- A. A veterinarian who vaccinates any dog or cat, for whom a license is required under this Part, with an anti-rabies vaccine, or causes or directs such vaccination, must complete and sign a rabies vaccination certificate that can be obtained from the City to certify that the dog or cat has been vaccinated.

- B. The rabies vaccination certificate must include all information required by State law, including:
 - 1. The name, address, and telephone number of the owner/guardian of the dog or cat;
 - 2. A description of the dog or cat, including its breed, color, age, sex, and spay or neuter status;
 - 3. The date of the vaccination;
 - 4. The type of rabies vaccine administered; and
 - 5. The expiration date of the vaccination and lot number.

- C. If the veterinarian who vaccinates the dog or cat is located within the City, the veterinarian must submit a current and valid rabies vaccination certificate to the Administrator within thirty (30) days from the date that the dog or cat was vaccinated.

- D. If the dog or cat that is subject to the licensing requirements is vaccinated for rabies by a veterinarian located outside the City, the owner/guardian or person with a right to control the dog or cat must submit a copy of the vaccination certificate to the Administrator within thirty (30) days from the date that a dog or cat is vaccinated or brought into the City, whichever date is later in time.

7.20.520 License Required

- A. It is unlawful of any person to own, maintain, or board any adult dog or adult cat that has not been licensed pursuant to the provisions of this Part, except that a license is not required for a dog or cat owned, maintained by, or under the control of a nonresident of the City which is kept in the City for thirty (30) or fewer days in any twelve (12) month period.

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- B. Any dog or cat that is not properly licensed in accordance with this Part is rebuttably presumed to be an unvaccinated stray animal and may be subject to the seizure and impoundment procedures set forth in Chapter 7.50 of this Title.
- C. Animal shelters, animal hospitals, animal rescuers, commercial kennels, and pet shops are exempt from the requirement of this Section to obtain a license for each dog or cat within the facility unless the dog or cat is owned by a person that owns or works at the facility.

7.20.530 Issuance of License

- A. An application for a dog or cat license or a renewal of a dog or cat license, together with any required license fees and a current and valid rabies vaccination certificate must be filed with the Administrator on a form provided by the Administrator.
- B. The Administrator may only issue a dog or cat license upon payment of the required license fees and the submission of a current and valid rabies vaccination certificate.
- C. The dog or cat license must state:
 - 1. The name and address of the person to whom the license is issued;
 - 2. The amount paid for the license;
 - 3. The date of issuance and expiration of the license;
 - 4. The date of expiration of the rabies vaccination;
 - 5. A description of the dog or cat for which the license is issued; and
 - 6. The identification number on the metallic tag accompanying the license.

7.20.540 License Fees

- A. All fees authorized by this Section must be set forth in the schedule of fees adopted by resolution of the City Council.
- B. The license fee may be imposed for the issuance of a dog license or a cat license.
- C. A reduced license fee may be imposed for a dog or cat that has been spayed or neutered. A certificate from a veterinarian duly licensed by the State of California

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certifying that a dog or cat has been spayed or neutered, cannot be spayed or neutered for health reasons, or is incapable of breeding must be submitted to the Administrator before a license for that dog or cat is issued at the reduced fee.

- D. A late license fee may be imposed for any dog or cat license that is:
1. Obtained more than thirty (30) days after the date that the dog or cat became four (4) months old; or
 2. Obtained more than thirty (30) days after the date that the adult dog or adult cat was acquired or brought into the City; or
 3. Obtained more than thirty (30) days after the expiration of a previously issued license.
- E. A transfer fee may be imposed to update the dog and cat license information to reflect a new owner/guardian.
- F. No fees imposed by this Section is refundable in whole or in part.

7.20.550 License Fee - Exemptions

- A. One person over sixty-five (65) years of age per dwelling unit is exempt from a license fee for either one (1) spayed or neutered dog or one (1) spayed or neutered cat if he or she maintains the dog or cat in the dwelling unit.
- B. No license fee is required for Service Dogs covered by definition when a written request for this exemption is submitted to the Administrator.
- C. No license fee is required if a licensed dog or cat dies and the owner/guardian, within thirty (30) days of the animal's death, obtains a license for a new dog or cat and requests the remainder of the license period for the deceased dog or cat be applied towards the new license.
- D. No license fee is required for Police Dogs when a written request for this exemption is submitted to the Administrator.

7.20.560 License Period

- A. The term of any dog or cat license is from the date that the license is issued as shown on the license and expires upon the one (1) year anniversary of the date upon which the license was issued except as provided in Section 7.20.560.D.

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- B. The Administrator may issue a license for a period not to exceed three (3) years for dogs or cats that have attained the age of twelve (12) months or older, and who have been vaccinated against rabies provided the license period does not extend beyond the validity for the current rabies vaccination.
- C. An application for the renewal of any license issued pursuant to this Part must be filed with the Administrator prior to the expiration of the license.
- D. The new license period begins on the expiration date of the previous license period, irrespective of the application date for the license renewal.

7.20.570 Metal Tag

- A. The Administrator issues the metal tag bearing an identification number with each dog or cat license.
- B. Any person who owns, maintains, or boards a dog or cat must cause the dog or cat to wear the metal tag at all times.
- C. In lieu of the requirement that a cat wear a metal tag, the Administrator may approve that a cat receive a computer microchip providing access to all of the information on the metal tag issued for the cat at the sole cost and expense of the owner/guardian or person with a right to control the cat.
- D. The metal tag issued pursuant to this Part to any dog or cat may not be attached to a dog or cat other than the dog or cat for which the tag was issued.
- E. A dog participating in or preparing for an Exhibition may not be required to wear a metal tag ~~during the Exhibition~~ if the dog is implanted with a computer microchip providing access to all of the information on the metal tag issued for the dog and the owner/guardian and/or person with a right to control the dog carries the metal license tag on his or her person. This subsection does not exempt any person from complying with Sections 7.40.030 and 7.40.040.

7.20.580 Presentation of License on Request

- The owner/guardian of the dog or cat and any person with a right to control the dog or cat must present the license for that dog or cat upon the request of the Administrator or any person authorized to enforce this Title.

7.20.590 License Record

The Administrator keeps a record of all licenses issued pursuant to this Part, together with a description of the dog or cat for which the license was issued.

**Part 7
Sale of Animal**

7.20.700 Sale of Cats or Dogs

It is unlawful for any person to display, sell, exchange, barter, or give away any cat or dog under eight (8) weeks of age, except to surrender the animal to an animal shelter or to an animal rescuer with a valid registration pursuant to Section 7.60.300. Proof of age of the dog or cat may be required by the Administrator. Proof of age may include, but not be limited to, certification by a licensed veterinarian attesting to the animal's age.

7.20.710 Immunization and Disclosure

- A. It is unlawful for any person to display, sell, exchange, or barter any cat or dog over eight (8) weeks of age, unless the cat or dog has been immunized against common diseases. Dogs must be immunized against distemper and parvovirus. Cats must be immunized against panleukopenia.
- B. The seller of a cat or dog must provide the buyer, at the time of sale, a signed statement from the seller attesting to the date of vaccination and the seller's knowledge of the animal's health. Such statement must also include the animal's immunization history, and the record of any known disease, sickness, or internal parasites that the animal is afflicted with at the time of transfer of ownership/guardianship including treatment and medication.

7.20.720 Return of Cat or Dog

- A. Any person purchasing a cat or dog from a person required to be permitted or registered pursuant to this Title may, within five (5) days of such purchase, cause such animal to be examined by a veterinarian licensed by the State of California, and if such examination reveals clinical signs of a contagious or infectious disease or serious congenital defects, not otherwise disclosed to the purchaser as required by Section 7.20.710.B, the purchaser may, within one day of the examination, return such animal to the seller. When returned, such animal must be accompanied with a written statement of findings signed by the attending veterinarian stating the examination findings. Upon return of such animal for the reasons stated in this Section, the seller must accept the returned animal and reimburse the purchaser for the cost of the animal.

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- B. If the seller refuses to accept the returned animal or to reimburse the purchaser for the cost of the animal upon purchaser's offer to return it, the purchaser may file a complaint with the Santa Clara Superior Court stating a cause of action for violation of this Section.

7.20.730 Location of Sale

- A. It is unlawful for any person, except an animal rescuer with a valid registration under Section 7.60.300, to display for sale, offer for sale, exchange, barter, or give away any animal except in the following locations:
1. An Animal Facility with a valid permit pursuant to Part 1 of Chapter 7.60;
 2. A private residence; or
 3. Agricultural shows or agricultural exhibits.
- B. An animal rescuer, with a valid registration under Section 7.60.300, may conduct a live animal sale or animal adoption event at a location other than an animal facility, private residence, or agricultural shows or agricultural exhibits if the animal rescuer complies with all of the following:
1. Obtains approval for the location of the event from the Administrator and such approval must be based on the animal rescuer's ability to meet the criteria established by the Administrator in conformity with and for the purpose of carrying out the intent of this Title. The criteria, include, but is not be limited to, the animal rescuer's ability to:
 - a. Provide the animals proper and adequate water, food, and shelter from the elements for the duration of the animal sale or animal adoption event; and
 - b. Properly confine the animals to protect them from vehicular and pedestrian traffic and to maintain the health and safety of the public.
 2. Reports the duration of the event, and the number of animals being offered for sale or adoption, to the Administrator, at least seven (7) calendar days before the event; and
 3. Displays the animal rescuer registration at the event in a prominent location such that any member of the public attending the event would be able to read the registration.

7.20.740 Raffle of Animals

It is unlawful for any person to raffle, give away, or otherwise offer for the purpose of a prize or fundraiser any live animal. The term “offer” includes when the live animal is redeemed at another location or time.

**CHAPTER 7.30
POTENTIALLY DANGEROUS, DANGEROUS, OR VICIOUS DOG
Part 1
Seizure and Release**

7.30.010 Potentially Dangerous Dog Behavior Prohibited

| It is unlawful for any dog owner/guardian or person with a right to control the dog to permit the dog to engage in potentially dangerous behavior as specified in Section 7.10.180.

7.30.020 Grounds for Summary Seizure and Impoundment

Notwithstanding any other provision of this Title, an Animal Services Officer or peace officer may summarily seize and impound a dog prior to a hearing, where the officer has reasonable grounds to believe that the dog:

- A. Has demonstrated one or more of the characteristics or behaviors specified in Sections 7.10.090, 7.10.180, or 7.10.210 and neither the owner/guardian nor person with a right to control the dog has a valid special dog permit; or
- B. Has a special dog permit, and
 - 1. Has engaged in one or more of the behaviors described in Sections 7.10.090, 7.10.180, or 7.10.210; or
 - 2. Has not been kept or maintained in accordance with the applicable provisions of this Chapter; or
- C. Is subject to a special dog permit but neither the owner/guardian nor person with a right to control the dog:
 - 1. Has applied for the permit; or
 - 2. Has completed the permit process; or
- D. Poses an immediate or substantial threat to the public health and safety, or property.

7.30.030 Potentially Dangerous, Dangerous, or Vicious Behavior - Rebuttal

The following circumstances may be raised, at a hearing pursuant to Section 7.30.300, to rebut the allegation(s) of potentially dangerous, dangerous, or vicious behavior as specified in Sections 7.10.090, 7.10.180, or 7.10.210 if:

- A. The injury or damage was sustained by a person who, at the time the injury or damage was sustained, was:
 - 1. Committing a willful trespass or other tort upon the private property of the dog owner/guardian or person with a right to control the dog;
 - 2. Teasing, tormenting, abusing, or assaulting the dog; or
 - 3. Committing or attempting to commit a crime.

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- B. The injury or damage was sustained by a domestic animal that, at the time the injury or damage was sustained, was teasing, tormenting, abusing, or assaulting the dog, or trespassing upon the private property of the dog owner/guardian or person with a right to control the dog that caused the injury or damage.
- C. The dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.
- D. The injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner/guardian or the person with a right to control the dog, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

7.30.040 Notice of Summary Seizure and Impoundment

- A. The Animal Services Officer must post a notice of impoundment on the front door or other appropriate place at the residence of the dog owner/guardian or person with a right to control the dog if he or she is not present at the time the dog is seized and impounded, which notice must state:
 - 1. That the dog has been impounded;
 - 2. The alleged San José Municipal Code violation;
 - 3. Where the dog is being held;
 - 4. The name, address, and telephone number of the agency or person to be contacted regarding release of the dog;
 - 5. The consequences of not requesting a hearing within the holding period of the dog's seizure as specified in Section 7.30.060; and
 - 6. The requirements for pre-hearing release of the dog as specified in Section 7.30.080.
- B. If the dog owner/guardian or person with a right to control the dog is present at the time of the seizure, such person must be given a written notice with the same information specified in Subsection A.
- C. If the name and address of the dog owner/guardian or person with a right to control the dog cannot be ascertained by the Animal Services Officer, then the notice prescribed in Subsection A must be posted on a street lamp or any other

appropriate public location and as close to the actual location of the seizure as possible.

7.30.050 Duty to Inquire

The dog owner/guardian and person with a right to control the dog have a duty to inquire with the Administrator to learn if the dog has been impounded, whenever the dog is known to have been missing from the property of the dog owner/guardian or person with a right to control the dog for more than two (2) hours and neither the dog owner/guardian nor the person with a right to control the dog has received a notice pursuant to Section 7.30.040.

7.30.060 Post-Seizure Request for Hearing

- A. If either the dog owner/guardian or person with a right to control the dog seeks to have the dog released from impoundment, he or she may request a potentially dangerous, dangerous or vicious dog hearing, or compliance hearing. Such request must be received by the Administrator within the State mandated holding period, under Food and Agricultural Sections 31754, 31752 and 31108, as may be amended, of four (4) business days, not including the day of impoundment.
- B. If no request is made by either the dog owner/guardian or person with a right to control the dog within the State mandated holding period, under Food and Agricultural Code Sections 31754, 31752 and 31108, as may be amended, of four (4) business days, not including the day of impoundment, the dog may be destroyed or otherwise disposed of in accordance with law.

7.30.070 Prompt Setting of Hearing

The Hearing Officer must set the time and place for a potentially dangerous, dangerous or vicious dog hearing, or compliance hearing, as soon as reasonably possible.

7.30.080 Pre-Hearing Release of Dog

Notwithstanding any other provision of this Title, the Administrator may release a dog impounded because of behavior described under Sections 7.10.090, 7.10.180, or 7.10.210 to its owner/guardian or to the person with a right to control the dog, prior to hearing, if the following conditions are satisfied:

- A. The Animal Services Officer, after observation of the dog and based upon assurances from the dog owner/guardian or person with a right to control the dog, has no reason to believe the dog presents an immediate threat to the health and safety of persons or domestic animals; and

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- B. The dog owner/guardian or person with a right to control the dog has paid all fees including but not limited to fees associated with impounding, licensing, and boarding the dog.

Part 3

Potentially Dangerous, Dangerous or Vicious Dog Hearing or Compliance Hearing

7.30.300 Initiation of Hearing

- A. A hearing to determine whether a dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, must be scheduled by the Hearing Officer upon filing any of the following:
 - 1. A report filed by an Animal Services Officer with the Hearing Officer stating that there are reasonable grounds to believe a dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit; or
 - 2. A request by either the dog owner/guardian or person with a right to control the dog seeking the release of a dog from impoundment pursuant to Section 7.30.060; or
 - 3. A request by either the dog owner/guardian or person with a right to control a dog that has been declared potentially dangerous, dangerous or vicious in another jurisdiction and that now resides in the City.
- B. Whenever possible, the report filed by the Animal Services Officer must include a sworn and verified statement from the complainant pursuant to Food and Agricultural Code Section 31621, as may be amended.
- C. Once the Hearing Officer has decided, in accordance with Section 7.30.330 that a dog is not potentially dangerous, dangerous, or vicious, or that the dog is maintained in compliance with the special dog permit, then the Hearing Officer may not schedule another hearing based on the same incident(s) unless an Animal Services Officer, upon investigation, has determined that there are reasonable grounds to believe the dog is potentially dangerous, dangerous, or vicious, or that the dog is not being maintained in compliance with a special dog permit.

7.30.310 Notice of Hearing and Report to Owner/Guardian or Person With a Right to Control the Dog

Pursuant to Food and Agricultural Code Section 31621, as may be amended, the Administrator may cause a notice and report to be mailed first class with return receipt

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requested or otherwise personally delivered to the dog owner/guardian or person with a right to control the dog, at least five (5) business days prior to the date set for hearing, in substantially the following form:

NOTICE OF HEARING REGARDING POTENTIALLY DANGEROUS,
DANGEROUS OR VICIOUS DOG, OR COMPLIANCE HEARING

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Chapter 7.30 of Title 7 of the San José Municipal Code, an Animal Services Officer has reported that there is reasonable cause to believe your dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit.

FURTHER NOTICE IS HEREBY GIVEN that on the _____ day of _____ 20____, at the hour of _____ o'clock, in the office of the Hearing Officer located at _____, the report of an Animal Services Officer will be considered by the Hearing Officer together with any other oral and documentary evidence bearing upon the question of whether your dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit. You may appear and present evidence at the hearing.

In the event your dog is found to be potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, the dog will be ordered to be controlled, confined, destroyed, restricted, or otherwise abated as a public nuisance. In the event your dog is found to be dangerous or vicious, or maintained in violation of the special dog permit, you may be ordered to pay a fine not to exceed Five Hundred Dollars (\$500) for each dangerous dog incident, and One Thousand Dollars (\$1,000) for each vicious dog incident. All costs of impoundment, care, and board of the dog incurred by the City of San Jose will be assessed against you and must be paid prior to the dog's release.

Dated:

Administrator
Address

7.30.320 Hearing Notice to Witnesses

The Administrator must cause a notice of the potentially dangerous, dangerous, or vicious dog, or compliance hearing to be mailed or otherwise delivered to all person(s) who have complained about the dog, to the owners of all the properties within three hundred (300) feet of the address where the dog has been maintained, and to the substation of the United States Postal Service serving that address. The notice must be

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sent at least five (5) business days prior to the date set for hearing in substantially the following form:

**NOTICE OF HEARING REGARDING POTENTIALLY DANGEROUS,
DANGEROUS OR VICIOUS DOG, OR COMPLIANCE HEARING**

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Chapter 7.30 of Title 7 of the San José Municipal Code, an Animal Services Officer has reported that there may be cause to believe that a dog, which is owned or under the control of [NAME] _____ of [ADDRESS] _____, is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit.

FURTHER NOTICE IS HEREBY GIVEN that on the ____ day of ____ 20____, at the hour of ____ o'clock, in the office of the Hearing Officer located at _____, the report of an Animal Services Officer will be considered by the Hearing Officer together with any other oral and documentary evidence bearing upon the question of whether the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit. As parties affected or potentially affected by the dog's behavior, you are invited to appear and present evidence at the hearing on the issue of whether or not the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit.

In the event the dog is found to be potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, it will be ordered to be controlled, confined, destroyed, restricted, or otherwise abated as a public nuisance.

Dated:

Administrator
Address

7.30.330 Hearing Procedure and Appeal

- A. Pursuant to Food and Agricultural Code Section 31621, as may be amended, the hearing must be held promptly within no fewer than five (5) business days nor more than ten (10) business days after service of notice upon the dog owner/guardian or person with a right to control the dog.
- B. At the hearing to determine whether the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, the dog owner/guardian or person with a right to control the dog and the City may be represented by counsel, may present evidence, and may cross-examine

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witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

- C. Any witness appearing may present evidence.
- D. Once an Animal Services Officer presents evidence to substantiate the dog's status as potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, the burden shifts to the dog owner/guardian to rebut based on circumstances specified in Section 7.30.030.
- E. The decision of the Hearing Officer that the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit must be supported by evidence on the record and is final.
- F. The Hearing Officer must cause written notice of his or her decision to be mailed within fifteen (15) business days after the conclusion of the hearing to the dog owner/guardian or person with a right to control the dog and to all persons who make a written request for a copy of the decision.
- G. Unless the preponderance of the evidence rebuts the allegation that the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, the Hearing Officer may determine the dog to be potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, as alleged.
- H. If no evidence is entered at the hearing on behalf of either the dog owner/guardian or person with a right to control the dog, then the Hearing Officer may determine that the dog is potentially dangerous, dangerous or vicious, or maintained in violation of the special dog permit, as alleged.
- I. The dog owner/guardian or person with a right to control the dog has five (5) business days upon service of the Hearing Officer's decision to appeal the decision to the superior court pursuant to Food and Agricultural Code Section 31622, as may be amended, or the decision will be deemed final if no appeal is filed on or before the expiration of the appeal period. Service of the decision or appeal may be either personally or by first-class mail, postage prepaid.
- J. Within thirty (30) days of service of the Hearing Officer's decision, both the dog owner/guardian and person with a right to control a dog that is deemed potentially dangerous, dangerous, or vicious must comply with all the provisions of the Hearing Officer's decision. Either the failure of the dog owner/guardian or person with a right to control the dog to comply with all the provisions of the Hearing Officer's decision will result in the surrender of the animal to the

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Administrator to be disposed in accordance with the law. The appeal of the Hearing Officer's decision to the superior court will suspend the thirty (30) day period until a resolution of the appeal by the court. The Administrator may grant either the dog owner/guardian or person with a right to control the dog a fifteen (15) day extension for good cause such as evidence of a good faith effort to comply and circumstances beyond the control of the dog owner/guardian or person with a right to control the dog.

7.30.340 Prohibition of Owning, Possessing, Controlling or Having Custody

A The Hearing Officer may determine, after a dangerous or vicious dog hearing, or compliance hearing, that the dog owner/guardian or person with a right to control a dog that has been deemed dangerous or vicious, or maintained in violation of the special dog permit, should be prohibited from owning, possessing, controlling, or having custody of any dog for up to three (3) years because his or her ownership/guardianship or control of a dog would create a significant threat to the public health, safety, and welfare.

7.30.350 Fines

The Hearing Officer may impose fines upon the dog owner/guardian or person with a right to control the dog for creating, maintaining, or fostering a dangerous or vicious dog in an amount not to exceed Five Hundred Dollars (\$500) for each incident described under Section 7.10.090 and One Thousand Dollars (\$1,000) for each incident described under Section 7.10.210. In determining the amount of the fine, the Hearing Officer may take any and all of the following factors into consideration:

- A. The period of time during which the dog owner/guardian or person with a right to control the dog failed to comply with this Chapter;
- B. The nature, frequency, and recurrence of the dangerous or vicious dog behavior;
- C. The ease with which the dangerous or vicious dog behavior could have been abated;
- D. The good faith efforts made to deter the dangerous or vicious dog behavior or ameliorate its effects;
- E. The economic impact of the penalty upon persons responsible for payment;
- F. The impact of the dangerous or vicious dog behavior on the community;
- G. The number and nature of previous enforcement actions by the Administrator;
and

H. Such other factors as justice may require.

**Part 5
Special Dog Permit**

7.30.500 Special Dog Permit Required

- A. It is unlawful for any person to possess or maintain a potentially dangerous, dangerous, or vicious dog unless he or she has a current and valid special dog permit.
- B. The dog owner/guardian or person with a right to control a dog found to be potentially dangerous, dangerous, or vicious by the Hearing Officer must submit an application for a special dog permit within ten (10) business days after the date that a copy of the decision is placed in the mail or personally served on the dog owner/guardian or person with a right to control the dog, whichever date is earlier in time.
- C. The license requirement in Part 5 of Chapter 7.20 is applicable to dogs with a special dog permit.
- D. No dog impounded at the San José Animal Care Center and deemed potentially dangerous, dangerous, or vicious may be released prior to issuance of both a license pursuant to Part 5 of Chapter 7.20 and a special dog permit.

7.30.510 Special Dog Permit Application

- A. An application for a special dog permit must be made by the dog owner/guardian or person with a right to control the dog on a form provided by the Administrator and must be filed with the Administrator.
- B. The application must contain all of the following information:
 - 1. The name, address, and telephone number of the dog owner/guardian or person with a right to control the dog;
 - 2. Any name(s) by which the dog is called;
 - 3. The height, weight, color, and any distinguishing physical characteristics of the dog;
 - 4. A statement specifying all convictions within the past five (5) years of the dog owner/guardian or person with a right to control the dog, by any court

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of law, for any violation of this Title, or of any other laws relating to animals, public nuisance caused by animals, or cruelty to animals in this or any other State, and any administrative citations issued for violations of this Title which were upheld by a Hearing Officer or which were not contested by the applicant. For purposes of this Section, a forfeiture of bail is deemed to be a conviction of the offense charged;

5. The number of the license issued pursuant to Part 5 of Chapter 7.20 or a statement that an application for such a license is being concurrently filed; and
6. A recent and clear photograph of the dog.

C. The dog owner/guardian or person with a right to control the dog must affirmatively state on oath or affirmation under penalty of perjury, that he or she has the necessary facilities and equipment to comply with all the applicable requirements for maintaining a potentially dangerous, dangerous, or vicious dog as prescribed in this Chapter and that all the information given on the application is true and correct.

7.30.520 Special Dog Permit Fee

- A. The fee for a special dog permit must be set forth in the schedule of fees adopted by resolution of the City Council. These fees must be paid by the dog owner/guardian or person with a right to control the dog concurrent with submission of the application for a special dog permit.
- B. If the Administrator denies the applicant a special dog permit, a partial refund, as set forth in the schedule of fees adopted by resolution of the City Council, may be granted provided the applicant does not have any other outstanding fees and fines due to the City, and can provide proof that the dog has been disposed of in accordance with the law.

7.30.530 Issuance of Special Dog Permit

- A. Upon completion of the processing of the special dog permit application and payment of the special dog permit fee, the Administrator must decide whether to grant or deny a special dog permit.
- B. In issuing the special dog permit, the Administrator may impose any additional conditions which the Administrator deems reasonably necessary to protect the public health, safety, and welfare.

- C. The special dog permit must specify whether it is for a potentially dangerous, dangerous, or vicious dog.

7.30.540 Special Dog Permit Tag

- A. In addition to the license tag required in Part 5 of Chapter 7.20, every dog that is subject to a special dog permit must wear a special dog permit tag provided by the Administrator.
- B. The tag must have the special dog permit number printed on its face. The tag must have a distinctive shape, size, and color chosen by the Administrator.
- C. It is unlawful for any person to remove the special dog permit tag except to the extent removal is necessary for:
 - 1. Bathing the dog;
 - 2. Rendering veterinarian services; or
 - 3. Replacing the special dog permit or license tags.

Once removed, the tag must be replaced as soon as reasonably possible.

- D. It is unlawful for any person to attach a special dog permit tag to any dog other than the dog for which it is issued.

7.30.550 Special Dog Permit Renewal

- A. Any special dog permit issued under this Part expires twelve (12) months from the date of issuance. The procedure for renewal of the permit is the same as for the original permit.
- B. Any special dog permit issued for a potentially dangerous dog will not need to be renewed after twelve (12) months from the date of issuance unless deemed necessary by the Hearing Officer after a potentially dangerous dog hearing.
- C. An application for the renewal of a special dog permit must be made within thirty (30) days prior to the expiration of the permit. Upon failure to make a timely application, the applicant must pay, in addition to the permit fee, a late renewal fee as set forth in the schedule of fees adopted by resolution of the City Council.

7.30.560 Denial or Revocation of a Special Dog Permit

The Administrator may deny or revoke a special dog permit issued pursuant to this Part in any of the following situations:

- A. The Administrator has determined, after inspection or upon complaint from any person, that the applicant or permit holder is in violation of any of the provisions of this Chapter, this Title or other applicable law that govern the health, safety, and maintenance of dogs.
- B. The Administrator has reason to believe that the applicant or permit holder has willfully withheld or falsified any information required for the permit.
- C. If the applicant or permit holder has been convicted within the past five (5) years, by a court of law, for any violation of this Title, or any other law(s) relating to animals, public nuisance caused by animals, or cruelty to animals in this or any other state, and any administrative citations issued for violations of this Title which were upheld by a Hearing Officer or which were not contested by the applicant. For the purpose of this Section, a forfeiture of bail is deemed a conviction of the offense charged.
- D. The applicant or permit holder fails to pay in full all fines, and impoundment, boarding or other outstanding fees.
- E. The applicant or permit holder fails to allow the Administrator or Animal Services Officer to conduct a lawful inspection of the potentially dangerous, dangerous, or vicious dog or the premises where the dog is located.
- F. The applicant or permit holder fails to appear at the hearing to appeal the revocation of the special dog permit conducted pursuant to Section 7.30.700.

7.30.570 Permits Not Transferable

The special dog permit may not be sold, assigned or transferred and covers only the premises designated and the person to whom the permit was originally issued.

7.30.580 Inspection and Inspection Fees

- A. The Administrator has the authority to inspect at any reasonable time and in a reasonable manner, the dog that is subject to a special dog permit and the property where the dog is located in order to verify the full conformance with the requirements of this Chapter.

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- B. The Administrator may impose an additional fee for any inspection conducted in accordance with Subsection A, if either the dog owner/guardian or person with a right to control the dog has failed to maintain or board the dog in conformity with the requirements of this Chapter. The inspection fee must be set forth in the schedule of fees adopted by resolution of the City Council.

7.30.590 Requirements for Notification

- A. Both the dog owner/guardian and person with a right to control a dog that is subject to a special dog permit are required to notify the Administrator immediately if the dog:
 - 1. Is running at large; or
 - 2. Has attacked another domestic animal or a person.
- B. The dog owner/guardian and person with a right to control the dog may not move the place of residence of the dog within the City, sell, trade, give away, or otherwise transfer ownership/guardianship and/or the right to control the dog to a person residing within the City, unless the Administrator has issued a special dog permit for the new location and to the person assuming ownership/guardianship and/or right to control the dog.
- C. If either the dog owner/guardian or person with a right to control the dog decides to sell, trade, give away, or otherwise transfer ownership/guardianship and/or the control of the dog to a location outside of the City or to another person residing outside the City, the person transferring ownership/guardianship and/or right to control must:
 - 1. Notify the Administrator at least five (5) business days prior to the physical transfer of the dog;
 - 2. Provide the Administrator with the name, address, and telephone number of the new owner/guardian or person with a right to control the dog; and
 - 3. Return the special dog permit tag to the Administrator.
- D. In the event the dog dies, the owner/guardian or person with a right to control the dog must notify the Administrator and return the special dog permit tag within ten (10) business days of the death of the dog.

7.30.600 No New Permit after Denial or Revocation

If a special dog permit has been denied or revoked, the Administrator may refuse to accept a new permit application from the same applicant for two (2) years from the date of such denial or revocation.

7.30.610 Removal of Designation as a Dangerous Dog

If there are no additional instances of the behavior or characteristics specified in Sections 7.10.090, 7.10.180, or 7.10.210 within a thirty-six (36) month period from the date of the designation as a dangerous dog, either the owner/guardian or person with a right to control the dog may petition the Administrator to remove the dog's designation as a dangerous dog.

**Part 7
Special Dog Permit Denial or Revocation Hearing**

7.30.700 Special Dog Permit Denial or Revocation Hearing

- A. If the Administrator seeks to deny the application for or revoke a special dog permit, the Administrator must send to the applicant or permit holder, a notice of intent to deny or revoke which states the following:
 - 1. The reason(s) for the denial or revocation;
 - 2. That the applicant or permit holder may appeal the intended decision by requesting a hearing in writing;
 - 3. That the request for a hearing must be received by the Administrator within ten (10) business days after the date that a copy of the notice of intent to deny or revoke was placed in the mail; and
 - 4. Failure to request a hearing within the time specified may result in seizure of the dog.
- B. Failure to apply for a special dog permit by an owner/guardian or person with a right to control the dog terminates the right to a hearing.
- C. Upon service of a request for a hearing, the Hearing Officer must set the date, time and place for the hearing. Service may be personally or by first-class mail, postage prepaid. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting it at least five (5) business days before the date of the hearing. The hearing is conducted in accordance with the provisions of Section 7.30.330.

- D. The Hearing Officer must cause notice to be sent to the owners of each property within three hundred (300) feet of the applicant or permit holder's property and to the United States Postal Service substation which serves the property. This notice must state:
1. The date, time, location, and nature of the hearing;
 2. The reasons for the denial or revocation; and
 3. That the parties notified have the right to present any relevant evidence with regard to the denial or revocation of the permit.

7.30.710 Special Dog Permit Denial or Revocation Hearing Decision

- A. The Hearing Officer's decision must be supported by evidence on the record.
- B. If the Hearing Officer upholds the decision to deny or revoke a special dog permit, then the Hearing Officer may direct that:
1. The owner/guardian or person with a right to control the dog pay all applicable fees and transfer ownership/guardianship of the dog to a person who either satisfies the requirements of this Chapter or who will have the dog reside outside the City, within a specified time period.
 2. The City may dispose of the dog in accordance with the law.
 3. The owner/guardian or person with a right to control the dog has five (5) business days upon service of the Hearing Officer's decision to appeal the decision to the superior court pursuant to Food and Agricultural Code Section 31622, as may be amended, or the decision will be deemed final if no appeal is filed on or before the expiration of the appeal period. Service of the decision or appeal may be either personally or by first-class mail, postage prepaid. If either the owner/guardian or person with a right to control the dog fails to comply with the Hearing Officer's decision, the Administrator may summarily seize the dog and assume possession of the dog for disposal in accordance with the law.
 4. If the dog has been impounded in contemplation of or pursuant to the hearing, either the owner/guardian or person with a right to control the dog must pay all fees associated with the board and care of the dog. Failure to appeal the Hearing Officer's decision and remit all applicable fees five (5) business days after service of the decision will trigger the State mandated holding period, under Food and Agricultural Code Sections 31754, 31752

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and 31108, as may be amended, of four (4) business days, not including the day of impoundment. If by the end of this holding period, neither the owner/guardian nor the person with a right to control the dog has paid the balance of fees, both the owner/guardian and person with a right to control the dog forfeit their interest in the dog and the City may dispose of the dog in accordance with the law. Both owner/guardian and person with a right to control the dog are responsible for the payment of all applicable fees.

- C. If the Hearing Officer decides denial or revocation of the special dog permit is not warranted, the Hearing Officer may release the dog. If the dog is impounded, the Hearing Officer may require the release of the dog from impoundment be upon payment of the impound and board fees, and may add such conditions to the special dog permit as are necessary to effectuate the purposes of this Chapter and to protect the public health, safety, and welfare.

Part 9

Maintenance of Potentially Dangerous, Dangerous or Vicious Dog

7.30.900 Maintenance Requirement

It is unlawful for any person to possess or maintain a potentially dangerous, dangerous, or vicious dog in violation of this Part.

7.30.910 Potentially Dangerous Dog Maintenance Requirement

The Administrator may impose any or all of the following requirements upon the maintenance of a potentially dangerous dog:

- A. A potentially dangerous dog must be muzzled and leashed, as specified under Section 7.30.950, when it is on any public street or in any other public place, or upon any private place or property or common area of any planned development, cluster, townhouse, or condominium project unless the dog owner/guardian or person with a right to control the dog has obtained the consent of the owner/guardian or person in control of the private place or property or common area of the planned development, cluster, townhouse, or condominium project.
- B. A potentially dangerous dog must be spayed or neutered.
- C. A potentially dangerous dog must have a microchip implant for identification purposes.
- D. A potentially dangerous dog is subject to special dog permit tag requirements under Section 7.30.540.

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- E. The dog owner/guardian or person with a right to control the dog must seek pre-approval from the Administrator for a dog obedience class and attend the dog obedience class with the dog that exhibited the behavior specified in Section 7.10.180.

7.30.920 Dangerous Dog Maintenance Requirement

A dangerous dog is subject to all requirements of Section 7.30.910 and all of the following:

- A. A dangerous dog is subject to the confinement requirements of Section 7.30.940;
- B. A dangerous dog is subject to the warning sign requirements of Section 7.30.960;
- C. A dangerous dog is subject to the transportation requirements of Section 7.30.970; and
- D. A dangerous dog is subject to the insurance requirements of Section 7.30.980.

7.30.930 Vicious Dog Maintenance Requirement

- A. A vicious dog is subject to all requirements under Section 7.30.920 and the Hearing Officer may impose additional conditions upon the ownership/guardianship and control of a vicious dog if the Hearing Officer determines that under these additional conditions, the dog would not present a significant threat to the public health, safety, and welfare.
- B. If the Hearing Officer determines that a dog is vicious but additional conditions upon the ownership/guardianship and control of the dog will not sufficiently mitigate a significant threat to the public health, safety, and welfare, the Hearing Officer may order the dog be destroyed by the City in accordance with the law.

7.30.940 Confinement Requirement

A dangerous or vicious dog must be securely confined at all times by one of the following means:

- A. Outdoors:
 - 1. The dog must be confined by means of a securely enclosed escape-proof, locked kennel, or pen. Such kennel, pen or structure must have secure sides and a secure top attached thereto. The kennel or pen must be constructed in a manner and of such material so that it cannot be broken

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down by any action of the confined dog. All structures used for confinement of dangerous or vicious dogs must be locked with a key or combination lock of sufficient strength to ensure confinement of the dog. Such structures must be erected upon a secure bottom or floor constructed of concrete or other material of sufficient depth to prevent the dog from digging free.

2. The supporting posts of the structure must be set in concrete or other material not less than two (2) feet into the ground and no further than six (6) feet apart. The sides and ends of the structure must be constructed of solid boards or chain-link material not less than six (6) feet in height and securely fastened to the top and bottom of the structure. The structure may not be constructed or maintained in any front or required side yard and must be maintained in a sanitary condition at all times. The dog(s) confined therein must be afforded adequate protection from the elements and kept in a humane manner.
3. The escape-proof, locked kennel or pen may not be enclosed by a fence of less than six (6) feet high.

B. Indoors:

The dog must be confined by means of a house, apartment, building, or similar structure wherein the windows and doors are secured to prevent the dog from exiting without the assistance of either the owner/guardian or person with a right to control the dog.

7.30.950 Muzzling and Leashing Requirement

- A. No person may bring a dangerous or vicious dog to a place that does not meet the requirements of Section 7.30.940, even temporarily, unless the dog is securely muzzled and leashed in accordance with this Section.
- B. The leash must:
 1. Not exceed three (3) feet in length;
 2. Be capable of restraining four (4) times the weight of the dog; and
 3. Be attached to an escape-proof commercial quality walking harness that fastens securely across the shoulders and midchest encompassing the rib area and upper abdomen of the dog.

- C. The Administrator may require as an alternative to Subsection B that a neck collar be used for a dangerous or vicious dog.
- D. The dog must be securely muzzled with a device constructed to allow normal respiration but impossible for the dog to remove without human assistance.
- E. The dog must be under the direct physical control of a person eighteen (18) years old or older who is physically capable of restraining the dog.
- F. The Administrator may require the use of specially marked or colored leash and collar or harness for identification of dangerous and vicious dogs.

7.30.960 Warning Signs Requirement

The dog owner/guardian or person with a right to control the dog must post sign(s) advising of the presence of a dangerous or vicious dog at every entrance to the property wherein any dangerous or vicious dog is confined. The dog owner/guardian or person with a right to control the dog must obtain the signs from the Administrator. A fee may be charged for the signs as set forth in the schedule of fees adopted by resolution of the City Council.

7.30.970 Transportation Requirement

- A. A dangerous or vicious dog must be transported in a locked animal carrier equivalent in construction quality to those used by commercial air carriers.
- B. A dangerous or vicious dog may not be unconfined or unattended in or about any motor vehicle.

7.30.980 Insurance Requirement

- A. No person may keep, have, or maintain, sell, trade, or let for hire a dangerous dog unless that person has a public liability insurance policy from an insurer licensed to practice in the State of California, in a single incident amount of not less than One Hundred Thousand Dollars (\$100,000) for each such dog, for injury to or death of any person or persons, or loss or damage to any property, caused by or resulting from any act of such dog.
- B. No person may keep, have, or maintain, sell, trade, or let for hire a vicious dog unless that person has a public liability insurance policy from an insurer licensed to practice in the State of California, in a single incident amount of not less than Two Hundred Thousand Dollars (\$200,000) for each such dog, for injury to or death of any person or persons, or loss or damage to any property, caused by or resulting from any act of such dog.

- C. The owner/guardian or the person with a right to control the dangerous or vicious dog must provide written notice to the Administrator of any cancellation or material change in the insurance within five (5) days of service of notice from the insurer. Service may be personally or by first-class mail, postage prepaid. In case of such cancellation or material change, the dog owner/guardian or the person with a right to control the dog must, at the time of the written notice to the Administrator, also provide the Administrator written assurance stating that the person will obtain other insurance to meet the requirement of this Section. If no alternate insurance can be found before the current insurance coverage ends, then the person must remove the dog from the City, surrender the dog to the Administrator, or otherwise dispose of the dog in accordance with the law.

7.30.990 Microchip Implant Requirement

- The owner/guardian or person with a right to control a dog that is subject to a special dog permit must, at his or her own expense, have a microchip inserted into the dog by a licensed veterinarian within twenty (20) days of the designation as a potentially dangerous, dangerous or vicious dog for identification purposes. The owner/guardian or person with a right to control the dog must provide the Administrator with the identifying information listed on the microchip and the information must be noted in the City's licensing record for that dog.

**CHAPTER 7.40
PROHIBITED ACTIVITIES
Part 1**

Miscellaneous Prohibited Activities

7.40.010 Public Nuisance

- A. No owner/guardian or person with a right to control the animal may allow the animal to commit any of the following acts:
1. Defecate or urinate on private property other than the private property of the owner/guardian or the person with a right to control the animal.
 2. Defecate on public property without immediately removing the excrement to a proper receptacle.
 3. Obstruct the reasonable and comfortable use of public or private property by chasing vehicles, or molesting passersby.

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4. Habitually disturb the peace and quietude of any neighborhood or person, by howling, barking, crying, baying, or making any other noise.
- B. No owner/guardian or person with a right to control an animal may keep, use, or maintain any animal in violation of the proper and adequate care requirements under Part 1 of Chapter 7.20.
- C. Any violation of this TitleSection is hereby declared to be a public nuisance.
- D. An Animal Services Officer may seize and impound any animal causing a public nuisance.
- E. Any private person may maintain an action under Civil Code Section 3493, as may be amended, for compliance with the requirements of this Section.

7.40.020 Maximum Number of Dogs, Cats, or Litters

- A. It is unlawful for any person to maintain, at any dwelling unit, more than any of the following combination of cats and dogs:
 - 0 adult dogs and 5 adult cats; or
 - 1 adult dog and 4 adult cats; or
 - 2 adult dogs and 3 adult cats; or
 - 3 adult dogs and 2 adult cats
- B. Any person that maintains a dog or cat and resides at a dwelling unit with more than the permissible number of dogs and cats is in violation of subsection A of this Section.
- C. A female dog or cat is rebuttably presumed unaltered unless either the owner/guardian or person with a right to control the dog or cat provides evidence of spaying or neutering, provides written certification from a licensed veterinarian that an animal cannot be spayed or neutered for health reasons, or is incapable of breeding.
- D. No person may allow the parturition and rearing of more than one (1) litter from all dogs and cats of dogs or cats from any female dog or cat owned by such person or maintained at on any premises, including a dwelling unit, in any consecutive twelve (12) month period except under the following circumstances:
 1. A premise maintained by a veterinarian licensed by the State of California for the practice of veterinary medicine;
 2. A private kennel, commercial kennel, pet shop, animal menagerie, or animal shelter in possession of a valid permit from the Administrator; or

3. A premise maintained by an animal rescuer with a valid registration pursuant to Section 7.60.300 for that location.

7.40.030 Animals Running at Large

It is unlawful for the animal owner/guardian or person with a right to control any animal to permit the animal to stray or run at large upon any public street or other public place, or upon any private place or property or common area of any planned development, cluster, townhouse, or condominium project without the consent of the owner or person in control thereof.

7.40.040 Restraint of Dogs

- A. The dog owner/guardian or person with a right to control a dog must keep the dog confined to his or her premises or keep the dog confined behind a fence of sufficient height and construction to safely contain the dog.
- B. The dog owner/guardian or person with a right to control a dog must keep the dog under direct physical restraint by means of a leash not to exceed six (6) feet in length when the dog is on any public street, public sidewalk, ~~or at any other~~ public place, event on public property, or at any private place or property or common area of any planned development cluster, townhouse, or on any condominium project without the consent of the owner or person in control thereof. A leash of more than six (6) feet in length but no longer than twenty (20) feet in length may be used when in a public park or public open space only if the owner/guardian or person with a right to control the dog can exercise direct physical restraint of the dog and the dog makes no physical contact with another person or with an animal without the consent of that person or the consent of the owner/guardian or person with the right to control the other animal.
- C. The restraint requirements specified in Subsections A and B do not apply to:
 1. Service dogs while such dogs are performing their duties;
 2. Dogs assisting either their owner/guardian /handler in legal hunting or in the herding of livestock;
 3. Dogs assisting a peace officer engaged in law enforcement activities;
 4. Dogs being trained for any of the above purposes on private land with permission of the landowner, as long as such dogs are under direct control of either the dog owner/guardian or person with a right to control the dogs to assure that the dogs do not violate any other provisions of law;

5. Dogs subject to regulation as potentially dangerous, dangerous, or vicious dogs under Chapter 7.30 of this Title;
6. Dogs participating in field or obedience trials or exhibitions located on a public place and approved by the City; or
7. Dogs within a posted off-leash area located in any City owned land, as established by resolution of the City Council, provided however, that nothing herein relieves either the dog owner/guardian or person with a right to control such dog from the responsibility to maintain proper control over the dog.

7.40.050 Dogs in Posted Off-Leash Areas

- A. It is unlawful for any dog owner/guardian or person with a right to control a dog to permit the dog to be unrestrained on a posted off-leash area in violation of this Section.
- B. Both the dog owner/guardian and person with a right to control a dog in a posted off-leash area must comply with all of the following conditions:
 1. No dog may be in a posted off-leash area except when in the charge, care, custody, or control of a person at least thirteen (13) years old.
 2. No animals other than dogs may be in any posted off-leash area.
 3. Dogs are only permitted in the posted off-leash area during posted hours of operation.
 4. No person may have more than two (2) dogs in a posted off-leash area at any one time.
 5. Any dog in a posted off-leash area must be at least four (4) months of age, vaccinated for rabies, and currently licensed by the City or other jurisdictions. All persons entering the posted off-leash area are responsible for ensuring that their dog is not sick, in heat, injured, less than four (4) months of age, or displaying aggressive behavior toward other dogs or humans in the posted off-leash area.
 6. Any person having charge, care, custody, or control of a dog in a posted off-leash area must:

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- a. Carry at all times a suitable container or other suitable instrument for the removal and disposal of dog feces;
 - b. Promptly remove and properly dispose of any waste deposited by the dog;
 - c. Quiet or remove the dog if it disrupts or disturbs the reasonable and comfortable use of the area;
 - d. Have in his or her possession a leash for such dog that must be worn by the dog, and physically held by the owner/guardian, at all times the dog is not in the posted off-leash area; and
 - e. Comply with all other applicable State and local laws, including without limitation those contained in this Title that govern the health, safety, and maintenance of dogs.
- C. Compliance with this Section does not relieve any person of liability for damages arising out of his or her use of a posted off-leash area.

7.40.060 Bites by Dangerous Animals – Civil Damages

- A. It is unlawful for any owner/guardian of a dangerous animal or person with a right to control a dangerous animal to allow or permit such animal to bite any person or animal that is lawfully on either private or public property.
- B. For the purpose of this Section, a bite is any cut, laceration, tear, bruise, abrasion, or injury inflicted in or on the epidermis of a person or animal, whether or not that bite is considered a rabies risk by the State of California Health Department.
- C. A civil action for damages against the owner/guardian of a dangerous animal or person with a right to control a dangerous animal which bites any person or animal on either private or public property may be instituted by the human victim of such bite. Damages may include actual damages, costs, attorneys' fees, and a civil penalty of Five Thousand Dollars (\$5,000) in addition thereto. The court also may award punitive damages in a proper case. Nothing in this provision limits any other right or remedy otherwise available in law or equity to any party, nor limits the City's right to enforcement under Chapter 1.08 of this Code.
- D. In the case of a bite by a dog, the court, in determining punitive damages, may consider whether the dog was or should have been licensed and properly maintained as a potentially dangerous, dangerous, or vicious dog pursuant to Chapter 7.30 of this Title.

- E. This Section does not apply to dog bites inflicted by dogs owned or maintained by the City of San José Police Department while such dogs are being used for law enforcement purposes.

7.40.070 Animal Bites – Quarantine, Violations, and Examinations

- A. Any person having knowledge that an animal is known to have or is believed to have bitten any person must immediately report the basis for such knowledge or belief to the Administrator.
- B. On receipt of such report, an Animal Services Officer may seize and quarantine such animal for a period of fourteen (14) days or such other period as may be prescribed by State law. The Animal Services Officer may order either the owner/guardian or person with a right to control the animal to quarantine the animal on the premises of the owner/guardian.
- C. No person may fail, refuse, or neglect to quarantine any animal as ordered by the Animal Services Officer, or refuse to allow the Animal Services Officer to inspect any premises where the animal is kept. No animal may be removed or released from the quarantine location during the quarantine period without written permission of the Animal Services Officer.
- D. The Administrator may charge a fee as set forth in the schedule of fees adopted by resolution of the City Council, for the costs to quarantine the animal and to inspect the quarantine of an animal. Any fee charged must be paid by the owner/guardian or person with a right to control the animal. Such a fee does not include the cost incurred by the City to board, feed, and otherwise care for a quarantined animal.
- E. The head of any animal that dies or is destroyed while under quarantine must be submitted to the laboratory of the Santa Clara County Health Department for rabies examination.

7.40.080 Abandoned Animals

- It is unlawful for the owner/guardian of an animal or person with a right to control the animal to abandon the animal in the City.

7.40.090 Neglect of Animals in Vehicles

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- A. It is unlawful for any person, other than an individual then actually in the process of working a dog or other animal for ranching or law enforcement purposes, to transport or carry the animal in a motor vehicle on any public highway or public roadway, unless the animal is safely enclosed inside the passenger area of the vehicle or by means of a container, cage, or other device which will prevent the animal from falling from, jumping from, or being thrown from the motor vehicle.
- B. It is unlawful for any person to leave any animal in a motor vehicle without adequate ventilation or in such a manner as to subject the animal to extreme temperatures which may adversely affect the health or well-being of the animal.

7.40.100 Animals in City Buildings

It is unlawful for any person to bring or allow an animal to remain in City-owned or City-managed buildings other than a building used for the purpose of care, detention, control, or treatment of animals or a building used for training classes, shows, or exhibitions, except persons with a disability assisted by a service dog ~~or a dog in training to be a service dog~~, peace officers with a police dog, or persons authorized by the City Manager, ~~or persons with animals participating in an animal event.~~

7.40.110 Poisoning and Abusing Domestic Animals

- A. It is unlawful for any person to willfully administer poison to any domestic animal or to willfully place, expose or leave poisonous or harmful substances of any kind in any place with intent to injure or kill any domestic animal.
- B. It is unlawful for any person to maliciously kill, maim, wound, mutilate, torment, torture or physically abuse any animal.

7.40.120 Ban on Feeding Wild Animals

- A. It is unlawful for any person to feed or in any manner provide an Attractant to a Wild Animal.
- B. No person may leave, store, or maintain any Attractant in a location and manner accessible to any Wild Animal.
- C. The prohibitions in subsections A and B do not apply to:
 - 1. Any person who is the legal owner/guardian of the Wild Animal and the Wild Animal is kept under a valid license or permit issued by the State Department of Fish and Game, and in compliance with all applicable laws.

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2. Any person who feeds or provides an Attractant to a trapped, injured, or unweaned Wild Animal between the time that the agency charged with animal control or its designated agent is notified of the Wild Animal and the Wild Animal is picked up by said agency.
3. A Wildlife Rehabilitator.
4. Any person who is using an Attractant to trap an animal in a legally authorized or permitted manner.
5. Any person with a bird feeder provided the feeders are suspended on a cable or other device to make them inaccessible to Wild Animals and the area below the feeders are kept free from the accumulation of seed debris.

7.40.130 Animal Traps

- A. It is unlawful for any person to use any of the following animal traps within the City limits of San José:
 1. Leg-hold steel-jawed traps;
 2. Steel-jawed traps;
 3. Leg-hold traps; and
 4. Saw-toothed or spiked-jaw traps.
- B. Any person using an animal trap that is not prohibited under Subsection A must:
 1. Check the trap every twenty-four (24) hours;
 2. Maintain the trap in proper working condition;
 3. Remove, release, or transfer the animal from the trap within twenty-four (24) hours after the animal enters the trap;
 4. Cover or move the trap and the animal so that is not directly exposed to the elements including, but not limited to, the sun, rain, cold, or other conditions that may be detrimental to the animal's health; and
 5. Euthanize and dispose of the animal in accordance with the law.

- C. Any person that uses a trap as part of a trap, spay or neuter and release program for cats is exempt from complying with Subsection B(3) if (1) confinement for more than twenty-four (24) hours is for the purpose of spaying or neutering the cats and the cats are released as soon as medically practical and (2) the cats receive reasonably adequate water, food, and shelter pursuant to Sections 7.20.020, 7.20.030, and 7.20.040.

7.40.140 Trapping and Snaring Wild Birds Prohibited

It is unlawful for any person to snare or trap, or set any device to trap or snare any wild birds, except such birds as are destructive to fruit, provided that the person first obtains any required permit(s).

**CHAPTER 7.50
IMPOUNDMENT
Part 1
Impoundment Provisions**

7.50.010 Hearing Prior to Animal Impoundment

- A. Except as provided in Sections 7.30.020 and 7.50.020, the Administrator or Animal Services Officer may not impound an animal without the consent of the owner/guardian or person with a right to control the animal, unless a hearing is held under Section 7.50.090 or Section 7.30.300 for a potentially dangerous, dangerous, or vicious dog.
- B. If the owner/guardian or person with a right to control the animal does not consent to an impoundment of his or her animal, an Animal Services Officer may request a date and time for a hearing from the Hearing Officer and the Hearing Officer must cause the issuance of a notice commanding the person to appear before the Hearing Officer at that time.
- C. If the Hearing Officer finds a violation of Title 7 has occurred based on a preponderance of the evidence, he or she may order the animal be impounded.

7.50.020 Summary Impoundment of Animals

Except as provided in Section 7.30.020, an Animal Services Officer may impound an animal for violation of any provision of this Title or State law prior to a hearing in any of the following situations where the owner/guardian and person with a right to control the animal is not present and where the officer reasonably believes that such impoundment is necessary:

- A. To protect the public health, safety, and public and private property;
- B. To protect an animal which is injured, sick, or starving and must be cared for; or
- C. To protect from injury an animal that has strayed onto public property or public right-of-way.

7.50.030 Notification of Impoundment

An Animal Services Officer must give notice of impoundment to the owner/guardian of the impounded animal or person with a right to control the impounded animal if he or she is known.

7.50.040 Cost of Impoundment and Boarding

The Administrator may recover the cost to impound and board the animal from either the owner/guardian or person with a right to control the animal, in an amount as set forth in the schedule of fees adopted by resolution of the City Council.

7.50.050 Waiver of Impound and Boarding Cost

- A. Except as specified in Subsection B, the Administrator may waive the cost of impoundment and boarding only for the first impoundment of the animal, in cases of hardship.
- B. The hardship waiver may not be granted in the following cases:
 - 1. A record of a prior conviction of any offense(s) involving State, County, or City animal control laws;
 - 2. A record with the City of a violation of any offense(s) involving State, County, or City animal control laws.
- C. The Administrator may determine that a waiver of the fees be given for hardship. A hardship waiver is based on a proven inability to meet ongoing family expenses for the necessities of living including, but not limited to, food, clothing, and shelter.

7.50.060 Redemption of Impounded Animals

- A. No animal may be redeemed without compliance with the licensing and permit provisions of this Title.

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- B. No animal may be redeemed without payment for the cost of impounding and boarding the animal unless Section 7.50.050 applies. The City may send either the owner/guardian or person with a right to control the impounded animal an invoice for the cost of impoundment and boarding.

7.50.070 Disposition of Impounded Animals

- A. No animal may be disposed of until the State mandated holding period, under Food and Agricultural Code Sections 31754, 31752 and 31108, as may be amended, of four (4) business days, not including the day of impoundment, have elapsed from the time of impoundment.
- B. Notwithstanding the foregoing, if an animal which has been determined by a veterinarian licensed by the State of California or by other City personnel authorized by the Administrator to be diseased or injured to the extent that emergency veterinary care will not alleviate the animal's intense suffering, the animal may be destroyed in accordance with State law.

7.50.080 Post Summary Impoundment Hearing

- A. If either the owner/guardian of the animal or person with a right to control the animal challenges the grounds of the summary impoundment, that person may personally deliver or mail to the Administrator a written request for a hearing. Such a request must be received by the Administrator within the State mandated holding period, under Food and Agricultural Code Sections 31754, 31752 and 31108, as may be amended, of four (4) business days, not including the day of impoundment.
- B. The Administrator must promptly request the time and place for the hearing before the Hearing Officer and the Hearing Officer must cause notice of such hearing to be deposited in the mail addressed to all parties at least ten (10) days before the date of hearing.
- C. The procedure for the hearing is set forth in Section 7.50.090.
- D. Potentially dangerous, dangerous, or vicious dogs are subject to the hearing procedure of Chapter 7.30.

7.50.090 Impoundment Hearing Procedure and Hearing Decision

- A. At the impoundment hearing, the owner/guardian of the animal or person with a right to control the animal and the Administrator may be represented by counsel, may present oral and written evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the

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sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The decision of the Hearing Officer must be supported by the preponderance of the evidence and is final. The Administrator and owner/guardian of the animal or person with a right to control the animal may be served personally or by first-class mailed, postage prepaid, written notice of the decision within fifteen (15) days of the conclusion of the hearing.

B. The Hearing Officer may decide that the owner/guardian of the animal or person with a right to control the animal will lose all rights of ownership/guardianship and control of the animal, and may order that the animal be destroyed if the animal has bitten or injured a person on one or more occasions. The Hearing Officer may declare an animal to be dangerous as defined in this Title and be subject to the permit requirements for maintaining a dangerous animal under Part 9 of Chapter 7.60. Before the animal is released to either the owner/guardian or person with a right to control the animal, the Hearing Officer may require that he or she obtain a dangerous animal permit under Section 7.60.910 and sign a commitment which contains one or more conditions, such as, but not limited to, the following:

1. To keep the animal confined to the premises of the owner/guardian or person with the right to control the animal and in an enclosure approved by the Administrator;
2. To keep the animal securely muzzled, leashed, and under the direct physical restraint of a person eighteen (18) years of age or older who is physically capable of restraining the animal when the animal is off of the property of the owner/guardian or person with the right to control the animal;
3. That a violation of this commitment may result in the animal being impounded and destroyed;
4. To prove financial responsibility by posting a bond or certificate of insurance in the amount of Ten Thousand Dollars (\$10,000), or more as determined by the Administrator with the advice of the City of San José Risk Manager;
5. To inform the Administrator, any City or County employee, any postmaster, utility company meter reader, and anyone else who enters the property with implied consent or who enters the property peaceably and lawfully, of the animal's dangerousness if the animal is moved and maintained in any other area of the City for more than 24 hours;
6. To care for the animal consistent with Chapter 7.20 of this Title;

7. To have the animal complete obedience and training classes; and
 8. To provide the animal with microchip identification.
- C. Failure to comply with any condition of the Hearing Officer's decision is a violation of this Section and would subject the dangerous animal to summary seizure and disposal in accordance with the law.

7.50.100 Failure to Request Impoundment Hearing

Any person who fails to submit a written request for a hearing after any seizure or impoundment by an Animal Services Officer within the State mandated holding period, under Food and Agricultural Code Sections 31754, 31752 and 31108, as may be amended, of four (4) business days, not including the day of impoundment, will forfeit all rights of ownership/guardianship and control of the animal to the City of San Jose. Upon such forfeiture, the Administrator determines the final disposition of the impounded animal in accordance with the law.

**CHAPTER 7.60
PERMITS
Part 1
Animal Event and Animal Facility**

7.60.010 Animal Event and Animal Facility Permit Required

- A. It is unlawful for any person to conduct, or operate an Animal Event without first obtaining a permit under this Part. No person may obtain more than one permit within a twelve (12) month period.
- B. It is unlawful for any person to operate an Animal Facility without first obtaining a permit under this Part.

7.60.020 Compliance Required

- A. It is unlawful for any person to conduct or operate an Animal Event in violation of this Part.
- B. It is unlawful for any person to conduct or operate an Animal Facility in violation of this Part.

7.60.030 Presumption of Commercial Kennel Intentionally Left Blank

~~The maintenance of any adult dogs or cats used for breeding purposes for which compensation is received, or the parturition or rearing of more than one litter of dogs or cats per animal owned or maintained by that person on the premises in any consecutive twelve (12) month period is a rebuttable presumption that such animals are owned or maintained for the purpose of commercial breeding. The operator of the Commercial Kennel and the premises is subject to the permit requirements of a Commercial Kennel.~~

7.60.040 Proximity to Any Residence

Unless permitted by other provisions of this Part, no permit to operate any commercial ~~kennel or private kennel~~, or animal shelter within two hundred fifty (250) feet of any dwelling unit, apartment, motel, hotel, or other building used for human habitation may be issued or renewed.

7.60.050 Application for Permit

- A. An application for a permit to operate an animal event or animal facility must be made in writing to the Administrator and accompanied by a processing fee as set forth in the schedule of fees adopted by resolution of the City Council. The permit is valid for a twelve (12) month period.
- B. Such application must be on a form approved by the Administrator. The applicant must furnish a list of the types of animals to be maintained or used for the stated purpose, together with the approximate number of animals of each type.
- C. The Administrator may establish regulations and standards relating to:
 - 1. The maximum number and species of animals to be kept or maintained on the premises;
 - 2. The construction, sanitation, and maintenance of facilities; and
 - 3. Any other regulations and standards in conformity with and for the purpose of carrying out the intent of this Title. Compliance with such rules and regulations is a prerequisite to the issuance and continued validity of any permit provided pursuant to this Part.
- D. The permitholder must maintain a record of the names and addresses of persons from whom animals are received and to whom the animals are sold, traded, or given. This record must be presented to the Administrator for review upon request.

7.60.060 Action upon Application

- A. Upon receipt of an application for an Animal Facility permit for a commercial kennel, private kennel, or animal shelter, the Administrator must determine whether or not the location of the commercial kennel or animal shelter is within two hundred fifty (250) feet of a dwelling unit, apartment, motel, hotel, or other building used for human habitation. If the commercial kennel or animal shelter is not within two hundred fifty (250) feet or if an exemption is granted for a commercial kennel or animal shelter under Section 7.60.100, the Administrator may approve the application.
- B. If the Administrator finds that all general regulations relating to animals that are set forth in this Title have been complied with by the applicant for any permit authorized to be issued under the provisions of this Part, such permit may be issued upon payment of the applicable fee. If the Administrator should find that any or all of the general regulations relating to animals are not complied with by any such applicant, such permit may not be issued.

7.60.070 Expiration and Renewal of Permit

- A. Any permit issued under this Part expires twelve (12) months from the date of issuance. The procedure for the renewal of a permit is the same as for an original permit.
- B. Upon failure to make application for the renewal of a permit within thirty (30) days of the expiration of a permit, or prior thereto, the applicant pays, in addition to the permit fee, a late permit renewal fee as set forth in the schedule of fees adopted by resolution of the City Council.

7.60.080 Permits Not Transferable

The permit may not be sold, assigned or transferred and covers only the premises designated and the person to whom the permit was originally issued.

7.60.090 Inspection

As a condition to the issuance or renewal of a permit under this Part, the Administrator has the authority to inspect the animal facility or animal event at any reasonable time.

7.60.100 Proximity to Any Residence -- Exemption

- A. The Administrator may grant an annual exemption from the restrictions contained in Section 7.60.040 to commercial kennels and animal shelters provided an application for exemption is filed in accordance with subsection B of this Section,

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and further provided that the Administrator has made any finding required by subsection C of this Section.

- B. Applications for exemptions pursuant to this Section must be made in writing to the Administrator. The application must be filed concurrently with the commercial kennel or animal shelter permit applications required by Section 7.60.050. Application for exemptions pursuant to this Section must contain the name and address of the applicant and a plot plan in form approved by the Administrator. The plot plan must show the location of the commercial kennel or animal shelter relative to the locations of any places of human habitation existing within two hundred fifty (250) feet of the commercial kennel or animal shelter at the time of the application.
- C. In the event that a commercial kennel or animal shelter exemption application is filed on behalf of a commercial kennel or animal shelter whose previous exemption was revoked pursuant to this Section the following information must be supplied by the applicant, in addition to that information required by subsection B of this Section, before any further exemption is granted:
- The applicant for the exemption must furnish proof to the satisfaction of the Administrator that conditions of the care and handling of the animals or other circumstances existing at the facility at the time of the violation resulting in the earlier exemption revocation have been changed so as to remove the danger of future violations of Section 7.60.120. If the Administrator finds that such proof has been provided, the Administrator may grant the exemption, provided that all other requirements of this Section have been met.
- D. Exemptions granted hereunder expire at the same time as the annual Animal Facility permit for a commercial kennel or animal shelter permit issued by the Administrator. The applicant may apply for a renewal of the exemptions upon such expiration as a condition to obtaining a renewal of the permit. Renewals are subject to all the provisions, requirements, and conditions set forth in this Section.
- E. The Administrator may revoke the exemption granted to a commercial kennel or animal shelter under this Section if, during any one-year period, two or more violations under Section 7.60.120 result from incidents occurring at the commercial kennel or animal shelter.
- F. Nothing herein contained nor any exemption granted hereunder permits the maintenance of a public nuisance or permits the violation of any other applicable law, ordinance, or regulation.

7.60.120 Excessive Noise Prohibited

No person may cause or permit the sound level of animal noise emanating from any commercial kennel, private kennel, or animal shelter within the City to exceed the background noise level by ten (10) dBA or more, three (3) or more times within any five (5) minute period, when such sound level of animal noise is measured at any dwelling unit, apartment, motel, hotel, or other building used for human habitation which is located within two hundred fifty (250) feet of a kennel or animal shelter.

A. The following definitions and procedures are applicable to this Section:

1. "Sound level" is the apparent loudness measured in decibels on the A-weighted scale as defined in the American National Standards Institute S 1.4-1971, or the latest approved revision thereof, and hereafter referred to as dBA.
2. "Background noise level" is the average sound level over five (5) minutes excluding random or intermittent noises, and excluding animal noise emanating from the kennel.
3. "Decibel" is a unit of measure of sound (noise) level relative to a standard reference sound on a logarithmic scale. The decibel level of a given sound is twenty (20) times the logarithm to the base ten of the ratio of the pressure in micronewtons per square meter of the sound being measured to the standard reference sound pressure of twenty micronewtons per square meter (0.0002 microbar, or twenty micropascals).
4. "Measurement of sound level of animal noise." For the purposes of this Section, the sound level of animal noise is measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 1 sound level meters as defined in American National Standards Institute S 1.41971 or the most recent revisions thereof. The meter is set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to each measurement period, the meter is calibrated and adjusted to plus-minus three-tenths decibel by means of an acoustical calibrator and the calibration is to be verified by means of an acoustical calibrator immediately following each noise level survey.

For outside measurements the microphone may not be less than four (4) feet (1.22 meters) above the ground and must be protected from the effects of wind, noises, and other extraneous sounds by the use of screens, shields, or other appropriate devices.

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5. "Measurement of background noise level." Background noise level must be measured at the same location that is used for the measurement of the sound level of animal noise emanating from any kennel within the City. Background noise level is the average sound level measured at a particular location over a five (5) minute period. Such average sound level must not include random or intermittent noises or animal noise emanating from the particular kennel being investigated.
- B. Averaging may be done by instrumental analysis in accordance with American National Standard S-1.13.1971, or may be done manually as follows:
1. Observe a sound level meter for five (5) seconds and record the next estimate of the central tendency of the indicator needle, and the highest and lowest indications.
 2. Repeat the observations as many times as necessary to provide that observations are made at the beginning and the end of the five (5) minute averaging period and that there is at least as many observations as there are decibels between the lowest low indication and the highest high indication.
 3. Calculate the arithmetical average of the observed central tendency indications.

7.60.130 Conditions Relating To Animal Events and Animal Facilities

Every person who owns, conducts, manages, or operates an animal event or animal facility must comply with each of the following conditions:

- A. All animal facilities must be constructed and operated and all animal events must be operated in a manner that reasonably protects public health and safety and the safety of the animals.
- B. No animal and fish, except animals in a pasture provided with adequate food and water, may be without attention for more than twenty-four (24) consecutive hours. The name, address, and telephone number of a person responsible for the animal must be posted in a conspicuous place, visible from outside the animal facility or at the main gate of a pasture where the animals are kept, unless the owner/guardian or attendant of the animals and fish is immediately available on the premises.
- C. All sick, diseased, or injured animals and fish must be isolated from healthy animals and fish at all times and given proper veterinary treatment. The

Administrator may order the operator of the animal facility or animal event to immediately seek treatment from a licensed veterinarian for any animal or fish.

- D. All animals and fish must be treated in a humane manner.
- E. Compliance.
 - 1. The Administrator has the authority to enter the animal facility or animal event except by means of force when the Administrator has reason to believe that the provisions of any permit or this Title, applicable State law, or the rules and regulations of the Administrator are being violated. The failure of the operator to consent to the entry is grounds for the revocation of the permit.
 - 2. Failure of an applicant or a permit holder to comply with any of the provisions of the permit, this Title, or applicable State law, or the rules and regulations of the Administrator is just cause for the denial of any permit, either original or renewal, or for revocation of a permit.
- F. In addition to all the conditions stated in this Section, every person who owns, conducts, manages, or operates any pet shop must comply with each of the following conditions:
 - 1. Housing facilities for animals and fish must be within a wholly enclosed structurally sound building, as defined in Section 7.10.065.
 - 2. Every pet shop must have a heating and cooling system and a ventilation system, that has been properly installed and meets all permit requirements, to regulate the temperature therein within a range suitable for the size and species of each animal and fish, to prevent drafts and to remove odors; and an electrical system that has been properly installed and meets all permit requirements to support the required ventilation, heating, and cooling systems.
 - 3. All animal and fish housing facilities including, but not limited to, animal rooms, cages, runs, and stalls, must provide a means to keep animals out of direct sunlight.
 - 4. All pet shops must include a properly installed and permitted hot and cold running water system which is connected to sanitary sewer facilities.

7.60.140 Denial or Revocation of Permit

The Administrator may deny or revoke any permit issued pursuant to this Part in any of the following situations:

- A. The Administrator has determined by inspection that any animal facility or animal event fails to meet any of the conditions of the permit, this Title, or applicable State law.
- B. The Administrator has reason to believe that the applicant or permit holder has willfully withheld or falsified any information required for a permit.
- C. If the applicant or permit holder has been found by a hearing officer to have committed more than two (2) violations in a twelve (12) month period of this Title, or by a court of law of this Title or State laws relating to animals or public nuisance caused by animals, or has been convicted of cruelty to animals in this or any other State within the previous five (5) years. For the purpose of this Section, a forfeiture of bail is deemed to be a conviction of the offense charged.

7.60.150 Permit Denial or Revocation Hearing Notice

If the Administrator seeks to deny the application or revoke the permit, the Administrator must send the applicant or permit holder a notice of intent to deny or revoke, which must state the following:

- 1. The reasons for the denial or revocation;
- 2. That the applicant or permit holder may appeal the intended decision by requesting a hearing in writing;
- 3. That the request for a hearing must be received by the Administrator within five (5) business days after service of such notice if he or she wishes to challenge the denial or revocation. Service may be personally or by first-class mail, postage prepaid;
- 4. That the failure to appeal the Administrator's intended decision terminates the applicant or permit holder's right to a hearing.

7.60.160 Permit Denial or Revocation Hearing Procedure

- A. Upon receipt of a request for a permit denial or revocation hearing, the Hearing Officer must set the date, time, and place for the hearing. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting a hearing at least five (5) business days before the date of the hearing.
- B. At the hearing, the applicant or permit holder and the Administrator may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- C. Any witness appearing may present evidence.
- D. The Hearing Officer may also cause notice to be sent to the owners of each property within three hundred (300) feet of the property designated in the permit or permit application. This notice must state:
 - 1. The date, time, location, and nature of the hearing;
 - 2. The reasons for the denial or revocation; and
 - 3. That the parties notified have a right to present any relevant evidence with regard to the denial or revocation of the permit.

7.60.170 Permit Denial or Revocation Hearing Decision

- A. The decision of the Hearing Officer is final. Any appeal of the final administrative decision must be pursuant to Section 1.16.010.
- B. The Hearing Officer's decision must be supported by evidence on the record.
- C. If the Hearing Officer upholds the decision to deny the permit application or revoke the permit, then the Hearing Officer may direct that the owner/guardian of the animals and person with the right to control the animals remove all animals from the premises covered by the permit or permit application within ten (10) business days after service of the notice of decision. Service may be personally or by first-class mail, postage prepaid.

7.60.180 No New Permit after Denial or Revocation

If a permit has been denied or revoked, the Administrator may not accept a new permit application from the same person for the same activity at the same location during the

six (6) month period after such denial or revocation, unless the applicant shows, and the Administrator finds by inspection or investigation, that the grounds upon which the previous application was denied or the permit revoked no longer exist.

Part 3 Animal Rescuer

7.60.300 Animal Rescuer Registration

Any person that maintains more than the number of adult animals allowed under Section 7.40.020 and is an Animal Rescuer as defined in Section 7.10.040 must register with the Administrator as an Animal Rescuer. In order to register as an Animal Rescuer, the applicant must provide the Administrator with all of the following information:

- A. Verifiable proof of membership in or status as a State of California nonprofit corporation with tax-exempt status under Section 501(c)(3) of Title 26 of the Internal Revenue Code, and is in good standing with the State of California;
- B. Verifiable proof that animal adoption and placement of rescued animals with a new and permanent owner/guardian in a new home is one of its primary organizational goals and proof of a history of placement of animals with new and permanent owners/guardians in new homes;
- C. The location and contact information of the rescue work to be performed and the identity of the person(s) responsible for the care of the animals at that location;
- D. Payment of the registration fee as set forth in the schedule of fees adopted by resolution of the City Council;
- E. Agreement from the applicant to abide by the requirements set forth in Section 7.60.310; and
- F. Agreement from the applicant to any other conditions the Administrator deems reasonably necessary for the proper care and maintenance of the animals.

7.60.310 Maintenance of Animal Rescuer Registration

- A. In order to maintain a valid Animal Rescuer registration, the Animal Rescuer must comply with each of the following requirements:

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1. Rescue work such as the temporary housing and care of domestic animals must be in conformity with all standards of animal care and housing set forth by State law and this Title.
 2. Rescue work may not create a public nuisance.
 3. Animal Rescuer must cooperate with the City during investigations of complaints and inspections of animal areas.
 4. Animal Rescuer must limit the number of animals maintained at the registered location if the Administrator deems limitations are necessary because of space, finance, effect on surrounding area, history, or any other criteria relevant to the Animal Rescuer's ability to provide proper and adequate care of the animals.
- B. The Administrator may revoke the Animal Rescuer registration if the holder of the registration fails at any time to satisfy one or more of the requirements specified in this Section.

7.60.320 Registration Not Transferable

The registration may not be sold, assigned or transferred and may cover only the premises designated and the person to whom the registration was originally issued.

7.60.330 Denial or Revocation of the Registration

The Administrator may deny or revoke a registration issued pursuant to this Part in any of the following situations:

- A. The Administrator has determined by inspection of the premises where the animals are maintained that the applicant cannot comply with the requirements of this Part, the Title, or applicable State law, or the registrant is in violation of the registration conditions.
- B. The Administrator has reason to believe that the applicant or registrant has willfully withheld or falsified any information required for a registration.

7.60.340 Registration Denial or Revocation Hearing Notice

If the Administrator seeks to deny the application or revoke the registration, the Administrator must send the applicant or registrant a notice of intent to deny or revoke, which must state the following:

1. The reasons for the denial or revocation;

2. That the applicant or registrant must remove all animals from the premises covered by the registration or registration application, within ten (10) business days after service of the notice of intent to deny or revoke. Service may be personally or by first-class mail, postage prepaid;
3. That the applicant or registrant may appeal the intended decision by requesting a hearing in writing;
4. That the request for a hearing must be received by the Administrator within five (5) business days after service of such notice if he or she wishes to challenge the denial or revocation. Service may be personally or by first-class mail, postage prepaid;
5. If the written appeal to the Hearing Officer is made, the applicant or registrant may maintain the animals on the premises if the maintenance of these animals on the premises pending the hearing will not result in harm to the animals or unreasonably impact the public health and safety of the neighboring community;
6. That the failure to request a hearing within the time specified may result in the seizure of the animals; and
7. That the failure to appeal the Administrator's intended decision terminates the applicant or registrant's right to a hearing.

7.60.350 Registration Denial or Revocation Hearing Procedure

- A. Upon receipt of a request for a registration denial or revocation hearing, the Hearing Officer must set the date, time, and place for the hearing. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting a hearing at least five (5) business days before the date of the hearing.
- B. At the hearing, the applicant or registrant and the Administrator may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- C. Any witness appearing may present evidence.
- D. The Hearing Officer may also cause notice to be sent to the owners of each property within three hundred (300) feet of the property designated in the registration or registration application. This notice must state:

1. The date, time, location, and nature of the hearing;
2. The reasons for the denial or revocation; and
3. That the parties notified have a right to present any relevant evidence with regard to the denial or revocation of the registration.

7.60.360 Registration Denial or Revocation Hearing Decision

- A. The decision of the Hearing Officer is final. Any appeal of the final administrative decision must be pursuant to Section 1.16.010.
- B. The Hearing Officer's decision must be supported by evidence on the record.
- C. If the Hearing Officer upholds the decision to deny the registration application or revoke the registration, then the Hearing Officer may direct that the owner/guardian of the animals and person with a right to control the animals remove all animals from the premises covered by the registration or registration application within ten (10) business days after service of the notice of decision. Service may be personally or by first-class mail, postage prepaid.

7.60.370 No New Registration after Denial or Revocation

If a registration has been revoked, the Administrator may not accept a new registration application from the same person for the same activity at the same location during the six (6) month period after such revocation, unless the applicant shows, and the Administrator finds by inspection or investigation, that the grounds upon which the previous registration was revoked no longer exist.

**Part 5
Beekeeping**

7.60.500 Wild Swarms of Bees Prohibited

It is unlawful for any person to keep, maintain, or allow remaining on any lot or parcel, which such person owns or resides, any wild swarm of bees.

7.60.510 Permit Required for Beekeeping

It is unlawful for any person to keep or maintain any hive of bees on any lot or parcel within the City without first obtaining a permit in accordance with this Part.

7.60.520 Compliance Required

It is unlawful for any person to keep or maintain any hive of bees on any lot or parcel within the City in violation of this Part.

7.60.530 Beekeeping Permit – Period of Validity

- A. A permit may be issued by the Administrator, for uses specified by this Part, where such use meets criteria for assuring that the use does not create such potential impact on residents of properties adjoining lots or parcels upon which beehives are maintained.
- B. A permit may be granted by the Administrator only if all of the criteria for the use specified in this Part are met. The criteria for a permit for such use are set forth in Sections 7.60.530, 7.60.550, 7.60.560 and 7.60.570.
- C. The permit is valid for a period of twelve (12) months from the date of issuance.

7.60.540 Application Requirements

A written application for a permit under this Part must be filed with the Administrator on the form provided by the Administrator. The application must be signed by an owner or lawful tenant of the lot or parcel for which the application is submitted.

7.60.550 Fees

Fees for the permit must be set forth in the schedule of fees adopted by resolution of the City Council. No application may be accepted as complete until all fees so imposed have been paid.

7.60.560 Permits Not Transferable

The permit may not be sold, assigned or transferred, and may cover only the premises designated and the person to whom the permit was originally issued.

7.60.570 Criteria for Approval

The applicant must declare under penalty of perjury that the location for the beehive(s) sought is and at all times will be maintained in conformity to each and every one of the following criteria:

- A. No more than two (2) hives may be maintained on any lot or parcel.

- B. The owner's name, address, and location of all such hives must be registered with the office of the Santa Clara County Agriculture Commission.
- C. No hive may be kept or maintained within ten (10) feet of any side property line on the lot or parcel upon which such hives are situate, or within fifty (50) feet of any dwelling unit other than that occupied by the person maintaining the hive or hives.
- D. No hive may be kept or maintained within any required front or side setbacks.
- E. All hives must be oriented so that their entrances face a house or building on the premises and must be surrounded by a solid fence not less than six (6) feet in height, located no farther than thirty (30) feet from such hives. Said fence may be open on that side facing a house or building on the premises. This condition may be met by locating such hives upon or affixed to a building or structure so that their entrances are more than ten (10) feet from the ground and face a house or building on the premises.
- F. A constant water supply adequate to the needs of all hives located on the premises must be maintained on those premises.

7.60.580 Beehives Situate in the OS Open Space, A Agricultural, Industrial, Manufacturing Districts and PD Districts

Notwithstanding the provisions of Sections 7.60.510 and 7.60.570, beehives may be kept or maintained without the issuance of a permit on lots or parcels situate in the OS, A agricultural, industrial, manufacturing districts and PD districts zoned for such uses (excluding, however, such lots or parcels being used for residential or commercial legal nonconforming uses) provided such beehives are situate more than one hundred fifty (150) feet from any dwelling unit, excluding the dwelling unit on the lot or parcel whereon such hives are situate, and at least one hundred (100) feet from any public street or roadway or public access. The requirements of Section 7.60.570 B, D, and F apply.

7.60.590 Exceptions

The City Council finds that the maintenance of beehives within the City not in compliance with the regulations contained in Sections 7.60.510, 7.60.570 and 7.60.580 constitute a public nuisance. The regulations contained in said Sections are adopted for the general welfare of the residents of the City. The regulations are primarily adopted for the purpose of enhancing the welfare of residents of properties adjoining lots or parcels upon which beehives are maintained and such persons are found to be specifically

affected by the maintenance of such beehives. Therefore, the requirements of subsection C of Section 7.60.570 or the distance restriction set forth in Section 7.60.580 are not applicable if the person desiring to maintain the hive, or hives, files with the Administrator the written consent of the residents of the adjoining properties and dwelling units from which the distance limitations contained in subsection C of Section 7.60.570 and Section 7.60.580 are to be measured. Such written consent may be revoked by the grantor or successor resident following at least thirty (30) days written notice to the person in control of such hive or hives, and by filing a copy thereof with the Administrator.

7.60.600 Denial or Revocation of the Permit

The Administrator may deny or revoke a permit issued pursuant to this Part in any of the following situations:

- A. The Administrator has determined by inspection of the premises where the hive or hives are maintained that the applicant cannot comply with the requirements of this Part, the Title, or applicable State law, or the permit holder is in violation of the permit conditions.
- B. The Administrator has reason to believe that the applicant or permit holder has willfully withheld or falsified any information required for a permit.

7.60.610 Permit Denial or Revocation Hearing Notice

If the Administrator seeks to deny the application or revoke the permit, the Administrator must send the applicant or permit holder a notice of intent to deny or revoke, which must state the following:

- 1. The reasons for the denial or revocation;
- 2. That the applicant or permit holder must remove all hives from the premises covered by the permit or permit application, within ten (10) business days after service of the notice of intent to deny or revoke. Service may be personally or by first-class mail, postage prepaid;
- 3. That the applicant or permit holder may appeal the intended decision by requesting a hearing in writing;
- 4. That the request for a hearing must be received by the Administrator within five (5) business days after service of such notice if he or she wishes to challenge the denial or revocation. Service may be personally or by first-class mail, postage prepaid;

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5. If the written appeal to the Hearing Officer is made, the applicant or permit holder may maintain the hive or hives on the premises if the maintenance of the hive or hives on the premises pending the hearing will not unreasonably impact the public health and safety of the neighboring community;
6. That the failure to request a hearing within the time specified may result in the seizure of the hive or hives; and
7. That the failure to appeal the Administrator's intended decision terminates the applicant or permit holder's right to a hearing.

7.60.620 Permit Denial or Revocation Hearing Procedure

- A. Upon receipt of a request for a permit denial or revocation hearing, the Hearing Officer must set the date, time, and place for the hearing. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting a hearing at least five (5) business days before the date of the hearing.
- B. At the hearing, the applicant or permit holder and the Administrator may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- C. Any witness appearing may present evidence.
- D. The Hearing Officer may also cause notice to be sent to the owners of each property within three hundred (300) feet of the property designated in the permit or permit application. This notice must state:
 1. The date, time, location, and nature of the hearing;
 2. The reasons for the denial or revocation; and
 3. That the parties notified have a right to present any relevant evidence with regard to the denial or revocation of the permit.

7.60.630 Permit Denial or Revocation Hearing Decision

- A. The decision of the Hearing Officer is final. Any appeal of the final administrative decision must be pursuant to Section 1.16.010.

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- B. The Hearing Officer's decision must be supported by evidence on the record.
- C. If the Hearing Officer upholds the decision to deny the permit application or revoke the permit, then the Hearing Officer may direct that the owner and the person with a right to control the hive or hives remove all hive or hives from the premises covered by the permit or permit application within ten (10) business days after service of the decision. Service may be personally or by first-class mail, postage prepaid.

7.60.640 No New Permit after Denial or Revocation

If a permit has been denied or revoked, the Administrator may not accept a new permit application from the same person for the same activity at the same location during the six (6) month period after such denial or revocation, unless the applicant shows, and the Administrator finds by inspection and/or investigation, that the grounds upon which the previous application was denied or the permit revoked no longer exist.

**Part 7
Small Animals and Livestock**

7.60.700 Permit Requirement - Exemption

- A. It is unlawful for any person to maintain livestock or more than six (6) small animals without a permit.
- B. A person that maintains fewer than seven (7) small animals in violation of this Title or State law may become subject to the permit requirement of this Part. The Administrator must provide the owner/guardian or person with a right to control the small animals written notice of the requirement to obtain a permit.
- C. The permit requirements do not apply to circuses, carnivals, agricultural shows or exhibits, and other similar enterprises which operate for limited periods only, where a permit to conduct such enterprises has been granted in accordance with this Title relating to the operation of such enterprises, nor to any pet shop, pet grooming business or animal menagerie as said terms are defined in this Title.

7.60.705 Compliance Required

It is unlawful for any person to maintain livestock or more than six (6) small animals in violation of this Part.

7.60.710 Permit Application -- Period of Validity

- A. Applicants for a permit to maintain livestock or small animals must submit the application form to the Administrator.
- B. A permit may only be issued after the applicant shows, through an inspection of the premises, that he or she would comply with the provisions of this Title and State law.
- C. The permit is valid for a period of two (2) years from the date of issuance.

7.60.715 Fees

The fee for a permit to maintain livestock or small animals must be set forth in the schedule of fees adopted by resolution of the City Council. No application may be accepted as complete until all fees so imposed have been paid.

7.60.720 Permit Renewal Procedure

Any person issued a permit to maintain livestock or small animals may renew the permit for an additional two (2) years subject to similar permit conditions. The application for renewal must be submitted to the Administrator prior to the expiration of the permit.

7.60.725 Permit Transfer Prohibited

The permit to maintain livestock or small animals may not be sold, assigned or transferred, and may cover only the premises designated and the person to whom the permit was originally issued.

7.60.730 Denial or Revocation of the Permit

The Administrator may deny or revoke a permit issued pursuant to this Part in any of the following situations:

- A. The Administrator has determined by inspection of the premises where the livestock or small animals are maintained that the applicant cannot comply with the requirements of this Part, the Title, or applicable State law, or the permit holder is in violation of the permit conditions.
- B. The Administrator has reason to believe that the applicant or permit holder has willfully withheld or falsified any information required for a permit.

7.60.735 Permit Denial or Revocation Hearing Notice

If the Administrator seeks to deny the application or revoke the permit, the Administrator must send the applicant or permit holder a notice of intent to deny or revoke, which must state the following:

1. The reasons for the denial or revocation;
2. That the applicant or permit holder must remove all livestock and small animals from the premises covered by the permit or permit application, within ten (10) business days after service of the notice of intent to deny or revoke. Service may be personally or by first-class mail, postage prepaid;
3. That the applicant or permit holder may appeal the intended decision by requesting a hearing in writing;
4. That the request for a hearing must be received by the Administrator within five (5) business days after service of such notice if he or she wishes to challenge the denial or revocation. Service may be personally or by first-class mail, postage prepaid;
5. If the written appeal to the Hearing Officer is made, the applicant or permit holder may maintain the livestock and small animals on the premises if the maintenance of these animals on the premises pending the hearing will not result in harm to the animals or unreasonably impact the public health and safety of the neighboring community;
6. That the failure to request a hearing within the time specified may result in the seizure of the livestock and small animals; and
7. That the failure to appeal the Administrator's intended decision terminates the applicant or permit holder's right to a hearing.

7.60.740 Permit Denial or Revocation Hearing Procedure

- A. Upon receipt of a request for a permit denial or revocation hearing, the Hearing Officer must set the date, time, and place for the hearing. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting a hearing at least five (5) business days before the date of the hearing.
- B. At the hearing, the applicant or permit holder and the Administrator may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be

admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

- C. Any witness appearing may present evidence.
- D. The Hearing Officer may also cause notice to be sent to the owners of each property within three hundred (300) feet of the property designated in the permit or permit application. This notice must state:
 - 1. The date, time, location, and nature of the hearing;
 - 2. The reasons for the denial or revocation; and
 - 3. That the parties notified have a right to present any relevant evidence with regard to the denial or revocation of the permit.

7.60.745 Permit Denial or Revocation Hearing Decision

- A. The decision of the Hearing Officer is final. Any appeal of the final administrative decision must be pursuant to Section 1.16.010.
- B. The Hearing Officer's decision must be supported by evidence on the record.
- C. If the Hearing Officer upholds the decision to deny the permit application or revoke the permit, then the Hearing Officer may direct that the owner/guardian and person with a right to control the livestock or small animals remove all livestock and small animals from the premises covered by the permit or permit application within ten (10) business days after service of the notice of decision. Service may be personally or by first-class mail, postage prepaid.

7.60.750 Confinement Requirement – Homing Pigeon Exception

- A. The owner/guardian and person with a right to control the livestock or small animals must keep the premises where the livestock or small animals are maintained fenced to prevent such animal from straying or running at large upon any public street or other public place, or upon any private place or property or common area of any planned development, cluster, townhouse, or condominium project without the consent of the owner or person in control thereof.
- B. If the small animal is a homing pigeon, the homing pigeon must be confined to the enclosure or structure and may only be released for exercise, training or competition if the homing pigeon is fitted with a leg band which contains a serial

number issued by a pigeon registry and the homing pigeon does not perch or otherwise linger on the building or property of another without their consent.

7.60.755 Sanitary Enclosure Requirement

- A. All premises, enclosures, or structures used or intended to be used for the keeping or housing of livestock or small animals must be cleaned and reasonably free of debris, refuse, manure, excreta, or like material as often as may be necessary to comply with the provisions of this Section.
- B. The floor of any premises, enclosure, or structure for the use of small animals must be smooth and tight to prevent the accumulation of water, debris, refuse, manure, excreta, or like material, and the harboring of vermin and wild animals. A wire floor may be used if appropriate for the small animal and is maintained to prevent injury to the animal.
- C. Evidence of a lack of sanitary maintenance of the premises, enclosure, or structure may include (1) the accumulation of debris, refuse, manure, excreta, or other like material upon any surface within any such premises, enclosure, or structure used or intended to be used for the housing of such small animals or livestock, (2) any reasonably obnoxious odor or allergen arising from any condition existing within the premises, enclosure, or structure used or intended to be used for the housing of such small animals or livestock, and (3) the presence of numerous flies or fly larvae in the vicinity.

7.60.760 Enclosure, Structure and Shading Requirements

- A. Any small animal or livestock must have adequate enclosures, structures, or shading to allow an animal maintained outdoors to (1) protect themselves from the direct rays of the sun when the sunlight is likely to cause overheating or discomfort, and (2) remain dry during the rain;
- B. The enclosure, structure, or shading must be accessible to the animal at all times;
- C. The enclosure or structure must be situated to prevent exposing the animal to (1) unreasonably loud noise or (2) teasing, abuse, or injury by another animal or person;
- D. If the livestock or small animal is confined in an enclosure or structure, the enclosure or structure must be:
 - 1. Of adequate size inside and outside the enclosure or structure to allow the animal to stand up, sit, turn around freely, or lie down in a normal position,

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relieve itself away from its confinement, and safely interact with any other animal;

2. Adequately lighted to provide regular diurnal lighting cycles of natural or artificial light uniformly diffused throughout the shelter, and sufficient illumination for routine inspections and maintenance of the animal; and
3. Supplied with clean and dry bedding material or other means of protection from the weather elements to maintain the shelter at a temperature that is not harmful to the health of the animal.

7.60.765 Water Requirement

- A. Any small animal or livestock must have access to clean potable water at all times unless restricted for veterinary care. If the water is kept in a container, the container must be designed to prevent tipping and spilling of the water or be secured to a solid structure or the ground.
- B. Water containers must be clean and must be emptied and refilled with fresh water every twenty four (24) hours or alternatively if the water is provided by an automatic or demand device, the water supply connected to the device must function twenty four (24) hours a day. This Subsection does not apply to livestock that is pastured.

7.60.770 Food and Feeding Requirements

- A. Any small animal or livestock must be provided food that is wholesome and be of sufficient quantity and nutritive value to maintain a healthy body weight and meet the normal daily requirements for the condition and size of the animal.
- B. The food receptacles must be accessible to the animal and be placed in a location to minimize contamination from excreta and insects. Feeding pans must be durable and kept clean. Disposable food receptacles may be used and must be discarded after each feeding. Self-feeders may be used for dry food and must be sanitized regularly to prevent molding, deterioration, or the dense compaction of food.
- C. Spoiled or contaminated food must be disposed of in a sanitary manner.

7.60.775 Veterinary Treatment Requirement

Any small animal or livestock must receive veterinary treatment from a veterinarian licensed by the State of California when such treatment is necessary to alleviate the animal's suffering or prevent the transmission of disease.

7.60.780 Exercise Requirement

Any small animal or livestock must be provided the opportunity to exercise in order to maintain normal muscle tone and mass for the age, size, and condition of the animal.

7.60.785 Transportation Requirement

Any small animal or livestock must be handled, moved, or shipped in a manner consistent with Section 7.40.090 and to insure the health and safety of the animal.

7.60.790 Refuse Container Requirement

Any debris, refuse, manure, excreta, or other like material conducive to the breeding of flies or that creates a reasonably obnoxious odor must be placed in a fly proofed container until the material is removed from the premises or buried under the soil surface as fertilizer.

7.60.795 Food Storage Containers Requirement

All grain or cereal intended for use as food for livestock must be kept in metal containers with tightly fitted metal covers or other containers constructed to keep out vermin and wild animals.

7.60.800 Proximity of Livestock to Dwelling Unit

- A. It is unlawful for any person to keep livestock within two hundred (200) feet of any dwelling unit other than the dwelling unit of the owner/guardian of the livestock or person with a right to control the livestock.
- B. It is unlawful for any person to keep livestock within thirty-five (35) feet of the dwelling unit of the owner/guardian of the livestock or the person with a right to control the livestock.

7.60.805 Exemption -- Lands Annexed to City

- A. Lands which are annexed to the City and upon which any barn, stable or roofed structures are existing and were being used for the shelter of livestock at the time of annexation, are exempt from the provisions of Section 7.60.800. This

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exemption from the requirements of Section 7.60.800 does not apply to structures which are placed on the annexed lands after the date of annexation.

- B. The following regulations apply to those lands exempted under subsection A of this Section:
1. Any barn, stable, or roofed structures existing at the time of annexation and used for the shelter of livestock must be located no closer than one hundred (100) feet to any dwelling unit or swimming pool on the property adjacent to the property where said animals are kept.
 2. All barns, stables, or roofed structures existing at the time of annexation and used for the shelter of livestock must be located no closer than twenty-five (25) feet from a residence on the subject property.
 3. Any corral, fenced area, or restraint for livestock may not be located closer than sixty (60) feet to a dwelling unit or swimming pool on the property adjacent to the property where said animals are kept.
- C. Nothing herein contained, nor any exemption granted hereunder permits the maintenance of a public nuisance or permits the violation of any other applicable law, ordinance, or regulation.

7.60.810 Side Setback Area

It is unlawful for any person to keep livestock or small animals subject to a permit under this Part within any side setback area as defined by San Jose Municipal Code Section 20.200.1110.

7.60.815 Proximity to Dwelling Unit -- Small Animals

It is unlawful to maintain more than the maximum number of small animals either of the same type or combination thereof within the designated distances as set forth below in this Section. Designated distances are the distance measured from the enclosure or structure housing such small animals to the nearest dwelling unit other than the permittee's.

Designated Distance	Maximum Number of Small Animals
Less than 20 feet	0
More than 20 feet but less than 40 feet	6
More than 40 feet but less than 50 feet	10
More than 50 feet	20

7.60.820 Roosters Prohibited

It is unlawful for any person to maintain a rooster over four (4) months of age.

**Part 9
Dangerous Animal**

7.60.900 Dangerous Animal Presumption

- A. Any animal, other than a dog, which demonstrates any or all of the following behavior, is rebuttably presumed dangerous:
1. An attack, without provocation, which requires a defensive action by any person to prevent bodily injury and/or property damage in a place where such person is conducting himself/herself peaceably and lawfully.
 2. An attack, without provocation, on another animal or livestock which occurs off of the property of the owner/guardian of the attacking animal.
 3. An attack, without provocation, that results in an injury to a person in a place where such person is conducting himself/herself peaceably and lawfully.
 4. Any behavior, without provocation, that constitutes a physical threat of bodily harm to a person in a place where such person is conducting himself/herself peaceably and lawfully.
 5. Any animal owned or kept primarily, or in part, for the purpose of animal fighting or any animal trained for animal fighting.
- B. For the purposes of this Section, a person is peaceably and lawfully upon the private property of an owner/guardian of the animal when such person is on such property in the performance of any duty imposed upon such person by the laws of this State or any city or county, or by the laws or postal regulations of the United States, or when such person is on such property upon the expressed or implied invitation of any person with the authority to issue such invitation.

7.60.910 Permit Required for Dangerous Animal

- A. No person may keep, harbor, maintain, sell, trade, or let for hire a dangerous animal, other than a potentially dangerous, dangerous, or vicious dog which is subject to separate requirements under Chapter 7.30 of this Title 7, without first obtaining a permit from the Administrator.
- B. No permit may be required of any zoo, university, college, governmental research agency, or other bona fide scientific institution, as determined by the Administrator, engaging in scientific or public health research.
- C. For the purpose of this Section, a zoo is considered any organization which exhibits animals to the general public at regular specified hours, equaling at least thirty (30) hours a week for thirty-six (36) weeks a year, and whose animals, whether maintained for exhibit purposes or not, are not for sale to private individuals.
- D. The owner/guardian of a dangerous animal and person with a right to control a dangerous animal must post the entrances to the property where the animal is kept with a sign, of at least twelve (12) inches square, that can be read from a publicly accessible location, warning persons of a dangerous animal.

7.60.920 Application for Permit and Permit Conditions

- A. An application for a permit to keep, harbor, maintain, sell, trade, or let for hire a dangerous animal must be made in writing to the Administrator and accompanied by a processing fee as set forth in the schedule of fees adopted by resolution of the City Council.
- B. Such application must be on a form approved by the Administrator. The applicant must furnish a list of the types of animals to be maintained or used for the stated purpose, together with the approximate number of animals of each type.
- C. The Administrator may establish regulations and standards relating to:
 - 1. The maximum number and species of animals to be kept or maintained on the premises;
 - 2. The construction, sanitation, and maintenance of the premises; and
 - 3. Any other regulations and standards in conformity with and for the purpose of carrying out the intent of this Title. Compliance with such rules

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and regulations are prerequisites to the issuance and continued validity of any permit provided pursuant to this Part.

- D. The Administrator, based on a review of the facts and circumstances of the application, may require any such animal to be properly caged, tethered, or restrained in zoo-type facilities that meet or are in addition to, or more restrictive than, State guidelines issued under the provisions of Section 671 of Title 14 of the California Administrative Code, as may be amended, and federal standards issued under Chapter 1 of Title 9 of the Code of Federal Regulations, as may be amended. Nothing in this Part permits the keeping of dangerous animals where zoning provisions or State law would prohibit such keeping.
- E. The permit holder must maintain a record of the names and addresses of persons from whom animals are received and to whom the animals are sold, traded, or given. This record must be presented to the Administrator for review upon request.

7.60.930 Expiration and Renewal of Permit

Any permit issued under this Part expires twelve (12) months from the date of issuance. The procedure for the renewal of a permit is the same as for an original permit. Upon failure to make application for the renewal of a permit within thirty (30) days of the expiration of a permit, or prior thereto, the applicant must pay in addition to the permit a late renewal fee. The permit fee and late renewal fee must be as set forth set forth in the schedule of fees adopted by resolution of the City Council.

7.60.940 Permits Not Transferable

The permit may not be sold, assigned, or transferred and covers only the premises designated and the person to whom the permit was originally issued.

7.60.950 Inspection

As a condition to the issuance or renewal of a permit under this Part, the Administrator or an authorized representative has the authority to inspect the premises where the dangerous animal is maintained at any reasonable time.

7.60.960 Permit Denial or Revocation

Notwithstanding anything to the contrary, the Administrator may deny or revoke a permit to keep or maintain any dangerous animal, based on a review of the facts and circumstances, when any one or all of the following apply:

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- A. Any such animal may not be kept or maintained without endangering the safety of any person(s) or property;
- B. The keeping of the animal would constitute a public nuisance;
- C. The animal would be subject to suffering, neglect, cruelty, or abuse; or
- D. The keeping of the animal is incompatible with the residential or other uses of the surrounding area.

7.60.970 Permit Denial or Revocation Hearing Notice

If the Administrator seeks to deny the application or revoke the permit, the Administrator must send the applicant or permit holder a notice of intent to deny or revoke, which must state the following:

- 1. The reasons for the denial or revocation;
- 2. That the applicant or permit holder may appeal the intended decision by requesting a hearing in writing;
- 3. That the request for a hearing must be received by the Administrator within five (5) business days after service of such notice if he or she wishes to challenge the denial or revocation. Service may be personally or by first-class mail, postage prepaid;
- 4. That the failure to request a hearing within the time specified may result in the seizure of the dangerous animals; and
- 5. That the failure to appeal the Administrator's intended decision terminates the applicant or permit holder's right to a hearing.

7.60.980 Permit Denial or Revocation Hearing Procedure

- A. Upon receipt of a request for a permit denial or revocation hearing, the Hearing Officer must set the date, time, and place for the hearing. The Hearing Officer must cause notice of the hearing to be mailed to the person requesting a hearing at least five (5) business days before the date of the hearing.
- B. At the hearing, the applicant or permit holder and the Administrator may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence do not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

- C. Any witness appearing may present evidence.
- D. The Hearing Officer may also cause notice to be sent to the owners of each property within three hundred (300) feet of the property designated in the permit or permit application. This notice must state:
 - 1. The date, time, location, and nature of the hearing;
 - 2. The reasons for the denial or revocation; and
 - 3. That the parties notified have a right to present any relevant evidence with regard to the denial or revocation of the permit.

7.60.990 Permit Denial or Revocation Hearing Decision

- A. The decision of the Hearing Officer is final. Any appeal of the final administrative decision must be pursuant to Section 1.16.010.
- B. The Hearing Officer's decision must be supported by evidence on the record.
- C. The Hearing Officer may decide that the owner/guardian or person with a right to control the animal will lose all rights of ownership/guardianship and control of the animal; and may order that the animal will be destroyed after the animal has bitten or injured a person on one or more occasions. The Hearing Officer may declare an animal to be dangerous as defined in this Title. The Hearing Officer may require the owner/guardian and person with a right to control the animal, before the animal is released to his or her custody, to obtain a permit under Section 7.60.910 and sign a commitment which contains conditions, such as, but not limited to, the following:
 - The owner/guardian and/or person with a right to control the animal agree as a condition of the animal's release:
 - 1. To keep the animal confined to the premises of the owner/guardian and/or person with a right to control the animal and in an enclosure approved by the Administrator;
 - 2. To keep the animal securely muzzled, leashed, and under the direct physical restraint of a person eighteen (18) years of age or older who is physically capable of restraining the animal when the animal is off the property of the owner/guardian and person with a right to control the animal;

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3. That a violation of this commitment may result in the animal being impounded and destroyed;
 4. To prove financial responsibility by posting a bond or certificate of insurance in the amount of Ten Thousand Dollars (\$10,000), or more as determined by the Administrator with the advice of the City of San José Risk Manager;
 5. To inform, along with the Administrator, any City and/or County employee, any postmaster, utility company meter reader, and anyone else who enters the property with implied consent or who enters the property peaceably and lawfully, of the animal's dangerousness if the animal is moved and maintained in any other area of the City for more than twenty-four (24) hours;
 6. To care for the animal consistent with Chapter 7.20 of this Title;
 7. To have the animal complete obedience and training classes; and
 8. To provide the animal with microchip identification.
- D. Failure to comply with any condition of the Hearing Officer's decision is a violation of this Section and would subject the dangerous animal to summary seizure and disposal in accordance with the law.

7.60.1000 No New Permit after Denial or Revocation

If a permit has been denied or revoked, the Administrator may not accept a new permit application from the same person for the same activity at the same location within six (6) months of the denial or revocation, unless the applicant shows and the Administrator finds by inspection and/or investigation, that the grounds upon which the previous application was denied or the permit revoked no longer exist.

SECTION 2. This Ordinance will be effective on August 1, 2007.

RD:RLT:RPH
6/21/07

PASSED FOR PUBLICATION OF TITLE this _____ day of _____ **DRAFT**
2007,
by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk