

Ordinance #251 ordered published in its entirety the 13th day of October by the Town of Cheyenne Wells Town Council for public viewing. This Ordinance is scheduled for final reading and approval at the Town of Cheyenne Wells Regular Meeting November 10, 2009 at 7:15 p.m. in Council Chambers at 151 South 1st Cheyenne Wells, Colorado 80810

ORDINANCE NO. 251

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CHEYENNE WELLS, CHEYENNE COUNTY, COLORADO, TO AMEND THE TOWN CODE OF CHEYENNE WELLS, COLORADO, TITLE 6, CHAPTERS 6.04 AND 6.08 PERTAINING TO ANIMALS, TO PROVIDE PENALTIES FOR ANIMALS RUNNING AT LARGE, VICIOUS ANIMALS, AND AGGRESSIVE ANIMALS, LICENSING OF CATS, LIMITATIONS ON NUMBERS OF DOGS AND CATS, AND ESTABLISHING PERMITS FOR THE KEEPING OF ANIMALS OTHER THAN DOGS AND CATS.

Whereas, the Town of Cheyenne Wells, hereinafter referred to as the "Town", in the County of Cheyenne, and the State of Colorado, is the body corporate operating as a statutory town pursuant to the general statutes of the State of Colorado; and

Whereas, Colorado Revised Statutes, C.R.S. 31-15-401(1)(m)(l) gives to municipalities the authority to regulate and to prohibit the running at large and the keeping of animals within the municipality and to otherwise provide for the regulation and control of such animals including, but not limited to, licensing, impoundment, and disposition of impounded animals; and

Whereas, the Town has provided for the regulation of dogs and other animals in Title 6 of the Town Code and has determined that the best interests of the citizens of the Town require that the Code be amended, to define and deal with dangerous and vicious animals, running at large of animals, licensing and vaccination of cats, and to more closely regulate the keeping of livestock, fowl, and other animals within the Town boundaries through a permitting system, taking into account the character of the neighborhood and the wishes and desires of the inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CHEYENNE WELLS, COLORADO:

SECTION I – AMENDMENT OF TITLE 6, CHAPTER 6.04, SECTION 6.04.010, DEFINITIONS

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04, Section 6.04.010, shall be amended to re-define "Owner" and "Running-at-large" and shall also include the following additional definitions:

"Owner" shall mean any person who owns, keeps, or harbors a dog, cat, or other animal within the boundaries of the Town of Cheyenne Wells. In reference to Chapter 6.08.20, "Owner" shall mean the owner of the real property which is the subject of the application for Permit.

"Running-at -large" shall mean any animal in the Town of Cheyenne Wells that is not secured on the premises of the owner or keeper unless the animal is on a six (6) foot or shorter leash held by a person, or within a vehicle or similarly confined area, including being leashed or tied within the box of a pickup truck, and without access to passersby. An animal shall be considered running at large if the animal is left unattended on any public property, whether or not the animal is secured by any leash, cord, chain or other means.

"F. "Animal" means any organism of the kingdom Animalia, other than a human being, distinguished from plants by certain typical characteristics, such as the power of locomotion. The term "animal" shall include but not be limited to rabbits, domesticated bees, and other domesticated or propagated insects."

"G. "Vicious animal" means:

- (1) Any individual dog or other animal that when unprovoked inflicts bites or attacks a human being or other animal either on public or private property.
- (2) Any individual dog or other animal with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.
- (3) Any individual dog or other animal that has as a trait or characteristic and a generally known reputation for viciousness, dangerousness, or unprovoked attacks upon human beings or other animals, unless handled in a particular manner or with special equipment.
- (4) Any individual dog or other animal that attacks a human being or domestic animal without provocation.
- (5) Any individual dog or other animal that has been found to be an "aggressive dog" or "aggressive animal" upon a prior occasion."

G. "Aggressive Animal" shall mean any individual dog or other animal which when either unmuzzled, unleashed or unattended by its

owner or keeper, in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack upon any streets, sidewalks, or any public grounds or places.

- H. "Cat" shall mean any member of the species *Felix Catus*, regardless of sex.

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SECTION II – AMENDMENT OF TITLE 6, CHAPTER 6.04.020, VACCINATION REQUIRED.

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04.020, shall be amended to state as follows:

"It is the duty of every person who owns any dog, dogs, cat, or cats in the Town to have such dogs or cats inoculated by a person legally authorized to do so. Such vaccination shall be performed before May 1st of each year; provided, however, that any person who acquires any dogs or cats after June 1st shall immediately have the dog and / or cat inoculated.

SECTION III – AMENDMENT OF TITLE 6, CHAPTERS 6.04.030, LICENSE AND REGISTRATION – REQUIRED

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04.030, shall be amended to add paragraph D, E, and F as follows:

"D. It is the duty of the town clerk to register all cats upon application by the owner.

E. The town clerk shall, following registration of each cat and upon certification of a duly licensed veterinarian, dated in the same calendar year for which the license is sought, that the cat has been vaccinated for rabies, issue a license tag for each cat upon the payment of ten dollars for a male or spayed female cat and fifteen dollars for an unspayed female cat.

F. This chapter shall be not intended to apply to cats that belong to nonresidents temporarily in the town; however, such cats shall not be allowed to run at large."

SECTION IV – AMENDMENT OF TITLE 6, CHAPTERS 6.04.040, LICENSE AND REGISTRATION – REQUIRED

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04.040, shall be amended as follows:

“A. Every owner of a dog or cat shall be required to provide each dog or cat with a collar or harness to which the license tag must be affixed and to see that the tag and collar are constantly worn.

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B. In case a license tag is lost or destroyed, a substitute tag shall be issued by the town clerk upon payment of such fee as the Board shall establish, by Resolution, on a yearly basis. To obtain the substitute tag, the owner shall present his or her receipt showing payment of the license fee for the current year.

C. Dog or cat tags shall not be transferable from one dog to another and no refunds shall be made on any dog or cat license for any reason.”

SECTION V – AMENDMENT OF TITLE 6, CHAPTERS 6.04.060, 6.04.070, and 6.04.080

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04.060, 6.04.070, and 6.04.080, shall be amended to provide that cats, as well as dogs, shall be subject to the impoundment, euthanasia, and confinement procedures.

SECTION VI – AMENDMENT OF TITLE 6, CHAPTER 6.04, SECTION 6.04.090, RUNNING AT LARGE PROHIBITED

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04, Section 6.04.090, shall be adopted to state as follows:

“6.04.090 Animals Running at Large Prohibited A. No person owning or keeping any animal in the Town of Cheyenne Wells shall fail to keep the animal on the premises of the owner or keeper unless the animal is on a six (6) foot or shorter leash held by a person, or within a vehicle or similarly confined area, including being leashed or tied within the box of a pickup truck, and without access to passersby. An animal shall be considered running at large if the animal is left unattended on any public property, whether or not the animal is secured by any leash, cord, chain or other means.

B. Every person convicted of a violation of this section shall be subject to a fine up to the amount allowed by law. In assessing the fine, the Judge shall take into account the prior history of the animal and the animal’s owner.

C. If the Cheyenne Wells Municipal Judge finds that the escape or

release of the animal was made possible by forces and events outside the common experience of animal owners and could neither have been anticipated nor prevented, the judge may suspend all the fine for the first offense and up to one half of the fine for the second and subsequent offenses.

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SECTION VII – AMENDMENT OF TITLE 6, CHAPTER 6.04, SECTION 6.04.100, VICIOUS ANIMALS PROHIBITED

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04, Section 6.04.100, shall be adopted to state as follows:

“6.04.100 Keeping of Vicious Animals Prohibited. A. No person shall keep, possess, or harbor a vicious animal within the Town of Cheyenne Wells. Impoundment of animals whose owner or custodian has been cited for violation of this section shall be at the discretion of the animal control officer. If the animal is vicious or otherwise presents a clear and present danger to the public health or safety, it shall be the duty of the animal control officer, as designated by the Board, or his or her agent to impound such animal.

B. It shall be an affirmative defense to charges under this section if the victim of the attack has made an unlawful entry into the dwelling or enclosed premises of the owner or custodian or was bitten during the commission of a crime against the owner or custodian.

C. Every person convicted of keeping, possessing, or harboring a vicious animal shall be subject to a fine of up to Five Hundred Dollars (\$500.00) subject to the discretion of the Municipal Court Judge. The Municipal Court Judge may also order the removal of the animal from the boundaries of the Town of Cheyenne Wells, Colorado.

SECTION VIII – AMENDMENT OF TITLE 6, CHAPTER 6.04, SECTION 6.04.110, AGGRESSIVE ANIMALS REGULATED

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04, Section 6.04.110, shall be adopted to state as follows:

“6.04.110, AGGRESSIVE ANIMALS REGULATED A. It is unlawful for any person to own, harbor, or keep an aggressive animal within the Town. It shall be an affirmative defense to prosecution under this section that an animal is under the control of a law enforcement agency or that a trained guard dog is kept for the protection of property, and restrained by cage, fence or other adequate

enclosure or means from contact with the public or with persons who enter the premises with the actual or implied permission or of the owner or occupant, provided the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog.

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B. Every person convicted of keeping, possessing, or harboring an aggressive dog or animal, without establishing an affirmative defense, shall be subject to a fine up to the maximum allowed by law subject to the discretion of the Municipal Court Judge. Other remedies available to the Municipal Court Judge shall include a requirement that the owner of the aggressive animal obtain a rider to his or her home owners insurance policy requiring a minimum of One Hundred Thousand Dollars (\$100,000.00) to cover any injury to a citizen caused by the aggressive animal or a requirement that the animal be removed from the within the boundaries of the Town of Cheyenne Wells.

SECTION IX – AMENDMENT OF TITLE 6, CHAPTER 6.04, RENUMBERING OF SECTION

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.04, Section 6.04.090 shall be renumbered as Section 6.04.120.

SECTION X – AMENDMENT OF TITLE 6, CHAPTER 6.08, LIVESTOCK, FOWL, AND BEES REGULATED BY PERMIT

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.08, Section 6.08.010 and 6.08.020 shall be amended as follows:

6.08.10 Livestock, Fowl, Bees Defined. “Livestock” shall refer to horses, cattle, hogs, sheep, goats, or other hoofed animals identified in the agricultural community as livestock. “Fowl” shall refer to chickens, ducks, geese, guinea fowl, turkeys, or other birds identified in the agricultural community as “fowl”. “Bees” shall refer to winged insects of the order Hymenoptera that have been domesticated for honey production. Wild bees shall be considered a public nuisance and not allowed within the Town boundaries. Other “animals” not specifically defined herein, but defined in Section 6.04.010, which would include domesticated rabbits or other fur bearing animals are also subject to this section.

6.08.20 Livestock, Fowl, Bees, and Other Animals Prohibited Unless Permitted. Livestock , Fowl, and Bees, and other Animals, other than dogs and cats, shall not be allowed within the boundaries of the Town of Cheyenne Wells unless the following conditions are first met:

A. Size of Parcel. An owner, or the lessee or other occupant, of real property located within the Town of Cheyenne Wells, as reflected by deed or other proof of ownership, wishing to house livestock, fowl, or bees within the Town, must own at least one (1) acre of real property and be able to provide proof of the size of the parcel. The parcel which is the subject of the application for permit must be a contiguous parcel and must also comply with any setback

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requirements of the Town. The property must be enclosed or fenced in such manner as to insure that the animal or animals contained therein are secure from release or damage to neighboring property. Livestock shall be limited to one animal per parcel unless it is determined by the Board that the size of the parcel, and other factors including the type of animal, customary required acreage for agricultural animals, character of the neighborhood, condition of the structure or facilities, and location of the parcel allow for additional animals. Fowl shall include such number as the Board determines is appropriate to the size of the parcel, customary requirements for agricultural fowl, character of the neighborhood, the location of the parcel, and the quality of the confinement structures and facilities as set forth in this Chapter. Bees shall be of a variety approved by the Board. The number of hives approved by the Board shall depend upon the size of the parcel, customary requirements for domesticated bees, character of the neighborhood (including numbers of children, those with known allergic reaction to bee stings, etc.), the location of the hives, and other relevant factors. Other animals, such as domesticated rabbits, may be approved by the Board dependent upon the size of the parcel, customary requirements for domesticated rabbits, character of the neighborhood, the location and quality of the structures designed to house the animals, and other factors deemed to be relevant by the Board.

B. Owner Ultimately Responsible. The owner of any parcel of property subject to a permit issued pursuant to this Code shall along with the owner or owners of the animal ultimately be responsible for compliance with the permit and shall also be jointly liable with the owner or owners of the animal as to any violation of the permit. However, should the Town determine that any property is in violation of this Code or the permit issued hereunder and the owner of the animal or animals is not also the owner of the real property in question, then the Town shall serve notice of the violation upon both the owner or owners of the property and the owner or owners of the animal or animals. The owner or owners of the property shall then have five (5) days to deliver notice of the violation to the owner or owners of the animal or animals to abate the noncompliance and if the owner or owners of the animal or animals do not take the necessary action, the owner of the real property may have up to thirty (30) days, or such longer time as may be granted by the Board, to take the necessary action to abate the violation before the Town proceeds with a formal abatement process.

C. Annual Permit. Each person wishing to harbor livestock, fowl, or bees within the boundaries of the Town of Cheyenne Wells, whether or not such livestock, fowl, or bees have been located upon property within the Town prior to the adoption of this ordinance, must first, on an annual basis, apply to the Town Clerk for a permit allowing the animals to be present on the person's property. The permit shall contain information including but not limited to the animal or

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animals proposed to be harbored, a sketch of the parcel that will house the animal or animals, a description of the enclosure, fence, or facilities to be utilized, a description of the care to be included in the boarding of the animal or animals, a description of the safeguards to be implemented to insure that the animals do not escape from the parcel (or in the case of bees the efforts which will be undertaken to safeguard the public), efforts to be utilized to minimize or prevent odor, noise, or other objectionable aspects of the animal or animals to be housed, written input from neighbors or others in the vicinity of the proposed enclosure, and such additional information as the Board deems relevant to the issuance of the permit. An annual, renewable permit fee in the amount as established by the Resolution of the Board, on an annual basis, designed to cover the cost of the permitting and regulation process shall accompany the application and shall be paid on or before May 1st of each succeeding year. The permit fee may be changed on an annual basis, per Resolution, to more closely cover actual costs.

D. Public Hearing. No permit shall be issued without the Board first scheduling a public hearing for the purpose of allowing those in the neighborhood of the proposed animal enclosure to provide input as to whether or not the character of the neighborhood is served by or is to the detriment of the neighbors, such hearing to focus on public health and safety. The applicant for the permit shall be responsible for providing written notice, by certified mail return receipt requested, to all landowners within six hundred feet of the proposed animal enclosure. If at the conclusion of the hearing (which may be continued for additional information or input), the Board shall determine if the proposed animal enclosure and containment is appropriate for the neighborhood in question.

E. Penalties for Noncompliance. Should the Board find that the application for permit is acceptable, or appropriate for the neighborhood in question, the Board shall impose such conditions and safeguards as the Board determines is appropriate for the keeping of the animal or animals. The conditions shall be stated clearly on the permit. Should at any time in the ensuing year it be determined that the conditions of the permit are not being met or complied with, and should the owner after being notified of the violation of the conditions not take action within ten (10) days to bring the property into compliance, the owner of the property shall be subject to a hearing before the Cheyenne County Municipal Court to determine, by a preponderance of the evidence, whether or not there has been a violation of the conditions set forth in

the permit. The Municipal Judge shall have the authority to issue a fine for the violation of this Ordinance up to the full amount allowed by law and shall also have the authority to rescind the permit and make provisions for the removal of the animal or animals, including assessing costs for such removal if Town representatives are required to remove the animal or animals.

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F. Exemption. The permitting process set forth in this section shall not apply to the fairground area, i.e. the agricultural district, which is located within the Town boundaries.

G. Grace Period for Compliance. Any owner of real property or of animals which are subject to this Ordinance, who do not own property of sufficient size or eligibility to meet the requirements of this Ordinance, shall be allowed a period of six months to either remove the animals from within the Town or to comply with this Ordinance. The six month grace period will commence from the date that this Ordinance becomes enforceable.

SECTION XI – AMENDMENT OF TITLE 6, CHAPTER 6.08, RENUMBERING OF SECTION

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.08, Section 6.04.010, 6.04.020, 6.08.030, 6.08.040, 6.08.050, and 6.08.060 shall be renumbered as Section 6.04.030, 6.04.040, 6.08.050, 6.08.070, 6.08.080, and 6.08.090 .

SECTION XII – AMENDMENT OF TITLE 6, CHAPTER 6.08, REVOCATION OF ARTICLE II AND ARTICLE III

Upon the adoption and date of enforcement of this Ordinance, Title 6, Chapter 6.08, Articles II and III shall be revoked.

SECTION XIII – VALIDITY.

If any part or parts of this Ordinance are for any reason held to be invalid such decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any part or parts be declared invalid.

SECTION XIV – REPEAL.

Upon adoption and enforcement of this Ordinance, existing or parts of Ordinances covering the same matters as embraced in this Ordinance are

hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

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SECTION XV – EFFECTIVE PERIOD.

This Ordinance, upon passage, shall be published at the first available time, and shall take affect thirty (30) days from the date of publication. The Clerk is required to record this Ordinance in the Book of Ordinances and to arrange for publication as required by statute.

Adopted and Approved this ____ day of _____, 2009.

Signed by _____
Mayor

(S E A L)

Attest:

Town Clerk

