

San José Municipal Code Title 7 ANIMALS (Effective 12/05)
(searchable using key words/phrases)

Chapter 7.04 KEEPING ANIMALS AND FOWL

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7.04.010 Health officer defined.

Whenever the term “health officer” is used in this chapter, it means the head of city's health department.

(Prior code § 4101.24; Ord. 20550.)

7.04.020 Small animals defined.

Whenever the term “small animals” is used in this chapter, it means hares, rabbits, chickens, turkeys, geese, ducks, doves, pigeons, game birds, or other fowl.

(Ord. 20550.)

7.04.030 Permit - Requirements generally.

No person shall have in his possession or control, on any premises in the city, any horse, cow, pig, sheep, goat, hare, rabbit, chicken, turkey, goose, duck, dove, pigeon, game bird, or other fowl, hereinafter referred to in this chapter as “animals or fowl,” unless he shall have obtained and have in his possession a permit from the health officer,

which permit shall be issued only after inspection of the premises and approval of the sanitary condition and sanitary facilities thereof, and such enclosure as may be reasonably necessary to secure any such animal or fowl. No permit shall be required if no more than a maximum of six small animals is maintained in any combination thereof. Except as to the provisions regarding issuance, renewal and revocation of permits, all other provisions of this chapter shall be applicable to those persons maintaining six or less small animals.

(Prior code § 4101.24; Ord. 20550.)

7.04.040 Exemptions to chapter applicability.

The provisions of this chapter shall 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 the chapter of this code relating to the operation of such enterprises, nor to any pet shop, pet grooming parlor, or animal menagerie as said terms are defined in Chapter 7.08 of this code.

(Prior code § 4101.21; 7.04.030; Ord. 20550.)

7.04.050 Permit - Application - Period of validity.

All applications for permits for the keeping of any such animals or fowl shall be filed with the health officer, on forms to be provided by him or her. Every permit issued pursuant to such application shall be valid for a period of two years from date of issue, unless revoked in the manner as hereinafter provided by this chapter.

(Prior code § 4201.2; 7.04.040; Ord. 20550.)

7.04.060 Permit - Fees.

The fee for each biennial permit for the keeping of any such animals or fowl shall be as set forth in the schedule of fees established by resolution of council.

(Prior code § 4101.2a; 7.04.050; Ords. 20550, 2106, 21042, 21286.)

7.04.070 Permit - Renewal procedures.

Upon the expiration of any permit, the same may be renewed by the person to whom it has been issued by filing an application for a renewal thereof with the health officer. Approval of such application for renewal of permit shall be issued and the permit endorsed for the succeeding biennial period in the same manner as prescribed for the first renewal.

(Prior code § 4101.3; 7.04.060; Ord. 20550.)

7.04.080 Permit - Transfer prohibited.

Permits issued under this chapter shall not be sold, assigned or transferred and shall cover the premises designated and the person to whom issued only. Permits shall be revoked for violation of this provision.

(Prior code § 4101.8; 7.04.070; Ord. 20550.)

7.04.090 Permit privilege - Revocation conditions -Notice.

Every such permit, so issued, or every privilege to keep six or less small animals shall be subject to revocation. The health officer shall revoke permits or revoke the privilege to

keep six or less small animals without a permit for violations of the provisions of this chapter, regulations of the city, or the health laws and regulations of this state, by notice in writing delivered personally or by mail to the holder of such permit or person maintaining six or less small animals.

(Prior code § 4101.4; 7.04.080; Ord. 20550.)

7.04.100 Removal of animals following permit or privilege revocation - Time limit.

In the event of the revocation of any such permit, or in the event that there is a revocation of the privilege to maintain six or less small animals, the holder of such permit or that person maintaining six or less small animals shall remove all animals or fowl from the premises covered by the permit or from the premises maintaining six or less small animals within fifteen days after receipt of notice of revocation. If a written appeal to the health officer is made, the period of time for removal of such animals or fowl shall be extended until ten days after affirmation of the revocation by the health officer. The decision of the health officer shall be final.

(Prior code § 4101.7; 7.04.090; Ord. 20550.)

7.04.110 Proximity to dwelling - Live stock.

No person shall keep any horse, cow, pig, sheep or goat within one hundred fifty feet of any dwelling other than the dwelling of the owner of such animal, or within thirty-five feet of the dwelling of such owner.

(Prior code § 4104.12; Ord. 20550.)

7.04.120 Exemption - Lands annexed to city.

1. Lands which are annexed to the city of San José, and upon which any barn, stable or roofed structures are existing and were being used for the shelter of horses, cows, pigs, sheep or goats at the time of annexation, shall be exempt from the provisions of Section 7.04.110 of this code. This exemption from the requirements of Section 7.04.110 shall not apply to structures which are placed on the annexed lands after the date of annexation.

2. The following regulations shall apply to those lands exempted under subdivision 1 of this section:

a. Any barn, stable or roofed structures existing at the time of annexation and used for the shelter of horses, cows, pigs, sheep or goats shall be located no closer than one hundred feet to any dwelling or swimming pool on the property adjacent to the property where said animals are kept.

b. All barns, stables or roofed structures existing at the time of annexation and used for the shelter of horses, cows, sheep, pigs or goats shall be located no closer than twenty-five feet from a residence on the subject property.

c. Any corral, fenced area or restraint for horses, cows, pigs, sheep or goats shall not be located closer than sixty feet to a dwelling or swimming pool on the property adjacent to the property where said animals are kept.

3. Nothing herein contained, nor any exemption granted hereunder shall permit or be deemed to permit the maintenance of a public nuisance or permit the violation of any other applicable law, ordinance or regulation.
(Ord. 20550.)

7.04.130 Side setback area.

No person shall keep any animals or fowl as designated in Section 7.04.030 within any side setback area as defined by San José Municipal Code Sections 20.30.250 and 20.30.260.
(Ord. 20550.)

7.04.140 Proximity to occupiable dwelling - Fowl and small animals.

Not more than the maximum number of small animals either of the same type or combination thereof may be maintained within the designated distances as set forth below in this section. Designated distances shall be that distance measured from the enclosure or structure housing such small animals to the nearest occupiable dwelling other than the permittee's.

Designated Distance

Maximum Number of Small Animals

Less than 15 feet

0

More than 15 feet but less than 20 feet

4

More than 20 feet but less than 30 feet

6

More than 30 feet but less than 40 feet

8

More than 40 feet but less than 50 feet

10

More than 50 feet

25

(Ord. 20550.)

7.04.150 Premises to be fenced - Exceptions.

Any person maintaining any such animals or fowl within the city shall keep the premises upon which they are kept fenced so as to keep them from leaving the premises, and shall not permit such animals or fowl to run at large upon the streets, or upon the

property of other persons; provided, however, homing pigeons may be released for flying.
(Ord. 20550.)

7.04.160 Sanitary enclosures required.

A. All premises, enclosures or structures wherein said animals or fowl are kept shall be kept in a clean and sanitary condition, free from all obnoxious smells or substances.

B. The presence of numerous flies or the presence of fly larvae in the vicinity of any such premises, enclosures or structures shall be evidence of a lack of sanitary maintenance of the premises.

C. Any unnecessary accumulation of debris, refuse, manure or other removable material upon any surface within any such enclosed area or premises, or within any structure used or intended to be used for the housing of such animals or fowl, shall be evidence of a lack of sanitary maintenance of the premises.

D. Any obnoxious odor or allergen arising from any condition existing within the enclosure or within any structure used or intended to be used for the housing of such animals or fowl shall be evidence of a lack of sanitary maintenance of the premises.

E. All premises, enclosures or structures used or intended to be used for the keeping or housing of any such animals or fowl shall be thoroughly cleaned and all debris, refuse, manure or other removable material removed therefrom as often as may be necessary to effect satisfactory compliance with the provisions of this section. Enclosures housing small animals shall be cleaned of all debris, refuse, offal, manure, and filth on a daily basis.

(Prior code § 4101.9; Ord. 20550.)

7.04.170 Refuse container requirements.

All refuse and manure and any material conducive to the breeding of flies or which would create any obnoxious odor, removed from such premises, enclosures or such structures, shall be placed in suitable tight containers, which containers must be covered with a tightly fitted flyproof cover, until entirely removed from the premises or until actually turned under the surface of the soil, where such materials are used as fertilizer.

(Prior code § 4101.10; Ord. 20550.)

7.04.180 Number of animals - Restrictions.

From and after the effective date of this chapter, no rooster over four months old and not more than twenty-five small animals shall be kept on any premises within the city, unless the premises involved are operating under a valid permit to engage in the handling of such animals or fowl on a commercial basis, and where the conducting of such a business is in accordance with the city's zoning ordinance.

(Ord. 20550.)

7.04.190 Enclosures, containers, and feed supply.

All enclosures, refuse containers, and all feed containers intended for the use of hares, rabbits, chickens, turkeys, geese, ducks, doves, pigeons, game birds or other fowl shall be constructed, maintained and kept in such a manner as to be completely proofed against the ingress of rodents. The floors of every such enclosure shall be smooth and tight, and maintained so as to prevent accumulation of filth or water or harboring of vermin thereunder.

(Ord. 20550.)

7.04.200 Food storage containers.

All grain or cereal foods intended for use as food for any bovine or equine animals or any sheep or goats shall be kept in metal containers provided with tightly fitted metal covers, unless the structure wherein such foods are kept is completely rodentproofed.

(Prior code § 4101.20; Ord. 20550.)

7.04.210 Trapping and snaring wild animals prohibited when.

No person shall snare or trap, or set any trap or snare for the purpose of trapping or snaring, any wild birds, except such birds as are destructive to fruit, within the city.

(Prior code § 4101.22; Ord. 20550.)

7.04.220 Noisy animals prohibited.

No person shall keep or permit to remain on any premises within the city any animal that habitually disturbs the peace and quietude of any neighborhood or person, by howling, barking, crying, baying or making any other noise.

(Prior code § 4101.25; Ord. 20550.)

7.04.230 Enforcement - Health officer authority.

The health officer and any employee of city's department of neighborhood preservation authorized by the health officer to do so shall enforce the provisions of this chapter and perform all duties imposed upon the health officer by the provisions of this chapter. In the enforcement of said provisions and in the performance of said duties, they shall have and are hereby invested with the power and authority of a peace officer but shall not be deemed to be members of the police department.

(Prior code § 4101.26; Ord. 20550.)

7.04.240 Inspection of premises authorized when.

The health officer and each other employee of the department of neighborhood preservation referred to in section 7.04.230 are authorized to enter upon any premises, to the extent permitted and in the manner provided by law, other than a dwelling, for the purpose of inspecting the same to ascertain if any of the provisions of this chapter are being violated. Neither the health officer nor any such other employee of the health department shall exercise the right of inspection granted by this section unless he has reasonable cause believe that such inspection is reasonably necessary to carry out or enforce the provisions of this chapter.

(Prior code § 4101.27; Ord. 20550.)

Chapter 7.08 ANIMAL REGULATIONS AND RABIES CONTROL

Parts:

- 1 Definitions
- 2 Stray, Dead and Vicious Animals; Animals in City Buildings
- 3 Enforcement
- 4 Poisoning, Abuse and Public Nuisance
- 5 Impounded Animals; Restraint of Dogs
- 6 Dog and Cat Vaccination and Licensing
- 7 Kennel Permit and Animal Permit
- 8 Sale of Animals
- 9 Potentially Dangerous, Dangerous, or Vicious Dogs
- 10 Special Dog Permit Procedures
- 11 Requirements for Maintaining a Potentially Dangerous, Dangerous, or Vicious

Dog

- 12 Other Laws

Part 1 DEFINITIONS

Sections:

- 7.08.010 Definitions.
- 7.08.015 Administrator.
- 7.08.016 Adult dog or cat.
- 7.08.020 Animal.
- 7.08.030 Animal service officer.
- 7.08.040 Animal menagerie.
- 7.08.045 Animal rescuer.
- 7.08.050 Animal shelter.
- 7.08.055 Building.
- 7.08.060 Commercial kennel.
- 7.08.070 Dangerous animal.
- 7.08.080 Director.
- 7.08.085 Exhibition.
- 7.08.090 Grooming parlor.
- 7.08.100 Hearing officer.
- 7.08.110 Horse establishment.
- 7.08.115 Licensing authority.
- 7.08.120 Owner.
- 7.08.130 Person.
- 7.08.140 Pet shop.
- 7.08.150 Private kennel.
- 7.08.160 Quarantine.
- 7.08.165 Service dog.
- 7.08.167 Severe injury.
- 7.08.170 Dangerous animal presumption.
- 7.08.180 Dog.
- 7.08.190 Cat.
- 7.08.010 Definitions.

The words and terms used in this Chapter 7.08 shall have the meaning indicated in this Part 1 unless the context indicates otherwise.

(Ord. 20128.)

7.08.015 Administrator.

As used in this chapter, "Administrator" means the head of the city of San José animal services division or his or her authorized representative.

(Ord. 27162.)

7.08.016 Adult dog or cat.

"Adult dog or cat" means any dog or cat over four months of age.

(Ord. 27161.)

7.08.020 Animal.

Any live vertebrate creature, domestic or wild, except fish.

(Ord. 20128.)

7.08.030 Animal service officer.

"Animal service officer" means any person authorized by the city manager, by designation, delegation or contract, to administer or enforce the provisions of this chapter and applicable state laws and regulations pertaining to animal control or rabies control.

(Ords. 20128, 21624, 24867, 27162.)

7.08.040 Animal menagerie.

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.

(Ord. 20128.)

7.08.045 Animal rescuer.

"Animal rescuer" means any person or organization that provides temporary housing and care for domestic animals with the purpose of placing those animals with a new and permanent owner in a new home and that provides evidence satisfactory to the administrator of a history of active placement or an affiliation with a recognized group with a history of active placement.

(Ord. 27161.)

7.08.050 Animal shelter.

A facility operated by a public jurisdiction 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.

(Ord. 20128.)

7.08.055 Building.

A fully enclosed permanent structure that is constructed with permits that conform to standards of the building, electrical, fire, mechanical, plumbing and zoning codes.

(Ords. 26345, 26395, 26396.)

7.08.060 Commercial kennel.

Any person engaged in the commercial breeding of dogs or cats, or both, for sale, individually or in litter lots; or in the boarding, training, sale or hire of dogs and/or cats for compensation, except that animal hospitals maintained by a veterinarian licensed by the state of California as part of the practice of veterinary medicine, animal shelters, or private kennels shall not be considered commercial kennels.

(Ord. 20128.)

7.08.070 Dangerous animal.

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, or any vicious dog.

(Ords. 20128, 22619.)

7.08.080 Director.

“Director” means the city manager or the head or director of the department designated by the city manager to enforce and administer the provisions of this chapter.

(Ords. 20128, 21624, 24867.)

7.08.085 Exhibition.

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

(Ord. 27163.)

7.08.090 Grooming parlor.

Any commercial place where animals are trimmed, bathed or groomed.

(Ord. 20128.)

7.08.100 Hearing officer.

As used in this chapter, "hearing officer" means the entity described in Section 1.15.080 of Title 1 of the San José Municipal Code.

(Ord. 27162.)

7.08.110 Horse establishment.

Any person keeping three or more horses, donkeys, mules, jack, hinnies, jennies, burros, or ponies for any or all of the following purposes:(i) for hire to be ridden or driven; (ii) for giving riding instruction; (iii) for boarding with compensation.

(Ord. 20128.)

7.08.115 Licensing authority.

“Licensing authority” means the person authorized by the city manager, by designation, delegation or contract, to administer and enforce the provisions of this chapter and applicable state laws and regulations pertaining to dog and cat licensing.

(Ord. 24867.)

7.08.120 Owner.

Any person who acknowledges ownership of an animal or who harbors or keeps an animal for five or more consecutive days.
(Ord. 20128.)

7.08.130 Person.

Any individual, establishment, firm, association, organization, partnership, trust, corporation or company.
(Ord. 20128.)

7.08.140 Pet shop.

A business establishment whose activities are conducted wholly inside a building, as defined in Section 7.08.055 of this chapter, where animals are displayed for sale, offered for sale, exchange, give away, barter or hire.
(Ords. 20128, 26345, 26395, 26396.)

7.08.150 Private kennel.

A person who maintains within or adjoining his private residence three or more dogs over four months of age, or three or more cats over four months of age or more than a combined total of two dogs and cats, such animals to be for that person's 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. The maintenance of more than two male or cats used for breeding purposes for which compensation is received, or the parturition or rearing of more than two litters of dogs or cats in any one calendar year from the total number of females owned or maintained by that person on the premises shall a rebuttable presumption that such animals are owned or maintained for the purpose of commercial breeding and the owner and the premises shall be subject to the permit requirements of a commercial kennel.
(Ord. 20128.)

7.08.160 Quarantine.

Isolation of an animal in a place and manner approved by the health officer.
(Ord. 20128.)

7.08.165 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, guiding 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.
(Ord. 27163.)

7.08.167 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.

(Ord. 27162.)

7.08.170 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 the property of the owner 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 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.

(Ords. 20128, 21729, 22619.)

7.08.180 Dog.

A domestic dog (*Canis familiaris*).

(Ord. 20128.)

7.08.190 Cat.

A domestic cat (*Felis catus*).

(Ord. 20128.)

Part 2

STRAY, DEAD AND VICIOUS ANIMALS; ANIMALS IN CITY BUILDINGS

Sections:

7.08.200 Animals running at large.

- 7.08.210 Conditions related to summary seizures of stray dogs.
- 7.08.220 Animal bites - Quarantine, violations and examinations.
- 7.08.225 Bites by dangerous animals - Civil damages.
- 7.08.230 Diseased or dangerous animals.
- 7.08.240 Dead animals.
- 7.08.250 Abandoned animals.
- 7.08.260 Animals in city buildings.

7.08.200 Animals running at large.

No person owning or having control of any animal shall permit such 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. (Ord. 20128.)

7.08.210 Conditions related to summary seizures of stray dogs.

A. A stray dog is one which is running at large.

B. An animal control officer may seize and impound a stray dog under the following circumstances:

1. The dog is off the property of the owner or person having a right to control the dog and such owner or person having a right to control the dog is not present; or

2. The dog meets the grounds for seizure and impoundment specified in Section 7.08.920.

C. A dog seized and impounded under Subsections A. and B.1. of this section is subject to the hearing procedure specified in Part 9 of this chapter.

D. A dog seized and impounded under Subsection B.2. of this section is subject to the potentially dangerous, dangerous, or vicious dog procedures specified in Part 9 of this chapter.

(Ords. 20128, 22619, 27162.)

7.08.220 Animal bites - Quarantine, violations and examinations.

A. Any person having knowledge that any animal is known to have or is believed to have bitten any person shall immediately report the basis for such knowledge or belief to the animal services division.

B. On receipt of such report, an animal services officer shall seize and quarantine such animal for a period of fourteen days or such other period as may be prescribed by state law. The animal services officer may order the owner to quarantine the animal on the owner's premises.

C. No person shall 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 private premises where the animal is kept. No animal shall be removed or released from the quarantine location during the quarantine period without written permission of the animal services officer.

D. The animal services division may charge a fee as set forth by resolution of the city council, for the costs of quarantining animals and inspections for quarantine of animals. Any fee charged shall be paid by the owner or person who has legal custody of the animal. Such a fee shall be in addition to the actual cost of the animal services division in housing, feeding and otherwise caring for a quarantined animal.

E. The head of any animal that dies or is destroyed while under quarantine shall be submitted to the laboratory of the county health department for rabies examination. (Ords. 20128, 20625, 21572, 27162.)

7.08.225 Bites by dangerous animals - Civil damages.

A. No person owning or having a right to control a dangerous animal shall allow or permit such animal to bite any person or animal who 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 health department.

C. A civil action for damages against the person owning or having 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 shall include actual damages, costs, attorneys' fees and a civil penalty of five thousand dollars in addition thereto. The court also may award punitive damages in a proper case. Nothing in this provision shall be construed to limit any other right or remedy otherwise available in law or equity to any party, nor shall this section in any way limit 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, shall take into consideration whether the dog was or should have been licensed and properly maintained as a potentially dangerous, dangerous, or vicious dog pursuant to Part 10 of this chapter.

E. This section shall 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. (Ords. 21729, 22619, 27162.)

7.08.230 Diseased or dangerous animals.

A. A person owning or having charge of a dangerous animal shall confine it within a building or secure enclosure, except that it may be permitted off the premises only when securely muzzled, leashed, and under the control of a person eighteen years of age or older and who is physically capable of restraining the dangerous animal. If the dangerous animal is a dog, the owner or person who has a right to control the dog is subject to the requirements of Part 10 of this chapter.

B. No person owning or having charge of any animal which that person knows to be infected with any disease transmittable to humans shall permit such 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 shall keep such animal in a safe place for a period sufficient to observe, examine, and determine whether it is diseased or dangerous so as to be a menace to public health or safety.

D. Diseased or dangerous animals which are a danger to public health or safety shall be impounded and may be destroyed pursuant to Section 7.08.530.
(Prior code § 4102.11, 7.08.360; Ords. 20128, 22619, 27162.)

7.08.240 Dead animals.

A. Upon the death of any animal the owner or person in charge thereof shall provide for the burial, incineration, or other disposition of the body of such animal. If the owner or person in charge of any dead animal is unable to provide for burial or other disposition, the owner may request the animal services division dispose of the body of such animal 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 shall dispose of such body as soon as practical; provided, however, that an animal services officer shall not be required to remove and dispose of bodies of dead animals on state highways or on state property.

C. The administrator shall collect a fee as set forth by resolution of the city council to remove and dispose of dead animals, which shall be paid by the owner or person in charge thereof.

(Prior code §§ 4102.7, 4102.8, 4102.9, 7.08.460, 7.08.470, 7.08.480; Ords. 20128, 27162.)

7.08.250 Abandoned animals.

It is unlawful to abandon any animal in the city of San José.
(Prior code § 4102.31, 7.08.560; Ord. 20128.)

7.08.260 Animals in city buildings.

No person having the control or care of any animal or animals shall suffer or permit such animal to enter or 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 who are blind or deaf and who use dogs for guidance, or persons authorized by the city manager. (Ord. 20128.)

Part 3 ENFORCEMENT

Sections:

7.08.300 Authority of administrator and animal service officer.

7.08.310 Inspection by animal services officer.

7.08.300 Authority of administrator and animal services officer.

A. The administrator and animal services officer are authorized to:

1. Enforce the provisions of this chapter and state laws relating to the care, treatment, impounding and destruction of animals.

2. Arrest any person who violates any provision of this chapter deemed a misdemeanor pursuant to Section 836.5 of the California Penal Code, as may be amended.

3. Issue citations pursuant to Section 14503 of the California Corporations Code, as may be amended.

4. Act as a public officer pursuant to Section 7 of the California Food and Agricultural Code, as may be amended.

B. The administrator is authorized to formulate rules and regulations in conformity with and for the purpose of carrying out the intent of this chapter. Such rules and regulations shall have the same force and effect as this chapter.

C. The animal services officer is authorized, during the course and within the scope of their employment, to arrest any person who violates this chapter and state law pursuant to Section 830.9 of the California Penal Code. (Ords. 20128, 21735, 27162.)

7.08.310 Inspection by animal service officer.

An animal services officer shall have the power to enter upon and inspect any premises where any animal is kept or harbored when such entry is necessary to enforce the provisions of this chapter as allowed by law.

(Ords. 20128, 21735, 27162.)

Part 4 POISONING, ABUSE AND PUBLIC NUISANCE

Sections:

7.08.400 Poisoning and abusing dogs, cats or other domestic animals.

7.08.405 Neglect of animals in vehicles.

7.08.410 Public nuisance.

7.08.400 Poisoning and abusing dogs, cats or other domestic animals.

In addition to Penal Code Section 596, it shall further be unlawful for any person wilfully to administer poison to any dog, cat or other domestic animal or wilfully to place, expose or leave poisonous or harmful substances of any kind in any place with intent to injure or kill any dog, cat or other domestic animal. Further, it shall be unlawful for any person maliciously to kill, maim, wound, mutilate, torment, torture or physically abuse any animal.

(Ord. 20128.)

7.08.405 Neglect of animals in vehicles.

A. No person, other than an individual then actually in the process of working a dog or other animal for ranching or law enforcement purposes, shall transport or carry the animal in a motor vehicle on any public highway or public roadway, unless the animal is safely enclosed within the vehicle 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. No person shall leave any dog or other animal in an unattended 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.

(Ord. 22468.)

7.08.410 Public nuisance.

A. No person owning or having a right to control any animal shall permit such animal to do any of the following:

1. Defecate or urinate on private property other than the private property of the owner or the person having a right to control the animal;

2. Defecate on public property without immediately cleaning or removing the excrement to a proper receptacle;

3. Permit an animal to obstruct the reasonable and comfortable use of property in any neighborhood or community by chasing vehicles, molesting passersby, barking, howling, baying, or making any other noise.

B. No person owning or having a right to control an animal shall:

1. Permit unsanitary conditions to exist on the premises where said animal is kept which would cause odors, attract flies or vermin, or which would be otherwise injurious to the public health and safety; which would be offensive to the senses, or obstruct the

free use of property so as to interfere with the comfortable enjoyment of life or property by members of the neighborhood, community, or other persons;

2. Maintain a potentially dangerous, dangerous or vicious dog as defined in Part 9 of this chapter without meeting all the requirements specified therefor in Parts 10 and 11 of this chapter; or

3. Allow a dog to run at large.

C. Any violation of this section 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 Section 3493 of the California Civil Code, as may be amended, for compliance with the requirements of this section. (Ords. 20128, 22619, 27162.)

Part 5

IMPOUNDED ANIMALS; RESTRAINT OF DOGS

Sections:

- 7.08.500 Fees for impounding and keeping.
- 7.08.505 Waiver of impound and boarding fees.
- 7.08.510 Redemption of impounded animals.
- 7.08.520 Notification of impoundment.
- 7.08.530 Disposition of impounded animals.
- 7.08.540 Care of impounded animals.
- 7.08.550 Summary seizure and post-seizure hearing.
- 7.08.560 Hearing prior to animal deprivation.
- 7.08.570 Appeal hearing.
- 7.08.580 Failure to appeal impoundment.
- 7.08.590 Restraint of dogs.
- 7.08.591 Dogs in posted off-leash areas.
- 7.08.595 Maximum number of dogs, cats or litters.
- 7.08.596 Animal rescuer registration.
- 7.08.597 Maintenance of animal rescuer registration.

7.08.500 Fees for impounding and keeping.

An impoundment fee shall be charged to the owner of each animal impounded in an amount fixed by resolution of the city council.

In addition, a fee for keeping an impounded animal shall be charged in an amount sufficient to defray the costs of keeping the animal, as determined by the administrator. (Prior code § 4102.5, 7.08.440; Ord. 20128.)

7.08.505 Waiver of impound and boarding fees.

The administrator may waive the impound and boarding fee only for the first impoundment of the animal, in cases of hardship, except in the following cases:

1. A record of a prior conviction of any offense(s) involving state or county or city animal control laws;
2. A record with animal control of a violation of any offense(s) involving state or county or city animal control laws.

Hardship shall be determined by the administrator on the basis of the following standard: Hardship is a proven inability to meet ongoing family expenses for the necessities of living; that is, food, clothing, and shelter.
(Ord. 21287.)

7.08.510 Redemption of impounded animals.

A. No animal may be redeemed without compliance with the licensing and permit provisions of this chapter, including, if applicable, the special dog permit requirements in Parts 9, 10 and 11.

B. No animal may be redeemed without payment of the fees for impounding and boarding the animal unless the administrator determines there is demonstrable proof of an inability to pay immediately from the owner or person having a right to control the impounded animal. The owner or person having a right to control the impounded animal shall not be released from his or her obligation to reimburse the city for the cost of impoundment and boarding. The city shall send the owner or person having a right to control the impounded animal an invoice for the cost of impoundment and boarding.
(Prior code § 4102.26, 7.08.590; Ords. 20128, 22619, 27162.)

7.08.520 Notification of impoundment.

An animal services officer shall give notice of impoundment to the owner of an animal impounded, if he or she is known.
(Ords. 20128, 27162.)

7.08.530 Disposition of impounded animals.

A. No animal may be disposed of until the holding period of seventy-two hours, 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 as 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 shall be destroyed in accordance with state law.
(Ords. 20128, 27162.)

7.08.540 Care of impounded animals.

The administrator shall assure that all impounded animals receive suitable and adequate food, water and shelter.
(Prior code § 4102.4, 7.08.430; Ord. 20128.)

7.08.550 Summary seizure and post-seizure hearing.

A. Except as provided in Section 7.08.210 and Section 7.08.920, an animal services officer may seize and impound an animal for violation of any provision of this part or any provision of state law prior to a hearing in any of the following situations where the owner is not present and where the officer reasonably believes that such seizure is necessary:

1. To protect public health, safety and property;
2. To protect an animal which is injured, sick, or starving and must be cared for; or
3. To protect from injury an animal which has strayed onto public property or public right-of-way.

B. If the owner or person having the right to control the animal challenges the impoundment, that person shall personally deliver or mail to the administrator a written request for a hearing. Such a request must be received by the administrator within the holding period of seventy-two hours, not including the day of impoundment.

C. The administrator shall promptly set the time and place for the hearing before the hearing officer and the hearing officer shall cause notice of such hearing to be deposited in the mail addressed to all parties at least ten days before the date of hearing.

D. The procedure for the hearing shall be conducted as set forth in Section 7.08.570.

E. Potentially dangerous, dangerous or vicious dogs are not subject to the hearing procedure pursuant to this part, but to the hearing procedures pursuant to Part 9 of this chapter.

(Ords. 20128, 22619, 27162.)

7.08.560 Hearing prior to animal deprivation.

A. Except as provided in Sections 7.08.210 and 7.08.550, and as specified for potentially dangerous, dangerous or vicious dogs in Part 9 of this chapter, the administrator or animal services officer may not seize or impound any animal, without the consent of the owner or person having a right to control the animal, unless a hearing is held as set forth in Section 7.08.570.

B. If the owner or person having a right to control an animal refuses to consent to an impoundment of his or her animal, an animal services officer may request a date and time of an appeal hearing from the hearing officer and the hearing officer shall cause the issuance of a notice commanding the person to appear before the hearing officer at that time.

C. Failure to appear at the hearing is grounds for seizure and impoundment of the animal.

(Ords. 20128, 21735, 22619, 27162.)

7.08.570 Appeal hearing.

A. At the appeal hearing, petitioner and the animal services division may be represented by counsel, may present oral and written evidence, and may cross-examine witnesses. Strict rules of evidence shall 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. The decision of the hearing officer shall be supported by the preponderance of the evidence and shall be final. The animal services division and petitioner shall be given written notice of the decision within fifteen days of the conclusion of the hearing.

B. The hearing officer may decide that the owner or person having a right to control the animal will lose all rights of ownership 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 chapter. The hearing officer may require the owner, before the animal is released to the owner's custody, to obtain a permit under Section 7.08.765 and sign a commitment which contains conditions, such as, but not limited to, the following:

The owner agrees as a condition of the animal's release:

1. To keep the animal confined to the owner's premises in an enclosure approved by the administrator;

2. To keep the animal securely muzzled, leashed and under the control of a person eighteen years of age or older who is physically capable of restraining the animal when the animal is off the owner's property;

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, or more as determined by the administrator with the advice of the city of San José risk manager; and

5. To inform, along with the animal services division, 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 into the area.

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.

(Ords. 20128, 21735, 22619, 27162.)

7.08.580 Failure to appeal impoundment.

A. Any person who fails to appeal any seizure or impoundment by an animal services officer under this chapter within the holding period of seventy-two hours, not including the day of impoundment, will forfeit all rights of ownership and control of the animal.

B. All rights of ownership and control shall be transferred to the city of San José. Upon such forfeiture, final disposition of the impounded animal shall be determined by the animal services division in accordance with this chapter and state law.

(Ords. 20128, 27162.)

7.08.590 Restraint of dogs.

A. The owner or person with the right to control of any dog shall keep such dog confined to such person's own premises, or shall keep such dog confined behind a fence of sufficient height and construction to safely contain the dog.

B. The owner or person with the right to control any dog shall keep such dog under direct physical restraint by means of a leash not to exceed six feet in length when the dog is on 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.

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 their owner/handler in legal hunting or in the herding of livestock.
3. Dogs assisting a security guard or 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 the dog owners or persons 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 Parts 9, 10 and 11 of this chapter.
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 shall relieve the owner or person having charge, custody, care or control of such dog from the responsibility to maintain proper control over the dog.
(Ords. 20128, 22619, 27163.)

7.08.591 Dogs in posted off-leash areas.

A. The exemption from the requirements for the restraint of dogs as set forth in Section 7.08.590.A.7 of this chapter shall apply only if all of the following conditions are met:

1. No dog shall be in a posted off-leash area except when in the charge, care, custody, or control of a person at least thirteen years old.
2. No animals other than dogs shall be in any posted off-leash area. Dogs are only permitted in the posted off-leash area during posted hours of operation.
3. No person shall have more than two dogs in a posted off-leash area at any one time.
4. Any dog in a posted off-leash area must be at least four months of age, vaccinated for rabies, and currently licensed by the city's animal services division 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 months of age, or displaying aggressive behavior toward other dogs or humans in the posted off-leash area.
5. Any person having charge, care, custody, or control of a dog in a posted off-leash area shall:
 - 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 shall be worn by the dog, and physically held by the owner, 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 Title 7 of the San José Municipal Code that govern the health, safety and maintenance of dogs.

B. Compliance with this part shall not relieve any person of liability for damages arising out of his or her use of a posted off-leash area.

(Ord. 27163.)

7.08.595 Maximum number of dogs, cats or litters.

A. No more than three adult dogs, or more than five adult cats, or more than a combined total of five adult dogs and cats, shall be maintained at any dwelling unit. The number of permissible adult animals described in this section shall include no more than one unaltered female dog or one unaltered female cat. Only the following combinations of the maximum number of adult cats and adult dogs shall be maintained at any dwelling unit:

1. One adult dog and four adult cats.
2. Two adult dogs and three adult cats.
3. Three adult dogs and two adult cats.
4. Zero adult dogs and five adult cats.

B. Any person residing at a dwelling unit with more than the permissible number of dogs and cats shall be in violation of Subsection A. of this section.

C. A female dog or cat shall be rebuttably presumed unaltered unless the owner provides evidence of spaying or provides written certification from a licensed veterinarian that an animal cannot be spayed for health reasons or is incapable of breeding.

D. No person shall allow the parturition and rearing of more than one litter of dogs or cats in any one calendar year from a female dog or cat owned by such person or maintained at any premises, including a dwelling unit, 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 premises maintained by a person registered as a valid animal rescuer for that location with the city of San José.

(Ord. 27240.)

7.08.596 Animal rescuer registration.

Any person or organization that maintains more than the number of adult animals allowed under Section 7.08.595, as described in Section 7.08.045, shall register with the animal services division as an animal rescuer. In order to register as an animal rescuer, the applicant must provide the administrator with the following information:

- A. Verifiable proof of membership in or status as a State of California not-for-profit corporation that meets the requirements of Internal Revenue Code Section 501(c)(3) 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 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 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 in an amount established by resolution of the city council;
- E. Agreement from the applicant to abide by the requirements set forth in Section 7.08.597; and
- F. Agreement from the applicant to any other conditions the administrator deems reasonably necessary for the proper care and maintenance of the animals.
(Ord. 27161.)

7.08.597 Maintenance of animal rescuer registration.

- A. In order to maintain a valid animal rescuer registration, the animal rescuer shall comply with each of the following requirements:
 - 1. Rescue work such as the temporary housing and care of domestic animals shall be performed in conformity with all standards of animal care and housing set forth by state and local law.
 - 2. Rescue work shall not create a public nuisance.
 - 3. Animal rescuer shall cooperate with the animal services division during investigations of complaints and inspections of animal areas.
 - 4. Animal rescuer shall 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 maintain 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 Subsection A.
(Ord. 27161.)

Part 6 DOG AND CAT VACCINATION AND LICENSING

Sections:

- 7.08.600 Vaccination of dogs and cats.
- 7.08.605 Vaccination certificate.
- 7.08.610 License required.
- 7.08.615 Issuance of license.
- 7.08.620 License fees.
- 7.08.625 Reduced license fees.
- 7.08.630 Exemption from license fees.
- 7.08.635 License period.
- 7.08.640 Issuance of metal tags.
- 7.08.645 Use of metal tags.
- 7.08.650 Presentation of license on request.
- 7.08.655 Record of licenses.

7.08.600 Vaccination of dogs and cats.

A. Every person who owns, maintains or boards a dog or cat, four months of age or older, shall cause that dog or cat to be vaccinated and revaccinated with a state-approved, anti-rabies vaccine within the time periods that may be prescribed by state law or regulation.

B. The vaccination shall be certified by a veterinarian in accordance with Section 7.08.605.

C. Compliance with the provisions of this section shall be a condition precedent to the issuance or renewal of any dog or cat license.
(Ord. 24867.)

7.08.605 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, shall complete and sign a rabies vaccination certificate that can be obtained from the licensing authority to certify that the dog or cat has been vaccinated.

B. The rabies vaccination certificate shall include all information required by state law, including:

1. The name, address and telephone number of the owner of the dog or cat;
2. A description of the dog or cat, including its breed, color, age and sex;
3. The date of the vaccination;
4. The type of rabies vaccine administered; and
5. The expiration date of the vaccination.

C. A current and valid rabies vaccination certificate shall be submitted to the licensing authority by the veterinarian or the person who owns, maintains or boards the dog or cat:

1. Within thirty days from the date that the dog or cat was vaccinated; or

2. Within sixty days from the date that a dog or cat previously vaccinated outside of the county of Santa Clara was brought into the city.

(Ord. 24867.)

7.08.610 License required.

A. No person shall own, maintain or board any dog or cat, four months of age or older, that has not been licensed pursuant to the provisions of this chapter, except that a license shall not be 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 sixty days or less in any twelve-month period.

B. Any cat or dog that is not properly licensed in accordance with this chapter shall be rebuttably presumed to be an unvaccinated stray animal and shall be subject to the seizure and impoundment procedures set forth in Part 5 of this chapter.

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.

(Ords. 24867, 27162.)

7.08.615 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, shall be filed with the licensing authority on a form provided by the licensing authority.

B. The licensing authority shall 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 shall 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.
(Ord. 24867.)

7.08.620 License fees.

A. License fees for dog licenses and cat licenses shall be as set forth in the schedule of fees adopted by resolution of the city council.

B. Late fees as set forth in the schedule of fees adopted by resolution of the city council shall be imposed for any dog or cat license required by this part that is:

1. Obtained more than sixty days after the date that the dog or cat became four months old; or
2. Obtained more than sixty days after the date that the dog or cat was acquired or brought into the city; or
3. Obtained more than thirty days after the expiration of a previously issued license.

C. These license fees shall not be refundable in whole or in part.
(Ord. 24867.)

7.08.625 Reduced license fees.

A. Reduced license fees for dogs or cats that have been spayed or neutered, cannot be spayed or neutered for health reasons, or are incapable of breeding shall be as set forth in the schedule of fees adopted by resolution of the city council.

B. A certificate of a veterinarian duly licensed by the state of California certifying that a dog or cat has been spayed or neutered, cannot be spayed or neutered for health reasons, or is incapable of breeding shall be submitted to the licensing authority before a license for that dog or cat is issued at the reduced fee.

(Ord. 24867.)

7.08.630 Exemption from license fees.

A. No license fee shall be required for one, and only one, spayed or neutered dog or cat kept in a household where the person who owns, maintains or boards the dog or cat is over sixty-five years of age.

B. No license fee shall be required for dogs used principally for the purpose of assisting or guiding persons who are blind, deaf or otherwise physically disabled when a written request for this exemption is submitted to the licensing authority.

C. No license fee shall be required for dogs used in law enforcement by any governmental agency when a written request for this exemption is submitted to the licensing authority.

(Ord. 24867.)

7.08.635 License period.

A. The term of any dog or cat license shall be from the date that the license is issued as shown on the license and shall expire upon the one-year anniversary of the date upon which the license was issued.

B. The administrator may issue a license for a period not to exceed three years for dogs or cats that have attained the age of twelve 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 shall be filed with the animal services division prior to its expiration date.

D. The new license period shall begin on the expiration date of the previous license period, irrespective of the application date for the license renewal.
(Ords. 24867, 27162.)

7.08.640 Issuance of metal tags.

The licensing authority shall issue a metal tag bearing an identification number with each dog or cat license issued.
(Ord. 24867.)

7.08.645 Use of metal tags.

A. Any person who owns, maintains or boards a dog or cat shall cause each such dog or cat to wear its metal tag at all times.

B. In lieu of the requirement that a cat wear a metal tag, the cat may be outfitted at the owner's sole cost and expense with a computer microchip providing access to all of the information on the metal tag issued for that cat.

C. It shall be unlawful for any person to attach a metal tag issued pursuant to this part to any dog or cat, other than the dog or cat for which the tag was issued.
(Ord. 24867.)

7.08.650 Presentation of license on request.

The owner or person having control of a dog or cat shall present the license for that dog or cat upon the request of the administrator, the licensing authority, any authorized animal services officer, or peace officer.
(Ords. 24867, 27162.)

7.08.655 Record of licenses.

The licensing authority shall keep 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.
(Ord. 24867.)

Part 7 KENNEL PERMIT AND ANIMAL PERMIT

Sections:

- 7.08.700 Permit required.
- 7.08.705 No kennel within two hundred fifty feet of any residence.
- 7.08.710 Application for permit.
- 7.08.715 Action upon application.
- 7.08.720 Permitted exemption - Proximity to residence - Commercial kennels and animal shelters.
- 7.08.725 Excessive noise prohibited.
- 7.08.730 Conditions relating to animal facilities.
- 7.08.735 Expiration and renewal of permit.
- 7.08.740 Inspection.
- 7.08.745 Denial or revocation of permit.
- 7.08.750 Appeal from denial or revocation of permit.
- 7.08.755 No new permit after denial or revocation.
- 7.08.760 Permit not transferable.
- 7.08.765 Permit required for dangerous animal.
- 7.08.770 Permit denial.
- 7.08.775 Permit period and fee.

7.08.700 Permit required.

No person shall conduct, operate or keep any pet shop, commercial kennel, private kennel, pet grooming parlor, animal menagerie, animal shelter or horse establishment without first obtaining an appropriate permit from the administrator. The annual permit fee for the above animal facilities shall be fixed by resolution of the city council. (Ord. 20128.)

7.08.705 No kennel within two hundred fifty feet of any residence.

Unless permitted by other provisions of this part, no license to operate any commercial or private kennel or animal shelter within two hundred fifty feet of any dwelling house, apartment, hotel or other building used for human habitation shall be issued or renewed. (Prior code § 4102.32a; 7.08.640; Ord. 20128.)

7.08.710 Application for permit.

A. An application for license to operate and keep a pet shop, pet grooming parlor, animal menagerie, horse establishment or dangerous animal shall be made in writing to the administrator.

B. An application for a permit to operate a commercial kennel or private kennel or animal shelter shall be made in writing to the city's director of the department of neighborhood preservation and shall be accompanied by an annual application and processing fee as set forth in the schedule of fees established by resolution of council.

C. Such application shall be on a form approved by the administrator. The applicant shall furnish a list of the types of animals to be maintained or used for any purpose, together with the approximate number of animals of each type.

D. 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, provided that no private kennel shall keep or maintain more than a combined total of five dogs or cats over four months of age;
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 chapter. Compliance with such rules and regulations shall be prerequisite to the issuance and continued validity of any permit provided pursuant to this chapter.

E. Permittee shall 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 shall be available to the administrator upon request.

(Ords. 20128, 20636, 21033, 21049, 21286, 21624.)

7.08.715 Action upon application.

Upon receipt of an application for commercial or private kennel or animal shelter permit, the director of the department of neighborhood preservation shall determine whether or not the location of the kennel or animal shelter is within two hundred fifty feet of a dwelling house, apartment, hotel or other building used for human habitation. If it is not or if he grants an exemption for a commercial kennel or animal shelter under Section 7.08.720, he shall approve and forward the application to the administrator.

If the administrator finds that all general regulations relating to animals that are set forth in this chapter have been complied with by the applicant for any permit or license authorized to be issued under the provisions of this chapter, he shall issue such license or permit upon payment of the fee therefor. If the administrator should find that any or all of said general regulations relating to animals are not complied with by any such applicant, he shall not issue such license or permit.

(Prior code § 4102.33a; 7.08.630; Ords. 20128, 21624.)

7.08.720 Permitted exemption - Proximity to residence -Commercial kennels and animal shelters.

A. The director of the department of neighborhood preservation shall grant an annual exemption from the restrictions contained in Section 7.08.705 to commercial kennels and animal shelters provided an application for exemption is filed in accordance with subsection B of this section, and further provided that the director of the department of neighborhood preservation has made any finding required by subsection C of this section.

B. Applications for exemptions pursuant to this section shall be made in writing to the director of neighborhood preservation. Said application shall be filed concurrently with the commercial kennel or animal shelter permit applications required by Section

7.08.710. Application for exemptions pursuant to this section shall contain the name and address of the applicant and a plot plan in form approved by the director of the department of neighborhood preservation. Said plot plan shall 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 feet of the 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 kennel or animal shelter whose previous exemption was revoked pursuant to this section the following information shall 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 said exemption shall furnish proof to the satisfaction of the director of the department of neighborhood preservation 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 7.08.725. If the director of the department of neighborhood preservation finds that such proof has been provided he shall grant the exemption, provided that all other requirements of this section have been met.

D. Exemptions granted hereunder shall expire and terminate at the same time as the annual commercial kennel or animal shelter permit issued by the administrator and shall be renewed upon such expiration as a condition to obtaining a renewal of the kennel or animal shelter permit. Renewals shall be subject to all the provisions and requirements and conditions set forth in this section.

E. The director of the department of neighborhood preservation shall revoke the exemption granted to a kennel or animal shelter under this section if, during any one-year period, two or more convictions under section 7.08.725 result from incidents occurring at the kennel or animal shelter.

F. Nothing herein contained nor any exemption granted hereunder shall be deemed to permit the maintenance of a public nuisance or permit the violation of any other applicable law, ordinance, or regulation.
(Ords. 20128, 21624.)

7.08.725 Excessive noise prohibited.

No person, firm, corporation, or partnership shall cause or permit the sound level of animal noise emanating from any commercial or private kennel or animal shelter within the city of San José to exceed the background noise level by ten dBA or more, three or more times within any five-minute period, when such sound level of animal noise is measured at any dwelling house, apartment, hotel, or other building used for human habitation which is located within two hundred fifty feet of a kennel or animal shelter, which is owned by the owner of the facility and occupied by said owner or by an operator of the facility.

A. The following definitions and procedures shall be 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 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 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 shall be 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 1.4-1971 or the most recent revisions thereof. The meter shall be 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 shall be 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 micro phone shall be not less than four feet (1.22 meters) above the ground and shall be protected from the effects of wind, noises and other extraneous sounds by the use of screens, shields or other appropriate devices.

5. "Measurement of background noise level." Background noise level shall 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 shall 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 shall be the average sound level measured at a particular location over a five-minute period. Such average sound level shall not include any random or intermittent noises or any 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 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-minute averaging period and that there shall be 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. (Ord. 20128.)

7.08.730 Conditions relating to animal facilities.

Every person who owns, conducts, manages or operates any pet shop, commercial kennel, private kennel, pet grooming parlor, animal menagerie, animal shelter or horse establishment shall comply with each of the following conditions:

A. Housing.

1. Housing facilities for animals shall be structurally sound and shall be maintained in good repair to protect animals from injury and restrict entrance of other animals or the escape of animals so contained therein.

2. Every building or enclosure wherein animals are maintained shall be properly ventilated to prevent drafts and to remove odors; heating and cooling shall be provided as required, according to the physical needs of the animals, with sufficient light to allow observation of animals.

3. All animal rooms, cages, kennels, runs, stalls and corrals shall be of sufficient size to provide adequate and proper accommodation and protection from the weather for the animals kept therein.

4. All animal facilities shall be constructed and operated in a manner that reasonably protects public health and safety and the safety of the animals.

B. Sanitation.

1. All animal facilities shall be maintained and operated at all times in a clean and sanitary condition, and in a manner that avoids causing odors or attraction of flies and vermin, and excessive noise.

C. Care of Animals.

1. All animals shall be supplied with a quantity of wholesome food suitable for the species and age of the respective animals, as often as the feeding habits of such animals require, sufficient to maintain a reasonable level of nutrition. All animals shall have available to them sufficient potable water. Food and water shall be served in separate, clean receptacles.

2. No animal, except those animals in a pasture provided with adequate food and water, shall be without attention for more than twenty-four consecutive hours. The name, address, and telephone number of a person responsible for the animal shall be posted in a conspicuous place, visible from outside the facility or at the main gate of a pasture where animals are kept, unless the owner or attendant of the animal(s) is immediately available on the premises.

3. All sick, diseased, or injured animals shall be isolated from healthy animals at all times and shall be given proper medical treatment. The administrator may order the operator of the facility to immediately seek licensed veterinarian treatment for any animal.

4. All animals shall be treated in an humane manner.

D. Compliance.

1. The administrator shall have the authority to enter the animal facility except by means of force when the administrator has reason to believe that the provisions of any permit or this chapter, applicable state law, or the rules and regulations of the administrator are being violated. The failure of the operator to consent to the entry shall be 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 chapter, or applicable state law, or the rules and regulations of the administrator shall be deemed just cause for the denial of any permit, either original or renewal, or for revocation of a permit.

E. Additional Conditions Relating to Pet Shops. In addition to all the conditions stated in this section, every person who owns, conducts, manages or operates any pet shop shall comply with each of the following conditions:

1. Housing facilities for animals shall be within a wholly enclosed structurally sound building, as defined in Section 7.08.055. Such building shall have valid building permits and comply with all applicable building, electrical, fire, mechanical, plumbing and zoning codes.

2. Every pet shop shall include 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, to prevent drafts and to remove odors; and shall also include 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 housing facilities including, but not limited to, animal rooms, cages, runs, and stalls shall provide a means to keep animals out of direct sunlight.

4. All pet shops shall include a properly installed and permitted hot and cold running water system which is connected to sanitary sewer facilities.
(Prior code § 4102.34, 7.08.690; Ords. 20128, 26345, 26395, 26396.)

7.08.735 Expiration and renewal of permit.

Any permit issued under this part shall expire twelve months from the date of issuance. The procedure for the renewal of a permit shall be the same as for an original permit.

Upon failure to make application for the renewal of a permit within thirty days of the expiration of a permit, or prior thereto, the applicant shall pay in addition to the permit a penalty for late renewal as set forth in the schedule of fees established by resolution of council.

(Ords. 20128, 21286.)

7.08.740 Inspection.

As a condition to the issuance or renewal of a permit under this chapter, the administrator or his authorized representative shall have the authority to inspect at any reasonable time the animal facility.

(Ord. 20128.)

7.08.745 Denial or revocation of permit.

The administrator may deny or revoke any permit issued pursuant to this chapter in the following situations:

A. Whenever he determines by inspection that any animal facility fails to meet any of the conditions of the permit, this chapter, or applicable state law.

B. Whenever he has reason to believe that the applicant or permit holder has wilfully withheld or falsified any information required for a permit.

C. If the applicant or permit holder has been convicted by a court of law of more than two violations in a twelve-month period of this chapter, 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 years. For the purpose of this section, a forfeiture of bail shall be deemed to be a conviction of the offense charged.

(Ord. 20128.)

7.08.750 Appeal from denial or revocation of permit.

A. Prior to denial or revocation of a permit issued under Section 7.08.765, the administrator shall notify the applicant in writing of the intent to deny or revoke the permit, the reasons for such denial or revocation, and that the applicant may make a written request to the administrator for a hearing before the hearing officer within five business days after receipt of such notice if he or she wishes to challenge the denial or revocation.

B. The hearing officer shall set the time and place for hearing and cause notice of such hearing to be mailed to all parties at least five business days before the date of the hearing. The hearing shall be conducted according to Section 7.08.570.
(Ords. 20128, 27162.)

7.08.755 No new permit after denial or revocation.

If a permit has been denied or revoked, the administrator shall not accept a new permit application fee from the same person for the same activity at the same location less than six months after such denial or revocation, unless the applicant shows, and the administrator finds by inspection and/or investigation, that the grounds upon which the first application was denied or the permit revoked no longer exist.

(Ord. 20128.)

7.08.760 Permit not transferable.

Permits issued pursuant to the provisions of this chapter shall not be transferable.

(Ord. 20128.)

7.08.765 Permit required for dangerous animal.

A. No person shall keep, have, 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 Parts 9, 10 and 11 of this chapter, without first obtaining a permit from the administrator. The application for a permit, permit conditions, inspection, denial, revocation, and appeal shall be the same as set forth in Sections 7.08.705, 7.08.710 and 7.08.715 through 7.08.740, inclusive, of this chapter.

B. No permit shall 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 shall be considered any organization which exhibits animals to the general public at regular specified hours, equaling at least thirty hours a week for thirty-six weeks a year, and whose animals, whether maintained for exhibit purposes or not, are not for sale to private individuals.

D. The owner of a dangerous animal shall post the entrances to the property where the animal is kept with a legible sign of at least twelve inches square warning persons of a dangerous animal.

(Ords. 20128, 22619, 27162.)

7.08.770 Permit denial.

Notwithstanding anything to the contrary, the administrator may deny or revoke a permit to keep or maintain any dangerous and/or vicious animal when, in his opinion:(a) Any such animal may not be kept or maintained without endangering the safety of any person(s) or property; or (b) the keeping of the animal would constitute a public nuisance; or (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. The administrator in his discretion 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 and federal standards issued under Chapter 1 of Title 9 of the Code of Federal Regulations. Nothing in this section shall be construed to permit the keeping of dangerous and/or vicious animals where zoning provisions or state law would prohibit such keeping.
(Ords. 20128, 21729.)

7.08.775 Permit period and fee.

The fee for a permit to keep or maintain a dangerous animal shall be as set forth in the schedule of fees established by resolution of council. The permit shall expire and be renewable as set forth in Section 7.08.735.
(Ords. 20128, 21286.)

Part 8 SALE OF ANIMALS

Sections:

- 7.08.800 Sale of cats or dogs.
- 7.08.810 Immunization.
- 7.08.820 Return of dog or cat.
- 7.08.830 Location of sale.

7.08.800 Sale of cats or dogs.

No person or establishment other than a licensed or county-operated animal shelter shall display, sell, exchange, barter, or give away any cat or dog under eight weeks of age, except as a surrender to a licensed animal shelter. Proof of age of the dog or cat may be required by the administrator. Proof of age may include, but not be limited to, a certification by a licensed veterinarian attesting to the animal's age.
(Ords. 20128, 21572.)

7.08.810 Immunization.

All cats or dogs over eight weeks of age, before they are sold, must be immunized against common disease; in the case of dogs, against distemper; and in the case of cats, against panleukopenia. The seller of a dog or cat shall provide to 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 shall 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, including treatment and medication.
(Ord. 20128.)

7.08.820 Return of dog or cat.

Any person purchasing a dog or cat from a person or establishment required to be licensed or registered pursuant to this part may, within five 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 7.08.810, the purchaser may, within one day of the examination, return such animal to the seller. When returned, such animal must be accompanied with a certificate signed by the examining veterinarian stating the examination findings. Upon return of such animal for the reasons stated in this section, seller shall reimburse the purchaser for the cost of the animal.

If the seller refuses to reimburse the purchaser for the cost of the animal upon purchaser's offer to return it, the purchaser may file a complaint with any judge of the municipal court stating a cause of action for violation of this section.
(Ord. 20128.)

7.08.830 Location of sale.

It shall be unlawful for any person to display for sale, offer for sale, exchange, barter, or give away any animal except in the following places:

A. Pet shop, commercial kennel, private kennel, pet grooming parlor, animal menagerie, animal shelter, or horse establishment which have a valid permit pursuant to Section 7.08.700 of this chapter;

B. Private residence; or

C. Agricultural shows or agricultural exhibits.
(Ords. 20128, 26345, 26395, 26396.)

Part 9 POTENTIALLY DANGEROUS, DANGEROUS, OR VICIOUS DOGS

Sections:

- 7.08.900 Vicious dog.
- 7.08.901 Dangerous dog.
- 7.08.905 Potentially dangerous dog.
- 7.08.906 Police dog.
- 7.08.907 Potentially dangerous dog behavior prohibited.
- 7.08.910 Circumstances under which dogs may not be declared potentially dangerous, dangerous, or vicious.
- 7.08.915 Initiation of a potentially dangerous, dangerous or vicious dog hearing, or a compliance hearing.
- 7.08.920 Grounds for summary seizure and impoundment.
- 7.08.925 Duty to inquire.
- 7.08.930 Notice of summary seizure and impoundment.
- 7.08.935 Post-seizure request for a potentially dangerous, dangerous or vicious dog hearing or a compliance hearing.
- 7.08.940 Pre-hearing release of potentially dangerous, dangerous or vicious dogs
- 7.08.945 Prompt setting of a potentially dangerous, dangerous or vicious dog hearing, or a compliance hearing.
- 7.08.950 Potentially dangerous, dangerous, or vicious dog hearing - Notice and report to owner.

- 7.08.955 Potentially dangerous, dangerous, or vicious dog hearing - Notice to witnesses.
- 7.08.960 Potentially dangerous, dangerous, or vicious dog hearing procedure and appeal.
- 7.08.965 Fines and fees.
- 7.08.900 Vicious dog. "Vicious dog" means any of the following:

A. Any dog seized under Section 599a of the Penal Code, as may be amended, where the owner or keeper has been convicted under subdivision (a) of Section 597.5 of the California Penal Code, as may be amended.

B. Any dog which has inflicted severe injury on or kills a human being.

C. Any dog previously determined to be, and currently designated as a dangerous dog which, after its owner or keeper has been notified of this determination:

- 1. Commits any of the behavior described in Section 7.08.901; or
- 2. Is maintained in violation of Section 7.08.1106.
(Ords. 22619, 27162.)

7.08.901 Dangerous dog. "Dangerous dog" means any of the following:

- A. Any dog that has killed or caused the death of another domestic animal.
- B. Any dog that has bitten a person, causing an injury that is less than a severe injury.
- C. Any dog declared a dangerous or vicious dog in another jurisdiction.
- D. Any dog previously determined to be, and is currently designated as a potentially dangerous dog which, after its owner or keeper has been notified of this determination:

- 1. Commits any of the behavior described in Section 7.08.905; or
- 2. Is maintained in violation of Section 7.08.1105.
(Ord. 27162.)

7.08.905 Potentially dangerous dog. "Potentially dangerous dog" means any of the following:

- A. Any dog that on at least two occasions has shown a propensity to threaten the safety of persons that has required the threatened persons to take defensive action.
- B. Any dog that has injured a domestic animal to the extent that the domestic animal required veterinary care.
(Ord. 27162.)

7.08.906 Police dog. The definition of vicious, dangerous, or potentially dangerous dog under Sections 7.08.900, 7.08.901 and 7.08.905 do not apply to any dog assisting a police officer engaged in law enforcement duties.
(Ord. 27162.)

7.08.907 Potentially dangerous dog behavior prohibited.

No person owning or having a right to control a dog shall permit the dog to engage in behavior described in Section 7.08.905.
(Ord. 27162.)

7.08.910 Circumstances under which dogs may not be declared potentially dangerous, dangerous, or vicious.

The following circumstances may be raised, at a hearing pursuant to Section 7.08.915, to rebut the allegation(s) of potentially dangerous, dangerous, or vicious behavior as described under Sections 7.08.900, 7.08.901, or 7.08.905 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 owner or person having a right to control the dog;
2. Teasing, tormenting, abusing or assaulting the dog; or
3. Committing or attempting to commit a crime.

B. An 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 owner or person having a right to control the dog.

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 or the person having 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.

(Ords. 22619, 27162.)

7.08.915 Initiation of a potentially dangerous, dangerous or vicious dog hearing, or a compliance hearing.

A. A hearing to determine whether a dog is potentially dangerous, dangerous or vicious under this Part 9, or a compliance hearing pursuant to Part 10, shall be scheduled by the hearing officer upon filing of 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 that a potentially dangerous, dangerous, or vicious dog is not being maintained in the full compliance with its special dog permit and the applicable provisions of this chapter; or

2. A request by the dog owner or person having a right to control the dog seeking the release of a dog from impoundment pursuant to this Part 9; or

3. A request by the dog owner or person having a right to control a dog that has been declared potentially dangerous, dangerous or vicious in another jurisdiction and that now resides in San José.

B. Whenever possible, the report filed by an animal services officer shall include a sworn and verified statement from the complainant pursuant to Section 31621 of the California Food and Agricultural Code, as may be amended.

C. Once the hearing officer has decided, in accordance with Section 7.08.960, that a dog is not potentially dangerous, dangerous, or vicious, 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.

(Ords. 22619, 27162.)

7.08.920 Grounds for summary seizure and impoundment.

A. Notwithstanding any other provision of this chapter, an animal services officer may summarily seize and impound a dog prior to a potentially dangerous, dangerous or vicious dog hearing, or a compliance hearing, where the officer has reasonable grounds to believe that a dog:

1. Has demonstrated one or more of the characteristics set out in Sections 7.08.900, 7.08.901 or 7.08.905 and the owner or person having the right to control the dog does not have a valid special dog permit; or

2. Has special dog permit, and

a. Has engaged in one or more of the behaviors set out in Sections 7.08.900, 7.08.901 or 7.08.905; or

b. Has not been kept or maintained in accordance with the applicable provisions of Parts 10 and 11 of this chapter; or

3. Is subject to a special dog permit but the owner or person having a right to control the dog:

- a. Has not applied for a special permit; or
- b. Has not completed the permit process; or

4. Poses an immediate or substantial threat to the public health, safety or property. (Ords. 22619, 27162.)

7.08.925 Duty to inquire.

Any person who owns or has a right to control a dog has a duty to make inquiry of the animal services division to learn if the dog has been impounded, whenever the dog is known to have been missing from the person's property for more than two hours and the person has not received a notice pursuant to Section 7.08.930. (Ords. 22619, 27162.)

7.08.930 Notice of summary seizure and impoundment.

A. Whenever the owner or person having a right to control the dog is not present at the time a dog is seized and impounded, the animal services officer shall post a notice of such impoundment on the front door or other appropriate place at the residence of such person, which notice shall 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 7.08.935; and
- 6. The requirements for pre-hearing release of the dog as specified in Section 7.08.940.

B. If the owner or person having a right to control the dog is present at the time of the seizure, such person shall be given a written notice with the same information as specified above.

C. If the name and address of the owner or person having a right to control the dog cannot be ascertained by the animal services officer, then the notice prescribed above shall be posted on a street lamp or other appropriate public places and as close to the actual place of seizure as possible.

(Ords. 22619, 27162.)

7.08.935 Post-seizure request for a potentially dangerous, dangerous or vicious dog hearing or a compliance hearing.

A. If the owner or person having a right to control the dog seeks to have the dog released from impoundment, that person shall request a potentially dangerous, dangerous or vicious dog or a compliance hearing. Such a request must be received by the administrator within seventy-two hours, not including the day of impoundment.

B. If no request is made by the owner or person having a right to control the dog within the seventy-two hours, not including the day of impoundment the dog may be destroyed or otherwise disposed of in accordance with law.

(Ords. 22619, 27162.)

7.08.940 Pre-hearing release of potentially dangerous, dangerous, or vicious dogs.

Notwithstanding any other provision of this chapter, the animal services division may release a dog impounded because of behavior described under Sections 7.08.900, 7.08.901 and 7.08.905 to its owner or to the person having a right to control it, 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 owner or person having 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

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

(Ords. 22619, 27162.)

7.08.945 Prompt setting of a potentially dangerous, dangerous or vicious dog hearing, or a compliance hearing.

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

(Ords. 22619, 27162.)

7.08.950 Potentially dangerous, dangerous, or vicious dog hearing - notice and report to owner.

Pursuant to Section 31621 of the California Food and Agricultural Code, as may be amended, the administrator shall cause a notice and report to be mailed first class with return receipt requested, or otherwise personally delivered to the owner or person who has an apparent right to control the dog, at least five business days prior to the date set for hearing, in substantially the following form:

NOTICE OF HEARING REGARDING
POTENTIALLY DANGEROUS,

DANGEROUS, OR VICIOUS DOG

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Chapter 7.08 of the San José Municipal Code, the Animal Services Officer has reported that there is reasonable cause to believe your dog is potentially dangerous, dangerous or vicious.

FURTHER NOTICE IS HEREBY GIVEN that on _____ the _____ day of _____ 20_____, at the hour of _____ o'clock, in the office of the Hearing Officer, the report of the 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. You may appear and present evidence at the hearing.

In the event your dog is found to be potentially dangerous, dangerous or vicious, it 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, you may be ordered to pay a fine not to exceed five hundred dollars for each dangerous dog incident, and one thousand dollars for each vicious dog incident. All costs of impoundment and board of the dog incurred shall be assessed against you and must be paid prior to the dog's release.

Dated:

Administrator
Address
(Ords. 22619, 27162.)

7.08.955 Potentially dangerous, dangerous, or vicious dog hearing - Notice to witnesses.

The administrator shall cause a notice of the 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 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 shall be sent at least five business days prior to the date set for hearing, and shall be in substantially the following form:

NOTICE OF HEARING REGARDING
VICIOUS DOG

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Chapter 7.08 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.

FURTHER NOTICE IS HEREBY GIVEN that on the _____ day of _____ 20_____, at the hour of _____ o'clock, in the office of the Hearing Officer, 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. 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.

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

Dated:

Administrator
Address
(Ords. 22619, 27162.)

7.08.960 Potentially dangerous, dangerous, or vicious dog hearing procedure and appeal.

A. Pursuant to Section 31621 of the California Food and Agricultural Code, as may be amended, the hearing shall be held promptly within no less than five business days nor more than ten business days after service of notice upon the owner or person having a right to control the dog.

B. At the hearing to determine whether the dog is potentially dangerous, dangerous, or vicious, the dog owner or person having a right to control the dog and an animal services officer may be represented by counsel, may present evidence, and may cross-examine witnesses. Strict rules of evidence shall 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 shall be allowed to present evidence.

D. Once an animal services officer presents evidence to substantiate the dog's status as potentially dangerous, dangerous, or vicious, the burden shifts to the dog owner to rebut based on circumstances specified in Section 7.08.910.

E. The decision of the hearing officer that the dog is potentially dangerous, dangerous, or vicious shall be supported by evidence on the record and shall be final.

F. The hearing officer shall cause written notice of the hearing officer's decision to be mailed within fifteen working days after the conclusion of the hearing to the owner of the dog or the person having 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, the hearing officer shall determine the dog to be potentially dangerous, dangerous or vicious, as alleged.

H. If no evidence is entered at the hearing on behalf of the owner or person having a right to control the dog, then the hearing officer shall determine that the dog is potentially dangerous, dangerous, or vicious, as alleged.

I. The owner or person having a right to control the dog has five days upon receipt of the hearing officer's decision to appeal the decision pursuant to Section 31622 of the California Food and Agricultural Code, and the decision shall be deemed final after five days.

(Ords. 22619, 27162.)

7.08.965 Fines and fees.

The hearing officer may impose fines upon the owner or person having 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 for each incident described under Section 7.08.901 and one thousand dollars for each incident described under Section 7.08.900. 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 owner or person having a right to control the dog failed to comply with the dog in accordance with Part 11 of 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 city and/or from animal services division; and/or
 - H. Such other factors as justice may require.
- (Ord. 27162.)

Part 10 SPECIAL DOG PERMIT PROCEDURES

Sections:

- 7.08.1000 Special dog permit required.
- 7.08.1005 Special dog permit application.
- 7.08.1010 Special dog permit fee.
- 7.08.1015 Issuance of special dog permit.
- 7.08.1020 Special dog permit tag.
- 7.08.1030 Special dog permit renewal.

- 7.08.1035 Denial or revocation of permit.
- 7.08.1040 Compliance hearing.
- 7.08.1045 Compliance hearing decision.
- 7.08.1050 Permit not transferable.
- 7.08.1055 Inspection and inspection fees.
- 7.08.1060 Requirements for notification.
- 7.08.1065 No new permit after denial or revocation.
- 7.08.1070 Removal of designation as a dangerous dog.
- 7.08.1080 Prohibition of owning, possessing, controlling or having custody.

7.08.1000 Special dog permit required.

A. No person shall keep, have, maintain, sell, trade or let for hire a potentially dangerous, dangerous or vicious dog without first obtaining a special dog permit from the administrator. The owner or person with the right to control any dog found to be potentially dangerous, dangerous, or vicious by the hearing officer shall submit an application for a special dog permit within ten working days of the decision that the dog is potentially dangerous, dangerous, or vicious.

B. The license requirement of Part 6 of this chapter is applicable to dogs with a special dog permit.

C. No impounded dog found by the hearing officer to be potentially dangerous, dangerous, or vicious may be released prior to issuance of both a license pursuant to Part 6 and a special dog permit pursuant to Part 10 of this chapter.
(Ords. 22619, 27162.)

7.08.1005 Special dog permit application.

A. An application for a special dog permit shall be made by the dog owner or person having a right to control the dog on a form provided by the administrator and shall be filed with the city of San José animal services division.

B. The application shall contain the following information:

1. The name, address and telephone number of the owner and other person having 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 years of the owner or any persons having a right to control the dog, by any court of law, for any violation of this title, or of any other law(s) relating to animals, public nuisance caused by animals, or cruelty to animals in this or any other state, and any 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 shall be deemed to be a conviction of the offense charged;

5. The number of the license issued pursuant to Part 6 of this chapter 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 owner or person having a right to control the dog shall affirmatively state on oath or affirmation under penalty of perjury, that he or she has the necessary facilities and equipment to be able to comply with all the applicable requirements for maintaining a potentially dangerous, dangerous or vicious dog as prescribed in Parts 10 and 11 of this chapter and that all the information given on the application is true and correct.
(Ords. 22619, 27162.)

7.08.1010 Special dog permit fee.

A. The fees for the special dog permits shall be established by resolution of the city council. These fees are not waivable and must be paid by the owner or person having 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 permit, a partial refund as set forth by resolution of the city council shall be granted provided the applicant does not have any other outstanding fees and fines, and can provide proof that the dog has been disposed of in accordance with the law.
(Ord. 27162.)

7.08.1015 Issuance of special dog permit.

A. Upon completion of the processing of the special dog permit application and payment of the special dog permit fees, the administrator shall 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 effectuate the purposes of this chapter and to protect the public health, safety and welfare.

C. The special dog permit shall specify whether it is a potentially dangerous, dangerous or vicious dog permit.
(Ords. 22619, 27162.)

7.08.1020 Special dog permit tag.

A. In addition to the license tag required under Part 6 of this chapter, every dog that is subject to a special dog permit shall wear a special permit tag provided by the administrator.

B. The tag shall have the special dog permit number printed on its face. The tag shall 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 shall be unlawful for any person to attach a special dog permit tag to any dog other than the dog for which it is issued.

(Ords. 22619, 27162.)

7.08.1030 Special dog permit renewal.

A. Any permit issued under this Part 10 shall expire twelve months from the date of issuance. The procedure for renewal of a permit shall be the same as for an original permit.

B. Any permit issued for a potentially dangerous dog will not need to be renewed after twelve 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 shall be made within thirty days prior to the expiration of a permit. Upon failure to make a timely application, the applicant shall pay, in addition to the permit, a penalty for late renewal as established by resolution of the city council.

(Ords. 22619, 27162.)

7.08.1035 Denial or revocation of permit.

The administrator may deny or revoke any special dog permit issued pursuant to this Part 10 in any of the following situations:

A. Whenever the administrator determines by inspection or upon complaint from any person that the dog owner or person having a right to control the potentially dangerous, dangerous or vicious dog has failed to meet any of the provisions of Parts 10 and 11 of this chapter or any conditions of the special dog permit, or has failed to meet any other requirement for maintenance of the dog under this chapter or other applicable law.

B. Whenever the administrator has reason to believe that the applicant or permit holder has wilfully withheld or falsified any information required for a permit.

C. If the applicant or permit holder has been convicted within the past five years, by a court of law, for any violation of this chapter, 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 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 shall be deemed to be a conviction of the offense charged.

D. Whenever the owner fails to pay in full all fines, and impound, boarding or other outstanding fees.

E. Whenever the dog owner or person having a right to control the dog 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. Whenever the dog owner or person having a right to control the dog fails to appear at a compliance hearing to appeal the revocation of the dog's special dog permit. (Ords. 22619, 27162.)

7.08.1040 Compliance hearing.

A. If the Administrator seeks to deny the application for or revoke a special permit, the administrator shall send to the applicant or special permit holder, a notice of intent to deny or revoke, which shall 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 compliance hearing in writing;
3. That the request for a compliance hearing must be received by the administrator within ten working 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 compliance hearing within the time specified may result in seizure of the dog.

B. Failure to apply for a special permit by an owner or person having the right to control the dog terminates the right to a compliance hearing.

C. Upon receipt of a request for a compliance hearing, the hearing officer shall set the date, time and place for the compliance hearing. The hearing officer shall cause notice of the hearing to be mailed to the person requesting it at least five business days before the date of the hearing. The hearing shall be conducted in accordance with the provisions of Subsections 7.08.960A. and B.

D. The hearing officer may also cause notice to be sent to the owners of each property within three hundred feet of the dog owner's property and to the United States Postal Service substation which serves the property. This notice shall state:

1. The date, time, location and nature of the compliance 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.
(Ords. 22619, 27162.)

7.08.1045 Compliance hearing decision.

A. The hearing officer's decision shall 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 or person having a right to control the dog pay all applicable fees and transfer ownership and the right to control the dog to a person who either satisfies the requirements of this chapter or who will have the dog reside outside the city limits, within a specified time period.

2. The animal services division shall dispose of the dog in any way allowed by law.

3. The owner or person having a right to control the dog has five days upon receipt of the hearing officer's decision to appeal the decision pursuant to Section 31622 of the California Food and Agricultural Code and the decision shall be deemed final after five days. If the owner or person having a right to control the dog fails to comply with the hearing officer's decision, the animal services division 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 compliance hearing, the owner shall 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 days after receipt of the decision will trigger the holding period of seventy-two hours, not including the day of impoundment, for impounded dogs. If by the end of this holding period, the owner has not paid the balance of fees, the owner shall forfeit any interest in the dog and the animal services division may dispose of the dog in accordance with the law. The owner remains 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, then the hearing officer may release the dog, if it is impounded, upon payment of 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.

(Ords. 22619, 27162.)

7.08.1050 Permit not transferable.

Permits issued pursuant to the provisions of this part shall not be transferable.
(Ords. 22619, 27162.)

7.08.1055 Inspection and inspection fees.

A. The administrator shall have 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 Part 10.

B. The animal services division may impose an additional fee for any inspection conducted in accordance with Subsection A above, if the dog owner or person having a right to control the dog has failed to keep the dog in conformity with the requirements of Parts 9, 10 and 11 of this chapter. This fee shall be as established by resolution of the city council.

(Ords. 22619, 27162.)

7.08.1060 Requirements for notification.

A. The owner or person having a right to control a dog that is subject to a special dog permit, shall notify the animal services division immediately if the dog:

1. Is loose or unconfined; or
2. Has attacked another domestic animal or a person.

B. The owner or person having 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 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 and/or right to control the dog.

C. If the dog owner or person having a right to control the dog decides to sell, trade, give away or otherwise transfer ownership and/or the right to control the dog to a location outside of the city and/or to another person residing outside the city, person transferring ownership or control shall:

1. Notify the animal services division at least five business days prior to the physical transfer of the dog;
2. Provide the animal services division with the name, address and telephone number of the new owner or new person having a right to control the dog; and
3. Return the special dog permit tag to the animal services division.

D. In the event the dog dies, the owner or person having a right to control the dog shall so notify the animal services division and return the special dog permit tag within ten working days of the death of the dog.
(Ords. 22619, 27162.)

7.08.1065 No new permit after denial or revocation.

If a special dog permit has been denied or revoked, the administrator shall not be required to accept a new permit application from the same applicant for two years from the date of such denial or revocation.
(Ords. 22619, 27162.)

7.08.1070 Removal of designation as a dangerous dog.

If there are no additional instances of the behavior described in Sections 7.08.901 and 7.08.905 within a thirty-six-month period from the date of the designation as a dangerous dog, the owner may petition the administrator to remove the dog's designation as a dangerous dog.
(Ord. 27162.)

7.08.1080 Prohibition of owning, possessing, controlling or having custody.

Any person having a right to control a dog or the owner of a dog that has been deemed dangerous or vicious may be prohibited from owning, possessing, controlling or having custody of any dog for up to three years, if the hearing officer determines, after a dangerous or vicious dog hearing, that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare. Thereafter, such persons must demonstrate to the administrator that he or she is capable of directly restraining the dog he or she seeks to own, possess, control, or have custody of.
(Ord. 27162.)

Part 11 REQUIREMENTS FOR MAINTAINING A POTENTIALLY DANGEROUS, DANGEROUS OR VICIOUS DOG

Sections:

- 7.08.1100 Special dog permit required.
- 7.08.1105 Potentially dangerous dog maintenance requirements.
- 7.08.1106 Dangerous dog maintenance requirements.
- 7.08.1107 Vicious dog maintenance requirements.
- 7.08.1110 Requirements for confinement.
- 7.08.1120 Requirements for muzzling and leashing.
- 7.08.1130 Requirement for warning signs.
- 7.08.1140 Requirements for transportation.
- 7.08.1150 Requirement for insurance.
- 7.08.1160 Requirements for microchip implant.

7.08.1100 Special dog permit required.

A. No person shall have, possess or maintain a potentially dangerous, dangerous or vicious dog unless the dog owner or person having a right to control the dog possesses a current, valid special dog permit for that dog.

B. Any dog subject to a potentially dangerous, dangerous or vicious dog permit is subject to the applicable requirements of this part.
(Ords. 22619, 27162.)

7.08.1105 Potentially dangerous dog maintenance requirements.

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

A. A potentially dangerous dog shall be muzzled and leashed, as specified under Section 7.08.1120, when it is on 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, unless the owner or person having the right to control the dog has obtained the consent of the owner 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 shall be spayed or neutered.

C. A potentially dangerous dog shall have a microchip implant for identification purposes.

D. A potentially dangerous dog shall be subject to special dog permit tag requirements under Section 7.08.1020.

E. Any owner or person having a right to control the dog shall seek pre-approval from the administrator for a dog obedience class and attend the dog obedience class with the dog that exhibited behavior specified in Section 7.08.905.
(Ord. 27162.)

7.08.1106 Dangerous dog maintenance requirements.

A dangerous dog shall be subject to all requirements of Section 7.08.1105 and all of the following:

A. A dangerous dog shall be subject to the confinement requirements of Section 7.08.1110;

B. A dangerous dog shall be subject to the warning sign requirements of Section 7.08.1130;

C. A dangerous dog shall be subject to the transportation requirements of Section 7.08.1140; and

D. A dangerous dog shall be subject to the insurance requirements of Section 7.08.1150.
(Ord. 27162.)

7.08.1107 Vicious dog maintenance requirements.

A. A vicious dog shall be subject to all requirements under Section 7.08.1106 and the hearing officer may impose additional conditions upon the ownership and/or control of a vicious dog if the hearing officer determines that under these additional conditions, the dog will not create 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 will not sufficiently mitigate a significant threat to the public health, safety and welfare, the hearing officer shall order the dog be destroyed by the animal services division.
(Ord. 27162.)

7.08.1110 Requirements for confinement.

No person shall have, possess or maintain a dangerous or vicious dog unless that person demonstrates, to the satisfaction of the administrator, that the dog is 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 shall be constructed in a manner and of such materials so that it cannot be broken 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. Sides of the structure shall be imbedded not less than two feet into the ground behind a solid fence not less than six feet in height.

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

3. The escape-proof, locked kennel or pen shall be enclosed by a fence not less than six 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 the owner or person having a right to control such dog. (Ords. 22619, 27162.)

7.08.1120 Requirements for muzzling and leashing.

A. When a dangerous or vicious dog is even temporarily in a place that does not meet the requirements of Section 7.08.1110, the owner or person having a right to control the dog shall keep the dog securely muzzled and leashed in accordance with this section.

B. The leash shall:

1. Not exceed three feet in length;

2. Be capable of restraining four 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. No neck collar of any type or material will be sufficient.

C. The dog shall not be leashed or tethered at any time to inanimate objects such as trees, posts, or buildings, except when the dog is inside a securely enclosed, escape-proof locked kennel or pen.

D. The dog shall be securely muzzled with a device constructed to allow normal respiration but impossible for the dog to remove without human assistance.

E. The dog shall be under the direct physical control of a person eighteen 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 vicious dogs.

(Ords. 22619, 27162.)

7.08.1130 Requirement for warning signs.

The owner of a dog or person having a right to control the dog shall post a sign 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 administrator shall provide the signs to the owner or person having a right to control the dog.

(Ord. 22619, 27162.)

7.08.1140 Requirements for transportation.

A. No person shall transport a dangerous or vicious dog except in locked animal carriers equivalent in construction quality to those used by commercial air carriers.

B. No person shall leave a dangerous or vicious dog unconfined or unattended in or about any motor vehicle.
(Ords. 22619, 27162.)

7.08.1150 Requirement for insurance.

A. No person shall 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 one hundred thousand dollars 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 shall 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 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 or person having a right to control the dangerous or vicious dog shall provide written notice to the administrator of any cancellation or material change in the insurance within five days of receipt of notice from the insurer. In case of such a cancellation or material change, the owner or person having a right to control the dog shall, 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 animal services division, or otherwise dispose of the dog in a manner prescribed by law.
(Ords. 22619, 27162.)

7.08.1160 Requirements for microchip implant.

The owner or person having a right to control a dog that is subject to a special dog permit shall, at his or her own expense, have a microchip inserted into the dog by a licensed veterinarian within twenty days of the designation as a dangerous or vicious dog for identification purposes. The owner or person having a right to control a dog shall provide the animal services division with the identifying information listed on the microchip and the information shall be noted in the city's licensing files for that dog.
(Ords. 22619, 27162.)

Part 12 OTHER LAWS

Sections:

7.08.1200 Other laws.

7.08.1200 Other laws.

Nothing in this chapter is intended to supersede the provisions of the city of San José zoning ordinance or other applicable codes or ordinances.

Chapter 7.09 BEEKEEPING

Sections:

- 7.09.010 Definitions.
- 7.09.020 Permit required.
- 7.09.030 Criteria for approval.
- 7.09.040 Adhering to criteria.
- 7.09.050 Beehives situate in the OS open space, A agricultural, industrial, manufacturing districts and PD districts.
- 7.09.060 Exceptions.
- 7.09.070 Administrative permit.
- 7.09.080 Application requirements.
- 7.09.090 Approval.
- 7.09.100 Denial of the permit.
- 7.09.110 Notification of denial.
- 7.09.120 Revocation of permit.
- 7.09.130 Order to show cause.
- 7.09.140 Hearing for revocation or denial of renewal.
- 7.09.150 Fees.
- 7.09.160 Nontransferability.
- 7.09.170 Wild swarms of bees.

7.09.010 Definitions.

For the purpose of this Chapter 7.09 only, the following words and terms shall be deemed to mean and to be construed as follows:

A. “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.

B. “Hives” mean any receptacle or container made or prepared for the intended use of bees and/or storage of honey or brood, or box or similar container of which bees have taken possession.

C. “Wild swarms of bees” means any colony of bees which becomes established upon a lot or parcel or in anything other than a hive.
(Ord. 21559.)

7.09.020 Permit required.

No person shall keep or maintain any hive of bees on any lot or parcel within the city without first obtaining a permit in accordance with this chapter.
(Ord. 21559.)

7.09.030 Criteria for approval.

Applicant shall 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 hives shall be maintained on any lot or parcel.
- B. The owner's name, address and location of all such hives shall be registered with the office of the Santa Clara county agriculture commission.
- C. No hive shall be kept or maintained within ten feet of any side property line on the lot or parcel upon which such hives are situate, or within fifty feet of any dwelling unit other than that occupied by the person maintaining the hive or hives.
- D. No hive shall be kept or maintained within any required front or side setbacks.
- E. All hives shall be oriented so that their entrances face a house or building on the premises and shall be surrounded by a solid fence not less than six feet in height, located no farther than thirty 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 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 shall be maintained on those premises.
(Ord. 21559.)

7.09.040 Adhering to criteria.

The criteria set forth in Sections 7.09.030, 7.09.050 and 7.09.060 shall be deemed to be conditions of any administrative permit for the placement of beehive(s), and failure to adhere to said criteria shall be a violation of this chapter.
(Ord. 21559.)

7.09.050 Beehives situate in the OS open space, A agricultural, industrial, manufacturing districts and PD districts.

Notwithstanding the provisions of Sections 7.09.020 and 7.09.030, 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 feet from any dwelling, excluding the dwelling on the lot or parcel whereon such hives are situate, and at least one hundred feet from any public street or roadway or public access; provided, however, the requirements of Section 7.09.030 B, D, and F shall apply.
(Ord. 21559.)

7.09.060 Exceptions.

The city council finds that the maintenance of beehives within the city not in compliance with the regulations contained in Sections 7.09.020 and 7.09.030 and 7.09.050 constitutes 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 7.09.030 or the distance restriction set forth in Section 7.09.050 shall not be applicable if the person desiring to maintain the hive, or hives, shall file with the director of neighborhood preservation the written consent of the residents of the adjoining properties and/or dwelling units from which the distance limitations contained in subsection C of Section 7.09.030 and Section 7.09.050 are to be measured. Such written consent may be revoked by the grantor or successor resident following at least thirty days' written notice to the person in control of such hive or hives, and by filing a copy thereof with the director of neighborhood preservation.
(Ord. 21559.)

7.09.070 Administrative permit.

An administrative permit shall be issued by the director of neighborhood preservation, for uses specified by this chapter, 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.
(Ord. 21559.)

7.09.080 Application requirements.

A written application for an administrative permit under this chapter shall be filed with the department of neighborhood preservation upon the form provided by city. Said application shall be signed by an owner or lawful tenant of the lot or parcel for which the application is submitted.
(Ord. 21559.)

7.09.090 Approval.

A permit shall be granted by the director only if all of the criteria for the use specified in this chapter are met. The criteria for an administrative permit for such use are set forth in Sections 7.09.030, 7.09.050 and 7.09.060 of this chapter.
(Ord. 21559.)

7.09.100 Denial of the permit.

The director shall deny the application for the administrative permit unless each and every one of the criteria set forth for the use in this chapter is satisfied.
(Ord. 21559.)

7.09.110 Notification of denial.

Whenever an administrative permit is denied hereunder, the director shall notify the applicant in writing of the grounds upon which such denial is based.
(Ord. 21559.)

7.09.120 Revocation of permit.

The director may issue a notice of noncompliance for any failure to comply with this chapter or for failure to comply with any state law or local ordinance if the use creates a public or private nuisance or in any way adversely affects the peace, health, safety, or welfare of the community. Such notice shall be sent by certified mail to the permit holder at the address shown on the permit.

(Ord. 21559.)

7.09.130 Order to show cause.

If the noncompliance, nuisance or adverse effect is not abated, corrected or rectified within the time specified in said notice, the director may issue an order to show cause why such permit shall not be revoked. Such order shall be served on the permit holder personally or sent by certified mail to the address listed in the permit. It shall set forth the date of a hearing, while shall be not less than ten days from the date of service of such notice, unless the director finds that public health or safety requires immediate action, in which case the hearing may be sooner.

(Ord. 21559.)

7.09.140 Hearing for revocation or denial of renewal.

A hearing shall be held by the director during which the permit holder and any other interested party may present evidence. After considering all evidence presented, the director shall determine if there is good cause and sufficient grounds to revoke such permit. A written order stating the basis for the decision shall be issued. If the permit is revoked, the permit holder shall have ten days to terminate the use on the premises.

(Ord. 21559.)

7.09.150 Fees.

Fees for the administrative permit shall be set forth in the schedule of fees established by resolution of the city council. No application shall be accepted as complete until all fees so imposed have been paid.

(Ord. 21559.)

7.09.160 Nontransferability.

A permit issued hereunder may not be transferred or assigned.

(Ord. 21559.)

7.09.170 Wild swarms of bees.

No person shall keep, maintain or allow to remain on any lot or parcel which such person owns and/or resides any wild swarms of bees.

(Ord. 21559.)

Chapter 7.10 ANIMAL TRAPS

Sections:

7.10.010 Ban on animal traps.

7.10.010 Ban on animal traps.

A. It is unlawful for a 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.
- (Ord. 23239.)

Chapter 7.11 FEEDING WILD ANIMALS

Parts:

- 1 Definitions
- 2 Prohibition

Part 1 DEFINITIONS

Sections:

- 7.11.010 Attractant.
7.11.020 Wild animal.
7.11.030 Wildlife rehabilitator.

7.11.010 Attractant.

As used in this chapter, “Attractant” includes 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.

(Ord. 27273.)

7.11.020 Wild animal.

As used in this chapter, “Wild animal” is limited to coyotes, opossums, skunks, fur-bearing mammals as defined by Section 4000 of the California Fish and Game Code, and game mammals as defined by Section 3950 of the California Fish and Game Code, as may be amended.

(Ord. 27273.)

7.11.030 Wildlife rehabilitator.

As used in this chapter, “Wildlife rehabilitator” is any person acting on behalf of a wildlife rehabilitation facility with a valid permit or license from the State Department of Fish and Game.

(Ord. 27273.)

Part 2 PROHIBITION

Sections:

7.11.100 Ban on feeding wild animals.

7.11.100 Ban on feeding wild animal.

A. No person shall feed or in any manner provide an attractant to any wild animal.

B. No person shall leave, store, or maintain any attractant in a location and manner accessible to any wild animal.

C. The prohibitions in Subsections A. and B. shall not apply to:

1. Any person who is the legal owner of the wild animal and the wild animal is kept: (a) under a valid license or permit issued by the State Department of Fish and Game; and (b) in compliance with all applicable laws.

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.

(Ords. 27273, 27333.)