

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2019-04

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 1 AND TITLE 7, ANIMALS, TO CLARIFY APPLICABLE PENALTIES FOR CERTAIN OFFENSES AND THE PROCEDURE FOR PAYMENT OF FINES; AND TO MAKE CORRECTIONS TO THE MINOR OFFENSE FINE SCHEDULE AND CERTAIN MUNICIPAL CODE PRACTICES

WHEREAS, the City of Dillingham (City), repealed and replaced Title 7, Animals, by Ordinance 2018-07 adopted January 10, 2019, in its entirety; and

WHEREAS, the State of Alaska notified the City that some language was not compatible with the state UMOT, and

WHEREAS, Code Publishing recommended a few minor changes to wording of Ordinance 2018-07 for clarity;

NOW BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Title 1 and Title 7. Title 1 and Title 7 of the Dillingham Municipal Code are hereby amended as follows with new language underlined and **emboldened** and deleted language shown as ~~strikethrough~~:

**Title 7
ANIMALS**

Chapters:

- 7.10 Administration of Animal Control**
- 7.30 Impound, Protective Custody, and Quarantine**
- 7.40 Care and Control of Animals**

**Chapter 7.10
Administration of Animal Control**

Sections:

- 7.10.050 Fees.
- 7.10.060 Penalties.**

7.10.050 Fees.

Registration	
Valid for the expiration of the rabies vaccination. Fees reflect per year and are available for advanced purchase up to three years.	
a. Unsterilized animal	\$10.00
b. Sterilized animal*	\$5.00
c. Duplicate	\$1.00

Adoption Plus registration fee above	\$35.00
Impound per day, commencing 24 hours after the time of impoundment	\$25.00
Pick-up	
a. Unregistered animal*	\$50.00
b. Registered animal	\$35.00
Plus impound fee per day	
Kennel permit new, extended, or re-issued (three-year period)	\$25.00
Surrender of animal	\$25.00
Euthanize	\$50.00

7.10.060 Penalties

Offenses in this Title are violations and are punishable by the fines established in the minor offense table schedule in 1.20.040. If a fine for an offense is not established in the fine schedule, the defendant must appear in court and, if convicted, may be punished by a fine up to \$300.

Chapter 7.30
Impound, Protective Custody, and Quarantine

Sections:

- 7.30.040 Release of animal to keeper.
- 7.30.060 Euthanasia.
- 7.30.070 Rabies control.
- 7.30.090 Interference in official duties.

7.30.040 Release of animal to keeper.

A. Except as otherwise provided in this section, an animal may be released from quarantine, protective custody, or impound to its keeper if the animal is determined to be free of rabies or other contagious disease and upon payment of all fees specified in DMC 7.10.060050 as well as the actual costs of any veterinary care provided to the animal.

B. An animal may not be released to the animal's keeper if:

1. the animal is not registered as required by this title,
2. the animal was taken into protective custody and the keeper fails to provide the animal control officer adequate assurance that the animal will receive humane care if released,
3. the keeper has been found to have committed an act of cruelty to an animal or an animal cruelty investigation is ongoing,
4. the animal has been adopted, or
5. Any provision of this title restricts or prohibits such release.

C. If the animal has been classified as aggressive under DMC 7.40.050, prior to releasing the animal the animal control officer may inspect the premises where the animal is kept to ensure that, to the officer's reasonable satisfaction, that the requirements of DMC 7.40.070 will be satisfied.

D. The animal control officer has discretion to not release an animal to its keeper if the animal has been impounded 3 or more times in the previous 60 days. Such an animal shall be considered abandoned.

E. Appeal of the animal controls officer's decision to not release an animal must be made in writing and received by the city manager's office within five business days of the date the request for the animal's release was denied. The appeal shall be governed by DMC 7.40.080.

7.30.060 Euthanasia.

A. The following animals may be euthanized at any time:

1. an animal exhibiting symptoms of a major infectious or contagious disease, as determined by a licensed veterinarian if available, that is a danger to the health and safety of the public or other animals within the city;
2. an animal that in the judgment of the animal control officer or agent is injured or suffering to the extent that it should be euthanized for humane reasons. When reasonably possible, the opinion of a licensed veterinarian will be obtained prior to euthanasia under this subsection;
3. an abandoned animal that is not adoption eligible or have been unable to be adopted;

4. an animal deemed by the animal control officer in conjunction with the Police Chief to be dangerous and a safety risk to the animal control officer or the public.

B. Euthanasia, of an animal in the custody of the City, may be accomplished in the following manner:

1. By a licensed veterinarian, or a technician trained and certified under the Permit For Use of Drugs To Euthanize Domestic Animals as specified in AS 08.02.050.

2. An animal may be shot by a law enforcement officer, a veterinarian, or an agent or designee of the Animal Control Officer, if it is restrained in a humane way, **and** it is performed by a highly skilled and trained person using a weapon that will produce instantaneous death by a single shot.

C. The animal control officer shall maintain a list of animals euthanized including a description of the animal and the condition for euthanasia, available for review by the general public.

D. A reasonable effort shall be made to contact the keeper of a non-stray animal prior to euthanasia unless, in the sole opinion of the animal control officer or other responsible official, the animal is suffering unduly.

7.30.070 Rabies control.

A. The city animal control officer, under the direction of the city manager, shall cooperate with other agencies in establishing a rabies control program for the city.

B. All persons shall report to an animal control officer or agent any suspected or positively diagnosed occurrence of rabies as soon as such occurrence becomes known to the person.

C. No person may kill any suspected or confirmed rabid animal or an animal subject to quarantine except to defend a human **being**, or domestic animal, **being** from death or bodily injury, unless otherwise provided in this title.

D. Any at large animal suspected of being rabid and evading attempts to be caught may be shot by an animal control officer or agent and the head sent to the appropriate laboratory for examination of rabies disease.

E. Only an animal control officer or agent may remove the carcass of any suspected or confirmed rabid animal from the location where the animal was killed or found.

F. The carcass of an animal suspected of being rabid shall upon demand be surrendered to an animal control officer or agent or to the Department of Health and Social Services.

G. Any animal that bites a person or animal shall be quarantined for no less than ten days, and if such bite was without provocation, the keeper shall pay all costs of quarantine.

H. Animals that have been exposed to an animal that has bitten a person may be quarantined at the animal control officer's discretion.

I. If the animal control officer or agent reasonably suspects an animal to have rabies, that animal shall be quarantined immediately and/or euthanized.

J. An unvaccinated animal that has been bitten by an animal diagnosed as rabid shall be euthanized immediately.

K. If a bitten animal has a current rabies vaccination, the animal shall be re-vaccinated immediately and quarantined and, except as otherwise provided in this section, its keeper shall comply with the standard requirements for animal rabies vaccination in 7 AAC 27.020(c).

L. Any animal classified as aggressive under DMC 7.40.050 and reasonably suspected of being rabid may be euthanized before completion of quarantine and, if practical, the keeper will be notified.

M. When there has been a positive diagnosis of rabies within the city, the city manager or the city manager's designee may declare an area-wide quarantine for such period of time as determined necessary and there shall be no animals transported, taken, or removed from the city without the prior written consent of the city manager. Except as otherwise provided in this section, every keeper shall quarantine his or her animal.

7.30.090 Interference in official duties.

It is unlawful for any person to:

A. Open a vehicle being used to transport animals to the animal control center, open the doors of the animal control center, or open or tamper with the doors of a live trap with the intent of allowing impounded animals to escape; or

B. intentionally, recklessly, or ~~with criminal negligence~~ **negligently**.

1. interfere with the animal control officer or agent in performance of a duty under this title, or

2. tamper with any equipment used in the performance of any duty under this title.

Chapter 7.40
Care and Control of Animals

Sections:

- 7.40.040 Animals creating disturbance or nuisance.
- 7.40.060 Aggressive animal classifications and exceptions.
- 7.40.080 Appeal of animal control officer determinations.

7.40.040 Animals creating disturbance or nuisance.

A. It is unlawful for the keeper of an animal to allow it to disturb the public health, safety, or peace by allowing the animal to make chronic animal noise.

~~1. The animal control officer or agent may, upon receiving a complaint alleging chronic animal noise, investigate and, if necessary, issue a warning notice to the animal keeper. The notice shall contain:~~

- ~~a. The definition of chronic animal noise,~~
- ~~b. The nature and times of complaint,~~
- ~~c. Penalties for the violation,~~
- ~~d. A description of the means and methods suggested to and/or agreed upon with the keeper for curtailing the problem, and~~
- ~~e. Time permitted to comply with the notice.~~

~~2. If the violation continues after the time permitted by the notice to comply, a citation may be issued in accordance with subsection A.3. of this section.~~

~~3. Citations for chronic animal noise shall only be issued upon one of the following:~~

- ~~a. A complaint sworn by two or more persons living at different addresses, one of whom must be the original complainant, in the immediate neighborhood of the animal making the chronic noise and after completion of an investigation by animal control officer or agent indicates that a citation is appropriate; or~~
- ~~b. A complaint sworn by one person living in the immediate neighborhood of the chronic noise where additional date and time specific evidence is provided and after completion of an investigation by animal control officer or agent indicates that a citation is appropriate.~~

1. The animal control officer or agent, upon receiving a complaint alleging chronic animal noise, investigate and, if necessary, issue a warning notice to the animal keeper.

2. If the violation continues, a citation may be issued in as established in Section 1.020.040.

B. It is unlawful for the keeper of an animal to allow the animal to defecate without appropriate and immediate removal, to dig upon, injure or destroy public property, a public thoroughfare, or private property without the permission of the property owner.

C. It is unlawful for the keeper of an animal to allow the animal to upset, disturb, or place garbage on public or private property.

7.40.060 Aggressive animal classifications and exceptions.

A. *Classifications.* Subject to subsection B below, an animal may be classified as aggressive based on the highest level behavior exhibited, with such levels described as follows:

1. Level one behavior is established if an unrestrained animal is found to growl, snap at, jump upon, or otherwise menace, injure, or frighten persons or other animals, ~~provided chase, run after, or jump at vehicles or persons using the public thoroughfares, or otherwise threaten or endanger the safety of any person or domestic animal.~~
2. Level two behavior is established if an animal bites or causes physical injury to any domestic animal, or if an unrestrained animal kills any unrestrained domestic animal.
3. Level three behavior is established if any of the following occur, regardless of whether the animal is restrained:
 - a. An animal inflicts an aggressive bite or causes physical injury to any human;
 - b. An animal kills a domestic animal that is restrained; or
 - c. An animal for the second time injures or kills a domestic animal.
4. Level four behavior is established if any of the following occur:
 - a. An animal, regardless of whether it is restrained, causes serious physical injury or the death of any human;
 - b. An animal is used as a weapon in the commission of a crime; or
 - c. An animal previously classified as a level three, or as a potentially dangerous or vicious animal under a prior enactment of this Code, behaves as described in subsection A.3. after the keeper receives notice of the prior level three classification.

B. *Exceptions to classifications.* Notwithstanding subsection A above, the animal control officer shall have discretionary to refrain from classifying an animal as specified in subsection A if the animal control officer determines that:

1. At the time of injury or damage, the victim was committing trespass with criminal intent on premises occupied by the keeper of the animal, the victim was teasing, tormenting, abusing, or assaulting the animal, its offspring, the keeper, or the victim was committing or attempting to commit a crime;
2. The animal was protecting or defending itself, its offspring, or a human within the immediate vicinity of the animal from an attack or assault while under control or confined;
3. The animal is trained to attack persons independently or upon oral command while under the restraint and supervision of an authorized government or law enforcement unit and the act is directly associated with the proper execution of the animal's duties;
4. The animal, with a current rabies vaccination, causes injury to the keeper, keeper's family, trainer or person caring for the animal, unless:
 - a. A complaint is received from the injured party;
 - b. The victim is a minor who is not involved in training or competing with the animal; or
 - c. The animal is unredeemable.
5. The decision not to classify reasonably serves and promotes justice, fairness, and the purposes and intent of this title, the protection of public health, safety and welfare, and the humane care and treatment of animals.

C. In addition to any other action or remedy authorized by this title or any other law, it is unlawful for the keeper of an animal to allow the animal to behave in a manner ~~described~~ **defined** in DMG 7.40.060 (A) ~~and such keeper shall be guilty of a minor offense, punishable per act of the animal as shown in~~ **The fines for behavior** described in subsection (A) **are established in** Section 1.20.040.

7.40.080 Appeal of Animal Control Officer Determinations.

- A. The issues to be considered at the hearing on an appeal of a decision made under DMC 7.30.040 shall be limited to whether the preponderance of the evidence supports the animal control officer's decision to not release the animal for a reason stated in DMC 7.30.040.B.
- B. The issues to be considered at the appeal hearing of an aggressive animal determination under DMC 7.40.050 shall be limited to whether the preponderance of the evidence shows that the animal acted in a manner described in DMC 7.40.060.A and if any factor described in DMC 7.40.060.B should result in a lower categorization of the animal.
- C. The issues to be considered at the appeal hearing of a denied kennel permit shall be limited to whether the preponderance of the evidence shows that the kennel constitutes or would constitute a public nuisance or threat to public safety, that humane care of each animal is not or would not be provided, or if the applicant or permittee is responsible for violation of this title.
- D. The city manager shall issue a written decision to be delivered within 5 business days of the appeal hearing.
- E. Appeal of the written decision of the city manager shall be to the Superior Court for the Third Judicial District in Dillingham and shall be brought within 30 days of the manager's decision. Hearing before the superior court is an administrative appeal heard solely on the record established before the city manager and the city shall be entitled to recover its costs and reasonable attorney's **fees** if it is the prevailing party. No enforcement action authorized by this chapter shall be stayed during the time to appeal or the pendency of the appeal unless ordered by the court.
- F. An animal's keeper may prevent an animal's adoption or euthanasia under 7.30.050 **060** A.3 by:
1. Petitioning the Superior Court for the Third Judicial District in Dillingham for the animal's immediate return, subject, if appropriate, to court-imposed conditions; or
 2. Posting a bond or security with the city of Dillingham in an amount determined by the city manager to be sufficient to provide for the animal's care for a minimum of thirty days from the date the animal was removed.
 3. If the animal control officer still has custody of the animal when the bond or security posted expires and the court has not ordered an alternative disposition, the animal becomes the city's personal property. If the court has not allowed the city to adopt out the animal and the city continues to care for the animal, the keeper of the animal shall post a bond or otherwise pay in advance for the city's continuing costs of care for the animal until a final decision is made by the trial court.
- G. During any appeal process, it is unlawful to breed, sell, exchange or abandon an animal classified as level four or allow it to reside in any household containing animals.

Section 3. Amendment to Section 1.20.040. That Dillingham Municipal Code 1.20.040 – Minor Offense Fine Schedule is hereby amended as follows with new language underlined and **emboldened** and deleted language shown as ~~strikethrough~~:

1.20.040 Minor offense fine schedule.

In accordance with AS 29.25.070(a), citations for the following offenses may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of the fine amounts listed in this section, plus the state surcharge required by AS 12.55.039 and 29.25.074. **Fines must be paid to the court.** The Alaska Court System's Rule of Minor Offense Procedures applies to all offenses listed in this section. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine schedule amount listed below for that

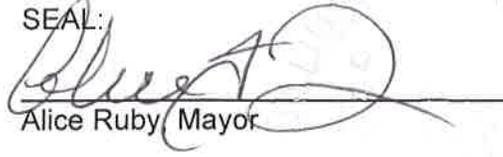
offense. Citations charging these offenses must meet the requirements of the Minor Offense Rules. The fines set forth below may not be judicially reduced.

Code Section	Offense	Penalty/Fine
7.20.010.A	Failure to register domestic animal	75
7.20.010.E	Failure to display registration tag	75
7.20.010.F	Failure to produce kennel registration	75
7.20.010.G	Failure to transfer registration	75
7.20.010.H	Use of another animal's tags	300
7.20.020.A	Failure to obtain kennel permit	75
7.20.040	Unlawful transfer of animal	75
7.20.050	Prohibited wolf hybrid	300
7.30.080.B	Unlawful release of quarantined animal	300
7.30.080.D	Unlawful removal of quarantined animal from city	300
7.30.090.A	Unlawful release of animal from animal control facility or vehicle	300
7.30.090.B	Unlawful interference in official duties	300
7.40.020.A	Animal cruelty	300
7.40.030.A	Failure to restrain animal on city property	75
7.40.030.B	Failure to restrain animal in public	75
7.40.030.C	Unlawfully releasing an animal from restraint	75
7.40.040.(A)(2)	Unlawful chronic animal noise	75
7.40.040.B	Animal disturbing property	75
7.40.040.C	Animal disturbing garbage	75
7.40.060.C.1	Level 1 aggressive animal act	75
7.40.060.C.2	Level 2 aggressive animal act	125
7.40.060.C.3	Level 3 aggressive animal act	300
7.40.060.C.4	Level 4 aggressive animal act	500
7.40.070.E	Classified animal restriction violation	500

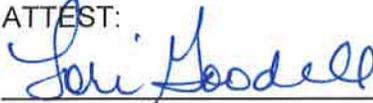
Section 4. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on August 1, 2019.

SEAL:


Alice Ruby, Mayor

ATTEST:


Lori Goodell, City Clerk

City of Dillingham Information Memorandum

Agenda of: August 1, 2019

Attachment to:

Ordinance No. 2019-04 / Resolution No. _____

Subject:

Title 1 and Title 7 updated language for clarification and inclusion on the State of Alaska minor offense table

City Manager: Recommend Approval

Signature: 

Fiscal Note: Yes No

Funds Available: Yes No

Other Attachments:

Summary Statement:

Title 1 was updated and Title 7 was repealed and re-enacted with Ordinance 2018-07 adopted January 10, 2019.

The State of Alaska court system notified the city that some wording needed clarification before the UMOT could be revised to reflect some of the changes.

Code Publishing recommended some minor changes to Ordinance 2018-07 when codification was done.

Ordinance 2019-04 addresses both the State and Code Publishing recommendations. It was introduced at the June 20, 2019 regular council meeting. Notice for the public hearing appeared in the Bristol Bay Times July 25, 2019 edition, posted locally at city hall, the post office, and the public library, as well as emailed to all city departments, council members and posted to the city website.

Attachment to: 2019-04 / Resolution No. _____
Ordinance No. _____

Summary Statement continued:

Route to	Department Head	Date
X	Finance Director	
X	City Clerk	