

CITY of ALBUQUERQUE

NINETEENTH COUNCIL

COUNCIL BILL NO. C/S O-11-37 ENACTMENT NO. _____

SPONSORED BY: Winter by request

1 **ORDINANCE**

2 **ADOPTING A NEW CODE PROVISION, CHAPTER 9, ARTICLE 18 ROA 1994,**
3 **MAKING IT A CIVIL VIOLATION TO FEED FERAL PIGEONS; DEFINING A**
4 **“PIGEON NUISANCE” AS AN EXCESSIVE CONGREGATION OF PIGEONS AND**
5 **CREATING A PROCESS TO ABATE NUISANCES RESULTING FROM THE**
6 **FEEDING AND HARBORING OF FERAL PIGEONS; ESTABLISHING A**
7 **COMPLAINT PROCESS REGARDING PIGEON NUISANCE; ESTABLISHING**
8 **METHODS OF ENFORCEMENT.**

9 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
10 **ALBUQUERQUE:**

11 **SECTION 1. There is hereby created the “Pigeon Nuisance Abatement**
12 **Ordinance as follows:**

13 **“9-18-1. FINDINGS AND INTENT.**

14 **(A) The Council finds that the urban feral pigeon population is**
15 **expanding and the droppings of feral pigeons damage property, make**
16 **walkways unsafe and create a health hazard to humans because the pigeons**
17 **and their droppings support parasites and diseases that can be transmitted to**
18 **humans. The Council finds that pigeon waste contributes to the pollution of**
19 **the Rio Grande because the waste and its bacteria flows into and through the**
20 **storm drainage system to the river after a precipitation event. The Council**
21 **finds that supplemental feeding of pigeons by humans, whether deliberate or**
22 **through negligence is a substantial cause of the overpopulation of pigeons in**
23 **the City of Albuquerque. It is the intent of the Council to humanely reduce**
24 **overpopulation and excessive breeding of the feral pigeon population.**

25 **(B) The City Council declares that this Ordinance is enacted both under**
26 **the City’s authority pursuant to the New Mexico Constitution and City Charter**

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1 to adopt legislation to protect the health, safety and welfare of its citizens and
2 pursuant to the City's authority to define and abate nuisances pursuant to the
3 city's authority under state law.

4 (C) A Pigeon Harborage or Pigeon Nuisance as defined herein is declared
5 by the City Council to be a public nuisance.

6 § 9-18-2. SHORT TITLE. This Ordinance shall be referred to as the "Pigeon
7 Nuisance Abatement Ordinance" and may sometimes be referred to herein as
8 "this Ordinance."

9 § 9-18-3. DEFINITIONS. For the purpose of this Ordinance, the following
10 definitions shall apply unless the context clearly indicates or requires a
11 different meaning.

12 ABATE. To bring to a halt, eliminate, suppress or reduce a Pigeon
13 Nuisance.

14 DIRECTOR. The Director of the Department of Environmental Health.

15 DIRECTOR'S DESIGNEE. The person(s) or entity(ies) appointed by the
16 Director to enforce this ordinance.

17 FEEDING. Providing food, either purposely or through negligence, to
18 pigeons. Food may include, but is not limited to grain, seed, greens,
19 breadcrumbs and other miscellaneous food scraps, including garbage not
20 properly disposed of or contained.

21 OWNER. That person holding the legal title to real property as shown by
22 the records of the County Assessor.

23 PERSON. An individual, partnership, association, syndicate, company,
24 firm, trust, corporation, or any other entity recognized by law.

25 PIGEON. The common pigeon, Columba livia, also known as the Rock
26 Dove or Rock Pigeon. For the purposes of this ordinance, "pigeon" refers to
27 any wild state (feral) pigeon, and does not include domestic pigeons used for
28 recreation or show.

29 PIGEON HARBORAGE. Any condition which provides shelter or protection
30 for pigeons; thus, favoring their multiplication and continued existence in,
31 under, outside a structure or premise at a location where there exists a Pigeon
32 Nuisance.

1 **PIGEON NUISANCE.** The excessive congregation of pigeons at a location
2 when such congregation of pigeons results in the accumulation of pigeon
3 droppings or other pigeon related waste. In addition, the accumulation of
4 pigeon excrement, nesting materials, pigeon carcasses and other pigeon
5 related detritus that may be harmful to the public health and welfare or
6 contribute to polluted stormwater runoff to the river.

7 **PIGEON-PROOFING.** Actions taken to Abate a Pigeon Nuisance. The
8 actions may include but are not limited to: a.) construction to prevent the
9 ingress of pigeons into or under buildings or structures from the exterior; b.)
10 steps to prevent the congregation of pigeons in a given location including the
11 addition of spikes or other materials to prevent roosting; c.) the removal or
12 covering of sources of food for pigeons.

13 **PROPERTY.** Real property including buildings structures and land
14 regardless of use for residential, commercial or other purposes.

15 **RESPONSIBLE PARTY:** That person or those persons who hold that legal
16 or equitable interest in real property which empowers them to take appropriate
17 actions to abate a Pigeon Nuisance found to exist on that real property. This
18 may include but not be limited to a person with ownership, condominium
19 rights, time-share rights, leasehold rights or an easement, license, contractual
20 right, and any right or obligation to manage or act as agent or trustee for any
21 person holding any of the foregoing. The owner of real property shall be
22 presumed to be the responsible party.

23 **§ 9-18-4. MAKING THE FEEDING OF FERAL PIGEONS A CIVIL VIOLATION**

24 **(A)** It is a violation of this ordinance for any person to feed, offer food to, or
25 through negligence allow the feeding of feral pigeons on any public or private
26 property within Albuquerque City limits.

27 **(B)** It is a violation of this ordinance for any person to permit or allow the
28 placement or discard of food, food by-products, vegetables, garbage or animal
29 food of any kind in a manner that results in the lingering, roosting and/or
30 congregating of feral pigeons.

31 **(C)** This prohibition does not extend to domesticated birds or show
32 pigeons that are kept at all times in cages.

1 (D) This prohibition does not extend to bird seed set out in bird feeders
2 of a type that discourages use by pigeons, provided that the seed does not
3 attract significant numbers of pigeons or create conditions that constitute a
4 pigeon nuisance.

5 (E) Any person who violates this section shall be subject to a fine not to
6 exceed \$50 for each violation or each day of a continuing violation.

7 (F) Any person who is fined for violating this section may request a hearing
8 by making a written request to the Director. Upon receipt of a written request
9 for a hearing, the Director shall set a date, time and place for the hearing no
10 more than 60 days from the date of receipt of the request and provide notice to
11 the requesting party of the date, time and place of the hearing. The Director
12 may appoint a hearing officer to conduct the hearing and make
13 recommendation to the Director. The Director may uphold, reduce or
14 eliminate the fines based on the merits presented in the hearing.

15 § 9-18-5. OTHER ACTS PROHIBITED.

16 (A) No person shall create or foster any condition or allow any condition
17 to exist or continue which in any way harbors a number of feral pigeons or
18 results in an infestation of feral pigeons. Pigeon harborages constitute a
19 pigeon nuisance.

20 No person shall allow to accumulate, pigeon excrement, nesting materials,
21 pigeon carcasses and other pigeon related detritus on property where the
22 person is the owner or occupant. Pigeon related waste materials constitute a
23 pigeon nuisance.

24 § 9-18-6. PROCEDURE FOR THE ABATEMENT OF A PIGEON NUISANCE.

25 (A) Any person may complain to the Director or the Director's Designee
26 that the person believes that a Pigeon Nuisance exists or that pigeon feeding
27 is occurring in a manner that encourages the congregation of pigeons. There
28 shall be an investigation of any complaint to determine if there is a Pigeon
29 Nuisance. In addition the Director or the Director's Designee may initiate an
30 investigation to determine if a Pigeon Nuisance exists when there has been no
31 complaint.

32 (B) The Director or the Director's Designee shall determine if a Pigeon
33 Nuisance exists.

1 (C) The Director or the Director's Designee shall attempt to meet informally
2 with the property owner and any person on the property who appears to be a
3 responsible party to notify them that a Pigeon Nuisance has been determined
4 to exist. The goal of the informal meeting shall be to enter into a written
5 Nuisance Abatement Agreement with the City of Albuquerque wherein the
6 property owner or responsible party agrees to take specific steps to pigeon
7 proof the property.

8 (D) A Nuisance Abatement Agreement may provide for the use of any
9 pigeon-proofing method. If pigeon-proofing involves the removal of
10 accumulations of pigeon excrement, nesting materials, pigeon carcasses or
11 other pigeon related detritus the method selected for such removal shall
12 protect human health and ensure that ground water, surface water and real
13 property are not contaminated by the waste.

14 (E) If the Director or the Director's Designee determines that the property
15 owner and/or responsible party are unable or unwilling to voluntarily enter into
16 a Nuisance Abatement Agreement or if the owner and/ or the responsible party
17 fails to act on or complete the terms and conditions agreed to in an Nuisance
18 Abatement Agreement by the time set forth in the Agreement, the Director or
19 the Director's Designee may proceed to abate the nuisance through the
20 procedures of the Nuisance Abatement Ordinance at §§ 11-1-1-26 through 11-
21 1-1-29 ROA 1994.

22 § 9-18-6. INSPECTION OF BUILDINGS, PREMISES AND VACANT LOTS.

23 The Director or the Director's Designee is authorized to make such
24 inspections of real property as is necessary to investigate and abate pigeon
25 nuisances. For the purpose of making such inspections, the Director or the
26 Director's Designee is authorized to enter, examine, or survey at all
27 reasonable times. Such entry shall only be made after reasonable notice to
28 the owner and any person occupying the property and with consent. Such
29 entry shall be made in a manner as to cause the least possible inconvenience
30 to the person in control, and the Director or the Director's Designee shall
31 obtain an order for this purpose from a court of competent jurisdiction in the
32 event entry is denied or resisted.

33 § 9-18-7. ADDITIONAL REMEDIES

1 Nothing in this Ordinance shall be construed to preclude the City from
2 seeking any other remedy available at law or at equity.”

3 **SECTION 2 SEVERABILITY CLAUSE.**

4 If any section, paragraph, sentence, clause, word or phrase of this
5 Ordinance is for any reason held to be invalid or unenforceable by any court
6 of competent jurisdiction, such decision shall not affect the validity of the
7 remaining provisions of this Ordinance. The Council hereby declares that it
8 would have passed this Ordinance and each section, paragraph, sentence,
9 clause, word or phrase thereof irrespective of any provision being declared
10 unconstitutional or otherwise invalid.

11 **SECTION 3 COMPILATION.** This Ordinance shall be incorporated in and made
12 part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

13 **SECTION 4 EFFECTIVE DATE.** This Ordinance shall take effect five days after
14 publication by title and general summary.

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