

CITY of ALBUQUERQUE

NINETEENTH COUNCIL

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

SPONSORED BY: Brad Winter, by request

1 **ORDINANCE**

2 **ADOPTING CHAPTER 9, ARTICLE 18 ROA 1994, REGARDING THE**
3 **ABATEMENT OF PIGEON NUISANCE; DEFINING A “PIGEON NUISANCE” AS**
4 **AN EXCESSIVE CONGREGATION OF PIGEONS; MAKING IT A CIVIL**
5 **VIOLATION TO FEED FERAL PIGEONS; PROHIBITING HARBORAGE AND THE**
6 **ALLOWANCE OF PIGEON WASTE TO ACCUMULATE; AND AUTHORIZING**
7 **ABATEMENT AGREEMENTS.**

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

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

12 **“9-18-1 FINDINGS AND INTENT.**

13 **(A) The Council finds that the urban feral pigeon population is**
14 **expanding and the droppings associated with large flocks of feral pigeons**
15 **interfere with use and enjoyment of private and public outdoor facilities,**
16 **create undesirable conditions and may have an economic impact on the City**
17 **of Albuquerque.**

18 **(B) The Council finds that pigeon droppings damage and depreciate**
19 **property, make walkways unsafe and unsanitary, and potentially represent a**
20 **public health hazard due to parasites or disease that may be associated with**
21 **accumulation of pigeon droppings.**

22 **(C) The Council finds that pigeon waste contributes to the pollution of**
23 **the Rio Grande because the waste and its bacteria flows into and through the**
24 **storm drainage system to the river after a precipitation event.**

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1 (D) The Council finds that supplemental feeding of pigeons by humans,
2 whether deliberate or through negligence, is a substantial cause of the
3 overpopulation of pigeons in the City of Albuquerque.

4 (E) The Council finds that providing readily available food sources for
5 pigeons allows their numbers to increase in a manner that negatively impacts
6 safe and comfortable use of commercial and residential areas, and that
7 research has demonstrated that restricting access to food is an important
8 factor in maintaining urban feral pigeon populations at acceptable levels.

9 (F) It is not the intent of the Council to eradicate the feral pigeon
10 population; this ordinance is intended to address public nuisance associated
11 with large numbers of pigeons.

12 (G) It is the intent of the Council that the City place an emphasis on
13 disseminating information about, and assisting citizens with, effective
14 measures for preventing and abating pigeon nuisance in a manner that
15 promotes effective management of pigeon populations.

16 § 9-18-2 DEFINITIONS. For the purpose of this Ordinance, the following
17 definitions shall apply unless the context clearly indicates or requires a
18 different meaning.

19 ABATE. To reduce, stop or prevent a Pigeon Nuisance.

20 DIRECTOR. The Director of the Department of Environmental Health or the
21 Director's designee.

22 FEEDING. Providing food to pigeons. Food may include, but is not limited
23 to grain, seed, greens, breadcrumbs and other miscellaneous food scraps,
24 including garbage not properly disposed of or contained.

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

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

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

1 **PIGEON HARBORAGE.** Any condition which provides shelter or protection
2 for pigeons; thus, favoring their multiplication and continued inhabitation in,
3 under, outside a structure or premise at a location where there exists a Pigeon
4 Nuisance. Housing or shelter provided for injured or ill pigeons that are being
5 rehabilitated is not considered pigeon harborage.

6 **PIGEON NUISANCE.** The excessive congregation of pigeons at a location
7 when such congregation of pigeons results in the accumulation of pigeon
8 droppings or other pigeon related waste. In addition, the accumulation of
9 pigeon excrement, nesting materials, pigeon carcasses and other pigeon
10 related detritus that may be damaging to the property, pose a threat to public
11 health and welfare or contribute to polluted stormwater runoff to the river.

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

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

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

28 **§ 9-18-3 MAKING THE FEEDING OF FERAL PIGEONS A CIVIL VIOLATION;**
29 **PROVIDING A HEARING.**

30 **(A)** It is a violation of this Ordinance for any person to intentionally feed
31 feral pigeons on any public or private property within Albuquerque City limits.

32 **(B)** It is a violation of this Ordinance for any person to permit or allow
33 the placement or discard of food, food by-products, vegetables, garbage or

1 animal food of any kind in a manner that such person knows will reasonably
2 result in the lingering, roosting and/or congregating of feral pigeons.

3 (C) This prohibition does not extend to domesticated birds used for
4 show or for racing, or to injured pigeons that are kept at all times in cages or
5 are prevented from creating Pigeon Nuisance conditions on nearby properties.

6 (D) This prohibition does not extend to bird seed set out in bird feeders
7 or otherwise provided to birds other than pigeons, provided that the seed
8 does not attract significant numbers of pigeons or create conditions that
9 constitute a Pigeon Nuisance.

10 (E) Each act in violation of this section shall constitute a public
11 nuisance and a separate violation. Any person who violates this section shall
12 be subject to:

13 (1) The first violation of this section shall result in a written
14 warning by the Director. This warning will provide the details of the violation
15 and will specify corrective action.

16 (2) The second violation and subsequent violations of this section
17 shall result in a fine not to exceed \$50 for each violation or each day of a
18 continuing violation.

19 (F) Any person who is fined for violating this section may request a
20 hearing by making a written request to the Director. Upon receipt of a written
21 request for a hearing, the Director shall set a date, time and place for the
22 hearing no more than 60 days from the date of receipt of the request and
23 provide notice to the requesting party of the date, time and place of the
24 hearing. The Director may appoint a hearing officer to conduct the hearing
25 and make recommendation to the Director. The Director may uphold, reduce
26 or eliminate the fines based on the merits presented in the hearing.

27 § 9-18-4 OTHER ACTS PROHIBITED.

28 (A) No person shall create or foster any condition or allow any condition
29 to exist or continue which in any way harbors a number of feral pigeons or
30 results in an infestation of feral pigeons that would constitute a Pigeon
31 Nuisance, as defined herein.

32 (B) No person shall allow the accumulation of pigeon excrement, nesting
33 materials, pigeon carcasses and other pigeon related detritus that would

1 constitute a Pigeon Nuisance, as defined herein, on property where the person
2 is the owner or occupant.

3 **§ 9-18-5 PROCEDURE FOR THE ABATEMENT OF A PIGEON NUISANCE.**

4 (A) There shall be an investigation of any complaint made to the Director
5 to determine if there is a Pigeon Nuisance. In addition the Director may initiate
6 an investigation to determine if a Pigeon Nuisance exists when there has been
7 no complaint.

8 (B) The Director shall determine if a Pigeon Nuisance exists.

9 (C) The Director shall attempt to meet with the property owner and any
10 person on the property who appears to be a responsible party to notify them
11 that a Pigeon Nuisance has been determined to exist. The goal of the meeting
12 shall be to enter into a written Abatement Agreement with the City of
13 Albuquerque wherein the responsible party agrees to take specific steps to
14 pigeon-proof the property.

15 (D) An Abatement Agreement may provide for the use of any pigeon-
16 proofing method agreed upon by the Director and the responsible party. If
17 pigeon-proofing involves the removal of accumulations of pigeon excrement,
18 nesting materials, pigeon carcasses or other pigeon related detritus, the
19 method selected for such removal shall protect human health and ensure that
20 ground water, surface water and real property are not contaminated by the
21 waste.

22 (E) If the Director determines that the responsible party is in violation of
23 § 9-18-4 ROA 1994 herein and is unwilling to comply with this Ordinance, or if
24 the responsible party fails to act on or complete the terms and conditions
25 agreed to in an Abatement Agreement by the time set forth in the Agreement,
26 the Director may proceed to seek the penalties provided in § 1-1-99 ROA 1994.

27 **§ 9-18-6 INSPECTION OF BUILDINGS, PREMISES AND VACANT LOTS.**

28 The Director is authorized, by obtaining consent of the owner or occupant,
29 and at reasonable times, to make such inspections of real property as is
30 necessary to investigate and abate a Pigeon Nuisance. For the purpose of
31 making such inspections, the Director is authorized to enter onto premises to
32 examine or survey property only after reasonable notice to the owner and any
33 person occupying the property and with consent. Such entry shall be made in

1 a manner as to cause the least possible inconvenience to the person in
2 control. In the event that entry is denied the Director shall obtain a court order
3 for this purpose from a court of competent jurisdiction.

4 **§ 9-18-7 ADDITIONAL REMEDIES.**

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

7 **SECTION 2. SEVERABILITY CLAUSE.**

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

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

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