



Legislation Text

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CITY of ALBUQUERQUE
NINETEENTH COUNCIL

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

SPONSORED BY: Brad Winter, by request

ORDINANCE

F/S Adopting Chapter 9, Article 18 ROA 1994, Regarding The Abatement Of Pigeon Nuisance;
Defining A "Pigeon Nuisance" As An Excessive Congregation Of Pigeons; Making It A Civil
Violation To Feed Feral Pigeons; Prohibiting Harborage And The Allowance Of Pigeon Waste To
Accumulate; And Authorizing Abatement Agreements (Winter, by request)

ADOPTING CHAPTER 9, ARTICLE 18 ROA 1994, REGARDING THE ABATEMENT OF PIGEON
NUISANCE; DEFINING A "PIGEON NUISANCE" AS AN EXCESSIVE CONGREGATION OF
PIGEONS; MAKING IT A CIVIL VIOLATION TO FEED FERAL PIGEONS; PROHIBITING
HARBORAGE AND THE ALLOWANCE OF PIGEON WASTE TO ACCUMULATE; AND
AUTHORIZING ABATEMENT AGREEMENTS.

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

SECTION 1. There is hereby created the "Pigeon Nuisance Abatement Ordinance" as follows:

"9-18-1 FINDINGS AND INTENT.

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

(B) The Council finds that pigeon droppings damage and depreciate property, make walkways unsafe and unsanitary, and potentially represent a public health hazard due to parasites

or disease that may be associated with accumulation of pigeon droppings.

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

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

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

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

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

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

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

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

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

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

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

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

PIGEON HARBORAGE. Any condition which provides shelter or protection for pigeons; thus,

favoring their multiplication and continued inhabitation in, under, outside a structure or premise at a location where there exists a Pigeon Nuisance. Housing or shelter provided for injured or ill pigeons that are being rehabilitated is not considered pigeon harborage.

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

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

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

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

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

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

(B) It is a violation of this Ordinance for any person to permit or allow the placement or discard of food, food by-products, vegetables, garbage or animal food of any kind in a manner that such person knows will reasonably result in the lingering, roosting and/or congregating of feral pigeons.

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

conditions on nearby properties.

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

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

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

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

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

§ 9-18-4 OTHER ACTS PROHIBITED.

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

(B) No person shall allow the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus that would constitute a Pigeon Nuisance, as defined herein, on property where the person is the owner or occupant.

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

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

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

(C) The Director shall attempt to meet with the property owner and any person on the property who appears to be a responsible party to notify them that a Pigeon Nuisance has been determined to exist. The goal of the meeting shall be to enter into a written Abatement Agreement

with the City of Albuquerque wherein the responsible party agrees to take specific steps to pigeon-proof the property.

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

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

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

The Director is authorized, by obtaining consent of the owner or occupant, and at reasonable times, to make such inspections of real property as is necessary to investigate and abate a Pigeon Nuisance. For the purpose of making such inspections, the Director is authorized to enter onto premises to examine or survey property only after reasonable notice to the owner and any person occupying the property and with consent. Such entry shall be made in a manner as to cause the least possible inconvenience to the person in control. In the event that entry is denied the Director shall obtain a court order for this purpose from a court of competent jurisdiction.

§ 9-18-7 ADDITIONAL REMEDIES.

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

SECTION 2. SEVERABILITY CLAUSE.

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

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

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

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