

RESOLUTION NO. 37, SERIES OF 2015

FREMONT COUNTY ANIMAL CONTROL RESOLUTION

WHEREAS, Colorado Revised Statutes, §30-15-101 through §30-15-105, §30-11-101, and §16-2-201, authorize the Board of County Commissioners of any county to adopt a Resolution for the control and licensing of dogs and other pet animals; and

WHEREAS, it is the determination of the Board of County Commissioners for Fremont County that such a Resolution is necessary for the protection of the health, safety and welfare of all inhabitants and residents of Fremont County.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF FREMONT, the Fremont County Animal Control Resolution contained herein is hereby adopted in entirety, effective as of the date indicated below, and to be enforced in all unincorporated areas of Fremont County.

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1.010 Definitions.

For all purposes under this Resolution, the following words and phrases shall be construed as follows:

- A. "Animal Control Officer" ("ACO"), means any person employed by the County to enforce the provisions of this Resolution, and any and all peace officers having concurrent jurisdiction in Fremont County.
- B. "Bodily Injury" means any physical injury that results in severe bruising, muscle tears, or skin lacerations, requiring professional medical treatment or any physical injury that requires corrective or cosmetic surgery.
- C. "Control", means the actual physical restraint of an animal, when off or away from the premises of the owner, possessor or keeper thereof, by means of leash, cord or chain of not more than ten (10) feet in length.
- D. "County" means the County of Fremont, State of Colorado.
- E. "Destructive Dog", means and includes any dog that injures or destroys or molests the property of persons, other than the owner, including particularly, among all other property, gardens, shrubbery, trees, vines, flowers, grass, and seed beds.
- F. "Dog", means any domesticated canine, whether male or female, of the age of six months and older and includes any hybrid domesticated animal related to the fox, wolf, coyote, or jackal.
- G. "Domestic animal" means any dog, cat, any animal kept as a household pet, poultry or livestock.
- H. "Estray" means any bovine animal, horse, mule, ass, or alternative livestock as defined in section 35-41.5-102(1) found running at large upon public or private lands in the state of Colorado whose owner is either known or unknown in the section where found or which is outside the limits of its usual range or pasture.
- I. "Kennel" means any lot, tract, parcel, or structure used in whole or in part for the purposes of grooming (if the animals are housed overnight), housing, boarding, breeding, raising and/or training of five (5) or more dogs or cats, six (6) months old or older. The term "kennel" does not include pet shops or veterinary premises.

J. "Noisy Dog", means and includes any dog that barks, yelps or howls loudly and at frequent intervals, or continuously, or for extended periods of time.

K. "Owner", means and includes any person, persons, or entity who owns, keeps, harbors, has an interest in, possesses or has custody of an animal, whether temporarily or permanently, whether or not such person is a resident of the county.

L. "Pet Animal" means and includes any dog or animal owned or kept by a person for companionship or protection or for sale to others, or other similar purposes. "Pet Animal" does not include wildlife, livestock used for any purpose or which is stray, or animals which are owned or bought and sold through the efforts of those that are licensed, inspected, or both, by the United States Department of Agriculture, the Colorado Department of Agriculture, or both. "Pet Animal" shall specifically include dogs and animals used as service animals (pursuant to Title II of the Americans with Disabilities Act), emotional support and therapy animals.

M. "Proven" means conviction of the owner of a pet animal of a violation of any provision of this Resolution. Conviction shall include payment of the fine pursuant to the penalty assessment procedure, which constitutes a voluntary admission of guilt.

N. "Run at Large", and "Running at Large", means any pet animal that is off or away from the premises of the owner, possessor, or keeper, thereof, and not under the control of such owner.

O. "Serious Bodily Injury", means bodily injury which, either at the time of the actual injury or a later time, involves a substantial risk of death; a substantial risk of serious permanent disfigurement; a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures or burns of the second or third degree.

P. "Vicious Animal" means any dog or animal that is off the premises owned or occupied by the owner, whether or not the dog is under control, or is on the premises of its owner, but is either out of its normal enclosure, or removed from its usual restraints, and which, without provocation:

(I) Inflicts bodily or serious bodily injury upon or causes the death of a person or domestic animal; or

(II) Demonstrates tendencies that would cause a reasonable person to believe that the dog may inflict bodily or serious bodily injury upon or cause the death of any person or domestic animal; or

(III) Engages in or is trained for animal fighting as described and prohibited in section 18-9-204.

1.020 Running At Large Prohibited

A. It is unlawful for the owner of any dog to permit the same to run at large as defined in this Resolution.

B. This prohibition against running at large shall not apply 1) to dogs actually working livestock, 2) to dogs locating or retrieving wild game in season for a licensed hunter, 3) to dogs assisting law enforcement officers, 4) or to dogs while actually being trained for these pursuits.

1.030 Noisy Dog Prohibited

It shall be unlawful for any person or entity to own, keep, harbor, possess, or have custody or control over any noisy dog, as defined in this Resolution.

1.040 Destructive Dog Prohibited

It shall be unlawful for any person or entity to own, keep, harbor, possess, have a financial or property interest in, or have custody or control over any destructive dog, as defined in this Resolution.

1.050 Unlicensed Kennel Prohibited

It shall be unlawful for any Owner to own, house, keep, possess, or have custody or control of more than four (4) dogs, four (4) cats, and/or four (4) other pet animals on a lot, tract, parcel, or structure used in whole or in part by the Owner without a valid government-issued kennel permit or license authorizing the number of animals located on the lot, tract, parcel or structure.

1.060 Vicious Dog Prohibited

It shall be unlawful for any person or entity to own, keep, harbor, possess, have a financial or property interest in, or have custody or control over any vicious dog, as defined in this Resolution.

1.070 Affirmative Defenses

A. An affirmative defense to the violation of Section 1.090 (vicious dog) shall be:

1. That, at the time of the attack by the vicious dog which causes injury to or the death of a domestic animal, the domestic animal was at large, was an estray, and entered upon the property of the dog's owner and the attack began, but did not necessarily end, upon such property;

2. That, at the time of the attack by the vicious dog which causes injury to or the death of a domestic animal, said animal was biting or otherwise attacking the vicious dog or its owner;

3. That, at the time of the attack by the vicious dog which causes injury to or the death of a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against the dog's owner, and the attack did not occur on the owner's property;

4. That, at the time of the attack by the vicious dog which causes injury to or the death of a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against a person on the owner's property or the property itself and the attack began, but did not necessarily end, upon such property; or

5. That the person who was the victim of the attack by the vicious dog tormented, provoked, abused, or inflicted injury upon the dog in such an extreme manner which resulted in the attack.

B. The affirmative defenses set forth herein shall not apply to any dog that has engaged in or been trained for animal fighting as said term is described in section 18-9-204, C.R.S.

**CHAPTER TWO
IMPOUNDMENT, DESTRUCTION AND DISPOSITION**

2.010 Rabies—Impoundment for Quarantine

A. Any pet animal which is known to have, or is suspected of having bitten or injured any person so as to cause a breaking of the skin, shall be impounded, unless the owner can prove the pet animal has a valid and current rabies vaccination. Any pet animal which, in the opinion of any licensed physician or any licensed veterinarian of the State, appears to be infected with rabies, shall be impounded, whether or not the pet animal has been vaccinated for rabies. When any such facts above shall be made known or reported to the ACO or any law enforcement officer, such pet animal shall be impounded and closely confined for a period of fourteen days. If during such period such pet animal displays symptoms of illness, its disposition shall be determined by the Fremont County public health agency, a licensed physician or licensed veterinarian.

B. A pet animal which is known to have been exposed to an animal infected with rabies shall be impounded, and the disposition of such pet animal shall be made as directed by the Fremont County public health agency, licensed physician or licensed veterinarian. When permitted by such public health agency, physician or veterinarian, the pet animal shall be closely confined by its owner in a sufficiently fenced, locked area, or at the County's impoundment facility, or at a private kennel, all at the expense of the owner and in accordance with the directions of such public health agency, physician or veterinarian for a period of not less than six months from the date of exposure.

C. If the owner of any such pet animal cannot be determined or located, then the pet animal shall be confined under the direction of the Fremont County public health agency, a physician or veterinarian. If the pet animal impounded pursuant to subpart A of this Section 2.010 is not claimed by its owner within 14 days from the date of impoundment listing, and the impoundment facility declines to accept responsibility for disposition of such pet animal, such public health agency, physician or veterinarian may order the pet animal destroyed.

D. All costs of the confinement of any pet animal confined under the provisions of this section, and all costs incurred in destroying such pet animal and examining the pet animal, and other related services shall be the responsibility of the owner of the pet animal.

2.020 Impoundment for Other than Rabies Quarantine.

- A.** The ACO may impound any dog running at large.
- B.** The ACO may impound any vicious or destructive dog whose owner is convicted of a violation under this Resolution. Impoundment may occur even if such dog was under the control of its owner while engaging in the act resulting in the conviction of the owner for vicious or destructive dog under this Resolution. Impoundment may include the owner's confinement of the vicious or destructive dangerous dog in a building or enclosure designed to be escape-proof and, whenever the dog is outside of the building or enclosure, keeping the dog under the owner's control by use of a leash. The owner shall post a conspicuous warning sign on the building or enclosure notifying others that a vicious or destructive dog is housed in the building or enclosure. Under no circumstances shall there be any right or obligation to allow impoundment by the owner.
- C.** The ACO shall impound, pending trial, any dog against whose owner the ACO has filed a complaint alleging the dog is vicious, when the ACO has probable cause to believe such dog has caused serious bodily injury to a person. This impoundment shall be made whether or not the dog has a valid rabies vaccination and regardless of where the incident leading to the complaint occurred.
- D.** The ACO shall impound any dog which is proven to be a noisy dog, upon receipt and verification of a noise complaint by the ACO, if the dog's owner has a prior noisy dog conviction under this Resolution.
- E.** The ACO shall impound any pet animal that is found running at large and which may reasonably pose a risk of destruction of property or danger to any person or pet animal.
- F.** The Board of County Commissioners shall have the authority to contract with third parties to provide facilities for the impoundment of dogs and pet animals under this Resolution.

2.030 Impounded Pet Animals—Listing.

The ACO shall maintain a list with the Fremont County Sheriff's Office of all pet animals impounded, giving the names of the owners, if known, and a description of each pet animal so impounded. Impounded pet animals shall be listed within 24 hours following impoundment.

For pet animals whose owners cannot be determined, the filing of such list with the Sheriff's Office shall be deemed to be notice to the owner of such impoundment, and no other notice need be given by the ACO. For pet animals whose owner is known, the County shall make at least two attempts within five days of impoundment, to notify the owner of the pet animal that the pet animal is impounded. If the owner can not be reached on the first attempt, the second attempt shall not be made on the same day or at the same time of day.

2.040 Impounded Pet Animals—Care and feeding.

The ACO, or contractor housing the pet animals, shall cause all pet animals impounded to be properly fed and watered, and provided with basic veterinary services for injury or illness, until redeemed or disposed of as provided in this Resolution.

2.050 Impounded Pet Animals—Redemption.

A. Any pet animal impounded, other than a vicious or destructive dog, may be redeemed by its owner at any time within five days after listing the pet animal as impounded, upon payment to the impoundment facility of the fee for the pet animal's care.

B. Any pet animal, other than a vicious or destructive dog, not redeemed within the five-day period provided for in this Section 2.050 may be disposed of in such manner as deemed appropriate by the impoundment facility. Destruction of any impounded pet animal shall require the consent of the ACO, which shall not be unreasonably withheld.

2.060 Vicious, Destructive or Noisy Dogs—Destruction and Disposition

A. The ACO, as defined in this Resolution, may kill or authorize the immediate killing of any vicious dog running at large when there is a grave and imminent danger of its doing harm or injury to any person.

B. If a dog is impounded pending the resolution of criminal charges and is subsequently proven to be vicious, the ACO may authorize euthanization of the same after five days from the date of conviction, unless the owner has arranged for the dog to be disposed of, euthanized or permanently removed from the County in such manner that the inhabitants of the County shall be assured that any such dog shall no longer molest the inhabitants of the County.

C. Subsection B of this Section 2.060 notwithstanding, the ACO may authorize the euthanization of a dog proven to be vicious, if the dog has caused serious bodily injury to any person.

D. Subsection B of this Section 2.060 notwithstanding, when the owner of a dog which has been proven to be vicious in accordance with this Resolution is convicted of having a vicious dog for a second, separate incident involving the same dog, the ACO may euthanize the dog and the owner shall have no right of redemption, nor shall the owner be allowed to make alternate arrangements for the dog under Subsection B of this Section 2.060.

E. When the owner of a dog which has been proven to be destructive in accordance with this Resolution is convicted of having a destructive dog for a second, separate incident involving the same dog, the ACO may authorize euthanization of the dog and the owner shall have no right of redemption.

F. When the owner of a dog which has been proven to be noisy in accordance with this Resolution is convicted of having a noisy dog for a third, separate incident occurring within 12 months of the date of the first offense (date of offense not date of conviction), whether or not the three convictions involve the same dog, the ACO may authorize euthanization of the dog and the owner shall have no right of redemption.

CHAPTER THREE

VIOLATIONS AND PENALTIES

3.010 Violation Not Involving Bodily Injury.

Any violation of this Resolution, not involving bodily injury to any person shall be a class 2 petty offense, and, notwithstanding the provisions of section 18-1.3-503, C.R.S., punishable, upon conviction, by a fine of not more than one thousand dollars pursuant to section 30-15-102(1), or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment for each separate offense.

3.020 Violation Involving Bodily Injury.

A. Any offense involving bodily injury to any person by a dog or other pet animal shall be a class 2 misdemeanor, and any violator shall be punished as provided in section 18-1.3-501, C.R.S., for each separate offense. Such punishment shall be a fine of not less than two hundred fifty dollars and not more than one thousand dollars, or imprisonment in the County jail for not less than three months and not more than twelve months, or both such fine and imprisonment.

B. In addition to the penalties prescribed in subsection (A) of this section, a person convicted of a violation of this Resolution involving bodily injury to any person is subject to a surcharge of ten dollars that shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the moneys to the court administrator of the eleventh judicial district for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district pursuant to section 24-4.2-103, C.R.S.

C. In the case of any person incurring a third or subsequent conviction for a violation of this Resolution involving bodily injury to any person, a sentence of imprisonment within the minimum and maximum terms shall be mandatory and shall not be subject to suspension, nor shall such person be eligible for probation or parole for any part of such period. A plea of *nolo contendere*, or *Alford* plea accepted by the court shall be considered a conviction for the purposes of this section.

3.030 Penalty Assessment Procedure Authorized.

A. The ACO and any other arresting law enforcement officer is hereby authorized to use the penalty assessment procedure provided in C.R.S. Section 16-2-201 for any violation of this Resolution not involving bodily injury to any person.

B. The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section. A duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred. The provisions herein shall not apply to penalties assessed pursuant to authority of law outside

this Resolution unless this Resolution is specifically referred to in such other law.

C. If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs and surcharges may be assessed against him in addition to the fine.

3.040 Violation Not Involving Bodily Injury—Graduated Fine Schedule and Procedure for Payment

A. Any person who violates any provision of this Resolution not involving bodily injury to any person commits a Class 2 Petty Offense, and shall be punished, upon conviction, in accordance with the following schedule:

1. For the first offense, the sum of fifty dollars;
2. For the second offense, whether or not the dog involved is the same dog involved in the first offense, the sum of one hundred dollars;
3. For the third offense within twelve months of the date of the first offense, regardless of whether the dogs involved in any of the three offenses are the same, the sum of two hundred dollars.

B. Whenever a penalty assessment notice is issued pursuant to this Resolution, the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant; a citation of the Resolution section alleged to have been violated; a brief description of the offense; the date and approximate location of the commission of the offense; the amount of the penalty prescribed for such offense, including any surcharge and collection costs; and the date the penalty assessment notice is served on the defendant. The penalty assessment shall inform the defendant of the opportunity to pay the fine and a \$5.00 collection fee, within 20 days to the office of the Fremont County Treasurer, Fremont County Administration Building, 615 Macon Ave., Canon City, Colorado, 81212, thereby avoiding imposition of court costs and surcharges at a later date.

C. The penalty assessment notice shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty is not paid; shall be signed by the peace officer; and shall contain a place for such defendant to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed within twenty days, as well as such other information as may be required by law, to enable such penalty assessment notice to become a summons and complaint, should the prescribed penalty not be paid within the time allowed in this Resolution.

(1) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the Fremont County Treasurer. In the event that the penalty assessment is not paid to the Fremont County Treasurer within the required 20 day period, the Fremont County Treasurer shall forward all unpaid penalty assessments to the Fremont County Court for docketing on the date of first appearance indicated on the summons and complaint/penalty assessment notice.

(2) The time specified in the summons portion of said summons and complaint must be at least twenty days after the date such summons and complaint is served, unless the defendant shall demand an earlier court appearance date.

(3) The time specified in the summons portion of said penalty assessment notice shall be at least thirty days but not more than ninety days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier court appearance date.

(4) The place specified in the summons portion of said summons and complaint or of the penalty assessment notice must be a county court within the county in which the offense is alleged to have been committed.

(5) If the defendant is otherwise eligible to be issued a summons and complaint or a penalty assessment notice for a violation of this Resolution and if the defendant is not a resident of Fremont County, in order to secure release, as provided in this section, must either consent to be taken by the officer to the nearest mailbox and to mail the amount of the penalty and surcharge thereon to the Fremont County Treasurer or must execute a promise to appear in court on the penalty assessment notice or on the summons and complaint.

(6) Unless a person who has been cited for a Resolution violation pays in a timely manner with adequate and sufficient funds, the penalty assessment as provided in this Resolution, the person shall appear at a hearing on the date and time specified in the summons portion of the penalty assessment and answer the complaint against him.

(7) If judgment is entered against a violator, he shall be assessed an appropriate penalty, a surcharge, a docket fee, and other applicable costs.

3.050 Penalties not to Include Impoundment Fees

Any fine or penalty provided for in this Resolution shall be in addition to any fees and costs arising from impoundment of an animal, as provided in Chapter Two herein.

3.060 Effective Date and Repealer

This Resolution as approved herein shall become effective on December 1, 2015. All prior dog control or animal control resolutions, specifically including Resolution 35, Series of 1996, shall be revoked and repealed, as of the effective date of this Resolution.

Commissioner Bell moved adoption of the foregoing Resolution, seconded by Commissioner Payne and approved by roll call vote as follows:

Debbie Bell	<u>Aye</u>	Nay	Abstain	Absent
Edward H. Norden	<u>Aye</u>	Nay	Abstain	Absent
Timothy R. Payne	<u>Aye</u>	Nay	Abstain	Absent

Date: 11/24/15

BOARD OF COUNTY COMMISSIONERS
OF FREMONT COUNTY

ATTEST:

By: Edward H. Norden
Chairman

By: Katie E. Bauer
Clerk to the Board