

**TITLE 17 - HEALTH AND SAFETY**

**CHAPTER 7 - ANIMAL CONTROL**

*Legislative History: 17 T.O.C. Chapter 7, Animal Control, was adopted and codified by Resolution No. 07-025 effective January 21, 2007.*

**TITLE 17 HEALTH AND SAFETY**

**CHAPTER 7 - ANIMAL CONTROL**

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**Section 7202 Unlawful Interference with Animal Control Officer.**

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**Section 7302 Animals Not Permitted at Large.**

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**Section 7501 Unlawful Keeping of Dogs.**

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## ARTICLE 1

### Section 7101 Definitions.

In this Chapter, unless the context otherwise requires, or unless otherwise defined for a particular purpose herein:

- (A) “Animal” means any animal of a species that is susceptible to rabies, except humans.
- (B) “Animal Control Officer” means any employee of the Department of Public Safety who is assigned the duties and responsibilities of an Animal Control Officer under this Chapter or any person who is authorized to perform such duties pursuant to a cooperative or intergovernmental agreement for that purpose.
- (C) “At large” means an animal is not physically restrained by a leash, within the owner’s residence, or enclosed in a humane manner temporarily within a vehicle, or in a cage or similar enclosure, or by a fence that guarantees the animal cannot escape.
- (D) “Collar” means a band, chain, harness or other suitable device worn around the neck of an animal to which an identification tag can be attached.
- (E) “Harboring” means keeping an animal at any premises or allowing an animal to return to an occupant’s premises daily for food, water, or care for a period of three or more consecutive days.
- (F) “Impound” means the act of taking or receiving any dog or other animal into custody by the Animal Control Officer for the purpose of confinement in a pound in accordance with the provisions of this Chapter.
- (G) “Leash” means a line made of rope, chain or other suitable material not less than one-quarter inch in diameter for the purpose of temporarily restraining an animal that is accompanied by a person who is physically capable of controlling such an animal in a humane manner. The use of leashes for animal confinement is prohibited in accordance with the terms of this Chapter.
- (H) “Livestock” means cattle, horses, sheep, goats, swine, mules or burros or other domesticated animals other than cats or dogs.
- (I) “Owner” means any person harboring or keeping an animal other than livestock for more than three consecutive days.
- (J) “Owner identification tag” or “Identification tag” means a metal tag attached to the collar of an animal with the name, address, and telephone number (if available) of the animal’s owner engraved or embossed thereon.

(K) “Pit bull” means any (1) American Pit Bull Terrier, (2) Staffordshire Bull Terrier, (3) American Staffordshire Terrier, (4) any dog having the appearance and characteristics of being predominantly of the one or more of the breeds of terriers identified herein, or (5) any dog identified by its owner as a pit bull.

(L) “Vicious animal” means any animal of the order Carnivora that bites, attempts to bite, endangers or otherwise injures or causes injury to a human being without sufficient provocation, or any animal that, while at large, kills or causes injury to any domesticated animal, including livestock.

## **ARTICLE 2**

### **Section 7201 Animal Control Services.**

The Legislative Council may, by resolution, enter an agreement for the establishment, operation, or use of a pound or to provide any other services under this chapter. An animal that is impounded pursuant to this chapter may be redeemed, purchased, or destroyed in accordance with the fee schedules and policies of the entity providing such services, provided such fees and policies do not conflict with this Chapter.

### **Section 7202 Unlawful Interference with Animal Control Officer.**

(A) Any person who interferes with, threatens, or harasses the Animal Control Officer in the performance of the Officer’s duties is guilty of the offense of Unlawful Interference With Animal Control Officer.

(B) Any person found guilty to Unlawful Interference With Animal Control Officer shall be sentenced to the following:

- (1) imprisonment in jail for a period not to exceed 60 days; and
- (2) a fine not to exceed \$300.00.

### **Section 7203 Removing Impounded Animals.**

No person may remove or attempt to remove an animal which has been impounded or that is in the possession of the Animal Control Officer except in accordance with the provisions of this Chapter.

## **ARTICLE 3**

### **Section 7301 Collar and Owner Identification Tags.**

(A) Every dog or cat owned or harbored within the exterior boundaries of the Tohono

O'odham Nation ("Nation") shall wear a collar with an owner identification tag at all times.

(B) Any dog over the age of four months found at large within the Nation without a collar and an attached owner identification tag shall be deemed a stray dog and shall be subject to impoundment.

(C) Any cat over the age of four months found to be at large in an area not permitted by Section 7302 of this Chapter and without a collar and an owner identification tag, shall be deemed to be a stray cat and shall be subject to impoundment.

### **Section 7302 Animals Not Permitted at Large.**

(A) No female dog during her breeding or mating season shall be permitted at large at any time.

(B) No owner or person in charge of a dog or cat shall permit such an animal to be at large in

(1) any area of a village where a feast or other communal activity is taking place,

(2) in or near a feast house or communal kitchen or area where food for human consumption is prepared or served, or

(3) in a public park, playground, public shopping area, government building or adjoining grounds, or upon any school or business property.

### **Section 7303 Tie-outs; Humane Confinement.**

The use of tie-outs such as chains, leashes, wires, cables, ropes or similar restraining devices for the purposes of animal confinement is prohibited and shall constitute the offense of Cruelty to Animals except that

(A) tie-outs for dogs shall be permitted if

(1) the animal is provided adequate food, water, and shelter at all times,

(2) the animal is provided adequate exercise space,

(3) the tie-out is located so that it cannot become entangled with other objects, and

(4) a collar is used to attach the dog to the tie-out that is not a choke-type.

(B) livestock may be temporarily tethered.

### **Section 7304 Vaccination Required; Proof.**

(A) Every person owning or harboring a dog or cat within the Nation shall ensure that such an animal is vaccinated by a veterinarian, or authorized technician acting under the direction of a veterinarian, for rabies and re-immunized as required, and shall provide written proof, or a tag providing proof, of such vaccination upon the request of the Animal Control Officer. A dog or cat without written proof, or a tag providing proof, of current vaccination shall be deemed unvaccinated and subject to impoundment and vaccination at the owner's expense.

(B) Any person who fails to vaccinate or provide proof of vaccination of a dog or cat as required pursuant to this section shall be guilty of the offense of Failure to Vaccinate.

#### **Section 7305 Diseased Animals.**

(A) Any animal affected with a contagious or infectious disease shall, at all times, be confined by a fence or pen and shall not be removed from such enclosures, even when held by a leash, except for the purpose of being transported to a licensed veterinarian, until a licensed veterinarian determines that the animal is no longer contagious or infectious. Any person abandoning a diseased animal or otherwise violating a provision of this section shall be guilty of an offense.

(B) It shall be unlawful for any owner, or other person, knowing that an animal may have been exposed to rabies, to remove the animal from the owner's residence or from the Nation, except by order of the Animal Control Officer.

(C) Any animal owner or other person who has reason to believe that an animal may have rabies, or has been exposed to rabies, shall immediately report to the Tohono O'odham Police Department and the Natural Resources Department, for appropriate action under this Chapter.

#### **Section 7306 Rabies and Quarantine Areas.**

(A) The Chairperson of the Nation may declare quarantine areas within the Nation for a period not to exceed 30 days to prevent the transmission of rabies or other infectious animal diseases. Such quarantine areas may be declared for longer periods by resolution of the Tohono O'odham Legislative Council.

(B) When a quarantine area has been declared, the Chairperson of the Nation, in cooperation with appropriate county and federal health boards and agencies, shall institute an emergency program for control of rabies or other infectious animal diseases within the area.

(C) In a rabies quarantine area, no dog shall be permitted at large. Each dog shall be humanely confined within an enclosed area on the owner's property or on a leash not to exceed five feet in length and directly under the control of an able-bodied person over the age of 18 years when not on the owner's property.

#### **Section 7307 Dead Animal Disposal.**

(A) The owner or person in possession of a dead animal other than livestock shall dispose of the carcasses by burial or burning in a manner that is consistent with the Tohono O’odham Solid Waste Management Code and regulations promulgated under the Code within 24 hours.

(B) When the owner or person in possession fails to comply with this section, such disposal shall be made by the Animal Control Officer or an appropriate health officer and the cost of such disposal be assessed to the owner of the carcass.

#### **ARTICLE 4**

##### **Section 7401 Control of Vicious Animals.**

(A) It is unlawful for any person to keep, control, or harbor any vicious animal. This section shall not apply to a police dog under the command of its trainer or seeing eye dogs.

(B) The owner of any animal that bites, attempts to bite, endangers or otherwise injures or causes injury to a human being is guilty of the offense of Failure to Control Vicious Animal.

(C) Anyone found guilty of Failure to Control Vicious Animal shall be sentenced to any of the following:

- (1) imprisonment in jail for a period not to exceed one year; or
- (2) a fine not less than \$250 and not to exceed \$1000; or
- (3) both of the above.

(D) If anyone is found guilty of the offense of Failure to Control Vicious Animal and it is established beyond a reasonable doubt that the animal caused the loss of human life or permanent injury to a human being, then the maximum fine and sentence shall be fully imposed and the sentence shall be served without probation, parole, suspension, commutation, or release of any kind except for medical treatment or, if approved by the Tohono O’odham Judicial Court (“Court”), work release.

##### **Section 7402 Control of Destructive Animals.**

(A) The owner of any animal that destroys, damages or causes damage to private or public property or injures or kills another animal is guilty of the offense of Failure to Control Destructive Animal.

(B) Anyone found guilty of Failure to Control Destructive Animal shall be sentenced to the following:

- (1) imprisonment in jail for a period not to exceed 180 days;

- (2) a fine not to exceed \$500.00; and
- (3) restitution in an amount determined by the Court.

(C) It shall be an affirmative defense to the offense of Failure to Control Destructive Animal if the animal is not at large and there is sufficient provocation of the animal, or the animal is a police dog under the command of its trainer.

**Section 7403 Handling Biting Animals; Responsibility for Reporting Bites; Authority to Destroy.**

(A) A dog or cat that bites or injures any person shall be confined and quarantined in a pound for a period of not less than seven days.

(B) Any animal other than a dog or cat that bites any person shall be confined and quarantined in a pound for a period of not less than 14 days.

(C) Any wild animal that bites any person may be killed and submitted to the Animal Control Officer or the appropriate health official for transmission to an appropriate diagnostic laboratory.

(D) Whenever an animal bites or injures any person, the incident shall be immediately reported to the Animal Control Officer or to the Tohono O’odham Police Department by any person having direct knowledge.

(E) The Animal Control Officer may destroy any animal confined and quarantined pursuant to this section prior to the termination of the minimum confinement period for laboratory examination for rabies if:

- (1) such animal shows clear clinical signs of rabies; or
- (2) the owner of such animal consents to its destruction.

(F) In addition to the authority to destroy an animal pursuant to paragraph (E) of this Section, the Animal Control Officer shall destroy a vicious animal upon an order of a Court judge. A Court judge may issue an order after notice to the owner, if any, and hearing, or such an order may issue *ex parte* if the judge finds good cause or time is of the essence after considering the facts of the situation. The Office of the Prosecutor shall represent the Nation in any hearing in Court for enforcement of any provision of this Chapter.

**Section 7404 Duty of Owner of Dog Found Harassing Livestock.**

It shall be the duty of the owner or keeper of any dog found biting, or injuring any livestock or

other domestic animal or game animal, upon being notified of that fact by the owner of such livestock or domestic animal or an Animal Control Officer, to keep such dog or dogs leashed or confined in a humane manner upon the owner or keeper's premises. If the owner or keeper of such dog fails to comply with the provisions of this section, it shall be lawful for an Animal Control Officer to kill such dog that is not confined as required in this section.

**Section 7405 Duty of Owner to Kill Marauding Dog.**

It shall be the duty of any person owning or keeping any dog that kills any livestock, a domestic animal, or game animal to kill such dog within 48 hours after being notified of that fact by the owner of such livestock or domestic animal or by an Animal Control Officer. If such owner or keeper of a dog shall fail or neglect to comply with the provision of this section, it shall be lawful for an Animal Control Officer to kill such a dog or for the owner of such livestock or domestic animal to kill such a dog if found running at large.

**Section 7406 Public Nuisance.**

- (A) An animal shall be considered a public nuisance if it:
- (1) harasses any passerby or chases any passing vehicle;
  - (2) attacks other animals;
  - (3) barks, howls, or creates other animal noises so as to disturb the peace and quiet of any person;
  - (4) is repeatedly at large, especially on school grounds;
  - (5) overturns or spreads garbage about; or
  - (6) runs through or tears up gardens, landscaping or lawns.
- (B) Anyone who harbors, owns or controls such an animal is guilty of the offense of Public Nuisance.

## **ARTICLE 5**

### **Section 7501 Unlawful Keeping of Dogs.**

- (A) It is unlawful for a person to own or harbor a dog within the Nation except as provided by the terms of this Chapter.
- (B) No more than two dogs shall be kept at any residence within the Nation, regardless of whether the dogs are owned by more than one person or whether the dogs reside inside or outside the residence.

### **Section 7502 Prohibited Breeds and Exemptions.**

- (A) It shall be unlawful to possess or transport the following breeds or mixture of breeds of dogs within the exterior boundaries of the Nation.
- (1) Pit bull;
  - (2) Rottweiler;
  - (3) Wolf/dog Hybrid; or
  - (4) Coyote/dog Hybrid.
- (B) Anyone possessing or transporting any of the above reference breeds or mixture thereof shall be guilty of Possession or Transporting of Prohibited Breeds.
- (C) Anyone convicted of Possession or Transporting of Prohibited Breeds shall be punished pursuant to Section 7601 of the Chapter.
- (D) After 90 days from the passage of this Chapter, all prohibited breeds and mixtures as defined in paragraph (A) of this section shall be removed from the Nation or shall be impounded by the Animal Control Officer and destroyed.
- (E) Any owner of a dog alleged to be prohibited breed or mixture thereof shall have the burden of proof if the allegation is contested.

## **ARTICLE 6**

### **Section 7601 Violation and Penalties.**

- (A) A person who is subject to the criminal jurisdiction of the Nation and who violates any provision of this Chapter for which the penalties are not specified is guilty of an offense and shall be subject to a fine of not more than \$300 and/or 60 days in jail.

(B) In addition to any penalty specified in this Section 7601 or otherwise provided in the provisions of this Chapter, the Court may order restitution, rehabilitation, issue restraining orders, and impose other penalties and remedies authorized under Section 1.11 of the Criminal Code of the Nation that do not conflict with the relevant provisions of this Chapter.

(C) A criminal prosecution conducted pursuant to this Chapter shall not preclude a civil action based upon the same conduct, including but not limited to an action for removal and exclusion.

(D) A person who is not subject to the criminal jurisdiction of the Nation and who violates any provision of this Chapter is subject to a civil fine not to exceed \$10,000 per offense, restitution, temporary or permanent restraining orders or injunctions, and such additional remedies and orders as the Court deems just, provided that any civil sanction shall not preclude a separate action for removal and exclusion in accordance with the laws of the Nation. Nothing in this Chapter shall be construed as precluding the imposition of civil sanctions on any person who is not subject to the Nation's criminal jurisdiction.

#### **Section 7602 Dog Owner Liability.**

Injury to any person or animal, or damage to any property by a dog shall be the responsibility of the dog owner or person responsible for the dog when such injury or damage was inflicted regardless of whether the dog had a prior propensity to inflict such injury or damage.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Enacting Tohono O'odham Code Title 17, Chapter 7 - Animal Control)**

**RESOLUTION NO. 07-025**

1 **WHEREAS, the Legislative Council is vested with the power “to enact criminal and civil laws**  
2 **governing the conduct of any person within the Tohono O’odham Nation” and to**  
3 **provide laws “to promote, protect and provide for public health, peace, morals,**  
4 **education and general welfare of the Tohono O’odham Nation and its members”**  
5 **(Constitution of the Tohono O’odham Nation, Article VI, Section 1(c)(6) and 1(c)(2)); and**

6 **WHEREAS, while the Nation has existing laws governing the conduct of members and non-**  
7 **members, these laws do not adequately address animal control issues; and**

8 **WHEREAS, in response to concerns over animal control, in part, raised by incidents in which**  
9 **Nation’s members have been maimed or killed by animals at large, the Domestic**  
10 **Affairs Committee drafted Tohono O’odham Code Title 17, Chapter 7 - Animal Control;**  
11 **and**

12 **WHEREAS, the Domestic Affairs Committee subsequently met with the Natural Resources**  
13 **Department staff and amended the draft law in accordance with the**  
14 **recommendations of the director and veterinarian’s technician; and**

15 **WHEREAS, the draft law was also distributed to the Tohono O’odham Police Department, Office**  
16 **of the Attorney General, Prosecutor’s Office, Advocate Program, Judicial Court for**  
17 **review and comment; and**

18 **WHEREAS, on July 19, 2006, Title 17, Chapter 7 - Animal Control was provided to all Districts for**  
19 **a 30-day public comment period; and**

20 **WHEREAS, the Domestic Affairs Committee reviewed the comments received and incorporated**  
21 **suggestions into the revised draft Title 17, Chapter 7 - Animal Control, which is**  
22 **incorporated by this reference and has been provided to the Legislative Council for**  
23 **review; and**

24 **WHEREAS, if enacted, this law would create a legal framework for**

- 25 • **entering animal control services agreements;**
- 26 • **limiting the areas where animals may be at large;**
- 27 • **requiring identification tags;**
- 28 • **limiting the use of tie-outs;**
- 29 • **addressing vaccinations, diseased animals, and quarantines;**

- 1 • dead animal disposal;
- 2 • control of vicious and destructive animals and owner liability;
- 3 • handling biting animals and animals harassing livestock;
- 4 • addressing prohibited breeds; and
- 5 • exercising jurisdiction over non-members and non-Indians for conduct in
- 6 violation of the Nation's laws; and

7 WHEREAS, if enacted, Title 17, Chapter 7 - Animal Control will improve the health, safety, and  
8 welfare of the Nation's members.

9 NOW, THEREFORE, BE IT RESOLVED that the Legislative Council hereby adopts and enacts  
10 Tohono O'odham Code Title 17, Chapter 7 - Animal Control.

11 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09<sup>TH</sup> Day  
12 of JANUARY, 2007 at a meeting at which a quorum was present with a vote of 2,247.7 FOR; -0-  
13 AGAINST; 193.1 NOT VOTING; and [-0-] ABSENT, pursuant to the powers vested in the Council by  
14 Article VI, Section 1(c)(1), 1(c)(2), and 1(c)(6) of the Constitution of the Tohono O'Odham Nation,  
15 adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy  
16 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act  
17 of June 18, 1934 (48 Stat. 984).

18  
19 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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22 \_\_\_\_\_  
23 Verlon M. Jose, Legislative Chairman

24  
25 18 day of January, 2007

26  
27 ATTEST:

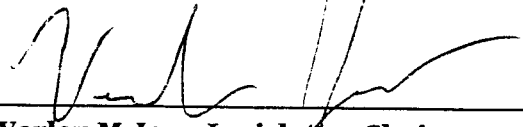
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31 Lucille Lopez, Acting Legislative Secretary

32  
33 19 day of January, 2007.

34  
35 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono  
36 O'Odham Nation on the 18 day of January, 2007 at 4:46 o'clock,  
37 P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
38 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours  
39 of submittal.  
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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

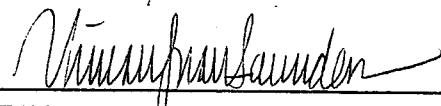
  
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**Verlon M. Jose, Legislative Chairman**

**APPROVED**

on the 21 day of January, 2007

**DISAPPROVED**

at 1:30 o'clock, P.M.

  
\_\_\_\_\_  
**VIVIAN JUAN-SAUNDERS, CHAIRWOMAN**  
**TOHONO O'ODHAM NATION**

**Returned to the Legislative Secretary on the 22 day of**

January, 2007, at 9:37 o'clock, A.M.

  
\_\_\_\_\_  
**Lucille Lopez, Acting Legislative Secretary**