

ORDINANCE XX-16

ORDINANCE OF THE PASCUA YAQUI TRIBE REPEALING TITLE 8, PART VI, CHAPTER 6-1, ANIMAL CONTROL (8 PYTC Chapter 6-1) AND ADDING A NEW ANIMAL CONTROL CODE IN ITS PLACE.

Be it enacted by the Tribal Council of the Pascua Yaqui Tribe, this Ordinance, which hereby repeals existing Title 8, Part VI, Chapter 6-1 of the Pascua Yaqui Tribal Code (PYTC) and adds new Title 8, Part VI, Chapter 6-1, which reads as follows:

“Section 10 Animal Control (8 PYTC § 6-1-10)

(A) Scope:

This chapter shall apply to all matters involving control of animals on lands within the jurisdiction of the Pascua Yaqui Tribe.

(B) Animal Control Officer:

The position of Animal Control Officer is hereby established. The Animal Control Officer shall be an employee of the Tribe, and shall enforce the provisions of this chapter under the supervision of the Chief of Police.

(C) Directive:

By August 1, 2002 the Chief of Police shall present to the Tribal Council a written plan for the establishment of a permanent Tribal Pound facility. The plan shall include: a feasibility study addressing the start-up costs, operating costs, equipment, logistics, location, public safety and health issues, and potential liabilities of an on-Reservation Tribal Pound. The Chief of Police shall develop the Plan in consultation with the Directors of the Procurement Department and the Health Department. Such facility shall be operated by the Tribe, and located within the bounds of the Reservation, and shall be the primary impoundment and housing facility for impounded animals.

(D) Enforcement:

- (1) The Animal Control Officer shall enforce the provisions of this chapter and any other regulations pertaining thereto, and shall be empowered to issue summons, citations, and complaints relating to this chapter.
- (2) Any Tribal Officer of the Peace may enforce the provisions of this chapter.

Section 20 Definitions (8 PYTC § 6-1-20)

- (A) “Abandon” means to willfully cause or allow an animal to remain at large with no intent to reclaim or provide necessary food, water, shelter, or medical care.
- (B) “Animal” means any fowl, reptile, amphibian or mammal, except for human beings.
- (C) “Animal Control Center” means any establishment for the confinement, maintenance, safekeeping and control of dogs and other animals that become the custody of the Animal Control Officer in the performance of his official duties.
- (D) “Animal Control Officer” means the enforcement officer employed by the Law Enforcement Services Department who is empowered by and is responsible for enforcing this chapter.
- (E) “At large” means being neither confined by an enclosure nor restrained by a leash while off of owners property.
- (F) “Animal Breeder” means any owner, who provides the means for, or assists, the procreation of animals for commercial or other pecuniary gain.
- (G) “Bite” means any penetration of the skin by the teeth of any animal.
- (H) “Collar” means a band, harness, or other suitable device worn around the neck of an animal to which a license can be attached.
- (I) “Cruel Mistreatment” means to torture or otherwise inflict unnecessary serious physical injury on an animal or to kill an animal in a manner that causes protracted suffering to the animal.
- (J) “Dangerous Animal” means one which:
 - a. Has been declared to be vicious or destructive pursuant to 8 PYTC § 6-1-70, or dangerous or vicious or destructive or a danger to the safety of any person or other animal; or
 - b. Displays a tendency, disposition or propensity, as determined by established guidelines developed for that purpose, to:

- 1) Injure, bite, attack, chase or charge without provocation, or attempt to injure, bite, attack, chase or charge without provocation a person or domestic animal in a manner that poses a threat to public safety
- c. A dangerous animal does not include an animal used in law enforcement and performing official duties, or animals in the custody of zoos, wild animal parks or animal shelters, or animals under the care of veterinarians.
- (K) “Destructive Animal” means any animal that has exhibited a propensity to destroy, damage or cause damage to the property of a person other than the animal’s owner.
- (L) “Fowl” means a bird of any kind.
- (M) “Impound” means the act of taking or receiving into custody by the Animal Control Officer of any dog or other animal for the purpose of confinement in accordance with the provisions of this chapter.
- (N) “Indian” means an enrolled member of a federally recognized Tribe.
- (O) “Leash” means a line made of rope, or other suitable material not less than one-fourth inch in diameter for the purpose of restraining an animal.
- (P) “Livestock” means cattle, horses, sheep, goats, swine, mules, or burros, not kept as a companion animal.
- (Q) “Owner” means any person owning, keeping, possessing, harboring, maintaining, having custody, or otherwise having control of an animal within the boundaries of the Pascua Yaqui Reservation.
- (R) “Person” means a corporation, company, partnership, firm, association or society, as well as a natural person.
- (S) “Police Dog” means any dog belonging to any law enforcement agency that is an active member of the service dog unit.
- (T) “Provocation” means any behavior toward an animal or its owner, its owner, or other persons or animals which is likely to cause a defensive reaction by the animal.
- (U) “Rabies Quarantine Area” means any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to said area.
- (V) “Stray Animal” means any animal that is not owned or registered to any known person and is running at large.

- (W) “Vaccination” means the administration of vaccines that comply with best practices in the medical community for rabies control.
- (X) “Veterinarian” means, unless otherwise indicated, any veterinarian licensed and under contract with the Tribe.
- (Y) “Vicious Animal” means any animal that has a propensity to bite human beings, except as provided in 8 PYTC § 6-1-70 or any individual animal that, while at large, kills or causes injury to domestic animals, except as provided in Section 8 PYTC § 6-1-70.
- (Z) “Wild Animal” means any animal which is now or historically has been found in the wild, or in the wild state. Wild state means living in its original, natural condition; not domesticated. A wild animal may also be a vicious animal.

Section 30 Registration; Issuance of Dog Tags (8 PYTC § 6-1-30)

(A) Registration Requirement:

Every dog over the age of three (3) months and residing or harbored on lands in the territorial jurisdiction of the Pascua Yaqui Tribe shall comply with all vaccination and registration requirements within thirty (30) days of residing or being harbored within the boundaries of the jurisdiction, at owner’s expense. The vaccination requirements shall be in accordance with the current best practices in the medical community for rabies control. Registration requirements may be met through maintaining current registration with the Pima Animal Care Center.

(B) Registration Information:

The registry of dog ownership shall contain the following information: name of dog, breed (if known), sex, color, and whether the animal is spayed or neutered. The name of the owner, phone number, and location of the residence where the animal resides shall also be included.

(C) Registration Identification:

Upon completion of the registration, a certificate shall be issued to the owner. A metal tag shall also be issued to the owner with a registry number and date of issue imprinted thereon. The valid license tag shall be attached to a collar or harness which shall be worn by the dog at all times.

D) Registration Renewal, Transfer, and Fees:

Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a fee established by the Animal Control Officer. Without the tag, the dog will be considered unregistered. The number of the tag shall also

be recorded in the registry. The period of registration is one year and must be renewed thereafter. The tag is non-transferable. The registration fee shall be set forth in the fee schedule at the end of this chapter.

(E) Proof of Vaccination:

Proof of vaccination is required before a registration certificate can be issued. Proof of vaccination is obtained through any licensed veterinarian, the Animal Control Officer of the Tribe, a governmental animal control agency or the Humane Society. If the dog has been previously registered elsewhere, the appropriate documentation must be provided before the registration can be final.

(F) Penalty:

The owner of any dog who fails to license or permit such dog pursuant to this section is guilty of a civil offense, which is punishable by a fine of not more than five hundred dollars. The owner of any dog who fails to vaccinate such dog pursuant to this section is guilty of a class two misdemeanor, which is punishable by a fine of not more than five hundred dollars, up to four months detention, two years' probation, or any combination thereof. After a second offense under this section, such dog may be impounded.

Section 40 Establishment and Procedures of Tribe's Pound (8 PYTC § 6-1-40)

(A) Establishment of pounds:

The Tribe shall establish a pound for the temporary housing of animals captured at large. The Chairman, or his designee, is authorized to enter into a cooperative agreement with a veterinarian, humane society, or private commercial kennel for its establishment and/or operation. The pound shall be operated in accordance with the provisions of this chapter and such other rules and regulations as the Animal Control Officer shall promulgate. Nothing in this section shall be intended to preclude the Tribe from establishing the pound on Reservation lands.

(B) Impounded Animals:

The Pascua Yaqui Animal Control may apprehend and impound, or cause to be impounded, any dog required to be licensed, which is found without a license tag for the current year. Any impounded animal shall be given proper care and maintenance. The Animal Control Officer shall attempt to ascertain ownership information for the impounded animal, and shall attempt to contact owner in order for the animal to be reclaimed.

(C) Reclaiming impounded animals:

Any impounded licensed animal may be reclaimed by its owner or such owner's agent provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all fees. If the dog or cat is not reclaimed within the first five days of the impoundment period, Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.

(E) Unclaimed or Suffering Animals:

For unclaimed or suffering animals, Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.

Section 50 Responsibilities of Owners and Other Persons (8 PYTC § 6-1-50)

(A) Dogs not permitted at large:

The owner of a dog or canine-wild animal hybrid that is found at large upon the streets, sidewalks, alleys, or public property is guilty of a class three misdemeanor.

(B) Dogs or canine-wild animal hybrids may be at large as follows:

- (1) The dog or canine-wild animal is on the private premises of the owner; or
- (2) While assisting a peace officer engaged in official law enforcement duties; or
- (3) Guide dogs while assisting blind, deaf or physically handicapped persons, so long as such dogs are under direct and effective voice control by such individuals as to assure that they do not violate any other provision of law.

(C) Restraint required in public place. Any dog in a public place shall be restrained on a leash not longer than six feet.

(D) Penalty. A violation of any provision of this section is punishable by a fine of not more than five hundred dollars, thirty days detention, 1 year probation, or any combination thereof.

(E) It shall be unlawful for the owner or person having custody of any dog or canine-wild animal hybrid to fail to immediately remove and dispose of in a sanitary manner any solid waste deposited by such dog or canine-wild animal hybrid on public property or on private property without the consent of the person in control of the property. This provision does not give the owner of the dog or canine-wild animal hybrid permission to enter private property without the consent of the person in control of the property.

- (F) Penalties. A person convicted of the offense prohibited by subsection (E) is guilty of a civil offense, punishable by a fine of not more than one hundred dollars. The fine may be suspended if the person participates in not less than five hours of community litter removal.
- (G) Exceptions. Subsection (E) shall not apply to blind persons or persons with mobility disabilities.

Section 60 Cruelty and Neglect of Animals; Breeding Regulation (8 PYTC § 6-1-60)

- (A) Cruelty. A person shall be guilty of a criminal offense who:
 - (1) Overdrives, overloads, overworks, tortures, torments, cruelly beats, mutilates or unlawfully kills an animal; or
 - (2) Causes or procures an animal to be so overdriven, overloaded, overworked, tortured, tormented, cruelly beaten, mutilated or killed;
 - (3) Intentionally, knowingly or recklessly kills any animal under the custody or control of another person without either legal privilege or consent of the owner; or
 - (4) Intentionally or knowingly subjects any animal to cruel mistreatment
 - (5) Whoever, having charge or custody of an animal, either as owner or otherwise:
 - a. Inflicts unnecessary cruelty upon it, cruelly drives or works it when unfit for labor, or cruelly abandons it; or
 - b. Carries it or causes it to be carried in or upon a vehicle or otherwise, in an unnecessarily cruel or inhumane manner; or
 - c. Knowingly and willfully authorizes or permits it to be subjected to unreasonable or unnecessary torture, suffering or cruelty of any kind
- (B) Neglect. The purpose of this subsection is to guarantee that animals under human custody or control are housed in healthy environments and are provided with proper food, water, shelter, medical care, exercise space and ventilation. Any person owning or having care, control or custody of any animal shall provide:
 - 1. That the animal receives daily, food that is free from contamination and is of sufficient quantity and nutritive value to maintain the animal in good health;
 - 2. That potable water is accessible to the animal at all times, either free-flowing or in a clean receptacle;

3. That all animals have convenient access to natural or artificial shelter throughout the year. Any such artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements, and of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, shall not comply with this section. Any shelter, all bedding and any spaces accessible to the animal shall be maintained in a manner which minimizes the risk of the animal contracting disease, being injured, or becoming infested with parasites.;
 4. That the animal receives care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering. All medical care and treatment are to be at the owners' expense.
 5. That the animal is given adequate exercise space within an enclosure that shall be constructed of material and in a manner, to minimize the risk of injury to the animal, and shall encompass sufficient usable space to keep the animal in good condition. With the exception of temporary tethering of horses, the use of tie-outs such as chains, leashes, wires, cables, ropes, or similar restraining devices for the purpose of animal confinement is prohibited.
 6. That the animal has access to adequate ventilation and is protected from temperature extremes at all times. It is unlawful for any person to keep an animal in a vehicle or other enclosed space in which the temperature is either so high or so low, or the ventilation is so inadequate, as to endanger the animal's life or health. Any peace officer or animal control officer is authorized to use whatever force is reasonable and necessary to remove any animal from a vehicle or other enclosed space whenever it appears that the animal's life or health is endangered by extreme temperatures or lack of ventilation within the vehicle or other enclosed space.
- (C) No peace officer or animal control officer shall be civilly or criminally liable for damages to property caused by the use of reasonable force to remove an animal from such a vehicle or other enclosed space under such circumstances.
- (D) Subsection B, paragraphs 1 and 2 of this section may be waived by any peace officer or animal control officer if dictated by current treatment under the direction of a licensed veterinarian.
- (E) Any person violating the provisions of this section shall be guilty of a criminal offense.
- (F) Penalties.

A violation of subsection A (1), (2), (3), or (5) or Subsection A(2)(a), (b) or (c) and Subsection B(1), (2), (3), (4), (5), or (6) is a class one misdemeanor, punishable by a fine of not more than five hundred dollars, up to six months detention, up to three years' probation, or any combination thereof. A violation of subsection A (4) is a class three felony, punishable by up to one year imprisonment and 2 years probation. For first time offenses, if the sentencing judge finds that a felony conviction would not serve the interests of justice, the sentencing judge may commute the sentence to a class one misdemeanor, punishable by up to two years of probation or six months imprisonment. For offenses that rise to level of a felony, a Tribal Court Judge may order that the owner shall not be permitted to own or control any animal for a period of up to three years, and the Tribal Court shall order that the animal(s) which are the subject of this action be forfeited to animal control. Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.

(E) Breeding Prohibited Without Permit:

Owners acting as Animal Breeders must purchase a permit, from the Animal Control Officer. Permits are valid for one year and must be renewed pending an inspection of the premises and of the animals subject to the permit. Such permits are held subject to inspections of the premises for health and safety purposes by the Animal Control Officer, and such other rules and regulations as the Animal Control Officer may promulgate under this chapter. All animals subject to the permit must be in maintained in compliance with all other sections of the animal code. Permit may be purchased for one hundred dollars. Failure to obtain a permit is a civil offense, punishable by a fine of not more than five hundred dollars.

(F) Breeding of Dogs for Fighting Purposes:

Any owner who breeds, harbors, owns, or controls animals for the primary purpose of using such animals for fighting other animals or attacking humans shall be guilty of a criminal offense.

(G) Responsibility to Prevent Public Nuisance: Anyone who harbors, owns, or controls an animal that:

(1) molests passerby or passing vehicles;

(2) attacks other animals;

(3) unreasonably barks, howls, crows, or creates other animal noises so as to disturb the peace and quiet of people;

(4) is repeatedly at large, especially on school grounds;

(5) overturns or spreads garbage about on property other than that of the registered owner; or

(6) Disturbs or destroys gardens, landscaping or lawns is considered to be maintaining a public nuisance and is guilty of the offense of “Maintaining a Public Nuisance” as set forth in 4 PYTC § 1-650.

(H) Unlawful interference with Animal Control Officer:

It is unlawful for any person to interfere, threaten or harass the Animal Control Officer in the performance of his duties. Anyone found guilty of unlawful interference with the Animal Control Officer shall be punished as prescribed in 4 PYTC § 1-710.

(I) Removing impounded animals:

No person may remove or attempt to remove an animal which has been impounded or which is in the possession of the Animal Control Officer except according to this chapter. Such removal or attempt shall constitute a civil offense.

(J) Bestiality

(1) A person commits bestiality by knowingly doing either of the following:

(a) Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal, dead or alive, or

(b) Causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal, dead or alive.

(2) In addition to any other penalty imposed for a violation of this subsection, the court may order that the convicted person to do any of the following:

(a) undergo a psychological assessment and participate in appropriate counseling at the person’s own expense

(b) register as a sex offender, as included in the Pascua Yaqui Code

(3) This section shall not apply to accepted veterinary practices performed by a veterinarian or veterinary technician.

(4) Bestiality is a class three felony, punishable by up to one year imprisonment, and 2 years probation, For first time offenses, if the sentencing judge finds that a felony conviction would not serve the interests of justice, the sentencing judge may commute the sentence to a class one misdemeanor, punishable by up to two years of probation or six months imprisonment, except that bestiality under

section (1)(b) of this subsection is a class two felony, punishable as a dangerous crime against children and up to one year imprisonment or three years probation if the other person is a minor under 15 years of age.

Section 70 Vicious or Destructive Animals (8 PYTC § 6-1-70)

(A) Prohibited Activity.

- (1) It is unlawful for any person to keep, control, harbor or otherwise have under control any animal which is vicious or destructive. This section shall not apply to zoos, wild animal parks or animal shelters, or to persons who are in compliance with an order of a Tribal Court Judge issue pursuant this section.
- (2) The owner of any vicious animal that bites, attempts to bite, endangers or otherwise injures or causes injury to human beings or other animals is guilty of a class one misdemeanor, except as provided under defenses in Section D.
- (3) The owner of any vicious animal that recklessly allows the animal to destroy, damage or cause damage to the property of another person is guilty of a class one misdemeanor, except as provided under defenses in Section D.
- (4) It is unlawful for any person to fail to comply with an order of a Tribal Court Judge regarding a vicious or destructive animal. It is a separate criminal offense for failing to comply with such an order.

(B) Penalty. A violation of any provision of this section is punishable by a fine of not more than five hundred dollars, up to six months detention, up to two years' probation, or any combination thereof. In addition, unless the animal has been previously forfeited or destroyed, upon declaration of an animal as vicious or destructive, a Tribal Court Judge shall order the owner to do one or more of the following:

- (1) Comply with the provisions of subsection 80 (D) and be subject to subsections (E) and (F) and reimburse Pascua Yaqui Animal Control for the costs of impoundment of the animal; or
- (2) That the animal be banished from within the boundaries of the Pascua Yaqui Reservation after first being spayed or neutered, microchipped, and tattooed by a licensed veterinarian at the owner's expense. The owner shall provide proof of compliance with altering, microchipping and tattooing, within the timeframe set by Tribal Court, and prior to banishment; or

- (3) That the animal be forfeited to Pascua Yaqui Animal Control. Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.
- (C) Defenses. It shall be an affirmative defense to the provisions of this section if the animal is:
- (1) Not at large and there is provocation; or
 - (2) A police dog under the command of its trainer while performing police duties.

Section 80 Dangerous Animals (8 PYTC § 6-1-80)

- (A) “Dangerous animal” means one which:
- (1) Has been declared to be vicious or destructive pursuant to Section 70, or dangerous or vicious or destructive or a danger to the safety of any person or other animal; or
 - (2) Displays a tendency, disposition or propensity, as determined by animal control, pursuant to guidelines developed for that purpose to: Injure, bite, attack, chase or charge without provocation, or attempt to injure, bite, attack, chase or charge without provocation a person or domestic animal in a manner which poses a threat to public safety; or
 - (3) A dangerous animal does not include an animal used in law enforcement in the course of official business, or animals in the custody of zoos, wild animal parks or animal shelters, or animals under the care of veterinarians.
- (B) Declaring an animal dangerous.
- (1) Whenever Pascua Yaqui Animal Control has sufficient reason to evaluate a dog for possible dangerousness, an evaluation of the animal shall be conducted pursuant to guidelines developed by animal control for that purpose and in accordance with current national standards. These guidelines will provide for an evaluation of the animal’s behavior both on and off of the premises of the owner, its behavior in and out of the owner’s presence and its interactions with other persons and domestic animals. By conducting such an evaluation, the Tribe and Animal Control shall not be subject to criminal or civil liability for any injuries or property damage caused by any animal subject to this section.
 - (2) If Pascua Yaqui Animal Control declares that an animal is dangerous, the owner shall be notified and issued an order of compliance. Once an animal is declared dangerous, the animal is dangerous until a hearing officer or

judge determines otherwise. If the owner is known, he shall be provided with a written notice of his right to file, within ten days of receipt of the notice, a written request with Pascua Yaqui Animal Control for a hearing to determine if the animal is dangerous. If the owner is unknown or the owner's whereabouts cannot be determined or the animal poses a threat to public safety or domestic animals, the animal shall be impounded and notice shall be posted at the Pascua Yaqui Administration Building or mailed to owner at his last known address by registered or certified mail, return receipt requested. The owner is responsible for payment of any and all impound costs and fees.

(C) Hearing – Burden of Proof.

- (1) The owner of the animal may request a hearing to contest the declaration of dangerousness under subsection B or contest the confinement conditions ordered by Pascua Yaqui Animal Control. Findings made at this hearing are not binding for purposes of prosecution under Section 70.
- (2) If the owner of an impounded animal fails to contact Pascua Yaqui Animal Control five working days of receipt of notice of impoundment in order to arrange for an evaluation of the animal, the animal shall be forfeited to Pascua Yaqui Animal Control. Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.
- (3) If the owner of an impounded animal fails to appear at a hearing, the animal shall be forfeited to the Pascua Yaqui Animal Control upon expiration of the time provided by the order of compliance, if the owner does not demonstrate obedience with the order of compliance.
- (4) An impounded animal, subject to this section, shall not, under any circumstances, be returned to its owner until any order of compliance has been obeyed.
- (5) If the owner of a nonimpounded animal fails to appear at a hearing or fails to request a hearing, the animal is declared to be dangerous and the order of compliance shall remain in effect. The animal may also be subject to forfeiture to Animal Control. If an animal is forfeited, Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.
- (6) After a request for a hearing, Pascua Yaqui Animal Control shall set a hearing date within ten working days, excluding Tribal holidays at a time and place designated by Pascua Yaqui Animal Control. The hearing shall be conducted by the next available Tribal Court Judge, or a hearing officer selected by Pascua Yaqui Animal Control.

- (a) The hearing shall be conducted in an informal manner without adherence to the rules of evidence required in judicial proceedings. Any evidence offered may be admitted subject to a determination by the hearing officer that the evidence offered is relevant and material and has some probative value to the facts at issue. A record thereof shall be made.
 - (b) It is the burden of Pascua Yaqui Animal Control to establish by a preponderance of the evidence that the animal is dangerous. All parties may be represented by counsel and present witnesses at their own expense. Filing, service costs and subpoenas shall be at the requestor's expense.
 - (c) The hearing officer shall make a written decision within ten working days of the hearing and notify the owner of the animal of the decision.
 - (i) If the declaration of dangerousness is sustained by hearing officer, the owner of the animal shall obey the order of compliance issued by Pascua Yaqui Animal Control and reimburse Pascua Yaqui Animal Control for the costs of impoundment within twenty days.
 - (ii) If the animal is found not to be dangerous, the order of compliance is null and void. The finding that an animal is not dangerous does not prevent Pascua Yaqui Animal Control from declaring an animal dangerous again, if Pascua Yaqui Animal Control has additional reasons which arise after the hearing and based on subsequent conduct, and after a new evaluation of the animal is conducted. This finding shall not subject the Tribe to criminal or civil liability for any subsequent injuries or property damage caused by any animal subject to this Section.
 - (d) Upon a finding of dangerousness, Pascua Yaqui Animal Control shall notify Pima Animal Care Center of the finding within thirty days.
- (D) Order of Compliance – Provisions. When an animal is declared dangerous, Pascua Yaqui Animal Control shall issue an order of compliance requiring the owner within thirty days to:
- (1) Confine the animal sufficiently at the owner's expense to prevent the animal's escape as follows:

- (a) Pascua Yaqui Animal Control shall determine the appropriate fencing requirements for the size and nature of the animal, which may require: a fence including gates to be up to six feet in height; the fence from five feet to six feet in height to incline to the inside of the confinement area at a forty-five degree angle from the vertical; or that the confinement area be wholly covered by a material strong enough to keep the animal from escaping.
 - (b) Pascua Yaqui Animal Control may require the bottom of the confinement area to be of concrete, cement or asphalt, or of bricks set in concrete or cement or if such bottom is not provided, then a footing of such material shall be placed along the whole of the perimeter of the confinement area to a depth of one foot below the ground or deeper.
 - (c) The gates to the confinement area shall be locked at all times with a padlock except when either entering or exiting.
 - (d) Pascua Yaqui Animal Control may require temporary confinement measures until the order of compliance has been obeyed or the hearing officer determines that the animal is not dangerous. If the owner does not immediately comply with the temporary confinement requirements, the animal shall be impounded.
- (2) Restrain the animal outside of the confinement area at the owner's expense with a leash, rope or similar device not more than six feet in length sufficient to restrain the animal. When outside the confinement area, the animal must be under the control of a person capable of preventing the animal from engaging in any prohibited activity. Pascua Yaqui Animal Control may require that the dog be muzzled at the owner's expense when outside of the confinement area.
- (3) Post a sign at the owner's expense on every gate or entry way to the confinement area stating: "Beware of dangerous animal."
- (4) Obtain and maintain liability insurance at the owner's expense in a single incident amount of fifteen thousand dollars, unless the animal has been declared to be vicious or destructive pursuant to Section 70 of this Chapter, in which case the amount of insurance or bond shall be no less than thirty thousand dollars, to cover any damage or injury that may be caused by the dangerous animal. Pascua Yaqui Animal Control shall maintain a registry of dangerous animals, owners and the insurance carrier or bonding agent for each dangerous animal. This section shall not be construed to limit civil liability of the animal's owner.

- (5) Owner must license the animal, have the animal spayed or neutered, microchipped and tattooed with an identification number, by the Pascua Yaqui Animal Control, Pima Animal Control, or a licensed veterinarian, at their own expense. Pascua Yaqui Animal Control shall maintain a registry of tattoo and microchip numbers and the owners of the animals. If the required procedures are performed by an entity other than Pascua Yaqui Animal Control, a written certification of completion must be obtained.
 - (6) Pascua Yaqui Animal Control shall not be criminally or civilly liable for any injuries or destruction of property caused by any animal subject to this section.
- (E) Owner's consent to inspection; failure to obey order of compliance – Penalties
- (1) By continuing to own an animal declared dangerous, an owner gives consent to Pascua Yaqui Animal Control or any law enforcement officer, after providing twenty four hour notice of intent to owner, to inspect the animal declared dangerous, the premises where the animal is kept and the liability insurance required for the animal(s), and the certification of completion of spaying/neutering, microchipping, and tattooing the animal(s).
 - (2) Pascua Yaqui Animal Control may seize and impound the dangerous animal if the owner fails to obey the order of compliance. Pascua Yaqui Animal Control shall determine the most humane disposition of the animal, unless the owner demonstrates obedience to the order of compliance or judicial proceedings are pending. The owner of the animal is responsible for any impound costs or fees. If the owner of the animal demonstrates proof that the order of compliance has been obeyed then the animals will be returned to the owner after a payment of impound costs and fees. Any action taken under the section shall be in addition to any criminal penalties set out in subsection (G) of this section.
- (F) Required Acts – Prohibited Criminal Conduct.
- (1) An owner of an animal declared dangerous shall obey the order of compliance within the given thirty days.
 - (2) An owner of an animal declared dangerous shall not sell, give away, abandon or otherwise dispose of the animal without notifying Pascua Yaqui Animal Control in writing in advance.
 - (3) An owner of an animal declared dangerous shall provide proof of licensure and applicable liability insurance to the Pascua Yaqui Animal Control Officer upon demand.

- (4) An owner of an animal declared dangerous shall not prevent or try to prevent inspection of the animal or the premises where the animal is kept, after the owner has been provided with twenty-four hour notice of the intent to inspect.
 - (5) When the owner of an animal is notified that Pascua Yaqui Animal Control is evaluating an animal or wishes to evaluate an animal to determine if the animal is dangerous, the owner of the animal shall make the animal available for evaluation at its usual place of abode within twenty-four hours of a request by Pascua Yaqui Animal Control. The owner shall not sell, give away, hide or otherwise prevent Pascua Yaqui Animal Control from making an evaluation.
 - (6) The owner of an animal declared dangerous shall prevent the animal from running at large as defined in this chapter.
 - (7) The owner of an animal declared dangerous shall prevent the animal from biting, injuring or attacking any person or domestic animal outside of the confinement area.
- (G) Penalties after Declaration and Failure to Comply
- (1) A person convicted for the first time of any offense prohibited by subsections (F)(1) of this section is guilty of a class two misdemeanor and, in addition may be punished by detention of not more than four months and may pay a fine of not more than five hundred dollars or any combination thereof. A person convicted of a second or subsequent offense prohibited by subsections (F)(1) of this section shall be punished by detention for not less than ten days nor more than four months and a fine of not more than five hundred dollars or any combination thereof. No Judge may grant probation in lieu of, or otherwise suspend, the imposition of a minimum detention sentence. In addition, a person convicted of any offense prohibited in subsections (F)(1) may be placed on probation for not more than two years and the dangerous animal may be ordered humanely destroyed or banished from the reservation after first ensuring the animal has been microchipped, tattooed, spayed or neutered at the owner's expense. If the animal is not microchipped, tattooed, spayed or neutered within the time given by the court, the animal shall be forfeited to Pascua Yaqui Animal Control. Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community. This shall not be construed to affect, in any way, the imposition of any mandatory minimum penalties provided in this section.
 - (2) A person convicted of violating subsection (F)(7) of this section is guilty of a class two misdemeanor may be punished by detention for not less

than ten days nor more than four months and shall pay a fine of not more than five hundred dollars or any combination thereof. No judge may grant probation in lieu of, or otherwise suspend, the imposition of the minimum detention upon a person convicted of violating subsection (F) (7) of this section. In addition, a person convicted of violating subsection (F)(7) may be placed on probation for not more than two years and the dangerous animal shall be forfeited to Pascua Yaqui Animal Control. Animal Control will determine the most humane disposition of the animal which will best preserve and protect the safety of the community.

- (3) Wherever in this section any act is prohibited or declared to be unlawful, the violation of such provision of this section is a class three misdemeanor punishable (except for the penalties already set forth in subsection (F) of this section) by a fine of not more than two hundred fifty dollars and/or by detention of not more than thirty days. In addition, a person may be placed on probation for not more than two years.

Section 90 Wild Animals; Responsibility for Reporting Animal Bites (8 PYTC § 6-1-90)

(A) Wild Animals:

- (1) Pascua Yaqui Animal Control has discretion to take appropriate action with regards to wild animals on the reservation, in order to preserve public safety.
- (2) Pascua Yaqui Animal Control shall comply with all applicable Federal laws as applied to wild animals.

(B) Reporting of animal bites:

Whenever an animal bites any person, the incident shall be reported to the Animal Control Officer immediately by any person having direct knowledge. Failure to report the incident shall constitute a civil offense and punishable by no more than one hundred dollars.

Section 100 Diseased Animals (8 PYTC § 6-1-100)

(A) Contagious or infectious diseases:

Any animal afflicted with a contagious or infectious disease shall, at all times, be confined by a fence or pen and shall not be removed from such enclosure, even when held by a leash, except for the purpose of being transported to a licensed veterinarian.

(B) Rabid animals:

If any owner, Animal Control Officer, or other person knows, or has reason to believe, that an animal has rabies, or has been exposed to rabies, they shall report this to the Animal Control Officer or Tribal Police for appropriate action under this chapter.

(C) Removal of rabid animals:

It shall be unlawful for any animal owner, or other person, knowing that an animal has rabies, or has been exposed to rabies, to remove the animal from the owner's residence in the territorial jurisdiction of the Tribe, except under the order of the Animal Control Officer. 4 PYTC § 1-710.

(D) Penalties:

Any person who knowingly owns a rabid animal and fails to report this to Animal Control or Tribal Police within 24 hours shall be guilty of a class three misdemeanor punishable by a fine of not more than five hundred dollars, up to thirty days detention and one year probation, or any combination thereof.

Section 110 Miscellaneous (8 PYTC § 6-1-110)

(A) Rabies, quarantine areas:

The Tribal Chairman may declare rabies quarantine areas on lands in the territorial jurisdiction of the Tribe.

- (1) When a rabies quarantine area has been declared, the Chairman of the Pascua Yaqui Tribe shall institute an emergency program for the control of rabies within the area.
- (2) In a rabies quarantine area, no dog shall be permitted at large. Each dog shall be confined within an enclosure on his owner's property, or securely tied so that the dog is confined entirely 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 16 years when not on the owner's property.

(B) Dead Animals:

Owners of dead animals shall dispose of the carcasses by burial, or by arranging with the Animal Control Office for removal of the carcass, within 24 hours of the death of the animal.

(C) Refusal to dispose of dead animals:

When the owner refuses to comply with this section, such disposal shall be made by the Animal Control Officer or Police or an appropriate health officer and the cost of such disposal shall be assessed to the owner of the carcass.

(D) Civil Liability:

- (1) Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted.
- (2) It shall be an affirmative defense to civil liability if the animal is:
 - (a) Not at large and there is provocation; or
 - (b) A police dog under the command of its trainer while actively performing police duties. ”

Section 2.

Code Reviser Discretion.

The Code Reviser of the Pascua Yaqui Tribe is hereby authorized to insert this Ordinance to the Pascua Yaqui Code, to include a section on legislative history, and to renumber the sections hereof in accordance with Title 1 Chapter 1 of the Pascua Yaqui Code, the Codification Ordinance, without further action or approval.

Section 3.

This Ordinance shall go into effect 90 days from the passage of Resolution Number C02-29-16.

CHAIRMAN OF THE PASCUA YAQUI TRIBE **Date**

SECRETARY OF THE PASCUA YAQUI TRIBE **Date**