

LUNA COUNTY

AMENDMENT NO. 2 ORDINANCE NO. 1

AN ORDINANCE TO REGULATE, RESTRAIN, CONTROL AND REQUIRE VACCINATION OF DOGS WITHIN THE COUNTY OF LUNA, EXCEPT FOR INCORPORATED MUNICIPALITIES WITHIN THE BOUNDARIES OF SAID COUNTY, AMENDING SECTION 5. IMPOUNDING OF DOGS WITH REGARD TO PENALTIES AND FEES.

SECTION 1. DEFINITIONS:

- (a) Owner: The word "owner" shall mean any person or group of persons keeping or harboring any dog or dogs.
- (b) Vaccination: The word "vaccination" shall mean any injection of vaccine approved by the State Veterinarian, and administered by a licensed veterinarian for the purpose of immunizing a dog against rabies.

SECTION 2. ENFORCEMENT:

The provisions of this ordinance shall be enforced by all peace officers with jurisdiction in Luna County, New Mexico.

SECTION 3. VACCINATION AND TAG:

- (a) No person shall own, keep, harbor, or permit any dog to be present within Luna County unless such dog is vaccinated in accordance with the Laws of New Mexico and wears a tag proving such vaccination.
- (b) The owner shall see that the dog wears at all times a collar or harness to which tag shall be attached.

SECTION 4. TRESPASSING DOGS:

- (a) When any person who owns or leases property has suffered damage to his person or livestock and finds any dog on his property under circumstances leading a reasonable man to believe that such dog has caused or contributed to damage to person or livestock on said property it shall be the right of the owner or lessee of said property to kill such dog while such dog is on the property owned or leased by him.
- (b) Prohibited methods of killing: Poisoning unlawful.
 - (1) It shall be unlawful for any person to dispense, set out, administer or otherwise poison any dog within the boundaries of Luna County, New Mexico. Whoever violates this section shall pay a fine of not less than One Hundred Dollars (\$100.00) and be imprisoned in the Luna County Jail for not less than Thirty (30) days nor more than Ninety (90) days.
 - (2) It shall be unlawful to set traps other than non-injurious cage-type enclosures.

SECTION 5. IMPOUNDING OF DOGS:

- (a) Any peace officer with jurisdiction in Luna County,

except for incorporated municipalities within Luna County, New Mexico, shall impound any unvaccinated dog he may observe or any trespassing dog not killed pursuant to Section 4 above.

- (b) Any dog impounded may be released to the owner upon vaccination of the dog and a payment of \$7.50 fine/pickup fee plus \$5.00 per day boarding fee for the first offense, and \$15.00 fine/pickup fee plus \$5.00 per day boarding fee for the second offense.
- (c) The County shall hold any dog seized for a period of seventy-five (72) hours for the purpose of allowing the owner to redeem such dog before the County disposes of such dog.
- (d) Any dog not reclaimed by the owner in accordance with Section 5 (b) shall be humanely destroyed or placed in the custody of a suitable person who complies with the provisions this ordinance.

SECTION 6. PENALTIES:

Any action in this ordinance which is declared to be unlawful but for the violation of which no penalty is provided shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

SECTION 7. SEVERABILITY:

If any part or application of the Dog Ordinance is held invalid the remainder or its application to other situations or person shall not be affected. This Ordinance shall become effective Thirty (30). Days after recording in Miscellaneous Papers by the Luna County Clerk.

PASSED, ADOPTED, AND APPROVED this 14th day of December, 1990.

ORDINANCE NO. 52

AN ORDINANCE PROVIDING FOR ANIMAL REGULATION AND CONTROL FOR LUNA COUNTY, NEW MEXICO

Preamble

WHEREAS, Luna County, New Mexico is a rural area with a large population of domestic and other animals, and; WHEREAS, at this time, it is in the best interest of the health, safety and general welfare of the citizens of Luna County, New Mexico to establish certain animal regulation and control provisions;

NOW, THEREFORE, BE IT ORDAINED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS, LUNA COUNTY, NEW MEXICO, AS FOLLOWS:

Section 1:

Section 2:

Section 3:

DECLARATION OF POLICY: It is the sole intent, purpose, and policy of the county to promote the protection of the public health, safety, peace, and general welfare by the regulation of animals as provided in this ordinances. The provisions stated are to be construed liberally, according to the fair import of their terms, in order to effectuate this policy. The provisions of this ordinance and other county ordinances are cumulative law, and this ordinance does not prevent enforcement of any other ordinance that regulates any area covered by this chapter.

ANIMAL CONTROL AND A SHELTER FOR DOMESTIC ANIMALS

Deming-Luna County Humane Society, under an annually negotiated agreement with the City of Deming and Luna County, the shelter for dogs, cats, and potbellied pigs, and shall assist the County in animal control. The County Code Enforcement Department shall be responsible for animal control in the County.

DEFINITIONS: The following terms, words, and phrases as used in this chapter are hereby defined as follows:

Abandonment To leave an animal without food, water or shelter for more than 24 hours on ones premises or to dump or leave off a domestic animal on property other than ones own without permission.

Animal For purposes of this ordinance, animal shall be defined to include dogs, cats, potbellied pigs, fish, reptiles, exotic and endangered species.

Animal Control Officer A person given the responsibility of enforcing the provisions of this chapter in regard to animals in violation of regulations, pick-up of dead animals, calls by owners for pickups, nuisance calls, and 24 hour a day response to emergency calls (seven days a week). May be shelter trained or a certified deputy.

Animal Shelter A facility authorized to house, care for, and dispose of animals. The Deming Luna County Animal Shelter must accept all dogs, cats, and potbelly pigs brought to the shelter. The Shelter Manager and staff maintain records of each animal that enters, issues licenses, collects fines, and performs related functions.

Dangerous Animal Any animal which, when unprovoked, engages in behavior that requires defensive action by a person to prevent bodily injury to a person or other animal when off the property of the owner of the attacking animal; or

Fines and Fees All fines and fees in this ordinance are to be paid at the animal shelter

Guard Dog A dog that is used to protect a private or commercial property.

Humane Euthanasia The only methods of euthanasia used shall be those certified by the Humane Society of the United States as painless, rapid, and minimizing fear and trauma in the animal;

Intact Animal An animal which has not been sterilized.

Keeper Any person who owns, keeps or has control or custody of an animal for more than six (6) days; provided that this term shall not apply to veterinary clinics or professional kennel owners temporarily maintaining on their premises animals owned by others.

Kennel - Residential Premises harboring seven (7) to nine (9) dogs, cats or potbellied pigs, or any combination thereof.

Kennel - Commercial Premises harboring more than nine (9) dogs, cats or potbellied pigs or any combination thereof.

Licenses and Permits Annual county licenses for pets. Intact animal permits. Premises

Inspection for guard dogs and kennels.

Livestock and Others Animals such as horses, sheep, pigs, goats, rabbits, rodents, reptiles and fowl.

Nuisance Includes, but is not limited to, defecation, disturbing the peace by persistently barking, howling or making noise, emitting noxious or offensive odors or endangering area residents, pets or domestic animals.

Owner A person who has title to, possession of, custody or control of an animal. Any adult who causes or permits a minor child in his household to harbor or keep an animal.

Owner Responsibility On owner's premises, animals must be within a penned area, fenced yard, or within a building. All must have access to food, water and shelter. For dogs, tether chains must be tangle proof to allow exercise.

Pet Any animal kept and maintained by a person for non-commercial purposes.

Premises Any place where animals are kept or sheltered.

Rabies Inoculations By law, all animals are required to have annual rabies inoculations and to wear the tags issued.

Quarantine To detain or isolate an animal suspected of being infected with rabies.

Running at Large An animal shall be deemed to be running at large when it is off the premises of the keeper, and not under direct control of a competent person.

Stray Any animal which is not physically restrained or controlled and has no identifiable keeper.

Vaccination A protection against rabies by inoculation with anti-rabies vaccine to provide protection for a minimum of one year.

Veterinarian A doctor of veterinary medicine licensed by the New Mexico Board of Veterinary Medicine.

Vicious Animal Any animal which has bitten, exhibits a tendency to bite, or in any manner attacks, attempts to attack or bite any person except that any animal that exhibits such behavior when provoked by a person trespassing upon its owner's or custodian's premises shall not be deemed a vicious animal. Additionally, any animal which kills or maims any other animal when unprovoked shall also be defined as a vicious animal.

SECTION 4: ENFORCEMENT OF ORDINANCE:

Duly employed animal control officer(s) shall have the

authority to issue citations for violations of this ordinance.

SECTION 5: ANIMAL CONTROL OFFICERS AND DUTIES:

Animal control officer(s) will be available during the hours the shelter is open to the public. In addition, animal control officers will respond at any time, day or night, to emergency calls from the hospital reporting animal bites and from law enforcement officers reporting injured animals, dangerous/vicious animals, and situations needing special services from those trained to care for animals. Calls of a non-emergency nature received outside business hours will be acknowledged during regular business hours.

- A. **Personnel:** Personnel shall be trained as to their responsibilities in animal control and in the use of such equipment as shall be deemed necessary to carry out their duties.
- B. **Safety Precautions:** All persons dealing with animals should have the proper protective gear (heavy gloves, catch loops, etc.) - and be trained in the use of such equipment as shall be deemed necessary to carry out their duties. Protective devices and equipment should be readily available both in the shelter and all vehicles used in animal control.
- C. **Citations:** Animal Control Officers shall be authorized to issue warnings and citations to keepers and other persons in violation of any provision of this Ordinance.
 - (1) Complaints alleging any violation of this ordinance must be filed with the animal control officer or the Shelter by a person who has personal knowledge of such violation and who can identify the keeper of the animal involved or the premises where the animal is located. The complainant may be required to provide his name and address and affirm the complaint.
 - (2) Complaint Follow up. The investigating animal control officer will notify the keeper of the animals that a complaint has been filed. When violations warrant it, a written report with name, address, and details of the offense will be prepared to issue a citation for the offense or to file a complaint through the courts. A copy will be sent to the offender.
 - (3) It shall be unlawful for any person to conceal any animal or otherwise interfere with the animal control officer while carrying out his/her designated duties.
 - (4) Animal control officers must bring animals for impounding to the shelter. Outside shelter office hours, the animals are to be put in the drop pens provided. Dead animals for disposal are to be taken directly to the approved site provided by the city. Officers must submit a report on each animal handled with all information known, (i.e. any tags attached, description of the animal, name of owner if known, location of pickup, etc.)
- D. **Authorized Entry of Premises:**

- (1) For the purpose of discharging their duties imposed by this Ordinance, animal control officers are hereby authorized and directed to enter upon any premises after having received a complaint, for the purpose of inspecting to ascertain if any provisions of this Ordinance or any laws of the State of New Mexico relating to the care, treatment, control and prevention of cruelty to animals are being violated.
- (2) An animal control officer who personally views a "violation" may enter a vehicle or premises without a complaint having been received. A full report will be filed of the circumstances.
- (3) If, however, the owner or occupant of any dwelling objects to inspection, as above stated, a warrant will be obtained from a court of qualified jurisdiction prior to inspection.
- E. **Emergency Measures:** Any animal control officer discovering a violation of this ordinance which endangers an animal is authorized to take emergency measures and/or otherwise remove the animal, at the owner's expense, until the violation is corrected or resolved to prevent further suffering of or cruelty to the animal.
- F. **Dog Bites:** When notified of a biting dog incident, animal control officers shall interview victims and law officer(s) in charge; attempt to identify the owner; and remain at the hospital until the investigation is complete. The animal(s) shall be taken into custody for isolation and quarantine. If taken to the animal shelter a copy of the report should be on file there.
- G. **Emergency Calls:** Emergencies include vicious animals in threatening situations, dog fights in progress, dog bites, animals being actively abused, injured animals whose owner is unknown and when vehicle accidents involve animals that must be taken to the shelter. Calls must include name, address, phone number and location of the emergency and should be made to the City/County 911 center.
- H. **Non-Emergency:** Non-Emergency Calls include animal pickups, strays, nuisance barking, and dead animals that are not obstructing traffic. When two or more reports of the same violation, such as animals in packs, are received, animal control will set up special patrols to remedy the problem. Calls must include name, address, and phone number. Law officers on duty and citizens are asked to move dead animals off roadways. These calls may be made to the shelter, 546-2024 or through central dispatch, 546-0354.
- I. **Destruction:** The animal control officer may authorize or complete the immediate destruction of any threatening animal that can't be caught and/or may be subject to quarantine in the event that it is necessary to protect the life or safety of any person or animal.

SECTION 6: ANIMAL SHELTER:

- A. The facility owned by the City of Deming and used by both the City and County for impounding dogs, cats,

and potbellied pigs shall be open to the general public forty hours per week as posted at the shelter. The shelter shall be open to the public from 9 to 5 except on Tuesday mornings, Saturday afternoons and Sundays. The shelter is required to accept all animals brought to the shelter by individuals or animal control. It shall be the only facility for quarantine in Luna County. The shelter shall:

- (1) be maintained according to standards set by the American Humane Society or cleanliness and safety;
 - (2) provide food, water and care for the animals;
 - (3) make every effort to find the owner of any animal in protection.
- B. Personnel: The shelter shall be adequately staffed and the staff adequately trained.
- C. Agreement: The Deming-Luna County Humane Society, under annually negotiated agreements with the County of Luna and the City of Deming, shall manage the city-county shelter for dogs, cats, and potbellied pigs. The not-for-profit organization shall use the shelter office as their headquarters to dispense educational information on the need for spay/neuter, the proper care needed for animals, etc. In addition, at their expense, the society is allowed:
- (1) to keep adoptable animals longer than mandated minimums;
 - a. Generally: any person who desires to adopt a dog or cat may file an application for pet ownership. Animals will be available as soon as the required confinement period ends. Prospective adopters must have proper facilities to care for the animal.
 - b. The adoption fee will include payment for the anti-rabies vaccine which will be remitted to the veterinarian who redeems the certificate.
 - (2) to require that all animals adopted at the shelter be spayed or neutered.
 - a. The adoption fee includes a deposit toward spay and neuter which will be remitted to the veterinarian who affirms the surgery has been done.
 - b. If verification of the spay/neuter operation has not been received within sixty days (60) the animal may be repossessed by the society.
 - (3) to operate a pet cemetery for public use. The cemetery is platted and records are kept of all lots. Spaces may be purchased in advance of need. Burial plot purchase includes a small name marker.
 - (4) to accept donations of all kinds to offset the expenses above the stipends received for services from the city and county.
- D. Records: Shelter management shall maintain, for a reasonable period of time or as required by statute, a record of all animals impounded. At least the following information shall be included:
- (1) A complete description of the animal;
 - (2) The manner and date of its acquisition;
 - (3) The date, manner, and place of impoundment;
 - (4) The impoundment number;
 - (5) The date and manner of disposition of said animal.
- E. Disposition of Animals: An animal not adopted or reclaimed at the end of the protective custody period may be transferred to another facility able to offer extended care, or humanely euthanized.
- (1) Euthanasia - The only methods of euthanasia shall be those certified by the Humane Society of the United States as painless, rapid, and - to the fullest extent possible minimizing fear and trauma in the animal;
 - (2) Disposal: The City will provide space for all dead animals from the shelter and those brought in by animal control.
- F. Fees, License and Permits: All fees and licenses payments shall be made at the animal shelter.
- G. Fines: Fines assessed will be processed through the Magistrate Court
- H. Daily Handling Fee: The owner of an animal confined at the shelter shall be charged a handling fee as set by the shelter for each day or fraction of a day the animal is confined.
- I. Quarantine Costs: In addition to any penalties imposed by a court for the violation of the city's animal control ordinances, fees will be established for the purpose of defraying the cost incurred in connection with each separate and distinct quarantine of a dog, cat or potbellied pig.
- J. Guard Dogs: All sites where guard dogs are used must have an inspection permit allowing periodical inspections by shelter or animal control personnel to assure that the facilities meet specifications and that animals are properly housed supplied with ample shelter, food, and water, and show no signs of cruelty or abuse. The fee, payable at the shelter, shall be fifteen dollars (\$15 00) per year. Special housing requirements include:
- (1) In addition to the standard facilities and care requirements for permitted premises set forth elsewhere in this ordinance, the area where the guard dog is housed while not on duty shall be secured in a manner which will prevent the escape of the animal. The off duty housing area shall be kept locked when not in use.
 - (2) When a dog is on duty outside a building, the premises must be enclosed by a secure fence adequate to enclose the dog and to which anti-escape devices have been added.
 - (3) The doors, windows and all other openings to the outside of a building where a guard dog is on duty must be secured to prevent its escape.
 - (4) Guard dog premises shall be posted with warning signs.
 - (5) Vehicles used to transport a guard dog(s) and vehicles being protected by a guard dog(s) shall be

secured so the public is protected from injury and shall be constructed or modified to ensure that the guard dog is transported in a safe, humane manner.

SECTION 7. LICENSES AND PERMITS REQUIRED.

- A. County License: Any person who shall keep or harbor any dog on his premises shall pay a county license fee of three dollars (\$3.00) per annum for each spayed or neutered dog, and the sum of five dollars (\$5.00) per annum for each other dog so kept or harbored on such premises. Licenses are available throughout the year but must be renewed on or before January 1 annually. The animal shelter shall issue all licenses and retain fees collected.
- B. Intact Animals: If an additional \$15 fee is paid at the time the annual license is issued will register the animal as breeding stock. If impounded, said animal will not have to be sterilized before being redeemed.
- C. Guard Dogs. All sites where guard dogs are used must have an inspection permit. The fee, payable at the shelter, is ten dollars (\$10.00) per year.

SECTION 8. IMPOUNDMENT.

- A. An animal control officer is hereby authorized and directed to impound any of the following animals
- (1) Any dog that does not exhibit evidence of vaccination as required by this chapter.
 - (2) Any animal other than a cat that is found to be running at large.
 - (3) Any animal, dog or cat, that is subject to quarantine as provided in this chapter.
 - (4) Any animal found to be in violation of any of the provisions of this chapter.
- B. Owners may redeem or impound their animals.
- (1) Owners requesting impoundment of an animal shall be required to sign a release. Such owner will still have to pay the \$10 impounding fee.
 - (2) The owner of any animal impounded at the shelter may reclaim the animal after paying all required fees imposed by the impound facility;
 - (3) Any expenses incurred by the impoundment of any animal shall be paid by the owner even if the owner does not reclaim the animal including payment of any and all veterinary expenses incurred for the welfare of the animal;
 - (4) The owner of any impounded dog or cat that has not been vaccinated against rabies as required by this chapter may redeem the animal by paying for the vaccination plus any other charges at the animal shelter. If such owner fails to procure a vaccination certificate within four days (96 hours), the paid vaccination fee shall be forfeited and the animal may be impounded again.
 - (5) The NM Sterilization Act mandates no animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been

paid. The surgery for adult animals will either be done before the animal is released or at an appointment made for the surgery at adoption. Puppies and kittens by six months of age and older cats and dogs within thirty (30) days of adoption. The voucher received for the deposit will be accepted by the doctor doing the surgery as partial payment and reimbursed by the shelter. If verification of spay/neuter is not received within the appointed time the owner will be given a citation for violating this ordinance and the animal may be redeemed by the shelter.

- (6) Intact animals impounded at the shelter must be spayed or neutered before they can be reclaimed unless they were registered as breeding stock when issued a city license. It may be released after impoundment fees are paid plus a twenty-five (\$25.00) sterilization deposit and an appointment made for the surgery. The voucher received for the deposit will be accepted by the doctor doing the surgery as partial payment and reimbursed by the shelter. If verification of spay/neuter is not received within the appointed time the owner will be given a citation for violating this ordinance and the animal may be redeemed by the shelter.
- (7) Animals become the property of the shelter on the day following the impoundment period.

SECTION 9. IMPOUNDMENT AND QUARANTINE

FEES: The owner of an animal that is confined within the animal shelter shall be required to pay an impoundment fee in the amount set out in this section. The owner of an animal that is impounded for quarantine purposes shall also be liable to the shelter for daily charges.

Fees to defray the cost incurred in connection to impounding and/or quarantining an animal are hereby fixed for all animals admitted to the shelter.

1st time \$10.00 2nd time \$15.00 3rd time \$30.00
4th time \$40.00

An animal that is impounded on more than four (4) occasions in any twelve month period shall not be released to the owner thereof without the prior written approval of the animal control officer and proof the dog has a current rabies tag and city license. The reimpoundment fee for such animal shall be double the highest fee paid.

SECTION 10. RABIES CONTROL:

Vaccination Required: It shall be unlawful for any person to own any dog or cat over three (3) months of age within the city limits that is not immunized against rabies. Each animal must have the anti-virus inoculation annually.

- A. Dogs must wear the metal vaccination tag securely attached to a collar or harness.

- (1) The metal tag described above must contain the following information:

- a. The year of vaccination;
 - b. A certificate number; and
 - c. The name, address, and phone number of the vaccinating veterinarian or veterinary clinic.
- (2) In addition the owner must have in his possession a paper certificate validating current inoculation with the following information:
- a. The name and address of the owner;
 - b. The telephone number of the owner;
 - c. A description of the animal;
 - d. The date of vaccination;
 - e. The number of the metal certificate, if any;
 - f. The kind of vaccine used; and
 - g. The signature of the administering veterinarian.
- B. Unlawful Use of Metal Certificate: It shall be unlawful for any person to attach the metal vaccination certificate or tag which was issued to a dog to the collar or harness of any other dog.
- C. Lost Metal Certificate: In the event that a metal certificate is lost, a duplicate may be obtained upon the presentation of a valid paper certificate of vaccination and the payment of five dollars (\$5.00).
- D. Animal Quarantine : It shall be unlawful for the owner of any animal subject to quarantine under this section to fail to immediately surrender possession of such animal to any animal control officer upon request for purposes of supervised quarantine. Unless more stringent regulations have been promulgated by the New Mexico Department of Health or other state agency, the following provisions shall apply:
- (1) Any dog or cat that has bitten, scratched, or otherwise attacked a person or animal without provocation shall:
 - a. Either be impounded at an animal shelter or a veterinary hospital or an approved kennel and observed for a period often (10) days from the date of the bite;
 - b. Or, if the animal has a current vaccination for rabies and the area involved is not quarantined for rabies, the animal control officer may permit quarantine of such animal at the keeper's home after inspecting the premises.
 - (2) If quarantined, it shall be unlawful for the owner to fail to immediately confine said animal in such a manner that absolutely prevents the escape of such animal and to fail to prevent said animal from contacting any other person or animal. The owner of said animal shall further be required to obtain the same veterinary supervision of the animal and otherwise comply with the same conditions of release from quarantine as would be required in a veterinary hospital or at the animal shelter.
 - (3) If observance of the animal by an animal control officer is denied or prevented, the animal shall immediately be confined at the animal shelter for the remainder of the quarantine period;
 - (4) It shall be unlawful for the owner allowed home quarantine to fail to immediately report and otherwise notify the animal shelter should the animal escape and report any changes in such animal's condition.
- E. Report of animal control officer for quarantine shall specify each of the following:
- (1) The name and address of any victim;
 - (2) The name and address of the owner of the animal;
 - (3) The reason for the confinement of such animal;
 - (4) A description of the animal; and
 - (5) Place where such animal is confined and any other data which may aid animal control or the shelter.
- F. Rabies Occurrence:
- (1) If as determined by the veterinarian, a dog or cat proves to be rabid during the period of confinement, the animal shelter shall have it humanely destroyed at the owners expense and properly dispose of the remains.
 - (2) The head of any animal suspected of having died of rabies shall be immediately sent to a laboratory designated by the State Board of Public Health under such procedure as specified by the State Board of Public Health.
 - (3) If any dog or cat is bitten by an animal proved to be rabid, the owner or keeper shall have it humanely destroyed and properly dispose of the body; unless such dog or cat has been vaccinated at least three (3) weeks before being bitten then the animal shall be confined for ninety (90) days. At the end of the confinement period, the dog or cat shall be released if declared free of rabies by a licensed veterinarian.
- G. Declaration of Quarantine: The Board of County Commissioners may declare a quarantine against rabies within the county proper when, in its judgment, rabies exists to the extent that it is a danger to public health. Upon such declaration, all dogs and cats within the County shall be confined on the premises of the keeper, in a veterinary hospital, in a commercial kennel, or in the animal shelter. After reasonable effort is made to apprehend any dog or cat found running at large, it may be humanely destroyed by any animal control officer who shall also properly dispose of the remains. A quarantine shall not be removed except on order of the Board of County Commissioners.
- SECTION 11. OWNER RESPONSIBILITY:**
- A. No more than 4 animals (any combination of dogs, cats and potbellied pigs) may be kept at one residence.
 - B. Owners with five (5) but not more than seven (7) cats or dogs or potbellied pigs or any thereof shall be considered as a Private Residential Kennel. Such owner may qualify by paying a registration fee often dollars (\$10.00) per year at the shelter and permit access to property for periodic inspections by shelter or animal control to ensure that such owner complies with the pro-

visions of this chapter.

- (1) Permits may be revoked for serious or repeated violations of the requirements of this chapter.
 - (2) There is no provision for more than seven animals to be kept at any private residence. Veterinary clinics, pet shops, and licensed businesses which deal in animals are excluded.
- C. Mating Season: Keepers of female dogs or cats in heat must confine the animal(s) within a building or enclosure in such a way as to prevent attack by male dogs or cats and so as not to constitute a nuisance by attracting male animals.
- D. Restraint of Animals: A person owning or having charge, custody, care, or control over a dog or cat shall keep the animal upon his own premises by either a secure dog run or kennel, an enclosure surrounding the perimeter of his property or (for a dog only) on a chain not less than twelve (12) feet in length anchored with a swivel device and a second swivel device attaching the chain to the animal's non-abrasive collar or harness. Area must be clear of obstacles which may entangle animal and chain. No chain or tether shall weigh more than 1/8 of the animal weight.
- E. Off Premises: When off the premises, a dog must be restrained by a leash not exceeding six feet in length or under complete voice control. An exception is when the owner or keeper physically carries or holds said animal in his hands.
- F. Nothing in this section shall be construed as allowing any animal under physical restraint to commit any act defined as unlawful in this chapter.
- G. Animal Disposal: Within twenty-four (24) hours of death of an animal, the owner shall dispose of the carcass by burial at least three (3) feet underground in a suitable location, or by other means approved by the animal control unit. There will be a ten dollar (\$10) fee if an animal control officer is called to pick up the dead animal for disposal.
- (3) overcrowded and shall be given adequate exercise.
- (3) Indoor housing shall have adequate lighting, ventilation, and adequate insulation from the heat and cold.
 - (4) Outside housing must be sufficient to protect the animals from the weather.
 - (5) Animals shall be provided with sufficient food and water.
 - (6) Every animal must be observed daily, and diseased or injured animals must be provided with proper veterinary care.
 - (7) Neither animals nor the manner in which they are kept must constitute a nuisance.
- D. Exemptions. This section shall not apply to and shall not be construed to require a kennel license for:
- (1) A veterinary hospital or clinic operated by a licensed veterinarian.
 - (2) A publicly owned animal control center or shelter.
 - (3) A bona fide animal shelter or refuge operated by an organized humane society which is authorized and inspected by a political subdivision of the State of New Mexico for the care and custody of impounded animals.
- E. Kennel License Suspensions and Revocations; Appeals.
- (1) A kennel license may be denied, suspended or revoked by the animal control officer or sheriff upon a determination that the operator of the kennel is in violation of this section.
 - (2) Appeals may be filed with the Humane Society. The Humane Society shall notify the County Manager, who shall appoint a hearing officer.
 - (3) The opportunity for a hearing on any denial, suspension or revocation shall be provided at a time and place determined by the County Manager, at which the hearing officer shall preside.
 - (4) Based upon the record of such hearing, the County Commission shall sustain, modify or rescind the action taken by the hearing officer at the hearing.
 - (5) Any owner of a kennel whose license has been suspended or revoked may make application for the reinstatement of the license. If, during the following inspection, the applicant has complied with the requirements for a kennel license, the license shall be reinstated.

SECTION 12. KENNELS:

There shall be two categories for kennel registrations. Residential (private) kennels will consist of persons who harbor seven (7) to nine dogs, cats or potbellied pigs in any combination and commercial kennels which have ten (10) or more such animals.

- A. Residential Kennels. Premises where seven (7) to nine (9) dogs and/or cats are owned will be inspected at the time a kennel registration license is issued to assure compliance with this ordinance.
- B. Commercial Kennels. Premises where ten (10) or more animals are kept or boarded are subject to periodic inspections by animal control officers.
- C. Kennel Requirements. To obtain and maintain a kennel license, the following requirements must be met:
 - (1) The facility shall be maintained in good repair and kept clean at all times.
 - (2) Animals maintained in confined areas must not be

SECTION 13. LIVESTOCK, HORSES, SHEEP, PIGS, GOATS, BIRDS, REPTILES, WILD ANIMALS, OR FOWL:

The keeping and raising of animals, other than dogs or cats as set forth herein, shall be determined by the location of such animals and shall be governed by the Deming-Luna County Extraterritorial Zoning Ordinance or state law, as may be applicable.

SECTION 14 . ANIMAL CARE AND PROTECTION:

- A. Conditions: The animal must have easy access to ade-

quate shade, shelter from the weather, food, potable water, and proper veterinary care when needed.

- (1) The area where the animal is confined must be kept free of garbage and other debris that might endanger the animal's health or safety. Feces will be cleaned up regularly.
 - (2) The area where the animal is confined must be kept free of insect infestation such as ant hills, wasps nests, fleas, ticks and maggots. Reasonable efforts should be made to prevent the attraction and breeding of flies, mosquitos, or other noxious insects.
- B. Cruelty to Animals: No animal shall be willfully, maliciously or cruelly beaten, except that such force as may be needed can be used to drive off vicious or trespassing animals.
- C. Extreme Cruelty: Extreme cruelty to animals consists of a person who:(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or (2) maliciously killing an animal.

SECTION 15. OFFENSES AND ENFORCEMENT:

- A. Animal Nuisance: It is unlawful for a keeper to allow any animal to persistently bark howl or make noise, to be kept or maintained in such a manner to disturb by emitting noxious or offensive odors or to otherwise be a nuisance to the inhabitants of the area, specifically including defecation upon other private property.
- B. Abandonment of Animals: It is unlawful to abandon any animal. To leave an animal without food, water or shelter for more than twenty four (24) hours on one's premises or to dump or leave off a domestic animal on property other than one's own without permission is considered abandonment.
- C. Dangerous and Vicious Animals:
- (1) It is unlawful for any person to keep or harbor any vicious animal. When an animal control officer has probable cause to believe that an animal is vicious, the officer may impound the animal into protective custody awaiting appropriate court proceedings. Following judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this ordinance, shall, in addition to any fine or imprisonment imposed for violation of this section, order the-owner or keeper of such vicious animal to have it humanely destroyed.
 - (2) Dangerous animals with the potential to become vicious, whether through breeding or training (such as guard dogs) must be contained and restrained with additional safeguards for the public. When in public, such restraint may include a muzzle attached to its mouth of sufficient construction to prevent said dog from harming any person or animal.
 - (3) Should any dangerous animal be found abandoned, running at large, or violating any other part of this ordinance, the shelter or animal control will determine if the animal is a hazard to the public and

whether or not it may be redeemed from the shelter. Vicious animals found abandoned or running at large shall be destroyed.

- D. Harboring Unvaccinated Animals: It is unlawful for any person to keep a dog or cat that has not been vaccinated against rabies as provided in this ordinance.
- E. Cruelty to Animals: It is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, beat with a stick, chain, club or other object, mutilate, burn or scald with any substance, overdrive or otherwise cruelly set upon any animal except that reasonable force may be employed to drive off or otherwise control vicious or trespassing animals.
- F. Wild Animals: It is unlawful to own or harbor a wild animal except as allowed by state law.
- G. Sustenance: It is unlawful for a keeper to fail to provide any animal with proper food, water available at all times, shade, shelter, and veterinary care when needed to prevent suffering.
- H. Poisoning and Trapping: It is unlawful to set traps to capture dogs or cats other than non-injurious, cage-type enclosures.
- (1) It is unlawful for any person to prepare, dispense, set out, or otherwise administer any poisonous material with the intent of harming or killing any animal, except as otherwise allowed by state or federal law for predator control or other purposes.
 - (2) It is unlawful to set traps intended to kill or maim dogs or cats. This section does not prohibit the eradication of vermin which are a threat to public health.
- I. Animal Fights: It is unlawful to cause, instigate, promote or attend any fight in which two or more animals are engaged for the purpose of injuring, maiming or destroying themselves or another animal.
- J. Exclusion of Service Dogs From Places of Business: It is unlawful for any person owning, operating or maintaining any public place of business or conveyance into which the general public is invited for any business purpose to exclude therefrom any dog that has been trained to assist the blind or deaf, or mobility impaired, provided that such dog is in the company of the person whom it was trained to assist.
- K. Quarantine Release: It is unlawful to remove an animal from quarantine without a signed release from an animal control officer or the shelter.

SECTION 16. PENALTIES:

- A. Misdemeanor: Any person who violates any of the provisions of this ordinance may be charged with a misdemeanor and, upon conviction thereof, may be punished by a fine not to exceed three hundred dollars (\$300) and/or imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment. Each day of violation shall be considered a separate offense.
- B. Penalty for Poisoning: Any person who distributes or sets out poison for animals other than for the eradication

of vermin within the boundaries of Luna County, New Mexico, shall pay a fine of not less than three hundred dollars (\$300) and be imprisoned in the Luna County Jail for not less than thirty (30) days nor more than ninety (90) days.

C. Repeat Offenses:

- (1) In cases of three repeat offenses under Section 14, an animal control officer shall have the authority to impound any animal subjected to cruelty, neglect or abandonment. The animal may not be returned to its owner before a hearing in the appropriate court, if in the opinion of the animal control officer, the harm to the animal is severe and likely to recur.
- (2) In addition to the above penalties, any person found violating the terms of the Ordinance or any similar statute or Ordinance within or without the State of New Mexico may, as a condition of probation, lose his/her right to own or keep an animal for a period as follows: 90 days for a 1st offense; 1 year for a 2nd offense; and 5 years for a 3rd offense.
- (3) Notwithstanding the above, the court may permanently ban an individual from owning or possessing any animals for a period of time deemed reasonable by said court, if that person has been convicted of any offense involving cruelty to animals.

D. Suspensions, Revocations of Permits: When a permitted premises is in violation of this ordinance, a notice will be given to the permit holder of the specific violation, a time limit to correct it, and the warning that failure to comply may result in immediate suspension or revocation of the permit.

- (1) A person whose permit has been suspended may apply for an inspection of the premises for the purpose of reinstating the permit. The suspension may be lifted when the inspection determines the violations have been corrected. The reinstated permit shall expire on the date of expiration of the previously-suspended permit.

E. Appeal Procedures for Permit Denial, Suspension or Revocation: When a permit is revoked or renewal is refused, the person may submit a written request for a hearing. The written request must be received within ten days after the permit holder is notified of the revocation or renewal is refused. The applicant shall be afforded a fair hearing within a reasonable time which provides the basic safeguards of due process hearing shall be conducted.

- (1) The opportunity to examine before the hearing, and, at the expense of the applicant, to copy all documents, records and regulations of the animal control department that are relevant to the hearing. Any document not made available by the animal control department after a written request by the applicant may not be relied upon by the animal control department at the hearing.

- (2) The right to present evidence and arguments in support of his appeal to controvert evidence relied on by the department, and to confront and cross-examine all witnesses on whose testimony or information the department relies.
- (3) The hearing officer shall prepare a written report of his findings and decision based solely and exclusively upon the facts presented at the hearing within ten days and provide copies to the parties.
- (4) An appeal from a notice or inspection finding will be provided if a written request for a hearing is filed at the shelter within five days of receipt of the notice.

SECTION 17. ANNUAL FEE ADJUSTMENT:

All fees included in this ordinance will be reviewed annually by the Society, effective January 1, to consider changes in the cost of providing services and related increases or decreases in fees.

SECTION 18: SEVERABILITY:

If any part of this ordinance is held to be unconstitutional or invalid or otherwise in conflict with the law of the State of New Mexico and the United States of America, the validity of the remaining portions of the ordinance shall remain in full force and effect.

Adopted this 14th day of November, 2002. This ordinance shall be effective on the 14th day of November, 2002, and shall nullify any and all ordinances and amendments previously enacted relating to animal control in Luna County.

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO