

LUNA COUNTY-NM  
BERENDA MCWRIGHT, CLERK  
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BY TONI

**LUNA COUNTY, NEW MEXICO**

**ORDINANCE 98**

**ANIMAL CONTROL**

AN ORDINANCE REPEALING ALL PREVIOUS ORDINANCES PERTAINING TO ANIMAL CONTROL (1, 33 AND 52) AND ESTABLISHING REGULATIONS, REQUIREMENTS AND PROCEDURES FOR THE CARE AND CONTROL OF ANIMALS

**WHEREAS**, LUNA COUNTY, New Mexico is a rural area with a large population of DOMESTIC ANIMALS; and

**WHEREAS**, it is in the best interests of the health, safety and general welfare of the citizens of LUNA COUNTY, to establish provisions for the regulation and control of DOMESTIC ANIMALS, and to deter and prohibit the RUNNING AT LARGE of any ANIMAL, and to prevent NEGLECT of and CRUELTY to ANIMALS; and

**WHEREAS**, the COUNTY has authority to enact this Ordinance pursuant to Section 4-37-1, NMSA 1978; and

**WHEREAS**, Section 77-1-1 et seq., N.M.S.A. 1978 Compilation establishes standards for the management of DOMESTIC ANIMALS, and further: requires that each county shall make provision by ordinance for the seizure and DISPOSITION of dogs and cats RUNNING AT LARGE and not kept or claimed by any PERSON on their PREMISES, and further requires that each county shall provide for the IMPOUNDMENT of RABIES-SUSPECT ANIMALS and designate a part-time or full-time ANIMAL CONTROL OFFICER who shall be deputized to enforce ANIMAL control laws, orders, ordinances and regulations; and

**WHEREAS**, the Board of County Commissioners of Luna County, New Mexico, has heretofore determined that the health, safety, and general welfare of the residents of Luna County would be best served by the adoption of an updated ANIMAL Control Ordinance;

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners in and for the County of Luna, State of New Mexico, that this Ordinance be enacted pursuant to New Mexico law to read as follows:

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LUNA COUNTY ANIMAL CONTROL ORDINANCE  
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**ARTICLE I GENERAL PROVISIONS**

**Section 1.1 Short Title and Intent**

This Ordinance may be cited as the “Luna County Animal Control Ordinance” and is referred to hereinafter as “this Ordinance.” It is the intent of the Board of County Commissioners that enactment of this Ordinance will: protect ANIMALS from NEGLECT and abuse, protect residents from annoyance and injury, encourage responsible OWNERSHIP of ANIMALS as pets, and assist in providing housing for ANIMALS in an ANIMAL SHELTER.

**Section 1.2 Definitions**

As stated in this Ordinance, the following definitions shall apply unless otherwise specified.

**1.2.1 ABANDONMENT** means: 1) to leave an ANIMAL for more than 24 hours without making provisions for proper feeding, watering, shelter, including shade, and care, or 2) to dispose, dump, or leave any ANIMAL, living or dead, on property other than one’s own without consent of that property owner and, with consent, without making provision for the adequate feeding, watering and shelter of the DOMESTIC ANIMAL, or 3) the failure to RECLAIM an impounded ANIMAL.

**1.2.2 ADOPTION** means: the retrieval of any ANIMAL from the County designated ANIMAL SHELTER and assumption of responsibility for proper care in accordance with this Ordinance.

**1.2.3 ANIMAL** means: any vertebrate or invertebrate member of the ANIMAL kingdom, except humans, provided that LIVESTOCK, except as may be specifically referred to herein, are specifically exempt from this Ordinance.

**1.2.4 ANIMAL CONTROL OFFICER (“ACO”)** means: any PERSON designated by Luna County, directly or through any CONTRACTOR and any PERSON designated as such with the authority to enforce ANIMAL control laws, ordinances and regulation. The Luna County Sheriff and his/her deputies have the statutory authority to enforce this ordinance and take every action an ANIMAL CONTROL OFFICER is hereunder authorized to undertake; all references herein to an ANIMAL CONTROL OFFICER incorporates by reference the Luna County Sheriff and Luna County Sheriff’s Deputies.

**1.2.5 ANIMAL NUISANCES** means: any ANIMAL 1) habitually or continuously barking, howling, or otherwise disturbing the inhabitants of Luna County; 2) kept and/or maintained in a manner as to disturb by noise and/or noxious or offensive odors; or 3) that endangers the health and welfare of the inhabitants of Luna County.

**1.2.6 ANIMAL RESCUE** means: any facility operated by a licensed or permitted PERSON or organization that RESCUES ANIMALS for the purpose of temporarily taking CUSTODY of and caring for eight (8) or more ANIMALS at any one time until a permanent home or placement is found and is prohibited from the breeding of ANIMALS or operating a BREEDING FACILITY.

**1.2.7 ANIMAL SANCTUARY OR REFUGE (FACILITY)** means: any facility or PREMISES operated by a licensed or permitted PERSON or non-profit organization, or member of the same, RECOGNIZED by the County as an animal humane organization, where such facility or

PREMISES is operated for the purpose of taking permanent or indefinite CUSTODY, providing care, and bringing aid and comfort to more than eight (8) or more ANIMALS at any one time to ANIMALS that are not adoptable or transferrable, after exhaustion of all reasonable efforts to adopt or place such ANIMALS into a permanent home. ANIMALS may not be bred and must be STERILIZED within thirty (30) days of placement into CUSTODY of said ANIMAL SANCTUARY OR REFUGE.

**1.2.8 ANIMAL SHELTER** shall mean: any facility operated privately by a non-profit animal humane entity and established or authorized by a municipality or county of the State of New Mexico for the purpose of bringing aid and comfort, housing, care and CUSTODY of eight (8) or more lost, STRAY, injured, unwanted or impounded ANIMALS and where ANIMALS are not bred or allowed to breed.

**1.2.9 ATTACK** means: to BITE, scratch, knock down, or chase.

**1.2.10 BASIC GROOMING** means: examination, attention and acts necessary to maintain eyes, ears, feet, nails, teeth, coat and skin of an ANIMAL in a healthy condition but does not include acts for the purposes of maintaining appearance only.

**1.2.11 BASIC MEDICAL CARE** means: reasonable medical care required by the species, including but not limited to required VACCINATIONS, examination by a VETERINARIAN, prompt veterinary care when required by age and species, appropriate internal and external parasite control and emergency medical care when required.

**1.2.12 BITE** means: one or more punctures of skin from a single BITE with any punctures of half the length, or greater, of the ANIMAL'S canine teeth. Multiple scratches or lacerations in more than one direction and inflicted by the claws or teeth of an ANIMAL that results in tearing of flesh will also be treated as a BITE for the purposes of QUARANTINE.

**1.2.13 BREEDER** means: any licensed or permitted PERSON or organization established for the purpose of breeding female dogs or cats to produce offspring with the intent to sell, gift or otherwise transfer OWNERSHIP of the offspring. All ANIMALS older than six (6) months of age must have INTACT ANIMAL Licenses. Breeding for the purposes of sale to commercial outlets or for the purpose of research, testing or laboratory experiments is not permitted. BREEDER does not include OWNERS with fewer than eight (8) ANIMALS with one or more permitted INTACT ANIMALS and with no more than two litters of ANIMALS in any calendar year for the location.

**1.2.14 BREEDING FACILITY** means: a permitted or licensed facility that exists for profit and where ANIMALS are bred for sale to third parties. All ANIMALS older than six (6) months must have INTACT ANIMAL Licenses.

**1.2.15 CANINE HYBRID** means: a dog resulting from the breeding of a domestic species with that of a wild species or breed of canine, such as a wolf or coyote and because of its wolf or coyote ancestry, cannot be vaccinated against rabies effectively. Any ANIMAL that, at any time, has been advertised, described or represented as a CANINE HYBRID, wolf-dog or wolf hybrid by its OWNER shall be considered a CANINE HYBRID for purposes of this Ordinance. An ANIMAL shall not be judged to be a CANINE HYBRID based strictly on its appearance

**1.2.16 COMPLAINT** means: a report that alleges violation of this Ordinance or a statute or regulation related to ANIMALS, made on a standardized form, submitted to Luna County or its designated CONTRACTOR , or received by the Luna County Sheriff or the public ANIMAL SHELTER.

**1.2.17 CONFINEMENT** means: the restriction, detainment or ISOLATION of an ANIMAL at all times by the OWNER or keeper by secure fence, kennel (as ENCLOSURE), or cage to prevent escape and inadvertent or unsupervised contact with the public.

**1.2.18 CONTRACTOR** means: the PERSON or entity engaged, retained or hired by Luna County to enforce this Ordinance and operate the public ANIMAL SHELTER.

**1.2.19 COUNTY** means: The Board of County Commissioners of Luna County, New Mexico, its designees, and the various departments of the Luna County Government.

**1.2.20 COUNTY MANAGER** means: the COUNTY MANAGER of Luna County or designated representative(s).

**1.2.21 CUSTODY** means: a PERSON or OWNER that has possession of an ANIMAL for more than seven (7) consecutive days or more than fourteen (14) days in any month, excluding VETERINARIANS or licensed KENNELS temporarily maintaining ANIMALS owned by others on their property. It does not mean physical control, CONFINEMENT or RESTRAINT.

**1.2.22 CRUELTY** means: the intentional killing of an ANIMAL without lawful justification, or mistreating, injuring, maiming, disfiguring, tormenting, torturing, beating, mutilating, burning, scalding, poisoning, attempting to poison, or otherwise unnecessarily causing an ANIMAL to suffer physical or emotional harm. Any of the following may be deemed a separate act of CRUELTY: failing to meet any standard of care in this Ordinance; failing to provide necessary sustenance to an ANIMAL under that PERSON'S CUSTODY or control; failing to provide adequate shelter; failing to provide potable water; failing to provide palatable, nutritious food of adequate quantity; taunting an ANIMAL; leaving an ANIMAL inside an ENCLOSED vehicle when the temperature is such that it will cause pain, suffering or death; ABANDONMENT or NEGLECT of an ANIMAL; failing to take action when an ANIMAL is in need of basic or emergency medical care; ear-cropping, de-barking, tail docking, or alteration by a non-VETERINARIAN; EUTHANASIA by an un-qualified or licensed PERSON or when not conducted as humanely as possible when circumstances do not allow for a qualified or licensed PERSON.

**1.2.23 DISPOSITION** means: ADOPTION of an ANIMAL; return of an ANIMAL to the OWNER; release of an ANIMAL to a RESCUE organization; release of an ANIMAL to another ANIMAL SHELTER or to a rehabilitator licensed by the NM Department of Game and Fish or the United States Fish and Wildlife service; or EUTHANASIA of an ANIMAL;

**1.2.24 DOMESTIC ANIMAL** includes: dogs, cats, wolf hybrids, coyote hybrids, domestic ferrets and other ANIMALS commonly known and kept as domestic pets.

**1.2.25 EMERGENCY FIELD EUTHANASIA** means: the process to cause the death of an ANIMAL in an emergency situation when safe and humane transport of the ANIMAL is not possible.

**1.2.26 EMERGENCY MEASURES** means: any action taken by an ANIMAL CONTROL OFFICER in order to preserve the health and/or life of an ANIMAL or human being, including but not limited to entering vehicles or PREMISES, given probable cause, and detaining the ANIMAL to prevent imminent suffering, serious harm or death to the ANIMAL, a human or another ANIMAL.

**1.2.27 ENCLOSED** means: a parcel of land completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain ANIMALS within, or by an electric or invisible fencing that has been approved by the ANIMAL Control Unit supervisor or his/her designee. **UNENCLOSED** as used herein shall mean a parcel of land not completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain ANIMALS within.

**1.2.28 ESTABLISHMENT** means: a place of business together with its grounds and equipment.

**1.2.29 EUTHANASIA** means: to produce a humane death of an ANIMAL by standards deemed acceptable by the Board of Veterinary Medicine as set forth in its rules.

**1.2.30 EUTHANASIA AGENCY** means: a facility that provides shelter to ANIMALS on a regular basis, including a small ANIMAL impound facility, a humane society or a public or private shelter facility that temporarily houses STRAY, unwanted or injured ANIMALS, and that performs EUTHANASIA.

**1.2.31 EUTHANASIA DRUGS** means: non-narcotic Schedule II or Schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1, *et seq.* NMSA 1978 that are used for the purposes of EUTHANASIA and pre-EUTHANASIA of ANIMALS.

**1.2.32 EUTHANASIA TECHNICIAN** means: a PERSON licensed by the New Mexico Veterinary Board to euthanize ANIMALS for a EUTHANASIA AGENCY.

**1.2.33 EXOTIC ANIMAL** means: an ANIMAL of a species not commonly kept as a household pet or for food and fiber production but does not include domesticated birds or ferrets. EXOTIC ANIMALS may or may not be native to the area and may or may not be governed by existing wildlife regulations and regardless of training or domestication and are prohibited under this ordinance unless otherwise specifically allowed by Federal or State Law. This category does NOT include WILD ANIMALS.

**1.2.34 EXPOSURE TO RABIES** means: an exposure resulting from a BITE by an ANIMAL susceptible to rabies or from contact of the saliva of such ANIMAL with any break or abrasion of the skin.

**1.2.35 FELINE HYBRID** means: a cat resulting from the breeding of a domestic species with that of a wild species or breed of feline, such as an African Serval cat and because of its ancestry, cannot be vaccinated against rabies effectively. Any ANIMAL that, at any time, has been

advertised, described or represented as a FELINE HYBRID by its OWNER shall be considered a FELINE HYBRID for purposes of this Ordinance. An ANIMAL shall not be judged to be a FELINE HYBRID based strictly on its appearance.

**1.2.36 FERAL ANIMAL** means: any ANIMAL existing in the wild, living in an untamed state or that is a STRAY and has returned to an untamed state from domestication.

**1.2.37 GROOMING PARLOR** means: an ESTABLISHMENT or part thereof maintained for the purpose of performing cosmetic services for ANIMALS including, but not limited to bathing, brushing, grooming and nail trimming.

**1.2.38 GUARD DOG** means: a dog that is used to protect a commercial property, but excludes a dog used exclusively to guard LIVESTOCK.

**1.2.39 HARBOR** means: to allow STRAY ANIMALS to accumulate on one's PREMISES by feeding them without making effective provisions as required by this Ordinance for their RESTRAINT, VACCINATIONS, socialization, sterilization or other care or attempting to humanely trap, neuter and return.

**1.2.40 HOBBY BREEDER** means: a PERSON involved in showing or controlled breeding of dogs and cats that are registered with a nationally or internationally RECOGNIZED canine or feline registry organization.

**1.2.41 HOUSEHOLD** means: one (1) or more individuals, related or not, occupying the PREMISES and/or residing at one street address. A household pet or ANIMAL is a DOMESTIC ANIMAL.

**1.2.42 IMMEDIATE CONTROL** means: the ability to exercise direct physical control over an ANIMAL by a capable and competent PERSON by use of a secure collar or harness, a secure leash in conjunction with a properly fitting harness or a secure and appropriate portable ANIMAL crate or cage.

**1.2.43 IMPOUNDING FACILITIES** means: any ANIMAL Control center, pound, ANIMAL SHELTER, KENNEL, veterinary hospital, lot premise or building maintained or contracted by a municipality or county for the care and CUSTODY of ANIMALS.

**1.2.44 IMPOUNDMENT** means: the taking into CUSTODY or CONFINEMENT in a facility designated for the keeping or CONFINEMENT of such ANIMALS.

**1.2.45 INSPECTION** means: a physical or visual INSPECTION by an ANIMAL CONTROL OFFICER of any PREMISES or ANIMAL for the purpose of ensuring compliance with the provisions of the Ordinance.

**1.2.46 INTACT ANIMAL** means: an ANIMAL that has not been STERILIZED.

**1.2.47 ISOLATION** means: the CONFINEMENT of an ANIMAL in an escape proof run or cage so that there is no possibility of direct contact with other ANIMALS or humans.



**1.2.48 KENNEL** means: an ESTABLISHMENT operated by a PERSON or entity for profit where dogs or cats are temporarily housed or boarded, kept, or maintained for grooming, breeding, boarding, training or selling to individuals regardless of whether it is operated by a PERSON or PERSON(s) or entity . The sale or transfer of ANIMALS to commercial outlets or for the purposes of research, testing, or laboratory experimentation is prohibited.

**1.2.49 LIVESTOCK** means: horses, cattle, llamas, pigs, sheep, goats, rabbits, fowl, or any other DOMESTIC ANIMALS typically used in the production of food, fiber, or other products or activities defined by the COUNTY MANAGER or his/her designee as agricultural are exempt from articles included in this ordinance unless specifically addressed as applies to article.

**1.2.50 LUNA COUNTY** refers to the unincorporated areas within the jurisdictional boundaries of the County of Luna, New Mexico.

**1.2.51 MICROCHIP IMPLANT** means: a passive electronic device that is injected into an ANIMAL by means of a hypodermic-type syringe device. Each MICROCHIP shall contain a unique and original number that is read by an electronic scanning device for purposes of ANIMAL identification and recovery by the ANIMAL'S OWNERS.

**1.2.52 MICROCHIP READER** means: an electronic scanner with an operating frequency that is able to detect a MICROCHIP that has been IMPLANTED in an ANIMAL and displays the number of the MICROCHIP to its operator.

**1.2.53 MISREPRESENTATION OF PEDIGREE** consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any ANIMAL, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

**1.2.54 MULTIPLE ANIMAL (SITE OR) FACILITY:** Any PREMISES where eight (8) or more dogs and/or eight (8) or more cats of at least six (6) months of age, excluding litters and ANIMALS less than six (6) months of age, are kept as companion ANIMALS. A MULTIPLE ANIMAL SITE OR FACILITY is a facility that is not operated as or required to be PERMITTED as an ANIMAL RESCUE, ANIMAL SANCTUARY OR REFUGE, ANIMAL SHELTER, KENNEL or BREEDING FACILITY and where the business of buying, selling, breeding, training or boarding for compensation or profit is prohibited and not carried on, with the exception that the sale of not more than two (2) litters per year is allowed. The operation of a MULTIPLE ANIMAL SITE OR FACILITY for commercial purposes means: any PREMISES where eight (8) or more dogs and/or cats of at least six (6) months of age are kept where the business of buying, selling, breeding, training or boarding for compensation or profit is conducted and requires a separate PERMIT for each commercial activity but does not include veterinary clinics or hospitals, the County ANIMAL SHELTER or a research laboratory.

**1.2.55 NEGLECT** means: to leave an ANIMAL without sufficient quantity of good quality food, water or shelter for more than twenty-four (24) hours, regardless of whether such action or inaction is intentional or voluntary. For any dog left outside and unattended for more than 30 minutes during any period, the following must be provided: the shelter shall be a moisture-proof and wind-

proof and of suitable size to accommodate the dog, allowing for freedom of movement to make normal postural adjustments, including the ability to stand, turn around and lie down with limbs outstretched. It shall be made of durable material with a solid, moisture-proof floor raised at least three inches from the ground. The roof shall extend over the doorway and not permit rain to enter inside the shelter. The shelter shall not be constructed of metal or any material that readily conducts heat or cold. Between November 1st and March 31st, structures must have a windbreak at the entrance and must contain a sufficient quantity of suitable, clean bedding material consisting of straw, cedar shavings, or the equivalent to protect against cold and dampness. Hay, blankets, rags and other materials that retain moisture shall not be utilized for bedding. Between May 1st and October 31st of any year, all dogs must be afforded one or more areas of shade by natural or artificial means large enough to accommodate the entire body of the dog at one time to provide protection from the direct rays of the sun. Shaded area must be separate and outside of any shelter. "Outside and unattended" for purposes of this section, shall mean any dog who is confined outdoors for a duration of longer than 30 minutes and not in visual range and physical presence of the OWNER.

**1.2.56 OWNER/CARETAKER/RESPONSIBLE PERSON** means: a PERSON 18 years of age or older or the parent or guardian of a PERSON under 18 years of age, group of PERSONS, or business entity who owns, HARBORS, keeps an ANIMAL, has one in his care, or permits any ANIMAL to remain on or about the PREMISES owned or controlled by him. OWNER shall also mean any governmental entity owning, keeping, or HARBORING any ANIMAL that has been kept in captivity or CONFINEMENT for more than thirty (30) consecutive days.

**1.2.57 PERSON** means: an individual, HOUSEHOLD, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

**1.2.58 PEACE OFFICER** shall mean: any duly appointed ANIMAL CONTROL OFFICER, Luna County Sheriff's Deputy or other law enforcement officer within the jurisdiction or boundaries of Luna County, New Mexico.

**1.2.59 PERSON/OWNER** means: any PERSON, group or entity who possesses, keeps, HARBORS or has control or CUSTODY of an ANIMAL or who knowingly permits the possession, HARBORING, control or CUSTODY of an ANIMAL on their property.

**1.2.60 PET IDENTIFICATION** means: a rabies tag, Luna County license tag, MICROCHIP tag, or PET IDENTIFICATION tag providing OWNER contact information.

**1.2.61 PET MILL** means: a facility or PERSON excluded from the definition of a BREEDER and not licensed or required to be licensed as a BREEDING FACILITY that has any ANIMALS without INTACT ANIMAL PERMITS or that has INTACT ANIMAL PERMITS but where more than 2 litters of ANIMALS are produced in any calendar year. Such facilities are prohibited and such facilities that are operated for the purpose of breeding ANIMALS for compensation or profit that emphasizes profit or gain over ANIMAL welfare, will be subject to prosecution. Such facilities are generally of substandard ANIMAL welfare conditions and where ANIMALS are often afflicted by infectious diseases, such as parvo and distemper. Substandard conditions include, but are not limited to, overbreeding, inbreeding, minimal or no veterinary care, poor quality or insufficient food or shelter, lack of socialization with humans and/or other ANIMALS,

overcrowding, makeshift cages and frequent death or EUTHANASIA of ANIMALS. Such substandard conditions are intended to be addressed through regulatory enforcement.

**1.2.62 PET SHOP** means: any PREMISES, social media or internet site or posting, or part thereof, which engages in the purchase, sale, exchange or hire of ANIMALS of any type, except that the term shall not apply to shelters or PREMISES used exclusively for the sale of LIVESTOCK.

**1.2.63 PREMISES** means: a parcel of land and the structures thereon.

**1.2.64 (PROPER) ENCLOSURE** means: secure CONFINEMENT indoors or outdoors, such as in a fenced yard, locked pen, or other structure, such structure being designed to prevent the ANIMAL from escaping the confined area and also preventing young children from entering the confined area, but does not include chaining, restraining or otherwise affixing the ANIMAL to a stationary object.

**1.2.65 PROFESSIONAL ANIMAL ESTABLISHMENT** means: any KENNEL, grooming parlor or PET SHOPS, with the exception of state inspected veterinary hospitals and federally inspected laboratory facilities and zoos.

**1.2.66 POULTRY** means: any chicken, duck, goose, turkey or similar bird.

**1.2.67 QUALIFIED ASSISTANCE ANIMAL** means:

**1.2.67.1** A dog trained or being trained by a RECOGNIZED school for training dogs to assist PERSONS with disabilities; or

**1.2.67.2** An ANIMAL RECOGNIZED as a SERVICE ANIMAL pursuant to the Americans with Disabilities Act of 1990; or

**1.2.67.3** Any other ANIMAL approved by the NM Governor's Commission on Disability as acceptable in public places and trained to provide a defined special assistance to a PERSON with a disability.

**1.2.68 QUARANTINE** means: detention or ISOLATION of an ANIMAL in order to observe for rabies providing for the strict containment of an ANIMAL in ISOLATION pursuant to authority under this Ordinance or by order of the district health officer within a closed cage or paddock to control the spread of rabies or other contagious disease.

**1.2.69 RABIES-SUSPECT ANIMAL** means: any ANIMAL which has been exposed to or is suspected of having been exposed to rabies through a BITE by any other ANIMAL or through contact with any other ANIMAL known or reasonably suspected to be infected with rabies. Any such ANIMAL is subject to state regulation and/or statute.

**1.2.70 RECLAIM** means: the retrieval of a DOMESTIC ANIMAL from the ANIMAL SHELTER by its OWNER or RESPONSIBLE PERSON. The Reclamation Period within which an ANIMAL'S OWNER may RECLAIM their ANIMAL from the County ANIMAL SHELTER is five (5) business days in which the Shelter is open to the public for at least four (4) continuous hours.

**1.2.71 RECOGNIZED** means: the acknowledgement of validity and approval, such approval to be affirmed or granted by the Luna COUNTY MANAGER, unless specific alternate authority is noted herein.

**1.2.72 RESCUE** means: to legally set free from danger.

**1.2.73 RESTRAINT** means: keeping any ANIMAL under the IMMEDIATE CONTROL of a RESPONSIBLE PERSON on a leash or lead.

**1.2.74 RESTITUTION** means: a monetary amount awarded by a court of competent jurisdiction to compensate a victim whose person or property, including ANIMALS, has been injured, killed or damaged by another ANIMAL as a result of a violation of this Ordinance but specifically excludes any fines or penalties imposed under this Ordinance or any applicable statute, rule, or regulation.

**1.2.75 RUNNING AT LARGE** means: free of physical RESTRAINT on private or public property other than that belonging to, occupied by, or controlled by the OWNER of the ANIMAL and the ANIMAL is not under the physical control of the OWNER or not obedient to the OWNER'S commands.

**1.2.76 SERIOUS INJURY** means: a physical injury that results in broken bones, multiple BITES or disfiguring lacerations requiring sutures or reconstructive surgery.

**1.2.77 SERVICE ANIMAL** means: any of the following ANIMALS, as defined in Section 28-11-2, NMSA 1978, now or as subsequently amended, including:

**1.2.77.1 Emotional Support ANIMAL, Comfort ANIMAL or Therapy ANIMAL** shall mean an ANIMAL selected to accompany an individual with a disability that does not work or perform tasks for the benefit of an individual with a disability and does not accompany at all times an individual with a disability.

**1.2.77.2 Qualified SERVICE ANIMAL** shall mean any qualified SERVICE dog or qualified SERVICE miniature horse that has been or is being trained to provide assistance to an individual with a disability; but "qualified SERVICE ANIMAL" does not include a pet, an emotional support ANIMAL, a comfort ANIMAL or a therapy ANIMAL.

**1.2.77.3 Qualified SERVICE Dog** shall mean a dog that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; and

**1.2.77.4 Qualified SERVICE Miniature Horse** shall mean a miniature horse that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

**1.2.78 SHERIFF** means: the LUNA COUNTY SHERIFF or his/her designee.

**1.2.79 SPECIAL ANIMAL PERMIT** means: any one of several PERMITS authorized and required by the Ordinance for the possession or handling of ANIMALS beyond normal companion ANIMAL OWNERSHIP and includes, but is not limited to: Commercial Operation Permit;

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KENNEL Permit; Foster/RESCUE Permit; Shelter Permit; Sanctuary PERMIT; RESCUE PERMIT; Transport PERMIT; Multiple ANIMAL PERMIT; BREEDER PERMIT; and other such PERMITS as may be authorized from time to time by LUNA COUNTY.

**1.2.80 STERILIZE** means: to be rendered permanently incapable of reproduction and rendering an ANIMAL unable to reproduce, either by spaying of a female or neutering of a male ANIMAL.

**1.2.81 STERILIZATION DEPOSIT** means: the fee that is charged by the ANIMAL SHELTER as part of and included in the adoption fees when a PERSON RECLAIMS, adopts or RESCUES an UNSTERILIZED ANIMAL; the sterilization deposit may or may not be refunded when the ANIMAL is STERILIZED.

**1.2.82 STRAY** means: an ANIMAL found RUNNING AT LARGE away from its home or that is unattended or allowed to run at large away from its home.

**1.2.83 SUPERVISING VETERINARIAN** means: a PERSON who is a licensed VETERINARIAN, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license.

**1.2.84 TETHERING** means: to tie an ANIMAL with a rope or chain to restrict its movement.

**1.2.85 VACCINATION** shall mean: any injection of vaccine for the purpose of immunizing an ANIMAL against rabies approved by a State Veterinarian and administered by a licensed VETERINARIAN for the purpose of immunizing an ANIMAL against rabies as required by Section 77-1-3, NMSA 1978.

**1.2.86 VETERINARIAN** means: a PERSON who with a Doctor of Veterinary Medicine degree and licensed as such by the State of New Mexico, Board of Veterinary Medicine.

**1.2.87 WILD ANIMAL** means: a living creature that is untamed or domesticated in a natural state of a species that, in its natural state or life, is dangerous or ferocious including, but not limited to: wolves; foxes; coyotes; dingoes; other non-domesticated or wild canines; lions; tigers; cheetahs; leopards; bobcats; pumas; panthers; mountain lions; jaguars; other non-domesticated, wild or hybrid felines; bears; raccoons; skunks; bats; primates; venomous, poisonous and constricting snakes; alligators, crocodiles, caimans, other poisonous lizards and spiders; piranhas and venomous fish and piranhas; elephants; non-domesticated or wild ferrets; and ANIMALS protected by applicable endangered or protected species act, such as bald eagles, golden eagles and various parrots and other birds. The possession of a WILD ANIMAL is prohibited under this Ordinance unless specifically allowed by Federal or State law.

## **ARTICLE II OWNER'S DUTIES**

### **Section 2.1 Animal Vaccinations**

**2.1.1** No PERSON shall keep, own or HARBOR any member of the canine or feline species over three (3) months of age within this COUNTY unless that dog or cat is vaccinated against rabies. Every such dog or cat shall be vaccinated

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against rabies within thirty (30) days upon any PERSON acquiring OWNERSHIP or taking CUSTODY, care and control of said ANIMAL. Upon request or demand by the Luna County SHERIFF or his designee, every OWNER shall provide proof of the ANIMAL'S rabies VACCINATION.

**2.1.2** Rabies VACCINATIONS must be administered by or under the supervision of a VETERINARIAN. Any VETERINARIAN who vaccinates DOMESTIC ANIMALS for rabies shall issue a serially numbered tag and certificate for each VACCINATION. Each DOMESTIC ANIMAL must be revaccinated before the expiration of the first and each subsequent rabies VACCINATION period.

**2.1.3** No PERSON may keep any DOMESTIC ANIMAL with any symptom of rabies. Any PERSON observing an ANIMAL with any symptom of rabies shall notify the ANIMAL CONTROL OFFICER or the LUNA COUNTY SHERIFF's Department immediately.

## **Section 2.2 Sterilization**

**2.2.1** Sterilization and neutering is required for dogs and cats over the age of 6 months unless an annual INTACT ANIMAL PERMIT is purchased or a need-based waiver is granted for each ANIMAL.

**2.2.2** Unless granted a Need Based Waiver every dog or cat RECLAIMED, adopted or RESCUED from the COUNTY ANIMAL control shelter shall be spayed or neutered by a licensed VETERINARIAN at the expense of the responsible party or the OWNER must obtain an INTACT ANIMAL PERMIT and have the Intact ANIMAL microchipped within thirty (30) days of the date of RECLAIM/ADOPTION/RESCUE .

**2.2.3** In addition to any other lawful fees due, any PERSON RECLAIMING or adopting a dog or cat from the COUNTY shelter shall pay a STERILIZATION DEPOSIT. Fees for licenses, PERMITS and as required pursuant to this ordinance shall be established and adopted annually through resolution by the Luna County Board of County Commissioners. Absent an INTACT ANIMAL PERMIT, RECLAIMED ANIMALS shall not be released until sterilization has been administered unless allowed otherwise herein.

## **Section 2.3 Sterilization Agreement and Deposit Required**

**2.3.1** Pursuant to Section 77-1-20, NMSA 1978, a sterilization deposit is required by any PERSON RECLAIMING or adopting an ANIMAL from the COUNTY ANIMAL SHELTER.

**2.3.2** No ANIMAL shall be released from an ANIMAL SHELTER to an adopting PERSON unless a sterilization has been administered after payment of the STERILIZATION DEPOSIT, as provided herein.

**2.3.3** ADOPTION fees will be reduced by ten percent (10%) for those choosing to voluntarily using a MICROCHIP IMPLANT their ANIMALS.

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**2.3.4** ANIMALS less than six months of age shall be released only upon payment of the ADOPTION fee and STERILIZATION and after the adopting PERSON has signed an agreement stating he will have the adopted ANIMAL STERILIZED when it is not older than six (6) months of age.

**2.3.5** Adult ANIMALS over the age of six (6) months shall be released only after payment of the ADOPTION fee and a STERILIZATION DEPOSIT and sterilization has been administered.

**2.3.7** An UNSTERILIZED (Intact) ANIMAL RECLAIMED by its OWNER shall only be released without being STERILIZED upon payment of an INTACT ANIMAL PERMIT and other IMPOUNDMENT fees imposed by the shelter; or STERILIZATION pursuant to this Ordinance and payment of other IMPOUNDMENT fees imposed by the shelter.

**Section 2.4 Restraint and Control Requirements**

**2.4.1** A PERSON owning or having CUSTODY and care over an ANIMAL shall keep the ANIMAL under humane physical RESTRAINT at all times and shall maintain IMMEDIATE CONTROL over such ANIMALS when away from the OWNER'S property.

**2.4.2** ANIMALS not restrained by IMMEDIATE CONTROL, secure ENCLOSURE or humane TETHERING shall be deemed an unrestrained ANIMAL and subject to enforcement actions and penalties by ANIMAL CONTROL OFFICERS.

**2.4.3** All pens, kennels (as ENCLOSURES), stalls or other secure ENCLOSURES used to restrain an ANIMAL shall be properly constructed and maintained in a manner and condition that does not expose ANIMALS or humans to sharp edges and other dangers. Locking or latching devices shall be installed on all gates or doors to ANIMAL ENCLOSURES in such a manner as to be inaccessible to ANIMALS and small children to prevent ANIMAL escape and unauthorized entry.

**2.4.4** A rope, chain, or other device may be used to tether a dog or other ANIMAL on one's property, provided the following criteria are met:

**2.4.4.1** TETHERING or restraining must be to a stationary object and shall not be attached to any object that can be moved or dragged by the ANIMAL except that a running line, pulley or trolley system.

**2.4.4.2** The device must be affixed to the ANIMAL by use of a non-abrasive, comfortably fitted collar or harness and shall not be attached to a choke chain collar, pinch collar or prong collar.

**2.4.4.2** The device shall not be a logging or tow chain and must be at least 10 feet long. The device must be fastened so the ANIMAL can sit, walk and lie down comfortably; and must be unobstructed by objects that may cause the device or ANIMAL to become entangled or strangled. Any chain or tether shall have swivels on both ends.

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**2.4.4.3** The ANIMAL must have constant access to adequate shade, shelter, food and potable water as defined herein.

**2.4.4.5** TETHERING an ANIMAL must be done humanely as not to cause behavioral or physical changes and/or CRUELTY to the ANIMAL. No chain or tether shall weigh more than 1/8 of the dog's weight.

**2.4.4.6** TETHERING to a stationary object shall not be for more than six (6) continuous hours in any twelve (12) hour period.

**2.4.4.7** TETHERING to a running line, pulley or trolley system shall not be for more than twelve (12) continuous hours in any twenty-four (24) hour period.

**2.4.4.8** An ANIMAL shall not be tethered in any UNENCLOSED area where people or other ANIMALS can freely wander into the proximity of the tethered ANIMAL.

**2.4.4.9** The tether shall have working swivels on both ends and fastened in such a way as to allow the ANIMAL to sit, walk and lie down with natural motions and free of obstructions that may cause entanglement or strangulation.

**2.4.5** The area where the ANIMAL is restrained must be kept free of garbage and other debris that might endanger the ANIMAL'S health or safety. Feces shall not be allowed to accumulate and shall be cleaned up by the OWNER.

**2.4.6** Nothing in this section shall be construed as allowing any ANIMAL under physical RESTRAINT to commit any act defined as unlawful in this ordinance.

**2.4.7** A PERSON who uses electric or invisible fencing designed to confine an ANIMAL to his property must clearly post a notice in two separate locations upon the property that such a device is in use.

**2.4.8** The presence of any uninvited dog or cat upon public property or the private property of any PERSON other than its OWNER shall be prima facie evidence that the OWNER has violated the provisions of this section, and shall make such ANIMAL liable to surrender to an ANIMAL CONTROL OFFICER as would apply to the case of a dog RUNNING AT LARGE.

**2.4.9** This provision of this section do not apply to ANIMALS being properly used for herding or working LIVESTOCK, hunting activities, law enforcement activities, search and rescue and while engaged in training sessions.

## **Section 2.5 Animal Licensure and Identification**

**2.5.1** A PERSON owning or having care, CUSTODY and control of a dog or cat of at least three (3) months of age or more, shall obtain an annual LUNA COUNTY Pet License issued by the LUNA COUNTY Code Enforcement Department.

**2.5.2** Applications for a Pet License shall be made within thirty (30) days of acquiring OWNERSHIP or care, CUSTODY or control of a dog or cat.

**2.5.3** Proof of current rabies VACCINATION and Pet License shall be required to obtain or renew a Pet License.

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**2.5.4** Pet Licenses shall include Pet License Tag Number, name and address of OWNER, ANIMAL description and picture, rabies VACCINATION tag number and date, MICROCHIP number (if any), record of other VACCINATIONS and sterilization information or INTACT ANIMAL Permit Number.

**2.5.5** The COUNTY or its designee shall maintain a registry of all Pet Licenses.

**2.5.6** All STRAY dogs and cats that are that voluntarily have MICROCHIPS IMPLANTED at the OWNER'S expense when RECLAIMED by their OWNER, adopted or RESCUED will receive a ten percent (10%) discount on any fees owed. ANIMAL identification through MICROCHIPS and/or tags are encouraged as a means of returning lost or STRAY ANIMALS to their OWNERS, as is registration of the ANIMAL'S description, OWNER'S name, address, and telephone number, with VETERINARIANS or a national registry.

**2.5.7** Pet Licenses can be refused or revoked if the applicant has withheld or falsified information on any application or has been convicted of multiple violations of this ordinance or been convicted a crime related to the abuse or mistreatment of ANIMALS.

**2.5.8** Required ANIMAL tags shall be worn while away from the OWNER'S property and during any veterinary or grooming care and may not be transferred to another ANIMAL or OWNER.

**2.5.9** Fees for Pet Licenses shall be set by Resolution of the Luna County Board of County Commissioners but no fee shall be charged for qualified SERVICE or therapy ANIMALS.

**Section 2.6 Care and Maintenance of Animals**

**2.6.1** It is unlawful for a PERSON to fail, refuse and/or NEGLECT to provide any ANIMAL in his charge or CUSTODY with such care and husbandry as to maintain the good health and well-being of the ANIMAL. Such care and husbandry shall include, but not be limited to, adequate wholesome food, provided daily, fresh potable water, available at all times, clean adequate living area, shade, professional veterinary care and necessary grooming and daily cleaning and removal of feces and waste.

**2.6.2** To maintain good health and protection from weather elements, any ANIMAL, except horses, cattle, pigs, sheep or goats, habitually kept outside shall be provided with a structurally sound, weatherproof ENCLOSURE, large enough to accommodate the ANIMAL comfortably, with adequate shade and ventilation and built to provide adequate protection and comfort from weather and temperature extremes.

**2.6.2.1.** Dog Housing shall provide a minimum of flat floor space as follows:

**2.6.2.1.1** One dog up to 15 pounds = at least 4 square feet;

**2.6.2.1.2** One dog 15 pounds up to 30 pounds = at least 8 square feet;

**2.6.2.1.3** One dog 30 pounds up to 65 pounds = at least 12 square feet;

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**2.6.2.1.4** One dog 65 pounds or more = at least 20 square feet.

**2.6.2.2** Dog Housing shall provide vertical space of at least 1.5 times the height of the dog at the shoulder.

**2.6.2.3** If more than one dog occupies the same primary ENCLOSURE, in addition to the minimum requirement for one dog, each additional dog must provide at least one-half of the minimum square footage required by weight.

**2.6.2.4** Dog beds are recommended but not required but if dog beds are provided, a bed must be provided for each dog occupying the same primary ENCLOSURE.

**2.6.2.5** Cat Housing, if kept in a crate or cage, shall provide a minimum of 4 square feet with food, litter and bedding spaced apart as possible with sufficient space to stand, stretch and move around.

**2.6.2.6** If colony rooms are used as Cat Housing, at least 18 square feet per cat must be provided with the ability for the cats to maintain at least 3 feet between themselves and other cats. Cat perches or walkways do not count toward the minimum square footage but outdoor access is included in the minimum square footage. A 12" x 18" or larger litter pan or box must be provided for every three cats in colony rooms; such pan or box to be constructed of materials suitable for sterile cleaning, such as stainless steel or fiberglass.

**2.6.2.7** UNSTERILIZED males must be segregated from females and kittens less than 6 months old must be housed separately with their mothers.

**2.6.3** ANIMAL ENCLOSURES shall be maintained free of garbage, feces and other debris that might endanger the ANIMAL'S health or safety.

**2.6.4** ANIMALS and their ENCLOSURES shall be maintained free of insect infestations, such as ants, wasps, fleas, ticks, maggots and other parasites, and other infestations, such as mice, rats and other rodents, which might endanger the ANIMAL'S health or safety.

**2.6.5** ENCLOSURES where an ANIMAL is maintained for periods exceeding twenty-four (24) hours must be of adequate size to prevent overcrowding and allow for normal exercise according to species, and in no case shall the minimum twice-daily exercise be less than twenty (20) minutes each session, with documentation maintained for each ANIMAL.

**2.6.6** ANIMALS with infectious diseases or with unknown VACCINATION history must be held in ISOLATION in housing providing the appropriate minimum space until evaluated and treatment completed.

**2.6.7** ANIMAL crates may not be stacked more than three (3) crates high and must be secured to at least one adjacent wall and crate flooring may not be wires or slats unless properly covered to prevent paws and feet from slipping through.

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**Section 2.7 Animal Waste**

The OWNER or keeper of ANIMALS, such as dogs, cats or any small household ANIMAL shall maintain a watertight and fly tight receptacle for feces from such ANIMALS which shall be emptied frequently and in such a manner so as to prevent a nuisance or health hazard. Such receptacles shall be securely covered at all times except when opened to deposit feces. No feces will be allowed to accumulate except in such receptacles.

**ARTICLE III PROHIBITED ACTIVITIES**

**Section 3.1 Animals Biting Persons**

**3.1.1** The OWNER of an ANIMAL that BITES a PERSON and a PERSON bitten by an ANIMAL have a duty to report that occurrence to the ANIMAL Control Unit within 24 hours of the occurrence. The OWNER of an ANIMAL that BITES a PERSON shall surrender said ANIMAL to an ANIMAL CONTROL OFFICER if the officer deems it necessary to impound said ANIMAL for a period of observation.

**3.1.2** A physician who renders professional treatment to a PERSON bitten by an ANIMAL shall report to the LUNA COUNTY SHERIFF that he has rendered professional treatment within 24 hours of his first professional attendance. The physician shall report the name and address of the PERSON bitten as well as the type and location of the BITE. The physician shall report the name and address of the OWNER of the ANIMAL that inflicted the BITE, if known, and any other facts or details that may assist the ANIMAL Control Unit in ascertaining the immunization status of the ANIMAL.

**3.1.3** An ANIMAL that BITES a PERSON shall be confined securely at a place and for a period of time deemed necessary by the ANIMAL CONTROL OFFICER. The OWNER of the ANIMAL shall bear the cost of CONFINEMENT.

**3.1.4** ANIMAL CONTROL OFFICERS may take up and impound the ANIMAL into protective CUSTODY for the period of the QUARANTINE and the OWNER shall pay all related costs of the IMPOUNDMENT prior to RECLAIMING the ANIMAL.

**3.1.5** The ANIMAL CONTROL OFFICER may consent to CONFINEMENT of the ANIMAL on the OWNER'S PREMISES. The PREMISES where the home CONFINEMENT is to occur shall be inspected and approved for such purpose by the ANIMAL CONTROL OFFICER. The OWNER of the ANIMAL shall be required to enter into an indemnity agreement on a form approved and prescribed by the Supervisor for such home CONFINEMENT.

**3.1.6** If the ANIMAL shows signs of sickness or abnormal behavior, or if the ANIMAL escapes CONFINEMENT, the PERSON shall immediately notify the ANIMAL CONTROL OFFICER. The PERSON having CUSTODY of an ANIMAL that dies during the CONFINEMENT period shall notify the ANIMAL CONTROL OFFICER and surrender the carcass of the ANIMAL immediately to an ANIMAL CONTROL OFFICER.

**Section 3.2 Abandonment**

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It is unlawful for a PERSON to abandon an ANIMAL or cause an ANIMAL to be abandoned.

### Section 3.3 Animal Nuisances

**3.3.1** It is unlawful for a PERSON to allow an unprovoked ANIMAL to persistently or continuously bark, howl or make noise common to their species or otherwise disturbs the peace and quiet of inhabitants of the COUNTY for more than sixty (60) consecutive minutes.

**3.3.2** No PERSON may keep any ANIMALS and/or LIVESTOCK in unclean or unsanitary conditions or in such numbers so as to result in noxious or offensive odors or accumulations of feces, urine or other bodily wastes, that disturbs others or confine the ANIMALS in such conditions so as to become unmanageable or potentially vicious.

**3.3.3** No OWNER or RESPONSIBLE PERSON of any DOMESTIC ANIMAL shall allow that ANIMAL to defecate upon public property or upon any private property other than the property of the OWNER of the ANIMAL without thoroughly and immediately removing and legally disposing of the feces.

**3.3.4** OWNERS or PERSONS with the CUSTODY, care and control of ANIMALS shall prevent ANIMALS from causing damage or being a nuisance to another PERSON or property and shall be financially responsible for any such damage or nuisance, in addition to being responsible for any fines or penalties assessed.

**3.3.5** OWNERS or PERSONS having CUSTODY, care and control over a female ANIMAL in estrus shall confine the ANIMAL in such a way that prevents the ANIMAL from becoming a nuisance.

**3.3.6** ANIMAL CONTROL OFFICERS shall have the authority to enter PREMISES on which a nuisance ANIMAL is located in an effort to abate the nuisance. If the OWNER or PERSON having CUSTODY, care and control over the nuisance ANIMAL is unable or unwilling to abate the nuisance or cannot be located on the property, the ANIMAL CONTROL OFFICER may seize and impound the ANIMAL, subject to the OWNER'S right of reclamation after payment of any assessed fines or penalties.

### Section 3.4 Animals at Large

**3.4.1** It is unlawful for a PERSON to allow or permit any ANIMAL to run at large in or on any alley, street, sidewalk, vacant lot, public property, other UNENCLOSED place in the COUNTY, or private property without permission of the property OWNER.

**3.4.2** An ANIMAL permitted to run at large in violation of this section is declared to be a nuisance and a menace to the public health and safety. Such ANIMAL may be taken up and impounded. An officer may not enter a private building or residence in pursuit of an ANIMAL without permission of the OWNER.

**3.4.3** A working dog performing such acts as herding or search and rescue that is under the control and supervision of the OWNER or handler shall not be considered as unleashed while performing or being trained for its duties. A hunting, obedience, tracking, or show dog that is under the control and supervision of the OWNER or handler shall not be considered as unleashed while performing in or being trained for those capacities.

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**3.4.4** A PERSON shall not, without the knowledge and consent of the OWNER, hold, HARBOR or retain possession of any ANIMAL for more than twenty-four (24) hours without first submitting a Found ANIMAL Report to an ANIMAL CONTROL OFFICER.

**3.4.5** Found ANIMALS shall be immediately surrendered to an ANIMAL CONTROL OFFICER, upon request, and found ANIMALS shall be allowed to be scanned for a MICROCHIP and, when requested, presented for INSPECTION or identification to an ANIMAL CONTROL OFFICER and PERSON claiming OWNERSHIP of the ANIMAL.

**Section 3.5 Animals Transported in Vehicles**

**3.5.1** It is unlawful for a PERSON to carry an ANIMAL in or upon any vehicle in an unsafe manner.

**3.5.2** If an ANIMAL CONTROL OFFICER determines that an ANIMAL in a closed vehicle is in immediate danger or SERIOUS INJURY or death, the officer may enter the vehicle, by whatever means necessary, and impound the ANIMAL into protective CUSTODY.

**3.5.3** It shall be prima facie evidence on unsafe transportation if an ANIMAL is carried in open vehicle or truck bed on public roads with speed limits of 55 miles per hour or greater.

**3.5.4** An ANIMAL in an open vehicle or truck must be restrained in such a manner that the ANIMAL cannot leave the confines of the open vehicle or truck bed while restrained.

**Section 3.6 Breaking into Animal Control Facilities or Vehicles**

It is unlawful for a PERSON to break into any pound, center, facility or vehicle wherein ANIMALS are impounded, or to in any manner remove or assist in the removal of any ANIMAL or equipment from such.

**Section 3.7 Cruelty to Animals**

**3.7.1** CRUELTY to ANIMALS is prohibited and consists of the placement of an ANIMAL in a circumstance that endangers or puts the ANIMAL at substantial risk of loss of life or limb. It also includes, but is not limited to, the following:

**3.7.1.1** Negligently mistreating, torturing, injuring, tormenting, poisoning, mutilating or, without legal justification, killing any ANIMAL;

**3.7.1.2** Voluntarily or involuntarily abandoning or failing to provide necessary sustenance to an ANIMAL;

**3.7.1.3** Voluntarily or involuntarily depriving an ANIMAL of shelter to the extent it endangers or could cause suffering or endanger the life of said ANIMAL.

**3.7.1.4** Voluntarily or involuntarily depriving an ANIMAL of necessary sustenance, food and/or drink or failing to meet minimum housing standards as set out herein; or

**3.7.1.5** Placement of an ANIMAL in a vehicle or other confined area whereby it is subjected to extreme temperatures or conditions.

**3.7.2** Extreme CRUELTY to ANIMALS is prohibited and consists of the intentional placement of an ANIMAL in a circumstance that endangers the

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ANIMAL and results at substantial risk of loss of life or limb. It also includes, but is not limited to, the following:

**3.7.2.1** Intentionally, maliciously or with extreme disregard or mistreating, injuring, tormenting, torturing, poisoning or, without lawful justification, killing an ANIMAL; or

**3.7.2.2** Maliciously killing or killing without lawful justification an ANIMAL.

**3.7.3** CRUELTY and Extreme CRUELTY to ANIMALS does not consist of:

**3.7.3.1** Lawful fishing, hunting, falconry, taking and trapping;

**3.7.3.2** The lawful practice of veterinary medicine;

**3.7.3.3** Lawful rodent or pest control that does not endanger wildlife or other ANIMALS;

**3.7.3.4** The treatment of LIVESTOCK and other ANIMALS used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural ANIMAL husbandry practices;

**3.7.3.5** The use of commonly accepted rodeo practices, unless otherwise prohibited by law;

**3.7.3.6** Duly licensed research facilities, except when knowingly operating outside provisions, governing the treatment of ANIMALS, of a research or maintenance protocol approved by the institutional ANIMAL care and use committee of the facility;

**3.7.3.7** A state-managed or authorized predator control program; or

**3.7.3.8** Other similar activities not otherwise prohibited by law.

**3.7.4** Disputes as to what constitutes commonly accepted agricultural ANIMAL husbandry practices or commonly accepted rodeo practices shall be determined by applicable statutes, rules and regulations or the New Mexico Livestock Board rules, regulations or determinations.

**3.7.5** Prosecution of ANIMAL CRUELTY may be under this Ordinance and/or any applicable laws, rules and regulations.

**3.7.6** Nothing contained in this Section shall apply to or prohibit the use of reasonable and necessary force to drive off or stop an ATTACK by a vicious, dangerous or trespassing ANIMAL.

### **Section 3.8 Vicious or Dangerous Animals**

**3.8.1** It shall be unlawful to maintain, HARBOR or keep a vicious/dangerous ANIMAL or potentially vicious/dangerous ANIMAL in a manner that constitutes a threat to any PERSON or other ANIMAL. All vicious/dangerous ANIMALS must be securely confined in escape-proof locked structures and the OWNER must post warning signs warning people to remain a safe distance from said ANIMALS. Any PERSON ATTACKED by a vicious/dangerous ANIMAL may use reasonable force to repel the ATTACK. Any ANIMAL CONTROL OFFICER who determines that the present conditions of CONFINEMENT for a vicious/dangerous ANIMAL do not meet the above standards and that a present substantial danger to the public exists may, consistent with the constitutional rights of the OWNER, take control of said ANIMAL and confine it, pending further Court action.

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**3.8.2** When an ANIMAL CONTROL OFFICER has probable cause to believe that an ANIMAL is vicious/dangerous or potentially vicious/dangerous, the ANIMAL CONTROL OFFICER may, consistent with the constitutional rights of the OWNER, impound the ANIMAL into protective CUSTODY awaiting appropriate court proceedings. Following judicial determination that an ANIMAL is vicious/dangerous, 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 destroy it humanely or turn such ANIMAL over for destruction.

**3.8.3** An ANIMAL CONTROL OFFICER who learns of a STRAY vicious/dangerous ANIMAL within the COUNTY, which is a threat or potential threat to human life, is authorized to destroy said STRAY vicious/dangerous ANIMAL if he is unable to capture said ANIMALS without any substantial danger to himself or others.

**3.8.4** A Vicious/Dangerous ANIMAL means any of the following:

**3.8.4.1** Any ANIMAL that, without provocation, ATTACKS, BITES or physically injures kills or seriously injures a PERSON or other ANIMAL;

**3.8.4.2** An ANIMAL, which engages in behavior that reasonably requires a defensive action by a PERSON to prevent bodily injury to a PERSON;

**3.8.4.3** A snake, which, because of its poisonous BITE, is a significant hazard to the public;

**3.8.4.5** Any ANIMAL known to be vicious and is deemed liable to ATTACK or injure any PERSON or other ANIMAL;

**3.8.4.6** Any ANIMAL which at any time without provocation shall BITE, ATTACK or injure any PERSON who was peacefully conducting himself where he lawfully may be.

**3.8.5** A Potentially Vicious/Dangerous ANIMAL means an ANIMAL:

**3.8.5.1** That may be reasonably assumed to pose a threat to public safety by a pattern of behavior;

**3.8.5.2** Has prior incidents of history of causing an injury to a PERSON or ANIMAL that is less severe than a SERIOUS INJURY;

**3.8.5.3** That chases or menaces a PERSON or DOMESTIC ANIMAL in an aggressive manner and without provocation; or

**3.8.5.4** That by acting in a highly aggressive manner within a fenced yard or ENCLOSURE and appearing able to jump out of the yard or ENCLOSURE.

**3.8.6** A Dangerous ANIMAL shall not mean:

**3.8.6.1** A dog used by a law enforcement official for legitimate law enforcement purposes;

**3.8.6.2** If the threat, injury or damage was sustained by a PERSON or DOMESTIC ANIMAL who was trespassing upon PREMISES occupied by the OWNER or the dog;

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**3.8.6.3** If the ANIMAL was provoked, tormented, abused or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog;

**3.8.6.4** The victim was injured or ATTACKED while committing or attempting to commit a crime; or

**3.8.6.5** The ANIMAL was responding to fear, pain or injury, protecting itself or its offspring; or protecting or defending a human being or DOMESTIC ANIMAL from ATTACK or assault.

### **Section 3.9 Unlawful Use of VACCINATION Certificates**

No PERSON may remove any VACCINATION tag from one DOMESTIC ANIMAL to another, or manufacture or cause to be manufactured or to possess or control a stolen, counterfeit or forged ANIMAL VACCINATION certificate or tag.

### **Section 3.10 Use and Safety of Fireworks**

No PERSON shall ignite any aerial device firework so that any part of that aerial device firework or the sparks or flames from that aerial device firework comes within fifty feet of any DOMESTIC ANIMAL or LIVESTOCK belonging to another PERSON.

### **Section 3.11 Restrictions on Sale or Transfer of Ownership**

**3.11.1** The sale, offer to sell, permanent transfer or ADOPTION of ANIMALS under the age of six (6) weeks is prohibited and ANIMALS over the age of six (6) weeks is prohibited until the ANIMAL has been weaned and capable of eating on its own to sufficiently maintain proper body condition as determined by an ANIMAL CONTROL OFFICER unless accompanied by a nursing female.

**3.11.2** Prior to the sale or permanent transfer of any ANIMAL outside the boundaries of LUNA COUNTY, a letter or certification of health from a VETERINARIAN must be obtained which evaluates the physical condition and fitness for travel and verifies the absence of communicable or infectious diseases, such as rabies, parvo, distemper, etc. ANIMALS infected with communicable or infectious diseases shall not be transferred and are subject to the QUARANTINE or ISOLATION provisions of this Ordinance.

**3.11.3** The sale, offer for sale, barter, give away, ADOPTION or other transfer upon a street, sidewalk, public park or any area open to the public is prohibited unless conducted by or on behalf of the COUNTY ANIMAL SHELTER or without a Special Animal Event PERMIT.

**3.11.4** The offer of an ANIMAL as a prize, giveaway, premium, novelty, award or reward for a contest, game or sport or as an incentive to purchase merchandise is prohibited unless done in conjunction with FFA, 4-H or other RECOGNIZED ANIMAL humane organizations and approved, in advance, by the COUNTY or its designee.

**3.11.5** Other than accurately labeled and identified fish, the sale, offer for sale, or other transfer of venomous ANIMALS is prohibited.

**3.11.6** Nothing herein shall prohibit the sale, transfer or ADOPTION by, between, or among ANIMAL SHELTERS, ANIMAL RESCUES, and/or ANIMAL SANCTUARY OR REFUGE facilities.

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**ARTICLE IV. EXOTIC ANIMALS**

**Section 4.1 Exotic Animals**

Except for municipal zoos and aquarium facilities, veterinary facilities, or individuals holding a State of New Mexico Wildlife Rehabilitation or Educational Use Permit, the possession of EXOTIC ANIMALS is prohibited.

**ARTICLE V PERMITS, AGREEMENTS AND FEES REQUIRED**

**Section 5.1 Permits**

LUNA COUNTY requires the following INSPECTIONS, permits, licenses, and SPECIAL ANIMAL PERMITS conducted or issued by the LUNA COUNTY Code Enforcement Office on Applications prepared by an applicant in cooperation with the LUNA COUNTY Code Enforcement Office. Permit requests will be acknowledged and conditionally granted no later than the next business day and conditioned on any inspections or additional information requests. Applications are available at their office and online at the LUNA COUNTY website.

**5.1.1 DOMESTIC ANIMAL License.** All domestic dogs and cats kept as pets must be registered bi-annually.

**5.1.2** All permitted facilities shall be inspected based on the total capacity for the facility as follows:

**5.1.2.1** 8 to 20 ANIMALS – at least once each 12 months;

**5.1.2.2** 21 to 40 ANIMALS – at least once every 6 months;

**5.1.2.3** 41 to 60 ANIMALS – at least once every 3 months; and

**5.1.2.4** 61 or more ANIMALS – at least once each month.

**5.1.3** Except temporarily in a RECOGNIZED emergency, as determined by LUNA COUNTY or its designee, no facility of any kind may hold, contain or possess more than 80 ANIMALS.

**5.1.4 ANIMAL RESCUE Facility PERMITS** allow any licensed or permitted PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or a member thereof, to take temporary CUSTODY of or care for the licensed number of ANIMALS until suitable permanent housing or placement is found. All facilities operated as an ANIMAL RESCUE must be registered and permitted annually and inspected at least annually.

**5.1.5 ANIMAL SHELTER Facility PERMITS** allow any licensed or any permitted non-profit ANIMAL humane entity not established or authorized by a municipality or county of the State of New Mexico to temporarily take CUSTODY of or care for the licensed number of ANIMALS until a permanent placement or DISPOSITION is found. All facilities operated as an ANIMAL SHELTER must be registered, permitted annually and inspected at least annually.

**5.1.6 ANIMAL SANCTUARY OR REFUGE Facility PERMITS** allow any licensed or permitted PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or member thereof, to take permanent or indefinite CUSTODY of and care for ANIMALS not suitable for placement elsewhere. All facilities operated as an ANIMAL SANCTUARY OR REFUGE must be registered and permitted annually and inspected at least annually.

**5.1.7 BREEDING FACILITY PERMITS,** allow any licensed or permitted PERSON or non-profit organization RECOGNIZED as an ANIMAL humane

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organization, or member thereof, to house up to eight (8) female dogs and eight (8) female cats for the purpose of breeding and producing offspring with the intent to sell, gift or otherwise transfer OWNERSHIP to third parties. All facilities operated as Breeding Facilities must be registered and permitted annually and inspected at least quarterly. Additionally, all litters must be reported within seventy-two (72) hours and inspected within eight (8) weeks. Breeding Facilities and BREEDERS may not operate as an ANIMAL RESCUE, ANIMAL SHELTER, ANIMAL SANCTUARY OR REFUGE, KENNEL, or other MULTIPLE ANIMAL FACILITY.

**5.1.7.1** INTACT ANIMAL PERMITS allow for a RESPONSIBLE PERSON to keep an ANIMAL intact for the calendar year in which the PERMIT is issued. INTACT ANIMAL PERMITS must be registered and permitted annually.

**5.1.8** Groomer or Grooming Parlor PERMITS allow for a PERSON or organization to take temporary CUSTODY of up to twenty (20) ANIMALS for the purpose of performing cosmetic services for ANIMALS including, but not limited to, bathing, brushing, grooming and nail trimming, for up to seventy-two (72) hours. Groomer or Grooming Parlor PERMITS must be registered and permitted annually and inspected for cause or upon receipt of a credible complaint.

**5.1.9** KENNELS must be registered and permitted annually and inspected for cause or upon receipt of a credible complaint.

**5.1.10** MULTIPLE ANIMAL FACILITY PERMITS allow for a PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or member thereof, for a purpose not otherwise specified herein, such as foster-care, to take temporary CUSTODY of up to nine (9) ANIMALS at any one time. MULTIPLE ANIMAL FACILITY PERMITS must be registered and permitted annually and inspected at least annually.

**5.1.11** PET SHOP PERMITS allow for a PERSON or organization to operate a business physical or online, open to the public, for the purpose of purchasing, selling or exchanging ANIMALS. PERMITS shall specify the number of each type of ANIMAL to be held at the facility. PET SHOP PERMITS must be registered and permitted annually and inspected at least annually.

**5.1.12** SPECIAL ANIMAL PERMITS allow for operations or purposes not otherwise specified in this Ordinance, such as ANIMAL transport and SERVICE ANIMALS. SPECIAL ANIMAL PERMITS must be registered and permitted annually.

## Section 5.2 Agreements

**5.2** The COUNTY ANIMAL SHELTER shall not release any DOMESTIC ANIMAL for RECLAIM, ADOPTION, or RESCUE unless the OWNER or RESPONSIBLE PERSON signs a Reclaim, Adoption and Rescue Agreement, the form of which shall be approved by the COUNTY MANAGER, or his designee. At a minimum, the Agreement shall:

**5.2.1** Obligate the RECLAIMING/adopting/rescuing PERSON to vaccinate any ANIMAL not proven to be vaccinated for rabies within

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thirty (30) days of possession and provide proof to the COUNTY ANIMAL SHELTER or be subject to automatic forfeiture of the ANIMAL; and

**5.2.2** Obligate the RECLAIMING/adopting/rescuing PERSON to have a DOMESTIC ANIMAL older than 6 months of age STERILIZED or that PERSON obtain an INTACT ANIMAL PERMIT for the ANIMAL and have the Intact ANIMAL micro-chipped within thirty (30) days of the date of RECLAIM/ADOPTION/RESCUE;

**5.2.3** Indicate whether or not the Owner agrees to a MICROCHIP IMPLANT, thereby entitling the Owner to a ten percent (10%) discount on any fees due and owing.

**Section 5.3 Fees**

Fees for licenses, PERMITS as required and pursuant to this ordinance shall be established and adopted annually through resolution by the Board of County Commissioners.

**ARTICLE VI ANIMAL CONTROL OFFICER; AUTHORITY, RESPONSIBILITIES AND IMPOUNDMENT PROCEDURES**

**Section 6.1 Authority of the Animal Control Officer**

ANIMAL CONTROL OFFICERS will be properly trained and, within one (1) year of employment, obtain basic or level one ANIMAL CONTROL OFFICER certification and subject to constitutional limitations, shall have the following authority:

**6.1.1** To require RESPONSIBLE PERSONS to exhibit proof of rabies VACCINATION for any dog, cat or domestic ferret in their CUSTODY.

**6.1.2** To enter upon private property to affix any summons, notice or official document upon the door of any residence occupied by a RESPONSIBLE PERSON.

**6.1.3** To enter upon any PREMISES or go upon UNENCLOSED parcels of land enter any pen, ENCLOSURE, yard or vehicle to enforce this Ordinance. However, the Officer must personally view any violation proscribed by this Ordinance that would place a DOMESTIC ANIMAL in immediate peril. Further, the Officer may enter only to the extent necessary for the immediate RESCUE of an imperiled ANIMAL.

**6.1.4** To enter upon any licensed or permitted PREMISES for the purpose of conducting an INSPECTION required under this Ordinance, or in response to any COMPLAINT of ANIMAL CRUELTY or mistreatment.

**6.1.5** ANIMAL CONTROL OFFICERS may not enter any building, dwelling or place of business without the permission of the OWNER. However, nothing in this section limits the authority of an ANIMAL CONTROL OFFICER pursuant to a warrant issued by a court of competent jurisdiction.

**Section 6.2 Responsibilities of the Animal Control Officer**

**6.2.1** ANIMAL CONTROL OFFICER shall make every attempt to impound any DOMESTIC ANIMAL that he or she finds running astray and not under the control of the OWNER or RESPONSIBLE PERSON.

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**6.2.2** ANIMAL CONTROL OFFICER shall destroy any dog he or she finds in the act of pursuing or wounding LIVESTOCK or wounding and killing POULTRY or ATTACKING humans.

**6.2.3** ANIMAL CONTROL OFFICER shall detain any DOMESTIC ANIMAL exhibiting symptoms of rabies. The ANIMAL CONTROL OFFICER shall have any such ANIMAL tested for rabies by the New Mexico Department of Health.

**6.2.4** Must obtain proper training for duties and responsibilities required as an ANIMAL CONTROL OFFICER to apprehend, handle and care for ANIMALS.

**Section 6.3 Impounding Animals**

**6.3.1** An ANIMAL Control Officer may detain and impound in the designated ANIMAL control facility a STRAY or any ANIMAL kept or maintained contrary to the requirements of this ordinance.

**6.3.2** If a STRAY, DOMESTIC ANIMAL is wearing a license, collar, anti-rabies tag, has an identifying tattoo, MICROCHIP or is otherwise identifiable, the ANIMAL may be either immediately returned to the OWNER or impounded for at least five (5) days. During the five (5) days of IMPOUNDMENT, the ANIMAL SHELTER shall attempt, at least once daily, to notify the ANIMAL'S OWNER(S) or RESPONSIBLE PERSON(S) of the IMPOUNDMENT by either direct communication or oral or written message. Further, the ANIMAL SHELTER shall not release the ANIMAL for ADOPTION during the five days of IMPOUNDMENT.

**6.3.3** If an OWNER or RESPONSIBLE PERSON contacts the ANIMAL SHELTER before expiration of the IMPOUNDMENT period, but cannot arrange to RECLAIM the ANIMAL before the IMPOUNDMENT period expires, the ANIMAL SHELTER shall assist the OWNER or RESPONSIBLE PERSON in making alternative arrangements, at the OWNER or RESPONSIBLE PERSON'S expense.

**6.3.4** The OWNER or RESPONSIBLE PERSON shall be responsible for all impound fees, boarding fees, and other costs whether or not the ANIMAL is RECLAIMED.

**6.3.5** Any STRAY which is not RECLAIMED and cannot be adopted, may be euthanized in accordance with the impound facility's regulations.

**6.3.6** The ANIMAL may be confined in accordance with the facilities regulations.

**6.3.7** The Director of such facility shall maintain, as required by statute, a record of all ANIMALS impounded. At least the following information shall be included:

- A complete description of the ANIMAL and photo;
- The manner, date and location of its acquisition;
- The date, manner, and place of IMPOUNDMENT;
- The IMPOUNDMENT number; and
- The date and manner of DISPOSITION of said ANIMAL.

**6.3.8** OWNERS requesting surrender of an ANIMAL shall be required to sign an OWNER'S release at the time of IMPOUNDMENT.

**6.3.9** If a STRAY ANIMAL is not wearing a current rabies tag and is deemed critically injured or critically ill by an ANIMAL CONTROL OFFICER, the officer may deliver the ANIMAL to the Luna County Humane Society for

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EUTHANASIA. A report must be filed with the Luna County SHERIFF. A properly trained and equipped ANIMAL CONTROL OFFICER may euthanize said ANIMAL if he/she believes it is necessary.

**6.3.10** Whenever an ANIMAL CONTROL OFFICER finds that any ANIMAL is or will be without adequate care because of injury, illness, incarceration or other absence of the OWNER or PERSON responsible for the care of such ANIMAL, the Luna County SHERIFF or his designee may take up such ANIMAL for protective care. The OWNER of the ANIMAL may RECLAIM the ANIMAL after paying all required fees and costs imposed by the impound facility. If the ANIMAL is unclaimed at the end of the protective CUSTODY period of fifteen (15) days, the ANIMAL may be humanely destroyed or otherwise disposed of by impound facility.

**6.3.11** The OWNER of any impounded dog or cat that has not been vaccinated as required by this chapter may redeem the ANIMAL by paying IMPOUNDMENT charges at the COUNTY ANIMAL SHELTER and having the ANIMAL vaccinated within thirty (30) days with proof provided thereafter to the COUNTY ANIMAL SHELTER. If such OWNER fails to comply with this section, the ANIMAL may be impounded and subject to forfeiture.

## ARTICLE VII ADMINISTRATION

### Section 7.1 Procedures for Complaints

**7.1.1** A COMPLAINT alleging any violation of this ordinance shall be filed with the Luna County SHERIFF and the CONTRACTOR of the ANIMAL SHELTER by a PERSON who has personal knowledge of such violation and who can identify the OWNER of the ANIMAL involved or the PREMISES where the ANIMAL is located.

**7.1.2** The Complainant must include his/her name, address, phone number and e-mail account with the COMPLAINT.

**7.1.3** ANIMAL CONTROL OFFICER must include all findings in the investigation report narrative and submit a copy to the COUNTY MANAGER or his designee.

### Section 7.2 Procedure for Sheriff and Animal Control Officers

**7.2.1** The Luna County SHERIFF or his deputies and ANIMAL CONTROL OFFICERS shall have the authority to and are directed to investigate, upon probable cause, any alleged violation of this Ordinance or of any law of the State of New Mexico relating to the care, treatment, control and prevention of CRUELTY to ANIMALS. The results of all investigations shall be presented to the Luna County SHERIFF and referred to the District Attorney for determination of further action.

**7.2.2** An ANIMAL CONTROL OFFICER shall wear a uniform and shall carry appropriate identification when on duty.

**7.2.3** In enforcing this ordinance, the COUNTY'S personnel shall observe all of the legal rights granted its citizens under United States or New Mexico law, including citizens' constitutional rights against unreasonable searches and seizures. All such searches and seizures shall be conducted in such a manner as to

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protect the citizens' rights under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. These protections require that the officer have consent of the PERSON, or a warrant to enter upon private property or that such entry be in accordance with a RECOGNIZED exception to the warrant requirement, per existing Federal or New Mexico State law. If an officer receives a COMPLAINT of a violation, or observes a violation, he/she may only enter the property if such entry is done in conformance with the above constitutional requirements. Where legally RECOGNIZED exigent circumstances exist, per existing Federal or New Mexico State law, to justify such an entry and a warrant cannot reasonably be obtained by the officer, he/she can enter the PREMISES to the extent justified by law. For example, exigent circumstances exist where an ANIMAL appears to have been abandoned, as defined in this ordinance, and the officer reasonably believes it is necessary to protect the life and safety of the ANIMAL; the officer may enter the property to detain the ANIMAL.

7.2.4 Whenever a Deputy or an ANIMAL CONTROL OFFICER has probable cause to believe that a PERSON has violated this Ordinance or applicable state laws, the ANIMAL CONTROL OFFICER shall prepare a criminal COMPLAINT to be submitted to the Luna County SHERIFF and referred to the District Attorney for filing with the appropriate court or prepare a citation for the alleged violator to appear in court. The citation shall contain the name, date of birth, address and telephone number, if known, of the PERSON violating this chapter, the driver's license number of such violator, if known, the code section allegedly violated, and the date and place when and where such PERSON allegedly committed the violation, and the location where such PERSON shall appear in court and the deadline for appearance. The ANIMAL CONTROL OFFICER shall present the citation to the PERSON he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign a copy of the citation. The ANIMAL CONTROL OFFICER shall deliver a copy of the citation to the PERSON promising to appear.

**ARTICLE VIII PENALTIES**

**Section 8.1 Penalties-Repeat Offenses**

Any violation of this Ordinance shall constitute a petty misdemeanor and shall be punishable by a fine up to five-hundred dollars (\$500) and/or imprisonment up to six (6) months or both.

**Section 8.2 Suspensions, Revocations of Permits.**

8.2.1 When a violation of this Ordinance is discovered, the Luna County SHERIFF or his designee shall give notice of the violations to the PERMIT holder, operator or PERSON in charge. The notification shall:

Set forth each specific violation.

Established a specific and reasonable period of time for the correction of the violation.

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State that failure to comply with a notice issued in accordance with the provisions of this chapter may result in immediate suspension or revocation of the PERMIT.

State that an opportunity for appeal from a notice or INSPECTION findings will be provided if a written request for a hearing is filed with the Supervisor within 5 days of receipt of the notice.

**8.2.2** Notices under this section shall be deemed properly served and received when the original INSPECTION report or other notice has been personally served on the PERSON in charge or sent by registered or certified mail to the last known address of the PERMIT holder.

**8.2.3** PERMITS may be suspended for failure of the holder to comply with the requirements of this chapter or other applicable laws, ordinances or regulations. The suspension may be lifted when the Supervisor determines the violations have been corrected.

**8.2.4** PERMITS may be revoked for serious or repeated violations of the requirements of this chapter, or for violation of other applicable laws, ordinances or regulations. A PERMIT shall be revoked for one (1) year. The PERMIT shall be surrendered to the ANIMAL Control Unit upon suspension or revocation.

**8.2.5** A PERSON whose PERMIT has been suspended may apply for an INSPECTION of the PREMISES for the purpose of reinstating the PERMIT. If the applicant and the site are in compliance with the requirements of this chapter and all other applicable laws, ordinances and regulations, the PERMIT shall be reinstated. The reinstated PERMIT shall expire on the date of expiration of the previously suspended PERMIT.

### **Section 8.3 Appeal Procedures for Permit Denial, Suspension or Revocation**

**8.3.1** A PERSON whose application for a PERMIT or PERMIT renewal has been approved on condition or denied and a PERMIT holder, whose PERMIT has been suspended or revoked, may submit to the COUNTY ANIMAL SHELTER a written request for a hearing. The written request must be received within ten (10) days of the applicant's receipt of the written notice from the COUNTY. The hearing shall be conducted within a reasonable time after the COUNTY ANIMAL SHELTER receives the request for a hearing.

**8.3.2** Hearings shall be conducted by a hearing officer at a time and place designated by the COUNTY ANIMAL SHELTER and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time and place of the hearing shall be mailed to the applicant and the LUNA COUNTY MANAGER.

**8.3.3** The applicant shall be afforded a fair hearing that provides the basic safeguards of due process that shall include:

**8.3.4** 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 written request by the applicant, may not be relied upon by the ANIMAL control department at the hearing.

**8.3.5** The right to be represented by counsel or other PERSONS chosen as his representative.

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**8.3.6** 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 COUNTY MANAGER relies. A decision shall be based solely and exclusively upon the facts presented at the hearing.

**8.3.8** The hearing officer shall prepare a written report of his findings and decision within ten (10) days after the hearing and shall provide copies to the parties.

## **ARTICLE IX REPEAL AND SEVERABILITY CLAUSE**

### **Section 9.1 Repeal of Prior Ordinances and Effective Date**

All other ordinances of this COUNTY pertaining to ANIMAL control and specifically Ordinances 1, 33, and 52 are hereby repealed by the adoption of this Ordinance. Additionally, if any part of this Ordinance is held to be invalid, such shall be deemed severed and shall not void any remaining sections of this Ordinance.

### **Section 9.2 Severability**

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

## **ARTICLE X ENFORCEMENT**

The LUNA COUNTY SHERIFF, or his designee, LUNA COUNTY Code Enforcement Officers and ANIMAL CONTROL OFFICERS shall be responsible for the enforcement of this Ordinance. The LUNA COUNTY SHERIFF shall have the discretion to name a designee and describe the duties of said designee in accordance with New Mexico law and LUNA COUNTY Ordinances and policies.

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APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF NOVEMBER, 2021

by the Board of County Commissioners of Luna County

ATTEST:

ABSENT

Barbara L. Reedy, Chairperson  
Commissioner, District 1

Linda M. Smrkovsky

Linda M. Smrkovsky,  
Commissioner, District 2

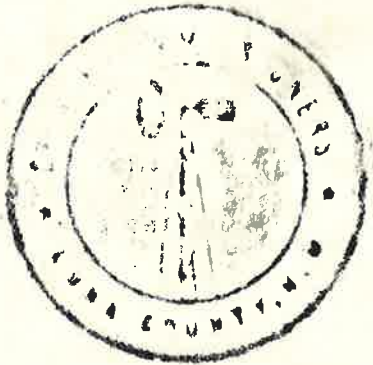
John S. Sweetser

John S. Sweetser,  
Commissioner, District 3

Berenda McWright  
Berenda McWright,  
County Clerk

REVIEWED FOR LEGAL SUFFICIENCY:

Charles C. Kretek  
Charles C. Kretek, County Attorney



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