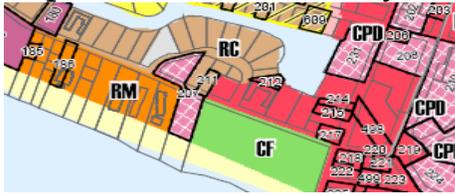


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Local Planning Agency

From: Frank Shockey, Interim Community Development Director

Date: April 9, 2009

RE: Municipal Animal Control

In attempting to prepare animal control ordinance language that would address specific policy changes discussed by LPA and Town Council members at previous public meetings, I encountered some initial questions of policy regarding animal control that will affect how the Town ought to proceed with adopting a new animal control ordinance and replacing the current animal control ordinances.

The state statutes contain many provisions related to animal control, animal cruelty, damage done by dogs, and other similar issues. Authority to enforce these provisions is given in most cases to law enforcement officers and to county animal control officers, but not to municipal animal control officers. Violations of some of these provisions are treated as civil infractions, others as misdemeanors, and still others as felonies. Municipalities may adopt ordinances related to animal control, animal cruelty, and similar issues, but may not conflict with state law. A municipal ordinance related to animal control or cruelty must provide that a violation is a civil infraction and the maximum penalty for such an infraction cannot exceed \$500. Citations for such infractions are to the court system and under current conditions most (or all) of the fines would not inure to the Town. Enforcement would be all costs and little-to-no revenues.

The Town's current animal control ordinances appear largely to be restatements of previous versions of the County's animal control ordinance. This is problematic because a county animal control officer's authority is different from

that of a municipal animal control officer, and the County has the option to choose how to enforce infractions of its ordinance that are also violations of state law.

This situation begs a threshold question: in its municipal animal control ordinance, should the Town adopt the state statutes related to animal control and animal cruelty, which would allow municipal animal control officers (including anyone hired to act as a municipal animal control officer, such as a county animal control officer under interlocal agreement) to enforce these provisions by citation?

The advantage of doing so would be that the Town could control the expenditure dedicated to enforcing its own animal control ordinance, either to increase or decrease the level of enforcement. The disadvantage would be that the Sheriff and the County Animal Control Officers would have little incentive to enforce state law related to animal control and animal cruelty, a service for which the County Animal Control Agency already charges the Town even though authority and responsibility to enforce state law is only given to law enforcement officers and county animal control officers, not municipal animal control officers.

Whether the Sheriff or the County Animal Control Agency will enforce state law related to animal control and animal cruelty without supplemental payment by the Town, regardless of whether the Town has its own animal control ordinance, is uncertain.

Without duplicating the statutory provisions related to animal control and animal cruelty, however, the Town's animal control ordinance could be short and relatively simple, addressing only the policy matters the LPA and Council have previously found compelling, such as leash requirements, animal waste cleanup, animals running at large, and nuisance animals.

The policy question is which, if any, of the statutory provisions should be incorporated into the Town's ordinance for enforcement by citation by municipal animal control officers, and which should be omitted.

The raw draft ordinance included in this packet contains rough adaptations of the statutory provisions related to animal control and animal cruelty, with the state law source noted in parentheses after each section heading, copies of the County's procedural provisions for licensing and impoundment with questions noted regarding the Town's potential future partnership with the County, and

additional policy initiatives for leashes, animals running at large, nuisance animals, and animal waste cleanup.

For the adaptations of statutory provisions, the threshold question of whether the Town should adopt these provisions or not needs to be answered to direct the preparation of final language. These provisions begin after the definitions and end on page 19.

For the procedural provisions regarding licensing, impoundment, and other registrations that the County agency carries out, another policy question regarding who provides these services, and how, needs to be answered to direct the preparation of final language. These provisions begin with “license requirements for dogs, cats, and ferrets” on page 19 and end at the bottom of page 24.

For the additional policy initiatives for leashes, animals at large, nuisance animals, and animal waste cleanup, any clarifications or redirection of policy should be made to direct preparation of final language. These provisions begin with “nuisance animals” on page 25 and continue through the enforcement provision, which contains some specific optional items as noted.

Finally, LDC Section 14-4 contains a specific provision categorically banning pets of any kind from the Little Estero Island Critical Wildlife Area. FWC rule provides specifically that *dogs* are not allowed in a Critical Wildlife Area during the time periods when that Critical Wildlife Area is declared off-limits by the FWC order establishing it. A policy question for the LPA and Council is whether the more restrictive provision in LDC Section 14-4 should be retained in some form in the new animal control ordinance for local enforcement, replaced by a provision analogous to the FWC rule to allow for local enforcement, or simply removed altogether.

Once these policy questions are addressed, and the content of the ordinance is revised and potentially shortened, the LPA Attorney can assist with preparing the language to be legally sufficient for hearings and adoption.

TOWN OF FORT MYERS BEACH
Ordinance __-__

WHEREAS...

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section One. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida; Chapters 166, 379, 705, 767, 823, and 828, Florida Statutes, and other applicable provisions of law.

Section Two. Title and Citation. This Ordinance may be known and cited as the “Fort Myers Beach Animal Control Ordinance”.

Section Three. Repeal of prior ordinances.

Section Four. Effect on prior offenses.

No provision of this Ordinance shall be construed to affect any obligation entered into, or any offense committed, prior to its effective date.

Section ____. **Purpose and Intent.** The purpose of this ordinance is to adopt provisions relating to animal control and cruelty that conform to the requirements set forth in Florida statute where required and that are otherwise congruent with Town policies and procedures. Its intent is to protect and preserve the health, safety, and welfare of humans and domestic animals within the Town of Fort Myers Beach, Florida.

Section ____. **Definitions.**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations, shall have the meanings given herein, unless specifically defined otherwise within sections of this Ordinance. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The words “shall” and “will” are mandatory and not discretionary. Terms not defined herein shall have the meanings given them by state law.

ABANDON: to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

AGENCY: The Town of Fort Myers Beach, or any governmental or non-governmental organization to which authority to enforce and administer this Ordinance is delegated by the Town through interlocal agreement, contract, or other lawful means.

ADEQUATE FOOD: Food that is uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal.

ADEQUATE WATER: A continual access to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the species, and in sufficient amounts to maintain good health.

ADEQUATE SHELTER: A structurally sound, properly ventilated, sanitary and weather-proof shelter suitable for the species, condition and age of the animal, which provides access to shade from direct sunlight and protection from exposure to inclement weather.

ADEQUATE HEALTH CARE: The provision to each animal of all immunizations and preventative care required to maintain good health; and the provision to each sick, diseased or injured animal of veterinary care or humane death.

ANIMAL: Every living dumb creature.

ANIMAL CONTROL OFFICER: Any officer employed or appointed by Lee County or the Town of Fort Myers Beach who is authorized by the Agency to investigate, on public or private property, civil infractions relating to animal control or cruelty and to issue citations as provided in this Ordinance. An animal control officer is not authorized to bear arms or make arrests; however, such officer may carry a device to chemically subdue and tranquilize an animal, provided that such officer has successfully completed a minimum of 16 hours of training in marksmanship, equipment handling, safety and animal care, and can demonstrate proficiency in chemical immobilization of animals in accordance with guidelines prescribed in the Chemical Immobilization Operational Guide of the American Humane Association

ANIMAL FIGHTING: fighting between roosters or other birds or between dogs, bears, or other animals.

AT LARGE: A domestic animal or an owned animal is at large if it does not meet any one or more of the following conditions:

1. Under direct control of its owner; or
2. Confined on its owner's property by means of a tether restricting its movement, or by means of any combination of fences, walls, hedges, or buildings that prevent it from leaving the property; or
3. Inside of a building or enclosed vehicle; or
4. Inside a proper enclosure.

BAITING: to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals. In addition, "baiting" means the use of live animals in the training of racing greyhounds.

CAT: Any live or dead cat (*Felis catus*) or cat-hybrid cross.

CRUELTY: Every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused (except when done in the interest of medical science), permitted, or allowed to continue when there is reasonable remedy or relief. The term “cruelty” shall be synonymous and interchangeable with the term “torture” and with the term “torment”.

DANGEROUS DOG: any dog that according to the records of the Agency:

- (a) Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property;
- (b) Has more than once severely injured or killed a domestic animal while off its owner's property;
- (c) Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or
- (d) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

DIRECT CONTROL: Continuous, immediate physical control of an animal by means of a leash of sufficient strength to restrain the animal; or, the employment of a bona fide service animal by its owner.

DOG: Any live or dead dog (*Canis familiaris*) or dog-hybrid cross.

DOMESTIC ANIMAL: Any equine or bovine animal, goat, sheep, swine, dog, cat, poultry, or other domesticated beast or bird.

EUTHANASIA: The humane and painless putting to death of an animal that is hopelessly sick, injured, or ultimately unclaimed.

FERRET: Any domestic animal of genus *Mustela*.

FRESHWATER FISH: All classes of pisces that are indigenous to fresh water.

HUMANE METHOD: A method whereby the animal is rapidly and effectively rendered insensitive to pain by electrical or chemical means or by a penetrating captive bolt or gunshot with appropriate caliber and placement; or a method in accordance with ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

IMPOUNDMENT: Confinement of any animal by the Agency in a manner consistent with professionally recognized standards of humane treatment.

LICENSE: A document and/or tag issued by the Agency indicating that the animal described on the license is owned, kept, or boarded by the individual named thereon.

NUISANCE WILDLIFE: Wildlife that causes or is about to cause property damage, presents a threat to public safety, or wildlife causing an annoyance within, under or upon a building.

OFFICER: Any law enforcement officer; any officer or agent of any municipal or county animal control unit.

OWNER: Any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of an animal or, if the animal is owned by a person under the age of 18, that person's parent or guardian.

PROBABLE CAUSE: For purposes of the issuance of a citation by an officer, probable cause shall be facts and circumstances within the officer's knowledge, about which the officer has reasonably accurate information sufficient to lead a reasonable person to believe that a violation of this Ordinance has been or is being committed.

PROPER ENCLOSURE: Secure confinement indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and shall also provide protection from the elements.

PUBLIC AREA: Lands and improvements owned, leased, or controlled by the federal, state, county, or Town government, including sovereignty submerged lands, and buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, beaches, and similar property lawfully available to use by the public.

SALTWATER FISH: Any saltwater species of finfish of the classes Agnatha, Chondrichthyes, or Osteichthyes and marine invertebrates of the classes Gastropoda, Bivalvia, or Crustacea, or of the phylum Echinodermata, but does not include nonliving shells or echinoderms; and all classes of pisces, shellfish, sponges, and crustacea indigenous to salt water.

SERVICE ANIMAL: An animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet.

SEVERE INJURY: Any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

TETHER: A flexible rope, cable, or chain that is securely attached to an immovable object and to a properly fitted collar or harness on animal to prevent it from running at large. A tether must be at least 10 feet in length and may not weigh more than 1/8 the weight of the animal tethered.

UNPROVOKED: means that the victim who has been conducting himself or herself peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog.

WILDLIFE: All wild or non-domestic birds, mammals, fur-bearing animals, reptiles and amphibians.

State Law Provisions Begin Here

Section ____. Killing an injured or diseased domestic animal (FS 828.05)

(1) The purpose of this section is to provide a swift and merciful means whereby domestic animals which are suffering from an incurable or untreatable condition or are imminently near death from injury or disease may be destroyed without unconscionable delay and in a humane and proficient manner.

(2) As used in this section, the term "officer" means:

(a) Any law enforcement officer;

(b) Any veterinarian; and

(c) Any officer or agent of any municipal or county animal control unit or of any society or association for the prevention of cruelty to animals, or the designee of such an officer or agent.

(3) Whenever any domestic animal is so injured or diseased as to appear useless and is suffering, and it reasonably appears to an officer that such animal is imminently near death or cannot be cured or rendered fit for service and the officer has made a reasonable and concerted, but unsuccessful, effort to locate the owner, the owner's agent, or a veterinarian, then such officer, acting in good faith and upon reasonable belief, may immediately destroy such animal by shooting the animal or injecting it with a barbiturate drug. If the officer locates the owner or the owner's agent, the officer shall notify him or her of the animal's location and condition. If the officer locates only a veterinarian, the officer shall destroy the animal only upon the advice of the veterinarian. However, this section does not prohibit an owner from destroying his or her own domestic animal in a humane and proficient manner when the conditions described in this section exist.

(4) No officer or veterinarian acting in good faith and with due care pursuant to this section will be liable either criminally or civilly for such act, nor will any civil or criminal liability attach to the employer of the officer or veterinarian.

(5) A court order is not necessary to carry out the provisions of this section.

Section _____. Animals found in distress; when agent may take charge; hearing; disposition; sale (FS 828.073)

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal can be:

(a) Removed from its present custody, or

(b) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, or any agent of the county or of any society or association for the prevention of cruelty to animals appointed under F.S. Section 828.03, and given protection and an appropriate and humane disposition made.

(2) Any law enforcement officer or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under the provisions of F.S. Section 828.03 may:

(a) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(b) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location,

and shall forthwith petition the county court judge of the county wherein the animal is found for a hearing, to be set within 30 days after the date of seizure of the animal or issuance of the order to provide care and held not more than 15 days after the setting of such date, to determine whether the owner, if known, is able to provide adequately for the animal and is fit to have custody of the animal. The hearing shall be concluded and the court order entered thereon within 60 days after the date the hearing is commenced. No fee shall be charged for the filing of the petition. Nothing herein is intended to require court action for the taking into custody and making proper disposition of stray or abandoned animals as lawfully performed by animal control agents.

(3) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of any animal pursuant to the provisions of this section shall have written notice served, at least 5 days prior to the hearing set forth in subsection (2), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in conformance with the provisions of state law

relating to service of process. The sheriff of the county shall not charge a fee for service of such notice. If the owner of the animal is known but is residing outside of the county wherein the animal was taken, notice of the hearing shall be by publication in conformance with the provisions of state law.

(4)(a) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of an animal as provided for in this section shall provide for the animal until either:

1. The owner is adjudged by the court to be able to provide adequately for, and have custody of, the animal, in which case the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody; or
2. The animal is turned over to the officer or agent as provided in paragraph (c) and a humane disposition of the animal is made.

(b) If the court determines that the owner is able to provide adequately for, and have custody of, the animal, the order shall provide that the animal in the possession of the officer or agent be claimed and removed by the owner within 7 days after the date of the order.

(c) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

1. The court shall order the animal to be sold by the sheriff at public auction, and shall provide in its order that the current owner shall have no further custody of the animal and that any animal not bid upon shall be remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit; or
2. The court may order the animal destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit, upon the testimony of the agent who took custody of the animal, or upon the testimony of other qualified witnesses, that the animal requires destruction or other disposition for humanitarian reasons or is of no commercial value.
3. Upon proof of costs incurred by the agent or officer, the court may require that the owner pay for the care of the animal while in the custody of the agent or officer. A separate hearing may be held.
4. The court may order that other animals that are in the custody of the owner and that were not seized by the officer or agent be turned over to the officer or agent,

if the court determines that the owner is unable or unfit to adequately provide for the animals. The court may enjoin the owner's further possession or custody of other animals.

(5) In determining the person's fitness to have custody of an animal under the provisions of this section, the court may consider, among other matters:

(a) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized and as to the conditions under which the animal was kept.

(b) Testimony and evidence as to the veterinary care provided to the animal.

(c) Testimony and evidence as to the type and amount of care provided to the animal.

(d) Expert testimony as to the community standards for proper and reasonable care of the same type of animal.

(e) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(f) The owner's past record of judgments under the provisions of this chapter.

(g) Convictions under the statutes prohibiting cruelty to animals.

(h) Any other evidence the court considers to be material or relevant.

(6) If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and provide adequately for the animal.

(7) In any case in which an animal is offered for auction under the provisions of this section, the proceeds shall be:

(a) Applied, first, to the cost of the sale.

(b) Applied, secondly, to the care and provision for the animal by the officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge.

(c) Applied, thirdly, to the payment of the owner for the sale of the animal.

(d) Paid over to the court if the owner is not known.

Section _____. Euthanasia of dogs and cats

Euthanasia of dogs and cats shall only occur within the Town of Fort Myers Beach or under the authority of this Ordinance in accordance with Sections 828.055, 828.058, and 828.065, *Florida Statutes* (2008), as may be amended and/or renumbered from time to time.

Section ____ . Exposing poison (FS 828.08)

Whoever leaves or deposits any poison or any substance containing poison, in any common street, alley, lane, or thoroughfare of any kind, or in any yard or enclosure other than the yard or enclosure occupied or owned by such person, shall be guilty of a violation of this Ordinance.

Section ____ . Cruelty to animals (FS 828.12)

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits a violation of this Ordinance.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits a violation of this Ordinance.

(3) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(4) A person who intentionally trips, fells, ropes, or lassos the legs of a horse by any means for the purpose of entertainment or sport commits a violation of this Ordinance. As used in this subsection, "trip" means any act that consists of the use of any wire, pole, stick, rope, or other apparatus to cause a horse to fall or lose its balance, and "horse" means any animal of any registered breed of the genus *Equus*, or any recognized hybrid thereof. The provisions of this subsection shall not apply when tripping is used:

(a) To control a horse that is posing an immediate threat to other livestock or human beings;

(b) For the purpose of identifying ownership of the horse when its ownership is unknown; or

(c) For the purpose of administering veterinary care to the horse.

Section ____ . Fighting or baiting of animals (F.S. 828.122)

Any person who knowingly commits any of the following acts commits a violation of this Ordinance:

- (a) Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or baiting;
- (b) Owning, possessing, or selling equipment for use in any activity described in paragraph (a);
- (c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);
- (d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
- (e) Performing any service or act to facilitate animal fighting or baiting, including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting;
- (f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;
- (g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
- (h) Attending the fighting or baiting of animals.

Notwithstanding any provision of this subsection to the contrary, possession of the animal alone does not constitute a violation of this Ordinance.

(4) If a court finds probable cause to believe that a violation of this section or F.S. Section 828.12 has occurred, the court shall order the seizure of any animals and equipment used in committing the violation and shall provide for appropriate and humane care or disposition of the animals. This subsection is not a limitation on the power to seize animals as evidence at the time of arrest.

(5) If an animal shelter or other location is unavailable, a court may order the animal to be impounded on the property of its owner or possessor and shall order such person to provide all necessary care for the animal and to allow regular inspections of the animal by a person designated by the court.

(6) If a veterinarian finds that an animal kept or used in violation of this section is suffering from an injury or a disease severe enough that it is not possible to humanely house and care for the animal pending completion of a hearing held under Section ____

(ANIMALS FOUND IN DISTRESS above), final disposition of the criminal charges, or court-ordered forfeiture, the veterinarian may euthanize the animal as specified in Section _____(EUTHANASIA above). A veterinarian licensed to practice in this state shall be held harmless from criminal or civil liability for any decisions made or services rendered under this subsection.

(7) If an animal can be housed in a humane manner, the provisions of Section _____(ANIMALS FOUND IN DISTRESS above) shall apply. For the purpose of a hearing provided pursuant to Section ____ (the same), any animal baited, bred, trained, transported, sold, owned, possessed, or used for the purpose of animal fighting or baiting shall be considered mistreated.

(8) In addition to other penalties prescribed by law, the court may issue an order prohibiting a person who is convicted of a violation of this section from owning, possessing, keeping, harboring, or having custody or control over any animals within the species that are the subject of the conviction, or any animals kept for the purpose of fighting or baiting, for a period of time determined by the court.

(9) This section shall not apply to:

(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided Section _____ (ANIMAL CRUELTY) is not violated.

(b) Any person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission.

(c) Any person using animals to work livestock for agricultural purposes.

(d) Any person violating F.S. Section 828.121.

(e) Any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.

(10) This section shall not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.

Section _____. Killing dog or cat with intent of selling or giving away pelt; possession, sale, or importation of pelt with intent of selling or giving away (828.123)

(1) A person who kills any dog or cat with the sole intent of selling or giving away the pelt of such animal commits a violation of this Ordinance.

(2) A person who possesses, imports into the Town, sells, buys, gives away, or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat commits a violation of this Ordinance.

(3) A person who possesses, imports into the Town, sells, buys, gives away, or accepts any dog or cat with the sole intent of killing such dog or cat, or having such dog or cat killed, for the purpose of selling or giving away the pelt of such animal commits a violation of this Ordinance.

(4) It is unlawful for any person to knowingly engage in the business of a dealer or buyer in the pelts or furs of any dog or cat in the Town or to purchase such pelts or furs within the Town. No common carrier shall knowingly ship or transport or receive for transportation any dog or cat pelts or furs within the Town. Any person who violates this subsection commits a violation of this Ordinance.

Section _____. Sale of garments or items of clothing containing dog or cat fur prohibited; sale of pelt of any dog or cat prohibited (828.1231)

1) It is unlawful for any person to knowingly sell or offer for sale, directly or indirectly, at wholesale or at retail, in the Town of Fort Myers Beach any garment, or any item of clothing or apparel that is made, in whole or in part, from the fur of any dog or cat, or which contains or to which is attached any dog or cat fur.

(2) It is unlawful for any person to knowingly sell or offer for sale, directly or indirectly, at wholesale or at retail, or to give away, in the Town of Fort Myers Beach the pelt of any dog or cat.

(3) Any person who violates the provisions of this section commits a violation of this Ordinance.

(4) Any law enforcement agency, or humane officer as defined in F.S. Section 828.03, may institute proceedings in the appropriate circuit court to enforce compliance with the provisions of this section.

Section _____. Confinement of animals without sufficient food, water, or exercise; abandonment of animals (828.13)

(a) Whoever:

(1) Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and wholesome food and water,

(2) Keeps any animals in any enclosure without wholesome exercise and change of air, or

(3) Abandons to die any animal that is maimed, sick, infirm, or diseased,

is guilty of a violation of this Ordinance.

(b) Any person who is the owner or possessor, or has charge or custody, of any animal who abandons such animal to suffer injury or malnutrition or abandons any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is guilty of a violation of this Ordinance.

Section ____. **Prohibiting artificial coloring and sale of certain animals and fowls; construction** (828.161)

(1) It is unlawful for any person to dye or color artificially any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings, or to bring any dyed or colored animal or fowl into the Town.

(2) It is unlawful for any person to sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys or retail premiums.

(3) This section shall not be construed to apply to any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings to be used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

(4) Any person violating the provisions of this section shall be guilty of a violation of this Ordinance.

Section ____. **Prohibited acts; humane slaughter of animals** (828.24)

(1) No person shall kill an animal in any way except by an approved humane method.

(2) No person shall shackle or hoist with intent to kill any animal prior to rendering the animal insensitive to pain.

(3) Nothing in this section precludes the enforcement of any provision relating to cruelty to animals.

Section ____. **Rabies vaccination of dogs, cats, and ferrets** (828.30)

(1) All dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian against rabies with a vaccine that is licensed by the United States Department of Agriculture for use in those species. The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies shall not be used as a substitute for current

vaccination in managing rabies exposure or determining the need for booster vaccinations.

(2) A dog, cat, or ferret is exempt from vaccination against rabies if a licensed veterinarian has examined the animal and has certified in writing that at the time vaccination would endanger the animal's health because of its age, infirmity, disability, illness, or other medical considerations. An exempt animal must be vaccinated against rabies as soon as its health permits.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the Agency with a rabies vaccination certificate, or, if the owner does not permanently reside in the Town but resides in the Town more than 30 days in any calendar year, the owner shall provide the Agency with a copy of the animal's rabies vaccination certificate. The Agency and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV). The veterinarian who administers the rabies vaccine to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.

(4) Each ferret vaccinated according to this section must be quarantined, when necessary, according to rules of the Florida Department of Health.

(5) An animal owner's name, street address, phone number, and animal tag number contained in a rabies vaccination certificate provided to the Agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as provided in F.S. 820.30. However, any person who has been bitten, scratched, or otherwise exposed to a zoonotic disease or the physician of such person; a veterinarian who is treating an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease; or the owner of an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease shall be provided with any information contained in a rabies vaccination certificate but only with respect to the particular animal biting, scratching, or otherwise causing exposure. Any person with an animal tag number may receive vaccination certificate information with regard to that animal. Law enforcement and prosecutorial agencies; other animal control authorities; emergency and medical response and disease control agencies; or other governmental health agencies shall be provided information contained in the rabies vaccination certificate for the purpose of controlling the transmission of rabies; however, the receiving agencies and authorities must not release the exempt information.

(6) Failure by an owner of an animal to comply with this section shall constitute a violation of this Ordinance.

Section ____ . Classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts (767.12)

1)(a) The Agency shall investigate reported incidents involving any dog that may be dangerous and shall, if possible, interview the owner and require a sworn affidavit from

any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous. Any animal that is the subject of a dangerous dog investigation, that is not impounded with the Agency, shall be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation and resolution of any hearings related to the dangerous dog classification. The address of where the animal resides shall be provided to the Agency. No dog that is the subject of a dangerous dog investigation may be relocated or ownership transferred pending the outcome of an investigation or any hearings related to the determination of a dangerous dog classification. In the event that a dog is to be destroyed, the dog shall not be relocated or ownership transferred.

(b) A dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was unlawfully on the property or, while lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner or a family member. No dog may be declared dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

(c) After the investigation, the Agency shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and shall afford the owner an opportunity for a hearing prior to making a final determination. The Agency shall provide written notification of the sufficient cause finding, to the owner, by registered mail, certified hand delivery, or service in conformance with the statutory provisions related to service of process. The owner may file a written request for a hearing within 7 calendar days from the date of receipt of the notification of the sufficient cause finding and, if requested, the hearing shall be held as soon as possible, but not more than 21 calendar days and no sooner than 5 days after receipt of the request from the owner.

(d) Once a dog is classified as a dangerous dog, the Agency shall provide written notification to the owner by registered mail, certified hand delivery or service, and the owner may file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination of dangerous dog classification and must confine the dog in a securely fenced or enclosed area pending a resolution of the appeal.

(2) Within 14 days after a dog has been classified as dangerous by the Agency or a dangerous dog classification is upheld by the county court on appeal, the owner of the dog must obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and the certificate shall be renewed annually. Such certificates of registration, and renewals thereof, may be issued only to persons who are at least 18 years of age and who present to the animal control authority sufficient evidence of:

(a) A current certificate of rabies vaccination for the dog.

(b) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property.

(c) Permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.

The annual fee for the issuance of certificates of registration required by this section shall be set by the Town Council by resolution, or in the absence of such resolution, the Agency shall charge the fee for the most similar purpose charged by the analogous department of Lee County.

(3) The owner shall immediately notify the appropriate animal control authority when a dog that has been classified as dangerous:

(a) Is loose or unconfined.

(b) Has bitten a human being or attacked another animal.

(c) Is sold, given away, or dies.

(d) Is moved to another address.

Prior to a dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the Agency. The new owner must comply with all of the requirements of this Ordinance and state law, even if the animal is moved from one local jurisdiction to another within the state. The Agency must be notified by the owner of a dog classified as dangerous that the dog is in the Town.

(4) It is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting any person or animal. The owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the immediate household or persons 18 years of age or older are allowed in the enclosure when the dog is present. When being transported, such dogs must be safely and securely restrained within a vehicle.

(5) Hunting dogs are exempt from the provisions of this section when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from the provisions of this section when engaged in any legal procedures. However, such dogs at all other times and in all other respects shall be subject to this Ordinance. Dogs that have been classified as dangerous shall not be used for hunting purposes.

(6) This section does not apply to dogs used by law enforcement officials for law enforcement work.

(7) Any person who violates any provision of this section commits a violation of this Ordinance.

Section _____. Attack or bite by dangerous dog; penalties; confiscation; destruction (767.13)

(1) If a dog that has previously been declared dangerous attacks or bites a person or a domestic animal without provocation, the owner is guilty of a violation of this Ordinance. In addition, the dangerous dog shall be immediately confiscated by the Agency, placed in quarantine, if necessary, for the proper length of time, or impounded and held for 10 business days after the owner is given written notification under (the immediately previous section), and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under s. 767.12 (the immediately previous section). The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(2) If a dog that has not been declared dangerous attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by the Agency, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under F.S. Section 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under F.S. Section 767.12. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure. In addition, if the owner of the dog had prior knowledge of the dog's dangerous propensities, yet demonstrated a reckless disregard for such propensities under the circumstances, the owner of the dog is guilty of a violation of this Ordinance.

(3) If a dog that has previously been declared dangerous attacks and causes severe injury to or death of any human, the owner is guilty of a violation of this Ordinance. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under F.S. Section 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under F.S. Section 767.12. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(4) If the owner files a written appeal under F.S. Section 767.12 or this section, the dog must be held and may not be destroyed while the appeal is pending.

(5) If a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner is not guilty of any violation under this section.

Section ____ . Bite by police dog or service dog; exemption from quarantine (767.16)

Any dog that is owned, or the service of which is employed, by a law enforcement agency, or any dog that is used as a service dog for blind, hearing impaired, or disabled persons, and that bites another animal or human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered by a licensed veterinarian.

Section ____ . Abandonment of animals; procedure for handling (705.19)

(1) Any animal placed in the custody of a licensed veterinarian or bona fide boarding kennel for treatment, boarding, or other care, which shall be abandoned by its owner or the owner's agent for a period of more than 10 days after written notice is given to the owner or the owner's agent at her or his last known address may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian or kennel operator as provided in subsection (1) shall relieve the veterinarian or kennel operator and any custodian to whom such animal may be given of any further liability for disposal.

(3) Abandonment shall constitute the relinquishment of all rights and claim by the owner to the abandoned animal.

Section ____ . Disposal of dead bodies of animals (823.041)

(1) Any owner, custodian, or person in charge of domestic animals, upon the death of such animals due to disease, shall dispose of the carcasses of such animals by burning or burying at least 2 feet below the surface of the ground; provided, however, nothing in this section shall prohibit the disposal of such animal carcasses to rendering companies licensed to do business in this state.

(2) It is unlawful to dispose of the carcass of any domestic animal by dumping such carcass on any public road or right-of-way, or in any place where such carcass can be devoured by beast or bird.

(3) Any person violating any of the provisions of this section shall be guilty of a violation of this Ordinance.

Section ____ . Dogs and cats released from animal shelters, sterilization requirement (823.15)

(1) All dogs and cats sold or released for adoption from any public or private animal shelter or animal control agency operated by a humane society or by a county, city, or other incorporated political subdivision within the Town shall be sterilized, either by:

(a) Providing sterilization by a licensed veterinarian before relinquishing custody of the animal; or

(b) Entering into a written agreement with the adoptor or purchaser guaranteeing that sterilization will be performed within 30 days or prior to sexual maturity. The shelter or animal control agency shall require a sufficient deposit from the adoptor or purchaser, which deposit shall be refundable upon presentation to the shelter or animal control agency of written evidence by the veterinarian performing the sterilization that the animal has been sterilized. The deposit or donation may be based upon recommended guidelines established by the Florida Federation of Humane Societies. Failure by the adoptor or purchaser to comply with the provisions of this paragraph shall be a violation of this ordinance. Any legal fees or court costs used for the enforcement of this paragraph are the responsibility of the adoptor. Upon the request of a licensed veterinarian, and for a valid reason, the shelter or animal control agency shall extend the time limit within which the animal must be sterilized.

(2) All costs of sterilization pursuant to this section shall be paid by the prospective adoptor unless otherwise provided for by the shelter or agency.

County Procedural Provisions Begin Here

Section ____ .LICENSE REQUIREMENTS FOR DOGS, CATS AND FERRETS

A. ~~Beginning January 1, 2007, a~~Any veterinarian vaccinating dogs, cats or ferrets in Lee County shall only issue the County vaccination/license tag ~~[along with the proper rabies certificate requirements described above]~~as proof of vaccination. No veterinarian, clinic, shelter or provider shall issue any tag or object that may be thought by a reasonable person to be the equivalent of the required County rabies/license tag. Each individual tag or object issued shall be deemed a violation.

B. Any person who owns, keeps, possesses, provides for or harbors within Lee County any dog, cat or ferret four (4) months of age or older must have such animal licensed.

1. Excluded from this license requirement are shelters operated by or under contract with the Board of County Commissioners. Not exempt from this requirement are rescues, private animal facilities, greyhound or other sporting dog facilities, breeders, and other animal care facilities.
2. The County license must be attached to a collar or harness on the animal at all times. Cats and ferrets that have a microchip registered to the owner with current name, address, and phone

number shall be exempt from the requirement that the license tag must be attached to the animal.

C. No license shall be issued unless the dog, ~~or~~ cat, or ferret has been vaccinated against rabies and has a valid certificate of vaccination issued by a licensed veterinarian ~~except for~~. Owners of animals that are exempt from rabies vaccination due to a medical condition ~~in accordance with section 18(B)(5) above~~ and who possess a valid medical certificate of exemption issued by a licensed veterinarian are required to purchase a one-year county license regardless of the exemption from a licensed veterinarian. ~~Such license will be valid for one year beginning on the date of the vaccination. Animals with valid rabies vaccinations with recognized durations exceeding one year must purchase a license each year. One year licenses shall only be issued with a one-year rabies vaccination and three-year licenses shall only be issued with a three-year rabies vaccination.~~

D. Owners of animals who visit Lee County or reside in Lee County for less than thirty (30) days per year are exempt from the license requirement provided that they have proof of a valid current rabies vaccination.

E. No license tag issued for one animal shall be considered valid for any other animal. Any person that owns, keeps, harbors, provides for or possesses an animal wearing the license tag of another animal shall be in violation of this Ordinance even if the animal has a valid license of its own.

F The license tag may be issued by a licensed veterinarian or other entity approved by the Director of Domestic Animal Services to issue County license tags upon being shown a current vaccination certificate from any licensed veterinarian.

G. All veterinarians, clinics, shelters, pet stores and other outlets where cats, dogs, and/or ferrets are available, sold or vaccinated against rabies must inform the public in writing of the rabies and license requirements within Lee County. Such information must include the cost of the license and how a license may be obtained (including information on getting a license through the mail or in person at Domestic Animal Services). To satisfy the information requirement the facility may post a sign or provide an informational brochure or provide the written information in a manner easily accessible and understandable.

Section ____ . Animal Identification requirements

A. All dogs, cats and ferrets must have some form of identification indicating the owner's name and current telephone number at all times. Examples of identification meeting the requirements of this Section:

1. Any commercially available tag imprinted with the appropriate information attached to the collar or harness of a pet.
2. A current, valid County license/rabies tag attached to the collar or harness of a pet.
3. An implanted microchip identification device registered to the owner of the animal and with a current name, address, and telephone number.

B. ~~No one is permitted~~ It shall be unlawful to remove the collar and/or tag of an animal for the purpose of preventing or falsifying the identification of an animal. Cats are not exempt from this provision. During a recognized breed show, the owner of the dog, cat or ferret shall retain the license tag and/or rabies certificates, and shall produce the same if called upon to verify that any cat, dog or ferret has the required license and vaccination.

SECTION ____ . LICENSE FEES

A. The Board of County Commissioners shall set the fee by Resolution.
B. The fee is payable to the authorized agency or the authorized veterinarian.
License fees collected must be properly documented and funds remitted to Domestic Animal Services within forty-five (45) days of the sale of the tag. The Director of Domestic Animal Services may provide for an extension of the deadline, in writing, for special circumstances.

C. Authorized Sellers of the Lee County license must sell the license at the fee levels approved by the Board and must keep complete and accurate records of tags sold and on hand as inventory. All theft or loss must be reported immediately to the proper authority, and a copy of the official law enforcement report must be provided to Domestic Animal Services. Unexplained shortages/losses of tags or sales of tags at the incorrect prices are the responsibility of the seller.

D. Authorized sellers of the Lee County license tags may charge a reasonable administrative fee to cover costs of providing that service per license issued. The maximum allowable administrative fee shall be set by the Board through the external fees Administrative Code. Any authorized seller that charges an administrative fee must inform the client that such a fee is charged by that establishment/provider and that license tags are available through the County with no additional charge. Any such fees may not be added to the cost of a license but must be listed separately on any invoice/receipt.

E. License fees are not required for governmental police dogs, or certified dogs, trained to assist the physically handicapped; but such animals must be licensed and must have received their rabies vaccination. In order to receive these license tags at no charge, the owner must have the animal licensed through Domestic Animal Services, no other outlet is authorized to issue these license tags.

F. If an owner fails to obtain a valid license each year it is required, fees may be assessed for previous years' licenses for a period of up to three years. **[County licensing and identification requirements. Do we want to do it exactly this way?]**

Section ____ . REDEMPTION AND DISPOSITION OF IMPOUNDED AND UNWANTED ANIMALS.

A. Any cat, ~~or dog~~, or ferret impounded under the provision of this Ordinance and not redeemed by its owner after ~~five (5)~~ three (3) consecutive days shall be come the property of the Domestic Animal Services. The ~~five (5)~~ three (3) day period does not apply to sick, injured, diseased or orphaned sucklings, or wild animals regulated by state wildlife agencies. Any stray cat, dog or ferret impounded that possesses a valid County license and/or microchip shall be held for five (5) consecutive days before becoming the property of Domestic Animal Services. Litters of animals or individual members of a litter of animals, including the nursing mother and unweaned animals, that do not possess a valid County license and/or microchip may be transferred immediately upon impoundment to a private sheltering agency, rescue group or individuals for the purpose of adoption. Individual members of litters of animals who are at least six weeks of age, including the mother, may be adopted immediately upon impoundment.

B. This time period may be extended or reduced at the discretion of Domestic Animal Services to relieve animal suffering or to limit disease contagious to humans and animals housed at Domestic Animal Services.

C. Domestic Animal Services may utilize the services of a veterinarian to treat sick, injured or diseased animals. The owner shall be responsible for all such costs incurred.

D. Feral animals ~~may only be held for three (3) consecutive days~~ that do not possess a valid County license and/or microchip may be humanely euthanized upon impoundment.

E. Any person seeking to redeem or reclaim an animal impounded under the provisions of this Ordinance shall pay the impoundment fees, boarding fees, license fees and all other fees resulting from impounding and caring for the animal. Any animal to be released from ~~the pound~~ Domestic Animal Services must have a rabies vaccination and license or a license and rabies vaccination must be obtained by the owner. If a rabies vaccination is not available at ~~the shelter~~ Domestic Animal Services for any reason, the person seeking to redeem or reclaim the animal must pre-pay the license fee, the animal will be released to its owner or his designee, who then must have the animal vaccinated for rabies by a licensed veterinarian. The certificate of vaccination must be provided to Domestic Animal Services as a prerequisite to issuance of the license. F. An owner whose animal has been impounded more than one time shall be charged increasing fees for each subsequent impoundment. Fees shall be established by the ~~BOCC~~ Board in the external fees manual.

G. When the ownership of an animal is deemed questionable, Domestic Animal Services ~~may~~ will require proof of ownership. Proof of ownership may include valid County license, veterinary records, ~~sworn and notarized affidavits from at least two unrelated neighbors living at different addresses,~~ registered microchip identification or other reliable, verifiable documentary evidence. If ownership cannot be proven by the required information the animal in question must be adopted rather than redeemed; the person claiming unproven ownership may be afforded the opportunity to adopt the animal prior to the public at the discretion of Domestic Animal Services.

H. Prior to release from Domestic Animal Services' shelter, all dogs, cats and ferrets must be microchipped; with the microchip being registered to the pet owner.

I. Exotic invasive animal species found at large and ~~brought to the animal services shelter~~ impounded shall be humanely euthanized. **[Do they coordinate this with FWC in any way or just do it?]** The only exceptions to this provision is if the animal is released to an educational facility for study to assist in the control and removal of the species or if the animal is to be used for educational purposes to inform the public of the dangers of invasive exotic animal species. **[County process and procedure. Do we want to do it this way?]**

Section _____. PROVIDING FOR THE REPORTING OF PERSONS BITTEN OR SCRATCHED BY ANIMALS AND QUARANTINE OF ANIMALS FOR RABIES OBSERVATION

A. Any stray dog, cat or ferret that bites or scratches a person shall be impounded by Domestic Animal Services and held in quarantine for a minimum period of ten (10) days from the date of bite or scratch for rabies observation, ~~either at the Animal Services shelter or a veterinary clinic in Lee County approved by Animal Services as a quarantine location~~ or humane euthanasia and sent to the State Board of Health

for pathological examination after the expiration of the stray holding period. Animals not picked up-redeemed within 48 hours of the end of the ten (10) day quarantine period shall be considered abandoned and shall may be euthanized. Information regarding the animal's description; current rabies vaccination date; owner's name, address and telephone number; the name of the animal; the address and telephone number of person bitten or scratched; and location of wound, shall be reported.

~~B. If the dog, cat or ferret has a current rabies vaccination and a current license, the Animal Control Officer may allow the animal to be quarantined at home by agreement with Animal Services if and only if the animal has not bitten a person previously.~~

B. Owned dogs, cats or ferrets that have bitten a human may be permitted to be quarantined at home for a minimum period of ten (10) days from the date of bite or scratch for rabies observation. Information regarding the animal's description; current rabies vaccination date; owner's name, address and telephone number; the name of the animal; the address and telephone number of person bitten or scratched; and location of wound, shall be reported to the Department of Health. An owner whose animal has bitten or scratched a human shall comply fully with Chapter 64D-3 Florida Administrative Code (Control of Communicable Diseases & Conditions Which May Significantly Affect Public Health).

C. It shall be a violation of this Ordinance for any person to refuse to surrender any animal for quarantine.

~~D. No person shall allow an animal under home quarantine to violate the Home Quarantine Agreement in any way, or allow said animal to roam at large. No owner of an animal placed under a Home Quarantine Agreement for rabies observation shall violate the Home Quarantine Agreement in any manner.~~

E. Any dog, cat or ferret that dies or is humanely euthanized while under quarantine shall be decapitated without mutilation and the head sent to undergo pathological examination performed by the State Board of Health. ~~for pathological examination. All other animals (except dogs or cats or ferrets) which bite or scratch a person shall not be quarantined, but shall be impounded until instructed by the Health Department as to its disposition.~~ It shall be a violation of this Ordinance for any person to refuse to surrender the body of a deceased animal while under quarantine.

F. It is a violation of this Ordinance for anyone to kill or remove from Lee County, Florida, without the express written consent of Domestic Animal Services or the Health Department any of the following:

1. Any rabid animal;
2. Any animal suspected of rabies or any other infectious or contagious disease;
3. Any animal exhibiting unusual behavior;
4. Any animal which scratches or bites a person, or
5. Any animal under quarantine.

G. Any person violating the provisions of this Section shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided for in Florida Statutes.

H. It shall be the duty of any person having knowledge that an animal has bitten or otherwise exposed a person or any animal to rabies, to report the incident immediately to the Department of Health.

I. Any person who, upon demand, does not surrender to Domestic Animal Services or the Health Department the carcass of any dead animal exposed to rabies shall be

guilty of a misdemeanor of the second degree, for each separate offense. **[County rabies observation stuff. Do we want this?]**

GUARD DOGS

A. ~~Guard dog services~~ Any person utilizing a dog for the purpose of guarding a business shall register all dogs used in their business with Domestic Animal Services. The registration shall include name, address and telephone number of the service's manager; the breed, sex, weight, age, color, tattoo registration number of the guard dog, and other distinguishing physical features of the dog; and certification of rabies vaccination.

B. Guard dogs newly acquired shall be vaccinated for rabies and registered with Domestic Animal Services no later than seventy-two (72) hours after acquisition.

C. The fee for registration of a guard dog will be listed in the Lee County Administrative Codes.

D. Each guard dog will be issued with a registration number which will be obtained from Domestic Animal Services. This number will be posted at the entrance of any property using that guard dog service. At the time of registration, each dog will be Micro chipped and receive an ~~I.D.~~-identification tag that must be affixed to the dog at all times.

E. ~~The~~ Domestic Animal Services shall maintain a guard dog register which shall contain all data required by this Section. Immediately upon transfer of ownership, death, disappearance or annual rabies inoculation of a guard dog, each guard dog service or owner shall notify Domestic Animal Services. Upon receipt of the information, the appropriate entry shall be made in the register. If the guard dog has disappeared, an entry should be made to reflect the locale and reason of such disappearance.

F. An Animal Control Officer shall have the right to enter and inspect all kennels housing guard dogs and other premises where such dogs are in use for determination of owner registration compliance.

G. It shall be unlawful for any person, firm or corporation to own or harbor any guard dog in the county that has not been inoculated, registered and tattooed as provided by this Section.

H. TRANSPORTATION OF GUARD DOGS: The vehicle of every guard dog service transporting any guard dog must be clearly marked, showing that it is transporting a guard dog. A compartment separate from the driver and separating each dog is required, which shall be arranged to ensure maximum ventilation for the animal.

I. REQUIREMENTS OF BUSINESSES USING ~~GUARD~~ DOGS FOR THE PURPOSE OF GUARDING:

1. ~~Each business~~ Persons ~~which~~ who hires or uses a guard dog service to patrol the premises shall provide adequate fencing or some other confining structure to keep the guard dog within the enclosed area.

2. ~~Each business~~ Persons ~~which~~ who hires or uses a guard dog service to patrol the premises during that business' operating hours shall have said dog confined in such a manner so as not to pose a danger to the public.

3. At each appropriate location and entry point, and at 50 foot intervals along the fence perimeter, if applicable, a sign shall be posted including the words "Bad Dog" or "Guard Dog", with a dog picture.

4. All entry points shall be posted with the guard dog registration number.

5. Dogs used for guarding businesses must be given a humane existence, including adequate shelter, food, water and exercise.
6. No dog which has been classified as dangerous ~~or vicious~~ by Domestic Animal Services shall be used as a guard dog.
- J. Failure to comply with this Section is a violation of this Ordinance. **[County Guard Dog stuff. Do we want this?]**

Local Policy Options Begin Here

Section _____. Muscovy ducks as a Nuisance (authority unknown, compliance with FWC rule uncertain)

The Agency may declare Muscovy ducks to be a public nuisance. If a public nuisance is declared, Animal Control Officers may break the eggs and humanely euthanize the ducks, or authorize other qualified individuals to do the same. Where a nuisance is created by a Muscovy duck or ducks, and the person responsible for the ducks can be determined, the person may be issued a citation for contributing to the creation of a public nuisance.

The possession of or feeding of Muscovy ducks on public property and private property zoned residential is hereby prohibited. **(This was a county provision but its authority and its compliance with FWC rules is unknown...)**

Section _____. Nuisance Animals (See 828.27)

A. Any owner of an animal who fails to care for and control that animal and prevent it from becoming a nuisance commits a violation of this Ordinance. Any owner of an animal shall be responsible for the removal of any excreta deposited by that animal on public walks, recreation areas, private property, or any other place where such excreta deposits may create a nuisance injurious to the public health. Any person exercising control over an animal who fails to remove excreta deposited by that animal in a public area or on any other person's private property commits a violation of this Ordinance.

B. Any owner of an animal commits a violation of this Ordinance if that owner:

1. Causes or allows that animal to make unreasonable disturbing noises, including, but not limited to barking, howling, whining, screeching or other utterances causing annoyance, discomfort or disturbance of the peace or sleep of a reasonable person(s); or
2. Causes or allows that animal to damage the property of anyone other than its owner; or
3. Causes or allows that animal to roam on school grounds or in the area of school transportation vehicles; or

4. Causes or allows unsanitary conditions in enclosures or surroundings where that animal is kept or confined, as determined by the Agency; or
5. Keeps any animal or animals that are dangerous to the public health, safety or welfare by virtue of any combination of the number or types of animals maintained; or
6. Causes or allows that animal to disturb or turn over garbage containers.

Section ____. **Nuisance Wildlife** (F.A.C. 68A-9.010, authority: Art. IV, Sec. 9, Florida Constitution)

A property owner may take nuisance wildlife, or may authorize another person to take nuisance wildlife, on their property:

- (1) In accordance with all applicable provisions of state law; and
- (2) In a manner not inconsistent with the requirements of this Ordinance.

Section ____. **Animals roaming at-large--responsibility of owner; animal under direct control of owner--responsibility of owner;** (See §28.27, 767.07 and 767.14)

(1) Any person owning or having possession, charge, custody or control of any animal who permits that animal to stray, run, go, or roam at-large in or upon any public street, sidewalk, school grounds, in the area of school vehicles, beaches, or parks, or on the private property of others, commits a violation of this Ordinance.

(a) Any domestic animal found at-large within the Town may be impounded and treated in accordance with Section ____ (IMPOUNDED/UNWANTED ANIMALS).

(b) Any owner of real property or tenant upon real property may seize any unrestrained animal, unattended animal, or animal at-large on that real property. Any such seized animal must be surrendered within twenty-four (24) hours to the Agency for disposition. Any person seizing an unrestrained animal, unattended animal, or animal at large shall capture the animal in a humane manner.

(2) For the duration of any time a dog is within any public area of the Town, the owner of that dog must keep it under direct control by the use of a hand-held leash that is not more than six feet in length. The leash must be attached to a properly fitting collar or harness from which the dog cannot escape without human assistance. The owner must withdraw the dog from contact with any person or domestic animal unless such contact is specifically invited either

- (a) For a person: by that person, or if the person is under 18 years of age, by that person's parent or guardian; or
- (b) For a domestic animal: by that animal's owner.

Any owner of a dog who fails to control that dog in accordance with this subsection commits a violation of this Ordinance. This subsection does not apply to the use of a service animal by its owner.

Section ____ . Violations; method of enforcement; penalty (828.27)

(1) A violation of this Ordinance is a civil infraction.

(a) The maximum civil penalty for a violation of this Ordinance shall not exceed \$500.

(b) If the person who has committed a violation of this Ordinance does not contest the citation, the maximum civil penalty shall not exceed \$100 [MUST BE LESS THAN \$500]

(c) Surcharge on civil penalties: up to \$5 to be used solely for the training of animal control officers **OPTIONAL but this may be the only money we see from the fines**

(2) Any officer who has probable cause to believe that a person has committed an act in violation of this Ordinance may issue a citation.

(3) A citation must be issued to a person by an officer and must notify that person that the officer has probable cause to believe that the person has committed a civil infraction in violation of this Ordinance, and that the county court will hear the charge. A citation must contain the following:

(a) The date and time of issuance.

(b) The name and address of the person.

(c) The date and time the civil infraction was committed.

(d) The facts constituting probable cause.

(e) The ordinance violated.

(f) The name and authority of the officer.

(g) The procedure for the person to follow in order to pay the civil penalty, to contest the citation, or to appear in court as may be required.

(h) The applicable civil penalty if the person elects to contest the citation.

(i) The applicable civil penalty if the person elects not to contest the citation.

(j) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum penalty.

(k) A conspicuous statement that if the person is required to appear in court, he or she does not have the option of paying a fine in lieu of appearing in court.

(4) A citation issued under the provisions of this Ordinance may be contested in county court.

(5) If a person fails to pay the civil penalty, fails to appear in court to contest the citation, or fails to appear in court as may be required by this Ordinance, the court may issue an order to show cause upon the request of the governing body of the Town. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

(6) At any hearing authorized pursuant to this Ordinance, the commission of a charged infraction must be proven by a preponderance of evidence.

(7) Any person who willfully refuses to sign and accept a citation issued by an officer commits a violation of this Ordinance.

The governing body of a county or municipality may require mandatory court appearances for certain aggravated violations of a local ordinance resulting in the unprovoked biting, attacking, or wounding of a domestic animal; violations resulting in the destruction or loss of personal property; second or subsequent violations of local animal cruelty laws; or violations resulting in the issuance of a third or subsequent citation to a person. The citation must clearly inform the person of the mandatory court appearance. The governing body of the county or municipality shall maintain records to prove the number of citations issued to the person. Persons required to appear in court do not have the option of paying the fine instead of appearing in court. **[State law allows us to require mandatory court appearances in circumstances described above. Do we want to do this or not, and if so, in which of these circumstances?]**

Section ____. **Effect on enforcement by Lee County and by other organizations**
(828.03)

Any county or any society or association for the prevention of cruelty to children or animals organized under Florida law, may appoint agents for the purpose of investigating violations of any of the provisions of Chapter 828, Florida Statutes, or any other law of the state for the purpose of protecting children and animals or preventing any act of cruelty thereto.

All appointments of such agents by such societies or corporations must have the approval of the mayor of the Town of Fort Myers Beach if the society or corporation exists solely in the Town of Fort Myers Beach, and if the society or association exists or works outside of the Town of Fort Myers Beach, the appointment must be approved by the county court judge or the judge of the circuit court for the county. The mayor or judge shall keep a record of such appointment. The approval of the appointment of any agent by Lee County shall be by the Lee County Board of County Commissioners.

Nothing in this Ordinance shall be construed as limiting the authority given to law enforcement officers and county Animal Control officers to prosecute violations of state law that occur within the Town of Fort Myers Beach.

Section ____ . Conflicts with state law; preemption; severability

All provisions of this Ordinance shall be construed so as not to conflict with state law. Areas preempted by the state, including the regulation of hunting and fishing, and of the taking and possession of wildlife, freshwater fish, and saltwater fish, and other marine life, are not regulated by this Ordinance.

If any one provision of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this Ordinance, and shall in no way affect the validity of all other provisions of this Ordinance.

DRAFT FOR DISCUSSION