

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2010-021

1. Requested Motion:

Meeting Date: Feb. 16, 2010

Adopt Ordinance 10-03, to be known as the Town of Fort Myers Beach Animal Control Ordinance

Why the action is necessary:

This action fulfills the direction of Town Council to bring forward an updated and consolidated animal control ordinance.

What the action accomplishes:

This ordinance will make animal control issues easier to understand and enforce, since it consolidates and updates multiple different Town ordinances.

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☒ Ordinance
☐ Other

4. Submitter of Information:

☐ Council
☒ Town Staff
☒ Town Attorney

5. Background:

The Town currently has several different Animal Control Ordinances. This has made it very difficult to obtain timely and appropriate services, especially since the Town outsources enforcement to Lee County. In addition, the Town animal control ordinances were outdated and had insufficient enforcement provisions. The attached Ordinance addresses all these matters. **This Ordinance requires only this one (1) hearing.**

Enclosures:

Community Development Director Memo
Draft Animal Control Ordinance
LPA Resolution 2009-22

6. Alternative Action:

Do not pass Ordinance; direct that options be prepared to consider changes to Ordinance language

7. Management Recommendations:

Adopt ordinance.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009-22**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, the Town Council requested that the LPA review the three (3) existing Town Animal Control Ordinances and consolidate them into one (1) Ordinance with appropriate revisions thereto; and

WHEREAS, the LPA has had various workshops and agenda items over the past year and has determined to recommend the adoption of the Lee County Animal Control Ordinance as the Town Ordinance with internal revisions as appropriate to address specific needs for animal control within the Town of Fort Myers Beach, and with a provision for establishing and changing the fines and fees for animal control via Town Resolution rather than requiring such change by Ordinance.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends the Town Council adopt the draft Town animal control ordinance which is attached hereto as Exhibit A and incorporated by reference.

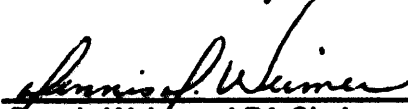
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Ryffel and seconded by LPA Member Mandel and upon being put to a vote, the result was as follows:

Dennis Weimer, Chair aye
Carleton Ryffel aye
Joanne Shamp aye

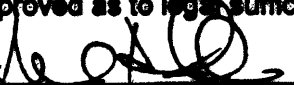
Alan Mandel, Vice Chair aye
Rechelle Kay aye
Bill Van Duzer aye

DULY PASSED AND ADOPTED THIS 29th day of September, 2009.

LPA of the Town of Fort Myers Beach

By: 
Dennis Weimer, LPA Chair

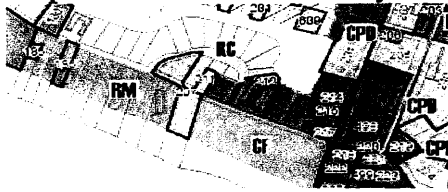
Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher, Town Clerk

Town of Fort Myers Beach
Department of Community Development



MEMORANDUM

To: Town Council

CC: Town Manager
Anne Dalton, Town Attorney

From: Frank Shockey, Community Development Director

Date: January 21, 2010

RE: Ordinance 10-03, Animal Control

On March 3, 2008, the Town Council considered an emergency ordinance relating to animal control. The emergency ordinance was not adopted and instead a motion to send the text to the LPA with an assignment to consider short-term and long-term issues with animal control passed by a vote of 3-1 in favor with one council member absent. In the summer of 2008, Town Council adopted Ordinance 08-08, which amended the prior animal control provisions slightly to change requirements for leashes in response to the "short-term" issues.

Since the fall of 2008, the LPA has spent considerable time considering various issues relating to animal control, and in September 2009 passed a resolution recommending that the Town Council adopt provisions that would be substantially the same as those contained in the Lee County Animal Control Ordinance. The LPA suggested minor changes to clarify requirements regarding nuisance animals and a comprehensive section to require dogs in public to be leashed. Lee County adopted a substantial amendment to its animal control ordinance (Chapter 6, Article III of the Lee County Code of Ordinances) in the spring of 2009. The minor changes recommended by the LPA have been incorporated into the language of the County's current ordinance to create the

attached draft Ordinance 10-03. Differences between the attached draft and the County ordinance are described, section-by-section, below.

Section Six (County 6-30) contains definitions. Several definitions, including *animal control officer*, *designee*, *domestic animal services*, and *town* are altered to reflect the Town's authority to adopt the ordinance and provide for animal control by various means that may or may not involve Lee County staff. The definition of *restraint* is revised slightly to avoid conflict with the leash requirements. Several other definitions are removed or added for reasons explained in context later in this memorandum.

Section Seven (County 6-31) is revised to comport with the probability that the Town will provide for an animal shelter through a facility that is owned and operated by another entity.

Section Eight (County 6-32) is revised to reflect the slightly different form of authority exercised by municipal animal control officers and to allow for the Town's ability to provide for animal control by various means that may or may not involve Lee County staff.

Sections Nine, Ten, Eleven, Twelve, and Thirteen (County 6-33, 6-34, 6-35, 6-36, and 6-37) are not significantly altered from the Lee County ordinance.

Section Fourteen (County 6-38) addresses nuisance animals. This section is revised in minor ways to clarify the responsibility of an animal's owner for the actions of the animal. A subsection in the Lee County ordinance that legitimizes feeding and giving other care to feral cats is removed. Staff suggested, and the LPA concurred, that those who encourage feral cats to thrive and roam at large within the Town should be held responsible under this ordinance for the actions of such animals.

Sections Fifteen, Sixteen, Seventeen, and Eighteen (County 6-39, 6-40, 6-41, and 6-42) are not significantly altered from the Lee County ordinance.

Section Nineteen (County 6-43) is revised in minor ways for clarity.

Sections Twenty, Twenty-One, and Twenty-Two (County 6-44, 6-45, and 6-46) are not significantly altered except that Section Twenty allows for the Town Council to adopt an administrative code to govern "dangerous dog" procedures to replace those provided in the Lee County Administrative Code. Unless Council adopts such procedures the Lee County Administrative Code would

continue to be used and this section would be essentially the same as the Lee County ordinance.

Section Twenty-Three (County 6-47) is revised slightly to clarify the authority of animal control officers acting under a municipal animal control ordinance.

Sections Twenty-Four, Twenty-Five, Twenty-Six, and Twenty-Seven (County 6-48, 6-49, 6-50, and 6-51) are not significantly altered from the County ordinance.

Sections Twenty-Eight and Twenty-Nine (County 6-52 and 6-53) are revised slightly and in a similar way to clarify the relationship between this municipal ordinance and state law.

Section Thirty (County 6-54) is not significantly altered from the County ordinance.

Section Thirty-One (County 6-55) is revised to clarify the manner in which animal control officers should interact with law enforcement officers and state agencies and to clarify the relationship between this municipal ordinance and state law and state agency rules.

Section Thirty-Two (County 6-56) is not significantly altered from the County ordinance.

Section Thirty-Three (County 6-57) regarding registration and licensing of guard dogs, is not significantly altered from the County ordinance. Sections Nineteen and Twenty contain exemptions for animals that threaten or injure a person who is offending the animal or its owner in specific ways. The Town need not otherwise legitimize the use of animals to threaten or attack other human beings. However, by requiring this annual registration of guard dogs, animal control services can charge a sizable fee that is likely to discourage people from using guard dogs in the Town. At the will of Council this section could be removed if there is a concern that it unnecessarily legitimizes the use of guard dogs.

Section Thirty-Four (County 6-58) is not significantly altered from the County ordinance.

Section Thirty-Five is added to require dogs to be leashed while in public places. This would include beaches where dogs are not otherwise prohibited. The section also imposes a duty on the person holding the leash to withdraw the dog from contact with other people and domestic animals unless an appropriate party invites that contact. An exemption is provided for service animals assisting a person with a disability or being trained by a trainer of service animals, to avoid conflict with state law. Definitions related to this section are added in the definitions section.

TOWN OF FORT MYERS BEACH
ORDINANCE 10-03

AN ORDINANCE REGULATING THE CONTROL OF ANIMALS WITHIN THE TOWN OF FORT MYERS BEACH, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH ANIMAL CONTROL ORDINANCE; PROVIDING FINDINGS, PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTY; REPEALING ALL PRIOR TOWN ORDINANCES REGARDING ANIMAL CONTROL; PROVIDING FOR SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council finds that there is a public need affecting life, health, property or the public peace of persons with regard to establishing procedures for control of animals within the Town municipal limits and setting forth all regulations regarding such animal control in one comprehensive ordinance.

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

Section One. Authority and Title. 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. It shall be hereafter known and cited as "The Town of Fort Myers Beach Animal Control Ordinance".

Section Two. Incorporation of Whereas Clauses. The above "Whereas" clauses are hereby incorporated by reference.

Section Three. Repeal of Prior Ordinances. The following Ordinances are hereby repealed in their entirety, effective upon passage of this Ordinance: Ordinance 08-08, 00-08, 99-05, and 96-08.

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 Five. Purpose and Intent. The purpose of this Ordinance is to adopt provisions relating to animal control that conform to the requirements set forth in Florida statute where required, that do not prevent or displace the enforcement of Florida statutes related to animal control and cruelty, 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.

Section Six. Definitions.

The following definitions are established for purposes of and apply to this Ordinance:

Abandon means to give up possession of, to neglect, to forsake an animal entirely or to refuse to provide or perform the legal obligations for care and support of an animal by its owner or owner's agent.

Adequate food means uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet must be appropriate for the individual animal's age and condition.

Adequate water means 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. Such water will be provided in a secure manner so that the container cannot be overturned.

Adequate shelter means a structurally sound, properly ventilated, sanitary and weatherproof 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 means 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 means domesticated animals including dogs, cats and ferrets.

Animal roaming at large means any animal not under the restraint, confinement or direct control of the owner or his agent, as defined further herein.

Animal care facility means any person, group or business that provides for the care, sustenance, housing, maintenance or other necessary care of an animal, usually but not necessarily for a fee. Including, but are not limited to, veterinary facilities, boarding facilities, groomers, animal sitters/foster care, rescues, shelters and pet stores.

Animal control officer means any person employed or appointed by the Town of Fort Myers Beach and who is authorized to investigate, pursuant to law, civil infractions or criminal offenses relating to animal control or animal cruelty, and to issue citations, or utilize other enforcement mechanisms as provided in this Ordinance, and to file charges

based on such investigation. This definition is in addition to any provisions of state law regarding animal control officers.

Auction means any facility or place where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this Ordinance. This definition does not apply to individual sale of animals by owners.

Baiting means to attack with violence, to provoke or to harass an animal with one (1) 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. "Baiting" also means the use of live animals in the training of racing greyhounds or dogs used in "Hog Dog Rodeos", or any other performing animal exhibition.

Board means the Board of County Commissioners of Lee County, Florida.

Caregiver means any person who provides food, water or shelter to or otherwise cares for any animal, feral or domesticated, over a designated period of ten (10) days or longer that the person, whether of their own volition or by request of the owner of said animal provides care for the animal.

Citation means a written notice issued to a person by an animal control officer stating that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly-enacted ordinance or of the applicable laws of the State of Florida and that the county court will hear the charge.

Commercial animal establishment means any pet shop, animal grooming shop, flea market, department store, guard dog training facility, riding school, any type of kennel, cattery; or any other premises or property where animals are kept as part or whole of a business concern. Bona fide commercial agricultural animal establishments are excluded from this definition, with the exception of cruelty to animal investigations as authorized elsewhere in this Ordinance.

Cruelty to animals is defined in Chapter 828, Florida Statutes, as amended from time to time.

Dangerous animal means any animal that according to the records of the appropriate authority has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; has more than once severely injured or killed a domestic animal while off the owner's property; has been used primarily or in part for the purpose of fighting or is an animal trained for fighting; or 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 (1) or more persons and dutifully investigated by the appropriate authority.

Designee means the person designated to fulfill a specific role hereunder at the direction of the Town Manager.

Direct control shall mean immediate and continuous physical control of an animal at all times; such as by means of a fence, leash not to exceed six (6) feet in length, cord, or chain of sufficient strength to restrain said animal (excluding herding dogs, dogs in process of hunting, police dogs, dogs participating in a registered field trial, obedience training or trial, or on its owner's property). A bona fide service animal shall be considered to be under direct control when it is being employed by an individual with a disability or when it is being trained by a trainer of service animals.

Domestic animal means any animal kept for enjoyment and/or companionship rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent upon people for food, shelter and survival.

Domestic animal services means 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 mean and/or any entity which is otherwise charged by state statute with enforcement of laws related to animals.

Euthanasia means the humane and painless putting to death of an animal that is hopelessly sick, injured or ultimately unclaimed. In the case of dogs and cats, by injection of sodium pentobarbital as defined in Chapter 828, Florida Statute, as amended, from time to time.

Exotic species means any animal whose natural habitat is outside the continental United States, excluding nonvenomous reptiles and fish.

Feral animal means any wild cat or dog, whether it was born in the wild or reverted to a wild state due to abandonment or lack of domestication.

Grooming shop means any commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Guard dog means any dog used primarily for the purposes of defending, patrolling, or protecting property or life.

Guard dog registration means the process of presenting a guard dog to domestic animal services for purposes of documenting pertinent data of the dog, which shall include name, address, and telephone number of the guard dog service, the service's manager, the dog's owner (if other than the service), and/or the handler, the dog's breed, sex color, microchip registration number (if applicable), certification of rabies vaccination, any other distinguishing physical characteristics of the animal, and any "stop attack/release" commands.

Guard dog service means any person, firm, or corporation which trains, sells, rents, leases, or loans guard dogs for the purpose of defending, patrolling, or protecting properties or persons.

Health department means the Lee County Health Department.

Humane capture methods means the use of control poles, muzzles, nets, humane traps and tranquilizer equipment.

Humane manner means a manner consistent with the physical and behavioral needs of a species; including but not limited to adequate heat, ventilation and sanitary shelter, wholesome food and water consistent with the normal requirements and feeding habits of the particular animal according to its size, species and breed; including necessary veterinary care.

Humane trap means a device used to capture animals, which does not cause injury to the animal upon capture or confinement.

Implied owner means any person who is harboring an animal without ownership being openly or directly expressed.

Impoundment means confining of any animal by domestic animal services in a manner consistent with professionally recognized standards of humane treatment.

Individual with a disability is defined in F.S. § 413.08(1), as amended from time to time.

Kennel or cattery means any premises where animals are kept for profit rather than enjoyment, by boarding, grooming, buying, training, selling, letting-for-hire or offering of stud services. Animal hospitals maintained by a Florida licensed veterinarians, shelters operated by the Board of County Commissioners or tax exempt animal care facility shall not be considered commercial kennels or catteries.

Livestock means as defined in F.S. § 828.23, as may be amended, all animals of the bovine, equine, or swine class and also includes goats, sheep, mules, horses, hogs, and domesticated poultry, or any other animal used in and for utility or preparation of meat or meat products.

Nuisance animal means any animal or animals that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interferes with the rights of citizens, other than their owners, to reasonable enjoyment of life or property.

Official health record means a certificate signed by a licensed veterinarian that shows the age, sex, breed, name, description and health record of an animal; as well as the name, address and phone number of the owner or agent of the owner.

Owner means any person or entity owning, keeping, harboring or having control of one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for ten (10) or more consecutive days. Any implied owner will also be construed as being the owner of an animal. An animal owner is responsible for keeping their animals under direct control at all times and will be held accountable for any violation of this Ordinance.

Owner's agent means a person or entity capable of acting or empowered to act for and on behalf of the owner.

Person means a natural person or persons, firm, association, corporation or any other entity, legal or otherwise, as defined in Chapter 828, Florida Statutes, as may be amended.

Pet shop means a store, person, partnership, corporation or franchise operation whether operated separately or in connection with another business enterprise that buys, sells, or boards any species of animal for a fee or reimbursement.

Pet license means a document and/or tag issued by domestic animal services indicating that the animal described on the license is owned, kept or boarded by the individual named thereon.

Provider means any person or entity that provides for the sustenance, medical care, housing, or other essential items/care to any animal. Florida licensed veterinarians are exempt from this definition while providing care for an animal owned by a client, customer, or shelter.

Probable cause exists where the facts and circumstances within the officer's knowledge and of which the officer has reasonably accurate information are sufficient to lead a reasonable person to believe that an offense has been or is being committed.

Public nuisance, for the purposes of this Ordinance, means any animal that unreasonably annoys the community, injures the health of citizens in general or other animals, or substantially interferes with the rights of other persons to the quiet enjoyment of life or property.

Public property means lands and improvements owned, leased or controlled by the Federal Government, the state, the county, or a municipality, and includes sovereignty submerged lands located adjacent to the County or municipality, buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

Quarantine means the strict indoor confinement, isolation and observation of an animal for symptoms of rabies. Such confinement must prevent the animal from coming into unplanned contact with any other animal or human being for a period of ten (10) days from the date of the bite.

Recognized national, regional or local dog/cat club means any national, regional or local dog or cat club which is chartered, organized, and has by-laws, directors and members.

Restraint means the restraint of an animal by leash, fence, building, chain, cage, crate or other secure enclosure that prevents such animal from roaming at large. Other than a dog restrained on a hand-held leash, dogs that are restrained exclusively by a chain or tether may be so restrained if the restraint is at least ten (10) feet in length. This may be attached to a pulley or trolley mounted on a cable. No chain or tether shall weigh more than one-eighth (1/8) of the dog's weight, and shall have swivels on both ends. Each chain, tether or leash shall be attached to a properly fitting collar or harness. Animals must be restrained in a clear area free from obstructions or vermin-harboring debris.

Sanitary means clean and free from infectious or deleterious influences.

Secure enclosure means confinement of an animal in a building or other enclosure that renders such animal inaccessible to any other animal or people.

Secure enclosure of a dangerous animal means while on the owner's or keeper's property, a dangerous animal is securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the entry of young children and designated to prevent the animal from escaping. Such pen or structure shall include a concrete base with a minimum of eight (8) inches of block above concrete base with secure fencing material that is tied into the base and secured behind the block and the enclosure shall further include a full, secure top and locking access door that must remain locked at all times while the dangerous animal is inside. The pen or structure shall also provide adequate ventilation and protection from the elements.

Service animal means 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. An animal control officer may ask if an animal is a service animal or what tasks the animal has been trained to perform in order to determine the difference between a service animal and a pet.

Threatening and menacing behavior means any aggressive behavior toward a human or another animal, whether by barking, growling or charging, without provocation, where such action on the part of the aggressor creates a reasonable apprehension of immediate injury. This does not include an animal that is secured on its own property.

Town. All references to the "the Town" or "Town" herein shall mean "the Town of Fort Myers Beach, Florida".

Twenty-four (24) hour notice means a domestic animal services form left upon a property in an attempt to notify an owner or owner's agent of an existing violation or an abandoned animal, and that they have twenty-four (24) hours in which to contact domestic animal services.

Unattended animal means an animal that is not securely confined and no owner or owner's agent is present, and where that animal is at liberty to come and go freely from the property.

Unprovoked behavior of an animal means an animal that has been bitten or chased in a menacing fashion or attacked a person or another animal who has been conducting themselves peacefully and lawfully.

Veterinarian means a person who is licensed to engage in the practice of veterinary medicine as provided for in Chapter 474, Florida Statutes, as may be amended.

Veterinary care means medical treatment by a licensed veterinarian having as its purpose the mitigation of disease, suffering and/or injury.

Veterinary hospital means any place or facility owned or operated by a licensed veterinarian and used for the practice of veterinary medicine in the diagnosis, treatment, and care of diseases and injuries to animals, or used for the boarding of animals during such diagnosis, treatment or care, or used for the temporary boarding of animals belonging to the veterinarian's clients.

Warning notice means an animal control agency form served on an owner or owner's agent advising them of an existing violation of this Ordinance.

Wild animal means any nondomesticated member of the animal kingdom, including those born or raised in captivity that are not dependent upon human beings for survival.

Zoonoses or zoonotic diseases means those diseases transmittable to humans and animals by other animals including parasitic, bacterial, fungal and viral diseases.

Section Seven. Animal shelter.

Domestic animal services shall provide for the availability of an animal shelter of adequate size and design for the safe confinement of animals through interlocal agreement, contract, or other lawful means.

Section Eight. Domestic animal control enforcement agency.

Domestic animal services shall employ qualified persons who shall be invested with full and complete authority to enforce the provisions, requirements and regulations set forth herein and to discharge the duties of the office. Those persons designated by the Town as animal control officers, are duly appointed as code enforcement officers in accordance with Florida Statute § 162.21(2), as may be amended, and by any applicable Town

regulations. Such persons shall have the authority to issue citations and to enforce this Ordinance and, where applicable, the laws of the State of Florida relating to animals.

Section Nine. Adoption by reference: Florida Statutes relating to animal control, animal welfare and animal cruelty.

The Town hereby adopts by reference, as a part of this Ordinance, all laws of the State of Florida relating to animal control, animal welfare and animal cruelty.

Section Ten. Cruelty to animals.

(a) No owner, keeper or agent of an animal shall fail to provide the animal with adequate food, water, shelter or veterinary care; or restrain the animal by any means other than those defined in this Ordinance.

(b) No animal shall be kept in unsanitary conditions, or in areas where there is vermin-harboring debris or other material which can provide an opportunity for injury or a danger to the animal's health or welfare.

(c) No animal in the care, custody, or control of a person shall be neglected, beaten, cruelly treated, tormented, overworked, overloaded, abused, mutilated or killed.

(d) It shall be unlawful for any person or owner, or group of persons, to abuse, cause bloodletting or death of an animal.

(e) It shall be unlawful for any person to molest or penetrate an animal or use the body parts of an animal for sexual gratification.

(f) It shall be unlawful to procure an animal for the purposes set forth in subsections (d) and (e) of this section.

(g) No person other than a licensed veterinarian, or an owner certified competent by a licensed veterinarian, shall crop the ears or dock the tail of any dog.

(1) A person commits an offense if he crops or cuts off or causes or procures to be cropped or cut off, the whole or part of the ear, ears or tail of a dog, except as provided herein.

(2) The possession by any person of a dog with an ear or ears cut off or cropped, or tail docked, and with the wound resulting therefrom unhealed, or any such dog being found in the charge or custody of any person, or confined upon the premises owned by or under the control of any person, shall be prima facie evidence of a violation of this section, unless the cropping or docking has been carried out by a licensed veterinarian or an owner trained by a licensed veterinarian.

(h) It shall be unlawful for any person to leave or deposit any poison or any substance containing poison in any common street, road, alley, lane or thoroughfare of any kind, or in any yard or enclosure other than that person's own yard or enclosure, for the purpose of inflicting injury or killing any animal.

(i) The humane slaughter of either domestic or wild animals for food purposes (including but not limited to all lawful hunting activities) is exempt from the provisions of this section.

(j) Nothing in this section shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Slaughter and the handling or other preparation of livestock for ritual slaughter shall be carried out in a humane method. For the purpose of this section, the term "slaughter" is defined in accordance with F.S. 828.23(3), as may be amended.

(k) Abandonment of Animals.

(1) No owner or agent of an animal shall abandon any animal in any public or private place.

(2) If an animal control officer suspects that an animal has been abandoned, but such animal does not appear to be in immediate distress or danger, the officer may leave notices posted in a conspicuous place informing the owner or agent to contact said officer within twenty-four (24) hours. Failure to do so will result in the animal being removed by the animal control officer. The animal will become the property of domestic animal services if not redeemed within three (3) days. The officer may issue citations if the owner or agent is subsequently located.

(3) It shall be unlawful for a person to willfully and knowingly provide false or misleading information to domestic animal services regarding animal ownership, licensing, rabies vaccination, medical treatment and condition and/or other matters pertaining to the enforcement of state law or this Ordinance.

(l) Tethering. No person shall under any circumstances tether or otherwise confine any animal in a manner that is injurious to the animal's health, safety and well-being. Proper and humane tethering includes, but is not limited to the following:

(1) Collars used to attach an animal should be comfortable and properly fitted as to not choke the animal. The use of choke chains is prohibited.

(2) The tether shall not extend over an object or edge in such a manner that could result in strangulation of or injury to the animal. The length of the tether must be a minimum of ten (10) feet, or at least three (3) times the length of the animal measured from the animal's nose to the base of its tail, whichever is greater, unless the tether is being used to secure the animal to the bed of an open vehicle or pick-up truck. Restraints should allow the animal to move about and lie down comfortably.

(3) Tethering of an animal is prohibited during natural disasters such as floods, fires, tornados or hurricanes.

Section Eleven. Impoundment of animals found in distress.

Animal control officers shall have the authority to impound any animal found to be cruelly treated or in obvious distress. Any animal so impounded may be taken to a veterinarian without the owner's consent for examination and/or treatment, if necessary. The owner of said animal shall be liable for all costs incurred. Any animal impounded under the provisions of this Ordinance and not redeemed by its owner after three (3) consecutive days shall become the property of domestic animal services.

Section Twelve. Animal fighting or baiting.

It shall be unlawful for any person to promote, allow or permit any animal to engage in animal fighting or baiting for amusement or gain, including:

- (1) Knowingly owning, managing or operating a facility kept or used for fighting or baiting any animal.
- (2) Owning, possessing, keeping, training, promoting, purchasing or knowingly selling any animal for animal fighting or baiting.
- (3) Promoting, staging, advertising, wagering or charging an admission fee to fighting or baiting between two (2) or more animals.
- (4) Paying for admission to an animal fight/baiting or attending fighting or baiting as a spectator.

Section Thirteen. Sterilization of dogs and cats released from animal shelter facility.

- (a) No unclaimed dog or cat shall be released for adoption without being sterilized prior to entering the new home. Animal control officers are authorized to issue citations for failure to sterilize any cat or dog adopted from the animal shelter.
- (b) Sterilization may be deferred only on the recommendation of a licensed veterinarian.
- (c) Any person who adopts an unaltered animal shall be required to leave a spay/neuter deposit, which will be fully refunded upon proof that the sterilization has been accomplished.
- (d) Any unsterilized animal impounded for a second or subsequent redemption that is reclaimed by the owner shall be sterilized at the expense of the owner prior to the animal being released from domestic animal services. Sterilization may be deferred only on the recommendation of a licensed veterinarian.

Section Fourteen. Nuisance animals.

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.

(1) The owner of each animal shall be responsible for the removal of any excreta deposited by the 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.

- (2) An owner of an animal commits a violation of this Ordinance if that owner:
- a. 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).
 - b. Causes or allows that animal to damage the property of anyone other than its owner.
 - c. Causes or allows that animal to roam on school grounds or in the area of school transportation vehicles.

d. Causes or allows that animal to cause unsanitary conditions in enclosures or surroundings where the animal is kept or confined, as determined by domestic animal services to be unsanitary.

e. Keeps any animals that are dangerous to the public health, safety or welfare by virtue of the number or types of animals maintained.

f. Causes or allows that animal to disturb or turn over any garbage containers.

(3) No person shall offer a bounty for the collection or the elimination of any animal determined to be a nuisance under the provisions of this Ordinance.

Section Fifteen. Muscovy ducks as nuisances.

(a) Domestic animal services is hereby given the authority to declare Muscovy ducks to be a public nuisance. If a public nuisance is determined to exist, Domestic animal services 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.

(b) The possession of or feeding of Muscovy ducks on public property and private property zoned residential is hereby prohibited.

Section Sixteen. Surrender of stray animals to domestic animal control enforcement agency.

Stray animals shall be released by the finder to domestic animal services within twenty-four (24) hours of being found to provide owners the opportunity to reclaim their animal during the stray holding period. A finder may adopt the found animal if unclaimed by the owner at the expiration of the stray holding period with a completed and approved adoption application through domestic animal services.

Section Seventeen. Concealment of animals.

It shall be unlawful for any person to confine, hide or conceal any animal to which the person does not have legal title; or any animal which has been involved in a bite or scratch or rabies exposure incident for which formal investigation is pending, or to conceal any other animal that is subject to an investigation by domestic animal services.

Section Eighteen. Prohibiting animals from running at large.

(a) It shall be unlawful for any person owning or having possession, charge, custody or control of any animal, to permit the 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 without the consent of the owner of such private property.

(b) Any animal found in violation of this section may be impounded.

(c) Any property owner or tenant upon property may seize an unrestrained animal, unattended animal, or animal at large on his or her property and shall surrender said animal within twenty-four (24) hours to domestic animal services for disposition. Any person seizing an unrestrained animal, or animal at large shall capture the animal in a safe and humane manner, and may employ certain humane traps for such purpose.

Section Nineteen. Threatening or menacing behavior.

- (a) It shall be unlawful for the owner of any animal, or that owner's agent, to allow that animal to act in a threatening or menacing manner toward any other animal not belonging to said owner or agent, when that animal is not on the property of said owner or agent. This section shall not apply to animals which are securely enclosed, or under the direct control of the owner/agent as defined in this Ordinance.
- (b) It shall be unlawful for the owner of any animal, or that owner's agent, to allow that animal to act in a threatening or menacing manner toward any person not on the property of said owner or agent.
- (c) Upon receipt of a report of any animal acting in this manner, domestic animal services may investigate the incident. After investigation, domestic animal services may order the owner or agent to keep the animal restrained or confined as defined in this Ordinance, and may issue a written warning or a citation and a notice ordering confinement.
- (d) Upon an owner's conviction under this section, the subject animal will be considered a dangerous animal for the purpose of section twenty of this Ordinance. A record of the order to confine, the written warning, the citation, and any supporting affidavits will be held on file at domestic animal services.
- (e) An order to confine will be a written notice issued by an animal control officer to a person who owns or harbors a dog that has acted in a threatening or menacing manner. One (1) copy will be left with the owner of the animal and one (1) copy will be kept on file at domestic animal services. Such notice shall include name, address and telephone number of owner; sex, color, breed of dog; license and rabies vaccination registration numbers; time, date and nature of incident; signature of owner agreeing to confinement and signature of issuing officer. The confinement must be completed within twenty-four (24) hours of the notice being issued. The animal control officer conducting the investigation will check to ensure that the confinement has been completed.
- (f) Failure or refusal to confine any animal in violation of this section may result in the animal being impounded and/or citations being issued.
- (g) Exception to threatening or menacing behavior. An animal that is secured on its owner's property cannot be found to be threatening or menacing.

Section Twenty. Dangerous animals.

- (a) The director of domestic animal services or designee may declare that an animal is a dangerous animal, in accordance with applicable administrative code that may be adopted by the Town Council. If no such administrative code has been adopted, domestic animal services shall follow the procedures provided by the applicable Lee County administrative code.
- (b) Any animal declared to be a dangerous animal shall be confined in a secure enclosure on the premises of the owner or keeper of such animal. No dangerous animal shall be allowed off the premises of the owner or keeper unless such animal remains:
- (1) Inside a secure marked carrier identifying the animal as dangerous, or
 - (2) Under the physical control of such owner or keeper who is competent and over the age of eighteen (18) years, securely muzzled and restrained by a chain with a minimum tensile strength of three hundred (300) pounds and not exceeding three (3) feet in length

attached to an approved harness which identifies the animal, provided by domestic animal services at owner's expense. The muzzle must be made in a manner that will not cause injury to the animal or interfere with its vision or respiration; or

(3) Subject to conditions established by the director of domestic animal services.

(c) It is a violation of this Ordinance for the owner or keeper of a dangerous animal to refuse or fail to confine or restrain such animal as required by this section.

(d) No dangerous animal impounded pursuant to this Ordinance shall be released until:

(1) The owner or keeper of such dangerous animal presents proof to the director of domestic animal services that the animal will be confined as required by this section;

(2) The owner or keeper executes an affidavit acknowledging that the animal has been declared dangerous, agreeing to confine and restrain the animal, and recognizing that domestic animal services will assume ownership and custody of the animal if it bites or injures a human or another animal after being declared dangerous.

(3) Provides proof that the animal has been electronically implanted, sterilized, vaccinated for rabies and has made payment of a one-time dangerous dog registration fee of one thousand five hundred dollars (\$1,500.00) with the acknowledgement of an additional annual registration fee of five hundred dollars (\$500.00) per year. This annual registration fee is in addition to the pet licensing fee required in section twenty-seven of this Ordinance.

(4) Posts warning signs with attached number identifying the dangerous animal, provided by domestic animal services at owner's expense, on owner or keeper's premise stating "Dangerous Animal" on the property at all entry points to the property.

(5) If applicable, a notarized statement must be submitted to the director of domestic animal services by the landlord of said property that will house a dangerous animal including adherence to all posting regulations.

(e) If a dangerous animal is sold or given away, the owner or keeper of a dangerous animal shall report, in writing, the names, addresses and telephone numbers of the new owner or keeper to the director of domestic animal services prior to the transfer of ownership or custody of such animal. It is a violation of this Ordinance not to report the name and address of the new owner. The owner or keeper shall update all relevant information with the national registry applicable to the microchip and shall provide domestic animal services with confirmation that the microchip information has been updated. The new responsible party shall comply with all of the requirements of this section even if the animal is later moved from this county to another county within the State of Florida. If an animal that has been designated by another jurisdiction as dangerous and is housed within Lee County, the owner or keeper shall immediately register the animal with domestic animal services. If an animal is declared dangerous by another municipality, the animal will automatically be declared a dangerous animal in Lee County, requiring the owner or keeper to comply with section nineteen of this Ordinance.

(f) The owner or keeper of a dangerous animal shall report in writing or by telephone the death of such animal to the director of domestic animal services immediately, and it is a violation of this Ordinance not to do so. The death of such animal shall be verified by a licensed veterinarian or an animal control officer.

(g) The owner or keeper of a dangerous animal, whether or not it has been declared dangerous, who permits, allows or causes such animal to run, stray or be uncontrolled or

at large in or upon public or private property, shall be in violation of this Ordinance if such dangerous animal bites, attacks or causes injury to any person or domestic animal.

(h) It is a violation of this Ordinance for any person convicted under this subsection to own, keep, possess, control or be in charge of any animal of the breed which caused the bite, attack or injury for which a conviction was rendered for a period of three (3) years from the date of conviction. No license certificate, license tag or other permit shall be issued for such type of animal to such person within three (3) years of such conviction.

(i) Domestic animal services shall have the authority to make inspections as necessary to ensure that the owner or keeper of a dangerous animal is in compliance with this Ordinance. Animals classified as dangerous under this Ordinance:

(1) Shall not be used as a guard dog.

(2) Shall not be used for the purposes of hunting.

(j) Upon declaration of euthanasia of a dangerous animal provided by domestic animal services, domestic animal services shall provide the owner of a classified dangerous animal written notice containing all costs and fees incurred by the department in the confiscation, maintenance, quarantine and euthanasia of the animal with a deadline not less than thirty (30) days from receipt of the notice of payment of the costs and fees.

(k) Exception to classification under section twenty. No animal shall be classified as threatening or dangerous if the threat of injury was sustained by a person who, at the time, was committing or attempting to commit a crime upon the owner of the animal, or who was committing a willful trespass upon premises occupied by the owner of the animal, or who was teasing, tormenting, abusing or assaulting the animal or its owner.

Section Twenty-One. Failure to confine female dogs and cats in season.

(a) It shall be unlawful for the owner or agent of any female dog or cat in season to fail to keep such animal confined in a building or secure enclosure, veterinary hospital, or boarding kennel to prevent such dog or cat coming into contact with another dog or cat except for intentional breeding purposes. Confinement solely by a leash, chain or other similar restraint, or within a fence, open kennel, open cage or run, may be, but shall not be presumed to be, in compliance with this section.

(b) For the purposes of this section, a fenced yard may not be considered a secure enclosure, and any female in season chained on any unfenced lot, tract, yard or parcel of land may be removed by an animal control officer and confined at domestic animal services until the owner of said animal provides alternative confinement, or the animal's condition has ceased to exist. The owner or agent shall be liable for all fees incurred. Domestic animal services may issue citations for any violation of this section.

Section Twenty-Two. Opposing an animal control officer.

(a) It shall be unlawful for any person to oppose, resist, obstruct, hinder or in any manner prevent an animal control officer from performing lawful duties.

(b) It shall be unlawful to tear down, burn, deface, destroy or otherwise damage any animal shelter, equipment, vehicle, or to release or remove any animal from the custody of an animal control officer, domestic animal services shelter or trap owned by domestic animal services.

Section Twenty-Three. Enforcement of violations.

- (a) Animal control officers shall have the authority to impound any animal in violation of this Ordinance by using recognized capture techniques and methods. Such methods and techniques may include but are not limited to: leashes, control poles, nets, humane traps and recognized tranquilizer equipment.
- (b) If after a reasonable effort the seizure of any such unrestrained animal cannot be made, or should the animal be dangerous or have an injury or physical condition which causes the animal to suffer, the animal control officer may incapacitate the animal by the most reasonable and humane means then available.
- (c) An animal control officer who has probable cause to believe that a person has committed a civil infraction in violation of this Ordinance may issue a citation. The citation criteria as set forth in F.S. § 828.27, as may be amended, are hereby adopted, and will be utilized for issuance of citations and warning notices.
- (d) An animal control officer who in the course of duty observes conduct that may be contrary to state law, including but not limited to a person's willful refusal to sign and accept a citation issued pursuant to this Ordinance, shall report such conduct to a law enforcement officer.
- (e) Any duly sworn law enforcement officer in Lee County may enforce the provisions of this Ordinance in the Town of Fort Myers Beach.

Section Twenty-Four. Vaccination requirements for dogs, cats and ferrets.

- (a) Any person who owns, keeps, possesses, provides for or harbors within the Town of Fort Myers Beach any dog, cat, or ferret four (4) months of age or older must have such animal vaccinated against rabies. Any person owning, keeping, possessing or harboring any dog, cat, or ferret without proof of a current valid vaccination shall be deemed to be violating this provision.
- (b) All dogs, cats, and ferrets four (4) months of age or older must be vaccinated against rabies by a licensed veterinarian with a vaccine that is licensed for use in such species and in the following manner:
 - (1) The animal must be revaccinated twelve (12) months after the initial vaccination.
 - (2) For subsequent vaccinations the interval between vaccinations shall conform to the vaccine manufacturer's directions.
 - (3) 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.
 - (4) Any owner or agent doing a self-vaccination for rabies shall be deemed in violation of this section.
 - (5) A dog, cat, or ferret is only 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. A county license must be purchased regardless of the exemption from the rabies vaccination.
- (c) A licensed veterinarian shall provide the owner of the animal a rabies vaccination certificate at the time of the vaccination. Similarly, the licensed veterinarian shall provide animal services a copy of the actual rabies certificate within thirty (30) days of the

vaccination or immediately upon demand for investigations, public safety or other reasons of enforcement.

(1) Each veterinarian shall use the "Rabies Vaccination Certificate," of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government.

(2) Failure to provide the rabies vaccination certificate as required by this section shall be deemed a separate and distinct violation for each certificate not issued or provided to domestic animal services.

Section Twenty-Five. License requirements for dogs, cats and ferrets.

(a) Any veterinarian vaccinating dogs, cats or ferrets in the Town of Fort Myers Beach shall only issue the Lee 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 the Town of Fort Myers Beach 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 Lee County or the Town of Fort Myers Beach. 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, cat, or ferret has been vaccinated against rabies. Owners of animals that are exempt from rabies vaccination due to a medical condition 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. 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 or reside in the Town of Fort Myers Beach 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 (1) 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 Twenty-Six. Animal identification requirements for dogs, cats and ferrets.

- (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) 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 certificate, and shall produce the same if called upon to verify that any cat, dog or ferret has the required license and vaccination.

Section Twenty-Seven. License fees.

- (a) The Lee County 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 of county commissioners 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 (3) years.

Section Twenty-Eight. Animals in motor vehicles.

(a) The owner or operator of a motor vehicle shall not place or confine an animal, nor allow an animal to be placed or confined in an unattended motor vehicle without sufficient ventilation or under conditions which may endanger the health or well-being of the animal due to heat, lack of water or any other circumstances which may cause suffering, disability or death.

(b) It shall be unlawful to transport any animal in any vehicle, if such vehicle is of open design, unless the animal is safely and humanely restrained.

(c) Any animal control officer or law enforcement officer who observes an animal in a motor vehicle in obvious danger or distress may enter the motor vehicle by any means necessary to remove and impound the animal or take the animal to a veterinarian if necessary. If the owner of said animal cannot be contacted, the animal control officer or law enforcement officer shall leave in a prominent place in or upon the vehicle a written notice as to the reason for removal of the animal. The owner of the animal and the owner of the motor vehicle are responsible for any costs incurred.

Section Twenty-Nine. Humane treatment of animals.

(a) It is unlawful for any person to dye or artificially color 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 this county.

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

Section Thirty. Redemption and disposition of impounded and unwanted animals.

(a) Any cat, dog, or ferret impounded under the provision of this Ordinance and not redeemed by its owner after three (3) consecutive days shall become the property of domestic animal services. The 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 (6) 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 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 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 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 (1) time shall be charged increasing fees for each subsequent impoundment. Fees shall be established by the board in the external fees manual.
- (g) When the ownership of an animal is deemed questionable, domestic animal services will require proof of ownership. Proof of ownership may include valid county license, veterinary records, 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 impounded shall be humanely euthanized. 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.

Section Thirty-One. 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 or humane euthanasia and sent to the state board of health for pathological examination after the expiration of the stray holding period. Animals not redeemed within the ten (10) day quarantine period shall be considered abandoned and may be euthanized.
- (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 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 undergo pathological examination performed by the state board of health. 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) 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.

(h) Any person having in their possession the carcass of any dead animal exposed to rabies must surrender such carcass to domestic animal services or the health department upon demand.

(i) Animal control officers shall cooperate with the health department and with law enforcement officers in the enforcement of this section and any related state law and state agency rules.

Section Thirty-Two. Inspection of commercial animal establishments.

(a) Domestic animal services shall have the authority to enter and inspect any commercial animal establishment in the Town of Fort Myers Beach during reasonable hours, for the purpose of ascertaining violations of this Ordinance or of Florida State Statutes. Bona fide commercial agricultural animal establishments which includes livestock as defined herein, are specifically exempt from the provisions of this subparagraph (a).

(b) Any owner, manager or staff person upon demand of an animal control officer must produce any and all records pertaining to sale or purchase of animals, veterinary care, rabies certification, health certification, feed receipts, business or exhibitors licenses or permits, relating to each animal on the premises.

(c) Standards of care required to be maintained at all commercial animal establishments in the Town of Fort Myers Beach must include, but are not limited to:

(1) All animals must be given adequate food, water, shelter and veterinary care, as defined in this Ordinance.

(2) All cages, kennels, stalls or enclosures shall be cleaned daily. Any bedding provided must be clean.

- (3) In shops or kennels, room temperature shall be maintained at a level that is healthful for every species of animals kept on the premises. Adequate ventilation shall be maintained.
- (4) All buildings and sheds used for stabling animals shall be well ventilated and provide adequate protection from the elements.
- (5) Each animal shall have sufficient space to stand up, lie down, and turn around in a natural position, without touching the sides or top of the cage, stall, kennel or enclosure. Overcrowding will be determined by the inspecting officer.
- (6) Any animal that appears to be sick must be quarantined away from other animals to avoid the spread of disease and examined by a licensed veterinarian before being placed back with other animals or sold.
- (d) Each animal found in violation of this section shall be deemed a separate offense.

Section Thirty-Three. Guard dogs.

- (a) 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 as provided by section thirty-six of this Ordinance.
- (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 microchipped and receive an identification tag that must be affixed to the dog at all times.
- (e) 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 dogs for the purpose of guarding:

- (1) Persons who hire or use 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) Persons who hire or use 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 by domestic animal services shall be used as a guard dog.
- (j) Failure to comply with this section is a violation of this Ordinance.

Section Thirty-Four. Disposal of dead bodies of owned animals.

Upon the death of an animal, the owner shall be responsible for disposing of the carcass by burial at least two (2) feet below the surface of the ground. The approved alternative method of disposal is cremation at a licensed crematory approved by domestic animal control services. Nothing in this section prohibits the disposal of animal carcasses to rendering companies licensed to do business in this state. It is unlawful to dispose of the carcass of any domestic animal by dumping the carcass on public property, road or right-of-way, pursuant to F.S. § 823.041, as may be amended.

Section Thirty-Five. Leash Requirement.

For the duration of any time a dog is on any public property, or on any private property, other than that of its owner, to which the general public is customarily invited or permitted to enter, the owner of such dog must keep it under direct control via hand-held leash not more than six (6) feet in length. The owner must withdraw the dog from contact with any person or domestic animal unless such contact is specifically invited either

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

Any owner of a dog who fails to control the dog in accordance with this section commits a violation of this Ordinance. This section does not apply to an individual with a disability who is accompanied by a service animal or to a trainer of service animals who is training a service animal.

Section Thirty-Six. Fines and fees.

Unless otherwise specifically provided in this Ordinance all fines and fees, including licensing fees, are set by resolution of the Town Council of the Town of Fort Myers Beach.

Section Thirty-Seven. Conflict of laws.

In the event that this Ordinance is found to be contrary to or in any way in conflict with any other Town Ordinance which regulates the same subject matter, then in said event, the more restrictive ordinance shall apply.

Section Thirty-Eight. Enforcement by other organizations.

Nothing in this Ordinance shall be construed as limiting the authority given to law enforcement officers and county animal control officers to investigate violations of state law that occur within the Town of Fort Myers Beach. Animal control officers appointed pursuant to this ordinance shall cooperate with law enforcement officers, county animal control officers, and agents of state agencies in the enforcement of state law and state agency rules related to animal control and animal cruelty.

Section Thirty-Nine. Conflicts with state law; preemption; severability.

All provisions of this Ordinance shall be construed so as not to conflict with state law. State law will preempt any provisions of this Ordinance which would otherwise appear to be in conflict therewith.

The taking and possession of wildlife, freshwater fish, 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.

The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the ordinances of the Town of Fort Myers Beach, except as expressly provided.

Section Forty. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor

Tom Babcock

Herb Acken, Vice Mayor
Bob Raymond

Jo List

DULY PASSED AND ENACTED this ____ day of _____, 2010.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____ By: _____
Michelle D. Mayher, Town Clerk Larry Kiker, Mayor

Approved as to legal form and sufficiency by:

Anne Dalton, Esquire, Town Attorney