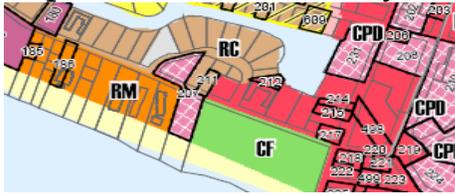


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Local Planning Agency
CC: Anne Dalton, LPA Attorney
From: Frank Shockey, Interim Community Development Director
Date: June 4, 2009
RE: Animal Control discussion language

The attached text is a revised version of the language that was discussed for potential revisions to the Town's animal control ordinances. The LPA was asked to address perceived issues with the existing ordinances by the Town Council several months ago. In response to LPA comments on April 14, the language has been revised with policy changes as follows:

- (1) Section regarding "muscovy ducks" as nuisance animals was removed.
- (2) Provision for potentially requiring mandatory court appearances for some types of violations of this ordinance removed.
- (3) Provision (on page 16) allows Town Council to create schedule of fees and fines by resolution but provides for use of Lee County's schedules if Town Council does not do so.
- (4) Dangerous dog provisions (pages 5 through 9) are set up to allow Town to use Lee County Animal Control or some other agency, and to allow Town Council to adopt an administrative procedure for hearings if necessary.
- (5) Licensing provisions (pages 10 through 12) are set up to work with Lee County Animal Control's logistics. Note that most veterinarians are off the Island and therefore most pets are going to get Lee County licenses as a result.

- (6) Vaccination requirement and penalty (pages 4 and 5) are included as required by state law.
- (7) Sterilization requirement and penalty (page 9) are included as required by state law.
- (8) The section regarding reporting of bites and scratches, and quarantines, (pages 12 and 13) still needs work to ensure that it complies with state health regulations and allows the proper interaction between the town's animal control provider and the appropriate health authorities.
- (9) Extraneous definitions have been removed.
- (10) Attached separately is Section 28 of the recent Lee County Ordinance 09-20, which amended the Lee County Animal Control Ordinance. This section covers "guard dogs" and contains requirements for registration. At the April meeting LPA members asked that provisions to allow for registration of guard dogs be included as an option for discussion.

At this juncture it may be best for the LPA to review all the proposed language to ensure that the desired policy directions are being followed and the changes match what the LPA desires to recommend. This draft language has not undergone legal review.

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 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, 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.

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.

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

AT LARGE: Any domestic animal, and any live animal possessed by any person, is at large within the Town 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, buildings or other physical obstructions that prevent it from leaving the property; or
3. Inside of a building or enclosed vehicle; or
4. Inside a proper enclosure.

CAT: Any live 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 or while on the owner's property in any area of legal easement;
- (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 Agency.

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 service animal by a person with a disability.

DOG: Any live 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.

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 animal 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 an 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.

TOWN COUNCIL: The Town Council of Fort Myers Beach

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 ____ . Rabies vaccination of dogs, cats, and ferrets (828.30; 828.27)

(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 euthanized, 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) If the owner files a written request for a hearing within 7 calendar days from the date of receipt of the notification of the sufficient cause finding, the Agency shall hold a hearing to determine whether to classify the dog as dangerous. The hearing shall follow the hearing procedures specified in Lee County Administrative Code AC-1-1, parts III, IV, V, and VI, except that references to "Animal Services" and "County Attorney's office" shall mean the Agency as defined in this Ordinance, and the hearing may be held at a facility provided for by the Agency. The Town Council may by resolution adopt an administrative code to provide procedures for hearings required by this section, which shall supersede the procedures specified in Lee County Administrative Code AC-1-1.

(e) If the owner does not file a written request for a hearing within 7 calendar days from the date of receipt of the notification of sufficient cause finding, the owner will be deemed to have waived his opportunity for a hearing and the Agency shall make a final determination classifying the dog a dangerous dog based on the sufficient cause of which the owner was provided written notification.

(f) 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 to owners residing in the Town 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 under the schedule adopted by the Lee County Board of County Commissioners.

(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 owner of a dog who performs any act prohibited by this section, or fails to perform any act required of an owner of a dog by this section, commits a violation of this Ordinance.

Section ____. ~~Attack or bite by dangerous dog; 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 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 **(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 **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 **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.

(3) If a dog that has previously been declared dangerous attacks and causes severe injury to or death of any human, 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 **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 **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.

(4) If the owner files a written appeal under **the immediately previous 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.

(6) The Agency shall cooperate with the sheriff or other law enforcement authority that is investigating or prosecuting any misdemeanor, felony, or noncriminal violation of state law, which may be related to the actions of any dog confiscated 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 ____ . 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 (County Licensing from Lee County Ordinance 09-20)

A. Any veterinarian vaccinating dogs, cats or ferrets in the Town shall only issue the Lee County vaccination/license tag, along with the proper rabies certificate as required by Section ____, 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 false tag or object issued shall be deemed a violation.

B. Any person who owns, keeps, possesses, provides for or harbors within the Town 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 Lee County Board of County Commissioners or the Agency. 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. The owner of an animal that is exempt from rabies vaccination due to a medical condition, for which a valid medical certificate of exemption has been issued by a licensed veterinarian, must 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. The owner of an animal who visits or resides in the Town for less than thirty (30) days per year is exempt from the license requirement for that animal provided that the owner has valid proof of a 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 Agency 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 the Town. 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 the Agency). To satisfy the information requirement the facility may post a sign, provide an informational brochure, or provide the written information in any other manner easily accessible and understandable.

Section ____. **Animal Identification requirements (County identification requirements from Ordinance 09-20)**

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 a violation of this Ordinance to remove the collar and/or tag of a dog, cat, or ferret for the purpose of preventing or falsifying the identification of an animal. 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 (County licensing fee requirements from Ordinance 09-20)**

A. The Board of County Commissioners shall set the fee for the Lee County license by Resolution.

B. The fee is payable to the authorized license 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 of County Commissioners 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 Lee County 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.

Section _____. Impounded and unwanted animals

A. Impounded and unwanted domestic animals held by the Agency shall be disposed of according to procedures adopted by the Agency and in a manner not inconsistent with any provision of this Ordinance and state law.

B. The costs of caring for an impounded animal must be paid by the owner of the animal before reclaiming the animal, in accordance with procedures adopted by the Agency.

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

This needs work to match with County and State Health Department Rules

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.

Local Policy Options Begin Here

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 excrement deposited by that animal on public walks, recreation areas, private property, or any other place where such excrement deposits may create a nuisance injurious to the public health. Any person exercising control over an animal who fails to remove excrement 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 unreasonably 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, including state agency rules; 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 828.27, 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 in court.
- (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 or fails to appear in court to contest the citation, 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.

Section ____. **Fines and fees**

The Town Council may adopt a schedule of fees, and a schedule of fines for violations of this Ordinance, in compliance with applicable state law. In the absence of a schedule of fees and a schedule of fines adopted by Town Council, the agency shall utilize the schedule of fees and schedule of fines for the most similar purposes adopted by the Lee County Board of County Commissioners.

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 investigate and 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 060309

From Lee County Ordinance 09-20

27. SECTION 28: 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.

28-SECTION 29: 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 Lee County approved licensed crematory. 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 Chapter 823.041, Florida Statutes, as may be amended.

SECTION 30: FINES AND FEES

All fines and fees, including licensing fees, are set by Resolution of the Board of County Commissioners and are included in the External Fees Manual.