

**ORDINANCE NO. 2003-10**

AN ORDINANCE PROVIDING FOR IMPOUNDMENT OF ANIMALS FOUND AT-LARGE, AND CONFINEMENT OF BITING DOGS AND FEMALE DOGS AND CATS IN HEAT; REQUIRING ANTI-RABIES VACCINATIONS; SETTING FEES; PROHIBITING CRUELTY, NEGLECT, ABANDONMENT, AND ANIMAL NUISANCES; PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; REPEALING ORDINANCE 2001-14 AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, it is the intent of the Board of County Commissioners, through the enactment of this Ordinance, to protect animals from neglect and abuse; to protect residents from annoyance and injury; and to encourage responsible ownership of animals; and

**WHEREAS**, enactment of this Ordinance will assist in providing housing for animals in a control center and will partially finance the functions of housing, enforcement, and recovery; and

**WHEREAS**, the Board of County Commissioners finds that this Ordinance is necessary to provide for the safety, health and welfare of the citizens of the County of Lincoln.

**NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF LINCOLN, NEW MEXICO:**

**Section 1. Short Title and Intent.**

A. This Ordinance shall be known and may be cited as the “Lincoln County Animal Control Ordinance.”

B. The intent of this Ordinance is to protect animals from neglect and abuse; to protect residents from annoyance and injury; and to encourage responsible ownership of animals. The provisions of NMSA 1978, Chapter 77, and Section 30-18-1, *et seq.*, (2001) and any amendments thereto are hereby implemented as the law of Lincoln County and shall be enforced by the Sheriff’s Department. In any instance where provisions of this Ordinance are in conflict with provisions of the statute, the statute controls. In an instance where provisions of this Ordinance are not in conflict with but are more stringent than the statute, this Ordinance controls.

**Section 2. Definitions.**

As used in this Ordinance, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

“*Abandonment*” means to give up possession of, to neglect, to forsake an Animal entirely or to refuse to provide or perform the legal obligations for the care and support of an Animal by its Owner or Keeper.

“*Animal*” means any vertebrate member of the animal kingdom, excluding human beings, which has been tamed, conditioned or maintained as a pet or chattel.

“*Animal Control Officer*” means any person employed or appointed by the County of Lincoln with the authority to issue citations or otherwise enforce the provisions of this Ordinance.

“*Animal control shelter*” means the facility maintained and operated by the County of Lincoln or its contractors for the care, custody and disposal of animals, pursuant to this Ordinance.

“*At Large*” and “*Estray*” mean off the premises of the Owner and not under the direct control, custody, charge, or possession of the Owner or Keeper. A dog or police horse, while in use by a law enforcement agency, shall not be deemed to be At Large.

“*Bite*” or “*bitten*” means an actual puncture or tear of skin inflicted by the teeth of an animal.

“*Feral animal*” is an animal that is wild by nature and, under normal circumstances, cannot be domesticated or controlled. This definition of feral does not include birds, small rodents or small nonpoisonous reptiles commonly used for educational or experimental purposes or for pets.

“*Neutered*” refers to any animal which has been spayed, castrated or otherwise surgically altered so that it is incapable of reproduction.

“*Nuisance*” means, but is not limited to, defecation, urination, disturbing the peace, emitting noxious or offensive odors or otherwise endangering or offending the well-being of the inhabitants of Lincoln County.

“*Owner*” or “*Keeper*” includes any person who owns, possesses, or has custody or control, or gives shelter, feeds, confines, boards, keeps, houses, or is in charge of, or tends any Animal for a period of five or more days, or an adult person placed in charge of the animal in the absence or incapacitation of the Owner.

“*Restraint*” means any animal secured by a leash or lead not more than eight feet in length which is under the immediate control of the Owner or a responsible person or an enclosed area, or by a tether not less than 12 feet or of a length sufficient to confine the animal within the boundaries of the real property limits of the Owner or responsible person, whichever may be shorter.

“*Secure Enclosure*” means an enclosure from which an animal cannot escape and which other animals cannot enter. It must be covered by material sufficiently strong to prevent entry or exit by animals, and must have a concrete or other equally strong footing to prevent an animal from digging its way in or out.

“*Vicious Animal*” means any animal which bites, has bitten, or in any manner attacks or attempts to attack or bites any person within the county, except any animal that bites, attacks, or attempts to attack or bite when provoked by any person trespassing upon its owner’s premises or when such attack is in defense of a person, shall not be deemed a vicious animal. “Vicious animal” also means any animal which, unprovoked, kills or maims any animal owned by a person.

**Section 3. Authority of Animal Control Officer and Deputies.**

For the purpose of discharging their duties imposed by this Ordinance, the Animal Control Officer or duly appointed Deputies are hereby authorized to go upon unenclosed lots or lands not posted for the purpose of taking up and into their custody for impounding any animal found running At Large, staked, herded, or grazed therein contrary to the provisions of this Ordinance. Animal Control Officers and Sheriff’s Deputies are not authorized to enter onto posted property to impound any animal which is At Large unless the animal is deemed a threat. It shall also be the duty of the Animal Control Officer or duly appointed Deputies to enter upon any premises after having received a complaint for the purpose of inspecting to ascertain if any provision of this Ordinance or any laws of the State of New Mexico relating to the care, treatment, control and prevention of cruelty to animals are being violated. Said officers may enter upon the premises without a complaint having been received only if the officer personally views the violation. If, however, the Owner or occupant of any dwelling objects to inspection, as above stated, a warrant will be obtained from a court of competent jurisdiction prior to inspection.

**Section 4. Rabies Vaccination Required for Dogs and Cats.**

Any person who is the Owner or Keeper of a dog or cat, of either sex, of the canine or feline family, over the age of three months, within the County, shall have the animal vaccinated against rabies at least every three years. The rabies vaccination shall be given in an amount sufficient to provide immunity from rabies for three years and shall be administered by a licensed veterinarian. A certificate from a licensed veterinarian shall be evidence of vaccination.

The veterinarian who administers the antirabies vaccine to any animal shall issue to the Owner or Keeper of the animal a numbered vaccination certificate and shall retain a copy of the certificate. The certificate shall contain the name and address of the Owner or Keeper of the animal, a description of the animal vaccinated, the date of the vaccination, and the expiration date of the period of immunity.

**Metal Vaccination Certificate:** It shall be unlawful for any person to own any dog over the age of three (3) months within the County unless a metal certificate of vaccination is continuously and securely attached to a collar or harness on the dog. Cats are not required to wear collars with metal certificates thereon;

provided, however, the certificate of rabies vaccination shall be produced by the Owner or Keeper upon demand by the Animal Control Officer, Sheriff's Deputy, or designee.

It is unlawful for the Owner or Keeper of any dog or cat to fail to exhibit its certificate of vaccination upon demand by the Animal Control Officer, Sheriff's Deputy, or designee.

No dog or cat shall require vaccination if:

- A. a licensed veterinarian has examined the animal and certified that at such time vaccination would endanger its health because of its age, infirmity, debility, illness or other medical consideration; and
- B. a certificate evidencing such exception is presented to the Animal Control Officer, Sheriff's Deputy, or designee within five days of such examination.

Such exempt Animal shall be vaccinated against rabies as soon as its health permits.

#### **Section 5. Quarantine of Animals.**

Any animal that has rabies or shows signs of having rabies, and every animal bitten by another inflicted with rabies or that has been exposed to rabies, shall be confined at once in a secure place by the Owner. A person who knows or who has reason to know that an animal is infected with rabies or has been exposed to rabies shall, immediately upon learning of the infection, notify the Sheriff's Department and the state health department as to the place where the animal is confined and shall surrender the animal to the Animal Control Officer or Sheriff's Deputy upon demand. The Animal Control Officer shall deal with the rabid animal pursuant to state law.

#### **Section 6. Animal Bite Incidents.**

A. If a person is bitten by an animal, the person, the person's parent or guardian, or the Owner of the animal should immediately report the bite incident to the Animal Control Officer or the County Sheriff's Department.

B. The Owner of any unvaccinated animal that has bitten any person shall immediately, at the Owner's expense, confine the involved animal for a period of time deemed necessary and at a place designated by the Animal Control Officer. The Owner of the animal shall bear the cost of the confinement, if any.

C. If the quarantined animal shows signs of sickness, abnormal behavior, or if the animal escapes confinement, the person shall immediately notify the Animal Control Officer or the County Sheriff's Department. The person having custody of an animal that dies during the confinement period shall notify

the animal control officer or Sheriff's Department and surrender the carcass of the animal to the Animal Control Officer or a Sheriff's Deputy.

D. Any licensed physician who renders medical assistance to a person bitten by an animal shall report the incident to the Animal Control Officer as soon as possible, but not later than 24 hours after rendering treatment. Physicians or other medical personnel shall report the name, sex and address of the person bitten as well as the type and physical location of the bite or any other pertinent information available.

### **Section 7. Vicious Animals.**

It is unlawful for any person to keep or harbor a vicious animal. When an Animal Control Officer has probable cause to believe that an animal is vicious, the officer may take up and impound the animal into protective custody awaiting appropriate court proceedings. Following judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this chapter may, in addition to any fine or imprisonment imposed for violation of this section, order the Owner or Keeper of such vicious animal to destroy it humanely or turn such animal over to the Sheriff or his designee for destruction.

### **Section 8. Guard Dogs.**

Nothing contained in this Ordinance shall prevent persons from owning or harboring guard dogs which have been trained to protect persons or property, provided such guard dogs are restrained within a fenced enclosure or within a building in such a manner that the guard dog will not have access to persons lawfully in or upon or adjacent to the guarded premises. Provided further, that the Owner or user of such guard dogs shall prominently post at least two (2) written warnings of the presence of such guard dogs.

### **Section 9. Collection and Disposition of Impound Fees and Fines.**

All fines imposed and collected pursuant to this Ordinance shall be used to offset the costs of recovery, enforcement, and housing of stray animals at a contracted facility. A detailed accounting of all fines and fees collected by any designated agent for the County shall be maintained at all times.

### **Section 10. Identification Tags.**

Licensing of animals is not required under this Ordinance. Pet identification tags are encouraged as a means of returning lost or stray animals to their owners, as is registration of the animal's description, owner's name, address and telephone number with veterinarians and the Humane Society of Lincoln County.

### **Section 11. Dogs and Cats Running At Large.**

A. No Owner or Keeper shall cause, permit, or allow a dog or cat to stray or in any manner to run At Large in or upon any public property or the property of another without the permission of the property owner, unless the dog or cat is leashed or otherwise under the direct control of the Owner or Keeper. An Animal permitted to run At Large is declared to be a nuisance and a menace to the public health and safety. Such animal may be taken up and impounded.

B. Hunting, tracking, working dogs exempt. This section shall not apply to any dog actually engaged in the sport of hunting or tracking in authorized areas at authorized times and supervised by a competent person, dogs used by the State, County, or municipal law enforcement forces in the exercise of their duties, or dogs used to work livestock in areas of Lincoln County. Section 11 does not apply to hunting dogs brought into the county on a temporary basis for the purpose of engaging in lawful hunting activities.

C. Animal Control Officers and Sheriff's Deputies are authorized to impound any dog or cat which is At Large and are authorized to enter onto private property for the purpose of capturing such dog or cat for impoundment. Animal Control Officers and Sheriff's Deputies are not authorized to enter onto posted property to impound any animal which is At Large unless the animal is deemed a threat.

D. In the case of a first offense of a dog or cat running At Large, an Animal Control Officer or Sheriff's Deputy is authorized to void or cancel a Citation issued to the Owner of an unneutered dog or cat if the Owner provides evidence to the Officer or Deputy that the dog or cat is subsequently neutered within ten business days from the date the Citation was issued.

E. Impoundment Over Four Times: An animal that is impounded on more than four (4) occasions in any twelve (12) month period shall not be released to the Owner thereof without the prior written approval of the Animal Control Officer.

F. No person shall, without the knowledge and consent of the Owner, hold or retain possession of any animal for more than 24 hours without first reporting the possession of the animal to the Animal Control Officer, Sheriff's Department, or the animal control shelter or facility contracted for impoundment of stray animals.

**Section 12. Impoundment, generally; Redemption of Impounded Animal by Owner.**

A. It shall be the duty of the designated Animal Control Officer or Sheriff's Deputy to capture and confine all animals Estray or running At Large within the County. Such animals, unless claimed by their Owner or adopted as provided in this section, shall be confined, housed, and fed for a minimum of three days (72 hours) for untagged animals or five days (120 hours) for tagged animals, excluding Saturdays, Sundays and holidays. Provided, however, if an animal is deemed to be feral, there shall be no minimum holding period before the animal may be humanely euthanized. Such determination of "feral" shall be at the discretion of the Animal Control Officer or contractor for the confinement of animals. Feral animals can be injurious to persons when confined and would be deemed unadoptable. During the confinement period,

the Animal Control Officer or contractor for the confinement of animals, whichever has custody of an animal, shall make reasonable efforts to contact the animal's Owner and advise of the animal's confinement. If a stray animal is not wearing a current rabies or identification tag and is deemed critically injured or critically ill, an Animal Control Officer or Sheriff's Deputy may deliver the animal to a licensed veterinarian for euthanization. A report must be filed with the Sheriff's Department.

The animal control shelter shall keep, or cause to be kept, accurate and detailed records and accounts of funds relating to the administration and enforcement of this Ordinance.

B. If the animal's Owner is identified and contacted, the animal will be released to the Owner or Agent *with proof* of ownership upon the payment of an impoundment fee set by the designated agent under contract by the County and subject to approval by the Board of County Commissioners to reflect its actual cost of confinement for each day that the animal was confined. Fees shall be established to charge for impounding, boarding, and feeding the animal.

Additionally, if the animal is not currently vaccinated, the Owner shall pay the required fee therefore prior to the release of the animal.

C. At the end of the minimum confinement period, the animal may be kept for adoption or destroyed at the discretion of the Animal Control Officer or the designated agent under contract to the County. If kept for adoption beyond the mandatory confinement period, the cost for housing and upkeep of the unclaimed animal if not in a County-operated facility shall be borne by the contracted facility and at no cost to the County. No live animal impounded under provisions of this ordinance may be given or sold to any person or entity for use in laboratory testing or experiment of any kind.

D. Any person finding an unattended animal off the premises of the animal's Owner may have the animal removed to any private or public animal shelter, or may notify the Animal Control Officer or the County Sheriff's Department. If the animal's Owner cannot be immediately located, the animal shall be confined pursuant to this Section.

### **Section 13. Pet Sterilization Act.**

A. No animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, pursuant to NMSA 1978, Sec. 77-1-18, *et seq.*, known as the "Pet Sterilization Act."

B. In addition to any adoption fee charged, a sterilization deposit of at least twenty-five dollars (\$25.00) shall be imposed on the adoption of each animal from an animal shelter.

C. Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.

D. Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating that he will have the animal sterilized within thirty days of the date of adoption.

E. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.

F. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the twenty-five dollars (\$25.00) for the sterilization deposit and impoundment fees imposed by a shelter; and the owner shall sign an agreement stating he will sterilize the animal within thirty days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.

#### **Section 14. Animal Control Shelter.**

An animal control shelter shall be established to carry out the provisions of this Ordinance and shall consist of the following minimum services and facilities:

A. Adequate impounding and confinement facilities for any stray, ownerless, or unvaccinated cats, dogs or other animals, with reasonable attended hours for Owner recovery or adoption;

B. Individual isolation facilities for sick, vicious, rabid or suspected rabid animals; and

C. Facilities for the humane destruction and intact disposition of all unclaimed, unadopted or unwanted animals.

#### **Section 15. Adoption and Destruction of Impounded Animals.**

Any impounded animal not claimed or adopted within the prescribed confinement period, or which is sick, maimed, or otherwise incapacitated beyond reasonable veterinary standards shall be painlessly destroyed by the Animal Control Officer or the contracted facility's employee using sodium pentobarbital (hypodermic injection).

#### **Section 16. Cruelty to Animals, Extreme Cruelty Prohibited.**

A. It is unlawful for any person to recklessly, willfully, or maliciously kill, maim, disfigure or torture; beat with a stick, chain, club or other object; mutilate, burn or scald with any substance, overwork, torment, harass, or otherwise cruelly set upon any animal, except that force may be used to deal with vicious, dangerous or trespassing animals.

B. It shall be unlawful for any person to chain or stake any animal in a cruel, inhumane manner. Where circumstances warrant and no other alternative exists for confining an animal on its owner's property, a rope, cable, or chain may be used to restrain the animal, provided the following criteria are met:

1. The rope, chain or cable must be affixed to the animal by use of a non-abrasive, comfortably fitted collar or harness;
2. The rope, chain, or cable must be at least twelve (12) feet in length unless such length allows the animal to enter onto another's property, in which case the chain shall be no less than eight (8) feet in length. The chain must be unobstructed by objects which might cause the animal to become entangled;
3. The animal must have easy and constant access to adequate shelter, food, and potable water;
4. The area where the animal is confined must be kept free of garbage or other debris which may endanger the animal's health and safety;
5. The area where the animal is confined must be kept free of insect infestation.
6. The animal must be tied reasonably near the owner's residence or work place and must not be left unattended for a period of time that would endanger the animal.

Violations of these requirements will constitute an act of neglect/cruelty, and will subject the animal to immediate impoundment and the owner to the penalties set forth in Appendix A.

C. It shall be unlawful for any person to fail, refuse, or neglect to provide any animal in his charge or custody, as Owner or otherwise, with proper food, drink, shade, care or shelter, or to fail to provide necessary medical care.

D. Operators of motor vehicles shall immediately, upon injuring, striking, maiming or running down any animal within the County, notify the Animal Control Officer or the County Sheriff's Department, furnishing sufficient facts relative to such incident.

E. Extreme cruelty to animals consists of a person

1. intentionally or maliciously torturing, mutilating, injuring, or poisoning an animal; or
2. maliciously killing an animal.

Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of NMSA 1978, Section 31-18-15.

### **Section 17. Abandonment.**

It shall be unlawful for a person to abandon an animal.

### **Section 18. Animals Left in Vehicles or Transported.**

No vehicle owner, passenger, or operator shall place or confine an Animal or allow it to be placed or confined or to remain in an unattended vehicle without sufficient ventilation or under conditions or for such

period of time as may reasonably be expected to endanger the health or well-being of such Animal due to heat, lack of water, or such other circumstances as may be expected to cause suffering, disability or death. Violations of this Section will constitute an act of cruelty/neglect. It shall be unlawful for any person to carry an Animal in or upon any vehicle in a cruel, inhumane or unsafe manner.

A. Any Animal Control Officer or Sheriff's Deputy who finds an Animal in a vehicle in violation of this article may enter the vehicle by using the amount of force which is reasonably necessary to remove the Animal. The Officer is authorized to take it into protective custody and dispose of such Animal in a manner provided for in this article.

B. Nothing in this Section shall be deemed to prohibit the transportation of horses, cattle, sheep, poultry or other agricultural livestock in trailers or other vehicles designed and constructed for such purposes.

### **Section 19. Animal Nuisances Prohibited.**

It is unlawful for any Owner or Keeper of any animal, including dogs or cats, that habitually or continuously barks, howls, or make noise common to their species or otherwise disturbs the peace of others, or are kept or maintained in such a manner or in such numbers as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the inhabitants of the County. Violations of this section are defined as an "animal nuisance."

### **Section 20. Female Dogs and Cats in Heat.**

The Owner or Keeper of any female dog or cat in heat (estrus) is required to keep such Animal in one of the following enclosures: a building, veterinary hospital, boarding kennel, or other Secure Enclosure, in such a manner that such female dog or cat cannot come in contact with a male dog or cat except for intentional breeding purposes. The failure to keep such animal enclosed shall be a violation of this Ordinance.

### **Section 21. Animals Trained to Assist the Handicapped, Allowed in Public Places.**

It is unlawful for any person owning, operating, or maintaining any public place of business or conveyance into which the general public is invited for any business purpose, to debar or exclude therefrom any animal which has been trained to assist the handicapped, provided such animal be in the company of the handicapped person whom it was trained to assist, in conformance with State Statute.

### **Section 22. Penalties; Restitution.**

Any person who violates any of the provisions of this Ordinance shall be punishable by a fine of up to three hundred dollars (\$300.00) and/or imprisonment of no more than ninety (90) days, or both. Whoever commits *extreme cruelty* to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of NMSA 1978, Section 31-18-15. Each day this Ordinance is violated shall be considered a separate offense.

Notwithstanding any of the foregoing, in the event any animal damages property, whether public or private, or causes injury to any person or animal, and such damage or injury is found to have been an element of the violation of any provision of this Ordinance, the Magistrate Court may, at its discretion, require the defendant to make restitution within a reasonable time, to the victim of said damage or injury.

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**Section 23. Severability Clause.**

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

**Section 24. Conflict.**

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 25. Effective Date and Repeal.**

This Ordinance shall take effect thirty days after being recorded in the Public Records of Lincoln County, New Mexico, at which time Ordinance No. 2001-14 shall be repealed.

**PASSED, APPROVED, and ADOPTED** this 17<sup>th</sup> day of June, 2003.

**APPENDIX**

**SCHEDULE OF FEES**

	First Offense	Second Offense	Third and subsequent offense
Abandonment of animal §17	\$100	\$200	\$300
Animal neglect §16	\$50 or Warning	\$50 up to \$200	\$200 up to \$300
Animal running At Large §11	\$ 25	\$ 60	\$100
Cruel treatment * §16	\$100	\$200	\$300
No rabies vaccination §4	\$ 25	\$ 50	\$ 75
No tags §10	\$ 25	\$ 50	\$ 75
Nuisance animal §19	\$ 25	\$ 50	\$ 75
Quarantine fee §5	\$5 for each day or fraction thereof that the animal is confined at said facility		
Vicious animal §7	\$ 50 min. \$300 max.	\$100 min. \$300 max.	\$150 min. \$300 max.

\* **Note:** Whoever commits *extreme cruelty* to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of NMSA 1978, Section 31-18-15.