

ORDINANCE #

ORDINANCE AMENDING CHAPTER 6 "ANIMALS" OF THE COUNTY
CODE OF ORDINANCES

WHEREAS, the County Attorney has been working with Animal Control Officers, the Department of Health and Asheville Humane Society representatives to amend Chapter 6 of the County Code to improve administration and enforcement of the ordinance;

WHEREAS, to improve administration and enforcement of this ordinance they are recommending the changes reflected below in the existing ordinance; and

WHEREAS, this Board feels that it would be in the best interest of the citizens of the County of approve the changes as recommended.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

DIVISION 1. GENERALLY

Sec. 6-26. Purpose.

It is the purpose of this Chapter to regulate ownership and possession of animals; prohibit certain acts, omissions and conditions which interfere with the health, safety and general welfare of the inhabitants of the county and those municipalities coming under the provisions of this Chapter; to protect the public from unvaccinated, diseased, stray, roaming, dangerous or wild animals; to make unlawful, acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; to provide for the peace and dignity of residents; and to perform any other duties authorized by applicable state laws.

Sec. 6-27. Jurisdiction.

Except as provided in this section, the provisions of this Chapter shall not be applicable to and shall not be enforced within the corporate limits of any municipality in the county. A municipality may come within the provisions of this Chapter at any time by mutual agreement with the county and by the adoption of an appropriate resolution by the governing body of such municipality pursuant to G.S. 153A-122 agreeing that this Chapter shall be enforced within the corporate limits of the municipality. All provisions of this Chapter which are indicated to be applicable only in a particular municipality shall not take effect until and unless such municipality adopts a resolution subjecting itself to the ordinance.

Sec. 6-28. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon. To forsake, desert or give up an animal previously under the custody or possession of a person without having secured another owner or custodian or by failing to make reasonable arrangements for adequate care.

Abuse. Willful injury to or mistreatment of a domesticated animal, but not to include the legal euthanization of an animal or the slaughtering of an animal raised to be used for food or clothing by humane and legal methods.

Adequate food. The provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain the animal's health and well being.

Adequate shelter. A structure intended for an animal's protection from inclement weather or sun, which consists of at least three sides, a floor and a roof. The structure is to be constructed of durable fiber, wood, plastic, or other non-metallic material of adequate insulate value that allows an animal to maintain its body heat. Structures for livestock may be constructed of a metallic material and may not include a floor or barns. Alternatively, a livestock shelter may be natural. Natural shelter may, in some circumstances, offer advantages over constructed shelter. If natural shelter is considered, the area to be considered as shelter must be dry and free of debris. Horses should always have a run in shelter. The Officer will have the final say on what is considered adequate shelter. Structures for all animals must be large enough to allow all animals on the premises to be housed, to turn around, lie down, and stretch comfortable. The walls must keep out rain, sleet, and snow. This shall not exclude the use of metallic structures as used as transportation and temporary shelter.

Adequate water. Constant access to a supply of water that is clean, fresh, and visibly free of debris and organic material, provided in a sanitary manner and provided at suitable intervals for the species and not to exceed 24 hours at any interval.

Administrative warrant. A warrant issued by any magistrate of the general court of justice, judge, clerk, or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected upon presentation of affidavit or other evidence provided to the satisfaction of the issuing officer that there is probable cause to believe that there is a condition, object, activity or circumstance legally justifying an inspection of the property described in that affidavit and issued pursuant to the provisions of G.S. 15-27.2, or any other appropriate statute authorizing such a search.

Adult. A person 18 years of age or older and who has not been judicially declared incompetent.

Animal. Any nonhuman vertebrate creature. Unless otherwise excepted, the term animal includes, but is not limited to, dogs, cats, rabbits, fowl, chickens, horses, cows and goats and other domesticated animals. For the purposes of subsection 6-57 only, animal shall not include:

- (1) Any small domesticated rodent such as a gerbil, guinea pig, hamster, rat or mouse;
- (2) Any small bird including but not limited to a canary, a parakeet, a finch, a parrot, a cockatoo or a myna; or
- (3) Any amphibian, fish or a non-venomous reptile.

Animal cruelty investigators. Persons duly appointed by the Buncombe County Board of County Commissioners pursuant to G.S. 19A-45 to investigate neglect, abuse or cruelty of animals.

Animal shelter. Any facility designated by the county for the purpose of impounding and caring for all animals found running at large or otherwise subject to impounding in accordance with the provisions of this Chapter, and the General Statutes of North Carolina.

Animal welfare organization. Any person, group, or organization whose purpose is to rehabilitate, rescue, or provide housing and care for an animal with the intent to make such animal available for adoption to the public.

County. The unincorporated areas of the county and municipalities within the county that have opted to come within the provisions of this Chapter.

Dangerous animal.

- (1) An animal that:
 - a. Without provocation has killed or inflicted severe injury on a person; or

- b. Is determined by Supervisor to be a potentially dangerous animal because the animal has engaged in one or more of the behaviors listed under the definition of "Potentially dangerous animal" as set forth below.
- (2) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

Department. The office of the Sheriff of Buncombe County or his designee, an animal control department within county government or any local entity or agency under contract with the county to enforce the provisions of this Chapter.

***Domestic / Domesticated animal.* Any animal traditionally kept, cared for, sheltered, fed or harbored for use as a companion animal, including but not limited to cats, dogs, ferrets, hamsters etc.**

Director. The designee of the sheriff assigned to administer this Chapter.

Enforcement. The Sheriff of Buncombe County or his designee, an animal control department within county government or any local entity or agency under contract with the county to enforce the provisions of this Chapter is charged with administering and enforcing the provisions of this Chapter.

***Exotic Animal.* Is any animal that is not classified as domesticated, livestock or a wild animal. This definition does not include feral animals.**

***Ferret.* A domestic mammal of the genus, species and subspecies *Mustela putorius furo*.**

Frivolous. Any complaint which is filed more than three times by one person or common household within a period of 48 hours; and in which such complaint is clearly insufficient on its face and is brought about with the intent to embarrass, disturb, harass, or otherwise annoy.

Health director. The director of the Buncombe County Health Department.

Household. Any room or group of rooms located within a building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Impoundment. The placement of an animal in the custody of an animal shelter or animal welfare organization by the sheriff or his duly authorized designee.

Inoculation. The vaccination of a dog or cat with antirabic vaccine approved by the United States Bureau of Animal Industry, the state department of agriculture, and the state board of health at such time or times as shall be required by state law, the state department of environment, health and natural resources, the commission for health services, the state health director, or the local health director as defined in G.S. 130A, Part 6.

Keeper. A person having custody of an animal, or who keeps or harbors an animal, feeds or shelters, or who permits an animal to remain on or about any premises occupied or controlled by such person. A keeper shall be legally responsible for ensuring compliance with all sections of this Chapter for any such animal(s) kept on or about their premises.

Kennel. Any premises wherein any person, partnership or corporation is engaged in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs or cats.

Livestock. Animals commonly associated with farming including, but not limited to, horses, mules, ponies, llamas, swine, sheep, cattle, goats, chickens, emus, ostriches, and other fowl.

Lot. A portion, piece, division or parcel of land, with or without a household, which is identified by a tax map, recorded plat, deed, lease or the like. All contiguous land under common ownership and used for a single purpose shall constitute a single lot.

Neglect. Failure of an owner or person in possession of an animal to provide the animal with adequate food, water, shelter, veterinary care, social interaction, or failure of an owner or a person in possession of an animal to obtain appropriate veterinary care for the animal in the event of injury or illness.

***Officer.* Any person charged by the Sheriff of Buncombe County with the duties and responsibilities of investigating and enforcing the provisions of this Chapter and employed by the sheriff, the county, an animal control department within county government or any local entity or agency under contract with the county to enforce the provisions of this Chapter. This definition shall include any Supervisor or Director of any Animal Control Department.**

Owner. A person who or legal entity that has a possessory property right in an animal.

Owner's real property. Any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

Performance. Any action or attempted action to discharge any duty prescribed by this Chapter or prescribed by policy of the sheriff, his duly authorized representatives, agents or deputies, or the animal shelter director.

Performance dog. A dog that is that is being trained, used in herding, hunting, tracking or shown.

Pet. Any domestic animal kept for pleasure versus utility.

Potentially dangerous animal. An animal that the Supervisor determines to have:

- (1) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization;
- (2) Killed or inflicted severe injury upon a domestic animal or livestock when not on the owner's real property; or
- (3) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Premises. A definite portion of real estate including land with its appurtenances, a building or part of a building. For purposes of section 6-76, Restraint of animals, "premises" does not include private or public rights of way, or easements, adjoining or providing ingress, egress or regress to and from an individual's real property.

Proof of ownership. Documentation in support of a property right in an animal that includes, but is not limited to, veterinary records; rabies vaccination certificates; license; photographs; bills of sale; signed affidavits, breed registries; written transfers of ownership.

Provocation. Any action designed to goad, inflame, instigate or stimulate an aggressive or defensive response on the part of an animal, but provocation shall not include any actions on the part of an individual that pertain to reasonable efforts of self-defense against an unprovoked animal.

Rabies exposure. Any animal or human bitten by or that has come in contact with the saliva or nervous tissue of any animal known or suspected to have been infected with rabies.

Securely enclosed. A fence or structure forming or causing a humane enclosure suitable to prevent the animal from escaping and to prevent entry of young children.

Service animal. Any guide dog, signal dog, or other animal individually trained to work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Severe injury. Any physical injury that results in broken bones or disfiguring lacerations or requires cosmetic surgery or hospitalization.

Supervisor. Person designed by the Sheriff or County for supervising animal control officers.

Tether. A means by which an animal is fastened so that it can range only within a set radius.

Unfounded. Any complaint without merit or validity, and in which a reasonable and prudent person would find such lack of merit or validity readily apparent.

Vaccination. The administration of rabies vaccine as required by law.

Wild animal. Any animal which can normally be found in the wild state, particularly those feral, exotic, dangerous or nondomestic animals which generally do not live in or about the habitation of humans, including, but not limited to, deer, lions, monkeys, raccoons, skunks, squirrels, tigers, snakes, and any animal resulting from the crossbreeding of wild animal species.

Zoonotic disease. A disease communicable from animals to humans under natural conditions.

DIVISION 2. ADMINISTRATION

Sec. 6-41. Duties.

- (a) In administering this Chapter, the county and any municipalities therein may, pursuant to an interlocal agreement, form a joint agency, designate a local agency or create an animal control department within either county or municipal government. There shall be a director of animal control who shall have overall responsibility for administering this Chapter. Notwithstanding the foregoing, this Chapter of the County Code of Ordinances shall be enforced and administered by the Sheriff of Buncombe County, his deputies or other duly authorized designees.
- (b) Officers shall have the following powers:
 - (1) Take up and deliver any animal at large in violation of this Chapter to the animal shelter.
 - (2) Issue appropriate permits, civil penalties and notices required for the enforcement of this Chapter.
 - (3) May recommend to the Supervisor to declare an animal as a potentially dangerous animal if he or she determines that the animal so qualifies as that term is defined in this Chapter.
 - (4) Make canvasses of the county, including homes and any businesses utilizing security animals as necessary to ascertain that all animals and cats are currently vaccinated against rabies; organizing and carrying out any such canvas, having sole and exclusive authority, control, and responsibility for such actions; and insuring that the provisions of this Chapter and North Carolina General Statutes related to animal control are adhered to.
 - (5) Investigate complaints of residents with regard to animals.
 - (6) Protect animals from neglect or abuse and assist animal cruelty investigators as needed in enforcing state laws regarding cruelty.

- (7) Enforce the laws with regard to remedies for an owner's failure to obtain proper vaccination of animals and cats against rabies.
 - (8) Investigate all reported animal bites or other human physical contact with suspected rabid animals, and submit bite reports and reports of human contacts to the county health director.
 - (9) Officers shall have the authority to enter any property, road, or drive; both public and private; pursuant to a reported violation of this Chapter, and attempt to make contact with any person reasonably suspected to be the owner of any animal in question in order to enforce any provision created under this Chapter. It shall not be considered trespassing for the Officer to enter such property for the aforementioned purpose, even if such property, road, or drive is posted as "private" or is posted "no trespassing". This section shall not apply to residential dwellings, barns, sheds, outbuildings, or other non-commercial structures situated upon a property which structures may only be searched pursuant to the terms and conditions of a warrant issued and served as provided by law.
 - (10) Transport any animal reasonably believed to be substantially suffering due to injury or illness, or to which an imminent threat of death exists, to a licensed veterinarian so that medical treatment necessary to prevent the suffering of the animal may be provided until such time as the animal's owner or caretaker may be located. The owner or caretaker shall be responsible for any incurred medical expenses deemed necessary to prevent the suffering of such animal by a veterinarian licensed to practice in the State of North Carolina.
- (c) The Department shall have no authority to enforce the provisions of this Chapter relating to dangerous dogs, if one of the following factors is present:
- (1) The dog is being used by a law enforcement officer to carry out the law enforcement officer's official duties;
 - (2) A dog being used in a lawful hunt;**
 - (3) Where the injury or damage inflicted by the dog was sustained by a domestic animal while the animal was working as a hunting animal, herding animal or predator control animal on the property of or under the control of its owner or keeper and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.
 - (4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.**

Sec. 6-42. Inspection, interference, or concealment.

- (a) *Inspections.* Whenever it is necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Officer has reasonable cause to believe that there exists in any household or upon any premises any violation of this Chapter, the Officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon him by this Chapter as follows:
- (1) If such property is unoccupied, the Officer shall first make a reasonable effort to locate the owner or other persons having control of the property; and
 - (2) If such property is occupied, the Officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and

- (3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the Officer may seek an appropriate warrant issued and served as provided by law.
- (b) *Filing false reports.* It shall be unlawful for any person to file a false report with the department of animal control, or to provide false information to an Officer involving any investigation of any reported violation of this Chapter. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.
- (c) *Frivolous or unfounded complaints.* It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with the department of animal control in order to intimidate or harass any member of such department or any animal owner, or to otherwise hinder or interfere with any function of the department of animal control. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.
- (d) ***Interference.*** It shall be unlawful for any person to interfere with, hinder, resist, or obstruct the Officer while the Officer is carrying out any duty created under this Chapter. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.
- (e) ***Concealment of animal.*** It shall be unlawful for any person to conceal any animal for the purpose of evading any federal, state or local law. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00. In addition, the Officer has the authority to seize the animal pursuant to this Chapter.

DIVISION 3. REGULATIONS

Sec. 6-56. Rabies control.

- (a) *Vaccination of dogs, cats and ferrets required; vaccination of other pets.*
 - (1) It shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies for any dog, cat or ferret four months of age or older. Should it be deemed necessary by the local health director or the local board of health that other pets be vaccinated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for any owner or keeper to fail to provide current vaccination against rabies for that pet.
 - (2) All antirabic vaccines shall be administered by a licensed veterinarian or a certified rabies vaccinator.
- (b) *Vaccination tag and certification.*
 - (1) Upon complying with the provisions of subsection (a)(1) above, there shall be issued to the owner or keeper of the dog or cat vaccinated a rabies tag, stamped with the number and the year for which issued, and a rabies vaccination certificate.
 - (2) It shall be unlawful for any dog or cat owner or keeper to fail to provide the dog or cat with a collar or harness to which a current rabies tag issued under this section is securely attached. The collar or harness, with attached tag, must be worn at all times. All dog and cat owners or keepers must maintain in their possession all vaccination certificates for official proof and documentation of rabies vaccination.
 - (3) In addition to all other penalties as prescribed by law, a dog, cat or ferret is subject to impoundment in accordance with the provisions of this Chapter if the dog, cat or ferret is found not to be wearing a currently valid rabies tag.

- (4) It shall be unlawful for any person to use for any animal a rabies vaccination tag issued for an animal other than the one using the tag.
- (c) *Notice to local animal control when person bitten by dog, cat or ferret; confinement of animal.*
- (1) It shall be unlawful for any person, or his parent or guardian if such person is a minor, and the person owning such animal or having possession or under his control to fail to report within 24 hours of the bite to the Officer that an animal has bitten a person. It shall be unlawful for any person to fail to inform the Officer where an animal is located if the owner has given the animal away, or caused in any way the animal to be taken from the owner's premises.
- (2) All dogs, cats or ferrets that bite human beings shall be immediately confined for ten (10) days in a place designated by the county health director. If the owner or the person who controls or possesses the dog or cat refuses to confine the animal as required by this section, the animal may be seized pursuant to section 6-112 for the ten-day period at the expense of the owner, or person who controls or possesses the animal. Should the owner, or person who controls or possesses the animal fail to reclaim the animal as provided in said section 6-112, then the remaining terms and conditions of said section shall control. Following such ten day confinement, the dog, cat or ferret may be released with the written permission of the sheriff or his designees or health director, and the terms and conditions of said section 6-112.
- (d) *Rabies exposures.*
- (1) Any domestic or hybrid animal reasonably suspected to have been exposed to the saliva or nervous tissue of a proven rabid animal, or animal reasonable suspected of having rabies that is not available for laboratory diagnosis, shall be considered to have been exposed to rabies. In any case where the animal in questions without a current rabies vaccination, or a domestic animal that's vaccination status cannot be verified, the exposed animal shall be seized immediately pursuant to section 6-112 and held at the expense of the owner, or person who controls or possesses the animal.
- (2) As an alternative to destruction, a domestic dog or cat reasonably believed to have been exposed to rabies may be quarantined in accordance with G.S. 130A-197 at the discretion of the local health director. In such case, the owner of the exposed animal shall make the appropriate quarantine arrangements at the owner's expense within a period of time not to exceed ten days. The local health director, or designee of the health director, may grant an extension at his or her discretion. Such extension shall be made in writing. During such time, it shall be the responsibility of the owner or caretaker to post a bond pursuant to section of this Chapter. Failure of the owner or caretaker to comply with this provision will result in the determination of the animal's final disposition being made in accordance with section 6-110.

Sec. 6-57. Public nuisance.

- (a) The keeping of any animal in such manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:
- (1) Unsightly litter, foul or offensive odors of any animal which remain upon or emanate from the property of the owner;
- (2) The keeping of any animal which frequently is at large, including any animal that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, animals walked on a leash, bicycles or other vehicles;
- (3) **The keeping, possessing, harboring or feeding of any animal which may threaten the public health, safety and welfare of the community;**

- (4) The keeping of a cage or pen, constructed and used for the purpose of restraining animals within ten feet of the outer limits of the lot upon which the cage or pen is situated; provided, however, this setback requirement shall not be applicable where the placing of the cage or pen within the ten-foot area does not result in locating the cage or pen within 50 feet of the nearest household occupied by persons other than the owner or keeper of the cage or pen. This subsection shall not apply to the fencing of all or a major portion of a lot;
- (5) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, or damaging gardens, flowers, or vegetables, or defecating upon the property of another;
- (6) Maintaining animals in an unsanitary environment which results in offensive odors or a failure to maintain a condition of good order and cleanliness which reduces the probability of transmission of disease;
- (7) Maintaining animals in such a manner and location as that animal waste can accumulate and run off onto another owner's property or stream.
- (8) Maintaining the owner's property in a manner that is offensive, annoying or hazardous to the public health, safety, or welfare of the community because of the number, type, variety, density or location of the animals on the property;
- (9) Maintaining an animal that is diseased and dangerous to the public health through transmission of a zoonotic disease;
- (10) The keeping of any animal which by continued or repeated howling, yelping, barking or otherwise, causes loud noises which would disturb the quiet, comfort or repose of a reasonably prudent person.
- (11) Failing to confine a female dog or cat while in heat in a secure enclosure in such a manner that will prevent the animal from coming into contact with a male of its species, or attract other animals; provided, this section shall not be construed to prohibit the intentional breeding of animals within a securely enclosed area on the premises of the owner of the animal which is being bred.

Sec. 6-58. Animal care.

- (a) It shall be unlawful for any owner or keeper to fail to provide his animals with adequate food, water, shelter, a clean living environment free of debris and excessive waste, veterinary care when needed to prevent suffering and with humane care and treatment.
- (b) It shall be unlawful for any person to intentionally overdrive, overload, wound, beat, injure, torment, kill, or poison or otherwise abuse an animal; or procure an animal to be overdriven, overloaded, wounded, beaten, injured, tormented, killed, or poisoned or otherwise abused; or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals and humans and animals.
- (c) It shall be unlawful for any person to promote, encourage, engage in or do any act toward the furtherance of any act of cruelty to an animal.
- (d) No owner of an animal shall abandon such animal except to relinquish the animal to the animal shelter during normal business hours in accordance with policies and procedures then in effect at the animal shelter.
 - (1) If an Officer finds that an animal has been abandoned the animal may be impounded.

- (2) If an Officer has been abandoned in a house or within a fenced area, the department must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the department shall secure permission of the owner or manager to remove the animal. If the property owner is also the animal owner and this individual property owner cannot be located, the department shall secure an appropriate warrant to seize the animal. An animal seized pursuant to this section shall be impounded.
- (e) No person may transport any type of animal in a motor vehicle or in a wagon or trailer pulled by a motor vehicle, or in a truck or the back of a truck, in such a way as to cause pain, suffering, or unreasonable risk of pain or death to the animal. Provided, however, there shall be no prohibition against the humane transportation of horses, cattle, sheep, poultry, or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported.
- (f) Animals transported in open truck beds on public roads shall be secured by cross-tethering suitable and acceptable for the size of animal in such a manner that they cannot fall or jump over the side or contained in a properly secured and ventilated cage. This provision shall not be applicable to:
 - (1) Law enforcement dogs while being used for investigation, tracking and similar duties under the supervision of a certified law officer;
 - (2) Search and rescue dogs while being used for their intended purpose and under the control of a trained handler;
 - (3) Hunting dogs while being used in a legal hunt on private property, private roads or public secondary roads;
 - (4) Farm dogs while being used for agricultural purposes on private property or private roads; or
 - (5) Farm dogs while being used for agricultural purposes on secondary roads within one mile of property owned, leased or otherwise used for farm purposes.
- (g) It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.
 - (1) After making a reasonable effort to find the driver of a vehicle in which an animal is confined, the Officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.
 - (2) The Officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed.
- (h) It shall be unlawful for any person to intentionally strike an animal with an automobile or other vehicle causing injury or death.
- (i) It shall be unlawful for any person injuring or killing a domestic animal by striking it with an automobile or other vehicle to fail to notify the owner of such animal, if ownership information is available. If ownership information is not available, animal control or law enforcement must be notified.
- (j) It shall be unlawful for any person to sponsor, promote, or train a wild or domestic animal to participate in any unnatural behavior in which the animal is wrestled, fought, harassed, or displayed in such a way that the animal is abused or stressed. This prohibition applies to events and activities taking place in either public or private facilities or property in the county, and applies regardless of the purpose of the

event or activities and whether or not a fee is charged to spectators. The sheriff or his designees shall make the determination that an activity or event comes under this section. Provided, however, this section shall in no way apply to zoological parks, performing animal exhibitions or circuses.

- (k) It shall be unlawful for any person to give away any live animal, fish, reptile, or bird as a prize or as an inducement to enter any contest, game, or other competition; as an inducement to enter a place of amusement; offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade; or sell chances, coupons, or tickets to be redeemed for any live animal, bird or fish, or to offer animals for sale or gift at flea markets.
- (l) It shall be unlawful for anyone to give away, sell or adopt any dog or cat under the age of six weeks old without accompanying it's mother or until fully weaned.
- (m) It shall be unlawful for any person to sell, offer for sale, barter or give away chickens, ducklings or other fowl under three weeks of age, or rabbits under two months of age; provided, however, that this section shall not be construed to prohibit the sale or display of such baby chickens, ducklings or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for purposes of commercial breeding and raising.
- (o) It shall be unlawful to color, dye, stain or otherwise change the natural color of baby chickens or other fowl or rabbits, or to sell such animals after their natural color has been altered.
- (p) It shall be unlawful to tether an animal to a stationary object for a period of time or under conditions that an Officer or animal cruelty investigator deems harmful or potentially harmful to the animal. Tethering may be allowed in certain cases where daily socialization and exercise off the tether can be verified and the animal is not exhibiting health or temperament problems. Examples of improper tethering include, but are not limited to the following:
 - (1) Using a length or weight of tether that is not appropriate for the size, weight and age of the animal. The restraint must be a minimum of four times the length from the tip of the animal's nose to the tip of the animal's tail and shall be no less than ten feet.
 - (2) Using tether that does not have swivels on both ends. All tethers must be attached to the animal by means of a properly fitting harness or collar of not less than one inch in width made of nylon or leather.
 - (3) Allowing an animal to tethered such that the animal is not confined to the owner's property or such that the tether can become entangled and prevent the animal from moving about freely, lying down comfortable or having access to adequate food, water and shelter.
- (q) It shall be unlawful for any person to hoard animals. An owner, keeper, possessor, or caretaker shall be guilty of this offense if he or she possesses five or more animals; fails to provide suitable care for such animals as prescribed by this Chapter; keeps the animals in a severely overcrowded or unsanitary environment; and displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the animals are living and the deleterious impact such conditions have on the animals' health and well-being.
- (r) Any animal found to be treated in a manner constituting a violation of this Chapter shall be subject to immediate seizure by the Officer so that suitable care may be provided for such animal.

6-60 Bird Sanctuaries

- (a) **The areas embraced within the corporate limits of municipalities opting to be covered by the ordinance and all land owned or leased by such municipalities outside their corporate limits are hereby designated as bird sanctuaries.**

(b) It shall be unlawful for any person within a bird sanctuary to:

- (1) Shoot, hunt, kill, trap or otherwise take any bird or other wild fowl;**
- (2) Collect or destroy any bird's nest or eggs; or**
- (3) Disturb or annoy any bird within such sanctuary without a permit issued by the state wildlife resources commission.**

(c) This section is not intended in any manner to regulate the care of animals that fall under the exclusive province of federal or state laws.

Sec. 6-61. Wild animals.

No person, firm, or corporation shall keep, maintain, possess or have within the county any venomous reptile or any other wild or exotic animal. This section shall not be construed to apply to licensed North Carolina wildlife rehabilitators, while they are rehabilitating animals native to North Carolina, and traveling animal exhibitions or traveling circuses, with short term performances scheduled in the county, only after they are permitted by Buncombe County Animal Control.

Sec. 6-62. Dead animals.

- (a) It shall be unlawful for any person to leave or place the carcass of any animal which he owns upon any street, alley, or lot, or to allow the animal to remain unburied on his property. This shall not be construed to prohibit the placing of a carcass of a small animal on the right-of-way or within six feet thereof, for pickup by the proper authorities such as the state department of transportation.
- (b) The owner or keeper of any animal which dies shall, within 24 hours after he has learned of its death, have it buried in a pet cemetery, bury it at least three feet beneath the surface of the ground, and not closer than 300 feet to any flowing stream or public body of water, or otherwise have it removed from his property.

Sec. 6-63. Spaying and neutering requirements; unaltered animals permit required.

- (a) *Requirements.* No person shall own or harbor any dog or cat over the age of six months that has not been spayed or neutered unless such person holds an unaltered animal permit issued for such animal by the department of animal services, or any successor agency authorized by law to issue such a permit, except:
 - (1) Persons who own or harbor service dogs or police work dogs;
 - (2) Individuals who are non-residents of the county and reside temporarily therein for a period not to exceed 30 days;
 - (3) Animal shelters and veterinary hospitals; and
 - (4) Persons who own or harbor a dog or cat and who are in possession of a certification signed by a licensed veterinarian stating that such animal is unfit to be spayed or neutered because such procedure would endanger the life of such animal.

Sec. 6-64. Obtaining an unaltered animal permit.

Applicants must apply for permits required by section 6-63 above, with the sheriff or his designees. The fee for an unaltered animal permit shall be \$100.00. A certificate will be issued identifying the animal as an unaltered animal and must be displayed at all times.

Sec. 6-65. Prohibition against giveaways in public places.

It shall be unlawful to display any animal in a public place for the purpose of selling or giving the animal away. This section does not apply to the display of animals by and within a pet shop, commercial kennel, or veterinarian's office. Only Buncombe County animal welfare organizations may display animals for adoption in a public place, provided that such organization is in possession of a permit issued at no charge by the sheriff or his designees. In such case any animal made available for adoption must be spayed or neutered, no less than two months of age, no less than two pounds, and if more than four months of age must be accompanied by a certificate verifying that the animal has been vaccinated to protect it from the rabies virus by a veterinarian licensed to practice in the State of North Carolina.

DIVISION IV RESTRAIN AND IMPOUNDMENT

Sec. 6-76. Restraint of dogs.

- (a) *Restraint of Dogs.* Every person owning or having possession, charge, care, custody or control of any dog shall keep such animal exclusively upon his premises. However, such dog may be off such premises if it is under the physical control of a competent person and restrained by a chain, leash, harness or other means of physical control. Service dogs trained to provide assistance to handicapped persons for sight, hearing, mobility, or other similar purposes do not have to be under physical restraint while off the owner's premises if the dog is under the handicapped person's direct control and is obedient to that person's commands. If the animal is found at large and has a micro-chip the owner will not be fined on the first offense and the Officer will make reasonable effort to locate the owner. If a dog is found at large and taken to the shelter, the dog must be micro-chipped at the owner's expense before the dog can be returned to the owner
- (b) *Exceptions.* A working police dog in the course and scope of its duties and performance dogs shall be excluded from the provisions requiring physical restraint while the dogs are engaged in performance provided that the performance complies with state law and provided that the performers are not trespassing.

Sec. 6-76A. Impoundment.

- (a) *Grounds.* Any animal which shall be found in violation of Sec. 6-76. may be subject to immediate impounded at the animal shelter pursuant to this section.
- (b) *Trespassing Animals.* Any person finding any animal upon his property, in violation of section 6-76, to his injury or annoyance, shall be authorized to restrain such animal in a humane manner and to thereupon either notify the sheriff or his designee who shall take possession of the animal for impoundment, or deliver the animal directly to the animal shelter.
- (c) *Redemption.* The owner/custodian of an animal impounded under this section may redeem the animal and regain possession thereof within three (3) business days after notice of impoundment is given as required by subsection (e) above, by complying with all applicable provisions of this section, payment of the assessed fines and fees, any necessary veterinarian's fee, and a daily boarding fee. All dogs and cats reclaimed by their owner must be micro-chipped at the owner's expense before being released from the shelter. Fee rates shall be available for public inspection in the office of the clerk to the board of county commissioners and the animal shelter. The provisions of this section shall have no application with respect to animals surrendered by the owner or keeper to the animal shelter for adoption or destruction. Fines may be deferred at time of redemption upon execution of a reclamation agreement acceptable to both the sheriff, or his designee, and shelter manager.
- (d) *Abandonment.* Any dog or cat which appears to be lost, stray, unwanted, or abandoned, or which is found to be not wearing a currently valid rabies vaccination tag, as required by state law or this Chapter and not under restraint in violation of this Chapter, may be impounded by the Sheriff or his designee and confined in the county animal shelter in a humane manner. Impoundment of such an animal shall not relieve the custodian thereof from any penalty which may be imposed for violation of this Chapter.

- (e) *Notice to Owner.* Immediately upon impounding an animal, the Officer shall make a reasonable effort to notify the owner and inform such owner of the condition whereby the animal may be redeemed, which shall include inspection of the animal for microchip or tattoo. If the owner is unknown or cannot be located, a notice of such impoundment showing the time of impoundment shall be posted at the animal shelter for at least three (3) business days, or until the animal is disposed of. Any owner concerned about the loss or possible impoundment of an animal must check the animal shelter since all animals seized or impounded under this Chapter shall be available for inspection and reclamation during the shelter's normal business hours. The three (3) business day period begins when the Officer delivers the animal to the animal shelter.
- (f) *An unredeemed animal may be destroyed or adopted according to the following procedures:*
- (1) If an impounded animal is not redeemed by the owner/custodian within the three (3) business day period prescribed above, ownership of the animal shall revert to the animal shelter, and it may be destroyed in a humane manner or offered for adoption to any responsible adult who is willing to comply with this Chapter. Such animal may be adopted by a person who meets animal shelter adoption requirements, adoption fees and rabies vaccination fees.
 - (2) The operator of the animal shelter shall require that all dogs and cats released for adoption from the animal shelter be spayed or neutered.
 - (3) No animal which has been impounded by reason of its being a stray, or unclaimed by its owner/custodian, shall be allowed to be adopted from the animal shelter during a period of emergency rabies quarantine invoked by the local health director pursuant to state law.
- (g) *Procedure for redemption or adoption of unvaccinated animals.*
- (1) Unvaccinated animals may be redeemed or adopted according to the following provisions:
 - a. Any person adopting or reclaiming any dog or cat at the animal shelter shall have the animal vaccinated prior to its leaving the shelter or execute a written agreement wherein the adopting or redeeming party agrees to comply with state rabies vaccination law.
 - b. Payment for rabies vaccination will be the responsibility of the person redeeming or adopting the animal.
 - (2) Suspected rabid animals not to be redeemed or adopted.
 - (3) Notwithstanding any other provision of this section, animals impounded which appear to be suffering from rabies shall not be redeemed or adopted, but shall be dealt with in accordance with this Chapter and applicable state laws.
- (h) *Destruction of wounded or diseased animals.* Notwithstanding any other provision of this section, any animal impounded that is badly wounded or diseased and has no identification may be destroyed immediately in a humane manner. If the animal has identification, the Officer and/or the animal shelter attendants shall attempt to notify the owner/custodian before disposing of such animal. However, if the owner/custodian cannot be readily reached, and the animal is suffering, the Officer and/or the animal shelter attendants may destroy the animal at its discretion in a humane manner.

DIVISION V PREVENTIVE MEASURES AND DANGEROUS DOGS

Sec. 6-77. Preventive measures for regulation of animals hazardous to the health, safety or welfare.

- (a) ***Circumstances requiring preventive measures.*** Upon the finding of any violation in this Chapter, or the Supervisor making a declaration that a dog is dangerous or potentially dangerous, the

animal control officer shall have the authority to require the owner of an animal to comply with preventive measures, as described below, after taking into consideration the following factors:

- (1) Nature of the particular animal. The behavior, size, temperament, capacity for inflicting serious injury, the number of animals involved or other such factors which would be relevant to a determination of whether or not additional preventive measures need to be imposed for a particular situation;
- (2) Adequacy of confinement. The adequacy of the enclosure or confinement, if any;
- (3) Immediate surrounding area. The likelihood that the conditions pertaining to the particular animal and the animal's confinement are detrimental to the safety, welfare or peace and tranquility of a reasonably prudent person in the vicinity;
- (4) Children under the age of seven, elderly persons and disabled persons who live in close proximity to the premises occupied by the animal.
- (5) The animals bit a human being or another domesticated animal without provocation or approached a person in an apparent attitude of attack.
- (6) Animals trained for fighting or aggressive attack;
- (7) History of the animals. Whether restrictions were previously placed on the animal in this City or in another jurisdiction; and
- (8) Reputation of the animal. Whether the animal has a known propensity, reputation, or tendency to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.

(b) *Preventive measures.* If the animal control officer determines that the circumstances require special preventive measures, then the animal control officer shall have the authority to require appropriate, specific preventive measures which might include, but are not limited to, the following:

- (1) Necessary repairs to any fence or enclosure.
- (2) Measures to ensure that a gate will remain secure.
- (3) A secure fence or any other similar device that would provide greater assurance for the confinement of the animal.
- (4) Requiring the owner to tattoo or microchip the animal at the owner's expense.
- (5) Posting of "Beware of Dog" or other like signage.
- (6) Requiring the owner to purchase and show proof of sufficient liability insurance. If the Supervisor determines that an animal has bitten a human being, then the Supervisor shall have the authority to require the owner to procure liability insurance in the amount of at least \$100,000.00 at the owner's expense.
- (7) Any other reasonable measure to insure the health and safety of other persons and property.
- (8) Preventive measures required for dogs classified "Dangerous" or "Potentially Dangerous" as defined in N.C.G.S. § 67-4.1:

- a. The dog may not be left unattended on the owner's real property unless confined indoors, in a securely enclosed and locked pen, or in another structure designed to restrain the dog and approved by the Sheriff.
 - b. The dog may not go beyond the owner's real property unless securely restrained and muzzled.
 - c. The owner of a dangerous dog must provide the Sheriff with written notice of transfer of ownership or possession stating the name and address of the new owner or possessor of the dog and with written notice to the new owner or possessor specifying the dog's dangerous behavior and the Animal Control Supervisor's declaration.
 - d. The owner of a dangerous dog must notify the Sheriff in writing of any change in the owner's address or location where the dog resides.
 - e. Any other restriction as set forth in Chapter 67 of the North Carolina General Statutes as amended.
- (c) **Written order.** If the animal control officer determines that an animal owner must take specific preventive measures, the animal control officer shall make reasonable efforts to notify the owner by a written order, stating the reasons that preventive measures are required, identifying the specific preventive measures that must be implemented, and stating the designated time period for compliance with the written order. The written order shall further state that failure to comply within the time period prescribed may result in the assessment of a civil penalty and/or seizure of the animal. The animal control officer shall have the authority to allow for reasonable extensions of time limits based on good faith progress of implementation of the preventive measures. Any approved extensions shall be in writing.
- (d) **Failure to comply with the written order.** It shall be unlawful for an owner to fail to comply with a written order to take preventive measures within the designated time for compliance stated in the written order or any extension thereof. The Officer shall have authority to impose a Level III civil penalty pursuant to Sec. 6-115. Each day of non-compliance shall constitute a new violation. The Officer also has the authority to seize and impound the animal if the owner fails to comply with the aforementioned order
- (1) In situations where the owner repeatedly fails to comply with the written order or the owner's failure to comply creates a danger to the public, health safety or welfare of the community, the Officer shall have authority to the Officer may seize the animal and terminate the owner's ownership rights of the animal. The animal shall be handled in accordance with Sec. 6-112(e) of the Chapter.
- (e) **Owner's challenge to the written order.** The owner may submit in writing a challenge to the animal control officer's determination that specific preventive measures are required or the decision to terminate the ownership rights in accordance with Section 6-118(a). If the dog has been declared dangerous or potentially dangerous the owner may appeal such determination in accordance with Sec. 6-118(b) of this Chapter.
- (f) **Review of Written Order.** When an animal is regulated by an order of preventive measures as authorized by this section (except for dogs declared dangerous or potentially dangerous), a review of the order may be requested by the owner. The review will be conducted by the Supervisor when the following criteria have been met: (1) the request has been submitted in writing; (2) the order has been in effect without incident or review for twenty-four (24) months; (3) there have been no violations of this Chapter by the owner and/or animal for the past twenty-four (24) months. Upon receipt of a valid review request, the Supervisor will conduct an inspection and uphold the existing order, modify the order or nullify the order based on the

totality of the circumstances. The decision of the Supervisor is subject to appeal as set forth in Sec. 6-118(a) of this Chapter.

- (g) ***Injury to Person.*** If an animal has caused serious injury to any person, upon the finding by the officer that an animal is a danger to the health, safety or welfare of the general public, the owner shall forfeit his or her ownership rights and the animal shall be put down. The animal control officer shall seize said animal, make the decision in writing and serve said decision upon the owner. The owner may appeal this decision pursuant to Sec. 6-118(a).

Sec. 6-80. Certain animals to be registered.

- (a) *Dangerous dog registration; permit required.* Any person who owns, harbors, possesses, or maintains any dog which has lawfully been declared to be dangerous pursuant to this Chapter or N.C.G.S. § 67-4.1 et al shall be required to obtain a permit from the department of animal control within 15 days of such declaration (or final appeal determination) at a cost of \$200.00. An annual registration renewal fee of \$25.00 must also be paid by such person by the 10th day of July each year thereafter until such time as the dog in question expires, or ownership of such dog is relinquished to another person or to the animal shelter. Violation of this provision, including failure to pay registration and renewal fees, will result in immediate seizure of such animal by the department of animal control, and immediate termination of ownership rights to such animal. The determination of the animal's final disposition will be at the discretion of the sheriff, his designee or shelter manager.
- (b) *Dangerous dog records made available to public.* The location in which any dog lawfully deemed to be dangerous under this Chapter or N.C.G.S. § 67-4.1 et al, is kept shall be made available to the public, provided that such location falls under the jurisdiction of this Chapter. The Buncombe County Sheriff's Department will maintain the following information regarding such animals, and will make such information available to the public upon a written request: date of declaration; description of the dog including breed, color, size, and sex; precise physical address where the dog is kept; and the name of the animal's owner. The sheriff's department may also make this information available to the public through electronic means such as e-mail or a departmental website.

Sec. 6-81. Certain information to be provided.

Any person who surrenders any animal to the county animal shelter shall provide the following information: full name, address, date of birth, phone number, and the location in which the animal was found. The Buncombe County Sheriff's Department or shelter manager may require that such person provide satisfactory proof of identify by presentation of a state issued identification card or driver's license. Further, such person shall provide the animal shelter with any information which could assist with identifying or contacting the lawful owner of the animal, if such information is known. Violation shall constitute a level III offense.

Sec. 6-82. Unlawful to sell information.

It shall be unlawful for any person, firm, agency, corporation, or other entity to sell or give away any personal information obtained pursuant to any provision set forth under this Chapter or to use such information for any commercial purpose or financial gain. This provision shall not be applicable to the release of public records pursuant to N.C.G.S. § 132-1.

DIVISION VI. SEIZURE AND DISPOSITION; BOND

Sec. 6-110. Posting of a bond and Bond forfeiture.

- (a) *Posting Bond.* Any person claiming an ownership interest in any animal confined pursuant to this Chapter may prevent the disposition of the animal after the three (3) business day holding period set forth herein by posting a security bond or cash with the animal shelter prior to the animal being adopted or euthanized in an amount sufficient to guarantee payment of all of the reasonable expenses expected to be incurred in caring and providing for the animal, including the estimated cost of medical care, for at

least 30 days; However, such security bond shall not prevent the animal shelter from disposing of the animal at the end of the 30-day period covered by the posted bond/cash, unless the person claiming an ownership interest in the animal posts an additional security bond or cash with the animal shelter to secure payment of the animal's reasonable expenses for an additional 30 days, and does so prior to the expiration of the first 30-day period. The amount of the bond/cash shall be determined by the director of the animal shelter or his/her designee based on the current rate for board and on the condition of the animal after examination by a veterinary professional. Failure to post the security bond within the time allowed shall result in the animal being immediately forfeited to the animal shelter. The owner must comply with any order issued by the Sheriff or his designee and pay all fees, costs and fines before the animal may be released from the animal shelter. If the date on which payment is due falls on a weekend or holiday then such bond or deposit must be posted on the next business day.

- (b) *Security bond forfeited upon failure to pay costs.* If the fees, costs, and penalties owed for the animal are not paid in full by the end of each security period, the security bond already posted shall be forfeited to the animal shelter on said date and used to pay the remaining unpaid fees, costs, and penalties owing for the animal. The animal's owner shall remain responsible for all remaining unpaid fees, costs, and penalties. Any security bond/cash remaining after the payment of all fees, costs, and penalties shall be remitted to the person who posted the bond/cash.

Sec. 6-112. Seizure and disposition of animals.

- (a) *Authority to seize animals.* In addition to any other authority or procedure authorized by this Chapter or by any other law to seize an animal an Officer shall have the authority to summarily seize any animal from premises when it is determined by the Officer that the animal is receiving insufficient care or treatment as set forth in section 6-58, Animal care, or that the animal in the surrounding circumstances is dangerous to the health, safety or welfare of the general public. Upon summarily seizing an animal, the Officer shall provide the owner with a written order of seizure. The Officer shall give notice of this section by posting a copy of it at the location where the animal was seized or by delivering such notice to a person residing on the property of the owner within 24 hours from the time the animal was seized. Livestock shall be exempt from this provision when they are on their owner's property. When livestock found off their owner's property are seized, reasonable efforts shall be made to identify and notify the owner of the livestock.
- (b) *Obligation of owner to comply with seizure order.* When an Officer serves the owner, or a person of suitable age who resides in the residence, with a written order of seizure, it shall be unlawful for the owner or person served, to fail to comply with the order or to interfere with the Officer.
- (c) ***A challenge to the seizure order.* If the owner wishes to challenge the seizure order, the owner shall appeal in accordance with Sec. 6-118(a) of this Chapter. The procedures for appeal contained in Sec. 6-118(a) will be followed.**
- (d) *Owner's redemption of animal.* **The owner is entitled to redeem the animal, unless the Department retains the animal upon some other basis or legal authority which shall include any situation where the Supervisor determines that the animal has inflicted severe injuries human being or is a danger to the health, safety or welfare of the community.** If the owner is authorized to redeem the animal, the owner must pay all applicable fees, costs and boarding fees, agree to comply with any preventive measures issued by the Officer. Failure to comply with the preventive measures shall constitute a basis for seizing the animal again and terminating the owner's ownership rights.
- (e) ***Termination of owner's rights.* If an owner fails to reclaim the animal within the time periods set forth in this Chapter or post a bond in accordance with Sec. 6-110, then the ownership of the animal shall be transferred to the animal shelter. The animal shelter shall place the animal for adoption to the public, transfer the animal to another animal welfare organization or have the authority to humanely destroy the animal.**

Sec. 6-115. Civil penalty.

- (a) *Violation.* Except as otherwise provided herein, any owner who violates any provision of this Chapter shall be subject to a civil penalty for each violation in accordance with subsection (c) below, as well as to criminal penalties. Fines shall be established by the county board of commissioners based on the nature of the violation and number of repeat offenses. If the violation is continued, each day's violation shall constitute a separate offense. For the purposes of this section, repeat violations occur where the agency has issued a fine for the same offense within a 24-month period. Nothing in this section shall prevent agency representatives from issuing warning violations.
- (b) *Payment of penalty and Written notice of violation and penalty.* The animal owner or keeper shall be issued a written notice of violation and shall be required to make payment to the sheriff or his designee at the time the animal is redeemed or within ten days of the receipt of notice whichever comes first. Notice of the civil penalty and violation shall be delivered in person to the violator or mailed by certified mail, return receipt requested, to the owner's last known address. If the applicable civil penalty is not paid within the time period prescribed, a civil action may be commenced to recover the penalty and costs associated with collection of the penalty.
- (c) *Levels of violation and fines.*

Level I

Sec. 6-56(a)	Animal bite
Sec. 6-57(a)(1)	Unsanitary litter, foul or offensive odors
Sec. 6-57(a)(4)	Keeping a cage too close to the property line
Sec. 6-57(a)(5)	Animal causing property damage
Sec. 6-57(a)(6)	Maintaining animals in an unsanitary environment
Sec. 6-57(a)(7)	Maintaining animal wastes
Sec. 6-62(a), (b)	Failure to dispose of a dead animal
Sec. 6-76	Animal at large
Sec. 6-80	Failure to register certain animals

Level II

Sec. 6-57(a)(2)	Animal frequently at large
Sec. 6-57(a)(10)	Failure to confine a dog in heat
Sec. 6-58(a)	Failure to provide care of animal
Sec. 6-58(e), (f)	Unsafe transport of animal
Sec. 6-58(g)	Unsafe confinement of an animal in a vehicle
Sec. 6-58(h)	Intentionally striking an animal with a motor vehicle
Sec. 6-58(i)	Failure to report striking an animal with a motor vehicle
Sec. 6-58(k)	Giving away an animal as an inducement/contest prize
Sec. 6-58(l)	Bird sanctuaries
Sec. 6-58(m)	Distribution of unweaned cats and dogs prohibited
Sec. 6-58(n)	Distribution of under age fowl prohibited

Sec. 6-58(o)	Dyeing of animals prohibited
Sec. 6-65	Prohibition against giveaways in public places

Level III

Sec. 6-42(3)(b)	Interference with an Officer
Sec. 6-42(3)(c)	Concealment of an animal
Sec. 6-56(a)(1), (2)	Vaccination of dogs and cats required; vaccination of other pets
Sec. 6-56(b)(1)--(4)	Vaccination tag and certification
Sec. 6-57(a)(3)	Keeping of a dangerous animal
Sec. 6-57(a)(8)	Maintaining property in an offensive, annoying or dangerous manner
Sec. 6-57(a)(9)	Maintaining diseased animal
Sec. 6-58(b)	Cruelty to animals
Sec. 6-58(c)	Promoting animal cruelty
Sec. 6-58(d)	Abandoning an animal
Sec. 6-58(j)	Animal used unnatural behavior
Sec. 6-61	Keeping a wild animal
Sec. 6-61	Failure to comply with a dangerous dog order
Sec. 6-63	Unaltered animal permit required
Sec. 6-77	Protective measures for confinement of dogs
Sec. 6-81	Failure to provide required information
Sec. 6-58(q)	Animal hoarding
Sec. 6-57(a)(2)	Animal frequently at large

Civil Penalty Fine Schedule				
	First offense	Second offense	Third offense	Each additional offense
Level I	\$50.00	\$75.00	\$100.00	\$100.00
Level II	75.00	125.00	250.00	250.00
Level III	100.00	250.00	500.00	500.00

(d) The Director of his or her designee has the authority to waive fines for first time offenders if it can be demonstrated that the owner of the animal has come into compliance with the ordinance and the violation did not threaten the health, safety or welfare of the general public.

Sec. 6-116. Criminal penalties.

Violation of this Chapter may subject the violator to criminal as well as civil action. In addition to the civil penalties or fees imposed under this Chapter, violation of this Chapter shall be a misdemeanor for which a criminal summons or warrant may be issued. Any violator convicted of such violation shall be punishable as provided in G.S. 14-4. Each day's violation of this section is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this section does not relieve the violator of his liability for taxes, civil penalties or fees imposed under this Chapter.

Sec. 6-117. Injunctions.

Any provision of this Chapter which makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement. When a violation of such a provision occurs, the sheriff or his designee through either the county attorney or any resident of the county, may apply to the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

Sec. 6-118 Appeals

- (a) Except for dangerous dog and potentially dangerous dog determinations made pursuant to N.C.G.S. § 67-4.1 et al or as amended, any written determination made by the Supervisor or Officer within this Chapter, the owner of the animal may appeal the determination by filing written objections with the Sheriff within three (3) business days of the violation. The owner shall be required to post a bond in the amount of the fine or penalty assessed with the application of appeal. Failure to post the bond will result in an invalid appeal. Upon timely receipt of an appeal and the posting of the bond, the Sheriff or his/her designee shall render a decision within 30 days of the filing of the appeal. The decision of the Sheriff or his/her designee shall be final. If the owner's appeal is successful, the County shall refund any fines or penalties paid by the owner regarding the matter that was appealed.**
- (b) Any appeal from the declaration that a dog is dangerous or potentially dangerous shall be made to the Animal Control Appeals Board. The owners shall have three (3) business days from receipt of said declaration to appeal the decision. Said appeal shall be in writing and filed with the Sheriff's Department. Upon timely receipt of an appeal, the appeal board or its designee shall schedule a hearing before the appeals board within ten (10) days of the filing of the appeal. If the owner's appeal is successful, the County shall refund any fines or penalties paid by the owner regarding the matter that was appealed. Any party has the right to have counsel present before the board, to examine and cross-examine witnesses and to have witnesses' testimony be sworn. The county attorney/designee shall preside over all hearings of the board, but shall not be a voting member. Any appeal from the final decision of the appeals board shall be taken to superior court of Buncombe County by filing notice of appeal and a petition for review within ten days of the final decision of the appellate board. Appeals from the rulings of the appeals board shall be heard de novo before a superior court judge. If there are any conflicts between this section and N.C.G.S. § 67-4.1 et al or as amended, the provision of N.C.G.S. § 67-4.1 shall prevail and apply.**
- (c) There is hereby created an animal control appeals board which shall consist of seven (7) persons. Members of this board shall include the Emergency Management Director or his or her designee, the Public Health Director or his or her designee and the Cooperative Extension Director or his or her designee. In addition, the County Manager shall appoint one (1) additional County Employee to serve on the Board. In addition, the County Commissioners shall appoint to the Board three (3) residents of Buncombe County for a three year term. The County Manager shall also appoint one (1) County employee to be an alternate member should one of the Board members not be able to attend a hearing. Appeals shall be heard by all seven (7) members of the board whenever all seven can be present, but four (4) members shall constitute**

a quorum in the event that all seven are not able to be present. If the vote is a tie, the appeal shall be denied. The members shall be expected to disclose any prior personal involvement they have had with the case or other conflicts of interest, and recuse themselves accordingly. The board shall have jurisdiction to hear and determine all appeals from determinations made by the sheriff or his designee regarding whether a dog is dangerous or potentially dangerous in accordance N.C.G.S. § 67-4.1 et al or as amended.

Sec. 6-119. Severability.

If any section or part of this Chapter should be held invalid for any reason, such determination shall not affect the

Adopted on first reading by a vote of ___ for and ___ against this the 16th day of March, 2010.

Adopted on second reading by a vote of ___ for and ___ against this the 6th day of April, 2010.

Adopted this the 16th day of March, 2010.

ATTEST

Copy

KATHY HUGHES, CLERK

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Copy

DAVID GANTT, CHAIRMAN

APPROVED AS TO FORM

Copy

MICHAEL FRUE, COUNTY ATTORNEY