

ORDINANCE #03-11-12

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

WHEREAS, Layton Long, Environmental Health Services Director and Animal Control liaison has been working with the County Attorney and Animal Control Officers to amend Chapter 6 of the County Code to improve enforcement of the ordinance; and

WHEREAS, to improve enforcement of this ordinance they are recommending several changes to 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:

1. That Chapter 6 "Animals" of the Buncombe County Code of Ordinances be amended as follows:

Division 3. Regulations

Sec.6-56. ~~Animal Bite Rabies Control~~
Sec.6-57. Public Nuisance
Sec.6-58. Animal Care
Sec.6-59. Exemption of pet stores
Sec.6-60. Posting of a Bond
Sec.6-61. Wild Animals
Sec.6-62. Dead Animals
Sec.6-63---6-75. Reserved

Division 4. Animals At Large

Sec.6-76. Restraint of Animals
Sec.6-77. Protective Measures for confinement of dogs.
Sec.6-78. Impoundment
Sec.6-79. Seizure and disposition of animals
Sec.6-80---6-90. Reserved

Division 5. Reserved

Sec.6-91---6-105. Reserved

Division 6. Enforcement

Sec.6-106. ~~Criminal Penalties~~ Civil Penalty
Sec.6-107. ~~Civil Penalty~~ Criminal Penalties
Sec.6-108. Injunctions
Sec.6-109. Animal Control Appeals Board

*Cross references: Destruction of wildlife in parks prohibited, § 54-4; dogs required to be on leash in parks, § 54-9.

State law references: Authority to prohibit the abuse of animals, G.S. 153A-127; authority to establish and operate animal shelters, G.S. 153A-442.

Sec. 6-26. Purpose.

It is the purpose of this article 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 article; 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.

(Ord. No. 96-5-8, § 1, 5-7-96)

Sec. 6-27. Jurisdiction.

Except as provided in this section, the provisions of this article shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality in the county. A municipality may come within the provisions of this ordinance 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 ordinance shall be enforced within the corporate limits or jurisdiction of the municipality. All provisions of this article 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.

(Ord. No. 96-5-8, § 1, 5-7-96)

Sec. 6-28. Definitions.

The following words, terms and phrases, when used in this article, 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 it's body heat. Structures for livestock may be constructed of a metallic material and may not include a floor. 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 comfortably. The walls must keep out rain, sleet, and snow. This shall not exclude the use of metallic structures 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 or

provided at suitable intervals for the species and not to exceed 24 hours at any interval.

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

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 article, ~~the county rabies ordinance~~ and the General Statutes of North Carolina.

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

Dangerous animal.

(1) An animal that:

a. Without provocation has killed or inflicted severe injury on a person;

b. Without provocation has killed or inflicted severe injury on another domestic animal;

c. Is determined by the animal control officer to be a potentially dangerous animal and for which there has been no appeal from such a determination under the provisions of this article.

(2) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

Department. The ~~county~~ Animal Control department.

Director. The ~~executive~~ Animal Services director of the agency charged with administering and enforcing the provisions of this article.

Domesticated Animal. Any animal that is accustomed to live in or about the habitation of humans including but not limited to cats, dogs, horses, cows, fowl, or swine, but not to include any wild animal. kept, cared for, sheltered, fed or harbored for use as a pet, labor or as a source of food or income.

~~Exposed to rabies. Any animal or human bitten by or exposed to any animal known or suspected to have been infected with rabies.~~

~~Harboring an animal. Feeding and/or sheltering an animal seven days or more, unless the animal is being boarded for a fee.~~

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 by the department.

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.

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. ~~The keeping of seven or more dogs or cats on the same premises without a current written permit issued pursuant to division III, section B.2, shall constitute a kennel.~~

Livestock. Animals commonly associated with farming including, but not limited to, horses, mules, ponies, llamas, swine, sheep, cattle, and goats, chickens, emus, ostriches, and other fowl. ~~Livestock shall not include chickens or 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, ~~or immunizations required by law; failure of an owner or person in possession of an animal to adequately confine the animal so as to prevent it from roaming at large;~~ 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.

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

Pet. Any animal kept for pleasure versus utility.

Potentially dangerous animal. An animal that the animal control officer 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 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.

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 ~~dangerous~~ 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.

Restraint of a dangerous or potentially dangerous animal. An animal that is confined in a securely enclosed and locked pen or in another structure designed to restrain the animal or the animal is securely restrained and muzzled when permitted to go beyond the owner's property. Tethering the dog does not meet the restraint requirements of this section and is not considered adequate physical control.

Restraint of animal, other than a dangerous or potentially dangerous animal. The animal is:

- (1) Exclusively on the property of the owner or other person in charge; or
- (2) Under the control of a competent person by a chain, leash, harness or other adequate physical control; or
- ~~(3) Sufficiently near the owner or other person in charge to be under his direct control and is obedient to that person's commands.~~

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. For the purposes of this definition, a home, mobile home, or garage do not meet this definition for a permanent secure enclosure. ~~An enclosure on all six sides including the top. The bottom must be concrete unless the sides of the structure are buried one foot deep in hard-packed soil. The structure shall be a minimum of four feet height and surround at least 150 square feet in area. If the animal is over 15 inches at the shoulder, the structure shall be a minimum of six feet in height.~~

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

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

Vaccination. The administration of rabies vaccine as required by law. ~~G.S. 130A-185.~~

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, and snakes.

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

(Ord. No. 01-02-09, §§ 1--3, 2-6-01)

Secs. 6-29--6-40. Reserved.

Sec. 6-41. Duties.

(a) In administering this article, 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 article. The director shall have the authority to hire appropriate staff including animal control officers.

(b) Animal control officers shall have the following powers:

(1) Take up and deliver any animal at large in violation of this article to the animal shelter.

(2) Issue appropriate permits, civil penalties and notices required for the enforcement of this article.

(3) Declare an animal as a potentially dangerous animal if he determines that the animal so qualifies as that term is defined in this article. Upon making a determination that an animal is a potentially dangerous animal, the director shall notify the owner of the animal in writing, giving the reasons for the determination. The owner may appeal the determination of the director by filing written objections with the animal control appeals board established in this article.

(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 article 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.

(c) The director shall have no authority to enforce the provisions of this article relating to dangerous animals, if one of the following factors is present:

(1) The animal is being used by a law enforcement officer to carry out the law enforcement officer's official duties;

(2) Where the injury or damage inflicted by the animal 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 animal; or

~~(3) Where the injury inflicted by the animal 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 animal; had tormented, abused or assaulted the animal; or was committing or attempting to commit a crime.~~

~~(4) The director shall have no duties or responsibilities whatsoever with respect to organizing and carrying out any rabies vaccination clinics.~~

(d) If the director determines that an animal has bitten a human being, then the director 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, to have the ~~animal dog~~ microchipped tattooed, and to display a sign on the premises warning of the presence of the animal on the premises. The director may waive any or all of these requirements if the bite is inconsequential, provoked, or inflicted upon a trespasser. The director shall have the authority to require proof of insurance. The owner has a duty to notify the director if the animal escapes or if they move to a new address. If the owner fails to comply with the protective provisions required by the director under this subsection, he waives the right to contest the seizure and impoundment of the animal.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, § 4, 2-6-01)

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 article, or whenever the animal control officer has reasonable cause to believe that there exists in any household or upon any premises any violation of this article, the animal control officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon him by this article as follows:

(1) If such property is unoccupied, the animal control 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 animal control 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 animal control officer may seek an administrative inspection warrant as provided in G.S. ch. 15, art. 4A.

(b) Interference. It shall be unlawful for any person to interfere with, hinder, assault, molest, resist, or obstruct the animal control officer while the animal control officer is carrying out any duty created under this article.

(c) Concealment of animal. It shall be unlawful for any person to conceal, for the purpose of evading the rabies inoculation requirement of the North Carolina General Statutes, any uninoculated animal from the animal control officer, or to evade any other provision of this ordinance.

(Ord. No. 96-5-8, § 1, 5-7-96)

Secs. 6-43--6-55. Reserved.

Sec. 6-56. ~~Animal bite.~~ Rabies Control

(a) Vaccination of dogs and cats 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 or cat 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 section 6-56(1), 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 or cat is subject to impoundment in accordance with the provisions of this article if the dog or cat 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.

~~(a) It shall be unlawful for an animal to bite a human being who does not ordinarily reside on the premises, except under the circumstances set forth under Division II, section 6-41(c), of this article.~~

~~(b) It shall be unlawful for any adult with custody of an animal to fail to timely report to the animal control officer as soon as possible that an animal has bitten a person. It shall be unlawful for any person to fail to inform the animal control 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.~~

~~(e)(c) All dogs or cats that bite human beings shall be immediately confined for ten days in a place designated by the county director, which can be on the premises of the owner. 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 director may order seizure of the animal and its confinement for ten days at the expense of the owner. Following such ten day confinement, the dog or cat may be released with the written permission of the director. The disposition of an animal, other than a dog or cat, that bites a person shall be at the discretion of the director.~~

(c) Notice to local animal control when person bitten by dog or cat; confinement of animal.

~~(b)(1)~~ It shall be unlawful for any person, or his parent or guardian if such person is a minor, and the person owning such and animal or having possession or under his control ~~adult with custody of an animal~~ to fail to timely report within 24 hours of the bite to the animal control officer ~~as soon as possible that an animal has bitten a person. It shall be unlawful for any person to fail to inform the animal control 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)(c)~~ All dogs or cats that bite human beings shall be immediately confined for ten 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 director or Health Director may order seizure of the animal and its confinement for ten days at the expense of the owner. Following such ten day

confinement, the dog or cat may be released with the written permission of the director or Health Director.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, § 5, 2-6-01)

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) The keeping of any animal which by frequent or habitual howling, yelping, barking or otherwise, causes loud noises which disturbs the quiet, comfort or repose of a reasonably prudent person in the vicinity;~~

~~(2)~~ (1) Unsightly litter, foul or offensive odors of any animal which remain upon or emanate from the property of the owner;

~~(3)~~ (2) The keeping of any animal which frequently is at large;

(4) (3) The keeping, possession or harboring of any animal which is dangerous to persons or property;

~~(5)~~ (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;

~~(6)~~ (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;

~~(7)~~ (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 dangerous 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) Maintaining an animal that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, animals walked on a leash, bicycles or other vehicles;~~

~~(11)~~ (10) Failing to confine a female dog or cat while in heat in a secure enclosure in such a manner that she will prevent the animal from coming into not be in contact with a male of its species another dog, 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; ~~and~~

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, § 6, 2-6-01)

Sec. 6-58. Animal care.

(a) It shall be unlawful for any owner or keeper to fail to provide his animals with adequate sufficient food, fresh water, shelter, and protection from the weather, 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, ill-treat, 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.

~~(e)~~(d) No owner of an animal shall abandon such animal except to relinquish the animal to the animal shelter during normal business hours. If the department finds that an animal has been abandoned, the animal may be impounded. If an animal 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 to remove the animal. If the property owner is also the animal owner and this individual cannot be located, the department shall secure an appropriate warrant to seize the animal. An animal seized pursuant to this section shall be impounded for a period of ten days. If the animal is unclaimed by its owner after being held ten days, the animal shall be disposed of by adoption or humane euthanasia.

~~(d)~~(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.

~~(e)~~(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.

(f)(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.

After making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal control 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.

The animal control 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.

~~(g)~~(h) It shall be unlawful for any person to intentionally strike an animal with an automobile or other vehicle causing injury or death.

~~(h)~~(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.

~~(i)~~(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 director 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.

~~(j)~~(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.

~~(k)~~(l) 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.

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.

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.

(m) It shall be unlawful for anyone to give away, sell or adopt any dog or cat under the age of 6 weeks old without accompanying it's mother or until fully weaned.

(n) It shall be unlawful for any person to sell, offer for sale, barter or give away chickens, ducklings or other fowl under three (3) weeks of age, or rabbits under two (2) 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 animal control 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:

- a. 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 4 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 10 feet.
- b. 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.
- c. Allowing an animal to be 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 comfortably or having access to adequate food, water and shelter.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, §§ 7--13, 2-6-01)

Sec. 6-59. Exemption of pet stores.

This article shall not apply to pet stores which are regulated by G.S. ch. 19A, art. 3.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, § 14, 2-6-01)

Sec. 6-60. Posting of a bond.

If the animal control officer has seized an animal as authorized by this article, or for any other legally authorized seizure and confinement of an animal, and the director determines that the retention of any animal so seized might extend beyond five days, then the director shall be authorized to require the owner to post a bond or to deposit cash not to exceed \$200.00 within a reasonable time to cover the boarding costs for the animal and any foreseen, reasonable veterinarian fees required by law or deemed necessary for the animal care. (Ord. No. 96-5-8, § 1, 5-7-96)

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. ~~No person shall keep or permit to be kept on his premises any dangerous wild animal.~~ This section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses or licensed wildlife rehabilitators.

(Ord. No. 96-5-8, § 1, 5-7-96)

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 ~~small~~ animal which dies shall ~~may~~, 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.

~~(c) The owner of any large 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 four feet beneath the surface of the ground and not closer than 300 feet to a flowing stream or public body of water, or otherwise have it removed from his property.~~

(Ord. No. 96-5-8, § 1, 5-7-96)

Secs. 6-63--6-75. Reserved.

Sec. 6-76. Restraint of animals.

(a) Every person owning or having possession, charge, care, custody or control of any animal shall keep such animal exclusively upon his premises. However, such animal may be off such premises if it is under the control of a competent person and restrained by a chain, leash, harness or other means of physical control. ~~or is sufficiently near the owner or the person in charge of the animal to be under his direct restraining control and is obedient to that person's commands. Provided, however,~~ 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.

(b) 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.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09, § 15, 2-6-01)

Sec. 6-77. Protective measures for confinement of dogs.

(a) Circumstances requiring special preventive measures. The animal control officer shall have the authority to require the owner or custodian of a dog to comply with special preventive measures, as described below, after taking into consideration the following factors:

(1) Nature of the particular dog: The behavior, size, temperament, capacity for inflicting serious injury, the number of dogs 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 dog and the dog's confinement are detrimental to the safety, welfare or peace and tranquillity of a reasonably prudent person in the vicinity;

- (4) Children, elderly, and disabled: Minor ~~cChildren under the age of seven,~~ elderly, and disabled people who live in close proximity to the premises occupied by the dog;
- (5) Bite: The dog has bitten a human being or domestic animal, without provocation or trespass, and the person bitten does not ordinarily reside on the premises; or
- (6) Dog trained for aggressive attack: The dog has been trained for aggressive attacks; and
- (7) Attack incidents and reputation: The dog without provocation or a trespass, has approached a person in an apparent attitude of attack or has a reputation to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.
- (b) Special preventive measures. If the animal control officer determines that the circumstances require special preventive measures, then the animal control ~~officer~~ director 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 dog.
- (4) Requiring the owner to tattoo or microchip the dog at the owner's expense, if necessary for identification, investigative, or enforcement purposes.
- (5) Posting of "Beware of Dog" signage. Signage is to be reflective, weatherproof, and of such size to be clearly seen by approaching persons, and approved by the Director.
- (c) Written order. If the animal control officer determines that a dog 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 they have 10 days to comply with the designated time period for compliance with the written order. 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 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. If the owner fails to comply, the animal can be impounded by an animal control officer and held at the animal shelter pending a hearing by a court of competent jurisdiction.
- (e) Owner's challenge to the written order. The owner may submit in writing a challenge to the animal control officer's determination that special preventive measures are required. The owner's written challenge must be received by the director within ten days of the date of the written order. The board shall handle the appeal in accordance with the procedures set forth in section 6-109 of this article. If an appeal from the board's decision is made to superior court, and the director makes written findings concluding that the animal must be confined at the animal shelter pending review by the superior court, the owner shall post a cash bond to cover the cost of the animal's care in accordance with section 6-80 ~~not to exceed \$200.00.~~

(f) Immediate Impoundment. If the animal control officer determines that the dog has inflicted life-threatening injuries or killed a human, or the owner has failed to comply with preventive measures in the past, the animal control officer may impound the animal immediately and hold it at the animal shelter pending a hearing to determine disposition by a court of competent jurisdiction.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09; § 16, 2-6-01)

Sec. 6-78. Impoundment.

Any animal which shall be found in violation of section 6-76 shall be subject to immediate seizure and impounded at the animal shelter. 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 animal control officer, who shall take possession of the animal for impoundment, or deliver the animal directly to the animal shelter. The animal may, consistent with the provisions of this article, be redeemed by the Owner upon payment of the costs assessed by the animal shelter and fines assessed for violation of any section of this ordinance. Upon failure of the owner to redeem the animal as set forth herein, the animal shall be disposed of by the animal shelter as provided in this article.

(1) Generally. Any dog or cat which appears to be lost, stray or unwanted, or which is found to be not wearing a currently valid rabies vaccination tag, as required by state law or this chapter division and not under restraint in violation of this chapter division, shall be impounded by the department 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 article.

(2) Notice to owner. Immediately upon impounding an animal, the animal shelter attendant 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 72 hours, or until the animal is disposed of.

(3) Redemption by owner generally. The owner/custodian of an animal impounded under this section may redeem the animal and regain possession thereof within 72 hours (three days) after notice of impoundment is given or posted as required by subsection (2) of this section, by complying with all applicable provisions of this section, production of proof of ownership, payment of the assessed fines and fees, any necessary veterinarian's fee, and a daily boarding fee at a rate to be determined by resolution of the board of county commissioners. 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.

(4) Destruction or adoption of unredeemed animal generally. An unredeemed animal may be destroyed or adopted according to the following procedures:

a. If an impounded animal is not redeemed by the owner/custodian within the period prescribed in subsection (3) of this section, it may be destroyed in a humane manner or offered for adoption to any responsible adult who is willing to comply with this article. Such animal may be adopted or purchased by a the first such person who meets adoption requirements, pays the adoption or purchase fee and rabies vaccination fee.

b. The operator of the animal shelter shall require that all dogs and cats released for adoption from the animal shelter be spayed or neutered.

c. 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.

(5) Procedure for redemption or adoption of unvaccinated animals. 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 it's 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.

~~c. Violation of this section by any person will subject said person to the criminal penalties provided for in section 6-106.~~

(6) Suspected rabid animals not to be redeemed or adopted. 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 ~~division~~ and applicable state laws.

(7) Destruction of wounded or diseased animals. Notwithstanding any other provision of this section, any animal impounded that ~~which~~ is badly wounded or diseased ~~(not a rabies suspect)~~ and has no identification may be destroyed immediately in a humane manner. If the animal has identification, the animal control department 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 animal control department and/or the animal shelter attendants may destroy the animal at its discretion in a humane manner.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09; § 17, 2-6-01)

Sec. 6-79. Seizure and disposition of animals.

(a) Authority to seize animals. In addition to any other authority or procedure authorized by this article or by any other law to seize an animal, the animal control officer shall have the authority to summarily seize any animal from premises when the animal control officer determines that the animal in the surrounding circumstances is dangerous to the public safety or public health. Upon summarily seizing an animal, the animal control officer shall provide the owner with a written order of seizure. 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 the animal control officer serves the owner with a written order of seizure, it shall be unlawful for the owner to fail to comply with the order or to interfere with the animal control officer. A sworn law enforcement officer shall accompany the animal control officer to seize the animal.

(c) A challenge to the seizure order. If the owner wishes to challenge the seizure order, then the owner must submit in writing the basis of the challenge within ten days of the seizure of the animal, not counting the day of seizure of the animal. The challenge must be directed to the appeals board and filed with the

director. The animal control appeals board is authorized to hear and decide the challenge to the seizure order in the same manner as provided for in section 6-109 of this article.

(d) Owner's redemption of animal. The owner is entitled to redeem the animal, unless the animal shelter retains the animal upon some other basis of legal authority, by paying all applicable costs and boarding fees, and complying with any outstanding orders of the animal control officer.

(e) Termination of owner's rights. If an owner fails to comply with the requirements that constituted the basis for seizing the animal, or fails to reclaim the animal within any applicable time period, then the animal control shelter shall have the authority to humanely destroy the animal or place the animal for sale to the public, or to place the animal with a local humane society for future placement through the humane society.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 01-02-09; § 18, 2-6-01)

Secs. 6-80--6-90. Reserved.

Sec. 6-106. Civil penalty.

(a) Except as otherwise provided herein, any person who violates any provision of this ordinance shall be subject to a civil penalty for each level of violation in accordance with Section 6-106(c) of this ordinance. Fines shall be established by the Buncombe 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) The animal owner or keeper shall be issued a written notice of violation and penalty which shall be required to make payment to the animal shelter within 10 days of receipt of notice. 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 violator's last known address. If the applicable civil penalty is not paid within the period prescribed, a civil action may be commenced to recover the penalty and costs associated with the collection of the penalty.

(c)

Level I

Sec. 6-56 (a)	Animal bite
Sec. 6-57 (a) (1)	Barking Dog
Sec. 6-57 (a) (2) <u>(1)</u>	Unsightly litter, foul or offensive odors
Sec. 6-57 (a) (4)	Keeping a cage too close to the property line
Sec. 6-57 (a) (6) <u>(5)</u>	Animal causing property damage
Sec. 6-57 (a) (7) <u>(6)</u>	Maintaining animals in an unsanitary environment
Sec. 6-57 (a) (7)	Maintaining animal wastes
Sec. 6-62 <u>(a) (b)</u>	Failure to dispose of a dead animal
Sec. 6-76	Animal at large

Level II

Sec. 6-57 (a) ~~(3)~~ (2) Animal frequently at large

Sec. 6-57 (a) (4) <u>(10)</u>	Failure to confine a dog in heat
Sec. 6-58 (a)	Failure to provide care of animal
Sec. 6-58 (d) <u>(e)(f)</u>	Unsafe transport of animal
Sec. 6-58 (f) <u>(g)</u>	Unsafe confinement of an animal in a vehicle
Sec. 6-58 (g) <u>(h)</u>	Intentionally striking an animal with a motor vehicle
Sec. 6-58 (h) <u>(i)</u>	Failure to report striking an animal with a motor vehicle
Sec. 6-58 (j) <u>(k)</u>	Giving away an animal as an inducement / contest prize
<u>Sec. 6-58 (l)</u>	<u>Bird sanctuaries</u>
<u>Sec. 6-58 (m)</u>	<u>Distribution of unweaned cats and dogs prohibited</u>
<u>Sec. 6-58 (n)</u>	<u>Distribution of under age fowl prohibited</u>
<u>Sec. 6-58(o)</u>	<u>Dyeing of animals prohibited</u>

Level III

Sec. 6-42 <u>(3)</u> <u>(b)</u>	Interference with an Animal Control Officer
Sec. 6-42 <u>(3)</u> (c)	Concealment of an animal
Sec. 6-56 (b) <u>(a)(1)(2)</u>	<u>Vaccination of dogs and cats required; vaccination of other pets</u>
	Failure to report an animal bite
6-56 (e) <u>(b)(1)(2)(3)(4)</u>	<u>Vaccination tag and certification</u> Failure to quarantine a biting dog or cat
Sec. 6-57 (a) (4) <u>(3)</u>	Keeping of a dangerous animal
Sec. 6-57 (a) (8) <u>(8)</u>	Maintaining property in an offense, annoying or dangerous manner
Sec. 6-57 (a) (9) <u>(9)</u>	Maintaining diseased animal
Sec. 6-57 (a) (10)	Maintaining animal habitually molests passersby
Sec. 6-58 (b)	Cruelty to animals
<u>Sec. 6-58(c)</u>	<u>Promoting animal cruelty</u>
Sec. 6-58 (e) <u>(d)</u>	Abandoning an animal
Sec. 6-58 (f) <u>(j)</u>	Animal used unnatural behavior
Sec. 6-61	Keeping a wild animal
Sec. 6-61	Failure to comply with a dangerous dog order

(Ord. No. 96-5-8, § 1, 5-7-96)

Sec. 6-108. Injunctions.

Any provision of this article 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 director through either the county attorney or applicable municipality's attorney, or any resident of the county or applicable municipality, 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. 6-109. Animal control appeals board.

(a) There is hereby created an animal control appeals board which shall consist of five representatives appointed by the county board of commissioners. Members of this board shall be appointed within 60 days of the adoption of this amendment. Two members shall be appointed for an initial term of three years, two members shall be appointed for an initial term of two years, one member shall be appointed for an initial term of one year, and all members shall thereafter be appointed for terms of three years. Appeals shall be heard by all five members of the board whenever all five can be present, but three members shall constitute a quorum in the event that all five are not able to be present. To avoid tie votes, all appeals shall be heard by an odd number of members, either five or three. 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 director in administering this article excluding matters referred to criminal prosecution or civil actions for injunctive relief.

(b) Upon determination made by the director from which an appeal is authorized in this article, the owner of the animal or other aggrieved person may appeal the determination by filing written objections with the director within ten days. Upon timely receipt of an appeal, the director shall schedule a hearing before the appeals board within 30 days of the filing of the appeal. Any appeal from the final decision of the appellate Board shall be taken to superior court of Buncombe County by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate board. Appeals from the rulings of the appellate board shall be heard de novo before a superior court judge. 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.

(Ord. No. 96-5-8, § 1, 5-7-96; Ord. No. 96-9-5, § 1, 9-17-96; Ord. No. 01-02-09, §§ 20, 21, 2-6-01)

(Ord. No. 96-5-8, § 1, 5-7-96)

Civil Penalty Fine Schedule				
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	EACH ADDITIONAL OFFENSE
LEVEL I	\$50	\$75	\$100	\$100
LEVEL II	\$75	\$125	\$250	\$250
LEVEL III	\$100	\$250	\$500	\$500

Adopted on First reading November 4, 2003 by a vote of 5 and 0.

Adopted this the 4th day of November, 2003.

ATTEST

Kathy Hughes

KATHY HUGHES, CLERK

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Nathan Ramsey

NATHAN RAMSEY, CHAIRMAN

APPROVED AS TO FORM

Joe Connolly

JOE CONNOLLY, COUNTY ATTORNEY