

AGENDA
TOWN OF EDGEWOOD
REGULAR COUNCIL MEETING – DECEMBER 7, 2016 @ 6:30 P.M.
EDGEWOOD COMMUNITY CENTER - 27 E. FRONTAGE ROAD
PLEASE SILENCE ALL ELECTRONIC DEVICES DURING MEETING
THANK YOU.

(The Town of Edgewood Council is pleased to have residents of the community take time to attend Council Meetings. Attendance and participation is encouraged. Individuals wishing to be heard during Public Hearing proceedings are encouraged to be prepared. Public comments may not be disruptive or harassing, and all persons are expected to maintain respect and decorum. Accordingly, rude, slanderous, or abusive comments and/or boisterous behavior will not be permitted. Written comments are welcomed and should be given to the Clerk-Treasurer prior to the start of the meeting).

CALL TO ORDER.

PLEDGE OF ALLEGIANCE.

1. APPROVAL OF AGENDA.

2. APPROVAL OF MINUTES.

- a. Approval of the Draft Regular Council Meeting Minutes of November 16, 2016

3. ACKNOWLEDGEMENT OF CONSENT AGENDA.

- a. Acknowledge receipt of the Planning & Zoning Commission Meeting Minutes of November 7, 2016

4. MATTERS FROM THE MUNICIPAL JUDGE

- a. Judge White will present his report for the month of November

5. MATTERS FROM THE MAYOR.

- a. Update on the school remodeling
- b. Collection Line RFP Review Committee
- c. WTB Application Update

6. MATTERS FROM THE COUNCILORS and/or ANNOUNCEMENTS.

7. DISCUSSION OF THE ANIMAL CONTROL ORDINANCE

- a. Changes to the Animal Control Ordinance proposed by residents of the Square H Subdivision
- b. Preliminary Proposal Changes to the Animal Control Ordinance

8. PUBLIC HEARINGS

Quasi-Judicial Procedure: Certification that Public Notice of these Meetings has been posted as required: This cases are being heard under provisions required by the New Mexico Court of Appeals intended to protect the rights of all parties and their witnesses and the swearing in of all parties giving testimony. The affected parties will have the right to cross-examine persons giving testimony. Confirmation of no conflict of interest or ex-parte communication.

- a. **LODGERS TAX** - Public hearing, discussion, consideration and final action on Ordinance No. 2016-21. An ordinance establishing a Lodgers Tax in the town of Edgewood
- b. **AMENDMENT TO THE ZONING ORDINANCE** - Public hearing, discussion, consideration and final action on amending Ordinance No. 2014-02, as amended, August 3rd, 2016 changing the definition of Building Height and amending the Maximum Building Height.
- c. **ORDINANCE NO. 2016-08 REPEALING PERSONNEL
ORDINANCE NO. 2003-5** - Public hearing, discussion, consideration and final action on repealing Ordinance No. 2014-02

9. DISCUSSION AND ADOPTION OF A PERSONNEL POLICY MANUAL

10. PUBLIC COMMENTS OF GENERAL MATTERS. Limit to 2 minutes per person.

11. MATTERS FROM THE CLERK/TREASURER.

- a. Discussion of dates for the next Quarterly Budget Review
- b. The Town of Edgewood Police Department's Standard Operating Procedures Manual (SOP)

12. RESOLUTION NO. 2016-22 – TOWN OF EDGEWOOD 2017 HOLIDAY CALENDAR

13. ANNOUNCEMENTS and/or CALENDAR REVIEW.

- a. Next Regular Council Meeting – December 21st, 2016 @ 6:30 P.M.
- b. NOTE: Town Hall offices will be closed on Friday, December 23rd at 12 noon and all day on Monday, December 26, 2016 in observance Christmas Eve and Christmas Day.

14. FUTURE AGENDA ITEMS.

- a. A. Public Hearing will be held during the Regular Council Meeting of December, 21st, 2016 on a Request for Appeal by Mr. Jonathan Pillars
- b. The Annual Open Meetings Act Resolution will be presented to council for approval during the Regular Council Meeting of December 21st, 2016
- c. Joint Council/P&Z Commission meeting now set for January 7th at 2:30 PM

15. ADJOURN.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Clerk at the Town Offices located at 1911 Historic Route 66, at least five (5) days prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk at (505)286-4518, or by e-mail at clerk@edgewood-nm.gov if a summary or other type of accessible format is needed. **The complete council packet may be viewed on the web, visit www.edgewood-nm.gov click on Agendas & Minutes.**

**MINUTES
TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION MEETING
November 7, 2016 AT 6:00 PM
Edgewood Community Center
27 E. Frontage Road, Edgewood, NM 87015**

1. CALL TO ORDER & ROLL CALL

Chair Person Thompson called the meeting to order at 6:35 p.m.

Commissioners Present: Dan Thompson, James Lee Jr. and Cheryl Huppertz

Commissioners Not Present: Gary Bryant,

Also Present: Larry Sullivan, Planning and Zoning Administrator and Rebecca Sanchez, Staff.

2. APPROVAL OF AGENDA

MOTION: Commissioner Huppertz made a motion to approve the Agenda with one revision: move Item # 7 Workshop to Item # 10 and move all other Items up one.

Commissioner Lee seconded the motion.

VOTE: All Commissioners voted aye. The motion carried.

3. APPROVAL OF MINUTES:

a. Draft planning & zoning commission meeting minutes of October 17, 2016

Commissioner James Lee Jr. was recently sworn in and was not present at the P & Z Meeting of October 17, 2016. Therefore there was no quorum approve minutes for that date.

4. INTRODUCTION OF TWO NEW MEMBERS TO THE COMMISSION

James Lee Jr. was introduced and sworn to office. Lorenzo Stanton will be sworn at another time. **Mayor Bassett left the meeting at 6:36**

5. PUBLIC COMMENTS

None.

**6. RECOMMENDATION FOR REVISIONS TO THE ZONING ORDINANCE –
Revise Section 12. R1 Conventional 1-acre Residential Zoning and Section 13. R2**

Conventional 2-acre Residential Zoning to meet requirements of the Manufactured Housing and Zoning Act [NMSA article 21a]

Mr. Sullivan stated word change from “manufactured home” to “mobile home” in R-1 and R-2 classifications would presumably satisfy requirements of the State Statute.

MOTION: Commissioner Huppertz made a motion to request a change to the Zoning Ordinance **Section 12. R1 Conventional 1-acre Residential Zoning and Section 13. R2 Conventional 2-acre Residential Zoning** to meet requirements of the Manufactured Housing and Zoning Act [NMSA article 21a] by changing the word “manufactured” home to “mobile” home.

Commissioner Lee seconded the motion.

VOTE: All Commissioners voted aye. The motion carried.

7. WORKSHOP

[Mayor Bassett joined the Workshop at 7:14.]

- a. Road standards & paving priority list – consider drainage improvements for Venus Road intersection, as well as criteria for other items on the list

Mr. Sullivan introduced the Town of Edgewood Infrastructure Capital Improvement Plan (ICIP) for fiscal year 2018-2022. He suggested the Commission look at the listing so they may incorporate items there with the towns road standard and paving priority list.

Commissioner Huppertz asked Mr. Sullivan if the ICIP item rank could be changed. Mr. Sullivan redirected her question to Mayor Bassett. Mayor Bassett described the items on the list and stated why they were there. He said the ICIP and the road paving list are two different items and should not be confused as being the same thing. He addressed the Commission and their duties informing the new Commissioner, Mr. Lee, about items they could see while being on the Commission; zone changes, subdivisions request, conditional use permits etc., he included a handout. This handout included training opportunities with MRCOG and P & Z frequently used terms with the definitions.

8. MATTERS FROM THE CHAIR AND COMMISSION MEMBERS

None.

9. MATTERS FROM STAFF

- A. Pillars appeal update. Mr. Sullivan stated the application for a Minor Subdivision off Woodline Drive has been appealed a second time. Mr. Pillars did not accept the changes made by the Commission, and he is now appealing the decision of the Commission denying the application. Mr. Pillars requested to have his hearing on December 21, 2016.
- B. Update on Conditional Use Permit for Charter School. Mr. Sullivan updated the Commission on the recent application for the Charter School to create a campus on a 20-acre parcel fronting on 344 across from the Pinto Road intersection. This application was approved with conditions which included sign off from the town engineer, the fire department, water department and Department of Transportation (DOT) and the Edgewood Planning and Zoning Department. He stated the DOT has already approved a traffic study commissioned by the applicant, and that DOT stated must be a deceleration lane in right of way, south of the first entrance. There must be a deceleration lane and a tapered lane totaling about 420 feet. The Planning and Zoning Commission has concerns of losing right of way for our trails, and Norton Henninger should be asked to do a measurement.
- C. Proposal for Clean & Lien Ordinance. Mr. Sullivan will send a proposal to the Commissioners to review for possible recommendation to Town Council. Gallop passed such an Ordinance. They call it Clean & Lien. It grants the Town authority to implement further action if a resident is not keeping their yard clean free of junk. Under that ordinance, if the resident fails to clean up after a formal request, the Town contracts for cleanup services and charges the resident for the costs and secures payment with a lien against the property. Mr. Sullivan stated he heard a presentation in Santa Fe about a similar Ordinance. He stated the City of Gallup has seen effective results using the Clean & Lien Ordinance. It was a consensus that the Planning and Zoning Commissioners would like this proposal to be submitted to Council.
Ms. Janelle Turner asked if a hardship clause would be available. Mr. Sullivan stated there might be, but if the condition of a lot becomes a public health or public safety issue it must be addressed. Ms. Turner suggested to reach out to the local Churches and other residents to see if they would be willing to help. The Commission thought it would be a great idea to explore.

10. CALENDAR UPDATE AND FUTURE AGENDA ITEMS

- A. Hearing on height limit change set for December 7th
- B. Next meeting -November 21st
- C. Joint workshop on subdivisions – TBD

The Commissioners came to consensus on a joint workshop meeting after the Pillars case.
The date chosen is Saturday, January 7, 2017 around 3:30 pm.

11. ADJOURN

MOTION: Commissioner Lee made a motion to adjourn the meeting of November 7, 2016.
Commissioner Huppertz seconded the motion.

VOTE: All Commissioners voted aye. The motion carried.

Chairperson Thompson adjourned the meeting of November 7, 2016 at 7:50 p.m.

PASSED, APPROVED AND ADOPTED THIS 21st day of NOVEMBER, 2016

Dan Thompson, Chairperson

ATTEST:

Garry Bryant, Secretary

Monthly Activity Report
 November 2016
 Citations and Non-Citations By Issued Date
 Financial Type: Fines and Fees
 Cases With and Without Disposition

Citations	Last Month	This Month	Change	Last YTD	This YTD	Change
ANIMAL CONTROL	0	10	10	20	21	1
CRIMINAL 2006-10	1	0	-1	31	21	-10
DWI	0	0	0	4	1	-3
Miscellaneous	1	0	-1	23	7	-16
TRAFFIC	31	23	-8	906	829	-77
Totals:	33	33	0	984	879	-105
Non-Citations						
CRIMINAL 2006-10	0	0	0	4	10	6
LITTER_ANTI-BLIGHT	0	0	0	1	0	-1
Miscellaneous	0	0	0	0	1	1
TRAFFIC	0	0	0	0	2	2
Totals:	0	0	0	5	13	8
Fines and Fees						
Correction Fee	680.00	900.00	220.00	9,838.00	10,466.00	628.00
Court Automation Fee	204.00	270.00	66.00	2,968.00	3,116.00	148.00
DWI Lab	85.00	0.00	(85.00)	87.00	255.00	168.00
DWI Prevention	3.80	0.00	(3.80)	215.00	225.00	10.00
Fine	2,223.50	3,889.50	1,666.00	30,276.27	28,153.03	(2,123.24)
Judicial Education Fee	99.00	135.00	36.00	1,496.00	1,553.00	57.00
Totals:	\$3,295.30	\$5,194.50	\$1,899.20	\$44,880.27	\$43,768.03	\$(1,112.24)

Fine Fee Summary

From 11/01/2016 12:00 AM to 11/30/2016 11:59 PM
All Case Types and Sub-Types
All Clerks

Receipts**Case Payment**

Correction Fee	900.00
Court Automation Fee	270.00
Fine	3,889.50
Judicial Education Fee	135.00

Subtotal: 5,194.50

Total Receipts: 5,194.50

Report Total: 5,194.50

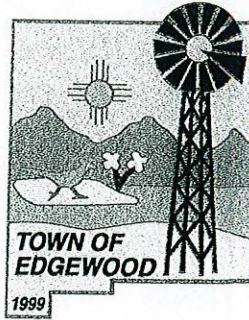
Edgewood Municipal Court

User: KSMITH

Epayment Payments Received

From 11/01/2016 12:00 AM to 11/30/2016 11:59 PM
By Payment Date And Time

Case No.	Defendant	Transaction No.	Payment Type	Charge Payment	Payment Date and Time	Receipt No.
CitePayUSA Payments						
201600020-CO-PA	Cahow, Tracey	970706539	CitePayUSA	129.00	11/01/2016 8:34 AM	6398
201600689-TR-SP	Lucero, Paulette-Yolanda	974334091	CitePayUSA	129.00	11/07/2016 10:11 AM	6408
201600675-TR-SP	Six, Stephen	974342217	CitePayUSA	59.00	11/07/2016 10:22 AM	6409
201600548-TR-SP	Schlesener, Shane	974441455	CitePayUSA	59.00	11/07/2016 12:45 PM	6411
201402691-TR-DI	Gallegos, Aaron	975470993	CitePayUSA	20.00	11/09/2016 2:00 PM	6415
201600678-TR-SP	Branch, Melissa	975769183	CitePayUSA	44.00	11/10/2016 8:19 AM	6416
201600676-TR-SP	Six, Joelle	978344754	CitePayUSA	59.00	11/15/2016 7:57 AM	6419
201600643-TR-SU	Billings, Terry	978484422	CitePayUSA	50.00	11/15/2016 10:53 AM	6420
201600657-TR-SP	Ivey, Heather	982297888	CitePayUSA	44.00	11/22/2016 4:54 PM	6430
201600712-TR-SP	Parras, Nicholas	982747645	CitePayUSA	44.00	11/23/2016 2:01 PM	6431
201600643-TR-SU	Billings, Terry	984463988	CitePayUSA	60.00	11/28/2016 10:51 AM	6433
201600010-AC-RU	Fols-Woody, Jessica	984971113	CitePayUSA	29.00	11/29/2016 10:13 AM	6436
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	529.00	11/30/2016 12:40 PM	6440
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6441
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6442
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6443
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6444
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6445
201600009-AC-UN	Robledo, Pamela	985587018	CitePayUSA	29.00	11/30/2016 12:40 PM	6446
No. of Payments: 19			Subtotal:	1,429.00		
Total no. of Payments: 19			Total:	1,429.00		



ANIMAL CARE & CONTROL ORDINANCE
TOWN OF EDGEWOOD, NEW MEXICO
ORDINANCE NO.: 2008-04
As amended October 19, 2011

THIS ORDINANCE SUPERCEDES ORDINANCE NO. 2003-02

AN ORDINANCE ESTABLISHING REGULATIONS, REQUIREMENTS, AND PROCEDURES FOR THE CARE AND CONTROL OF ANIMALS IN THE TOWN OF EDGEWOOD, SANTA FE COUNTY, NEW MEXICO; AND PROVIDING FOR AMENDMENTS THERETO; AND PROVIDING FOR PENALTIES FOR ANY VIOLATION THEREOF.

WHEREAS: IT IS DEEMED NECESSARY TO HELP PROTECT PUBLIC HEALTH AND SAFETY; AND WHEREAS: IT IS DEEMED NECESSARY TO PROMOTE RESPONSIBLE OWNERSHIP OF ANIMALS; AND WHEREAS: IT IS DEEMED DESIRABLE TO PROMOTE A RURAL, ANIMAL FRIENDLY CHARACTER IN THE TOWN OF EDGEWOOD;

THEREFORE: BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF EDGEWOOD, NEW MEXICO THAT THE FOLLOWING REGULATIONS, REQUIREMENTS, AND PROCEDURES FOR THE CARE AND CONTROL OF ANIMALS BE HEREBY ADOPTED:

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ARTICLE 1: GENERAL PROVISIONS**1.1 TITLE**

This Ordinance shall be known and may be cited as the "The Animal Care and Control Ordinance of the Town of Edgewood" and shall be referred to elsewhere herein as "this Ordinance".

1.2 AUTHORITY

This Ordinance is created pursuant to the enabling authority set forth in NMSA (1978), section 3-18-3; NMSA (1978), 77-28-11; and NMSA (1978), section 77-30-18.

1.3 PURPOSE

It is the intent of the Council that enactment of this Ordinance will:

- 1) Protect residents from immediate threat to health or safety;
- 2) Regulate, restrain, and prohibit the running at large of any animal within the boundary of the municipality;
- 3) Provide for the impounding and disposition of animals found running at large;
- 4) Prohibit cruelty to animals; and
- 5) Promote a rural and animal-friendly character within the municipality.

1.4 SEVERABILITY OF PROVISIONS

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Council to enact each section, subsection, sentence, clause, or phrase of this Ordinance separately and independently of each other section, subsection, sentence, clause, or phrase.

1.5 AMENDMENTS

The Council may amend or modify this Ordinance in accordance with State Statutes, and following a public hearing, due notice of which shall be given by the Town.

1.6 PENALTIES

Any person who violates a provision of this article shall be deemed guilty of a petty misdemeanor, unless otherwise provided for by State or Federal law, and upon conviction thereof, shall be subject to the penalty provisions set forth in this Ordinance. Each day this article is violated shall be considered a separate offense. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed ninety days or to the payment of a fine of not more than five hundred dollars (\$500) or to both such imprisonment and fine in the discretion of the judge. The court may exercise discretion to suspend a sentence in whole or in part and place the convicted person on probation for a term of one (1) year, conditioned upon the satisfaction of lawful conditions imposed by the court.

ARTICLE 2: DEFINITIONS**2.1 WORD FORMS**

Unless a contrary intention clearly appears, words used in the present tense include the future tense, and words used in the future tense include the present tense; the singular includes the plural, and the plural includes the singular; the word "may" is permissive, and the words "shall", "will", and "must" are mandatory, subject to specific exceptions allowed by this Ordinance.

(Article 2-Definitions-Cont'd)**2.2 DEFINITIONS**

Abandon – The intentional act of leaving an animal for more than 24 hours without making effective provisions for its proper feeding and care.

Adequate Drainage – Drainage sufficient to prevent the unintentional standing or pooling of water.

Animal – Any living nonhuman mammal, bird, reptile, or amphibian including, but not limited to, bats, companion animals, domestic animals, livestock, pigeons, porcupines, poultry, prairie dogs, rabbits and skunks. For the purpose of this article, insects and arachnids are not included in the definition of animals.

Animal Care & Control Department – All staff, premises, facilities, and programs provided by, or contracted-out by the Town to implement and/or enforce this Ordinance.

Animal Control Officer – Any person designated as responsible and having authority within the Town to implement and enforce this Ordinance in conformance with the provisions established herein.

Animal Exhibit – Any traveling animal show, animal refuge, zoo, petting zoo, circus, animal ride, animal act, or any premises or activity operated for the purpose of showing any animal or providing entertainment through animal performances.

Animal Fighting – An organized event involving one or more animals, other than cocks or dogs, and that has the purpose or probable result of one animal inflicting injury on or killing another animal.

Animal Fighting Paraphernalia – Equipment that any reasonable person would ascertain is used for animal fighting purposes which includes, but is not limited to, (1) instruments designed to be attached to the leg of a bird such as boxing gloves, knives, gaffs, or other sharp instruments; (2) performance enhancing drugs or substances, and veterinary equipment such as suture equipment and bags of saline; (3) items to train and condition dogs to fight including, but not limited to, hides or other material used as hanging devices to strengthen and/or condition dogs, wooden sticks or handles used to pry open jaws, food or water additives, treadmills, and jenny mills; (4) the presence of any animal that appears to be a fighting animal alone or together with animals suspected of being used as bait animals including but not limited to rabbits, cats, and other dogs; and (5) information about training or managing fighting animals such as documents and video tapes.

Animal Kennel – An establishment operating for intended profit where dogs or cats are boarded, kept, or maintained, sold or bred for either resale to commercial outlets or for the purposes of research, testing or laboratory experimentation.

Animal Rescue site – See Multiple Animal Site

Animal Shelter – Any establishment:

- 1) Which is operated by a municipality, county, or other State-recognized animal humane organization for the care and control of animals; and
- 2) In which animals are not allowed to breed.

Animals on Unenclosed Premises – A domestic or companion animal on its owner's property that is able to come and go at will without restraint to keep it on its owner's property.

Bite – A puncture or tear of the skin inflicted by the teeth of an animal. For purposes of this act, any scratch caused by the nails of an animal and resulting in a break of the skin shall be treated as a bite.

(2.2 Definitions-Cont'd)

Boarding Kennel – a commercial establishment where animals are housed overnight for the benefit of the animals owner, but not including zoos, guard dog sites, pet stores, or state inspected Veterinary Hospitals unless specifically offering non-patient boarding services.

Canine Hybrid – Any canine which results from the breeding of a domestic dog (*canus domesticus*) with any other canine sub-species, including, but not limited to wolves and coyotes.

Cock – adult male bird.

Cockfighting – An organized event involving one or more cocks and that has the purpose or probable result of one cock inflicting injury on or killing another cock.

Companion Animal – A dog or cat that is not a Hybrid, kept as a pet by humans.

Confinement – Detainment or isolation of an animal within an escape-proof building or enclosure and away from other animals and persons.

Controlled Breeding – Breeding of a companion or domestic animal that follows a breeding plan in efforts to preserve and protect the breed, and producing between zero (0) and four (4) litters yearly only when a litter will enhance the breed and the breeding program.

Council – The governing body of the Town of Edgewood.

Custodial Person – A person other than the owner, who has temporary or long-term custody or possession of an animal.

Dangerous Animal – An animal that at any time and without provocation, attacks a person or other domesticated animal that is lawfully in the presence of the attacking animal and is acting peaceably, when the attack results in serious injury.

Dog Fighting – An organized event involving one or more dogs and that has the purpose or probable result of one dog inflicting injury on or killing another dog or animal.

Doggie Day Care – A commercial establishment that takes temporary possession of a companion animal at the request of an owner to provide safety, comfort and/or socialization for the animal.

Domestic Animal – Any Animal whose psychology has been determined or manipulated through selective breeding and which does not occur naturally in the wild and includes, but is not limited to, ferrets, gerbils, guinea pigs, hamsters, horses, mice, rabbits, donkeys, rats and kangaroo rats. All Companion Animals are Domestic Animals but all Domestic Animals are not **Companion Animals**. Domestic Animals may also be considered Livestock if meeting the requirements of this definition.

Enclosure/enclosed (Proper) - Secure confinement indoors or outdoors, such as a parcel of land, or any portion thereof, completely surrounded at its perimeter by a wall or fence, locked pen or other structure, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area. The enclosure must be of sufficient height and strength to contain the animal within.

Euthanasia – The humane killing of an animal by an authorized person in a manner commonly recognized as humane and approved by the appropriate State agency, and does not cause undue pain or suffering to the animal.

Fighting Cock – a cock bred or trained for fighting or used to fight other cocks bred or trained for fighting

Foster Care Provider – Any person who fosters an animal from or through Edgewood Animal Care & Control to lend aid and comfort and to otherwise assist in making the animal adoptable or to provide a safe, homelike environment to minimize the effects on the animal being separated from its family.

Grooming Parlor – An establishment which provides animal grooming services for

(2.2 Definitions-Cont'd)

domestic or companion animals.

Guard Dog – dog that is used to protect a guard dog site.

Guard Dog Site – An establishment that utilizes a Guard Dog, and which has a current guard dog permit.

Hobby Breeder – A person involved in controlled breeding of companion animals that are registered with a nationally or internationally recognized animal registry organization and produces less than four (4) litters annually.

Hobby Breeder Site – Any residence, building, or other structure used in whole or in part for keeping, raising, or breeding animals registered with a nationally or internationally recognized animal registry organization, and of which the resultant offspring are not sold for resale to commercial outlets or for the purpose of research, testing, or laboratory experimentation.

Household – A human social or family unit comprised of persons living, residing and domiciled in the same residence, whether related or not.

Kennel – Any establishment wherein or whereon dogs or cats are kept for the purpose of breeding, sale or sporting purposes.

Livestock – Animals typically used in the production of food, fiber, or other products or activities defined as agricultural. Livestock shall include, but not be limited to horses, mules, cattle, llamas, pigs, sheep, goats, rabbits, fowl, ostriches, alpacas, emu, and mink. Domestic Animals may also be livestock if meeting the requirements of this definition.

Microchip – A passive transponder which can be implanted in an animal by injection, and which is a component of a radio frequency identification (RFID) system.

Multiple Animal Permit – A permit issued by the Animal Care & Control Department that is required to operate a Multiple Animal site.

Multiple Animal Site – Property in a residential Zone, upon which more than ten (10) dogs or cats, in any combination, are in compliance with a current multiple animal permit obtained by the Owner or custodian of the animals.

Owner – A person eighteen (18) years of age or older, or the parent or guardian of a person under eighteen (18) years of age, or responsible person who owns, keeps, cares for, or harbors an animal, or who allows an animal to remain on or about his premises for more than 14 consecutive days.

Person – An individual, household, firm, partnership, corporation, company, society, association, or legal entity, and any officer, agent, or employee thereof.

Permanent identification - registered microchip, or registered tattoo.

Pet Store - An establishment that, in whole or in part, offers animals, for sale or resale, or sells animals to consumers or wholesalers.

Premises – A parcel of land and the structures thereon.

Potentially Dangerous Animal – Any animal that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- 1) Causing an injury to a person or domestic animal that does not result in muscle tears, disfiguring lacerations, require multiple sutures, or corrective or reconstructive surgery; or
- 2) Chasing or menacing a person or other domestic animal in an aggressive manner and without provocation; or
- 3) Acting in a highly aggressive manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure; or
- 4) Any exotic or wild animal held in captivity by a human that, because of its poisonous bite or sting, would constitute a significant hazard to the public.

Professional Animal Establishment – Including, but not limited to a Boarding kennel,

(2.2 Definitions-Cont'd)

grooming parlor, Doggie Day Care, Pet Store, Sanctuary, Animal rescue site or shelter.

Quarantine – The strict confinement and isolation of an animal for any length of time in accordance with this Ordinance, State law, or Federal law, in order to observe for and control the spread of infectious or contagious diseases, such as rabies.

Reserve Animal Service Officer - A qualified volunteer appointed as responsible and having authority with the Town to implement and enforce this Ordinance in conformance with provisions established herein to assist Animal Control Officers in the field.

Running-at-large

- 1) An Animal beyond the boundaries of the Owner's premises and is free from the Owner's control. Free from an Owner's control shall mean those animals that are not contained by an enclosure or restrained on a leash no longer than eight feet held by a responsible person capable of controlling the animal. Verbal commands do not constitute control of an animal. Running at large includes all stray animals.
- 2) Being stray, or running-at-large shall not include:
 - a) A dog which is working at a specific job for which it has been trained; or
 - b) A dog performing in the capacities of hunting, tracking, obedience, agility, showing, or field trials.

Sanctuary – Areas protected through the management of human activities to provide and maintain habitat, other wildlife, and the ecosystems that support them. Inclusions: National Wildlife Areas, Migratory Bird Sanctuaries, Conservation Areas and Zoos.

Secure Enclosure – Secure confinement indoors or outdoors, such as a parcel of land, or any portion thereof, completely surrounded at its perimeter by a wall or fence, locked pen or other structure, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area. The enclosure must be of sufficient height and strength to contain the animal within and provide sufficient room for the animal to comfortably move around within the structure.

Serious Injury – Any physical injury to a person or animal that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures, corrective or reconstructive surgery.

Service Animal – Any animal recognized as a qualified service animal pursuant to the Americans with Disabilities Act of 1990. A qualified service animal is defined as, but not limited to:

- 1) A guide dog trained by a professionally recognized guide dog school to lead a totally or partially blind person; or
- 2) A hearing dog trained by a professionally recognized hearing dog school to aid a hearing impaired person; or
- 3) A service dog trained by a professionally recognized school to assist a mobility-impaired person; or
- 4) Any other animal, approved by the Vocational Rehabilitation Department of the Department of Public Education of the State as acceptable in public places, which is trained to provide special assistance to a mobility-impaired person.

State – The State of New Mexico, United States of America.

Stray – An animal beyond the boundaries of the Owner's premises and free from the Owner's restraint or control, and includes all Animals that are Running-at-large, abandoned, or have no known owner.

Tattoo – An indelible mark placed on an animal to serve as permanent identification.

Town – The Town of Edgewood, a municipal corporation incorporated under the laws

(2.2 Definitions-Cont'd)

of the state of New Mexico.

Vaccination – Inoculation with an anti-rabies vaccine recognized and approved by the State of New Mexico and given in accordance with State law.

Vermin – Wild rodent and various insects including flies, mosquitoes, ants and wasps.

Vertebrate Pest – Any vertebrate member of the animal kingdom which does damage to man or the environment, including rodents, carnivores, other mammals, birds, reptiles and amphibians, and fish.

Veterinarian – A person licensed in the State of New Mexico to treat the ailments or injuries suffered by animals and who possesses an academic degree of Doctor of Veterinary Medicine or Veterinary Medical Doctor.

Wild Animal – Wild animal means any animal found naturally in a wild state, whether indigenous to the State of New Mexico or not and whether raised in captivity or not. Such animals, though they may be trained and domesticated, include but are not limited to:

- 1) Wolves, foxes, coyotes, dingoes, and other members of the non-domestic canine families.
- 2) Lions, pumas, panthers, mountain lions, wild cats, and other members of the non-domestic feline families.
- 3) All bears, including grizzly bears, black bears, brown bears etc.
- 4) Raccoons, including eastern raccoon, desert raccoon, ring-tailed cat, etc.
- 5) Primates, including all non-human great apes other than qualified service animals.
- 6) Skunks.
- 7) Bats.
- 8) Indigenous and Non-indigenous poisonous snakes.
- 9) Alligators, crocodiles, caimans, or poisonous lizards.
- 10) Venomous fish and piranha.

Zoo – The Wildlife West Nature Park and other zoos accredited by the American Zoological Association.

ARTICLE 3: ADMINISTRATION**3.1 RULES AND PROCEDURES**

Reasonable rules and procedures may be prescribed as needed by the Mayor, or his delegate, in order to carry out the intent and purposes of this Section, and in accordance with the provisions of this Ordinance.

3.2 PROCEDURES FOR COMPLAINTS

A person who has personal knowledge of a violation of this chapter and who can identify the owner of the animal involved or the premises where the animal is located may file a complaint alleging any violation of this chapter with the animal control and protection department. The Animal Control Authority may require the complainant to provide his name and address and swear to and affirm the complaint.

3.3 PROCEDURES FOR ANIMAL CONTROL OFFICER

The Animal Control Officer or Reserve Animal Service Officer shall have the authority, and is directed to investigate, upon reasonable cause including complaints, any alleged violation of this chapter.

- 1) Whenever the Animal Control Officer has probable cause to believe that a person has violated this ordinance, the Animal Control Officer may prepare a citation

(3.3 Procedures for Animal Control Officer-Cont'd)

provided by the Town of Edgewood giving written notice to appear in court.

- 2) The citation shall contain:
 - a) The name, address and telephone number, if known, of the person violating this ordinance;
 - b) The driver's license number of such violator, if known;
 - c) The code section allegedly violated;
 - d) The date when the person allegedly committed the violation;
 - e) The place where the person allegedly committed the violation;
 - f) The location where the person shall appear in court and the deadline for appearance;
- 3) The Animal Control Officer shall present the citation to the person he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign at least one copy of the citation.
- 4) The Animal Control Officer shall deliver a copy of the citation to the person promising to appear.
- 5) If the alleged violator refused to or was unable to give his written promise to appear, or if the violator refused to respond to meet with the Animal Control Officer, the Animal Control Officer may prepare a written complaint (criminal summons) against the alleged violator and file the complaint with the Town of Edgewood Municipal Court.

3.4 SCHEDULE OF FEES & OTHER ASSIGNABLE COSTS**A. PURPOSE**

The purpose of this Schedule shall be to defray expenses related to enforcement of this Ordinance.

B. METHOD OF PAYMENT

Payment of any and all fees and other assignable costs shall be made to the Town of Edgewood in a method acceptable to the Town, and become due immediately upon imposition.

C. ADOPTION BY RESOLUTION

This Schedule shall be only as is duly adopted or amended by Resolution of the Council, attached as exhibit "A".

3.5 ANIMAL CONTROL OFFICER(S)**A. DEPUTIZED**

Any Animal Control Officer, whether an employee of the Town of Edgewood, volunteer Reserve Animal Service Officer, or a contracted agent, shall be a deputy of the Town, and shall be responsible for enforcement of the provisions of this Ordinance of The Town of Edgewood and Statutes of the state of New Mexico as applicable.

B. IDENTIFICATION

Any Animal Control Officer or Reserve Animal Service Officer shall wear a uniform and shall carry official identification. Official identification shall be issued by the Town Clerk, and must be surrendered to the Town Clerk upon cessation of either employment or contract with the Town.

3.6 AUTHORITY AND LIABILITY OF OFFICER(S)**A. IMPOUNDING OF ANIMALS**

Any Animal Control Officer or Reserve Animal Service Officer shall be authorized to impound:

- 1) Any animal determined to be running-at-large;
- 2) Any animal in plain view on its own private premises whose condition threatens imminent death or serious injury to the animal itself;
- 3) Any animal in plain view on its own private premises whose action(s) threatens imminent death or serious injury to any person or to another animal within the same premises;
- 4) Any animal when so order by a court of competent jurisdiction.

B. ENTRY TO PRIVATE PREMISES

- 1) Any Animal Control Officer or Reserve Animal Service Officer shall be authorized to enter upon any private premises with the consent of the Owner/occupant or as otherwise provided for by law, for the purpose of making inspections to determine compliance with this ordinance, impounding animals as authorized by the Town, or examining records pertinent to the origin and care of any animals located at, or emanating from, any permitted premises.
- 2) Except in cases of imminent danger to either the public or animal(s), the Animal Control Officer shall make reasonable efforts to obtain the permission of the property owner/occupant. If the Animal Control Officer is unable to obtain the permission of the Owner/occupant, the Animal Control Officer may seek a court order or warrant to enter a premise as provided by law for the purpose of making inspections to determine compliance with this Ordinance and impound animals as authorized by the Town.
- 3) In cases where entry is mandated by either court order or warrant, the order or warrant must be executed in the company of an authorized law enforcement officer of the Town, County, or State.

C. SEIZURE OF DANGEROUS AND POTENTIALLY DANGEROUS ANIMALS – PETITION TO COURT

- 1) Following notice to the Owner, if the Animal Control Officer has probable cause to believe that an animal is dangerous or potentially dangerous, and poses an imminent threat to public safety, the Animal Care & Control Department may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal and impound the animal or may impound the animal at the Owner's request or with the Owner's consent.
- 2) The Animal Care & Control Department shall impound the animal pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of Section 4-2.
- 3) After seizure, the owner may:
 - a) admit that the animal is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to Section 4-2 of the Licensing and Permit Fees; or
 - b) The Animal Care & Control Department may, within fourteen days after seizure of the animal, bring a petition to a court of competent jurisdiction seeking a determination of whether the animal is dangerous or potentially dangerous.
 - i. If the court finds, by clear and convincing evidence, that the animal is dangerous and poses an imminent threat to public safety or

(3.6 Authority & Liability of Officer(s)-Section C.3 Cont'd)

- ii. potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the animal and obtain a certificate of registration within thirty days or have the animal humanely destroyed.
- iii. If the court does not make the required findings pursuant to this subsection, the court shall immediately order the release of the animal to its owner. A determination that an animal is not dangerous or potentially dangerous shall not prevent an animal control authority from making a subsequent application for seizure based on the animal's subsequent behavior.

D. DEAD ANIMALS

- 1) In order to help safeguard the public safety and health, any Animal Control Officer or Reserve Animal Service Officer shall be authorized to pick-up and dispose of any dead dog, cat, or unprotected animal lying in any public right-of-way, or in any private access easement which is dedicated for public use. The Animal Control Officer shall make a reasonable attempt to notify the Owner of any dead dog or cat prior to disposal.
- 2) At the discretion of the Animal Control Officer, the Town may pick-up and dispose of any dead and privately owned Companion Animal, Domestic Animal, Livestock, or other animal at the request of the Owner, provided
- 3) The owner pays the full costs of any such pick-up and disposal.
- 4) Disposal shall be accomplished in such a manner as to minimize vermin infestation, odors, and disease.
- 5) Potentially rabid animals shall be handled in a manner consistent with State law and the requirements of this Ordinance.

E. AUTHORITY

The officer may move to dismiss any citations, criminal summons, or fees provided the owner complies with an agreement entered into with the officer as to the action required to correct the problem.

F. PERSONAL LIABILITY

There shall be no personal liability on the part of any Animal Control Officer or Reserve Animal Service Officer in the lawful execution of his/her assigned duties, except as provided by State or Federal Law.

3.7 ANIMAL CARE & CONTROL FACILITIES**A. GENERAL**

The Town shall provide or contract for sufficient facilities to be used for the purpose of humanely boarding and caring for animals impounded under the provisions of this Ordinance. Such a facility shall meet the requirements established in this Section.

B. ANIMAL HOUSING FACILITIES

- 1) Animal housing facilities shall be structurally sound, constructed of non-toxic materials, and weatherproof. Interior floors shall be of smooth, easily cleanable construction, and impervious to water. The premises shall be kept clean, sanitary, and in good repair in order to protect animals from disease and/or injury.
- 2) Animal housing facilities shall be provided with proper ventilation, temperature

(3.7 Animal Care & control Facilities-Section 4-Cont'd)

control, shade, and lighting necessary for the health and safety of animals according to each species' needs.

- 3) Specific housing and other facility requirements will be established by Animal Control for the different kinds of animals that will housed there. The requirements will be made available in writing and without charge upon request.
- 4) Provisions shall be made by a responsible person in charge of any impounded animal for the removal and proper disposal of any animal and/or food waste, soiled bedding, dead animals, and miscellaneous debris. Disposal shall be accomplished in such a manner as to minimize vermin infestation, odors, and disease.

3.8 RECORD KEEPING**A. REQUIREMENT**

Upon impounding or receiving any animal, the Animal Control Officer or Reserve Animal Service Officer shall record data required by this Section into a registry to be kept for such a purpose.

B. DATA

Data required to be kept includes:

- 1) The date, time, location, reason for impoundment, and manner of the animal's acquisition;
- 2) The species, breed, color, and sex of the animal;
- 3) The animal's name, and the owner's name, address, and phone number, if known;
- 4) Verification of notification and reasonable attempts at notification to the known owner of animals impounded with identification;
- 5) The animal's Town license number if any, rabies tag number and microchip number, if available;
- 6) The date, time, and manner of the animal's disposition, as prescribed by this Ordinance;
- 7) The name, address, and phone number of the person redeeming the animal, if applicable; and
- 8) Any and all fees and fines received.

C. OBSERVANCE OF ANIMALS

Each animal shall be observed at least twice daily by the authorized person in charge of its care.

D. DURATION

Recorded data required by this Ordinance shall be kept and maintained as per the New Mexico Administrative Code, Local Government Records Retention and Disposition Schedule, Title 1, Chapter 19.¹

3.9 DISPOSITION OF IMPOUNDED ANIMALS**A. NOTICE**

If the owner of an impounded animal is known, the Animal Control Officer shall make a reasonable effort to notify the owner immediately. If the owner of the animal is not known, a notice of the impoundment shall be posted in a conspicuous place at the office of the Animal Control Officer and at the Town office.

B. DURATION

- 1) All stray impounded animals without identification shall be held for a minimum

¹ Amended 10/19/11

(3.9 Disposition of Impounded Animals-Section B-Cont'd)

- of four (4) working days; and notice of impoundment posted.
- 2) All stray animals with identification shall be held a minimum of seven (7) working days and notice of impoundment posted.
- 3) All quarantined animals shall be held and observed for a period of ten (10) consecutive days from the date of the bite or seizure.
- 4) All owner-surrendered animals become the property of the Town of Edgewood at the time of surrender.
- 5) All animals placed under protective custody shall be held a minimum of fifteen (15) consecutive days.
- 6) In computing any period of time under this section, the day that the animal is impounded shall not be included. The last day of impoundment shall be included, unless it is a Saturday, Sunday, Holiday, or when the shelter is unexpectedly closed, in which case the period of time continues until the end of the next day which is not one of these days.

C. LIMITED RIGHT OF REDEMPTION / RECLAMATION BY OWNER

In conformance with any and all other requirements of this Ordinance and except for animals held on complaint, for quarantine, in protective custody, or impounded under similar circumstance, an Owner or Custodial Person of any impounded animal shall have a limited right to redeem/reclaim the animal within the required holding period conditional on compliance with this paragraph and all other applicable provisions of this Ordinance. To reclaim an animal, the owner/custodial person shall sign a statement of ownership/responsibility and comply with all other provisions of this Ordinance prior to redeeming/reclaiming any animal.

D. PAYMENT OF FEES AND OTHER ASSIGNABLE COSTS

In all cases, the limited right to redeem may only be exercised by the owner/custodial person upon payment to the Town of any license fees due, microchip fee, impounding fees, boarding charges, veterinary charges, and other costs incurred by the Town in the care and maintenance of said animal, or as designated in the Schedule of Fees and other Assignable Costs.

E. COMPANION ANIMALS

In conformance with NMSA (1978), Section 77-1-20, and in addition to any other requirements of this Ordinance, for the redemption/reclaiming of any un-sterilized Companion Animal the owner/custodial person shall:

- 1) Pay a sterilization deposit of not less than \$25.00 and sign an agreement to have the animal sterilized by the age of 6 (six) months or within 30 (thirty) days, whichever is longer; or
- 2) Obtain an, Intact Permit, from the Town in conformance with the requirements of this Ordinance, if there are no prior impoundments for the animal being redeemed.

F. DISPOSITION OF STERILIZATION DEPOSIT

A sterilization deposit shall be reimbursed to the owner only upon delivery of a valid receipt from a veterinarian proving that the specified animal was sterilized within the required time period.

G. ANIMALS HELD ON COURT ORDER

In all instances where an animal is impounded and a court order related to a violation

(3.9 Disposition of Impounded Animals-Section G-Cont'd)

of this Ordinance has been filed in a Court of competent jurisdiction against the owner of the animal, the animal shall not be released except upon order of the Court. The Court may direct the animal owner to pay any penalties or fines for violation of this Ordinance in addition to penalties resulting from other charges.

I. NON-REDEEMED ANIMALS

Any animal not redeemed/reclaimed within the required holding period shall become the property of the Town. Animals, which have thereby become the property of the Town may be:

- 1) Placed for adoption in conformance with the requirements of this Section; or
- 2) Transferred to the ownership of any animal shelter or certified rescue group, or euthanized in a humane manner.

J. ADOPTION

An impounded animal shall not be released for adoption until:

- 1) The required holding period for redemption/reclaiming has passed;
- 2) The animal has been deemed adoptable; and
- 3) The prospective adopter has paid any required adoption fee to the Town as noted in the Schedule of Fees and other Assignable Costs.

K. ADOPTION OF COMPANION ANIMALS

In conformance with NMSA (1978) Section 77-1-20, and in addition to any other requirements of this Ordinance, for the adoption of any un-sterilized dog or cat, the adopter shall pay a sterilization deposit as established in the fee schedule, and sign an agreement to have the animal sterilized by the age of 6 (six) months or within 30 (thirty) days, whichever is longer.

L. DISPOSITION OF STERILIZATION DEPOSIT

Any required sterilization deposit shall be reimbursed to the adopter only upon presentation by the adopter of a valid receipt from a veterinarian proving that the animal was sterilized within the required time period.

N. PENALTY FOR VIOLATING STERILIZATION ACT

Any violation of NMSA (1978), Section 77-1-20, known as the "Sterilization Act" and involving the failure to sterilize an adopted or reclaimed companion animal within the required period, is a misdemeanor and shall be punishable by a fine of not more than five hundred dollars (\$500.00)

O. EUTHANASIA

Any impounded animal may be euthanized by the Animal Control Officer, or by such other persons as may be contracted with by the Town to perform such euthanasia:

- 1) After the required holding period for redemption/reclaiming has passed; or
- 2) For humane reasons to prevent suffering, or
- 3) If the owner admits that the animal is dangerous or potentially dangerous and transfers ownership of the animal to the Animal Care & Control Department, or
- 4) If the court finds, by clear and convincing evidence, that an animal is dangerous or potentially dangerous and poses an imminent threat to public safety and orders humane destruction of the animal consistent with the provisions of Section 4.8.B.2.

(3.9 Disposition of Impounded Animals--Cont'd)**P. PERMANENT IDENTIFICATION**

- 1) Owner must purchase a microchip, from the town in conformance with the requirements of this ordinance, implanted in the animals by injection prior to the animals being redeemed; unless already permanently identified.
- 2) No reclaimed dog or cat shall be allowed to leave any animal shelter including Edgewood Animal Control Holding Facilities without being micro-chipped.
- 3) Boarding kennels are not responsible for micro-chipping.

3.10 VERTIBRATE PEST CONTROL

The animal control department recognizes the need for vertebrate pest control for the protection of human health and safety and for the protection of private and public property with the Town of Edgewood. This work may be performed by private citizens on the land that they own or lease, and by federal, state, or local government employees. All persons shall work in compliance with all applicable federal, state, county, and local laws and regulations. It is recognized that various levels of protection exist for animal species and that this section will not attempt to override or lessen those protections. This section will work within those laws afforded for animals. The animal control officers have the authority to approve or disapprove of methods used to perform vertebrate pest control that are not otherwise specified in this section.

- 1) Pest control methods requiring authorization. Landowners and other agency personnel will be required to receive prior authorization from the animal control department for the following methods of vertebrate pest control:
 - a. Shooting with a firearm
 - b. Chemical immobilization
 - c. Quick kill traps.
 - d. Leg hold traps
 - e. Leg-hold traps shall only be used as a last resort and only with the written approval of the Animal Control Officer and the Clerk or his/her authorized agent.
 - f. Leg-hold traps, size no. 3 or smaller, pan-tension, with offset jaws or jaws modified so they do not close together around the leg.
 - g. No leg-hold trap set shall be made within 100 yards of any occupied dwelling without written notification to the dwelling's occupant. Traps are to be checked every 12 hours. All Animals trapped will be removed by the animal control officers or its acting officials.
- 2) Pest control methods not requiring authorization. The following methods of vertebrate pest control will not require authorization from the animal control department, but may only be performed by private citizens within the confines of their own property:
 - a. Quick-kill traps for the control of gopher, mole, rat and mouse species.
 - b. Live traps:
 1. All domestic cats or dogs will be turned over to the Town animal control officer. Animal Control Officers or the resident where the live trap is placed may remove any animals caught in the trap.
 2. Traps are to be checked every 24 hours.
 3. Issued live traps. The animal control officer can be contacted for issuance of live traps for a resident's temporary use. It is not a violation of this section or any other section of this chapter for a resident to own traps as long as they meet the requirements specified in this section.
 - c. Pesticides. Pesticide use shall be permitted if the product used is an E.P.A.

(3.10 Vertebrae Pest Control-Section 2.c-Cont'd)

registered pesticide and is used in accordance with special use restrictions for the control of vertebrate pests.

ARTICLE 4: OWNER'S DUTIES**4.1 RABIES CONTROL****A. VACCINATION REQUIRED**

Companion Animals and ferrets over three (3) months of age shall be vaccinated against rabies by a veterinarian at the owner's expense no less frequently than is required by State law.

B. VACCINATION TAG & CERTIFICATE

1. Owners of any animal vaccinated for rabies shall obtain from the veterinarian performing such procedure a unique-numbered vaccination certificate and tag. The certificate shall contain at a minimum:
 - a. The name and address of the owner;
 - b. A description of the animal;
 - c. A description of the type of vaccine used;
 - d. The date of vaccination; and
 - e. The expiration date of immunity provided by the vaccination.
2. The certificate shall be surrendered for verification or examination upon demand of the Animal Control Officer or any other person charged by the Town with enforcement of this Ordinance. The tag shall bear the certificate number and the year of vaccination, and shall be worn attached to a collar or harness at all times, exceptions being cats, working animals, show dogs, animals being kept in a veterinary hospital or others performing in agility, herding tracking, coursing or hunting capacity. Owners shall be responsible for replacing lost tags. Tags and certificates are non-transferable. Animals without valid and current tags and certificates shall be subject to fines as designated in the Schedule of Fees and other Assignable Costs. Veterinarians within the Township of Edgewood shall surrender for verification; copies of the unique-numbered vaccination certificates upon demand of an Animal Control Officer for any other person charged by the Town with enforcement of this Ordinance.

C. SUSPECTED RABIES

Any veterinarian who makes a clinical diagnosis of rabies and any person who suspects rabies in any Animal, including Companion Animals, Domestic Animals, or Wild Animals, shall immediately report the same to the appropriate State health agency providing information about where and when such animal was seen and, if possible, where it may be found.

D. EXPOSURE TO RABIES/BITING

To ensure protection of the public health and welfare and control the spread of the rabies virus:

- 1) Any person with knowledge that an animal has bitten a person shall immediately report the incident to the Animal Care & Control Department and the appropriate State health agency.
- 2) Any physician or other health care professional that treats a person for an animal bite shall report such treatment to the appropriate State health agency within twenty-four (24) hours of such treatment.
- 3) The report must specify the name and home address of the person

(4.1 Rabies Control-Section 4.1-D.3-Cont'd)

bitten, and the precise location of the bite on the person.

E. ANIMAL DESTRUCTION OR QUARANTINE

- 1) Any dog, cat, or other animal determined by the State as requiring the rabies vaccination, and which has bitten or otherwise exposed a person or another animal to the rabies virus shall be:
 - A. Quarantined by confining it immediately and observing it in confinement for a period of ten (10) days from the date of the bite, at the owner's expense at a place and in a manner designated by the Animal Control Officer and approved by the appropriate State health agency. Upon the conclusion of observation period, the animal shall be:
 - a) Released in accordance with all other applicable provisions of this Ordinance if the animal does not show signs of infection with the rabies virus; or
 - b) Destroyed and its head sent to an appropriate laboratory for rabies testing if the animal shows signs of infection with the rabies virus; or If the animal shows signs of infection during the required period of confinement and observation, the animal shall also be destroyed and its head sent to an appropriate laboratory for rabies testing.
- 2) If the animal is proven to the Animal Control Officer to have a valid current vaccination for rabies, and if the area involved is not under quarantine for rabies, then the Animal Control Officer may allow quarantine of the animal at the owner's home after its inspection and approval by the Officer for suitability as a location for quarantine. If the animal shows signs of rabies during the required period of confinement and observation, the animal shall be destroyed and its head sent to an appropriate laboratory for rabies testing.
- 3) No person may remove or release an animal from a required quarantine location, during the observation period without the written consent of the Animal Control Officer.
- 4) No person may frustrate the quarantine of an animal during the observations period without the written consent of the Animal Control Officer, including allowing other animals into the quarantine location.

F. DEAD SUSPECTED RABID ANIMALS

Pick-up and disposal of rabid animals or animals suspected of infection with the rabies virus shall be handled by the Animal Care & Control Department in a manner consistent with State law.

4.2 LICENSING**A. INDIVIDUAL LICENSE**

An Individual License shall be required for any Companion Animal age 3 months or older residing within the Town of Edgewood. The license will be valid for either 1 year or 3 years. A current rabies vaccination shall also be required, and will determine the length of validity of the license. Lifetime licenses will be available without cost to service animals.

B. POTENTIALLY DANGEROUS ANIMAL LICENSE

A Potentially Dangerous Animal License shall be required for any animal deemed potentially dangerous within the Town of Edgewood. The license will be valid for one

(4.2 Licensing-Section B-Cont'd)

year. The owner must comply with the registration and handling requirements for the potentially dangerous animal to obtain the Potentially Dangerous Animal License.

C. DANGEROUS ANIMAL LICENSE

A Dangerous Animal License shall be required for any animal deemed dangerous within the Town of Edgewood. The license will be valid for one year. The owner must comply with the registration and handling requirements for the dangerous animal to obtain the dangerous license.

4.3 PERMITS**A. CONDITIONAL USE PERMIT**

No person shall operate a boarding kennel, grooming parlor, pet shop, doggie day care, refuge, shelter, guard dog site, or hobby breeder site without a valid conditional use permit. A person may obtain a permit under the following conditions:

- 1) Payment of an annual permit fee at the Town Offices.
- 2) Application for a conditional use permit from The Planning & Zoning Commission.
- 3) Annual inspection by an Animal Control Officer of the premises used for keeping animals.

B. GUARD DOG PERMIT

A guard dog permit shall be required for all guard dog sites.

C. HOBBY BREEDER PERMIT

A Hobby Breeder permit will be required for controlled breeding of dogs or cats, instead of an individual litter permit as per Section 4-3G. The Hobby Breeder Permit number must appear in all advertisements regarding the sale of any litter.

D. INTACT ANIMAL PERMIT

An Intact Animal permit is required to keep a dog or cat exempt from being sterilized as mandated by State Law when released from an animal shelter. The animal must be registered with a nationally or internationally recognized animal registry organization. No person shall breed or allow to be bred a dog or cat for which an Intact animal permit has been issued unless accompanied by a Hobby breeder permit.

E. WILD/ EXOTIC ANIMAL PERMIT

- 1) Wild/Exotic Animal permit shall be required for all persons who own, harbor, or keep any Wild Animal, as defined in this Ordinance, or have a valid State or Federal permit for protected species.
- 2) Prohibited Exotic or Wild Animals. No person shall own, harbor or keep any species in violation of Federal or State laws, including, but not limited to, bats and skunks.
- 3) New Animal Addition. If the number of exotic or wild animals in a collection increases as a result of the reproduction of members of the collection or if animals in the collection are replaced by animals of the same number and zoological species, an additional permit is not required during the permit year, provided the Animal Care & Control Department is notified in writing within thirty (30) days of the addition of the new animals.
- 4) Health Requirements. Exotic or Wild animal owners must submit a health certificate from a veterinarian to the Animal Care & Control Department within fourteen (14) days of acquisition of the animal. The health certificate must certify that the animal is in good health and has been vaccinated as appropriate for the species.

(4.3 Permits-Section E.4-Cont'd)

- 5) Wild Animal Permit Requirements.
 - a) In addition to the professional animal facilities and care standard requirements for the permitted premises required by this article, wild animals shall be kept and cared for in a manner which does not constitute a nuisance or endanger the safety of any person, property, or the animal itself.
 - b) The holder of a permit for wild animal(s) must notify Animal Control in writing within thirty (30) days if the owner changes his/her residence or the location of the exotic or wild animals, or sells or otherwise disposes of any of the animal(s) for which the permit was issued.
- 6) Impoundment. The Animal Control Officers may impound an exotic or wild animal for an owner's failure to comply with this article and shall use the impound procedure set out in this article or, if the wild animal may be a danger to the public, use a procedure which protects the public.
- 7) Exclusion. Notwithstanding the above, zoological parks, veterinary hospital, humane societies, shelters, public laboratories, circuses, sideshows, and educational and scientific facilities are excluded from the provision of this section, provided that the excluded facilities use protective devices adequate to prevent the exotic or wild animals from escaping or injuring the public or the animal itself.

F. LITTER PERMIT; DISPLAY OF HOBBY BREEDER PERMIT

The owner who intentionally or unintentionally breeds dogs or cats and does not have a current Hobby Breeder's permit shall purchase a litter permit for each litter. The litter permit fee may be refunded at the time proof of sterilization of the female animal is submitted and verified by the Animal Control Officer no later than two months from the time the female dog or cat delivers a litter.

- 1) Owners of an intact female must obtain a Litter Permit prior to birth of a litter or within one week after the birth of a litter.
- 2) No person shall apply for or obtain more than four litter permits per household in any consecutive 12 month period.
- 3) A litter permit is required to advertise any animal under the age of 1 year for sale, gift, barter, exchange, or give away in any local periodical or newspaper of general circulation. The litter permit number must be included in any advertisement of a member of the litter.
- 4) An owner shall not advertise sell, barter, exchange or give away any puppy or kitten, under one (1) year of age within municipal boundaries unless the litter permit or Hobby Breeder permit has been purchased.
- 5) Litter Permits expire two months from the date of issue.
- 6) Edgewood Animal Care & Control Department may waive the Litter Permit Fee for Rescue Groups and animal foster care givers.
- 7) Puppies and kittens can only be sold, given as a gift, or transferred or conveyed in any other manner from the location listed on the Litter Permit. Puppies or kittens sold on public property or commercial property, even with the owner's permission, are in violation of this article and the puppies and kittens may be seized.
- 8) Puppies and kittens shall not be released from the Permitted Premises prior to eight weeks of age.
- 9) An owner shall furnish the Litter Permit number or Hobby Breeder permit number to any prospective recipient requesting the number.

(4.3 Permits--Cont'd)**G. MULTIPLE ANIMAL PERMIT**

Any person intending to exceed the combined maximum limit of ten (10) dogs or cats in a household shall obtain a Multiple Animal Permit.

- 1) All Dogs and Cats at a Multiple Animal Site shall be licensed and must be either micro-chipped or otherwise permanently identified. A fostered pregnant dog or cat and her eventual offspring are temporary exempted from this rule.
- 2) No person shall be authorized to keep or maintain more than fifteen (15) dogs or cats at any Multiple Animal site, no more than four(4) of which can be un-sterilized, without obtaining the additional written consent and approval of the Animal Care & Control Department.
- 3) Granting of Multiple Animal permits and any other required approvals shall be at the discretion of the Animal Care & Control Department.
- 4) No permit shall be issued until an inspection by Animal Control has been completed and compliance with this ordinance is achieved.
- 5) A Multiple Animal Permit may be revoked, modified or suspended if an adjoining property owner is reasonably aggrieved by any effects of the Multiple Animal Site.

H. A VALID PERMIT SHALL BE POSTED IN A CONSPICUOUS PLACE AT EACH PERMITTED PREMISES

- 1) This provision shall apply to all relevant permits issued pursuant to this Ordinance, including but not limited Multiple Animal permits, Danger Dog permits, Potentially Dangerous Dog permits, Wild Animal permits, Guard Dog permits, and Conditional Use permits.
- 2) A permit holder shall notify the Animal Care & Control Department of any changes in operations which may affect the status of any permit issued pursuant to this Ordinance and shall keep the Animal Care & Control Department informed of all changes in name, location, address, and home and business telephone number of the site and activities covered by the permit.
- 3) Both the person in charge of a permitted premises and the owner of the permitted premises shall be responsible for complying with this article.
- 4) At each permitted premises, a current record shall be kept which describes all animals owned, purchased or received, and the final disposition of each animal.
- 5) Permits shall expire one (1) year after the date of issuance of the permit. An application for renewal shall be filed at the Animal Care & Control Department thirty (30) days before the date of expiration. The fees and application and inspection procedures for permit renewals shall be the same as those for new applications. Failure to renew permits as specified shall result in the expiration of the permit or in the assessment of a five percent (5%) late fee.

J. ACCESS TO PERMITTED PREMISES

Upon presentation of proper identification, and at any reasonable time, the Animal Control Officer shall be allowed to enter any permitted premises for the purpose of making inspections to determine compliance with this article. The person in charge of the permitted premises shall be allowed to accompany the Animal Control Office on the inspection. The Animal Control Officer shall prepare a written inspection report which shall state whether or not the permitted premises is in compliance with or in violation of this article; If the premises is found to be not in compliance, the report shall specify the nature of the noncompliance. A copy of the inspection report shall be furnished to the person in charge.

(4.3 Permits-Cont'd)**K. PERMIT APPROVAL**

Within ten (10) days of receipt of an application for a permit, the Planning & Zoning office shall review the application and the Animal Control Officer shall inspect the premises to determine whether it complies with the standards established in this article. The applicant shall be notified in writing by the Planning Office of approval or denial of the permit application. The Planning office shall approve an application only if it is determined that:

- 1) The standards established by this article and other applicable laws and regulations have been met; and
- 2) The issuance of a permit will not result in activity, which presents a danger to the public health, safety or welfare or a danger or nuisance to the neighborhood.

L. APPEALS

If any affected party wishes to appeal the Animal Control Office's decision regarding a permit application, the party may file an appeal with the Town Council. A written request for the appeal must be filed within five (5) days of the Animal Control Office's decision.

M. PERMIT EXPIRATION; RENEWAL

No permit except a Guard Dog permit is transferable from one person or place to another person or place. A Guard Dog permit may be transferred to a new location operated by the same person during the permit year, provided that advance notice of at least five (5) working days shall be given to the Animal Control Office for each transfer of a Guard Dog permit. Permit transfers shall not be effective until the Animal Control Office has inspected and approved the facilities at the new location and recorded the information required on the permit application.

4.4 NUMBER OF DOGS & CATS ALLOWED

- 1) No person or any one household shall own, harbor, maintain or keep more than a combined total of ten (10) dogs and/or cats in any combination thereof over the age of three (3) months without a valid professional animal permit, Hobby breeder permit, or multiple animal permit.
- 2) A household may have up to (10) dogs or cats or any combinations thereof provided that no more than a total of four dogs and cats are intact.
- 3) No person or household shall permit or allow the breeding of a dog or cat without a valid hobby breeder permit, professional animal permit, or litter permit.

4.5 CARE AND MAINTENANCE

The owner or custodian shall be responsible for the care and maintenance of an animal., including but not limited to companion animals, Canine hybrids, cocks, Dangerous Animals, Guard dogs, Potentially Dangerous animals, service animals and wild animals. An owner or custodian of any animal shall have the following obligations in regard to the care and maintenance of each animal:

- 1) Owner or custodian of an animal shall provide the animal with:
 - a. Food. Animals shall be provided with uncontaminated, edible, nutritious food, which is of adequate quantity as to maintain the normal weight and condition of a healthy animal. Additionally the amount of food administered must properly conform to the individual animal's age and condition. All food containers shall be kept clean; and
 - b. Water. Animals shall be provided with constant access to a supply of potable

(4.5 Care & Maintenance-Cont'd)

- c. water with sufficient amount as to maintain good health as required by the species whether animals are outdoors or indoors except as directed by a Veterinarian; and
 - d. Shelter. Outside housing shall protect animals from weather that may be detrimental to the health of the animal; and
 - e. Area for Exercise; and
 - f. Ventilation. Ventilation must be sufficient to provide for the health and safety of the animal and prevent strong odors from forming; and
 - g. Veterinary Medical Care. Animal owners shall provide regular basic and emergency medical care for all their animals. No person shall keep an animal which is seriously sick or injured without providing proper veterinary care to the animal. The Animal Control Officer may require a letter of health evaluation from a licensed veterinarian describing the condition of the animal; and
 - h. Cleaning and Grooming. Basic cleaning and grooming shall be provided as necessary for the health and general welfare of the animal. Grooming the coat on most animals is necessary to ensure the coat is not matted to the point that it becomes so heavy as to cause skin irritation or trap fecal matter. The animal shall not be so dirty as to provide a home for parasites and insects; and
 - i. No animal shall be allowed to have foreign object imbedded in its skin, fur or hair other than a microchip for companion animals.
- 2) Any owner of an animal shall provide the animal with access to shade not to be inclusive of shelter.
 - 3) No person shall leave an animal in an enclosed vehicle or upon a vehicle for a length of time, which could result in danger to or death of the animal. If an Animal Control Officer determines that an animal in an enclosed vehicle is in immediate danger, the Animal Control Officer may enter the vehicle for the sole purpose of rescuing an animal in danger, by any means necessary and/or legal, without being liable to the owner of the vehicle. The Animal Control Officer may take any animal rescued in this manner into protective custody.

4.6 RESTRAINT OF ANIMALS**A. ANIMALS ON OWNER'S PROPERTY**

Any animal not deemed potentially dangerous or dangerous on its owner's property shall be:

- 1) Placed in a secure run or kennel with access to shade; or
- 2) Kept within a Secure Enclosure, as defined in this Ordinance, surrounding the owner's premises or a portion thereof; or
- 3) Kept under the immediate physical control of a person capable of restraining the animal; or
- 4) Confined through means of a buried electronic barrier/collar system if the dog is properly trained, and the electronic system is functioning properly; or
- 5) Dogs not within a Secure Enclosure may be restrained by means of a trolley system, only if the following conditions are met:
 - a) Only one dog may be tethered to each cable run; and
 - b) The device must be attached to a pulley on a cable run or trolley; and
 - c) There must be a swivel on a least one end of the tether to minimize tangling of the tether; and
 - d) The tether and cable run must be of adequate size and strength to effectively restrain the dog. The size and weight of the tether must not be excessive, as

(4.6 Restraint of Animals-Section A.5-Cont'd)

- e) determined by the Animal Control officer, considering the age, size and health of the dog; and
- f) The cable run must be at least ten (10) feet in length and mounted either at ground level or at least four (4) feet above ground level; and
- g) The tether must be a minimum of ten (10) feet in length which does not allow the animal to move beyond the legal boundary of the property; and
- h) The device must be affixed to an animal by use of a non-abrasive, comfortably fitted collar or harness; and
- i) The device must be fastened so that the animal can sit, walk, and lie down comfortably, and must be unobstructed by objects that may cause the device or animal to become entangled or strangled; and
- j) The animal must have easy access to adequate shade, shelter, food, and potable water; and
- k) The area where the animal is confined must be kept free of garbage and other debris that might endanger the animal's health or safety. Feces shall be cleaned up regularly, but no less frequently than once a week; and
- l) The area where the animal is confined must be kept free of insect infestation, such as ant hills, wasp nests, flea, tick, and maggot infestations; and

B. ANIMALS OFF OWNER'S PROPERTY

- 1) Any animal off of its owner's property shall be kept on a leash at all times in compliance with this article, and under the immediate physical control of a person capable of restraining the animal.
- a) Animals are prohibited from being placed in the back of any motor vehicle, truck bed or trailer unless such animal is confined and no portion of the animal's head protrudes beyond the outer boundaries of the motor vehicle, truck bed, or trailer.
- 2) Animals shall not be kept in or upon any vehicle without the ability to seek shelter from direct rays of the sun when temperatures exceed 95 degrees Fahrenheit, from wind, and from freezing precipitation.

C. CONFINEMENT DURING ESTRUS

While a female Companion Animal is in Estrus, that animal shall be isolated and protected from interaction with un-sterilized male Companion Animals of the same species unless breeding is intended consistent with the requirements of this Ordinance, and a Litter permit or Hobby Breeder permit has been purchased per Section 4-3C.

D. GUARD DOG(S)

- 1) The premises where a guard dog is housed or is on-duty shall be enclosed and secured to prevent escape of the guard dog and injury to the public.
- 2) Guard dog premises shall be posted with warning signs at least twelve (12) inches long on each side. The signs shall state: "Guard Dog" and "Guardia", and shall show a picture of an aggressive dog. The warning signs shall be posted not more than two-hundred (200) feet apart on the exterior walls or fences surrounding the premises, and shall be posted at all exterior corners of the premises and at all entrances.
- 3) Vehicles used to transport any guard dog, and vehicles protected by any guard dog shall be secured to prevent escape of the animal and injury to the public.

(4.6 Restraint of Animals-Section D.3-Cont'd)

Any such vehicle shall be conspicuously posted with warning signs.

E. WILD ANIMAL(S)

Any Wild Animal kept as part of an Animal Exhibit shall be kept within a Secure Enclosure, or so restrained by other means to prevent the animal from leaving the owner's premises or presenting a danger to the general public.

F. OWNER'S LIABILITY

Nothing in this Section shall be construed as allowing any animal under physical restraint to commit an act deemed unlawful in this Ordinance. The Owner shall be liable for any such acts by an animal under physical restraint.

4.7 LIVESTOCK**A. RESIDENTIAL AREAS**

In order to promote a rural character within the municipality, livestock may be kept on any residential-zoned lot, so long as the keeping of any such livestock is in conformance with all Ordinances of the Town of Edgewood and conforms to the following requirements:

- 1) All livestock shall be kept within a fenced enclosure at all times when the animals are not haltered, or bridled and under the direct control of the owner or an authorized agent of the Owner;
- 2) The livestock and lot use shall not constitute a nuisance with regard to noise², odor, vectors, dust, vibration, or other nuisance effects beyond the property lines of the parcel upon which the use is located
- 3) No commercial livestock operation shall be permitted;
The animals shall be kept in such a manner that promotes the general welfare of the animals and is not detrimental to the public health, safety, or welfare; and
- 4) The livestock and lot use complies with all other State, Federal, and local ordinances and regulations.

B. NON-RESIDENTIAL AREAS

Livestock may be kept on any lot zoned other than residential, so long as any such use is in conformance with all Ordinances of the Town of Edgewood.

C. RESTRICTIVE COVENANTS

The provisions of this Ordinance are held to be minimum requirements to carry out the purpose of this Ordinance and are not intended to interfere with any more restrictive laws, covenants, or ordinances. Whenever any provisions of this Ordinance are more or less restrictive than other laws, covenants, or ordinances then the more restrictive shall govern.

4.8 REGISTRATION & HANDLING REQUIREMENTS FOR DANGEROUS AND POTENTIALLY DANGEROUS ANIMALS**A. POTENTIALLY DANGEROUS ANIMALS**

Any owner of an animal determined to be potentially dangerous shall be required to comply with registration and handling requirements for the animal. The owner of the animal must also obtain a potentially dangerous license within thirty (30) days of such determination or the animal must be humanely destroyed. The potentially dangerous license will be valid for one year if the owner establishes the following:

- 1) The owner is able to keep the animal under control at all times; and

² Amended 09/15/10

(4.8 Registration & Handling Requirements for Dangerous and Potentially Dangerous Section A-Cont'd)

- 2) The animal has a current rabies vaccination; and
- 3) The owner has a proper enclosure for the animal; and
- 4) If the animal is a dog or cat, proof must be provided that the animal is sterilized; and
- 5) The animal does not attack any person or other domestic animal at any time and without provocation;
- 6) The animal has been implanted with a microchip containing owner information. That is also provided to the Animal Care & Control Department; and
- 7) If the animal is a dog, the owner has entered the dog in a socialization and behavior program approved or offered by the Animal Care & Control Department.

B. DANGEROUS ANIMALS

- 1) Any owner of an animal determined to be dangerous shall be required to comply with registration and handling requirements for the animal and obtain a dangerous animal license. The dangerous animal license will be valid for one year if the owner, in addition to the requirements of Subsection A of this section, establishes that:
 - a) The owner has the written permission of the property owner or homeowner's association where the dangerous animal will be kept, if applicable;
 - b) The dangerous animal will be maintained exclusively on the owner's property except for medical treatment or examination; and
 - c) When a dangerous animal is moved from the owner's property, the animal shall be caged or muzzled and restrained with a lead no longer than four feet, and the animal shall be under complete control at all times; and
 - d) A clearly visible warning sign with a conspicuous symbol indicating that there is a dangerous animal on the premises is posted where the animal is kept and is visible from a public roadway or from fifty feet, whichever is less; and
 - e) The animal does not attack or repeat another attack on any person or other domestic animal at any time and without provocation.
- 2) If the owner fails to abide by the conditions of registration, confinement, or handling set forth in this ordinance, the Animal Care & Control Department may, without court adjudication, order the immediate impoundment or humane destruction of an animal previously determined to be a dangerous animal.

C. MINIMUM ENCLOSURE FOR POTENTIALLY DANGEROUS AND DANGEROUS ANIMALS

Minimum Enclosure for Potentially Dangerous and Dangerous Animals means confinement indoors or secure confinement in a locked pen, fenced yard or structure measuring at least 6 feet in width, 12 feet in length, 6 feet in height, with secure sides and capped if there is a possibility that the animal can climb the fence. Proper protection from the elements for the animal must be provided. The enclosure must be suitable to prevent the entry of young children, and designed to prevent the animal from escaping.

D. EXCEPTIONS FOR POTENTIALLY DANGEROUS AND DANGEROUS ANIMALS

An animal shall not be declared dangerous or potentially dangerous animal is;

- 1) The animal was used by a law enforcement official for legitimate law enforcement purposes;
- 2) The threat, injury, or damage was sustained by a person or domestic animal

(4.8 Registration & Handling Requirements for Dangerous and Potentially Dangerous Section D-Cont'd)

- 3) that was provoking, tormenting, abusing or assaulting the animal or had repeatedly, in the past, provoked, tormented, abused or assaulted the animal; or
- 4) The animal was:
 - a) Responding to pain or injury;
 - b) Protecting itself or its offspring; or
 - c) Protecting or defending a human being or domestic animal from an imminent, unlawful attack or assault.

4.9 STANDARDS FOR PROFESSIONAL ANIMAL ESTABLISHMENTS**A. STANDARDS**

Inspection standards for a conditional use permit required for all persons who are operating a professional animal establishment such a boarding kennel, grooming parlor, doggie day care, pet shop, refuge, or animal shelter shall include, but are not limited to, the following:

- 1) Animal housing facilities shall be structurally sound and constructed of nontoxic materials. Interior floors shall be smooth, easily cleanable construction and impervious to water. The premises shall be kept clean, sanitary and in good repair in a manner which will protect animals from disease and injury; and
- 2) Indoor and outdoor facilities must meet the definitions of Secure Enclosure; and
- 3) Outdoor facilities must provide shade from the sun and shelter from rain or snow. Adequate drainage must be provided.
- 4) Animals maintained in pens, cages or runs for periods exceeding 24 hours shall be provided with adequate space to prevent overcrowding and to maintain normal exercise according to species. Temporary enclosures must be large enough for the animals to stand up, lie down and stretch out comfortably. Such cages holding cats must contain a litter box.
- 5) Adequate weatherproof housing shall be provided with proper ventilation and temperature, and sufficient lighting and shade. Ventilation must be such that there are no strong odors.
- 6) Provisions shall be made for the timely removal and proper disposal of animal and food waste, soiled bedding, dead animals and debris. Feces and urine shall be removed as necessary to prevent the animals from becoming soiled and to prevent odors but under no circumstances less than twice each day. Animals shall be removed from cages and protected from water and cleaning agents during cleaning. Adequate drainage shall be maintained. Disposal facilities shall be operated in a manner which will minimize vermin infestation, odors, and disease.
- 7) Excessive and night-time noise shall be eliminated.
- 8) Un-sterilized adult animals shall be segregated by sex, except where otherwise indicated for health, welfare or breeding purposes. Animals shall be housed in compatible groups.
- 9) Vicious, diseased, injured, or dangerous or potentially dangerous animals shall be caged individually.
- 10) Animals shall be provided with clean, fresh, sufficient and wholesome food and water. Food and water containers shall be kept clean.
- 11) Sanitary, pest-free storage of food and bedding shall be provided.

(4.9 Standards for Professional Animal Establishments-Section A-Cont'd)

- 12) Each animal shall be observed daily by the person in charge. Programs for disease control and prevention shall be maintained. Sick, diseased, injured, lame, or blind animals shall be provided with appropriate veterinary care.

ARTICLE 5: PROHIBITED ACTIVITIES**5.1 POTENTIALLY DANGEROUS ANIMALS**

No person shall keep or maintain a potentially dangerous animal, as defined in this Ordinance, unless all requirements for licensing have been met as set forth in section 4-8(A & C).

5.2 DANGEROUS ANIMALS

No person shall keep or harbor a dangerous animal as defined in this Ordinance unless all requirements for licensing have been met as set forth in section 4-8(A,B & C). Such an animal shall be subject to immediate impoundment by the Animal Control Officer for euthanasia if the owner fails to abide by the requirements of Section 4-8(A,B & C) At the discretion of the Animal Control Officer, the owner of the animal may arrange for euthanasia through a person or agency other than the Town, if proof of such euthanasia can be provided satisfactorily to the Animal Control Officer.

5.3 WILD ANIMALS

- A.** No person shall keep or harbor on any private or public property within the municipal boundary of the Town of Edgewood any wild or exotic animal of a species that in its natural life is dangerous or ferocious or protected by State or Federal Law, unless the person holds a valid Town business license for an animal exhibit or a wild animal permit, as defined in this Ordinance, or has a valid State or Federal permit for protected species.
- B.** Any person who lawfully holds or keeps a wild or exotic animal as defined by this ordinance prior to the effective date of this ordinance may maintain that individual animal until its death under the following conditions:
- 1) Submission of an application for a wild animal permit within 60 days of the effective date of this ordinance and payment of the annual permit fee.
 - 2) Provision of adequate facilities to prevent the animal from escaping, injuring the public, or creating a public nuisance.
 - 3) Compliance with all applicable requirements set forth in this chapter.
 - 4) No additional wild or exotic animals may be added to the premises by acquisition or breeding as of the effective date of this chapter.
- C.** This section shall not apply to municipal zoos and aquarium facilities, veterinary facilities, or individuals holding a State of New Mexico Wildlife Rehabilitation or Educational Use Permit.

5.4 HYBRIDS

- A.** No person shall own, harbor, keep, sell, offer for sale, or freely give any canine Hybrid, as defined in this Ordinance, within the municipal boundary of the Town.
- B.** Any person who lawfully holds or keeps a canine hybrid as defined by this ordinance prior to the effective date of this ordinance may maintain that individual animal until its death subject to appropriate confinement requirements and under the following conditions:

(5.4 Hybrids-Section B-Cont'd)

- 1) Submission of an application for a Wild Animal permit within sixty (60) days of the effective date of this ordinance and payment of the annual permit fee; and
- 2) Provision of adequate facilities to prevent the animal from escaping, injuring the public, or creating a public nuisance; and
- 3) Compliance with all applicable requirements set forth in this chapter; and
- 4) No additional wild or exotic animals may be added to the premises by acquisition or breeding as of the effective date of this chapter; and
- 5) The containment facility used for housing a canine hybrid shall be open to annual inspection by and Animal Control Officer.
- 6) Any canine hybrid owned, held or kept lawfully pursuant to Section 5-4(B) shall not be replaced once sold, moved to a different location, or upon its death. All such canine hybrids must be sterilized.

5.5 CRUELTY TO ANIMALS

- A.** It is unlawful for a person to recklessly, willfully, or maliciously kill, maim, disfigure, or torture; beat with a stick, chain, club or other object; mutilate, burn or scald with any substance; overwork, torment, harass; poison or otherwise cruelly harm any animal, except that reasonable force may be used to drive off vicious, dangerous, or trespassing animals. When a law enforcement officer or animal control officer has probable cause to believe that an animal has been cruelly treated, the officer may impound the animal for its protection pending appropriate court proceedings.
- B.** It is unlawful for a person to abandon or fail to provide necessary sustenance to any animal under that person's custody or control, including nutritious food, potable water, and access to adequate shade and shelter.
- C.** It is unlawful for any person to tease, harass, annoy, disturb, molest, threaten, or hit any animal which is on the property of its owner, or under the control of its owner.
- D.** It is unlawful for any person to entice, or lure any animal out of an enclosure or off the property of its owner or caretaker or to seize any animal while the animal is on the property of its owner or caretaker, except a law enforcement officer or animal control officer, in the otherwise lawful performances of his/her duties.
- E.** Notwithstanding the foregoing prohibition, it shall not be violation of this ordinance:
 - 1) To use reasonable force to protect a person or animal from death or injury due to an attack by another trespassing animal or vermin;
 - 2) To eradicate or destroy vermin;
 - 3) For the owner of an animal to have the animal humanely destroyed;
 - 4) For law enforcement officer or veterinarian to humanely destroy an animal in an emergency situation when such destruction is reasonably required to protect public health and safety, to relieve the suffering of a mortally wounded or injured animal, and under the where destruction is allowed by state law. There shall be no liability of the law enforcement officer or the Veterinarian for such acts;
 - 5) To engage in legal hunting practices as allowed by state wildlife authorities.

5.6 ILLEGAL POSSESSION

No person, other than an Animal Control Officer, shall retain possession of any animal which is not his/her property without the consent of the animal's owner, if there is evidence of ownership, or retain possession of any animal for more than twenty-four (24) hours without reporting the possession of such animal to an Animal Control Officer. Such a person shall provide his name, address, and telephone number if available, location of the animal, and a true and complete statement of the circumstances under which the animal came into his/her possession.

5.7 ABANDONMENT

No person shall intentionally abandon any animal in a location where any reasonable person would know the Animal has little chance of finding food, potable water or shelter. No person shall dump or release an animal anywhere in the Town or leave an animal behind when the person moves.

5.8 UNCARED FOR ANIMALS, PROTECTIVE CUSTODY**A. PROTECTIVE CUSTODY**

Whenever the Animal Control Officer finds that an animal is or will be without proper care because the Owner is injured, ill, incarcerated, or absent, the Animal Control Officer or Reserve Animal Service Officer may seize the animal using any legal means reasonably necessary under the circumstances for the sole purpose of placing it in protective custody for a period not to exceed fifteen (15) days. While the animal is in protective custody, and upon the advice of a licensed veterinarian, the Animal Care & Control Department may take any action necessary and/or legal to prevent undue pain and suffering to the animal, including the humane destruction of the animal.

B. RECLAMATION AND DISPOSITION OF UNCLAIMED ANIMALS

Within the fifteen (15) day period, the Owner/Custodian may petition the Animal Care & Control Department to reclaim the animal by paying all related costs incurred by the Town and showing that the reason warranting protective custody has been remedied. Animals not reclaimed by the owner at the expiration of the period of protective custody

shall be deemed to be the property of the town following the mailing or other delivery of written notice to the Owner, and the Animal Care & Control Department may place the animal for adoption or otherwise dispose of it in accordance with the provisions of this article.

5.9 RUNNING-AT-LARGE

No person shall cause or permit any animal to run-at large, as defined in this Ordinance

5.10 NUISANCES**A. DISTURBING THE PEACE**

~~1) It is unlawful for any person to allow any animal to persistently or continuously bark, howl, or make noise common to their species, or otherwise unreasonably disturb the peace and quiet of the inhabitants of the Town for more than sixty (60) consecutive minutes or intermittently for more than two (2) hours, or to keep or maintain any animal in any manner such as to disturb the general peace and quiet, disturb by unreasonably noxious or offensive odors, or otherwise endanger the general health, safety, or welfare of the inhabitants of the Town. This provision shall not apply to livestock.~~

~~2) Private criminal complaints may be filed in the municipal court by any citizen~~

(5.10 Nuisances-Section A.2-Cont'd)

affected by an animal disturbing the peace. All complaints filed pursuant to this section shall be in writing, giving the name and address of the person(s) permitting the nuisance to occur and continue and a description of the circumstances which allegedly constitute a violation of this section.

- 3) All animal control³ and law enforcement officers have authority to enforce this section and may issue a citation for violation of this section. Notice shall include the name, address and phone number (if available) of the complainant, and all witnesses to the violation of this section. If the violation of this section is witnessed by an officer, that officer shall become the complainant and the officer's name shall appear as a witness. Penalties for any violation for this section shall be established in the schedule of fees.⁴

B. DEFECATION/URINATION

- 1) No owner of any animal shall allow a dog or cat to defecate upon public property or upon any private property other than the property of the Animal's Owner without thoroughly removing and disposing of the feces.
- 2) No owner of any animal shall allow the feces or urine of the animal to accumulate on his, or another's, property so as to become a public nuisance and/or a danger to the animal or the public health, safety, or welfare

5.11 ANIMAL FIGHTING

- A. No person shall promote stage, hold, manage, conduct, train for, carry on, or attend any game, exhibition, contest or fight in which any animal participates for the purpose of injuring, killing, maiming or destroying itself or any other animal.
- B. No person shall own, possess, rear, breed, train, buy, sell, transport, or advertise or otherwise offer to sell any fighting cock, fighting dog, or other fighting animal;
- C. No person shall be present at any such fight without attempting to interfere with or stop such contest or display.
- D. It is unlawful to own, equip, or sponsor an animal for the purpose of having it participate in animal fighting, including for purposes of monetary gain or entertainment.
- E. No person shall provoke or entice an animal from the property of its Owner or keeper for the purpose of engaging the animal in an animal fight.
- F. No person shall sell, receive, possess, transport, loan, or give away any animals fighting paraphernalia.

5.12 POISONING**A. GENERAL**

No person shall make accessible to any animal, with the intent to cause harm or death, any substance which contains, has been treated with, or has been prepared with a harmful poisonous substance. Such poisoning shall constitute extreme cruelty to an animal.

B. EXCEPTION

This Section does not apply to the placement of such substances in order to control

³ Amended 09/15/10

⁴ Amended 09/15/10

vermin, i.e. rats, mice, moles/gophers, which are a threat to public health, nor does it

(5.12 Poisoning Section B-Cont'd)

apply to the use of substances for the humane destruction of animals in accordance with the provisions of this Ordinance.

5.13 SALE AND DISPLAY OF ANIMALS**A. ANIMAL EXHIBITS**

No person shall operate, conduct, or maintain any animal exhibit as defined in this Ordinance, permanent or temporary, except in conformance with any and all governing State and Federal laws and regulations, and without first having obtained a valid Town business license.

B. TURTLES

No person shall display, sell, offer for sale, barter, auction, give away, or otherwise dispose of any turtle except in conformance with appropriate State and Federal laws and regulations.

C. COMPANION ANIMALS

The owner who intentionally or unintentionally breeds companion animals and does not have a current Hobby Breeder's permit shall purchase a valid litter permit for each litter prior to the sale and display of animals. See (4-3G) of this ordinance.

D. PET STORES

Pet stores shall not sell companion animals.

5.14 INTERFERENCE WITH SERVICE ANIMAL**A. PUBLIC ACCESS**

Notwithstanding any other provision of law, no qualified service animal shall be denied admittance to any building, facility, or accommodation open to the general public, including, but not limited to, restaurants, hotels, motels, hospitals, clinics, swimming pools, stores, common carriers, and theaters provided that the qualified service animal is under the immediate control of a person who is sight impaired, hearing impaired, or mobility impaired.

B. INTERFERENCE

No person shall:

- 1) Intentionally or negligently interfere with the use of a qualified service animal by means of harassment or obstruction; or
- 2) Intentionally or negligently allow an animal owned or controlled by him/her to interfere with the use of a qualified service animal by means of harassment or obstruction.

C. PRIVATE PROPERTY

The provisions of this Section shall not apply to animals on private property and which is not open to the general public.

5.15 INTERFERENCE WITH OFFICIAL DUTIES**A. TAMPERING WITH TRAPS AND EQUIPMENT**

No person shall remove, alter, damage or otherwise tamper with a trap or equipment belonging to or set out by the Animal Care & Control Department.

(5.15 Interference with Official duties-Cont'd)**B. INTERFERENCE WITH ANIMAL CONTROL AUTHORITY**

No person shall threaten, hinder, or interfere in any manner with the Animal Control Officer or Reserve Animal Service Officer in the performance of any duties prescribed by this Ordinance.

5.16 UNENCLOSED PREMISES

No person shall allow an unrestrained animal access to any unenclosed premises so that the animal is physically able to leave the owner's property.

5.17 POSSESSION OF FALSE OR STOLEN DOCUMENTS

No person shall transfer any rabies tag or license, if required, from one animal to another; or possess, manufacture, or use any stolen, counterfeit, or forged license, certificate, or tag.

5.18 IMPROPER RESTRAINT

Direct point chaining, or tethering of dogs to a stationary object, is prohibited.

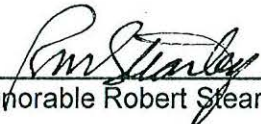
ARTICLE 6: ADOPTION OF ORDINANCE**6.1 EFFECTIVE DATE**

This ordinance shall be in full force and effect five (5) days after its publication, as provided by State law.

This Ordinance repeals Ordinance No. 2003-02.

6.2 ATTESTATION

PASSED, APPROVED, ADOPTED and AMENDED this 19th day of October 2011.


 Honorable Robert Stearley, Mayor

ATTEST:


 Stefanie B. Muller, CMC, Clerk-Treasurer

**TOWN OF EDGEWOOD
Resolution No 2008-30
As Amended November 16, 2011**

**A RESOLUTION
ESTABLISHING A SCHEDULE OF FEES AND OTHER ASSIGNABLE COSTS
RELATED TO THE CARE AND CONTROL OF ANIMALS WITHIN THE
TOWN OF EDGEWOOD, SANTA FE COUNTY.**

WHEREAS: the Governing Body of the Town of Edgewood has duly passed and adopted an Animal Care and Control Ordinance for the Town of Edgewood; and

WHEREAS: the governing Body of the Town of Edgewood deems it necessary and proper to establish a Schedule of Fees and other Assignable Costs in order to help achieve the requirements and purposes of said Ordinance;

THEREFORE: BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN
OF EDGEWOOD THAT:

The Town of Edgewood hereby establishes a Schedule of Fees and other Assignable Costs related to the Care and Control of Animals within the Municipal boundary of the Town of Edgewood, which Schedule is attached hereto as:

"Exhibit 'A'"

WHEREAS: This resolution is supersedes Resolution No. 2004-19

PASSED, APPROVED, and ADOPTED by the Town Council, the governing body of Edgewood, at its regular meeting on November 16, 2011.


Robert Stearley, Mayor

ATTEST:


(Estefanie Muller, Clerk - Treasurer)

"EXHIBIT A"
SCHEDULE OF FEES and OTHER ASSIGNABLE COSTS

A. LICENSING.

One-year licensing fees are to be collected upon the licensing of animals owned by persons living within the municipal boundaries of the Town of Edgewood by the Animal Care & Control Department;

a)	Un-sterilized Male/Female	\$ 20.00
b)	Sterilized Male/Female	\$ 3.00
c)	Potentially Dangerous	\$ 100.00
d)	Dangerous	\$1000.00
e)	Tag Replacement	\$ 3.00

Three-year licensing fees are to be collected upon the licensing of animals with a current three-year rabies certificate owned by persons living within the municipal boundaries of The Town of Edgewood. The three-year licensing fee shall be prorated;

a)	Un-sterilized Male/Female	\$54.00
b)	Sterilized Male/Female	\$ 8.00

B. IMPOUNDMENT FEES.

1. DOGS.

a)	1 st offense	\$20.00
b)	2 nd offense within calendar year	\$30.00
c)	3 rd offense in calendar year	\$40.00
d)	Any additional offenses within the calendar year will be increased by \$10.00	
e)	Boarding cost per day	\$10.00

2. CATS.

a)	1 st offense	\$15.00
b)	2 nd offense within calendar year	\$25.00
c)	3 rd offense in calendar year	\$35.00
d)	Any additional offenses within the calendar year will be increased by \$10.00	
e)	Boarding cost per day	\$ 8.00

3. LIVESTOCK.

a)	Small: Boarding cost per day	\$10.00
b)	Large: Boarding cost per day	\$15.00

4. POCKET PETS, BIRDS & REPTILES.

a)	Boarding cost per day	\$ 3.00
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5. PICK-UP & DISPOSAL FEES.

a)	Pick up and Disposal fees for deceased companion animals taken to the landfill	\$20.00
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- b) Pick up and Disposal fees for deceased companion animals scheduled for General Cremations as follows:
 - 1. Under 15 lbs. \$ 40.00
 - 2. 16 lbs – 75 lbs \$ 55.00
 - 3. 76 lbs – 126 lbs \$ 80.00
 - 4. 127 lbs – 175 lbs \$100.00
 - 5. Over 175 lbs \$ 1.75 per lb.
- c) Pick up and Disposal fees for large animals such as livestock taken to the landfill \$200.00

6. MICROCHIPPING FEES.

- a) Micro-chipping fees (includes registration) \$20.00

7. ADOPTION FEES.

- a) Pre-sterilized dogs (excludes special adoption events) \$75.00
- b) Pre-sterilized cats (excludes special adoption events) \$65.00
- c) Un-sterilized companion animals \$30.00
(plus sterility deposit; see D.1 and D.2 below)
- d) Large Livestock – handled through the New Mexico Livestock Board.
- e) Pocket Pets, Birds, Reptiles, & Small livestock to be determined by sealed bids.

8. EUTHANASIA FEES.

- a) Companion Animals \$30.00

9. LATE FEES.

- a) Failure to renew a license or permit within 30 days of the expiration date, and after several attempts to contact shall result in the assessment of a late fee of \$5.00. (Abolished on 11-19-11 per amended Resolution No. 2008-30)

C. PERMIT FEES.

- 1. Conditional Use Permit \$ 50.00
- 2. Guard Dog Permit \$ 50.00
- 3. Hobby Breeder Permit \$150.00
- 4. Litter Permit \$ 50.00
- 5. Intact Permit \$ 50.00
- 6. Wild Animal Permit \$ 50.00
- 7. Multiple Animals Permit \$ 25.00

D. STERILIZATION DEPOSIT.

- 1. Residents \$25.00
- 2. Non-Residents \$65.00

E. FINES FOR VIOLATIONS.

Any person who violates a provision of this article shall be deemed guilty of a petty misdemeanor, and upon conviction thereof, shall be subject to the penalty provisions set forth in this Ordinance. Each day this article is violated shall be considered a separate offense. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the Judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed 90 days or to the payment of a fine of not more than five hundred dollars (\$500.00) or to both such imprisonment and fine in the discretion of the Judge.

**ORIGINAL
RESOLUTION
IS FILED IN THE
RESOLUTION BOOK
FOR 2012.**

**TOWN OF EDGEWOOD
RESOLUTION NO. 2012-12**

**A Resolution Establishing a Schedule of Fees and Other Assignable Costs Related to the
Care and Control of Animals Within the Town of Edgewood, Santa Fe County.**

The Town Council of the Town of Edgewood, Santa Fe County, New Mexico, by this resolution, adopted by a majority of the Town Council on a roll call vote with a quorum present and voting, and proper notice having been given, resolves and declares as follows:

WHEREAS, the Town Council has duly passed and adopted an Animal Care and Control Ordinance, No. 2008-04, for the Town of Edgewood; and

WHEREAS, the Animal Care and Control Ordinance, No. 2008-04 provides that the Town Council may establish a Schedule of Fees & Other Assignable Costs upon the passage of a duly adopted Resolution of the Council, which schedule shall be incorporated by reference into the Ordinance as "Exhibit A"; and

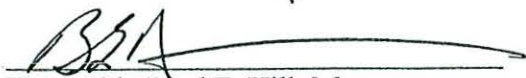
WHEREAS, the Town Council deems it necessary and proper to establish a Schedule of Fees and other Assignable Costs in order to help achieve the requirements and purposes of said Ordinance; and

WHEREAS, this Schedule of Fees and other Assignable Costs shall supersede any and all other fee schedules adopted by the Town Council.

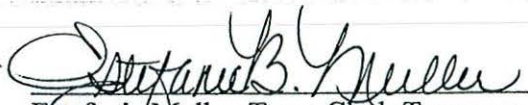
NOW, THEREFORE, be it resolved by the Town Council of the Town of Edgewood that the Town of Edgewood hereby establishes a Schedule of Fees and other Assignable Costs related to the Care and Control of Animals, which Schedule is attached hereto as "Exhibit A".

Adopted this 18th day of April, 2012.

WITNESSED AND APPROVED:


Honorable Brad E. Hill, Mayor

ATTEST:


Stefanie Muller, Town Clerk-Treasurer

"EXHIBIT A"
SCHEDULE OF FEES and OTHER ASSIGNABLE COSTS

A. LICENSING.

One-year licensing fees are to be collected upon the licensing of animals owned by persons living within the municipal boundaries of the Town of Edgewood by the Animal Care & Control Department;

a)	Un-sterilized Male/Female	\$ 20.00
b)	Sterilized Male/Female	\$ 3.00
c)	Potentially Dangerous	\$ 100.00
d)	Dangerous	\$1000.00
e)	Tag Replacement	\$ 3.00

Three-year licensing fees are to be collected upon the licensing of animals with a current three-year rabies certificate owned by persons living within the municipal boundaries of The Town of Edgewood. The three-year licensing fee shall be prorated;

a)	Un-sterilized Male/Female	\$54.00
b)	Sterilized Male/Female	\$ 8.00

B. IMPOUNDMENT FEES.

1. DOGS.

a)	1 st offense	\$20.00
b)	2 nd offense within calendar year	\$30.00
c)	3 rd offense in calendar year	\$40.00
d)	Any additional offenses within the calendar year will be increased by \$10.00	
e)	Boarding cost per day	\$ 20.00

2. CATS.

a)	1 st offense	\$15.00
b)	2 nd offense within calendar year	\$25.00
c)	3 rd offense in calendar year	\$35.00
d)	Any additional offenses within the calendar year will be increased by \$10.00	
e)	Boarding cost per day	\$ 20.00

3. LIVESTOCK.

a)	Small: Boarding cost per day	\$10.00 plus feed
b)	Large: Boarding cost per day	\$15.00 plus feed

4. POCKET PETS, BIRDS & REPTILES.

a)	Boarding cost per day	\$ 3.00 plus feed
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5. PICK-UP & DISPOSAL FEES.

a)	Pick up and Disposal fees for deceased companion animals taken to the landfill	\$20.00
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- b) Pick up and Disposal fees for deceased companion animals scheduled for General Cremations as follows:
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 - 3. 76 lbs-126 lbs \$ 80.00
 - 4. 127 lbs-175 lbs \$100.00
 - 5. Over 175 lbs \$ 1.75 per lb.
- c) Pick up and Disposal fees for large animals such as livestock taken to the landfill \$200.00

6. MICROCHIPPING FEES.

- a) Micro-chipping fees (includes registration) \$20.00

7. ADOPTION FEES.

- a) Pre-sterilized dogs (excludes special adoption events) \$75.00
- b) Pre-sterilized cats (excludes special adoption events) \$65.00
- c) Un-sterilized companion animals \$30.00
(plus sterility deposit; sec D.1 and D.2 below)
- d) Large Livestock - handled through the New Mexico Livestock Board.
- e) Pocket Pets, Birds, Reptiles, & Small livestock to be determined by sealed bids.

8. EUTHANASIA FEES.

- a) Companion Animals \$30.00

9. LATE FEES.

- a) Failure to renew a license or permit within 30 days of the expiration date, and after several attempts to contact shall result in the assessment of a late fee of \$5.00.

C. PERMIT FEES.

- 1. Conditional Use Permit \$ 50.00
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- 5. Intact Permit \$ 50.00
- 6. Wild Animal Permit \$ 50.00
- 7. Multiple Animals Permit \$ 25.00

D. SURRENDER FEE \$25.00

E. STERILIZATION DEPOSIT.

- 1. Residents \$25.00
- 2. Non-Residents \$65.00

RESOLUTION NO. 2013-19

**A RESOLUTION ESTABLISHING A SCHEDULE OF FEES AND OTHER
ASSIGNABLE COSTS RELATED TO THE CARE AND CONTROL OF ANIMALS
WITHIN THE TOWN OF EDGEWOOD, NEW MEXICO**

WHEREAS: The Town Council has duly passed and adopted an Animal Care and Control Ordinance No. 2008-04, for the Town of Edgewood; and

WHEREAS: the Animal Care and Control Ordinance No. 2008-04 provides that the Town Council may establish a Schedule of Fees and Other Assignable Costs upon the passage of a duly adopted Resolution of the Council, which schedule shall be incorporated by reference into the Ordinance as "Exhibit A", and

WHEREAS: the Town Council deems it necessary and proper to establish a Schedule of Fees and other Assignable Costs in order to help achieve the requirements and purposes of said Ordinance; and


WHEREAS: this Schedule of Fees and other Assignable Costs shall supersede any and all other fee schedules adopted by the Town Council; and

WHEREAS: the Town Administrator is hereby authorized to approve low cost adoptions or free adoptions as deemed appropriate due to circumstances and will report such adoptions to the Town Council.

NOW, THEREFORE, BE IT RESOLVED by the Town Council that the Town of Edgewood hereby establishes a Schedule of Fees and other Assignable Costs related to the Care and Control of Animals, which Schedule is attached hereto as "Exhibit A.

This Resolution Supersedes Resolution No. 2013-01.

PASSED, APPROVED and ADOPTED this 7th day of AUGUST, 2013.


Brad E. Hill, Mayor

ATTEST:


Stefanie B. Muller, CMC, Clerk-Treasurer

"EXHIBIT A"
SCHEDULE OF FEES and OTHER ASSIGNABLE COSTS

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a)	Un-sterilized Male/Female	\$ 54.00
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3. LIVESTOCK.

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4. POCKET PETS, BIRDS & REPTILES.

a)	Boarding cost per day	\$3.00 plus feed
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 - 4. 127 lbs. - 175 lbs. \$100.00
 - 5. Over 175 lbs. \$ 1.75 per lb.
- c) Pick-up and Disposal fees for large animals such as livestock taken to the landfill \$200.00

6. MICROCHIPPING FEES.

- a) Micro-chipping fees (includes registration) \$20.00

7. ADOPTION FEES.

- a) Pre-sterilized dogs (excludes special adoption events) \$75.00
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(plus sterility deposit; Section D.1 and D.2 below)
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- 4. Litter Permit \$ 50.00
- 5. Intact Permit \$ 50.00
- 6. Wild Animal Permit \$ 50.00
- 7. Multiple Animals Permit \$ 25.00

D. SURRENDER FEE. \$ 25.00

E. STERILIZATION DEPOSIT.

- 1. Residents \$ 25.00
- 2. Non-Residents \$ 65.00

Carla Salazar

From: MJ Turner <jt87015@gmail.com>
Sent: Thursday, December 01, 2016 3:54 PM
To: Mayor John Bassett; John Abrams; Chuck Ring; Rita Loy Simmons; Sherry Abraham
Cc: Juan Torres; Carla Salazar; Ron Crow; Mike Ring; Tim Dvorak
Subject: Agenda item: discussion of the Animal Control Ordinance
Attachments: joye.pdf; dog-attack-deaths-maimings-merritt-clifton-2014.pdf; faq-pit-bulls-dogsbite.pdf

Mayor and Councilors:

Thank you for placing the item on the December 7 Council agenda. I'm attaching three files which I have found especially helpful in framing my concerns about our current ordinance with regard to managing the risks posed by the keeping and breeding of potentially dangerous dogs. I also plan to attend the Animal Welfare Advisory Committee meeting on December 6.

1. The first is a several years old document (2008) from an International Municipal Lawyers Association workshop. The topic is how to regulate dangerous dogs. Given the date of this workshop, it might be good to look for more recently established case law if any of its suggestions are used.
2. The second report is also a few years old, but it is still cited frequently. The methodology is considered to be relatively sound--and the authors are frank about the limitations. It's a good place to start with identifying physical features and characteristic behaviors of potentially dangerous dogs. This is where I first found a reference to the "Molosser Breeds." More information on this breed grouping can be found at this link to a [website on Bulldogs](#).
3. The third is a production of an organization based in Austin, Texas; citing it is guaranteed to raise the ire of bulldog kennel club members. However, the FAQ document on Pitbulls seems relatively sound so long as it's kept in mind that there is no pretense of the site being unbiased.
4. This webpage from the CDC also has some potentially good advice on crafting sound policy: [Dog Bite Fatalities 1995-1996](#).

While I have identified a list of things about the current ordinance which I would like to see clarified, supplemented, or more rigorously defined, I think the Town's overall approach to dealing with the keeping of animals is a good fit for the community. However, like most small town animal control ordinances, it is set up on the premise of "allowing every dog one bite." That's not a bad thing for the majority of cases. However, that approach does not do enough to protect the innocent human, domestic animal, or livestock victims of unprovoked severe mauling by large, aggressive dogs.

The multiple dog attack which took place on November 6 as well as the attack in 2006 on the young man referred to publicly as "Cody" ([Albuquerque Journal](#)) illustrate the need for a more proactive approach to identifying, managing, and responding to potential threats by dogs which are large, exceptionally territorial, aggressive and powerful. Statistically speaking, these attacks are a minority, but I believe their severity warrants special attention.

Thank you,

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: X. Animal Control: Addressing the
Dangerous Dog Issue.

Title: Regulating Dangerous Dogs: To Ban or Not
To Ban

by

Presenter: John D. Joye

Presenter's Title: Senior Assistant City Attorney - CATS

Presenter's Office: Charlotte City Attorney's Office

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I. Introduction

This paper is intended to be a practical guide to assist municipal attorneys in understanding the general legal issues surrounding the regulation of dangerous dogs as well as the practical and political pitfalls associated with dog attacks and the municipal regulations used to address such incidents.

Background:

‘Dogs are man’s best friend’ or so the saying goes. The dog is generally accepted as the first species to be domesticated by man and this link goes back between 10,000 and 12,000 years.¹ The domestication of the dog may have occurred for a variety of reasons with hunting being only one. Pet ownership is well documented in even primitive communities² and few can argue with the obvious companionship and affection humans share with dogs today. A recent survey conducted by the American Pet Products Manufacturers Association found that there are 74.8 million dogs owned by 44.8 million United States households. Additionally, pet owners spent \$41.2 *billion* on their pets in 2007 (all pets, not solely dogs).³

While it is apparent that dogs and humans have such a relationship as to give rise to the byword ‘dogs are man’s best friend’, there is also a clear legal history involving the regulation of dangerous dogs stretching back to the colonization of America. In 1868, the Supreme Court of Massachusetts upheld the summary destruction of three unlicensed dogs by a town constable (via shooting) based on the police power of the state.⁴ That case made it clear that its holding was based on longstanding common and statutory law flowing from the Massachusetts Province Charter. Further, it noted that a 1715 Massachusetts statute included a provision for the killing of unruly and ravenous dogs.⁵

Also useful to understanding the practical issues in regulating dangerous dogs is the history of a particular breed, the pit bull. The term ‘pit bull’ is a loaded question in itself due to a lack of national consensus regarding the breed and the fact that dogs popularly referred to as pit bulls are associated with at least three different breed names, and arguably more. Those three breeds are the American Staffordshire Terrier recognized by the American Kennel Club (AKC),⁶ the American Pit Bull and the Staffordshire Bull Terrier both recognized by the United Kennel Club (UKC).⁷

Setting the aside the various underlying breed names and using just the popular term ‘pit bull’, it takes only cursory research to find that it is mostly held that the pit bull was developed in England during the early 19th century as an enhancement to the practice of bull-baiting. Briefly put, bull-baiting was a cruel practice wherein a bull was confined to a ring or pit and bulldogs were loosed upon the bull with the object being for the dogs to immobilize the bull or in some variations, to latch onto the bull’s snout and not let go.⁸ Pit bulls were developed by crossbreeding bulldogs and terriers in an attempt to obtain a dog with tremendous endurance, courage, and agility.⁹ The epitome of the desired characteristics can be described as ‘gameness’, defined as unflagging courage and the determination not to quit regardless of extreme pain or injury.¹⁰ Understanding this history of the pit bull is useful in

framing the title question of this paper, to ban or not to ban, which will be discussed in a practical context.

Practical application:

The regulation of dangerous dogs is sadly much more than an academic exercise of municipal powers. Dogs are often loved like just another family member and are defended as such. However, dogs do bite and there are tragic fatalities each year. The Center for Disease control estimates that there over 4.7 million instances of dogs biting humans each year and approximately 18 dog bite related fatalities annually.¹¹ There is no standard means for collecting dog bite and fatality data and most publications and websites base their figures on news reports, meaning that the statistics are approximations and not wholly consistent.

Dog bite related fatalities often receive massive coverage in the media and evoke very strong emotions. Many of the cases cited in this paper or listed as resources flow from ordinances adopted after such an incident occurred in a given jurisdiction. In some years, as many as 80% of the fatalities are children and often such attacks involve multiple dogs (64% in 1995-1996).¹² The high percentage of child fatalities is frightening and makes headlines. Local governments faced with such an event often turn to their attorney to learn what can be done to stop such dangerous dogs. The following sections will help to answer the question of 'what can we do?'

II. Dangerous Dog Regulation

Can municipalities regulate dangerous dogs?

The answer is almost uniformly, Yes. The United States Supreme Court has made it clear in two cases that dogs are considered a type of property subject to drastic regulation¹³ via the police power of the state. "Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the state, and might be destroyed or otherwise dealt with, as in the judgment of the legislature as is necessary for the protection of its citizens."¹⁴ From a federal constitutional perspective, states and hence political subdivisions of states may regulate dangerous dogs even to the point of authorizing summary destruction when the safety and health of the community is threatened.¹⁵ The question then becomes how to regulate, and many times whether to ban or not to ban.

Breed Specific Legislation vs. Non-Breed Specific Legislation.

If a specific dog has been shown to be vicious or dangerous (most often by that particular dog's history of attacks) it is difficult to argue against the dogs destruction. Many communities already have dangerous dog ordinances that define certain behaviors as triggers to classify a particular dog as dangerous, and then allow the local animal control agency to take specific steps to control the particular dog, often including humane destruction. However, some argue that there are specific breeds of dogs that by their

genetic nature are more prone to attack, or are more prone to engage in a prolonged or continued attack. Hence, these 'more dangerous' breeds should be banned altogether or more tightly controlled by regulations. For many communities that are considering enacting or enhancing a dangerous dog ordinance, the gateway question to be answered is should the regulation address or restrict a specific breed?

Breed Specific Legislation, is it Legal?

The short answer to this question is a qualified yes. The qualification comes from the fact that eleven states have passed statutes that limit or forbid their political subdivisions from enacting breed specific ordinances. Those states and the relevant statutory citations are included in the table below.

States Forbidding or Limiting Local Breed Specific Legislation	
California	<i>Cal. Food & Agr. Code s 31683</i>
Colorado	<i>Colo. Rev. Stat. 18-9-204.5(5)</i>
Florida	<i>Fla. Stat. Ann. 767.14</i>
Maine	<i>Me. Rev Stat. Ann. Tit. 7, 3950</i>
Minnesota	<i>Minn. Stat. Ann. 347.51</i>
New Jersey	<i>N.J. Stat. Ann. 4:19-36</i>
New York	<i>N.Y. Agric. & Mkts. Law 107</i>
Oklahoma	<i>Okla. Stat. Ann. Tit. 4, 46(B)</i>
Pennsylvania	<i>3 Pa. Cons. Stat. Ann. 459-507-A(b)</i>
Texas	<i>Tex. Health & Safety Code Ann. 822.047</i>
Virginia	<i>Va. Code Ann. 3.1-796.93:1(2)</i>

Municipalities located in one of the above states likely cannot implement breed specific legislation, though the applicable state law should be carefully reviewed. California has amended its statute and now allows municipalities to require sterilization of some breeds. Municipalities not restricted from breed specific legislation by state law may generally enact such regulations. Nationally, several cities and towns have done so and those ordinances have generally been upheld by the courts as constitutional.

Constitutional Challenges to Breed Specific Legislation

The constitutional challenges to breed specific legislation have been based upon the following constitutional clauses:

Equal Protection

The Equal Protection Clause of the 14th Amendment has been used to argue that breed specific ordinances are unconstitutionally broad and also that they are underinclusive. The gist of each argument is:

Overbroad: Not all pit bulls (or whatever breed is deemed dangerous) are actually dangerous, and hence the breed classification is inherently overbroad and unconstitutional.

Underinclusive: There are other breeds that are dangerous (or specific dogs of other breeds that are dangerous) that are not specifically regulated. Because the ordinance only targets one or more dangerous breeds, but not all of them, the ordinance is underinclusive and unconstitutional.

Neither of the above arguments has been successful. The courts have found that breed of dog is not a suspect classification. Since no suspect classification is at issue, the lowest level of constitutional scrutiny (rational relation test) is applicable and courts have had little trouble finding that the breed specific regulations are rationally related to the preservation of public safety. “[T]he constitutional guarantee of equal protection of the laws does not guarantee that all dog owners will be treated alike; at most, the only guarantee is that all owners of defined pit bulls will be treated alike.”¹⁶

Takings Clause

The Takings Clause of the 5th Amendment requires that government give fair and just compensation whenever it takes private property for public use. Some opponents of breed specific legislation decry that the banning of a breed is a taking, but with little success.¹⁷ The banning of a specific breed by a municipality, especially if a period of time is given for such dogs to be re-located by their owners, is not likely to be considered a taking requiring compensation. Such ordinances are considered an exercise of the general police power as opposed to a taking.¹⁸

Due Process

The Due Process Clause of the 5th and 14th Amendments requires any municipal ordinance to be both substantively and procedurally fair. Due process based attacks on breed specific legislation have had some success. The issue of vagueness as to how a given breed is defined, as well as the process required to determine if a given dog is banned, are areas in which careful drafting is required. (It should be noted that the due process requirement of sufficient notice and hearing apply equally to non-breed specific ordinances, though the issues are usually less murky when dealing with the dog’s factual behavior as opposed to breed and heredity.) Despite the fact that the right of a person to own or possess a specific breed of dog is not considered a fundamental right,¹⁹ and only the rational relation test applies, some courts have struck down ordinances or parts of ordinances based upon the above issues.²⁰

The pit bull breed is an excellent example of the difficulty in crafting a definition of the breed that is being specifically regulated. There are three different names used for what is popularly thought of as the pit bull breed, with numerous other breeds that some would argue should also be considered pit bulls. The method used by the City of North Miami is perhaps the easiest way to sufficiently give notice to the public as to which dogs are regulated by breed. That ordinance refers to the physical description of the three pit bull breeds (American Staffordshire Terrier, American Pit Bull and the Staffordshire Bull Terrier) as set forth by the AKC or the UKC and defines the banned pit bull breed as any

dog that substantially conforms to those distinguishing physical characteristics.²¹ The strength of this method is that it addresses the issue of pit bull hybrids and cross-breeds without a need to look at the dog's actual ancestry (often an impossible task). That ordinance and its definitional method was examined and upheld by the Florida Court of Appeals.²²

Breed Specific Legislation – Opposition.

Consideration must be given to the opposition there is to breed specific legislation. As stated above, eleven states have forbidden or limited its use. Additionally, the Humane Society of the United States (HSUS) opposes such legislation and has issued a position statement reproduced in part below:

The HSUS opposes legislation aimed at eradicating or strictly regulating dogs based solely on their breed for a number of reasons. Breed Specific Legislation (BSL) is a common first approach that many communities take. Thankfully, once research is conducted most community leaders correctly realize that BSL won't solve the problems they face with dangerous dogs.²³

The full statement is available on the HSUS's website. Numerous other groups also oppose such legislation (including the American Veterinary Medical Association²⁴). Any municipality considering enacting breed specific legislation should expect boisterous and well organized opposition to such legislation.

Breed Specific Legislation – Practical Issues.

There are several practical issues that should also be considered. They are as follows:

Slippery Slope: Breed specific legislation is often called for after a particular tragic attack involving a given breed. Banning the currently perceived dangerous breed opens the door to banning subsequent breeds that are involved in another incident. Culturally, the perceived most dangerous breed seems to shift with time and notoriety. Many readers may recall times in which German shepherds, Doberman pinchers, Rottweilers, or perhaps Akitas were the breed in the spotlight.

Notoriety: Breed specific legislation obviously calls attention to a given breed. Often, such attention makes the breed more attractive to those that seek to own and use an aggressive or vicious dog for immoral or illegal purposes.

Moving Target: Many argue that regardless of genetic traits, human mishandling and aggression training of dogs is largely to blame for dangerous dogs. Banning one breed only causes another breed to become the breed of choice for such mishandling.

Enforcement Costs: For any regulation to be effective it must be enforced and the costs of enforcing a ban of an entire breed, especially if the breed is popular and kept in large numbers can be prohibitive. Prince George's County, Maryland formed a task force to evaluate the cost versus effectiveness of its own pit bull ban and the task force found that cost outweighed effectiveness and recommended that the ban be repealed.²⁵ Currently, the ban has not been repealed.

Humane Concerns: Breed bans that include humane destruction can obviously cause a large increase in the number of dogs euthanized. Morally, many citizens and voters do not find that aspect of such legislation appealing in the long term.

Non-Breed Specific Legislation

As stated previously, the regulation of dangerous dogs has been common to American law since colonial days. States, and hence municipalities, have the power to regulate dangerous dogs and many do so. Dog specific regulation is common place and but for due process challenges to a particular jurisdiction's notice and hearing process for determining a dog's dangerous status, not very controversial. However, a strong and well written dangerous dog ordinance is not necessarily easy to produce. Often, such ordinances have simply been on the books for years and are suddenly thrown into the spotlight when a tragedy occurs. For that reason, municipal attorney's should consider reviewing their current dangerous dog ordinance and look for, revise, or consider adding, the following:

- Broad definition of dangerous

Many ordinances only consider a dog dangerous after it has bitten. A stronger approach is to define a dog (or any animal) as dangerous when under the **totality of the circumstances** it presents a reasonable risk of injuring a human or damaging property. Determining that a dog is dangerous is usually the threshold for triggering appropriate restraint measures. By using a broad definition of dangerous, animal control officials can address probable accidental injuries caused by large dogs that are not vicious, and have an easier legal standard to prove when dealing with dogs that are borderline aggressive.

- Broad Seizure power

Dangerous, or destructive, dogs very often present an exigency that animal control officers need to have the express legal authority to address, and that means seizing the animal. Also, possession of the dog is often the only means to actually obtain compliance of the owner. Conditioning the return of a seized dog upon appropriate restraint/containment measures being taken is quite effective.

- Address Aggression trained dogs specifically

Requiring any aggression trained dog (specifically defined as any training conducted by the owner or another) to be specially licensed can be a very useful tool in avoiding such aggression training or ensuring that aggression trained dogs are properly contained.

- Multiple dogs

As stated above, dog bite related fatalities often involve multiple dogs. Permit requirements for multiple dog ownership, or for keeping multiple dogs outdoors, can be a useful tool for animal control.

- Mandatory restraint methods

With a broad definition of dangerous as discussed above, obviously not every dog that is declared dangerous under the circumstances is appropriate for destruction. If such a dog is to be maintained by its owner, appropriate restraint/containment measures must be in the discretion of animal control or a hearing officer to order – with seizure and destruction of the animal suspended during compliance with such a restraint requirement. Though sometimes costly, many owners are willing to install completely enclosed and concreted kennels in lieu of losing their dog. Allowing reasonable options often avoids litigation and fosters a reputation of prudence and cooperation for a municipality's animal control.

- Insurance requirements

As with mandatory restraint methods above, it is prudent for a dangerous dog ordinance to require, or allow animal control the discretion to require in defined circumstances, liability insurance to be maintained for certain dogs under certain circumstances. It should be noted, however, that some insurers will not insure certain breeds, or charge an enhanced premium for doing so.²⁶

- Fertility

It is noted in the article "Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998"²⁷ that sexually intact dogs have been found to be 2.6 times more likely to attack than altered dogs. One website listing 2007 dog bite related fatalities notes that of the 33 fatalities it reports, 25 involved intact dogs.²⁸

- Termination of ownership / Destruction

Obviously, a dangerous dog ordinance must expressly authorize the termination of ownership rights and destruction of dangerous dogs in order to be effective. A key to effectiveness, however, is the ability of animal control to have guided discretion in crafting lesser alternatives while suspending such destruction.

III. CONCLUSION

Animal Control is often a component of governance that does not receive much attention until it is thrust to the forefront by a tragedy. Local governments wrangle with police and crime issues, transportation and economic development routinely. Those areas often overshadow the need for animal control resources, until a dog bite fatality makes the headlines. The best time to review and revise a dangerous dog ordinance and process is before such a tragic event occurs. It is then that breed specific vs. dog specific options can best be weighed and solid policy adopted – policy that just may prevent the next headline.

Special thanks to Christine Volponi, Charlotte City Attorney Intern, since she did all the rest.

Endnotes

1. The International Encyclopedia of Dogs 7 (Anne Rogers Clark & Andrew H. Brace eds., 1995).
2. The International Encyclopedia of Dogs 7 (Anne Rogers Clark & Andrew H. Brace eds., 1995).
3. American Pet Products Manufacturer's Association, Inc.
http://www.appma.org/press_industrytrends.asp.
4. *Blair v. Forehand*, 100 Mass. 136.
5. *Id.* at 141 (citing Prov. St. 2 Geo. I. c. 3; Mass. Prov. Laws, (ed. 1726) 243).
6. http://www.akc.org/breeds/american_staffordshire_terrier/history.cfm
7. <http://www.ukcdogs.com/website.nsf/breeds>
8. <http://en.wikipedia.org/wiki/bullbaiting>
9. The International Encyclopedia of Dogs 450 (Anne Rogers Clark & Andrew H. Brace eds., 1995).
10. Safia Gray Hussain, *Attacking the Dog-bite Epidemic: Why Breed Specific Legislation Won't Solve the Dangerous-dog Dilemma*, 74 Fordham L. Rev. 2847.
11. <http://www.cdc.gov/ncipc/duip/biteprevention.htm>. MMWR, May 30, 1997,
<http://www.cdc.gov/mmwr/preview/mmwrhtml/00047723.htm>.
12. MMWR, May 30, 1997,
<http://www.cdc.gov/mmwr/preview/mmwrhtml/00047723.htm>.
13. *Nicchia v. People of the State of New York*, 254 U.S. 228, 41 S.Ct. 103, 65 L.Ed. 235.
14. *Sentell v. New Orleans and Carrollton Railroad Company*, 166 U.S. 698, 704, 17 S.Ct. 693, 695, 41 L.Ed. 1169.
15. *Nicchia v. People of the State of New York*, 254 U.S. 228, 41 S.Ct. 103, 65 L.Ed. 235.
16. *State of Florida v. Peters*, 534 So. 2d 760, 763 (Fl. 1988)
17. *Garcia v. Village of Tijeras*, 108 N.M. 116 (1988). *Colorado Dog Fanciers v. City and County of Denver*, 820 P.2d 644 (Colo. 1991).

18. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980).
19. *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 17 S.Ct. 693, 41 L.Ed. 1169 (1897).
20. *American Dog Owners Assn. v. City of Lynn*, 533 N.E.2d 642 (Mass. 1989).
American Dog Owners Assn. v. City of Des Moines, 469 N.W.2d 416 (Iowa 1991).
Phillips v. San Luis Obispo County Dept. of Animal Reg., 228 Cal. Rptr. 2d 101 (Ct. App. 1986).
21. City of North Miami, Ordinance 422.5
22. *State of Florida v. Peters*, 534 So. 2d 760 (Fl. 1988)
23. *HSUS Statement on Dangerous Dogs and Breed-Specific Legislation*,
http://www.hsus.org/pets/issues_affecting_our_pets/dangerous_dogs.html
24. American Veterinary Medical Association, policy. Dangerous Animal
Legislation, http://www.avma.org/issues/policy/dangerous_animal_legislation.asp
25. http://www.akc.org/news/index.cfm?article_id=2608
26. http://www.insurance.com/article.aspx/Will_your_homeowners_insurance_go_up_if_you_buy_a_pit_bull/artid/44
27. Jeffrey J. Sacks, M.D., M.P.H., Leslie Sinclair, D.V.M., Julie Gilchrist, M.D.,
Gail C. Golab, Ph.D., D.V.M. & Randall Lockwood, Ph.D., *Breeds of dogs
involved in fatal human attacks in the United States between 1979 and 1998*,
JAVMA, Vol 217, No. 6, September 15, 2000.
28. Canine Aggression Issues with Jim Crosby, 2007 – Fatal Attack Facts and Figures,
<http://canineaggression.blogspot.com/2008/01/2007-fatal-attack-facts-and-figures.html>

Resource List

Websites

American Dog Owners Association
www.adoa.org

American Kennel Club
www.akc.org

Dog Bite Law
www.dogbitelaw.com

Dogsbite.org
www.dogsbite.org

The Human Society of the United States
www.hsus.org

Rott-N-Chatter
www.rott-n-chatter.com

United Kennel Club
www.ukcdogs.com

Codes and Ordinances

States that Ban Breed Specific Legislation

California: *Cal. Food & Agr. Code* § 31683
Colorado: *C.R.S.* 18-9-204.5*
Florida: *Fla. Stat.* § 767-14
Maine: *7 M.R.S.* § 3950
Minnesota: *Minn. Stat.* § 347.51
New Jersey: *N.J. Stat.* § 4:19-36
New York: *NY CLS Agr. & M.* § 107
Oklahoma: *4 Okl. St.* § 46
Pennsylvania: *3 P.S.* § 459-507-A
Texas: *Tex. Health & Safety Code* § 822.047
Virginia: *Va. Code Ann.* § 3.2-6540

State that utilizes Breed Specific Legislation

Ohio: *ORC Ann.* 955.11

Charlotte City Code § 3-3
www.municode.com

England

Dangerous Dog Act 1991
http://www.opsi.gov.uk/acts/acts1991/Ukpga_19910065_en_1

Dangerous Dog (Amendment) Act 1997
www.opsi.gov.uk/acts/acts1997/ukpga_19970053_en_1

Dog attack deaths and maimings, U.S. & Canada

September 1982 to December 31, 2014

Reports are logged as received, and the current log is printed out as requested.

Compiled by the editor of *ANIMALS 24-7* from press accounts since 1982, this table covers only attacks by dogs of clearly identified breed type or ancestry, as designated by animal control officers or others with evident expertise, who have been kept as pets. All accounts are cross-checked by date, location, and identity of the victim.

Attacks by police dogs, guard dogs, and dogs trained specifically to fight are also excluded. "Attacks doing bodily harm" includes all fatalities, maimings, and other injuries requiring extensive hospital treatment. "Maimings" includes permanent disfigurement or loss of a limb. Where there is an asterisk (#), please see footnotes. If there are more "attacks" than "victims," it means that there were multiple dogs involved in some attacks. If the numbers of "victims" does not equal the numbers of "deaths" and "maimings," it means that some of the victims -- in attacks in which some people were killed or maimed -- were not killed or maimed.

Because attacks involve varying numbers of dogs and victims, because victims' ages are not always disclosed, and because not all victims of an attack in which someone is killed or disfigured are themselves killed or disfigured, these numbers cannot be added up from left to right to get a balance.

Over the duration of the data collection, the severity of the logged attacks appears to be at approximately the 1-bite-in-10,000 level.

The "%/dogs" column states the percentage of each breed of dog among 65,658 classified ads listing dogs for sale and adoption at web sites during July 2013, screened to eliminate duplicates. For most breeds the numbers differ little from those found in similar surveys done in June 2010, 2011, 2012, and 2013. Similar data has been collected in many previous years, but until 2010 was not included in this table. If a percentage is not listed for a breed or mix, it either appears to be too low to calculate or too difficult to isolate from other variants of the breed or mix. In some cases, including German shepherds, pit bulls and Rottweilers, the percentage includes mixes.

There is a persistent allegation by pit bull advocates that pit bulls are over-represented among reported dog attack deaths and maimings because of misidentifications or because "pit bull" is, according to them, a generic term covering several similar types of dog. However, the frequency of pit bull attacks among these worst-in-10,000 cases is so disproportionate that even if half of the attacks in the pit bull category were misattributed, or even if the pit bull category was split four ways, attacks by pit bulls and their closest relatives would still outnumber attacks by any other breed.

There is also a persistent allegation by pit bull advocates that the use of media accounts as a data source is somehow suspect. Reality is that media coverage incorporates information from police reports, animal control reports, witness accounts, victim accounts in many instances, and hospital reports. Media coverage is, in short, multi-sourced, unlike reports from any single source.

Note: to ensure that the columns are aligned properly, please print this table from e-mail using a non-proportional font, such as Courier or Roman Fixed Width.

Breed	Attacks doing bodily harm [dogs X victims]	Child victims [-----Individuals-----]	Adult victims	Deaths	Maimings	%/dogs	Notes
Akita	70	44	22	8	52	.07%	#
Akita mix (inspecific)	2	2	0	0	2		
Akita/Chow mix	3	3	0	0	3		
Akita/Lab mix	1	1	0	0	1		
Akita/terrier mix	2	1	0	0	1		
Airedale/boxer	1	1	0	1	0		#
Airedale	2	1	1	2	0	.02%	#
Anatolian shepherd	1	1	0	0	1		
Australian blue heeler	13	4	2	1	5		
Australian shepherd	11	7	2	0	5		
Australian shepherd mix	1	0	1	1	0		#
Basset	2	0	2	0	2		#
Basset/GSD mix	1	1	0	1	0		
Basset/beagle mix	1	1	0	0	1		
Basset/Lab mix	1	1	0	1	0		
Beagle	4	3	1	1	3	2.32%	#
Belgian shepherd (Malinois)	7	4	3	0	4	.04%	
Bernese mountain dog	1	0	1	0	1	.06%	
Black mouth cur	4	3	1	0	4		
Blue heeler	20	2	3	0	5		
Border collie	2	1	1	1	2	.09%	#
Boston terrier	2	0	1	1	0	1.81%	#
Boxer	64	19	23	7	31	1.25%	#
Boxer/Australian shepherd	1	1	0	0	1		
Boxer/Boston terrier mix	1	1	0	0	1		
Boxer/bull mastiff mix	1	1	0	0	1		
Boxer/German shepherd mix	1	1	0	1	0		
Boxer/Lab mix	3	1	2	0	3		
Boxer mix	10	3	5	2	6		
Boxer/Sharpei	1	1	0	0	1		
Briard	2	0	1	1	0	.09%	
Brittany spaniel	4	1	0	0	1		
Bulldog (English)	20	12	4	1	14	.06%	
Bull mastiff (Presa Canario)	111	46	41	18	63	.02%	
Bull mastiff/German shepherd	2	1	0	1	0		
Buff mastiff/Rottweiler	2	1	1	0	2		
Bull mastiff/Boxer	1	1	0	1	0		
Bull terrier (not pit)	3	1	1	0	1		
Cane Corso/Italian mastiff	21	4	11	2	12	.05%	
Cane Corso/pit bull mix	1	1	0	1	1		#
Catahoula	4	1	1	1	1	.02%	
Catahoula/pit bull mix	1	0	1	1	0		
Caucasian shepherd	1	0	1	0	1		
Cavalier King Charles spaniel	1	0	1	0	1		#
Chesapeake Bay retriever	3	3	0	0	2		
Chihuahua	1	1	0	1	1	2.75%	#
Chow	61	37	18	8	40	.01%	
Chow/German shepherd	2	1	1	0	2		
Chow/husky mix	2	2	0	1	1		
Chow/Labrador mix	5	5	0	0	4		
Chow/Sharpei mix	1	1	0	0	1		
Chow mix (other)	7	7	1	1	7		
Cocker spaniel	2	2	0	0	2	.08%	
Collie	4	4	0	1	3	1.62%	
Collie/retriever mix	1	1	0	0	1		
Coonhound	3	1	2	1	1	.02%	#
Coton de Tulear	1	0	1	0	1		#
Dachschund	6	3	3	1	6	4.68%	#
Dalmatian	3	3	0	0	3	.01%	
Dalmatian/Akita mix	1	1	0	0	1		

Doberman	23	12	9	8	12	1.70%	#
Doberman/Great Dane mix	1	1	0	0	1		
Dogo Argentino	5	2	3	1	3		
Doge de Bordeaux	2	1	0	0	1		
East Highland terrier	1	0	1	1	0		#
Fila Brasileiro	5	1	1	1	1		#
German shepherd	113	65	41	15	73	3.72%	#
German shepherd mix	45	28	14	7	30		#
German shepherd/Malinois mix	4	4	0	0	1		
German shepherd/husky mix	6	5	1	2	3		#
German shepherd/Lab mix	11	4	2	1	5		#
German shepherd/Sharpei	1	1	0	0	1		
Golden retriever	11	9	2	3	7	3.08%	#
Golden retriever mix	1	0	1	1	0		#
Golden retriever/Lab mix	1	1	0	0	1		
Great Dane	37	12	9	3	19	1.08%	
Great Pyrenees	4	1	2	1	2		
Greyhound	1	1	0	0	1	1.60%	
Hound mix	3	2	1	0	3		#
Husky	83	51	8	26	27	1.04%	
Husky/Malamute mix	2	2	0	0	2		
Husky/Labrador mix	2	1	1	0	2		
Husky mix	3	0	2	1	1		
Jack Russell terrier	5	3	1	2	2	1.46%	#
Jack Russell/English bulldog	1	1	0	0	1		
Karelian bear dog	1	0	1	0	1		
Keeshond	1	0	1	1	0		#
Labrador	56	37	17	3	45	2.47%	#
Labrador mix	27	18	7	1	23	8.98%	#
Lab/blue heeler mix	1	0	1	0	0		
Labrador/boxer mix	1	0	1	0	0		
Lab/Doberman	1	1	0	0	1		
Lab/Great Pyrenees	1	0	1	0	1		
Lab/St. Bernard	1	1	0	0	1		
Malamute	15	12	2	6	5	.08%	
Maremma	1	0	1	0	1	.01%	
Mastiff	28	23	5	5	17	1.15%	
Mastiff/Rhodesian ridgeback	1	1	0	1	0		
Mini-pinscher	1	1	0	0	1		#
Norwegian elkhound	1	0	1	0	1		#
Old English sheep dog	2	1	1	2	0		#
Old English sheep dog mix	1	0	1	0	1		
Pit bull	3397	1355	1312	295	2110	6.69%	#
Pit bull/Akita mix	4	0	4	0	4		
Pit bull/Australian shepherd	2	1	0	0	1		
Pit bull boxer mix	35	14	13	2	23		
Pit bull/chow mix	11	3	4	1	5		
Pit bull/Doberman mix	1	0	1	0	1		
Pit bull/Doberman/GSD/Lab	2	2	0	0	2		
Pit bull/Great Dane	1	1	0	0	1		
Pit bull/Great Dane/Dalmatian	1	0	2	0	2		
Pit bull/GSD mix	15	7	6	1	14		
Pit bull/Lab mix	43	27	11	5	29		#
Pit/Rhodesian ridgeback mix	2	2	0	0	2		
Pit bull/Rott. mix	56	12	9	2	17		
Pit bull/Sharpei mix	2	2	0	0	2		
Pit bull/Sheltie mix	7	4	0	0	4		
Pit bull/Weimaraner mix	1	0	1	0	1		
Pit bull/wolf hybrid	1	1	1	0	2		
Pit mix unknown	22	3	2	1	5		
Plott hound	10	0	1	0	1		
Pointer mix	1	0	1	0	0		#
Pomeranian	1	1	0	1	0	1.33%	
Poodle	4	2	1	0	1	2.55%	#

Poodle/terrier	1	1	0	0	1		
Pug	1	1	0	0	1		
Pug/Rottweiler mix	2	1	0	1	0		
Rat terrier	2	0	1	0	1		
Queensland heeler	5	0	3	0	3		
Rhodesian ridgeback	2	2	0	0	2	.02%	
Rottweiler	535	297	141	85	296	2.76%	#
Rottweiler/chow mix	2	2	0	0	2		
Rottweiler/GSD mix	18	9	8	3	14		
Rottweiler/Labrador	8	7	1	0	8		
Rottweiler/mastiff	2	1	1	1	1		
Russian terrier	1	0	1	0	1		
Saint Bernard	12	8	1	1	7	.10%	
Schnauzer	1	0	1	1	0	1.55%	#
Setter	1	0	1	0	1	2.26%	
Sharpei	6	6	0	0	6	1.45%	
Sharpei/Rottweiler	2	1	0	0	1		
Sharpei/unknown mix	2	2	0	0	2		
Sharpei/Labrador	1	1	0	0	1		
Shiba Inu	3	1	1	1	1	.05%	
Shih Tzu	5	2	3	0	5	1.74%	#
Springer spaniel	3	4	0	0	4		
Terrier mix (not pit bull)	2	0	2	0	2		
Tosa	1	1	0	0	1		
Unidentified	81	16	29	8	32		#
Weimaraner	2	2	0	1	1	.82%	
West Highland terrier	2	0	2	1	1	.32%	#
Wheaten terrier	3	1	1	0	2	.12%	
Wolf hybrid	85	70	5	19	49		#

Crude totals: 5460 2436 1875 593 3285
 (These numbers differ from the totals below because the totals below have been adjusted to avoid duplication in reporting attacks involving multiple dogs of differing breeds.)

Totals of dogs attacking humans in fatal & disfiguring cases:
 5242 2423 1871 593 3285 41.9%

Totals of humans attacked by dogs in fatal & disfiguring cases:
 4870 2323 1810 579 3156 41.9%
 (The sum of fatalities is greater than the total from adding up the column because of deaths involving multiple dogs of differing breed.)

Pit bulls & close pit mixes:
 3617 1443 1379 307 2249 6.0%
 69% 61% 75% 53% 70%

Molosser breeds, including pit bulls, Rottweilers, Presa Canarios, Cane Corsos, mastiffs, Dogo Argentinos, Fila Brasieros, Sharpeis, boxers, and their mixes:
 4467 1895 1622 440 2732 9.2%+
 86% 81% 89% 76% 86%

Wolf-like breeds, broadly defined to include Akitas, German shepherds, huskies, Karelian bear dogs, Malamutes, wolf hybrids, Shiba Inus, and their mixes:
 459 294 96 87 259 3.9%+
 10% 14% 6% 15% 9%

Chows & their close mixes, a chow being apparently an ancient cross of wolf-like Arctic dogs with molossers:

82	54	20	10	55	0.1%+
2%	3%	2%	2%	2%	

Notes:

Airedale/boxer: The only listed attack was by 10 dogs at once.

Airedale: Anne Beth Grotzky, 87, died from complications of surgery for a broken hip suffered on July 27, 2010 when an Airedale kept by Dale Eggers, 65, knocked her down. Eggers was fined \$500 for allowing the dog to run at large.

Akita: Two fatalities occurring in 1991 and 1993 were initially excluded because they were reportedly inflicted by guard dogs. This has been disputed. Whether these attacks are included or excluded makes little difference to the overall statistical patterns shown on this chart.

Australian shepherd mix: Involved with golden retriever mix in July 26, 2008 fatal attack on Lorraine May, 74, of Titusville, Florida.

Basset hound: Ernest & Kim Lawrence, of Moira, New York, were both injured in 2010 in separate attacks by the same basset hound, who was adopted from the North Country Animal Shelter. Related litigation is underway.

Beagle: The fatality was a strangulation caused by tugging on a leash which was around a child's neck.

Border collie: Involved in 4-dog attack. The other dogs were two pit bulls and a mastiff.

Boston terrier: Elizabeth Louise Hirt, 93, of Bethel Township, Ohio, was found badly mauled by her two Boston terriers on November 27, 2012. Remaining in intensive care for the next two weeks, she died on December 11, 2012.

Boxer: Fatal attack on 3-week-old infant also involved a Rottweiler.

Bull mastiff/Presa Canario: A 13-day-old child was killed in Houston on September 3, 2011 by a dog described by sheriff's department and animal control first responders as a pit bull, but later reported by some media as a Lab mix. Harris County Veterinary Services eventually identified the dog as a Presa Canario.

Cane Corso/pit bull: The dog who killed Jayelin Graham, 4, in Brooklyn on 5/27/11 was reported by some sources as a Cane Corso and by others as a pit bull. A pit bull was also found at the scene. A *New York Daily News* photo of the killer dog showed both Cane Corso and pit bull characteristics.

Cavalier King Charles spaniel: Gary Abbuhl, 65, suffered fractured femur & other injuries on March 5, 2009 in Boulder, Colorado after dog belonging to Kelly Engholt, 31, ran into his bicycle.

Coton de Tulear: Reports differed as to whether the 2014 Coton de Tulear attack on a mail carrier was serious enough to include.

Chihuahua: Dog on retractable leash leaped up and bit the lip of a six-year-old who was riding past on a bicycle. The bicycle's momentum and restraint on the dog apparently increased the severity of the injury (8-12-08, Springfield Township, Indiana.)

Coonhound: Victim Kenneth D. Bock died in 2010 from *Capnocytophaga canimorsus sepsis* infection.

Dachshund: Julia Beck, 87, of Fort Wayne, died 5/15/05, two weeks after attack by dachshund & Lab at home she shared with Michael T. Kitchen, 48, and Linda A. Kitchen, 57. Linda Floyd, 56, a diabetic, lost toe to dachshund who gnawed it off in her sleep 6/30/08.

Doberman: At least two Dobermans were among 16 dogs who are believed to have killed Sherry Schweder, 65, and her husband Luther Schweder, on August 15, 2009 in Lexington, Georgia.

East Highland terrier: Victim, age 75, died of heart attack.

Fila Brasileiro: Bitten repeatedly on August 3, 2007 by four Fila Brasieros, also described in some accounts as "three bull mastiffs and one English bulldog," Jacob Adams, 40, died from a pre-existing condition called intravascular sickling, associated with illnesses including sickle cell anemia, hepatitis, and diabetes. Intravascular sickling can flare up and become fatal under conditions of extreme exertion.

German shepherd: Four disfiguring attacks on four different victims were inflicted by the same German shepherd between May 2000 and October 2009. The dog's keeper, Gary McKeown, 55 of Plymouth, Pennsylvania, was sentenced to two years on probation plus 100 hours of community service, and was fined \$2,244 in connection with the fourth attack. The dog was euthanized.

German shepherd/Lab mix: Attica, New York Police Chief John Palillo identified the alleged service dog who mauled 2-year-old Emilee Amrhein on April 4, 2004 as a "lab shepherd mix." WHEC video of the dog showed a dog of golden Lab coloration and a pit bull-like head.

German shepherd mix: One fatality victim, age 83, was apparently killed by an overly rowdy greeting. The victim was knocked down and suffered multiple broken bones, but was not bitten. The dog had bitten a person on a previous occasion. In that case, the skin was not broken. Another 83-year-old victim was killed by either a German shepherd/Labrador mix or a pit bull. Not clear whether both dogs attacked her, or just one of them. An 18-day-old child was killed in an attack also involving a pit bull/golden Lab mix. Mail carrier Robert Rochester, 55, of New Castle, Delaware, died on October 17, 2012 from a heart attack five days after receiving hospital treatment for multiple bites inflicted by a German shepherd who

was shot at the scene by police. The death was eventually found to have resulted from the dog attack.

German shepherd/husky mix: Neighbors identified the "German shepherd and husky mix" who killed Kyle Holland, 5, in Lincoln Park, Michigan, on July 12, 2010 (with a Lab mix) as a wolf hybrid.

Golden retriever: One dog responsible for an attack was rabid. Another accidentally strangled Kaitlyn Hassard, 6, of Manorville, Long Island, on 1/24/06, by tugging at her scarf.

Golden retriever mix: Involved with Australian shepherd mix in July 26, 2008 fatal attack on Lorraine May, 74, of Titusville, Florida.

Hound mix: The "hound/terrier mix" who attacked Ryan Baxter, 6, on February 14, 2014 in Marsing, Idaho, might in truth have been a pit bull.

Jack Russell terrier: Patricia Schneider, 50, of Discovery Bay, Calif., whose spleen had been removed, died in 2/98 of infection, 3 days after receiving bite on lip at home of Diane Gardner and Elaine Goodney. A Jack Russell chewed off gangrenous toe of Jerry Douthett, of Grand Rapids, Michigan, in August 2010.

Keeshond: A 91-year-old woman whose arm was badly mauled by her "Keeshond mix" on November 14, 2014 at her home in Stratford, Connecticut died four days later from kidney failure believed to have resulted from an infection transmitted by bites. The dog was subsequently found to have a brain tumor.

Labrador: Adult victim was attacked in her home by as many as 23 dogs owned by daughter. The Lab who severely mauled Jasmine Charboneau, 2, on 7/29/04 in Devils Lake, ND, proved to be rabid.

Labrador mix: Reports varied as to whether one case was severe enough to include.

Mastiff: One mastiff attack also involved an attacking pit bull.

Mini-pinscher: One miniature pinscher apparently joined two pit bulls in attacking a child. The dog has also been identified in some accounts as a Doberman. Either way, this isolated event is not of statistical significance relative to the larger patterns of dog attacks.

Old English sheep dog: Gertrude Monroe, 87, mother of Kathryn Schwarb of Birmingham, Michigan, on December 19, 1984 tripped over King Boots, 8, an award-winning show dog belonging to Schwarb, and was severely bitten. Whether Monroe died of the bites, the fall, or a heart attack or stroke preceding the fall was not clearly established. King Boots was defanged and castrated, by judicial order, as this was the second biting incident involving him.

Pit bull: Two cases have involved dogs who assisted in killings carried out by a human, and may have inflicted the fatal injuries. Another case was a 6-year-old girl who was caught and strangled by a pit bull's chain. An 83-year-old victim was killed by either a German shepherd/Labrador mix or a pit bull, but it was not clear whether both dogs attacked her, or just one of them. One case involved a woman who was apparently killed by two pit bulls and one Rottweiler. Not listed but suspect was the December 1998 death of **Z'aira Marshall**, age 4, in Glen Burnie, Maryland. Her father, Richard Prince Marshall, 25, left her remains inside two plastic garbage bags in a wooded area near the Baltimore/Washington Airport, telling a friend that he was disposing of a dead pit bull. She was not reported missing until August 1999. Richard Prince Marshall led police to the remains, saying she had died of convulsions of unknown origin. Decomposition was so advanced that the cause of death could not be determined. Also not listed but suspect was the July 2006 death of **Serenity Brown**, 2, in Brooklyn, New York, who was not reported missing until 2011. The *New York Daily News* on February 10 2014 reported that police believe her father Edward "Chuck" Brown fatally punched her, immersed her in a bathtub, fed her remains to a pit bull, then killed the pit bull. Brown has not been charged, the *Daily News* indicated, due to lack of forensic evidence. A month-old baby girl was smothered in May 2005 in Lockland, Ohio, when a pit bull lay down on top of her. **Rashawn Thompson**, 18, was mauled on 4/25/07 by 13 dogs, including one pit bull and 12 of unidentifiable mix. **Amber Strode**, 22, of Springfield, Illinois, was found dismembered by pit bulls in her home on January 28, 2008. Coroner Susan Boone ruled that Strode had died of a cocaine overdose before the pit bulls attacked her. Boone later resigned for allegedly falsifying evidence in that and several other cases. **Leanne Bechtel** was convicted on October 26, 2012 of killing **Autumn Franks**, 3, on April 3, 2008, in Lakewood, Washington. Bechtel contended that Franks suffered multiple skull fractures when knocked off a couch by a pit bull. However, Franks had suffered earlier injuries, including a prior skull fracture, indicative of human-inflicted abuse. The Franks case is accordingly not included in the dog attack data. As many as 27 pit bull puppies in August 2008 used terminal cancer patient **Michael Warner**, 55, "as a food source," according to Pierce County sheriff's spokesman Ed Troyer. Warner died from his injuries. **Louanne Okapal**, 55, of Sauk County, Wisconsin, suffered severe facial injuries on February 14, 2009 when a pit bull attacked a horse she was saddling and the horse kicked her in the face. A woman who was not named by police was killed on June 4, 2009 in Hayward, California, when a leashed pit bull ran after his owner, who had bicycled across railway tracks in front of an oncoming train, and dragged the woman in front of the train. The pit bull was also killed. This chart formerly included a stat line separate from pit bulls for "American bulldogs." That line recorded an attack on September 13, 2007 in Livingston County, Michigan, by five dogs described by Livingston County animal control director Anne Burns as resembling an "English bulldog on stilts." Photos subsequently established that these dogs were in fact pit bulls. They killed two adults. **Robert J. Klatch**, 83, of Port St. Lucie, Florida, was injured by a pit bull who attacked his shih tsu on February 11, 2009. Klatch died of his injuries and other deteriorating health conditions apparently aggravated by the dog attack on April 21, 2009. Animal control officer **Teresa Foss**, 48, of Plainfield, Connecticut, died on

October 8, 2009, from head injuries suffered when a pit bull she had been called to apprehend apparently knocked her down. **Timothy Niemeyer**, 56, of Indianapolis, suffered a fatal heart attack on October 10, 2009 when attacked by a pit bull; he died on October 14. **Ethel Baker Horton**, 65, of Lee County, Wisconsin, died of a heart attack on March 4, 2010 while intervening in an attack on her husband, Jerry Horton, 71. Portland, Oregon police officer **Stephen Gandy**, 33, suffered a life-threatening blood infection from a bite by a pit bull on April 12, 2010. **Miracle Parham**, 14, of Henry County, Georgia, was killed by a car on October 5, 2010 while trying to escape from a pit bull who rushed her at her school bus stop. **Christina Casey**, 53, was killed on November 2, 2010 in her yard in Moreno Valley, California, by two dogs who were initially identified as pit bulls, but were later mentioned in various reports as mixes of pit bull & Akita and/or pit bull & Weimaraner and/or pit bull, Wainmaraner, and Labrador retriever. The one consistent aspect of the description was that the dogs were at least part pit bull & of pit bull configuration. **Richard Martratt**, 64, died from a heart attack on November 25, 2010, after stabbing one of two pit bulls who had knocked down Joan Hardin, 78. Alan Hardin 50, was bitten in the same incident. A fatality not included in the numbers was **Anna Smith Brown**, 68, of Wilmington, North Carolina, who was killed in a car crash on December 5, 2010 while trying to rush her 20-month-old granddaughter to a hospital after the granddaughter suffered a facially disfiguring bite from a pit bull. **Cary Grant**, 56, died of a heart attack in Sullivan, Ohio, on April 17, 2011, soon after a pit bull attack which appeared to be the triggering event. **Addyson Paige Camerino**, nine days old, was killed on August 30, 2011 in Bladen County, North Carolina, by at least three dogs from among a group including "a pit bull, bulldog, Alaskan malamute, German shepherd and German shepherd-bulldog mix," according to investigators. Neighbors reported that the household also included a Rottweiler. **Emako Mendoza**, 76, of San Diego, died on December 24, 2011. She had been hospitalized since losing her left arm and leg in a June 18, 2011 attack by two pit bulls. **Mable Harrison McCallister**, 84, of Cleveland, Tennessee, was mauled on the face and neck on December 18, 2011. She died on January 1, 2012. **Diane Jansen**, 59, suffered a fatal stroke when attacked by a pit bull on March 4, 2012 in Escondido, California. **Tim Thomas**, 49, of Douglas County, Georgia, on July 13, 2012 suffered a fatal heart attack while trying to stop his two pit bulls from killing a Lhasa Apso. **America Viridiana**, 4, was killed on August 23, 2012 in Tijuana, Mexico, by an adult pit bull brought from San Diego only days earlier by her grandfather, **Godofredo Cruz Martinez**, 55. Although the attack occurred a few miles outside the U.S., it is listed because almost the entire life and acculturation of the dog were in the U.S. **James Harding**, 62, of East Baltimore, Maryland, was killed on February 22, 2013 when he ran in front of a car while trying to escape an attack by two pit bulls. **Carlos Eligio Trevino**, 54, of Idaho Falls, Idaho, died of "apparent natural causes" on January 7, 2014 after breaking up a fight involving seven pit bulls and pit mixes. Not listed is **Pedro Tepale**, 51, whose remains were being eaten by a pit bull and a Rottweiler when discovered on February 14, 2014 by Torsten Werner, animal control officer for Mendocino County, California. The man was believed to have already been dead when the dogs found him. An unidentified 24-year-old man suffered a severe but not life-threatening head injury in Springfield, Illinois on March 6, 2014 when hit by a car while trying to escape a pit bull attack. **Davon Jiggetts**, 17, of Fulton County, Georgia, was killed by a car on April 11, 2014 while trying to evade an attacking pit bull. Not included among these statistics is **Ryan Brown**, 15, of Fayette County, Tennessee, who was fatally injured on August 3, 2014 when struck by a pan his twin brother threw to try to break up a fight between two family pit bulls. Not listed is **Robert Franti**, 40, found dead on October 13, 2014 in Greenwood, Indiana. Police said Franti's pit bull and Cane Corso had eaten the soft tissue from his face, neck, and upper chest, but ascribed his death to a drug overdose.

Pit bull/Lab mix: One child was killed in an attack also involving a German shepherd mix. Cary Phelan, of Papillion, Nebraska, died in August 2012 from an infection transmitted by a pit bull/Lab mix.

Pit bull/Pointer mix: Was involved in attack on Iran Menses, 66, of Los Angeles, on 5/28/00, along with two pit bull terriers, but apparently did not inflict any of Menses' injuries.

Poodle: Very strange 2002 case involved prescription drug use possibly affecting dog as well as victim. A pit bull attack on a 3-year-old on December 2, 2011 in Seymour, Tennessee also involved two poodles who apparently joined in.

Rottweiler: **Jonathon Chandler**, 6 months, of Lancaster, Ohio, was reportedly crushed in bed by the family Rottweiler. Four other children, ages 2-11, were removed from home of **Shelly Fisher**; case was investigated as possible negligent homicide. Another case involved a woman who was apparently killed by two pit bulls and one Rottweiler. The May 15, 2005 death of **Neil Pera** in Wallingford, Connecticut, was attributed by the coroner to cirrhosis of the liver, but police photographs of his remains and the reports of the responding police officers indicate that innumerable bites were involved, apparently as Pera curled into a fetal position to avoid further injury. He died afterward, stretched out on his badly bitten back. **Joe Mortensen**, 22, of Dix Hills, N.Y., was mauled by two Rottweilers belonging to James Mazzone, 44, in June 2007, when the Rottweilers allegedly attacked his pit bull mix. A man fleeing an attack by two Rottweilers was critically injured by a car on September 20, 2009 in Fort Wayne, Indiana. Mail carrier **Hao Yun "Eddie" Lin** of Oceanside, California, suffered a fatal head injury in a fall while trying to evade a lunging Rottweiler on May 25, 2010. **Michael Winter**, 30, of Henrietta Township, Lorain County, Ohio, was killed on June 15, 2010 by a reportedly Rottweiler-led pack also including five bull

mastiffs and three pit bull/boxer mixes. Not listed is an unidentified man whose remains were being eaten by a pit bull and a Rottweiler when found on February 14, 2014 by Torsten Werner, animal control officer for Mendocino County, Calif. The man was believed to have already been dead when the dogs found him.

Schnauzer: A schnauzer joined a pit bull in fatally injuring **Mike Rocha Gomez**, 86, on October 14, 2005 in West Covina, California.

Shih Tsu: **Christine Caron**, 42, of Ottawa, Ontario lost her left arm and both legs to a *Capnocytophaga canimorsus* bacterial infection after suffering a bite on her knuckle while playing with her Shih Tsu, the *Ottawa Citizen* reported on July 22, 2013. Three other dogs licked the wound. The Public Health Agency of Canada found that only 200 human cases of this type of infection have been reported worldwide since 1976. "The medical literature emphasizes that the infection is much more severe in immune incompetent hosts including those with functional or anatomic asplenia [absence of a spleen]," wrote ProMed infectious disease moderator Larry Lutwick.

Unidentified: The death of **Nicholas Benjamin Loris**, 6, of Davidson County, NC, on February 21, 1987, was belatedly recognized by the county medical examiner as having been caused by an attack by an unknown dog in January 2012. **Keith Trout**, 60, of York, PA, died on November 23, 2011 from a septic dog bite, apparently inflicted by one of his own dogs. No breed information was available about the dogs. Sisters **Josefina Ledezma**, 63, and **Estela Regalado**, 51, of Brownsville, TX, were injured on January 24, 2013 by about a dozen of 29 dogs kept in their home, who appeared in news video to be typical mixed-breed Mexican street dogs. Many of the dogs who were not involved in the attack were puppies. Robin Sullins, 48, of Leander, Texas, lost both legs and nine fingers to *Capnocytophaga canimorsus* infection resulting from bites suffered on Christmas Day 2013 while breaking up a fight between her two dogs of unidentified breed.

West Highland terrier: **Rose Kazarian**, 75, suffered a fatal heart attack after a bite by a leashed West Highland terrier while visiting her husband's grave at the Hope Cemetery in Worcester, Massachusetts.

Wolf hybrid: One adult fatality was a small woman who was defending two children. The other was a small woman, 61, who was apparently defending her dog. In that instance, the wolf hybrid was identified as being a wolf hybrid/German shepherd cross, with the German shepherd configuration dominant. Some experts are skeptical that the animal had any wolf ancestry at all. A third possible adult fatality was

Patricia Ritz, 67, of Ohio County, Kentucky, a multi-time convicted animal hoarder whose remains were found on September 24, 2013. Her remains had apparently been eaten by some of her 50 starving wolf-hybrids, but her cause of death was not determined.

Pit bull & pit mix trends, 1982-present

The 1992 data represents the first 10 years of data collection:

YEAR	ATTACKS		CHILDREN		ADULTS		KILLED		MAIMED	
	Total	Year	Total	Year	Total	Year	Total	Year	Total	Year
1992	104		44		60		18		36	
2002	731	86	346	45	248	22	62	6	394	54
2003	859	128	396	50	304	56	75	13	465	71
2004	938	79	434	38	330	26	83	8	503	38
2005	1082	144	495	61	370	40	97	14	584	81
2006	1196	114	524	29	417	47	111	14	647	63
2007	1274	78	554	30	440	23	124	13	684	37
2008	1400	126	595	41	476	37	138	14	738	54
2009	1562	162	668	73	527	51	162	24	831	93
2010	1807	245	778	110	607	80	191	29	973	142
2011	2102	295	880	102	718	111	214	23	1171	198
2012	2405	305	974	95	854	136	246	32	1360	190
2013	2993	588	1190	214	1094	240	276	30	1782	422
2014	3595	603	1454	264	1373	279	307	31	2233	451

Analysis

The above data may be evaluated in three different contexts. The first pertains to breed-specific characteristic behavior, the second to bite frequency as opposed to the frequency of severe injuries, and the third to degree of relative risk.

Of the breeds most often involved in incidents of sufficient severity to be listed, pit bulls and their close mixes make up only about 6% of the total U.S. dog population, according to my frequent surveys of regionally balanced samples of classified ads of dogs for sale, but they constitute 37% of the dog population in U.S. animal shelters at any given time, according to my 2013 single-day shelter inventory survey, which followed up similar surveys producing similar results done in 2004, 2008, 2010, 2011, and 2012.

Pit bulls are noteworthy on the chart above for attacking adults almost as frequently as children. This is a very rare pattern, also seen in the bull mastiff/Presa Canario line. Children are normally at greatest risk from dog bite because they play with dogs more often, have less experience in reading dog behavior, are more likely to engage in activity that alarms or stimulates a dog, and are less able to defend themselves when a dog becomes aggressive. Pit bulls and the bull mastiff/Presa Canario dog category (whose ancestry overlaps pit bull ancestry) seem to differ behaviorally from other dogs in having far less inhibition about attacking people who are larger than they are. They are also notorious for attacking seemingly without warning, a tendency exacerbated by the formerly common and still occasionally seen custom of docking pit bulls' tails so that warning signals are not easily recognized. Thus the adult victim of a pit bull attack may have had little or no opportunity to read the warning signals that would avert an attack from any other dog.

Rottweilers by contrast show a fairly normal child/adult attack ratio. They seem to show up disproportionately often in the mauling, killing, and maiming statistics simply because they are both quite popular and very powerful, capable of doing a great deal of damage in cases where bites by other breeds might be relatively harmless.

Wolf hybrids, German shepherds, and huskies are at the extreme opposite end of the scale, rarely inflicting severe injury on adults—but it would be a huge mistake to assume that these seemingly similar patterns reflect similar behavior.

German shepherds are herding dogs, bred for generations to guide and protect sheep. In modern society, they are among the dogs of choice for families with small children, because of their extremely strong protective instinct. They have three distinctively different bites: the guiding nip, which usually does not break the skin; the grab-and-drag, to pull a puppy or lamb or child away from danger, which is as gentle as emergency circumstances allow; and the reactive bite, usually in defense of territory, a child, or someone else the dog is inclined to guard. The reactive bite usually comes only

after many warning barks, growls, and other exhibitions intended to avert a conflict. When it does come, it is typically accompanied by a frontal leap for the wrist or throat.

Because German shepherds often use the guiding nip and the grab-and-drag with children, who sometimes misread the dogs' intentions and pull away in panic, they are involved in biting incidents at almost twice the rate that their numbers alone would predict: approximately 28% of all bite cases, according to a recent five-year compilation of Minneapolis animal control data. Yet none of the Minneapolis bites by German shepherds involved a serious injury: hurting someone is almost never the dogs' intent.

Every one of the wolf hybrid attacks, however, seems to have been predatory. Only four of the fatality victims were older than age seven, and all three were of small stature. The first adult fatality was killed in the presence of her two young sons, whom she was apparently trying to protect. The second was killed while apparently trying to protect her dog. Most of the victims were killed very quickly. Some never knew the wolf hybrid was present. Some may never have known what hit them. Some were killed right in front of parents, who had no time to react.

Unlike German shepherds, wolf hybrids are usually kept well apart from children, and from any people other than their owners. Yet through the last two decades of the 20th century, wolf hybrids have found frequent opportunity to attack.

Though huskies are common in the U.S., fatal and disfiguring husky attacks have occurred mostly in Alaska, the Northwest Territories, the Yukon, Labrador, and the northernmost parts of Quebec. In these regions, huskies are often kept in packs, in semi-natural conditions, and in some cases are even allowed to spend summers without regular human supervision. Thus many of the husky attack cases might be viewed more as attacks by feral animals, even though they technically qualified for this log because they were identified as owned and trained animals.

Akitas, Malamutes, and Samoyeds have a similar attack pattern, but while these are also "northern breeds" used to pull sleds, most of the attacks by Akitas, Malamutes, and Samoyeds have occurred in ordinary home situations.

Chows, apparently an ancient cross of Arctic dogs with dogs of molosser lineage, exhibit an attack pattern comparable to that of the northern breeds.

What all this may mean relative to legislation is problematic.

The traditional approach to dangerous dog legislation is to allow "one free bite," at which point the owner is warned. On second bite, the dog is killed. The traditional approach, however, patently does not apply in addressing the threats from pit bulls, Rottweilers, and wolf hybrids. In more than two-thirds of the cases I have logged, the life-threatening or fatal attack was apparently the first known dangerous behavior by the animal in question. Children and elderly people were almost always the victims.

Temperament, I must emphasize, is not the issue illustrated by the above data, nor is it relevant. What this data reveals is actuarial risk. If almost any other dog has a bad moment, someone may get bitten, but will not be maimed for life or killed, and the actuarial risk is accordingly reasonable. If a pit bull or a Rottweiler has a bad moment, often someone is maimed or killed—and that has now created off-the-chart actuarial risk, for which the dogs as well as their victims are paying the price.

Merritt Clifton, editor

ANIMALS 24-7

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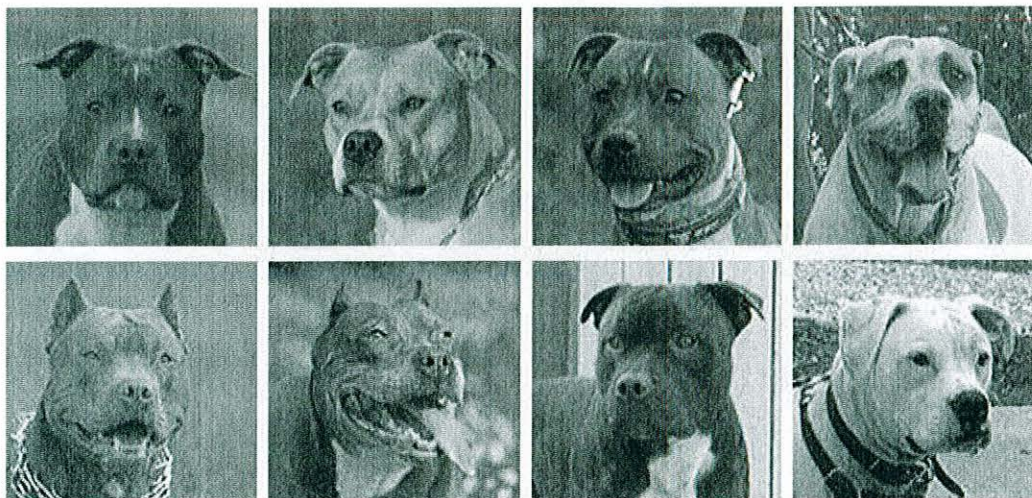
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Pit bull faq

DogsBite.org | <http://www.dogsbite.org/dangerous-dogs-pit-bull-faq.php>

Q: What is a pit bull?



From left: American pit bull terrier, American Staffordshire terrier, Staffordshire bull terrier and American bulldog.

The legal definition of a pit bull is a class of dogs that includes several breeds: American pit bull terrier, American Staffordshire terrier, Staffordshire bull terrier and any other pure bred or mixed breed dog that is a combination of these dogs. Progressive legislation also includes the American bulldog,¹ a related breed that shares the same blood sport heritage of bull baiting. In 1999, the United Kennel Club became the only major kennel club that recognizes the American bulldog.

In the State of Ohio, the legal definition of a pit bull is a "breed of dog commonly known as a pit bull."² The American bulldog became part of this definition after a series of appellate court rulings, *The State of Ohio v. Anderson* (1991) and *Toledo, Ohio v. Paul Tellings* (2007). Weight and shape can vary significantly amongst pit bulls, from 35 to 100 plus pounds.³ (Please see Disguise Breed Name to learn more about the deliberate renaming and mislabeling of pit bulls throughout history.)

¹ Jurisdictions, particularly in Ohio and nearby states, are also incorporating canary dogs (presa canarios) into their breed-specific dog ordinances. See the Wheeling, West Virginia example.

² From 1987 to 2012, Ohio had a statewide pit bull law. This document references the statute at that time, Section 955 of the Ohio Revised Code. By 2006, "a breed of dog commonly known as a pit.bull" included: American pit bull terrier, American Staffordshire terrier, Staffordshire bull terrier, American bulldog and any other pure bred or mixed breed dog whose appearance and physical characteristics is predominately those of any of the dogs listed above, or is a combination of any of the dogs listed above. Though the state law was repealed in 2012, many jurisdictions in Ohio maintain their pit bull ordinances. The appellate decisions pertaining to this issue remain intact.

³ For example, Raising Cain Kennels, breeds and sells XL and XXL red nosed pit bulls. Google query, "XXL pit bull breeders," to find more 100 plus pound pit bull breeders. (Accessed: August 20, 2015)

Q: What is the history of the pit bull?

The blood sport of "bull baiting" began over 1,000 years ago in England (various sources dispute this date). What is undisputed is that by 1500, bull baiting had progressed to Britain's national pastime. Bulldogs were reportedly first mentioned by name in 1631, referring to their function rather than a distinct dog breed. By 1800, and through further selective breeding, the bulldog developed into a compact muscular dog characterized by tremendous jaw strength.⁴

Due to public outrage, bull baiting was banned in England in 1835. Bulldog breeders and owners then moved to the sport of "ratting," where a number of rats were placed into a pit and wagers were made on how many rats the dog could kill in a certain time period. To increase agility, quickness and prey-drive in the bulldog, ratters crossed the breed with terriers. Essentially, it was the sport of ratting that combined the bulldog and terrier into the modern day pit bull terrier.

On the heels of ratting, dogfighting developed. Pit bulls and dogfighting were exported to America as settlers made their way to the New World. In 1884, the American Kennel Club was formed but rejected pit bulls due to their use in dogfighting. In response, Chauncey Z. Bennett formed the United Kennel Club in 1898 to bring formal recognition to the pit bull breed. At that time, Bennett also drew up rules and regulations for dogfighting to bring "organization" to the blood sport.⁵

Q: What is dogfighting and what does it have to do with pit bulls?

Pit bulls are the dog of choice amongst dogmen, individuals who fight their pit bulls against other pit bulls. Dogmen consider pit bull terriers, who they commonly call "100% bulldogs," to be the ultimate canine gladiator. Pit bulls were selectively bred for "gameness," the ability to finish a fight. A truly gamedog will continue fighting "on stumps," two or more broken legs, and far worse.⁶ (Please see excerpts from *The Complete Gamedog*, by Ed and Chris Faron to learn more).

The blood sport of dogfighting involves a contest between two dogs, primarily pit bulls, fighting each other in front of spectators for entertainment and gambling purposes. Other felonious activities, such as illegal drugs, often accompany dogfight matches. A single dogfight averages about an hour in length but can last two or more.⁷ A dogfight begins when a referee says, "Face your dogs," then says, "Let go." The fight ends when one of the dogs will not or cannot continue.

The arrest and conviction of Michael Vick shows that dogfighting still proliferates in the U.S. Law enforcement education, however, is on the rise. In 2008, Edward Faron of Wildside Kennels, known as the "godfather" of dogfighting, was arrested and charged. Faron pleaded guilty to 14 counts of felony dogfighting.⁸ In 2009, authorities unleashed an 8-state simultaneous dogfighting sting and seized over 450 dogs.⁹ In 2013, a string of at least six major raids occurred as well.¹⁰

⁴ The History of Bull Baiting, by Amy Fernandez, DogChannel.com (www.dogchannel.com)

⁵ American Pit Bull Terrier Handbook, by Joe Stahlkuppe, Barron's Educational Series, Inc., 2000. Also see the rules governing recognized dog fight matches: *The American Pit Bull Terrier* (History of Fighting Dogs Series), by Joseph L. Colby, The News Publishing Company, 1936.

⁶ *The Complete Gamedog: A Guide to Breeding & Raising the American pit bull terrier*, by Ed and Chris Faron, Walsworth Pub. Co., 1995.

⁷ Dogfighting Fact Sheet, The Humane Society of the United States (www.humansociety.com)

⁸ Dog-fighting 'godfather' given prison, by Monte Mitchell, Winston-Salem Journal, February 13, 2009 (www.journalnow.com)

⁹ Eight-State Dogfighting Raid Largest in U.S. History, by Wayne Pacelle, The Humane Society of the United States, July 9, 2009 (blog.humansociety.org)

Q: Why do I always read about pit bulls in the news?

When a pit bull attacks, the injury inflicted may be catastrophic. First responders, such as police officers and firefighters, understand this as do members of the media, who are quick to report these attacks. Ongoing social tension also keeps pit bulls in the news. The pit bull problem is now over 30-years old.¹¹ In this time, most lawmakers have been "too afraid" to take breed-specific action to correct the problem. Due to this failure, horrific maulings continue to make headlines.

About half of all media reports regarding pit bulls involve police officers shooting dangerous pit bulls in the line of duty.¹² Since the late 1970's pit bulls have been used extensively in criminal operations for drug dealers, gang members and other violent offenders. The pit bull terrier is the breed of choice for criminals. This choice is directly linked to the pit bull's selectively bred traits of robust jaw strength, a deadly bite style, tenacity (gameness) and a high tolerance to pain.¹³

Q: Why do people say that pit bulls "don't let go?"

Through selective breeding, pit bulls have developed enormous jaw strength, as well as a ruinous "hold and shake" bite style, designed to inflict the maximum damage possible on their victims. This bite trait delivered winning results in the fighting pit. When the Colorado Supreme Court upheld the Denver pit bull ban in 2005, the high court set aside characteristics that pit bulls displayed when they attack that differ from all other dog breeds. One of these characteristics was their lethal bite:

"[pit bulls] inflicted more serious wounds than other breeds. They tend to attack the deep muscles, to hold on, to shake, and to cause ripping of tissues. Pit bull attacks were compared to shark attacks." - Kory Nelson, *One City's Experience*¹⁴

Leading pit bull education websites, such as Pit Bull Rescue Central, encourage pit bull owners to be responsible and to always carry a "break stick" -- a tool used to pry open a pit bull's jaws -- in case their dog "accidentally" gets into a fight. These same websites also warn that using a break stick on any other dog breed may cause serious injury to the person.¹⁵ This is true because no other dog breed possesses the pit bull's tenacity combined with a "hold and shake" bite style.

One of the most powerful examples of a pit bull "not letting go" occurred in an Ohio courtroom. During the *Toledo, Ohio v. Paul Tellings* trial (Tellings was convicted of violating the City of Toledo's pit bull ordinance), Lucas County Dog Warden Tom Skeldon showed a videotape of a tranquilized pit bull hanging from a steel cable. The dog is essentially unconscious and still does not release its grip. At the time of the taping, the pit bull was being housed at the Lucas County Animal Shelter.¹⁶

¹⁰ Arrest made in suspected dogfighting-related 2013 triple murder, by Merritt Clifton, *Animals 24-7*, February 17, 2015 (www.animals24-7.org)

¹¹ Pit Bulls -- Family Pets and Fierce Fighters, by Tom Greely, *Los Angeles Times*, July 25, 1982.

¹² Combined data from: Mid Year Results: U.S. Pit Bull Attacks 2009 and Mid Year Results: U.S. Police and Citizen Shootings of Pit Bulls 2009, by DogsBite.org, August 2009.

¹³ One City's Experience, by Kory A. Nelson, Senior City Attorney for the City of Denver, Municipal Lawyer, July/August 2005.

¹⁴ One City's Experience, by Kory A. Nelson, Senior City Attorney for the City of Denver, Municipal Lawyer, July/August 2005. See also: Pit Bull Case Report and Literature Review, by Steven F. Vegas, MD, Jason H. Calhoun, MD, M. Eng., John Mader, MD, *Texas Medicine* Vol. 84, November 1988.

¹⁵ Breaking Up a Fight, Pit Bull Rescue Central (www.pbrc.net)

¹⁶ Information provided by the Lucas County, Ohio Dog Warden and viewing the "Gray's pit bulls" (April 11, 1997) video.

Q: Do pit bulls bite more than other dogs?

Depending upon the community in which you live and the ratio of pit bulls within it, yes and no. But whether a pit bull bites more or less than another dog breed is not the point. The issue is the acute damage a pit bull inflicts when it does choose to bite. The pit bull's "hold and shake" bite style causes severe bone and muscle damage, often inflicting permanent and disfiguring injuries. Moreover, once a pit bull starts an attack, firearm intervention may be the only way to stop it.

When analyzing dog bite statistics, it is important to understand what constitutes a bite. A single bite -- recorded and used in dog bite statistics -- is a bite that "breaks the skin." One bite by a poodle that leaves two puncture wounds is recorded the same way as a pit bull mauling, which can constitute hundreds of puncture wounds and extensive soft tissue loss. Despite the "quagmire" of dog bite statistics, pit bulls are leading bite counts across U.S. cities and counties.¹⁷

Q: Can a pit bull be correctly identified?

Yes, pit bulls are an identifiable dog breed. This is validated by a series of appellate court decisions starting in 1988. (For a break down of each decision see: Pit Bulls Are Identifiable). Each appellate court concluded in its own variance that a "dog owner of ordinary intelligence" or a "layman" could identify a pit bull. Pit bull owners and animal welfare groups, however, still claim the average person, and even professional shelter workers, cannot correctly identify a pit bull.

"Pit bull dogs possess unique and readily identifiable physical and behavioral traits which are capable of recognition both by dog owners of ordinary intelligence..." - *Ohio v. Anderson, Supreme Court of Ohio (1991)*

Nowhere do the high courts make any presumption of "expert" knowledge being necessary to identify a pit bull. Further, appellate courts in Ohio explained in 1989 and 1991 that "an ordinary person could easily refer to a dictionary, a dog buyer's guide or any dog book for guidance and instruction" and "consistent and detailed descriptions of the pit bull dog may be found in canine guidebooks" and more.¹⁸ These rulings occurred a decade before the invention of Google Search.

Related appellate decisions

- *Garcia v. Village of Tijeras*, 767 P. 2d 355 - NM: Court of Appeals 1988.
- *Vanater v. Village of South Point*, 717 F. Supp. 1236 - Dist. Court, SD Ohio 1989.
- *Colorado Dog Fanciers v. Denver*, 820 P. 2d 644 - Colo: Supreme Court 1991.
- *Ohio v. Anderson*, 57 Ohio St. 3d 168 - Ohio: Supreme Court 1991.

Q: How come pit bull owners say, "My dog might lick you to death."

To understand the experience of owning a negatively perceived dog, Tufts Center for Animals and Public Policy did a study on pit bull owners. Researchers found that owners of out-law dog breeds directly feel the stigma targeted at their breed and resort to various tactics to lessen it. One of the

¹⁷ Pit Bulls Lead "Bite" Counts Across U.S. Cities and Counties, by DogsBite.org (continuously updated)

¹⁸ *Vanater v. Village of South Point*, 717 F. Supp. 1236 - Dist. Court, SD Ohio 1989. *Ohio v. Anderson*, 57 Ohio St. 3d 168 - Ohio: Supreme Court 1991.

tactics included attempts to counterbalance the pit bull's menacing appearance and physical power with overwhelming "affectionate" behavior, such as: "My dog might lick you to death."¹⁹

Q: Why does my friend say, "Pit bulls are dog-aggressive not people-aggressive?"

Due to selective breeding for the purposes of dogfighting, pit bulls are highly dog-aggressive. This aggression is not limited to dogs; pit bulls frequently kill other companion pets and domesticated animals. Leading pit bull education websites warn pit bull owners to, "Never trust your pit bull not to fight." These same websites also state that pit bulls should never be left alone with another dog or animal.²⁰ The practical and moral question is: Why is "pit bull dog aggression" tolerated at all?

Pit bull dog aggression is unacceptable for two reasons. In many instances it leads to human aggression. A common scenario is the following: A loose pit bull attacks a leashed dog being walked by its owner. The owner gets seriously injured trying to stop the attack. Every year, one or more Americans suffers death due to pit bull dog aggression, including pit bull rescuers like Rita Woodard and Mary Jo Hunt who died while attempting to break up a fight between their pit bulls.

Secondly, far too many beloved companion pets and domesticated animals suffer a violent death by the powerful jaws of pit bull terriers each year. In some instances, these attacks involve pit bulls charging through screen doors of private homes -- in a home invasion attack -- to kill the pet living inside.²¹ Owners of the pet are then forced to watch as their dog or cat is disemboweled by the pit bull and pray that the animal does not turn its attention on an innocent family member next.

Q: What is the best thing we can do for communities and pit bulls?

The best thing we can do for communities and pit bulls is to regulate pit bull ownership and pit bull breeding. Lowering the pit bull population will reduce the number of serious maulings and the euthanasia of pit bulls. In late 2014, Animals 24-7, a group that tracks shelter killings, estimated that of the 1.3 million shelter dogs projected for euthanasia in 2014, pit bulls accounted for 56%.²² This is true despite the fact that pit bulls only make up about 6% of the total U.S. dog population.²³

Over 700 U.S. cities and nearly all privatized military housing -- the U.S. Army, U.S. Marine Corps and U.S. Air Force -- and many public housing authorities have breed-specific restrictions. Such measures often include: mandatory sterilization, liability insurance and strict containment rules. The most progressive law, a pit bull ban, prohibits new pit bulls and new pit bull breeding. In just a few years, these communities see a significant drop in pit bull bites and euthanasia of pit bulls.

¹⁹ Managing the Stigma of Outlaw Breeds: A Case Study of Pit Bull Owners, by Hillary Twining, Arnold Arluke, Gary Patronek, Tufts Center for Animals and Public Policy, *Society & Animals Journal of Human-Animal Studies*, Vol. 8 Number 1, 2000.

²⁰ 10 Easy to Remember Tips for Responsible Pit Bull Owners, PitBullLovers.com (www.pitbulllovers.com) (Accessed: July 9, 0216)

²¹ Pit bull put down after attack, by Kieran Nicholson, The Denver Post, March 3, 2009 (www.denverpost.com) (Archived by WebCite® at <http://www.webcitation.org/6bcQ8VhI4>)

²² Record low shelter killing raises both hopes & questions, by Merritt Clifton, *Animals 24-7*, November 19, 2014 (www.animals24-7.org)

²³ Dog attack deaths and maimings, U.S. & Canada, September 1982 to December 31, 2014, by Merritt Clifton, *Animals 24-7*, December 31, 2014 (www.animals24-7.org)

About Us

DogsBite.org is a national dog bite victims' group dedicated to reducing serious dog attacks. Through our work, we hope to protect both people and pets from future attacks. Our website, www.dogsbite.org, was launched in October 2007 and contains a wide collection of data to help policymakers and citizens learn about dangerous dogs. Our research focuses on pit bull type dogs. Due to selective breeding practices that emphasize aggression and tenacity, this class of dogs negatively impacts communities the most. Our website hosts important dog bite studies, U.S. dog bite fatalities and other key bibliographies. In the Legislating Dogs portion of our site, we offer examples of breed-specific laws (state-by-state) and documentation of the constitutionality of these laws. The Victim Realities section provides a glance into the unforgettable stories victims leave behind and much more. DogsBite.org operates out of Austin, Texas.



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LODGERS' TAX ORDINANCE NO. 2016-21

AN ORDINANCE IMPOSING A LODGERS TAX; SETTING FORTH DEFINITIONS; PROVIDING FOR EXEMPTIONS; ESTABLISHING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR AUDITS; ESTABLISHING ADMINISTRATIVE PROCEDURES AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE MUNICIPALITY OF EDGEWOOD, NEW MEXICO:

Purpose. The purpose of this ordinance is to impose a tax which will be borne by persons using commercial lodging accommodations which tax will provide revenues for the purpose of advertising, publicizing and promoting facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, and for all other legally permissible purposes.

Definitions. As used in this section.

Board refers to the lodgers' tax advisory board established herein to make recommendations for advertising, publicizing and promoting tourist-related attractions, facilities and events to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

Town Clerk/Treasurer means the Town Clerk/Treasurer of Edgewood, New Mexico.

Gross taxable rent means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

Lodging means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

Lodgings means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

Lodgers tax means tax on lodging authorized by the Lodgers' Tax Ordinance

Person means a corporation, firm, other body corporate, partnership, association or individual, includes a property management company, includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government, or any political subdivision of the state.

Rent means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to a lodgers' tax authorized in the Lodgers' Tax Ordinance.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, condominium, town home, casita, time-share and fractional-share lodge, lodging house, rooming house, motor hotel, bed and breakfast, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin, short-term rental unit or other premises for lodging.

Tourist means a person who travels for the purpose of business, pleasure or culture to the town of Edgewood.

Tourist-related events means events that are planned for, promoted to and attended by tourists.

Tourist-related facilities and attractions means facilities and attractions that are intended to be used by or visited by tourists.

Town means the Town of Edgewood, New Mexico.

Vendee means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

Vendor means a person furnishing lodgings in the exercise of the taxable service of lodging.

Imposition of Tax.

There is imposed a lodgers' tax of three percent (3%) of gross taxable rent for lodging at a taxable premise within the town of Edgewood paid to vendors.

Presumption of Taxability.

Every vendor who is providing lodging within the town of Edgewood is exercising a taxable privilege. The vendor must provide documentation as to any applicable exception under this section, if requested by the town.

Registration.

A. No vendor shall engage in the business of providing lodging in the town of Edgewood who has first not obtained a business registration as provided in this subsection

B. Applicants for a vendor's business registration shall submit an application to the Town of Edgewood stating:

- (1) The name of the vendor, including identification of any person, as defined in this section, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
- (2) A description of the facilities, including the physical address(es), the number of rooms and the usual schedule of rates;
- (3) A description of other facilities provided by the vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others, and a statement identifying the license/registration issued, to whom issued, the authority

- issuing, and the period for which issued. If applicable, also the identification number provided by the taxation and revenue department of the state of New Mexico;
- (4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax;
 - (5) State of New Mexico gross receipts tax number (C.R.S. ID #); and
 - (6) Other information reasonably necessary to effect a determination of eligibility for such license;

C. The Town of Edgewood shall review applications for registration and grant the registration in due course if the applicant is doing business subject to the lodgers' tax;

Change of Ownership.

Upon any change in, or transfer of ownership of lodging facilities, the vendor is required to notify the town of Edgewood in writing:

- A. The nature of the ownership change;
- B. Documentation of sale or incorporation, if applicable;
- C. The effective date of the ownership change; and
- D. The name and business address of the new owner.

Exemptions.

The lodgers tax shall not apply to any portion of the gross taxable rent:

- A. If a vendee:
 - (1) Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days as evidenced by a lease or other long-term lodging documentation; or
 - (2) Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;
- B. If the rent paid by the vendee is less than two dollars (\$2.00) a day;
- C. To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- D. To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. To clinics, hospitals or other medical facilities;
- F. To privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill;

Collection of the Tax and Reporting Procedures.

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the town of Edgewood and shall act as a trustee therefor.
- B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Each vendor registered under this section shall be liable to the town of Edgewood for the tax provided herein on the rent paid for lodging at his respective place of business.
- D. Failure of the vendor to collect the tax is not cause for the town to forgive the tax due and owed by the vendor.
- E. Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the town, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the town of Edgewood and include sufficient information to enable the town to audit the reports and shall be verified on oath by the vendor.
- F. Lodgers' tax payments are due (postmarked by the United States Post Office or other such provider or hand delivered to and receipted by the town) by the twenty- fifth day of each month for receipts of lodging in the preceding calendar month. The town, however, is not obligated to retain all envelopes as it is the responsibility of the vendor to ensure timely payments;
- G. Upon application approved in writing by the town, a vendor may report and submit payments on a quarterly basis, which are due on the twenty-fifth day of the month after the end of the quarter for the receipts of lodging in the preceding calendar quarter, using separate reporting forms for each month in the quarter;

Duties of the Vendor.

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Edgewood, New Mexico, and shall be open to the inspection of the town during reasonable hours and shall be retained for three (3) years.

Failure to Make Return; Computation, Civil Penalty and Notice; Collection of Delinquencies; Lodgers' Tax Is a Lien.

- A. Every vendor is liable for the payment of the proceeds of any lodgers' tax that the vendor failed to remit to the town, whether due to vendor's failure to collect the tax or otherwise. Vendor shall be liable for the tax plus a civil penalty equal to the greater of ten percent (10%) of the amount not remitted or one hundred dollars (\$100.). The town shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed either to the vendor's local or business address, informing the lodging facility of the delinquency and penalty due. Failure to receive the notice does not abate the delinquency and penalty fee.
- B. If payment is not received within fifteen (15) days of the date due, interest will accrue at the rate of one percent (1%) per month or prorated for a partial month on the unpaid balance of the tax and penalty.

C. If payments are not received within fifteen (15) days of the mailing of the notice, the town may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent (1%) a month. If the town attempts collection through an attorney or the town attorney for any purpose with regard to this section, the vendor shall be liable to the town for all costs, fees paid to the attorney or town attorney, and all other expenses incurred in connection therewith.

D. The lodgers tax fee imposed by the town of Edgewood constitutes a lien in favor of the town upon the personal and real property of the property owner of the lodgings. The lien may be enforced as provided in Section 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

E. The payments due under this section, together with all penalties, fees, interest and other charges prescribed, shall become a personal liability of the owner of the property. In addition to collection through foreclosure of the lien, collection may be enforced on such personal liability by resort to any other legal procedure available for the enforcement of personal liabilities.

F. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the town clerk/treasurer the amount of any lodgers' tax fee due the town. Any lodgers tax fee due the town shall be paid from the proceeds of the sale before payment is made to any judgment creditor or any other person with a claim on the proceeds of the sale.

Criminal Penalties; Other Sanctions.

A. Any person who violates the provisions of the lodgers' tax ordinance for a failure to pay the tax, to remit proceeds thereof to the town or to properly account for any lodging and tax proceeds pertaining thereto shall be guilty of a petty misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.) and/or imprisonment not to exceed ninety (90) days, or both.

B. The town may bring an action in the district court for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent (1%) per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid tax.

Refunds and Credits.

A. If any person believes he has made payment of any lodgers' tax in excess of that for which he was liable, he may claim a refund thereof by directing to the town clerk/treasurer, no later than ninety (90) days from the date payment was made, a written claim for refund accompanied by a restated lodgers' tax reporting form for that period. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The town clerk/treasurer shall allow the claim in whole or in part or may deny it.

B. A refund may be made by the town unilaterally to a vendor in consideration of documentation presented in an audit report received as detailed in subsection

Vendor Audits.

- A. The town clerk/treasurer may conduct random audit(s) to verify the amount of gross rent subject to the lodgers' tax and to ensure that the full amount of lodgers' tax on the rent is collected from each vendor thus audited. The town clerk/treasurer may also conduct audits as necessary to verify compliance with this section.
- B. The audit(s) may be performed by the town clerk/treasurer or by any other designee. A copy of the audit shall be submitted to the town's lodgers' tax advisory board for review. A copy of the audit(s) shall be filed annually with the local government division of the department of finance and administration.

Confidentiality of Return and Audit.

It is unlawful for any employee of the town of Edgewood to reveal to any individual other than another employee or elected official of the town of Edgewood any information contained in the return or audit of any taxpayer including vendors subject to the Lodgers' Tax Act, except:

- A. To a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the town of Edgewood is a party, and in which information sought is material to the inquiry;
- B. To the taxpayer himself or to his authorized representative;
- C. In such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer; and
- D. For the identity of vendors subject to the Lodgers' Tax Act.

Advisory Board.

The governing body shall administer the lodgers' tax monies collected. The mayor shall appoint an advisory board of five (5) members; two (2) of whom shall be owners or operators of lodgings subject to the tax within the municipality, two (2) of whom are owners or operators of industries within the municipality that primarily provide services or products to tourists and one (1) member who is a resident of the municipality and represents the general public. The members of the board shall serve at the pleasure of the mayor. The board shall advise the governing body on expenditures of funds for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding areas. The recommendations for the expenditures of funds shall be submitted to the governing body by the board. The budget approved by the governing body shall be furnished to the advisory board.

Use of Lodger's Tax Monies.

Lodgers Tax monies may be used for:

- (1) Collecting and administering the tax;
- (2) Audits;

- (3) Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities or attractions of the municipality in which the municipality is located;
- (4) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality and tourist facilities or attractions within the area;
- (5) Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the respective municipality;
- (6) Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal uses.

Local Government Division Rules.

A report shall be made quarterly to the local government division of the state department of finance and administration of expenditure of lodgers' tax. A copy shall be submitted to the advisory board.

Severability.

If any subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this section.

Effective Date.

This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

NOW, THEREFORE, BE IT RESOLVED:

The Governing Body of the Town of Edgewood hereby adopts Lodgers Tax Ordinance No. 2016-21

PASSED, APPROVED AND ADOPTED this 7th day of DECEMBER, 2016

John Bassett, Mayor

ATTEST:

Juan Torres, Clerk-Treasurer

A RECOMMENDATION TO THE TOWN COUNCIL
TOWN OF EDGEWOOD
FROM THE PLANNING & ZONING COMMISSION
October 17, 2016

The Planning and Zoning Commission of the Town of Edgewood recommends adoption of the following amendments to the Zoning Ordinance:

Definition – (changes to be inserted on page 4, **Section 4. B 12**)

“Building Height” means the height of the Building, as measured from ~~six inches below~~ the lowest finished floor, not including the basement, to the highest point of the building, based ~~either on the top of the parapet or coping of a flat roof or the ridges~~ peak of a sloping roof, not including chimney(s) or exhaust pipes or any devices attached to the roof. ~~No Part of any building shall be constructed above the permitted height.~~

District Standards – (to be inserted on page 19, **Section 12 R-1** Conventional 1-acre Residential Zoning, **E. 4**; page 20, **Section 13 R2** Conventional 2-acre Residential Zoning, **E. 4**; page 28, **Section 21 C-1** Commercial Zone **D. 4**; and page 27, **Section 19. R-S** Residential and Services **E. 4**)

“Maximum Building Height shall be ~~36 (thirty-six)~~ 40 (forty) feet.”

(to be inserted on page 21, **Section 14 R3** Residential /Institutional, **E. 3**; page 27, **Section 20. MU** Mixed Use **E. 4**; and page 29, **Section 22 C2** Commercial Business Zone, **D. 4**)

“Maximum building height shall be 40 (forty feet), unless a different maximum height is recommended/approved in a letter from the Santa Fe County Fire Department.”

D. District Standards (to be inserted on page 24, **Section 24, RE** Residential Estate as **D. 1 & 2**)

1. Setbacks shall be maintained as follows:

- a. Front Setback shall be no less than thirty (30) feet;
- b. Side Setback shall be no less than ten (10) feet, except in cases of corner lots, where the secondary street Side Setback shall be no less than twenty (20) feet;
- c. Rear Setback shall be no less that ten (10) feet.

2. Maximum building height shall be forty (40) feet.

4. Setbacks shall be maintained as follows: (to be inserted on page 25, **Section 18. RR**-Rural Residential as **E. 4& 5**)

- d. Front Setback shall be no less than thirty (30) feet;

- e. Side Setback shall be no less than ten (10) feet, except in cases of corner lots, where the secondary street Side Setback shall be no less than twenty (20) feet;
- f. Rear Setback shall be no less than ten (10) feet.

5. Maximum building height shall be forty (40) feet.

These recommendations have been made after the Commission considered frustrations of citizens with the method used to measure the height of dwelling units in sloped areas, recommendations of the county fire department, height restrictions in ordinances in other communities, and provisions of the International Building Code. The Commission notes in support of these recommendations that:

- 1) As a practical matter, cost considerations will limit the height of residential structures.
- 2) Provisions of the International Building Code will govern features of multi-story buildings with three or more stories.
- 3) Height limits based on view sheds (to protect ridge lines) are difficult to administer, and there is not yet a clear community mandate to enforce such restrictions.
- 4) The fire department will in any event review all plans for residential structures and make recommendations to the Planning Staff for modifications when appropriate.
- 5) The zoning ordinance should not apply height restrictions that limit roof slopes designed by architects or engineers to carry specific snow loads.
- 6) In conjunction with the varied slopes in this area, the present height restriction may unfairly discriminate against certain building types such as the "A" frame or the "salt box" structure.

The above recommended amendments were unanimously approved by the Commission on this 17th day of October, 2016.


Dan Thompson, Chairman

Attest:

 10-17-16
Garry Bryant, Secretary

**TOWN OF EDGEWOOD
ORDINANCE NO. 2016-08**

**ADOPTING AN ORDINANCE REPEALING
PERSONNEL ORDINANCE NO. 2003-5**

WHEREAS, the Governing Body in and for the Town of Edgewood recognizes having a Personnel Ordinance to be burdensome, redundant and unnecessary; and

WHEREAS, a Personnel Policy Manual provides the same functions as the Personnel Ordinance; and

WHEREAS, a Personnel Policy Manual is a resource document containing employment policy for employees; and

WHEREAS, having all policies and procedures in a manual facilitates training about them to all employees

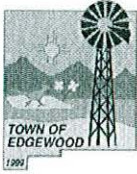
NOW, THEREFORE, BE IT RESOLVED by the Governing Body in and for the Town of Edgewood, New Mexico that we hereby authorize Ordinance No. 2016-08 which repeals Ordinance No. 2003-05

PASSED, APPROVED and ADOPTED by the governing body in and for the Town of Edgewood at its meeting of December 7, 2016.

John Bassett, Mayor

ATTEST:

Juan Torres, Clerk-Treasurer



Town of Edgewood Personnel Policy Manual

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Section I: Purpose

The purpose of this Personnel Policy Manual is to establish policies and procedures in order to ensure, insofar as possible, uniform treatment and administration of personnel employed by the Town of Edgewood. This manual not only outlines the policies towards the various phases of employment, but it also indicates how policy is to be administered. These policies also aid in achieving fair and equitable interpretations of policy which require personnel action on a regular recurring basis. Moreover, it is our intent that all employees have a deeper understanding of their role in the organization.

The Town of Edgewood is committed to providing equal opportunities for all persons making application for employment and for equity in treatment and advancement opportunities for our employees. The importance of each employee's contribution cannot be overstated. It is the Town's goal to provide residents with the finest and most efficient service possible.

Section II: Scope

The policies outlined in this Manual should be regarded as guidelines only, which may require changing from time to time. This policy shall not be amended by any future departmental procedures, directives and/or general orders in order to provide a uniform leave policy for all Town employees. Only the Town of Edgewood Governing Body has the right to add to, delete from, or modify this manual at any time, in its sole discretion.

Section III: Applicability

All positions in the service of the Town of Edgewood are covered under the provisions of this manual and the rules proclaimed under this chapter, except as follows:

1. Elected officials or those appointed to fill vacancies in elected offices;
2. Members of Town boards and commissions who are not employees;
3. Independent contractors;
4. Temporary employees and employees working less than twenty hours per week;
5. Professional consultants.

Section IV: Recruitment and Hiring

A. Purpose and Policy

It shall be the policy of the Town to recruit, select and promote employees on the basis of knowledge, skills and abilities regarding their jobs, regardless of race, sex, age, creed, national origin or political affiliation.

B. Procedures

1. When a position becomes vacant or whenever a new position is to be created, an Employee Requisition form shall be completed by the supervisor and transmitted to the Clerk-Treasurer's office
2. The Clerk-Treasurer will then be responsible for completing a "Notice of Position" form, which shall include a job description. Before to the posting of the Notice of Position form, the salary shall be determined by the appropriate job description and shall be approved by the Town Council. This form shall be distributed and posted in the Town Offices and on other bulletin boards in local centers and community buildings. This form shall be posted for a minimum period of five working days before filling the vacancy or new position. If appropriate, advertisement of a job vacancy may be made in employment agencies, trade journals or the appropriate news media. Casual labor can temporarily fill any vacancy.

C. Application

1. Application Procedure. Each applicant for employment with the Town shall obtain the required form and fill it out completely. Any false statement made on the application shall be grounds for rejection or automatic dismissal from employment.
2. Application Retention. Applications shall be accepted only for approved vacant positions or designated standing files. Standing file applications remain in an active file for six months. Persons desiring to extend this active status may do so by requesting extension from the Clerk-Treasurer.
3. General Requirements. Evidence of job performance and capability, experience, education, training, skills and other abilities shall be carefully considered in evaluating the qualifications of applicants.

4. Basic Qualifications. Basic qualifications and other criteria for employment shall be contained in the job description for each position. Qualifications and criteria for employment shall include minimum requirements for training, education, skills and experience relating particularly to that individual position.
5. Testing. Performance or other tests may be required by the Town to ascertain competency for the position. Mastery of standards for operations may be required.
6. Interview. Applicants shall be interviewed to further determine qualifications for the position.
7. Non-Discrimination. The Town makes every effort to see that its policies:
 1. Do not discriminate on the basis of race, age, handicap, color, sex, religion, political affiliation or marital status;
 2. Do not grant special favors to any employee or group of employees.
8. Individuals will be considered for appointment on the basis of bona-fide occupational qualifications only.
9. Basis for Final Selection. Approval of the final selection for a position will be made by the Town Council upon recommendation of the Mayor and Department Head, after consultation with the Clerk-Treasurer and the supervisor before making a recommendation and will be based upon the following:
 1. Qualification on skills and/or proficiency tests;
 2. Education, backgrounds and experience;
 3. Personal interview; and
 4. Physical examination when required by the job description.
 5. Other job related selection criteria.

D. Ineligibility

Applicants will be considered ineligible for employment by the Town for any of the following reasons:

- (1) Proof of fraud or intentional false statements in an application.
- (2) Failure to complete the testing requirements;
- (3) Failure to appear for processing or for work after notice of appointment.

Section V: Employment Categories and Probationary Periods

A. Employees shall be assigned under the following categories for the purpose of this section:

1. Probationary. A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether he or she is qualified for permanent employment with the Town of Edgewood. Probationary employees

include all newly hired employees and/or employees promoted, transferred and/or reassigned to a new position. Probationary employees shall be subject to Section VI, herein below.

2. Regular Full-Time. Regular full-time employees are employees who have successfully completed their probationary period and who work regularly in excess of thirty-five hours per week.
3. Regular Part-Time. Regular part-time employees are employees who have completed their probationary period and who work less than thirty-five hours per week on a permanent basis.
4. Temporary. Temporary employees may be either full-time or part-time, depending on the nature of employment, but who are considered temporary employees if the work being performed has a specified duration, not to exceed six consecutive months, such as employment during peak periods, summer and students under vocational education programs.
5. Limited-Term. An employee whose employment term is for a continuous fixed period of time normally in excess of six (6) months and generally less than one (1) year and who works a basic work period. The employment term may only be extended upon the approval of the Town Council. The term may be measured by the completion of a specific activity or funding, not necessarily by an ending date. Limited-term employees are not regular employees and do not have recourse to grievance procedures, however may participate in employee benefit plans otherwise afforded regular employees. Limited-term positions must be reviewed annually in the budget process to determine future status.

B. Probationary Period Purpose. The purpose of the probationary period is to give supervisors time to assess whether the employee's skill, performance, reliability and attitude fit the requirements for the position.

C. Probationary Period Considerations and Procedures.

1. The probationary period for all Town employees shall begin on the date of employment and shall continue for 12 months thereafter.
2. A probationary employee is an at-will employee and therefore may be terminated at any time during the probationary period by the Mayor, Clerk-Treasurer or Department Head with or without cause or notice.
3. A probationary employee who is dismissed during the probationary period is not eligible to utilize the Town's appeal procedures.
4. All probationary and non-probationary employees will be eligible for fringe benefits such as retirement and life and health insurance. Sick leave shall accrue from date of employment.
5. An Employee Evaluation Report, which shall be approved as to form by the Clerk-Treasurer, shall be completed by the probationary employee's Department Head

- six (6) months before the end of the probationary period and again twenty (20) days before to the end of the probationary period.
6. In cases where the probationary employee's performance is marginal, neither clearly unsatisfactory nor clearly satisfactory, the probationary period may be extended for a period of up to one (1) year in three (3) month increments to allow further evaluation of the employee performance. If the probationary period is extended, the Department Head shall also place the probationary employee on a performance improvement plan (PIP) that is approved as to form by the Clerk-Treasurer. The probationary period will only be extended in exceptional circumstances. Generally, a probationary employee whose performance is still marginal by their second evaluation will be terminated
 7. Any time a decision is made to terminate a probationary employee; a notice of discharge shall be given in writing.

E. Promotional Probationary Period

1. An employee promoted to a higher level position or laterally transferred shall serve a six (6) month probationary period from the initial promotion or transfer date.
2. This probationary period shall be an integral part of the evaluation of the employee's performance in the new position. At the end of the probationary period, the employee shall be removed from probation unless certification is made by the Department Head to the Clerk-Treasurer that the employee's performance is unacceptable. An employee on probation who is unable to perform satisfactorily in the new position will be returned to the original title, pay grade, and salary, or if this is not possible, to a position at the original pay grade and salary occupied before the promotion or transfer.

F. Performance Reassignment Probationary Period

1. An employee reassigned to an alternative position due to an inability to satisfactorily or fully perform the duties of a position to which the employee was hired, promoted, or transferred shall serve a one (1) year probationary period from the reassignment date.

Section VI: Job Classification and Pay Plan

A. Job Classification Purpose: All positions shall be grouped into classes and each class shall include those positions sufficiently similar in character, difficulty, and responsibility considering:

1. The similarity of the worked performed;
2. Comparable level of education, experience, knowledge, ability, and other qualifications may be required of incumbents;
3. Comparable tests of fitness may be required of incumbents;
4. The same general range of compensation will apply with equity under substantially the same employment conditions.

B. Job Descriptions: The Clerk-Treasurer shall maintain and publish a complete set of descriptions for all job classes. Such descriptions shall include title, typical duties and/or task statements, minimum qualifications, and working conditions. Such descriptions shall be reviewed regularly, but not less than once every four (4) years to maintain their accuracy. The establishment of new or revised classes, or the abolishment of existing classes, shall be recommended or action taken as recommended by the Clerk-Treasurer to the Mayor, for approval by the Town Council.

C. Position Classification Studies: The Clerk-Treasurer shall make position-classification studies of individual positions whenever he/she deems it necessary, or whenever requested by the Mayor, Town Council, Department Head, or supervisors.

D. Pay Plan Purpose: The Pay Plan includes the basic salary schedule adopted by the Town Council, together with the assignment of job classes to ranges or rates in the plan as approved by the Town Council.

E. Pay Plan Provisions: The Pay Plan is intended to provide equitable compensation for all job classes in relation to the pay for other job classes, general rates of pay for similar employment, the financial condition of the Town, and other factors. To this end, the Clerk-Treasurer shall regularly, but not less than biannually make comparative studies of all the factors affecting the level of pay and recommend such changes as may be justified. Such adjustments shall be made by increasing or decreasing the pay ranges provided in the basic pay schedule as approved by the Town Council.

F. Pay Ranges: Pay ranges are intended to furnish administrative flexibility in recognizing job content differences among positions allocated to the same class, in providing employee incentive for growth and improved performance, and in rewarding employees for meritorious service.

Section VII: Performance evaluation

- A. Purpose.** The purpose of the performance evaluation is to establish a program of performance appraisal that will encourage objective, systematic review and analysis of each Town employee's performance.
- B. Basic Policy.** It shall be the responsibility of the supervisor to conduct performance evaluations. The Clerk-Treasurer will provide that the performance of each employee is reviewed by the employee's supervisor at the end of each fiscal year. Failure to provide a

performance evaluation shall be reported to the Mayor and the Town Council. This evaluation shall become part of the employee's permanent personnel record.

C. Performance Evaluation Procedures.

1. Responsibility. It shall be the responsibility of the Clerk-Treasurer's office to see that the performance evaluation program is operated as required by this chapter.
 - b. Supervisors shall conduct a performance evaluation of each employee as provided in this chapter. A complete performance evaluation form will be sent to the Clerk-Treasurer by each supervisor each year. The Clerk-Treasurer shall provide a status report of all Town employees at the first council meeting in July of each year.
 - c. Employees have the right to review their performance evaluation and review the contents of their personnel folder at any time. Employees must sign and may attach comments to the completed performance evaluation. Such signature shall not signify concurrence by the employee as to the contents of the evaluation, but only notice that the employee has read and been made aware of the evaluation's contents. If an employee refuses to sign the completed evaluation, the supervisor shall obtain a management witness to certify the employee has read and been made aware of the evaluation's contents.
 - d. All performance evaluations shall be confidential and the contents shall not be disclosed, except within the employee's chain of command including the Clerk-Treasurer, or prospective supervisor and Department Head, in cases of internal transfers or as provided for under law, without the written consent of the employee.
 - e. Citizen's complaints should not be part of the employee's personnel record unless, after investigation, they have been determined to be founded on fact.

Section VIII: Conditions of Employment

A. Hours of Work

1. Regular full-time employees are expected to work forty (40) hours per week. Working hours may fluctuate at the discretion of Department Heads.
2. Breaks. Lunch breaks are normally one (1) hour, except for those departments with established thirty (30) minute lunch breaks. Such meal time shall be unpaid time unless the employee is required to remain at the work site, in which case the Department Head may authorize a meal period as part of time worked.

- B. Attendance and Absenteeism.** Employees will be expected to report for work promptly and be in attendance as scheduled. Absence for any reason should be reported to the supervisor or Department Head one (1) hour before the time the employee is to report to work or as soon as practical. Unauthorized absence from work for three (3) consecutive

work shifts will be considered abandonment of the job and automatic termination will result. Employees will be paid for time actually worked unless absences fall under leave provisions.

C. Dress and Personal Appearance. It is important that Town employees present the best possible image to the public. Employees should be as neatly dressed as work assignments allow.

D. Pay Periods. Each pay period shall be bi-weekly, with checks issued every other Wednesday. Under unusual circumstances checks may be issued early, but only upon the request of the Department Head and with the concurrence of the Clerk-Treasurer.

E. Time Sheets. Time sheets approved to form by the Clerk-Treasurer, for each pay period shall be kept by the Department Head and shall be forwarded to the Clerk-Treasurer on Monday morning before to the pay day.

F. Payroll Deductions. Deductions from an employee's check are mandatory for Federal Withholding, P.E.R.A. and State Income Tax. Employees may choose to have deducted from each check their contribution for medical health care, life insurance, credit union savings, or other benefits available to employees.

G. Transfers. Transfers must be approved by the Clerk-Treasurer and will only be considered upon the approval of the receiving Department Head. Should an employee request a transfer, the employee's salary may be reduced, if necessary, to conform to the pay range appropriate to the new position. Any transfer which results in an over-all increase in salary and wage expenditure must be approved by the Town Council. The employee shall be advised of any changes in pay that will occur as a result of the transfer.

H. Resignations. A Town employee who wishes to resign in good standing must submit a letter to his immediate supervisor at least fourteen calendar days before leaving. All Town equipment and property is to be turned in to the department upon termination. If this is not done, the employee's paycheck may be reduced by the value of the unreturned items.

I. Reductions in Force. It may, at any given time, be necessary and appropriate for the Town to reduce the number of its employees or abolish some positions because of economic conditions, reorganization, and/or lack of work.

When a position is to be discontinued or abolished, the Mayor or a majority of the members of the Town Council shall submit a written proposal shall contain a recommendation of an order of layoff based on:

1. A determination whether the employee whose position is being eliminated is qualified to perform one or more other jobs with the Town; and

2. If the immediate supervisor of the position determines this employee is qualified to perform one or more alternate jobs, the application of the rules used to determine reductions in force.

When the Town wishes to reduce the number of employees without abolishing a position, the Mayor or a majority of the members of the Town Council shall submit a written proposal to the council for final approval containing recommendations for the order of layoff. In determining the order of layoff, the following rules shall apply:

1. Temporary and/or probationary employees will be laid off first from positions for which a regular employee, subject to reduction in force, is at least as equally qualified;
2. Reduction of regular employees will be determined by department, based on ability to perform work, job performance, and seniority;
3. Regular employees to be terminated as a result of a reduction in force shall be provided written notice at least two calendar weeks in advance of the effective date of the termination or shall be granted equivalent severance pay;
4. A regular employee terminated as a result of a reduction in force or the elimination of a position shall receive preference in hiring for any position for which they are at least as equally qualified over external employment candidates.
 - a. Terminated Regular employees seeking reemployment must follow the established hiring procedures of the Town.
 - b. This privilege ends after six (6) months of after the employee declines an offer of employment from the Town, whichever comes first.
5. A regular employee rehired or reinstated within one (1) year of termination as a result of a reduction in force shall be entitled to service credit accrued prior to termination.

J. Outside Employment. All Town employees who wish to engage in outside employment are required to complete a request for permission to engage in outside employment on an annual basis and have it approved before such employment will be authorized. It shall be the responsibility of the employee's Department Head to assure compliance with this rule.

Section IX: Leave

A. Vacation. All tenured and probationary employees earn and are eligible to use paid vacation from the date of hire as follows:

1. Eight (8) hours a month are accumulated for employees who have served less than five years in the Town.

2. Ten (10) hours a month are accumulated for employees who have served more than five (5) years in the Town.
3. Four (4) hours a month are accumulated for part-time regular, temporary or limited term employees.

Employees may use accrued vacation leave in hourly increments. Every effort will be made to grant an employee vacation at the time requested. However, vacations cannot interfere with the Town's essential operations and therefore must be approved by the Department Head well in advance.

Town employees, including Police Department employees, may carry a balance of not more than 200 hours of vacation per calendar year. Excess hours will be forfeited at the beginning of the calendar year. The purpose of this provision is to encourage employees to take time off and to avoid imposing a significant liability on the Town to pay out unused vacation leave when an employee separates from employment. Paid holidays which occur during vacation time are not counted as a day of vacation.

Probationary, temporary and limited-term employees shall not be paid for accrued vacation time upon separation from employment. Regular employees who separate from employment will be paid for unused vacation time.

Annually, on December 1, the Town may offer to buy back unused vacation leave hours at 100% of the employees' respective base hourly rates of pay. The number of hours the Town may offer to buy back is discretionary. Employee participation is voluntary. An employee's vacation leave accrual balance cannot be reduced below 24 hours as a result of the buy-back.

B. Holidays.

1. The holiday schedule shall be designated by the Town Council each year.
2. Regular full and part time, and limited term employees shall be paid for the holiday the same amount the employee would have earned for a regularly scheduled workday.
3. Employees scheduled to work an approved Town Holiday shall be paid the same amount of time they would have earned for a regularly scheduled workday at straight time, and shall receive pay at one and one-half (1.5) times their regular hourly rate for actual time worked during the Holiday.
4. If a paid holiday falls on the employee's regular day off, the employee may float the paid holiday.

C. Personal Leave Day. Regular employees are entitled to one (1) personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance. The personal leave day must be taken during consecutive hours. The personal leave day must be taken by December 31 or it will be lost. Employees who do not take the personal leave day shall not be paid for it upon separation from Town employment.

D. Sick Leave. Sick leave benefits are accrued at the rate of eight hours per month. Part-time employees accrue sick leave at the rate of four hours per month. Unused sick leave shall be accumulated from year to year. Employees on probationary status shall be credited with sick leave for each pay period worked.

Sick leave should only be used as needed, and abuses of sick leave will be grounds for disciplinary action. If an employee has used all accrued sick leave, the employee may choose to use his accrued vacation as sick leave with approval of his supervisor. The employee must be able to justify the use of vacation leave as sick leave.

Employees using sick leave shall notify the Clerk-Treasurer's office before the start of their scheduled work shift. Sick leave of more than three days duration may require certification by a physician as to the nature of the illness be submitted to the Clerk-Treasurer's office. Persons on sick leave for more than five (5) consecutive work days may be required to have a physical examination but shall be required to be certified fit to return to work by a physician. Physical examinations performed at the insistence of the Town will be paid for by the Town.

An employee may use accrued sick leave to care for members of the employee's immediate family (employee's spouse or ex-spouse, live-in partner, children, step-children, parents, step-parents, siblings, grandparents, step-grandparents, grandchildren, step-grandchildren, aunts, uncles, first cousins, nieces, nephews, and the like relations of the employee's spouse. This definition shall cover any person so related to the employee by birth, adoption or marriage). A doctor's certification may be required stating the family member's condition before to sick leave being granted.

Regular, Probationary, temporary and limited-term employees shall not be paid for accrued sick leave time upon separation from employment with one exception. Regular employees who retire from the Town will be paid for unused sick time up to 200 hours at a rate of %50.

Conversion of sick leave: Employees who have over 100 hours of accrued sick leave may convert a total of 100 additional hours of accrued sick leave as follows:

- a. An employee may convert up 50 hours over the initial 100 hours to vacation time at the rate of 50%.
- b. An employee may convert up to 50 hours over the initial 100 hours of sick

leave for cash at the rate of 50%.

- c. These conversions may be made annually during the month of December.
- d. All requests for conversion must be submitted through the Clerk-Treasurer.

D. Donated Leave. There are occurrences brought about by medical conditions that cause employees to exhaust leave and therefore be placed on leave without pay. It is recognized that employees forced to go on leave without pay could be without income at a most critical point in their life. Employees who want to assist their fellow workers by donating leave can do so through this provision of the policy manual.

For the purpose of this section, "medical conditions" shall be interpreted to include a serious illness or injury which is monumental, unusual, immediate in nature and which is expected to preclude the employees from returning to work for an extended period of time. This shall involve but is not limited to:

1. Any period of incapacity or treatment connected with inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. A period of incapacity requiring absence of more than three calendar days from work that involve continuing treatment by (or under the supervision of) a licensed health care provider; or
3. Any period of incapacity due to pregnancy, or for prenatal care; or
4. Any period of incapacity or treatment due to a chronic serious health condition (e.g. asthma, diabetes, epilepsy, etc.); or
5. A period of incapacity that is permanent or long-term due to a condition for which treatment may be effective (e.g. Alzheimer's, stroke, terminal disease, etc.) or
6. Any absence to receive multiple treatments (including any period of recovery) by, or referral by, a licensed health care provider (e.g. chemotherapy, physical therapy, dialysis, etc.)

General Guidelines:

1. Leave may be donated from vacation or sick leave.
2. An employee cannot donate from either the vacation or sick leave if the balance will fall below one-half what can be earned in 12 months.
3. Leave donated will be added to the recipient's sick leave balance limiting its use for sickness only.
4. The minimum donation allowable is four hours.

5. Leave shall be donated on a one-to-one personal basis. Establishment of a leave "pool/bank" is expressly prohibited.
6. The donation and receipt of leave shall be completely voluntary, and anyone who interferes with an employee's right to choose whether to donate or receive leave shall be subject to disciplinary action on the basis of personal misconduct.
7. Individual leave records are confidential and only involved individuals may reveal their donation or receipt of leave.
8. The employee donating leave cannot receive compensation for the leave donated.
9. Upon return to work the recipient will be allowed to retain up to 40 hours in their sick leave account.
10. Any additional unused donated leave beyond 40 hours will be returned to the donor(s) on a pro-rated basis and credited to the leave account from which it was donated. Fractions of the hour shall not be returned to an individual donor.
11. If a recipient of donated leave separates from Town of Edgewood employment, the donated leave remaining in the recipients account shall be returned to the donors' accounts on a pro-rated basis.

Recipient Requirements:

1. When requesting donated leave, the employee or the immediate supervisor must complete in writing, and forward the request for donated leave including the physician certification to the Clerk-Treasurer. All medical information is confidential. When disclosing information about an applicant the Human Resources department will state only that the requesting individual or the individual's family member has a "medical condition".
2. An employee must exhaust all types of leave before any donated leave will be used.
3. While using donated leave, the employee continues to earn vacation and sick leave. This earned vacation and sick leave should be used each month prior to any donated leave.
4. Upon return to work, an employee is allowed to retain 40 hours of the donated leave in his sick leave account. Any remaining leave over 40 hours will be prorated back to the donors in the leave reporting period immediately following the employee's return to work. This action is reflected in the adjustments column of the employee's monthly leave report.
5. An employee's participation in donated leave is limited to 520 hours either continuously or, if for the same condition, on a recurring basis. However, a continuation may be granted month by month for any amount of time that management would otherwise have granted leave without pay.

- E. Family and Medical Leave of Absence.** The purpose of Family Medical Leave is to balance the demands of the work place with the needs of families to promote the stability and

economic security of families; to minimize the potential for employment discrimination on the basis of sex by ensuring that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

1. Employee Eligibility: Permanent employees who have been employed with the Town of Edgewood for at least 12 months and who have worked at least 1250 hours (half-time) during the previous 12-month period are entitled to a total of 12 workweeks of leave, paid or unpaid, during any 12-month period for one or more specified conditions which are covered under this Act.

For the purpose of this policy, the 12-month period is defined as 12 months from the date of the qualifying event.

2. Qualifying Conditions:

- A. Birth of a child and care for the child after birth, provided the leave is taken within a 12-month period following birth,
- B. Care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption.
- C. Care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition.
- D. A serious health condition that makes the employee unable to perform the essential functions of his/her position.

3. FMLA Leave Options:

- A. Eligible employees are entitled to 12 weeks of unpaid leave within a twelve-month period.
- B. Eligible employees may choose to use paid leave in the form of vacation, sick, compensatory, or donated leave.
- C. Eligible employees may choose to use the FMLA Leave on an intermittent basis or on a reduced work schedule.

4. Definitions: Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. If an employee requests FMLA to care for an individual who stood in loco parentis, the employee must provide documentation verifying the relationship. If legal records are not available, the employee has the burden of proof and must submit written documentation explaining the relationship covering periods of residence, facts and circumstances. Someone who was in a position to know of the relationship must verify this documentation through signature and notary.

A. Child - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability. Child would include: (a) biological, (b) adopted, (c) foster, (d) step-child, (e) legal ward, and (f) child of an employee standing in loco parentis as defined above.

B. Spouse - a husband or wife recognized by the State of New Mexico.

C. Serious Health Condition - (a) an illness, injury, impairment, and/or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider; (b) any period of incapacity requiring absence from work of more than three calendar workdays that also involves continuing treatment by a health care provider; or (c) continuing treatment by a health care provider for conditions so serious that, if not treated would likely result in an absence of more than three calendar workdays. Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and may be subject to family/medical leave regulations, whether as paid or unpaid leave.

D. Intermittent Leave or Reduced Work Schedule- an intermittent work schedule is a schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time. The leave period may not exceed the total of the allowed 12-week period.

5. Administration of Family Medical Leave:

A. An employee desiring to use Family Medical Leave needs to contact the Human Resources department prior to the requested leave period whenever possible.

B. Requests for FMLA Leave must be supported by reasonable proof.

C. If an employee is unable to initiate the contact to Human Resources for Family Medical Leave, the department head is responsible for contacting Human Resources to investigate the designation of the leave period as paid or unpaid FMLA leave. The designation must be made on the Family Medical Leave Request Form and must be completed prior to the extension of FMLA Leave.

D. If an employee on paid leave has not provided sufficient information to determine whether it is designated as FMLA Leave the department head shall, after a period of 10 workdays, request that the employee provide sufficient information to establish a FMLA-qualifying reason for the needed leave. This does not preclude the department from requesting the information sooner or at any time an extension is requested.

E. Employees designated on FMLA Leave have the following options for charging leave:

1. For the birth of a child, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay.
2. For the adoption or foster care of a child, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay;
3. For the illness of an employee's child, spouse, or parents, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay;
4. For the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available compensatory, vacation leave, and/or donated leave, or any portion, before going on leave without pay.

F. Employees desiring to work a reduced or intermittent work schedule under FMLA leave will need to contact the Human Resources Department for further instructions. Employees approved for one of these options will experience a reduction in monthly earning rates.

6. Notice to Employer: It is the responsibility of the employee to explain the reasons for the FMLA Leave in sufficient detail to allow the Town to determine that the leave qualifies under the FMLA. If the employee fails to adequately explain or document the FMLA-qualifying reasons for the leave after a request by the Town, leave may be denied. Where the necessity for FMLA Leave for the birth or placement of a child is foreseeable, the employee shall give the Town at least 30 days' advance notice (before the date the leave is to begin) of the employee's intention to take such leave. In other cases, the employee shall provide such notice as soon as practical. As soon as practical means at least verbal notification to the Town within one or two business days of when the need for leave becomes known to the employee. An employee shall at least provide verbal notice to the Town of the need for FMLA Leave and the anticipated timing and duration of the leave. The Town may also require an employee to comply with the Town's usual and customary notice and procedural requirements for requesting leave. If the employee fails to give timely advance notice when the need for FMLA Leave is foreseeable, the Town may

delay the taking of FMLA Leave until 30 days after the date the employee requested the need for the FMLA Leave. In some circumstances, employees may need to make the request for FMLA Leave after the fact. If this occurs, employees have two business days upon returning to work to provide the appropriate information in order to be entitled to the protections of FMLA.

7. Notice to Employee: Once the Town has received a request for a FMLA required reason, the Town shall promptly (generally within two business days, absent extenuating circumstances) notify the employee that the leave is designated and will be counted as FMLA Leave. The Town may give such notice in writing

8. Medical Certification: Any request for FMLA Leave for a serious health condition shall be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, and a parent of the employee or an individual who has acted in loco parentis to an employee as appropriate. Such medical certification should be attached to the employee's request for FMLA Leave, or in the case of unforeseen leave, generally within two business days after the leave commences. In the case of foreseeable leave, the Town may delay the taking of FMLA Leave to an employee who fails to provide timely certification after being requested by the Town to furnish such certification (within 15 calendar days, if practicable), until the required certification is provided. In the case of unforeseeable leave, if the employee does not provide the medical certification within a reasonable time, the Town may delay the continuation of FMLA Leave. If the employee never produces the required medical certification, or if the certification does not confirm the existence of a serious health condition as defined under FMLA, then the leave is not FMLA Leave. In any case in which the Town has reason to question the appropriateness of the leave or its duration the Town may request certification at some later date. If the Town has reason to doubt the validity of the certification provided the Town, the Town may require at its expense, that the eligible employee obtain the opinion of a second (or third) health care provider.

9. Confidentiality: All records and documents relating to medical certifications, re-certification or medical histories of an employee's family members, shall be maintained in a separate medical file from the employee's personnel file, and shall be treated as confidential medical records in accordance with the Americans with Disabilities Act of 1990 (ADA) and The Health Insurance Portability and Accountability Act of 1996 (HIPPA).

10. Restoration to Work: Any eligible employee who takes approved FMLA Leave shall be entitled, upon return from such leave:

A. To be restored by the Town to the same position of employment held by the employee when the leave commenced; or

B. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and condition of employment.

If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the Town will review such situations on a case-by-case basis under the ADA.

11. Group Health Plan Coverage:

A. The Town shall maintain coverage for the employee under the Town's group health plan for the duration of the 12-week FMLA leave period at the level and under the conditions coverage would have been provided if the employee had continued employment.

B. Any share of health plan premiums paid by the employee prior to leave must continue to be paid by the employee during the leave period.

C. The Town must give advance written notice to employees of the terms for payment of premiums during FMLA leave.

D. The Town's obligation to maintain dependent health insurance coverage stops if an employee's premium payment is more than 30 days late. The Town must provide the employee with at least 15 days' notice that coverage will cease.

E. If an employee's failure to make the premium payments leads to a lapse in coverage, the Town must still restore the employee, upon return to work, to the health coverage equivalent that employee would have had if leave had not been taken and premium payments had not been missed without any waiting period or preexisting conditions.

F. The Town may recover the premiums if the employee fails to return for a reason other than the continuation, recurrence, or onset of a serious health condition of the employee or the employee's immediate family member, or other circumstances beyond the employee's control.

12. Other Benefits: Maintenance of health insurance policies that are not a part of the Town's group health plan (where no contributions are made by the Town) is the sole responsibility of the employee.

Taking FMLA Leave shall not result in the loss of any employment benefit accrued prior to

the date on which the leave commenced.

13. No Retaliation: The Town shall not interfere with an eligible employee's rights under the FMLA, shall not discharge or otherwise discriminate against employees who exercise such rights, and shall not retaliate against employees who file, initiate or otherwise assist in charges or investigation against the Town.

14. Rights and Obligation of Employees: When an employee provides notice of the need for FMLA Leave, the Town shall provide the employee with a Notice (within two business days, if feasible) detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.

F. Leave Without Pay.

The Clerk-Treasurer may grant a regular employee leave without pay for a period not to exceed one year. Leave without pay may be granted only when it is in the best interest of the Town, and only following consideration of the employee's performance and disciplinary history, and the potential disruption of Town operations.

1. For leave without pay a written request indicating the reason for the leave, duration, and dates of departure and return, must be approved by the Clerk-Treasurer before leave is taken.
2. Employees on leave without pay shall not accrue annual or sick leave for those hours on leave without pay, nor be paid for observed holidays.
3. During an employee's approved leave of without pay, his/her position may be filled by temporary appointment, a temporary promotion, limited term employee or detail to another employee. At the expiration of a leave without pay, the employee has the right to and shall be reinstated in the position he/she vacated if the position still exists; or, if not, to any other vacant position of like seniority, status and pay. If no vacancy exists, the employee will be offered the first available position for which he/she qualifies. If no position is found within a period of one-hundred twenty (120) days, the employee will be terminated.

G. Bereavement Leave. In the event of a death in the employee's immediate family, (employee's spouse or ex-spouse, live-in partner, children, step-children, parents, step-parents, siblings, grandparents, step-grandparents, grandchildren, step-grandchildren,

aunts, uncles, first cousins, nieces, nephews, and the like relations of the employee's spouse. This definition shall cover any person so related to the employee by birth, adoption or marriage)¹¹ the employee will be permitted three days leave with pay per occurrence not chargeable under any benefits. After three days, bereavement leave will be charged against the employee's sick leave. An employee must notify the employee's department head before taking such leave.

- H. Military Leave.** Leave with pay will be granted for a period of two weeks per year to permanent full time employees and permanent reserve part time employees enrolled in the National Guard or military reserve units to attend training camp or exercises. In cases where such leave is granted, the employee must furnish proof of duty orders before leave being granted. The equivalent of National Guard military reserve pay will be deducted from the employee's paycheck, and if the employee's regular income from the Military Reserve Service is in excess of the employee's regular income from the Town, then the employee shall not be entitled to any pay from the Town.
- I. Unpaid Military Leave** Regular employees who are members of the Armed Forces, the Army National Guard, the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty are entitled to re-employment after up to five years of service. PERA contributions may not be withdrawn when an employee begins military leave without pay. Upon re-employment, such employees shall receive any necessary pay adjustment such as provided to other employees during the period of active duty.
1. Employees must apply for re-employment within fourteen days of the date of release from active duty where the active service was from 31 to 181 days.
 2. Employees must apply for re-employment within ninety days of the date of release from active duty where the active service was more than 181 days.
 3. For service of 90 days or less, the employee is entitled to the position he/she would have been employed in if continuous employment had not been interrupted or the position in which the employee would have been employed on the date of the commencement of service.
 4. For service of more than 90 days, the employee is entitled to the position in which he/she would have been employed if the continuous employment had not been interrupted or the position of employment in which he/she was employed at the date of commencement of service, or a position of like seniority, status and pay.
- J. Jury Duty** Employees will be granted court leave for the purpose of serving as a juror or witness in any court. Court leave with pay will be authorized only during those days which would otherwise have been an employee's regular scheduled working days.

K. Occupational Injury Leave

1. Purpose. Injury leave by a doctor's order shall be granted to any employee who sustains an injury as a result of or in the course of the performance of his or her job. Injury leave is intended to cover initial gaps in coverage of the State's Workman's Compensation Program. A doctor shall mean any qualified health care provider recognized under New Mexico's Workers Compensation Act as being qualified to provide such an order.
2. Injury Leave Granted. An employee who sustains an on the job injury shall receive paid injury leave equal to normal salary for all regularly scheduled working hours or up to seven working days until State's Workman's Compensation coverage commences. All benefits will accrue while an employee is on workman's compensation, and the Town will pay its share of an employee's hospitalization insurance for a period not to exceed three months.
3. Procedures. Any employee injured on the job shall immediately report the injury to his or her supervisor, who shall report the injury to the Clerk-Treasurer's office. An accident report shall be completed within forty-eight hours of the accident. If medical attention is required, the procedures set forth in administrative regulations shall be followed.

- L. Voting Leave** Employees, who are registered voters, shall be given necessary time off to vote without loss of pay. Employees will receive up to two (2) hours on Election Day for the purpose of voting between the time of opening and the time of closing the polls; however, the Supervisor or Department Head may specify the hours during this period that the voter may be absent. The provisions of this subsection do not apply to any employee whose work day begins more than two (2) hours after the polls open or ends more than three (3) hours before the polls close.

Section IX: Overtime

1. A non-exempt employee shall not work more than the regularly scheduled 40-hour workweek without his/her supervisor's prior approval. Non-exempt employees who work in excess of the normal 40-hour workweek shall be compensated at the rate of 1½ times the employee's regular base rate of pay for each hour of overtime worked. Overtime work will be compensated in 15-minute increments.
2. Working overtime without prior approval is just cause for disciplinary action, up to and including termination.

3. Payment for overtime may be in the form of cash ("overtime pay") or compensatory time ("comp time"). In times of budgetary constraint, the Town of Edgewood, at its sole discretion, may elect to pay employees overtime in the form that best suits the Town.
4. An employee is not entitled to overtime pay or comp time unless that employee has actually *worked* more than 40 hours in a given workweek. The time an employee takes off from work for a holiday, vacation, personal leave, or an illness is not considered hours worked for purposes of calculating overtime, even if the employee is paid for that time with accrued leave or accrued comp time.
5. All Town employees, including commissioned police officers, eligible for overtime compensation may accrue a maximum balance of 240 hours of comp time (or 160 hours of overtime worked). If an employee has reached the accrual limit for comp time set forth in this paragraph, any additional overtime worked by the employee shall be paid out in the form of cash.
6. The Town strongly encourages all employees to use their accrued comp time within 6 months of earning it. Employees may use comp time at any time with the prior approval of the eligible employee's supervisor, unless the granting of such time would unduly disrupt the effective functioning of the employee's department. Mere inconvenience is an insufficient basis for denial of a request to use accrued compensatory time.
7. At any time, an employee may request that the Town of Edgewood cash out his/her accrued but unused comp time balance, even if the balance is below the accrual maximum set forth in paragraph 6. The Town of Edgewood, at its discretion, may grant the employee's request, giving consideration to budgetary constraints and priorities. Such payment must be made at the regular hourly rate of pay received by the employee at the time of payment.
8. The Town may, at any time, elect to pay out some or all of an employee's accumulated compensatory time. Such payment must be made at the regular hourly rate of pay received by the employee at the time of payment. It is within the Town's sole discretion whether to pay out some or all accrued comp time.
9. Upon an employee's retirement, resignation or termination, the Town of Edgewood shall pay the employee for the balance of his/her accrued but unused

comp time at a rate not less than the employee's final hourly pay rate or the employee's average hourly rate over the last three (3) years of employment, whichever is greater. In instances where the employee has less than three (3) years of employment with the Town of Edgewood, the average pay rate for the entire period of employment shall be used instead.

11. Supervisors shall monitor overtime worked and compensatory time accrued and shall encourage the use of compensatory time as the opportunity arises, in order to minimize the Town of Edgewood's overtime pay liability. The supervisors' monitoring of overtime and encouraging the use of comp time will be considered as part of the supervisors' performance evaluation.

Section X: Political Activity

Town employees shall not, during working hours, publicly support or endorse any person running for political office. Town employees should not be harassed for political support by any political candidate, Department Head or Elected Official. An employee cannot be fired or penalized for failure to support a particular candidate. This is to ensure the protection of the employee from any unnecessary interference with the employee's job. The employee's job does not depend upon political beliefs, but upon the employee's job skills and performance.

Section XI: Gratuities – Solicitation

A. Gratuities. Town employees shall be prohibited from accepting gifts or other considerations from vendors where the value of such gifts or considerations is in excess of twenty-five dollars (\$25.00). Any attempt to influence an employee's performance of the employee's duties by a vendor or other persons should be reported to the Clerk- Treasurer.

B. Solicitations. No solicitation by employees or others will be allowed in a Town-owned building or on Town property. All legitimate proposals should be directed to the Department Heads or persons responsible for purchasing. Salesmen should not consult directly with employees without permission of the employee's supervisor. Limited exceptions may be authorized by the Clerk-Treasurer for charitable solicitations.

Section XII: Rules of Employee Conduct and Disciplinary Action

A. Rules of Employee Conduct. Reasonable rules of employee conduct are necessary for the orderly and effective operation of the Town. Some of the more obvious examples of unacceptable conduct are listed below. This list is not all inclusive and is not intended to refer to all possible policy infractions. Employees should contact the Clerk-Treasurer or Deputy Clerk with any questions regarding the Town's rules of employee conduct.

1. Violation of the Town personnel ordinance, policies or rules.
2. Incompetence, inefficiency or inadequate performance of an employee's duties.
3. Insubordination or uncooperative behavior.
4. Leaving work before the end of a workday or not being ready to work at the start of a workday without approval from the employee's supervisor; stopping work before the time specified for such purpose.
5. Failure to report an absence or late arrival; excessive absence or tardiness.
6. Use of official position or authority for personal profit or advantage, including a violation of the Governmental Conduct Act, NMSA (1978), §10-16-1, *et seq.* (as amended), which sets forth the ethical principles of public service and prohibits certain official acts. A copy of the Act is available from the Clerk-Treasurer.
7. Violation of security or safety practices.
8. Commission of a felony or misdemeanor related to the position held by the employee or conviction of a crime involving moral turpitude.
9. Violence or threats of violence toward anyone while on duty, on Town property, driving a Town vehicle or equipment, representing the Town or wearing a Town uniform. Fighting, horseplay or provoking a fight is prohibited.
10. Obscene, abusive or rude language or behavior toward any supervisor, employee or member of the public; any disorderly or antagonistic conduct.
11. Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; willfully restricting work output or encouraging others to do the same.
12. Misappropriation or personal use of Town funds, property or resources; theft or fraud.
13. Intentionally or negligently causing damage to Town tools, equipment or other property;
14. Failure to immediately report damage to, or an accident involving Town vehicles or equipment.
15. Violation of confidentiality or release of confidential information.
16. Deliberate falsification or omission of information on an employment application, resume, timecard/record or other Town documents.
17. Soliciting during work hours and/or on Town premises; selling merchandise or

collecting funds of any kind for whatever purpose without the Clerk-Treasurer's prior approval, or at a time or place that interferes with the work of another employee on Town property or at a Town worksite.

18. Conducting a lottery or gambling on Town premises or while on duty.
19. Failure to maintain a neat, clean and professional appearance or wearing unsafe clothing to perform employee's specific job duties.
20. Other acts or omissions, on or off-duty, that may result in disciplinary action include those that:
 - a. Call into question the employee's ability to perform assigned duties or job functions;
 - b. Harm public respect for the Town's employees or confidence in the operation of Town services; or
 - c. Impair the operation or efficiency of any Town function.

B. Just Cause for Disciplinary Action. Failure or refusal to meet the standards of employee conduct shall constitute just cause for disciplinary action. Regular full-time and regular part-time employees may be disciplined only for just cause. Unlike regular employees, probationary employees, temporary employees, limited-term employees and other at-will employees may be discharged without cause or for any lawful reason.

C. Progressive Discipline. Occasionally, disciplinary action is necessary to correct employee misconduct or performance that fails to meet expectations. The type of corrective or disciplinary action imposed will depend on the severity of the infraction and the employee's previous work record. Progressive discipline will normally be used; however, some infractions may be so serious that the first disciplinary action may require suspension without pay, demotion or even dismissal.

D. Documentation. In every situation involving any form of corrective or disciplinary action, documentation of such action shall be prepared. Any such documentation given to an employee should be signed by the employee to acknowledge receipt. If the employee refuses to sign the documentation, another employee should be called in to sign the form as a witness to the fact that the counseled or disciplined employee received the documentation, but refused to sign it.

E. Range of Counseling and Discipline. The range of counseling and discipline is as follows:

1. **Verbal Counseling.** A supervisor may verbally counsel an employee for minor infractions and to inform the employee that behavior or conduct needs to change or improve. The supervisor should inform the employee that the supervisor is verbally counseling the employee. Verbal counseling should: (A) remind the

employee of pertinent policies and work rules; (B) provide examples of how the employee's behavior or performance has fallen short of exceptions; (C) explain the impact of the employee's deficiencies on the Town and coworkers; (D) describe the actions the employee needs to take to correct the problem; and inform the employee that failure to improve may result in more severe discipline. Supervisors shall prepare a memorandum of the supervisor's own records indicating that the employee has received a verbal counseling. Documentation of a verbal counseling shall not be placed in the employee's personnel file. Verbal counseling is not grievable.

2. **Written Reprimand.** A supervisor may issue a written reprimand to an employee in circumstances where the infraction is perceived to be of a greater consequence than that for which a verbal counseling would be used or if the verbal counseling was ineffective.

A written reprimand shall include the following information: (A) the date(s) on which the unacceptable performance occurred and a brief description of the incident(s); (B) a reference to the policy(ies), rule(s) or directive(s) that were violated; (C) prior counseling or discipline, if any, imposed on employee during the employee's time with the Town; (D) a statement of the potential disciplinary consequences if performance does not improve; and (E) the goals of improvement and a time frame, if applicable, to accomplish these goals.

Written reprimands shall be placed in the employee's personnel file after providing the employee with a copy of the written reprimand. The employee shall be asked to acknowledge having received the reprimand by signing it. If the employee refuses to sign, another supervisory level employee (by his signature) shall attest that the written reprimand was presented to the employee for his signature and the employee refused to sign. A written reprimand is not grievable

3. **Suspension without Pay.** The Mayor or Clerk-Treasurer may suspend an employee without pay for a single serious offense or for continued substandard job performance or misconduct after previous attempts to correct such behavior have failed. Such suspension shall not exceed thirty working days (30). A suspension without pay for a FLSA exempt employee shall be in workweek increments not to exceed six workweeks, unless otherwise provided by law. A regular, full-time or regular, part-time employee may appeal a suspension without pay pursuant to the Town's grievance procedures.
4. **Demotion.** The Mayor or Clerk-Treasurer may demote an employee in those instances where the employee is unwilling or unable to perform the

responsibilities of his/her position. The employee may be moved from one position to another position with a lower pay rate for which the employee qualifies or, alternatively, the employee may be permitted to remain in the same position but will be subject to a reduction in his/her pay rate. Demotion is not to be used as a substitute for discharge from employment, when a discharge is warranted. A regular, full-time or regular, part-time employee may appeal a demotion pursuant to the Town's grievance procedures.

5. **Dismissal.** The Town Council may, upon the Mayor's recommendation which will be made in the form of a Notice of Intent to Discipline, dismiss an employee when other forms of discipline have failed to improve unacceptable behavior or job performance, or the employee's conduct is severe enough to preclude corrective action. A regular, full-time or regular, part-time employee may appeal a dismissal pursuant to the Town's grievance procedures.

Probationary employees, temporary employees, limited-term employees and other at-will employees may be discharged at any time without cause or for any lawful reason by the Mayor, Clerk-Treasurer or supervisor. These employees may not appeal a decision to dismiss them from employment pursuant to the Town's grievance procedures.

F . Notice of Intent to Discipline. The Mayor, Clerk-Treasurer or designee shall present the employee with a Notice of Intent to Discipline when suspension, demotion, or dismissal is contemplated. The Notice of Intent to Discipline shall include the following information: (A) the date(s) on which the unacceptable performance or conduct occurred and a brief description of the incident(s); (B) a reference to the policy(ies), rule(s) or directive(s) that were violated; (C) prior counseling or discipline, if any, imposed on employee during the employee's time with the Town; (D) a statement of the contemplated discipline; (E) a statement of the potential disciplinary consequences if performance does not improve; (F) the goals of improvement and a time frame, if applicable, to accomplish these goals; and (G) the employee's right to a pre-disciplinary hearing. The Notice of Intent to Discipline shall be hand-delivered to the employee and receipt acknowledged by him, or sent to the employee by certified mail, return-receipt requested. The Notice of Intent to Discipline shall be placed in the employee's personnel file after providing the employee with a copy. If the Notice of Intent to Discipline is hand-delivered and the employee refuses to sign it, another supervisory level employee (by his signature) shall attest that the Notice of Intent to Discipline was presented to the employee for his signature and the employee refused to sign.

G . Pre-Disciplinary Meeting and Notice of Final Action. Within three (3) working days of the receipt of the Notice of Intent to Discipline the employee shall notify the Clerk-Treasurer, in writing, whether he/she will avail him/herself of the pre-disciplinary meeting. Such notice shall

be hand-delivered with receipt acknowledged. If the employee does not avail himself of the pre-disciplinary hearing, Clerk-Treasurer shall issue a Notice of Final Action to the employee which shall:

1. Specify the final action to be taken and the factual basis for the final action;
2. Specify the effective date of the disciplinary action; and
3. Inform the employee of his/her right to appeal.

In the event the employee wishes to avail him/herself of a pre-disciplinary meeting, the nature of the pre-disciplinary meeting will depend on the type of discipline being proposed.

If the contemplated discipline is a suspension or demotion, Clerk-Treasurer and/or Department Director will meet with the employee at a pre-arranged time. At the pre-disciplinary meeting, the employee will be given the opportunity to respond to the allegations in the Notice of Intent to Discipline and offer explanations and/or present evidence and reasons supporting mitigation. No witnesses will be permitted at the informal meeting. This will not be an evidentiary hearing. Neither the Town nor the employee will not be permitted to have a representative present at the pre-disciplinary meeting.

If the contemplated discipline is termination, the Mayor's recommendation will be placed on the agenda for the executive session of the next regular meeting of the Town Council. During the executive session, the employee will be given the opportunity to respond to the allegations in the Notice of Intent to Discipline and offer explanations and/or present evidence and reasons supporting mitigation. No witnesses will be permitted to address the Council during executive session. This will not be an evidentiary hearing. The employee may have a representative present for the presentation to the Town Council. After hearing from the employee, the Council will excuse the employee and discuss the proposed termination. A vote will be taken during the public portion of the meeting.

After taking the employee's response into consideration, a Notice of Final Action shall be issued to the employee if it is determined that discipline is warranted. The Notice of Final Action shall specify the final action to be taken, and the factual basis on which the final action is based, state the time, date, and location of the pre-disciplinary meeting, persons present, the effective date of the final action, and the employee's right to appeal the disciplinary action.

The Notice of Final Action shall be either hand-delivered to the employee and receipt acknowledged by him or sent to the employee by certified mail, return-receipt requested. If the employee refuses to sign, another supervisory level employee (by his signature) shall attest that the Notice of Final Action was presented to the employee for his signature and the employee refused to sign. The Notice of Final Action shall be placed in the employee's

personnel file. An employee who is dismissed for cause will not be considered for reemployment with the City.

H . Administrative Leave with Pay Pending Investigation and/or Disciplinary Proceeding.

The Mayor or Clerk-Treasurer may authorize administrative leave with pay when an employee is ordered to leave the premises or work site pending an investigation, while disciplinary action is being contemplated and/or pending issuance of the Notice of Final Action.

Generally, this leave is authorized when the employee is disruptive or poses a threat of harm to himself/herself, others or Town property. During this period, the employee continues to accrue benefits as if he/she were still on duty.

Employees on paid administrative leave shall be available in person and telephonically between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Failure to comply or attend any scheduled meetings as directed by the employee's supervisor shall constitute an unauthorized leave without pay. Employees on paid administrative leave shall not obtain other employment. The supervisor will document the administrative leave and include expectations of the employee while on leave, including but not limited to the return of Town equipment.

Administrative leave with pay under these circumstances does not constitute discipline and may not be appealed under the Town's grievance procedures.

I. Grievance Procedure.

1. **Applicability.** A regular employee who has successfully completed his/her probationary period may pursue grievances according to the rules contained in this Section.
2. **Attendance at Grievance Hearings.** Employees who have filed grievances and employees required to give testimony as witnesses in a grievance hearing shall be given time off with pay if such meetings or hearings are scheduled during their regularly scheduled work hours. Former employees, or employees on suspension, layoff, or other unpaid status shall not receive pay to attend grievance hearings.
3. **Conditions or Actions Not Grievable.** The following conditions or actions are not grievable:
 - a. Whether an established Town policy or practice is appropriate.
 - b. In matters where a method of review is mandated by law or where avenues of statutory review are available such as review which may be obtained through the

filing of charges with the N.M. Human Rights Bureau or Equal Employment Opportunity Commission or the filing of a Worker's Compensation Claim.

- c. In matters where the Town is without authority to act or does not have the ability to provide a remedy.
- d. Disciplinary action for a probationary, temporary, limited-term or other at-will employees.
- e. Verbal counseling, written reprimand or job abandonment.
- f. Transfers, assignments, removal from assignments, temporary upgrades and promotions.
- g. Position evaluation/audit, job evaluations, performance reviews, or selection for vacant positions.
- h. Denial or termination of self-employment / supplementary / outside employment.

J. **Post-Discipline Appeal.** A regular employee who has been suspended without pay, involuntarily demoted or terminated may appeal his/her discipline to a neutral hearing officer.

1. **Notice of Appeal.** Within five (5) business days of receipt of the Notice of Final Action, the employee must give written notice to the Clerk-Treasurer of the employee's intent to pursue a post-disciplinary hearing. The written notice must be hand-delivered or mailed via certified mail, return receipt requested. This deadline is of the essence and strictly enforced. An employee's failure to comply with the provisions in this paragraph, including the deadlines will render the grievance null and void.
2. **Hearing Officer.** Within fifteen (15) calendar days of receipt of the employee's notice of appeal, Clerk-Treasurer will appoint a hearing officer who is a licensed New Mexico attorney or a person experienced in personnel administration.
3. The hearing officer shall recuse him/herself if, for any reason, he/she cannot afford a fair and impartial hearing to either party. The employee or Town may ask to disqualify a designated hearing officer for cause by filing an affidavit of disqualification within ten (10) calendar days of the hearing officer's designation or immediately upon subsequently learning of the grounds for disqualification. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on motions for disqualification.
4. No person shall discuss the merits of the appeal with the hearing officer unless both parties or their representatives are present.

5. **Pre-Hearing Conference.** The hearing officer shall schedule and conduct a pre-hearing conference by such method deemed appropriate. Each party shall submit a pre-hearing statement by the date set by the hearing officer, containing the following information:

- a. A statement of the issues;
- b. Proposed stipulations of fact;
- c. A list of witnesses to be called and a summary of their testimony;
- d. A list of exhibits;
- e. Requests for discovery;
- f. Requests for subpoenas; and
- g. Estimated amount of time needed for the hearing.

6. **Pre-Hearing Order.** The hearing officer shall issue a Pre-Hearing Order which shall contain:

- a. The issue(s) to be heard;
- b. Stipulations of fact;
- c. Deadline for disclosure of all witnesses and documentary evidence;
- d. Deadline for the close of all discovery;
- e. Deadline for filing pre-hearing motions and the manner in which they will be heard or acted upon;
- f. Deadline for filing proposed findings of fact and conclusions of law; and
- g. Hearing location and date, which may be continued only for good cause.

7. **Rules of Procedure for Hearing**

- a. All hearings shall be open to the public unless the parties mutually agree to the contrary.
- b. The hearing officer shall follow the evidentiary standards for administrative hearings.
- c. Either party may be represented at the hearing by a person of their choosing provided the representative has submitted a written entry of appearance prior to the hearing.
- d. The Town shall be entitled to have an employee representative in the hearing room during the course of the hearing.
- e. The hearing officer shall clear the hearing room of all witnesses if requested by either party prior to commencing the hearing.
- f. The Town shall present its evidence first.
- g. Oral evidence shall be taken only under oath.
- h. The hearing shall be conducted in an orderly manner.

- i. The hearing officer may admit evidence if it is evidence upon which reasonable persons are accustomed to rely on for the conduct of serious affairs. The hearing officer may exclude immaterial, irrelevant or unduly cumulative testimony.
- j. The hearing officer may take administrative notice of those matters of which the courts of this State may take notice.
- k. A record of the hearing shall be made by a certified court reporter arranged by the Town. If a certified court reporter is utilized, the City shall pay only the court reporter's appearance fee. No transcript shall be produced, unless one is requested by a party and such requesting party shall be responsible for the cost of the transcript.

7. Appeal Hearing Decision

- a. The hearing officer shall prepare a written decision upholding, reversing or modifying the disciplinary action within thirty calendar (30) days of the conclusion of the hearing or at a time mutually agreed upon by the parties at the close of the hearing. The decision shall contain findings of fact and conclusions of law. The decision shall be served on the parties by electronic mail, fax or mail. The employee or the Town may appeal the hearing officer's decision to district court within 30 days after the date of the hearing officer's decision pursuant to SCRA 1-074.
- b. In the event the hearing officer has reversed or modified the disciplinary action, the hearing officer shall have the authority to only award back wages and Town contributed benefits to the employee. The hearing officer shall have no authority to grant attorney fees, costs or interest in connection with any award of back wages or benefits. In the event the panel or hearing officer awards back wages, the employee shall file a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The Hearing Officer shall offset earnings and unemployment compensation received during the period against the back wages awarded. After a written decision is issued, the hearing officer shall retain jurisdiction of the case for the sole purpose of resolving any disputes regarding back wages and Town contributed benefits.
- c. The Town shall pay the hearing officer's fees and expenses.
- d. Each party shall pay all of its own attorney fees and costs.

Section XIV: Equal Employment Opportunity

Statement of Purpose: It is the policy of the Town of Edgewood to comply with all applicable federal and state laws and regulations relating to equal employment opportunity and that equal opportunity shall be practiced in the administration of all personnel policies and practices and shall include, but not be limited to:

A. Recruitment, hiring and promotion of any qualified person on the basis of merit without regard to race, religion, creed, color, ancestry, or national origin and without regard to age, sex, or disability where applicants or employees are otherwise able to perform the essential functions of the job.

B. Employment and promotion are administered in accordance with the principles of equal employment opportunity and based upon valid job requirements in the following order of priority:

1. Persons currently employed by the Municipality.
2. The general public as an equal opportunity employer.

C. Personnel actions shall be carried out without regard to race, religion, creed, color, ancestry or national origin or to age, sex, or physical or mental disability where employees are otherwise able to perform the essential functions of the job.

D. Management Responsibility. The Clerk-Treasurer shall assume the responsibility for equal employment opportunity laws and regulations and is designated to assist and counsel department heads and investigate and resolve internal complaints of employment discrimination filed by Town employees or employment applicants. The Clerk-Treasurer shall be the referral officer for the Town to receive notice of alleged unlawful employment practices from the equal employment opportunity commission or other appropriate federal or state agency of jurisdiction. The Clerk-Treasurer shall notify the Mayor, Town Council and the Town Attorney upon receipt of any complaints alleging violations under this section.

E. Applicant Complaints. Any job applicant, who has been denied employment with the Town of Edgewood and believes they have been denied employment on the basis of their race, religion, creed, color, ancestry or national origin, or to age, sex, or physical or mental disability, may petition the Town council to conduct an investigation into this matter.

F. Communication. The Equal Employment Opportunity policy shall be posted on Town bulletin boards and communicated to employees during new hire orientation, and by other means as determined to be appropriate.

Section XV: Harassment

Statement of Purpose: The Town of Edgewood provides a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional environment that promotes equal opportunity and prohibits discriminatory practices, including harassment on the basis of race, color, religion, gender, national origin, age or disability. The Town of Edgewood does not tolerate acts harassment is committed to enforcing this policy prohibiting harassment and sexual misconduct to provide:

1. A work environment free of all forms of harassment;
2. Appropriate corrective measures, up to and including dismissal and appropriate legal action, will be taken if this policy is violated;
3. A complaint procedure that is fair and, protect against retaliation for filing, or testifying as a witness to a complaint;
4. All complaints are investigated promptly, thoroughly, and fairly, and
5. That all Town officials, supervisors, and employees are aware of their responsibilities under this policy.

A. Coverage: This policy applies to Town officials, department heads, supervisors, employees, non-employees and volunteers subject to the control of Town authority and shall be actively enforced by Town management.

B. Definition: Harassment is any unwelcome conduct of verbal and/or physical conduct directed at an employee because of that person's sex, race, color, religion, national origin, age or disability when:

1. Submission to such conduct is made, either explicitly or implicitly, a term of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
3. Such conduct unreasonably interferes with an individual's work performance; or
4. Such conduct creates an intimidating, hostile, or offensive working environment. C.

Examples of sexual harassment include, but are not limited to:

Sexual innuendo, suggestive comments, insults, threats, jokes; suggestive or insulting noises, staring, leering, whistling, and obscene gestures; propositions or pressures to engage in sexual activity; touching, pinching, cornering, or brushing up against the body, or sexual assault; inappropriate comments concerning appearance; sexual or sexually insulting written communications, or public postings, including electronic communications; employment decisions based on sexual relationship; harassing behavior directed toward another because of the persons gender.

Sexual misconduct is any conduct constituting a criminal sexual offense under the laws of the State of New Mexico or the ordinances of the Town of Edgewood.

D. Responsibilities of Employees: All employees shall be familiar with this policy, and shall, if asked, cooperate in the investigation or resolution of harassment complaints.

E. Harassment Complaint Procedures:

1. Any employee who makes a complaint of harassment or sexual misconduct will be asked to record the complaint in writing or to sign their allegations or to indicate their refusal to sign their allegations. The Town will investigate all complaints in accordance with this procedure. Any employee who provides false or misleading information in connection with a complaint of harassment or sexual misconduct shall be subject to disciplinary action, up to and including dismissal.
2. Individuals who believe they are being harassed are encouraged to promptly and firmly notify the offender that his or her behavior is unwelcome. If such confrontation is ineffective or impossible, a complaint should be made to the individual's supervisor or to the Clerk-Treasurer. The supervisor or Clerk-Treasurer shall document the complaint and provide a copy to the complaining employee. All such complaints shall be kept in a confidential file.
3. Notification of such complaints, including documentation of the complaint, shall be provided to the Town Council as soon as possible after receipt of the complaint.
4. Clerk-Treasurer, along with the Town Attorney, has the responsibility to investigate any complaints of harassment or sexual misconduct, either directly or through their designee. A report of the complaint, the investigation, the findings and disposition of the complaint shall be reported to the Town Council.
5. If the allegation is substantiated, appropriate steps will be taken to remedy the situation. The supervisor shall apply an appropriate level of disciplinary action, up to and including dismissal from employment, for a person determined to have violated this policy.
6. Retaliation against an individual who makes a report of harassment or sexual misconduct, or testifies as a witness to a complaint is a serious violation of this policy and should be reported immediately. Any person found to have retaliated against another for reporting harassment or sexual misconduct, or testifying, as a witness to a complaint shall be subject to disciplinary action, up to and including dismissal.

F. Responsibilities of Managers and Supervisors: Managers and supervisors shall;

1. Be familiar with the Town policy on harassment and sexual misconduct;
2. Not make statements or engage in conduct that could reasonably be construed as harassment or sexual misconduct;

3. Be alert to potential instances of harassment or sexual misconduct in the course of providing supervision;
4. Immediately notify their own supervisor upon receipt of an allegation of harassment or sexual misconduct;
5. Take immediate action to stop confirmed instances of harassment or sexual misconduct;
6. After a complaint of harassment or sexual misconduct has been substantiated monitor the situation to ensure the situation has stopped and;
7. Ensure that no retaliation is taken against the complainant(s) or anyone who or testifies as a witness to a complaint in a harassment or sexual misconduct compliant.

Section XVI: Drug and Alcohol Policy

Statement of Purpose: It is the policy of the Town of Edgewood to provide a work environment that is free from the use, possession, sale or distribution of illegal drugs and from the misuse of alcohol and legal drugs by Town employees. Accordingly, the Town requires that employees and contractors alike will be subject to testing to determine the presence of unacceptable levels of illegal drugs, alcohol or inappropriately used legal drugs within their bodies while performing the Town's business. Therefore, this policy is to assure that only safe and alert employees are permitted on/in the Town premises, on the Town job site locations and at any time while operating Town vehicles, or using Town equipment. This policy establishes guidelines for consistent handling of alcohol and drug usage situations throughout the Town of Edgewood.

A. Prohibited Behavior:

1. Use of illegal drugs;
2. Abuse of legal drugs or alcohol;
3. Use of alcohol or illegal drugs on Town time or property, to include scheduled or unscheduled break periods, meal times, and at all other times when the employee is considered "at work" for the Town;
4. Sale, purchase, transfer, use or possession of illegal drugs or drugs obtained illegally;
5. Transport of alcoholic beverages in Town vehicles during Town time, break periods, or meal times;
6. Arrival for work under the influence of drugs or alcohol.

An employee who is using prescription drugs or over-the-counter medications that could affect work performance must inform his/her supervisor. A doctor's statement may be required at the Town's discretion.

B. Implementation

The Clerk-Treasurer shall adopt procedures required by all applicable federal and state mandates to ensure the effective implementation of this policy. In addition to setting out the procedures for pre-employment testing and the random drug and alcohol testing of those employees covered by the federal regulations, the procedures shall provide for reasonable suspicion testing for drugs and alcohol for all Town employees.

C. Employee Assistance Plan (EAP)

The Town Clerk-Treasurer or designee shall establish and communicate the availability of an employee assistance program for all Town employees. The Town Clerk-Treasurer or his/her designee shall for the benefit of all employees identify avenues for obtaining drug treatment and rehabilitation, outline available drug abuse counseling and educational programs, and describe any drug abuse rehabilitation benefits available through the Town's group health plan. Normal Town benefits, such as sick leave and the group medical plan, are available to aid in the rehabilitation process.

If the available assistance fails or is obviously inappropriate given the nature of the drug use and the employee's position, the penalty for drug use or alcohol abuse may be termination of employment

Section XVII: Care and Use of Equipment and Facilities

Statement of Purpose: All employees are required to properly maintain and utilize the Town of Edgewood property. Willful abuse or mishandling of any Town property including vehicles and/or technical resources will not be tolerated and may be grounds for disciplinary action up to and including discharge.

A. Town Vehicles. Some positions in the Town require the use of Town vehicles. These are Town-owned property and must be maintained in a proper fashion. Employees are responsible for maintaining vehicles and reporting problems to their Department Head. Any employee assigned a Town-owned vehicle must adhere to procedures established by the Clerk-Treasurer, which may include a defensive driving course. Town vehicles may not be used for personal business.

B. Technical Resources. The Town of Edgewood's technical resources including any voice mail, fax or e-mail systems, cellular telephones, are provided for use in the conduct of Town business and are to be reviewed, monitored and used in that pursuit. Employees may transmit or receive messages in the course of their employment on the Town of Edgewood computer systems or other technical resources, those messages may be subject to investigation, search and review. In addition, any electronically stored communications that are received may be retrieved and reviewed without prior notice.

1. Employees may access those electronic files or programs that they have permission to enter. Unauthorized copying or use of computer software exposes both the Town of Edgewood and the employee to fines and/or imprisonment. Employees may not load personal software or download software from the Internet onto the Town of Edgewood's computer system and may not copy software from the Town of Edgewood for personal use.

2. Employees are responsible for the content of all text, audio, or images that they place or send over the Internet. All messages communicated on the Internet should include the employee's name. No messages may be transmitted under an assumed name or anonymously.

3. Any non-business e-mail or other electronic messages must be clearly identified as such in the subject line. Employees may not prepare or review non-business e-mail messages during work time. With regard to computer use, working time is defined as any time an employee is at his or her workstation and not on a designated break, regardless of whether the break is paid. Employees who encounter messages that are of a personal or non-business purpose during work time are expected to skip the messages and review them only before or after the workday or during designated break time.

Section XVIII: On Call

Purpose

To define terms and conditions for the Town of Edgewood to compensate employees on unrestricted call-back status that are called back to the service of the Town of Edgewood outside of their normally scheduled shifts.

Definitions

- A. Employee – a person in a non-supervisory or non-management position.
- B. Report to work – accomplishing the necessary task working on-site or remotely.
- C. Unrestricted call-back status – Non-duty hours when an employee is required to report to work as soon as practical from the time contact is made.

Policy

A Town of Edgewood employee can be placed on unrestricted call-back status to be able to report to work whether in person or remotely. An employee on unrestricted call-back

status is not required to remain in any specific geographical area or required to work within a specific time period. Employees on such status may decline to return to work when contacted if they acknowledge they are not fit to report to duty, without penalty, discipline or other reprisal.

On Call Compensation

Town of Edgewood employees who are called back by management to report to work shall be guaranteed a minimum of two (2) hours of pay for actual hours worked at the applicable straight time or overtime rate. Employees shall be compensated in accordance with the provisions of overtime if the time worked results in overtime; or be paid their hourly rates if the work does not result in overtime. On-call time for employees who return to work shall commence at the time the employee receives the call and ends at the completion of the call-back assignment.

Section XIX: Temporary Light/Modified Duty

Purpose To define terms and conditions for the Town of Edgewood to allow injured/disabled employees to return to work under temporary light/modified duty.

Definitions

- D. Employee – a person in a non-supervisory or non-management position.
- E. Temporary light/modified duty is defined either as performing the same job as the employee held before the injury, or as performing the duties of another position for which the employee is qualified, for fewer than eight (8) hours each day or having reduced physical requirements for the full day or for less than the full day.

Policy

- A. An Employee returning from an injury/temporary disability may return to temporary light/modified duty if an appropriate position is available or if the employee's department can reasonably accommodate the employee by modifying the job requirements and the employee's physician certifies that the employee is capable of returning to temporary light/modified duty. If the employee's department does not have work available for the temporary light/modified duty, the employee may be assigned to another department.
- B. If an employee returns to work on a part-time basis and is not receiving full salary while still on injury time, the Town of Edgewood shall continue to pay the employee's share of benefits contributed by the Town of Edgewood on a pro-rata basis, based on hours worked.

- C. The terms and conditions of temporary light/modified duty shall be determined by the employee's Department Director in conjunction with the Clerk-Treasurer.

Unless otherwise stated in this Personnel Policy Manual, the provisions of this Personnel Policy Manual are effective December ___, 2016.

PASSED, APPROVED AND AMENDED this ___th day of December 2016.

John Bassett, Mayor

ATTEST:

Juan Torres, Clerk-Treasurer

RESOLUTION NO. 2016-22
TOWN OF EDGEWOOD 2017 HOLIDAY CALENDAR

WHEREAS: the Governing Body in and for the Town of Edgewood, New Mexico, meeting in regular session, has approved and adopted the Holiday Calendar as follows:

New Year's Day	Observed on Monday, January 2, 2017
Dr. Martin Luther King Jr's Birthday	Observed on Monday, January 16, 2017
Memorial Day	Observed on Monday, May, 29, 2017
Independence Day	Observed on Tuesday, July 4, 2017
Labor Day	Observed on Monday, September 4, 2017
Columbus Day	Observed on Monday, October 9, 2017
Veterans Day	Observed on Friday, November 10, 2017
Thanksgiving Day	Observed on Thursday, November 23, 2017
Presidents' Day	Observed on Friday, November 24, 2017
Christmas Eve	Observed on Friday, December 22, 2017 Town Offices close at 12 noon
Christmas Day	Observed on Monday, December 25, 2017
New Year's Eve	Observed on Friday, December 29, 2017 Town Offices close at 12 noon

NOW, THEREFORE, BE IT RESOLVED:

The Governing Body of the Town of Edgewood hereby adopts the following as the 2016 Holiday Calendar for the Town of Edgewood.

PASSED, APPROVED AND ADOPTED this 7th day of DECEMBER, 2016

John Bassett, Mayor

ATTEST:

Juan Torres, Clerk-Treasurer