

Chapter 91A: ANIMALS

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ARTICLE I. GENERAL PROVISIONS

§ 91A-1. PURPOSE.

Pursuant to authority granted by the North Carolina General Assembly, this animal control chapter is enacted to regulate, restrict or prohibit, if necessary, animals; to protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild or exotic animals; to make unlawful acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; to operate an animal shelter; and to carry out any other lawful duties authorized by state laws and applicable ordinances.

The Matthews Board of Commissioners hereby finds that animals kept or allowed to be in violation of any of the provisions of this Chapter are detrimental to the health, safety, and welfare of the citizens of the Town of Matthews and jeopardize the peace and dignity of the Town.

§ 91A-2. JURISDICTION.

This chapter shall be applicable within the corporate limits of the Town. No employee of the Animal Control Division shall have the authority to enforce provisions of this chapter within any other corporate limits or jurisdictions, unless an interlocal agreement pursuant to G.S. Section 160A-460 et. seq. is executed by the Town

and the incorporated municipality. Such an interlocal agreement may be entered into at any time, providing the appropriate resolution is adopted by the governing body of any such municipality agreeing that this chapter shall be enforced by the Animal Control Officers, as defined below, within the corporate limits or jurisdiction of the Town.

§ 91A-3. DEFINITIONS.

For the purposes of this chapter, the following words and phrases are defined and shall be construed as set out below, unless it is apparent from the context that a different meaning is intended:

Adequate Shelter: An enclosed area accessible by an animal, of sufficient size and nature so as to provide the animal with reasonable protection from adverse weather conditions.

Aggression-trained dog: Any dog that has been trained or conditioned, to any extent, to bite, attack or exhibit aggressive behavior toward humans or other domestic animals for any purpose, including, but not limited to, the security of business property or personal security.

Aggression-training facility: Any person, group of persons, firm, organization, association, partnership, syndicate or corporation that schools, trains or conditions canines to bite, attack or exhibit aggressive behavior toward humans or other domestic animals for any purpose, including, but not limited to, the security of business property or personal security.

Animal: Every nonhuman, animate being that is endowed with the power of voluntary motion including, but not limited to, dogs, cats, livestock and other mammals, birds, reptiles, amphibians and fish.

Animal Control Officers: Persons properly appointed by the Town to enforce all sections of this chapter and applicable state laws and who are responsible for discharging other duties and functions as may be prescribed by the Board of Commissioners and as set forward by this or any other applicable ordinance or state law or pursuant to interlocal agreements cited in section §91A-2.

Cat: A domestic feline of either sex.

City: The City of Charlotte, North Carolina.

CMPD: Charlotte-Mecklenburg Police Department.

CMAC: Charlotte-Mecklenburg Animal Control or the shelter operated by CMAC.

Code: Matthews Town Code

Computation of time: In computing any period of time, all calendar days shall be counted unless other was designated in any order or other document.

County Rabies Ordinance: The Mecklenburg County Ordinance for the Control of Rabies and Other Zoonoses.

Dangerous: Any animal whose behavior, temperament, size, or any combination thereof, when considered under the totality of the circumstances, including the nature of the surrounding area, constitutes a reasonable risk of injuring a human or animal or damaging personal or real property. That behavior includes, but is not limited to, an animal's biting or attacking or attempting to attack a human or another animal. However, this definition shall not apply to any animal that has been subject to provocation or if the victim has been trespassing, as defined herein, upon the animal owner's premises.

Dog: A domestic canine of either sex.

Domesticated: Those species of animals that are indigenous to Matthews and normally and customarily share human habitat in Matthews and are normally dependent on humans for food and shelter in Matthews, such as, but not limited to, dogs, cats, cattle, horses, swine, fowl, sheep and goats.

Equine: Any horse, pony, mule, donkey or hinny.

Exotic or wild animal: An animal that would ordinarily be confined to a zoo, or one that would ordinarily be found in the wilderness of this or any other country or one that is a species of animal not indigenous to the United States or to North America, or one that otherwise is likely to cause a reasonable person to be fearful of significant destruction of property or of bodily harm and the latter includes but is not limited to: monkeys, raccoons, squirrels, ocelots, bobcats, wolves, hybrid wolves, venomous reptiles, and other such

animals. Such animals are further defined as those mammals or non venomous reptiles weighing over fifty (50) pounds at maturity, which are known at law as *ferae naturae*. Exotic or wild animals specifically do not include animals of a species customarily used in North Carolina as ordinary household pets, animals of a species customarily used in North Carolina as domestic farm animals, fish confined in an aquarium other than piranha, birds, or insects.

Guard Dogs: Dogs primarily kept for the purpose of protecting premises from intruders or for the purpose of attacking a person coming in the vicinity of the dog.

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

Harboring an animal: An animal shall be deemed to be harbored if it is fed or sheltered seven (7) days or more, unless the animal is being boarded for a fee.

Health Director: The director of the Mecklenburg County Health Department.

Impounded: Any animal that is received into custody by any employee of the Matthews Animal Control or CMAC.

Inoculation: The vaccination of a dog or cat with anti-rabic vaccine approved by the United States Division of Animal Industry, the North Carolina Department of Agriculture and the State Board of Health at such time or times as shall be required by the Board of Health and/or the local Health Director, as defined in Section 106-364(2) of the General Statutes of North Carolina or as amended thereafter.

Livestock: All animals of a domesticated, agricultural nature including but not limited to: equine animals, bovine animals, sheep, goats, llamas, and swine.

MAC: Matthews Animal Control, A Division of the Matthews Public Works Department.

MPD: Matthews Police Department

Neutered male: Any male dog or cat which has been rendered sterile by a surgical procedure (orchiectomy).

Owner: Any person, group of persons, firm,

organization, association, society, club, lodge, partnership, syndicate, trustee or corporation owning, keeping, having charge of sheltering, feeding, harboring or taking care of any animal for seven (7) or more consecutive days, unless the animal is boarded for a fee. If a commercial kennel is involved for breeding, then ownership shall be indicated by the kennel operator by showing the registration of the animal in the name of the actual owner of the animal.

Pasture: An auxiliary fenced area with sufficient grass for grazing.

A definite portion of real estate, including land with its appurtenances, a building or part of a building.

Provocation: Any act done toward an animal that a reasonable person would expect to irritate or enrage such an animal to the extent that the animal would be likely to bite or attack. Including, but not limited to, teasing, harassing, beating, torturing, injuring, or intentionally causing pain to an animal. Provocation shall not include any actions on the part of an individual that pertain to reasonable efforts of self-defense or defense of others.

Security Dogs: For the purposes of this chapter, security dogs shall be synonymous with guard dogs.

Shelter: Any facility designated by the Town for the purpose of sheltering any animal lawfully impounded by Matthews Animal Control or CMAC.

Spayed female: A female dog or cat that has been rendered sterile by surgical means (ovariohysterectomy).

Trespass: The wrongful or legally unauthorized entrance onto or invasion of the property of an animal owner or lawful possessor. The cause of the individual to be on the property and any other relevant circumstances shall be considered in order to determine whether or not a trespass has occurred. A child under the age of seven (7) shall not be deemed to be a trespasser.

§ 91A-4 - 91A-10 RESERVED.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

§ 91A-11. ADMINISTRATION AND DUTIES.

The Matthews Animal Control Division is a Division of the Matthews Public Works Department created by the Board of Commissioners and under the direction of the Public Works Director.

(A) **Duties.** There shall be a Senior Animal Control Officer of the Division. The Senior Animal Officer and Animal Control Officers shall be charged with the responsibilities of:

(1) Enforcing and carrying out the provisions of this chapter and of any other ordinance assigning animal control duties and of all relevant state laws.

(2) Making canvasses including homes and any businesses utilizing guard or security dogs, for the purpose of ascertaining that all dogs, cats and equine animals are properly licensed, if required; that all dogs and cats are currently vaccinated against rabies; organizing and carrying out any such canvas having sole and exclusive authority, control and responsibility for such actions; and that provisions of this chapter are being followed.

(3) Investigating complaints regarding animals.

(4) Enforcing the laws with regard to the vaccination of dogs and cats against rabies and enforcement of the county rabies ordinance. The Mecklenburg County Ordinance for the Control of Rabies and other Zoonoses declares that the Health Director is responsible for county programs to monitor and control rabies and other zoonotic diseases. Investigating all reported animal bites or other human physical contact of the suspected rabid animal, enforcement of quarantine of any animal involved, and submission of bite reports and reports of human contacts to the Health Director.

(5) Supervising any Town facility for the sheltering of animals and coordinating sheltering with CMAC.

(6) Protecting animals from neglect and abuse.

(B) **Uniform.** Every employee of the Division, while performing these respective duties, shall wear any

required uniform and badge as determined by the Senior Animal Control Officer.

(C) **Weapons.** The employees of the Division shall not carry on their person any firearms of any kind unless specifically authorized by the Public Works Director. However, employees of the Division may store at the animal shelter, or carry in division vehicles, firearms, including tranquilizer guns, approved for use by the Public Works Director. Such firearms may be used when necessary to enforce sections of this chapter or other applicable laws for the control of wild, diseased or dangerous animals or for public safety when the Public Works Director or in the absence of the Public Works Director the Senior Animal Control Officer, deems the action necessary. While acting with weapons in their official capacity, employees of the Division shall be exempt from any Town Code provision otherwise requiring permits or Town Board approval.

§ 91A-12. INSPECTION, INTERFERENCE OR CONCEALMENT.

(A) **Inspections.** Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or other applicable law, or whenever an employee of the Division has probable cause to believe that there exists in any building or upon any premises any violation of this chapter or other applicable law, the employees of the Division are empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter or other applicable law, but only if the consent of the occupant or owner of the property is freely given or an administrative search warrant or criminal search warrant is obtained or if legally recognized exigent circumstances exist, as follows:

(1) If such property is occupied, the employee of the Division shall first present credentials to the occupant and request entry, explaining the reasons therefore; and

(2) If such property is unoccupied, the employee of the Division shall first make a reasonable effort to locate the owner or other persons having control of the property, present proper credentials and request entry, explaining the reasons therefore; and

(3) If such entry is refused or cannot be obtained because the owner or other person having

control or charge of the property cannot be found after due diligence, an employee of the Division may obtain an appropriate warrant to conduct a search, or inspection of the property or seizure on the property, or may act under a legally recognized exigent circumstance if such exists.

Notwithstanding any other provision of this chapter, an employee of the Division shall have the authority to enter upon any land to enforce the provisions of this chapter or other applicable law if a violation of such law is being committed in the presence of the employee and such entrance is otherwise consistent with the Constitution of the United States; such entry upon private property shall not be deemed to be a trespass.

(B) **Interference.** It shall be unlawful for any person to interfere with, hinder, molest, resist or obstruct employees of the Division while they are carrying out any duty created under this chapter or other applicable law.

(C) **Concealment of animal.** It shall be unlawful for any person to conceal, for the purpose of evading the licensing requirement, permit requirement or rabies inoculation requirement of this chapter or any applicable chapter, any un licensed, uninoculated or un-permitted animals from any employee of the Division.

(D) **Concealment of license, etc.** It shall be unlawful for any person to refuse to show proof of a license, permit or a rabies inoculation to any employee of the Division upon request.

§ 91A-13. ENFORCEMENT.

(A) The provisions of this chapter may be enforced by one (1) or more of the following methods unless otherwise limited to a specific manner(s) of enforcement by this section or chapter:

(1) Civil Citation.

(a) Civil citations may generally be used to enforce any provision of this chapter. Such citations may be used independently or in conjunction with any other enforcement method. Violations of the following sections may only be enforced by the issuance of a civil citation:

- 91A-27 Animals at Town-sponsored events.
- 91A-30 Reckless riding and driving of animal.
- 91A-32 Harboring stray animals.

- 91A-34 Failure to have Town animal license.
- 91A-43 Town permits.

(b) The penalties assessed by civil citations shall be in accordance with the escalating civil penalty graph that follows. The civil penalty graph applies to all violations that are enforced civilly, regardless of any other method of enforcement that may be additionally used. Each prior offense must be evidenced by the issuance of a civil citation or a criminal conviction arising from a prior offense before the next escalated penalty for subsequent offenses may be assessed.

(c) Each day that an ongoing violation continues shall be considered a separate violation from any previous or subsequent violation and each separate violation may be the basis of a citation.

Owner's Offense	Penalty
1st	\$ 50.00 fine
2nd	\$75.00 fine
3rd	\$150.00 fine and/or restraint measures in accordance with section 91A-55.
4th	\$250.00 fine and/or restraint measures in accordance with section 91A-55 that shall include a secure enclosure if violation is of sections 01A-23, 91A-26, or 91A-31.
5th	\$500.00 fine and seizure/forfeiture of the animal.

(2) Criminal misdemeanor. The violator may be charged with a misdemeanor and be subject to a fine not to exceed five hundred dollars (\$500.00) or thirty (30) days in jail; or

(3) Injunction. The Town may apply to the appropriate court for an injunction and order of abatement that would require that a violator correct any unlawful condition relating to this chapter existing on his or her property.

(4) Seizure / Forfeiture. The following sections of this chapter may be enforced by the seizure and forfeiture to the Division of the animal that is the basis for a violation of the Section:

- 91A-21 Abandoned animals.
- 91A-22 Abuse of animals.
- 91A-23 Animal bite.
- 91A-26 Biting or attacking animals.
- 91A-29 Nuisance.
- 91A-31 Restraint of animals.
- 91A-41 License and rabies tags and fees.
- 91A-43 Permit for four or more dogs or cats kept outside .
- 91A-52 Seizure, forfeiture, and disposition of animals.
- 91A-59 Un-cared for animals.

The manner of the seizure and the procedure by which the animal may be forfeited to the Division is that set out in § 91A-54 unless otherwise stated by the particular section authorizing the seizure and forfeiture. This subsection shall not be read to limit in any way any seizure or forfeitures authorized by the civil escalating

penalties graph.

(5) Exception. Nothing in this chapter shall be construed to prevent Matthews Police Officers, sheriff deputies or law enforcement officers of any kind from enforcing any of the provisions of this chapter or from exercising their authority as law enforcement officers.

§ 91A-14. NEGLIGENCE PER SE.

This section is included in this chapter in order to impose a public duty upon persons having possession of animals to prevent those animals from attacking another person due to a possible violation of the following code sections:

- 91A-24 Aggression-trained dogs.
- 91A-31 Restraint of animals.
- 91A-33 Exotic or wild animals.

91A-55 Protective measures for containment of animals; (failing to comply with instructions to impose preventive measures). Such persons having possession of animals have imposed upon them a public duty designed to promote the safety of other persons; and a violation of any of those provisions is negligence per se and could give rise to the recovery of damages for personal injuries in a civil action by an injured person against the person owning or having possession, charge, custody or control of the animal causing said injuries.

§ 91A-15. FEE SCHEDULE

The following fees are hereby established under this chapter:

Impound Fee	(91A-56)	\$40
Boarding Fee/day	(91A-56)	\$10
Rabies Vaccination	(91A-57)	\$15
Permits for 4 or more animals	(91A-43)	
First Time		\$25
Subsequent Years		\$25
Other Permits	(91A-42)	\$25

(Ord. 1399; passed 12-13-04)

§91A-16 – 91A-20 Reserved.

ARTICLE III. VIOLATIONS

§ 91A-21. ABANDONED ANIMALS.

(A) It shall be unlawful for any person owning, possessing or harboring an animal to negligently or willfully abandon that animal.

(B) For the purposes of this section, animals shall be considered abandoned when the totality of the circumstances reasonably indicates that the owner, possessor, or harbinger of the animal has negligently or willfully ceased to provide basic necessities for the animal with the intention to no longer care for the animal.

§ 91A-22. ABUSE OF ANIMALS.

(A) Prohibited: It shall be unlawful if a person negligently or willfully:

(1) Fails to provide adequate food and/or water for any animal they own, possess, or harbor; or

(2) Overworks or over drives any animal causing physical pain, suffering or death; or

(3) Beats, tortures, injures, torments, poisons or mutilates any animal causing physical pain, suffering or death; or

(4) Fails to provide adequate medical attention

for any sick, diseased or injured animal they own, possess, or harbor; or

(5) Keeps any animal under unsanitary or inhumane conditions which are detrimental to the animal's health and general welfare or fails to maintain a condition of good order and cleanliness which reduces the probability of transmission of disease; or

(6) Teases, molests, or in any way bothers or harasses any animal; or

(7) Sets any rabbit, hare, raccoon or other such animal loose for the purpose of chasing, hunting or having a race thereafter; or

(8) Promotes, stages, holds, manages, conducts, carries on or attends any game, exhibition, contest, fight or combat between one (1) or more animals or between animals and humans; or

(9) Fails to provide an adequate shelter for an animal they own, possess, harbor, or enclose, wherein the animal can be protected from extremes of weather (heat, cold, rain, etc.) and allowed to remain dry and comfortable during inclement weather; or

(10) Conveys any type of animal in a motor vehicle or in a wagon or trailer pulled by a motor vehicle or in a truck or the back of a truck without having such animal reasonably secured so as to prevent the animal from leaping or being thrown from the vehicle or in such a way as to cause pain, suffering, unreasonable discomfort or death to the animal; or

(11) Places or confines an animal or allows an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability or death.

After making a reasonable effort to find the driver of a vehicle in which an animal is confined, an employee of the Division, in the presence of a police officer, may use the least intrusive means to break and enter the vehicle if necessary to remove the animal where probable cause exists to believe that the animal is in the vehicle in violation of this subsection.

The officer removing the animal shall then impound

it and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed. In addition, the officer may also use any other enforcement method authorized by § 91A-13.

So long as an animal is within sight of an employee of the Division or a police officer, § 91A-8 shall not be interpreted to require that any warrant be obtained before removing the animal so long as such removal is otherwise consistent with the United States Constitution; or

(12) Fails to provide sufficient shade, when sunlight is likely to cause overheating and discomfort, to allow all animals kept outdoors to protect themselves from the direct rays of the sun; or

(13) Keeps animals outdoors without access to shelter to allow them to remain dry and comfortable during inclement weather; or

(B) Convictions. If a person has been criminally convicted twice of a violation of this section or of N.C.G.S. Sections 14-360 or 14-361 or 14-361.1 or 14-362 or 14-363, or as they are amended, and any two (2) such convictions have both occurred within the last five (5) years preceding a request by such person for an animal license or permit, then the animal license or permit request shall be refused. In that situation, the person shall be eligible to apply for an animal license permit five (5) years after the date of the last criminal conviction.

(C) Euthanizing exception. Nothing in this section shall be construed to prohibit the Division or veterinarians from euthanizing dangerous, unwanted, injured or diseased animals in a humane manner; nor to prohibit slaughterhouses or medical facilities from the proper, humane and lawful carrying out of their activities or duties.

(D) Pet shops. Animal Control Officers shall have the authority to conduct inspections of pet stores, to the extent not preempted by state law, in order to determine if there is any abuse of animals. Pet shops shall also be subject to the Mecklenburg County Ordinance for the Control of Rabies and other Zoonoses as administered and enforced by the Mecklenburg County Health Department. Abuse of animals shall include any act described in this section or any other act that is detrimental to the well being of the animal. It shall be unlawful for any pet store employee or pet store owner to

violate this section.

§ 91A-23. ANIMAL BITE.

(A) It shall be unlawful for the owner, possessor, or harbinger of an animal to negligently allow the animal to bite a human being, who does not ordinarily reside on the premises, unless the animal has been subject to provocation, or unless the victim has been trespassing, as defined in §91A-3 "Definitions."

(B) It shall be unlawful for the owner, possessor, or harbinger of an animal, or for the victim if the victim is reasonably physically able, to fail to report to the Division or 911 as soon as possible that an animal has bitten a person. It shall be unlawful for any person knowing the location of such an animal to fail to inform the Division of where the animal is located if the owner, possessor, or harbinger has given the animal away, or caused in any way the animal to be taken from their premises.

(C) If the Division determines that a dog has bitten a human being, then the Division shall have the authority to require protective measures pursuant to § 91A-55.

The Division shall have the authority to require the owner to file with the Division signed, written affidavits, and receipts where applicable, affirming that any of the above measures required by the Division have been and will continue to be complied with. Any breach in compliance with such measures subjects the animal to seizure and forfeiture as provided in § 91A-52.

The Senior Animal Control Officer shall have the authority to waive any or all of these requirements if the Senior Animal Control Officer determines that the bite is inconsequential.

§ 91A-24. AGGRESSION-TRAINED DOGS.

(A) The Division shall have the authority to determine whether any individual or business entity is engaged in the aggression training of dogs. If the Division makes such a determination, then the individual or business entity must comply with the requirements of sub-paragraph (B) as hereinafter written.

(B) Registration of aggression-trained dogs. Individuals or business entities engaged in the

aggression-training of dogs, or the owner, possessor or harbinger of any aggression-trained dog(s) must comply with the following requirements:

(1) The individual, business entity, owner, possessor or harbinger has a duty to provide registration information as required by the Division as it pertains to aggression-training of any kind of dogs.

(2) The individual or business entity has the duty to maintain a current registration of all dogs thus trained, including the current location or address of the dog; and that information shall be provided to the Division upon the training of any such dogs.

(3) The Division shall have the authority to inspect the premises engaged in aggression-training and to observe training methods and the safety of facilities during the operating hours of the aggression-training facility.

(4) Aggression-trained dogs must be maintained in adequate confinement by anyone possessing them in any way. The Division shall have the authority to require all aggression-trained dogs to be confined in a strong fence at least six (6) feet high and, at the discretion of the Division, topped by an anti-climb enclosure.

(5) Zoning - Business Only

(C) Unlawful acts. It shall be unlawful for any individual, business entity, owner, possessor or harbinger to fail to comply with any of the requirements addressed to them by this section.

(D) Imposition of preventive measures. If the Division determines that a dog has been aggression-trained, or trained for fighting or aggressive attack, then the Division shall have the authority to impose the same requirements stated in § 91A-53.

(E) Appeal. If the Division determines that a dog has been aggression-trained, or trained for fighting or aggressive attack, and the owner wishes to appeal that or the preventive measures imposed, then the appeal shall be the same as that stated in § 91A-54.

§ 91A-25 GUARD DOGS TAGS.

(A) Regulations. The owner, possessor, or harbinger of a guard dog kept within the Town for longer than is necessary to merely pass through the Town shall comply with the following requirements:

(1) Identification. It shall be unlawful for a guard dog kept in the Town not to have a current license tag.

(2) Signs. The owner, possessor, harbinger or user of any guard dogs or the owner of the premises employing the dogs must have posted on the premises a sign that identifies the name, address and telephone number of the owner of the security dogs.

(B) Escaping dog. If a guard dog escapes and bites someone who is not a trespasser, then the Senior Animal Control Officer shall have the authority to prohibit that dog from serving as a guard dog within the Town. It shall be unlawful to use such a dog as a guard dog after the Senior Animal Control Officer has ordered that the dog shall not be used within the Town as a guard dog.

(C) Enforcement. In addition to using any and all enforcement remedies stated in § 91A-13, the Division shall also have the following additional authority in respect to security dogs:

(1) If any security dog is seized running at large, then the dog shall not be returned to the owner until the owner has obtained a license tag for that dog and any other guard dogs used or to be used in the Town in accordance with sub-paragraph (B) above and is in complete compliance with all the requirements of sub-paragraph (A) above.

(2) If a security dog is found on the premises without complying with sub-paragraph (A), then the Senior Animal Control Officer or his designee shall have the authority to issue a notice of prohibition letter that will prohibit the use of that dog as a security dog within the Town, unless there is compliance with all of sub-paragraph (A) within forty-eight (48) hours.

Such a notice of prohibition shall, at the same time, be given to the owner of the premises upon which the security dog is utilized. The owner of the premises shall be informed that the continued use of such a security dog on the premises is an unlawful act on the part of the owner in violation of this section.

If such a dog remains on the premises after the forty-eight (48) hours, it shall be an unlawful act on the part of the owner of the dog and on the part of the owner of the premises; and a citation may be issued to either or both of those individuals, and the amount of the citation shall be fifty dollars (\$50.00).

The Division shall have the authority to seize guard dogs if there has not been compliance with the provisions of this subsection or for the safety of the public, all in accordance with Code § 91A-53.

§ 91A-26. BITING OR ATTACKING ANIMALS.

It shall be unlawful for an animal that has bitten, attacked or threatened a human or animal to remain at large. Animal Control Officers shall have the authority to enter upon private property, including entry into a dwelling unit or other similar building, when the Animal Control Officer has observed an animal which has committed the biting, attacking or threatening in violation of this section; and such entry upon private property shall not be deemed to be a trespass. Such entry is authorized so long as it is otherwise consistent with the North Carolina and United States Constitutions.

It shall be unlawful for any person to interfere, to threaten or otherwise prevent an Animal Control Officer from carrying out and performing their lawful duties, as described above, under this section.

§ 91A-27. ANIMALS PROHIBITED AT TOWN-SPONSORED EVENTS.

(A) Unlawful to have animal at a Town-sponsored public event. It shall be unlawful for any person owning or having possession, charge, custody or control of any animal, as defined in § 91A-3, to take that animal, whether on a leash or not on a leash, into or allow the animal to enter the boundaries of any Town-sponsored public event unless such event is specifically designated as exempt from this section due to the event's nature by the Public Works Director. The boundaries and the interior of a Town-sponsored public event shall consist of any area that is part of the event and shall include any public street, sidewalk or other publicly owned area within that area.

(B) Failure to remove animal. It shall be unlawful for any person with an animal within the boundaries of

those events to fail to obey the command of a law enforcement officer or of an Animal Control Officer, to remove such animal from the event.

(C) Exception. This section shall not apply to those animals that are part of an authorized event exhibit. The Public Works Director or his designee shall have the authority to specify the conditions for having such animals for the protection of the public and for the well being of the animals. This section shall not apply to guide dogs.

§ 91A-28. INJURING ANIMALS.

(A) It shall be unlawful for any person to intentionally strike an animal with an automobile or other vehicle.

(B) It shall be unlawful for any person injuring or killing a domestic animal by striking it with an automobile or other vehicle to fail to notify the owner of said animal, if identification of the animal is available, or the Division if no identification is possible. Notification may be made through the Matthews Police Department.

§ 91A-29. NUISANCE.

(A) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public nuisance or a nuisance to neighbors. By way of example and not of limitation, the following acts or actions of an owner, harbinger or possessor of an animal are hereby declared to be a public nuisance and are, therefore, unlawful:

(1) Having an animal that disturbs the rights of, threatens the safety of or injures a member of the general public or interferes with the ordinary use and enjoyment of their property; or

(2) Permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damaging gardens, flowers or vegetables; or

(3) Maintaining animals in an environment of unsanitary conditions or lack of cleanliness which results in offensive odor or is dangerous to the public health, welfare or safety, or a failure to maintain a condition of good order and cleanliness which reduces the probability

of transmission of disease; or

(4) Maintaining property that is offensive, annoying or dangerous to the public health, safety or welfare of the community because of the number, type, variety, density or location of the animals on the property; or

(5) Allowing or permitting an animal to bark, whine, howl, crow, cackle, or cause noise in an excessive, continuous or untimely fashion so as to interfere with the reasonable use and enjoyment of neighboring premises; or

(6) Maintaining an animal that is diseased and dangerous to the public health; or

(7) Maintaining an animal that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, dogs walked on a leash by owners, bicycles or vehicles; or

(8) Failing to confine a female dog or cat while in season in a building or secure enclosure in such a manner that she cannot come into contact with another dog or creates a nuisance by attracting other animals; provided this section shall not be construed to prohibit the intentional breeding of animals within an enclosed, concealed area on the premises of the owner of an animal which is being bred; or

(9) Failing to remove feces deposited by a dog on any public street, sidewalk, gutter, park or other publicly owned property or private property unless the owner of the property has given permission allowing such use of the property. This section shall not apply to visually impaired persons who have charge, control or use of guide dogs or persons using dogs in conjunction with activities of the Matthews Police Department.

(B) It shall be the duty of anyone reporting an alleged nuisance under this section to reveal his or her identity to the Division or the investigating law enforcement agency. Anonymous reports of alleged nuisances under this section shall not be investigated.

(C) In addition to any other enforcement remedies available under this chapter, if the Senior Animal Control Officer shall declare an animal a nuisance under this section, then the Senior Animal Control Officer has the authority to order the owner to confine the animal in accordance with § 91A-55. It shall be unlawful for the

owner to fail to comply with such an order or with the instructions in the order.

§ 91A-30. RECKLESS RIDING AND DRIVING OF ANIMAL.

(A) It shall be unlawful for any person to run, drive or ride any animal in a reckless, disorderly or careless manner through any street, alley or highway.

(B) It shall be unlawful for any person to drive or cause to be driven through any street or highway any loose or un-haltered horse, mule, cow or other livestock; nor shall the keeper of any such animal knowingly permit any loose horse, mule or cow to be driven from his property onto streets, alleys or highways.

§ 91A-31. RESTRAINT OF ANIMALS.

(A) Physical restraint of animal. It shall be unlawful for any person owning or having possession, charge, custody or control of any animal, excluding cats, to keep such on his own premises or off the premises, unless such animal is under sufficient physical restraint, such as a leash, cage, bridle or similar effective device which restrains and controls the animal, or within a vehicle or adequately contained by a fence on the premises or other secure enclosure. If the physical restraint used is a leash, bridle, or other device requiring a person to control the animal, then the person using such restraint must be of sufficient age and physical size or ability to reasonably restrain the animal. If the secure enclosure is an effective, working invisible fence, then there must be a visible, permanent signs on the premises stating that there is an invisible fence. If an animal escapes from an invisible fence then the Animal Control Division may order further current methods as specified in § 91A-55.

(B) Adult with animal on premises. If a responsible adult is physically outdoors, and immediately adjacent to the animal, on the land where the owner of the animal resides, and the animal is under the person's direct control and is obedient to that person's commands, then this section shall not apply during the duration of the time the animal is in the company and under the control of that adult and the animal is on the premises. An adult is defined as a person eighteen (18) years of age or older.

(C) Public parks. It shall be unlawful for any

person owning or having possession, charge, custody, or control of any dog to take the dog into or allow the dog to enter any public park without being at all times under the restraint of a leash.

This sub-paragraph shall not apply to:

- (1) Parks that have been designated as a leash free parks by the governmental agency responsible for the park;
- (2) Guide and hearing-aid dogs that are in the company of blind or deaf persons or being trained for such purposes;
- (3) Dogs employed or hired by law enforcement agencies or by the governmental agency responsible for the park to perform a governmental purpose within the park.

§ 91A-32. HARBORING STRAY ANIMALS.

- (A) It shall be unlawful for any person, without the actual consent of the owner, to harbor, feed, keep in possession by confinement or otherwise have any animal which does not belong to him, unless he has, within seventy two (72) hours of the time the animal came into his possession, notified the Division. Upon receiving such notice, the Division may take the animal and deal with it as provided in § 91A-51
- (B) It shall be unlawful for any person to refuse to surrender such an animal to an employee of the Division upon demand.
- (C) It shall be unlawful for any person, group, club, business entities or their employees to keep, harbor, maintain, or provide easy food access for stray, feral or otherwise wild dangerous animals on residential or business property in the Town which may entice known “rabies carriers” into the area.

§ 91A-33. EXOTIC OR WILD ANIMALS.

- (A) Unlawful act. It shall be unlawful for any person, firm or corporation to keep, maintain, possesses or have under their control within the Town, any venomous reptile or any other wild or exotic animal.
- (B) Exceptions. The provisions of this section shall not apply to lawfully operated and located pet shops, zoological gardens, scientific research laboratories, circuses, veterinarians harboring such animals for purposes of providing professional medical treatment, wildlife rehabilitators with proper permits, or exhibitors licensed by the United States Department of Agriculture displaying such animals for educational purposes, provided that the animals are maintained in a manner so as to prevent escape.
- (C) No permits for wild or exotic animals. Permits for the keeping or maintenance of wild or exotic animals are not authorized.
- (D) Compliance with state and federal regulations and safe confinement. The confinement of exotic or wild animals exempted from subsection (a) by subsection (b) above, must meet the regulations promulgated by the North Carolina Wildlife Commission, the minimum standards under the Animal Welfare Act and all applicable rules promulgated by the United States Department of Agriculture. In addition to meeting the above minimum standards, all such venomous reptiles and all such wild or exotic animals shall be confined, restrained or controlled in such a manner so that the physical safety, or property, of any person lawfully entering the premises shall not be endangered.
- (E) Exotic or wild animals on public rights-of-way. Animals described under sub-paragraph (A) above, but exempt under sub-paragraph (B), shall not be allowed on any public street, sidewalk, or other public way, except in a fully enclosed cage or adequate structural restraint. The use of a leash, with or without a muzzle, shall not be considered adequate restraint. Exempt from this provision are animals that are part of a featured performance at a special event with a Town festival or parade permit where the animal handler is licensed by the United States Department of Agriculture.

§ 91A-34 – 91A-40. RESERVED.

ARTICLE IV. LICENSING AND PERMITS

§ 91A-41. LICENSE AND RABIES TAG AND FEES.

(A) License: It shall be unlawful for any dog, cat, or ferret owner, possessor or harbinger who resides in the Town to fail to provide their dog, cat, or ferret over four (4) months of age with a current Town license tag. The owner, possessor or harbinger of any above-described animal must have their animal vaccinated and must have a current rabies vaccination tag showing that such animals have been vaccinated. No license will be issued unless proof of inoculation is shown. Any dog, cat, or ferret owner, possessor, or harbinger who moves into the Town for the purpose of establishing residency, or who becomes a resident as a result of annexation, shall have thirty (30) days in which to obtain a license.

(B) License Fee:

(1) Licenses shall be renewed by the last day of the month in which the license expires one (1) year from the date of issue, except for sterile dogs or cats, which may have a three (3) year renewal term. (Ord. No. 1512, passed 10-9-06). The license fee for all dogs, guard dogs, cats, and ferrets shall be as follows:

Dogs	Fertile	\$30.00/year	
	Sterile	\$10.00/year	(3 year \$30)
Cats:	Fertile	\$30.00/year	
	Sterile	\$10.00/year	(3 year \$30)
Ferrets:	Fertile	\$30.00/year	
	Sterile	\$10.00/year	(3 year \$30)

(2) Any owner of an animal who can furnish a statement from a licensed veterinarian that the animal, due to health reasons, could not withstand spay/neuter surgery, shall be charged at the Sterile rate.

(3) Any animal owner sixty-two (62) years of age or older who owns a sterilized animal may receive their license free of charge.

(4) Any disabled owner of a dog which is used for seeing or hearing purposes and is spayed or neutered shall obtain a license free of charge.

(5) Any governmental agency that owns for a governmental purpose, an animal subject to licensing, shall obtain their license free of charge.

(C) Rabies Inoculation: It shall be unlawful for any person who owns, possesses, or harbors a dog, cat, or ferret not to have the animal inoculated against rabies.

(D) Rabies tag: It shall be unlawful for the owner, possessor, or harbinger of any dog or cat in the Town not to have the dog or cat wear the rabies vaccination tag issued to them by the veterinarian administering the rabies vaccine. It shall be unlawful for the owner, possessor, or harbinger of any ferret in the Town not to have in the owner's possession the rabies vaccination tag issued to that person by the veterinarian administering the rabies vaccination. Dogs and cats not wearing such tags, and for which the owner cannot promptly display a valid rabies tag, may be impounded pursuant to § 91A-51.

(E) Reclaim: If the Division has lawfully acquired custody or control of an animal and the Division has probable cause to believe that the animal does not have the lawfully required inoculation against rabies, then the Division shall have the authority to inoculate the animal against rabies. The owner, possessor, or harbinger of the animal shall not have the right to reclaim the animal until the owner, possessor, or harbinger has paid the Town for the cost of the rabies inoculation.

§ 91A-42. TOWN PERMITS.

It shall be unlawful for any person to own, keep, have, or maintain any equine animals, cloven-hoofed animals or other livestock or any chickens, turkeys, ducks, guineas, geese, pheasants, pigeons or other domestic fowl in the Town without first receiving from the Division a permit to do so, or to continue to have any of the same stated above after a permit has been denied. This section shall not apply to, and no permit shall be required for, any agricultural operation within G.S. Section 106-700, "Nuisance Liability of Agricultural Operation." The permit shall be valid for one year from the date of issuance and shall be renewed annually. (Ord. No. 1512; passed 10-9-06) The annual fee for such permit shall be per household and shall be set by the Town Board from time to time. The application shall list all such animals and fowl on the premises. Before a permit is issued, an employee of the Division shall inspect the premises to determine if the keeping of the animals or fowl on the premises will endanger or is likely to endanger the health, safety, peace, quiet, comfort, enjoyment of or otherwise become a public nuisance to nearby residents or occupants or places of business.

When a permit is denied for any reason, the applicant shall be given a written explanation of the reason for denial.

An owner or possessor of such animals or fowl shall comply with the following applicable provisions before a permit is issued. Compliance with the below provisions will create a rebuttable presumption that a permit shall be issued. That presumption may only be rebutted by specific findings supported by competent evidence that despite compliance with the below provisions, the presence of such animals or fowl are still likely to endanger the health, safety, peace, quiet, comfort, enjoyment of or otherwise become a public nuisance to nearby residents or occupants or places of business. :

(A) Fowl and other specifically identified animals. Chickens, turkeys, ducks, guineas, geese, pheasants or other domestic fowl or rabbits:

(1) Such animals must be confined in a coop, fowl house or rabbit hutch not less than eighteen (18) inches in height. The fowl must be kept within the coop or fowl house and the rabbits in the hutch at all times.

(2) The coop or fowl house must be used for fowl only and the hutch for rabbits only, and both must be well ventilated.

(3) The coop, fowl house or hutch shall have a minimum of four (4) square feet of floor area for each fowl or rabbit.

(4) The run must be well-drained so there is no accumulation of moisture.

(5) The coop, fowl house or hutch shall be kept clean, sanitary and free from accumulation of animal excrement and objectionable odors. It shall be cleaned daily, and all droppings and body excretion shall be placed in a fly proof container and double-bagged in plastic bags.

(6) The coop, fowl house or hutch shall be a minimum of twenty-five (25) feet from any property line.

(7) No more than twenty (20) such fowl or rabbits shall be kept or maintained per acre. The number of fowl or rabbits should be proportionate to the acreage.

(B) Pigeons. Pigeons, while allowed to fly to and

from the premises, must be provided with adequate space on the premises, and sanitary conditions must be maintained.

(C) Cloven-hoofed animals. Cloven-hoofed animals, equines and other livestock:

(1) Such animals must be provided with adequate shelter to protect them from the elements.

(2) The shelter shall be kept clean, sanitary and free from accumulations of animal excrement and objectionable odors.

(3) The shelters for cows and other large livestock, which are covered by the zoning ordinance, shall be kept at a minimum of seventy-five (75) feet from any property line. The shelters for goats and other small livestock shall be kept at a minimum of twenty-five (25) feet from any property line.

(4) Cows. Each cow or other large livestock, excluding equines, shall have a minimum pasture area of two (2) acres. Each goat, sheep or other small livestock shall have a minimum pasture area of one-fourth (1/4) acre.

(D) Slaughter. Any slaughter of any livestock or poultry not regulated by North Carolina state law or otherwise forbidden or regulated, shall be done only in a humane and sanitary manner and shall not be done open to the view of any public area or adjacent property owned by another.

(E) Annexation. New annexes have ninety (90) days from the date of annexation to bring their property into compliance and to have obtained permits required by this section.

(F) Exceptions. A permit shall not be required for animals of any kind if the animals are kept by a governmental authority or other appropriately certified and recognized academic institution, museum, raptor center, etc.

The Division may revoke any permit when the permit has been mistakenly issued without compliance with this section; or when the applicant has submitted false information; or for a violation of any of the provisions of this chapter; or, when, in the opinion of the Senior Animal Control Officer, the health, safety or welfare of any person or property is menaced by the

keeping of such animals; or when the animals become a nuisance. If a permit is revoked, the applicant shall be given a written explanation of the reasons for the revocation. Upon the determination of a violation of this section, and if the violation pertains to a correctable condition on the property, the owner shall have thirty (30) days in which to bring the property or condition into compliance with this chapter

§ 91A-43. PERMIT FOR FOUR OR MORE DOGS OR CATS.

(A) It shall be unlawful for any person to own, to keep custody of or to take care of four (4) or more dogs or cats or any combination of four (4) dogs and cats or more, four (4) months or older, unless a permit is issued by the Animal Control Division.

(B) If a person has four (4) or more dogs or cats on the premises, then the Public Works Director or his designee must make the following five (5) findings in order to issue a special permit:

(1) Noise from the dogs or cats will not interfere with an abutting occupant's use and peaceful enjoyment of the property.

(2) Any odor or unsanitary conditions caused by the dogs or cats will not interfere with an abutting occupant's use and peaceful enjoyment of the property.

(3) Four (4) or more dog runs or other dog-related structures or any combination thereof shall not be permitted if the structures can be seen from an abutting occupant's property in a residentially zoned district.

(4) There is no evidence that the dogs or cats pose any health problem or disease exposure for abutting occupants.

(5) The dogs or cats do not interfere in some other similar manner with the peaceful use and enjoyment of abutting property.

If the Public Works Director or his designee denies a person a special permit, then the Public Works Director or his designee must state the reasons for the denial in writing. If the Public Works Director or his designee has any recommendations or conditions that would enable the person to be in compliance with the standard(s), then the Public Works Director or his designee must state those

recommendations or conditions in writing. The Public Works Director or his designee is authorized to issue a special permit with specific conditions attached to the permit.

(C) A permit shall remain valid as long as the person is in compliance with the terms and conditions, if any, of the permit. If any of the circumstances change, such as, but not limited to, more animals, different breed for a particular dog, new structures or other such similar change that might reasonably violate the five (5) standards set forth above, then the permit shall automatically terminate and be null and void. The person must secure a new permit, or the person shall be in violation of this section. The Public Works Director or his designee shall have the authority to revoke the permit at any time if there is a violation of the standards stated in subsection (B), for a violation of any term or condition of the permit if there has been any misrepresentation, or for any other similar reason. The Public Works Director or his designee shall state in writing the basis of the revocation.

§ 91A-44. APPEAL OF DENIAL OR REVOCATION OF PERMIT.

Any person who is denied a permit or has a permit revoked under § 91A-43 and 91A-44 shall have the right to appeal the denial or revocation to the office of the Town Manager. Such appeal shall be in writing and shall state the basis of the appeal. The written appeal must be filed with the Town Clerk within ten (10) days after the notice of denial or revocation of the permit is given to the appellant by the Division. Such notice shall be considered given to the appellant when a notice letter with adequate postage and properly addressed to the last mailing address provided to the Division by the person is placed in the United States mail, or when personal notice is given to the person, whichever occurs first. The appellant, in addition to filing the appeal with the Town Clerk, shall also file a copy of the appeal letter with the Public Works Director. Upon receipt of a proper appeal, the Town Manager or his representative shall conduct a hearing to determine if the permit should be denied or revoked. A properly filed appeal shall not affect the denial of a permit unless and until such time as the Town Manager or his representative overturns the denial. A properly filed appeal shall toll the revocation of an existing permit until a decision is entered on the appeal by the Town Manager or his representative.

§91A-45. NONRESIDENT EXCEPTIONS.

The provisions of this chapter requiring certain animals to be licensed or permitted shall not apply to those animals owned by, in the charge of or under the care of nonresidents of this Town who are traveling through or temporarily sojourning in the Town for a period not exceeding thirty (30) days. Nor shall the licensing provisions apply to animals temporarily brought into this Town for the exclusive purpose of entering animals in a show or other exhibition. These exemptions do not apply to nonresidents of the Town who bring dogs into the Town for guard-dog purposes.

§ 91A-46 – 91A-50. RESERVED.

**ARTICLE V.
IMPOUND, SEIZURE/FORFEITURE, CLINIC AND
DISPOSITION OF ANIMALS**

§ 91A-51. IMPOUNDMENT.

Any animal that is found to be unowned or to be in violation of any provision of this chapter is subject to immediate impoundment if the animal’s owner is nonexistent, unknown, or found to be unavailable after a reasonable attempt to identify, locate, and/or notify the animal’s owner has been made. Any animal that is so impounded may be held by the MAC for up to three (3) working days, excluding the day of impoundment. At the discretion of MAC or transport to CMAC division.

If the owner of the animal appears during the three (3) day holding period, the owner may redeem the animal by paying the applicable impoundment and boarding fee, any and all outstanding civil citations that may have been issued pursuant to a violation of this chapter, and also by bringing the animal into full compliance with all provisions of this chapter and any applicable state law. The animal shall not be released to the owner until the owner has fully complied with the above requirements. The owner shall have ten (10) calendar days from when they first appear and claim the animal in which to accomplish such compliance and redeem the animal. The owner shall be responsible for a boarding fee for the entire time the animal is held by the Division. Failure to do so shall result in the forfeiture of the animal to the Division. The MAC or CMAC Senior Animal Control Officer or CMAC may grant a time extension to any

owner actively attempting to redeem their animal.

Matthews Animal Control may transport the animal to the Charlotte Mecklenburg Animal Control shelter at any time and any release from CMAC shall be in accordance to their regulations and requirements.

Any animal for which no owner appears within the three (3) day holding period shall be deemed abandoned and shall be forfeited to CMAC. All animals forfeited to CMAC shall be disposed of in accordance with CMAC policies.

Nothing in this section shall prevent MAC or CMAC from seizing and/or forfeiting an impounded animal pursuant to any other provision of this chapter or state law.

**§ 91A-52. SEIZURE, FORFEITURE, AND
DISPOSITION OF ANIMALS.**

(A) Authority to seize and forfeit animals. In addition to any other authority or procedure authorized by this chapter or by any other law to seize an animal, the MAC shall have the authority to summarily seize and forfeit to the MAC any animal when the MAC determines that:

(1) There is probable cause to believe that the animal, under the totality of the circumstances, is dangerous or prejudicial to the public safety or public health and the MAC has issued a probable cause notice on the animal. (Dangerous Animals)

(2) There is probable cause to believe the animal is the subject of a violation of the following sections of this chapter:

- 91A-21 Abandoned animals.
- 91A-22 Abuse of animals.
- 91A-23 Animal bite.
- 91A-26 Biting or attacking animals.
- 91A-29 Nuisance.
- 91A-31 Restraint of animals.
- 91A-41 License and rabies tags and fees.
- 91A-44 Permit for four or more dogs or cats kept outside.
- 91A-59 Un-cared-for animals.

(3) There is probable cause to believe the animal is the subject of a violation of this chapter that is

punishable by escalating civil penalties under § 91A-13 and the escalated penalty appropriate to the specific violation includes seizure of the animal (Civil).

(B) Procedure. The procedures by which such seizures and forfeitures shall be accomplished shall be in accordance with subsequent sections as follows:

(1) Sub-paragraph (A)(1) “Dangerous Animal Seizures” shall be conducted in accordance with the procedures set out in §91A-53.

(2) Sub-paragraph (A)(2) and (A)(3) seizures shall be conducted in accordance with the procedures set out in § 91A-54.

**§91A-53. DANGEROUS ANIMAL SEIZURE/
FORFEITURE PROCEDURE.**

(A) Probable Cause Notice Required. No animal shall be seized on the basis that it is dangerous or prejudicial to the public safety or public health without the prior issuance of a probable cause notice. This limitation shall not prohibit seizure based on other lawful authority, nor the subsequent issuance of a probable cause notice for an animal otherwise seized or impounded.

(B) Probable Cause Notice. Probable Cause notices may only be issued by the Public Works Director or his designee. The probable cause notice shall state:

(1) The specific facts constituting probable cause for declaring the animal dangerous,

(2) That a prompt hearing to determine whether or not the animal is dangerous shall be held as soon as possible, and

(3) That anyone in possession of the animal shall immediately turn the animal over to the MAC.

If the animal’s owner is known, the probable cause notice shall also order the owner to immediately contact the MAC and shall state the manner(s) in which the MAC may be contacted.

The MAC shall notify the owner as soon as reasonably possible of the probable cause notice if the owner is known. If the owner is unknown, the MAC shall make reasonable efforts to determine who the owner is

and try to notify the owner.

(C) Owner duties. The owner shall turn the animal over to MAC immediately upon receiving a probable cause notice. The MAC shall have the authority to seize immediately any animal for which a probable cause notice has been issued. It shall be unlawful for the owner or occupant of a premises to fail to give an animal to the department immediately upon the presentment of a probable cause notice. Such animal may be held at MAC or CMAC, at the discretion of the Public Works Director or his designee.

(D) The supervisor that issued the probable cause notice shall have the authority to authorize that an animal may remain on the premises or elsewhere prior to the seizure/forfeiture hearing if the supervisor is satisfied that the animal’s confinement shall be adequate for protecting the public and for the well-being of the animal. The supervisor that allows the animal to remain without seizure shall order the animal to be kept adequately confined and shall issue a containment order in compliance with § 91A-55. A failure of the animal to be kept so confined shall result in the immediate seizure of the animal. The department shall always have the authority to summarily seize an animal after the probable cause notice has been delivered and before the seizure hearing.

(E) Request for a hearing. The owner of an animal subject to a probable cause notice shall have the right to a hearing to determine whether or not the animal shall be declared dangerous as defined in this chapter. The owner of the animal shall request a hearing by submitting a written request during normal working hours to MAC within ten (10) working days after the delivery of, or all reasonable efforts to deliver the probable cause notice to the owner.

(F) Failure to request a hearing. If the owner fails to properly file a timely request for a hearing with the MAC, the Public Works Director shall determine whether the animal is dangerous. The Public Works Director shall make findings of fact to support the determination, and the determination shall be conclusive. MAC may dispose of the animal as provided for in subsection (I) below. In the event that the Public Works Director, due to a conflict of interest or any other circumstance, is unable to make the above determination, then the Chief of Police shall make the determination.

(G) Hearing. Upon a proper and timely request, a

hearing shall be held. The supervisor that issued the probable cause notice or his designee shall present whatever relevant evidence the supervisor has that the animal should be declared dangerous. The owner shall be entitled to present whatever relevant evidence the owner wishes and to have legal representation. All testimony before the Hearing Officer shall be sworn testimony. The entirety of the hearing shall be recorded. If physical evidence is presented by either side, the Hearing Officer shall have such evidence photographed as part of the record and shall describe the item fully for the record.

(H) Public Works Director as Hearing Officer. The Public Works Director shall be the Hearing Officer and shall conduct the hearing to determine whether the animal shall be declared dangerous or not. The Public Works Director shall not function as the Hearing Officer if there is any conflict of interest or appearance of such. In such cases the Police Chief shall serve as Hearing Officer. The Public Works Director shall disclose any facts, knowledge or any information known by the Public Works Director regarding the particular situation for the record at the very beginning of the hearing. The Public Works Director shall respond to any questions about any past knowledge about the particular situation. The appellant shall have the right to state for the record any specific findings of fact about the particular situation that the appellant believes precludes the Public Works Director from conducting an impartial hearing of the case.

(I) Decision and written orders. The Hearing Officer's decision shall be supported by specific findings of fact and specific conclusions based upon the findings of fact. The Public Works Director, if the Public Works Director acts as Hearing Officer over the objections of the appellant, shall make specific findings of fact and conclusions regarding such objections for that particular case. All findings of fact must be supported by competent and material evidence in the record and must be included in the record.

The Hearing Officer shall issue a written order based on his or her decision. The written order shall declare whether the animal is found to be dangerous or prejudicial to the public safety or public health or non-dangerous. If the animal is found to be dangerous or prejudicial to the public safety or public health, then the Hearing Officer shall have the authority to terminate the owner's ownership rights in the animal and to dispose of the animal in accordance with sub-section (I), or the Hearing Officer may suspend the termination of

ownership rights conditioned upon the owners compliance with such terms as the Hearing Officer deems necessary to ensure that the animal may be kept by the owner in safety. If such terms are part of a written order suspending seizure/forfeiture, then the terms and the written order shall comply with the requirements of section 91A-55. The Public Works Director shall have the authority to modify the terms when it is necessary to ensure the safety of the public. The termination of ownership rights may be invoked upon the failure to comply with any of the terms. Written orders shall include the following statements:

(1) Whether the animal is dangerous and prejudicial to the public safety or health or non-dangerous. (If non-dangerous, nothing further is required.)

(2) That MAC has the authority to terminate ownership rights of the animal, and to order the humane destruction of the animal.

(3) Whether the ownership rights are being presently terminated or if such termination is suspended.

(4) If the termination is suspended, the terms and condition on which the termination is suspended in compliance with section 91A-55.

(5) That failure to comply with the written order could result in termination of ownership rights and humane destruction of the animal.

(6) That any appeal to the Superior Court of the Hearing Officer's decision must be filed within 30 days.

(J) Disposition of the animal. The Public Works Director shall have the discretion to dispose of any animal forfeited to the Division under § 91A-53 in one (1) of only two (2) specific ways:

(1) By humane destruction of the animal; or

(2) By giving the animal to an individual or an organization subject to the protective and inspection conditions required by the Senior Animal Control Officer for the well-being of the animal, for the protection of the public and for the purpose of preserving and taking care of the animal. Such conditions shall reserve MAC's right to seize and humanely destroy the animal upon any failure to comply with the conditions. An animal declared

to be dangerous by the Public Works Director shall not be disposed of for research or experimental purposes.

(K) Appeal to Superior Court. The decision of the Public Works Director or of the Town Manager or his designee shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for writ of certiorari for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after delivery of or reasonable efforts to deliver the decision to the owner or the owner's representative.

The Town shall reimburse the petitioner for the cost of the petitioner's transcript and the court's transcript if the court reverses the decision and determines that the animal is not dangerous.

In the event of the filing of a petition for writ of certiorari in Superior Court, the animal shall be confined at the animal shelter or at a location solely acceptable to MAC or CMAC.

**§ 91A-54. GENERAL SEIZURE/
FORFEITURE PROCEDURE.**

(A) Applicability. When an animal has been or shall be seized pursuant to § 91A-52(A)(2), (A)(3), the following procedure shall be followed.

(B) The actual act of seizing the animal shall be done in any manner consistent with North Carolina law and the United States Constitution.

(C) Notice and Holding Period. MAC may/shall conduct reasonable efforts to identify, locate, and notify the animal's owner. The animal shall be held three (3) working days, excluding the day of seizure, from the date notice is sent to the owner, or from the date of seizure if the owner cannot be identified or located after reasonable efforts to do so.

The Notice, if sent, shall include the following statements:

(1) An order to the animal's owner to contact the Division immediately.

(2) A brief statement of the date, location, and reason for the seizure of the animal.

(3) A statement that the animal is subject to forfeiture and humane destruction within three (3) working days from the date the notice was sent.

(4) A statement that a hearing will be held, at the owner's request, to determine if the animal shall be forfeited.

(5) A statement of the method(s) by which the owner may contact the Division.

(D) Hearing. A hearing shall be held if the owner has contacted the Division within the three (3) days and requested a hearing. The hearing shall be conducted in the same manner and with the same remedies and consequences as those set out in § 91A-53. If the violation that is the basis of the seizure is found by the preponderance of the evidence to have occurred, then the Hearing Officer shall have the authority to order the same remedies available in § 91A-53(I) and 91A-53(J). However, if a forfeiture is ordered, the animal may be placed for general adoption to the public if it is healthy, nonaggressive, and has not bitten. If the animal's owner fails to contact MAC and request a hearing within the three days after the notice is sent, then the animal shall be forfeited to MAC or CMAC.

(E) Appeal. Appeal from a determination under this section shall be conducted in compliance with § 91A-53(K).

**§91A-55. PROTECTIVE MEASURES FOR
CONTAINMENT OF ANIMALS.**

(A) Circumstances requiring special preventive measures. MAC shall have the authority to require the owner or custodian of an animal to comply with specific preventive measures, as described below in subparagraph (B), whenever MAC has the authority to seize the animal for possible forfeiture or when otherwise authorized by this chapter. Preventive measures shall only be ordered after taking into consideration the totality of the circumstances, including but not limited, to the following:

(1) Nature of the particular animal. The behavior, size, temperament, breed, capacity for inflicting serious injury, the number of animals or other such similar factors that would be relevant to a determination of whether or not preventive measures need to be imposed for a particular situation; and

(2) Adequacy of confinement. The adequacy of the current enclosure or confinement, if any; and

(3) Immediate surrounding area. The likelihood that the conditions pertaining to the particular animal and the animal's confinement are detrimental to the safety or welfare of citizens or the peace and tranquility of citizens in the immediate surrounding area.

(4) History and ability: The history of the animal and the animal's owner in compliance or noncompliance with this chapter's provisions as well as the owner's ability to adequately restrain the animal when viewed in light of all relevant factors.

(B) Preventive measures. If MAC determines that the circumstances require special preventive measures, then the MAC shall have the authority to require appropriate, specific preventive measures which might include, but are not limited to, the following: Necessary repairs for any fence or enclosure, measures to ensure that a gate will remain closed, a "fence" or "secure fence" as described below or any other similar device that would provide greater assurance for the confinement of the animal, all of which are subject to being specifically approved for their adequacy by the Division.

A fence shall be at least a minimum of four (4) feet high and constitute a secure-enough enclosure sufficient to contain the animal at all times. The minimum size of the enclosure may be at least one hundred fifty (150) square feet. If the animal is over fifteen (15) inches at the shoulder or is deemed capable of climbing a standard four-foot fence, then the animal control supervisor may require a six-foot fence. A secure fence means a fence, as immediately described above, that may also be enclosed on all six (6) sides, including the top. The bottom may be concrete, unless the sides of the fence are buried one foot deep in a hard-packed soil. Any reference to "fence" or "secure fence" shall be defined as stated immediately above.

MAC shall also have the authority to require the owner to tattoo or microchip the animal at the owner's expense if that is necessary for identification, investigative or enforcement purposes.

MAC shall have the authority to require the owner to procure liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) at the owner's expense, or to have the animal tattooed or to display a sign on the premises warning of the animal on the

premises. MAC shall have the authority to require the owner to show signed, written statements about maintaining the liability insurance, the designated enclosure for the animal and the duty to notify the Animal Control Division if the animal escapes, and to require the owner to give the MAC the authority to seize and impound the animal if the owner fails to comply with the provisions.

(C) Containment order. If the MAC determines that specific preventive measures must be complied with by the owner of a animal, the MAC shall make reasonable efforts to notify the owner of the containment order. All containment orders shall be in writing and shall state the reasons that preventive measures are required, identify the specific preventive measures that must be implemented, and the designated time period within which to comply with the containment order. MAC shall have the authority to exercise discretion for extensions of time if that is reasonable in view of the good-faith progress of the owner in implementing the preventive measures.

(D) Failure to comply with containment order. It shall be unlawful for an owner to fail to comply with a containment order within the designated time for compliance stated in the written order or any extension thereof. The penalty for a willful failure to comply with a containment order shall be a civil penalty in accordance with § 91A-13 or seizure/forfeiture of the animal in accordance with § 91A-13 and § 91A-54.

(E) Owner's challenge to the containment order. The owner may submit in writing a challenge to the MAC determination that sub-paragraph (A) is applicable to the owner's premises or submit in writing a challenge to the specific preventive measures required by the MAC. The challenge must comply with all of the requirements as for a request for hearing as set out in § 91A-53. A challenge that meets those requirements shall be heard in the same manner and with the same appeal to superior court as set out in § 91A-53. The Hearing Officer shall review the containment order under the standards of this section but shall follow the process for hearing as set out in § 91A-53. If the animal has been seized and the owner wishes to appeal the seizure and potential forfeiture as well as challenge the containment order, both matters may be addressed in the same hearing.

§ 91A-56. FEES.

(A) Generally MAC shall charge and collect fees as established by the Town Board from owners or possessors who redeem their animals. The below services and fees for those services are hereby authorized. The Town Board shall have the authority to establish a fee schedule for the following services and categories:

(1) Impounding. Any animal that is taken into custody by MAC pursuant to this Code or state statute.

(2) Boarding. Dog per day; cat per day; large animals (e.g., equines, bovines, sheep, goat, swine, etc.) per day; small animals (e.g., rabbits, birds, poultry, hamsters, etc.) per day. Any animal not deemed to fit in a particular enumerated category shall be considered a large animal.

(3) Electronic Tagging. The Division is hereby authorized to, and may without the consent of the animal's owner or possessor, humanely implant any animal lawfully impounded with an electronic tagging device similar to a microchip that will allow the animal to be positively identified. The cost shall be deferred by the owner or possessor prior to the animal being released back into their custody.

The fees shall be reviewed annually, by the Town Board. The Town Board may also set escalating impoundment fees for animals for recurring violations by the same owner.

An accurate copy of the fee schedule shall be posted in a conspicuous place in the office of the Animal Control Division, and a copy shall also be filed with the Town Clerk's office.

The above fees do not include applicable charges for any license or inoculation that may be required by this chapter or other applicable law. If the animal to be redeemed is not licensed, permitted, or inoculated as required by law, the owner must have the dog or cat inoculated, and obtain a proper license or permit before release of the animal.

No fees whatsoever shall be charged or collected on any animal which has been unlawfully impounded. Any such animal shall immediately be delivered upon demand to the owner or person entitled to the custody of the animal.

Any animal transported by MAC to CMAC shall be subject to any and all fees and policies appropriate to this

CMAC facility, as established by the City of Charlotte.

§ 91A-57. RABIES CLINICS; SPAY AND NEUTER SERVICES.

(A) Establishment or provision of Rabies Clinics or spay/neuter services. MAC is authorized to establish, equip, operate and maintain and provide Rabies and/or spay neuter services ("services" hereinafter) for dogs, cats, rabbits and ferrets, and to employ personnel for those services, and to appropriate and expend tax and non tax funds, including property taxes, for those purposes. In lieu thereof, the MAC is further authorized to contract with any individual, corporation, nonprofit corporation, governmental body or any other group for the purpose of operating or providing services for dogs, cats, rabbits and ferrets within the Town. The Division may appropriate and expend tax and non tax funds, including property tax, for those purposes.

(B) Consent waiver and form. Persons submitting dogs, cats, rabbits and ferrets for the services of the clinic shall first be required to sign a consent form certifying under penalty of perjury that they are the owners of said animals or are otherwise authorized to present the animal for the operation. Such persons may be required to furnish proof of such ownership or authority.

By signing the consent form, the owner shall waive any and all liability for any injury or death to an animal arising out of the rabies inoculation or spaying or neutering operation or any services provided incidental thereto. The person presenting the animal for such operation shall indemnify the Town against any person's claim that the Town did not have the authority or right to destroy the animal.

(C) Boarding charge. MAC shall establish a return date by which persons submitting animals for the above operation shall pick up the animal or be subject to a reasonable boarding fee, established in accordance with § 91A-56, to commence the date after such return date. If the animal is not picked up by the seventh day after the return date, then the MAC may dispose of the animal by any disposition method authorized by this chapter.

§ 91A-58. RABIES IMPOUNDMENT.

The Mecklenburg County Ordinance for the Control of Rabies and other Zoonoses shall apply. Consistent

with that ordinance, the Senior Animal Control Officer or his designee shall have the authority to order confinement of an animal which shows symptoms of rabies or which has bitten a person and to take whatever other action is necessary for confinement, observation and disposition of the animal.

§ 91A-59. UN-CARED FOR ANIMALS.

(A) Whenever MAC finds that any animal is or will be without proper care because of injury, illness, incarceration or other excusable, involuntary absence of the person responsible for the care of such animal, MAC may impound such animal until it is reclaimed by its owner. The owner must pay the applicable fees in § 91A-56 in the same manner as any other owner would reclaim an impounded animal prior to the release of such animal by the MAC or CMAC.

(B) Any animal that has been impounded under sub-paragraph (A) and is not reclaimed can be kept, at the discretion of the Senior Animal Control Officer, up to ten (10) days and may be disposed of by the MAC pursuant to § 91A-60.

(C) If the owner of the animal notifies the MAC of the owner's intent to claim the animal but will not be able to until after the ten (10) day impoundment period, the MAC shall have the authority to grant extensions at its discretion, when the MAC has concluded, after investigating the request, that the owner or an agent for the owner is not able to reclaim the animal within the time period specified in (B) above. The owner shall be charged double the redemption fee stated in section 91A-56, if the animal is claimed after the ten-day period when permission has been granted to claim the animal after the ten-day period. If the MAC has concluded that the owner or an agent is in a position to reclaim the animal, then the MAC can inform the owner or agent that the request is denied and proceed to dispose of the animal in accordance with § 91A-60.

§ 91A-60. SALE OR EUTHANASIA.

(A) Animals transported to CMAC may be sold or euthanized in accordance with policies as established by the Charlotte City Council.

(1) MAC may accept any animal that the owner wishes to release to the MAC. The owner shall sign a release card vesting all rights and title to the animal

in the MAC. All released animals shall immediately be available for public sale or public auction or humane euthanasia as the MAC or CMAC deems appropriate.

(2) The MAC Division shall have the authority to carry out the humane euthanasia of any animal lawfully taken into custody by the Division which is affected with any dangerous, painful, incurable or communicable disease, or which is incurably crippled or suffering incurably after reasonable effort has been made to notify the owner.

(B) Bite. In accordance with the Mecklenburg Rabies Control Ordinance all dogs and cats that bite a person shall be immediately confined for ten (10) days in a place designated by the Senior Animal Control Officer of the Animal Control Division or the Health Director. If the owner or the person, who controls or possesses the dog or cat that has bitten a person, refuses to confine the animal as required by this section, the Public Works Director or his designee or the Health Director may order the seizure of the animal and its confinement for ten (10) days at the expense of the owner. The disposition of an animal other than a dog or cat that bites a person shall be at the discretion of the Health Director in consultation with the consulting veterinarian. If any animal is unclaimed after the ten-day confinement, then the MAC may dispose of the animal, unless the MAC or CMAC receives instructions of a different nature from the Health Department.

(Ord. No. 1397; passed 11-22-04; effective 12-1-04; Ord. No. 1399; passed 12-13-04) (Ord. No. 1484, passed 2-27-06)