

Chapter 6

Morals, Conduct, and Criminal Code on General Offenses

(State Law: NMSA 3-17-1, 3-18-1, and 3-18-17 et seq., 1978 Comp.,)

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ARTICLE 1

GENERAL PROVISIONS

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6-1-1 TITLE:

This chapter shall be entitled "Criminal Code on General Offenses". [M.C. 1981, Ord. 81-1]

6-1-2 LIMITATION OF ACTION:

All prosecution for the alleged violation of this Code shall be commenced within one year after the alleged violation and shall be barred thereafter. [M.C. 1981, Ord. 81-1]

6-1-3 JURISDICTION:

This Code applies only to offenses committed within the Village limits of Capitan, New Mexico, as those limits may from time to time be established. [M.C. 1981, Ord. 81-1]

6-1-4 DEFINITIONS AND RULES OF CONSTRUCTION:

In the construction of the Criminal Code Ordinance, the following definitions and rules on construction shall be observed, unless it shall be otherwise expressly provided in any section of this ordinance, or unless inconsistent with the manifest intent of this ordinance.

A. "accused" means any person charged with the violation of any Ordinance of the municipality that imposes a penalty.

B. "another", "other" means any other human being or legal entity, whether incorporated, including the United States, the State of New Mexico, or any subdivision thereof.

C. "anything of value" means any conceivable thing of the slightest value, tangible or intangible, movable or immovable, corporeal or incorporeal, public or private. The term is not necessarily synonymous with the traditional legal term "property".

D. "battery" means the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

E. "bet" means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement.

A bet does not include:

1. Bona fide business transactions which are not valid under the laws of contracts, including, without limitation:

a. Contracts for the purchase or sale, at a future date, of securities or other commodities; and

b. agreements to compensate for the loss caused by the happening of chance, including without limitation, contracts for indemnity or guarantee and life and health and accident insurance;

2. Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such contest;

3. A lottery which is defined as an enterprise wherein, for consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance even though accompanied by some skill. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise; or

4. Betting otherwise permitted by law.

F. "carrying a deadly weapon" means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

G. "defendant" means any person accused of a violation of any Ordinance of the municipality that imposes a penalty.

H. "disorderly conduct" means engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace, or maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any person.

I. "governing body" means the city council or city commission of a city, the board of trustees of a town or village.

J. "he" or "him" or "she" or "her" shall not be construed to be mandatory distinctions of gender if not expressly stipulated.

K. "lawful custody or confinement" means the holding of any person pursuant to lawful authority, including, without limitation, actual or constructive custody of prisoners temporarily outside a penal institution, reformatory, jail, prison farm or ranch.

L. "mayor" means the chief executive officer of municipalities having the mayor-council form of government.

M. "minor" means any unmarried person who has not reached his or her eighteenth birthday, except that under application of the Alcohol Beverage Control Act, or any alcohol-related division of this ordinance, "minor" means any person under 21 years of age.

N. "municipality" means any incorporated city, town, or village, whether incorporated under general act, special act or special charter.

O. "official proceeding" means a proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or depositions in any proceedings.

P. "person" means any human being or legal entity, whether incorporated or unincorporated.

Q. "police officer", "law enforcement officer", "peace officer" or "officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

R. "prostitution" means knowingly engaging in or offering to engage in sexual intercourse for hire.

S. "public employee" means any person receiving remuneration for regular services rendered to the state or any of its political subdivisions.

T. "public grounds" means any real property owned or leased by a municipality.

U. "public officer" means any elected or appointed officer of the state or any of its political subdivisions, serving with or without remuneration for his services.

V. "shall" is mandatory and "may" is permissive.

W. "street" means any thoroughfare that can accommodate pedestrian or vehicular traffic, is open to the public, and is under the control of the municipality. [M.C. 1981, Ord. 81-1]

6-1-5 AMENDMENTS:

Any amendments to this Ordinance shall be adopted as Ordinances as required by state law, and when passed in such form as to indicate the intention to make the same a part thereof, shall be incorporated into this Ordinance so that reference to it as "the Criminal Code Ordinance on General Offenses", shall be understood as including such amendments. [M.C. 1981, Ord. 81-1]

6-1-6 PENALTY:

Any person found guilty of violating any of the provisions of the Ordinance shall be fined not more than three hundred (\$300.00) dollars or imprisoned for a period of not more than ninety (90) days, or by both such fine and imprisonments, and each day this Ordinance is violated shall constitute a separate offense; provided, however, that if a specific penalty is provided therefore in any particular and individual section of this Ordinance, then the specific penalty shall prevail. The Court may sentence any corporation, club, organization or unincorporated association by the Criminal code of the Village of Capitan. [M.C. 1981, Ord. 81-1]

6-1-7 SEVERABILITY:

Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance. [M.C. 1981, Ord. 81-1]

6-1-8 REPEALER:

All Ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any Ordinance or resolution, or part thereof, heretofore repealed. [M.C. 1981, Ord. 81-1]

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PUBLIC ORDER AND SAFETY

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6-2-1 ASSAULT:

It is unlawful for any person to commit a battery upon the person of another, nor shall any person, by unlawful act, threat or menacing conduct, cause another person to believe he is in danger of receiving an immediate battery, nor shall any person, by the use of insulting language toward another, impugn his honor, delicacy or reputation. [M.C. 1981, Ord. 81-1]

6-2-2 BATTERY:

It is unlawful for any person to beat, strike, inflict violence or apply force to the person of another, nor shall a person intentionally touch or apply force to the person of another in a rude, insolent, angry or hostile manner except in connection with an exhibition duly authorized and licensed under law, or in lawful self defense, or in the line of duty as a duly authorized police officer as circumstances warrant. [M.C. 1981, Ord. 81-1]

6-2-3 AGGRAVATED BATTERY:

It is unlawful for any person to commit aggravated battery upon the person of another, nor shall any person unlawfully touch or apply force to the person of another with intent to injure that person or another, or inflict an injury to the person which is not likely to cause death or great bodily harm, but does cause painful temporary disfiguration or temporary loss or impairment of the functions of any member or organ of the body. [M.C. 1981, Ord. 81-1]

6-2-4 TRESPASS:

It is unlawful to enter or remain, with malicious intent, on the property of another knowing that consent to enter or remain has been denied or withdrawn by the owner or occupant thereof. [M.C. 1981, Ord. 81-1]

6-2-5 DISTURBING THE PEACE:

It is unlawful for any person to disturb or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit such conduct upon any property owned by him or under his control or supervision. [M.C. 1981, Ord. 81-1]

6-2-6 UNREASONABLE NOISE:

It is unlawful for any person to make, continue or cause to be made, any loud or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others. Unlawful noises include but shall not be limited to the following:

A. Horns and Signal Devices. The sounding of any horn or signaling device of any automobile, motorcycle, truck, or other vehicle on any street or public place except as a danger warning, the creation by means of any such signaling devices any unreasonable, loud, or harsh sound, the sounding of such devices for any unnecessary and unreasonable period of time other than by accident or mechanical, electrical or other difficulty or failure, and the use of any such signaling device where traffic is held up.

B. Radios and Phonographs. The use of operation of any radio, phonograph or other sound producing machine in such manner as to disturb the peace and quiet of neighbors.

C. Loud-Speakers and Amplifiers Used for Advertising. The use of operation of permitting to be played, used, or operated any radio, receiver set, musical instrument, phonograph, tape recorder, loud-speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public in any residential area except with the proper permit elsewhere prescribed.

D. Yelling or Shouting. Yelling, shouting or creating other loud noises which annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel or residence, or of any persons in the vicinity.

E. Animals. The keeping of any animals which, by causing frequent or long continuous noise, shall disturb the comfort or repose of any persons in the vicinity.

F. Schools, Courts, Churches, Hospitals. The creating of any excessive noise on any street adjacent to any hospital, school, institution of learning, church or court which interferes with the workings of such institution, or which disturbs or annoys patients in a hospital.

G. Pounding. The pounding or hammering on any metal object or thing except inside a building or in connection with the construction or erection of a building. [M.C. 1981, Ord. 81-1]

6-2-7 DISORDERLY CONDUCT:

Disorderly conduct is unlawful. A person is guilty of disorderly conduct if he or she:

A. creates a disturbance of the public order by an act of violence or by any act likely to produce violence; or

B. engages in fighting, or in violent, threatening or tumultuous behavior; or

C. makes any unreasonably loud noise; or

D. addresses abusive language or threats to any person present which creates a clear and present danger of violence; or

E. causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, where three or more persons are committing acts of disorderly conduct in the immediate vicinity; or

F. damages, befouls, or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition; or

G. commits a trespass on residential property or on public property. Trespass for the purpose of this Ordinance shall mean:

1. entering upon, or refusing to leave, any residential property of another, either where such property has been posted with "No Trespassing" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry, or continued presence, is prohibited.

2. entering upon, or refusing to leave, any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the Governing Body of the public agency owning property, where such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, his agent or a police officer.

H. makes a telephone call with intent to annoy another, whether or not conversation ensues; or

I. assembles together with two or more persons with intent to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out such unlawful purpose; or

J. disturbs, threatens, or in any insolent manner intentionally touches any house or vehicle occupied by any person. [M.C. 1981, Ord. 81-1]

6-2-8 UNLAWFUL ASSEMBLY:

It is unlawful for three or more persons to assemble with intent to do any unlawful act by force or violence against the person or property of another and to make any overt act to carry out such unlawful purpose. [M.C. 1981, Ord. 81-1]

6-2-9 OBSTRUCTING MOVEMENT:

It is unlawful to hinder, annoy or molest persons passing along any street, sidewalk, crosswalk or other public way, or to lie, sit, or stand around the entrance of any church, theater, public building, or other place of public assemblage in any manner so as to unreasonably obstruct such entrance or to place or erect upon any public way an obstruction of any type except temporary barriers or warning signs placed for the purpose of safeguarding the public against any hazard. [M.C. 1981, Ord. 81-1]

6-2-10 REMOVAL OF BARRICADES:

It is unlawful to remove, destroy or interfere with any barrier, guard or light placed before or in any dangerous place near the streets, sidewalks or other public ways of the city for the purpose of warning or protecting travelers from injury or danger, provided that removal after the danger has ceased and temporary removal to allow the passage of a vehicle with immediate subsequent replacement shall not be considered unlawful. [M.C. 1981, Ord. 81-1]

6-2-11 DEADLY WEAPONS:

A. Carrying of Deadly Weapons. It is unlawful to carry within the municipality a concealed, loaded firearm or other weapon capable of producing death or great bodily harm including, but not restricted to, any types of daggers, brass knuckles, switchblades knives, poniards, butcher knives, dirk knives, chains, can openers, ice picks, and all such weapons with which dangerous wounds can be inflicted, except in a person's residence or on real property belonging to him as owner, lessee, tenant or licensee or in a private automobile or other private means of conveyance for lawful protection of one's person or property while traveling or for other lawful purposes.

B. Discharge of Firearms. It is unlawful to discharge within the municipal limits any pistol, revolver, rifle or shotgun which may be used for the explosion of cartridges, or any gas-operated gun or any device used for propelling missiles or any slingshot or missile propelling device, or any bow made for purpose of throwing or projecting missiles of any kind by any means whatsoever, whether any instrument is called by any name set forth above involving the discharge of a firearm for lawful purposes.

C. Air and B-B Guns. It is unlawful for anyone to shoot within the municipality any air rifle, air gun or B-B gun. Parents who permit the violation of this section shall be deemed guilty of a violation of Section 6-5-7.

D. Exceptions for Peace Officers. The provisions set forth above shall not be construed to forbid police officers from carrying, wearing or discharging such weapons as shall be necessary in the proper discharge of their duties.

E. Exposing Others to Danger. It is unlawful to endanger the safety of another or his property by using a firearm or other deadly weapon in a negligent manner or to carry a firearm while under the influence of any intoxicant or narcotic, or to sell, loan or furnish any deadly weapon to persons under the influence of any intoxicant or narcotic or to any incompetent person.

F. Prohibited Weapons. It is unlawful to manufacture, cause to be manufactured, possess, display, offer, sell, or lend any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device or any knife having a blade which opens, falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement.

G. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value, any deadly weapon, air rifle, air gun, or B-B gun, or ammunition for any firearm to any person under the age of 18 provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

H. Dispositions of Seized Weapons. Every police officer upon making an arrest and taking a weapon used in the violation of any section of this code, shall deliver the same to the chief of police to be held by him until judgment is entered for the offense and upon the finding of guilt the weapon be disposed of as provided in § 3-55-2 NMSA. 1978 Compilation. [M.C. 1981, Ord. 81-1]

6-2-12 FAILURE TO REPORT TREATMENT OF WOUNDS:

It is unlawful for any physician, surgeon or other practitioner of the healing arts licensed by the State of New Mexico to fail to immediately report to the municipal police department his treatment of any persons in the municipality for a wound inflicted by a deadly weapon of any kind. [M.C. 1981, Ord. 81-1]

6-2-13 PROPELLING OF MISSILES:

It is unlawful for any person to shoot, sling or throw any stone, rock or other propellant, missile or substance in any manner as to be reasonably likely to cause injury to any person or property. [M.C. 1981, Ord. 81-1]

6-2-14 POSSESSION OF BURGLARY TOOLS:

It shall be unlawful to possess any lock pick, skeleton key or key to be used with a bit or bits, jimmy, sledge hammer, pry bar, cold chisel, dynamite, nitroglycerine, blasting caps, or any other burglary instrument or instruments commonly used by burglars unless such possession is for lawful purpose. [M.C. 1981, Ord. 81-1]

6-2-15 POSSESSION OF FIREWORKS:

Possession of fireworks consists of either selling, offering to sell, owning, possessing, manufacturing, transporting, or discharging any firecracker, roman candle, skyrocket, torpedo, bomb, blank cartridge (except when used in connection with athletic or racing activities), or any type or form of explosive commonly known as "fireworks", unless such item has been declared by the Fire Chief as not dangerous to persons or property.

Nothing herein contained shall be held to prevent such activities as may be authorized by compliance with the provisions of the Fire Code.

The term "fireworks" shall not include toy pistols, toy canes, toy guns, or other devices in which paper cups containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty-hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

Safe and sane devices as approved by the Fire Chief shall be those devices listed as approved for sale by the Fire Chief. Any device which propels any portion, part or projectile more than ten (10) feet in the air or has a report louder than the paper caps described above are not considered safe and sane.

Nothing herein contained shall be held to apply to or prohibit any employee of the State Game and Fish Department of the United States Fish and Wildlife Service for possessing fireworks for control of game birds and animals or to prohibit the Village or any civic organization therein from sponsoring and conducting, in connection with any public celebration, an officially supervised and controlled fireworks display.

Whoever violates this Ordinance, upon conviction thereof, may be imprisoned for a term not to exceed ninety (90) days, or shall pay a fine of not more than \$300.00, or shall be sentenced to both imprisonment and a fine by the direction of the judge. [Ord. 80-4, as adopted by M.C. 1981, Ord. 81-1]

6-2-16 FALSE ALARMS:

It is unlawful for any person to make, turn in or give a false alarm of fire or of need for police or ambulance assistance, or to interfere with the proper functioning of an alarm system, or to aid or abet the commission of such an act. [M.C. 1981, Ord. 81-1]

6-2-17 FALSE REPORTS:

It is unlawful for any person to maliciously make or file with the police department any false, misleading or unfounded report or statement concerning the commission or alleged commission of any crime. [M.C. 1981, Ord. 81-1]

6-2-18 INTERFERENCE WITH OFFICERS:

It is unlawful to resist, abuse, molest, hinder, obstruct or refuse to obey or assist when called upon to do so, any police officer, fireman, emergency medical personnel or judge while in the discharge of his duty. [M.C. 1981, Ord. 81-1]

6-2-19 IMPERSONATING AN OFFICER:

It is unlawful for any person other than a duly commissioned police officer to wear or carry the uniform, apparel, badge, identification card or other insignia of office, the same, similar or a colorable imitation of that adopted and worn or carried duly commissioned police officers unless acting in the course of regular business and with the permission of the municipality, or, without authority, to exercise or attempt to exercise the functions of, or pretend to be, a peace officer or judge. [M.C. 1981, Ord. 81-1]

6-2-20 ASSAULT UPON A PEACE OFFICER:

It is unlawful for any person to commit assault upon a peace officer. Assault upon a peace officer consists of:

A. an attempt to commit a battery upon the person of a peace officer while he is in the lawful discharge of his duties; or

B. any unlawful act, threat or menacing conduct which causes a peace officer while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery. [M.C. 1981, Ord. 81-1]

6-2-21 UNAUTHORIZED USE OF CERTAIN WORDS AND INSIGNIA:

It is unlawful to display on any vehicle or sign, without authority of the municipality, the words "police", "police department", "fire department", or words or insignia of similar import, whose design or form is such that it appears to be an official vehicle or sign of the fire or police department of the municipality, provided that nothing contained herein shall apply to any state or county vehicle. [M.C. 1981, Ord. 81-1]

6-2-22 ESCAPE OF PRISONERS:

A. Escape from Jail or Custody. It is unlawful for any person, while prisoner of the municipality or otherwise in the custody of or confined by the municipality, to escape or attempt to escape or to assist other prisoners to escape or attempt to escape from such custody or confinement.

B. Assisting Escape. It is unlawful for any persons to assist, attempt to assist or offer to assist any person in custody of or confined under the authority of the municipality to escape from jail, place of confinement or custody. [M.C. 1981, Ord. 81-1]

6-2-23 RESISTING, OBSTRUCTING OR REFUSING TO OBEY AN OFFICER:

Resisting, obstructing or refusing to obey an officer consists of either:

A. Knowingly obstructing, resisting or opposing any officer of this State or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this State or any other judicial writ or process; or

B. Resisting or abusing any judge, magistrate or peace officer in the lawful discharge of his duties; or

C. Refusing to obey or comply with any lawful process or order given by any police officer acting in the lawful discharge of his duties. [M.C. 1981, Ord. 81-1]

6-2-24 GIVING ASSISTANCE TO POLICE OFFICERS:

It shall be unlawful for any male citizen over the age of eighteen (18) years to refuse or neglect to render assistance to any police officer when called upon for such assistance or aid in the suppression of riot or other unlawful assemblage or in the arrest of any person who has committed an offense. [M.C. 1981, Ord. 81-1]

6-2-25 IMPROPER HANDLING OF FIRE:

A. It shall be unlawful for any person to set a fire or to cause or procure a fire to be set to any trash, refuse, inflammable vegetation or forest material, or to any other flammable substance on the land of another person and without the permission of the owner thereof.

B. It shall be unlawful for any person to allow fire to escape or spread from the control of the person setting such fire or having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading.

C. It shall be unlawful for any person to set a fire or to cause or procure a fire to be set to any trash, refuse, inflammable vegetation or forest material, or to any other flammable substance on his own land or that of another person, without using proper and reasonable precaution at all times to prevent the escape of such fire.

D. It shall be unlawful for any person to leave any campfire burning and unattended upon his own land or the lands of another person.

E. It shall be unlawful for any person to cause a fire to be started upon his own land or the land of another person by means of any lighted cigar, cigarette, match or other manner, and leave such fire unquenched.

Provided, however, that nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning. [M.C. 1981, Ord. 81-1]

6-2-26 INTERFERENCE WITH FIRE CONTROLS:

A. It shall be unlawful to give a false alarm to any public officer or employee, whether by means of a fire alarm box or otherwise.

B. It shall be unlawful to interfere with the proper functioning of a fire alarm system.

C. It shall be unlawful to interfere with the lawful efforts of firemen to extinguish a fire. [M.C. 1981, Ord. 81-1]

6-2-27 FIRE DANGER EMERGENCY:

A. It shall be unlawful for any person or cause to procure a fire to be set to any trash, refuse, inflammable vegetation or forest material, or any other flammable substance at any time during which an extreme fire danger emergency exists unless a permit to do so has first been obtained.

B. The Mayor or the Chief of the Fire Department may by proclamation declare that an extreme fire danger emergency exists, and the publication of such proclamation in any newspaper of general circulation with the Village shall be held to be legal notice within the meaning of this Section. [M.C. 1981, Ord. 81-1]

6-2-28 OBSTRUCTION OF SIDEWALKS:

It shall be deemed a nuisance for any occupant, owner or agent of any piece of land to suffer or permit any weeds or brush to grow and remain upon the sidewalk of such lot or piece of land, or allow anything to be placed upon their sidewalk that would obstruct the free passage of the general public. [M.C. 1981, Ord. 81-1]

6-2-29 DEPOSITS OF INJURIOUS MATERIAL ON THOROUGHFARES:

It shall be unlawful for any person to deposit, place or allow to remain on or upon any public thoroughfare, street or alley any material or substance injurious to person or property. [M.C. 1981, Ord. 81-1]

6-2-30 PROTECTION OF RIVERS AND STREAMS AND BAR DITCHES:

It shall be unlawful for any person to deposit, place or allow to remain on or upon any public thoroughfare, street or alley any material or substance injurious to person or property. [M.C. 1981, Ord. 81-1]

6-2-31 ABANDONMENT OF DANGEROUS CONTAINERS:

A. Abandoning, discarding or keeping in any place accessible to children any refrigerator, icebox, freezer, air-tight container, cabinet or similar container of a capacity of one and one-half cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids, or latches removed or without sealing the doors, or other entrances so as to make it impossible for anyone to be imprisoned therein;

B. Being the owner, lessee, or manager of any premises with the right of entry or possession thereof who knowingly permits any abandoned or discarded refrigerator, icebox, freezer, air-tight container, cabinet, or similar container of a capacity of one and one-half cubic feet or more, and which remains upon such premises in a condition whereby a child may be imprisoned therein. [M.C. 1981, Ord. 81-1]

6-2-32 REPEALER:

All Ordinances or parts of Ordinances in conflict with this code are hereby repealed. [M.C. 1981, Ord. 81-1]

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ARTICLE 3

PROPERTY

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6-3-1 DESTROYING, INJURING, REMOVING, TAMPERING WITH OR DEFACING PROPERTY:

It is unlawful for any person to willfully, maliciously or wantonly destroy, injure, remove, tamper with or deface real property or improvements thereto or personal property, either public or private. [M.C. 1981, Ord. 81-1]

6-3-2 LIBRARY PROPERTY:

It is unlawful for any person to carry away without authority, misuse, cut, write upon, injure, deface, tear or destroy any book, periodical, map, newspaper or any other property devoted to public library use. [M.C. 1981, Ord. 81-1]

6-3-3 SCATTERING TRASH, RUBBISH:

It is unlawful for any person to throw or permit to be deposited or scattered upon any sidewalk, alley, street or public property or upon the private property of another, any rubbish, waste, trash or other disposed material of any kind. [M.C. 1981, Ord. 81-1]

6-3-4 ADVERTISING MATTER:

A. It is unlawful for any person to distribute any commercial advertising such as showcards, posters, brochures, circulars or handbills upon any public street or way.

B. It is unlawful for any person to distribute, place or post in or upon any private property, including utility poles, any showcard, poster, handbill or another announcement or advertisement without the express consent of the owner or occupant of the property.

C. It is unlawful for any person to post or affix any poster, handbill or other form of advertisement upon the surface of any public structure or building without the express consent of the public official having charge of said public structure of property. [M.C. 1981, Ord. 81-1]

6-3-5 PETTY LARCENY, CONVERSION, EMBEZZLEMENT, FRAUD:

It is unlawful for any persons to steal, convert, embezzle or acquire by fraud the property of another including any money, goods, chattels, bank notes, bonds, promissory notes, bills of exchange, other bills, orders, certificates or any books of account for or concerning money due or to become due and to be delivered. If the property stolen, converted, embezzled or acquired by fraud exceeds the value of \$100.00, the matter shall be referred to the district attorney. [M.C. 1981, Ord. 81-1]

6-3-6 RECEIVING STOLEN PROPERTY:

It is unlawful to buy, procure, receive or conceal anything of value knowing the same to have been stolen, converted, embezzled or acquired by fraud. [M.C. 1981, Ord. 81-1]

6-3-7 SHOPLIFTING:

It is unlawful for any person to willfully take possession of or conceal any merchandise valued at not more than \$100.00 offered for sale with the intention of converting it without paying for it or to willfully alter any label, price tag or marking upon any merchandise, or transfer any merchandise from one container to another with the intention of depriving the merchant of all or part of the value of the merchandise. Any person who willfully conceals merchandise on his persons or on the person of another or among his belongings or the belongings of another or on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found to be concealed on any person or among his belongings it shall be prima facie evidence of willful concealment. Any offense concerning merchandise valued at more than \$100.00 shall be turned over to a higher authority. [M.C. 1981, Ord. 81-1]

6-3-8 ISSUING WORTHLESS CHECKS:

It is unlawful to issue in exchange for anything of value with intent to defraud any check, draft, or order for the payment of money in the amount of \$1.00 to \$25.00 upon any bank or other depository knowing at the time of such issue that insufficient funds of credit exists with the bank or other depository for the payment in full by such check, draft or order. Any persons convicted of issuing worthless checks may be imprisoned for not more than 30 days or fined not more than \$100.00 or receive both such imprisonment and fine. Offense of issuance of fraudulent check in excess of \$25.00 shall be turned over to a higher authority. [M.C. 1981, Ord. 81-1]

6-3-9 FALSELY OBTAINING SERVICES OR ACCOMMODATIONS:

It is unlawful for any person to falsely obtain services or accommodations, or for any person to obtain any service, food, entertainment or accommodations without paying therefor, and with the intent to cheat or defraud the owner or person supplying such service, food, entertainment or accommodations. Any offense concerning falsely obtaining services or accommodations when the value of the service, food, entertainment or accommodations is in excess of \$100.00 shall be turned over to a higher authority. [M.C. 1981, Ord. 81-1]

6-3-10 WRONGFUL USE OF PUBLIC PROPERTY:

It is unlawful for any person to commit unlawful use of public property by knowingly entering any public property without permission of the lawful custodian or his representative when the public property is not open to the public, or remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his representative, who has determined that the public property is being used or occupied contrary to its intended or

customary use or that the public property may be damaged or destroyed by the use. [M.C. 1981, Ord. 81-1]

6-3-11 REMOVAL OF EARTH:

It is unlawful for any unauthorized person to move, distribute or take away any earth, stone or other material from any public street, way, alley, park or public ground. [M.C. 1981, Ord. 81-1]

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ARTICLE 4

PUBLIC MORALS

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[6-4-2 Drinking in Public Establishment; Selling or Serving Alcoholic Beverages Other Than in Licensed Establishments](#)

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6-4-1 SHORT TITLE- PUBLIC NUISANCES:

This Ordinance [6-4-1 through 6-4-5] shall be known and may be cited as the "Capitan Public Nuisance Ordinance. [Ord. 96-5]

6-4-2 DRINKING IN PUBLIC ESTABLISHMENTS; SELLING OR SERVING ALCOHOLIC BEVERAGES OTHER THAN IN LICENSED ESTABLISHMENTS:

A. It is unlawful for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is unlawful for any person not a licensee under the New Mexico Liquor Control Act to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

C. It shall be unlawful to drink or consume alcoholic liquors in any street, state or federal building or in any other public place.

D. It shall also be unlawful for any licensee to give any kind of "curb service" of alcoholic liquors outside of the building on the premises at which the licensee's business is operated, except in unbroken packages or to customers seated at tables.[Ord. 96-5]

6-4-3 INDECENT EXPOSURE - GENERALLY:

It shall be unlawful for any person to commit indecent exposure, consisting of knowingly and indecently exposing his or her private parts or sexual organs to the public view. [Ord. 96-5]

6-4-4 SEVERABILITY:

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance [6-4-1 through 6-4-5] is for any reason held invalid or unconstitutional by any federal or state Court of competent jurisdiction, each portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. [Ord. 96-5]

6-4-5 PENALTIES:

Violators of this Ordinance [6-4-1 through 6-4-5] shall, upon conviction, be subject to a fine not to exceed THREE HUNDRED (\$300.00) DOLLARS and/or NINETY (90) days in jail for each separate offense. Each violation shall constitute a separate offense. [Ord. 96-5]

6-4-6 LEWD, IMMORAL OR OBSCENE ACTS:

The following acts are lewd, immoral, or obscene and their commission is unlawful:

A. Being present in any establishment where alcoholic beverages are sold and engaging in the practice of or for the purpose of soliciting other to purchase alcoholic beverages, provided that this provision does not apply to one employed as a bartender, waitress or waiter.

B. As the owner or operator of any establishment where alcoholic beverages are sold, to knowingly permit the presence in such establishment of any person who violates the provisions of section 6-4-6.A.

C. Prostitution, which means knowingly engaging in or offering to engage in sexual intercourse with a prostitute.

D. Entering or remaining in a house of prostitution with intent to engage in sexual intercourse with a prostitute.

E. Knowingly hiring a prostitute to engage in sexual intercourse.

- F. Knowingly establishing, owning, maintaining or managing a house of prostitution or participating in the establishment, ownership, maintenance or management thereof.
- G. Knowingly permitting any place to be used as a house of prostitution.
- H. Procuring a prostitute for a house of prostitution.
- I. Inducing another to become a prostitute.
- J. Living wholly or partly upon the earning of prostitution.
- K. Knowingly soliciting a patron for a prostitute or for a house of prostitution.
- L. Knowingly procuring a prostitute for a patron.
- M. Knowingly procuring transportation for, paying for the transportation of, or transporting a person within the municipality with the intention of aiding that person to engage in prostitution.
- N. Knowingly being employed by a house of prostitution or to perform any function which constitutes promoting prostitution.
- O. Knowingly and intentionally exposing the primary genital area to public view. Primary genital area means the mons pubis, penis, testicles, mons veneris, vulva or vagina. [M.C. 1981, Ord. 81-1]

6-4-7 WINDOW PEEPING:

It is unlawful for any person to enter upon any private property and look, peer, or peep into or be found around or within the view of any window or other means of viewing into any occupied building, other than his own residence, with the intent of observing a person or persons undressed, dressing or undressing or engaging in sexual acts. [M.C. 1981, Ord. 81-1]

6-4-8 GAMBLING:

A. Engaging in Gambling. It is unlawful for any person to make a bet, enter or remain in a gambling place with the intent to make a bet, participate in a lottery or play a gambling device or to conduct a lottery or possess facilities with intent to conduct a lottery.

B. Commercial Gambling. It is unlawful to participate in the earnings of or to operate a gambling place; or to receive, record, forward or possess facilities with the intent to receive or forward bets or offers to bet or become custodian of anything of value bet or offered to be bet; or to conduct a lottery or possess facilities with the intent to conduct a lottery where both the consideration and the prize are money; or to set up for use for the purpose of gambling, or operate any gambling device or collect the profits therefrom.

C. Permitting Use of Premises. It is unlawful for any person to knowingly permit any property owned or occupied by him or under his control to be used as a gambling place or to knowingly permit a gambling device to be set up for the purposes of gambling in a place under his control.

D. Dealing in Gambling Devices. It is unlawful to manufacture, commercially transfer or possess with the intent to commercially transfer any device which he knows evidences, purports to evidence or is designed to evidence a gambling purpose or any device which he knows is designed exclusively as a subassembly or essential part of such device including, but not limited to gambling machines, numbers, jars, punch boards, or roulette wheels. Proof of possession of any device designed exclusively for gambling purposes other than in a gambling place and not set up for use is prima facie evidence of possession with intent to transfer commercially.

E. Permitted Lottery. Nothing in section 6-4-8 shall be construed to apply to any sale or drawing of any prize at any fair held in this State for the benefit of any church, public library, or religious society if such benefit shall be expended in this State for the benefit of such church, public library, religious society or charitable purposes. A lottery may be operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go into the organization for charitable purposes and not part of such proceeds go to any individual member or employee thereof.

F. Nothing in this section shall be held to prohibit any motion picture theater from offering prizes of cash or merchandise for advertising purposes in connection with such business whether or not any consideration other than monetary in excess of the regular price of admission is exacted for participation in drawings for prizes.

G. Nothing in this section shall be construed to prohibit on track pari-mutual betting as authorized by NMSA, 60-1-11, 1978 Comp. [M.C. 1981, Ord. 81-1]

6-4-9 AIDING ILLEGAL ACTIVITY:

It is unlawful to be found in any place where gambling or prostitution is being conducted with knowledge of such activity or to give or attempt to give any signal intended to give warning of the approach of any police officer to any person in or about any place where any illegal activity is being conducted. [M.C. 1981, Ord. 81-1]

6-4-10 MARIJUANA, POSSESSION PROHIBITED:

A. "Marijuana" means all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, and every compound, manufacture, sale, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinol extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

B. "Practitioner" means a physician, dentist, veterinarian or other person licensed to prescribe and administer drugs which are subject to the Controlled Substance Act of New Mexico.

C. Any person found guilty of violating this section with respect to one (1) ounce or less of marijuana shall be punished by a fine not less than fifty (\$50.00) dollars, not more than one hundred (\$100.00) dollars and by imprisonment for not more than fifteen (15) days.

D. Second and subsequent offenses, and possession of more than one (1) ounce of marijuana shall be turned over to a higher jurisdiction. [M.C. 1981, Ord. 81-1]

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ARTICLE 5

MINORS

[6-5-1 Abandonment of Children](#)

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[6-5-9 Sale, Offer of Sale, Delivery or Gift of Certain Glues to Minors](#)

[6-5-10 Sale of Alcohol to Minors, Drunkards, or Persons of Unsound Mind](#)

6-5-1 ABANDONMENT OF CHILDREN:

It is unlawful for the parent, guardian or custodian of a child to intentionally leave the child or abandon him under the circumstances whereby the child may suffer from neglect. [M.C. 1981, Ord. 81-1]

6-5-2 CRUELTY TO CHILDREN:

It is unlawful for any parent, guardian or other person having the care or custody of any child to cause or permit any child to be placed in a situation where the life or health of such child will be endangered, or to torture, cruelly confine or cruelly punish child or to willfully or negligently expose such child to the inclemency of the weather. [M.C. 1981, Ord. 81-1]

6-5-3 ENTICEMENT OF CHILD:

It is unlawful to persuade any child under the age of sixteen (16) years to enter a vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code (30-9-1 to 36-9-9, NMSA, 1978 Comp.) or having possession of a child under the age of sixteen (16) years to commit such a crime. [M.C. 1981, Ord. 81-1]

6-5-4 UNLAWFUL ASSISTANCE TO MINORS:

It is unlawful to assist minors to buy, procure, obtain, or be served any alcoholic beverages or to induce any person to sell, serve or deliver any alcoholic beverage to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts which are calculated to cause the person selling, serving or delivering such alcoholic beverages to sell to a minor or to any person for ultimate delivery to a minor. [M.C. 1981, Ord. 81-1]

6-5-5 UNLAWFUL PRESENCE IN LIQUOR ESTABLISHMENT:

It is unlawful for the owner or operator of any establishment serving alcoholic beverages to permit any person under the age of 21 years to attend, work in, frequent or loiter in or about such premises unless such person is accompanied by his parent or guardian. [M.C. 1981, Ord. 81-1]

6-5-6 OFFENSES BY MINORS:

A. False Statement of Identification. It is unlawful for any minor to make false statements or to furnish, present or exhibit any fictitious or false registration card, identification card or other instrument, or to furnish, present or exhibit any document issued to another person, for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift or delivery of prohibited articles including, but not limited to alcoholic beverages.

B. Procuring Unlawful Services. It is unlawful for any minor to engage or authorize the services of any other person to procure for such minor any article which the minor is prohibited by law to purchase. [M.C. 1981, Ord. 81-1]

6-5-7 FAILURE OF PARENTAL RESPONSIBILITY:

It is unlawful for any parent, guardian or other adult person having the care and custody of a minor to knowingly permit such minor to violate the provisions of section [6-5-4](#) , [6-5-5](#) , [6-5-6](#) , or [6-2-11.C](#) . [M.C. 1981, Ord. 81-1]

6-5-8 ABANDONMENT OF DANGEROUS OBJECTS:

A. Containers. It is unlawful to abandon, discard or keep in any place accessible to children, any refrigerator, icebox, freezer, air-tight container, cabinet or similar container or a capacity of one and one half cubic feet or more, which is no longer in use without sealing or removing the doors

or other entrances so as to make it impossible for any child to be imprisoned therein, or being the owner, lessee or operator of any premises to permit such articles to remain upon such premises in a condition whereby a child may be imprisoned therein.

B. Plastic Bags. It is unlawful for any person to abandon, expose, leave in any place accessible to children or permit upon premises under his control any plastic bag without first tearing the same sufficiently to render it not longer dangerous to a child. [M.C. 1981, Ord. 81-1]

6-5-9 SALE, OFFER FOR SALE, DELIVERY OR GIFT OF CERTAIN GLUES OR CEMENTS TO MINORS:

A. Prohibited Conveyance. It is unlawful to sell, offer for sale, deliver or give to any person under the age of 18 years, any glue or cement commonly known as model airplane glue, plastic cement, household cement, cement or any other similar substance, if such glue, cement or substance contains one or more of the following volatile solvents: Hexade, benzene, toluol, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl kentone, amyl acetate, butyl acetate, ethyl acetate, tricresol phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol, methylcellosolve acetate, trichloroethane or ether.

B. Exception. The provisions of section 6-5-9.A shall not apply when the glue or cement is sold, delivered or given simultaneously with and as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models. [M.C. 1981, Ord. 81-1]

6-5-10 SALE OF ALCOHOL TO MINORS, DRUNKARDS, OR PERSONS OF UNSOUND MIND:

A. It shall be unlawful for any club, retailer, dispenser, bartender, waiter, or servant or agent or employee of any club, retailer, dispenser, or any other person, except the parent, guardian or spouse of any minor, or adult person into whose custody any court has committed such minor for the time, outside of the actual, visible personal presence of such minor's parent, guardian, spouse or the adult person into whose custody any court has committed such minor for the time to do any of the following acts:

1. To sell, serve, or give any alcoholic liquor to a minor;
2. To buy alcoholic liquor for, or to procure the sale or service of alcoholic liquor to a minor;
3. To deliver alcoholic liquor to a minor;
4. To aid or assist a minor to buy, procure or be served with alcoholic liquor.

B. It shall be unlawful for any minor to buy, receive or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, spouse, or an adult person into whose custody he has been committed for the time by some court, who is actually, visibly

and personally present at the time such alcoholic liquor is bought or received by him, or served or delivered to him.

C. In the event any person except a minor shall procure any other person to sell, serve or deliver any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts, the concealment of which is calculated to cause, the person selling, serving or delivering such alcoholic liquors to such minor, that such minor is legally entitled to be sold, served or delivered alcoholic liquors, and actually deceiving him by such misrepresentation or concealment, then that person, and not the person so deceived by such misrepresentation or concealment, shall have violated this article.

D. In any proceedings under provision of this section it shall not be necessary for the prosecution, or any person, official or party urging or contending that such section has been violated, to allege or prove that the parent, guardian, spouse or any adult person into whose custody any such minor has been committed by any court, was not actually, visibly and personally present at the time of the alleged violation, but such matters are matters of the defense to be established and proved by the person against whom the prosecution or proceedings is brought.

E. The term "Minor" as used in this article shall mean any person under twenty one (21) years of age, except where another age has been specifically stated.

F. It shall be unlawful for any person to sell, serve, give or deliver any alcoholic liquors to, or to procure or aid in the procuring of any alcoholic liquors for any habitual drunkard or person of unsound mind knowing that the person buying, receiving, or receiving service of such alcoholic liquors is a habitual drunkard or person of unsound mind.

G. It shall be unlawful for any club, retailer, dispenser, bartender, waiter or servant, agent or employee of any club, retailer or dispenser to permit a minor under the age of twenty one (21) years of age to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of such minor. [M.C. 1981, Ord. 81-1]

6-5-11 CURFEW:

A. Restrictions. It shall be unlawful for any parent, guardian, or person having custody of a minor under the age of eighteen (18) years to permit or allow such minor to be upon any public thoroughfare or any public place, or other place at any time between the hours of 10:00 p.m. and 5:00 a.m., Sunday through Thursday, and the hours of 12:00 a.m. and 5:00 a.m. on Friday and Saturday of each week unless accompanied by a parent or guardian.

This shall not apply to any minor who shall be accompanied by a parent, guardian, or adult acting with the authority of the parent or any minor upon errand of necessity or attending religious services, or any legitimate show or athletic event.

B. Parent or Guardian Liable. It shall be the duty of any peace officer to apprehend and take into custody any minor under the age of eighteen (18) years found in violation of this Article. The

taking into custody of such minor by any peace officer shall not be termed an arrest. The peace officer or juvenile authority shall thereupon, at the earliest possible time, notify such parent or guardian; and such parent or guardian shall, upon conviction, be deemed guilty of violating this section for permitting violation of this section.

In the event that the said parent or guardian cannot be located within a reasonable time, said minor shall be remanded to the custody of the proper juvenile authorities. In no event shall such minor at any time be unduly detained in any lockup or jail except as provided by the Children's Code of the State of New Mexico.

C. Penalties. Any violation of this Article shall be punishable by a fine of not more than one hundred dollars (\$100.00) or imprisonment in jail for ninety (90) days or both. [Ord. 87-3]

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ARTICLE 6

GENERAL NUISANCES

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6-6-1 PUBLIC NUISANCE:

It is unlawful to commit public nuisance. Public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

Injurious to public health, safety, morals or welfare, or interferes with the exercise and enjoyment of public rights including the right to use public property. [M.C. 1981, Ord. 81-1]

6-6-2 NUISANCE DECLARED:

In the interest of the inhabitants of the Municipality, it is necessary to prohibit the accumulation of junk, trash and refuse on property within the corporate limits of the municipality by declaring such accumulation a nuisance. The following are hereby declared to be a public nuisance:

A. Unoccupied Premises. It shall be unlawful for any reason for any person to sweep, place or throw solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied premises.

B. Unsanitary Premises. It shall be unlawful for any person to permit or cause to remain in or about his premises any solid waste, weeds, motor vehicles not in operating condition, waste water or any conglomeration of residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents; and which in the opinion of the Sanitation Officer is unsanitary, or injurious to public health. The accumulation of building materials, pipe, lumber or boxes may be maintained on said premises if said accumulations are evenly piled and stacked for a reasonable length of time to be determined by the Sanitation Officer.

C. Hazardous Premises. It shall be unlawful for any person to permit in or about his premises weeds, briars, brush or any other solid waste to become in any way hazardous or injurious to public health or to obstruct pedestrian and vehicular traffic.

D. Accumulation of Solid Waste. It shall be unlawful for any person to allow any solid waste to accumulate upon premises, owned, leased, rented or occupied by him during intervals between collection thereof, except in the manner herein provided. It shall be unlawful to deposit any solid waste in or upon the streets, alleys, sidewalks, gutters, curbing, storm sewers, parkways, or vacant lots within the municipality, except in the manner and in the receptacles or container as provided in (E) of this section.

E. Solid Waste Receptacles. All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle and such receptacles shall be located only in such places as shall be readily accessible for removing and emptying the same, but shall not be placed in such place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic. [M.C. 1981, Ord. 81-1]

6-6-3 OUTDOOR AUTOMOTIVE STORAGE:

A. Nuisance Declared. The presence of an inoperative vehicle or motor vehicle or part thereof on any occupied or unoccupied land within the village limits in violation of the terms of this section is a public nuisance.

B. Definitions, as used in this section.

1. "Motor Vehicle" means any wheeled vehicle which is self propelled or intended to be self propelled.

2. "Inoperable Motor Vehicle" means any motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

C. Prohibited Acts. It is unlawful for any person to store on, place on, or permit to be stored or placed on, or allowed to remain on any occupied or unoccupied land within the Village limits a dismantled, partially dismantled or inoperable motor vehicle or any parts of motor vehicle except in a storage area as provided in subsection F below.

D. Exceptions. An owner or tenant may store, permit to be stored or allow to remain upon his premises any dismantled, partially dismantled or inoperable motor vehicle or parts thereof for a period not to exceed thirty (30) days if such motor vehicle is registered in his name, and provided further that any such owner or tenant may, in the event of hardship, secure a permit from the Village to extend such period of thirty (30) days for an additional period not to exceed two months (2).

E. Permit. Upon application by the registered owner of a motor vehicle covered by this section, and upon the proof of hardship, the Police Department or its authorized agent is hereby authorized to issue the permit provided above and shall require the payment of one dollar (\$1.00) for each permit issued.

F. Storage Area. An owner may store a nonlicensed and nonregistered or inoperative motor vehicle or the parts and parts and the outdoor storage areas are maintained in such a manner that they do not constitute a health, safety or fire hazard and are effectively screened from ordinary public view by means of a solid fence. All storage areas shall be kept free of weeds, trash, refuse, garbage, and any other objectionable items. [Ord. 87-6]

6-6-4 ABANDONED WRECKS, NONOPERATING, DISMANTLED OR DISCARDED VEHICLES:

A. Definitions. The following definitions shall apply in interpretation and enforcement of this Article.

1. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

2. "Vehicle" shall mean a machine propelled by power other than human power, designed to travel along the ground by use of wheels, threads, runners, or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy or wagon.

3. "Street or Highway" shall mean the entire width between the boundary lines of every publicly maintained roadway when any part thereof is open to the use of the public for purposes of vehicular travel.

4. "Property" shall mean any real property within the Village of Capitan which is not a street or highway.

B. Abandonment of Vehicles. No person shall abandon any vehicle within the Village and no person shall leave any vehicle at any place within the Village for such time and under such circumstances as to cause such vehicle reasonable to appear to have been abandoned.

C. Leaving of Wrecked, Nonoperating Vehicle on Street. No person shall leave any partially dismantled, nonoperating, wrecked or wrecked vehicle on any street or highway within the Village.

D. Disposition of Wrecked or Discarded Vehicles. No person in charge or control of any property within the Village, whether as owner, tenant, occupant, lessee, or otherwise shall allow any partially dismantled, wrecked, junked, or discarded vehicle to remain on such property longer than thirty (30) days; and no person shall leave any such vehicle on any property within the Village for a longer time than thirty (30) days, save and except that this section shall not apply to a vehicle in an enclosed building or on property which in enclosed with a fence or wall so that said vehicle is not visible from adjoining or surrounding property or from the street or highway or public ways. This section shall not apply to a vehicle or vehicles on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of such business enterprise or to a vehicle in an appropriate storage place or depository maintained in a lawful place an manner by the Village.

E. Failure to Display Current Registration, Presumptions. For purposes of this Article, any vehicle not displaying the current year's vehicle registration sixty (60) days after the legal deadline for such registration each year shall be presumed to be abandoned or discarded, provided the exceptions of section (D) hereof do not apply to said vehicle.

F. Impounding. The Village Marshall or his uniformed designee is hereby authorized to remove or have removed any vehicle left at any place within the Village which reasonable appears to be in violation of this Article or lost, stolen, or unclaimed. Such vehicle shall be impounded until lawfully claimed or disposed of in accordance with the provision of NMSA 3-46-32 to and including 3-46-36, 1978 Comp., which provides for the disposal of unclaimed personal property by municipalities.

G. Penalties. Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount of not less than three hundred dollars (\$300.00) or to be imprisoned in the County jail for a period not exceeding ninety (90) days, or both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

H. Severability. If any of the subsections, sentences, clauses or phrases of this section are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this section shall not be thereby affected, since it is the express intent of the Village Governing Body to adopt each subsection, sentence, clause or phrase of this section separately. [M.C. 1981, Ord. 81-1]

6-6-5 DANGEROUS NUISANCES:

A. No owner or occupier of land or building shall cause or knowingly permit said property to become or remain in a condition constituting a menace to health or safety by the accumulation of filth, sewage, garbage, refuse, trash, standing or stagnant water, litter, rubbish, ruins, weeds, brush or and waste matter whatsoever.

B. No person shall allow or cause sewage, garbage, filth, refuse or liquid waste to be discharged or to penetrate or to drain from premises occupied by him into or upon the premises of another except through those sewage facilities provided by the municipality.

C. No person shall allow or cause the pollution of water used for domestic purposes or the discharge into any moving water sewage, refuse, filth or other hazardous or poisonous matter.

D. No person shall cause or permit the escape of noxious fumes, gas, smoke or odor from the premises owned or occupied by another or to any place where the same shall be offensive or constitute a danger to the general public.

E. Whenever any building or structure is ruined, damaged, dilapidated or any premises covered with ruins, rubbish, wreckage, or debris, the Governing Body of the municipality may, by resolution, find that the ruined, damaged, dilapidated building, structure or premises is a menace to the public comfort, health, peace or safety and required the removal from the municipality of the building, structure, ruins, rubbish, wreckage, or debris by proceeding in compliance with NMSA, 3-18-5, 1978 Comp.

F. Whoever violates the provision under 6-6-5 upon conviction thereof, may be imprisoned for a term not to exceed ninety (90) days, or shall pay a fine of not more than three hundred dollars (\$300.00), or shall be sentenced to both imprisonment and a fine by the direction of the Municipal Judge. [Ord. 80-2, as adopted by M.C. 1981, Ord. 81-1]

6-6-6 NOTICE OF NUISANCE:

Any municipal police officer, upon observing any violation of this article, shall issue a notice directed to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property, or both. The notice shall describe the violation and establish a reasonable time limit for abatement thereof by the owner or occupant or tenants, which limit shall be not less than two (2) days nor more than thirty (30) days after the service of notice. The notice may be served by either personally or by certified, return receipt requested at the owner's or occupant's last known address. [M.C. 1981, Ord. 81-1]

6-6-7 COMPLAINT:

In the event the owner or occupant of the property where the nuisance violation of this article exists, has failed, within the prescribed time, to abate the nuisance, then any municipal Police Officer, shall file a complaint charging violation of this article with the Municipal Court demanding that the owner of the property, or the owner thereof, or both, be held to answer to the Court for the violation of this Article. [M.C. 1981, Ord. 81-1]

6-6-8 REMOVAL OF NUISANCE:

In the event that a person is convicted of violation of this Article and still refuses to remove the junk, trash or refuse, the municipality may enforce this section in any manner consistent with law. Should the person refuse or fail to pay the assessment, the municipality shall collect such assessment as provided by law. [M.C. 1981, Ord. 81-1]

6-6-9 INJUNCTIONS:

The Chief of Police, when a nuisance exists as set forth in this Article, may maintain a complaint in the name of the municipality, perpetually, to enjoin all persons from maintaining or permitting the nuisance and to abate the same. [M.C. 1981, Ord. 81-1]

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ARTICLE 7

TRAFFIC CODE

(State Law: NMSA §§ 3-17-6 et seq., 1978 Comp.)

[6-7-1 New Mexico Uniform Traffic Ordinance- Adoption by Reference](#)

[6-7-2 Penalty Assessment Fee](#)

[6-7-3 Penalty Assessment Misdemeanor; Option; Effect](#)

[6-7-4 Failure to Pay Penalty Assessment](#)

[6-7-5 Separability](#)

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[6-7-7 Skateboarding or Bicycling on Village Streets and Sidewalks](#)

[6-7-8 Unlawful Riding](#)

[6-7-9 Eliminating Truck Traffic on Forest Avenue](#)

[6-7-10 Special Fund](#)

[6-7-11 Testing Fee](#)

[6-7-12 Correction Fees and Judicial Education Fees](#)

[6-7-13 Court Automation Fees](#)

6-7-1 NEW MEXICO UNIFORM TRAFFIC ORDINANCE- ADOPTION BY REFERENCE:

The 1997 New Mexico Uniform Traffic Ordinance, as it may be amended from time to time, is adopted by reference and incorporated herein as if set forth in its entirety. [Ord. 97-9]

6-7-2 PENALTY ASSESSMENT FEE:

A. This article may be cited as the Village of Capitan Penalty Assessment Ordinance.

B. As used in the New Mexico Uniform Traffic Statutes adopted by reference by the Village of Capitan, New Mexico, "penalty assessment misdemeanor" means violation of any of the following listed sections of the New Mexico Uniform Traffic Statutes for which the listed penalty is established:

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

FLASHING SIGNALS	12-5-8	\$25.00
SPEED REGULATIONS	12-6-1	
(1) Up to an including ten miles an hour over speed limit		(1)\$25.00
(2) From eleven up to and including fifteen miles an hour over the speed limit		(2)\$40.00
(3) From sixteen up to and including twenty miles and hour over speed limit		(3)\$75.00
(4) From twenty-one up to and including twenty-five miles an hour over the speed limit		(4)\$110.00
(5) From twenty-six up to and including thirty miles an hour over the speed limit		(5)\$135.00
(6) From thirty-one up to and including thirty-five miles an hour over the speed limit		(6)\$160.00
(7) More than thirty-five miles an hour over the speed limit		(7)\$210.00
MINIMUM SPEED REGULATIONS	12-6-1.5	\$25.00
OVERTAKING A VEHICLE ON THE LEFT	12-6-2.3	\$25.00
LIMITATIONS ON OVERTAKING ON THE LEFT	12-6-2.4	\$25.00
NO PASSING ZONES AND RESTRICTIONS ON PASSING	12-6-2.7	\$25.00

FOLLOWING TOO CLOSELY	12-6-2.3	\$25.00
DRIVING ON DIVIDED STREETS	12-6-2.14	\$25.00
VEHICLE APPROACHING OR ENTERING INTERSECTION	12-6-4.1	\$25.00
VEHICLES TURNING LEFT AT INTERSECTION	12-6-4.2	\$25.00
VEHICLES ENTERING STOP OR YIELD INTERSECTION	12-6-4.3	\$25.00
LIMITATIONS ON TURNING AROUND	12-6-5.5	\$25.00
STARTING PARKED VEHICLE	12-6-5.7	\$25.00
TURNING AND STOPPING MOVEMENTS AND REQUIRED SIGNALS	12-6-5.8	\$25.00
STOPPING, STANDING AND PARKING	12-6-6	\$25.00
SPECIAL STOPS REQUIRED	12-6-7	\$25.00
STOPPING FOR SCHOOL BUS	12-6-7.3	\$70.00
CARELESS DRIVING	12-6-12.4	\$65.00
OPERATORS AND CHAUFFEURS MUST BE LICENSED	12-6-12.5	\$25.00
LIMITATIONS ON BACKING	12-6-12.9	\$25.00
UNLAWFUL RIDING	12-6-13.2	\$25.00
CHILD NOT IN RESTRAINT DEVICE OR SAFETY BELT	12-6-13.12	\$50.00
UNFASTENED SAFETY BELT	12-6-13.13	\$35.00
POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS-FIRST OFFENSE	12-6-13.14	\$50.00
DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY	12-6-13.5	\$110.00

DRIVERS TO EXERCISE DUE CARE	12-6-14.8	\$25.00
WHEN LIGHTED LAMPS ARE REQUIRED	12-10-1.3	\$25.00
HEADLAMPS ON VEHICLES	12-10-1.5	\$25.00
DIMMING OF LIGHTS	12-10-1.6	\$25.00
TAIL LAMPS	12-10-1.7	\$25.00
MUFFLERS, PREVENTION OF NOISE	12-10-1.10	\$25.00
LAMP OR FLAG ON PROJECTING LOAD	12-10-1.11	\$25.00
WINDSHIELD UNOBSTRUCTED	12-10-1.12	\$25.00
DISPLAY OF CURRENT VALID REGISTRATION PLATE	12-10-4	\$25.00
EVIDENCE OF REGISTRATION TO BE SIGNED AND EXHIBITED ON DEMAND	12-10-5	\$25.00

B. The term "penalty assessment misdemeanor" does not include any violation which has caused or contributed to the cause of an accident resulting in injury or death to any person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed ninety days.

D. In addition to the penalty assessment established for each penalty assessment misdemeanor pursuant to this section, there shall be assessed a penalty assessment fee of \$10.00 to help defray the costs of local government corrections, a one dollar (\$1.00) fee for training for Judges and Court Clerks and a three dollar (\$3.00) fee for court automation. [Ord. 96-3]

6-7-3 PENALTY ASSESSMENT MISDEMEANORS, OPTION, EFFECT:

A. Unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of the guilt of the offense stated in the notice, and payment of the prescribed penalty assessment is a complete satisfaction of the violation.

B. Payment of any penalty assessment must be made by mail to the Municipal Court, Traffic Violations Bureau, Village of Capitan, New Mexico, within thirty days from the date of arrest. Payments of penalty assessments are timely if postmarked within the time limits set from the date of arrest. The Traffic Violations Bureau shall issue a receipt when a penalty assessment is paid by currency or by check.

C. No record of any penalty assessment payment is admissible as evidence in any court in any civil action. [Ord. 96-3]

6-7-4 FAILURE TO PAY PENALTY ASSESSMENT:

A. If a penalty assessment is not paid within 30 days from the date of arrest, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued. Upon conviction in such prosecution, the court shall impose penalties as provided by the New Mexico Uniform Traffic Ordinance or other law relating to motor vehicles for the particular offense charged and the schedule of penalty assessments shall not apply.

B. In addition to the prosecution provided for in Section 4A [6-7-9A], it is a misdemeanor for any person who has elected to pay a penalty assessment to fail to do so within 30 days from the date of arrest.

C. The Office of the Municipal Court shall notify the Division of Motor Vehicles of the State of New Mexico when a person fails to pay a penalty assessment within the required period of time. The Department of Motor Vehicles shall report the notice upon the driver's record and shall not renew the person's license to drive until the Office of the Municipal Court notifies the Department of Motor Vehicles that the penalty assessment, or its equivalent, as well as any additional penalties imposed, are properly disposed of. [Ord. 96-3]

6-7-5 SEPARABILITY:

If any section, subsection, sentence, clause, phrase, or portion of this ordinance [6-7-7 through 6-7-11] 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 thereof. [Ord. 96-3]

6-7-6 ORDINANCES REPEALED:

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. [Ord. 96-3]

6-7-7 SKATEBOARDING ON VILLAGE STREETS AND SIDEWALKS:

A. Subsections (A) and (B) of Section 12-8-12 of the Capitan Village [Uniform] Traffic Code are hereby amended as follows:

1. No person shall ride a bicycle, skateboard or similar human-powered wheeled device upon any Village sidewalk within a business district, which is defined as both sides of Smokey Bear Avenue, the west side of Forest Avenue and both side of Lincoln Avenue between Smokey Bear Avenue and Third Street.

2. No person shall ride a bicycle, skateboard or human-powered wheeled device when signs are posted prohibiting bicycles or skateboards on the sidewalk or street.

B. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any federal or state Court of competent jurisdiction, each portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. [Ord. 97-2]

6-7-8 UNLAWFUL RIDING- AMENDING SECTION 12-6-13.2 OF THE UNIFORM TRAFFIC ORDINANCE:

A. The Uniform Traffic Code is amended by inserting the following as a subsection:

1. No person shall ride in the bed of a truck or in any other part of a truck which is not enclosed by a rigid top or vehicle body. No driver shall allow such a person or persons to ride in a part of a truck that is not enclosed by a rigid top or vehicle body.

The following exemption to this regulation applies:

a. Persons riding in trucks which are participating in a parade.

B. The Uniform Traffic Code is further amended by striking that portion of Section B which reads ("or to persons riding within truck bodies in space intended for merchandise"). These persons are NOT exempted from the provisions of this ordinance.

C. If any section, paragraph, clause or provision of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance. [Ord. 96-1]

6-7-9 ELIMINATING TRUCK TRAFFIC ON FOREST AVENUE:

A. Prohibition of Truck Traffic on Forest Avenue:

1. It shall be unlawful for any truck or other moving vehicle with a rated capacity in excess of two (2) tons Gross Vehicle Weight (GVW) to be operated on Forest Avenue in the Village. This prohibition shall not apply to fire apparatus, emergency equipment or road machinery engaged in highway construction or maintenance or service equipment.

2. Notices of the prohibition of truck traffic on Forest Avenue shall be posted at least five hundred (500) feet prior to the intersection of Forest Avenue with any other Village street.

3. The penalty for violation of this Ordinance shall not be more than Five Hundred Dollars (\$500.00) or Thirty (30) days in jail.

B. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any federal or state Court of competent jurisdiction, each portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. [Ord. 97-1]

6-7-10 SPECIAL FUND:

All penalty assessment fees, collected above and beyond the penalty assessment, shall be deposited in a special fund in the municipal treasury and shall be used solely for the purpose of constructing, operating or maintaining the municipal jail or for paying the cost of housing municipal prisoners in the county jail. [M.C. 1981, Ord. 81-1]

6-7-11 TESTING FEE:

In the event an individual is found guilty or pleads guilty or no contest to a violation of section 12-6-12.1 New Mexico Uniform Traffic Ordinance, in addition to any other fine, costs, or sentence imposed, the Judge hearing the case shall assess costs of twenty five (\$25.00) dollars to defray expenses of the Village for testing the blood, breath, or urine of such individual, if any such tests were performed. [M.C. 1981, Ord. 81-1]

6-7-12 CORRECTION FEES AND JUDICIAL EDUCATION FEES:

A. Title: This Ordinance shall be known as the "Municipal Court Fee Ordinance"

B. Costs Assessed: Each and every person found guilty of a criminal charge by the Municipal Judge shall be charged the following costs:

1. Corrections fee of ten (\$10.00) dollars; and
2. A judicial education fee of one (\$1.00) dollar.

C Fund:

1. The money collected pursuant to Section B(1), herein, shall be deposited in a special fund in the municipal treasury and shall be used for municipal jailer or juvenile detention officer training, for the construction, operation or maintenance of a municipal jail or juvenile detention facility, for paying the costs of housing municipal prisoners in a county jail or housing juveniles in a detention facility or for complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities.

2. All money collected pursuant to Section B(2), herein, shall be remitted monthly to the State Treasurer for credit to the Judicial Education Fund and shall be used for the education and

training, including production of bench books and other written materials of the Municipal Judge and other municipal court employees. [Ord. 93-12, replacing Ord. 87-5]

6-7-13 COURT AUTOMATION FEES:

A. This Ordinance shall be known as the "Municipal Court Automation Fee Ordinance".

B. Costs Assessed: Each and every defendant found guilty of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment by the Municipal Judge shall be charged the following costs, in addition to any other costs heretofore authorized by the Village of Capitan:

1. A court automation fee of Six (\$6.00) Dollars.

C. Fund: All money collected pursuant to Section B, herein, shall be remitted monthly to the State Treasurer for credit to the Municipal Court Automation Fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation systems shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council. [Ord. 98-1, amending Ord. 94-2]

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ARTICLE 8

ANIMAL CONTROL

(State Law: NMSA 3-18-3, 77-1-12 et seq., 1978 Comp.)

[6-8-1 Definitions](#)

[6-8-2 Application](#)

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[6-8-4 Fees](#)

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[6-8-19 Failure to Kill - Penalty](#)

[6-8-20 Establishment of a Pound](#)

[6-8-21 Notice or Knowledge of Violation of this Ordinance Not Necessary for Prosecution of Owner or Keeper](#)

6-8-1 DEFINITIONS:

A. "Animals" shall mean any and all types of animals, both domesticated and wild, male and female, singular and plural, including fowl.

B. "Bite or Bitten" shall mean an actual puncture or tear of the skin inflicted by the teeth of an animal.

C. "Cat" shall mean any male or female feline over three (3) months of age.

D. "Dog" shall mean any dog, bitch, or whelp over three (3) months of age.

E. "Exposed to Rabies" shall mean a dog or cat is considered exposed to rabies or if it is known that the dog or cat has been in contact with an animal known or reasonably suspected to have rabies.

F. "Immediate Control" shall mean regulation and supervision of an animal by a person present with the animal such that the animal is unable to run or get loose at will.

G. "Nuisance" shall mean, but is not limited to, defecation, urination, disturbing the peace, emitting noxious or offensive odors or otherwise endangering or offending the well being of the inhabitants of the Village.

H. "Neutered Male" shall mean a male dog or cat which has been operated upon by a licensed veterinarian to prevent conception permanently, as attested to by a document signed by the veterinarian to the effect that such an operation has been performed.

I. "Owner" shall mean any person, group or persons or corporation owning, keeping or harboring an animal.

J. "Running at large" shall mean an animal will be deemed running at large when it is off the property of its owner and not under the immediate control of a competent person.

K. "Spayed female" shall mean a female dog or cat which has been operated upon by a licensed veterinarian to prevent conception permanently, as attested to by a document signed by the veterinarian to the effect that such an operation has been performed.

L. "Vaccination" shall mean an injection of vaccine, approved by the State Board of Public Health and administered by or under the supervision of a licensed veterinarian for the purpose of immunizing an animal against rabies. [Ord. 78-7, 63-5]

6-8-2 APPLICATION:

The following Ordinance [Ord. 80-1, as amended], except where otherwise noted, shall apply to all dogs within the corporate limits of the Village of Capitan, New Mexico, over the age of three (3) months. [Ord. 87-7, amending Ord. 80-1]

6-8-3 LICENSE AND VACCINATION REQUIRED:

A. The owner or keeper of any dog within the corporate limits of the Village shall secure a license for the dog from the Clerk/Treasurer on or before the 1st day of March of each year or within thirty days after the dog reaches the age of three months. Dogs purchased or otherwise acquired subsequent to the first day of March in a year shall be licensed within thirty days after the acquisition. New residents of the Village shall have thirty days from their entry into the Village to secure any license required under this ordinance [Ord. 80-1]

B. The owner or keeper of every dog within the Village shall have such dog vaccinated against rabies between January 1 and March 1 of each calendar year. Dogs acquired or brought into the Village subsequent to March 1 of any year shall be vaccinated within one week after their entry into the Village. The vaccination required under this Ordinance shall be administered by or under the supervision of a licensed veterinarian.

C. No application for a dog license will be accepted unless the applicant shall exhibit to the Clerk/Treasurer a certificate from a licensed veterinarian stated the name and address of the veterinarian, the type of vaccine used, and the name and address of the owner or keeper of the dog, a description of the dog vaccinated, the date of vaccination and the expiration date of the period of immunity. All applications for licenses shall be made on forms provided by the Clerk/Treasurer.

D. It is the duty of the Clerk/Treasurer to deliver or cause to be delivered to each person complying with the licensing provisions of this Ordinance a dog tag for each dog licensed and vaccinated.

E. The dog tag provided for in this Ordinance shall be of such size, shape, color and material as may be deemed expedient and suitable by the Clerk/Treasurer; provided, however, that the color of the tag shall be changed each year. All tags issued shall be serially numbered with the number for each particular license stamped thereon and shall also indicate the year for which the license is issued and the words, "Capitan, New Mexico".

F. Every owner or keeper of a dog within the Village shall place upon such dog a collar or harness made of durable material to which the dog tag provided for in this Ordinance shall be attached.

G. It shall be unlawful for any person who has not complied with the licensing and vaccination provisions of this Ordinance to own or keep a dog within the corporate limits of the Village except that the owner or keeper of a dog need not comply with the vaccination provision only if he has a certificate of vaccination issued by a veterinarian in another state or foreign country and such vaccination conforms to the requirements of this Ordinance. Failure to comply with the licensing and vaccination provisions of this Ordinance shall subject the owner or keeper to a fine of Ten (\$10.00) Dollars and costs, and each day's failure to comply is a separate offense.

H. The Clerk/Treasurer shall keep a record of the date of issue of each dog tag and person to whom such tag was issued, and the number thereof. If the dog tag is lost or destroyed, a duplicate tag may be obtained from the Clerk/Treasurer upon the payment of a fee of One (\$1.00) dollar. In the event that the ownership or possession of a dog is changed, a new dog tag must be obtained and such new dog tag shall be issued by the Clerk/Treasurer upon proof being presented that the vaccination and licensing requirements of this Ordinance have been complied with and upon the payment of a fee of One (\$1.00) Dollar.

I. No person owning or keeping a dog within the corporate limits of the Village of Capitan shall affix to the collar or harness of any dog or permit to remain so affixed, a tag evidencing licensing and rabies vaccination except a dog tag applied for and issued in accordance with the provisions of this Ordinance. [Ord. 80-1]

6-8-4 FEES:

The Yearly fee schedule for licenses shall be as follows:

Cats (spayed females) \$2.00

Cats (male) \$2.00

Dogs (male and spayed females) \$5.00

Senior Citizens (males and spayed females) \$2.00

Dogs (unspayed females) \$10.00

Senior Citizens (unspayed females) \$10.00

Any guide dog trained to lead a blind person and any hearing aid dog trained to aid a deaf person shall be exempt from the licensing requirement of this section.

A veterinarian, at his option, may issue the license and tag required in 6-8-2. The veterinarian issuing such licenses and tags will be paid one dollar (\$1.00) for this service. The \$1.00 is to be retained by the veterinarian from the fee collected pursuant to 6-8-3. The remainder of the fee collected by the veterinarian will be remitted to the Village Clerk.

[Ord. 78-7, as amended by Ord. 80-1 and 87-7]

6-8-5 ANIMALS PROHIBITED FROM RUNNING AT LARGE:

It shall be unlawful for any owner or keeper of any dog in the Village to permit the same to run at large within the corporate limits of the Village. A dog shall be deemed to be running at large when it is off or away from the premises of the owner or keeper of the dog or his agent or servant or a member of his immediate family, if the dog is not controlled either by leash, cord or chain not more than ten feet in length. [Ord. 80-1]

6-8-6 IMPOUNDING OF ANIMALS:

The animal control officer or any other peace officer may impound any dog which is not wearing a dog tag and any dog which they reasonably feel to be in violation of any provision of this Article, whether such dog wearing a dog tag or not. It is lawful for the animal control officer or any other peace officer having probable cause to believe there has been a violation of this Article, to go upon private property for the purpose of catching any dog to be impounded. [Ord. 80-1]

A. In the event an animal is impounded with an expired license a new license and tag will be issued by the Animal Control Officer. In the event an animal is impounded with an expired vaccination tag, the Animal Control Officer shall collect a fee from the owner or person adopting as provided in subsection C hereof. The veterinarian subsequently administering the vaccination shall bill the Animal Control Officer therefore.

B. If the owner is determined, the animal will be released to the owner or representative upon payment of redemption fees. Any owner or keeper of a dog desiring to redeem such dog from the pound shall pay the Village the sum of twenty-five (\$25.00) dollars for the first offense; fifty (\$50.00) dollars for the second offense; and seventy-five (\$75.00) dollars for all subsequent offenses, as an impoundment fee together with the sum of five (\$5.00) dollars for each day of impoundment as room and board, plus any and all license and/or rabies vaccination fees which may be required.

C. At the end of the minimum confinement period the animal may be adopted or, if not adopted, shall be destroyed. The animal may be kept for adoption beyond the minimum confinement period at the discretion of the Animal Control Officer.

D. In the event that an unneutered or unspayed impounded dog or cat is claimed by the owner, the owner shall pay a deposit of twenty dollars (\$20.00) to insure that such animal will be neutered or spayed. Such deposit will be refunded upon presentation within 180 days of proof that the animal has been spayed or neutered. Said deposit will be remitted to the Village Clerk.

E. Any person finding any animal upon his property to his injury or annoyance may take upon the same and remove it to any private or other animal shelter that will take possession of it. If no such shelter is available, he may hold such animal in his own possession, and as soon as possible notify the police department or Animal Control Officer of this custody, giving a description of the animal and the name of the owner if known.

F. MISCELLANEOUS FEES: The Animal Control Officer shall be entitled to collect the following fees:

Pick-up animal at request of owner to pound ten (\$10.00) dollars;

animal dropped off by owner to pound ten (\$10.00) dollars;

room and board for animal five (\$5.00) dollars per day; and

adoption fee fifteen (\$15.00) dollars.

The adoption fee is in addition to any and all license and/or rabies vaccination fees which may be required. [Ord. 80-1 as amended by Ord. 87-7]

6-8-7 CONFINEMENT OF BITING DOGS:

The owner or keeper of any dog which has bitten or which is suspected to have bitten any person, or which is suspected of having rabies, shall immediately notify the animal control officer or any other peace officer of such fact. Any dog which has bitten or which is suspected to have bitten any person, or which is believed to have rabies or to have been exposed to rabies, shall be confined, upon order of the animal control officer or any other peace officer, for a period of ten (10) days for observation. Such dog shall either be confined at the residence of the owner or keeper thereof, if such confinement can be accomplished without exposing the dog to the public, or at the option of the animal control officer or any other peace officer, such dog shall be confined at the Village Pound or at a private veterinary hospital at the expense of the owner or keeper thereof. It is unlawful for any owner or keeper of such dog to permit such dog during confinement to come into contact with the public. [Ord. 80-1]

6-8-8 FILING OF COMPLAINT IN MUNICIPAL COURT:

If a dog is impounded, the Animal Control Officer or any other peace officer shall immediately institute proceedings in the Municipal Court on behalf of the Village against the owner or keeper of such dog, if he is known, charging the owner or keeper with a violation of the appropriate Ordinance section. Nothing herein contained shall be construed as preventing the Animal Control Officer or other peace officer, or any citizen from instituting a proceeding in the Municipal Court of the Village for violation of this Article where there has been no impoundment. [Ord. 80-1]

6-8-9 RELEASE OF IMPOUNDED DOG - DESTRUCTION OF DOG:

If a complaint has been filed in the Municipal Court of the Village against the owner or keeper of any impounded dog for a violation of this Article, the dog shall not be released from impoundment except by orders from the Municipal Judge. In addition to any penalties which may be provided for in this Article for a violation of this Article, the Municipal Judge shall require the owner or keeper to pay the fees provided for in this Article and may, upon finding that the dog constitutes a nuisance, or that the dog is vicious, or that the dog constitutes a clear

and present danger to the citizens of the community, order that the dog be destroyed in a humane manner by the Animal Control Officer or by such other persons as are authorized to do so by the Mayor. [Ord. 80-1]

6-8-10 DISPOSAL OF DOG OF UNKNOWN OWNER OR KEEPER:

If a complaint has not been filed in Municipal Court because the owner or keeper of an impounded dog is not known or cannot be located and such dog has not been claimed within a minimum of three (3) days for unlicensed and five (5) days for licensed dogs, not counting the first day of impoundment, the dog may be disposed of in any humane manner prescribed by the Animal Control Officer or by such other persons as are authorized to do so by the Mayor. [Ord. 80-1]

6-8-11 DOGS TRAINED TO ASSIST THE BLIND, ALLOWED IN PUBLIC PLACES:

It shall be unlawful for any person owning, operating or maintaining any public place of business or conveyance into which the general public is invited for any business purpose to debar or exclude therefrom any dog which has been trained to assist the blind, provided that such dog be in the company of the blind person whom it was trained to assist in conformance with NMSA 77-1-14, 1978 Comp. [M.C. 1981, Ord. 81-1]

6-8-12 CRUELTY TO ANIMALS:

It shall be unlawful for any person to torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, or cruelly drive or kill any animal, or unnecessarily fail to provide the same with proper food or drink or to cruelly drive or work the same when unfit for labor or known to be diseased, or to abandon any animal within the Village limits. [Ord. 63-4]

6-8-13 CONFINEMENT OR MUZZLING OF DOGS DURING RABIES DANGER - IMPOUNDING OF DOGS NOT CONFINED OR MUZZLED:

Whenever the Mayor, or any person designated by him for such purpose, shall be of the opinion that any danger from hydrophobia in the Village or other danger exists from dogs running at large within the Village, he shall issue his proclamation requiring every owner or keeper within the Village to confine and/or securely muzzle the same for such time as he may designate, during which time it is unlawful for any dog to be within the Village unless so securely muzzled with a good and substantial wire or leather muzzle securely fastened so as to prevent any dog from biting. It shall be the duty of the Animal Control Officer and all other peace officers of the Village, to impound any dog that may be found during the time so designated by the Mayor unless the dog is muzzled and/or confined as herein provided. [Ord. 80-1]

6-8-14 FEMALE DOGS IN HEAT:

Any unspayed female dog, while in heat, shall be securely confined during such period in the owner's yard, pen or other enclosure. Such yard, pen or other enclosure shall be so constructed and/or situated so as to prevent other dogs or cats from gaining access to it. [Ord. 80-1]

6-8-15 VICIOUS DOGS:

No person shall own, keep or harbor a vicious dog within the Village. As said within this Article, a vicious dog is a dog that bites or attacks human beings or other animals without provocation either on public or private property, or approaches any person in an apparent attitude of attack upon the streets, sidewalks or any other public ground or place. The Animal Control Officer and all other peace officers shall impound any dog which is a vicious dog. In the event that a vicious dog cannot be impounded by the Animal Control Officer or any other peace officer without the Animal Control Officer or any other peace officer exposing himself to danger of personal injury from such dog, the Animal Control Officer or any other peace officer may destroy such dog without notice to the owner or keeper thereof. [Ord. 80-1]

6-8-16 DOG KILLING OR INJURING LIVESTOCK:

If any dog shall kill or injure any livestock, the owner or keeper of such dog shall be liable for all damages that may be sustained thereby, to be recovered by the party to injured before the Municipal Court or any other Court having competent jurisdiction, and it shall be unlawful to keep such dog after it is known that the dog is liable to kill livestock, and it shall be the duty of the owner or keeper to kill, or have killed, the dog upon the order of the Court after a finding that the dog has killed or injured livestock and provided further, it shall be the right of any owner of livestock so killed or injured by the actions of any dog, to kill the dog while it is upon the property controlled by the owner of the livestock. [Ord 80-1]

6-8-17 INTERFERENCE WITH ANIMAL CONTROL OFFICER OR OTHER PEACE OFFICER PERFORMING DUTIES:

It is unlawful for any person to interfere with, molest, hinder or obstruct the Animal Control Officer or any police officer in the discharge of their official duties under this Ordinance. [Ord. 80-1]

6-8-18 INSTIGATING OR ENCOURAGING DOG FIGHTS, PROHIBITED:

No person shall cause, instigate or encourage any dog fight within the Village. [Ord. 80-1]

6-8-19 FAILURE TO KILL - PENALTY:

It is the duty of any person who is the owner or keeper of any dog, the keeping of which is unlawful, to cause such animal to be killed. Failure to comply with this section shall subject such owner or keeper to a fine of ten dollars (\$10.00) and costs, and each day's failure to comply is a separate offense. [Ord. 80-1]

6-8-20 ESTABLISHMENT OF A POUND:

The Mayor may establish a dog pound for the municipality to be operated by the Village personnel, or at his election, he may, subject to the approval of the Council, contract with a

public or private person or organization for the operation of a dog pound for and on behalf of the Village. [Ord. 80-1]

6-8-21 NOTICE OR KNOWLEDGE OF VIOLATION OF THIS ORDINANCE NOT NECESSARY FOR PROSECUTION OF OWNER OR KEEPER:

For the purpose of prosecution for violations of this Ordinance, it shall not be necessary in order to obtain a conviction to prove notice or knowledge on the part of the owner or keeper of the dog in question that such dog was in violation of any of the provisions of this Ordinance at the time and place charged; it being the purpose and intent of this Ordinance to impose strict liability upon the owner or keeper of any dog for the actions, conduct and conditions of such dog. [Ord. 80-1]

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ARTICLE 9

LIVESTOCK

[6-9-1 Effective Date](#)

[6-9-2 Restricted Area](#)

[6-9-3 Violation - Penalty](#)

[6-9-4 Dogs and Cats](#)

6-9-1 EFFECTIVE DATE:

From and after the 21st day of September, 1964, it shall be unlawful for any person, firm, co-partnership, association or corporation to keep, cause, or permit to be kept, sheep, swine or other livestock at any place within the boundaries of the restricted area of the Village of Capitan, New Mexico, as hereinafter defined. [Ord. 64-2, as adopted by M.C. 1981, Ord. 81-1]

6-9-2 RESTRICTED AREA:

The restricted areas of the said Village of Capitan generally used for business or residential purposes, and within which the keeping of confinement of livestock is hereby prohibited, shall be that portion of the Village of Capitan within the following boundaries, as delineated upon the map of the Village of Capitan filed with the Village Clerk, to-wit:

Beginning at First Street within the Village of Capitan; Thence South on Bonito Street to Fourth Street; Thence West on Fourth Street to Lincoln; Thence South on Lincoln to Fifth Street;

Thence West on Fifth Street to Forest; Thence North on Forest to First Street, the point of beginning. [Ord. 64-2, as adopted by M.C. 1981, Ord. 81-1]

6-9-3 VIOLATION - PENALTY:

The violation of the provision of this article is a misdemeanor, and every person, firm, co-partnership, association, or corporation so convicted shall be punished by a fine in an amount not to exceed three hundred dollars (\$300.00), or by imprisonment in jail for a period of not more than ninety (90) days, or both. [Ord. 64-2, as adopted by M.C. 1981, Ord. 81-1]

6-9-4 DOGS AND CATS:

Nothing in this Article shall be construed as regulating or prohibiting the keeping and confining of dogs or cats. [Ord. 64-2, as adopted by M.C. 1981, Ord. 81-1]

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