

ORDINANCE NO. 878
AN ORDINANCE OF THE COUNTY OF RIVERSIDE
REGARDING NOISY ANIMALS

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. FINDINGS. The disturbance caused by excessive, unrelenting or habitual noise of any animal is disruptive of the public's peace and tranquility and represents an unwanted invasion of privacy of the residents of the unincorporated areas of the County of Riverside. At certain levels, the excessive, unrelenting or habitual noise of any animal may jeopardize the health, safety or general welfare of residents of the County of Riverside and degrade their quality of life.

Section 2. PURPOSE. It is declared to be in the public interest to promote the health and welfare of the residents of the unincorporated areas of the County of Riverside (the "County") by providing for an administrative proceeding for the abatement of such noisy animal nuisances, which abatement procedures shall be in addition to all other proceedings authorized by County ordinances or otherwise by law.

Section 3. AUTHORITY. This ordinance is adopted pursuant to the Board of Supervisors' police power as set forth under Article XI, section 7 of the California Constitution.

Section 4. EXEMPTIONS. This ordinance shall not apply to noise or sound made by an official law enforcement dog while on duty.

Section 5. DEFINITIONS. As used in this ordinance, the following terms shall have the following meanings:

- a. Complaining Party. Person or persons who contact the Department of Animal Services to report a noisy animal or animals.
- b. Director. The Director of the Department of Animal Services of the County of Riverside or his duly authorized representative.
- c. Noisy Animal. Any animal or animals maintained on the same premises or location whose excessive, unrelenting or habitual barking, howling, crying or other noises or sounds annoy or become offensive to a resident or residents in the vicinity thereby disturbing the peace of the neighborhood or causing excessive discomfort to any reasonable person of normal sensitivity hearing such sounds.
- d. Responsible Party. A Responsible Party includes any of the following:
 1. The person or persons who own the property where the noisy animal is located;
 2. The person or persons in charge of the premises where the noisy animal is located;
 3. The person or persons occupying the premises where the noisy animal is located;
 4. The owner of the noisy animal.

If any of these persons are minors, the parent or parents or a guardian of such minor shall be the Responsible Party.

Section 6. GENERAL PROHIBITION. DECLARATION OF NOISY ANIMAL AS A PUBLIC NUISANCE.

- a. It is unlawful and a public nuisance for any person to allow on their property, own, keep, permit, harbor or have in their care, custody or control a Noisy Animal.
- b. It is unlawful for the Responsible Party, after being informed in writing that his animal has been declared a Noisy Animal and that the maintenance of a Noisy Animal is a public nuisance, to fail, refuse or neglect to take whatever steps or use whatever means are necessary to assure that such Noisy Animal does not again disturb residents in the vicinity in which the Noisy Animal is kept.

Section 7. NOISY ANIMAL WARNING NOTICE.

- a. When an animal control officer is notified of a possible Noisy Animal and has personally confirmed the existence of a Noisy Animal, or has received a written complaint under penalty of perjury of such Noisy Animal signed by a Complaining Party, the animal control officer shall issue a Noisy Animal Warning Notice (“Warning Notice”) to the Responsible Party. Such Warning Notice shall specify that the continued barking, howling or other noise or sounds of such animal is in violation of this ordinance and that the Noisy Animal nuisance must be abated immediately to avoid further action by the County. The Warning Notice shall be personally served or served by mail upon the Responsible Party. If service by mail or personal service cannot be safely made or reasonable attempts at personal service have failed, the Warning Notice shall also be posted at the premises upon which the animal is located. A copy of the Warning Notice shall be filed with the Department of Animal Services. The Director shall within five days of issuance of the Warning Notice, make a reasonable attempt to speak personally or by telephone with the Responsible Party concerning the matter, including what efforts have been made to abate the nuisance.
- b. If within five days of the issuance of the Warning Notice the Director determines that the barking, howling or other sound or cry was provoked or that such barking, howling or other sound or cry was not excessive, unrelenting or habitual, the Director shall cause the Warning Notice to be voided and the Responsible Party to whom it was issued to be so notified. In the event a Warning Notice has been voided, such Warning Notice shall not be considered as having been issued for the purposes of Sections 8, 13, or 15 of this ordinance.

Section 8. DECLARATION OF COMPLAINT OF NOISY ANIMAL AND PETITION FOR ADMINISTRATIVE HEARING.

- a. When the Director receives a subsequent verbal or written complaint concerning a Noisy Animal at the same location within twelve months after the issuance of a Warning Notice, the Director shall determine whether there is a violation of this ordinance. If there is a violation of this ordinance, a Declaration of Complaint of Noisy Animal and Petition for Administrative Hearing (“Declaration of Complaint and Petition”) shall be issued by the Director to the Complaining Party. The Complaining Party shall be informed that further action may not be warranted if the Responsible Party is in compliance with subsection b. of Section 6 of this ordinance, but in any case, no further action can be taken until the completed Declaration of Complaint and Petition is received by the Director.
- b. The Declaration of Complaint and Petition shall be completed under penalty of perjury by the Complaining Party and returned within ten (10) days to the Director.

- c. The Director, upon receipt of a timely executed Declaration of Complaint and Petition, shall set the case for hearing before an administrative hearing officer. The hearing shall be set at least ten (10) days from the date the Declaration of Complaint and Petition is received and no more than thirty (30) days after the date the Declaration of Complaint and Petition is received. The Director shall notify the Complaining Party and Responsible Party of the date, time, and place for the hearing. The notice of hearing shall advise the Complaining Party and Responsible Party that they may present evidence at the hearing through witnesses and documents. The notice of hearing shall be accompanied by a copy of the completed Declaration of Complaint and Petition. The notice of hearing shall be personally served or served by mail on all parties. If the notice of hearing cannot be mailed or safely served by personal service or reasonable attempts at personal service have failed, then it may be posted upon the premises where the animal is kept.

Section 9. ADMINISTRATIVE HEARING OFFICER. A determination whether an animal is violating this ordinance shall be made by an administrative hearing officer. The administrative hearing officer shall have the power to hear testimony from witnesses, including complainants, peace officers, animal control officers, or other witnesses or parties including the Responsible Party, to determine whether the maintenance of the animal is a public nuisance and to order the abatement of such nuisance by taking such actions as set forth in this ordinance.

Section 10. ADMINISTRATIVE ABATEMENT HEARING REGARDING NOISY ANIMAL. The hearing before the administrative hearing officer shall be open to the public. The administrative hearing officer may admit all relevant evidence, including incident reports and affidavits of witnesses. The administrative hearing officer may decide all issues even if the Responsible Party for the animal fails to appear at the hearing. If the Complaining Party fails to appear at the hearing and the investigating animal control officer does not have personal knowledge of the Noisy Animal, the complaint shall be dismissed. The administrative hearing officer may find, upon a preponderance of the evidence, that the animal is a Noisy Animal and the maintenance of such Noisy Animal is a public nuisance. Upon the conclusion of the hearing, the administrative hearing officer may orally announce the decision as to whether the animal is a Noisy Animal.

Section 11. DETERMINATION AND ORDER. Within three (3) business days after the conclusion of the hearing, the administrative hearing officer shall, by certified mail, return receipt requested and by posting upon the premises where the animal is kept, notify the Responsible Party of the administrative hearing officer's determination and any orders issued. The order shall be called an administrative abatement order. If the administrative hearing officer determines that the animal is a Noisy Animal and the maintenance thereof, a public nuisance, the Responsible Party shall comply with the administrative hearing officer's order within five (5) days after the date of mailing and posting of the determination and order. The decision of the administrative hearing officer shall be final.

Section 12. ADMINISTRATIVE ABATEMENT MEASURES. The administrative hearing officer may, as part of his determination that the animal is a Noisy Animal and a public nuisance, direct the Responsible Party to perform one or more of the following actions:

- a. Containment of the Noisy Animal within an enclosed building on the premises of the Responsible Party;

- b. Require that the Noisy Animal wear a noise suppression device obtained at the expense of the Responsible Party to reduce or eliminate the noise creating the nuisance;
- c. Require that the Noisy Animal undertake obedience training designed to abate the nuisance problem when appropriate and under the conditions imposed by the administrative hearing officer and at the expense of the Responsible Party;
- d. Restrict the time of day, days of the week and duration when the animal may be placed out-of-doors on the premises of the Responsible Party;
- e. Require the Noisy Animal be debarked at the expense of the Responsible Party;
- f. Require the Responsible Party to permanently remove the Noisy Animal from said property;
- g. Any other reasonable means to accomplish the abatement of the nuisance.

Section 13. FAILURE TO COMPLY WITH ADMINISTRATIVE ORDER. It is unlawful for any Responsible Party to fail, neglect or refuse to comply with an administrative abatement order of the administrative hearing officer within the time specified in said order. Should any party subject to the administrative abatement order fail to comply with the order, in whole or in any part thereof, that party or those parties may be subject to administrative remedies to enforce the administrative abatement order as set forth in this ordinance, including administrative citations and penalties, and any other lawful means necessary to gain compliance, including a civil action.

Section 14. CIVIL ACTION. In the event any person shall fail, neglect or refuse to comply with an administrative abatement order of the administrative hearing officer within the time specified in said order and the public nuisance continues to exist, a civil action may be commenced to obtain the abatement of the Noisy Animal public nuisance.

Section 15. ADMINISTRATIVE CITATIONS AND PENALTIES. In addition to the remedies and penalties contained in this ordinance, and in accordance with Government Code section 53069.4, an administrative citation may be issued for failure to comply with an administrative abatement order of the administrative hearing officer. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.

- a. Administrative hearing officer's order. If the public nuisance is not corrected within the period stated in the administrative abatement order, an administrative citation may be issued by a County Animal Control Officer.
- b. Content of citation. The administrative citation shall be issued on a form approved by County Counsel and shall contain the following information:
 - 1. Date, location and approximate time that the violation was observed;
 - 2. The ordinance violated and a brief description of the violation;
 - 3. The amount of the administrative penalty imposed for the violation;
 - 4. Instructions for payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within this time period;
 - 5. Instructions on how to appeal the citation;
 - 6. The signature of the animal control officer. The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.
- c. Service of citation.
 - 1. If the Responsible Party who has violated the ordinance is present at the scene of the violation, the animal control officer shall attempt to obtain the

- Responsible Party's signature on the administrative citation and shall deliver a copy of the administrative citation to the Responsible Party.
2. If no one can be located at the property where the Noisy Animal is located, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the Responsible Party or other person who has violated the ordinance. The citation shall be mailed to the property address and/or the address listed for the property owner on the last county equalized assessment roll. The citation shall also be mailed to any additional address for the Responsible Party in Department of Animal Services records.
 3. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
- d. Administrative Penalties
1. The penalties assessed for each violation of the Administrative Abatement Order issued by the administrative hearing officer shall not exceed the following amounts:
 - i. One hundred dollars (\$100.00) for a first violation;
 - ii. Two hundred dollars (\$200.00) for a second violation of the same administrative abatement order within one year;
 - iii. Five hundred dollars (\$500.00) for each additional violation of the administrative abatement order within one year.
 2. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
 3. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
 4. The penalties assessed shall be payable to the County of Riverside, Department of Animal Services.
- e. Administrative Appeal of Administrative Citation.
1. Written Appeal. The recipient of an administrative citation may appeal the citation by submitting a written appeal with the Department of Animal Services. The written appeal must be submitted within twenty (20) days of the date stated on the administrative citation. Failure to submit a written appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The written appeal shall contain the following information:
 - i. A brief statement setting forth the appellant's reasons for the appeal, including, but not limited to, a brief statement of the material facts which the appellant claims supports his contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - ii. The written appeal shall also include a check or money order as a deposit for the total penalty amount as shown on the citation. A successful appeal will result in a full refund of the penalty amount placed on deposit. Appeals received without the full deposit will not be accepted.
 2. Administrative Appeal Hearing for appeal of Administrative Citation. Upon a timely written request by the appellant, an administrative appeal hearing for appeal of an administrative citation shall be held as follows:

- i. Notice of Hearing. Notice of the administrative appeal hearing for appeal of an administrative citation shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be personally delivered or mailed to the appellant at the address to which the citation was mailed, unless a new address is provided in the written appeal at which the appellant agrees notice of any additional proceeding or an order relating to the administrative penalty may be received by mail.
 - ii. Hearing Officer. The administrative hearing for appeal of an administrative citation shall be held before the Director. The hearing officer shall not be the investigating animal control officer who issued the administrative citation or his immediate supervisor. Nor shall the administrative hearing for appeal of the administrative citation be held before the administrative hearing officer that issued the administrative abatement order concerning the Noisy Animal pursuant to Section 11. The Director may contract with a qualified provider to conduct the administrative hearings for appeals of administrative citations or to process administrative citations.
 - iii. Conduct of the Hearing. The investigating animal control officer who issued the administrative citation shall not be required to participate in the administrative appeal hearing. The contents of the investigating animal control officer's file shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal of the administrative citation fails to appear at the administrative appeal hearing, the hearing officer shall make his determination based on the information contained in the written appeal. The purpose of the administrative appeal hearing as allowed under this section is to appeal the administrative citation. The hearing officer cannot reconsider the administrative abatement order that declared the Noisy Animal a public nuisance.
 - iv. Hearing Officer's Decision. The hearing officer's decision regarding appeal of the administrative citation following the administrative appeal hearing may be personally delivered to the person requesting the hearing or sent by mail. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.
- f. Review of Administrative Hearing Officer's Decision. If the recipient of an administrative citation disagrees with the administrative hearing officer's decision upholding the issuance of the administrative citation and/or administrative penalty amount assessed, the recipient may appeal the issuance of the administrative citation to the superior court as set forth in this section.
 - i. Notice of Appeal. Within twenty (20) days of the delivery and mailing of the hearing officer's decision regarding the administrative citation, the recipient of the administrative citation may contest that decision by filing an appeal to be heard by the superior court. The fee for filing the notice of appeal is twenty-five dollars (\$25.00). The failure to file the appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be

- served in person or by first class mail upon the Department of Animal Services by the contestant.
- ii. Conduct of Hearing. The conduct of the appeal hearing is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received into evidence. A copy of the issued administrative citation providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request. The purpose of the appeal hearing as allowed under this section is to appeal the decision of the administrative hearing officer with regard to the administrative citation and/or amount of the administrative penalty assessed. The hearing officer cannot reconsider the administrative abatement order that declared the Noisy Animal a public nuisance.
 - iii. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the Department of Animal Services. Any deposit of the fine or penalty shall be refunded by the Department of Animal Services in accordance with the judgment of the court. If the court finds in favor of the Department of Animal Services, the amount of the fee deposited by the contestant shall be retained by the Department of Animal Services in accordance with the judgment of the court.

Section 16. NOT EXCLUSIVE REMEDY. The provisions of this ordinance are to be construed as an added remedy of abatement of the nuisance hereby declared and not in conflict with or derogation of any other actions or proceedings or remedies otherwise provided by law.

Section 17. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the remainder of the ordinance or the application of such provision(s) to other persons or circumstances.

Section 18. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

Adopted:
878 Item 9.2 of 01/06/2009 (Eff: 02/05/2009)