

ORDINANCE NO. \_\_\_\_\_

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 6.24.040 (BARKING DOGS) TO BETTER ADDRESS AND MORE EFFICIENTLY RESOLVE THE BARKING DOG COMPLAINT AND ENFORCEMENT PROCESS, REMOVING SECTION 6.24.050, DISTURBING THE PEACE PROHIBITED, AND REMOVING SECTION 6.24.060, NUISANCE.

WHEREAS, the City Council finds and declares that barking dogs are a private nuisance in that they can frequently disturb a person's interest in the use and enjoyment of his land and their quality of life; and

WHEREAS, the City Council finds and declares that incessant dog barking can disturb neighbors to the point that the dog's barking needs to be addressed through issuing an infraction citation that requires attendance in superior court; and

WHEREAS, Animal Care Facility staff has received numerous complaints of barking dogs despite undertaking the enforcement process as detailed by the current code; and

WHEREAS, Animal Care Facility staff spends a lot of its time in addressing barking dog complaints without much if any tangible results; and

WHEREAS, the current barking dog ordinance does not do enough to resolve barking dog complaints nor does it provide a complaining party with additional options other than continuing to complain about the dog; and

WHEREAS, the barking dog Municipal Code provisions need to be updated in response to citizen and staff concerns about the barking dog complaint and resolution process; and

WHEREAS, the code updates will better obtain compliance, improve enforcement efforts, and will save staff time and resources as well as resolving the complaints in a more efficient and productive manner.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

**Section I.** That Section 6.24.040 of the Chula Vista Municipal Code, with the above recitations incorporated herein, is hereby amended to read as follows:

6.24.040 Barking ~~D~~dogs, Enforcement Procedure & Nuisance.

A. Definitions

1. “Barking dog” means any dog that barks, bays, cries, howls or makes any noise audible beyond the boundaries of the property on which the dog is situated for an extended period of time to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property.

a. A dog shall not be deemed a “barking dog” for purposes of these provisions if, at any time the dog is barking, a person is trespassing or threatening to trespass upon private property in or upon where the dog is situated, or when the dog is being teased or provoked, or when the dog is reacting to a property owner’s invitee or by a person attempting to conduct lawful business at the property.

b. Nothing contained herein shall be construed to apply to reasonable noises emanating from legally operated dog and cat hospitals, humane societies, shelters, farm and/or agricultural facilities, or areas where the keeping of animals or fowl is permitted pursuant to city or county codes.

2. “Extended period of time” shall consist of incessant barks, bays, cries, howls, or other noise for sixty (60) minutes or more uninterrupted in any 24-hour period.

3. “Uninterrupted” shall mean barking may not stop for five (5) minutes or more during the sixty (60) minutes.

4. A “Responsible Person” is defined as any one of the following:

1. A person who allows a barking dog violation to exist, whether through willful action, failure to act, or failure to exercise proper control over a barking dog.

2. A person whose agent, employee, or independent contractor allows a barking dog violation to exist, whether through willful action, failure to act, or failure to exercise proper control over a barking dog.

3. A person who is the owner of, and a person who is a lessee or sublessee with the current right of possession of, real property in or upon where a barking dog violation occurs.

4. A person who possesses, has title to or an interest in, harbors or has control, custody or possession of a barking dog.

5. “Chula Vista Animal Care Facility” (“CVACF”) is the City department responsible for animal control and management. CVACF, and its Officers, are acting under the authority of the CVACF and City Managers and are therefore authorized to utilize the procedures for code compliance and enforcement contained in CVMC Chapters 1.20 and 1.41.

B. Initial Barking Dog Complaints. The initial complaints about a barking dog are to be processed as detailed below. These steps must be undertaken prior to any barking dog citation issuance pursuant to subsections C and D below.

1. A Chula Vista resident lodges a barking dog complaint form with the Chula Vista Animal Care Facility (“CVACF”). The complaint must state: 1) the home address, email address and contact information for the complaining party; 2) the address location of the barking dog; and 3) specifics of when and for how long the barking dog barks, bays,

cries, or howls. CVACF will not process a complaint without the above-listed information. The complainant must complete the complaint form in its entirety and mail or deliver it to the Chula Vista Animal Care Facility at 130 Beyer Way, Chula Vista, CA, 91911.

2. In response to the above complaint, CVACF will make an attempt to contact the responsible owner, via phone or by writing, to notify them of the complaint. The responsible owner will be given 10 days to resolve the situation.

3. The complainant can lodge a second complaint, with the same information required by subsection A above, 15 days from the initial complaint should the dog continue to bark.

4. In response to the second complaint, CVACF will make an attempt to contact the responsible owner, via phone or by writing, to notify them of the second complaint and to let them know the next step could be issuing a barking dog citation pursuant to subsection C or D below.

5. After two complaints have been lodged CVACF will not process barking dog complaints against this specific animal.

Chula Vista Animal Care recommends that neighbors make an attempt to resolve the problem with the responsible person prior to filing a formal complaint. Sometimes the responsible person is unaware of the noise and grateful for the opportunity to address the issue. If a formal complaint is submitted, CVACF will assist in an effort to help in the resolution of the reported problem.

C. Barking Dog Infraction Citation. ~~General. Any~~ A Chula Vista Animal Control Officer ~~enforcement officer~~ has the authority to issue a ~~civil~~ citation to any responsible person for a barking dog ~~as defined herein~~ ~~violation~~ that the enforcement officer did not see or hear occur based on a ~~complaints~~, signed under penalty of perjury, lodged by two members of the community (the “complainants”) who have been disturbed by the barking dog and who reside in Chula Vista at separate addresses within one-hundred (100) feet of the property boundary line where the barking dog is maintained. ~~who have been disturbed by the barking dog. A responsible person to whom a civil citation is issued shall be liable for and shall pay to the City the fine or fines described in the barking dog citation when due. Where the responsible person is a minor under the age of 18 years, the minor’s parents or legal guardian shall be liable for and held responsible for payments of their minor child’s citation fines and/or late penalties. In any case, the responsible person (or his/her parents when the responsible person is under the age of 18 shall have the right to appeal the issuance of the citation pursuant to the provisions of this section.~~ One of the complainants must have lodged two complaints against the barking dog pursuant to subsection B above. Complainants’ complaints, signed under penalty of perjury, shall be prima facie evidence of a violation of this section. This citation will be issued as an infraction and will not be issued unless the complainants sign a written promise to appear at the court hearing.

D. Barking Dog Administrative Citation. A Chula Vista Animal Care Officer has the authority to issue an administrative citation to any responsible person for a barking dog as defined herein that the enforcement officer did not see or hear occur based on complaints, signed under penalty of perjury, lodged by two members of the community (the “complainants”) who

have been disturbed by the barking dog and who reside in Chula Vista at separate addresses within one-hundred (100) feet of the property boundary line where the barking dog is maintained. One of the complainants must have lodged two complaints against the barking dog pursuant to subsection B above. Complainants' complaints, signed under penalty of perjury, shall be prima facie evidence of a violation of this section. This citation will be issued administratively and will not be issued unless the complainants sign a written promise to appear at the administrative appeal hearing if the responsible party lodges a timely administrative appeal.

E. Option of Mediation. Citations under subsections C or D above will not be issued, or will be held in abeyance, in the event that the complainants and the responsible party agree in writing to mediation. The City will provide its offices for this mediation. Mediation needs to be completed within 30 days of selecting this option. The City will attempt to provide mediation at no cost to the requesting parties but if it is unable to the requesting parties will agree to fund it in equal, pro-rata shares between themselves.

F. Barking Dog Nuisance (Private). Any barking dog that satisfies the definition of subsection A above is hereby declared to be a private nuisance that permits a Chula Vista citizen to file a civil lawsuit in San Diego County Superior Court against the responsible party. The filing party is encouraged to obtain as much evidence as possible, including but not limited to audio recordings, in support of his or her nuisance lawsuit. City officers and records may be subpoenaed in response to a lawsuit of this nature but the City will obtain reimbursement for the costs thereof.

G. These provisions are the sum-total of CVACF's involvement with barking dog complaints and citations. CVACF will not confiscate dogs for barking alone.

~~a.~~

~~There may be more than one person responsible for a barking dog violation. A "responsible person" is defined as any one of the following:~~

- ~~1. A person who allows a barking dog violation to exist, whether through willful action, failure to act, or failure to exercise proper control over a barking dog.~~
- ~~2. A person whose agent, employee, or independent contractor allows a barking dog violation to exist, whether through willful action, failure to act, or failure to exercise proper control over a barking dog.~~
- ~~3. A person who is the owner of, and a person who is a lessee or sublessee with the current right of possession of, real property in or upon which a barking dog violation occurs.~~

~~Chula Vista Animal Care recommends that neighbors make an attempt to resolve the problem with the nuisance animal owner or other responsible person prior to filing a formal complaint. Sometimes the responsible person is unaware of the noise and grateful for the opportunity to address the issue. If a formal complaint is submitted, Chula Vista Animal Care will attempt contact with the responsible person in an effort to help in the resolution of the reported problem.~~

~~This information is intended to clearly explain both the role of the Chula Vista Animal Care Facility (CVACF) and the complainant's role in the resolution of the problem. The complainant must complete the complaint form in its entirety and mail it to Chula Vista Animal Care Facility~~

at 130 Beyer Way, Chula Vista, CA, 91911. To expedite the process, you may hand deliver the completed form to Chula Vista Animal Care Facility.

~~B. The entire civil citation process for a barking dog complaint procedure is as follows:~~

- ~~1. The complainant initiates a complaint in writing by submitting a completed barking dog complaint form to CVACF. Once the complaint has been processed, an Animal Control Officer shall attempt to contact the responsible person to explain the civil citation process and try to help resolve the situation.~~
- ~~2. The responsible person is given 10 days to resolve the situation. If the situation still exists, the complainant may file a second complaint with CVACF through the dispatch center at (619)476 2476. If CVACF is not contacted within a reasonable time (as determined by CVACF) of the initial contact of the responsible party, the complaint will expire. Once the complainant requests further action on a second complaint, the Animal Control Officer shall initiate the issuance of a civil citation.~~
- ~~3. The purpose of issuing a civil citation is to encourage voluntary and complete compliance with the City code to eliminate barking dog nuisances for the protection and benefit of the entire community. The issuance of a civil citation is solely at the City's discretion and is one option the City has to address barking dog violations.~~
- ~~4. If the complainant requests to have a civil citation issued, an Animal Control Officer shall respond to the complainant's residence.~~
- ~~5. Before a citation will be issued, the complainant is required to sign an affidavit under penalty of perjury that the barking dog has disturbed him/her, and the dog is a nuisance as defined by the definition of a barking dog.~~
- ~~6. The complainant shall be advised of the necessity of attending the administrative hearing if the responsible person contests the citation. If the complainant does not attend the scheduled hearing, the citation shall be dismissed in favor of the responsible person.~~
- ~~7. The Animal Control Officer shall then attempt to contact the responsible person. The responsible person shall be advised of the second complaint and the request for a civil citation. The Animal Control Officer shall advise the responsible person of the option of paying a fine and abating the nuisance or contesting the citation at the administrative hearing. The responsible person may opt to pay the fine immediately to the Animal Control Officer on scene.~~
- ~~8. After there has been no contact made with the responsible person, the Animal Control Officer may post the citation in a conspicuous place on the responsible person's property.~~
- ~~9. The responsible person must pay the fine within 15 days or contest the citation at the administrative hearing. If the responsible person does not appear at the administrative hearing the fine will be due and payable. Payment of the fine shall not excuse the violator from correcting the barking dog violation.~~

~~This civil citation procedure only applies to the nuisance (barking) of a dog. (Ord. 3226 §1, 2012).~~

~~6.24.050 Disturbing the peace prohibited.~~

~~No person shall own or harbor an animal in such a manner that the peace and quiet of the public is unreasonably disturbed. The written affirmation by two persons, having separate residences, that the violation of CVMC 6.24.010(H) and (J), 6.24.030, 6.24.070 and 6.24.100 disturbs the peace and quiet of said persons shall be prima facie evidence of a violation of this section. The keeping or maintenance, or the permitting to be kept or maintained, on any premises owned, occupied, or controlled by any person, of any animal or fowl which, by frequent or long-continued noise, causes unreasonable annoyance or discomfort to any person of normal sensitivity in the vicinity shall constitute a violation of this section; provided, however, that nothing contained herein shall be construed to apply to reasonable noises emanating from legally operated dog and cat hospitals, humane societies, shelters, farm and/or agricultural facilities, or areas where the keeping of animals or fowl is permitted. The destruction by an animal of property other than that which belongs to the owner of said animal shall be prima facie evidence of a violation of this section. (Ord. 3226 § 1, 2012; Ord. 1706 § 1, 1976. Formerly 6.24.040).~~

~~6.24.060 Nuisance.~~

~~A. No person shall keep, maintain, or permit, either willfully or through failure to control, on any lot, parcel of land, or premises under his control any animal which by sound or cry shall disturb the peace and comfort of the inhabitants of the neighborhood or interfere with any person in the reasonable and comfortable enjoyment of life or property except noise on property used for agricultural purposes which is normally associated with animals on property used for such purposes.~~

~~B. The process for the nuisance complaint procedure is as follows:~~

- ~~1. The reporting party initiates the first complaint by mailing in the completed nuisance complaint form. If the owner's animal is not currently licensed, an Animal Control Officer will contact the owner in person. If the animal is licensed, a postcard notifying the owner of the complaint is sent.~~
- ~~2. If after 10 days the nuisance violation continues, the complainant must file a second complaint with CVACF through dispatch center. If CVACF is not contacted within 90 days of the initial complaint, the file will be purged. Upon second complaint, the dog owner is given 14 days to resolve the violation.~~
- ~~3. If the situation still exists after the 14 day period, the complainant must file a third complaint with CVACF through dispatch center. At the third complaint, the complainant will be mailed a nuisance statement form, including a sample statement form and directions for completion of the form. This completed form, when returned to CVACF, is used to document the history of the situation.~~
- ~~4. Once the nuisance statement form is received, CVACF will issue a notice to abate (final warning) to the nuisance animal owner. After this notice is hand-delivered to the owner by an Animal Control Officer, the owner is given 15 days to remedy the nuisance violation.~~

~~5. If the problem remains unsolved after the 15 days, the complainant must again contact Animal Care Facility and request a petition packet (legal evidence). The complainant then has 45 days to complete the packet and return it to CVACF.~~

~~6. Once all information is received, reviewed and deemed complete, CVACF will forward it to the City Attorney with a request for a criminal complaint. The action taken by the City Attorney will be based upon the information that is supplied by the complaining party. (Ord. 3226 § 1, 2012).~~

**Section II. Severability**

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

**Section III. Construction**

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**Section IV. Effective Date**

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

**Section V. Publication**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

\_\_\_\_\_  
Mariya Anton  
Animal Care Facility Administrator

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Glen R. Googins  
City Attorney