



# **CITY COUNCIL AGENDA REPORT**

MEETING DATE: August 5, 2008

ITEM NUMBER:

**IX-3**

**SUBJECT:** REVISIONS TO ANIMAL REGULATIONS ORDINANCE REGARDING BARKING DOGS

**DATE:** JULY 23, 2008

**FROM:** CITY ATTORNEY'S OFFICE

**PRESENTATION BY:** KIMBERLY HALL BARLOW, CITY ATTORNEY

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY HALL BARLOW, 714-754-5399

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## **RECOMMENDATION:**

Introduce and give first reading to the attached Ordinance Amending Title 3 relating to Animal Regulations, specifically to address barking dogs.

## **BACKGROUND:**

In July 2007, the City Council adopted comprehensive revisions to the Animal Regulations. Just before the revisions were adopted, the County of Orange had enacted new provisions regarding control of barking dogs. During its consideration of the 2007 code revisions, City Council asked staff to follow the progress of the Orange County revisions to see whether this might be a successful tool in addressing barking dogs. The County has advised staff that the code revisions have substantially streamlined and improved the County's ability to addressing the nuisance of barking dogs. Thus, staff has prepared for Council's consideration comparable revisions to our Animal Regulations to address barking dogs. The three sections proposed to be added are completely new, so no strike out version of the current code is provided.

## **ANALYSIS:**

The ordinance adds a definition for "barking dog" that establishes measurable and objective criteria specific to a dog barking, howling, crying, etc., including time periods of continuous barking and total barking time over a 24 hour period. The ordinance then requires a complainant to contact the police and a citation may be issued based upon either the City's animal control officer's own observation (if he or she has observed barking for the requisite time period), or based upon a complaint signed under penalty of perjury by the complainant. Before a citation is issued, the Police Department will post, serve and/or send a notice to the responsible person(s) (occupant(s) and/or owner(s) of the property) giving ten days to correct the nuisance. If the problem persists after that ten day period has expired, a citation will be issued.

Staff recommends that the Council introduce and give first reading to the proposed ordinance. At second reading, staff will bring forward a resolution establishing the fines for these citations. We would recommend using the same

graduated fines that the County of Orange and City of Santa Ana have adopted, because they seem to be having a positive effect in reducing this nuisance. The proposed fine schedule follows:

Fine for First Barking Dog Violation Citation Issued (Per Citation):	\$250.00
Fine for Second Barking Dog Citation Issued within Same 12-month Period (Per Citation):	\$275.00
Fine for Third Barking Dog Citation Issued within Same 12-month Period (Per Citation):	\$303.00
Fine for Fourth Barking Dog Citation Issued within Same 12-month Period (Per Citation):	\$333.00
Fine for Fifth Barking Dog Citation Issued within Same 12-month Period (Per Citation):	\$366.00
Fine for Sixth and Subsequent Barking Dog Citations Issued within Same 12-	\$403.00

If Council would like to see a different fine structure, staff requests that Council give direction so that an appropriate resolution may be brought forward at second reading of the ordinance.

**ALTERNATIVES CONSIDERED:**

Council could decide not to adopt the proposed revisions or request changes to the draft ordinance prior to final Council action.

**FISCAL REVIEW:**

None required.

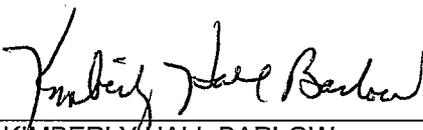
**LEGAL REVIEW:**

The City Attorney's office has prepared the draft ordinance with input from the Police Department for your consideration.

**CONCLUSION:**

The Council is requested to introduce and give first reading to the attached Ordinance, to be read by title only and waive further reading. The Council is also requested to give direction on the proposed fine schedule.

  
ALLAN L. ROEDER  
City Manager

  
KIMBERLY HALL BARLOW  
City Attorney



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CHRISTOPHER SHAWKEY

Chief of Police

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Ordinance  
2 Costa Mesa Municipal Code Section 3-16

Animal Regulations

July 31, 2008

5:15 p.m



**ORDINANCE NO. 08-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING TITLE 3 OF THE COSTA MESA MUNICIPAL CODE RELATING TO ANIMAL REGULATIONS**

**WHEREAS**, chronically barking dogs can be highly disturbing to surrounding residents and create a public nuisance; and

**WHEREAS**, chronically barking dogs may result from owner neglect or abuse; and

**WHEREAS**, the City has a substantial interest in protecting both the safety of dogs and the peace and quiet of residents throughout the City;

**WHEREAS**, the current process for addressing barking dogs is cumbersome and involves substantial delay; and

**WHEREAS**, a revision to the City's animal regulations is needed to specifically address the problem of barking dogs and the public nuisance they create and to streamline the complaint and citation system for barking dogs.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Title 3 of the Costa Mesa Municipal Code is hereby amended by adding Section 3-8 to Chapter I, to read as follows:

Sec. 3-8. "Barking dog" defined.

"Barking dog" means a 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. Such extended period of time shall consist of incessant barking, baying, crying, howling or making of any noise for thirty (30) minutes or more in any twenty-four-hour period, or intermittent barking, baying, crying, howling or making any noise for sixty (60) minutes or more during any twenty-four-hour period. A dog shall not be deemed a "barking dog" for purposes of this article if, at any time the dog is barking, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated, or when the dog is being teased or provoked.

**Section 2.** Title 3 of the Costa Mesa Municipal Code is hereby amended by adding Sections 3-113 and 3-114 to Chapter IV, Article 1, to read as follows:

Sec. 3-113. Barking dog – Public nuisance.

The city council of the City of Costa Mesa hereby decrees that maintaining, keeping and/or permitting a barking dog, as defined in section 3-8 of this Code, on any premises

in the City of Costa Mesa constitutes a public nuisance. Every day the barking dog violation exists beyond the ten day notice period to correct the problem, as set out in Section 3-114 of this Code, shall be regarded as a new and separate offense.

**Sec. 3-114. Barking dog – Enforcement.**

(a) Any animal control officer or police officer has the authority to issue an administrative citation pursuant to the procedures set forth in sections 1-34 through 1-48 of this Code to any responsible person for a barking dog violation that the enforcement officer did not see or hear based upon a complaint signed under penalty of perjury lodged by a member of the community who has been disturbed by the barking dog. All barking dog complaints shall be lodged with the Costa Mesa Police Department.

(b) Prior to issuing the administrative citation to the responsible person the enforcement officer shall send a warning notice via first class mail or shall personally serve upon the responsible person a warning notice giving the responsible person ten (10) days from the date of mailing or date of personal service in which to abate the public nuisance caused by the barking dog.

(c) The administrative citation shall contain the information set forth in section 1-38 of this Code.

(d) The responsible person shall have the right to appeal the administrative citation as set forth in sections 1-42 through 1-47 of this Code.

(e) The procedures established in this section may be in addition to criminal, civil or any other legal remedy established by law which may be pursued to address violations of the municipal code.

**Section 3.** Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

**Section 4.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**Section 5.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008.

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Mayor

APPROVED AS TO FORM:

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City Attorney

ATTEST:

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City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF COSTA MESA )

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 08-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the 5th day of August, 2008, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2008, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2008.

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City Clerk and ex-officio  
Clerk of the City Council of the  
City of Costa Mesa

Current code provisions regarding barking dogs:<sup>1</sup>

**Sec. 3-16. Noisy animals.**

No person shall keep, maintain or permit on any lot or parcel of land under his control any animal which, by any sound or cry disturbs the peace and comfort of the inhabitants of any neighborhood, or interferes with any person in the reasonable and comfortable enjoyment of life or property.

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<sup>1</sup> This provision will be retained to ensure that any noisy animal which creates a nuisance can be addressed.