

ORDINANCE NO. 3258

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 have 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 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.** A Chula Vista Animal Control Officer has the authority to issue a 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 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.

## **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

[Redacted Signature]

[Redacted Signature]

Mariya Anton  
Animal Care Facility Administrator

Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 23rd day of September 2014, by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Ramirez, Salas and Cox

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

[Redacted Signature]

Cheryl Cox, Mayor

ATTEST:

[Redacted Signature]

Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO )  
CITY OF CHULA VISTA )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3258 had its first reading at a regular meeting held on the 5th day of March 2013 and its second reading and adoption at a regular meeting of said City Council held on the 23rd day of September 2014; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Dated October 8, 2014

[Redacted Signature]

Donna R. Norris, CMC, City Clerk