

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON WEDNESDAY, SEPTEMBER 28, 2022

ORDINANCE 092822-5 AMENDING CHAPTER 5 (ANIMALS AND FOWL), ARTICLE II (DOGS, CATS AND OTHER ANIMALS), SECTIONS 5-27 (BARKING OR HOWLING DOGS) AND 5-34 (PENALTIES) OF THE CODE OF ROANOKE COUNTY

WHEREAS, the Virginia Supreme Court, in the case of *Tanner v. City of Va. Beach*, 227 Va. 432 (2009), ruled that penal ordinances must contain ascertainable standards, and that violations must not be determined by police officers on a subjective basis; and

WHEREAS, Section 5-27 of the Roanoke County Code, states, in part, "The harboring or keeping of any dog which, by loud, frequent or habitual barking or howling or by any other conduct, shall cause annoyance and disturb the peace and quiet of any person or neighborhood shall be unlawful; and any such dog is hereby declared to be a public nuisance"; and

WHEREAS, violations of Section 5-27 are punishable pursuant to the penalties set forth in Section 5-34 (which have not been updated since 2006); and

WHEREAS the above Section 5-27 does not set forth objective standards as required by the Tanner case, and is accordingly unlawful (it violates the constitutional prohibition on vagueness for penal ordinances), and is therefore unenforceable; and

WHEREAS, it is proposed that Section 5-27 accordingly be amended to set forth objective standards prohibiting the excessive barking or howling of dogs, and that Section 5-34 be amended to provide increases to the schedule of penalties for violations; and

WHEREAS, the first reading of this ordinance was held on September 13, 2022, and the second reading and public hearing of this ordinance was held on September 28, 2022.

NOW THEREFORE BE IT ORDAINED by the Roanoke County Board of Supervisors:

1. That Chapter 5 (Animals and Fowl), Article II (Dogs, Cats and Other Animals), Sections 5-27 (Barking or howling dogs) and 5-34 (Penalties) of the Roanoke County Code are hereby amended as follows:

Sec. 5-27. - Barking or howling dogs.

- a) The harboring or keeping of any dog that causes any sound or noise such that it is plainly audible at least once a minute for ten (10) consecutive minutes
 - (i) inside the confines of the dwelling unit, house or apartment of another, or
 - (ii) at fifty (50) or more feet from the animalis hereby declared to be a public nuisance and shall be unlawful.
- b) A dog that is in violation of Subsection (a) may be impounded by a community service officer or other law enforcement officer under the following circumstances:
 - 1) If, after reasonable efforts by the officer, the keeper of the animal cannot be located and the noise in violation of this Section persists,
 - 2) If, after being advised by an officer that the dog is in violation of this Section, the keeper of the dog is unwilling or unable to take steps to stop the dog from barking, or
 - 3) The keeper of a specific dog has been notified on three (3) or more separate occasions that the dog was in violation of this Section, and the officer again observes the dog to be in violation of this section.

The disposition of any such dog shall be in accordance with Section 5-29.

- c) It is *requested*, upon the first instance that a specific dog creates a public nuisance (as set forth in subsection (a) above), that the affected citizen first contact the dog's keeper, prior to contacting the County Police Department, to attempt to resolve objections with the keeper.
- d) A community service officer or other law enforcement officer may institute civil proceedings against any person that is in violation of this section. Citizens may also institute their own civil proceedings to resolve barking dog problems.

Sec. 5-34. - Penalties.

A violation of any provision of this article and any "animal nuisance" as defined in sections 5-21 may also be corrected, removed or abated through an appropriate action at law or suit in equity by any person suffering injury or damage therefrom.

Except as otherwise specifically provided, the penalties for violations of all sections of this chapter shall be as follows:

- (1) For the **first offense**, a fine of not less than seventy-five dollars (\$75.00) nor more than one hundred and fifty dollars (\$150.00).
- (2) For a **second offense** within a consecutive twelve-month period, a fine of not less than one hundred fifty dollars (\$150.00) nor more than two hundred fifty dollars (\$250.00).
- (3) For a third and all subsequent offenses, a fine of not less than two hundred fifty dollars (\$250.00) nor more than three hundred fifty dollars (\$350.00).
- (4) The judge trying case may order any animal permanently removed from the county within twenty-four (24) hours of such order.

2. That this ordinance shall be effective immediately.

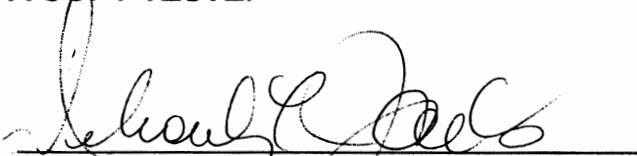
On motion of Supervisor Peters to adopt the ordinance, seconded by Supervisor

Radford and carried by the following recorded vote:

AYES: Supervisors Peters, Hooker, North, Radford, Mahoney

NAYS: None

A COPY TESTE:



Deborah C. Jacks

Chief Deputy Clerk to the Board of Supervisors

cc: Peter Lubeck, County Attorney
Howard B. Hall, Chief of Police