

ORDINANCE NO. NS-2818

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING CHAPTER 5 OF THE SANTA ANA MUNICIPAL CODE REGARDING THE CARE, TREATMENT, AND ASSESSMENT OF DOGS

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The Request for Council Action for this ordinance dated April 18, 2011, shall by this reference be incorporated herein, and together with this ordinance, any amendments or supplements and the oral testimony before the City Council at this meeting, shall additionally constitute the necessary findings for this ordinance.
- B. All provisions of the Santa Ana Municipal Code which are repeated herein are repeated solely in order to comply with the provisions of Section 418 of the City Charter. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action or decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Section 5-59 of Chapter 5 of the Santa Ana Municipal Code is amended to read as follows:

Sec. 5-59. Noisy animals.

It is hereby declared to be a nuisance for any person to keep, maintain or permit on any lot, parcel of land, or premises under his/her control any animal, including a barking dog as defined in section 5-1(q), within the city limits which is in the habit of either disturbing the peace and quiet of any person within the city or interfering with any person in the reasonable and comfortable enjoyment of life or property. Every day a violation exists shall be regarded as a new and separate offense.

Section 3. Section 5-59.1 of Chapter 5 of the Santa Ana Municipal Code is added to read as follows:

Sec. 5-59.1. Enforcement—Noisy Animals.

(a) Any enforcement officer has the authority to issue an administrative citation pursuant to the procedures set forth in sections 1-21.1--1-21.9 of this Code to any

responsible person for a noisy animal, including 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 noisy animal or barking dog. All noisy animal or barking dog complaints shall be lodged with the Santa Ana 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 noisy animal or barking dog.

(c) The administrative citation shall contain the information set forth in section 1-21.5 of this Code.

(d) The responsible person shall have the right to appeal the administrative citation as set forth in section 1-21.8 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 4. Section 5-62 of Chapter 5 of the Santa Ana Municipal Code is amended to read as follows:

Sec. 5-62. Commercial kennel requirements.

(a) No person shall establish, operate, maintain or have a commercial kennel within the city without an inspection permit.

(b) No commercial kennels shall be allowed in any area zoned residential pursuant to chapter 41 of this code.

(c) Residential structures of one (1) story in height shall maintain a setback of one hundred (100) feet from any preexisting outside kennel runs of a preexisting kennel, and commercial kennels shall also maintain a setback of one hundred (100) feet from any preexisting residential structure.

(d) Residential structures of two (2) stories or more in height shall maintain a setback of two hundred (200) feet from any preexisting commercial kennel, and commercial kennels shall also maintain a setback of two hundred (200) feet from any preexisting structure of two (2) or more stories. These provisions will not apply to anyone who erects a residential structure of two (2) stories or more in height or to anyone who erects a commercial kennel if, in erecting the structure or kennel, that person:

- (1) Provides a barrier that will impair the vision between the kennels and the residential structure to at least the same extent as if a two-hundred-foot setback were used, and provides sufficient sound-retardant materials to produce no more than the same decibel level than if a two-hundred-foot setback was maintained. The decibel level shall be measured both at the kennel and at the residential structure; or
- (2) In the alternative, provides visual and sound standards that, in the opinion of the director of planning and development services, are equal to or greater than those required by the provisions of (1) above.

(e) The residence of a commercial kennel operator or owner shall not be deemed a residential structure as applied in the language of this section.

(f) The development and occupation of buildings for human habitation within the distances prescribed above by others than the kennel owner or operator or grantees, directly or indirectly, from or through the kennel owner or operator following the proper establishment of kennels, shall not render the maintenance of such preexisting kennels unlawful by reason of the diminished separation of the kennel use and the use of buildings for human habitation.

(g) Enforcement. The director of planning and development services shall not approve for issuance any building permit until he has assured himself that the provisions of this section have been met.

Section 5. Section 5-72 of Chapter 5 of the Santa Ana Municipal Code is amended to read as follows:

Sec. 5-72. Declaration and possession of vicious or potentially dangerous dog.

(a) *General Provisions.*

- (1) If the Animal Services Officer or Police Officer has cause to believe that a dog is a "vicious dog or potentially dangerous dog" within the meaning of section 5-72.1, he or she may tentatively find and declare such dog a "vicious dog or potentially dangerous dog."
- (2) Upon tentatively finding and declaring that a dog is a "vicious dog or potentially dangerous dog," the Animal Services Officer or Police Officer shall notify the owner and/or custodian in writing of his or her tentative finding and declaration.
- (3) The notice shall inform the owner and/or custodian of such dog that he or she may request a hearing in writing in accordance with Chapter 3 of this Code within ten (10) days of receipt of such notice to contest the tentative finding and declaration.

- (4) Failure of the owner and/or custodian to request a hearing pursuant to subsection (a)(3) of this section or failure to comply with the conditions and restrictions of the declaration shall result in the declaration becoming final and may result in the destruction of the dog.
  
- (5) The possession or maintenance of a "vicious dog or potentially dangerous dog," or the allowing of any such dog to be in contravention of this division, is hereby declared to be a public nuisance. The Santa Ana Police Department is hereby authorized and empowered to impound and/or abate any "vicious dog or potentially dangerous dog" independently of any criminal prosecution or the results thereof by any means reasonably necessary to ensure the health, safety and welfare of the public, including, but not limited to, the destruction of the dog or by the imposition upon the owner and/or custodian of specific reasonable restrictions and conditions for the maintenance of the dog. The restrictions and conditions may include but are not limited to:
  - a. Obtaining and maintaining liability insurance in the amount of one hundred thousand dollars (\$100,000.00) against bodily injury or death or damage to property and furnishing a certificate or proof of insurance by which the Santa Ana Police Department shall be notified at least ten (10) days prior to cancellation or nonrenewal or, at the owner's or custodian's option, the filing with the Santa Ana Police Department of proof of a bond in the amount of one hundred thousand dollars (100,000.00), to be able to respond in damages.
  - b. Requirements as to size, construction and design of the dog's enclosure.
  - c. Location of the dog's residence.
  - d. Requirements as to type and method of restraints and/or muzzling of the dog.
  - e. Photo identification or permanent marking of the dog for purposes of identification, such as a tattoo or microchip, may be required.
  - f. Requirements as to the posting of a warning notice or notices conspicuous to the public warning persons of the presence of a vicious dog.
  - g. Payment of a fee or fees as established by resolution of the City Council to recover the costs of enforcing the provisions of this Code as applied to the regulation of vicious dogs.

(b) *Notification of Right to Hearing.* At least five (5) working days prior to impoundment and/or abatement, the owner or custodian shall be notified in writing of his or her right to request a hearing in writing to determine whether grounds exist for such impoundment and/or abatement. If a hearing is requested, the impoundment and/or abatement hearing may be held in conjunction with the hearing provided for in subsection (a) of this section. If the owner or custodian requests a hearing prior to impoundment and/or abatement, no impoundment and/or abatement shall take place pending decision following a hearing, except as provided in subsection (c) of this section. Pending such impoundment and/or abatement hearing and decision, the Santa Ana Police Department may order the owner or custodian to keep the dog within a substantial enclosure as deemed necessary under the circumstances. The Santa Ana Police Department may also order the owner or custodian to post and keep posted upon the premises where such dog is kept under restraint, a warning notice pending such impoundment and/or abatement hearing and decision by the Superior Court. The form, content and display of such notice shall be specified by the Santa Ana Police Department. Any hearing under this subsection shall be conducted in accordance with Chapter 3 of this Code.

(c) *Immediate Impoundment.* When, in the opinion of the Animal Services Officer or Police Officer, immediate impoundment is necessary for the preservation of animal or public health, safety or welfare, or if the dog has been impounded under other provisions of this Code or State law, the preimpoundment hearing shall not be required; however, the owner or custodian shall be given written notice allowing ten (10) days from receipt of such notice to request in writing an abatement hearing. If requested, a hearing shall be held within ten (10) working days of receipt of the request, and the dog shall not be disposed of prior to the decision following such hearing. A hearing under this subsection shall be conducted in accordance with Chapter 3 of this Code, except as otherwise indicated. If, after ten (10) days following receipt of such notice, no written request for a hearing is received from the owner or custodian, the dog in question shall be disposed of under applicable provisions of law.

(d) *Initial Hearing and Appeal.*

- (1) *Initial Hearing.* Any hearing requested or conducted pursuant to this section shall be requested and conducted in accordance with Chapter 3 of this Code, unless otherwise stated herein.
- (2) *Appeal.* After any hearing conducted pursuant to subsection (1), any party to the hearing may, within ten (10) days of the receipt of the notice of determination, appeal the decision of the hearing entity of original jurisdiction to the Orange County Superior Court. Any such appeal shall be requested and conducted in accordance with California Food and Agriculture Code sections 31601, et seq.
- (3) The Santa Ana Police Department shall have the discretion, in any event, to directly petition the Superior Court to seek a determination whether or not the dog in question should be declared potentially

dangerous or vicious. The Santa Ana Police Department shall follow the procedures set forth in California Food and Agriculture Code sections 31601, et seq. for this purpose.

(e) *Change of Circumstances.* In the event of changed circumstances, the Santa Ana Police Department may amend or rescind any abatement and/or impoundment imposed pursuant to subsection (a)(5) of this section. Any such revision to the abatement and/or impoundment due to changed circumstances shall be subject to the same notice, hearing and other procedural requirements as required for imposing an initial abatement and/or impoundment set forth in subsections (b) and (c) of this section.

(f) *Change of Ownership, Custody and/or Residence.* Owners of a vicious dog or potentially dangerous dog who sell or otherwise transfer the ownership, custody or residence of the dog shall at least ten (10) days prior to the sale or transfer, inform the Santa Ana Police Department in writing of the name, address and telephone number of the new owner, custodian and/or residence and the name and description of the dog. The owner shall, in addition, notify the new owner or custodian in writing of the details of the dog's record, terms and conditions of maintenance and provide the Santa Ana Police Department with a copy thereof containing an acknowledgment by the new owner or custodian of his or her receipt of the original. The Santa Ana Police Department shall notify the new owner or custodian in writing of any different or additional restrictions or conditions imposed pursuant to subsection (a)(5) of this section as a result of the change of ownership, custody or residence. The imposition of any such different or additional restrictions or conditions shall be subject to the same notice, hearing and other procedural requirements as required for imposing an initial abatement and/or impoundment set forth in subsections (b) and (c) of this section.

(g) *Possession Unlawful.* It is unlawful to have custody of, own or possess a vicious dog or potentially dangerous dog within the meaning of section 5-72.1 unless it is restrained, confined or muzzled so that it cannot bite, attack or cause injury to any person.

(h) *Declared Vicious Dog or Potentially Dangerous Dog.* It shall be unlawful for the owner and/or custodian of a dog declared vicious or potentially dangerous pursuant to subsection (a) to fail to comply with any requirements or conditions imposed pursuant to subsection (a)(5) of this section. If a vicious or potentially dangerous dog escapes, the owner and/or custodian shall immediately notify the Santa Ana Police Department. The dog shall be seized by the Santa Ana Police Department pending an investigation and may be destroyed.

Section 6. Section 5-72.1 of Chapter 5 of the Santa Ana Municipal Code is added to read as follows:

Sec. 5-72.1. Definitions.

(a) Potentially dangerous dog means any of the following:

- (1) Any dog which, when unprovoked, after two (2) separate documented bites within the prior thirty-six-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury whether the person and the dog are on or off the property of the owner or custodian of the dog.
- (2) Any dog which, when unprovoked, bites a person causing any injury less severe than a "severe injury." Severe injury means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.
- (3) Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal, horse, or livestock.

(b) Vicious dog means any of the following:

- (1) Any dog seized as a "fighting animal" under section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or custodian of a fighting animal as set forth in subdivision (a) of Section 597.5 of the Penal Code.
- (2) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being, whether the person and the dog are on or off the property of the owner or custodian of the dog.
- (3) Any dog previously determined to be and currently listed as a potentially dangerous dog, which, after its owner or keeper has been notified of this determination, continues the behavior of a "potentially dangerous dog" as set forth above, or is maintained in violation of the conditions and restrictions placed upon the dog as a "potentially dangerous dog."

(c) Provided, no dog may be determined to be a vicious dog if any such bite, threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass upon the premises occupied by the owner or custodian of the dog, or was committing or attempting to commit a crime upon the premises occupied by the owner or custodian of the dog, or was teasing, tormenting, abusing or assaulting the dog or who has, in the past, teased, tormented, abused or assaulted the dog.

(d) These definitions do not apply to dogs used in military or police work while they are actually performing in that capacity.

Section 7: That section 5-74 of the Santa Ana Municipal Code is hereby deleted in its entirety:

Sec. 5-74. Reserved.

Section 8: That section 5-75 of the Santa Ana Municipal Code is hereby deleted in its entirety:

Sec. 5-75. Reserved.

Section 9. Section 5-76 of Chapter 5 of the Santa Ana Municipal Code is amended to read as follows:

Sec. 5-76. Care and maintenance of dogs.

(a) *Shelter requirements.* It shall be unlawful for any person to keep, house, or maintain any dog outdoors on any premises within the City of Santa Ana unless the dog has access at all times to an enclosed building or a shelter which meets all of the following requirements:

- (1) It is weatherproof meaning that it keeps the dog dry when it rains and provides sufficient protection from the sun so that the dog will not overheat;
- (2) It has a floor that is level and dry;
- (3) It is composed of material that will not result in injury to the dog;
- (4) It is maintained in a condition that will not result in injury to the dog;
- (5) It contains bedding material which is kept clean and dry;
- (6) It allows the dog easy access in and out;
- (7) It is cleaned and maintained in a manner designed to insure sanitary conditions, including but not limited to, removal of excrement, removal of urine, and treatment of area for flies, fleas, ticks, and parasites as necessary.

(b) *Water requirements.* It shall be unlawful for any person to keep, house, or maintain any dog on any premises within the City of Santa Ana unless the dog has access at all times to clean and fresh drinking water.

- (1) If the water is in a container, this container shall be designed, secured, placed and maintained in a manner that prevents tipping and spilling of the water;
- (2) Water containers shall be kept clean and sanitary, out of the sun, and shall be emptied and refilled regularly with fresh water.

(c) *Feeding requirements.* It shall be unlawful for any person to keep, house, or maintain any dog on any premises within the City of Santa Ana without providing food daily to maintain proper body weight and good general health. The food shall be:

- (1) Free from contamination;
- (2) Wholesome, palatable, and of sufficient quality, quantity, and nutritive value to meet the normal daily requirements for the age, size, and breed of the dog;
- (3) Easily accessible to the dog;
- (4) Maintained in a sanitary condition.

(d) *Tethering requirements.* It shall be unlawful for any person to tether, fasten, chain, tie, restrain or cause a dog to be fastened, chained, tied or restrained to a house, tree, garage, stake, fence, or other object except in circumstances where all of the following requirements are met:

- (1) The tethering, fastening, chaining, tying, and restraining is not accomplished by means of using a choke type of collar;
- (2) The tethering, fastening, chaining, tying or restraining shall not exceed three (3) hours in any twenty-four (24) hour period;
- (3) The length of the tether or implement used to restrain the dog is not less than three (3) times the length of the dog's body measured from the tip of the dog's nose to the end of the dog's tail;
- (4) The tether or implement used to restrain the dog is free from entanglement;
- (5) The dog has access to water, food, and shelter as described in this section;
- (6) The dog is monitored periodically.

(e) *Leaving in unattended vehicle.* It shall be unlawful for any person to leave any animal in any standing or parked vehicle in such a way to endanger the animal's health, safety or welfare. An animal control officer or police officer is authorized to use reasonable force to remove the animal from the vehicle whenever it appears that the animal's health, safety or welfare is or will be endangered if the owner of the vehicle cannot be located after reasonable attempts. The animal shall be taken to the shelter or to a veterinarian if the animal is in distress. A written notice bearing the name of the officer removing the animal, a telephone number where the officer can be contacted, and the location where the animal may be claimed by the owner shall be attached to the vehicle. Any person violating this section shall bear the full cost and expense incurred by the city in

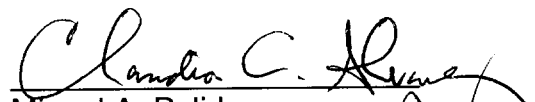
the care, medical treatment, impoundment cost and/or disposal of said animal, including removal from and/or damage done to the vehicle.

(f) *Exceptions.* These provisions of this section shall not apply to the following:

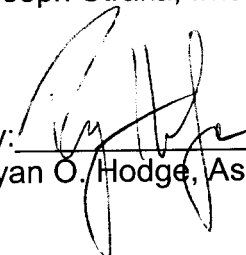
- (1) Government agencies;
- (2) Non-profit animal rescue organizations exempt from taxation under Internal Revenue Code Section 501(c)(3);
- (3) Humane societies or societies for the prevention of cruelty to animals if incorporated under the provisions of the California Corporations Code Section 10400 and the Nonprofit Public Benefit Corporation Law in Part 2 of the California Corporations Code, beginning at Section 5110; or
- (4) Permitted dog or cat shows.

Section 10. 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 Santa Ana 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.

ADOPTED this 2nd day of May 2011.

  
Miguel A. Pulido  
Mayor for Miguel Pulido

APPROVED AS TO FORM:  
Joseph Straka, Interim City Attorney

By:   
Ryan O. Hodge, Assistant City Attorney

YES: Councilmembers: Alvarez, Benavides, Bustamante, Martinez,  
Tinajero, Sarmiento (6)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: Pulido (1)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2818 to be the original ordinance adopted by the City Council of the City of Santa Ana on May 2, 2011 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 5/12/2011

Maria D. Huizar  
Clerk of the Council  
City of Santa Ana