

SUMMARY: An ordinance amending the Washoe County Code by repealing and enacting section 800 of Chapter 55 relating to animals and fowl regarding animal control in Washoe County

BILL NO. 1639

ORDINANCE NO. 1460

AN ORDINANCE AMENDING THE WASHOE COUNTY CODE REPEALING CERTAIN SECTIONS OF CHAPTER 55 RELATING TO PENALTIES ESTABLISHED FOR VIOLATIONS OF THE ANIMAL CONTROL PROVISIONS AND BY ENACTING PROVISIONS REGARDING ANIMAL CONTROL IN WASHOE COUNTY BY SETTING FORTH UNLAWFUL ACTS RELATING THERETO, PROSCRIBING CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS OF THE ANIMAL CONTROL PROVISIONS, BY ALLOWING THE UTILIZATION OF WASHOE COUNTY'S CIVIL ENFORCEMENT PROCESS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

SECTION 1. Purpose and intent.

1. NRS 244.189 provides that the board of county commissioners may exercise such powers and may enact such ordinances not in conflict with Nevada statutes for, inter alia, the control and protection of animals. NRS 244.359 provides that the board of county commissioners may by ordinance impose a civil liability in favor of the county for the violation of particular ordinances enacted pursuant to NRS 244.359, in an amount not to exceed \$500, instead of a criminal penalty. It is the intention of this Ordinance to repeal in total and enact new language in section 800 of Washoe County Code Chapter 55 to provide for decriminalizing most violations of the animal control ordinances and to create a civil penalty process for those violations.

SECTION 2. Section 55.800 of the Washoe County Code is hereby repealed.

SECTION 3. Chapter 55 of the Washoe County Code is hereby amended by adding thereto the provisions set forth in section 4 of this ordinance.

SECTION 4.

55.800 Penalties:

(1) Except when a civil penalty is imposed pursuant to NRS 244.359 as provided below, any person violating any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than 6 months, or by a fine of not less than \$50 or more than \$1,000, or by both fine and imprisonment. Failure to appear in the proper court to answer to such misdemeanor citation is a separate offense.

(2) Each day that a violation occurs constitutes a separate offense.

(3) For any second conviction for violation of the same provision of this chapter, such person violating that provision shall be punished by imprisonment in the county jail

for not more than 6 months, or by a fine of not less than \$100 nor more than \$1,000, or both fine and imprisonment.

(4) In lieu of all or part of the criminal penalty which may be imposed pursuant to this section, the convicted person may be sentenced to perform a fixed period of community service pursuant to the conditions prescribed by law.

(5) Except as prohibited by NRS 244.359, and in lieu of any criminal penalty which may be imposed for the violation(s) of any ordinance enacted pursuant to NRS 244.359(3), a civil penalty in favor of the county may be imposed in an amount not to exceed \$500. In order to impose a civil penalty as authorized by NRS 244.359, a peace officer or an animal control officer shall serve upon a person a "Notice of Civil Penalty" (NCP). The NCP shall contain the information required in WCC 55.800(8) and will be adjudicated in accordance with WCC 55.800(6) through 55.800(16) inclusive. A NCP is a civil infraction in nature and is not to be considered a criminal offense for any reason. All civil penalties collected pursuant to WCC 55.800 shall be payable directly to Washoe County and shall be placed in the County's general fund.

(6) Violation—Civil Infraction. It is a civil infraction for which a civil penalty may be imposed against an animal owner and in favor of the County, for an animal to be found in violation of any of the animal ordinances which are set forth in WCC 55.010 through 55.800 to the extent allowed by law.

(7) Notice of civil penalty. Whenever any animal is found in violation of the animal ordinances which are set forth in WCC 55.010 through 55.800, a NCP may be issued. In lieu of issuing a NCP, a written warning may be served upon the owner of the animal by affixing the warning to the place of residence in a conspicuous place. The written warning shall be imprinted so as to advise the owner that the owner has violated the animal control ordinances, which animal control ordinances the owner violated, but that it carries no civil or criminal penalty.

(8) Notice of civil penalty - Form. The NCP authorized by WCC 55.800(5) must be on a form which is provided by Washoe County Regional Animal Services and must contain the following information or as much of the following information as reasonably possible:

- (a) The name and address of the alleged violator;
- (b) The location at which the violation occurred together with the date and approximate time of the violation;
- (c) The description of the animal found in violation of WCC 55.010 through 55.800 together with the section(s) of the Washoe County Code allegedly violated;
- (d) The name of the peace officer or animal control officer who issues the notice of civil penalty;
- (e) Information which advises of the manner in which the violation occurred, and the time within which, the NCP should be answered;

- (f) Information that Washoe County Regional Animal Services Center (WCRASC) is the Washoe County agency where the alleged violator shall appear. The NCP shall also contain the address, telephone number and the hours of operation of WCRASC;
- (g) The amount of civil penalty imposed together with a statement that the NCP shall not be considered a criminal offense for any purpose and that a person who commits the infraction shall not be arrested as a result; the NCP shall also inform the person served that failure to respond to the NCP within 30 days of the date of issuance shall be deemed an admission of liability and a waiver of any right to a hearing and will result in the imposition of an additional \$25.00 administrative assessment;
- (h) The NCP shall also advise the individual that the Washoe County Board of Commissioners authorizes animal services to accept as payment in full for the civil penalty, one half of the authorized penalty indicated on the NCP if the individual pays that amount within 30 days of issuance.

(9) Issuance. The notice of civil penalty may be issued by any peace officer or animal control officer. The NCP may be issued by the peace officer or animal control officer based upon a written and signed statement of a complaining party. In such a case, the complaining party must appear at a hearing subsequently scheduled pursuant to WCC 55.800(13) (d) below, to testify. If the complaining party does not appear at the hearing in the case, the NCP will be dismissed and the respondent released from liability.

(10) Filing. The notice of civil penalty and/or an electronic facsimile thereof, must be filed with and retained by Washoe County Regional Animal Services and is deemed to be a public record of matters which are observed pursuant to a duty which is imposed by law and is prima facie evidence of the facts which are alleged therein. The notice of civil penalty must be served on the person to whom it is issued as provided in section 55.800(11).

(11) Service. The notice of civil penalty may be served upon the owner of the animal by personal service, regular US Postal Service mail to the last known address of the owner, or by affixing the notice to the place of residence in a conspicuous place. Service of the notice of civil penalty by mail or affixation has the same force and effect and is subject to the same penalties for the disregard thereof as if the notice of civil penalty were personally served on the owner.

(12) Liability. The owner of an animal is liable for all of the civil penalties which are imposed pursuant to this chapter. The following civil penalties are hereby authorized by the Board of County Commissioners:

- (a). For the first NCP relating to an ordinance: \$100.00
- (b). For second or subsequent NCPs issued for the same ordinance, as follows:

- (1) Second NCP- \$200.00
- (2) Third or subsequent NCP- \$400.00

(c). A peace officer or animal control officer may issue a criminal citation for a fourth or subsequent violation by the owner of the same ordinance within a three year period.

(13) Notice of civil penalty—Duties of animal owner/respondent.

- (a). A person who responds (“the respondent”) to a notice of civil penalty must either:
  - (1) "Admit" the commission of the civil infraction and pay the civil penalty imposed on the NCP, or
  - (2) "Deny" liability for the civil penalty.
- (b). A person may "admit" pursuant to paragraph (1) of subsection (a) of this section by paying the amount of the civil penalty which is appropriate for the violation and which has been approved by the Washoe County Board of Commissioners.
- (c). A person may "deny" liability pursuant to paragraph (2) of subsection (a) of this section by appearing in person at or by telephone contact to the Washoe County Regional Animal Services Center within 30 days of the date of issuance of the NCP to request a hearing, at which time, a date for a hearing and assignment of a hearing officer on the NCP shall be scheduled.
- (d). Assignment of the hearing officer to each case will be on a fixed daily rotation basis, but the hearing officer must be chosen from a list of hearing officers approved by the Washoe County Board of Commissioners. Only one hearing officer will be so assigned per day to hear scheduled cases. The assigned hearing officer is subject to disqualification for bias, prejudice, conflict of interest, or for any other reason for which a judge may be disqualified in a court of law. At the hearing, the hearing officer shall have the authority to require every witness to declare, under penalty of perjury, that he will testify truthfully, by oath or affirmation, administered by the hearing officer. An affirmation is sufficient if the witness is addressed in the following terms:
 

“Do you solemnly swear or affirm that the evidence you shall give in this matter now pending shall be the truth, the whole truth and nothing but the truth.”

Assent to this affirmation shall be made by the answer “I do”. The hearing officer shall not accept evidence from any party that does not assent to the affirmation.
- (e). At that hearing, any witness may present relevant evidence regarding the infraction and the issuance of the NCP. If the hearing officer finds that the civil infraction has not occurred or a civil infraction has been committed but the respondent asserts and

proves one or more legal defenses to the NCP, the hearing officer may dismiss the NCP and release the owner from liability.

- (f). If the hearing officer finds that a civil infraction has been committed and no defense exists, the hearing officer may, in the interest of justice and on behalf of the County, enter into an agreement for the timely or periodic payment of the applicable civil penalty.
- (g). In a contested hearing, the respondent against whom the hearing officer has entered a finding of liability and has assessed a civil penalty, by default or otherwise, may, if the assessed fine has been paid, seek judicial review thereof by filing a petition for a writ of mandate in the district court within 30 days of the hearing officer's findings.
- (h). If the person served with a NCP fails to respond as set forth in this subsection, animal services may serve on the violator by mail or by personal service, an overdue notice which shall contain payment instruction including the address to which payments should be mailed or personally delivered. The overdue notice shall also state that payment of the civil penalty in accordance with WCC 55.800(8)(h) is no longer available to the violator and that the entire amount of the civil penalty indicated on the NCP shall be paid. In addition, the overdue notice shall inform the violator that an additional administrative assessment of \$25.00 will also be charged.

(14) Judicial enforcement. Judicial enforcement of a notice of civil penalty must be by way of civil suit in the appropriate Justice's Court. A certified copy of the notice of civil penalty constitutes a prima facie showing that a civil infraction occurred.

(15) Commencement of civil action - Procedure. The civil action authorized in WCC 55.800(14) may be commenced at any time after the expiration of 60 days following the date on which the notice of civil penalty was served pursuant to WCC 55.800(11) or 60 days following the hearing officer's findings, by the filing of a complaint in the name of Washoe County and the issuance of a summons with respect thereto. Service of such complaint and summons on the defendant must be made by certified mail, return receipt requested, addressed to the registered owner of the animal at the owner's last known address, as indicated by any animal identification or in any other manner which is authorized by law. The proceedings in the Justice's Court for actions commenced pursuant this chapter shall be governed by the appropriate Justice Court Rules of Civil Procedure.

(16) Time limit. Civil actions pursuant to this chapter may only be commenced within one year after the date on which the civil penalty occurred, and the standard of proof which is applied is the preponderance of the evidence. The County has satisfied its burden of proof if it shows that a civil infraction occurred and that the animal was owned by, registered to, or in the custody of the defendant on the date the NCP was served, unless either of these elements is satisfactorily rebutted by the defendant. The defendant

may assert and prove defenses as allowed by law and the court may dismiss the notice of civil penalty if it finds that a defense has been proven by the respondent.

(17) Administrative Enforcement Authority. In addition to any criminal or civil penalties which are authorized by this chapter, in the sole discretion of Washoe County Regional Animal Services and in lieu of the process contained in WCC 55.800(5) through 55.800(16), any animal control officer is authorized to utilize the administrative enforcement procedures contained within WCC Chapter 125 in appropriate cases.

[Business Impact Note: The Board of County Commissioners hereby finds that this ordinance does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business]

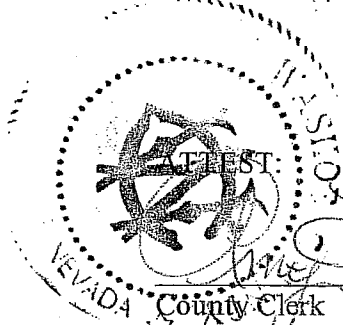
Proposed on the 8<sup>th</sup> day of March, 2011.  
Proposed by Commissioner Jung  
Passed on the 22<sup>nd</sup> day of March, 2011.

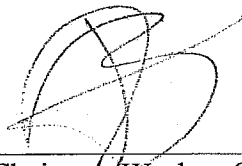
Vote:

Ayes: Breternitz, Weber, Humke, Jung, Larkin

Nays: none

Absent: none



  
Chairman Washoe County Commission

This ordinance shall be in force and effect from and after the 1<sup>st</sup> day of April, 2011.

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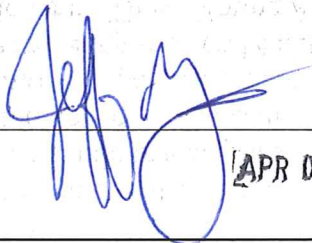
2011 APR -5 PM 4:42  
WASHOE COUNTY  
CLERK'S OFFICE

STATE OF NEVADA  
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **03/26/2011 - 04/01/2011**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: \_\_\_\_\_



APR 01 2011



**Proof of Publication**

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1460 BILL NO. 1639 An Ordinance amending the Washoe County Code repealing certain sections of Chapter 55 relating to penalties established for violations of the animal control provisions and by enacting provisions regarding animal control in Washoe County by setting forth unlawful acts relating thereto, proscribing criminal and civil penalties for violations of the animal control provisions, by allowing the utilization of Washoe County's civil enforcement process; and providing for other matters properly relating thereto (Bill No. 1639) PUBLIC NOTICE IS HEREBY GIVEN, that an adequate number of typewritten copies of the above-numbered and entitled Ordinance are available for public inspection and distribution at the office of the County Clerk of Washoe County, at her office in the County Courthouse, 75 Court Street, Reno, Nevada, and that such Ordinance was proposed by Commissioner Jung on March 8, 2011, and was passed and adopted at a regular meeting held on March 22, 2011, by the following vote of the Board of County Commissioners: Those Voting Aye: John Breternitz, David E. Humke, Kitty Jung, Robert M. Larkin, Bonnie Weber Those Voting Nay: None Those Absent: None Those Abstaining: None This Ordinance shall be in full force and effect from and after April 1, 2011, i.e., the date of the second publication of such ordinance by its title only. IN WITNESS WHEREOF, the Board of

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County Commissioners of Washoe County, Nevada, has caused this Ordinance to be published by title only. DATED this 24th day of March, 2011. AMY HARVEY, Washoe County Clerk and Clerk of the Board of County Commissioners No. 748641 Mar. 26, April 1, 2011