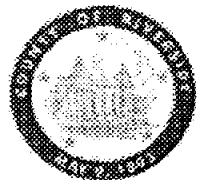


FORM APPROVED COUNTY COUNSEL
 BY: JINNY H. RA 11/24/08
 DATE

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**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Community Health Agency, Department of Animal Services

SUBMITTAL DATE:

SUBJECT: Ordinance No.878 of the County of Riverside Regarding Noisy Animals.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Introduce and set for public hearing Ordinance No. 878, an Ordinance of the County of Riverside Regarding Noisy Animals;
- 2) Authorize the Clerk of the Board to place an advertisement for the public hearing in the appropriate local publications;
- 3) Upon the close of the public hearing, adopt Ordinance No. 878.

(continued)

Departmental Concurrence

RM:rg

Robert Miller for
 Robert Miller, Director of Animal Services
Boige M. Garner, Administrative Mgr II

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	08/09

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Courmoyer*
 Debra Courmoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above ordinance approved as introduced with waiver of the reading, and is set for public hearing on January 6, 2009 at 9:30 a.m.

Ayes: Buster, Tavaglione, Stone, Wilson, and Ashley
 Nays: None
 Absent: None
 Date: December 9, 2008
 xc: CHA/Animal Services, COB(2)

Nancy Romero
 Clerk of the Board
 By: *Nancy Romero*
 Deputy

Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: District: All **Agenda Number:**

ATTACHMENTS FILED WITH
 THE CLERK OF THE BOARD

9.2

BACKGROUND:

Riverside County Ordinance No. 630 Section 13 states that it is unlawful for any person to keep a dog that habitually barks, whines, or makes loud or unusual noises in such a manner that disturbs the peace and quiet of the neighbors surrounding or in the vicinity of such premises. Under Ordinance No. 630, the animal control officer is currently limited on how to resolve the disputes between neighbors as most offenses occur out of the presence of the officer. Animal control officers spend the majority of their time dealing with priority calls such as dangerous stray dogs or investigating animal cruelty cases. As such, noisy animal/barking dog calls are often viewed as low priority and, at times, take months to resolve.

Riverside County Ordinance No. 878 will expedite the investigative process by establishing procedures to include proper notification to pet owners and the ability to hold administrative hearings to determine liability and impose abatement processes using administrative citations. Ordinance No. 878 declares that excessive, unrelenting or habitual noise of any animal is disruptive of the public's peace and tranquility and represents an unwarranted invasion of privacy of the residents of the unincorporated areas of the County of Riverside. Ordinance No. 878 further declares such noisy animals to be public nuisances.

In 2005, the Department began utilizing the services of an administrative hearing officer to adjudicate other animal related administrative issues, including "Vicious Dog" hearings and "Dangerous Dog" hearings. The cost for this administrative function is currently contained within the Department budget. The Department's plan, under Ordinance No. 878, is to utilize the hearing officer to also adjudicate "Barking Dog" or "Noisy Animal" hearings. With the adoption of Riverside County Ordinance No. 878, the hearing process will be implemented as outlined below.

To summarize, if the owner of a noisy animal does not take steps to control the noise after written notice by the Department of Animal Services (Department), an administrative hearing will be scheduled before a hearing officer to hear the initial complaint and to place an abatement order on dogs found to be a nuisance. Subsequent to the hearing, if the abatement order and abatement measures are not complied with, administrative citations can be issued as follows:

First violation - \$100.00

Second violation - \$200.00 (when committed within one year of the first violation)

Third and subsequent violations - \$500.00 (when committed within one year)

The administrative citations will be provided by a Department vendor, Data Ticket, for violations of the original order. If the citation is appealed, Data Ticket will provide the hearing officer for those hearings to decide whether the order was violated and whether or not the citation fee must be paid. The hearing officer will be a practicing attorney, retired judge, or certified hearing officer with extensive experience that includes municipal code enforcement matters.

FISCAL IMPACT:

Noisy Animal Ordinance - Estimate Fiscal Breakdown

FY07/08 - Unincorporated Riverside County	
2006 Census:	1,437,511
FY07/08 Initial Complaints Received by Department:	1,000
FY07/08 Initial Hearings Provided by Department:	144
Projected # of Secondary Hearings required to be provided by Contractor (75% of Initial):	108
Average Hearing Time (hours):	0.5
Secondary Contracted Hearing Officer Cost per Hour:	\$75.00
Projected Cost of Secondary Hearings Provided by Contractor:	\$4,050.00
Total Hearing Cost per year (Payable to Contractor): \$4,050.00	

Estimated Revenue			
Citation	Cost	Average # per Year	Average Cost
1st Violation – based on recidivism	\$100	100	\$10,000.00
2nd Violation – based on recidivism	\$200	50	\$10,000.00
3rd Violation – based on recidivism	\$500	25	\$12,500.00
Sub-Total:		1,000	\$32,500
Contractor Expense:			\$4,050.00
Revenue Grand Total:			\$28,450.00

As stated above, the Department currently utilizes the services of the administrative hearing officer for other matters. The addition of the administrative hearing process for noisy animals would provide improved customer service and more importantly, quicker resolution to "Barking Dog" matters. Lastly, it is believed such monetary sanctions would serve as a motivating factor for animal owners to comply with the hearing officer's abatement orders.

1 other noises or sounds annoy or become offensive to a resident or residents in
2 the vicinity thereby disturbing the peace of the neighborhood or causing
3 excessive discomfort to any reasonable person of normal sensitivity hearing
4 such sounds.

5 d. Responsible Party. A Responsible Party includes any of the following:

- 6 1. The person or persons who own the property where the noisy animal
7 is located;
- 8 2. The person or persons in charge of the premises where the noisy
9 animal is located;
- 10 3. The person or persons occupying the premises where the noisy animal
11 is located;
- 12 4. The owner of the noisy animal.

13 If any of these persons are minors, the parent or parents or a guardian of such
14 minor shall be the Responsible Party.

15 Section 6. GENERAL PROHIBITION. DECLARATION OF NOISY ANIMAL AS A
16 PUBLIC NUISANCE.

- 17 a. It is unlawful and a public nuisance for any person to allow on their property,
18 own, keep, permit, harbor or have in their care, custody or control a Noisy
19 Animal.
- 20 b. It is unlawful for the Responsible Party, after being informed in writing that
21 his animal has been declared a Noisy Animal and that the maintenance of a
22 Noisy Animal is a public nuisance, to fail, refuse or neglect to take whatever
23 steps or use whatever means are necessary to assure that such Noisy Animal
24 does not again disturb residents in the vicinity in which the Noisy Animal is
25 kept.

26 Section 7. NOISY ANIMAL WARNING NOTICE.

- 27 a. When an animal control officer is notified of a possible Noisy Animal and
28 has personally confirmed the existence of a Noisy Animal, or has received a

1 written complaint under penalty of perjury of such Noisy Animal signed by a
2 Complaining Party, the animal control officer shall issue a Noisy Animal
3 Warning Notice ("Warning Notice") to the Responsible Party. Such Warning
4 Notice shall specify that the continued barking, howling or other noise or
5 sounds of such animal is in violation of this ordinance and that the Noisy
6 Animal nuisance must be abated immediately to avoid further action by the
7 County. The Warning Notice shall be personally served or served by mail
8 upon the Responsible Party. If service by mail or personal service cannot be
9 safely made or reasonable attempts at personal service have failed, the
10 Warning Notice shall also be posted at the premises upon which the animal is
11 located. A copy of the Warning Notice shall be filed with the Department of
12 Animal Services. The Director shall within five days of issuance of the
13 Warning Notice, make a reasonable attempt to speak personally or by
14 telephone with the Responsible Party concerning the matter, including what
15 efforts have been made to abate the nuisance.

- 16 b. If within five days of the issuance of the Warning Notice the Director
17 determines that the barking, howling or other sound or cry was provoked or
18 that such barking, howling or other sound or cry was not excessive,
19 unrelenting or habitual, the Director shall cause the Warning Notice to be
20 voided and the Responsible Party to whom it was issued to be so notified. In
21 the event a Warning Notice has been voided, such Warning Notice shall not
22 be considered as having been issued for the purposes of Sections 8, 13, or 15
23 of this ordinance.

24 Section 8. DECLARATION OF COMPLAINT OF NOISY ANIMAL AND PETITION
25 FOR ADMINISTRATIVE HEARING.

- 26 a. When the Director receives a subsequent verbal or written complaint
27 concerning a Noisy Animal at the same location within twelve months after
28 the issuance of a Warning Notice, the Director shall determine whether there

1 is a violation of this ordinance. If there is a violation of this ordinance, a
2 Declaration of Complaint of Noisy Animal and Petition for Administrative
3 Hearing (“Declaration of Complaint and Petition”) shall be issued by the
4 Director to the Complaining Party. The Complaining Party shall be informed
5 that further action may not be warranted if the Responsible Party is
6 in compliance with subsection b. of Section 6 of this ordinance, but in any
7 case, no further action can be taken until the completed Declaration of
8 Complaint and Petition is received by the Director.

9 b. The Declaration of Complaint and Petition shall be completed under penalty
10 of perjury by the Complaining Party and returned within ten (10) days to the
11 Director.

12 c. The Director, upon receipt of a timely executed Declaration of Complaint and
13 Petition, shall set the case for hearing before an administrative hearing
14 officer. The hearing shall be set at least ten (10) days from the date the
15 Declaration of Complaint and Petition is received and no more than thirty
16 (30) days after the date the Declaration of Complaint and Petition is received.
17 The Director shall notify the Complaining Party and Responsible Party of the
18 date, time, and place for the hearing. The notice of hearing shall advise the
19 Complaining Party and Responsible Party that they may present evidence at
20 the hearing through witnesses and documents. The notice of hearing shall be
21 accompanied by a copy of the completed Declaration of Complaint and
22 Petition. The notice of hearing shall be personally served or served by mail
23 on all parties. If the notice of hearing cannot be mailed or safely served by
24 personal service or reasonable attempts at personal service have failed, then it
25 may be posted upon the premises where the animal is kept.

26 Section 9. ADMINISTRATIVE HEARING OFFICER. A determination whether an
27 animal is violating this ordinance shall be made by an administrative hearing officer. The administrative
28 hearing officer shall have the power to hear testimony from witnesses, including complainants, peace

1 officers, animal control officers, or other witnesses or parties including the Responsible Party, to determine
2 whether the maintenance of the animal is a public nuisance and to order the abatement of such nuisance by
3 taking such actions as set forth in this ordinance.

4 Section 10. ADMINISTRATIVE ABATEMENT HEARING REGARDING NOISY
5 ANIMAL. The hearing before the administrative hearing officer shall be open to the public. The
6 administrative hearing officer may admit all relevant evidence, including incident reports and affidavits of
7 witnesses. The administrative hearing officer may decide all issues even if the Responsible Party for the
8 animal fails to appear at the hearing. If the Complaining Party fails to appear at the hearing and the
9 investigating animal control officer does not have personal knowledge of the Noisy Animal, the complaint
10 shall be dismissed. The administrative hearing officer may find, upon a preponderance of the evidence,
11 that the animal is a Noisy Animal and the maintenance of such Noisy Animal is a public nuisance. Upon
12 the conclusion of the hearing, the administrative hearing officer may orally announce the decision as to
13 whether the animal is a Noisy Animal.

14 Section 11. DETERMINATION AND ORDER. Within three (3) business days after the
15 conclusion of the hearing, the administrative hearing officer shall, by certified mail, return receipt requested
16 and by posting upon the premises where the animal is kept, notify the Responsible Party of the
17 administrative hearing officer's determination and any orders issued. The order shall be called an
18 administrative abatement order. If the administrative hearing officer determines that the animal is a Noisy
19 Animal and the maintenance thereof, a public nuisance, the Responsible Party shall comply with the
20 administrative hearing officer's order within five (5) days after the date of mailing and posting of the
21 determination and order. The decision of the administrative hearing officer shall be final.

22 Section 12. ADMINISTRATIVE ABATEMENT MEASURES. The administrative
23 hearing officer may, as part of his determination that the animal is a Noisy Animal and a public nuisance,
24 direct the Responsible Party to perform one or more of the following actions:

- 25 a. Containment of the Noisy Animal within an enclosed building on the
26 premises of the Responsible Party;

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- 1 b. Require that the Noisy Animal wear a noise suppression device obtained at
2 the expense of the Responsible Party to reduce or eliminate the noise creating
3 the nuisance;
- 4 c. Require that the Noisy Animal undertake obedience training designed to
5 abate the nuisance problem when appropriate and under the conditions
6 imposed by the administrative hearing officer and at the expense of the
7 Responsible Party;
- 8 d. Restrict the time of day, days of the week and duration when the animal may
9 be placed out-of-doors on the premises of the Responsible Party;
- 10 e. Require the Noisy Animal be debarked at the expense of the Responsible
11 Party;
- 12 f. Require the Responsible Party to permanently remove the Noisy Animal
13 from said property;
- 14 g. Any other reasonable means to accomplish the abatement of the nuisance.

15 Section 13. FAILURE TO COMPLY WITH ADMINISTRATIVE ORDER. It is
16 unlawful for any Responsible Party to fail, neglect or refuse to comply with an administrative abatement
17 order of the administrative hearing officer within the time specified in said order. Should any party subject
18 to the administrative abatement order fail to comply with the order, in whole or in any part thereof, that
19 party or those parties may be subject to administrative remedies to enforce the administrative abatement
20 order as set forth in this ordinance, including administrative citations and penalties, and any other lawful
21 means necessary to gain compliance, including a civil action.

22 Section 14. CIVIL ACTION. In the event any person shall fail, neglect or refuse to
23 comply with an administrative abatement order of the administrative hearing officer within the time
24 specified in said order and the public nuisance continues to exist, a civil action may be commenced to
25 obtain the abatement of the Noisy Animal public nuisance.

26 Section 15. ADMINISTRATIVE CITATIONS AND PENALTIES. In addition to the
27 remedies and penalties contained in this ordinance, and in accordance with Government Code section
28 53069.4, an administrative citation may be issued for failure to comply with an administrative abatement

1 order of the administrative hearing officer. The following procedures shall govern the imposition,
2 enforcement, collection and administrative review of administrative citations and penalties.

3 a. Administrative hearing officer's order. If the public nuisance is not corrected within
4 the period stated in the administrative abatement order, an administrative citation may be issued by a
5 County Animal Control Officer.

6 b. Content of citation. The administrative citation shall be issued on a form approved
7 by County Counsel and shall contain the following information:

- 8 1. Date, location and approximate time that the violation was observed;
- 9 2. The ordinance violated and a brief description of the violation;
- 10 3. The amount of the administrative penalty imposed for the violation;
- 11 4. Instructions for payment of the penalty, and the time period by which it shall
12 be paid and the consequences of failure to pay the penalty within this time
13 period;
- 14 5. Instructions on how to appeal the citation;
- 15 6. The signature of the animal control officer.

16 The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

17 c. Service of citation.

- 18 1. If the Responsible Party who has violated the ordinance is present at the
19 scene of the violation, the animal control officer shall attempt to obtain the
20 Responsible Party's signature on the administrative citation and shall deliver
21 a copy of the administrative citation to the Responsible Party.
- 22 2. If no one can be located at the property where the Noisy Animal is located,
23 then the administrative citation shall be posted in a conspicuous place on or
24 near the property and a copy mailed by certified mail, return receipt requested
25 to the Responsible Party or other person who has violated the ordinance. The
26 citation shall be mailed to the property address and/or the address listed for

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1 the property owner on the last county equalized assessment roll. The citation
2 shall also be mailed to any additional address for the Responsible Party in
3 Department of Animal Services records.

4 3. The failure of any interested person to receive the citation shall not affect the
5 validity of the proceedings.

6 d. Administrative Penalties

7 1. The penalties assessed for each violation of the Administrative Abatement
8 Order issued by the administrative hearing officer shall not exceed the
9 following amounts:

- 10 i. One hundred dollars (\$100.00) for a first violation;
- 11 ii. Two hundred dollars (\$200.00) for a second violation of the same
12 administrative abatement order within one year;
- 13 iii. Five hundred dollars (\$500.00) for each additional violation of the
14 administrative abatement order within one year.

15 2. If the violation is not corrected, additional administrative citations may be
16 issued for the same violation. The amount of the penalty shall increase at the
17 rate specified above.

18 3. Payment of the penalty shall not excuse the failure to correct the violation nor
19 shall it bar further enforcement action.

20 4. The penalties assessed shall be payable to the County of Riverside,
21 Department of Animal Services.

22 e. Administrative Appeal of Administrative Citation.

23 1. Written Appeal. The recipient of an administrative citation may appeal the
24 citation by submitting a written appeal with the Department of Animal
25 Services. The written appeal must be submitted within twenty (20) days of
26 the date stated on the administrative citation. Failure to submit a written
27 appeal within this time period shall constitute a waiver of the right to appeal
28 the administrative citation. The written appeal shall contain the following
information:

1 i. A brief statement setting forth the appellant's reasons for the appeal,
2 including, but not limited to, a brief statement of the material facts
3 which the appellant claims supports his contention that no
4 administrative penalty should be imposed or that an administrative
5 penalty of a different amount is warranted;

6 ii. The written appeal shall also include a check or money order as a
7 deposit for the total penalty amount as shown on the citation. A
8 successful appeal will result in a full refund of the penalty amount
9 placed on deposit. Appeals received without the full deposit will not
10 be accepted.

11 2. Administrative Appeal Hearing for appeal of Administrative Citation. Upon
12 a timely written request by the appellant, an administrative appeal hearing for
13 appeal of an administrative citation shall be held as follows:

14 i. Notice of Hearing. Notice of the administrative appeal hearing for
15 appeal of an administrative citation shall be given at least ten (10)
16 days before the hearing to the person requesting the hearing. The
17 notice may be personally delivered or mailed to the appellant at the
18 address to which the citation was mailed, unless a new address is
19 provided in the written appeal at which the appellant agrees notice of
20 any additional proceeding or an order relating to the administrative
21 penalty may be received by mail.

22 ii. Hearing Officer. The administrative hearing for appeal of an
23 administrative citation shall be held before the Director. The hearing
24 officer shall not be the investigating animal control officer who issued
25 the administrative citation or his immediate supervisor. Nor shall the
26 administrative hearing for appeal of the administrative citation be held
27 before the administrative hearing officer that issued the administrative
28 abatement order concerning the Noisy Animal pursuant to Section 11.
The Director may contract with a qualified provider to conduct the

1 administrative hearings for appeals of administrative citations or to
2 process administrative citations.

3 iii. Conduct of the Hearing. The investigating animal control officer who
4 issued the administrative citation shall not be required to participate in
5 the administrative appeal hearing. The contents of the investigating
6 animal control officer's file shall be admitted as prima facie evidence
7 of the facts stated therein. The hearing officer shall not be limited by
8 the technical rules of evidence. If the person requesting the appeal of
9 the administrative citation fails to appear at the administrative appeal
10 hearing, the hearing officer shall make his determination based on the
11 information contained in the written appeal. The purpose of the
12 administrative appeal hearing as allowed under this section is to
13 appeal the administrative citation. The hearing officer cannot
14 reconsider the administrative abatement order that declared the Noisy
15 Animal a public nuisance.

16 iv. Hearing Officer's Decision. The hearing officer's decision regarding
17 appeal of the administrative citation following the administrative
18 appeal hearing may be personally delivered to the person requesting
19 the hearing or sent by mail. The hearing officer's decision shall
20 contain instructions for obtaining review of the decision by the
21 superior court.

22 f. Review of Administrative Hearing Officer's Decision. If the recipient of an
23 administrative citation disagrees with the administrative hearing officer's decision
24 upholding the issuance of the administrative citation and/or administrative penalty
25 amount assessed, the recipient may appeal the issuance of the administrative citation
26 to the superior court as set forth in this section.

27 i. Notice of Appeal. Within twenty (20) days of the delivery and mailing of
28 the hearing officer's decision regarding the administrative citation, the
recipient of the administrative citation may contest that decision by filing

1 an appeal to be heard by the superior court. The fee for filing the notice
2 of appeal is twenty-five dollars (\$25.00). The failure to file the appeal
3 and to pay the filing fee within this period shall constitute a waiver of the
4 right to an appeal and the decision shall be deemed confirmed. A copy of
5 the notice of appeal shall be served in person or by first class mail upon
6 the Department of Animal Services by the contestant.

7 ii. Conduct of Hearing. The conduct of the appeal hearing is a subordinate
8 judicial duty and may be performed by traffic trial commissioners and
9 other subordinate judicial officials at the direction of the presiding judge
10 of the court. The appeal shall be heard de novo, except that the contents
11 of the issuing agency's file in the case shall be received into evidence. A
12 copy of the issued administrative citation providing notice of the violation
13 and imposition of the administrative penalty shall be admitted into
14 evidence as prima facie evidence of the facts stated therein. The court
15 shall request that the issuing agency's file on the case be forwarded to the
16 court, to be received within fifteen (15) days of the request. The purpose
17 of the appeal hearing as allowed under this section is to appeal the
18 decision of the administrative hearing officer with regard to the
19 administrative citation and/or amount of the administrative penalty
20 assessed. The hearing officer cannot reconsider the administrative
21 abatement order that declared the Noisy Animal a public nuisance.

22 iii. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee
23 regardless of the outcome of the appeal. If the court finds in favor of the
24 contestant, the amount of the fee shall be reimbursed to the contestant by
25 the Department of Animal Services. Any deposit of the fine or penalty
26 shall be refunded by the Department of Animal Services in accordance
27 with the judgment of the court. If the court finds in favor of the
28 Department of Animal Services, the amount of the fee deposited by the

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contestant shall be retained by the Department of Animal Services in accordance with the judgment of the court.

Section 16. NOT EXCLUSIVE REMEDY. The provisions of this ordinance are to be construed as an added remedy of abatement of the nuisance hereby declared and not in conflict with or derogation of any other actions or proceedings or remedies otherwise provided by law.

Section 17. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the remainder of the ordinance or the application of such provision(s) to other persons or circumstances.

Section 18. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By: _____
Chairman

ATTEST:
CLERK OF THE BOARD

By: _____
Deputy
(SEAL)

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FORM APPROVED COUNTY COUNSEL
BY: JIMMY H. BA 11/24/08
DATE