

ORDINANCE NO. 2016-21

AMENDMENTS TO DIVISION 416 (ANIMALS) OF THE COUNTY ORDINANCE CODE

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance amends Division 416 of the County Ordinance Code to authorize administrative penalties for any violation of Division 416, including barking dogs and noisy animals, and to prohibit the harboring of more than four roosters on private property.

SECTION II. Article 416-6.6 is repealed in its entirety.

SECTION III. Article 416-4.8 is added to the County Ordinance Code, to read:

Article 416-4.8 Administrative Penalties

416-4.802 Applicability and Authorization.

- (a) This article provides for administrative fines that the animal services department may impose, enforce, and collect to address any violation of this division.
- (b) Remedies under this article are in addition to any other remedy allowed by this code or applicable law.
- (c) This article is authorized by California Government Code Section 53069.4. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.804 Definitions. For purposes of this article, the following words and phrases have the following meanings:

- (a) “Complainant” means a person who reports a violation of any section of Division 416 to the department.
- (b) “Department” means the animal services department.
- (c) “Effective date” means the date by which a violation must be corrected, as specified in a notice of violation.

- (d) “Hearing examiner” means the animal services director, or the animal services director’s designee.
- (e) “Responsible Person” means any of the following:
 - (1) A person who possesses, has title to, has an interest in, or has control, custody or possession of an animal or the property on which an animal is kept.
 - (2) A person who allows, or whose agent, employee, or contractor allows, a barking dog or other noisy animal violation to exist, whether through action, failure to act, or failure to exercise control over a barking dog or other noisy animal.
 - (3) For purposes of this article, there may be more than one responsible person for a barking dog or other noisy animal violation.
- (f) “Service date” means the date a notice or decision is served in accordance with Section 416-4.816. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.806 Administrative Fines.

- (a) **Notice of violation.** If a violation is a continuing violation, such as the failure to obtain a dog or cat license, the department will first serve a notice of violation on the responsible person as specified in Section 416-4.816. The notice of violation will include all of the following information:
 - (1) The date of the violation.
 - (2) The name of the responsible person.
 - (3) The address or location where the violation occurred.
 - (4) The code section(s) violated and a description of the violation.
 - (5) Whether the violation(s) were established by inspection or by complaint, if applicable.
 - (4) A description of how the violation can be corrected.
 - (7) A specified time period of at least ten calendar days, beginning on the service date, within which the violation must be corrected.
 - (8) An advisement that the owner may be subject to an administrative fine under this article if the violation is not corrected by the effective date, and the amount of that fine.

- (b) The department may impose an administrative fine on a responsible person if any of the following occur:
 - (1) The violation is not a continuing violation, such as a violation of the animal noise ordinance.
 - (2) The continuing violation has not been corrected in the time period specified in the notice of violation.
 - (3) The continuing violation was corrected as specified in the notice of violation, but a violation of the same section continues, exists, or occurs within one year after the effective date.

- (c) **Notice of fine.** An administrative fine will be assessed by means of a notice of fine. The responsible party will be served with the notice of fine as specified in Section 416-4.816. The notice of fine will include all of the following information:
 - (1) The date of the violation.
 - (2) The code section(s) violated and a description of the violation.
 - (3) The amount of the fine.
 - (4) An advisement of the right to request a hearing before the hearing examiner, contesting the imposition of the fine.

- (d) For a continuing violation, the amount of the fine is one hundred dollars for the first notice of fine. If the owner fails to correct the violation after the first notice of fine, and a second notice of fine is issued in the same year, the amount of the fine in the second notice is two hundred dollars. If the owner still fails to correct the violation after the second notice of fine, the amount of the fine is five hundred dollars for each additional notice of fine that is sent within one year.

- (e) If the violation is not a continuing violation, the amount of the fine is one hundred dollars for a first violation, two hundred dollars for a second violation of the same section within one year, and five hundred dollars for each additional violation of the same ordinance within one year. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.808 Hearings.

- (a) Any person upon whom an administrative fine is imposed by the department may request a hearing pursuant to the procedures set forth in this section. The appellant must file a written appeal with the department within fifteen calendar days after the service date of the notice of fine. The written appeal must contain:

- (1) A brief statement explaining who the appealing party is and what interest the appealing party has in challenging the imposition of the fine; and
 - (2) A brief statement of the material facts that the appellant claims supports his or her contention that no administrative fine should be imposed or that an administrative fine of a different amount is warranted.
- (b) Notice of the hearing will be served on the appellant and the complainant, if any, as specified in Section 416-4.816. The department will set the hearing no sooner than twenty days and no later than forty-five days following the service date of the notice of hearing.
 - (c) The hearing of an administrative fine imposed for violations of this division will be heard by the hearing examiner.
 - (d) At the hearing, the appellant and complainant, if any, will be given the opportunity to testify, and present written and oral evidence.
 - (e) An appellant's failure to appear at the hearing shall constitute an abandonment of any defense the appellant may have to the administrative fine.
 - (f) Where applicable, a complainant's failure to appear at the hearing shall constitute an abandonment of the complaint and shall be grounds for a dismissal of the administrative fine.
 - (g) After considering the testimony and evidence submitted at the hearing, or after the appellant or complainant has failed to appear at the hearing, the hearing examiner will issue a written decision to uphold, modify, or cancel the administrative fine and will list in the decision the reason or reasons for that decision. The decision will be served as specified in Section 416-4.816. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.810 Final Administrative Order. The imposition of the administrative fine becomes a final administrative order at one of the following times:

- (a) On the date the notice of fine is served, if the responsible party fails to file a written appeal to the department within the time specified.
- (b) On the date the written decision by the hearing examiner is served, if the responsible party files a written appeal to the department within the time specified. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.812 Payment of the Fine. The fine must be paid to the county within thirty days after the imposition of the administrative fine becomes a final administrative order. Payment of a fine under this article does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the notice of fine. The payment of a fine does not bar the county

from taking any other enforcement action regarding a violation that is not corrected. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.814 Collection. If the fine is not paid within thirty days after the imposition of the fine becomes a final administrative order, the county may collect the fine, the county's collection costs, and interest. An administrative fine accrues interest at the same annual rate as any civil judgment, beginning on the twentieth day after the fine becomes a final administrative order. The county may collect by using any available legal means, including but not limited to the following:

- (a) The county may file a civil action. If a civil action is commenced, the county is entitled to recover all costs associated with the collection of the fine, including those costs set forth in Code of Civil Procedure Section 1033.5.
- (b) The county may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Section 680.010 et seq. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.816 Service. All notices or decisions required to be served by this article will be served by any of the methods specified below:

- (a) First class mail. First class mail will be addressed to the responsible person at the address shown on the last equalized assessment roll, at the address where the violation occurred, or as otherwise known. Service is deemed completed upon the deposit of the notice or decision, postage pre-paid, in the United States mail.
- (b) Personal service. Personal service is deemed complete on the date the notice or decision is personally served on the responsible person. (Ords. 2016-21 § 3, 2014-14 § 2.)

416-4.818 Judicial Review. A final administrative order may be appealed to the superior court of the county in accordance with the provisions set forth in Government Code Section 53069.4. (Ords. 2016-21 § 3, 2014-14 § 2.)

SECTION IV. Section 416-12.202 is repealed in its entirety and replaced with a new Section 416-12.202 to read:

416-12.202 Animal Noise

- (a) No person may own, possess, harbor, control, or keep on any premises, a barking dog or other noisy animal.
- (b) "Barking dog" means a dog that barks, bays, cries, howls or makes any noise 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. An

“extended period of time” means incessant barking for thirty minutes or more in any twenty-four hour period, or intermittent barking for sixty minutes or more in any twenty-four hour period. A dog shall not be deemed a “barking dog” for purposes of this section if, at any time the dog is barking, a person is trespassing or threatening to trespass upon private property where the dog is situated, or when the dog is being teased or provoked.

- (c) “Noisy animal” means an animal that makes any noise for an extended period of time to the disturbance of any person at any time of day or night, regardless of whether the animal is physically situated in or upon private property. An “extended period of time” means incessant noise for thirty minutes or more in any twenty-four hour period, or intermittent noise for sixty minutes or more in any twenty-four hour period.
- (d) Enforcement. The department may issue an administrative penalty under Article 416-4.8 to any responsible person for a violation of this section based on either or both of the following:
 - (1) An observation of the violation by a department employee.
 - (2) A complaint, signed under penalty of perjury, lodged by a person who has been disturbed by the barking dog or noisy animal. (Ords. 2016-21 § 4, 80-97 § 2.)

SECTION V. Article 416-12.10 is added to the County Ordinance Code to read:

Article 416-12.10 Roosters

416-12.1002 Definition. For purposes of this article, “rooster” means any male chicken who:

- (a) Is six months or older; or
- (b) Has full adult plumage; or
- (c) Is capable of crowing. (Ord. 2016-21 § 5.)

416-12.1004 Rooster Keeping.

- (a) No person may keep, maintain, or harbor four or more roosters on any property.
- (b) This section does not apply to any of the following:
 - (1) Commercial poultry ranches whose primary commodity is the production of eggs or meat for sale as permitted by the county.
 - (2) Public or private schools as registered with the California Department of Education.
 - (3) FFA or 4-H sponsored projects.

- (4) Legitimate poultry hobbyists as approved in writing by the animal services director.
- (c) Each individual rooster on a property beyond the three rooster limitation is a separate violation of this section.
- (d) A rooster enclosure must be set back at least fifty feet from all adjacent residences.
- (e) Notwithstanding any other provision of law, no person may maintain any rooster by means of a tether attached to an object. Each individual rooster so tethered is a separate violation of this section.
- (f) Nothing in this section is to be construed as authorizing the keeping of any poultry in violation of any applicable statute, zoning ordinance, or other law.
- (g) At all times, roosters shall be provided all of the following:
 - (1) Access to water.
 - (2) Shelter from the elements, including rain, wind, and direct sun.
 - (3) Sufficient room to spread both wings fully and to be able to turn in a complete circle without any impediment and without touching the side of an enclosure.
 - (4) Clean and sanitary premises that are kept in good repair. (Ord. 2016-21 § 5.)

416-12.1006 Enforcement. In addition to any other remedy allowed by this code or applicable law, the animal services director may issue an administrative penalty under Article 416-4.8 to any responsible person for a violation of this article. (Ord. 2016-21 § 5.)

SECTION VI. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for and against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:s

ABSTAIN:

ATTEST: DAVID TWA,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

CJR:
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