

# Laguna Niguel Nuisance Animals

## Sec. 10-1-48. Nuisance.

“No person shall allow, upon any premises owned, occupied, or controlled by such a person, any animal to cause a nuisance by barking, howling, crying or making other sounds that unreasonably disturb other persons in the comfortable enjoyment of their life or property.

A dog shall not be deemed a nuisance if, at any time the dog is making noise, a person is trespassing or threatening to trespass upon the private property where the dog is situated, or when the dog is being teased or provoked.”

## NUISANCE COMPLAINT ADMINISTRATIVE PROCEDURES

### CITY OF LAGUNA NIGUEL

#### **ORDINANCE NO. 2011-165**

#### **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA, PROVIDING FOR ADMINISTRATIVE CITATIONS AND ADMINISTRATIVE HEARINGS TO REDUCE DISTURBANCES CAUSED BY ANIMALS**

The City Council of the City of Laguna Niguel does ordain as follows:

#### **SECTION 1. Recitals.**

1. The City of Laguna Niguel has an agreement with the City of Mission Viejo pursuant to which the City of Mission Viejo provides animal control and shelter services to the City of Laguna Niguel.
2. The City of Mission Viejo has adopted an ordinance that provides for the issuance of administrative citations and the holding of administrative hearings to reduce disturbances caused by animals, including barking dogs.
3. Residents of the City of Laguna Niguel have requested that the City of Laguna Niguel adopt an ordinance like the City of Mission Viejo ordinance.

**SECTION 2.** Section 10-1-2 (Definitions (A)), of Article 1 (General Provisions) of Division 1 (Animal Control, Welfare and Licensing Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code is hereby amended to add the definition of “Animal services department” to read as follows:

“Sec. 10-1-2 (Definitions (A)).

*Animal services department* means the animal services department for the City of Mission Viejo authorized to perform the services and functions described in this title pursuant to contract.”

**SECTION 3.** Section 10-1-5 (Definitions (D)), of Article 1 (General Provisions) of Division 1 (Animal Control, Welfare and Licensing Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code is hereby amended to change the definition of “Director” to read as follows:

“Sec. 10-1-5 (Definitions (D)).

*Director* means the City of Mission Viejo Animal Services Manager or his or her designee or such other person may be designated by the City Council.”

**SECTION 4.** Section 10-1-37 is added to Article 1 (General Provisions) of Division 1 (Animal Control, Welfare and Licensing Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code to read as follows:

“Sec. 10-1-37.

A violation of this division shall, in the sole discretion of the City by and through the City Attorney or other authorized personnel, be prosecuted in any manner provided for by law, including, but not limited to, the administrative, civil or the misdemeanor criminal prosecution of the offender (subject to the City’s sole and absolute discretion to reduce the same to an infraction or administrative civil complaint) and as provided for in Title 1 of this Code.”

**SECTION 5.** Section 10-1-48 (Nuisance), of Article 2 (Keeping and Restraint of Dogs and Cats) of Division 1 (Animal Control, Welfare and License Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code is hereby amended to read as follows:

“Sec. 10-1-48. Nuisance.

No responsible person shall allow, upon any premises owned, occupied, or controlled by such a person, any animal to cause a nuisance by barking, howling, crying or making other sounds that unreasonably disturb other persons in the comfortable enjoyment of their life or property.

A dog shall not be deemed a nuisance if, at any time the dog is making noise, a person is trespassing or threatening to trespass upon the private property where the dog is situated, or when the dog is being teased or provoked.”

**SECTION 6.** Section 10-1-52 (Nuisance Complaint Administrative Procedures), is added to Article 2 (Keeping and Restraint of Dogs and Cats) of Division 1 (Animal Control, Welfare and License Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code to read as follows:

“Sec. 10-1-52. Nuisance Complaint Administrative Procedures.

Upon receiving a complaint alleging a nuisance as defined in Section 10-1-48, the animal services staff shall adhere to the following procedures.

- a. Upon receipt by the animal services department of a first complaint, animal services staff will send a letter informing the responsible person about the complaint.
- b. For purposes of this Article a “responsible person” is any of the following:
  - (i) A person who allows a violation of Section 10-1-48 to exist, whether through willful action, failure to act, or failure to exercise proper control over an animal.
  - (ii) A person whose agent, employee, or independent contractor allows a violation to exist, whether through willful action, failure to act, or failure to exercise proper control over an animal.
  - (iii) A person who is the owner of, or a lessee or sublessee with the current right of possession of, real property in or upon which a violation occurs.
  - (iv) A “person” includes a natural person or legal entity, including the owners, majority stockholders, corporate officers, trustees, or general partners of a legal entity.
  - (v) There may be more than one responsible person for a violation.
- c. Upon receipt by the animal services department of a second complaint regarding an animal for which a first notice has been sent, provided at least ten (10) days but no more than thirty (30) days have elapsed from the date of the first letter sent by animal services staff pursuant to subsection (a) above, an animal services officer will be dispatched to issue a notice to comply and to advise the responsible person about possible solutions to rectify the nuisance.
- d. Upon receipt by the animal services department of a third complaint between ten (10) and thirty (30) days after the date of a second complaint pursuant to subsection (b) above, animal services staff will ask the complainant to obtain, complete and return to the department a Formal Witness Statement Form within ten (10) days of request.
- e. Upon receipt of a Formal Witness Statement Form, if the Director or his or her designee finds the animal owner to be in violation of Section 10-1-48, the department will issue an administrative citation pursuant to this Code in an amount set forth in this Code. The animal services department shall inform the City of Laguna Niguel of the issuance of an administrative citation within 48 hours of its issuance.
- f. Administrative citations may be contested pursuant to the provisions of this Code.”

**SECTION 7.** Section 10-1-53, (Administrative Hearing), is added to Article 2 (Keeping and Restraint of Dogs and Cats) of Division 1 (Animal Control, Welfare and License Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code to read as follows:

“Sec. 10-1-53. Administrative Hearing.

- a. Any person who receives an administrative nuisance citation may contest it by calling the animal services department and asking for an administrative hearing within ten (10) days of the issuance date located on the citation. The animal owner may contest the citation by denying that a violation occurred.
  - b. If the citation fine is not paid prior to the assigned date and time of the administrative hearing, the animal owner must personally attend the administrative hearing on the date, time and place scheduled. Failure to personally appear at the administrative hearing shall constitute an abandonment of any defense the animal owner may have to the citation.
- Hearing Procedures.

- a. Hearings shall be conducted by the animal services department on the date assigned by the department when contested by the animal owner. The complainant will be notified of the assigned hearing date, time and location by the department staff.  
The animal services department shall inform the City of hearings so that the City may have representatives attend and observe the hearing.
- b. The animal owner and complainant shall be given the opportunity to present testimony and evidence relevant to the citation. A parent or legal guardian of an animal owner, who is a juvenile, under eighteen (18) years of age, must accompany the juvenile to the hearing or the administrative hearing will be deemed abandoned by the animal owner. Such abandonment shall also constitute a failure to exhaust administrative remedies concerning the violation set forth in the animal nuisance complaint.
- c. The citation itself and accompanying complainants formal witness statement signed under penalty of perjury attesting to the nuisance violation provided to the animal services department shall be accepted by the department as prima facie evidence of the violation and the facts stated in such documents.
- d. Failure of the animal owner to appear at the hearing, unless the hearing was continued by the animal services department prior to the hearing date, shall constitute abandonment and will require the citation fine to be paid. Failure of the complainant to appear at the hearing, unless the hearing was continued by the animal services department, shall constitute abandonment of the complaint and shall be grounds for dismissal of the nuisance violation and citation. The complainant's failure to appear shall be noted and mailed to the animal owner and complainant.

**Amount for Barking Dog Civil Fines:**

Fines for violating the provisions of the subarticle shall be as follows:

- |   |       |
|---|-------|
| (1) First barking dog citation issued (per citation)                                      | \$100 |
| (2) Second barking dog citation within the same 12-month period                           |       |
| \$200   |       |
| (3) Third barking dog citation within the same 12-month period                            |       |
| \$500   |       |
| (4) Fourth barking dog citation within the same 12-month period                           | \$500 |
| (5) Fifth barking dog citation within the same 12-month period                            |       |
| \$500   |       |
| (6) For sixth and subsequent barking dog citations issued within the same 12-month period | \$500 |

No more than five barking dog citations may be issued to the same person within a 12-month period. There must be at least ten (10) days between issuance of citations to the same person.

Any fine not paid within fifteen (15) days of due date shall be calculated as follows:

The amount of the appropriate fine listed above added to a late penalty in the same amount as the fine such that the total amount due is double the unpaid fine amount.”

**SECTION 8.** Section 10-1-54, (Abatement of Nuisances Through Legal Action), is added to Article 2 (Keeping and Restraint of Dogs and Cats) of Division 1 (Animal Control, Welfare and License Requirements) of Title 10 (Animals) of the Laguna Niguel Municipal Code to read as follows:

“Sec. 10-1-54. Abatement of Nuisances Through Legal Action.

Nothing in this Article shall prevent the City Council from ordering the City Attorney to commence a civil or criminal proceeding to abate a public nuisance as an alternative to the procedures set forth in this Article.”

**SECTION 9.** Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 10.** Effective Date.

This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

**SECTION 11.** City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and post a certified copy of the text of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.