

ORDINANCE NO. (O)19-03

AN ORDINANCE OF THE TOWN OF ORO VALLEY, ARIZONA AMENDING THE ORO VALLEY TOWN CODE CHAPTER 18, ARTICLE 18-1, DEFINITIONS AND ARTICLE 18-8, EXCESSIVE NOISE CAUSED BY ANIMALS OR BIRDS; VIOLATIONS; PENALTIES AND ADDING SECTION 18-8-3 EXCESSIVE NOISE – IMPOUNDMENT ORDER TO SHOW CAUSE; AND DIRECTING THE TOWN MANAGER, TOWN CLERK, TOWN LEGAL SERVICES DIRECTOR, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS, TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS ORDINANCE

WHEREAS, on September 27, 1989, the Town Council adopted a certain document entitled “The Code of the Town of Oro Valley, Arizona”; and

WHEREAS, on June 14, 1989, the Mayor and Council adopted Ordinance No. (O) 89-13, the Town of Oro Valley Animal Control Code; and

WHEREAS, on September 5, 2007, the Mayor and Council adopted Ordinance No. (O) 07-36 amending the Town of Oro Valley Animal Code to conform with Pima County animal control codes; and

WHEREAS, the Mayor and Council find that excessive noise caused by animals degrades the environment of the Town and the Town has a substantial, and in some cases, compelling interest in controlling such noise; and

WHEREAS, effective enforcement of the excessive noise caused by animals section of this code is essential to the health and welfare of the Town’s inhabitants and to the conduct of the normal pursuits of life; and

WHEREAS, the Council has determined that amending Chapter 18, Article 8-1, Definitions and Article 18-8, Excessive Noise Caused by Animals and adding Section 18-8-3, Excessive Noise – Impoundment Order to Show Cause is just and appropriate, and is found to be in the best interest of the Town; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Oro Valley, Arizona that the certain document, known as “The Oro Valley Town Code” is hereby amended as follows:

SECTION 1. That Article 18-1 and Article 18-8 of the Oro Valley Town Code, including the addition of Section 18-8-3, attached hereto as Exhibit “A” and incorporated by reference is hereby amended with additions being shown in ALL CAPS and deletions in ~~Strikeout text~~.

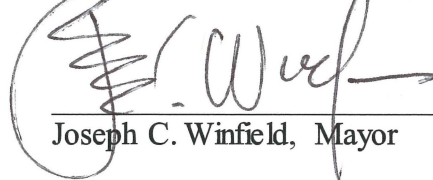
SECTION 2. All Oro Valley Ordinances, Resolutions, or Motions and parts of Ordinances, Resolutions, or Motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 3. 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 thereof.

SECTION 4. That the Town Manager, Town Clerk, Town Legal Services Director, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this ordinance.

PASSED AND ADOPTED by Mayor and Town Council, the Town of Oro Valley, Arizona, this 20th day of February, 2019.

TOWN OF ORO VALLEY



Joseph C. Winfield, Mayor

ATTEST:

APPROVED AS TO FORM:



Michael Standish, Town Clerk



Tobin Sidles, Legal Services Director

PUBLISH: DAILY TERRITORIAL
FEBRUARY 26, 27, 28 and MARCH 1, 2019

POSTED: 2/26/19 - 3/28/19

18-1 Definitions

- A. **Altered dog** - a spayed female dog or neutered male dog.
- B. **Animal** - any fowl, reptile, amphibian or mammal, except for human beings.
- C. **At Large** - being neither confined by an enclosure nor physically restrained by a leash.
- D. **Bite** - the penetration of the skin by the teeth of any animal.
- E. **Biting Animal** - any animal that bites or otherwise injures human beings or other animals without provocation.
- F. **Collar** - a band, chain, harness or suitable device worn around the neck of a dog to which a license may be affixed.
- G. **Destructive Animal** - any animal that has a propensity to destroy, damage or cause damage to the property of a person other than the animal's owner.
- H. **Dog** - any member of the canine species.
- I. **EXCESSIVE NOISE** - UNREASONABLE NOISE THAT TRAVELS OVER ONE OR MORE PROPERTY LINE AND INTERFERES WITH THE COMFORTABLE ENJOYMENT OF LIFE OR PROPERTY BY A NEIGHBOR OR COMMUNITY. FACTORS CONSIDERED IN DETERMINING IF NOISE IS UNREASONABLE INCLUDES, BUT IS NOT LIMITED TO:
 - a. THE LEVEL, CHARACTER, FREQUENCY, AND DURATION OF THE NOISE;
 - b. THE PROXIMITY TO INHABITED STRUCTURES;
 - c. THE CHARACTER AND ZONING OF THE NEIGHBORHOOD;
 - d. ANY DISCERNABLE REASONS THAT LIKELY CAUSED THE NOISE TO BE MADE.
- J. **Impound** - the act of taking or receiving an animal into custody for the purpose of confinement at the Town's animal enforcement agent's facility.
- K. **Leash or Lead** - a chain, rope, leather strap, cord or similar restraint attached to a collar or harness or otherwise secured around an animal's neck.
- L. **Licensed Dog** - any dog having a current license.
- M. **Livestock** - neat animals, horses, sheep, goats, swine, mules and asses.
- N. **Owner** - any person owning, keeping, possessing, harboring, maintaining or having custody and/or control of an animal within the Town limits.
- O. **Peace Officer** - includes any animal control officer.
- P. **Police Dog** - any dog belonging to any law enforcement agency service dog unit.
- Q. **Property Line** - the line which represents the legal limits of property (including an apartment, condominium, room or other dwelling unit) owned, leased or otherwise occupied by a person, business, corporation or institution. In cases involving sound from an activity on a public street or other public right-of-way, the "property line" shall be the nearest boundary of the public right-of-way.
- R. **Provocation** - any behavior toward an animal and/or its owner or its owner's property which is likely to cause a defensive reaction by said animal.
- S. **Tie-Out** - a chain, leash, wire cable or similar restraint attached to a swivel or pulley.
- T. **Town Enforcement Agent** - the Pima Animal Care Center director and/or his/her designee.

- U. **Under Restraint** - an animal secured by a leash or lead and under control of a responsible person, confined within a vehicle or located upon the real property limits of its owner.
- V. **Vaccination** - an anti-rabies vaccination using a type of vaccine approved by the State Veterinarian and administered by a state licensed veterinarian.
- W. **Vicious animal** - any animal that bites, attempts to bite, endangers and/or injures people and/or other animals.

18-8 Excessive Noise ~~Caused by~~ AN Animal; Violations; Penalties

~~18-8-1 It is a civil infraction for anyone owning, possessing, harboring and/or controlling any animal or bird which does the following:~~

~~Frequently or for continuous duration howls, barks, meows, squawks or makes other sounds, if they are clearly audible sounds beyond the property line of the property on which they are conducted and they disturb the public peace, quiet or comfort of the neighboring inhabitants.~~ NO PERSON SHALL KNOWINGLY ALLOW, CAUSE, POSSESS, PERMIT, MAKE, OR HARBOR ANY ANIMAL THAT MAKES EXCESSIVE NOISE.

18-8-2 Civil Sanctions. A person found responsible for a violation of ~~this Article~~ 18-8-1 shall be - SEPARATE AND APART FROM THE PROVISIONS OF 18-8-3 - sanctioned by the Magistrate or hearing officer as follows:

- A. A **First** violation within a 12-month period - a fine of not less than Twenty Five Dollars (\$25.00) and no more than Two Hundred and Fifty Dollars (\$250.00).
- B. A **Second** violation within a 12-month period ~~a fine of not less than One Hundred Dollars (\$100.00) and no more than Two Hundred and Fifty Dollars (\$250.00).~~ BY THE SAME ANIMAL(S) - A FINE OF NOT LESS THAN FIFTY DOLLARS (\$50.00) AND NOT MORE THAN TWO HUNDRED AND FIFTY DOLLARS (\$250.00).
- C. A **Third** or subsequent violation, OR AN OFFENSE AFTER A CRIMINAL CONVICTION OF A SIMILARLY RELATED OFFENSE (SUCH AS DISORDERLY CONDUCT OR NUISANCE) BY THE SAME ANIMAL(S) within a 12-month period - ~~a fine of not less than Two Hundred Dollars (\$200.00) and no more than Two Hundred and Fifty Dollars (\$250.00).~~ A CLASS ONE MISDEMEANOR WITH SANCTIONS UP TO TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) IN FINES, UP TO SIX MONTHS IN JAIL, AND UP TO THREE (3) YEARS OF PROBATION. THE MINIMUM SANCTION SHALL BE A FINE OF TWO HUNDRED AND FIFTY DOLLARS (\$250.00) AND A MINIMUM PROBATIONARY PERIOD OF ONE YEAR. PERSONAL APPEARANCE AT ANY ARRAIGNMENT SHALL BE REQUIRED SO THE MAGISTRATE MAY SET ANY NECESSARY RELEASE CONDITIONS. IN ADDITION, AFTER CONVICTION AND AS PART OF PROBATION, THE MAGISTRATE OF HEARING OFFICER MAY IMPOSE THE USE OF CERTAIN TECHNOLOGICAL OR SURGICAL DETERRENDS AT DEFENDANT'S EXPENSE.

- D. **Default.** If an individual receiving a notice of violation fails to appear at the hearing time designated in the notice of violation and/or the time designated for a hearing by the Court, that individual shall be deemed to have admitted the allegation in the complaint and the Court shall enter judgment and impose a civil sanction in accordance with the provisions of this Chapter. IF IT IS A CRIMINAL VIOLATION A WARRANT MAY BE ISSUED FOR THE OWNER'S ARREST.
- E. If any penalty ordered to be paid by the Magistrate or forfeited pursuant to default is not paid within thirty (30) days of the Magistrate's order, appropriate civil proceedings, both legal and equitable, may be initiated by the Town—Attorney'S LEGAL DEPARTMENT in order to enforce the administrative order. The Magistrate may also institute judicial proceedings as provided by law to collect such penalty. All penalties corrected pursuant to this Article shall be paid to and become the property of the Town of Oro Valley.
- F. Each day and/or a portion of a day a violation continues under this Article shall constitute a separate offense.

18-8-3 IMPOUNDMENT AND ORDERS TO SHOW CAUSE

- A. REMOVAL: IF A PEACE OFFICER AND/OR A TOWN ENFORCEMENT AGENT ISSUES A CITATION FOR 18-8-1, FOR A THIRD OFFENSE, OR SUBSEQUENT EXCESSIVE NOISE OFFENSE, OR PRIOR CRIMINAL CONVICTION FOR THE SAME ANIMAL(S) WITHIN A TWELVE MONTH PERIOD, AND REASONABLY BELIEVES THE ANIMAL(S) WILL CONTINUE TO CAUSE 18-8-1 VIOLATIONS, THE PEACE OFFICER AND/OR TOWN ENFORCEMENT AGENT ARE AUTHORIZED TO SEIZE AND IMPOUND THE ANIMAL(S) BY REMOVING THEM AND PLACING THEM IN THE CUSTODY OF PIMA COUNTY ANIMAL CONTROL OR A SIMILAR AGENCY.
- B. COSTS – THE CUSTODIAN OR OWNER OF ANY ANIMAL REMOVED AND IMPOUNDED SHALL BE SOLELY RESPONSIBLE FOR ANY IMPOUNDMENT, REMOVAL, BOARDING, VETERINARIAN, DESTRUCTION FEES OR ANY OTHER COSTS ASSOCIATED WITH THE REMOVAL, IMPOUNDMENT AND CARE OF THE SEIZED ANIMAL(S).
- C. HEARING/ORDER TO SHOW CAUSE
 - 1. WITHIN TEN (10) DAYS OF ANY IMPOUNDMENT DESCRIBED ABOVE, THE CUSTODIAN OR OWNER OF THE ANIMAL(S) MAY FILE A PETITION IN THE ORO VALLEY MAGISTRATE COURT FOR AN ORDER TO SHOW CAUSE WHY THE ANIMAL(S) SHOULD NOT BE RETURNED TO THE CUSTODIAN OR OWNER PENDING THE OUTCOME OF THE COMPLAINT.
 - 2. THE TOWN MAGISTRATE OR HEARING OFFICER, UPON A SHOWING BY PREPONDERANCE OF THE EVIDENCE THAT REASONABLE GROUNDS EXIST TO BELIEVE THE PROHIBITED CONDUCT WILL NOT CONTINUE, MAY ORDER THAT THE ANIMAL(S) BE RELEASED BY THE PIMA COUNTY ANIMAL CONTROL OR SIMILAR AGENCY AND RETURNED TO THE CUSTODIAN OR OWNER PENDING THE OUTCOME OF THE COMPLAINT. THE MAGISTRATE SHALL SET WHATEVER RELEASE CONDITIONS AS ARE NECESSARY TO ALLEVIATE THE EXCESSIVE NOISE PROBLEM THE ANIMAL(S) ALLEGEDLY CAUSED.

3. IF THE CUSTODIAN OR OWNER IS CONVICTED OF A THIRD OFFENSE OR SUBSEQUENT OFFENSE FOR THE SAME ANIMAL(S) OVER A PERIOD OF TWELVE MONTHS, AND THE CUSTODIAN OR OWNER FAILS TO APPEAR FOR HEARING, SUSTAIN THE BURDEN AT HEARING, OR FAILS TO REQUEST A HEARING, THE PIMA COUNTY ANIMAL CONTROL OR SIMILAR AGENCY MAY PLACE THE ANIMAL(S) UP FOR ADOPTION OR DISPOSE OF THE ANIMAL IN A HUMANE MANNER.
4. IF THE CUSTODIAN OR OWNER IS ACQUITTED OR THE COMPLAINT IS DISMISSED, THE PIMA COUNTY ANIMAL CONTROL CARE CENTER OR SIMILAR AGENCY SHALL IMMEDIATELY RETURN THE ANIMAL(S) TO THE OWNER.