

**ORDINANCE NO. 21-091**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 4 (“ANIMALS”), ARTICLE 2 (“ANIMAL CONTROL”), SECTION 4.02.001. (“LICENSES; RESTRAINT; IMPOUNDMENT; DESTRUCTION; NUISANCES; ENFORCEMENT GENERALLY”) AND SECTION 4.02.002. (“ENFORCEMENT OF SECTION 4.02.001”), AND *NEW CASTLE COUNTY CODE* CHAPTER 22 (“OFFENSES AND MISCELLANEOUS PROVISIONS”), ARTICLE 2 (“OFFENSES GENERALLY”), SECTION 22.02.008. (“NOISE CONTROL”) RELATING TO DOGS AND OTHER ANIMALS**

**WHEREAS**, New Castle County Council believes the residents of New Castle County will be better served if the responsibilities of the New Castle County Police do not include responding to, for example, dogs barking or other animals making obnoxious noises; and

**WHEREAS**, New Castle County Council believes the issue of dog barking and dog and animal control, and the enforcement of dog and animal laws overall would be more appropriately addressed by the trained professionals of the Delaware Office of Animal Welfare (within the Department of Health and Social Services); and

**WHEREAS**, County Council further believes that animal control officers of the Office of Animal Welfare are better equipped than County Police officers to determine the care and treatment that should be provided to dogs and other animals, as well as to verify that a dog or other animal is properly licensed and vaccinated in compliance with Delaware State laws, and the actions necessary to take with and for the animals and the means by which to best ensure compliance.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 4 (“Animals”), Article 2 (“Animal Control”), Section 4.02.001 (“Licenses; Restraint; Impoundment; Destruction; Nuisances; Enforcement Generally”) and Section 4.02.002 (“Enforcement of Section 4.02.001”) are hereby amended by adding the material that is underscored and deleting the material that is stricken, as follows.

Sec. 4.02.001. - Licenses; restraint; impoundment; destruction; nuisances; enforcement generally.

- A. *Definitions.* The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Animal control agency* means The Office of Animal Welfare within the Department of Health and Social Services (except in cases of domestic agricultural animals specified in § 101(8) of Title 3 of the Delaware Code, where the Department of Agriculture shall have primary enforcement authority)~~a State or County administrative agency, a Humane Society, or other entity,~~ which is authorized by statute and~~;~~ ordinance ~~or contract~~ to enforce any animal control laws or regulations, including those related to noise, of the State or County.

*Animal control officer* means a person employed by ~~the State, County or an~~ the animal control agency as an enforcement officer.

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*Public nuisance animal* means any animal or group of animals which:

...

5. Is found to be in violation of Section 22.02.007 because of the noise or noise disturbance it creates, as those terms are defined by Section ~~22.02.007~~ 22.02.008.

...

D. *Impoundment.*

1. Dogs at large and public nuisance animals may be taken by an animal control officer and impounded in an animal shelter. At the discretion of the animal control officer, such dog or animal may be left in the custody of its owner and the owner issued a summons for violation of this Section.

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H. *Enforcement.* Animal control officers shall have all powers and authority as identified under 16 Del. C. Sections 3031F., et seq. ~~of County Police Officers,~~ limited, however, to the powers and authority incident to the enforcement of this Section and other statutes, ordinances, and regulations concerning, among other things, the control and registration of dogs and other animals, the prevention of annoyance thereof~~or,~~ the prevention of cruelty to animals, and the taking and impounding of animals. ~~A Humane Society, authorized by ordinance to enforce this Section, shall be designated an instrumentality of the County created pursuant to 9 Del. C. § 101 et seq. (Counties), only for purposes of the immunities conferred on such agency and its employees by 10 Del. C. § 4001 et seq. (Tort Claims Act), unless otherwise provided by such authorizing ordinance.~~ The County shall not be obliged to indemnify, hold harmless, defend or insure ~~such~~ the animal control agency if the immunity of the agency is ever determined to be inapplicable.

**Sec. 4.02.002. – Enforcement of Section 4.02.001.**

~~The Kent County Society for the Prevention of Cruelty to Animals (S.P.C.A.), Delaware Animal Control, the County Police Department and/or other animal control agencies as defined herein shall have the authority to enforce this Article regarding regulation of dogs and other animals. The County Executive may appoint the animal control officers, contingent on funds available, responsible for the enforcement of this section as code enforcement constables or officers for the limited purpose of issuing summons for violations of this Chapter.~~

Section 2. The current Section numbers for *New Castle County Code* Chapter 4 (“Animals”), Article 2 (“Animal Control”), Sections 4.02.003. (“Dog or cat excrement”), 4.02.004. (“Prohibited animals in certain residential areas”), 4.02.005. (“Prohibitions regarding the transfer of puppies”), and 4.02.006. (“Inspections of retail dog outlets and kennels and specifications for humane handling, care and treatment of dogs”) are hereby deleted and chronologically re-numbered as Sections 4.02.002, 4.02.003, 4.02.004, and 4.02.005, respectively.

Section 3. *New Castle County Code* Chapter 22 (“Offenses and Miscellaneous Provisions”), Article 2 (“Offenses Generally”), Section 22.02.008 (“Noise Control”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as follows.

Sec. 22.02.008. - Noise control.

A. *Definitions.* The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning; all terminology used in this Section, not defined in this subsection, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body:

...

*Animal ~~noise~~ control agency* means The Office of Animal Welfare within the Department of Health and Social Services (except in cases of domestic agricultural animals specified in § 101(8) of Title 3 of the Delaware Code, where the Department of Agriculture shall have primary enforcement authority) ~~a State or County administrative agency, a humane society, or other entity,~~ which is authorized by statute, and ordinance ~~or contract~~ to enforce any animal ~~noise~~ control laws or regulations, including those related to noise, of the State or County.

...

*Noise* means any sound which is unwanted or which causes or tends to cause any adverse physiological or psychological effect on human beings.

*Noise disturbance* means any sound which:

1. Endangers or injures the safety or health of humans or animals;
2. Any sound that recklessly or willfully disturbs any neighborhood, business, or a reasonable person of normal sensibilities within the County by making loud and unseemly noises.
3. Jeopardizes the value of property and erodes the integrity of the environment; or
4. Is in excess of the allowable noise levels established in Subsection E.

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B. *Noise disturbances prohibited.*

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2. *Specific prohibitions.* It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbances in the County in any of the following manners:

- a. ...
- d. *Animals.* Owning, possessing, harboring or controlling any animal or bird which causes a noise disturbance by barking, baying, crying, squawking or by making any other noise continuously or incessantly for a period of ten (10) minutes or which makes such noises intermittently for one-half (½) hour or more; provided, however, that at the time the animal or bird is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated or that no person other than the owner, controller or possessor of the animal was teasing or provoking the animal or bird at the time it made such noise. For purposes of this Section, the term "animals and birds" shall not include livestock or poultry which are raised or kept as part of a farm operation which is actively devoted to the production for sale of plants and animals useful to people.

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C. *Enforcement and penalties.*

1. ~~Except as otherwise specified in this Section, any person who fails to comply with the regulations as established in this Section shall be subject to the penalties provided in Section 1.01.009.~~
12. *Enforcement.* This Section shall be enforced by the Police Department, provided, however, that the provisions of Subsection B.2.d ~~may also~~ shall be enforced exclusively by the an animal noise control agency as defined in this Section. ~~The County Executive may appoint the animal noise control officers, contingent on funds available, responsible for the enforcement of this section as code enforcement constables or officers for the limited purpose of issuing summons for violations of this Chapter. An animal noise control agency other than a State or County administrative agency or entity, authorized by statute or ordinance to enforce this Section, shall be designated an instrumentality of the County created pursuant to 9 Del. C. § 101 et seq. (Counties), only for purposes of the immunities conferred on such agency and its employees pursuant to 10 Del. C. § 4001 et seq. (Tort Claims Act), unless otherwise provided by such authorizing statute or ordinance.~~ The County shall not be obliged to indemnify, hold harmless, defend or insure ~~such~~ the animal control agency if the immunity of the agency is ever determined to be inapplicable.
2. *Penalties.* Except as otherwise specified in this Section, any person who fails to comply with the regulations as established in this Section shall be subject to the penalties provided in Section 1.01.009.

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Section 4. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 Del. C. § 1156.

Adopted by County Council of  
New Castle County on:

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President of County Council  
of New Castle County

Approved on:

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County Executive  
of New Castle County

**SYNOPSIS:** This Ordinance is intended to clarify that animal welfare officers of The Office of Animal Welfare within the Department of Health and Social Services are exclusively responsible for enforcing within New Castle County State and County laws relating to, among other things, the control and registration of dogs and other animals (except in cases of domestic agricultural animals specified in § 101(8) of Title 3 of the Delaware Code, where the Department of Agriculture shall have primary enforcement authority pursuant to State law). As such, this Ordinance will clarify that New Castle County Policy will no longer be responsible for addressing, for example, disturbing noises by dogs or other animals.

**FISCAL NOTE:** There is no discernible financial impact.