

**BUTTE COUNTY
BOARD OF SUPERVISORS
AGENDA TRANSMITTAL**

CLERK OF THE BOARD USE ONLY

MEETING DATE: _____
AGENDA ITEM: 3.22

AGENDA TITLE: Ordinance Modifying Butte County Code, Chapter 4 entitled Animals

DEPARTMENT: Public Health/County Counsel

DATE: 5/8/08

MEETING DATE REQUESTED: 5/20/08

CONTACT: Phyllis Murdock/Bruce Alpert

PHONE: X7704/X7621

REGULAR x **CONSENT** _____

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

An ordinance modifying Butte County Code, Chapter 4 – Animals was provided to the Board for consideration at its May 6, 2008 meeting. The Board made minor modifications and waived first reading of the ordinance. A marked up version of the ordinance is attached, showing these modifications.

REQUESTED ACTION

Adopt the ordinance amending Chapter 4 of the Butte County Code.

**AGENDA ITEM SUBMITTALS REQUIRE THE ORIGINAL AND TWELVE (12) COPIES
ATTACH EXPLANATORY MEMORANDUM AND OTHER BACKGROUND INFORMATION AS NECESSARY**

Budgetary Impact: Yes _____ No _____
If yes, complete Budgetary Impact Worksheet on back
Budget Transfer Requested: Yes _____ No _____
If yes, complete Budget Transfer Request Worksheet on back.
(Deadline is one business day prior to normal agenda deadline)
Will Proposal Require an Agreement: Yes _____ No _____
Auditor-Controller's Number (if required): _____
County Counsel's Approval: Yes _____ No _____
Will Proposal Require Additional Personnel: Yes _____ No _____
Number of Permanent: _____ **Temp** _____ **Extra Help** _____

CAO OFFICE USE ONLY

Administrative Office Review MC
Administrative Office Staff Contact MC Condo

4/5's Vote Required: Yes: _____ No: X

Date Received by Clerk of Board:

Previous Board Action Date: _____
Describe: _____

Additional Information Attached: Yes x No _____

SPECIAL INSTRUCTIONS TO CLERK

Number of originals required to be returned to Department: 1

****Please Note**** Department is responsible for returning contract to contractor. Clerk of the Board returns completed Auditor's copy ONLY.

AN ORDINANCE ADDING ARTICLE IA, ENTITLED "BARKING DOGS," AND
ADDING SECTION 4-20.2, ENTITLED "CATTERIES PROHIBITED," TO CHAPTER
4, ENTITLED "ANIMALS," OF THE BUTTE COUNTY CODE

The Board of Supervisors of the County of Butte ordains as follows:

**Section 1. Section 4-1.2, entitled "Nuisances-Defined," of Article I, entitled
"Dogs," of Chapter 4, entitled "Animals," of the Butte County Code is amended
to read as follows:**

"4-1.2 Nuisances-Defined.

Without limitation as to the general provisions of section 4-1.1, the following
specific acts and conditions committed by a dog are hereby declared to be unlawful
and to constitute a public nuisance, and the owner or person having possession,
custody or control of a dog committing any of the following shall be subject to the
penalties provided by this chapter:

- (a) Being in or upon any public or private school grounds, except when authorized by appropriate school officials;
- (b) Annoying, harassing, nipping, mauling or biting any person or persons;
- (c) A female dog in breedable condition (in heat), being within the county, except when confined in or upon the premises of its owner or custodian;
- (d) Damaging or destroying any property or thing of value;
- (e) Barking, as defined in Section 4-14.2 of this Chapter.

1 (f) Committing excretion on private property other than the property of its owner or
2 custodian.”

3 **Section 2. Section 4-1.4, entitled “Penalty for violations of sections 4-1, 4-1.1, 4-
4 1.2, 4-1.3 and 4-1.5,” of Article I, entitled “Dogs,” of Chapter 4, entitled
5 “Animals,” of the Butte County Code is amended to read as follows:**

6
7 **“4-1.4 Penalty for violation of sections 4-1, 4-1.1, 4-1.2, and 4-1.5.**

8 Any person violating any provision of section 4-1, 4-1.1, ~~2(e)~~, 4-1.2(f) or 4-
9 1.5 shall be guilty of an infraction, punishable by fine or fines of not less than one
10 hundred (\$100.00) for the first offense; of not less than two hundred (\$200.00) for a
11 second offense; and of not less than five hundred (\$500.00) for a third or subsequent
12 offense. The first, second, third and subsequent offenses shall be accumulated and
13 counted within any twelve (12) consecutive month period. No part of these fines may
14 be suspended.”

15
16 ~~Any person violating any provision of section 4-1, 4-1.1, 4-1.2 or 4-1.3
17 4-1.5, other than those set forth in the above paragraph, shall be guilty of a
18 misdemeanor.~~

19
20 **Section 3. Article IA is added to Chapter 4, entitled “Animals” of the Butte
21 County Code, to read as follows:**

22 **“Article IA. BARKING DOGS.**

23 **4-14.2 Definition.**

24
25 “Barking dog” means a dog that barks, bays, cries, howls or makes any noise for an
26 extended period of time to the disturbance of any person at any time of day or night,

1 regardless of whether the dog is physically situated in or upon private property. Such
2 extended period of time shall consist of incessant barking for ~~thirty (30)~~ sixty (60)
3 minutes or more in any twenty-four-hour period, or intermittent barking for sixty (60)
4 minutes or more during any twenty-four-hour period. A dog shall not be deemed a
5 "barking dog" for purposes of this Article if, at any time the dog is barking, a person
6 is trespassing or threatening to trespass upon private property in or upon which the
7 dog is situated, or when the dog is being teased or provoked by someone other than
8 the owner.
9

10 **4-14.3 Applicability.**

11 (a) This Article makes any violation for keeping, maintaining, or permitting a
12 barking dog subject to civil fine.
13

14 (b) This Article establishes the administrative procedures for the imposition,
15 enforcement, collection, and administrative review of civil fines for barking dog
16 violations pursuant to Government Code section 53069.4 and the County's plenary
17 police power.
18

19 (c) The issuance of a civil citation under this Article is solely at the County's
20 discretion and is one option the County has to address barking dog violations. By
21 adopting this Article, the County does not intend to limit its discretion to utilize any
22 other remedy, civil or criminal, including public nuisance remedies.
23

24 (d) The purpose of issuing civil citations pursuant to this Article is to encourage
25 voluntary and complete compliance with the provisions of this Article and to
26

1 eliminate nuisances for the protection and benefit of the entire community.

2 **4-14.4 Barking dog civil complaint procedure.**

3 (a) A barking dog civil complaint is initiated by a complainant filing a first
4 complaint by mail on forms provided by the Butte County Public Health Department.

5 (1) Upon filing of an initial complaint, an animal control officer will make a
6 personal visit with the dog owner or responsible person to offer information about a
7 barking dog violation and civil fine and to provide educational materials.
8

9 (2) From the day of the visit, the dog owner or responsible person is allowed ten
10 (10) days to remedy the barking violation.

11 (b) If after ten (10) days from the day of the visit the barking violation
12 continues, the complainant must file a second complaint by mail on forms provided
13 by the Department.
14

15 (1) Upon second complaint, the complainant must sign a sworn affidavit, under
16 the penalty of perjury, that the dog barking is violating the county ordinance.

17 (2) An animal control officer will then make a second visit with the dog owner
18 or responsible person and may issue a civil citation for the barking dog violation.
19

20 **4-14.5 Barking dog citation – general.**

21 (a) Any animal control officer has the authority to issue a civil citation to any
22 responsible person for a barking dog violation that the animal control officer did not
23 see or hear occur but is based on a complaint, signed under penalty of perjury by a
24 person who has been disturbed by the barking dog.
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28

1 (1) A responsible person to whom a civil citation is issued shall be liable for
2 and shall pay to the County the fine or fines described in the barking dog citation
3 when due.

4 (2) Where the responsible person is a minor under the age of eighteen (18)
5 years, the minor's parents or legal guardian shall be liable for and held responsible
6 for payment of their minor child's citation fines and/or late penalties.
7

8 (3) In any case, the responsible person (by his/her parents when the responsible
9 person is under the age of eighteen (18)) shall have the right to appeal the issuance of
10 the citation by requesting an administrative hearing pursuant to the provisions of
11 sections 4-14.9 and 4-14.10 of this Article.
12

13 (4) "Responsible person" means any of the following:

14 i. A person who owns, is in possession of, or has custody or control of any
15 animal; or

16 ii. A person whose agent, employee, or independent contractor allows a
17 violation of this Chapter to exist, whether through willful action, failure to act, or
18 failure to exercise proper control over an animal;
19

20 iii. A person who is the owner of, and/or a person who is a lessee or sublessee
21 with the current right of possession of, real property in or upon which a violation of
22 this Chapter occurs.
23

24 (b) Each day a barking dog violation exists beyond the initial ten (10) calendar
25 day period allowed for correction shall be a separate violation and be subject to a
26

1 separate citation and fine. A barking dog civil citation may include a violation for
2 one (1) or more days on which a violation exists, and for violation of one (1) or more
3 code sections.

4 **4-14.6 Barking dog citation - contents.**

5 Each barking dog citation shall contain the following information:

- 6 (a) Date on which a complaint or personal inspection established the barking
7 dog violation(s).
8
- 9 (b) Name of the responsible person for the barking dog violation(s) (if known).
10
- 11 (c) Address where the barking dog violation(s) occurred.
12
- 13 (d) The code section(s) violated.
14
- 15 (e) Whether the violation(s) were established by inspection or by complainant.
16
- 17 (f) Amount of the fine for the violation(s) and procedure to pay the fine to
18 avoid a late payment penalty.
- 19 (g) Designation of prior civil citations issued for the same code violation(s), if
20 known by the animal control officer.
- 21 (h) Notification of the procedure for requesting an administrative hearing where
22 the civil fine may be contested, including date by which such request must be made.
23
- 24 (i) A notice that a barking dog violation is a nuisance and that collection of
25 unpaid fines and/or penalties can result in additional fines, penalties and/or
26 imprisonment in the County jail.
- 27 (j) Signature of the animal control officer who issued the barking dog citation
28

1 and/or civil fine.

2 (k) Date upon which the barking dog citation and/or civil fine was issued.

3 (l) Proof of service to be completed by the animal control officer indicating
4 whether citation was issued by personal service, by mail, or by posting in a
5 conspicuous place on the property where the barking dog violation occurred.

6 (m) A self-addressed envelope in which the violator can mail the civil fine to the
7 Department if the citation is not contested.

8 (n) Any other information deemed necessary by the Department for enforcement
9 or collection purposes.
10

11 **4-14.7 Service of barking dog citation.**

12 A barking dog citation may be served as follows:

13
14 (a) An animal control officer may personally serve the barking dog citation on
15 the responsible person. The responsible person shall be requested to sign a copy of
16 the citation showing his or her receipt of the citation and notice of the responsible
17 person's right to an administrative hearing. Signing the citation shall not constitute
18 an admission of guilt. A refusal to sign does not invalidate service of the citation.

19
20 (b) An animal control officer may mail the civil citation by certified mail, return
21 receipt requested, if the property owner and/or occupier's name is known but the
22 violator is not present when personal service is attempted. The citation shall be
23 mailed to the address where the barking dog violation occurred.

24
25 (c) An animal control officer may post a copy of the barking dog citation in a
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27
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1 conspicuous place on the property where the barking dog violation occurred if the
2 property owner and/or occupier's name is unknown. In this event, the citation shall
3 also be mailed by certified mail, return receipt requested to the owner of the property
4 where the barking dog violation occurred as reflected on the County's property tax
5 rolls. A copy of the citation shall also be mailed within 24 hours of posting the
6 citation addressed to "Resident" at the address where the barking dog violation
7 occurred.
8

9 **4-14.8 Amount of barking dog civil fines.**

10 Fines for violating the provisions of this Article shall be progressively increased
11 based on the number of violations occurring within the same 12-month period as
12 follows:
13

14 Barking Dog Civil Fines	First violation	\$100.00
15	Second violation in 12 months	\$200.00
16	Third and each subsequent 17 violation in 12 months	\$500.00

18
19 **4-14.9 Payment of barking dog civil fines.**

20 (a) After receiving a barking dog violation citation, a violator may respond by
21 either of the following methods:

22 (1) The violator may choose to correct the barking dog violation and pay the
23 barking dog citation fine without contesting the fine in an administrative hearing. In
24 that event, payment of the citation fine must be received by the Department prior to
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26
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1 the date contained in the citation by which the responsible party must request an
2 administrative hearing to contest the fine.

3 (i) Payment shall be made by enclosing the fine amount by check or money
4 order in the self-addressed envelope attached to the civil citation and mailing the
5 envelope to the Public Health Department by U.S. first class mail, postage prepaid.

6 (ii) The Director may authorize payment to be made in accordance with any
7 other method, at any location within the county, or to any address.

8 (2) A violator may choose to request an administrative hearing by the date
9 contained in the citation. In that event, the fine is due and payable to the hearing
10 officer at the conclusion of the hearing if the hearing officer upholds the barking dog
11 citation.
12

13 (i) The Director or hearing officer may allow the violator an additional period
14 of time in which to pay the fine if the Director or hearing officer finds that such
15 additional time for payment is necessary.
16

17 (b) Fines for barking dog violations must be received by the Department within
18 fifteen (15) days of the date they are due as specified in subparagraph (a)(1) or (a)(2)
19 above.
20

21 (c) Payment of a fine shall not excuse the violator from correcting the barking
22 dog violation.
23

24 (d) The issuance of a barking dog citation and/or payment of a fine shall not bar
25 the County from taking any other enforcement action regarding a barking dog
26

1 violation that is not corrected, including issuing additional barking dog citations
2 and/or criminal complaints.

3 **4-14.10 Administrative hearing.**

4 (a) Any person who receives a barking dog citation may contest it by submitting
5 a request in writing for an administrative hearing. Such request must be made by the
6 date and time contained in the barking dog citation. The hearing shall be held by a
7 hearing Officer selected pursuant to the protocol set forth in that document entitled
8 the "Butte County Administrative Hearing Officer Program," on file in the office of
9 the Chief Administrative Officer of the County.
10

11 (b) Upon receipt of request for an administrative hearing to contest the fine, the
12 Department shall schedule the hearing and notify the requestor in writing of the
13 administrative hearing date, time and location.
14

15 (c) A violator may contest the barking dog citation by denying that a violation
16 occurred, by denying that it was not corrected within the original ten (10) calendar
17 day correction period, if applicable, or by denying that the violator is a responsible
18 person for the violation.
19

20 (d) If the citation fine is not paid prior to the date and time of the administrative
21 hearing, a failure to personally appear at the administrative hearing shall constitute an
22 abandonment of any defense the violator may have to the barking dog citation. If the
23 violator fails to appear at the administrative hearing, any unpaid citation fine
24 becomes immediately due and payable.
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4-14.11 Hearing procedures.

(a) Hearings shall be conducted by a hearing officer either:

(1) On the date, time and place specified in the notification to the requestor of the scheduled hearing which shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) calendar days from the date contained in the barking dog citation per section 4-14.9 above; or

(2) On the date assigned when a continuance pursuant to subsection (f) below has been granted.

(b) The violator and complainant shall be notified of the assigned hearing date, time and location by the Director or his/her designee.

(c) The Director or his/her designee shall provide all pertinent documents and records in the possession of the Department related to the barking dog citation to the hearing officer.

(d) The violator and complainant shall be given the opportunity to testify and to present evidence relevant to the barking dog citation. A parent or legal guardian of a violator 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 violator. Such abandonment shall also constitute a failure to exhaust administrative remedies concerning the violation set forth in the barking dog citation.

(e) The citation itself and accompanying complainant's affidavit signed under penalty of perjury attesting to the barking dog violation provided to the hearing

1 officer shall be accepted by the hearing officer as prima facie evidence of the
2 violation and the facts stated in such documents.

3 (f) ~~Neither the animal control officer nor any other representative of the~~
4 ~~County shall be required to attend the hearing. However, any such appearance and/or~~
5 ~~additional submission may be made at the discretion of the animal control officer or~~
6 ~~any other Department employee.~~

7
8 (g) The Director or his/her designee may continue a hearing once if a request for
9 continuance is made showing good cause by a violator, a complainant, or a
10 representative of the County. A hearing officer may also continue a hearing upon his
11 or her own motion. All continuance requests shall either:

12 (1) Be made in person at the hearing; or

13
14 (2) Be made by a written request received by the Department or hearing officer via
15 e-mail, facsimile or letter at least seven (7) calendar days prior to the hearing date.

16 (h) If a continuance is granted, the parties will be notified, and a new hearing
17 date shall be scheduled that is within fourteen (14) calendar days of the date on
18 which the continued hearing was first scheduled to take place.

19
20 (1) If the request for continuance is denied, the parties will be notified, and the
21 hearing shall proceed as originally scheduled.

22 (2) If the violator ~~or complainant~~ is not present on an assigned hearing date and
23 no continuance of the hearing has been granted, ~~the hearing shall be deemed~~
24 ~~abandoned or dismissed in accordance with subsection (j) or (k) below.~~ this shall
25

1 constitute an abandonment of the administrative hearing, and a failure to exhaust
2 administrative remedies concerning the violation set forth in the barking dog citation.

3 The violator's failure to appear shall be noted on the notice of decision completed by
4 the hearing officer and mailed to the violator and complainant.

5 (i) The hearing shall be conducted informally and the legal rules of evidence
6 need not be followed.

7
8 (j) The hearing officer does not have the authority to issue a subpoena or
9 subpoena duces tecum.

10 ~~(k) The failure of the violator to appear at the hearing, unless the hearing was~~
11 ~~continued per subsection (f) above, shall constitute an abandonment of the~~
12 ~~administrative hearing, and a failure to exhaust administrative remedies concerning~~
13 ~~the violation set forth in the barking dog citation. The violator's failure to appear~~
14 ~~shall be noted on the notice of decision completed by the hearing officer and mailed~~
15 ~~to the violator and complainant.~~

16
17 ~~(l) The complainant's failure to appear shall be noted on the notice of decision~~
18 ~~completed by the hearing officer and mailed to the violator and complainant.~~

19
20 **4-14.12 Administrative hearing decision.**

21 (a) After considering all the evidence and testimony submitted at an
22 administrative hearing, the hearing officer shall issue a written decision to the
23 violator and complainant to uphold or to dismiss the barking dog citation based upon
24 a conclusion of whether or not a violation occurred for which the violator was a
25

1 responsible person. The decision of the hearing officer shall list the reasons for that
2 decision.

3 (1) The hearing officer's decision is final.

4 (2) The hearing officer has no discretion or authority to reduce the amount of a
5 fine.

6
7 (b) If the hearing officer's decision is to uphold the barking dog citation, the
8 civil fine imposed for the violation shall be due at the conclusion of the
9 administrative hearing, or at some other time as directed by the Director or hearing
10 officer.

11 (1) If the decision is to dismiss the barking dog citation, the civil fine shall no
12 longer be due and payable. If the penalty was deposited with the Department, then
13 the Department shall promptly refund the amount of the deposited penalty.

14
15 **4-14.13 Right to judicial review.**

16 (a) A responsible person may seek judicial review of the administrative hearing
17 decision by filing an appeal with the Superior Court within twenty (20) calendar days
18 after the responsible person receives a copy of the notice of decision at the
19 conclusion of the hearing in accordance with the provisions of California
20 Government Code Section 53069.4.

21
22 (1) The appeal filed with the court must also contain a proof of service showing
23 that a copy of the appeal was served upon "Clerk of the Board of Supervisors, County
24 of Butte, 25 County Center Drive, Oroville, California 95965."
25

1 (2) The responsible person must pay the appropriate Superior Court filing fee
2 when the appeal is filed.

3 (b) No judicial appeal is permitted where a violator has failed to appear at an
4 assigned administrative hearing, or is deemed to have abandoned the contest of the
5 barking dog citation by an unexcused nonappearance at the hearing, or where a
6 citation has been dismissed by a hearing officer because a complainant has failed to
7 appear at an assigned administrative hearing.
8

9 **4-14.14 Collection of unpaid fines.**

10 (a) The County at its discretion may pursue any and all legal and equitable
11 remedies for the collection of unpaid fines and late penalties. Pursuit of one remedy
12 does not preclude the pursuit of any other remedies until the total fines and late
13 penalties owed by a violator under this Article have been collected.”
14

15 **Section 4. Article III, entitled “Cat vaccination; Animal Vaccination**
16 **Reporting,” of Chapter 4, entitled “Animals,” is amended to read as follows:**

17 **“Article III. Cats**

18 **4-20 Cat rabies vaccinations required.**

19 Any person who owns a domestic cat over four (4) months of age in Butte County
20 shall have such cat vaccinated against rabies. The vaccination shall be maintained
21 current with a vaccine approved for use by the California Department of Health
22 Services for a duration of immunity of thirty-six (36) months.
23

24 **4-20.1 Rabies vaccination certificate.**

25 The owner of every cat vaccinated against rabies by a veterinarian shall be provided
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27
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1 a rabies vaccination certificate completed in the same form and content as required
2 by the California State Health and Safety Code.

3 **4-20.2 Catteries prohibited.**

4 (a) It shall be unlawful for any person(s) to operate a cattery within the
5 unincorporated area of Butte County.

6 (b) A person shall be deemed to maintain or operate a cattery if the person
7 keeps, harbors, or maintains twelve (12) or more cats over three (3) months of age
8 on parcels one acre or more in size.

9 (c) A person shall be deemed to maintain or operate a cattery if the person
10 keeps, harbors, or maintains ~~eight (8)~~ six (6) or more cats over three (3) months of
11 age on parcels less than one acre in size.

12 (d) The term “cattery” shall not include an animal shelter operated or
13 established by local government or a non-profit humane organization, or a
14 veterinary hospital operated by a veterinarian licensed by the State of California.

15 (e) Any person violating any provision of this section shall be guilty of an
16 infraction, punishable by fine or fines of not less than one hundred dollars (\$100.00)
17 for the first offense; of not less than two hundred dollars (\$200.00) for a second
18 offense; and of not less than five hundred dollars (\$500.00) for a third or subsequent
19 offense. The first, second, third and subsequent offenses shall be accumulated and
20 counted within any twelve (12) consecutive month period. No part of these fines
21 may be suspended.”
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1 Section 5. Severability. If any provision of this Ordinance or the application thereof to
2 any person or circumstances is for any reason held to be invalid by a court of competent
3 jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall
4 not affect the remaining provisions or other applications of the Ordinance which can be
5 given effect without the invalid provision or application thereof.
6

7 Section 6. Effective Date and Publication. This Ordinance shall take effect thirty (30)
8 days after the date of its passage. The Clerk of the Board of Supervisors is authorized
9 and directed to publish this ordinance before the expiration of fifteen (15) days after its
10 passage. This Ordinance shall be published once, with the names of the members of
11 the Board of Supervisors voting for and against it, in the _____, a
12 newspaper of general circulation published in the County of Butte, State of California.
13

14 PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State
15 of California, on the _____ day of _____, 2008, by the following vote:

16 AYES:

17 NOES:

18 ABSENT:

19 NOT VOTING:

21

22

CURT JOSIASSEN, Chair of the
Butte County Board of Supervisors

23

24

ATTEST:
C. BRIAN HADDIX, Chief
Administrative Officer
and Clerk of the Board

25

26

By _____

27

28