

Introduced by: David L. Tackett
Date of introduction: July 12, 2005

**SUBSTITUTE NO. 3 TO
ORDINANCE NO. 05-056**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 4 (“ANIMALS”) AND
CHAPTER 22 (“OFFENSES AND MISCELLANEOUS PROVISIONS”)
REGARDING FINES FOR VIOLATIONS OF ANIMAL CONTROL AND NOISE
CONTROL ORDINANCES AND TO INSTITUTE VOLUNTARY ASSESSMENTS
FOR VIOLATIONS OF ANIMAL NOISE CONTROL ORDINANCES**

WHEREAS, animal control and animal noise control problems have become an increasing concern of residents throughout New Castle County, and it is in the best interest of County residents for County Council to take effective measures to address those problems; and

WHEREAS, Council finds that it is appropriate to implement increases in the fines for violations of the County’s animal control and animal noise control ordinances in order that those fines more accurately reflect and more effectively offset the increased costs of enforcing such ordinances, and in order to enhance the County’s overall animal control and animal noise control efforts; and

WHEREAS, Council finds that it is appropriate for Council to implement a system of voluntary assessments as alternatives to court appearances for certain violations of animal control and animal noise control ordinances; and

WHEREAS, Council finds that the provisions of this ordinance are rationally and reasonably related to legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare and quality of life.

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

Section 1. Section 4.02.001 (“Licenses; restraint; impoundment; destruction; nuisances; enforcement generally”) of the *New Castle County Code* Chapter 4 (“Animals”) Article 2 (“Animal Control”) is hereby amended by the deletion of the bracketed text and the addition of the underlined text set forth below:

A. *Definitions.* ...

Animal control agency means a State or County administrative agency, [or] a Humane Society, or other entity which is authorized by statute, [or] ordinance or contract to enforce any animal control laws or regulations of the State or County.

C. *Restraint and control of animals. ...*

7. Any person convicted of a violation of this subsection C shall pay a [mandatory and nonsuspendable] fine of at least the minimum fine for each offense as follows:

a. For a violation of subsection (C)(1) of this Section, the penalty shall be [as set forth in 7 Del C. §§ 1701, 1714] a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for the first offense, and a fine of not less than five hundred dollars (\$500.00) nor more than seven hundred fifty dollars (\$750.00) for the second offense, and a fine of not less than seven hundred fifty dollars (\$750.00) nor more than one thousand dollars (\$1,000.00) for each subsequent offense.

b. [For a violation of subsection (C)(5) of this Section, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for the first offense, and a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) for each subsequent offense.] For a violation of subsection (C)(2), (C)(3), (C)(4), (C)(5) or (C)(6) of this Section, which shall be classified a misdemeanor, a fine of not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) for the first offense, and a fine of not less than five hundred dollars (\$500.00) nor more than two thousand five hundred dollars (\$2,500.00) for the second offense, and a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) for each subsequent offense.

c. [For a violation of subsection (C)(2) or (C)(6), a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) for the first offense and a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00) for each subsequent offense. Sentences of up to sixty (60) days in jail may be imposed for subsequent offenses.] Upon conviction in any court of an offense under subsection (C)(3) of this Section involving a dog, the court shall cause a report to be forwarded to the Delaware Department of Natural Resources and Environmental Control. The report shall contain the name of the defendant, the name of the dog, the license number of the dog, the date of the offense and the date of the conviction. In addition, for each violation there shall be a mandatory impoundment of the animal and discretionary review by the animal control agency to determine whether the animal should be destroyed. The animal control agency may consider any evidence material to whether the animal constitutes a threat to human beings or other animals. Record of reports of two (2) prior convictions involving the same animal shall constitute a conclusive presumption that the animal constitutes a threat to human beings or other animals.

d. [For a violation of subsection (C)(3) or (C)(4), which shall be classified a misdemeanor (for which penalties are defined in 11 Del. C. § 4206), a fine of not less than two hundred dollars (\$200.00) nor more than one thousand five hundred dollars (\$1,500.00), restitution, or such other conditions as the court deems fit, plus up to six (6) months incarceration at level V. Upon conviction in any court of an offense under subsection (C)(3) of this Section, the court shall cause a report to be forwarded to the

Delaware Department of Natural Resources and Environmental Control. The report shall contain the name of the defendant, the name of the dog, the license number of the dog, the date of the offense and the date of the conviction. In addition, for each violation there shall be a mandatory impoundment of the dog and discretionary review by the animal control agency to determine whether the animal should be destroyed. The animal control agency may consider any evidence material to whether the dog constitutes a threat to human beings or other animals. Record of reports of two (2) prior convictions involving the same dog shall constitute a conclusive presumption that the dog constitutes a threat to human beings or other animals.] Any summons issued for a violation of subsection (C)(1) of this Section may provide that in lieu of appearing in court, the offender may remit a voluntary assessment of up to two hundred dollars (\$200.00) for each offense. The summons may provide that each day any violation shall continue shall constitute a separate offense.

Section 2. Section 4.02.002 (“Enforcement of Section 4.02.001”) of the *New Castle County Code* Chapter 4 (“Animals”) Article 2 (“Animal Control”) is hereby amended by the deletion of the bracketed text and the addition of the underlined text set forth below:

Sec. 4.02.002. Enforcement of Section 4.02.001.

The Delaware Society for the Prevention of Cruelty to Animals (S.P.C.A.), the County Police Department and/or other animal control [officers] 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 for the limited purpose of issuing summons for violations of this Chapter.

Section 3. Section 22.02.007 (“Noise Control”) of the *New Castle County Code* Chapter 22 (“Offenses and Miscellaneous Provisions”) Article 2 (“Offenses Generally”) is hereby amended by the deletion of the bracketed text and the addition of the underlined text set forth below:

Sec. 22.02.007. Noise Control.

A. *Definitions. ...*

Ambient noise level. ...

Animal noise control agency means a State or County administrative agency, a humane society, or other entity which is authorized by statute, ordinance or contract to enforce any animal noise control laws or regulations of the State or County. ...

C. *Enforcement and penalties*

1. Except as otherwise specified in this Section, [A]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 of this Code.

2. Enforcement. This Section shall be enforced by the Police Department, provided, however, that the provisions of subsection (B)(2)(d) may also be enforced by 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 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, authorized by ordinance to enforce this Section, shall be designated an instrumentality of the County created pursuant to 9 Del. C. § 101 et seq., only for purposes of the immunities conferred on such agency and its employees by the Tort Claims Act, 10 Del. C. § 4001 et seq., unless otherwise provided by such authorizing ordinance. The County shall not be obliged to indemnify, hold harmless, defend or insure such agency if the immunity is ever determined to be inapplicable.

3. Animal Noise Penalties. Any person convicted of a violation of subsection (B)(2)(d) of this Section, which shall be classified a misdemeanor, shall pay a fine for each offense as follows:

a. A fine of not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) for the first offense, and a fine of not less than five hundred dollars (\$500.00) nor more than two thousand five hundred dollars (\$2,500.00) for the second offense, and a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) for each subsequent offense.

b. Each day any violation of such subsection shall continue shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty for each day shall be imposed.

c. Any summons issued for any violation of subsection (B)(2)(d) of this Section may provide that in lieu of appearing in court, the offender may remit a voluntary assessment of up to two hundred dollars (\$200.00) for each offense. The summons may provide that each day any violation shall continue shall constitute a separate offense.

Section 4. This ordinance shall become effective immediately upon passage by New Castle County Council and approval by the County Executive or as otherwise provided in 9 *Del C.* Section 1156.

Approved on:

Adopted by County Council of
New Castle County on:7/12/05

County Executive
New Castle County

President of County Council of
New Castle County

SYNOPSIS: This ordinance amends Chapter 4 of the *New Castle County Code* to increase the amounts of fines for violations of the County's animal control ordinances. It also amends Chapter 22 of the *New Castle County Code* to increase the amounts of fines for convictions of violations of the County's animal noise control ordinances and to provide for a voluntary assessment payable in addition to or in lieu of appearance in court. Substitute No. 3 to this ordinance reflects the increased fine schedule recently adopted by the General Assembly and deletes language prohibiting the suspension of fines and permitting incarceration, to be consistent with State law.

FISCAL NOTE: This ordinance, if adopted, will increase the fines for violations of animal control and animal noise control ordinances. In addition, this legislation will implement a system of voluntary assessments as alternatives to court appearances for violations of animal noise control ordinances. The fines associated with this legislation are based on a tier system with the amount of the fine increasing significantly for repeat offenders.