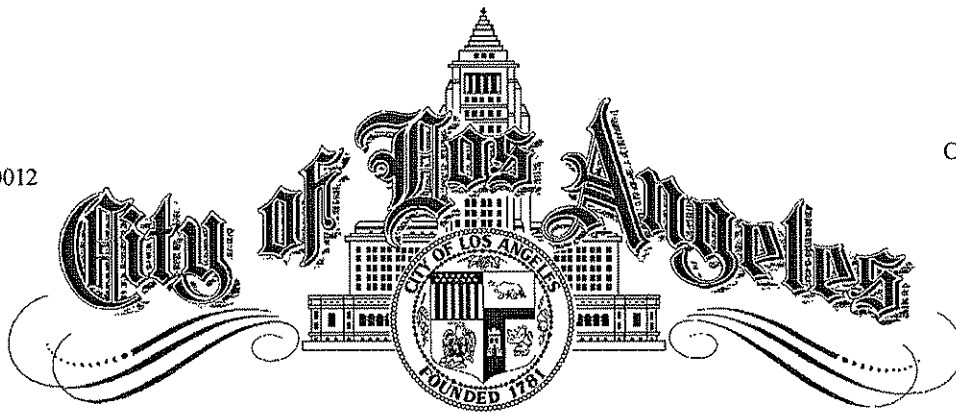


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 2 0 4

JUN 0 1 2011

REPORT RE:

**DRAFT ORDINANCE AUTHORIZING THE DEPARTMENT OF ANIMAL SERVICES
TO CONDUCT LICENSE HEARINGS IN THE ABSENCE OF A VALID DOG LICENSE,
ESTABLISHING MORE DEFINITE BARKING DOG NOISE AND DISTANCE
CRITERIA, AND CREATING A RESTRICTED DOG PERMIT**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 07-1996

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The ordinance would amend Sections 53.18.5 and 53.63 of the Los Angeles Municipal Code (LAMC) to authorize the Department of Animal Services (Department) to conduct license hearings even in the absence of a valid dog license and to establish more definite barking dog noise and distance criteria. The above changes will also streamline the hearing process and reduce administrative costs to the Department.

In addition, the ordinance would add Section 53.34.3 to the LAMC, creating a Restricted Dog Permit with additional terms, conditions and restrictions to provide the Department with greater flexibility in dealing with a dog that attacks, bites or injures a person or another animal.

Background and Summary of Ordinance Provisions

The changes to Section 53.18.5 of the LAMC will allow the Hearing Examiner to hold a hearing even in the absence of a valid dog license. Following the hearing, the Department will be able to reissue the existing license or issue a new license with terms, conditions and restrictions or the Hearing Examiner will be able to order an owner to surrender an unlicensed dog or order the dog to be removed from the City as if the license was being revoked, in addition to any civil or criminal penalties for failure to have a valid license.

Presently, the Department does not hold hearings if a dog is unlicensed or if the license is not valid, because the LAMC only provides a remedy against the license. As a result, the Department spends time and resources to compel the owner to license the dog so that the hearing can proceed. The present system is not only cumbersome and costly in staff time, but the delay also rewards owners who fail to license their dogs or to maintain a valid license.

Additions to Subdivision 1 of Subsection (I) of Section 53.18.5 will allow the Hearing Examiner to order a dog to be micro-chipped (term F) and sterilized even if otherwise exempt (term G). They also allow the Hearing Examiner to impose a civil penalty not-to-exceed \$100.00 (term H) and to require the dog owner to obtain a Restricted Dog Permit (term I), which is being added to the LAMC as Section 53.34.4.

The Restricted Dog Permit adds additional terms and conditions that can be imposed in lieu of license revocation, if the Hearing Examiner determines that a dog bite, attack or injury was the result of improper or negligent training, handling or maintenance, and that the owner or custodian is able and willing to properly train, handle or maintain the dog. These can include proof of liability insurance of not less than \$100,000, warning signs on the property, notifying the neighbors and securing the owner's or custodian's property to protect the public health, safety and welfare. The \$120.00 cost of the Permit will defray the inspection costs by an Animal Control Officer. The Restricted Dog Permit may be revoked if the owner fails to comply with the terms, conditions or restrictions of either the dog license or the Permit. It may be rescinded by the General Manager if measures taken by the owner or changed circumstances have mitigated the danger to the public, including the permanent removal of the dog from the City.

Section 53.63 adds guidelines to address barking dog noise and complaints. The barking noise will have to be continuously audible for ten (10) minutes or intermittently audible for thirty (30) minutes within a three hour period. It also requires the complaining party to be within reasonable proximity to the property where the dog or dogs are kept. If the noise is not abated following a letter from the Department, a second complaint must be accompanied by a separate complaint from an additional party living in a separate residence within reasonable proximity to the dog(s).

Nevertheless, the Department retains the ability to proceed on a second complaint from only one complainant if it determines that the noise affects only that complainant.

Fee Notice

We note that, because this ordinance would impose a new fee, notice of its proposed adoption should be given in accordance with the provisions of California Government Code sections 66018 and 6062a. Those sections of State law require that prior to adoption of a new or increased fee a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Animal Services asking that the Department make any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Assistant City Attorney Dove S. Else at (213) 978-8154. He or another member of this Office will be present when you consider this matter in order to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO ECHEVERRIA
Chief Assistant City Attorney

PBE:DSL:lee
Transmittal

ORDINANCE NO. _____

An ordinance amending Sections 53.18.5 and 53.63 and adding Section 53.34.3 to Article 3, Chapter 5 of the Los Angeles Municipal Code (LAMC) to authorize the Department of Animal Services (Department) to conduct barking dog and other hearings in the absence of a dog license, to establish more definite barking dog noise and distance criteria and create a Restricted Dog Permit.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The title, first unnumbered paragraph and Subsection (a) of Section 53.18.5 of the Los Angeles Municipal Code are amended to read as follows:

SEC. 53.18.5. HEARING PROCEDURES AND LICENSE REVOCATIONS.

This section shall govern hearing procedures for barking dog complaints, the revocation of dog licenses and related matters. For purposes of this section the term "dog" includes the plural and the term "owner" means the owner or person having charge, care or custody of a dog.

(a) **Hearing.** A hearing pursuant to this Section shall be held to issue or reissue a dog license upon terms, conditions and restrictions. A hearing shall also be held to revoke a dog license that has previously been issued or reissued upon terms, conditions or restrictions where the owner has either failed to comply with the terms, conditions or restrictions or the violation continues to exist or reoccurs. A hearing also may be held in the absence of a dog license or in the absence of a valid license. Following the hearing, the license may be issued or reissued upon terms, conditions and restrictions, or the owner may be ordered to surrender the dog to the Department or remove the dog from the City as if the license was revoked.

Sec. 2. Paragraph 1 of Subsection (l) of Section 53.18.5 of the Los Angeles Municipal Code is amended to read as follows:

1. If, at the initial hearing the Hearing Examiner determines that the allegations are true, the Hearing Examiner shall recommend that the license be issued or reissued upon reasonable terms, conditions or restrictions for the training, handling or maintenance of the dog to abate the condition which gave rise to the hearing. In the absence of a dog license or of a valid license, the Hearing Examiner may recommend that the license be issued upon reasonable terms, conditions or restrictions or if the owner is unwilling to accept an issued or reissued license, that the dog be surrendered to the Department or removed from the City. Surrendering the dog to the Department or removing the dog from the City shall be in addition to any civil or criminal penalties for failure to have a valid license.

Terms, conditions, or restrictions may include but are not limited to the following:

- A. selection of locations within the owner's property or premises where a dog shall not be kept;
- B. requirements as to size, construction or design of an enclosure where a dog may be kept;
- C. specialized training from a trainer or training program approved by the Department to correct any of the dog's behavioral problems;
- D. removal of one or more dogs from the premises to another location or prohibiting the addition of any new dog at the premises;
- E. types and method of restraint, or muzzling, or both;
- F. photo identification, permanent marking, electronic identification device, or all of these, for purposes of identification;
- G. sterilization, even if otherwise exempt;
- H. a civil penalty as provided by ordinance for an administrative citations enforcement program;
- I. requiring the owner to obtain a Restricted Dog Permit with additional terms, conditions and restrictions pursuant thereto.

Sec. 3. Paragraph 3 of Subsection (l) of Section 53.18.5 of the Los Angeles Municipal Code is amended to read as follows:

3. If the owner fails to appear at a hearing or absents himself from a hearing, the Hearing Examiner may continue the matter or proceed with the hearing as the Hearing Examiner deems appropriate. Notwithstanding any other provision of this Section, the Hearing Examiner may recommend that the license of any owner who fails to attend a hearing or absents himself from a hearing be revoked if the evidence establishes that the allegations are true. In the absence of a license or a valid license, the Hearing Examiner may recommend that the dog be surrendered to the Department or removed from the City as if the license were revoked. Surrendering the dog to the Department or removing the dog from the City shall be in addition to any civil or criminal penalties for failure to have a valid license.

Sec. 4. Subsection (n) of Section 53.18.5 of the Los Angeles Municipal Code is amended to read as follows:

(n) **Revoked License - Removal of Animal from City.** Following a hearing, if a dog license is revoked, or in the absence of a license or a valid license, if the dog has been ordered to be surrendered to the Department or removed from the City as if the license were revoked, the owner shall surrender the dog to the Department or permanently remove the dog or cause the dog to be permanently removed from the City within five (5) calendar days after either the time for appeal, as provided herein, has passed without an appeal being filed, or the decision of the General Manager revoking a dog license or ordering the dog to be surrendered to the Department or removed from the City as if the license were revoked, has been served upon the dog owner. The dog shall be impounded by the Department if found within the City after the five day period. Failure to remove a dog from the City or surrender it to the Department as provided herein is a misdemeanor.

Sec. 5. Paragraph 1 of Subsection (q) of Section 53.18.5 of the Los Angeles Municipal Code is amended to read as follows:

1. The decision of the General Manager to revoke a dog license or order a dog to be surrendered to the Department or removed from the City as if the license were revoked, to declare a dog to be a dangerous animal, to issue or re-issue a dog license upon terms, conditions or restrictions, or refuse to issue a new license pursuant to Subdivision (r) may be appealed to the Board of Commissioners by the owner of the dog as provided herein.

Sec. 6. Section 53.34.3 is added to Article 3 of Chapter V of the Los Angeles Municipal Code to read as follows:

SEC. 53.34.3. RESTRICTED DOG PERMIT.

(a) Following a hearing in accordance with Section 53.18.5 or Section 53.34.4, if the Hearing Examiner determines that the bite, attack or injury was the result of improper or negligent training, handling or maintenance, and that the owner or custodian is able and willing to properly train, handle or maintain the dog and that a similar incident is not likely to occur if the terms, conditions and restrictions are followed, the Hearing Examiner may recommend that a Restricted Dog Permit be issued as part of the terms, conditions or restrictions pursuant to Subsection (l) of Section 53.18.5, to include, but not limited to, some or all of the following additional terms, conditions or restrictions to protect the public health, safety and welfare:

1. That in addition to the dog license tax and fee, the owner shall pay a Restricted Dog Permit fee of \$120.00 annually, which is subject to reassessment in accordance with Section 53.12 (a).

2. That the dog owner obtain and maintain liability insurance in an amount not less than \$100,000 or in an amount determined by the City's Risk

Manager, provide proof of insurance and notify the City at least thirty (30) days prior to cancellation or non-renewal of the insurance coverage.

3. Post warning signs at all property entrances and notify the occupants of the adjacent property and/or within a 150 foot radius of the Restricted Dog Permit.

4. That the dog not be transferred or placed in the custody of another person without the written consent of the General Manager, except in a licensed dog kennel or with a California licensed veterinarian. The dog owner must notify any transferee, kennel, veterinarian or other custodian that the dog is subject to a Restricted Dog Permit.

5. Other terms, conditions and restrictions may include but are not limited to the training, handling and maintenance of the dog, the wearing of a muzzle, properly securing the owner's or custodian's property and that the dog only be walked by the owner or another responsible adult.

6. That the dog owner and custodian, if separate from the owner, sign a declaration that he or she will abide by the terms, conditions and restrictions of the license and the Restricted Dog Permit.

(b) A Restricted Dog Permit shall not be issued for a dog that has fatally injured a human being or to a dog owner if any current or previously owned dog of that owner has fatally injured a human being.

(c) A Restricted Dog Permit may be rescinded by the General Manager if the owner demonstrates that measures taken by the owner or changed circumstances have mitigated the danger to the public, including the permanent removal of the dog from the City.

(d) The Department may amend or revoke a Restricted Dog Permit and the dog license following a hearing if the owner has failed to comply with the terms, conditions or restrictions of the Permit or of the dog license.

Sec. 7. Section 53.63 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 53.63. BARKING DOG NOISE.

It shall be unlawful for any person to permit any dog or dogs under his or her charge, care, custody or control to emit any excessive noise after the Department has issued a written notice advising the owner or custodian of the alleged noise and the procedures as set forth below have been followed. For purposes of this section, the term "excessive noise" shall mean noise which is unreasonably annoying, disturbing, offensive, or which unreasonably interferes with the comfortable enjoyment of life or

property of one or more persons occupying property in the community or neighborhood, within reasonable proximity to the property where the dog or dogs are kept. The noise must be continuously audible for ten (10) minutes or intermittently audible for thirty (30) minutes within a three (3) hour period. However, the provisions of this section shall not apply to any commercial animal establishment permitted by zoning law where located. The Department is responsible for enforcement of the provisions of this Section as follows:

(a) First Complaint.

1. Upon receiving a written complaint involving a whining, barking, howling, or similar dog noise, the Department shall issue a written notice to the owner or person having charge, care, or custody (hereinafter in this Section referred to as the owner) of the dog or dogs advising that person of the noise complaint and requesting immediate abatement of any excessive noise.

2. Complaints to the Department must be submitted in writing, and shall include the name, address and telephone number of the complainant(s) as well as the address of the dog owner and a description of the noise.

(b) Second Complaint.

1. If, within 15 days from the issuance of the written notice pursuant to (a) above, a second complaint is received from the complainant along with a written complaint from an additional complainant residing in a separate residence within reasonable proximity to the dog(s), the Department shall, by written notice, require the complainant or complainants and the owner of the dog or dogs to appear at a meeting before a Department representative to discuss possible ways and means to resolve the problem. The Department may proceed with a meeting based on a second complaint from only one complainant if the Department determines that the noise affects that complainant. If the problem remains unresolved, the matter shall be set for hearing as provided by Section 53.18.5.

2. If the owner fails to appear before the Department representative, and there is evidence that the dog or dogs have emitted excessive noise, the problem shall be deemed unresolved, and the matter set for hearing as provided by Section 53.18.5.

Sec. 8. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
DOV S. LESEL
Assistant City Attorney

Date 5-26-2011

File No. 07-1996