



DESCHUTES COUNTY LEGAL COUNSEL

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CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION – NOT TO BE DISCLOSED

TO: Board of County Commissioners

Date: August 26, 2015

RE: Work Session Agenda, 8/31/15

File No. 29/1-008E

It has come to the Legal Department's attention that Deschutes County Code sections 6.08.050 and 8.08.040 are confusing, and arguably inconsistent with each other, regarding (a) what constitutes a nuisance caused by an animal, and (b) whether such a nuisance is a Class A or Class B violation. Amending these sections to remove inconsistencies will make these Code provisions easier to interpret and enforce.

Attached: Proposed Amendments
cc: Bonnie Baker, Recording Secretary

PROPOSED AMENDMENT

6.08.050. Conditions When Animals Are Nuisances.

A. An animal other than livestock is a public nuisance if it:

1. Bites, injures or attacks a person;
2. Chases vehicles or persons;
3. Damages or destroys property of persons other than the owner of the animal;
4. Scatters garbage;
5. Trespasses on private property of persons other than the owner of the animal;
6. Disturbs any person by frequent or prolonged noises;
7. Places a person in reasonable fear of imminent physical injury, when such incident takes place off the premises of the animal's owner or keeper;
8. Injures or kills an animal or fowl belonging to a person other than the owner or keeper of the animal;
9. Is found to be in violation of DCC 6.08.060.

B. An animal shall not be considered to be a nuisance under DCC 6.08.050 if the subject animal bites a person or another animal wrongfully assaulting the subject animal or if the subject animal bites a person or other animal trespassing upon premises occupied by the dog's owner or keeper after being provoked by that person.

~~C. The owner or keeper of an animal that is a public nuisance under DCC 6.08.050(A)(1) shall be liable under DCC 6.08.090.~~

(Ord. _____, 2015; Ord. 98-008 §1, 1998; Ord. 95-031 §1, 1995; Ord. 90-019 §1, 1990;)

PROPOSED AMENDMENT

8.08.040. Definitions.

For the purposes of DCC 8.08, unless otherwise apparent from the context, certain words and phrases used in DCC 8.08 are defined as set forth in DCC 8.08.040.

"Direct transportation" means travel between different locations separated by a distance not substantially different than the length of a trip with a destination where the rider leaves the vehicle before resuming travel. "Direct transportation" includes parking places in streets and parking lots, but excludes speed contests, motocross contests, rallies and practice therefore, repair and testing of motors, accelerating the motors of stopped motor vehicles, and vehicular traffic wherein the same vehicle may be heard for more than five minutes from the same location.

"Motor vehicle" means every self-propelled vehicle and vehicle designed for self-propulsion, except road rollers, farm tractors, traction engines; provided however, that police vehicles, ambulances, fire engines and other emergency vehicles responding to emergency calls are not subject to DCC 8.08.

"Off-road motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a trailer. This includes motorcycles suitable for use off any road or on dirt trails, regardless of whether it may also be used on public streets or highways under state law. "Off-road motorcycle" includes motorcycles sold or commonly described as dirt bikes, motocross bikes, trail bikes, enduro bikes and trail bikes which in operation make crackling or explosive noises that would disturb the sleep, comfort or repose of persons 30 or more feet away.

"Unreasonably loud or raucous noise" means:

- A. Motor vehicle noise which is louder or heard for a longer period than that produced by use in direct transportation by motor vehicles with mufflers supplied by the manufacturer with the vehicle, which disturbs, injures or endangers the comfort, repose, health, peace or safety of persons 30 or more feet away, if such noise is not emitted in order to make the motor vehicle move up to the maximum speed limit on public streets, roads, and/or highways for the purpose of direct transportation; or
- B. Noise, which violates the standards of the Environmental Quality Commission, adopted pursuant to ORS 467.030 which are not exempt under ORS 467.035 or permitted by a variance issued under ORS 467.060;
- C. The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle except as a reasonable signal required by the exigencies of vehicular or pedestrian traffic; the creation by means of any such signaling device of any sound which disturbs the sleep, peace, quiet, comfort or repose of other persons; the sounding of any such device for an unnecessary or unreasonable period of time;
- D. The playing, using or operating of any radio, musical instrument, phonograph, television set, tape recorder or other machine or device for the producing or reproducing of sound in such a manner as to disturb the sleep, peace, quiet, comfort or repose of other persons, or at any time with louder volume than is necessary for convenient hearing by the person or persons who are in the room, vehicle or chamber in which the machine or device is operated and others who are voluntary listeners thereto. The operation of any such machine or device in such a manner so as to be plainly audible to a peace officer at a distance of 50 feet from the building, room, structure or vehicle in which it is located shall be prima facie proof of a violation of DCC 8.08.040;
- E. Using, operating or permitting to be used or operated any mechanical or electrical loudspeaker or sound amplifier, either stationary or mobile, for producing or reproducing sound which is cast upon the public streets or other public property. DCC 8.08.040 does not prohibit the reasonable use of mechanical loudspeakers or sound amplifiers in the course of noncommercial public addresses or emergency announcements required by public safety; provided however, that repetitive mechanically or electrically amplified political advertising shall not be allowed in zoned

residential neighborhoods between 10:00 p.m. and 7:00 a.m. if it disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;

F. Yelling, shouting, hooting, whistling or singing on the public streets, between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to disturb the sleep, peace, comfort or repose of persons more than 30 feet away. DCC 8.08.040 shall not apply to applause and cheering at public meetings, lectures, sports events and shows held at schools, stadiums, auditoriums, churches, meeting halls, public parks and public playgrounds;

~~G. The keeping of any animal which by frequent or long continued noise disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;~~

HG. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, as a warning of fire or danger, or upon request of proper authorities;

IH. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises there from;

JL. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded, or in such a manner as to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;

KJ. The loading or unloading of any vehicle or the opening, closing or destruction of bales, boxes, crates and containers, so as to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;

LK. The construction including excavation, demolition, alteration or repair of any building, street, sidewalk, driveway, sewer or utility line between the hours of 10:00 p.m. and 7:00 a.m., except as provided in DCC 8.08.080;

ML. The creation of any sound on any street adjacent to any school, institution of learning, church or court, while the same is in use, or adjacent to any hospital, nursing home or other institution for the care of the sick or infirm, which would tend to unreasonably interfere with the operation of the same or disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away. "Adjacent" means within 500 feet of any of such institutional building;

NM. The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pile driver, earthmoving equipment, pneumatic hammer, derrick, steam or electric hoist or other appliance or machinery, the use of which creates a sound which disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;

ON. The use of any off-road motorcycle or snowmobile where it is heard by the occupant from the premises of an inhabited residence not owned by the user. If the user has a permit issued under DCC 8.08.080(B), such person may operate the motorcycle or snowmobile within the terms of the permit;

PO. The operation of any blower, power fan, internal combustion engine, electric motor or compressor, or the compression of air, unless the sound from each machine is sufficiently muffled so as not to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away. (Ord. _____, 2015; Ord. 95-032 §1, 1995; Ord. 203.11 §4, 1980;)