



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

1/7/2020

Subject:

Adoption of Animal Abuse Registry Ordinance

Fiscal Impact:

Estimated less than \$300.00 for staff time per prior agenda item.

Dept/Office:

County Attorney's Office

Requested Action:

Approve the proposed Ordinance creating a new article in Chapter 14, Article IV, entitled "Animal Abuse Registry", establishing the Brevard County Animal Abuse Registry.

Summary Explanation and Background:

On December 17, 2019, the Board held discussion on an ordinance presented by District 2 creating an Animal Abuse Registry and directed staff to amend the proposed ordinance language presented at the meeting. The proposed ordinance (a redlined version and a clean version) is included in this report.

Options:

1. Approve ordinance;
2. Reject ordinance;
3. Propose modifications provided they are within the parameters provided by the advertisement for the ordinance.

Clerk to the Board Instructions:

Return a copy of the executed ordinance after it has been recorded with the State.



January 8, 2020

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item H.1., Adoption of Animal Abuse Registry Ordinance

The Board of County Commissioners, in regular session on January 7, 2020, approved striking the wording, "however, such definition shall exclude livestock as defined in this section" from the definitions of Animal, and removing the definition of "livestock"; and adopted Ordinance No. 20-01, creating a new article in Chapter 14, Article IV, entitled "Animal Abuse Registry", establishing the Brevard County Animal Abuse Registry. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

January 9, 2020

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 20-01, which was filed in this office on January 9, 2020.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO. 20__ - 01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 14 OF THE BREVARD COUNTY CODE OF ORDINANCES, "ANIMALS"; CREATING A NEW ARTICLE IN CHAPTER 14, ARTICLE IV, ENTITLED "ANIMAL ABUSE REGISTRY", ESTABLISHING THE BREVARD COUNTY ANIMAL ABUSE REGISTRY; PROVIDING FOR THE PURPOSE AND INTENT FOR THE REGISTRY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND REQUIREMENTS OF THE REGISTRY; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes, the Board of County Commissioners of Brevard County, Florida (hereinafter the "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, despite the State of Florida criminalizing and prohibiting the cruel treatment of animals, instances of abuse and/or cruelty to animals continue to exist in Brevard County; and

WHEREAS, the Board finds that cruelty and abuse to animals is a serious problem and an issue of public concern; and

WHEREAS, animal ownership carries with it both rights and responsibilities with respect to the humane treatment, care, and control of owned animals; and

WHEREAS, counties throughout the State of Florida have already put in place animal abuse registries and/or databases, including Pasco, Hillsborough, Marion, and Volusia; and

WHEREAS, the Board has determined that it is in the best interest of the residents and animals of Brevard County that an online registry be created to identify individuals convicted of animal cruelty charges and/or abuse crimes; and

WHEREAS, the Board finds that it serves the public health, safety, and welfare of the residents and animals of Brevard County to establish such a registry for those convicted of abusing and/or being cruel to animals.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, as follows:

Officially filed with the Secretary of State on January 9, 2020.

Section 1. Amendments to Chapter 14 of the Brevard County Code of Ordinances.

Chapter 14 is hereby amended to include the following provisions:

Chapter 14, Article IV "Animal Abuse Registry" is hereby created and shall read as follows:

14-119. Purpose and Intent. The Brevard County Animal Abuse Registry, hereinafter referred to as the "Registry", is hereby created. The Board of County Commissioners of Brevard County, Florida, hereinafter referred to as the "Board", hereby determines and declares that a registry should be created for those who are abusive or cruel to animals. In order to ensure that the citizens and animals of Brevard County are kept safe, healthy, and protected, the Board finds that a registry for those that abuse animals or that are cruel to animals will serve the public health, safety, and welfare by identifying individuals within Brevard County convicted of animal cruelty charges and/or abuse crimes so as to prevent these individuals from adopting, purchasing, possessing, or otherwise obtaining animals from any animal shelter, pet seller, or other person or entity involved in the exchange of animals by adoption, sale, or other means.

14-120. Definition. As used in this Article, the following words and phrases are defined as follows:

Abuser shall mean any person who has been convicted of an Animal Abuse Violation in Brevard County.

Animal shall mean any living dumb creature, as provided for in Section 828.27, Florida Statutes, as may be amended.

Animal Abuse Violation shall mean a violation, whether felony or misdemeanor, of any of the following provisions of State law, as may be amended:

- (a) Section 828.12, Florida Statutes – Cruelty to animals.
- (b) Section 828.122, Florida Statutes – Fighting or baiting animals.
- (c) Section 828.123, Florida Statutes – Killing dog or cat with intent of selling or giving away pelt.
- (d) Section 828.126, Florida Statutes – Sexual activities involving animals.
- (e) Section 828.13, Florida Statutes – Confinement of animals without sufficient food, water, or exercise; abandonment of animals.

This definition shall also extend to non-criminal violations of: Section 14-51 – Failure to surrender animal or carcass; Section 14-53 – Cruel and inhumane treatment of animals prohibited; Section 14-64 – Retail sale of dogs and cats at pet stores; and, Section 14-65 – Abandonment of animals.

Animal Abuse Registry or ***Registry*** shall mean the online registry established by this Ordinance for registering and/or identifying any person convicted of an Animal Abuse Violation in Brevard County.

Convicted or ***Conviction*** shall mean an adjudication of guilt by any court of competent jurisdiction, regardless of whether upon a verdict, plea of guilty, plea of nolo contendere, or withhold of adjudication of one or more of the applicable Animal Abuse Violation(s).

County shall mean the Board of County Commissioners of Brevard County, Florida, or its officers, agents, or designees.

Officer shall mean any law enforcement officer defined in Section 943.10, Florida Statutes, as may be amended, or any animal control officer.

Service Animal shall have the same meaning as provided for in the American with Disabilities Act, as amended from time to time.

14-121. Establishment and Requirements of the Animal Abuse Registry.

- (a) Brevard County (the “County”) hereby establishes an online Animal Abuse Registry that shall contain the name, date of birth, charge(s), case number, disposition date, disposition, and other related information available to the public of Abusers who were convicted of or found to have violated an Animal Abuse Violation in the County per the Clerk of Courts records. The Registry shall be maintained by the County, or its agent shall be listed on the County’s official website, which may include on the animal control authority’s website; and may contain links to other abuse registries around the State that are available, or that may become available in the future, to be used as informational resources by the general public, as well as animal shelters or other persons or entities located in the County that sell, exchange, or otherwise transfer ownership of animals. The County and/or the animal control authority may promulgate internal policies

and procedures, as may be amended from time to time, necessary for the implementation of this Ordinance.

- (b) Prior to the sale, exchange, or other transfer of ownership of any animal, the person or entity shall make every attempt to examine the Registry to confirm that the name of the potential owner of the animal is not listed, as well as to confirm that the purchaser of the animal does not reside at a listed address for any individual on the Registry. Upon request from the animal control authority, the person or entity shall provide proof by affidavit or otherwise, that this requirement was met prior to the transfer. This prohibition does not apply to livestock as defined herein or service animals as defined by the Americans with Disabilities Act.
- (c) The Registry shall contain identifying information about each particular Abuser following his or her release from incarceration or, if not incarcerated, from the date of the judgment finding a violation of an Animal Abuse Violation for a period of ten (10) years.
- (d) The County will attempt to ensure that the information in the Registry is accurate and complete. However, the County relies on other sources for the information. As a result, the County makes no express or implied guarantee concerning the accuracy or completeness of any information or data in the Registry.
- (e) Upon notification to the County that the records of a person have been expunged by the court or of a successful appeal of a conviction of an Animal Abuse Violation by a person included in the Registry, the individual shall be removed from the Registry within ten (10) business days following notification. It shall be the individual's responsibility to initiate the removal of his or her name from the Registry by providing verified documentation to the County of grounds for removal.
- (f) No penalty, citation or enforcement procedures shall apply to Section 14-121.

Section 2. Area Encompassed. This Ordinance shall apply County-wide; however, municipal ordinances shall control to the extent of any conflict.

Section 3. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 5. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 6. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

DONE, ORDERED, AND ADOPTED in Regular Session, this 7 day of January, 2020.

ATTEST:

By:



Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By:



Bryan Lober, Chairman

(as approved by the Board on 1/7/20)

I received no less than 13 of the below verbatim identical emails within the span of a few hours starting yesterday afternoon. Prior to that time, I had not received a single negative email from anyone (constituent or otherwise) about the abuse registry.

Dear Lober,

All 13+ emails contain this typo (making it clear that those who sent this email mistakenly placed their trust in someone who provided them with wholly incorrect information).

As a resident of Brevard County, I respectfully urge you to vote NO on a proposal to establish a local animal abuser registry. I am an animal lover and want Brevard County to do everything it can to prevent animal cruelty. However,

This sounds exactly like those folks who say they support the 2nd Amendment and then they follow up with something that's anti-2nd Amendment. Everything that follows is incompatible with this qualifier.

any costs to set up and maintain an abuser registry would be a wasted investment,

Nearly all of the remotely difficult IT work has **already been done** pro bono as public outreach and a gesture of goodwill by the Clerk's Office. It's already done. The cost to set up, therefore, is *de minimus* (e.g., likely **under \$100**). The cost to maintain the registry is also negligible. Exportation of the update data will be done programmatically with exceedingly **little human involvement**. The programming is already in place at the Clerk's Office and our County IT has already confirmed that the format will work for them so that ALL records can be updated, in batch, programmatically.

particularly when a registry would likely have the unintended consequence of leaving animals more vulnerable to abuse.

This is speculation is totally unsupported by any facts.

For example, by imposing the punishment of registry listing on offenders, this proposal could have the effect of encouraging prosecutors and courts—who often see registry listing as an additional punishment—to reduce or dismiss cruelty charges, resulting in fewer convicted abusers. It could also set a precedent that may lead to fewer prosecutions of animal cruelty in other areas as well.

Wrong on all counts and in every respect – as wrong as it is ever possible to be.

As to the proposition that the courts (namely the judiciary) would reduce or dismiss charges, directly or indirectly, on account of the implementation of this registry, that is simply false. The courts do not have any discretion whatsoever to do any such

thing. I've taught criminal litigation at an ABA approved program and I have almost a decade of experience that tells me otherwise. This is absolutely, 100%, wrong. A judge could and likely would be disciplined for reducing or dismissing charges on account of this registry as there is no lawful mechanism permitting any such action.

Our duly elected State Attorney advised my office, in writing, in pertinent part, as follows: "I received your email regarding the suggestions made by many persons contacting you that being added to an animal abuser database or registry would somehow negatively influence our prosecution of animal cruelty cases. **I can assure you that is not going to happen**" (emphasis added). Our state attorney went on to add that the existence of the registry will not impact his filing decisions. He added, "In addition, if someone is already on that database or registry and commits a new offense we would most certainly consider that as a reason to request a **more harsh sentence** upon conviction for the new offense" (emphasis added). Hence, reality is the opposite of what the copied-and-pasted chain email suggests.

There are other, far better ways for Brevard County to allocate its limited resources to prevent animal cruelty, such as including pets in orders of protection and allotting funds toward better enforcement of no-contact orders.

Wrong again. It is up to the judiciary, not the Board of County Commissioners, to determine whether to include pets in injunctions (as already permitted by laws enacted by our state legislature). We have already provided a tremendous increase in funding to the Sheriff's Office – in large part to increase the number of patrol (road) deputies on the streets. This serves to allow for better enforcement of no-contact orders. The implementation of the registry is not mutually exclusive and does absolutely nothing to preclude any other act(s) which might serve to disincentivize animal abuse.

Again, as a constituent, I respectfully but urgently request that you reject a local animal abuser registry.

Thank you for your time and consideration.

Sincerely,

NAME
ADDRESS
CITY, STATE & ZIP