



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

8/24/2021

Subject:

Proposed Amendments to Section 14-57, Brevard County Code, pertaining to the creation of a nuisance from animal noises.

Fiscal Impact:

None.

Dept/Office:

County Attorney's Office on behalf of District 4

Requested Action:

It is requested that the Board of County Commissioners approve the proposed ordinance amending Chapter 14, Article II of the Brevard County Code to modify the nuisance provisions in Section 14-57, Brevard County Code, to, among other things, shorten the duration in which animal noise(s) constitutes a nuisance.

Summary Explanation and Background:

On August 3, 2021, the Board approved legislative intent and permission to advertise amendments to Section 14-57, Brevard County Code, whereby certain animals that make sounds common to that respective species for a persistent and continuous period of 30 minutes or longer, constitutes a nuisance. The County has received concerns pertaining to loud sounds emanating from animals that disturb the peace, annoy citizens, and interfere with the rights of individuals to enjoy life and property. In order to best address the harm and negative impacts caused by prolonged animal sounds that disturb the peace, it is in the best interest of the citizens of Brevard County to reduce the time period established in Section 14-57 in which a nuisance is created by persistent and continuous animal noise(s).

The proposed ordinance will reduce the time period in which a nuisance is created from 30 minutes to 15 minutes. Each separate occasion shall be considered a separate violation to be penalized in accordance with the Brevard County Code of Ordinances, including Section 14-79. In instances where a nuisance complaint is investigated by the animal control authority, there must be personal knowledge of the nuisance by the animal control officer, or affidavits from different parties residing in close proximity to the alleged nuisance. In some instances, one affidavit will be sufficient to warrant an investigation where only one party lives within a 1,000-foot radius of the property where the alleged violation occurred.

Clerk to the Board Instructions:

Upon approval by the Board, execution by the Chair and attestation by the Clerk, file the ordinance with the Department of State as required by law within the 10 day deadline.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

August 26, 2021

Honorable Rachel M. Sadoff
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Ms. Sadoff:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2021-22, which was filed in this office on August 26, 2021.

Sincerely,

Anya Grosenbaugh
Program Administrator

AG/lb



August 25, 2021

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item H.5., Proposed Amendments to Section 14-57, Brevard County Code,
Pertaining to the Creation of a Nuisance from Animal Noises

The Board of County Commissioners, in regular session on August 24, 2021, adopted Ordinance 21-22, amending Chapter 14, Article II of the Brevard County Code to modify the nuisance provisions in Section 14-57, Brevard County Code, to, among other things, shorten the duration in which animal noise(s) constitutes a nuisance. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK**

Kimberly Powell
Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: Commissioner Smith District 4

ORDINANCE NO. 2021- 22

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 14, ARTICLE II ENTITLED "ANIMAL CONTROL"; SPECIFICALLY AMENDING SECTION 14-57, "CREATION OF NUISANCE", TO MODIFY THE TIME-PERIOD THAT A DOMESTIC ANIMAL QUALIFIES AS A NUISANCE DUE TO PERSISTENT AND CONTINUOUS NOISE; ESTABLISHING PARAMETERS TO ENFORCE THE NUISANCE PROVISIONS IDENTIFIED IN SECTION 14-57 OF THE BREVARD COUNTY CODE; 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 Chapter 828, Florida Statutes, the Brevard County Board of County Commissioners (the "County") has the authority to adopt regulations to prohibit or regulate noise from domesticated animals; and

WHEREAS, the County finds that noise that is caused by domesticated animals on a continuous and persistent basis interferes with an individual's ability to quietly enjoy their property; and

WHEREAS, the County finds that a nuisance is created when these domestic animals are allowed to bark, meow, whine, howl, or make other sounds common to the species in a persistent and continuous manner, causing a negative impact on the health and overall welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are incorporated by reference into this Ordinance.

Section 2. Nuisance Process. Section 14-57, Brevard County Code, is hereby amended to read as follows:

* * *

(b) It shall be unlawful for the owner or caretaker of an animal to allow the animal to bark, meow, whine, howl, or make other sounds common to the species, persistently or continuously, for a period of 15 minutes or longer when said animal is not contained within an enclosure sufficient to baffle loud noises and render them reasonably

unobjectionable. For the purposes of this section, noise from farm animals, including exotic birds, shall not constitute a nuisance within an AU zoning classification; provided, however, that the following setback requirement shall apply only to exotic birds kept on AU property which abuts non-AU property of a residential character: a minimum set back of 100 feet between the noise source and the abutting non-AU residential property.

- (1) Each separate occasion is considered a separate violation.

* * *

(g) Any nuisance complaint may be investigated by the animal control authority. However, before a citation may be issued, the animal control officer must have personal knowledge of the nuisance or must have received at least two affidavits from different parties residing in close proximity to the alleged nuisance. One affidavit may be sufficient to warrant investigation where there is only one party residing within a 1,000-foot radius of the property where the alleged nuisance occurred.

(h) Excluding a violation of subsection (b) above, a nuisance exists where an owner of an animal or animals has been found to have violated more than four sections of this article within a 12-month period.

Section 3. Area Encompassed. This Ordinance shall apply County-wide.

Section 4. 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.

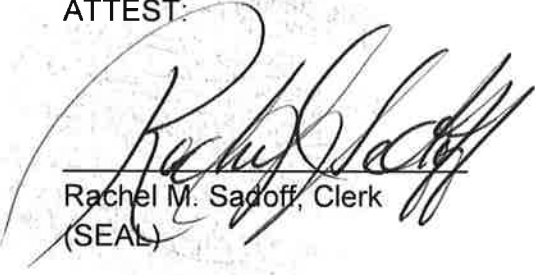
Section 5. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 6. 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 7. 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 24 day of August, 2021.

ATTEST:



Rachel M. Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair

As approved by the Board on 8-24-21