Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of October 28, 2015

DATE: October 19, 2015

FROM: John Laherty JL Asst. Legal Counsel 541-330-4645

TITLE OF AGENDA ITEM:
Consideration of adoption of Ordinance 2015-012, amending sections 6.08.050 and 8.08.040 of the Deschutes County Code in order to clarify the Code's provisions relating to nuisances caused by animals.

PUBLIC HEARING ON THIS DATE? Yes.

BACKGROUND AND POLICY IMPLICATIONS:
Currently, Deschutes County Code sections 6.08.050 and 8.08.040, both of which relate to nuisances caused by animals, are arguably inconsistent with each other. Amending these sections to remove inconsistiencese will make these Code provisions easier to interpret and enforce.

FISCAL IMPLICATIONS:
None.

RECOMMENDATION & ACTION REQUESTED:
Approval of Ordinance 2015-012

ATTENDANCE: Legal Counsel: John Laherty, Assistant Legal Counsel

DISTRIBUTION OF DOCUMENTS:
Deschutes County Sheriff Shane Nelson
Legal Counsel.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code Sections 6.08.050 and 8.08.040 relating to nuisances caused by animal noises.	* * *	ORDINANCE NO. 2015-012

WHEREAS, Deschutes County Code sections 6.08.050 and 8.08.040 both address nuisances caused by animals; and

WHEREAS, 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; and

WHEREAS, amendment of Deschutes County Code sections 6.08.050 and 8.08.040 is appropriate to cure these inconsistencies; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1: DCC section 6.08.050 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein.

Section 2: DCC section 8.08.040 is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein.

Dated this _____ of _____, 2015

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

_____
ANTHONY DEBONE, Chair

_____
TAMMY BANEY, Commissioner

ATTEST:

_____
Recording Secretary

_____
ALAN UNGER, Commissioner

Date of 1st Reading: _____ day of _____, 2015.

Date of 2nd Reading: _____ day of _____, 2015.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Anthony Debone	_____	_____	_____	_____
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____

Effective date: _____ day of _____, 2015.

ATTEST:

_____

Recording Secretary

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. 2015-012, §1 2015; Ord. 98-008 §1, 1998; Ord. 95-031 §1, 1995; Ord. 90-019 §1, 1990;

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;~~

~~H~~G. 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;

~~I~~H. 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;

~~J~~I. 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;

~~K~~J. 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;

~~L~~K. 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;

~~M~~L. 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;

~~N~~M. 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;

~~O~~N. 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;

~~P~~O. 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. 2015-012, §2, 2015; Ord. 95-032 §1, 1995; Ord. 203.11 §4, 1980.