

ORDINANCE TO AMEND CHAPTER 2, PART 8 (animals)
OF THE VALDESE TOWN CODE

WHEREAS, the town council of the Town of Valdese has determined that certain changes should be made to the Valdese Town Code relating to the number of dogs and cats that may be kept, the conditions under which they may be kept and other matters related to the keeping of dogs and cats; and

WHEREAS, the town council also desires to prohibit the keeping of wild or exotic animals, eliminate the dog licensing requirement and make certain other changes to Chapter 2 of Part 8 of the Code;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VALDESE THAT:

1. The following Code sections, Section 8-2008 titled “Maintaining kennels – generally”, Section 8-2009 titled Same; definition of maintaining a kennel”, and Section 8-2010 titled “Same; location and maintenance requirements of kennels generally; complaints; removal of health menaces,” are hereby repealed, and in lieu and in substitution thereof the following ordinances are hereby adopted.

Section 8-2008 Number of dogs and cats allowed.

A. The keeping of more than six (6) dogs or cats or any combination thereof, 16 weeks old or older, is prohibited. The keeping of more than three (3) but fewer than seven (7) dogs or cats or any combination thereof, 16 weeks old or older, shall be allowed only upon issuance of a written permit by an animal warden appointed pursuant to Section 8-2033. The procedure for obtaining a permit shall be as follows:

- (1) The applicant shall first pay a permit fee in the amount of \$25.
- (2) The applicant shall submit an application for a permit that shall contain the following information and documentation:
 - (a) location and size of the lot where the dogs and/or cats will be kept;
 - (b) size and nature of the construction of the primary structure or housing facility where the animals will reside;
 - (c) the breeds of the dogs and the breeds of the cats;
 - (d) the number of dogs and the number of cats;
 - (e) purpose of keeping the dogs and/or cats (i.e., pets, breeding, training);
 - (f) whether the keeping of the dogs and/or cats will be on a temporary (30 days or less) or permanent (excess of 30 days) basis;
 - (g) whether the dogs and/or cats will be kept primarily indoors or outside;

- (h) the sex of the dogs and/or cats and whether they are spayed or neutered;
 - (i) the owner of the animals, the person in charge of keeping the animals and the owner of the property where the animals will be kept.
- (3) Upon receipt of an application, an animal warden shall make an inspection of the outside areas of the subject premises. The animal warden may solicit comments from other interested parties, including adjoining property owners. The animal warden shall grant a permit only if the animal warden make the following findings:
- (a) Barking, howling or other noise from the dogs or noise from the cats will neither disrupt the peace and quiet of the neighborhood nor otherwise interfere with the adjacent property owners' reasonable use and occupancy of their property and the peaceful enjoyment thereof.
 - (b) Any smell, odor or unsanitary condition caused by the dogs or cats will not unreasonably interfere with the adjacent property owners' use and peaceful enjoyment of their property.
 - (c) There is no reason to believe that the dogs or cats are carriers of any disease or pose any health problem or exposure to disease for occupants of adjacent property or to pets maintained on adjacent property.
 - (d) The keeping of the dogs and/or cats is not likely to become a nuisance under any nuisance ordinance.
 - (e) The lots, pens, runs or other structures in which the animals are to be kept are located in a place that is not unsightly to the neighbors and unlikely to result in odors or unreasonably loud noises that interfere with the right of the neighbors to the peaceful use and enjoyment of their property.

In making the findings required above and in determining whether the keeping or maintaining of dogs and/or cats will constitute a violation of this chapter or any other ordinance, the standard of "a reasonable man or woman under the same or similar circumstances" shall be applied.

- (4) Each permit shall require the signed authorized consent of the permittee and any other persons whose consent is required in order to authorize an animal warden's inspection of the premises at which the animals are kept at reasonable times. The permit shall specify the number of dogs or cats or combination thereof, sixteen (16) weeks old or older, permitted to be kept on the property. The permit may have additional conditions attached to it to ensure the continuing compliance with this

chapter and the required findings set out above. Such conditions may include, but are not limited to:

- (a) Requiring dog houses, lots, pens and other similar enclosures for cats to be set back from the property line for a distance not to exceed fifty (50) feet to ensure that such enclosures are located in an area least likely to adversely affect adjacent properties.
- (b) Requiring fences, screening devices or other buffer areas, including natural vegetative screening (shrubbery and low growing trees), to ensure that unsightly conditions are not visible from adjacent property or from the nearest street.
- (c) Requiring that dilapidated and unsightly pens, enclosures and structures be repaired and maintained and that such structures be built of materials normally associated with the keeping or maintenance of animals.
- (d) Requiring routine cleaning and appropriate offsite disposal of litter, excrement and other objectionable material created by the keeping of dogs and cats.

Persons issued a permit shall be given a reasonable period of time, not to exceed ninety (90) days, within which to comply with any special conditions imposed in the permit, depending on how extensive the repairs and construction of enclosures will be and the expense of compliance.

- (5) The permit issued pursuant to this section shall be a one-time permit which shall remain in full force and effect so long as the applicant and holder of the permit shall remain in compliance with the requirements of the permit, this chapter and the Town Code.
- (6) No permit issued pursuant to this section shall be a defense to any action brought pursuant to Section 8-2022. The animal warden may refuse to issue a permit, and after having issued a permit, may revoke the permit upon finding any of the following:
 - (a) Any material misrepresentation in the application for a permit.
 - (b) Any willful violation by the applicant or permittee of this chapter or of the Animal Welfare Act, G.S. 19A-20 et. seq.
 - (c) Any violation of the terms and conditions of the permit issued pursuant to the terms of this chapter.
 - (d) Any violation of federal, state or local laws that relate to animals, zoning, nuisances or the condition of the property.

- (7) Upon revocation of a permit, the dogs and/or cats in violation of this section must be removed for the lot within seven (7) days from the date the permittee is notified of the revocation.
- (8) Any denial of an application for a permit shall be in writing and shall specify in detail the reasons for the denial and, if appropriate, how any deficiencies may be remedied.

B. This Section shall not apply to animals kept by a commercial kennel or pet shop licensed in accordance with state and local laws or to animals kept by a facility licensed or regulated by the Department of Agriculture or the North Carolina Veterinary Medical Board.

Section 8-2009

Sanitation.

Any person owning, harboring, walking, in possession of or in charge of a dog, cat, or other animal which defecates on public property, public park property, public right of way or any private property without permission of the private owner, shall immediately remove all feces deposited by the animal. All feces removed in accordance with this section shall be placed in a suitable bag or other container that closes and shall be promptly disposed of in a lawful manner. The provisions of this section shall not apply to blind persons using service dogs as guides.

Section 8-2010

Keeping of wild or exotic animals prohibited.

It shall be unlawful for any person to own or have in their possession or on property within the town limits of Valdese any exotic or wild animal. An exotic or wild animal is an animal that would ordinarily be confined to a zoo, or one that would ordinarily be found in the wilderness of this or any other country or one that is a species of animal not indigenous to the United States or to North America, or one that otherwise is likely to cause a reasonable person to be fearful of significant destruction of property or of bodily harm and the latter includes, but is not limited to: monkeys, raccoons, squirrels, ocelots, bobcats, wolves, hybrid wolves, venomous reptiles, and other such animals. Such animals are further defined to include those mammals or non-venomous reptiles weighing over fifty (50) pounds at maturity which are known at law as *ferae naturae*. Exotic or wild animals specifically do not include animals of a species customarily used in North Carolina as ordinary household pets, animals of a species customarily used in North Carolina as domestic farm animals, fish confined in an aquarium other than piranha, birds, or insects.

Section 8-2011

Injunctions.

Any provision of this chapter may be enforced by injunction and order of abatement. When a violation of such provision occurs, the town may apply to a general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

Section 8-2012 Penalties.

- (a) Any violation of this chapter shall be deemed a non-criminal violation for which a civil penalty as set forth in subparagraph (d) may be assessed.
- (b) The person in violation of this chapter shall be issued a written notice of violation and penalty and payment of the penalty shall be made to the town within five (5) business days of receipt of the notice. Notice of the civil penalty shall be delivered in person or mailed by certified mail, return receipt requested, to the person's last known address.
- (c) Upon a person's failure to pay the required amount within the designated 5-day period, the town may institute a civil action in the nature of debt to recover such amount.
- (d) The civil penalty for the first violation within a 24-month period shall be \$25; the penalty for the second violation within a 24-month period shall be \$50, the penalty for the third violation within a 24-month period shall be \$100, and the penalty for the fourth and any subsequent violation within a 24-month period \$200.

2. Section 8-2022 titled "Conditions under which dogs may be declared a nuisance" is hereby amended to read as follows:

Section 8-2022 Conditions under which dogs may be declared to be a nuisance.

- A. The keeping of any dog in such manner or the keeping of dogs in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:
 - (1) The keeping of any dog that by continued or repeated howling, yelping, barking or otherwise, causes loud noises that would disturb the quiet, comfort or repose of a reasonably prudent person on adjoining property.
 - (2) The keeping of any dog that is habitually at large.
 - (3) The keeping of a cage, pen or other structure used for restraining animals within ten (10) feet of the outer limits of the lot upon which the cage, pen or other structure is situated; provided, however, this setback requirement shall not be applicable where the placing of the cage, pen or other structure within the 10-foot area does not result in locating the cage, pen or other structure within fifty (50) feet of the nearest household occupied by persons other than the owner or keeper of the cage, pen or other structure.
 - (4) Allowing or permitting a dog to damage the property of anyone other than its owner, including, but not limited to, turning over garbage

containers, damaging gardens, flowers or vegetables, or defecating upon the property of another.

- (5) Maintaining a dog or dogs in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person on adjoining property
- (6) Maintaining a dog that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, animals walked on a leash, bicycles or other vehicles.
- (7) Failing to confine a female dog while in heat in a secure enclosure in such a manner that she will not be in contact with another dog, or attract other dogs.
- (8) The keeping of more than three (3) but fewer than seven (7) dogs or cats or any combination thereof without a permit as provided in Section 8-2008, or the keeping of more than six (6) dogs or cats, or any combination thereof. This subsection shall not apply to offspring under the age of 16 weeks and to dogs kept by a commercial kennel or a pet shop licensed in accordance with state and local law and to dogs kept by a facility licensed or regulation by the Department of Agriculture or the North Carolina Veterinary Medical Board.

3. Section 8-2025 titled "Dog license tax" is hereby repealed.

The repeal, amendment and adoption of the ordinances referred to above shall become effective immediately upon adoption.

ADOPTED THIS 1ST DAY OF AUGUST, 2011.

TOWN OF VALDESE

By: _____

James L. Hatley, Mayor

ATTEST:

Town Clerk

(corporate seal)