

COUNCIL OF THE COUNTY OF MAUI

HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE

November 1, 2013

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on October 17, 2013, makes reference to County Communication 12-201, from Councilmember Gladys C. Baisa, transmitting a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04, MAUI COUNTY CODE, RELATING TO ANIMAL CONTROL”.

The purpose of the proposed bill is to add new definitions and amend existing definitions relating to animal control; amend regulations relating to animals, dangerous dogs, and impoundment; and amend the membership requirement for the Animal Control Board.

Your Committee notes a coalition of animal owners, agencies dealing with animals, and other interested parties had been working on this proposed bill over the past several years. Recent circumstances had illustrated the limitations of existing laws, and the parties sought consensus on how best to address these limitations.

The proposed bill allows for a more humane approach to control animals, including those deemed dangerous, and clarifies the procedure to be used when impounding these animals. The proposed bill also removes the requirement to have a veterinarian on the Animal Control Board in an attempt to ensure that recruiting a full complement of board members is not hindered.

Your Committee revised the proposed bill by substituting “may” for “shall” in proposed Subsection 6.04.046(A)(1). The revision would give an enforcement or animal control officer discretion when designating a dog as dangerous.

Testimony from representatives of the Maui Humane Society, including several animal control officers, stated their support for this revision. They stated that to be obliged to designate a dog as dangerous would result in designating many dogs

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inappropriately. Your Committee concurred with the recommendation, and revised the bill to allow for discretion when designating a dog as dangerous.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Crivello, Vice-Chair Cochran, and members Baisa, Carroll, Couch, Guzman, and Victorino voted "aye".

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revision and nonsubstantive revisions.

Your Housing, Human Services, and Transportation Committee RECOMMENDS the following:

1. That Bill _____ (2013), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04, MAUI COUNTY CODE, RELATING TO ANIMAL CONTROL", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 12-201 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



STACY CRIVELLO, Chair

ORDINANCE NO. _____

BILL NO. _____ (2013)

A BILL FOR AN ORDINANCE AMENDING
CHAPTER 6.04, MAUI COUNTY CODE,
RELATING TO ANIMAL CONTROL

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 6.04.010, Maui County Code, is amended by amending the definition of "Dangerous dog" to read as follows:

"Dangerous dog" means [any dog which attacks a person while on or off the owner's property, or a domestic animal while off the owner's property causing bodily injury to the person or serious injury or death to a domestic animal, or behaves in a manner that a reasonable person would believe poses an imminent threat of bodily injury to one or more persons or serious injury or death to domestic animals. A dog's breed shall not be considered in determining whether or not it is dangerous. Mere growling or barking or a combination of both shall not constitute grounds upon which to find a dog to be dangerous.] any dog deemed dangerous by an enforcement or animal control officer."

SECTION 2. Section 6.04.010, Maui County Code, is amended by amending the definition of "Enforcement officer" to read as follows:

"Enforcement officer" means any law enforcement officer, any employee of the County authorized to enforce this chapter, and any animal control employee [of the humane society] authorized to enforce this chapter."

SECTION 3. Section 6.04.010, Maui County Code, is amended by amending the definition of "Humane manner" to read as follows:

"Humane manner" means care sufficient to preserve the health and well being of an animal and, except for emergencies or circumstances beyond the reasonable

control of the owner, includes, but is not limited to, the following requirements:

1. Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;

2. Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs;

3. Access to a barn, dog house, or other suitable shelter sufficient to protect the animal from wind, rain, [or] and sun, [and with adequate bedding to protect from wet and dampness;] said shelter shall ensure the animals health and well-being;

4. The shelter shall contain adequate bedding to protect the animal from wet and dampness;

[4.] 5. Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect, [or] and disease;

[5.] 6. Adequate space for exercise necessary for the health of the animal consistent with prudent animal care practices and access to a dry place for the animal to rest;

[6.] 7. If confined, confinement area kept reasonably clean and free from excess waste or other contaminants which could affect the animal's health and air temperature suitable for the animal involved.

The owner is responsible for finding the animal another home, or turning it over to [the humane society] animal control, if the owner cannot care for the animal."

SECTION 4. Section 6.04.010, Maui County Code, is amended by amending the definition of "Impound" to read as follows:

"Impound" means to seize and take physical custody of an animal, and place it in the care of [the humane society or public pound.] animal control."

SECTION 5. Section 6.04.010, Maui County Code, is amended by amending the definition of "Under restraint" to read as follows:

"Under restraint" means kept on real property [that is fully enclosed,] with the express consent of the property owner[; or kept within a kennel or other

enclosure with secure sides, top, and bottom; or kept secured by a leash on real property with the express consent of the owner;], in a manner which prevents the dog from exiting the property of its own volition. Examples shall include, but not be limited to, fully enclosed property, kennels, and tethers; or kept secured by a leash or lead of not more than [six] ten feet in length held by or tied to a responsible person; or, if in the bed of a truck, secured to prevent the dog from climbing or falling out of the truck bed."

SECTION 6. Section 6.04.010, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Equine animal" means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.

"Animal control" means the organization contracted with for the seizure and impounding of all unlicensed dogs, and for the maintenance of a shelter or pound for unlicensed dogs, and for lost, strayed, and homeless dogs, and for the destruction or other disposition of seized dogs not redeemed as provided in chapter 143 of the Hawaii Revised Statutes.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Intentionally" shall have the same meaning as ascribed to the term in section 702-206(1), Hawaii Revised Statutes.

"Knowingly" shall have the same meaning as ascribed to the term in section 702-206(2), Hawaii Revised Statutes.

"Muzzle" means a muzzling device that prevents the dog from biting without injuring the dog or interfering with its vision or breathing.

"Negligently" shall have the same meaning as ascribed to the term in section 702-206(4), Hawaii Revised Statutes.

"Owner's property" means property owned, leased, or rented by the owner of the dog.

"Pet animal" means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only,) so long as not bred for consumption.

"Recklessly" shall have the same meaning as ascribed to the term in section 702-206(3), Hawaii Revised Statutes."

SECTION 7. Section 6.04.040, Maui County Code, is amended to read as follows:

"6.04.040 Animal regulations--general. A. An owner of a dog shall keep the dog under restraint, except for the following:

1. A dog being used by law enforcement agencies for law enforcement purposes;

2. A dog used during hunting; accompanied by its owner, and used with the consent of the owner of the real property upon which the hunting occurs;

3. A dog used during organized competitions, or during training for such competitions, accompanied by its owner, and used with the consent of the owner of the real property upon which the dog is used; and

4. A dog being monitored by its owner or handler within the confines of an authorized dog park.

B. An owner of an animal shall treat the animal in a humane manner. Owners of pet animals shall be subject to the penalties as provided in section 711-1109(1)(b), Hawaii Revised Statutes, pertaining to cruelty to animals in the second degree. Owners of all other animals shall treat the animal in a humane manner and be subject to the penalties as provided in section 6.04.110.C.

C. An owner of a dog shall not allow the dog to cause a nuisance. The owner shall be held responsible for every behavior of such dog under the provisions of this chapter.

D. No person shall abandon an animal.

E. An owner of a dog shall not intentionally, knowingly, recklessly, or negligently permit the dog to:

1. [Attack] While on or off the owner's property, attack a person [or domestic animal]; causing bodily injury to the person; or

2. [Behave in a manner that a reasonable person would believe poses an imminent threat of bodily injury to a person or serious injury or death to a domestic animal. The terms "negligently", "intentionally", "knowingly", and "recklessly" shall have the same meaning as are ascribed to the terms in section 702-206, Hawaii

Revised Statutes.] While off the owner's property, attack a pet animal, equine animal, goat, sheep, other domesticated animal, or any animal that is listed as threatened or endangered by the United States Fish and Wildlife Service, causing serious bodily injury or death to the animal; or

3. While off the owner's property, behave in a manner that a reasonable person would believe poses an imminent threat of bodily injury to one or more persons; or

4. While off the owner's property, behave in a manner that a reasonable person would believe poses an imminent threat of serious bodily injury or death to a pet animal, equine animal, goat, sheep, other domesticated animal, or any animal that is listed as threatened or endangered by the United States Fish and Wildlife Service.

F. [No person shall own, harbor, train, or use any dog for the purpose of dog fighting.

G.] Any person who harvests aquatic life for sale for aquarium purposes shall:

1. Treat aquatic life in a humane manner. For the purposes of this section, inhumane treatment of aquatic life includes:

a. Intentionally or knowingly causing injury to aquatic life, including: piercing or deflating a fish's swim bladder; cutting or trimming the fin or spine of any fish; withholding food for more than twenty-four hours for transport purposes, including carrying or causing to be carried upon any vehicle or other conveyance.

b. Intentionally, knowingly, recklessly, or negligently carrying or causing to be carried in or upon any vehicle or other conveyance in a manner resulting in the injury or death to aquatic life.

2. For each species, document and biannually submit to [the humane society] animal control the mortality rates, including cause of death, if known, of all aquatic life collected for sale for aquarium purposes. The most recent biannual report required by this subsection must also be presented to an enforcement officer at any time upon request.

3. No provision of this chapter shall be construed to repeal or otherwise limit any provision of chapter 6.01 of this title."

SECTION 8. Section 6.04.045, Maui County Code, is repealed.

["6.04.045 - Dog regulations—dangerous dogs. When a dog is deemed dangerous, the owner shall comply with the following conditions of ownership:

A. Immediately and at all times, an owner of a dangerous dog shall inform the humane society of the address of the property where the dog is kept and any change of address and shall restrict the movement of the dog as follows:

1. The dog shall be confined to the owner's home within a structure not open to the public, where the dog cannot exit the structure on its own volition; provided that screen door or window screens shall not be deemed to prevent the dog from exiting the structure; or

2. When outdoors, the dog shall be confined within a locked fenced area consisting of a fully enclosed structure with secure sides, top, and bottom from which it cannot escape; or

3. When outdoors the dog shall be attended and kept on a leash of not more than three feet in length with a minimum tensile strength of three hundred pounds held by or attached to a responsible person eighteen years of age or older and, in addition, the dog shall be muzzled with a muzzling device which prevents the dog from biting, and does not injure the dog, and does not interfere with its vision or breathing.

B. Within ten days, the owner of a dangerous dog shall post a sign or signs indicating "beware of dangerous dog" in a prominent and clearly visible place at the access to the real property where the dog is kept, and on the building or structure in which the dog is confined. In addition to these locations, the board may order additional signs to be placed at additional locations as deemed necessary, advising the public of the presence and dangerous nature of the dog.

C. Within ten days, the owner of a dangerous dog shall procure liability insurance in an amount not less than \$50,000 to cover the medical and/or veterinary cost resulting from potential future actions of the dog. The insurance policy shall provide that the policy shall not be canceled unless thirty days' written notice is first given to the board and the humane society. Proof of said insurance shall be provided to the board and to the humane society. The owner of a dangerous dog shall

produce evidence of the insurance policy upon request of any enforcement or police officer.

D. The owner of a dangerous dog shall:

1. Notify the humane society within twenty-four hours after the owner knows or reasonably should know that the movement of the dog was not restricted as required by this section, or that the dog attacked a human being or domestic animal.

2. Upon the death of a dangerous dog, notify the humane society immediately and make the body available for identification.

3. Advise the humane society before selling or giving the dangerous dog away. The new owner will be given a dangerous dog notice and shall be subject to all applicable laws. It is a violation of this law for any person to transfer ownership of a dangerous dog from such person to another person without compliance with this procedure.

4. Advise the humane society of any claims or lawsuits resulting from further instances of attack by the dangerous dog.

5. Within thirty days, permanently identify the dangerous dog by injecting into the dog an identification microchip using standard veterinary procedures and practices, which microchip shall include an identification number for the dog and the identification of the person performing the procedure to be registered with the humane society.

6. Accompanied by the dog, attend, and complete within six months training sessions conducted by an animal behaviorist, a licensed veterinarian or other recognized expert in the field. The owner shall be responsible for all costs associated with the evaluation and training ordered.

7. Within thirty days, neuter or spay the dog at the owner's expense, unless medically contraindicated.

E. If an enforcement officer has probable cause to believe that a dog is dangerous, the officer may give the owner of the dog a written notice that the dog is a dangerous dog, and is subject to the conditions of ownership as a dangerous dog. The notice shall state that the owner may, within ten days, submit to the board a written request for a hearing to dispute the designation of the dog as a dangerous dog. After receiving the request for a hearing, the board shall hold a hearing and, after the hearing, shall notify the owner in writing

of its decision. A decision of the board that a dog is not a dangerous dog, shall not preclude a subsequent designation of the dog as a dangerous dog for other cause.

F. If an enforcement officer has probable cause to believe that a dog has attacked a person or domestic animal, or that the dog has behaved in a manner that a reasonable person would believe poses an imminent threat of bodily injury to a person or of serious injury or death to a domestic animal, the officer may immediately have the dog seized and impounded, and issue a notice to the owner to report to the board. At the owner's request, such impoundment may be at the premises of a licensed veterinarian or at a commercial kennel of the owner's choice. All expenses of the boarding and retention of the dog shall be borne by the owner.

G. In the event the owner fails to appear before the board at the time and place cited in the notice, the ownership of the dog shall be deemed forfeited and the board may thereafter order disposition of the dog as it deems appropriate. Notwithstanding any forfeiture of ownership or voluntary relinquishment of ownership of the dog, the owner shall remain responsible for all expenses of boarding the dog and any fees which may be imposed by the board.

H. The regulations in this section shall be in addition to other regulations under this chapter.

I. Any enforcement officer is empowered to make such inquiries as are deemed necessary to ensure compliance with this section, and may enter upon private property for purposes of inspecting the premises for compliance with this section.

J. All dogs designated as "vicious" dogs by the humane society prior to the enactment of ordinance 2922, shall be re-designated as "dangerous dogs" as defined by section 6.04.010, and shall be subject to this section."]

SECTION 9. Chapter 6.04, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"6.04.046 - Dog regulations-dangerous dogs. A. Dangerous dog designation.

1. An enforcement or animal control officer may designate a dog as dangerous if the officer has

probable cause to believe that the dog has committed any of the following:

a. While on or off the owner's property, attack a person, causing bodily injury to the person;

b. While off the owner's property, attack a pet animal, equine animal, goat, sheep, other domesticated animal, or any animal that is listed as threatened or endangered by the United States Fish and Wildlife Service, causing serious bodily injury or death to the animal;

c. While off the owner's property, behave in a manner that a reasonable person would believe poses an imminent threat of bodily injury to one or more persons;

d. While off the owner's property, behave in a manner that a reasonable person would believe poses an imminent threat of serious bodily injury or death to a pet animal, equine animal, goat, sheep, other domesticated animal, or any animal that is listed as threatened or endangered by the United States Fish and Wildlife Service.

2. A dog's breed shall not be considered when making the determination of whether a dog is dangerous.

3. Mere growling or barking or a combination of both shall not constitute grounds upon which to designate a dog dangerous.

B. The enforcement or animal control officer shall give the owner of a dog designated as dangerous a written notice informing the owner:

1. That the dog has been designated a dangerous dog;

2. That the owner shall be subject to the conditions found in subsection C; and

3. That the owner may, within ten days, submit to the board a written request for a hearing to dispute the designation of the dog as a dangerous dog.

C. Conditions of ownership.

1. Address.

a. Animal control shall, at all times, have a record of the address of the real property where the dog is kept.

b. The owner shall be responsible to notify animal control, in advance, of any change of address.

c. The owner shall provide animal control with the express, written consent of the owner of the real property where the dog is kept, in the case where the dog owner is not the owner of the real property.

2. The owner shall restrict the dogs movement as follows:

a. When confined indoors, the dog shall be confined in a structure that is not open to the public and is configured in a manner that the dog cannot exit the structure of its own volition, screen doors and window screens shall not be considered proper barriers for preventing the dogs exit;

b. When confined outdoors, the dog shall be confined within a locked fenced area, consisting of a fully enclosed structure, with secure sides, top, and bottom, preventing the dog's head from protruding outside the confines of the structure and from which the dog cannot exit of its own volition;

c. When outdoors and outside of a locked fenced area meeting the requirements of subparagraph b, the dog shall wear a muzzle and be attended to and kept on a leash not more than four feet in length with a tensile strength of at least three hundred pounds, held by, or attached to, a responsible person eighteen years of age or older.

d. When in the bed of a truck, the dog shall wear a muzzle and be secured in a manner that prevents the dog from climbing or falling out of the truck bed.

3. Within ten days of the dangerous dog designation, the owner shall:

a. Post a sign or signs, of reasonable size, indicating "beware of dog" in a prominent and clearly visible place at the access to the real property where the dog is kept, and on the building or structure in which the dog is confined; and

4. Within thirty days of the dangerous dog designation, the owner shall:

a. Permanently identify the dangerous dog by injecting into the dog an

identification microchip using standard veterinary procedures and practices, which microchip shall include an identification number for the dog and the identification of the person performing the procedure to be registered with animal control; and

b. Neuter or spay the dog at the owner's expense, unless medically contraindicated. In the event that the dangerous dog designation is being appealed, within thirty days of confirmation of the designation by the board, unless otherwise specified by the board.

c. Procure and produce evidence to animal control of liability insurance in an amount not less than \$50,000 to cover the medical and/or veterinary costs resulting from potential future actions of the dog. The insurance policy shall provide that the policy shall not be canceled unless thirty days written notice is first given to the board.

5. Within six months of the dangerous dog designation, the owner shall, while accompanied by the dog, attend and complete training sessions conducted by an animal behaviorist, a licensed veterinarian or other recognized expert in the field. Upon completion, the owner shall transmit documentation of completion to animal control. The owner shall be responsible for all costs associated with the evaluation and training ordered.

6. The owner shall produce proof of compliance with any of the conditions found in this subsection upon the request of the board, animal control, or any enforcement officer.

7. The owner shall notify animal control within twenty-four hours after the owner knows, or reasonably should know, that the movement of the dog was not restricted as required by paragraph 2 of subsection C, or behaved in a manner described in subsection A.

8. Upon the death of a dangerous dog, the owner shall immediately notify animal control and make the body available for identification.

9. The owner shall advise animal control before selling or giving the dangerous dog away. The new owner will be given a dangerous dog notice, and shall be subject to all applicable laws. It is a violation of this law for any person to transfer

ownership of a dangerous dog from such person to another person without compliance with this procedure.

10. The owner shall advise animal control of any claims or lawsuits resulting from further instances of attack by the dangerous dog.

D. A court of competent jurisdiction may order that a dangerous dog be seized, impounded, or euthanized, or any combination thereof, if the owner of the dog fails to comply with this chapter and if, in the court's judgment, the dog presents a continuing threat of injury or harm to human beings or animals.

E. The regulations in this section shall be in addition to other regulations under this chapter.

F. Any enforcement or animal control officer is empowered to make such inquiries as are deemed necessary to ensure compliance with this section, and may enter upon private property for purposes of inspecting the premises for compliance with this section.

G. All dogs designated as "vicious" dogs by animal control prior to the enactment of ordinance 2922, shall be re-designated as "dangerous dogs" as defined by section 6.04.010, and shall be subject to this section."

SECTION 10. Section 6.04.050, Maui County Code, is amended to read as follows:

"6.04.050 Impoundment. A. Any dog found running at large, [and any dangerous dog which is not restricted in movement as required by this chapter,] shall be seized and impounded by the enforcement or animal control officer in an animal shelter and confined in a humane manner. [The enforcement officer may slay any previously adjudicated dangerous dog which cannot be safely tranquilized and seized.] Immediately upon impounding a dog, the enforcement or animal control officer shall notify the owner and inform such owner of the conditions whereby custody of the animal may be regained.

[Licensed dogs not claimed by their owners within a period of nine days, or unclaimed, unlicensed dogs after two days in which the shelter is open to the public shall become the property of the County.]

B. [If an unclaimed animal is sold to a new owner, the original owner may reclaim the animal within thirty days from the date of sale upon payment of the purchase price paid by the purchaser, impoundment fees and any

related costs as determined by the humane society.]Dangerous dogs.

1. Any dangerous dog which is not restricted in movement as required by this chapter, shall be seized and impounded by an enforcement or animal control officer in an animal shelter and confined in a humane manner. The enforcement or animal control officer may euthanize any previously adjudicated dangerous dog which cannot be safely tranquilized and seized.

2. The enforcement or animal control officer, if reasonably necessary for public safety, may, at the time of designation, immediately seize and impound the dog.

3. When a dangerous dog is seized and impounded the enforcement or animal control officer shall issue a notice to the owner to report to the board. Failure by the owner to report to the board, shall result in ownership of the dog being deemed forfeited and the board may thereafter order disposition of the dog as it deems appropriate.

4. Notwithstanding any forfeiture of ownership or voluntary relinquishment of ownership of the dog, the owner shall remain responsible for all expenses of boarding the dog and any fees which may be imposed by the board.

5. At the owner's request, such impoundment may be at the premises of a licensed veterinarian or at a commercial kennel of the owner's choice.

C. [A court of competent jurisdiction may order that a dangerous dog be seized, impounded, and euthanized if the owner of the dog fails to comply with this chapter and if, in the court's judgment, the dog presents a continuing threat of serious harm to human beings or animals.]Licensed dogs, not claimed by their owners within a period of nine days, shall become the property of animal control.

D. [In the event that an enforcement officer finds animals to be suffering, he shall have the right forthwith to remove or cause to have removed any such animals to a safe place for care at the owner's expense or to euthanize them when necessary to prevent further suffering. Return to the owner may be withheld until the owner shall have made full payment for all expenses so incurred.]Unlicensed dogs, unclaimed after two days in which the shelter is open to the public, shall become the property of animal control.

E. [Disposal of an animal by any method specified in this chapter does not relieve the owner of liability for violations and any accrued charges.]Any animal, other than a dog or cat, seized and impounded by animal control, that remains unclaimed by its owner for a period of fourteen days shall become the property of animal control.

F. Regardless of the location of the impoundment, all expenses of the boarding and retention of an animal shall be borne by the owner, return of the animal may be withheld until all amounts due are paid in full.

G. If an unclaimed animal is sold to a new owner, the original owner may reclaim the animal within thirty days from the date of sale upon payment of the purchase price paid by the purchaser, impoundment fees and any related costs as determined by animal control.

H. In the event that an enforcement or animal control officer finds animals to be suffering, he shall have the right forthwith to remove or cause to have removed any such animals to a safe place for care at the owner's expense or to euthanize them when necessary to prevent further suffering. Return to the owner may be withheld until the owner shall have made full payment for all expenses so incurred.

I. Disposal of an animal by any method specified in this chapter, does not relieve the owner of liability for violations and any accrued charges."

SECTION 11. Section 6.04.060, Maui County Code, is amended by amending Subsection A to read as follows:

"A. Any animal impounded may be redeemed by the owner thereof upon payment of an impoundment fee as established in the annual budget ordinance of the [county,] County, subject to the requirements of this chapter. Where a dog is impounded after having been found running at large, the owner may be relieved of the impoundment fee if [the Humane Society] animal control finds that such owner was not at fault for allowing the dog to run at large."

SECTION 12. Section 6.04.070, Maui County Code, is amended to read as follows:

"An adoption fee as established in the annual budget ordinance of the County shall be assessed at the time of

adoption. No dog or cat shall be released for adoption as a pet without being neutered or without a written agreement from the adopter guaranteeing that the dog or cat will be neutered. [The humane society] Animal control shall reclaim a dog or cat when the agreement has been violated by failure to neuter the animal. Licensing fees and veterinary costs may be assessed above and beyond the adoption fee."

SECTION 13. Section 6.04.095, Maui County Code, is amended by amending Subsection A to read as follows:

"A. Establishment. There shall be and is created an animal control board consisting of five members who shall be appointed by the mayor with the approval of the county council.

[The membership of the board shall consist of the following:

1. One member who is a registered and licensed veterinarian in the State of Hawaii; and
2. Four members of the general public.]"

SECTION 14. Section 6.04.095, Maui County Code, is amended by amending Subsection C to read as follows:

"C. Powers duties and responsibilities.

1. The jurisdiction of the board shall be:

a. To hear and determine appeals from decisions concerning dangerous dogs as set forth in sections [6.04.045] 6.04.046 and 6.04.050, and from any order issued by an enforcement or animal control officer relating thereto.

b. To conduct hearings on notices issued pursuant to subsections [6.04.045, F and G,] 6.04.046.B and 6.04.050.B.3, and thereafter, determine the status and disposition of the dog.

c. After hearing the appeal, the board shall notify the owner in writing of its decision.

2. The board may reconsider, reverse, affirm, or modify, wholly or partly, any decision appealed from. Exceptions or modification from the strict application of the provisions of sections

[6.04.045] 6.04.046 and 6.04.050 may be granted only if the board finds:

a. That the strict application, operation, or enforcement of the provision being appealed from would result in practical difficulty or unnecessary hardship to the appellant; and

b. That an exception, reversal, or modification, will not jeopardize life, limb, or property.

3. A decision of the board that a dog is not a dangerous dog, shall not preclude a subsequent designation of the dog as a dangerous dog for other cause."

SECTION 15. Section 6.04.110, Maui County Code, is amended to read as follows:

"6.04.110 Penalties. A. Any person convicted of a violation of any section or provision of this chapter, except [the provisions relating to excessive barking dogs and dangerous dogs,] subsection 6.04.046.C, and subsections 6.04.040.B, and 6.04.040.C, relating to excessive barking, 6.04.040.E, 6.04.040.F, 6.04.040.G and 6.04.080, shall be fined not more than \$500. The minimum fine shall be as follows: for a first violation, a fine of not less than \$50; for a second violation within five years after a prior violation under this section, a fine of not less than \$100; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$200.

B. Any person convicted of a violation of [any section or provision of this chapter] subsection 6.04.040.C, relating to excessive barking [dogs], and subsection 6.04.040.F, shall be fined not more than \$500. The minimum fine shall be as follows: for a first violation, a fine of not less than \$100; for a second violation within five years after a prior violation under this section, a fine of not less than \$200; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$500.

C. Any person convicted of a violation of [any section or provision of this chapter relating to dangerous dogs] subsection 6.04.046.C and subsections 6.04.040.B and 6.04.040.E, shall be fined not more than \$1,000 and imprisoned not more than thirty days, or both.

The minimum sentence shall be as follows: for a first violation, a fine of not less than \$200; for a second violation within five years after a prior violation under this section, a fine of not less than \$500; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$1,000. In addition, a court may require restitution for damages caused by a dangerous dog; provided, that this section shall not preclude a person damaged by a dangerous dog from pursuing a civil remedy.

D. The portion of the fine equal to the minimum fine shall not be suspended.

E. A successive violation of the same owner involving different dogs shall be considered a subsequent and not a first violation.


F. For purposes of this section [6.04.110], a violation is defined to include the payment of a fine directly to the district court or the finding of guilt by a court after a contested hearing.

G. Any person convicted of a violation of section 6.04.040.G₁ shall be guilty of a misdemeanor subject to a fine of not less than \$500₁ and not more than \$2,000, or imprisonment for not more than one year, or both."

SECTION 16. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 17. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY VEOKA
Deputy Corporation Counsel
County of Maui

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