

TITLE 4
ANIMAL CONTROL ORDINANCE
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TITLE 4

ANIMAL CONTROL

4.01 GENERAL PROVISIONS

4.01.01 Purpose

The purpose of this Title is to protect human health, safety and welfare on the Nisqually Indian Reservation. It is the intent of this Ordinance to provide regulations to control conduct of animals so that such conduct will not constitute a nuisance within the Nisqually Indian Reservation. This ordinance will also establish guidelines for those who are responsible for animals and provide a program of enforcement through the Tribal Police Department.

HISTORICAL AND STATUTORY NOTES

This Title adopted by Tribal Council Resolution 26-2011, dated March 22, 2011.

4.01.02 Severability

If any part of this Title or its application to any person or circumstance is held to be invalid, the remainder of this Title or its application to other persons or circumstances is not affected.

4.01.03 Jurisdiction

The Nisqually Tribal Court shall have jurisdiction over cases arising under this Title of the Nisqually Law and Order Code. Only federal law and the Constitution of the Nisqually Indian Tribe limit the jurisdiction of the Tribal Court over persons and territory. The Tribal Court shall have the power to decide questions of jurisdiction, which may be raised under this Title.

4.01.04 Repealer

This Title is to be interpreted to supersede and replace any conflicting provisions of all prior animal control laws, codes and regulations of the Nisqually Indian Tribe.

4.01.05 Definitions

- (a) Adult Dog - Any member of the dog family six months of age or older.
- (b) Animal - Any non-human member of the mammal class, reptile or bird; includes dogs and cats for purposes of the licensing requirements of this ordinance.

- (c) At large - A private place or any public place not owned or occupied by the owner of the animal; unless permission has been obtained from property owner.
- (d) Confinement - Keeping an animal indoors or in an enclosure, which prevents escape or contact with other animals.
- (e) Department -The Nisqually Law Enforcement Department.
- (f) Domesticated Animal - An animal in a tame condition either by training, breeding or natural propensity or disposition which is maintained to enhance pleasure, welfare or aesthetic means of an owner.
- (g) Euthanasia - Humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that causes painless loss of consciousness and death during such loss of consciousness.
- (h) Guard Dog - Adult member of the dog family, which has been trained to protect persons and property by virtue of exhibiting hostile propensities and aggressiveness to unauthorized persons.
- (i) Keeper - Any person who is responsible for control, custody, or possession of any animal.
- (j) Leash - A cord, thong, chain or other similar device used to exert control over an animal.
- (k) License - The animal license issued by the Tribal licensing agent under this ordinance.
- (l) Livestock - Any horses, ponies, bovine animals, sheep, rams, lambs, goats, kids, mules, jacks, jennies, domesticated hares, rabbits and poultry.
- (m) Owner - Any person who owns, possesses, or has an ownership interest in, any animal.
- (n) Premises - Area of land surrounding a house or dwelling unit and actually, or by legal construction, forming an enclosure with it and to which the owner of an animal has legal and equitable right therein. In addition automobiles, trucks, or farm wagons are also premises.
- (o) Public Emergency - Any situation which the Law Enforcement Department finds warrants the restraint and confinement of animals within the premises of their owners or keepers.

(p) Restraint - An animal shall be deemed to under restraint if it is confined within the premises of its owner or keeper by a suitable fence or enclosure or securely restrained within the premises by a leash affixed to a post or other securely fixed object, or securely restrained off the premises by a leash controlled by a person of suitable age and ability.

(q) Spayed (female) or Neutered (male) - Sterilization of an animal by a licensed veterinarian to avoid or prevent conception.

(r) Vicious Animal - Any animal which:
(i) bites or attacks a person or attempts to bite or attack a person more than once within a five-year period; or
(ii) belongs to a breed or classification of animals which, based on the known nature of the animals of that breed or classification, represents a potential threat of serious bodily harm to persons or animals.

4.02 ADMINISTRATION AND ENFORCEMENT

4.02.01 Administration and Enforcement

Administration and enforcement of this ordinance shall be the responsibility of the Tribal Law Enforcement Department. The Department shall:

(a) Operate or cause to be operated animal shelters and/or dog pounds as may be required;

(b) If deemed necessary, select, train, hire and retain animal control officers who will enforce the provisions of this ordinance;

(c) Make investigations of complaints pertaining to animal misconduct occurring in the area of jurisdiction and provide for administration, issuance, re-issuance of license fees and other charges as provide herein.

4.02.02 Delegation

In carrying out the responsibilities of this ordinance, the Department may at its discretion:

(a) Delegate all or part of its responsibilities to a competent agency or agencies;

(b) Negotiate contracts or agreements with agencies or facilities within or outside the reservation to aid in the enforcement and execution of this ordinance;

(c) Deputize individuals over the age of (21) twenty-one years for the purpose of enforcing animal control regulations.

4.02.03 Impoundment

- (a) Animals may be impounded in the following situations:
 - (i) When the animal is unleashed and off the premises of its owner or keeper and a violation of this ordinance has been committed.
 - (ii) If the animal is an adult dog and it has no license tag or its license tag has been expired for more than thirty days.
 - (iii) When the animal has been subjected to cruel treatment.
- (b) Animals shall be impounded in a place and manner designated by the Nisqually Tribal Police Chief.
- (c) Following impoundment, the Police chief or his authorized agent will notify the owner or keeper of the animal of its impoundment; if the owner or keeper of the animal is unknown, reasonable efforts to notify the owner or keeper of the impoundment will be made.
- (d) When the Department has knowledge that an animal is not being quarantined as required by section 4.03.04 of this Title, the Department shall pick up the animal and impound it for the quarantine period.

4.02.04 Authorized Dog "Round-Up"

The Department is authorized to periodically conduct a "round-up" of all dogs that are roaming or running at large. This authority is granted in addition to the power to have individual animals impounded under this code. Prior notice to the Tribal Community shall be prominently posted prior to any round-up. Instructions for claiming the animals shall be posted immediately after such round-up.

4.02.05 Redemption of Animals

- (a) Animals other than livestock and quarantined animals that have been impounded may be redeemed upon payment of the fifty dollars (\$50.00) impound fee, and any appropriate license fees.
- (b) Livestock may redeemed upon payment of an impound fee and boarding fee, and if impounding required special transportation, a fee will be assessed for such special transportation.
- (c) If an animal has been quarantined by the Department, the owner or keeper of the animal may redeem it after the quarantine period, if the animal shows no signs of rabies, at a cost of fifty dollars (\$50.00) and any other fines or license fees applicable.

4.02.06 Disposition of Animals not Redeemed

(a) When an animal other than livestock is not redeemed, sooner than five (5) days following impoundment, the Chief of Police or his authorized agent may give or sell the animal to a qualified person, euthanize or otherwise dispose of the animal.

(b) When livestock is not redeemed sooner than seven (7) days following impoundment the Police Chief or his authorized agent may commence to sell the animal at public auction. Notice of the auction and a description of the livestock to be auctioned shall be published at least five (5) days prior to the sale in the official Tribal or county newspaper. Such notice shall also be mailed to the owner of the livestock if known. Housing, feed, publication and auction costs described in shall be deducted from the proceeds of the sale. The balance shall be remitted to the owner, if known. Otherwise it shall be deposited into an account used for the administration and enforcement of this ordinance.

(c) Sick or injured animals may be euthanized or otherwise disposed of prior to the expiration period if such is in furtherance of the public health or necessary to prevent unnecessary suffering. When reasonably possible, the owner or keeper shall be notified prior to any such disposition.

4.02.07 Public Emergency

Law Enforcement may require that animal owners or keepers confine their animals within the premises of their owners or keepers during any public emergency. In a public emergency, Law Enforcement shall make reasonable efforts to notify animal owners and keepers that a public emergency has been declared.

4.03 ANIMAL CONTROL

4.03.01 Abandonment of Animals

Any owner or keeper who could regain custody of an animal by getting a license or by paying fines/fees but does not do so in the time provided, shall conclusively be deemed to have abandoned all legal rights and interests in the animal.

4.03.02 Responsibility for Animals

Any person who is an owner or keeper of any animal shall be responsible for:

- (a) Damage to persons or property cause by the animal;
- (b) Providing proper medical care, vaccinations, food, water, and reasonable supervision and care;

- (c) Preventing the animal from unreasonable annoying or disturbing others through frequent or habitual barking, howling, yelping or crying;
- (d) Preventing the animal from disturbing pedestrians or chasing vehicles;
- (e) Preventing the animal from getting into other people's garbage.

4.03.03 Licensing Requirements

(a) It is a misdemeanor for any person to own or keep any adult dog within the exterior boundaries of the Nisqually Indian Reservation without paying the license fee and obtaining the license required by this ordinance. Any person who owns or keeps a dog shall have thirty days from the day the dog becomes an adult or from the date the owner or keeper moves onto the reservation within which to obtain the license required. An exception to the license requirement shall be made for occasional residents whose dog(s) are licensed in another city or county and whose dog displays a valid license.

(b) The dog license shall be an annual license, which will expire on midnight June 30th each year. The basic fee for such license shall be ten dollars (\$10.00) for dogs that have not been neutered or spayed and two dollars (\$2.00) for dogs that have been neutered or spayed. A dog newly acquired, brought onto the reservation, or becoming an adult after July 1st of any calendar year, shall be subject to one half of the annual fee. Annual license fees which have not been paid by the 15th of July are subject to an additional fee of two dollars (\$2.00) provided, there shall be no additional fee where:

- (i) The applicant has owned the dog for less than (30) thirty days.
- (ii) The dog is less than (7) seven months of age at the time of application.
- (iii) The applicant has resided on the Nisqually Indian Reservation less than (30) thirty days.
- (iv) The applicant voluntarily applies for a license and was not found to be in violation of this ordinance.

(c) Replacement of a lost or damaged license may be obtained at the cost of (\$2.00) two dollars.

(d) Dogs must wear license identification tags at all times.

(e) Persons over the age of 55 years may obtain a permanent license by paying the regular annual fee, which will be valid for the lifetime of the animal; provided the animal lives permanently with the license applicant.

4.03.04 Quarantine

- (a) Animals will be quarantined under the following conditions:
- (i) When an animal has bit someone severely enough to break the skin, the animal shall be quarantined for a period of not less than 10 days. If the animal dies during that period or shows any signs of rabies, illness, or unusual behavior, the owner or keeper shall notify the Department.
 - (ii) Any animal which has a contagious disease shall be quarantined until such time as a veterinarian certifies that the animal no longer has the disease.
- (b) The owner or keeper of an animal that must be quarantined under this section shall keep the animal in a place of confinement for the quarantine period. The animal shall at all times be confined in a cage on its premises, and kept separate from other animals. The animal must be confined so that it cannot reach persons who are lawfully on the premises. Children 10 years of age or younger are presumed to be lawfully present.
- (c) The owner or keeper of a quarantined animal shall not sell, give away or permit the animal to be taken outside the reservation boundaries during the quarantine period. The owner or keeper of an animal who has bit someone shall not kill the animal during the quarantine period.

4.03.05 Dogs Running At Large

It shall be unlawful for the owner or keeper of a dog to allow it to run at large within the Reservation.

4.03.06 Mandatory Leashing

All dogs shall be physically restrained by means of a leash not more than ten feet in length when not on the property of the owner or keeper. Dogs may be unleashed on the property of the owner or keeper if the property is enclosed with a secure fence.

4.03.07 Dogs in Heat

Any person who owns a female dog shall keep the dog in confinement during any time period in which the dog is in heat.

4.03.08 Vicious Animals

It shall be unlawful to own or keep a vicious, menacing or dangerous animal in a fashion such that the animal is a danger to any person. Vicious animals shall not be permitted off the owner or keeper's premises unless the animal is securely muzzled, leashed, and in the

custody and control of a person sixteen years of age or older who is physically able to restrain and control such animal.

4.03.09 Selling Diseased Animals

It shall be unlawful to sell an animal that the seller knows, or reasonably should have known, is diseased.

4.03.10 Breeding Animals

It shall be unlawful to breed animals for sale without the express written approval of the Nisqually Tribal Council.

4.04 CIVIL INFRACTIONS

4.04.01 Infraction Penalties

The penalty for any infraction specified in this chapter shall be twenty-five dollars (\$25.00) for the first cited violation, fifty dollars (\$50.00) for the second cited violation committed within one year, and seventy-five (\$75.00) for the third and subsequent cited violation committed within one (1) year. Each and everyday or portion thereof in which an infraction is committed shall constitute a separate and distinct infraction.

4.04.02 Failure to License a Dog

Any owner or keeper of a dog who fails to meet the licensing requirement of section 4.03.03 has committed a civil infraction.

4.04.03 Failure to Provide Care

Any owner or keeper of an animal who fails to provide the animal with proper medical care, vaccinations, food, water, and reasonable supervision and care, has committed a civil infraction.

4.04.04 Failure to Prevent Damage

Any owner or keeper of an animal who fails to prevent damage to person or property caused by the animal, has committed a civil infraction. It is a defense to liability under this section if the injured party provoked the animal, or was unlawfully in or on a private place including the property of the owner or keeper, or was doing an unlawful act which contributed to the injury; provided, however, that the defense is not available if the injured party is a child 10 years of age or younger.

4.04.05 Failure to Prevent Nuisance

Any owner or keeper of an animal, after one (1) written notice by the department, has committed a civil infraction when he or she fails to prevent the animal from:

- (a) Unreasonably annoying or disturbing others through frequent or habitual barking, howling, yelping or crying;
- (b) Disturbing pedestrians or chasing vehicles; or
- (c) Getting into other people's garbage.

4.04.06 Allowing a Dog to Run at Large

Any owner or keeper of a dog, after one (1) written notice department, has committed a civil infraction when he or she allows the dog to run at large.

4.04.07 Failure to Abide by Leashing Requirements

Any owner or keeper of an animal, after one (1) written notice by the department, who fails to abide by the leashing requirements in Section 4.03.06, has committed a civil infraction

4.04.08 Failure to Confine a Dog in Heat

Any owner or keeper of a female dog who fails to confine the dog when in heat has committed a civil infraction.

4.04.09 Failure to Quarantine an Animal

Any owner or keeper of an animal who fails to quarantine the animal as required by section 4.03.04 has committed a civil infraction.

4.04.10 Failure to Confine an Animal During a Public Emergency

Any owner or keeper of an animal who fails to confine the animal when he or she knows, or reasonably should have known, that a public emergency has been declared has committed a civil infraction.

4.04.11 Harboring a Vicious Animal

Any person who owns or keeps a vicious, menacing or dangerous animal in a fashion such that the animal is a danger to any person has committed a civil infraction.

4.04.12 Selling a Diseased Animal

Any person who sells an animal that he or she knows, or reasonably should have known, is diseased has committed a civil infraction.

4.04.13 Breeding Animals

Any person who breeds animals for sale without the express written approval of the Nisqually Tribal Council has committed a civil infraction.

4.05 ENFORCEMENT PROCEDURES

4.05.01 Power of Enforcement

Any person authorized to enforce this ordinance shall issue a notice of violation:

- (a) When it occurs in the enforcement authorities presence; or,
- (b) When the enforcement authority investigating a report of an infraction finds probable cause to believe that a violation of this ordinance has been committed.

4.05.02 Notice of Violation

The Tribe through its enforcement authorities shall give a written notice to any violators of this ordinance. The notice of violation shall:

- (a) Specify the nature of the violation, the location of the violation, and the section(s) of this ordinance being violated;
- (b) Set a date for hearing before the Tribal Court, which shall be no sooner than ten (10) days after service of the notice;
- (c) Specify the amount of the fine, which may be paid by the violator to the Court in order to avoid a Court hearing;
- (d) Notify the violator that if the violator does pay the amount of the fine and does not appear before the Tribal Court on the date set for hearing, the court may declare the defendant to be in default and award any appropriate relief as provided by this ordinance.

4.05.03 Service of Notice

The notice of violation shall be served upon the defendant in the following manner:

- (a) By delivering a copy personally to the defendant or the defendant's authorized representative, or to any member of the defendant's family residing with the defendant who is eighteen (18) years of age or older; or,
- (b) By delivering a copy to the defendant's place of business and leaving it with a secretary or other person authorized to accept service.
- (c) If, after reasonable effort is made, the defendant can not be personally served, service may be made by sending a copy of the notice to the defendant's last known address by certified mail, return receipt requested, and sending an additional copy by regular mail.

An affidavit of service filed with the Tribal Court shall constitute proof of service of the notice of violation. If service is made in the manner described in subsection (c), the affidavit must describe the efforts that were made to personally serve the defendant.

4.06 COURT PROCEDURES

4.06.01 Rights of Parties

Any party to a hearing held pursuant to this ordinance has the following rights:

- (a) The right to be represented by council at his or her own expense;
- (b) The opportunity to subpoena witnesses;
- (c) The opportunity to introduce, examine and cross-examine witnesses;
- (d) The opportunity to discover, offer and inspect evidence; and,
- (e) The opportunity to explain any mitigating circumstances surrounding the violation.

4.06.02 No Right to Jury Trial

There is no right to a jury trial in proceedings held pursuant to this ordinance. The Court without a jury shall hear such proceedings.

4.06.03 Hearing

After consideration of the evidence and arguments presented, the Court shall determine whether or not a violation of this ordinance has been committed. If the Court has established, by a preponderance of the evidence, that a violation has been committed the Court shall enter an order accordingly.

4.06.04 Appeals

Any party may appeal any final order made by the Court pursuant to this ordinance. All appeals shall be governed by the rules for appeal in other civil cases.

4.06.05 Power of the Court

(a) If the Court finds by a preponderance of the evidence that a violation of this ordinance has been committed, it may require the violator to pay a civil penalty in an amount not to exceed the maximum penalty allowed for the infraction. The Court may suspend any fine or a portion thereof, on the condition that the owner comply with the Court's order. The Court may also reduce any fine imposed if the animal's owner proves to the Court that the animal has been properly vaccinated and that the vaccinations are current.

(b) If the Court finds by a preponderance of the evidence that a violation of this ordinance has been committed and that it is likely that the owner or keeper of the animal will not provide proper care and supervision for the animal so as to prevent further violations of this ordinance, the Court may order the Department to remove the animal from the owner or keeper and dispose of it in accordance with this ordinance.

4.06.06 Community Service

Upon a showing of financial hardship, the court may sentence a violator to perform community service hours in lieu of payment of a fine imposed. Each hour of community service shall reduce the fine by the amount of federal minimum wage at the time of sentencing. Adequate supervision must be available before community service hours are imposed.

4.06.07 Actual Damages

(a) In addition to the civil penalties imposed in this ordinance, the Court may also order the owner or keeper of an animal to pay any actual damages for injury to property, life or resources of any person.

(b) It is a defense to liability under this section if the injured party provoked the animal, or was unlawfully in or on a private place including the property of the owner or

keeper, or was doing an unlawful act which contributed to the injury; provided, however, that the defense is not available if the injured party is a child 10 years of age or younger.

(c) If a child 10 years of age or younger is the injured party, liability may be apportioned between the animal's owner or keeper and the child's parent or guardian if the parent or guardian knew or should have known of the risk that the child might be injured by the animal but failed to take reasonable steps to protect the child.

4.06.08 Failure to Pay Fine

Any person who fails to pay any fine assessed by the Court within thirty (30) days after the fine has been assessed, and who fails to make other arrangements with the Court regarding payment of the fine, shall owe, in addition to the fine imposed, ten dollars (\$10.00) for each thirty (30) day period that the fine is overdue.

4.06.09 Disposition of Funds

Civil penalties collected by the Court, which are in excess of court costs, shall be placed into an account to be used for the administration and enforcement of this ordinance. Use of the funds for such purposes may be made by the Nisqually Tribal Council upon recommendation from Law Enforcement.

4.06.10 Civil Actions

Nothing in this ordinance shall prevent a person from bringing a civil action for damages to his or her person or property.

Certification

I certify that the above Animal Control Ordinance was adopted at a regular meeting of the Nisqually Tribal Council held on the 15th day of March, 2011 at the Nisqually Tribal Center, at which time a quorum was present and voting 3 FOR 0 AGAINST 0 ABSTENTIONS.

ATTEST:

Cynthia Iyall, Chairman
Nisqually Indian Tribe

Jean Sanders, Secretary
Nisqually Indian Tribe