

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 2/7/2005	Department ID Number: CA 05-03

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR CITY COUNCIL MEMBERS

**SUBMITTED BY:** JENNIFER MCGRATH, City Attorney

**PREPARED BY:** JENNIFER MCGRATH, City Attorney

**SUBJECT:** Wild Bird Protection Ordinance *No. 3696*

RECEIVED  
CITY CLERK  
CITY OF  
HUNTINGTON BEACH, CA  
2005 JAN 25 4 11:28

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Should the City ban the killing of wild birds?

**Funding Source:** N/A

**Recommended Action:** Adopt Ordinance No. *3696* entitled An Ordinance Of The City Of Huntington Beach Amending Chapter 7.12 Of The Huntington Beach Municipal Code Relating To The Killing Or Maiming Of Wild Birds.

**Alternative Action(s):** Do not adopt Ordinance No. *3696*.

**Analysis:** Councilwoman Boardman brought to the Council as an "H" item a proposed ordinance which would prohibit the use of a given pesticide which was being used to exterminate birds. The City Attorney was asked to research whether or not the City was able to adopt an ordinance banning the use or possession of this pesticide. Research revealed that the State of California has pre-empted the field of pesticide regulation. Therefore, Councilwoman Boardman suggested banning the practice of killing wild birds within the City limits. The City Attorney's research has revealed certain sections of the California Fish and Game Code and regulations promulgated by the Fish and Game Commission which would preclude the City from enacting a complete prohibition on killing wild birds. This ordinance therefore contains certain exceptions for persons who are permitted to do so.

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REQUEST FOR ACTION

MEETING DATE: 2/7/2005

DEPARTMENT ID NUMBER:CA 05-03

Environmental Status:

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Ordinance No. <u>3696</u> An Ordinance Of The City Of Huntington Beach Amending Chapter 7.12 Of The Huntington Beach Municipal Code Relating To The Killing Or Maiming Of Wild Birds
5	2.	Legislative Draft of Chapter 7.12

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**ATTACHMENT NO. 1**

ORDINANCE NO. 3696

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 7.12 OF THE HUNTINGTON BEACH  
MUNICIPAL CODE RELATING TO THE KILLING OR MAIMING OF WILD BIRDS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 7.12 of the Huntington Beach Municipal Code is hereby amended by adding Section 7.12.035, said section to read as follows:

No person shall intentionally kill or maim a bird within the City of Huntington Beach. This ordinance shall not apply to the following:

- (a) A veterinarian while engaged in practicing veterinary medicine.
- (b) Any person acting to prevent immediate death or injury to a person or domestic animal.
- (c) An official of a state, federal or local agency who, by virtue of this office, has authority to destroy birds.
- (d) Any person acting pursuant to the California Fish and Game Code or regulations adopted by the Fish and Game Commission, and persons issued licenses or permits authorizing the take of birds by the State or Federal Government. This section shall not be construed to allow the discharge of weapons in areas where their use is prohibited.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Jennifer M. [Signature]*  
1/13/05 City Attorney *SES* 1/21/05

REVIEWED AND APPROVED:

*Penelope Culler [Signature]*  
City Administrator

INITIATED AND APPROVED:

*Jennifer M. [Signature]*  
City Attorney 1/21/05

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**ATTACHMENT NO. 2**

LEGISLATIVE DRAFT

Chapter 7.12

MISCELLANEOUS ANIMAL CARE AND CONTROL

(27-11/09, 66-9/10, 885-2/62, 1279-2/67, 1352-11/67, 1835-5/73, 1857-8/73, 1905-4/74, 1910-6/74, 2067-5/76, Urg. 2084-6/76, 2095-9/76, 2547-5/82, 2936-4/88, 3169-9/92, 3508-10/01)

Sections:

- 7.12.010 Bees
- 7.12.020 Running at large prohibited
- 7.12.030 Animal premises kept clean
- 7.12.035 Killing or maiming of birds**
- 7.12.040 Keeping animals near inhabited structures
- 7.12.050 Animals prohibited in food-handling premises
- 7.12.060 Dead--Carcass disposal
- 7.12.070 Noisy animals
- 7.12.080 Goats
- 7.12.090 Horses
- 7.12.100 Cattle and hogs
- 7.12.110 Fowl and rabbits--At large
- 7.12.120 Fowl and rabbits--Keeping restrictions
- 7.12.130 Fowl--Number permitted
- 7.12.140 Monkeys and chimpanzees to be secured
- 7.12.150 Kennels
- 7.12.160 Residential Animal Permit
- 7.12.170 Dogs -- Number Permitted -- Dog Park
- 7.12.290 Enforcement
- 7.12.300 Penalty

7.12.010 Bees. No person shall keep or maintain, or suffer or permit to be kept or maintained, upon premises owned or controlled by him in the City, any hive bees within two hundred (200) feet of any dwelling house of the owner or person in control of such bees. This section shall not apply to the keeping of bees within an educational institution for study or observation, or within a physician's office or laboratory for medical research, treatment, or other scientific purposes, provided they are not permitted to fly at large. (885-2/62, 1279-2/67, 1905-4/74, Urg 2067-5/76, 2095-9/76)

7.12.020 Running at large prohibited.

- (a) No person owning or having control of any ox, steer, bull, cow, horse, colt, calf, sheep, goat, cat or any animal of a species commonly referred to as wild shall:
- (1) Permit such animal to run at large in the City;
  - (2) Cause or permit any such animal to be pastured, herded, staked or tied in any street, lane, alley, park, or other public place;
  - (3) Tie, stake, pasture or permit the tying, staking or pasturing of any such animal upon any private property within the limits of the City, without the consent of the owner or occupant of such property, or in such a way as to permit any animal to trespass upon any street or public place or upon any such private property;
  - (4) Permit any of said animals to be or remain during the nighttime secured by a stake, or secured in any manner other than by enclosing such animal in a pen, corral or barn sufficient and adequate to restrain such animal, or by securely fastening such animal by means of a rope, or chain of sufficient size, strength, and weight to effectively restrain such animal; or

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(5) Fail to provide the necessary sustenance, drink, shelter or protection from the weather, or otherwise.

(b) No person owning or having charge, custody, control or possession of any animal or reptile known by such person to be vicious or dangerous, or commonly so known, or owning or having charge, custody, or possession of any elephant, bear, hippopotamus, rhinoceros, lion, tiger, leopard, wolf, monkey, ape, chimpanzee, bobcat, lynx, wildcat, puma, cheetah or any animal of a species commonly referred to as wild or any poisonous reptile, shall permit or allow the same to be at large upon any highway, street, lane, alley, court or other public place or upon any private property other than within the enclosed premises of such person.

(1279-2/67, 1352-11/67, 1835-5/73, 1905-4/74, 1910-6/74, Urg. 2084-6/76)

7.12.030 Animal premises kept clean. Every person owning or occupying premises where any animal, fowl or bird is kept shall keep the stable, barn, stall, pen, coop, building or place in which the animal is kept in a clean and sanitary condition. (885-2/62, 1279-2/67, Urg. 2084-6/76)

### 7.12.035 Killing or maiming of birds

**No person shall intentionally kill or maim a bird within the City of Huntington Beach. This ordinance shall not apply to the following:**

- (a) A veterinarian while engaged in practicing veterinary medicine.**
- (b) Any person acting to prevent immediate death or injury to a person or domestic animal.**
- (c) An official of a state, federal or local agency who, by virtue of this office, has authority to destroy birds.**
- (d) Any person acting pursuant to the California Fish and Game Code or regulations adopted by the Fish and Game Commission, and persons issued licenses or permits authorizing the take of birds by the State or Federal Government. This section shall not be construed to allow the discharge of weapons in areas where their use is prohibited.**

7.12.040 Keeping animals near inhabited structures. No person shall keep any animal, fowl or bird, wild or domestic, other than dogs, cats, canaries, or birds of the psittacinae family, within fifty (50) feet of any inhabited structure, school or hospital provided, however, that when any person keeps more than four (4) birds of the psittacinae family, he shall keep such birds at least thirty-five (35) feet from any of said structures. (885-2/62, 1279-2/67, 1905-4/74, Urg. 2084-6/76)

7.12.050 Animals prohibited in food-handling premises. No person shall bring any dog, cat or other live animal, or permit any dog, cat or other live animal to be brought into or to remain in any room or place, other than a private home where food is not handled for commercial purposes, in which meat, fish, game, poultry, fruit, vegetables, bakery goods or any other food or food product is stored, kept, held, prepared, exposed or offered for sale, or sold for human consumption; or permit any dog, cat or other live animal to ride upon or get into or upon any wagon, or other vehicle in which any such articles offered or to be offered for sale for human consumption are being kept or transported; provided, however, that the provisions of this section shall not apply to a dog trained to guide the blind. (1279-2/67, 1905-4/74, 2095-9/76 Urg. 2084-6/76)

7.12.060 Dead--Carcass disposal. It is declared to be a nuisance and no person shall cause, suffer or permit the carcass of any animal to remain upon any lot, premises or place owned, controlled or occupied by him or it for a period of more than twenty-four (24) hours, or to bury the carcass of any animal upon the premises owned, controlled or occupied by him or it in the City. (885-2/62, 1279-2/67, Urg. 2084-6/76)

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7.12.070 Noisy animals. It is a nuisance, and no person shall keep, maintain or permit upon any lot or parcel of land within the City under his control, any animal or animals, including any fowl, which by any sound or cry, shall interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons. (1279-2/67, 1905-4/74, Urg. 2084-6/76)

7.12.080 Goats.

- (a) It is a nuisance and no person shall keep or maintain any goat within fifty (50) feet of any dwelling house other than that occupied by him or it, or more than two (2) goats within one hundred (100) feet of any dwelling house other than that occupied by him or it, or more than four (4) goats within three hundred (300) feet of any dwelling house other than that occupied by him or it, or more than five (5) goats within one thousand (1000) feet of any dwelling house other than that occupied by him or it.
- (b) No person shall keep or maintain any male goat exceeding the age of six (6) months within the limits of the City. (885-2/62, 1279-2/67, 1905-4/74, Urg. 2084-6/76)

7.12.090 Horses.

- (a) It is declared to be a nuisance and no person shall stable or corral any horse or horses within fifty (50) feet of any street line.
- (b) It is declared to be a nuisance and no person shall stable or corral any horse or mule within fifty (50) feet of any dwelling house other than occupied by him or them, or to stable more than two horses or mules within one hundred (100) feet of any dwelling house other than that occupied by him or them.
- (c) No person, firm or corporation shall keep or stable any burro or burros, or donkey or donkeys, within one hundred (100) feet of any dwelling house other than that occupied by him or it.
- (d) Street line. For the purposes of this chapter, "street line" means the nearest edge of any sidewalk and, if there is no sidewalk, the nearest edge of any curb, and if there is no sidewalk or curb, the nearest edge of the improved portion of the public right-of-way. (885-2/62, 1279-2/67, 1352-11/67, 1905-4/74, Urg. 2084-6/76)

7.12.100 Cattle and hogs. It is a nuisance and no person shall keep or maintain in the City cattle or hogs at or upon premises owned, occupied or controlled by him within three hundred (300) feet of any dwelling other than occupied by him; or to keep or maintain any cattle within three hundred (300) feet of any school or hospital, or within one hundred (100) feet of any street line, except as otherwise provided in this Chapter. (66-9/10, 885-2/62, 1279-2/67, 1835-5/73, 1905-4/74, Urg. 2084-6/76, 3169-9/92)

7.12.110 Fowl and rabbits--At large. It is a nuisance and no person shall suffer or permit any chickens, geese, ducks, turkeys, pheasants, doves, pigeons, squabs or similar fowl or rabbits, owned or controlled by him or it, to run or fly at large or go upon the premises of any other person in the City. (27-11/09, 885-2/62, 1279-2/67, 1905-4/74, 1835-5/73, Urg. 2084-6/76)

7.12.120 Fowl and rabbits--Keeping restrictions. It is a nuisance and no person shall keep chickens, geese, ducks, turkeys, pheasants, doves, pigeons, squabs or similar fowl or rabbits, owned or controlled by him or it, within fifty (50) feet of any street line or within twenty (20) feet of any property line, or within one hundred (100) feet of any dwelling house or structure used as a dwelling, church, school, hospital or place where food products are kept, stored, manufactured or served to the public, unless such house or structure be occupied by him or it, or to keep any rooster over four (4) months old in the City limits. (27-11/09, 66-9/10, 885-2/62, 1279-2/67, 1835-5/73, 1905-4/74, Urg. 2084-6/76)

7.12.130 Fowl--Number permitted. No person shall keep or maintain in the City more than ten (10) in all of chickens, geese, ducks, turkeys, pheasants, doves, pigeons, squabs or similar fowl; and keeping or maintaining more than ten (10) fowl shall be presumptive evidence of a public nuisance. The presumption created by this section is a rebuttable presumption affecting the burden of proof. (66-9/10, 885-2/62, 1279-2/67, 1905-4/74, Urg. 2084-6/76)

7.12.140 Monkeys and chimpanzees to be secured.

- (a) No person owning or having control of any monkey, ape, chimpanzee or other animal of the monkey type, shall permit, allow or suffer such animal to run at large within the City or permit, allow or suffer such animal to be or go upon any street or public place within the City without having such animal securely fastened by an adequate chain or rope, firmly held by or attached to a competent person.
- (b) Such animal shall be deemed and considered as running at large, within the meaning of the expression as herein used, when not confined in an enclosure or when not securely tied or chained. (885-2/62, 1279-2/67, 1352-11/67, 1835-5/73, 1857-8/73, 1905-4/74, Urg. 2084-6/76)

7.12.150 Kennels.

- (a) "Kennel" means any property where four (4) or more dogs, or four (4) or more cats, over the age of four (4) months, are kept or maintained for any purpose, except veterinary clinics and hospitals.
- (b) No person shall keep or maintain, or suffer or permit to be kept or maintained, upon premises owned or controlled by him in the City, any kennel within two hundred (200) feet of any dwelling house except the dwelling house of the person in control of such kennel.
- (c) Any person, firm or corporation which conducts a kennel operated or carried on primarily for financial gain shall obtain a business license pursuant to Title 5 of this code. (1279-2/67, 1905-4/74, 2095-9/76)

7.12.160 Residential Animal Permit.

- (a) A residential animal permit shall be required for the keeping of one goose, rabbit, miniature pot-bellied pig, or duck subject to the review and approval of the Director of Community Development. "Miniature pot-bellied pig" means any pig weighing not more than 125 pounds that is continuously registered with a nationally recognized miniature pig association. All miniature pot-bellied pigs kept pursuant to a residential animal permit shall be spayed or neutered; proof of sterilization shall be presented to the Director of Community Development prior to the issuance of a residential animal permit. (2936-4/88, 3169-9/92)
- (b) At the time the application is made for a residential animal permit, the applicant shall pay a fee established by resolution of the City Council. (2936-4/88)
- (c) Premises shall be kept clean and free of all matter which may create odors or attract rodents. (2936-4/88)
- (d) The animal shall comply with all applicable sections of Chapter 8.40, Noise Control of the Municipal Code. (2936-4/88)
- (e) The Director of Community Development may impose conditions of approval in addition to the above. (2936-4/88)
- (f) The applicant shall be required to sign an affidavit that he/she understands all of the conditions of approval for the residential animal permit at the time the permit is issued. (2936-4/88)

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- (g) Any authorized City employee may inspect the premises for which an application has been granted for a residential animal permit. (2936-4/88)
- (h) A violation of any of the above conditions of approval shall be cause for revocation of the residential animal permit. (2936-4/88)
- (i) Prior to issuance of a residential animal permit, notices shall be sent to all abutting property owners and tenants notifying them of the pending application for said permit. (2936-4/88)

7.12.170 Dogs – Number Permitted – Dog Park.

No person having control of more than three dogs simultaneously shall permit or allow such to be or go upon the area dedicated exclusively by the Huntington Beach Central Park Master Plan for use by dog owners with pets, commonly known as Dog Park. (3508-10/01)

7.12.290 Enforcement. The Community Development Director and his designees are hereby authorized and directed to enforce the provisions of this chapter. (2547-5/82)

7.12.300 Penalty. A violation of any of the sections in this chapter is an infraction and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100). (2095-9/76)

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