

## ORDER NO. 2008-0017

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**AN ORDER DECLARING A CERTAIN BLACK GERMAN SHEPHERD, KNOWN AS SHADOW, WHICH IS HOUSED AT 505 NORTH MAIN STREET AND OWNED BY PAM AND STAN SHIRTS, TO BE A NUISANCE; AND ORDERING THAT THE NUISANCE BE ABATED**

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### RECITALS:

1. Stan and Pam Shirts own a black, German Shepherd, known as Shadow, which resides with them at 505 North Main Street, Newberg, Oregon. The property is owned by Elaine Shirts, who is Stan Shirts mother.
2. Stan and Pam Shirts have been notified that the German Shepherd (Shadow) is a nuisance and given notice to abate that nuisance. The notice is attached as Exhibit "A" and by this reference incorporated.
3. Elaine Shirts, owner of the property who is also a responsible party, has been notified of the nuisance. A copy of the letter notifying her is attached as Exhibit "B" and by this reference incorporated.
4. Pam Shirts was cited into Municipal Court for violation of the City Code by Animal Control Officer Darleen Harding. That matter is pending hearing on December 18, 2008. Citation No. 77883 is attached as Exhibit "C" and by this reference incorporated.
5. On August 28, 2008, Stan Shirts requested a hearing before the City Council concerning the nuisance. Their hearing has been postponed by agreement of the parties with consent of the Council until December 15, 2008.
6. The Shirts are represented by Gary Gardner, an attorney from Salem.
7. Mr. Gardner has indicated that the Shirts do not dispute this Order.

### THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. Declaration of Nuisance: The black, German Shepherd, known as Shadow, which housed at 505 North Main Street, is hereby declared to be a potentially dangerous dog, which has been running at large and is therefore a nuisance in accordance with the Newberg City Code. (Code Provision 92.27 under Chapter 95 NUISANCES.)
2. Responsible Parties:
  - a. Stan and Pam Shirts are responsible parties because they live with the dog at 505

North Main Street, Newberg, Oregon, and own as well as control the dog.

- b. Elaine Shirts is a responsible party because she owns the property at 505 North Main Street, Newberg, Oregon and has allowed the dog to be housed at that location.

3. Abatement: The nuisance will be abated as follows:

- a. **Relocation** – The German Shepherd named Shadow will be relocated to a rural setting where adequate property and surrounding can be available for her. The dog is not allowed to be within the corporate limits of the city of Newberg, not even temporarily, unless custody is given to the City of Newberg.

If the dog cannot be relocated, the custody, control, and ownership of the dog will be given to the City of Newberg. The owners will provide the dog to the animal control officer at the Newberg Animal Shelter located at 921 South Blaine Street in Newberg. The owners have until Monday, January 12, 2009, to relocate the dog and if not done so, they must present dog on or before January 13, 2009, to the City.

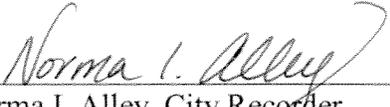
- b. **Certification** - The owners of the dog (Stan and Pam Shirts) will certify to the animal control officer that they have relocated the dog by giving the name of the person and location of the property where the dog has been relocated.
- c. **Notification to Governmental Jurisdiction** - The animal control officer will notify the governmental jurisdiction where the dog is relocated if the animal control officer deems that to be necessary.
- d. **Penalty** - Failure to comply with the terms of this order and to abate the nuisance will be considered a violation of the Newberg City Code subject to a fine of \$500.00 per day for the violation, as a Civil 2 infraction. (§ 95.99 Penalty.)

4. Cost and Expenses: Costs and expenses are owed and should be paid by the responsible parties within thirty (30) days of this order.

- a. The City declares no cost for abatement of the nuisance at this time but reserves the right to amend the order if costs are incurred.
- b. The amount of restitution owed to James Curtis (the owner of the dog, a Cavalier King Charles Spaniel that was killed) is not addressed in this Order. The issue can be pursued in other forums (Municipal Court or civil litigation).

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: December 16, 2008.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 15<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 18<sup>th</sup> day of December, 2008.

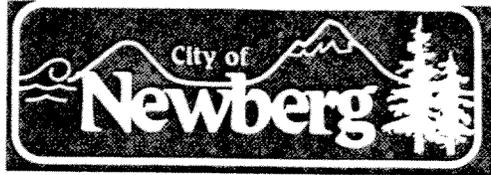
  
\_\_\_\_\_  
Bob Andrews, Mayor

**QUASI-JUDICIAL HISTORY**

By and through \_\_\_\_\_ Committee at  / /2008 meeting. Or, X None.  
(committee name) (date) (check if applicable)

**Exhibit "A"**  
**To Order No. 2008-0017**  
*(total of 1 page)*

City of Newberg  
414 E. First Street  
P.O. Box 970  
Newberg, OR 97132



City Manager  
(503) 538-9421  
(503) 537-5013 FAX

**Dangerous/Potentially Dangerous Dog Abatement  
NOTICE**

August 28, 2008

Stanley and Pam Shirts  
505 N. Main St.  
Newberg, OR 97132

Dear Mr. and Mrs. Shirts:

RE: NOTICE AND ORDER - Dangerous/Potentially Dangerous Dog  
505 N. Main St., Newberg, OR 97132

This notice is in response to a complaint and evidence regarding an incident occurring on Friday, August 22nd, 2008 at approximately 7 p.m. in which witnesses reported your German Shepherd dog to have attacked and killed a neighbor's dog while not on your property and not restrained. The City of Newberg has various complaints, past and present as well as record of this type of aggressive and menacing behavior by your dog.

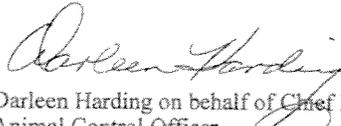
In accordance with City of Newberg Code provisions 92.27 and 92.25 for abating a nuisance, this letter serves as notice that you have 48 hours from the date of this letter to abate the nuisance and remove the said dog from within the city limits of the City of Newberg.

If the nuisance has not been abated within 48 hours, the City may cause the nuisance to be abated in accordance with City Code 95.59. Any costs will be charged to you as the owners of the dog and may be assessed against your property.

You do have the right to protest the order to abate by giving notice to the enforcement officer within 48 hours from the date of this notice.

Failure to abate the nuisance may result in court action.

*Advise A Nuisance abatement Hearing will be set.*  
Sincerely,

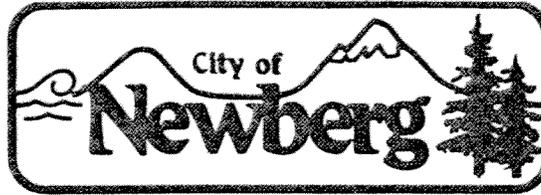
  
Darleen Harding on behalf of Chief Brian Casey  
Animal Control Officer  
City of Newberg  
503-537-1243

"Working Together For A Better Community-Serious About Service"  
0:\LEGAL\COURT\PARATED\ANGEROUS DOG ABATEMENT-SHIRTS.DOC

**Exhibit "B"**  
**To Order No. 2008-0017**  
*(total of 2 pages)*

City Attorney  
(503) 537-1206

City Manager  
(503) 537-1207



414 East First Street  
PO Box 970  
Newberg, OR 97132  
503-537-1206

September 10, 2008

J. Elaine Shirts  
PO Box 53  
Tualatin, OR 97062

via CERTIFIED MAIL, RETURN RECEIPT REQUESTED  
and  
POSTED on Property Located at 505 North Main Street, Newberg, OR on 09/10/08

**Re: NOTICE OF DAMAGES & NUISANCE ABATEMENT**  
Responsible party as owner of the property located at 505 North Main Street,  
Newberg, Oregon, by allowing a nuisance to exist by allowing a potentially  
dangerous dog named Shadow to reside at the above named property and knowing  
that the dog is running at large.

Dear Ms. Shirts:

Pam and Stan Shirts reside at 505 North Main Street, Newberg, Oregon. It is our understanding that Stan Shirts is your son. You are the owner of the property. The public records list you as the sole owner of the property.

As the owner of the property, you have allowed Pam and Stan Shirts to reside on that property. They are housing a potentially dangerous dog named Shadow. That dog has been known to run at large. That is to be loose, unrestrained, and off the property. While unrestrained and off the property, Shadow attacked and killed another small spaniel. Pam Shirts readily admits that the dog is aggressive. Furthermore, the police have contacted the Shirts and warned them about allowing the dog to run at large.

As the owner of the property, you knew or reasonably should have known that Stan and Pam Shirts were housing this German shepherd Shadow on your property. As the owner of the property, the City is asserting that you are a responsible party concerning this nuisance.

The owner of the dog who was killed has the following damages:

1. \$2,260 veterinary:	\$2,260
2. Cremation Bill:	\$ 100
3. Acquisition Cost (replacement value of dog):	<u>\$1,500</u>
<b>Total:</b>	<b>\$3,860</b>

● CITY ATTORNEY'S OFFICE: nlegal@ci.newberg.or.us - Fax: 503-537-5013 ●  
Admin: 537-1261 ● Building: 537-1240 ● Public Works: 537-1273 ● Finance: 538-9421 ● Fire: 537-1230  
Library: 538-7325 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Maintenance: 537-1234 ● Utilities: 537-1205  
Municipal Court Fax: 538-5393 ● Public Works Fax: 537-1277 ● Library Fax: 538-9720

"Working Together For A Better Community-Serious About Service"

J. Elaine Shirts  
September 10, 2008  
Page 2 of 2

Stan Shirts has asked for a hearing concerning this matter before the City Council. **That hearing will take place on Monday, September 15, at 7:00pm.** You're welcome to attend that meeting.

**The City makes the following demands:**

1. That you, as the owner of the property, not allow Stan and Pam Shirts to house Shadow on the above-named property, which is the nuisance.
2. If you have homeowner's insurance, you need to provide this office with the information so a claim can be made concerning these damages from this incident.
3. Certify to the City that you have taken the necessary steps to ensure that the nuisance has been abated by having the German Shepherd, named Shadow, not reside on your property.

Please feel free to call me at (503) 537-1206 concerning this matter. I would appreciate hearing from you concerning the homeowner's insurance as quickly as possible so that victim may make a claim concerning the damages.

Very truly yours,



Terrence D. Mahr  
City Attorney

cc: Darleen Harding, Animal Control Officer  
Dawn Wilson, Sr. Paralegal  
Robin Steele, Paralegal  
Jeff Kosmicki, Lieutenant

O:\Legal\Court\Abate Killed Dog - James Curtis and Elaine Shirts Ltr to Elaine Shirts\_Nuisance Abatement Sept 2008.doc

# Exhibit "C"

To Order No. 2008-0017

(total of 1 page)

## OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed/ORS 153.045 or 153.069

CRIME(S) (See A on Back)    **OR** (Not Both)     VIOLATION(S) (See B on Back)    
  Traffic     Other     Wildlife  
 Boating     Commercial Fishing

STATE OF OREGON    Docket No. \_\_\_\_\_  
 CITY/OTHER PUBLIC BODY Newberg-Dundee    Court:  Municipal     Justice  
 Juvenile     Circuit  
 Community     Tribal  
 COUNTY OF Yamhill

**77883**  
**COMPLAINT**  
 Reserved for D.A. use

**THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:**

Non-CDL ID Type    ID No. \_\_\_\_\_    State OR    Tel No. \_\_\_\_\_  
 CDL

Name: Last Shirts    First Tam    MI M  
 Address \_\_\_\_\_  
 City Newberg    State OR    Zip Code 97132  
 Sex F    Race W    DOB 2-4-60    Height 5'3    Weight 185    Hair Blk    Eyes \_\_\_\_\_  
 License Class \_\_\_\_\_     Employed to drive  
 Def is:  Passenger

**AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:**

Offense Date on or about Aug 22 08    Time 7:00  AM     PM     Highway     Premises open to public  
 At or near Location Newberg OR

**INVOLVING THE FOLLOWING:**

Type \_\_\_\_\_    Regis/VIN/ID No. \_\_\_\_\_    State \_\_\_\_\_     Accident     Injury  
 Property Damage     Endanger others  
 Vehicle year, make, model, style, color, OR Other, describe: \_\_\_\_\_  
 Driver not Reg. Owner     Haz Material  
 Com. Vehicle     Com. Passenger  
 Other \_\_\_\_\_

**DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):**

1. Violated (cite ORS/ORD/rule) 92.27    Describe Keeping a Dangerous dog that killed neighbors dog    Alleged Spd \_\_\_\_\_    Designated Spd \_\_\_\_\_     Posted Limit     Radar  
 VBR     Pace     Laser  
 Intentional     Knowing     Reckless     Criminal negligence     No culpable mental state    1. Base Fine: 500.  
 1. Violated (cite ORS/ORD/rule) \_\_\_\_\_    Describe \_\_\_\_\_  
 Intentional     Knowing     Reckless     Criminal negligence     No culpable mental state    1. Base Fine: \_\_\_\_\_  
 1. Violated (cite ORS/ORD/rule) \_\_\_\_\_    Describe \_\_\_\_\_  
 Intentional     Knowing     Reckless     Criminal negligence     No culpable mental state    1. Base Fine: \_\_\_\_\_

OTHER 08-7819    Expl. \_\_\_\_\_

I certify under ORS 153.045 and 153.990 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint.

Date issued 8-24-08    1st Officer Signature \_\_\_\_\_    Officer(s) Agency ID NGP  
 Print 1st Officer Name \_\_\_\_\_    1st Officer ID No. 17655  
 2nd Officer of Arresting Person (If Not Officer) \_\_\_\_\_    Signature \_\_\_\_\_    Print Name \_\_\_\_\_    2nd Officer ID No. \_\_\_\_\_

**YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE**

9/18/08    9:00  AM     PM  
 Newberg MUNI CT     Yamhill County CIRCUIT CT     Yamhill County JUVENILE CT     Dundee MUNI CT  
 401 E Third St    535 E Fifth St    535 E Fifth St    820 SW Fifth St  
 Newberg OR 97132    McMinnville OR 97128    McMinnville OR 97128    Dundee OR 97115  
 (503) 537-1203    (503) 538-3922