812.04 ANIMALS - OWNER'S NEGLIGENCE IN VIOLATION OF ANIMAL CONTROL ORDINANCE.[1]

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

Every person is under a duty to follow standards of conduct enacted as laws for the safety of the public. A standard of conduct established by a safety ordinance[2] must be followed. A person's failure to do so is negligence in and of itself.[3]

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that

the defendant was negligent in that *he* violated a safety ordinance by (*here describe conduct violating ordinance*).

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

With respect to the plaintiff's contention, a safety ordinance enacted by (*name political subdivision*) provides that (*quote or summarize safety ordinance*).

A violation of this safety ordinance is negligence in and of itself.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff was negligent in the way contended by the plaintiff and that such negligence was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. "[W]here a statute or municipal ordinance imposes on any person a specific duty for the protection or benefit of others, if he neglects to perform that duty, he is liable to those for whose protection or benefit it was imposed for any injuries or damages of the character which the statute or ordinance was designed to prevent and which was proximately produced by such neglect . . . ." *Carr v. Murrows Transfer, Inc.*, 262 N.C. 550, 553, 138 S.E.2d 228, 231 (1964).

2. Ordinances must be properly enacted and must be consistent with state law. N.C. Gen. Stat. § 160A-174 (1994). The fact that a state law makes a given act, omission or condition unlawful does not preclude ordinances requiring a higher standard. N.C. Gen. Stat. § 160A-174(b); *Pharo v. Pearson*, 28 N.C. App. 171, 174, 220 S.E.2d 359, 361 (1975).

3. *Swaney v. Shaw*, 27 N.C. App. 631, 635, 219 S.E.2d 803, 806 (1975).