

ORDINANCE NO. 07-05

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF WINDSOR HEIGHTS, IOWA, BY REPLACING CHAPTER 33 ILLEGAL OR DANGEROUS ANIMALS.

BE IT ENACTED by the City Council of the City of Windsor Heights, Polk County, Iowa:

SECTION 1. Purpose. The purpose of this ordinance is to replace Chapter 33 of the Municipal Code, with an updated chapter that has animal control standards similar to our surrounding municipalities.

SECTION 2. Amended. Chapter 33 is replaced with the following chapter:

CHAPTER 33

ILLEGAL OR DANGEROUS ANIMALS

33.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Dangerous animal" means (a) any animal which is not naturally tame or gentle, and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon or causing disease among human beings and (b) the following animals, which are deemed to be dangerous animals per se:
 - A. Wolves, coyotes and foxes;
 - B. Badgers, wolverines, weasels, mink and other Mustelids;
 - C. Bats;
 - D. Bears;
 - E. Gila monsters, and lizards that are venomous or poisonous;
 - F. All apes (including chimpanzees), baboons, and macaques;
 - G. Monkeys, except the squirrel monkey;
 - H. Elephants;
 - I. Wild boar;
 - J. Black widow and brown recluse spiders and scorpions;
 - K. Snakes which are naturally venomous, poisonous, or constrictors;
 - L. All cats, except domestic cats (Carnivora of the family Felidae, including but not limited to lions, cougars, tigers, jaguars, leopards, lynx, ocelots, bobcats, etc.); and
 - M. Raccoons, opossums, and skunks.

Dangerous animals shall not include dangerous dogs as defined in Chapter 33.01(2) or potentially dangerous dogs as defined in Chapter 33.01(8) below.

2. "Dangerous dog" means any dog that:
 - A. Causes a serious injury to a person or domestic animal; or
 - B. Any dog which has attacked a human being or domestic animal one or more times, without provocation; or
 - C. Any dog with a history, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
 - D. Any dog that snaps, bites, or manifests a disposition to snap or bite; or
 - E. Any dog that has been trained for dog fighting, animal fighting or animal baiting, or is owned or kept for such purposes; or
 - F. Any dog trained to attack human beings, upon command or spontaneously in response to human activities except dogs owned by and under the control of the police department, a law enforcement agency of the State of Iowa or the United States or a branch of the armed forces of the United States.
 - G. The American pit bull terrier breed of dog; or

- H. The American Staffordshire terrier breed of dog; or
 - I. Any dog which has the appearance and characteristics of being predominately of the breeds of American Pit Bull Terrier or American Staffordshire Terrier.
 - J. Any dog that has been designated as a potentially dangerous dog and engages in behavior that poses a threat to public safety as defined in Chapter 33.01(8) or serious injury as defined in Chapter 33.01(3) below.
3. "Serious injury" means any physical injury to a human being inflicted by a dog demonstrating an intent to harm resulting in a major fracture, muscle tears or disfiguring lacerations or lacerations requiring multiple sutures or corrective or cosmetic surgery.
 4. "Proper enclosure" of potentially dangerous and dangerous dogs requires:
 - A. Potentially dangerous and dangerous dogs must be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this chapter. Such pen, kennel or structure must have secure sides and a secure top attached to the sides or, in lieu of a top, walls at least six feet in height and at least six feet taller than any internal structure.
 - B. All pens or other structures designed, constructed or used to confine potentially dangerous and dangerous dogs must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined potentially dangerous or dangerous dog.
 - C. Any structures erected must comply with all zoning and building regulations of the City. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition. No potentially dangerous or dangerous dog may be kept on a porch, patio or in any part of a house or structure that would allow the potentially dangerous or dangerous dog to exit such building on its own volition.
 5. "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of a dog.
 6. "Impound" means taken into the custody under the direction of Windsor Heights Police Department.
 7. "Provocation" means that the threat, injury or damage caused by the dog was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime.
 8. "Potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by any of the following behaviors:
 - A. Causing an injury to a person or domestic animal on public or private property that is less severe than a serious injury;
 - B. Without provocation, chases or approaches a person, a domestic animal or a wheeled conveyance upon the streets, sidewalks, or any public or private property, in an apparent attitude of attack; or has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals;
 - C. Running at large and impounded or owner cited by Police Department two (2) or more times for running at large within any 12-month period; or
 - D. Acts in a highly aggressive manner within a fenced yard/enclosure and appears to a reasonable person able to jump over or escape.
 9. "Responsible person" means a person at least 18 years old who is able to keep the dog under complete control at all times.

10. "Pet safety course" means a course pre-approved by the Chief of Police or his designee consisting of but not limited to instruction in safe management of dogs.

33.02 ANIMAL REVIEW BOARD/APPEALS.

1. An Animal Review Board is hereby created for the sole purpose of hearing and deciding administrative appeals regarding dangerous animals, potentially dangerous dogs or dangerous dogs, according to the procedure set forth in this chapter. The Animal Review Board shall consist of the following three persons: the City Administrator, the Director of Public Works, and the Mayor.
2. In order to appeal an order to remove a dangerous animal or a determination that a dog is a potentially dangerous dog or dangerous dog, written notice of appeal must be filed with the City Clerk within three (3) days after receipt of the order or written determination. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the order or determination of the Chief of Police.
3. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the City Clerk. The hearing by the Animal Review Board of such appeal shall be scheduled within seven (7) days of the receipt of notice of appeal. After such hearing, the Animal Review Board may affirm or reverse the order or determination of the Chief of Police. Such determination shall be contained in a written decision and shall be filed with the City Clerk within three days after the hearing, or any continued session thereof. The written decision shall immediately be served upon the person or entity against whom rendered in the same manner as the order or determination of the Chief of Police.

33.03 KEEPING OF DANGEROUS ANIMALS PROHIBITED. No

person shall keep, shelter or harbor any dangerous animal or act as a custodian for such animal, or keep such animal for any purpose or in any capacity within the City except in the following circumstances:

1. The keeping of dangerous animals in a public zoo, bona fide educational or medical institution, humane society or museum where they are kept as live specimens for the public to view or for the purpose of instruction, research or study.
2. The keeping of dangerous animals for exhibition to the public by a circus, carnival, exhibit or show where such circus, carnival, exhibit or show is of a traveling nature, is displayed before large assemblages of people and maintains any and all required Federal or State licenses.
3. The keeping of dangerous animals in a bona fide, licensed veterinary hospital for treatment.
4. The keeping of dangerous animals by a wildlife rescue organization with appropriate permit from the State Department of Natural Resources.
5. Any dangerous animals under the jurisdiction of and in the possession of the Iowa Department of Natural Resources, pursuant to Chapters 481A and 48 IB of the Code of Iowa.

33.04 SEIZURE, IMPOUNDMENT AND DISPOSITION OF DANGEROUS ANIMALS.

1. In the event that a dangerous animal is found at large and unattended upon public property, park property, public right-of-way or the property of someone other than its owner, thereby creating a hazard to persons or property, such animal may, in the discretion of the Chief of Police, be destroyed if it cannot be confined or captured. The City shall be under no duty to attempt the confinement or capture of a dangerous animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction.

2. Upon the complaint of any individual that a person is keeping, sheltering or harboring a dangerous animal in the City, the Chief of Police shall cause the matter to be investigated, and if after investigation, the facts indicate that such person is keeping, sheltering or harboring a dangerous animal in the City, the Chief of Police shall order such person to safely remove such animal from the City, and permanently place the animal with an organization or group allowed under Chapter 33.03 of this Code to possess dangerous animals, or destroy the animal, within three days of the receipt of such order. Such order shall be contained in a notice to remove the dangerous animal, which notice shall be given in writing to the person keeping, sheltering or harboring the dangerous animal, and shall be served personally or by certified mail. Such order and notice to remove the dangerous animal shall not be required where the dangerous animal has previously caused serious physical harm or death to any person, in which case, the Chief of Police shall cause the animal to be immediately seized and impounded or killed if seizure and impoundment are not possible without risk of serious physical harm or death to any person.

3. The order to remove a dangerous animal, issued by the Chief of Police, may be appealed to the Animal Review Board as set forth in Chapter 33.02 above. If the Animal Review Board affirms the action of the Chief of Police, the Board shall order in its written decision that the individual or entity owning, sheltering, harboring, or keeping such dangerous animal, remove such animal from the City, permanently place such animal with an organization or group allowed under Chapter 33.03 of this chapter to possess dangerous animals, or destroy it. If the original order of the Chief of Police is not appealed and is not complied with within three (3) days, or if the order of the Animal Review Board after appeal is not complied with within three (3) days of its issuance, the Chief of Police is authorized to seize and impound such dangerous animal. An animal so seized shall be impounded for a period of seven (7) days. If at the end of the impoundment period, the individual or entity against whom the decision and order of the Animal Review Board was issued has not petitioned the Iowa District Court for a review of said order, the City shall cause the animal to be disposed of by sale, permanently place such animal with an organization or group allowed under Chapter 33.03 of this chapter to possess dangerous animals, or destroy such animals in a humane manner. Failure to comply with an order of the City issued pursuant hereto shall constitute a serious misdemeanor offense, punishable pursuant to this Code of Ordinances.

33.05 DETERMINATION OF POTENTIALLY DANGEROUS DOG OR DANGEROUS DOG

1. Determination of a Potentially Dangerous Dog.

A. After an investigation, which must be initiated within three (3) days after the situation becomes known to Windsor Heights Police Department, the Chief of Police or his designee is authorized to make a determination whether a dog is potentially dangerous based on the factors listed in Chapter 33.01(8) and shall notify the owner of the dog in writing by certified mail or hand delivery with signature of that status within five (5) days after the completion of the investigation.

B. Following attempted notice to the owner, if the Chief of Police or his designee has probable cause to believe that a dog is a potentially dangerous dog and may pose a threat to public safety, the Chief of Police or his designee may obtain a search warrant pursuant to Iowa Rules of Civil Procedure and arrange for the impounding of the dog pending disposition of the case or until the dog owner has fulfilled the requirements of Chapter 33.06. The owner of the dog shall be liable to the City for the costs of impounding and keeping the dog.

C. Upon notice, the owner may, within three (3) days after a determination that a dog is a potentially dangerous dog, appeal the determination to the Animal Review Board as set forth in Chapter 33.02 above. A decision by the Animal Review Board overturning the determination of the Chief of Police or his designee shall not affect the right of Chief of Police or his designee to later declare a dog to be a potentially dangerous dog or a dangerous dog, or to determine that the dog poses a threat to public safety, based on the dog's subsequent behavior.

2. Determination of a Dangerous Dog.

A. After an investigation, which must be initiated within three (3) days after the situation becomes known to the Windsor Heights Police Department, the Chief of Police is authorized to make a determination whether a dog is dangerous based on the factors listed in Chapter 33.01(2) and shall notify the owner of the dog in writing by certified mail with signature or hand delivery of that status within five (5) days after completing the investigation.

B. Following attempted notice to the owner and prior to the hearing, if Chief of Police or his designee has probable cause and believes the dog to be a dangerous dog and that the animal poses an imminent threat to public safety, law enforcement, the Chief of Police or his designee may obtain a search warrant pursuant to Iowa Rules of Civil Procedure and impound the dog pending disposition of the case or until the dog owner has fulfilled the requirements of Chapter 33.06. The owner of the dog shall be liable to the City for the costs of impounding and keeping the dog if the dog is determined to be a dangerous dog.

C. The owner may, within three (3) days after a determination that a dog is a dangerous dog, appeal the determination to the Animal Review Board as set forth in Chapter 33.02. A decision by the Animal Review Board overturning the Chief of Police's or his designee's determination shall not affect the right of the Chief of Police or his designee to later declare a dog to be a dangerous dog or to determine that the dog poses a threat to public safety based on the dog's subsequent behavior.

3. Exceptions to Dangerous or Potentially Dangerous Dog Determination.

No dog shall be declared a dangerous or potentially dangerous dog if:

A. The dog was used by a law enforcement or military official for legitimate law enforcement or military purposes;

B. The threat, injury, or damage was sustained by a person:

- (i) Who was committing, at the time, a willful trespass or other tort upon the premises lawfully occupied by the owner of the dog; or
- (ii) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or
- (iii) Who was committing or attempting to commit a crime; or

C. The dog was:

- (i) Responding to pain or injury or protecting its offspring; or
- (ii) Protecting or defending a human being within the immediate vicinity of the dog from an attack or assault.

4. Consequences of a Dangerous or Potentially Dangerous Dog Determination.

A. If the Chief of Police or his designee determines that a dog is a potentially dangerous dog under Chapter 33.05(1), the owner shall comply with the requirements for proper enclosure under Chapter 33.01(4) and for registration and handling under Chapter 33.06(1) and any other special security or care requirements which are reasonable.

B. If the Chief of Police or his designee determines that a dog is a dangerous dog under Chapter 33.05(2), the owner shall comply with the requirements for proper enclosure under Chapter 33.01(4) and for registration and handling under Chapter 33.06(2) and (3) and any other special security or care requirements which are reasonable.

C. The Chief of Police or his designee may require impoundment of the dog if the owner is unable or unwilling to comply with the requirements of Chapter 33.06(1) until the owner of the dog has satisfied all the requirements of the certificate of registration holding permit. The requirements must be met within thirty (30) days. If, after thirty (30) days, the owner has not satisfied all the requirements of the holding permit, the animal may be humanely euthanized on the thirty-first (31) day. The owner of the dog shall be liable to the City for

the costs of impounding and keeping the dangerous or potentially dangerous dog whether or not they reclaim the dog.

33.06 REGISTRATION AND HANDLING REQUIREMENTS FOR DANGEROUS DOGS AND POTENTIALLY DANGEROUS DOGS .

1. The City Clerk, at the direction of the Chief of Police or his designee, shall issue a certificate of registration and valid City pet license to the owner of a potentially dangerous dog if the owner establishes to the satisfaction of the Chief of Police or his designee that:

A. The owner of the potentially dangerous dog is 18 years of age or older;

B. The owner of the potentially dangerous dog shall present a certificate of insurance issued by an insurance company licensed to do business in this state, providing personal liability insurance coverage as in a homeowner's policy, with a minimum liability amount of \$500,000.00 for the injury or death of any person, for damage to property of others and for acts of negligence by the owner or his or her agents, in the keeping or owning of such potentially dangerous dog. The certificate shall require notice to the City, in conformity with general City standards for certificates of insurance, if the underlying policy of insurance is cancelled for any reason. In lieu of such a certificate, a copy of a current homeowner's policy designating these requirements shall be sufficient proof of insurance for purposes of this subsection. If a certificate of insurance or policy is not immediately available, a binder indicating the coverage may be accepted for up to 30 days subsequent to the determination that a dog is potentially dangerous; however, if after 30 days a certificate of insurance or a policy has not been submitted, the dog shall be deemed unlicensed and subject to immediate impoundment or humane euthanasia at the owner's expense;

C. The potentially dangerous dog has a current rabies vaccination at the owner's expense;

D. The owner has a proper enclosure to prevent the entry of any person or animal and the escape of said potentially dangerous dog as defined in Chapter 33.01(4);

E. The potentially dangerous dog has been spayed or neutered at the owner's expense;

F. The potentially dangerous dog has been implanted with a microchip containing owner identification information at the owner's expense. The microchip information must be registered with the Chief of Police;

G. The potentially dangerous dog has been photographed for identification purposes;

H. The potentially dangerous dog owner shall satisfactorily complete a pet safety course pre-approved by the Chief of Police or his designee at the dog owner's expense; and

I. The owner of the potentially dangerous dog has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable.

2. The City Clerk, at the direction of the Chief of Police or his designee, shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to satisfying the requirements for registration of a potentially dangerous dog pursuant to paragraph (1) of this Chapter, establishes to the satisfaction of the Chief of Police or his designee that:

A. The owner will maintain the dangerous dog exclusively on the owner's property except for medical treatment or examination; and

B. The owner of the dangerous dog has posted on the premises a clearly visible written warning sign

that there is a dangerous dog on the property with a conspicuous warning symbol that informs children of the presence of a dangerous dog. The sign shall be very visible from the public roadway or 50 feet, whichever is less.

3. The Chief of Police or his designee may order the immediate impoundment or humane euthanasia of a dangerous dog if the owner fails to abide by the conditions for registration or confinement or handling of a dangerous or potentially dangerous dog.

4. If any dog previously determined to be a potentially dangerous dog has not exhibited any of the behaviors specified for a potentially dangerous dog, as set forth in Chapter 33.01(8) within twelve (12) months since the date of the potentially dangerous dog determination, then that dog is eligible for a review of the determination with the potential for lifting the requirements of this Chapter; provided, however, then that same dog may again be declared a dangerous or potentially dangerous dog if it again exhibits any of the specified behaviors. Such a review shall be completed by the Animal Review Board.

33.07 OWNER RESPONSIBILITY FOR DANGEROUS OR POTENTIALLY DANGEROUS DOGS.

1. It shall be unlawful to:

A. Keep a dog determined to be dangerous or potentially dangerous without a valid certificate of registration issued under Chapter 33.06.

B. Permit a potentially dangerous dog to be outside a proper enclosure unless the potentially dangerous dog is under the control of a responsible person as defined in Chapter 33.01(9), muzzled, and restrained by a substantial lead not exceeding six (6) feet in length. The muzzle shall be made in a manner that will not cause injury to the dog or obscure its vision or interfere with its respiration but shall prevent it from biting any human being or animal.

C. Fail to maintain a dangerous dog exclusively on the owner's property as required except for medical treatment or examination. When removed from the owner's property for medical treatment or examination, the dangerous dog shall be caged or under the control of a responsible person, muzzled and restrained with a substantial lead not exceeding six (6) feet in length. The muzzle shall be made in a manner that will not cause injury to the dog or obscure its vision or interfere with its respiration but shall prevent it from biting any human being or animal.

D. Permit a dangerous or potentially dangerous dog to be kept on a chain, rope or other type of leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

E. Fail to notify the Chief of Police or his designee immediately in person or by telephone upon escape if a dangerous or potentially dangerous dog is on the loose, is unconfined, has attacked another domestic animal, or has attacked a human being.

F. Fail to notify the Windsor Heights Police Department within 72 hours (3 days) with the name, address, and telephone number of the new owner of the dangerous or potentially dangerous dog if the dog has been sold or has been given away to an owner inside or outside the jurisdiction; and

(i) If requested by the Chief of Police or his designee, the owner must execute an affidavit under oath setting forth the complete name, address, and telephone number of the person to whom the dog has been transferred.

G. Fail to notify the Windsor Heights Police Department within 72 hours (3 days) of a change of address or telephone number by the owner of the dangerous or potentially dangerous dog.

H. Fail to notify the Windsor Heights Police Department within 72 hours (3 days) if the dangerous or potentially dangerous dog has died; and

(i) If requested by the Chief of Police or his designee, the owner must execute an affidavit under oath setting forth the circumstances of the dog's death.

I. Fail to surrender a dangerous or potentially dangerous dog to the Windsor Heights Police Department to arrange for safe confinement pending a disposition of the case when there is a reason to believe that the dangerous or potentially dangerous dog poses an imminent threat to public safety.

J. Fail to comply with any reasonable special security or care requirements for a dangerous or potentially dangerous dog, the Chief of Police or his designee may have established pursuant to the finding that the dog was potentially dangerous or dangerous.

33.08 PENALTIES AND FEES.

1. An owner of a dangerous or potentially dangerous dog who violates the provisions of Chapter 33.06 and 33.07 shall be guilty of a serious misdemeanor, and, upon conviction, shall be punished by a fine not to exceed \$500 or imprisonment not to exceed 90 days, or both, for a first offense and not more than \$1,000 or imprisonment not to exceed 90 days, or both, for a second offense.

2. An owner of a dangerous or potentially dangerous dog that causes serious injury to or kills a human being without provocation shall be fined up to five hundred dollars (\$500).

2. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act, or the rules issued under authority of this Chapter.

3. License Fee – Spayed or Neutered: \$10.00 per animal

4. License Fee – Not Spayed or Neutered: \$20.00 per animal

5. Impound Fee: \$75.00 first offense

6. Impound Fee: \$100.00 each subsequent offense within a twelve (12) month period

7. Board Fee: \$20.00 per day

SECTION 3. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Severability. If any section, provision or part of this ordinance shall be adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of this ordinance as a whole, or any section, provision or part thereof not adjudged unconstitutional or invalid.

SECTION 5. Effective Date. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

Passed by the City Council this xxth day of xx, 2007 and approved this xxth day of xx, 2006.

David J. Sullivan, Mayor

ATTEST:

Marketa George Oliver, City Clerk

CLERK'S CERTIFICATE 07-05

I, Marketa George Oliver, do hereby certify that I am the duly appointed, qualified and acting City Clerk of the City of Windsor Heights, Iowa, and that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Windsor Heights, Iowa, as provided by law on the XX day of XX, 2007, approved as provided by law on the XX day of XX, 2007, and published as provided by law on the XX day of XX, 2007, at 8:00 a.m.

Marketa George Oliver, City Clerk