

## ORDINANCE NO. 15,128

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 18-1, 18-41, 18-58, 18-196 and 18-198, and by repealing Sections 18-59, 18-199 and 18-202 and adding and enacting new Sections 18-59, 18-199 and 18-202, regarding the process for designation and handling of vicious dogs, and illegal and dangerous animals, and appeals therefrom.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, be and is hereby amended by amending Sections 18-1, 18-41, 18-58, 18-196 and 18-198, and by repealing Sections 18-59, 18-199 and 18-202 and adding and enacting new Sections 18-59, 18-199 and 18-202, regarding the process for designation and handling of vicious dogs, and illegal and dangerous animals, and appeals therefrom, as follows:

### **Chapter 18 ANIMALS ARTICLE I. IN GENERAL**

#### **Sec. 18-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Acreage* means a plot of land within the city's corporate limits equal to or greater than an acre.

*Adequate shelter* means a protective covering which is impervious to moisture and other adverse weather conditions, and includes a door or flap allowing the animal constant access, and which is maintained in a sanitary manner.

*Animal shelter* means the facility owned by the City of Des Moines used for animal control purposes.

*Chief humane officer* means the city employee designated by the city manager to exercise the authority of the chief human officer under this chapter, and such employee's designee.

*Contractor* means a nonprofit corporation that provides animal care, adoption and cremation services, and that has contracted with the City of Des Moines to provide animal shelter services.

*Dead animal* includes all dead animals, skinned or unskinned, undressed, unslaughtered hogs, cattle, and other animals which have died from disease, accident, or cause other than slaughter for use as food, in accordance with the sanitary laws regulating such act.

*Chief of police* means the legally designated chief of the police department and his or her designee.

*Owner* means any person owning, keeping or harboring an animal.

## ARTICLE II. DOGS

### Sec. 18-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dog* means and includes both male and female animals of the canine species.

*Owner* means any person owning, keeping or harboring a dog.

*Service dog or service animal* means a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being or companionship do not constitute work or tasks for the purposes of this definition.

*Vicious dog* means:

- (1) Any dog which has bitten or attacked a human being or domestic animal one or more times, without provocation;
- (2) 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;
- (3) Any dog that snaps, bites, or manifests a disposition to snap or bite;
- (4) Any dog that has been trained for dog fighting, animal fighting or animal baiting or is owned or kept for such purposes;
- (5) 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 or of the United States or a branch of the armed forces of the United States;
- (6) Staffordshire terrier breed of dog;
- (7) The American pit bull terrier breed of dog;
- (8) The American Staffordshire terrier breed of dog; or
- (9) Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.

### Sec. 18-58. Unlicensed vicious dogs.

All unlicensed vicious dogs shall be deemed illegal and shall be destroyed except as provided in section 18-66 of this chapter. This section shall not apply to a dog which, upon initial notice to its owner, the owner agrees to properly license and confine or to a dog for which a hearing has been requested under this article to determine if it is vicious until there has been a final decision on the question raised at hearing at which time the owner may, if the dog is found vicious, properly license and confine the dog.

**Sec. 18-59. Seizure, impoundment and disposition of vicious dogs.**

- (a) Upon complaint or reasonable suspicion that a particular dog is a vicious dog, the chief humane officer may cause the matter to be investigated. If after investigation, the chief humane officer determines that a particular dog is a vicious dog as defined in this chapter, the chief humane officer shall declare such dog to be a vicious dog.
- (b) Notice that a dog has been declared a vicious dog shall be promptly served upon an owner of the dog, if known, in one of the following ways:
  - (1) By personal service upon an owner of the dog, if known.
  - (2) If notice cannot be conveniently served on an owner of the dog within the city boundaries, then notice may be served by service upon any adult residing at the premises where the dog is regularly kept or by posting on those premises if no resident adult is present to accept service.
  - (3) If notice cannot be conveniently served on an owner of the dog within the city boundaries and the dog is not regularly kept at known location within the city, then service may be made upon the owner by any reasonable means. Such notice, if mailed, shall not be considered served until received or rejected by the owner.

The notice shall include the following: a description of the dog and the basis for the declaration that the dog is vicious, notice that the owner is required to license, insure and confine the dog at all times as required by this article, and notice that the declaration that the dog is vicious may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served.

- (c) Any person owning or having a right to possession of the dog in question may appeal the declaration that the dog is vicious pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within three business days of service of the notice of such declaration. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the declaration that the dog is vicious.
- (d) The chief humane officer may seize and impound any dog which has been declared to be a vicious dog pursuant to this section unless the dog is licensed and insured in conformance with this article and the owner has demonstrated to the reasonable satisfaction of the chief humane officer a willingness and ability to keep the dog confined. A dog so seized and not redeemed shall be impounded for a period of seven days, or until seven days after service of the decision on appeal if the declaration that the dog is vicious is appealed and upheld. If the declaration that the dog is vicious is reversed on appeal, the dog shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the declaration that the dog is vicious remains in effect and the owner has not redeemed the dog or petitioned the district court for a review of the declaration that the dog is vicious, the chief humane officer shall cause the dog to be destroyed except as provided in section 18-66 of this chapter.
- (e) Any dog that has been declared to be vicious and that is under impoundment may be redeemed by the owner only if the dog is not under quarantine, and the owner has licensed, insured and demonstrated to the reasonable satisfaction of the chief humane officer a willingness and ability to confine the dog as required by this article for a vicious dog. All costs of such impoundment or quarantine shall be paid by the owner if the dog is determined

- to be vicious. If the dog is not determined to be vicious, the owner shall only pay those costs attributable to initial confinement prior to notice or costs of any required quarantine.
- (f) All dogs declared to be vicious shall have an electronic identification device placed under the dog's skin prior to release from impound or quarantine. Prior to the release of a vicious dog from any impoundment or quarantine, the owner shall pay the fee in the amount set in the schedule of fees adopted by the city council by resolution for the installation of the electronic identification device. If a contractor implants an electronic identification device in a dog pursuant to this section, the contractor shall retain the fee.
  - (g) Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed or if affirmed on appeal shall constitute a misdemeanor.

## **ARTICLE VI. ILLEGAL AND DANGEROUS ANIMALS**

### **Sec. 18-196. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dangerous animal* means any animal, including a dog, except for an illegal animal per se, as listed in the definition of illegal animal, that has bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that the animal:

- (1) Has bitten or clawed a person on two separate occasions within a 12-month period;
- (2) Did bite or claw once causing injuries above the shoulders of a person;
- (3) Could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence; or
- (4) Has attacked any domestic animal or fowl on three separate occasions within a 12-month period.

*Illegal animal* means:

- (1) 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 or domestic animals and having known tendencies as a species to do so.
- (2) Any dangerous wild animal as defined in I.C. ch. 717F.
- (3) Any nondomesticated member of the order Carnivora which as an adult exceeds the weight of 20 pounds.
- (4) The following animals, which shall be deemed to be illegal animals per se:
  - a. Lions, tigers, jaguars, leopards, cougars, lynx and bobcats.
  - b. Wolves, coyotes and foxes.
  - c. Badgers, wolverines, weasels, skunks and mink.
  - d. Raccoons.
  - e. Bears.
  - f. Monkeys and chimpanzees.
  - g. Bats.
  - h. Alligators, crocodiles and caimans.
  - i. Scorpions.

- j. Snakes and reptiles that are venomous.
- k. Snakes that are constrictors over six feet in length.
- l. Gila monsters.
- m. Opossums.
- n. All apes, baboons and macaques.
- o. Piranhas.

**Sec. 18-198. Exceptions to keeping illegal animals.**

The prohibition contained in section 18-197 of this article shall not apply to the keeping of illegal animals in the following circumstances:

- (1) The keeping of illegal 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 illegal animals for exhibition to the public by a bona fide traveling circus, carnival, exhibit or show.
- (3) The keeping of illegal animals in a bona fide, licensed veterinary hospital for treatment.
- (4) The keeping of illegal animals by a wildlife rescue organization with appropriate permit from the state conservation commission.
- (5) Any illegal animals under the jurisdiction of and in the possession of the state conservation commission, pursuant to I.C. § 481A.1 et seq. or 481B.1 et seq.
- (6) The keeping of snakes and reptiles that are venomous and the keeping of snakes that are constrictors six feet in length and over by any individual 18 years of age or older who has:
  - a. Received a degree of bachelor of science, based upon courses of instruction which include courses in herpetology, from an accredited college level institution; or
  - b. Successfully completed a course of instruction taught under the auspices of the city zoo on the proper handling, care and keeping of such animals; or
  - c. Completed a course of instruction of at least 20 hours duration at an accredited educational institution on the care, handling and keeping of reptiles; and
  - d. Applied for and received from the city clerk a permit to keep such animals, such application to be on a form approved by the city council.
- (7) A person with a disability or a person training an assistive animal has the right to possess an assistive animal. As used in this subsection, the term "assistive animal" means a simian or other animal specially trained or in the process of being trained under the auspices of a recognized training facility to assist a person with a disability.
- (8) The keeping of primates maintained for research or educational programs by the Iowa Primate Learning Sanctuary.
- (9) The conveyance of animals through the city in compliance with all state and federal laws governing the possession and sale of such animal, provided that such animal does not remain within the city longer than necessary for its safe conveyance through the city, and such animal is not removed from the vehicle except as necessary for immediate transfer to another vehicle.

**Sec. 18-199. Seizure, impoundment and disposition of illegal animals.**

- (a) *Seizure of illegal animals found at large.*
  - (1) If an illegal 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 be destroyed by the police department if it cannot be safely captured and impounded. The city shall be under no duty to attempt the capture and impoundment of an illegal animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction. Notice of the capture and impoundment of an illegal animal found at large shall be promptly given to the owner, if known, by any reasonable means.
- (b) *Seizure of illegal animals illegally kept.*
  - (1) Upon complaint or reasonable suspicion that an illegal animal is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane officer may cause the matter to be investigated.
    - a. If, after investigation, the chief humane officer determines that an illegal animal per se is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane officer shall declare the animal to be an illegal animal per se and shall immediately seize the animal. However, such animal may be destroyed or temporarily left in the possession and control of the owner, if in the discretion of the chief humane officer or chief of police such animal cannot be safely seized and impounded.
    - b. If, after investigation, the chief humane officer determines that an illegal animal, other than an illegal animal per se, is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane officer shall declare the animal to be an illegal animal and shall order the person to permanently place the animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or destroy the animal, within seven days of the receipt of such order. If the animal is not placed with an organization or group allowed under section 18-198 of this article to possess illegal animals or destroyed within seven days of receipt of such order the chief humane officer shall seize the animal. However, such animal may be temporarily left in the possession and control of the owner pending transfer to an organization or group allowed under section 18-198 of this article to possess the animal or destroyed, if in the discretion of the chief humane officer or the chief of police, such animal cannot be safely seized and impounded.
- (c) *Disposition of illegal animals.*
  - (1) Notice that an animal has been declared an illegal animal subject to seizure, and notice of the seizure, if such animal has been seized and impounded, shall be promptly served by personal service upon an owner of the animal, if known. If notice cannot be promptly served on an owner of the animal within the city boundaries, then notice may be served by service upon any adult residing at the premises where the animal was regularly kept or by posting on those premises if no resident adult is present to accept service. The notice shall include: a description of the animal; a

declaration that the animal is an illegal animal or illegal animal per se which has been kept, sheltered or harbored in violation of section 18-197; the basis for such declaration; notice that such animal must be placed with a person or organization permitted by section 18-198 to keep illegal animals who demonstrates to the reasonable satisfaction of the chief humane officer that they are willing and capable of keeping the animal confined; and, notice that the decisions to declare the animal an illegal animal and to seize the animal may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served.

- (2) An illegal animal so impounded and not subject to quarantine may be redeemed by a person or organization permitted by section 18-198 to keep illegal animals, who demonstrates to the reasonable satisfaction of the chief humane officer that they are an owner of the animal and are willing and capable of keeping the animal confined.
- (3) An animal so impounded and not redeemed shall be held for a period of seven days, or until seven days after service of the decision on appeal if the decisions to declare the animal an illegal animal and to seize the animal is appealed and upheld. If the decision to declare the animal an illegal animal and to seize the animal are reversed on appeal, the animal shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the decision to declare the animal an illegal animal and, if applicable, the decision to seize the animal remain in effect and the owner has not petitioned the district court for a review of such decisions, the chief humane officer shall cause the animal to be placed with an organization or group allowed under section 18-198 of this article to possess the animal, or shall destroy such animal in a humane manner.
- (d) The orders and declarations concerning an illegal animal issued by the chief humane officer pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such order or declaration, written notice of appeal must be filed with the city clerk within three days after receipt of the order or declaration. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the chief humane officer.
- (e) Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed, or after such order has been affirmed on appeal, shall constitute a misdemeanor offense.

**Sec. 18-202. Seizure, impoundment and disposition of dangerous animals.**

- (a) Upon complaint or reasonable suspicion that a dangerous animal is being kept, sheltered or harbored in the city, the chief humane officer may cause the matter to be investigated. If after investigation, the chief humane officer determines that a dangerous animal is being kept, sheltered or harbored in the city by any person, the chief humane officer shall declare such animal to be a dangerous animal and shall order the person owning, sheltering, harboring or keeping the animal to cause it to be destroyed in a humane manner within 3 days of service of the notice of the order, and keep the animal securely confined or leased under the actual control of a person 18 years of age or older until so destroyed.
- (b) Notice that an animal has been declared a dangerous animal shall be promptly served by personal service upon an owner of the animal, if known. If notice cannot be promptly served on an owner of the animal within the city boundaries, then notice may be served by service

upon any adult residing at the premises where the animal was regularly kept or by posting on those premises if no resident adult is present to accept service. The notice shall include: a description of the animal; a declaration that such animal is a dangerous animal; the basis for such declaration; an order that the owner cause the animal to be destroyed in a humane manner within 3 days of service of the notice; notice that such animal will be subject to seizure if not destroyed within 3 days of service of the notice; and notice that the decision to declare the animal a dangerous animal may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served. A notice that a dog is a dangerous animal may include as an alternative an allegation that a dog is a vicious dog under section 18-59 of this chapter.

- (c) If the animal is ordered to be destroyed by the owner, such order must be complied with within three days of its issuance, otherwise the chief humane officer is authorized to seize and impound the animal. Such an animal may also be seized at any time if it is not actually kept securely confined or leased under the actual control of a person 18 years of age or order until so destroyed. An animal so seized shall be impounded for a period of seven days, or until seven days after service of the decision on appeal if the decision to declare the animal a dangerous animal is appealed and upheld. If the decision to declare the animal a dangerous animal is reversed on appeal, the animal shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the decision to declare the animal a dangerous animal remains in effect and the owner has not petitioned the district court for a review of such decision, the chief humane officer shall cause the animal to be destroyed in a humane manner.
- (d) The orders and declarations concerning a dangerous animal issued by the chief humane officer pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such order or declaration, written notice of appeal must be filed with the city clerk within three days after receipt of the order or declaration. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the chief humane officer.
- (e) Any animal which is alleged to be dangerous and which is under impoundment or quarantine shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be dangerous. If the animal is not determined to be dangerous and was found at large, the owner shall only pay those costs attributable to the initial confinement and any required quarantine. If the animal is not determined to be dangerous and was not at large at the time of confinement, the owner shall only pay those costs attributable to any required quarantine.
- (f) Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed, or after such order has been affirmed on appeal, shall constitute a misdemeanor offense.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law. However, any administrative appeal for which the initial notice of appeal was received by the City Clerk prior to the date of such publication shall continue to be governed by the procedural rules in effect at the time such appeal was so received.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 12-1438), passed by the City Council of said City at a meeting held September 10, 2012 signed by the Mayor on September 10, 2012 and published as provided by law in the Business Record on September 28, 2012. Authorized by Publication Order No. 7936.

Diane Rauh, City Clerk