

★ Roll Call Number

Agenda Item Number

37

Date July 23, 2007

An Ordinance entitled, "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, and amended by Ordinance No. 13,854 passed August 21, 2000, and Ordinance No. 14,155 passed October 21, 2002 and Ordinance No. 14,415 passed February 28, 2005, and Ordinance No. 14,462 passed June 6, 2005 by amending Sections 18-44.01, 18-57, 18-58, 18-59, 18-199, 18-202 and 18-204 thereof, relating to vicious dogs",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)



Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

MOTION CARRIED

APPROVED

Mayor

ORDINANCE NO. _____

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, and amended by Ordinance No. 13,854 passed August 21, 2000, and Ordinance No. 14,155 passed October 21, 2002 and Ordinance No. 14,415 passed February 28, 2005, and Ordinance No. 14,462 passed June 6, 2005 by amending Sections 18-44.01, 18-57, 18-58, 18-59, 18-199, 18-202 and 18-204 thereof, relating to vicious dogs.

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, and amended by Ordinance No. 13,854 passed August 21, 2000, and Ordinance No. 14,155 passed October 21, 2002, and Ordinance No. 14,415 passed February 28, 2005, and Ordinance No. 14,462 passed June 6, 2005 is hereby amended by amending Sections 18-44.01, 18-57, 18-58, 18-59, 18-199, 18-202 and 18-204 thereof, relating to vicious dogs, as follows:

Sec. 18-44.01. Insurance on vicious dogs not licensed.

The owner of every dog which is defined as vicious under section 18-41 of this article, or ~~and~~ which is both vicious and under six months of age, or ~~and~~ is vicious and not licensed shall maintain insurance as set forth in section 18-44(d) of this article.

Sec. 18-57. Vicious dogs not properly confined/leashed.

A vicious dog which is found more than twice not to be confined or leashed as required by this article shall be required to be ~~permanently removed from the city or~~ destroyed. ~~An animal which is returned to the city after removal under this section shall be destroyed.~~

Sec. 18-58. Unlicensed vicious dogs.

All unlicensed vicious dogs shall be deemed illegal animals. ~~The person harboring or keeping an unlicensed vicious dog may have the animal removed from the city; if, however, the animal is again found unlicensed in the city or if the person holding or keeping the animal chooses not to remove it from the city, the dog and~~ shall be destroyed. 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) The chief humane officer or his or her designee, in his or her discretion or upon receipt of a complaint alleging that a particular dog is a vicious dog as defined in this article, may declare such dog a vicious dog by delivering a written notice of declaration to the owner. The notice shall include a description of the dog and the basis for the declaration of viciousness. The notice shall also set forth that the owner shall be required to license and confine the dog as required by this article. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on those premises if no adult is present to accept service.
- (b) The person owning, keeping, sheltering, or harboring the dog in question may contest the declaration of viciousness by filing a written request with the city clerk within three business days of the receipt of the chief humane officer's declaration. If at this time the owner agrees to confine the dog pursuant to section 18-56 of this chapter and submits to the clerk proof of insurance as described in section 18-44, the dog shall not be impounded pending appeal. Failure to file a request for hearing shall constitute a waiver of any right to contest the declaration of the chief humane officer, and the chief humane officer or his or her designee shall be authorized to seize and impound the dog. A dog so seized shall be impounded for a period of seven days. If, at the end of the impoundment

period, the owner has not licensed and shown ability to confine the dog as required by this article ~~or has not declared an intent to remove the dog from the city,~~ the chief humane officer or his or her designee shall cause the dog to be destroyed.

- (c) The person owning, keeping, sheltering, or harboring the dog in question shall be given not less than 72 hours' written notice of the time and place of the hearing. The notice shall set forth the description of the dog in question and the basis for the allegation of viciousness. The notice shall also set forth that, if the determination of the chief humane officer is upheld, the owner shall be required to license and confine the dog as required by this article. The notice shall be served in the same manner as the declaration notice.
- (d) If, after hearing, the city manager or his or her designee upholds the determination of the chief humane officer that the dog is a vicious dog or is a vicious dog held in violation of this article, as set out in the notice of hearing, the city manager or his or her designee shall order the person owning, sheltering, harboring or keeping the animal to permanently license and confine the dog as required by this article. ~~or remove it from the city.~~ The order shall immediately be served upon the individual or entity against whom issued in the same manner as the notice of hearing. If the order is not complied with within three days of its issuance, the city manager or his or her designee is authorized to seize and impound the dog. A dog so seized shall be impounded for a period of seven days. If, at the end of the impoundment period, the individual or entity against whom the order of the city manager or his or her designee was issued has not appealed such order to the city council or has not complied with the order, the city manager or his or her designee shall cause the dog to be destroyed.
- (e) The order to license, and confine ~~or remove~~ a vicious dog ~~from the city~~ issued by the city manager or his or her designee may be appealed to the city council. In order to appeal such order, written notice of appeal must be filed with the city clerk within three days after receipt of the order. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the order of the city manager or his or her designee.
- (f) 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 of such appeal shall be scheduled within 20 days of the receipt of notice of

appeal. The hearing may be continued for good cause. After such hearing the city council may affirm or reverse the order of the city manager or his or her designee. 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 hearing shall be confined to the record made before the city manager or his or her designee, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the city manager or his or her designee, and any other information the city council deems necessary.

- (g) If the city council affirms the action of the city manager or his or her designee, the city council shall order in its written decision that the individual or entity owning, sheltering, harboring, or keeping such vicious dog shall license and confine the dog as required by this article. ~~or remove such animal from the city.~~ The decision and order shall immediately be served upon the person against whom rendered in the same manner as the notice set out in subsection (a) of this section. If the original order of the city manager or his or her designee is not appealed and is not complied with within three days or the order of the city council after appeal is not complied with within three days of its issuance, the chief humane officer or his or her designee is authorized to seize and impound such vicious dog. A dog so seized shall be impounded for a period of seven days. If, at the end of the impoundment period, the individual or entity against whom the decision and order of the city manager or his or her designee or the city council was issued has not petitioned the county district court for a review of the order or has not complied with the order, the city manager or his or her designee shall cause the dog to be destroyed in a humane manner.
- (h) Failure to comply with an order of the city manager or his or her designee issued pursuant to this section and not appealed or of the city council after appeal is a misdemeanor.
- (i) Any dog that is alleged to be vicious and that is under impoundment or quarantine at the animal shelter 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 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.

- (j) All vicious dogs shall have an identification microchip implant placed under the dogs skin. Prior to the release of a vicious dog from the animal shelter the owner shall pay the fee in the amount set in the Schedule of Fees adopted by the City Council by resolution for the microchip identification procedure. If a contractor microchips a dog pursuant to this section, the contractor shall retain the fee.

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

- (a) 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, in the discretion of the chief humane officer or his or her designee or 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 an illegal animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction.
- (b) Upon the complaint of an individual that a person is keeping, sheltering, or harboring an illegal animal on premises in the city, the chief humane officer shall cause the matter to be investigated. If, after investigation, the facts indicate that the person named in the complaint is keeping, sheltering or harboring an illegal animal in the city, the chief humane officer shall immediately seize any such animal. An animal so seized shall be impounded for a period of seven days. If at the end of the impoundment period the individual or entity keeping, sheltering or harboring such illegal animal has not petitioned the county district court seeking return of such illegal animal, the chief humane officer shall cause the animal to be disposed of by sale, shall permanently place such animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or shall destroy such animal in a humane manner.
- (c) Upon the complaint of any individual that a person is keeping, sheltering, or harboring a dangerous animal other than an illegal animal per se on premises in the city, the chief humane officer shall cause the matter to be

investigated. If after investigation, the facts indicate that the person named in the complaint is keeping, sheltering or harboring such an illegal animal in the city, the chief humane officer shall order the person named in the complaint to ~~safely remove such animal from the city, shall~~ permanently place the animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or ~~shall~~ destroy the animal, within three days of the receipt of such order. Such order shall be ~~contained in a notice to remove the illegal animal, which notice shall be given in writing to the person keeping, sheltering or harboring the illegal animal, and shall be served personally or by certified mail. Such order and personal service or mailing notice to remove the illegal animal shall not be required where such illegal animal has previously caused serious physical harm or death to any person, in which case the chief humane officer shall cause the animal to be immediately seized or destroyed if seizure and impoundment are not possible without risk of serious physical harm or death to any person.~~

- (d) The order concerning to remove an illegal animal other than an illegal animal per se issued by the chief humane officer may be appealed to the city council. In order to appeal such order, written notice of appeal must be filed with the city clerk within three days after receipt of the order, ~~contained in the notice to remove the illegal animal.~~ Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the chief humane officer.
- (e) 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 of such appeal shall be scheduled within seven days of the receipt of the notice of appeal. The hearing may be continued for good cause. The hearing shall be confined to the record made before the city manager or his or her designee and the arguments of the parties or their representatives, but no additional evidence shall be taken. After such hearing the city council may affirm or reverse the order of the chief humane officer. 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.
- (f) If the city council affirms the action of the chief humane officer, the city council shall order in its written

decision that the individual or entity owning, sheltering, harboring, or keeping such illegal animal ~~remove such animal from the city,~~ shall permanently place such animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or destroy it. The decision and order shall immediately be served upon the person against whom rendered in the same manner as the notice of removal. If the original order of the chief humane officer is not appealed and is not complied with within three days or the order of the city council after appeal is not complied with within three days of its issuance, the chief humane officer or his or her designee is authorized to seize and impound such illegal animal. An animal so seized shall be impounded for a period of seven days. If, at the end of the impoundment period, the individual or entity against whom the decision and order of the chief humane officer or city council was issued has not petitioned the county district court for a review of the order, the chief humane officer shall cause the animal to be disposed of by sale, shall permanently place such animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or shall destroy such animal in a humane manner. Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed or of the city council after appeal shall constitute a misdemeanor.

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

- (a) The chief humane officer or his or her designee, in his or her discretion or upon receipt of a complaint alleging that a particular animal is a dangerous animal as defined in this article, may initiate proceedings to declare such animal a dangerous animal. A hearing on the matter shall be conducted by the city manager or his or her designee. The person owning, keeping, sheltering, or harboring the animal in question shall be given not less than 72 hours' written notice of the time and place of the hearing. The notice shall set forth the description of the animal in question and the basis for the allegation of dangerousness. The notice shall also set forth that if the animal is determined to be dangerous it may be ordered destroyed or the owner may be given the option to ~~remove it from the city~~ or cause it to be destroyed. The notice shall be served upon any adult residing at the premises where the

animal is located or may be posted on those premises if no adult is present to accept service. A notice that a dog is a dangerous animal may include as an alternative an allegation that a dog is a vicious dog under sections 18-41 and 18-59 of this chapter, and the hearings shall proceed together under this section.

- (b) If, after hearing, the city manager or his or her designee determines that an animal is dangerous, the city manager or his or her designee shall either order the animal destroyed in a humane manner by the chief human officer, or order the person owning, sheltering, harboring or keeping the animal to ~~remove it from the city or to cause it to be destroyed~~ in a humane manner. The order shall immediately be served upon the individual or entity against whom issued in the same manner as the notice of hearing. If the animal is ordered to be destroyed by the chief humane officer such order shall be carried out after the appeal period in subsection (c) of this section has expired. If the animal is ordered to be ~~removed from the city or destroyed~~ by the owner, such order must be complied with within three days of its issuance, otherwise the city manager or his or her designee is authorized to seize and impound the animal. An animal so seized shall be impounded for a period of seven days. If, at the end of the impoundment period, the individual or entity against whom the order of the city manager or his or her designee was issued has not appealed such order to the city council, the city manager or his or her designee shall cause the animal to be destroyed in a humane manner.
- (c) The order to ~~remove or destroy~~ a dangerous animal issued by the city manager or his or her designee may be appealed to the city council. In order to appeal such order, written notice of appeal must be filed with the city clerk within three days after receipt of the order to ~~remove or destroy~~ the dangerous animal. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the order of the city manager or his or her designee.
- (d) 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 of such appeal shall be scheduled within seven days of the receipt of notice of appeal. The hearing may be continued for good cause. The hearing shall be confined to the record made before the city manager or his or her designee and the arguments of the parties or their representatives, but no additional evidence shall be taken. After such hearing the city council may affirm or reverse the order of the city manager

or his or her designee. 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.

- (e) If the city council affirms the action of the city manager or his or her designee, the city council shall either order the animal destroyed by the chief humane officer, or order that the individual or entity owning, sheltering, harboring, or keeping such dangerous animal shall ~~remove such animal from the city or~~ cause it to be destroyed in a humane manner. The decision and order shall immediately be served upon the person or entity against whom rendered in the same manner as the order to ~~remove or~~ destroy. If the animal is ordered to be destroyed by the chief humane officer the order shall be effective on the fourth day after receipt of the order by the owner unless the county district court has been petitioned to review the order within the first three days after receipt. If the animal is ordered to be ~~removed from the city or to be~~ destroyed by the owner and such order is not appealed to the county district court and is not complied with within three days after receipt of the order by the owner, the chief humane officer or his or her designee is authorized to seize and impound such dangerous animal. An animal so seized shall be impounded for a period of seven days. If, at the end of the impoundment period, the individual or entity against whom the decision and order of the city council was issued has not petitioned the county district court for a review of the order, the city manager or his or her designee shall cause the animal to be destroyed in a humane manner.
- (f) Failure to comply with an order of the city manager or his or her designee issued pursuant to this section and not appealed or of the city council after appeal shall constitute a misdemeanor offense.
- (g) Any animal which is alleged to be dangerous and which is under impoundment or quarantine at the animal shelter 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.

~~(h) All dangerous animals shall have an identification microchip implant placed under the animals skin. Prior to the release of a dangerous animal from the animal shelter the owner shall pay the fee specified at section 18-15 of this chapter for the microchip identification procedure.~~

~~Sec. 18-204. Permanent removal from city~~Repealed by Ord. No. 14, ---.

~~Any animal required by any section of this chapter to be removed, voluntarily or otherwise, from the city shall be so removed by its owner or the person harboring or having control of such animal, who shall provide the chief humane officer a notarized statement designating the place to which the animal has been removed. An animal not removed as required or an animal which has been removed and which is again found illegally within the city shall be humanely destroyed.~~

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney