

ORDINANCE NO. 23-07

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Robert Corbin ON THE 19th DAY OF November, 2007.

AN ORDINANCE AMENDING SECTION 618.01 OF THE CENTERVILLE MUNICIPAL CODE TO PROVIDE A RIGHT OF APPEAL, TO ALLOW CLASSIFICATION OF ANIMALS AND TO MAKE OTHER ADMINISTRATIVE CHANGES TO THE DANGEROUS AND VICIOUS DOGS PROVISIONS.

WHEREAS, the City of Centerville has previously enacted Section 618.01 of the Centerville Municipal Code regarding Dogs and Other Animals Running At Large; Dangerous and Vicious Dogs; and

WHEREAS, The Supreme Court of Ohio has ruled that similar ordinances may cause an unconstitutional deprivation of property without due process of law unless such ordinance contains a provision allowing for a right to appeal the designation as a vicious dog; and

WHEREAS, the City of Centerville desires to amend its present ordinance to be in compliance with the recent case law by providing an appeal process for designations of vicious dogs;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1: That section 618.01 be amended and hereby enacted with the new matter appearing in *italics* and deleted matter shown by ~~strikethrough~~:

**618.01 DOGS AND OTHER ANIMALS RUNNING AT LARGE;
DANGEROUS AND VICIOUS DOGS.**

(a) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1)

A. "Dangerous dog." A dog that, without provocation, and subject to ~~the following sentence subsection (a)(1)(B) herein of this definition~~, has chased or approached in either

a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while that dog is off the premises of its owner, keeper or harborer or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top.

B. "Dangerous dog" does not include:

1. a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist law enforcement officers in the performance of their official duties.
2. *A dog that has been determined by a city official, police officer, or other person of governmental authority as meeting the criteria contained in subsection (a)(1)(A) hereinabove, but for which the period of owner's right to appeal has not yet concluded.*

(2) "Menacing fashion." A dog that would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3) "Police dog." A dog that has been trained and may be used to assist one or more law enforcement officers in the performance of their official duties.

(4) "Vicious dog."

A. A dog that, without provocation and subject to division B. of this definition, meets any of the following criteria:

1. Has killed or caused serious injury to any person;
2. Has caused injury, other than killing or serious injury, to any person, or has killed another dog;
3. Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima facie evidence of the ownership, keeping or harboring of a vicious dog.

B. "Vicious dog" does not include either of the following:

1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist law enforcement officers in the performance of their official duties.
2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal

offense on the property of the owner, keeper or harborer of the dog.

3. *A dog that has been determined by a city official, police officer, or other person of governmental authority as meeting the criteria contained in subsection (a)(4)(A) hereinabove, but for which the period of owner's right to appeal has not yet concluded.*

(5) "Without provocation." A dog acts "without provocation" when it was not teased, tormented, or abused by a person, or it was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity. (ORC 955.11(A))

(6) "*Period of Owner's Right Appeal.*" *The time period beginning on the date when an owner, keeper, harborer or handler of a dog was given written notice that a dog has been classified as "dangerous" or "vicious." Such time period shall conclude on the later of:*

1. *the day immediately following the expiration of the period for which the owner, keeper, harborer or handler has the ability to appeal such classification as defined in subsection (l)(2) herein, OR*
2. *the day upon which a final determination is made in accordance with subsection (l)(4) herein.*

(b) A person who is the owner or has charge of any animal shall not permit it to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or permit them to go upon any private yard, lot, or enclosure without the consent of the owner of the yard, lot, or enclosure.

(c) No person shall cause animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or occupied by the owner or keeper thereof without the consent of the owner of the premises.

(d) The running at large of such animal in or upon any of the places mentioned in divisions (b) and (c) above is prima facie evidence that it is running at large in violation of this section. (ORC 951.01, 951.02)

(e) No owner, keeper, or harborer of any female dog shall permit it to go beyond the premises of the owner, keeper, or harborer at any time the dog is in heat unless the dog is properly in leash.

(f) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of any dog shall fail at any time to do either of the following:

- (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harborer by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
- (2) Keep the dog under the reasonable control of some person.

(g) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of a dangerous or vicious dog shall fail to do either of the following:

- (1) While the dog is on the premises of the owner, keeper, or harborer, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained.
- (2) While the dog is off the premises of the owner, keeper, or harborer, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following: keep the dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top; have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station a person in close enough proximity to that dog so as to prevent it from causing injury to any person; or muzzle that dog.

(h) No owner, keeper, or harborer of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars (\$100,000.00) because of damage or bodily injury to or death of a person caused by the vicious dog.

(i) No person shall do any of the following:

- (1) Debark or surgically silence a dog that the person knows or has reason to believe is a vicious dog;
- (2) Possess a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
- (3) Falsely attest on a waiver form provided by the veterinarian under division (j) of this section that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.

(j) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a vicious dog. The written waiver form shall include all of the following:

- (1) The veterinarian's license number and current business address;

- (2) The number of the license of the dog if the dog is licensed;
- (3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;
- (4) The signature of the owner of the dog attesting that the owner's dog is not a vicious dog;
- (5) A statement that division (F) of Ohio R.C. 955.22 prohibits any person from doing any of the following:
 - A. Debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog;
 - B. Possessing a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - C. Falsely attesting on a waiver form provided by the veterinarian under division (G) of Ohio R.C. 955.22 that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.

(k) It is an affirmative defense to a charge of a violation of division (i) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (j) of this section and that attests that the dog is not a vicious dog. (ORC 955.22)

(l) *No dog shall be deemed a "dangerous dog" or "vicious dog" as stated herein unless and until the owner, keeper, harborer, or handler shall have been provided the opportunity to contest, challenge, or otherwise appeal the determination that a dog is a "dangerous dog" or "vicious dog" in accordance with the following:*

- (1) *Notice that a dog is deemed "vicious" or "dangerous" shall be deemed "given" when such notice has been either served upon an owner, keeper, harborer, or handler, when a written notice properly stamped and addressed to the registered owner of a dog is deposited into the mails, or when written notice is left in a reasonable location upon the property on which the dog was located. Such written notice of classification may be given by a city official, police officer, or other person of governmental authority in the form of informal notification that a dog has been classified as "dangerous" or "vicious," or a citation for failure to comply with relevant city ordinances or Ohio Revised Code provisions concerning dangerous or vicious dogs.*
- (2) *Upon receiving notice that a city official, police officer, or other person of governmental authority has made a determination that a dog is a vicious dog, the owner, keeper, harborer, or handler of such dog shall have 10 days to deliver written notice of appeal of such classification to the Chief of Police or designee. Such notice of appeal must contain all of the following:*

- A. *A clear statement identifying the document as a notice of appeal of a classification of a dog as dangerous or vicious;*
- B. *Identifying by name and address the owner, keeper, harbinger, or handler who is making the appeal;*
- C. *A reasonable identification of the dog in question;*
- D. *Identifying the notice or citation in which a classification as dangerous or vicious was made;*
- E. *The following statement: "I, as the accused in this matter, do hereby acknowledge that, by making this appeal, I knowingly and voluntarily waive my right to speedy trial afforded by Ohio Revised Code § 2945.71, as the making of this appeal will cause a delay in trial because of an action made or instituted by me as the accused."*
- F. *A request for a hearing before the Chief of Police or his/her designee, if a hearing is desired by the owner. If no hearing is desired, or if a statement is submitted without such a request, the ability to request a hearing shall be waived by the owner.*
- G. *Any relevant information, documents, statements, or other evidence which the person challenging the classification desires to have considered prior to making a final determination that a dog is a "dangerous dog" or "vicious dog;" AND*
- H. *If the dog has been classified as "vicious" based upon subsection (a)(4)(A)(3) hereinabove, or upon Ohio Revised Code § 955.11 (A)(4)(a)(iii), then the notice shall be accompanied by reasonable certification or other affirmation that the dog in question is not of the breed identified in the question.*

If no written intent to appeal the classification is delivered within 10 days, such a right to appeal the classification of a dog as dangerous or vicious shall be deemed waived, and such classification shall become conclusive and final, and a city official, police officer, or court may therefore proceed accordingly in compliance with this ordinance.

- (3) *Upon receiving a written notice of appeal containing all the required provisions of (1)(2) above, the Chief of Police or his/her designee shall conduct an investigation. The Chief of Police or his/her designee shall also conduct a hearing if such hearing is expressly requested by the owner in the notice of appeal given under (1)(2) above and, in the discretion of the Chief of Police or his/her designee, deemed beneficial to the interests of justice.*
- (4) *After conducting the investigation/hearing in accordance with (1)(3) above, the Chief of Police or his/her designee shall issue a written determination of the appropriateness of the classification. This decision shall be final, and shall be served in person or by*

mail upon the person identified in subsection (l)(2)(B) hereinabove.

- (5) A finding by Chief of Police or his/her designee that a dog is not a "dangerous" or "vicious" dog as defined in subsections (a)(1) or (a)(4) hereinabove does not preclude a subsequent classification based on events occurring after the determination made in subsection (l)(4) hereinabove.*
- (6) Nothing in this section shall preclude the City from enforcing any other ordinances pertaining to dogs as set forth in this Chapter, or in Chapter 955 of the Ohio Revised Code.*

(m) Whoever violates divisions (b) or (c) of this section is guilty of a misdemeanor of the fourth degree. (ORC 951.99)

(n)

- (1) Whoever violates divisions (e) or (f) of this section shall be fined not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00) on a first offense; and on each subsequent offense, shall be fined not less than seventy-five dollars (\$75.00) or more than two hundred fifty dollars (\$250.00) and may be imprisoned for not more than 30 days.*
- (2) In addition to the penalties prescribed in division (m)(1) above, if the offender is guilty of a violation of division (e) or (f) of this section, the court may order the offender to personally supervise the dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.*

(o)

- (1) If a violation of division (g) of this section involves a dangerous dog, whoever violates that division (g) is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to division (h) of this section. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.*
- (2) If a violation of division (g) of this section involves a vicious dog, whoever violates that division (g) is guilty of one of the following:
 - A. On a first offense, a misdemeanor of the first degree if the dog causes injury other than killing or serious injury to any person. The person shall be guilty of a felony on each subsequent offense and shall be prosecuted under appropriate state law. Additionally, the court may order the**

vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

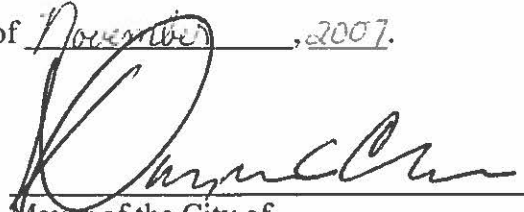
- B. A felony on a first or subsequent offense if the dog kills or seriously injures a person and shall be prosecuted under appropriate state law. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

(p) Whoever violates division (h) of this section is guilty of a misdemeanor of the first degree.

(q) Whoever violates division (i) of this section is guilty of a felony to be prosecuted under appropriate state law. Additionally, the court shall order that the vicious dog be humanely destroyed by as licensed veterinarian, the County Dog Warden, or the County Humane Society. (ORC 955.99(E) - (H), (J))

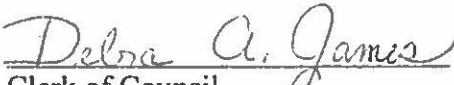
Section 2, This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 19th day of November, 2007.



Deputy Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No.

23-07, passed by the Council of the City of Centerville, Ohio on the 19th day of November, 2007.

Debra A. Jamis
Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney