

AN ORDINANCE

BY: MR. STEPHENS NO. 4733

ENACTING SECTION 505.121, "DANGEROUS AND VICIOUS DOGS," OF THE CODIFIED ORDINANCES OF THE CITY OF OAKWOOD, OHIO.

WHEREAS, the City Manager and Director of Public Safety have recommended the adoption of an ordinance to address the problem of dangerous and vicious dogs, which can cause severe physical injury and even death, and can be otherwise harmful to the general welfare of the citizens of Oakwood; and

WHEREAS, Council accepts the recommendation and finds that enacting an ordinance in the form attached as Exhibit A will benefit the general welfare and public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO:

SECTION I.

That Section 505.121 of the Codified Ordinances of the City of Oakwood, Ohio be and hereby is enacted to read as set forth on the attached Exhibit A, which is incorporated by this reference.

SECTION II.

That Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those actions were in meetings open to the public in compliance with the law.

SECTION III.

That this Ordinance shall take effect and be in force from and after the earliest date allowed by law.

PASSED THIS 11th DAY OF July, 2011.

ATTEST:

Cathy N. Gibson
Clerk of Council

William D. Duncan
Mayor William D. Duncan

To the Clerk:

Please publish the foregoing ordinance by including the same in the Codified Ordinances of the City of Oakwood, Ohio.

Robert F. Jacques
Robert F. Jacques, City Attorney

EXHIBIT A

505.121 DANGEROUS AND VICIOUS DOGS.

(a) As used in this section:

(1) A. "Dangerous dog" means a dog that, without provocation, and subject to subsection (a)(1)B. hereof, 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 and not under the reasonable control 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 one or more law enforcement officers in the performance of their official duties;
2. A dog that has been determined by a City official, public safety 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" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3) "Police dog" means 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) A. "Vicious dog" means a dog that, without provocation and subject to subsection (a)(4)(B) hereof, meets any of the following:

1. Has killed or caused serious injury to any persons;
2. Has caused injury, other than killing or serious injury to any person, or has caused serious injury to or has killed another animal;
3. Is of a breed designated as a vicious dog under Ohio Revised Code Section 955.11 or 955.22, as the same may be amended from time to time. The ownership, keeping or harboring of such a 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 one or more 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 offence on the property of the owner, keeper, or harborer of the dog.
3. A dog that has been determined by a city official, public safety 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.

(5) "Without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog 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)

(6) "Period of Owner's Right to Appeal" means 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 (d)(2) herein, or
2. The day upon which a final determination is made in accordance with subsection (d)(3) herein.

(b) 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 building, 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 chain-link 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:

- A. Keep the dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
- B. Have the leash or tether physically controlled by a person who is of suitable age, strength, and discretion or securely attach, tie, or affix the leash or tether to the ground or stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
- C. Muzzle the dog.

(c) No owner, keeper, or harborer of a vicious dog shall fail to obtain and maintain 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) because of damage or bodily injury to or death of a person caused by the vicious dog. (ORC 955.22)

(d) 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 shall be deemed given when such a notice has been personally served upon any owner, keeper, harborer, or handler; when a written notice properly stamped and addressed to the registered owner of a dog is deposited into the mail, or when written notice is left in a reasonable location upon the property on which the dog was located. Such written notice may be given by a City official, public safety officer, or other person of governmental authority in the form of a preliminary 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 notice that a City official, public safety officer, or other person of governmental authority has made a preliminary determination that a dog is a dangerous or vicious dog, the owner, keeper, harborer, or handler of such dog shall have ten (10) days to deliver written intent to appeal such classification to the Director of Public Safety or designee. Such notice must contain all of the following:

- A. A clear statement identifying the document as a Notice of Intent to appeal a classification of a dog as dangerous or vicious;
- B. Identification, by name and address, of the owner, keeper, harborer, or handler who is making the appeal ("the Appellant");

- C. Reasonable identification of the dog in question;
- D. Identification of the notice or citation in which a classification as dangerous or vicious was made;
- E. 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
- F. 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 subsection (a) (4) (C) herein.

If no written intent to appeal the classification is delivered within ten (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, public safety officer, or court may therefore proceed accordingly in compliance with this ordinance.

- (3) Upon receiving written notice of intent to appeal a classification of dangerous or vicious, the Director of Public Safety or designee shall promptly, upon conducting an investigation and/or a hearing [if requested] 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 Appellant.
- (4) A finding by the Director of Public Safety or 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 (d) (3) hereinabove.
- (5) Nothing in this section shall preclude the City from enforcing any other laws or ordinances pertaining to dogs as set forth in this Chapter, or in Chapter 955 of the Ohio Revised Code.
- (e) If a violation of subsection (b) hereof involves a dangerous dog, whoever violates that subsection 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 the dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to subsection (c) hereof. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the Dog Warden, or the Humane Society.
- (f) If a violation of subsection (b) hereof involves a vicious dog, whoever violates that subsection is guilty of one of the following:
 - (1) A misdemeanor of the first degree on a first offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the Dog Warden, or the Humane Society.
 - (2) A misdemeanor of the first degree if the dog causes injury other than killing or serious injury, to any person.
- (g) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree. (ORC 955.99)