

ORDINANCE NO. 2009-7

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE CHAPTER 14, ARTICLE II, DOGS, DIVISION 2 VICIOUS DOGS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska:

Section 1. That Chapter 14, Article II, of the Wayne Municipal Code is amended by adding the following:

Sec. 14.41 Definitions

Irresponsible animal owner means any animal owner that has:

(1) Been convicted or plead guilty three times or more for separate incidents that occurred in any twelve month period concerning:

- (1) An animal at large;**
- (2) An animal disturbing the peace;**
- (3) An unlicensed animal;**
- (4) An excessive number of animals; or**
- (5) Unsanitary premises due to animals.**

(2) Been convicted or plead guilty two times or more for separate incidents concerning:

- (1) Animal cruelty;**
- (2) Animal neglect,**
- (3) Keeping animals covered by section 7.06.010 without obtaining a permit; or**
- (4) An animal declared a vicious animal.**

Section 2. That Chapter 14, Article II, of the Wayne Municipal Code is amended as follows:

Article II. Dogs

Division 2. Vicious Dogs

~~Sec. 14-71. Confinement of vicious dogs.~~

~~The owner of a vicious dog shall not suffer or permit the dog to go unconfined.~~

~~Sec. 14-72. Leash and muzzle.~~

~~The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.~~

~~Sec. 14-73. Signs.~~

~~The owner of a vicious dog shall display in a prominent place on his premises a clearly visible warning sign indicating there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.~~

~~Sec. 14-74. Insurance.~~

~~Owners of vicious dogs must provide proof to the city clerk of public liability insurance in the amount of at least \$25,000.00, insuring the owner for any personal injuries inflicted by his vicious dog.~~

Sec. 14-71 5. Duty of owner.

It shall be unlawful for the owner of any dog involved in a bite or bodily injury to another person or domestic animal to fail to immediately prevent further bites or injury, and immediately furnish to the person or person injured, or in the case of a juvenile, the parent or guardian of the juvenile, the owner's name and address and the rabies tag number and dog license number of the dog.

Sec. 14-72 6. Dog declared vicious.

Whenever a dog is declared vicious, **the owner will immediately release the dog to the police department to be impounded. The police department** may cause the dog to be permanently removed from City limits or may have the dog humanely destroyed by a veterinarian of the owner's choice. **and If the dog is to be removed, the owner shall provide an affidavit signed by both the owner and the future caretaker that the dog will be permanently removed from the Wayne city limits, listing where it will be taken and who is the caretaker. The police department will then contact that caretaker to verify the dog was given to them. If the dog is to be humanely destroyed, the owner of the dog shall document to the police department the arrangement for direct transfer of the dog, at the owner's expense, by the impounding agency to the euthanizing veterinarian of the owner's choice and without any possession by the**

owner or any agent or representative of the owner. The owner of the dog will then produce to the police department a statement from the veterinarian certifying the action taken, or humanely destroyed by the animal shelter at the owner's expense. The notice shall be served whether in person or by mailing such notice by certified mail, return receipt. If the owner shall have failed to destroy such vicious dog after the expiration of 11 days from the receipt of such notice and no appeal is taken by the owner, the police department shall have such animal destroyed.

~~Any decision~~ The declaration of a dog as vicious and the determination by of the police department of whether the dog shall be destroyed or permanently removed under the provisions of this section may be appealed to the council, who shall hear and render a decision in this matter. Such appeal by the owner to the council shall be filed in writing with the police department within ten days after receipt of notification from the police department that the vicious dog shall be destroyed. The disposition of any animal shall be stayed during the pendency of such appeal. The dog shall be surrendered by the owner to the custody of the police department or designated agency during the appeal process. The decision of the council shall be final and binding upon the city and upon the owner appellant, and its decision may be appealed as provided by law. The council shall review the information provided by the police department and the owner of the animal and any other interested party and render a decision ~~to the effect that the dog is not vicious or the dog is vicious and should be destroyed~~ on the appeal.

The owner of any dog which is impounded and destroyed under this section shall be held responsible for payment and any expenses incurred by the police department for impoundment and destruction, and failure to pay such fee to the city within 15 days after the destruction or release of such dog shall constitute a violation of this Code.

Sec. 14-73 ~~7~~. Penalties.

Whoever violates any provision of this article shall be guilty of a misdemeanor and may be punished in accordance with section 1-9 and will be prohibited from ownership or possession of any dog for a period of year from the date of the occurrence of the violation. The penalties provided in this section shall be accumulative with and in addition to any penalty or forfeiture elsewhere in this article.

Sec. 14-74. Irresponsible animal owners.

- 1. The determination of an "irresponsible animal owner" shall be in accordance with the following procedures:**
 - a. The city manager or the city manager's designee, upon being satisfied that an owner is an irresponsible animal owner, shall cause to be served upon the owner a written notice of said determination.**
 - b. The written notice shall contain:**

- (1) A finding that the owner is an irresponsible animal owner.
- (2) A description of the acts relied upon in determining the owner is an irresponsible animal owner.
- (3) A copy of Municipal Code Section 14-74
- (4) A statement advising the owner of the right to request a hearing as provided by subsection 14-72 within a stated time which shall be reasonable under the circumstances.

- c. Notice. Notice shall be by personal service or by certified mail to the owner.
- d. Request for hearing and appeal. Any owner advised that the owner is declared an irresponsible animal owner may have, upon request, a hearing with the officials making said determination as to whether the owner is an irresponsible animal owner. A request for a hearing must be made in writing and delivered to the office of the city manager or the city manager's designee within the time stated in the notice or it will be conclusively presumed that the owner is an irresponsible animal owner.

The city manager or the city manager's designee will act as hearing officer. At the conclusion of the hearing or within three days thereafter, the hearing officer shall render a written decision as to whether the owner is an irresponsible animal owner. An appeal from this decision may be had by filing a written notice with the hearing officer. This appeal will be heard before the City Council at a time and place fixed by the Council. The findings of the Council shall be conclusive.

3. If an owner is declared to be an irresponsible animal owner, the owner shall be banned from having animals within the city limits of Wayne.
4. The city manager or the city manager's designee shall cause the animal to be impounded if an owner has been declared an irresponsible animal owner and is found to have an animal within the city.
5. The city manager or the city manager's designee may order the destruction or adoption of any animals impounded under this section.

Section 3. All Ordinances or parts of Ordinances in conflict herewith are repealed.

Section 4. This Ordinance shall be in full force and effect after its passage, approval, and publication as provided by law.

PASSED AND APPROVED this 21st day of April, 2009.

THE CITY OF WAYNE, NEBRASKA

By _____

Council President

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney