

ORDINANCE NO. 1350

AN ORDINANCE CREATING CHAPTER 4, ANIMALS, ARTICLE III, DANGEROUS ANIMALS

The City Council of the City of Willmar hereby ordains as follow:

Section 1. ADOPTION OF NEW MUNICIPAL CODE SECTIONS 4-55 – 4-64. Chapter 4, Article III of the Willmar Municipal Code is hereby created and shall read as follows:

ARTICLE III. DANGEROUS ANIMALS

Sec. 4-55. Animal Control Authority.

- (a) The *animal control authority* means the municipal agency which is responsible for animal control operations in the City of Willmar.
- (b) The animal control authority for the City of Willmar is the Willmar Police Department.

Sec. 4-56. Definitions

- (a) *Proper enclosure* means securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the animal from escaping and providing protection from the elements for the animal. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the animal from exiting.
- (b) *Owner* means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal.
- (c) *Provocation* means an act that an adult could reasonably expect may cause an animal to attack or bite.

4-57. Potentially Dangerous Animals

- (a) *Definition.* A potentially dangerous animal is an animal which has:
 - (1) When unprovoked, bitten a human or a domestic animal on public or private property; or

- (2) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public or private property, other than the animal owner's property, in an apparent attitude of attack; or
- (3) A known history or propensity, tendency or disposition to attack while unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

(b) *Designation as potentially dangerous animal.* The Animal Control Authority shall designate any animal as a potentially dangerous animal upon receiving evidence that the animal meets any of the criteria in subdivision (a). When an animal is declared potentially dangerous, the Animal Control Authority shall cause the owner(s) of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous. An animal that has been determined to be potentially dangerous must be microchipped in accordance with Section 4-61, licensed in accordance with Section 4-42, and may, at the discretion of the animal control authority, be required to comply with one (1) or more of the following conditions:

- (1) An owner of a dog may be required to complete an approved dog obedience class;
- (2) The animal may be required to be restrained by chain or leash not to exceed six (6) feet in length, and/or muzzled, and under the control of a person eighteen (18) years of age or older at all times it is outdoors and not inside a proper enclosure.
- (3) The owner of the animal may be required to show proof of up to date rabies vaccination and, if required, licensing.
- (4) The owner may be required to sterilize the animal at the owner's expense. If the owner does not have the animal sterilized within the specified time limits, the animal control authority may seize the animal and have it sterilized at the owner's expense.
- (5) If the animal is a dog or cat, the owner shall purchase a proper license.

(c) *Procedure.* The animal control authority shall notify the owner(s) of the animal in writing or in person that the animal has been determined to be potentially dangerous pursuant to Section 4-62 and shall specify what, if any, conditions are being required of the owner. This notice shall state the date, time, place, and parties bitten, chased attacked or threatened by the animal, and shall advise the owner that they have fourteen (14) days to appeal the determination or the imposition of conditions on maintaining the animal by requesting a hearing before the Willmar Public Works and Public Safety Committee.

- (1) If an owner requests a hearing, a date shall be set not more than three (3) weeks after receipt of the demand for a hearing. The committee may consider all records of the animal control authority without the necessity for further foundation. After considering all of the evidence, the committee chair person shall issue a written order which rejects or upholds the determination based upon the majority opinion of the committee. If the committee upholds the determination as potentially dangerous, the order may affirm or modify the conditions recommended by the animal control authority. If as a result of testimony or other evidence at the hearing there are grounds for declaring the animal to be dangerous pursuant to Section 4-58, the committee chairperson may change the designation and issue the appropriate orders.

(2) If an owner fails to comply with any conditions specified in the order and fails to request a hearing under subdivision (c)(1), the animal shall be seized. The animal may be reclaimed by the owner as set forth in Section 4-59.

(d) *Subsequent Offenses.* If an owner of an animal which has been declared potentially dangerous and is subject to the conditions of this section fails to comply with the conditions imposed by the animal control authority or the Public Works and Public Safety Committee, the animal must be seized by the animal control authority. Notice shall be provided to the owner of the basis for the seizure and the right to request a hearing before the Willmar Public Works and Public Safety Committee to determine whether the conditions were violated. A request for hearing must be made within fourteen (14) days of the seizure. If the owner fails to request a hearing within fourteen (14) days, or is found to have violated the conditions, the Willmar Public Works and Public Safety Committee may order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the owner is found not to have violated the conditions, the owner may reclaim the animal under the provisions of Section 4-59.

(e) *Review of Designation.* The animal control authority may review the status of an animal which has been determined to be potentially dangerous if a period of two years has passed without any further incidents under section (a) above and may use discretion in determining whether any conditions which have been ordered are still required. After the initial two year period, an owner may request a review annually. The owner must provide evidence that the animal's behavior has changed due to the animal's age, sterilization, environment, completion of obedience training that includes modification of aggressive behavior, or other factors.

Sec. 4-58. Dangerous Animals.

(a) *Definitions.* A dangerous animal is an animal which has:

- (1) Without provocation caused substantial bodily harm to any person on public or private property. Substantial bodily harm means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the functions of any bodily member or organ, or which causes a fracture of any bodily member.
- (2) Killed a domestic animal without provocation while off the owner's property;
- (3) Been found to be potentially dangerous pursuant to Section 4-57, and after the owner has notice that the animal is potentially dangerous, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals;
- (4) Bitten one (1) or more persons on two (2) or more occasions; or
- (5) Fresh wounds, scarring, or is observed in a fight, or has other indications which to a reasonable person evidence that the animal has been or will be used, trained or

encouraged to fight with another animal; or whose owner has in custody or possession any training apparatus, paraphernalia or drugs used to prepare such animal to be fought with another animal.

- (b) *Designation as dangerous animal.* The animal control authority may designate any animal as a potentially dangerous animal upon receiving evidence that the animal meets any of the criteria in subdivision (a).
- (c) *Procedure.* The animal control authority, after having determined that an animal is dangerous, shall proceed in the following manner:
- (1) The animal control authority shall seize the dangerous animal and notify its owner pursuant to Section 4-62 that the animal has been determined to be dangerous and that the animal is to be destroyed if the owner does not comply with the conditions and requirements of Section 4-59 and applicable state laws. This notice shall state that the owner shall have 14 days to reclaim the animal and appeal the determination by submitting to the City Administrator a written request for a hearing before the city council.
 - (A) If no appeal is filed, the orders issued shall be final.
 - (B) If an owner requests a hearing, a date shall be set not more than three (3) weeks after receipt of the demand for a hearing.
 - (C) Pending a hearing on the determination, the animal may be seized and kept at animal control unless the owner shows proof that the animal is licensed and has a current rabies vaccination, and agrees that the animal will not be permitted to be outside without being in a proper enclosure or being restrained on a leash and wearing a muzzle.
 - (D) The city council may consider all records of the animal control authority without the necessity for further foundation. After considering all of the evidence, the city council shall issue a written order which rejects or upholds the determination of the animal control authority.
 - (E) If no appeal is filed, or if the city council upholds the determination that the animal is dangerous, then the animal control authority may take the animal into custody for destruction, if such animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the animal control authority and failure to do so shall be a misdemeanor.
 - (2) Nothing in this section shall prevent the animal control authority from ordering the immediate seizure and quarantine of a rabies-suspected animal.

Sec. 4-59. Dangerous Animal Registration

A person may not own a dangerous animal unless the owner obtains a certificate of registration for the dangerous animal from the animal control authority pursuant to this Section. The animal

control authority shall issue a certificate of registration to the owner if the owner presents sufficient evidence that all of the following conditions and requirements are met:

- (a) A proper enclosure exists for the dangerous animal.
- (b) If a dangerous animal is outside of a proper enclosure, the animal must be restrained by a substantial chain or leash and under the physical restraint of a responsible person.
Depending on the species of animal, the animal control authority may require that the animal also be muzzled when outside of its proper enclosure.
- (c) A dangerous animal must be sterilized at the owner's expense.
- (d) If a person who owns a dangerous animal rents property from another person where the animal will reside, the animal owner must disclose to the property owner that he or she owns a dangerous animal that will live at the property. This disclosure must be made prior to entering a lease agreement and at the time of any lease renewal.
- (e) A surety bond has been issued by a surety company authorized to conduct business in Minnesota in a form acceptable to the animal control authority in the sum of at least \$300,000, payable to any person injured by the dangerous animal, or a policy of liability insurance has been issued by an insurance company authorized to conduct business in Minnesota in the amount of at least \$300,000, insuring the owner for any personal injuries inflicted by the dangerous animal.
- (f) The owner has paid an annual dangerous animal licensing fee of not more than \$500, in addition to regular licensing fees under Section 4-42.
- (g) The owner has had microchip identification implanted in the dangerous animal pursuant to Section 4-62.

Sec. 4-60. Reclamation.

A dangerous animal or a potentially dangerous animal seized under Sections 4-57 or 4-58 may be reclaimed by the owner of the animal upon payment of impounding and boarding fees, and presenting proof to the appropriate animal control authority that the requirements of Sections 4-57 and/or 4-58 will be met. An animal not reclaimed under this subdivision within seven days may be disposed of in a manner permitted by law, and the owner shall be liable to the animal control authority for costs incurred in confining and disposing of the animal.

Sec. 4-61. Exceptions.

- (a) *Law Enforcement Exemption.* The provisions of this section do not apply to dangerous animals used by law enforcement officials for police work.
- (b) *Exemptions.* Animals may not be declared dangerous if the threat, injury, or damage was sustained by a person:

- (1) who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the animal;
- (2) who was provoking, tormenting, abusing, or assaulting the animal or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the animal; or
- (3) who was committing or attempting to commit a crime.

Sec. 4-62. Microchip Identification.

The owner of a dangerous or potentially dangerous animal must have a microchip implanted in the animal for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the animal control authority. If the microchip is not implanted by the owner, it may be implanted by the animal control authority. In either case, all costs related to purchase and implantation of the microchip must be borne by the animal's owner.

Sec. 4-63. Notice Requirements.

- (a) The authority declaring the animal dangerous or potentially dangerous shall give notice of the right to a hearing by delivering or mailing it to the owner of the animal, or by posting a copy of it at the place where the animal is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice must include:
 - (1) a description of the seized animal; the authority for and purpose of the dangerous animal or potentially dangerous animal declaration and seizure; the time, place, and circumstances under which the animal was declared dangerous or potentially dangerous; and the telephone number and contact person where the animal is kept;
 - (2) a statement that the owner of the animal may request a hearing concerning the dangerous animal or potentially dangerous animal declaration and, if applicable, prior potentially dangerous animal declarations for the animal, and that failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing under this section;
 - (3) a statement that if an appeal request is made within 14 days of the notice, the owner must immediately comply with the requirements of Sections 4-57 and/or 4-58 until such time as the hearing officer issues an opinion;
 - (4) a form to request a hearing under this subdivision; and
 - (5) a statement that all actual costs of the care, keeping, and disposition of the animal are the responsibility of the person claiming an interest in the animal, except to the extent that a

court or hearing officer finds that the seizure or impoundment was not substantially justified by law.

Sec. 4-64. Right to a Hearing.

Any hearing under this Section must be held within 14 days of the request to determine the validity of the dangerous animal or potentially dangerous animal declaration. In the event that the dangerous animal or potentially dangerous animal declaration is upheld by the hearing official(s), actual expenses of the hearing up to a maximum of \$1,000 will be the responsibility of the animal's owner. The hearing official(s) shall issue a decision on the matter within ten days after the hearing. The decision must be delivered to the animal's owner by hand delivery or registered mail as soon as practical and a copy must be provided to the animal control authority.

Section 2. EFFECTIVE DATE. This ordinance shall be effective from and after its adoption and second publication.

This Ordinance introduced by Council Member: Christianson

This Ordinance introduced on: October 21, 2013

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This Ordinance given a hearing on: November 4, 2013

This Ordinance adopted on: November 4, 2013

This Ordinance published on: November 9, 2013