

**NOTICE OF PUBLIC MEETING OF THE
ABERDEEN CITY COUNCIL TO CONSIDER FINAL
ADOPTION OF ORDINANCE NO. 18-01-02 AMENDING THE
CITY CODE REGARDING ANIMAL CONTROL REGULATIONS**

A regular public meeting of the Aberdeen City Council will be held on the 12th day of February, 2018, beginning at 5:30 p.m. in City Council Chambers, 123 South Lincoln Street, First Floor of the Municipal Building, to consider final adoption of Ordinance No. 18-01-02, as amended at the second reading on February 5, 2018. The ordinance will amend Chapter 8 – *Animals and Fowl*, of the City Code, regarding animal control regulations.

Dated this 6th day of February, 2018. ATTEST: /s/ Karl Alberts, Finance Officer.

Notice posted in compliance with SDCL 1-25-1.1 and 9-19-7.1 on February 6th, 2018.

By: Mary Campton
Mary Campton,
Records & Compliance Specialist

ORDINANCE NO. 18-01-02

**AN ORDINANCE AMENDING
CHAPTER 8 – ANIMALS AND FOWL
OF THE ABERDEEN CITY CODE**

WHEREAS, the City Council of the City of Aberdeen is charged with protecting the safety and property of its citizens; and

WHEREAS, the City Council has determined that the following animal control ordinance revisions will protect the safety and property of its citizens.

BE IT ORDAINED BY THE CITY OF ABERDEEN THAT THE FOLLOWING CHANGES AND ADDITIONS SHALL BE MADE TO THE ABERDEEN CITY CODE:

1. Chapter 8 – ANIMALS AND FOWL, shall be amended as follows:

Sec. 8-1. - Enforcement.

(a) It shall be the duty of the animal control ~~authority~~ officer to carry out and enforce all provisions of this Chapter. Animal control officer means the city animal control officer and any city police officer performing animal control duties. Animal control authority means an animal control officer or, if an appeal of a determination by an animal control officer, the animal review board.

(b) ~~The~~ An animal control officer, at the direction of the chief of police, may assist a code enforcement officer in the abatement of public nuisances involving creatures. Notwithstanding the prohibitions in this Chapter, in Chapter 34, Article III, Division 2, and in Section 36-64, ~~the~~ an animal control officer, a designated assistant, or a law enforcement officer may utilize any means reasonably necessary to carry out and enforce the provisions of this Chapter and in the abatement of public nuisances involving creatures.

(c) It shall be unlawful to hinder, delay, or obstruct ~~the~~ an animal control officer, a designated assistant, or a law enforcement officer when engaged in capturing, securing, or impounding any creature. It shall also be unlawful to damage or in any way interfere with city owned or controlled animal traps or equipment.

Sec. 8-10. – Animal attack. ~~biting or injuring a person.~~

It shall be unlawful for any person to own or have possession, charge, custody, or control of any dangerous, vicious, or unsafe ~~vicious~~ creature as defined in section 8-

36(2) or any wild or exotic creature as defined in section 8-39, which attacks, bites, or otherwise inflicts injury on a person or other creature.

Sec. 8-36. – Dangerous, vicious, or unsafe, ~~potentially dangerous and vicious animals; notice.~~

A mammal, reptile, insect, bird, fish or amphibian may be declared dangerous, vicious, or unsafe by the city animal control authority under the following guidelines:

- (1) ~~An city police officer or~~ animal control officer may initiate an investigation into the dangerousness of any mammal, reptile, insect, bird, fish or amphibian based on his observations upon the official complaint of any adult person, deemed credible, who has observed such behavior or by an attending physician who has treated an individual for animal caused wounds.
- (2) ~~A dangerous, vicious, or unsafe creature is:~~The following actions will determine the need for investigation or declaration of dangerous/vicious creature:
 - a. A vicious animal as defined under SDCL 40-34-14 or a similar statute or law of another jurisdiction.
 - ba. A creature which approaches in an apparent attitude of attack or bites, inflicts injury, or otherwise attacks a person or other creature upon the streets, sidewalks, or any public grounds or places, or upon private property open to the public such as common use areas and unfenced main entrance sidewalks.
 - cb. A creature which, on private property approaches in an apparent attitude of attack or bites, inflicts injury, or otherwise attacks a police officer, animal control officer, mailman, meter reader, serviceman, journeyman, deliveryman, or other employed person or other creature who is on private property by reason of permission of the owner or occupant of such property or who is on private property by reason of a course of dealing with the owner of such private property. Included in these circumstances will be the unintentional trespass of a minor child who is not yet capable of understanding the concept of private property.
 - de. No creature may be declared dangerous/~~vicious, vicious, or unsafe~~ if the injury or damage is sustained to a bird, fowl, or chicken, or if the injury or damage is sustained to any person or creature who is committing a willful trespass or other tort upon premises occupied by the owner or keeper of the creature, or who was teasing,

tormenting, abusing, or assaulting the animal or was committing or attempting to commit a crime.

- (3) At any time during the course of an investigation, ~~the city police officer or an~~ animal control officer may impound the creature being investigated if that officer determines that the public safety so requires. If the creature is determined to be dangerous/~~vicious, vicious, or unsafe~~, the creature will be impounded until the conditions in section 8-38 are met or until the animal review board overturns the determination~~declaration~~.
- (4) After making the determination that a creature is dangerous/~~vicious, vicious, or unsafe~~, the animal control officer ~~or police officer~~ will determine which of the following courses of actions ~~are~~ is appropriate:
- a. Suspend indefinitely or for a period of time the determination that the creature is dangerous, vicious, or unsafe upon verification ~~The creature is not dangerous and the animal is returned when it is verified that it and the owner are in compliance with all applicable city ordinances and upon conditions or restrictions imposed by the animal control officer necessary to safeguard the public.~~
 - b. Return ~~the creature may be returned upon the owner's compliance with all conditions or restrictions imposed by the animal control official, or their designee, necessary to safeguard the public.~~
 - c. If ~~the creature presents an unacceptable risk to the safety and well-being of the owner/caretaker of the creature, of any individual that lives in the same household, of the public at large, or any other creature,~~ the animal control officer or any police officer may ~~then~~ direct that the creature be disposed of. If the creature presents an immediate danger and cannot be safely secured, the animal may be disposed of immediately on site.

- (5) Notice. When a creature is declared dangerous, vicious, or unsafe and has not been immediately disposed of or directed to be disposed of, the animal control authority shall notify the owner of such declaration in writing that such creature must be registered as a dangerous or unsafe creature within 10 business days after the receipt of such written notice. Said notice shall be served either in person or by mailing such notice by certified mail.

State Law reference – Vicious dog defined, SDCL 40-34-14; person trespassing or teasing dog, SDCL 40-34-15.

Sec. 8-37. – Appeal to animal review board. ~~Same—Determination; notice; appeal.~~

~~(a) — *Notice.* When a creature is declared dangerous/vicious, the city animal control authority shall notify the owner of such declaration in writing that such creature must be registered as a dangerous/vicious creature within 14 business days after the receipt of such written notice. Said notice shall be served either in person or by mailing such notice by certified mail.~~

~~(a**b**) *Animal review board.* The animal review board shall convene as necessary to hear appeals from a determination of the animal control officer's finding. The board shall consist of the city health officer (or designee), the chief of police (or designee), and a resident of the community with a significant background in animal behavior, as designated by the city manager.~~

~~(b**e**) *Appeal request.* If the owner or complainant does wish to appeal the dangerous/vicious An animal owner or complainant may appeal a determination of the animal control officer by requesting, he may request, in writing, and upon payment of the requisite fee of \$100.00, a hearing before the animal review board within five business days after receiving the animal control officer's determination.~~

~~(c) *Hearing time.* The animal review board shall hold a hearing not less than three nor more than ten business days after receiving at the owner's or complainant's written request for such a hearing. The purpose of the hearing shall be to uphold, overturn, or modify the animal control officer's finding and determination. ~~The chair of the animal review board~~ animal control officer shall provide notice of the date, time, and location of the hearing to the animal owner by registered mail and/or to the complainant by first class mail. Notice must be received by the owner and/or complainant a minimum of two calendar days prior to the hearing.~~

~~(d) *Hearing criteria.* At the hearing, all interested persons shall be given the opportunity to present evidence on the determination of the animal control officer ~~issue of the animal's dangerousness or potential dangerousness.~~ The purpose of the hearing shall be to uphold, overturn, or modify the determination of the animal control officer. Criteria to be considered in a hearing regarding the dangerousness or potential dangerousness of an animal ~~required by this section~~ shall include, but not be limited to, the following:~~

- (1) Provocation.
- (2) Severity of attack or injury to a person or domestic animal.
- (3) Previous aggressive history of the animal.
- (4) Observable behavior of the animal.
- (5) Site and circumstances of the incident.
- (6) Statements from interested parties.

(e) *Decision.* The animal review board shall issue a decision upholding, modifying, or overturning the animal control officer's determination. The decision may be issued at the hearing but, in any case, shall be issued within three calendar days after the hearing.

(f) *Owner's responsibility* Conditions on return of potentially dangerous animal. ~~A determination by the animal review board that the creature is a potentially dangerous creature shall subject the creature and its owner to the provisions of this section. The owner of such creature must then be in compliance of these section guidelines within ten business days from the date of notification. If the owner of such creature does not appeal, then he or she~~ A potentially dangerous creature and its owner must be in compliance with such provisions section 8-38 within ten working days of the receipt of notification of dangerous/vicious from the animal control officer or, if an appeal, from the animal review board. The owner must be in compliance ~~of these section guidelines~~ with section 8-38 before the creature ~~is~~ may be returned to him or her. If ~~these~~ such requirements are not met, the creature will be destroyed. The owner shall be responsible for all expenses.

Sec. 8-38. - Same—Ownership and possession of dangerous, vicious, or unsafe creature.

(a) No person may keep within the boundaries of the city any potentially dangerous creature, as per section 8-39, or any creature that has been declared ~~dangerous/vicious, vicious, or unsafe~~ under section 8-36 unless such creature is registered yearly with the city and a permit fee in the amount of \$150.00 is paid to the city. Such permit ~~for maintaining a dangerous/vicious animal~~ shall be presented to any law enforcement officer or animal control officer upon demand.

(b) In addition to such permit, the following conditions shall be met:

- (1) If the creature is indoors, the animal shall be under the control of a person over 18 years of age. A lockable kennel or room must be available to secure the creature in. It shall not be kept in a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no potentially dangerous animal shall be kept in a house or structure when screen windows or doors are the only obstacle preventing the creature from exiting the structure.
- (2) If the creature is outdoors and attended, the creature shall be muzzled, on a leash no longer than six feet and under the control of a person over 18 years of age and capable of physically controlling the animal. The animal shall have a colorfast, fluorescent green colored vest of sufficient and standard design as to easily identify the creature a ~~dangerous/vicious, vicious, or unsafe~~ animal.

- (3) If the creature is outdoors and unattended, the creature must be locked in an escape-proof kennel approved by the city animal control officer. Minimum standards shall include the following:
- a. Fencing materials shall not have openings with a diameter of more than two inches; in the case of a wooden fence, the gaps shall not be more than two inches.
 - b. Any gates within such pen or structure shall be lockable and of such design to prevent the entry of children or the escape of the animal. The kennel gate will be locked by padlock at all times.
 - c. The required pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be imbedded into the ground at least 18 inches or secured with concrete footings. The bottom of the enclosure will be secured in such a way that the creature will not be able to dig under the sides to escape.
 - d. The pen or structure shall include an enclosed area to protect the creature from the elements. The pen must provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition. A source of clean, drinkable water shall be provided to the creature at all times.
 - e. The pen or structure may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.
 - f. A universal sign denoting a dangerous ~~vicious~~, vicious, or unsafe creature shall be displayed on the kennel or enclosure. The signs will be on all sides of the enclosure and easily readable by the public and specify what type of creature to be aware of.
 - g. All other city regulations shall apply in addition to the regulations prescribed in this section.
- (4) The owner shall be required to carry a minimum of \$500,000.00, and ~~may be required by the animal review board to have up to~~ \$1,000,000.00, in liability insurance covering any damages caused by the animal causes, on or off the owner's premises and naming the City of Aberdeen as an additional insured, the amount of such insurance to be determined by the animal control authority.

~~certificate holder. Proof of such~~ A certificate of insurance shall be filed with the city noting the coverage in writing ~~covering a vicious~~ for a dangerous, vicious, and unsafe animal or similar endorsement on the policy. Verification ~~by letter from the insurance company stating that they are~~ from the insurer that it is aware of the animal and its situation and that ~~it~~ the animal is covered under their policy will be required before ~~it~~ the animal can be brought to or ~~back~~ returned to the owner's residence. Continuation of such insurance will be required as long as the individual owns the animal. Failure to maintain such insurance will result in the immediate destruction of the animal. The issuer of any insurance policy required hereunder shall be licensed to sell insurance within the State of South Dakota.

- (5) The owner shall present proof of current rabies vaccination, if applicable, or have rabies shots given before the animal can be returned or taken to the owner's residence. The owner shall maintain current rabies shots. Failure to maintain rabies shots will result in the immediate destruction of the animal.
- (6) The owner shall ~~also~~ present proof that the creature has been altered to prevent reproduction.
- (7) The owner shall have an identifying microchip implanted into the creature, and shall maintain such subscriptions as are necessary to allow the creature to be identified at any time throughout its life.
- (8) If the conditions in this section are not complied with within ten working days, the creature shall be euthanized in a humane manner at the owner's expense, including kenneling fees.
- (9) Any ~~dangerous~~ vicious, vicious, or unsafe creature found off the premises of its owner, other than provided for in this section, shall be seized by the animal control officer ~~or any police officer~~ and impounded. If the creature cannot be captured, it may be destroyed. If the creature has been running at large, or bites a person, or bites another animal, the animal control officer ~~or any police officer~~ may order the owner to deliver the creature to the city animal shelter within 24 hours to be euthanized. ~~The owner may request in writing within five working days to appear in front of the animal review board, subsection 8-37(b), to show cause why this animal shall not be destroyed. If no request is filed at the end of those five working days, the creature may be euthanized. If the owner of the creature fails to deliver the creature as ordered, the animal control officer or any police officer shall use such means as are necessary to impound the creature. The owner may appeal to~~

the animal review board as set forth in section 8-37 to show cause why the animal shall not be destroyed.

- (10) The owner or keeper of a dangerous/~~vicious~~, vicious, or unsafe creature shall notify the city's designated animal control authority immediately if such creature escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the animal bites or attacks a person or domestic animal or livestock.
- (11) Any owner of a potentially dangerous animal who sells or otherwise transfers ownership, custody or residence of the animal shall, within ten business days after such change of ownership or residence, provide written notification to the ~~city's designated~~ animal control authority of the name, address, and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the animal to provide written notification of the animal's classification as dangerous/~~vicious~~, vicious, or unsafe to the person receiving the animal. The previous owner shall furnish a copy of such notification to the ~~city's designated~~ animal control authority along with written acknowledgment by the new owner of his receipt of such notification. The new owner shall notify the ~~city's designated~~ animal control authority of any changes of ownership, custody, or residence of the animal within three business days.
- (12) Any creature that has been declared dangerous/~~vicious~~, vicious, or unsafe by any agency or department of the city, another municipality, county or state shall be subject to the provisions of this section for the remainder of its life, unless the potentially dangerous animal designation is removed in accordance with this section. The person owning or having custody of any creature designated as a dangerous/~~vicious~~, vicious, or unsafe creature by any municipality, county or state government shall notify, in writing, the ~~city's designated~~ animal control authority of the creature's address and conditions of maintenance within ten days of moving the animal into the city. If the conditions for keeping a dangerous/~~vicious~~, vicious, or unsafe creature are not already in place, the creature will be impounded, at the owner's expense, for up to ten days while the owner meets the requirements of this section. If these requirements are not met by that time, the creature will be subject to disposal as set forth in this section, in addition to any other penalties prescribed by this chapter.
- (13) The owner of any dangerous/~~vicious~~, vicious, or unsafe creature may petition the animal review board for a removal of the

designation after five consecutive years during which the owner has received no violations under this section.

- (14) The owner of any dangerous/~~vicious, vicious, or unsafe~~ creature will notify the animal control authority of any address change of where the animal is housed, any change in the health status of the creature, and the death of the creature within five working days of these happenings.
- (15) The owner of any dangerous/~~vicious, vicious, or unsafe~~ creature will be liable for all expenses connected to the catching, kenneling, medical care or disposal of his or her creature.
- (16) The animal control authority may waive or modify any of the conditions in this section only for service animals and for creatures used by law enforcement, state and federal militia, or authorized animal care and control agencies. ~~Nothing in this section shall be construed to limit, affect, or apply to the use of creatures by law enforcement, military, legitimate service animals, or certified and established rescue organizations.~~

Sec. 8-41. - Animals having bitten or attacked a person; impoundment, quarantine and observation; disposition.

...
(b) If, in the opinion of the city police officer or animal control officer, the creature may be considered dangerous/~~vicious, vicious, or unsafe~~, it may be impounded.
...

Sec. 8-45. - Guard dogs.

...
(i) In case of a guard dog escaping from his handler or authorized enclosure, it will be treated by the city police or animal control officer as a dangerous/~~vicious, vicious, or unsafe~~ animal. The city or any police office or animal control officer will not be held liable for any injury or death to the guard dog resulting from attempts to capture or contain a guard dog.
...

Sec. 8-58. - Application.

Any person desiring to keep, maintain or have in his custody or control by himself or agent within the city, any dog or cat, shall within 30 days upon owning or taking into their possession such dog or cat, make application to the city finance office for a license to keep such dog or cat. Such application shall be in writing stating the name, sex, color and breed and other distinguishing characteristics of such animal and the name of the owner thereof. As to dogs, applications shall state whether or not the dog has any

~~vicious~~ dangerous, vicious, or unsafe propensities so far as known to such applicant. Each application shall be made on a printed form furnished by the city finance office and shall be filed with the city finance office.

Passed First Reading: January 29, 2018

Passed Second Reading: February 5, 2018

Final Adoption Date: _____

Published: _____

Effective Date: _____

Mike Levsen, Mayor

ATTEST:

Karl Alberts, Finance Officer