

**ORDINANCE NO. 1783**

**AN ORDINANCE AMENDING CHAPTER 6, ARTICLE I, SECTION 6-17 THROUGH SECTION 6-22 OF THE CODE OF THE CITY OF NEODESHA, DEALING WITH VICIOUS DOGS INSIDE THE CITY OF NEODESHA; AND REPEALING OLD CHAPTER 6, ARTICLE I, SECTION 6-17 THROUGH SECTION 6-22 OF THE CODE OF THE CITY OF NEODESHA.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS:**

**Section One:** Chapter 6, Article I of the City of Neodesha Code shall be amended to read as follows:

**Sec. 6-17. – Vicious dogs, definitions.**

The city hereby finds that certain dogs, because of a combination of their physical attributes and disposition or training for aggression, fighting or attack, pose a clear and present threat to public safety. Although relatively few in number, such dogs represent a threat to all persons, particularly those persons who cannot protect and defend themselves, such as children and the elderly. Regardless of the procedures taken to confine such dogs, their mere presence creates an unacceptable risk to the public because such dogs may escape or be released at any time. Because of the clear and present threat to public safety, such dogs are found to be a public nuisance. As a result, the city hereby prohibits the ownership and possession of these vicious dogs within the city limits of the city and imposes related regulations, as set forth in this article.

Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Vicious dog means:

(a) Any dog which:

- (1) Kills a human being;
- (2) Inflicts severe injury to a human being through a sustained or vicious attack;
- (3) Has been trained to fight and possess physical attributes such as size, build, or bite strength to inflict severe injury to a human being. For this purpose, the following shall be presumed to have been trained to fight:
  - (A) Any dog involved in a staged fight;
  - (B) Any dog exhibiting wounds or bodily disfigurements commonly associated with dog fighting;
  - (C) Any dog found or kept on premises at which equipment is located that is commonly associated with training dogs to fight; or
  - (D) Any dog found or kept with other dogs that:
    - (i) Have been trained to fight; or
    - (ii) Are presumed to have been trained to fight.

- (4) Because of its disposition and physical attributes, such as size, build, or bite strength, poses a substantial threat to the life and safety of public safety and emergency response personnel (such as law enforcement officers, firefighters and paramedics) who are seeking or may seek lawful access to any property in order to perform their duties; or
  - (5) Has the propensity, tendency or disposition to attack a human being without provocation and possesses physical attributes such as size, build, or bite strength to inflict severe injury to a human being.
- (b) Exceptions. No dog shall be deemed or declared a vicious dog:
- (1) Solely because it inflicted severe injury on a human being if the human being was, at the time the severe injury was sustained:
    - (A) Assaulting the owner or possessor of the dog; provided, the owner or possessor of the dog was not the aggressor;
    - (B) Committing a willful trespass upon the premises of the owner or possessor of the dog; or
    - (C) Provoking, tormenting abusing, or assaulting the dog, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the dog at other times.
  - (2) Solely because it inflicted severe injury on a human being if the dog was, at the time the substantial injury was sustained:
    - (A) Responding to pain or injury;
    - (B) Protecting itself; its kennel, its offspring, or its owner or possessor's property; or
    - (C) Protecting or defending another human being within the immediate vicinity of the dog from an unjustified attack or assault.
  - (3) Is owned or possessed by a federal, state, or local law enforcement agency.

**Sec. 6-18. – Vicious dogs, unlawful acts.**

(a) Vicious Dogs as Public Nuisance. Vicious dogs are declared to be a public nuisance and are hereby prohibited within the city.

(b) Ownership or Possession of Vicious Dog. It is unlawful to own or possess a vicious dog in the city. An owner or possessor of a dog that falls within the definition of "vicious dog" shall be strictly liable under this article and a conviction shall not require proof of any criminal intent or the owner or possessor's knowledge of any particular propensity, tendency or disposition of the dog. Each vicious dog owned or possessed in violation of this article shall constitute a separate offense.

(c) Ownership or Possession of Dog Following Conviction. It is unlawful for any person convicted of owning or possessing a vicious dog in violation of subsection (b) of this section to own or possess any dog, whether or not found to be a vicious dog, for a period of three (3) years following the date of such conviction.

Citation. In the event that the Animal Control Officer, or law enforcement officer, has probable cause to believe an animal is vicious by written complaint of the victim and that victim is willing to testify that the animal has acted in a manner that causes it to fall within the definition of a Vicious Animal, that officer shall endeavor to issue a citation for a violation of the section.

**Sec. 6-19. – Vicious dogs, removal; euthanization.**

In addition to the penalties prescribed by this Chapter, upon conviction, the Municipal Court shall order that the animal be removed from the city or humanely euthanized, and direct the Animal Control Officer, law enforcement officer, Animal Shelter or its veterinary designee to ensure that the order is enforced. If the Municipal Court orders a Vicious Animal to be humanely euthanized pursuant to this Section, that decision shall be final unless the owner applies to a court of competent jurisdiction for any remedies that may be available within the applicable appeal period, or other timeframe. If an appeal is timely filed, the Municipal Court shall suspend the Euthanasia order pending the final determination of the court in which the appeal is under review. If the animal is sold or transferred out of the city, the owner shall notify the City Clerk within seven days of the sale or transfer. The City Clerk shall report the Vicious Animal determination to the city in which the animal will be kept. If the animal is ordered removed from the city, the address in which the animal will reside shall be reported to the City Clerk within seven days of the move.

**Sec. 6-20. – Vicious dogs, impoundment.**

- (a) Any animal impounded under a probable cause belief that it is a Vicious Animal and which in the judgment of the Animal Control Officer, or law enforcement officer, would constitute a menace to the health, safety or welfare of the public if released from custody, may be impounded pending a hearing on any charges or complaints filed in the Municipal Court to determine the disposition thereof.
- (b) Unauthorized Removal of Impounded Dogs, Actual or Attempted. No person shall remove or attempt to remove a dog from the custody of the animal control officer, law enforcement, or designee or any animal shelter at which the dog is impounded, whether by force, threat, deceit or otherwise, when such dog has been impounded under the provisions of this article or any other law, unless the animal control officer, law enforcement, or designee or a court of appropriate jurisdiction expressly authorized the release of the dog.

**Sec. 6-21. – Vicious dogs, criminal penalties.**

Any person who violates the provisions of this section shall be subject to the following penalties:

- (a) Violation of Vicious Dog Provisions. Any person who owns or possesses a vicious dog in violation of Section 6-18(b) shall be guilty of a misdemeanor, punishable as follows:
  - (1) First offense, a fine, which shall be set at \$500.00. The fine shall be mandatory, and the court shall have no authority to suspend the fine or any portion thereof. In addition, the court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 90 days.
  - (2) Second or subsequent offense, committed within three years of a prior offense, a fine, which shall be set at \$1,000.00. The fine shall be mandatory, and the court shall have no authority to suspend the fine or any portion thereof. In addition, the court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of six months.

(b) Violation of Provisions Regarding Unauthorized Removal of Impounded Dogs. Any person who removes or attempts to remove a dog from the custody of the animal control officer, law enforcement officer, or designee, or any animal shelter at which the dog is impounded, in violation of Section 6-20(b), shall be guilty of a misdemeanor, punishable by a fine in the amount of \$1,000.00. The court shall have no authority to suspend the fine or any portion thereof. In addition, the court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of six months.

(c) Violation of Other Provisions. Any person, who owns or possesses a dog in violation of Section 6-18(c) or violates any other provision of this article, shall be guilty of a misdemeanor, punishable by a fine in the amount of \$250.00. The court shall have no authority to suspend the fine or any portion thereof. In addition, the court shall have the authority to sentence the defendant to confinement in the county jail for a maximum of 30 days.

**Sec. 6-22. – Vicious dogs, costs to be paid by responsible persons.**

All reasonable costs incurred by the city in seizing, impounding, confining or disposing of any vicious dog pursuant to the provisions of this article shall be charged against the owner of such animal and shall be subject to collection by any lawful means. If the owner of the animal is found guilty of a violation of this article, said above-mentioned expenses shall be assessed as costs in said court action.

**Section Two:** Old Chapter 6, Article I, Section 6-17 through Section 6-22 of the Code of the City of Neodesha is hereby repealed.

**Section Three: EFFECTIVE DATE.** This ordinance shall be in full force and effect after its publication in the official city newspaper.

**Passed by the Governing Body of the City of Neodesha, Kansas and signed by the Mayor this 24<sup>th</sup> day of May, 2023.**

ATTEST:

/s/ Stephanie Fyfe

**Stephanie Fyfe, City Clerk**

/s/ Devin Johnson

**Devin Johnson, Mayor**