

## Dangerous Dogs

AN ORDINANCE ENACTING CHAPTER 8, ARTICLE 3 OF THE CITY CODE OF THE CITY OF GARRISON, NORTH DAKOTA RELATING TO DANGEROUS AND VICIOUS DOGS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARRISON, NORTH DAKOTA AS FOLLOWS:

- 8.0301 Authorization
- 8.0302 Purpose and Intent
- 8.0303 Definitions
- 8.0304 Determination of Status
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- 8.0308 Immediate Impoundment
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A public safety ordinance providing for responsible ownership of and licensing and keeping of potentially dangerous dogs, dangerous dogs, and vicious dogs within the corporate limits of the City of Garrison, North Dakota, authorizing impoundment and disposition of certain dogs, and repealing all ordinances in conflict therewith.

### **SECTION 8.0301. Authorization.**

This Ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the North Dakota State Constitution, and the North Dakota Century Code.

### **SECTION 8.0302. Purpose and Intent.**

The purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of Garrison.

### **SECTION 8.0303. Definitions.**

When used in this Ordinance, words have their common meaning and in addition the following words, terms, and phrases, and their derivations have the following meaning:

- (a) *Animal control officer* means any person employed or appointed by the City who is authorized to investigate and enforce violations relating to animal control or cruelty under the provision of this Ordinance.
- (b) *At large* means a dog that is not on its owner's property and not leashed.
- (c) *Bite injury* means any contact between an animal's mouth and teeth and the skin of a bite victim which causes visible trauma, such as a puncture wound, laceration, or other piercing of the skin.

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- (d) *Dangerous dog* means any dog that has caused a bite injury and is not a vicious dog.
- (e) *Director* means the Director of the Department of Animal Control, Chief of Police, or other individual designated by the Garrison city council.
- (f) *Domestic animal* means an animal of a tamed species commonly kept as pets and includes livestock
- (g) *Enclosure* means a fenced or walled area having a fence or wall height of at least six (6) feet suitable to prevent the entry of young children and suitable to confine a dog.
- (h) *Impoundment* means seizing and confining a dog by any police officer, animal control officer or any other public officer under the provisions of this Ordinance.
- (i) *Muzzle* means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of a dog that prevents the dog from biting any person or other animal and that does not interfere with its respiration.
- (j) *Potentially dangerous dog* means a dog that while *at large*: (1) behaves in a manner that a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to a person or *domestic animal*, or (2) causes injury to a *domestic animal*.
- (k) *Provocation* means any action or activity, whether intentional or unintentional, which would be reasonably expected to cause a normal dog in similar circumstances to react in a manner similar to that shown by the evidence.
- (l) *Owner* means any person, partnership, or corporation having a right of property in an animal, or who keeps or harbors a dog, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her.
- (m) *Sanitary condition* means a condition of good order and cleanliness to minimize the possibility of disease transmission.
- (n) *Serious physical injury* means disfigurement, protracted impairment of health, or impairment of the function of any bodily organ.
- (o) *Vicious dog* means a dog that without provocation or justification bites or attacks a person and causes serious physical injury or death or is declared vicious under this title.

### **SECTION 8.0304. Determination of Status.**

- (a) The animal control officer may find and declare a dog potentially dangerous, dangerous, or vicious if the officer has probable cause to believe that the dog falls within the definition of "vicious dog", "dangerous dog" or "potentially dangerous dog". The finding must be based upon:
  - (i) The written complaint of a person who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of "vicious dog", "dangerous dog" or "potentially dangerous dog"; or
  - (ii) Dog bite reports filed with the animal control officer as required by city ordinance or state law;

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or

(iii) Actions of the dog witnessed by any animal control officer or law enforcement officer; or

(iv) Other substantial evidence admissible in court.

(b) The declaration shall be in writing, and shall be served by the animal control officer:

(i) On the owner if known using one of the following methods:

1. Regular mail to the owner's last known address, or by certified mail directed to the owner at the owner's last known address; or

2. Personally; or

3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation and posting a notice on the property of the owner;

(ii) Where the owner is not known publication in a newspaper of general circulation.

(c) The declaration shall contain the following information:

(i) Name and address of the owner of the dog if known and if not known that fact.

(ii) A description of the dog.

(iii) Whereabouts of the dog.

(iv) Facts upon which the declaration is based.

(v) Restrictions placed upon the dog and when the owner is not known the intended disposition of the dog.

(vi) Penalties for violation of the restrictions, including possibility of destruction of the animal and fine and imprisonment of owner.

(vii) Availability of a hearing to contest the declaration by submitting a written request to the Board of Appeals within fifteen days of receipt of the declaration or if notice is given by publication or posting within 15 days of the earlier of the date the notice first appears in the newspaper or the property is posted.

(d) A dog may be declared dangerous under this section if the dog has within a twelve-month period attacked and killed a domestic animal on more than one occasion. For purposes of this subsection only, a domestic animal does not include any feral animal or does not apply where the attack was upon a domestic animal that was at large or upon a domestic animal that was tormenting or attacking the dog.

(e) Dogs shall not be declared dangerous, potentially dangerous or vicious if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, provoking or

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assaulting the dog or has, in the past, been observed or reported to have tormented, abused, provoked or assaulted the dog or was committing or attempting to commit a crime.

- (f) *Notice.* When notice is given by regular mail to the owner's last known address, notice is effective on the third day after the notice was placed in the mail, postage prepaid, to the owner's last known address. When notice is given by certified mail, notice is effective when received; provided however, if certified mail delivery has been refused, notice is effective by publication or posting and whenever notice is accomplished by publication or posting the notice is effective and deemed received on the earlier of the day the property is posted or the newspaper is published.

### SECTION 8.0305. Potentially Dangerous Dogs.

(a) No person shall maintain a potentially dangerous dog without a license or otherwise in violation of this section.

(b) No person owning, harboring or having the care or custody of a potentially dangerous dog shall permit the dog to go at large or leave the owner's property unless the dog is securely leashed and muzzled.

(c) *Spaying/Neutering.* All owners of potentially dangerous dogs must spay or neuter the dog and provide proof of sterilization to the Director of Animal Control within 14 days of the animal control officer declaring the dog potentially dangerous.

(d) In addition to any other penalty for a violation of this section, a court may revoke the authority of a person to keep a potentially dangerous dog within the city.

(e) The owner of a potentially dangerous dog may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following conditions:

- (i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and
- (ii) The owner of the dog has complied with all the provisions of this act for a period of two (2) years; and
- (iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog owner has complied with all conditions in this subsection, the application shall be forwarded to the Court to rescind the potentially dangerous dog declaration.

### SECTION 8.0306. Dangerous Dogs.

(a) No person shall maintain a dangerous dog in violation of this section.

(b) *Keeping of a Dangerous Dog.* Once a dog has been declared dangerous, it shall be kept in a secure

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enclosure subject to the following requirements:

- (i) *Leash.* No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its enclosure unless such dog is securely attached to a leash not more than four (4) feet in length and walked by a person who is both over the age of eighteen and who has the physical ability to restrain the dog at all times. No owner shall keep or permit a dangerous dog to be kept on a chain, rope or other type of leash outside its enclosure unless a person capable of controlling the dog is in physical control of the leash.
- (ii) *Muzzle.* It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.
- (iii) *Confinement.* Except when leashed and muzzled as provided in this Section, a dangerous dog shall be securely confined in a residence or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light, and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:
  1. The structure must have secure sides and a secure top, or all sides must be at least six (6) feet high;
  2. The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and
  3. The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.
- (iv) *Indoor Confinement.* No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.
- (v) *Signs.* All owners, keepers, or harborers of dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog."
- (vi) *Liability Insurance, Surety Bond.* Subject to judicial discretion, the owner of a dangerous dog may be required to present to the Department of Animal Control proof that he has procured liability insurance or a surety bond in the amount of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing it if the insurance policy is canceled, terminated or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period.
- (vii) *Identification Photographs.* All owners, keepers, or harborers of dangerous dogs must within

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ten (10) days of determination provide to the Animal Control two color photographs of the registered dog clearly showing the color and approximate size of the dog.

- (viii) *Microchip*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination microchip the dog and provide microchip information to the Director of Animal Control to register the dog as dangerous.
  - (ix) *Spaying/Neutering*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination spay or neuter the dog and provide proof of sterilization to the Director of Animal Control.
  - (x) *Sale or Transfer of Ownership Prohibited*. Sale - No person shall sell, barter or in any other way dispose of a dangerous dog registered with the City to any person within the city unless the recipient person resides permanently in the same household and on the same premises as the owner of such dog, provided that the owner of a dangerous dog may sell or otherwise dispose of a registered dog to persons who do not reside within the city. Owner must disclose dog's status as a dangerous dog to anyone to whom the owner transfers custody or care of the dog.
  - (xi) *Notification of Escape*. The owner or keeper of a dangerous dog shall notify the Department of Animal Control immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.
  - (xii) *Failure to Comply*. It shall be a separate offense to fail to comply with the restrictions in this section. Any dog found to be in violation of this Section shall be subject to immediate seizure and impoundment pursuant to 8.0308. In addition, failure to comply with the requirements and conditions set forth in this Ordinance shall result in the revocation of the dog's license and the permit providing for the keeping of such dog.
- (c) A dangerous dog owner may apply to the Director of Animal Control to have the declaration waived after three (3) years upon meeting the following conditions:
- (i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and
  - (ii) The owner of the dog has complied with all the provisions of this act for a period of three (3) years; and
  - (iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog has complied with all conditions in this subsection, and has sufficient evidence that the dog's behavior has changed, the application shall be forwarded to the Court to rescind the dangerous dog declaration.

### **SECTION 8.0307. Vicious Dogs.**

It shall be unlawful to keep, possess, or harbor a vicious dog within the city limits.

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- (a) The provisions of this article shall not apply to a police dog being used to assist one or more Law Enforcement Officers acting in an official capacity
- (b) The Director of Animal Control may order a dog euthanized that has been declared vicious.
- (c) The owner of a dog that the Director declares to be vicious may appeal that determination to the Board of Appeals within 15 days of the declaration. If an appeal is timely filed, the order to destroy the animal is suspended pending the final determination of the Board except when the Director declares that public health and safety require the immediate destruction of the animal as in the case of rabies.
- (d) The owner of a vicious dog shall be liable for and shall pay all costs associated with impoundment, removal, or euthanasia of said animal. The owner shall pay any other associated costs incurred.

### SECTION 8.0308. Immediate Impoundment.

- (a) A dog suspected of being dangerous or vicious may be immediately impounded when the Director of Animal Control or the Director's designee determines such immediate impoundment is necessary for the protection of public health or safety.
- (b) If the owner of the dog impounded under subsection (a) of this section is not reasonably ascertainable at the time of impoundment, the Director shall immediately notify the owner by mail sent to the owner's last known address postage prepaid which upon the passage of three days be deemed complete or by personal service within five (5) business days after the dog's impoundment.
- (c) The notice of impoundment shall inform the owner of the dog that the owner may request, in writing, a hearing to contest the impoundment. Upon receipt of the notice of impoundment either through personal service or by mail (receipt is complete three days after mailing to the last known address of owner postage prepaid), the owner has 5 business days to request a hearing by serving on the Director of Animal Control a written request for the hearing.
- (d) Upon request by the owner of the dog for a hearing under subsection (c), a hearing must be held within ten (10) business days after receipt of the request. Notice of the date, time and location of the hearing shall be provided by regular mail to the dog owner requesting the hearing. The impoundment hearing shall determine upon **clear and convincing evidence** if the dog poses a risk to public health and safety; or if the dog could be released. If the trier of fact determines the dog does not pose a risk to public health and safety, the dog shall be immediately released back to the owner pending further proceedings either administrative or judicial.
- (e) The owner must pay all of the cost of the impoundment and upon request must post sufficient funds to cover the anticipated costs for continued impoundment. In the alternative, the owner may propose a suitable facility where the dog could be contained and maintained at the sole cost of the owner and upon approval of the Director the dog may be impounded at that facility under the terms and conditions set by the director. Failure to post funds sufficient to pay for the costs of impoundment constitutes a waiver of any rights the owner may have to a hearing under this Section.
- (f) If the owner timely appeals an impoundment or seizure, the owner may also seek review of the Director's determination of boarding costs by filing an appeal with the Board of Appeals within 5 days after the Director issues a demand for prepayment. The Board or a designee, must review the Director's

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decision within 2 business days after receiving the appeal. The owner must provide the Board with information sufficient to show that requiring prepayment of boarding costs would be a serious financial hardship on the owner. The Board may ask the owner to provide additional information at an informal hearing conducted in person or by telephone. The Director must not require the owner to prepay any boarding costs pending the Board's decision. The Board may make any decision the Director could have made such as requiring the owner to prepay boarding costs retroactive to the initial boarding date of the animal, posting a bond, or placing the animal in a suitable facility at the owner's sole expense. The owner may ask the Board to review the Director's decision regarding prepayment of boarding costs as part of its review of the underlying appeal.

(g) If the owner is successful in appealing the decision to impound the dog, the Director must refund to the owner any costs paid for the impoundment.

### **SECTION 8.0309. Continuation of Dangerous Dog Declaration.**

Any dog that has been declared dangerous or vicious by any agency or department of this City, another municipality, county, or state shall be subject to the provisions of this Ordinance. The person owning or having custody of any dog designated as potentially dangerous or dangerous by any municipality, county, or state government shall notify the Department of Animal Control of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City of Garrison. The restrictions and conditions of maintenance of any dog declared dangerous by this City, another municipality, county, or state shall remain in force while the dog remains in the City. No dog declared a potentially dangerous, dangerous, or vicious dog by any other designation agency or department of another municipality, county, or state based solely on size, breed, mix of breeds, or appearance shall be subject to this Section.

### **SECTION 8.0310. Reckless Dog Owner.**

(a) Any person convicted of:

- (i) a violation of the City of Garrison Code of Ordinances Chapter on Animals three (3) or more times in a 24 (twenty-four) month period; or
- (ii) a violation of this Article two (2) or more times in any five-year period, shall be declared a reckless dog owner.

(b) The Director of Animal Control shall issue a notification of the declaration of Reckless Dog Owner to the person with the following:

- (i) name and address of the person subject to the declaration, and;
- (ii) the description, violation, and conviction that led to the declaration, and;
- (iii) the name, description, and license number of all dogs subject to the effects of the declaration, and;
- (iv) instructions on appealing the declaration to the Board of Appeals.

(c) Once declared a reckless dog owner, the city licenses of all dogs owned by the person shall be

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revoked, and the person shall not own, keep, possess, or harbor a dog for a period of 5 (five) full years from the date of the declaration.

(d) A person declared to be a reckless dog owner may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following conditions:

- (i) The person has no subsequent violations of this Chapter of the Code; and
- (ii) The person has complied with all the provisions of this act for a period of two (2) years; and
- (iii) The person provides proof to the Director of Animal Control of successful completion of a program designed to improve the person's understanding of dog ownership responsibilities and based upon an interview with the Director of Animal Control establishes that understanding.

If the Director finds sufficient evidence that the person has complied with all conditions in this subsection, the Director may rescind the reckless owner declaration subject to conditions that can help to ensure no future violations. If the Director declines to remove the declaration, the person aggrieved may appeal to the Board of Appeals within 30 days of that decision. Upon appeal, the person must provide clear and convincing proof that ownership of a dog in the future will be handled responsibly and not in violation of any law or ordinance.

### **SECTION 8.0311. Penalties.**

(a) Any person violating this Article shall, upon conviction, be punished by a fine of not less than \$250.00 nor more than \$1,000.00.

(b) Upon conviction of a violation of this Article, the court may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

### **SECTION 8.0312. Appeals.**

(a) Any person aggrieved by a decision of the Director of Animal Control to declare a dog potentially dangerous, dangerous or vicious, or to declare a person a reckless dog owner, or to impound a dog, or to have a dog euthanized may appeal the decision to the Board of Appeals within 30 days of the decision unless a different period is provided under this Title. A person aggrieved by a decision of the Board of Appeals may appeal that decision to the courts in accordance with and pursuant to state law and the rules of court.

(b) If the Director of Animal Control orders a dog to be euthanized for public health or safety reasons other than for rabies, the owner may immediately appeal that decision to the courts and upon a showing of good cause the court may suspend the order to euthanize the dog until the appeal is finally resolved.

### **SECTION 8.0313. Conflicting Ordinances.**

All other ordinances of the City of Garrison that conflict with this Ordinance are hereby repealed to the extent of such conflict.

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**SECTION 8.0314. Severability.**

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part.

WHEREUPON, the Motion was passed and the Ordinance declared adopted this 7<sup>th</sup> day of September, 2021.

**First Reading: June 7, 2021**

Voting Aye: Schlichting, M. Olson, Reinarts, Jeffrey, Iglehart.

Voting Nay: None

Absent: C. Olson

**Second Reading: September 7, 2021**

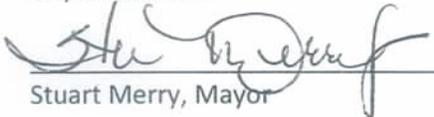
Voting Aye: Schlichting, M. Olson, Reinarts, Jeffrey, C. Olson.

Voting Nay: None

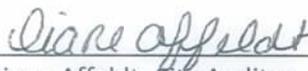
Absent: Iglehart

**Date Published (if required):** \_\_\_\_\_

City of Garrison

  
\_\_\_\_\_  
Stuart Merry, Mayor

ATTEST:

  
\_\_\_\_\_  
Diane Affeldt, City Auditor