

BY: Mr. Kos

TEMP NO: 10570R

ORDINANCE NO. 132-2015

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES BY AMENDING SECTION 618.01, DOGS AND OTHER ANIMALS RUNNING AT LARGE, AND WITH THE ADDITION OF SECTION 618.21, POTENTIAL NUISANCE DOG CLASSIFICATION, SECTION 618.22, CONTROL OF POTENTIAL NUISANCE DOGS, SECTION 618.23, DECLASSIFICATION OF DOGS, SECTION 618.24, DOG CLASSIFIED BY ANOTHER JURISDICTION, SECTION 618.25, OBJECTIONS HEARING, SECTION 618.26, DANGEROUS AND VICIOUS DOG OWNERSHIP RESTRICTIONS, AND SECTION 618.27, EXEMPTIONS, AND DECLARING AN EMERGENCY.

WHEREAS, due to recent events in the City of Avon Lake and changes to State Law, the Safety Committee recommended additions to the Avon Lake Codified Ordinances regarding control of dogs to prevent bites to humans and domestic animals, and

WHEREAS, Council coming now to consider said recommendations approves them in full, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,
STATE OF OHIO:

Section No. 1: That Section 618.01 of the Avon Lake Codified Ordinances is hereby amended to read as follows:

618.01 - DOGS AND OTHER ANIMALS RUNNING AT LARGE.

(a) No person who is the owner or keeper of horses, mules, cattle, sheep, goats, swine, dogs, geese or other fowl or animals shall permit them to run at large upon any public way or upon unenclosed land.

(b) No person who is the owner of or in charge or control of a cat shall permit or allow, by any means or in any manner, such ~~dog or~~ cat to go or remain upon any public street or ground within the City, except when under such control as to prevent such ~~dog or~~ cat from entering private property or from ~~chasing or~~ attacking any person or domestic animal.

c) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, or harborer of the dog, no owner, keeper, or harborer of any dog shall fail at any time to do either of the following:

(1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harborer by a leash, tether, adequate locked fence, which fence is located in the rear yard with self-closing/self-latching gates on any openings of the fenced yard, supervision of some person, or secure enclosure to prevent such dog from escaping or from injuring any person or domestic animal;

(2) Keep the dog under the reasonable control of some person and restrained by a leash or tether no longer than six (6) feet in length when off the premises of the owner to prevent such dog from entering private property, escaping, or from injuring any person or animal.

(d) The running at large of any such animal in or upon any of the places mentioned in this section is prima facie evidence that it is running at large in violation of this section.

(e) A cat found running at large shall be impounded by the Municipal Animal Warden or any police officer, kept in an animal shelter and confined in a humane manner. Immediately upon impounding, every reasonable effort shall be made to ascertain and notify the owner of the conditions whereby custody of the cat may be regained. A cat not claimed by its owner within five full days after impounding shall become the property of the City, regardless of whether or not the owner is ascertained and notified as provided in this subsection.

(f) The owner of a cat so impounded may reclaim such animal upon presentation of proof of ownership, upon execution of a form wherein the Municipality is released from any liability for any damage or injury to the cat being reclaimed, and wherein the Municipality is indemnified for any claim by another person regarding ownership, damages or injury to the cat being reclaimed, upon execution of a statement under oath or affirmation stating that the affiant is the true and legal owner of such cat and upon payment of an impounding fee and boarding charge as set forth in Chapter 208 of the Administration Code - the General Fee Schedule.

(g) References to "aggressively bite" in sections 618.01 through 618.26 shall mean any bite, not committed in play, that causes a physical injury, including a bruise, puncture, tearing of the skin, or laceration.

(h) References to "unprovoked" or "without provocation" in this section and sections 618.21 through 618.22 shall mean that the dog was not:

(1) Being abused, teased, tormented, or physically threatened or injured by a person;

(2) Being abused or physically threatened or injured by an animal;

(3) Being aggressively teased or tormented by an animal;

(4) Directing its behavior at a trespasser on the property of its owner, keeper, or harbinger;

(5) Reasonably coming to the defense of a human or domestic animal within the immediate vicinity of the dog and under perceived threat; or

(6) Directing its behavior at a domestic animal that was running at large and unattended by some person.

(i) References to "classified dog" in this section shall mean a dog that has been previously classified as a potential nuisance dog, nuisance dog, dangerous dog, or vicious dog pursuant to this Code, or similar designation in another jurisdiction, under the provisions of Section 955.11 et seq. of the Revised Code or comparable local ordinance.

(j) Penalties.

(1) Whoever violates this section, where the animal at large is not a classified dog, is guilty of a minor misdemeanor on the first offense, a misdemeanor of the fourth degree on the second offense, and a misdemeanor of the second degree on the third or any subsequent offense. Whoever violates this section shall be fined not less than twenty-five dollars or more than one hundred dollars on a first offense, and on each subsequent offense shall be fined not less than seventy-five dollars or more than two

hundred fifty dollars and may be imprisoned for not more than thirty days.

(2) Notwithstanding division (j)(1) of this section, where the animal at large is not a classified dog and the animal aggressively bites a domestic animal without provocation as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the third degree. Additionally, where a violation of this section involves a dog, the court may order the offender to complete dog obedience training within a specified period of time and provide written proof thereof to the police chief.

(3) Notwithstanding division (j)(1) of this section, where the animal at large is not a classified dog and the animal aggressively bites a human without provocation as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the second degree. Additionally, where a violation of this section involves a dog, the court may order the offender to complete dog obedience training within a specified period of time and provide written proof thereof to the police chief.

(4) Notwithstanding division (j)(1) of this section, where the animal at large is not a classified dog and the animal aggressively bites a human or domestic animal without provocation and causes serious injury as defined by 955.11(A)(5) of the Ohio Revised Code, as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree. Additionally, where a violation of this section involves a dog, the court may order the offender to complete dog obedience training within a specified period of time and provide written proof thereof to the police chief.

Section No. 2: That the Avon Lake Codified Ordinances are hereby amended with the addition of the following sections:

618.21 - POTENTIAL NUISANCE DOG CLASSIFICATION.

(a) Definitions.

(1) Classification of a dog as a potential nuisance dog shall be based upon specific behaviors exhibited by the dog. For

purposes of this section, behaviors establishing various levels of a potential nuisance dog are the following:

- (i) Level 1 classification is established if a dog off the premises of its owner, keeper, or harborer aggressively bites any domestic animal without provocation.
- (ii) Level 2 classification is established if a dog off the premises of its owner, keeper, or harborer displays threatening or aggressive behavior toward or otherwise threatens or endangers the safety of any animal without provocation, or if a dog on the premises of its owner, keeper, or harborer displays threatening or aggressive behavior toward or otherwise threatens or endangers the safety of any domestic animal or person without provocation.

(2) References to "designated dog" or "classified dog" in this section shall mean a dog classified as a Level 1 or Level 2 potential nuisance dog.

(3) References to "police chief" in sections 618.21 through 618.26 shall mean the police chief or his/her designee.

(4) References to "Director of Public Safety" in sections 618.21 through 618.26 shall mean the Director of Public Safety or his/her designee.

(b) The police chief shall have authority to determine whether a dog has engaged in the behaviors specified in divisions (a)(1)(i)-(ii). This determination may be based upon an investigation that includes observation of and testimony about the dog's behavior, including the dog's upbringing and the owner's or keeper's control of the dog, and other relevant evidence as determined by the police chief. These observations and testimony can be provided by any witness who personally observed the behavior. Such witness shall sign a written statement attesting to the observed behavior and agree to provide testimony regarding the dog's behavior. Forms for providing witness testimony shall be made available at the Police Department.

(c) Upon reasonable determination by the police chief that a dog has engaged in a behavior specified in divisions (a)(1)(i)-(ii), the police chief shall give the dog's owner or keeper written

notice by certified mail or personal service. The notice shall state:

- (1) The description of the dog;
- (2) The level of classification;
- (3) The facts upon which the classification is based;
- (4) The availability of a hearing to object to the classification;
- (5) The restrictions placed on the dog as a result of the classification;
- (6) The penalties for violation of the restrictions; and
- (7) The availability of declassification procedures.

(d) Upon receipt of notice of the dog's classification as a Level 1 or 2 potential nuisance dog pursuant to division (c) of this section, the owner or keeper shall comply with the restrictions as specified in section 618.22.

(e) Notwithstanding divisions (b) through (d) of this section, the police chief shall have discretionary authority to refrain from classifying a dog as a potential nuisance dog, even if the dog has engaged in the behaviors specified in divisions (a)(1)(i)-(ii) of this section, if the police chief determines that the behavior was not unprovoked or other similar mitigating or extenuating circumstances existed.

(f) If a dog is classified pursuant to division (c) of this section, the owner or keeper of the dog shall have the right to an administrative hearing to object to the designation pursuant to section 618.25. At hearing, the police chief must show, by a preponderance of the evidence, that the designated dog is a Level 1 or Level 2 potential nuisance dog.

618.22 - CONTROL OF POTENTIAL NUISANCE DOGS.

(a) No owner, keeper, or harborer of any Level 1 or 2 potential nuisance dog shall fail to do the following:

(1) While the dog is on the premises of the owner, keeper, or harborer, so as to prevent it from causing injury to any person or domestic animal:

(i) securely confine the dog indoors;

(ii) securely confine the dog in a locked pen which has a secured top and keep the dog under direct supervision by some person who is of sufficient size and strength to control the dog,

(iii) securely confine the dog in a locked fenced yard, which fence is located in the rear yard with self-closing/self-latching gates on any openings of the fenced yard, at least six (6) feet high, and keep the dog under direct supervision by a person who is of sufficient size and strength to control the dog; or

(iv) keep the dog restrained by a non-retractable leash or tether no longer than six (6) feet in length and have the leash or tether controlled by a person who is of sufficient size and strength to control the dog or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such person in close proximity.

(2) While the dog is off the premises of the owner, keeper, or harborer, so as to prevent it from causing injury to any person or domestic animal:

(i) keep the dog restrained by a non-retractable tether leash or a leash no longer than six (6) feet in length and have the leash or tether controlled by a person who is of sufficient size and strength to control the dog or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such person in close proximity; and

(ii) identify the dog as a potential nuisance dog with a leash, collar, harness, vest, or other garment that is colored neon yellow, without patterns or other adornments except designs intended to increase visibility of the dog at night. The identifying garment shall be visible and identifiable to an ordinary person from at least fifteen (15) feet away so as to provide reasonable warning to that person about the dog's classification.

(3) Post and display on the premises where the potential nuisance dog is kept a conspicuous and legible sign visible from

all areas of customary or actual public access warning the public that there is a Level 1 or 2 potential nuisance dog on the premises. Such sign shall be at least eight (8) inches by ten (10) inches in rectangular dimensions and shall contain only the words "LEVEL 1 THREAT DOG" or "LEVEL 2 THREAT DOG" in lettering not less than two (2) inches in height. Such sign shall also include a visual symbol for any children or people who cannot read words. All signs in residential areas must be setback from the front property line a minimum of five feet. All signs are to be purchased from the City.

(4) Within ten (10) calendar days of the notice of classification, provide the Police Department with an identifying color photograph of the dog and microchip information if the dog is microchipped.

(5) Notify the Police Department immediately if the dog is loose or unconfined or has aggressively bitten a human or another domestic animal.

(6) Notify the Police Department in writing within five (5) calendar days if the dog is transferred to another owner or keeper or dies. If the dog is transferred to another owner, the written notice shall include the name, address, and phone number of the transferee.

(7) Notify veterinarians, veterinary staff, groomers, and other members of the public who come into direct contact with the designated dog that the dog has been designed as a Level 1 or Level 2 potential nuisance dog prior to such contact.

(b) In addition to the provisions of division (a) of this section, no owner or keeper of any Level 1 potential nuisance dog shall fail to do the following:

(1) Muzzle the dog while the dog is off the premises of the owner, keeper, or harborer. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but must prevent it from biting any person or animal.

(2) Microchip the dog within fourteen (14) calendar days of the final determination of the dog as Level 1 potential nuisance dog and provide the microchip information to the police chief upon demand.

(3) Vaccinate the dog for rabies yearly and provide proof of vaccination to the police chief upon demand.

(4) Neuter or spay the dog within fourteen (14) calendar days of the final determination of the dog as Level 1 potential nuisance dog, unless a licensed veterinarian determines that neutering or spaying of the dog is medically contraindicated, and provide proof of alteration or exemption to the police chief upon demand.

(5) Maintain a policy of liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than ten thousand dollars (\$10,000.00) because of damage or bodily injury to or death of a person or animal caused by the dog. Such insurance must be obtained within fourteen (14) calendar days of the final determination of the dog as a Level 1 potential nuisance dog. The owner of any Level 1 potential nuisance dog shall provide a copy of the policy for liability insurance to the police chief on a yearly basis.

(c) Notwithstanding divisions (a) and (b) of this section, the police chief shall have the discretion to decrease or increase a classified dog's restrictions at the time of classification based upon relevant circumstances and may order the owner or keeper to complete dog obedience training within a specified period of time. The police chief shall notify the owner or keeper of any modifications to the restrictions in writing.

(d) Whoever violates this section when the violation involves a Level 2 potential nuisance dog is guilty of a misdemeanor of the fourth degree on the first offense, a misdemeanor of the third degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if a domestic animal or human is aggressively bitten by the dog without provocation as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree. Additionally, the court shall order the offender to complete dog obedience training within a specified period of time and provide written proof thereof to the police chief.

(e) Whoever violates this section when the violation involves a Level 1 potential nuisance dog is guilty of a misdemeanor of the

third degree on the first offense, a misdemeanor of the second degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if a domestic animal or human is aggressively bitten by the dog without provocation as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree. Additionally, the court shall order the offender to complete dog obedience training within a specified period of time and provide written proof thereof to the police chief.

618.23 - DECLASSIFICATION OF DOGS.

(a) Level 2 potential nuisance dogs shall be declassified when, for a period of one year following the classification, there have been no further Level 2 behaviors demonstrated or violations of 618.22.

(b) Level 1 potential nuisance dogs and nuisance dogs shall be declassified when, for a period of one year following the classification, there have been no Level 1 or Level 2 behaviors demonstrated or violations of 618.22 or Revised Code 955.22, and the owner or keeper has satisfactorily completed obedience training for the dog classified.

(c) Dangerous dogs shall be declassified when, for a period of four years following the classification, there have been no Level 1, Level 2, nuisance dog, or dangerous dog behaviors demonstrated or violations of 618.20 or Revised Code 955.22, and the owner or keeper has satisfactorily completed obedience training for the dog classified and has passed the American Kennel Club "Canine Good Citizen" test.

(d) The owner or keeper of the dog seeking declassification shall file a written application with the Police Department that demonstrates satisfaction of all required declassification conditions.

(e) Upon declassification, the restrictions for dogs classified as a Level 1 or 2 potential nuisance dog or nuisance dog shall be removed and restrictions on dogs classified as a dangerous dog shall be removed, with the exception of the insurance requirements.

(f) Upon reasonable determination by the police chief that a dog meets the requirements for declassification, the police

chief shall give the dog's owner or keeper written notice by certified mail or personal service.

(g) If the police chief denies the declassification application, the police chief shall give the dog's owner or keeper written notice by certified mail or personal service notifying the owner or keeper of the right to object to that determination pursuant to section 618.25. At hearing, the dog's owner or keeper must show, by clear and convincing evidence, that all condition of declassification have been satisfied.

(h) If a declassification application is denied, the owner or keeper may reapply for declassification after a period of six (6) months has elapsed.

618.24 - DOG CLASSIFIED BY ANOTHER JURISDICTION.

(a) Any person desiring to bring a dog to live in the City which has been previously declared to be a nuisance dog, dangerous dog, vicious dog, or similar designation in another jurisdiction, under the provisions of Section 955.11 et seq. of the Revised Code or comparable local ordinance, must notify the Police Department prior to moving the dog to the City.

(b) The police chief shall have authority to determine whether a previously classified dog has engaged in the behaviors specified in sections 618.17 or 618.21. This determination may be based upon an investigation that includes observation of and testimony about the dog's behavior, including the dog's upbringing and the owner's or keeper's control of the dog, and other relevant evidence as determined by the police chief. The owner or keeper of the dog shall provide the police chief with all information requested related to that dog.

(c) Upon reasonable determination by the police chief that a previously classified dog has engaged in the behaviors specified in sections 618.17 or 618.21, the police chief shall give the dog's owner or keeper written notice by certified mail or personal service. The notice shall state:

- (1) The description of the dog;
- (2) The level of classification;
- (3) The facts upon which the classification is based;

- (4) The availability of a hearing to object to the classification;
- (5) The restrictions placed on the dog as a result of the classification;
- (6) The penalties for violation of the restrictions; and
- (7) The availability of declassification procedures.

(d) Upon receipt of notice of the dog's classification as a potential nuisance dog, nuisance dog, dangerous dog, or vicious dog pursuant to division (c) of this section, the owner or keeper shall comply with the restrictions specified in sections 618.18 or 618.22 for that dog.

(e)

(1) If a dog is classified pursuant to division (c) of this section, the owner or keeper of the dog shall have the right to an administrative hearing to object to the designation pursuant to section 618.25. At hearing, the dog's owner or keeper must show, by clear and convincing evidence, that the classification as determined by the police chief does not match the dog's previous behavior or classification.

(f) Whoever violates division (a) of this section is guilty of a second degree misdemeanor and shall be subject to the penalty provided in Section 698.02.

618.25 - OBJECTION HEARINGS.

(a) If a dog is classified pursuant to sections 618.21 or 618.24, or is denied declassification pursuant to section 618.23, the owner or keeper of the dog shall have the right to an administrative hearing to object to the determination. The hearing shall be heard by the Director of Public Safety. An owner or keeper has ten (10) calendar days from the date listed on the written notice of the determination to inform the Director of Public Safety in writing that a hearing is requested. The Director of Public Safety will schedule the hearing and notify the party requesting the hearing in writing of the time, date, and location of the hearing.

(b) The objection hearing shall be conducted as follows:

(1) Parties may appear pro se or be represented by an attorney.

(2) Parties may present their position, arguments, and contentions, including by making statements, presenting evidence, and offering witnesses on their behalf, on any relevant issue.

(3) Parties may refute evidence and testimony offered in opposition to their position, arguments, and contentions, including by making statements, presenting evidence, and offering witnesses on their behalf, on any relevant issue.

(4) Parties shall be entitled to the right of cross examination.

(5) The hearing shall be quasi-judicial in nature and all testimony shall be under oath.

(6) Any party shall be entitled to transcribe the proceeding at his own cost.

(7) After considering all substantial, reliable and probative evidence accepted for review, the Director of Public Safety shall affirm, deny, or affirm with conditions the determination.

(8) Within five (5) business days of such hearing, the Director of Public Safety shall issue a written decision making a factual finding as to the determination and shall serve the decision upon all parties. The decision of the Director of Public Safety is a final order.

618.26 - DANGEROUS AND VICIOUS DOG OWNERSHIP RESTRICTIONS.

(a) No person shall own, keep, maintain, allow, harbor, or permit more than one dangerous or vicious dog at any one residence that has aggressively bitten and killed a dog or aggressively bitten and caused serious injury or death to a person.

(b) The provisions as set forth in section 955.54 of the Ohio Revised Code shall apply inside the City, with the exception of division (A)(2), which shall be construed to include vicious dogs in addition to dangerous dogs.

(c) Penalty.

(1) Whoever violates division (a) of this section is guilty of a second degree misdemeanor and shall be subject to the penalty provided in Section 698.02.

(2) Whoever violates division (b) of this section is guilty of a first degree misdemeanor and shall be subject to the penalty provided in Section 698.02.

618.27 - EXEMPTIONS.

Chapter 618 of this Code shall exempt the following:

(a) Any dog which is lawfully engaged in hunting or training for the purpose of hunting while accompanied by a licensed hunter. However, such dogs at all other times and in all other respects shall be subject to the ordinance or resolution permitted by this section, unless actually in the field and engaged in hunting or in legitimate training for such purpose;

(b) A service animal, as defined by the Americans with Disabilities Act and the regulations promulgated pursuant thereto, that has caused injury or serious injury to any person or has killed a person or a domestic animal while the service animal is actually being used to assist a person in the performance of that animal's trained duties; and

(c) A police dog that has caused injury or serious injury to any person or has killed a person or a domestic animal while the police dog is actually being used to assist one or more law enforcement officers in the performance of their official duties.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No: 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to enact laws regarding potential nuisance, dangerous, and vicious dogs to protect individuals and domestic animals, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1st reading: 09/28/15
2nd reading: 10/13/15
3rd reading:

PASSED: 10/13/15

Matthew O'Donnell
President of Council

POSTED: 10/16/15

10/15/15
Approved

ATTEST: Barbara Dopp
Clerk of Council

Gregory J. Zilker
Mayor