

BY: Mr. Kos

TEMP NO: 10551R2

ORDINANCE NO. 126-2015

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES WITH THE ADDITION OF SECTION 618.17, NUISANCE, DANGEROUS, AND VICIOUS DOGS - DEFINITIONS AND TRANSFER OF OWNERSHIP, SECTION 618.18, DESIGNATION OF NUISANCE, DANGEROUS, AND VICIOUS DOGS, SECTION 618.19, IMPOUNDMENT OF A DOG FOR PUBLIC SAFETY, AND SECTION 618.20, CONFINING, RESTRAINING, DEBARKING NUISANCE, DANGEROUS, AND VICIOUS DOGS, 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 nuisance, dangerous, and vicious dogs, 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 the Avon Lake Codified Ordinances are hereby amended with the addition of the following sections:

618.17 - NUISANCE, DANGEROUS AND VICIOUS DOGS - DEFINITIONS AND TRANSFER OF OWNERSHIP

(a) The definitions and provisions as set forth in section 955.11 of the Ohio Revised Code shall apply inside the City, with the exception of division (D), which shall be construed to include vicious dogs in addition to dangerous dogs.

(b) Notwithstanding the foregoing, "without provocation" in sections 618.18 and 618.20 shall mean that a dog was not teased by a person or animal, tormented by a person or animal, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(c) References in sections 618.18 through 618.20 to "police chief" shall mean the police chief or his/her designee or any person authorized to enforce chapter 955 of the Ohio Revised Code.

#### 618.18 - DESIGNATION OF NUISANCE, DANGEROUS, AND VICIOUS DOGS

(a) As used in this section, "nuisance dog," "dangerous dog," and "vicious dog" have the same meanings as in section 955.11 of the Revised Code. As used in Sections 618.18 through 618.26, "final determination" means a determination that is not subject to appeal.

(b) The police chief shall have authority to determine whether a dog is a nuisance dog, dangerous dog, or vicious dog. 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 is a nuisance dog, dangerous dog, or vicious dog, 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 and instructions to request that hearing;
- (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 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 section 618.20.

(f) If the owner, keeper, or harbinger of the dog disagrees with the designation of the dog as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harbinger may request a hearing regarding the determination pursuant to section 955.222 of the Revised Code.

#### 618.19 - IMPOUNDMENT OF A DOG FOR PUBLIC SAFETY

(a) As used in this section, "serious injury" has the same meaning as in section 955.11 of the Revised Code.

(b) Upon a resultant death or serious injury of a domestic animal or human, the Police Department shall have the authority but not the duty, in the interest of public safety, to seize the killing/seriously injuring dog and impound it. Any person keeping or harboring a dog sought to be impounded shall give possession of such dog to a police officer or health officer upon demand.

(c) If a dangerous or vicious dog aggressively bites any person or domestic animal, the Police Department shall have the authority but not the duty, in the interest of public safety, to seize the offending dog and impound it. Any person keeping or harboring a dog sought to be impounded shall give possession of such dog to a police officer or health officer upon demand.

(d) The owner, keeper, or harbinger of the dog shall be responsible for any and all costs associated with the housing of the dog.

(e) A dog impounded pursuant to division (b) of this section shall remain impounded until there has been a final determination as to the dog's classification or until the owner or keeper provides satisfactory proof to the police chief that they have complied with all applicable provisions of section 618.20 and renders payment for the costs of housing the dog. Upon a final determination, the owner or keeper of an impounded

dog shall claim it within fourteen (14) calendar days by rendering proof to the police chief that they have complied with all applicable provisions of section 618.20 and payment for the costs of housing the dog. If the dog is not claimed pursuant to the foregoing provisions, the City may dispose of the dog at its discretion.

(f) A dog impounded pursuant to division (c) of this section shall remain impounded until the court makes a final determination as to whether a violation of section 618.20 has occurred or until the owner or keeper provides satisfactory proof to the police chief that they have complied with all applicable provisions of section 618.20 and renders payment for the costs of housing the dog. Upon a final determination, the owner or keeper of an impounded dog shall claim it within fourteen (14) calendar days by rendering proof to the police chief that they have complied with all applicable provisions of section 618.20 and payment for the costs of housing the dog. If the dog is not claimed pursuant to the foregoing provisions, the City may dispose of the dog at its discretion.

(g) Whoever violates division (b) or (c) of this section by refusing or otherwise purposefully failing to give possession of a dog that the Police Department is authorized by such divisions to seize and impound is guilty of a second degree misdemeanor and shall be subject to the penalty provided in Section 698.02.

#### 618.20 - CONFINING, RESTRAINING, DEBARKING NUISANCE, DANGEROUS, AND VICIOUS DOGS

(a) As used in this section, "nuisance dog", "dangerous dog", and "vicious dog" have the same meaning as in section 955.11 of the Revised Code.

(b) No owner, keeper, or harbinger of a nuisance dog shall fail to do the following:

(1) While the dog is on the premises of the owner, keeper, or harbinger, 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 a 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 at least six (6) feet tall, 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 tether 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.

(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 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 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 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 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 "NUISANCE 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 a 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 nuisance dog prior to such contact.

(8) 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 nuisance dog. The owner of any nuisance dog shall provide a copy of the policy for liability insurance to the police chief on a yearly basis.

(c) No owner, keeper, or harbinger of a dangerous or vicious 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, securely confine it at all times:

(i) in a locked pen that has a secured top, under the direct supervision of a person who is at least eighteen (18) years of age and of sufficient size and strength to control the dog;

(ii) 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 tall, and restrained by a leash or tether no longer than ten (10) feet in length controlled by a person who is at least eighteen (18) years of age and 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; or

(iii) in an other locked enclosure that has a secured top, including a house. If the dog is confined in an other locked enclosure that has a top outdoors, keep the dog under the direct supervision of a person who is at least eighteen (18) years of age and of sufficient size and strength to control the dog.

(2) While that 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) muzzle the dog with a muzzle made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but allows the dog to eat and drink and prevents it from biting any person or animal, and also keep the dog restrained by a chain-link leash or tether no longer than six (6) feet in length controlled by a person who is at least eighteen (18) years of age and 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;

(ii) keep 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 tall, and restrained by a leash or tether no longer than ten (10) feet in length and have the leash or tether controlled by a person who is at least eighteen (18) years of age and 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;

(iii) keep the dog in a locked pen that has a secure top, under the direct supervision of a person who is at least eighteen (18) years of age and of sufficient size and strength to control the dog; or

(iv) keep the dog in an other locked enclosure that has a secure top, including a house. If the dog is confined in an other locked enclosure that has a top outdoors, keep the dog under the direct supervision of a person who is at least eighteen (18) years of age and of sufficient size and strength to control the dog.

(d) No owner, keeper, or harbinger of a dangerous or vicious dog shall fail to identify the dog at all times 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. While the dog is off the premises of the owner, keeper, or harbinger, 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 and to prevent the dog from causing injury to any person or domestic animal.

(e) No owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do the following:

(1) 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 one hundred thousand



dollars (\$100,000.00) for a dangerous or vicious dog 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 dangerous or vicious dog. The owner or keeper of any dangerous or vicious dog shall provide a copy of the policy for liability insurance to the police chief on a yearly basis and provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing this section.

(2) Obtain a dangerous dog registration certificate from the county auditor pursuant to division (I) of section 955.22 of the Revised Code within fourteen (14) calendar days of the final determination of the dog as a dangerous or vicious dog, affix a tag that identifies the dog as a dangerous or vicious dog to the dog's collar, ensure that the dog wears the collar and tag at all times, and present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, animal warden or control officer, or public health official, including evidence that the dog has been microchipped, rabies vaccinated, and neutered or spayed, unless a licensed veterinarian determines that neutering or spaying of the dog is medically contraindicated.

(3) Notify the local dog warden and Police Department immediately if any of the following occurs:

(i) The dog is loose or unconfined.

(ii) The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.

(iii) The dog attacks another animal while the dog is off the property of the owner of the dog.

(iv) The dog is sold, given to another person, or dies, within ten (10) calendar days of the sale, transfer, or death, and also notify the county auditor.

(4) Post and display on the premises where the dangerous or vicious 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 dangerous or 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 "DANGEROUS DOG" or "VICIOUS 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.

(5) Within ten (10) calendar days of the notice of classification, provide the Police Department with an identifying color photograph of the dog.

(6) 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 dangerous or vicious dog prior to such contact.

(7) Successfully complete a dog obedience or behavior modification course that includes a minimum of six (6) hours of in-person professional training or behavior modification within ninety (90) calendar days of the final determination of the dog as a dangerous or vicious dog and provide proof of completion to the police chief.

(8) Consent to an inspection of the property where the dog is kept, other than within any private structure unless otherwise authorized by law, by the police chief for the purpose of determining compliance with the requirements of this section.

(f) No person shall do any of the following:

(1) Debark or surgically silence a dog that the person knows or has reason to believe is a dangerous or vicious dog;

(2) Possess a dangerous or vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(3) Falsely attest on a waiver form provided by the veterinarian under division (F) of section 955.22 of the Revised Code that the person's dog is not a dangerous or vicious dog or

otherwise provide false information on that written waiver form. It is an affirmative defense to a charge of a violation of this division that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (F) of section 955.22 of the Revised Code and that attests that the dog is not a dangerous or vicious dog.

(g) Penalties.

(1) Whoever violates this section when the violation involves a 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 the dog aggressively bites a domestic animal or human 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.

(2) Whoever violates this section when the violation involves a dangerous 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 the dog aggressively bites a domestic animal or human 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. The court may further impose reasonable terms, conditions and restrictions deemed necessary to protect the public health, safety and welfare.

Notwithstanding the foregoing penalties, if the dog aggressively bites a domestic animal or human without provocation, causing serious injury, as a result of a violation of this section, then

whoever violates this section is guilty of a misdemeanor of the first degree. The court may impose reasonable terms, conditions and restrictions deemed necessary to protect the public health, safety and welfare, including humane euthanasia of the dog by a licensed veterinarian.

(3) Whoever violates this section when the violation involves a vicious dog is guilty of a misdemeanor of the second degree on the first offense, a misdemeanor of the first degree on the second offense or any subsequent offense.

Notwithstanding the foregoing penalties, if the dog aggressively bites a domestic animal or human 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. The court may further impose reasonable terms, conditions and restrictions deemed necessary to protect the public health, safety and welfare.

Notwithstanding the foregoing penalties, if the dog kills domestic animal or causes serious injury to a human as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree. The court may impose reasonable terms, conditions and restrictions deemed necessary to protect the public health, safety and welfare, including humane euthanasia of the dog by a licensed veterinarian.

Notwithstanding the foregoing penalties, it is felony of the fourth degree if the dog kills a person as a result of a violation of section 955.22(C) of the Revised Code. The penalties in this section shall not apply whenever the conduct proscribed in this section constitutes a felony under Revised Code 955.99.

Section No. 2: 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: 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to enact laws regarding 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.

1<sup>st</sup> reading: 8/24/15  
2<sup>nd</sup> reading: 9/28/15  
3<sup>rd</sup> reading:

PASSED: 10/13/15

Martin E O'Donnell  
President of Council

POSTED: 10/16/15

10/15/15  
Approved

ATTEST: Barbara Dapp  
Clerk of Council

Gregory J. Zelke  
Mayor