

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE CLASSIFICATION AND REGULATION OF DANGEROUS DOGS WITHIN THE CORPORATE LIMITS OF THE CITY OF LEXINGTON; AUTHORIZING THE IMPOUNDING AND DISPOSITION OF SUCH DOGS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA:

**SECTION 1. Authorization.**

This Ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the State Constitution, and Sections 54-601 through 54-624 of the Nebraska Revised Statutes.

**SECTION 2. 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 Lexington. It is intended to be applicable to "dangerous" dogs, as defined herein, and to regulate dogs that are commonly referred to as "pit bulls," as defined herein, by ensuring responsible handling by their owners through confinement and liability insurance.

**SECTION 3. Definitions.**

When used in this Ordinance, the following words, terms, and phrases, and their derivations shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) *Animal control officer* means any person employed or appointed by the City Manager who is authorized to investigate and enforce violations relating to animal control or cruelty under the provision of this Ordinance.

(b) *At large* means that a dog is not under the direct control of the owner.

(c) *Dangerous dog* means any dog that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties. The term "dangerous dog" includes any dog that according to the records of either the City Animal Shelter, the City Department of Animal Control, or any law enforcement agency:

- (1) Has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property, or when unprovoked, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by any of the above-referenced authorities;
- (2) Has more than once severely injured or killed a domestic animal while off the owner's property; or
- (3) Has been used primarily or in part for the purpose of dog fighting, or is a dog trained for dog fighting.

(d) *Direct control* means immediate, continuous physical control of a dog such as by means of a leash, cord, secure fence, or chain of such strength to restrain the dog and controlled by a person capable of restraining the dog, or safe and secure restraint within a vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog, voice control shall be considered direct control when the dog is actually participating in training or in an official showing, obedience, or field event. Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or to government police dogs.

(e) *Director* means the Director of the Department of Animal Control.

(f) *Impoundment* means the taking or picking up and confining of an animal by any police officer, animal control officer or any other public officer under the provisions of this Ordinance.

(g) *Muzzle* means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

(h) *Pit bull dog* means and includes any of the following dogs:

- (1) The Staffordshire Bull Terrier breed of dogs.
- (2) The American Staffordshire Terrier breed of dogs.
- (3) The American Pit Bull Terrier breed of dogs.
- (4) Dogs that have the appearance and characteristics of being predominately of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier.

(i) *Owner* means any person, partnership, corporation or other legal entity owning, harboring or keeping any animal, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days. This definition shall not apply to any veterinary clinic or boarding kennel.

(j) *Sanitary condition* means a condition of good order and cleanliness to minimize the possibility of disease transmission.

(k) *Under restraint* means that an animal is secured by a leash, led under the control of a person physically capable of restraining the animal and obedient to that person's commands, or securely enclosed within the real property limits of the owner's premises.

#### **SECTION 4. Procedure for Declaring a Dog Dangerous.**

- (a) An animal control officer or any adult person may request under oath that a dog be classified as dangerous as defined in Section 3(c) by submitting a sworn, written complaint on a form approved by the Director. Upon receipt of such complaint, the Director shall notify the owner of the dog that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.
- (b) At the conclusion of an investigation, the Director may:
  - (1) Determine that the dog is not dangerous and, if the dog is impounded, waive any impoundment fees incurred and release the dog to its owner; or

- (2) Determine that the dog is dangerous and order the owner to comply with the requirements for keeping dangerous dogs set forth in Section 8, and if the dog is impounded, release the dog to its owner after the owner has paid all fees incurred for the impoundment. If all impoundment fees have not been paid within ten (10) business days after a final determination that a dog is dangerous, the Director may cause the dog to be humanely destroyed.

#### **SECTION 5. Notification of Dangerous Dog Declaration.**

(a) Within five (5) business days after declaring a dog dangerous, the Director shall notify the owner by certified mail of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping of the dog as set forth in Section 8 of this Ordinance. The Director also shall notify the City Manager and the Police Department of the designation of any dog as a dangerous dog. Such notification shall describe the dog and specify any particular requirements or conditions placed upon the dog owner.

(b) The notice shall inform the dog owner that he may request, in writing, a hearing to contest the Director's finding and designation within five (5) business days after delivery of the dangerous dog declaration notice.

(c) If the Director cannot with due diligence locate the owner of a dog that has been seized pursuant to this Ordinance, the Director shall cause the dog to be impounded for not less than five (5) business days. If after five (5) days, the owner fails to claim the dog, the Director may cause the dog to be humanely destroyed.

#### **SECTION 6. Hearing on Dangerous Dog Declaration.**

(a) The Director shall hold a hearing within fifteen (15) business days after receiving the dog owner's written request for such a hearing. The Director shall provide notice of the date, time and location of the hearing to the dog owner by certified mail and to the complainant by regular mail.

(b) At a hearing, all interested persons shall be given the opportunity to present evidence on the issue of the dog's dangerousness. Criteria to be considered in a hearing 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 dog,
- (4) Observable behavior of the dog,
- (5) Site and circumstances of the incident, and
- (6) Statements from interested parties.

(c) A determination at a hearing that the dog is in fact a dangerous dog as defined in Section 3(c) shall subject the dog and its owner to the provisions of this Ordinance.

(d) Failure of the dog owner to request a hearing shall result in the dog being finally declared a dangerous dog and shall subject the dog and its owner to the provisions of this Ordinance.

#### **SECTION 7. Appeal from Dangerous Dog Declaration.**

If the Director determines that a dog is dangerous at the conclusion of a hearing conducted under Section

6, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within days after receiving notice that the dog has been finally declared dangerous. The appeal must be a trial de novo and shall be a civil proceeding for the purpose of affirming or reversing the Director's determination of dangerousness.

### **SECTION 8. Keeping of Dangerous Dogs.**

The keeping of a dangerous dog as defined in Section 3(c) shall be subject to the following requirements:

(a) *Leash.* No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen or other proper enclosure unless such dog is securely attached to a leash not more than four (4) feet in length. No such person shall permit a dangerous dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person capable of controlling the dog is in physical control of the leash.

(b) *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.

(c) *Confinement.* Except when leashed and muzzled as provided in this Section, a dangerous dog shall be securely confined indoors 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 eight (8) 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.

(d) *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.

(e) *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."

(f) *Liability Insurance, Surety Bond.* The owner of a dangerous dog shall 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 the policy in the event that the insurance policy is canceled, terminate 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. In the event that the owner proves to the satisfaction of the Department of Animal Control that insurance is not available, he may pay a non-refundable cash fee in the amount of one thousand dollars (\$1,000) to the City.

(g) *Animals Born of Registered (Dangerous)?? Dogs.* All offspring born of dangerous dogs registered with the Department of Animal Control also must be registered with the Department within six (6) weeks of birth.

(h) *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.

(i) *Failure to Comply.* It shall be unlawful and a misdemeanor for any owner of a dangerous dog registered with the Department of Animal Control to fail to comply with the requirements and conditions set forth in this Section. Any dog found to be in violation of this Section shall be subject to immediate seizure and impoundment. 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 animal.

#### **SECTION 9. Permit and Tag Required for a Dangerous Dog.**

(a) The owner of a dangerous dog shall, within three (3) business days after the classification of the dog as dangerous or upon acquisition of such a dog, obtain an annual permit from the Department of Animal Control to harbor the dog. The fee for such permit shall be five hundred dollars (\$500) per year.

(b) At the time the permit is issued, a red circular tag shall be issued to the owner of the dangerous dog. The tag shall be worn at all times by the dog to clearly and easily identify it as a dangerous dog.

(c) The permit for maintaining a dangerous dog shall be presented to an animal control officer upon demand.

#### **SECTION 10. Pit Bull Dogs Presumed Dangerous.**

There shall be an irrefutable presumption that any pit bull dog is a dangerous dog and is therefore subject to the requirements of this Ordinance.

#### **SECTION 11. Notification of Intent to Impound.**

(a) When the Director of Animal Control or his designee intends to impound a dog declared to be dangerous for violation of Section 8, he shall notify the owner or custodian of the dog, by certified mail, of the intended impoundment at least five (5) business days prior to the intended impoundment, except as provided in Section 12.

(b) The notice of intent to impound shall inform the owner or custodian of the dog that he may request in writing, within five (5) business days prior to the intended impoundment, a hearing to contest the intended impoundment and finding of violation.

(c) Upon request by the owner or custodian of the dog for a hearing pursuant to subsection (b), a

hearing shall be held within ten (10) business days after the request for a hearing. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog's owner or custodian requesting such hearing.

(d) If the owner or custodian requests a hearing pursuant to subsection (b), no impoundment shall take place until conclusion of the hearing, except as authorized in Section 12.

#### **SECTION 12. Immediate Impoundment.**

(a) A dog declared to be dangerous shall be immediately impounded when the Director of Animal Control or his designee determines such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for violation of Section 8 or when the dog bites a person or domestic animal.

(b) The owner or custodian of the dog immediately impounded pursuant to subsection (a) shall be notified of the impoundment by certified mail within five (5) business days after the dog's impoundment.

(c) The notice of impoundment shall inform the owner or custodian of the dog that he may request, in writing, a hearing to contest the impoundment within five (5) business days after the mailing of the notice of impoundment.

(d) Upon request by the owner or custodian of the dog for a hearing under subsection (c), a hearing shall be held within ten (10) business days after such request. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog owner requesting the hearing.

#### **SECTION 13. Impoundment Hearing.**

(a) If after a hearing on impoundment, the Director or his designee finds no violation of Section 4-208, or that the dog has not bitten an individual, the dog shall be returned to its owner or custodian if already impounded, or shall not be impounded as intended.

(b) Incident to the findings and conclusions made at the impoundment hearing, the Director or his designee may impose reasonable restrictions and conditions for the maintenance of the dog to ensure the health and safety of the public and the animal. Such conditions may include, but shall not be limited to:

(c) Posting of bond or other proof of ability to respond in damages;

- (1) Specific requirements as to size, construction and design of a kennel in which to house the dog;
- (2) Requirements as to type and method of restraint and/or muzzling of the dog;
- (3) Photo identification or permanent marking of the dog for purposes of identification;  
and
- (4) Payment of reasonable fees to recover the costs incurred by the Department of Animal Control in ensuring compliance with this Ordinance.

#### **SECTION 14. Humane Destruction.**

The Director of Animal Control or his designee may order the humane destruction of a dog that it determines to be extremely dangerous to public health or safety, a dog that has made an extremely vicious attack upon

an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.

(a) The Director or his designee shall give written notice by certified mail of his intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within ten (10) business days after delivery of such notice, a hearing to contest the intended destruction.

(b) If no hearing is requested pursuant to subsection (a), the dog shall be destroyed pursuant to applicable provisions of law.

(c) If a hearing is requested pursuant to subsection (a), such hearing shall be held within ten (10) business days after the request; and the dog shall not be destroyed prior to the conclusion of the hearing.

(d) The dog owner shall be responsible for payment of all boarding costs and other fees as may be required for the City to humanely and safely keep the animal during any legal proceeding.

### **SECTION 15. Appeal from Order of Humane Destruction.**

If the Director or his designee orders a dangerous dog to be humanely destroyed pursuant to Section 14, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within 10 days after receiving notice of the destruction order. If an appeal is timely filed, the Director shall suspend the destruction order pending the final determination of the court. The appeal hearing must be a trial de novo and shall be a civil proceeding for the purpose of affirming or reversing the Director's destruction order.

### **SECTION 16. Change of Ownership.**

(a) Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog shall, within ten (10) business days after such change of ownership or residence, provide written notification to the Department of Animal Control 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 dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the Department of Animal Control along with written acknowledgment by the new owner of his receipt of such notification. The Director of Animal Control or his designee shall notify the Chief Executive and the Police Department of any changes of ownership, custody or residence of the dog within three (3) business days after receiving the required information from the previous dog owner.

(b) Any person receiving a dog classified as dangerous must obtain the required permit, tag and enclosure prior to acquisition of the dog. The new owner shall comply fully with the provisions of this Ordinance pertaining to obtaining liability insurance, payment of fees, and maintenance, control and ownership of a dangerous dog.

### **SECTION 17. Continuation of Dangerous Dog Declaration.**

Any dog that has been declared dangerous by any agency or department of this City, another municipality, county, or state shall be subject to the provisions of this Ordinance for the remainder of its life. The person owning or having custody of any dog designated as a dangerous dog 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 Lexington. 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.

**SECTION 18. Conflicting Ordinances.**

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

**SECTION 19. 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.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Deputy City Clerk