

ORDINANCE NO. 06-08

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SPIRIT LAKE, IOWA, 2005 BY REVISING CHAPTER 58, PROVIDING FOR THE CLASSIFICATION, LICENSING AND KEEPING OF DANGEROUS DOGS WITHIN THE CORPORATE LIMITS OF THE CITY OF SPIRIT LAKE, AUTHORIZING THE IMPOUNDING AND DISPOSITION OF SUCH DOGS, PROVIDING FOR PROHIBITION OF KEEPING OF WILD ANIMALS, AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH

BE IT ENACTED by the Council of the City of Spirit Lake, Iowa:

Section 1. Chapter 58 of the Code of Ordinances of the City of Spirit Lake, Iowa, 2005 is repealed and the following is adopted in lieu thereof:

**CHAPTER 58
DANGEROUS DOGS AND WILD ANIMALS**

Section 58.01 – AUTHORIZATION. This Ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the Iowa State Constitution, and by the Iowa Code.

Section 58.02 – 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 Spirit Lake. It is intended to be applicable to “dangerous” dogs, to regulate dogs that are commonly referred to as “pit bulls,” as defined herein, by ensuring responsible handling by their owners through registration, confinement, and liability insurance, and to prohibit the keeping of “wild animals,” as defined herein.

Section 58.03 – 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 City Police Officer or 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 that a dog is not under the direct control of the owner.

(c) *Chief of Police* means the Chief of Police of the City of Spirit Lake.

(d) *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 an Animal Shelter, the City Police Department, or any other 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.

(e) *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.

(f) *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.

(g) *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.

(h) *Owner* means any person, partnership, corporation or any 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 there for three (3) or more consecutive days. This definition shall not apply to any

veterinary clinic or boarding kennel.

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

(j) *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.

(k) *Wild animal* means an animal which is not of a species customarily used as an ordinary household pet, but one which would ordinarily be found in the wilderness of this or any other country, or one which otherwise causes a reasonable person to be fearful of bodily harm or property damage. This definition includes but is not limited to:

- (1) All poisonous animals including rear-fang snakes;
- (2) Apes (chimpanzees, gibbons, gorillas, orangutans and siamongs);
- (3) Baboons;
- (4) Bears;
- (5) Cheetahs;
- (6) Alligators and crocodiles, thirty inches (30") or more in length;
- (7) Constrictor snakes;
- (8) Coyotes;
- (9) Game cocks and other fighting birds;
- (10) Hippopotami;
- (11) Hyenas;
- (12) Jaguars;
- (13) Leopards;
- (14) Lions;
- (15) Lynxes;

- (16) Ostriches;
- (17) Piranha fish;
- (18) Pumas, also known as cougars, mountain lions and panthers;
- (19) Rhinoceroses;
- (20) Sharks;
- (21) Snow leopards;
- (22) Tigers;
- (23) Wolves.

Section 58.04 – PROCEDURE FOR DECLARING A DOG DANGEROUS.

(a) An animal control officer or any adult person may file a complaint alleging that a particular dog is a dangerous dog as defined in this article. Upon receipt of such complaint, the Chief of Police or his designee 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 Chief of Police or his designee 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 58.08, 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 dog is dangerous, the Chief of Police or his designee may cause the dog to be humanely destroyed.

Section 58.05 – NOTIFICATION OF DANGEROUS DOG

DECLARATION.

(a) Within five (5) business days after declaring a dog dangerous, the Chief of Police or his designee shall notify the owner in writing of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set forth in Section 58.08 of this Ordinance. Such notification shall describe the dog and specify any particular requirements or conditions placed upon the dog owner. The notice shall be served by any law enforcement officer on any adult residing at the premises where the animal is located or may be posted on those premises if no adult is present to accept service.

(b) The person owning, keeping, sheltering, or harboring the dog in question may contest the declaration of dangerousness by filing a written request with the City Administrator within three (3) business days of the receipt of the Chief of Police's or his designee's declaration. If at this time the owner agrees to confine the dog pursuant to Section 58.08 of this chapter and submits to the City Administrator proof of insurance as described in Section 58.08(f), the dog shall not be impounded pending appeal. Failure to file a request for hearing shall constitute a waiver of any right to contest the declaration of the Chief of Police or his designee shall be authorized to seize and impound the dog. A dog so seized shall be impounded for a period of seven (7) days. If, at the end of the impoundment period, the owner has not licensed and shown ability to confine the dog as required by this article, the Chief of Police or his designee shall cause the dog to be humanely destroyed.

Section 58.06 – HEARING ON DANGEROUS DOG DECLARATION.

(a) The person owning, keeping, sheltering, or harboring the dog in question shall be given not less than 72 hours' written notice of the time and place of hearing. The notice shall set forth the description of the dog in question and the basis for the allegation of dangerousness. The notice shall also set forth that, if the determination of the Chief of Police or his designee is upheld, the owner shall be required to license and confine the dog as required by this article. The notice shall be served in the same manner as the declaration notice.

(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) If, after hearing, the City Administrator or his or her designee upholds the determination of the Chief of Police or his designee that the dog is a dangerous dog or is a dangerous dog held in violation of this article, as set out in the notice of hearing, the City Administrator or his or her designee shall order the person owning, sheltering, harboring or keeping the animal to permanently license and confine the dog as required by this article. The order shall immediately be served upon the individual or entity against whom issued in the same manner as the notice of hearing. If the order is not complied with within three (3) days of its issuance, the City Administrator or his or her designee is authorized to seize and impound the dog. A dog so seized shall be impounded for a period of seven (7) days. If, at the end of the impoundment period, the individual or entity against whom the order of the City Administrator or his or her designee was issued has not appealed such order to the City Council or has not complied with the order, the City Administrator or his or her designee shall cause the dog to be humanely destroyed.

(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 58.07 – APPEAL FROM DANGEROUS DOG DECLARATION.

The order to license and confine a dangerous dog issued by the City Administrator or his or her designee may be appealed to the City Council. In order to appeal such order, written notice of appeal must be filed with the City Administrator within three (3) business days after receipt of the order. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the order of the City Administrator or his or her designee.

(b) The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the City Administrator. The hearing of such appeal shall be scheduled within 20 days of the receipt of notice of appeal. The hearing may be continued for good cause. After such

hearing, the City Council may affirm or reverse the order of the City Administrator or his or her designee. Such determination shall be contained in a written decision and shall be filed with the City Administrator within three (3) business days after the hearing or any continued session thereof. The hearing shall be confined to the record made before the City Administrator or his or her designee, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the City Administrator or his or her designee, and any other information the City Council deems necessary.

(c) If the City Council affirms the action of the City Administrator or his or her designee, the City Council shall order in its written decision that the individual or entity owning, sheltering, harboring, or keeping such vicious dog shall license and confine the dog as required by this article. The decision and order shall immediately be served upon the person against whom rendered in the same manner as the notice set out in Section 58.05. If the original order of the City Administrator or his or her designee is not appealed and is not complied with within three (3) days or the order of the City Council after appeal is not complied with within three (3) days of its issuance, the Chief of Police or his designee is authorized to seize and impound such dangerous dog. A dog so seized shall be impounded for a period of seven (7) days. If, at the end of the impoundment period, the individual or entity against whom the decision and order of the City Administrator or his or her designee or the City Council was issued has not petitioned the County District Court for a review of the order or has not complied with the order, the City Administrator or his or her designee shall cause the dog to be destroyed in a humane manner.

(d) Failure to comply with an order of the City Administrator or his or her designee issued pursuant to this section and not appealed or of the City Council after appeal is a misdemeanor.

(f) Any dog that is alleged to be dangerous and that is under impoundment or quarantine at the animal shelter shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the dog is determined to be dangerous. If the dog is not determined to be dangerous, the owner shall only pay those costs attributable to initial confinement prior to notice or costs of any required quarantine.

Section 58.08 – KEEPING OF DANGEROUS DOGS.

(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 without Adult Supervision.* Except when leashed and muzzled as provided in this Section, a dangerous dog shall be securely confined indoors or, if not supervised by an adult, 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 be locked with a key or combination lock at all times the dog is confined. 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) *Confinement with Adult Supervision.* Except when leashed and muzzled as provided in this Section, a dangerous dog may be allowed outdoors in an area that is securely confined and is designed to prevent the dog from escaping and prevent entry of other persons as long as an adult is present within the confined area.

(e) *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 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.

(f) *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" in no less than 2-inch letters.

(g) *Liability Insurance, Surety Bond.* The owner of a dangerous dog shall present to the City Administrator 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, 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 or she 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.

(h) *Microchip.* The owner or keeper of a dangerous dog shall take the dog to an animal shelter or licensed veterinarian, where a person authorized by the City shall cause an identifying microchip to be inserted beneath the skin of the dog. The City shall maintain a file containing the registration numbers and names of the dogs and the names and addresses of the owners. The owner shall notify the City of any change of address.

(i) *Sterilization.* The owner or keeper of a dangerous dog shall, at the owner's own expense, have the dog spayed or neutered and shall present to the City written proof from a licensed veterinarian that this sterilization has been performed.

(j) *Notification of Escape.* The owner or keeper of a dangerous dog shall notify the Police Department 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.

(k) *Failure to Comply.* It shall be unlawful and a misdemeanor for any owner of a dangerous dog registered with the City 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 58.09 – 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 City Administrator to harbor the dog. The fee for such permit shall be established by the City Council by resolution from time to time and shall be on record in the office of the City Administrator.

(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 58.10 – PIT BULL DOGS PRESUMED DANGEROUS.

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

Section 58.11 – NOTIFICATION OF INTENT TO IMPOUND.

(a) When the Chief of Police or his designee intends to impound a dog declared to be dangerous for violation of Section 58.08 he shall notify the owner or custodian of the dog in writing. The notice shall be served by any law enforcement officer upon any adult residing at the premises where the animal is located or may be posted on those premises if no adult is present to accept service.

(b) The notice of intent to impound shall inform the owner or custodian of the dog that he may request in writing, within three (3) 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 to the dog's owner no less than 72 hours prior to the hearing. The notice shall be served in the same manner as the notice of intent to impound.

(d) If the owner or custodian requests a hearing pursuant to subsection (c), no impoundment shall take place until conclusion of the

hearing, except as authorized in Section 58.12.

Section 58.12 – IMMEDIATE IMPOUNDMENT.

(a) A dog declared to be dangerous may be immediately impounded without a pre-impoundment hearing when the Chief of Police 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 58.08 or when the dog bites a person or domestic animal.

(b) The owner or custodian of the dog immediately impounded pursuant to subsection (1) shall be notified of the impoundment in writing. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on those premises if no adult is present to accept service.

(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 three (3) business days after the service 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 to the dog's owner no less than 72 hours prior to the hearing. The notice shall be served in the same manner as the notice of impoundment.

Section 58.13 – IMPOUNDMENT HEARING.

(a) If after a hearing on impoundment, the Chief of Police or his designee finds no violation of Section 58.08, 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 Chief of Police 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:

- (1) Posting of bond or other proof of ability to respond in damages;
- (2) Specific requirements as to size, construction and design of a

kennel in which to house the dog;

(3) Requirements as to type and method of restraint and/or muzzling of the dog;

(4) Photo identification or permanent marking of the dog for purposes of identification; and

(5) Payment of reasonable fees to recover the costs incurred by the City or the Police Department in ensuring compliance with this Ordinance.

Section 58.14 – DESTRUCTION.

(a) The Chief of Police or his designee shall order the 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.

(b) The Chief of Police or his designee shall give written notice by certified mail or by personal delivery by a law enforcement officer of his intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within seven (7) business days after delivery of such notice, a hearing to contest the intended destruction.

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

(d) If a hearing is requested pursuant to subsection (b), 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.

(e) 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, as well as for the cost of destruction of the dog if destroyed.

Section 58.15 – APPEAL FROM ORDER OF HUMANE DESTRUCTION.

If the Chief of Police or his designee orders a dangerous dog to be humanely destroyed pursuant to Section 58.14, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) days after receiving notice of

the destruction order. If an appeal is timely filed, the Chief of Police or his designee 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 destruction order of the Chief of Police or his designee.

Section 58.16 – 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 Chief of Police 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 Chief of Police along with written acknowledgment by the new owner of his receipt of such notification. The Chief of Police shall notify the City Administrator 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 58.17 – 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 Police Department of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City of Spirit Lake. 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 58.18 – KEEPING OF WILD ANIMALS.

It is unlawful for anyone to own, harbor or permit at large any wild

animal as defined in Section 58.03 within the City except as authorized in Chapter 162 and 481A of the Code of Iowa.

Section 58.19 – CONFLICTING ORDINANCES.

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

Section 58.20 – 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.

Section 2. Effective Date. This ordinance shall be effective after its final passage and publication as provided by law.

PASSED by the City Council this 23rd day of September, 2008, and approved this 23rd day of September, 2008.

Blain Andera, Mayor

Attest:

Mark Stevens, City Administrator

Certification

I, Mark Stevens, hereby certify that I am the duly appointed, qualified and acting City Administrator of Spirit Lake, Iowa, and that the foregoing Ordinance was duly adopted by the City Council of the City of Spirit Lake, Iowa, on the ____ day of _____, 2008, and thereafter on the ____ day of _____, 2008, the same was published in the Dickinson County News.

Mark Stevens