

ORDINANCE NO. 2020-05

**AN ORDINANCE AMENDING CODE SECTION 93
ANIMALS**

WHEREAS, the City of Olivia has authority to enact ordinances to provide for the government and good order of the city, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient; and

WHEREAS, Minn. Stat. §§ 609 and 347 do not provide for the prosecution of individuals who own, harbor, or keep any animal, and negligently or intentionally permit or fail to prevent the animal from inflicting or attempting to inflict less than great or substantial bodily harm.

WHEREAS, the City of Olivia believes to protect the public and to make restitution available to all bite victims, it is imperative to amend City Code Section 93 to address cases of animal attacks which result in less than great or substantial bodily harm, to discourage every attack by animal, and to encourage proper enclosure, restraint, and supervision of all domesticated animals within the City.

NOW, THEREFORE, the City Council of the City of Olivia, Renville County, State of Minnesota, hereby ordains as follows:

1. Section 93 of the Olivia Code of Ordinances as follows:

CHAPTER 93: ANIMALS

Section

Dogs and Cats

- 93.01 License requirements
- 93.02 Control of animal
- 93.03 Potentially Dangerous and Dangerous Animals
- 93.04 Attack by Animal
- 93.05 Vicious animals
- 93.06 Effective date

- 93.98 Violations

DOGS AND CATS

' 93.01 LICENSE REQUIREMENTS.

The following regulations shall apply to all dogs and cats within the City of Olivia.

(A) A license shall be required for every dog and cat over the age of 6 months kept in the City of Olivia. This shall not apply to any dog or cat temporarily present within the City of Olivia for a period of less than 30 days.

(B) The owner, caretaker, or other person in possession of a dog or cat kept within the City of Olivia shall apply to the City Clerk for a license for the animal. The Clerk shall record the licenses issued and shall furnish the applicant with a tag for each license. The applicant shall attach the tag to a collar or chain around the neck of the animal in a secure manner.

(C) Licenses for dogs and cats shall be issued for the lifetime of the animal.

(D) The City Clerk shall not issue any license for a dog or cat until the applicant furnishes a certificate from a veterinarian indicating that the animal has been vaccinated for rabies within the preceding 2 years.

(E) License fees shall be set by the City Council of the City of Olivia by resolution and may be changed from time in the same manner. (See Appendix A).
(Ord. 250, passed 10-20-1997) Penalty, see ' 10.99

' 93.02 CONTROL OF ANIMAL.

(A) *Running at large prohibited.* It shall be unlawful for any person who owns, harbors, or keeps a dog to fail to prevent the same from running at large. A person who owns, harbors, or keeps a dog which runs at large shall be guilty of a misdemeanor. Dogs on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading Dogs or Cats Prohibited.

(B) *Nuisances.*

(1) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least 3 minutes with less than 1 minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

(2) *Damage to property.* It shall be unlawful for any person to fail to prevent that person's dog or other animal to damage any lawn, garden, or other property, whether or not the

owner has knowledge of the damage.

(3) *Cleaning up litter.* The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others, or on public property.

(4) *Other.* Any animals kept contrary to this section are subject to impoundment as provided in ' 93.03.
Penalty, see ' 10.99

' 93.03 POTENTIALLY DANGEROUS AND DANGEROUS ANIMALS.

(A) Definitions.

(1) **Animal Control Officer.** The Chief Law Enforcement Officer, or an individual or employee of a business retained by the City for purposes of enforcing the provisions of this Chapter. In the latter case, the City may have them deputized with police powers for such enforcement, including authority to issue complaints for the violation of this Section.

(2) **Dangerous Animal.** A dangerous animal is an animal which has:
(a) Caused bodily injury or disfigurement to any person on public or private property; or
(b) Engaged in any attack on any person under circumstances, which would indicate danger to personal safety; or
(c) Exhibited unusually aggressive behavior, such as an attack on another animal; or
(d) Bitten one or more persons on two or more occasions; or
(e) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(3) **Potentially Dangerous Animal.** A potentially dangerous animal is an animal which has:
(a) Bitten a human or a domestic animal on public or private property; or
(b) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
(c) Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

(4) **Proper Enclosure.** Proper enclosure means securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

(a) Have a minimum overall floor size of 32 square feet.

(b) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be 1 1/4 inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground.

(c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches.

(d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

(5) Unprovoked. Unprovoked shall mean the condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(B) Seizure of animals. Any police officer or Animal Control Officer may enter upon private property and seize any animal, provided that the following exist:

(1) There is an identified complainant other than the police officer or Animal Control Officer making a contemporaneous complaint about the animal;

(2) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 93.02 (B)(1); the criteria for dangerous set out in § 93.03 (A)(2); the criteria for cruelty set out in M.S. § 343.20 Subd. 3; or the criteria for an at large animal set out in the definition of "at large" in § 93.02 (A);

(3) There is evidence that the animal is dangerous or the officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date;

(4) The officer has made a reasonable attempt to contact the owner of the property and those attempts have either failed or have been ignored;

(5) The seizure will not involve the forced entry into a private residence. Use of a pass key obtained from a property manager, landlord, innkeeper, or other authorized person to have such key shall not be considered unauthorized entry; and

(6) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

(C) Impounding.

(1) Biting animals. Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the City Pound for a period of not less than 10 days, at the expense of the owner. The animal may be released at the end of such time if healthy and free from

symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for such confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of the county in which this City is located, and provide immediate proof of such confinement in such manner as may be required, the owner may do so. If, however, the animal has been or is being deemed a dangerous animal, then the animal shall be confined until such time as the owner complies with the requirements of M.S. § 347.51. The animal shall be confined until the order becomes final if the animal is ordered destroyed.

(D) Reclaiming.

(1) All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under § 93.03(A)(2), in which case it shall be kept for the times specified in §§ 93.03(C), (G) or (I), and except if the animal is a cruelly-treated animal in which case it shall be kept for 10 regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required:

(a) Payment of the animal pick up fees, as established in the fine and fee schedule, and receipt of a release permission from the police;

(b) Payment of veterinary and maintenance costs, as provided by the pound, per day or any part of day while animal is in said pound; and

(c) If a dog is unlicensed, payment of a regular license fee and valid certificate of vaccination for rabies and distemper shots is required.

(E) Destruction or confinement of animals.

(1) If, in the reasonable belief of any person or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the officer may immediately destroy the animal in a proper and humane manner. Otherwise the person or officer may apprehend the animal and deliver it to the pound for confinement under this section. If the animal is destroyed, the actual cost to dispose of the animal is payable by the owner of the animal. If the animal is found not to be a danger to the health and safety of the City, it may be released to the owner or keeper in accordance with § 93.03(D).

(F) Designation as Potentially Dangerous Animal.

(1) The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving such evidence that the animal meets the definition of "potentially dangerous" as defined in 93.03(A)(3). When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous.

(G) Appeal hearing procedures for Potentially Dangerous Animal. A potentially dangerous

animal declaration appeal shall consist of a record review by the city administrator or his/her designee, using the designated appeal form supplied at the time of the written request. The appeal form must be completed and returned to the animal control officer or designee with written evidence and/or affidavits that dispute the declaration within 14 business days of notification. The owner/custodian of the dog shall be notified, in writing, of the record review results within ten calendar days of receipt. There shall be a fee for an appeal of a potentially dangerous animal declaration, as established in the Fine & Fee Schedule. The individual conducting the review shall have the authority to amend the declaration or order as appropriate and to establish specific requirements for the dog found to be potentially dangerous.

(H) Designation as Dangerous Animal. The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence that the animal meets the definition of “dangerous” as defined in 93.03(A)(2). When an animal is declared dangerous, the Animal Control Officer shall cause one owner of the dangerous animal to be notified in writing that such animal is deemed dangerous.

(I) Appeal hearing procedures for Dangerous Animal.

(1) The owner/custodian of an animal that has been declared dangerous may appeal the declaration and request a hearing. The appeal request is to be submitted in writing within 14 days of notification. If a hearing is requested, the animal control officer or the designee, shall schedule a hearing within 14 calendar days. A dangerous declaration appeal shall consist of an appearance before an independent city employee or hired representative. The hearing fee, as established in the Fine & Fee Schedule, must be paid prior to the hearing. The hearing officer may set limits on the evidence that may be submitted and the length of testimony offered. The hearing officer conducting the review shall have the authority to amend the declaration or order as appropriate and to establish specific requirements. Any time after a declaration has been issued, the animal control officer or designee may seize a declared animal. All applicable fees and costs shall be the responsibility of the owner/custodian of the animal. The animal shall not be released until all fees are paid in full and in compliance with the provisions of this Code is achieved.

(2) All animals seized pursuant to this subsection may be disposed of by animal control after 14 calendar days of notification of declaration when the animal is not properly registered or an appeal has not been properly submitted pursuant to this section.

(3) In the event the declaration is overturned, all fees will be reviewed by the hearing officer. The owner/custodian of the animal shall be notified of the hearing results within ten business days. All decisions may be appealed to the Minnesota Court of Appeals.

(4) The animal control officer, after having determined that an animal is dangerous, may proceed in the following manner: The animal control officer shall cause one owner/custodian of the animal to be notified in writing or in person that the animal is dangerous and may order the dog seized or make orders as deemed proper. This owner/custodian shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order.

(a) If no appeal is filed within the time allowed, the animal control officer may authorize the seizure and the destruction of the animal, unless the animal is already in custody or the

owner/custodian consents to the seizure and destruction of the animal.

(b) If an appeal is filed within the time allowed, the animal control officer may, pending the outcome of the appeal, either authorize the continued impounding of the animal, or authorize the release of the animal to the owner if the owner proves compliance with all requirements for keeping a dangerous animal and the animal does not present an immediate danger to the health and safety of any person.

(J) Authority to order destruction.

(1) The Animal Control Officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:

- (a) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or
- (b) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

(2) The Animal Control Officer shall require a previously designated dangerous animal to be destroyed if:

- (a) The dog afflicted substantial or great bodily harm on a human or a domestic animal on public or private property.
- (b) The dog inflicted multiple bites on a human on public or private property without provocation.
- (c) The dog bit multiple human victims on public or private property without provocation; or
- (d) The dog bit a human on public or private property without provocation, in an attack where more than one dog participated in the attack.

(K) No person shall harbor an animal after it has been found to be dangerous and ordered into custody for destruction.

(L) Notification of new address. The owner of an animal which has been identified as dangerous or potentially dangerous must notify the Animal Control Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification must be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification must include the current owner's name and address, the relocation address, and the name of the new owner, if any.

Penalty, see §10.99.

(Ord. 2016-03, passed 07-18-2016) (replaced part of Ord. 250, passed 10-20-1997)

' 93.04 ATTACK BY ANIMAL.

(A) It shall be unlawful for any person who owns, harbors, or keeps any animal, or the parents or the guardians of any such person under 18 years of age, to negligently or intentionally

permit or fail to prevent the animal from inflicting or attempting to inflict bodily injury upon any person or other animal, whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home without permission.

' 93.05 VICIOUS ANIMALS.

(A) No person shall keep a dog or cat within the City of Olivia if the animal, when unprovoked has shown a tendency to attack, bite, scratch, claw, or otherwise injure or attempt to injure any person.

(B) In addition to the penalties set forth below, the owner, caretaker, or person in possession of a vicious dog or cat shall either destroy the animal or remove it permanently to a location outside the City of Olivia.

(Ord. 250, passed 10-20-1997) Penalty, see ' 10.99

' 93.06 EFFECTIVE DATE.

Sections 93.01 *et seq.* shall be effective upon passage and publication.
(Ord. 250, passed 10-20-1997)

' 93.98 VIOLATIONS.

(A) It shall be a petty misdemeanor for anyone, whether owner, caretaker, or person in possession of an animal, to violate the regulations set forth in ' 93.01.

(B) It shall be a misdemeanor for anyone, whether owner, caretaker, or person in possession of an animal, to violate the regulations set forth in " 93.02, 93.04, and 93.05.

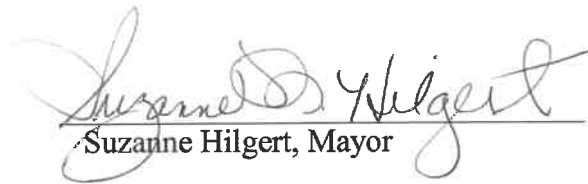
(C) Any subsequent violation, within 1 year from the date of a previous conviction by an owner, caretaker, or person in possession, regardless of whether the dog or cat is the same, shall be a misdemeanor.

(D) In addition to the penalties set forth above, an owner, caretaker, or person in possession of a dog or cat convicted of a subsequent violation, excluding those provisions set forth in ' 93.05(B), may be ordered by the court to either destroy the animal(s) or remove it (them) permanently to a location outside the City of Olivia.

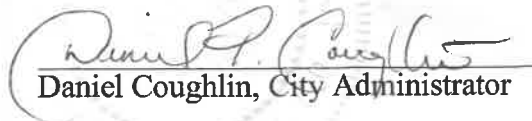
(E) It shall be a misdemeanor to harass, abuse, threaten, or in any way interfere with a police officer who is enforcing or attempting to enforce the terms of " 93.01 *et seq.*
(Ord. 250, passed 10-20-1997) Penalty, see ' 10.99

PASSED AND ADOPTED THIS 1 DAY OF June 2020. By the

OLIVIA CITY COUNCIL


Suzanne Hilgert, Mayor

ATTEST:


Daniel Coughlin, City Administrator