

ORDINANCE NO. 10-400

AN ORDINANCE TO REGULATE POTENTIALLY DANGEROUS DOGS AND DANGEROUS DOGS

THE CITY OF ISHPEMING ORDAINS:

Section 10-401. Statement of Purpose

The purpose of this Ordinance is to establish a procedure for identifying dogs that pose a potential or significant threat to the safety of people, animals, or property, and to impose precautionary restrictions on such dogs in an effort to prevent serious injury from occurring.

Section 10-402. Determination of a Potentially Dangerous Dog

- (a) The determination that a dog is a potentially dangerous dog may be made if any of the following specific behaviors are exhibited by the dog:
- (i) Menaces, chases, displays threatening or aggressive behavior toward, or otherwise threatens or endangers the safety of a person or domestic animal;
 - (ii) Causes injury to a person or domestic animal that is less than a severe injury. For purposes of this subsection, the term "severe" injury means permanent serious disfigurement, serious impairment of health, or serious impairment of any bodily function;
 - (iii) Aggressively bites a person or domestic animal. For purposes of this sub-section, the term "aggressively bites" means the dog physically bit the person or animal in a manner not normally associated with playfulness or accidental behavior, while exhibiting objective signs of aggression, attack behavior, or intent to harm. The damage inflicted by a bite, or lack thereof, may also be used by animal control officials as a factor in determining whether a bite was aggressive; or
 - (iv) Exhibits three instances of any of the above behaviors within a six (6) month period.
- (b) Notice of Determination and Right of Appeal. An animal control officer or police officer shall have the authority to make a determination that a dog is a potentially dangerous dog if the officer concludes that the dog has exhibited any of the behaviors specified in Section 10-402(a) above. The owner or keeper of a dog determined to be a potentially dangerous dog shall be provided with a written notice, sent by first class mail, containing the following information:
- (i) A summary of the findings that form the basis for the determination that the dog is a potentially dangerous dog.
 - (ii) Notice of the requirements that must be complied with in order to legally possess a potentially dangerous dog in the City.
 - (iii) Notice of the right to appeal the determination that the dog is a potentially dangerous dog to the Dangerous Dog Hearing Officer, who shall be the City Manager, within ten (10) calendar days from the date of mailing of the notice. The notice shall provide instructions for taking an appeal and indicate that the determination is final and conclusive if an appeal is not taken.
 - (iv) Notice of the right to request removal of the potentially dangerous dog classification after the dog has resided and been licensed within the City for a period of three (3) full years

without any violations of this Ordinance. The decision to remove the potentially dangerous dog classification shall be made in the first instance by the Chief of Police. If the request is denied by the Chief of Police, the owner may appeal the denial to the Dangerous Dog Hearing Officer within ten (10) calendar days after mailing of the denial. An owner shall only be permitted one such request and one such appeal during any twelve (12) month period.

- (c) Mitigating Circumstances. An animal control officer or police officer shall have discretion to refrain from making a determination that a dog is a potentially dangerous dog if the officer determines that the dog's behavior was the result of the victim abusing or tormenting the dog, was directed toward a trespasser or person committing or attempting to commit a crime, involved accidental or instinctive behavior while playing, did not involve a significant injury, or other similar mitigating or extenuating circumstances.

Section 10-403. Requirements for Possession of a Potentially Dangerous Dog

After a dog has been determined to be a potentially dangerous dog, no person shall own, possess, keep, harbor, or have custody of a potentially dangerous dog except in compliance with all of the following requirements:

- (a) A potentially dangerous dog shall be restrained while on the property of the owner or keeper, when out of doors, by a secure leash or by secure fencing when outside and not on a leash. The fencing shall be in good repair, shall be high enough that the dog cannot jump over the fence, and any gates providing ingress or egress shall be self-locking. The fence/gate interface shall be small enough so that the dog cannot squeeze through the opening between the fence and the gate.
- (b) When removed from the property of the owner or keeper, a potentially dangerous dog shall be restrained by a secure leash of no more than four (4) feet in length and under the control of a responsible adult (i.e., a person at least 18 years of age) who is physically capable of restraining the dog.
- (c) A potentially dangerous dog shall have a microchip implanted by a licensed veterinarian. The microchip shall contain the name and approximate age of the dog, its classification as potentially dangerous, and the name, address, and telephone number of the registered owner. Proof of the microchipping shall be provided to the Ishpeming Police Department and, upon submission of an application for a dog license or license renewal after the dog has been determined to be a potentially dangerous dog, to the City Clerk. The owner shall ensure that the microchip information provided to the City is kept up to date. The microchip information shall be provided to the City Clerk irrespective of who issues the dog license.
- (d) The owner shall provide a color photograph of the dog, which clearly show the color and approximate size of the animal, to the Ishpeming Police Department and to the City Clerk.
- (e) The owner shall obtain and maintain public liability insurance with policy coverage for dog bites or dog caused injuries in the minimum amount of \$250,000. A copy of the certificate of insurance showing such coverage shall be provided to the Ishpeming Police Department and to the City Clerk.
- (f) The potentially dangerous dog shall satisfy the requirements of the AKC's Canine Good Citizen Program, the breed-specific testing performed by the American Temperament Test Society, or a program deemed their equivalent by the City Manager in an administrative order. Dogs that are under one year of age are ineligible for the AKC Canine Good Citizen Program, so such dogs must be enrolled in or have completed the AKC START Program or an equivalent listed in the City

Manager's administrative order. Written proof of successful completion of any of the aforementioned programs shall be submitted to the Ishpeming Police Department and to the City Clerk within six (6) months after the dog has been determined to be a potentially dangerous dog. If the dog continues to exhibit any of the specific behaviors identified in Section 10-402 (a) above after the dog has completed the requirements of this subsection, additional training or testing including, but not limited to, renewing the dog's compliance with this subsection may be imposed by the Ishpeming Chief of Police as a condition of continuing to keep the dog within the City.

- (g) The owner or keeper of a potentially dangerous dog must, within ten (10) days, report to the Ishpeming Police Department and to the City Clerk if the dog has been permanently removed from the City, has died, or has relocated within the City. The new address and new owner (if applicable) of a relocated potentially dangerous dog shall be provided as part of the report.
- (h) A potentially dangerous dog shall be registered with the City Clerk annually, and its owner or keeper shall pay a registration fee in the amount of \$150.00. This registration and fee shall be in addition to any requirement imposed for annual licensing of the dog.
- (i) A potentially dangerous dog shall be spayed or neutered within 30 days after mailing of the written notice that the dog has been determined to be a potentially dangerous dog. Written proof of spaying or neutering shall be immediately provided by the dog owner to the Ishpeming Police Department and to the City Clerk.
- (j) A dog determined to be a potentially dangerous dog shall not be allowed to leave or stray from the owner or keeper's premises unless the dog is wearing a muzzle, which muzzle requirement shall apply until such time as the dog's owner furnishes to the Ishpeming Police Department and the City Clerk proof that the dog has completed one of the programs identified in Subsection (f) above.

Section 10-404. Determination of a Dangerous Dog

- (a) The determination that a dog is a dangerous dog may be made by an animal control officer or by a police officer if any of the following specific behaviors are exhibited by the dog:
 - (i) Exhibits any of the behaviors identified in Section 10-402(a) above after the dog has been determined to be a potentially dangerous dog, or whether or not the dog has been determined to be a potentially dangerous dog,
 - (ii) Causes severe injury to a person or domestic animal. For purposes of this subsection, the term "severe" injury means permanent serious disfigurement, serious impairment of health, or serious impairment of any bodily function,
 - (iii) Kills a person or domestic animal, or
 - (iv) Is used in the commission of a crime including, but not limited to, dog fighting and guarding of illegal operations.
- (b) Mitigating circumstances. An animal control officer or police officer shall have discretion to refrain from making a determination that a dog is a dangerous dog if the officer determines that the behavior was the result of the victim abusing or tormenting the dog, was directed toward a trespasser or person committing or attempting to commit a crime, or other similar mitigating or extenuating circumstances. The officer retains discretion, however, to classify the dog as a potentially dangerous dog if the mitigating circumstances do not completely dispel concern about the dog's future behaviors.

- (c) If a dog is determined to be a dangerous dog, the Ishpeming Police Department: (a) shall serve written notice of such determination upon the owner or person in possession of the dog in writing of such determination and (b) may proceed under the provisions of M.C.L.A. Section 287.286a or M.C.L.A. Section 287.322 to have the dog destroyed at the expense of the owner.

Section 10-405. Prohibition Against Keeping a Dangerous Dog

- (a) After the owner, keeper, or person in possession of a dangerous dog has been notified in writing by the Ishpeming Police Department that the dog is a dangerous dog, the owner, keeper, or person in possession of said dog shall either:
- (i) Have the dangerous dog euthanized by a licensed veterinary clinic and supply to the Ishpeming Police Department written proof of such disposition, all within ten (10) days after the mailing or service of notice by the Ishpeming Police Department that the dog is a dangerous dog, or
 - (ii) Permanently remove the dangerous dog from the City, and give written notice of such removal to the Ishpeming Police Department, along with the new address of the dog and the name of the person keeping the dog, all within ten (10) days after the mailing or service of notice by the Ishpeming Police Department that the dog is a dangerous dog.
- (b) It shall be unlawful for any person to own, keep, harbor, or be in possession of a dangerous dog in the City more than ten (10) days after having been served with written notice that such dog is a dangerous dog. The date of service of such notice shall be the date of personal service or the date of mailing such notice.

Section 10-406. Appeal Hearing Procedures

In all appeals to the Dangerous Dog Hearing Officer under this Ordinance, the following provisions shall apply:

- (a) The Dangerous Dog Hearing Officer shall be the City Manager.
- (b) The Dangerous Dog Hearing Officer shall conduct all appeal hearings under this Ordinance.
- (c) An appeal by an owner under the terms of this Ordinance shall be filed in writing with the City Clerk. An appeal fee in the amount of \$150.00 shall be paid at the time the appeal is filed.
- (d) If an appeal is timely filed, the Dangerous Dog Hearing Officer shall convene and hold a public hearing on the appeal within sixty (60) days after the appeal is filed with the City Clerk, with written notice served on the Ishpeming Chief of Police and the appealing party of the date, time, and location of the hearing. The Dangerous Dog Hearing Officer shall hear testimony and take evidence from the appealing party, the Chief of Police or police officer who issued the determination appealed from, and any other witnesses that may be called, and shall render a written decision on the appeal. The decision shall be based upon competent, material, and substantial evidence on the whole record. In making a decision, the Dangerous Dog Hearing Officer shall not be bound by the strict rules of evidence, and may take into account matters that would be relied on by reasonably prudent persons in the conduct of their affairs. The Dangerous Dog Hearing Officer may request that the dog be brought to the hearing. If the Dangerous Dog Hearing Officer does not request that the dog be brought to the hearing, the owner may not bring the dog to the hearing. The decision of the Dangerous Dog Hearing Officer shall be mailed to the person who filed the appeal, and shall be final and conclusive.

- (e) The person who filed the appeal and the Ishpeming Police Department may be represented by an attorney at the hearing.

Section 10-407. Judicial Review After Appeal Hearing

The owner of the dog that is the subject of an appeal hearing by the Dangerous Dog Hearing Officer may appeal the decision of the Dangerous Dog Hearing Officer to the Marquette County Circuit Court by filing an appeal or a petition for an order of superintending control within twenty-one (21) days after the date on which the decision was mailed, and the filing of such petition shall operate to stay proceedings for enforcement of the decision until the further order of the Circuit Court. The decision of the Dangerous Dog Hearing Officer shall become final twenty-one (21) days after the date of mailing unless judicial review is timely applied for.

Section 10-408. Remedies Cumulative

Nothing in this Ordinance shall be construed to prohibit the City from maintaining an action independent of the provisions of this Ordinance, under any provision of the laws of the State of Michigan, to have a dog destroyed if the City wishes to proceed independently of the provisions of this Ordinance. Such action under State law may be maintained irrespective of whether a dog has been determined to be a potentially dangerous dog or a dangerous dog under the terms of this Ordinance.

Section No. 10-409. Penalties

Any person who owns, harbors, keeps or possesses a potentially dangerous dog or a dangerous dog in violation of the provisions of this Ordinance, or who otherwise violates any provision of this Ordinance, shall be guilty of a municipal civil infraction. The fine for a first violation shall be \$300.00. The fine for every subsequent violation shall be \$500.00. Every day that a violation continues shall constitute a separate infraction.

Adopted: March 6, 2013