

ORDINANCE NO.: 13-2010

VILLAGE OF SILVER LAKE

INTRODUCED BY: The Administration

AN ORDINANCE TO IDENTIFY AND PROSCRIBE THE KEEPING AND BEHAVIOR OF WILD OR EXOTIC ANIMALS LIVESTOCK, AND VICIOUS AND DANGEROUS DOGS IN THE VILLAGE AND PROVIDE FOR THE ENFORCEMENT THEREOF, AND DECLARING AN EMERGENCY.

WHEREAS, vicious or dangerous dogs are a threat to the health and safety of the citizens of Village; and

WHEREAS, greater regulation and the means to enforce such measures, is immediately necessary to protect the public.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Silver Lake, County of Summit and State of Ohio:

Section 1. That Section 505.15 be, and the same is hereby amended to read as follows:

505.15 KEEPING ~~DANGEROUS~~ **WILD OR EXOTIC** ANIMALS AND LIVESTOCK PROHIBITED.

- (a) ~~"Dangerous~~ **"Wild" or "Exotic"** animals means any wild animal which by its size, breeding, nature or other characteristics is dangerous to human beings. Such animals include, but are not limited to lions, tigers, bears, wolves, apes, alligators, poisonous reptiles, ~~"Dangerous animals" also means any domestic animal which by its size, nature, breeding or other characteristics is dangerous to human beings. Such animals include but are not limited to Staffordshire Bull Terrier or American Staffordshire Terrier (commonly known as Pit Bulls), monkeys and any other domestic animal of a vicious and dangerous nature,~~ ***domestic or otherwise, except for dogs (See Section 505.19)***
- (b) No person shall possess, harbor, keep or maintain within the corporate limits any ~~"dangerous animal".~~ ***"wild" or "exotic" animal.***
- (c) No person shall possess, harbor, keep or maintain within the corporate limits any livestock or fowl. Livestock shall include, but is not limited to, horses, cows, goats, pigs, and sheep. Fowl shall include, but is not limited to, chickens, turkeys, ***pigeons***, ducks and geese.
- (d) (1) Any person who violates Section 505.15(b) is guilty of a misdemeanor of the fourth degree for the first offense. For a second or third offense, a violation of this section is a misdemeanor of the third degree. All subsequent offenses shall be a misdemeanor of the first degree.

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(2) Any person who violates Section 505.15(c) is guilty of a minor misdemeanor for the first offense, and a misdemeanor of the fourth degree for all subsequent offenses.

(3) A separate offense shall be deemed committed each day during or on which an offense occurs or continues

Section 2. That Section 505.19 be, and the same is hereby enacted to read as follows

VICIOUS AND DANGEROUS DOGS

(a) As used in this section certain terms are defined as follows:

(1) "Owner" means any person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dog, or the parents or guardian of a minor owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dog.

(2) "Police dog" means a dog that has been trained, and may be used, to assist a law enforcement officer in the performance of his official duties.

(3) A. "Vicious dog" means a dog that, without provocation, has either:

1. Killed or caused physical harm to any person; or
2. Killed a domestic animal or repeatedly attacked and caused physical harm to any domestic animal.

B. "Vicious dog" does not include either:

1. A police dog that has killed or caused injury or serious injury to any person while the police dog is being used to assist a law enforcement officer in the performance of his duties;
2. A dog that has killed or caused injury or serious injury to any person while a person was committing or attempting to commit a criminal trespass or other crime of violence on the property of the owner of the dog.

(4) A "dangerous dog" means a dog that, without provocation, has either:

- (1) Has attempted to cause physical harm to any person (menacing); or
- (2) Has caused physical harm to any domestic animal.

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(5) “Provocation” means that a dog was teased, tormented or abused, or that the dog was coming to the aid or defense of a person who was not engaged in illegal activity, and whose person or property was in imminent danger of physical harm.

(b) Whenever a complaint is made to the Police Department of the presence of a dangerous or vicious dog within the Village, the Chief of Police shall promptly inspect or cause an inspection to be made of the premises on which it is alleged that such animal is being kept.

(c) The Chief of Police shall determine that a dog is dangerous or vicious pursuant to this section upon proof by a preponderance of the evidence.

(d) If the Chief determines that a dangerous or vicious dog is being kept within the Village, the Chief shall then determine the individual, firm, or corporation who from the records in the Fiscal Officer’s Office of Summit County, appears to be the owner of the dog, or if such information is not available, the titled owner of the property upon which the dog is kept, and shall, within five days, cause written notice to be served upon such owner. Notice shall be served by certified mail with a return receipt requested. If service of such written notice is unable to be perfected, then the Chief of Police shall cause a copy of the aforesaid notice to be served by ordinary mail which shall be deemed complete upon mailing, and also left with the individual, if any, in possession of the premises on which the dog is kept, or if there is no individual in possession of the premises, he shall cause a copy of the notice to be posted on the premises. Notice shall also be given to any injured party.

(e) The notice required by subsection (d) hereof shall state, in brief, the findings with respect to the dangerous or vicious nature of the dog. The notice shall further state that the owner must comply with the requirements of this section within thirty days after service of the notice.

(f) Police dogs are exempt from these provisions for all actions occurring in the course of their duties.

(g) The owner of a dog who has been served with a notice pursuant to this section may, within seven days after receipt of such notice, make a written demand to the Director of Public Safety for a hearing on the question of whether the dog is dangerous or vicious as defined in this section.

(h) Every effort should be made to hold a hearing no later than ten days following receipt of written demand to the Director of Public Safety and at least three days’ notice of the hearing shall be given to the individual who made the written demand for the hearing. Notice shall also be given to any injured party.

(i) All hearings requested pursuant to this section shall be conducted before the Animal Appeals Board. The Board shall be composed of the Village Solicitor or *his/her* designee, a doctor of veterinary medicine designated by the Director of Public Safety, and an officer of the Humane Society of Greater Akron, *designated by the Director of Public Safety*. The Board may affirm, reverse or modify the finding that a dog is dangerous or vicious by a majority vote.

(j) A copy of the decision of the Board shall be served upon the person who made the written demand for the hearing, by certified mail with a return receipt requested.

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The decision of the Board shall be final and conclusive, unless an appeal is timely filed in a court of competent jurisdiction. Notice shall also be given to any injured party.

(k) All hearings held by the Board pursuant to this section shall be administrative in nature. At all hearings conducted pursuant to this section, any party may be represented by legal counsel. The rules of evidence utilized by the courts shall not be applicable in hearings before the Board. The Board is hereby empowered to subpoena witnesses and take testimony under oath.

(l) Any person owning, keeping, possession, harboring, maintaining or having care, custody or control of a dangerous or vicious dog shall:

- (1) Register the dog with the Police Department annually, between January 2 and 20, and whenever a dog is newly obtained;
- (2) At the time of registration ~~of a vicious dog~~ provide proof of liability insurance as required herein below;
- (3) Identify the dog by having the dog tattooed at the owner's expense with a code provided by the Police Department and provide one color photo of the dog showing the tattoo number after the animal has been tattooed, or if the dog has been tattooed *previously as a dangerous dog*, provide the Police Department with the code number and photo as provided herein. *Thereafter, the owner shall provide the Police Department with one color photo annually from the date of registration;*
- ~~(4) Provide two color photos of the dog to the Police Department annually upon registration.~~
- (4) Post on the premises, in a conspicuous place where the dog is kept, at least one Village-issued warning sign available, upon payment of a fee of ten dollars (\$10.00) from the Police Department. The sign shall be visible and capable of being read from the public highway or street;
- (5) Notify the Police Department within seventy-two hours if the dangerous or vicious dog has died or has been sold or donated, and provide the Police Department with the name, address and telephone number of the new owner; and
- (6) Pay an annual registration fee of twenty-five dollars (\$25.00) to cover the administrative expenses associated herewith.

(m) Whoever fails to register a dangerous or vicious dog as provided in subsection (l) is guilty of a misdemeanor if the third degree. Each and every day during such period of noncompliance with this section may be deemed a separate offense.

(n) No owner of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this State providing coverage in each occurrence,

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subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars (\$100,000) because of damage to property or bodily injury to or death of a person caused by the vicious dog. No owner of a dangerous dog shall fail to obtain such insurance coverage in an amount not less than \$50,000.

- (o) Whoever violates subsection (n) is guilty of a misdemeanor of the fourth degree.
- (p) No owner of a dangerous or vicious dog shall fail to do one of the following:
 - (1) Keep the dog inside the owner's home;
 - (2) Keep the dog in a locked enclosure, *approved by the Planning Commission*, at least five feet by ten feet which has a secure top and sides. If the enclosure has no bottom securely attached to the sides, ~~the sides must be embedded into the ground.~~ **No less than two feet of** it must have a concrete base with fencing securely attached or anchored to the concrete perimeter to a depth of six inches;
 - (3) Keep the dog muzzled on a chain-link leash/lead that is not more than six feet in length which is held in the hand of a person who is of suitable age, size and discretion to control the dog and who is outside with the dog.
- (q) Whoever violates subsection (p) is guilty of a misdemeanor of the first degree.
- (r) Any person owning, keeping, possessing, harboring, maintaining or having the care, custody or control of a dangerous or vicious dog shall be deemed to have given consent to an inspection of private property, other than within any private structure unless otherwise authorized by law, by any law enforcement officer for the purpose of determining compliance with the requirements of this section.
- (s) No person, with the purpose to prevent, obstruct or delay the performance by a law enforcement officer of any authorized act within his official capacity, shall do any act which hampers or impedes said official in the performance of his lawful duties under the provisions of this chapter.
- (t) Whoever violates subsection (s) hereof is guilty of a misdemeanor of the second degree.
- (u) No person, being the owner or having the care, custody or control of any dangerous or vicious dog within the Village, shall allow such dog to cause serious physical harm to any person, except in defense of such owner's person or property.
- (v) Lack of intent on the part of such person to allow such dog to injure another person or domestic animal, or the lack of knowledge of the violent propensities of such dog, is not a defense to a violation of this section.
- (w) Whoever violates subsection (u) is guilty of a misdemeanor and shall be fined not

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more than five thousand dollars (\$5,000) or sentenced to a term of incarceration of not more than one year or both.

(x) No person, being the owner or having the care, custody or control of any dangerous or vicious dog within the Village, shall allow such dog to cause physical harm to another dog, cat or other domestic animal, except in defense of such owner's person or property.

(y) Lack of intent on the part of such person to allow such dog to injure another dog, cat or other domestic animal, or the lack of knowledge of the violent propensities of such dog, is not a defense to a violation of this section.

(z) Whoever violates subsection (x) is guilty of a misdemeanor of the first degree.

(aa) No person, being the owner or having custody or control of any dangerous or vicious dog, and while off the premises of the owner, shall knowingly cause or allow such dog to menace any person, except in defense of such owner's person or property.

(bb) Whoever violates subsection (aa) is guilty of a misdemeanor of the fourth degree.

(cc) When any person, being the owner or having custody or control of any dog is charged with a violation of this chapter, the court may, upon motion of any party or its own motion, order the seizure and impoundment of the dog pending trial.

(dd) In the event that a law enforcement officer, including the Animal Control Officer, has probable cause to believe that a dangerous or vicious dog is running at large, he may seize and impound the dog without seeking prior court order.

(ee) Nothing within this section shall be construed to prevent a law enforcement officer, including the Animal Control Officer, from seizing or destroying any animal which presents an immediate risk of physical harm to any person or domestic animal.

(ff) Any dog that attacks and injures any person or another dog, cat or other domestic ~~farm~~ animal shall be ordered humanely destroyed when, in the court's judgment, such dog represents a continuing threat of serious harm to persons or other such animals. The Chief of Police may petition a court of competent jurisdiction for an order to humanely destroy any dog impounded pursuant to this section which represents a threat of harm to any person caring for such animal. The Solicitor may also petition the court for such purposes if petitioned to do so by any party injured by such dog. The court shall order any dog that kills or causes serious physical harm to any person, other than a person then committing a criminal trespass or other crime of violence upon the premises of the owner of such dog, humanely destroyed.

(gg) No person shall own, keep, possess, harbor, maintain or have the care, custody or control of a dog within the Village when such dog has been banned by order of a court of competent jurisdiction from any municipality, county, township or other political subdivision.

(hh) Compliance with the requirements of this section is not a defense to a violation of

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this section.

- (ii) Whoever violates subsection (gg) is guilty of a misdemeanor of the first degree.
- (jj) The provisions of this section are specifically intended to impose strict liability.

Section 3. 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 the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. WHEREFORE, this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, convenience and welfare of the Village of Silver Lake and the inhabitants thereof, for the reason that greater regulation and the means to enforce such measures is necessary to protect the public, and provided it receives the necessary affirmative votes as required by the Village Charter, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.

PASSED:

APPROVED AS TO FORM:

Robert W. Heydorn, Solicitor

ATTEST:

Teresa M. Spohn, Clerk-Treasurer

Gerald P. Jones, President of Council

APPROVED: _____
Date

Bernie Hovey, Mayor