ORDINANCE # 393

Dangerous/Vicious animals

The Village Board of the Village of Lomira, Wisconsin, hereby ordains Section 4-2 be amended to read as follows:

(a) Definition and determination. Law enforcement or designee thereof shall investigate every dog complaint and make a determination as to whether or not such dog is dangerous, shall so inform the owner, keeper, or harborer of such animal, and provide such person with a copy of this division. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning: Dangerous/vicious animal means any animal which:

(1) Without provocation, while not under the control of its owner, chases, confronts, or approaches a person in a menacing fashion and it is clear that the ~~dog~~ animal is not merely being protective in a particular set of circumstances.
(2) When unprovoked, approaches a domestic animal in a menacing fashion.
(3) When unprovoked, causes a non-severe, non-bite injury in a menacing fashion to any person or domestic animal.
(4) Caused a serious injury to or killed a person or domestic animal
(5) Caused an injury by biting a person
(6) Attacked a person or domestic animal in such a manner as to require defensive action to prevent bodily injury or property damage when such person is conducting himself or herself peacefully and lawfully
(7) Any animal owned, harbored, or trained primarily or in part for the purpose of fighting
(8) Any animal declared to be vicious/dangerous in another municipality, county, or state
(9) Any animal previously found to be vicious/dangerous in a trial on the charge of violating this section

(b) Domestic animal means any animals, emotional support animal, and service animals.

(c) Menacing fashion means demonstrating an intent or desire to cause injury by one or more of the following actions:

(1) An attempt to bite a person or another animal in such a fashion as to show plainly to a reasonable person an unfriendly intent and put them in fear of attack.
(2) Growling or barking in an unfriendly manner while approaching or chasing a person or another animal.
(3) Growling or barking in an unfriendly manner while making physical contact with a person or another animal.

(d) Officer means any law enforcement officer

(e) Owner means any person, firm, corporation, or other organization owning, keeping, possessing, harboring, controlling, or having the care or custody, whether temporarily or permanently, of an animal

(f) Provoked. Any attack by an animal or physical injury caused by an animal shall be considered provoked if at the time the attack occurs or the injury is inflicted:

(1) The person who was attacked or injured was teasing, tormenting, abusing, or assaulting the animal;

(2) The animal was protecting a person, itself, its young, or another domestic animal from an attack by a human being or another animal; or

(3) The person who was attacked or injured was committing a crime on the property of the animal's owner.

(g) Disposition of dangerous animals. Any law enforcement officer of the village may take custody of an animal if the officer has reasonable grounds to believe the animal is one of the types set forth in Wis. Stats. § 173.13(1)(a)(1)—(9).

(h) Prohibited in multifamily dwellings. No vicious animal may be kept within any portion of any two-family or multiple-family dwelling.

(i) Transfer. No person may sell, give away, or transfer ownership or custodianship of a vicious/dangerous animal without first advising law enforcement in writing, including the name and address of the person to whom the animal is given.

(j) Leash and muzzle. No person owning, harboring, or having the care of a vicious animal may permit such an animal to go outside its kennel or pen unless the animal is securely leashed with a leash no longer than four feet in length. No person may permit a vicious animal to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person is in physical control of the leash. The animal may not be leashed to inanimate objects such as trees, posts, and buildings. A vicious animal on a leash outside the kennel shall be muzzled by a muzzling device sufficient to prevent the animal from biting persons or other animals.

(k) Confinement indoors. No vicious animal may be kept on a porch, patio, or in any part of a house or structure that would allow the animal to exit the building on its own volition. No vicious animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(l) Confinement outdoors.

(1) All vicious animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled.

(2) The pen, kennel or structure shall have secure sides and a secure top attached to all sides. A structure used to confine a vicious animal shall be locked with a key or combination lock when the animal is within the structure. The structure shall have a secure bottom or floor attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet. All structures shall be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) All structures erected to house vicious animals shall comply with all applicable municipal zoning and building regulations.

(m) Signs. All owners, keepers, or harborers of vicious animals shall display in a prominent place on their premises a sign easily readable by the public using the words "beware of dog" or "beware of animal(s)" or providing the animal type. A similar sign is required to be posted on the kennel or pen of the ~~dog~~ animal.

(n) Insurance.

(1) All owners, keepers, or harborers of vicious animals shall provide proof to the local law enforcement of public liability insurance in a single incident amount of $50,000.00 per incident for bodily injury to or death of any person or for the damage to property owned by any person which may result from the ownership, keeping or maintenance of vicious animals.

(2) The insurance policy shall provide that no cancellation of the policy will be made unless a ten-day written notice is first given to law enforcement.

(3) The owner or custodian of the animal shall produce evidence of the required insurance upon request of a law enforcement officer.

(o) State Law reference— Taking custody of animals, Wis. Stats. § 173.13; restraining action against dogs, Wis. Stats. § 174.01.

(p) Declaration of dangerous/vicious animal; notification and hearing.

a. If law enforcement determines that an animal is vicious as defined in this section, he or she may declare the animal to be vicious. The officer shall immediately inform the owner or custodian in writing, by personal service or certified mail, of such determination, and the reasons therefor. The determination shall be dated, and shall advise such person of the right to have such determination reviewed, the time within such review may be obtained, and the officer or person to whom a request shall be addressed.

b. If an owner or custodian contests the designation of the animal as vicious, the owner may request a hearing in writing, mailed or delivered in person to law enforcement agency providing services to the Village within thirty days of issuance of the notice. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed.

c. The hearing shall be held within 15 days of receipt of the request for hearing before the common council. The DCSO Sergeant for the Village of Lomira or designee thereof, shall serve the appellant with notice of such hearing by mail or personal service at least ten days before such hearing. Any interested party may present evidence as to whether the dog is vicious. At such a hearing, the determination of the police officer shall be termed an initial determination.

d. The owner or custodian may file with the request for hearing written evidence and argument in support of the person's position with respect to the initial determination.

e. At the hearing, the appellant and the municipal authority may be represented by an attorney and may present evidence and call and examine witnesses and cross examine witnesses of the other party. Such witnesses shall be sworn by the Village Clerk. The Board may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Wis. Stats. § 805.07(4), and must be served in the manner provided in Wis. Stats. § 805.07(5). The attorney shall, at the time of issuance, send a copy of the subpoena to the decision maker.

f. At the hearing, law enforcement and the owner or custodian of the allegedly vicious dog may present any relevant evidence related to whether the animal meets the definition of a vicious animal in this section.

g. The proceedings shall be taken by a stenographer or recorded. The Village Clerk or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits.

h. Pending the decision of the Board upon the hearing, the owner must comply with any restrictions established by the Board. After the hearing, the owner shall be notified in writing of the determination. The Board may impose additional restrictions on an animal declared vicious pending arrangements for its removal from the village, euthanasia, or during any period pending judicial review.

i. Any party aggrieved by the determination may seek judicial review pursuant to Wis. Stats. § 68.13.

(q) At trial on a charge or at a hearing:

a. The fact-finder shall consider evidence of provocation of the animal by a person or animal bitten or injured by the animal as a potentially mitigating factor. If the provocation is purposeful or substantial, the fact-finder may accept any alleged bite or injury as self-defense by the animal and not classify the animal as vicious.

b. The attack, chase, or injury of a person or domestic animal by an animal shall, in the absence of contrary evidence, be presumed to be due to an unprovoked attack.

However, a dog shall not be deemed to be vicious if it bites, attacks or menaces any person or animal:

i. To defend its owner, caretaker or another person from an unjustified attack by a person or animal;

ii. To protect its young or another animal;

iii. To defend itself against any person or animal that has tormented, assaulted, or abused it;

iv. To defend its owner's or caretaker's property against trespassers;

v. That is actively committing or attempting to commit a crime;

vi. That is violating or attempting to violate an ordinance that protects persons or property.

c. No animal may be declared vicious for acts committed by the animal while being utilized by a law enforcement agency for law enforcement purposes while under the control and direction of a law enforcement officer.

d. Any vicious animal may be ordered impounded or removed from the village for violations of this chapter. The animal's owner shall be responsible for costs of impoundment or removal.

e. Any animal that has caused serious injury to a person or domestic animal on two separate occasions, without reasonable cause, may be destroyed as a result of judgment rendered by a court of competent jurisdiction, as specified under Wis. Stats. § 174.02(3). The animal's owner shall be responsible for costs of destruction.

Moved by Tr. Moore seconded by Tr. Jewell

to adopt Ordinance #393 as presented.

Motion carried.

Passed and adopted this 14 day of October