

City of Willoughby Hills

ORDINANCE NO. 2019-31

AN ORDINANCE AMENDING PART FIVE – GENERAL OFFENSES CODE, CHAPTER 505 – ANIMALS AND FOWL, SECTION 505.07 – DANGEROUS AND VICIOUS DOGS OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS, OHIO; REPEALING ANY AND ALL CONFLICTING LEGISLATION AND DECLARING AN EMERGENCY.

WHEREAS, Section 505.07 of the Codified Ordinances of the City of Willoughby Hills was last updated in 2000; and

WHEREAS, Section 505.07 was intended to follow the Ohio Revised Code, and it was based on, references and cites to sections of the Ohio Revised Code that were substantially amended or abolished in 2012; and

WHEREAS, Section 505.07 now conflicts with the Ohio Revised Code, and recent case law provides that even home rule jurisdictions like Willoughby Hills must comply with Ohio Revised Code Chapter 955, which “has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog”. See *Russ v. City of Reynoldsburg*, 81 N.E.3d 493, 498 (2017 Ohio App.); and

WHEREAS, the Law Director recommends that we update Section 505.07 to delete the outdated references to the Ohio Revised Code and conform to current Ohio law.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Chapter 505 – Animals and Fowl, Section 505.07 – Dangerous and Vicious Dogs of the Codified Ordinances of the City of Willoughby Hills be and it hereby is amended to read and provide in its entirety as follows:

505.07 DANGEROUS AND VICIOUS DOGS.

(a) As used in this section:

- (1) A. "Dangerous dog" means a dog that, without provocation, and subject to subsection (a)(1)B, hereof, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper or harbinger and not under the reasonable control of its owner, keeper, harbinger or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top.
- B. "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.
- (2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.
- (3) "Police dog" means a dog that has been trained, and may be used to assist one or more law enforcement officers in the performance of their official duties.

- (4) A. "Vicious dog" means a dog that without provocation and subject to subsection (a)(4)B hereof, meets any of the following:
 - 1. Has killed or caused serious injury to any persons (on one or more occasions without provocation).
 - 2. Has caused injury, other than killing or serious injury to any person, or has killed or has seriously injured another domestic animal while on the property of another (on two or more occasions without provocation).
- B. "Vicious dog" does not include either of the following:
 - 1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.
 - 2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper or harbinger of the dog.
- (5) "Without provocation" means that a dog was not teased, tormented or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.
- (b) No owner, keeper or harbinger of a dangerous or vicious dog shall fail to do either of the following:
 - (1) While that dog is on the premises of the owner, keeper or harbinger, securely confine it at all times in a building, in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;
 - (2) While that dog is off the premises of the owner, keeper or harbinger, keep it on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:
 - A. Keep that dog in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top;
 - B. Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie or affix the leash or tether to the ground or stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - C. Muzzle that dog, except that a vicious dog shall not be required to be muzzled when shown either in a sanctioned American Kennel Club show or upon prior written approval of the Mayor.
- (c) Subsection (b) hereof are necessary controls on the unrestrained activity of vicious dogs which threaten the safety of streets, parks, sidewalks, yards and other areas of the City. Lack of knowledge or lack of intent is not a defense to a violation of this section.
- (d) No owner, keeper or harbinger 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, subject to a limit, exclusive of interest and costs, of not less than fifty thousand dollars (\$50,000) because of damage or bodily injury to or death of a person caused by a vicious dog.
- (e) If a violation of subsection (b) hereof involves a dangerous dog, whoever violates that subsection is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that he owns, keeps or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to subsection (c) hereof. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.

- (f) If a violation of subsection (b) hereof involves a vicious dog, whoever violates that subsection is guilty of one of the following:
 - (1) A misdemeanor of the first degree on a first offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.
 - (2) A misdemeanor of the first degree if the dog causes injury other than killing or serious injury, to any person.
- (g) Whoever violates subsection (b) shall be issued a separate citation for each occurrence the vicious dog is found in violation of this Ordinance.
- (h) Whoever violates subsection (d) hereof is guilty of a misdemeanor of the first degree.

SECTION 2. All Ordinances or parts thereof in conflict with the provisions of this Ordinance be, and they are hereby repealed as of the effective date of this Ordinance.

SECTION 3. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 4. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the usual daily operation of the municipality and further reason being to allow the City to be in compliance with the current state statute; wherefore this Ordinance shall be in full force and take effect from and after its adoption and approval by the Mayor.

PASSED: April 25, 2019

Nancy E. Fellows
Nancy E. Fellows
President of Council

Submitted to the Mayor for his approval on this 25 day of April, 2019

Approved by the Mayor
April 29, 2019

ATTEST: Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council

Robert M. Weger
Robert M. Weger
Mayor