

THE CITY COUNCIL OF NORTH ROYALTON, OHIO

ORDINANCE NO. 05-8

INTRODUCED BY: Mayor Luks

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF NORTH ROYALTON, PART SIX GENERAL OFFENSES CODE, CHAPTER 618 ANIMALS, SECTION 618.19 DANGEROUS AND VICIOUS DOGS, AND DECLARING AN EMERGENCY

WHEREAS: The Supreme Court of Ohio has recently issued its decision in State v. Cowan(2004), 103 Ohio St.3d 144, which decision holds that the State may not prosecute a person for violation of Ohio's dangerous dog and vicious dog criminal statutes where prosecution depends on a prior classification of the animal as a dangerous and/or vicious animal, and the owner has not had a meaningful opportunity to a hearing on the classification; and

WHEREAS: The Codified Ordinances of the City of North Royalton do not currently expressly afford a dog owner with a specific hearing at which the owner may challenge the classification of a dog as a dangerous and/or a vicious dog; and

WHEREAS: It is therefore necessary to amend Section 618.19 Dangerous and Vicious Dogs as provided for herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. The Codified Ordinances of the City of North Royalton, Part Six General Offenses Code, Chapter 618 Animals, Section 618.19 Dangerous and Vicious Dogs is hereby amended as follows:

618.19 DANGEROUS AND VICIOUS DOGS.

(a) **DEFINITIONS:**

As used in this section:

- (1) "Dangerous dog" is defined as follows:
 - A. "Dangerous dog" means a dog that, without provocation, and subject to paragraph (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) "Vicious dog" is defined as follows:
 - A. "Vicious dog" means a dog that, without provocation, and subject to paragraph (a)(4)B. hereof, meets any of the following requirements:
 1. Has killed or caused serious injury to any person;
 2. Has caused injury, other than killing or serious injury, to any person, or has killed another dog; or
 3. Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping or harboring of a vicious dog.
 - 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; or
 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. (ORC 955.11(A)).

- (6) ***“Person” shall mean and include any person or persons, corporation, partnership or other legal entity, property owner, tenant, or person occupying property, owner, keeper or harborer of a dog as defined in ORC 955. __.***
- (7) ***“Owner”, “keeper”, or “harborer” shall have the same meaning as used in Chapter 955 of the Ohio Revised Code.***

(b) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper or harborer 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 harborer, securely confine it at all times in a locked pen that has a top, locked fenced yard or other locked enclosure that 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 harborer, keep it on a chain-line 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 that has a top, locked fenced yard or other locked enclosure that 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 a 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; and/or
 - C. Muzzle that dog. (ORC 955.22(D))

(c) No owner, keeper, or harborer 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 \$100,000 because of damage or bodily injury to or death of a person caused by the vicious dog.
(ORC 955.22(E))

(d) As a prerequisite to charging any person, with a violation of this Section 618.19, a dog must first be classified as a “dangerous dog” or “vicious dog” in accordance with this section. No person shall be charged unless an event occurs after the dog has been so classified. Before a dog can be classified as a “dangerous dog” or “vicious dog” as defined herein, the person responsible for the dog shall first be summoned pursuant to this section and required to attend a hearing as provided for hereinafter as follows:

Any Animal Control Officer, Police Officer, or other Law Enforcement Officer who has probable cause to believe that a dog is a "dangerous dog" within the meaning of subsection (a)(1)A., and/or who has probable cause to believe that a dog is a "vicious dog" within the meaning of subsection (a)(4)A., may issue a summons requiring the owner, keeper, or harborer of the dog to appear at a hearing in Mayor's Court for the sole purpose of determining whether or not such dog will be classified as a dangerous dog and/or a vicious dog. The City shall have the burden of proof at such hearing to establish beyond a reasonable doubt that the dog meets the criteria for classification as a dangerous or vicious dog. The person to whom such summons is issued shall have the right to be represented by counsel at such hearing; the opportunity to subpoena witnesses; to question any witnesses called to testify by the City; and shall have the opportunity to present witnesses and evidence relevant to the issue presented. At the conclusion of the hearing or at a reasonable time following the hearing, the Mayor, or other presiding officer of the Mayor's Court, shall issue a written decision classifying, or declining to classify, the dog as a dangerous dog or vicious dog. If the decision classifies the dog as a dangerous dog or a vicious dog, the decision shall contain findings of fact and conclusions of law. In making a determination under this section, the Mayor shall consider all relevant factors including but not limited to, public safety, the interests of justice, and the factors found in paragraphs (a) and (b) above.

(e) Once a dog has been classified as a “dangerous dog” or “vicious dog” said owner, keeper or harborer, in addition to the requirements of paragraph (c) above, shall post a notice/sign on the premises which notice/sign shall be prominently displayed in plain view and shall warn all persons coming onto the property of the dog’s classification. Said notice shall state: “Warning: Vicious Dog” or “Warning: Dangerous Dog”.

(f) ~~(f)~~ 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 and shall be subject to the penalty provided in Section 698.02. Additionally, the court may order the offender to personally supervise the dangerous dog that he or she 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 County Dog Warden or the County Humane Society.

(g) ~~(e)~~ Any owner or person in possession of an animal which has bitten **another person or** individual **after being classified as provided herein** shall be issued a summons to appear in the Mayor's Court.

Upon a determination by the Court that the animal **was responsible for the act or injury to the person or individual, upon making a finding that the dog** is a serious threat to the health and safety of this community, the Court may order the owner or person in possession of such animal to forthwith remove such animal from the confines of the City **or have the animal destroyed**. No person shall fail to comply with such order. If such animal is **ordered to be removed and is** not so removed in compliance with such order, the Court may order the Chief of Police to cause such animal to be impounded to **be** destroyed, in addition to the penalty provided in subsection (f) hereof.

(h) ~~(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 felony of the fourth degree on a first or subsequent offense if the dog kills or seriously injures a person. Prosecution shall be made under Ohio R.C. 955.22(D) and punishment shall be as provided in Ohio R.C. 2929.11. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the County Dog Warden or the County Humane Society.

(2) A misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Prosecution for the felony shall be under Ohio R.C. 955.22(D) and the penalty shall be as provided in Ohio R.C. 2929.11. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the County Dog Warden or the County Humane Society.

(3) A misdemeanor of the first degree if the dog causes injury, other than killing or serious **physical** injury, to any person. The penalty shall be as provided in Section 698.02.

(i) ~~(g)~~ Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree and shall be subject to the penalty **as** provided in Section 698.02.

Section 2. Section 618.19 is hereby amended as provided for herein and all other provisions of Chapter 618 shall remain in full force and effect.

Section 3. This Ordinance shall supersede all other previously adopted Ordinances in direct conflict herewith.

Section 4. 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 this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 5. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the city, and for the further reason that it is immediately necessary to amend Section 618.19 Dangerous and Vicious Dogs to allow a dog owner a specific hearing at which the owner may challenge the classification of a dog as dangerous and/or vicious.

THEREFORE, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

/s/ Robert A. Stefanik
PRESIDENT OF COUNCIL

APPROVED: /s/ Cathy Luks
MAYOR

DATE PASSED: March 15, 2005

DATE APPROVED: March 17, 2005

ATTEST: /s/ Laura J. Haller
DIRECTOR OF LEGISLATIVE SERVICES

First reading January 18, 2005
Second reading February 1, 2005
Third reading March 15, 2005

YEAS: Stefanik, Bobulsky, Gentile, Willey,
Koch, Zaccardelli, Uffman-Kirsch
NAYS: none