

ORDINANCE NO. 029-18

**AN ORDINANCE AMENDING SECTION 505.14 OF THE
CODIFIED CODE TO PROHIBIT DANGEROUS AND VICIOUS
DOGS FROM BEING ON SIDEWALKS USED BY THE GENERAL
PUBLIC; REPEALING CERTAIN SECTIONS OF ORDINANCE
NO. 051-09**

WHEREAS, City Council recently reviewed the City's Codified Ordinances in an effort to keep up to date with current regulations; and,

WHEREAS, on February 21, 2012, Ohio House Bill 14 took effect removing pit bulls from the State's definition of vicious dogs; **Now Therefore**,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NAPOLEON,
OHIO:**

Section 1. That, Section 505.14 of the Napoleon Codified Code shall be amended and enacted as follows:

505.14 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;
2. Has caused injury, other than killing or serious injury to any person, or has killed another dog;
- ~~3. — Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping or harboring of such a 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;

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.

~~C. "Pit bull" as used herein includes, but is not limited to, any American Pit Bull Terrier, any Bull Terrier, any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.~~

(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) 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, harbinger, or handler of the dog, 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.

(c) 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 one hundred thousand dollars (\$100,000) because of damage or bodily injury to or death of a person caused by the vicious dog. The failure to furnish a copy of the liability insurance policy to a Dog Warden or a law enforcement officer that has authority to enforce Section 505.14 within ten (10) days of request by such Dog Warden or law enforcement officer shall be prima facie evidence that the insurance does not exist.

(d) No owner, keeper, or harbinger of a dangerous or vicious dog shall NEGLIGENTLY permit said animal, when within the city, in a public park, public parking lot, or upon any public sidewalk, or upon other public property that is owned,

leased, or controlled by the local, state, or federal government, or upon any private sidewalk or parking lot that is placed for use by the general public, unless the dog is muzzled and on a chain-link leash or tether that is not more than six (6) feet in length, except that such dangerous or vicious dog may be transported in a motor vehicle when meeting the minimum requirements of Section 505.14(b)(2).

(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) In the event the vicious dog kills or causes serious injury to a person while violating subsection (b), then the charge should be filed pursuant to Section 955.22 of the Ohio Revised Code as a felony.

(g) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree.

(h) Whoever violates subsection (d) hereof is guilty of a misdemeanor of the fourth degree.

(i) ~~Except when an offense involves a pit bull,~~ Whenever an alleged violation of Section 505.14 comes to the attention of the official with authority to enforce Section 505.14, as it relates to a dangerous or vicious dog as herein defined, not being properly insured, restrained or confined, he or she shall promptly investigate prior to the filing of a criminal charge. Should the official, after such investigation, believe that a violation does exist, or believe that the dog is dangerous or vicious, he or she shall promptly notify the owner, keeper, or harbinger in the manner prescribed in this section to appear before the City Manager or the City Manager's designee at a date, time and place certain to determine the question as to whether or not the dog is dangerous or vicious as defined in Section 505.14 of the Codified Ordinances.

(1) The investigator shall cause a written report concerning the dangerous or vicious dog to be filed with the City Manager along with any photographs and evidence thereof stating his or her findings.

(2) Notice shall be deemed to be properly served if a copy thereof is:

A. Delivered to the owner, keeper or harbinger of the dog by either personal or residential service or by certified mail; or,
B. If the certified letter is returned showing that the letter was not delivered, when a copy thereof is posted in a conspicuous place at the residence of the owner, keeper, or harbinger of the dog.

C. Notice of the hearing shall be in substantially the following form:

NOTICE OF HEARING

You are hereby notified that you as an owner, keeper or harbinger of an alleged dangerous or vicious dog, as defined in Section 505.14 of the Codified Ordinances of the City are ordered to appear on _____ at ____ M. at the location of _____. Failure to appear may result in favor of the official alleging the dog is dangerous or vicious.

Dated this _____ day of _____.

/s/ _____
(TITLE OF SIGNER)

A copy of the foregoing notice was served on _____ on the _____ day of _____, _____.

(MANNER OF SERVICE)

/s/ _____
(PERSON SERVING)

D. At the time and place specified in the notice, the City Manager or his or her designee shall hear the matter. The formal rules of evidence shall not apply; however, the hearing shall be recorded. The owner, keeper or harbinger of the dog in question shall have the right to appear in person or by counsel. At the conclusion of the hearing, the City Manager or his or her designee shall make a determination whether or not, by preponderance of the evidence, the dog in question is dangerous or vicious as defined in Section 505.14 of the Codified Ordinances. Service of the decision is deemed completed when the decision is either delivered in person or by regular U.S. mail, proof of mailing required, to the owner, keeper or harbinger or representative of the dog in question, or by posting the order in a conspicuous place on, in or about the residence of the owner, keeper or harbinger. The decision shall be deemed final subject to an appeal filed within ten (10) days from service of the decision to the owner, keeper or harbinger of the dog in question or his or her representative. Appeals shall be taken to the Common Pleas Court of Henry County, Ohio.

Section 2. That, Section 505.14 of the Codified Code as existed prior to the enactment of this Ordinance is repealed.

Section 3. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further,

if any portion of this Ordinance is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof.

Section 5. That, upon passage, this Ordinance shall take effect at the earliest time permitted by law.

Passed: July 2, 2018

Joseph D. Bialorucki
Joseph D. Bialorucki, Council President

Approved: July 2, 2018

Jason P. Maassel
Jason P. Maassel, Mayor

VOTE ON PASSAGE 6 Yea 0 Nay 0 Abstain

Attest:

Gregory J. Heath
Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Ordinance No. 029-18 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the 7th day of July, 2018; & I further certify the compliance with rules established in Chapter 103 of the Codified Ordinances of Napoleon Ohio and the laws of the State of Ohio pertaining to Public Meetings.

Gregory J. Heath
Gregory J. Heath, Clerk/Finance Director