

ORDINANCE NO. 1480

AN ORDINANCE ADDING, AMENDING, READOPTING AND RECODIFYING SECTIONS OF OAK HARBOR MUNICIPAL CODE CHAPTER 7.32 RELATING TO THE DECLARATION OF DANGEROUS DOGS AND POTENTIALLY DANGEROUS DOGS AND THE RESTRICTIONS ON THE POSSESSION THEREOF.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 7.32 entitled “Dangerous and Potentially Dangerous Dogs” is amended, readopted and recodified to have the following sections:

**Chapter 7.32
DANGEROUS DOG AND POTENTIALLY DANGEROUS DOG**

Sections:

7.32.010	Title
7.32.020	Applicability
7.32.030	Definitions
7.32.040	Defense
7.32.050	Declaration of dangerous dog or potentially dangerous dog – Procedure
7.32.060	Notice of potential declaration
7.32.070	Evidence
7.32.080	Final declaration
7.32.090	Service
7.32.100	Registration of dangerous and potentially dangerous dogs required
7.32.110	Prohibited acts
7.32.120	Penalties
7.32.130	Destruction
7.32.140	Costs
7.32.150	Failure to Redeem
7.32.160	Nuisance
7.32.170	Civil damages

Section Two. Oak Harbor Municipal Code Section 7.32.010 entitled “Title” is hereby amended and readopted to read as follows:

7.32.010 Title. The ordinance codified in this chapter shall be referred to as the dangerous dog and potentially dangerous dog ordinance.

Section Three. Oak Harbor Municipal Code Section 7.32.020 entitled “Findings” is hereby amended to read as follows:

7.32.020 Applicability. The provisions of this chapter shall apply to adult dogs only, which means any dog over the age of six (6) months. The declaration of dangerous dog or potentially dangerous dog follows the dog, regardless of ownership or change of ownership.

Section Four. Oak Harbor Municipal Code Section 7.32.030 entitled “Definitions” is hereby amended and readopted to read as follows:

7.32.030 Definitions. The following definitions shall apply throughout this chapter:

- (1) “Animal Control Authority” means the department of the City charged with the responsibility of administering the provisions of this chapter, or the department and any other agency to which this responsibility is contractually delegated and which is thereby charged with the duty of enforcing the animal control laws of the City and/or with the shelter and welfare of animals.
- (2) “Animal Control Officer” means any person or agency designated by the City as a law enforcement officer or quasi-law enforcement officer who is authorized to implement the provisions of this chapter and this title.
- (3) “Dangerous dog” means any dog that:
 - (a) inflicts severe injury on a human being without provocation on public or private property; or
 - (b) kills a domestic animal, without provocation, while the dog is off the owner’s property; or
 - (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.
- (4) “Owner” means any person, firm, corporation, organization, or department in possession of, harboring, keeping, having an interest in, or having control or custody of an animal.
- (5) “Potentially dangerous dog” means:
 - (a) Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or
 - (b) Any dog which unprovoked inflicts bites on a human or domestic animal either on public or private property; or

- (c) Any dog which unprovoked chases or approaches a person upon the streets, sidewalks or other public grounds in a menacing fashion or apparent attitude of attack.
- (6) “Proper enclosure” of a dangerous dog or a potentially dangerous dog means that while on the owner’s property, a dangerous dog shall either be:
 - (a) securely confined indoors; or
 - (b) in a securely enclosed and locked pen or structure suitable to prevent the entry of children under the age of ten (10) years and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top and provide protection from the elements for the dog. If such pen or structure does not have a bottom that is secured to the sides, the sides must be embedded at least one (1) foot into the ground.
- (7) “Running at large” means to be off the premises of the owner and not under the immediate control of the owner or other competent person authorized by the owner, by means of a leash, cord or chain, except when in or on any vehicle and securely confined to such vehicle.
- (8) “Severe injury” means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.

Section Five. Oak Harbor Municipal Code Section 7.32.040 entitled “Defense” is hereby amended to read as follows:

7.32.040 Defense. Dogs shall not be declared dangerous or potentially dangerous if the threat, injury, or damage was sustained by a person who, at the time:

- (1) was committing a willful trespass or other tort upon the property, or vehicle, occupied or owned by the owner of the dog; or
- (2) was tormenting, abusing, or assaulting the dog; or
- (3) has, in the past, tormented, abused, or assaulted the dog; or
- (4) was committing or attempting to commit a crime.

Section Six. Oak Harbor Municipal Code Section 7.32.050 entitled “Notice” is hereby amended to read as follows:

7.32.050 Declaration of dangerous dog or potentially dangerous dog – Procedure.

- (1) The Animal Control Officer shall issue a Notice of Potential declaration to the owner of the dog following the guidelines of service found at Oak Harbor Municipal Code (OHMC) 7.32.090. Said notice will include an opportunity for the owner to discuss the action in writing or orally with the Animal Control Officer within fourteen (14) days of receipt of the notice.
- (2) After the discussion or the fourteen (14) day period, whichever comes first, the Animal Control Officer shall issue a final decision in the form of either a final declaration or a letter of no finding.
- (3) If the dog has been impounded due to its actions, such impoundment shall continue during the pendency of the above procedure. The owner shall be responsible for the cost of impoundment regardless of the outcome of the action.
- (4) The City Administrator in an OHMC 1.24 appeal can take note of and consider the owner's failure to discuss the action with the Animal Control Officer or failure to raise any and all defenses at the discussion with the Animal Control Officer.

Section Seven. Oak Harbor Municipal Code Section 7.32.060 entitled "Information" is hereby amended to read as follows:

7.32.060 Notice of potential declaration. Notice in the form of a declaration given to an owner in the manner described below or in OHMC 7.32.080 shall be *prima facie* evidence that the owner acted knowingly, although notice is not the only way to prove the owner's knowledge of the animal's propensity. Any notice of potential declaration must be in writing and include the following:

- (1) A description of the animal;
- (2) The name and address of the owner, if known;
- (3) The whereabouts of the animal if it is not in the custody of the owner;
- (4) A brief statement of why the dog is being considered a dangerous or potentially dangerous dog;
- (5) The specific provision or provisions of OHMC 7.32.030(3) or (5) which the Animal Control Officer has found applicable;
- (6) The restrictions that could be placed on the dog as a result of a final declaration;

- (7) The penalties for violation of the restrictions of a final declaration, including the possibility of destruction of the dog, civil damages assessed against the owner, imprisonment and fines incurred by the owner through criminal prosecution;
- (8) The date, time and location to meet with the Animal Control Officer to discuss the action.

Section Eight. Oak Harbor Municipal Code Section 7.32.070 entitled “Dangerous dogs” is hereby amended to read as follows:

7.32.070 Evidence. Based on an investigation, the Animal Control Officer may find and declare a dog dangerous or potentially dangerous if he has a reasonable belief that the dog falls within the definitions set forth in OHMC 7.32.030 (3) or (5). For the purposes of this chapter, a reasonable belief may be supported by any of the following:

- (1) The written complaint of a citizen who has witnessed the animal acting in a manner which causes it to fall within the definitions in OHMC 7.32.030(3) or (5) and is willing to so testify in a court of law; or
- (2) Dog bite reports filed with the Animal Control Officer; or
- (3) Actions of the dog witnessed by the Animal Control Officer or any law enforcement officer; or
- (4) A verified report that the animal previously has been found to be either potentially dangerous or dangerous by the Animal Control Officer; or
- (5) Other substantial evidence admissible in a court of law.

Section Nine. Oak Harbor Municipal Code Section 7.32.080 entitled “Destruction of dangerous dogs and potentially dangerous dogs” is hereby amended to read as follows:

7.32.080 Final decision. The final decision shall consist of either a final declaration or a letter of no finding issued to the owner.

- (1) In the event the Animal Control Officer finds reason to issue a final declaration, it shall contain the following:
 - (a) a description of the animal;
 - (b) the name and address of the owner, if known;
 - (c) the date and time of the meeting with the owner, if any;
 - (d) a brief statement of why the dog has been found to be a dangerous or potentially dangerous dog;

- (e) the specific provision or provisions of OHMC 7.32.030(3) or (5) which the Animal Control Officer found applicable;
 - (f) the restrictions placed on the dog as a result of the declaration;
 - (g) the penalties for violation of the restrictions, including the possibility of destruction of the dog, civil damages assessed against the owner, imprisonment and fines incurred by the owner through criminal prosecution;
 - (h) a statement that the declaration can be appealed to the City Administrator pursuant to OHMC 1.24 within fourteen (14) days; and
 - (i) a statement that failure to file a timely and complete notice of appeal will constitute a waiver of all rights to appeal said declaration.
- (2) A letter of no finding shall include:
- (a) a description of the animal;
 - (b) the name and address of the owner;
 - (c) the date and time of the meeting with the owner;
 - (d) a brief summary of testimony and evidence presented at such discussion;
 - (e) a brief summary of why the animal is not being found dangerous or potentially dangerous.

Section Ten. Oak Harbor Municipal Code Section 7.32.090 entitled “Civil damages” is hereby is hereby amended to read as follows:

7.32.090 Service. Service of the notice of potential declaration, final declaration or letter of no finding shall be in writing, and shall be served on the owner in one of the following methods:

- (1) Certified mail, return receipt requested or delivery confirmation requested, to the owner’s last known address; or
- (2) Personally delivered with proof of personal service made by written declaration under penalty of perjury by the person effecting service declaring the time, date and manner in which service was made; or
- (3) Posting the declaration on the front door of the living unit of the owner, or person with right to control the animal if said owner is not home; or

- (4) Publication in a newspaper of general circulation, if the owner cannot be located by one of the above methods.

Section Eleven. Oak Harbor Municipal Code Section 7.32.100 entitled “Nuisance” is hereby amended to read as follows:

7.32.100 Registration of dangerous and potentially dangerous dogs required. All dangerous dogs and potentially dangerous dogs residing within the City of Oak Harbor must be registered to the current owner. The fee for registration of a dangerous dog is Fifty Dollars (\$50.00) and the fee for registration of a potentially dangerous dog is Twenty-Five Dollars (\$25.00). Registration must be renewed annually.

- (1) A Dangerous Dog certificate of registration shall be issued by the Animal Control Officer to the owner of a dangerous dog if the owner presents, to the Animal Control Officer, sufficient evidence of:
 - (a) a proper enclosure as defined in OHMC 7.32.030(6) in which to confine the dangerous dog;
 - (b) the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property, including a conspicuously displayed sign with a warning symbol that informs children of the presence of a dangerous dog;
 - (c) a surety bond issued by a surety insurer qualified under Revised Code of Washington (RCW) Chapter 48.28 in a form acceptable to the City in the sum of at least Two Hundred and Fifty Thousand Dollars (\$250,000), payable to any person injured by the dangerous dog; or a policy of liability insurance, such as homeowner’s insurance, issued by an insurer qualified under RCW Title 48 in the amount of at least Two Hundred and Fifty Thousand Dollars (\$250,000), insuring the owner for any personal injuries inflicted by the dangerous dog;
 - (d) proof of payment of the annual registration fee;
 - (e) proof that the dog has been microchipped, including providing the microchip serial number or proof that the dog has been tattooed including providing the tattoo number;
 - (f) written acknowledgement of receipt of a copy of OHMC 7.32 that includes a statement that the acknowledger has read and understood what is required to keep a dangerous dog within the city.
- (2) A Potentially Dangerous Dog certificate of registration shall be issued by the Animal Control Officer to the owner of a potentially dangerous dog if the owner presents, to the Animal Control Officer, sufficient evidence of:

- (a) a proper enclosure as defined in OHMC 7.32.030(6) in which to confine the potentially dangerous dog;
- (b) proof of payment of the annual registration fee;
- (c) proof that the dog has been microchipped, including providing the microchip serial number or proof that the dog has been tattooed including providing the tattoo number;
- (d) written acknowledgement of receipt of a copy of OHMC 7.32 that includes a statement that the acknowledger has read and understood what is required to keep a potentially dangerous dog within the city and what actions may lead to a dangerous dog declaration.

Section Twelve. Oak Harbor Municipal Code Section 7.32.110 entitled “Construction” is hereby amended to read as follows:

7.32.110 Prohibited acts. It shall be unlawful for any person to:

- (1) Fail to register a dangerous dog under OHMC 7.32.060(1) within thirty (30) days of bringing the dog into the city limits or after it has been declared a dangerous dog;
- (2) Fail to secure, and maintain, the liability insurance coverage required under OHMC 7.32.060(1)(c) within thirty (30) days of bringing a dangerous dog into the city limits or after it has been declared a dangerous dog;
- (3) Fail to register a potentially dangerous dog under OHMC 7.32.060(2) within thirty (30) days of bringing the dog into the city limits or after it has been declared a potentially dangerous dog;
- (4) Fail to keep a dangerous dog or a potentially dangerous dog in a proper enclosure as defined in OHMC 7.32.030(6);
- (5) Allow a dangerous dog or a potentially dangerous dog outside of a proper enclosure, unless the dog is muzzled, restrained by a substantial chain or leash and under the physical control of a person over the age of eighteen (18) years who is of sufficient size and stature to control the animal. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

Section Thirteen. Oak Harbor Municipal Code Section 7.32.120 entitled “Appeal” is hereby amended to read as follows:

7.32.120 Penalties.

- (1) Violations of any of the prohibited acts under OHMC 7.32.070 may result in the following penalties:
 - (a) Immediate confiscation of the dog:
 - (i) The Animal Control Officer shall immediately confiscate and impound any dangerous dog not registered, or insured, or kept in a proper enclosure and the Animal Control Authority shall hold the same until such time as the prohibited act is abated.
 - (ii) The Animal Control Officer shall immediately impound any dangerous dog or potentially dangerous dog found running at large as defined in OHMC 7.32.030(7).
 - (b) The owner of said dog shall be guilty of a gross misdemeanor punishable by a fine of up to Five Thousand Dollars (\$5,000) or a jail sentence of one (1) year or both fine and jail time.
 - (c) Each day of violation is a separate offense.
- (2) If a dangerous dog of an owner with a prior conviction under this chapter or RCW chapter 16.08 attacks or bites a person or another domestic animal, the dog's owner is guilty of a Class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an Animal Control Officer, placed with the Animal Control Authority to be held in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.
- (3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a Class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an Animal Control Officer, placed with the Animal Control Authority to be held in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

Section Fourteen. Oak Harbor Municipal Code Section 7.32.130 entitled "Violation - Penalty" is hereby amended to read as follows:

7.32.130 Destruction. Whenever the Animal Control Authority comes into possession of a dangerous dog or potentially dangerous dog they shall destroy the same if the dog is not reclaimed by the owner within thirty (30) days. Under no circumstances shall a dangerous dog be sold or given to another as a pet.

Section Fifteen. There is hereby added a new section to the Oak Harbor Municipal Code at Section 7.32.140 entitled “Costs” to read as follows:

7.32.140 Costs.

- (1) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all actual service costs expended under OHMC 7.32.050(3).
- (2) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all costs of confinement for any dog impounded pursuant to a violation of OHMC 7.32.080(1).
- (3) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all costs of destruction expended for any dog impounded and not reclaimed under OHMC 7.32.100.

Section Sixteen. There is hereby added a new section to the Oak Harbor Municipal Code at Section 7.32.150 entitled “Failure to redeem” to read as follows:

7.32.150 Failure to Reclaim. Whenever a dog is seized and impounded under this chapter the failure to either reclaim the dog or to give a written surrender of the dog to the Animal Control Authority shall result in the owner being prohibited from registering any new dogs in the City for a period of one (1) year. This prohibition shall not apply to the renewal of any existing dog license.

Section Seventeen. Oak Harbor Municipal Code Section 7.32.100 entitled “Nuisance” is hereby recodified and readopted as:

7.32.160 Nuisance. The harboring, keeping and maintaining of a potentially dangerous dog or dangerous dog contrary to this chapter is a public nuisance and is subject to abatement by judicial procedure or by a summary abatement in an emergency or life threatening situation. If summary removal of a dog occurs, the dog shall not be destroyed before a hearing can be held concerning the removal and destruction.

Section Eighteen. Oak Harbor Municipal Code Section 7.32.090 entitled “Civil Damages” is hereby recodified and readopted as:

7.32.170 Civil damages.

- (1) In addition to criminal penalties, the following civil damages shall be incurred by the owner of a potentially dangerous dog or dangerous dog:
 - (a) If a potentially dangerous dog or dangerous dog enters onto the property of another without permission, the owner of the potentially dangerous dog or dangerous dog shall be liable for all direct damages incurred as a result of such

intrusion and for general damages, even if no special damages are proved, of a minimum of \$250.00.

- (b) If a potentially dangerous dog or dangerous dog menaces a person, the owner shall be liable for damages not to be less than \$250.00.
 - (c) If a potentially dangerous dog or dangerous dog injures a person, the owner of the potentially dangerous dog or dangerous dog shall be liable for damages of three times all the medical expenses in addition to any other damages or relief the person injured is entitled to under law.
- (2) The damage enumerated under subsection (1) of this section may be imposed as restitution requirements for criminal violations of this chapter; provided, that in no event may damages awarded as restitution exceed \$5,000.

Section Nineteen. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Twenty. Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2006.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____