

## CHAPTER 90: ANIMALS

The Village of Birch Run Code is hereby amended to replace section 90.03 as follows:

### § 90.03 DANGEROUS ANIMALS.

#### (A) **Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*OWNER* means a person keeping, possessing, harboring or having the care or custody of a dog.

*VICIOUS DOG* means any dog:

- (1) With a known propensity, tendency or disposition to attack without provocation; to cause injury; or to otherwise threaten the safety of human beings or domestic animals;
- (2) Which, without provocation, has attacked or bitten a human being or domestic animal;
- (3) Owned or harbored primarily or in part for the purpose of dog fighting or trained for dog fighting; or
- (4) Which, without provocation, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack.
- (5) However, a vicious dog does not include any of the following:
  - a. A dog that bites or attacks a person who provokes or torments the dog, or
  - b. A dog that bites or attacks a person who is knowingly trespassing on the property of the dog's owner, or
  - c. A dog that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault.

*PROVOKE* means to perform a willful act or omission that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack by an ordinary dog.

*TORMENT* means an act or omission that causes unjustifiable pain, suffering, and distress to an animal, or causes mental and emotional anguish in the dog as evidenced by its altered behavior, for a purpose such as sadistic pleasure, coercion, or punishment that

an ordinary and reasonable person would conclude is likely to precipitate the bite or attack.

**(B) Exemptions.**

The following exemptions shall apply to this section:

- (1) This section shall not apply to dogs used by a police department or law enforcement agency.

**(C) Harboring a vicious dog.**

No person shall own or harbor a vicious dog, except pursuant to paragraph (G), or a dog that has been bitten by any animal known to have been afflicted with rabies.

**(D) Declaring a dog vicious.**

If a police officer has reasonable cause to believe that a dog is vicious, the Chief of Police, or his designee, may declare it to be a vicious dog and may direct that the dog be immediately impounded.

**(E) Notice of vicious dog declaration.**

Within five days of declaring a dog vicious, the Chief of Police, or his designee, shall notify the dog's owner in writing of the declaration of viciousness. The notice shall identify the requirements and conditions for maintaining a vicious dog as set forth in this division. If the owner cannot be located, the dog may be immediately impounded, and notice shall be posted on the owner's property or sent by first class mail to the owner's last known address.

**(F) Requirements for keeping a vicious dog.**

The owner of a vicious dog who wishes to keep the vicious dog, shall be subject to the following:

- (1) *Confinement.* All vicious dogs shall be securely confined indoors or in an enclosed and locked pen or structure upon the premises of the owner. The pen or structure must have minimum dimensions of five feet by ten feet and must have secure sides and a secure top attached to the sides. If no bottom is secured to the sides, the sides must be imbedded into the ground no less than two feet. All pens or structures must be adequately lighted and kept clean and sanitary. The enclosure must also protect the dog from the elements. The dog must be provided with fresh water at all times and fed regularly.
- (2) *Leash and muzzle.* The owner of a vicious dog shall not allow the dog to go outside the house or its kennel, pen or structure unless the dog is muzzled, restrained by a chain or leash not more than four feet in length, and under the physical control of a person of at least 14 years of age. The muzzle must not cause

injury to the dog or interfere with its vision or respiration, but must prevent the dog from biting any human or animal.

- (3) *Signs.* The owner of a vicious dog shall display in a prominent place on the owner's premises a clearly visible warning sign indicating that there is a vicious dog on the premises. The sign must be readable from the public highway or thoroughfare. The owner shall also display a sign with a symbol warning children of the presence of a vicious dog. Similar signs shall be posted on the dog's kennel, pen or enclosed structure.
- (4) *Insurance.* The owner of a vicious dog must provide proof to the Village Clerk that the owner has procured public liability insurance with a single incident amount of \$100,000.00 per dog insuring the owner, with the village named an additional insured, for any damage or personal injury which may be caused by the owner's vicious dog.

**(G) Impoundment and destruction of vicious dog.**

After the Chief of Police, or his designee, has ordered the impoundment of a dog he shall apply to the district court for the destruction of a dog by filing a sworn complaint if:

- (1) The dog has attacked, bitten or injured a human being or domestic animal; or
- (2) The dog is a vicious dog as defined in paragraph (A) and/or the owner has failed to comply with the requirements and conditions for keeping a vicious dog as required in paragraph (F); or
- (3) The dog poses a threat of serious harm to the public health or safety; or
- (4) The dog is rabid; or
- (5) There is any other reason provided by this Code or state law.

The Chief of Police, or his designee, may ask the court to impose the conditions in paragraph (F) on continued ownership of a dog that the court determines to be vicious but does not meet the criteria for destruction.

**(H) Impoundment and destruction of vicious dog.**

Within five days of an impoundment, the village shall notify the dog's owner in writing of the impoundment in accordance with the notification procedure set forth in paragraph (E).

**(I) Change of status of vicious dog.**

The owner of a vicious dog shall immediately notify the Chief of Police if the vicious dog is unconfined and on the loose or has attacked a human being or domestic animal.

**(J) Change of ownership of vicious dog.**

If the owner of a vicious dog sells, gives away or otherwise transfers ownership of the vicious dog, he shall within three days provide the Chief of Police with the name, address and telephone number of the new owner. The previous owner shall notify the new owner of the dog's designation as a vicious dog and of the requirements and conditions for keeping a vicious dog.

**(K) Fighting.**

No person shall possess, harbor or maintain care or custody of any dog for the purpose of dog fighting nor shall any person train, torment, badger, bait or use any dog for the reason of causing or encouraging the dog to attack human beings or domestic animals.

**(L) Other vicious animals.**

Except as otherwise provided herein, it shall be illegal to own or harbor any mammal, amphibian, reptile or fowl of a species which, due to size, vicious nature or other characteristics, constitutes a danger to human life, physical well-being or property, including, but not limited to lions, tigers, leopards, panthers, bears, wolves, apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants and snakes which are poisonous or otherwise present a risk of serious physical harm or death to human beings as a result of their nature or physical makeup, including all constrictors. This section shall not apply to the ownership or possession of any such mammal, amphibian, reptile or fowl for a temporary event such as a circus, sporting event or zoo exhibition where such mammal, amphibian, reptile or fowl are handled by trained and experienced professional caretakers, or possession of such creatures for veterinary care or in a bona fide educational or medical institution, museum or other place where they are kept as live specimens for public view or for the purpose of instruction or study.