

Oelwein Police Department

501 Rock Island Road
Oelwein, Iowa 50662

Jeremy P. Logan
Chief of Police

Date: 06/23/2023

Heather Hinze
214 2nd Ave NW
Oelwein, Iowa 50662

Dear Heather Hinze:

This letter is to formally advise you that your dog that you possess, a 2yo male pitbull, is in violation of Section 19-26 of the Oelwein City Code. This section specifically describes and outlines procedures for the handling of vicious dogs.

On June 18, 2023 at 12:45pm, it was reported to the Oelwein Police Department that a young juvenile male had been bitten by a dog in the neighborhood. I responded to the 100-blk of 2nd St NW and met with the mother (reporting party) and young male. The juvenile male and a few other children were walking their dog on the sidewalk when the male pitbull approached them and bit the boy and also their dog that they were walking. The boy's right calf was bitten and the dog's tongue. Neighbors next to the reporting party said they have witnessed the dog running loose and being aggressive. A neighbor directly next to Heinze's home also said there was an incident in the past where the male pitbull bit her son but it was not reported to the police department. Oelwein City Code Section 19-26 describes a vicious dog as any of the following:

1. "Vicious Dog" means:

- A. Any dog which when unprovoked, in a vicious or terrorizing manner approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or
- B. Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
- C. Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or
- D. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

Therefore, you are hereby directed, that within five (5) days of receiving this notice, excluding Saturday & Sunday, you shall:

- A. Register said vicious dogs pursuant to the terms and conditions of Section 19-29, (enclosed) or;
- B. Permanently remove said dogs from the City of Oelwein, and submit adequate proof of such removal, or;
- C. Destroy said dogs in an expeditious and humane manner, and submit adequate written documentation of such act.

You do have the right to appeal this declaration to the Oelwein City Council. That appeal needs to be made, in writing, within five (5) days, exclusive of Saturdays & Sundays and delivered to Oelwein City Hall, 20 2nd Ave S.W., Oelwein, Iowa 50662. If no notice of appeal is received within this time frame, it will be deemed that the appeal is waived. *An appeal of this declaration is separate from any possible pending court action that may be required for charges filed for, including but not limited to, Dog At Large, Disturbing the Public Quiet etc... Citations/charges will be addressed in magistrate court. The appeal of this declaration will be addressed by the Oelwein City Council.

If the vicious dog is not registered, removed or destroyed or if no appeal is received within five days, the City of Oelwein will impound the dogs and assess the costs against you.

Thank you for your time and anticipated expeditious response to this matter.

Respectfully,



Officer
Oelwein Police Department

Enc. Vicious Animal Ordinance of the City of Oelwein.

Cc: Chief of Police, City Hall, File [23-013290](#)

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SECTION 19-26. DEFINITIONS.

As used in Sections 19-26 through 19-33, inclusive, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

1. "Vicious Dog" means:

- A. Any dog which when unprovoked, in a vicious or terrorizing manner approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or
- B. Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
- C. Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or
- D. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

Notwithstanding the definition of a vicious dog above, no dog may be declared vicious if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime.

No dog may be declared vicious if any injury or damage was sustained by a domestic animal which at the time such injury or damage was sustained was teasing, tormenting, abusing or assaulting the dog. No dog may be declared vicious if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

2. "Enclosure" means a fence or structure of at least six feet ("6') in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping from the enclosure. Any gates or access to the enclosure shall be self closing and equipped with a keyed or combination locking device.

3. "Animal Control Officer" means the Animal Control Warden, the Chief of Police or the Chief's designee.

4. "Impounded" means taken into custody by the Animal Control Officer.

5. "Persons" means a natural person or any legal entity, including but not limited to, a corporation, firm, partnership or trust.

SECTION 19-27. VICIOUS DOG – DESIGNATION.

In the event that the Animal Control Officer has probable cause to believe that a dog is vicious, said officer shall notify, in writing, by personal service or certified mail, the owner and keeper of said dog, that said dog has been declared a vicious dog.

The written notice shall include:

- 1. Description of the dog, to the extent possible;
- 2. State that the dog is vicious pursuant to the provisions of this chapter;
- 3. State that within five (5) days, exclusive of Saturdays and Sundays, from the receipt of notice the owner or keeper of the dog shall:
 - A. Register said vicious dog pursuant to the terms and conditions of Section 19-29 below, or;
 - B. Permanently remove said dog from the city of Oelwein, and submit adequate proof of such removal, or;
 - C. Destroy said dog in an expeditious and humane manner, and submit adequate written documentation of such act.

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4. State that the owner or keeper of the dog may appeal the decision of the Animal Control Officer to the City Council, in writing, within five (5) days, exclusive of Saturdays and Sundays. The notice shall further advise that in the event there is no written notice of appeal filed with the City Clerk within five (5) days, exclusive of Saturdays and Sundays, the right to appeal will be deemed waived and the decision of the Animal Control Officer will be conclusively presumed.

5. State that if the vicious dog has not been registered, removed or destroyed or if no appeal is requested within the five (5) days, exclusive of Saturdays and Sundays, the city will impound the dog and assess the costs against the owner and keeper of the dog.

SECTION 19-28. APPEALS.

Any owner or keeper of a dog that has been declared vicious may appeal to the City Council for review. The appeal must be in writing and received by the City Clerk within five (5) days, exclusive of Saturdays and Sundays, of the Animal Control Officers notice. The City Council shall, within fourteen (14) days of receipt of the appeal, fix the time and place of the hearing, which shall be within thirty days after the filing of the appeal. The City Council, after hearing such testimony and evidence as it may deem proper, shall render its decision. The decision of the City Council shall be final and the Animal Control Officer shall take such action as is necessary to carry out such decision.

In the event that the Animal Control Officer has probable cause to believe that the dog in question is vicious and may pose a threat of serious harm to human beings or other domestic animals, the Animal Control Officer may seize and impound the dog pending the appeal. The owner or keeper of the dog shall be liable to the City of Oelwein for the costs and expenses of keeping such dog if the dog is found to be a vicious dog.

SECTION 19-29. REQUIREMENTS FOR REGISTRATION.

1. No vicious dog shall be licensed by the City of Oelwein for any licensing period commencing after the effective date of this ordinance unless the owner or keeper of such vicious dog shall meet the following requirements:

A. The owner or keeper shall present to the city or town clerk or other licensing authority, proof that the owner or keeper has procured liability insurance issued by an insurance company licensed to do business in the State of Iowa, in the amount of at least one hundred thousand dollars (\$100,000.00) covering any damage or injury which may be caused by such vicious dog during the twelve (12) month period for which licensing is sought, which policy shall contain a provision requiring the city or town to be named as additional insured for the sole purpose of the city or town clerk or other licensing authority where such dog is licensed to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

B. The owner or keeper shall cause the vicious dog to be identified by means of a special blaze orange collar visible from a distance of 100 feet, which the dog must wear at all times.

C. The owner or keeper shall display a sign on his or her premises warning that there is a vicious dog on the premises. Said sign shall be visible and capable of being read from the public highway.

D. The owner or keeper shall sign a statement attesting that:

1. The owner or keeper shall maintain and not voluntarily cancel the liability insurance required by this section during the twelve (12) month period for which licensing is sought, unless the owner or keeper shall cease to own or keep the vicious dog prior to expiration of such license.

2. The owner or keeper shall, on or prior to the effective date of such license for which application is being made, have an enclosure for the vicious dog on the property where the vicious dog will be kept or maintained.

3. The owner or keeper shall notify the licensing authority and the animal control warden immediately if a vicious dog is on the loose, is unconfined, has attacked another animal or has attacked a human being, or has died or has been sold or given away. If the vicious dog has been sold or given away the owner or keeper shall also provide the licensing authority with the name, address and telephone number of the new owner of the vicious dog.

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2. The Animal Control Officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this chapter, and any such officer is hereby empowered to seize and impound any vicious dog whose owner or keeper fails to comply with the provisions hereof.

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In the event that the owner or keeper of the dog refuses to surrender the animal to the officer, the officer may request a police officer to obtain a search warrant to seize the dog upon execution of the warrant.

Notwithstanding any other provisions of this code, any person in possession of a vicious dog upon the effective date of this ordinance shall have fourteen days to amend any current license application to show compliance with Section 19-29 of this code.

SECTION 19-30. CONTROL OF VICIOUS DOGS.

All vicious dogs shall be confined in an enclosure. It shall be unlawful for any owner or keeper to maintain a vicious dog upon any premises which does not have a locked enclosure.

It shall be unlawful for any owner or keeper to allow any vicious dog to be outside of the dwelling of the owner or keeper or outside of the enclosure unless it is necessary for the owner or keeper to obtain veterinary care for the vicious dog or to sell or give away the vicious dog or to comply with commands or directions of the animal control warden with respect to the vicious dog, or to comply with the provisions of Section 19-27(3) of this Chapter. In such event, the vicious dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of three hundred (300) pounds and not exceeding three feet (3') in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.

SECTION 19-31. PURPOSE OR INTENT - - HARBORING.

No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging said dog to unprovoked attacks upon human beings or domestic animals. No person shall possess with intent to sell, or offer for sale, breed, or buy or attempt to buy within the city any vicious dog.

SECTION 19-32. PENALTIES FOR VIOLATION.

1. Any owner or keeper of a dog violating any of the provisions of this chapter shall, upon conviction, be guilty of a municipal infraction. Each day that a violation occurs or is permitted to exist by the violator, constitutes a separate offense.

2. If any dog previously declared to be a vicious dog, shall, when unprovoked, attack, assault, bite or otherwise injure any human being or assist in attacking, assaulting, biting or otherwise injuring any human being while out of or within the enclosure of the owner or keeper of such vicious dog, or while otherwise, on or off the property of the owner or keeper whether or not such vicious dog was on a leash and securely muzzled or whether the vicious dog escaped without fault of the owner or keeper, the owner or keeper of such dog shall be guilty of a municipal infraction. It is rebuttably presumed as a matter of law that the owning, keeping or harboring of a vicious dog in violation of this chapter is a nuisance. It shall not be necessary, in order to sustain any such action, to prove that the owner or keeper of such vicious dog knew that such vicious dog possessed the propensity to cause such damage or that the vicious dog had a vicious nature. Upon such attack or assault, the Animal Control Officer is empowered to confiscate and, after expiration of a five (5) day waiting period exclusive of Sundays and holidays, shall destroy said vicious dog.