

**ORDINANCE NO. 84**

**AN ORDINANCE GOVERNING THE GENERAL PROHIBITION AGAINST THE OWNERSHIP OF A VICIOUS DOG; TO MAKE AN UNLAWFUL DOG ATTACK A VIOLATION; TO FIX THE PENALTY FOR VIOLATION OF THIS ORDINANCE; AND TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES**

**WHEREAS**, the ownership of a vicious dog, or an unlawful dog attack, poses a threat to the citizens of Goshen and their pets and creates a public nuisance within the City of Goshen; and

**WHEREAS**, the City of Goshen is presently without a means of preventing the ownership of a vicious dog and preventing an unlawful dog attack; and

**WHEREAS**, there have been complaints regarding the actions of vicious dogs, and unlawful dog attacks, making it vitally necessary to address this issue as soon as possible; and

**WHEREAS**, emergency personnel are at risk for serious injury from dog attack by trained guard, attack or vicious dogs while responding to an emergency at premises housing such dogs; and

**WHEREAS**, the promulgation and adoption of this Ordinance is done pursuant to the police power of the City of Goshen.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GOSHEN:**

**SECTION 1.** Vicious dogs. It shall be unlawful for any person to keep any vicious dog within the corporate limits of the City of Goshen. A dog is considered vicious for purposes of this section if it:

- a. Causes death or serious physical injury to a person engaged in a lawful activity;
- b. On more than one (1) occasion, attacks or bites without provocation a person engaged in a lawful activity;
- c. On more than one (1) occasion, while off the property of its owner and without provocation, seriously injures another domesticated animal, or, in the owner's presence, on his property without provocation, seriously injures another domesticated animal;
- d. Without provocation, kills a domesticated animal;

- e. Is trained for dog fighting or is owned or kept for the purpose of dog fighting;
- f. Is trained to attack humans, other dogs or domestic pets, but shall not mean a dog trained as a hunting dog for the sport of recreational hunting or trained as a herd dog and it is no defense that the training to attack humans is for purpose of guarding or protecting premises;
- g. Acts in a manner that causes or should cause its owner to know that it is potentially vicious; or
- h. Has been declared vicious, or has been given some other designation, by another governmental body under circumstances that would meet the grounds for vicious dog designation under the provisions of this section.

## SECTION 2. Declaration of a vicious dog.

- a. Notice to owner. In instances where the dog is declared vicious, the Marshal shall, within forty-eight (48) hours, notify the owner of the dog in writing posted at the owner's or custodian's last known address, that the dog has been determined to be a vicious animal, the reasons for the declaration and, if applicable, that the dog has been quarantined or impounded by the city. Upon receipt of notice, the owner shall immediately confine the dog or deliver it to a veterinarian or shelter outside the corporate limits of Goshen. The owner shall have five (5) days from delivery of the notice to contact the Marshal and comply with the ordinance by removing the dog from the city limits or by having the dog euthanized.
- b. Opportunity to contest vicious designation. The notice shall also inform the owner or custodian of the dog that a hearing to contest the declaration shall be held before the Mayor, or appointed designee, if a request for a hearing is submitted in writing to the Marshal within five (5) working days from receipt of the notice of vicious-dog declaration. Once the hearing is scheduled, the Marshal shall give notice of the hearing to the owner and to any person who was injured or whose pet suffered an injury by such dog.
- c. Status pending hearing. Once notice of vicious dog designation has been given, the dog shall be considered vicious unless, and until such time as, the declaration is overruled by the Mayor.
- d. Opportunity to contest decision by Marshal not to designate dog as vicious. If the Marshal, after investigating allegations that a dog is vicious, decides not to designate the dog as vicious, the Marshal shall also give written notice to any person who was injured or whose pet suffered an injury by such dog. That notice shall inform the

aggrieved party that a hearing to contest the declaration shall be held before the Mayor, or appointed designee, if a request for a hearing is submitted in writing to the Marshal within five (5) working days from receipt of the notice of the Marshal's decision not to declare the dog as vicious. Once the hearing is scheduled, the Marshal shall give notice of the hearing to the owner and to the person who sought the hearing.

e. Hearings. (i) Hearings required pursuant to this subsection shall be held no more than five (5) working days from the date of receipt of the request. The Mayor, or appointed designee, shall act as the appeal hearing officer and shall make his ruling on the basis of a preponderance of the evidence presented at the hearing. The hearing shall be an informal proceeding, and each party, including the owner of the dog, the party injured by the dog and the City's representative, shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called the witness to testify, and to rebut the evidence against the party. Either party may examine the owner/custodian. The decision of the hearing officer shall be in writing and filed with the City Recorder. The decision may be appealed to the City Council by any party by filing a written request with the City Recorder within five (5) working days of the decision being filed with the City Recorder. Such appeal shall be heard at the next regularly scheduled meeting of the Council.

(ii) The hearing officer, or the Council on appeal, shall have the discretion to consider mitigating or extenuating circumstances and allow continued possession of the animal by the owner despite a determination that the dog is vicious, upon such conditions that protect the citizens of Goshen. Such conditions shall include confined enclosure for the dog, including size, type and design of fencing to preclude future incidents; warning sign placed prominently on the owner's property and on the kennel or enclosure housing the dog; leash or muzzle requirements if outside the confinement; photograph identification; notice by owner of change of status, physical location, change of ownership of dog; or, permit or fee to be paid to City; all to be agreed in writing by the dog owner and violation of which results in immediate vacation of the confinement agreement and immediate surrender of the dog to the Marshal for disposition.

f. Change of status. After the Marshal has designated a dog as vicious and so long as such designation remains, the owner or custodian of a vicious dog shall notify the Marshal immediately if the dog is unconfined and on the loose, or has attacked a human or a domestic animal.

g. Failure to comply. If the person owning, keeping, possessing or otherwise maintaining the dog fails to request a hearing; if the hearing officer determines that the vicious declaration stands and such determination is not appealed to the City Council; or if appealed to the Council and the Council decides the vicious declaration stands, the

owner or custodian shall comply with the ordinance by removing the dog from the corporate limits or by having the dog euthanized. If the dog owner/custodian does not comply with the ordinance, the Marshal, the Mayor, the City Attorney, or appointed designee, may seek a court order to impound the dog, if necessary, and have such dog euthanized.

h. Restitution. In addition to the fines, penalties, and forfeitures imposed under the provisions of this ordinance, the court ordering impoundment, or any court of competent jurisdiction, if no impoundment order is sought, may require the defendant to make restitution to any person or animal owner injured for medical or veterinarian bills, to the city, the animal control shelter, veterinarian or a society which is incorporated for the prevention of cruelty to animals for housing, feeding, or providing medical treatment to a dog impounded pursuant to this ordinance.

i. Exemptions. Dogs that are used regularly for law enforcement purposes shall not be subject to this section, but shall be confined and maintained in accordance the law enforcement agency's general orders.

SECTION 3. Violation. A person commits the offense of unlawful dog attack if:

- a. The person owns a dog that the person knows or has reason to know has a propensity to attack, cause injury, or endanger the safety of another person, other dog or domestic pet without provocation;
- b. The person negligently allows the dog to attack another person, other dog or domestic pet, without provocation, regardless of location; and
- c. The attack causes the death of or serious physical injury to the person, dog or domestic pet attacked.

SECTION 4. Penalty. Any person, firm or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than (\$30.00) and not more than (\$250.00) for each offense. For purposes of this ordinance, each day of activity proscribed as unlawful under this ordinance shall be considered a separate violation for which the party violating the ordinance shall be subject.

SECTION 5. Severability. If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provision of this ordinance not specifically included in such judgment and to that extent the provisions hereof are declared to be severable.

SECTION 6. Emergency Clause. Since there are no current regulations regarding unlawful dog attacks, the ownership of a trained attack dog or vicious dog within the corporate

limits of Goshen, and there have been recent complaints of unlawful dog attacks, and of the actions of a trained attack dog or vicious dog, it is hereby declared that based on the conditions set forth herein, an emergency exists and this Ordinance, being necessary for the immediate protection of the health, safety, and welfare of the citizens of Goshen, Arkansas, shall be in effect immediately upon its passage, approval, and publication.


PASSED AND APPROVED this 9<sup>th</sup> day of June, 2009.

  
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Joe Benson Mayor

ATTEST:

  
\_\_\_\_\_  
Sharon Baggett, City Recorder

APPROVED AS TO FORM:

  
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Charles L. Harwell, City Attorney

ROLL CALL VOTE ADOPTING THE ORDINANCE

Names Of Those Voting YEA

Names Of Those Voting NAY

Paula Anderson  
Andy Bethell  
Brian Buell  
JJ Lockhart  
Max Poye  
Dick Seddon

Absent

ROLL CALL VOTE ADOPTING THE EMERGENCY CLAUSE

Names Of Those Voting YEA

Paula Anderson  
Andy Bethell  
Brian Buell  
JJ Lockhart  
Max Poye  
Dick Seddon

Names Of Those Voting NAY

Absent