

VILLAGE OF BENSON

ORDINANCE NO. 10 – 04

AN ORDINANCE TO PROVIDE FOR ANIMAL CONTROL

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF BENSON, ILLINOIS:

Section I.

10-4-1: DEFINITION:

For the purposes of this chapter, the word "dog" shall be construed to include animals of every kind and description of the canine species whatsoever from and over three (3) months of age, and shall also include the female as well as the male. For the purpose of this chapter, the word "cat" shall be construed to include animals of every kind and description of the feline species whatsoever from and over three (3) months of age and shall also include the female as well as the male. The word "animal" used in this chapter shall include any other two (2) or four (4) legged animal.

10-4-2: VACCINATION AGAINST RABIES:

(A) It shall be unlawful for any person to own, keep, maintain or harbor a dog, cat or other animal requiring rabies vaccination within the village without first having said dog, cat or other animal vaccinated by a licensed veterinarian against rabies, and it shall be the duty of every such person owning, having charge of or control of any dog, cat or other animal requiring rabies vaccination to have said dog, cat or other animal vaccinated against rabies annually thereafter.

(B) It shall be the duty of every licensed veterinarian vaccinating a dog, cat or other animal requiring rabies vaccination against rabies to issue a certificate showing the date of such vaccination, a description of the dog, cat or other animal requiring rabies vaccination, and the name and address of the owner thereof. Such certificates shall be in triplicate and be numbered in the order issued. One copy of such certificate shall be retained by the veterinarian, and two (2) copies shall be delivered to the owner. One copy of said certificate shall be filed by the owner of the dog, cat or other animal requiring rabies vaccination at the time said dog, cat or other animal is registered and the other copy shall be retained by the owner of the dog, cat or other animal.

10-4-3: RUNNING AT LARGE:

It shall be unlawful for any person keeping, maintaining or harboring a dog, cat or any other animal to allow said dog, cat or other animal to run at large at any time beyond the limits of the land of its owner, and upon the streets, sidewalks or other public or private property. For the purpose of this section, a dog, cat or other animal shall be considered not to be at large whenever said dog, cat or other animal is under the control of a person by means of a leash, chain, cord or rope of not more than ten feet (10') in length and of sufficient strength to control said dog, cat or other animal.

10-4-4: IMPOUNDING AND DESTROYING¹:

Any dog, cat or other animal found in the village in violation of any provision of this chapter shall be impounded by the animal control officer or anyone else authorized by the president and board of trustees to perform such duties, and placed or kept in a suitable place. The animal control officer or any police officer or anyone else properly delegated by the village, may, following the impounding of such dog, cat or other animal, notify the owner of the dog, cat or other animal, or if the owner of the dog, cat or other animal is unknown, said individual shall post written notices in at least three (3) public places in the village describing the dog, cat or other animal and the place and time of taking of said dog, cat or other animal. Unless the dog, cat or other animal is redeemed and all charges paid, and the dog, cat or other animal is registered and vaccinated as herein required, said dog, cat or other animal may be sold or destroyed in the most humane manner possible after the expiration of seven (7) days from the time said dog, cat or other animal is impounded or the posting of notices aforesaid; provided, however, that any dog, cat or other animal which appears to be suffering from rabies or affected with hydrophobia, mange or other infectious, contagious or dangerous disease shall not be released, but may be destroyed forthwith. Additionally, any animal impounded under the terms of this provision, shall not be released until all fines and other sums have been paid to the person designated to receive such sums by the president and board of trustees of the village.

If a person claims an animal, be it a dog, cat or other animal, which has been confined pursuant to the terms of this section, said person, shall be responsible for all expenses for boarding as well as any vaccination or medical treatment that is necessary for that animal, dog or cat. This applies to all animals picked up pursuant to the terms of this section. The fine for the violation of any provision of this chapter shall be fifteen dollars (\$15.00) for the first offense and twenty-five dollars (\$25.00) for the second offense and every offense thereafter.

10-4-5: ANIMALS CREATING A DISTURBANCE:

(A) Definitions:

ANIMAL: Any and all types of animals, both domesticated and wild, male and female, singular and plural.

CORROBORATED: Additional evidence of a different person or character to the same point. A complaint is said to be corroborated when it is shown to correspond with the representation of another witness or to comport with some fact otherwise known or established related to the violation.

OWNER OR KEEPER: Any person having a right of property in an animal, or who has it in his care or control, or who knowingly permits such animal to remain on property owned or controlled by him. If such animal is licensed, the person last issued such license shall be presumed to be the owner of the animal and, for the purposes of this section, if such person is a minor then the parent or guardian with whom the child resides shall be considered to be the "owner or keeper".

(B) **Prohibited:** It shall be unlawful for any person to be the owner or keeper of any animal or animals which emit noises in such a manner that is unreasonably loud, unnecessary, and disturbing or annoying.

(C) **Interpretation:** For the purposes of this section, noises occurring between the hours of eight o'clock (8:00) P.M. and seven o'clock (7:00) A.M. are more unreasonable, disturbing, and unnecessary than noises occurring between seven o'clock (7:00) A.M. and eight o'clock (8:00) P.M. Additionally, repetitious sounds are more unreasonable, disturbing, and unnecessary than intermittent sounds.

(D) **First Complaint:** Upon receipt of a complaint or observation of a violation of this section, the owner or keeper of the animal or animals shall be notified of the violation and served with a written copy of this section, and a record of such service shall be maintained by village officials or the village's law enforcement agency. This service may be obtained by personal service or by certified or registered mail. If the person cannot be served or refuses service after a reasonable attempt to do so, service can be obtained by regular mail or by posting the violation notice and copy of this section on the front door of the person's residence or building located on the property on which the violation has occurred.

(E) **Subsequent Violation:** If, at any time within twelve (12) months of the service described above, another such violation occurs and is complained of and corroborated, the person may be issued a citation charging a violation of this section. However, if a law enforcement officer witnesses or observes the subsequent violation, such violation need not be complained of or corroborated by another person. Additional notice shall not be required at any time during the twelve (12) month period following the initial notice in order for a subsequent violation or violations of this section to occur.

(F) **Penalty:** A person violating this section shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each such offense. A person violating this section within twelve (12) months of the first violation shall be fined not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00) for each such offense. The chairperson of the village's ordinance committee shall be permitted to issue administrative citations for violations of this section under section **1-4-13** of this code. A

separate offense shall be deemed committed on each date upon which a violation occurs.(ORD. 10-04)

10-4-6: DANGEROUS, MISCHIEVOUS ANIMALS:

Whoever knowingly suffers or permits any dangerous, unruly, or mischievous animal owned or kept by him to go at large in the village to the danger, annoyance, or damage of any person within the village shall be subject to a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense, and not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00) for each subsequent offense.

10-4-7: DELIBERATE VIOLATION FOR PURPOSE OF IMPOUNDMENT:

Whoever willfully drives or entices any animal from beyond the inhabited part of the village into the inhabited part of the village, or aids or abets the same, or lets any animal out of any enclosure in which it may be confined, or aids or abets in the letting out or escape thereof, in order to take up or impound the same shall be subject to a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) in each case.

10-4-8: VICIOUS DOGS:

(A) Definition Of Vicious Dog: For the purposes of this chapter, "vicious dog" is defined as:

1. Any individual dog that, without provocation, bites or attacks a human being or domestic animal either on public or private property; or
2. Any individual dog that has a known propensity, tendency or disposition to attack without provocation, to cause injury, or to otherwise endanger the safety of human beings or domestic animals; or
3. Any individual dog that is owned or harbored primarily or in part for the purpose of dog fighting or is trained for dog fighting; or
4. Any individual dog that has, upon two (2) separate occasions, when either unmuzzled, unleashed, or unattended by its owner or a member of its owner's family, in a vicious or terrorizing manner, approached any person in an apparent attitude of attack upon streets, sidewalks, any public grounds or places, or private property not owned or controlled by the owner.
5. No dog shall be deemed "vicious" if it bites, attacks, or menaces a trespasser on the property of its owner, anyone assaulting its owner, anyone who has tormented or abused the dog or its offspring, or is a professionally trained dog used for law enforcement or guard duties.

(B) Definition Of Owner: For the purposes of this chapter, "owner" is defined as any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian.

(C) Possession Illegal: It shall be unlawful for any person to keep, harbor, or in any way possess within the corporate limits of the village a vicious dog, unless the dog is spayed or neutered, and unless the dog is licensed and confined as provided by this chapter.

(D) Identification Of Vicious Dogs: Any law enforcement officer or animal control officer employed by or under contract with the village or Woodford County who suspects that a dog may be vicious within the meaning of this section may conduct an investigation to determine whether or not the dog has committed any act or displays any characteristics which qualify it as a vicious dog. If upon the completion of such investigation the officer concludes that the dog is a vicious dog, such officer shall issue a written notice of determination, which includes at least the following:

1. A description of the dog;
2. Information available concerning the ownership of the dog;
3. A statement or conclusion that the dog is a vicious dog within the meaning of this section;
4. A description of the acts or characteristics, which led the officer to conclude that the dog is a vicious dog;
5. Notice to the owner that the vicious dog must be licensed and confined in accordance with the requirements of this chapter;
6. Notice that the owner may appeal the determination of the officer to the village president within seven (7) working days after the determination is served upon the owner.

This notice of determination shall be served on the owner by certified mail from the village clerk or the "code official" (as designated in section 7-4-13 of this code) to the last known address of the owner or by personal service from the officer or any person authorized by law to make personal service. If the owner cannot be served or refuses service after a reasonable attempt to do so, service can be obtained by regular mail or by posting the notice of determination on the front door of the owner's residence.

(E) Appeal Of A Determination That A Dog Is A Vicious Dog:

1. The owner may appeal the determination that the owner's dog is a vicious dog. An appeal must be in writing and directed to the village president, and it must be filed by the owner with the village clerk at the village hall within seven (7) days after receipt of the notice of determination, which identifies the dog as a vicious dog. Should the owner fail to appeal the determination within seven (7) days, the determination of the investigating officer that the dog is a vicious dog shall become final. Upon receipt of an appeal, the village president, or such person as the village president may designate to act on the village president's behalf, shall convene a hearing for the purpose of determining whether the dog in question is a vicious dog.
2. The hearing shall be held within no less than five (5) nor more than ten (10) business days after the village president or his designee provides written notice of the time, date and location

of the hearing upon the owner at the owner's last known address. The hearing shall be conducted informally and shall remain open to the public. At the hearing, the owner shall have the opportunity to present evidence to explain why the dog should not be declared a vicious dog. The owner shall have the right to be represented by legal counsel at the owner's expense. The officer who made the initial determination that the dog is vicious, and any other persons having knowledge of the facts and circumstances, may be heard by the village president or his designee. All witnesses at the hearing shall be subject to cross-examination by the owner, village representatives, or either party's attorney. If an appeal has been properly requested, the village president or his designee shall hold this hearing and decide all issues related to the appeal regardless of whether the owner appears at the hearing. Evidence regarding the determination of whether a dog is a vicious dog may include any acts or incidents involving the dog after the events that lead to the issuance of the notice of determination up to the time of the hearing.

3. Within five (5) business days after the conclusion of the hearing, the village president or his designee shall determine whether or not the dog is a vicious dog within the meaning of this section. The village president or his designee shall notify the owner in writing of its determination. The decision of the village president or his designee shall be final.

4. If any officer of the village, including a law enforcement officer or an animal control officer, determines that the public safety requires the immediate impoundment of a dog as authorized by this section, the officer shall within a reasonable time notify the owner of the facts and circumstances relating to the impoundment. Upon receipt of such notification, the owner may appeal the determination of the officer to the village president or his designee in accordance with the procedures established hereinabove for the identification of vicious dogs.

(F) Licensing Of Vicious Dogs:

1. No person shall possess any vicious dog within village limits without having first obtained a license for the vicious dog from the village. However, an owner may continue to possess a vicious dog without a license: a) during the forty eight (48) hour period after the final determination has been made that the dog is a vicious dog, and b) during the license application process described in this subsection (F).

2. An application for a license to possess a vicious dog shall be filed with the village clerk on a form prescribed and provided by the village and shall be accompanied by all of the following:

(a) Verification of the identity of the owner and current address by providing a photocopy of the owner's driver's license or state identification card.

(b) Proof of ownership of the vicious dog.

(c) A copy of the current immunization and health record of the vicious dog, including certification that the dog has received a rabies vaccine and that the dog has been spayed or neutered, prepared by a veterinarian licensed to practice in the state of Illinois.

(d) A certificate of insurance evidencing coverage in an amount not less than fifty thousand dollars (\$50,000.00), insuring said owner against any claim, loss, damage or injury to persons, domestic animals, or property resulting from the acts, whether intentional or unintentional, of the vicious dog.

(e) Two (2) photographs of the vicious dog to be licensed taken not less than one month before the date of the application. One photograph shall provide a front view of the vicious dog and shall clearly show the face and ears of the vicious dog. One photograph shall show a side view of the vicious dog.

(f) A license fee of fifty dollars (\$50.00).

(g) A license granted under this subsection (F) for a vicious dog shall be nontransferable. Any change of owner shall require a new license for the vicious dog.

3. Upon receipt of an application, village officials shall cause an inspection of the premises on which the vicious dog shall be kept to determine that all provisions of this section relating to confinement and posting of signs have been complied with by the applicant. Upon completion of the inspection, the village clerk shall be notified of the results of the inspection.

4. Based upon the results of the inspection, the village clerk shall notify the applicant of the approval or denial of the license. In the event that the license is denied, the notification shall be provided in writing and the reasons for such denial shall be stated. Upon denial, the owner of the vicious dog shall remove the vicious dog from the corporate limits of the village within forty eight (48) hours. Upon approval, the clerk shall issue a license to the applicant.

(G) Reporting Requirements Of License: Any person holding a license pursuant to this section shall report to the village's law enforcement agency the incidence of any of the following events as provided herein:

1. The sale, barter, exchange, gift or death of any vicious dog shall be reported to the village clerk within forty eight (48) hours.

2. The escape from confinement of any vicious dog shall be reported to the village's law enforcement agency upon discovery of the escape.

3. The biting or nipping of any person or animal by a vicious dog shall be reported to the village's law enforcement agency upon occurrence.

4. The birth of any offspring of a vicious dog shall be reported to the village clerk within forty eight (48) hours of the birth of the offspring. The license shall be immediately revoked until proof is provided that the vicious dog has been spayed or neutered.

5. The permanent removal of any vicious dog from the corporate limits of the village shall be reported within forty eight (48) hours of such removal by surrender of the license of the owner to the clerk of the village.

Except as otherwise provided in this section, the failure to report of any incident required to be reported under this subsection shall be a violation of this section.

(H) Revocation Of License: A license granted pursuant to this section shall be automatically revoked upon the second violation by the licensee of any provision of this section. In the event of a revocation of the license, the license fee shall be retained by the village and the vicious dog must be removed from the village within forty eight (48) hours.

(I) Confinement Of Vicious Dogs: No person shall possess any vicious dog unless the vicious dog is confined in accordance with this section. No vicious dog may be kept on a porch, patio or in any part of a house or structure that would allow the vicious dog to exit the structure on its own volition. No vicious dog shall be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the vicious dog from exiting the structure. The owner of a vicious dog shall keep the dog securely confined at all times in a locked pen, locked fenced yard, or other locked enclosure while on the premises of the owner. The owner shall display in a conspicuous manner, a sign on his or her premises warning that there is a vicious dog on the premises. This sign shall be visible and legible from the road. When the vicious dog is off such premises, the owner shall keep the dog:

1. On a leash or tether not more than five feet (5') long having a minimum tensile strength of at least three hundred (300) pounds; or
2. In a locked pen, or other locked enclosure (i.e., car or truck).

(J) Impoundment Of Dogs: A dog shall be impounded for any grounds enumerated in this subsection by any law enforcement officer or animal control officer employed by or under contract with the village or Woodford County; provided, however, that if any law enforcement officer or animal control officer reasonably believes that such dog poses an immediate threat of severe injury to any person or domestic animal, such officials are authorized to kill such dog. Grounds for impoundment include:

1. The dog has previously been determined to be a "vicious dog"; and
 - (a) The vicious dog is not confined as provided by subsection (I) of this section or is running at large; or
 - (b) The owner of a vicious dog has not obtained or applied for a license within forty eight (48) hours of any determination under this section that the dog is a vicious dog.
2. Whether or not the dog was previously determined to be a vicious dog:
 - (a) Without provocation, the dog has attacked, bitten or killed a domestic animal; or
 - (b) The dog was used or possessed for the purposes of dog fighting; or
 - (c) Without provocation, the dog has attacked, bitten, or killed a person.

Upon impoundment of a dog, the owner of the dog shall be served notice of impoundment in the same manner as provided in subsection (D) of this section. The notice will state whether the dog is subject to redemption or destruction. The notice will state that all dogs subject to redemption and not redeemed within fourteen (14) days are subject to destruction. If the dog is not subject to redemption, the notice shall state that appeal or review of the proposed destruction must be sought in the circuit court of Woodford County within fourteen (14) days of receipt of the notice. If the dog is subject to redemption, but the dog has not been previously determined to be a vicious dog, notice shall also be given pursuant to subsection (D) of this section that the dog has been determined to be a vicious dog. If the owner of a dog subject to redemption appeals the determination that the dog is a vicious dog pursuant to subsection (E) of this section, and the village president or his designee determines that the dog is not a vicious dog, the dog shall be released to its owner without cost, except that the cost of keeping the dog during impoundment can be assessed to the owner of any dog, vicious or not, found running at large. Nothing in this subsection shall be construed to allow an owner to appeal a determination that a dog is a vicious dog, if the dog was determined to be vicious after a previous appeal, or if the owner previously failed to file a timely appeal of a determination that the dog was a vicious dog.

(K) Redemption Of An Impounded Dog:

1. Unless a dog is ineligible for redemption under this subsection, an owner of a vicious dog holding a license pursuant to this section may redeem an impounded vicious dog subject to the following conditions:

- (a) Proof of a valid license issued by the village under subsection (F) of this section; and
- (b) Payment of all costs of keeping the vicious dog during the period of impoundment.

2. If the owner of a dog otherwise subject to redemption fails to redeem the impounded dog within fourteen (14) days of receiving notice of impoundment, the dog shall be subject to destruction, provided no dog otherwise subject to redemption shall be destroyed pending appeal, pursuant to subsection (E) of this section, of a determination that the dog is a vicious dog. Nothing in this subsection shall be construed to allow an owner to appeal a determination that a dog is a vicious dog, if the dog was determined to be vicious after a previous appeal, or if the owner previously failed to file a timely appeal of a determination that the dog was a vicious dog.

3. An impounded dog shall not be subject to redemption, but shall be subject to humane destruction, if:

- (a) Whether or not the dog had previously been determined to be a vicious dog, the dog causes severe injury, disfigurement or death in an unprovoked attack on a person; or
- (b) Subsequent to having been determined, pursuant to this section, to be a vicious dog, the vicious dog has, without provocation, attacked or bitten a person on one or more occasions; or

(c) Subsequent to having been determined, pursuant to this section, to be a vicious dog, the vicious dog has, without provocation, killed a domestic animal on one or more occasions; or

(d) Whether or not the dog had previously been determined to be a vicious dog, the dog was used, with the knowledge or consent of its owner, for dog fighting.

(L) Destruction Of Dogs: A dog that has been impounded, and: 1) has not been redeemed by its owner, or 2) is not subject to redemption, shall be destroyed in a humane fashion, no sooner than fourteen (14) days after its owner has received actual notice of impoundment, provided:

1. If the dog is otherwise subject to redemption, and the owner is appealing, pursuant to subsection (E) of this section a determination that the dog is a vicious dog, the dog shall not be destroyed pending the appeal and pending the licensing of the dog, if the dog is determined, after appeal, to be a vicious dog requiring licensing; or

2. An appeal or request for review filed by the owner in the circuit court of Woodford County shall immediately stay destruction of a dog not subject to redemption pending a final court order; or

3. The village board, for compelling reasons and in its sole discretion, can require that the vicious dog be placed with any not for profit or charitable "no kill" shelter or dog rescue organization, provided said organization agrees that the vicious dog shall not be sold, bartered, made available for adoption, released or bred.

(M) Costs Of Impoundment And Destruction: Except as otherwise provided in subsection (J) of this section, the owner shall be liable for all costs of keeping the dog during any period of impoundment (including any period during which destruction was stayed pending judicial review), all costs for humane destruction of the dog, and all costs for the disposal or burial of the dog. Costs of keeping the dog during a period of impoundment include shelter, food, veterinary expenses, and other expenses necessitated by the seizure of the dog for the protection of the public.

(N) Penalties: Upon conviction of a violation of any provision of this section, the court shall assess a fine of not less than two hundred dollars (\$200.00), nor more than seven hundred fifty dollars (\$750.00). This penalty is in addition to any other expenses that an owner may be required to pay under this section for the impounding or destruction of a dog.

(O) Other Statutes And Ordinances: Nothing in this section shall limit the authority of the village or law enforcement officials or animal control officers to control, license, impound, or destroy dogs as otherwise provided by any other ordinance or statute.

Section II.

(A) Severability: If any subsection, sentence, clause or phrase of this section is, for any reason, held to be unconstitutional or invalid by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.

Section III.

This ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Upon Motion by Trustee _____ and seconded by Trustee _____

Adopted at regular meeting of the Board of Trustees of The Village of Benson, Illinois on the 16th day of August, 2010

ADPOTED THIS SIXTEENTH DAY OF AUGUST, A.D. 2010 pursuant to roll call vote, as follows:

AYES: _____

NAYS: _____

ABSENT: _____

PASSED AND APPROVED THIS SIXTEENTH DAY OF AUGUST, A.D., 2010

Arthur Skip Brooks, Village President