

## *DOGS; GENERAL PROVISIONS*

### **§ 94.20 SHORT TITLE; DEFINITIONS.**

This Article shall be known as and may be cited as "THE WAVERLY DOG ORDINANCE." For the purpose of this Chapter, the following definitions shall prevail:

- A. Dog: The term "dog", whenever used in this Chapter, shall mean an animal of Canine or Canidae family, regardless of sex.
- B. Inoculation, Vaccination, or Vaccination for Rabies: The terms "inoculations," "vaccination," or "vaccination for rabies," whenever used in this Chapter, shall mean the inoculation of a dog, cat, or other animal with a vaccine approved by the State Veterinarian and as required by the Nebraska Statutes, or approved by the Lincoln-Lancaster County Department of Health. (*Ref. 71-4401 to 71-4412 RS Neb.*)
- C. Own: The term "own," as used in this Chapter, unless otherwise indicated in the text, shall be deemed to mean and include, own, keep, harbor, or have charge, custody, or control of, a dog.
- D. Owner: The term "owner," as used in this Chapter, shall mean any person or persons, firm, association, corporation, or other entity, who shall harbor or permit any dog to be in or about his or her house, store, or enclosure, or to remain to be fed in or about his or her house, store, or enclosure, for a period of ten (10) days or more. (*Ref. 54-606, 71-4401 RS Neb.*)
- E. Person: The term "person," as used in this Chapter, shall mean and include any individual, firm, corporation, association, partnership, or any other entity.
- F. Kennel: The term "kennel," as used in this Chapter, shall be deemed to mean the house, store, yard, enclosure, or place where more than three (3) dogs over the age of six (6) months, are harbored or kept, provided, however, that this definition shall not apply to any animal shelter, not to the place of business of licensed veterinarians.
- G. Spayed Female Dog: The term "spayed female dog," as used in this Chapter, shall be construed to include any female dog which has been spayed or otherwise rendered incapable of reproduction.
- H. Neutered Male Dog: The term "neutered male dog," as used in this Chapter, shall be construed to include any male dog which has been neutered or otherwise rendered incapable of reproduction. (*Amended by Ordinance 03-01, 2/17/03*)
- I. Dangerous Dog: The term "dangerous dog" as used in this Chapter shall mean any dog that:
  - 1. has killed or inflicted severe injury on a human being on public or private property;

2. has killed a domestic animal without provocation while the dog was off the owner's property;
3. has been previously determined to be a potentially dangerous dog according to this Chapter and such dog subsequently bites, attacks, or endangers the safety of humans or domestic animals;
4. any dog that has been trained for dog fighting, animal fighting or animal biting, or is owned or kept for such purposes;
5. any dog trained to attack human beings, upon command or spontaneously in response to human activities except dogs owned by and under the control of a law enforcement officer or a law enforcement agency of the State of Nebraska or the United States or a branch of the armed forces of the United States;

Under (1) and (3) herein, a dog shall not be considered a dangerous dog if the conduct of the dog in question is directed at a person:

1. who, at the time, was committing a willful trespass or any other tort upon the property of the owner of the dog;
2. who, at the time, was tormenting, abusing, or assaulting the dog;
3. who has, in the past, been observed or reported to have tormented, abused or assaulted the dog; or
4. who, at the time, was committing or attempting to commit a crime against the person, against public peace, or relating to property.

J. Potentially Dangerous Dog: The term "potentially dangerous dog" as used in this Chapter shall mean:

1. Any dog that when provoked:
  - a. inflicts a wound on a human or injures a domestic animal either on public or private property, or
  - b. chases or approaches a person upon streets, sidewalks, or any public property in an outward appearance of aggressive or dangerous behavior; or
  - i. Any dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals. (*Amended by Ord. No. 05-12, 9/6/05; 15-18, 11/24/15*)

**§ 94.21 VACCINATION AGAINST RABIES REQUIRED; VACCINATION TAG.**

Any person within the City owning a dog six (6) months of age or older shall have such dog vaccinated against rabies. Young dogs shall be vaccinated within thirty (30) days when they have reached six (6) months of age. Unvaccinated dogs acquired or moved into the Municipality must be vaccinated within thirty (30) days after purchase or arrival, unless under six (6) months of age as specified above. It shall be the duty of every person owning, keeping, or harboring a dog within the City of Waverly to require their veterinarian, at the time of vaccinating any dog, to provide a copy of a uniform rabies vaccination certificate to the Lincoln-Lancaster County Department of Health and to the Waverly Municipal Clerk and to provide a rabies vaccination tag to the owner. It shall be the duty of every veterinarian administering any rabies vaccination within the City of Waverly to provide a copy of the rabies vaccination certificate as required above. The rabies vaccination tag shall be attached to and kept upon the collar or harness of the dog. Dogs shall be vaccinated within the three (3) year period immediately prior to the last date of vaccination if the last vaccination was with chick embryo Low Egg Passage flurry vaccine or within the one (1) year period immediately prior to the last date of vaccination if the last vaccination was with killed or inactivated vaccine. Dogs may be vaccinated with any other vaccine approved by the State Veterinarian or otherwise authorized by the laws of the State of Nebraska, and the intervals of any other antirabies vaccines shall be set by the State Veterinarian. (*Ref. 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 17-04, 2/28/2017*)

#### **§ 94.22 EXCEPTIONS TO RABIES VACCINATION; DOGS HELD FOR RESEARCH.**

The vaccination provisions of this Article with respect to dogs assigned to a bona fide research institution shall not apply if such dogs are kept under strict supervision of research personnel, and are kept in a kennel or similar holding facility, nor shall such vaccination provisions apply to dogs which are otherwise exempt from vaccination requirements under Nebraska law.

#### **§ 94.23 LICENSE.**

Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog annually by or before the thirty-first (31<sup>st</sup>) day of January of each year. Such tax shall be delinquent from and after February first (1<sup>st</sup>); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to January first (1<sup>st</sup>) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within thirty (30) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of a license fee in accordance with the following schedule:

Male Dog - \$20.00  
Neutered Male Dog - \$10.00  
Female Dog - \$20.00  
Spayed Female Dog - \$10.00

Provided, that the sum of five dollars (\$5.00) shall be added to the license fees set forth in the foregoing schedule for each license obtained after February first (1<sup>st</sup>) or otherwise delinquent. Dogs shall be licensed for the reduced fee provided for spayed and neutered dogs only upon presentation of a certificate of neutering signed by a licensed veterinarian or upon

presentation of other handwritten verification signed by a licensed veterinarian that such dog is no longer capable of reproduction.

Such license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time of the application is made and upon printed forms provided for such purpose, the following information:

- A. The name and address of the owner of the dog;
- B. The license number of the tag issued for such dog;
- C. The breed, age, color, name, and sex of the dog;
- D. Such other information as the Municipal Clerk may require for the purpose of identification.

A uniform certificate of rabies vaccination or reasonable facsimile thereof sufficient to comply with the requirement of Section 94.21 of this Code shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (*Ref. 17-526, 54-603, 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 87-13, 9/8/87, 02-03, 2/4/02; 10-05, 5/3/10*)

#### **§ 94.24 LICENSE TAGS.**

Upon the payment of the license fee and the presentation of a satisfactory proof of vaccination, the Municipal Clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. Said license certificate shall be issued in duplicate, the original of which shall be delivered to the owner of the dog, who shall retain it as evidence of the dog's license; the duplicate shall be retained by the Municipal Clerk. The metallic tags shall be of such design as shall be approved by the Municipal Clerk, shall bear the license number shown on the license, and shall have die-stamped thereon the license number, the words "DOG TAG – WAVERLY, NEBRASKA," and the year for which issued. The metallic tags so issued shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor said dog until the thirty-first (31<sup>st</sup>) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year of which the license tax has been paid and shall charge and collect one dollar (\$1.00) for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the Governing Body. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year. (*Ref. 17-526, 54-603 RS*)

#### **§ 94.25 WRONGFUL LICENSING.**

It shall be unlawful for the owner of any dog to permit or allow such dog to wear any other license tag than the identical one issued for such dog by the Municipality in which such owner resides, and for the license year for which issued. (*Ref. 17-526, 54-603*)

#### **§ 94.26 WEARING OF COLLARS; IDENTIFICATION; REMOVAL OF LICENSE TAG; RELEASE FROM RESTRAINT; WHEN PROHIBITED.**

Every dog within the Municipality shall wear a collar or harness and license tag at all times. It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, or metallic license tag, or rabies vaccination tag from any licensed dog or release any dog from such restraint as is required by 94.31(B) of this Article without the permission of the owner. (*Ref. 54-605 RS Neb.*)

#### **§ 94.27 EXCEPTIONS TO LICENSE; TRANSIENT DOGS.**

The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to a dog owned by any person temporarily remaining within the City for less than thirty (30) days. The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to any dog owned by a bona fide resident of any other Municipality who works within the City of Waverly, whether or not, in excess of thirty (30) days; Provided, however, that such dogs must be vaccinated against rabies in accordance with the provisions of Nebraska law and properly licensed by the Municipality in which the owner resides.

#### **§ 94.28 PROCLAMATION.**

It shall be the duty of the Mayor, whenever in his or her opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine such dogs for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided. (*Ref. 17-526 RS Neb.*)

#### **§ 94.29 KILLING AND POISONING.**

It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim, or destroy, or to place any poison, or poisoned food where the same is accessible to a dog, except as elsewhere specifically authorized in this Code or by Nebraska law. (*Ref. 54-604, 54-605 RS*)

#### **§ 94.30 DOGS – OTHER ANIMALS; SEIZURE FOR PROTECTION OF ANIMAL.**

When, in the judgment of any Humane Office, any dog or other animal is deprived of food or fresh water or maintained under cruel or inhumane circumstances, the Municipality may seize such dog or other animal and provide for its well-being until, in the judgment of the Humane Officer, such animal will be properly cared for if returned to its owner. While such dog or other animal is under the care of the Municipality, the owner of such animal shall be charged for boarding fees at the rates provided under this Chapter for dogs and cats or shall be charged the actual costs of maintaining any other animals. Failure to pay the costs which accrue under this or any other Section within Sections 94.20 to 94.73 shall be deemed a separate offense which may not be disposed of by waiver of appearance and plea of guilty. Upon conviction for violation of this Section the court may order the person

so offending to pay to the City of Waverly all fees which have accrued under Sections 94.20 to 94.73 with respect to such defendant. When in the judgment of the Humane Officer, the owner of any animal seized under this Section is unwilling or unable to properly care for such animal, title to such dog or other animal shall immediately vest in the Municipality and the Municipality shall thereafter find a suitable home for such animal, or if the same is not possible within a reasonable period of time, the Municipality shall dispose of the animal in a humane manner.

#### **§ 94.31 RUNNING AT LARGE.**

- A. It shall be unlawful for the owner of any dog to allow such dog to run at large, whether licensed or not, at any time within the Municipality and any dog found to be running at large may be destroyed by the Municipality or may be impounded in a suitable animal shelter by any Humane Officer designated by the Municipality, by any Law Enforcement Officer, or by any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk.
- B. For the purposes of this Article, the term "running at large" is defined to mean any dog found off the premises of the owner and not physically restrained by means of a leash, cord, wire, rope, or chain, held by a responsible person no less than eight (8) years of age; confined to a cage or under other suitable and humane means of physical restraint.
- C. It shall be the duty of the Humane Office, or in his or her absence or unavailability, it shall be the duty of the Law Enforcement Officer on duty, to cause any dog found to be running at large within the Municipality to be taken up and impounded. No dog found running at large shall be released from impoundment until the owner of said dog shall have obtained a license as provided in this Chapter and the impoundment fee or other fees have been paid or other satisfactory arrangements have been made. (*Ref. 17-506, 54-607 RS Neb.*)

#### **§ 94.32 UNCOLLARED.**

All dogs found running at large within the Municipality without a collar or harness or without a current and valid license as required by this Article are hereby declared a public nuisance. Uncollared or unlicensed dogs found running at large may be destroyed by the Municipality or may be impounded in any suitable Animal Shelter by any Humane Officer designated by the Municipality, any Law Enforcement Officer, or any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk. (*ref. 17-526, 54-605 RS Neb.*)

#### **§ 94.33 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.**

- A. **DANGEROUS AND POTENTIAL DANGEROUS DOGS; PROHIBITED:** It shall be unlawful for any person to keep or harbor a dangerous or a potentially dangerous dog within the City without complying with the provisions of this Chapter.
- B. **DANGEROUS AND POTENTIALLY DANGEROUS DOGS; PROCEDURE:** Whenever it shall come to the attention of the City that any person within the City's corporate limits is keeping or harboring a dangerous dog or a potentially dangerous dog as defined in this Chapter, the City Clerk shall notify the owner of such animal in writing that such dog must be registered as a dangerous or potentially dangerous

dog within ten (10) days after the receipt of such written notice. Said notice shall be served either in person or by mailing such notice by certified or registered mail.  
REGISTRATION REQUIREMENTS; DANGEROUS DOGS:

1. The owner of any dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:
  - a. The name, address, and telephone number of the owner;
  - b. A written description and representation indicating the owner has and will continue to comply with the confinement provisions of the Chapter;
  - c. Written evidence from a licensed veterinarian that the dog is currently neutered or spayed;
  - d. A written acknowledgement that the owner shall notify the City Clerk immediately if said dog is known by the owner to be running at large, unconfined, or when the owner has any knowledge of belief that the dog has bitten or is alleged to have bitten a human being or another animal;
  - e. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, given away, or otherwise transferred to any other person, and in the event the registered owner shall provide the Clerk with the name, address and phone number of such person; and
  - f. A non-refundable annual registration fee of Fifty Dollars (\$50.00), which fee shall be in addition to any other license fee required by this Chapter.
2. Upon satisfactory completion of all the requirements of this section the City Clerk shall issue a registration certificate which shall be used to assign the dog a permanent number. At the time of registration the City Clerk shall either order the owner to have any dangerous dog tattooed by a licensed veterinarian permanently marking the number assigned herein by tattoo upon the inner side of the dangerous dog's right ear or order the owner to have a microchip inserted in any dangerous dog by a licensed veterinarian within thirty (30) days of the date of registration. The owner shall provide the City Clerk with the animal's microchip number within thirty (30) days of the date of the registration. It shall be unlawful for any owner of such dangerous dog to fail to so mark, tattoo or microchip such dangerous dog as provided herein. It shall be unlawful to any person other than a licensed veterinarian to remove any tattoo, microchip or any other marking used for identification.
3. The registration requirements including the notification requirements acknowledged therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.

4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of registration.

**A. REGISTRATION REQUIREMENTS; POTENTIALLY DANGEROUS DOGS:**

1. The owner of any potentially dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:

- a. The name, address, and telephone number of the owner;
- b. A written acknowledgement that the owner shall notify the City Clerk immediately or when the owner has any knowledge or belief that the dog has bitten or is alleged to have bitten a human being or another animal;
- c. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, give away, or otherwise transferred to any other person, and in the event the registered owner shall provide the director with the name, address, and telephone number of such person; and
- d. A non-refundable registration fee of Twenty-Five Dollars (\$25.00), which fee shall be in addition to any other license fee required by this Chapter.

2. Upon satisfactory completion of all the requirements of this section the Clerk shall issue an annual registration certificate which shall be used to assign the dog a permanent number.

3. The registration requirements including the notification requirements acknowledge therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.

4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of the registration.

**B. DANGEROUS DOGS; SECURELY CONFINED:**

1. It shall be unlawful for the owner of a dangerous dog to fail, neglect, or refuse to securely confine such dog, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. For materials used to provide a securely enclosed and locked pen or structure as required herein, such materials shall, at a minimum, comply with the following:

- a. Any fencing material used shall not have openings with a diameter of more than two (2) inches, or in the case of wooden fence materials, gaps of more than two (2) inches wide;
- b. Any gates within such pen or structure shall be lockable or of such design to prevent the entry of children or the escape of the dog.



2. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
  3. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
  4. The owner of a dangerous dog shall securely restrain such dog by chain or leash when moving the dog to or from such pen or structure.
- C. DANGEROUS DOGS; LEASH REQUIRED: It shall be unlawful for any owner of a dangerous dog to permit such dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash and properly muzzled to reasonably prevent the dog from biting.
- D. DANGEROUS DOGS; WARNING SIGNS: The owner of a dangerous dog shall display signs warning that there is a dangerous dog on the property. These signs shall be placed so as to be readily discernible and clearly visible from the public sidewalk or property line at any actual or customary point of entry to the premises. An additional sign shall be conspicuously displayed on any pen or structure provided for such dangerous dog.
- E. DANGEROUS DOGS; CONFISCATION: Any dangerous dog may be immediately confiscated by a City Law Enforcement Officer if in violation of this Chapter. The owner shall be responsible for the reasonable costs incurred for the care of a dangerous dog confiscated or for the destruction of any dangerous dog as authorized herein. In addition to any other penalty, a Court may order the destruction of a dangerous dog in an expeditious and humane manner.
- F. BITES UNLAWFUL: It shall be unlawful for the owner of any dangerous or potentially dangerous dog required to be registered under this section to permit or allow such dog to kill, bite, chase, attack, injure, wound, or endanger in such a way that the dog may be considered either a dangerous dog or a potentially dangerous dog. In addition, any such dangerous dog required to be registered under this section shall be immediately confiscated by a City Law Enforcement Officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.
- G. APPEALS: The determination that any dog is dangerous or potentially dangerous as defined herein shall be deemed to have been made upon notice to the owner of such dog as provided in subsection B herein. Upon such notification and after the expiration of eleven (11) days from the date of such notice, the determination shall be final and binding upon the City and upon the owner unless within ten (10) days after notice, the owner requests, in writing, a review of the determination by the Director of the Lancaster County Health Department. At such review the owner may present any written statements or documentary evidence relevant to the determination. The director shall make a final and binding determination after such review within fifteen (15) days of the date of review. The

owner may appeal any final determination to the district court as provided by law.  
(Amended by Ord. No. 05-12, 9/6/05)

**§ 94.34 MULTIPLE BITING INCIDENTS; REMOVAL FROM MUNICIPALITY.**

When any designated Municipal Humane Officer or the Municipal Clerk shall receive verification through the affidavit of any victim or eye-witness to any biting incident by any dog, through the official report of any Humane Officer or Law Enforcement Officer, or shall have first-hand personal knowledge that any dog has been involved in two (2) or more biting incidents in which said dog has bitten one (1) or more individuals or animals, he or she shall order that such dog be destroyed or removed from the Municipality (at the option of the owner), within ten (10) days of the date of the most recent biting incident or in the event such dog has been placed under mandatory observation, then immediately upon expiration of any mandatory observation period required under this Chapter. Notice of such order shall be sent by postage prepaid, certified United States mail, return receipt requested to the owner of such dog, shall include a copy of this Section, and shall specify the date on or before which such dog must be destroyed or removed from the Municipality. Any person who fails to comply with such order shall be deemed guilty of a misdemeanor. If upon trial for violation of this Section, it shall appear to the Judge of the County Court that such person be guilty as charged in said complaint, in addition to the usual judgment or conviction, said Judge may order such disposition of the offending dog as may seem reasonable and proper. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

**§ 94.35 CAPTURE IMPOSSIBLE.**

Any designated Humane Officer or any Law Enforcement Officer designated by the Municipality shall have the authority to tranquilize or to kill any dog showing vicious tendencies, or the characteristics of rabies which tendencies or characteristics make capture impossible because of the danger involved when such killing or tranquilizing appears reasonably necessary to prevent injury to any person. (*Ref. 54-605 RS Neb.*)

**§ 94.36 LIABILITY OF OWNER; RESTITUTION; PROPERTY DAMAGE OR PERSONAL INJURY; WAIVER DISALLOWED.**

It shall be unlawful for any person to allow a dog owned, kept, or harbored by him or her, or under his or her charge or control, to injure any person or to destroy any real or personal property of any description belonging to another person. If upon the trial for any violation of Sections 94.20 to 94.73 which involves personal injury or property damage, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint, said Judge may, in addition to the usual judgment and conviction, order the person so offending to make restitution to the party injured in an amount equal to the value of the property so damaged or destroyed together with medical expenses incurred by any injured person or persons. When any person shall be charged with a violation of any provision of this Chapter involving injury to person or damage to real or personal property, such complaint may not be disposed of by way of Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526, 54-601, 54-602 RS Neb.*)

#### **§ 94.37 BARKING AND OFFENSIVE.**

It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, street, or alleys in the Municipality. Upon written complaint of two (2) or more affected persons from different households, filed with any thirty (30) day period with the Municipal Clerk, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this Section, the Humane Officer or in his or her absence, the Law Enforcement Official on duty shall investigate the complaint and, if in his or her opinion the situation warrants, shall issue an appropriate citation for violation of this Section. The provisions of this Section shall not be construed to apply to any Animal Shelter or to the place of business of licensed veterinarians. (*Ref. 17-526 RS Neb.*)

#### **§ 94.38 ODORS.**

No person shall allow any dog or dogs which he or she owns, harbors, or keeps to be maintained in such manner that foul or offensive odors are produced on or around the premises on which such dog is kept. Upon conviction of violation of this Section the Judge of the County Court may declare that such odors constitute a public nuisance, and in addition to the usual judgment or conviction, order the abatement of such nuisance. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

#### **§ 94.39 INTERFERENCE WITH POLICE.**

It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or designated Humane Officer who is performing any duty enjoined upon him or her by the provisions of this Article, or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open of any animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of dogs to such shelter. (*Ref. 28-906 RS Neb.*)

#### **§ 94.40 FIGHTING.**

It shall be unlawful for any person, by agreement or otherwise, to set dogs to fighting, or by any gesture or word to encourage the same to fight.

#### **§ 94.41 KENNELS DEFINED, PROHIBITED.**

More than three (3) dogs in excess of six (6) months of age, per family or residence, shall constitute a kennel. No kennels shall be maintained within the Municipality; provided, however, the provisions of this Section shall not apply to any Municipal Animal Shelter, or to hospitals operated by veterinarians duly licensed under the laws of the State of Nebraska, keeping dogs for others for treatment or boarding.

If upon the trial of the offense mentioned in this Section, it shall appear to the County Judge that the person be guilty as charged in said complaint, said Judge may, in addition to the usual judgment of conviction, declare said dog kennel a public nuisance, order the party or parties so convicted to abate said nuisance forthwith, and in the event that the party or parties convicted shall fail to do so, order the Municipal Law Enforcement Personnel to remove to a suitable animal shelter said dog or dogs so kept and harbored in violation of this Section, there to be impounded and placed in suitable homes or disposed of in accordance with the terms of this Article. When a complaint is filed for violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty, and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

#### **§ 94.42 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER.**

The Municipality shall provide a temporary Municipal Animal Shelter. The Mayor may, when necessary, employ or appoint annually a Chief Humane Officer and one (1) or more additional Humane Officers who shall manage the temporary Municipal Animal Shelter, issue citations for violation of the provisions of Sections 94.20 to 94.73, and perform such duties as the Mayor shall direct and such other duties as may be imposed by Sections 94.20 to 94.73. (*Amended by Ord. 02-03, 2/4/02*)

#### **§ 94.43 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER, CONTRACT WITH HUMANE SOCIETY.**

The Mayor shall have the authority, with the approval of the City Council, to contract with any Humane Society or like institution to handle boarding and disposal of dogs or other animals required under this Chapter and to perform the duties assigned to Humane Officers under this Chapter and may designate such institution to fulfill the duties of the Humane Officers.

#### **§ 94.44 IMPOUNDING.**

- A. It shall be the duty of the Humane Officers or in the event of his, her, or their absence or unavailability it shall be the duty of the Law Enforcement Officer on duty to capture, secure, and remove in a humane manner to a Municipal Animal Shelter or other appropriate shelter any dog violating any of the provisions of this Article, except Section 94.37. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day.
- B. Each impounded dog except those impounded for lack of a current rabies vaccination shall be kept and maintained at an appropriate animal shelter for a period not less than seventy-two (72) hours after notice has been given unless reclaimed earlier by the owner. All dogs impounded for the lack of a current rabies vaccination shall be held for not less than one hundred twenty (120) hours, unless sooner redeemed or released as herein provided, and if not so redeemed or released at the expiration of the time limit of one hundred twenty (120) hours may be destroyed in a humane manner. Unlicensed dogs shall be transported immediately to the Capital Humane Society or other animal shelter for impoundment or disposal as provided hereunder. Dogs licensed as required hereunder shall be held in the Municipal Animal Shelter for no less than twenty-four (24) hours after the notice required hereunder has been mailed and may thereafter be

transported to any other appropriate animal shelter. Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the office of the City Clerk and at the Municipal Pound within twenty-four (24) hours after impoundment. And in addition, if the name and/or address of the owner is known to the Municipal Clerk, or is reasonably ascertainable, notice of such impoundment shall be mailed to said owner by postage prepaid, certified United States mail, return receipt requested, within twenty-four (24) hours after impoundment. Such notice shall be deemed to be sufficient if it includes the following:

1. A copy of §6-125 of the Waverly Municipal Code;
2. The date the dog was impounded;
3. A description of the dog;
4. The address and telephone number of the Municipal offices;
5. The address and telephone number of any other agency or institution which at the time of the notice has, or may in the future have, the physical control of the impounded dog;
6. The accrued costs to date and an estimate of the costs which are expected to accrue on a daily basis incident to impoundment and/or destruction of the dog; and,
7. The date, time, and place at which the dog will be destroyed if not claimed.

- C. When any impounded dog is claimed and returned to the owner within twenty-four (24) hours of impoundment, the Municipal Clerk shall not be required to provide the notice which would otherwise be required hereunder.

Any dog may be reclaimed by its owner during the period of impoundment by payment of all accrued impoundment and boarding fees and the cost of certified mailing as provided for in this Article. Upon claiming any such dog, the owner shall be required to comply with the licensing and rabies vaccination requirements before said dog is released. If the dog is not claimed at the end of the applicable waiting period as required by this Section, the Municipality may, after the notice required by this Section has been given, cause the disposal of any such dog in accordance with the applicable rules and regulations pertaining to the same; Provided, however, that if, in the judgment of the Municipality, or its agent or any animal shelter, a suitable home can be found for any such dog within or without the Municipality, said dog shall be turned over to that person and shall not be destroyed and the new owner shall then be required to pay all fees required hereunder and meet all licensing and vaccinating requirements provided in this Chapter. The Municipality shall, after notice and the expiration of the applicable waiting period required by this Section, acquire legal title to any unlicensed dog impounded in the Animal Shelter or other authorized shelter.

- D. All dogs required hereunder to be destroyed shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health. (*Ref. 17-548, 71-4409 RS Neb.*)

#### **§ 94.45 IMPOUNDMENT FEES.**

- A. Fees. There shall be a boarding fee of three dollars (\$3.00) per day, or part thereof, payable to the City of Waverly for each day a dog is impounded by the Municipality. In

addition there shall be a general impoundment fee of fifteen dollars (\$15.00) for each impoundment of any dog.

All such fees shall be paid to the City of Waverly before any dog is released. In the event the dog is being held by the Capitol Humane Society or other authorized animal shelter, said dog shall not be released until the owner presents a receipt to the authorized animal shelter showing that all fees required hereunder have been paid to the City of Waverly and, in addition, the owner shall pay the daily or flat rate boarding fee charged by the Humane Society or other authorized Animal Shelter.

- B. Dogs, Destruction; Applicable Fees. In the event that any dog is destroyed at the direction of the City of Waverly, the owner of the dog which is destroyed shall, within ten (10) days of the date of the destruction of such dog, pay all applicable pound fees levied by the City of Waverly and/or its agents, and shall pay a reasonable fee for destroying such dog, but no complaint shall be filed in the County Court against the owner of said dog; Provided, however, that in the event that the owner, subsequent to the destruction of his or her dog, shall fail to pay the fees which accrue under this Section, within the time provided herein, he or she shall be deemed to be guilty of a misdemeanor, and the Municipal Attorney shall file a separate complaint against such dog owner for violation of this subsection. When any person shall be charged with violation of this subsection, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. If upon the trial for violation of this subsection, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint said Judge may, in addition to the usual judgment or conviction, order the person so offending to pay to the City of Waverly all fees which have accrued under this Chapter in connection with the dog which has been destroyed.

#### **§ 94.46 DUTY TO PLACE UNDER OBSERVATION; WHEN REQUIRED, PROCEDURE.**

When any person owning a dog or other animal has been notified by any person injured or by someone in his or her behalf, or has knowledge of said injury, that said person has been bitten or attacked by said dog, or other animal, or when any person owning a dog or other animal has been notified by any person that said dog or other animal has been bitten by a rabid animal, the owner shall immediately place the dog or other animal under the care and observation of the Municipality or a licensed veterinarian the expense thereof to be borne by the owner of such dog, and failure of the owner to submit said dog or other animal within twenty-four (24) hours after notice of said bite or attack to the Municipality or its authorized agent or a licensed veterinarian shall constitute a violation of this Chapter. The Municipality or its agent or a licensed veterinarian shall impound said dog or other animal for care and observation for a period of ten (10) days or for such other period as required by Chapter 71, Article 44, Reissued Revised Statutes of Nebraska, 1943, and the amendments thereto, in compliance with standards adopted by the Board of Health. It shall be lawful for the Municipality or any agent of the Municipality or the custodial veterinarian to destroy in a humane manner any dog or other animal that has been determined by a licensed veterinarian to have rabies, or which has been impounded for observation after the period of observation has expired unless the owner shall, within five (5) days after notice of the expiration of impoundment has been given, redeem such dog by paying such expense incident to such

impounding, observation, or treatment. It shall be illegal for any person to release any dog or other animal held for observation to any person prior to expiration of the period of observation. Before any such dog or other animal is released, the person to whom it is released shall submit proof, in the form of a certificate issued by a licensed veterinarian or other person authorized by law to administer rabies inoculation, that such dog or other animal does not have rabies and has been properly inoculated for rabies. (*Ref. 71-4406 RS. Neb.*)

#### **§ 94.47 ENFORCEMENT.**

The enforcement of the provisions of this Chapter shall be under the direction of the Mayor. For the purpose of enforcing Sections 94.20 to 94.73 or abating any nuisance existing hereunder, the designated Humane Officer or any Law Enforcement Officer may enter private premises.

#### **§ 94.48 ANIMAL CONTROL VIOLATION, CITATION.**

- A. Whenever a designated Humane Officer of the Municipality or any Law Enforcement Officer shall observe any violation of Sections 94.20 to 94.73, it shall be his, her, or their duty to issue an appropriate citation. It shall be the duty of the Municipal Attorney to promptly prosecute all violations of this Article.
- B. At the time of the commission of the alleged violation, the accused may be served with a printed notice requiring him or her to make such appearance on or before the date specified thereon and advising whether execution of a Waiver of Appearance and Plea of Guilty has been made available by the court for such violation. Said notice shall further apprise the accused that upon direct refusal or failure to so appear, a warrant shall be issued for his or her arrest, that he or she must appear at said court during the hours fixed by the Judges of the County Court as shown on said notice.

#### **§ 94.49 GENERAL PROHIBITIONS AND DUTIES**

- A. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another unless such person shall immediately thereafter clean up, remove and dispose of the feces so deposited.
- B. It shall be the duty of every person owning or having the custody or control of an animal to clean up, remove and dispose of the feces deposited by such animal upon public property, park property, public right-of-way or the property of another. (*Amended by Ord. 02-21, 8/19/02*)

**§ 94.50 PENALTY FOR VIOLATION.**

- A. Except as otherwise provided herein, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class I Misdemeanor as defined by section 131.22 of this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00).
- B. Any person upon whom a duty is placed by the provision of §94.31, §94.32, and/or §94.37, of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be ten dollars (\$10.00).
- C. Any person upon whom a duty is placed by the provisions of §94.41 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- D. Any person upon whom a duty is placed by the provisions of §94.29 and §94.33 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be One Hundred Dollars (\$100.00).
- E. Any person upon whom a duty is placed by the provisions of §94.46 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be seventy dollars (\$70.00).
- F. Any person upon whom a duty is placed by the provisions of §94.34 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- G. Each day that a violation of any Section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty or forfeiture elsewhere in this Article provided. *(Amended by Ord. 02-21, 8/19/02; amended by Ord. No. 05-12, 9/6/05, Ord. 07-05, 5/7/07)*