

AN ORDINANCE AMENDING SECTION 90.16 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF BREWSTER TO REPEAL SECTION 90.16 (A) (a)(3) ELIMINATING FROM THE DEFINITION OF A VICIOUS DOG THE BREED SPECIFIC REFERENCE TO THE PIT BULL DOG AS A VICIOUS DOG AND TO REPEAL ORDINANCE 90.18 WHICH PROHIBITS THE SALE AND PURCHASE OF A PIT BULL TERRIER.

WHEREAS, in 2012 the Ohio Legislature through House Bill 14 passed legislation which repealed the automatic inclusion of a pit bull as a vicious dog in the definition of vicious dog contained in chapter 955 of the Ohio Revised Code.

WHEREAS, the Fifth District Court of Appeals in the case of Russ v. City of Reynoldsburg decided April 19, 2017, declared that an ordinance contrary to the state statute's definition of vicious dog is invalid and contrary to law.

WHEREAS, in order to comply with current law, the Village of Brewster desires to amend ordinance number 90.16 of the codified ordinances of the Village of Brewster to eliminate from the definition of a vicious dog the reference to the specific breed of dog known as a pit bull and to repeal ordinance 90.18 which prohibits the sale and purchase of a pit bull within the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: Section 90.16 (A) (a)(3) which states as follows: ".(3)..belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping or harboring of a vicious dog" shall be repealed and eliminated from the ordinance.

SECTION 2: Section 90.16 (a) defining a vicious dog shall hereafter be as follows:

90.16: REGISTRATION AND REGULATION OF VICIOUS DOGS.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

POLICE DOG. A dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

UNCONFINED. A vicious dog is **UNCONFINED**, as the term is used in this section, if such dog is not confined on the premises of the person described in division (B) below as follows.

(a) If the dog is outside, it must be in a securely enclosed pen or dog run area which has secure sides and a secure top attached to all sides, and which has a secure floor or bottom attached to all sides of the pen or which is embedded in the ground no less than two feet. Such pen or dog run area shall be locked with a key or combination lock at all times when the animal is within the structure.

(b) If the dog is inside, it may not be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure. A vicious dog may not be kept on a patio, porch or in any part of a house or structure which would allow the animal to exit the building on its own volition, whether or not such dog is on a chain or leash.

VICIOUS DOG.

(a) A dog that, without provocation and subject to division (b) below of this definition, meets any of the following:

1. Has killed or caused serious injury to any person;
2. Has caused injury, other than killing or serious injury, to any person, or has killed another dog;

(b) **VICIOUS DOG** does not include either of the following:

1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties; or
2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper or harbinger of the dog.

WITHOUT PROVOCATION. A dog was not teased, tormented or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(B) No person owning or harboring or having the care or custody of a vicious dog shall permit such dog to go unconfined on the premises of such person.

(C) No person owning or harboring or having the care of a vicious dog shall permit such dog to go beyond the premises of such person unless such dog is accompanied by said person and securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length.

(D) 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 such dog to unprovoked attacks upon humans or domestic animals.

(E) No person shall possess with intent to sell, or offer for sale, breed or buy or attempt to buy within the village any vicious dog.

(F) Any person owning or harboring or having the care or control of any vicious dog shall maintain a policy of insurance in an amount not less than \$200,000 for each occurrence and insuring such person 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. Such person shall produce evidence of such insurance upon the request of a law enforcement officer.

(G) In the event that a law enforcement officer has probable cause to believe that a vicious dog is being harbored or cared for in violation of divisions (B), (C), (D) (E) or (F) hereof, the law enforcement officer may petition a court of competent jurisdiction to order the seizure and impoundment of the vicious dog pending trial. In the event that a law enforcement officer finds a vicious dog running at large unaccompanied beyond the premises of a person owning, harboring or having the care or control of the dog, in violation of division (C) hereof, the law enforcement officer may seize and impound the vicious dog pending trial.

(H) No person shall own, harbor, care for or control a vicious dog within the village until such dog has been registered at the Village Police Department on such form(s) as prescribed by the Chief of Police. Persons owning, harboring, caring for or controlling a vicious dog upon the effective date of this section, shall register such dog with the Village Police Department within 60 days of the effective date of this provision.

(I) Penalty.

(1) Whoever violates any provision of this section, other than division (H) herein, shall be guilty of a misdemeanor of the first degree. Whoever violates division (H) herein shall be guilty of a misdemeanor of the fourth degree and shall be required to comply with the requirements of division (H).

(2) Whoever is found guilty of any subsequent offense of violating this section shall be guilty if a misdemeanor of the first degree and, in addition to any other penalty imposed by law, the Court shall impose a fine of not less than \$ 500.

(3) Any vicious dog which attacks a human or domestic animal may be ordered destroyed when, in the court's judgment, such vicious dog represents a continuing threat of serious harm to humans and domestic animals.

(4) Any person found guilty of violating this section shall pay all expenses, including shelter food, veterinary expenses for identification or certification of the breed of the animal or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expense as may be required for the destruction of any such dog.

SECTION 3: All other provisions of ordinance no 90.16 shall remain in full force and effect.

SECTION 4: Section 90.18 which prohibits the sale and purchase of a pit bull within the Village is hereby repealed.

SECTION 5: This ordinance shall be in full force and effect at the earliest date provided by law.

ATTEST:

Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on October 2, 2017

Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

Clerk K. Kris King

Brewster, Ohio