

**ORD. 389-10**

**Repealing Toledo Municipal Code Section 505.14, enacting a new Chapter 1706 of the Toledo Municipal Code, "Dogs".**

**1706.01. Purpose:**

The City of Toledo finds that it is necessary to establish and implement regulations regarding dogs maintained within the city limits; that the property rights of owners or keepers and non-owners of dogs should be protected; and that the health, safety and welfare of the people residing in the City would be served by adoption of such an ordinance. This Chapter is intended to supplement existing State laws to address a matter of local concern.

**1706.02. Duties and Responsibility of Dog Owners and Keepers:**

(A) For the purposes of this section, unless otherwise limited, the owner is ultimately responsible for the behavior of the dog regardless of whether the owner or another member of the owner's household or a household visitor permitted the animal to engage in the behavior that is the subject of the violation.

(B) The following conduct shall be considered to constitute a public nuisance:

(1) Permitting any dog to be running at large. In the event a dog is captured running at large and said dog is unlicensed, the dog shall be spayed or neutered at owner's expense as a condition of return to the owner, keeper or harborer. If a licensed dog is captured by the Dog Warden,

Commissioner of Health and/or Chief of Police more than once while running at large, the dog shall be spayed or neutered, at the owner's expense, as a condition of return to the owner, keeper or harborer. Notwithstanding the foregoing if any owner, keeper or harborer can provide written

documentation from a licensed veterinarian that the dog has a condition which would make spaying or neutering dangerous to the dog's health, said condition shall be waived.;

(2) Permitting a dog to trespass upon property of another;(3) Failing to comply with requirements of this ordinance or Ohio Revised Code Chapter 955 that apply to the keeping of a dog which has been determined to pose a threat to the public safety;(4) Permitting a dog in season (estrus) to be accessible to a male dog not in the person's ownership except for intentional breeding purposes;(5) Permitting any dog unreasonably to cause annoyance, alarm or noise disturbance to any person or neighborhood by barking, whining, screeching, howling, or other like sounds which may be heard beyond the boundary of the owner, keeper or harborer's property under conditions wherein the animal sounds are shown to have occurred either as an episode of continuous noise lasting for a minimum period of fifteen (15) minutes, or repeated episodes of intermittent noise lasting for a minimum period of thirty (30) minutes. It shall be an affirmative defense under this subsection that the animal was intentionally provoked by a party other than the owner to make such noise. (6) Leaving a dog unattended for more than 24 consecutive hours; or to otherwise abandon a dog; (7) Depriving a dog of proper facilities or care. Proper shelter must provide protection from the weather and be maintained in a condition to protect the animal from injury; (8) Physically mistreating any dog either by abuse, neglect, mistreatment or failure to provide necessary sustenance; (9) Permitting any dog to leave the confines of any officially prescribed quarantine area; (10) Permitting any dog to be tethered while unattended for more than one hour. Each dog shall be tethered separately. No dog shall be tethered outdoors in excess of one hour at any one time unless the dog's owner, keeper or harborer is present in the yard where the dog is tethered, or within direct line of site. No dog shall be tethered for any length of time while the owner, keeper or harborer is not present at the residence. The tether shall be at least five times the length of the dog's body as measured from the tip of the nose to the base of the tail, terminates at each end with a swivel snap, weighs no more than one-eighth of the dog's weight, is free of tangles, prevents strangulation or injury and prevents the dog from being within ten (10) feet from the edge of any public street, alley, sidewalk or other right of way. (11) Permitting any dog to be tethered within 500 feet of a school within one hour before commencement of the school day or within one hour of the end of the school day or other times in which children would reasonably be expected to be traveling to and from the school. (12) For 10 years from the date of release from incarceration or, if a prison term was not imposed, then from the date of conviction, no person who has been convicted of a felony shall be allowed to own or have custody or possession of a dog that has not been spayed/neutered or that has been found to be a Level-One or Level-two Threat under this ordinance. (13) Confining a dog in a motor vehicle under any conditions that may endanger the well being of the dog. (14) Utilizing a dog as a weapon in the commission of any crime, including the use of a dog to intentionally harass, menace or intimidate any person. (15) Permitting a dog, without provocation, to bite or otherwise inflict serious injury to a person or companion animal.(C) The Toledo Area Humane Society shall have full and concurrent enforcement authority as to Sections 1706.02(6), (8), and (13).

**1706.03. Dogs Which Pose a Threat to Public Safety**

**A. Definitions:**

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

(1) (a) "Level-One Threat." A dog designated as a Level-One threat is one which, without provocation, and subject to section (b) of this section, has chased or approached a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner, keeper or harborer's property in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper or harborer or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top. A level-one threat dog may also be one who has repeatedly exhibited a propensity, tendency or disposition to attack, without provocation, or otherwise threatens the safety of humans or domestic animals. (b) "A Level-One threat dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist law enforcement officers in the performance of their official duties. (2) (a) "Level-two Threat" A dog designated as a Level-two threat is one which, without provocation and subject to section (b) of this section, has killed or caused serious injury to any person; or has killed or caused serious injury another dog; (b) "A Level-two threat 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 or to another dog while the police dog is being used to assist 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 criminal trespass or other criminal offense on the property of the owner, keeper or harborer of the dog. (3) "Menacing fashion." A dog that would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person. (4) "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. (5) "Without provocation." A dog acts "without provocation" when it was not teased, tormented or abused by a person, attacked by another dog, or it 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. Determination of Dogs Which Pose a Threat to Public Safety (1) The Dog Warden, Commissioner of Health and/or Chief of Police, shall have the authority to determine whether any dog poses a threat to public safety as defined in this Section. Alternatively, the Dog Warden, Commissioner of Health and/or Chief of Police can obtain an evaluation of a dog's behavior from a person who has been trained or certified and has experience as a dog trainer or dog behaviorist. The person must provide a written report describing the evaluation, the behavior observed, the conclusions and reasons for the conclusion. The person making the determination must agree to provide testimony in a hearing, if necessary. In making this determination, the Dog Warden, Commissioner of Health and/or Chief of Police or designated trainer/behaviorist, shall consider the observations and testimony of others about the dog's upbringing, training, behavior, the owner, keeper or harbinger of the dog, and other relevant evidence. These observations and testimony must be provided by witnesses who personally observed the behavior. These witnesses must sign a written statement attesting to the observed behavior and agree to provide testimony in a hearing, if necessary. (2) The Dog Warden, Commissioner of Health and/or Chief of Police shall give the dog's owner, keeper or harbinger written notice by certified mail, return receipt requested, personal service, or other methods of service provided in the Ohio Rules of Civil Procedure, of the dog's designation as a threat to public safety, level of the threat the dog presents and the specific reasons therefore, and the requirements and duties of the owner or person in charge or control as a result of such designation. (3) The owner, keeper or harbinger of the dog so classified shall have the right to request a hearing and present evidence and testimony to an impartial hearing officer. The owner, keeper or harbinger must request such hearing, in writing, within twenty-one (21) days of the date the notice was served. The Dog Warden, Commissioner of Health and/or Chief of Police shall not enforce any restrictions upon the owner, keeper or harbinger of the dog until the hearing officer has rendered a decision or the twenty-one (21) day period has lapsed without a response from the owner, keeper or harbinger. (4) Notwithstanding the above sections, the Commissioner of Health and/or Chief of Police shall, unless otherwise prohibited by law, have the authority to seize and impound any dog which has been determined to be a threat to public safety, or may pose an immediate threat to the safety of another person, during the pendency of any hearing or appeal. The owner, keeper or harbinger of the dog must comply with the responsibilities and duties imposed pursuant to this Section unless the decision is reversed on appeal. (5) Unless the Dog Warden, Commissioner of Health and/or Chief of Police's decision is overturned on appeal, and the owner, keeper or harbinger, is unable or unwilling to uphold the duties and responsibilities as required, the owner, keeper or harbinger may remove the dog from the City, or the dog may be seized.

#### C. Restrictions on Dogs Which Pose a Threat to Public Safety

In addition to the other requirements of this chapter, the owner, keeper or harbinger of a dog which poses a threat to public safety, shall comply with the following conditions: (1) Dogs classified as a threat to public safety shall be restrained, so as not to be at large by a physical device or structure, in a manner that prevents the dog from reaching within 10 feet of any public sidewalk or right of way, and must be located so as not to interfere with the public's legal access to the owner's or keeper's premises, whenever that dog is outside the owner, keeper or harbinger's home and not on a leash. Level-one dogs shall be on a six (6) foot or shorter leash handled by an adult capable of controlling the dog, or shall be muzzled when off the property of the owner or keeper (2) In addition to the requirements of section (1), dogs classified as Level-two threat under this ordinance, shall be confined within a secure enclosure whenever the dog is not on a leash. The secure enclosure must be located so as not to interfere with the public's legal access to the owner, keeper or harbinger's premises. The owner, keeper or harbinger shall post warning signs on the premises where the dog is kept, in conformance with rules to be adopted by the Dog Warden and/or Chief of Police. All dogs determined to be a Level-two threat to public safety shall be spayed or neutered, unless exempted by a licensed veterinarian for health reasons. In addition, the owner, keeper or harbinger shall be required to obtain and maintain proof of public liability insurance in a minimum amount of \$100,000.00. The owner, keeper or harbinger shall not permit the dog to be off their premises unless the dog is humanely muzzled and restrained by an adequate leash and under the control of a capable person. The Dog Warden, Commissioner of Health and/or Chief of Police may require the owner, keeper or harbinger to satisfactorily complete a pet ownership program and other remedial measures which the Dog Warden, Commissioner of Health and/or Chief of Police finds are necessary and proper under the circumstances. (3) To insure correct identification, all dogs that have been classified as threat to public safety shall be marked with a permanent identifying mark, micro-chipped, photographed, or may be fitted with a special tag or collar at the owner, keeper or harbinger's expense. (4) All dogs classified as a Level-two threat to public safety shall be registered with the Dog Warden and/or Chief of Police. In addition to the normal licensing fees, there shall be an annual registration fee in an amount set by resolution for dogs classified as Level-two threats to public safety. This additional fee shall be imposed at the time of classification of the dog and shall be payable to the Division of Treasury within thirty (30) days of notification by the Dog Warden and/or Chief of Police. Annual payment of this additional fee shall be due and payable upon the anniversary date of the classification or at the time of the renewal of the Lucas County Dog License. (5) The owner or keeper of a dog which poses a threat to public safety shall not permit the warning sign to be removed from the secure enclosure, and shall not permit the special tag or collar to be removed from the classified dog. The owner, keeper or harbinger of such a dog shall not permit the dog to be moved to a new address or change owners or keepers without providing written notification to the Dog Warden and/or Chief of Police. (6) For 10 years from the date of release from incarceration or, if imprisonment was not ordered, then from the date of conviction, no person who has been convicted of a felony shall be allowed to own or have custody or possession of a dog that has not been spayed/neutered or that has been determined to be a threat to public safety. (7) No owner, keeper or harbinger shall have more than one dog on any premises which has been determined to be a Level-two threat to public safety. (8) All dogs defined as "vicious" under the Ohio Revised Code, or as a Level-two threat under this ordinance, residing in the City shall be spayed or neutered unless exempted by a licensed veterinarian for health reasons, licensed and registered with the Dog Warden and/or Chief of Police. Dogs classified as a Level-Two threat under this ordinance shall also be micro-chipped. D. Hearings and Appeals Process & Declassification of Dog as Threat to Public Safety (A) If an owner, keeper, or harbinger of a dog is convicted in Toledo Municipal Court of any offense which qualifies the dog as a Level-One or Level-two threat, the conviction shall evidence the fact that said dog is a Level-One or Level-two threat. Upon such conviction, the owner, keeper or harbinger shall be on notice that the dog is a Level-One or Level-two threat and must comply with all restrictions specified in Section C of this ordinance. (B) Regardless of whether the owner, keeper, or harbinger of a dog has been convicted of any violation of this ordinance, the Lucas County Dog Warden, Commissioner of Health and/or Chief of Police may designate a dog as a Level-One or Level-two threat. The owner, keeper, or harbinger shall receive written notice that the dog has been designated a Level-One or Level-two threat by one of the aforementioned designating authorities. The written notice shall specify the appeal rights of the owner, keeper, or harbinger of the designated dog. (1) If a dog is designated a Level-One or Level-two threat under Section (A)(2), the owner, keeper, or harbinger of the dog shall have the right to a hearing to appeal the designation. (2) Appeals shall be heard through a hearing presided over by a Hearing Officer designated by the Mayor. The Hearing Officer shall be a person who is not an employee of Lucas County, the City of Toledo, the Toledo Area Humane Society, or any police agency in Toledo or Lucas County. The hearing officer shall be an attorney licensed to practice law in Ohio and shall be compensated at a rate determined by the Mayor with the Consent of City Council. (3) An owner, keeper, or harbinger of a dog designated a Level-One or Level-two threat has twentyone (21) days from the date listed on the written notice of such designation to inform the hearing officer in writing that a hearing date is being requested. The hearing officer will schedule the hearing and notify the party requesting the hearing in writing of the time, date, and location of the hearing. (4) The designating authority must show, by a preponderance of the evidence, that the designated dog is a Level-One or Level-two

threat. (5) Following the hearing, if the hearing officer finds the dog a Level-One or Level-two threat dog, the owner, keeper, or harbor shall be on notice that the dog must be kept pursuant to the restrictions specified in this ordinance. (C) The following conditions for declassification must be met: (1) Level-One threat dogs have been classified for two years without further incident, Level two threat dogs for 5 years without incident; and (2) There have been no violations of the specified regulations; and (3) Any other condition ordered by the Dog Warden, Commissioner of Health and/or Chief of Police or Hearings Officer at the time of classification have been met; and, (4) The owner, keeper or harboree provides the Dog Warden, Commissioner of Health and/or Chief of Police with written certification of satisfactory completion of obedience training for the dog classified, with the owner, keeper or harboree; and, (5) The dog owner, keeper or harboree shall provide written verification that the classified dog has been spayed or neutered. (D) When the owner, keeper or harboree of a dog meets all of the conditions in this division, the restrictions for dogs classified as a Level-One threat to public safety shall be removed; restrictions on dogs classified as a Level-two threat to public safety may be removed, with the exception of the secure enclosure and insurance requirement. (E) A declassification fee in an amount to be set by City resolution will be assessed when the classification period begins.

#### **1706.04 Severability**

The provisions of Sections 1706.01 to 1706.99 are severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal or state law or regulation, the validity of the remaining provisions of Sections 1706.01 to 1706.99 shall not be affected thereby. If any provision of Section is declared inapplicable in any specific way, the remaining provisions shall nonetheless continue to apply and be in full force and effect.

#### **1706.05. Violations and Reckless Owners**

(A.) Each violation of Section 1706.03 shall constitute a civil violation. Violators shall be assessed a civil penalty of \$150 for the first violation, \$500 for the second violation, and \$1000 for the third and subsequent violations. In addition to or in lieu of any penalties authorized for violations under this Section, the person in violation may be required to (a) pay restitution and monetary sanctions, (b) take steps to prevent a recurrence of the nuisance including by providing kennels, fencing, spaying/neutering, micro-chipping, or other care and treatment in compliance with applicable laws; (c) participate in training and/or responsible pet ownership classes, (d) perform community service with an animal welfare organization, and/or (e) forfeit all rights to the animal(s) involved. Any forfeited animal shall be placed in the Lucas County Dog Warden and/or Chief of Police's office. (B.) The Dog Warden, Commissioner of Health and/or Chief of Police may impound dogs of owners, keepers or harborers in violation of this Chapter. Any dog impounded under this Chapter may remain impounded until the owner, keeper or harboree has either surrendered ownership of the dog or demonstrated a willingness to comply with this Section. All owners, who have surrendered dogs under this Chapter, shall not be permitted to own, keep or harbor dogs for a period of forty eight (48) months from the date of the last surrender. (C.) Notwithstanding the foregoing, the Dog Warden, Commissioner of Health and/or Chief of Police may refer any complaints under this section for mediation or other resolution by Hearing Officer or Board of Mediation to be designated by the Mayor with the confirmation of City Council. An owner assessed a civil penalty pursuant to this Section may appeal any decision of the Hearing Officer or Board to the applicable Court as provided by the Ohio Revised Code. The Hearing Officer or Board shall have the authority to impose the sanctions set forth in Section 1706.05(A). (D.) The Dog Warden, Commissioner of Health and/or Chief of Police shall be empowered to initiate administrative proceedings to declare an owner, keeper or harboree who has been convicted of one or more violations of this Ordinance on three separate occasions in a twenty-four (24) month period, or whose dog has been determined to be a Level-One or Level-two threat to public safety and who has failed to comply with the requirements of this Ordinance pertaining to Level-One or Level-two threats to public safety, a reckless owner, keeper or harboree. Such proceedings shall be instituted by service of a written notice upon such owner, keeper or harboree either by certified mail and regular mail to the owner, keeper or harboree's last known address or by personal service. The notice shall contain the following information: (1) The name and address of the owner, keeper or harboree who is subject to such declaration and revocation; (2) The names, descriptions and license numbers of any dogs licensed to the owner, keeper or harboree; (3) A description of the violations or requirements which form the basis of such declaration and revocation, including the case numbers, if any; (4) A summary of the effects of such declaration, including revocation of all dog licenses and surrender of all dogs; (5) The date of proposed entry of the declaration and revocation order which shall be not less than ten days after the date of mailing or personal service of the notice; and (6) Notification of the availability of an appeal, if the owner, keeper or harboree objects to such declaration and revocation within ten days after the date of mailing or personal service of the notice. Upon entry of such declaration and revocation Order, unless an appeal of such Order is filed with the Dog Warden, Commissioner of Health and/or Chief of Police in accordance with this Section, such reckless owner, keeper or harboree shall be required to surrender all dogs to the Dog Warden, Commissioner of Health and/or Chief of Police within twenty-four (24) hours. Failure to surrender such dogs shall result in the immediate impoundment by the Dog Warden, Commissioner of Health and/or Chief of Police in accordance with this Ordinance. Such surrendered or impounded dogs shall immediately become the property of the Dog Warden, Commissioner of Health and/or Chief of Police and may be disposed of or placed for adoption by the Dog Warden, Commissioner of Health and/or Chief of Police as deemed appropriate by the Dog Warden and/or Chief of Police. An owner, keeper or harboree who is declared reckless shall be prohibited from licensing, residing with or owning any dog in the City for a period of forty-eight (48) months from the date of entry of the declaration and revocation Order. An appeal of such declaration and revocation Order shall be heard by a Hearing Officer designated by the Mayor and shall provide an opportunity for the owner, keeper or harboree to appear and offer evidence to dispute the declaration and revocation Order within ten business days. There shall be a filing fee for each appeal. A determination to affirm or reverse such Order shall be entered by the Hearing Officer within ten days of the hearing. (E.) Payment of any fine under this Section may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

#### **1706.99. Penalties**

(A) Whoever violates any provision of Sections 1706.02 (B)(2), 1706.02 (B)(5), of this chapter is guilty of a minor misdemeanor. Each day's violation shall constitute a separate offense. (B) Whoever violates any provision of Sections 1706.02 (B)(1), 1706.02 (B)(4), 1706.02 (B)(7), 1706.02 (B)(8), 1706.02 (B)(9), 1706.02 (B)(10), 1706.02 (B)(11), of this chapter is guilty of a misdemeanor of the fourth degree. Each day's violation shall constitute a separate offense. (C) Whoever violates any provision of Sections 1706.02 (B)(3), 1706.02 (B)(6), 1706.02 (B)(12), 1706.02 (B)(13), 1706.02 (B)(14), 1706.02 (B)(15) of this chapter is guilty of a misdemeanor of the first degree. Each day's violation shall constitute a separate offense.

SECTION 3. That this Ordinance shall take effect and be in force at the earliest period allowed by law.

' Passed: October 12, 2010: yeas 11, nays 0.

Attest:

Gerald E. Dendinger Wilma D. Brown  
Clerk of Council President of Council