TITLE 9. ANIMAL CONTROL

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TITLE 9. ANIMAL CONTROL

Source: Omaha Tribal Council Ordinance No. 88-93 (10-31-88).

CHAPTER 1. REGISTRATION

SECTION 9-1-1. Registration Required.

Any person who shall own, keep, or harbor within the Omaha Reservation a dog or other domestic animal over the age of six (6) months, shall within thirty (30) days after acquisition of such animal, make application for license with the Sanitation officer and present evidence that the animal has been vaccinated for rabies within the preceding twelve (12) months. Such registration must be renewed annually during the twelfth succeeding month, and evidence of current vaccination must be presented at the time of registration.

SECTION 9-1-2. Where Registration to be Made.

Registration of dogs and other domestic pets will be at the Sanitation office of the Carl T. Curtis Health Center, Macy, Nebraska.

SECTION 9-1-3. Registration to Be Displayed.

Each dog shall wear a tag showing such registration and vaccination certification at all times on a collar provided for such purpose by the owner.

CHAPTER 2. PROHIBITED ACTIONS.

SECTION 9-2-1. Prohibited Actions.

The following actions are prohibited:

(a) To harbor any domestic pet, with or without proper registration, if the animal is found to be infected with rabies or mange;

(b) To keep an animal in an enclosure that is unsanitary;

(c) To treat animals in a cruel or inhumane manner, such as teasing, beating, overworking, short-tethering, or providing inadequate feeding or watering.

(d) To allow dogs, cows, sheep, geese, goats, horses or any animal to run uncontrolled or at large within four miles of the center of the Village of Macy, Nebraska;

(e) To allow animals to block pedestrian traffic;

(f) To have custody within four miles of the center of the Village of Macy, Nebraska of any animal not properly registered with the office of the Sanitarian;

(g) To let loose onto the Reservation any dog or other domestic animal;

(h) To 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 the dog to unprovoked attacks upon human beings or domestic animals.

(i) To harbor, own or keep any Vicious Dog.

SECTION 9-2-2. Definition of Vicious Dog.

(a) "Vicious Dog" means:

(1) Any dog which when unprovoked, in a vicious or terrorizing manner approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or

(2) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(3) Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or

(4) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting such as pit bulls, etc.

(5) The dog breed, pit bulls, shall be outlawed-prohibited under any ownership or care by any individual within the exterior boundaries of the Omaha Indian Reservation.

(b) Notwithstanding the definition of a Vicious Dog above, no dog may be declared vicious under Section 9-3-1 of this Title if an injury or damage is sustained by a person who, at the time that injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime. No dog may be declared vicious under Section 9-3-1 of this Title if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

CHAPTER 3. DETERMINATION OF A VICIOUS DOG

SECTION 9-3-1. Hearing and Investigation.

In the event that the Enforcement Officer has probable cause to believe that a dog is vicious, the chief enforcement officer or his or her empowered to convene a hearing for the purpose of determining whether or not the dog in question should be declared vicious. The Enforcement Officer or immediate supervisor or the Chief of Police, or his designee, shall conduct or cause to be conducted an investigation and shall notify the owner or keeper of the dog that the hearing will be held, at which time he or she may have the opportunity to present evidence why the dog should not be declared vicious. The hearing shall be held promptly within no less than five (5) nor more than ten (10) days after service of notice upon the owner or keeper of the dog. The hearing shall be informal and shall be open to the public.

SECTION 9-3-2. Notice of Determination; Opportunity to Contest Determination.

After the hearing, the owner or keeper of the dog shall be notified in writing of the determination. If a determination is made that the dog is vicious, the owner or keeper shall comply with the provisions of this Title in accordance with a time schedule established by the Enforcement Officer, but in no case more than thirty (30) days subsequent to the date of the determination. If the owner or keeper of the dog contests the determination, he or she may, within five (5) days of that determination, bring a petition in the Tribal Court praying that the court conduct its own hearing on whether or not the dog should be declared vicious. After service of notice upon the Enforcement Officer, the Tribal Court shall conduct a hearing de novo and make its own determination as to viciousness. The hearing shall be conducted within seven (7) days of the service of the notice upon the Enforcement Officer or law enforcement officer involved. The issue shall be decided upon the preponderance of the evidence. If the Tribal Court rules the dog to be vicious, the court may establish a time schedule to ensure compliance with this Title, but in no case more than thirty (30) days subsequent to the date of the Tribal Court's determination.

SECTION 9-3-3. Owner's Presence at Hearing Not Required.

The Tribal Court may decide all issues for or against the owner or keeper of the dog regardless of the fact that the owner or keeper fails to appear at the hearing.

SECTION 9-3-4. Finality of Determination.

The determination of the Tribal Court shall be final and conclusive upon all parties thereto. However, any Enforcement Officer shall have the right to declare a dog to be vicious for any subsequent actions of the dog.

SECTION 9-3-5. Seizure and Impoundment of Vicious Dog Pending Hearing.

In the event that the Enforcement Officer has probable cause to believe that the dog in question is vicious and may pose a threat of serious harm to human beings or other domestic animals, the Enforcement Officer may seize and impound the dog pending the aforesaid hearing. The owner or keeper of shall be liable to the Tribe for the costs and expenses of keeping the dog. The Tribal Council may establish a schedule of those costs and expenses.

CHAPTER 4. IMPOUNDING

SECTION 9-4-1. When Impounding Required.

It shall be the duty of all enforcement officers to capture (where possible), secure and remove to the Tribal Animal Shelter any dog running loose, without a collar, or not properly registered, under the provisions of this Title. Each dog so impounded shall be kept in the shelter for a period of not less than three days for a licensed dog and five days for an unlicensed dog, after notice or impounding is given to the owner or published by the Tribal Police. Any dog so impounded shall be held in a shelter that shall be well lit, dry and clean.

SECTION 9-4-2. Fees to Be Paid by Owner After Impoundment.

An owner may retrieve his dog from impoundment only after the fee has been paid. A fee of $5.00 per day shall be charged for each day so impounded. A reasonable fee shall also be charged for each dog so impounded. A reasonable fee shall also be charged for registration, vaccination for rabies or for other types of general care provided for any such dog so impounded.

SECTION 9-4-3. Unclaimed Dogs.

If any dog is not claimed within ten days after notification of the owner or publication of notice of impoundment, then the dog may be adopted or it may be destroyed in a humane manner.

SECTION 9-4-4. Disposition of Destroyed Dogs.

All dogs that are destroyed shall be buried according to the policies set out for burying dead animals, and burials will be supervised by the office of the Sanitarian.

CHAPTER 5. LICENSING OF VICIOUS DOGS

SECTION 9-5-1. Requirements for Licensing.

No Vicious Dog, as defined in Section 9-2-2 hereof or determined under Section 9-3-1 hereof, shall be licensed for any licensing period unless the owner or keeper of that Vicious Dog shall meet the following requirements:

(a) The owner or keeper shall present to the licensing authority proof that the owner or keeper has procured liability insurance in the amount of at least one hundred thousand dollars ($100,000.00), covering any damage or injury which may be caused by the Vicious Dog during the twelve (12) month period for which licensing is sought, which policy shall contain a provision requiring the Omaha Tribe to be named as additional insured for the sole purpose of causing the

licensing authority to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

(b) The owner or keeper shall, at his own expense, have the licensing number assigned to the Vicious Dog tattooed upon the Vicious Dog by a licensed veterinarian or person trained as a tattooist and authorized as such by any state, city or town police department. The tattoo shall be placed either on the upper inner lip or upper left rear thigh of the Vicious Dog. For the purposes of this section, "tattoo" shall be defined as any permanent numbering of a Vicious Dog by means of indelible or permanent ink with the number designated by the licensing authority, or any other permanent, acceptable method of tattooing.

(c) The owner or keeper shall display a sign on his or her premises warning that there is a Vicious Dog on the premises. The sign shall be visible and capable of being read from the public street.

(d) The owner or keeper shall sign a statement attesting that:

(1) The owner or keeper shall maintain and not voluntarily cancel the liability insurance required by this section during the twelve (12) month period for which licensing is sought, unless the owner or keeper shall cease to own or keep the Vicious Dog prior to expiration of the license.

(2) The owner or keeper shall, on or prior to the effective date of the license for which application is being made, have an enclosure for the Vicious Dog will be kept or maintained. "Enclosure" means a fence or structure of at least six feet (6') in height, forming or causing a barrier suitable to prevent the entry of young children, and suitable to confine a Vicious Dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of the Vicious Dog. The Enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping from the Enclosure.

(3) The owner or keeper shall notify the licensing authority and the Enforcement Officer within twenty-four (24) hours if a Vicious Dog is on the loose, is unconfined, has attacked another animal or has attacked a human being, or has died or has been sold or given away. If a Vicious Dog has been sold or given away, the owner or keeper shall also provide the licensing authority with the name, address and telephone number of the new owner of the Vicious Dog.

CHAPTER 6. CONTROL OF VICIOUS DOGS

SECTION 9-6-1. Enclosure Required.

(a) All Vicious Dogs shall be confined in an Enclosure. It shall be unlawful for any owner or keeper to maintain a Vicious Dog upon any premises that does not have a locked Enclosure.

(b) It shall be unlawful for any owner or keeper to allow any Vicious Dog to be outside of the dwelling of the owner or keeper or outside of the Enclosure unless it is necessary for the owner or keeper to obtain veterinary care for the Vicious Dog or to sell or give away the Vicious Dog or to comply with commands or directions of an Enforcement Officer with respect to the Vicious Dog, or to comply with the provisions of this Title. In such event, the Vicious Dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of three hundred (300) pounds and not exceeding three feet (3') in length, and shall be under the direct control and supervision of the owner or keeper of the Vicious Dog.

SECTION 9-6-2. Liability for Harm Caused by Vicious Dogs; Presumption of Nuisance.

If any Vicious Dog shall, when unprovoked, kill or wound, or assist in killing or wounding any sheep, lamb, cattle, horse, hog, swine, fowl or other domestic animal, belonging to or in the possession of any

person, or shall, when unprovoked, attack, assault, bite or otherwise injure any human being or assist in attacking, assaulting, biting or otherwise injuring any human being while out of or within the Enclosure of the owner or keeper of the Vicious Dog, or while otherwise, on or off the property of the owner or keeper, whether or not the Vicious Dog was on a leash and securely muzzled or whether the Vicious Dog escaped without fault of the owner or keeper, the owner or keeper of this dog shall be liable to the person aggrieved as aforesaid, for all damage sustained, to be recovered in a civil action, with costs of suit. It is rebuttably presumed that the owning, keeping or harboring of a Vicious Dog in violation of this Title is a nuisance. It shall not be necessary, in order to sustain any such action, to prove that the owner or keeper of the Vicious Dog knew that the Vicious Dog possessed the propensity to cause such damage or that the Vicious Dog had a vicious nature.

SECTION 9-6-3. Confiscation and Destruction of Vicious Dogs.

Any Vicious Dog:

(a) whose owner or keeper does not secure the liability insurance coverage required in accordance with Section 9-5-1(a), or

(b) that is not maintained on property with an Enclosure, or

(c) that shall be outside of the dwelling of the owner or keeper, or outside of an Enclosure except as provided in Section 9-6-1, or

(d) that is not tattooed,

shall be confiscated by an Enforcement Officer and destroyed in an expeditious and humane manner. In addition, the owner or keeper shall pay a one thousand dollar ($1,000) fine.

SECTION 9-6-4. Fine, Confiscation, and Destruction for Harm Caused to Animals.

If any Vicious Dog shall, when unprovoked, kill, wound or worry or assist in killing or wounding any domestic or farm animal, the owner or keeper of the dog shall pay a five hundred dollar ($500) fine. The Enforcement Officer is empowered to confiscate and, after the expiration of a ten (10) day waiting period exclusive of Sundays and holidays, shall destroy the Vicious Dog. For each subsequent violation, the owner or keeper of the dog shall pay a fine of seven hundred fifty dollars ($750). Such fines are in addition to any legal remedies that the injured party may possess.

SECTION 9-6-5. Fine, Confiscation, and Destruction for Harm Caused to Humans

If any Vicious Dog shall, when unprovoked, attack, assault, wound, bite or otherwise injure or kill a human being, the owner or keeper shall pay a one thousand dollar ($1,000) fine. For each subsequent violation, the owner or keeper shall pay a fine of one thousand five hundred dollars ($1,500), for owning or keeping a Vicious Dog which so attacks, assaults, wounds, bites or otherwise injures or kills a human being. Such fines are in addition to any legal remedies that the injured party may possess.

SECTION 9-6-6. Vicious Dog Determination Prerequisite to Liability.

No person shall be charged under Sections 9-6-3, 9-6-4, or 9-6-5 above, unless the dog, prior to the offense alleged, shall have been declared vicious pursuant to Section 9-3-1 of this Title.

SECTION 9-6-7. Right to Contest Allegations of Violation.

If the owner or keeper of a dog impounded for an alleged violation of Sections 9-6-3, 9-6-4, or 9-6-5 of this Title shall believe that there shall not have been such a violation, such owner or keeper may petition the Tribal Court praying that the impounded dog not be destroyed. The impounded dog shall not be destroyed pending resolution of the owner's or keeper's petition if the petition shall have been filed within ten (10) days of impoundment of the dog and notice shall have been served within five (5) days of the impoundment of the dog upon the Enforcement Officer or keeper of the dog pound. The hearing shall be

conducted within seven (7) days from serving of the notice. However, the Enforcement Officer or any law enforcement officer shall have the right to declare a dog to be vicious for any actions of the dog subsequent to the date of the violation. If the Tribal Court shall find that there shall not have been a violation of Sections 9-6-3, 9-6-4, or 9-6-5 of this Title, the dog may be released to the custody of the owner or keeper upon payment of the expense of keeping the dog.

CHAPTER 7. ENFORCEMENT

SECTION 9-7-1. Who Shall Enforce.

This Title shall be enforced by the Tribal Police, Game Warden, and persons delegated from time to time by the Omaha Tribal Council. Such persons shall be referred to herein as Enforcement Officers.

SECTION 9-7-2. Liability of Owner.

The owner may be held responsible in a civil action for any damages done by his or her animal, whether or not the animal is registered, and such owner may be required to pay the costs of damages and the costs of action in Tribal Court.

SECTION 9-7-3. Enforcement Officer.

(a) An Enforcement Officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provision of this Title, and any such Enforcement Officer is hereby empowered to seize and impound any Vicious Dog whose owner or keeper fails to comply with the provision hereof.

(b) In event that the owner or keeper of the dog refuses to surrender the animal to the Enforcement Officer, the Enforcement Officer may request a police officer to obtain a search warrant from a member of the Tribal Court and to seize the dog upon execution of the warrant.

SECTION 9-7-4. Complaint and Hearing.

Any person who may have a complaint under this Title shall file such information with the Clerk of the Tribal Court. Thereafter notification of hearing shall be issued along with a copy of the complaint and the date of the hearing. Service shall be made through U.S. mail or personally by court officers.

CHAPTER 8. SEVERABILITY

SECTION 9-8-1. Provisions of Title Severable.

If any provision of this Title, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Title and the application of those provisions to other persons and circumstances shall not be affected thereby.

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