City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Gerald L. Clausen, City Manager

FROM: Laura A. Schaefer, Finance Director/City Clerk

DATE: June 8, 2016

SUBJECT: Vicious Animal Appeal Hearing

Kathryn Landon, owner of a dog that has been declared a vicious animal by the Carroll Police Department, has requested a hearing with the Council as to whether the dog is vicious in accordance with Chapter 56 of the City code.

At time of the hearing, evidence will be presented.

RECOMMENDATION: Based upon evidence presented, Council discussion and determination if the dog owned by Kathryn Landon is a vicious animal.

CHAPTER 56

DANGEROUS AND VICIOUS ANIMALS

56.01 Definitions
56.02 Keeping of Dangerous Animals Prohibited
56.03 Keeping of Vicious Animals Prohibited
56.04 Seizure, Impoundment and Disposition

56.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Dangerous animal" means the following animals: †

   A. Badgers, wolverines, weasels, skunk and mink;

   B. Raccoons;

   C. Bats;

   D. Scorpions;

   E. Piranhas.

2. "Vicious animal" means any animal, except for a dangerous animal as listed above, that has attacked, bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious tendencies in present or past conduct, including such that said animal (a) has bitten more than one person during the animal's lifetime; or (b) has bitten one person on two or more occasions during the animal's lifetime; or (c) has attacked any domestic animal or fowl without provocation, causing injury or death while off the property of the owner.

56.02 KEEPING OF DANGEROUS ANIMALS PROHIBITED. No person shall keep, shelter or harbor any dangerous animal as a pet, or act as a temporary custodian for such animal, or keep, shelter or harbor such animal for any purpose or in any capacity within the City.

56.03 KEEPING OF VICIOUS ANIMALS PROHIBITED. No person shall keep, shelter or harbor for any reason within the City a vicious animal except in the following circumstances:

1. Animals under the control of a law enforcement or military agency.

2. The keeping of guard dogs; however, guard dogs must be kept within a structure or fixed enclosure at all times, and any guard dog found at large may be processed as a vicious animal pursuant to the provisions of this chapter. Any premises guarded by a guard dog shall be prominently posted with a sign containing the wording "Guard Dog," "Vicious Dog" or words of similar import, and the owner of such premises shall inform the Mayor or peace officer that a guard dog is on duty at said premises.

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† **EDITOR'S NOTE:** Certain other dangerous animals, listed in Chapter 717F.1, paragraph 5a, of the *Code of Iowa,* are specifically prohibited and regulated by the Iowa Department of Agriculture and Land Stewardship.

56.04 SEIZURE, IMPOUNDMENT AND DISPOSITION.

1. In the event that a dangerous animal or vicious animal is found at large and unattended upon public property, park property, public right-of-way or the property of someone other than its owner, thereby creating a hazard to persons or property, such animal may, in the discretion of the Mayor or peace officer, be destroyed if it cannot be confined or captured. The City shall be under no duty to attempt the confinement or capture of a dangerous animal or vicious animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction.

2. Upon the complaint of any individual that a person is keeping, sheltering or harboring a dangerous animal or vicious animal on premises in the City, the Mayor or peace officer shall cause the matter to be investigated and if after investigation, the facts indicate that the person named in the complaint is keeping, sheltering or harboring a dangerous or vicious animal in the City, the Mayor or peace officer shall order the person named in the complaint to safely remove such animal from the City or destroy the animal within three (3) days of the receipt of such an order. Such order shall be contained in a notice to remove the dangerous or vicious animal, which notice shall be given in writing to the person keeping, sheltering or harboring the dangerous animal or vicious animal, and shall be served personally or by certified mail. Such order and notice to remove the dangerous animal or vicious animal shall not be required where such animal has previously caused serious physical harm or death to any person, in which case the Mayor or peace officer shall cause the animal to be immediately seized and impounded or killed if seizure and impoundment are not possible without risk of serious physical harm or death to any person.

3. The order to remove a dangerous animal or vicious animal issued by the Mayor or peace officer may be appealed to the Council. In order to appeal such order, written notice of appeal must be filed with the Clerk within three (3) days after receipt of the order contained in the notice to remove the dangerous or vicious animal. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the order of the Mayor or peace officer.

4. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the Clerk. The hearing of such appeal shall be scheduled within seven (7) days of the receipt of the notice of appeal. The hearing may be continued for good cause. After such hearing, the Council may affirm or reverse the order of the Mayor or peace officer. Such determination shall be contained in a written decision and shall be filed with the Clerk within three (3) days after the hearing or any continued session thereof.

5. If the Council affirms the action of the Mayor or peace officer, the Council shall order in its written decision that the person owning, sheltering, harboring or keeping such dangerous or vicious animal remove such animal from the City or destroy it. The decision and order shall immediately be served upon the person against whom rendered in the same manner as the notice of removal. If the original order of the Mayor or peace officer is not appealed and is not complied with within three (3) days or the order of the Council after appeal is not complied with within three (3) days of its issuance, the Mayor or peace officer is authorized to seize, impound or destroy such dangerous or vicious animal. Failure to comply with an order of the Mayor or peace officer issued pursuant to this chapter and not appealed, or of the Council after appeal, constitutes a simple misdemeanor.

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ORDINANCE NO. 1604

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CARROLL, IOWA, 2011, BY AMENDING PROVISIONS PERTAINING TO DANGEROUS AND VICIOUS ANIMALS

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

SECTION 1. Chapter 56, Section 01, of the Code of Ordinances of the City of Carroll, Iowa, 2011, is repealed and the following adopted in lieu thereof:

56.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Dangerous animal" means the following animals: †
   a. Badgers, wolverines, weasels, skunk and mink;
   b. Raccoons;
   c. Bats;
   d. Scorpions;
   e. Piranhas.
2. "Vicious animal" means:
   a. Any animal which has attacked a human being or domestic animal one or more times, without provocation while at large;
   b. Any animal with a history to cause injury or to otherwise endanger the safety of human beings or domestic animals while at large;
   c. Any animal that has been trained for dog fighting, animal fighting or animal baiting or is owned or kept for such purposes;
   d. Any animal trained to attack human beings, upon command or spontaneously in response to human activities, except dogs owned by and under the control of the police department, a law enforcement agency in the State of Iowa or of the United States or a branch of the armed forces of the United States.

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† **EDITOR'S NOTE:** Certain other dangerous animals, listed in Chapter 717F.1, paragraph 5a, of the *Code of Iowa,* are specifically prohibited and regulated by the Iowa Department of Agriculture and Land Stewardship.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved this 11th day of April, 2016.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

Eric P. Jensen, Mayor

ATTEST:

Laura A. Schaefer, City Clerk

I certify that the foregoing was published as Ordinance No. 1604 on the 15th day of April, 2016.

Laura A. Schaefer, City Clerk