



Agenda

Public Safety Committee

Oelwein City Hall, 20 Second Avenue SW, Oelwein, Iowa

5:15 PM

October 09, 2023

Oelwein, Iowa

Mayor: Brett DeVore

Mayor Pro Tem: Lynda Payne

Council Members: Karen Seeders, Tom Stewart, Matt Weber, Dave Garrigus, Dave Lenz

Pledge of Allegiance

Discussions

- [1.](#) Consideration of a motion declaring Gardner's dog vicious.

Adjournment

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 319-283-5440

OELWEIN POLICE DEPARTMENT

Call For Service Record

Item 1.

Call #: 23052024	Lat: 0.000000	Lon: 0.000000	Police	Fire	Amb	Other
Premise:			Grid: 2402	2402	2402	2402
Location: 917 7TH AVE NE			Beat: OEPD	OEFD	MOAM	
City: OELWEIN	St: IA	Zip: 50662	CMD Area: A	A	A	
Cross Str: 9TH ST NE /			Area/Agency: OEPD	OEFD	MOAM	
Call Type: BITE	ANIMAL BITE CALL		Priority: 2			

Reporting Party Information Name: MERCY ER,AMY Address: 201 8TH AVE SE City: OELWEIN St: IA Zip: 50662 Phone: Cell: Work Phone:	Disposition: Disp Desc: Actual Type: BITE ANIMAL BITE CALL by: P6003 via: Phone Received: 09/19/2023 @ 11:08:05 Custody: Fire Out: Pat Contact:
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Remarks: - ALL REMARKS

ENTERED BY: P6003 @ 09/19/2023 11:08:06
 1100 pbx Amy at Mercy ER advising that Brent Simpson 917 7th Av NE was bitten by a neighbor's girlfriend's dog-Clay Hallberg is the neighbor-do not know girlfriend's name other than she moved here very recently from Las Vegas/120 advised

ENTERED BY: P6003 @ 09/19/2023 13:47:29
 1304 pbx 23-052024 Brent Simpson [REDACTED] reference his dog bite report-he is back at home-1251338 125
 23-052024 out at 917 7th Av NE will return his call

ENTERED BY: P6003 @ 09/19/2023 14:02:27
 33125 Location updated to 908 7TH AV NE

ENTERED BY: P6003 @ 09/19/2023 14:07:35

1406

125 10-8

negative contact-door hanger left

Item 1.

Unit Information:

		Times					Destination	Trans Start	Trans Stop	Mile Start	Mile Stop
Unit ID	Officer 1	Disp	Enrte	Arriv	Clear	Total					
33125(P)	H4224	09/19/2023	13:43:46	13:45:11	14:09:28	26				0.0	0.0



OELWEIN POLICE DEPARTMENT

OFFENSE/INCIDENT ARREST REPORT



Item 1.

Case Information

CFS #: 23 - 052024

Narrative

On September 19, 2023, at approximately 11:08am, the Oelwein Mercy ER contacted the Oelwein Police Department to report a dog bite. I later met with Brent Simpson at his residence 917 7th Ave NE. The bite had already been heavily wrapped by the hospital so a picture was not taken at that time. Brent advised he was walking on the East side of the road, when he heard a woman yelling. He looked the direction of the yelling and saw a dog running at him. The dog came from the house across the street from where he was walking, on the West side of the road. Brent described himself as maneuvering and juking out of the dog's way to avoid being bitten or chased. He was waiting for the owner to come get ahold of the dog, but before she was able to, it lunged in and bite down on his left knee/leg. Brent stated the owner even had a hard time getting the dog off of his leg. Brent was then seen in the ER. After leaving Brent's residence, I stopped by 908 7th Ave NE to make contact with the dog owner. No contact was made and a door hanger was left on the doorknob. I did make contact with Clay Hallberg, the homeowner the same evening, who was out of town. Clay advised he would get ahold of his girlfriend, Carolyn Gardner, the dog's owner. As of September 19, 2023 at 9:30pm, no contact had been made. I need to verify vaccination status, and serve Carolyn a vicious dog letter. When Brent is able to take the wrap off, after the 24 hours the ER told him, he is going to photograph and email me the pictures of the wound. I made contact with Carolyn via phone. She provided me with the gender and breed of dog. She also advised that the dog is exempt from the rabies vaccination due to medical issues. Carolyn was advised she is responsible for quarantining the dog to ensure it does not have rabies and to keep the dog within her control when it is outside. This letter was served on September 20, 2023.

Officer Name:	Charity S. Heller	Officer	33-125
Officer Signature:		Date:	09/20/2023

Oelwein Police Department

Item 1.

501 Rock Island Road
Oelwein, Iowa 50662

Jeremy P. Logan
Chief of Police

Date: 09/19/2023

Name of Dog Owner: Carolyn Gardner
Address of Dog Owner: 908 7th Ave NE
Oelwein, Iowa 50662

Dear Carolyn Gardner:

This letter is to formally advise you that your dog that you possess, a femlae Beligian Malinois by the name of Adeline, is in violation of Section 19-26 of the Oelwein City Code. This section specifically describes and outlines procedures for the handling of vicious dogs.

Narrative:

On September 19, 2023, at approximately 11:08am, the Oelwein Mercy ER contacted the Oelwein Police Department to report a dog bite. I later met with Brent Simpson at his residence 917 7th Ave NE. The bite had already been heavily wrapped by the hospital so a picture was not taken at that time. Brent advised he was walking on the East side of the road, when he heard a woman yelling. He looked the direction of the yelling and saw a dog running at him. The dog came from the house across the street from where he was walking, on the West side of the road. Brent described himself as manuvering and juking out of the dogs way to avoid being bitten or chased. He was waiting for the owner to come get ahold of the dog, but before she was able to, it lunged in and bite down on his left knee/leg. Brent stated the owner even had a hard time getting the dog off of his leg. Brent was then seen in the ER. After leaving Brent's residence, I stopped by 908 7th Ave NE to make contact with the dog owner. No contact was made and a door hanger was left on the doorknob. I did make contact with Clay Hallberg, the homeowner the same evening, who was out of town. Clay advised he would get ahold of his girlfriend, Carolyn Gardner, the dog's owner. As of September 19, 2023 at 9:30pm, no contact had been made. I need to verify vaccination status, and serve Carolyn a vicious dog letter. When Brent is able to take the wrap off, after the 24 hours the ER told him, he is going to photograph and email me the pictures of the wound. I made contact with Carolyn via phone. She provided me with the gender and breed of dog. She also advised that the dog is exempt from the rabies vaccination due to medical issues. Carolyn was adivsed she is responsible for quatantining the dog to ensure it does not have rabies and to keeo the dog within her control when it is outside. This letter is being served on September 20, 2023. Oelwein City Code Section 19-26 describes a vicious dog as any of the following:

1. "Vicious Dog" means:

- A. 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
- B. 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
- C. Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or
- D. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

Therefore, you are hereby directed, that within five (5) days of receiving this notice, excluding Saturday & Sunday, you shall:

- A. Register said vicious dogs pursuant to the terms and conditions of Section 19-29, (enclosed) or;
- B. Permanently remove said dogs from the City of Oelwein, and submit adequate proof of such removal, or;
- C. Destroy said dogs in an expeditious and humane manner, and submit adequate written documentation of such act.

You do have the right to appeal this declaration to the Oelwein City Council. That appeal needs to be made, in writing, within five (5) days, exclusive of Saturdays & Sundays and delivered to Oelwein City Hall, 20 2nd Ave S.W., Oelwein, Iowa 50662. If no notice of appeal is received within this time frame, it will be deemed that the appeal is waived. *An appeal of this declaration is separate from any possible pending court action that may be required for charges filed for, including but not limited to, Dog At Large, Disturbing the Public Quiet etc... Citations/charges will be addressed in magistrate court. The appeal of this declaration will be addressed by the Oelwein City Council.

501 Rock Island Road
Oelwein, Iowa 50662

Jeremy P. Logan
Chief of Police

If the vicious dog is not registered, removed or destroyed or if no appeal is received within five days, the City of Oelwein will impound the dogs and assess the costs against you.

Thank you for your time and anticipated expeditious response to this matter.

Respectfully,



Officer: Heller, Charity 33-125
Oelwein Police Department

Enc. Vicious Animal Ordinance of the City of Oelwein.

Cc: Chief of Police, City Hall, File 23-052024

SECTION 19-26. DEFINITIONS.

As used in Sections 19-26 through 19-33, inclusive, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

1. "Vicious Dog" means:

- A. 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
- B. 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
- C. Any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or
- D. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

Notwithstanding the definition of a vicious dog above, no dog may be declared vicious if an injury or damage is sustained by a person who, at the time such 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 if any injury or damage was sustained by a domestic animal which at the time such injury or damage was sustained was teasing, tormenting, abusing or assaulting the dog. No dog may be declared vicious if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

2. "Enclosure" means a fence or structure of at least six feet "6') in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog. Such 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. Any gates or access to the enclosure shall be self closing and equipped with a keyed or combination locking device.

3. "Animal Control Officer" means the Animal Control Warden, the Chief of Police or the Chief's designee.

4. "Impounded" means taken into custody by the Animal Control Officer.

5. "Persons" means a natural person or any legal entity, including but not limited to, a corporation, firm, partnership or trust.

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Oelwein, Iowa 50662

Jeremy P. Logan
Chief of Police

SECTION 19-27. VICIOUS DOG – DESIGNATION.

In the event that the Animal Control Officer has probable cause to believe that a dog is vicious, said officer shall notify, in writing, by personal service or certified mail, the owner and keeper of said dog, that said dog has been declared a vicious dog.

The written notice shall include:

1. Description of the dog, to the extent possible;
2. State that the dog is vicious pursuant to the provisions of this chapter;
3. State that within five (5) days, exclusive of Saturdays and Sundays, from the receipt of notice the owner or keeper of the dog shall:
 - A. Register said vicious dog pursuant to the terms and conditions of Section 19-29 below, or;
 - B. Permanently remove said dog from the city of Oelwein, and submit adequate proof of such removal, or;
 - C. Destroy said dog in an expeditious and humane manner, and submit adequate written documentation of such act.
4. State that the owner or keeper of the dog may appeal the decision of the Animal Control Officer to the City Council, in writing, within five (5) days, exclusive of Saturdays and Sundays. The notice shall further advise that in the event there is no written notice of appeal filed with the City Clerk within five (5) days, exclusive of Saturdays and Sundays, the right to appeal will be deemed waived and the decision of the Animal Control Officer will be conclusively presumed.
5. State that if the vicious dog has not been registered, removed or destroyed or if no appeal is requested within the five (5) days, exclusive of Saturdays and Sundays, the city will impound the dog and assess the costs against the owner and keeper of the dog.

SECTION 19-28. APPEALS.

Any owner or keeper of a dog that has been declared vicious may appeal to the City Council for review. The appeal must be in writing and received by the City Clerk within five (5) days, exclusive of Saturdays and Sundays, of the Animal Control Officers notice. The City Council shall, within fourteen (14) days of receipt of the appeal, fix the time and place of the hearing, which shall be within thirty days after the filing of the appeal. The City Council, after hearing such testimony and evidence as it may deem proper, shall render its decision. The decision of the City Council shall be final and the Animal Control Officer shall take such action as is necessary to carry out such decision.

In the event that the Animal Control 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 Animal Control Officer may seize and impound the dog pending the appeal. The owner or keeper of the dog shall be liable to the City of Oelwein for the costs and expenses of keeping such dog if the dog is found to be a vicious dog.

SECTION 19-29. REQUIREMENTS FOR REGISTRATION.

1. No vicious dog shall be licensed by the City of Oelwein for any licensing period commencing after the effective date of this ordinance unless the owner or keeper of such vicious dog shall meet the following requirements:
 - A. The owner or keeper shall present to the city or town clerk or other licensing authority, proof that the owner or keeper has procured liability insurance issued by an insurance company licensed to do business in the State of Iowa, in the amount of at least one hundred thousand dollars (\$100,000.00) covering any damage or injury which may be caused by such vicious dog during the twelve (12) month period for which licensing is sought, which policy shall contain a provision requiring the city or town to be named as additional insured for the sole purpose of the city or town clerk or other licensing authority where such dog is licensed to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.
 - B. The owner or keeper shall cause the vicious dog to be identified by means of a special blaze orange collar visible from a distance of 100 feet, which the dog must wear at all times.

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Jeremy P. Logan
Chief of Police

C. The owner or keeper shall display a sign on his or her premises warning that there is a vicious dog on the premises. Said sign shall be visible and capable of being read from the public highway.

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 such license.
2. The owner or keeper shall, on or prior to the effective date of such license for which application is being made, have an enclosure for the vicious dog on the property where the vicious dog will be kept or maintained.
3. The owner or keeper shall notify the licensing authority and the animal control warden immediately 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 the 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.
2. The Animal control Officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this chapter, and any such officer is hereby empowered to seize and impound any vicious dog whose owner or keeper fails to comply with the provisions hereof.

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Chief of Police

In the event that the owner or keeper of the dog refuses to surrender the animal to the officer, the officer may request a police officer to obtain a search warrant to seize the dog upon execution of the warrant.

Notwithstanding any other provisions of this code, any person in possession of a vicious dog upon the effective date of this ordinance shall have fourteen days to amend any current license application to show compliance with Section 19-29 of this code.

SECTION 19-30. CONTROL OF VICIOUS DOGS.

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 which does not have a locked enclosure.

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 the animal control warden with respect to the vicious dog, or to comply with the provisions of Section 19-27(3) of this Chapter. 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 19-31. PURPOSE OR INTENT - - HARBORING.

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 said dog to unprovoked attacks upon human beings or domestic animals. No person shall possess with intent to sell, or offer for sale, breed, or buy or attempt to buy within the city any vicious dog.

SECTION 19-32. PENALTIES FOR VIOLATION.

1. Any owner or keeper of a dog violating any of the provisions of this chapter shall, upon conviction, be guilty of a municipal infraction. Each day that a violation occurs or is permitted to exist by the violator, constitutes a separate offense.

2. If any dog previously declared to be a vicious dog, 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 such vicious dog, or while otherwise, on or off the property of the owner or keeper whether or not such 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 such dog shall be guilty of a municipal infraction. It is rebuttably presumed as a matter of law that the owning, keeping or harboring of a vicious dog in violation of this chapter is a nuisance. It shall not be necessary, in order to sustain any such action, to prove that the owner or keeper of such vicious dog knew that such vicious dog possessed the propensity to cause such damage or that the vicious dog had a vicious nature. Upon such attack or assault, the Animal Control Officer is empowered to confiscate and, after expiration of a five (5) day waiting period exclusive of Sundays and holidays, shall destroy said vicious dog.

Oelwein Police Department

Voluntary Statement

Statement of: Last, First: Simpson, Brent

Address: 917 7th Ave NE City: Oelwein State: Iowa

DOB: [REDACTED] SSN: - - - Phone #: [REDACTED]

Statement taken by: _____

Walking South and I was on the East side of the road (Farthest from their house). I didn't notice that a lady was standing ~~out~~ out there with 2 Dogs. 1 pit bull and 1 mix breed. I was looking in the opposite direction and I heard someone yelling. I looked over in that direction and the dog was really close and ~~bit~~ it bite the back side of my leg and wouldn't get away from me. I feel if it was a small child, it would've been severely injured or probably killed.

I am concerned with the dogs vaccination.

I certify under the penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Signed: Brent Simpson

Date: 9 / 19 / 2023

Witness: _____

Wednesday, September 20, 2023

To: Delwin City Council

I am appealing the label of "vicious dog" for Adeline, my Belgian Malinois.

She is 7 1/2 years old, and she has not presented in this way. She is included on my homeowners' insurance, as is my other dog.


The young man, Brent, told me he was "OK" a few times, and he continued on his way to his destination away from his home, walking in a calm manner.

Thank you,

Carolyn Gardner

Sec 19-26 Delwin City Code
Officer Sells served paperwork 09/20/2023

Letter from Vet:



OELWEIN VETERINARY CLINIC P.C.
Drs. McDONOUGH & SEARS D.V.M.

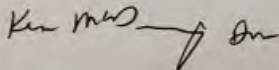
2221 S. Frederick Ave.
Oelwein, IA 50662
Phone 319-283-1158
Fax 319-283-1163

June 23, 2023

To whom it may concern:

This letter regards "Adeline", a 7 yr old female Belgian Malinois, owned by Carolyn Gardner of Oelwein, IA. It is my professional opinion that "Adeline" NOT be vaccinated for Rabies. She has a history of autoimmune vasculitis and has experienced life-threatening reactions to vaccines in the past. In the EXTREMELY rare case of a human exposure bite from this dog, the owner understands that a 7-10 day quarantine period will be necessary. If you have questions or need further information, please contact me at the location listed above.

Sincerely,



Ken McDonough DVM

Gardner Caro

Letter from Carolyn to Brent:

September 22, 2023

Clay Hallberg
Carolyn Gardner
908 7th Avenue N.E.
Oelwein, Iowa 50662

Dear Brent Simpson,

We are sorry that my dog injured your leg this past week. When you kept walking, and left the neighborhood, you stated a few times that you were alright. I told you that if you needed anything to let me know, and I asked you where you live since I had not seen you in the neighborhood before that day. You stated the brick house and pointed to your parents' home across the street. Later, when you did go to the emergency room, the local police left a visitor tag on our door.

I saw the tag at 5:30 AM the next morning, and I looked up the Oelwein ordinance for dogs and dog issues. I then realized that no matter if you had gone to the ER or not, it was my responsibility (in Oelwein) to report the issue to the local police within 24 hours. Since I have just been here this summer a few times from Las Vegas, and Adeline has not had any problem like this in her past, I was unaware of the expectations in Oelwein. Adeline is currently 7 ½ years old. In fact, we have taken both of my dogs to downtown park events, and we even saw your mom at one of these events. She has also been boarded with Ruff House for a week, and she was completely compliant with them and easy to manage there. I am also able to get a letter from her vet in Las Vegas that speaks to the demeanor and easy-going behavior of my dog.

I called the police department (It had not yet been 24 hours since the event.) I was unable to speak with the officer in charge at that time. She was due to be at work at noon that day. Instead, I left a message for her, and she called me back upon her arrival. She told me she would come to speak to me that afternoon. Until approximately 3 PM, I did not have all the details of your situation. Officer Heller and I spoke, and I then knew you had been to the ER. She stated she would be checking in with you and getting a photo of the wound.

My dog, Adeline is in quarantine and on a leash per the Oelwein ordinance. She is not rabid and has shown no signs of rabies, so I am certain you will not have this problem. She is not allowed to wander. In Las Vegas, she was an in-door dog and was not in environments that might host rabies within animals.

That said, you did have medical expenses, and I am more than willing to take care of the outstanding balance beyond what is covered by insurance. If you will provide the billing information, I am able to take care of the out-of-pocket expenses.

Sincerely,

Carolyn Gardner
Clay Hallberg