

Town of Danube
Local Law Number Three of 2005 – Dog Control

DOG CONTROL

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Addendum -- § 118 of the New York State Agriculture and Markets Law

§ 1. Purpose and intent.

The purpose of this law shall be to promote the health, safety and general welfare of the Town of Danube, including the protection and preservation of the property of the town and its inhabitants, by specifying, establishing and imposing certain restrictions, regulations and responsibilities relating to the control of dogs within the Town of Danube, as hereinafter defined.

§ 2. Definitions.

As used in this law, the words in the following list shall have the following respective meanings:

AT LARGE -- Any dog shall be deemed to be "at large" if not accompanied by a person who is in control of the dog or who is providing restraint of the dog elsewhere than on the premises of the owner, keeper or another responsible person who has knowledge of the dog's presence and who assents thereto.

ATTACK -- Any action by a dog that might cause reasonable apprehension of harm or injury to a person, together with the apparent ability of the dog to inflict such harm. An actual bite by the dog is unnecessary to meet the qualifications of this definition.

CONTROL -- When a dog comes, heels, and stays promptly upon command.

DANGEROUS DOG -- A dog that, without provocation, chases or approaches in either a menacing fashion or in an apparent attitude of attack or attempts to bite or otherwise endanger any person or domestic animal while that dog is off the premises of its owner, keeper or harbinger and not under the control of its owner, keeper or harbinger.

DESTRUCTION -- Euthanasia of a dog; the act of painlessly causing the death of the dog.

DISPOSAL -- Arrangement for the sale or destruction of a dog.

DOG -- Includes the plural "dogs" and refers to any dog of either sex or any age unless otherwise indicated herein. Any member of the species *Canis familiaris* regardless of age, male and female, licensed and unlicensed.

DOG CONTROL OFFICER -- Any person who is appointed by the Town Board to assist in the enforcement of this article.

DOMESTIC ANIMAL -- Any cat, other dog or any other animal defined as a domestic animal in Article 7, § 108, of the Agriculture and Markets Law of the State of New York.

FEE SCHEDULE -- A list of all fees charged by the Town of Danube in conjunction with this article.

FORFEITURE -- The loss or giving up of any claim to a dog.

GUIDE DOG -- Any dog trained to guide blind, deaf or other handicapped persons.

HABITUAL LOUD HOWLING OR BARKING – A dog that barks, bays, cries, howls, or makes any other noise for a period of ten minutes or barks intermittently for one-half hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private or commercial property, provided, however, that a dog shall not be deemed a “barking dog” for purpose of this Law, if, at the time the dog is barking or making any noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog.

HARBOR -- To provide food and shelter for any dog.

LEASH, LEASHED or RESTRAINED BY A LEASH -- That the dog is equipped with a collar or harness to which is attached a leash of sufficient strength to restrain the dog, unless the dog is accompanied by its owner or other responsible person able to control the animal by voice command.

MENACING FASHION -- The behavior of a dog which would cause a person to reasonably believe that the dog would cause physical injury to such person.

OWNER -- Any person who is a licensed owner of a dog. This term also includes any person who owns, keeps or harbors or who has the care, custody or control of a dog. Dogs owned by minors shall be deemed to be in the care, custody and control of the minor's parents or other head of the household where the minor resides.

PENALTIES -- Punishment fixed by law.

PERMIT TO BE KEPT -- Any person who harbors a dog for an individual or owner who lives off the premises.

SECURITY DOG -- Any dog owned or harbored by any State or Municipal Police Department.

SERIOUS INJURY -- Any injury to humans, domestic animals, or deer that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

TOWN -- Includes all who reside in the Town of Danube

VICIOUS DOG -- A dog that, without provocation, bites, injures or kills a human being, other dog, cat or domestic animal.

WITHOUT PROVOCATION -- The dog was not teased, tormented or abused by a person or 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.

WORKING DOG – Any dog being used to shepherd or guard cows, sheep or any other domestic animals.

§ 3. General regulations and restrictions.

It shall be unlawful for any owner of or any person harboring any dog in the Town of Danube to permit or allow such dog to:

A. Run at large unless accompanied by its owner or a responsible person able to control the animal. For the purposes of this law, a dog or dogs lawfully hunting *or field trialing* in the company with a hunter(s) or handler(s) shall be considered as accompanied by and under the control of its owner.

B. Engage in habitual loud howling or barking or to conduct itself in such manner so as to habitually annoy any person other than the owner or person harboring such dog—not to include “working” dogs.

C. Cause damage or destruction to property or commit a nuisance upon the premises of a person other than the owner or person harboring such a dog.

D. Chase or otherwise harass any person in such a manner as to reasonably cause intimidation or to put any person present in reasonable apprehension of bodily harm or injury.

E. Habitually chase or bark at motor vehicles.

F. Be outside a building or fenced enclosure when in heat.

§ 4. Enforcement.

An animal control officer or other proper authority designated by the Town Board, as provided by § 114 of the Agriculture and Markets Law and other applicable laws and provisions, may enforce the provisions of this law and may also investigate and report to a Town Justice any dangerous dog as described in § 121 of the Agriculture and Markets Law and see that the order or orders of the Town Justice in such case are carried out.

The Town Board shall appoint a Dog Control Officer or Officers as needed pursuant to Article 7 of the Agriculture and Markets Law of the State of New York. It shall be the duty of such Dog Control Officer or Officers, as well as all peace officers within the Town of Danube, to enforce appropriate provisions of this article, as well as the Agriculture and Markets Law, with respect to dogs in the Town of Danube. The Town Board authorizes the Herkimer County Sheriff's Department and the New York State Police to enforce any provisions of this article, as well as applicable provisions of the Agriculture and Markets Law of the State of New York. In addition, any Dog Control Officer or peace officer of the Town is hereby authorized to serve any process related to any proceeding, whether criminal or civil in nature, including any appearance ticket (pursuant to Section 150.20 of the Criminal Procedure Law), in accordance with the provisions of this article. If the Dog Control Officer serves said appearance ticket and it is disregarded, the Town Justice shall permit the filing of an information from said Officer and shall issue a warrant of arrest for such person.

- A. Authority of the Dog Control Officer. The Dog Control Officer or Officers of the Town of Danube may seize a dog or any dogs, tagged or untagged, which are found to be in violation of any provision of this article, as well as any dog or dogs otherwise required to be seized under and by virtue of Article 7 of the New York State Agriculture and Markets Law.
- B. Appearance tickets; filing of complaints.
 - (1) Any dog control officer in the employ of or under contract with the Town of Danube, observing a violation of this local law in his presence shall issue and serve an appearance ticket for such violation..
 - (2) Any person who observes a dog causing damage or destruction to property other than its owner or committing a nuisance upon the premises of a person other than its owner may file a signed complaint, under oath, with the Town Clerk, and such complaint shall be referred by the Clerk to the Dog Control Officer, specifying the objectionable conduct of the dog, the date thereof, the damage caused, a description of the dog, if known, and the name of the owner or person harboring said dog, if known.
 - (3) Oral complaints made to the Town Clerk or Dog Control Officer must include the complainant's name and address and may be used only as a basis for investigation by the Dog Control Officer or peace officer.

§ 5. Procedure.

A. The Dog Control Officer may issue an appearance ticket to any person believed to be in violation of this local law.

B. Upon receiving an appearance ticket in proper form the Town of Danube Justice shall summon the alleged violator to appear in person before him for a hearing. The alleged violator may be represented by legal counsel retained at his or her own expense. Upon a conviction the Town of Danube Justice may, in addition to imposing the penalty authorized by § 7 of this law, order:

- (1) That the dog be restrained by a collar and leash at all times.
- (2) That the dog be kept on the owner's premises at all times.
- (3) That the dog be confined.

(4) Such other remedy as may be warranted by the circumstances of the case.

C. A violation of any order issued by a Town of Danube Justice pursuant to this section shall itself be an offense punishable as provided in § 7 of this law.

§ 6. Seizure of dogs.

The seizure and redemption of dogs in violation of this law shall be as provided in § 118 of the Agriculture and Markets Law of the State of New York.

A. The owner of a seized dog shall reimburse the Town of Danube for the cost of sheltering said dog at the rate contained in the annual contract between the Town of Danube and the animal shelter (The Herkimer County Humane Society.).

B. The owner of any seized dog shall be required to pay the fees as set forth in Subsection A of this section whether or not such owner chooses to redeem his or her dog.

C. The owner of any dog not redeemed shall forfeit all title to the dog, and the dog shall be sold or destroyed pursuant to the provisions of § 118 of the Agriculture and Markets Law.

§ 7. Penalties for offenses.

A violation of this law shall be deemed an offense against such law, and any person convicted hereunder shall be fined an amount not less than 10 dollars (\$10.) and not more than one hundred dollars (\$100.); provided, however, that if the person committing such offense shall have committed an offense in violation of this law within the preceding two (2) years, the fine shall be not less than one hundred dollars (\$100.) and not more than one hundred fifty dollars (\$150.); and if such person shall have committed two (2) or more offenses within the preceding two (2) years, the fine shall not be less than one hundred fifty dollars (\$150.) and not more than two hundred fifty dollars (\$250.).

§ 8. Severability.

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

§ 9. Filing and Effective Date

This local law shall become effective upon its adoption by the Town Board and its filing with and acceptance by the Office of the New York Secretary of State.

Addendum: § 118 of the New York State Agriculture and Markets Law, as of the date of adoption of this local law.

Seizure of dogs; redemption periods; impoundment fees; adoption.

1. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality shall seize:

(a) any dog which is not identified and which is not on the owner's premises; and

(b) any dog which is not licensed, whether on or off the owner's premises.

(c) any licensed dog which is not in the control of its owner or custodian or not on the premises of the dog's owner or custodian, if there is probable cause to believe the dog is a dangerous dog.

(d) any dog which poses an immediate threat to the public safety. Promptly upon seizure the dog control officer shall commence a proceeding as provided for in subdivision two of section one hundred twenty-one of this article.

2. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality may seize any dog in violation of any local law or ordinance relating to the control of dogs, adopted by any municipality pursuant to the provisions of this article.

3. Each dog seized in accordance with the provisions of this article shall be properly sheltered, fed and watered for the redemption period as hereinafter provided.

4. Each dog which is not identified, whether or not licensed, shall be held for a period of five days from the day seized during which period the dog may be redeemed by its owner, provided that such owner produces proof that the dog has been licensed and has been identified pursuant to the provisions of this article and further provided that the owner pays the following impoundment fees:

(a) ten dollars for the first impoundment of any dog owned by that person;

(b) twenty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the second impoundment, within one year of the first impoundment, of any dog owned by that person; or

(c) thirty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person. The impoundment fees set forth in paragraphs (a), (b) and (c) of this subdivision notwithstanding, any municipality may set by local law or ordinance such fees in any amount.

5. All impoundment fees shall be the property of the municipality to which they are paid and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under section one hundred seventeen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

6. Promptly upon seizure of any identified dog, the owner of record of such dog shall be notified personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. If notification is personally given, such dog shall be held for a period of seven days after day of notice, during which period the dog may be redeemed by the owner. If such notification is made by mail, such dog shall be held for a period of nine days from the date of mailing, during which period the dog may be redeemed by the owner. In either case, the owner may redeem such dog upon payment of the impoundment fees prescribed by subdivision four of this section and by producing proof that the dog has been licensed.

7. An owner shall forfeit title to any dog unredeemed at the expiration of the appropriate redemption period, and the dog shall then be made available for adoption or euthanized subject to the provisions of subdivisions two-a, two-b, two-c, two-d, and two-e of section three hundred seventy-four of this law. Provided that no dog in the custody of a pound or shelter shall be delivered for adoption unless it has been licensed pursuant to the provisions of this article prior to its release from the custody of a pound or shelter. Any municipality may by local law or ordinance establish additional conditions for adoption including the requirement that adopted dogs shall be spayed or neutered before or after release from custody upon such terms and conditions as the municipality may establish.

7-a. Any dog or cat in the custody of a pound or shelter shall be made available for adoption or euthanized subject to the provisions of subdivisions two-a, two-b, two-c, two-d, and two-e of section three hundred seventy-four of this law after the time for redemption has expired.

254 8. The redemption periods set forth above in this section notwithstanding, any municipality may
255 establish the duration of such periods by local law or ordinance, provided that no such period
256 shall be less than three days, except that where notice to the owner is given by mail, no such
257 period shall be less than seven days.

258 9. Any dog, owned by a resident of any city having a population of over two million or by a non-
259 resident of this state, seized and impounded pursuant to the provisions of this article, and whose
260 owner can be identified, shall be subject to subdivision six of this section. If the dog is licensed
261 pursuant to the provisions of law of the area of the owner's residence, the licensing requirements
262 of this article shall not apply provided such dog is not harbored within this state outside any city
263 having a population of over two million for a period exceeding thirty days.

264 10. The seizure of any dog shall not relieve any person from any violation provided for by
265 section one hundred nineteen of this article.

266 11. No liability in damages or otherwise shall be incurred on account of the seizure,
267 euthanization or adoption of any dog pursuant to the provisions of this article.

268
269 Adopted December 1, 2005 by the following vote:

270 Councilman Edmunds – aye

271 Councilwoman Jodway – aye

272 Councilman Lasher – aye

273 Councilwoman Stock – aye

274 Supervisor Welden – aye

275
276 This law will take effect upon filing with the NYS Secretary of State

277
278 Word was received that the filing occurred on December 27, 2005.