

DOG CONTROL

A LOCAL LAW RELATING TO THE CONTROL CONFINING, AND LEASHING OF DOGS (Originally Adopted October 7, 1975)

A LOCAL LAW REPEALING AND REPLACING LOCAL LAW NO. 3 OF THE YEAR 1975 IN ITS ENTIRETY OF THE TOWN OF KIRKWOOD ENTITLED "A LOCAL LAW RELATING TO THE CONTROL, CONFINING AND LEASHING OF DOGS"

LOCAL LAW #2-2024, January 2, 2024

SECTION 1. Purpose

The Town Board of the Town of Kirkwood finds that the running at large and other uncontrolled behavior of licensed and unlicensed dogs has caused physical harm to persons, damage to property, and created nuisances within the town. The purpose of this local law is to protect the health, safety and well-being of persons and property by imposing restrictions on the keeping and running at large of dogs within the Town.

SECTION 2. Authority

This local law is enacted pursuant to the provisions of Section 122 of Article 7 of the Agriculture and Markets Law of the State of New York.

SECTION 3. Title

The title of this law shall be, "Dog Control Law of the Town of Kirkwood".

SECTION 4. Definition of Terms

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

- a. **Agriculture and Markets Law.** The Agriculture and Markets Law of the State of New York in effect as of the effective date of this local law, as amended by this local law, and as amended thereafter.
- b. **Attack.** Any physical assault, including mauling, biting, clawing, or tearing.
- c. **Confined.** An animal is confined where such animal is securely confined or restrained and kept on the owner's premises, either within a building, kennel or other suitable enclosure or securely fastened on a chain, wire, or other effective tether of such length and so arranged that the animal cannot reach or endanger any person or any adjacent premises or on any public street, way or place, or, if the animal is being transported by the owner, that it is securely confined in a crate, or other container, or so restrained in a vehicle that it cannot be expected to escape therefrom.
- d. **Control.** Control over the dog as to not allow the dog to run free and keeping the dog in close proximity to the accompanying person.

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- e. **Dog.** Dog shall mean any licensed or unlicensed members of the species *canis familiaris*.
- f. **Dog Control Officer.** Any person authorized by the Town Board, from time to time, to enforce the provisions of this local law or the provisions of the Agriculture and Markets Law.
- g. **Habitual.**
 - i. As used in paragraph b. of section 5: A dog howling, barking, crying or whining, etc. for repeated intervals of at least 5 minutes with less than 1 minute of interruption, which can be heard by any person, including a law enforcement officer or dog control officer, from a location outside of the property of the owner or harbinger of the dog.
 - ii. As used in paragraph e. of Section 5: A dog who has been observed on at least 2 prior occasions to have chased, run alongside of or barked at motor vehicles while on a public street or highway or upon public or private property of the owner or harbinger of the dog.
- h. **Owner.** Any person to harbor, have custody of, or keep a dog for any period of time.
- i. **Recreational Areas.** Recreational areas shall mean any real property owned by the Town of Kirkwood which is used for recreational purposes by the public, including, but not limited to, parks or playgrounds.
- j. **Run at large.** Run at large shall mean to be in a public place or on private lands without the knowledge, consent or approval of the owner of such lands,
- k. **School Premises.** Any real property situated within the Town of Kirkwood which is used for educational purposes or purposes incidental thereto.
- l. **Town.** Shall designate the area within the corporate limits of the Town of Kirkwood.
- m. **Harbor.** To provide food or shelter to any dog.

SECTION 5. Restrictions

It shall be unlawful for *any* owner of any dog in the Town of Kirkwood to permit or allow such dog to:

- a. Run at large within the territorial limits of the Town of Kirkwood. A dog shall be deemed at large if elsewhere than on the premises of the owner, including but not limited to public property, recreational areas, school premises, or private property without the permission of the owner of the same, and not accompanied by and under the full control of the owner or the owner's agent and restrained by an adequate collar and leash. For the purpose of this article, a dog or dogs hunting in the company of a

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hunter or hunters and under the control of said hunter or hunters shall be considered as accompanied by their owner and not required to be leashed while hunting.

- b. Engage in habitual loud howling, barking, crying or whining or conduct itself in such a manner so as to unreasonably and habitually disturb the comfort or repose of any person other than the owner of such dog.
- c. Uproot, dig, or otherwise damage any vegetables, lawns, flowers, garden beds, or other property not belonging to the owner of such dog.
- d. Attack, chase, jump upon or at or otherwise harass any person in such a manner as to cause bodily harm or injury or reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury.
- e. Habitually chase, run alongside of or bark at motor vehicles while on a public street or highway or upon public or private property not belonging to the owner of such dog.
- f. Create a nuisance by defecating, urinating or digging on public property or private property not belonging to the owner of such dog without the permission of the owner of the property.
- g. Create a nuisance on the property of the person owning, housing, or having custody of such dog which nuisance may reasonably be expected to or does create odors, attract insects, or create health matters which may interfere with the health, safety, welfare and comfort of adjoining property owners or property users.
- h. If a female dog, be off the owner's premises while in heat.

Establishment of the fact or facts that a dog has committed any of the acts prohibited by Section 5 of this local law shall be presumptive evidence against the owner of such dog that he has failed to properly confine, leash or control his dog.

SECTION 6. Enforcement

This local law shall be enforced by any dog control officer or peace officer when acting pursuant to their special duties.

SECTION 7. Seizure, Impoundment and Adoption

- a. Any dog found in violation of the provisions of Section 5 of this local law may be seized pursuant to the provisions of Section 117 of the Agriculture and Markets Law.
- b. Every dog seized shall be properly cared for, sheltered, fed and watered for the redemption periods set forth in Section 117 of the Agriculture and Markets Law.

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- c. Seized dogs may be redeemed by producing proof of licensing and identification pursuant to the provisions of Article 7 of the Agriculture and Markets Law and by paying the impoundment fees set forth in Section 117 of said Article.
- d. If the owner of any unredeemed dog is known, such owner shall be required to pay the impoundment fees set forth in subdivision (c) of this section whether or not such owner chooses to redeem their dog.
- e. Any dog unredeemed at the expiration of the appropriate redemption period, shall be made available for adoption or euthanized pursuant to the provision of Section 117 of the Agriculture and Markets Law.
- f. Any dog control officer may also investigate and report to a Town Justice of the Town any dangerous dog as described in Article 7 of the Agriculture and Markets Law and see that any order of the Town Justice in such case is carried out.
- g. No action shall be maintained against the Town of Kirkwood, any dog control officer, or peace officer, when said dog control officer or peace officer is acting pursuant to their special duties, or any other agent or officer of the Town or person under contract to said Town, to recover the possession or value of any dog, or for damages for injury or compensation for the destruction of any dog seized or destroyed pursuant to the provisions of this local law or the Agriculture and Markets Law.

SECTION 8A. Complaint

Any person who observes a dog in violation of this local law may file a signed complaint with any dog control officer. The complaint must specify the name and address of the complainant, the objectionable conduct of the dog, the damage caused or the acts constituting a violation, the date thereof, the place or places where such conduct occurred, and the name of the owner, if known, of such dog.

SECTION 8B. Appearance Ticket

Any dog control officer or peace officer, when acting pursuant to his special duties, or police officer in the employ of or under contract to the Town of Kirkwood observing a violation of this local law in their presence, or having reasonable cause to believe that a person has violated this article, shall issue and serve an appearance ticket for such violation.

SECTION 9: Penalties

A violation of this local law is considered a "violation" under the Penal Law, Criminal Procedure Law, Agriculture and Markets Law, and Town Law § 135, and is punishable as follows:

- a. For a conviction of a first offense: A fine of not less than twenty-five dollars and not exceeding two hundred fifty dollars.

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- b. For a conviction of a second offense, both of which were committed within a period of five years: A fine of not less than fifty dollars and not exceeding five hundred dollars.
- c. For a conviction of a third or subsequent offense, all of which were committed within a period of five years: A fine of not less than one hundred dollars and not exceeding one thousand dollars.

In addition to fines, the Town Justice may, after a hearing on any complaint and/or appearance ticket, at which hearing both the complainant and/or dog control officer and the owner shall have had an opportunity to be represented by counsel and to present evidence, decide that further action is warranted, and may order:

- 1. The dog to be restrained by collar and leash at all times whether on or off the owner's property.
- 2. The dog to be confined to the premises of the owner.
- 3. Such other remedy as may be warranted by the circumstances in such case.

Section 3. Repealer

All Ordinances, Local Laws, and parts thereof, inconsistent with this Local Law are hereby repealed. All other Ordinances, Local Laws, and parts thereof shall remain in full force and effect.

Section 4. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

Section 5. Effective Date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.