

TOWN OF ESSEX
LOCAL LAW #1 FOR 2010

A Local Law to enact a new Dog control Law of the Town of Essex and to repeal the existing Town of Essex Dog Control Law being Local Law #1 for the year 2000.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF Essex AS
FOLLOWS:

SECTION 1. TITLE

This Local Law shall be known and cited as "Dog Control Law of the Town of Essex" being

Local Law #1 for 2010.

SECTION 2. AUTHORITY

This Local law is enacted pursuant to Article 7 of the Agricultural and Markets Law and Municipal Home Rule Law of the State of New York.

SECTION 3. PURPOSE

The Town Board of the Town of Essex 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 from dog attack and damage by imposing restrictions in the keeping and running at large of dogs, the provision of licensing and identifying of dogs and the seizure thereof within the Town.

SECTION 4. DEFINITION OF TERMS

a. **AGRICULTURE AND MARKET LAW** - Agriculture and Market Law of the State of New York in effect as the effective date of this local law, as amended by this local law, as amended thereafter. All terms defined in Section 108 of the Agriculture and Markets Law shall have the same meaning as used herein unless specifically modified or otherwise defined herein.

b. **CONFINED** - That such animal is securely confined or restrained when it is kept on the owner's premises either within a building, kennel, or other suitable enclosure for 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, it is securely confined in a crate, or in a container, or so restrained in a vehicle that it cannot be expected to escape there from.

c. **DOG** - Dog shall mean male or female, licensed or unlicensed, members of the species canis familiaris.

d. **DOG CONTROL OFFICER** - Any person authorized by the Town Board of the Town of Essex, Essex County Legislature or the State of New York from time to time, directed or permitted, to enforce the provisions of this Local Law or the provisions of the Agriculture and Markets Law.

e. **HARBOR** - To provide food or shelter to any dog for a period of three days

or more.

f. **LEASHED** - The term leashed shall mean restricted by a leash attached to a collar or a harness of sufficient strength to restrain the dog which shall be held by a person having the ability to control the dog.

g. **OWNER** - A dog owner is the person, persons, firm, association or corporation who purchases the license, unless the dog is or has been lost, and such loss reported to the dog control officer of the police agency and reasonable search has been made. If an animal is not licensed, the term of the "owner" shall designate and cover any person or persons, firm, association, or corporation, who or which at any time owns or has custody or control of, harbors, or is otherwise responsible for any dog which is kept, brought or comes within the Town. Any person owning or harboring a dog for a period of (one) week prior to the filing of any complaint charging a violation of this Local Law shall be held deemed to be the owner of such dog for the purpose of this local law. In the event the dog found to be in violation of this chapter shall be owned by a minor, the head of the household in which said minor resides shall be deemed to have custody and control of said dog and shall be responsible for any acts of the said dog and violation of this local law.

h. **RECREATION AREA** - Recreation areas shall mean any real property owned by the Town, County, or State within the Town, which is used for recreational purposes by the public including, but not limited to, parks, or playgrounds.

i. **RUN AT LARGE** - Run at large shall mean any dog that is unleashed and on the property open to the public or is on private property not owned or leased by the owner of the dog unless permission for such presence has been obtained. This includes the running on any public highway. No dog shall be deemed to be at large if it is: (1) accompanied by and under the immediate supervision and control of the owner or other responsible person. (2) a police work dog in use for police work; or (3) accompanied by its owner or other responsible person and is actively engaged in hunting or training for hunting on unposted or posted land with the permission of the owner of the land.

j. **TOWN** - Town, shall mean all areas located within the Town of Essex, Essex County, State of New York.

k. **HABITUAL AND/OR HABITUALLY** - With reference to howling, barking, whining and other prohibitive acts, habitual shall mean the conduct by the dog of any restrictive acts which lasts more than 20 minutes on any given day on more than three consecutive or non consecutive days within anyone week. With respect to the Restriction number 5, Section 5 of this local law, habitually shall be defined as running, chasing or running along side or barking at any motor vehicle, motorcycle, bicycle or pedestrians while on a public street or highway or upon public or private property other than the owner or harborer of said dog on more than three occasions within any 60 day period.

l. **SCHOOL PREMISES** - Means any real property situate within the Town of Essex which is used for educational purposes or purposes incidental there to.

SECTION 5. RESTRICTIONS

(A) It shall be unlawful for any owner of any dog in the Town of Essex to permit or allow such dog to:

1. Run at large.
2. Engage in habitual loud howling, barking, or whining or conduct itself in such a manner so as to unreasonably and habitually annoy or disturb the comfort and repose of any person other than the owner of such dog.

With respect only to this Restriction 2, one of the following conditions must have occurred at the time of the complaint:

(A) The Dog Control Officer must personally witness/hear the violation or

(B) A valid complaint is made by an individual and said complaint is corroborated by additional signed statements in writing of at least one other individual living in a separate household who has witnessed or heard the act alleged to have violated this Local Law.

3. Uproot, dig, or otherwise damage any vegetables, lawns, flowers, garden beds, garbage containers or other property not belonging to the owner or cause damage or destruction to property.
4. Chase, jump upon or at or otherwise harass any person in such a manner as to reasonably cause intimidation or fear or to put such person in such a manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury.
5. Habitually chase, run, alongside of or bark at any motor vehicle, motorcycle, bicycles, and or pedestrians while on a public street or highway or upon public or private property other than the owner or harbinger of said dog.
6. Create a nuisance by defecating, urinating, or digging on public property or private property other than said owner.
7. If a female dog, be off the owner's premises when in heat except when being transported to a veterinarian's office or when involved in a formalized controlled breeding program.
8. Be at large on any school premises or recreational areas, or the sidewalks adjacent thereto, unless said dog is on a leash.
9. Destroy, kill or damage any dog, cat, poultry, livestock or domestic pets not belonging to the owner.
10. Own an unlicensed dog and or fail to license a dog.

(B) Establishment of the fact or facts that a dog has committed any of the acts prohibited by subdivision (A) of this Section shall be presumptive evidence against the owner or harbinger of such dog that he/she failed to properly license, confine, leash, or control his/her dog.

SECTION 6. LICENSING OF DOGS

(a) All dogs in the Town of Essex must be licensed with the Town Clerk by the age

of 4 months and are required to present a current Certificate of Rabies at the time of licensing or the renewal of an existing license.

(b) All dog licenses will be for a period of one year and will expire at the end of the month one year from the date of issue.

(c) All applications for a dog license or renewal shall be made to the Town Clerk of the Town of Essex and shall be accompanied by a statement certified by a licensed veterinarian showing that the dog has received the rabies vaccine; or in lieu thereof, a statement certified by a licensed veterinarian that because of the dogs age or other reasons, the life of the dog would be endangered by the administration of the vaccine. The application shall state the sex, actual or approximate age, breed, color, an official identification number of the dog, and other identification marks, if any, and the name, address, telephone number, county and town, city or village of residence of the owner and any additional information required by Resolution of the Town of Essex Town Board.

(d) No license shall be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately make application for license for such dog.

(e) Fees for Licensing of Dogs: The fee for spayed or neutered dogs will be \$5.00, (which included the assessment of a \$1.00 surcharge for the purpose of carrying out animal population control) and the fee for an unspayed or unneutered dog will be \$13.00, (which included the assessment of a \$3.00 surcharge for the purpose of carrying out animal population control) with such fees being reviewed by the Town Board periodically and may be changed by a resolution of the Town Board, if deemed necessary.

(f) Enumeration fee:

In addition to the license fees imposed by this law, each applicant for a dog license shall pay an additional surcharge of \$15.00 and shall be retained by the Town of Essex and used to defray the cost of an enumeration of dogs living within the Town of Essex and the cost of providing replacement identification tags.

(g) Purebred License:

The Town of Essex will not be issuing Purebred or Kennel Licenses. All dogs will be licensed individually as per fee system stated above.

(h) Service Dogs:

The Town of Essex will not require a license for any guide dog, service dog, hearing dog or detection dog.

(i) The Town of Essex does not allow the licensing of dogs by a shelter. The shelter MUST send the adoptive dog owners to the Town Clerk of the Town or City in which the dog will be harbored for licensing OR to the Town of Essex, where the shelter is located for the purchase of the license for adoption purposes.

j) All dog licenses may be purchased by visiting the Town offices or by regular mail. If licensing or renewing a license by mail, the appropriate fee must accompany the forms. There will be NO refund of fees.

(k) All fees will be used in funding the administration of the Dog Control Law of the Town of Essex

(l) The identification tag issued by the Town will set forth identification number together with the name of the Town of Essex, the State of New York, contact information, including telephone number, for the municipality and other information as the Town of Essex deems appropriate by resolution.

SECTION 7. ENFORCEMENT

This Local Law shall be enforced by any Dog Control Officer, Peace Officer, or Constable when acting pursuant to his/her special duties, or police officer in the employ of or under contract to the Town.

SECTION 8. ENFORCEMENT PROCEDURES COMPLAINT/ APPEARANCE TICKET

1. COMPLAINT:

(a) Any person who observes a dog in violation of this Local Law may file a Complaint with any Dog Control Officer of the Town of Essex, Constable or Peace Officer, when acting pursuant to his/her special duties, or a Town Justice specifying the nature of the violation, the date thereof, a description of the dog and the name and residence, if known, of the owner of such dog as well as any damage caused. Such complaint may serve as the basis for enforcing the provisions of this Local Law.

(b) Upon receipt by the Town Justice of any such complaint, he/she shall summon the alleged owner to appear in person before him/her for a hearing, at which both the complainant and owner shall have an opportunity to be represented by counsel and to present evidence. If, after such Hearing, the Town Justice decides that further action is warranted, he/she may order:

1. The dog to be declared a vicious or dangerous 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.

4. The owner to confine and destroy such dog as provided in Section 121 of the Agriculture and Markets Law, when such dog is determined to be dangerous in a dangerous dog proceeding pursuant to Section 121 of the Agriculture and Markets Law.

5. The owner or harbinger of the dog shall be fined as set forth in Section 10 of this Local Law.

C) A violation of any Order issued by the Town Justice under the provisions of this Section 7 shall be an offense punishable, upon conviction thereof as provided in Section 10 of this Local Law.

2. APPEARANCE TICKET

Should a written warning be deemed inappropriate due to a violation, or incident relating to this Local Law, the Dog Control Officer, Peace Officer, or other person

employed to enforce this Local Law, may issue and serve on the owner an Appearance Ticket. The Appearance Ticket shall be in the form prescribed by the Criminal Procedure Law of the State of New York and returnable before a Town Justice of the Town.

SECTION 9. WARNINGS

Any Dog Control Officer, Peace Officer or other person employed to enforce this Local Law shall have the authority in his or her sole discretion to issue a warning at the time of the first offense rather than the enforcement as provided herein provided that there is no personal or real property damage resulting. The warning shall be in writing and shall be similar to that of an Appearance Ticket and shall be issued to the owner of the dog or other person in control of the dog with the consent of the owner and a copy shall be filed with the Town Justice of the Town of Jay. If, at the time of the first offense and warning, the dog has been seized, the dog shall be immediately returned to the owner if practicable. If the dog has to be impounded, the owner will be responsible for the impoundment fees as set forth herein.

SECTION 10. SEIZURE, IMPOUNDMENT, REDEMPTION AND ADOPTION

(A) Any Dog Control Officer, Peace Officer or other individual acting pursuant to his/her special duties or Police Officer employed by or under contract of the Town, may seize any dog in violation of this Local Law or:

- (a) Any dog which is not identified and which is not on the owner's premises;
- (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 dangerous; and
- (d) Any dog which poses an immediate threat to public safety.

(B) Promptly upon seizure of an 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 five 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 eight 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

(C) Every dog seized shall be properly cared for, sheltered, fed and watered for the redemption period. 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) The same impoundment and euthanasia fees per animal that are charged to the Town for such service together with an impoundment fee of \$60.00 for the first impoundment; a fee of \$75.00 for the second impoundment together with the same impoundment and euthanasia fees per animal that are charged to the Town for such service and a fee of \$3.00 for each additional 24 hour period; a fee of \$100.00 for a third impoundment together with the same impoundment and euthanasia fees per animal that are charged to the Town for such service and a fee of \$3.00 for each additional 24 hour period.

(D) 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.

(E) Any dog unredeemed at the expiration of the appropriate redemption period, shall be made available for adoption or euthanized pursuant to the provisions of the Agriculture and Markets Law.

(F) No action shall be maintained against the Town of Essex, any dog control officer or peace officer when acting pursuant to his/her special duties, or any other agent of office of the Town or person under contract to said Town of Essex, 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.

(G) The seizure of any dog or its redemption shall not relieve any person from any violation of this law or penalty described herein.

(H) At no time under this local law shall the Dog Control Officer, Peace Officer, when acting pursuant to his/her special duties, or Police officer in the employ of the Town or under contract to the Town be authorized to enter a building in order to seize a dog without the permission of the building owner. When permission is not given and probable cause exists to believe that the dog is in the building and is in violation of the Agriculture and Markets Law or this Local Law, then a Dog Control Officer, Peace Officer when acting pursuant to his/her special duties, or Police Officer in the employ of the Town or under contract to the Town may proceed before a court of law to obtain a warrant to enter the building to seize the dog by application of the Criminal Procedure Law, Article 690.

SECTION 11. PENALTIES

(A) Any person who violates this Local law or knowingly permits the violation of this Local Law or any of the provisions thereof shall be deemed to have committed an offense under this Local Law and any person convicted of any such violation after investigation and hearing shall be punished as hereinafter set forth:

1. For any violation of Section 6: Licensing of Dogs: Any person convicted of a violation shall be liable for a civil penalty of \$25.00 for the first violation; \$50.00 for a second violation and \$75.00 for each subsequent violation.

2. Any person who shall violate any other provision of this Local Law, exclusive of the provisions of Section 6: Licensing of Dogs, upon conviction for a first punishable violation of this Local Law shall be subject to a minimum fine of \$35.00 and a maximum fine not to exceed \$250.00 and/or imprisonment for a period not exceeding 15 days. Upon conviction of a second offense hereof, within the preceding five years, such persons shall be subject to a minimum fine of \$50.00 and a maximum fine not to exceed \$250.00 and/or imprisonment for a period not exceeding fifteen (15) days. Upon conviction of two or more such violations within the preceding five years the minimum fine shall be \$100.00 and a maximum fine not to exceed \$250.00 and/or imprisonment for a period not exceeding fifteen (15) days. The determining factor shall be whether or not the dog owner has a prior conviction of this Local law. It shall be irrelevant whether or not the same dog is involved.

(B) In addition to the fines as provided for above, any Justice may also, if the circumstances in his or her discretion so warrant, order permanent confinement of a dog by the owner thereof.

(C) In the event of the failure of the dog owner to confine the dog after being ordered so to do, such dog may, upon order of an Justice, be euthanized subject, however, to the prohibitions contained in Section 374 of the Agriculture and Markets Law hereinabove referred to.

(D) Each separate violation shall constitute a separate additional offense.

SECTION 12. OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION

No person shall hinder, resist, or oppose the dog control officer, peace officer when acting pursuant to his/her special duties, or police officer employed by or under contract to the Town, or other person(s) authorized to administer or enforce the provisions of this Local Law in the performance of the officer's or other person's duties under this Local Law. Any person hindering, resisting, or opposing the dog control officer, peace officer, when acting pursuant to his/her special duties, police officer, employed by or under contract to the Town shall be prosecuted pursuant to the Penal Law 195.05, Obstructing governmental administration in the second degree.

SECTION 13. SEPARABILITY

Each separate provision of this Local Law shall be deemed independent of all other provisions herein, and if provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

SECTION 14. REPEALER

This Local Law shall supercede all prior local laws, ordinances, rules and regulations, including the Dog Control Local Law #1 for the year 2000 of Essex relative to the control of dogs within the Town and they shall be, upon effectiveness of this Local Law, null and void.

SECTION 15. EFFECTIVE DATE

This Local Law shall take effective immediately upon the filing of the same in the office of the Secretary of State of New York.