

TOWN OF BENNINGTON

ARTICLE - 9. CARE AND CONTROL OF ANIMALS

ARTICLE 9-1. AUTHORITY

The Select Board of the Town of Bennington under the grant of authority set forth in 24 V.S.A. §§ 2291 (10) and (14), hereby enacts the following Ordinance in order to protect the health, safety and welfare of the citizens of the Town of Bennington and others by regulating the keeping of pets. This Ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

It is the intention of the Select Board of the Town of Bennington to comply with the provisions of 24 V.S.A. §§ 3541(a)<sup>1</sup> and 3546(d)<sup>2</sup>.

ARTICLE 9-2. DEFINITIONS

**9-2.01 Cat** shall mean an animal of the feline species.

**9-2.02 Dog** shall mean an animal of the canine species.

**9-2.03 Pet** shall mean a dog or cat or any animal that is kept for companionship, interest or amusement.

**9-2.04 Excessive Noise** shall mean any noise that is created by a pet audible to an individual in a location where he/she/they is lawfully permitted to be; which noise occurs repeatedly for at least a seven minute period of time with one minute or less lapse of time between each noise during the seven minute period.

**9-2.05 Animal Control Officer** shall mean any Bennington Police Officer or any other individual designated by the Town Manager or Chief of Police to enforce the provisions of this Ordinance.

**9-2.06 Nuisance Pet** shall mean any pet that:

1. Makes Excessive noise.

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<sup>1</sup> 20 V.S.A. § 3541a. Feral animals; responsibility

It is not the intent of the General Assembly to require a person to be responsible under this chapter for a feral animal that takes up residence in a building other than the person's home, even if the person occasionally provides feed to the animal.

<sup>2</sup> 20 V.S.A. § 3546(d) The procedures provided in this section shall apply if the domestic pet or wolf-hybrid is not a rabies suspect. If a member of the legislative body or a municipal official designated by the legislative body determines that the animal is a rabies suspect, the provisions of subchapter 5 of this chapter and the rules of the department of health shall apply.

2. Acts aggressively or viciously towards, or attacks, persons or other animals.
3. Causes damage to public or private property.
4. Interferes with or threatens passes-by or passing vehicles on public roads or property.
5. Scatters Refuse.
6. Obstructs traffic.
7. Is not licensed as required by this Ordinance.
8. Is uncontrolled or running at large.
9. Otherwise acts to create a common-law nuisance or unreasonable disturbance.

**9-2.07 Owner** shall mean any person or group of persons who owns, harbors, or keeps any pet, or permits any pet to be or remain in or about buildings or premises owned or occupied by him or them.

**9-2.08 Aggressive or Vicious Pet** shall mean any pet which is found to menace, chase, display threatening or aggressive behavior, or otherwise endanger the safety of any human or domestic animal, or pets with a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals, or any pet which attacks a human being or domestic animal one or more times.

"Aggressive or vicious pets" shall be classified as follows:

Level 1. A Level 1 pet is one which menaces, chases or displays threatening behavior to any domestic animal, or has been found running at large two or more times during a 12-month period.

Level 2. A Level 2 pet is any pet which has already shown aggressive tendencies by menacing, chasing or otherwise endangering the safety of a human.

Level 3. A Level 3 pet is any pet which when unprovoked has bitten a human or physically harmed or killed a domestic animal.

Level 4. A Level 4 pet is any pet which has attacked a human resulting in serious injury or death, or which has bitten a human on two or more occasions, or which has attacked and killed another domestic animal on two or more occasions.

#### ARTICLE 9-3. PET OWNER RESPONSIBILITY

The owner of a pet shall at all times comply with all provisions of this Ordinance and ensure that any pet they own complies at all times with all provisions of this Ordinance.

#### ARTICLE 9-4. CONFINEMENT/CONTROL

**9-4.01** The owner of a dog shall at all times confine the dog within a building or other secure enclosure or securely tie the dog on an exercise wire or similar contrivance, except as otherwise provided in article 9-4.02 (*below*). Perimeter, underground electric fences qualify as confinement.

**9-4.02** The owner of a dog may have his/her dog outside a building enclosure or not otherwise confined or restrained as required in Article 9-4.01 (*above*), but only when the dog is:

1. Securely held on a leash, or
2. Within a vehicle preventing escape, or
3. On land owned or occupied by the same dog's owner, or Clearly subject to the verbal command of the owner and within sight of the owner and not trespassing upon the land of others. To be in compliance with this ordinance, dogs under such verbal command shall not harass citizens or other pets.

9-4.03 A dog found in violation of this article (9-4) shall be deemed to be "running at large."

#### **ARTICLE 9-5. AUTHORIZED AGENT**

The owner of a dog may release his/her dog in the charge of his/her duly authorized agent, who shall thereupon control the dog in accordance with Article 9-4.

#### **ARTICLE 9-6. DOG IN HEAT**

The owner of any dog in heat shall keep such dog confined or on a leash at all times. (See Article 9-4)

#### **ARTICLE 9-7. DISTURBANCES AND NUISANCES**

9-7.01 The owner of a pet shall not allow the pet to be vicious or to be a nuisance pet.

9-7.02 The owner of a pet shall not allow waste from the pet to accumulate so that either a health or odor problem results.

9-7.03 The owner of a pet shall remove immediately and properly dispose of any waste created by the pet when the pet is not on the private property of the owner or authorized agent.

#### **ARTICLE 9-8. IMPOUNDING FOR VIOLATION OF ORDINANCE**

An Animal Control Officer may apprehend and impound in a facility designated by the Town Manager any pet found to be in violation of this Ordinance including, but not limited to, any dog found to be running at large or unlicensed, or any pet that has bitten a person or pet. Impoundment may be initiated by an Animal Control Officer based on a filed complaint or based on the Officer's personal knowledge. The owner of an impounded pet shall be responsible for all fines, fees, and costs associated with the impoundment and, if applicable, humane killing of the pet.

#### **ARTICLE 9-9. IMPOUNDING PETS THAT HAVE BITTEN PERSONS**

A pet that has been impounded for biting a person or other pet may be impounded for ten days to determine if the pet is rabid. At the expiration of ten (10) days, such pet may be redeemed by the owner in accordance with Article 9-12 subject to the provisions of ARTICLE 9-10, below. (See also 20 V.S.A. §3546(d) as to suspected rabid animals.)

#### **ARTICLE 9-10. VICIOUS PET HEARING**

9-10.01 A citizen of the Town of Bennington or the Animal Control Officer may file with the Town Manager a written complaint regarding a pet they believe to be vicious

under this ordinance. The Complaint shall include the date and time of the triggering events and other such information so as to assist the Hearing Board in its findings.

- 9-10.02** Upon the receipt of a complaint the Town Manager, in consultation with the Chair of the Select Board, shall schedule a hearing in which the parties to the complaint shall be heard, and at which the Select Board shall sit as the Hearing Board.
- 9-10.03** The hearing will be warned as a Special Select Board meeting and all parties to the complaint shall be invited to attend; however the failure of any party to attend shall not prevent the hearing from proceeding and a decision by the Select Board.
- 9-10.04** The hearing shall be conducted as a "quasi-judicial" proceeding as that concept is understood under the law of the State of Vermont. As such:
1. Parties may choose to be represented by legal counsel;
  2. Parties may provide competent and material evidence to support their position including any witnesses, photographs, reports, etc.;
  3. Parties may conduct cross examination of witnesses subject to the consent of the hearing board;
  4. All witnesses shall be sworn by oath or affirmation in accordance with State law under the pain and penalty of perjury;
  5. The Chair of the Hearing Board may exclude disorderly or disruptive persons from the hearing or make other orders as necessary to ensure the fair and orderly conduct of the hearing.
  6. A record of the hearing shall be kept by the Select Board for use in cases of appeal;
  7. The Complaining Party shall have the burden of proving by a preponderance of the evidence that the pet is aggressive or vicious and should be subject to the restrictions pertaining to aggressive and vicious pets.
  8. The Select Board shall, after all evidence is taken, issue findings of fact as well as an order to chain or confine the dog permanently, muzzle the dog whenever it is off-premise, dispose of the dog in a humane manner, or such other order deemed appropriate by the Select Board in accordance with the provisions of 10.04 (below);
  9. Any party may choose to appeal the decision of the Select Board to the appropriate County Court.
  10. It shall be an affirmative defense against a vicious pet complaint that the complaining party was trespassing on the respondent's property as that term is defined in Vermont Statutes. [13 V.S.A. §3705]

**9-10.05**

When, after a hearing, the Select Board determines that the pet is an aggressive or vicious pet as defined in this ordinance, the Board shall determine what level the pet is, and at minimum, impose the following appropriate orders. (See Art. 9-2.2.07)

1. A Level 1 pet is required to be restrained whenever outside the owner's home, and shall be prevented from reaching any adjoining or public or private property. When off the property, the pet must be on a leash of no longer than eight feet, and under the control of a responsible person.
2. A Level 2 pet is required to be restrained on the owner's property by a secure fence with a secure locking device, with the fence to be at least six feet high or securely tied on an exercise wire or similar contrivance. Underground perimeter fencing shall not be considered as restrained when a pet has been determined to be Level 2 or Level 3 (See below). When off the property, the pet must be on a leash of no longer than eight feet, and under the control of a responsible person.
3. a. A Level 3 pet is required to be restrained on the owner's property in the same manner as a Level 2 pet with the additional requirement that signs be prominently displayed at all entrances to the premises clearly warning of the presence of an aggressive or vicious pet. When off of the owner's property, the pet must be muzzled in addition to the requirement for a Level 2 pet.  
  
b. The owner of a Level 3 pet must present to the Animal Control Officer evidence that a surety bond issued by a surety insurer in a form acceptable to the Animal Control Officer in the sum of at least \$50,000 payable to any person injured by the Level 3 pet, or a policy of liability insurance, such as home owner's insurance, issued by an insurer qualified in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the Level 3 pet.
4. A Level 4 pet shall immediately be taken into custody and be humanely killed not less than ten (10) working days after impoundment.

**ARTICLE 9-11 ENFORCEMENT ON PRIVATE PROPERTY**

In enforcing this Ordinance, and Animal Control Officer may apprehend a pet found on public or private property, including the property of the pet's owner.

**ARTICLE 9-12 NOTICE TO OWNER AND REDEMPTION**

Not later than two days after the impounding of any pet, the owner, if known, shall be notified in writing by an Animal Control Officer. An impounded pet shall not be released to the owner until all fines imposed under this Ordinance and all impoundment costs incurred by the Town are paid to the Town in full, and a certification of rabies vaccination and a health certificate from a veterinarian, if required by an Animal Control Officer, and any necessary licenses for the current year are shown to the Animal Control Officer.

**ARTICLE 9-13 DISPOSITION OF UNCLAIMED PETS**

If after seven (7) days from the date of notice to the owner, an impounded pet has not been redeemed by payment of all fines, fees, and costs imposed under this Ordinance, the impounded pet may be sold, given away, humanely destroyed or placed with a breed rescue organization or animal shelter. Whether or not an impounded pet is reclaimed or redeemed, the owner of an impounded pet shall be responsible for all fines, fees, and costs associated with the impoundment and, if applicable, humane destruction of the pet. The Town may collect any and all fines, fees, and costs involved in the impounding of a pet by a civil action against the owner. Any proceeds from the sale of an impounded pet, over and above fines, fees, and costs imposed under this Ordinance shall be paid over to the owner, if known.

**ARTICLE 9-14 LICENSING**

By April 1 of each year, every owner of a dog over six months of age, within the Town of Bennington shall procure a license and shall provide proof of all inoculations for all dogs to be licensed. Every dog shall wear a collar with attached license at all times except when it is on the owner's premises.

**ARTICLE 9-15 ENFORCEMENT BEFORE THE JUDICIAL BUREAU**

Any owner in violation of any provision of this Ordinance shall be subject to a civil penalty of up to \$500.00 per day for each day that such violation continues. Any Animal Control Officer may issue and pursue before the Judicial Bureau a municipal complaint against any owner found to have violated any provision of this Ordinance.

**ARTICLE 9-16 WAIVER FEE FOR MUNICIPAL COMPLAINT**

The Town has the authority to recover a waiver fee, in lieu of a civil penalty, in the following amount, for any person who declines to contest a municipal complaint and pays the waiver fee:

First Offense	\$ 35.00
Second Offense	\$ 50.00
Third Offense	\$100.00
Fourth Offense	\$150.00
Fifth and subsequent Offenses	\$300.00

Offenses shall be counted on a calendar year basis.

**ARTICLE 9-17 CIVIL PENALTY FOR ORDINANCE VIOLATION**

The Town has the authority to recover civil penalties in the following amounts for each violation of this Ordinance:

First Offense	\$ 75.00
Second Offense	\$100.00
Third Offense	\$200.00
Fourth Offense	\$300.00
Fifth and subsequent Offenses	\$500.00

Offenses shall be counted on a calendar year basis.

**ARTICLE 9-18 RIGHT TO CIVIL ENFORCEMENT**

In addition to the enforcement procedures available before the Judicial Bureau, the Town has the authority to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

**ARTICLE 9-19 SEVERABILITY**

If any part or provision of this Ordinance shall be deemed invalid by a court of competent jurisdiction, that portion of the Ordinance shall be severable, and the invalidity of such part or provision shall not invalidate any other part or provision of the Ordinance.

**ARTICLE 9-20 EFFECTIVE DATE**

This Ordinance shall become in full force and effect 60 days after the date of adoption by the Select Board, subject to the right of petition provided by law.

This Amended Ordinance is hereby adopted by the Select Board of the Town of Bennington, Vermont on this 28<sup>th</sup> day of June, 2021. It shall be printed in full in the minutes of the Select Board, posted in five (5) conspicuous places within the Town of Bennington and published once in the Bennington Banner within fourteen (14) days of its adoption and shall become in full force and effect sixty (60) days after the date of adoption subject to the right of petition as provided by law.

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Jeannie Jenkins, Chair

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Jeanne Conner, Vice Chair

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James Carroll

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Tom Haley

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Gary Corey

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Sarah Perrin

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Bruce C. Lee-Clark

