

TOWN OF BERLIN, VERMONT

ANIMAL CONTROL ORDINANCE

The Selectboard of the Town of Berlin hereby adopts the following Animal Control Ordinance, pursuant to the provisions of 24 V.S.A. §§ 1971, 2291(10), 2291(14) and 20 V.S.A. § 3549. This ordinance is hereby designated a civil ordinance.

Sec. I Purpose

The purpose of this Ordinance is to protect the comfort, health, repose, property, safety, and general welfare of citizens of the Town of Berlin. In order to accomplish the foregoing purpose, it is deemed necessary to establish a mechanism of review, provide for procedures for enforcement and appeal, and establish penalties for violations of this Ordinance.

Sec. II Duty of Maintenance of Property and Control of Animals

No person owning, leasing, occupying or having control of any premises in the Town of Berlin and no person owning, keeping, harboring, or maintaining any animal shall allow such premises or animal(s) to become or remain a public nuisance as herein defined.

Sec. III Definitions

1. Public Nuisance Defined — Any continuing or often repeated act, omission, condition, or conduct which endangers life, health, or property or which unreasonably annoys, injures, or disturbs, or intrudes upon the free use and comfortable enjoyment of private and public lands in the Town of Berlin, provided, however, such nuisance is specifically enumerated and defined in subsection (2) of this Section.
2. Enumeration of Nuisances
  - A. Animal Nuisances — Animals are hereby declared a public nuisance under the following circumstances or conditions:
    1. An animal that repeatedly disturbs the rights of, threatens the safety of, or injures a member of the general public, or substantially interferes with the ordinary use and enjoyment of their property;
    2. An animal repeatedly allowed or permitted to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damage to gardens, flowers or vegetables, or defecating upon the property of another, or injury to or worrying domestic animals and pets;

3. Animals maintained in an environment of unsanitary conditions or lack of cleanliness which results in offensive odor or is dangerous to the public health, welfare, or safety or which substantially increases the probability of transmission of disease;
4. Property that is offensive, annoying or dangerous to the public health, safety or welfare of the community because of the number, type, variety, density or location of the animals on the property;
5. An animal repeatedly, continuously, or habitually allowed or permitted to bark, whine, howl, crow, cackle, or make loud noises in an excessive, continuous, or untimely fashion so as to interfere with the reasonable use and enjoyment of neighboring premises;
6. An animal that is diseased and dangerous to the public health;
7. An animal that habitually or repeatedly chases, snaps at, attacks or barks in a threatening manner at pedestrians, joggers, dogs walked on a leash by owners, bicycles or vehicles;
8. An animal kept or maintained contrary to the conditions of a lawful order issued by the Selectboard under Section VIII of this Ordinance.

3. Animal Control Officer — Shall mean the person or persons appointed by the Selectboard to police and enforce this Ordinance in cooperation with appropriate law enforcement agencies and shall include, without limitation, sworn officers of the Town of Berlin Police Department.
4. Dog — Shall mean any animal of the canine species.
5. Owner — Shall mean any person or group of persons who owns or harbors a dog or permits any dog to be or remain in or about buildings or premises owned or occupied by such person(s).

#### Sec. IV Licensing of Dogs

It shall be the duty of every person owning, keeping or harboring any dog over six months of age, within the Town of Berlin, to procure a license therefore in accordance with Chapter 193, Title 20 of the Vermont Statutes Annotated, as amended.

Sec. V Animal Control Officer Duties

The Selectboard shall designate a person to act as Animal Control Officer to enforce the provisions of this Ordinance. It shall be the duty of the Animal Control Officer, or his or her authorized designee, to investigate complaints of animal nuisances and to enforce the provisions of this Ordinance. The Selectboard shall also designate the names of persons and their locations to receive animals for confinement under the terms of this Ordinance.

Sec. VI General Violation

Any animal allowed to become or remain a public nuisance as herein defined shall constitute a violation of this Ordinance and may be impounded. The owner of any animal impounded, if such owner can be identified, shall be guilty of a violation of this Ordinance and subject to the penalties hereinafter provided.

Sec. VII Enforcement

1. The Animal Control Officer may seize or impound any animal which constitutes a public nuisance in violation of this Ordinance if such nuisance, condition or act occurs in the presence of the officer. The Animal Control Officer shall notify the owner or keeper of such animal, if known, of the location where and the person with whom the animal is confined. If an animal so confined is a licensed dog, the Animal Control Officer shall forthwith give notice in writing to the owner, mailed to the owner at his last known address, by certified mail with return receipt requested, stating that the dog may be reclaimed within six (6) business days from the mailing of said notice. If the dog is not claimed, the dog shall be disposed of in a humane manner. The owner shall be liable for all costs incurred by the Town for seizure, impoundment or disposal costs.
2. If an unlicensed dog is impounded by virtue of this Ordinance, the Animal Control Officer shall confine such dog for up to six (6) business days. If, after six business days it has been impossible to determine the owner of such dog, the dog shall be disposed of in a humane manner. If the owner of an unlicensed dog is located and the owner wishes to reclaim the dog, the Animal Control Officer shall not release the dog until all required licenses have been obtained and evidence of anti-rabies inoculation is shown. The owner shall also pay to the Town a fee of \$25.00 plus all charges incurred by the Town for the impoundment of the dog. If the dog has been disposed of, the owner shall be liable for all costs incurred by the Town for such impoundment and disposal.

3. In addition to, or in lieu of impounding an animal found upon investigation of the Animal Control Officer to be a nuisance animal as defined in Sec. III, the Animal Control Officer may issue to the known owner of such animal a Notice of Fine, said Fine to be in the amount of \$50.00.

Within five (5) business days of receipt of a Notice of Fine, the owner or keeper may elect to:

- a. Pay the amount of the fine to the Town Clerk in full satisfaction of these penalties, or
  - b. File with the Town Clerk a request for hearing before the Selectboard; in which case a hearing shall be held in accordance with the procedures of Sec. VIII of this Ordinance, and in which case no fine shall be due until a determination has been made by the Selectboard.
4. In addition to or in lieu of impounding an animal found to be a nuisance animal as defined in Sec. II of this Ordinance, the Animal Control Officer may issue to the known animal owner a Notice of Complaint. A copy of the Notice of Complaint shall be filed with the Selectboard. The Selectboard shall proceed with a hearing in accordance with Sec. VIII of this Ordinance.
  5. In the event of failure to pay any fine assessed or the filing of an appeal therefrom in a timely manner, the Town Attorney or other designated officer of the Town may initiate an action for enforcement of civil ordinance violations before the Traffic and Municipal Ordinance Bureau, and upon establishment of a violation of this Ordinance, the owner shall be fined not less than \$50.00 nor more than \$500.00. Each day a violation continues shall constitute a separate violation. Upon application by the Town, the Traffic and Municipal Ordinance Bureau may also order that any continuing violation cease. In addition to or in lieu of an action before the Traffic and Municipal Ordinance Bureau, the Town may file an appropriate civil action in Superior Court.
  6. The Animal Control Officer is hereby authorized and empowered to enter onto private lands, seize and impound animals and take all reasonable and necessary measures to abate public nuisances which shall occur in his or her presence.

#### Sec. VIII Procedure for Complaints and Action

1. Complaints and Hearings
  - a. The Animal Control Officer, in accordance with Sec. VII(4), or three legal residents of the Town not satisfied with the action of the Animal Control

Officer, who upon knowledge that an animal constitutes a public nuisance under this Ordinance may file a written complaint with the Selectboard. The complaint shall contain the names and addresses of the three complaining residents, the nature and basis of the complaint, the name and address of the victim or victims, and any other facts that may assist the Selectboard in conducting its investigation required by subsection (1)(b) of this section.

- b. The Selectboard, within twenty-one (21) days from receipt of the complaint, shall investigate the charges and hold a hearing on the matter. If the owner or keeper of the animal which is the subject of the complaint can be ascertained with due diligence, said owner or keeper shall be provided with a written notice of the time, date and place of hearing and the facts of the complaint.
- c. After hearing, if the animal is found to be a nuisance under this Ordinance, the Selectboard may make findings of fact and such order for the abatement of such nuisance as the facts and circumstances of the case may require, including, without limitation, that the animal be disposed of in a humane way, muzzled, chained, or confined, and the owner or keeper of such animal may be assessed damages and/or a fine not to exceed \$500.00. The order shall be sent by certified mail, return receipt requested, or served personally upon the owner or keeper of the animal.

## Sec. IX Appeals

- I. Actions of the Animal Control Officer
  - a. Any owner or keeper of an animal found to be in violation of this Ordinance by the Animal Control Officer may appeal to the Selectboard any action, findings, impoundment charges, or boarding fees by filing written notification to the Town Clerk within seven (7) business days following the payment of any such charges, fees or fines.
  - b. The Selectboard shall convene a hearing on the appeal in accordance with the procedures under Sec. VIII of this Ordinance. The Selectboard, after notice and hearing, may determine to affirm or reverse any or all findings, actions, charges, fees or fines, and may direct the Town Treasurer to return any amounts paid as deemed appropriate.

2. Actions of the Selectboard

- a. Any owner or keeper of any animal found to be in violation of this Ordinance may appeal any decision, order, action or finding of the Selectboard to the Washington County Superior Court. Any appeal from the decision of the Selectboard under this Ordinance shall be filed within thirty (30) days of the rendering of such decision.

Sec. X Savings

Nothing herein shall be construed to limit, supercede, repeal or annul any other law, ordinance, or regulation related to nuisances generally or to animals, including dogs, in particular.

Sec. XI Separability

Each separate provision of this Ordinance shall be deemed independent of all other provisions of this Ordinance, and if any provisions of this Ordinance shall be declared invalid in a court of law, all other provisions of this Ordinance shall remain valid and enforceable.

Adopted at a regular meeting of the Town of Berlin Selectboard, duly warned for such purpose, this 21st day of September, 1998.

TOWN OF BERLIN SELECTBOARD

By: Laura Plude  
Laura Plude, Selectboard Chair