

Article I
Animal Control

§ 75-1 Purpose.

This Local Law amends Town of Berne Code Chapter 75, enacted under Local Law 1-1994 relating to the regulation of dogs within the Town of Berne.

The Town Board of the Town of Berne, New York finds that the uncontrolled behavior of licensed and unlicensed dogs and uncontrolled animals have caused physical harm to persons, damage to property and has created nuisances within the Town. The purpose of this article is to protect the health, safety and well-being of persons and property within the Town of Berne. These amendments are not intended to require licensure of any animal except of dogs as set for in Chapter 75, Article II.

§ 75-2 Title.

This article shall be known as the "Animal Control Law of the Town of Berne."

§ 75-3 Definitions.

All terms in this article shall have the same meaning as set forth in Article 7, section 108 of the New York State Agricultural and Markets law, including the following terms:

DOG

Means any member of the species *Canis familiaris*.

DOMESTIC ANIMAL

Means any domesticated dog, cat, sheep, horse, cattle, fallow deer, red deer, sika deer, whitetail deer which is raised under license from the department of environmental conservation, llama, goat, swine, fowl, duck, goose, swan, turkey, confined domestic hare or rabbit, pheasant or other bird which is raised in confinement under license from the state department of environmental conservation before release from captivity, except that the varieties of fowl commonly used for cock fights shall not be considered domestic animals for the purposes of this article.

OWNER

Means any person who harbors or keeps any domestic animals.

RUN AT LARGE

Means to be in or on lands within a Town Park or on private lands without the knowledge, consent and approval of the owner of such lands.

§ 75-4 Restrictions.

- A. Dogs and domestic animals are to be under the control of their owner or a responsible person able to control them by command and shall not be permitted to run at large. Dogs hunting in the company of a hunter or hunters shall be considered as accompanied by their owner.
- B. It shall be unlawful for any owner of any dog or domestic animal in the Town of Berne to permit or allow such dog or domestic animal to:

- (1) 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 or domestic animal with consideration to normal practices.
 - (2) Uproot, dig or otherwise damage any vegetables, lawn, flowers, garden beds or other property not belonging to the owner of such dog or domestic animal.
 - (3) While on property not belonging to the owner or harborer of such dog or domestic animal, 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 reasonable apprehension of bodily harm or injury.
 - (4) Habitually chase, run alongside of, bark or otherwise threaten bike riders or other moving vehicles while such vehicles are on a public street or highway or upon public or private property other than property of the owner or harborer of said dog or domestic animal.
 - (5) Create a nuisance by defecating, urinating or digging on public property or private property other than the property of the owner or harborer of said dog or domestic animal.
 - (6) If a female dog, be off the owner's property when the dog is in heat, unless the dog is accompanied by its owner.
- C. Establishment of the fact or facts that the owner of a dog or domestic animal has allowed or permitted such animal to commit any of the acts prohibited by this article shall be presumptive evidence against the owner or harborer that s/he has failed to properly confine or control such dog or domestic animal.

§ 75-5 Complaints.

- A. Any person who observes a dog or domestic animal in violation of this article may file a complaint under oath with the Town Clerk specifying the nature of the violation, the date thereof, a description of the dog or domestic animal, and the name and residence, if known, of the owner of the dog or domestic animal. In such event, the complaint shall then be delivered to a Town Justice as soon as possible for further proceedings as hereinafter set forth.

Alternatively, such sworn complaint may be filed with the Animal Control Officer or any other person authorized and designated by the Town Board to receive such complaints. Upon reasonable belief by the Animal Control Officer that there has been a violation of this Local Law or Article 7 of the Agriculture and Markets Law of the State of New York, such Animal Control Officer shall issue an appearance ticket requiring the owner or harborer of the dog or domestic animal to appear before a Town Justice.

Owners or harborers of "dangerous dogs" as defined in Section 108(24) of the Agriculture and Markets Law of the State of New York may also be prosecuted under Section 123 of that law which may subject said owner to additional fines and/or destruction of the dog involved. The Animal Control Officer shall initiate dangerous dog proceedings when warranted pursuant to Section 123 of the Agriculture and Markets Law of the State of New York.

- B. Upon receipt by the Town Justice of any such complaint, s/he shall summon the alleged owner to appear in person before him, at which time the owner shall have the opportunity to be represented by counsel. The Town Justice shall hold a hearing for the purpose of determining whether or not the owner or

harborer of the dog or domestic animal, which is the subject of the complaint, is in violation of this Local Law or Article 7 of the Agriculture and Markets Law of the State of New York. If the owner or harborer of such dog or domestic animal concedes the complaint, or if after a hearing, the Town Justice finds the owner or harborer of such dog or domestic animal to be in violation, s/he may, in addition to the penalties hereafter set forth, order the owner or person harboring said dog or domestic animal to confinement to the premises of the owner, subject to seizure by the Animal Control Officer for failure to obey such order.

- C. No person shall hinder, resist or oppose the Animal Control Officer, peace officer or other person(s) authorized to administer or enforce the provisions of this Local Law or Article 7 of the Agriculture and Markets Law of the State of New York in the performance of the officer's duties under this Local Law or said Article. A violation of this Section shall constitute a violation of this Local Law and said Article and shall be subject to Penalties as stated in section 75-6, below.
- D. The Town shall not be liable or responsible for any injury to persons or damage to property due to the Town's actions, or failures to act, under or pursuant to this Local Law, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town. In addition to the foregoing, the Town shall not be liable or responsible for any destruction of any animal pursuant to this Local Law or the provisions of the New York State Agriculture and Markets Law.

§ 75-6 Penalties for offenses.

- A. The Town may elect either to prosecute such action as a violation under the penal law or to commence an action to recover a civil penalty. A violation of this section shall be punishable, subject to such an election, either:
 - (1) where prosecuted pursuant to the penal law, by a fine of not less than twenty-five dollars (\$25.00), except that
 - (a) where the person was found to have violated this section or former Article 7 of this chapter within the preceding five years (5), the fine may be not less than fifty dollars (\$50.00), and
 - (b) where the person was found to have committed two or more such violations within the preceding five years, it shall be punishable by a fine of not less than one hundred dollars (100.00) or imprisonment for not more than fifteen days (15), or both; or
 - (2) where prosecuted as an action to recover a civil penalty, by a civil penalty of not less than twenty-five (\$25.00) dollars or more than one hundred (\$100.00) dollars for the first violation, and not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars for subsequent violations within a six (6) month period. Each separate offense shall constitute an additional violation, except that
- B. In addition to penalties set forth in this Local Law or in Article 7 of the Agriculture and Markets Law and/or New York Penal Law, all court costs and legal fees incurred by the Town shall be the financial responsibility of the defendant if such defendant concedes the violation of this Local Law or Article 7 of the Agriculture and Markets Law of the State of New York or is found in violation of this Local Law or said Article by a Town Justice.
- C. Nothing in this Local law shall limit the private right of action of any property owner to commence a private party action or proceeding against any person found to be in violation of this Local Law.

§ 75-7 Seizure of dog; notification of owner.

- A. The Town Animal Control Officer or any person so designated by the Town Board is authorized to seize any dog found violating this article, exercising such degree of force as shall be necessary to affect such seizure without intentionally injuring or harming such dog, and such dog shall be impounded and disposed of in accordance with the provisions of Article 7 of the Agriculture and Markets Law.
- B. The owner of any dog so seized shall be notified if the owner is ascertainable from the dog's license tag. The owner or any adult member of his family may redeem the dog within five days, upon payment of impoundment fees, and license fee if the dog is unlicensed. If any dog is not so redeemed the owner shall forfeit all title thereto and the dog shall be sold or otherwise disposed of. No action shall be maintained against the Town of Berne, any duly designated Animal Control Officer, or any other agent or officer of the 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 article.

§ 75-8 Jurisdiction to hear complaints.

Any Town Justice of the Town of Berne shall have jurisdiction to hear all complaints under this article and of all actions and proceedings hereunder and of all prosecutions for the violation of this article.