TOWN OF WALES

LOCAL LAW INTRO. NO. 2 -2010

LOCAL LAW 1 -2010

A LOCAL LAW, TO AMEND LOCAL LAW 1-1993 KNOWN AS "ADOPTION OF CODE", ADOPTED BY THE TOWN BOARD OF THE TOWN OF WALES ON MAY 11, 1993, BY AMENDING CHAPTER 79, ANIMALS, TO CONFORM WITH CURRENT REQUIREMENTS.

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

SECTION 1. LEGISLATIVE INTENT

This Local Law amends a prior Local Law known as "Adoption of Code" adopted by the Town of Wales on May 11, 1993, as amended, relating to the administrative, legislative and general legislation of Codes within the Town of Wales as therein set forth.

SECTION 2. CHAPTER 79, ANIMALS

This Local Law repeals and rescinds the present Chapter 79 in its entirety and enacts the following replacement Chapter 79:

Section 79-1, Legislative Intent

It is the intention of the Town Board to safeguard the health, safety and welfare of town residents and the public-at-large by providing for the licensing, seizure, disposal and supervision of dogs and other animals.

Section 79-2, Dog Control Officer

The Town Board shall appoint one (1) Dog Control officer, whose salary shall be determined by the Town Board, or the Town Board shall contract for Dog Control Officer services including services provided by another municipality, and whose duties and authority are described in New York State Agriculture and Markets Law. The Dog Control Officer's hours shall be during normal Town business hours.

Section 79-3, Definitions

As used in this chapter, the following terms shall have the meanings indicated:

ALTERED DOG – A dog which has been spayed or neutered.

AT LARGE – Off the premises of the owner.

DANGEROUS DOG –

A. Any dog that, without provocation, approaches in a threatening or terrorizing manner any person, in apparent attitude or attack, upon the streets, sidewalks or any public grounds.

B. Any dog with a know propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.

C. Any dog that bites, inflicts injury, assaults or otherwise attacks a human being or other domestic animal without provocation; or

D. Any dog that has been declared to be a dangerous dog after a hearing provided for in this Chapter.

DOG – Both male and female dogs.

DOG CONTROL OFFICER – An individual appointed for the purpose or assisting, within the appointing municipality, with the control of dogs and the enforcement of this Chapter.

IDENTIFICATION TAG – A tag issued by the Town Clerk which sets forth the identification number together with the name of the Town and State, the telephone number of the Town Clerk, and any other information deemed necessary by the Town Clerk.

OWNER – means any person who harbors or keeps any dog or other animal.

OWNER OF RECORD – means the person in whose name a dog was last licensed pursuant to this chapter.

PERSON – An individual, partnership, corporation, association or other organized group of persons, business entity, municipality or other legal entity.

RESIDENT – An individual who maintains a residence within the Town of Wales.

ARTICLE II

DOG LICENSING AND IMPOUNDMENT

Section 79-4, Rabies Vaccination Required

A. Any person owning, possessing or harboring a dog four (4) months of age or over in the Town of Wales shall be required to have the dog vaccinated to prevent the spread of rabies, except that a rabies vaccination is not required for a dog whose health would be adversely affected by a rabies vaccination, provided that a written statement, certified by a duly licensed veterinarian, specifying such condition is presented to the Dog Control Officer or the Town Clerk and filed with the Town Clerk's office.

B. Any person owning, possessing or harboring a dog, who fails or refuses to submit the dog for vaccination within ten (10) days after request by the Dog Control Officer or Town Clerk shall be in violation of this chapter. The Town Clerk or Assistant Town

Clerk shall advise the Dog Control Officer of such violation for purposes of enforcement of the required rabies vaccination.

Section 79-5, License Requirements

Any person who resides a minimum of six (6) months in the Town of Wales who owns, possesses or harbors a dog four (4) months of age or over in the Town of Wales shall obtain a current license for said dog and shall place and keep on such dog a collar to which shall be securely attached a valid identification tag for that dog, in accordance with the requirements of this chapter.

A. No license is required for any dog under the age of four (4) months and which is not at-large.

B. The owner of one (1) or more purebred dogs registered by a recognized registry association may annually make an application for a purebred license in addition to the individual licenses required by this Chapter. The purebred license shall be valid for a period of one (1) year beginning with the first day of the month following the date of issuance and shall be renewable annually thereafter prior to the expiration date.

Section 79-6, Application for a License

A. Applications for a license or renewal thereof shall be accompanied by a non-refundable license processing fee, the amount of which shall be adopted annually or at any other time as determined by resolution of the Town Board

(1) A guide dog, hearing dog, service dog, working search dog, *war dog,* detection dog; police work dog or therapy dog shall be exempt from a license processing fee provided that the owner of the dog provides adequate proof in the

form of a training certificate or other documentation deemed appropriate by the Town Clerk or Dog Control Officer.

(2) Licenses issued to any such dogs listed in Paragraph A(1) shall be conspicuously marked "guide dog", "hearing dog", "service dog", "working search dog", *"war dog"*, "detection dog", "police work dog" or "therapy dog".

B. Applications for a license or renewal thereof shall be accompanied, in addition to the non-refundable processing fee, by a non-refundable surcharge that will be deposited in the New York State Animal Population Control Fund pursuant to Article 7 of the New York State Agriculture and Markets Law. Such surcharge, the amount of which shall be adopted annually or at any other time as determined by resolution of the Town Board, shall be at least one dollar for altered dogs and three dollars for unaltered dogs in accordance with §110 of the New York State Agriculture and Markets Law.

C. Applications for a license or renewal thereof of a dog identified as unlicensed during an enumeration conducted pursuant to Article 7 of the New York State Agriculture and Markets Law shall pay an additional fee the amount of which shall be adopted annually or at any other time as determined by resolution of the Town Board.

D. An application for a license or renewal shall be in the form prescribed by the Town Clerk and shall provide for the following minimum information:

(1) The name, residence address, mailing address and telephone number of each owner; and

(2) The name, sex, approximate age or year of birth, breed, color, markings and other identifying details of the dog; and

(3) State whether the dog has been spayed or neutered; and

(4) Such other information or documentation deemed necessary by the Town Clerk to effectuate the purpose of this chapter.

E. Rabies certification. The application for a license or renewal 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 dog's age or other reason, the life of the dog would be endangered by the administration of the rabies vaccine.

F. In the case of an altered dog, every application shall be accompanied by a certificate signed by a licensed veterinarian or a sworn affidavit signed by the owner in the form acceptable to the Town Clerk showing that the dog has been spayed or neutered, except that such certificate or affidavit is not required if same is already on file with the Town Clerk. In lieu of the spay or neuter certificate an owner may present a statement certified by a licensed veterinarian stating that he or she has examined the dog and found that because of old age or other reason, the life of the dog would be endangered by spaying or neutering. In such case, the license fee for the dog shall be the same as an altered dog.

G. If any license is issued on an application of a person under eighteen (18) years of age, the owner of record shall be deemed to be the parent or guardian of such person.

Section 79-7, Issuance of License; Identification Tag

A. Upon validation by the Town Clerk or authorized dog control officer, a dog license shall be issued and a record of its issuance retained in the office of the Town Clerk. Such record shall be made available upon request to the State Commissioner of Agriculture and Markets, or successor thereof.

B. No license shall be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately apply for a new license for the dog. A license can not be transferred to another dog.

C. Identification Tag

(1) The Town Clerk shall assign identification number to a dog when it is first licensed. Such identification number shall be carried by the dog on an identification tag which shall be affixed to the collar of the dog at all times.

(2) No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which the number has been assigned.

(3) Any person wishing to replace a tag previously issued shall pay to the Town Clerk a sum to be determined by resolution of the Town Board for a replacement tag.

Section 79-8, Term of License and Renewals

All licenses issued pursuant to this article, and any renewal thereof, shall expire on the last day of the month of the period for which they are issued, except that no license or renewal shall be issued for a period expiring after the last day of the eleventh month following the expiration date of the current rabies certificate for the dog being licensed. In the event an applicant for a license or renewal presents a statement certified by a licensed veterinarian, in lieu of a rabies certificate, then the license or renewal shall be issued for one (1) year from the date of the statement.

Section 79-9, Change of Ownership; Lost or Stolen Dog; Death

A. Change in owner or address. In the event of a change in ownership of any dog which has been licensed pursuant to this chapter or change of address of the owner of record of any dog, the owner of record shall, within ten (10) days of the change, file with the Town Clerk a written notification of such change. Such owner of record shall be liable for any violation of this chapter until such filing is made or until the dog is licensed in the name of the new owner.

B. Lost or stolen dog. If any dog which has been licensed is lost or stolen, the owner of record shall, within ten (10) days of discovery of such loss or theft, file with the Town Clerk a written notification of such event. In the case of loss or theft, the owner of record of any such dog shall not be liable for any violation of this Article committed after such report is filed.

C. Death of dog. In the case of the death of a licensed dog, the owner of record shall notify the Town Clerk of the dog's death either before or upon receipt of a dog license renewal notice from the Town Clerk.

Section 79-10, Protection of Deer

A. Whenever the governing body of any municipality shall determine that deer population in the municipality or part thereof is suffering severe depredation due to dogs attacking, chasing or worrying deer, such governing body may by order require that all dogs in such municipality or part thereof shall be securely confined during the period of time designated in the order or, if no time is designated, until the order is revoked.

B. Notice of such order shall be given by publication in a newspaper or newspapers of general circulation in said municipality which shall be designated by such governing

body and by filing a copy of the order in the office of each Clerk in the area affected by such order. Such order shall be in full force and effect at the expiration of 24 hours following publication of such notice.

C. If any dog is not confined as required by such order, any dog control officer, peace officer acting pursuant to his special duties or police officer shall seize such dog. A dog shall not be deemed to be in violation of such order if accompanied by and under the full control of the owner.

D. If any dog, which is not confined as required by such order, shall attack, chase or worry any deer, any dog control officer, peace officer acting pursuant to his special duties or police officer, upon witnessing the same, shall destroy or seize and destroy such dog, and no liability in damages or otherwise shall be incurred on account of such destruction.

E. If any dog shall kill or cripple any deer, the owner shall be subject to a civil penalty in the amount of $100 for the first deer killed or crippled by the dog or by the pack of dogs, if any, of which the dog was a member, and in the amount of $150 for each additional deer killed or crippled, to be recovered in an action brought by the Commissioner of Environmental Conservation on behalf of the People of the State of New York.

F. This section and any order issued pursuant thereto shall not apply to dogs in special dog training areas or shooting preserves enclosed and licensed pursuant to the provisions of the Environmental Conservation Law while such dogs are under the control of the owner or trainer.

Section 79-11, Indemnification for Damage

A. Each county shall be liable for damage done within the county by dogs to domestic animals, including such veterinary fees and costs as may arise from such damage or injury. Indemnification therefor shall be made in the manner provided by this section. Such indemnification shall not exceed the actual damage. In no event shall indemnification exceed:

(1) $800 for each animal in the case of horses or cattle.

(2) $15 for each domesticated fowl, duck, goose, swan, turkey, pheasant or other bird which is raised in confinement under license from the State Department of Environmental Conservation, before release from captivity, and confined domestic hare or rabbit.

(3) $100 for any other domestic animal as defined in Article 7 of the Agriculture and Markets Law.

(4) $1,000 for each animal in case of registered purebred dairy and beef cattle or of purebred dairy and beef cattle eligible for registration and less than one year of age.

(5) $250 for each animal in the case of each registered purebred sheep, goat or swine or purebred sheep, goat or swine eligible for registration and less than one year of age.

B. No indemnification shall be paid for fowl of the varieties commonly used for cockfights.

C. The name of the owner of the dog causing the damage, if known, shall be reported to the financial officer of the county, and such owner shall be liable to the county in reimbursement for any amounts paid by the county for such indemnification, in an action

to be brought in the name of the county by the financial officer of the county or the County Dog Control Officer in a court of competent jurisdiction.

D. The owner of a domestic animal injured or killed as a result of being attacked, chased or worried by any dog shall, immediately upon the discovery of such injury or death, notify the nearest Assessor of the city or Town where the damage was done of the fact of such injury or death and that the owner claims indemnity therefor and requires that the damage be determined. The Assessor, or any other individual designated in writing by the governing body of the city or Town, shall immediately inquire into the matter and shall examine the animal injured or killed and, if he deems it necessary shall examine witnesses in relation thereto. If the Assessor or designated individual is satisfied that the injuring or killing of the animal was caused by a dog and that the owner of the animal had taken reasonable precautions to prevent the damage done, the Assessor or designated individual shall determine the amount of the damage apparent at the time and make a report of the amount of damages; provided, however, that if the amount of damage is determined by the Assessor or designated individual to be more than $400, the Assessor or designated individual shall immediately give notice of the claim to all the other Assessors or designated individuals, if any, of the city or Town, or a majority of them, who, shall, within three days, inquire into the matter and make a report in the manner provided above. The report shall be promptly filed with the financial officer of the county and the Commissioner and a copy provided to the claimant.

E. The governing body of any county may establish by local law a procedure for reviewing the decision of the Assessor or designated individual. If a procedure has been established, the claimant or financial officer of the county may, within 20 days after the receipt of the report of any assessor or designated individual, if dissatisfied with the

amount of the damages stated therein, request a review pursuant to the procedure established by the governing body of the county. The decision after review shall be in writing, and copies thereof shall be mailed to the financial officer of the county, the claimant and the Commissioner.

F. In the event that the county shall not have established a procedure for review of the decision, such review shall be made by the Commissioner. Upon receipt of such request, the Commissioner shall cause an investigation to be made of the alleged attack upon the claimant's domestic animal, the facts surrounding such attack and the amount of damage incurred thereby for which indemnification should be made in accordance with the intent of this section. The claimant shall permit the Commissioner or his authorized representative to enter the premises on which the attack is alleged to have been made and shall furnish to the Commissioner or his representative whatever information and proof may be available to the claimant and may be deemed necessary by the Commissioner or his representative to complete the investigation. Upon completion of the investigation, the Commissioner shall decide whether the attack was in fact made by a dog upon a domestic animal, as defined in Section 108 of Article 7 of the Agriculture and Markets Law, and whether the owner had taken reasonable precautions to prevent the damage done and, if he so finds, shall either confirm or deny the determination of the Assessor or designated individual or modify it as may appear proper and adequate in view of the facts. The decision of the Commissioner shall be in writing, and copies thereof shall be mailed to the financial officer of the county and the claimant.

G. After the expiration of 20 days from the filing of the Assessor's or designated individual's report with the financial officer of the county, such officer shall mail to the claimant a certificate of indemnity due to the claimant; provided, however, that in those

counties where a review procedure has been established and a request for a review has been presented, such certificate shall be mailed to the claimant upon the filing of a copy of the decision, after review, with the county financial officer. The financial officer shall retain a copy of the certificate and shall mail a copy to the Commissioner.

H. If, subsequent to the determination of damage, it develops that damage which was not apparent at the time of determination was caused to any domestic animal, a supplemental notice of claim for such damage shall be promptly given by the claimant upon discovery thereof to the Assessor at any time within six months after the discovery of the original damage. Such notice shall set forth the facts upon which the additional claim was based. The same proceedings shall thereupon be had as upon the original claim.

I. The amount of the damage determined as hereinbefore provided shall be paid by the financial officer of the county of the claimant, upon presentation of the aforesaid certificate, from the funds received by such officer and, if such funds shall be insufficient therefor, then from such other funds as shall be raised by the county governing body in the manner that funds are raised to pay other county charges.

J. These rates are subject to state law, and fees shall be based upon current state law.

Section 79-12, Impoundment Fees

A. The following fees and costs established for impoundment of dogs under §117 of the New York State Agriculture and Markets Law:

(1) For the first impoundment of any dog owned by a person or entity: $25.00

(2) For the second impoundment of any dog owned by the same person or entity within one year of the first impoundment: $50.00

(3) For the third impoundment of any dog owned by the same person or entity within one year of the second impoundment: $75.00

(4) An additional $25 for each and every additional impoundment within one year of a prior impoundment of any dog owned by the same person or entity so that the total fine for the impoundment of dogs owned by the same person or entity during any one-year period would be $25 for the first impoundment, $50 for the second impoundment, $75 for the third impoundment, $100 for the fourth impoundment, and so on.

(5) In addition to the fines described herein, the owner or any impounded dog will be required to pay $20 for each 24 hours or part thereof said dog is impounded.

B. Said owner shall pay all impoundment fees to the Town Clerk and shall produce a receipt for such payment to the Dog Control Officer before such dog shall be released to said owner. In addition to impoundment fees any licensing fees which are required under this code shall be paid to the Town Clerk prior to the release of the dog to its owner.

Section 79-13, Veterinary Care For Impounded Dogs

A. Each dog seized or impounded by the Dog Control Officer of the Town of Wales, under the authority of the New York State Agriculture and Markets Law, that requires veterinary treatment for either injuries or sickness shall receive such veterinary care when such care is necessary in the judgment of the Dog Control Officer.

B. The owner of such dog shall pay for said veterinary fees in addition to the impoundment fees upon redemption of the dog or, if said dog is deceased, not later than

thirty (30) days after said veterinary care is rendered and the owner notified in writing of such amount.

C. If such amount is not paid within thirty (30) days after written notification, the Town shall proceed to collect the amount in a civil action in the Town of Wales Justice Court.

ARTICLE III

DOGS-AT-LARGE

Section 79-14, Running at Large Restricted

A. It is a restricted act for a person or entity owning or harboring a dog, whether licensed or not, to permit said dog to run at large within the Town of Wales, outside the municipal boundaries of the Town of Wales, unless said dog is restrained by a chain or leash not exceeding ten (10) feet in length.

B. Exceptions

(1) A guide dog actually leading a blind person or a dog being trained as a guide dog.

(2) A hearing dog actually aiding a deaf person or a dog being trained to assist a deaf person.

(3) A police dog in use for police work or a dog being trained as a police dog.

(4) A dog actually engaged in hunting or training for hunting accompanied by its owner or other responsible person, on land with the permission of the owner of the land.

Section 79-15, Penalties for Offenses

Any person violating the provisions of this article shall, upon conviction thereof, be Punished by a fine not exceeding $25 for the first offense, a fine not exceeding $50 for the second offense and a fine not exceeding $100 for the third and subsequent offense.

ARTICLE IV

DANGEROUS DOGS

Section 79-16, Restricted Acts

A. No person who owns or has control of any dog shall permit or suffer such dog to damage or destroy property of any kind of another person, to attack or bite any person peaceably conducting himself in any place where such person may lawfully be, or to attack, chase, injure or kill any domestic animal or dog or cat of another person when such animal is in any place where it may lawfully be. For the purpose hereof, when any dog is at large contrary to the provisions of this article and commits any of such acts, the owner or person in control shall be deemed to have permitted or suffered the dog to have committed such act.

B. No owner of a dog or of a duly approved kennel within the Town of Wales shall suffer or permit any dog or dogs to create any unreasonably loud or disturbing noise of such an intensity and duration as to be detrimental to the life, health or welfare of any individual, and the violation hereof is prohibited and deemed to be a public nuisance, and such dog or dogs shall be so housed and confined in a place so constructed as to prevent such disturbing and unnecessary noise as may result from the habitual or continual

barking of such dog or dogs. The provisions of this section shall be liberally construed to prevent excessive, unreasonable, disturbing and unnecessary noise, due consideration being given to the circumstances, time of day, particular location of each violation and the demands of the public health, safety and welfare.

C. No person who owns a dog shall permit the premises, structures or enclosure in which such dog is kept to be unclean or unsanitary.

Section 79-17, Determination of Status as Dangerous Dog

In the event that the Dog Control Officer or law enforcement officer has probable cause to believe that a dog is dangerous, the Dog Control Officer or law enforcement officer may proceed under Article 7 of the New York State Agriculture and Markets Law for a determination by the Justice Court of the Town of Wales. If the court shall find such dog to be a dangerous dog under the Agriculture and Markets Law or under this Article, the court may impose such restrictions on said dog as are provided for in the Agricultural and Markets Law or as are provide for under this Article.

Section 79-18, Seizure, Impoundment and Disposition

The Dog Control Officer or any law enforcement officer shall seize any dog found to be in violation of the provisions of Article 7 of the New York State Agriculture and Markets Law or in violation of this Article; and such dog shall be impounded, redeemed, euthanized or sold as provided in §118 of the Agriculture and Markets Law; and the owner of such dog shall pay the costs of seizure and impoundment as provided for in this Chapter.

Section 79-19, Confinement for Rabies Determination

The owner of any dog which has attacked or injured another person or animal contrary to the provisions of this Article shall confine such dog for such length of time as may be directed by the Dog Control Officer for the purpose of determining whether such dog is affected by rabies; and if so affected, such dog shall be destroyed (euthanized) under the direction of the Dog Control Officer.

Section 79-20, Confinement of Dangerous Dogs

The owner of any dog which has attacked or injured another person or animal or has been determined to be a dangerous dog as provided herein shall not thereafter permit such dog to be at any place other than on the premises of the owner unless such dog is securely fitted with a property fitting muzzle of a type which shall not permit such dog to bite another person or animal.

Section 79-21, Kennel License

A kennel license shall be required for four (4) or more dogs per dwelling unit required as follows:

A. Application to the Town Board for a special use permit and kennel license.

B. Proof of notice at least ten (10) days prior to the consideration of the special use permit to all adjoining property owners within one thousand (1,000) feet of the premises to be licensed.

C. All applications shall be referred to the Dog Control Officer for review, with any recommendations submitted to the Town Board within thirty (30) days from referral.

D. Any dog four (4) months or older shall be considered a dog for the purposes of the required kennel permit.

ARTICLE V

ENFORCEMENT AND PENALTIES

Section 79-22, Enforcement

The Dog Control Officer and any NYS law enforcement officer shall be authorized to issue such process as is necessary to bring violations before the court upon being satisfied that the person to whom such process is issued is in fact chargeable with the violation.

Section 79-23, Penalties for Offenses

Penalties, except for those prescribed elsewhere in this Chapter or New York Agriculture and Markets Law, shall be deemed punishable by a fine not exceeding $250 or confinement in jail not exceeding five (5) days, or by both fine and imprisonment. Each separate offense or misdemeanor, as the case may be, shall constitute a separate violation. The provisions hereof are in addition to the regulations, restrictions, requirements and penalties contained in Article 7 of the New York State Agriculture and Markets Law.

Section 79-24. Amount of Fees or Penalties

The amount of any fees or penalties set forth in this Chapter may be amended by the Town Board from time to time by the adoption of a resolution setting forth such fees and/or penalties.

SECTION 3. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the New York Secretary of State.