

TOWN OF HORNBY

LOCAL LAW NO. 1 of 2010

DOG LICENSING AND CONTROL

Section

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1. Purpose. The purpose of this article is to provide for the licensing and identification of dogs, the control and protection of the dog population and the protection of persons, property, and domestic animals from dog attack and damage.

2. Application.

1. This article shall apply in the Town of Hornby in the County of Steuben, State of New York.
2. In the event that any dog owned by a non-resident of this state is harbored within this state, such dog shall be exempt from the identification and licensing provisions of this article for a period of thirty days beginning the day the dog first entered New York State, provided such dog is licensed pursuant to the provisions of law of the area of residence.
3. This article shall not apply to any dog confined to the premises of any public or private hospital devoted solely to the treatment of sick animals, or confined for the purposes of research to the premises of any college or other educational or research institution.
4. This article shall not apply to any dog confined to the premises of any person, firm or corporation engaged in the business of breeding or raising dogs for profit and licensed as

a class A dealer under the Federal Laboratory Animal Welfare Act, provided that such person, firm or corporation has obtained a certificate of exemption.

3. Definitions. As used in this article, unless otherwise expressly stated or unless the context or subject matter requires otherwise:

1. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog, seized or surrendered, or any cat.

2. "Clerk" means the Town Clerk of the Town of Hornby where licenses are validated or issued pursuant to this article.

3. "Commissioner" means the state commissioner of agriculture and markets.

4. "Dog" means any member of the species *canis familiaris*.

5. "Dog control officer" means any individual appointed by the Town of Hornby to assist in the enforcement of this article or any authorized officer, agent or employee of an incorporated humane society or similar incorporated dog protective association under contract with the Town of Hornby to assist in the enforcement of this article.

6. "Domestic animal" means any domesticated 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.

7. "Euthanize" means to bring about death by a humane method.

8. "Guide dog" means any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog owned by a recognized guide dog training center located within the state during the period such dog is being trained or bred for such purpose.

9. "Harbor" means to provide food or shelter to any dog.

10. "Identification tag" means a tag which sets forth an official identification number as required by the provisions of this article.

11. "Identified dog" means any dog carrying an identification tag as provided in section seven of this article.

12. "Municipality" means the Town of Hornby in the County of Steuben, State of New York.

13. "Official identification number" means a series or combination of letters, numbers or symbols approved and furnished by the Town of Hornby.

14. "Owner" means any person who harbors or keeps any dog.

15. "Owner of record" means the person in whose name any dog was last licensed pursuant to either subdivision one or subdivision two of section four of this article, except that if any license is issued on application of a person under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person. If it cannot be determined in whose name any dog was last licensed or if the owner of record has filed a statement pursuant to the provisions of section eight of this article, the owner shall be deemed to be the owner of record of such dog, except that if the owner is under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person.

16. "Person" means any individual, corporation, partnership, association or other organized group of persons, municipality, or other legal entity.

17. "Police work dog" means any dog owned or harbored by any state or municipal police department or any state or federal law enforcement agency, which has been trained to aid law enforcement officers and is actually being used for police work purposes.

18. "Recognized registry association" means any registry association that operates on a nationwide basis, issues numbered registration certificates and keeps such records as may be required by the commissioner.

19. "War dog" means any dog which has been honorably discharged from the United States armed services.

20. "Hearing dog" means any dog that is trained to aid a person with a hearing impairment and is actually used for such purpose, or any dog owned by a recognized training center located within the state during the period such dog is being trained or bred for such purpose.

21. "Service dog" means any dog that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability, provided that the dog is or will be owned by such person or that person's parent, guardian or other legal representative.

22. "Person with a disability" means any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law.

23. (a) "Dangerous dog" means any dog which (i) without justification attacks a person, companion animal as defined in subdivision five of section three hundred fifty of the Agriculture and Markets Law of this state, farm animal as defined in subdivision four of

section three hundred fifty of the Agriculture and Markets Law of this state or domestic animal as defined in subdivision six of this section and causes physical injury or death, or (ii) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion animals, farm animals or domestic animals or (iii) without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death. (b) "Dangerous dog" does not include a police work dog, as defined in subdivision seventeen of this section, which acts in the manner described in this paragraph while such police work dog is being used to assist one or more law enforcement officers in the performance of their official duties.

24. "Working search dog" means any dog that is trained to aid in the search for missing persons, is actually used for such purpose and is registered with the department; provided, however, that such services provided by said dog shall be performed without charge or fee.

25. "Therapy dog" means any dog that is trained to aid the emotional and physical health of patients in hospitals, nursing homes, retirement homes and other settings and is actually used for such purpose, or any dog owned by a recognized training center located within the state during the period such dog is being trained or bred for such purpose.

26. "Detection dog" means any dog that is trained and is actually used for such purposes or is undergoing training to be used for the purpose of detecting controlled substances, explosives, ignitable liquids, firearms, cadavers, or school or correctional facility contraband.

27. "Physical injury" means impairment of physical condition or substantial pain.

28. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

29. "Town Board" means the Town Board of the Town of Hornby in the County of Steuben, State of New York.

4. Licensing of dogs; rabies vaccination requirement.

1. Licensing of dogs.

(a) The owner of any dog reaching the age of four months shall immediately make application for a dog license. No license shall be required for any dog which is under the age of four months and which is not at large. Except as otherwise provided in this subdivision, a license shall be issued or renewed for a period of one year.

(b) Application for a dog license shall be made to the Town Clerk of the Town of Hornby. The Town Board may authorize that such application be made to one or more

named dog control officers of the town. The issuance of any license by any such officer shall be under the control and supervision of the Town Clerk.

(c) The application shall state the sex, actual or approximate age, breed, color, and official identification number of the dog, and other identification marks, if any, and the name, address, and telephone number of the owner.

(d) The application shall be accompanied by the license fee prescribed by section five of this article and a certificate of rabies vaccination or statement in lieu thereof, as required by subdivision three of this section. The rabies vaccination must be valid for at least 30 days into the new license period in order to issue a license or renewal. This also applies to multi year licenses; the rabies must be valid at least 30 days into each year of the license in order to be validated. Dogs that are listed as “exempt” must have a new letter of exemption from a licensed veterinarian every year. In the case of a spayed or neutered dog, every application shall also be accompanied by a certificate signed by a licensed veterinarian or an affidavit signed by the owner, showing that the dog has been spayed or neutered, provided such certificate or affidavit shall not be required if the 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 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 for a spayed or neutered dog as set forth in paragraph (a) of subdivision one of section five of this article.

(e) Upon validation by the Town Clerk, the application shall become a license for the dog described therein. Once an application has been validated, no refund therefore shall be made.

(f) The Town Clerk shall: (i) provide a copy of the license to the owner and retain a record of the license.

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

2. Purebred license.

(a) The owner of one or more purebred dogs registered by a recognized registry association may annually make an application for a purebred license, in lieu of or in addition to the individual licenses required by subdivision one of this section. A purebred license shall be valid for a period of one year and shall be renewable thereafter prior to the expiration date.

(b) Such application shall be made to the person specified in paragraph (b) of subdivision one of this section.

(c) The application shall state the name, address and telephone number of the owner; the sex, breed, registry name and number of each purebred registered dog over the age of

four months which is harbored on the premises; and the sex and breed of each purebred dog over the age of four months which is harbored on the premises and which is eligible for registration. The application shall also include a statement by the owner that all purebred dogs over the age of four months which are harbored on the premises have been listed.

(d) The application shall be accompanied by the license fee prescribed by section five of this article and a certificate of rabies vaccination or statement in lieu thereof, as required by subdivision three of this section.

(e) Upon receipt of the foregoing items, the Town Clerk or authorized dog control officer shall assign a license number, which shall be reserved for the sole use of the named owner, and shall issue a purebred license. Once a purebred license has been issued, no refund therefor shall be made.

(f) The Town Clerk shall: (i) provide a copy of the purebred license to the owner and retain a record of the purebred license.

(g) No purebred license shall be transferable. Upon change of ownership of any dog licensed under a purebred license, such dog shall become subject to the licensing provisions of subdivision one of this section, except when the new owner holds a valid purebred license.

3. The Town Clerk, at the time of issuing any license pursuant to this article, shall require the applicant to present a statement certified by a licensed veterinarian showing that the dog or dogs have been vaccinated to prevent rabies or, in lieu thereof, a statement certified by a licensed veterinarian stating that because of old age or other reason, the life of the dog or dogs would be endangered by the administration of vaccine. The Town Clerk, shall make or cause to be made from such statement a record of such information and shall file such record with a copy of the license.

5. License fees.

1. The license fee for each dog license issued pursuant to subdivision one of section four of this article shall be:

(a) nine dollars for each spayed or neutered dog and fourteen dollars for each unspayed or unneutered dog licensed for up to and including one year;

(b) fifteen dollars for each spayed or neutered dog and twenty four dollars for each unspayed or unneutered dog licensed for a period of more than one and no more than two years;

(c) twenty one dollars for each spayed or neutered dog and thirty four dollars for each unspayed or unneutered dog licensed for a period of more than two and no more than three years.

2. The annual fee for each purebred license issued pursuant to subdivision two of section four of this article shall be:

(a) fifty dollars, if no more than ten registered purebred dogs or purebred dogs eligible for registration over the age of four months are harbored on the owner's premises at the time of the application;

(b) one hundred dollars, if more than ten, but not more than twenty-five registered purebred dogs or purebred dogs eligible for registration over the age of four months are harbored on the premises at the time of application; or

(c) one hundred fifty dollars, if more than twenty-five registered purebred dogs or purebred dogs eligible for registration over the age of four months are harbored on the premises at the time of application.

3. a. There shall be no fee for any license issued for any guide dog, hearing dog, service dog, war dog, working search dog, detection dog, police work dog or therapy dog. Each copy of any license for such dogs shall be conspicuously marked "Guide Dog," "Hearing Dog," "Service Dog", "Working Search Dog", "War Dog", "Detection Dog", "Police Work Dog," or "Therapy Dog", as may be appropriate, by the Town Clerk or authorized dog control officer.

b. There shall be no fee paid for any license issued for the first dog licensed by one or more persons each of whom is aged 65 years of age or older.

4. a. In addition to the fee charged pursuant to subdivisions one and two of this section, any person applying for a dog license for a period of up to and including one year shall pay a fee of three dollars for any dog four months of age or older which has not been spayed or neutered unless an owner presents with the license application 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. Provided, however, that the fee shall be six dollars in the case of an unspayed or unneutered dog licensed for a period of more than one and no more than two years and nine dollars in the case of an unspayed or unneutered dog licensed for a period of more than two and no more than three years, unless the owner presents with the license application a statement certified by a licensed veterinarian stating that because of old age or other reason, the life of the dog would be endangered by spaying or neutering. The fee under this section shall be one dollar for any dog four months of age or older which has been spayed or neutered for a license up to and including one year, two dollars for any dog four months of age or older which has been spayed or neutered for a license of more than one and no more than two years, and three dollars for any dog four months of age or older which has been spayed or neutered for a license of more than two and no more than three years. This section shall not apply to applications for a purebred license.

b. Notwithstanding the provisions of subsection (a) of this subdivision, in addition to the fee charged pursuant to subdivisions one and two of this section any person applying for

a purebred license for a period of up to and including one year shall pay a fee of three dollars. Provided, however, that the fee shall be six dollars in the case of a purebred dog license for a period of more than one and no more than two years and nine dollars in the case of a purebred dog license for a period of more than two and no more than three years.

c. In addition to any other applicable fee, any person applying for a dog or purebred license for a dog identified as unlicensed during an enumeration conducted pursuant to subdivision seven of section seven of this article shall pay a fee of twenty five dollars for each unlicensed dog. Such additional fee shall be the property of Town of Hornby and shall be used to pay the expenses incurred by the municipality in conducting the enumeration. In the event the additional fees collected exceed the expenses incurred by the municipality in conducting an enumeration in any year, such excess fees may be used by the Town of Hornby for any other lawful purpose.

6. Disposition of license fees. Notwithstanding any other provision in this article, the Town Clerk shall remit to the commissioner the animal population control program surcharge.

7. Identification of Dogs.

1. Each dog licensed pursuant to subdivision one of section four of this article shall be assigned, at the time the dog is first licensed, a permanent official identification number. Such identification number shall be carried by the dog on an identification tag which shall be affixed to a collar on the dog at all times when at large, provided that a dog participating in a dog show shall be exempt from this requirement during such participation.

2. The official identification number shall constitute the official identification of the dog to which it is assigned, regardless of changes of ownership, and the number shall not be reassigned to any other dog during the lifetime of the dog to which it is assigned.

3. At the time a dog is first licensed, one identification tag shall be furnished to the owner at no charge. Any replacement tag shall be obtained by the owner at his expense at a fee of \$3.00 and in a manner prescribed Town Clerk.

4. No tag carrying an official identification number shall be affixed to the collar of any dog other than the one to which that number has been assigned.

5. The holder of a purebred license may procure, at his expense, any number of tags imprinted with the same number as the purebred license. One such tag shall be affixed to the collar of each dog harbored pursuant to the purebred license at all times when at large, provided that a dog participating in a dog show shall be exempt from this requirement during such participation. Such a tag shall be affixed only to the collar of a dog owned by the holder of the purebred license and harbored on his premises.

6. The applicant for a license for any guide dog, service dog, hearing dog or detection dog may procure a special tag for identifying such dog. This special tag shall be in addition to the identification tag required by subdivision one of this section. The Town Clerk shall prescribe the shape, size, color, and form of imprint of the tag which shall be a different color and shape than the official identification tag. Upon application, the Town Clerk shall furnish such tags at the owner's expense.

7. The Town Board may, either individually or in cooperation with other municipal entities, require its dog control officer or animal control officer or any other authorized agent to enumerate and list the names of all persons in the municipality owning or harboring dogs, or in lieu thereof, the Town Board may contract to have the same done.

8. Change of ownership; lost or stolen dog.

1. In the event of a change in the ownership of any dog which has been assigned an official identification number or in the address of the owner of record of any such dog, the owner of record shall, within ten days of such change, file with the Town Clerk a written report of such change. Such owner of record shall be liable for any violation of this article until such filing is made or until the dog is licensed in the name of the new owner.

2. If any dog which has been assigned an official identification number is lost or stolen, the owner of record shall, within ten days of the discovery of such loss or theft file with the Town Clerk a written report of such loss or theft. In the case of a 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.

3. In the case of a dog's death, the owner of record shall so notify the Town Clerk either prior to renewal of licensure or upon the time of such renewal as set forth in subdivision one of section four of this chapter. Until such time that the Town Clerk receives such information, said number shall not be reassigned. Failure to notify the Town Clerk of the death of a dog as so required herein shall constitute a violation and the owner of record shall be held liable.

9. Seizure of dogs; redemption periods; impoundment fees; adoption.

1. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to the Town of Hornby shall seize:

(a) any dog which is not identified and which is not on the owner's premises; and

(b) any dog which is not licensed, whether on or off the owner's premises, subsequent to a seven day warning.

(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 a dangerous dog.

(d) any dog which poses an immediate threat to the public safety. Promptly upon seizure the dog control officer shall commence a proceeding as provided for in subdivision two of section twelve of this article.

2. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to the Town of Hornby may seize any dog in violation of any local law or ordinance relating to the control of dogs, adopted by the Town of Hornby pursuant to the provisions of this article.

3. Each dog seized in accordance with the provisions of this article shall be properly sheltered, fed and watered for the redemption period as hereinafter provided.

4. 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) ten dollars for the first impoundment of any dog owned by that person;

(b) twenty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the second impoundment, within one year of the first impoundment, of any dog owned by that person; or

(c) thirty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person.

5. All impoundment fees shall be the property of the Town of Hornby and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under laws of this state, and subsidizing public humane education programs in responsible dog ownership. All collected fees shall be given to the Town Clerk monthly, with appropriate documentation, from the dog control officer by the 10th day of the following month. Documentation of no activity shall be done by the dog control officer if not fees are collected for that month.

6. Promptly upon seizure of any 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 seven 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 nine 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.

7. An owner shall forfeit title to any dog unredeemed at the expiration of the appropriate redemption period, and the dog shall then be made available for adoption or euthanized subject to the provisions of the laws of this state. Provided that no dog in the custody of a pound or shelter shall be delivered for adoption unless it has been licensed pursuant to the provisions of this article prior to its release from the custody of a pound or shelter. The Town Board may by local law or ordinance establish additional conditions for adoption including the requirement that adopted dogs shall be spayed or neutered before or after release from custody upon such terms and conditions as the municipality may establish.

8. Any dog or cat in the custody of a pound or shelter shall be made available for adoption or euthanized subject to the provisions of the laws of this state after the time for redemption has expired.

(The redemption periods set forth above in this section notwithstanding, the Town Board may establish the duration of such periods by local law or ordinance, provided that no such period shall be less than three days, except that where notice to the owner is given by mail, no such period shall be less than seven days.)

9. Any dog, owned by a non-resident of this state, seized and impounded pursuant to the provisions of this article, and whose owner can be identified, shall be subject to subdivision six of this section. If the dog is licensed pursuant to the provisions of law of the area of the owner's residence, the licensing requirements of this article shall not apply provided such dog is not harbored for a period exceeding thirty days.

10. The seizure of any dog shall not relieve any person from any violation provided for by section ten of this article.

11. No liability in damages or otherwise shall be incurred on account of the seizure, euthanization or adoption of any dog pursuant to the provisions of this article.

10. Violations.

1. It shall be a violation, punishable as provided in subdivision two of this section, for:

(a) any owner to fail to license any dog that requires licensing;

(b) any owner to fail to have any dog identified as required by this article;

(c) any person to knowingly affix to any dog any false or improper identification tag, special identification tag for identifying guide, service or hearing dogs or purebred license tag;

(d) any owner or custodian of any dog to fail to confine, restrain or present such dog for any lawful purpose pursuant to this article;

(e) any person to furnish any false or misleading information on any form required to be filed with the Town of Hornby;

(f) the owner or custodian of any dog to fail to exercise due diligence in handling his or her dog if the handling results in harm to another dog that is a guide, hearing or service dog.

(g) any owner or custodian to permit or allow their dog to engage in repeated and prolonged howling, barking, crying, whining, squealing or conduct itself in such a manner so as unreasonably and repeatedly to disturb the peace, or comfort or repose of any person other than the owner of such dog.

(h) any owner or custodian to permit or allow their dog to uproot, dig or otherwise damage any vegetables, lawns, flowers, garden beds, including but not limited to other property not belonging to the owner of such dog.

(i) any owner or custodian to permit or allow their dog to chase, jump upon or jump at or otherwise conduct itself as to harass any person in such a manner as reasonable to cause intimidation or to put such person in reasonable apprehension of bodily harm or injury.

(j) any owner or custodian to permit or allow their dog while on a public right of way, to chase, run alongside or bark at motor vehicles, bicycles or pedestrians while on a public street or highway or upon public or private property other than the property of the owner or harbinger of said dog.

(k) any owner or custodian to permit or allow their dog to create a nuisance by defacing or digging on public property or private property other than the property of the owner. No owner or harbinger of a dog shall permit the building, kennel or other enclosure area wherein the dog is confined, to become offensive or unhealthy or emit noxious odor.

(l) any owner or custodian to permit or allow their female dog to be off their premises when in heat, unless on a leash or caged.

2. It shall be the duty of the authorized dog control officer of the Town of Hornby to bring an action against any person who has committed within the town any violation set forth in subdivision one of this section. The Town of Hornby 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:

(a) where prosecuted pursuant to the penal law, by a fine of not more than twenty-five dollars, except that (i) where the person was found to have violated this section within the preceding five years, the fine may be not more than fifty dollars, and (ii) 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 more than one hundred dollars or imprisonment for not more than fifteen days, or both.

11. Disposition of fines. Notwithstanding any other provision of law, all moneys collected as fines or penalties by the Town of Hornby as a result of any prosecution for violations of the provisions of this article or any local law or ordinance and all bail forfeitures by persons charged with such violations shall be the property of the Town of Hornby and shall be paid to the Town Clerk of the town. Such moneys shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under the laws of this state, and subsidizing public humane education programs in responsible dog ownership. Documentation of such fines, surcharges, penalties, and forfeitures shall be submitted by the Town Court to the Town Clerk on a monthly basis.

12. Dangerous dogs.

1. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may make a complaint of an attack or threatened attack upon a person, companion animal, farm animal as defined in subdivision twenty-three of section three of this article, or a domestic animal as defined in subdivision six of section three of this article to an authorized dog control officer or police officer of the town. Such officer shall immediately inform the complainant of his right to commence a proceeding as provided in subdivision two of this section and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself.

2. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may, and any dog control officer or police officer as provided in subdivision one of this section shall, make a complaint under oath or affirmation to any municipal judge or justice of such attack or threatened attack. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog is a dangerous dog and, if so, shall issue an order to any dog control officer, peace officer, acting pursuant to his special duties, or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination as provided in this section. Whether or not the judge or justice finds there is probable cause for such seizure, he shall, within five days and upon written notice of not less than two days to the owner of the dog, hold a hearing on the complaint. The petitioner shall have the burden at such hearing to prove the dog is a "dangerous dog" by clear and convincing evidence. If satisfied that the dog is a dangerous dog, the judge or justice shall then order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

(a) evaluation of the dog by a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field and completion of training or other treatment as deemed appropriate by such expert. The owner of the dog shall be responsible for all costs associated with evaluations and training ordered under this section;

(b) secure, humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to: (1) prevent escape of the dog, (2) protect the public from unauthorized contact with the dog, and (3) to protect the dog from the elements pursuant to the laws of this state. Such confinement shall not include lengthy periods of tying or chaining;

(c) restraint of the dog on a leash by an adult of at least eighteen years of age whenever the dog is on public premises;

(d) muzzling the dog whenever it is on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or

(e) maintenance of a liability insurance policy in an amount determined by the court, but in no event in excess of one hundred thousand dollars for personal injury or death resulting from an attack by such dangerous dog.

3. Upon a finding that a dog is dangerous, the judge or justice may order humane euthanasia or permanent confinement of the dog if one of the following aggravating circumstances is established at the judicial hearing held pursuant to subdivision two of this section:

(a) the dog, without justification, attacked a person causing serious physical injury or death; or

(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a "dangerous dog" finding pursuant to the provisions of this section. An order of humane euthanasia shall not be carried out until expiration of the thirty day period provided for in subdivision five of this section for filing a notice of appeal, unless the owner of the dog has indicated to the judge in writing, his or her intention to waive his or her right to appeal. Upon filing of a notice of appeal, the order shall be automatically stayed pending the outcome of the appeal.

4. A dog shall not be declared dangerous if the court determines the conduct of the dog (a) was justified because the threat, injury or damage was sustained by a person who at the time was committing a crime or offense upon the owner or custodian of the dog or upon the property of the owner or custodian of the dog;

(b) was justified because the injured, threatened or killed person was tormenting, abusing, assaulting or physically threatening the dog or its offspring, or has in the past tormented, abused, assaulted or physically threatened the dog or its offspring;

(c) was justified because the dog was responding to pain or injury, or was protecting itself, its owner, custodian, or a member of its household, its kennels or its offspring, or its owners domestic livestock; or was justified because the injured, threatened or killed companion animal, farm animal or domestic animal was attacking or threatening to attack the dog or its offspring. Testimony of a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert shall be relevant to the court's determination as to whether the dog's behavior was justified pursuant to the provisions of this subdivision.

5. (a) The owner of a dog found to be a "dangerous dog" pursuant to this section may appeal such determination, and/or the court's order concerning disposition of the dog to the court having jurisdiction to hear civil appeals in the county where the "dangerous dog" finding was made. The owner shall commence such appeal by filing a notice of appeal with the appropriate court within thirty days of the final order pursuant to this section. Court rules governing civil appeals in the appropriate jurisdiction shall govern the appeal of a determination under this section.

(b) Upon filing a notice of appeal from an order of humane euthanasia pursuant to this section, such order shall be automatically stayed pending final determination of any appeal. In all other circumstances, the owner of the dog may make application to the court to issue a stay of disposition pending determination of the appeal.

6. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person, service dog, guide dog or hearing dog causing physical injury shall be subject to a civil penalty not to exceed four hundred dollars in addition to any other applicable penalties.

7. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person causing serious physical injury shall be subject to a civil penalty not to exceed one thousand five hundred dollars in addition to any other applicable penalties. Any such penalty may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

8. The owner of a dog who, through any act or omission, negligently permits his or her dog, which had previously been determined to be dangerous pursuant to this article, to bite a person causing serious physical injury, shall be guilty of a misdemeanor punishable by a fine of not more than three thousand dollars, or by a period of imprisonment not to exceed ninety days, or by both such fine and imprisonment in addition to any other applicable penalties. Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

9. If any dog, which had previously been determined by a judge or justice to be a dangerous dog, as defined in section three of this article, shall without justification kill or cause the death of any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, regardless of whether such dog escapes without fault of the owner, the owner shall be guilty of a class A misdemeanor in addition to any other penalties.

10. The owner or lawful custodian of a dangerous dog shall, except in the circumstances enumerated in subdivisions four and eleven of this section, be strictly liable for medical costs resulting from injury caused by such dog to a person, companion animal, farm animal or domestic animal.

11. The owner shall not be liable pursuant to subdivision six, seven, eight, nine or ten of this section if the dog was coming to the aid or defense of a person during the commission or attempted commission of a murder, robbery, burglary, arson, rape in the first degree as defined in subdivision one or two of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one or two of section 130.50 of the penal law or kidnapping within the dwelling or upon the real property of the owner of the dog and the dog injured or killed the person committing such criminal activity.

12. Nothing contained in this section shall limit or abrogate any claim or cause of action any person who is injured by a dog with a vicious disposition or a vicious propensity may have under common law or by statute. The provisions of this section shall be in addition to such common law and statutory remedies.

13. Nothing contained in this section shall restrict the rights and powers derived from the provisions of title four of article twenty-one of the public health law relating to rabies and any rule and regulation adopted pursuant thereto.

14. Persons owning, possessing or harboring dangerous dogs shall report the presence of such dangerous dogs pursuant to section two hundred nine-cc of the general municipal law.

13. Dog Control Officer Duties. Per New York State Law, the Town Board shall appoint yearly one or more Dog Control Officer(s) for the purpose of assisting within the municipality with the control of dogs and the enforcement of this law. The Dog Control Officer's responsibilities are as follows:

(a) The dog control officer(s) will enforce the provisions of the New York State Agriculture and Markets Law Article 7 Licensing, Identification and Control of Dogs.

(b) The dog control officer(s) will accept phone calls regarding any issues with dogs and shall respond back to the complainant within 48 hours. The dog control officer shall make and maintain a complete record of phone calls, including but not limited to date,

time, name of complainant and issue; and the response back to the complainant, including date and time of the response.

(c) The dog control officer(s) shall issue appearance tickets and/or summons for any unlicensed dog or any dog violating this law.

(d) The dog control officer(s) shall make and maintain a complete record of any tickets issued and any seizure and subsequent disposition of any dog. Such record shall include, but not be limited to, the description of the dog, date and time of seizure, the official identification number of dog if known, location where seized, reason for seizure and the name and address of the owner if known.

(e) The dog control officer(s) or other authorized agent shall complete an enumeration of dogs within the Town of Hornby when requested by the Town Board; timeframe between enumerations not to exceed five years. Any owners of dogs found to be unlicensed at the time of the enumeration shall be assessed a twenty five dollar (\$25.00) fee for each unlicensed dog by the dog control officer, or other authorized agent.

(f) All monies collected by the dog control officer and copies of all of the records for previous month shall be turned into the Town Clerk by the 10th of the following month. Documentation of no activity shall be done by the dog control officer if no calls are received and/or no fees are collected for that month, for audit purposes.

(g) The dog control officer(s) shall assist with and work the rabies clinic held by the Town of Hornby.

(h) All records of the dog control officer shall be kept for a minimum of three (3) years, and shall be made available to the Town Board and/or the commissioner upon request.

14. Exemption from civil liability.

1. If any dog shall, without justification, attack a person, or behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury to a person, when such person is peaceably conducting himself in a place where he may lawfully be, such person or any other person witnessing the attack or threatened attack may destroy such dog while so attacking, and no liability in damages or otherwise shall be incurred on account of such destruction.

2. If any dog shall, without justification, attack a companion animal, farm animal or domestic animal, or shall behave in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to a companion animal, farm animal or domestic animal, where such animal is in any place where it may lawfully be, the owner or caretaker of such animal, or any other person witnessing the attack, may destroy such dog, and no liability in damages or otherwise shall be incurred on account of such destruction.

15. Repealer. This local law shall supersede all prior Local Laws, Ordinances, Rules & Regulations relative to the control of dogs within the Town of Hornby, and they shall be upon the effectiveness of this Local Law, null and void.

16. Effective Date. This Local Law shall be effective January 1, 2011, after filing with the Secretary of State