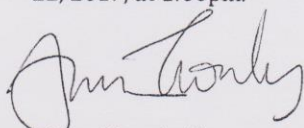


Windham Select Board
Windham Town Office
5976 Windham Hill Road
Windham, VT 05359

Notice of Re-Posting
Vicious Dog Ordinance

The attached Vicious Dog Ordinance has been adopted for re-posting on January 9, 2017 by the Windham Select Board. It has been posted for review in the Brattleboro Reformer on January 18, 2017, and at the Windham Meetinghouse, Elementary School and the Town Office on January 22, 2017. As per statutory requirements, the public has 60 days to comment or request a hearing starting on the posting date. Please contact the Select Board with any questions or comments.

Posted at the Windham Meetinghouse, Elementary School and the Town Office on January 22, 2017, at 1:00pm.



Alison Trowbridge
Select Board Clerk

WINDHAM VICIOUS DOG ORDINANCE

SECTION 1. AUTHORITY. This ordinance is adopted by the Selectboard of the Town of Windham under authority of 20 V.S.A. § 3549, 24 V.S.A. §§ 2291 (10), (14), and (15), and 24 V.S.A. Chapter 59.

SECTION 2. PURPOSE. It is the purpose of this ordinance to regulate the keeping of dogs [and wolf hybrids] and to provide for their leashing, muzzling, restraint, impoundment and destruction and their running at large, so as to protect the public health and safety of the Town and the quiet enjoyment of its residents' homes and properties.

SECTION 3. DEFINITIONS. For purposes of this ordinance, the following words and/or phrases shall apply:

- A. "Dog" means any member of the canine species. For purposes of this ordinance, this term, wherever used, shall also include "wolf-hybrids" and "working farm dogs" except where specifically exempted.
- B. "Enforcement Officer" means any Town Constable, Police Officer, Animal Control Officer, Humane Officer, or any other person designated as an Enforcement Officer by the Selectboard.
- C. "Owner" means any person who has actual or constructive possession of a dog. The term also includes those persons who provide food and shelter to a dog.
- D. "Potentially vicious dog" means a dog running at large that inflicts minor injuries on a person not necessitating medical attention; chases, threatens to attack or attacks another domestic pet or animal as defined in 20 V.S.A. § 3541; causes damage to personal property; chases a person; or causes any person to reasonably fear attack or bodily injury from such dog. This definition shall not apply if the dog was protecting or defending itself, its offspring, another domestic pet or animal or a person from attack or assault or the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog.
- E. "Running at large" means that a dog is not:
 - 1. on a leash;
 - 2. in a vehicle;
 - 3. on the owner's premises;
 - 4. on the premises of another person with that person's permission;
 - 5. clearly under the verbal or non-verbal control of the owner; or
 - 6. hunting with the owner.
- F. "Wolf hybrid" means:
 - 1. An animal that is the progeny of a dog and a wolf (*Canis lupus* or *Canis rufus*);
 - 2. An animal that is advertised or otherwise described or represented to be a wolf hybrid; or
 - 3. An animal that exhibits primary physical and/or behavioral wolf characteristics.
- G. "Working farm dog" means a dog that is bred or trained to herd or protect livestock or poultry or to protect crops and that is used for those purposes and that is registered as a working farm dog pursuant to State law.

SECTION 4. COLLAR AND LICENSE. Each dog shall be licensed according to the laws of this State and shall wear a collar or harness with the current license attached. A dog that is visiting from out of state must wear a collar or harness with a current license from its home state attached. A dog that is found without a collar or harness and license shall be immediately impounded.

SECTION 5. ENFORCEMENT.³² The violation of this ordinance shall be a civil matter which may be enforced in the Vermont Judicial Bureau or in the Windham County Superior Court, at the election of Windham Selectboard.

Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. For purposes of enforcement in the Judicial Bureau, [the constable/ police/animal control officer/humane officer] shall be the designated enforcement officer(s). The enforcement officer shall issue tickets and may be the appearing officer at any hearing. Violations enforced in the Superior Court shall be in accordance with the Vermont Rules of Civil Procedure. The Town of Windham may pursue all appropriate injunctive relief.

SECTION 6. PENALTIES AND COSTS.

- A. First offense \$50.00 full penalty/\$25.00 waiver penalty.
- B. Second offense \$100.00 full penalty/\$50.00 waiver penalty.
- C. Third offense Impoundment & impoundment costs, any remedial action as required by the enforcement officer, plus \$150.00 full penalty/\$75.00 waiver penalty.
- D. Subsequent offenses Impoundment & impoundment costs, any remedial action as required by the enforcement officer, plus \$200.00 full penalty/\$100.00 waiver penalty.
- E. For purposes of determining the sequence of offenses, second and third offenses shall be those that occur within the 12-month period of the anniversary day of the first offense. Any offense occurring after this 12-month period shall be considered a new first offense.
- F. Any owner whose dog has been impounded for its initial third offense shall provide the Selectboard with proof of satisfactory completion of a responsible dog owner training course pre-approved by the Selectboard within 6 months of the anniversary date of impoundment. Failure to provide such certification may result in forfeiture of the offending animal.
- G. For purposes of calculating the sequence of offenses, offenses shall be counted against the owner.
- H. Impoundment costs and pre-approved responsible owner training programs shall be set annually by the Selectboard.

³² Local officials should be aware that while enforcement of a municipal civil ordinance falls under the jurisdiction of the Vermont Judicial Bureau, penalties that escalate beyond \$800 must be pursued in Superior Court. 24 V.S.A. § 1974a (b). Municipalities may want to pursue more severe penalties beyond fines, such as neutering/spaying and impoundment of a violator's dog(s). However, the Judicial Bureau does not have the legal authority to order a violator to alter their dog or impound them. This is called "injunctive relief," and in Vermont, only the Superior Court has this power. The exception to this rule is that the Judicial Bureau can "order that a civil ordinance violation cease." 24 V.S.A. § 1974a (c). Therefore, when penalties exceed \$800, or when the municipality desires additional relief, the case must be brought in Superior Court. 24 V.S.A. § 1974a (b).

SECTION 7. IMPOUNDMENT.

A. Any dog that is determined by a [constable/police officer/animal control officer/humane officer] to be a potentially vicious dog, which presents an imminent danger to people or other animals, has reportedly bitten a person off the premises of its owner, or is in violation of State licensing law or 20 V.S.A. § 3806 may be immediately impounded.

B. A person claiming a dog is a "potentially vicious dog" may file a written complaint with the Selectboard. The complaint shall contain the time, date and place where the alleged behavior occurred, an identification of the domestic pet or animal threatened or attacked the name and address of any victim or victims, and any other facts that may assist the Selectboard in conducting its hearing.

C. Upon receipt of a "potentially vicious dog" complaint" the Selectboard shall proceed as in the case of a "vicious dog" complaint with the exception that if the Selectboard determines that the behavior classifies the dog as "potentially vicious" the Selectboard may order any protective measures be taken absent the dog being humanely destroyed.

SECTION 8. NOTICE OF IMPOUNDMENT AND RELEASE FROM IMPOUNDMENT.

- A. The officer who impounds a dog shall, within twenty-four (24) hours, give notice to the owner thereof, either personally, by telephone call, or by written notice at the owner's dwelling. Such notice shall inform the owner of the nature of the violations, the location of the dog and the steps that are necessary to have it returned to the owner.
- B. If the owner of the dog is unknown, the officer who impounds a dog shall, within twenty-four (24) hours of impoundment post a public notice. Notification shall be posted in the town clerk's office and other usual places for public notice for a ten (10) day period.³⁴ The public notice shall include a description of the dog, including any significant marks of identification, when and where it was impounded or found by the person placing the dog in the town's custody, and declare that unless the owner claims the dog and pays all expenses incurred by the town for treatment, boarding and care of the dog, any applicable penalties and takes all necessary remedial action within ten (10) days following posting, the town may place the dog in an adoptive home, transfer it to a humane society or rescue organization. If the dog cannot be placed in an adoptive home or transferred to a humane society or rescue organization, it may be destroyed in a humane way.

³⁴ Although state law only requires public notice for a one-week period for an impounded stray dog, the potential reasons for impoundment under this ordinance are broader than those under 20 V.S.A. § 3806. Furthermore, even though the VT Supreme Court has held that "(t)he qualified right to possession of dogs and other animals, and the strong public interest in assuring their permanent placement in a suitable environment, amply supports the town's decision to provide for the sale or transfer of impounded dogs if unclaimed after seven days..." *Lamare v. North Country Animal League*, 170 Vt. 115 at 123 (1999) the Court in that case mostly looked to other jurisdictions around the country for guidance as to appropriate notice periods as Vermont law was up until that time largely silent. Considering that the VT Legislature, in amending 20 V.S.A. § 3621, imposed a ten-day period to attempt to transfer to animal shelters or rescue organization dogs impounded following a Selectboard's grant of a warrant for all unlicensed dogs, we would recommend following this longer ten day timeframe.

4.1

- C. Impounded dogs shall be released to the owner only after payment of all penalties and impoundment fees (including but not limited to boarding, food, and veterinary expenses), the final disposition of a potentially vicious dog or vicious dog hearing if applicable, and after all necessary remedial action is taken by the owner. Remedial action shall include, but is not limited to, such actions as providing a collar and current license, and verification of certification of current vaccination against rabies.
- D. If the owner of a dog impounded under the provisions of this ordinance refuses to take the remedial action necessary to secure the dog's release within ten (10) days following notice of impoundment or gives notice either personally, by telephone call, or in writing to the town of forfeiture of ownership before that time, the dog may be placed in an adoptive home, transferred to a humane society or rescue organization, or if the town is unable to transfer the dog it may be humanely destroyed. The owner of a dog transferred or humanely destroyed shall remain liable for all expenses incurred by the Town for treatment, boarding and care of the dog for the duration of its impoundment and any expenses associated with its transfer or humane disposal.
- E. The procedures provided in this section shall only apply if the dog is not a rabies suspect. If an official designated by the Selectboard to enforce the provisions of this ordinance determines that the dog is a rabies suspect, the Selectboard shall immediately notify the Town Health Officer who shall proceed in accordance with the rules of the Vermont Department of Health.

SECTION 9. INVESTIGATION OF VICIOUS DOGS.

- A. When a dog has bitten a person while the dog is off the premises of its owner or keeper, and the person bitten requires medical attention for the attack, such person may file a written complaint with the Selectboard of the municipality. The complaint shall contain the time, date and place where the attack occurred, the name and address of the victim or victims, and any other facts that may assist the Selectboard in conducting its investigation.
- B. The Selectboard, within seven (7) days from receipt of the complaint, shall investigate the charges and hold a hearing on the matter. If the owner of the dog which is the subject of the complaint can be ascertained with due diligence, said owner shall be provided with a written notice of the time, date and place of hearing and a copy of the complaint.
- C. If the dog is found to have bitten the victim without provocation, the Selectboard shall make such order for the protection of persons as the facts and circumstances of the case may require, including, without limitation that the dog is disposed of in a humane way, muzzled, chained, or confined. The order shall be sent by certified mail, return receipt requested to the owner. A person who, after receiving notice, fails to comply with the terms of the order shall be subject to the penalties provided in 20 V.S.A. § 3550.

D. The procedures provided in this section shall only apply if the dog is not a rabies suspect. If a member of the Selectboard or a municipal official designated by the Selectboard determines that the dog is a rabies suspect, the provisions of Subchapter 5 of Title 20 Chapter 193 and the rules of the Vermont Department of Health shall apply. If the dog is deemed healthy, the terms and conditions set forth in the Selectboard's order shall be enforced.

SECTION 10. OTHER LAWS. This ordinance is in addition to all other ordinances of the Town of Windham and all applicable laws of the State of Vermont. All ordinances or parts of ordinances, resolutions, regulations, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 11. SEVERABILITY. If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.

SECTION 12. EFFECTIVE DATE. This ordinance shall become effective 60 days after its adoption by the Windham Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Adopted this 19th day of September 2016. *Re-adopted January 9, 2017*

Maureen Bell
Maureen Bell

Kord Scott
Kord Scott

Frank Seawright
Frank Seawright

SIGNATURES

Adoption History

1. Agenda item at regular Selectboard meeting held on 9-19-16.
2. Read and approved at regular/special Selectboard meeting on 9-19-16 and entered in the minutes of that meeting which were approved on _____.
3. Posted in public places on _____.
4. Notice of adoption published in the _____ newspaper on _____ with a notice of the right to petition.
5. Other actions [petitions, etc.]