



**TOWN OF PORTVILLE, NEW YORK
LOCAL LAW NO. 2 2010
DOG LICENSING, CONTROL & PROTECTION**

§ 1. Purpose. The purpose of this local law is to provide for the licensing and identification of dogs, the control and protection of the dog population and the protection of persons, property, domestic animals and deer from dog attack and damage as defined in and consistent with the New York State Agriculture and Markets Law Article 7 titled Licensing, identification and Control of Dogs that became effective January 1, 2011.

§ 2. Application. This local law shall: 1) apply to all areas of the town; 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 local law for a period of thirty days provided such dog is licensed pursuant to the provisions of law of the area of residence; 3) 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) 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; 5) control dangerous dogs in a manner no less stringent than that articulated in the New York State Agriculture and Markets Law, Article 7, Licensing, Identification and Control of Dogs effective January 1, 2011 and any other subsequent amendments to same.

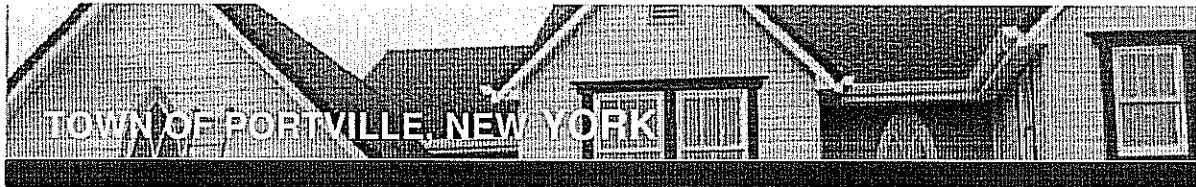
§ 3. Definitions. As used in this local law, unless otherwise expressly stated or unless the context or subject matter requires otherwise: 1) "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog, seized or surrendered, or any cat; 2) "Clerk" means the Town Clerk of the Town of Portville where licenses are validated or issued pursuant to this local law; 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 a the Town of Portville to assist in the enforcement of this local law or any authorized officer, agent or employee of an incorporated humane society or similar incorporated dog protective association under contract with the Town of Portville to assist in the enforcement of this local law; 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 local law; 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 issued by the Town of Portville which sets forth an identification number, together with the name of the Town of Portville, the state of New York, contact information, including telephone number, for the municipality and such other information as the licensing municipality deems appropriate; 11) "Identified dog" means any dog carrying an identification tag as described herein; 12) "Municipality" means Town of Portville, inclusive of the Village of Portville and any hamlets of the Town of Portville; 13) "Owner" means any person who harbors or keeps any dog; 14) "Owner of record" means the person in whose name any dog was last licensed pursuant to this local law, 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 to wit 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 this local law, 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; 15) "Person" means any individual, corporation, partnership, association or other organized group of persons, municipality, or other legal entity; 16) "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; 17) "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; 18) "War dog" means any dog which has been honorably discharged from the United States armed services; 19) "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; 19) "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; 20) "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; 21) (a) "Dangerous dog" means any dog which (i) without justification attacks a person, companion animal as defined herein or domestic animal as defined herein 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 by New York State Law while such police work dog is being used to assist one or more law enforcement officers in the performance of their official duties; 22) "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; 23) "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; 24) "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; 25) "Physical injury" means impairment of physical condition or substantial pain; 26) "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.

§ 4. Licensing of dogs required; rabies vaccination required. 1. (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, or that is residing in a pound or shelter maintained by or under contract or agreement with the state or any county, city, or town, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog protective association. Except as otherwise provided in this local law, a license shall be issued or renewed for a period of one year, provided, that no license 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. All licenses shall expire on the last day of the last month of the period for which they are issued. A license issued by the Municipality that has established a common renewal date shall expire no later than the common renewal date prior to the expiration date of the rabies certificate for the dog being licensed. (b) Application for a dog license shall be made to the Town Clerk of the Municipality. The town board of the Municipality restricts the issuance of licenses to the Town Clerk. (c) The application shall state the sex, actual or approximate age, breed, color, and municipal identification number of the dog, and other identification marks, if any, and the name, address, telephone number, county and town of residence of the owner. The Municipality may also require additional information on such application as deemed appropriate. (d) The application shall be accompanied by the: (i) license fee; (ii) any applicable license surcharges; (iii) such additional fees as may be established by the Municipality prescribed herein; (iv) a certificate of rabies vaccination or statement in lieu thereof, as required herein; and (v) in the case of a spayed or neutered dog, every application shall also be accompanied by a certificate signed by a licensed veterinarian, showing that the dog has been spayed or neutered, provided such certificate shall not be required if the same is already on file with the town clerk. (e) Upon validation by the town clerk, the application shall become a license for the dog described therein. (f) The town clerk shall: (i) provide a copy of the license to the owner; (ii) retain a record of the license that shall be made available upon request to applicable New York State officials for purposes of rabies and other animal disease control efforts and actions. (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. (h) The Municipality may, but is not required to provide for the establishment and issuance of purebred licenses and, in the event it does so, shall provide for the assessment of a surcharge of at least three dollars for the purposes of carrying out animal population control efforts as provided herein.

2. In lieu of a certificate of rabies shot, the Clerk shall require the applicant to present a statement certified by a licensed veterinarian stating that because of old age or another reason, the life of the dog or dogs would be endangered by the administration of the vaccine, which certificate shall be retained by the Clerk and filed with Town together with a copy of the license.



§ 5. License fees. 1. The license fee for dog licenses issued as well as any other dog control services shall be determined by the town board of the Municipality by resolution each November concurrent with the approval of its annual budget as depicted in provided that the total fee for an unspayed or unneutered dog shall be at least five dollars more than the total fee for a spayed or neutered dog. All revenue derived from such fees shall be the sole property of the Municipality and shall be used only for controlling dogs and enforcing this local law 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 herein and used therefore, and subsidizing public humane education programs in responsible dog ownership. 2. The Municipality does exempt from their licensing fees, but not from licensing, 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. 3. In addition to the fee charged herein, the Municipality shall, when issuing dog licenses pursuant to this local law, require the assessment of an additional surcharge of at least one dollar for altered dogs and at least three dollars for unaltered dogs for the purposes of carrying out animal population control efforts as provided in herein. 4. In addition to the fee charged herein, the Municipality shall, when issuing dog licenses, provide for the assessment of additional surcharges for the purpose of: (a) recovering costs associated with enumeration conducted should a dog be identified as unlicensed during such enumeration. Such additional fee shall be the property of the Municipality 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 Municipality for enforcing this article and for spaying or neutering animals; and (b) offsetting costs associated with the provision and replacement of identification tags pursuant to this local law.

§ 6. Identification of dogs. 1. Each dog licensed shall be assigned, at the time the dog is first licensed, a municipal 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, provided that the Municipality may provide for the exemption of dogs participating in a dog show during such participation. 2. No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which that number has been assigned. 3. In the event the Municipality shall establish a purebred license, it may provide a licensee, at applicant's sole 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, provided that the Municipality may exempt dogs participating in a dog show 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. 4. The Municipality, when offering a license for any guide dog, service dog, hearing dog or detection dog, may issue a special tag for identifying such dog, provided that such tag shall be in addition to the identification tag required by this local law. The Municipality will prescribe the shape, size, color, and form of imprint of the tag, which shall be a different color and shape than the standard identification tag. Upon application, the Town Clerk shall furnish such tags without payment of a fee.

§ 7. Change of ownership; lost or stolen dog. 1. In the event of a change in the ownership of any dog which has been licensed in accordance with this local law or if 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 of the Municipality a written report of such change. Such owner of record shall be liable for any violation of this local law 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 licensed pursuant to this local law 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 of the Municipality 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 local law 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 of the Municipality either prior to renewal of licensure or upon the time of such renewal.

§ 8. Dog control officers. 1. The Town Board of the Municipality shall appoint one or more dog control officers for the purpose of assisting, within its municipality, with the control of dogs and the enforcement of this local law. 2. In lieu of or in addition to the appointment of a dog control officer or officers, the Town Board of the Municipality may, contract for dog control officer services with any other municipality or with any incorporated humane society or similar incorporated dog protective association, or shall appoint, jointly with one or more other municipalities, one or more



dog control officers having jurisdiction in each of the cooperating municipalities. 3. Every dog control officer shall have the power to issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, to serve a summons and to serve and execute any other order or process in the execution of the provisions of this article. In addition, any dog control officer or any peace officer, when acting pursuant to his special duties, or police officer, who is authorized by the Municipality to assist in the enforcement of this article may serve any process, including an appearance ticket, a uniform appearance ticket and a uniform appearance ticket and simplified information, related to any proceeding, whether criminal or civil in nature undertaken in accord with the provisions of this local law or any ordinance promulgated pursuant thereto. 4. Every dog control officer, peace officer, when acting pursuant to his special duties or police officer shall promptly make and maintain a complete record of any seizure and subsequent disposition of any dog. Such record shall include, but not be limited to, a description of the dog, the date and hour of seizure, the official identification number of such dog, if any, the location where seized, the reason for seizure, and the owner's name and address, if known. 5. Every dog control officer shall file and maintain such records for not less than three years following the creation of such record, and shall make such reports available to the commissioner upon request. 6. The Town Board of the Municipality in which licenses are issued, 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 ascertain and list the names of all persons in the municipality owning or harboring dogs, or in lieu thereof, the Municipality may contract to have the same done.

§ 9. Pounds and shelters. 1. The Municipality shall establish and maintain a pound or shelter for dogs. 2. In lieu of or in addition to establishing and maintaining such pound or shelter, the Town Board of the Municipality may contract for pound or shelter services with any other municipality or with any incorporated humane society or similar incorporated dog protective association, or shall establish and maintain, jointly or with one or more other municipalities, a pound or shelter.

§ 10. Funds expended by municipality for services. The Municipality shall not be required to expend in any calendar year for dog control officer and pound or shelter services undertaken pursuant to this local law, an amount of money greater than it receives during such year pursuant to this local law or ordinance enacted pursuant thereto.

§ 11. Spaying and neutering facilities authorized. 1. The Municipality may, by ordinance, provide for the establishment and operation of a facility to provide services for the alteration of the reproductive capacity through spaying or neutering of dogs and cats owned by the residents thereof. 2. Any animal which is presented at such facility for alteration must be accompanied by a notarized authorization signed by the owner thereof consenting to such alteration and agreeing to hold the municipality, its agents, servants and employees harmless for any damages arising therefrom or incidental thereto. 3. Any ordinance adopted by the Town Board of the Municipality as authorized herein shall further provide for the regulation of such facility with respect to the terms and conditions, including compensation, under which any animal will be maintained while the animal remains in the custody of the facility. 4. In no event shall any of the moneys or fees derived from, or collected pursuant to, the provisions of this local law except as provided herein be used to subsidize the spaying or neutering of cats.

§ 12. 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 Municipality shall seize: (a) any dog which is not identified and which is not on the owner's premises; (b) any dog which is not licensed, whether on or off the owner's premises; (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 dangerous; and (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 herein. 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 Municipality may seize any dog in violation of any local law or ordinance relating to the control of dogs, adopted by the Municipality pursuant to the provisions herein. 3. Each dog seized in accordance with the provisions of this local law 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 local law and further provided that the owner pays the following impoundment fees: (a) not less than ten dollars for the first impoundment of any dog owned by that person; (b) not less than 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) not less than 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. The impoundment fees set forth in paragraphs (a), (b) and (c) of this subdivision notwithstanding, the Municipality may set by local law or ordinance such fees in any amount. 5. All impoundment fees shall be the property of the Municipality to which they are paid and shall be used only for controlling dogs and enforcing this local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized herein and used therefore, and subsidizing public humane education programs in responsible dog ownership. 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 owner may redeem the dog. 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 owner may redeem the dog. In either case, the owner may redeem such dog upon payment of the impoundment fees and any other outstanding fees owed as prescribed in Section 20 of this law 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 provisions of this local law. The Municipality does hereby establish the additional adoption condition and 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. 7-a. Any dog or cat in the custody of a pound or shelter shall be made available for adoption or euthanized subject to subdivisions six, eight and nine of this section and subject to the provisions of this local law after the time for redemption has expired. 8. The redemption periods set forth above in this section notwithstanding, the Municipality may establish and change the duration of such periods annually at its organizational meeting through the approval and issuance 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. The seizure of any dog shall not relieve any person from any violation provided for by this local law. 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 local law.

§ 13. Violations. 1. It shall be a violation, punishable as provided herein for: (a) any owner to fail to license any dog; (b) any owner to fail to have any dog identified as required by this local law; (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 local law; (e) any person to furnish any false or misleading information on any form required to be filed with any municipality pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto; (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 of a dog to fail to notify the Municipality in which his or her dog is licensed of any change of ownership or address as required herein. 2. It shall be the duty of the dog control officer of any municipality to bring an action against any person who has committed within the Municipality any violation set forth herein. The Municipality 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 less than twenty-five dollars, except that (i) where the person was found to have violated this section or former article seven of New York State Agriculture and Markets Law within the preceding five years, the fine may be not less 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 less than one hundred dollars or imprisonment for not more than fifteen days, or both; or (b) where prosecuted as an action to recover a civil penalty, by a civil penalty of not less than twenty-five dollars, except that (i) when the person was found to have violated this section or this local law within the preceding five years, the civil penalty may be not less than fifty dollars, and (ii) where the person was found to have committed two or more such violations within the preceding five years, the civil penalty may be not less than one hundred dollars. 3. A defendant charged with a violation of any provision of this local law or ordinance promulgated pursuant thereto may plead guilty to the charge in open court. He or she may also submit to the magistrate having jurisdiction, in person, by duly authorized agent, or by registered mail, a statement (a) that he or she waives arraignment in open court and the aid of counsel, (b) that he or she pleads guilty to the offense charged, (c) that he or she elects and requests that the charge be disposed of and the fine or penalty fixed by the court, (d) of any explanation that he or she desires to make concerning the offense charged, and (e) that he or she makes all



statements under penalty of perjury. Thereupon the magistrate may proceed as though the defendant had been convicted upon a plea of guilty in open court, provided however, that any imposition of fine or penalty hereunder shall be deemed tentative until such fine or penalty shall have been paid and discharged in full. If upon receipt of the aforesaid statement the magistrate shall deny the same, he or she shall thereupon notify the defendant of this fact, and that he or she is required to appear before the said magistrate at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law. 4. Any person who intentionally refuses, withholds, or denies a person, because he or she is accompanied by an on-duty police work dog, working search, war, or detection dog as defined in section one hundred eight of Article 7 Agriculture and Markets Law, any accommodations, facilities, or privileges thereof shall be subject to a civil penalty of up to two hundred dollars for the first violation and up to four hundred dollars for each subsequent violation. 5. Any person who for the purpose of participating in the animal population control program shall falsify proof of adoption from a pound, shelter, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog or cat protective association or who shall furnish any licensed veterinarian of this state with inaccurate information concerning his or her residency or the ownership of an animal or such person's authority to submit an animal for a spaying or neutering procedure articulated within this local law or as provided by Agriculture and Markets Law, Article 7, Section 117-a, and any veterinarian who shall furnish false information concerning animal sterilization fees shall be guilty of a violation punishable by a fine of not less than two hundred fifty dollars where prosecuted pursuant to the penal law, or where prosecuted as an action to recover a civil penalty of not more than two hundred fifty dollars.

§ 14. Disposition of fines. Notwithstanding any other provision of law, all moneys collected as fines or penalties by any municipality as a result of any prosecution for violations of the provisions of this local law and all bail forfeitures by persons charged with such violations shall be the property of the Municipality and shall be paid to the Municipality through its Town Clerk. Such moneys shall be used only for controlling dogs and enforcing this local law 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 herein and used therefore, and subsidizing public humane education programs in responsible dog ownership.

§ 15. Protection of deer. 1. Whenever the Town Board of the Municipality shall determine that the deer population in the Municipality or part thereof is suffering severe depredation due to dogs attacking, chasing or worrying deer, the Town Board of the Municipality may by order require that all dogs in the 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. 2. Notice of such order shall be given by publication in a newspaper or newspapers of general circulation in the Municipality which shall be designated by the Town Board of the Municipality and by filing a copy of the order in the office of the Town Clerk of the Municipality. Such order shall be in full force and effect at the expiration of twenty-four hours following publication of such notice. 3. 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. Any dog so seized shall be subject to the provisions of this local law. A dog shall not be deemed to be in violation of such order if accompanied by and under the full control of the owner. 4. If any dog, which is not confined as required by such order, shall attack, injure or kill 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. 5. If any dog shall kill or cripple any deer, the owner shall be subject to a civil penalty in the amount of one hundred dollars 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 one hundred fifty dollars 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. 6. 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.

§ 16. Night quarantine. 1. The Town Board of the Municipality may at any time by order require that all dogs in the Municipality shall be securely confined between sunset and one hour after sunrise during the period of time designated in the order, or, if no time is so designated, until the order is revoked. 2. Notice of such order shall be given by publication in a newspaper or newspapers of general circulation in the Municipality which shall be designated by the Town Board of the Municipality and by filing a copy of the order in the office of the Town Clerk of the Municipality. 3. Any dog control officer, peace officer, acting pursuant to his special duties, or police officer shall



destroy or seize any dog not confined as required by such order, and no liability in damages or otherwise shall be incurred on account of such destruction or seizure. Any dog so seized shall be subject to the provisions of this local law. A dog shall not be deemed to be in violation of such order if accompanied by and under the full control of the owner.

§ 17. 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 as defined herein, farm animal as defined herein, or a domestic animal as defined herein to a dog control officer or police officer of the Municipality. Such officer shall immediately inform the complainant of his or her right to commence a proceeding as provided hereinafter and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself or herself. 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 herein shall, make a complaint under oath or affirmation to the town justice of such attack or threatened attack. Thereupon, the town 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 or her 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 town justice finds there is probable cause for such seizure, he or she 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 town 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 this local law. 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 twenty-one 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 town 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 this local law: (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 local law. An order of humane euthanasia shall not be carried out until expiration of the thirty day period provided herein 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 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 town justice to be a dangerous dog, as defined in this local law, 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 herein, 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.

§ 18. 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.

§ 19. Offenses against service animals and handlers. 1. Definitions. For purposes of this section: (a) "Service animal" shall mean any animal that has been partnered with a person who has a disability and has been trained or is being trained, by a qualified person, to aid or guide a person with a disability. (b) "Disability" shall have the same meaning as provided in section two hundred ninety-two of the executive law. (c) "Handler" shall mean a disabled person using a service animal. (d) "Formal training program" or "certified trainer" shall mean an institution, group or individual who has documentation and community recognition as a provider of service animals. 2. Any person who



owns an animal or possesses control of such animal and who, through any act or omission, recklessly permits his or her animal to interfere with the proper working of a service animal, exposing the handler and service animal to danger or resulting in injury or death of the service animal shall be subject to a civil penalty not to exceed one thousand dollars in addition to any other applicable penalties. 3. Any person who owns an animal or possesses control of such animal and who, through any act or omission, recklessly permits his or her animal to interfere with the proper working of a service animal, exposing the handler and service animal to danger or resulting in injury or death of the service animal, where the animal causing such injury has previously been determined to be dangerous pursuant to this local law, shall be guilty of a violation punishable by a fine of not more than two thousand dollars, or by a period of imprisonment not to exceed fifteen days, or by both such fine and imprisonment in addition to any other applicable penalties. 4. The handler of the service animal incapacitated, injured or killed shall have the right to pursue any and all civil remedies available to recover damages for medical and veterinary expenses, rehabilitation or replacement of the service animal, and lost wages, transportation expenses or other expenses directly related to the temporary or permanent loss of the service animal.



§ 20. Fees, Fines, Charges, and Ownership Forfeiture.

a. Fees: In accordance with section 5 of this local law (Licensing Fees), effective January 1, 2011, the following shall apply:

(1) Annual Licensing shall occur on the anniversary month of initial licensing of a dog within the Municipality. Prerequisite inoculations established by standards set by the New York State Department of Agriculture and Markets must occur prior to licensing. The annual licensing fee per dog shall be as follows:

Spayed or Neutered Dog	\$14
Unspayed or Unneutered Dog	\$27

(2) In addition to the license fee established by this law, each applicant for a dog license shall pay a surcharge of \$1.00 if the dog to be licensed is altered, or a fee of \$3.00 if the dog sought to be licensed is unaltered. (See Section 5(c)).

(3) In addition to the license fee imposed by this law, each applicant for a dog license shall pay a surcharge of \$0.00 that shall be retained by the Municipality and used to defray the cost of an enumeration of dogs living within the Town of Portville and the cost of providing replacement identification tags. (See Section 5(d)).

b. Violations, Fines & Penalties: In accordance with section 13 of this local law (Violations), effective January 1, 2011 the following shall apply:

(1) Violation of any provision of Section 13(1) including failure to license:

First Violation in 5 years: Civil Penalty/fine, Not less than \$25.00
Second Violation in 5 years: Civil Penalty/fine, Not less than \$50.00

More than two violations in 5 years:
Penal law: Not less than \$100 or up to 15 days imprisonment.
Civil Penalty: Not less than \$100

(2) Violation of section 13(4) relating to Special Purpose Dog (Civil Penalty only):

First Violation: Civil Penalty of not more than \$200.00
Second and Subsequent Violation(s): Civil Penalty of Not less than \$400.00

(3) Violation of Section 13(5) relating to falsification of certain information:

Any violation: Not less than \$250.00

c. Charges: In accordance with Section 12 of this local law (Seizure of Dogs, Redemption Periods, Impoundment Fees; Adoption), effective January 1, 2011 the following fees shall apply:

(1) Pick Up Charge is defined as the charge to an owner for the dog control officer to collect, transport and subsequently secure animal:

Pick Up Charge	\$35.00
----------------	---------

(2) Impoundment Charge Per Day is defined as the charge for housing a dog collected by the animal control officer in the municipality kennel:

Impoundment Charge Per Day	\$40.00
----------------------------	---------

