

ANIMAL NUISANCE CONTROL ORDINANCE

TOWN OF NEWFANE, VERMONT

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TOWN OF NEWFANE, VERMONT

ANIMAL NUISANCE CONTROL ORDINANCE

ARTICLE I **GENERAL PROVISIONS**

A. Title

All rules and regulations contained herein, together with such additions and amendments as may be hereafter adopted, are hereby designated as the "Newfane Animal Nuisance Control Ordinance" or "Ordinance."

B. Authority

This Ordinance is adopted pursuant to authority granted under 24 VSA Section 1971, 24 VSA Section 2291, subsections (10) and (14), 20 VSA Chapters 191 and 193, and the Charter of the Town of Newfane, as amended.

C. Purpose

The purpose of this Ordinance is to protect the health, safety, and welfare of the public, domestic pets, domestic animals, and wolf-hybrids of the Town of Newfane by regulating the keeping of domestic pets, domestic animals, and wolf-hybrids and their running at large and by defining what constitutes a public nuisance. In order to accomplish the foregoing purpose, it is deemed necessary to establish procedures for enforcement and establish penalties for violations of this ordinance.

D. Filing of Ordinance

The Town Clerk of the Town of Newfane shall file a certified copy of this Ordinance, as well as certified copies of any additions or amendments to this Ordinance as may be hereafter adopted, in the municipal records.

E. Inconsistent Provisions

In the case of any other applicable regulation, by-law, ordinance or statute which differs from the rules and regulations of this Ordinance, the more strict shall apply.

F. Civil Ordinance

This Ordinance is designated as a civil ordinance in conformance with 24 VSA Section 1971(b).

ARTICLE II
DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

“Animal Control Officer” shall mean the Newfane Health Officer, Newfane Deputy Health Officer, Newfane Town Constable, Vermont State Police Officer, Windham County Sheriff, any Deputy Windham County Sheriff, or any individual appointed by the Selectboard.

“Dangerous animal” shall mean: (1) an animal, while running at large, which causes reasonable fear of bodily injury by attacking or threatening to attack a person, domestic pet, domestic animal, or wolf-hybrid; (2) an animal that is diseased and dangerous to the public health; or (3) a wolf-hybrid which is not being confined within a proper enclosure as required by Article IV, Section F or which when outside of its enclosure, is not either in a cage or on a leash.

“Domestic animal” shall mean those animals defined by 6 V.S.A. 1151(2) as follows: rabbits, cattle, sheep, goats, equines, fallow deer, red deer, reindeer, American bison, swine, poultry, pheasant, Chukar partridge, Coturnix quail, psittacine birds, ferrets, camelids, ratites (ostriches, rheas, and emus), reptiles and amphibians. The term does not include those species of amphibians native to Vermont. The term shall include cultured trout propagated by commercial trout farms.

“Domestic pet” shall mean any domestic dog, domestic cat, or European ferret (*Mustela putorius furo*) as defined in 20 V.S.A., Chapter 193, Section 3541.

“Humane disposal” shall mean (a) humane euthanasia by a licensed veterinarian, or (b) sold or given away to a responsible person.

“Keeper” (See “Owner”.)

“Nuisance Animal” shall mean an animal, the conduct, keeping or maintenance of which is in violation of any section of this Ordinance or applicable Vermont statute (20 VSA Chapters 191 and 193).

“Owner” shall mean any person who owns a domestic pet or wolf-hybrid and includes any person

who has actual or constructive possession of the pet or wolf-hybrid. The term also includes those persons who provide feed or shelter to a domestic pet or wolf-hybrid. However, it is not the intent of the Town to require a person to be responsible under this ordinance for feral animals that take up residence in a building other than the person's home, even if the person occasionally provides feed to the animal.

"Person" shall mean any individual, institution, public or private corporation, partnership or other legal entity.

"Public Nuisance" shall mean any conduct which endangers life, health, or property or which reasonably annoys, injures, or disturbs, or intrudes upon the free use and comfortable enjoyment of public lands in Newfane is a public nuisance, provided, however, such act is specifically enumerated and defined in this Ordinance.

"Public Road" shall mean the area within 25' of the center line of the traveled way on any state- or town-owned highway.

"Run at large" shall mean to move about without restraint, control or limitation as to property lines or areas.

- A. A domestic pet or domestic animal on a public road within the Town is considered restrained if it is on a leash.
- B. A domestic pet or domestic animal on a public road is considered restrained if it is either (1) on a leash or (2) in the presence of a person and obedient to that person's commands and is not causing a danger or nuisance.
- C. A wolf-hybrid is considered restrained if, while outside of the enclosure required in Article IV, Section F, is:
 - 1. In a cage; or
 - 2. On a leash,and not causing a danger or nuisance.

(Exception: Nothing in this Ordinance shall be construed to require: (1) the restraint of cats, (2) the restraint of any domestic pet or domestic animal while on private property by permission of the property owner or while in a vehicle, or (3) to restrict the use of dogs for lawful hunting.)

"Selectboard" shall mean the Town of Newfane, Vermont, Selectboard.

"Town" shall mean the Town of Newfane, Vermont.

"Town Clerk" shall mean the Town Clerk of Newfane, Vermont.

“Vicious Animal” shall mean a domestic pet or wolf-hybrid that has bitten a person while the domestic pet or wolf-hybrid is off the premises of the owner or keeper, and the person bitten requires medical attention of the attack.

“Wolf-hybrid” shall mean those animals defined by 20 V.S.A., Chapter 193, Section 3541, as follows: an animal which is the progeny or descendant of a domestic dog (*Canis familiaris*) and a wolf (*Canis lupus* or *Canis rufus*). “Wolf-hybrid” also means an animal which is advertised, registered, licensed or otherwise described or represented as a wolf-hybrid by its owner, or an animal which exhibits primary physical and behavioral wolf characteristics, or one which has the primary physical and behavioral wolf characteristics as described by the Commissioner of the Department of Fish and Wildlife (in Title 10, Appendix, Chapter 1, Subchapter 3, #34) as follows:

“The following are some general characteristics common to wolves:

Wolves have large heads, long muzzles (distance from the eyes to the top of the nose), and proportionately larger canines than domestic dogs. Wolf eyes appear slanted when viewed head on and are most often yellow in color. Built for speed and agility, wolves are lanky with narrow chests, long legs, and large feet. They often appear “bonier” than domestic dogs. Their front legs are quite close together and front feet toe out. The rear legs of a wolf tend to be cow-hocked or turned in. While a domestic dog will often carry its tail curved up over its back, a wolf carries its tail straight out or down (a dominant wolf will sometimes hold it straight up). Wolves and occasionally some northern breeds of dog, have an obvious gland located halfway down the top of the tail. The gland called the supra caudal functions as a scent carrier. The size of the supra caudal gland varies from that of a dime to 1 ½ inches in diameter. The hair covering the gland will usually contrast with the hair color of the tail and is often quite coarse. Wide tufts of hair often project outward and downward from a wolf’s ears, framing the face.

In the wild the wolf is a social animal, living in family groups or packs. There are social hierarchies with the pack and being a dominant member is an important survival tool. Dominant animals rule with aggressive behavior, and wolves within packs will constantly test one another. Wolves will watch for signs of weakness in pack members or prey and take advantage of the weakness through aggressive behavior.

Wolves, because of the hunting instinct, are genetically programmed to track and pounce (seemingly without provocation) upon small, erratically behaving, vocalizing individuals who may, to the wolf, seem to be distressed. Small children often appear to a wolf to be distressed prey. Running or yelling on the part of a child can trigger a predatory response in a wolf. This instinctive response is almost impossible to alter through socialization or training.

Wolves are hyperactive compared to dogs and extremely curious or inquisitive. They may be shy around people and are extremely difficult to restrain. In the wild, wolves may

range up to 30 to 125 miles per day and from a standing position can jump vertically 6 to 8 feet.”

ARTICLE III
APPLICABILITY OF ORDINANCE

- A. No person owning a domestic pet, domestic animal, or wolf-hybrid shall allow such animal to become or remain a public nuisance as herein defined, or to be kept in violation of this ordinance.
- B. Any domestic pet, domestic animal, or wolf-hybrid allowed to become or remain a public nuisance as herein defined shall be in violation of the Ordinance and is subject to the provisions of this Ordinance.
- C. Nothing in this Ordinance shall be construed to restrict accepted agricultural practices.

ARTICLE IV
LICENSING, KEEPING, AND IMMUNIZATION OF DOGS
AND WOLF-HYBRIDS

- A. Annually on or before April 1st, it shall be the duty of every person within the Town owning a dog or wolf-hybrid more than six months old to: (1) procure a license therefore in accordance with Chapter 193, Title 20 of the Vermont Statutes, (2) to cause the dog or wolf-hybrid to wear a collar, and (3) to attach to the collar a license tag.
- B. The Town may charge a fee for dog and wolf-hybrid licenses, as authorized by Chapter 193, Title 20 of the Vermont Statutes.
- C. The dog or wolf-hybrid shall be inoculated against rabies as required in Chapter 193, Title 20 of the Vermont Statutes.
- D. The owner or keeper of domestic pets and wolf-hybrids kept for breeding purposes may take out annually, on or before April 1, a special license for the domestic pets or wolf-hybrids, as authorized by 20 V.S.A., Section 3583.
- E. The owner or keeper of two or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes, except for his or her own use, shall apply to the Town Clerk for a kennel permit¹, as authorized by 20 V.S.A., Section 3681.

[¹ Note: The owner may also need a Zoning Permit for a kennel under the Town of Newfane, Vermont, Zoning Regulations.]

- F. Except when in a cage or on a leash and not causing a danger or nuisance, a wolf-hybrid shall be confined within a proper enclosure consisting of:
1. A locked fence or structure of sufficient height and sufficient depth into the ground to prevent the entry of young children and to prevent the animal from escaping. Fencing shall at a minimum consist of an 8' high chain link fence with a 2' overhang and a chain link, concrete apron, or asphalt apron to prevent digging out and a catch pen to avoid escape and ease veterinary care.
 2. A humane shelter for the animal.

ARTICLE V
ANIMAL CONTROL OFFICER

- A. Any Animal Control Officer is hereby authorized and empowered to obtain search warrants to enter onto private lands, to seize and to impound domestic pets, domestic animals, and wolf-hybrids, and to take all reasonable and necessary measures to abate violations as herein defined.
- B. It is the duty of an Animal Control Officer to investigate complaints of animal nuisances and to enforce the provisions of this Ordinance.
- C. The Selectboard shall designate the names of persons and their locations to receive domestic pets, domestic animals, and wolf-hybrids for impoundment under the terms of this Ordinance.

ARTICLE VI
VIOLATIONS

A domestic pet, domestic animal, or wolf-hybrid in the following situations is hereby declared to be a public nuisance in violation of Article III above:

- A. The dog or wolf-hybrid has not been inoculated against rabies as required in 20 V.S.A. Chapter 193; or
- B. The dog or wolf-hybrid has not been licensed in accordance with 20 V.S.A. Chapter 193; or
- C. The dog or wolf-hybrid is not wearing a collar with its current license tag attached to the collar in accordance with 20 V.S.A. Chapter 193; or
- D. The domestic pet, domestic animal, or wolf-hybrid is a dangerous animal as determined

by an Animal Control Officer; or

- E. The domestic pet, domestic animal, or wolf-hybrid is being kept or maintained contrary to the conditions of a lawful order issued by the Newfane Selectboard under Article IX of this ordinance; or
- F. The domestic pet (except domestic cat), domestic animal, or wolf-hybrid is running at large; or
- G. The domestic pet, domestic animal, or wolf-hybrid is causing damage to the property of anyone other than its owner, by:
 - 1. Turning over garbage containers; or
 - 2. Doing damage to gardens, flowers, shrubs or vegetables; or
 - 3. Injuring or worrying people, domestic pets, domestic animals, or wolf-hybrids.
- H. The dog has defecated on private property other than that of its owner onto which the dog has not been invited or on Public Roads or public property (including parking areas, lawns, flower beds, parks, and sidewalks) and the dog owner does not remove the resulting material immediately and dispose of it in a sanitary manner; or
- I. The domestic pet (except domestic cat) or wolf-hybrid, while running at large, is chasing and/or snapping at pedestrians, joggers, pets walked on a leash, bicyclists, vehicles, or riders on horseback; or
- J. The domestic pet, domestic animal, or wolf-hybrid is barking, whining, calling, or howling for a continuous period of 15 minutes or more;¹ or
 - [¹Exception: This regulation shall not apply to domestic pets, domestic animals, or wolf-hybrids in a kennel which kennel has received a zoning permit under the Town of Newfane, Vermont, Zoning Regulations.]
- K. The owner or keeper of two or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes, except for his or her own use, has not received a kennel permit, as required by Article IV, Section E; or
- L. The wolf-hybrid is not:
 - 1. Confined within a proper enclosure; or
 - 2. In a cage; or
 - 3. On a leash,as required by Article IV, Section F.

ARTICLE VII
ENFORCEMENT AND PENALTIES

A. Violations of Ordinance

Unless violation and penalty provisions specifically set forth elsewhere in this Ordinance provide otherwise, all violations of this Ordinance shall be handled according to the provisions of this Article.

B. Response to Violations by Animal Control Officer

When a domestic pet, domestic animal, or wolf-hybrid is found to be in violation of this Ordinance, an Animal Control Officer may take one or more of the following actions:

1. Issue a verbal warning to the owner;
2. Issue a written warning to the owner;
3. Serve the owner with a written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated, permanently cease and correct all violations. Any Person who continues any violation beyond the specified time limit shall be issued a "Municipal Complaint" (ticket) pursuant to Subsection 5 of this Section.
4. Require that a domestic pet, or domestic animal be restrained by a leash while off the premises of its owner.
5. Issue a "Municipal Complaint" (ticket) per the provisions of 24 V.S.A. 1974a and 1977 et. seq.;
6. Confine or impound the domestic pet, domestic animal, or wolf-hybrid;

C. Fines

1. Any person who violates any provision of this ordinance and is issued a "Municipal Complaint" (ticket) under Article VII, Section B.5. shall be subject to a civil penalty of up to \$200 per day for each day that such violation continues. The Newfane Health Officer, Newfane Deputy Health Officer, Newfane Town Constable, Vermont State Police Officer, Windham County Sheriff, any Deputy Windham County Sheriff, or any individual appointed by the Selectboard shall be authorized to act as Issuing Municipal Officials to issue and pursue before the Traffic and Municipal Ordinance Bureau a municipal complaint.
2. An Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amount, for any person who declines to contest a municipal complaint and pays the waiver fee:

First offense	\$ 15
Second offense	\$ 35
Third offense	\$ 60
Fourth offense	\$100
Fifth and subsequent Offenses	\$120

Offenses shall be counted on a calendar year basis.

3. An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$ 25
Second offense	\$ 50
Third offense	\$ 75
Fourth offense	\$150
Fifth and subsequent Offenses	\$200

Offenses shall be counted on a calendar year basis.

4. Each day in which any violation continues or occurs shall be deemed a separate offense.
5. Violations involving multiple animals shall be considered multiple violations.

D. Liability for Loss by the Town Due to Violation

Any Person violating any of the provisions of this Ordinance shall become liable to the Town for any expense, loss, or damage occasioned by the Town, including reasonable legal expenses, by reason of such offense.

E. Actions to Prevent, Restrain or Abate Violation

Notwithstanding any of the foregoing provisions, the Town may institute any appropriate action authorized by law, including injunction or other proceeding, to prevent, restrain, or abate any violation hereof, and in the case of emergency situations when, in the Town's determination, violations of the provision of the Ordinance may cause damage to human life or public property, the Town shall have the power to take whatever action is necessary to correct such violations.

F. Board of Health and Health Officer

Nothing in this ordinance shall be construed to prevent the Local Board of Health or Health Officer from carrying out their duties as prescribed in 18 V.S.A. Chapter 11.

ARTICLE VIII
CONFINEMENT AND IMPOUNDMENT

- A. Pursuant to 20 VSA Chapters 191 and 193, an Animal Control Officer is authorized to confine or impound any domestic pet, domestic animal, or wolf-hybrid which is violating

this Ordinance or which:

1. Is suspected of having been exposed to rabies; or
 2. Is believed to have been attacked by another animal which may be rabid; or
 3. Has been attacked by a wild animal; or
 4. Has an unknown rabies vaccination history.
- B.** In the event that a domestic pet, domestic animal, or wolf-hybrid is confined or impounded, the owner, if known, shall be notified within 24 hours. Notification may be accomplished by in-person communication, by telephone call, or by written statement sent to the last known address of the owner. If the owner's address is not known, notification shall be posted in the Newfane Town Clerk's Office and 2 other places in the Town for a one-week period.
- C.** When an Animal Control Officer reasonably suspects that a confined or impounded domestic pet, domestic animal, or wolf-hybrid:
1. has been running at large in violation of Article VI, Section F; or
 2. has been exposed to rabies; or
 3. has been attacked by a rabid animal,
- the Animal Control Officer may dispose of the animal in a humane manner, pursuant to Title 20, Section 3807.
- D.** If the domestic pet, domestic animal, or wolf-hybrid is unclaimed within 7 days of the notification of the owner or within 7 days of posting, the Animal Control Officer may dispose of the dog in a humane manner subject to Article X regarding impoundment for rabies control.
- E.** If the unclaimed domestic pet, domestic animal, or wolf-hybrid has been disposed of, the owner shall be liable for all costs incurred by the Town.
- F.** No confined or impounded domestic pet, domestic animal, or wolf-hybrid shall be released until all necessary licenses and vaccinations are obtained and until all fees associated with the impoundment are paid in full by the owner.

ARTICLE IX
INVESTIGATION OF A DOMESTIC PET OR
WOLF-HYBRID WHICH HAS BITTEN A PERSON

When a domestic pet or wolf-hybrid has bitten a person while the domestic pet or wolf-hybrid is off the premises of its owner or keeper, and the person bitten requires medical attention for the attack, investigation by an Animal Control Officer shall be done in accordance with the following procedures, pursuant to 20 VSA, Section 3546, as follows:

- A.** When a domestic pet or wolf-hybrid has bitten a person while the domestic pet or

wolf-hybrid is off the premises of the owner or keeper, and the person bitten requires medical attention for the attack, such person may file a written complaint with the Newfane Selectboard. 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 required by Section B below.

- B.** The Selectboard, within seven days from receipt of the complaint, shall investigate the charges and hold a hearing on the matter. If the owner of the domestic pet or wolf-hybrid 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 the hearing and the facts of the complaint.
- C.** If the domestic pet or wolf-hybrid 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 domestic pet or wolf-hybrid is disposed of in a humane way, muzzled, chained, or confined. The order shall be sent by certified mail, return receipt requested. A person who, after receiving notice, fails to comply with the terms of the order shall be in violation of Article VI, Section E. of this ordinance. The Selectboard may seek injunctive relief as provided in 20 VSA 3550 (j).
- D.** The procedures provided in Article IX shall only apply if the domestic pet or wolf-hybrid is not a rabies suspect. If a member of the Selectboard or an Animal Control Officer determines that the animal is a rabies suspect, the provisions of Article X of this ordinance shall apply.

ARTICLE X
MANAGEMENT OF BITING ANIMALS, RABIES SUSPECT
ANIMALS, AND RABIES EXPOSED ANIMALS

- A.** Domestic pets, domestic animals, or wolf-hybrids which have bitten a person, or have been exposed to rabies or are suspected of being infected with rabies shall be managed by the Newfane Health Officer or Deputy Newfane Health Officer in accordance with 20 V.S.A. and Rules adopted by the Vermont Department of Health.
- B.** All costs associated with the management of the biting animal, rabies suspect animal, or rabies exposed animal shall be borne by the owner.

ARTICLE XI
SEVERABILITY/LIABILITY/AMENDMENTS

- A.** If any portion of this Ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

- B.** This Ordinance may be amended at any time by the Newfane Selectboard pursuant to applicable provisions of the law.

ARTICLE XII
ORDINANCE IN FORCE

A. Ordinance in Effect

This Ordinance shall be in full force and effect from and after its passage, approval, recording and publication as provided by law, and hereby replaces in its entirety the Town of Newfane, Vermont, Newfane Dog Ordinance originally adopted in 1981 and last amended January 13th, 2003.

B. Date of Enactment

Duly enacted and ordained by the Selectboard of the Town of Newfane, Windham County, State of Vermont, on this 20th day of May, 2004, at a duly warned and duly held meeting of said Selectboard.

C. Effective Date

This Ordinance shall become effective sixty (60) days from the date hereof, that is, on July 19th, 2004.

NEWFANE SELECTBOARD

Adopted - May 20, 2004
Effective Date - July 19, 2004