

ORDINANCE NO. 2019-9

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF NESQUEHONING BOROUGH, CARBON COUNTY, REGULATING AND DEFINING DANGEROUS DOMESTIC ANIMALS; ESTABLISHING LICENSING AND FEES FOR SAID ANIMALS; PROVIDING FOR THE REGULATION, CONFINEMENT AND DESTRUCTION OF SAID ANIMALS; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT HEREWITH**

BE IT ENACTED AND ORDAINED by the Council of the Borough of Nesquehoning as follows:

**SECTION 1. PURPOSE**

The Purpose of this Ordinance is to promote public health, safety, and general welfare of the citizens of the Borough of Nesquehoning and to ensure the humane treatment of animals by regulating care and control of animals within the Borough limits.

**SECTION 2. DEFINITIONS.**

The following words shall have the meaning set forth herein, unless the context clearly indicates a different meaning.

**ANIMAL NUISANCE** – any nuisance arising out of the keeping, maintaining or owning of, or failure to exercise sufficient control of an animal.

**AT LARGE** - an animal is off the premises of the owner, and not on a leash or otherwise under the immediate control of a person physically capable of restraining the animal.

**ATTACK** – the deliberate action of a dog whether or not in response to a command by its owner, to bite, to seize with its teeth or to pursue any human, animate or inanimate object, with intent to destroy, kill, wound, injure or otherwise harm the object of its action.

**DOG, DANGEROUS**– Any dog as defined in 3 P.S. Section 459-502-A(1)

**DOG, AGGRESSIVE**– shall include any or all of the following, except police dogs or guard dogs acting under the supervision of a police officer or certified trained dog handler, or certified service dogs:

1. Any dog which bites, inflicts injury, assaults or otherwise attacks a human

- being or a domestic animal without provocation; or
2. Any dog which, without provocation, approaches in a threatening or terrorizing manner, any person or domestic animal upon the streets, sidewalks or any public grounds or places; or,
  - 3- Any dog which is trained to attack or cause injury or to otherwise endanger the safety of human beings or domestic animals, or any dog which has a history of attacking or propensity to attack people or domestic animals without provocation.

**DISPOSITION**– Adoption, quarantine, voluntary or involuntary custodianship or placement, or euthanasia humanely administered to an animal. “Disposition” includes placement or sale of an animal to the general public, or removal of an animal from any pet shop to any other location.

**GUARD OR ATTACK DOG**– a dog trained to attack on command or to protect persons or property, and who will cease to attack upon command.

**HEEL**– The animal is directly behind or next to a person and obedient to that person’s command.

**IMPOUNDMENT**– the taking into custody of an animal by any police officer, animal control officer, or any authorized representative thereof.

**MUZZLE**– a device constructed of a strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

**OFFICER**– Police officer and/or duly appointed Animal Control Officer.

**OWNER**– Any person having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or having property rights to, any animal covered by this Part. An animal shall be deemed to be harbored if it is fed or sheltered for 3 or more consecutive days.

**PERSON**– Any individual, partnership, association, corporation, company, firm, institution, trustee, estate, trust, any private entity or public entity as well as all officers, agents, servants, employees or others acting for any of the same and shall be taken as applying in the singular or plural as the case may require.

**PUBLIC NUISANCE ANIMAL**– Any animal that unreasonably annoys humans, endangers the life or health or person or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property.

The term “public nuisance animal” shall include , but not be limited to:

- (1) any animal that is found running at large.
- (2) any dog or cat in any section or a park or public recreation area unless the dog or cat is controlled by a leash or similar physical restraint.
- (3) any animal that damages property other than that of its owner.
- (4) Any animal, whether or not on the property of its owner, that without provocation, molests, attacks or otherwise interferes with the freedom of movement of persons in a public right of way.
- (5) Any animal that chases motor vehicles in a public right of way.
- (6) Any animal that attacks domestic animals.
- (7) Any animal that is offensive or dangerous to the public health, safety, or welfare by virtue of the number of animals maintained at a single residence or the inadequacy of its facilities.

**UNDER RESTRAINT**– An animal is secured by a leash, lead under the control of a person physically capable of restraining the animal and is obedient to that person’s commands, or securely enclosed within the real property limits of the owner’s premises.

**VICIOUS OR DANGEROUS ANIMAL**– any animal that attacks, bites, or physically injures human beings, domestic animals, or livestock without provocation or which, because of temperament or training, has a known propensity to attack, bite or physically injure human beings, domestic animals, or livestock. Any wild animal or any animal that without provocation has bitten or attacked a human being or other animal shall be prima facie presumed vicious or dangerous.

### **SECTION 3. RESTRAINING AND CONFINEMENT GENERALLY**

A. It shall be unlawful for the owner of any dangerous dog and/or aggressive dog to fail to keep such dangerous dog and/or aggressive dog under restraint or to permit such dangerous dog and/or aggressive dog to run at large upon the streets and public ways of the Borough of Nesquehoning.

B. Any dog, while on a street, sidewalk, public way or in any park, public square, or other public space, or upon any private property without the consent of the owner, shall be secured by a leash or chain of sufficient tensile strength to restrain the particular dog, or shall be at heel and securely muzzled.

C. No owner or custodian of any animal shall fail to exercise proper care and control of such animal to prevent the same from becoming a public nuisance.

### **SECTION 4. RESTRAINT OF GUARD DOGS.**

A. Every owner of a guard or attack dog shall keep such dog confined in a building, compartment or other enclosure. Any such enclosure shall be completely surrounded by a

fence at least 6 feet in height. The areas of confinement shall all have gates and entrances thereto securely closed and locked and all fences properly maintained.

B. The provisions of this section shall not apply to dogs owned or controlled by government law enforcement agencies.

#### **SECTION 5. RESTRAINING OF DANGEROUS OR AGGRESSIVE DOGS.**

Every dangerous dog or aggressive dog shall be confined by its owner or authorized agent of its owner to the residence of the owner or keeper in accordance with the Pennsylvania Dog Law, Title 3, Chapter 8, Dog Law, Section 459-502. Whenever off the premises of its owner, the dog shall be securely mizzled and restrained with a chain having a minimal tensile strength of 300 pounds and not more than 3 feet in length. Every person harboring a dangerous or aggressive dog is charged with an affirmative duty to confine the animal in such a way that children do not have access to such an animal.

#### **SECTION 6. PROPERTY OWNERS MAY IMPOUND**

Any person finding an animal at large upon his property may remove the same to any animal shelter that will take possession of the animal. If no such shelter is available, the property owner may hold the animal in his/her possession, and as soon as possible, notify the Animal Control Official or the Borough Police Department. The property owner shall provide a description of the animal and the name of the owner, if known.

#### **SECTION 7. DANGEROUS DOG AND/OR AGGRESSIVE DOG PERMITS**

A. Any person owning a dangerous or aggressive dog must register the dog with the Nesquehoning Borough Police department to enforce the provisions of this ordinance and pay a fee of one hundred dollars (\$100.00) for such registration to the Borough of Nesquehoning. The owner must provide proof at the time of registration that:

1. The home owners's insurance policy for the residence in which the dangerous dog is housed contains a rider or a liability clause for dangerous dogs.
2. The dog's rabies vaccination status is current.
3. The dog is licensed for the current year.

#### **SECTION 8. IMPOUNDMENT**

A. In addition to any other remedies provide in this part, a Borough Police Officer or Animal Control Officer may seize, impound and humanely confine any of the following animals in accordance with Pennsylvania Title 3 Chapter 8 Dog Law:

1. Any dog without a valid permit or license.
2. Any animal at large.

3. Any animal constituting a public nuisance or considered a danger to the public.
4. Any animal that is in violation of any quarantine or confinement order of a health official.
5. Any unattended animal that is ill, injured or otherwise in need of care.
6. Any animal that is reasonably believed to have been abused or neglected.
7. Any animal that is reasonably suspected of having rabies.
8. Any animal that is charged with being potentially dangerous, aggressive or displays aggressive behavior where an Animal Control Officer, a Borough Police Officer or the Mayor determines that there is a threat to the public health and safety.
9. Any animal that a court of competent jurisdiction has ordered impounded or destroyed.
10. Any animal that is considered unattended or abandoned, as in situations where the owner is deceased, has been arrested or evicted from his/her regular place of residence.

B. An Animal Control Officer or Police Officer may also, in lieu of impoundment, issue to the owner a citation.

C. Upon impoundment of an animal, the Authority impounding said animal shall immediately attempt to notify the owner by telephone or certified mail. The owner shall be advised that the failure to claim the animal within a specified period of time may result in the disposition of the animal.

1. Any animal not reclaimed by its owner within 48 hours shall become eligible to be placed for adoption in a suitable home
- 2- Any dangerous dog or aggressive dog impounded shall not be redeemed by the owner or adopted by any other person until all applicable fees imposed by this part have been paid and proof thereof shall be presented to the Borough.

## **SECTION 9. APPEALS**

A. Any owner aggrieved by a decision that their dog has been determined to be a dangerous or aggressive dog shall have the right to appeal this decision to the Borough Council.

B. An owner shall have 14 days to appeal a determination that his/her dog is a dangerous or aggressive dog by submitting a notice of appeal to the Borough Secretary with copies to the Chief of Police and asking for a hearing before Council.

C. All appeals hereunder shall follow the provisions of 2 Pa C.S., Chapter 5, Subchapter B ( relating to practice and procedure of local agencies), and 2 Pa C.S., Chapter 7, Subchapter B ( relating to judicial review of local agency action), also known as the "Local Agency Law".

**SECTION 9. PENALTIES.**

Any person, firm, or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00); and in default of payment to imprisonment for a term not to exceed thirty (30) days.

**SECTION 10. ENFORCEMENT**

This ordinance and its provisions shall be enforced by any officer of the Nesquehoning Police Department, a duly appointed Code Enforcement official or any duly appointed Animal Control Officer.

**SECTION 11. SEVERABILITY.**

In the event that provision, section, sentence, clause, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Borough of Nesquehoning that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence clause, section or part thereof not been included herein.

**SECTION 12. EFFECTIVE DATE.**

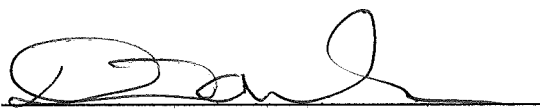
This Ordinance shall become effective five(5) days after enactment.

**ENACTED AND ORDAINED** by the Council of the Borough of Nesquehoning, Carbon County, Pennsylvania, this 23<sup>rd</sup> day of October, 2019.

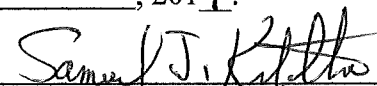
BOROUGH OF NESQUEHONING

ATTEST.

  
\_\_\_\_\_  
SECRETARY

  
\_\_\_\_\_  
PRESIDENT

APPROVED THIS 23<sup>rd</sup> DAY OF October, 2019.

  
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MAYOR