

The first regular meeting of the Kingsbury Town Board was conducted on March 4, 2019 at the Kingsbury Town Hall at 6 Michigan Street, Hudson Falls.

MEMBERS PRESENT: Dana Hogan, Supervisor  
Richard Doyle, Councilman  
Henry Freebern, Councilman  
William Haessly, Councilman  
Dan Washburn, Councilman

OTHERS PRESENT: Jeffrey Meyer, Town Attorney  
Ross Cortese, Code Enforcement Officer  
Todd Humiston, Dog Control Officer  
Michael Graham, Highway Superintendent  
Thomas Schmeizenbach, Earth, Waste & Metal  
Residents: Jerry Caruso, Patty Nicolls, Jeffrey Zappieri,  
Leslie Macura

The meeting was called to order at 7 p.m. by Supervisor Hogan and opened for the order of business with the Flag Salute led by Councilman Washburn.

The minutes of the February 11, 2019 Town Board Meeting were accepted as submitted by the Town Clerk on a **motion** by Councilman Washburn seconded by Councilman Doyle and carried by a vote of 5 ayes.

Supervisor Hogan re-opened the Public Hearing for the application of a junkyard license from Earth, Waste & Metal at 7:01 PM. There being no public comment the Public Hearing was closed at 7:01 PM.

The Town proceeded to discuss the proposed changes to the Local Law for Animal Control as follows:

**TOWN BOARD OF THE TOWN OF KINGSBURY**

**COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution Number 1 of 2019

Adopted March 4, 2019

Introduced by Councilman Freebern

who moved its adoption.

Seconded by Councilman Haessly

**RESOLUTION AUTHORIZING THE ADOPTION OF LOCAL LAW NO. 1 OF 2019 ENTITLED: A LOCAL LAW AMENDING CHAPTER 130**

**SCHEDULE OF FEES OF THE CODE OF THE TOWN OF KINGSBURY**

**WHEREAS**, by resolution of the Town Board, a public hearing was scheduled to be held before the Town Board commencing on December 17, 2018 at 7:05 p.m. at the Offices of the Town of Kingsbury to hear all interested parties on a proposed local law amending various sections of Chapter 130 concerning Fees, including adding a section on fees relating to dog licensing; and

**WHEREAS**, notice of said public hearing was duly posted and then published in the official newspaper of the Town, pursuant to Municipal Home Rule Law; and

**WHEREAS**, said public hearing was duly held before the Town Board at the Offices of the Town of Kingsbury and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to the proposed local law; and

**WHEREAS**, this Local Law is an action under the New York State Environmental Quality Review Act (SEQRA). The Town Board hereby declares that this action is a Type II action pursuant to 6 NYCRR 617.5(20) and (27) and declares that the action does not have a significant impact on the environment and the action is hereby precluded from further environmental review.

**NOW, THEREFORE BE IT RESOLVED** by the Town Board as follows:

**Section 1.** The Town Board, upon due deliberation of the proposed local law finds that the adoption of the same is in the best interests of the Town.

**Section 2.** The local law entitled “A Local Law Amending Chapter 130-1 Schedule of Fees of the Code of the Town of Kingsbury” is hereby adopted, a copy of which is attached hereto and made a part hereof.

**Section 3.** Pursuant to and in accordance with the Municipal Home Rule Law, the Town Clerk is hereby directed to enter Local Law No \_\_\_ of 2019 into the minutes of this meeting and file the same with the Office of the Secretary of State of the State of New York.

**Section 4.** This resolution shall take effect immediately.

### **LOCAL LAW NO. 1 OF 2019**

## **A LOCAL LAW AMENDING CHAPTER 130 SCHEDULE OF FEES OF THE CODE OF THE TOWN OF KINGSBURY**

### **TOWN OF KINGSBURY, COUNTY OF WASHINGTON STATE OF NEW YORK**

Be it enacted by the Town Board of the Town of Kingsbury (the “Town”), as follows:

#### **SECTION 1. Purpose**

<http://www.kingsburyny.gov>

The purpose of this local law is to amend the fee schedule relating to the licensing and impoundment of dogs in the Town of Kingsbury to comply with the recently amended Article 7 of the New York State Agriculture and Markets Law.

**SECTION 2. Amendments**

**§ 130-1. Schedule of fees.**

The fees relating to Chapter 75, Animal Control, shall be repealed in their entirety and replaced with the following:

<b>Chapter/Type of License, Application or Permit</b>	<b>Fee</b>
Ch. 75, Animal Control	
License fees, annual	
Spayed or neutered dogs	\$15.00, which fee includes the assessment of a surcharge of \$1 for the purpose of carrying out a program of animal population control
Unspayed or unneutered dogs	\$25.00, which fee includes the assessment of a surcharge of \$3 for the purpose of carrying out a program of animal population control
Replacement tag	\$3.00
Impoundment, per day	
First impoundment	\$25.00, plus the prevailing charge to the Town, as per contract, for each day of impoundment
Second impoundment	\$50.00, plus the prevailing charge to the Town, as per contract, for each day of impoundment
Third impoundment and thereafter	\$75.00, plus the prevailing charge to the Town, as per contract, for each day of impoundment

**SECTION 3. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this local law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**SECTION 4. Effective Date.**

This Local Law shall take effect after filing with the New York State Secretary of State.

**TOWN BOARD OF THE TOWN OF KINGSBURY**  
**COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution Number 2 of 2019

Adopted March 4, 2019

Introduced by Councilman Freebern

who moved its adoption.

Seconded by Councilman Haessly

**RESOLUTION AUTHORIZING THE ADOPTION OF LOCAL LAW NO. 2 OF 2019 ENTITLED: A LOCAL LAW  
AMENDING CHAPTER 75 - ANIMAL CONTROL LAW-OF THE CODE OF THE TOWN OF KINGSBURY**

**WHEREAS**, by resolution of the Town Board, a public hearing was scheduled to be held before the Town Board commencing on December 17, 2018 at 7:05 p.m. at the Offices of the Town of Kingsbury to hear all interested parties on a proposed local law amending various sections of Chapter 75 concerning Animal Control, including adding provisions concerning dog licensing that comply with the recent amendments to the New York State Agriculture and Markets Law; and

**WHEREAS**, notice of said public hearing was duly posted and then published in the official newspaper of the Town, pursuant to Municipal Home Rule Law; and

**WHEREAS**, said public hearing was duly held before the Town Board at the Offices of the Town of Kingsbury and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to the proposed local law.

**WHEREAS**, this Local Law is an action under the New York State Environmental Quality Review Act (SEQRA). The Town Board hereby declares that this action is a Type II action pursuant to 6 NYCRR 617.5(20) and (27) and declares that the action does not have a significant impact on the environment and the action is hereby precluded from further environmental review.

**NOW, THEREFORE BE IT RESOLVED** by the Town Board as follows:

**Section 1.** The Town Board, upon due deliberation of the proposed local law finds that the adoption of the same is in the best interests of the Town.

**Section 2.** The local law entitled "A Local Law Amending Chapter 75 - Animal Control Law - of the Code of the Town of Kingsbury" is hereby adopted, a copy of which is attached hereto and made a part hereof.

**Section 3.** Pursuant to and in accordance with the Municipal Home Rule Law, the Town Clerk is hereby directed to enter Local Law No 2 of 2019 into the minutes of this meeting and file the same with the Office of the Secretary of State of the State of New York.

**Section 4.** This resolution shall take effect immediately.

## **LOCAL LAW NO. 2 OF 2019**

### **A LOCAL LAW AMENDING CHAPTER 75 - THE ANIMAL CONTROL LAW- OF THE CODE OF THE TOWN OF KINGSBURY**

#### **TOWN OF KINGSBURY, COUNTY OF WASHINGTON STATE OF NEW YORK**

Be it enacted by the Town Board of the Town of Kingsbury (the "Town"), as follows:

#### **SECTION 1. Purpose.**

The purpose of this local law is to protect the health, safety and well-being of persons and property by imposing restrictions and regulations upon the keeping or running at large of dogs and the seizure thereof within the Town and to comply with the recently amended Article 7 of the New York State Agriculture and Markets Law.

#### **SECTION 2. Authority.**

This local law is enacted pursuant to the provisions of Article 7 of the Agriculture and Markets Law, as amended by Chapter 59, Part T of the Laws of 2010, and Municipal Home Rule Law.

#### **SECTION 3. Amendments.**

Chapter 50 of the Code of the Town of Kingsbury shall be repealed in its entirety and replaced with the following:

Article I. Title; Purpose

§ 75-1. Title.

This chapter shall be known as the "Animal Control Law" of the Town of Kingsbury inclusive of the Village of Hudson Falls.

§ 75-2. Purpose.

The purpose of this chapter is to protect the health, safety and well-being of persons and property within the Town of Kingsbury by imposing restrictions and prohibitions on the keeping and running at large of dogs, dangerous animals and other identified animals within the Town.

## Article II. Definitions

### § 75-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**AT LARGE** A dog, dangerous animal or any other animal identified herein off the premises of the owner and in a public place or on private lands without the knowledge, consent and approval of the owner of such lands.

**CAT** Any member of the feline family, regardless of sex.

**DANGEROUS ANIMAL** Any animal that conducts itself so as to cause bodily harm and injury or to put any person in reasonable apprehension of such bodily harm and injury, or any animal which attacks, chases or worries any domestic animal, as defined in § 108 of the Agriculture and Markets Law.

**DOG** Any member of the species *canis familiaris*, regardless of sex.

**DOG CONTROL OFFICER** The Dog Control Officer of the Town of Kingsbury, who is specifically authorized to enforce the provisions of this chapter.

**EUTHANIZE** Means to bring about death by a humane method.

**HARBOR** Means to provide food or shelter to any dog.

**IDENTIFIED DOG** Means any dog carrying an identification tag as defined further in this section.

**IDENTIFICATION TAG** Means a tag issued by the licensing municipality which sets forth an identification number, together with the name of the municipality, contact information, including telephone number, for the municipality and such other information as the licensing municipality deems appropriate.

**LEASHED or RESTRAINED BY A LEASH** A dog that is equipped with a collar of sufficient strength attached to a leash not more than six feet long, which leash shall be held by a person having sufficient ability to control and restrain the dog by means of the collar and leash.

**OWNER** Includes any person who owns, keeps, harbors or has the care, custody or control of any dog, dangerous animal or any other animal identified herein. Dogs, dangerous animals or any other animal identified herein owned by minors shall be deemed to be in the care, custody and control of the minor's parents or other head of the household where the minor resides, and who shall be responsible for any acts of said dog in violation of this chapter. The term "owner"

shall also be construed to include any association or corporation owning, harboring, in possession of or keeping a dog or dogs or any other animal identified herein within the Town of Kingsbury inclusive of the Village of Hudson Falls.

**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.

**SERVICE DOG** Any dog that is trained to aid a person with a disability and is actually used for this purpose, otherwise known as a "guide dog."

**WAR DOG** Means any dog which has been honorably discharged from the United States armed services.

### Article III. Animal Control

#### § 75-4. Farm animals.

A. It shall be unlawful for any person to permit any horses, cattle, swine, pigs, sheep, goats, or any other farm animal to run at large in the Town of Kingsbury.

#### § 75-5. Domestic animals.

The owner of any other domestic animals or pets, including but not limited to all species of lizard, snake, spider, bird, rat, mouse, guinea pig or rabbit, shall maintain said other domestic animal or pet in a cage or appropriate container at all times when said other domestic animal or pet is outside the premises of the owner.

#### § 75-6. Licensing requirements.

A. Requirement. The owner of any dog in the Town of Kingsbury reaching the age of four months shall immediately make application for a dog license with the Town Clerk of the Town of Kingsbury. 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, town or village, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog protective association.

B. Expiration of license. All dog licenses shall be valid for a period of one year and shall expire at the end of the month one year from the date of issuance.

C. Fees.

(1) The licensing fee for a spayed or neutered dog shall be the amount as stated in the current fees schedule set forth in Chapter 130 of the Kingsbury Code.

(2) The licensing fee for an unspayed or unneutered dog shall be the amount as stated in the current fees schedule set forth in Chapter 130 of the Kingsbury Code.

(3) The charge for replacement tags shall be the amount as stated in the current fees schedule set forth in Chapter 130 of the Kingsbury Code.

(4) When the Town Board determines the need for a dog enumeration, a fee to be determined by the Town Board by Resolution and encompassed in the Town's Fee Schedule, will be assessed to the owner of any dog found unlicensed or for which the license has not yet been renewed at the time the enumeration is conducted.

D. Service dogs. The Town of Kingsbury exempts guide, hearing, service, war, working, search, detection, police dogs, as defined in Article 7 of the Agriculture and Markets Law of the State of New York, from payment of the licensing fees.

E. Purebred license. The Town of Kingsbury shall not issue purebred or kennel licenses. All dogs shall be licensed individually in accordance with the fees stated herein.

F. Shelters. The Town of Kingsbury does not allow the licensing of dogs by a shelter. The shelter shall be required to send adoptive dog owners to the clerk of the municipality in which the dog will be harbored for licensing.

G. All dog licenses shall be purchased in person at the Town offices or by regular mail. If licensing or renewing a license by mail, the appropriate fees must accompany the application. There shall be no refund of fees.

H. All fees will be used in funding the administration of the Animal Control Law in the Town of Kingsbury.

#### § 75-7. Control of dogs.

It shall be unlawful for any owner of or any person owning or harboring any dog in the Town of Kingsbury to permit or allow any such dog to:

A. Engage in a noise disturbance that is created by a dog barking, howling, crying or whining continually for 10 minutes or intermittently for 30 minutes.

B. Cause damage or destruction to the property of or commit a nuisance upon the premises of a person other than the owner or person(s) harboring such dog without the consent or approval of the owner of such premises.

C. Chase, jump on or at, or otherwise harass any person in such a manner as would reasonably cause intimidation or to put such person in reasonable apprehension of bodily harm or injury.

D. Attack, chase or worry any domestic animal, as defined by § 108 of the Agriculture and Market Law.

E. Habitually chase or bark at motor vehicles, motorcycles or bicycles while on a public street, highway or place, or upon private property without the consent or approval of the owner of such property.

F. Be off the premises of the owner or harborer unless restrained by a leash to be held by a person of sufficient strength and ability to adequately restrain the dog. Such dog may be unleashed while off the owner's or harborer's premises only on such occasions as when such dog is on the private premises of another with the knowledge, consent and approval of such person.

G. No dog, whether leashed or unleashed, shall be in any restaurant, grocery or commercial establishment which sells food for human consumption except for a service dog or police work dog.

H. No person who owns or harbors a dog shall permit the premises, structures or enclosures in which such dog is kept to be unclean or unsanitary whether on account of dog feces or otherwise.

#### § 75-8. Enforcement officer.

A. Except as otherwise set forth in this chapter, the Dog Control Officer or other law enforcement officer observing a violation of this chapter in his presence shall issue and serve an appearance ticket for such violation. The Dog Control Officer shall enforce the provisions of this chapter pursuant to Article 7 of the Agriculture and Markets Law.

B. The Dog Control Officer or other law enforcement officer may also investigate and report to the Town of Kingsbury Court ("the Court") any dangerous dog, as described in Article 7 of the Agriculture and Markets Law, as defined herein, and see that the order of the Court in such case is carried out.

C. Sections 75-4, 75-5 and 75-9 may also be enforced by the Code Enforcement Officer of the Town with respect to animals others than dogs, as may be applicable.

#### § 75-9. Kennel regulations; where required.

Any residence or single parcel of land that is a nonmultiple residence, a multiple residence being three or more residences on a single parcel of land, shall have a kennel for the outdoor housing of dogs where there are four or more adult dogs over the age of six months.

A. "Kennel" shall be defined to mean the outdoor housing of dogs, for profit or otherwise.

B. Any preexisting kennels or kennels coming into existence after the adoption of this section will conform to the following restrictions within 90 days of the effective date of this section:

(1) Fences. Each kennel, either preexisting or coming into existence after the adoption of this section, shall have a fence surrounding said kennel with the following requirements:

(a) Each fence will be a minimum of six feet in height and a maximum of six feet six inches in height, and it is to be of consistent height and/or shall meet the applicable zoning ordinances of the municipality as confirmed by the Code Enforcement Officer pursuant to subsection (e) of this section.

(b) Each fence and kennel shall be set back at least eight feet from adjoining property lines, roads, sidewalks or highways and/or shall meet the applicable zoning ordinances of the municipality as confirmed by the Code Enforcement Officer pursuant to subsection (e) of this section.

(c) Each fence and kennel must conform to the zoning ordinances of the Town of Kingsbury, Village of Hudson Falls and other governmental agencies. Compliance with this section is in addition to compliance with other laws.

(d) Each fence shall be of such construction so as to be capable of confining said dog or dogs at all times.

(e) Each Kennel shall meet the approval of the applicable municipal Code Enforcement Officer and such approval shall be sought prior to installation.

(2) When any dog is outside the residential building, off a leash and not under the direct control of a responsible adult or the owner in a residence or parcel of land where a kennel is necessary under this section, said dog or dogs shall be confined to said kennel.

#### § 75-10. Filing of complaint.

A. Any person who observes a violation of any provision of this article may file a signed complaint, under oath, with the Court, specifying the objectionable conduct; the date(s) thereof; the damage caused; a description of the animal; and the name and residence, if known, of the owner of such animal or other person harboring such animal.

B. Any person who is attacked, chased or otherwise harassed by any dog in such a manner as to reasonably cause intimidation or to put such person in reasonable apprehension of bodily harm or injury, or any person who witnesses a dog attacking, chasing or worrying any domestic animal, as defined in § 108 of the Agriculture and Markets Law, may file a signed complaint, under oath, with the Court, stating the specific objectionable conduct of the dog; the date thereof; the place of occurrence; a description of the dog; the name and residence, if known, of the person harassed; and the owner or other person harboring said dog; or, in the alternative, the person harassed by a dog may file with the Court an information charging a violation of this article.

§ 75-11. Jurisdiction of Court.

A. The Town Court shall have jurisdiction to hear all complaints filed as herein provided and all actions and proceedings hereunder and of all prosecutions for any violation of this chapter.

B. Upon receipt by the Court of any complaint against the conduct of a particular dog, the Court may summon the alleged owner of the dog or other person harboring such dog to appear in person before the Court. If the summons is disregarded, the Court may permit the filing of information and issue a warrant for the arrest of such person.

§ 75-12. Exception.

This article shall not apply to a Service dog or police work dog during such time as such dogs are performing the functions for which they are trained.

§ 75-13. Procedures relating to dangerous dogs.

Procedures relating to dangerous dogs shall be in accordance with the relevant provisions of the Agriculture and Markets Law.

A. In the event of a complaint of an attack upon a person or of an attack, chase or worrying of a domestic animal, the Court shall immediately determine if there is probable cause to believe the dog is a dangerous dog, and upon if so finding, shall order the Dog Control Officer or law enforcement officer to immediately seize the dog pending a judicial hearing conducted in accordance with the provisions of the Agriculture and Markets Law.

B. If satisfied that said dog is a dangerous dog, the Court may order the Dog Control Officer or other law enforcement officer to take any action consistent with the provisions of the Agriculture and Markets Law including the destruction of the dog, or take any other action prescribed herein. In the event that any person is bitten by said dog, the Court shall order the dog tested for rabies or quarantined for a period of 10 days. The rabies testing and/or quarantine shall be at the owner's expense.

C. In the event that the Court does not order the dog destroyed and determines that said dog is a dangerous dog within the meaning of the Agriculture and Markets Law, the owner of the dog shall be required to:

(1) Maintain 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;

(2) Muzzling of 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;

(3) Post the property where the dog is located with a notice of “Beware of Dog” or “Dangerous Dog” warning signs on every side of the property no more than one hundred (100) feet apart and at each and every access point (i.e. entry way, door and gates); and

(4) Any other and further requirements as directed at the discretion of the Town of Kingsbury Town Court.

D. Upon default of any of the conditions of a court order, said dangerous dog and owner shall be dealt with in accordance with the law and/or applicable Court order.

#### § 75-14. Penalties for offenses.

An offense against any provision of this article shall be punishable:

A. By a fine of not less than \$50.00 and not more than \$200.00 for the first offense. Where a person has been found to have violated this article within the preceding five years, the fine may not be less than \$200.00 and not more than \$500.00, and where the person has been found to have committed two or more violations of this article within the preceding five years, the offense shall be punishable by a fine of not less than \$250.00 and no more than \$1,000.00 or imprisonment for not more than 15 days, or both.

B. In addition to the penalties imposed for violations of this article, the person found to have violated this article must pay administrative fines as set forth hereinafter for the cost of seizure and kennel fees.

C. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

D. Upon presentation of proof of payment of any and all fines and/or penalties, the Dog Control Officer or other law enforcement officer shall release any dog impounded to its owner or harbinger, provided that the release of the dog is consistent with any court determination made with respect to the dog.

#### Article IV. Seizure and Impoundment

##### § 75-15. Dogs to be seized.

A. The Dog Control Officer or any other law enforcement officer in the employ of or under contract with the Town of Kingsbury shall seize:

- (1) Any dog which is not identified and which is not on the owner's premises.
- (2) Any dog which is not licensed, whether on or off the owner's premises.

B. The Dog Control Officer or any other law enforcement officer in the employ of or under contract to the Town of Kingsbury may seize any dog in violation of any local law or ordinance relating to the control of dogs adopted by the Town of Kingsbury pursuant to the provisions of Article 7 of the Agriculture and Markets Law.

§ 75-16. Care of seized dogs.

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

§ 75-17. Impoundment fee.

Each dog which is not identified, whether or not licensed, shall be held for a period of three business days from the day seized, during which period the dog may be redeemed by its owner, provided that such owner produces proof that the dog has been licensed and has been identified pursuant to the provisions of this article, and further provided that the owner pays the impoundment fee and pickup fee as required in the current fees schedule set forth in Chapter 130 of the Kingsbury Code. All impoundment fees, including all seizure and kennel fees and all fines and/or penalties levied or assessed by the Court to this article, shall be the property of the Town of Kingsbury.

§ 75-18. Disposition of impoundment fees.

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 article and any rule, regulation or local law or ordinance adopted pursuant thereto.

§ 75-19. Notice of seizure; redemption.

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 the day of notice, during which period the dog may be redeemed by the owner. If such notification is made by mail, such dog will be held for a period of seven days from the date of mailing, during which period the dog may be redeemed by the owner. In either case, the owner may redeem such dog upon payment of the impoundment fees prescribed by § 75-17 and by producing proof that the dog has been licensed.

§ 75-20. Unredeemed dogs.

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. Any person, other than the owner of the dog seized or a member of his or her immediate family, may apply to the impoundment facility for the adoption of the dog, provided that no such dog shall be delivered for adoption unless it has been licensed pursuant to this chapter prior to its release from

the custody of a pound or shelter. Upon adoption, collection of any impoundment fees from the adoption prescribed by Chapter 130, Fees, of the Kingsbury Code, shall be waived.

§ 75-21. Penalties for offenses.

The seizure of any dog shall not relieve any person from any violation provided for by § 118 of the Agriculture and Markets Law.

§ 75-22. Nonliability for damages.

The Town of Kingsbury, its employees or agents shall not be liable in damages or otherwise on account of the seizure, adoption or destruction of any dog pursuant to the terms of this article.

§ 75-23. Word usage.

Where necessary, words in the singular shall be interpreted in the plural and vice versa.

#### Article V. Canine Waste

§ 75-24. Intent.

The purpose of this article shall be to promote the health, safety, cleanliness and general welfare of the Town of Kingsbury, including the protection, cleanliness and preservation of the property of the Town of Kingsbury and its inhabitants by adopting and enforcing certain regulations and restrictions on the activities of dogs.

§ 75-25. Nuisances by dogs prohibited.

Except as provided and regulated by § 75-26 hereof, no person owning, harboring, keeping, walking or having custody or control of a dog shall cause, permit, suffer or allow such dog to soil, defile, defecate on or commit any nuisance on any common thoroughfare, sidewalk, passageway, bypath, play area, park or any other public property. These restrictions shall likewise apply to any private property unless such person shall have the express written permission of the owner of said property.

§ 75-26. Exceptions; removal of feces.

The prohibition set forth in § 75-25 above shall not apply to those portions of a street lying between curblines, which areas may be utilized to curb a dog; subject, however, to the following conditions:

A. Any person who so curbs a dog shall immediately remove all feces deposited by such dog in the following manner: feces shall be picked up with scoop, shovel, broom, tong or other similar implement and be deposited immediately thereafter in a container, plastic or otherwise, and then subsequently deposited in a container used for the disposal of refuse.

B. In no event shall any feces be deposited in sewers or drains, whether storm or sanitary.

§ 75-27. Penalties for offenses.

Any person violating this article shall be guilty of a violation and shall be subject to a fine not less than \$50.00 and not more than \$200.00 for the first offense. Where a person has been found to have violated this article within the preceding five years, the fine may not be less than \$200.00 and not more than \$500.00, and where the person has been found to have committed two or more violations of this article within the preceding five years, the offense shall be punishable by a fine of not less than \$250.00 and no more than \$1,000.00 or imprisonment for not more than 15 days, or both.

ARTICLE VI. Impoundment for Safe Keeping

§ 75-28. Impoundment of Dogs for Safe Keeping

In the event a dog is turned over by law enforcement to the Town of Kingsbury Dog Control Officer or Code Enforcement Officer for reasons of safe keeping and where no other violation of this Chapter exists and wherein law enforcement is unable to find suitable care for the dog, the Dog Control Officer or Code Enforcement Officer may assist and hold dog(s) for safekeeping at the Town's contracted shelter for no more than seven (7) days from the date of pickup. If the seventh (7<sup>th</sup>) day falls on a day where the owner is unable to redeem the dog(s) due to the Town Hall or Shelter being closed the owner will be given until the next business day to redeem. The owner will be responsible for a \$25.00 administration fee, per dog, to the Town plus prevailing charge per shelter contract. If the owner or agent acting on the owner's behalf does not redeem the dog and pay all fees associated with the dog's impoundment by the close of business of the Town Hall office on the final redemption day they will have released ownership of the dog(s) to the Town for adoption or euthanasia. The owner will be responsible for all fees and costs occurred by the Town.

**SECTION 4. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this local law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**SECTION 5. Effective Date.**

This Local Law shall take effect upon filing with the New York State Secretary of State.

The Town Board has reviewed the application for a junkyard license for Earth, Waste & Metal and the potential environmental impact of the proposal pursuant to the State Environmental Quality Review Act (SEQRA) and issued a negative declaration with a **motion** from Councilman Doyle seconded by Councilman Washburn and carried by a vote of 5 ayes.

**TOWN BOARD OF THE TOWN OF KINGSBURY**

**COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 3 of 2019

Adopted March 4, 2019

Introduced by Councilman Freebern

who moved its adoption

Seconded by Councilman Doyle

**RESOLUTION APPROVING JUNKYARD LICENSE APPLICATION**

**OF**

**EARTH WASTE & METAL**

**WHEREAS**, pursuant to Chapter 174 of the Code of the Town of Kingsbury, Section 10 of Municipal Home Rule Law, and Section 136 of the General Municipal Law, the Town Board of the Town of Kingsbury (the "Town") has the authority to license and regulate junkyard facilities;

**WHEREAS**, by materials submitted on October 4, 2018 Earth Waste & Metal (hereafter "Applicant") applied for a Junkyard License and a Scrap Processor License for a facility at 1612 State Route 196, Town of Kingsbury, Tax Map No. 155.-2-10.1 (the "Site") for the remainder of the 2018-2019 license year and all of the 2019-2020 license year; and

**WHEREAS**, the Applicant has submitted the required application materials found in Section 5 of the Junkyard Regulation and Licensing Law, all of the materials submitted by the Applicant in reviewing this matter shall be considered and hereafter referred to as the "Application"; and

**WHEREAS**, notice of said public hearing was duly posted and then published in The Post Star, the official newspaper of the Town; and

**WHEREAS**, said public hearing was duly held and all parties in attendance were permitted an opportunity to comment on the license applications; and

**WHEREAS**, the Town Board has already reviewed the Application and reviewed the potential environmental impact of the proposal pursuant to the State Environmental Quality Review Act (hereafter "SEQRA"), and issued a negative declaration thereon; and

**WHEREAS**, upon due consideration, the Town Board is prepared to review the application and make a final determination thereon in accordance with Sections 8 and 9 of the Junkyard Regulation and Licensing Law of the Town of Kingsbury.

**NOW THEREFORE BE IT RESOLVED** by the Town Board of the Town as follows:

Section 1. Licensing Standards.

- a. Ownership and control: The Applicant shall provide proof of legal ownership or the right to use the property for a junkyard proposed during the license period.

The Applicant has established proof that the site of the facility is owned and operated by the Applicant.

- b. Location: The location must be suitable to the safe operation of the junkyard facility. The following shall be taken into account: the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors, smoke, noise, dust, or other pollution. The following shall also be taken into account: the available site access to the proposed location, whether the transportation infrastructure is sufficient to provide ingress and egress to the proposed site, as well as accommodating for the increase in scope and intensity of the traffic. No license shall be issued without obtaining a certificate of zoning compliance as provided for in this law.

The Applicant has established the proposed Site is in compliance with the Zoning Ordinance for the Town of Kingsbury and has obtained a certificate of zoning compliance. The site is the location of the former Washington County Transfer Station that was specifically designed for to be able to safely accommodate this use.

- c. Aesthetic: A clean, wholesome and attractive environment has been declared to be of vital importance to the general welfare of the town citizens. Consideration shall be made to whether the proposed location can be reasonably protected from having an unfavorable effect thereon. Pursuant thereto, special attention shall be made collectively to the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes to the site, as well as the reasonable availability of other suitable sites for the junkyard.

The site having been originally designed as a transfer station is adequately screened from view. Additionally, as stated previously, the site is the former location of the Washington County Transfer Station and has been historically used as a waste management facility. Access to the site is via State and County Highways that have been adequately designed to handle the traffic and associated weight of vehicles accessing the facility.

- d. Compliance history: The Applicant's history of compliance shall be considered with any federal, state or local law or any of the following: Section 136 of the NYS General Municipal Law, Articles 6 or 6-C of the NYS General Business Law, Section 415-a of the NYS Vehicle and Traffic Law, any applicable provision of the NYS Environmental Conservation Law, or any regulations promulgated pursuant to said laws.

At the present time, the Applicant has a history of compliance. The Applicant was previously operating pursuant to the County's license and there were no reports or complaints or noncompliance.

Section 2. Variance.

As part of the Application, the Applicant has requested two waivers. The Town Board may only grant said waiver(s) upon determining such actions would be in keeping with the intent and spirit of Chapter 174 of the Code of the Town of Kingsbury after considering the benefit to the Applicant as against the detriment to the health, safety and welfare of the neighborhood or community.

- a. The Applicant has requested a waiver from the \$5,000,000 pollution liability insurance requirement contained in Chapter 174, and acceptance of a reduced limited of \$2,000,000 in coverage for pollution liability insurance. The Town Board hereby grants the requested waiver, based upon the following:
  1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the waiver – An undesirable change will not be produced in the character of the neighborhood nor a detriment to the nearby properties. The application is more analogous to a transfer station and recycling center than a traditional junkyard. The Applicant will not be accepting hazardous materials, nor vehicles that would contain petroleum products or other materials for which this requirement was originally intended. As such, the risk is minimal for detriment to the nearby properties. Additionally, there is still plenty of coverage in the event of a claim.
  2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a waiver – There are no other feasible alternatives. The additional cost for \$3,000,000 in coverage will be a detriment to the financial viability of the facility.
  3. Whether the requested waiver is substantial – The request is not substantial since there will be pollution liability insurance in place to mitigate the risk and pay for any claim in the event pollution is discovered on site.
  4. Whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood – The proposed waiver will not have an adverse impact. As stated previously, there will be insurance in place that will protect the neighborhood. The existing coverage limit is commensurate with the materials being handled and the risk associated with the facility. Additionally, it meets the requirements of NYS Department of Environmental Conservation for transfer stations.
  5. Whether the alleged difficulty was self-created – The difficulty was self-created in that there is the option of increased insurance. However, this single factor is not determinative.
- b. The Applicant has requested a waiver from the financial security requirement contained in Chapter 174, and acceptance of a surety bond that lists the obligee as NYS Department of Environmental Conservation in the amount of \$40,584.96. The Town Board hereby grants the requested waiver, based upon the following:
  1. Whether an undesirable change will be produced in the character of the neighborhood or a

detriment to nearby properties will be created by granting of the waiver – An undesirable change will not occur in the character of the neighborhood nor a detriment to the nearby properties. The Applicant has submitted financial estimates of closure and proof of financial surety. The facility is primarily a Solid Waste Management Facility regulated by NYS Department of Environmental Conservation. As such, they are required to maintain a bond to ensure the proper closure and post-closure procedures occur and are followed. This will protect the neighborhood and town.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a waiver – There are no feasible alternatives. The Applicant was not permitted to add the Town as an obligee under the existing surety bond. Therefore, the Applicant would be forced to provide a duplicate surety bond in the same amount, for the same reason. Doing so would have a detrimental impact on the financial viability of the Applicant and site.
3. Whether the requested waiver is substantial – The requested waiver is not substantial since there will be a surety bond in place to ensure the site is clean post closure.
4. Whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood – The proposed waiver will not have a detrimental impact on the environment or neighborhood. As evidenced by the applicant, there is a surety bond in place to ensure the site is clean post closure. The NYS DEC closely regulates this facility to ensure solid waste is handled and disposed of properly.
5. Whether the alleged difficulty was self-created - The difficulty was self-created in that there is the option of increased insurance. However, this single factor is not determinative.

### Section 3. Approval.

In consideration of the suitability of the junkyard at the proposed location, the ability to comply with the licensing standards, regulations and requirements of the Junkyard Regulation and Licensing Law, and other reasonable regulations, the Town Board hereby approves the licenses as proposed for the remainder of the 2018-2019 license year and all of the 2019-2020 license year subject to the conditions set forth below.

The Applicant is proposing to utilize an existing transfer station, previously designed for handling recycling and collecting and handling solid waste. Additionally, the safeguards being instituted, the requirements of the Junkyard Regulation and Licensing Law and the Site Plan approval are all being met in order to help protect the community from potential hazards of operating the facility and their handling of junk on the premises.

### Section 4. Conditions.

Based on all of the foregoing, and all of the evidence and materials submitted by the Applicant, the Licenses for operating a Junkyard, and to operate as a Scrap Processor are hereby approved with the following conditions:

- a. Junk motor vehicles shall not be processed, stored, and/or stockpiled on the premises.
- b. No motor vehicle fluids, petroleum products, electronics, or other hazardous liquids and/or materials shall be drained, removed, collected, or stored on the premises.
- c. This license shall expire on March 31, 2020 pursuant to the Junkyard Regulation and Licensing Law.

TOWN CLERK REPORT:

Town Clerk reported Brian Landsman and his Cub Scouts will attend the Board Meeting scheduled on March 18, 2019. The Scouts would like the opportunity to conduct a Flag Ceremony and to ask questions to the Board.

**CODE ENFORCEMENT REPORT:**

Ross Cortese has requested an executive session to discuss the employment of a particular person and a pending legal matter.

**DOG CONTROL OFFICER REPORT:**

Todd Humiston reported the annual inspection from Ag & Markets is scheduled for Tuesday March 12, 2019.

A discussion followed in regard to when the increase in the dog licensing fees would take effect.

Attorney Meyer stated the increase could take effect upon filing with the New York State Secretary of State.

Dog Control Officer suggested enclosing an updated copy of the Guide for Dog Owners with the license renewal letters due to the adoption of the amended Animal Control Laws.

**HIGHWAY SUPERINTENDENT REPORT:**

Michael Graham received a call from Washington County Real Property with a request for the Board to adopt two resolutions to name two small roads in Quarry Circle this will enable Real Property establish 911 numbers. At this time one of the small roads is Luke Way; it is no longer a private road but a public road and requires a name change. The second road will be named Quarry Circle Extension.

A **motion** by Councilman Freebern seconded by Councilman Haessly and carried by a vote of 5 ayes for the town road Luke Way to be named Luke Lane.

A **motion** by Councilman Doyle seconded by Councilman Haessly and carried by a vote of 5 ayes for a town road in Quarry Circle to be named Quarry Circle Extension.

Michael Graham stated he is not quite ready to post the roads but would like permission from the Board to notify the Town Clerk to do so when it starts to warm up. A **motion** by Councilman Freebern seconded by Councilman Washburn and carried by a vote of 5 ayes for the Highway Superintendent to post town roads when necessary.

Michael Graham will attend Local Roads Matter Advocacy Day to be conducted at the Capitol in Albany, New York. The highway superintendents would like to add \$150,000,000.00 to the CHIPS base; the last few years they have received approximately \$100,000,000.00 from Pave New York and \$65,000,000.00 from Extreme Recovery which is divided amongst the 932 towns in New York State. The funds received are used for the maintenance and repair to local roads and bridges.

**COUNCILMAN REPORT:**

Councilman Haessly introduced Leslie Macura a candidate for a councilman position that will be vacated December 31, 2019.

Councilman Doyle would like to start the process to amend the zoning that would affect five properties, including the transfer station operated by Earth, Waste & Metal located on State Route 196. A

<http://www.kingsburyny.gov>

discussion followed. Attorney Meyer will draft a local law to start the process to amend the zoning. The zoning must be amended from Residential-Agricultural to Industrial for Earth, Waste & Metal to continue operation at the current site.

#### SUPERVISOR REPORT:

Supervisor Hogan received an annual report from Sheriff Jeffrey Murphy and made copies available to anyone interested.

Supervisor Hogan today received a letter from Sandy Hill Vision, LLC with an application and public hearing notice with regard to their proposed project. The Counties of Warren-Washington Industrial Development Agency would like the Town Board to provide the IDA their determination on this project. The public hearing is scheduled for March 12, 2019 at 6 p.m. at the Village of Hudson Falls. The Board will discuss this at the next Board Meeting on March 18, 2019 and send their determination thereafter.

Recently NYSERDA gave a presentation to the Board which gave an overview of resources for local governments to manage solar projects. The Board had discussed development of solar energy structures at the Kingsbury Landfill. Supervisor Hogan made an inquiry, had a conference call with NYSERDA and a phone call with two members of the DEC. He received paperwork for a 60-day change of use and was encouraged to submit them to the DEC. These are early steps for the possibility of a solar energy structure at the landfill and there is 3-Phase power that goes by the site.

Supervisor Hogan encouraged everyone to attend events at the Strand Theatre, there are some good shows scheduled for St. Patrick's Day and many recent shows have been sold out.

Supervisor Hogan invited Andrew Meader to the Town Board Meeting who is with the marketing company who is handling the tourism and marketing for Washington County to the Board Meeting scheduled for March 18, 2019. He will present a Kingsbury specific breakdown of the marketing efforts they are making.

A **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes to accept the reports of certain officer for the month of February as follows:

Dog Control Officer: Complaints/Calls 24; Unlicensed Dogs 2; Seizures 1; Mileage with 39 charged to Fort Edward & 104 charged to Fort Ann

Town Clerk: Paid to EnCon \$568.74; Paid to Supervisor \$2,285.41; Paid to NYS Dept. of Health \$22.50; Paid to the Village of Hudson Falls \$160.00; Paid to Ag & Markets for Population Control \$147.00

Town Comptroller for December – Revised/Tentative – Receipts \$41,296.13; Disbursements \$123,757.28; January: Receipts \$1,830,316.25; Disbursements \$1,816,172.85

Town Justice; Fees Collected in January: \$21,765.75

Assessor Sales Report for January

#### PUBLIC COMMENT:

Jerry Caruso asked if the communication received from the IDA was in regard to the Town's decision for a PILOT request. Supervisor Hogan responded it is and could provide a copy of what was received.

A **motion** by Councilman Doyle seconded by Councilman Washburn and carried by a vote of 5 ayes to enter into an executive session at 7:35 pm to discuss the employment of a particular person and a pending legal matter. Code Enforcement Officer Ross Cortese was asked to remain for the executive session.

A **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes to exit the executive session at 8:57 pm.

Supervisor Hogan reported Water Superintendent James Chase had been working on the toilets in Town Hall because they do not flush well. Mr. Chase had some recommendations for pricing for materials and to replace the toilets at a cost of approximately \$1,200.00. Councilman Washburn has offered to follow up with Mr. Chase.

There being no further business before the Board a **motion** by Councilman seconded by Councilman and carried by a vote of 5 ayes to adjourn the meeting at 8:58 P.M.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk