

# Town of Duluth

## Ordinance 011196 Habitually Barking Dogs

**Section 1. Purpose and Intent.** The Town has for a number of years regulated dogs in the Greenwood Beach platted area, but has had no ordinance regarding dogs outside that area. The Town has decided that it has neither the personnel nor the resources to extend the Greenwood Beach Dog Restraint Ordinance to the Township as a whole.

However, increasing population outside the Greenwood beach area has created problems with habitually barking dogs, which seem to be a relatively frequent concern for Town residents.

It is the intent of this ordinance to provide a procedure by which complaints of habitually barking dogs can be brought to the Town's attention, by which a determination can be made of whether the dogs are or are not a nuisance, and to provide a system of fines and penalties for owners who harbor dogs that have become a nuisance by habitual barking.

**Section 2. Authority.** The Town has authority to enact this ordinance pursuant to Minn. Laws 1971 Ch. 746 (granting special powers to the Town of Duluth including the powers to by ordinance regulate the keeping of animals and to define nuisances and provide for their prevention and abatement) and Minn. Stat. §366.01, subd 10 (allowing town to prescribe penalties for violations of ordinances).

**Section 3. Definitions.** As used in this ordinance, the following words have the following meanings: "Dog" means both the male and female of the canine species, and includes dogs located anywhere within the Town of Duluth, except for the Greenwood Beach platted area (which is subject to the Greenwood Beach Dog Restraint Ordinance). Unless the context indicates otherwise, the singular includes the plural.

"Nuisance by habitual barking" means that the dog, by repeated and persistent barking, has become a nuisance to citizens of the Town by unreasonably disturbing their peaceful enjoyment of their property. In determining if a dog has become a nuisance by habitual barking, the standard of a reasonable neighbor/complainant rather than the standard of a hyper-sensitive neighbor/complainant shall be used. In determining if a dog has become a nuisance by habitual barking, it should be kept in mind that the Town (outside the Greenwood Beach area) remains principally rural and that, in rural areas, there are times and occasions when it is appropriate for dogs to bark. The standard is not simply that a dog barks but that the dog, by repeated and persistent barking, has become a nuisance and is unreasonably disturbing neighboring property owners or renters.

"Town" means the Town of Duluth.

"Board" means the Board of Supervisors of the Town of Duluth or, if the context so indicates, the board that is hearing the complaint.

"Peace Officer: means a peace officer of the Town of Duluth.

"Dog owner" means anyone owning a dog or harboring or keeping a dog.

**Subdivision 4. Complaint.** Any person may give the peace officer a *written* complaint of a habitually barking dog. The peace officer shall *not* act under this ordinance unless given a written complaint. The complaint must reasonably identify (1) the dog (2) the dog's owner or apparent owner, (3) the owner's address, and (4) what specific facts lead the complainant to believe that the dog has become a nuisance by habitual barking specifying as far as possible the dates, times, and particularities of the barking. The complaint must be signed by the complainant or complainants, and give the complainant's address and telephone number.

**Subdivision 5. Peace officer's investigation and attempt to mediate the problem.** Upon receiving such a written complaint, the peace officer shall investigate as he or she deems necessary, including speaking with the complainant, the dog owner, and any neighbors who might be affected or reasonably supposed to be affected. The peace officer should, upon the conclusion of the investigation, attempt to informally reconcile the situation between the complainant and the dog owner. If, in the peace officer's judgment, the situation cannot be informally reconciled, the peace officer shall present the complaint to the Town Clerk.

**Subdivision 6. Notice of Hearing.** Upon receipt of the written complaint from the peace officer the clerk shall contact the board members to set a date and time for the hearing. The hearing is subject to the Open Meeting Law, and therefore at least three days posted notice of the hearing must be given to the public. Upon setting a date and time for the hearing, the clerk shall send written notice of the hearing to the complainant(s) and the dog owner. The notice should be substantially in the following form:

PLEASE TAKE NOTICE that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock\_\_\_\_,m., a hearing will be conducted at the Duluth Town Hall to determine whether, in accordance with a copy of the attached complaint, the dog described in the complaint has become a nuisance by habitual barking in accordance with Ordinance 011196, a copy of which is also attached.

The hearing officials will be the members of the Town Board or their designees.

If it is determined that the dog is a nuisance due to habitual barking, further incidents of habitual barking may result in the owner being subjected to fines and penalties.

You are expected to present at the hearing any witnesses or documents upon which you rely. Failure to appear at the hearing may result in the board finding against you.

A copy of the complaint and of this ordinance shall be attached to the notice.

To afford notice to the dog owner and to allow compliance with the Open Meeting Law, the hearing should not take place until at least seven days after the notice is mailed. To afford a timely hearing to the complainant, the hearing should, if at all possible, take place within 14 days after the mailing of the notice.

If a board member or members are not available to hear the matter within the time frame in the preceding paragraph, any board member may appoint a designee to sit as a board member at the hearing, as long as the designee is not interested in the outcome of the hearing.

If any board member is interested in the outcome of the hearing, the board member shall either (1) appoint a disinterested designee or (2) disclose his or her interest and, if the remaining board members believe the interest creates a conflict of interest, they shall appoint a disinterested designee to replace the interested board member at the hearing.

**Subdivision 7. The Hearing.** The board is in control of the manner of proceeding at the hearing. The board shall hear such evidence as the owner and complainant present, but is entitled to curtail the proceeding and disallow evidence that is redundant, cumulative, or irrelevant to the question of whether the dog has become a nuisance by habitual barking. The board has the right to enforce order at the hearing, including expelling anyone from the hearing for disruptive behavior. Formal rules of evidence shall not apply at the hearing. A party may appear by an attorney. The board may consider the peace officer's investigation and attempts at mediation, either upon oral testimony from the peace officer or by written report.

The board may tape-record the proceedings or have minutes kept. The board may require parties to testify upon oath.

The burden of persuasion at the hearing shall be upon the complainant. In other words, at the end of the hearing if the board feels that it is unable to determine whether the dog is or is not a nuisance by habitual barking, the board shall find against the complainant and determine that the dog is not a nuisance by habitual barking.

**Subdivision 8. The Decision.** The board shall, within 14 days of the conclusion of the hearing, decide whether the dog is or is not a nuisance by habitual barking. The decision will be mailed to both the complainant and the dog owner.

The decision shall be made by a majority of the board members.

If the decision is that the dog is a nuisance by habitual barking, the dog owner shall be notified by mail that the dog's continued habitual barking shall be a violation of this ordinance.

If the decision is that the dog is not a nuisance by habitual barking, the board has the right in its discretion to refuse for one year to hear another complaint by the same complainant against the same dog owner regarding the same dog.

The board may, but is not required to, issue a formal written decision with findings of fact and reasons for its determination.

**Subdivision 9. Violations.** Any owner who, after notification that the dog is a nuisance due to habitual barking, continues to allow the dog to habitually bark creating a nuisance is in violation of this ordinance.

The penalties for violation of this ordinance are as follows:

1. First Violation: \$100.00
2. Second Violation: \$300.00
3. Third Violation: \$500.00

Any violation after the third violation will be punishable by a fine of \$500.00. The town may also recover its court costs, disbursements, and attorney fees if otherwise allowed by law in connection with any prosecution under this ordinance.

After the third violation, the dog may be impounded in addition to the imposition of any applicable fine. The owner shall be required to pay all lawful charges of the pound in connection with its retention of the dog prior to redemption of the dog by the owner, including fees of the impounder, charges for maintenance and keeping of the dog, inoculations, or other lawful fees. The owner shall also be required to reimburse the town for the reasonable value of the time expended by peace officers in transporting the dog to the pound, as well as any damage to the peace officer's vehicle or property caused by the dog.

In addition to the penalties provided above, the board may upon any violation of this ordinance direct the town attorney to sue the dog owner on behalf of the town in an attempt to gain an injunction against the nuisance, together with any costs, disbursements, fees or other relief that the court might grant.

**Subdivision 10. Effective Date.** This ordinance shall be in force and effect on and after the 12<sup>th</sup> day of January, 1996, and shall apply to any incidents of barking dogs that occur after that date; provided, however, that incidents of barking occurring before the effective date of this ordinance may be considered to determine whether the dog has a long-standing or habitual history of barking.

Richard Bakke  
Chair, Board of Supervisors  
Town of Duluth

I, Linda Hauge, hereby attest that  
This ordinance was adopted at a  
Town Board Meeting held on the  
11<sup>th</sup> day of January, 1996.

Linda Hauge  
Clerk, Town of Duluth