

Town of Badin Ordinance 14-2

AN ORDINANCE AMENDING AND RESTATING ORDINANCE 09-4 AUTHORIZING PROTECTIVE MEASURES FOR CONFINEMENT OF DOGS

WHEREAS, the Town Council of the Town of Badin deems it to be in the best interest of the health and safety of the citizens of Badin to have measures for confinement of dogs within the Town of Badin;

THEREFORE, BE IT ORDAINED by the Badin Town Council as follows:

Section 1: Circumstances requiring special preventive measures. Any officer of the Badin Police Department shall have the authority to require the owner or custodian of a dog to comply with specific preventive measures, as described in Section 2, after taking into consideration the following three (3) circumstances: This provision shall not limit the authority of the Badin Police Department to declare any animal vicious and order its removal from the town limits.

A. Nature of the particular dog. The behavior, size, temperament, breed, capacity for inflicting serious injury, the number of dogs or other such similar factors which would be relevant to a determination of whether or not additional preventive measures need to be imposed for a particular situation; and

B. Adequacy of confinement. The adequacy of the enclosure or confinement, if any; and

C. Immediate surrounding area. The likelihood that the conditions pertaining to the particular dog and the dog's confinement are detrimental to the safety or welfare of citizens or the peace and tranquility of citizens in the immediate surround area.

(1) A person who knowingly restrains a dog using a chain or wire grossly in excess of the size or weight necessary to restrain the dog safely or other type of tethering device in violation of this section is subject to legal enforcement action.

(2) No person shall tether, fasten, chain, tie, or restrain a dog, or cause restraining of a dog, to a tree, fence, post, stake, dog house, or other stationary object for more than nine (9) hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, any tethering device used shall be at least 15 feet in length and attached in such manner as to prevent strangulation or other injury to the dog and prevent entanglement with objects stationary or otherwise. Further, any device to which a dog is tethered must allow the dog otherwise unrestricted motion without entanglement to said device.

(3) No person shall tether, fasten, chain, tie, or restrain a dog, or cause restraining of a dog, to a tree, fence, post, stake, dog house, or other stationary object on the street-facing, front section, front parcel, front yard or front porch of the dog owner's property.

(4) No person shall confine a dog in such a way that causes the dog to affect or impede any public walkway, thoroughfare, gathering area, or any property not owned and controlled by the dog owner.

(5) No person shall attach a chain or wire or other tethering device to, cause such attachment to, a choke-type or pronged collar on a dog.

(6) No person shall confine a dog in a manner that does not allow the dog access to potable water and adequate shelter and shade.

(7) Notwithstanding the provisions of subsection (2) of this section, a person may, subject to the provisions of subsections (3) and (4) of this section:

(7a) Tether and restrain a dog while actively engaged in:

1. Use of the dog in shepherding or herding livestock, or

2. Use of the dog in the business of cultivating agricultural products, if the restraining is reasonably necessary for the safety of the dog, or

3. Use of the dog in lawful hunting activities if the restraint is reasonably necessary for the safety of the dog.

(7b) After taking possession of a dog that appears to be a stray dog and after having advised animal control authorities of the capture of the dog, tether and restrain the dog during such time as the person having taken possession of the dog is seeking the identity of the owner of the dog.

(7c) Walk a dog with a handheld leash.

(8) Restraining a dog in a manner prohibited by this section constitutes cruelty as defined in G.S. 19A-1(2) and violates humane care of animals as defined in Stanly County Animal Control Ordinance 82-4.

In considering whether to order a special preventive measure, an officer of the Badin Police Department is authorized to consider additional factors as aggravating circumstances that might warrant the ordering of special preventive measures:

A. Child under the age of seven. There is a child under the age of seven who lives in such close proximity, or children walk by or are otherwise in close proximity, to the property occupied by the dog; or

B. Bite. The dog has bitten a human being or domestic animals without provocation or without a trespass, and the person bitten does not ordinarily reside on the premises; or

C. Dog trained for fighting or aggressive attack. The dog is kept primarily or in part for the purpose of dog-fighting or the dog has been trained for aggressive attacks; or

D. Attitude of attack incident. A dog, without provocation or a trespass, has approached a person in an apparent attitude of attack; or

E. Reputation of a dog. The individual dog has a known propensity, reputation or tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

F. Dangerous Animals. Any animal whose behavior constitutes a reasonable risk of injuring a human or animal or damaging personal property. That behavior includes, but is not limited to, an animal's biting or attacking or attempting to attack a human or another animal. However, this definition shall not apply to any animal that has been subject to provocation or if the victim has been trespassing, as defined herein, upon the animal owner's premises.

Section 2: Preventive measures. If the Police Chief determines that the circumstances require special preventive measures, then the Badin Police Department shall have the authority to require appropriate, specific preventive measures which might include, but are not limited to, the following: necessary repairs for any fence or enclosure, measures to ensure that a gate will remain closed, a "fence" or "secure dog fence" as described below or any other similar device such as electronic electric fence that would provide greater assurance for the confinement of the dog, all of which are subject to being specifically approved for their adequacy by the Badin Police Department.

A fence shall be at least a minimum of four (4) feet high and constitute a secure-enough enclosure sufficient to contain the dog at all times. The minimum size of the enclosure may be at least one hundred twenty (120) square feet. If the dog is over fifteen (15) inches at the shoulder or deemed capable of climbing a standard four-foot fence, then the Police Chief may require a six-foot fence or may require up to (160) square feet enclosure. The location of the enclosure shall be at the approval of the Police Chief.

A secure dog fence means a fence, as immediately described above, that may also be enclosed on all six (6) sides including the top. The bottom may be concrete unless the sides of the fence are buried one foot deep in a hard packed soil. Any reference to "fence" or "secure dog fence" shall be defined as stated immediately above.

The Badin Police Department shall also have the authority to require the owner to tattoo the dog at the owner's expense if that is necessary for identification, investigative or enforcement purposes.

The Badin Police Department shall have the authority to require the owner to procure liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) at the owner's expense, or to have the dog tattooed or to display a sign on the premises warning of the dog on the premises.

The department shall have the authority to require the owner to show signed written statements about maintaining the liability insurance, the designated enclosure for the dogs and the duty to notify the Badin Police Department if the dog escapes, and to require the owner to give the Badin

Police Department the authority to seize and impound the dog if the owner fails to comply with the provisions.

The Police Chief shall have the authority to waive any or all of these requirements if the Chief determines that a bite is inconsequential or that there is no necessity for action.

Section 3: Written order. If the Police Chief determines that specific preventive measures must be complied with by the owner of a dog, the Badin Police Department shall make reasonable efforts to notify the owner of the written order, state the reasons that preventive measures are required, identify the specific preventive measures that must be implemented and state the designated time period within which to comply with the written order. The Badin Police Department shall have the authority to exercise discretion for extensions of time if that is reasonable in view of the good-faith progress of the owner in implementing the preventive measures.

Section 4: Failure to comply with written order. It shall be unlawful for an owner to fail to comply with a written order within the designated time for compliance stated in the written order or any extension thereof. Failure to comply with the written order shall be one hundred dollars (\$100.00). The Badin Police Department shall have the authority to issue additional one hundred dollar (\$100.00) citations for a continuing failure to comply with a written order.

Section 5: Owner's challenge to the written order. The owner may submit in writing a challenge to the Badin Police Department's determination that Section 1 is applicable to the owner's premises or submit in writing a challenge to the specific preventive measures required by the division. The owner's written challenge must be received at the office of the Town Manager at 36 Falls Road, during normal working hours, five (5) days from the date of the written order, not counting the day of issuance of the written order. The Town Manager or a designee shall review the written challenge. The review of the challenge may be done on the basis of the written material and information received from the Badin Police Department regarding the order. The person reviewing the challenge shall have the authority to make findings of fact and conclusions in respect to the written order. The decision, the written order and any findings of act and conclusions shall be final with the only other appeal made to the general courts of North Carolina.

Section 6: Special Condition of Probation for Certain Drug-Offenders. As a special condition of probation, a defendant who is convicted of a felony offense under G.S. 90-95 and who is sentenced to community punishment, intermediate punishment or other incarceration or probation shall not possess a dog that weighs more than 14 pounds and shall not possess a dog that weighs more than 14 pounds either on the premises of his or her residence or dwelling or in a motor vehicle that the defendant is driving.

Section 7: Size limitation on dogs that a drug felon may own or have on residential premises:

A. Notwithstanding any other provision of law, it is unlawful for any person who is convicted of a felony under G.S. 90-95 to do any of the following:

(1) Possess a dog that weighs more than 14 pounds, or

(2) Possess a dog that weighs more than 14 pounds either on the premises of his or her residence or dwelling or in a motor vehicle that he or she is driving. The prohibition imposed by this section applies for a period of six years after the person has completed the sentence imposed on the person for the felony conviction under G.S. 90-95.

B. If a person violates this section, then the person is guilty of a Class 3 misdemeanor punishable only by a fine of two hundred fifty dollars (\$250.00) for a first offense, five hundred dollars (\$500.00) for a second offense, and one thousand dollars (\$1,000) for a third or subsequent offense.

C. In addition to any penalty imposed pursuant to subsection (B) of this section when a person is convicted of a violation of this section, the six-year prohibition imposed under subsection (A) of this section shall restart and shall run a full six years from the date of the person's conviction under this section.

Section 8: Seizure and disposition of animal. The Badin Police Department is authorized to request Stanly Animal Control to seize any animal in violation as provided.

Section 9: Dogs at large and confinement of dogs.

DEFINITIONS. As used in this Article, the following terms shall have the meanings set forth below:

(A) **DOG:** Any and all domestic canines.

(B) **AT LARGE:** Any dog out of compliance with Section 1 (H), and not under physical restraint.

(C) **IN ESTRUS:** A female dog in what is commonly called "heat."

(D) **NIGHTTIME:** The time from one-hour after sunset until one hour before sunrise.

(E) **OWNER:** Any person, group of persons, firm, partnership or corporation owning, keeping, having charge or taking care of any animal or allowing any animal to remain on their property for one hundred twenty (120) hours.

(F) **OWNER'S PROPERTY:** The owner's property is that area described in a deed of conveyance or the area described in a lease. In a situation involving townhouses or condominiums, Animal Control will treat the "Common Areas" as being owned by the Homeowner's Association. In a situation involving leased apartments, Animal Control will treat the "Common Areas," as being owned by the Lessor/Property Owner.

(G) **PRIOR COMPLAINTS:** For purposes of this Ordinance, any prior verbal or written complaint to Animal Control about a specific dog being at large, or any verbal or written complaint about any dogs of an owner being at large, shall constitute a prior complaint.

(H) **RESTRAINT:** A dog is under restraint if it is:

(1) inside a secure enclosure that is size appropriate for the dog contained with sides of sufficient height and depth to prevent the animal from jumping, climbing or digging out of the enclosure;
or

(2) inside the primary residence of the owner/harbinger when on the owner's/harbinger's property;
or

(3) controlled by a leash of sufficient means to restrain the dog and under control of a competent person when outside a secure enclosure or home; or

(4) inside an area on the owner's property secured by a functional, properly maintained electronic fencing device; or

(5) within the passenger area of a vehicle, restrained in a safe manner to prevent the dog from jumping over the sides or out of an open bed truck, or in a secure enclosure on a vehicle or trailer; or

(6) under the control of a licensed hunter while said dog is in the act of hunting or training for hunting as regulated by the N.C. Wildlife Resources Commission; or

(7) participating in an animal show, competition or field trial; or

(8) sufficiently near the owner or a competent handler on the owner's property to be under his/her direct control while playing with or socializing with the dog and the dog is obedient to that person's commands; or

(9) tethered by means of a size appropriate chain, cable or like device not less than 8 feet in length with swivel fasteners at both ends of the tether. Tethers shall be fastened to a collar (not choke or pinch collar) or harness on the dog and attached to a D-Ring on the collar or harness. It shall be unlawful to tether a dog in such a manner as to cause injury or pain, or not permit it to reach shelter, food and water; or

(10) on the owner's property that is three (3) acres or greater and remains under the control of their owner on that parcel of land. Under these conditions, the dog does not have to be actively restrained by means of a fence, tether, or other secure enclosure if control can be maintained and the dog restricted to the owner's property.

An animal control officer may, at their discretion, order a more restrictive restraint requirement if circumstances require and it is not detrimental to the health, safety or welfare of the dog.
Exemptions: Law enforcement working canines, service dogs, search and rescue dogs, HRD (Human Remains Detection) dogs.

(D) PRIVATE REMEDIES. Nothing in this Article shall prevent a private citizen from suing the owner of a dog, which has caused injury to said private citizen or his property for damages or any other loss resulting from a dog being at large.

Section 10: Interference. It shall be unlawful for any person to interfere with, hinder, or molest an employee of the Town of Badin, Stanly County Animal Control or any other person duly authorized by this Ordinance while in the performance of duty. It shall also be unlawful for any person to seek release, or attempt to release, or to release any animal in the custody of the Town

of Badin or Stanly County Animal Control except as otherwise specifically provided in this Ordinance. The Town of Badin or Animal Control Officer may initiate the issuance of a criminal warrant for any person violating this Article. If convicted, the person shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars (\$500.00) or imprisonment for not more than six (6) months.

Section 11: Civil Penalties. The Badin Police Department and Stanly County Animal Control are authorized to assess civil penalties for violations of this Ordinance. The Town of Badin and Stanly County Animal Control may attempt to collect any assessed civil penalty that is not paid within 20 days of its issuance via the filing of a civil action and/or the use of a collection agency to the extent permitted by applicable law(s). Civil penalties shall be assessed on a “per animal, per occurrence” basis.

A. Animals Running at Large:

1st Time; \$50.00

2nd Time; \$75.00

3rd Time; \$100.00

4 or More Times; Court Proceedings

B. Animal Public Nuisance:

1st Time; \$50.00

2nd Time; \$75.00

3rd Time; \$100.00

4 or More Times; Court proceedings

C. General Violations:

Dangerous Animal Violations; \$500.00

Violation of Inherently Dangerous Exotic Animal Article \$500.00 plus costs of seizure, if applicable

Interference with Officer; \$500.00

Interference with Trap or Cage; \$100.00

Damage or Neglect to Dog Trap; \$250.00

Damage or Neglect to Cat Trap; \$150.00

Unspecified Violations of the Ordinance (Each); \$50.00

This Ordinance was duly passed by the Badin Town Council on the 9th day of September, 2014.