

S. Wagar: I send out a renewal notice every year, I'm having an issue where people aren't renewing but the dog still has the tag on them so when the Dog Control Officer responds to a call and sees a tag she assumes the dog is licensed instead of checking to see if it has been renewed. I do have a resident in town that has two dogs, one of the dogs have passed away and he has that dogs tag on the new dog and it's not issued to that dog. I am not sure if we can make a fee for being late or a certain amount of time.

C. Crist: just remember if you set a fee in a local law you would need anything local law to change that fee, it's best to set fees by resolution, we put fees in here but included a provision that states fees can be set or changed by resolution. Some of the fees we have go back to the 1970s.

L. Eckhardt: real sharp line between the licensure and control law.

C. Crist: correct, the licensure law ensures the dog has its shots.

L. Eckhardt: spoke to other town supervisors and they sent out a strong letter regarding dogs being licensed. We probably have 30% of dog owners actually have their dogs licensed.

R. McClave: had an incident where a child was bit, called the Dog Control Officer and refused to come. Had no information on the dog whether it had its shots or not. State police showed up we got control of the dog.

C. Crist: normal municipalities have Animal Control Officers who would respond and hold the dog or animal.

G. Robinson: the health department would have to retain the dog for 10 days, who would hold the dog?

C. Crist: municipalities would contract out to pounds or shelters

L. Eckhardt: where would that be in this law?

C. Crist: that would be in the control law Section 5 where the majority of the changes are, including the duties of the Dog Control Officer.

R. McClave: all the officers in the Fire Department are considered Peace Officers so does that mean we can act?

C. Crist: yes, but are not required to help, just like the constable he is considered a Peace Officer but these duties are not considered their duties when you have a dog control officer to do them.

L. Eckhardt: she should have responded and taken the dog since it had no license.

C. Crist: difference between seizer and evidence, provided a memo the goes through a variety of ways a dog can be seized. References II 1. on memo, Gerry looked at the whole bonding process there is no reason the town should have to fork up this kind of money.

Material referenced from Memo:

1. The Seizure Mechanisms

There are five general mechanisms by which law enforcement personnel may lawfully "take possession" of an animal. However, it is important to note that all post-seizure mechanisms provided in the AGM do not apply uniformly to each of the seizure mechanisms detailed

below. Thus, it is important to recognize that the choice of seizure mechanisms “might bind the animal(s) in question to a specific procedural path or fate.” Notably, when “possession is taken” pursuant to AGM 373, certain disposition provisions and procedures of AGM 374 are activated.

The five general seizure mechanisms are:

1. Warrantless seizure from a public place (AGM 373(1)).
Quite simply, police and SCPA offices may take possession of any “lost, strayed, homeless or abandoned animal found in any street, road or other public place.” (AGM 373(1)). This is broad authority to capture any animals that are on the loose. No criminal charges are required to be filed in order for certain of the AGM 374 civil dispositions to ensue (AGM 374(1)- immediate humane euthanasia or 374(2) lawful adoption or humane euthanasia after five days).
2. Court-authorized seizure from a privately-owned space (AGM 373(2)).
If certain conditions as more fully detailed therein (AGM 373(2)) (unhealthy conditions or not properly cared for and same persists for more than twelve hours) a court ordered warrant for the seizure of the animal may be issued.
3. Owner consent to seizure (AGM 373(3));
(AGM 373(3)) allows the taking of possession of an unwanted animal from a person in the possession of or custody of the animal. The transfer of possession will trigger a five-day period for the owner to come forward and redeem the animal from law enforcement else adoption or euthanasia may ensue.
4. Seizure incident to arrest (AGM 373(4));
(AGM 373(4)) allows seizure pursuant to an arrest. It applies equally if the animal was the victim of cruelty or if an otherwise healthy dog happens to be with a person who gets arrested.
5. Municipal seizure (AGM 373(5)).
This section “preserves the rights of an individual SCPA under any other special or general law” and “likewise clarifies that the passages of section 373 are not intended to supersede or alter the powers of dog control officers and municipalities given under Article 7 of the Agriculture and Markets Law.” Practice Commentaries.

It is therefore worth detailing the powers that are given under section 117 of Article 7 if the AGM. That section provides both a seizure power thereunder as well as authorizes seizure in violation of any municipalities local laws. We also have certain powers under the Town’s existing Dog Control Law.

AGM 117(1) provides:

1. *Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under the contract to a municipality shall seize:*
 - (a) *any dog which is not identified and which is not on the owner’s premises;*
 - (b) *any dog which is not licensed, whether on or off the owner’s premises;*
 - (c) *any licensed dog which is not in the control of its owner or custodian or not on the premises of the dog’s owner or custodian, if there is probable cause to believe the dog is dangerous;*
and
 - (d) *any dog which poses an immediate threat to the public safety.*

Promptly upon seizure the dog control officer shall commence a proceeding as provided for in subdivision two of section one hundred twenty-three of this article.

As noted above, AGM 117(2) allows for seizure for any violations of local laws or ordinances adopted by any municipalities.

These seizure mechanisms apply generally to police officers and society for the prevention to cruelty to animals (SCPA) officers, however, police officers may be addresses of warrants under the Criminal Procedure Law and peace officers (which includes SCPA officers) may not, giving the police officers an additional search and seizure mechanism.

Article 7 has its own notice and related requirements prior to euthanasia and adoption and should be consulted for seizures thereunder.

I. The Mechanisms to Finance the Care and Boarding of An Impounded Animal

1. Costs to the County.

Seizure method 4, above, seizure pursuant to arrest, provides that animals seized pursuant to arrest may be “deliver[ed] ... into the possession of the police or sheriff in the county or place wherein such arrest was made.” AGM 373(4). The County Sheriff must “thereupon assume the custody” of any such animals, and “all necessary expenses incurred in taking charge of such property shall be a charge thereon.” AGM 373(4).

2. Costs to the Seizing Authority.

If not deposited with the County, the seizing authority may also take direct possession of the animal. AGM 373(1-4). In the case of a seizure pursuant to arrest per AGM 373(4), the seizing authority may alternatively “deposit” the animal in an unspecified “safe place or custody.”

Animals seized pursuant to AGM 373(6), labeled “the reverse-warrant procedure,” may be ordered by a court to be “place[d] ... in the custody of the [seizing] officer or other proper person ... to be by him kept until the trial or final discharge of the offender” *When the seizing authority is the police this is a seizure per arrest as detailed above.* However, when it is an SCPA, humane society, pound, other “safe place,” or other “proper person,” and no other costs of impoundment were utilized, the costs of impoundment would remain on the seizing authority. The authority could seek to curtail those expenses by a court action.

3. Costs to the Defendant by Means of a Court-Ordered Security Bond.

In 1997, after the Town had already passed Local Law Number 1 of 1993 (entitled “Dog Control Law”) a provision was added to the NYS Agriculture and Markets Law whereby an “impounding organization” (who is articulated to be an SCPA, humane society, pound, animal shelter or authorized agents thereof), could, in connection with a criminal proceeding, file a petition that, if granted, would grant them a subsidy for expenses for the care and boarding of any impounding animals- such subsidy being financed by the person from whom the animals were seized.” Practice Commentaries citing AGM 373(6).

The failure to post the court ordered subsidy could result in the permanent forfeiture of the animal to the impounding organization and therefore provides an additional mechanism of permanent forfeiture of custody to an impounding organization.

To utilize this provision, there needs to be a criminal charge filed and the petition is to be filed by the “impounding organization” that expects to incur financial expense relating to the “medical care and boarding” of such impounded animals. The hearing is set for within ten business days. At the hearing “the petitioner or district attorney as agent” (Practice Commentaries) has the burden of proof and must carry this burden by a preponderance of the evidence (meaning at least 51%) as to the matters set forth in the statute. The security is to be for a minimum of thirty days. Note that if the charges are dismissed or there is an acquittal the person gets all of the money they posted back, even the funds expended on the dog.

4. Costs to the Defendant by a Court-Authorized “Impoundment in Place”.

This provision allows a court to “order a person charged with any violation of [Article 26] to provide necessary food, water, shelter and care for any animal from its existing location until

the charges against the person are adjudicated.” AGM 373(7). The court can authorize regular visits by law enforcement to the property.

II. The Seizure Mechanisms

Not all entities have disposition authority. The police usually do not.

1. Disposition to Abate Suffering by Euthanasia.

AGM 374(1) allows the destruction of the animal, regardless of any opportunity for redemption under the authority of a “duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, any dog control officer, or any police officer” if the animal is “so maimed, diseased, disabled, or infirm so as to be unfit for any useful purposes,” and provided that certain documentation has been obtained.

2. Disposition by Euthanasia Regardless of Suffering.

If the animal was seized pursuant to AGM 373, even without the dog being essentially maimed or wasted beyond repair, euthanasia other than to abate suffering, is permitted after a five-day waiting period may be undertaken by a “duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, or any pound maintained by or under contract or agreement with any county, city, town or village ...”

3. Disposition by Owner Redemption

Per AGM 374(2), the owner has a five-day period to redeem any animal seized pursuant to AGM 373.

4. Disposition by Adoption

If the animal was seized per AGM 373 and the five-day period to redeem has passed, the animal may be adopted or transferred for adoption.

5. Disposition by Owner Return

An owner can have the animal returned through a successful replevin action, the acquittal or dismissal of criminal charges that were the basis of the seizure and other avenues. In the event of an acquittal or dismissal of the charges the owner also gets a full refund of the security it posted, even the amounts the court allowed it to expend which have been expended.

6. Disposition by Judicial Order After Conviction

Upon conviction of any of the following sections of the AGM: 351, 353, 353-a, 353-b, 355, 356, 359, 360, 361, 365 or 368, the court may hold a hearing to determine whether the animal or animals which were the “basis of the conviction” should be forfeited to a SCPA or humane society. It is in essence a sentencing hearing. There are special provisions for farm animals, allowing them to be sold under certain circumstances.

7. Disposition by Judicial Order After Failure to Post Court-Ordered Security.

If the court ordered security is not posted, even prior to the adjudication of the criminal charges, the court “may” order the immediate forfeiture of the animal to the impounding organization.

It should be noted that there are different notice periods and requirements for seizures that are conducted pursuant to Article 7, with those periods and notice requirements set forth in AGM 117(6) as well as rights of euthanasia and adoption that also are provided therein. These GML 117 periods can be shortened but not by less than three days for in person notices and when notice is given by mail no less than seven days.

L. Eckhardt: asked Lynne to release the dog and she stated she needed an order to release the dog.

C. Crist: you never need an order to release a dog, like Judge Meekins stated the dog is no longer evidence once a vet has examined the dog, if the dog is healthy enough to release the dog should be released.

B. Jennings: How do we get the Dog Control Officer present or future to change and follow through with the duties in the law?

G. Robinson: once we updated the law we need to develop a resolution with a job description to follow the law and procedures that guide the dog control officer.

C. Crist: requests executive session to provide the Town Board with legal advice.

Motion: Go into Executive Session 7:39 PM to discuss Attorney client information .

MOTION BY: ECKHARDT

SECONDED BY: JENNINGS

VOTES OF: 3 AYE

0 NAY

Motion: Come out of Executive Session 7:58 PM

MOTION BY: ECKHARDT

SECONDED BY: JENNINGS

VOTES OF: 3 AYE

0 NAY

G. Robinson: we don't have to pass a resolution tonight for these laws?

C. Crist: there's a process.

R. MacClave: what does the law do, for the Officer?

B. Jennings: develop a set of procedures that the dog control officer will have to follow.

G. Robinson: and the fact we have to oversee

B. Jennings: correct and once we have some oversight we will note the rules, then we will have rules that we can hold the Dog Control Officer accountable for and if they don't follow we can remove the dog control officer.

C. Crist: procedure for enacting a law, the first is we have the law in a final form we are content with, call a public hearing with Stephanie's changes, the board would then call for a second public hearing, Stephanie would post and give notice of the hearing to enact the law, Stephanie would sign it and file it with the Department of State, then you have a law.

L. Eckhardt: we will make an announcement at next week's meeting for another Public Hearing.

B. Jennings: at August's workshop meeting to hold another public hearing. We'd rather not do business here, we'd rather do it at our regular meeting.

MOTION TO ADJOURN AT 8:00PM

MOTION BY: JENNINGS

SECONDED BY: ROBINSON

VOTES OF: 3 AYE

0 NAY

****A Workshop Meeting** is held every second Monday of every month at **7:00PM** at the Town Hall.

****The next Regular Meeting** of the Town Board, Town of Stephentown will be held on **Monday, July 17th, 2017** at **7:00 PM** at the Town Hall.

Stephanie M. Wagar

Town Clerk