

ARTICLE III

COMMERCIAL AND/OR NONCOMMERCIAL DOG USE LAW**[amend this title and entire article]**

§ 142-24. Legislative intent and title. It is the intent hereof to require commercial dog boarding, commercial dog breeding, and/or noncommercial dog use proposing to or is operating within the Town of Milo, outside the Village of Penn Yan, an operating permit. The purposes of this permit are to keep a record of such use(s) as well as to assure the healthful and humane treatment of dogs pursuant to law. Lastly, this article shall be known as the "**Commercial and/or Noncommercial Dog Use Law**" of the Town of Milo", hereinafter referred to as "this article."

§ 142-25. Definitions.

A. As used in this article, the following terms shall have the meanings as indicated:

BREEDING FEMALE – A female dog with the capacity to breed. A female dog that cannot be bred due to an ovariectomy (spayed), age, infirmity, illness or other justifiable reason(s) are not included in this definition.

CODE ENFORCEMENT OFFICER – Shall bear the same meaning as "Code Enforcement Officer" that is defined in the Zoning Law.

COMMERCIAL DOG BOARDING – Any use on a lot of record, whether such use is a principal one or otherwise, wherein five (5) or more dogs are boarded for compensation, whether monetary or otherwise, of any kind.

Exemption(s):

1. Animal shelter operated by a municipality.
2. Veterinary facility as defined by the Zoning Law.

COMMERCIAL DOG BREEDING — Any use on a lot of record, whether such use is principal one or otherwise, wherein five (5) or more breeding females, each of which is six (6) months of age or older, are bred for compensation, whether monetary or otherwise, of any kind. Furthermore, all breeding females located at a lot of record shall be considered regardless of ownership.

DOG – Any member of *Canis lupus familiaris*.

NONCOMMERCIAL DOG USE – Any use on a lot of record, whether such use is a principal one or otherwise where five (5) or more dogs are kept or otherwise allowed to reside. The sole purpose or outcome of keeping said dogs shall provide personal recreation, enjoyment or use by the owner not resulting in direct or indirect compensation, profit or gains. Lastly, this use must obtain an operating permit but is not required to be inspected nor comply with the applicable standards for a commercial dog boarding and/or commercial dog breeding use as prescribed herein and/or the Zoning Law.

NYSDAM – New York State Department of Agriculture and Markets.

OPERATING PERMIT – An official document issued by the Code Enforcement Officer of the Town of

Milo that authorizes commercial dog boarding, commercial dog breeding, and/or noncommercial dog use at a lot of record.

TOWN – Shall bear the same meaning as “Town” that is defined in the Zoning Law.

TOWN BOARD – Shall bear the same meaning as “Town Board” that is defined in the Zoning Law.

USDA – The United States’ Department of Agriculture.

ZONING LAW – The Zoning Law of the Town of Milo, as currently in effect and as hereafter amended from time to time.

- B. All other words and phrases used in this article shall have, for the purpose of this article, the meanings respectively ascribed to them by Article 26-A of the Agriculture and Markets Law (Care of Animals by Pet Dealers), Article 35-D of the General Business Law (Sale of Dogs and Cats) and the Federal Animal Welfare Act (7 U.S.C. § 2131 et seq.), as currently in effect and as hereafter amended from time to time.

§ 142-26. Operating permit.

- A. Designated approval authority. The Code Enforcement Officer is hereby appointed by the Town Board as the designated approval authority as it pertains to denying or granting an operating permit as set forth in this article.
- B. Operating permit required. An owner who intends to operate a commercial dog boarding, commercial dog breeding, and/or noncommercial dog use shall first make an application to the Code Enforcement Officer and obtain an operating permit.
1. Vested rights. This article shall not abrogate or restrict any vested rights in the continuation of an existing commercial dog boarding, commercial dog breeding, and/or noncommercial dog use, or any permissible activities therein. However, any addition and/or change to such existing use shall comply with the applicable provisions of this article.
- C. Application. An owner applying for an operating permit required by this article shall submit a complete application to the designated approval authority, along with any applicable fee and payment of incurred costs. Such application shall be in writing on a form furnished by the Town for that purpose. At a minimum, such application shall contain all of the following:
1. The owner’s name and address, and the owner’s signed consent to the filing of this application; and
 2. Identify and describe the use to be covered by the operating permit for which an application is made; and
 3. Description of the land on which the proposed use is to be operated by legal description, address or similar description that will readily identify and locate the proposed use; and
 4. A site plan; and

5. Document(s) that indicate and describe the proposed use is compliant with any applicable law (e.g., standards prescribed within the Zoning Law, regulations required for a pet dealer license as mandated by NYSDAM, etc.); and
 6. Give such other data and information as required by the designated approval authority.
- D. Site plan. The application for an operating permit shall be accompanied by a site plan showing the size and location of the proposed use as well as distances to lot lines. The designated approval authority is authorized to waive or modify the requirement for a site plan when the application for an operating permit is for an action where such plan is not warranted.

Exception(s):

1. A site plan is not required for a noncommercial dog use.

E. Action on the application.

1. General. The designated approval authority shall examine applications for an operating permit and amendments thereto within a reasonable time after filing. If the application or any attached documents do not conform to the requirements of this article, the designated approval authority shall reject such application in writing, stating the reasons for such rejection. If the designated approval authority is satisfied that the proposed use conforms to the requirements of this article, the designated approval authority shall issue an operating permit as soon as practicable.
2. Qualified consultants. The designated approval authority may refer an application for an operating permit and amendments thereto to a qualified consultant(s) for a recommendation of acceptability. The cost of such a review shall be at the expense of the applicant.

F. Amendments. Uses shall operate in accordance with the permitted action prescribed in the operating permit, and any changes that are not in compliance with such permit shall be submitted as an amended application if such action is warranted by the designated approval authority. Such authority is authorized to waive the submission of an amended application when the change is:

1. De minimis revisions; or
2. Revisions requested by an AHJ to ensure compliance with its applicable regulations and/or provision of law; or
3. Revisions that comply with any applicable law.

G. Conditions. The designated approval authority may include in an operating permit such terms and conditions as such authority deems necessary or appropriate to ensure compliance with any applicable law.

H. Validity. The issuance of an operating permit shall not be construed to be an approval of a violation of this article nor any law. Permits presuming to give authority to violate or cancel the provisions of this article or any law shall not be valid. The issuance of an operating permit based on a submitted application and other documents shall not prevent the designated approval authority from requiring

the correction of errors in such application and/or documents. The designated approval authority is also authorized to prevent the operation of a use at a lot of record where it is in violation of this article.

- I. Expiration. An operating permit shall expire three (3) years after the date of issuance.
- J. Renewal. An operating permit may be renewed upon application to the designated approval authority, payment of applicable fees, and approval of such application by such authority.
- K. Transferability. An operating permit is not transferable, and any change in occupancy, operation, tenancy or ownership shall require the issuance of a new permit.
- L. Revocation. The designated approval authority is authorized to revoke an operating permit issued under the provisions of this article when it has been determined by such authority that there has been a false statement or misrepresentation as to the material facts in the application on which such permit or approval was based, including but not limited to, any one of the following:
 - 1. The operating permit is used for a lot of record and/or within a structure other than that for which it was issued.
 - 2. The operating permit is used for an activity and/or use other than that listed in such permit.
 - 3. Conditions and/or limitations set forth in the operating permit have been violated.
 - 4. License(s) or other types of approvals required by law (e.g., pet dealer license issued by NYSDAM, APHIS license issued by USDA, etc.) have expired or were revoked.
 - 5. There have been false statements and/or misrepresentations as to material facts in the application.
 - 6. The operating permit is used by a different owner than the one for which it was issued.
 - 7. The owner failed, refused, or neglected to comply with orders or notices duly served in accordance with this article within the time provided therein.
 - 8. The operating permit was issued in error or in violation of an applicable provision of law.
- M. Display of permit. An operating permit shall be displayed in a conspicuous place that is posted near the main exit or exit access doorway of a structure.

§ 142-27. Standards. A commercial dog boarding and/or breeding use shall comply with the applicable general and specific standards prescribed within the Zoning Law.

§ 142-28. Complaints. Complaints shall be administered in accordance with the applicable regulations prescribed within the Zoning Law.

§ 142-29. Fees. An application fee in the amounts set forth in a fee schedule established from time to time by resolution of the Town Board shall be submitted with the application.

§ 142-30. Administrative costs and professional fees. Administrative costs and professional fees shall be administered in accordance with the applicable provisions of the Zoning Law.

§ 142-31. Refunds. Any payment of a fee or administrative cost to the Town is not refundable regardless if an operating permit has been issued pursuant to this article.

§ 142-32. Responsibility of owners.

- A. General. The owner is responsible for compliance with this chapter regardless of any agreement between or among agents, contractors, lessors, operators, occupants, registered design professionals or other person as to which party shall be responsible.
- B. Accuracy of information. The owner is responsible for the accuracy of the information on documents submitted to the designated approval authority for its review and determination. Presentation of a misleading or knowingly false statement on such documents may result in criminal prosecution. This action is considered "Filing a false instrument," which is a violation of § 170.10, Forgery in the Second Degree, of the Penal Law of NYS, as currently in effect and as hereafter amended from time to time.
- C. Transfer of real property.
 - 1. It is the responsibility of the buyer/purchaser of any real property to ascertain whether such property is compliant with applicable laws.
 - 2. The buyer/purchaser shall be responsible for compliance with any lawful certificate, covenant, notice, permit, order, restriction and/or any other written directive from an AHJ regardless of the date of issuance.

§ 142-33. Violations and/or penalties. A violation and/or penalty of this article shall be identical to those prescribed in the Zoning Law.

§ 142-34. Assessment. The failure of any owner to pay any fee, expense incurred by the Town, and/or penalty in connection with the administration and enforcement of this article shall be assessed against the subject lot of record in accordance with the applicable provisions of the Zoning Law.

§ 142-35. Severability. If any clause, sentence, paragraph, section or a part of this article shall be adjudged by a court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or a part thereof directly involved in a controversy in which said judgement shall have been rendered.