

Ordinance No: 7266

Introduced in Council

June 4, 2007

Introduced by:

Robert White, Mary Jean Davis  
Teresa Reed, Betty Morton, Jim Harris  
Harry Deitzler,

Adopted by Council

June 18, 2007

Referred to

Public Safety Committee

Ordinance No. 7266 - A Bill to repeal § 10-1, § 10-2, § 10-3, § 10-4, § 10-5, § 10-6, § 10-7, § 10-8, § 10-9, § 10-10, § 10-11, § 10-12, § 10-13, § 10-14, § 10-15, § 10-51, § 10-111, § 10-112, § 10-113, § 10-114, § 10-115, § 10-116, § 10-117, § 10-118, § 10-119, § 10-120, § 10-121, § 10-122, § 10-123, § 10-124, § 10-141, § 10-142, § 10-161, § 10-162, and § 10-163 of the City of Charleston Code, as amended; and to reenact § 10-1, § 10-2, § 10-3, § 10-4, § 10-5, § 10-6, § 10-7, § 10-8, § 10-9, § 10-10, § 10-11, § 10-12, § 10-13, § 10-14, § 10-15, § 10-51, § 10-111, § 10-112, § 10-113, § 10-114, § 10-115, § 10-116, § 10-117, § 10-118, § 10-119, § 10-120, § 10-121, § 10-141, § 10-142, § 10-161, § 10-162, and § 10-163 and to amend said code by adding thereto § 10-16, § 10-17, § 10-18, § 10-19, and § 10-20, all relating to regulation of animals, including, among other things, the licensure, care, and humane treatment of such animals within the City of Charleston.

WHEREAS, many of the citizens of the City own or harbor a wide variety of domesticated pets as well as animals kept as working or farm animals;

WHEREAS, such animals, by being domesticated pets or kept for working or farm use, are fully dependant upon their owners and keepers for their safety and well-being;

WHEREAS, historically, the City has established ordinances, currently in Chapter 10 of the City Code (the "Animal Ordinance"), regulating, among other things, the licensure, care, and humane treatment of such animals (including domestic dogs and cats) within the City; regulating against such animals being left roaming at-large, creating noise disturbances, and other such nuisances which impact upon the health, safety, and welfare of those living in and visiting the City; and creating restrictions regarding the keeping of known vicious dogs;

WHEREAS, the Kanawha/Charleston Humane Association (the "Humane Association"), by its very nature of business, has direct and extensive experience in dealing with and caring for animals, including domestic dogs and cats;

WHEREAS, after review and analysis of the Animal Ordinance as currently enacted, relevant West Virginia State Code, certain ordinances implemented and enforced by other jurisdictions, and after lengthy discussions with humane officers from jurisdictions with recently modernized animal ordinances, and based upon the Humane Association's own experiences in carrying out its daily business, the Humane Association believes it to be in the best interest of and recommends to the City that it amend and update certain portions of the Animal Ordinance;

WHEREAS, based on the Humane Association's review and recommendations, the enactment of a tethering law would protect dogs from being tied outside in a manner which is cruel and inhumane, and would protect them from being left tethered outside in conditions or for such lengths of time which is cruel and inhumane, and would work to modernize and update the Animal Ordinance;

WHEREAS, the Humane Association and the City agree that the Animal Ordinance can be made a more effective enforcement tool by amending and modifying the provisions relating to, among other thing, the keeping of dangerous or vicious dogs and dogs at large, including modifications of the penalty provisions for the misdemeanor offenses related thereto;

WHEREAS, in proposing amendments concerning the specific topics identified above, it is apparent that certain other amendments regarding licensure, care, and treatment of dogs and cats, and amendments to the penalties provisions of the Animal Ordinance will add additional concomitant tools and benefits for enforcement of the Code, and thereby assist in ensuring the proper and humane care and treatment of animals in the City;

WHEREAS, the various amendments set forth herein will also further the purpose of the Animal Ordinance by educating the public at large through the standards set forth in the Animal Ordinance as revised herein, and through the promotion of direct teaching and training opportunities concerning the humane care and treatment of animals;

**Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:**

That the Council for the City of Charleston hereby repeals § 10-1, § 10-2, § 10-3, § 10-4, § 10-5, § 10-6, § 10-7, § 10-8, § 10-9, § 10-10, § 10-11, § 10-12, § 10-13, § 10-14, § 10-15, § 10-51, § 10-111, § 10-112, § 10-113, § 10-114, § 10-115, § 10-116, § 10-117, § 10-118, § 10-119, § 10-120, § 10-121, § 10-122, § 10-123, § 10-124, § 10-141, § 10-142, § 10-161, § 10-162, and § 10-163 of the City of Charleston Code, as amended; and reenacts § 10-1, § 10-2, § 10-3, § 10-4, § 10-5, § 10-6, § 10-7, § 10-8, § 10-9, § 10-10, § 10-11, § 10-12, § 10-13, § 10-14, § 10-15, § 10-51, § 10-111, § 10-112, § 10-113, § 10-114, § 10-115, § 10-116, § 10-117, § 10-118, § 10-119, § 10-120, § 10-121, § 10-141, § 10-142, § 10-161, § 10-162, and § 10-163 and amends said code by adding thereto § 10-16, § 10-17, § 10-18, § 10-19, and § 10-20, all relating to regulation of animals,

including, among other things, the licensure, care, and humane treatment of such animals within the City of Charleston, to read as follows:

## **ARTICLE I. IN GENERAL**

### **Section 10-1. Administration and Enforcement of Chapter; Interference with Officers.**

(a) It shall be the duty of the humane officer or officers appointed by the mayor pursuant to the provisions of sections 5 and 35 of the city's Charter, with the cooperation of the police and health departments, to administer and enforce the provisions of this Chapter.

(b) The senior humane officer and his assistants shall be uniformed in accordance with the standards recommended by the Kanawha/Charleston Humane Association (hereinafter referred to in this Chapter as "Humane Association") and approved by the mayor.

(c) A humane officer or police officer may pursue and capture any dog found to be running at large as defined in this Chapter. The officer shall have the authority to enter upon private property to effectuate capture. However, the officer shall not enter into any secured fenced area or structure located upon private property unless necessary to prevent harm to persons or animals, or unless consent is obtained from the person in possession of the real property.

(d) No person shall hinder, molest or interfere with any person authorized or empowered to perform any duty under this Chapter; nor shall any person hinder, delay or obstruct the humane officer or police officer in driving or transporting to the public pound any animal to be impounded under the provisions of this Article.

(e) Violators of any section of this Chapter may be summoned to the Municipal Court by a humane officer or a police officer.

(Code 1975, § 4-1)

**Cross references:** Administration, ch. 2.

### **Section 10-2. Poisoning Animals.**

No poisoned meat or any poisonous substance shall be cast into any of the streets, public places or lots or buildings in the city for the purpose of destroying dogs or other animals: provided that it is not the intent of this Section to prohibit the use of poisonous substances for the control of vermin of significance to the public health.

(Code 1975, § 4-11)

Violations of this section shall be subject to the enforcement, adjudication and penalty provisions of Section 10-5.

**State law references:** Malicious killing of animals, W. Va. Code § 61-3-27.

**Section 10-3. Cruelty to Animals.**

(a) Cruel Acts and Conditions Enumerated.

(1) It shall be unlawful for any person:

(A) to willfully and maliciously kill, maim, disfigure or torture any animal, or beat any animal with a stick, board, chain, club, or other object, mutilate, burn or scale any animal with any substance, or drive over any animal, or otherwise cruelly set an animal upon another animal; provided that reasonable force may be employed to drive off vicious or trespassing animals; or

(B) to make accessible to any animal by any means, with the intent to cause harm or death, any substance which has in any manner been treated or prepared with harmful or poisonous substances: provided that it is not the intent of this subsection to prohibit the use of poisonous substances for the control of vermin of significance to the public health; or

(C) to cause, instigate, stage, or train any animal to fight or permit any fight between any animal and another animal or human; or

(D) to fail, refuse, or neglect to provide any animal in his or her charge or custody as owner or otherwise with proper food, drink, shade, care, or shelter: provided that for the purposes of this subsection any animal kept outside shall be provided with structurally sound weatherproof enclosure, large enough to accommodate the animal; or

(E) to drive or work any animal cruelly; or

(F) to abandon any animal within the City Limits (for the purposes of this Section, abandon means for the owner or keeper to leave an animal unattended without demonstrated or apparent intent to recover or resume custody, to leave an animal for more than 12 hours without providing adequate food and shelter for the duration of the absence, or to turn out or release an animal for the purpose of causing it to be impounded); or

(G) to leave an animal confined in a vehicle unattended for more than five (5) minutes in extreme weather conditions, defined as less than thirty degrees Fahrenheit or more than 80 degrees Fahrenheit; or

(H) to transport an animal in the trunk of a vehicle; or

(I) to transport an animal in the open bed of a truck unless said animal is restrained in a cage or on a leash that will prevent the animal from jumping or falling from the vehicle; or



(J) to crop animal ears or dock animal tails except when performed by a licensed veterinarian; or

(K) to give away any live animal, fish, reptile, or bird as a prize for entering, or as an inducement to enter a place of amusement; or

(L) who strikes an animal while operating a motor vehicle, to fail to stop at once and render such assistance as may be possible and immediately report such injury or death to the animal's owner, if any: provided that in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to the Humane Association.

(b) Exceptions: Nothing in subsection (a) of this Section shall be deemed or interpreted to prohibit:

(1) Any action by a licensed veterinarian done in accordance with accepted standards of veterinary medicine; or

(2) Any action taken by a police officer pursuant to the interests of public health and safety.

(3) Any act done in self-defense or done to defend another person or animal.

(c) Violations of this section shall be subject to the enforcement, adjudication and penalty provisions of Section 10-5.

#### **Section 10-4. Tethering of Dogs.**

(a) It is unlawful to attach chains or other tethers, restraints or implements directly to a dog without the proper use of a collar, harness, or other device designed for that purpose and designed to prevent injury to the animal.

(b) No person shall:

(1) Except as provided in subsection (2), tether a dog for more than two continuous hours: provided that tethering of the same dog may resume after a hiatus of three continuous hours; and provided further that the tethering of the same dog shall not be tethered more than five times in a 24-hour period; or

(2) When the outside temperature is equal to or greater than 90° Fahrenheit or equal to or less than 32° Fahrenheit, tether a dog for more than one continuous hour: provided that tethering of the same dog may resume after a hiatus of three continuous hours; and provided further that the tethering of the same dog is allowed no more than five times in a 24-hour period; or

(3) Use a tethering device, including, but not limited to, chain, leash, rope, collaring device, or any assembly or attachments thereto, the weight of which inhibits the free movement of the animal within the area tethered: provided that for the purpose of this subsection, in no event shall the tethering device, including any assembly or attachments thereto, weigh more than 1/8 of the animal's body weight; or

(4) Tether a dog in such a manner as to cause injury, strangulation, or entanglement of the dog on fences, trees, or other man-made or natural obstacles.

(c) For the purpose of tethering a dog, the chain, leash, rope or other tethering device used shall be at least 10 feet in length, unless this length allows the dog to be on property other than the owner's property, or results in a violation of subsection (b)4.

(d) Violation of this Section shall be a separate and distinct offense from the cruelty to animals provisions of Section 10-3. Further, violations of this section shall be subject to the enforcement, adjudication and penalty provisions of Section 10-5.

#### **Section 10-5. Procedures, Penalties and Fines for Sections 10-2, 10-3 and 10-4.**

(a) Any police officer or humane officer may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals as set forth in Sections 10-2, 10-3 or 10-4. Such officer may:

(1) Inspect, care for, or treat such animal or place such animal in the care of the Humane Association or licensed veterinarian for treatment, boarding or other care; or

(2) Designate such animal for humane destruction if an officer of the Humane Association or licensed veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose.

(b) The owner or keeper of an animal that is destroyed pursuant to subsection (a) herein shall not be entitled to recover damages for the destruction of such animal unless the owner or keeper proves by clear and convincing evidence that such destruction was unreasonable and unwarranted.

(c) In addition to the fines and/or imprisonment imposed by this Section, any defendant convicted of a violation of Sections 10-2, 10-3 or 10-4 shall pay to the Municipal Court, consistent with Section 10-163, a penalty of all reasonable expenses incurred for the care, treatment, and boarding of any animal taken into custody pursuant to subsection (a) herein. Upon payment of such penalty, the Municipal Court shall remit such payment to the Humane Association or other animal care provider.

(d) If a person is adjudicated guilty of a violation of Sections 10-3 or 10-4, the Municipal Court Judge may in his discretion order that such person shall be deemed to have forfeited all interest in the animal at issue in the violation and may vest all interest to the Humane Association for adoption or other disposition. If the person is adjudicated not guilty of a violation of Sections 10-3 or 10-4, or the charge(s) otherwise be dismissed,

and the animal at issue has been taken into custody pursuant to this Section, then the defendant shall have ten (10) days from the date of the entry of the finding of not guilty or of dismissal to appear and claim said animal. The defendant shall be responsible for all reasonable expenses incurred for the care, treatment and boarding from the date of the entry of the disposition of the case until redemption of the animal: provided that if the animal is not claimed within ten (10) days from the date of entry of the finding of not guilty or of dismissal, then the owner shall be deemed to have forfeited all interest in the dog, the dog shall be deemed abandoned, and all interest in the animal shall vest to the Humane Association for adoption or other disposition.

(e) Subject to the exceptions contained in subsections (1) and (2) herein, a person convicted of a violation of Sections 10-2, 10-3 or 10-4 shall be punished by a fine of not less than \$500.00 for each separate violation arising under Sections 10-2, 10-3 or 10-4. For violations of Sections 10-3(a)(1)(A-C), and in addition to the fines set forth herein, the Municipal Court Judge may, in his discretion, order that the defendant be sentenced to a jail term of not more than 30 days for each separate violation arising under Sections 10-3(a)(1)(A-C).

(1) Except for violation of Sections 10-3(a)(1)(A-C), in the case of a first offense of Sections 10-3 or 10-4, if the defendant enters a plea of guilty or no contest and voluntarily forfeits his right to own any animal within the city limits for one year, the Municipal Court Judge may, in his discretion, reduce or suspend the fine: provided that if the defendant violates the terms of the plea regarding forfeiture, then the full amount of the fine shall be reinstated upon proper findings and conclusions of the Court.

(2) Except for violation of Sections 10-3(a)(1)(A-C), the Municipal Court Judge shall have the authority, on one occasion only per defendant, to withhold for a reasonable time not to exceed one-hundred-eighty (180) days the entry of a judgment of conviction for violations under Sections 10-3 or 10-4 so that the defendant may attend an animal training program established or certified by the Humane Association. If the defendant attends said course, the Municipal Court Judge, if satisfied with the defendant's participation in and proof of payment for the course, shall, without entering a judgment of conviction, dismiss the proceeding against the defendant. It shall be a condition of this alternative disposition that the defendant pay the regular court costs required for misdemeanor offenses by this code where a person is convicted of such a misdemeanor offense. Any such court costs collected by the Municipal Court shall be allocated and transmitted by the Municipal Court as required by law.

**State law references:** Authority to prevent cruelty to animals, W. Va. Code § 8-12-5(27); cruelty to animals, W. Va. Code §§ 61-8-19, 61-8-20; authority to regulate animals, W. Va. Code § 8-12-5(26); authority to impose fines, forfeiture, and confinement, W. Va. Code § 8-11-1.

#### **Section 10-6. Animal Nuisances.**

It shall be unlawful to own any animal, including a dog or cat, in a residentially-zoned district, which by frequent or long continued noise shall disturb the comfort or repose of



any person within the vicinity of such animal, or shall by the nature of their maintenance or by the numbers of the same shall create an offensive odor so as to be objectionable to surrounding residences. All dogs and cats in heat shall be confined in a secure and sufficiently enclosed area throughout the period of estrus. In any event, dogs in heat shall be so confined for no less than 25 days during the period of estrus. No person shall own on their premises more than two (2) dogs, ten (10) weeks in age or older, unless such premises is licensed as a commercial kennel or the owner has a permit from the City allowing more than two dogs, as provided in Section 10-121. The provisions of this Section are to be interpreted consistently with any City noise ordinance.

**Section 10-7. Animal Owner Responsibility for Removal of Animal Excrement; Fines**

(a) It shall be unlawful for any person to appear with an animal upon the public right-of-way, within public places or upon the property of another, absent that person's consent, without some means for removal of excrement that may be deposited by the animal.

(b) It shall be unlawful for any person who is an owner or possessor of an animal in his care to fail to remove any excrement deposited by the animal upon any public or private property, other than the property of the owner of the animal.

(c) The provisions of this Section shall not apply to persons who have a physical disability or visual impairment, are using service dogs, and can provide upon demand by an humane officer or police officer adequate documentation that the service dog is an animal trained by an accredited institution which trains dogs for service work for the physically disabled or visually impaired.

(d) Violation of this Section shall be punished by a fine of not less than \$10.00, nor more than \$25.00 plus applicable court costs. The Municipal Court Judge shall have no authority to suspend the fine or any portion thereof.

**Section 10-8. Sale of Baby Fowl.**

It shall be unlawful for any person to sell or offer for sale as pets or novelties any artificially colored, sprayed, painted or dyed baby chicks, ducklings, goslings, turkeys or other fowl, or to sell or offer for sale any baby chicks, ducklings, goslings, turkeys or other fowl in lots of less than six.

**Section 10-9. Dead Animals and Fowl; Disposition of Carcasses.**

It shall be unlawful for any person to deposit in any of the streets, parks, public squares or places, or upon any private lot or parcel of ground, the carcass or part of any carcass of any animal, fowl or bird within the limits of the city or at any point within one mile of the city limits if such place outside the limits is so located that such carcass shall become offensive to or detrimental to the health of the inhabitants of the neighborhood. It shall be unlawful to bury within the city or within one mile of the city the carcass or part of carcass of any animal, fowl or bird which has died or been killed within the city, or that

has been brought into the city; but all such carcasses shall immediately after death be disposed of in a manner consistent with Section 10-10 herein.

**Section 10-10. Responsibility for Removal of Carcasses.**

(a) When any dead animal, fowl or bird is found in the streets, public places or private lots in the city, upon notice to the owner, such owner shall remove the carcass and dispose of it in a lawful and sanitary manner; failure to do so shall be a violation of this code. If the owner refuses or fails to do so within a reasonable time not to exceed twenty-four (24) hours after such notice, the City may send a proper vehicle to obtain such carcass and have it removed and disposed of, and render a bill for such removal and disposal to the owner, if known, and shall place a duplicate of such bill in the hands of the city collector for collection. The city collector shall have power to collect such amount in accordance with State Law and City Code.

(b) When any animal, fowl or bird shall be killed upon any of the streets or public places within the city by any automobile or other vehicle being driven over or upon the streets within the city, or by the horse or other animal attached to any vehicle, it shall be the duty of the owner, driver or other person having such vehicle in his charge to at once remove such carcass to the curblin, or if possible to some point out of the public view, and to cover the carcass from view, and immediately thereafter remove or cause it to be removed and lawfully disposed of in a sanitary manner. It shall be violation for any person to refuse or neglect to carry out the provisions of this subsection.

**State law references:** Prohibited disposition of animal carcasses, W. Va. Code §§ 16-9-2, 16-9-3; extraterritorial jurisdiction of municipalities, W. Va. Code §§ 8-12-5(43), 8-12-19.

**Section 10-11. Keeping Fowl Near Inhabited Building.**

No person shall keep any kind of poultry, fowl or pigeon within 25 feet of any structure owned by another and used for human habitation, occupation or assembly, whether the structure is in the same or adjacent block or square.

**Section 10-12. Keeping of Certain Animals.**

No person shall keep or permit to be kept within the corporate limits any hog, goat, cow, chicken, or other animal or fowl in a pen or otherwise confined in any lot, to the annoyance, detriment or inconvenience of any neighbor or the public.

**Section 10-13. Certain Animals and Reptiles Prohibited to be Kept Within City Except Pursuant to License or Permit.**

It shall be unlawful for any person to keep or harbor within the city any panther, wildcat or bobcat, bear or other wild animal of a species normally dangerous to human beings, or any skunk from which the perineal glands have not been removed, or any venomous

reptile or any make of a constrictor species, except pursuant to authority of a city license or permit which may be issued under any other provisions of the City Code or other city ordinance or by special action of the city council.

**Section 10-14. City Declared Bird Sanctuary; Trapping, Hunting; Riddance Of Nuisance Birds; Penalty.**

(a) The entire area embraced within the boundaries of the city is designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wildfowl or to rob bird nests or wildfowl nests; however, if starlings, pigeons or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the city, the health authorities shall meet with representatives of the Audubon Society, Bird Club, Garden Club or Humane Association, or as many of those clubs as are found to exist in the city, after having given at least three days' actual notice of the time and place of such meeting to the representatives of the clubs. If as a result of such meeting no satisfactory alternative is found to abate such nuisance, such birds may be destroyed in such numbers and in such manner as is deemed advisable by the health authorities under the supervision of the chief of police.

(c) Any person violating the provisions of this section may be prosecuted pursuant to section 10-3.

**Section 10-15. Maintenance of Pens, Coops, Other Enclosures, Places.**

(a) Each stable, pen, coop and other enclosure or place where any animal or fowl is kept shall be so located and of such construction as to have sufficient sanitary drainage to keep it dry at all times; and it shall be the duty of each person owning, harboring or keeping any animal or fowl to maintain such enclosure or other place where such animal or fowl is kept in a clean and sanitary condition at all times, free of any unwholesome or offensive substance, liquid or odor and so as not to constitute, in the opinion of the health commissioner, a nuisance.

(b) The provisions of this section shall be applicable within the city generally, as well as beyond the city limits for a distance of one mile in any instance wherein a stable, pen, coop or other enclosure or place where an animal or fowl is kept constitutes a nuisance affecting this city or is offensive or detrimental to the health of inhabitants of this city.

(Code 1975, § 4-22)

**State law references:** Extraterritorial jurisdiction of municipalities, W. Va. Code §§ 8-12-5(43), 8-12-19.

**Section 10-16. Immunization of Dogs, Cats and Ferrets; Fines.**

(a) No person shall own any dog, cat or ferret, six (6) months of age or older, within the city limits if such animal is not currently vaccinated against rabies. Any person owning a dog within the City shall cause such dog to wear a collar or harness at all times to which shall be attached a current tag reflecting that the dog is vaccinated against rabies. The tag shall be situated on the collar or harness in such a manner that it may be easily visible at all times. Owners of cats and ferrets may retain proof of current rabies vaccination on their person or premises.

(b) Violation of this Section shall be punished by a fine of not less than \$10.00, nor more than \$25.00, plus applicable court costs. The Municipal Court Judge shall have no authority to suspend the fine or any portion thereof.

**Section 10-17. Control of Rabies and Other Diseases Generally.**

(a) It shall be the duty of each owner or person in charge of any dog, whether licensed or unlicensed, or in charge of any other animal known to have or suspected of having rabies or any other communicable disease, or known to have been bitten by another animal having or suspected of having any such disease, to forthwith take such animal to a veterinarian for confinement and observation or to securely confine such animal on his own premises, and, in either case, to notify the Kanawha – Charleston Health Department without delay, and then to obey the directives given by the Kanawha – Charleston Health Department. Any animal so confined shall be destroyed in a humane manner upon a finding by a licensed veterinarian that the animal has rabies or some other incurable communicable disease. No animal shall be released from such confinement until it is determined by a licensed veterinarian that the animal is free of rabies or any other communicable disease.

(b) Rabid animals found at large within the city shall be shot and killed or otherwise humanely euthanized forthwith by any humane officer or by any police officer. It shall be the duty of humane officers and police officers to immediately notify the Kanawha – Charleston Health Department upon killing any animal for having exhibited signs of rabies and to comply with instructions of the Kanawha – Charleston Health Department as to making the carcass or any portion of the carcass available to the health department for examination.

(Code 1975, § 4-14)

(c) Any person having knowledge of an animal known to have or suspected of having rabies or any other communicable disease shall forthwith notify a humane officer or the police officer. If the owner or person in charge of such animal can be found without undue delay, he shall be notified by the humane officer or police officer to comply with the provisions of subsection (a) of this section forthwith; otherwise, such animal shall be destroyed in a humane manner.

**State law references:** Quarantine of biting dogs, W. Va. Code § 19-20-9a.

## **Section 10-18. Animal Bites, Quarantine; Fines.**

(a) OWNER KNOWN. Upon receipt of credible information that an animal bite incident has occurred, a humane officer or police officer shall make reasonable effort to contact the owner of the animal involved in the incident and advise the owner to place the animal immediately with a licensed and practicing veterinarian of the owner's choice for a confinement and observation period of a minimum of ten (10) days from the time of the occurrence of the bite. The exact period of confinement and observation may be longer than ten (10) days in the discretion of the veterinarian selected and the owner shall be liable for all such costs incurred.

(b) FAILURE TO COMPLY. Any owner who shall fail to comply with the provisions of this Section, within twenty-four (24) hours of notification, shall be deemed in violation of this Article and, if reasonable to do so under the circumstances, the officer shall take such animal into custody and place it for the above described confinement period with a licensed and practicing veterinarian of the owner's choice. The owner shall be liable for all cost incurred. If the owner fails or refuses to make such choice or if it is unreasonable under the circumstances for the officer to place the animal with a veterinarian chosen by the owner as described herein, the officer will take the animal into custody and place it with the Humane Association to be quarantined at the owner's expense in accordance with subsection (c) herein.

(c) OWNER UNKNOWN. Upon receipt of credible information that an animal bite incident has occurred, and when the owner cannot be located, the humane officer or police officer shall take the animal into custody and place it with the Humane Association for a confinement and observation period of a minimum of ten (10) days from the time of the occurrence of the bite. If, however, at any time during the confinement and observation period the dog becomes dangerous as defined in this code, and/or it is determined by a licensed veterinarian that the animal has rabies or some other incurable communicable disease, then the animal may be euthanized at the discretion of the Humane Association. If the owner appears and seeks to claim the animal, the provisions of Subsection (a) shall govern the confinement of the animal. If the owner does not appear to claim the animal within the ten (10) day period, then the owner shall be deemed to have forfeited all interest in the animal, the animal shall be deemed abandoned, and all interest in the animal shall vest to the Humane Association for adoption or other disposition. Should such animal become ill or die within the confinement period, the bite victim or victim's representative shall be notified by a humane officer. If the animal is alive and well at the end of the confinement period, the bite victim or victim's representative shall be notified by a humane officer.

(d) State law shall be followed concerning the isolation of biting animals for observation, examination and quarantine, unless the provisions of this Chapter require more stringent procedures.

(e) Any person convicted of the violation of any of this section shall upon conviction thereof be fined not less than \$10.00 nor more than \$500.00, and that upon any second or

subsequent violation shall be fined not less than \$100.00 nor more than \$500.00. Each consecutive day's violation shall constitute a separate punishable offense.

**Section 10-19. Releasing Impounded Animals.**

No person shall break open or in any manner directly or indirectly aid or assist in breaking open the impoundment enclosure established by the City or the Humane Association, or take or let any animal out of an impoundment enclosure without the consent of the person in charge of such enclosure.

**Section 10-20. General Penalty.**

Except as otherwise provided by law or ordinance, a person convicted of a violation of this chapter for which no specific penalty is prescribed, shall be punished by a fine of not more than \$500.00. In addition to any penalty prescribed in these animal control provisions, the Municipal Court Judge may award an additional penalty in the form of restitution for damages which may be caused as a result of any violation of these animal control provisions. Additionally, the Municipal Court Judge shall in all cases order a defendant convicted of any violation of these animal control provisions to reimburse the Humane Association, veterinarian, animal clinic or hospital, or other animal care and treatment provider for all such reasonable expenses as may have been incurred by the Humane Association, veterinarian, animal clinic or hospital, or other animal care and treatment provider with respect to the animal at issue in the violation. Except as otherwise provided by law or ordinance, with respect to the violations of this code that are continuous with respect to time, each day that the violation continues is a separate offense. The imposition of a penalty does not preclude suspension or revocation of any license, permit or franchise or other administrative sanctions. Violations of this code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not preclude injunctive relief.

Secs. 10-21--10-50. Reserved.

**ARTICLE II. LIVESTOCK\***

**\*State law references:** Livestock at large, W. Va. Code § 19-18-1 et seq.

**DIVISION 1. GENERALLY**

**Sec. 10-51. Certain animals prohibited from running at large, subject to impoundment; responsibility of owners and persons in charge.**

No horse, pony, mule, goat, hog of any description, cattle, or any kind of poultry or domesticated fowl, shall run at large upon any of the streets, lanes, open lots, commons or other unenclosed places within the city unless there is with such animal some person

within ten feet and having the animal in charge. All such animals found running at large shall be taken up by the humane officer and placed in a designated pound. The owner or person having charge of such animal shall be responsible for such violation.

Secs. 10-52--10-70. Reserved.

### **ARTICLE III. DOGS\***

**\*State law references:** Dogs and cats, W. Va. Code § 19-20-1 et seq.

#### **DIVISION 1. GENERALLY**

##### **Section 10-111. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Enclosure* means a fence or structure of at least six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog. An enclosure shall be securely enclosed and locked and designed to prevent the animal from escaping from the enclosure. If such enclosure has no bottom secured to the sides, the sides must be embedded into the ground no less than one (1) foot.

*Owner* means an individual who has lawful title to a dog, or is the keeper or harbinger of the dog. A parent or legal guardian shall be deemed to be the owner of a dog maintained by or on behalf of a minor upon the premises of the parent or legal guardian.

##### **Section 10-112. Removal of Dogs from Public Gatherings.**

No person shall keep any dog at a public gathering after any humane officer or police officer has determined that the presence or conduct of the dog may jeopardize the health, safety or welfare of any person attending the gathering. Any such dog shall be promptly removed from such public place by its owner upon oral notification from the officer. Failure to obey this provision shall result in the dog's impoundment as provided in section 10-163.

**Cross references:** Streets, sidewalks and other public places, ch. 102.

##### **Section 10-113. Seizing or Enticing Dog; Bringing Dog Into City for Impounding or Killing.**

(a) No person shall, except with the consent of the owner, entice any properly licensed dog into any enclosure, or decoy or entice any dog out of the enclosure or house of its owner or possessor for the purpose of taking off its collar or tag.

(b) No person shall bring any dog into the city for the purpose of unlawfully abandoning, impounding, or killing the dog.

**Section 10-114. Dangerous Dogs: Definitions.**

Dangerous dog, as used in this Chapter, shall mean:

(a) Any dog with a known propensity, tendency, or disposition to attack, to cause injury, or otherwise threaten the safety of human beings or domestic animals; or

(b) Any dog which, in a vicious or threatening manner, approaches any person or another domestic animal in an apparent attack upon the person or the domestic animal; or

(c) Any dog which attacks or bites, or has attacked or bitten a human being or domestic animal; or

(d) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or

(e) Any dog already determined to be an aggressive dog at large as defined in this Article.

Notwithstanding the definition of a dangerous dog above, no dog may be declared dangerous if any injury or damage is sustained by a person or animal who at the time of such injury or damage was sustained, was committing or attempting to commit a willful trespass or other crime or tort upon the premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog. Further, no dog may be declared dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

Nothing in this Article shall be deemed to regulate or prohibit the lawful maintenance of dogs by law enforcement agencies.

**Section 10-115. Dangerous Dogs: Procedure for the Determination of a Dangerous Dog.**

In the event that a humane officer or police officer has probable cause to believe that a dog is dangerous, as defined in this Article, the Municipal Court Judge may convene a hearing for the purpose of determining whether the dog in question should be declared dangerous as defined by Section 10-114. Pending the determination, the humane officer or police officer may order the dog to be impounded at a licensed veterinary clinic or the Humane Association. Consistent with Section 10-163, the owner of the dog shall be liable for the reasonable costs incurred for the care, treatment, and boarding of the dog.

Notice shall be provided to the owner of the dog that a hearing will be held before the Municipal Court to determine whether the dog is dangerous as defined in this Article; such notice shall provide in writing the date, time, and place of the hearing. The failure



of the owner to attend or participate in the hearing shall not preclude the Municipal Court Judge from making the appropriate determination concerning the dog. The hearing shall be held no less than five (5) nor more than twenty (20) days after service of notice upon the owner of the dog. The City shall have the burden of proof to show that the dog is dangerous pursuant to Section 10-114.

The Municipal Court Judge shall issue such order in writing as is appropriate. Upon entry, the Municipal Court Clerk shall serve copies of such order upon all parties to the action. If a determination is made by the Municipal Court Judge that the dog is dangerous, the owner shall comply with the provisions of Section 10-116 within fifteen (15) days of entry of the order. If the owner fails to comply with the provisions of Section 10-116 within the time provided, the dog shall be euthanized; and the owner shall be responsible for all reasonable costs related thereto.

**Section 10-116. Dangerous Dogs: Control of Dangerous Dog; Registration and Confinement.**

If the Municipal Court Judge determines that a dog is dangerous, the owner such dog shall comply with the following:

(a) Registration. The owner shall:

(1) Have a microchip inserted into the dog by a veterinarian, which microchip shall detail the dangerous dog designation and such other information as may be appropriate to determine the ownership of the dog. The owner shall be responsible for all costs associated with the microchip procedure;

(2) Maintain an insurance policy in a minimum amount of \$50,000.00 to cover any injuries to persons or property which may be caused by the dangerous dog; and

(3) Annually register the dangerous dog with the City, on forms designated by the City Manager, which registration shall include proof of installation and maintenance of the microchip and the required insurance. The owner shall pay a \$50.00 annual registration fee. The owner shall be responsible for maintaining with the City Manager the address of the owner of the dangerous dog. Upon any change of address of the owner, or any change in the place of residence of the dangerous dog, or any change in ownership of the dangerous dog, the owner shall within seven (7) days of such change notify the City Manager.

(b) Confinement. At all times, except as otherwise provided in this subsection, all dangerous dogs shall be confined inside the dwelling of the owner or inside an enclosure. It shall be unlawful for any owner to allow a dangerous dog to be outside of the dwelling of the owner or outside the enclosure unless it is necessary for the owner to obtain veterinary care for the dangerous dog or for the limited purposes of allowing said dangerous dog to urinate or defecate or to sell or give away the dangerous dog, or to respond to such orders of law enforcement officials as may be required. In such event, the dangerous dog shall be securely muzzled and restrained with a leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner

of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or other animal.

**Section 10-117. Dangerous Dogs: Violation of Requirements for Dangerous Dog; Fines.**

Any person found guilty of violating the requirements of Section 10-116 shall be assessed, fined, and the animal disposed of, as follows:

(a) Any dangerous dog that is not confined or registered pursuant to Section 10-116 shall be impounded by a humane officer or police officer in accordance with the provisions of Section 10-163. Upon a first conviction, in addition to all costs for impoundment, the owner shall be punished by a fine of Two Hundred Fifty Dollar (\$250.00). Upon conviction of a second offense within twenty-four (24) months of any prior conviction, in addition to all costs for impoundment, the owner shall be punished by a fine of Five Hundred Dollars (\$500.00) and said dog shall be euthanized. Pending the adjudication of a second offense under this section, the redemption provision of Section 10-163 is suspended. The Municipal Court Judge shall have no authority to suspend the fine or any portion thereof;

(b) Any dangerous dog which, without provocation attacks, assaults, wounds, bites, or otherwise injures, or assists in injuring a human being shall be impounded by a humane officer or a police officer in accordance with the provisions of Section 10-163. Upon conviction, in addition to all reasonable costs of impoundment, the owner shall be punished by a fine of Five Hundred Dollars (\$500.00). The Municipal Court Judge shall have no authority to suspend the fine or any portion thereof;

(c) Any dangerous dog which, without provocation attacks, assaults, wounds, bites, or otherwise injures, or assists in injuring any domestic animal shall be impounded by a humane officer or a police officer in accordance with the provisions of Section 10-163. Upon conviction, in addition to all reasonable costs of impoundment, the owner shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00). The Municipal Court Judge shall have no authority to suspend the fine or any portion thereof.

(d) Upon conviction under subsections (b) or (c) herein, the Municipal Court Judge shall order that the owner be deemed to have forfeited all interest in the dog and that the dog be humanely euthanized: provided that upon presentation of evidence satisfactory to the Municipal Court Judge that the dangerous dog should not be euthanized in this case, then such dog may be released to the custody of the owner upon the payment of the fees and expenses as set forth in Section 10-163 for redemption of the dog by the owner.

**Section 10-118. Dangerous Dogs: Threats to Public Safety.**

(a) Notwithstanding any provision of this Article to the contrary and irrespective of whether the dog has been declared dangerous pursuant to this Article, no person shall harbor, own, or possess a dog that is an immediate threat to public health and safety. The

Municipal Court Judge shall have the authority to order any such person convicted of violating this section to pay a fine of not more than Five Hundred Dollars (\$500.00).

(b) Notwithstanding any provision of this Article to the contrary and irrespective of whether the dog has been declared dangerous pursuant to this Article, the Municipal Court Judge may order any dog destroyed if the Municipal Court Judge determines that the dog is an immediate threat to public health, safety, and welfare and that confinement and registration of the dog by the owner of the dog as provided in this Article will not adequately protect public health, safety and welfare. In making such determination the Municipal Court Judge shall consider the severity of any attack and any other relevant information.

**State law references:** Vicious dogs, W. Va. Code §§ 8-12-5(26), 19-20-20, 19-20-21.

#### **Section 10-119. Actions Under Proclamation By Health Commissioner.**

Whenever it shall be made to appear to the satisfaction of the Kanawha - Charleston Health Department that any dog within the city has rabies or any other dangerous and communicable disease, that Department may issue a proclamation requiring any actions, consistent with State law, necessary to protect the health, safety and welfare of the public.

**State law references:** W. Va. Code § 19-9-2

#### **Section 10-120. Restriction on Number of Dogs.**

No person shall own, keep or harbor more than two dogs on any lot, premises, dwelling, building, structure, boat or living accommodation unless:

- (a) Properly licensed as a commercial kennel in compliance with the zoning ordinance; or
- (b) Approved for a special permit under the provisions of section 10-121; or
- (c) Previously granted a variance for the keeping of more than two dogs from the board of zoning appeals. The variance shall remain in effect until such time as the property is no longer in compliance with the conditions set forth in said variance.

#### **Section 10-121. Restriction on Number of Dogs: Special Permit.**

- (a) The intent of the special permit application is to allow responsible pet owners to keep or harbor more than two dogs if adequate conditions exist in which the animals will not cause damage, hazard, nuisance, or be a detriment to any persons or property.
- (b) Any person desiring to keep or harbor more than two dogs shall submit a written application for a special permit with a humane officer. The special permit application shall include a copy of a site plan of the subject property showing all structures, fences and open space.

(c) A humane officer may grant a special permit if the following conditions are met:

(1) The subject property is larger than 6,500 square feet, unless the dogs are kept predominately indoors; and

(2) The dogs must be kept: indoors; or in a secure area with a fence of sufficient height and durability to prohibit the dog(s) from escaping; or in a secure area effectively controlled by electronic device; and

(3) Adequate shelter as defined by the Humane Association be provided for each dog; and

(d) Applicants shall not be eligible for a special permit if they are known in the neighborhood or community for causing disruptions related to dogs.

(e) Special permits are nontransferable. A change in the number or type of dogs, or changes in the residence or ownership of the dogs shall require a new special permit.

(f) The fee for a special permit shall be \$50.00.

(g) A previously approved special permit may be rejected or revoked at any time if the humane officer determines the issuance of a special permit has caused damage, hazard, nuisance, dangerous conditions, or is a detriment to any person or property.

(h) Any person aggrieved by the denial or granting of a special permit shall have the right to appeal to the Public Safety Committee of City Council.

Secs. 10-122--10-140. Reserved.

## **DIVISION 2. LICENSE\***

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**\*State law references:** Taxation of dogs, W. Va. Code § 19-20-1 et seq.

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### **Section 10-141. Annual License Required; Application for License and Payment of License Fee; License Tag.**

(a) Every person owning or harboring in the City a dog of six months old or older, shall apply annually, on or before July 1, to the City Collector for a license for each dog so owned or harbored. After payment of the license fee set forth in section 10-142, the City Collector shall issue to such person a license and a copy of this article, together with an official license tag, which tag shall be fastened to the collar of the dog so licensed and shall be worn by such dog at all times while off the premises of its owner or custodian.

(b) In the event of a dog attaining the age of six months, or being acquired or brought into the city after July 1 of any year, a license shall be obtained for such dog immediately after the date such dog attains the age of six months or is acquired or brought into the city.

(c) No person shall attach a license tag to any dog to which it was not issued or remove a license tag from the collar of any dog without the consent of its owner.

**Sec. 10-142. License fees; expiration of licenses.**

The license fee for a dog license shall be \$3.00 for each dog. The license shall expire June 30 following the date of issue; provided that said license fee shall not apply to dogs in a licensed kennel or veterinary hospital.

(Code 1975, § 4-27)

Secs. 10-143--10-160. Reserved.

**DIVISION 3. IMPOUNDMENT\***

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\***State law references:** County impoundment of dogs, W. Va. Code § 19-20-8.

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**Section 10-161. Dogs Prohibited to Run at Large; Fines.**

(a) It shall be unlawful for any person to own or keep a dog which runs at large in the City. Knowledge or acquiescence by the owner is not an element of the offense. An animal shall not be deemed to be running at large if:

(1) The dog is firmly attached to a leash or chain under the physical control of its owner; or

(2) The dog is within a structure or within a fence enclosure with the permission of the owner of the structure or fence enclosure; or

(3) The dog has an operating electronic collar and is under the charge or control of its owner who is operating an electronic pet containment system or electronic training system for the animal. Notwithstanding this subsection, all dogs on the public right-of-way in the Central Business District zoning district (downtown area) must be kept on a leash or chain under the physical control of its owner; or

(4) The dog is under the supervision of its owner and is using an off-leash dog park in accordance with the rules and regulations for the off-leash dog park.

(b) Any dog on property without the permission of the property owner shall be deemed to be a dog at large, and the owner of such animal shall be in violation of this Section.

(c) The provisions of this Section shall not apply to persons who have a physical disability or visual impairment, are using service dogs, and can provide upon demand by an humane officer or police officer adequate documentation that the service dog is an animal trained by an accredited institution which trains dogs for service work for the physically disabled or visually impaired.

(d) Any person found guilty of dog at large as defined herein shall be punished by a fine as follows: \$30.00 for the first offense within a twenty-four (24) month period; \$40.00 for the second offense within a twenty-four (24) month period; \$60.00 for the third offense within a twenty-four (24) month period; \$100.00 for the fourth offense within a twenty-four (24) month period; and \$250.00 for the fifth and subsequent offenses within a twenty-four (24) month period. The Municipal Court Judge shall have no authority to suspend the fine; provided that with regard to a fifth or subsequent offense within a twenty-four (24) month period, the Municipal Court Judge shall have the authority to reduce the fine to an amount no less than \$100.00 if the defendant agrees to forfeit ownership of the animal. In such cases all interest of the animal shall vest to the Human Association for appropriate disposition. All fines arising from convictions for violations of this Section shall be in addition to any applicable court costs or impoundment fees.

#### **Section 10-162. Aggressive Dog At Large Defined; Fines.**

(a) It shall be unlawful for any person to own or keep an aggressive dog which runs at large in the City. Knowledge or acquiescence by the owner is not an element of the offense. An aggressive dog at large means any dog at large as defined in Section 10-161 that, without provocation, exhibits aggressive or combative behavior toward a person or another domestic animal, whether said person or domestic animal is physically attacked or bitten.

(b) Any person found guilty of an aggressive dog at large shall be punished by a fine as follows: \$60.00 for the first offense within a twenty-four (24) month period; \$80.00 for the second offense within a twenty-four (24) month period; \$120.00 for the third offense within a twenty-four (24) month period; \$200.00 for the fourth offense within a twenty-four (24) month period; and \$500.00 for a fifth or subsequent offense within a twenty-four (24) month period. The Municipal Court Judge shall have no authority to suspend the fine; provided that with regard to a fifth or subsequent offense within a twenty-four (24) month period, the Municipal Court Judge shall have the authority to reduce the fine to an amount no less than \$250.00 if the defendant agrees to forfeit ownership of the animal. In such cases all interest of the animal shall vest to the Human Association for appropriate disposition. All fines arising from convictions for violations of this Section shall be in addition to any applicable court costs or impoundment fees.

#### **Section 10-163. Impounding, Redemption And Disposition.**

(a) A dog found running at large within the corporate limits of the City contrary to the provisions of Section 10-161 may be impounded at the Humane Association by a humane

officer or police officer. The humane officer or police officer shall make a record of all dogs so impounded with their description, date of impoundment and rabies vaccination number.

(b) The owner of any dog impounded pursuant to the provisions of this Article must appear and claim the said dog within ten (10) days from the date the dog is impounded. If the dog is not claimed within ten (10) days of impoundment, then the owner shall be deemed to have forfeited all interest in the dog and the dog shall be deemed abandoned. All interest in such dog shall vest to the Humane Association for adoption or other disposition. If the owner appears to claim the dog within the ten (10) day time period, said dog may be released to him or her upon the following conditions:

(1) Proof that the dog is currently immunized against rabies, or, in the absence of such proof, reimbursement to the Humane Association for a rabies vaccine or voucher for a rabies vaccine;

(2) Reimbursement to the Humane Association for all reasonable expense for necessary medical care;

(3) Payment of the following fees to the Human Association:

(A) Impoundment and initial board fee for the first twenty-four (24) hour period or any part thereof of Thirty Dollars (\$30.00);

(B) An additional fee of Five Dollars (\$5.00) for each additional twenty-four (24) hour period up to a maximum of ten (10) days.

Secs. 10-164--10-170. Reserved.