

## TITLE 4

## ANIMALS AND FOWL

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CHAPTER 1 - In General Section4-101 Definitions

For the purposes of this title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Animal warden. The person designated as such by the Mayor and Town. Council.

At large. Any animal or fowl when not upon property owned or lawfully occupied by its keeper, or when upon the property of another without the consent of the owner or lawful occupant of such property shall be deemed to be at large unless such animal or fowl is held on a leash or otherwise under the effective control of a responsible person.

Dog. The word "dog" shall include female dogs as well as male dogs.

Keeper. Any person owning or having possession or custody of an animal or fowl or any person keeping, harboring or caring for an animal or fowl shall be deemed to be the keeper thereof; thus, the owner of an animal or fowl shall continue to be a keeper thereof even though another person may be harboring or caring for such animal or fowl and is likewise a keeper thereof.

Section 4-102 Certain animals and fowl prohibited to be at large; impoundment and disposition of animals and fowl found at large

(a) It shall be unlawful for any person to permit any horse, mule, jack, jennet, swine, cow, cattle, hog, pig, shoat, goat, poultry or other fowl to run at large within the Town; and any such animal or fowl found at large within the Town shall be taken up by the animal warden and impounded at a public pound or other suitable place and kept there for at least three days and, whenever possible, its owner or other keeper shall be notified of such happening and the manner in which the animal or fowl may be redeemed, to wit, by the payment of an impounding fee of one dollar plus the cost of care, feeding and shelter, such payment to be made within two days from the date of such notice. Any animal or fowl not so redeemed may be sold at a public sale to recover the impoundment fee and costs herein mentioned; and if no buyer is found the animal or fowl in question may be destroyed or given away to some responsible person.

(b) The proceeds of any sale under subsection (a) of this section which are in excess of the impoundment fee, cost of care, feeding and shelter, and the cost of sale shall be turned over by the animal warden to the town treasurer and shall be held by him until claimed by the owner of the animal or fowl in question within three months of the sale; and if no claim is made within such time such proceeds so held shall be credited to the general fund of the town.

Section 4-103 Hogs, swine, etc., prohibited

It shall be unlawful for any person to keep within the Town any live hog, pig, shoat or swine.

Section 4-104 Keeping of chickens

It shall be unlawful for any person to keep within the Town more than twenty-five live chickens at any one time, or to keep one or more chickens within the Town contrary to the provisions of any zoning ordinance now or hereafter in force.

Section 4-105 Maintenance of stables, pens, coopes, etc.; abatement of nuisances

Each stable, pen, coop or other place within the Town where any animal or fowl is kept shall be maintained by the keeper at all times in a clean and sanitary condition and free of offensive odors and solid and liquid waste matter. Any place where an animal or fowl is kept which is found to be in violation of this section shall be deemed to be a public nuisance, subject to abatement by the Town at the expense of the person responsible therefor or the owner of the property whereon it exists.

Section 4-106 Speed and manner of riding or driving of animals on streets

It shall be unlawful for any person to ride, drive or lead a horse or other animal, whether such animal be hitched to a vehicle or not, upon any street or other place within the Town at such speed or in such manner as to endanger life, health or property, or at a speed in excess of that permitted by state law, this Code or other ordinance for motor vehicles.

**Section 4-107: Cruelty to animals; penalties; exclusions (revised December 2011)**

- (a) (1) It is unlawful for any person to intentionally, knowingly or recklessly,
- (A) Mistreat an animal in cruel manner;
  - (B) Abandon an animal;
  - (C) Withhold; (i) Proper sustenance, including food or water; (ii) Shelter that protects from the elements of weather; or (iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
  - (D) Abandon an animal to die;
  - (E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
  - (F) Ride an animal when it is physically unfit;
  - (G) Bait or harass an animal for the purpose of making it perform for a person's amusement;
  - (H) Cruelly chain or tether an animal; or
  - (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.
- (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars.
- (b) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than two thousand dollars.
- (c) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society or county pound as a result.
- (d) For the purpose of this section, the term "controlled substance" has the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of Code of the State of West Virginia.
- (e) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and shall be fined not less than five hundred dollars nor more than three thousand dollars.
- (f) (1) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless

ant is determined by the court to be indigent, he or she is responsible for the cost of the program.

(g) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.

(h) A court shall look to interpretations of West Virginia Code § 61-8-19 should any doubt arise regarding the construction or interpretation of this Section.

#### Section 4-108 Disposition of carcasses

(a) It shall be the duty of the street commissioner to cause to be promptly removed and buried any animal or fowl found dead on any street, sidewalk or public place in this Town; and any animal or fowl which be there killed by any officer or other person; provided, that any animal or fowl which may be killed by any vehicle shall be promptly removed and buried by and at the expense of the owner of such vehicle, and a failure so to do for more than one hour shall be unlawful.

(b) Whenever any animal or fowl is killed or is found dead upon any lot or premises owned or occupied by the owner or keeper thereof, such-owner or keeper of-such animal or fowl shall cause same to be removed and buried and a failure to do so for more than twelve hours shall be unlawful.

(c) Whenever any animal or fowl is found dead, or is killed, upon any lot or premises in this Town not owned or occupied by the owner or keeper of such animal or fowl the carcass shall be removed and buried under the direction of the street commissioner, upon the request made by the owner or occupant of such premises, and the expenses of such removal and burial shall be paid to the Town by the person who was the owner or keeper of such animal or fowl, if such person can be ascertained, unless herein otherwise provided. A bill for such expense shall be made out by the recorder upon information from the street commissioner and shall be placed in the hands of the town treasurer for collection, and such persons shall pay such bill within twenty-four hours after its first presentation, and a failure so to do shall be unlawful.

(d) Whenever any animal or fowl is killed within this Town by any person save when under some provision of this title or pursuant to some law, the person so killing such animal or fowl shall cause to be removed and buried, and a failure to do so for more than one hour shall be unlawful.

(e) Whenever under any provision of this Code or any ordinance of the Town it is made the duty of any person, other than the street commissioner, to remove or bury any dead animal or fowl, and such person fails so to do for twelve hours, the street commissioner shall so remove and bury such carcass, and the expense of so doing shall be paid to the Town by the person whose duty it was to remove or bury it, and the expense shall be collected as provided in subsection (c) of this section, and a failure to pay same as therein provided shall be unlawful.

(f) The payment to the Town of the expense of the removing or burying any carcass by any person whose duty it is so to do, or the payment of a fine for the failure to pay such expenses as above provided, shall not release such person from any liability or penalty he may have incurred by reason of his previous failure to perform such duty, but same shall be in addition to such liability or penalty.

Section 4-108 cont.

(g) It shall be unlawful for any person to cast or put any dead or dying animal or fowl found on any premises in this Town, upon any premises belonging to or occupied by any other person, or upon any street, alley or public place.

Section 4-109 Transportation of carcasses

It shall be unlawful for any person to expose, transport or move any part or all of the carcass of any animal or fowl upon any street, sidewalk or public place within the Town unless such carcass shall be completely covered from public view and from access of flies, or other disease carrying insects, by a heavy cloth or other suitable covering.

**Section 4-110: Dog Tethering and Confinement.**

**I. Definitions**

- a. "Adequate food" means access to and the provision of food that is of sufficient quantity to maintain each animal in good health and is accessible to each animal.
- b. "Adequate space" means:
  1. When a dog is confined, the standards for "adequate space" are:
    - i. Small dogs (defined as 35 lbs or under) must have 100 square feet of permanent outdoor enclosure, *provided* that two small dogs may be confined within the same 100 square foot outdoor enclosure.
    - ii. Medium dogs (defined as 35-60 lbs.) must have 100 square feet of permanent outdoor enclosure per dog.
    - iii. Large dogs (defined as 60-100 lbs.) must have 150 square feet of permanent outdoor enclosure per dog.
    - iv. Extra-large dogs (defined as 100 lbs. or greater) must have 250 square feet of permanent outdoor enclosure per dog.
    - v. More than one dog may be confined in the same enclosure provided that the above space standards are met.
  2. When a dog is tethered, "adequate space" means a tether that i) is appropriate to the age and size of the animal; ii) is attached to the animal by a properly applied collar, halter, or harness configured so as to reasonably protect the animal from injury; and iii) is at least four (4) times the body length of the dog measured from the dog's nose to the base of its tail. *Provided*, that when freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.
- c. "Adequate shelter" means provision of and access to shelter that is suitable for the age, condition, size, and type of each animal. It shall be unlawful to consider metal barrels, plastic drums, cardboard or other disposable boxes, lean-tos, porches, vehicles, and objects of similar description as proper shelter. The shelter shall meet the following requirements:
  - i. Weatherproof roof, having no gaps;

- ii. Enclosed sides, doorway, and solid floor raised at least 2 inches off the ground and free of cracks, holes, protruding objects or rough edges that could cause injury;
  - iii. Interior shall have no metal;
  - iv. Entryway large enough for the dog to easily enter and exit;
  - v. Shall be insulated on all sides including the roof and floor, and be wind and moisture proof;
  - vi. Shall be of proportionate size to allow the natural body heat of the dog to be retained in cold weather;
  - vii. Shall have adequate ventilation and protection from temperature extremes at all times;
  - viii. Shall be structurally sound and maintained in good repair;
  - ix. Shall have bedding, such as wood shavings, straw, or other material that cannot freeze to the dog's body; bedding shall be provided in sufficient quantity for insulation. Such bedding shall be kept dry.
- d. "Adequate water" means provision of and access to potable water that is provided in a suitable manner, in sufficient volume, and at suitable intervals, to maintain normal hydration for the age, species, condition, size and type of each animal.
- e. "Collar" means a well-fitted device, appropriate to the age and size of the animal, encircling and attached to the animal's neck in such a way as to minimize trauma or injury to the animal. A collar for tethering must be at least as large as the dog's neck plus one inch. Choke collars shall not be used in tethering.
- f. "Confine" for the purpose of this ordinance means to place or keep a dog within a permanent outdoor enclosure.
- g. A "Permanent Outdoor Enclosure" shall be defined as any enclosure used for the purpose of dog confinement. Such enclosure shall be constructed of chain link or a similar type of material with all four sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping the enclosure.
- h. "Tether" means a rope, chain, cable, or the like, by which an animal is fastened, chained, tied or restrained to any stationary or inanimate object by means of a rope, chain, strap or other physical restraint so as to limit its range of movement.
- i. "Tethering" means the act of restraining a dog through the use of a tether.
- j. The definition of "tether", "tethered," or "tethering" shall not include using a leash to walk a dog, or when a leash or lead line is used in the physical presence of an owner or other caretaker for training purposes.
- k. "Extreme weather" means temperature that is 28 degrees Fahrenheit or below, or in effect feels 28 degrees Fahrenheit or below accounting for wind chill factors; extreme heat or humidity conditions including a heat index of 95 degrees Fahrenheit or above; hurricanes; flooding; and other similar extremes.

## II. Care Requirements

- a. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall provide the dog with adequate food while the dog is tethered or confined.
- b. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall provide the dog with adequate water while the dog is tethered or confined.
- c. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall provide the dog with adequate space while the dog is tethered or confined.
- d. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall provide the dog with adequate shelter while the dog is tethered or confined.
- e. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall provide adequate care and medical treatment for injuries, parasites and disease, sufficient to maintain the dog in good health while the dog is tethered or confined.
- f. Any outdoor area where a dog is tethered or confined as defined herein must be kept reasonably free of excretions.
- g. Every person owning or harboring a female dog, whether licensed or unlicensed, shall keep such dog confined in a building or secure enclosure for twenty-five days during the period of estrus.
- h. *Provided*, that the requirements herein do not apply when the animal is being walked by its owner or other caretaker on a leash or is attached to a tether to lead line in the presence of a caretaker for purposes of exercise or training.
- i. Any person owning or having care, control or custody of a dog that is tethered or confined as defined herein shall ensure that the dog is taken indoors (not kept in an outdoor enclosure or tethered) during times of extreme weather.

### **III. Permanent Outdoor Enclosure Requirements**

- a. It shall be unlawful to keep a dog outside for more than five (5) hours in any twenty-four hour period. A person owning or having care, control or custody of the dog must supervise the dog while the dog is tethered.
- b. Adequate shelter, including protection from the weather and elements, shall be provided at all times in any permanent outdoor enclosure.
- c. Shade, either natural or manmade, shall be available at all times to a dog that is confined. The dog's shelter must be placed in the shade during the summer months.
- d. Bedding, shall be provided in sufficient quantity for insulation to allow reasonable retention of the dog's body heat. Bedding shall be kept reasonably clean and dry.
- e. All areas of confinement shall be maintained as to provide a safe and healthy environment for the dog and shall be reasonably free of hazards.
- f. Any dog confined within a permanent outdoor enclosure must have adequate space for exercise.
- g. More than one dog may be confined in the same enclosure provided that the space standards defined herein are met and the dog can interact safely with other animals in the enclosure.

h. All areas of confinement shall be free of standing water.

#### **IV. Tethering Requirements**

- a. It shall be unlawful for any person to tether, fasten, chain, tie, restrain or cause a dog to be fastened, chained, tied or restrained to any stationary or inanimate object by means of a rope, chain, strap or other physical restraint for the purpose of tethering, for more than five (5) hours, cumulatively, in any twenty-four hour period.
- b. Any person owning or having care, control or custody of the dog must supervise the dog while the dog is tethered.
- c. If a dog is tethered pursuant to this section, the dog must be tethered by a properly fitted non-choke collar or a body harness to a tether that is at least twelve (12) feet in length or four (4) times the body length of the dog, measured from the dog's nose to the tip of its tail, whichever is greater. The tether shall be free from entanglement and shall not weigh more than 1/8<sup>th</sup> of the body weight of the animal. All tethers shall have swivels on at least one end and so mounted and situated to minimize risk of entanglement.
- d. Shade, either natural or manmade, shall be available at all times to a dog that is tethered. The dog's shelter must be placed in the shade during the summer months.
- e. If a dog is tethered for more than two hours, the dog must be provided with adequate shelter, space, food, and water as defined in Section I of this Ordinance.
- f. No dog under the age of six months may be tethered.
- g. All tethers shall allow the dog to move freely without danger of entanglement with other objects or dogs, or from extending over an object or edge that could result in the strangulation or injury of the dog.
- h. Any person owning or having care, control or custody of a dog that is tethered must restrict the animal to the confines of their property.

#### **V. Penalties**

- a. It is hereby declared unlawful for an owner or caretaker of a dog to violate any of the provisions of this Ordinance.
- b. Any person who violates any provision of this Ordinance, shall be guilty of a misdemeanor, may be issued a citation for violation of the Ordinance, and upon conviction thereof shall be fined for each violation not more than \$100 (one hundred dollars) and shall be subject to prosecution on the aforesaid misdemeanor charge in the appropriate court, pursuant to W. Va. Code § 19-20-6(c) and related statutes.
- c. *Warning Period:* Any person found by Animal Control or law enforcement officers to be confining or tethering an animal in violation of this Ordinance may be issued a warning citation and be allowed up to fifteen (15) days to provide means of tethering or confinement that conform to the requirements of this ordinance. *Provided* the warning period is void immediately if the owner or caretaker, at any time during the warning period, fails to comply with W. Va. Code § 61-8-19. *Provided* the Animal Control or law enforcement officer may, but is not required to, issue a second

warning to a person who has received a prior warning, but may instead issue a citation under the terms of this ordinance.

- d. Any person who is issued a warning citation and does not conform the keeping of their dogs to the requirements of this Ordinance within the time period provided in the warning citation may be issued a citation immediately and is thereupon subject to fines and penalties stipulated in this Ordinance.

## **VI. Severability**

If any portion of this ordinance shall be found by a Court of competent jurisdiction to be invalid, the remainder of this Ordinance shall remain in full force and effect.

## **VII. Authority:**

W. Va. Code § 7-10-1, et. seq.; W. Va. Code § 19-20-1, et. seq.; W. Va. Code § 19-20A-1, et. seq.; W. Va. Code § 61-8-19.

### CHAPTER 2 - Dogs

#### Section 4-201 Annual head tax imposed; amount of tax and when and to whom payable

(a) Every person who owns or keeps within the town a dog over the age of six months shall pay an annual head tax of \$3.00 for each dog.

(b) The taxes imposed by this section shall be paid on or before the first day of July of each year to the assessor of Jefferson County or to one of his deputies; provided, that when a person becomes the owner of a dog which is six months or more of age, or when a dog owned or kept within the Town attains the age of six months, such owner or keeper shall pay the tax imposed by this section at the time of acquisition of such dog, or at the time such dog attains the age of six months, as the case may be.

#### Section 4-202 Registration tag to be worn

Each owner or keeper of a dog within the Town shall cause such dog to wear a suitable collar or harness, to which shall be securely attached the current year's registration tag of such dog.

#### Section 4-203 Prohibited running at large; limitation on dogs being in stores, etc.

No owner or keeper of a dog within the Town shall permit such dog to run at large; or to enter any store or other place where goods, merchandise, food stuffs or other commodities are sold, exchanged, exposed or offered for sale or exchange, and it shall be the duty of the owner and occupant of such store or other place to immediately cause such dog so entering to be expelled therefrom, but this provision shall not apply to seeing-eye dogs held on leash by blind persons.

#### Section 4-204 Impoundment and disposition of dogs found running at large

Dogs found running at large within the town shall be subject to impoundment and disposition in the same manner as other animals as provided in section 4-102.

Section 4-205 Yelping, howling, etc., to annoyance of neighborhood

No person shall harbor or keep any dog which by loud and frequent or habitual barking, yelping or howling shall cause serious annoyance to the neighborhood or to people passing upon the street.

Section 4-206 Mad dogs; proclamation of mayor that muzzles be worn;  
impoundment of unmuzzled dogs during period of proclamation

Whenever it shall appear to the Mayor that there is good reason to believe that any dog within the town is mad, it shall be his duty to issue his proclamation requiring that all dogs within the town shall, for a period named in such proclamation, wear a good substantial muzzle, so securely put on as to prevent any such dog from biting. If any dog shall be found in the town during such period without wearing a muzzle, such dog shall be impounded and treated in all respects as is provided in Section 4-102, and moreover, such dog shall not be delivered to anyone until so muzzled; provided, that if there is a reason to believe that any dog is mad, or has been bitten by a mad dog, then it shall be the duty of any officer of the town immediately taken or cause such dog to be killed and buried. -

Section 4-207 Dogs that deposit waste on public or private property. (Adopted August 2009)

(a) Every owner or keeper of a dog which is permitted to deposit waste on public or private property should immediately remove and discard the waste. Such owner or keeper who does not remove such waste from public or private property is guilty of a misdemeanor and shall be fined not less than \$50.00 nor more than \$150.00, upon conviction. Any dog which deposits waste on public or private property is subject to seizure and to impoundment and disposition in the same manner as other animals as provided in Section 4-102.

(b) For purposes of this Section 4-207, "private property" shall not include private property owned by the owner or keeper of the dog, or private property leased by the owner or keeper of the dog with the lessor's express consent for such owner or keeper to maintain the dog on the property.

(c) All persons paying the fees and costs for redemption of the dog to the animal warden shall be given a receipt for the total sum collected. Such receipt shall be signed and dated by the animal warden collecting the fees and costs. The owner or keeper of the dog shall be assessed the impoundment fee, cost of care, feeding and shelter, and the cost of sale upon disposition of the dog as provided in Section 4-207, which shall be offset by any sale proceeds or other receipts from such disposition. If any such owner or keeper does not pay the fees and costs assessed within 30 days of the assessment, the Town may institute legal proceedings for collection of the same, including all fees and costs expended in the collection effort.

**Section 4-208. Penalties.**

(d) Notwithstanding any provision to the contrary, any person in violation of any provision of this Chapter shall be fined no more than one hundred dollars.

