

**BEFORE THE COUNTY COMMISSION OF BERKELEY COUNTY
WEST VIRGINIA**

**IN RE: MANAGEMENT AND CONTROL OF DOGS AND CERTAIN
 OTHER ANIMALS**

The members of the Berkeley County Commission (Commission) on this the 24th day of June, 2010, do hereby ORDER that the County's existing three Ordinances related to dogs and other animals be rescinded and that the following is adopted as a new Ordinance, all effective on August 1, 2010.

I. Control of Dogs By Owners

A. Generally

All dogs in the unincorporated areas of Berkeley County shall be kept under control by the owner or supervisor of the dog. Dogs not on property owned or leased by the owner of the dog shall be kept on a leash. The Sheriff's designees are hereby appointed as Dog Wardens and County Humane Officers, as those terms are defined in the *West Virginia Code*, 1931, as amended, and are collectively designated Berkeley County Animal Control Officers. Such Animal Control Officers are hereby **authorized to seize dogs not on a leash, if such dogs are not on property owned or leased by the owner, and to hold such dogs at the Animal Control facilities for a period of 5 days or until the owner of such dogs pays the facility fees and costs due** as hereinbelow set forth, whichever time is shorter. Dogs not picked up by the owner within 5 days shall become the property of Berkeley County and shall be adopted out to suitable owners or shall be destroyed, pursuant to the provisions of this Ordinance, by the Animal Control Officers or their agents.

Dogs engaged in legal hunting activities, lawful training activities, law enforcement activities, lawful herding or other farm-business activities shall not be subject to this section of the Ordinance.

Any dog which does not have on its collar a tag indicating that the **applicable County taxes or fees** have been paid and/or any dog which does not have a **tag indicating that the particular dog has had its rabies vaccination**, shall be considered uncontrolled and subject to seizure. In addition, all persons who own, keep or harbour a dog which dog is not vaccinated or revaccinated against rabies, and whoever vaccinates a dog against rabies and fails or refuses to keep and report the required record of such vaccination, or fails or refuses to provide the required tag, or whoever obstructs or interferes in an way with the enforcement of the laws hereto pertaining, shall, upon conviction, be fined not less than \$10.00 nor more than \$50.00, or be confined in the regional jail not less than 10 days nor more than 60 days, or both.

The Assessor, at the time residents of this County pay the dog tax or fee and receive their dog tag, shall provide a copy of this or any subsequently amended Dog Management Ordinance. The Ordinance shall, also, be available on the County website.

Owners of dogs which are permitted to leave waste on public or private property not his or her own should immediately **remove and properly dispose of the waste**. Owners who do not remove such waste from the public or private property not owned or leased by them are guilty of a misdemeanor and shall be fined not less than \$50.00 nor more than \$150.00, upon conviction.

When, in the provisions of this Ordinance, Animal Control Officers or law enforcement officers seize dogs and such dogs are housed at the County Animal Control Facilities, **fees for such impoundment** shall be as follows:

Seizure and Delivery of Dog to Facility.....	\$54.00
Serving or Posting Notice to Owner.....	20.00
Housing and Feeding Dog Per Diem.....	7.00

All Animal Control Officers are hereby authorized to issue citations for violations of this Ordinance.

B. Excessively Noisy Dogs

Habitually barking, howling or yelping dogs are hereby found to be and are declared a public nuisance. Pursuant to *West Virginia Code* § 7-1-3kk, the keeping or harbouring of any dog within the County of Berkeley which dog, by frequent or habitual barking, howling or yelping, creates unreasonably loud or disturbing noises of such character, intensity or duration as to disturb the peace, quiet and good order of the neighborhood or such resident or business neighbors as may be in close enough proximity to such dog to cause such disturbance, is prohibited.

Any person who shall allow such dog to habitually remain, be lodged or fed within or on any property, dwelling, building, yard or enclosure, which he/she occupies, owns or over which he/she has control, shall be considered as harbouring such dog and shall be guilty of a misdemeanor. Upon a finding by the Magistrate Court of Berkeley County, that this section of the Ordinance has been violated, such **Magistrate shall impose a fine in the amount of \$100.00 for a first offense. Subsequent offenses shall result in fines of, at least, \$100.00 but, not to exceed \$250.00.** Appeals from a Magistrate Court finding and conviction shall be to the Circuit Court. Such finding and conviction shall not restrict the bringing of a civil action, in an appropriate court of law, to seek a remedy for imposition of this offending nuisance.

C. Vicious/Dangerous Dogs

Likewise, pursuant to the provisions of *West Virginia Code* § 7-1-3kk, the Commission finds and declares that **vicious and/or dangerous dogs are a public nuisance.**

Definitions

1. A dangerous or vicious dog shall be defined to mean:
 - a. A dog that:
 1. Without provocation has killed or inflicted injury on a person; or
 2. Killed or inflicted severe injury upon a domestic animal, horse or livestock, when not on the offending dog owner's real property; or
 3. Approached a person when not on the offending dog owner's property in a vicious or terrorizing manner, in an apparent attitude of attack, as determined by the Supervising Animal Control Officer of his or her designee, upon the sworn affidavit of, at least, two eye witnesses.
 - b. Any dog owned or harboured primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.
2. Owner shall mean any person or legal entity that has a possessory property right in a dog.
3. Owners' real property shall mean any real property owned or leased by the owner or owners of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, townhouse or subdivision development.
4. Severe injury shall mean any physical injury that results in broken bones or disfiguring lacerations or which required surgery or hospitalization.
5. Injury shall mean any breaking of the skin, which results in bleeding, caused by bite.

Officers' Responsibilities

The Supervising Animal Control Officer of Berkeley County, his or her designee, is hereby designated as the person **responsible for initially determining when a dog is a dangerous or vicious dog.** Such Animal Control Officer may not be able to make such determination early in his/her investigation. The Officer may seize an offending dog before making that determination, if it appears that the definitional requisites exist for such determination. **The Officer may use his/her full discretion in making a determination before it is communicated.**

Notwithstanding the existence of the definitional requisites of a determination of vicious/dangerous, the Officer may, after appropriate observation at the Animal Control Facilities, determine that the dog is not vicious/dangerous but, rather, that the act of the dog was an anomaly and not the act of a vicious/dangerous animal. Such determination shall not be open to dispute through this Ordinance.

Any determination that a dog is vicious or dangerous shall be communicated by the Supervising Animal Control Officer, his or her designee, to the dog owner in writing, giving the reasons for such determination.

Initial Appeal of Vicious/Dangerous Determination

Appeal of this determination shall be to the County Commission **through a five member body to be known as the Nuisance Appeal Board**. Such Board shall be appointed by the Commission and its members shall serve terms of three years. They shall serve at the will and pleasure of the Commission and without compensation.

Such **appeal must be in writing and must be received by the County Commission within three business days of service of the reasons for the determination**. The Commission shall immediately notify the Nuisance Appeal Board that an appeal has been filed. The Board Chair or Vice Chair shall schedule an appeal proceeding to hear the evidence with regard to the determination made by the Animal Control Officer that the dog is vicious or dangerous and to decide the legitimacy of that determination. Such appeal shall be heard within ten working days of receipt of such written appeal and shall be memorialized by electronic recordation. The Board shall communicate its recommendation to the owner of the dog and to the County Commission upon completion of the appeal proceeding

Should the Nuisance Appeal Board find that the Animal Control Officer's Determination should not prevail, the seized dog shall be returned to the owner forthwith and no appeal of such decision shall be heard.

Mid-Level Appeal of Board's Affirmation of Officer's Determination

Any owner adversely affected by the Determination that his/her dog is a vicious/dangerous dog **may appeal to the Commission**. The Commission shall review the record of the hearing held by the Nuisance Appeal Board and may take any evidence it deems appropriate. The Commission shall adopt or reject, in its discretion, the recommendation of the Nuisance Appeal Board.

Appeal of Commission's Decision to Circuit Court

Such **decision of the County Commission shall be considered a final order and shall be appealable, by the owner of the dog, to the circuit court**. The petition for appeal must be filed with the circuit court within four months of the entry of the final order of the Commission. If such appeal is allowed, it shall be heard and a decision made thereon upon the original record of the proceeding, all as defined in *West Virginia Code 58-3-4* and 5.

Any person eligible to file an appeal hereunder may sign a **waiver of appeal** if he/she decides not to file such appeal. In that case, the dog shall be euthanized and no additional costs will accrue to that person.

Disposition of Dog Following Final Determination

Any **dog finally determined, at any point, to be vicious or dangerous shall be disposed of by the Animal Control Office** in the same manner as such officer disposes of other dogs, except that vicious or dangerous dogs may not be made available to the public through adoption. Provided, That the Commission may find that the vicious/dangerous dog should not be euthanized but, rather, may Order that, **in order to avoid the killing of the dog**, the owner must meet certain requirements, including but, not limited to, payment of any and all medical and/or veterinary costs incurred as a result of vicious act; neutering of the dog; professional training of the dog; micro chipping of the dog; securely confining the dog according to the specifications of the Animal Control Office; and/or licensing the dog as a Vicious Dog, pursuant to *West Virginia Code §19-20-21*.

Exceptions

No **police dog**, which was engaged in the performance of its duties at the time of the acts complained of, shall be found to be a dangerous or vicious dog. No dog shall be found to be a dangerous or vicious dog **solely because of its breed**, nor is a particular breed of dog precluded from being determined to be vicious/dangerous. **No dog shall be found to be a dangerous or vicious dog if the bite, attack or injury was sustained by a person who was** (i) committing at the time a crime upon the premises at which the dog's owner resides; (ii) committing, at the time, a willful trespass or other tort upon the premises at which the dog's owner resides; or (iii) provoking, tormenting, or physically abusing the dog.

If, in the discretion of the Supervising Animal Control Officer, or his or her designee, a dog cannot safely be captured and detained, and the same has been determined by the Animal Control Officer to be vicious or dangerous, either definitionally or following full investigatory observation, the Animal Control **Officer is authorized to take immediate and, if necessary, lethal action, against such dog** notwithstanding the fact that no written notice has been communicated to the owner of the dog and that no hearing into said determination has been requested or held.

Costs of Disposition in Vicious/Dangerous Designation Cases

When dogs are finally determined to be vicious or dangerous and, therefore, a nuisance, **all costs of disposition**, including legal fees, housing of the dog during the legal proceedings, termination of the dog's life and administrative costs expended by the County **shall be reimbursed by the owner of the dog**.

Additionally, the owner of any dog finally found to be vicious shall pay any and all medical and/or veterinary costs, including costs for disposition of the bodies of pets which have died or been euthanized as a result of attack by such vicious or dangerous dog.

Penalties

The Supervising Animal Control **Officer, or his or her designee, shall cite the owner of any dog finally determined to be vicious or dangerous** and the dog owner shall be fined a maximum of \$100.00 for the first offense; for subsequent offenses, such fine shall be a minimum of \$300.00, and shall not exceed \$1000.00.

Time Lines

Notwithstanding any other provision of any county ordinance or state statute to the contrary, the detention of any dog designated, pursuant to the provisions of this Ordinance, as vicious or dangerous, shall include all time necessary for the conclusion of all appeals to be finalized.

II. Animal Cruelty and Dog Tethering

A. Cruelty to Animals

(1) No person shall intentionally, knowingly or recklessly, cruelly mistreat, abandon or withhold proper sustenance, including food, water, shelter that protects from the elements, exercise or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandon any domesticated animal to die, or intentionally, knowingly or recklessly leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result, or ride an animal when it is physically unfit, or bait or harass any animal for the purpose of making it perform for a person's amusement, or cruelly chain, tether or confine outside any animal or use, train or possess any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

Any person in violation of II A (1) above is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars or confined in jail not more than six months, or both.

(2) Any person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than 1 nor more than 5 years and be fined not less than \$1,000.00 nor more than \$5,000.00. For the purpose of this subsection, "torture" means an action taken for the primary purpose of inflicting pain.

Nothing in II.A., above, shall be construed to prohibit (1) any action by a licensed veterinarian done in accordance with accepted standards of veterinary care; any action taken by a law enforcement officer pursuant to the interests of public health and safety; or, any act done in self-defense or done to defend another person or animal from attack.

The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, not humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect at the effective date of this Ordinance.

B. Tethering

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 houses, trees, fences, garages or other stationary or immobile objects by means of a rope, chain, strap or other physical restraint for the purpose of confinement, except in circumstances where all of the following requirements are met:

- 1) The dog must be properly fitted with and wearing a non-choke harness or collar made of leather, nylon, or similar material.
- 2) The tether must be attached to the dog's harness or collar and not directly to the dog's neck and must be attached to such harness or collar by a swivel mechanism.
- 3) The tether must be at least 4 times the body length of the dog or a minimum of 10 feet long and may weigh no more than 1/8 of the dog's weight. The tether shall be free from tangles and allow the dog easy access to food, water, shelter, and shade.
- 4) The dog must be tethered so as to prevent injury, strangulation, or entanglement.
- 5) The dog shall not be tethered without appropriate shelter during extreme weather, including, but not limited to, extreme heat or freezing temperatures, severe thunderstorms, or floods.
- 6) The dog must be, at least, 15 feet from the edge of any public road or sidewalk.
- 7) The dog must be 6 months of age or older, unless being trained for hunting and, then, an age appropriate tether must be utilized.
- 8) The dog is not sick or injured.
- 9) The dog's restraint should last as brief a time as possible and, in no case, may the restraint time exceed 12 hours in any 24 hour period.

With regard to requirements 3 and 9 above, Animal Control Officers are authorized to utilize their discretion in finding a violation based on length and/or weight of a tether or duration of restraint. A finding or violation must be accompanied by a recitation of specific facts and conclusions drawn from such facts as a part of any citation.

b. If using a pulley, running line or trolley system, all the conditions listed immediately above, must be met, plus:

1. The tether must be at least 15 feet in length and at least 4 feet and not more than 7 feet above ground.
2. If there are multiple dogs, each dog must be tethered separately.
3. The dog(s) must be tethered at sufficient distance from any other objects to prohibit the tangling of the cable, from extending over an object or an edge that could result in injury or strangulation of the dog and be of sufficient distance from any fence so as to prohibit the dog access to the fence.

All dogs shall be provided with sanitary shelter from the elements. Said shelter shall be designed, constructed and maintained to protect the dog from rain, ice, excessive cold, excessive heat and excessive direct sunlight, and of a size to allow the dog sufficient space to stand, turn around, lie down, and make all other normal body movements in a normal and comfortable position appropriate to the age, size, and health of the dog.

Nothing in II.B. (a) and (b) immediately above, shall be deemed to apply to temporary restraint (1) during any lawful training activities, veterinary treatment, grooming or law enforcement training; (2) when the animal is being held, walked, or exercised on a hand-held leash.

C. Proper Shelter and Outdoor Dog Pens

Proper shelter, including protection from the weather and elements, shall be provided at all times. The shelter shall meet the following requirements:

1. weatherproof roof, having no gaps;
2. 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;
3. interior shall have no metal;
4. entryway large enough for the dog to easily enter and exit;
5. must be wind and moisture proof and of proportionate size to allow the natural body heat of the dog to be retained in cold weather;
6. shall have adequate ventilation and protection from temperature extremes at all times;
7. and, bedding, such as wood shavings, straw, or other material that cannot freeze to the dog's body shall be provided in sufficient quantity for insulation. Such bedding shall be kept dry.

It shall be unlawful to consider metal barrels, plastic drums, cardboard or other disposable boxes, lean-tos, vehicles, and objects of similar description as proper shelter.

If outdoor dog pens are used, they must meet the following requirements:

1. There shall be, at least, **100 square feet of space in such pen for each dog** over 6 months of age kept in the pen.
2. The dog shall have proper shelter, as described above.
3. The dog(s) must have **access to clean, potable water and shelter** at all times.
4. The dog must be provided, at all times, with **shade or protection from the sun or elements** by either natural or man-made means.
5. An owner must promptly **remove and dispose of dog excrement** and food wastes and debris so as to minimize vermin infestation, contamination, odors, and disease hazards.

Exceptions: The Animal Control **Officer may use discretion in granting a waiver to the square foot requirements** in this part of the Ordinance, if the Officer determines that the pen provides appropriate space for the size of the dog(s). Criteria the officer may consider when determining whether to grant a waiver can include but, are not limited to: size of the dog(s), breed of the dog(s); whether the dogs are being housed for legal hunting or training purposes, and size of the property on which the pen is located.

D. Enforcement, Penalties for Violation

1. **First Offense:** Any humane officer or law enforcement officer who determines a dog is being kept in violation of any provision set forth in II B or C, herein, shall issue a **warning** to the owner or guardian of the dog or property owner on which the violation is present. The owner or guardian will be given a reasonable amount of time to correct the violation, not to exceed 72 hours. The Animal Control Officer may use discretion in permitting a longer time period, if construction is required to comply with the law but, in no case may such construction take longer to complete than 20 days from the date of warning.
2. **Second Offense:** If, after receiving a warning, the dog continues to show evidence of cruelty or inhumane treatment as set forth in this part of the Ordinance, the owner or supervisor of the animal shall be guilty of a **misdemeanor** and, upon conviction thereof, shall be **fined not less than \$300.00 nor more than \$2000.00.**
3. **Additional Offenses:** For each subsequent offense, following conviction, the owner shall be **fined not less than \$500.00 nor more than \$2500.00.**

4. In addition, any Animal Control Officer or law enforcement officer may, at the time of the second offense or any subsequent offense, take into custody, upon either private or public property, an animal which clearly shows evidence of cruel or inhumane treatment. Upon conviction, such animal shall become the property of the County and shall be adopted out or disposed of according to law.
5. With regard to II A (1) of this Ordinance, any person in violation thereof the first time, is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$300.00 nor more than \$2000.00 or confined in jail not more than 6 months, or both. Any person in violation of II A (1) a second or subsequent time, is guilty of a misdemeanor and shall be confined in jail for a period of not less than 90 days nor more than one year, fined not less than \$500.00 nor more than \$3000.00, or both fined and incarcerated.

No person who has been convicted of a violation of II A (1) or (2) may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation. The court may, in addition to the penalties provided thus far in this Ordinance, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

In addition to any other penalty which can be imposed for a violation of II A (1) or (2), a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of 5 years following entry of a misdemeanor conviction and 15 years following entry of a felony conviction. A violation of the order not to possess own or reside with any animal is a misdemeanor punishable by a fine not exceeding \$2,000.00 and forfeiture of the animal.

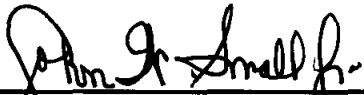
Violations of II A (1) and (2) type prohibitions may be cited, at the discretion of the officers, as violations of the Code of West Virginia §61-8-19.

The effective date of this Ordinance is the 1st day of August, 2010.

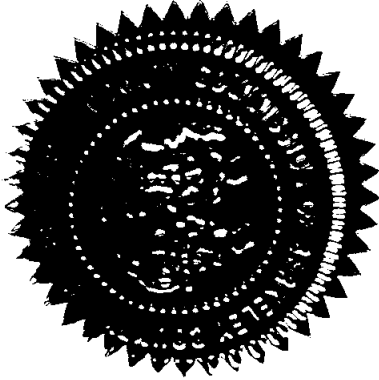

Ronald K. Collins, President


William L. Stubblefield, Commissioner

ATTEST:


John W. Small, Jr., Clerk

Anthony J. Petrucci, Commissioner



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