

IN THE COUNTY COMMISSION OF SUMMERS COUNTY, WEST VIRGINIA

ANIMAL CARE AND CONTROL ORDINANCE

ORDER

WHEREAS, West Virginia Code, section fourteen, article one, chapter seven (7-1-14), and section six, article twenty, chapter nineteen (19-20-6) of the West Virginia Code, as amended, provides for a promulgation and enforcement of such ordinances, rules and regulations consistent with these provisions, as necessary or convenient for the control and management of all dogs, and other animals, in the county by the County Commission, and

WHEREAS, the County Commission of Summers County, West Virginia, has been made aware of the need for an ordinance for the humane treatment of animals in the county; and

WHEREAS, the County Commission of Summers County, West Virginia, has been made aware of the fact that dogs are running loose, intimidating and harassing individuals and other animals and livestock, destroying property, inflicting personal injury; and

WHEREAS, the County animal control officer and other law enforcement officials are currently without authority to seize and impound dogs running loose if such dogs are properly licensed, or to issue citations to the owners thereof; and

WHEREAS, the County Commission of Summers County, West Virginia, has been made aware that some dogs are not being properly licensed and are without proper rabies vaccinations; and

WHEREAS, it is the desire of the County Commission of Summers County, West Virginia, to protect its citizens and

property from dogs running at large, and to protect its citizens from animals not properly vaccinated against rabies; and

WHEREAS, the County Commission of Summers County, West Virginia, desires to authorize and specify action by the County animal control officer and other law enforcement officers in regard to such dogs running at large, dogs without proper licenses and dogs without current rabies vaccines, and to provide for the issuance of citations, assessment of fines, and the destruction of dogs for the violations thereof.

NOW, THEREFORE, BE IT HEREBY ORDERED AND ORDAINED by the County Commission of Summers County, West Virginia, that the following ordinance establishing a animal care and control ordinance for dogs, and other animals, for the unincorporated areas of Summers County, West Virginia, in accordance with section fourteen, article one, chapter seven (7-1-14) and section six, article twenty, chapter nineteen (19-20-6); prohibiting the abuse and neglect of animals in the county; and prohibiting owners from allowing their dogs to be running at large, dogs without proper licenses, and dogs without current rabies vaccines; authorizing and specifying action by the Animal control officer and other law enforcement officers with regard to dogs running at large, dogs without proper licenses, and dogs without current rabies vaccines; and providing for the issuance of citations, the assessment of fines and the destruction of dogs for violations for this ordinance, is hereby adopted;

SECTION 1. CRUELTY TO ANIMALS

The purpose of this section is to provide for the custody, care, and protection of domestic animals so they will not be abandoned,

neglected or cruelly treated.

(a) No person shall cruelly mistreat, abandon or withhold proper sustenance, including food, potable water, shelter, clean and sanitary living conditions, or medical treatment necessary to sustain normal health and fitness, or to prevent or end suffering.

(b) No person shall use, train or possess any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(c) No person, other than a licensed veterinarian or a person acting under the direction of and with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause 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 such animal's performance.

(d) No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to any animal that is the property of another; and no person shall, willfully place any poisoned food where it may easily be found and eaten by children or domestic animals, either upon his own land or the lands of another.

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

(f) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound, and such person shall, in addition to any fine imposed, be liable for any costs

incurred or to be incurred by the humane society or county pound as a result.

(g) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(h) The provisions of this section, with the exception of item (a), do not apply to 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, nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated hereunder, as both such statutes and regulations are in effect on the effective date of this section. (WVaC61-8-19).

SECTION 1-1 TETHERING OF DOGS AND OTHER ANIMALS

For the purpose of this provision, tethering shall include pulleys, running lines, and trolley systems.

(a) No dog or other animal shall be confined by means of leash, chain, rope, cord., etc., for more than twenty-four consecutive hours. For each twenty-four hour period of tethering, the dog or other animal must be unconfined from leash, chain, rope, cord, etc. or otherwise exercised for a minimum of one hour. The owner may release the dog or other animal into a kennel to meet the required time for unconfined periods, but the kennel must be a minimum of ten (10') feet by ten (10') feet. For multiple dogs or other animals, the kennel must have a minimum square footage of ten (10') feet by ten (10') feet per each animal.

(b) During periods of tethering, the dog or other animal must be tethered in a manner so as to prevent injury, strangulation or entanglement and must not prevent the animal from having access to

adequate food, potable water, shade, shelter and protection from the elements. For multiple dogs or other animals, there must be a separate tether for each animal and the animals must be tethered in a manner so as not to become tangled with one another or obstructed by one another, and each animal must have access to adequate food, potable water, shade, shelter and protection from the elements.

(c) During periods of tethering, the dog or other animal must be fitted with and wearing a non-choke harness or collar made of leather, nylon or similar material. Choke, prong, martingale, or greyhound collars shall not be used. The tether must be attached to the dog's or other animal's harness or collar and not directly to the dog's or other animal's neck. The dog or other animal must be on a tether not less than ten (10') feet in length, free from tangles and obstruction and the tether can weigh no more than 1/8 of the dog's or other animal's weight.

(d) No dog or other animal under the age of six (6) months of age shall be tethered.

(e) No dog or other animal shall be tethered during periods of extreme weather, which shall include, but is not limited to, extreme heat, freezing temperatures, thunderstorms, tornadoes, floods, etc., unless adequate food, potable water, shade, shelter and protection from the elements is provided.

(f) During periods of tethering the dog or other animal must be tethered in a manner so that the dog or other animal is, at all times, a minimum of fifteen (15') feet from the edge of any public road or sidewalk; or from any fence or other object which the dog or animal might attempt to scale that could result in injury or strangulation of the animal.

(g) The purpose of this section is to ensure the animal will be

provided with adequate exercise, mental stimulation, socialization, and care, including food, potable water, and shelter from the elements.

(h) Any person in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than two thousand dollars, or confined to jail not more than six months, or both fined and confined to jail, and may further be sentenced to forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or with the county dog warden. Any time that a citation is issued to the owner of a dog within two (2) weeks of the issuance of a citation for the same offense involving the same dog, the fine shall be not less than one hundred dollars (\$100.00).

SECTION 2. ANIMAL FIGHTING VENTURES PROHIBITED

(a) No person shall engage in, be employed at, or purchase or sell an admission to any animal fighting venture.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1000.00), or confined in the county jail not exceeding one year, or both so fined and confined, and shall be divested of ownership and control of such animals, and shall be liable for all costs for their care, maintenance and/or destruction.

SECTION 3. VACCINATIONS OF DOGS AND CATS

Anyone who owns, keeps or harbors a dog or cat three months or more of age shall have such dog or cat vaccinated against rabies as often as may be necessary under the provisions of West Virginia Code Article 19-20(A) to insure that the dog or cat will at all times be immune to rabies. It shall be the duty of the owner of such dog or cat to provide, upon request by the animal control officer or any county or

state police officer, the currently valid vaccination tag issued for such dog or cat pursuant to West Virginia Code 19-20A-4.

SECTION 4. KEEPING OF VICIOUS OR DANGEROUS DOG

No person shall own, keep or harbor any dog, known by it's owner to be vicious, dangerous or in the habit of biting or attacking persons or other animals, whether or not such dog wears current license and rabies tags or whether such dog wears a muzzle, except as provided herein. Upon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous or in the habit of biting or attacking persons or other dogs or animals, the judge may authorize the animal control officer or any other police officer to cause such dog to be to be killed.

(a) For the purposes of this section, "dangerous dog" shall mean any dog that has bitten or attacked or inflicted injury on a person; or that has bitten or attacked a companion animal that is a dog or cat; or that has killed a domestic animal that is a dog or cat.

(b) For the purposes of this section "vicious dog" shall mean any dog that has killed a person; or that has inflicted serious injury to a person, including multiple bites, serious disfigurements, serious impairment of health or serious impairment of bodily function; or any dog that has continued to exhibit behaviors that have resulted in a previous finding by a court that the animal is a dangerous dog, provided that its owner or custodian has been given notice of that finding.

(c) No dog shall be declared dangerous or vicious if the dog was used by a law enforcement official for a legitimate law enforcement purpose; or if the threat, injury or damage was sustained by a person who was committing, at the time, a willful trespass on the premises occupied by the animal's owner or custodian; or who was committing, at

the time, a crime on the premises occupied by the animal's owner or custodian; or who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to repeatedly, in the past, to have provoked, tormented, abused, or assaulted the dog; or at the time of the complaint, the dog was responding to pain or injury or was protecting its kennel, its offspring, a person, or the owner's custodial property.

SECTION 4-1 POWERS OF LAW ENFORCEMENT OR ANIMAL CONTROL OFFICER

(a) Any law enforcement officer or animal control officer who has reason to believe that a dog within his or her jurisdiction is a dangerous or vicious dog shall apply to the magistrate of the county for the issuance of a summons requiring the owner or custodian, if known, to appear before a magistrate at a specified time. The summons shall advise the owner or custodian of the nature of the proceeding and the matters at issue.

(b) If the animal control officer determines that the owner or custodian can confine the dog in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a decision rendered. If the animal control officer determines that the owner or custodian cannot confine the dog in a manner that protects the public safety, then the animal control officer shall take custody of the dog until a hearing is conducted, a decision rendered and any appeals are exhausted.

(c) The magistrate court may compel the owner or custodian of the dog to produce the dog. If after hearing the evidence, the magistrate finds that the dog is a dangerous dog, the magistrate shall order the dog's owner to comply with the provisions of this ordinance.

(d) If after hearing the evidence, the magistrate finds that the animal is a vicious dog, the magistrate shall order the dog to be

humanely destroyed.

(e) Any decision, determination or order made according to this section is subject to appellate review by the circuit court. The owner or custodian of a dog declared dangerous or vicious is liable to the jurisdiction for all costs and expenses of keeping the dog.

SECTION 4-2 OWNER IS A MINOR

If the owner of a dog found to be dangerous is a minor, the custodial parent or legal guardian of the minor shall be responsible for complying with all the requirements of this ordinance.

SECTION 4-3 REGISTRATION AND HANDLING REQUIREMENTS FOR DANGEROUS DOGS

(a) The owner or custodian of any dog found to be a dangerous dog shall, within 15 days of such finding, obtain a dangerous dog registration certificate from the county assessor for a fee of ten dollars, in addition to other fees that may be authorized by law. The assessor shall also provide the owner or custodian with a uniformly designed collar that identifies the dog as a dangerous dog. The owner or custodian shall ensure that the dog wears the collar at all times.

(b) All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.

(c) All dangerous dog registration certificates or renewals thereof required to be obtained under this ordinance shall only be issued to persons 18 years of age or older who present satisfactory evidence of: the dog's current rabies vaccination; that the dog has been spayed or neutered; that the dog is and will be confined in a proper enclosure, or is and will be confined inside the owner's residence, or is and will be muzzled and confined in the owner's fenced-in yard until a proper enclosure is constructed.

(d) Owners or custodians who apply for certificates or renewals thereof under this ordinance shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property;

(e) While on the property of its owner or custodian, a dog found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the dog with shelter from the elements of weather.

(f) When off its owner's or custodian's property, a dog found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the dog or interfere with the dog's vision or respiration, but so as to prevent it from biting a person or another animal.

Section 4-4 NOTIFICATION REQUIRED BY OWNER

(a) The owner or custodian of a dog found to be a dangerous dog shall promptly notify the animal control officer of the names, addresses, and telephone numbers of all owners or custodians of the dog; of all the means necessary to locate the owner or custodian and the dog at any time; of any complaints or incidents of attack by the dog upon any person or cat or dog; of any claims made or lawsuits brought as a result of any attack; or of the death of the dog.

(b) After an animal has been found to be a dangerous dog, the animal's owner or custodian shall immediately, upon learning the same, shall notify the local animal control officer if the animal is loose or unconfined; bites a person or attacks another animal; is sold, given

away, or dies.

(c) Any owner or custodian of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the animal control officer for the old address from which the animal has moved and the new address to which the animal has been moved.

(d) The animal control officer shall maintain a complete and accurate record of each dog in Summers County that has been found to be dangerous or vicious by the magistrate or other court. Records shall include dates and descriptions of incidents leading to the matter being brought before the courts; the date and detail of the court's finding that the animal is dangerous; and all correspondence and telephone contact made by the owner of the animal deemed to be dangerous, which shall include the date and time of the contact and the detail of the contact. In the event that an animal is deemed to be vicious by the magistrate or other court, the animal control officer shall maintain the same records as described for a dangerous dog, but will also include the date and time the animal was humanely destroyed.

SECTION 4-5 PUNISHMENT AND PENALTIES FOR NON-COMPLIANCE

(a) Any owner or custodian of a dangerous or vicious dog, who violates the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars.

(b) Any owner or custodian of a dangerous or vicious dog that causes serious injury to a human being without provocation is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the regional jail for not more than ninety days, or both fined and imprisoned.

(c) Any owner or custodian of a dangerous or vicious dog that

causes death to a human being without provocation is guilty of involuntary manslaughter, a misdemeanor, and upon conviction thereof, shall be fined not less than one thousand dollars or confined to the regional jail not to exceed one year, or both fined and imprisoned.

SECTION 5. OFFENSES RELATING TO DOG TAGS

(a) Any owner of a dog shall, upon request by the animal control officer or any county or state police officer, show evidence of registration of such dog. If the owner of such dog should fail to produce proper registration within forty-eight (48) business hours, the dog shall be subject to be impounded, sold, or destroyed as hereinbefore or hereinafter provided.

(b) No person shall attach a license or vaccination tag to any dog to which it was not issued.

(c) No person shall remove a license or vaccination tag from the collar of any dog without the consent of its owner.

(d) Any person who owns, keeps, or harbors a dog, or who owns or operates a kennel, subject to registration under the provisions of this ordinance, and who fails, refuses, or neglects to register such dog or kennel, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five (\$25.00) nor more than one hundred dollars (\$100.00).

(e) Any person who shall alter, or forge any certificate or tag, provided for in this ordinance, or display, present or utter such certificate as valid with knowledge that it has been altered or forged, or who knowingly causes or permits any dog owned, kept or harbored by him to wear any fictitious, altered, or invalid registration or rabies tag in place of a valid tag as required under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment for not more than thirty days or by a

fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or by both fine and imprisonment.

SECTION 6. CONFINEMENT OF DOGS IN HEAT

(a) Every person owning or harboring any female dog in heat shall keep such dog confined in a building or secure enclosure for twenty five days (25) during the period of estrus.

(b) Every person convicted of violating this section shall be fined not more than one hundred dollars (\$100.00).

SECTION 7. PROHIBITION OF DOGS RUNNING AT LARGE

(a) No person shall allow any dog owned by him or in his custody to run at large within Summers County. "At large" means when off the property or premises of its owner or custodian and not under the control of the owner or custodian, or his agent, either by collar and leash, lead or chain. "Property" does not include town houses, condominiums or other property owned in common. "Property" shall include property owned, leased or occupied by the dog's owner. "Owner" for the purposes hereof, shall be deemed any person who has a property right in a dog, any person who keeps or harbors a dog or has a dog in his care or acts as its custodian, or such person who regularly feeds a dog. "Restraint" means being secured by collar and leash, lead, cord or chain.

(b) No person, living on property in common, shall allow any dog owned by him or in his custody to be without restraint when outside the home and/or off the owner's property.

(c) This section shall not apply to any owner while engaged in a supervised, formal obedience training class or show, or during formally sanctioned field trials or while engaged in lawful hunting with a dog during open season or during bona fide hunting or field trial dog training, or any other lawful training activity, or while

engaged in any lawful herding or other farm related activity.

(d) This section shall not apply to any dog being lawfully used as a service animal or being used by any municipal, county or state police department or agency in the performance or the functions and duties of such person, department or agency; or any dog being lawfully trained to be used as a service animal or being trained for use by a municipal, county or state police department or agency.

(e) It shall be unlawful for the owner of a dog to place such dog or allow it to be placed in the custody of any other person not physically capable of maintaining effective control of such dog.

(f) Any dog running at large in the county, whether licensed or unlicensed, may be seized by the county animal control officer or any county or state law enforcement officer. All dogs seized in accordance with the provisions hereof shall be impounded at the County Humane Association facilities in accordance with provisions of West Virginia Code, Chapter 19, Article 20, Sections 6 and 8, as amended.

(g) The owner of any dog seized or impounded under this ordinance may, at any time prior to the expiration of five (5) days from the time that notice of the seizure and impoundment of the dog shall have been given or posted as required by state law, redeem the dog by paying the proper authority having jurisdiction thereof, all costs assessed against such dogs, and any fine assessed hereunder.

(h) The owner of any dog found in violation of this ordinance shall be issued a citation therefore.

(i) Any person found to be guilty of permitting a dog to run at large shall be guilty of a misdemeanor and may be assessed a fine of not less than Twenty Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each violation hereof. A separate violation shall be deemed to have occurred after notification to the owner that

the dog is running at large and after the passage of twenty-four hours.

(j) Any time that a citation is issued to the owner of a dog within two (2) weeks of the issuance of a citation for the same offense involving the same dog, the minimum fine shall be One Hundred Dollars (100.00).

(k) Any owner or keeper of any dog who permits such dog to run at large shall be liable for any damages inflicted upon the person or property of another by such dog while running at large.

SECTION 8. IMPOUNDMENT

Any animal found to be in violation of this ordinance may be impounded by the animal control officer, or any county or state police officer.

(a) The animal control officer, or his appointed agent or agency, shall be responsible for the proper care and final disposition of all impounded dogs.

(b) When any animal is seized by the animal control officer, the officer shall forthwith give notice to the owner of the animal, if such owner be known to the animal control officer, that such animal has been impounded and that it will be sold or destroyed if not redeemed within five (5) days.

(c) If the owner of any seized animal is not known to animal control officer, he shall post a notice in the county courthouse. The notice shall describe the animal, the date and place where seized and shall advise the unknown owner that such dog will be sold or destroyed if not redeemed in five (5) days.

(d) The owner of any impounded animal will be responsible for all expenses, care and upkeep, of the impounded animal.

(e) The animal control officer shall make a monthly report, in writing, to the Summers County Commissioners and shall include a

description of the animal, the date and place where the animal was seized, the owner of the animal, if known, dates of contact with the owner and detail, dates of posted notices, all expenses involved in the upkeep, sale or humane destruction of the animal, and the final disposition of the animal.

SECTION 9. WHEN LAWFUL TO KILL DOG

Any owner of livestock or show animals, or other domestic animals, may kill a dog that he may see chasing, worrying or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, poultry or other domestic animals outside of the enclosure of the owner of the dog, unless the chasing or worrying be done by and at the direction of the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits or horses and colts, poultry or other domestic animals.

SECTION 10. POWER TO ISSUE CITATIONS AND TO IMPOUND ANIMALS

(a) The animal control officer, any county or state police officer, shall have the authority to issue citations for the violation of any of the provisions of this ordinance, and shall have the authority to impound animals where just cause is found.

(b) The animal control officer, or any county or state police officer, shall have the discretion to issue warning citations and/or to order corrective action by the animal's owner prior to issuing citations and/or impounding the animal.

SECTION 11. PROHIBITION OF THE USE OF IMPOUNDED DOGS AND CATS; OTHER ANIMALS

Any dog or cat, or other animal impounded under the provisions of this ordinance may not be sold, given, transferred or otherwise be made available directly or indirectly to any person, institution, corporation or other entity for use in education, scientific research

or related activities, or to slaughter houses, or any other such activity. Disposition of impounded dogs or cats, and other animals, may only be by adoption as pets or humanely destroyed. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction hereof, shall be fined not less than four hundred fifty dollars (\$450.00) nor more than two thousand dollars (\$2,000.00).

SECTION 12. OFFENSES, CRIMINAL PENALTIES, JURISDICTION

A person who violates any of the provisions of this ordinance for which no specific penalty is prescribed is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned. Magistrates shall have concurrent jurisdiction with the circuit courts to enforce the penalties prescribed by this ordinance.

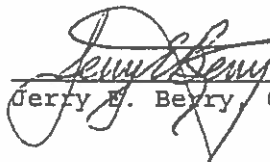
SECTION 13. EFFECTIVE DATE

This ordinance shall become effective on December 1, 2010, and shall remain in effect unless otherwise amended or repealed by the Summers County Commissioners.

ENTERED this 18th day of October, 2010.



Lonnie R. Mullins, President



Jerry E. Berry, Commissioner

Bill Lightner, Commissioner