

ORDINANCE 316

<p>AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA, AMENDING AND RE-ENACTING CITY CODE, CHAPTER 90: ANIMALS</p>
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WHEREAS, the Common Council of the City of Elkins, West Virginia previously adopted ordinances which are codified and reflected in City Code, Chapter 90: Animals; and

WHEREAS, subsequent to the passages of these ordinances, it has become apparent that certain provisions of the City Code, Chapter 90: Animals needed to be changed and amended to reflect changes in State law and for enforceability issues; and

WHEREAS, the Common Council has determined that by making these amendments to said Chapter it is in the best interests of the citizens of the City.

NOW, THEREFORE, be it Ordained and Enacted by the Common Council that City Code, Chapter 90: Animals be amended and shall read as follows:

CHAPTER 90: ANIMALS

Section

General Provisions

90.01 Definitions

90.02 Keeping of livestock and fowl

90.03 Cruelty

90.04 Birds and wild fowl

90.05 Disposal of dead animals

90.06 Staking cows or other animals on streets or property of another

90.07 Slaughtering

90.08 Animals running at large

90.09 Tethering

90.10 Barking, Howling or Squalling Dogs, Cats or Other Animals

90.11 Procedure on complaint of an animal that is vicious, dangerous or infected with a potentially harmful communicable disease.

Impoundment

90.12 Enforcement and State Law applicable

Waterfowl

90.13 Purpose and intent

90.14 Prohibited acts

90.99 Penalty

Cross-reference:

Animals on sidewalks, see § 93.004

Disposition of carcasses generally, see § 91.021

Statutory reference:

Authority of city to regulate or prohibit the keeping of animals and fowl, see W.Va. Code § 8-12-5(26)

Diseases among domestic animals, see W.Va. Code §§ 19-9-1 et seq.

General stock law, see W.Va. Code §§ 19-18-1 et seq.

GENERAL PROVISIONS

§90.01 DEFINITIONS

1) "Dangerous wild animal" means a mammal, bird, reptile, amphibian or aquatic animal, including a hybrid, that is dangerous to humans, other animals or the environment due to its inherent nature and capability to do significant harm. "Wildlife," as defined by section two, article one, chapter twenty of this code, "livestock," as defined in section two, article ten-b, chapter nineteen of this code, and "domestic animals," as defined in this section, are excluded.

2) "Domestic animal" means an animal which, through extremely long association with humans, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and distinguishable from a wild individual of its species, and includes an animal that has been bred as a companion animal.

3) "Enforcement Officer" means any person authorized by this Chapter or State Law to enforce the provisions hereof, or of State law and specifically including any officer of the City of Elkins Police Department.

4) "Feed or feeding" means to place or deposit, scatter or distribute any type of food or sustenance with the intention of feeding, attracting or enticing waterfowl, both migrating and domestic.

5) "Fowl" means any chicken, duck, goose, turkey, guinea fowl or pigeon.

6) "Livestock" means any hog, pig, goat, cow, horse, pony, emu, alpaca or other hoofed animal.

7) "Migratory waterfowl" includes those species of birds commonly known as ducks, geese, swans and other waterfowl falling under the jurisdiction of the United States Fish and Wildlife Service.

§ 90.02 KEEPING OF LIVESTOCK AND FOWL AND DANGEROUS WILD ANIMALS

No person shall keep any livestock or dangerous wild animals within the City. This section shall not apply to hogs or pigs kept at commercial stock yards to be sold at auction.

No person shall keep any fowl within the City except as provided for in the zoning ordinance Section 152.180.

§ 90.03 CRUELTY, POISONING AND INJURY TO ANIMALS

No person within the city shall cruelly or needlessly beat, torture, mutilate, kill, overload or overdrive any domestic animal or fowl, nor willfully deprive any domestic animal or fowl of necessary sustenance or shelter. All provisions of the West Virginia Code that are applicable to and within the City are hereby adopted by reference.

(1991 Code, § 4-5) Penalty, see § 90.99

Statutory reference:

Authority of Council to enact this section, see W.Va. Code § 8-12-5(27)

Malicious killing of, and cruelty to, animals, see W.Va. Code §§ 61-3-27, 61-8-19

No poisoned meat nor any poisonous substance shall be cast into any of the streets, public places, lots or buildings in the city for the purpose of destroying dogs or other animals.

(1991 Code, § 4-6) Penalty, see § 90.99

Statutory reference:

Malicious killing of animals by poison or otherwise, see W.Va. Code § 61-3-27

§ 90.04 BIRDS AND WILD FOWL

No person shall, at any time, kill or injure any wild bird or fowl of any kind or destroy the nests or eggs of any wild bird or fowl. This section shall be administered and enforced by the Enforcement Officer in compliance specifically with the provisions of the West Virginia Code Chapter 20, Article 2, Section 5 and all provisions of the West Virginia Code that are applicable. Any action that is taken to catch or kill wild birds or fowl is not prohibited by this section, if such action is taken pursuant to a state or federal sanctioned programs.

(1991 Code, § 4-7) Penalty, see § 90.99

Statutory reference:

Definitions as to game birds, protected birds and unprotected birds, see W.Va. Code § 20-1-2

Hunting and killing of birds generally, see W.Va. Code §§ 20-2-1 et seq.

§ 90.05 DISPOSAL OF DEAD ANIMALS.

The procedure upon finding the carcass of a dead animal within the City shall immediately contact the Enforcement Officer and state the location thereof. If it is a domestic animal, the Enforcement Officer shall attempt to contact the owner. If the owner is not known, or if it is not a domestic animal, the Enforcement Officer shall notify the Operations Department and the dead animal will be removed and disposed of by the Streets Department. If the dead animal is located on the property of the owner, the owner shall be responsible for the removal and disposal of the dead animal in an appropriate manner.

§ 90.06 HITCHING OR STAKING ANIMALS ON STREETS OR PROPERTY OF ANOTHER.

It shall be unlawful for any person to stake out any animal on the property of another without such property owner's consent, or upon any street or public place in the city or upon property belonging to the city.

(1991 Code, § 4-10) Penalty, see § 90.99

§ 90.07 SLAUGHTERING.

No person shall keep any slaughterhouse or slaughter any animals within the City.

(1991 Code, § 4-12) Penalty, see § 90.99

§ 90.08 ANIMALS RUNNING AT LARGE

(A) Any person who owns, keeps or harbors animal within the city shall keep such animal confined to the premises owned or occupied by him or her and shall not permit such animal to run at large; provided, that animal shall not be deemed to be at large when held on leash by and under the control of a responsible person.

(B) It shall be unlawful for any owner or person in control of an animal to:

(1) Knowingly or willfully allow his or her animal to defecate on private property of other persons without their consent or the consent of persons having control of the premises; and

(2) Knowingly or willfully allow his or her animal to defecate on public property; except that defecation by an animal on public property shall not constitute a violation of this section if the owner of the animal immediately removes the material defecated and disposes of it in a safe and sanitary manner.

(3) Knowingly or willfully fail to periodically, properly and completely collect and dispose of any and all animal fecal excrement accumulating upon the premises of such owner. Detection of odor from the animal fecal excrement which constitutes a nuisance as determined by an Enforcement Officer from any neighboring property shall be deemed to be prima facie evidence of such, animal's owner or other persons failure to abide by this section and shall be subject to penalties under this Chapter.

(1991 Code, § 4-17) (Ord. passed 3-2-1972; Ord. passed 5-5-1994) Penalty, see § 90.99

§ 90.09 TETHERING.

(A) No person shall tether an animal

(1) When the outside temperature, as measured on site by the Enforcement Officer, is equal to or greater than 90°F or equal to or less than 20°F;

(2) In such a manner as to cause injury, strangulation or entanglement on fences, trees or other human-made or natural obstacles;

(3) For a continuous period of time; or

(4) That is sick or injured.

(B) Animals may be restrained by means of a trolley system, or a tether attached to a pulley on a cable run, if the following conditions are met.

(1) Only one animal may be tethered to each cable run.

(2) The tether must be attached to a properly fitting collar or harness worn by the animal, with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for purposes of tethering a dog to a cable run. There must be a swivel on at least one end of the tether to minimize tangling of the tether with stoppers on either side of the cable to ensure the animal is not able to entangle himself or herself.

(3) The tether and cable run must be of adequate size and strength to effectively restrain the animal. The size and weight of the tether must not be excessive, as determined by the Enforcement Officer, considering the age, size and health of the animal.

(4) The length of the tether from the cable run to the animal's collar should allow access to the maximum available exercise area and should allow continuous access to water and shelter. The trolley system must be of appropriate configuration to confine the animal to the owner's property, to prevent the tether from extending over an object or an edge that could result in injury or strangulation, and to prevent the tether from becoming tangled with other objects or animals. The tether must be long enough for the animal to move around or be able to urinate or defecate in an area separate from where it must eat, drink or lie down and allows the animal convenient access to food, water, dry ground or shelter. No vegetation or obstacles can restrict the movement of the animal on the tether.

(C) (1) All tethered animals must have access to shelter which is defined as any natural or artificial area which provides protection from the direct sunlight when that sunlight is likely to cause heat exhaustion. Metal barrels as well as any uninsulated metal structures are prohibited for use as shelter.

(2) Animal shelter shall be a wind-proof and moisture-proof structure and shall include four walls, a roof, a door flap for winter and a solid floor raised off the ground, containing a sufficient quantity of suitable dry bedding material.

(3) The containment area of any shelter shall be free of accumulated debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris. A suitable method of draining shall be provided to eliminate excess water or moisture inside the shelter.

(Ord. 086, passed 12-4-2008) Penalty, see § 90.99

§ 90.10 BARKING OR HOWLING.

No person shall keep or harbor any dog, cat or other animal within the City which, by frequent and habitual barking, howling, yelping, crying or squalling creates unreasonably loud and disturbing noises of such character, intensity and duration as to disturb the peace, quiet and good order of the City. Any person who shall allow any dog, cat or other animal habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure which he occupies or owns, shall be considered as harboring such dog, cat or other animal. Any person in violation of this section shall, upon conviction, be fined in accordance with City Code §90.99(D).

(1991 Code, § 4-18) (Ord. passed 11-19-1970) (Ord. passed 11-3-2022) Penalty, see § 90.99

§ 90.11 PROCEDURE ON COMPLAINT OF AN ANIMAL THAT IS VICIOUS, DANGEROUS OR INFECTED WITH A POTENTIALLY HARMFUL COMMUNICABLE DISEASE.

Procedure upon complaint that an animal is vicious, dangerous or infected with a potentially harmful communicable disease shall be as follows.

(A) (1) Upon complaint to the Judge of the Municipal Court of the city, that an animal is vicious or dangerous, as defined in division (B) below, or infected with a potentially harmful communicable disease, it shall be the duty of the Judge to immediately summon the owner or keeper of the animal to answer the complaint.

(2) In the instance of a complaint of an animal infected with a potentially harmful communicable disease, the Judge shall immediately notify the owner or keeper of such allegedly infected animal that such animal be exposed to any public place whereby the health of humans or animal may be affected; nor shall such animal be shipped or removed from the premises of the owner or keeper of such animal except under the supervision of the Enforcement Officer of the city. The Judge may order proper testing be completed on the alleged infected animal, by a licensed veterinarian, to determine if the animal is in fact infected with a potentially harmful communicable disease.

(3) If upon hearing, the Judge finds that such animal is vicious, dangerous or infected with a potentially harmful communicable disease, he or she may order a fine or may order the animal a menace to public safety and order the animal be destroyed to prevent injury and/or death to the public, The destruction of said animal shall occur immediately, absent a stay of such destruction pending appeal.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DANGEROUS or VICIOUS. Refers to and includes any animal:

(a) With a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or

(b) Which attacks human beings or other domestic animals without provocation.

(C) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, the owner or keeper of such animal shall be liable for all costs incurred by the city, associated with said owner's or keeper of the animal's prosecution under this section.

(D) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, and if the owner or keeper of said animal appeals the Municipal Court Judges' ruling, said animal shall be impounded, at the cost and expense of the animal's owner or keeper, until such appeal hearing is concluded. If the owner or keeper of such animal fails to pay the costs and expenses within ten days, the animal shall be deemed surrendered.

(Ord. 104, passed 8-6-2009) Penalty, see § 90.99

IMPOUNDMENT

§ 90.12 ENFORCEMENT AND STATE LAW APPLICABLE

The provisions of this Chapter shall be administered and enforced by the Enforcement Officer. For these purposes, the Enforcement Officer shall have and exercise such powers as may be reasonably necessary, including those specified for humane officers of counties in West Virginia Code Chapter 7, Article 10 and all provisions of West Virginia Code Chapter 7, Article 10 which are applicable to and within the City are hereby adopted by reference.

WATERFOWL

§ 90.13 PURPOSE AND INTENT.

It is the purpose and the intent of this subchapter to protect the health, safety and welfare of the community and its waterfowl, both migratory and domestic. It is further the purpose of this subchapter to control the feeding of waterfowl, both migratory and domestic.

(Ord. 121, passed 1-20-2011)

§ 90.14 PROHIBITED ACTS.

No person shall feed, cause or permit the feeding of waterfowl, domestic or migratory, within the corporate limits of the City.

(Ord. 121, passed 1-20-2011) Penalty, see § 90.99

§ 90.99 PENALTY.

(A) Any person violating any provision of this Chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(1991 Code, § 4-2)

(B) Any owner or keeper of an animal who violates § 90.11, and whose animal is not ordered destroyed, shall be fined an amount set forth by Council from time to time, and ordered to pay court costs.

(C) (1) Any person caught violating § 90.09 in the first instance shall be given a warning, stating what section of the city code he or she is violating and how to comply with the violated section. The person shall be subject to a follow-up visit by the Enforcement Officer, at a later time that is adequate to allow the person to correct the violation, to determine if the person is in compliance with said City Code section.

(2) Any person caught violating § 90.09 after being given a warning as specified in division (C)(1) above is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount set forth by Council from time to time or confined in jail not more than 30 days, or both.

(3) Any person convicted of a violation of § 90.09 forfeits his or her interests in any animal and all interest in the animal vests in the Randolph County Humane Society and is responsible for any costs incurred by the Randolph County Humane Society as a result.

(4) The Enforcement Officer may exercise discretion in citing violators pursuant to § 90.09. In determining whether to cite under § 90.09, the Enforcement Officer shall consider the overall condition of the dog, and whether the alleged violator is in substantial compliance with § 90.09.

(D) The owner of any animal in violation of § 90.10 shall, upon conviction of such violation, be fined an amount set forth by Council from time to time.

(1991 Code, § 4-18)

(E) Any person or persons violating any provision of §§ 90.13 through 90.14 shall, upon conviction thereof, pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Upon conviction of any subsequent offense under the provisions of §§ 90.13 through 90.14, the person or persons shall pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Each day such violation continues shall constitute a separate offense.

(Ord. passed 11-19-1970; Ord. 086, passed 12-4-2008; Ord. 104, passed 8-6-2009; Ord. 121, passed 1-20-2011)

This Ordinance shall become effective upon passage.

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

PASSED AND APPROVED ON FIRST READING: June 15, 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING: July 6, 2023.

CITY OF ELKINS, WEST VIRGINIA

Jerry A. Marco, Mayor

Attest:

Sutton Stokes, City Clerk