

**AN ORDINANCE AMENDING SECTIONS 505.03 AND 505.031 OF THE GENERAL OFFENSES CODE PROHIBITING CRUEL TREATMENT OF ANIMALS**

The City of Morgantown hereby ordains that Sections 505.03 and 505.031 of the General Offenses Code are amended as follows:

**505.03 CRUELTY TO ANIMALS; PENALTIES; EXCLUSIONS.**

(a) Definitions. The following terms shall have the meanings ascribed for the purposes of this Section:

(1) Adverse environmental conditions - means (1) when the ambient temperature is 32 degrees Fahrenheit or below in the immediate vicinity of a dog, domestic companion animal, or service animal, or there are other cold weather or precipitation-related environmental conditions, including, but not limited to, wind, rain, snow, ice, sleet, or hail, such that a person should reasonably know would pose an adverse risk to the health or safety of a dog, domestic companion animal, or service animal, based on the animal's size, age, physical condition, or thickness of the animal's hair or fur; or (2) when the ambient temperature is 90 degrees Fahrenheit or above in the immediate vicinity of a dog, domestic companion animal, or service animal, or a dog, domestic companion animal, or service animal is exposed to direct sunlight or hot pavement or any other hot surfaces such that a person should reasonably know would pose an adverse risk to the health or safety of the animal, based on the animal's size, age, physical condition, or thickness of the animal's hair or fur.

(2) Blind - means a person whose vision in the person's better eye with proper correction does not exceed 20/200 or who has a field defect in the person's better eye with proper correction which contracts the peripheral field so that the diameter of the visual field subtends an angle no greater than 20 degrees; and "visually impaired" means having a condition in which a person has a corrected visual acuity not exceeding 20/70, but not less than 20/200, in the person's better eye, or in which the peripheral field of the person's vision has contracted so that the diameter of the visual field subtends an angle no greater than 40 degrees but no less than 20 degrees.

(3) Controlled substance - the same definition used in section one hundred one, article one, chapter sixty-a of the West Virginia Code, as it may be amended.

(4) Cruelly tether –

(A) The term "Cruelly tether" means attaching a dog to a physical restraint under the following conditions:

(i) the dog is a nursing female, or is less than six months old;

(ii) outdoors between the hours of 10 p.m. and 6 a.m.,

(iii) in an unoccupied building or upon vacant property;

(iv) in a manner that does not permit the dog continuous access to water in a sanitary and liquid state whenever the dog is tethered for more than 30 minutes;

(v) in a manner that exposes the dog to adverse environmental conditions for more than 30 minutes;

- (vi) by means of a choke collar, prong collar, head harness, or any other type of collar, harness, or similar device other than a properly fitted body harness or buckle-type collar designed for dogs;
- (vii) by using a chain with metal links that are more than one-quarter of an inch thick, or a tether, collar, or harness to which a weight is attached;
- (viii) with a tether on which more than one dog is restrained;
- (ix) with a tether that is less than 15 feet in length or which does not permit the dog to walk at least 15 feet in any one direction;
- (x) with a tether that permits the dog to reach another dog or an object or location that poses a risk of entanglement, strangulation, drowning, or other harm to the health or safety of the dog, including, but not limited to, another dog's tether or a window sill, fence, wall, porch, terrace railing, vehicle, tree, pole, pool, or public road or highway;
- (xi) with a chain or tether that weighs more than one-eighth of the dog's body weight;
- (xii) in such a manner as to limit its ability to urinate or defecate in an area separate from where it must eat, drink, or lie down; or
- (xiii) in such a manner as to prohibit its access to food, water, dry ground or shelter

(B) The term "Cruelly tether" does not include the following:

- (i) Attaching a dog to a running line, pulley, or trolley system, if the tether has swivels at both ends to prevent entanglement, and only if the dog has access to shelter from adverse environmental conditions;
- (ii) Tethering, fastening, chaining, tying, or otherwise restraining a dog pursuant to the requirements of a camping or recreational area.
- (iii) Tethering, fastening, chaining, or tying a dog during the restricted hours of 10 p.m. and 6 a.m. for no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period, which shall not exceed one (1) hour.
- (iv) Tethering, fastening, chaining, or tying a dog while engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the State of West Virginia if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in this section shall be construed to prohibit a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity.
- (v) Tethering, fastening, chaining, or tying a dog while actively engaged in any of the following:
  - (A) Conduct that is directly related to the business of shepherding or herding cattle or livestock.
  - (B) Conduct that is directly related to an agricultural operation, if the restraint is reasonably necessary for the safety of the dog.

(C) The specific activities defined in Paragraphs (2)(A)(ii), (ix), and (x) of this Section shall not constitute “cruelly tethering” a dog when the dog’s owner or a person with custody or control of the dog:

(1) is in the presence of the dog at all times while the dog is tethered, whether indoors or outdoors; and

(2) can see the dog at all times while the dog is tethered, unless the person present is blind or visually impaired so that the person cannot see the dog due to the blindness or visual impairment, in which case the person present shall remain immediately adjacent to the dog at all times while the dog is tethered.

(5) Humanely destroyed - means:

(A) Humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with the provisions of article ten-a, chapter thirty of this code; or

(B) Any other humane euthanasia procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association; but such term does not include euthanizing by means of a gas chamber.

(6) Shelter – means a structure that is fully enclosed and has rigid walls and a roof.

(b) Unlawful treatment. (a) (1) It is unlawful for any person to intentionally, knowingly, or recklessly,

A. (1) Mistreat an animal in a cruel manner;

B. (2) Abandon an animal;

C. (3) Withhold from an animal,

1. (A) Proper sustenance, including food or water;

2. (B) Shelter that protects from the elements of weather; or

3. (C) Medical treatment; necessary to sustain normal health and fitness or to end the suffering of any animal;

D. (4) Abandon an animal to die;

E. (5) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

F. (6) Ride an animal when it is physically unfit;

G. (7) Bait or harass an animal for the purpose of making it perform for a person’s amusement;

(8) Pit one animal to fight against another animal;

(9) Accept or receive money for the admission of any person to an animal fight;

(10) Use, train, or possess an animal for the purpose of seizing, detaining, or maltreating any other domesticated animal;

(11) Except when performed by a licensed veterinarian or those legally authorized to operate under the direction of a licensed veterinarian, a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, to 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 the animal's performance

H. ~~(12) Cruelly chain or tether an animal; The following are examples of certain factual scenarios which may be considered when determining whether an animal has been cruelly chained or tethered (this list is not all inclusive):~~

~~1. The use of a tethering device, including, but not limited to chain, leash, rope, collaring device, or any assembly or attachments thereto, the weight of which inhibits the free movement of the animal within the tethered area.~~

~~2. The tethering of an animal in such a manner as to cause injury, strangulation, or entanglement of the animal with fences, trees, or other man-made or natural obstacles.~~

~~3. The tethering of an animal in such a manner as to limit its ability to urinate or defecate in an area separate from where it must eat, drink, or lie down.~~

~~4. The tethering of an animal in such a manner as to prohibit its access to food, water, dry ground or shelter.~~

~~5. The tethering of an animal by means of a collar which causes physical injury to the animal.~~

~~(2) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.~~

~~(3) Any person in violation of subsection (a) hereof is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than five hundred dollars or confined in jail not more than thirty days, or both.~~

~~(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 two hundred nor more than five hundred 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 the West Virginia Code.~~

(c) Exemptions. 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, nor to 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 on the effective date of this section.

(d) Penalties.

(1) Any person in violation of subsection Paragraph (b) (a) hereof of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three

hundred nor more than five hundred dollars or confined in jail not more than thirty days, or both.

(2) Any person convicted of a violation of this section forfeits his or her interest in any animal subject of the conviction 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.

~~—(f) (4) (3)~~ Notwithstanding any provision of this section to the contrary, no person who has been convicted of a violation of the provisions of Paragraph (b) subsection (a) of this section 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.

~~(2) (4)~~ For any person convicted of a violation of Paragraph (b) subsection (a) 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 the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

~~(3) (5)~~ 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 of this subparagraph (d)(5) under this subsection is a misdemeanor punishable by a fine not exceeding five hundred dollars and forfeiture of the animal.

(e) Seizure and removal of animals. Any animal kept in violation of this section may be immediately seized and removed by any law enforcement officer or animal control officer who observes such violation. Upon removal, the animal shall be kept in accordance with Paragraph (f) of this Section.

(f) Impoundment.

(1) All animals seized and removed as provided in this Section shall be kept housed and fed in the county or municipal shelter for five days after notice of seizure and impounding has been given or posted as required by West Virginia Code Chapter 19, Article 20, as it may be amended, at the expiration of which time all animals which have not previously been redeemed by their owners as provided herein shall be sold or humanely destroyed. No animal sold as provided in this section may be discharged from the county or municipal shelter until the dog has been registered and provided with a valid registration tag. In an emergency or in a situation in which an animal cannot be humanely destroyed in an expeditious manner, an animal may be destroyed by shooting if: The shooting is performed by someone trained in the use of firearms with a weapon and ammunition of suitable caliber and other characteristics designed to produce instantaneous death by a single shot, and maximum precaution is taken to minimize the animal's suffering and to protect other persons and animals.

(2) The owner, keeper, or harbinger of any animal seized and impounded under the provisions of this Section may, at any time prior to the expiration of five days from the

time that notice of the seizure and impounding of the animal has been given or posted as required by this Section, redeem the animal by paying all of the costs assessed against the animal and by providing a valid certificate of registration and registration tag for the animal, if required by law.

(3) Reasonable costs and fees, shall be assessed against every animal seized and impounded under the provisions of this Section. The costs and fees shall be a valid claim in favor of the City against the owner, keeper, or harbinger of any animal seized and impounded under the provisions of this article and not redeemed or sold as provided in this Section and may be recovered in a civil action against the owner, keeper, or harbinger.

(4) When any animal shall have been seized and impounded, the officer seizing such animal shall forthwith give notice to the owner of such animal, if the owner is known to the officer, that the animal has been impounded and that it will be sold or destroyed if not redeemed within five days. If the owner of the animal is not known to the officer, he or she shall cause a notice of the impoundment and right to redemption to be posted at the front door of the Monongalia County Dog Pound, which notice shall include (A) the date the notice is posted, (B) a description of the animal seized, (C) the place of seizure, and (D) notice that such animal will be sold or destroyed if not redeemed within five days of the posting date.

#### **505.031 CRUELTY TO DOGS AND CATS.**

~~—No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or maltreating any other dog or cat.~~

This Ordinance shall be effective upon date of adoption.

FIRST READING: 10/2/2018

ADOPTED: 11/7/2018

FILED: 11/14/2018

RECORDED: 11/14/2018

  
MAYOR

  
CITY CLERK