

AN ORDINANCE AMENDING SECTION 1329.02, TABLE 1331.05.01, AND SECTION 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO URBAN AGRICULTURE AND ARTICLE 505 OF THE GENERAL OFFENSES CODE AS IT RELATES TO ANIMALS AND FOWL.

WHEREAS, the City of Morgantown is committed to increasing access to fresh, locally grown, wholesome foods for all residents; and,

WHEREAS, to ensure the health and safety of all its residents, the City seeks to create and encourage programs and policies that sustain greater local food security and improve access to healthy food in underserved neighborhoods; and,

WHEREAS, urban agriculture contributes to the local economy by generating living-wage jobs, sales of food at farmer's markets, grocery stores, and on-site farm stands and offering the opportunity for resident entrepreneurship in creating food-related small-business; and,

WHEREAS, urban agriculture provides a tool for improving the City's quality-of-life by reducing the negative impact of vacant lots, buildings and unused rooftops and helps to support neighborhood stabilization and recovery; and,

WHEREAS, urban agriculture at a residential scale provides a valuable supplement to a family food budget; and,

WHEREAS, urban agriculture at a community scale provides an invaluable opportunity for students to learn about nutrition and where food comes from; and,

WHEREAS, new technologies for growing food, including indoor growing technologies such as aquaponic and hydroponics, are the basis for new agricultural opportunities, partnerships, and research;

NOW THEREFORE, the City of Morgantown hereby ordains that Section 1329.02, Table 1331.05.01, and Section 1331.06 of the City's Planning and Zoning Code and Article 505 of the City's General Offenses Code are amended as follows (deleted matter struck through; new matter underlined):

Article 1329.02 DEFINITION OF TERMS.

AGRICULTURAL ACTIVITY – Farming, including plowing, tillage, cropping, installation of best management practices, seeding, animal and poultry husbandry, cultivating, or harvesting for the production of food and fiber products (except commercial logging and timber harvesting).

AGRICULTURE, COMMERCIAL – The farming, cultivating, harvesting, husbandry, aquaponics, and hydroponic farming, and/or production principally for the sale to others of plants, animals, or their products, including but not limited to: forage and sod crops, grain and feed crops, dairy animals, and dairy products; livestock, including dairy and beef cattle, poultry, sheep, swine, horses, ponies, mules, and goats; including the breeding and grazing of all such animals; bees and apiary products; fruits of all kinds including grapes, nuts, and berries; vegetables; nursery, floral ornamental and greenhouse products, and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing, and trapping. COMMERCIAL AGRICULTURE shall not include poultry or swine production or animal feedlot operations.

AGRICULTURE, HOME (with animals) –The keeping and/or production, principally for use or consumption of the resident of the premises, of certain animals and/or their products and for sale to others where such sales are incidental. Such keeping and/or production includes, as permitted, bees and apiary products, domestic poultry, and/or rabbits. Permits and/or approvals must be issued, if applicable, for an ACCESSORY STRUCTURE and/or HOME OCCUPATION.

AGRICULTURE, HOME (with no animals) – Gardening and/or production, principally for use or consumption of the resident of the premises, of plants and/or their products and for sale to others where such sales are incidental. Such gardening and/or production includes, but is not limited to, fruits of all kinds including grapes, nuts, berries, etc.; vegetables; and, floral ornamental and non-commercial greenhouse products. Permits and/or approvals must be issued, if applicable, for an ACCESSORY STRUCTURE and/or HOME OCCUPATION.

AQUAPONICS – The cultivation of fish and plants together in a constructed, re-circulating ecosystem utilizing natural bacterial cycles to convert fish waste to plant nutrients and considered a COMMERCIAL AGRICULTURE use.

COMMUNITY GARDENS – A private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person or family. A neighborhood-based development with the primary purpose of providing space for members of the community to grow plants for beautification, education, recreation, community distribution, or personal use. The responsibility of managing maintenance and operations of COMMUNITY GARDEN sites shall be that of the land owner or designated public or civic entity, nonprofit organization, or other community-based organization. Processing and storage of plants or plant products are prohibited on site. Gardening tools and supplies may be stored within an accessory structure that is in compliance with Article 1331.08 of the zoning ordinance. The keeping and/or raising of animals at a COMMUNITY GARDEN site is prohibited.

DOMESTIC POULTRY – Domesticated birds kept for eggs, meat, feathers, etc. that include chicken and duck but shall not include turkey, goose, pigeon, pheasant, partridge, guinea fowl, peafowl, quail, ratite, ostrich, emu, rhea, etc.

FREE-RANGE – A method of farming husbandry where the animals, for at least part of the day, can roam freely outdoors, rather than being confined in an enclosure (e.g., coops, pens, etc.) for twenty-four (24) hours each day.

HOME GARDENING – The growing of vegetables, produce or other plants on individual private lots, by the owner or resident of the lot, for personal enjoyment or consumption, or for sale at off-premise locations such as farmers’ markets, produce stands, etc. Such activities may occur in any zoning district without permits. This activity is distinguished from AGRICULTURAL ACTIVITY in that the latter is primarily commercial in intent and nature.

HYDROPONICS – The cultivation of plants in nutrient solution rather than soil.

PREMISES – An area of land occupied by the principal building(s), accessory structure(s), and/or other physical uses which are an integral part of the activity conducted upon the land and such open spaces as are arranged and designed to be used in conjunction with that activity.

Table 1331.05.01 Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Agricultural Activity	P										P	
Community Gardens	P	P	P	P	<u>C</u>	P	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	28
<u>Agriculture, Commercial</u>	<u>C</u>										<u>C</u>	35
<u>Agriculture, Home (with animals)</u>	<u>A</u>	36										
<u>Agriculture, Home (with no animals)</u>	<u>A</u>	37										
Greenhouse, Noncommercial	A	A	A	A	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>P A</u>	

Article 1331.06 SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE.

(35) The following regulations are specific to COMMERCIAL AGRICULTURE development:

- (a) The Board of Zoning Appeals must determine a COMMERCIAL AGRICULTURE use to be compatible with the area and may limit its hours of operation.
- (b) The use shall not create unacceptable congestion or traffic hazards on the neighboring streets.
- (c) The use shall not create a nuisance due to noise, smoke, electrical interference,

dust, or obnoxious odor.

- (d) Land devoted to the use shall be well-maintained, regularly cleared of debris and free of excessively tall weeds and grass as provided in the International Property Maintenance Code (IPMC).
- (e) Principal and accessory structures for the use shall be subject to applicable building and fire code requirements and any applicable rules and regulations and shall be well maintained.

(36) The following regulations are specific to HOME AGRICULTURE (with animals) uses:

- (a) The use shall not create a nuisance due to noise, dust, rodents, and/or obnoxious odor.
- (b) All HOME AGRICULTURE related animal structures and roaming areas shall be kept sanitary and free from accumulations of animal excrement and obnoxious odor.
- (c) The keeping of HOME AGRICULTURE related animals shall be permitted only on a premises where there is an occupied dwelling unit.
- (d) Land devoted to the use shall be well-maintained, regularly cleared of debris and free of excessively tall weeds and grass as provided in the International Property Maintenance Code (IPMC).
- (e) Pens, coops, coop fences, apiary, or similar structures are subject to applicable building code requirements and shall be well maintained.
- (f) Pens, coops, including fences for coops, apiary, or similar structures utilized for the keeping of permitted HOME AGRICULTURE related animals:
 - (i) Shall not be placed in the front yard. If placed in a side yard, shall not be located closer to the street than the building line of the principal building.
 - (ii) On corner lots, shall not be located between any portion of the principal building and either street.
 - (iii) Shall not be placed closer than ten (10) feet to the side or rear property line nor closer to the principal building(s) of adjoining premises than to the principal building to which such structures are accessory, whichever is greater.
 - (iv) In residential districts, shall comply with the provisions of Section 1331.08

governing accessory structures and fences; provided that in the case of a conflict these supplemental regulations shall apply.

- (g) Rooftop HOME AGRICULTURE (with animals) uses are subject to all applicable building and fire codes. Building permits and other applicable permits must be obtained before beginning any use, where required by City Code.
 - (h) Domestic Poultry. Ownership, care and control of domestic poultry shall be the responsibility of a resident of the premises. Free-range shall be prohibited and domestic poultry shall be confined to a pen and/or coop, where permitted, twenty-four (24) hours each day. The number of Domestic Poultry may not exceed the maximum number of animals permitted by applicable law, including but not limited to City Code Article 505.
 - (i) Rabbits. Ownership, care and control of rabbits shall be the responsibility of a resident of the premises. Free-range shall be prohibited and rabbits shall be confined to a pen and/or coop, where permitted, twenty-four (24) hours each day. The number of Rabbits may not exceed the maximum number of animals permitted by applicable law, including but not limited to City Code Article 505.
 - (j) Hoofed Animals. Hoofed animals, including but not limited to cattle, horses, goats, sheep, pigs, deer, and donkeys, may not exceed the maximum number of animals permitted by applicable law, including but not limited to City Code Article 505.
 - (k) All animal feed shall be stored in a secured, rodent-proof container and housed within an enclosed structure.
 - (l) HOME OCCUPATION approval is required for the incidental sale of HOME AGRICULTURE (with animals) production; except, that HOME OCCUPATION supplemental regulations provided in Section 1331.06(2)(c), Subsections (iv) and (v) of this Ordinance shall not apply to HOME AGRICULTURE (with animals) uses.
- (37) The following regulations are specific to HOME AGRICULTURE (with no animals) uses:
- (a) The use shall not create a nuisance due to noise, dust, rodents, and/or obnoxious odor.
 - (b) Land devoted to the use shall be well-maintained, regularly cleared of debris and free of excessively tall weeds and grass as provided in the International Property Maintenance Code (IPMC).
 - (c) Noncommercial greenhouses or similar structures are subject to applicable building code requirements and shall be well maintained.

- (d) Hoop houses, cold frames, or other similar structures shall be allowed as accessory structures subject to applicable building code requirements and shall be well maintained, and the cover shall be removed and stored when plants are not being cultivated.
- (e) Structures referenced in subsection (c) and (d) above:
 - (i) Shall not be placed in the front yard. If placed in a side yard, such structures shall not be located closer to the street than the building line of the principal building.
 - (ii) On corner lots, shall not be located between any portion of the principal building and either street.
 - (iii) Shall not be closer than five (5) feet to the side or rear property line.
 - (iv) In residential districts, shall comply with the provisions of Section 1331.08 governing accessory structures and fences; provided that in the case of a conflict these supplemental regulations shall apply.
- (f) Rooftop HOME AGRICULTURE (with no animals) uses are subject to all applicable building and fire codes. Building permits and other applicable permits must be obtained before beginning any use, where required by City Code.
- (g) All seed and fertilizer shall be stored in a secured, rodent-proof container and housed within an enclosed structure.
- (h) HOME OCCUPATION approval is required for the incidental sale of HOME AGRICULTURE (with no animals) production; except, that HOME OCCUPATION supplemental regulations provided in Section 1331.06(2)(c), Subsections (iv) and (v) of this Ordinance shall not apply to HOME AGRICULTURE (with animals) uses.

505.01. DOGS AND OTHER ANIMALS RUNNING AT LARGE.

(a) No person being the owner or having charge of ~~cattle, sheep, geese, ducks, turkeys, chickens or other~~ fowl or animals shall permit them to run at large upon any public place, or upon any unenclosed lands, or upon the premises of another.

(b) ~~No person being the owner of or having charge of any dog shall permit it to run at large upon any public place or upon the premises of another.~~ Dogs not confined on the owner's property shall be maintained on a leash of a length no longer than six feet. The name and address of the owner and the City tax tag shall be attached to the collars of dogs at all times. The regulations governing the keeping of dangerous dogs as set forth in Section 505.04 shall supersede any conflicting provisions within this subsection.

(c) The running at large of any ~~such~~ animal in or upon any of the places mentioned in this section is prima-facie evidence that it is running at large in violation of this section.

(d) For purposes of this section, cats shall be permitted to run at large only if such cat is wearing identification as set forth in Section 505.15.

(e) Should any dog, while running at large, bite or otherwise inflict injury upon any person, the person or owner having charge of any such dog shall be guilty of a misdemeanor, shall be fined five hundred dollars (\$500.00), and may be ordered by the Municipal Judge to provide restitution, where appropriate. A conviction for the violation of this particular subsection shall not be a prerequisite for the filing of a civil action by the victim of any such dog incident.

Article 505.02. KEEPING ANIMALS; PENS AND STABLES.

~~(a) Rabbits. No person shall confine, keep or house live rabbits, exceeding two in number, within the City, in any pen, coop or structure located within 120 feet of the residence or dwelling of any other person without the consent of such person in writing.~~

(a) Definitions. For purposes of this section, the following terms shall have the stated meanings:

(i) Commercial Agriculture means that term defined in Section 1329.02 of the Planning and Zoning Code

(ii) Commercial Kennel means that term defined in Section 1329.02 of the Planning and Zoning Code

(iii) Domestic Poultry means domesticated birds kept for eggs, meat, feathers, etc. that include chicken and duck but shall not include turkey, goose, pigeon, pheasant, partridge, guinea fowl, peafowl, quail, ratite, ostrich, emu, or rhea.

- (b) Permitting Pens to Become Offensive. No person shall permit any yard, kennel, pen, coop, apiary structure or ~~other similar structures~~ wherein live animals may be confined, kept or housed to become or be offensive, noxious or deleterious to health.
- ~~(c) Chickens. No person shall confine, keep or house chickens or other domestic fowl, exceeding two in number, in any pen, coop or structure located within eighty feet of the residence or dwelling of any other person without the consent in writing of such other person; provided, that this section shall not be construed to prohibit the proprietor of any market, hotel, restaurant, boarding house or residence from keeping or confining for sale or slaughter chickens or other fowls in a pen or coop within such prescribed limit for a period not exceeding ten days; provided that such pen or coop is thoroughly cleaned at least once during each forty-eight hour period and rendered free from offensive, noxious or deleterious odors.~~
- ~~(d) Permitting Coops to Become Offensive. No person shall permit any pen, coop or other structure wherein chickens or other fowl may be confined, kept or housed, to become offensive, noxious or deleterious to health.~~
- ~~(e) (c) Stables. Whoever shall keep a stable within the City shall cause all the stable manure produced thereat to be kept within such stable until hauled away, and he shall in no case allow such manure to accumulate in such quantities or condition as to become offensive, or deleterious to health; and all manure so kept within the stable shall be protected from flies by means of screens or other fly-excluding devices. The floor of every stable shall be kept free from standing or seeping stable liquids, excrements and other offensive matters.~~
- (d) Number and Type of Animals Permitted.
- (i) Turkey, goose, pigeon, pheasant, partridge, guinea fowl, peafowl, quail, ratite, ostrich, emu, rhea, and roosters shall not be kept as domestic animals.
- (ii) A maximum of four domestic poultry birds may be kept at any residence or structure, whichever is more restrictive.
- (iii) A maximum of three rabbits may be kept at any residence or structure, whichever is more restrictive.
- (iv) Hoofed animals – including but not limited to cattle, horses, goats, sheep, pigs, deer, and donkeys – shall not be kept as domestic animals; provided that this restriction shall not limit the otherwise lawful passage of such animals through the City.
- (e) Registration. The resident of any premises responsible for the ownership, care, and control of animals permitted by this Section 505.02 shall register with the City Manager's office on a form prescribed by the City Manager or his designee within sixty (60) days of the date of adoption of this ordinance, and, if not keeping permitted

animals at the time of adoption of this ordinance, prior to keeping or maintaining any animal permitted by this Section 505.02.

(f) Exemptions. Paragraphs (d) and (e) of this section shall not apply to

(i) COMMERCIAL AGRICULTURE uses otherwise permitted by the Planning and Zoning Code;

(ii) COMMERCIAL KENNEL uses otherwise permitted by the Planning and Zoning Code;

(iii) educational programs conducted at educational institutions owned and controlled by the State of West Virginia or the Monongalia County Board of Education; or

(iv) programs or activities operated by the Board of Park and Recreation Commissioners.

505.99 PENALTY.

(a) Whoever violates Section 505.01(b) shall be fined not more than one hundred dollars (\$100.00). Second offenders of Section 505.01(b) shall be subject to the penalty provided in Section 501.99 and also be given the alternative of paying the maximum fine under this section or present evidence of having their dogs spayed or neutered within thirty days of any violations hereof.

(b) Whoever violates Section 505.11 shall be fined not more than twenty-five dollars (\$25.00); provided, that after any violation has been called to the attention of the violator by any member of the Police Department of this City, each day on which such violation continues or is repeated shall constitute a separate offense.

(c)

(1) Whoever violates Section 505.03(a) shall be fined not less than three hundred dollars (\$300.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both, for a first offense. Any person convicted of a second or subsequent violation of Section 505.01(a) shall be imprisoned for not more than thirty days or fined not less than five hundred dollars (\$500.00) nor more than three thousand dollars (\$3,000), or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (c)(2) are complied with.

(2)

A. Notwithstanding any provision of this Code to the contrary, no person who has been convicted of a violation of the provisions of Section 505.03(a) may

be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

B. For any person convicted of a violation of subsection (c) 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 shall be responsible for the cost of the program.

(3) In addition to any other penalty which can be imposed for a violation of Section 505.03, 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 conviction. A violation under this subsection is punishable by a fine not exceeding two thousand dollars (\$2,000) and forfeiture of the animal.

(d) Whoever violates Section 505.03(b) shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000).

(e) Whoever violates Section 505.031 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both. In addition, the Humane Officer may remove the dog or cat involved and place it in the pound and such dog or cat shall not be returned to the owner or perpetrator of the act of cruelty, but shall be put up for adoption to a desirable home, or given into the care of a humane society or upon the recommendation of a licensed veterinarian shall be humanely destroyed.

(f) In addition to any other penalty provided by law, any animal kept in violation of Section 505.02 or on premises in violation of Section 505.02 may be impounded, sold, or destroyed.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk