

KANAWHA COUNTY ANIMAL CRUELTY & CANINE TETHERING ORDINANCE

Authority: Authority to regulate and manage dogs and cats- W. Va. Code §19-20-6; Authority to prevent cruelty to animals, impose penalties for violations -W. Va. Code §7-1-14; cruelty to animals, fines for animal cruelty- W. Va. Code § 61-8-19.

Purpose: To provide for the custody, care, and protection of domestic animals so that they will not be abandoned, neglected or cruelly treated and to prevent said animals from becoming a public nuisance or risk to public health or safety or the environment. This ordinance prohibits the tethering of dogs in most circumstances. A limited period of tethering is allowed provided that certain conditions are met. This ordinance also regulates outdoor pens and shelters for dogs.

Section 1. Cruelty to Animals.

(a) No person shall 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 injure 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.

(b) Exceptions. Nothing in subsection **(a)** of this section shall be deemed to prohibit.

- 1) Any action by licensed veterinarian done in accordance with accepted standards of veterinary care;
- 2) Any action taken by a law enforcement officer pursuant to the interests of public health and safety;
- 3) Any act done in self-defense or done to defend another person or animal.

Section 2. Tethering of Dogs

(a) Tethering: 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 highly 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 tethering shall be no longer than necessary for the dog's caretaker or owner to complete a temporary task that requires the dog to be physically restrained for a reasonable period of time;
- 2) The dog is visible to the responsible party at all times and the responsible party is outside with the dog; provided that for a period not exceeding fifteen consecutive

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minutes in any one period, for a total of no more than four such periods in a twenty-four hour period, the dog may remain out of the sight of the responsible party, while that party conducts a temporary task;

- 3) The dog must be properly 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;
- 4) The tether must be attached to the dog's harness or collar and not directly to the dog's neck;
- 5) The tether must be at least 10 feet long, free from tangles and weigh no more than 1/8 of the dog's weight;
- 6) The dog is tethered so as to prevent injury, strangulation, or entanglement;
- 7) The dog is not tethered outside during extreme weather, including, but not limited to, extreme heat or near-freezing temperatures, thunderstorms, tornadoes, or floods, unless adequate food, potable water, shade, shelter and protection is provided, as provided in section 3 below;
- 8) The dog must be at least 15 feet from the edge of any public road or sidewalk;
- 9) The dog is six (6) months of age or older;
- 10) The dog is not sick or injured.

(b) If using a pulley, running line or trolley system, all the conditions of subsection (a) of this section must be met, and:

- (1) The running line or trolley system must be at least fifteen (15) feet in length and at least four feet and no more than seven (7) feet above ground;
- (2) If there are multiple dogs, each dog is 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 animal and be of sufficient distance from any fence so as to prohibit the dog's access to the fence.

(c) Exceptions. Nothing in subsection (a) or (b) will be deemed to apply to restraint:

- 1) Of hunting dogs. As used in this Paragraph, the term "hunting dog" means a dog actually used to lawfully hunt game in West Virginia or another State of the United States under a valid hunting license issued by the State where the hunting occurred during the then present year or the year previous, and with respect to a dog of less than eighteen (18) months of age, a dog that has had training toward hunting lawful game in West Virginia or another state of the United States. The owner of the dog relying on the dog's status as a "hunting dog" under this paragraph may

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establish a prima facie case of such status by providing to a law enforcement officer a sworn written statement setting forth the specific facts establishing that the dog is a "hunting dog" within the meaning of this paragraph.

- 2) Temporarily utilized during any lawful training activities, veterinary treatment, grooming, or law enforcement training;
- 3) Temporarily utilized when the animal is being held, walked, or exercised on a hand-held leash;

Section 3. Food, Water, and Shelter

Section 1. FOOD. Animals must be provided with food of sufficient quantity and quality to allow for normal growth or the maintenance of body weight. Animal food must meet or exceed National Research Council standards and should meet American Association of Feed Company officials, Inc., (AAFCO) processing standards. Animals should be provided wholesome food suitable for the species at a frequency and amount appropriate for the species and age. Animals over the age of 20 weeks should be offered food at least once every 24 hours. Animals under the age of 20 weeks should be offered food at least once every 12 hours.

Section 2. WATER. Animals must be provided with potable water in sufficient quantity to satisfy the animal's needs. Animals should be provided access to clean, fresh, potable water in a sanitary manner at least once every 12 hours or in sufficient quantity to satisfy the animals' needs or supplied by free choice. Snow or ice is not an adequate water source.

Section 3. SHELTER. Animals must be provided with adequate shelter to provide for their health and welfare. A shelter that protects the animal from inclement weather, wind, and direct rays of the sun, shelter shall be provided and accessible to each dog. A shaded area must be provided that is sufficient to protect the animal from the direct rays of the sun, while housed during the months of May to October.

(a) Examples of inadequate shelters include, but are not limited to, lean-tos, metal drums, standard unmodified plastic drums, cardboard or other disposable boxes, vehicles, or the area on or beneath exposed porches or exposed decks.

(b) Travel or overnight crates. The use of airline approved crates, travel kennels, and mobile dog pens, are permitted for travel and overnight care so long as the dog is provided with: (i) adequate size and space; (ii) adequate protection from the weather; (iii) adequate ventilation, shade and shelter; and (iv) food and water at reasonable intervals during travel time and overnight care.

Section 4. CONFINEMENT AREAS A confinement area must provide sufficient space to allow each animal to turn about freely and to easily stand, sit and lie in a normal position. If an animal is maintained in an outdoor confinement area, that space should contain a shelter that complies with the following sections.

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A. General - A person in charge or control of any dog which is kept outdoors or kept in an unheated enclosure shall provide the dog with shelter and bedding as prescribed in this section as a minimum.

B. Building specifications. The shelter shall include a moisture proof and windproof structure of suitable size to accommodate the dog and allow retention of body heat. It shall be made of durable material with a solid, moisture-proof floor or a floor raised at least two inches from the ground. Between November 1 and March 31 the structure must have a windbreak at the entrance. The structure shall be provided with a sufficient quantity of suitable bedding material consisting of hay, straw, cedar shavings, blankets, or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat.

C. Shade. Shade from the direct rays of the sun, when the ambient temperature is at or above 85 degrees Fahrenheit, adequate shade shall be provided, either natural, constructed, or some combination.

D. Farm dogs. In lieu of the requirements of subsection B and C, a dog kept on a farm may be provided with access to a barn with a sufficient quantity of loose hay or bedding to protect against cold and dampness.

E. CONFINEMENT AREAS

(1) Outdoor Pens-If an animal is confined in an outdoor pen, there shall be at least 100 square feet in such pen for each dog over six months of age kept in the pen; provided that a humane officer may use discretion in granting a waiver to the square footage requirements if the officer determines the pen provides adequate space for the size and breed 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 dog(s); whether the dogs are being housed for legal hunting or training purposes; size of the property upon which the pen is located; and the length of time the dog will be in the pen. For example, small pens may provide appropriate space for smaller breeds of dogs.

(2) Extreme Weather- Dogs shall not be penned outside during extreme weather, including, but not limited to, extreme heat defined as 85 degrees Fahrenheit and above or near-freezing temperatures defined at 35 degrees Fahrenheit and below, severe thunderstorms, tornadoes, or floods, unless the dog has access to shade shelter and protection adequate to protect the dog from extreme weather, including space heaters, radiators, floor heating systems, heating pads, heat lamps, or other similar mechanisms, for circumstances in which temperatures are at or below 35 degrees Fahrenheit.

(3) Other Containment - If an animal is maintained in a confinement area within a housing facility used primarily to house animals other than an outdoor pen, each confined animal must be provided a minimum square footage of floor space as measured from the tip of its nose to the base of its tail, plus 25 percent, expressed in square feet. The formula for computing minimum square footage is: (length of animal in inches plus 25 percent) times (length of animal in inches plus 25 percent) divided by 144.

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F. SURFACE AREA. The interior surfaces of all outdoor confinement areas must be constructed and maintained so that they are substantially impervious to moisture, provide for adequate drainage, may be readily cleaned, kept in good repair, and protect the animal from injury. Confinement areas should be ventilated sufficiently to allow for the free movement of air in and around the confinement area. All outdoor confinement area flooring should be impermeable material or well drained aggregate.

G. WASTE - A suitable method must be used to eliminate excess fluids from confinement areas. All feces should be removed and disposed of daily. All waste drainage and waste material should be disposed of using a method prescribed by any applicable building or health codes.

H. TEMPERATURE, VENTILATION, LIGHTING. Temperature, ventilation, and lighting must be adequate for the type, number, and condition of dogs involved.

- a. TEMPERATURE. Housing facilities for animals should be maintained at a temperature that is appropriate for the breed of animal and allows for the acclimation of the animal to its working environment.
- b. VENTILATION. Housing facilities must be ventilated. Auxiliary ventilation, such as exhaust fans, vents, air conditioning, or a combination of them, should be used when the ambient temperature is 85 degrees Fahrenheit or above.

Section 4. Animal Care

A. SANITATION. Feeding and water receptacles must be kept clean and free of contaminants. Confinement areas must be kept clean enough to protect animals from excessive moisture, waste, disease, and harmful contaminants.

B. FOOD AND WATER. Food and water receptacles must be accessible to each animal and located so as to prevent contamination by excreta.

C. EXERCISE. All animals must be provided adequate exercise. Space should be sufficient for the animals to exercise freely.

D. VETERINARY CARE. An effective program should be established and maintained for rabies and disease control prevention, and adequate veterinary care.

E. CONTROL OF PESTS. An effective program should be established and maintained for the control of insects, ectoparasites, rodents, and other pests.

Section 5. Jurisdiction

The Magistrate Court of Kanawha County and the Circuit Court of Kanawha County shall have concurrent jurisdiction with respect to misdemeanors under this ordinance.

Section 6. Enforcement; Penalties for Violation of §§ 1, 2, 3, 4.

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(a) Enforcement

- 1) First offense: Any humane officer or law enforcement officer who determines an animal is being kept in violation of any section of this ordinance shall issue a warning to the owner or guardian of the animal 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.
- 2) Second Offense: If, after receiving a warning, the animal continues to show evidence of cruelty or inhumane treatment as set forth in this ordinance, the owner or guardian of the animal shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars.
- 3) Additional Offense(s): For each subsequent offense, the owner shall be punishable by a fine of not less than three hundred nor more than two thousand dollars. In addition, any humane officer or law enforcement officer may, on or after the third offense, take into custody, upon either private or public property, an animal which clearly shows evidence of cruel or inhumane treatment as set forth in this ordinance.

(b) In addition to the fines and penalties imposed by this section, any defendant convicted of a violation under this ordinance shall pay the Kanawha/Charleston Humane Association or other animal care provider, as a penalty, all reasonable expenses incurred for the care, treatment, and boarding of any animal taken into custody pursuant to this ordinance.

Section 7. Effective Date

This ordinance will take effect on February 20, 2010.