

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING
AMENDING AND REENACTING ARTICLE 505 OF THE CODIFIED
ORDINANCES OF THE CITY OF WHEELING, ANIMALS AND
FOWLS GENERALLY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Council of the City of Wheeling does hereby amend and reenact Article 505, Dogs and Cats, of the Codified Ordinances of the City of Wheeling, Sections 505.01 and 505.99 as amended and reenacted as follows:

ARTICLE 505

Animals and Fowls Generally

505.01 Cruelty to animals.

505.02 Animals, reptiles and fowl prohibited without permit.

505.03 Animals, reptiles and fowl running at large.

505.04 Stables to be kept clean; manure disposal.

505.05 Keeping bees.

505.06 Disposition and removal of dead animals.

505.07 Corporate limits designated a bird sanctuary.

505.08 Groundfeeding of wild fowl and birds prohibited.

505.99 Penalty

505.01 CRUELTY TO ANIMALS.

(a) No person shall intentionally, knowingly or recklessly:

- (1) Mistreat an animal in a cruel manner;
- (2) Abandon an animal;
- (3) Withhold,

A. Proper sustenance, including food or water;

B. Shelter that protects from the elements of weather provided that, for purposes of this subsection, any animal kept outside shall be provided with structurally sound weatherproof enclosure, large enough to accommodate the animal with adequate room for movement, and insulated so as to protect the animal from extreme heat or cold temperatures; or

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

- (4) Abandon an animal to die;
- (5) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
- (6) Ride an animal when it is physically unfit;

- (7) Bait or harass an animal for the purpose of making it perform for a person's amusement;
- (8) Cruelly chain or tether an animal; or
- (9) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

*See also, as applicable to § 507.12-Cruelty to Dogs and Cats further concerning tethering of dogs and § 507.99- Penalty- for procedure of enlisting assistance of the Ohio County, WV Animal Shelter/Dog Warden to investigate animal cruelty complaints.

(b) No person, other than a licensed veterinarian or a person acting under the direction or 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.

(c) 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 **Animal Shelter** of the county in which the conviction was rendered, 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 **Animal Shelter of the county** as a result.

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

(e) 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. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.
(WVaC 61-8-19)

505.02 ANIMALS, REPTILES AND FOWL PROHIBITED WITHOUT PERMIT.

(a) No person shall keep or harbor any animal, reptile or fowl within the City except upon securing a permit from the City Manager, who shall prescribe and may inspect the conditions under which such animals, reptiles or fowl may be kept within the City.

(b) This section shall not apply to domesticated dogs, cats, birds or rodents.
(Ord. 6021. Passed 7-27-76; Ord. 11285. Passed 7-1-97.)

505.03 ANIMALS, REPTILES AND FOWL RUNNING AT LARGE.

No person shall permit or suffer any animal, reptile or fowl to run at large within the City.

(Ord. 11285. Passed 7-1-97.)

505.04 STABLES TO BE KEPT CLEAN; MANURE DISPOSAL.

Every owner of any stable or place where horses, cattle or other animals are kept, or any place in which manure or any liquid discharge of such animals shall collect, shall cause such stables and places and the drainage and appurtenances thereof to be kept at all times in a wholesome and clean condition so that no offensive smell shall escape. Every stall, stable or place where horses or cattle are kept shall have a manure vault or box. Such vault or box must be kept completely and securely closed and covered, and must be kept on the premises of the owner and located at a point as remote as practicable from any dwelling, church, school or similar structure owned by any person in the neighborhood other than the owner of the building or stable aforesaid.

(1961 Code Sec. 505.05)

505.05 KEEPING BEES.

(a) Whenever written complaint is made to the City Manager by an occupant of property within 100 feet of any premises whereon are kept apiaries, hives or colonies of bees, within the City that the bees are a source of annoyance, the City Manager may investigate the circumstances which are the basis of such complaint.

(b) If upon investigation it is the opinion of the City Manager that the bees do cause annoyance to such occupant he shall attempt to find a place on the premises to which apiaries, hives or colonies of bees may be moved and where in his judgment the occupant shall not be annoyed thereby. If thereafter further complaint is made by such occupant that the bees continue to be an annoyance and, if, upon investigation, the City Manager finds that the bees continue to annoy the occupant of property within 100 feet of the premises whereon the bees are kept and in his judgment they cannot be kept anywhere upon the premises without annoyance to such occupant, he shall serve or cause to be served a written notice upon the owner or keeper of such bees to discontinue the keeping of the bees or to move them to other premises where they shall not annoy the occupants of property within 100 feet thereof, within thirty days from the service of the notice. The keeping of bees upon the premises thereafter shall be unlawful.

(c) Appeals from the order of the City Manager shall be by petition to the Municipal Court as a matter of right within five days of the serving of the notice. A cash bond of twenty-five dollars (\$25.00) shall be deposited by the petitioner at the time of the filing of the petition for an appeal.

(Ord. 11285. Passed 7-1-97.)

505.06 DISPOSITION AND REMOVAL OF DEAD ANIMALS.

No person shall throw, bury, burn or leave in or upon any street, public square, public enclosure, vacant lot or any pond, stream or body of water or branch thereof, within the City, any dead animals or any portion thereof. The City Manager is authorized and directed to remove, or to contract for removal, all remains and carcasses of all dead goats, hogs, dogs, cats, fowl or other animals. All remains and carcasses of all dead horses, cows, mules, mares and steers shall be removed, or caused to be removed by the City Manager at the expense of the owner. All such remains and carcasses shall be removed in a sanitary manner within twelve hours after report of same is made to the City Manager.

(Ord. 11285. Passed 7-1-97.)

505.07 CORPORATE LIMITS DESIGNATED A BIRD SANCTUARY.

No person shall trap, shoot, shoot at or intentionally harm in any manner any bird or wild fowl or molest bird or wildfowl nests or eggs. However, if starlings or similar pests are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the health authorities of the City, then in such event, such health authorities may, under the supervision of the Chief of Police, take such action as may be reasonably necessary to abate such nuisance, including the destruction of such birds if, in the opinion of the health authorities, no satisfactory alternative is available.

(Ord. 5024. Passed 5-25-71.)

505.08 GROUNDFEEDING OF WILD FOWL AND BIRDS PROHIBITED.

(a) No person shall intentionally scatter, distribute or otherwise place any corn, bread, seed or other food upon the ground of any premises, public or private, for the purpose of feeding any wild fowl, game birds, pigeons, doves, or other birds (including those species protected by the Migratory Bird Treaty Acts 17 U.S.C.A. Sec. 701 et seq.) within the City.

(b) A violation of this section shall not preclude prosecution for littering as defined in Article 1103 or for violations of Article 1101 of the Health and Sanitation Code.

(c) This section shall not apply to the feeding of birds or fowl kept or harbored upon a permit secured from the City Manager under Section 505.02(a).

(Ord. 10644. Passed 11-1-94; Ord. 11285. Passed 7-1-97.)

505.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) (1) Whoever violates Section 505.01(a) shall be ~~subject to the penalties set out in Section 507.99 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 (a)(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 505.01(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 (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 shall be responsible for the cost of the program.~~

(2) In addition to any other penalty which can be imposed for a violation of Section

505.01, a court may 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.

(b) Whoever violates Section 505.01(b) shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000).

(WVaC 61-8-19)

(c) Whoever violates any provision of Section 505.07 shall be fined not more than one hundred dollars (\$100.00) ~~or imprisoned not more than ten days.~~

(Ord. 5024. Passed 5-25-71.)

(d) Whoever violates Section 505.08 shall be fined not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00), ~~or imprisoned not more than thirty days, or both.~~

(Ord. 8228. Passed 6-6-84.)