

ARTICLE – 3

ANIMAL & FOWL ORDINANCE

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This ordinance repeals any previous Animal and Fowl Ordinance

CHAPTER 1. GENERAL

Sec. 3-101. Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized Personnel means the Pocahontas County Health Officer or Animal Control Officer, any Police Officer, the Mayor of the Town of Marlinton, or any Agent of the Town of Marlinton as appointed by the Mayor of the Town of Marlinton, or an Event Officer.

Domestic Animal(s) means any dog, cat, rabbit, guinea pig, hamster, or any other common house pet as recognized by the general public.

Domestic Reptile(s) means any turtle, frog, toad, lizard, or newt commonly found in West Virginia except for snakes.

Agriculture Animal(s) means any cows, swine, sheep, horses, mules, or goats, or any chickens, ducks, geese, turkey, or other domestic fowl, cattle or livestock commonly referred to as farm animal(s).

Wild Animal(s) means any snake, wildcat, bobcat, bear, deer, skunk, opossum, raccoon, ferret, beaver, wild game birds, wild water fowl, or any other animal or fowl/bird commonly considered to be wild by the general public.

Exotic Animal(s) and Reptile(s) mean any animal, snake, or any reptile not native to West Virginia or commonly found in the continental United States.

Enclosure means a fence or structure of sufficient size, forming or causing an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous animal. An enclosure shall be securely enclosed and locked and designed to prevent the animal from escaping from the enclosure. If such enclosure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.

Owner means an individual who has lawful title to an animal, or is the keeper or harbinger of an animal. A parent or legal guardian shall be deemed to be the owner of an animal maintained by or on behalf of a minor upon the premises of the parent or legal guardian.

Service Animal means any animal used by a physically impaired person in order to function in a normal way of life.

Sec. 3-102. Administration and enforcement of Chapter: interference with officers.

- a. It shall be the duty of any authorized personnel pursuant to the provisions of this ordinance, with the cooperation of any police agency and/or the County Health Department, to administer and enforce the provisions of the ordinance.
- b. All authorized personnel shall be readily identifiable or uniformed in accordance with the standards recommended by the Marlinton Town Council and approved by the Mayor.
- c. Any authorized personnel may pursue and capture any animal found to be running at large as defined in this chapter. The authorized personnel shall have the authority to enter upon private property to effectuate capture. However, the authorized personnel shall not enter into any secured fenced area or structure located upon private property unless necessary to prevent harm to persons or animals, or unless consent is obtained from the person in possession of the real property.
- d. No person shall hinder, molest, or interfere with any person authorized or empowered to perform any duty under this chapter; nor shall any person hinder, delay, or obstruct the authorized personnel in driving or transporting to the public pound any animal to be impounded under the provisions of this article.
- e. Violators of any section of this chapter may be summoned to the municipal court by authorized personnel.

Sec. 3-103. Poisoning of Animals

1. No poisoned meat or any poisonous substance shall be cast into any of the streets, public places, lots, buildings, or private property in the Town for the purpose of destroying animals; provided that it is not the intent of this section to prohibit the use of poisonous substances for the control of vermin of significance to the public health.
2. Violations of this section shall be subject to the enforcement, adjudication, and penalty provisions of Section 3-106 of the Chapter.

Ref. *WV Code 61-3-27 (Malicious Killing of Animals)*

Sec. 3-104. Cruelty to animals

a. Cruel acts and conditions enumerate.

1. It shall be unlawful for any person:

- a. To willfully and maliciously kill, maim, disfigure, or torture any animal, or beat any animal with a stick, board, chain, club, or other object, mutilate, burn, or scale any animal with any substance, or purposefully drive over any animal, or otherwise cruelly set an animal upon another animal; provided that reasonable force may be employed to drive off vicious or trespassing animals; or
- b. To make accessible to any animal by any means, with the intent to cause harm or death, any substance which has in any manner been treated or prepared with harmful or poisonous substances; provided that it is not the intent of this subsection to prohibit the use of poisonous substances for the control of vermin of significance to the public health; or
- c. To cause, instigate, stage, or train any animal to fight or permit any fight between any animal and another animal or human; or
- d. To fail, refuse, or neglect to provide any animal in his or her charge or custody as owner or otherwise with proper food, drink, shade, care, or shelter; 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; or
- e. To drive or work any animal cruelly; or
- f. To abandon any animal within the Town limits (for the purposes of this section, abandon means for the owner or keeper to leave an animal unattended without demonstrating the apparent intent to recover or resume custody, to leave an animal for more than 12 hours without providing adequate food, water, and shelter for the duration of the absence, or to turn out or release an animal for the purpose of causing it to be impounded; or
- g. To leave an animal confined in a closed vehicle without adequate ventilation or heat; or
- h. To transport an animal in the trunk of a vehicle; or

- i. To transport an animal in the open bed of a truck unless said animal is restrained in a cage or on a leash that will prevent the animal from jumping or falling from the vehicle; or
- j. To crop animal ears or dock animal tails, except when performed by a licensed veterinarian; or
- k. To strike an animal while operating a motor vehicle and to fail to report such injury or death to the animal's owner, if any; provided that in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency.

b. Exceptions.

Nothing in subsection [a] of this section shall be deemed or interpreted to prohibit.

1. Any action by a licensed veterinarian done in accordance with accepted standards or veterinary medicine; or
2. Any action taken by a police officer pursuant to the interests of public health and safety; or
3. Any act done in self-defense or done to defend another person or animal, while or owner's property

c. Violations.

Violations of this shall be subject to the enforcement, adjudication and penalty provisions of Section 3-106.

Sec. 3-105. Tethering/Restraining of Animals.

- a. A dog or puppy shall not be restrained by a fixed point chain or tether for more than twelve (12) consecutive hours in a twenty-four (24) hour period. This chain shall be at least fifteen (15) feet long.
- b. A dog or puppy may be exclusively restrained by a chain or tether provided that it is at least fifteen (15) feet in length and attached to a pulley or trolley mounted on a cable which is also at least fifteen (15) feet in length and mounted no more than seven (7) feet above ground level.
- c. Any tethering system employed shall not allow the dog or puppy to leave the owner's property.
- d. No chain or tether shall weigh more than one-eighth (1/8) of the dog or puppy's weight.

- e. Any chain or tether shall be at least fifteen (15) feet in length and have swivels on both ends.
- f. Any chain or tether shall be attached to a properly fitting collar (no choke chain collars) or harness worn by the animal.

Sec. 3-106. Procedures, penalties, and fines for Sections 3-103, 3-104, and 3-105

1. Any authorized personnel may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to the animal as set forth in Sections 3-103, 3-104, and 3-105. Such authorized personnel may:
 - a. Inspect, care for, or treat such animal or place such animal in the care of an animal welfare organization or licensed veterinarian for treatment, boarding or other care; or
 - b. Designate such animal for humane destruction if an officer of an animal welfare organization or licensed veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose.
2. The owner or keeper of an animal that is destroyed pursuant to Subsection 1 herein shall not be entitled to recover damages for the destruction of such animal unless the owner or keeper proves by clear and convincing evidence that such destruction was unreasonable and unwarranted.
3. In addition to the fines and/or imprisonment imposed by this section, any defendant convicted of a violation of Sections 3-103, 3-104, and 3-105 shall pay to the municipal court a penalty of all reasonable expenses incurred for the care, treatment, and boarding of any animal taken into custody pursuant to Subsection 1 herein. Upon payment of such penalty, the municipal court shall remit such payment to an animal welfare organization or other animal care provider.
4. If a person is adjudicated guilty of a violation of Sections 3-103, 3-104, and 3-105, the municipal court judge may in his or her discretion order that such person be deemed to have forfeited all interest in the animal at issue in the violation and may vest all interest to an animal welfare organization for adoption or other disposition. If the person is adjudicated not guilty of a violation of Sections 3-103, 3-104, and 3-105, or the charge(s) otherwise be dismissed, and the animal at issue has been taken into custody pursuant to this section, then the defendant shall have ten days from the date of the entry of the finding of not guilty or of dismissal to appear and claim said animal. The defendant shall be responsible for all reasonable expenses incurred for the care, treatment, and boarding from the date of the entry of the disposition of the case until redemption of the animal; provided that if the animal is not claimed within ten days from the date of entry of the

finding of not guilty or of dismissal, then the owner shall be deemed to have forfeited interest in the animal, the animal shall be deemed abandoned, and all interest in the animal shall vest to an animal welfare organization for adoption or other disposition.

5. Subject to the exceptions contained in Subsections [a] and [b] herein, a person convicted of a violation of Sections 3-103, 3-104, and 3-105 shall be punished by a fine of not less than \$500.00 for each separate violation arising under Sections 3-103, 3-104, and 3-105. For violations of Sections 3-104 [a] 1. a-c, and in addition to the fines set forth herein, the municipal court judge may, in his or her discretion, order that the defendant be sentenced to a jail term of not more than 30 days for each separate violation arising under Subsection 3-104 [a] 1. a-c.
 - a. Except for violation of subsections 3-104 [a] 1. a-c, in the case of the first offense of sections 3-104 or 3-105, if the defendant enters a plea of guilty or no contest and voluntarily forfeits his or her right to own any animal within the town limits for one year, the municipal court judge may, in his or her discretion, reduce or suspend the fine; provided that if the defendant violates the terms of the plea regarding forfeiture, then the full amount of the fine shall be reinstated upon proper findings and conclusions of the court.
 - b. Except for violation of subsections 3-104 [a] 1. a-c, the municipal court judge shall have the authority, on one occasion only per defendant, to withhold for a reasonable time not to exceed 180 days the entry of judgment of conviction for violations under Sections 3-104 and 3-105 so that the defendant may attend an animal training program established or certified by an animal welfare organization. If the defendant attends said course, the municipal court judge, if satisfied with the defendant's participation in and proof of payment for the course, shall without entering a judgment of conviction, dismiss the proceeding against the defendant. It shall be a condition of this alternative disposition that the defendant pay the regular court costs required for misdemeanor offenses by this code where a person is convicted of such a misdemeanor offense. Any such court cost collected by the municipal court shall be allocated and transmitted by the municipal court as required by law.

Ref: *WV Code 8-11-1 (Authority to impose fines, forfeiture, and confinement)*

Sec. 3-107. Animal nuisances.

It shall be unlawful to own any animal, including a dog or cat, in a residential area, which by frequent or long continued noise shall disturb the comfort or repose of persons within the vicinity of such animal, or shall by the nature of their maintenance or by the numbers of the same shall create an offensive odor so as to be objectionable to surrounding residences. All dogs and cats in season shall be confined in a secure and sufficiently enclosed area throughout the period

of estrus. In any event, dogs and cats in season shall be so confined for no less than 25 days during the period of estrus. No person shall own on their premises more than three dogs or cats, ten weeks in age or older, unless such premises is licensed as a commercial kennel or the owner has a permit from the town allowing more than three dogs or cats, as provided in Section 3-308. The provisions of this section are to be interpreted consistently with the town's noise ordinance (Title 9, chapter 15, paragraph B-7).

Sec. 3-108. Animal owner responsibility for removal of animal excrement; fines.

1. It shall be unlawful for any person to appear with an animal upon the public right-of-way, within public places or upon the property of another, absent that person's consent, without some means for removal of excrement that may be deposited by the animal.
2. It shall be unlawful for any person who is an owner or possessor of an animal in his or her care to fail to remove any excrement deposited by the animal upon any public or private property, other than the property of the owner of the animal.
3. The provisions of this section shall not apply to persons who have a physical disability or visual impairment, are using service dogs, and can provide upon demand by an authorized personnel adequate documentation that the service dog is an animal trained by an accredited institution which trains dogs for service work for the physically disabled or visually impaired.
4. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-109. Dead animals and fowl; disposition of carcasses.

1. It shall be unlawful for any person to deposit or bury in any of the streets, parks, public squares, or places, the carcass or part of any carcass of any animal, fowl, or bird within the limits of the town, but all such carcasses shall immediately after death be disposed of in a manner consistent with Section 3-111 herein.
2. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-110. Responsibility for removal of carcasses.

1. When any dead animal, fowl, or bird is found in the streets, public places, or private lots in the town, upon notice to the owner, such owner shall remove the carcass and dispose of it in a lawful and sanitary manner; failure to do so shall be a violation of this code. If the owner refuses or fails to do so within a reasonable time not to exceed 24 hours after such notice, the town may send a proper vehicle to obtain such carcass and have it

removed and disposed of, and render a bill for such removal and disposal to the owner, if known.

2. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-111. Keeping of certain animals.

1. It shall be unlawful for any person to own or keep any agriculture animal or fowl within the corporate limits of the town, except those kept for sale by lawful businesses for agricultural purposes only and those which are currently grandfathered in.
2. It shall be unlawful to keep in your possession a poisonous snake.
3. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-112 Maintenance of pens, coops, other enclosures, places.

1. Each stable, pen, coop, and other enclosure or place where any animal or fowl is kept shall be so located and of such construction as to have sufficient sanitary drainage to keep it dry at all times; and it shall be the duty of each person owning, harboring, or keeping any animal or fowl to maintain such enclosure or other place where such animal or fowl is kept in a clean and sanitary condition at all times, free of any unwholesome or offensive substance, liquid or odor and so as not to constitute, in the opinion of an authorized personnel, a nuisance.
2. The provisions of this section shall be applicable with the town limits.
3. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-113. Immunization of dogs, cats, and ferrets; fines

1. No person shall own any dog, cat, or ferret, six months of age or older, within the city limits if such animal is not currently vaccinated against rabies. Any person owning a dog or cat within the town shall cause such animal to wear a collar or harness at all times to which shall be attached a current tag reflecting that the animal is vaccinated against rabies. The tag shall be situated on the collar or harness in such a manner that it may be easily visible at all times. Owners of ferrets may retain proof of current rabies vaccination on their person or premises.

2. Any dog or cat without rabies tag affixed is deemed a stray and is susceptible to impoundment.
3. Violation of this section shall be punishable as set forth in Section 3-402. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

Sec. 3-114. Control of Rabies and other diseases generally.

1. It shall be the duty of each owner or person in charge of an animal known to have or suspected of having rabies or any other communicable disease, or known to have been bitten by another animal having or suspected of having any such disease, to forthwith take such animal to a veterinarian for confinement and observation or to securely confine such animal on his or her own premises, and, in either case, to notify the Pocahontas County Health Department. Any animal so confined shall be destroyed in a humane manner upon a finding by a licensed veterinarian that the animal has rabies or some other incurable communicable disease. No animal shall be released from such confinement until it is determined by a licensed veterinarian that the animal is free of rabies or any other communicable disease.
2. Rabid animals found at large within the Town shall be humanely euthanized forthwith by any authorized personnel. It shall be the duty of the authorized personnel to immediately notify the Pocahontas County Health Department upon killing any animal of having exhibited signs of rabies and to comply with instruction of the Pocahontas County Health Department as to making the carcass or any portion of the carcass available to the Health Department for examination.
3. Any person having knowledge of an animal known to have or suspected of having rabies or any other communicable disease shall forthwith notify authorized personnel. If the owner or person in charge of such animal can be found without undue delay, he or she shall be notified by the humane officer or police officer to comply with the provisions of subsection 1 of this section forthwith; otherwise, such animal shall be destroyed in a humane manner.

Sec. 3-115. Animal bites, quarantine; fines.

1. *Owner known.* Upon receipt of credible information that an animal bite incident has occurred, authorized personnel shall make reasonable effort to contact the owner of the animal involved in the incident and advise the owner to place the animal immediately with a licensed and practicing veterinarian of the owner's choice for a confinement and observation period of a minimum of ten days from the time of the occurrence of the bite. The exact period of confinement and observation may be longer than ten days in the

discretion of the veterinarian selected and the owner shall be liable for all such costs incurred.

2. *Failure to comply.* Any owner who shall fail to comply with the provisions of this section, within 24 hours of notification, shall be deemed in violation of this article and, if reasonable to do so under the circumstances, the authorized personnel shall take such animal into custody and place it for the above described confinement period with a licensed and practicing veterinarian of the owner's choice. The owner shall be liable for all cost incurred. If the owner fails or refuses to make such choice or if it is unreasonable under the circumstances for the authorized personnel to place the animal with a veterinarian chosen by the owner as described herein, the authorized personnel will take the animal into custody and place it with an animal welfare organization to be quarantined at the owner's expense in accordance with subsection (3) herein.
3. *Owner unknown.* Upon receipt of credible information that an animal bite incident has occurred, and when the owner cannot be located, authorized personnel shall take the animal into custody and place it with an animal welfare organization for a confinement and observation period of a minimum of ten days from the time of the occurrence of the bite. If, however, at any time during the confinement and observation period the dog becomes dangerous as defined in this Code, and/or it is determined by a licensed veterinarian that the animal has rabies or some other incurable communicable disease, then the animal may be euthanized at the discretion of an animal welfare organization. IF the owner appears and seeks to claim the animal, the provisions of subsection (1) shall govern the confinement of the animal. If the owner does not appear to claim the animal within the ten-day period, then the owner shall be deemed to have forfeited all interest in the animal, the animal shall be deemed abandoned, and all interest in the animal shall vest to an animal welfare organization for adoption or other disposition. Should such animal become ill or die within the confinement period, the bite victim or victim's representative shall be notified by authorized personnel. If the animal is alive and well at the end of the confinement period, the bite victim or victim's representative shall be notified by authorized personnel.
4. State law shall be followed concerning the isolation of biting animals for the observation, examination, and quarantine, unless the provisions of this chapter require more stringent procedures.
5. Any person convicted of the violation of any of this section shall upon conviction thereof be fined not less than \$25.00 nor more than \$500.00 and that upon any second or subsequent violation shall be fined not less than \$100.00 nor more than \$500.00. Each consecutive day's violation shall constitute a separate punishable offense.

Ref. *WV Code 19-20-9a. (Quarantine of biting dogs)*

Sec. 3-116. Releasing impounded animals.

No person shall break open or in any manner directly or indirectly aid or assist in breaking open the impoundment enclosure established by the town or an animal welfare organization or take or let any animal out of an impoundment enclosure without the consent of the person in charge of such enclosure.

CHAPTER 2. ANIMALS AT PUBLIC GATHERINGS.

Sec. 3-201. Public gatherings, shows, parades.

1. For the purpose of this Section, a public gathering is defined as: Any festival, parade, or event where the general public is welcome. All animals participating in such events must have all vaccinations as required by the State of West Virginia.
2. For the health, safety, welfare, and enjoyment of all persons attending a public gathering; it shall be mandatory for dogs to be on a leash of not more than five (5) feet and under full control of the owner. At the discretion of authorized personnel, a person with a dog may be asked to remove said dog from the premises. Failure to obey this provision shall result in the owner being cited and upon conviction, shall be fined as set forth in Section 4 of this Article.
3. If the public gathering includes an animal, pet, or dog show; or if a parade is held in conjunction with a festival or event then the following restrictions shall be enforced:

ANIMAL, PET, or DOG SHOWS – DOMESTIC ANIMALS may be escorted to and from said show either on a leash, tether, or in a cage, and shall remain on the leash, tether, or in the cage while waiting to be presented or the awarding of prizes. **EXOTIC REPTILES** – must remain caged at all times. **DOMESTIC REPTILES** – need not be caged. **AGRICULTURE ANIMALS** – must be tethered during such events.

PARADES & FESTIVALS – Horses, mules, and other agriculture animals that normally would be ridden in a parade must have a diaper attached or the owner/rider must immediately clean up any excrement from such animals. This also includes animals attached to drawn conveyances. Other animals need only be leashed, tethered, or in a carrier.

Sec. 3-202. Riding of animals in the Town.

1. It shall be unlawful to ride any horse, mule, or other agriculture animal (except as described in Sec. 3-201-3) within the Town of Marlinton. All such animals are riders

needing to transverse the Town of Marlinton from US Route 219 to 10th Avenue and from 1st Street to 12th Street must be walked. All excrement of such animals must be cleaned up immediately. This section also applies to animals attached to drawn conveyances.

2. This section does not apply to animals being ridden on the Greenbrier River Trail, as long as they remain on the Greenbrier River Trail.

CHAPTER 3. DOGS & CATS.

Sec. 3-301. Seizing or enticing dog; bringing dog into town for impounding or killing.

1. No person shall, except with the consent of the owner, entice any properly licensed dog into any enclosure, or decoy or entice any dog out of the enclosure or house of its owner or possessor for the purpose of removing its collar or tag.
2. No person shall bring any dog into the Town for the purpose of unlawfully abandoning, impounding, or killing of the dog.

Sec. 3-302. Dangerous dogs; definitions

1. Dangerous dog, as used in this chapter, shall mean:
 - (1) Any individual dog with a known propensity, tendency, or disposition to attack, to cause injury, or otherwise threaten the safety of human beings or other domestic animals; or
 - (2) Any dog which, in a vicious or threatening manner, approaches any person or another domestic animal in an apparent attack upon the person or the domestic animal; or
 - (3) Any dog which attacks or bites, or has attacked or bitten a human being or domestic animal; or
 - (4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or
 - (5) Any dog already determined to be an aggressive dog at large as defined in the article.
2. Notwithstanding the definition of a dangerous dog above, no dog may be declared dangerous if any injury or damage is sustained by a person or animal who at the time of such injury or damage was sustained, was committing or attempting to commit a willful trespass or other crime or tort upon the premises occupied by the owner of the dog, or was teasing, tormenting, abusing, or assaulting the dog. Further, no dog may be declared

dangerous if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

3. Nothing in this article shall be deemed to regulate or prohibit the lawful maintenance of dogs by law enforcement agencies.

Sec. 3-303. Dangerous dogs: procedure for the determination of a dangerous dog.

1. In the event that authorized authority has probable cause to believe that a dog is dangerous, as defined in this article, the municipal court judge may convene a hearing for the purpose of determining whether the dog in question should be declared dangerous as defined by Section 3-302. Pending the determination, the authorized authority may order the dog to be impounded at a licensed veterinary clinic or an animal welfare agency or other county facility. Consistent with Section 3-314, the owner of the dog shall be liable for the reasonable costs incurred for the care, treatment, and boarding of the dog.
2. Notice shall be provided to the owner of the dog that a hearing will be held before the municipal court to determine whether the dog is dangerous as defined in this article; such notice shall provide in writing, the date, time and place of the hearing. The failure of the owner to attend or participate in the hearing shall not preclude the municipal court judge from the making the appropriate determination concerning the dog. The hearing shall be held no less than five nor more than 20 days after service of notice upon the owner of the dog. The Town shall have the burden of proof to show that the dog is dangerous pursuant to Section 3-302.
3. The municipal court judge shall issue such order in writing as is appropriate. Upon entry, the municipal clerk shall serve copies of such order upon all parties to the action. If a determination is made by the municipal court judge that the dog is dangerous, the owner shall comply with the provisions of Section 3-304 within 15 days of entry of the order. If the owner fails to comply with the provisions of Section 3-304 within the time provided, the dog shall be euthanized; and the owner shall be responsible for all reasonable costs related thereto.

Sec. 3-304. Dangerous dogs: control of dangerous dog; registration and confinement.

If the municipal court judge determines that a dog is dangerous, the owner of such dog shall comply with the following:

- (1) *Registration.* The owner shall:
 - a. Have a microchip inserted into the dog by a veterinarian, which microchip shall detail the dangerous dog designation and such other information as may be appropriate to

determine ownership of the dog. The owner shall be responsible for all cost associated with the microchip procedure.

- b. Maintain an insurance policy in a minimum amount of \$50,000.00 to cover any injuries to persons or property which may be caused by the dangerous dog.
 - c. Annually register the dangerous dog with the town, on forms designated by the town, which registration shall include proof of installation and maintenance of the microchip and the required insurance. The owner shall pay a \$50.00 annual registration fee. All registration fees are due at the beginning of the fiscal year or at the time of registration. The owner shall be responsible for maintaining with the town, the address of the owner of the dangerous dog. Upon any change of address of the owner, or any change in the place of residence of the dangerous dog, or any change in ownership of the dangerous dog, the owner shall within seven days of the such change notify the Town.
- (2) *Confinement.* At all times, except as otherwise provided in this subsection, all dangerous dogs shall be confined inside the dwelling of the owner or inside a securely locked enclosure. It shall be unlawful for any owner to allow a dangerous dog to be outside of the dwelling of the owner or outside the enclosure unless it is necessary for the owner to obtain veterinary care for the dangerous dog or for the limited purposes of allowing said dangerous dog to urinate or defecate or to sell or give away the dangerous dog, or to respond to such orders of law enforcement officials as may be required. In such event, the dangerous dog shall be securely muzzled and restrained with a leash not exceeding five feet in length, and shall be under the direct control and supervision of the owner of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or other animal.

Sec. 3-305. Dangerous dogs: Violation of requirements for dangerous dog; fines.

Any person found guilty of violating the requirements of Section 3-304 shall be assessed, fined, and the animal disposed of, as follows:

- 1. Any dangerous dog that is not confined or registered pursuant to Section 3-304 shall be impounded by authorized personnel in accordance with the provisions of Section 3-314. Upon a first conviction, in addition to all costs for impoundment, the owner shall be punished by a fine of \$250.00. Upon conviction of a second offense within 24 months of any prior conviction, in addition to all costs for impoundment, the owner shall be punished by a fine of \$500.00 and said dog shall be euthanized. Pending the adjudication of a second offense under this section, the redemption provision of Section 3-314 is

suspended. The municipal court judge shall have no authority to suspend the fine or any portion thereof.

2. Any dangerous dog which, without provocation attacks, assaults, wounds, bites, or otherwise injures, or assists in injuring a human being shall be impounded by authorized personnel in accordance with the provisions of section 3-314. Upon conviction, in addition to all reasonable costs of impoundment, the owner shall be punished by a fine of \$500.00. The municipal court judge shall have no authority to suspend the fine or any portion thereof.
3. Any dangerous dog which, without provocation attacks, assaults, wounds, bites, or otherwise injures, or assists in injuring any domestic animal shall be impounded by authorized personnel in accordance with the provisions of section 3-314. Upon conviction, in addition to all reasonable costs of impoundment, the owner shall be punished by a fine of \$250.00. The municipal court judge shall have no authority to suspend the fine or any portion thereof.
4. Upon conviction under subsections (2) or (3) herein, the municipal court judge shall order that the owner be deemed to have forfeited all interest in the dog and that the dog be humanely euthanized; provided that upon presentation of evidence satisfactory to the municipal court judge that the dangerous dog should not be euthanized in this case, then such dog may be released to the custody of the owner upon the payment of the fees and expenses as set forth in Section 3-3147 for the redemption of the dog by the owner.

Sec. 3-306. Dangerous dogs: threats to public safety.

1. Notwithstanding any provision of this article to the contrary and irrespective of whether the dog has been declared dangerous pursuant to this article, no person shall harbor, own, or possess a dog that is an immediate threat to public health and safety. The municipal court judge shall have the authority to order any such person convicted of violating this section to pay a fine of not more than \$500.00
2. Notwithstanding any provision of this article to the contrary and irrespective of whether the dog has been declared dangerous pursuant to this article, the municipal court judge may order any dog be destroyed if the municipal court judge determines that the dog is an immediate threat to public health, safety, and welfare and that confinement and registration of the dog by the owner of the dog as provided in this article will not adequately protect public health, safety, and welfare. In making such determination the municipal court judge shall consider the severity of any attack and any other relevant information.

Ref: WV Code 8-12-5(26), 19-20-20, 19-20-21 (Vicious dogs)

Sec. 3-307. Actions under proclamation by health department or Mayor

Whenever it shall be made to appear to the satisfaction of the Pocahontas County Health Department or the Mayor of the Town of Marlinton that any dog within the town has rabies or any other dangerous and communicable disease, that department may issue a proclamation requiring any actions, consistent with state law, necessary to protect the health, safety, and welfare of the public.

Ref. WV Code 19-9-2

Sec. 3-308. Restriction on number of dogs and cats.

No person shall own, keep, or harbor more than three (3) dogs and/or cats on any lot, premises, dwelling, building, structure, boat or living accommodation. This would include a breeding pair and one litter (puppies/kittens less than 8 weeks old are considered one unit) or any combination of three dogs and/or cats unless:

- (1) Properly licensed as a commercial kennel in compliance with all county and state laws; or
- (2) Approved for a special permit under the provisions of Section 3-309; or
- (3) Previously granted a variance for the keeping of more than three dogs and/or cats from the Town Council of the Town of Marlinton. The variance shall remain in effect until such time as the property is no longer in compliance with conditions set forth in said variance.
- (4) Any owner with more than three dogs and/or cats at the time of adoption of this ordinance shall be grandfathered and not required to relinquish any dogs or cats. However, at any time thereafter as loss of a dog and/or cat may occur, no person shall be permitted to replace said animal and will be subject to the above restrictions.

Sec. 3-309. Restriction on number of dogs and/or cats: Special permits.

1. The intent of the special permit application is to allow responsible pet owners to keep or harbor more than three dogs and/or cats if adequate conditions exist in which the animals will not cause damage, hazard, nuisance, or be a detriment to any persons or property.
2. Any person desiring to keep or harbor more than three dogs and/or cats shall submit a written request for a special permit to the Marlinton Town Council. The special permit request shall include a copy of a site plan of the subject property showing all structures, fences, and open space.
3. The Town Council may grant a special permit if the following conditions are met:

- (1) The subject property is larger than 9600 square feet. If less than 9600 square feet, dogs and/or cats must be kept indoors; and
 - (2) The dogs and/or cats must be kept indoors; or in a secure area with a fence of sufficient height and durability to prohibit the dogs and/or cats from escaping; or in a secure area effectively controlled by a electronic device; and
 - (3) Adequate shelter as defined in Chapter 1 of this Article.
4. Applicants shall not be eligible for a special permit if they are known in the neighborhood or community for causing disruptions related to dogs and/or cats.
 5. Special permits are non-transferable. A change in the number or type of dogs and/or cats, or changes in the residence or ownership of the dogs and/or cats shall require a new special permit.
 6. The fee for a special permit shall be \$50.00. The special permit fee shall be allocated for animal welfare by the Marlinton Town Council.
 7. A previously approved special permit may be rejected or revoked at any time if the Marlinton Town Council determines the issuance of a special permit has caused damage, hazard, nuisance, dangerous conditions, or is a detriment to any person or property.
 8. Any person aggrieved by the denial or granting of a special permit shall have the right to appeal to the Marlinton Town Council.
 9. Special permits will not be required for verifiable members of an animal welfare agency providing temporary "foster care" for stray/abandoned dogs and/or cats until appropriate disposition can be determined.

Sec. 3-310. Annual head tax (dog tax).

1. There is hereby imposed upon each person owning or harboring within the town, a dog above the age of six months an annual head tax on each dog so kept; in the amount of \$3.00 for each dog kept. The tag shall be situated on the collar or harness in such a manner that it may be easily visible at all times.
2. Shall be the duty of each person who owns or harbors any dog within the town at the time of the annual assessment of personal property to report to the county assessor and pay the head tax on said dog.
3. The head tax collected by the Town of Marlinton shall be used for animal welfare.
4. This section does not apply to dogs in a licensed kennel or veterinary hospital.

Ref: *WV Code 8-13-10 & 19-20-1*

Sec. 3-311. Dogs prohibited to run at large.

1. It shall be unlawful for any person to own or keep a dog which runs at large in the Town. Knowledge or acquiescence by the owner is not an element of the offense. An animal shall not be deemed to be running at large if:
 - [a] The dog is firmly attached to a leash or chain under the physical control of its owner; or
 - [b] The dog is within a structure or within a fence enclosure with the permission of the owner of the structure; or
 - [c] The dog has an operating electronic collar and is under the charge or control of its owner who is operating an electronic pet containment system or electronic training system for the animal.
 - [d] Notwithstanding this subsection, all dogs on the public right-of-way in the central business district (8th Street) must be kept on a leash or chain under the physical control of its owner.
 - [e] Notwithstanding this subsection, Stillwell Park is not included but owner is subject to Pocahontas County Parks and Recreation rules for that facility.
2. Any dog on property without permission of the property owner shall be deemed to be a dog at large, and the owner of such animal shall be in violation of this section.
3. The provisions of this section shall not apply to service animals.
4. Any person found guilty of a dog at large as defined herein shall be punished by a fine as set for in Chapter 4 of this Article. If the owner agrees to forfeit ownership of the animal, all interest in the animal shall vest to an animal welfare organization for appropriate disposition.

Sec. 3-312. Aggressive dog at large defined; fines.

1. It shall be unlawful for any person to own or keep an aggressive dog which runs at large in the town. Knowledge or acquiescence by the owner is not an element of the offense. An aggressive dog at large as defined in this section is that without provocation, exhibits aggressive or combative behavior toward a person or another domestic animal, whether said person or domestic animal is physically attacked or bitten.

2. Any person found guilty of an aggressive dog at large shall be punished by a fine as set forth in Section 4 of this Article. The Municipal Court Judge shall have no authority to suspend the fine.
3. If the owner agrees to forfeit ownership of the animal, all interest in the animal shall vest to an animal welfare organization.

Sec. 3-313. Impounding, redemption, and disposition.

1. A dog and/or cat found running at large within the corporate limits of the town contrary to the provisions of Section 3-312 may be impounded by any authorized personnel. The authorized personnel shall make a record of all dogs and/or cats so impounded with their description, date of impoundment, and rabies vaccination number.
2. The owner of any animal impounded pursuant to the provisions of this article must appear and claim the said animal within ten days from the date the animal is impounded. If the animal is not claimed within ten days of impoundment, then the owner shall be deemed to have forfeited all interest in the animal and the animal shall be deemed abandoned. All interest in such animal shall vest to an animal welfare organization for adoption or other disposition. If the owner appears to claim the dog within the ten-day period, said animal may be released to him or her upon the following conditions:

[a] Proof that the animal is currently immunized against rabies, or, in absence of such proof, reimbursement to the animal welfare organization for a rabies vaccine or voucher for a rabies vaccine;

[b] Reimbursement to the animal welfare organization for all reasonable expense for necessary medical care;

[c] Payment of the following fees to the animal welfare organization:

- 1) Impoundment and initial board fee for the first 24-hour period or any part thereof of \$50.00.
- 2) An additional fee of \$10.00 for each additional 24-hour period up to a maximum of ten days.

CHAPTER 4. PENALTIES

Sec. 3-401. General penalty

Except as otherwise provided by law or this ordinance, a person convicted of violation of this ordinance for which no specific penalty is prescribed, shall be punished by a fine as set forth in Section 3-402. In addition to any penalty prescribed in these animal control provisions, the

municipal court judge may award an additional penalty in the form of restitution for damages which may be caused as a result of any violation of these animal control provisions. Additionally, the municipal court judge shall in all cases order a defendant convicted of any violation of these animal control provisions to reimburse the animal welfare organization, veterinarian, animal clinic or hospital, or other animal care and treatment provider for all such reasonable expenses as may have been incurred by the animal welfare organization, veterinarian, animal clinic or hospital, or other animal care and treatment provider with respect to the animal at issue in the violation. Except as otherwise provided by law or ordinance, with respect to the violations of this Code that are continuous with respect to time each day that the violation continues is a separate offense. The imposition of a penalty does not preclude suspension or revocation of any license, permit or franchise, or other administrative sanctions. Violations of this code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not preclude injunctive relief.

Sec. 3-402. Fines and penalties.

A violation of any section of this ordinance, not otherwise designated, shall be punishable by a fine as follows, for each separate violation:

- 1st Offense \$100.00 fine, plus court cost, food, medications, lodging.
- 2nd Offense \$200.00 fine, plus court cost, food, medications, lodging.
- 3rd Offense \$300.00 fine, plus court cost, food, medications, lodging.

With each additional violation after the third (3rd) offense the fine shall be \$500.00, plus court cost, food, medications, lodging.

SEVERABILITY:

1. This ordinance shall become effective immediately upon passage.
2. If any portion of this ordinance shall be declared invalid by any court of competent jurisdiction or amended by the Council of the Town of Marlinton; then the remainder of the ordinance shall remain in full force and effect.

FIRST READING: October 3, 2011PUBLISHED DATE: June 2, 2011SECOND READING: November 7, 2011APPROVED: 
MAYORATTEST: 
RECORDER