

**BEFORE THE COUNTY COMMISSION OF BERKELEY COUNTY
WEST VIRGINIA**

The members of the Berkeley County Commission hereby find that vicious dogs are a public nuisance and, as such, they are under the jurisdiction of this body. Accordingly, upon motion of Commissioner Howard L. Strauss, and second by President Steven C. Teufel, the following Ordinance is amended, as indicated, and re-adopted, pursuant to the provisions of § 7-1-3kk, *Code of West Virginia*, 1931, as amended.

NUISANCE: VICIOUS DOGS

- A. 1. A dangerous or vicious dog shall be defined to mean:
 - a. A dog that:
 - 1. Without provocation has killed or inflicted injury on a person; or
 - 2. Killed or inflicted severe injury upon a domestic animal, horse or livestock, when not on the offending dog owner's real property; or
 - 3. Approached a person when not on the offending dog owner's property in a vicious or terrorizing manner, in an apparent attitude of attack, as determined by the Chief Animal Control Officer or his or her designee, upon the sworn affidavit of at least two eye witnesses.
 - b. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.
 - 2. Owner shall mean any person or legal entity that has a possessory property right in a dog.
 - 3. Owners' real property shall mean any real property owned or leased by the owner or owners of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, townhouse or subdivision development.
 - 4. Severe injury shall mean any physical injury that results in broken bones or disfiguring lacerations or which required surgery or hospitalization.
 - 5. Injury shall mean any breaking of the skin, which results in bleeding, caused by bite.
- B. The Chief Animal Control Officer of Berkeley County, his or her designee, is hereby designated as the person responsible for determining when a dog is a dangerous or vicious dog. At the time such determination

is made, such dog shall be seized by officers of the Animal Control Office or any appropriate law enforcement agency.

- C. Any determination that a dog is vicious or dangerous shall be communicated by the Chief Animal Control Officer, his or her designee, to the dog owner in writing, giving the reasons for such determination.
 - a. Appeal of this determination shall be to the County Commission through a five member body to be known as the Nuisance Appeal Board. Such Board shall be appointed by the Commission and its members shall serve terms of three years. They shall serve at the will and pleasure of the Commission and without compensation.
 - b. Such appeal must be in writing and must be received by the County Commission within 3 business days of service of the reasons for the determination. The Commission shall immediately notify the Nuisance Appeal Board that an appeal has been filed. The Board Chair or Vice Chair shall schedule an appeal proceeding to hear the evidence with regard to the determination made by the Animal Control Officer that the dog is vicious or dangerous and to decide the legitimacy of that determination. Such appeal shall be heard within ten working days of receipt of such written appeal. The Board shall communicate its recommendation to the County Commission upon completion of the appeal proceeding.
 - c. The County Commission shall adopt or reject, in its discretion, the recommendation of the Nuisance Appeal Board. Such decision of the County Commission shall be considered a final order and shall be appealable to the circuit court . The petition for appeal must be filed with the circuit court within four months of the entry of the final order of the Commission. If such appeal is allowed, it shall be heard and a decision made thereon upon the original record of the proceeding, all as defined in § 58-3-4 and 5, *Code of West Virginia, 1931, as amended*.
 - d. Any person eligible to file an appeal hereunder may sign a waiver of appeal if they decide not to file such appeal. In that case, the dog shall be put down and no additional costs will accrue to that person.
- D. Any dog finally determined to be vicious or dangerous shall be disposed of by the Animal Control Office in the same manner as such office disposes of other dogs, except that vicious or dangerous dogs may not be made available to the public.
- E. No police dog, which was engaged in the performance of its duties at the time of the acts complained of, shall be found to be a dangerous or vicious dog. No dog shall be found to be a dangerous or vicious dog solely because of its breed, nor is a particular breed of dog prohibited. No dog shall be found to be a dangerous or vicious dog if the bite, attack or injury was sustained by a person who was (i) committing at the time a crime upon the premises occupied by the dog's owner,

(ii) committing, at the time, a willful trespass or other tort upon the premises occupied by the dog's owner, or (iii) provoking, tormenting, or physically abusing the dog.

- F. If, in the discretion of the Chief Animal Control Officer, or his or her designee, a dog cannot safely be captured and detained, pursuant to paragraph B above, and the same has been determined to be vicious or dangerous, the Animal Control Office is authorized to take immediate and, if necessary, lethal action, against such dog notwithstanding the fact that no written notice has been communicated to the owner of the dog and that no hearing into said determination has been requested or held.
- G. When dogs are finally determined to be vicious or dangerous and, therefore, a nuisance, all costs of disposition, including legal fees, housing of the dog during the legal proceedings, termination of the dog's life and administrative costs expended by the County shall be reimbursed by the owner to Berkeley County.
- H. The Chief Animal Control Officer, or his or her designee, shall cite the owner of any dog finally determined to be vicious or dangerous and the dog owner shall be fined a maximum of one hundred dollars, for the first offense; for subsequent offenses, such fine shall be a minimum of three hundred dollars, not to exceed one thousand dollars. Such owner shall also be liable to any victim for reimbursement of any and all medical and other costs, including, but not limited to, the cost of veterinary care for pets injured or killed by such vicious or dangerous dog and disposition of the bodies of pets which have died or been put down as a result of attack by such vicious or dangerous dog.
- I. Notwithstanding any other provision of any county ordinance or state statute to the contrary, the detention of any dog designated, pursuant to the provisions of this ordinance, as vicious or dangerous, shall include all time necessary for the conclusion of all appeals to be finalized.

Amended and re-adopted this 19th day of August, 2004, at Martinsburg, Berkeley County, West Virginia.

This amended Ordinance shall be effective on the date of adoption.

Steven C. Teufel, President

Howard L. Strauss, Commissioner

John E. Wright, Commissioner₁