

ARTICLE 505
Animals and Fowl

<p>505.01 Cruelty to animals.</p> <p>505.02 Cruelty to dogs and cats.</p> <p>505.03 Nuisance conditions prohibited.</p> <p>505.04 Barking or howling dogs.</p> <p>505.05 Dangerous and vicious dogs; dogs running at large.</p> <p>505.06 Dogs and cats running at large.</p> <p>505.07 City designated bird sanctuary.</p> <p>505.08 Keeping fowl, certain animals within city prohibited.</p> <p>505.09 Animals and fowl running at large.</p>	<p>505.10 Engaging in or attending dog fights, cock fights, etc. prohibited.</p> <p>505.11 Use of lame, diseased or vicious animal.</p> <p>505.12 Humane Officer.</p> <p>505.13 Care and disposal of animals abandoned, neglected, or cruelly treated.</p> <p>505.14 Dogs.</p> <p>505.99 Penalty.</p>
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CROSS REFERENCES

Authority to regulate the keeping of animals –
see W. Va. Code 8-12-5(26)

Authority to prevent ill-treatment of animals –
see W. Va. Code 8-12-5(27)

Domestic animal tax - see W. Va. Code 8-13-10

Disposing of dead animals - see W. Va. Code 16-9-3

Diseases among domestic animals - see W. Va. Code Art. 19-9

Dogs generally - see W. Va. Code Art. 19-20

Vaccination of dogs - see W. Va. Code Art. 19-20A

Hunting - see W. Va. Code Art. 20-2

505.01 CRUELTY TO ANIMALS.

(a) No person shall cruelly mistreat, abandon or withhold proper sustenance, *including* food, water, shelter or medical treatment necessary to sustain normal health and fitness or to end suffering or abandon any animal to die, or use, train or possess any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(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 county pound 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 county pound 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 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 CRUELTY TO DOGS AND CATS.

No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dog fighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or maltreating any other dog or cat. (WVaC 61-8-19a)

505.03 NUISANCE CONDITIONS PROHIBITED.

No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

505.04 BARKING OR HOWLING DOGS.

No person shall keep or harbor any dog within the Municipality which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the Municipality. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such dog.

505.05 DANGEROUS AND VICIOUS DOGS; DOGS RUNNING AT LARGE.

(a) (1) A. "Dangerous dog" means a dog that, without provocation, and subject to subsection (a)(1)B. hereof, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog

is off the premises of its owner, keeper or harborer and not under the reasonable control of its owner, keeper, harborer or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top.

B. "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(4) A. "Vicious dog" means a dog that, without provocation and subject to subsection (a)(4)B.hereof, meets any of the following:

1. Has killed or caused serious injury to any person;
2. Has caused injury, other than killing or serious injury to any person, or has killed another dog;
3. Belongs to a breed that is commonly known as a pit bull dog, the ownership, keeping or harboring of such a breed of dog shall be prima-facie evidence of the ownership keeping or harboring of a vicious dog.

B. "Vicious dog" does not include either of the following:

1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper or harborer of the dog.

(5) "Without provocation" means that a dog was not teased, tormented or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(b) No owner, keeper or harborer of any female dog shall permit it to go beyond the premises of the owner, keeper or harborer at any time the dog is in heat, unless the dog is properly on a leash.

(c) No owner, keeper or harborer of any dog shall fail at any time to keep it either physically confined or restrained upon the premises of the owner, keeper or harborer by a leash, tether, adequate fence, supervision or secure enclosure to prevent escape or under reasonable control of some person.

- (d) No owner, keeper or harbinger of a dangerous or vicious dog shall fail to do either of the following:
- (1) While that dog is on the premises of the owner, keeper or harbinger, securely confine it at all times in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;
 - (2) While that dog is off the premises of the owner, keeper or harbinger, keep it on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:
 - A. Keep that dog in a locked pen which has a top, locked fenced yard and/or other locked enclosure which has a top;
 - B. Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - C. Muzzle that dog.
- (e) No owner, keeper or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this State providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than fifty thousand dollars (\$50,000) because of damage or bodily injury to or death of a - Person caused by the vicious dog.
- (f) (1) Whoever violates subsection (b) or (c) hereof shall be fined one hundred dollars (\$100.00).
- (2) In addition to the penalties prescribed in subsection (f)(1) hereof, if the offender is guilty of a violation of subsection (b) or (c) hereof, the court may order the offender to personally supervise the dog that he owns, keeps or harbors, to cause that dog to complete the dog obedience training, or to do both.
- (g) If a violation of subsection (d) hereof involves a dangerous dog, whoever violates that subsection is guilty of a misdemeanor on a first offense. Additionally, the court may order the offender to personally supervise the dangerous dog that he owns, keeps or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to subsection (e) hereof. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.
- (h) Whoever violates subsection (d) or (e) hereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty days or both.
- (Passed 8-21-87)

505.06 DOGS AND CATS RUNNING AT LARGE.

(a) Leash Required. No owner or person in charge of any dog or cat, whether or not such dog or cat has attached to it a license tag, shall cause or permit such dog or cat to run at large or be upon a street, sidewalk or public place within the Town, unless such dog or cat is on a leash and accompanied by its owner or some other person in charge of such dog or cat.

(b) Impoundment. If any dog or cat shall be found running at large or unleashed in the Town in violation of subsection (a) hereof, it shall be taken up and impounded in the Town pound, or other designated proper facility, by the Police Chief or other person designated as a Humane Officer, and securely kept subject to the provisions of this article.

(c) Town to Provide or Designate Pound; Notification of Owner; Redemption. The Town shall provide, or designate and make provisions for the use of, a pound where all dogs and cats taken up under the provisions of this section shall be impounded, and where such dogs and cats so taken up and impounded shall be kept, housed and fed for five days or the allotted amount of time specified by the pound; provided, that if such dog or cat shall have attached to it a license tag, it shall be the duty of the person in charge of the pound to promptly give written notice to the owner of such dog or cat by mailing such notice, return receipt requested, to such owner at the address shown upon the records of the County Assessor. The owner of such dog or cat may redeem the same by paying seven dollars and fifty cents (\$7.50), the cost of notification, or actual charge of housing of the animal from the shelter or pound. An additional charge will be added for the violation of 505.14(b); Running at Large Prohibited; Leash Required. Animal will be ticketed under this section and will not be released until both impoundment fees and ticket are paid in full.

(Passed 1-14-97)

(d) Disposal. The person in charge of the pound shall hold any dog or cat brought to him/her for a period of at least five days, at the expiration of which time, if such dog has not been redeemed as provided in subsection (c) hereof, such animal may be put to death, or, if the animal is worthy in value, it may be sold at public auction to the highest bidder at 2:00 p.m. of the day next succeeding the last day of the five-day period or at any time thereafter; provided, that no dog or cat shall be sold for less than the fee required for redemption, as provided in subsection (c) hereof, and provided, further, that the impounding and killing or sale of any such dog or cat shall not relieve the owner thereof from prosecution for the violation of subsection (a) hereof.

(e) Penalty. Whoever violates this section shall be fined not less than fifteen dollars (\$15.00) nor more than one hundred dollars (\$100.00).

(Passed 6-10-86)

505.07 TOWN DESIGNATED BIRD SANCTUARY.

The Town is hereby designated a bird sanctuary under existing State, federal and Municipal laws. The citizens of the Town are requested to feed and shelter desirable birds and to protect them from predators and vandals.

(Passed 6-12-73)

505.08 KEEPING FOWL, CERTAIN ANIMALS WITHIN CITY PROHIBITED.

(a) No person shall keep, maintain, raise, or otherwise harbor within the City any fowl, including, but not limited to the following types of fowl: Chickens, guineas, ducks, geese, turkeys and pigeons.

(Passed 6-12-73)

(b) No person shall keep, maintain, raise, or otherwise harbor within the City the following animals: Horses, mules, goats, hogs, rabbits, cattle, and wild animals of any type or nature.

(Passed 4-8-86)

505.09 ANIMALS AND FOWL RUNNING AT LARGE.

No owner shall permit any fowl, or animal referred to in Section 505.08 to run at large within the City. All such fowl and animals found running at large within the City shall be taken up by the Chief of Police or other designated officer of the City and placed in the City pound or other designated and suitable place; provided, that any competent person may lead, drive or ride, as, appropriate, a horse, mule, goat or cattle upon and over the public thoroughfares of the City when such animal is in the actual charge of such person in such manner that the same may be prevented from trespassing upon and over lawns, sidewalks, grass plots or over other public or private property not used or intended as a traveled roadway.

(Passed 6-12-73)

505.10 ENGAGING IN OR ATTENDING DOG FIGHTS, COCK FIGHTS, ETC., PROHIBITED.

No person shall be engaged in or employed at cock fighting, dog fighting, pitting one animal to fight against another of the same or different kind, or any similar cruelty; nor shall any person receive money for the admission of any person, or knowingly purchase an admission, to any place kept for any such purpose; nor shall any person use, train or possess a dog or other animal for the purpose of seizing, detaining or mistreating any other domestic animal.

(Passed 6-12-73)

505.11 USE OF LAME, DISEASED OR VICIOUS ANIMAL.

No person shall bring into the City from any state, territory, county or jurisdiction without the City on, over or along any public street, any animal which is not fit for use, or which is not free from lameness or sores or vicious propensities likely to cause delay in traffic, or to obstruct any such street or to spread contagious diseases or to cause accident or injury on any such street or place to persons or property using the same. No person shall drive or work any such animal on, over or along any public street in the City, or for the owner of any such animal to allow or permit the same to be driven or worked on, over or along the same, or be brought on, along or over the same into the City from any other state, territory, county or jurisdiction beyond the territorial limits of the City.

(Passed 6-12-73)

505.12 HUMANE OFFICER.

(a) The Chief of Police, or any other person who may be from time to time designated for such purpose by Council, shall act as Humane Officer, and investigate all complaints made to the Police Department of cruel or inhumane treatment of animals within the City, and to see that the law relating to the prevention of cruelty to animals is enforced.

(b) The Chief of Police, or the Humane Officer, if designated, shall prevent the perpetration or continuance of any act of cruelty upon any animal in his presence, and arrest and prosecute any person engaging in such cruel and forbidden practices in his presence or whom he has reasonable cause to believe guilty thereof after investigating any complaint made to him. No person shall interfere with, or obstruct, or resist any Humane Officer in the discharge of his duty.

(Passed 6-12-73)

505.13 CARE AND DISPOSAL OF ANIMALS ABANDONED, NEGLECTED, OR CRUELLY TREATED.

(a) The Chief of Police, or Humane Officer, if designated, shall take charge of any fowl or animal found abandoned, neglected, or cruelly treated, and any wagon or vehicle attached thereto, and shall thereupon give or cause to be given to the owner thereof, if known, notice of such seizure and shall care and provide for, or cause to be cared and provided for, such fowl or animal until the owner shall take charge of the same. The expense of the care and provision for any fowl or animal taken up or impounded under the provisions of this section shall be a charge against the owner and a lien upon the fowl, or animal and vehicle, and such fowl, or animal and vehicle, shall not be turned over to such owner until all such expense is paid; provided, that if it shall appear to the arresting officer that the owner has willfully abandoned, neglected or cruelly treated the fowl or animal, the same shall not be returned to him until he has been acquitted of the charge in the Municipal Court, or, if convicted thereof, until he shall execute bond in the penalty of not less than one hundred dollars (\$100.00) before the Municipal Judge, conditioned not to again cruelly treat such fowl or animal and not then until he has fully paid all the time it shall have been in the possession of such officer; and provided further, that if the owner shall neglect or refuse to pay such expense, then the officer shall sell the fowl or animal as provided in subsection (c) hereof.

(b) When the Police Chief, or any Humane Officer, properly designated, shall provide any neglected or abandoned fowl or animal found running at large with proper food, shelter and care, or shall cause another proper person to do so, the City shall have a lien upon such fowl or animal for the expense thereof, and such expense shall be charged against the owner of the fowl or animal and shall be collectible from the owner as provided in subsection (c) hereof.

(c) When the City is entitled to any lien under the provisions of subsections (a) or (b) hereof, it may enforce the same by selling the fowl or animal and other personal property upon which the lien is given, at public auction, upon giving written notice to the owner, if he be known, of the time and place of the sale at least five days previous thereto, and by posting three notices of the time and place of such sale in three public places within the City at least five days previous thereto, and if the owner be not known, then such notices shall be posted at least ten days previous to the day of sale.

(d) The Police Chief, or designated Humane Officer, shall file with the Recorder within five days after the sale of any impounded fowl, animal or property, a full report of all money received from such sale, the cost of keeping the fowl or animal as provided in subsection (f) hereof, and the costs attending such sale, and the Police Chief, or designated Humane Officer shall, after deducting all expenses, fees and costs, pay all surplus money if any, arising from the sale of any impounded fowl, horse, mule, goat, hog, pig or cattle to the City Recorder, taking his receipt therefore in duplicate, one copy of which shall be retained by the officer and the other shall be turned over to the Municipal Court Judge, and the City recorder shall place all money so received by him from the sale of impounded animals to the credit of the general fund and account for the same as for other money in his charge.

(e) All money received by the Recorder from the sale of impounded fowl or animals shall be paid over to the owner thereof, in the same manner as other public funds are disbursed, provided written demand therefore is made to the Recorder by the rightful owner thereof within sixty days from the sale of such animal.

(Passed 6-12-73)

(f) The following costs and fees shall be collected from the owner:

- (1) For taking up and impounding each fowl, goat, hog, pig, sheep, or calf, twenty dollars (\$20.00).
- (2) For taking up and impounding each horse, mule, cow, ox or bull, twenty dollars (\$20.00).
- (3) For feeding each fowl, goat, hog, pig, sheep or calf, per day, five dollars (\$5.00).
- (4) For feeding any horse, mule, cow, ox or bull five dollars (\$5.00).
- (5) For making sale of such fowl or animal, twenty percent (20%) of the sale price thereof. Provided, that the officer may have such fowl or animal properly provided for by some other suitable person, at a rate not to exceed the fees herein provided, in lieu of assuming such responsibility until the fowl or animal is sold or is returned to the owner as provided in this article. Such fees, when collected, shall be paid over by the officer to the Recorder.

(Passed 4-8-86)

(g) No person shall break open or in any manner, directly or indirectly, aid or assist in breaking open any pound established by the City, or any enclosure in which an impounded fowl or animal may be kept or take or let any horse, mule, goat, hog, cattle or any other fowl or animal out of the public pound or other enclosure when so kept without the consent of the person or officer in charge thereof. Any person guilty of violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00).

(Passed 6-12-73)

505.14 DOGS.**(a) Head Tax.**

- (1) There is hereby levied, annually, from the first day of January, a tax upon any citizen or inhabitant of the City, for the privileges of owning, keeping or harboring any dog above the age of six months. Any person or resident of or inhabiting any house within the City and owning or keeping any such dog or allowing or permitting any such dog to be or remain at or about such house, shall be deemed the owner of such dog for the purpose of this section. Any such dog is hereby declared to be personal property within the meaning of the laws of the State.
- (2) The tax for the privilege of owning or keeping such dog or permitting or allowing such dog to remain at or about any such house, shall be one dollar (\$1.00) on each male or spayed female dog, and two dollars (\$2.00) on each unspayed female dog, which tax shall be collected by the County Assessor, at the same time and in the same manner and form as the County taxes are collected, as provided by West Virginia 19-20-2.

(b) Running at Large Prohibited: Leash Required. No owner or person in charge of any dog, whether or not such dog has attached to it a license tag, shall cause or permit such dog to run at large or be upon a street, sidewalk or public place within the City, unless such dog is on a leash and accompanied by its owner or some other person in charge of such dog. Any person guilty of violating this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifteen dollars (\$15.00), nor more than one hundred dollars (\$100.00).

(c) Impoundment. If any dog shall be found running at large or unleashed in the City in violation of subsection (b) hereof, it shall be taken up and impounded in the City dog pound, or other designated proper facility, by the Police Chief or other person designated as a Humane Officer, and securely kept subject to the provisions of this section.

- (1) The City shall provide, or designate and make provisions for the use of a dog pound where all dogs taken up under the provisions of this section shall be impounded, and where such dogs so taken up and impounded shall be kept, housed and fed for five days; provided, that if such dog shall have attached to it a license tag, it shall be the duty of the person in charge of the dog pound to promptly give written notice to the owner of such dog by mailing such notice, return receipt requested, to such owner at the address shown upon the records of the County Assessor. The owner of such dog may redeem the same by paying five dollars (\$5.00), the cost of notification, plus an additional fifty cents (\$0.50) for each day that such dog shall have been impounded.

- (2) The person in charge of the dog pound shall hold any dog brought to him for a period of at least five days, at the expiration of which time, if such dog has not been redeemed as provided in subsection (c)(1) hereof, such animal may be put to death, or, if the animal is worthy in value, it may be sold at public auction to the highest bidder at 2:00 p.m. of the day next succeeding the last day of the five-day period or at any time thereafter; provided, that no dog shall be sold for less than the fee required for redemption, as provided in subsection (c)(1); and provided, further, that the impounding and killing or sale of any such dog shall not relieve the owner thereof from prosecution for the violation of subsection (b) hereof. (Passed 6-12-73)
- (d) Defecation Removal.
- (1) The owner or person in charge or control of any dog, cat, or other animal which defecates upon any lawn, tree, shrub plant or water within the City of Nutter Fort, including its parks, shall immediately clean all feces and cause its removal to a proper receptacle.
- (2) Persons medically requiring the need of a "seeing eye dog" while relying upon a dog specifically trained for this purpose shall be exempt from compliance with this section. (Passed 9-8-92)

505.99 PENALTY.

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

- (a) Whoever violates Section 505.01(a) shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 505.01(b) shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). (WVaC 61-8-19)
- (c) Whoever violates Section 505.02 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. (WVaC 61-8-19a)