CITY OF CHARLES TOWN

ORDINANCE COMMITTEE
AGENDA • APRIL 17, 2024

Committee Meeting **COUNCIL CHAMBERS** **6:00 PM**
101 E Washington Street, Charles Town, WV 25414

1. CALL TO ORDER

2. UNFINISHED BUSINESS

3. NEW BUSINESS

: **2024-422:** Outdoor Dining Ordinance
Charleston Outdoor Dining Ordinance.pdf
City of Huntington Outdoor Dining Ordinance.pdf
Parkersburg Outdoor Dining Ordinance.pdf

: **2024-423:** Article 1102 Animals and Fowls
Article 1102 Animals and Fowl.pdf

4. ADJOURNMENT

5. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at: https://www.charlestownwv.us/government/agendas-and-minutes/

Ordinance Committee
101 East Washington Street
Charles Town, WV 25414

SCHEDULED

AGENDA ITEM (ID #)

Meeting: 04/17/24
Department: Ordinance Committee
Category: Ordinance
Initiator:

2024-422: Outdoor Dining Ordinance

The committee will start creating an ordinance that outlines the guidelines and requirements for food and alcoholic beverage consumption outdoors.

ATTACHMENTS:

- Charleston Outdoor Dining Ordinance.pdf
- City of Huntington Outdoor Dining Ordinance.pdf
- Parkersburg Outdoor Dining Ordinance.pdf

ARTICLE VII. OUTDOOR DINING

Sec. 102-271. Planning department rules and regulations under article.

The City of Charleston Planning Department is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all outdoor dining area permit applications and to either grant or deny such permits under this article. Copies of such regulations, as amended from time to time, shall be maintained by the planning department, posted on the city's website and filed in the city clerk's office, and shall be available to interested parties at all reasonable times.

(Bill No. 7516, 4-16-2012)

Sec. 102-272. Compliance with federal, state and local laws and regulations.

(a) The operation of an outdoor dining area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food. The operations of an outdoor dining area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the operator's responsibility to comply with all code provisions and regulations of the WVABCA.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the city, as set forth in subsection 78-211(b) of the Municipal Code of the City of Charleston, except that any permitted outdoor dining area operator and patrons of permitted operator's outdoor dining area shall be deemed to be exempt from said prohibition during the hours of operation of the outdoor dining area and only within the confines of said area.

(Bill No. 7516, 4-16-2012)

Sec. 102-273. Nondiscrimination/right to limit or deny admission or service.

No person shall be denied access or service to an outdoor dining area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the operator to limit access and admission to an outdoor dining area to only bona fide paying customers of that operator's establishment who are behaving in a lawful manner.

(Bill No. 7516, 4-16-2012)

Sec. 102-274. Definitions.

(a) *Operator* shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District (CBD) or Urban Corridor District (UCD), as shown on the City of Charleston's Official Zoning Map, that possesses a valid State of West Virginia food vendor's permit and serves at a minimum both lunch and dinner, and has been issued an outdoor dining area permit by the city's planning department.

(b) *Outdoor dining area* shall mean a confined area of the public sidewalk designated by a site plan approved by the city through its planning department and located in the Central Business District (CBD) or Urban Corridor District (UCD), as shown on the City of Charleston's Official Zoning Map, where, if abutting a street, the street abutting the sidewalk is posted at a speed limit of 30 mph or less, and which area is adjacent to operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include any beverage regulated by the WVABCA contingent on proper licensure by the WVABCA.

(Bill No. 7516, 4-16-2012; Ord. No. 7765, § 1, 12-4-2017; Bill No. 7765, § 1, 12-4-2017)

Sec. 102-275. Permit process.

(a) An applicant for an outdoor dining area permit shall file an application with the City of Charleston Planning Department on such forms and subject to such procedures as the planning department may establish. An application for an outdoor dining area permit shall be accompanied by a $50.00 administrative fee for a non-partitioned outdoor dining area, and a $500.00 administrative fee for a partitioned outdoor dining area, and shall include: a site plan, drawn to scale showing the layout for the outdoor dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, aisles between tables, and if applicable, enclosures; routes of ingress and egress; clearances between the seating area and the curb; and any such additional requirements of the planning department with respect to type, style, or specifications of the outdoor dining area, including those requirements subject to the approval of the WVABCA.

(b) After reviewing the application and site plan, the planning department shall determine if the proposed outdoor dining area, consistent with the requirements of this article, is reasonable, promotes safe pedestrian and retail friendly vitality, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety and welfare. Thereafter, the planning department may approve, approve with conditions, or deny an application. The approved plan and permit shall be posted at the operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the planning department.

(c) The outdoor dining area permit term shall be for one calendar year, unless revoked prior to expiration, and may be renewed on an annual basis. An annual administrative fee of $25.00 for a non-partitioned outdoor dining area, and $500.00 for a partitioned outdoor dining area, shall be assessed for renewal of an existing outdoor dining area permit; provided said administrative fee shall be waived in 2013 for any operator who was permitted in 2012.

(d) Any operator holding a valid existing permit for a particular outdoor dining area that continues to utilize that outdoor dining area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such operator shall pay the applicable annual renewal administrative fee, complete all renewal paperwork and comply with any other renewal requirements of the planning department, within 30 days of the commencement of the succeeding permit term. If the operator fails to meet all renewal requirements within the 30 days, then the operator's permit shall be deemed to have expired.

(e) The issuance of an outdoor dining area permit does not grant or imply vested rights to use of the area by the operator, but instead is a privilege granted to the operator. The city retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The city shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improving the overall public health, safety and welfare.

(Bill No. 7516, 4-16-2012; Bill No. 7572, § 1, 5-7-2013)

Sec. 102-276. Standards for outdoor dining areas.

(a) The outdoor dining area shall be located adjacent to the property of an existing and lawful establishment of a permitted operator and shall be under the responsible direction and control of that operator.

(b) The outdoor dining area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said outdoor dining area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons. In the event a permitted operator intends to serve any beverage regulated by the WVABCA in an outdoor dining area, all code provisions and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(c) All furniture or other personal property located on the public sidewalk/right-of-way by operator must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way by operator are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W. Va. Code §§ 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on city right-of-way shall be provided, installed, maintained and removed by and at the discretion of the city, shall remain property of the city, and no other partitions or fencing shall be permitted absent a finding by the planning department that the city is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

(e) The planning department shall have the authority to determine when furniture, personal property and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) At least 42 inches, of unobstructed corridor space must be maintained between the outer dimension of the outside dining area and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the outdoor dining area.

(g) An unobstructed clearance of 42 inches, must be maintained between a fire hydrant and any furniture or enclosures of an outdoor dining area.

(h) The outdoor dining area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter.

(i) In order to control litter, the use of disposable plates and utensils is prohibited.

(j) In accordance with section 78-212 of the Municipal Code of the City of Charleston, noise from an outdoor dining area which unreasonably disturbs neighboring commercial or residential occupants is prohibited.

(k) In order to serve any beverage regulated by the WVABCA in an outdoor dining area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the city as an outdoor dining area. Patrons are not permitted to carry any beverage regulated by the WVABCA out of the outdoor dining area.

(l) Smoking is prohibited within any outdoor dining area.

(Bill No. 7516, 4-16-2012; Bill No. 7572, § 1, 5-7-2013)

Sec. 102-277. Additional requirements.

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the city, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to, the permitted outdoor dining area.

(b) The applicant shall maintain such general liability insurance with at least $1,000,000.00 coverage per each occurrence and shall the name as additional insured the City of Charleston, its agents, officers, directors and employees. A copy of said insurance policy shall be furnished to the City of Charleston.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the operator's failure to comply with any federal, state or local laws, any unabated nuisances or whenever the city desires to use the affected public right-of-way for any public purpose. In the event the city shall have a public need for use of the right-of-way or the property affected by the right-of-way, the city may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the operator shall cease use of the right-of-way unless and until such time the city has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the city. If the applicant fails or neglects to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the operator, and shall not be liable to the operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

(Bill No. 7516, 4-16-2012)

Sec. 102-278. Denial or revocation of permit.

(a) An outdoor dining area permit is a privilege granted to the operator that may be revoked by the city upon finding by the planning department that the operator has violated any federal, state or city law applicable to the outdoor dining area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the WVABCA, that the continued operation of the outdoor dining area poses a threat to the health, safety or welfare of the public, or that the outdoor dining area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an operator whose permit has been revoked, may appeal the denial or revocation to the City of Charleston Board of Zoning Appeals (BZA). The provisions of Article 31 of the City of Charleston Zoning Ordinance shall apply. Such appeal may be made in writing within 30 days following the decision appealed from, on forms available at the planning department, and shall set forth the basis on which the person contests the decision. Within ten days of receipt of the appeal by the BZA, the BZA shall set a date and time for a public hearing. The public hearing shall be held within 45 days of receipt of the appeal to the BZA. The BZA shall conduct a public hearing on the appeal and may: deny the appeal and uphold the original order, requirement, decision or determination; grant the appeal and overturn the original order, requirement, decision or determination; or, issue an order which denies part of the appeal and grants part of the appeal.The BZA shall make written findings of fact and conclusions of law on which the BZA based its decision.The decision of the BZA may be appealed by either party, within 30 days, to the Kanawha County Circuit Court, as set forth in WV Code § 8A-9-1, et seq.

(Bill No. 7516, 4-16-2012)

Sec. 102-279. Penalty.

Any operator who violates any provision of this article shall, upon conviction, be fined up to $500.00 per day. Each day any violation of this article shall continue shall constitute a separate offense.

(Bill No. 7516, 4-16-2012)

Secs. 102-280—102-289. Reserved.

ARTICLE 1340 OUTDOOR DINING AND OUTDOOR SERVICE OF ALCOHOL

1340.01 PLANNING DEPARTMENT RULES AND REGULATIONS UNDER ARTICLE.

The City of Huntington Department of Planning and Development ("planning department") is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all outdoor dining area permit applications and to either grant or deny such permits under this article. Copies of such regulations, as amended from time to time, shall be maintained by the planning department, posted on the city's website and filed in the city clerk's office, and shall be available to interested parties at all reasonable times.

(Ord. of 4-9-18(1))

1340.02 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS.

(a) The operation of an outdoor dining area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food, and shall not unreasonably interfere with utility access. The operations of an outdoor dining area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the operator's responsibility to comply with all code provisions and regulations of the WVABCA.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the city, as set forth in section 516.06 of the Huntington Revised Code, except that any permitted outdoor dining area operator and patrons of permitted operator's outdoor dining area shall be deemed to be exempt from said prohibition during the hours of operation of the outdoor dining area and only within the confines of said area.

(Ord. of 4-9-18(1))

1340.03 NONDISCRIMINATION/RIGHT TO LIMIT OR DENY ADMISSION OR SERVICE.

No person shall be denied access or service to an outdoor dining area on the basis of race as defined in Article 147, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the operator to limit access and admission to an outdoor dining area to only bona fide paying customers of that operator's establishment who are behaving in a lawful manner.

(Ord. of 4-9-18(1) ; Ord. No. 2022-O-01 , 3-14-22)

1340.04 DEFINITIONS.

(a) *"Operator"* shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in a district zoned for commercial use that possesses a valid State of West

Virginia food vendor's permit and serves at a minimum both lunch and dinner, and has been issued an outdoor dining area permit by the city's planning department.

(b) *"Outdoor dining area"* shall mean a confined area of the public sidewalk designated by a site plan approved by the city through its planning department and located in a commercial district, as shown on the City of Huntington's Official Zoning Map, where, if abutting a street, the street abutting the sidewalk is posted at a speed limit of 25 mph or less, and which area is adjacent to operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include alcoholic beverages contingent on proper licensure by the WVABCA.

(c) *"Small partitioned area"* shall mean an outdoor dining area that is fenced or otherwise enclosed and occupies 30 or less of linear feet along the adjacent storefront.

(d) *"Large partitioned area"* shall mean an outdoor dining area that is fenced or otherwise enclosed and occupies greater than 30 feet of linear feet along the adjacent storefront.

(e) *"Non-partitioned area"* shall mean an outdoor dining area that is not fenced or otherwise enclosed.

(Ord. of 4-9-18(1))

1340.05 PERMIT PROCESS.

(a) An applicant for an outdoor dining area permit shall file an application with the City of Huntington Planning office on such forms and subject to such procedures as the Planner may establish. An application for an outdoor dining area permit shall be accompanied by the appropriate administrative fee as listed in section 1340.05(c), a $5,000 surety bond for partitioned outdoor dining areas, and shall include: a site plan, drawn to scale showing the layout for the outdoor dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, aisles between tables, and if applicable, enclosures; routes of ingress and egress; clearances between the seating area and the curb; and any such additional requirements of the planning department with respect to type, style, or specifications of the outdoor dining area, including those requirements subject to the approval of the WVABCA.

(b) After reviewing the application and site plan, the planner shall determine if the proposed outdoor dining area, consistent with the requirements of this article, is reasonable, promotes safe pedestrian and retail friendly vitality, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety and welfare. The planner may require that the applicant obtain the approval of other departments or utilities before making a final determination. Thereafter, the planning department may approve, approve with conditions, or deny an application. The approved plan and permit shall be posted at the operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the planning department. The planning department shall provide separate guidelines regarding applicable standards for uniform aesthetics, design, installation, and maintenance of the outdoor dining area and the Planning Commission will review these guidelines annually.

(c) The outdoor dining area permit term shall be for one fiscal year, renewed July 1, unless revoked prior to expiration, and may be renewed on an annual basis. An annual administrative fee of $100 for a non-partitioned outdoor dining area, a $250 administrative fee for a small partitioned area or a $500 administrative fee for a large petitioned area, shall be assessed for renewal of an existing outdoor dining area permit.

(d) Any operator holding a valid existing permit for a particular outdoor dining area that continues to utilize that outdoor dining area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such operator shall pay the applicable annual renewal administrative fee, complete all renewal paperwork and comply with any other renewal requirements of the planning department, within 30 days of the commencement of the succeeding permit term. If the operator fails to meet all renewal requirements within the 30 days, then the operator's permit shall be deemed to have expired.

(e) The issuance of an outdoor dining area permit does not grant or imply vested rights to use of the area by the operator, but instead is a privilege granted to the operator. The city retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The city shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improving the overall public health, safety and welfare.

(Ord. of 4-9-18(1))

1340.06 STANDARDS FOR OUTDOOR DINING AREAS.

(a) The outdoor dining area shall be located adjacent to the property of an existing and lawful establishment of a permitted operator and shall be under the responsible direction and control of that operator.

(b) The outdoor dining area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said outdoor dining area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons. In the event a permitted operator intends to serve any beverage regulated by the WVABCA in an outdoor dining area, all code provisions and regulations of the WVABCA regarding permitted days and hours of service shall be followed. If a bar is proposing to allow for outdoor drinking and do not meet the dining requirements listed above they may petition to go before the board of zoning appeals to allow for an expansion to their existing special permit/conditional use permit if all other site and location requirements can be met.

(c) All furniture or other personal property located on the public sidewalk/right-of-way by operator must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way by operator are strictly prohibited. If a permanent fixture is placed upon the right-of-way by the operator, the outdoor dining area permit shall be revoked immediately and the public right-of-way returned to its original condition.

(d) As authorized by state law, including, but not limited to, W. Va. Code §§ 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on city right-of-way shall be provided, installed, maintained and removed by and at the discretion of the city, shall remain property of the city, and no other partitions or fencing shall be permitted absent a finding by the planning department that the city is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

(e) The planning department shall have the authority to determine when furniture, personal property and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) An unobstructed corridor space of 60 inches must be maintained between the outer dimension of the outside dining area and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. Provided however that the planner may reduce this to a minimum of 36 inches of unobstructed corridor space with approvals from appropriate departments. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the outdoor dining area. If the Americans with Disabilities Act requires a greater space, then the federal law shall control.

(g) An unobstructed clearance of 36 inches, must be maintained between a fire connection and any furniture or enclosures of an outdoor dining area. If the city's Fire Code requires a greater space, that Code shall control.

(h) The outdoor dining area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food, broken tableware, and litter.

(i) In order to control litter, the use of disposable tableware and utensils is prohibited.

(j) In accordance with section 572.04 of the Huntington Revised Code, noise from an outdoor dining area which unreasonably disturbs neighboring commercial or residential occupants is prohibited.

(k) In order to serve any beverage regulated by the WVABCA in an outdoor dining area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the city as an outdoor dining area. Patrons are not permitted to carry any beverage regulated by the WVABCA out of the outdoor dining area.

(l) Smoking is prohibited within any outdoor dining area.

(Ord. of 4-9-18(1))

1340.07 ADDITIONAL REQUIREMENTS.

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the city, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to, the permitted outdoor dining area.

(b) The applicant shall maintain such general liability insurance with at least $1,000,000 coverage per each occurrence and shall the name as additional insured the City of Huntington, its agents, officers, directors and employees. A copy of said insurance policy shall be furnished to the City of Huntington.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the operator's failure to comply with any federal, state or local laws, any unabated nuisances or whenever the city desires to use the affected public right-of-way for any public purpose. In the event the city shall have a public need for use of the right-of-way or the property affected by the right-of-way, the city may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the operator shall cease use of the right-of-way unless and until such time the city has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the city. If the applicant fails or neglects to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the operator, and shall not be liable to the operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

(Ord. of 4-9-18(1))

1340.08 DENIAL OR REVOCATION OF PERMIT.

(a) An outdoor dining area permit is a privilege granted to the operator that may be revoked by the city upon finding by the planning department that the operator has violated any federal, state or city law applicable to the outdoor dining area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the WVABCA, that the continued operation of the outdoor dining area poses a threat to the health, safety or welfare of the public, or that the outdoor dining area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an operator whose permit has been revoked, may appeal the denial or revocation to the City of Huntington Board of Zoning Appeals (BZA). The provisions of Article 13 of the City of Huntington Zoning Ordinance shall apply. Such appeal may be made in writing within 30 days following the decision appealed from, on forms available at the planning department, and shall set forth the basis on which the person contests the decision. Within ten days of receipt of the appeal by the BZA, the BZA shall set a date and time for a public hearing. The public hearing shall be held within 45 days of receipt of the appeal to the BZA. The BZA shall conduct a public hearing on the appeal and may: deny the appeal and uphold the original order, requirement, decision or determination; grant the appeal and overturn the original order, requirement, decision or determination; or, issue an order which denies part of the appeal and grants part of the appeal. The BZA shall make written findings of fact and conclusions of law on which the BZA based its decision. The decision of the BZA may be appealed by either party, within 30 days, to the Cabell County Circuit Court, as set forth in WV Code § 8A-9-1, et seq.

(Ord. of 4-9-18(1))

1340.09 NO GRANDFATHER PROVISION.

All outdoor dining areas on city right-of-way in operation at the time of the enactment of this article, as well as all such areas that are licensed thereafter, shall be subject to each provision of this article. No grandfather provision is applicable. No act of any person or business entity prior to the effective date of this article, which would be considered a violation under this article if it were in effect, shall be subject to prosecution.

(Ord. of 4-9-18(1))

1340.10 SEVERABILITY.

Each section of this article shall be severable from the others, and if any section or portion thereof shall be determined to be unenforceable, then the remaining sections shall remain in full force and effect.

(Ord. of 4-9-18(1))

1340.99 PENALTY.

Any operator who violates any provision of this article shall, upon conviction, be fined up to $500 per day. Each day any violation of this article shall continue shall constitute a separate offense.

(Ord. of 4-9-18(1))

Parkersburg

1367.07 GENERAL PROVISIONS FOR OUTDOOR DINING AREAS.

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons during hours of operation, but not before 7 a.m. or after 11 p.m. In the event a permitted Operator intends to serve non-intoxicating beer in an Outdoor Dining Area, all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration regarding permitted days and hours of service shall be followed.

(c) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W.Va. Code §8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the City.

(e) The City shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) No Outdoor Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than forty-eight (48) inches. Forty-eight (48) inches of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area (barrier) and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An Outdoor Dining Area permit shall not be issued for an area that would obstruct access within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the Operator. Sweeping of refuse or food scraps into tree grates or other nearby areas is strictly prohibited. Each operator shall wash, as needed, the public area to remove any food or drink residue.

(i) All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The Operator shall be responsible for posting the outdoor dining area as to any special Health Department requirements.

(j) Operation and maintenance of the Outdoor dining area must comply in accordance with Article 509 - Disorderly Conduct and Peace Disturbance of the Municipal Code of the City of Parkersburg and all other code provisions and regulations of the City of Parkersburg.

(k) In order to serve non-intoxicating beer in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol Beverage Control Administration. Non-intoxicating beer shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry non-intoxicating beer in or out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

(m) Non-intoxicating beer or alcoholic beverages shall not be served in their original packaging within any Outdoor Dining Area. (Ord. 0-1574. Passed 9-26-17.)

Ordinance Committee
101 East Washington Street
Charles Town, WV 25414

SCHEDULED

AGENDA ITEM (ID #)

Meeting: 04/17/24
Department: Ordinance Committee
Category: Ordinance
Initiator:

2024-423: Article 1102 Animals and Fowls

Ordinance Committee to consider if potbelly pigs should be considered livestock or pets and adjust ordinance if necessary.

ATTACHMENTS:

- Article 1102 Animals and Fowl.pdf

ARTICLE 1102

Animals and Fowl

1102.01 Cruelty to animals.
1102.02 Cruelty to dogs and cats.
1102.03 Nuisance conditions prohibited.
1102.04 Barking or howling dogs or cats.
1102.05 Hunting prohibited.
1102.05a **Urban deer.**
1102.06 Bird sanctuary.
1102.07 Livestock.
1102.08 Disposition of dead animals.
1102.09 Animals running at large.
1102.10 Keeping domestic fowl or pigeons.
1102.11 Dogs generally.
1102.12 Stables.
1102.13 Dangerous or vicious animals.
1102.14 Injury to dogs.
1102.15 Domestic cats.
1102.16 Free-roaming cats.
1102.17 Kennels.
1102.99 Penalty.

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

1102.01 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; 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.

(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)

1102.02 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 dogfighting, 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)

1102.03 NUISANCE CONDITIONS PROHIBITED.

(a) Definitions: For the purpose of this section "owner" and "ownership" shall refer to one who owns or has possession, temporarily or permanently of a domestic animal.

(b) 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.

(c) No owner shall permit his or her pet to go upon the private property of another under circumstances that would constitute a trespass if committed by any person, and every owner shall prevent his or her pet from defecating, urinating or causing any destruction or contamination upon the private real estate of another.

(d) The owner of any pet that defecates upon public property within the Municipality shall immediately remove the animal feces and shall dispose of same in a proper manner.

(Ord. 04-21. Passed 10-4-04.)

1102.04 BARKING OR HOWLING DOGS OR CATS.

No person shall keep or harbor any dog or cat 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 or cat 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 or cat.

1102.05 HUNTING PROHIBITED.

(a) No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the Municipality.

(b) This section does not apply to Article 1102.05a.

(Passed 1-17-12.)

1102.05a URBAN DEER.

(a) Purpose: The City of Charles Town is vested with the authority and responsibility for protection of the health, safety, and welfare of its citizens. The City has directly experienced an increased problem of deer overpopulation in some of the rural annexed areas, more specifically defined as agriculturally-zoned land that was annexed into the City after 1999 that continues, without interruption, to be actively used for agricultural purposes. Deer exist in these areas of the City in such numbers as to pose an unacceptable risk of disease, vehicle damage, crop damage, and property damage. The City Council has determined two measures that would alleviate the problem of deer overpopulation: (1) allowing the issuance of crop damage deer permits through the West Virginia Department of Natural Resources (WVDNR) and (2) allowing these areas to be hunted in accordance with current WVDNR game laws.

(b) Provisions:

(1) Appropriate deer permits must be obtained by the permit holder from the WVDNR and all hunt participants shall comply with all permit requirements and all laws and regulations of the State of West Virginia.

(2) Crop Damage Permits (January - September)

A. Crop Damage Permit Holders must register their permits, in writing, with the City of Charles Town Chief of Police and give the Chief written notice, not less than twenty-four (24) hours prior to the commencement of any hunt, identifying all individuals who will participate in the hunt, the duration of the hunt, and the area to be encompassed by the hunt. The location of the hunt must provide sufficient specificity so that the Chief and the Charles Town police department staff may readily identify the area on a map of the City and respond to inquiries in regard thereto. This registration must be done in person, by at least one representative from each group of hunters, no less than once per calendar year, after receiving current WVDNR permits, and prior to the initial hunt in any calendar year.

B. Jefferson County Dispatch must also be notified, by the permit holder, via the non- emergency number when permit holders are arriving and departing a hunt area to execute crop damage permits. Permit numbers must be referenced when calling Jefferson County Dispatch.

C. Only archery and crossbows that comply with the rules and regulations of the WVDNR may be used while executing a crop damage permit.

(3) Yearly Hunting Permits (September - December)

A. Eligible persons will also be permitted to hunt the rural annexed areas from September to December in compliance with the WVDNR yearly hunting regulations.

B. Archery, crossbows, and shotguns that comply with the rules and regulations of the WVDNR may be used while executing a yearly hunting permit.

(4) Hunting may only occur between sunrise and sunset.

(5) Rifles may not be used for hunting at any time on rural annexed land.

(6) All hunters must shoot from an elevated position such as a tree stand that is no less than ten (10) feet above the ground while facing toward the center of the designated area.

(7) Permit holders will be responsible for the removal and cleaning up of all deer carcasses and remains resulting from the controlled hunt within twenty-four (24) hours of the hunt.

(8) In the event that a wounded animal escapes the hunt area, the permit holder shall contact the Charles Town police department not later than at the conclusion of the hunt and inform the staff of the location outside the hunt at which the wounded animal is believed to be located. The permit holder will not leave the hunt area in pursuit of a wounded animal.

(c) Penalties. Any violation of this Section shall be punishable by a fine of up to five hundred dollars ($500.00) for each offense.

(Ord. 2021-005. Passed 10-12-21.)

1102.06 BIRD SANCTUARY.

(a) No person shall trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests, provided, however, if starlings or similar birds 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 Council, then in such event, Council shall meet with representatives of the Audubon Society, Bird Club, Garden Club or Humane Society, or as many of such Clubs as are found to exist in the City, after having given at least three days actual notice of the time and place of the meeting to the representatives of such Clubs.

(b) If as a result of the meeting no satisfactory alternative is found to abate such nuisance in the opinion of Council, then the birds may be destroyed in such numbers and in such manner as is deemed advisable by Council under the supervision of the Chief of Police.

(Passed. 2-4-80.)

1102.07 LIVESTOCK.

(a) Livestock as used in this section shall be defined as cattle, horses, ponies, swine (including pot bellied pigs), sheep, goats, llamas, alpacas, and any other animals used or to be used in the production of food, fiber or other commercial products.

(b) No person shall raise, maintain or keep hogs, swine or shoats within the City.

(c) Poultry shall comply with Section 1102.10 .

(d) Livestock Restricted Within the City Limits. No person shall keep or maintain livestock within the City limits unless the subject property is large enough to board such an animal with a minimum of one acre per animal. Housing of such animals shall comply with Section 1102.12 .

(e) Rabbits shall be excluded from the requirements of this section but only if said animals are kept indoors and not permitted to run at large. There shall be a maximum of five rabbits kept in any single household.

(f) Compliance with this section is not abrogated by the designation of any animal or poultry as a pet and not livestock.

(Passed 10-20-08.)

1102.08 DISPOSITION OF DEAD ANIMALS.

(a) When any animal shall die within the City so as to become a nuisance therein, the person owning the same and knowing of its death, whether it shall have died on his premises or otherwise, shall dispose of such dead animal as required by the health officer. Failure to comply with the provisions of this section shall constitute a misdemeanor.

(b) In all cases of dead animals of any kind being found upon the premises of any person within the City, the owner or occupier thereof shall forthwith remove or bury same; and after notice has been duly given such person, upon his failure to do so, he shall be guilty of a misdemeanor, and in addition he shall be liable for the expense incurred by the health officer in having same buried or removed.

(c) No person shall throw any dead animal, or the fleshings, of animal hides, or any other substance likely to pollute the water or obstruct the channel, into Evitt's Run within the City, or north or west of the City within one mile of the corporate limits.

1102.09 ANIMALS RUNNING AT LARGE.

(a) It shall be deemed a nuisance for any hog, pig, goat, pony, horse, mule, colt, cow or any other livestock to wander or stray unattended on any street or alley within the City. Any person owning or keeping any such animal and permitting it to so run at large, or to wander or stray unattended, shall be guilty of a misdemeanor.

(b) It shall be the duty of the police to take up and impound in some secure place any animal running at large, and if the fine imposed upon such owner or keeper shall not be paid within five days after notice given, the police shall sell such animal at public auction for payment of such fine, costs and expenses of keeping such animal prior to day of sale.

(c) It shall be unlawful for the owner of any chickens, guineas, ducks, geese, turkeys or other fowl to permit the same to run at large in any of the streets of the City or on any lot or premises not in the possession or under the control of the owner of such chickens, guineas, ducks, geese, turkeys or other fowl.

1102.10 KEEPING DOMESTIC FOWL OR PIGEONS.

(a) No person shall keep or cause to be kept on premises owned by him or under or subject to his control, any kind of domestic fowl or pigeons, within thirty feet of any street, sidewalk or structure owned by another and used for human habitation, occupation or assemblage, whether such structure be in the same or an adjacent block or square, and no domestic fowl or pigeons shall be kept within the City by any person otherwise than in compliance with the following conditions: The house in which such fowl or pigeons are kept shall be dry, well ventilated, and with windows so placed, if possible, to admit sunlight; it shall be kept well whitewashed within and shall be cleaned at least once a week between November 1 and May 1, and at least twice a week between May 1 and November 1 of each year, and oftener if necessary or so ordered by the City Inspector. All perches shall be movable and kept clean. All chicken nests shall be movable and clean, and aired and sunned at frequent intervals. Drinking fountains shall be clean and supplied at all proper times with clean water. The surface of the yard shall be kept clean and free from all decaying animal or vegetable matter or odors; provided, however, that nothing herein shall apply to such fowl or pigeons confined in coops in provision stores or stores regularly established for the sale of fowl or pigeons or to fowl or pigeons brought upon the premises and kept for a brief period for dressing and consumption.

(b) The number of domestic fowl kept of any premises in the City shall not exceed twenty.

(c) The keeping of domestic poultry shall be limited to one-half acre of net buildable site area defined in the Zoning Ordinance of the City of Charles Town.

(Passed 10-20-08.)

1102.11 DOGS GENERALLY.

(a) Annual License Tax. Every person owning or keeping any dog within the City, either male or female, shall pay a tax of three dollars ($3.00) on every dog so kept or owned. This tax shall be payable at the time of assessment annually.

(b) Tags. Upon payment of the dog tax required by subsection (a), a tag shall be issued, identifying the dog and the tax year. The tag shall be attached and kept attached to a substantial collar worn by the dog.

(c) Running at Large.

(1) No owner or person having the possession of any dog shall allow such dog to run at large, at any time, within the City, even though the dog is both lawfully licensed and vaccinated. Any person violating this article and/or section, regardless of whether or not such dog is impounded or not, upon conviction, shall be fined a minimum of two dollars ($2.00) for the first offense in any one year, and for each successive violation in any one year, shall be fined a minimum of five dollars ($5.00), with a maximum fine of not more than one hundred dollars ($100.00) for any offense, whether in any one year or subsequent.

(2) In addition, all owners or person having the possession of any dog that is considered a dangerous or vicious dog as outlined in Section 1102.13(c)(6) and having attained the proper permit through the City of Charles Town, as described in Section 1102.13(e), to own such dog shall construct a fence on the property, built to the appropriate specifications as outlined in the City Building Codes and Ordinances, to provide adequate space for exercise on a dimension of at least one hundred square feet, to allow for a healthy free roaming area for the dog as described by the Humane Society of the United States.

(d) Tethering. No person shall, at any time, fasten, chain or tie any dog or cause such dog to be fastened, chained or tied in an

inhumane manner or for an unreasonable amount of time while such dog is on the owner's property or on the property of the dog owner's landlord.

(e) Impoundment of Dogs At Large. Any dog found at large in violation of this section shall be impounded by any policeman or other person authorized to do so by Council. Notice of such impoundment shall be given to the owner or person in possession of such dog, if known. Any dog so impounded may be redeemed by the owner within five days upon payment of a pound fee to be determined by Council by resolution. Any dog not redeemed within five days may be sold or destroyed. The pound fee to be paid to redeem a dog shall be in addition to any fine imposed for a violation of this article.

(f) Rabies; Quarantine. Whenever the Mayor shall be satisfied that any case of rabies has appeared among the dogs in the City, he shall issue his proclamation requiring all persons to confine their dogs or to have the same securely muzzled for such time from and after the issuing of such proclamation as he shall therein appoint, and if any dog shall be found at large in the City during the time so appointed, without being properly and securely muzzled, the same may be killed by any person whatsoever, and the owner or keeper thereof shall be guilty of a misdemeanor.

(g) Vicious Dogs.

(1) No person shall own, keep or harbor any dog known by him or which, in the exercise of reasonable diligence he should know, to be vicious, dangerous or in the habit of bitting or attacking persons.

(2) No person shall own, keep or harbor any dog known by him or which, in the exercise of reasonable diligence he should know, to be suffering with rabies.

(3) Vicious or dangerous dogs are hereby declared to be public nuisances and a menace to the public safety.

(4) If the Mayor shall find, as a result of a hearing held upon a compliant, that any dog is vicious, dangerous or in the habit of biting or attacking persons, or in suffering with rabies infection, or that any dog has been bitten by a dog suffering with rabies infection, he may order or cause such dog to be destroyed as a menace to the public safety, and the owner or keeper of such dog shall be liable for all fines and costs assessed.

(Passed 5-4-06.)

1102.12 STABLES.

(a) No stable or other structure for the housing or confining of animals, other than dogs or fowl, shall hereafter be constructed within the City until the plans and location of the same shall have been submitted to and approved by the health officer. All applications to the health officer for such permission and approval shall be accompanied by a fee of five dollars ($5.00), which shall be paid into the City treasury.

(b) No barn or stable of any kind used for the shelter of any animal enumerated in subsection (d) shall be used or maintained within twenty-five feet of any building used, wholly or in part, by any person for sleeping quarters, or where food is prepared, served or sold.

(c) No stable or other outbuilding shall be erected or constructed, nor shall any person proceed with the erection or construction of such building within fifty feet of any street or less than twenty-five feet from any other property line within the City. Any violation of this section shall constitute a misdemeanor, and Council shall have discretion to require any person so offending to remove such building, or cause it to be removed at such person's expense.

(Passed 10-20-08.)

(d) It shall be the duty of the owner and keeper of any stable wherein a horse or other animal is kept, to remove or cause to be removed, all manure from such premises or stable at least once in every fifteen days, and oftener, if deemed necessary by the health officer.

1102.13 DANGEROUS OR VICIOUS ANIMALS.

(a) No person shall knowingly keep, maintain or have in his possession or under his control within the city any dangerous or carnivorous wild animal or reptile, any vicious or dangerous domesticated animal, or any other animal or reptile of wild, vicious or dangerous propensities, except to the extent that an exemption may be applicable pursuant to subsections (d) or (e) hereof. As used in this section, "dangerous or vicious animal" means and includes the following:

(1) Any animal with known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(2) Any animal which attacks a human being or domestic animal without provocation; or

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

(b) The prohibitions of subsection (a) hereof shall not be applicable to the owners or keepers of domesticated dogs or cats; provided, however, that the owners or keepers of a domesticated dog or cat which by its characteristics meets the definitions of a dangerous or vicious animal set forth in subsections (a)(l) through (3) hereof shall be subject to the following requirements:

(1) No such person shall suffer or permit such animal to go unconfined on the land or building of such person.

(2) No such person shall permit such animal to run on the property of the owner other than in the back yard of the property in residential districts.

(3) Such person in residential districts shall maintain fencing in the back yard which is not less than six feet in height; which shall be constructed from stockade or solid screening material; which shall fully confine the animal and prevent the animal from reaching over, under or through the fence with its jaws, teeth or claw; and which fencing shall be set back a minimum of four feet from any adjacent property lines.

(4) No such person shall suffer or permit such animal to go beyond the land or building of such person unless such animal is securely restrained and muzzled. (Ord. 98-019. Passed 9-21-98.)

(c) For the purpose of this section, there shall be an irrebuttable presumption, that when kept or maintained within the City of Charles Town, the animals listed below are considered dangerous animals to which the prohibition of subsection (a) hereof, in the absence of an exemption pursuant to subsections (d) or (e) hereof, applies:

(1) All crotalid, elapid and venomous colubroid snakes;

(2) Apes, Gibbons (Hylobates); Gorillas (Gorilla); Orangutuans (Pongo); and stamangs (Symphalangus);

(3) Baboons (Papol, Mandrillus);

(4) Bears (Ursidae);

(5) Bison (Bison);

(6) Canines breeds or canines that look similar to the breeds that regularly categorized as "high risk dogs" by the insurance industry;

(7) Cheetahs (Acinonyx Jubatus);
(8) Crocodilians (Corcodilia) when twenty-four inches in length or more;
(9) Snakes;
(10) Coyotes (Canis Latrans);
(11) Deer (Cervidae, includes all members of the deer family, for example white-tailed deer, elk, antelope and moose);
(12) Elephants (elephas and Loxondonta);
(13) Foxes (Canis Vulpes);
(14) Game cocks and other fighting birds;
(15) Hippototami (Hippopotamidae);
(16) Hyenas (Hyaenidae);
(17) Jaguars (Panthera onca);
(18) Leopards (Pantera Pardus);
(19) Lions (Pantera Leo);
(20) Lynxes (Lynx);
(21) Ostriches (Struthio);
(22) Piranha Fish (Characidae), except those considered vegetarians;
(23) Pumas (Felis Concolor), also known as cougars, mountain lions and panthers;
(24) Rhinoceroses (Rhinocero Tidae);
(25) Sharks (Class Chonodrichthyes);
(26) Snow Leopards (Pantera Uncia);
(27) Swine (Suidae);
(28) Tigers (Pantera Tigris);
(29) Wolves (Canis Lupus), and Wolf hybrids or Wolfdogs;
(30) Scorpions;
(31) Birds of prey, except for those held by licensed falconers;
(32) Venomous fish;
(33) Poisonous spiders, except for tarantulas;
(34) Stinging insects (except honey bees);
(35) Bats.
(Passed 5-4-06.)

(d) Licensed menageries, zoological gardens, and circuses shall be exempt from the provisions of subsection (a) hereof if all of the following conditions are applicable;

(1) The location conforms to the provisions of the City Zoning Ordinance;
(2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors;
(3) Animals are maintained in quarters so constructed as to prevent their escape; and
(4) No person resides within fifty feet of the quarters in which the animals are kept. (Ord. 98-019. Passed 9-21-98.)

(e) Notwithstanding any of the foregoing, the City, by the Mayor, Chief of Police, and City Code Enforcement Official, may grant a specific exemption, on a temporary or permanent basis, from any of the provisions of this section to any person with a legitimate scientific, educational, commercial or other purpose for maintaining the prohibited animals, in accordance with the following provisions:

(1) Written application for exemption shall be filed by any person desiring to obtain an exemption with the Mayor, Chief of Police, or Code Enforcement Official. The application shall state the applicants name, address, type and number of animals desired to be kept, general purpose for which the animals will be kept, and a general description of provisions which will be made for safe, sanitary and secure maintenance of the animals.
(2) The Mayor, Chief of Police, or Code Enforcement Official may grant, deny or restrict the terms of an application for exemption; provided however, that they shall take some official action on an application within sixty days of its filing.
(3) In considering the merits of an application for exemption, the Mayor, Chief of Police, or Code Enforcement Official may cause one or more inspections of the applicants premises to be made by appropriate City employees or representatives, and may also refer the application to persons who are technically knowledgeable with respect to the animals involved for an advisory opinion.
(4) In evaluating an application for exemption, the Mayor, Chief of Police, and Code Enforcement Officia1 shall give consideration to the following criteria:

A. The experience and knowledge of the applicant relative to the animals involved;
B. Whether the applicant has obtained a federal or state permit relative to the animals involved;
C. The relative danger, safety and health-risks to the general public, to persons residing or passing near the applicants premises and to the applicant in connection with the animals involved;
D. The provisions which have been or will be made for the safe, sanitary and secure maintenance of the animals for the protection of the general public, persons residing or passing near the applicants premises and the applicant;
E. The provisions which have been made or will be made to protect the safety and health of the animals involved;
F. Any other logically relevant information.

(5) An application for exemption under this subsection (e) shall be denied unless the Mayor, Chief of Police, and Code Enforcement Officia1 determines that, in view of all the relevant criteria and any restrictions which they may provide, reasonably appropriate measures commensurate with the degree of risk associated with the animals involved have been or will be taken to assure at least a minimum acceptable level protection from danger to the health and safety of the general public, persons residing or passing near the applicants premises, and the applicant.
(6) An exemption granted pursuant to this subsection (e) may be withdrawn by action of the Mayor, Chief of Police, or Code Enforcement Official in the event that there has been a change in conditions or assumptions under which it was

originally granted or in the event that the applicant fails to comply with restrictions originally placed on the exemption.

(7) Any person or persons who obtain a permit for any of the "Dangerous or Vicious Animals" shall waive any claim against the City of Charles Town for damage caused by said animal. By issuing a permit for said "Dangerous or Vicious Animals" the City of Charles Town does not guarantee safety, only that reasonable measures have been taken to prevent harm to the owner of such animals and the citizens of the City.

(Passed 5-4-06)

(f) No exemption granted pursuant to any provision of this section shall be construed, nor is it intended by the City as a guaranty or warranty of any kind, whether expressed or implied to any person, including without limitation the general public, persons residing or passing near the applicants premises, or the applicant, either in general or individually, as to the danger or lack thereof, or degree of risk or health or safety of any animal, specifically or generally, or any premises where any animal is maintained or kept pursuant to such exemption.

(Ord. 98-019. Passed 9-21-98.)

1102.14 INJURY TO DOGS.

(a) Theft, Poison, Abandonment.

(1) Dogs to be personal property. All dogs are hereby declared to be personal property and subjects of theft. Except as provided in certain sections of the West Virginia State Code, Chapter 20, known as “The Game Law”, it shall be unlawful for any person, except a police officer, State dog warden or accredited veterinarian to kill, injure, or to attempt to kill or injure any dog.

(2) Poison illegal. It shall be unlawful for a person to place any poison or harmful substance of any description in any place, on his own premises or elsewhere, where it may be easily found and eaten by dogs.

(3) Abandonment illegal. It shall be unlawful for a person to abandon or attempt to abandon any dog with the City of Charles Town. Anyone convicted of abandoning or attempting to abandon any dog within the City of Charles Town will pay a fine of three hundred dollars ($300.00) to five hundred dollars ($500.00), plus costs.

(b) Dogs Used For Law Enforcement.

(1) Illegal to taunt law enforcement dogs. It shall be unlawful for any person to willfully and maliciously taunt, torment, tease, beat, kick or strike any dog used by any municipal or State police department or agency in the performance of the functions or duties of such department or agency or to interfere with or meddle with any such dog used by the department or agency or any member thereof in the performance of the functions or duties of the department or agency or of such officer or member.

(2) Illegal to torture certain dogs. It shall be unlawful for any person to willfully or maliciously torture, mutilate, injure, disable, poison or kill any dog used by any municipal or State police department or agency or to interfere with or meddle with any such dog used by the department or agency or any member thereof in the performance of any of the functions or duties of the department of agency or of such officer or member. Any person who violates any of the provisions of this section is guilty of a summary offense.

(3) Quarantine of certain dogs not required. Quarantine of dogs as required by law shall not apply to dogs owned by any municipal or State police department or agency when such dogs are under the direct supervision and care of a police officer and subject to routine veterinary care.

(Ord. 98-019. Passed 9-21-98.)

1102.15 DOMESTIC CATS.

Whoever owns, keeps or harbors a cat within the City of Charles Town shall have said cat vaccinated or immunized against rabies with a vaccine capable to producing immunity for two years and shall every second year thereafter have said cat revaccinated. Proof of immunization shall be available to the Housing Inspector for verification that said cat is domestic.

(Ord. 02-18. Passed 7-15-02.)

1102.16 FREE-ROAMING CATS.

(a) "Free-roaming cat" includes feral, stray or abandoned cats that may or may not have a caretaker and do not have an owner or are otherwise homeless. The term does not include a stray pet cat that might have been lost or abandoned and which has identifiable ownership such as, but not limited to, a tag, microchip or tattoo.

(b) "Eartipping" means the removal of a 3/8" inch tip of a free-roaming cat's left ear, performed while the cat is under anesthesia in compliance with any applicable federal, state, or county laws and under the supervision of a licensed veterinarian. Eartipping is designed to identify a free-roaming cat as being sterilized and lawfully vaccinated against rabies.

(c) "Trap-Neuter-Return" means the process of humanely trapping, sterilizing, vaccinating against rabies, eartipping, and returning free-roaming cats to their original location.

(d) Free-roaming cat initiatives: The City of Charles Town recognizes the need for innovation in addressing the issues presented by free-roaming cats. To that end it recognizes that there are community caregivers of cats and acknowledges that properly managed free-roaming cats may be part of the solution to the continuing euthanasia of cats. The overall goal of the City is to reduce the population of feral cats and establishes the following requirements:

(1) All free-roaming cat colonies/groups and trap-neuter-return activities must be maintained on private property of the caregiver, or with written permission, the private property of another landowner (including city, county, state, and federal public property). Written permission must include the landowner's name, address, phone number and signature. Written permission must be dated and will expire 1 year from that date and will become void if the property changes ownership. This written permission must be in the possession of the caregiver when conducting any functions related to the management of free-roaming cats on that property.

(2) A "Cat Caregiver Registration" shall be required of any individual that wishes to manage free-roaming cat colonies/groups or conduct trap-neuter-return activities according to the previsions of this section. This registration shall be provided by the City at no cost to the caregiver and valid for 2 years after the date of issuance. This registration may be revoked by the City at any time if the City believes the individual is incapable of performing duties associated

with managing free-roaming cats or if the individual is not complying with the provisions of this section. Appeals of revocations shall be made to the City Council.

(3) All cats that are part of free-roaming cat programs must be sterilized, vaccinated against the threat of rabies, and ear-tipped for easy identification; if these requirements are met, the free-roaming cat is exempted from licensing, stray, at-large and possibly other provisions of this ordinance or other City Ordinances that apply to owned animals.

(4) If a person is providing care for free-roaming cats, he or she is required to provide certain necessities on a regular/ongoing basis, including, but not limited to, proper nutrition and medical care as needed. The following guidelines shall be followed;

A. Food must be provided in the proper quantity for the number of cats being managed and is to be supplied no less than once per day. Food must be maintained in proper feeding containers.

B. Water, if supplied, must be clean, potable and free from debris and algae.

C. If shelter is provided, it shall be unobtrusive, safe, and of the proper size for the cat(s).

(e) Contact information of local organizations willing to assist free-roaming cats and their caregivers will be made available by the City.

(f) Violations of this section are subject to a fine of not less than $250.00 and not to exceed $500.00. (Ord. 2018-005. Passed 8-6-18.)

1102.17 KENNELS.

The City of Charles Town restricts the harboring of more than three dogs or cats as presented in the City Zoning ordinance, Section 2.2, Specific Definitions which states the following:

Kennel: Any building or structure and/or land used, designed, or arranged for housing, boarding, breeding, or care of more than three adult dogs or cats kept for breeding, hunting, sale, exhibition, or domestic use or other domestic animals for profit, but not including those animals raised for agricultural purposes.

(Passed 5-4-06)

1102.99 PENALTY.

Whoever violates any provision of this article, shall be fined not more than five hundred dollars ($500.00). Each day such violation continues shall constitute a separate offense.

(Ord. 91-0-3-4. Passed 3-4-91.)