

ARTICLE A. - GENERAL

Sec. 8-2001. - Title.

This chapter shall be known as the Animal Control Ordinance of the City of Morganton or simply as the Animal Control Ordinance.

(Ord. No. 99-17, 4-5-99)

Sec. 8-2002. - Authority.

This chapter is adopted under the authority and provisions of the general ordinance making power set out in G.S. 160A-174 as well as the specific authority granted in G.S. 160A-182, G.S. 160A-186, G.S. 160A-187 and G.S. ch. 67.

(Ord. No. 99-17, 4-5-99)

Sec. 8-2003. - Jurisdiction.

These regulations and the requirements of this chapter shall apply and be enforceable throughout the corporate limits of the city.

(Ord. No. 99-17, 4-5-99)

Sec. 8-2004. - Purpose and intent.

The purposes of this chapter are to promote the public health, safety and general welfare of the citizens of the City of Morganton and to ensure the humane treatment of animals by regulating the care and control of animals within the city.

It is the city's intent to fairly but effectively and diligently enforce the provisions of this chapter.

(Ord. No. 99-17, 4-5-99)

Sec. 8-2005. - Definitions.

For the purpose of this chapter, the following terms are defined:

Animal. Any live creature, wild or domestic, male or female except humans. Animals include, but are not limited to, dogs, cats, livestock and other mammals, birds, chickens, reptiles, amphibians and fish.

Animal control officer. An employee or agent of the city, designated by the city manager or the director of public safety or some other authorized person to administer and enforce the licensing, inspection and enforcement requirements of this chapter and applicable state laws.

Animal shelter. Any facility operated by the city, solely or jointly, or used by the city under a contractual arrangement, for the temporary care, confinement and detention of animals or the humane killing or other disposition of animals when appropriate. The term includes any animal shelter operated by the County or any animal shelter operated by any private or public entity, if the services of that shelter are utilized by the city.

Appellate board. The board required by G.S. 67-4.1(5)(c), as amended or superseded. For purposes of this chapter, the city council shall be the appellate board unless the city designates or appoints some other board, commission or agency. The appellate board shall have all of the power and authority vested in it by state law and by local ordinance regardless of how it is constituted or designated.

Cat. A domestic feline of either sex.

Cloven hoofed animal. A cloven hoofed animal, equine or other similar livestock such as horse, mule, pony, cow, goat or sheep including miniature or novelty breeds of such animals. Also called livestock, but it does not include swine.

County rabies ordinance. Any ordinance by whatever title adopted by Burke County for the purpose of controlling rabies.

Dangerous animal. Any animal, that because of its aggressive nature, breeding, training or characteristic behavior, presents a risk of serious physical harm or death to human beings or would constitute a danger to human life, physical well-being or property if not kept under the direct control of the owner. The term "dangerous animal" is intended to include the term "dangerous dog" or "potentially dangerous dog" as defined by G.S. 67-4.1(a)(1) but this definition shall not apply to dogs utilized by law enforcement officers in the performance of their duty. May also be called a vicious animal.

Dog. A domestic canine of either sex.

Domestic or domesticated animal. Animals that are generally indigenous to Burke County and raised and/or maintained in confinement and normally dependent upon humans for food and shelter. Dogs, cats, domesticated sheep, horses, cattle, domesticated goats, domesticated swine, confined rabbits, ducks, geese and turkeys are examples. Wild or exotic animals, even in confinement or under the care of a human being, are not domesticated.

Exposed to rabies. Any animal or human that is bitten by or exposed to any animal known or suspected to have been infected with rabies.

Guard or attack dog. A dog trained to attack on command or to protect persons or property and who will cease to attack upon command.

Harboring an animal. An animal shall be deemed to be harbored if it is fed or sheltered for seven (7) days or more unless the animal is being boarded for a fee in a properly licensed kennel.

Health director. The director of the Burke County health department.

Impounded or impoundment. Taking an animal into custody by an animal control officer or any other authorized representative of the City of Morganton including any animal captured in a trap placed by or under the direction of animal control officers.

Inoculation. The vaccination of a dog or cat by a licensed veterinarian or under the supervision of a licensed veterinarian with rabies vaccine approved by the United States Bureau of Animal Industry, the North Carolina department of agriculture or the North Carolina state board of health. A vaccination.

Kennel. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs, cats or other animals.

Livestock. See cloven hoofed animal.

Muzzle. A device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

Neutered male. Any male dog or cat which has been rendered sterile by a surgical procedure.

Owner. Any person having temporary or permanent custody of an animal, including an individual who harbors, has a legal or possessory interest in or actually cares for a particular animal.

Pasture. An auxiliary fenced area with sufficient grass for grazing.

Premises. A particular portion of real estate such as a house and lot, a building or a defined part of a building such as a condominium or an apartment.

Provocation. Any action designed to goad, enflame, instigate or stimulate an aggressive response from an animal; except that the action of a child age seven (7) or under cannot be provocation.

Running-at-large or at large. An animal that is off the premises of its owner and is not on a leash or under physical restraint of a person who is physically capable of restraining the animal.

Shelter. See animal shelter.

Spayed. A female dog, cat or animal which has been rendered sterile by surgical means.

Stray. Any animal at large without identification of ownership or a readily ascertainable owner.

Swine. Any hog, pig, male or female, regardless of age, breed or size including miniature, novelty or special breeds of any pig or hog.

Wild or exotic animal. Any animal that would ordinarily be confined to a zoo or that can normally be found in the wild state including, but not limited to, monkeys, non-human primates, raccoons, skunks, foxes, lions, leopards, panthers, tigers, wolves, deer, bear, bobcats, etc. The term "wild animal" does not include domestic dogs unless crossbred with a wolf, coyote or jackal or other similar animal or domestic cats, unless crossbred with a wild cat, or fish confined in an aquarium, birds kept indoors in cages, or insects.

(Ord. 99-17, 4-5-99)

Sec. 8-2006. - Responsibility.

- (a) Animal owners. Every owner of a dog, cat or other animal shall be responsible for its acts and the results of its acts.
- (b) Conditions. Every property owner, tenant or occupant of any premises shall be fully responsible for the conditions occurring on their property including odors, noise or other unsanitary conditions associated with dog lots, animal pens, pastures or other facilities used to house or confine any animal.
- (c) Negligence. This chapter is intended to impose a public duty upon the owner of an animal or animals to prevent those animals from attacking or causing injury to other people, other animals and other property. Owners have the duty to promote the health, safety and welfare of other citizens, and a violation of any duty imposed under this chapter shall be considered as negligence which may give rise to damages for personal injuries or damage to personal property in a civil action as permitted by law.

(Ord. 99-17, 4-5-99)

Sec. 8-2007. - Interference.

It shall be unlawful for any person to hinder or interfere with an animal control officer or any other person charged with the enforcement of this chapter in the performance of their official duties.

(Ord. 99-17, 4-5-99)

Sec. 8-2008. - Concealment.

It shall be unlawful for any person to conceal any animal for the purposes of evading the requirements of this chapter, especially the rabies inoculation requirement. Further, it shall be unlawful for the owner of an animal to refuse to show proof of a rabies inoculation upon the request of any animal enforcement officer.

(Ord. 99-17, 4-5-99)

Sec. 8-2009. - Exemptions.

- (a) The prohibition in this chapter on the number of animals or the kinds or species of animals that may be kept or maintained within the city shall not apply under the following circumstances:
- (1) Lawfully operated and located pet shops; however, once an animal is purchased from a pet shop, the keeping or maintaining of the animal shall be subject to all of the provisions of this chapter unless such animal is immediately removed from the city;
 - (2) A lawfully operated and located zoological garden (zoo) provided such zoo is accredited by the appropriate association normally issuing or establishing the standards for the operation of a zoo;
 - (3) A veterinarian harboring such animals for the purpose of providing professional medical treatment;
 - (4) Lawfully operated and located scientific research laboratory, a circus, a wildlife rehabilitator with the proper permits, or an exhibitor licensed by the United States Department of Agriculture displaying such animals for educational purpose; or
 - (5) An abattoir, rendering operation or food processing plant provided the animals kept or maintained are for the purpose of the operation and provided further that the operation is otherwise lawfully operated and located.
 - (6) An institution of higher learning, keeping a limited number of farm animals (pigs, chickens or goats) as an essential part of an animal science educational program in accordance with the adopted curriculum of the State of North Carolina provided such animals are maintained in a fenced pen or enclosure, and at least one thousand (1,000) feet from the nearest residence and provided further that such animals are not maintained for commercial or production purposes.
- (b) The exemption noted above shall only apply when the animals are maintained in a manner so as to prevent escape and relates only to the number of animals and the type or species of animals kept or maintained. Provisions of this chapter dealing with animal treatment and abuse, nuisances, the kinds and types of pens, closures and other structures or places where animals are kept, sanitary conditions and other similar provisions shall continue to apply even to exempt activities.

(Ord. No. 02-46, 9-9-02; Ord. No. 10-08, 5-3-10)

Sec. 8-2010. - Reserved.

ARTICLE C. - PROHIBITED ACTS AND CONDITIONS

Sec. 8-2021. - Cruelty to animals.

The abuse of or cruel or inhumane treatment of any animal is prohibited. Without limiting the type of acts, omissions and neglect that may be considered as cruel and inhumane treatment, the acts and conditions set forth in this section shall be unlawful but other acts or neglect that injures or abuses any animal shall also be prohibited.

- (a) State law. Any act, neglect or failure to act that violates G.S. 14-360 through G. S. 14-363.1, or any amendments thereto or any other law enacted by the State of North Carolina or regulation issued pursuant to such law which governs cruelty to animals shall be unlawful. It is intended that all such laws shall be incorporated into and made a part of this chapter to the same extent as if such laws were specifically included herein and any violation of such laws shall likewise be a violation of this chapter.

- (b) Care. No owner of an animal shall refuse or fail to provide such animal with sufficient, wholesome and nutritious food, potable water and veterinarian care when needed to prevent suffering, nor shall such person unnecessarily expose an animal to hot, stormy, cold or inclement weather and conditions that are likely to harm the animal.
- (c) Abandonment. It shall be unlawful for any owner to abandon an animal within the City of Morganton.
- (d) Abuse. No person shall willfully or maliciously strike, beat, abuse or intentionally run down with a vehicle any animal or otherwise engage in any act to cause or inflict unnecessary pain, injury, suffering or death to an animal except that reasonable force may be used to drive away a trespassing animal and reasonable force (including deadly force) may be used for self-defense from a vicious, menacing or attacking animal.
- (e) Poison. No person shall poison any animal or knowingly leave any poisonous substance of any kind or ground glass or other similar material in any place with the intent to injure any animal.
- (f) Driving animals. It shall be unlawful to run, drive or ride any animal in a reckless, disorderly or careless manner through any street, alley, highway or public vehicular area or to drive or cause to be driven through any street or highway any loose or unhaltered horse, mule, cow or any other livestock or to permit any horse, mule or cow to be driven from its property onto the adjacent public streets, alleys or public vehicular areas.
- (g) Exhibition. It shall be unlawful for any person to exhibit or to display pets, animals, birds or fowl for sale or entertainment in any manner which endangers the safety of the animal or which causes the animal to act in a manner unnatural for the particular species.

(Ord. 99-17, 4-5-99)

Sec. 8-2022. - Nuisances.

- (a) Animal waste. It shall be unlawful for the owner of an animal to allow his or her animal to defecate or deposit any excretory matter (waste) in any public park, public playground, greenway, ball field or on any public street, sidewalk, public parking area (including islands and landscaped areas) or other public area unless such owner immediately removes the animal waste (feces or solid excretory matter) using a plastic bag or other suitable container and depositing the same in a receptacle suitable for such purpose.
- (b) Other prohibitions. The keeping or maintaining of animals on any property located within the corporate limits of the city in such a manner or under such circumstances that the animal and/or its pen or enclosure is a nuisance or becomes a menace to the public health and safety is prohibited. In determining what acts or what conditions may constitute a nuisance, the standard of "a reasonable man or woman under the same or similar circumstances" shall be applied and used. Without limiting the acts and conditions that may be or become a nuisance, the following particular acts, failure to act, neglect or circumstances shall be construed as being in violation of this section and therefore prohibited:
 - (1) Any animal that is repeatedly found running at large; or
 - (2) Any animal found to be in any section of a public park, ball field or recreational facility where the presence of animals is prohibited either by ordinance or by posted rules and regulations (signs) or within any city sponsored public festival or event when the presence of animals is prohibited by either ordinance or by posted rules and regulations; or
 - (3) Any animal in any section of a public park, ball field or public recreation area unless the animal is controlled by a leash or other physical restraint by a person who is physically capable of restraining such animal; or

- (4) Any vicious or dangerous animal in any public park, ball field, recreation area or other public area; or
- (5) Any animal that damages, soils, defiles or defecates on any property other than that of its owner or other person having its care or custody; or
- (6) Any animal that makes loud or disturbing noises, including, but not limited to, continued or repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance and discomfort to neighbors or to others in close proximity to the premises where the animal is kept or harbored; or
- (7) Any animal that causes fowling of the air by noxious or offensive odors causing unreasonable annoyance, disturbance and discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored; or
- (8) Any animal that is in heat and is not confined so as to prevent attraction or contact with other animals; or
- (9) Any animal, whether or not the animal is on the property of the owner, that without provocation, attacks, snaps at, bites or attempts to bite another person; however, for purposes of applying this section, a child under seven (7) years of age cannot be guilty of provocation; or
- (10) Any animal that repeatedly chases, snaps at, attacks or barks at pedestrians, bicyclists or vehicles of any kind on any public street, sidewalk or other public area; or
- (11) Any animal that bites or attacks other domestic animals; or
- (12) The keeping of any animal in a manner that causes unsanitary conditions in the pen or enclosure or other surroundings where the animal is kept or harbored; or
- (13) Any situation that is offensive or dangerous to the public health, safety and welfare or interferes with the right of nearby property owners to the use and enjoyment of their property because the number of animals maintained at a single residence or place is capable of maintaining, or because the facilities at the single residence or place is inadequate for the number of animals maintained at such location; or
- (14) Any pen, lot, dog run or enclosure where animals are kept or harbored which emits foul odors because of animal waste or other similar conditions; or
- (15) Any diseased, injured or suffering animal that is not being properly treated by a veterinarian or other qualified person for such diseases or injuries; or
- (16) The keeping of any wild or exotic animal except as specifically permitted and in strict compliance with the terms and conditions of this chapter.
- (17) Any animal that repeatedly turns over trash cans on either public or private property.

(Ord. 99-17, 4-5-99; Ord. No. 02-46, 9-9-02; Ord. No. 08-04, 2-4-08)

Sec. 8-2023. - Animal bites.

It shall be unlawful for any owner of an animal to suffer, allow or permit that animal to bite another person unless that animal has been subject to provocation or unless the animal is protecting its premises from a trespasser who has wrongfully entered the premises (however, for purposes of applying this section, a child seven (7) years of age or under cannot be guilty of trespass) or unless the animal is defending its owner from an unlawful attack by the victim. Likewise, it shall be unlawful for the owner of an animal that has bitten, attacked or threatened a human or another domestic animal to permit, allow or suffer the animal to remain at large.

(Ord. 99-17, 4-5-99)

Sec. 8-2024. - Beekeeping.

It shall be unlawful for any person keeping bees to fail to control the flight path of the bees on their premises so that, as a result, a flight path of the bees interferes with the rights of the owners of adjacent property to the use and enjoyment of their property.

Further, it shall be unlawful for any person to fail to have an adequate supply of water available on the premises for their bees. The water supply shall be in the vicinity of the beehives and shall be closer to the beehives than any water on any adjoining property. The water shall be available year around.

(Ord. 99-17, 4-5-99)

Sec. 8-2025. - Dead animals; burial.

- (a) It shall be unlawful for any person to leave or place the carcass of any dead animal owned or under the care, custody or control of that person upon any street, alley or lot or to allow such animal to remain unburied. Further, no property owner shall permit the carcass of a dead animal to remain on his or her property without burial more than twenty-four (24) hours after the property owner learns of the death of the animal, nor shall a person permit the dead carcass of an animal owned by that person to remain on the property of any other person for more than twenty-four (24) hours after he or she has learned of the situation.
- (b) Dogs, cats and other small animals shall be buried at least eighteen (18) inches under the surface of the ground and larger animals shall be buried at least three (3) feet under the surface of the ground. Animals shall not be buried within public easements and/or rights-of-way or near power lines and other underground utilities.

(Ord. 99-17, 4-5-99; Ord. No. 02-46, 9-9-02)

Sec. 8-2026. - Festivals.

It shall be unlawful for any owner to take an animal into or allow the animal to enter or remain within the boundaries of a festival, concert or other public gathering. The festival boundary shall include any area that is a part of the festival and shall include any public street, sidewalk or other publicly owned area within the confines of such festival except that this section shall not apply to those animals that are part of an authorized exhibit or attraction approved by the promoters of the festival.

(Ord. 99-17, 4-5-99)

Sec. 8-2027. - Strays and at large.

- (a) Strays. It shall be unlawful for any person to harbor, feed, keep in possession by confinement or otherwise any animal which does not belong to that person except with the consent of the owner or unless such person has within the next business day notified the department of public safety of such stray animal.
- (b) At large. It shall be unlawful for any owner of any animal to allow or permit any such animal to run or be at large within the city.

(Ord. 99-17, 4-5-99)

Sec. 8-2028. - Wild or exotic animals.

(a) It shall be unlawful for any person to own, to keep, maintain, possess or have under ~~their~~ the person's control any venomous reptile or any other wild or exotic animal, except that the provisions of this section shall not apply to a lawfully operated zoo, scientific research laboratories, circuses and veterinarians, harboring such animals for the purpose of providing professional medical treatment or wildlife rehabilitators with proper permits provided that the animals are maintained in quarters constructed to prevent any escape. All such quarters or confinement facilities must meet the regulations issued by the North Carolina ~~wildlife commission~~ Wildlife Resources Commission, the minimum standards under the Federal Animal Welfare Act, and all applicable rules issued by the United States Department of Agriculture.

(b) Notwithstanding this section, the following wild or exotic animals may be kept and maintained subject to the permit requirements stated below:

- a. One non-human primate weighing less than 15 pounds at maturity;
- b. One other mammal weighing less than 40 pounds at maturity;
- c. One bird weighing less than 15 pounds at maturity; or
- d. One non-venomous reptile less than 6 feet in length.

(c) Permits. Every owner of a wild or exotic animal, not otherwise prohibited by this section, shall be subject to the following requirements:

(1) Permits Required. No person may keep or possess a wild or exotic animal in the City without first obtaining any and all permits required by the federal or state governments for keeping such animal, and obtaining the permits as hereafter required by this subsection.

(2) Application. The owner of any wild or exotic animal must first complete a registration application which shall be supplied by the City Department of Public Safety. The application, once completed, shall contain the following information:

- a. Name, address, telephone number and e-mail address of the applicant;
- b. Description of the animal, including species, sex, and expected mature body weight and length or height;
- c. Street address of the premises where the animal will be kept;
- d. Copies of any federal or state permits or licenses required for the keeping of such animal, and
- e. Proof of the applicant's ability to respond in damages for any bodily injury or death of any person, or for damages to property of any person other than the owner, which may result from the ownership, keeping or maintenance of such animal. Such proof of ability to respond in damages may include a certificate of insurance, an appropriate

surety bond, or other sufficient proof reasonably satisfactory to the Director of Public Safety.

(Ord. 99-17, 4-5-99)

Sec. 8-2029. - Fowl and rabbits.

- (a) Rabbits. Rabbits that are otherwise lawfully maintained within the city shall be confined to a rabbit hutch or similar pen or enclosure ("hutch") that is not less than eighteen (18) inches in height with a minimum of four (4) square feet of floor area for each animal. The run shall be well drained so that there is no accumulation of moisture and the hutch shall be kept in a clean sanitary manner. The hutch may not be located within fifty (50) feet from any residence located on adjacent lots or property unless the hutch is located closer to the residence of the owner than the residence of the nearest neighbor.
- (b) Fowl. Chickens, guineas, peacocks and peafowl, turkeys, ducks and ~~geese~~ other domestic fowl shall not be kept or maintained by any person on any lot or parcel of land located within the city except as follows:
 - (1) Birds, such as parrots, parakeets, songbirds, love birds or other birds that are not generally considered farm animals, or
 - (2) Baby chicks and ducks that are kept or maintained in the owner's house, garage or outbuilding provided the baby chicks and baby ducks do not become a nuisance and provided any baby chick or duck that is more than twelve (12) weeks old shall be removed from the city, ~~or~~
 - (3) As permitted by Sec. 8-2009; or
 - (4) Not more than five (5) chickens, raised and kept for the purpose of providing fresh eggs, may be kept on any one lot having a minimum size of at least one acre, provided such lot is in compliance with the City's Zoning Ordinance, and provided that no coop or other containment structure for keeping fowl may be located within 50 feet of any property line, or within 100 feet of any residence other than that of the fowls' owner, provided further that all fowl so kept must be secured or contained upon the premises, that there shall be no butchering of fowl on the premises, and that no roosters are allowed to be kept.

(Ord. 99-17, 4-5-99; Ord. No. 02-46, 9-9-02)

Sec. 8-2030. - Swine and livestock.

- (a) Swine. It shall be unlawful for any person to harbor, feed, keep in their possession by confinement or otherwise maintain any swine within the city, except that no more than one miniature potbelly pig (*Sus scrofa vittatus*) may be kept as a household pet on any lot having a minimum size of at least one acre, provided such lot is otherwise in compliance with the requirements of the City's Zoning Ordinance.
- (b) Livestock. Keeping or maintaining livestock, on a temporary or permanent basis, within the city shall only be permitted if such animal is kept in strict compliance not only with this chapter but with any other ordinance, regulation or restriction applicable to such livestock. In the event there is a conflict between this chapter and any other ordinance, rule or regulation that prohibits, restricts or controls the keeping of livestock within the city, then it is the intent of this chapter to declare that the more restrictive ordinance, rule or condition shall be controlling and shall apply in all cases.

Therefore, to the extent they are otherwise permitted by ordinance, livestock shall be kept and maintained within the city only in compliance with the following:

- (1) Number of animals. No more than two (2) animals shall be kept or maintained (i) by an owner or (ii) on any lot or parcel of land, or (iii) in any fenced enclosure.

- (2) Enclosures. All animals shall be securely enclosed within a fenced area or pasture containing at least ½ acre for each animal.
- (3) Covered structure. All animals shall have available a stable, barn, stall or other covered structure to provide protection from the weather. The barn, stable, stall or structure shall contain at least two hundred (200) square feet of space under roof for each animal.
- (4) Distance. Any stable, stall, barn or other structure within the city where any livestock is kept shall be located at least one hundred (100) feet from the nearest street or sidewalk and at least one hundred (100) feet from any nearby dwelling house or any building used for commercial or other purposes except that a dwelling house occupied by the owner of the animal or animals and his or her family may be located within one hundred (100) feet of any stable, stall, barn or structure.
- (5) Sanitary condition. All pastures, lots, enclosures, stables, pens, barns, barnyards or any other enclosure used to keep livestock shall be kept in a clean, sanitary condition and shall not be permitted to become a nuisance because of any foul odor, animal noises, an attraction or breeding place for flies, rats or other vermin or for any other reason. Areas within such pastures, lots, or enclosures that are open to view from pedestrian and street traffic shall not be used for the purpose of breeding livestock.

It shall be unlawful for any person to own, keep, harbor or maintain livestock in violation of this section.

(Ord. 99-17, 4-5-99)

ARTICLE E. - MISCELLANEOUS REGULATIONS

Sec. 8-2041. - Dangerous animals.

- (a) Purpose. The purpose of this section is to protect people, especially the elderly and the young from the unnecessary injury caused by dangerous animals. This section is intended primarily to apply to dogs that bite or menace people but under appropriate circumstances can apply to an aggressive cat or any other animal that exhibits vicious characteristics.
- (b) Prohibited. It shall be unlawful for any person to own, harbor, keep or possess within the City of Morganton, any animal that has been declared to be dangerous in accordance with the procedures of this section unless such animal is being kept in absolutely strict compliance with the conditions of release, if any, issued as a part of the Order declaring the animal to be dangerous.
- (c) Construction. This section is intended to establish a procedure for dealing with particularly dangerous dogs and/or animals. Nothing in this section shall be construed to create a presumption or assumption that a dog or other animal that bites other people is permitted just because it has not been declared to be a dangerous or a potentially dangerous animal. Instead this section is intended to set up special procedures and safeguards for animals that are especially dangerous.
- (d) Initiation of proceedings. An animal control officer or any other adult person may request that an animal be classified as dangerous or as potentially dangerous as defined in this chapter by submitting a written complaint on the form issued by the director of public safety. Upon receipt of the complaint, the owner shall be notified that a complaint has been filed and that an investigation into the allegations set forth in the complaint will be conducted.
- (e) Summary impoundment. If during the initial investigation, the animal control officer or other person conducting the investigation has credible evidence to believe that the animal is a dangerous or potentially dangerous animal and that the animal is not or cannot be adequately confined by the owner, then the animal control officer may impound such animal pending further proceedings. It shall be unlawful for any owner to conceal such animal or to refuse to permit such animal to be impounded pending further proceedings.

- (f) Initial order. At the conclusion of the investigation, the director of public safety or the person designated to decide such issues shall review the investigative report and may:
- (1) Determine that the animal is not dangerous and if the animal has been impounded, waive any impoundment fees incurred and release the animal; or
 - (2) Determine that the ~~dog~~ animal is dangerous or potentially dangerous as defined herein and enter an order:
 - a. Establishing the terms and conditions under which the animal may be returned to its owner after all impoundment fees have been paid, or
 - b. Require that the animal be removed from the city, after impoundment fees have been paid, or
 - c. Require the humane destruction of the animal when because of the ~~breed of dog~~ species or breed of animal, the number of incidences, the severity of injuries caused, ~~inappropriate or lack of training of the dog~~ inappropriateness of or lack of training of the animal, or the inability to restrain the ~~dog~~ animal, the safety of others and the protection of property cannot be assured.

The person reviewing the results of the investigation and entering any initial order may not be an individual that initiates a complaint or conducts any investigation into the circumstances surrounding the dangerous animal. A copy of the Order shall be served on the owner by actual hand delivery or, by leaving a copy of the order at the usual residence of such person with a person of suitable age and discretion or by certified mail, return receipt requested, marked "deliver to addressee only".

- (g) Hearing. At any time after notification that a complaint has been filed and that an investigation will be conducted but not later than five (5) days after the service of the initial order, an owner may request in writing a hearing before an independent person designated by the director of public safety. The request for a hearing shall be filed with the director of public safety. The hearing shall then be scheduled as soon as reasonably possible but no later than ten (10) days thereafter and notice of the hearing shall be issued to the person requesting the hearing in the same manner that an initial order is served. The hearing shall be informal but the owner shall have the right to show cause why the animal is not dangerous.

At the hearing, among other things, the following matters may be considered:

- (1) Investigative report and recommendation from the investigative officer.
 - (2) Provocation.
 - (3) Severity of attack or injury to a person or domestic animal.
 - (4) Previous aggressive history of the animal.
 - (5) Breed of the animal.
 - (6) Observable behavior of the animal.
 - (7) Site and circumstances of any incident.
 - (8) Written statements from interested parties.
- (h) Decision. The hearing officer shall render his or her decision within five (5) days after the hearing. The decision shall be in writing and may affirm, vacate or modify any prior orders entered. A copy of the decision shall be served on the owner in the same manner provided by paragraph (f) above.
- (i) Appeal. Within five (5) days after a copy of the decision is served upon the owner, the owner may appeal the decision to the appellate board by filing written objections with the office of the city manager. A hearing shall then be scheduled before the appellate board and notice served on the owner in the same manner as paragraph (f) above.

The hearing before the appellate board shall be informal but the owner shall have the right to appear, to make any statements, provide affidavits and other written statements and documents or offer such other

evidence as may be relevant. The appellate board, after considering all relevant facts, shall enter its order affirming, modifying or vacating any prior order or decision.

Any appeal from the final decision of the appellate board shall be taken to the superior court by filing notice of appeal and petition for review within ten (10) days of the final decision of the appellate board. Appeals from rulings of the appellate board shall be heard in the superior court division. The appeal shall be heard "de novo" before a superior court judge sitting in the county in which the appellate board whose rule is being appealed is located.

An appeal shall not stay the impoundment of any animal pending such appeal but shall stay any order that an animal be destroyed.

(Ord. 99-17, 4-5-99)

Sec. 8-2042. - Restraint and confinement.

- (a) Purpose. Some animals, especially dogs and cats, are dangerous or become a nuisance or are regularly at large in violation of this chapter because of the lack of concern by the owner or because the lot, pen or other enclosure is inadequate. In some instances, the animal simply has a propensity to escape from confinement. Under those circumstances, it is the purpose of this section to authorize animal control officers and other individuals charged with the responsibility of enforcing this chapter to recommend and if necessary to require that special preventive measures be taken by the owner to securely restrain or confine such animals. The owner may be required to install special fencing, provide better housing or take other measures reasonably intended to prevent such animals from escaping.
- (b) Compliance required. It shall be unlawful for an owner of an animal to refuse or otherwise fail to comply with a written order issued in accordance with the requirements of this section.
- (c) Investigation. After reasonable inquiry and investigation if it is determined that any animal is not adequately confined or is likely to escape from its house, pen, lot, pasture, enclosure or other place of confinement, an animal control officer may order the owner to comply with specific preventive measures as further set forth herein.

Prior to entering an order under this section, the animal control officer may consider, among other things, the following matters:

- (1) The behavior, size, temperament, breed and capacity of the animal for inflicting serious injury,
 - (2) The likelihood that the conditions pertaining to the particular animals' confinement is detrimental to the safety and welfare of the citizens or the peace and tranquility of the immediate surrounding area, especially the presence of children under age seven (7),
 - (3) If the animal is a dog, the history of the dog for being aggressive, whether the dog has been trained for aggressive attacks, and
 - (4) The reputation of the dog or other animal and its propensity to attack people or other animals.
- (d) Order. If after considering the factors specified above and any other relevant information, the animal control officer determines that the circumstances require special preventive measures, the animal control officer shall issue an order in writing making the appropriate findings and may require that one (1) or more of the following preventive measures be implemented by the owner:
- (1) Repairs may be required to any fence, pasture, pen or enclosure.
 - (2) The height of any fence may be increased.
 - (3) Installation of anti-climb devices may be required.
 - (4) The fence may be required to be installed into the ground.
 - (5) The installation of a floor or a bottom to the enclosure and/or a top to the enclosure may be required.

- (6) Special chains, leashes and/or muzzles may be required.
- (7) The installation and use of special warning devices may be required.
- (8) The owner may be required to give immediate notice to the department of public safety in the event the animal escapes from its enclosure.
- (9) Use of special markings on the animal tags, animal collar or a tattoo may be required to identify the animal for future investigative or enforcement purposes.
- (10) The purchase of special liability insurance in an amount not exceeding one hundred thousand dollars (\$100,000.00) at the owner's expense may be required.

A copy of the order shall be served on the owner by personal delivery, by leaving a copy of the order with a person of suitable age and discretion at the owner's known residence or by certified mail, return receipt requested, marked "deliver to addressee only".

It shall be unlawful for any owner to fail or refuse to comply with any order issued under this section.

- (e) Appeal. If an order is entered requiring special preventive measures, and the owner of such animal objects thereto, the order may be appealed by filing a written request for a hearing with the director of public safety within five (5) working days from the date of the written order.

Upon receipt of an appeal, the director of public safety or some person authorized by him but not the officer issuing the original order, shall then schedule a hearing within ten (10) days and provide the owner with written notice setting forth the date, time and place of the hearing.

The owner of such animal shall have a right to be present at the hearing and to show cause why the original order should be vacated or modified. The hearing shall be informal.

The person designated to hear the appeal shall have the authority to make additional findings of facts or conclusions and may affirm, vacate or modify the original order.

(Ord. 99-17, 4-5-99)

Sec. 8-2043. - Pens and pastures.

Pens, pastures, barns, dog houses, coops and other enclosures for the confinement or keeping of an animal (collectively "structure") shall be adequate for the purpose intended, including the humane treatment of the animal confined. At a minimum, all fences, gates and shelters shall be adequately maintained and of sufficient height and size to secure the animal and protect the animal from weather and constructed and maintained in a manner so as to prevent the escape of the animal.

A fence for any dog shall be at least four (4) feet in height and the enclosure must contain at least sixty-four (64) square feet of space. If a dog is deemed capable of climbing or otherwise escaping from a standard four (4) foot fence, the animal control officer may require a six (6) foot fence.

If there is any indication that an animal may be dangerous, the animal control officer may require a secure dog fence which includes six (6) foot high fences with an anti-climbing device installed or a top. Further, a floor or bottom to the enclosure may be required unless the sides of the enclosure are buried at least one (1) foot in hard packed soil. All fencing material shall be of a type and strength to prevent escape.

Structures for the confinement of an animal shall generally be located in a manner so that such structures do not become a nuisance to adjacent property owners because of odor, smell, noise or other similar factors or otherwise interfere with the right of the occupants of adjacent property to the full enjoyment of their property. In enforcing the provisions of this section or any other provision relating to the type of structure or its location, the animal control officer shall provide the owner with a reasonable period of time not to exceed three (3) months in which to bring the pen, pasture or other enclosure into compliance.

Structures in existence as of August 9, 2002 shall be allowed to continue provided the structure is adequate for the purposes intended, is properly maintained and is not allowed to become a nuisance or is

not the subject of complaints. At such time as the structure is substantially rebuilt or at such time as the animal control officer receives complaints concerning the structure, and it is determined that the structure violates this chapter, then the structure shall be brought into compliance within a reasonable period of time taking into consideration the public safety, the public health and the expense involved.

(Ord. 99-17, 4-5-99; Ord. No. 02-46, 9-9-02)

Sec. 8-2044. - Bird sanctuary; protection of bird life.

- (a) Established. The area included within the corporate limits of the city, as extended from time to time, and all lands owned or leased by the city outside the corporate limits is hereby designated as a bird sanctuary.
- (b) Protected. It shall be unlawful to trap, hunt, shoot or otherwise kill any native wild bird within the territory described in paragraph (a) except when such birds or fowl are found to be congregating in such numbers in a particular location that they constitute a nuisance or a menace to health or property and only then if the consent of the department of public safety is first obtained.

(Ord. 99-17, 4-5-99)

Sec. 8-2045. - Zoning rules applicable.

The keeping and maintaining of animals within the city shall be and at all times remain in full compliance with the zoning ordinance. The breeding, raising of animals shall remain in compliance with the rules and regulations of the zoning district in which the activity takes place.

(Ord. 02-46, 9-9-02)

Secs. 8-2046—2050. - Reserved.

ARTICLE F. - ENFORCEMENT

Sec. 8-2051. - Impoundment.

- (a) In addition to any other remedies provided in this chapter, an animal control officer may seize, impound and humanely confine to an animal shelter or to a veterinarian hospital, any of the following animals:
 - (1) Any dog, cat or other animal that is required to be inoculated and have a rabies tag that either has not been inoculated or does not display a rabies tag, or
 - (2) Any animal at large, or
 - (3) Any animal constituting a public nuisance or considered a danger to the public, or
 - (4) Any animal that is in violation of any quarantine or confinement order, or
 - (5) Any unattended animal that is injured, diseased, obviously ill or otherwise in need of immediate veterinary care, or
 - (6) Any animal that is reasonably believed to have been abused or neglected, or
 - (7) Any animal that is reasonably suspected of having rabies or any other disease that is communicable, or

- (8) Any animal that is charged with being potentially dangerous or dangerous where an animal control officer, hearing officer or appellate board determines that there is a threat to public health and safety in accordance with the requirements of this chapter, or
 - (9) Any animal that a court of competent jurisdiction has ordered impounded or destroyed, or
 - (10) Any animal that is reasonably believed to be considered unattended or abandoned, as in situations where the owner is deceased, has been arrested or evicted from his regular place of residence, or
 - (11) Any wild or exotic animal except as may be specifically permitted in this chapter, or
 - (12) Any guard dog, attack dog or dog that has been trained to be aggressive that has not been registered in accordance with the provisions of this chapter, or
 - (13) Any other animal that has not been licensed as required by this chapter, or
 - (14) The animal of any owner that refuses to comply with a preventive order issued under the provisions of this chapter, or
 - (15) Any dog or cat that has recently bitten any person.
- (b) Custody. Any animal impounded hereunder shall be kept and shall remain in the custody of the animal shelter until:
- (1) The animal is redeemed, or
 - (2) The animal is released pursuant to an order by any appropriate official or judicial officer, or
 - (3) The animal is adopted in accordance with the provisions of this section, or
 - (4) The animal is humanely destroyed (euthanized).

If not previously notified and if the owner can be reasonably identified, the owner of an impounded animal shall be notified by any reasonable means that his or her animal has been seized and that the animal can be claimed or redeemed in accordance with the terms of this section.

Animals seized for violations of the provisions of this chapter dealing with rabies shall be held for observation for ten (10) days. Any other animal seized pursuant to this chapter shall be held for a minimum of five (5) working days (days during which the animal control shelter is open for business). In the event the animal has been impounded pursuant to the terms of an impoundment order issued under the provisions of this chapter or by order of any court, the animal shall be retained by the animal shelter for the period set forth in such order.

- (c) Redemption. At the end of any required period of impoundment, an owner may redeem his or her animal upon compliance with the following conditions:
- (1) The owner shall pay all impoundment fees, boarding fees, veterinarian fees, inoculation fees or other similar charges.
 - (2) The person redeeming the animal shall provide credible evidence that he or she is the owner.
 - (3) The person redeeming the animal is, in the opinion of the animal shelter, qualified to own an animal and is not under eighteen (18) years of age or has a record of abuse and cruelty to animals.
 - (4) The person agrees to abide by the terms and conditions of release set forth in any order of impoundment.
 - (5) The person complies with the other procedures established by the director of public safety for the release of animals including an acknowledgment of ownership, a receipt and proof of identity.
- (d) Adoption or euthanasia. After the redemption period has expired, all ownership rights to the impounded animal shall be forfeited. In the discretion of the animal shelter, such animals may:

- (1) Continue to be held for a reasonable period of time for adoption in accordance with the policies and procedures established by the director of public safety including the payment of all required fees, or
 - (2) The animal shelter may place the animal with a local humane society for future adoption through the humane society, or
 - (3) May destroy the animal in a humane manner approved by the director of public safety.
- (e) Fees. In connection with the impoundment and subsequent release of any animal, the city may require reimbursement for any inoculation or veterinarian charges or similar expense actually incurred and may impose a reasonable boarding fee, adoption fee, redemption fee or other administrative fee as may be set forth in the published schedule of fees and charges adopted by the city council from time to time.
- (f) County shelter. The impoundment, adoption, redemption or euthanasia procedures of this section are intended to apply to any animal shelter that is operated by or subject to the control of the city. Those procedures are not intended to be binding upon any county operated shelter or any other private shelter operated by any public or private entity. For animals that are impounded in those shelters, both the owner of the animal and the animals shall be subject to the rules, regulations and fees concerning impoundment, adoption, redemption or euthanasia procedures that are issued by the governing body of that facility.

(Ord. 99-17, 4-5-99)

Sec. 8-2052. - Powers.

It is intended that animal control officers and other personnel assigned to enforce this chapter shall have a broad range of power to carry out the provisions of this chapter and discretion in the use of an appropriate remedy for violations. Animal control officers shall have the power to initiate investigations, not only when complaints are received but as a result of their own knowledge and observation of facts and circumstances.

Animal control officers may take notice of facts and information in plain view in automobiles, in the yards surrounding houses and other areas that can be readily observed without intrusive investigations and as a result of those observations may take appropriate enforcement action including the impoundment of animals when violations are observed or the issuance of any other order permitted hereunder.

With the consent of property owners and individuals apparently in charge of the premises, animal control officers may investigate the conditions and circumstances inside of locked fences, outbuildings, houses, apartment units, condominium units or other buildings and as a result of such investigations may impound animals or take other appropriate enforcement action.

In the event circumstances are not plainly observable or in the event access to enclosed premises is denied, animal control officers may seek the assistance of public safety officers and other sworn personnel, may obtain search warrants and conduct other lawful searches of such premises.

(Ord. 99-17, 4-5-99)

Sec. 8-2053. - Conflicts.

This chapter anticipates that the City of Morganton will operate its own animal control shelter. However, Morganton reserves the right to utilize the impoundment services of a county operated shelter or a shelter operated by some other public or private entity. In that event, the procedures concerning the confinement of animals, the adoption or redemption of animals, the humane destruction of animals and the fees associated with each of those services may be different and in conflict with this chapter and the policies and procedures issued pursuant to the authority of this chapter. If Morganton elects to utilize the services

of a separate county or private animal shelter, then, and in that event, the policies, rules and regulations and other conditions issued by that facility shall be controlling and take precedence over this chapter and any rules and regulations issued under this chapter. The owner of any animal impounded or confined to such facility shall likewise be subject to the policies, rules, regulations and conditions imposed by that shelter and that facility is hereby granted jurisdiction to hold, adopt, redeem, release or destroy such animals in the manner prescribed by that facility as if the same were required under this chapter.

Further, this chapter anticipates that the appellate board for reviewing determinations concerning dangerous or potentially dangerous animals shall be the city council of the City of Morganton. In the event the city council shall designate some other board or agency to conduct such hearings and to review such determinations, the procedural rules and regulations issued by that designated agency shall be controlling and that agency is granted the jurisdiction and full authority under this chapter to discharge all of the powers granted in G.S. ch. 67 or under this chapter or under any other state or local law governing animals.

Further, this chapter anticipates that the appellate board for reviewing determinations concerning dangerous and potentially dangerous animals shall be the city council. However, the city council may designate some other board or there may in fact be a unified board appointed by the city and/or the county for the purpose of discharging the functions and exercising the powers of an appellate board. In that case, the procedural rules and regulations issued by that board in the discharge of its powers pursuant to G.S. ch. 67 shall be controlling in the event there is a conflict between the requirements of this chapter and the governing rules of that board.

(Ord. 99-17, 4-5-99)

Sec. 8-2054. - Remedies.

Consistent with the general law of the State of North Carolina, it is intended that the city shall have broad powers to enforce this chapter, including the power to impose criminal fines and penalties as well as civil penalties for the violation of this chapter. The city may also secure injunctions, or abatement orders, or may pursue any other remedy permitted at law or equity.

(Ord. 99-17, 4-5-99)

Sec. 8-2055. - Penalties.

- (a) Misdemeanor. A violation of this chapter is a misdemeanor or infraction as provided by G.S. 14-4 and is punishable by a maximum fine, term of imprisonment or infraction penalty, all as imposed and set forth in G.S. 14-4, which is incorporated herein by reference.
- (b) Civil citations. In addition to the criminal penalties imposed in subsection (a) above, a violation of this chapter shall also be a civil offense and shall subject the offender to a civil penalty to be issued and collected in the manner set forth in section 1-1005 of this Code. Each day's offense shall be a separate offense for which a separate civil citation may be issued. Unless otherwise specifically provided in the schedule of fees and charges adopted annually by the city council, the penalty shall be fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense, two hundred dollars (\$200.00) for the third offense and three hundred dollars (\$300.00) for the fourth and any subsequent offense.

(Ord. 99-17, 4-5-99; Ord. No. 02-46, 9-9-02)