



# City of Elkins

## s and Ordinances Committee Meeting

---

May 10, 2023  
9:00 AM  
401 Davis Avenue  
Council Chamber, 2nd Floor

### **AGENDA**

- 1. Call to order and roll call**
- 2. Public comment**
- 3. Minutes**
  - a. Proposed minutes for the meeting of April 12, 2023
- 4. Unfinished business**
  - a. City Code Section 90: Animals
- 5. New business**
- 6. Announcements**
- 7. Adjournment**



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |                                                    |
|--------------------------|----------------------------------------------------|
| <b>Meeting Date:</b>     | May 10, 2023                                       |
| <b>Section:</b>          | Minutes                                            |
| <b>Category:</b>         | Action Item                                        |
| <b>Agenda Item Name:</b> | Proposed minutes for the meeting of April 12, 2023 |
| <b>Recommended By:</b>   |                                                    |
| <b>Summary:</b>          |                                                    |
| <b>Fiscal Impact:</b>    |                                                    |
| <b>Recommendation:</b>   |                                                    |
| <b>Attachments:</b>      | None                                               |

CHAPTER 90: ANIMALS (Note: These titles and any sections numbers will be adjusted once the chapter is finalized.)

Section

General Provisions

90. Definitions

90.01 Keeping of livestock and fowl

90.05 Cruelty (combined as proposed with 90.06 and 90.07)

90.06 Poisoning (combined as proposed)

90.07 Birds and wild fowl (combined as proposed)

90.08 Fighting gamecocks or keeping cockpits

90.09 Disposal of dead animals

90.10 Staking cows or other animals on streets or property of another

90.11 Exhibiting stallion, jack or bull

90.12 Slaughtering

90.13 Administration and enforcement of chapter; Humane Officer; state law applicable

90.14 Procedure on complaint of an animal that is vicious, dangerous or infected with a potentially harmful communicable disease

Dogs

90.25 Definition

90.26 Annual head tax; imposed; duty of keepers to report to County Assessor; dog tags

90.27 Annual head tax; failure to pay

90.28 Running at large

90.29 Tethering

90.30 Barking or howling

Impoundment

90.45 Conditions; procedure; alternative procedure

90.46 Notice to owners or persons in charge

90.47 Redemption; costs

- 90.48 Disposition of unredeemed animals and fowl
- 90.49 Disposition of proceeds of sale
- 90.50 Prosecution of violations
- 90.51 Interference with pound and with release of animals

#### Waterfowl

- 90.65 Purpose and intent
- 90.66 Definitions
- 90.67 Prohibited acts

- 90.99 Penalty

#### Cross-reference:

- Animals on sidewalks, see § 93.004
- Disposition of carcasses generally, see § 91.021

#### Statutory reference:

- Authority of city to regulate or prohibit the keeping of animals and fowl, see W.Va. Code § 8-12-5(26)
- Diseases among domestic animals, see W.Va. Code §§ 19-9-1 et seq.
- General stock law, see W.Va. Code §§ 19-18-1 et seq.

## GENERAL PROVISIONS

### §90.\_\_\_\_ DEFINITIONS

Add "dangerous wild animal" as defined in state code.

~~1) "Domestic animal" means any animal commonly kept as a pet in households, including, but not limited to dogs, cats, guinea pigs, hamsters, rabbits, and common caged birds; and any animal commonly kept as a companion.~~

~~2) "Domestic waterfowl" includes those species of birds which are non-native ducks, geese and swans, not retained in agricultural activities.~~

~~3)1) \_\_\_\_\_~~ "Enforcement Officer" means any person authorized by this Chapter or State Law to enforce the provisions hereof, or of State law and specifically including any officer of the City of Elkins Police Department.

~~4)2)~~ “Feed or feeding” means to place or deposit, scatter or distribute any type of food or sustenance with the intention of feeding, attracting or enticing waterfowl, both migrating and domestic.

~~5)3)~~ “Fowl” means any chicken, duck, goose, turkey, guinea fowl or pigeon.

~~6)4)~~ “Livestock” means any hog, pig, goat, cow, horse, pony, emu, alpaca or other hoofed animal.

~~7)5)~~ “Migratory waterfowl” includes those species of birds commonly known as ducks, geese, swans and other waterfowl falling under the jurisdiction of the United States Fish and Wildlife Service.

~~8) “Non-domestic animal” means those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety and welfare of humans.~~

#### § 90.01 KEEPING OF LIVESTOCK AND FOWL AND DANGEROUS WILD ANIMALS

No person shall keep any livestock OR DANGEROUS WILD ANIMALS within the City. This section shall not apply to hogs or pigs kept at commercial stock yards to be sold at auction.

No person shall keep any fowl within the city except as provided for in the zoning ordinance Section 152.180.

#### § 90.05 CRUELTY, POISONING AND INJURY TO ANIMALS

No person within the city shall cruelly or needlessly beat, torture, mutilate, kill, overload or overdrive any domestic animal or fowl, nor willfully deprive any ~~domestic~~ animal or fowl of necessary sustenance or shelter.

(1991 Code, § 4-5) Penalty, see § 90.99

Statutory reference:

Authority of Council to enact this section, see W.Va. Code § 8-12-5(27)

Malicious killing of, and cruelty to, animals, see W.Va. Code §§ 61-3-27, 61-8-19

No poisoned meat nor any poisonous substance shall be cast into any of the streets, public places, lots or buildings in the city for the purpose of destroying dogs or other animals.

(1991 Code, § 4-6) Penalty, see § 90.99

Statutory reference:

Malicious killing of animals by poison or otherwise, see W.Va. Code § 61-3-27

No person shall, at any time, kill or injure any wild bird of any kind or injure or destroy the nests or eggs of any wild bird or fowl, except, that birds of prey, crows and English sparrows may be killed at any time and their nests and eggs may be destroyed; provided, that if under the law of the state it is at any time lawful to catch or kill any wild fowl or birds, such birds or fowl may, during such time, be caught or killed within the city or if such action is taken pursuant to a state or federal sanctioned programs.

(1991 Code, § 4-7) Penalty, see § 90.99

Statutory reference:

Definitions as to game birds, protected birds and unprotected birds, see W.Va. Code § 20-1-2

Hunting and killing of birds generally, see W.Va. Code §§ 20-2-1 et seq.

#### § 90.09 DISPOSAL OF DEAD ANIMALS.

~~Any person knowing of the existence of THE PROCEDURE UPON~~ or finding the carcass of a dead animal within the City shall immediately contact the Enforcement Officer and state the location thereof. If it is a domestic animal, the Enforcement Officer shall attempt to contact the owner. If the owner is not known, or if it is not a domestic animal, the Enforcement Officer shall notify the Operations Department and the dead animal will be removed and disposed of by the Streets Department. If the dead animal is located on the property of the owner, the owner shall be responsible for the removal and disposal of the dead animal in an appropriate manner.

#### § 90.10 HITCHING OR STAKING ~~COWS OR OTHER~~ ANIMALS ON STREETS OR PROPERTY OF ANOTHER.??

(Same question as to 90.04.)

It shall be unlawful for any person to stake out any animal on the property of another without such property owner's consent, or upon any street or public place in the city or upon property belonging to the city.

(1991 Code, § 4-10) Penalty, see § 90.99

#### § 90.12 SLAUGHTERING.

No person shall keep any slaughterhouse or slaughter any animals within the city. ~~Slaughtering and processing of any animal are prohibited within the City, except where such activity occurs within a butcher shop.~~

(1991 Code, § 4-12) Penalty, see § 90.99

§ 90.14 PROCEDURE ON COMPLAINT OF AN ANIMAL THAT IS VICIOUS, DANGEROUS OR INFECTED WITH A POTENTIALLY HARMFUL COMMUNICABLE DISEASE.

(Note: This section needs moved according to my notes. Need to discuss also how Municipal Court Judge will make this determination as to these animals.)

Procedure upon complaint that an animal is vicious, dangerous or infected with a potentially harmful communicable disease shall be as follows.

(A) (1) Upon complaint to the Judge of the Municipal Court of the city, that an animal is vicious or dangerous, as defined in division (B) below, or infected with a potentially harmful communicable disease, it shall be the duty of the Judge to immediately summon the owner or keeper of the animal to answer the complaint.

(2) In the instance of a complaint of an animal infected with a potentially harmful communicable disease, the Judge shall immediately notify the owner or keeper of such allegedly infected animal that such animal be exposed to any public place whereby the health of humans or animal may be affected; nor shall such animal be shipped or removed from the premises of the owner or keeper of such animal except under the supervision of the Enforcement Officer of the city. The Judge may order proper testing be completed on the alleged infected animal, by a licensed veterinarian, to determine if the animal is in fact infected with a potentially harmful communicable disease.

(3) If upon hearing, the Judge finds that such animal is vicious, dangerous or infected with a potentially harmful communicable disease, he or she may order a fine or may order the animal a menace to public safety and order the animal be destroyed to prevent injury and/or death to the public, The destruction of said animal shall occur immediately, absent a stay of such destruction pending appeal.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DANGEROUS or VICIOUS. Refers to and includes any animal:

(a) With a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or

(b) Which attacks human beings or other ~~domestic~~ animals without provocation.

(C) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, the owner or keeper of such animal shall be liable for all costs incurred by the city, associated with said owner's or keeper of the animal's prosecution under this section.

(D) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, and if the owner or keeper of said animal appeals the Municipal Court Judges' ruling, said animal

shall be impounded, at the cost and expense of the animal's owner or keeper, until such appeal hearing is concluded.

10-DAY PERIOD TO SETTLE ACCOUNT OR DOG IS SURRENDERED

(Ord. 104, passed 8-6-2009) Penalty, see § 90.99

§ 90.28 ANIMALS RUNNING AT LARGE. (Do you want to add "cat or any other animal" so that it does not just apply to dogs?)

(A) Any person who owns, keeps or harbors animal within the city shall keep such animal confined to the premises owned or occupied by him or her and shall not permit such animal to run at large; provided, that animal shall not be deemed to be at large when held on leash by and under the control of a responsible person.

(B) It shall be unlawful for any owner or person in control of an animal to:

(1) Knowingly or willfully allow his or her animal to defecate on private property of other persons without their consent or the consent of persons having control of the premises; and

(2) Knowingly or willfully allow his or her animal to defecate on public property; except that defecation by an animal on public property shall not constitute a violation of this section if the owner of the animal immediately removes the material defecated and disposes of it in a safe and sanitary manner.

(3) Knowingly or willfully fail to periodically, properly and completely collect and dispose of any and all animal fecal excrement accumulating upon the premises of such owner. Detection of odor from the animal fecal excrement which constitutes a nuisance as determined by an Enforcement Officer from any neighboring property shall be deemed to be a prima facie evidence of such, animal's owner or other persons failure to abide by this section and shall be subject to penalties under this Chapter.

(1991 Code, § 4-17) (Ord. passed 3-2-1972; Ord. passed 5-5-1994) Penalty, see § 90.99

§ 90.29 TETHERING.

(A) No person shall tether an animal

(1) When the outside temperature, as measured on site by the Enforcement Officer, is equal to or greater than 90°F or equal to or less than 20°F;

(2) In such a manner as to cause injury, strangulation or entanglement on fences, trees or other human-made or natural obstacles;

(3) For a continuous period of time; or

(4) That is sick or injured.

(B) Animals may be restrained by means of a trolley system, or a tether attached to a pulley on a cable run, if the following conditions are met.

(1) Only one animal may be tethered to each cable run.

(2) The tether must be attached to a properly fitting collar or harness worn by the animal, with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for purposes of tethering a dog to a cable run. There must be a swivel on at least one end of the tether to minimize tangling of the tether with stoppers on either side of the cable to ensure the animal is not able to entangle himself or herself.

(3) The tether and cable run must be of adequate size and strength to effectively restrain the animal. The size and weight of the tether must not be excessive, as determined by the Enforcement Officer, considering the age, size and health of the animal.

(4) The length of the tether from the cable run to the animal's collar should allow access to the maximum available exercise area and should allow continuous access to water and shelter. The trolley system must be of appropriate configuration to confine the animal to the owner's property, to prevent the tether from extending over an object or an edge that could result in injury or strangulation, and to prevent the tether from becoming tangled with other objects or animals. The tether must be long enough for the animal to move around or be able to urinate or defecate in an area separate from where it must eat, drink or lie down and allows the animal convenient access to food, water, dry ground or shelter. No vegetation or obstacles can restrict the movement of the animal on the tether.

(C) (1) All tethered animals must have access to shelter which is defined as any natural or artificial area which provides protection from the direct sunlight when that sunlight is likely to cause heat exhaustion. Metal barrels as well as any uninsulated metal structures are prohibited for use as shelter.

(2) Animal shelter shall be a wind-proof and moisture-proof structure and shall include four walls, a roof, a door flap for winter and a solid floor raised off the ground, containing a sufficient quantity of suitable dry bedding material.

(3) The containment area of any shelter shall be free of accumulated debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris. A suitable method of draining shall be provided to eliminate excess water or moisture inside the shelter.

(Ord. 086, passed 12-4-2008) Penalty, see § 90.99

§ 90.30 BARKING OR HOWLING. (Note: has been changed recently by Ordinance 307)

Publisher's Note: This Section has been AMENDED by new legislation (Ord. 307, adopted 11-3-2022). The text of the amendment will be incorporated below when the ordinance is codified.

~~—No person shall keep any barking or howling dog within the city nor permit any dog owned or controlled by him or her to bark or howl continuously for more than 15 consecutive minutes.~~

(1991 Code, § 4-18) (Ord. passed 11-19-1970) Penalty, see § 90.99

## IMPOUNDMENT

### § 90.45 CONDITIONS; PROCEDURE; ALTERNATIVE PROCEDURE.

Any animal or fowl found at large within the city contrary to any provision of this chapter shall be considered abandoned and may be taken up by any enforcement officer, and impounded at a place designated for such purpose by the Council or by the Mayor; provided, that if an animal found at large in violation of this chapter is rabid, vicious or otherwise constitutes a danger to human life or limb, the officer may destroy such animal by shooting if it cannot safely be captured and made secure; and provided further, that when the ownership of such animal or fowl is known to the officer and the animal or fowl is not rabid or vicious and does not otherwise constitute a danger to human life or limb, the officer may, in lieu of impounding such animal or fowl, notify the owner thereof to retrieve it promptly and confine it on his or her own premises and, in such case, the officer may cite such owner for violation of this chapter.

(1991 Code, § 4-19)

Statutory reference:

Authority of city to regulate or prohibit the keeping of animals or fowl and to provide for the impounding, sale or destruction of animals or fowl kept contrary to law or found running at large, see W.Va. Code § 8-12-5(26)

Impoundment and disposition of dogs, see W.Va. Code §§ 19-20-6a through 19-20-8a

Impoundment, redemption and sale of animals under the general stock law, see W.Va. Code §§ 19-18-1 through 19-18-3

### § 90.46 NOTICE TO OWNERS OR PERSONS IN CHARGE.

(A) If the owner or person in charge of any animal or fowl impounded under the provisions of this subchapter is known to the enforcement officer, the enforcement officer shall promptly notify him or her of such impoundment, so as to inform him or her of:

- (1) The animal or fowl impounded, and a description thereof;
- (2) The date of impoundment;
- (3) The place of impoundment;
- (4) The reason for impoundment;
- (5) The procedure for redemption of his or her animal or fowl;
- (6) The costs for redemption; and

(7) The consequences of failure to redeem the impounded animal or fowl, including authorized disposition after ~~five (5) fourteen (14) days~~.

(B) If the owner or person in charge of any animal or fowl impounded under the provisions of this subchapter is unknown to the enforcement officer and cannot be ascertained by reasonable effort within 24 hours, the Enforcement Officer shall, within ~~five (5) days~~ 48 hours following such impoundment, post notices City Hall and other public forums, each such notice to contain all the information required by divisions (A)(1) through (A)(7) above.

(1991 Code, § 4-20)

#### § 90.47 REDEMPTION; COSTS.

The owner or person entitled to possession of any animal or fowl impounded under the provisions of this subchapter may redeem such animal or fowl at any time within ~~fourteen (14) days~~ five (5) days, upon satisfactory proof of his or her right to possession and payment to the city of:

- (A) The expense, if any, incurred in making the impoundment;
- (B) The expense incurred for sustenance, shelter and care of the impounded animal or fowl;
- ~~—(C) The expense incurred for giving notice~~
- ~~—(D) Any other expense actually incurred by the city~~

(1991 Code, § 4-21) (Ord. 099-06, passed 4-20-1999)

#### § 90.48 DISPOSITION OF UNREDEEMED ANIMALS AND FOWL.

(A) Upon giving or posting of notice to the owner or person in charge of an impounded animal or fowl, as provided by § 90.46, the Enforcement Officer shall, except as provided by division (C) below, post notices City Hall and other public forums, to inform the public of a

description of the impounded animal or fowl and to state that such animal or fowl will be disposed of.

#### § 90.49 DISPOSITION OF PROCEEDS OF SALE.

The proceeds of each sale of an impounded animal or fowl shall be paid into the city treasury and shall be applied to:

- (A) The expense incident to the sale;
- (B) The expense, if any, incident to apprehension and making the impoundment;
- (C) The expense of giving notice;
- (D) The expense incurred for sustenance, shelter and care; and
- (E) The residue, if any, shall be paid to the owner of the animal or fowl, if known and, if he or she not be known, the residue shall be held in escrow for 90 days and shall be paid within such period upon application by the person entitled thereto, upon satisfactory proof of such entitlement and, if there be no such applicant within such 90-day period, such residue shall be credited to the General Fund of the city.

(1991 Code, § 4-23)

#### § 90.50 PROSECUTION OF VIOLATIONS.

Neither the impoundment of an animal or fowl nor the sale thereof nor the payment of any redemption fee shall serve to bar prosecution of any person for the violation of any provision of this chapter which may have resulted in such impoundment.

(1991 Code, § 4-24)

#### § 90.51 INTERFERENCE WITH POUND AND WITH RELEASE OF ANIMALS.

It shall be unlawful for any person, without proper authority, to release or cause to be released any animal or fowl impounded pursuant to this subchapter, or to in any way interfere with the operation or maintenance of the place of impoundment designated by the Council or by the Mayor or to molest or injure any animal or fowl therein impounded.

(1991 Code, § 4-25) Penalty, § 90.99

#### WATERFOWL

#### § 90.65 PURPOSE AND INTENT.

It is the purpose and the intent of this subchapter to protect the health, safety and welfare of the community and its waterfowl, both migratory and domestic. It is further the purpose of this subchapter to control the feeding of waterfowl, both migratory and domestic.

(Ord. 121, passed 1-20-2011)

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

#### § 90.67 PROHIBITED ACTS.

No person shall feed, cause or permit the feeding of waterfowl, domestic or migratory, within the corporate limits of the city.

(Ord. 121, passed 1-20-2011) Penalty, see § 90.99

#### § 90.99 PENALTY. (Note: In this penalty section, the number will be changed to reflect new numbered sections.)

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(1991 Code, § 4-2)

(B) Any owner or keeper of an animal who violates § 90.14, and whose animal is not ordered destroyed, shall be fined an amount set forth by Council from time to time, and ordered to pay court costs.

(C) (1) Any person caught violating § 90.29 in the first instance shall be given a warning, stating what section of the city code he or she is violating and how to comply with the violated section. The person shall be subject to a follow-up visit by the Enforcement Officer, at a later time that is adequate to allow the person to correct the violation, to determine if the person is in compliance with said city code section.

(2) Any person caught violating § 90.29 after being given a warning as specified in division (D)(1) above is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount set forth by Council from time to time or confined in jail not more than 30 days, or both.

(3) Any person convicted of a violation of § 90.29 forfeits his or her interests in any animal and all interest in the animal vests in the County Humane Society and is responsible for any costs incurred by the County Humane Society as a result.

(4) The Enforcement Officer may exercise discretion in citing violators pursuant to § 90.29. In determining whether to cite under § 90.29, the Enforcement Officer shall consider the overall condition of the dog, and whether the alleged violator is in substantial compliance with § 90.29.

(D) The owner of any dog in violation of § 90.30 shall, upon conviction of such violation, be fined an amount set forth by Council from time to time.

(1991 Code, § 4-18)

(E) Any person or persons violating any provision of §§ 90.65 through 90.67 shall, upon conviction thereof, pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Upon conviction of any subsequent offense under the provisions of §§ 90.65 through 90.67, the person or persons shall pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Each day such violation continues shall constitute a separate offense.

(Ord. passed 11-19-1970; Ord. 086, passed 12-4-2008; Ord. 104, passed 8-6-2009; Ord. 121, passed 1-20-2011)