

ORDINANCE

WHEREAS, the County Commission of Jefferson County, West Virginia regularly receives numerous public comments and complaints pertaining to barking, howling or yelping dogs and further that these complaints pertain directly to health, safety and welfare of the citizens of Jefferson County, and

WHEREAS, the County Commission of Jefferson County does hereby determine that barking, howling or yelping dogs constitute a public nuisance whenever two or more persons living in different households file or register their complaints about the same owner or custodian of barking, howling or yelping dogs, and

WHEREAS, Chapter 7, Article 1, Section three-k-k of the West Virginia Code of 1931, (W. Va. Code § 7-1-3-kk) as amended, authorizes county commissions to enact ordinances and issue orders for the elimination of hazards to public health and safety of the community and to abate or cause to be abated anything, which the county commission determines to be a public nuisance and further authorizes that such ordinances may provide for a misdemeanor penalty for violation thereof.

BE IT THEREFORE ENACTED AS FOLLOWS:

Section 1. Definitions.

For purposes of this ordinance only the following items are defined:

- (a) "Complaint" shall mean a written statement of the essential facts constituting the offense charged. It shall be made upon the oath of a law enforcement officer before a magistrate. The complaint shall set forth the facts of the allegation of disturbance of the peace caused by a barking, yelping, or howling dog, name the complainants with complete address and telephone number; name the owner or owners of the barking dog; and his or her complete address and telephone number; set forth the names, addresses, and telephone numbers of all persons who are impacted by the alleged barking dog and the approximate area of impact.*
- (b) "Residential area" shall mean any subdivision, development or other area used primarily for residential purposes located in Jefferson County but which is not within the boundaries of any municipality therein.*
- (c) "Public Nuisance" shall mean any dog or dogs that excessively bark, howl, or yelp intermittently or continuously for more than fifteen minutes in a fashion which creates unreasonably loud and disturbing noises of such a character, intensity, and duration as to disturb the peace, quiet, and good order and which gives rise to complaints from at least two persons, living in different households, regarding a breach or disturbance of the peace of others.*
- (d) "Household" shall mean any apartment, townhouse, unit, or freestanding home which serves as a residence of persons who live in that same dwelling, sharing its furnishings, facilities, accommodations, and expenses. A building with multiple apartments, townhouses, or units may, accordingly, contain multiple households.*
- (e) "Legal Hunting Activity" shall mean hunting of game that is in season by persons properly licensed to do so, unless exempted by law. Legal hunting activity may only occur on property which does not prohibit the same.*

Section 2. *Procedures*

- (a) *It shall be unlawful for any person who is the owner or custodian of any dog or dogs in any residential area to allow or cause said dog or dogs to bark, howl, or yelp in a fashion which rises to the level of a public nuisance as defined herein.*
- (b) *Any person complaining of a violation of this Ordinance may contact local law enforcement officers who may then investigate the complaint's report and, if appropriate, such officers may file a complaint with the Jefferson County Magistrate Court. If it appears from the complaint that there is probable cause to believe an offense has been committed and that the defendant has committed it, a summons shall issue to any officer authorized by law to execute it. The summons shall issue in the same form as a warrant, except that it shall summon the defendant to appear before a magistrate at a stated time and place. An authorized person shall cause a copy of the complaint and summons to be served upon the alleged perpetrator or upon each of the alleged perpetrators.*
- (c) *The Clerk of the Jefferson County Magistrate Court shall notify the assigned Jefferson County Magistrate when any complaint has been filed and when service thereof has been made. The assigned Magistrate shall schedule a hearing on the complaint and notify the complainant or complainants and alleged perpetrator or perpetrators of the hearing date and time.*
- (d) *Upon request by the defendant, a hearing on the complaint shall be heard by the assigned Jefferson County Magistrate according to the West Virginia Rules of Criminal Procedure for Magistrate Courts.*

Section 3. *Nuisance Abatement and Penalties.*

- (a) *The Jefferson County Magistrate, having found that the owner or custodian of any dog or dogs has allowed said dog or dogs to become a public nuisance as defined herein, may order the owner or custodian to abate the public nuisance.*
- (b) *The Jefferson County Magistrate, having found that the owner or custodian of any dog or dogs has failed to comply with an order of abatement, may order the owner or custodian to pay to the State of West Virginia a fine of not less than \$50 nor more than \$300.*
- (c) *A second or subsequent violation of this ordinance within any six month period shall subject the owner or custodian of any dog or dogs to a fine of not less than \$100 nor more than \$500.*
- (d) *A third or subsequent violation of this ordinance within any six month period shall subject the owner or custodian of any dog to a fine of not less than \$200 nor more than \$500.*
- (e) *Repeated similar violations of this Ordinance which occur beyond twenty-four hours of the initial incident shall be considered separate offenses. Accordingly, an owner or custodian of any dog or dogs may receive one violation per twenty-four hour period.*

Section 4. *Exempted Activities.*

- (a) *All activities within the boundaries of any municipality are exempt from the application of this ordinance.*
- (b) *This Ordinance is not enforceable against any dog which is exempted from the same by State or Federal law.*
- (c) *This Ordinance is not enforceable against any dog which is engaged in any legitimate farming activity, including but not limited to herding of livestock.*
- (d) *This Ordinance is not enforceable against any dog which is engaged in any legal hunting activity.*

Section 5. Severability.

The several sections and subsections of this ordinance are severable, and if any section or subsections hereof shall be held unconstitutional, all the remaining sections or subsections shall remain valid.

Section 6. Purpose.

It is the purpose of this Ordinance to promote the public health and safety of the community and as such it should be liberally construed to give effect to the purposes hereof.

Section 7. Appeals

Appeals to the Circuit Court shall be made pursuant to the West Virginia Rule of Criminal Procedure for Magistrate Courts 20.1.

Section 8. Civil Cause of Action not Precluded.

Nothing contained in this Ordinance shall be construed to limit or preclude the right of any individual or entity from pursuing any civil cause of action otherwise authorized by law for either injury or damage arising from any noise which creates either a public or private nuisance under law.

Dated: October 9, 2008

Frances B. Morgan, President