

CITY OF BALTIMORE

BOARD OF ESTIMATES

Room 204, City Hall
Baltimore, Maryland 21202
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BERNARD C. "JACK" YOUNG
PRESIDENT, CITY COUNCIL

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CITY SOLICITOR

BERNICE H. TAYLOR
DEPUTY COMPTROLLER
AND CLERK TO THE BOARD

November 23, 2011

Honorable President and Members
of the City Council

Ladies and Gentlemen:

On November 23, 2011 the Board had before it for consideration the following pending City Council Bill:

11-0766 - An ordinance concerning Animal Control and Protection - Reconstitution for the purpose of reconstituting the laws governing animals and their control and protection; prohibiting certain conduct; requiring licenses or permits for certain animals; providing for the licensing and regulation of certain animal facilities; prohibiting the keeping of certain animals; establishing standards for the general care and control of animals; establishing standards for the protection of animals from cruelty, abuse, and other inappropriate conduct; providing for the treatment of animals at large, dangerous animals, and vicious dogs; providing for the administration of complaints; providing for the appointment of animal control officers and for the enforcement of these laws by police officers, animal control officers, humane officers, and other authorized persons; abolishing the Vicious Dog Hearing Board and substituting for it a new Animal Hearing Board with broadened jurisdiction; authorizing the adoption of rules and regulations to supplement the law; defining certain terms; changing the name of the Bureau of Animal Control to Office of Animal Control; imposing certain civil and criminal penalties; conforming certain related provisions; and generally relating to the control and protection of animals.

THE BALTIMORE POLICE DEPARTMENT RECOMMENDS THAT §10-110(F)(2) BE AMENDED TO READ: IN ADDITION, THE HEALTH COMMISSIONER MAY REFER THE MATTER FOR FURTHER CRIMINAL INVESTIGATION TO THE POLICE OFFICER IN THE CHIEF OF PATROL'S OFFICE WHO HAS BEEN DESIGNATED BY THE POLICE COMMISSIONER AS THE BALTIMORE POLICE DEPARTMENT ANIMAL CRUELTY LIAISON TO THE OFFICE.

THE DEPARTMENT OF FINANCE RECOMMENDS THAT §10-106 (B) OF THE PROPOSED BILL BE CONSISTENT WITH CURRENT PROTOCOL AND BE REWORDED TO STATE THE FOLLOWING: "WITH THE APPROVAL OF THE DIRECTOR OF FINANCE, THE COMMISSIONER OF THE BALTIMORE CITY HEALTH DEPARTMENT MAY SEEK AUTHORITY FROM THE BOARD OF ESTIMATES TO RETAIN A PERCENTAGE OF REVENUES FROM LICENSE, PERMIT AND OTHER FEES TO FUND ANIMAL CONTROL AND PROTECTION PROGRAMS WITHIN THE CITY". §10-1001 OF THE PROPOSED BILL ESTABLISHES AN ANIMAL HEARING BOARD IN PLACE OF THE VICIOUS DOG HEARING BOARD, AND §10-1002 (D) ALLOWS FOR COMPENSATION OF APPOINTED ANIMAL HEARING BOARD MEMBERS AS PROVIDED FOR IN THE ORDINANCE OF ESTIMATES. THE DEPARTMENT OF FINANCE WOULD SUPPORT VOLUNTEER SERVICE TO THE BOARD, AND OPPOSE AN ACTION THAT RESULTS IN ADDITIONAL UNFUNDED COSTS TO THE CITY. THE DEPARTMENT OF FINANCE REQUESTS THAT COUNCIL BILL 11-0766 BE AMENDED TO INCLUDE THE REVISION TO §10-106 (B), AND THAT THE ANIMAL HEARING BOARD BE CONSTITUTED AS A VOLUNTEER BODY.

THE DEPARTMENT OF PLANNING TOOK NO POSITION ON CITY COUNCIL BILL 11-0766 WITH REGARDS TO THE CHANGES PROPOSED TO THE ZONING CODE, AND DEFERS TO THE HEALTH DEPARTMENT.

THE OFFICE OF THE MAYOR, ANTI-ANIMAL ABUSE ADVISORY COMMISSION RECOMMENDS THE FOLLOWING CHANGES:

1. §10-201 - LICENSE REQUIRED - THE CODE ONLY CONTEMPLATES LICENSES FOR DOGS AND CATS AND DOES NOT PROVIDE LICENSES FOR OTHER COMMONLY OWNED DOMESTICATED ANIMALS. THE AUTHORITY OF THE COMMISSIONER SHOULD BE EXPANDED.

2. §10-203(3) (III) - APPLICATIONS (p. 16, line 10) - THE PHRASE "THE PUBLIC HEALTH VETERINARIAN HAS WAIVED THE REQUIREMENT" SHOULD BE ADDED AFTER THE WORD "VACCINATION."
3. §10-301 - RABIES VACCINATION (P. 2, LINE 13) - THE PHRASE "OR THE PUBLIC HEALTH VETERINARIAN HAS WAIVED THE REQUIREMENT" SHOULD BE ADDED AT THE END OF THE SENTENCE.
4. §10-411 - MOLESTING BIRDS (P. 31, LINE 13) - "PRIVATE PROPERTY" SHOULD ALSO BE INCLUDED IN THE SECTION.
5. §10-915 - LIMITATIONS ON DRIVING - WEATHER (P. 48, LINE 15) - THE TERM "REAL AND EFFECTIVE" SHOULD BE INSERTED BEFORE THE WORD "TEMPERATURE."
6. §40-14 - VIOLATIONS TO WHICH SUBTITLE APPLIES (PP. 60 - 63). THE COMMISSION RECOMMENDS THAT FINES FOR CITATIONS SHOULD BE MADE CONSISTENT THROUGHOUT THE CITY CODE AND ON A SLIDING SCALE SO THAT: (A) FINES OF \$100 - \$200 BE IMPOSED FOR MINOR CODE VIOLATIONS, SUCH AS LACK OF A PET LICENSE, (B) FINES OF \$250 - \$500 BE IMPOSED FOR VIOLATIONS OF PUBLIC HEALTH/DISEASE PREVENTION CODE PROVISIONS (E.G. RABIES VACCINES, FECES AND DEAD ANIMALS); AND (C) MAXIMUM FINES OF \$1,000 SHOULD BE RESERVED FOR THE MOST EGREGIOUS OFFENSES, SUCH AS ANIMAL CRUELTY AND FIGHTING. THE COMMISSION RECOMMENDS THE FOLLOWING REVISIONS WITH RESPECT TO FEES IMPOSED FOR VIOLATIONS OF CODE SECTIONS:

§10-303 - HUMANE CARE REQUIRED - THE COMMISSION RECOMMENDS THAT THE FINE BE INCREASED FROM \$200 TO \$500.

§10-308 - TRANSPORTING ANIMALS (CONFINEMENT IN VEHICLE) - THE COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

10-309 - DISPOSITION OF DEAD ANIMALS - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-401 - CRUELTY TO OR ABUSE OF ANIMALS - THE COMMISSION RECOMMENDS THAT THE FINE BE INCREASED FROM \$500 TO \$1,000.

§10-405 - ANIMAL FIGHTS - THE COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR ANY FORM OF ANIMAL FIGHTING (DOG FIGHTING OR OTHERWISE).

§10-406(A) - ANIMAL SHOWS - CERTAIN DEVICES PROHIBITED - THE COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-406(B) - ANIMAL SHOWS - PROPER EQUIPMENT REQUIRED - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-407 - EXPOSURE TO POISONS - THE COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-408 - CONFINEMENT IN CAGE - THE COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-409 - PROHIBITED TETHERING OF DOGS - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-410 - ANIMALS AS PRIZES OR INDUCEMENTS - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-411 MOLESTING BIRDS - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-601 - WILD, EXOTIC, AND HYBRID ANIMALS - THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-602 - IMPORTATION OF WILD RABBITS AND HARES -
THE COMMISSION RECOMMENDS THAT A FINE OF \$500 BE
IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-603 - OTHER PROHIBITED ANIMALS - THE COMMISSION
RECOMMENDS THAT A FINE OF \$500 BE IMPOSED FOR
VIOLATION OF THIS CODE SECTION.

§10-701 - ATTACK DOGS - THE COMMISSION RECOMMENDS
THAT THE FINE BE INCREASED FROM \$500 TO \$1,000.

§10-705 - VICIOUS ANIMALS - AT LARGE - THE
COMMISSION RECOMMENDS THAT A FINE OF \$1,000 BE
IMPOSED FOR VIOLATION OF THIS CODE SECTION.

§10-918 - SICK OR INJURED HORSES - THE COMMISSION
RECOMMENDS THAT A FINE OF \$1,000 BE IMPOSED FOR
VIOLATION OF THIS CODE SECTION.

THE LAW DEPARTMENT APPROVES CITY COUNCIL BILL 11-0766
FOR FORM AND LEGAL SUFFICIENCY SUBJECT TO THE
FOLLOWING NOTED AMENDMENTS:

1. IN SEC. 10- 106(B), PAGE 9, THE BILL PROVIDES THAT A
PERCENTAGE OF THE FEES AS APPROVED BY THE BOARD OF
ESTIMATES SHALL BE RETAINED BY THE HEALTH DEPARTMENT
TO FUND ANIMAL CONTROL AND PROTECTION PROGRAMS. THIS
SECTION CONFLICTS WITH THE BALTIMORE CITY CHARTER,
ARTICLE VII, SEC. 12 WHICH REQUIRES THAT THE
DIRECTOR OF FINANCE COLLECT ALL MONIES DUE THE CITY
AND DEPOSIT THEM IN APPROVED ACCOUNTS. IN ADDITION,
ARTICLE VI, SEC.8 STATES THAT THE ORDINANCE OF
ESTIMATES SHALL INCLUDE ALL MONEYS TO BE
APPROPRIATED BY THE CITY FOR ALL PURPOSES FOR THE
FISCAL YEAR. THE LAW DEPARTMENT RECOMMENDS THAT THIS
SECTION BE AMENDED TO BE CONSISTENT WITH THE CHARTER
AUTHORITY OF THE BOARD OF ESTIMATES AND THE
DEPARTMENT OF FINANCE.

2. ON PAGE 11, LINE 16, AFTER "(5)" INSERT "PURSUANT TO SECTION 10-108,."
3. ON PAGE 11, LINE 22, AFTER "STATE" INSERT "AS AUTHORIZED UNDER STATE LAW."
4. ON PAGE 12, LINE 9, AFTER "INSPECTION" INSERT "AUTHORIZED UNDER SECTION 10-108."
5. ON PAGE 16, LINE 27, ANIMAL SHELTERS ARE GIVEN DISCRETION TO APPROVE THE ISSUANCE OF A LICENSE. ANIMAL SHELTERS, AS DEFINED IN SEC. 10-101(H), CAN INCLUDE HUMANE SOCIETIES WHICH ARE NOT CITY AGENCIES. ARTICLE II, SEC. 19 GRANTS THE MAYOR AND CITY COUNCIL THE AUTHORITY TO ENACT ANIMAL CONTROL LAWS. THAT AUTHORITY CANNOT BE DELEGATED TO A NON-GOVERNMENTAL BODY. ONLY MINISTERIAL OR ADMINISTRATIVE FUNCTIONS CAN BE DELEGATED NOT DISCRETIONARY FUNCTIONS. ANDY'S ICE CREAM V. CITY OF SALISBURY, 125 MD. APP. 125, 161 (MD. CT. SPEC. APP. 1999). NON-GOVERNMENTAL ANIMAL SHELTERS CAN PROVIDE FORMS AND COLLECT FEES BUT CAN NOT BE GIVEN DISCRETION TO APPROVE OR DENY A LICENSE UNLESS THE LEGISLATURE PROVIDES GUIDELINES FOR THE EXERCISE OF THAT DISCRETION THAT PREVENTS ARBITRARY DECISION-MAKING. GUIDELINES FOR APPROVAL CAN BE INSERTED INTO THE BILL TO REMEDY THIS PROBLEM OR THE BILL CAN SIMPLY DIRECT NON-GOVERNMENTAL SHELTERS TO ISSUE LICENSES TO ALL THAT APPLY.
6. ON PAGE 19, LINE 11 STRIKE "OF" AND SUBSTITUTE "CONCERNING."
7. ON PAGE 24, LINE 16, WORDS APPEAR TO BE MISSING. THIS LINE NEEDS TO BE AMENDED AS APPROPRIATE.

8. ON PAGE 31, LINES 23-29, THE BILL ATTEMPTS TO DEFINE A "PUBLIC NUISANCE ANIMAL." LINE 29 STATES THAT AN ANIMAL THAT "MOLESTS OR INTIMIDATES PEDESTRIANS OR PASSERSBY" IS A PUBLIC NUISANCE ANIMAL. AN ORDINANCE DEALING WITH NUISANCES IS REQUIRED TO GIVE FAIR WARNING BY SPECIFYING THE CONDUCT PROHIBITED. THE POWER TO DETERMINE WHAT IS A NUISANCE AND ABATE IT IS NOT ARBITRARY; AS WITH ALL EXERCISES OF THE POLICE POWER, THE DETERMINATION OF NUISANCES IS SUBJECT TO CONSTITUTIONAL GUARANTEES, AND A MUNICIPALITY MAY NOT DECLARE TO BE A NUISANCE WHAT IS NOT A NUISANCE IN FACT. AM.JUR.2D MUNICIPAL CORP. SEC.393. LINE 29 APPEARS TO BE VAGUE AND MAY NOT GIVE CITIZENS SUFFICIENT NOTICE OF WHAT IS PROHIBITED CONDUCT.
9. ON PAGE 32, IN BOTH LINES 4 AND 7, "UNREASONABLY" SHOULD PRECEDE "CAUSE".
10. ON PAGE 30, LINE 5, SEC. 10-503, NO NOTICE REQUIREMENT IS PROVIDED FOR IF A PUBLIC NUISANCE ANIMAL OR PUBLIC NUISANCE CONDITION EXISTS: NOTICE MAY BE HELPFUL TO CURE THE VIOLATION WITHOUT RESORT TO ABATEMENT PROCEEDINGS BY THE HEALTH DEPARTMENT.
11. ON PAGE 38, LINE 1-2, STRIKE "THAT AS DEFINED" AND SUBSTITUTE "THAN".
12. ON PAGE 38, LINES 20-23, THE PHRASE "SO THAT THE ANIMAL SHOULD BE IMMEDIATELY KILLED" IS CONFUSING. IT SHOULD BE REWORDED TO CLEARLY STATE THAT INTENT.
13. ON PAGE 40, LINE 16, HUMANE OFFICERS AND THIRD PARTIES CONTRACTING WITH THE CITY ARE GIVE AUTHORITY TO ENTER PRIVATE PROPERTY TO IMPOUND. THIS WOULD CAUSE THE CITY TO BE LIABLE FOR THE ACTIONS OF THESE THIRD PARTIES ON PRIVATE PROPERTY. AT THE VERY LEAST, THIS SECTION SHOULD BE MADE SUBJECT TO SEC. 10-108 REGARDING OBTAINING A RIGHT OF ENTRY AND ANY CONTRACT MUST REQUIRE THE THIRD PARTY TO INDEMNIFY THE CITY.