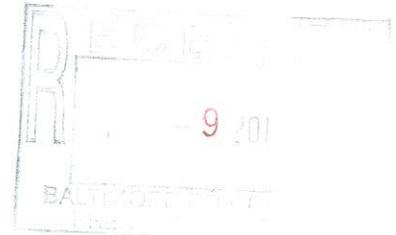


November 9, 2011

Honorable President and Members  
of the City Council of Baltimore  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Attn: Karen Randle Executive Secretary



Re: City Council Bill No. 11-0766 – Animal Control and Protection -  
Reconstitution

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 11-0766. City Council Bill 766 repeals Article 10 of the Health Code and provides for a reconstituted statutory scheme for animal control and protection.

The Law Department has the following concerns with the bill:

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 can not 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

F/A

(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. I am not sure what the intent is but 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. I am not sure of the intent but perhaps 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.
14. On page 47, line 12 strike "with" and substitute "without".
15. On page 47, line 25 strike "other".
16. On page 52, the bill provides for the creation of the Animal Hearing Board. Sec. 10-1002 provides for the Commissioner to appoint the board members and to determine the terms of the members. Article IV, Sec. 6(b) of the Charter provides that the Mayor shall have the sole power of appointment of all municipal officers including members of boards and commissions. See Art. 1, Sec.2. The commissioner therefore cannot appoint the board members. They must be appointed by the Mayor and confirmed by the City Council pursuant to Art. IV, Sec. 6. In addition, the Commissioner can not set the terms of

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the board members. Art. IV, Sec. 6(b) of the Charter requires that all members of boards and commissions shall serve terms that expire in 4 years or at the end of the Mayor's term whichever occurs first.

Subject to the amendments noted above, the Law Department can approve City Council Bill 11-0766 for form and legal sufficiency.

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Sincerely yours,



Elena R. DiPietro  
Chief Solicitor

cc: George A. Nilson, City Solicitor  
Angela Gibson, City Council Liaison, Mayor's Office  
Hilary Ruley  
Ashlea Brown  
Victor Tervalá