

MONTGOMERY COUNTY CODE
Chapter 5

Chapter 5. ANIMAL CONTROL.*

Article I. General Provisions.

§ 5-101. Definitions.

§ 5-102. Administration.

§ 5-103. Regulations.

§ 5-104. Animal Matters Hearing Board.

Article II. Prohibited Conduct.

§ 5-201. Cruelty.

§ 5-202. Dangerous and potentially dangerous animals.

*Editor's note—Section 1 of 1999 L.M.C., ch. 10, repealed former Chapter 5, §§ 5-1 through 5-78, and enacted a new Chapter 5, §§ 5-101 through 5-404. The former Chapter 5 was derived from the following: 1975 L.M.C., ch. 4, § 1; 1977 L.M.C., ch. 28, § 3; 1980 L.M.C., ch. 23, § 1; 1983 L.M.C., ch. 22, § 8; 1983 L.M.C., ch. 25, § 1; 1984 L.M.C., ch. 24, § 8; 1984 L.M.C., ch. 25 § 8; 1984 L.M.C., ch. 27, § 8; 1985 L.M.C., ch. 8 §§ 1, 2 and 3; 1985 L.M.C., ch. 11, § 1; 1985 L.M.C., ch. 31, § 3; 1985 L.M.C., ch. 45, § 1; 1986 L.M.C., ch. 40, § 1; 1986 L.M.C., ch. 47, § 1; 1986 L.M.C., ch. 48, §§ 1, 2, 3, 4 and 5; 1988 L.M.C., ch. 34, § 1; FY 1991 L.M.C., ch. 9 § 1; CY 1991 L.M.C., ch. 26, §§ 1 and 2; 1992 L.M.C., ch. 34, § 1; 1993 L.M.C., ch. 28 § 1; 1995 L.M.C., ch. 27, § 1; 1996 L.M.C., ch. 2, § 1; 1998 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 28, §§ 1, 15 and 16. The effective date of the repeal of former sections 5-19A, 5-20 and 5-21, pursuant to 2001 L.M.C., ch. 28, § 1, is the same effective date as 1998 L.M.C., ch. 21, § 1.

Section 2 of 1999 L.M.C., ch. 10, stated that a regulation that implements Chapter 5 continues in effect, except to the extent it is inconsistent with this Act or the regulation is repealed or amended

Previous Section 5-26 of this Chapter is cited in Moura v. Randall, 119 Md. App. 632, 705 A.2d 334 (1998). In Cahill v. Montgomery County, 72 Md. App. 274, 528 A.2d 527 (1987), cert. denied, 311 Md. 286, 533 A.2d 1308 (1987), the court held that an administrative search of a private residence conducted under previous § 5-18(a) and (b) must comport with the principles of the Fourth Amendment of the U.S. Constitution which requires the prior obtaining of a search warrant predicated upon a demonstration of probable cause. The court held further that "probable cause" for the issuance of an administrative search warrant is not the same as that required in a criminal case but rather may be established on the basis of specific evidence of an existing violation or upon a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied. Cahill also quoted previous § 5-45.

Cross references—Slaughterhouses, ch. 46; feeding of garbage to swine, § 48-12; animals prohibited in public transit facilities, § 54A-2.

§ 5-203. Public nuisance and other violations.

Article III. Enforcement, Penalties and Appeals.

§ 5-301. General provisions.

§ 5-302. Special enforcement provisions regarding specific offenses.

§ 5-303. Impoundment.

§ 5-304. Disposition.

§ 5-305. Penalties.

§ 5-306. Appeal to the Board.

§ 5-307. Appeal from the Board.

Article IV. Licensing and Health.

§ 5-401. Dog and cat licenses.

§ 5-402. Rabies control.

§ 5-403. Clinics to Alter Animals.

§ 5-404. Animal Business Licensing.

ARTICLE I. GENERAL PROVISIONS.

Sec. 5-101. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Alter: To castrate or perform an ovario-hysterectomy to make an animal physically incapable of reproducing.

Animal: An animate being capable of voluntary movement, other than humans. Specifically, a non-human species in the biological kingdom *Animalia*.

Animal control officer: The Director of the Division, or the Division Director's designee.

Animal shelter: A facility owned or operated by, or under contract with, the County for the care, confinement, or detention of animals.

Appropriate authority: For purposes of State law regarding animals, the Division, the Board, and any other agency or official designated by regulation.

At large: A dog, except a service animal, is at large if it is outside the owner's premises and not leashed, unless it is in a dog exercise area designated by the Maryland-National Capital Park and Planning Commission or is participating in a qualified activity. Any other animal is at large if it is outside the owner's premises and is not leashed or immediately responsive to verbal or non-verbal direction. For purposes of this Chapter or any other animal control law, the common area of a homeowners' association, condominium, or cooperative is not the owner's premises.

Aviary: A place for keeping birds confined.

Benevolent organization: A non-profit organization, registered with the Division, that cares for stray or homeless animals.

Bite: Seizing or wounding with the teeth or mouth that causes pain or injury. A minimal medical or cosmetic injury, such as a puncture or bruise or damaged clothing, must be shown as evidence of a bite.

Board: The Animal Matters Hearing Board.

Cage: An enclosure of limited space, enclosed on the bottom and on all 4 sides, in which animals are placed for any purpose, including confinement or display.

Commercial enterprise: An establishment whose primary function is to sell products, services, or commodities.

Commercial kennel: An establishment to sell animals or breed them for sale, or that provides boarding, grooming, or training for animals for a fee. *Commercial kennel* does not include:

- (1) an animal hospital maintained by a licensed veterinarian; or
- (2) a fancier's kennel.

Cross-tethering: A manner of securing an animal firmly by tying the animal from at least two different directions.

Dangerous animal: A dangerous animal as defined in Section 5-202.

Director: The Director of the Division or the Director's designee.

Disposition: Adoption or other placement of a domestic animal, release of a wild animal into a suitable habitat, or humane euthanasia administered in a manner approved by the Division.

Division: The Animal Services Division in the Department of Police.

Domestic animal: An animal of a tamed species commonly kept as pets or livestock.

Dwelling: A building or portion of a building that provides complete living facilities for people, including facilities for cooking, sanitation, and sleeping. *Dwelling* does not include a garage or extended structure separate from a house.

Exotic animal: A non-native species kept as a pet or livestock, other than a rodent, rabbit or hare, or hoofed animal.

Facility: A building or land, other than a veterinary hospital, for boarding, breeding, or care of domestic animals (except animals raised for agricultural purposes) for profit.

Fancier: A person who owns or keeps 3 or more dogs or cats for noncommercial hunting, tracking, exhibition in shows, or field or obedience trials. *Fancier* does not include a person who keeps:

- (1) 3 or more male dogs or cats primarily for commercial stud services; or
- (2) 3 or more female dogs or cats that each bear offspring more than once in a 12-month period.

Fancier's kennel: A private kennel maintained by a fancier to keep or train dogs or cats.

Groomer: An individual who provides bathing and haircutting of pets for compensation.

Guard dog: A dog trained to protect persons or property or to attack on command. *Guard dog* includes a dog serving a law enforcement agency, unless otherwise indicated. See Section 5-202(h).

Harbor: To provide food or shelter to an animal.

Health Officer: The County Health Officer or the Officer's designee.

Healthful: Hygienic conditions that maintain health and prevent disease in a particular species of animal.

Keeper: A person who maintains a facility regulated by this Chapter.

Livestock: Horses, cattle, sheep, goats, swine; domesticated rabbits and hares; commercially raised fur-bearing animals; and similar animals.

Mammal: An animal of any species of higher vertebrates that nourish their young with milk secreted by mammary glands and have skin covered with hair.

Non-commercial kennel: A building or land for boarding, breeding, or care of domestic animals that belong to the owner of the building or land and are kept for show or hunting, or as pets. *Non-commercial kennel* does not include an equestrian facility.

Obedience trained: An animal trained to heel on and off a leash and obey commands to come to its owner, sit, lie, and stand until further command. Heel means to move along at the heels of a person controlling the animal.

Owner: A person who, regardless of whether the person has legal title to the animal:

- (1) temporarily or permanently harbors or controls an animal;
- (2) has a property right in an animal; or
- (3) allows a person under 18 years old to harbor or control an animal.

Owner does not include a veterinary hospital, commercial kennel, or pet shop (regarding an animal being treated, boarded, or offered for sale, respectively), or an employee of these enterprises unless otherwise indicated in this Chapter.

Pet shop: A commercial enterprise that offers for sale any species of live animal. *Pet shop* does not include an enterprise that offers only livestock for sale.

Potentially dangerous animal: A potentially dangerous animal as defined in Section 5-202.

Provocation: An animal's behavior is provoked if the behavior is:

- (1) in response to current or previous tormenting, teasing, abuse, threat, or assault by a person or animal;
- (2) in response to pain or injury;
- (3) to protect the animal, its offspring, or other animals in the same household; or
- (4) directed against a person who is:
 - (A) not lawfully present where the action or behavior occurs;
 - (B) injuring, threatening, or endangering the animal's owner or another person in the vicinity; or
 - (C) damaging or unlawfully entering the property, household, or enclosure where the animal is harbored.

Public nuisance: A condition or repeated behavior that unreasonably interferes with or harms public health, safety, or peace. *Public nuisance* includes the conditions or repeated behaviors described in Section 5-203(b).

Qualified activity: A legal, supervised animal activity using humane practices, such as hunting, chasing, obedience or agility training, herding, tracking, or search and rescue.

Riding school or stable: An equestrian facility, as defined in Section 59-A-2.1.

Rodent-proof: Resistant to the entry, feeding, harboring, or breeding of rodents.

Sanitary: A condition of good order and cleanliness that reduces the spread of disease.

Service animal: Any guide or signal dog or other animal trained to work or perform tasks for a person with a disability, including guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items, or any dog used by the Department of Police, Sheriff's Office, Fire and Rescue Service, Department of Homeland Security, or any federal or state law enforcement or search and rescue agency.

Species: A biological classification more specific than a genus or subgenus, describing related animals with common attributes capable of interbreeding.

Trainer: An individual who provides animal behavior modification services or classes for a fee.

Unwanted contact: An animal's unwelcome or unsolicited threatening physical contact or close proximity to a person or a domesticated animal that occurs outside of an owner's property and causes alarm in a reasonable person, such as biting, chasing, tracking, inhibiting movement, or jumping.

Wild animal: An animal of a species of an untamable disposition, a species in a state of nature, or a native self-sustaining species. All animals of these species are wild animals even if a particular animal has characteristics that reflect domestication or taming. (1999 L.M.C., ch. 10, § 1; 2000 L.M.C., ch. 6, § 1; 2001 L.M.C., ch. 2, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—See County Attorney Opinion dated 1/24/99 explaining that a non-merit position in Animal Control Division need not be filled.

Sec. 5-102. Administration.

(a) *Division duties.* The Division administers this Chapter and must:

- (1) provide an animal shelter program;

- (2) assist and cooperate with the Health Officer and State officials in carrying out an anti-rabies program, including vaccination of dogs, cats, and ferrets, as required by State law and this Chapter;
- (3) carry out a program to license dogs and cats, as required by State law and this Chapter;
- (4) provide education programs regarding the humane treatment of animals;
- (5) provide wildlife management; and
- (6) provide a spay-neuter program.

The Division may provide other services and programs to promote the humane treatment of animals and protect public health and welfare from animal-related hazards.

(b) *Director.* The Director of the Division must:

- (1) maintain records of any license issued under this Chapter for an animal or facility;
- (2) supervise any animal shelter;
- (3) maintain permanent records of:
 - (A) animals impounded or otherwise harbored by an animal shelter;
 - (B) animals inoculated against rabies; and
 - (C) all animal bites or other attacks in the County;
- (4) collect and dispose of any dead wild, domestic, or exotic animal the size of an opossum or larger, found on a County road or other County property (and may do the same for this type of animal found on other property) and must recover from any identifiable owner of the animal a collection and disposal fee; and
- (5) enforce this Chapter and, concurrently with other authorized County officials, Chapter 31B (Noise Control) for a noise disturbance by an animal.

(c) *Animal shelter.* The County must, directly or by contract, maintain and operate an animal shelter or other place of confinement. The shelter must remove, harbor, care for, and dispose of any animal that the Division finds is abused, homeless, unwanted, abandoned, or neglected, or threatens the health, safety, peace, or security of the public.

- (d) *Care of animals.* The County may contract with veterinarians or animal hospitals to care for injured or diseased animals whose owners are unknown, that the County or its agents collect, or that any person brings to the animal shelter.
- (e) *Enforcement of state animal control laws.* To the extent allowed by State law, the Division may enforce any State animal control law. A reference in a State animal control law to the "appropriate authority" (or any similar term) in the County means the Division and any other County agency designated by regulation adopted under method (3). (1999 L.M.C., ch. 10, § 1; 2001 L.M.C., ch. 2, § 1.)

Sec. 5-103. Regulations.

The County Executive may adopt regulations to implement this Chapter under method (2) or another method specified in this Chapter. The Executive may establish fees under this Chapter by regulation adopted under method (3). (1999 L.M.C., ch. 10, § 1.)

Sec. 5-104. Animal Matters Hearing Board.

- (a) *Jurisdiction.*
 - (1) As provided in this Chapter, the Animal Matters Hearing Board has jurisdiction to hear:
 - (A) original complaints involving allegations of violations of this Chapter or a violation of the terms of an adoption agreement; and
 - (B) appeals from any decision or order of the Director.
 - (2) The Board must not enter an order that conflicts with a decision of the County Circuit or District Court.
 - (3) The Board must not hear a complaint or an appeal involving the seizure of an animal if the owner has been arrested and charged with violating any provision of Title 10, Subtitle 6 of the Criminal Law Article or Section 21-1004.1 of the Transportation Article of the Maryland Code until the charges have been finally resolved by the court with jurisdiction.
- (b) *Complaints.* A person may file a complaint with the Board alleging a violation of this Chapter or a violation of an animal shelter adoption contract. A complaint must be filed within one year after the alleged violation occurred.

(c) *Membership.*

- (1) The Animal Matters Hearing Board consists of 5 members appointed by the County Executive and confirmed by the County Council. The Board must include:
 - (A) a veterinarian or veterinary technician;
 - (B) a representative of the Montgomery County Humane Society; and
 - (C) 3 public members, including a representative of licensed animal fanciers.
- (2) The Executive must appoint, subject to Council confirmation, a qualified alternate for each member. The alternate may vote in place of the member when the member is absent.
- (3) The Executive may remove a member who misses three meetings during a fiscal year without permission of the Chair.
- (4) Each member and alternate serves for 3 years or until a successor takes office, whichever is later. A person appointed to fill a vacancy fills the remainder of the predecessor's term.
- (5) The Board must elect a Chair each year from among its members.

(d) *Duties.* The Board must:

- (1) decide complaints and appeals under this Chapter, including complaints alleging a violation of an animal shelter adoption contract;
- (2) recommend standards to maintain regulated facilities; and
- (3) report annually to the Executive and Council on the Board's activities and any recommendations for improving animal control laws, regulations, and programs.

(e) *Authority.* The Board may:

- (1) Order the Director to seize, impound, destroy, or take any other action the Board decides is necessary regarding an animal that is suffering cruelty, dangerous or potentially dangerous, or causing a public nuisance or other violation of this Chapter.

- (2) Specify conditions under which an owner may keep an animal that the Board finds has suffered cruelty, is dangerous or potentially dangerous, or caused a public nuisance or other violation of this Chapter.
 - (3) Require an owner to forfeit an animal to the County or prohibit the owner from harboring an animal in the County.
 - (4) Impose conditions on an owner harboring other animals in the County.
 - (5) Revoke or suspend a facility's license for a violation of this Chapter.
 - (6) Appoint a person to mediate a case if the owner and each complainant (which may include the Division) agree. A consent order resulting from mediation is an order of the Board. If the mediator or the Board finds that the parties are not likely to agree to a mediated consent order within a reasonable time, the Board must decide the case.
 - (7) Order the owner of an animal to pay actual damages (including medical or veterinary expenses) not exceeding \$1,000 to a person injured or aggrieved by the animal's actions or behavior. This limit applies separately to each incident resulting in a violation of an animal control law.
 - (8) In a case based on a complaint or appeal, the Board, in addition to ordering the payment of damages, may order the losing party to pay filing fees or other reasonable hearing-related expenses.
- (f) *Procedures. Hearings on Original Complaints.*
- (1) The Administrative Procedures Act (Chapter 2A) applies to the Board's hearings and decisions, unless otherwise expressly provided in this Chapter. The Board may issue procedural rules to implement this subsection. The Board may hold an emergency hearing under Section 2A-9.
 - (2) Except as provided in Section 2A-9, the Board must provide notice of any hearing to the parties at least 15 days before the hearing. The parties may agree to a shorter notice period. The Board may provide notice by first class mail, which is effective 3 days after the notice is placed in the mail, postage prepaid, to the last known address of the person to whom the notice is addressed.
- (g) *Fee.* The Executive may set by regulation a fee for filing a complaint with the Board. The filer must pay the fee to the Division. The Board or the Animal Control Officer may waive the filing fee in response to a written request. If the parties agree to a consent order after mediation, the Board may refund the filing fee.

- (h) *Support.* The Chief Administrative Officer must provide the services and County facilities that are reasonably necessary for the Board to perform its duties. The County Attorney must provide legal counsel to the Board. (1999 L.M.C., ch. 10, § 1; 2001 L.M.C., ch. 2, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—See County Attorney Opinion dated 2/27/00 explaining that the term “veterinary technician” does not require a person to be registered with the State Board of Veterinary Medical Examiners. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee.

ARTICLE II. PROHIBITED CONDUCT.

Sec. 5-201. Cruelty.

- (a) *Violation.* A person must not violate State laws against cruelty to animals, such as by:
- (1) violating general prohibitions against cruelty (Md. Code, Criminal Law Article Title 10, Subtitle 6);
 - (2) killing a dog or cat by an inhumane method (Md. Code, Criminal Law Article § 10-611);
 - (3) abandoning a domestic animal (Md. Code, Criminal Law Article § 10-612);
 - (4) giving away animals under certain circumstances (Md. Code, Criminal Law Article § 10-610);
 - (5) selling or importing certain puppies and kittens (Md. Code, Criminal Law Article § 10-613);
 - (6) selling or coloring a chick (Md. Code, Criminal Law Article, § 10-614);
 - (7) injuring certain horses (Md. Code, Criminal Law Article § 10-620);
 - (8) killing or trapping a carrier pigeon (Md. Code, Criminal Law Article § 10-622);
 - (9) poisoning a dog (Md. Code, Criminal Law Article § 10-618);
 - (10) abuse or neglect of an animal (Md. Code, Criminal Law Article, § 10-604);
 - (11) aggravated cruelty to animals, in general, (Md. Code, Criminal Law Article, § 10-606);
 - (12) failing to take actions required for the driver of a motor vehicle that hits and injures an animal (Md. Code, Transportation Article, § 20-106); or

(13) leaving a cat or dog in a vehicle under certain circumstances (Md. Code, Transportation Article, § 21-1004.1).

(b) *Regulations.* The County Executive may issue regulations, consistent with State law, to interpret and implement State anti-cruelty laws in the County. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—Section 5-201 is cited in Coroneos v. Montgomery County, 161 Md. App. 411, 869 A.2d 410 (2005).

Sec. 5-202. Dangerous and potentially dangerous animals.

(a) *Violation.*

(1) Except as provided in subsection (d), a person must not import, sell, trade, buy, barter, breed, raise, keep, or possess:

(A) a wild animal; or

(B) any animal that the County or any other jurisdiction finds is dangerous or a threat to public health or safety, including types of animals excluded from State law prohibitions on dangerous animals.

(2) An animal is dangerous if the animal is:

(A) a "dangerous dog" as defined in Md. Code, Criminal Law Article § 10-619;

(B) any other animal that, without provocation, has killed or severely injured a person;

(C) an animal that poses a physical threat to humans because of specific training or demonstrated behavior, or because the animal's bite is poisonous; or

(D) a potentially dangerous animal that:

(i) bites a person without provocation;

(ii) attacks a person or animal without provocation; or

(iii) kills or severely injures a domestic animal outside the property of the potentially dangerous animal's owner.

- (3) An animal is potentially dangerous if:
- (A) the animal:
 - (i) bites a person without provocation;
 - (ii) kills or severely injures a domestic animal outside the attacking-animal owner's property;
 - (iii) attacks or has unwanted contact with a person or animal without provocation; or
 - (iv) was declared by the County or another jurisdiction as potentially dangerous (even if the other jurisdiction uses a different term); and
 - (B) the Division notifies the owner that the animal is potentially dangerous.

An animal's actions in a qualified activity do not make the animal potentially dangerous.

- (b) *Declared dangerous or potentially dangerous elsewhere.* An owner of an animal declared dangerous or potentially dangerous in another jurisdiction must remove the animal from the County within 10 days after receiving a citation or other notice of a violation of this Chapter unless the Director waives this requirement and imposes conditions or restrictions under subsection (d) for the animal to remain in the County.
- (c) *Limited waiver.* The Director may waive the prohibitions of subsections (a) or (b) for a specific animal only if the Director finds that the animal is not a threat to public health or safety.
- (d) *Confinement and microchipping.* The Director or the Board may impose any restriction or condition, including confinement or microchipping the animal, on the owner of a dangerous or potentially dangerous animal that is reasonably expected to protect the public health or safety. A person must not release the animal from confinement unless the animal is:
 - (1) securely muzzled in a manner approved by the Division;
 - (2) leashed; and
 - (3) under the control of a person who is at least 18 years old and is physically able to restrain the animal.

MONTGOMERY COUNTY CODE
Chapter 5

- (e) When a potentially dangerous animal is off the owner's premises or property it must be:
 - (1) on a leash or harness; and
 - (2) under the control of a person who is at least 18 years old and is physically able to restrain the animal.

- (f) *Guard dogs.* An owner of a guard dog must:
 - (1) confine the dog as described in subsection (c);
 - (2) transport the dog only in a humane, escape-proof manner;
 - (3) ensure that the dog always wears a tag identifying the owner's name, address, and emergency phone number;
 - (4) tell the Department of Police and the Fire Department the location of a working guard dog before placing the animal in service and provide emergency contact information about the owner; and
 - (5) on demand by an animal control officer, produce the dog for examination by a specific veterinarian at the owner's expense.

- (g) *Licensing records.* The Director must indicate in the licensing records whether a licensed animal is dangerous, potentially dangerous, or a guard dog.

- (h) *Exception.* A dog serving a law enforcement agency is not a dangerous or potentially dangerous animal or a guard dog under this Section. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—Section 5-202 is cited in Coroneos v. Montgomery County, 161 Md. App. 411, 869 A.2d 410 (2005).

Sec. 5-203. Public nuisance and other violations.

- (a) *Violation.* An owner must not:
 - (1) Allow an animal other than an altered cat to be at large. An animal that is participating in a qualified activity is not at large unless the animal leaves the activity.

- (2) Allow an animal to damage or defecate on property outside the owner's property. An animal may defecate on public property or the common area of property in which the owner shares an interest if the owner immediately removes and disposes of the feces by a sanitary method approved by the Division. This paragraph does not affect any right of a common ownership community to regulate or ban animals from the community's property.
- (3) Allow an animal to enter private property without the property owner's permission. The property owner may capture the trespassing animal humanely and promptly notify animal control or other appropriate law enforcement authorities, or humanely transport the animal to an animal shelter.
- (4) Allow a female dog or cat in heat to be outside a building or other secure enclosure that prevents attraction of other animals.
- (5) Allow an animal to cause an unsanitary, dangerous, or offensive condition because of the size or number of animals in a single location or because a facility is not appropriate for the animal or properly maintained.
- (6) Allow an animal to cause noise that is loud and persistent enough to disturb another person's quiet enjoyment.
- (7) Allow a dog to be on public school grounds on a day when school is in session, or in a public recreation area during an organized activity, unless the dog is controlled by a leash or similar restraining device. This paragraph does not apply to a dog participating in a qualified activity if the agency controlling the school or area gave permission to the owner of the dog or the sponsor of the qualified activity.
- (8) Allow a domestic or exotic bird, including a homing pigeon, to be in an aviary within 100 feet of any structure owned or leased by another person and used for human habitation or work. This paragraph does not apply to a bird:
 - (A) other than a homing pigeon, inside the owner's dwelling;
 - (B) in a pet shop;
 - (C) in an agricultural zone as defined in Chapter 59; or
 - (D) in a market for less than 24 hours for sale for human consumption.
- (9) Refuse or fail to obtain a license for a dog, cat, or ferret as required by State law or this Chapter.

- (10) Allow an animal to act in any other way that the Director, the Board, or an animal control officer finds would cause any other public nuisance established by regulation. An action prohibited by the regulation is a violation even if the action does not qualify as a public nuisance because the owner has not received notice described in subsection (b)(1).
 - (11) sell, trade, or give a domesticated animal to another person at a place open to the public, except a business licensed to sell animals under Section 5-404.
- (b) *Public nuisance.* An owner must not allow an animal to create a public nuisance by:
- (1) behavior described in subsections (a)(1), (2), (3), (4), (6), (8), (9), or (10) occurring after the owner received notice from the County in any form (such as an oral warning from a Division employee) of a violation because of the same behavior; or
 - (2) any behavior described in subsections (a)(5) or (7).
- (c) An owner must prevent the owner's animal from having unwanted contact with a person or another domesticated animal at all times. (1999 L.M.C., ch. 10 § 1; 2001 L.M.C., ch. 2, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—Section 5-203 is cited in Coroneos v. Montgomery County, 161 Md. App. 411, 869 A.2d 410 (2005).

ARTICLE III. ENFORCEMENT, PENALTIES, AND APPEALS.

Sec. 5-301. General provisions.

- (a) *Who may enforce.* The Director, an animal control officer, the Board, and any other person authorized by regulation issued under method (2) may enforce an animal control law. In this Article, an "animal control law" includes a State animal control law, this Chapter, and, for noise from an animal source, Chapter 31B.
- (b) *Forms of enforcement.* The Director or an animal control officer may enforce an animal control law by issuing a citation or other lawful order. To exercise its authority, the Board must issue a written order that explains the factual and legal basis for the order.
- (c) *Types of enforcement.*
 - (1) Except as provided in paragraph (2), the Director or an animal control officer may, to enforce an animal control law or protect the health or safety of an animal, a person, or the public:

- (A) seize, impound, and dispose of an animal; or
 - (B) take any other action necessary or order an owner to take any other action necessary to enforce the law, including ordering that a microchip be inserted into an animal.
- (2) The Director or an animal control officer must not destroy an animal under paragraph (1) unless:
- (A) the Board has ordered the animal to be destroyed; or
 - (B) the Director, an animal control officer, or the Board finds that destruction of the animal is necessary to prevent an immediate threat to public health or safety. If an owner requests a hearing within 5 days after the County notifies the owner of any action under this paragraph, the Board must hold a hearing after the fact on the action and may order the County to reimburse the owner for the resale value of the animal if the action was not justified; or
 - (C) after 5 days, the owner has not filed an appeal to the Board.
- (3) A citation or order may require an owner to act or refrain from acting to prevent or stop a violation of an animal control law.
- (d) *Warrants.* An animal control officer may enforce an animal control law by searching private property and seizing evidence or animals, under State law or a warrant issued by a court.
 - (e) *Interference with enforcement.* A person must not interfere or attempt to interfere with any County officer, employee, or agent enforcing an animal control law.
 - (f) *Failure to follow or appeal an order.* An owner who, without justification, does not follow or appeal a legal order issued under this Chapter has abandoned and forfeited to the County any animal that is the subject of the order.
 - (g) *Concealing ownership.* A person must not conceal or falsely deny ownership of an animal to any person authorized to enforce an animal control law.
 - (h) *Board order to take action.* As a result of an adjudication of a complaint or appeal, the Board may order the Director or an animal control officer to take an action described in paragraph (c)(1). (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Sec. 5-302. Special enforcement provisions regarding specific offenses.

- (a) *Dangerous or potentially dangerous animals.*
- (1) An animal control officer immediately may seize, impound, and humanely euthanize, at the owner's expense, an animal that the Director, an animal control officer, or the Board finds is dangerous or potentially dangerous and poses an immediate threat to public health or safety.
 - (2) If the animal poses no immediate threat, the owner may, within 5 days after the County notifies the owner about the violation, appeal the violation or action to the Board and request a hearing. The County must not dispose of the animal during the 5-day period for filing an appeal, or while an appeal is pending.
- (b) *Public nuisance and other violations.* The Board, the Director, or an animal control officer may order any action necessary to abate a public nuisance or any other violation of Section 5-203. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Sec. 5-303. Impoundment.

- (a) *Generally.* The Director, an animal control officer, or the Board may enforce an animal control law or protect the health or safety of a person, an animal, or the public by impounding (or for the Board, ordering the Director to impound) an animal at an animal shelter or other facility approved by the Director.
- (b) *Notice of impoundment.* The Director promptly must make a reasonable effort to locate and notify the owner of an impounded animal. The notice must inform the owner of applicable requirements of this Chapter, including the requirement in subsection (c) to pay in advance for the animal's care and the opportunity to request a waiver of the prepayment requirement under subsection (c)(7). The Director may notify the owner by first class mail to the owner's last known address, or, if the Director cannot locate the owner, by publishing a notice in a newspaper of general circulation in the County.
- (c) *Prepayment for care.*
- (1) The animal's owner must prepay any boarding costs before and during any appeal to the Board, unless waived or modified as provided in this Chapter. Within 5 days after receiving notice that an animal was impounded under any provision of this Chapter, the animal's owner must pay to the County the estimated cost of caring for the animal for the 30-day period beginning on the date the animal was impounded. The Director must estimate the cost, which must include the cost of food, veterinary care, and other necessities that a responsible owner would provide for the animal and may include other costs, such as *pro rata* staffing and administrative expenses, allowed by regulation. The owner must pay in cash or by another method acceptable to the Division.

- (2) If the animal remains impounded at the end of a 30-day period, the owner must, within 3 days after that 30-day period ends:
 - (A) pay any difference between the estimated and actual cost of care; and
 - (B) prepay the estimated cost of 30 additional days of care.
 - (3) The Director may:
 - (A) revise the estimated cost of care for each 30-day period to improve the accuracy of the estimate; and
 - (B) apply any previous payment for that animal that exceeds the actual cost of care to the next 30-day period.
 - (4) (A) The County must refund to the owner, within 10 business days after:
 - (i) the end of the impoundment, any payment from the owner that exceeds the actual cost of care, including any payment for a day that the County did not care for the animal; or
 - (ii) the final judgment of a court holding that the County seized and impounded the animal illegally, all payments from the owner.
 - (B) If the actual cost of care exceeds the total estimated payments, the owner must pay the difference under Section 5-304(b) and (c).
 - (5) If the owner does not comply with this Section at any time, the animal must be treated as abandoned and becomes the property of the County.
 - (6) The prepayment requirement in this Section does not apply to an animal impounded as a stray in violation of Section 5-203(a)(1) unless the animal also is impounded for any other violation of this Chapter.
 - (7) The Director may waive or modify the prepayment required under this subsection (such as by requiring weekly prepayments) if the owner provides evidence that prepayment for 30 days of care would be a serious financial hardship to the owner.
- (d) *Multiple impoundments.*
- (1) If an unaltered dog or cat is impounded 2 or more times, the owner must have the animal altered at the owner's expense within 30 days after the animal is released from impoundment or surrender the animal to the Director unless:

MONTGOMERY COUNTY CODE
Chapter 5

- (A) the owner appeals to the Board within 10 days after the date of the second violation; and
 - (B) the Board after a hearing waives this requirement or orders other action.
- (2) The Director must not allow an owner to redeem an animal impounded less than 12 months after the animal was released from a previous impoundment, unless the owner has successfully appealed any citation arising out of the prior impoundment, until the Director has issued:
- (A) a citation for the current violation; and
 - (B) an order designed to prevent future violations. (1999 L.M.C., ch. 10, § 1; 2001 L.M.C., ch. 2, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—Section 5-303 is quoted in Coroneos v. Montgomery County, 161 Md. App. 411, 869 A.2d 410 (2005).

Sec. 5-304. Disposition.

- (a) *Types of disposition.* An animal impounded by the Division may be:
 - (1) redeemed by an owner under certain circumstances;
 - (2) placed for adoption if abandoned;
 - (3) set loose in a suitable habitat if wild; or
 - (4) humanely euthanized in a manner approved by the Division.
- (b) *Redemption.* The owner of an impounded animal may redeem the animal if:
 - (1) the owner pays impoundment and boarding fees, including the costs of caring for the animal, transporting livestock, or removing an animal from a tree or other location to protect the health or safety of humans or the animal;
 - (2) the owner pays a field service fee, if a County employee or contractor brought the animal to a shelter or other facility;
 - (3) the owner shows proof of legal title to the animal;
 - (4) the animal is licensed;
 - (5) the Director approves or the Board orders the redemption, and the owner complies with any conditions for redemption; and
 - (6) redemption is not prohibited by another animal control law.

- (c) *Fees.* The owner must pay any fees described in subsection (b) even if the owner does not redeem the animal. Failure to pay within 30 days after any fee becomes due is a Class B civil violation.
- (d) *Release or adoption prohibited.* The Director must not:
 - (1) release an animal impounded under a Board order unless a Board order allows redemption; or
 - (2) place for adoption an animal that has not been abandoned unless the owner consents.
- (e) *Dangerous or nuisance animals.* The Director or any other person must not sell, release, or place for adoption an animal that an animal control officer found is dangerous or potentially dangerous; would cause a public nuisance or other violation, or has rabies or an incurable communicable disease, unless the Director finds the action is safe.
- (f) *Failure to redeem.* Unless otherwise ordered by the Board, an impounded animal is considered abandoned and becomes County property if the animal is not redeemed by its owner within 5 days after the Director notifies the owner about the impoundment under Section 5-303(b).
- (g) *Adoption.* The Director may place an abandoned animal for adoption as a pet unless the Board or the Director decides adoption of the animal is not in the best interest of public health or safety. A dog or cat placed for adoption must be altered by a licensed veterinarian, at the expense of the person adopting the animal, within a time specified by the Director. The Director must set the deadline for altering based on the animal's age, sex, and health, but the deadline must be within 3 months after the adoption. If the owner of an adopted animal does not alter the animal by the deadline, the owner must return the animal to the animal shelter.
- (h) *Humane euthanasia.* The County may dispose of an animal by humane euthanasia under regulations issued with the advice of a licensed veterinarian. The County must not dispose of an animal for commercial or experimental purposes. A licensed veterinarian periodically must review whether the County implements these procedures humanely.
- (i) *Release defined.* In this Section, release means to allow an owner to redeem an impounded animal. (1999 L.M.C., ch. 10, § 1; 2001 L.M.C., ch. 2, § 1; 2005 L.M.C., ch. 22, § 1.)

Sec. 5-305. Penalties.

- (a) *General penalty.* Unless otherwise provided in this Chapter or State law, a violation of this Chapter is a Class B violation. For any penalty under this Chapter, each day the

violation continues, and each paragraph of Section 5-203(a), is a separate violation. A person convicted of violating a State animal control or anti-cruelty law is not subject to civil penalties for violating County law based on the same prohibited acts or omissions.

- (b) *Violation of an order of the Board.* A violation of an order issued by the Board is a Class A civil violation. Each day the violation continues is a separate violation.
- (c) *Penalties.* A violation of:
 - (1) Section 5-201 is a Class A civil violation for which the penalty must not exceed the maximum penalty allowed by State law for the equivalent offense under State law;
 - (2) Section 5-202 is a Class A violation;
 - (3) any paragraph of Section 5-203(a) that is not also a violation of Section 5-203(b) is a Class B violation;
 - (4) Section 5-203(b) and 5-203(c) are Class A violations; and
 - (5) Section 5-402(c) is a Class A violation. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Sec. 5-306. Appeal to the Board.

- (a) *Time for noting appeal.* Except as provided in Section 5-104(a), a person aggrieved by a decision of the Director or an animal control officer may appeal the decision to the Board within 5 days after the Director or the animal control officer notifies the owner about the decision. The Director or animal control officer must not dispose of the animal during the 5-day period for filing an appeal, or while an appeal is pending, unless authorized to do so under this Chapter.
- (b) *Burden of production.* Notwithstanding the provisions of Section 2A-8(d), the Appellant has the burden of going forward with the production of evidence before the Board.
- (c) *Filing fee.* In addition to any other requirement imposed by this Section, the owner appealing a decision of the Director or an animal control officer must pay a filing fee established by executive regulation. The Board or the Director may waive the filing fee in response to an appellant's request.
- (d) *Board's decision.* The Board may modify a decision of the Director or an animal control officer only if the appellant proves by a preponderance of the evidence that the decision was arbitrary, illegal, or not based on substantial evidence. The Board must issue a written opinion explaining the factual and legal basis for its decision.

- (e) *Boarding of animal – pending Board decision.* If the owner timely appeals an impoundment or seizure, the owner may also seek review of the Director's determination of boarding costs by filing an appeal with the Chief Administrative Officer within 5 days after the Director issues a demand for prepayment. The Chief Administrative Officer, or a designee, must review the Director's decision within 2 business days after receiving the appeal. The owner must provide the Chief Administrative Officer with information sufficient to show that requiring prepayment of boarding costs would be a serious financial hardship on the owner. The Chief Administrative Officer may ask the owner to provide additional information at an informal hearing conducted in person or by telephone. The Division must not require the owner to prepay any boarding costs pending the Chief Administrative Officer's decision. The Chief Administrative Officer may make any decision the Director could have made such as requiring the owner to prepay boarding costs retroactive to the initial boarding date of the animal, posting a bond, or placing the animal in a suitable facility at the owner's sole expense. The owner may ask the Board to review the Chief Administrative Officer's decision regarding prepayment of boarding costs as part of its review of the underlying appeal.
- (f) *Boarding of animal – after Board decision.* The owner must pay any boarding costs for the animal before and during any appeals, or if the Board allows, post a bond to pay these expenses if the owner does not prevail in the appeal.
- (g) If the owner does not meet the requirements of this Section, including any requirement to prepay boarding costs, the animal must be treated as abandoned and becomes the County's property. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Editor's note—Section 5-3061 is interpreted in Coroneos v. Montgomery County, 161 Md. App. 411, 869 A.2d 410 (2005).

Sec. 5-307. Appeal from the Board.

A party aggrieved by an order of the Board may appeal the order under Section 2A-11 within 10 days after the Board issues the order. (2005 L.M.C., ch. 22, § 1.)

ARTICLE IV. LICENSING AND HEALTH.

Sec. 5-401. Dog and cat licenses.

- (a) The Director must implement the State dog licensing laws that apply in the County (Md. Code, Article 24, Title 11, Subtitle 5) and must apply the same licensing requirements to cats. The Executive may set fees for cat licenses that are different than the equivalent fees for dog licenses.

- (b) The County Executive must, consistent with State law, set fees by regulation under method (3), and issue other regulations (such as a regulation authorizing different fees or free licenses for dogs or cats meeting certain age or other requirements) under method (2) to implement this Section. The regulations must coordinate dog and cat licensing with rabies vaccination under Section 5-402 and must require a dog or cat to wear its own legible, unobscured license tag attached to a collar or harness whenever the animal is outside the owner's home. (1999 L.M.C., ch. 10, § 1.)

Sec. 5-402. Rabies control.

- (a) The Director and the County Health Officer must implement the State anti-rabies law (Md. Code, Health-General Article, Title 18, Subtitle 3, Part III). The Executive must issue fee regulations under method (3) and other regulations under method (2) to implement this Section.
- (b) Consistent with State law (Md. Code, Health-General Article, § 18-315), the County Health Officer must conduct an anti-rabies clinic at least annually to vaccinate dogs, cats, and ferrets.
- (c) An owner must vaccinate a cat, dog, or ferret older than 4 months of age against rabies and provide proof of the most recent vaccination to an animal control officer within 24 hours. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)

Sec. 5-403. Clinics to alter animals.

- (a) The County directly or by contract must establish one or more clinics where County residents may have dogs or cats altered in a humane manner by a licensed veterinarian for a fee set by regulation. The County may contract for altering services by a licensed veterinarian at the veterinarian's own place of business. The fee may be:
- (1) uniform or based on ability to pay; and
 - (2) waived or reduced for financial hardship.
- (b) A person seeking to have an animal altered must certify that the person owns the animal or has authority to obtain the service. The person must agree in writing to hold the clinic and veterinarian harmless in any dispute about the person's authority.
- (c) A person must retrieve the altered animal on the date specified by the clinic. The person must pay any additional charges for boarding the animal after that date. An animal not retrieved within 10 days after that date is abandoned. (1999 L.M.C., ch. 10, § 1.)

Sec. 5-404. Animal business licensing.

- (a) *Businesses requiring a license.* The County Executive must issue regulations to require and set conditions for an annual County license to operate:
- (1) a pet shop;
 - (2) a commercial kennel;
 - (3) as a fancier;
 - (4) an equestrian facility;
 - (5) a benevolent organization; or
 - (6) a guard dog operator who places a dog for hire on private property.
- (b) *Fees.* The Executive must issue regulations to set fees:
- (1) under method (2) for licenses under subsections (a)(1) to (5); and
 - (2) under method (3) for licenses under subsection (a)(6).
- (c) *Denial, suspension, and revocation.*
- (1) The Division may deny, suspend, or revoke a license:
 - (A) for a facility that violates any provision of the Code, including Chapter 59, or any State or federal law; or
 - (B) if the applicant or licensee withholds or falsifies information, or engages in fraud or misrepresentation regarding the sale of animals.
 - (2) A person aggrieved by an action under this subsection may appeal the action under Section 5-306.
- (d) *Inspections.* A facility that requires a license under this Section must allow an animal control officer or other law enforcement officer to inspect the facility.
- (e) *Health and safety regulations.* Executive regulations should include licensing requirements to protect human health and safety and enforce state laws against cruelty to animals. (1999 L.M.C., ch. 10, § 1; 2005 L.M.C., ch. 22, § 1.)