

CORRECTED COPY

Clerk's note: Corrected the effective date on the first page to accurately reflect the effective date.

Expedited Bill No. 21-20
Concerning: Office of Animal Services –
Established
Revised: 5/14/2020 Draft No. 2
Introduced: April 14, 2020
Enacted: May 19, 2020
Executive: May 29, 2020
Effective: July 1, 2020
Sunset Date: None
Ch. 18, Laws of Mont. Co. 2020

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) transfer the duties of the Division of Animal Services in the Police Department to a new non-principal office in the Executive Branch; and
- (2) generally amend County law related to administration and animal services.

By amending

Montgomery County Code
Chapter 1A, Structure of County Government
Section 1A-203

Chapter 2, Administration
Sections 2-43 and 2-58C

Chapter 5, Animal Control
Sections 5-101, 5-102, 5-104, 5-202, 5-203, 5-301, 5-302, 5-303, 5-304, 5-306, 5-401,
5-402, and 5-404

Chapter 31B, Noise Control
Section 31B-12

By renumbering

Montgomery County Code
Chapter 5, Animal Control
Sections 5-405, 5-406, and 5-407

1 **Sec 1. Sections 1A-203, 2-43, 2-58C, 5-101, 5-102, 5-104, 5-202, 5-203, 5-
2 301, 5-302, 5-303, 5-304, 5-306, 5-401, 5-402, 5-404, and Section 31B-12 are
3 amended and Sections 5-405, 5-406, and 5-407 are renumbered as follows:**

4 **1A-203. Establishing other offices.**

5 (a) *Executive Branch.* These are the offices of the Executive Branch that
6 are not part of a department or principal office:

7 * * *

8 Office of Animal Services (section 2-58C)

9 * * *

10 **2-43. Organization and functions.**

11 (a) The Department of Police includes the County police[,] and the Office
12 of County Security[, and the Office of Animal Services]. The
13 Department has the authority, functions and activities prescribed by
14 law.

15 (b) Four positions of Assistant Chief of Police are non-merit positions.

16 (c) Any reference in this Code or in regulation or other document to
17 “superintendent of police” or “superintendent” means “Executive
18 Director of Police,” or “Chief of Police,” or “Executive Director”.

19 **DIVISION 11C. OFFICE OF ANIMAL SERVICES [DIVISION].**

20 **2-58C. [Reserved] Functions.**

21 The Office of Animal Services has the functions and duties assigned to it in
22 Chapter 5, Animal Control.

23 * * *

24 **5-101. Definitions.**

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

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Animal control officer: The Executive Director of the Office [Division], or the [Division] Executive Director’s designee.

* * *

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

* * *

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

* * *

[*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 Office [Division].

[*Division:* The Animal Services Division in the Department of Police.]

* * *

Executive Director: The Executive Director of the Office or the Executive Director’s designee.

* * *

Office: The Office of Animal Services.

* * *

5-102. Administration.

(a) Office [Division] duties. The Office [Division] administers this Chapter, [and must:]

(1) The Office must:

(A) provide an animal shelter program;

54 [(2)] (B) assist and cooperate with the Health Officer and State
55 officials in carrying out an anti-rabies program, including
56 vaccination of dogs, cats, and ferrets, as required by State
57 law and this Chapter;

58 [(3)] (C) carry out a program to license dogs and cats, as
59 required by State law and this Chapter;

60 [(4)] (D) provide education programs regarding the humane
61 treatment of animals;

62 [(5)] (E) provide wildlife management; and

63 [(6)] (F) provide a spay-neuter program.

64 (2) The Office [Division] may provide other services and programs
65 to promote the humane treatment of animals and protect public
66 health and welfare from animal-related hazards.

67 (b) Executive Director. The Executive Director of the Office [Division]
68 must:

69 * * *

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

76 (d) Care of animals. The County may [contact] contract with veterinarians
77 or animal hospitals to care for injured or diseased animals whose
78 owners are unknown, that the County or its agents collect, or that any
79 person brings to the animal shelter.

80 (e) *Enforcement of animal control laws.* To the extent allowed by State
81 law, the Office [Division] may enforce any State animal control law
82 and any law under this Chapter. A reference in a State animal control
83 law to the “appropriate authority” (or any similar term) in the County
84 means the Office [Division] and any other County agency designated
85 by regulation adopted under Method (3).

86 * * *

87 **5-104. Animal Matters Hearing Board.**

88 (a) *Jurisdiction.*

89 (1) As provided in this Chapter, the Animal Matters Hearing Board
90 has jurisdiction to hear:

91 (A) original complaints involving allegations of violations of
92 this Chapter or a violation of the terms of an adoption
93 agreement; and

94 (B) appeals from any decision or order of the Executive
95 Director.

96 * * *

97 (e) *Authority.* The Board may:

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

103 * * *

104 (6) Appoint a person to mediate a case if the owner and each
105 complainant (which may include the Office [Division]) agree. A
106 consent order resulting from mediation is an order of the Board.

107 If the mediator or the Board finds that the parties are not likely
108 to agree to a mediated consent order within a reasonable time,
109 the Board must decide the case.

110 * * *

111 (g) *Fee.* The Executive may set by regulation a fee for filing a complaint
112 with the Board. The filer must pay the fee to the Office [Division]. The
113 Board or the Animal Control Officer may waive the filing fee in
114 response to a written request. If the parties agree to a consent order
115 after mediation, the Board may refund the filing fee.

116 * * *

117 **5-202. Dangerous and potentially dangerous animals.**

118 (a) *Violation.*

119 * * *

120 (3) An animal is potentially dangerous if:

121 * * *

122 (B) the Office [Division] notifies the owner that the animal is
123 potentially dangerous.

124 * * *

125 (b) *Declared dangerous or potentially dangerous elsewhere.* An owner of
126 an animal declared dangerous or potentially dangerous in another
127 jurisdiction must remove the animal from the County within 10 days
128 after receiving a citation or other notice of a violation of this Chapter
129 unless the Executive Director waives this requirement and imposes
130 conditions or restrictions under subsection (d) for the animal to remain
131 in the County.

132 (c) *Limited waiver.* The Executive Director may waive the prohibitions of
133 subsections (a) or (b) for a specific animal only if the Executive

134 Director finds that the animal is not a threat to public health or safety.
135 (d) *Confinement and microchipping.* The Executive Director or the Board
136 may impose any restriction or condition, including confinement or
137 microchipping the animal, on the owner of a dangerous or potentially
138 dangerous animal that is reasonably expected to protect the public
139 health or safety. A person must not release the animal from
140 confinement unless the animal is:

141 (1) securely muzzled in a manner approved by the Office
142 [Division];

143 * * *

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

147 * * *

148 **5-203. Public nuisance and other violations.**

149 (a) *Violation.* An owner must not:

150 * * *

151 (2) Allow an animal to damage or defecate on property outside the
152 owner's property. An animal may defecate on public property or
153 the common area of property in which the owner shares an
154 interest if the owner immediately removes and disposes of the
155 feces by a sanitary method approved by the Office [Division].
156 This paragraph does not affect any right of a common ownership
157 community to regulate or ban animals from the community's
158 property.

159 * * *

160 (10) Allow an animal to act in any other way that the Executive

161 Director, the Board, or an animal control officer finds would
162 cause any other public nuisance established by regulation. An
163 action prohibited by the regulation is a violation even if the
164 action does not qualify as a public nuisance because the owner
165 has not received notice described in subsection (b)(1).

166 * * *

167 (b) *Public nuisance.* An owner must not allow an animal to create a public
168 nuisance by:

169 (1) behavior described in subsections (a)(1), (2), (3), (4), (6), (8), (9),
170 or (10) occurring after the owner received notice from the County
171 in any form (such as an oral warning from an Office [a Division]
172 employee) of a violation because of the same behavior; or

173 * * *

174 **ARTICLE III. ENFORCEMENT, PENALTIES, AND APPEALS.**

175 **5-301. General provisions.**

176 (a) *Who may enforce.* The Executive Director, an animal control officer,
177 the Board, and any other person authorized by regulation issued under
178 method (2) may enforce an animal control law. In this Article, an
179 “animal control law” includes a State animal control law, this Chapter,
180 and, for noise from an animal source, Chapter 31B.

181 (b) *Forms of enforcement.* The Executive Director or an animal control
182 officer may enforce an animal control law by issuing a citation or other
183 lawful order. To exercise its authority, the Board must issue a written
184 order that explains the factual and legal basis for the order.

185 (c) *Types of enforcement.*

186 (1) Except as provided in paragraph (2), the Executive Director or

187 an animal control officer may, to enforce an animal control law
188 or protect the health or safety of an animal, a person, or the
189 public:

190 * * *

191 (2) The Executive Director or an animal control officer must not
192 destroy an animal under paragraph (1) unless:

193 * * *

194 (B) the Executive Director, an animal control officer, or the
195 Board finds that destruction of the animal is necessary to
196 prevent an immediate threat to public [pubic] health or
197 safety. If an owner requests a hearing within 5 days after
198 the County notifies the owner of any action under this
199 paragraph, the Board must hold a hearing after the fact on
200 the action and may order the County to reimburse the
201 owner for the resale value of the animal if the action was
202 not justified; or

203 * * *

204 (h) *Board order to take action.* As a result of an adjudication of a
205 complaint or appeal, the Board may order the Executive Director or an
206 animal control officer to take an action described in paragraph (c)(1).

207 **5-302. Special enforcement provisions regarding specific offenses.**

208 (a) *Dangerous or potentially dangerous animals.*

209 (1) An animal control officer immediately may seize, impound, and
210 humanely euthanize, at the owner's expense, an animal that the
211 Executive Director, an animal control officer, or the Board finds
212 is dangerous or potentially dangerous and poses an immediate
213 threat to public health or safety.

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(b) *Public nuisance and other violations.* The Board, the Executive Director, or an animal control officer may order any action necessary to abate a public nuisance or any other violation of Section 5-203.

Sec. 5-303. Impoundment.

(a) *Generally.* The Executive 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 Executive Director to impound) an animal at an animal shelter or other facility approved by the Executive Director.

(b) *Notice of impoundment.* The Executive 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 Executive Director may notify the owner by first class mail to the owner’s last known address, or, if the Executive 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

240 caring for the animal for the 30-day period beginning on the date
241 the animal was impounded. The Executive Director must
242 estimate the cost, which must include the cost of food, veterinary
243 care, and other necessities that a responsible owner would
244 provide for the animal and may include other costs, such as pro
245 rata staffing and administrative expenses, allowed by regulation.
246 The owner must pay in cash or by another method acceptable to
247 the Office.

248 * * *

- 249 (3) The Executive Director may:
- 250 (A) revise the estimated cost of care for each 30-day period to
251 improve the accuracy of the estimate; and
 - 252 (B) apply any previous payment for that animal that exceeds
253 the actual cost of care to the next 30-day period.

254 * * *

- 255 (7) The Executive Director may waive or modify the prepayment
256 required under this subsection (such as by requiring weekly
257 prepayments) if the owner provides evidence that prepayment for
258 30 days of care would be a serious financial hardship to the
259 owner.

260 (d) *Multiple impoundments.*

- 261 (1) If an unaltered dog or cat is impounded 2 or more times, the
262 owner must have the animal altered at the owner's expense
263 within 30 days after the animal is released from impoundment or
264 surrender the animal to the Executive Director unless:

265 * * *

- 266 (2) The Executive Director must not allow an owner to redeem an

267 animal impounded less than 12 months after the animal was
268 released from a previous impoundment, unless the owner has
269 successfully appealed any citation arising out of the prior
270 impoundment, until the Executive Director has issued:

271 * * *

272 **5-304. Disposition.**

273 (a) *Types of disposition.* An animal impounded by the Office [Division]
274 may be:

- 275 (1) redeemed by an owner under certain circumstances;
- 276 (2) placed for adoption if abandoned;
- 277 (3) set loose in a suitable habitat if wild; or
- 278 (4) humanely euthanized in a manner approved by the Office
279 [Division].

280 (b) *Redemption.* The owner of an impounded animal may redeem the
281 animal if:

282 * * *

- 283 (5) the Executive Director approves, or the Board orders the
284 redemption, and the owner complies with any conditions for
285 redemption; and
- 286 (6) redemption is not prohibited by another animal control law.

287 * * *

288 (d) *Release or adoption prohibited.* The Executive Director must not:

289 * * *

290 (e) *Dangerous or nuisance animals.* The Executive Director or any other
291 person must not sell, release, or place for adoption an animal that an
292 animal control officer found is dangerous or potentially dangerous,
293 would cause a public nuisance or other violation, or has rabies or an

294 incurable communicable disease, unless the Executive Director finds
 295 the action is safe.

296 (f) *Failure to redeem.* Unless otherwise ordered by the Board, an
 297 impounded animal is considered abandoned and becomes County
 298 property if the animal is not redeemed by its owner within 5 days after
 299 the Executive Director notifies the owner about the impoundment under
 300 Section 5-303(b).

301 (g) *Adoption.* The Executive Director may place an abandoned animal for
 302 adoption as a pet unless the Board or the Executive Director decides
 303 adoption of the animal is not in the best interest of public health or
 304 safety. A dog or cat placed for adoption must be altered by a licensed
 305 veterinarian, at the expense of the person adopting the animal, within a
 306 time specified by the Executive Director. The Executive Director must
 307 set the deadline for altering based on the animal's age, sex, and health,
 308 but the deadline must be within 3 months after the adoption. If the
 309 owner of an adopted animal does not alter the animal by the deadline,
 310 the owner must return the animal to the animal shelter.

311 * * *

312 **5-306. Appeal to the Board.**

313 (a) *Time for noting appeal.* Except as provided in Section 5-104(a), a
 314 person aggrieved by a decision of the Executive Director or an animal
 315 control officer may appeal the decision to the Board within 5 days after
 316 the Executive Director or the animal control officer notifies the owner
 317 about the decision. The Executive Director or animal control officer
 318 must not dispose of the animal during the 5-day period for filing an
 319 appeal, or while an appeal is pending, unless authorized to do so under

320 this Chapter.

321 * * *

322 (c) *Filing fee.* In addition to any other requirement imposed by this
323 Section, the owner appealing a decision of the Executive Director or an
324 animal control officer must pay a filing fee established by executive
325 regulation. The Board or the Executive Director may waive the filing
326 fee in response to an appellant’s request.

327 (d) *Board’s decision.* The Board may modify a decision of the Executive
328 Director or an animal control officer only if the appellant proves by a
329 preponderance of the evidence that the decision was arbitrary, illegal,
330 or not based on substantial evidence. The Board must issue a written
331 opinion explaining the factual and legal basis for its decision.

332 (e) *Boarding of animal – pending Board decision.* If the owner timely
333 appeals an impoundment or seizure, the owner may also seek review of
334 the Executive Director’s determination of boarding costs by filing an
335 appeal with the Chief Administrative Officer within 5 days after the
336 Executive Director issues a demand for prepayment. The Chief
337 Administrative Officer, or a designee, must review the Executive
338 Director’s decision within 2 business days after receiving the appeal.
339 The owner must provide the Chief Administrative Officer with
340 information sufficient to show that requiring prepayment of boarding
341 costs would be a serious financial hardship on the owner. The Chief
342 Administrative Officer may ask the owner to provide additional
343 information at an informal hearing conducted in person or by telephone.
344 The Office [Division] must not require the owner to prepay any
345 boarding costs pending the Chief Administrative Officer’s decision.

346 The Chief Administrative Officer may make any decision the Executive
347 Director could have made such as requiring the owner to prepay
348 boarding costs retroactive to the initial boarding date of the animal,
349 posting a bond, or placing the animal in a suitable facility at the owner's
350 sole expense. The owner may ask the Board to review the Chief
351 Administrative Officer's decision regarding prepayment of boarding
352 costs as part of its review of the underlying appeal.

353 * * *

354 **ARTICLE IV. LICENSING AND HEALTH.**

355 **5-401. Dog and cat licenses.**

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

361 * * *

362 **5-402. Rabies control.**

363 (a) The Executive Director and the County Health Officer must implement
364 the State anti-rabies law (Md. Code, Health-General Article, Title 18,
365 Subtitle 3, Part III). The County Executive must issue fee regulations
366 under method (3) and other regulations under method (2) to implement
367 this Section.

368 * * *

369 **5-404. Animal business licensing.**

370 * * *

371 (b) *Fees.* The County Executive must issue regulations to set fees:

372 (1) under method (2) for licenses under subsections (a)(1) to (5);

373 * * *

374 (c) *Denial, suspension, and revocation.*

375 (1) The Office [Division] may deny, suspend, or revoke a license:

376 (A) for a facility that violates any provision of the Code,
377 including Chapter 59, or any State or federal law; or

378 (B) if the applicant or licensee withholds or falsifies
379 information, or engages in fraud or misrepresentation
380 regarding the sale of animals.

381 (2) A person aggrieved by an action under this subsection may
382 appeal the action under Section 5-306.

383 * * *

384 **ARTICLE V. RETAIL SALE OF DOGS AND CATS.**

385 **5-501 [5-405]. Legislative Findings.**

386 * * *

387 **5-502 [5-406]. Definitions.**

388 * * *

389 **5-503 [5-407]. Retail Sale of Dogs and Cats.**

390 * * *

391 **31B-12. Enforcement and penalties.**

392 * * *

393 (g) The Executive Director of the Office of Animal Services [Division]
394 may initiate administrative action before the Animal Matters Hearing
395 Board instead of an enforcement officer issuing a citation under
396 subsection (f) for a violation of this Chapter originating from an animal
397 source.

398 * * *

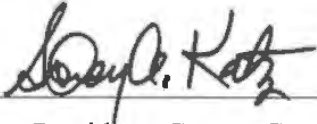
399 **Sec. 2. Transition.**

400 References to the Division of Animal Services in County law, contract, or
401 regulation means the Office of Animal Services.

402 **Sec. 3. Expedited effective date**

403 The Council declares that this legislation is necessary for the immediate
404 protection of the public interest. This Act takes effect on July 1, 2020.

Approved:



5/19/20

Sidney Katz, President, County Council

Date

Approved:



5/29/20

Marc Elrich, County Executive

Date

This is a correct copy of Council action.



5/29/20

Selena Mendy Singleton, Esq., Clerk of the Council

Date