

ARTICLE 35

# Animal Control

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LOCAL GOVERNMENTS IN North Carolina take the lead in traditional animal control activities, ranging from rabies control to dangerous dogs to animal cruelty. Much of this work is discretionary. The only activities local governments are required to undertake are in the fields of rabies control and dangerous dogs. Many local governments, however, have elected to offer more comprehensive animal control programs as a general public service. Counties and municipalities often handle their animal control activities separately. As a result, North Carolina has developed many different animal control programs and ordinances over the years.

State law addresses several important areas of animal control, including rabies control, dangerous dogs, and animal cruelty. Animal control activities, however, are largely governed by local ordinances and customs.

## Administrative Responsibility

Various local government agencies, offices, and departments assume responsibility for providing animal control services. County health departments often house county animal control programs because their health directors have several statutorily mandated duties related to rabies control. Other local governments have elected to make animal control a function of law enforcement agencies or public safety departments. Having law enforcement officers available to enforce animal control law can be advantageous when it becomes necessary to conduct a search or make an arrest. Some local governments have placed animal control responsibilities directly in the manager's office or in a separate department. Finally, some have contracted with private nonprofit agencies to manage some animal control functions.

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Primary responsibility for enforcing animal control laws and running related programs typically rests with animal control officers, although in some jurisdictions, law enforcement officers take the lead.<sup>1</sup> At one time many counties had “dog wardens,” officials who were authorized to enforce laws related to dogs.<sup>2</sup> While the statute creating the position of dog warden is still valid, few, if any, counties still have dog wardens.

## Services

Local government animal control programs and services vary among jurisdictions. The key areas that many programs address are rabies control, dangerous dogs, animal cruelty, stray and nuisance animals, and shelter management. The rest of this article addresses the laws governing each of these primary animal control functions and briefly discusses several other functions, such as exotic animal regulation, that are of interest only to some jurisdictions. Note that hunting, fishing, and other activities involving wildlife fall under the jurisdiction of the state Wildlife Resources Commission, and for the most part, its officers enforce statewide laws. Farm and other animals raised to be commercially processed as food fall under the jurisdiction of the North Carolina Department of Agriculture and Consumer Services.

### Rabies Control

Rabies is a communicable disease that is often transmitted to humans from animals such as raccoons, bats, and dogs. If left untreated, the disease is almost always fatal for humans; therefore, the public health system has a significant interest in ensuring that the disease, whenever present, does not spread. North Carolina, like most other states, has adopted a series of state laws governing the control of rabies. The statutes may be found in the public health chapter of the North Carolina General Statutes (hereinafter G.S.), Chapter 130A, Article 6, Part 6.

The cornerstone requirement of the rabies control laws relates to pet vaccination. Every owner of a dog or cat over four months of age is required to have the animal vaccinated against rabies. According to the office of the State Public Health Veterinarian (housed in the Division of Public Health of the Department of Health and Human Services), more than one million dogs and cats were vaccinated for rabies in 2006. Vaccinations may be administered by either a licensed veterinarian or a person who has been appointed a “certified rabies vaccinator” (G.S. 130A-185). Certified rabies vaccinators are persons appointed by a local health director and trained and certified by the State Public Health Veterinarian.<sup>3</sup> Pet owners may take their animals to a private veterinarian to be vaccinated. Local health departments are required to organize (or assist other county departments in organizing) at least one public vaccination clinic per year (G.S. 130A-187; 130A-88). Boards of county commissioners are required to establish their clinics’ vaccination fee, which is limited by statute to the actual cost of the vaccine, the certificate, and the tag plus an administrative fee not to exceed four dollars. Often the county coordinates these public clinics with private veterinarians in its communities. The county may organize and advertise the clinic and then the veterinarians may participate at selected locations or, at times, in their own offices.

At the time of vaccination, the owner is given a copy of a vaccination certificate (G.S. 130A-189) and a rabies tag (G.S. 130A-190). The fee for a tag purchased from the state includes not only the cost of the tag, link, and rivet, but also transportation costs, a five-cent surcharge to be credited to the rabies education and prevention program, and usually a twenty-cent surcharge to be credited to a special fund that is used primarily to subsidize sterilization procedures for dogs and cats owned by low-income individuals.

State law requires dogs and cats to wear their rabies tags at all times. A local government may, however, adopt a local ordinance exempting cats from the tag requirement (G.S. 130A-190). Local government animal control officers are required to canvass their jurisdictions to find animals not wearing rabies tags (G.S. 130A-192). If an officer finds a dog or cat without a tag, he or she has the authority to take action, which may include impounding the animal. If the officer knows who owns the animal, he or she must notify the owner in writing about the vaccination requirements. The owner must produce a copy of the animal’s vaccination certificate within three days of receiving the notification. If the owner fails to do so, he or she may be charged with a Class 1 misdemeanor.

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1. N.C. GEN. STAT. § 67-30 (hereinafter G.S.).

2. G.S. 67-31.

3. G.S. 130A-186.

If the officer does not know who owns an animal, he or she may impound it. Note that the officer is not *required* to impound the animal; state law provides local governments with the authority to seize animals, but it does not require them to impound all dogs and cats found without rabies tags. If the officer does seize the animal, the officer is required to make a reasonable effort to locate its owner. The local government is required to hold the animal for a time period established by the board of county commissioners, which must be at least seventy-two hours. Many cities and counties hold animals for periods longer than seventy-two hours. For example, Cleveland County holds animals for a minimum of five days.

If the owner of an impounded animal does not claim the animal within the established time period, the local government may allow another person to adopt the animal, or it may euthanize it or sell it to certain research institutions registered with the federal government. If an animal is to be euthanized, state law currently allows local governments to employ any method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.<sup>4</sup> Most local government animal shelters euthanize animals by either injecting them with sodium pentobarbital or having them inhale carbon monoxide gas.

The list of euthanasia methods allowed under state law may change in the near future. In 2005 the General Assembly passed a new law that requires the North Carolina Board of Agriculture to adopt regulations governing the euthanasia of all cats and dogs in animal shelters [S.L. 2005-276 (Sec. 11.5(b)); amending G.S. 19A-24]. Note that one adopted, these regulations will apply to *all* dogs and cats at shelters, not just those impounded for violations of the rabies laws.

Local governments play an important role in ensuring that animals are vaccinated, but they also get involved when an animal bites a person, has rabies, or is suspected of having rabies. If a person is bitten by any dog or cat—regardless of whether the animal has or is suspected of having rabies—the victim and the pet’s owner (or person possessing or in control of the pet) are required to notify the local health director immediately. This law applies to all dogs and cats—not just those suspected of having rabies. The offending animal is then supposed to be confined for ten days in a place designated by the local health director, which may be the owner’s property. If an owner fails to confine the animal as directed, he or she may be guilty of a Class 2 misdemeanor. Physicians treating persons bitten by an animal known to be a potential carrier of rabies must also notify the local health director (G.S. 130A-196).

If a dog or cat has been bitten (or otherwise infected) by a rabid animal or an animal suspected of having rabies and the bitten animal has not had the required vaccinations (including a booster shot within three days of being bitten), the bitten animal must either be destroyed immediately or, at the discretion of the local health director, quarantined for up to six months (G.S. 130A-197). If a dog or cat is *suspected* of having rabies, the owner must notify the local health director and confine the animal for ten days at a place designated by the health director. If an animal other than a dog or cat is suspected of having rabies, the State Public Health Veterinarian may order that the animal be destroyed. If an animal is *diagnosed* as having rabies, it must be destroyed and its head sent to the State Public Health Laboratory (G.S. 130A-199). The county typically assumes responsibility for shipping the animal’s head to the state laboratory.

If a local government or the state finds that a geographical area has a particularly high number of rabies cases, a local health director may quarantine dogs and cats in the area (G.S. 130A-194; 130A-195). When quarantined, dogs and cats must stay on their owners’ premises, in a veterinary hospital, or on a leash (or otherwise under the owners’ control). If a wild animal (other than a bat) has rabies, the local health director in that jurisdiction may petition the state to declare a rabies emergency. In such an emergency, the Wildlife Resources Commission will likely become involved in order to minimize the threat to humans and domestic animals.

While the state laws governing rabies control are fairly comprehensive, quite a few local governments have chosen to adopt local ordinances addressing rabies. While local governments do not have specific authority to regulate in this area, they can rely on their general ordinance-making power (G.S. 153A-121; 160A-174). A rabies ordinance can be useful if a local government wishes to supplement state law. For example, a Buncombe County ordinance authorizes the local health director to require domestic animals other than dogs and cats to be vaccinated (e.g., ferrets) (Buncombe County §6-56).

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4. A full list of the euthanasia methods approved by these organizations is included in Aimee N. Wall, “North Carolina Animal Control Law: 2005 Legislative Update,” *Local Government Law Bulletin* 107 (October 2005), available at [www.ncanimalcontrol.unc.edu/pubs.htm](http://www.ncanimalcontrol.unc.edu/pubs.htm).

## Dangerous Dogs

Every local government has probably faced the issue of a dog that is threatening or dangerous to its citizens or to other animals. State law provides a ready framework for handling dangerous-dog situations, but local governments need not rely upon the state law (G.S. 67-4.1 through 4.5). They have the option of adopting their own programs for handling such animals. Many local ordinances impose additional procedural requirements, restrictions on dogs, and penalties. Some have even considered (but not pursued) banning ownership or possession of a specific breed, such as pit bulls, entirely.<sup>5</sup>

Under state law, an owner of a dog that is considered “dangerous” must comply with a series of restrictions on the freedom of the dog. For example, it must be muzzled and securely restrained when it is off its owner’s property. Also, if the owner of the dog transfers its ownership or possession to another person, he or she must notify the new owner of the animal’s dangerous-dog status.

A dog is considered dangerous if it

- without provocation killed or inflicted severe injury on a person;
- is owned, kept, or trained for the purpose of dog fighting; or
- is determined by the local government to be “potentially dangerous.”

The local government’s responsibility under this law is to appoint a person or create a board responsible for determining whether a dog is potentially dangerous according to the definition provided in the state law (or possibly one provided in local ordinance). In addition, the local government must appoint a separate board charged with hearing appeals from citizens whose dogs have been declared potentially dangerous. There are no requirements or limitations regarding the size or membership of either the designation or appeals board. Some local governments, for example, have elected to have an animal control officer or supervisor responsible for making the initial designation of “potentially dangerous” and then have identified an existing board (such as the board of health or the board of county commissioners) or a subset of an existing board to hear appeals from such designations. An owner has the right to appeal the decision of the appeals board to superior court.<sup>6</sup>

An owner who violates the restrictions established in state law may be subject to criminal penalties. In addition, an owner will be strictly liable for any injuries or property damage inflicted by his or her dog. Strict liability means that if a property owner or individual files a civil lawsuit against a dog owner for money damages, the court will not require proof that the dog owner was negligent in caring for or restraining the dog.

In addition to the dangerous-dog laws, there are two other options available to local governments for addressing problems with dangerous animals of any kind, including dogs. Local governments have the general authority to regulate, restrict, or prohibit the possession or harboring of animals that are dangerous to persons or property (G.S. 153A-131; 160A-187).<sup>7</sup> In addition, local health directors have the authority to declare an animal vicious and a menace to the public’s health and require the owner to confine the animal to his or her property (G.S. 130A-200). This vicious animal authority is limited to animals that attacked a person causing bodily harm.

In rare cases the misdeeds of a dog can result in serious criminal charges. In *State v. Powell*,<sup>8</sup> the owner of two Rottweilers was convicted of involuntary manslaughter after his unattended dogs attacked and killed a jogger. In another case, a man was convicted of assault with a deadly weapon on a government official when he directed a dog to attack a police officer and the dog obeyed.<sup>9</sup>

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5. State law would likely permit a local government to adopt an ordinance banning ownership or possession of pit bulls or other breeds. For more information and recommendations regarding such an ordinance, see Jeanette Cox, “Ordinances Targeting Pit Bulls Must Be Drafted Carefully,” *Local Government Law Bulletin 106* (November 2004), available at [www.ncanimalcontrol.unc.edu/pubs.htm](http://www.ncanimalcontrol.unc.edu/pubs.htm).

6. *Caswell County v. Hanks*, 120 N.C. App. 489, 462 S.E.2d 841 (1995) (upholding the constitutionality of the dangerous-dog law and recognizing that the appeal to superior court must be held *de novo*).

7. Note that primary jurisdiction with respect to wildlife is vested in the North Carolina Wildlife Resources Commission.

8. 336 N.C. 762, 446 S.E.2d 26 (1994).

9. *State v. Cook*, 164 N.C. App. 139, 594 S.E.2d 819, *affirmed*, 359 N.C. 185, 606 S.E.2d 118 (2004).

## Animal Cruelty

Local government animal control officials are usually the first people called when someone discovers a starving animal or suspects that a person is abusing his or her pets. While local governments are not required to take action on a complaint involving animal cruelty, they often feel obliged to do so. There are several different means available for addressing suspected animal cruelty. Any citizen, including animal control officers, can seek an injunction in civil court allowing the removal of the animal from the defendant and termination of his or her right of ownership or possession (G.S. 19A-1 through -4).

Alternatively, one can pursue one of the many criminal remedies available under state law (G.S. 14-360 through 363.2). Criminal remedies are available for various types of cruelty, including killing, starving, overloading, tormenting, and abandoning animals. Animal fighting, which includes being a spectator at an animal fight, is also subject to criminal penalties that vary depending upon the type of animal and activity involved.

A county may wish to leverage the resources of nonprofit animal rights advocacy organizations in its community to assist it in responding to cruelty complaints and conducting investigations. It may do so by appointing individuals to serve as animal cruelty investigators (G.S. 19A-45 through -49). These individuals are appointed by the board of county commissioners for one-year terms and serve without compensation or benefits (although they may be reimbursed for expenses). Typically, they are concerned individuals or advocates; they are not county employees. These investigators also rely upon the civil remedies (i.e., injunction) available to resolve cruelty cases, but they have the unique authority to obtain a magistrate's order authorizing them to seize an animal prior to filing a complaint in district court. Absent exigent circumstances, animal control officers do not have the authority to seize animals until a court has so ordered.

In addition to the state laws governing cruelty described above, local governments also have the authority to adopt their own ordinances related to animal abuse (G.S. 153A-127; 160A-182). The term *abuse* is not defined in the law, but it is probably comparable to the term *cruelty*, which is defined broadly in the context of the state's civil remedies to include "every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted" (G.S. 19A-1).<sup>10</sup> A similar definition is used in the criminal cruelty laws (G.S. 14-360). Some local governments have relied upon this authority to outlaw specific types of abuse or cruelty that are illegal, such as leaving an animal inside an unattended vehicle. Others have adopted procedural requirements related to the role of animal control officers when responding to a complaint.

## Stray Animals

There are three state laws that address animals running at-large, but they are quite limited in scope. The laws apply to dogs running at-large at night, female dogs in heat, and dogs in wildlife management areas (G.S. 67.2; 67-12; 67-14.1). While the state does not have a statewide leash law, it does authorize animal control officers to impound unidentified animals that are not wearing rabies tags, as discussed above (G.S. 130A-192). Local governments regularly rely upon this authority in the rabies law to impound stray animals, but some have found that a local leash law is necessary as well. Cities have specific authority to adopt a law regulating animals running at-large (G.S. 160A-186). Under that statute, cities may adopt ordinances that allow the animals running at-large to be seized and, after reasonable efforts to notify the owner, either sold (which likely includes adoption) or destroyed. Counties, however, do not have specific authority but rather must rely on their general ordinance-making power to define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of their citizens, as well as to define and abate nuisances (G.S. 153A-121).

## Shelter Management

One of the greatest challenges facing local government animal control programs is providing housing for animals. Providing room and board as well as veterinary care to animals, some of which may be sick or injured, can be quite expensive. Local governments are allowed to own or operate an animal shelter, but they are not required to do so (G.S. 153A-442). Many have chosen to establish public shelters within their jurisdictions while others have elected to pool resources with other localities to operate a regional shelter. Quite a few have entered into agreements with local humane societies or other nonprofit organizations that allow the local government to house animals at private shelters.

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10. See William A. Reppy Jr., "Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience," 11 *Animal L.* 39, 46-49 (2005) (arguing that the term cruelty as used in the state's civil remedies laws should also include mental suffering and that the term unjustifiable inappropriately limits the scope of the definition).

Sometimes a shelter is asked to house and care for an animal seized in the course of a civil or criminal cruelty case, an animal fighting case, or a dangerous-dog case. Providing such shelter and care can present a significant financial challenge in some instances. In 2005 and 2006, legislation was enacted that allows shelters to request a court order requiring the defendant to pay for the care of the animals or make other arrangements for the animals until the case is resolved (G.S. 19A-70).

Until recently, public shelters were subject to very little regulation. As discussed previously, the rabies law provided some guidance regarding euthanasia of animals impounded for violations of the rabies law, but other than that, few standards applied. Private shelters operated by animal welfare organizations, on the other hand, were governed by the state's Animal Welfare Act, which is enforced by the North Carolina Department of Agriculture and Consumer Services (Department of Agriculture) (G.S. Chap. 19A, Art. 3). The Board of Agriculture has adopted detailed regulations governing the physical condition of shelters, recordkeeping, and animal care (2 NCAC 52J .0101 *et seq.*). In 2005, legislation was enacted that brings public shelters (those owned, operated, maintained by, or under contract with a local government) under the jurisdiction of the Department of Agriculture and requires those shelters to comply with the state's Animal Welfare Act (S.L. 2005-276; Sec. 11.5). As discussed earlier, the Board of Agriculture is also in the process of finalizing regulations governing the euthanasia of all animals in these shelters. The forthcoming regulations will probably also include detailed training and certification requirements for euthanasia technicians.

## Licensing

Local governments have the authority to require pet owners to pay an annual license tax (G.S. 153A-153; 160A-212). Some local governments have generated significant income streams from these taxes. For example, New Hanover County started its mandatory licensing program in 1999 and has been able to gradually increase its revenues every year. In fiscal year 2006–7, the program generated over \$725,000.<sup>11</sup> The licensing and taxing authority not only generates revenue, but it can serve two other purposes. First, it can provide local governments with an additional mechanism for addressing stray animals within the jurisdiction. A local government, for example, could have an ordinance authorizing animal control to impound any animal found without a license. Second, a jurisdiction that adopts a program of differential licensing (i.e., higher license taxes for animals that have not been spayed or neutered) can help reduce the population of stray and unwanted animals. Some jurisdictions have concluded, however, that the administrative burden of collecting such a tax outweighs the potential benefits.

## Spay/Neuter Program

In 2000 the state launched a new initiative designed in part to extend funds to local governments for the development and support of local spay and neuter programs (G.S. 19A-60 through -65). Local governments can apply for an allocation from the state's special fund if they offer certain spay and neuter services to low-income persons (G.S. 19A-63). In 2004 more than 100 jurisdictions (city and county) and organizations received funding from the program. The program is managed by the Veterinary Public Health Program in the North Carolina Department of Health and Human Services.<sup>12</sup>

## Exotic Animals

North Carolina does not have a general statewide law regulating the ownership or possession of exotic animals. The Wildlife Resources Commission exercises jurisdiction over native North Carolina wildlife, but it does not have authority to regulate nonnative animals such as tigers and elephants. The General Assembly has considered establish-

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11. Conversation with Jean McNeil, Director of Animal Control for New Hanover County (July 16, 2007). For additional information about licensing programs, see Catherine Clark, "The Truth about Cats and Dogs: Vaccinations, Licenses, Services and Revenue," *Popular Government* 67 (Winter 2002): 40.

12. More information about the Spay/Neuter program is available at [www.epi.state.nc.us/epi/vet/index.html](http://www.epi.state.nc.us/epi/vet/index.html).

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ing a more comprehensive statewide law on the subject but has not yet done so. In the absence of a statewide law, many local governments have adopted local exotic animal ordinances. Local governments have specific authority in state law to regulate any animals that are dangerous to persons or property (G.S. 153A-131; 160A-187). This authority is clearly applicable to animals that may injure a person (e.g., tigers) but could also be interpreted to extend to regulation of animals that could introduce disease to persons or domestic animals. In the absence of a local ordinance, a county health director may place restrictions on a “vicious” animal that has attacked a person without being provoked (G.S. 130A-200).

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