

The Role of North Carolina Local Governments in Animal Control

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1. What may local governments do when animals are being abused or cruelly treated?

a. Appoint one or more county animal cruelty investigators

The board of county commissioners has the authority to appoint one or more animal cruelty investigators. Cruelty investigators have the unique authority to ask a magistrate for an order allowing the investigator to take immediate custody of an animal that is being cruelly treated. Animal control officers do not have this authority. They must either pursue criminal animal cruelty remedies or seek an injunction (see discussions below).

Cruelty investigators also have the authority to forcibly enter a person's premises or vehicle if the following five conditions are satisfied:

- the investigator must reasonably believe that the premises/vehicle are unoccupied;
- if anyone is present, the investigator must give notice of his identity and purpose before entering;
- the investigator must reasonably believe that the animal is on the premises or in the vehicle;
- the entry must be during daylight hours; and
- the investigator must be accompanied by a law enforcement officer.

When seizing an animal, the investigator must leave a copy of the magistrate's order with the animal's owner or affixed to the premises or vehicle. He must also leave a description of the animal seized and information regarding (1) the reason it was seized, (2) the place it will be taken, (3) and the investigator's intent to file for an injunction. After seizing one or more cruelly-treated animals, the investigator must return an inventory of the animal(s) seized to the clerk of court and then file a complaint seeking a preliminary or permanent injunction (see discussion of injunctions below in Section 1.b.). While awaiting the court's decision, the investigator must take the animal to a safe and secure place and provide suitable care for it. The owner of the animal is legally responsible for the costs related to the animals care during that time.

The investigators have some legal protection for their activities. They are designated "public officials" by statute and therefore would be able to claim some immunity from liability in the event that they are sued. In addition, it is a crime (Class 1 misdemeanor) to interfere with an animal cruelty investigator when he is performing his official duties.

Some counties have considered designating their animal control or law enforcement officers as animal cruelty investigators. The statute creating the investigator position states that the investigators must "serve without any compensation or other employee benefits in his county." G.S. § 19A-45. Given that the statute explicitly identifies these individuals as

volunteers (usually humane society representatives), it seems unlikely that the General Assembly intended for these investigators to be paid county employees. It is conceivable that a county employee could serve as a cruelty investigator during non-working hours, but counties should not establish a system of dual appointments during working hours.

Statutory authority: G.S. §§ 19A-45 to -49.

b. Become involved in enforcing the state's *civil* animal cruelty laws

North Carolina law establishes a civil process which allows a court to impose restrictions necessary to protect an animal that is being cruelly treated.¹ Any person, including a county, an animal cruelty investigator, or a private individual, may file a complaint in district court alleging that an animal has been cruelly treated. The complaint may name as defendant any person who owns or has possession of an animal. Upon receiving such a complaint, the judge will hold a hearing and is authorized to issue a preliminary injunction.² If the complaint indicates conditions that require the animal to be removed from its current home, the judge may grant a complainant's request to take temporary possession of the animal and provide suitable care for it.

The judge then holds another hearing and determines whether a permanent injunction is necessary or whether the action should be dismissed and any preliminary injunction lifted. The court may conclude that even if a permanent injunction were issued, there would be a substantial risk that the animal would be subjected to further cruelty if returned to the owner. If so, the court may (1) terminate the defendant's rights of ownership and possession and (2) transfer ownership and right of possession to the person who filed the complaint *or* to another appropriate person.

The following seven situations are exempt from these cruelty laws as long as they are conducted lawfully:

- taking of animals under the jurisdiction of the Wildlife Resources Commission (with a limited exception for certain birds);
- activities conducted for purposes of used for biomedical research or training;
- activities conducted for purposes of production of livestock, poultry, or aquatic species;
- activities conducted for the primary purpose of providing food for human or animal consumption;
- activities conducted for veterinary purposes;
- destruction of any animal for the purposes of protecting the public, other animals, or the public health;³ and
- activities for sport.

¹ The term "animal" is defined broadly to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. The term "cruelty" encompasses "every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted." G.S. 19A-1(1)-(2).

² An injunction is basically a court order that either tells a person to stop doing something or, in some circumstances, commands a person to take certain action.

³ There are several older laws that expressly allow the killing of dogs when they are harming other animals – such as dogs injuring deer or bear in protected areas, dogs killing sheep or livestock, and "mad" dogs. Such acts would most likely not be considered cruelty. G.S. §§ 67-3, 67-4, 67-14, 67-14.1.

The civil remedy for animal cruelty may be employed alone or in combination with the criminal remedies discussed below.

Statutory authority: G.S. §§ 19A-1 to -4

c. Become involved in enforcing the state's *criminal* animal cruelty laws

North Carolina also has a series of criminal laws relating to animal cruelty. The general provision in G.S. § 14-360 establishes two offenses. It is a Class I misdemeanor if a person *intentionally* overdrives, overloads, wounds, injures, torments, kills, or deprives of necessary sustenance any animal⁴ (or causes or procures one of those cruelties). It is a Class I felony if a person *maliciously*⁵ tortures, mutilates, maims, cruelly beats, disfigures, poisons or kills (or causes or procures one of those cruelties) any animal. Certain types of cruelty are elevated to felonies without having been done maliciously, including poisoning livestock, injuring, maiming, killing a law-enforcement agency animal, and a second conviction for activities related to animal fighting and baiting within a three year period.

The following six situations are exempt from these cruelty laws as long as they are conducted lawfully:

- taking of animals under the jurisdiction of the Wildlife Resources Commission (with a limited exception for certain birds)⁶;
- activities conducted for purposes of used for biomedical research or training;
- activities conducted for purposes of production of livestock, poultry, or aquatic species;
- activities conducted for the primary purpose of providing food for human or animal consumption;
- activities conducted for veterinary purposes; and
- destruction of any animal for the purposes of protecting the public, other animals, or the public health.

These exceptions are identical to those in the civil animal cruelty context, except the civil remedy also excludes lawful activities for sport.

⁴ As with the civil cruelty laws, the term “animal” is defined broadly to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings

⁵ In general, North Carolina courts conclude that an act is done “maliciously” when it is done with ill will, hatred, spite or resentment towards the victim. By comparison, an act is done “intentionally” if the person’s purpose was to act in that way and intended to cause a result. See Robert L. Farb, North Carolina Crimes: A Guidebook on the Elements of Crime, 3-4 (Institute of Government, 5th ed. 2001).

⁶ In a recent decision, the North Carolina Court of Appeals addressed the exception in the law for “those birds exempted by the Wildlife Resources Commission (WRC) from its definition of ‘wild birds’ pursuant to G.S. 113-129(15a).” Under its rules implementing that exemption, the WRC identified “the domestic pigeon (*Columba livia*)” as being outside its jurisdiction and regulation. The court interpreted this exemption to mean that wild (or feral) pigeons within *Columba livia* are *not* exempt from WRC regulation and therefore are *not* subject to the criminal animal cruelty laws. The court went on to conclude that the criminal animal cruelty statute was unenforceable against a person who wanted to hold a pigeon shoot on his property because it was too vague. It explained that citizens would not be able to tell the difference between a domestic and feral pigeon and therefore could not know whether they might be subject to criminal penalties under the law. *Malloy v. Cooper*, 162 N.C.App. 504, 592 S.E.2d 17 (2004).

In addition to this general criminal law governing cruelty to animals, the state has a series of more specific laws governing particular situations, including:

- instigating or promoting cruelty to animals;
- abandoning animals;
- cock fighting (which includes being a spectator);
- animal fighting and baiting (which includes being a spectator);
- conveying animals in a cruel manner;
- selling baby chicks, other fowl, or rabbits (under 8 weeks of age); and
- placing poisonous items, antifreeze and other items in public places.

For most of the cruelty offenses discussed above, the judge has the authority to remove the animal from the owner or possessor's custody permanently.

Statutory authority: G.S. §§ 14-163; 14-163.1; 14-360 to 363.2; 14-368; 14-401.

d. Adopt a local ordinance governing animal abuse

In addition to the remedies for cruelty available under state law, local governments have the authority to “define and prohibit the abuse of animals.” Many local governments have adopted such ordinances. These local laws vary significantly; many mirror provisions in state law, some impose additional restrictions, and some expand on the general definition of cruelty to specifically identify certain behaviors. For example, one county has a provision regulating animals left in cars:

- (a) It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.
- (b) After making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal control officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.
- (c) The animal control officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed. (*modified version of Buncombe County, § 6-58*).⁷

While an animal control officer could rely on the general definition of animal cruelty in the state law in such situations, this local ordinance provides more specific guidance to both the officer and the public.

Statutory authority: G.S. §§ 153A-127; 160A-182.

⁷ Unless otherwise noted, all ordinances cited in this document are available online at www.municode.com. Note that examples of local ordinances included in this document are not intended to be “models” recommended by the Institute of Government.

2. What may local governments do to protect the public from rabies?

a. Become involved in enforcing the state's rabies laws

State law provides a detailed framework for the prevention, surveillance and management of rabies in North Carolina under its public health statutes. Any violation of these public health laws is a Class 1 misdemeanor.

Vaccination

All dogs and cats over four months of age must be vaccinated, and must be provided with a vaccination certificate and tag. A copy of the vaccination certificate must be filed with the county animal control agency. Dogs and cats must wear vaccination tags at all times, except that local governments have the authority to exempt cats from this requirement. Dogs and cats that are brought into the state without proof of vaccination must be confined until vaccination and for two weeks thereafter. There is a limited exception applicable to exhibition animals.

State law requires each local health director to organize (or assist other county departments to organize) at least one countywide rabies vaccination clinic per year. The board of county commissioners is allowed to establish a fee for the clinic vaccinations, which may include an administrative fee up to \$4.00 per vaccination and the actual cost of the vaccine, certificate, and tag.

Local animal control officers are required to enforce the vaccination tag requirement by canvassing the county to find animals without tags. If they find an animal with a vaccination tag and the animal has a different tag identifying the owner (or the officer knows who the owner is), the officer must notify the owner in writing that he must have the animal vaccinated and produce proof of vaccination within three days. If the owner of the animal is not known, the officer may impound the animal.

The local board of county commissioners may establish the required period of impoundment for such animals, with the minimum period being 72 hours. During that time the animal control officer is required to make reasonable efforts to locate the animal's owner. The officer (or animal control agency) must maintain a record of all animals impounded. If the impounded animal is not reclaimed, the animal may be:

- Returned to the owner;
- Adopted as a pet by a new owner;
- Sold to certain approved research institutions; or
- Put to death by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association.

With respect to euthanasia methods, each organization identified in North Carolina law has issued detailed policy statements and guidelines:

- AVMA: <http://www.avma.org/resources/euthanasia.pdf>
- HSUS: <http://www.hsus.org/ace/16121>

- AHA: http://www.americanhumane.org/site/PageServer?pagename=wh_where_stand_apsp_ebi_cats_dogs (cats and dogs in shelters only)

The approved methods vary depending on the type of animal and the circumstances. Local animal control officers may use any method approved by at least one organization. It is important to note that none of the organizations recognize gunshots as approved methods, except in certain emergency circumstances.

Animal bites

State law requires physicians to report animal bites to the local health director if the animal is known to be a potential carrier of rabies. In addition, when a dog or cat bites a human being, the victim and the owner (or the person in control or possession of the animal) must notify the local health director immediately. With limited exceptions, the biting animal must be immediately confined for 10 days in a place designated by the local health director. The owner will be responsible for the cost of the confinement. In some situations, the health director may agree to allow the owner to confine the animal on his own property. If, however, the owner fails to confine the animal as agreed, he may be guilty of a Class 2 misdemeanor.

Rabies exposure or infection (suspected and confirmed)

If someone owns or possesses an animal that is *suspected* of having rabies, he must (a) immediately notify the local health director or animal control officer; and (b) securely confine the animal in a place designated by the local health director. Dogs and cats must be confined for 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian.

Different rules apply if an animal has been *exposed to rabies*. An animal is considered to have been *exposed to rabies* if the local health director reasonably suspects that it was exposed to a proven rabid animal or an animal reasonably suspected of having rabies that is not available for diagnosis. If an exposed animal was vaccinated more than three weeks prior to being exposed *and* receives a booster dose of vaccine within three days of the exposure, nothing needs to be done. If not, the animal must either be (a) destroyed immediately by its owner or (b) quarantined at a facility approved by the local health director for a period up to six months.

An animal *diagnosed as having rabies* by a licensed veterinarian must be destroyed and its head must be sent to the State Laboratory of Public Health. In addition, the heads of all dogs and cats that die during the 10-day confinement period must be sent to the State Lab for rabies diagnosis.

Geographic rabies quarantine

If a local health director determines that rabies exists in a geographic area “to the extent that the lives of persons are endangered,” she may impose a quarantine on the area. In this context, the term quarantine means that every dog and cat must be confined either to the owner’s premises or in a veterinary hospital. Dogs or cats on a leash or under the control and in the sight of a responsible adult may be permitted to leave the owner’s premises or hospital. If a dog or cat continues to run uncontrolled, any peace officer or animal control officer has the right, after a reasonable effort has been made to apprehend the animal, to destroy the animal.

Rabies emergency

When rabies is found in the wild animal population in a county or district, the local health director may petition the State Health Director to declare a rabies emergency. If an emergency exists, the State Health Director must petition the Wildlife Resources Commission to develop a plan to reduce the threat of rabies exposure.

b. Adopt a local ordinance supplementing the state rabies laws

While the state rabies laws are fairly comprehensive, some local governments have elected to exercise their general authority to protect the health, safety and welfare to supplement the state law or impose additional restrictions and requirements in this area. For example:

If an owner of an animal fails to produce proof of rabies vaccination or fails to have the animal vaccinated, after having been issued a notice to vaccinate pursuant to G.S. 130A-192, animal control may seize and impound the animal. The animal may be redeemed upon showing proof of vaccination and payment of all fees and penalties authorized by this chapter. (*Catawba County, § 6-9; note that the state law does not specifically provide this impoundment authority for post-notice violations.*)

Should it be deemed necessary by the local health director or the local board of health that [pets other than cats and dogs] be vaccinated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for any owner or keeper to fail to provide current vaccination against rabies for that pet. (*Buncombe County, § 6-56; note that the state rabies law only applies to cats and dogs.*)

Statutory authority: G.S. § 130A-184 to -99; 153A-121; 160A-174

3. What may local governments do to prevent owners from letting their animals roam without a leash?

a. Become involved in enforcing the state’s *limited* restrictions on animals running at-large

There is no statewide leash law in North Carolina, but there are two provisions that limit dogs running at-large. One statute prohibits persons from allowing dogs to run at large, but it only applies during the night. Another prohibits “bitches...during the erotic stage of copulation” to run at-large. A violation of either law is a Class 3 misdemeanor. There is

also a law that authorizes the Wildlife Resources Commission to kill and seize dogs in wildlife management areas under certain circumstances.

Statutory authority: G.S. §§ 67.2; 67-12; 67-14.1

b. Adopt a local leash ordinance

Because the state laws are far from comprehensive, many cities and counties have enacted local leash laws. Without a local leash ordinance, animal control officers have limited authority to pick up stray animals. They generally must rely on their rabies enforcement authority to pick up those stray cats or dogs that do not have vaccination tags. A few examples of local ordinances follow:

Any dog or cat that is not confined as provided in this article, and not under the actual physical control or restraint of its owner, leaseholder or keeper, shall be presumed to be running at large. Any animal control officer shall impound such animal at the animal shelter. It shall be a violation of this article for any dog or cat running at large off its owner's or keeper's property to bite any person so as to break such person's skin. A first offense shall subject such owner or keeper to a civil penalty of \$250.00. A second offense shall subject such owner or keeper to a civil penalty of \$500.00. A third offense shall subject such owner or keeper to a civil penalty of \$1,000.00. (*City of Fayetteville, § 6-77*)

It shall be unlawful for any owner to permit any animal belonging to him to run at large upon the streets of the city. (*City of Winston-Salem, § 6-2*)

It shall be unlawful for any person owning, keeping, possessing or maintaining a dog in this county to intentionally or negligently allow the dog to run at large.

(a) If an animal control officer receives a first-time at large complaint and the officer does not personally observe the dog at large, the officer shall investigate the complaint. Upon finding probable cause to believe the dog was at large he shall issue a first civil penalty in accordance with section 4-9.

(b) If an animal control officer personally observes a dog at large animal control may seize and impound the animal and shall issue the appropriate civil penalty in accordance with section 4-9.

(c) Nothing in this article shall prevent a private citizen from bringing an action against the owner of an animal, which has caused injury to the private citizen or his property, for damages or any other loss resulting from an animal being at large. (*Durham County, § 4-86 to -87*).

Cities have specific statutory authority to enact local leash ordinances but counties must rely on their general ordinance making power.

Statutory authority: G.S. §§ 153A-121; 160A-186

4. What may local governments do to protect the public from dangerous dogs?

a. Become involved in enforcing the state's dangerous dog laws

“Dangerous dog” and “potentially dangerous dog” definitions

Under state law, there are three basic categories of “dangerous dogs”: the dog must (1) without provocation have killed or inflicted severe injury on a person; (2) be owned or kept for the purpose of dog fighting or be trained for dog fighting; or (3) be determined by a person or Board designated by the city or county to be “potentially dangerous” because it:

- inflicted a bite on a person that resulted in broken bones, disfiguring lacerations, or required cosmetic surgery or hospitalization;
- killed or inflicted severe injury upon a domestic animal when not on the owner’s property; or
- approached a person when not on the owner’s property in a vicious or terrorizing manner in an apparent attitude of attack.

There are certain types of dogs that are exempt from the state law, including law enforcement dogs, hunting dogs, and herding/predator control dogs that inflict injury on an animal appropriate to the dog’s training. In addition, the state’s laws do not apply when the dog inflicts injury on a person who (1) was committing a willful trespass or other tort; (2) was committing or attempting to commit a crime; or (3) was tormenting, abusing, or assaulting the dog (or had in the past).

“Potentially dangerous” dog classification process

Local animal control officials are required under this state law to designate either a single person or a Board to be responsible for determining when a dog is “potentially dangerous.” Such boards are often referred to as the “dangerous dog board.” Officials must also identify a Board (which must be different from the first Board) to hear appeals from “potentially dangerous dog” determinations. The statute outlines a process for declaring a dog “potentially dangerous,” which includes written notice to the owner and an appeal process.

Note that the classification and appeals processes are only applicable to dogs that are dangerous because they fall under the definition of “potentially dangerous dog.” The procedural requirements do not apply to dogs that fall into one of the first two components of the definition of dangerous dog (i.e., dog has killed or inflicted severe injury or is trained for fighting).

Dangerous dog restrictions

If a dog is “dangerous” under state law, the owner must comply with a series of restrictions and requirements. He must not leave the dog unattended on his property unless the dog is (1) confined indoors; (2) in a securely enclosed and locked pen; or (3) in another structure designed to restrain the dog. The owner must also not allow the dog to go off his property unless it is (1) muzzled and (2) on a leash or otherwise securely restrained.

If the owner transfers ownership or possession of the dog, he must notify the animal control official or dangerous dog board⁸ of the name and address of the new owner or possessor. He must also notify the new owner or possessor about the dog's dangerous behavior and any determination made by the local dangerous dog official or board.

Penalties

The state law identifies several potential penalties and risks for dangerous dog owners. First, it is a Class 3 misdemeanor to violate one of the restrictions or requirements provided in the law. In addition, it is a Class 1 misdemeanor if the dog attacks a person and causes physical injuries requiring medical treatment costing over one hundred dollars (\$100). Finally, and perhaps most importantly, the law provides that an owner will be *strictly liable* for any injuries or property damage inflicted by the dog. Strict liability basically means that if a property owner or individual files a civil lawsuit against the dog owner for money damages, the court will not require proof that the dog owner was negligent in caring for or restraining the dog.

b. Adopt a local ordinance governing dangerous dogs

State law specifically allows local governments to adopt their own programs for the control of dangerous dogs. Local programs may mirror the state law, be more or less restrictive than the state law, or establish a completely different program entirely.⁹ Many local ordinances impose additional procedural requirements, restrictions on dogs, and penalties. For example:

- (a) An owner of a dangerous or potentially dangerous dog shall take precautions against attacks by such dogs resulting in serious bodily injury to a person. Determination of a dangerous or potentially dangerous dog shall be in accordance with G.S. 67-4.1. A board designated by the city council, or the county commissioners when the county is contracted for animal control services, shall be responsible for determining when a dog is a potentially dangerous dog. This board shall be composed of a practicing veterinarian and two public citizens. The board of health will serve as the appellate board to hear any appeals. Appeals from the final decisions of the appellate board shall be heard in the superior court of the county.
- (b) It shall be unlawful for any person to keep any vicious or dangerous domestic animal within the city unless it is confined within a secure building or enclosure, or it is securely muzzled and under restraint by means of a leash, chain or rope and firmly under control at all times. (*Brevard, § 14-36*)

⁸ The statute provides that notification is required to the "authority that made the determination under this Article." G.S. § 67-4.2. Interestingly, the Article only requires an official determination by a person or Board when declaring a dog "potentially dangerous." Therefore, dogs that are "dangerous" under the first part of the definition of dangerous dog are not required to go through the official declaration process, nor is notification of transfer technically required under this law.

⁹ Note that local governments have a unique opportunity to adopt a local law that is *less stringent* than the applicable state law. Generally, local governments may only adopt laws that are more stringent.

(a) Circumstances requiring special preventive measures. The department shall have the authority to require the owner or custodian of a dog to comply with specific preventive measures, as described in subsection (b) of this section, after taking into consideration the following factors:

[includes nature of the particular dog, adequacy of confinement, immediate surrounding area, proximity of a child under the age of seven, bite history, trained for fighting or aggressive attack, attitude of attack incident, and reputation of the dog]

In considering whether to order a special preventive measure, the department is authorized to consider additional factors as aggravating circumstances that might warrant the ordering of special preventive measures.

(b) Preventive measures. If the department determines that the circumstances require special preventive measures, then the department shall have the authority to require appropriate, specific preventive measures which might include, but are not limited to, the following:

- (1) Necessary repairs to any fence or enclosure.
- (2) Measures to ensure that a gate will remain secure.
- (3) A fence or secure dog fence or any other similar device that would provide greater assurance for the confinement of the dog, subject to specific approval by the department.
- (4) The department shall also have the authority to require the owner to tattoo the dog at the owner's expense, if that is necessary for identification, investigation, or enforcement purposes.

(edited version of Cabarrus County, § 10-57; ordinance provides for monetary penalties and seizure of dog)

...(e) Any animal declared a dangerous dog or potentially dangerous dog is required to remain confined at the county animal shelter until such time as the owner constructs or makes available confinement facilities which are adjudged by county animal control officials to be secure and in keeping with all requirements.

(f) Redemption fees and daily boarding fees at a rate established by the board shall continue to accrue each day the animal remains confined at the county animal shelter. All charges and fees are required to be satisfied before the animal can be released to its owner.

(g) Minimum cage requirements for any animal declared as a dangerous dog or potentially dangerous dog are as follows:

- (1) 10 x 10 x 6 feet heavy gauge chain link fence.
- (2) Four-inch concrete slab.
- (3) Roof suitable to contain the dog.
- (4) Double padlock.
- (5) "Beware of dog" signs posted on the lot.

(h) Once the animal owner is notified that any animal has been declared to be a dangerous or potentially dangerous dog, the owner will have three (3) weeks to construct the dog lot and have it approved by the county animal control supervisor.

(i) The dog must stay caged in accordance with the county animal control rules until all appeals are exhausted.... *(edited version of Rutherford County, § 5-39; ordinance mirrors state law in many other respects)*

For guidance regarding adoption of a local ordinance specifically targeting pit bulls, see Local Government Law Bulletin, No. 106 by Jeanette Cox, available at <http://ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/lglb106.pdf>

c. Utilize the health director's "vicious animal" authority

In a law pre-dating the state's dangerous dog laws, the local health director has the authority to "declare an animal to be vicious and a menace to the public health." This authority only applies when the animal has attacked a person without being provoked.¹⁰ Once the animal is declared vicious, it must be confined to its owner's property unless it is on a leash and accompanied by a "responsible adult." If a local government does not have a dangerous dog official or board empowered to declare dogs "potentially dangerous," it may elect to use this procedure to impose restrictions on some dogs that would otherwise fall outside the scope of the definition of dangerous dog. A violation of this law is a Class 1 misdemeanor.

Statutory authority: G.S. §§ 67-4.1 to 4.5; 130A-200.

5. Where should local governments house seized animals?

Local governments have the authority to operate animal shelters or contribute to the support of animal shelters. They are not *required* to own or operate one, but many have chosen to do so. Others have entered into cooperative agreements with local humane societies or other nonprofit organizations. Both cities and counties have the authority to contract with private entities to provide not only the shelters, but also some of the animal control functions.

The North Carolina Department of Agriculture and Consumer Services is responsible for establishing and enforcing licensing regulations governing animal shelters.¹¹ Until recently, however, only private animal shelters were subject to those regulations; city and county shelters were exempt. In 2004, the General Assembly amended the law to require local government shelters to comply with the Department's regulations (S 1225, S.L. 2004-199). The new law adds a second sentence to the general law authorizing public shelters; the law governing county shelters now reads:

A county may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes."

G.S. § 153A-442. Identical language was added to the statute governing city shelters. See G.S. § 160A-493.

¹⁰ Provocation includes being teased, molested, provoked, beaten, tortured or otherwise harmed.

¹¹ See G.S. §§ 19A-20 to 19A-40; 2 NCAC 52J .0101 to .0304. Some of the regulations governing shelters were amended in late 2004. See 19:10 N.C. Reg. 868-870 (Nov. 15, 2004).

The amendments to the law, however, did not provide the Department with specific authority to enforce those regulations against local government shelters. Because of this ambiguity in the law and the limited resources available for regulatory enforcement, officials in the Veterinary Division have said that the Department does not have any plans to inspect or license public shelters at the current time. If a local government submits a request for a courtesy inspection, the Department may visit the shelter and offer suggestions for improvements consistent with the regulations.

Statutory authority: G.S. §§ 153A-442; 160A-493.

6. What may local governments do to protect the public from exotic and dangerous animals other than dogs (e.g., lions, tigers)?

a. Become involved in enforcement of applicable state laws

North Carolina does not have a general law regulating the ownership or possession of exotic or dangerous animals. The Wildlife Resources Commission exercises jurisdiction over native North Carolina wildlife, but it does not regulate ownership or possession of non-native animals such as lions, tigers, and elephants. There are, however, a handful of specific provisions scattered throughout state law that affect ownership or possession of certain exotic or dangerous animals. For example, it is unlawful to:

- intentionally expose humans to venomous reptiles. G.S. §§ 14-416 et seq.
- raise American alligators without a proper license. G.S. § 106-763.1.
- release exotic species of wild animals or wild birds into an area for the purpose of stocking the area for hunting or trapping. G.S. § 113-292(e).

While these specific laws have been adopted over time to respond to particular concerns, the state still lacks a comprehensive legal framework for addressing problems with these types of animals.¹²

b. Enact a local ordinance relating to dangerous animals.

Local governments have broad authority to regulate, restrict, or prohibit possession of animals that are dangerous to persons or property. Note that this authority extends only to animals that are dangerous to persons or property; it does not encompass all exotic (or non-native) animals. Several cities and counties have adopted local ordinances, and they vary dramatically from jurisdiction to jurisdiction. Some establish permitting programs, others prohibit ownership and possession entirely and others place restrictions upon ownership and possession. Some provide a general definition of “dangerous” or “exotic” animal and others identify the regulated animals by their scientific names. For examples of local ordinances, see:

- Buncombe County, § 6-61
- Catawba County, § 6-201 et seq.
- Guilford County, §§ 5-9; 5-22
- Stokes County, http://www.co.stokes.nc.us/Exotic_Animal_Ordinance.htm
- City of Charlotte, § 3-73

¹² Federal law addresses importation of some exotic animals, but it does not heavily regulate ownership or possession of them once they are lawfully within the country. Federal law also regulates, but does not entirely prohibit, private ownership of endangered species.

c. Utilize the health director’s “vicious animal” authority

If all else fails, a county could rely on the health director’s authority to place restrictions on an owner of a “vicious animal” if the animal has attacked a person without being provoked.¹³ Once an animal is declared vicious, it must be confined to its owner’s property unless it is on a leash and accompanied by a “responsible adult.” A violation of this law is a Class 1 misdemeanor.

Statutory authority: G.S. §§ 130A-200; 153A-131; 160A-187.

7. What may local governments do to address animals that are creating a nuisance in the community?

North Carolina local governments have broad authority to “define and abate nuisances.” Many rely on this authority to regulate nuisances affecting sanitation (e.g., pooper-scooper laws, trash can raiding) and noise (barking/howling). For example:

- (a) Any person owning, harboring, walking, in possession of or in charge of a dog which defecates on public property, public park property, public right-of-way or any private property without the permission of the private property owner, shall remove all feces immediately after it is deposited by the dog. All feces removed in accordance with this section shall be placed in a suitable bag or other container that closes and disposed of in a lawful manner.
- (b) Any person, while harboring, walking, in possession of or in charge of a dog on public property, public park property, public right-of-way or any private property without the permission of the private property owner, shall have in his or her possession a bag or other container that closes, which is suitable for removing feces deposited by the dog.
- (c) The provisions of this section shall not apply to blind persons using dogs as guides. (*Apex, § 4-1*).

It shall be unlawful for any dog owner to keep or have a dog that habitually or repeatedly barks in such a manner or to such an extent that it is a public nuisance. (*New Hanover County, § 5-11; see also § 5-4, which includes “any animal which barks, whines or howls in an excessive, continuous or untimely manner” in the definition of “public nuisance”*).

The ordinance may outline specific procedural requirements that apply when an animal is found to be creating a nuisance. For example:

- (a) *Prohibited.* It shall be unlawful for an owner or keeper to permit an animal to create a nuisance, or to maintain a nuisance created by an animal. An agricultural operation or any of its appurtenances shall not constitute a nuisance when operated in accordance with the conditions and provisions set forth in G.S. 106-701.

¹³ Provocation includes being teased, molested, provoked, beaten, tortured or otherwise harmed.

- (b) *Abatement procedure.* Compliance shall be required as follows:
- (1) When an animal control officer, law enforcement officer or duly authorized person observes a violation, the owner or keeper will be provided written notification of such violation and be given 48 hours from the time of notification to abate the nuisance.
 - (2) Upon receipt of a written, detailed and signed complaint being made to the city manager, or the local health director, where the county is contracted to provide animal control services for the city or by any person that any other person is maintaining a nuisance as defined in section 14-1, the city manager, or local health director, shall cause the owner or keeper of the animal in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing.
 - (3) If the written findings indicate that the complaint is justified, then the city manager, the local health director or a duly authorized person shall cause the owner or keeper of the animal in question to be so notified in writing, and ordered to abate such nuisance within 48 hours by whatever means may be necessary. If the owner or keeper of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be posted for 48 hours at the animal shelter, city hall and county courthouse. If after 48 hours the owner or keeper of the animal remains unknown, the animal may be impounded or humanely destroyed.
- (c) *Violations.* It shall be unlawful for a person to fail or refuse to abate the nuisance as required by this section. (*Brevard, 14-37*).

Statutory authority: G.S. §§ 153A-121; 160A-174.

8. How may local governments generate revenue to support their animal control programs?

Cities and counties have the authority to levy an annual license tax on the keeping of domestic animals. For example:

- (a) Any person harboring or keeping any dog shall pay annually a license tax on the privilege of keeping such dog in the county.
- (b) The yearly license tax shall be one dollar and fifty cents (\$1.50) for each dog.
- (c) The license tax shall be paid at the same time as the annual property tax with the same penalties for late payment. A dated and numbered receipt shall be issued to the owner at the time of payment. Such receipt shall constitute a license. (*Pitt County, § 3-5*).

This licensing and taxing authority also affords local governments with an additional mechanism for addressing stray animals within the jurisdiction by authorizing animal control to impound any unlicensed animal. While this mechanism would not be as effective as a local leash law (because licensed animals could not be impounded), it would help those without local interest in requiring leashes.

A recent article in Popular Government proposed a method for establishing a new licensing program by utilizing county rabies records. See Catherine Clark, *The Truth About Cats and Dogs: Vaccinations, Licenses, Services and Revenue* in Popular Government (Winter 2002), available at:

<http://ncinfo.iog.unc.edu/pubs/electronicversions/pg/pgwin02/article5.pdf>.

Statutory authority: G.S. §§ 153A-153; 160A-212