



Albemarle County

Legislation Text

File #: 18-478, **Version:** 1

AGENDA DATE: 9/12/2018

TITLE:

Ordinance to Amend County Code Chapter 4, Animals and Fowl

SUBJECT/PROPOSAL/REQUEST: Ordinance to Amend County Code Chapter 4, Animals and Fowl

ITEM TYPE: Consent Information Item

STAFF CONTACT(S): Richardson, Walker, Kamptner, Farley, Lantz, Wells

PRESENTER (S): N/A

LEGAL REVIEW: Yes

REVIEWED BY: Jeffrey B. Richardson

BACKGROUND: The Board held a work session on August 8, 2018 on the proposed amendment of Chapter 4, Animals and Fowl, of the County Code. The focus of the work session was on a range of current and proposed acts that would create a rebuttable presumption of animal cruelty. The Board also considered at the August 8 work session proposed changes to draft County Code §§ 4-306 and 4-308, which would replace some discretionary authority of the trial court in the disposition of animal treatment (e.g., abandonment, animal cruelty) cases with mandatory requirements.

STRATEGIC PLAN: Quality Government Operations: Ensure County's government capacity to provide high quality service that achieves community priorities.

DISCUSSION: Chapter 4 (Attachment A) has been revised to incorporate all of the acts that would create a rebuttable presumption of animal cruelty into draft County Code § 4-301. Section 4-301 begins on page 57 of Attachment A, and the changes made to the ordinance since the August 8 work session are highlighted in grey.

The Board also considered at the August 8 work session some proposed revisions to County Code §§ 4-306 and 4-308 that would make them more stringent than State law. Those revisions centered around the trial court's disposition of animals that have been found by a court to have been abandoned, cruelly treated, or subjected to other mistreatment. With respect to County Code § 4-306, the discussion was whether the court should be required by County ordinance to prohibit the person convicted from owning or possessing other animals. With respect to County Code § 4-308, the issue was whether the court should be required by County ordinance to prohibit the person convicted from adopting animals. The State laws on which County Code §§ 4-306 and 4-308 are based (Virginia Code §§ 3.2-6546 and 3.2-6569) leave those decisions to the trial court's discretion. However, localities are enabled by another State law (Virginia Code § 3.2-6543) to adopt ordinances that are more stringent than Virginia Code §§ 3.2-6546 and 3.2-6569. The most applicable definition of "stringent" to this circumstance is "marked by rigor, strictness, or severity: rigidly controlled by rule or standard." *Webster's Third New International Dictionary (2002)*, p. 2263. Removing judicial discretion in the circumstances described would "rigidly control by rule or standard" and, therefore, the proposed language

(“shall” instead of “may”) in County Code §§ 4-306 and 4-308 falls within this definition of “stringent.”

After the August 8 work session, the Board received a request from a citizen asking the Board to address feral cats in this ordinance. Feral cats are addressed in this ordinance to a certain extent because the definition of “companion animal” in draft Chapter 4 includes feral cats (Attachment A, pages 33-34). If the Board desires to explore additional regulations pertaining to feral cats, staff recommends that the work on that issue not delay the public hearing on draft Chapter 4 scheduled for October 10. Feral cats raise a broad range of regulatory issues that will require further study and collaboration with the Albemarle-Charlottesville SPCA and others to determine an appropriate regulatory scope and content. That work will take time.

BUDGET IMPACT: There is no expected budget impact.

RECOMMENDATION:

This is for information only. The public hearing on this ordinance is scheduled for October 10, 2018.

ATTACHMENTS:

A - Proposed Ordinance