

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Wildlife Protection

The Director of the Department of Energy and Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl.)), the Wildlife Protection Act of 2010, effective March 8, 2011 (D.C. Law 18-289; D.C. Official Code §§ 8-2201 *et seq.* (2013 Repl.)), and Mayor’s Order 2014-123, dated May 27, 2014, hereby amends Chapter 15 (Fish and Wildlife) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to license individuals and register companies performing wildlife control activities, to create qualifications and conditions for licensure and registration, to set restrictions on the capture, handling, and transport of wildlife, to set restrictions on euthanasia of wildlife, to establish control requirements for specified species, to require the compilation of service records and annual reporting, to create standards for suspension of licensure and registration, and to establish fees for licensure. The rules also clarify that certain prohibited methods of wildlife control do not apply to Norway rats, roof rats, and house mice, as well as fish.

The licensing of wildlife control operators and the registration of wildlife control service providers performing services in the District are in line with the requirements of neighboring states. Many of the wildlife control operators and wildlife control service providers offering services in the District come from Maryland or Virginia. Both states require wildlife control operators to be licensed.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on September 18, 2015, at 62 DCR 12532. The Department considered all comments received and made substantive changes to the proposed rulemaking. A Notice of Second Proposed Rulemaking, published in the *D.C. Register* on January 29, 2016, at 63 DCR 0001068 superseded the Notice of Proposed Rulemaking and reflected changes made in response to comments received from the public. Interested persons can find both the comments and the Department’s response to those comments at <http://doee.dc.gov/service/fisheries-and-wildlife>. The Department did not receive any comments on the second proposed rulemaking and made no substantive changes.

Chapter 15, FISH AND WILDLIFE, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add new Sections 1570 to 1579, as follows:

1570 WILDLIFE PROTECTION: WILDLIFE CONTROL OPERATOR LICENSING AND FEES

1570.1 Except in accordance with § 1560, no person shall engage in wildlife control without a license from the Department of Energy and Environment (Department).

- 1570.2 To obtain a wildlife control operator license, an applicant shall:
- (a) Be at least eighteen (18) years of age;
 - (b) Certify that he or she has not been convicted of an offense involving wildlife or animal cruelty within the previous ten (10) years;
 - (c) Complete a wildlife control operator training class approved or administered by the Department;
 - (d) Pass an examination approved by or administered by the Department, with a score of no less than eighty percent (80%) correct responses;
 - (e) Provide proof of employment with a wildlife control services provider registered by the Department under § 1571 below;
 - (f) Present a valid District or state-issued ID; and
 - (g) Pay a fee in the amount of fifty dollars (\$50.00).
- 1570.3 The written examination shall include the following topics:
- (a) Animal life cycles;
 - (b) Wildlife control methods and best practices;
 - (c) Human health and safety issues; and
 - (d) Laws and regulations pertaining to wildlife in the District of Columbia.
- 1570.4 If an applicant fails to pass the examination, he or she shall:
- (a) Wait ten (10) business days before making another attempt; and
 - (b) Not take the examination more than three (3) times in a calendar year.
- 1570.5 A wildlife control operator license shall not be transferable.
- 1570.6 A wildlife control operator shall be in possession of the license while engaging in activities authorized by the license, and it shall be made available for inspection when requested by the Department.
- 1570.7 A wildlife control operator license shall be renewed every two years, with payment of a fifty dollar (\$50.00) fee.

- 1570.8 It is the responsibility of the operator to initiate any license renewal by submitting a renewal application to the Department at least thirty (30) days before the expiration date on his or her license.
- 1570.9 The wildlife control operator has up to thirty (30) days after the expiration of his or her license to submit a renewal application. A twenty-five dollar (\$25.00) late fee will be assessed in addition to the renewal fees.
- 1570.10 If a license has been expired for more than thirty (30) days, the wildlife control operator shall be subject to applicable penalties for operating without a license.
- 1570.11 If a license has been expired for more than one (1) year, the wildlife control operator shall submit a new application pursuant to § 1570.2.
- 1570.12 A wildlife control operator shall perform wildlife control activities in accordance with §§ 1570 through 1579 and any terms or conditions in the license.
- 1570.13 A wildlife control operator shall perform wildlife control activities only for the species designated by the license.
- 1570.14 A wildlife control operator shall notify the Department within ten (10) business days of any changes to the information in his or her license.
- 1570.15 A wildlife control operator must comply with all federal and District laws, including those that apply to Species of Greatest Conservation Need (SGCN) and threatened or endangered species.
- 1570.16 Nothing in this subsection shall be construed to prohibit owners of private property from taking action to protect their property or person in compliance with § 1560.2.

1571 WILDLIFE PROTECTION: WILDLIFE CONTROL SERVICES PROVIDER REGISTRATION

- 1571.1 A business shall not engage in providing wildlife control services in the District unless the business is registered by the Department as a wildlife control services provider and uses the service of a licensed wildlife control operator to control wildlife.
- 1571.2 A self-employed wildlife control operator must register as a wildlife control services provider.
- 1571.3 A wildlife control services provider registration is non-transferable and continues until the registration is withdrawn by the wildlife control services provider or suspended or revoked pursuant to § 1578.

1571.4 A wildlife control services provider does not have to take an examination administered by the Department to register with the Department.

1571.5 To register, the wildlife control services provider shall submit to the Department:

- (a) Documentation showing that the entity has a valid District of Columbia basic business license;
- (b) The business name, address, e-mail address, phone number, and a contact name; and
- (c) Documentation of liability insurance, that shall be kept in full force and effect as long as the wildlife control services provider is engaged in wildlife control, for at least:
 - (1) \$1,000,000 for each occurrence;
 - (2) \$1,000,000 for personal injury; and
 - (3) \$2,000,000 in the aggregate.

1571.6 The wildlife control services provider shall notify the Department within ten (10) business days of any changes to the information in his or her registration.

1572 WILDLIFE PROTECTION: NOTICE TO CLIENTS

1572.1 Before undertaking any wildlife control measures, a wildlife control services provider shall provide to the client, in writing, the following:

- (a) An assessment of the wildlife problem, including possible causes;
- (b) The methods and practices that may be used to resolve the wildlife problem, clearly specifying possible lethal and nonlethal means;
- (c) The agreed-upon disposition of the animal;
- (d) The estimated charge; and
- (e) Where applicable, the methods and practices which the client may employ to limit future problems of a similar nature.

1573 WILDLIFE PROTECTION: RECORD KEEPING AND REPORTING

1573.1 A wildlife control operator shall maintain records of all wildlife control services, documenting the following information at each service call:

- (a) Client's name and address;
- (b) Date of services;
- (c) Nature of the complaint about wildlife;
- (d) Methods employed to alleviate problem;
- (e) Number and species of wildlife handled;
- (f) Method and location of disposition of wildlife; and
- (g) Name of the licensed wildlife control operator who performed the service.

1573.2 On or before January 15th of each year, a wildlife control services provider shall submit an accurate summary of activities of the preceding calendar year to the Department for publication online. The summary shall contain the following information:

- (a) Name, phone number, and employment address of the wildlife control operator;
- (b) Total number of complaints about wildlife;
- (c) Number and kinds of wildlife handled and their disposition;
- (d) Number of wildlife euthanized and method of euthanasia employed; and
- (e) Time period covered.

1573.3 A wildlife control services provider shall keep all records required in §§ 1573.1 and 1573.2 for three (3) years, and shall make the records available for inspection by the Department, upon request.

1573.4 Wildlife control services providers shall report to the Department any potential outbreak or widespread occurrence of suspected disease.

1574 WILDLIFE PROTECTION: CONTROL OF SPECIFIC SPECIES

1574.1 A wildlife control operator and wildlife control services provider shall recommend and employ non-lethal means in preference to lethal means for the control of problem wildlife.

1574.2 The following wildlife shall be controlled using the methods outlined in this section and § 1576:

(a) Birds

Common Name	Scientific Name
Budgerigar	<i>Melopsittacus undulatus</i>
European starling	<i>Sturnus vulgaris</i>
Graylag goose	<i>Anser anser</i>
House sparrow	<i>Passer domesticus</i>
Mute swan	<i>Cygnus olor</i>
Rock pigeon	<i>Columba livia</i>

(b) Mammals

Common Name	Scientific Name
Rodents	
Deer mouse	<i>Peromyscus maniculatus</i>
Gray squirrel	<i>Sciurus carolinensis</i>
Groundhog	<i>Marmota monax</i>
White-footed mouse	<i>Peromyscus leucopus</i>
Small Mammals	
Eastern mole	<i>Scalopus aquaticus</i>
Raccoon	<i>Procyon lotor</i>
Red fox	<i>Vulpes vulpes</i>
Star-nosed mole	<i>Condylura cristata</i>
Large Mammals	
Black bear	<i>Ursus americanus</i>
Coyote	<i>Canis latrans</i>
White-tailed deer	<i>Odocoileus virginianus</i>

(c) Reptiles

Common Name	Scientific Name
Black rat snake	<i>Elaphe obsoleta obsoleta</i>

1574.3 Except as provided in § 1574.7 below, any species identified as a Species of Greatest Conservation Need (SGCN) as listed in the District's Wildlife Action Plan, which may be found on the Department website, may not be euthanized, killed, relocated, distressed, displaced, or otherwise harmed without written permission from the Department.

1574.4 The Department may approve the request to control a particular SGCN animal for the following reasons:

- (a) If the animal is causing damage to personal property or threatening public health or safety;
- (b) If the animal is sick or injured; or
- (c) Additional reasons on a case-by-case basis.

- 1574.5 A migratory bird shall be controlled only in accordance with the federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and its' implementing regulations, and as follows:
- (a) A nest with eggs or young may not be moved, relocated, destroyed, or altered in any way without first obtaining a federal permit.
 - (b) A nest with no eggs or young may be removed from structures such as boats, docks, and construction equipment, or relocated without a federal permit.
- 1574.6 Bats are SGCN species and except as provided in § 1574.7, may only be controlled with written permission and guidance from the Department, including time restrictions for non-lethal exclusion of bat colonies, and decontamination protocols to prevent the spread of White-nose Syndrome.
- 1574.7 A wildlife control operator may humanely remove a SGCN from the interior of a residence, commercial, or government building without obtaining prior Department approval if:
- (a) The animal is trapped and unable to leave on their own;
 - (b) The animal is released immediately on-site, or taken to a licensed rehabilitation facility if it is sick, injured, or orphaned; and
 - (c) The Department is notified within twenty-four (24) hours of the removal.
- 1574.8 Amphibians and turtles shall not be controlled by wildlife control operators.
- 1574.9 For each transport of wildlife out of the District, the wildlife control operator or wildlife control provider must first obtain written permission from the receiving jurisdiction and then request and receive written permission from the Department.
- 1574.10 For each transport of wildlife into the District, the wildlife control operator or wildlife control provider must first obtain written permission from the Department and then obtain written permission from the jurisdiction the wildlife is leaving.
- 1574.11 Wildlife control operators shall notify the Department prior to performing any wildlife control on black bears or coyotes.

1575 WILDLIFE PROTECTION: FERAL DOGS AND CATS

- 1575.1 When no other control methods have been proven to be adequate, a wildlife control services provider may control feral dogs and cats.

1575.2 The control of feral cats by a wildlife control services provider shall be consistent with the District's policy in favor of trap, neuter, or spay, and return or adoption for controlling feral cats.

1575.3 The wildlife control services provider shall:

- (a) Minimize the use of euthanasia when medical treatment or adoption is possible; and
- (b) Make a good faith effort to provide for adoption of trapped, tamable kittens.

1576 WILDLIFE PROTECTION: ACCEPTABLE METHODS OF WILDLIFE CONTROL

1576.1 Live traps and exclusion devices may be used to control wildlife.

1576.2 Nets may be used to capture live birds and bats for immediate release.

1576.3 Mist nets must to be checked at least once every hour.

1576.4 Mist nets and rocket nets may be used indoors to capture live birds that are trapped in a building, in accordance with additional guidelines outlined in 50 C.F.R. § 21.12.

1576.5 Wildlife control operators must obtain a federal permit to use a mist net or rocket net outdoors.

1576.6 A live trap may be used to capture a SGCN trapped in a building if they are released immediately onsite, or if sick, injured, or orphaned taken to a licensed rehabilitation facility for care.

1576.7 All live traps and exclusion devices shall be labeled with the name, address, and phone number of the wildlife control services provider.

1576.8 A trap shall be set in a manner designed to catch the target wildlife and in a manner likely to avoid capture of and harm to non-target wildlife.

1576.9 A trap which is set shall be checked at least once every twenty-four (24) hours, or more frequently if environmental conditions require it to prevent harm to any animal.

1576.10 Remote trap technology may be used to check traps.

1576.11 If the remote trap does not send a report or electronic signal to the wildlife control operator or wildlife control services provider for a period of twenty-four (24)

hours, the wildlife control operator or services provider shall immediately check the trap.

1576.12 Captured non-target wildlife that is healthy and does not pose an unreasonable risk to the health and safety of persons or domestic animals shall be:

- (a) Released immediately at the site of capture; or
- (b) Relocated to a suitable location where nuisance problems are unlikely to continue, with the written permission of that property owner.

1576.13 Captured non-target wildlife that is believed to be sick, injured, orphaned, or poses an unreasonable risk to people or domestic animals, or is otherwise unfit for release on site shall be:

- (a) Transferred to the District's Animal Care and Control Agency;
- (b) Transferred to a licensed wildlife rehabilitator in the District; or
- (c) Euthanized in accordance with this section, if no other options are feasible.

1576.14 Captured target wildlife shall be:

- (a) Released at the site of capture;
- (b) With the written permission of that property owner relocated to a safe location where nuisance problems are unlikely to occur;
- (c) Surrendered to the District's Animal Care and Control Agency for evaluation and assessment, if the animal is exhibiting symptoms of disease;
- (d) Transferred to a licensed wildlife rehabilitator in the District, if the animal appears to be sick, injured, or abandoned; or
- (e) If no other options are feasible, euthanized in accordance with this section.

1576.15 A wildlife control services provider shall make every reasonable effort to keep dependent young with their parents by:

- (a) Using humane eviction or displacement and reuniting strategies; and
- (b) Not knowingly abandoning dependent young wildlife in a structure.

- 1576.16 In the case of an attempt to reunite dependent young, a wildlife control services provider may hold wildlife in captivity at a safe and secure location within the District for up to seventy-two (72) hours once authorized in writing by the Department.
- 1576.17 A wildlife services provider shall capture, handle, and transport captured wildlife in a manner that prevents or limits unnecessary discomfort, behavioral stress, or physical harm to the animal, including providing protections against weather extremes.
- 1576.18 Captured wildlife shall be kept in covered, secure safe containers in such a way as to:
- (a) Minimize stress to the animal and its exposure to the elements by covering the trap or vehicle with appropriate material;
 - (b) Ensure that the covering is of such material that the animal has adequate air supply and to prevent overheating; and
 - (c) Minimize potential hazards to the general public.
- 1576.19 Wildlife, or parts thereof, shall not be sold, bartered, traded, given to another person, or retained for any purpose, except that an animal may be given to a wildlife rehabilitator, veterinarian, or animal control officer within the District for rehabilitation or euthanasia.
- 1576.20 If relocation of healthy wildlife or rehabilitation of sick, injured, or orphaned wildlife is not feasible, a wildlife control services provider shall use the available method of euthanasia that is the quickest, least stressful, and least painful to the animal under the circumstances.
- 1576.21 Euthanasia is acceptable only when using methods that conform to the Report of the American Veterinary Medical Association Panel on Euthanasia: 2013 Edition for Free-Ranging Wildlife and Domestic Animals (AVMA Report).
- 1576.22 On a case-by-case basis, the Department may approve a method of euthanasia, not published in the AVMA Report, which utilizes advancements in technology that minimizes risks to animal welfare, personnel safety, and the environment for a particular set of circumstances.

1577 WILDLIFE PROTECTION: PROHIBITED METHODS OF CONTROL

- 1577.1 The Department may prohibit the use of toxicants on wildlife, where it is determined that the wildlife can be reasonably controlled using less harmful methods.

- 1577.2 The use of any toxicant to control pigeons, European starlings, or house sparrows shall be prohibited.
- 1577.3 The use of sticky or glue traps to control any wildlife is prohibited.
- 1577.4 Leg-hold and other body-gripping traps, body-crushing traps, snares, or harpoon-type traps shall not be used to control any wildlife.
- 1577.5 Wildlife shall not be kept in captivity longer than thirty-six (36) hours unless specifically authorized in writing by the Department.

1578 WILDLIFE PROTECTION: DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF A LICENSE OR REGISTRATION

- 1578.1 The Department may deny, suspend, modify, or revoke a license or registration issued pursuant to §§ 1570 or 1571, if applicant, registrant, or license holder has:
- (a) Threatened the public health, safety, or welfare, or the environment or engaged in cruelty to animals;
 - (b) Been convicted of an offense that directly involved wildlife or cruelty to animals within the previous ten (10) years;
 - (c) Violated or threatened violation of law, and the rules set forth in §§ 1570 to 1577, or the terms and conditions of the license or registration;
 - (d) Been convicted of an offense for cruelty to animals, pursuant to D.C. Official Code §§ 22-1001 *et seq.*;
 - (e) Engaged in fraudulent business practices;
 - (f) Failed to comply with one or more federal or District wildlife statutes or regulations;
 - (g) Misrepresented facts relating to wildlife or wildlife control to a client, customer, or the Department;
 - (h) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a license or registration;
 - (i) Submitted a false or fraudulent record or report;
 - (j) Had its authorization to do business in the District of Columbia revoked or suspended;
 - (k) Failed to keep an active insurance policy as required by § 1571.5; or

- (l) Had an error in the terms and conditions of the registration or license that needs to be corrected.

1578.2 The notice of proposed denial, suspension, modification, or revocation shall be in writing and shall include the following:

- (a) The name and address of the applicant or the holder of the license or registration;
- (b) The legal and factual basis for the proposed action, including citations to the specific statutory or regulatory provision(s);
- (c) The effective date and duration, if any; and
- (d) How and when the applicant or license or registration holder may request an administrative hearing and the consequences of failure to appeal.

1578.3 To appeal the denial, suspension, modification, or revocation, the applicant or license or holder may request an administrative hearing before the District of Columbia Office of Administrative Hearings in accordance with the Rules of Practice and Procedure set forth in Title 1, Chapter 28, of the D.C. Municipal Regulations.

1578.4 The applicant or license or registration holder shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, modify, or revoke the license or registration, or twenty (20) days if served by mail, to request a hearing to show cause why the license or registration should not be denied, suspended, modified, or revoked.

1578.5 The Department may serve a notice of denial, suspension, modification, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

1578.6 The Department shall not reissue a license or registration to any person whose certification or license has been revoked until after at least one year following the revocation.

1578.7 The Department shall not reissue a license or registration to any person whose license or registration has been revoked until the applicant has submitted a new application, and complies with the requirements in §§ 1570.2 and 1571.

1579 WILDLIFE PROTECTION: ENFORCEMENT

1579.1 The Mayor may bring an action in the Superior Court of the District of Columbia to enjoin the violation or threatened violation of §§ 1570-1577.

Section 1599, DEFINITIONS, is amended to add the following definitions:

1599 DEFINITIONS

1599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Animal Care and Control Agency - the agency established by Section 3 of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code §§ 8-1802 *et seq.* (2013 Repl.)).

Commensal rodent - Norway rat, roof rat, and house mouse. A rat or mouse found within a structure or proximally located at the external base of a structure may be treated as a commensal rodent for purposes of §§ 1570 to 1579.

Complaint - a service call received by a wildlife control operator or services provider for wildlife control services.

Department - the Department of Energy and Environment.

Director - the Director of the Department of Energy and Environment.

District - the District of Columbia.

Exclusion device - a product used to prevent wildlife from entering an area.

Licensed wildlife rehabilitator - wildlife rehabilitator licensed in any state or the District or a person or agent credentialed by the District of Columbia or any State to treat sick, orphaned, or injured wildlife within the District.

Live trap - a trap that is intended to capture an animal without killing.

Migratory bird - a bird protected by the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712, as defined in the Code of Federal Regulations for the U.S. Fish and Wildlife Service in 50 C.F.R. § 10.12 and listed in 50 C.F.R. § 10.13.

Mist net - a virtually invisible nylon mesh net suspended by two poles, often used by biologist to capture birds and bats for banding and other research.

Person - an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or any other private entity.

Potential outbreak - an increase in the number or frequency of cases of infectious disease, or a change in disease eruption patterns, that could reasonably lead to or signify an outbreak or epidemic.

Remote trap technology - real-time trap monitoring with devices that are fail safe and that self-report.

Rocket net - a type of net that uses a projection system to capture a large number of animals at once.

Species of Greatest Conservation Need (SGCN) - an animal species that is listed in the District's Wildlife Action Plan as a species in need of conservation through targeted management actions, based on a set of criteria that are detailed in the Wildlife Action Plan. This includes animal species whose populations are imperiled, vulnerable or declining, or have their habitat at risk.

Target wildlife - the specific species of wildlife that a wildlife control operator or wildlife control service provider intended to capture.

Threatened or endangered species - species on the list established pursuant to the Endangered Species Act, 16 U.S.C. §§ 1531-1534, and set forth in the Code of Federal Regulations at 50 C.F.R. Part 17.

Widespread outbreak - occurrence of an infectious disease over a wide geographic area or affecting a large proportion of the population, also known as an epidemic.

Wildlife - includes any free-roaming wild animal, but shall not include domestic animals, commensal rodents, invertebrates, and fish.

Wildlife control - to harass, repel, evict, exclude, possess, transport, liberate, reunite, rehome, take, euthanize, kill, handle, catch, capture, release, surrender, displace, or relocate wildlife.

Wildlife control operator - person who is licensed to perform wildlife control services by the Department, but shall not include the Animal Care and Control Agency or a property manager as defined by D.C. Official Code § 47-2853.141.

Wildlife control services provider - the operator of a business which involves the charging of a fee for services in wildlife control.