



CHAPTER 2

The Role of Local Government in Animal Control

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Throughout most of the United States, the responsibility for animal control and sheltering falls to local governments. It is mandated by state law that local municipalities provide certain animal control and animal sheltering functions. State laws can also enable or empower local governments to perform specific animal-related services should they choose to do so. In some states, though, local governments have no responsibility for certain aspects of animal control and sheltering. For example, in Illinois there is no statewide requirement that cities and counties deal with cats — other than bite cases.

From state to state, and within states, the responsibility for animal sheltering and control is approached in many different ways. The local government entity responsible for animal sheltering and control can be a county, a city, a special service district or another political subdivision. Sheltering functions and animal control field services functions may fall under a single agency, or they may be handled by separate agencies. The functions of animal control field services often reside within a police department or a sheriff's office, but sometimes they are contracted to a non-governmental organization. Governments often choose to operate their own shelters, but in much of the country, that responsibility is contracted with local nonprofit animal welfare organizations.

Regardless of the way in which the various animal services are organized, it must be done within the laws of each state. State law provides the basic framework for how local jurisdictions approach these responsibilities. Generally broad, state law defines the level of government that delivers the service and what the service includes. Whether mandating hold times, vaccination requirements or standards of sheltering care, state law has the final say in animal control.

From there, local communities have the ability to utilize the tool of the local ordinance to define their roles. Unfortunately, local ordinances (and sometimes state laws) are often contradictory and outdated. While lawmakers have the best of intentions — trying to balance public safety, nuisance abatement and, in some cases, the saving of animals' lives — many municipal codes have developed into an un-enforceable patchwork of regulation over the years. Ensuring updated and modern versions of animal control ordinances should be a goal of every jurisdiction.

What the public wants from government

Local governments often face a balancing act — imposing enough regulations to ensure the safety of citizens yet remaining mindful of individual rights. What the public wants is for government to ensure safe and humane communities for people and pets.

When it comes to pets, both freedom and compassion are important to Americans, and polls back this up. A 2014 national poll done by Luntz Global asked more than 1,000 U.S. citizens, “Who should be able to determine the types of dogs people can own?” Eighty-four percent of respondents said that individuals should be able to choose whatever breeds of dogs they wanted.

Respondents were also asked to indicate their preference from among three options for managing community cats:

- Sterilize and vaccinate healthy stray cats, and return them to where they were captured (sometimes called trap-neuter-vaccinate-return or TNVR)
- Impoundment by shelter staff, followed by lethal injection for any cats not adopted
- Do nothing: Leave stray cats alone to fend for themselves

Among the respondents, 68 percent chose TNVR, compared to 24 percent who chose lethal injection. Respondents' support for TNVR might have been even higher had they been made aware of the expense to taxpayers that's involved in conducting lethal roundups.

It's a challenge to draft comprehensive animal ordinances that empower humanitarians to save animals, protect pets, provide for public safety, encourage responsible pet ownership or caregiving, and penalize reckless pet owners. Luckily, there are a variety of effective animal ordinances that are paving the way toward supporting the safe, humane communities desired by the general public.

The following highlights some of the most common ordinances and policies that have evolved as our communities' understanding of animal services has also evolved. It is not intended to outline all important laws affecting animals in a community and should not be construed as legal advice.

WHAT DETERMINES THE WAY A SHELTER OPERATES?

Shelter policies are the written procedures outlining how shelter staff must perform their job duties in a variety of situations.

A shelter's policies dictate how animals are cared for, adoption procedures, impoundment requirements, volunteer duties, and all other aspects of shelter operations.

Shelter laws consist of state statutes and local ordinances. Local ordinances, depending on the jurisdiction, may be more specific than state statutes, but usually cannot conflict with them.

Dangerous dog laws vs. breed-discriminatory laws

Breed-discriminatory ordinances are passed with the assumption that they will make a community safer. However, these laws fail to increase public safety, are extremely expensive to enforce, and violate the property rights of responsible dog owners. That's why 21 states now have provisions preventing cities from enacting breed-specific legislation. (See [Appendix Q](#), "Progressive Animal Control Ordinances," for a detailed list of these states' provisions.)

Rather than pass laws that punish innocent dogs and responsible owners, communities can make better use of scarce resources by creating breed-neutral, comprehensive dangerous-dog laws that prosecute and penalize negligent or reckless owners. Pet owners should be held accountable if their dogs are dangerous, no matter what the dog's breed is. Idaho has a very good dangerous dog law that includes a broad definition of "justified provocation." The "at-risk" designation is removed after three years of good behavior. ([Appendix Q](#), "Progressive Animal Control Ordinances," contains a good definition of "dangerous dog" from the Illinois Animal Control Act and also the Idaho "justified provocation" definition.)

Breed-specific laws can be problematic for another reason: Identifying a dog's breed based on appearance can be very prone to error. In fact, visual identification of the breeds in a mixed-breed dog is likely to be contradicted by a DNA test. Local governments carry the burden of proof and so will incur the expense of proving the breed or combination of breeds in individual dogs in court cases.

Another issue is that breed-discriminatory laws are frequently directed against what the law calls "pit bulls," despite the fact that "pit bull" is not a specific breed of dog. The term "pit bull" loosely describes a continually expanding group of dogs that includes American Staffordshire terriers, Staffordshire bull terriers, American pit bull terriers and 20 other pure breeds, along with any dogs presumed, on the basis of appearance, to be mixes of one or more of those breeds.

Studies done in countries with breed-discriminatory laws, including the United Kingdom¹ and Spain,² found that these laws didn't reduce the number of dog bites or improve public safety. The Spanish study revealed that allegedly dangerous breeds accounted for 2.4 per-

cent of the dog bites before the breed-discriminatory law was introduced and 3.5 percent of the dog bites after the breed-discriminatory law was passed. The authors state that the “results suggest that BSL was fundamentally flawed ... (and) not effective in protecting people from dog bites in a significant manner.”

The authors of a 2013 study³ published in the *Journal of the American Veterinary Medical Association* found that there are multiple factors involved in dog-bite-related fatalities, and most are under the control of the dog owners (e.g., isolation from positive family interaction, abuse or neglect, not having dogs neutered, dogs left alone with a child). Breed could only be reliably determined in about 18 percent of the cases, and more than 20 breeds of dogs were involved, so breed wasn't considered a major factor.

Reckless owner, problem pet owner and habitual offender ordinances

It is common sense to restrict or ban certain high-risk pet owners from having pets. In 2006, Illinois became the first state to restrict convicted felons (those convicted of forcible felonies, drug or gun charges) from owning unsterilized dogs. (Statistics have shown that the majority of bite cases come from unsterilized dogs.) Ohio enacted a similar provision concerning convicted felons, and some counties in other states have followed suit.

In 2007, the city of Tacoma, Washington, created an ordinance regulating “problem pet owners.” A person who commits three or more animal control violations in a 24-month period could be declared a problem pet owner and not be allowed to own any animals for a period of time. In South Bend, Indiana, someone who is found to be a “habitual animal offender” may be prohibited from owning pets for a minimum of five years. In Minnesota, dog ownership is prohibited if a person has been convicted of a third or subsequent violation of the registration, maintenance or microchipping provision of the dangerous dog law.

Community cats and animal ordinances

While many communities across the country are seeking to update local ordinances, most areas of the country still have outdated restrictions that are detrimental to lifesaving efforts. These restrictions are most prevalent as they relate to the feline population.

Community cats (free-roaming cats, frequently called “stray,” “feral” or “at large”) are subject to impoundment by animal control under most local ordinances. Many jurisdictions also require that an impounded animal be held for a stray-hold period to allow the owner to reclaim the animal. Since the national average of owners reclaiming their cats at animal control facilities is approximately 2–5 percent, and most community cats are not, in fact, owned, these cats are very rarely claimed. After the stray hold period has expired, unclaimed community cats are generally killed by the shelter.

Not only does impounding community cats have bad outcomes for the cats, it is expensive for jurisdictions to trap, hold, kill and dispose of them — and that method hasn't reduced stray cat populations effectively. Because of that, communities across the country are turning increasingly to programs aimed at keeping cats and kittens out of shelters. Perhaps the best known of these programs is trap-neuter-vaccinate-return (TNVR or TNR), a common-sense, cost-effective solution for controlling stray cat populations by preventing additional births instead of continuing to house, feed and then end the lives of these cats.

In a TNVR program, stray cats are caught, vaccinated, sterilized and returned to their original location, where they have been and will continue to be cared for by community residents. (See [Appendix B](#), “Management of Stray and Feral Cats,” for more information.) As TNVR becomes widely accepted across the U.S., shelters themselves are successfully adapting the model for cats impounded into their facilities. This method is commonly referred to as shelter-neuter-return or return-to-field.

Traditional animal control laws also create serious obstacles for community cat caregivers, as they may find themselves unwittingly in violation of a number of laws. For example, if a caregiver is deemed the legal “owner” of a cat under local ordinances, he/she could be subject to several obligations required of pet owners, including licensing, pet limits and at-large or leash laws, making it virtually impossible to perform TNVR activities. Even if caregivers are not deemed to be owners, feeding bans, nuisance laws and laws prohibiting abandonment may subject them to civil and/or criminal prosecution. Providing reasonable specific exemptions for community cat caregivers in local ordinances allows TNVR programs to function most effectively. These protections should extend to both government and private entities and individuals participating in these programs.

The following provides more specific information regarding common pitfalls in local ordinances as they affect community cat caregivers.

Definition of “owner.” Animal ownership under local ordinances is defined in many ways, but a common definition involves keeping or harboring an animal. Some ordinances qualify it by stating that caring for an animal over a specified period of time meets those terms. Such definitions have the mostly unintended consequence of targeting community cat caregivers, since they regularly monitor and feed community cats. If community cats have more than one caregiver, it is conceivable under these definitions to reach the illogical conclusion that the cats may have several “owners.”

Caregivers often care for a number of cats residing together in colonies, so if they are deemed owners, they could potentially be criminally and/or civilly liable for violations of a number of laws. For example, some jurisdictions require owners to license their cats and/or limit the number of cats owned by residents. Community cat caregivers would be seriously burdened if they had to license each cat annually and/or if they were in violation of a pet limit law because they were considered owners of the cats they care for.

Additionally, some jurisdictions prohibit owners from allowing their cats to run at large. Because community cats are, by definition, roaming at large, their caregivers could be in violation of this law as well.

While these laws may serve useful purposes for true cat owners, they unnecessarily burden community cat caregivers and inhibit the implementation and effectiveness of TNVR programs. Because of these concerns, laws defining the term “owner” should exempt community cat caregivers. At-large laws, stray-hold periods and licensing requirements should likewise exempt community cats.

“Abandonment” concerns. Even if caregivers are not deemed owners, abandonment provisions could pose a significant challenge. When jurisdictions interpret the “return” aspect of TNVR to be abandonment, caregivers or other TNVR participants could potentially be found criminally liable without the protections being provided under the law. A typical definition of “abandon” is “to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care.”

TNVR programs that return cats to their original location should not be deemed “abandonment.” These programs are deliberately designed to improve cats’ overall health and well-being; thus, there is no intent, criminal or otherwise, to harm the cats. If the cats were healthy at the time they were trapped, there is no reason to believe that returning them to where they were found would subject them to pain, suffering or cruelty (which is what general cruelty laws attempt to prohibit). Indeed, the health and well-being of cats in TNVR programs is enhanced after sterilization and vaccination for rabies.

So, abandonment provisions should not be drafted or interpreted by local governments to prevent the “return” portion of TNVR programs. Best practice would dictate, for clarity, that the abandonment law should expressly exempt TNVR-related return of community cats to their original locations. The potential of criminal penalties for community cat caregivers only makes residents hesitant to become involved in TNVR programs, which would likely have the effect of worsening a community’s “feral cat problem.”

Mandatory spay/neuter

Some jurisdictions have moved to mandatory sterilization for owned pets. In considering this, lawmakers should be aware that no major animal welfare organization (including the ASPCA, the American Veterinary Medical Association, Best Friends Animal Society and the Humane Society of the United States) promotes or endorses mandatory spay/neuter of owned pets to increase live outcomes or decrease shelter intake. What these organizations do support is effective community outreach to give residents the information they need about spay/neuter and facilitate access to spay/neuter services.

Mandatory spay/neuter ordinances frequently have the unintended consequence of increasing intake because pet owners are unwilling or unable to comply with the law and choose to surrender their pets in lieu of getting citations and paying fines. Mandating spay/neuter can make owners reluctant to reclaim lost pets for the same reason and may make some pet owners less likely to comply with other ordinances, such as obtaining rabies vaccinations and seeing a veterinarian for routine medical issues. Plus, the burden of mandatory spay/neuter falls hardest on lower-income neighborhoods and criminalizing behavior does not induce compliance.

Research conducted by PetSmart Charities⁴ shows that only 4 percent of pet owners cited a mandatory spay/neuter requirement as motivation to have their pets altered. Almost three quarters of pet owners, on the other hand, cited a desire to prevent unwanted litters and a belief that “it was the right thing to do.”

Pet limit laws

Many pet limit laws are designed with the intention of abating nuisance complaints and preventing animal hoarding. In general, however, these laws have proven to be arbitrary, overly broad and ineffective. For example, one neglected dog chained up in a backyard has the potential to create a significant nuisance, while four dogs responsibly cared for by their owner may never generate any nuisance issues.

Pet limit laws also do little to prevent animal hoarding, which is linked to a serious mental illness that results in the accumulation of a large number of animals whom the person cannot care for adequately. Combatting animal hoarding⁵ relies on strong anti-cruelty and neglect laws combined with a coordinated multi-agency effort to strive for positive outcomes for the human and animal victims. Note: The National Animal Care & Control Association (NACA) has a guideline on animal hoarding.⁶

For these reasons, many local governments have discarded pet limit laws in favor of solid animal cruelty and neglect ordinances. Combined with specific nuisance laws that clearly define the public health and safety issues that can be created by a pet owner who is not responsibly caring for his/her pet(s), these ordinances effectively address actual issues rather than arbitrarily assigning a limit to the number of pets citizens can have.

Fight-bust dogs

Dogs who have been the victims of the cruel sport of dogfighting should not be summarily deemed unadoptable or dangerous. Many of these dogs can be safely placed in homes.

Transparency of shelter data

For the purpose of transparency, animal shelters should share their animal intake and disposition statistics with the public. This information should be kept up to date on agencies' websites and should be easy for members of the public to access. Local governments should commit to upholding the public trust by requiring shelter operators to provide this data to the public.

Shelters that join the Best Friends Network are required to submit monthly intake and outcome statistics via Shelter Animals Count, a national database that allows tracking of animal sheltering statistics. The Best Friends Network, comprised of thousands of public and private shelters and other animal welfare groups across all 50 states, connects shelters with the networking, training and resources needed to increase lifesaving. Participating shelters not only receive the support and resources of the network, they also easily meet industry transparency and data reporting standards via the Best Friends Network Coalition within Shelter Animals Count. For more details, see [Appendix O](#), "Shelter Animal Data Collection," and [Appendix T](#), "The Best Friends Network."

NOTES

1. "Does the Dangerous Dog Act Protect Against Animal Attacks? A Prospective Study of Mammalian Bites in the Accident and Emergency Department," *Injury* 27, no. 2 (1996): 89-91.
2. B. Rosado et al., "Spanish Dangerous Animals Act: Effect of the Epidemiology of Dog Bites," *Journal of Veterinary Behavior* 2, no. 5 (2007): 166-74.
3. "Co-occurrence of Potentially Preventable Factors in 256 Dog-Bite-Related Fatalities in the United States (2000-2009)," *Journal of the American Veterinary Medical Association* 243, no. 12 (December 15, 2013).
4. K. Campbell, *Pet Adoption & Spay/Neuter: Understanding Public Perceptions by the Numbers*. PowerPoint presentation, PetSmart Charities, November 27, 2012. Available at petsmartcharities.org/sites/default/files/lpsos-Webinar-11-27-12.pdf.
5. For more information on research done about animal hoarding, go to the website of the Cummings School of Veterinary Medicine at Tufts University: vet.tufts.edu/hoarding/publications-2.
6. See page 14 in *NACA Guidelines*: cdn.ymaws.com/nacanet.site-ym.com/resource/resmgr/Docs/NACA_Guidelines.pdf.