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Afternoon Concurrent Panel Discussion: Dangerous Dogs and Feral Cats

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Safe and Humane
Communities
Lee Greenwood, Esq.
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Best Friends
SAVE THEM ALL



There are over 78.2 million dogs living in homes in the US. Almost 50% of households own and care for at least 1 pet dog.

http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html?referrer=https://www.google.com/

There are 78.2 million dogs in the U.S.





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2014 National Survey

Eighty-four percent



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Public Safety

U.S. fatalities per year

1. Swimming pools: 3000
2. Lightning strikes: 50
3. Dog bites: around 2 dozen

LG

Breed Discriminatory Laws (BDL)

= Problems

- Policy
- Legality
- Constituents



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"BDL" is another way of saying "breed-specific legislation" (BSL) except BDL is more accurate and descriptive.

Ask the audience for a poll of how many of them have a breed-discriminatory ordinance.

Variety of BDL

- Ban
- Automatic "dangerous" or "vicious" or "wild animal"
- Regulations
  - Extra insurance
  - Muzzling
  - Fencing
  - Mandatory Spay/Neuter
  - Obedience Classes



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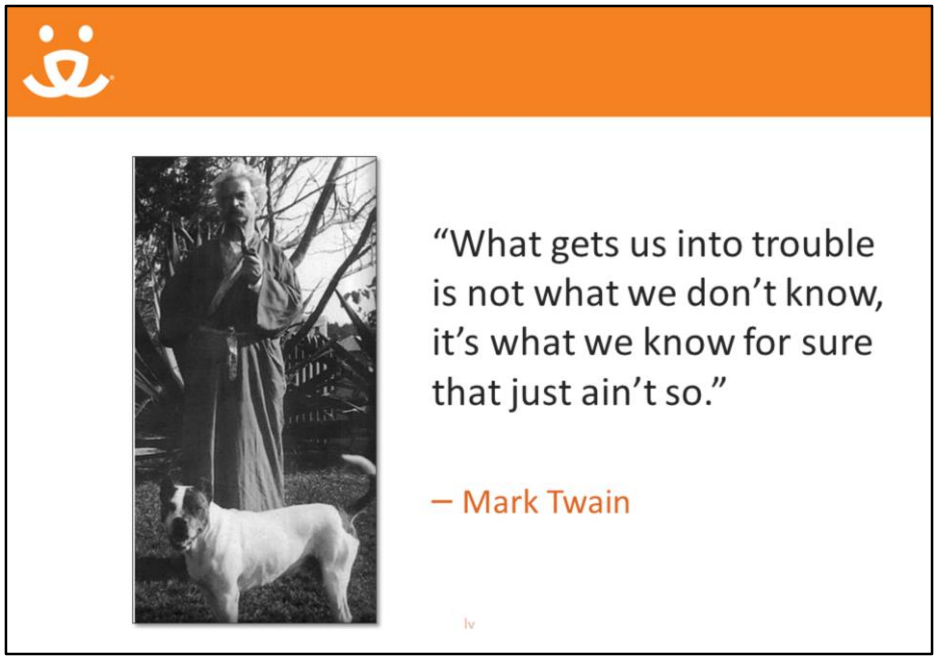

Here's Twain with a pit-bull terrier like dog.

Ask the audience to raise their hands if they're heard any of the following:

1) pit bulls have a locking jaw

2) pit bulls have a unique physiology that makes their bite PSI stronger than other dogs

3) It's impossible to make a pit bull stop biting

4) anything else?



1) In America, a responsible dog owner should be allowed to own any kind of dog s/he wants without the government putting arbitrary restrictions on these rights. Recent polling has found that 84% of respondents agree with this

2) Studies that have looked at the effects of BDL have concluded that these laws/policies either do nothing to the number of dog-bites, and might even increase the numbers

3) They cost a tremendous amount of $ to enforce and maintain.

Safia Gray Hussain, Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma. Fordham Law Review, Volume 74, Issue 5 (2006).

Ask the audience to guess how much it would cost if Las Vegas enacted BDL.

Answer: nearly $1 million/year

http://bestfriends.guerrillaeconomics.net/

Panic Policies

The Simple Truth is Breed is NOT A Factor in Bites



Journal of the American Veterinary Medical Association 12-2013

- Multiple factors involved in dog-bite-related fatalities
- Most factors in control of dog owners
  - Isolation from positive family interaction
  - Mismanagement by owners, abuse or neglect
  - Dogs left alone with a child, etc.

Co-occurrence of potentially preventable factors in 256 dog-bite-related fatalities in the United States (2000-2009). JAVMA, Vol. 243, No. 12, December 15, 2013.



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87.6 % involved a male dog

84.4% the dog was sexually intact

Breed could only be reliably determined in 17.6%

JAVMA 12- 2013



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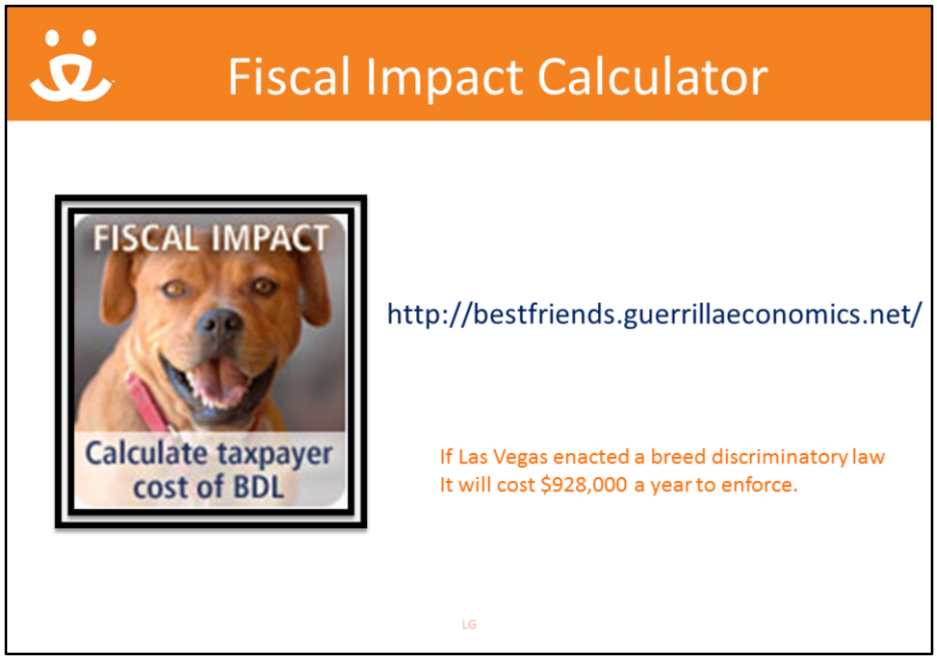
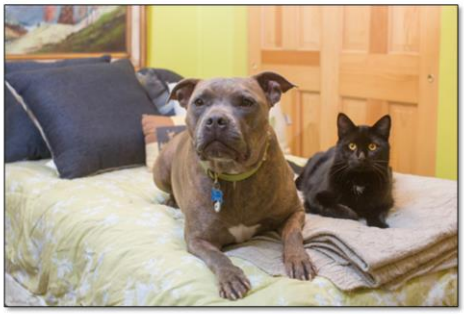


this is a free tool we offer on our website to calculate the cost of BDL in your community.

ABA House of Delegates Resolution 100-2012

RESOLVED, That the American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both dog owners and dogs, and to repeal any breed-discriminatory or breed-specific provisions.



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Opposition to Breed Discrimination

- National Animal Care and Control Associations (NACA)
- American Veterinary Medical Association (AVMA)
- Centers for Disease Control and Prevention (CDC)
- The White House
- The American Kennel Club
- The United Kennel Club
- The American Dog Breeders Association
- Best Friends Animal Society
- HSUS
- ASPCA

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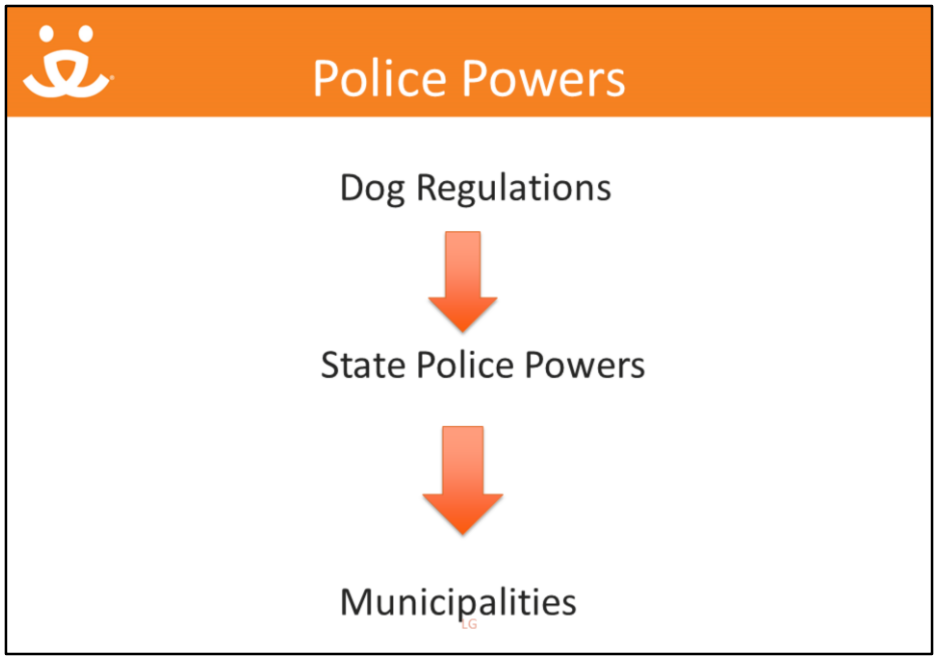
Myriad of Legal Problems

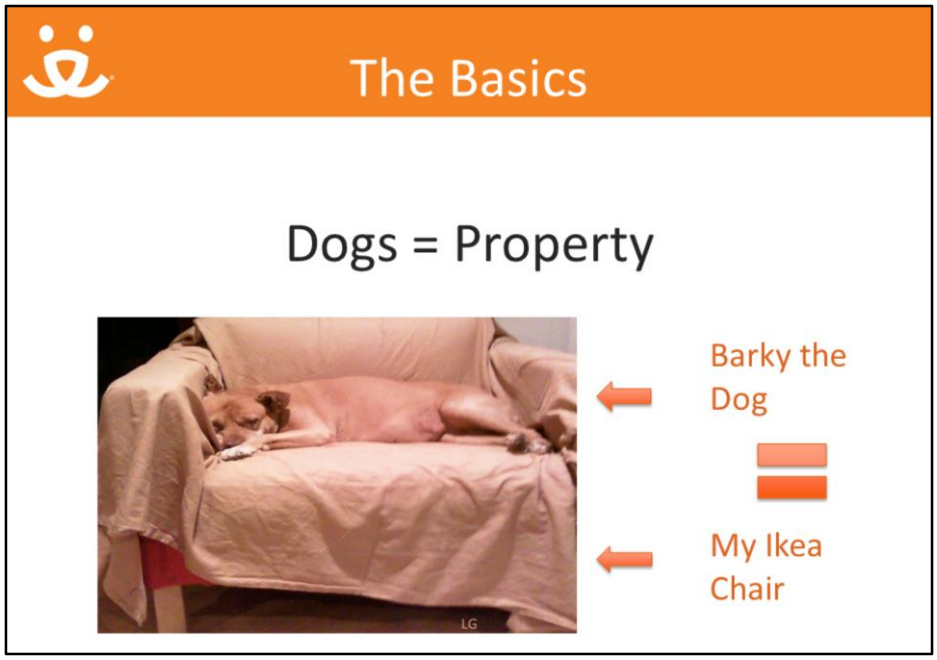
- (too many to fit on one slide)





Regulating dogs falls within a state's general police powers.

These powers can be delegated to local governments, either through the state's constitution or by statute



Though dogs have been recognized as "property plus" in some cases, the general rule of thumb is that animals are the property of their owners.

Delegation from the State

Statute

- e.g. RI ST § 4-13-15.1(a)
  - *. . . make any ordinances concerning dogs in their cities or towns as the councils deem expedient, pertaining to the conduct of dogs, which ordinances shall include regulations relating to unrestricted dogs, leash laws, confinement, and destruction of vicious dogs.*

Constitution

- e.g. Wash. Const. art. XI, sec. 11
  - *"Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws"*

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City of Pierre v. Blackwell

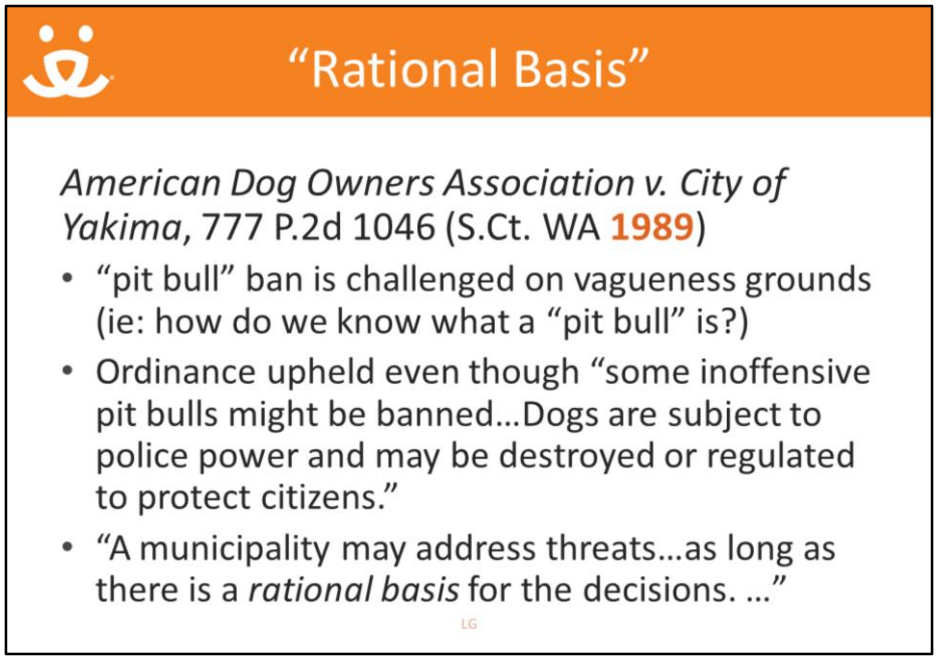
635 N.W. 2d 581 (SCt. S.D. 2001)

The city brought criminal charges, thus it needed to prove one of the elements, that the dog was dangerous beyond a reasonable doubt.

Both sides presented evidence of the "dangerousness" of the dog at trial, but the court did not make an independent assessment of the evidence. It relied solely on the finding of the animal control officer.

There was no independent determination of "dangerous" by a neutral judicial officer as a part of the criminal proceeding. The court goes on to discuss that this would have failed a procedural due process claim in the civil context, too, without exigent circumstances.

Here, the court just reviewed the animal control officer's decision for legality and due process was not satisfied.



This case is representative of the times. Courts bent over backwards to allow these bans. The late 80's was the height of pit bull hysteria.

Lots of deference to municipal governments.

Flash forward…New Llano, LA



- *Nelson v. Town of New Llano*, No. 2:14-cv-803 (W.D. La 2014)
- "Pit bull" ban challenged in Federal Court (W.D La)
- Court issued a preliminary injunction for the Nelsons, finding there was a "***substantial likelihood of success on the merits***, a substantial threat of irreparable harm if the injunction is not granted; that the threat of injury outweighs any harm the injunction would cause and that the injunction will not disturb public interest"

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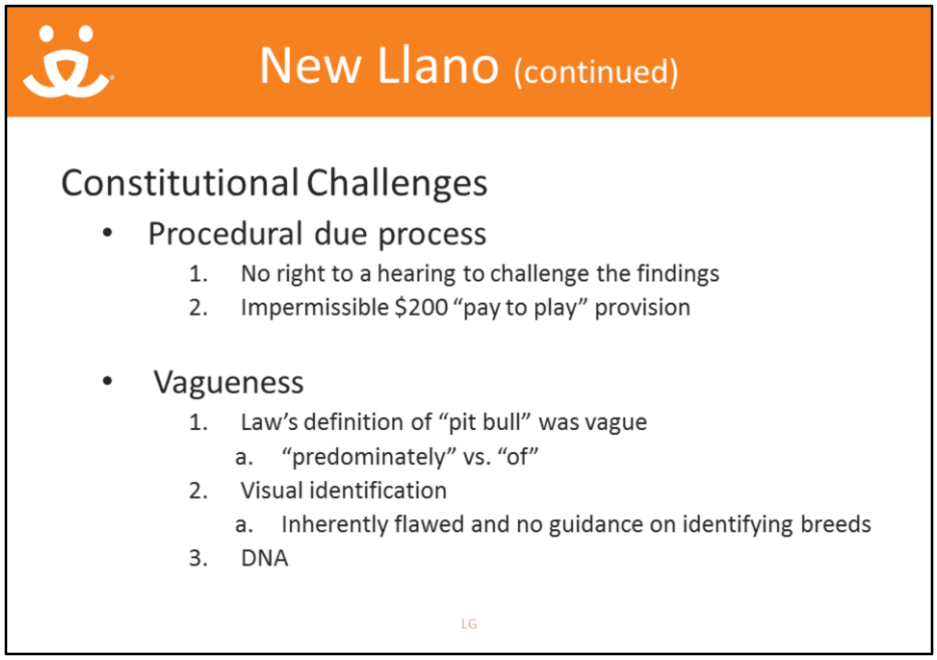
Huffington Post article at: http://www.huffingtonpost.com/2014/07/08/mazzy-pit-bull_n_5566543.html.



1) Ordinance provided no right to challenge the town's classification of a dog as a "pit bull", which is required under the constitution,

Further, the only way to challenge the town's finding that the dog in question is a pit bull is for the owner to pay $200 for a DNA test. Since the ordinance had criminal implications (fines and jail time for violators) it is unconstitutional to require the dog owner to "pay to play" to mount a defense.

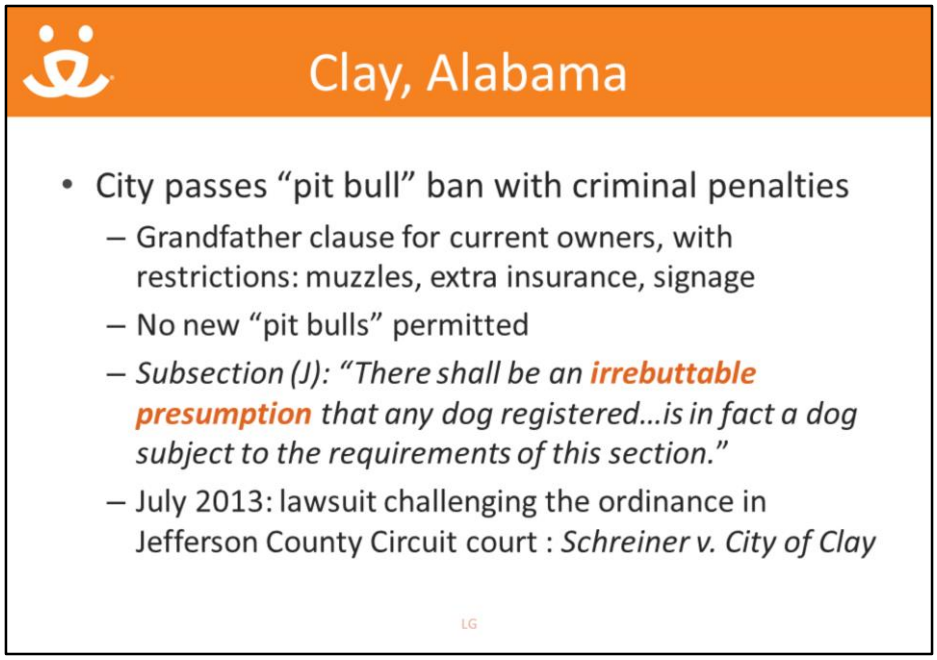
2) The ordinance states that any dog that has the "appearance and characteristics of being 'predominately of the breeds..." yet if an owner pays the $200 to test the DNA and the results show that it is "of pit bull breed" the dog is banned.

Predominately means more than 50% but "of" the breed means any amount of that genetic makeup. In other words, the law is inconsistent in what constitutes a "pit bull". Given the defects of the definition, there was insufficient notice to dog owners, making the ordinance impermissibly vague.

Further, the town gave the animal control officer complete discretion to decide whether a dog appears to be one of the banned breeds or if it is "predominately" one

of those breeds, yet it gave no guidance as to the factors (physical traits, etc.) to use to make those determinations. Plus, given the inherent flaws of visual identification enforcement of the ordinance would be completely arbitrary.

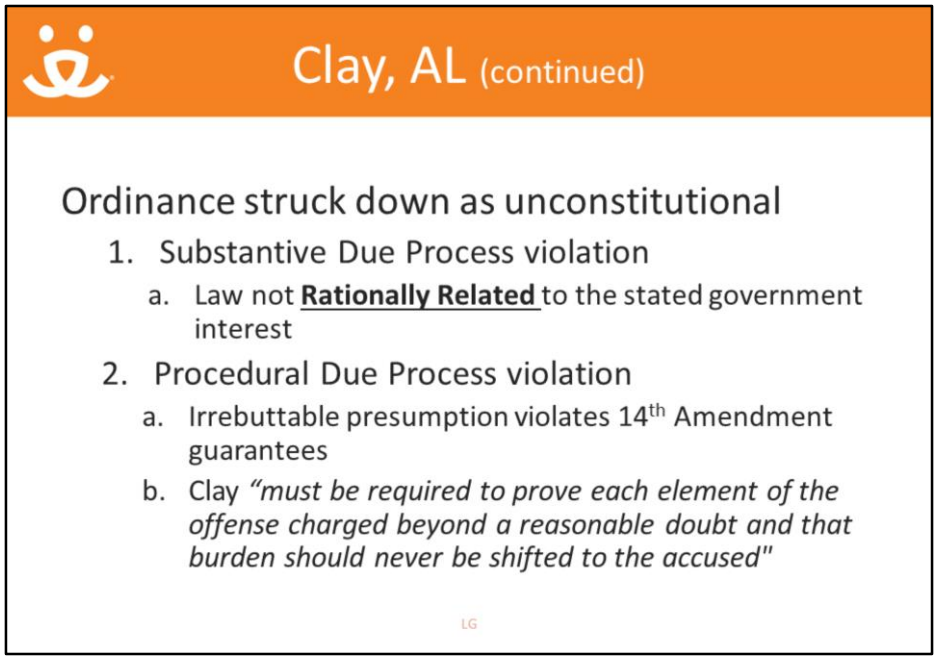
Finally, the only way to challenge the findings was by DNA test, yet the manufacturer is explicit in stating on the test that a town is not permitted or authorized to use it to ban a particular breed or to determine whether a dog is banned in a community.



Law was passed after the county sheriff was "approached" by 4 wandering dogs who, according to him, looked "like pit bull breeds" . He shot one of them. The dog's owner was rightfully charged with allowing his dogs to run unleashed.

The council "fast-tracked" the ordinance and introduced it 5 days after the incident. There was ZERO public notice of the ordinance, so no time or notice given to people who wanted to be heard on the matter (clear violation of AL's open meetings law).

When the public became aware of the proposal they came to the next council meeting to voice their objections and concerns. Despite the objections the Council passed the ordinance. Within a month the law was challenged by a Clay pit bull owner,



1) The city manager testified that the law was passed after he read an article about dangerous dogs online.

There was ZERO evidence presented to suggest that there was a "pit bull" problem in Clay. In fact, the City Manager testified that there had not been a single reported pit bull incident before or after the ordinance.

Without any evidence of a "stated governmental interest" there could be no law like this. In other words, you can't just pass one of these laws without a legitimate reason for doing so, and an unfounded fear is not a legitimate reason.

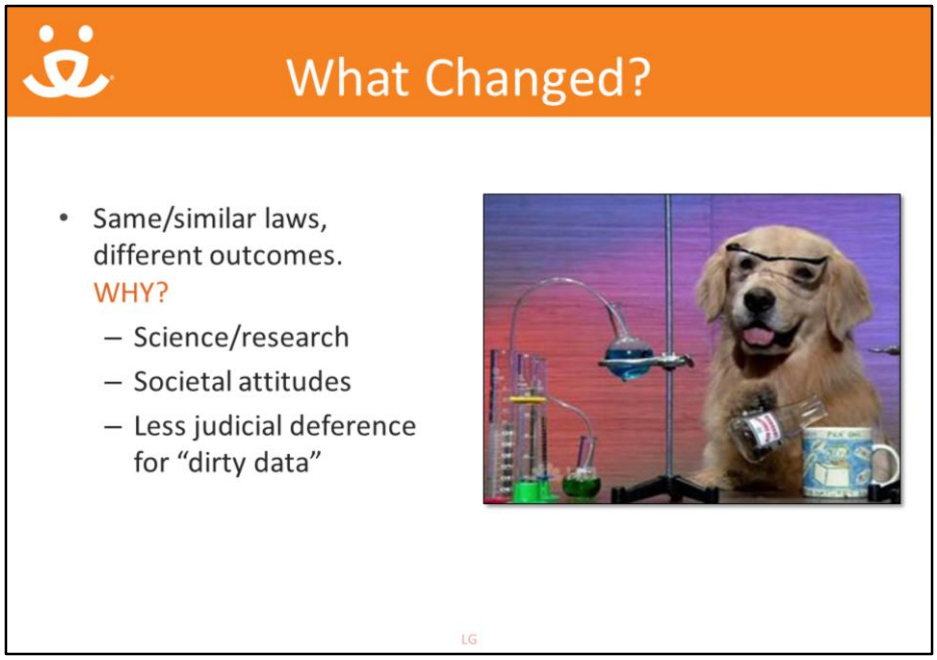
The Court even said that "the evidence offered...is mixed and not certain as to whether pit bulls are inherently or genetically predisposed to display vicious or aggressive traits, or whether such behavior is learned due to environment and training."

Modern research points to the fact that there is no such thing as a "dangerous breed" so the fact that the court is recognizing this is important. 25 years ago courts regularly upheld these laws because there was 1) no research showing that breed is

not a factor in a dog's behavior, and 2) courts were much more deferential to municipalities given that there was not a body of developed research. That deference appears to be waning given the evidence that refutes the idea that pits are somehow "different" from other dogs

2) Given that the ordinance has criminal penalties (fines and possible jail time), the court held that the irrebuttable presumption violated procedural due process rights.

Since proving the breed of the dog is an element of the crime, the city "must be required to prove each element of the offense charged beyond a reasonable doubt and that burden should never be shifted to the accused"



Why is BDL a fading policy choice and more likely to be overturned by the courts?

1) We now know that there are factors that contribute to dog bites that have nothing to do with breed.

Mention Pasternak's study and the results. The co-occurring factors most prevalent in dog-bite incidents are isolation from positive interaction (i.e.: no socialization), mismanagement by owners, abuse or neglect, dogs left alone with children. Breed is NOT a relevant factor.

Also, BDL has been proven to be ineffective at reducing dog bites. Research from the UK has shown that bites didn't go down after enacting BDL. Same holds true in Spain.

2) The late 90's marked the high-point in the pit bull hysteria but those attitudes are changing. Now, pit bull terrier like dogs are one of the top 10 most popular dogs in 47 states. Unthinkable 25 years ago.

3) As we see in the Clay case, courts won't rubber stamp the government's reasoning for these laws. Municipalities need to have a legitimate reason to enact these laws

and there is an ever-increasing body of research to show that these reasons are not sound.


Find the Pit Bull Terrier
Pit Bull Rescue Central
www.pbrc.net


Find the Pit Bull Terrier
Pit Bull Rescue Central
www.pbrc.net
Alapaha Blue Blood Bulldog
Doberman Pinscher
Catahoula Leopard Dog
Viszla
Patterdale Terrier
Rottweiler
Dogue de Bordeaux
English Bulldog
Olde English Bulldogge
Bull Terrier
Cane Corso
Black Mouth Cur
Boxer
American Bulldog
American Pit Bull Terrier
Bullmastiff
Fila Brasileiro
Tosa Inu
Dogo Argentino
Greater Swiss Mountain Dog
Ca De Bou
Boerboel
Thai Ridgeback
Jack Russell Terrier

Visual i.d. Mixed Breeds

- Inherently flawed





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1965 Scott & Fuller Study



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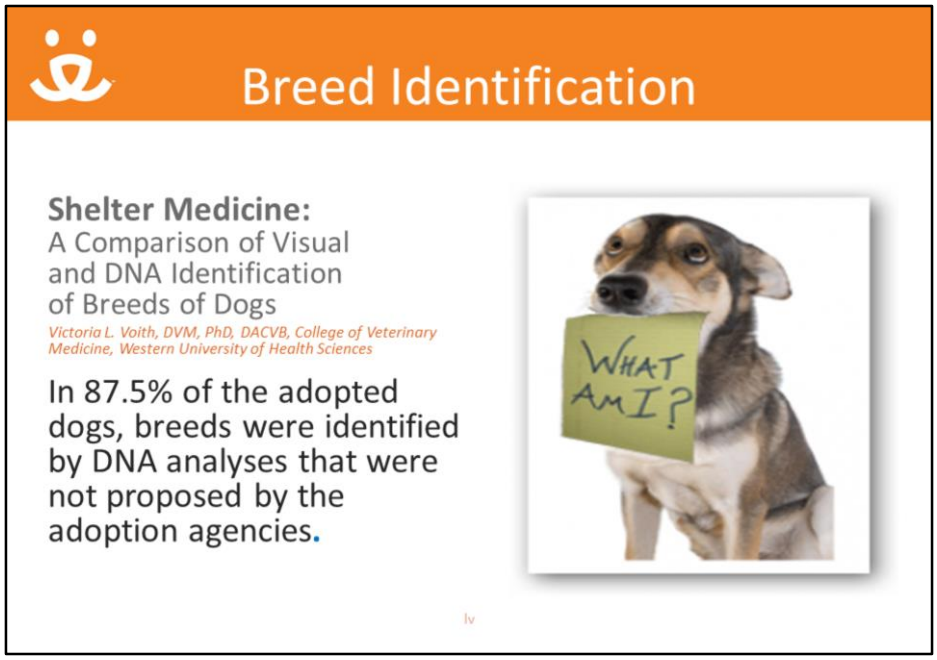


Dr Voith looked at dogs adopted from animal shelters.

These are "dog people": vets, shelter staff, etc., and even they couldn't come close to accurately identifying a dog based on it's appearance.



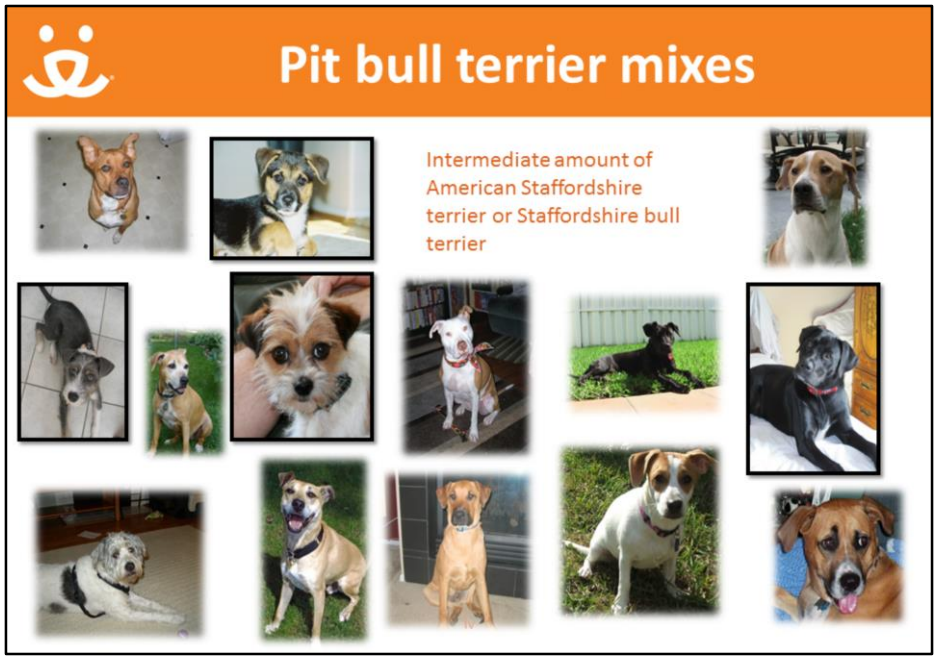
Whippet

Dalmation

Boxer



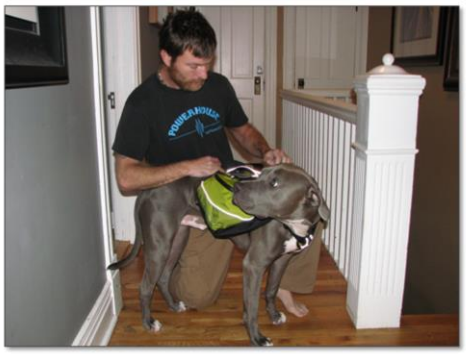
Many of these dogs have short hair, blocky heads, and small, rose ears, and would likely be seized in a city with a breed discriminatory ordinance. But genetically, they have no trace of “pit bull,” not one of these dogs is a descendent of an American Staffordshire Terrier or Staffordshire Bull Terrier.



Do these dogs look like “pit bulls” on the outside? No. But somewhere in their lineage, they were crossed with an American Staffordshire Terrier or Staffordshire Bull Terrier. Does that make them inherently dangerous? No.

Americans with Disabilities Act

- A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
  - 28 C.F.R. § 35.130(b)(7)



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The ADA grants authority to the AG to promulgate regulations related to the ADA. This is one such regulation.

"Public entity" means any state or local government. 42 U.S.C. § 12131(1)(A).

ADA

- DoJ regulations require:
  - § 35.136 Service animals.

  (a) General. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
    - 28 C.F.R. § 35.136



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This is the DoJ's regulations relating to service animals.

There are exceptions to this but none based on the animal's breed. In fact, see the next slide.

ADA Trumps BDL

Can a municipality discriminate against a person with a restricted/banned breed service animal?

- **NO**
  - Municipalities that prohibit specific breeds of dogs *must make an exception for a service animal of a prohibited breed*, unless the dog poses a direct threat to the health or safety of others. Under the "direct threat" provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave
    - Department of Justice. *Frequently Asked Questions about Service Animals and the ADA. http://www.ada.gov/regs2010/service_animal_qa.html*

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SAK v. CITY OF AURELIA, IOWA
Preliminary Injunction

- "whatever the legal bark of the City's Ordinance prohibiting pit bull dogs as a general matter of public health and safety, it is sufficiently likely that enforcement of that Ordinance against Snickers would take such an impermissible bite out of Title II of the ADA…"
- "This is one small, but vital step for Sak, one giant leap for pit bull service dogs"



Explain facts of the case and that the court cited to all of the previously listed regulations.

This case is representative of how courts will respond if a local BDL is enforced against a person with a disability and their service dog, regardless of breed.

Keep in mind that for purposes of the ADA a service dog does NOT have to be certified.

Also, the regs state that entities shall not "require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal."

Fair Housing Act (FHA)

- FHA includes persons with disabilities and protects them from housing discrimination
- DOJ and HUD enforce
- Similar "reasonable accommodation"
  - *"reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling*
    - 42 U.S.C. § 3604(f)(3)(B) (2012)



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FHA

- More expansive definition of "assistance animal" than the ADA
  - Covers not just service animals but also emotional support animals
    - e.g. *Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011)



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BEST LAWS

- Focus on BEHAVIOR of OWNER
- AND BEHAVIOR of DOG



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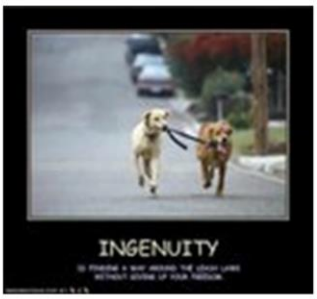
Leash Laws

- ✓ **Restrain and Restrict Dangerous Dogs**



Comprehensive Breed Neutral Dangerous Dog Laws

- Illinois Animal Control Act
- 510 ILCS 5 et. seq.
- **Behavior based**
- Potentially dangerous dog (targets packs of unsterilized dogs running at large)
- Dangerous Dog
- Vicious dog

http://www.ilga.gov



Reckless pet owners

- **South Bend, IN**
  Habitual Offender Ordinance
- Skokie, IL
  Prevents problem owners from owning pets for a period of time.
- Illinois & Ohio
  Prevent convicted felons from owning unsterilized dogs for a period of time after incarceration.



Property rights

"This is America. Every American who follows the safety rules as a responsible dog owner should be allowed to own whatever breed of dog he or she chooses."



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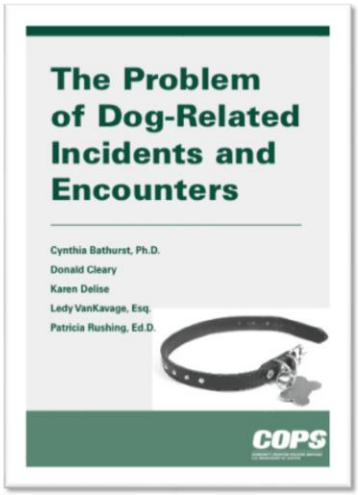
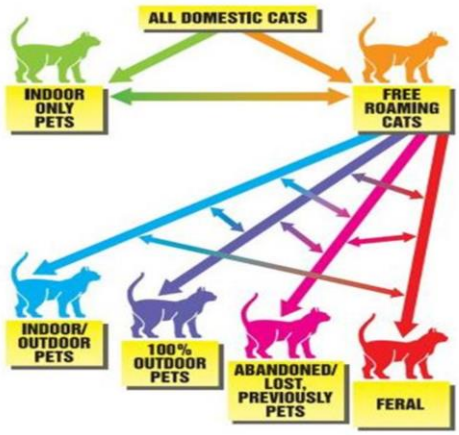
U.S. Department of Justice COPS Office



cops.usdoj.gov

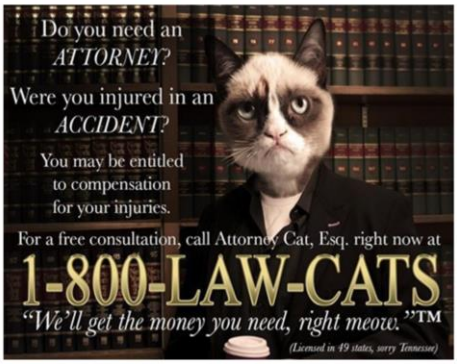
- Breed discriminatory ordinances go against the tenants of community policing.
- (i.e. Ferguson)

Creating Cat Policy/Programs
Cats Different from Dogs



Community Cats

Overcoming Cat Overpopulation



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Explain terminology: Feral cat=Free roaming cat=Community cat=Unowned Cat

Lots and Lots and Lots of Cats

- 74-86 million pet cats
- ~80 million community cats



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-91% of pet cats are sterilized (good news). https://www.aspca.org/about-us/faq/pet-statistics
-only about 2% of community cats are sterilized. Meaning we can't simply focus on educating pet owners about spay/neuter and thinking this will solve our community cat issue. IE: these are different issues. So, what do we do?

National Survey

Commissioned by Best Friends Animal Society



"Suppose that most of the stray and 'feral' cats entering your local animal shelter were killed there, either because they're not adoptable or because the shelter needs the space for other animals."

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National Survey

Community Cats

3 Options

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



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National Survey

Community Cats

Results

- **691 (68.3%) chose Trap, Neuter, Return**
- 242 (23.9%) chose lethal injection
- 78 (7.7%) chose "do nothing"



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Vocal Minority

4 out of 5 folks don't want the cats killed



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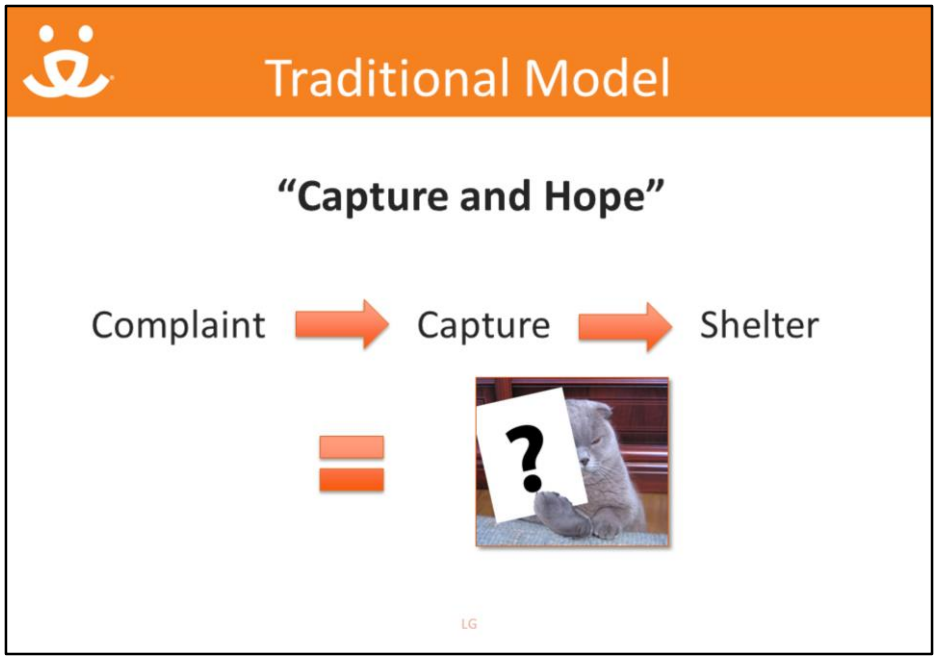
- Less than 2% cats reclaimed by owners nationally.
- Cats 3 times more likely than dogs to disappear from households.
- Cats are 13 times more likely to return home by NON-SHELTER means than by shelter means.
- 66% of lost cats found because they return home.





-The traditional model of cat population control consists of: 1) a neighbor or community member calling animal control; 2) the cat being captured and transported to the shelter; 3) adoption-if the cat is social and "adoptable" but typically euthanasia.

-the vast majority of the cats that come into the shelter system are not "adoptable" for one reason or another, meaning that of the millions of community cats that come into our nation-wide sheltering system, most are going to be killed, especially those that aren't kittens.

-THE TRADITIONAL MODEL DOES NOT WORK ON A NUMBER OF LEVERLS:

1) it's totally inhumane to kill millions of healthy cats that could live safe and baby-kitten-free lives in the community

2) IT DOESN"T WORK TO CULL THE CAT POPULATION

What Can We Do?

- 2 Options

1. Trap-Neuter-Return (TNR)
2. Eradication



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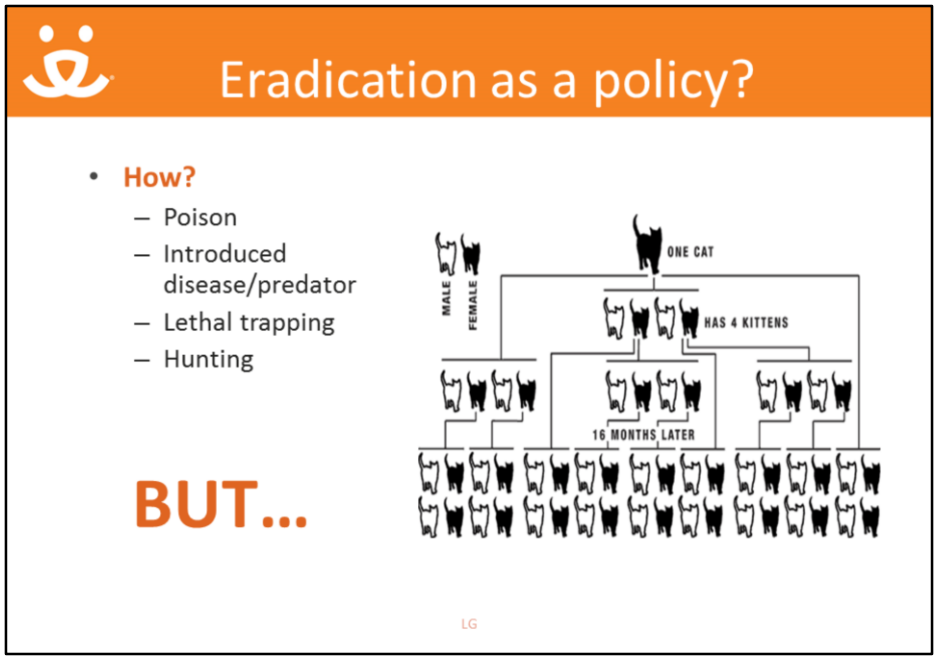
-Given that the traditional model has been shown to be ineffective, the question becomes 'how do we control the huge population of community cats (~80 million)'?
-2 options



-impossible to kill our way out of this problem.

1) 30-40% of American households have a pet cat so the idea of killing your community cats is not likely to be a political option

2) even if the political will is there, cats reproduce at a rate that makes eradication impossible (especially if you're not an island community). A fertile cat can have 1-2 litters each year with 4-6 cats per litter. Do the math.

-research shows that the public strongly opposes the lethal round-up of community cats.

-Chu, K. and W.M. Anderson, *Law & Policy Brief: U.S. Public Opinion on Humane Treatment of Stray Cats*, 2007, Alley Cat Allies: Bethesda, MD

Trapping & Removal

- Trapping/Removal is a **Failure**
- Lethal removal actually increases the number of cats by 75% to 200+% more
  - Scientific study by Tasmanian Government

  (Lazenby, Mooney & Dickman; 2015)



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Return to Field (R2F)

- Focuses on community cats trapped and taken to shelter
- Sterilizes and returns to same location
- Capitalizes on the services of generous volunteers



R2F Does Not…

- Abandon/Re-abandon
- Make life worse for the cat than death
- Relocate & concentrate
- Ignore legitimate nuisance issues
- Forget about your animal control mission or responsibilities
- Trump property rights



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What R2F Does

- Effectively addresses HUMAN behavior
- Provides effective solutions
- Decentralizes
- Relies on skilled volunteers to help reduce and manage outdoor cat populations
- Saves costs
- Refocuses resources



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Commonly seen benefits of R2F

- Lower cat intake and euthanasia rates
- Decreased cat housing space – new opportunities for shelter
- Reduced nuisance calls for animal control officers (with time)
- Greater good will – shelter seen as innovative, life-savers
- Major increase in morale & retention



Results

- All programs/projects have contributed to measurable decrease of intake and significant increase in cat save rates (between 80-98%).



Baltimore/BARCS - April 2014

lv

What works

- Expand the options for live release via Shelter-Neuter-Return
- Limit intake to only those cats that can be released alive or for whom death is clearly the best alternative
- Reallocate saved resources on programs to benefit cats and communities



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TNR: Legal Considerations

- Threshold question:
  - Is it legal?



LG

-the first thing you need to check is if a TNR program would be legal under your current law. Some jurisdictions have expressly allowed it, a few have expressly forbidden it, but many don't have a law one way or the other.
-

Caretaker ≠ Owner

- "Owner"?
  - e.g. *Palm Beach County Animal Care and Control Ordinance 98-22 Animals Chapter 4*
    - Community cat caregiver means a person who provides food, water and/or other care for one (1) or more community cats but who does not own, harbor, keep or have custody, control or charge of such cats.



LG

-there should be an explicit exemption in the law that a community cat caretaker is NOT the owner of the cat
-here is an example on the local level from the Palm Beach County ordinance

Caretaker ≠ Owner

- e.g. *Illinois Animal Control Act 510 ILCS 5*
  - "Owner" does not include a feral cat caretaker participating in a trap, spay/neuter, return or release program."



LG

-these exemptions can also be written into state law like this one from the IL Animal Control Act

Stray Hold Period

- Az. Rev. Stat § 11-1013 (2015)
  - *Any impounded cat that is eligible for a sterilization program and that will be returned to the vicinity where the cat was originally captured may be exempted from the mandatory holding period required by this subsection.*



- When an animal is brought in to a shelter, there a statutory "stray-hold" period. This can range from 3-5 days. The idea is to give a lost animal's owner an opportunity to reclaim her pet.
- With community cats there is no "owner" so mandating a stray hold is counterproductive. It requires the shelter to take up space for an animal that will not be claimed.
- Arizona just passed a law in 2015 exempting community cats from the stray hold period, which means these healthy cats will be spayed/neutered, vaccinated, and returned to field immediately. It's a win-win-win for the animals, the caretakers who look after them, and the shelters

Utah Community Cat Act

- *Utah 11-46-303 Community cats*
  - (2) A community cat is: (a) exempt from licensing requirements and feeding bans; and (b) eligible for release from an animal shelter prior to the mandatory five-day hold period in



LG

Utah passed the Community Cat Act in 2011.

South Bend, Indiana

- South Bend, IN
  - ***CHAPTER 5 - RESPONSIBLE ANIMAL AND PET OWNERSHIP CARE AND CONTROL REGULATIONS***
  - **Sec. 5-107**. Any ear tipped community cat that has been spayed/neutered and vaccinated…will be returned to a colony caretaker who will maintain the cat as part of a managed colony of community cats. Cats must be returned as close as possible to its location of capture unless illness or injury presents imminent danger to the animal to be processed through the community cat program.



-No need to re-invent the wheel. South Bend, IN has a great law that lays out how the TNR program works.

Ordinance Considerations

- Nuisance provisions -cats deemed public health/safety risk can be removed by animal control
- No leash laws for sterilized cats
- No feeding bans
- TNR is not abandonment
- Caregivers are not owners
- Minimum impound periods exempted R2F eligible cats
- R2F doesn't require caregiver



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Mitigating Nuisance Issues

- Humane deterrents available
- Expertise for "cat-proofing" property


Best Friends ANIMAL SOCIETY

Solutions to Cat-Related Issues





Resources to help

- www.Bestfriends.org
- ICMA webinar on how to get your community to no-kill
  - http://learning.icma.org/store/seminar/seminar.php?seminar=43456&pc=calendar



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Resources

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National Canine Research Council

http://nationalcanineresearchcouncil.com/

Skokie IL ordinance

https://www.municode.com/library/il/skokie/codes/code_of_ordinances?nodeId=COOR_CH18AN_ARTIIDOCACOAN_S18-40PRPEOW

South Bend Indiana Ordinance

https://www.municode.com/library/in/south_bend/codes/code_of_ordinances?nodeId=SUHITA_CH5REANPEOWCACORE

USDOJ COPS Office- Dog Related Incidents

http://cops.usdoj.gov/html/dispatch/12-2013/police_and_dog_encounters.asp

ABA Tort, Trial, and Insurance Practice- Animal Law Committee

http://apps.americanbar.org/dch/committee.cfm?com=IL201050

