

**BACKGROUND – MANDATORY STERILIZATION ON REDEMPTION ISSUES:**

- San Mateo County, 1991

Our first experience with mandatory sterilization on redemption was in San Mateo County, California in 1991 when a large two part task force reviewed a proposed “mandatory sterilization and breeding permit” ordinance and existing law. While the process was contentious, diverse animal interest groups were represented so that grossly unfair or incorrect provisions were, for the most part, avoided. Higher redemption fees for unaltered animals had been in existing law. The task force debated the issues involved in mandating sterilization on redemption. They recognized that animals can be impounded under unforeseen situations for which the owner bears little or no fault and that reproductive capacity is a valuable property interest subject to due process protection. The economic value of this interest ranges from a zero to substantial depending on the animal and circumstances. This interest is also subject to property and contractual rights of third parties such as co-owners, leaseholders and others. For example, an importer of working dogs for law enforcement purposes could import a pregnant female German Shepherd Dog at a cost of many thousands of dollars. The importer might be only an agent for owners living out of state, and the dog might not be registered in the United States.

The purpose of sterilization on redemption requirements should be to prevent unintended future breeding of only those animals at ongoing increased risk rather than merely punish or work a forfeiture. The consensus process of the San Mateo County task force resulted in a triggering threshold of second impound of the animal within a 3 year period. The task force realized that an owner may not have realized that containment was inadequate or the animal’s interest in escape. The reasons for an impound also change over the lifetime of an animal so that repeated offenses in a short period indicate a higher risk of re-offending than impounds separated by many years. Because the County animal control is centralized, each animal’s history can be tracked. On the second (or subsequent) impound, the owner had the option of a hearing to consider whether cause exists to NOT sterilize the animal. During the first 4 years the ordinance was in effect, 6 hearings were held and only one sterilization was upheld.

**SAN MATEO COUNTY, CALIFORNIA CODE Section 6.04.220 Redemption.**

(a) Except as otherwise provided by this ordinance or by any other law, the owner or person entitled to the control or custody of any animal impounded may, at any time before the sale or other disposition thereof, redeem the same by paying all proper fees assessed by Animal Control Services. Animal Control Services shall issue to the owner duplicate receipts for the amount of the fee paid.

(b) Upon redemption of any impounded unaltered animal, the owner will be required to pay a spay/neuter fee in the amount of \$35.00 in addition to the impound fees imposed under section 6.04.290. Such fee shall be refundable upon proof of spay/neuter of the animal within thirty (30) days of the redemption date. Any unaltered animal impounded twice or more within a three-year period shall be altered at the owner's expense prior to redemption. At the option of the owner, required spaying or neutering may be performed by a private veterinarian.

(c) Any owner of an impounded animal subject to mandatory spay/neuter under subsection (b) may petition, in writing, for a hearing conducted by the Animal Control Program Manager or his or her designee within three days following notice of the second impoundment. The hearing shall be held within four working days of such petition and shall be subject to the provisions of section 6.04.190. After the hearing, the hearing officer may require that the animal be spayed or neutered at the owner's expense, unless

the hearing officer determines that good cause exists for not requiring that the animal be spayed or neutered. (Prior code § 3330.8; Ord. 966, 10/23/51; Ord. 2551, 12/12/78; Ord. 2758, 12/01/81; Ord. 2850, 07/19/83; Ord. 3123, 09/15/87; Ord. 3344, 11/19/91; Ord. 3653, 5/23/95)

For additional protection against malicious release of animals, the following provision was also recommended by the task force and enacted into the revised San Mateo County Ordinance (subsequently renumbered):

SECTION 6. section 3330.5.2 of the San Mateo County Ordinance Code is hereby added to Chapter 6 of Part Two of Division III to be numbered and to read as follows:

section 3330.5.2. RELEASE FROM CONFINEMENT. No person other than the owner or person authorized by the owner of the animal shall release any animal from any confinement, vehicle or restraint unless such release is necessary to the immediate health and safety of the animal. This section shall not apply to peace officers or animal control officers.

- Post-San Mateo Trends

Other jurisdictions enacted variations on this original ordinance. When no hearing is provided, the owner must go directly to court. This is a greater expense and practical concern. The risk of dispute increases when there is no allowance for no-fault impoundments or hearing process. Use of the owner's veterinarian can also be expressly provided. Rarely are the scales balanced with malicious release provisions.

Other drafting variations, not necessarily enacted, in local laws include exemptions based on showing, breeding and related status of the owner or impoundment due to specified disasters or crimes. Increasingly these variations are impractical and do not reflect reality because of simple lack of knowledge or bias of drafters without broad representation in the drafting process.

- California State Law Limited to Redemption Surcharge for Unaltered

In 1998, California Assembly Bill 1856 was introduced as a sweeping requirement to sterilize all dogs and cats on transfer, placement or redemption. The bill was amended to only require sterilization of shelter or rescue group placed animals and a redemption surcharge for unaltered animals. While this surcharge does not allow for exemptions, it is cost effective and practical to enforce without being confiscatory.

- New York City Ordinance Exemptions Geared to Visitors

In 2000, New York City enacted a broad requirement for sterilization of all pet store sales and shelter redemptions with narrow exceptions for dogs and cats with either a documented breed show record within the prior 12 months of specified "or similar" registries or a completed championship. No lobbying by owner interests was done, but the City was aware that unaltered dogs from around the country come into the City to compete at the highly publicized annual Westminster Kennel Club show. Since all entrants must be champions, the exemptions would cover this specific class of dogs or those entered at any other show held within the City's boroughs should such dogs come to be impounded. Likely causes would be unavoidable escape, theft, vehicle accidents and incapacity of the responsible person (often not the legal owner) due to illness, death or even taken into custody. While the NYC ordinance tramples property rights, it is an urban city with many differences from the entire state of New Jersey.

**NEW JERSEY AB 3219 SPECIFIC ISSUES:**

State rather than local laws emphasize uniformity rather than local practices, resources and needs. Despite a long term trend in state laws requiring shelters (or equivalents) to sterilize animals before placement, this has *not* been extended to physical sterilization of redemptions. Increasing numbers of unredeemed animals already are sterilized before entry and most are not suitable for breeding. The shelter becomes the legal owner and either is the owner at the time of sterilization or as such, enters an enforceable contract with the adopting person when the animal is not fit for surgery at the time of placement. By contrast, redeemed animals are and remain the property of legal owners. Thus, a comprehensive approach to redemptions and placements is flawed both in practice and law.

The AB 3219 sterilization exemptions for owned redeemed animals are limited to arbitrary categories unrelated to facts of the impound, the relationship to the risk of repeat offenses or the public interest in preventing unintentional breeding, particularly in public places.

- General Policy Considerations

The primary policy reason for at least one “no questions” exemption is the variable nature of impounds, not all of which involve the animal being at large or fault of the owner. To allow no initial exemption is particularly problematic in cases of major disasters or even the typical Fourth of July mishaps where a well-confined, calm animal can scale high fences in utter panic. At these times, shelters become crowded and need to quickly redeem as many animals as possible. In the cases of burglaries and other crimes, vehicle accidents and sudden impairment of the owner, the owner should not suffer a forfeiture on top of the mishap. No dispute resolution process is provided either to challenge to the validity of the impoundment or to the specific subsection b exemption process. This requires a challenging party to bring a court action very quickly.

Other policy issues for “no questions” are ease and cost of administration for shelters, limiting liability for litigation either related to the mandate itself or subsequent malpractice for bad outcomes and reducing stressful and even dangerous conflict between shelter personnel and the public. For example, an owner seeking redemption may not be a local or even state resident. The animal may have traveled far on its own or been transported, lawfully or not, by other parties including across state lines. The owner or authorized agent may not have practical access to personal records or the animal’s attending veterinarian to document exemption claims.

- Specific AB 3219 Drafting Considerations:

**“1. (New section) a.** Notwithstanding any law, or any rule or regulation adopted pursuant thereto, to the contrary, no cat or dog shall be released from a shelter or pound in the State unless it has been sterilized, except if an owner of a cat or dog who is reclaiming the cat or dog submits an exemption application to the shelter or pound with the required documentation pursuant to subsection b. of this section, or after submitting an exemption application, submits the required documentation as provided for under subsection c. of this section. No provision of this section shall be construed to require the shelter or pound to sterilize a cat or dog unless it is being reclaimed, adopted, or otherwise released from the custody of the shelter or pound.

No cat or dog received at a shelter or pound that has a registration, license or any other type of identification tag shall be sterilized until the cat or dog has not been claimed after being at the shelter or pound for seven business days. If the seven business days elapse

between the date that the owner of the cat or dog has submitted an exemption application without the required documentation and the date on which the owner returns with the required documentation, the cat or dog shall not be sterilized until the owner fails to comply with the provisions of subsection c. of this section. The shelter or pound shall notify any owner seeking to reclaim a cat or dog of the requirements and the provisions of this subsection and subsections b. and c. of this section, in writing and at the time that the owner first seeks to reclaim the cat or dog.”

As drafted, the bill implies that the shelter itself will either perform or procure sterilization procedures. If the shelter actually operates a veterinary facility for this purpose, this is feasible but the shelter and its veterinarian bear responsibility for practice quality. For animals owned by the shelter or with freely given consent of owners, the risk of poor practice or bad outcomes is balanced by public interests. This may not be reasonable for owned animals. If shelters outsource to private veterinarians, those practitioners bear the liability risk for performing procedures without proper consent by owners or with poor outcomes. Local jurisdictions within a state will also have greatly varying resources and local attitudes on these matters.

“b. Any owner reclaiming a cat or a dog from a shelter or pound who expressly does not wish the cat or dog to be sterilized, shall, at the time of reclaiming the cat or dog, submit an exemption application, provided by the shelter or pound, with one of the following:”

As discussed above, the redemption process is fraught with stress and anxiety about the animal’s welfare including immediate medical needs, other family members and associates and possibly being far from home, so that delays escalate any confrontation and hostility by shelter personnel.

“(1) documentation that the cat or dog has been shown in the past 12 months and is registered as an American Kennel Club or Cat Fanciers Association show animal, or a show animal of any successor organization recognized as a successor organization to either of these organizations by the Department of Health and Senior Services;”

The purpose of competing in events open only to unaltered animals is to **EVALUATE AND PRESERVE BREEDING STOCK** and not mere competition based on status. Some animals that are highly desirable for breeding purposes may not be eligible or suitable for competition: for example, a Dalmatian with a tail amputated following an injury. An individual animal’s age during and length of show career is completely unrelated to the interest in preserving its reproductive capability. Application of the “shown in the past 12 months” requirement would have absurd results. Included would be animals too young for eligibility, not mature enough, retired or not shown due to pregnancy, training for other purposes, lack of appropriate shows and owner considerations such as health, work, family and financial considerations. Limiting exemption only to animals shown within 12 months simply does not make sense and defeats the purpose of showing.

The American Kennel Club is only one of many organizations that register breeding stock and sanction competitive events for evaluation purposes. To exclude all others or limit exemption is unreasonably discriminatory and not related to any legitimate public purpose. The Michigan based United Kennel Club has for many years registered a variety of breeds and sanctioned events throughout the country. There are breeders of working German Shepherds who register only with foreign and non-AKC registries, only compete in those events but supply law enforcement agencies with high quality dogs as well as training services. In recent years, AKC has recognized breeds against the wishes of independent organizations that historically registered

and sanctioned events for these breeds and continue to do so. The courts have upheld AKC's right to do this, but laws should not penalize people based on preferences for association. Only those dogs that initially dual registered with AKC and maintained that status would qualify under the AB 3219 provision. Well known breed examples are Border Collies and Australian Shepherds. The historical Australian Shepherd Club of American continues to register the breed under its own standard, sanctions conformation events and has Affiliated Clubs throughout the United States. Fluffy black and white Border Collies are common in AKC breed rings, but working sheep producers continue to register, compete only with other organizations if at all and expect to preserve their breeding stock even if they live in New Jersey.

The Cat Fanciers' Association is the largest pedigreed cat registry and event sanctioning organization in the United States, but it is also not the only one and does not recognize all breeds. While dogs' show careers may span many years, pedigreed cats typically campaign intensively for one competition year. Again, breeding value does not end 12 months following the last show.

Aside from registry issues, there are also other situations in which animal owners should be able to preserve their animal's reproductive capability. The logical approach is to limit any mandate to only subsequent impounds establishing a risk of re-offending instead of arbitrary exemptions based on the status of the owner and/or animal.

“(2) documentation from a licensed veterinarian that sterilizing the cat or dog would be detrimental to the health of the cat or dog, or that the cat or dog is too young to be sterilized properly;”

This is a standard exemption from basic shelter sterilization provisions for placement or for animals in the community where unaltered status is an issue. Unlike animals in these categories, animals awaiting redemption are in physical custody and not available for examination by their private, attending veterinarian or referral specialist. Existing medical records may or may not document contraindications. Contemporaneous independent medical evaluation including laboratory work should not be precluded to determine surgical risks such as bleeding disorders, other concurrent medical conditions, estrus and pregnancy. An owner's inability to have the animal independently evaluated also increases the risk of complications, negative outcome and veterinarian liability.

“(3) documentation of the American Kennel Club or Cat Fanciers Association requirements that are inconsistent with the sterilization of the cat or dog, or such documentation from any successor organization recognized as a successor organization to either of these organizations by the Department of Health and Senior Services; or”

This provision may be intended as a fallback for the animal not meeting the “shown in the past 12 months” provision. It also specifies that “any successor organization” would have to be recognized by the Department but excludes all others independent of AKC and CFA. Since each organization has conformation competition based on comparison to ideal breed standards for the purpose of evaluating breeding stock open only to unaltered animals, it is not clear how these general “requirements” would be applied to individual cases of unaltered animals registered with either organization or how disputes about application would be resolved.

“(4) documentation that the owner is a professional licensed breeder registered with the American Kennel Club or Cat Fanciers Association, or any successor organization recognized as a successor organization to either of these organizations by the Department of Health and Senior Services.”

There are no “professional licensed breeders registered” by either AKC or CFA. Both organizations are tax exempt as social welfare organizations under Internal Revenue Code Section 501(c)(4) and are composed of member clubs. Each operates a registry for recognized breeds, sanctions events under its respective rules and conducts ancillary programs related to preserving purebred dogs and pedigreed cats. Neither licenses or registers individual breeders as “professionals.” In fact, both organizations are geared to the hobby breeder and there is no professional status per se. Organizational designations such as CFA cattery names, Cattery of Excellence designation or AKC registered kennel names are not reflective of any professional designation. Again, designation of specific organizations is discriminatory and does not further the public interest in preventing habitually at large animals from unintended breeding.

“c. If the owner does not have the documentation required under subsection b. of this section at the time of reclaiming the cat or dog, the owner shall return with the required documentation within seven business days after submitting the exemption application, or by such time as otherwise agreed to by the shelter or pound, and reclaim the cat or dog without the cat or dog being sterilized.”

As a practical matter, it would be rare that a redeeming owner would come to the shelter with the required documentation, let alone that the shelter would be satisfied. Delays in redemption are not only stressful for the owner and associates but expensive and leave the animal in jeopardy of injury, illness or mistaken euthanasia while in custody. The owner has no assurance that the documentation will be acceptable or how to challenge an unfavorable determination.

“d. There is established a special fund to be known as the "Cat and Dog Sterilization Fund," to be administered by the Department of Health and Senior Services for the purposes of funding the sterilizations required pursuant to subsection a. of this section. No moneys deposited in the fund shall be used for any purpose other than the sterilization of cats or dogs.”

Funding issues for mandates on local government can be complex, but redemption sterilizations typically include express provision that this cost is paid by the owner. The downside of excessive charges to redeeming owners is financial hardship and inability to redeem.

“e. The Department of Health and Senior Services may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary for the implementation of the provisions and requirements of this section.”

The obstacles to public input in state rulemaking processes are particularly worrisome given the very problematic drafting of this bill and the severe consequences to both animals and the legal rights of owners from the arbitrary and discriminatory provisions.