



Community Cat Programs: Public Policy and Legal Considerations

Despite the significant, tangible benefits of community cat programs, and the trap/neuter/return (TNR) method of managing unowned free-roaming cats, these programs are sometimes challenged by opponents who raise questions about whether this progressive approach is sound public policy, or is “legal” under state and local law. Opposition is almost always rhetorical, fear-driven and comes from outside interests offering no feasible alternative. This opposition also operates on a flimsy foundation that runs counter to sound public policy and legal theory, and misrepresents existing animal protection provisions.

Community cat programs: Better for cats, better for communities

- Traditional trap-and-kill policies do not work; the ongoing debate surrounding “the feral cat problem” underscores this conclusion
- Public opinion is opposed to official policies that enable killing rather than facilitate lifesaving efforts
- Community cat programs promote public health by greatly increasing the number of vaccinated outdoor cats
- Criminal sanctions targeting community cat caregivers are misguided, incompatible with the purpose of criminal laws, and are unlikely to have any significant deterrent value
 - Criminalizing kindness is simply bad public policy
- For more information about the benefits of TNR and the critical role it plays in community cat programs, please see **Best Friends’ Frequently Asked Questions About TNR**

Legal Considerations

From a legal perspective, community cats (often referred to as “feral”) are not owned, whereas “pet” cats are “owned” animals. These two categories cannot be distinguished merely through visual identification, except to the extent that an ear-tipped¹ cat is presumptively unowned, and a cat wearing a collar is presumed to be a “pet” or an “owned” cat.

Broad legal definitions that impute ownership on “unownable” animals are irreconcilable and legally flawed.

- The legal definition of “own” cannot legally or factually apply to community cat caregivers, who lack the following basic legal property owner rights:
 - Right to exclude other people from possession and/or use of property, and
 - Right to transfer the right to exclude people from possession and use; and
 - Right to determine how property may be used, irrespective of other people
- Legal ownership of community cats cannot be imputed to individual caregivers
 - The presence of cats pre-dates caregivers; caregivers are simply responding to the cats’ need for care (whether real or perceived)
 - Caregivers possess no property right interest, and neither control nor confine community cats
- Attempts to impute ownership by virtue of a caregiver’s Good Samaritan conduct are misguided and diametrically opposed to the societal and policy elements of ownership

¹ The removal of the tip of one ear — done at the time of sterilization surgery — is the universally recognized indicator that a community cat has been sterilized.

- Common examples:
 - Good Samaritan “owns” cats because he or she has fed them a consecutive number of days
 - Good Samaritan did not object to cats on his or her real property
- Unenforceable because:
 - Law enforcement personnel are unlikely to monitor feeding activity of free-roaming cats for the requisite number of consecutive days
 - Mere presence of cats does not prove property owner consent
- Imputing ownership status on unwitting individuals triggers untenable constitutional obligations
 - Due process concerns for all “owners” if or when the cats are removed
 - Every person who feeds a cat (or allows the cat on his or her property) would be deemed an “owner”
 - The same cat could theoretically be owned by dozens of people — all of whom would be entitled to due process

Law Enforcement and Misunderstanding

Animal control and other law enforcement agencies might mistakenly impute “ownership” to caregivers and then issue fines and penalties for breaching duties that apply only to “pet” or “owned” cats. The results, however, are absurd.

- The law cannot be enforced if it does not clearly identify where property ownership rights begin and end
 - No one can visually distinguish an owned cat from an unowned cat; ear-tips and collars may be presumptive, but not conclusive, evidence
 - There is no legal mechanism to identify a discreet ownership interest in “community cats”
 - Whose ownership interest trumps when dozens of caregivers or organizations (likely unknown to one another) could claim “ownership” of a single cat?

Laws imputing duties of pet ownership to cat caregivers are not realistic and are fundamentally unfair.

- Caregiver is typically incapable of ensuring that a particular free-roaming cat is eating the food and/or doing so in the proper amount
- Caregiver is rarely capable of isolating the feeding to one specific cat
- Caregiver is typically incapable of preventing other opportunistic cats from consuming the food and as such:
 - Ownership would again be imputed for all other cats who take advantage of this food source
 - Any attempt to discontinue feeding could trigger animal cruelty provisions — a criminal violation

Abandonment Overview

Animal cruelty statutes address genuine societal concerns about animal owner responsibility, with an emphasis on ensuring care and continued support. Many anti-cruelty statutes rightfully forbid the act of abandonment, a provision of the penal code that is contingent upon the critical element of intent. A person might be guilty of abandonment if the person had the animal in his or her possession or control, but delivered the animal to a situation where any reasonable person would have known, or should have known, that the animal would come to harm. Thus *ownership* (or control) and foreseeable harm that may result from a person’s deliberate decision to withdraw necessary care are pivotal legal issues when considering the act of abandonment.

- Abandonment provisions are penal codes that hinge on the critical component of *intent to harm* and require three critical factors:
 - Intent to relinquish ownership or control over the animal, and
 - Intent to withhold, discontinue, or otherwise deprive the animal of any necessary care, and
 - Resulting foreseeable harm (see example below)
- Criminal sanctions for returning a healthy cat to his or her “outdoor home” as part of a community cat program deliberately designed to improve the cat’s overall health and well-being conflicts with legislative intent

- There is no intent to discontinue necessary care
 - There is no intent to harm: the cat is being returned to his or her “outdoor home” in an improved state of health, which maximizes survivability
 - There is no foreseeable harm
 - Program eligibility requirements (minimum age, sound body weight and health, etc.) are reasonable predictors of a cat’s capability to successfully continue to care for himself or herself
 - Once returned to familiar territory in an improved state of health, cats remain capable of finding sufficient food, water, and shelter
 - Temporarily removing a cat from his or her home environment for medical treatment does not trigger a dependence on human support
 - Abandonment provisions are often unenforceable
 - Law enforcement personnel must witness or have a credible witness to the abandonment to determine who actually placed the cat in question on any given property
 - Was the cat released without express permission of the property owner?
 - Was the cat released on the property, or did the animal enter the premises on his or her own?
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Example

John is annoyed that a neighborhood cat makes frequent visits to his backyard, often lounging for hours in the sun. The cat has no discernable identification, but John is pretty certain it is his neighbor’s cat. Fed up, John traps the cat and **drives him to a sparsely populated location several miles away, where he then releases the cat.**

So, did John abandon this cat?

Yes. John’s actions in this case clearly imperil the cat, as the cat was released far from his home in an area where John, as a “reasonable person,” should have known that the cat was unaware of available food and water sources (assuming such sources were available at all). Releasing the cat in these unfamiliar surroundings would deprive the animal of necessary care or support. In addition, it’s clear that John had control of the cat and that he intended to “get rid of the cat,” disregarding the obvious signs that the cat’s welfare was being jeopardized.

The Enforcement of Nuisance Provisions

- Nuisance is a condition existing on real property that offends the “reasonable person”
- Nuisance provisions must be behaviorally defined
 - The mere presence of cats does not suffice (i.e., cats cannot be nuisance “per se”)
 - Behavioral definitions must be:
 - Susceptible to human control (barking, chasing cars, etc.)
 - Caregivers do not possess “control” over free-roaming cats
 - Amenable to abatement

This document has been prepared for general information purposes only and is not intended to provide legal advice. Best Friends does not provide legal advice or services regarding specific TNR-related legal issues. An attorney licensed in your state should be contacted for advice on specific legal issues.

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