Feral Cats, TNR & the Law

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Roadmap for today’s webinar:

1. What is the “Law?”
2. The status of feral cats in general
3. Municipal ordinances impacting TNR
4. TNR-enabling ordinances
5. Freedom of Information Act
6. Endangered Species Act
7. Abandonment laws
8. Liability
Jurisdictions

Federal (U.S. Government)

State

Municipal
- County
- City
- Township
- Borough
- Village
Types of laws

Legislative
• Statutes (federal, state)
• Ordinances (municipal)

Judicial
• Common law (history of court decisions)

Executive
• Agency rules & regulations
Status of “cats”

• Usually governed by state law
• Considered property either by statute or under common law
• When addressed in statutes, most often in connection with animal control & shelter responsibilities, rabies vaccinations and cruelty & abandonment crimes
• Many states give cats, dogs and other companion animals special protections – e.g., holding periods & types of disposition in shelters, requirements for method of euthanasia
Status of “feral” cats

Because most states do not distinguish between “feral” and “non-feral”: 

• Feral cats are entitled to the same special protections as companion cats

• Feral cats are not “wildlife” and so TNR cannot be regulated by wildlife agencies (except perhaps on public land with wildlife populations)
**State laws addressing “feral” cats**

- **California** - shelters can relinquish ferals to nonprofit animal groups (Cal. Food & Agric. Code, sec. 31752.5)
- **Connecticut** – municipalities can set up TNR programs (CT ST sec. 22-339d)
- **Illinois** – provides funding for feral spay/neuter & rabies vaccination (510 ILCS Act 92)
- **Minnesota & South Dakota** – allow hunting of feral cats (agency regulations)
- **Florida** - Fish & Wildlife Conservataion Commission adopted policy against TNR on public lands with rare wildlife
Is TNR legal in your municipality?

- YES
- NO
- DON’T KNOW
**Cat Licensing** (Municipal Ordinances)

- “Any person who shall own, keep or harbor a cat of licensing age shall... apply for and procure from the animal control officer a license and official registration tag for each such cat so owned, kept or harbored....”
  (Randolph Township [NJ], sec. 8-3(c).)
Some ordinances do define “owner”

• “A person who continually feeds a stray cat shall be considered its owner.”  
(North Plainfield [NJ], sec. 5-2.1)

• “OWNER. Any person or persons, firm, property manager, partnership, association, corporation or organization of any kind who owns or has a right of property in such dog and/or cat or who has control and/or ownership in the premises where the dog and/or cat is kept or harbored.”  
(Voorhees Township [NJ], sec. 92.01.)

• “Any person who harbors or possesses any dog or cat for a period of 30 days or more shall, for the purpose of this chapter, be deemed to be the owner of the dog or cat so harbored or possessed.”  
(City of Woodbury [NJ], sec. 59-10.)
Leash Laws

“No person owning, keeping or harboring an animal shall permit, suffer or allow the animal to:

… (2) Run at large within the limits of the township….”

(Randolph Township [NJ], sec. 8-18.)
Pet Limits

“It shall be unlawful for any person to own, keep, hold, board or harbor more than five (5) adult cats that are allowed to freely roam out of doors.” (Greer [SC], sec. 4-117(1).)
Feeding bans

“All feeding of animals outdoors shall be prohibited with the following exception: birds may be fed in vermin-proof containers.” (Borough of Fort Lee [NJ], sec. 14-1.)
The solution? Exemptions for TNR!

“The limitation on the number of cats owned, kept, held, or harbored shall not apply to caretakers of feral cat colonies that have registered such colony with Animal Control.” (Greer [SC], sec. 4-117(2).)

Remember: Exemptions from cat licensing, leash laws, pet limits, feeding bans and similar ordinances are easier to obtain than trying to get rid of the ordinances all together.
Public Health Regulations

• Most municipalities have public health codes or regulations prohibiting the creation of “public health hazards,” “nuisances,” and “unsanitary conditions.”

• Great deal of discretion lies with the public health inspector (e.g., cat food left unattended, flies on cat food, odor, feces, etc.)

• Need for understanding of TNR by agency
Let’s try that again:
Is TNR legal in your municipality?

• YES

• NO

• DON’T KNOW
Getting laws & regulations changed

• **Persuading Municipal Officials to Go With TNR** by Bryan Kortis (webinar) - [https://petsmartcharities.webex.com](https://petsmartcharities.webex.com)

• **Trap-Neuter-Return: Fixing Feral Cat Overpopulation** (by HSUS, 16 min. video) – part of the *Effectively Managing Feral Cats* CD/DVD set available at [www.animalsheltering.org](http://www.animalsheltering.org)

• **Neighborhood Cats website** – click on “Resources,” then on “Advocacy” – for materials and policy statements of various organizations
TNR-enabling ordinances

- Chicago (Cook County)
- Indianapolis
- Baltimore
- Salt Lake City
- Las Vegas (Clark County)
- Omaha

For text of these & other ordinances:
www.neighborhoodcats.org/RESOURCES_ORDINANCES
Types of TNR-enabling ordinances

**Sponsor based**

- Qualified agencies/nonprofits can sponsor TNR colonies
- Sponsor duties are defined (registration & data collection, caretaker supervision, etc.)
- Caretaker duties are defined (spay/neuter, vaccinations, regular feeding, etc.)
- Animal Control restrictions stated (notice of complaint, time to cure, return of colony cats)

*Most sponsor-based ordinances (e.g., Chicago, Las Vegas) originated from model ordinance of Burlington County Feral Cat Initiative ([www.njferals.org](http://www.njferals.org)) – see Tabernacle ordinance*
Caretaker based

- Set forth general rules for maintaining colonies (spay/neuter, feeding, etc.)
- Often require registration with municipal agency/animal control
- E.g., Santa Cruz, Bristol [Rhode Island]
Delegate authority

• Designate a municipal agency to promulgate regulations and supervise TNR activities
• E.g., Baltimore – designates city’s Dept. of Health
Freedom of Information Act

- Most states & the U.S. government have their own Freedom of Information Act (FOIA)
- Gives the public access to all government records not specifically excluded from disclosure
FOIA & TNR

- FOIA applies to a “government agency”

- Under some FOIAs, a private agency can be a government agency for purposes of requiring disclosure of records

- E.g., Florida’s FOIA applies to any “…private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” (Florida Statutes, sec. 119.011(2).)
So, be careful!

• Find out if a private agency can become subject to your state’s FOIA

• If yes, consult an attorney before accepting municipal funding for TNR (to see if you can construct an arrangement that avoids being subject to FOIA)

• If yes, avoid being named in any ordinance or legislation as an administrator of the municipality’s program
**Endangered Species Act (ESA)**

- **Federal ESA** – protects species which are rare, threatened or endangered within the nation as a whole.

- **State** - protects species that are rare, threatened, endangered or of special concern within the territory of the particular state. (No separate state laws in AL, ND, WV, and WY.)
ESA resources

• Chart of state laws:
  www.animallaw.info/articles/ddusstateesa.htm

• Click-on map (with links to state laws):
  www.animallaw.info/articles/armpstateesa.htm
ESAs prohibit the “take” of a protected species

- The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
- Federal civil penalty: up to $25,000 per violation.
- Federal criminal penalty: up to $50,000 fine, one year in prison per violation.
Can TNR be an ESA violation?

• Never adjudicated (*though often threatened*)

• Difficulty of proving causal link (person/group – cat – specific animal harmed)

• Outcome would depend on how the court framed the issue:
  – Are you releasing cats into the environment and maintaining them, thereby causing a take? OR
  – Are you sterilizing and managing cats who were already there and reducing the risk of a take?
A better way: collaboration
STONE HARBOR, NEW JERSEY

- Piping plover sanctuary at tip of peninsula
- Plovers are federally threatened, beach-nesting bird (nest April thru Sept.)
- Cat colony was being fed/maintained in sanctuary
Stone Harbor ordinance

- Created cat-free zone at southern end of the peninsula where the bird sanctuary is located
- Legalized TNR in the rest of borough
- Registration required with borough’s Animal Coordinator
- Defined caretaker responsibilities

For text of ordinance:  
www.neighborhoodcats.org/RESOURCES_ORDINANCES
Is TNR a form of abandonment?

- Often a concern voiced by animal control agencies and officers
- Sometimes a threat of prosecution made by TNR opponents
Abandonment laws

- Most states criminalize the abandonment of animals
- “A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domestic animal at a location without providing for the animal's continued care.” (Oregon Statute, sec. 167.310, subd. (1).)
• Abandonment is “deserting, forsaking or intending to absolutely give up an animal without securing another owner or without providing the necessities....” (Prince George County [MD], sec. 6-7, subd. (a).)

• The essence of the crime of abandonment is leaving an animal, who is used to being provided for, to fend for himself.
The accusation TNR is a form of abandonment comes from focusing solely on the act of releasing a cat back into his territory, but....
...this ignores:

• The cats are being returned to familiar territory, not released into new, unknown circumstances. They’re not being deprived of what they were used to.

• TNR properly done involves the long-term care of the cats, including provision of food & shelter. They’re not being left to fend for themselves.
Rather than causing harm, TNR:

– Sterilizes the cat, improving his or her health

– Provides long-term care

– IMPROVES the cat’s situation
Liability
Is the caretaker or TNR program liable for harm caused by colony cats?

• Property damage, bites, etc.
• **Common law** (judicial): Cat owners are not liable for “normal” harm caused by roaming cats

• **Common law overruled:** Some states and municipalities have statutes or ordinances making the owners of animals liable for all harm done

• **First bite rule:** The law in some states is owners are liable for harm only if they’re on notice of the animal’s propensity to cause harm
• None of these rules apply unless a TNR program or caretaker is legally considered an “owner” for purposes of these laws

• Legislative exemptions: in Illinois, in counties which adopt TNR programs, state law gives civil and criminal immunity to feral cat caretakers.
For more on Liability & TNR:

• “Building a Community TNR Program Advanced” webinar (see discussion towards the end of the slide presentation)
  https://petsmartcharities.webex.com

• Release from liability forms (to use as a starting point in consultation with an attorney):
  www.neighborhoodcats.org/RESOURCES FORMS
Check [www.petsmartcharities.org](http://www.petsmartcharities.org) for news & upcoming grant programs!