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The No Kill Advocacy Center has evaluated whether pet limit laws are effective at preventing animal cruelty, addressing perceived or alleged "nuisance" issues, and whether they should be retained as part of a community's overall animal control enforcement strategy. For the reasons discussed below, we have determined that they are not effective and should not be supported. Nor is a variance by permit system a viable alternative. Pet limit laws do not provide the benefits which proponents claim, but rather have negative repercussions for animals in our communities.

Pet Limit Laws Punish Responsible Caregivers

Millions of compassionate people throughout the United States provide animals with food, love, and shelter in their own homes. Others put aside their own needs in order to care for beloved pets. Still others work tirelessly to feed, foster, and rehabilitate abandoned animals, all at their own personal expense. For every one of these caregivers, a pet limit law will exact a heavy toll. Each of these will have to obtain a permit and face the attendant costs associated with that process, or face citations, fines, penalties, and possibly confiscation of the animals they love and compassionately care for.

This burden, inflicted on the very people who are doing the most to help animals in their communities force many to stop caring for these animals, reducing the availability of homes, resulting in more animals impounded and killed in local shelters, or more animals left to fend for themselves.

As limits are often low, the net result is that many needy animals are denied loving homes. Further, in order to come into compliance if they are discovered, multi-pet households must reduce the number of animals in their home. This can only be done by shifting animals to other homes, abandoning animals, or relinquishing the animals at the local shelter, leading to an increase in killing and higher animal control costs.

In other words, responsible caregivers may be prevented from coming forward to adopt animals, or may be forced to surrender animals who are otherwise receiving good care at private expense, because to do otherwise would violate the pet limit law. This would take shelters further away, rather than closer to lifesaving goals.

Most Pets Should be Categorically Exempt

Beyond dispute, human beings have long enjoyed an abiding and cherished association with their animal companions. Given the substantial benefits derived from sharing one's life with animals, the undue burden on the use of property imposed on households who can maintain pets within the confines of their homes without creating a nuisance or disturbing the quiet enjoyment of others substantially outweighs whatever meager utility the restriction of pet limits may serve in the abstract. It certainly does not promote the public health and welfare commensurate with its tariff on the quality of life for those who value the companionship of animals.

What is gained from an uncompromising prohibition against more than a few pets that are confined to a person's home or property and create no noise, odor, or nuisance? To the extent such animals are not seen, heard, or smelled any more than if they were not kept in the first place, there is no corresponding benefit. Animals that remain within the four corners of their home space (or property) can have no deleterious or offensive effect on any common areas or any neighboring homes. Certainly, if other home owners and residents are totally unaware of their presence, prohibiting pets does not in any respect foster the public health or welfare of anyone. In light of the substantial and disproportionate burden imposed for those who must forego virtually any and all association with their pets, this lack of benefit renders a categorical ban unreasonable.

Most animal control agencies respond by saying that only animals who are actually a "nuisance" to neighbors will be subject to enforcement because ordinances of this type are only enforced on a complaint driven basis. What is disturbing about this point of view is that those agencies tasked with enforcement of laws are promoting a law that will actually punish multi-pet households despite the fact that:

1. many of these homes are outside the scope of the perceived need for the law because they do not impact neighbors or interfere with the rights of others;
2. these individuals open up loving homes for animals that may otherwise face impoundment and killing at taxpayer expense;
3. the position taken by these agencies is unethical in that it undermines respect for law.

In other words, in response to concerns about pet limit laws, some communities have admitted that these ordinances "will only be enforced on a complaint basis, and pets which are maintained indoors or do not raise the ire of neighbors will not generate enforcement." Not only does this leave the door wide open for pet limit laws to be used as a weapon of retribution in neighbor disputes over concerns totally unrelated to pets, but such a view embraces the position that because responsible multi-pet households will not generate enforcement, these residents need not fear violating the law. In other words, while local government is making outlaws out of normally law abiding citizens, it is also telling them that it is acceptable to break the law as long as they do not get caught.

Passing laws that aren't enforced or are enforced sporadically is unfair and counterproductive. Those that voluntarily comply can probably be counted among the most responsible pet caretakers in the community. There is little equity or sense in enacting a law that only ends up penalizing the very people whose behavior is already exemplary.[*]

Not only should indoor-only, confined animals, or animals who do not leave the property where they live be categorically exempt from any pet limits, but rescue groups and foster families should be as well. It is not uncommon for rescued animals, particularly those who have impediments by virtue of abuse, abandonment, or other issues, to be in a "foster" home environment for long periods of time. When agencies have not historically made an effort to rigorous implement foster care programs, foster homes will be in critical short supply, and it is common for the foster homes which are available to care for large numbers of animals. It is ironic that those groups and individuals who, at their own expense or through the aid of privately funded organized animal welfare groups, are undertaking efforts to rescue and provide for unwanted animals should be targeted for restrictive and punitive legislation. Pet limit laws bureaucratically encumber all rescue efforts by potentially disqualifying many, and discouraging the needed establishment of others. Moreover, since most ordinances do not recognize and accommodate private rescue efforts, many extensive and expansive efforts are underground and their impact cannot be disclosed or documented. Furthermore, the networking, expertise, peer influence, resource sharing, and education of those groups remain an untapped resource by public agencies—exactly the situation the Hayden Law sought to remedy.

Many caregivers and rescue groups would have to respond to a pet limit law by refusing to offer the care they were otherwise capable of giving. Not only would this result in increased shelter killing, but the pet limit law shifts the costs of caring for animals from private individuals and volunteer organizations to the taxpayers of the city. Thus the net effect of pet limit laws is that local and state, as well as public and private, efforts will end up at cross purposes rather than in constructive collaboration.[**]

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[*] Needless to say, truly irresponsible people will not be affected. If the law is not enforced, they are free to ignore it. If it is selectively enforced against them, it will only add to the number of animals killed, shifting the burden from private to taxpayer expense. Or such people will abandon their animals, thus increasing the number of free-roaming animals and thereby adding to the perceived problem the law is supposedly designed to ameliorate.

[**] In California, the 1998 California Animal Shelter Law (commonly known as the Hayden Law after its legislative sponsor Senator Tom Hayden) was promoted and passed into state law because of the political and practical problem that—very specifically—the City and County of Los Angeles, and its shelter administrators, refused to remedy: unnecessary shelter killing. This law provides legal protections for nonprofit animal welfare groups and specifically empowers them to rights over shelter animals that face killing. To infringe on these groups would undermine the goals of the Hayden Law and undermine the spirit of cooperation created by state law.

Indeed, pet limit laws aren't necessary because there are other remedies available to address any perceived problems associated with animals: health regulations, noise abatement, sanitation requirements, cruelty and neglect laws. Instead of correlating numbers of animals with problems, problems such as neglect, noise and sanitation can be addressed specifically. If there is a problem with level of care, this function of animal control will not be impaired by lack of pet limits. Because of pet limits, by contrast, many needy animals are denied loving homes.

Requiring Variance Permits Does Not Ameliorate Concerns

Even in those situations where the pet limit law has a variance or permit process through the city or animal control agency, the end result is the same because multi-pet households would be caught in a classic "Catch 22." They must choose between violating the law on the one hand and on the other, risking exposure if they are denied permits. In other words, multi-pet households would be afraid to apply for a permit for fear of denial, at the same time they make enforcement officials aware of their status in violation of the law thus subjecting them to penalties and possible loss of their beloved companions.

In addition, this fear of "coming out" and alerting enforcement officials of their locations is exacerbated by a permitting process which allows animal control agencies to impose conditions they deem necessary. As such, the process becomes arbitrary, extra-legislative and violates basic notions of representative and constitutional governance that enforcement duties and legislative functions not be vested in the same political body. Moreover, to the extent that the permit process requires people's homes to be open to search by animal control officers, the process runs afoul of the Fourth Amendment to the U.S. Constitution. In other words, requiring indoor-only multi-pet households or households where pets do not leave the property to open their homes to search by city officials as a condition of a permit is unconstitutional.

The Fourth Amendment provides, in relevant part, that "[t]he right of the people to be secure in their persons, houses, paper, and effects, against unreasonable search and seizure shall not be violated…" It is fairly well-settled that only consent, exigent circumstances, or a reasonable condition imposed as a condition of probation after conviction of a crime may justify the entry into a home without a search warrant. It is also clear that this protection cannot be abridged by statutes or local ordinances. Several animal control ordinances are illustrative of this prohibition:

1. *Pasadena, California.* In the 1990s, the City of Pasadena passed an ordinance allowing a humane officer to enter unoccupied premises to retrieve and impound a dog found running at large as these dogs were deemed by public officials as a public health and safety threat. Despite the local leash law which explicitly allowed the humane society to enter in the home, the California Court of Appeal declared the law unconstitutional as it failed to come within one of the limited exceptions enumerated above. The court held that local ordinances could not dispense with the Fourth Amendment's warrant requirements. In short, a statute does not trump the Constitution. (Conway vs. Pasadena Humane Society, 1996.)

2. *Carnegie, Pennsylvania.* In the 1990s, the Borough of Carnegie, just outside of Pittsburgh, passed an ordinance prohibiting the keeping of more than five animals. After being cited for violating the pet limit law, a woman who lived with numerous cats was found guilty. On appeal, city staff argued that the law was enacted to prevent public nuisance and there was sufficient evidence that the animals in this case adversely affected the health and welfare of the community. The court sitting in appeal disagreed. In invalidating the ordinance, and overturning the conviction, the court held that an ordinance limiting the number of dogs and cats a person can keep is beyond the power granted to states and localities to prohibit a nuisance, absent non-conclusory indications why more than a limited number of animals constitutes a nuisance or a risk to public health and welfare. The court was unpersuaded by the types of claims made by animal control agencies. Of note, the court stated that "even legitimate legislative goals cannot be pursued by means which stifle … liberty when the goals can otherwise be reasonably achieved." In short, legislation controlling how many animals a person can live with is invalid, particularly since the perceived aims of such laws (noise, smell, sanitation, neglect, and cruelty) can—and already are—

proscribed in other laws. (Commonwealth vs. Creighton, 1994.)

3. *Sauk Rapids, Minnesota.* In June 1996 two dog owners in Sauk Rapids, Minnesota, were granted a summary judgment against the city after being cited for violating the pet limit law. In ruling against the city, the judge called the limit law "an invalid exercise of police power violating the plaintiffs' Constitutional right to due process." Furthermore, the court found "that ownership of dogs and other pets is a property right which is protected by the Constitution." (Holt vs. City of Sauk Rapids, 1997.)*

Pet Limit Laws Do Not Prevent or Punish Hoarders

Proponents of these types of laws claim that pet limit laws prevent animal hoarding. This assertion is undeniably false. The argument being made is that if you share your life with more animals than the animal control bureaucracy wants you to, you are a criminal. For a representative of an animal welfare organization to make this claim would be ludicrous, if it wasn't so disturbing. More importantly, simply having more animals than an arbitrarily set limit law is not animal hoarding.

Animal hoarding is a mental disease and a crime whereby individuals keep large numbers of animals *beyond their capacity to care for them resulting in neglect and cruelty and often death*. There are three key defining characteristics that constitute hoarding:

- Keeping large numbers of animals; *and*,
- Inability to provide even minimal standards of nutrition, sanitation, shelter, and veterinary care, with this neglect often resulting in starvation, illness, and death; *and*,
- Denial of the inability to provide this minimum care and the impact of that failure on the animals, the household, and human occupants of the dwelling.

Focusing on the first, without the other two, is not hoarding in the same way that very large families with numerous children are not child abusers by the simple fact that they have a lot of children. In order to constitute criminal activity, there must be the added elements of neglect or cruelty. More importantly, animal hoarding is punished severely by existing state animal cruelty laws which provide authority for courts to impose prison, fines, counseling, and a prohibition against having custody of animals. Since the specter of prison does not seem to deter these individuals, it is patently absurd to believe that a local pet limit law will. And since these individuals are often mentally ill, they are hardly making a determined calculus about whether to hoard animals based on a pet limit law. Indeed, when these cases are discovered and the perpetrator is charged with multiple misdemeanors and felonies as a result of a violation of state anti-cruelty laws, the local ordinance is rarely—if ever—charged. And since the penalties available under state law far exceed the ones provided for in local ordinances, they have no value in this regard either, at least not sufficient enough to warrant the downsides associated with them.

Conclusion

Whereas one individual may be able to responsibly care for and nurture several animals, another may be unable to care for even one. A pet limit law would punish the first but not the second. Where is the equity in that? Nonetheless, supporters of these laws argue that pet limits serve as a reasonable proxy to a person's ability to care for these animals, when in reality, household pet limit laws do not address the problem of noise, sanitation, neglect or abuse. More importantly, all these issues can and are addressed in law without regard to pet limits. Instead, household pet limit laws discourage responsible individuals from providing a good home for more needy animals, but will not discourage an irresponsible one from acquiring unlimited animals.

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* Despite existing case law to the contrary, some proponents of pet limit laws argue that since other cities and communities have pet limit laws, they should be passed or retained. Such a claim is problematic and is best exemplified by an animal control ordinance related to seizure of barking dogs passed in the 1990s in Marin County, CA, just north of San Francisco. Rather than address the legal argument made by opponents that such a law was unconstitutional, the Board preceded from the assumption that since other counties had similar ordinances which had not been challenged, they would enact one of their own. As a legislative body governed by principles of fair play and substantial justice, government should not avoid the import of these questions simply because they were not raised elsewhere. In the end, the Marin County ordinance was repealed after the county ordinance was ultimately challenged and found to be constitutionally defective.

In the final analysis, pet limit laws require animal lovers to choose between their cherished companions on the one hand, and on the other:

1. the imposition of a fine;
2. the relinquishment of their privacy interests in their homes;
3. the requirement that they find other homes, or failing that, have their pets impounded and potentially killed by animal control; or,
4. maintain a status as a law-violator.

At a time when pets have become thoroughly integrated into our lives, it is inappropriate to maintain an ordinance that is overbroad, overly-restrictive, and invariably misses the mark on its intended target. The real burden imposed by such a perceived quick-fix, unfortunately, belittles and trivializes the interest at stake here.

Living with animals substantially increases the quality of life for those who desire the companionship. When others are disturbed by this or animals are harmed, there are effective remedies at law in the form of sanitation, noise, cruelty and neglect statutes. When others are not only undisturbed by, but completely unaware of, the presence of pets being enjoyed by their neighbors, the balance of benefit and burden is rendered disproportionate and unreasonable. While living with companion animals may not yet be considered a fundamental right as such, it is unquestionably an integral aspect of our daily lives, which cannot be dismissed lightly and should not suffer unwarranted intrusion.