

SHELTER  
**PALS**



## **SHELTER POLICY AND LEGAL SERVICES**

A PROGRAM OF THE SAN FRANCISCO SPCA



# Shelter Law Webinar Series

*Intake and Holding Periods*

# Agenda

*9.15.22*

- ▶ Hayden Revisited
- ▶ Intake from all angles
- ▶ State Holding Periods
- ▶ Summary Charts
- ▶ Myths Dispelled
- ▶ Q+A



# Hayden Law

*Ch. 752, Stats. 1998*

- Historical significance
  - Codified CA's policy that no adoptable or treatable animal should be euthanized
  - Broad coverage of shelter-centric topics
  - Shifting shelter theories, from 1960 to 1998 (to 2022)
  - Added many “unfunded mandates,” which are laws not in effect for public shelters



## TAKEAWAY

Application of Hayden is governed by complex rules that vary depending on the type of shelter and also which part of Hayden is involved – definitive answers can be provided by lawyers



# Public v. Private Shelter

## PUBLIC

- Shelter run by local government (usually gov't department or agency, e.g., Police Dept.)
- Shelter run by private group (nonprofit or other) that contracts with a municipality to carry out shelter and/or animal control functions for the municipality

## PRIVATE

Independently operating shelter (nonprofit or other) that does not carry out any municipal functions. May accept animals from the local municipality or public shelter or rescues or private individuals.



# The Confusing Part: “Unfunded Mandates”

*Public v. Private Shelters*



# Unfunded Mandates

- Only in California...
- Some aspects of the Hayden Law (Ch. 752, Stats. 1998) are unfunded mandates that are “suspended” and therefore not in effect for public shelters only. This means:
  - **Public shelters** = many hold periods currently found in the California Codes do not apply, and the appropriate hold periods for public shelters are those that were in effect before the Hayden Law was enacted in 1998.
  - **Private shelters** = all the hold periods currently found in the California Codes apply because the “unfunded mandates” exception does not apply to private shelters.



# Shelter Intake

*A topic of debate – legal and practical*

- ▶ Community sentiment and institutional history often define shelter operations without legal basis
- ▶ Shelters in the current day – a new vision
- ▶ Legal confusion prevents strategic changes and best practices for positive impacts
- ▶ Knowing the legal mandates, and being flexible within those parameters → more LPI



# Animal Intake

## *Private Shelters*

Private shelters with no connection to a municipality are under no obligation to take any animals into their shelters

- Although intake is voluntary, once animals are taken in, other legal obligations will apply
- Only exceptions to this rule are bylaws or policies/contracts of the shelter, if any
  - If the shelter has an established policy, it should not depart from it without cause.



TAKEAWAY

No state mandate to intake any animals at wholly private shelters





# Cat Intake

## *Public Shelters*

- No mandatory state law requirement to pick up **healthy** cats found outdoors
- Most local ordinances do not address seizure of *any* healthy cats, owned or unowned – but check your municipality's requirements





# Dog Intake

## *Public Shelters*

- There is no mandatory state law requirements to pick up **unowned, healthy** stray dogs
- State law mandates the pickup of
  - Owned dogs
  - In need of veterinary care
- Some **local ordinances** require the municipal shelter, or the shelter with the animal services contract, to pick up dogs running at large – healthy or not, owned or not. *Know your local laws.*



# All animals – Specific mandate

## Penal Code section 597.1(a) requires:

- **Any** peace officer, humane society officer, or animal control officer is required
  - To take possession of stray or abandoned animals
  - “Without proper care or attention” and
  - Keep them until they are “in suitable condition to be returned to the owner”
- Implied requirements:
  - (1) Owner is identifiable,
  - (2) Animal is in danger or is not in “suitable condition”
    - No requirement for veterinary care, implying animals not necessarily injured or sick
      - Compare to section 597.1(c) on next slide
- But **who** is under the obligation? And what is the penalty for failure to comply?
  - Mandatory nature of the seizure requirement has never been tested, i.e., is it every “owned” animal running at large? Or only with obvious medical issues?
  - And *whose* responsibility is it?



# Specific mandate for injured cats/dogs

## Penal Code section 597.1(c) requires:

“Any” peace officer, humane society officer, or animal control officer

- To transport “directly” to a veterinarian
- “All injured cats and dogs”
- “found without their owners in a public place”
- Implied requirements: (1) cat/dog, (2) owned, and (3) “injured”
  - Overlaps 597.1(a)



# Mandatory intake for dogs (rabies)



**Health & Safety Code section 121690** mandates:

- (d) Impoundment “as provided by local [rabies program] ordinance”
- State law punts obligation of rabies program to local jurisdictions
- (e) Every municipality must have its own “animal shelter system and a rabies control program for the purpose of carrying out and enforcing” the state rabies law.



# Other Animal Intake

## *Public Shelters*

- Only state law requirement for seizure/intake of animals besides dogs/cats is found in **Penal Code section 597.1(a)**:
  - Applies only to **owned** animals who are left alone and in danger or need of medical attention
    - An animal who is without identification or microchip, and not taken from a situation indicating ownership (such as a backyard), should be considered unowned
  - Only requires intake until animal can be returned, if that is a possibility
  - Allows for humane euthanasia if owner cannot be found

### TAKEAWAY

Only state mandate is to pick up non-cat/dog animals who are **both**: obviously owned and in danger or need of medical attention



# Owner-Surrender Intake

## *Public Shelters*

- No state law requirement to accept owner-surrendered animals
- Local laws or animal services contracts with municipalities may require intake
- Public may expect municipal shelters to accept owner-surrenders
- May be circumstances when in animal's best interest for shelter to accept

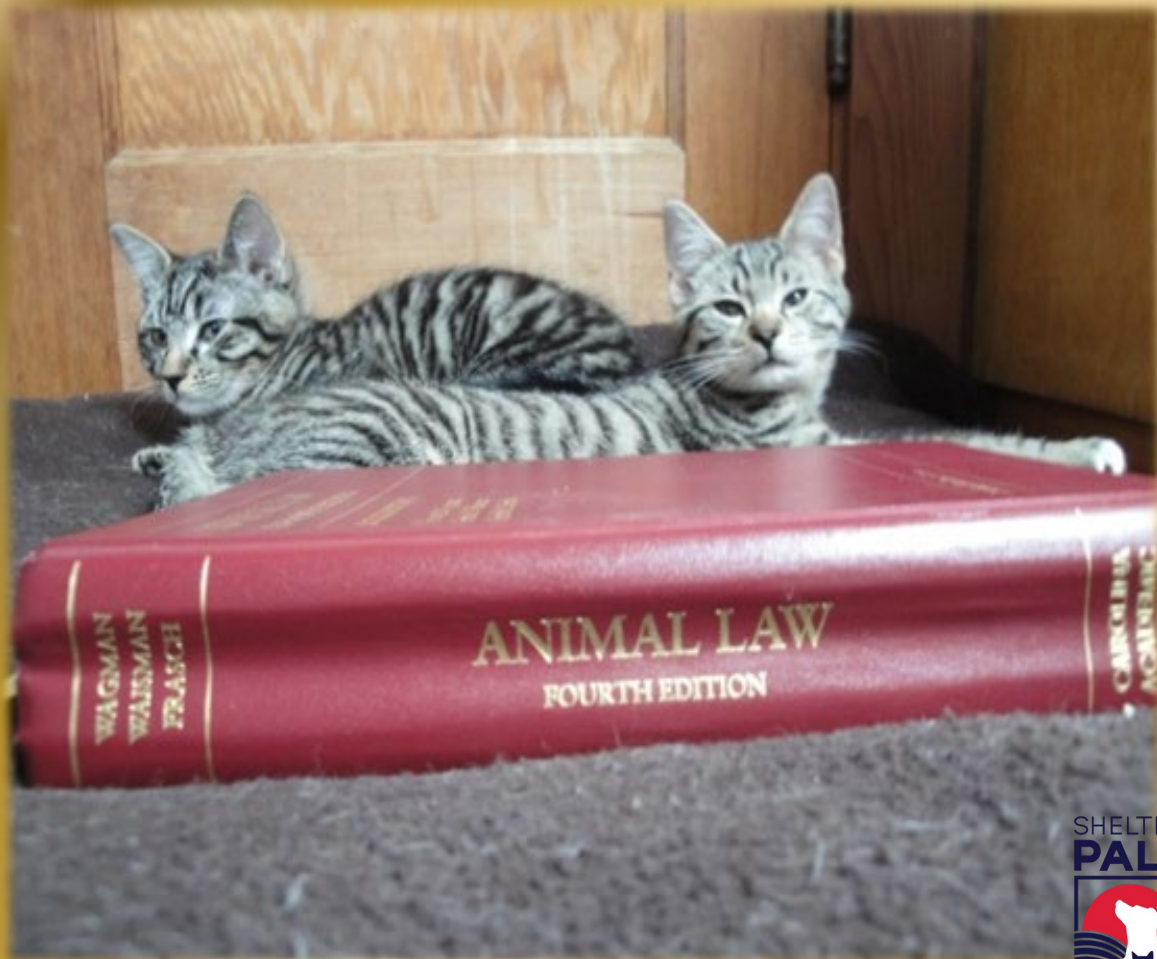
### TAKEAWAY

No state mandate to intake owner-surrendered animals





**Next:  
After they are  
taken in, how  
long must  
they be held?**



# Intake Defines Holding Periods

- Holding periods **only apply if an animal is affiliated with** the shelter.
- Generally, holding periods begin once shelter assumes control of an animal:
  - When ACO/HLE picks up an animal in the field
  - When finder drops an animal off at a shelter
    - *Or Finder-Foster program in effect*
- *No holding period applies for*
  - Community cat programs with cats kept outside of shelter population
  - Owner-requested euthanasia performed as a separate public service with surrender of ownership rights



# Which rule/law applies?

- Conflicts sometimes exist between state laws, municipal laws, municipal contracts, and/or shelter policies and SOPs
- With legal conflicts, the “stricter” law or contractual provision prevails – this typically means the **longer** holding period applies (lawyers can help confirm)
- Shelter **internal policies** are not legally binding, so it is not illegal to ignore a shelter’s longer holding period as set forth in an internal policy; however, shelter may want to change for consistency.



# Physical Location Does Not Matter

- State holding periods do not require shelters to physically hold an animal in the shelter – only to be exercising control and legal responsibilities
- “Holding” means that the shelter is in control of and can access the animal
- For example, animals can be offsite in “foster” in the following scenarios during the holding period:
  - Finder foster\*
  - Offsite veterinarian
  - Cruelty investigations
  - Natural disaster
  - Transfer partners (with ability to return animal if reclaimed during hold)

\*More Help?

See Shelter PALS’ Finder-Foster Webinar





# Help Animals Faster

- Promote Finder-Foster
- Don't double count
  - Shelter B that pulls an animal from Shelter A does not have to hold the animal for the statutory holding period if Shelter A has already done so
- Treat rescues uniquely
  - A shelter that agrees to accept an animal from a private rescue organization can immediately move that animal to a positive outcome (owner-surrender scenario, not stray)
- Conduct some activities, when appropriate, without triggering holds
  - Community cat programs
  - Owner-requested euthanasia





# State Holding Periods

*Dogs + Cats*





# Stray Dog + Cat Holding Periods

## *Public Shelters*

- Holding period for impounded stray dogs and cats in a public shelter
  - = **72 hours** from the moment of capture for all purposes (euthanasia, adoption or transfer)
  - Current statutes not in effect (F&A C. §§ 31108 and 31752) because the longer times there are unfunded mandates and therefore not in effect for public shelters.
  - *Commission on State Mandates* (Jan. 25, 2001), modifying F&A C. §§ 31108 (dogs), 31752 (cats)



# Stray Dog + Cat Holding Periods

## *Private Shelters*

- Statutory language applies
  - = **6 or 4 business days**, not counting day of impoundment, for euthanasia; **3 days** for adoption or transfer
    - Risk that owner wants to reclaim during hold; however, shelters can weigh pros/cons, especially with cats
- Business day =
  - Any day that a shelter is “open” (available) to the public for at least 4 hours, excluding state holidays
- 4-day period applies when:
  - Fewer than 3 shelter employees + appointment system OR
  - Redemption available on 1 weekday evening until 7pm or 1 weekend day
  - See F&A C. §§ 31108 (dogs), 31752 (cats)



# Owner-Surrender Dog + Cat Holding Periods

- Owner-surrender holding period:
  - Applies to all shelters (public + private)
  - Intended to mirror a shelter's stray hold for euthanasia
    - See F&A C. § 31754
- **Public shelters =**
  - Available for immediate adoption or transfer to rescue (i.e., positive outcome)
  - As written, the statute prohibits euthanasia before 6 or 4 business days, not counting the day of impoundment. However, one interpretation prohibits euthanasia before 72 hours.
  - *Discuss with counsel for your interpretation.*
- **Private shelters =**
  - Available for immediate adoption or transfer to rescue
  - Cannot euthanize before 6 or 4 business days, not counting the day of impoundment



# Exceptions to the Holding Periods



# Exceptions to Holding Periods 1

## *Most commonly invoked exceptions*

- Irremediably suffering animal (per DVM?) (F&A C. § 17006) = no euth hold
- Newborn animal without maternal care (F&A C. § 17006) = no euth hold, no adoption hold
- Unowned, underage kitten or puppy (<8 weeks)
  - No hold for rescue transfer or adoption
    - Food & Agric. Code §§ 31108, 31752



# Exceptions to Holding Periods 2

*Non-statutory, where shelter is providing other services*

- Community cats
  - = no hold if not impounded by shelter
  - Note: feral cat law (F&A C. § 31752.5(b) and (c)) almost never applies
- Owner requested euthanasia
  - = no euth hold if not impounded by shelter and performed with proper documentation (surrender of ownership)
  - Agreements should specify shelter can override ORE request and intake (then subject to OS hold) and adopt/transfer





# Exceptions to Holding Periods 3

## *Limited Circumstances*

- Biting rabies quarantine (17 CCR § 2606) = 10 days dogs/cats or 14 days other animal, can be done at home
- Dog with animal control documentation of history (multiple incidents) of “vicious or dangerous behavior”, as defined by applicable (state or local) law (F&A C. § 31108.5) = no euth holding period if, with some limited exceptions, no rescue wants dog
- Abandoned animal left at shelter (Civil Code § 1834.5) = calculate from pickup date – 14 days for rescue transfer or adoption; plus additional 10 days for euthanasia
- Active cruelty case if animal has not been surrendered, abandoned or forfeited = varies depending on court, activity in case (potential surrender or use of CPC 597.1)
- Safekeeping = nonstatutory: 14 days industry standard (such as domestic violence, illness, incarceration, death, etc.) if animals have not been surrendered



# State Holding Periods

*Other Animals*



# Other Animals Holding Periods

## *Public Shelter*

- Food & Agric. Code § 31753 sets hold period for “[a] rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property” and that is impounded by a shelter
  - If intake, recommend holding other animals (not livestock) for same hold period even if not listed
- **Stray =**
  - 72 hours from the moment of capture for euthanasia, adoption or transfer
  - See Commission on State Mandates (Jan. 25, 2001), modifying Food & Agric. Code § 31753
- **Owner-surrendered =**
  - Available for immediate adoption or transfer to rescue
  - As written, the statute prohibits euthanasia before 6 or 4 business days, not counting the day of impoundment. However, one interpretation prohibits euthanasia before 72 hours. Shelter to discuss with counsel
  - See Food & Agric. Code § 31754
- **Exceptions =**
  - Irremediably suffering (Food & Agric. Code § 17006) = no euth hold
  - Unweaned without mother (Food & Agric. Code 17006) = no euth hold



# Other Animals Holding Periods

## *Private Shelter*

- Food & Agric. Code § 31753 sets same holding period as for dogs/cats for “[a] rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property” and that is impounded by a shelter
  - If intake, recommend holding other animals (not livestock) for same hold period even if not listed
- **Stray** =
  - = 6 or 4 business days, not counting day of impoundment, for euthanasia; 3 days for adoption or transfer
    - Risk that owner wants to reclaim during hold; however, low for these animals and shelter can weigh pros/cons
  - See Food & Agric. Code § 31753
- **Owner-surrendered** =
  - Available for immediate adoption or transfer to rescue
  - Cannot euthanize before 6 or 4 business days, not counting day of impoundment
  - See Food & Agric. Code § 31754
- **Exceptions** =
  - Irremediably suffering (Food & Agric. Code § 17006) = no euth hold
  - Unweaned without mother (Food & Agric. Code § 17006) = no euth hold



# Myths Dispelled



# Holding Period Myths

- The following are intake and holding period misconceptions and **not true** according to state law:
  1. Shelters must intake healthy unowned strays and owner-surrendered dogs and cats = FALSE
  2. If shelter requires appointments for reclaims and surrenders, it is not “open” for business = FALSE
  3. Community cats in Community Cat Programs are subject to hold periods = FALSE if done correctly
  4. Owner requested euthanasia animals are subject to hold periods = FALSE if done correctly
  5. Shelters cannot house animals offsite during holding periods (e.g., disaster, cruelty cases) = FALSE
  6. 10-day stray hold exists for an animal with a known owner (e.g., microchipped) = FALSE
  7. “Reasonable efforts” to locate a known owner of a stray animal always means a longer hold = FALSE
  8. Extended holding for animals during natural disaster = FALSE but good practice, at shelter discretion
  9. Private citizen can claim ownership of found animals after 90-day period = FALSE





# Summary Charts



# Summary CA Legal Holding Periods

## Public Shelter

Animal Type	Holding Period	Authority
Stray	72 hours to euth, adopt, transfer	2001 CSM Decision modifying F&A C. §§ 31108, 31752
Owner Surrender	0 hours adopt or transfer; 4 or 6 days excluding impound day to euth <u>or</u> 72 hours – see slide 16 explain	F&A C. § 31754
Underage Kitten (8 weeks)	0 hours to adopt or transfer; 72 hours to euth <u>or</u> 0 days to euth if unweaned and w/o mother	F&A C. §§ 31752, 17006
Underage Puppy (8 weeks)	0 hours to transfer; 72 hours to adopt or euth <u>or</u> 0 days to euth if unweaned and w/o mother	F&A C. §§ 31108, 17006
Unweaned	0 hours to euth if newborn animal without maternal care	F&A C. § 17006
Irremediably Suffering	0 hours to euth if animal determined irremediably suffering	F&A C. § 17006
Rabies Quarantine Bite	10 days from day of bite in most cases for dogs/cats; 14 days for other animals	17 CCR § 2606
OS Dog Vicious	0 hours to euth if legally documented history	F&A C. § 31108.5
Cruelty	Varies – see management/supervisor Owner can surrender at any point (then apply surrender hold)	Situation dependent
Safekeeping	14 days Owner can surrender at any point (then apply surrender hold)	Recommended (not law)
Abandoned at Shelter	14 days to adopt or transfer; plus 10 days to euth	CIV § 1834.5
Holding Period	<i>DO include day of impound – unless otherwise noted, holding period starts on the day and at the time of day animal is on shelter's database</i>	-
Due Out Date	<i>Is the date the animal can have an outcome of euthanasia To minimize errors, can show as following day</i>	-

REMINDER: in appropriate circumstances, perform public CCP and ORE services without impounding animal to shelter

# Summary CA Legal Holds

## *Private Shelter*

Animal Type	Holding Period	Authority
Stray	4 or 6 days to euth; 3 days to adopt or transfer [see slide 15 re reclaim risk]	F&A C. §§ 31108, 31752
Owner Surrender	0 hours to adopt or transfer; 4 or 6 days to euth	F&A C. § 31754
Underage Kitten (<8 weeks)	0 hours to adopt or transfer; 4 or 6 days to euth <u>or</u> 0 days to euth if unweaned and w/o mother	F&A C. §§ 31752, 17006
Underage Puppy (<8 weeks)	0 hours to transfer; 4 or 6 days to adopt or euth <u>or</u> 0 days to euth if unweaned and w/o mother	F&A C. § 31108
Unweaned	0 hours to euth if newborn animal without maternal care	F&A C. § 17006
Irremediably Suffering	0 hours to euth if animal determined irremediably suffering	F&A C. § 17006
Rabies Quarantine Bite	10 days from day of bite in most cases for dogs/cats; 14 days for other animals	17 CCR § 2606
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Cruelty	Varies – see management/supervisor Owner can surrender at any point (then apply surrender hold)	Situation dependent
Safekeeping	14 days Owner can surrender at any point (then apply surrender hold)	Recommended (not law)
Abandoned at Shelter	14 days to adopt or transfer; plus 10 days for euth	CIV § 1834.5
<i>Holding Period</i>	<i>DO NOT include day of impound – in most cases, holding period starts the day after the animal taken in by shelter</i>	-
<i>Due Out Date</i>	<i>Is the date the animal can have an outcome of euthanasia</i>	-

*REMINDER: in appropriate circumstances, perform public CCP and ORE services without impounding animal to shelter*



# Law + Policy Resources

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# Q+A

