

SHELTER
PALS



SHELTER POLICY AND LEGAL SERVICES

A PROGRAM OF THE SAN FRANCISCO SPCA

A black and white photograph of several kittens on a windowsill. A semi-transparent blue rectangular overlay is centered over the image, containing the text 'Shelter Law Webinar Series' in a large, bold, white sans-serif font, and 'Shelter Intake' in a smaller, italicized white sans-serif font below it. The kittens are of various breeds, including tabbies and longhairs, and are looking in different directions. The background is a bright, out-of-focus window.

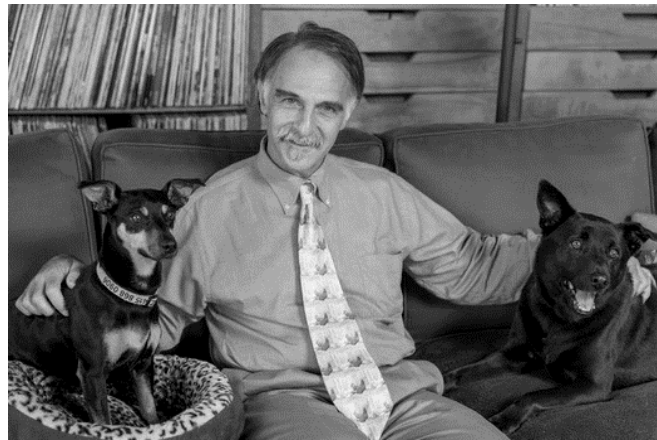
Shelter Law Webinar Series

Shelter Intake

Presenters



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Agenda

03.26.21

- ▶ Shelter Intake – Why Now?
- ▶ Laws + Conflicts
- ▶ Public Shelter Intake
- ▶ Private Shelter Intake
- ▶ Q+A



Shelter Intake

Why now?

- ▶ Community sentiment and institutional history often define shelter rules without legal basis
- ▶ Shelter philosophy reforms trigger a deep look at the mandatory legal requirements
- ▶ Legal confusion prevents strategic changes and best practices for positive impacts
- ▶ Shelter PALS is identifying minimum legal requirements to increase lives positively impacted
- ▶ Understanding varying obligations of shelters may allow for better collaboration



Applicable Laws

These are all “laws” that may apply to animal shelters

- United States Code or “USC”
- **CA Codes** – state laws enacted by our state legislature in Sacramento; sections in codes are also known as “statutes” (e.g., Penal, Food & Agriculture, Health & Safety, Business & Professions)
- **CA Regulations** – written by agencies authorized to enact rules of conduct under the more general Codes; have same force of law as statutes/Codes
- **Local Ordinances** – laws of municipal governments in the state (e.g., counties, cities, towns)
 - Found in county or city/town “Codes” as well; sections in these codes are called “ordinances”
 - Municipalities within county may have separate laws, or adopt some or all of the county codes



Potential Conflicts

- There may be conflicts between state laws, municipal laws, and/or municipal contracts
- The legal rule of “preemption” may mean a higher authority’s law overrides a directly conflicting lower authority law (usually, federal > state > local law)
- **But** this is a restricted doctrine in animal welfare for shelters
 1. Laws can “coexist” if not in direct conflict
 2. Some state and federal laws will specifically defer to local laws on the same subject
 3. In the shelter law area, the “stricter” law prevails
 - This means the more “animal-protective” law usually overrides (e.g.,: longer holding periods, mandatory intake requirements)

TAKEAWAY

Lawyers can help confirm the right path with potential conflicts



Words of Authority

For animal shelters, generally:

- Must/shall = mandatory
- Must/shall not = prohibited
- May = permissive or optional
- Should = recommended or advised but not required

However, with statutes and contracts, words of authority must be read in context to determine if an act is optional or mandatory (for example, sometimes “may” can be an imperative, and “shall” can be permissive)

TAKEAWAY

Lawyers can help confirm the right interpretation



Hayden Law

Ch. 752, Stats. 1998

- Historical significance
 - Codified CA's policy that no adoptable or treatable animal should be euthanized
 - In 1998, the theory was that more mandatory time in shelters would help more animals
 - Today, the dialogue and approach has shifted away from that presumption
 - Added many "unfunded mandates," which are laws not in effect for municipal shelters
- Hayden's particulars
 - Covers issues of welfare, intake, and holding periods
 - Many aspects of Hayden are **not** in effect for municipal shelters or those with municipal contracts
 - All of Hayden **is** in effect for wholly private shelters

TAKEAWAY

Application of Hayden varies depending on the type of shelter and also which part of Hayden is involved – definitive answers can be provided by lawyers



Dog Intake

Public Shelters

- 3 different areas of the law may apply
- Most **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
- There is no mandatory state law requirements to pick up **unowned, healthy** stray dogs



Dog Intake

Public Shelters (cont.)

But **Penal Code section 597.1** mandates:

- Transportation to a veterinarian of all “injured cats and dogs found without their owners in a public place”
 - Implied requirements: (1) dog, (2) owned, and (3) “injured”
- Animal services “shall” take possession of owned animals who are stray or abandoned “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) dog is in danger or in need of medical care/not in “suitable condition”
 - Mandatory nature of the seizure requirement has never been tested, i.e., is the requirement a nondiscretionary duty to pick up every owned dog who is found running at large or out of range of a responsible adult?



Dog Intake

Public Shelters (cont.)

Health & Safety Code section 121690(d) mandates:

- Impoundment “as provided by local ordinance” of all dogs in violation of state rabies laws

TAKEAWAY

Only state mandate is to pick up dogs who are **both**:
obviously owned and in danger or need of medical attention



Cat Intake

Public Shelters

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



Cat Intake

Public Shelters (cont.)

- Again, [Penal Code section 597.1](#) mandates:
 - Transportation to a veterinarian of all “injured cats and dogs found without their owners in a public place”
 - Implied requirements: (1) cat, (2) owned, and (3) injured
 - Animal services “shall” take possession of owned animals who are stray or abandoned “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, and (2) cat is in danger or in need of medical care/not in “suitable condition”
 - Mandatory nature of the seizure requirement has never been tested

TAKEAWAY

Only state mandate is to pick up cats who are **both**:
obviously owned and in danger or need of medical attention



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
 - Does not apply to unowned animals
 - 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



OS Intake

Public Shelters

- No mandatory 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



Animal Intake

Private Shelters

Private shelters with no connection to a municipality are under no obligation to take any animals (stray and owner surrendered) into their shelters

- Although intake is voluntary, once animals are taken in, other legal obligations may apply
- Only exceptions to this rule are bylaws or policies/contracts of the shelter, if any

TAKEAWAY

No state mandate to intake animals at wholly private shelters



Q+A



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