

ANIMAL ISSUES MOVEMENT

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CF 18-0130 - ADDITIONAL OPPOSITION TO REQUEST TO POLICY TO ALLOW COMMUNITY MEMBERS TO CARE FOR FOUND DOGS AND CATS UNDER CERTAIN GUIDELINES

Animal Issues Movement again adds to its opposition of the subject issue and includes all earlier comments and objections herein. Additionally, a copy of a January 7, 2019, article on City Watch LA is also attached: Pet Owners Alett! LA's New 'Finders, Keepers' Law Would Legalize Dog, Cat Theft!.

This is a plan to allow local--even nonregistered and for-profit--rescues to make money from taking in lost pets and it will delay every responsible and caring owner from his/her property.

Additionally, the City will be entering into an agreement with every unvetted and unknown finder, which increases its liability, both for the potential of an attack or injury while in the stranger's possession and for depriving owners (who pay taxes for shelters to take in lost pets) of their rightful property. If a death occurs--either human, another pet, or the found animal--the City can be sued because it has made the possessor an extension of the City, working under City instructions and provisions.

We have been informed by counsel that this practice could result in a federal civil-rights violation because the City is assisting in the deprivation and, possibly, theft of personal property and advising the finder that he/she has this right, plus making their actions part of a City process.

1. This will discriminate against low-income pet owners who often do not have the sophistication nor a home computer to search for their pet, and they are the owners most likely to look at the shelters for a lost pet.
2. This proposal may violate federal civil rights laws, in that it deprives the person of the opportunity to find his/her pet based upon the City establishing a policy that encourages a stranger to keep personal property of the owner and makes them believe that they have a right to the property after 30 days, which is not true under any property law.
3. **GM Barnette will be offering a favored status to certain individuals and groups to act as "agents"** but who do not indemnify the City for loss nor operate under the provisions, restrictions and requirements of a contractor.
4. **This is an attempt to legitimize quasi-animal shelters in residential locations**, which will act as the "agents" of the DAS. The shelter cannot create civilian "agents" to do this job merely by a change of policy nor can it change state liability laws.

Taxpayers' pay \$44 million per year for DAS to insure the safety of their own and others' pets if they are lost. They expect, for that money, to be able to have the shelter make every effort to pick up lost pets and keep them where there is veterinary care available, safe and sanitary conditions and proper diet and care.

Any owned dog is "stray" if it has left its property, even if it appears to have identification. Until the legal hold period and efforts to contact an owner has passed the City cannot make that determination.

Pets are personal property and the City cannot authorize someone to keep an owned animal. Animal shelters are mandated to take in stray/lost cats and dogs for rabies prevention under State law..

This will be a costly mistake by the City and will result in many lawsuits for numerous injuries, civilly and potentially physically to those involved and possibly to the animals to which the City has a legal obligation, paid for by out taxes..

Phyllis M. Daugherty

Phyllis M. Daugherty, Director

Attachment (1) - City Watch article Jan. 7, 2019

Pet Owners Alert! LA's New 'Finders, Keepers' Law Would Legalize Dog, Cat Theft

PHYLLIS M. DAUGHERTY

07 JANUARY 2019



ANIMAL WATCH-If you own a dog or cat and it is lost in Mayor Eric Garcetti's City of Angels, there is a very good chance you will never get it back if the new '[finders, keepers](#),' law devised by LA Animal Services GM Brenda Barnette is enacted to limit impounds and thereby avoid euthanizing pit bulls that overcrowd city shelters.

A draft version of a law that would give any stranger the right to *legally* keep your lost pet is now "approved to form and legality" by City Attorney Mike Feuer and is provided below.

The law was drafted in accordance with specific wording and instructions provided in a [report](#) by Councilman Paul Koretz and the Personnel and Animal Welfare Committee and left little choice for options.

All it needs is the blessing of final wording by the Committee and City Council, both of which already approved the concept as submitted, and the signature of Mayor Garcetti.

So, the vote to approve the wording developed by GM Brenda Barnette regarding your property rights (pets are personal property) was taken *before* the law was written. This is the reverse of how most U.S. cities are governed--with wide publicity soliciting public input on concepts and laws carefully analyzed **BEFORE** approval--and it is something to think about if Garcetti runs for President.

WEAKENING PET OWNERS' PROPERTY RIGHTS BASED ON POLITICS

It narrows down to politics and Mayor Garcetti's promise that L. would reach a "No Kill" goal established by the affluent and politically prominent Best Friends Animal Society, which has set up a headquarters in the NE Valley shelter (leased from the City for \$1 per year.)

Best Friends has been openly involved in lobbying against any BSL (breed specific legislation) nationwide that would in any way limit the breeding or regulation of pit bulls. Best Friends also promotes their adoption as a family pet, although the breed has historically been used for dog fighting and is still coveted for "game" bloodlines (the willingness to fight to death in order to kill an opponent.)

By reducing the number of found animals brought into the shelter by Good Samaritans, the 'finders, keepers' plan allows more room to keep dogs (including pit bulls) with known behavioral challenges. These are dogs that have bitten or otherwise demonstrated aggression towards other animals or humans (including shelter employees) and are not--and should not be--adopted because they are unsafe in a normal social environment.

Most responsible owners believe they will never lose their dog and it will not affect them, but many shopping carts of the homeless contain a dog that is purebred (or a near mix) or a dog that has obviously had a home and care and was never intended to be lost.

BARNETTE ALSO REMOVES BREED I.D. IN CITY SHELTERS

GM Brenda Barnette recently implemented another [policy](#), favored by Best Friends, to accomplish the Mayor's "No Kill" goal.

As of January 1, 2019, the order was issued that no dogs will be identified in L.A. city shelters as other than "mixed breed," unless the owner provides proof that it is a purebred. There is no reason to deny or hide that a dog is a Golden Retriever or Poodle-mix. Thus, the purpose of this policy is apparently so adopters may not realize they are possibly adopting a pit bull-mix. But this could backfire and actually drive away responsible adopters from city shelters--especially those with children and other pets.

This policy can also negatively impact an owner's ability to locate a lost pet under the 'finders, keepers' plan. It is unclear if LA City records will allow flyers indicating breed to be posted either on line or in the shelters, but it appears that LAAS staff will NOT be allowed to notify you that a dog which appears to be the breed of your pet has been impounded.

See: [LA Animal Comish Considers Removing Breed ID from Dog Kennel Cards to Increase Pit Bull Adoptions.](#)

[Is LA Animal Service's GM Trying to Hide Pit Bull History to Hype Adoptions?](#)

FINDERS, KEEPERS LAW (DRAFT ORDINANCE) SUBMITTED TO COUNCIL

An *ordinance* amending Section 53.09 of Article 3, Chapter 5 of the Los Angeles Municipal Code to allow temporary home care for a lost or stray dog or cat.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Subsections (d), (e) and (f) are hereby added to Section 53.09 of Article 3 of Chapter V of the Los Angeles Municipal Code to read as follows:

(d) If the animal is a stray dog that is not wearing a license tag or a stray cat, and the person finding the animal wishes to provide the animal with home care, the person shall comply with the following within the first four (4) hours of finding the animal:

Notify the nearest City animal shelter that the animal is in their possession, a description of the animal and where the animal was found, and the location of the animal along with their name, address, and contact information as required above.

2. Receive an animal ID number from the Department to be used in all communications. Provide two or more photographs (of different poses) of the animal to the Department suitable for posting on the Department's website. (Emph. added)

3. Bring the animal to a veterinarian or to the nearest animal shelter if the animal requires immediate medical care.

4. Within the first twenty-four (24) hours of finding the animal, the person finding the stray dog or cat shall comply with the following: (e) Bring the animal to one of the City animal shelters for a microchip scan and veterinary care or bring the animal to a licensed California veterinarian at their own expense for a microchip scan and veterinary care.

(1) Provide the Department with a record of the microchip scan and the veterinarian's diagnosis, treatment, and prognosis.

(2) Make and distribute posters with the animal's photo in a two-block radius of the location where the animal was found and the finder's contact information.

(3) . In addition to the requirements in Subsections (d) and (e) above, the person finding the stray dog or cat shall comply with the following (f) I Agree to keep the animal at the identified location for a period not to exceed 32 days and notify the Department within 12 hours of any change to the location where the animal is kept.

(4) Immediately notify the Department if the animal is lost or stolen. If the animal is returned to its lawful owner, immediately notify the Department with the name, address and contact information of the person to whom the animal was released.

(5) . After 30 days but prior to 32 days, bring the animal to the closest City animal shelter and either surrender the animal to the Department or adopt the animal and have the animal vaccinated, sterilized, and, if a dog, licensed.

STATE LAW IGNORED OR IS FINDER AN EXTENSION OF THE SHELTER?

The "keeper" does not automatically become the "owner" after 30 days. A CA shelter expert explained that, the City or other public agency must impound the lost animal according to law and make it available for the legal "hold" period so that the owner has the opportunity to claim it in order for the requirements of Cal. Civil Code § 2080.3 and 2080.5 to be met and ownership to be legally transferred to the agency. At that time the animal can be sold/adopted with clear title to a new owner.

"Not impounding the pet in a shelter removes the key method by which the pet could be located by its owner -- one of the primary mandates of the law -- and, does not automatically allow legal transfer of title to the finder," he advised.

"This is a safeguard in State law to assure this 30-day window cannot be used to hide and essentially "steal" an animal. After that 30 days, the governmental agency must still impound the pet for the legal "hold" period in order to obtain ownership and the right to transfer title."

The following [statutory section](#) comprises California's lost-property laws: West's Ann. Cal. Civ. Code § 2080 - 2082. § 2080.3. Advertisement; payment of cost; vesting of title in finder; and § 2080.5. Authority to sell.

The proposal also applies to cats. This is especially problematic and unveiled theft because it authorizes people to scoop up a "loose" cat, for which even the government does not have impound authority, and permanently take it from the true owner who had violated no laws.

OTHER CONCERNS FROM THE LEGAL COMMUNITY

The following is NOT legal advice. If you have a concern regarding this policy or your pet, be sure to contact a legal professional and/or contact the City Attorney (contact information is listed on the Council File.) The information contained below is a compilation from several sources and is for discussion purposes only. It is hoped to promote responses pro and con.

First and foremost, this ordinance and its accompanying program, create tremendous liability for the City.

Every person who provides home care is the City's agent (note that an Animal ID No. will be assigned in each case) and the City is responsible for his or her actions or inactions, as well as the damages to both the found pet and any harm caused by that pet.

Without specific accompanying guidelines, this ordinance alone fails to provide adequate training and supervision which potentially removes any qualified governmental immunity the City might have.

This ordinance prescribes no penalty. All punitive ordinances in local codes are either misdemeanors or infractions, but not all ordinances are punitive. Some are procedural. This ordinance prescribes no penalty of any nature and has no language which would lead one to believe that a failure to adhere to its described processes will result in any penalty. (Not that the Department or the City indicates it has any plans to actually enforce it anyway.)

If it is punitive, the absence of enforcement could increase their liability, as exercise of discretion is permissible (even if done poorly) but the omission of any exercise of that discretion is not permissible. In other words, when they have the discretion to make a decision as to how to proceed, an obviously bad decision is protected, but the failure to make a decision is not.

The next most dangerous aspect is the lack of requirement to actually prove to the shelter the care to the found animal—especially medical care. The ordinance is satisfied if a finder takes an injured/ill animal to the vet. Do I actually need to provide the specific recommended treatment? Although as a voluntary repository, the finder has certain duties under the Civil Code (the same ones to which the City shelter is bound), this ordinance fails to inform them of that duty. This is an example of the failure to train/supervise.

Also, the ordinance has a potential internal conflict—subsections (f)(1) and (f)(4). (f)(1) allows providing home care for *UP TO* 32 days, or any period of time the finder chooses, with a maximum of 30.

There is danger in the 24-hour delay in getting the microchip search done. Especially because, in practice it, the delay could be much longer (again, with no penalty.) During that period, by implementing this provision, the City is, in fact, depriving the owner of the possibility of locating his/her lost pet. If a chip is found, how long does the finder have to notify the shelter and relinquish the animal to it so that it can be reunited with its owner?

There is also no warning that keeping someone's pet when you know the identity of the owner is theft. Not knowing the owner, then being notified of their identity and still keeping the pet is embezzlement. There also is no guidance in this ordinance as to the amount that may be demanded by the finder for the care of the pet and how that can be collected. Since the City is establishing this program essentially as a "foster program," the City has liability for all that occurs in the process.

Another omission is what action is to be taken if the animal attacks, maims or otherwise harms an individual or another animal. As presented, such liability would be shared by the finder and the City. However, if the owner is identified, he/she could also be liable for the actions of the pet even though it was not in his/her possession.

The requirement for posters is vague and ambiguous. How many are required? Where will they be distributed: If posted, how long must they stay up and/or be replaced? Will they be posted on utilities poles, etc., in violation of the City's "post no bills" ordinance? There is no requirement for the finder to post an accompanying electronic flyer--many communities have their own social media sites.

Finally, the ordinance describes what to do if the finder returns the animal to the "rightful owner." How are they to determine who the *RIGHTFUL* owner is? What about physical conflicts or disputes over returning the animal and/or payment for expenses incurred by the finder for veterinary care, etc. (Many people believe that the owner doesn't deserve to get the animal back.) This sounds like the finder is authorized to release the animal without the consent or involvement of the City. And then notify the City later and release information which may not have been provided by the owner who may fear invasion of privacy or harassment.

The current legal hold period for an animal without a license or microchip is 72 hours. Placing it in the possession of a finder for 30 days merely extends the City's liability. Why doesn't Barnette just take in the pet at the shelter for three days? The finder can indicate the desire to adopt the pet as "Interested Party" and adopt the pet immediately after the hold period. This assures the lost animal is promptly seen by a shelter veterinary professional, given basic shots and the owner will have an opportunity to redeem it.

The reality of Brenda Barnette's elaborate scheme ignores that the City -- by imposing the indicted provisions and authorizing possession -- is legally taking responsibility for not only the animal but also for the actions of the unvetted finder, with all liability resting on the taxpayers.

FEDERAL CIVIL RIGHTS VIOLATION

Besides violating State law, there is also the concern that the new "finder, keepers' law is a violation of federal civil rights and could make the City responsible for each occurrence by creating a process that infringes on individual property rights. A city ordinance cannot supersede the applicable state law in regard to lost/found property.

The argument can be made that the City, is complicit in a denial of an individual's property right by creating an ordinance that gives the apparent authority for any individual, acting under the City's process, to infringe on an individual's property rights. In this case, the property rights are long established in federal, state and local laws regarding animal/pet ownership.

Violation of federal civil rights and the City is responsible for each and every incident by creating a process which provides the apparent authority to violate state law and individual property rights.

WHO SUPPORTED 'FINDERS, KEEPERS'?

The first group to embrace the 'finders, keepers' concept was the Los Angeles Animal Services Board of Commissioners, which is, not surprisingly, appointed by the Mayor to assure his favored policies are all approved.

The only official community whose Neighborhood Council aggressively supported and encouraged 'finders, keepers' was Tarzana. Not only did Tarzana submit a [Community Impact Statement](#) in support on August 30, 2018, but Jeffrey Mausner, an attorney who speaks at L.A. Animal Services Commission and Council Committee meetings as an official representative of the NC, wrote a *City Watch* article espousing the concept.

Other letters of support in [CF 18-0130](#) came from the Laurel Canyon (Valley) area from a group which calls itself, Safe Paws, which says it is already involved in this type of program in LA.

LA PETS DO NOT HAVE THE STATUS OF A USED CAR UNDER THIS LAW

So, now in LA pets that have been elevated to the status of family members (even though they are officially personal property) will now have a lower legal status if lost than your automobile, which is also personal property. Here's why!

If your car does not have its registration papers inside and accidentally rolls into someone's yard or is parked in a private driveway while it is not in your possession and you cannot find it, no law gives the 'finder' the right to notify the Los Angeles Police Department they have decided to keep it and, after 30 days, automatically claim ownership. In fact, no such provision exists in law for an item of value. That is EXACTLY what Barnette's plan does in regard to your beloved pet.

Legal experts say that transfer of title to lost property only occurs after it is impounded by a governmental agency for the legal hold period for owner redemption.

THE VALUE OF A PET

Unless it is a purebred, it is hard to place a dollar value on a pet. However, Florida and Illinois allow the courts to weigh intrinsic value of the pet in cases. Oklahoma and Missouri have a category for loss of companionship, while seven other states allow damages for emotional distress, according to [Indy Week](#).

California [Assembly Bill 2274](#), went into effect on January 1, 2019, and the new law allows courts to assign sole or joint ownership of a pet while considering the pet's well-being. In 2007 California included pets in the definition of domestic violence victims in California Family Code Section 6320. Alaska and Illinois have similar laws.

In a May 2018 article, [The Value of Pets](#), Dustin Sigins writes that " A Mississippi State University's College of Veterinary Medicine study found that shelters adopt out 2.6 million dogs and return almost one million to owners each year." Sigins adds that, in an economic impact study of the industry, published by the [Pet Industry Joint Advisory Council \(PIJAC\)](#) last year, pet owners spent \$2,400 per second on their pets in 2015 -- more than on movies and daycare for children.

IF YOUR LOST PET IS YOUR 'CHILD,' DO YOU WANT IT KEPT BY A STRANGER?

Even if the owners don't want the dog, should it be automatically entrusted to a stranger? This is like the Police Department or Social Services telling us we can just take in a lost child and not turn it into authorities for his/her safety and well-being.

We can't have it both ways. Pets are either worthy of the special care and attention we claim they deserve as family members and to be taken to a safe shelter where their human "parents" can find them...or they aren't! Which is it, Los Angeles?