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Crisis in Our Shelters: A Proposal

*I care not much for a man's religion
whose dog and cat are not the better for it.
—Abraham Lincoln*

The most common companion animals are dogs and cats.¹ The most common cause of death for companion animals is euthanasia in shelters.² This comment exposes the massive destruction of companion animals currently used as the primary method of population control. Causes of pet overpopulation are discussed as well as the ineffective efforts to end the crisis that are currently employed. Finally, legislation that mandates spaying and neutering of companion animals is suggested as an additional aspect of the effort to control the overpopulation crisis.

I. THE STATE OF THE CRISIS

Dogs and cats were domesticated between five and ten thousand years ago.³ Domestication has benefitted mankind immensely, particularly in the companionship that these animals offer. In return for these benefits, the law imposes obligations on guardians of pets. Guardians are required by law to provide food, water, and shelter to their animals, as well as necessary veterinary care. It is criminal to treat them inhumanely. Yet, in most geographical areas, it is not against the law to allow companion animals to breed.

Taken out of the ecosystem, the reproductive cycles of dogs and cats are no longer regulated by nature or predators.⁴ Before domestication, a dog came into heat once a year or less; today, she can have two litters per year.⁵ In seven years, one female dog and her

1. Zoe Weil, *Animals in Society* 11 (Animalearn, 1991).

2. The Fund for Animals, Companion Animal Factsheet #1, *Hidden Holocaust: The Overpopulation Crisis* (no date).

3. People for the Ethical Treatment of Animals (PETA), Companion Animals Factsheet #1, *Spaying & Neutering: A Solution for Suffering* (no date).

4. PETA, *Spaying & Neutering: A Solution for Suffering* (cited in note 3). See also *You're a Dog's Best Friend*, in *The Animal Rights Handbook* 46, 49 (Living Planet Press, 1990).

5. Ingrid Newkirk, *Dark Angels and Direct Action*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in

offspring can produce 4,372 puppies.⁶ Two cats, whose breeding is uncontrolled, can supply 12,680 kittens in five years.⁷ Every hour, approximately 2,500 puppies and kittens are born in the United States.⁸ With numbers like these, it is understandable why good homes cannot be found for each and every dog and cat in the United States. Enter the role of the shelter, the tragic last stop for many of these animals.

More than ten million companion animals meet their death *every year* by collisions with cars, by poisoning, or by starvation on the streets.⁹ Those animals who escape the perils resulting from the mere lack of a good home end up at animal control agencies or shelters. Estimates are that ten to twenty *million* cats and dogs filter into such shelters *each year*.¹⁰ Nationally, approximately nineteen percent of the dogs entering such shelters are reclaimed

Washington, D.C. (Sept 20-21, 1991).

6. *You're a Dog's Best Friend* at 49 (cited in note 4); Animal Care and Welfare, S.P.C.A., *Everyone Loves Puppies!* (leaflet) (no date).

The leaflet *Everyone Loves Puppies!* describes the math used in this computation:

In one year a female dog will give birth to four puppies, two of them females.

In the second year the mother and each of her two female offspring will produce four puppies, for a total of 12.

By the third year, the three generations of dogs have produced 36 offspring. By the fourth year, the four generations have produced 108 offspring. In the fifth year, the number has grown to 324.

If you carried the tabulation to the seventh year, you would have a total of 4,372 dogs.

Animal Care and Welfare, S.P.C.A., *Everyone Loves Puppies!* (cited within this note).

7. Carol L. Baird, *Attitudes Leading People to Accept or Reject Spay/Neutering Programs* 3, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991) (hereinafter *Attitudes Towards Spaying/Neutering*).

8. PETA, *Spaying and Neutering* (leaflet) (no date). Compare this figure to the birth rate of Americans, which is 450 every hour. The approximate ratio is one American citizen for every seven dogs and cats born. Statistic supplied by the Population Division of the United States Census Bureau.

9. Weil, *Animals in Society* at 11 (cited in note 1). See Merritt Clifton, ed, *Network in The Animals' Agenda* 10 (Mar 1992). Based on data published in the *American Journal on Veterinary Research*, five thousand cats are killed each year in Baltimore, Maryland alone, which suggests a nationwide figure of one and one-half million cats killed per year in this manner. Clifton, ed, *Network* at 10 (cited within this note).

10. Hattie Clark, *Muffin, Charles & Trail Found Themselves a New Home*, *Christian Science Monitor* 25, 27 col 3 (Aug 29, 1985) (estimating that twenty million animals went through animal shelters in 1985); PETA, *Spaying & Neutering: A Solution for Suffering* (cited in note 3) (estimating that thirteen million dogs and cats are turned in to animal shelters per year); Animal Care and Welfare, S.P.C.A., *Everyone Loves Puppies!* (cited in note 6) (estimating fifteen to twenty million animals); Weil, *Animals in Society* at 11 (cited in note 1) (estimating over ten million).

by their owners.¹¹ Only three and one-third percent of cats are reclaimed.¹² Approximately one-quarter of the animals are placed in adoptive homes.¹³ Those unwanted animals remaining in the shelters become unwilling participants in one of this nation's dark, dirty secrets. They are euthanized by the tens of thousands *every day* by various methods: lethal injection, carbon monoxide chambers, or decompression chambers.¹⁴ Their carcasses are taken away by renderers and, with the remains of other animals from slaughterhouses, meat-packing plants, veterinary clinics, and groceries, are "cooked" to produce tallow and bone meal.¹⁵ These by-products end up in cosmetics, soaps, lubricants, cement, polishes, inks, fertilizers, and livestock feed.¹⁶

The number of dogs and cats euthanized each year in United States shelters and pounds is absolutely astounding.¹⁷ The word "humane" has often been associated with such shelters, but the oxymoron should now be obvious. John A. Hoyt, president of the Humane Society of the United States, has recognized the cruel kindness offered animals by "humane" shelters:

Killing animals has become the principal function of too many "shelters."
Yet killing is necessary so long as the breeding of surplus animals continues.

11. Performance audit, City of Pittsburgh Animal Control Department 14 (Apr 20, 1990) (hereinafter "Performance audit").

12. Performance audit at 14 (cited in note 11).

13. PETA, *Spaying & Neutering: A Solution for Suffering* (cited in note 3); Animal Care and Welfare, S.P.C.A., *Everyone Loves Puppies!* (cited in note 6).

14. PETA, *Spaying & Neutering: A Solution for Suffering* (cited in note 3). See James Gross, *A Crusade to Save Unwanted Lives*, *The New York Times* A18, col 4 (Oct 31, 1990) (estimating that ten million dogs and cats are destroyed each year in the United States).

The decompression chamber method of euthanasia has been expressly forbidden by the legislature of many states (nineteen by this author's count), and the carbon monoxide chamber has been expressly forbidden in just a few states (four).

15. Progressive Animal Welfare Society, *Rendered Senseless* in *PAWS News* 14, 14 (Aug 1991).

This author is aware of only two states that send its carcasses to landfills: Arizona and Virginia. See *Spay Neuter Hotline Offers Advice on Pet Sterilization*, *Arizona Republic*, E3 (Feb 26, 1992); Mark Holmberg, *It's a Shame, But Who's to Blame?*, *Richmond Times-Dispatch* E1 (Sept 12, 1991). It is possible that Oregon cremates its unwanted animals. See Michael Rollins, *Pet Owners Blamed for Furor over Killings*, *Oregonian* D1 (May 5, 1989).

Even if certain states do dispose of companion animals in these arguably more dignified manners, with the cost of cremation and its attendant zoning problems as well as the limited space in landfills, these methods are undesirable because of the massive quantities of animal carcasses. See Progressive Animal Welfare Society, *Rendered Senseless* in *PAWS News* at 14 (cited in note 15).

16. Progressive Animal Welfare Society, *Rendered Senseless* in *PAWS News* at 14 (cited in note 15).

17. See note 14 and accompanying text.

. . . We try to be kind—but most of our kindness is killing.¹⁸

It is true that the killing of animals by the millions every year in the shelters and on the streets will continue as long as companion animals are allowed to breed without regulation. In order to stop the millions of senseless deaths each year, the millions of unwanted births must be prevented.

A solution proposed in this comment would include legislation requiring that companion animals be spayed or neutered. Spaying and neutering are surgeries usually performed on animals six months old or older:

Spaying is a surgical technique performed on females. It involves removal of both ovaries and the uterus. The operation prevents an animal from having heat periods and eliminates the ability to become pregnant.

Neutering is a surgical technique performed on male animals involving removal of the testicles. This prevents production of sperm and eliminates the possibility of the animal's impregnating females.¹⁹

Spaying or neutering results in medical benefits to the animal. Done at an early age, it reduces or eliminates the risk of many common diseases or injuries. In later years, intact male dogs are prone to diseases of the prostate, testicles, and other similar tissues.²⁰ "Testicular and perianal gland cancers are the second and third most frequently diagnosed tumors in older intact male dogs."²¹ Intact males roam and fight more often than neutered males, increasing the chance of injury or death.²² In females, spaying helps to protect against the most common tumor that affects them—mammary tumors.²³ About half of these tumors are malignant.²⁴ If spayed early enough, a female dog will develop mammary tumors only five percent as often as an unspayed female.²⁵

18. John A. Hoyt, Address at a Mid-Atlantic Regional Office/New England Regional Office Conference (Apr 26, 1991), reprinted in *HSUS News* 23, 23 (Summer 1991).

19. The Fund for Animals, *Hidden Holocaust: The Overpopulation Crisis* (cited in note 2).

20. *Id.*

21. *Id.*

22. *Id.* See also Katharine R. Salmeri, DVM, Patricia N. Olson, DVM, and Mark S. Bloomberg, DVM, *Elective Gonadectomy in Dogs: A Review* in 198 *J Am Veterinary Medicine Assoc* 1183, 1186 (Apr 1, 1991) ("Gonadectomy may modify objectionable behavior in dogs. Castration of adult dogs has been shown to reduce roaming behavior by 90% and to considerably reduce intermale aggression and urine marking in the house").

23. Eric Dunayer, VMD, *Caring for Other Animals in The Animals' Agenda* 46, 46 (May 1991).

24. Dunayer, *Caring for Other Animals in The Animals' Agenda* at 46 (cited in note 23).

25. *Id.*

Spaying or neutering also results in positive behavioral changes in the cat or dog. It reduces the spraying of urine to mark the animal's territory, which commonly occurs inside the guardian's home.²⁶ Female dogs are often "irritable and snappish" while in heat.²⁷ The surgery removes the animal's sexual drive so that the dog or cat is much less likely to escape the safety of its home in search of a mate.²⁸ Out-of-doors, an animal is vulnerable to a myriad of dangers including animal fights, collisions with cars,²⁹ and cruelty by humans. An animal is rendered less aggressive by spaying or neutering, particularly male animals.³⁰ Neutered male dogs are much less likely to attack humans and inflict harmful or fatal bites.³¹

Legislation mandating spaying or neutering would not be a cure-all for the overpopulation crisis, but should be implemented while other overpopulation programs, discussed in Part III of this comment, are continued and enhanced. This solution, containing a multi-faceted approach to solving the overpopulation crisis, is infinitely more humane than mass euthanasia.

The killing of surplus (non-human) animals has long been the accepted method of population control. Concerns about "public health" first prompted dog control in the United States.³² Early methods to dispose of surplus animals were barbaric, most commonly by drowning or shooting and sometimes by electrocution.³³

26. *Id.* Female cats and male cats and dogs demonstrate urine-marking behavior. *Id.*

27. *Id.*

28. *Id.* See also note 9, where it is reported that five thousand cats are killed on Baltimore, Maryland roads every year. Of those cats, a full 91% had "escaped" from their homes. Clifton, ed, *Network* at 10 (cited in note 9).

29. Dunayer, *Caring for Other Animals in The Animals' Agenda* at 46 (cited in note 23).

30. *Id.*

31. See Eric Conrad, *Survey: Neutered Dogs Bite Less—County Reports Unaltered Males Are the Most Likely to Attack*, *The Sun Sentinel* B1 (Mar 27, 1991). A survey by the Animal Care and Control department of Palm Beach County, Florida reported that of 153 reported rottweiler bites in 1989, 73% were inflicted by unneutered males. Conrad, *Survey: Neutered Dogs Bite Less* at B1 (cited within this note). See also Baird, *Attitudes Toward Spaying/Neutering* at 4 (cited in note 7). Ms. Baird quotes Dr. Randall Lockwood, Director of Higher Education at the Humane Society of the United States, who has announced that, of over twenty fatalities from dog bites investigated over a two-year period, "none was caused by spayed or neutered animals." *Id.*

32. Newkirk, *Dark Angels and Direct Action* at 2 (cited in note 5).

33. *Id.* Ms. Newkirk states:

[The surplus animals] would be put in a big cage and lowered on a winch into the nearest river. In winter, residents would break the ice to allow the cage to slip underwater. In rural areas, shooting was a popular means of animal disposal. In South Falls, South Dakota, dog wardens still shoot strays on sight. Some areas later adopted

In more modern times, the cruelties continue. On Marion Island, which is off the coast of South Africa, a mass extermination of the island's cat population was attempted by the aerial spraying of the feline distemper virus.³⁴ In Israel, food laced with strychnine poison is set out on the streets for strays (and hapless pets).³⁵ While the mode of death for unwanted companion animals has, at least in this country's shelters, somewhat improved over time, the number of deaths purposefully inflicted each year in so-called "humane" shelters has steadily increased.³⁶

The question today is not *how* to kill an unwanted dog or cat, but *why*, when there are more humane solutions available? Certainly, if the population of companion animals were reduced by regulated breeding, there would be no need to resort to the mass slaughter which occurs daily within the walls of this country's shelters.

Pet overpopulation exacts a toll on taxpayers as well as on the animals.³⁷ In Montgomery County, Maryland, only 12,000 animals were housed at its shelter during fiscal year 1991.³⁸ The county was

a crude form of electrocution, tying the dogs in a shallow trough of water and hooking up jumper cables to them.

Id.

34. Louise Holton, *Killing the Feral Cat Crisis, Not the Feral Cat*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington D.C. (Sept 20-21, 1991) (hereinafter "*Killing the Feral Cat Crisis*").

Within a few years of scientists leaving five unneutered cats behind on the island, the population had jumped to 2,500 feral cats. Holton, *Killing the Feral Cat Crisis* (cited within this note). After untold suffering, 35% of the cat population survived the spraying of the virus, and the population on Marion Island continues to grow. Id.

35. Nina Natelson, *The Treatment of Animals in Israel*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington D.C. (Sept 20-21, 1991). A bill has been introduced in the Knesset that would ban these poisonings, but the author of this comment has no word on the status of the bill. Natelson, *The Treatment of Animals in Israel* (cited within this note.)

36. See generally Progressive Animal Welfare Society, *PAWS News* at 10 (Aug 1991). See also Clark, *Muffin, Charles, & Trail Found Themselves a New Home* at 27, col 3 (cited in note 10) (stating that twenty million animals went into animal shelters in 1985, a ten million increase from 1980).

37. Other tolls, not so easily measured in numbers or dollars, are the psychological harms inflicted on those caring persons involved in trying to control the overpopulation crisis. Shelter workers relegated to doing the dirty work of killing healthy, surplus animals are not unaffected by the dozens of lethal injections they must administer every day. See Progressive Animal Welfare Society, *Death Every Afternoon: Euthanasia Takes a Human Toll* in *PAWS News* 16-19 (Aug 1991).

38. Beth Kaiman, *To Spay and to Neuter—From Maryland to Mexico to Mandatory*, in *The Fund for Animals*, vol 24, no 2 (leaflet) (no date), reprinted from The Washington Post.

footed with a \$760,000 bill.³⁹ In Dallas, Texas, more than 30,000 pets are euthanized annually at a cost to taxpayers of about \$1.5 million.⁴⁰ The state of Washington received 188,833 dogs and cats in its major shelters in 1990,⁴¹ and Maricopa County, Florida, destroys 80,000 animals each year.⁴² The annual cost to individual local and state governments is astronomical, particularly when one considers that the national average cost to publicly-funded animal control agencies to collect, house, euthanize, and dispose of one animal is fifty dollars.⁴³ It has been estimated that the nationwide cost of sheltering and killing unwanted companion animals is a *half-billion dollars each year*.⁴⁴ If the overpopulation crisis were resolved, these tax dollars could be better allocated.

An end to the pet overpopulation crisis would also benefit the public health, welfare, and safety. Reducing the sheer number of homeless dogs and cats will correspond to a reduction in the number of animals running loose and/or causing traffic hazards, necessary quarantines, dog bites⁴⁵ and dog fights, nuisance complaints about dogs barking, dogs harassing livestock and wildlife, and unsanitary conditions caused by animal feces.⁴⁶ Also, with the widespread fear that cases of rabies are on the rise, a reduction in the dog and cat population will reduce the spread of the disease at least to the extent that dogs and cats play a role.

Killing animals has proven an expensive, ineffective solution to the pet overpopulation crisis. It is time to explore alternatives to the senseless slaughter of this country's companion animals.

39. Kaiman, *To Spay and to Neuter—From Maryland to Mexico to Mandatory* (cited in note 38).

40. Enrique Rangel, *Spay Neuter Campaign Launched in Dallas* in *The Fund for Animals* vol 24, no 1 (leaflet) (no date), reprinted from *The Dallas Morning News*.

41. Progressive Animal Welfare Society, *PAWS News* 12 (Aug 1991).

42. *Doggone Good Idea: Spay Neuter Hotline Offers Advice on Pet Sterilization*, *The Arizona Republic* E3 (Feb 26, 1992).

43. Statement of Charlotte Grimme at a meeting with the Committee on Hearings, Pittsburgh, Pennsylvania (Jan 23, 1991). Ms. Grimme also stated to the author that the Pennsylvania Department of Transportation spends \$250,000 per year just to pick up dogs and cats killed on Pennsylvania roads. Interview with Ms. Grimme, Mar 14, 1992.

44. Deborah Lawson, *1 Reason for Neutering: 8 Billion Dead Animals*, *Arizona Republic* D4 (Mar 10, 1990).

45. See note 31 and accompanying text.

46. Kim Sturla, *Killing the Crisis Not the Animal: A Blueprint for a Lifesaving Ordinance* 6 (*The Fund for Animals*, no date) (hereinafter "*A Blueprint for a Lifesaving Ordinance*").

II. SOURCES OF PET OVERPOPULATION

With the shocking number of cats and dogs euthanized in this country, one may well wonder, "Where are all of these animals coming from?" There is no single source of pet overpopulation, but there are many that contribute to the crisis. These include irresponsible pet guardians, "puppy mills," backyard or "hobbyist" breeders, self-termed "responsible" breeders, and, of course, uncontrollable breeding by strays.

Of all the sources of the overpopulation crisis, irresponsible pet guardians are the greatest contributors. Not all guardians consciously decide to breed their pets, but those who do not spay or neuter their pets are the greatest single cause of overpopulation.⁴⁷

Pets are often acquired on impulse, especially when they are in their "cute" puppy or kitten stage. Little do the new guardians realize the immense responsibility they are undertaking when they bring home their companion. Beyond the cute stage, a dog or cat, if given the proper care and supervision by its guardian, will live for many years. When viewing a puppy or kitten through the pet shop window, few people think of accommodating the animal during their upcoming vacation (and every one thereafter for the next twelve to fifteen years) or when moving to a new home in the future; the veterinary bills that will follow; the need to put up a fence to safely insure the animal's exercise; or the property damage certain to occur. The day-to-day duties of responsible pet guardianship include feedings on a fixed schedule and exercise, regular grooming, and contributing immense amounts of "quality time" required by these social animals.

Many people quickly tire of the responsibilities attending pet guardianship; hence the many cases of abandonments.⁴⁸ Perhaps

47. The Fund for Animals, *Hidden Holocaust: The Overpopulation Crisis* (cited in note 2).

An informal survey was conducted by the organization Psychologists for the Ethical Treatment of Animals to determine attitudes of owners towards spaying or neutering their pets. See Baird, *Attitudes Towards Spaying/Neutering* (cited in note 7). Fifty pet owners were surveyed, and 78% of their pets were found to be spayed or neutered. *Id.* Only two of the respondents claimed that they wished their pet to have a litter. *Id.*

48. Faced with the choice of giving the animal to a "humane" shelter or abandoning the pet, often a guardian will choose the latter, naively believing that the animal has a better chance of survival. See Newkirk, *Dark Angels and Direct Action* at 4 (cited in note 5). "Domestication of the dog and cat have rendered them incapable of surviving on their own." *Id.*

Abandonments increase the population of feral animals. "Feral" describes the offspring of once-domesticated animals who manage to survive on their own. Holton, *Killing the Feral Cat Crisis* (cited in note 34). It is estimated that between twenty-six and fifty million feral

the guardian will find a friend willing to undertake the responsibility—another action motivated by impulse or other inappropriate reasons. Or perhaps the guardian will simply take the pet to the local animal shelter, where the animal is certain to become another statistic. About sixty percent of the animals at such shelters are taken there by their own guardians.⁴⁹

Many guardians who do not callously give away their companions do not have them spayed or neutered. The excuses given by irresponsible guardians for not spaying or neutering their pets range from the silly to the seriously misguided. "It's just too expensive to have my pet fixed," is a common excuse. But, compared to the relatively low, one-time cost of the surgery, the guardian should consider the expense in having litter after litter of unwanted pets, including food, licensing and veterinary bills as well as the time and effort required to find homes for them.⁵⁰ Some guardians, particularly men, consider spaying or neutering "unnatural."⁵¹ Choosing only one response to this assertion is difficult; however, suffice it to say that to irresponsibly create a surplus of companion animals and then carelessly condemn them to an unnecessary death is itself unnatural. Another excuse offered by guardians is that they wish their children to see the "miracle of birth."⁵² Let us hope that the guardians also instruct their children on the reality of death for those animals that do not find a home as

cats survive in the United States. *Id.*

This author has been unable to locate estimates of the feral dog population in this country, although it is clear that feral dogs do exist. See Newkirk, *Dark Angels and Direct Action* at 3 (cited in note 5) (calling attention to "feral dog dens under the front lawn of the U.S. Congress").

Another alternative open to the guardian and, sadly, too often the route taken, is to simply keep the animal while neglecting his or her responsibilities for the animal's well being. Neglect is synonymous with abuse, another by-product of the overpopulation crisis.

49. Newkirk, *Dark Angels and Direct Action* at 3 (cited in note 5). This is part of the disposable pet syndrome. Like many aspects of American life, our actions are often dictated by what we believe is most convenient.

50. A survey of veterinary clinics in Pittsburgh, Pennsylvania shows that the cost of spaying or neutering a dog costs from \$35 to \$125, and spaying or neutering a cat costs from \$20 to \$40. Performance audit at 17 (cited in note 11). The cost of the operation is less for males than for females, and depends on the individual pricing policies of the clinics. *Id.* No nationwide prices are available.

The one-time cost of spaying or neutering is less than the expense involved in raising puppies or kittens (food, shots, training, time) and is far less than the cost communities must pay toward animal control and euthanasia.

PETA, *Spaying & Neutering: A Solution for Suffering* (cited in note 3).

51. Baird, *Attitudes Towards Spaying/Neutering* at 5 (cited in note 7).

52. Animal Protection Institute, *There's No Excuse* (leaflet) (Animal Care and Welfare, Inc., SPCA, no date).

a result of their guardian's irresponsibility. There are more humane (and less misleading) methods of instructing children on sex and birth,⁵³ and children should not be taught that animals are disposable. Another justification by irresponsible pet guardians is that they always find homes for their litters.⁵⁴ But those animals will mature and have litters, too; and for every animal placed into an adoptive home by a private person, another homeless animal will die in the shelters.⁵⁵ Not to ignore guardians of male animals, another excuse is that males do not have litters, so there is no need to have them neutered. The logic is apparently flawless, except for the facts that "it takes two to tango," and one male can impregnate dozens of females.⁵⁶ A last excuse is worth mention, that the guardian does not want their pet to feel pain.⁵⁷ How kind—but does that guardian know that ten to twenty million animals each year will be killed in the shelters, not to mention those suffering on the streets?⁵⁸ Now, *that* hurts! The pain is slight compared to the consequences.

Another source of the pet overpopulation crisis is "puppy mills." Puppy mills are so called because the animals housed are continually bred to supply pet stores with puppies.⁵⁹ The consensus of animal protection groups is that the conditions in these establishments are deplorable:

In puppy mills, female dogs are kept in crude, usually outdoor cages and are bred continuously. Their puppies are taken from them at an early age and shipped hundred of miles under stressful conditions. Both the mothers and the puppies often suffer from poor living conditions, inadequate veterinary care and lack of affectionate, attentive human care and socialization necessary for a well-balanced psyche in the adult dog. Pet shop dogs are bred for quantity, not quality, and both physical and emotional problems arise from puppy mill breeding.⁶⁰

53. Animal Protection Institute, *There's No Excuse* (cited in note 52).

54. *Id.*

55. *Id.*

56. The Fund for Animals, *Hidden-Holocaust: The Overpopulation Crisis* (cited in note 2).

57. Animal Protection Institute, *There's No Excuse* (cited in note 52).

58. See notes 9-10, 14 and accompanying text.

59. Weil, *Animals in Society* at 15 (cited in note 1). See also Eric Dunayer, DVM, *AKC Culpability and Capability* 5, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991).

"Kitten mills" also exist, but not on such a large scale as puppy mills. PETA, Companion Animals Factsheet #3 *Puppy Mills: Puppy Hell* (no date).

60. Dunayer, *AKC Culpability and Capability* at 5 (cited in note 59). PETA, *Pet Shops & Puppy Mills* (leaflet) (no date). See also Weil, *Animals in Society* at 15 (cited in

Because puppy mill operators seek to maximize profit, the female dogs are ordinarily killed after the inhumane living conditions have taken their toll and their production of puppies drops.⁶¹

Seven states contain the majority of puppy mills: Arkansas, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Pennsylvania.⁶² The United States Department of Agriculture (USDA), charged with monitoring puppy mills under the Animal Welfare Act, estimates that one-quarter of federally licensed establishments are substandard.⁶³ However, the Humane Society estimates that eighty percent of the nation's 4,268 licensed breeders are substandard.⁶⁴ Puppy mills are incubators of disease and genetic defects caused by inbreeding.⁶⁵ Considering that approximately 500,000 puppies are born every year in puppy mills,⁶⁶ their contribution to the pet overpopulation problem cannot be ignored.

Neither can backyard or "hobbyist" breeders and self-termed "responsible" breeders be ignored as contributors to the overpopulation crisis.⁶⁷ After all, mutts and mixed breeds are not the only animals sentenced to die in the shelters. Twenty to thirty percent of the animals in shelters are purebred.⁶⁸

note 1); International Society for Animal Rights, *Focus on Puppy Mills* (leaflet) (no date); PETA, *Puppy Mills: Puppy Hell* (cited in note 59); Michael Neill and Bill Shaw, *A Life That No Dog Deserves* in *People* 67 (Feb 10, 1992); The Fund for Animals, *Hidden Holocaust: The Overpopulation Crisis* (cited in note 2).

61. Weil, *Animals in Society* at 15 (cited in note 1); PETA, *Puppy Mills: Puppy Hell* (cited in note 59), citing Julie Rovner, *Puppy Mill Misery* in *Humane Society News* (The Humane Society of the United States, Fall 1981); International Society for Animal Rights, *Focus on Puppy Mills* (cited in note 60); *You're a Dog's Best Friend* at 47 (cited in note 4).

62. International Society of Animal Rights, *Focus on Puppy Mills* (cited in note 60).

63. PETA, *Puppy Mills: Puppy Hell* (cited in note 59). The USDA has eighty-three inspectors, Neill and Shaw, *A Life That No Dog Deserves* at 68 (cited in note 60), and inspection of puppy mills is a low priority of the agency's. PETA, *Puppy Mills: Puppy Hell* (cited in note 59). It is estimated that as many as 1,600 puppy mills are operating without federal licenses and are never inspected. *Id.*, citing Thomas Knudsen, *Dogs Bred in "Mills" Are Often Victims of Filth and Neglect*, *The Wall Street Journal* (Oct 19, 1979).

64. Neill and Shaw, *A Life That No Dog Deserves* at 68 (cited in note 60).

65. See generally *id.* According to Bob Baker of the Humane Society, as well as a California state study, approximately half of the puppies in pet stores (90% of which are supplied by puppy mills) are ill or are incubating an illness at the time of purchase. *Id.* at 67, 70.

66. *Id.* at 67. *Puppy Mills: Consumer Demand Keeps Them Going Strong* in *PAWS News* 32 (Aug 1991). See also PETA, Companion Animals Factsheet #12, *Pet Shops: No Bargain for Animals* (no date) (estimating between 350,000 and 500,000 births per year).

67. While a lot of publicity has been given to puppy mills for their role in the overpopulation crisis, backyard and "responsible" breeders produce the majority of purebreds. See Dunayer, *AKC Culpability and Capability* at 5-6 (cited in note 59).

68. The Fund for Animals, *Hidden Holocaust: The Overpopulation Crisis* (cited in note 2); Progressive Animal Welfare Society, *Purebreds in the Shelters* in *PAWS News* at

The American Kennel Club (AKC) is the self-appointed promoter of purebred dogs.⁶⁹ In its literature, the AKC states that "its purpose is to adopt and enforce rules and regulations governing dog shows, obedience trials, and field trials, and to foster and encourage interest in, and the health and welfare of pure-bred dogs."⁷⁰ Ironically, the breeding of purebreds is detrimental to the dogs' health and consequently vexing to their guardians, yet it is simultaneously encouraged by the AKC.⁷¹ Dr. Eric Dunayer, a veterinarian, explains the consequences of pedigreed breeding:

Purebreds suffer from inherited diseases at a far greater rate than mixed-breeds. Dalmations, for example, are prone to deafness, poodles to epilepsy, young Lhasa apsos to fatal kidney failure, and boxers to malignant tumors. Eye diseases plague pure-breeds — including cataracts, glaucoma, and retinal degeneration that ends in blindness. Congenital heart disease afflicts pure-breeds at over four times the rate in mixed breeds. As a result of inbreeding to create and maintain their appearance, each breed harbors over a dozen genetic defects, and there are now close to 300 genetic disorders documented in the various breeds.

Such defects may undermine psychological as well as physical health. Toy dogs are frequently high-strung and hyperactive. Many mastiffs, German shepherds, and Doberman pinschers are overly fearful and submissive. An ever-growing number of chow chows, cocker spaniels, and golden retrievers are vicious.⁷²

One may think that careful breeding by those who value a particular breed would eliminate many of that breed's congenital defects. On the contrary, breeding by breed-fanciers has caused them.

Breed-fanciers attempt to improve or perfect a particular breed, to manipulate and conform their animals to pre-determined, written standards promulgated by breed clubs.⁷³ These standards must be approved by the Board of Directors of the AKC and are used by judges at AKC-sanctioned dog shows.⁷⁴ The winners are determined by how closely they meet the prescribed look of the particular breed. Many health problems of purebreds are directly related

22 (Aug 1991). During a four-month period at a King County, Washington animal shelter, it was found that the lowest percentage of purebreds on a given day was seventeen percent and the highest was over fifty percent. Progressive Animal Welfare Society, *Purebreds in the Shelters* at 22 (cited within this note). The average was thirty-three percent. *Id.*

69. Dunayer, *AKC Culpability and Capability* 1 (cited in note 59).

70. *Id.*

71. See note 85. The AKC does not permit unaltered animals to participate in their sanctioned conformational shows. Dunayer, *AKC Culpability and Capability* at 7 (cited in note 59).

72. Dunayer, *AKC Culpability and Capability* at 2 (cited in note 59).

73. *Id.*

74. *Id.*

to their prescribed look.⁷⁵ For example, the basset hound should have short, thick forelegs and the feet should turn "a trifle outward."⁷⁶ The hound's legs bow and invite chronic elbow dislocation, the splayed feet often result in lameness.⁷⁷ The dachshund is to have short legs and an elongated body, which causes about one-fifth of the breed to suffer ruptured vertebral disks that may result in total paralysis of the hind quarters.⁷⁸ The most pathetic of breeds gone awry because of the quest to meet the standard is, in this author's opinion, the English bulldog. Wrinkles and huge skin folds invite skin infections.⁷⁹ The AKC requires a nose "set back deeply between the eyes," which results in "pathologically short and twisted air passages," contributing to the bulldog's "ceaseless struggle against suffocation."⁸⁰ The bulldog should also have a "massive" head, "wide-spread" shoulders and "relatively narrow" hindquarters that usually require a caesarian section when giving birth.⁸¹ Most unbelievable of all is the requirement that the bulldog have a "low front and high rear," which has resulted in a breed that cannot even propagate without human intervention.⁸²

The exaggerations of purebreds' physical traits are caused by breed-fanciers attempting to create the "perfect" dog for show purposes.⁸³ Certainly, such breeds are not ideal in the typical companion animal/guardian relationship, where the animal is not acquired as a status symbol and showing is not contemplated:

Neither the show breeders nor the commercial breeders, for at least the past ten canine generations, have been at all interested in the needs and desires of the dog-owning public that makes up the bulk of their market. No one is breeding dogs for the purpose to which most dogs today are put — namely, urban or suburban companion. Until a little over one hundred years ago, dogs evolved alongside humanity. Now the needs and traits of breeds and people are worlds apart.⁸⁴

75. Id.

76. Id at 2-3.

77. Id at 3. Dr. Dunayer also reflects that the requirement that a basset hound's eyes should be "soft, sad, and slightly sunken" has created in the breed "a large gap between the lower eyelid and the eye that is basically an ashtray ready to catch any passing debris." Id.

78. Id.

79. Id.

80. Id. Dr. Dunayer states that he once "saw a bulldog whose nose was actually behind her eye." Id.

81. Id at 3-4.

82. Id at 3, 4.

83. Progressive Animal Welfare Society, *Playing God in PAWS News* 28 (Aug 1991).

84. Progressive Animal Welfare Society, *Breeding for What?* in *PAWS News* 29 (Aug 1991).

Perhaps this is why a surprisingly high number of purebreds fill this country's shelters.⁸⁵ The AKC is undoubtedly in a position to lessen the purebreds' impact on the pet overpopulation crisis, but will it make the effort? Past and current efforts to stem overpopulation do not include any significant contribution by the AKC.⁸⁶ Current efforts to ease the overpopulation crisis are discussed in the next section of this comment.

III. CURRENT EFFORTS TO EASE THE OVERPOPULATION CRISIS

From the figures discussed in Part I of this comment, it is obvious that none of the efforts currently employed to control the overpopulation of companion animals has been markedly successful. However, the bleakness of the situation that the figures portray does not mean that current efforts have had no impact and should not be continued. Rather, the overpopulation crisis has reached such a shocking level—in terms of animals killed as well as our society's unknowing or uncaring acquiescence—that *all* reasonable means to curb the crisis should be vigorously pursued.

Foremost in the current effort is education in the hope that guardians of companion animals will voluntarily have their pets spayed or neutered. Thousands of informational brochures have been distributed to guardians, thousands of visitors to shelters have been instructed about the overpopulation crisis, billboards and advertisements have been utilized, and the media has often covered the situation. Still, the crisis continues. Part of the problem seems to lie in reaching all guardians who have companion ani-

85. See note 68 and accompanying text. One veterinarian has commented:

Over 90% of my clients who obtain a purebred know nothing about the physical and behavioral defects of the breed. This translates into an unhappy owner unprepared for the financial and time commitments necessary to care for the dog. Why do you think so many purebreds are surrendered to animals shelters?

Progressive Animal Welfare Society, *Breeding for What?* (cited in note 84).

86. A brochure of the AKC's, entitled "Are You a Responsible Dog Owner (Or Dog Owner to Be?)," states:

It is unfortunate, but there are thousands upon thousands of unwanted dogs in the United States. Too many pure-bred dogs end up in humane shelters or pounds. An even more serious problem is the number of purebred dogs producing litters and thus adding to the unwanted dog problem.

Dunayer, *AKC Culpability and Capability* at 6-7 (cited in note 59). Besides understating the overpopulation crisis and the tremendous numbers of unwanted purebreds, the AKC does not advocate adoption of homeless animals, whether mixed or purebred, but only speaks of buying them. See *id.* at 7.

For suggestions of how the AKC could aid in reducing the overpopulation crisis, see generally *id.*

mals: approximately forty-three percent of United States households has pets.⁸⁷ The problem is further eviscerated by the need for funds by humane groups to educate the public. As stated by one shelter supervisor: "You can't reach everybody through education. I can't imagine that there would ever be enough money to do the massive outreach you would need."⁸⁸

Nationwide, several governmental entities have made available low-cost spay and neuter programs for local residents to utilize. Unfortunately, such programs also rely on voluntary participation by guardians of companion animals; consequently, such programs have not been proven panaceas for the pet overpopulation crisis. However, certain programs have proven markedly successful in their localities. For example, before Los Angeles established its low-cost spay/neuter program in 1971, 110,835 animals were euthanized in the city's shelters.⁸⁹ During the next fifteen years, the number of animals euthanized each year in Los Angeles shel-

87. *American Demographics* (May 1991). In comparison, 38% of United States households have children. Id.

Another part of the problem is that, even if reached with education, guardians of animals will not act on their own to help ease the overpopulation crisis. Ron Sims, member of the King County Council in Washington, who strongly advocates mandatory spaying and neutering, does not believe that education will solve the crisis:

I was told we'd see an end to racism the more educated people become, and we find that isn't true. We've been told in major magazines that racism now is as bad as it was in the sixties although we have more people educated. So understanding diversity has not resulted in a change of behavior.

We've had warning labels on every package of cigarettes for years. But it's been the enforcement, it's been restricting *who* can smoke, and *where* people can smoke, and the development of smoking cessation classes that's resulted in a significant decline of smokers in this country.

Even the changes that we've had in the area of civil rights have been brought about by direct enforcement. We have laws that prohibit discrimination. They have worked much more viably than having the population aware that discrimination's wrong. It has been the suits, the legal rights, that has made the difference.

I think on [the overpopulation issue] it's the same way. If you don't have a strong measure that imposes neutering and spaying, you'll never see a change in owners' behaviors with regards to allowing animals to freely breed.

Progressive Animal Welfare Society, *Local Hero: Councilmember Ron Sims in PAWS News* 6-7 (Aug 1991).

The groundbreaking legislation enacted in San Mateo, California, discussed in Part IV of this comment, was sponsored by supervisor Tom Nolan once he was informed that the local Humane Society spent over \$300,000 a year to educate the public on companion animal overpopulation with few results. Miles Corwin, *Puppy Love Put on Tight Leash in San Mateo County*, *The Sacramento Bee* A1 (Dec 19, 1990).

88. Statement of Lisa Wathne, King County (Washington) Animal Control Adoption Supervisor, *Just a Little More Education . . . Just a Little More Time* in *PAWS News* 37 (Aug 1991).

89. Performance audit at 9 (cited in note 11).

ters dropped by nearly fifty percent to 54,037 animals.⁹⁰ Santa Barbara, California, saw an eighty percent decrease in animals euthanized after its clinic opened in 1975.⁹¹ In Vancouver, British Columbia, the results of instituting a low-cost spay/neuter program were even more astounding. The opening of a clinic in 1976 resulted in an eighty-nine percent decrease over a period of ten years in the number of animals euthanized in the city, from 80,000 animals in 1975 to 8,986 animals in 1985.⁹²

Because the success of low-cost spay/neuter programs depends upon voluntary compliance by guardians, such programs must be accompanied by educational programs as well. Most people do not care about the companion animal overpopulation crisis in general,⁹³ so funds spent on education along these lines would be futile. A better avenue, in this author's opinion, would be to educate guardians about the health benefits to the animal, the positive behavioral changes of the animals, and the long-run cost efficiency of spaying or neutering.⁹⁴

In addition, successful spay/neuter programs require a reduction in the cost of the surgery to such an extent that an educated guardian will have a financial incentive to have his or her animal spayed or neutered. While the cost of the surgery is by no means exorbitant even without an additional incentive,⁹⁵ the state of the crisis requires that the program be available to all guardians regardless of their individual incomes. The program instituted by the state of New Jersey is, in this author's opinion, ideal in its low cost to the guardian. Instituted in 1983, guardians on public assistance enrolled in the program pay only ten dollars to have their animals spayed or neutered.⁹⁶ The law will soon be amended to open the program to all state residents, regardless of income, and the cost of the operation will be twenty dollars for those not on public assistance.⁹⁷ Funding for the program comes from two sources: (1) the

90. *Id.*

91. United Action for Animals, *No Way to Treat a Friend* (leaflet) (no date).

92. Performance audit at 9 (cited in note 11). Generally, areas that have instituted low-cost spay/neuter clinics have witnessed declines of 30%-60% in the number of animals euthanized. Baird, *Attitudes Towards Spaying/Neutering* at 8 (cited in note 7).

93. A recent survey of 475 companion animal guardians found that 78% of adults and 48% of adolescents were aware of the overpopulation crisis, but their awareness did not affect their decisions about permitting companion animals to breed. Clifton, ed, *Network* at 10 (cited in note 9).

94. See notes 19-31 and accompanying text.

95. See note 50.

96. Sturla, *A Blueprint for a Lifesaving Ordinance* at 9 (cited in note 46).

97. *Id.*

fee proffered by the guardian, and (2) a surcharge added to the licensing fee for unaltered dogs.⁹⁸ One problem with the New Jersey program is that the cost of the program is borne mostly by guardians of unaltered dogs,⁹⁹ although guardians of both dogs and cats have the program available to them. This cost would be more equally borne by all guardians if cats were licensed as well as dogs—then, a surcharge could be added to the licensing fee of cats as well.

Licensing of cats has, by the way, been adopted by several localities as another attempt to curb the mass euthanasia of companion animals in shelters. The placement rate of cats, either returned to their guardians or placed in adoptive homes, is significantly lower than that of dogs.¹⁰⁰ This is primarily because cats are not usually required by law to be licensed as dogs usually are.¹⁰¹ While the mandatory licensing of cats is certain to ensure that many of the cats who end up in a shelter are returned to their guardians, this solution only addresses a part of the companion animal crisis. Of course, enforcement of the cat licensing law is subject to the same obstacles as the licensure laws regarding dogs. One-hundred per-

98. A. Bader, III, DVM, *New Jersey's State Subsidized Spay/Neuter Program*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991). See also Robert I. Rush, *Animals and Municipal Funding Programs* 8, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991) (a surcharge on every unaltered dog license issued generated approximately \$289,000 in a recent year to fund Los Angeles' low-cost spay/neuter clinic).

99. Bader, *New Jersey's State Subsidized Spay/Neuter Program* (cited in note 98).

100. See notes 11-12 and accompanying text.

101. Performance audit at 14 (cited in note 11). Some choose to attribute the low placement rate of cats with their original guardians to so-called "feline behavior." See id. This author, who considers herself quite familiar with the behavior of cats, is at a loss to define this mysterious "feline behavior" to be blamed in the deaths of millions of cats each year in this country's shelters. Rather, this author attributes the millions of deaths each year to the misconception on the part of cat guardians that their animals need to roam as if a free spirit. While it is true that an unaltered cat will more likely wish to roam in search of a mate, see note 28 and accompanying text, a domesticated cat, whether or not spayed or neutered, is content to remain indoors in a good home. Of course, if a guardian encourages the animal to go out-of-doors, or gives in to the animal's expressed desire to go out-of-doors, knowing full well the perils that face a domesticated cat in this society outside the sanctity of its home, that cat's subsequent death in a shelter or on the streets can be blamed only on the guardian. A cat guardian who subscribes to the "free spirit myth" often does not become concerned about the animal's disappearance until several days later, when the holding period of the animal shelter has expired and the cat has been euthanized. See Performance audit at 14 (cited in note 11); Statement of Sandra Etzel at a meeting with the Committee on Hearings, Pittsburgh, Pennsylvania 23 (Jan 23, 1991).

cent compliance cannot reasonably be expected.¹⁰²

New developments in the search to control the companion animal overpopulation crisis include plans of implanting microchips into companion animals to ensure identification by animal control agencies and guardians,¹⁰³ and use of a simple injection to render an animal either temporarily or permanently sterile.¹⁰⁴ These breakthroughs, while offering hope in the future, are unfortunately doomed to mediocre effect in the search to control the companion animal overpopulation crisis for the same reason as the other efforts discussed above: a successful approach to control the overpopulation problem cannot depend upon voluntary compliance by animal guardians.

All of these programs currently utilized or pursued in efforts to control the overpopulation crisis should not be abandoned simply because none of them offers a cure-all solution. All of the programs discussed above have apparently had some impact on local overpopulation problems and should be expanded and followed in other areas with hopes of at least reducing the numbers of animals euthanized in shelters. Other efforts by individuals, such as the trapping, neutering, and releasing of feral animals,¹⁰⁵ should be continued even if only for humane reasons and not because of their groundbreaking success in population control. Unfortunately, such efforts depend on too few concerned and kind-hearted volunteers who unfairly bear the brunt of the cruel and unthinking guardians who all-too-easily dispose of their responsibilities. Nevertheless, another solution must be implemented in addition to those listed above because the overpopulation of companion animals is at a critical stage. These programs have been somewhat successful, but the staggering number of animals still being killed in the shelters today is totally unacceptable.

The major fault haunting all of the programs discussed above is

102. See, for example, Performance audit at 14 (cited in note 11), wherein it is stated that the city of Pittsburgh has a reclaim rate of only 40% for dogs impounded in its shelters, which is double the national average of nineteen percent, although a city ordinance requires the licensing of dogs.

103. Rush, *Animals and Municipal Funding Programs* at 13-14 (cited in note 98).

104. See generally M. Ghandi, *Use of Animal Birth Control Injection (Talsur) to Control the Stray Dog Menage*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991).

105. See generally Holton, *Killing the Feral Cat Crisis* (cited in note 34). Other efforts to be commended are by individuals who take into their private homes unwanted animals and eventually place them in suitable adoptive homes.

that the animals' guardians are expected to voluntarily comply with efforts to reduce the overpopulation of companion animals. Voluntary compliance cannot be expected to solve the crisis, nor has it proven to do so. A more extreme method of population control is called for, whereby guardians are required to assume responsibility for the dirty work their carelessness has imposed on the workers in this country's shelters.

IV. A PROPOSED SOLUTION

The companion animal overpopulation crisis has reached an obscene level where tens of thousands of unwanted animals are exterminated every day in this nation's "humane" shelters. Well-meaning efforts of population control which are aimed at voluntary compliance by pet guardians are not effective, and this nation's shelters still depend on that age-old method of non-human population control: extermination of the unwanted. This method is not only inhumane, expensive and ineffective, but it is also unnecessary under the following proposed solution.

A national moratorium on companion animal breeding by all guardians would help end the overpopulation crisis. The legislation would apply to all guardians of companion animals, from the individual pet guardian to those who breed and profit from the sale of the animals' offspring. Spaying or neutering of all companion animals would be required, and only guardians who purchase a breeding permit would be exempt.

Several municipalities have already turned to a moratorium on breeding in an attempt to end local overpopulation problems. The first municipality to take this progressive measure was San Mateo, California, and the groundbreaking legislation went into effect in March of 1992. Although the end-result of the legislation was quite different from that intended by animal protection groups involved in designing the ordinance, the legislation does provide some major inroads cutting into the overpopulation problem.

An important part of the San Mateo ordinance is the Resolution adopted by the governing authority, which justifies the extreme measures taken by the legislation. The Resolution of the San Mateo ordinance states:

RESOLUTION

Relating to Dog and Cat Overpopulation

WHEREAS, California cities and counties are responsible for the control and care of untold numbers of unwanted, neglected, stray and abused dogs and cats within their jurisdictions; and

WHEREAS, California cities and counties euthanize hundreds of thousands of unwanted, but healthy dogs and cats annually; and

WHEREAS, the cause of this problem is irresponsible and indiscriminate breeding of dogs and cats; and

WHEREAS, reliance by cities and counties on euthanasia and shelter adoptions has been shown to be ineffective in solving the problem of pet overpopulation; and

WHEREAS, the problem of pet overpopulation causes potential risk of injury and disease transmission to city and county employees, as well as the general public; and

WHEREAS, the problem of pet overpopulation costs cities and counties millions of dollars annually through programs funded to capture strays, deal with sanitation concerns, and abuse and neglect of animals that are the result of the overpopulation problem; and

WHEREAS, spaying and neutering dogs and cats has been shown to reduce animal populations, and therefore the cost to cities and counties and the cruelty to animals that results from pet overpopulation; now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled in Annual Conference in San Francisco, October 15, 1991, that the League encourage its members to promote city- and county-sponsored programs to educate our citizens concerning the social costs of allowing their pets to breed; and it be further

RESOLVED, that the League encourage and support local legislation that restricts indiscriminate breeding through permit systems, licenses, breeding moratoriums, fines and/or low-cost spay and neuter programs.¹⁰⁶

The Resolution sets forth the municipality's interests served by instituting such legislation and justifies the exercise of its police powers.

The San Mateo ordinance requires mandatory spaying or neutering of all dogs and cats over six months of age unless (1) a veterinarian certifies that the surgery would be detrimental to the animal's health, (2) the guardian has received a breeding permit, or (3) the guardian verifies that he or she does not intend to breed the animal and signs a statement to that effect.¹⁰⁷ This final exception, which exempts guardians who simply do not intend to breed, is the largest loophole in the legislation and cannot be copied in ideal legislation. As discussed earlier in this comment, irresponsible guardians who do not specifically intend to breed their animals are the greatest single contributors in the overpopulation crisis.¹⁰⁸ Nevertheless, the San Mateo ordinance cannot be judged for what it does *not* do, but what it does achieve.

106. The Fund for Animals, *Spay/Neuter Legislation Bulletin* (Jan 1992).

107. San Mateo, Cal, Code ch 6.2 § 3332.4(a), (b), § 3332.5(d)(6) (1992).

108. See note 47 and accompanying text.

The legislation provides that guardians who wish to breed their animals must obtain a permit at a cost of \$25.¹⁰⁹ In addition, permit holders cannot sell or offer for adoption offspring until they are eight weeks of age;¹¹⁰ the holder of the permit must assist in placement of the offspring if the adopter or purchaser can no longer keep the animal within the first year of placement, and must assume full care and responsibility of the animal if no alternative suitable home is found within six months;¹¹¹ the permit number must be displayed in newspaper advertisements for the sale or adoption of animals;¹¹² all animals sold or adopted must be given the necessary inoculations against common diseases;¹¹³ and for every sale or adoption of an animal, there must be a written spay/neuter agreement to insure that the animal will be surgically altered before the age of six months unless a veterinarian certifies that the animal's health will be endangered, or unless the offspring is bred for the purpose of show or breeding.¹¹⁴ Unfortunately, the cost of a breeding permit is too low under the ordinance: the \$25 cost is not much incentive for guardians to choose spaying or neutering over acquiring an annual permit.¹¹⁵

The ordinance requires that those who sell or give away animals on public property (streets, sidewalks, or parks) first obtain a business license.¹¹⁶ Veterinarians are required to forward proof of rabies vaccination to the licensing authority.¹¹⁷ This allows the licensing authority to ensure that those guardians have conformed with local licensing requirements.¹¹⁸

The ordinance institutes differentials in the licensing fees of altered versus unaltered animals. Guardians of unaltered dogs must pay \$25 for a license, \$10 for spayed or neutered dogs.¹¹⁹ Cat

109. San Mateo, Cal, Code ch 6.2 § 3332.5(d), § 3330.12(b) (1992).

110. *Id.*

111. *Id.* at § 3332.5(d)(3).

112. *Id.* at § 3332.5(d)(4).

113. *Id.* at § 3332.5(d)(2).

114. *Id.* at § 3332.5(d)(6).

115. A proposed ordinance in King County, Washington, requires a fee of \$100 for a breeding permit for each animal. See Progressive Animal Welfare Society, *PAWS News* 4 (Aug 1991). A fee this high, while not prohibitive for those who breed for a profit, e.g., puppy mills, or for those who breed as a hobby, i.e. the so-called "responsible breeders" or backyard breeders, would create an immense incentive for animal guardians to choose spaying or neutering over the more expensive breeder permit.

116. San Mateo, Cal, Code ch 6.2 § 3332.6(c) (1992).

117. *Id.* at § 3330.3(h).

118. The Fund for Animals, *Spay Neuter Legislation Bulletin* (cited in note 106).

119. San Mateo, Cal, Code ch 6.2 § 3330.12(a).

guardians must pay \$15 for a license if their animal is unaltered, \$5 if spayed or neutered.¹²⁰ The differential in licensing fees is intended to create a financial incentive for guardians to spay or neuter their animals. But once again, this author regards the licensing fees on unaltered animals, especially cats, too low to provide much incentive.¹²¹

Upon redeeming an animal from an animal control agency, the guardian must pay, in addition to impound fees, a spay/neuter fee of \$35.¹²² This fee is refundable upon proof within thirty days of the redemption that the animal has been spayed or neutered.¹²³ If an animal has been impounded twice within three years, the animal is required to be surgically altered at the guardian's expense.¹²⁴ The guardian is permitted a hearing if required to have his animal altered under the ordinance, and must show good cause for not requiring the surgery.¹²⁵ These provisions of the ordinance are excellent in that they punish those irresponsible guardians who claim they do not *intend* to breed their animals, and yet habitually allow their unaltered animals to roam the streets where breeding is certain to occur. Rather than imposing fine after ineffective fine upon these irresponsible guardians, the ordinance takes a direct route to fulfilling its purpose—mandatory spaying or neutering of the animals of those guardians who undoubtedly contribute to the overpopulation crisis. Simply because a guardian has a permit to breed does not mean that indiscriminate breeding will be

120. *Id.*

121. A proposed ordinance in King County, Washington has a greater and therefore more effective licensing differential. See Progressive Animal Welfare Society, *PAWS News* 4 (Mar 1992). The licensing fee for unaltered cats or dogs in the proposed ordinance is \$30, \$10 for altered animals. *Id.* The King County proposed ordinance is also preferable to the San Mateo ordinance in that the licensing fee for cats is the same as that for dogs. There is no reason to charge a lesser licensing fee for cats than dogs. In fact, statistics indicate that there are more cats euthanized in shelters than dogs. See *Statements of Barry McMeekin at a meeting with the Committee on Hearings, Pittsburgh, Pennsylvania* 37 (Jan 23, 1991); Progressive Animal Welfare Society, *PAWS News* 12 (Aug 1991). Where licensing of cats is required under local law, the number of cats returned to their owners rather than euthanized at the shelters undoubtedly increases. Those guardians who refuse to comply with licensing requirements are more likely to do so because of their unfounded beliefs about a cat's behavior rather than any prohibitive cost of licensing. A licensing fee equal to that of dogs requires those owners who contribute to the animal overpopulation to bear the burden equally, whether they are guardians of cats or dogs.

122. San Mateo, Cal, Code, ch 6.2 § 3330.8(b) (1992).

123. *Id.*

124. *Id.*

125. *Id.* at § 3330.8(c).

tolerated.¹²⁶

Another progressive aspect of the San Mateo legislation is that it places the onus of education on those who choose, through the purchase of permits, to add to the overpopulation crisis. Guardians holding breeding permits are required to educate purchasers or adopters about pet care as well as the county's laws regarding animal control and licensing requirements.¹²⁷ This requirement will ease the county's impossible burden of educating every pet guardian within its geographical boundaries and will heighten general awareness about the overpopulation crisis.¹²⁸

The passage of the San Mateo ordinance has sparked national interest and caused a flurry of requests for information from other localities interested in solving their own pet overpopulation crises.¹²⁹ Considering the state of the crisis and the tremendous effort that would be required for individual localities to garner the resources required to institute similar legislation, this author suggests that the effort be undertaken on a national level. The federal government is well-equipped, or certainly better equipped than local governmental entities, to institute the massive amount of information-gathering required to tailor similar legislation. A national standard would also eliminate inconsistencies between geographic localities and prevent subversion of the goals of such legislation by breeders who would simply escape responsibility by moving out of state or county lines. Whether such legislation is attempted by local governments or the federal government, this author recom-

126. San Mateo is not the only county requiring that irresponsible guardians halt their contribution to the pet overpopulation problem. A similar spay/neuter requirement upon the second impound exists in Santa Cruz, California. Baird, *Attitudes Towards Spaying/Neutering* at 9 (cited in note 7).

127. San Mateo, Cal, Code ch 6.2 § 3332.6(a) (1992).

128. Education is an important aspect of the continuing war against pet overpopulation. See notes 87-88, 93-94 and accompanying text.

129. See Progressive Animal Welfare Society, *San Mateo: Where Neutering is Law* in *PAWS News* at 8 (Aug 1991). Kim Sturla, the driving force behind the San Mateo ordinance, describes the national and local response to the ordinance:

Tremendous! There are communities all over examining similar ordinances. I've been in contact with some 60-odd communities which may or may not introduce it. Task forces have been formed across the country, bringing in breeders and vets and humane societies to focus on pet overpopulation. Others are looking at different measures such as state laws requiring shelters to spay or neuter animals, or to collect refundable neutering deposits, before animals are adopted. Differential license fees which charge up to \$250 for unaltered animals—are being considered in some areas. There has been a lot of local media coverage of humane societies and animal control. It's been a wonderful catalyst.

mends several provisions in order to most quickly, effectively, and fairly meet the laudable goals of such legislation.

A. The Purpose of the Legislation Must be Clearly Set Forth

The preamble to the legislation must reiterate the purposes of the legislation in order to bring it clearly within the legislating powers of the governmental entity.

B. Mandatory Spay/Neuter Before Six Months of Age

Because dogs and cats are capable of reproducing at a young age, mandatory spaying or neutering at an early age is necessary. Also, the six-month age limit reaps the health benefits and positive behavioral modifications of early spaying and neutering.¹³⁰

C. Exempt Breeders Who Acquire a Permit

Breeders who wish to continue breeding their animals must have a permit in addition to any license required. The permit number must be displayed when advertising offspring for sale.

The annual fee to acquire the permit, which must be renewed every year, should be high enough to discourage opting for the permit rather than spaying or neutering. However, the fee should not be entirely prohibitive.

The problematic setting of the fee is one factor favoring local legislation rather than national. Undoubtedly, veterinary fees for spaying and neutering vary across the nation so that determining the ideal permit fee will be difficult in seeking to discourage opting for the permit rather than the surgery. Ideally, the permit fee should be 75% to 150% of the average spay/neuter cost in order to deter opting for the permit.

D. Mandatory Spay/Neuter upon Second Impound

Although guardians may choose to purchase a breeding permit, indiscriminate breeding should not be tolerated. Allowing unaltered animals to roam out-of-doors is certain to contribute to the overpopulation crisis. If a particular animal is collected by animal control agencies two times during a reasonable time period (to allow for inadvertent releases of the animal), then the guardian should be required to have the animal spayed or neutered. In lieu

130. See notes 19-31 and accompanying text.

of paying a fine for the first impound, the guardian may choose to have the animal altered. Another alternative is that the fines be waived or reduced if the guardian contributes community service in an animal shelter.

E. Differential Licensing Fees

Differential licensing fees are another means to encourage the altering of one's pet. Responsible guardians should be rewarded by requiring a low fee for the privilege of having their animals. Licensing fees for unaltered animals should be several times that for altered animals in order to encourage spaying and neutering.

Again, the setting of the fees is problematic in a national solution because the fees vary nationwide. Licensing procedures should remain localized in order to effectuate enforcement. Licensing fees for altered animals can also be left to individual local governments, but the national solution would require that licensing fees for unaltered animals be at least triple the local fee for altered animals. The eventual national solution would require a detailed study on licensing fees nationwide in order to determine the formula used to calculate the ideal licensing fee for unaltered animals.

F. Increased Revenues Should Fund Overpopulation Programs

The increased revenues received by the enforcing agency or agencies should be churned back into educational programs, low-cost spay/neuter clinics, or care for abused or neglected animals. The funds can also be used for enforcement of the law.

These provisions suggested are not intended to be regarded as comprehensive. In addition to mandatory spaying or neutering, other efforts to control the companion animal overpopulation crisis should be pursued. Educational programs, low-cost spay/neuter clinics, and legislation for the licensing of cats should be established or continued as the case may be. The overpopulation crisis is a multi-faceted problem and should be approached with a combination of programs. The mandatory spay/neuter legislation would be one facet of the solution.

V. CONCLUSION

This comment has exposed the mass destruction of companion animals occurring daily behind the walls of this country's "humane" shelters. It is clear that man's (and woman's) best friends are unwilling victims of a dark, dirty secret that must be addressed

for several compelling reasons. First, unnecessary killing as a method of population control should not be accepted as humane. Second, a reduction in the number of unwanted companion animals would mean that a substantial sum of taxpayers' money could be better allocated. Third, fewer homeless animals roaming the streets would benefit the public health, welfare, and safety. The legislation proposed in this comment is a reasonable means to achieve these goals.

The legislation would be constitutionally permissible as well, whether enacted on a national or local level. Undoubtedly the greatest power that Congress wields is the power to regulate interstate commerce.¹³¹ The same reasoning that allows the USDA to regulate this nation's puppy mills should apply as well to regulation of all companion animals. Also, the overpopulation of companion animals undoubtedly affects their market price, which brings the legislation within the commerce power.¹³² Because the companion animal overpopulation crisis is a national problem and a national solution is needed, the federal solution must be considered.

If the legislation were to be enacted at a local level,¹³³ the state, county, or town could easily do so. The Tenth Amendment of the Constitution reserves to the states the power to legislate for the health, welfare, safety and morals of the public.¹³⁴ The local governments should address the substantive evils posed by the local cat and dog overpopulation, which results in the senseless death of thousands of animals, the poor allocation of tax dollars, and raises public health concerns. A breeding ban would impact the overpopulation problem, thus causing a corresponding benefit in those areas in which the government has a legitimate concern. Indeed, the legislation embodies purposes similar to the leash laws, licensing and inoculation requirements imposed on pet guardians nationwide by local governments.

On both the federal and state level, it is important to note that dogs and cats, and domesticated animals in general, are regarded by the law as mere property.¹³⁵ Thus, legislation imposing a breed-

131. US Const, Art I, § 8, cl 3.

132. See *Wickard v Filburn*, 317 US 111 (1942).

133. Indeed, several localities have already enacted such legislation. See generally Part III of this comment.

134. US Const, Amend X. See also Henry Mark Holzer, *Constitutional Test for Mandatory Spay and Neuter Legislation*, an address presented at Killing the Crisis, Not the Animals, an International Symposium on Dog and Cat Overpopulation in Washington, D.C. (Sept 20-21, 1991).

135. David S. Favre and Murray Loring, *Animal Law* § 4.1 at 47 (Quorum Books,

ing ban would not impinge on any fundamental rights protected under either the federal or state constitutions. This aspect of the legislation makes it unlikely to be struck down by a court when challenged, as it is sure to be, by the AKC, the pet industry, or other groups who believe they will lose profits as a result.

The legislation is subject to the same flaw as are other animal control measures: the improbability that it would be completely enforceable. Nevertheless, leash laws and licensing requirements have been beneficial in harmonizing human and companion animal relations, and no one could reasonably argue that such measures should have never been enacted. The same is true for the proposed mandatory spay/neuter legislation. The additional funds collected through the measure could increase enforcement of the legislation and perhaps other animal control efforts. The bottom line is that the legislation should not be judged for what it does not or cannot achieve, but rather for what it *does* achieve.

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