

**LEGALIZING TRAP-NEUTER-RETURN: ADVANTAGES AND DISADVANTAGES OF
THREE TYPES OF TNR ORDINANCES**

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A. WHAT IS TRAP-NEUTER-RETURN?

In a Trap-Neuter-Return (TNR) program, free-roaming¹ cats, which usually congregate together in colonies, are humanely trapped, spayed or neutered, vaccinated against rabies where legally required and marked for identification. Trapped cats are then returned to the same place where they were captured.² Following the cats' return, caretakers - also referred to as caregivers - are responsible for providing these cats with regular food, water, shelter and necessary medical attention.

TNR is quickly becoming recognized as the most effective approach to decreasing free-roaming cat populations, thereby easing the heavy burden on animal control agencies. Because free-roaming cats are sterilized in large numbers, TNR reduces the number of kittens born and, over time, reduces the size of a community's free-roaming cat population. This results in a decreased flow of cats and kittens into local shelters, helping to lessen overcrowding. In addition, shelters save costs and staff time because fewer cats need to be housed, euthanized and disposed of afterwards.

B. WHEN IS A TNR ORDINANCE NECESSARY?

Unaltered cats reproduce at a prolific rate. As a result, many municipalities are overwhelmed with ever-growing free-roaming cat populations. Traditional approaches to reducing these populations, like trap-and-euthanize and feeding bans, have largely failed; and so, municipalities nationwide have put TNR programs into effect by enacting TNR ordinances.³ TNR ordinances have been adopted in large cities like Houston, TX,⁴ counties like Marion County, IN,⁵ and smaller towns like Mount Olive, NJ.⁶ TNR ordinances are valuable to

¹ For the purposes of this article, free-roaming cats refer to feral and stray cats. Feral cats are un-owned and not socialized to humans, while stray cats, though un-owned, remain friendly to people.

² It is important cats are returned to their original territory rather than released in any location. If placed in unfamiliar territory, free-roaming cats may try to go back to their established colony and become lost. In addition, releasing cats at a location where they will not necessarily be provided with ongoing care may be considered a form of abandonment.

³ All TNR ordinances cited within this essay may be found on the Neighborhood Cats website, at www.neighborhoodcats.org/RESOURCES_ORDINANCES.

⁴ Houston, Tex., CODE OF ORDINANCES ch. 6, art. I, §§ 6-1, 6-3, 6-22 (2007, 2010).

⁵ Marion County, Ind., REVISED CODE title III, ch. 531, art. II, §§ 531-205, 531-209, 531-210 (2005).

municipalities because they regulate the efforts of caretakers, animal welfare organizations and animal control agencies, thereby creating orderly systems for municipalities to manage their TNR programs.

TNR ordinances are needed when a municipality has other ordinances in effect that create obstacles to TNR efforts. Examples of such ordinances include a requirement that all cats be licensed (licensing laws), a limitation on the number of cats that may be owned by one person or household (pet limit laws), a prohibition of cats being at-large and roaming off the property of their owners (leash laws), or a ban against the feeding of animals outdoors (feeding bans).

Typically, ordinances that impose these types of restrictions will apply to persons who “own, harbor or keep” cats.⁷ Harborers and keepers are often defined as persons who provide food, water, and other sustenance to cats, or otherwise encourage cats to return to their properties.⁸ Though it is usually unintentional, this language often ends up applying to caretakers of feral cat colonies, thereby subjecting them to the ordinance’s requirements unless an exemption is created. For example, the licensing ordinance in Wichita Falls, TX,⁹ requires the licensing of all harbored cats by the persons providing them with food, water or shelter, unless the cats belong to a registered feral cat colony, in which case the licensing requirements do not apply.¹⁰

If a community-wide effort to sterilize free-roaming cats is desired, requiring caretakers to meet the same legal requirements as the owners of pet cats can be counter-productive. Requiring free-roaming cats to be licensed would place an undue financial and administrative burden on citizens already volunteering their time and resources to care for the animals. Caretakers cannot control the size of a feral cat colony when they first undertake TNR and should not be penalized when there are more cats present in the colony than the prescribed limit for pets in a normal household. Further, almost all feral cats are already at-large when efforts to

⁶ Mount Olive, N.J., CODE ch. 106, art. V, §§ 106-28-106-40 (2009).

⁷ See Milford, Del., CODE OF ORDINANCES part II, art. I, § 79-1 (2008) (defining “owner” as a “person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal”); see also *id.* at art. II, § 79-4 (stating that all owned animals are subject to municipality leash laws, but that feral cats that are part of the municipality TNR program are specifically exempted from this requirement).

⁸ See Brevard County, Fla., CODE OF ORDINANCES part II, ch. 14, art. II, § 14-36 (2005) (defining “harborer” as “any person or entity which performs acts of care, shelter, protection, restraint, refuge, food or nourishment in such a manner as to control an animal's activities”).

⁹ Wichita Falls, Tex., CODE OF ORDINANCES part II, ch. 14, art. I, § 14-1 (2009); *Id.* at art. III, div. 4, §§ 14-207-14-213.

¹⁰ *Id.* at art. I, § 14-1; *Id.* at art. III, div. 4, § 14-207.

implement TNR begin, so making colony caretakers responsible for confining them makes little sense if the community wants volunteers to participate in the TNR program.

A feeding bans, as well, could undermine a TNR program as the long-term caretaking of the cats is an essential element of the practice of TNR. For example, Medford, MA,¹¹ bans the feeding of all feral and wild animals; however, the municipality recognized this may hurt TNR efforts and stated in a later section that the feeding ban does not apply to registered feral cat colony caretakers.¹²

There are two ways in which a TNR ordinance can overcome conflicts presented by other ordinances intended to regulate the activities of pet cats and their owners: they may do so by (1) exempting caretakers from requirements imposed on pet owners, as was done in Wichita Falls and Medford, or (2) expressly stating that caretakers are not to be considered owners, harborers or keepers. The Bernalillo County, NM,¹³ ordinance does this by stating, “[a] person or organization managing un-owned cats by trap, neuter and return is not deemed the owner, harborer, keeper, holder or possessor of such cats.”

Even when conflicting laws do not exist, some municipalities may still choose to enact a TNR ordinance. A law expressly authorizing TNR and defining the roles and duties of all parties may be necessary, for example, in communities where the policy of animal control has traditionally been to trap-and-euthanize free-roaming cats. To gain the trust and open cooperation of colony caretakers, who might otherwise fear for the safety of their cats, passage of a TNR ordinance may be essential. There may also be communities that simply prefer, as a matter of local culture, to formally authorize and regulate TNR activities.

It bears mentioning that TNR ordinances are not necessary in all communities. For example, animal welfare groups in New York City have organized a thriving city-wide TNR program without any enabling legislation. Notably, New York City does not have laws in place that would hinder TNR efforts and, in addition, local government agencies, including animal control, have either embraced TNR or at least have not actively opposed it. In communities like New York, the introduction of a TNR ordinance might hinder the functioning and growth of an already successful program by creating political issues where there were none before and by establishing duties and practices in conflict with those which have organically developed. Thus,

¹¹ Medford, Mass., REVISED ORDINANCES part II, ch. 6, art. III, § 6-108 (2007).

¹² *Id.* at § 6-109.

¹³ Bernalillo County, N.M., CODE ch. 6, art. VI, § 6-47 (2008) (effective June 6, 2009).

in municipalities without conflicting ordinances or policies, the advantages and disadvantages of enacting a TNR ordinance should be carefully weighed in deciding whether one is needed for the successful implementation of a community-wide TNR program.

C. TYPES OF TNR ORDINANCES

At the present time, three basic types of TNR ordinances have been enacted in the United States: (1) “sponsor-based,” which require caretakers to register their colonies with a private organization or individual acting as a sponsor of the TNR program, (2) “caretaker-based,” which require caretakers to register their colonies directly with the municipality or its agent, and (3) delegations of authority, which legalize TNR efforts and give a designated government agency the task of promulgating TNR program guidelines. The advantages and disadvantages of each type and the overarching issues that affect all TNR ordinances are discussed below.

i. SPONSOR-BASED ORDINANCES

Sponsor-based ordinances¹⁴ require that each caretaker register the colonies that he or she is caretaking with an eligible animal welfare organization (usually an incorporated nonprofit agency like a humane society or rescue group) or a private citizen appointed as a sponsor by the municipality. Typically, ordinances take one of two approaches in identifying sponsors: either they (1) allow all groups or persons able to meet certain defined requirements to automatically become sponsors by submitting a letter of intent,¹⁵ or (2) require groups or individuals to apply to and be approved by the municipality.¹⁶ Both approaches provide uniform standards of sponsorship, though the latter gives the municipality more discretion in approving sponsors. Allowing for municipal discretion in the approval of sponsors can help prevent a situation of

¹⁴ For examples of sponsor-based ordinances that have been implemented in larger communities, *see* Cook County, Ill., CODE OF ORDINANCES art. IV, §§ 10-95-10-99; *see also* Clark County, Nev., CODE OF ORDINANCES, title 10, ch. 10.06, §§ 10.06.010-10.06.080 (2008).

¹⁵ *See* Madison, Ga., CODE OF ORDINANCES ch. 14, art. XII, § 14-280 (2009) (defining “sponsor” as “any animal humane society that agrees to comply with the requirements of this article for sponsors and provides written notice to the department that it will serve as a sponsor”).

¹⁶ *See* Mount Olive, N.J., CODE ch. 106, art. V, § 106-30 (2009) (stating that all interested sponsors must apply to the Mount Olive Health Department in order to take on the role of sponsorship).

competing or geographically overlapping sponsors, and can provide a means of excluding groups known to have problematic histories.

Clark County, NV,¹⁷ is unique in creating two tiers of sponsorship. There is a “Central Sponsor,” a private citizen appointed by the County who supervises the overall TNR program, and there are regular sponsors which work directly with caretakers and report to the Central Sponsor. This system creates a division of labor with the Central Sponsor focused on administrative duties while the regular sponsors work out in the field. Such a division makes sense in Clark County, a large community with an estimated 350,000 feral cats.

Sponsors serve several purposes. They can help protect the privacy of caretakers and their colonies by acting as the holder of information normally considered confidential, such as caretaker identities and colony locations. A state’s Freedom of Information Act (FOIA) might require public disclosure of such data if it was held by the municipality, but not by a private agency. Note that in many states, a private agency acting as a sponsor must take care to retain its non-governmental status and avoid becoming subject to disclosure of records under the relevant FOIA. For further discussion on this important issue, see the essay, “Impact of Freedom of Information Acts on Trap-Neuter-Return Ordinances,” at www.neighborhoodcats.org/RESOURCES_ORDINANCES.

As discussed further below (*section (C)(i)(b)*), sponsors can also serve an important administrative role by providing caretaker and colony statistics to the municipality.¹⁸ This information is usually provided by sponsors in a general form that does not identify specific individuals or locations. They may provide interested caretakers with the documentation necessary to allow caretakers to receive public and private funding.¹⁹ They may also act as mediators between caretakers and residents with complaints related to the cats,²⁰ and serve as the “go to” agency for animal control when free-roaming cat-related issues arise, such as an eartipped colony cat being turned into a municipal shelter.²¹ Sponsors can also provide TNR training to caretakers.²² Such training may be especially helpful in communities that are

¹⁷ Clark County, Nev., *supra* note 14.

¹⁸ See Mount Olive, N.J., *supra* note 16, at § 106-31(D), (F).

¹⁹ See Cook County, Ill., *supra* note 14, at § 10-97(c)(7).

²⁰ See Hanover Park, Ill., CODE OF ORDINANCES ch. 14, art. VI, § 14-143(c)(2) (2008).

²¹ See *id.* at § 14-143(f)(1).

²² See *id.* at § 14-143(b)(4) (stating that sponsors must provide, at a minimum, “written educational training for all caretakers addressing uniform standards and procedures for colony maintenance”).

unfamiliar with TNR; however, it may be unnecessary to codify an educational requirement if the sponsor already provides this service voluntarily.

a. NAMING SPECIFIC SPONSORS

A small minority of TNR ordinances now in effect designate specific groups by name as sponsors. For example, Mount Olive, NJ,²³ names New Jersey Animal Rights Alliance's Project TNR as one (though not its only) approved sponsor. However, naming of specific groups in an ordinance is not recommended for several reasons. First, if the group's name changes (as has been the case with NJ Animal Rights Alliance, now known as Animal Protection League of NJ), the ordinance will need to be amended and go through the entire legislative process again if the group is to retain its designated status. The same is true if the named group dissolves or is unable to meet the requirements of sponsorship in the future. In addition, in some states, the naming of a specific group in a TNR ordinance could be a factor leading to the group being classified as a government agency under the particular state's FOIA. This classification would mean all the group's TNR-related records would be subject to disclosure upon request of a member of the public, including colony locations and caretaker identities. As this information is usually regarded by the relevant parties as confidential, public disclosure or even its possibility could undermine the municipality's TNR program.

b. SPONSOR DUTIES

Under many sponsor-based ordinances, sponsors are responsible for approving²⁴ and supervising caretakers and registering feral cat colonies. They are also required to keep sterilization and vaccination records provided by caretakers²⁵ and report general information to the municipality, like the number of colonies in an area, the number of sterilized cats in all colonies, and the number of kittens born to colony cats in the past year and their disposition.²⁶

²³ Mount Olive, N.J., *supra* note 16, at § 106-30 (stating that New Jersey Animal Rights Alliance's Project TNR is an approved sponsor and other persons and organizations may apply for the role of sponsorship).

²⁴ Some sponsor-based TNR ordinances give the sponsor a large degree of discretion in deciding whether to approve caretakers, while others require sponsors to approve all caretakers that meet certain standards set forth in the ordinance.

²⁵ See Hanover Park, Ill., *supra* note 20, at § 14-143(c)(3).

²⁶ See Mount Olive, N.J., *supra* note 16, at § 106-31(F).

These reports allow the municipality to determine the success of the TNR program. Sponsors must also help to remedy nuisance or other complaints directed towards their approved caretakers or registered colonies.²⁷ As discussed below (*section (C)(i)(d)*), animal control agencies are required by many ordinances to give sponsors notice of complaints and a reasonable time in which to cure them.²⁸

A minority of municipalities require sponsors to have liability insurance for all activities related to TNR programs. For example, Mount Olive, NJ, states that all sponsors must “[o]btain and maintain liability insurance for all TNR-related activities, name Mt. Olive Township as an additional insured, and agree in writing to hold Mt. Olive Township harmless against liability resulting from the actions or failures to act of sponsors, trappers, and caregivers.”²⁹ While liability insurance is always a worthwhile safeguard, making it a requirement for a sponsor could effectively narrow or eliminate the pool of potential organizations willing to fill that role due to the expense and possible difficulty of obtaining such insurance. This may explain why most TNR ordinances do not require it.

c. CARETAKER DUTIES

Sponsor-based ordinances also list caretaker responsibilities. As an initial requirement, caretakers must submit to a single sponsor for colony registration³⁰ and approval.³¹ Duties are then set forth for the management of the colonies. Universally, caretakers are required to trap colony cats and have them sterilized, vaccinated for rabies (where appropriate) and marked for identification (usually with an eartip).³² As discussed below (*section (D)(i)*), caretakers are usually required to make reasonable efforts to trap all cats in a managed colony.

While a sponsor may have programs available to assist caretakers, most ordinances place the responsibility for performing the trapping and securing veterinary services solely on caretakers. The majority of ordinances do not address who is responsible for veterinary bills; it is simply assumed the caretaker will be primarily responsible. A minority of ordinances do

²⁷ See Hanover Park, Ill., *supra* note 20, at § 14-143(c)(2).

²⁸ See Mount Olive, N.J., CODE ch. 106, art. V, §§ 106-37 (2009).

²⁹ *Id.* at § 106-31(A).

³⁰ See *id.* at § 106-32(A).

³¹ As stated in note 24, sponsor approval is not required in all ordinances.

³² See Mount Olive, N.J., *supra* note 28, at § 106-32.

address the issue, such as Las Vegas, NV,³³ which states that the caretaker or animal welfare group conducting the trapping shall be responsible for all ensuing costs. Others, such as Hamilton County, IN,³⁴ state that municipal funds may be used to supplement TNR costs by providing low-cost sterilization and vaccination services. Still others, such as Charleston, SC,³⁵ state the TNR program shall be funded in full, initially by the American Society for the Prevention of Cruelty to Animals (ASPCA) and then by other agencies within the municipality.

Caretakers are also responsible for providing colony cats with ongoing care by providing or arranging for the provision of regular food, water, necessary veterinary care and, if feasible, shelter. Some ordinances also require caretakers to make reasonable efforts to remove kittens and friendly adult cats for adoption.³⁶ The “reasonable efforts” qualification is important because it is not always possible to secure foster or adoptive homes and caretakers should not be placed in violation of the ordinance if this is the situation.

In addition, caretakers are required to provide sponsors with copies of sterilization and vaccination records, as well as colony status updates on factors outlined in the ordinance such as the number of cats in the colony, the number of cats sterilized and vaccinated in the past year, the number of kittens born to colony cats in the past year and their disposition, and the number of cats that have died or otherwise ceased to be part of the colony in the past year.³⁷ When sponsors cumulate this information for all registered colonies, the data allows the sponsor and municipality to measure the progress of the TNR program.

d. ANIMAL CONTROL AGENCY DUTIES

In most sponsor-based ordinances, limits placed on the local animal control agency are key incentives for caretakers to register their colonies and participate in the TNR program. If a complaint related to the conduct of a caretaker or a cat in a registered colony is received by the municipality, the animal control agency is required to provide notice of the complaint to the

³³ Las Vegas, Nev., MUNICIPAL CODE title 7, ch. 7.20, § 7.20.035(A) (1993).

³⁴ Hamilton County, Ind., CODE OF ORDINANCES title 15, art. 2.1, ch. 1, § 15-2.1-1-9 (2006).

³⁵ Charleston, S.C., CODE OF ORDINANCES ch. 5, art. III, § 5-61(a)(4)-(5) (2009).

³⁶ See Hanover Park, Ill., CODE OF ORDINANCES ch. 14, art. VI, § 14-143(d)(11) (2008).

³⁷ See *id.* at § 14-143(d)(6)(12).

sponsor and caretaker as well as a specified period of time in which to cure it.³⁸ During this “grace period,” the animal control agency is barred from taking action against the cat or colony based on the complaint. The time to remedy generally ranges from 30³⁹ to 60 days.⁴⁰

The animal control agency may also be required to contact sponsors when an eartipped or otherwise marked colony cat is trapped or intaked.⁴¹ A specified period of time, usually in the range of three⁴² to five business days, is then provided for the sponsor or applicable caretaker to arrange for the retrieval of the cat. Requiring a holding period for eartipped cats is especially important because many municipalities allow shelters to euthanize cats deemed to be feral immediately upon entry.

The animal control agency may also be required to give sponsors and caretakers that are not in compliance with the ordinance notice of their deficiencies and time to correct them.⁴³ Most ordinances provide 30 days for non-compliant sponsors and caretakers to meet the terms of the ordinance.⁴⁴

Sponsor-based ordinances may be difficult or impossible to implement in communities that do not have animal welfare groups or persons willing or able to take on the role of sponsorship. For these communities, caretaker-based ordinances may be more workable. However, because of the many advantages listed above, a sponsor-based ordinance is preferable when animal welfare groups or persons are available to act as sponsors.

ii. CARETAKER-BASED ORDINANCES

Caretaker-based ordinances⁴⁵ establish duties for the management of colonies by caretakers similar to those included in sponsor-based ordinances. Because sponsors are not

³⁸ Madison, Ga., CODE OF ORDINANCES ch. 14, art. XII, § 14-283(b)(1)-(2) (2009) (stating that an Animal Control Officer or police officer must provide written notice of any complaints regarding registered colonies to the sponsor and that the sponsor has thirty days to cure this nuisance).

³⁹ *See id.*

⁴⁰ *See* Mount Olive, N.J., CODE ch. 106, art. V, § 106-37 (2009).

⁴¹ *See* Clark County, Nev., CODE OF ORDINANCES, title 10, ch. 10.06, §§ 10.06.050 (2008).

⁴² *See* Hanover Park, Ill., *supra* note 36, at § 14-143(f)(2).

⁴³ *See* Cook County, Ill., CODE OF ORDINANCES art. IV, § 10-98(c)-(d).

⁴⁴ *See* Clark County, Nev., *supra* note 41, at § 10.06.060(d); *see also* Madison, Ga., *supra* note 38, at § 14-283(d); *see also* Hanover Park, Ill., *supra* note 36, at § 14-144(d).

⁴⁵ For an example of a caretaker-based ordinance, *see* Greer, S.C., CITY CODE §4-117(2) (requiring caretakers to register with Animal Care and Control).

included in caretaker-based ordinances, caretakers are required to register their colonies in one of two ways: they must either (1) register directly with the municipality or its agent (usually an animal control agency),⁴⁶ or (2) apply to the municipality or its agent for a colony permit.⁴⁷

In light of the availability of municipally-held records to public disclosure, ordinances may require registering caretakers to provide only their contact information and general information about the colony, such as size rather than location. While requiring limited information may help to protect caretaker privacy, it may also impede implementation of provisions intended to protect the caretaker's cats. For example, without data on caretaker identities and colony locations, it may be very difficult for the municipality to return captured or intaked eartipped cats to their colonies, or to determine the caretaker of a colony when a nuisance complaint is received about a particular cat or cats.⁴⁸ For this reason, it may be preferable for caretakers to provide their identities and colony locations during the registration process despite public disclosure concerns.

iii. ORDINANCES DELEGATING AUTHORITY

A third type of TNR ordinance gives the responsibility of regulating and supervising community TNR practices to a specified municipal agency.⁴⁹ Rather than delineating caretaker or animal control agency responsibilities, an ordinance delegating authority generally approves the practice of TNR in the community and authorizes a municipal agency to promulgate guidelines or rules. For example, Baltimore, MD,⁵⁰ authorized TNR and delegated rule-making authority to its Department of Health.

This type of ordinance may be passed with less debate because it does not contain much disputable detail besides its identification of the regulatory municipal agency. However, it also

⁴⁶ *Id.*

⁴⁷ For an example of a permit-based ordinance, *see* Salt Lake County, Utah, CODE OF ORDINANCES §8.03.140 (2000).

⁴⁸ *See* Denton, Tex., CODE OF ORDINANCES part II, subpart A, ch. 6, art. III, § 6-45 (2008) (stating that all cats trapped within city limits will be scanned for an electronic animal identification device (EAID) and, if caretaker can be identified, he/she must be contacted by the animal services department).

⁴⁹ For an example of an ordinance delegating authority, *see* Charleston County, S.C., CODE OF ORDINANCES part II, ch. 3, § 3-16 (2009) (stating that free-roaming cats shall be allowed if they meet requirements delineated in the ordinance and that the regulations of the TNR program shall be determined by the Charleston Animal Shelter in collaboration with Humane Net Collaboration).

⁵⁰ Baltimore, Md., REVISED CODE title 10, sections 1-3, §§ 10-101, 10-104, 10-301, 10-308, 10-402 (2007).

does not clearly outline caretaker and animal control agency roles and responsibilities. Once in effect, the regulatory agency may or may not set forth optimal guidelines. This type of ordinance has the best chance of success in smaller communities that already have successful TNR programs in place or that have animal control agencies willing to work with animal welfare organizations and caretakers to draft the required rules.

D. THE GOAL OF CARETAKER PARTICIPATION: AVOIDING RESTRICTIONS AND BURDENSOME STANDARDS

The participation of colony caretakers is essential if a community TNR program hopes to sterilize enough cats to make a significant impact on the size of the local free-roaming cat population. To promote participation, TNR ordinances should rely on incentives, such as return of eartipped cats to colonies or grace periods in which to cure nuisance complaints, and should set forth standards of conduct which are reasonable for caretakers to meet. Ordinances which are overly burdensome in their expectations of caretakers or impose penalties for lack of compliance, such as fines or impoundment of the cats,⁵¹ risk deterring caretaker participation.

A small number of ordinances, such as Madison, GA,⁵² make it mandatory for caretakers to obtain the landowner's written permission before registering a colony located on that person's property. Requiring permission be put in writing may create a considerable obstacle to colony management given the practical difficulties of securing written as opposed to verbal or implied consent. Trespassing laws already preclude a caretaker from entering upon another's property without permission, so it is unnecessary to include such a provision in a TNR ordinance. Requiring caretakers to gain written approval from neighbors before registering colonies creates a similar obstacle which will lessen caretaker participation and lower the number of cats sterilized.⁵³

The implementation of large registration fees may also deter caretaker participation and should be avoided. Caretakers usually already shoulder the financial burden of paying for

⁵¹ See Scotts Valley, Cal., MUNICIPAL CODE title 6, ch. 6.10, §§ 6.10.040, 6.10.070 (1994).

⁵² Madison, Ga., CODE OF ORDINANCES ch. 14, art. XII, § 14-282(d)(9) (2009).

⁵³ See Wichita Falls, Tex., CODE OF ORDINANCES part II, ch. 14, art. III, div. 4, § 14-209(a) (2009); see also Newport News, Va., CODE OF ORDINANCES ch. 6, art. II, div. 4, § 6-53(d)(1); see also West Point, Va., CODE OF ORDINANCES ch. 10, § 10-10(a)(2) (2006).

veterinary care and food and another significant cost could discourage them from coming forward and registering their colonies. Caretakers may also be wary of registering their colonies if they are required to provide overly frequent status updates to their sponsor or municipality.⁵⁴ In most instances, annual reporting is sufficient for gathering enough data to measure the success of a TNR program. Requiring updates more frequently only creates unnecessary work for caretakers.

Restricting the number of free-roaming cats that may be cared for in any given colony or by any one caretaker will also discourage colony registration because caretakers will not want to have any “excess” cats removed or euthanized. For example, Isle of Wight County, VA,⁵⁵ restricts the number of cats allowed per colony to twenty, but also allows exceptions on a case-by-case basis, to be decided by its Animal Control Officer. This may have been included to prevent hoarding situations. However, state animal cruelty laws already make hoarding illegal, and so it is unnecessary for a TNR ordinance to set a legal limit on the number of cats that may be managed. A better approach is for the ordinance to set the standard of care that all cats in registered colonies should receive, such as provision of adequate food, water, veterinary attention and, if possible, shelter. This will allow caretakers to care for as many cats as they are willing and able to support and safeguard against the development of hoarding and other unhealthy situations.

Similarly, Omaha, NE,⁵⁶ allows up to twenty cats in residential colonies, so long as the number of cats is reduced to ten or fewer within one year from the date of registration. TNR programs are appealing to caretakers because free-roaming cat populations are humanely and naturally decreased. By contrast, caretakers of larger colonies that are registered in Omaha and that want to be in compliance with the ordinance may have to relocate colony cats or surrender some to local shelters for likely euthanasia. A requirement like this will only deter caretaker registration and promote false reporting.

As a practical matter, trapping 100% of the cats in a colony can be a very difficult process. Recognizing this and not wanting to make the duty of trapping overly burdensome,

⁵⁴ See Waukegan, Ill., CODE OF ORDINANCES ch. 4, art. II, div. 1, § 4-49(a)(4) (2007); see also Zion, Ill., CODE ch. 6, art. II, div. 1, § 6-44(a)(4) (2008).

⁵⁵ Isle of Wight County, Va., THE CODE ch. 3, art. IV, § 3-27(d)(10) (2008).

⁵⁶ Omaha, Neb., Municipal Code art. VII, § 6-161(6)(a) (2007).

some ordinances qualify the duty to trap colony cats by requiring “reasonable efforts” to do so.⁵⁷ There are several variations of the “reasonable efforts” standard in the ordinances, such as “taking all appropriate and available steps”⁵⁸ to trap colony cats or “taking steps that are likely to result in” their trapping, vaccination, and sterilization.⁵⁹ In contrast, other ordinances do require that all colony cats are trapped without exception.⁶⁰ Setting such a high standard may have the unintended result of discouraging caretakers from submitting to the ordinance because they fear they will be unable to meet such a rigorous requirement. Because the participation of as many caretakers as possible is crucial for the success of a community-wide TNR program, an absolute standard that all cats be trapped without exception is inadvisable. More absolute language may be appropriate, however, in requiring that all cats that are trapped then be sterilized, vaccinated, eartipped, and provided with necessary medical care.

It must always be kept in mind when considering these and other restrictions that the goal of a TNR ordinance is to promote caretaker participation, not to discourage it with onerous restrictions.

E. CONCLUSION

Free-roaming cats are abundant across the United States. As traditional approaches to decreasing free-roaming cat populations have largely failed, TNR has come to be recognized as the most effective approach to managing their numbers. While not necessary for every community, TNR ordinances may be needed in municipalities where other ordinances impede the practice of TNR, where animal control agencies have historically practiced trap-and-kill and thereby created distrust in caretakers, and where there is a cultural preference for legal recognition and regulation of a TNR program.

Many municipalities in the United States currently have TNR ordinances in effect. These laws can be grouped as sponsor-based, caretaker-based, or a delegation of regulatory authority to a municipal agency. Sponsor-based ordinances have several advantages over the other two

⁵⁷ See Brisbane, Cal., MUNICIPAL CODE title 6, § 6.12.020(D)(3) (2005).

⁵⁸ See Clark County, Nev., CODE OF ORDINANCES, title 10, ch. 10.06, §§ 10.06.030(a)(2) (2008).

⁵⁹ See Tabernacle, N.J., MUNICIPAL CODE §3.4(b)-(c) (2005).

⁶⁰ For examples of ordinances requiring all cats in registered colonies to be trapped, see Wichita Falls, Tex., *supra* note 53, at § 14-210; see also Lake County, Cal., MUNICIPAL CODE ch. 4, art I, § 4-15.1(b) (2004).

types, including protection of caretaker privacy and administration of the program by a private agency with expertise in animal welfare. Because of these advantages, a sponsor-based ordinance is recommended for all municipalities that desire to adopt a TNR ordinance and have animal welfare organizations able and willing to serve as sponsors. For communities that wish to enact an ordinance but do not have sponsors available, a caretaker-based ordinance is recommended.

To be most effective, a TNR ordinance should not include overly burdensome restrictions or standards such as requiring that all cats within registered colonies be trapped or limiting the number of cats that may live within a colony. The goal of a TNR ordinance is a successful TNR program and this will result only by encouraging caretaker participation and registration, and not from overly burdensome requirements and restrictions that will deter caretaker involvement.