



**NEW YORK
CITY BAR**

COMMITTEE ON ANIMAL LAW

CHRISTINE L. MOTT
CHAIR
Phone: (917) 364-5093
christine.mott.esq@gmail.com

November 26, 2013

LORI A. BARRETT
SECRETARY
Phone: (347) 770-2473
barrettlori@hotmail.com

The Honorable Bill de Blasio
Mayor-elect of the City of New York
253 Broadway
New York, NY 10007

Dear Mayor-elect de Blasio,

The New York City Bar Association's Committee on Animal Law (the "Committee") is grateful for this opportunity to offer its views regarding important policy decisions facing the incoming administration that will have a substantial effect on the lives of New York City's residents and animals.

The Committee regularly addresses legal, regulatory, and policy issues on a local, state and national level affecting non-human animals, both wild and domestic. Numerous untapped opportunities exist to improve New York City's policies regarding animals that have the potential to yield enormous benefits for the City. Many of these opportunities may be realized merely through an application of an attitude from City government that focuses attention on the enormous potential of public/private partnership in this area, recognition of the importance of animals to so many residents of this City and a caring attitude to the animals themselves. This report seeks to address a few of the areas in which the City can have a significant impact on the welfare of animals: (1) Horse Drawn Carriages, (2) Humane Law Enforcement, (3) Fire Safety and Sprinklers in NYC Pet Stores, (4) Wild Animals in Entertainment, (5) Sheltering of Domestic Violence Victims with Pets, (6) Spay and Neuter of NYC Dogs and Cats, (7) Humane Education in NYC Schools, and (8) Non-lethal Bird Hazard Control.

HORSE DRAWN CARRIAGES

Carriage horses are the most visible demonstration to the world of New York City's attitude toward animals. Unfortunately, the message that is sent is not a positive one for our City. Presently, the City's carriage horses may be worked nine hours per day, seven days per week, in temperatures ranging from a low of 18 degrees to a high of 90 degrees Fahrenheit (such temperatures do not take wind chill factors or humidity into account).¹ After a long workday,

¹ N.Y.C. Administrative Code Section 17-330(o).

carriage horses are returned to stable stalls that are half the size recommended by the state.² In addition, there is no provision to allow carriage horses an opportunity to graze or exercise unfettered by a harness.³

Although the Committee has endorsed bills seeking to improve the living conditions for carriage horses,⁴ we have consistently taken the position that the only true humane solution to the carriage horse issue is to ban the industry in its entirety. Our recommendation is predicated upon the severe safety concerns posed to the public at large by carriage horses, as well as concern for the welfare of the carriage horses. Repeatedly and increasingly, incidents occur in which horses, spooked by traffic, bolt through the City's congested streets putting passengers, drivers and pedestrians, as well as the horses themselves, at risk of serious injury or even death. As a recent example, in September 2013 a startled carriage horse flipped over a carriage in Columbus Circle after his leg buckled and became tangled in a harness. The horse suffered injuries after being pinned under the carriage, which was destroyed in the incident; damage was also caused to a nearby car.⁵ The driver of the carriage acknowledged that as a result of the incident the horse "could have run into traffic, caused accidents and hit people."⁶ In another accident last year, a frightened carriage horse walking in traffic near Columbus Circle ran away, dumping the driver and two passengers in the street, hitting two cars, and running for blocks until caught.⁷

We appreciate your promise to "end the inhumane treatment of carriage horses" and your support for "an immediate ban on the abuse of carriage horses."⁸ We support the elimination of

² Compare the N.Y.C. Administrative Code Section 17-330(c) (permitting stalls to be as small as 64 square feet) with the N.Y.S. Department of Agriculture and Markets Horse Health Assurance Program (NYSHHAP) Standards and Certification Manual (recommending stalls to be 144 square feet for mid-sized horses, 196 square feet for draft horses).

³ N.Y.C. Administrative Code Section 17-330.

⁴ For example, the Committee supports a shorter work day for the horses, a maximum allowable work period within a week, a redefinition of permissible working conditions to take temperature/humidity index and wind/chill factors into account, weight restrictions on carriage loads, a prohibition on the sale of any carriage horse for slaughter, and a requirement that stables comply with the New York State Department of Agriculture & Markets Horse Health Assurance Guidelines.

⁵ See Edgar Sandoval, Joe Kemp, & Bill Hutchinson, *Horse flips out in midtown Manhattan traffic, carriage breaks, animal gets trapped underneath*, N.Y. Daily News, Sept. 26, 2013, available at <http://www.nydailynews.com/new-york/carriage-horse-flips-midtown-traffic-article-1.1468477> (last visited Nov. 8, 2013).

⁶ *Id.* (in retrospect of the accident, the driver added that "I'm very thankful I didn't get killed.").

⁷ See Vivian Yee, *Draft Horse that Bolted May End Up on Easy Street*, N.Y. Times, Aug. 17, 2012, available at http://www.nytimes.com/2012/08/18/nyregion/carriage-horse-that-bolted-may-end-up-on-easy-street.html?_r=0 (last visited Nov. 8, 2013).

⁸ See Bill de Blasio's Vision For a More Humane City, available at <http://www.billdeblasio.com/issues/humane-city> (last visited Nov. 8, 2013).

the use of carriage horses in New York City and urge you to take whatever action is necessary to accomplish this goal.

The Committee believes that City Council Intro. 86A, which calls for the phase-out of horse drawn carriages in New York City, and their replacement with 21st Century fully electric vintage replica cars called “Horseless Carriages,” presents a viable alternative to the use of horse-drawn carriages that will avoid the safety and quality of life issues discussed above. These electric vintage replica cars will provide a tourist attraction, offer jobs to workers currently in the carriage horse industry (with the potential for higher wages), promote environmentally friendly alternatives to gasoline fueled transportation, and maintain the historic and romantic feel of tours around Central Park. Additionally, by removing horse-drawn carriages from the already congested Midtown streets, such a proposal would greatly support anti-congestion efforts. The elimination of the carriage horse industry in favor of the “Horseless Carriage” will spotlight New York City as a leader in cruelty-free urban ecotourism. In the interim, the Committee continues to urge the City to endorse measures which will serve to improve the current living and working conditions of the carriage horses.

HUMANE LAW ENFORCEMENT

ASPCA – NYPD Humane Law Enforcement Partnership

On September 1, 2013, the New York City Police Department (NYPD) and the ASPCA entered into a partnership to transition primary enforcement of animal cruelty laws in New York City to the NYPD.⁹ While the ASPCA has been enforcing the state’s animal cruelty laws in the five boroughs since the organization was founded in 1866, under the laws of the State of New York, the NYPD has always had responsibility for the enforcement of the animal cruelty laws in the City.¹⁰ This transition is presented by the ASPCA and the NYPD as the best way to expand protections for New York City’s animals by leveraging the strengths and expertise of both organizations. Additionally, one of the stated goals of the partnership is to elevate the importance of preventing animal cruelty—particularly in light of the well-established link between animal cruelty and interpersonal violence.

Once the transition is completed in early 2014, the NYPD is expected to take the lead role in responding to all animal cruelty complaints in the five boroughs. The ASPCA is to continue to supplement the already extensive investigative training NYPD receives with training programs that will aid in the effective handling of animal cruelty complaints in the City. Additionally the ASPCA will provide support to the NYPD through a dedicated hotline and will

⁹ This partnership officially launched on September 1, 2013 beginning in the Bronx. The program will be in place citywide effective early 2014. In the interim, ASPCA agents will continue to respond to animal cruelty complaints that originate in Brooklyn, Manhattan, Queens and Staten Island.

¹⁰ N.Y. AGRIC. & MKTS. LAW § 371 (“A constable or police officer *must*, and any agent or officer of any duly incorporated society for the prevention of cruelty to animals *may* issue an appearance ticket . . . summon or arrest . . . any person offending against any of the provisions of article twenty-six of the agriculture and markets law.”) (emphasis provided).

Hon. Bill de Blasio
Mayor-elect of the City of New York

expand its direct care and forensics work to assist law enforcement officials by providing critical support for animal cruelty victims, including forensic evaluations, medical treatment, behavior assessments, housing and placement, as well as backup legal support.

The Committee urges you to ensure that the future NYPD Commissioner takes an active leadership role in overseeing this important partnership and to ensure zealous enforcement of the animal cruelty laws in this City.

New York State Attorney General Animal Protection Initiative

In May 2013, New York State Attorney General Eric Schneiderman unveiled an Animal Protection Initiative to focus on enforcement of New York's animal cruelty laws, particularly with respect to dog fighting, which remains a serious problem for New York City¹¹ and has been acknowledged by the Attorney General's office to be linked to other violent crimes, including gang activity. Additionally the Initiative seeks to increase enforcement with respect to abuses at large-scale dog breeding facilities or "puppy mills," as well as related consumer protection laws such as the Pet Lemon laws.¹² The ASPCA has announced that it will be collaborating with the Office of the Attorney General on this Initiative by providing training and support for investigating and prosecuting large-scale animal cruelty and fighting cases in New York State.

The Committee urges you to encourage the District Attorneys in the five boroughs to work closely with the NYS Attorney General's office to investigate and prosecute dog fighting and other large-scale animal cruelty crimes. Additionally we recommend that you seek to establish a regular reporting protocol between the NYPD Commissioner, the Attorney General's office and the District Attorneys in the five boroughs to ensure that animal crimes are being investigated and prosecuted.

FIRE SAFETY AND SPRINKLERS IN NYC PET STORES

Fires in pet stores have tragic consequences both for the animals and the first responders. The risk of injury and death to people and animals is greatly exacerbated where, as is the case in New York, there is no requirement that pet stores maintain fire mitigation systems like water sprinklers or automated alarms. For example, in 2010 firefighters risked their lives to save animals in a Queens pet store fire, which resulted in injuries to several firefighters and the deaths

¹¹ See AC&C: *Pit Bulls Rescued From Brooklyn Dog Fighting Operation Ready For Adoption*, CBS New York, July 23, 2013, available at <http://newyork.cbslocal.com/2013/07/23/acc-pit-bulls-rescued-from-brooklyn-dog-fighting-operation-ready-for-adoption/> (last visited Nov. 7, 2013); Brett Smiley, *Police Seize 47 Dogs Involved in Alleged Basement Fighting Ring in Bronx*, New York Magazine, June 21, 2012, available at <http://nymag.com/daily/intelligencer/2012/06/police-seize-47-dogs-bronx-fighting-ring.html> (last visited Nov. 7, 2013).

¹² See N.Y. GEN. BUS. LAW § 753 (requiring pet dealers to guarantee the good health of an animal sold to consumers within the state). It is reported that a large percentage of New York City pet stores are selling dogs from puppy mills. See Brett Smiley, *New York City Pet Stores Stocked with Dogs from Puppy Mills*, New York Magazine, Nov. 10, 2011, available at <http://nymag.com/daily/intelligencer/2011/11/ny-pet-stores-stocked-with-puppy-mill-dogs.html> (last visited Nov. 7, 2013).

of a number of animals. More than 1,000 animals were killed in a pet store fire on Long Island in 2004. Two years earlier in 2002, more than 200 animals died in a pet store fire in Manhattan. Confined animals have no means to escape a fire, which renders fire safety standards critical to their well-being. Additionally, the lack of fire mitigation requirements, which might otherwise extinguish or control fires, creates more dangerous situations for first responders arriving on the scene to assist these animals as well as the employees, customers and other members of the public who may be in proximity to the fire.

This Committee recommended the passage of bills sponsored by both the Assembly and Senate that would have imposed certain fire safety measures, such as fire suppression sprinkler systems and automatic dialing services, at pet housing facilities.¹³ Passage of this legislation would have remedied a material omission in Article 26-A of the Agriculture and Markets Law entitled “Care of Animals by Pet Dealers” which requires licensed pet dealers in New York to comply with minimum standards of care for all animals in their possession, including facilities for housing the animals. These housing standards require specific lighting, flooring, ventilation, and temperature controls sufficient to keep the animals in good health, but make no mention of fire safety.¹⁴ Other states have already enacted similar legislation requiring pet dealers to maintain either (a) a fire system connected to a central reporting station that alerts the local fire department in case of fire or (b) a fire suppression sprinkler system.¹⁵

This Committee continues its support of legislation that would require the implementation of fire hazard safety standards at pet housing facilities and encourages the City to do the same.

WILD ANIMALS IN ENTERTAINMENT

The use of wild animals in entertainment performances such as circuses, carnivals, parades or other exhibitions in which animals are required to perform tricks or participate for the amusement of an audience, is inherently cruel, abusive, and detrimental to the animals’ physical and psychological health and welfare and presents a serious risk to the public’s health and safety.

¹³ See A.972, 236th Session (N.Y. 2013); A.311/S.558, 230th Session (N.Y. 2007), A.312/S.559, 230th Session (N.Y. 2007). The Committee recommended modifications to the proposed legislation, specifically that it be expanded to cover all animals housed by pet stores, not just dogs and cats, and that it be amended to permit municipalities to enact local laws or ordinances imposing higher or more restrictive standards with respect to fire safety measures in pet housing facilities.

¹⁴ When the Legislature enacted Article 26-A, it clearly intended to provide for the safety of the confined animals, and fire safety standards must be considered at least as important to the animals’ safety as other enumerated protections. Article 26-A was recently amended to further raise the standards of care for dogs and cats by pet dealers and commercial breeding facilities with respect to the animals’ exercise and veterinary care. See N.Y. AGRIC. & MKTS. LAW § 401(1)(b)(3).

¹⁵ See, e.g., CAL. HEALTH & SAFETY CODE § 122155.

In forcing these animals to perform such unnatural tricks as headstands¹⁶ and jumping through hoops of fire, exhibitors frequently use extreme physical coercion resulting in trauma, physical injury and in extreme cases, death.¹⁷ There are also numerous accounts of elephants being hit by circus employees on sensitive parts of their bodies with baseball bats, electric prods, and pitchforks and being beaten on the face with sharp metal hooked rods known as bullhooks.¹⁸ In addition to being victims of brutal training tactics, records show that many circus animals spend eleven months out of the year traveling.¹⁹ During such time, these animals, including large animals such as elephants, may be confined to train boxcars for periods over 24 hours²⁰ causing profound psychological harm.²¹ The traveling conditions of some trips are so extreme that there are reported cases of circus animals dying in transit from heat prostration and dehydration.²² It has been further documented that animals subjected to coercive training techniques, stressful travel conditions, and long periods of confinement are prone to serious health problems.²³ Throughout the country, many circuses—including nationally recognized circuses that regularly perform in New York City—have been cited numerous times by the USDA for violation of the animal welfare and public safety provisions of the Animal Welfare Act, including for failing to

¹⁶ See Deborah Robinson, *Baby Elephants' Circus Misery*, In Defense of Animals, May 3, 2013, available at <http://www.idausa.org/baby-elephants-circus-misery/> (including photographs and video showing baby elephants being tied up with rope and forcibly stretched and beaten by several men to make them perform such tricks as headstands) (last visited Nov. 7, 2013).

¹⁷ In 2004, an eight-month-old circus elephant was euthanized after a training session in which he fractured his back legs after falling off a platform used for a circus trick. See, Marc Kaufman, *USDA Investigates Death of Circus Lion*, Washington Post, Aug. 8, 2004, A3, available at <http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html> (last visited Nov. 7, 2013).

¹⁸ See, e.g., Deborah Nelson, *The Cruellest Show on Earth*, Mother Jones, 48-57, Nov./Dec. 2011, available at <http://motherjones.com/environment/2011/10/ringling-bros-elephant-abuse> (last visited Nov. 7, 2013). The City of Los Angeles enacted a ban on the use of bullhooks on circus elephants in October 2013. *LA City Council Bans Use of Bullhooks On Circus Elephants*, CBS Los Angeles, Oct. 23, 2013, available at <http://losangeles.cbslocal.com/2013/10/23/la-city-council-to-debate-use-of-elephant-hooks-at-circuses/> (last visited Nov. 7, 2013).

¹⁹ Born Free USA, *Ten Fast Facts About Animals in the Circus*, available at <http://www.bornfreeusa.org/facts.php?more=1&p=431> (last visited Nov. 7, 2013).

²⁰ See e.g., Michael Smith to Dr. Garland regarding a 7/12/04 Ringling Brothers train arrival (7/21/04) (documenting a 36 hour train ride), available at <http://c206728.r28.cfl.rackcdn.com/Plaintiffs-Will-Call-Exhibit-48.pdf> (last visited Nov. 7, 2013).

²¹ G.A. Bradshaw, Animals and Society Institute, *Elephants in Circuses: Analysis of Practice, Policy, and Future*, 14, 2007, available at http://www.kerulos.org/projects/elephant_ptsd_assets/Bradshaw_ASI-Elephant_Policy-2007.pdf (last visited Nov. 7, 2013).

²² See, Marc Kaufman, *supra* (reporting the death of a lion while traveling in a boxcar); Donna Horowitz, *Elephant Death has Marin Wary of Fall Circus*, The Examiner, Aug. 8, 1997, available at http://articles.sfgate.com/1997-08/news/28576686_1 (last visited Nov. 7, 2013) (reporting the death of an elephant from heat prostration in a trailer).

²³ *Supra* note 21.

Hon. Bill de Blasio
Mayor-elect of the City of New York

provide adequate veterinary care, causing animals discomfort, failing to provide appropriate enclosures, and failing to remove excrement from enclosures to prevent animals from contamination.²⁴ These violations are especially troubling given that many of the wild animals injured and neglected in circuses are endangered or threatened species.²⁵

The safety of both the general public and the animal handlers is also put at risk every time a wild animal is used in entertainment. Reports from across the country document escapes and attacks by circus animals that have caused human fatalities and injuries. In New York City, for example, a 450-pound tiger escaped from a circus while being transferred from one cage to another which resulted in injuries to and a lawsuit by drivers who encountered the tiger.²⁶

The Animal Welfare Act (AWA),²⁷ the City's existing circus-permit requirement, and Article 26 of the N.Y. Agriculture & Markets Law²⁸ have proven ineffective in preventing or improving the common practices of mistreatment, neglect and extreme cruelty in the animal entertainment industry and have similarly failed to adequately protect the public health and safety. Accordingly, the Committee respectfully submits that the only way to adequately protect wild animals used in entertainment, as well as the public, is through a total ban on the use of wild

²⁴ See Miguel Llanos, *Ringling Circus Paying Big Fine Over Animal Case*, NBC News, Nov. 28, 2011, at <http://usnews.nbcnews.com/news/2011/11/28/9072340-ringling-circus-paying-big-fine-over-animal-case?lite> (last visited Nov. 13, 2013). Compilations of AWA violations by various circus exhibitors available generally at *Citations and Other Problems*, People for the Ethical Treatment of Animals, available at <http://www.peta.org/issues/animals-in-entertainment/circuses-USDA-citations-problems.aspx> (last visited Nov. 13, 2013).

²⁵ For example, the Asian Elephant, commonly used in circus performances, is listed as Endangered under the Endangered Species Act. See Nelson, *supra* note 18.

²⁶ Janon Fisher, *Tiger, Briefly on the Loose, Causes Collision*, N.Y. Times, Aug. 1, 2004, available at <http://www.nytimes.com/2004/08/01/nyregion/tiger-briefly-on-the-loose-causes-collision.html>; Jen Chung, *Escaped Circus Tiger Lawsuit Settlement*, Gothamist.com, Jan. 7, 2009, available at http://gothamist.com/2009/01/07/escaped_circus_tiger_lawsuit_settle.php (last visited Nov. 7, 2013).

²⁷ The AWA requires that minimum standards be provided for the care, treatment, transportation, housing, handling, purchase and sale of certain warm-blooded animals used for research, exhibition and commerce. 7 U.S.C. Sections 2131 *et seq.* The de minimis nature of these standards as well as the inconsistent enforcement of the law have proven grossly inadequate to insure the humane treatment of the covered animals. See, e.g., Audit Report by the USDA Office of the Inspector General, Controls Over APHIS Licensing of Animal Exhibitors, 33601-10-Ch at 2, June 2010, at <http://www.usda.gov/oig/webdocs/33601-10-CH.pdf> (last visited Nov. 13, 2013) (noting the inability of USDA inspectors to “perform timely reinspections to ensure that serious noncompliant items that were identified in previous inspections had been resolved.”).

²⁸ 24 RCNY Health Code Reg. Section 161.01. New York City requires a permit only for circuses not licensed under the AWA. The City's regulation is focused on protecting humans from exposure to dangerous animals and not on the well-being of animals in circuses. While N.Y. AGRIC. & MKTS. LAW §353 precludes the cruel treatment of animals, because the training of these animals usually occurs in jurisdictions outside of New York, it is not possible for City law enforcement to protect animals being subjected to abusive training or confinement prior to their arrival in the City. Furthermore local law enforcement most likely lacks the training and resources necessary to determine whether an exotic circus animal's welfare is compromised.

Hon. Bill de Blasio
Mayor-elect of the City of New York

or exotic animals for entertainment purposes. We therefore ask your support of Intro No. 49 which adds a new section 17-196 to the New York City Administrative Code to prohibit the display of any wild or exotic animal in New York City.²⁹

SHELTERING OF DOMESTIC VIOLENCE VICTIMS WITH PETS

We urge you to take a leadership role to support initiatives and legislation that improve access to sheltering and related support services for all domestic violence victims, including victims with pets. Perpetrators of domestic violence and child abuse often target family pets to victimize children and the family, and domestic violence victims may stay in an abusive environment to protect the animal if they are not able to move to safe housing with the animal.³⁰ Studies of domestic violence victims seeking shelter services shows that up to 48% of victims have delayed leaving a dangerous situation because they feared for their pets' safety³¹ and 71% of victims who were pet owners revealed that abusers had threatened, harmed, or killed their pet.³² Additionally, family pets have been found to be a source of comfort and stability to victims of domestic violence and their children. Accordingly, the availability of resources and support for victims of domestic violence with pets is paramount to the safety and well-being of the entire family unit.

The Committee has identified two specific issues that require mayoral leadership and support in this area: (1) co-sheltering for victims of domestic violence and their pets as a model to encourage pet retention for victims of domestic violence and housing crises; and (2) collaboration between human services and animal welfare programs funded by the New York City Department of Health and Mental Hygiene (DOHMH). Both issues can have an important and profound impact specifically on the most vulnerable pet owners in New York City.

Co-Sheltering

Building upon recent successes of New York's emergency preparedness effort offering

²⁹ The proposed legislation would ban the display of any wild or exotic animal "exhibition, act, circus, ride, trade show, carnival, parade, race, photographic opportunity, performance or similar undertaking in which animals are required to perform tricks, fight or participate as accompaniments in performances for the amusement or benefit of an audience." The legislation excludes wildlife sanctuaries, accredited zoos and aquariums, institutions operated by the Wildlife Conservation Society of New York, veterinarians, and laboratories. Similar legislation has been enacted by a number of other municipalities, including Stamford, CT, Boulder, CO, Hollywood, FL, Revere, MA, Richmond, MO, Greenburgh, NY, and Pasadena, CA.

³⁰ See *Domestic Violence and Animal Abuse*, N.Y.S. Office for Prevention of Domestic Violence Bulletin, Summer 2010, available at http://www.opdv.ny.gov/public_awareness/bulletins/summer2010/summer2010_bulletin.pdf (last visited November 7, 2013).

³¹ Sherry Ramsay, Mary Lou Randour, Nancy Blaney & Maya Gupta, *Protecting Domestic Violence Victims by Protecting their Pets*, Today: A Publication of the National Council of Juvenile and Family Court Judges, Spring 2010.

³² Frank R. Ascione, Ph.D, Claudia V. Weber, M.S., and David S. Wood, *Animal Welfare and Domestic Violence*, April 25, 1997.

Hon. Bill de Blasio
Mayor-elect of the City of New York

co-sheltering for people and their pets during Hurricane Sandy, we urge you to take a leadership role to effectuate the availability of co-sheltering programs for domestic violence victims with pets so that pet owners no longer have to choose between their personal safety and that of their beloved pets.

Although there are currently 70 such co-sheltering program for victims of domestic violence throughout the country, only one exists in New York City: the Urban Resource Institute's PALS Program, initiated in June 2013 in cooperation with the Mayor's Alliance for NYC's Animals. Expansion of co-sheltering programs and resources through the New York City Office of Domestic Violence Services and other New York City domestic violence shelters is necessary to ensure that all victims of domestic violence—including those with pets—have access to sheltering and support for their entire family. A co-sheltering initiative also lifts the weight from overtaxed animal welfare communities burdened with finding new homes for pets that already have families.

Collaboration Between DOHMH Human Services and Animal Welfare Programs

We urge the Mayor to take a leadership role to facilitate collaboration between DOHMH human services and animal welfare programs in light of the many significant connections and overlap between human health and animal welfare.

In addition to DOHMH's responsibilities for a wide range of human health services in New York City, DOHMH has been designated as the agency responsible for dealing with the City's lost, strayed or homeless animals. Since 1995, DOHMH has contracted with Animal Care and Control of NYC (AC&C) to effectuate these duties. Due to the lack of coordination among these programs, there have been significant missed opportunities that could benefit both people and animals in this City. For example where animal welfare programs have been solely focused on meeting the immediate animal welfare needs in an animal surrender, abuse or neglect case, related human issues afflicting the person surrendering the animal may not be identified and addressed. Such personal crisis issues as domestic violence, child abuse, homelessness or hospitalization may all be the impetus for surrendering an animal. By including questions about such personal crisis issues during the animal intake process, animal welfare programs can both assist and alert DOHMH human services departments, and/or the NYPD, to assist people in personal crisis, thereby addressing core issues causing animal relinquishment. Similarly where human services programs overlook the presence of a pet in the life of a person in need of care, this is a missed opportunity to alert DOHMH animal welfare programs to address the immediate animal welfare needs of that person's pet (particularly while that person is undergoing services and is unable to care for the pet) but also to identify and address latent personal crisis issues such as domestic violence and child abuse which may present themselves in the form of animal abuse or neglect.³³ By including questions about the presence of a pet in a person's life in DOHMH

³³ For example, in one national study 71% of abused women said their partners harmed, killed or threatened pets. Frank R. Ascione, Ph.D, Claudia V. Weber, M.S., and David S. Wood, *Animal Welfare and Domestic Violence*, April 25, 1997. Another national study indicated that abused animals were found in 60% of homes where child abuse or neglect was found and in 88% of homes of families where physical child abuse occurred. DeViney, E.,

human services intake questionnaires, including the current status of the pet and any indications of animal abuse or neglect, human services programs can both assist and alert animal welfare programs and/or the NYPD to address animal welfare concerns and related personal crisis issues.

By working together, DOHMH human services and animal welfare programs can holistically assist people and animals in crisis and reduce animal relinquishment. There are multiple relationship-building ways to collaborate jointly and address issues where human welfare and animal welfare are linked. As more individuals and families adopt and introduce pets into their homes, there is a need for more education regarding pets, more access to low-cost services, and an increased need for support from many different avenues to encourage pet retention. Beginning with messaging, health or mental health programs throughout the City could begin to disseminate information within their facilities about pet care including the importance of spay/neuter and vaccinations and other tips to reduce pet surrenders. In addition, families at risk for domestic violence, homelessness, or hospitalization could be identified early to prevent pet relinquishment and linked to multiple services addressing the needs of the entire household, including family pets.

SPAY AND NEUTER OF NYC DOGS AND CATS

New York City has long recognized the importance of spaying and neutering as a way to control the City's rampant animal overpopulation problem and ultimately lower the number of homeless dogs and cats entering the City's animal shelter system. Notably, Section 17-804 of the New York City Administrative Code and Section 161.23 of the New York City Health Code prohibit (with limited exception) a full-service shelter or other licensed shelter from releasing a dog or cat to a person claiming ownership thereof or to a person adopting such dog or cat, unless the animal has been sterilized by a licensed veterinarian.³⁴ The adoption of New York City Local Law 59 further broadened the scope of the City's spay/neuter policy by requiring the sterilization of every cat permitted to roam outside the interior of the owner's dwelling.

In addition to the spay/neuter laws described above, Section 17-804 of the City's administrative code also requires pet shops to sterilize all dogs and cats prior to purchase by a consumer. Unfortunately, the City has been unable to enforce this provision due to preemption language in the New York State Pet Dealer Law which prevents municipalities from enacting pet dealer laws that are more stringent than those provided by state law.³⁵

Dickert, J., & Lockwood, R., *The care of pets within child abusing families*, International Journal for the Study of Animal Problems, 4, 3321–3329 (1983).

³⁴ These City laws are far more stringent than the requirements set forth in Section 377-a of the N.Y. AGRIC. & MKTS. LAW which do not even apply to the reclamation of dogs and cats by their owners and authorize the adoption of dogs and cats from designated entities prior to sterilization provided the adopter has signed an agreement to have the animal spayed or neutered within a specified amount of time and leaves a deposit of not less than \$35.

³⁵ Section 400-a of N.Y. AGRIC. & MKTS. LAW provides, in pertinent part, that its provisions “shall supersede any local law, rule or ordinance regulating or licensing pet dealers as defined in the article.” Insofar as Article 26-A

Hon. Bill de Blasio
Mayor-elect of the City of New York

Both the New York State Assembly and Senate recently passed bill A.740-A/S.3753-A which removes the preemption language from the Agriculture and Markets Law thereby allowing municipalities to more strictly regulate pet dealers within their localities.³⁶ Although the proposed legislation has been passed by the Legislature, it has not yet been signed by Governor Cuomo. If enacted, the City will then have the authority to mandate full compliance with its spay/neuter law with respect to pet stores. Additionally, the City will be able to regulate the source of dogs and cats sold in local pet stores (thereby curtailing the sale of dogs bred in puppy mills) and set higher standards for the care of dogs and cats in pet stores.³⁷ This Committee therefore asks the administration to work with the City Council to support the passage of local laws to protect and humanely care for the animals in New York City.³⁸

We also note that the spay/neuter initiatives offered by such private organizations as the ASPCA, the Humane Society of New York, the New York City Feral Cat Initiative, and the Toby Project (to name a few) also have been extremely instrumental in lowering the number of stray and homeless dogs and cats entering the City shelters. We encourage the administration to work with these groups to further address the serious issue of animal overpopulation in New York City.

TRAP NEUTER RETURN

The number of feral and stray cats has been climbing to epidemic proportions in New York City and across the country. Because many of these cats are not socialized with humans, they are not candidates for adoption and therefore are almost always euthanized if and when they become part of the City's animal shelter system. The most progressive, humane, cost-effective, and efficient approach to dealing with the issue of feral cat overpopulation is through the

(Care Of Animals By Pet Dealers) does not require the sterilization of animals prior to their sale from pet dealers, it has been held that the City's sterilization requirement relative to pet stores is unenforceable.

³⁶ For a more thorough discussion of bill A.740-A/S.3753-A, *see*, the Association's report in support of the legislation with recommendations at <http://www2.nycbar.org/pdf/report/uploads/20072516-PetDealerPreemption.pdf>.

³⁷ Puppy mills are inhumane dog breeding facilities in which the welfare of the dogs is disregarded in favor of volume and profit. *See* USDA Office of Inspector General Audit Report 33002-4-SF, *Animal and Plant Health Inspection Service Animal Care Program, Inspection of Problematic Dealers*, May 2010, available at <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf> (last visited Nov. 7, 2013) (citing various cases of repeat violations of the Animal Welfare Act by large-scale dogs breeders and brokers throughout the United States "demonstrat[ing] the agency's leniency toward violators, the ineffectiveness of its enforcement process, and the harmful effect they had on the animals"). Although puppy mills do not exist in New York City, the majority of the puppies sold in local pet stores come from puppy mills in New York State and elsewhere. *See* Brett Smiley, *New York City Pet Stores Stocked with Dogs from Puppy Mills*, *New York Magazine*, Nov. 10, 2011, available at <http://nymag.com/daily/intelligencer/2011/11/ny-pet-stores-stocked-with-puppy-mill-dogs.html> (last visited Nov. 7, 2013).

³⁸ We note that the Mayor-elect has stated that he "supports state legislation that will give local governments the authority to more effectively regulate pet dealers." Bill de Blasio's Vision For a More Humane City, available at <http://www.billdeblasio.com/issues/humane-city> (last visited Nov. 8, 2013).

implementation of Trap Neuter Return (TNR) programs.³⁹ Both individuals and private nonprofit organizations are performing TNR activities throughout the five boroughs and already a decline in the number of cats in many areas has been reported. While many of these nonprofit organizations continue to work cooperatively with City agencies to perform TNR services on City property (the TNR project on Rikers Island being a prime example), many City agencies are unknowledgeable with respect to TNR and its efficacy. This Committee recommends that the City embrace TNR as its official policy for the humane and effective management of feral cats, educate all of its agencies as to this fact, and require these agencies to work with available nonprofit organizations engaged in TNR services to humanely remediate issues involving feral cats.⁴⁰

HUMANE EDUCATION IN NYC SCHOOLS

It is widely recognized that a first defense in combating animal abuse in our society is by cultivating empathy towards animals in children through the education process. Humane education helps children understand the effect of their actions on animals, as well as the environment, and may promote more thoughtful choices.⁴¹ Section 809 of the New York State Education Law requires that every elementary school under State control, or supported wholly or partly by public money of the State, provide instruction on the humane treatment and protection of animals and lessons on the importance of spaying and neutering. Such instruction does not need to be a separate course in a school's curriculum, but rather may be conducted in conjunction with work in "literature, reading, language, nature study or ethnology." The penalty for non-compliance with the humane education mandate is withdrawal of public school funding.⁴²

Notwithstanding the above, it appears that many New York City public schools are not providing students with the instruction in humane education mandated by Section 809, mainly because they are not aware of the requirement. To help increase compliance with Section 809, a resolution was proposed in the City Council (Res. No. 497) calling upon the New York City Department of Education to issue a memorandum to all New York City public schools that notifies them of the humane education mandate and to require that all elementary school principals direct their teachers to act in accordance with the law. Although the resolution

³⁹ Local Law 59 defines Feral Cat as "an animal of the species *felis catus* who has no owner, is unsocialized to humans and has a temperament of extreme fear of and resistance to contact with humans" and TNR as "a program to trap, vaccinate for rabies, sterilize and identify feral cats and return them to the locations where they were found."

⁴⁰ Local Law 59, codified in 2012, requires that the DOH post on its website the names of organizations that offer TNR information and conduct TNR activities.

⁴¹ HEART (Humane Education Advocates Reaching Teachers), Report on Legislation (on file with the author); Lydia S. Antoncic, *A New Era In Human Education: How Troubling Youth Trends and a Call For Character Education Are Breathing New Life into Efforts to Educate Our Youth About the Value of All Life*, 9 Animal L. 183 (2003).

⁴² N.Y. EDUC. L. Sect. 809(1).

ultimately was not approved, this Committee strongly encourages the City to renew action to ensure full compliance with Section 809.

The City can comply with the Section 809 mandate in a cost-effective manner by implementing humane education into existing educational programs and partnering with qualified private organizations that are familiar with the issues and willing to provide materials and assistance to schools in developing humane education curricula. For example, New York State legislation known as SAVE (Safe Schools Against Violence in Education) seeks to address violence prevention within New York State's schools by requiring a civility, citizenship and character education component in the K-12 course of instruction and requiring health curricula to address issues of violence prevention. Humane education, as already mandated by New York State Law for public elementary schools, is a perfect way to comply with these additional requirements, particularly since the evidence overwhelmingly supports the premise that animal abuse is oftentimes a precursor to violent crimes against humans. Enormous opportunities also exist for New York City to partner with qualified private organizations that are familiar with these issues and willing to provide materials and assistance to the schools in developing humane education curricula. For example, the not-for-profit charity HEART (Humane Education Advocates Reaching Teachers) presently works with educators, administrators and community leaders in New York City, among other locales, to help them comply with Section 809 and SAVE. This Committee encourages the formation of such public/private partnerships as a cost effective means of promoting humane education.

This Committee recognizes the importance of humane education for students of all ages and strongly supports efforts to bring New York City public schools into compliance with existing law. We urge the Mayor to take any and all action necessary to ensure that students are being provided with the instruction mandated by Section 809.

NON-LETHAL BIRD HAZARD CONTROL

This Committee recommends that the City terminate its current contract between the Department of Environmental Protection and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) for \$208,512⁴³ for the lethal removal of Canada geese, Mute Swans and other birds (the "Program") and instead adopt non-lethal, long-term strategies for preventing collisions between aircraft and birds ("bird strikes"). As explained below, the Program, which was established in response to the crash of a U.S. Airways plane into the Hudson River in 2009, is ineffective in preventing bird strikes, inhumane, and opposed by many New Yorkers who are concerned about wildlife and the environment.

⁴³ The term of the City's current contract with USDA ends June 30, 2014. The current contract was preceded by a contract with the USDA for \$100,070 for an approximately two-year term commencing June 1, 2009. The 2009 contract is available at <http://www.scribd.com/doc/62987573/NYC-Contract-for-CANADA-GOOSE-Removal-via-Comptroller-FOIL> (last visited Nov. 7, 2013).

Lethal methods are ineffective in preventing bird strikes

There is growing agreement among aviation experts and biologists that killing geese and other birds has no long-term impact in reducing the risk of bird strikes and may exacerbate existing threats by creating vacant desirable habitat thereby inviting other birds. Experience has shown that removing geese from parks, wetlands, and other desirable habitat creates a vacuum which can become quickly repopulated.⁴⁴ This effect could exacerbate the risk of plane-bird collisions.⁴⁵ Moreover, biologists have determined that the killing of one species can even result in increases in population of the targeted species due to reproductive overcompensation and population cycling.⁴⁶ In addition, killing resident geese is likely to be ineffective because bird strikes may be caused by migratory populations that are impossible to fully control. The geese that were responsible for the crash of the U.S. Airways plane in 2009 were migratory geese⁴⁷ that are not affected by the current Program because they do not live in New York City in the summer when the geese are killed. In light of such evidence, aviation experts have concluded that culling does not achieve long-term mitigation of the risks posed by bird collisions to air safety and that it is necessary to address environmental factors and other issues.⁴⁸ Indeed,

⁴⁴ See, e.g., Cate Doty, *Where Geese Were Thinned, Their Population Thickens*, N.Y. Times, Aug. 17, 2010, available at <http://cityroom.blogs.nytimes.com/2010/08/17/where-geese-were-thinned-their-population-thickens/> (last visited Nov. 7, 2013) (noting that Canada geese tend to quickly re-colonize newly vacant habitat subsequent to being killed by the USDA. For example, 107 Canada geese were counted in Prospect Park five weeks after the 2010 removal of the all but four of the park's 368 geese).

⁴⁵ See Bird Hazard Reduction Program: John F. Kennedy International Airport, Supplement to the Environmental Impact Statement: Gull Hazard Reduction Program: John F. Kennedy International Airport, April 2012, at Figure 1-2 and Table 1-1, available at http://www.aphis.usda.gov/regulations/ws/ws_new_york_jfk_2.shtml (last visited Nov. 7, 2013) (noting that the existing gull shooting program at John F. Kennedy International Airport coincided with a reduction in the rate of gull-aircraft collisions between 1991 and 2009, but that the rate of collisions with other birds has apparently increased during the same period, as have total collisions).

⁴⁶ Elise F. Zipkin, Clifford E. Kraft, Evan G. Cooch, and Patrick J. Sullivan, *When can efforts to control nuisance and invasive species backfire?*, *Ecological Applications* 19:1585–1595, available at <http://www.esajournals.org/doi/abs/10.1890/08-1467.1> (last visited Nov. 7, 2013) (“Population control through harvest has the potential to reduce the abundance of nuisance and invasive species. However, demographic structure and density-dependent processes can confound removal efforts and lead to undesirable consequences, such as overcompensation (an increase in abundance in response to harvest) and instability (population cycling or chaos).”).

⁴⁷ *Scientists Determine Geese Involved in Hudson River Plane Crash Were Migratory*, *Smithsonian Science*, July 10, 2009, available at <http://smithsonianscience.org/2009/07/scientists-determine-geese-involved-in-hudson-river-plane-crash-were-migratory> (last visited Nov. 7, 2013).

⁴⁸ See Perry Chiramonte, *Airport Experts Flock to Find Solution to Bird, Plane Collisions*, *Fox News*, Aug. 5, 2012, <http://www.foxnews.com/us/2012/08/05/bird-strike-summit-as-planes-hit-by-fowl-on-rise/#ixzz2GB34bcnz> (last visited Nov. 7, 2013) (noting that Jim Hall, former Chairman of the National Transportation Safety Board has stated that “I have not seen where [culling] has been effective as a long-term solution . . . What should happen is an effort to eliminate causes for the hazards” and that Ron Merritt, biologist and former chief for the Air Force’s Bird Aircraft Strike Hazard team has recommended the use of non-lethal alternatives); see also New York City Audubon, *Encouraging Better Management of Canada Geese in New York City*, <http://www.nycaudubon.org/issues-of-concern/canada-goose-extriation> (last visited Nov. 7, 2013) (noting that the New York City Audubon also opined that “[t]he blanket approach of lethal control will not significantly reduce the risk birds pose to aviation safety” and that other measures are necessary). Captain Chelsey B. Sullenburg, pilot of US Airways flight 1549, which crashed

Hon. Bill de Blasio
Mayor-elect of the City of New York

success has been seen with alternative management techniques, such as radar detection and dissuasive tactics that encourage relocation.⁴⁹

Lethal methods are inhumane and opposed by many New Yorkers who are concerned about wildlife and the environment

Under the Program, USDA employees remove the geese from public land in summer when the geese are molting, raising their young, and cannot fly. The flightless geese are corralled by USDA biologists into netted pens, put into crowded crates, and either asphyxiated by carbon dioxide or delivered several hours away in hot weather to slaughter facilities.⁵⁰ In July 2012, hundreds of geese were taken from Jamaica Bay Wildlife Refuge to slaughter, an unprecedented removal of previously protected wildlife on federal lands.

The lethal methods employed by the USDA to reduce geese populations, which includes the use of live traps and carbon dioxide asphyxiation, have been recognized as inhumane by a number of avian experts⁵¹ and may not comport with guidelines set forth by the American

into a flight of Canada geese in 2009, has stated that “[t]he most effective thing to prevent these collisions is not to allow anything anywhere near an airport that’s likely to be a bird attractant.” Eric Uhlfelder, *Bloody Skies: The Fight to Reduce Deadly Bird-Plane Collisions*, National Geographic, Nov. 7, 2013, available at <http://news.nationalgeographic.com/news/2013/10/131108-aircraft-bird-strikes-faa-radar-science/#close-modal> (last visited Nov. 11, 2013).

⁴⁹ Avian radar technologies have been recognized by the U.S. Department of Defense as valuable and cost-effective tools to monitor and locate bird populations. See Marissa Brand *et al.*, *Integration and Validation of Avian Radars (IVAR)*, Department of Defense Environmental Security Technology Certification Program Project RC-200723, July 2011, Executive Summary, at xxviii. Israel’s Tel Aviv Ben-Gurion International Airport has instituted an avian radar detection program that has received worldwide recognition for its impact on reducing bird strikes. See Dr. Yossi Leshem, Maj. Oded Ovadia, Dr. Leonid Dinevich, Oded Raz, *A National Network of Bird and Weather Radars in Israel – From Vision to Reality*, International Bird Strike Committee, May 2005, available at http://www.int-birdstrike.org/Athens_Papers/IBSC27%20WPX-2.pdf (last visited Nov. 7, 2013). Captain Chelsey B. Sullenburg, pilot of US Airways flight 1549, which crashed into a flight of Canada geese in 2009, has opined that if avian radar strategies had been in place at LaGuardia, allowing a “[d]elay[ed] takeoff by just several minutes or sending him off in a different direction . . . would have meant Flight 1549 would not have hit these geese.” See *id.* Uhlfelder.

⁵⁰ *Hundreds more majestic Canada geese killed in name of airline safety in Jamaica Bay Wildlife Refuge*, N.Y. Daily News, July 2, 2013, available at <http://www.nydailynews.com/new-york/queens/geese-slaughtered-wildlife-sanctuary-article-1.1388614> (last visited Nov. 7, 2013); Video of Roundup at Jamaica Bay Wildlife Refuge on July 2, 2013, Goosewatch NYC, available at <http://www.goosewatchnyc.com/videos-of-roundups/> (last visited Nov. 7, 2013).

⁵¹ According to wildlife biologist Stephanie Boyles, such “[r]oundups cause immeasurable stress—separating lifetime mates from each other and from their young goslings.” See Geoff Shackelford, *PETA Leader Speaks Out*, GOLFDOM 49, Feb. 2006, available at <http://archive.lib.msu.edu/tic/golfd/article/2006feb48.pdf> (last visited Nov. 7, 2013). Similarly veterinarian John G. Hynes has recognized that “[c]arbon dioxide asphyxiation used by the USDA is an especially cruel process that slowly strangles [the birds] as they struggle to breathe and compete for oxygen.” See *700 Geese From Jamaica Bay Wildlife Refuge To Be Euthanized*, CBSNewYork, July 10, 2012, available at <http://newyork.cbslocal.com/2012/07/10/700-geese-from-jamaica-bay-wildlife-refuge-to-be-euthanized> (last visited Nov. 7, 2013); See also AVMA Guidelines for the Euthanasia of Animals: 2013 Edition, American Veterinary Medical Association, 2013, available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf> (last visited Nov. 7, 2013) (noting that “diving birds have a great capacity for holding their breath and anaerobic metabolism.

Hon. Bill de Blasio
Mayor-elect of the City of New York

Veterinary Medical Association.⁵² Lethal methods of bird control are opposed by many New Yorkers who are concerned about wildlife and the environment.⁵³ The Program disrupts the balance of nature and deprives the public an oasis in the parks that allows a connection with limited wildlife.

For these reasons, the Committee urges the City to terminate its contract with the USDA for lethal removal of birds and instead focus its resources on non-lethal methods for mitigating the risk of bird strikes to protect Canada geese and other wildlife from unnecessary killings within New York City.

* * *

We thank you for the opportunity to express our thoughts on various problems and proposed solutions facing NYC's animals and those who care about them. We would very much appreciate the opportunity to meet with you to discuss these and other ideas to help NYC's animals and thereby improve the lives of all New Yorkers who will benefit in turn by leadership which shows respect for all who need its protection.

Sincerely,



Christine Mott
Chair, Committee on Animal Law

Therefore, induction of anesthesia and time to loss of consciousness when using inhalants may be greatly prolonged. Noninhaled methods of euthanasia should be considered for these species and a secondary method is required to kill the unconscious animal.”).

⁵² *Id.* at 2013 AVMA Guidelines.

⁵³ See, e.g., Natalie O'Neill, *Goose lovers to Bloomy: Don't you dare come for our birds*, Brooklyn Paper, March 27, 2011, available at http://www.brooklynpaper.com/stories/34/13/all_goosevigil_2011_4_1_bk.html (last visited Nov. 7, 2013) (reporting on an event in Prospect Park to oppose the killing of geese and including comments from New York State Senator Eric Adams, New York City Council Member Letitia James, representatives from the Humane Society of the United States and Friends of Animals, and other community members in opposition to lethal methods of geese control).