

# Legislative Report

*With permission from Margo Milde, I am publishing her Rand Park Training Club report in this MRC Newsletter. Margo is a member of the group I belong to which fights unreasonable state legislation and also the many past unenforceable ordinances in the city of Chicago. Margo has covered all the recent activities regarding legislation quite well, and I am thrilled that she has allowed us to reprint her report.*

*Karen Perry*

*MRC-AKC Legislative Liaison*

## Legislative Liaison Committee Report

November 20, 2009

Rand Park's Legislative Committee Margo Milde, Chair and Lois Leidahl-Marsh

“Among the natural rights of the colonists are these: first, a right to life; secondly, to liberty; thirdly to property; together with the right to support and defend them in the best manner they can.”

~Samuel Adams (1722–1803)

**Highland Park (IL) new Animal Control Ordinance:** Highland Park now has an official Animal Control Ordinance that will go into effect January 1, 2010. Thankfully, it is much improved over the version I wrote about in this column in PawPrints several months ago, with help from various Rand Park members who attended the Highland Park City Council meetings, and various Highland Park residents. It even has several improvements over the original ordinance, such as allowing a 3-year rabies vaccination to be recognized for Highland Park dog licensing purposes, as well as requirements for Highland Park animal control and police officers that “entry upon private property shall only be accomplished with the assistance of a police officer and pursuant to a warrant.” While some problems still remain, such as excessive restrictions for tethering, and a too broad a description for a “problem pet owner” designation, those are relatively minor compared with what we started with. As of today, the final copy is not yet on the Highland Park website, but should be up soon. If you need a copy before January 1, you can obtain one by emailing the Highland Park City Clerk, Shirley Fitzgerald, and requesting that a copy be emailed to you: [sfitzgerald@cityhpil.com](mailto:sfitzgerald@cityhpil.com)

**Park Ridge (IL) Vicious Dog Ordinance:** A great deal of opposition, including from several Rand Park members, was presented at a September Park Ridge City Council meeting to review the proposal of this extremely averse revision to their animal code. From what I've heard, the proposed revision has been temporarily pulled and has been sent to dog experts at the Park Ridge Park District for review. Mary Anne Gobbo, a long-time Rand Park member and Park Ridge Park District dog obedience instructor, has volunteered her expert services for reviewing these proposed changes.

il-pet-law list: I'm sure some of you already know, but for those that don't: I have been a co-moderator of the il-pet-law list since late August of this year. I invite you all to join; “lurkers” are most welcome, as are active participants! My co-moderator and I are keeping the list on the straight-and-narrow; if it doesn't deal with pet legislation or laws, and doesn't apply to Illinois, it won't be found on the list, so your time will not be wasted! The list is fully moderated, so “flaming” and off-topic discussions are not permitted. This list can be joined as you would any Yahoo! list. The il-pet-law homepage is: <http://groups.yahoo.com/group/il-pet-law/>

**Update on the Illinois Dog Breeders and Retailers Task Force:** The last Task Force meeting was held on October 27, 2009. On November 16, the Illinois Department of Agriculture (IDOA) issued their draft of recommendations, including revisions to the Illinois Animal Welfare Act (IAWA) which made a number of dog owners and breeders wonder if the IDOA listened to us at all. Here is the upcoming schedule for the Task Force and the Illinois Department of Agriculture for the rest of this year:

- Comments on this first draft are to be received by November 30, 2009
- Revision, written by IDOA, and based on previous comments, is due on December 7, 2009
- Final comments due back to IDOA on December 15, 2009
- Conference call for final discussion between Task Force members will be on December 21, 2009 at 9:00 am
- Final Report due January 1, 2010 – again, IDOA will be writing this, and will submit to the legislators after this date. A “minority report” may also be prepared, and possibly submitted.

If you haven't already, it is important for you to get your comments in. The IAWA revisions and Task Force report are too bulky for me to do a mass emailing to everyone, but are currently included as files on the il-pet-law list, or you can request electronic copies from me. (At this date I do not know of a public website where these have been posted.) I will be posting updated documents as files on the il-pet-law list as soon as I receive them – another good reason for you to join! Comments on the IDOAWA revisions and Task Force report should be directed to Michele Kasten, the IL Small Hobby Breeder representative on the Task Force [illinoisshobbybreeder@yahoo.com](mailto:illinoisshobbybreeder@yahoo.com) and Mary Jo Trimble, the Sporting Dog representative on the Task Force [trimnatchbritts@midamer.net](mailto:trimnatchbritts@midamer.net)

These revisions WILL affect you, whether or not you breed.

**The Louisville Court Decision (The Louisville Kennel Club vs. Louisville Metropolitan Animal Services):** Most of you are aware that in early 2007, Louisville/Jefferson County Metropolitan Animal Services (LMAS) (KY) enacted some very harshly restrictive animal ordinances against pet owners. You have also have probably heard by now that we had a victory (of sorts) in Louisville in late October. Well, sort of, and maybe. Despite the jubilation you might have read on other lists, I'm advising you to not take out those party hats, just yet. After having read (and re-read a number of times) the actual Court decision and then discussing it with other knowledgeable people, including an attorney involved in pet law, my own viewpoint is more measured. I advise you to read the case for yourself, which you can access at this link: <http://www.louisvillekennelclub.com/litigation/Federal%20Case%20Decision.pdf>

An accurate (from a legal standpoint) article on this case can be found here (and also see Page 2 of the article): <http://www.courier-journal.com/article/20091002/PETS/910020371/Judge-upholds-most-of-Louisville%5C-s-dangerous-dog-law>

The following represents my summary of the case, as taken from the official court documents. Plaintiff, the Louisville Kennel Club (LKC), wished to have the Court block enforcement of the 2007 revisions to the Louisville Metro animal ordinance. Everyone admits that what makes this challenge so difficult is that this was a “facial” challenge, meaning, under law, a direct challenge to a law without any party having claimed injury under the law. According to the Court, LKC's objections to the Ordinance could be classified into five categories, each of which had to be examined separately by the Court:

1. LKC argued that several portions of the ordinance are “constitutionally vague”.
2. LKC argued that other provisions of this ordinance lack a “legitimate legislative purpose” and are in violation of the Equal Protection Clause and the “substantive” component of the Due Process Clause.
3. LKC argued that one provision calls for forfeiture of pets without adequate Procedural Due Process.
4. LKC argued that this ordinance authorized illegal (warrantless) searches and seizures of property.
5. LKC argued that portions of this ordinance stand in conflict with state (Kentucky) law.

We'll look at each in turn, from the Court's viewpoint. There are two minor victories, but in everything else, the Court found for the Defendant (LMAS). Starting with the “vagueness” claims, by citing previous case law, the Court states that to show a section of the ordinance unconstitutional, a plaintiff (here, LKC) “must demonstrate that the law is impermissibly vague in all of its applications”, and furthermore, as a facial challenge, a plaintiff “must establish that no set of circumstances exists under which the Act would be valid.” This would be very hard to do. The Court therefore granted summary judgment to the Defendant (LMAS) on the “Dangerous” and “Potentially Dangerous Dog”, “Enclosure Requirement”, “Nuisance” (dog), “Attack” (by a dog), “Restraint” (of a dog), “Impoundment Provision”, “Tethering Standards”, “Revocation of License”, and “Cruelty” sections of the law, and denied a finding for the Plaintiff (LKC) in all of these. The Court did, however, make a broad interpretation of the “tethering” law as written to mean that “trolley tethers” can be used without restriction – something that probably was not the intention of LMAS.

Next, regarding the “Equal Protection Clause” challenge and the requirements of pre-approved special enclosures for intact dogs (“Approval of Enclosures in Writing”), the Court did find for the Plaintiff (LKC), stating that “there being no apparent reason why the owners of unaltered dogs should be treated differently than the owners of their neutered counterparts, the written approval requirement lacks a rational basis and is unconstitutional”, but also did find for the Defendant (LMAS) in the “Sale of Animals” provision, which the Court interpreted to mean sale of dangerous dogs only, and constitutionally sound.

In examining the “Procedural Due Process” challenge, the Court states that a possible result of the Ordinance as written was that “a person whose dog has been confiscated, and against whom there is probable cause that he violated one of the humane treatment requirements will lose his dog permanently unless he posts bond, even if he is ultimately found

innocent of the underlying charge”; for this reason they believe that this would “permanently deprive a pet owners of his property, absent a finding of guilt”, and is therefore unconstitutional. An injunction was entered by the Court against enforcement of this section of the ordinance. However, please carefully note the following: The issue is a person who does not have the ability to pay a forfeiture bond for their pets at the time they are charged; the Court did not state that this process in itself is illegal, only that “some sort of additional hearing, appeal, or late payment process could remedy” this deficiency. This is a critical statement of the Court that many seem to have missed – and please read the Decision documents for yourself to fully understand this. In the discussion, the Court did, however, affirm dogs as “personal property” under the law.

Next, the Court examined the questions regarding “searches and seizures” of property, and declared that – since LMAS stated that these are always done under either full permission of the property owner, or under a legitimate warrant – there was no violation of the Fourth Amendment that could be found. Absent of an actual case which might have shown differently (remember, this is a “facial challenge”), the Court could do nothing other than to dismiss the Plaintiff’s Fourth Amendment challenge, finding for the Defendant (LMAS). Finally, the LKC argued that that by requiring that veterinarians turn over client information to the LMAS, “this ordinance was in conflict with State law”. The Court found for the Defendant (LMAS), saying that there is no such conflict, since this ordinance does not seek to regulate veterinary medicine in any way contrary to existing state law. This became a moot point, since very recently Kentucky did enact a state law which would prevent municipalities from being forced to turn over confidential client information to the local government authorities. So is LKC vs. LMAS the big victory that many are claiming? Probably not, but we will have to wait a while before the full impact of the Court decision is felt.

**Las Vegas NV Passes Mandatory Spay Neuter law:** On 11/18/09, the Las Vegas NV City Council passed a MSN law; you can read a news story about it here:

<http://www.lasvegassun.com/news/2009/nov/18/city-passes-ordinance-requiring-pets-be-spayed-neu/>

About three weeks before that, a Nevada resident asked me to email the Las Vegas council members an opposition statement to the proposed MSN ordinance and I did so, representing my two Illinois Clubs (Rand Park, and Agility Ability of IL) as their AKC Legislative Liaison. A few days later, I received a reply email from a staff member representing Councilman Ross, which I will copy here, followed by my reply, so that you can see the complete senselessness and utter stupidity of the rationale used to justify MSN-type laws – and by the way, this staff member who replied was either in error or intentionally dissimulated the true story, since the ordinance passed mandated MSN at 4 months of age, not the 6 months as stated in their letter:

From: Tuesday James <tjames@LasVegasNevada.GOV  
Subject: RE: Opposition to Las Vegas Proposed Mandatory Spay/Neuter law  
To: “Margo Milde” <mrm1206@yahoo.com  
Date: Monday, November 9, 2009, 5:26 PM

Ms. Milde:

Councilman Ross thanks you for your email and asked that I supply you with some information. In southern Nevada we euthanize over 35,000 animals annually. That number has been consistent for the past several years and is well over the national average. Clark County is estimated to have a feral cat population of 500,000. We currently have nothing “on the books” to allow our Animal Control officers to go after the irresponsible (backyard) breeders. The proposed ordinance lists several exceptions including animals that are shown (conformation, obedience, field trials, etc), or are service animals, etc.

The City plans on setting up a fund to help low-income citizens receive free or low cost spay or neuter. We need to wait until the economy improves and monies become available, but it is so stated in the ordinance. In the meantime there are organizations such as Las Vegas Valley Humane Society and Heaven Can Wait that are currently providing low cost services. We are also working on an education campaign to alert people to the advantages of spay and neuter. The ordinance states that any letter from a veterinarian stating that any particular animal is too young (or too old, or too sick) does not need to be spayed or neutered. In addition, public comment on the 4 month age requirement was so strong on this issue, the ordinance is being changed to raise the minimum age to 6 months with the same stipulation concerning a letter from a vet. We can no longer tolerate allowing 35,000 animals to be euthanized. Something must be done. Thank you for your interest.

Tuesday James , Liaison to Councilman Ross

My reply: From: "Margo Milde"

To: Tuesday James and S Ross

Monday, November 16, 2009 6:09 PM

RE: Opposition to Las Vegas Proposed Mandatory Spay/Neuter Law

Thank you for your further comments, and please allow me to respond to you and to Councilman Ross.

First, let me commend you and your fellow council members and staff for allowing your government and community to take the first, important steps in encouraging shelters to provide low-cost voluntary spay/neuter for your community's residents, as well as emphasizing public education regarding the benefits of spaying and neutering. Both of these programs are critical for the success of any program which seeks to lower shelter impounds and euthanasias. I sincerely hope that you can eventually come up with monies for a government-funded voluntary spay/neuter program; while you may be spending a little more initially, you will be saving it in the long run with a reduction in shelter costs.

All of us seek to lower the number of shelter impounded animals and euthanasias, as well as related animal control costs to our respective communities. And that is precisely why so many humane organizations and shelters are opposed to the concept of Mandatory Spay/Neuter (MSN): MSN only increases both shelter intakes and euthanasia rates wherever it has been passed, while at the same time driving up animal control costs! This is a lose-lose situation for everyone.

The animal welfare groups who oppose MSN laws include the American Society for the Prevention of Cruelty to Animals (ASPCA), one of the largest of our nation's animal welfare organizations, who unequivocally state in their position statement against MSN laws:

"To the knowledge of the ASPCA, the only method of population control that has demonstrated long-term efficacy in significantly reducing the number of animals entering animal shelters is the voluntary sterilization of owned pets... In contrast, the ASPCA is not aware of any credible evidence demonstrating a statistically significant enhancement in the reduction of shelter intake or euthanasia as a result of the implementation of a mandatory spay/neuter law."

You can read their entire statement at this link:

<http://www.asPCA.org/about-us/policy-positions/mandatory-spay-neuter-laws.html>

When Mandatory Spay Neuter was considered in Chicago in 2008 and again earlier this year, five out of our eleven Chicago animal shelters went on public record opposing the concept; only one of the eleven was in favor. The strong opposition to the proposed MSN law by our Chicago shelters as a group was one of the primary reasons why MSN was not enacted in Chicago. Our Chicago shelters are well aware of the fact that MSN laws would only serve to hurt both them and the animals they serve. As an example, the public statement against MSN by the Chicago Anti-Cruelty Society, Chicago's oldest and largest animal shelter, clearly states:

"Our deep care for animals and for the health of the community is why The Anti-Cruelty Society does not support the proposed mandatory spay/neuter ordinance currently being considered by the City... A mandatory spay/neuter ordinance does not address the irresponsible pet owners. Incentives and public education are the most effective ways to inspire responsible pet care."

You may read their entire statement at this link: [http://www.anticruelty.org/site/epage/69344\\_576.htm](http://www.anticruelty.org/site/epage/69344_576.htm)

As you observed, feral cats are make up an extremely high percentage of your total shelter intakes and euthanasias. This is true in most communities, and is yet another reason why MSN-type laws would be so illogical for you in your case, since MSN laws only apply to pets that are already licensed and owned, and feral cats are neither! In fact, Alley Cat Allies, a national organization which is committed to the welfare of feral cats, has a public policy specifically opposing MSN-type laws for the reasons I've mentioned, which you can read here:

<http://www.alleycat.org/NetCommunity/Document.Doc?id=240>

Trap-Neuter-Return programs appear to be the best method for handling any feral cat population issue. Again, Alley Cat Allies has a wealth of information on their website to assist you in this. Since feral cats will never be affected by any MSN-type law, since they are not "owned", you will never be successful in reducing feral cat shelter intakes and euthanasias using MSN as the solution. Additionally, where large feral cat populations are found, MSN-type laws only

increase government administrative costs, without providing the needed spay/neuter services for these cats and their caretakers.

Alternative ideas for lowering shelter impounds and euthanasias you may wish to look at include legislation enacted in the 1994 in the State of New Hampshire, which has a voluntary state-subsidized spay/neuter program (funded in part through a small increase in pet license fees), along with various public education programs. New Hampshire initiated its voluntary spay/neuter program in 1994, and in 1995 - just one year later - experienced an overall 37% statewide drop in shelter intakes. They went on to achieve a 77% decrease in the year 2000, just six years after passage. This is a program that truly works, and has been used as a model for other states, including Delaware and Maine. Here are some links about the New Hampshire program for further information:

- <http://www.aspcapro.org/spay-neuter/documents/new-hampshire-spayneuter.pdf>
- <http://www.aspcapro.org/spay-neuter/documents/nh-summary.pdf>

I would encourage you, the Council Members, and staff members to learn more about voluntary programs such as this before jumping into any type of mandatory program. Based on experiences of communities who have already instituted mandatory spay/neuter, MSN will only worsen your current animal shelter situation instead of improving it. Even though I do not live in your community, if I can be of any further assistance to you in providing you with further information relating to the effects of Mandatory Spay/Neuter laws, or better alternative laws and policies - alternative laws and policies that do work - please do not hesitate to call upon me.

Sincerely, Margo Milde

AKC Legislative Liaison - Rand Park Dog Training Club Inc. (Des Plaines, IL)

AKC Legislative Liaison - Agility Ability Club of Illinois (Plano, IL)

Why, some of you are wondering, was MSN so easily passed in Las Vegas? According to reports posted on various pet legislation lists, the Las Vegas local kennel clubs and dog owners did very little to oppose MSN, and hence Animal Rights activists carried the day. This is a good example to show the need for all of us to involve ourselves with local (and state) issues as they arise. For example, in Highland Park, Highland Park officials freely admitted that they sought the “professional advice” of both Humane Society of the United States, and Best Friends, two of the Animal Rights organizations that we know are actively working to take our ownership and breeding rights away through legislation, which is why the first draft of the Highland Park revised animal ordinance was so hostile to our own interests. Without the involvement of local owners, breeders, rescuers, and pet-related business in Highland Park, we would have undoubtedly seen a much worse outcome than the one that we did. We know that Animal Rights activists will always be there to push through burdensome new laws that will interfere with, or actually prevent, our choices to have, and to breed, the pets of our choice. The question, then, remains – will you be there to oppose them?

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