

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S FERAL FRIENDS, SPCA, INC.

c/o Mr. Timothy Saffell, President *
P.O. Box 1036
Bowie, Maryland 20718
Plaintiff/Petitioner,

* **CAL 10-21374**

vs.

PRINCE GEORGE'S COUNTY, MARYLAND

14741 Gov. Oden Bowie Drive *
Upper Marlboro, Maryland 20772
Defendant/Respondent.

FILED
10/21/10
CLERK OF THE
COURT

AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

I. INTRODUCTION

Pursuant to Md. Rule 2-341 and the parties' consent, Plaintiff hereby amends and supersedes its first complaint. The parties to this amended complaint have stipulated that this and any complaint brought on this routing number shall not include any claim or cause of action for money damages.

This amendment does not change the cause of action in the original complaint, Defendant's violation of Plaintiff's right to due process as guaranteed by U.S. Const. Amend. XIV. This amended complaint simplifies the case by deleting parties; specifically, Susan Brown as a party plaintiff and Animal Management Division and Commission for Animal Control of the Prince George's County Department of Environmental Resources as party defendants.

"No good deed goes unpunished" is the theme of this action for declaratory and injunctive relief brought by Plaintiff Prince George's Feral Friends, SPCA, Inc., a charitable organization dedicated to educating the public about animal management policy and providing humane care to free-roaming and "feral" cats in Prince George's County, Maryland. In this action, Plaintiff challenges Defendant's animal

management policies and enforcement practices. The constitutional claims in this complaint are narrowly tailored and pertain only to free-roaming and “feral” cats.

Plaintiff respectfully requests the same relief requested in the original complaint: That this Honorable Court grant declaratory relief and issue a preliminary injunction pursuant to Md. Code Ann. (CJP) Sec. 3-401, et seq., Md. Rule 15-500, et seq. the Prince George’s County Code, Section 3-101, et seq., “Animal Control”.

First, Plaintiff requests that this court declare, adjudge and decree that the Animal Control portions of the Prince George’s County Code (PGC) shall be construed so that Defendant may not legally impute “ownership,” as defined in PGC Sec. 3-101(57), of free-roaming or “feral” cats to Plaintiff because Plaintiff provided nutrition to these animals. Defendant Prince George’s County currently enforces PGC 3-101(57), the definition of an animal’s owner, in an unconstitutionally overbroad manner that penalizes lawful behavior and enables arbitrary, capricious and illegal agency actions.

Second, Plaintiff requests that this court declare, adjudge and decree that Animal Management Division and the Commission for Animal Control of the Prince George’s County Department of Environmental Resources, referred to infra, as “Animal Management” and “The Commission,” comply with their enabling legislation in the PGC. Animal Management, an enforcement agency, is in violation of PGC 3-105(a)-(d) by failing to make or adopt a regulation, internal or otherwise. The Commission, an adjudicative agency, is in violation of PGC sec. 3-109(a) (1), (3) and (7) by not having made a rule, regulation or recommendation to the County Executive or the Director of the Department of Environmental Resources (DER).

Third, Plaintiff requests that this court declare, adjudge and decree that Animal Management and The Commission are public bodies pursuant to Md. Code Ann. (SG) 10-502(h) (i) (ii); and, further, that these bodies/agencies are in violation of the Open Meetings Act, Md. Code Ann. (SG) 10-501, et seq.

Finally, Plaintiff respectfully requests that this honorable court grant its request to issue a preliminary injunction prohibiting Defendant from violating Plaintiff’s right to due process of law caused by Defendant’s acts and omissions set forth in this complaint.

II. JURISDICTION

1. Plaintiff Prince George's Feral Friends, SPCA, Inc., organized in Maryland, is a not-for-profit charitable corporation. Plaintiff's principal places of business and residence have been Prince George's County, Maryland at all times relevant to this action.

2. Plaintiff's corporate mission is public education, advocacy of humane care, including feeding, veterinary attention, and practice of the animal management policy known as "Trap-Neuter-Return" (TNR) to free-roaming and "feral" cats in Prince George's County, Maryland.

3. Plaintiff provides lectures, broadcasts and low-cost or free legal advocacy to persons in Prince George's County on all matters pertaining to free-roaming and "feral" cats. Plaintiff advocates and practices TNR, an animal management policy that controls the population and health of free-roaming and "feral" cats. TNR involves the capture of these cats in humane traps, transport to a veterinarian for rabies vaccination and spay/neuter procedure; while the animals are anesthetized, the veterinarian marks each animal's ear so the individual animal can be identified as having been through the TNR program. Plaintiff then returns the cats, usually to the location of their capture, and provides food, water and shelter for the cats so as to maintain a managed "colony" of vaccinated, sterile, free-roaming or "feral" cats. A managed colony provides natural rodent population control and creates a "rabies buffer" which protects any person or animal, wild or domestic, that has contact with the cats from exposure to rabies.

4. Defendant Prince George's County is a political subdivision of the State of Maryland.

5. The Animal Management Division of the Prince George's County Department of Environmental Resources is a duly appointed administrative agency pursuant to PGC 3-102, et seq. The PGC empowers Animal Management to enforce all PGC provisions pertaining to free roaming and "feral" cats, including their capture, care, custody and destruction.

6. The Commission for Animal Control of the Prince George's County

Department of Environmental Resources is a duly appointed administrative agency pursuant to PGC 3-107, et seq. and 3-109, et seq. The PGC empowers the Commission to adjudicate all PGC provisions pertaining to free roaming and “feral” cats and; further, requires the Commission to recommend rules and regulations concerning the operation of the Animal Control Facility to the County Executive and the Director of the Department of Environmental Resources.

7. Pursuant to Md. Code Ann. (CJP) 3-409(2) Plaintiff brings this action against Defendant Prince George’s County, Maryland. Antagonistic claims exist between Plaintiff and Defendant and there is a history of litigation between Plaintiff and Defendant; Plaintiff’s volunteers have requested evidentiary hearings at Defendant’s Commission for Animal Control; one case is currently pending.

8. Pursuant to Md. Code Ann. (CJP) 3-409(3) Plaintiff brings this action against Defendant. Defendant’s enforcement practices deter and have a chilling effect on Plaintiff’s right to engage in lawful activity. Plaintiff’s interest, corporate mission and practice are to provide nutrition, shelter and veterinary care for free-roaming and “feral” cats. Plaintiff’s mission is lawful and its practices are not prohibited by the PGC. Defendant has warned Plaintiff’s volunteers that they will be penalized for feeding free-roaming and “feral” cats. Defendant has charged members of Plaintiff with violations of the PGC for feeding and providing care for free-roaming and “feral” cats.

III. VENUE

9. Venue is proper pursuant to Md. Code Ann. (CJP) 6-201 as all events alleged herein occurred in Prince George’s County, Maryland.

IV. DECLARATORY RELIEF

A. VIOLATION OF DUE PROCESS

10. Paragraphs 1 through 9 are incorporated into this section, as though fully set forth herein.

11. Defendant's enforcement of the Animal Control provisions, 3-101, et seq., of the PGC violates Plaintiff's right to Due Process of law as guaranteed by the U.S. Const. amend. XIV.

COUNT 1
DEFENDANT'S ACTS AND OMISSIONS
VIOLATE PLAINTIFF'S RIGHT TO PROCEDURAL DUE PROCESS

12. Defendant's procedures for charging Plaintiff with a violation of PGC, 3-101 et seq., deny Plaintiff's right to proper notice and fair process. The PGC empowers Animal Management to issue a charging document for violations of PGC 3-101 et seq. Defendant Animal Management does not issue a Uniform Citation or other charging document for certain violations, including but not limited to licensure and rabies vaccination. Instead, if Plaintiff requests an evidentiary hearing, the Commission generates and serves a summons warning Plaintiff that it must abate any licensure and rabies violation prior to the hearing date even though Defendant never has charged Plaintiff with these violations prior to generating or serving the summons. The summons further advises Plaintiff to provide proof at the hearing that Plaintiff has abated the violation alleged in the summons; otherwise, the Commission may fine Plaintiff for the alleged violation(s) at the hearing. Defendant's procedure denies Plaintiff's right to due process by presuming a fundamental fact that Defendant is constitutionally bound to prove, namely that the person identified in the summons is the same person who has the legal duty to abate the (uncharged) licensure and rabies violations.

13. Defendant does not provide Plaintiff with constitutionally adequate notice of the alleged violations of the PGC. Specifically, Defendant's charging procedure does not provide Plaintiff with adequate information because Defendant does not provide sufficient facts to identify the specific animals (cat(s)) at issue. Without this information, Plaintiff cannot ascertain which specific cat(s) are alleged to be Plaintiff's responsibility and Plaintiff cannot mount a defense or abate an alleged violation.

14. Defendant's enforcement of PGC 3-101 et seq. is unconstitutionally overbroad. Defendant issues written warnings to Plaintiff that state that feeding free-roaming or "feral" cats is a violation of the Animal Control provisions of the

PGC. The plain language of the PGC contains no prohibition against this activity. Defendant's warnings are unconstitutionally overbroad because they impede Plaintiff's right to engage in lawful activity.

COUNT 2

DEFENDANT'S ENFORCEMENT OF THE PGC IS OVERBROAD AND IMPEDES/PENALIZES LAWFUL ACTIVITY

15. Defendant's enforcement of the term "owner", PGC 3-101(57), is unconstitutionally overbroad and conflicts with the plain language of the PGC. Defendant makes a factual determination, without policy or regulatory guidance, that Plaintiff is the legal "owner" of any free-roaming and "feral" cat(s) that Plaintiff nourishes. That determination is construed as triggering the legal responsibilities of cat ownership, which include but are not limited to requiring Plaintiff to license and provide rabies vaccination for the cat(s). PGC 3-101(57) defines "owner" in four ways; the pertinent subsections are: (C), "[h]as an animal in his or her care" and (D) "[a]cts as a temporary or permanent custodian of an animal". These subsections exclude "feral" cats because PGC 3-101(43) defines "feral" as "[a]n animal existing in a wild or untamed state, i.e., "wild" ". Plaintiff feeds only "feral" and free-roaming cats so these animals necessarily are excluded from private "ownership" by the plain language of PGC 3-101, et seq.

B. DEFENDANT'S ACTIONS VIOLATE ITS ENABLING LEGISLATION

16. Pursuant to PGC 3-105(a), (b) and (d), Animal Management is required to make regulations pertaining to enforcement of the PGC pertaining to free-roaming or "feral" cats.

17. Animal Management has not made a rule or regulation pertaining to enforcement of the PGC regarding free-roaming or "feral" cats. The absence of regulatory guidance results in arbitrary, capricious and illegal enforcement which impedes Plaintiff's right to engage in lawful activity.

18. Pursuant to PGC 3-109(a)(1) and (7), the Commission is required to make

recommendations, rules and/or regulations pertaining to free-roaming or "feral" cats to the County Executive and/or to the Director of the Department of Environmental Resources.

19. The Commission has not made a rule, regulation or recommendation to the County Executive and/or to the Director of the Department of Environmental Resources, despite many changes pertaining to animal management and related matters that have occurred since the Commission was established. These omissions result in arbitrary, capricious and illegal enforcement which impedes Plaintiff's right to engage in lawful activity.

C. DEFENDANT DOES NOT COMPLY WITH THE OPEN MEETINGS ACT

20. The Animal Management Division of the Prince George's County Department of Environmental Resources was created by Executive Order No. 39-1973 in accordance with Art. V, Sec. 502 of the Prince George's County Charter. Animal Management is a "Public Body" as defined by Md. Code Ann. (SG) 10-502, et seq.

21. Animal Management has not held a public hearing on a proposed rule, regulation or recommendation. The omission violates the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) and (b) which require the agency to provide Plaintiff and the public with notice and opportunity to observe the proceedings and inspect the records made at those meetings.

22. The Commission for Animal Control was created by Executive Order No. 39-1973 in accordance with Art. V, Sec. 502 of the Prince George's County Charter and is a "Public Body" as defined by Md. Code Ann. (SG) 10-502, et seq.

23. The Commission has not held a public hearing on a proposed rule or regulation bearing on the substantive or procedural rights of litigants, the adjudication process itself, or the operations of the Animal Management Facility. The omission violates the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) and (b) which requires the Commission to provide the public with notice and opportunity to observe work sessions and other meetings that have not been properly closed.

V. PRAYER FOR RELIEF

- A. Declare, decree and adjudge that Plaintiff has a lawful right to provide free-roaming or "feral" cats with nutrition, shelter and veterinary care; and,
- B. Declare, decree and adjudge that the Defendant Prince George's County's enforcement practices of the Animal Control provisions of the PGC Sec. 3-101, et seq. violate Plaintiff's right to Due Process of law; and,
- C. Declare, decree and adjudge that Defendant, by and through the Commission for Animal Control is in violation of PGC 3-109(1) and (7) by not having made policy or other recommendations to the County Executive and/or to the Director of the Department of Environmental Resources; and,
- D. Declare, decree and adjudge that Defendant, by and through its agencies the Commission for Animal Control and the Animal Management Division, is in violation of the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) by not providing Plaintiff with notice and opportunity for public observation of the work sessions and other proceedings; and;
- E. Order any further relief as this Court deems just and proper to this cause.

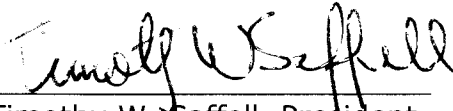
Respectfully Submitted,



E. Anne Benaroya
5625 Hogenhill Terrace
Rockville, Maryland 20853
(410) 977-3331
Attorney for Plaintiff,
Prince George's Feral Friends, SPCA, Inc.

AFFIDAVIT OF TIMOTHY W. SAFFELL

I hereby swear under penalties of perjury and upon personal knowledge that I am over the age of 18, competent to testify to the matters contained herein and that the contents of the foregoing are true.

A handwritten signature in black ink that reads "Timothy W. Saffell". The signature is written in a cursive style with a horizontal line underneath it.

Timothy W. Saffell, President
Prince George's Feral Friends, SPCA, Inc.

VI. REQUEST FOR PRELIMINARY INJUNCTION

24. Paragraphs 1-23 of Petitioner's Complaint for Declaratory Relief are incorporated by reference in this Section as though fully set forth herein.
25. Petitioner has no adequate legal remedy for Respondent's acts or omissions complained of in this Request of a Preliminary Injunction.
26. Petitioner should be excused from posting bond because this is not an action for money damages, debt or other action that falls within the bond requirement of Md. Rule 15-502(a).
27. Respondent's acts and omissions enable unconstitutional enforcement of the PGC Sec. 3-101, et seq. The acts and omissions complained of in the underlying complaint for declaratory relief violate Petitioner's right to due process of law.
28. Respondent should be enjoined from its current practices and enforcement of PGC 3-101, et seq. Respondent, in violation of its constitutional and statutory duties, has not made a rule or regulation pertaining to interpretation or enforcement of the PGC regarding the procedures used to charge Petitioner with violations of the PGC. Respondent's omission violates Petitioner's right to due process of law.
29. Respondent should be enjoined from its current enforcement practices as to the substantive aspects of PGC 3-101, et seq. Respondent's practice of imputing ownership of free-roaming and "feral" cats to Petitioner merely because Petitioner is feeding or has fed an outdoor, free-roaming or "feral" cat violates Petitioner's right to due process. Additionally, Respondent's practice of imputing the duties of ownership to Petitioner without proper notice or simply by fiat is unconstitutional and should be enjoined.
30. Respondent should be enjoined to hold open meetings as required by the Open Meetings Act. Respondent's lack of transparency denies Petitioner's access to information that is critical to Petitioner's fulfillment of its lawful mission and to participation in the democratic process.
31. Petitioner more likely than not will prevail on the merits in this action for declaratory relief against Respondent. Respondent's current enforcement practices conflict with the plain language of the PGC. Moreover, Respondent's current

practices ultimately lead either to Respondent's summary destruction of free-roaming and "feral" cats via a mass roundup and "euthanasia". This procedure is undesirable for many reasons. From the taxpayer's perspective, it is more costly than properly enforcing the PGC. Mass "euthanasia" reduces the cat population only temporarily while allowing the rodent population to flourish without the natural predation that the cats provided, and soon other cats, attracted by the abundant food source, will take the place of those deceased; the new cats reproduce and their numbers soon exceed those of the population they replaced. Proper enforcement is less costly because it would enable Petitioner to spay/neuter the cats so that they would not reproduce, which would diminish the population permanently over time.

32. Public policy discourages Respondent's practice for humane reasons. Respondent's practices inadvertently cause animal hoarding and neglect, since concerned citizens may take the cats indoors. Animal hoarding that has resulted from citizen rescue efforts is well-documented and has been the subject of numerous research studies in the veterinary, public health, and law enforcement communities. See generally, Patronek, Article, "The Hoarding of Animals Consortium (HARC)", *Tufts University Journal of Veterinary Medicine and Public Health*, (2004, Tufts University Press); see also, Website, *The Hoarding of Animal News & Info*, "9/22/10 Cat Hoarding, Greely, Colorado" (cached article).

33. The potential harm that Petitioner would suffer if an injunction does not issue greatly outweighs any potential prejudice to Respondent. Petitioner cares for many free-roaming or "feral" cats in Prince George's County. Absent Petitioner's care, these animals are likely to starve, become infected with rabies, be denied life-saving veterinary attention, and reproduce indiscriminately. Since the animals' lives and well-being hang in the balance, the damage wrought by denying an injunction is irreparable.

34. Respondent suffers no prejudice if this court issues an injunction. Petitioner cares for the cats at its own expense that encourages public stewardship. Petitioner's practice of nourishing, sheltering, and providing veterinary care for the cats diminishes Respondent's duties rather than imposing new ones.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for the following relief.

- A. Enjoin Respondent from its enforcement practices of PGC 3-101 et seq. that pertain to Petitioner's lawful right to provide free-roaming or "feral" cats with food and veterinary attention; and,
- B. Enjoin Respondent to make rules and/or regulations pertaining to free-roaming or "feral" cats; and,
- C. Enjoin Respondent to make recommendations pertaining to free-roaming or "feral" cats to the County Executive and/or to the Director of the Department of Environmental Resources; and,
- D. Enjoin Respondent, by and through the Animal Management Division and the Commission for Animal Control, to comply with the Open Meetings Act, Md. Code Ann. (SG) 10-501(a), and to provide the public with notice and opportunity for public comment; and,
- E. Order any further relief as this Court deems just and proper to this cause.

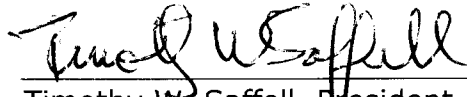
Respectfully Submitted,



E. Anne Benaroya
5625 Hogenhill Terrace
Rockville, Maryland 20853
(410) 977-3331
Attorney for Petitioner,
Prince George's Feral Friends, SPCA, Inc.

AFFIDAVIT OF TIMOTHY W. SAFFELL

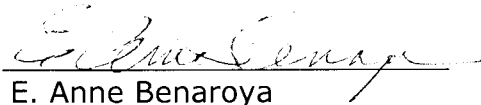
Pursuant to Md. Rule 1-304 I hereby swear under penalties of perjury and upon personal knowledge that I am over the age of 18, competent to testify to the matters contained herein and that the contents of the foregoing are true.



Timothy W. Saffell, President
Prince George's Feral Friends, SPCA, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2010 a copy of the foregoing Request for Issuance of Preliminary Injunction was mailed first-class, postage prepaid to the Prince George's County Office of Law, Kristen Dorsey, Esq., at 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772.



E. Anne Benaroya

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S FERAL FRIENDS, SPCA, INC.

c/o Mr. Timothy Saffell, President

P.O. Box 1036

Bowie, Maryland 20718

Plaintiff/Petitioner,

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CAL 10-21374

*

vs.

PRINCE GEORGE'S COUNTY, MARYLAND

14741 Gov. Oden Bowie Drive

Upper Marlboro, Maryland 20772

Defendant/Respondent.

*

PRELIMINARY INJUNCTION

Upon consideration of the Request for Preliminary Injunction brought by Petitioner Prince George's Feral Friends, SPCA, Inc. and the opposition brought by Prince George's County, it is

HEREBY ORDERED on this _____ day of _____, 2010 that

- A. Prince George's County is enjoined against interference with Petitioners' lawful right to provide free-roaming or "feral" cats with nutrition, shelter and veterinary attention; and,
- B. The Animal Management Division of the Prince George's County Department of Environmental Resources is enjoined to make rules and/or regulations pertaining to free-roaming or "feral" cats; and,
- C. The Commission for Animal Control of the Prince George's County Department of Environmental Resources is enjoined to make rules and/or recommendations pertaining to free roaming or "feral" cats to the County Executive and/or to the Director of the Department of Environmental Resources; and,
- D. The Animal Management Division of the Prince George's County Department of Environmental Resources is enjoined to comply with the Open Meetings Act, Md. Code Ann. (SG) 10-501(a); and,

E. The Commission for Animal Control of the Prince George's County Department of Environmental Resources is enjoined to comply with the Open Meetings Act; and,
F. This order shall stay in effect until the Prince Georges County Circuit Court has issued a final order/ruling on the merits and shall expire upon enrollment of that order.

Judge,
Circuit Court for Prince George's County

COPIES TO:

E. Anne Benaroya, Esq.
5625 Hogenhill Terrace
Rockville, Maryland 20853
Attorney for Petitioner,
Prince George's Feral Friends, SPCA, Inc.

Kristen Dorsey, Esq.
14741 Gov. Oden Bowie Dr.
Office of Law – Room 5121
Upper Marlboro, Maryland 20772
Counsel for Respondent,
Prince George's County, Maryland