

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,

And

SUSAN BROWN \*  
12811 Cheval Court  
Upper Marlboro, Maryland 20772  
Plaintiff/Petitioner,

Case No. CA110-21374

vs.

PRINCE GEORGE'S COUNTY, MARYLAND \*  
14741 Gov. Oden Bowie Drive  
Upper Marlboro, Maryland 20772  
Defendant/Respondent,

And

COMMISSION FOR ANIMAL CONTROL \*  
PRINCE GEORGE'S COUNTY  
DEPARTMENT OF ENVIRONMENTAL RESOURCES  
9400 Peppercorn Place, Suite 500  
Largo, Maryland 20774  
Defendant/Respondent

And

ANIMAL MANAGEMENT DIVISION OF \*  
PRINCE GEORGE'S COUNTY  
DEPARTMENT OF ENVIRONMENTAL RESOURCES  
9400 Peppercorn Place, Suite 500  
Largo, Maryland 20774  
Defendant/Respondent

SERVE:

PRINCE GEORGE'S COUNTY OFFICE OF LAW \*  
14741 Gov. Oden Bowie Drive  
Suite 5121  
Upper Marlboro, Maryland 20772

PR GEORGE CO MD #72  
JUN -9 AM 10:42  
Clerk of the  
Circuit Court

## COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

### I. INTRODUCTION

"No good deed goes unpunished" is the theme of this action brought by Prince George's Feral Friends, SPCA, Inc. (SPCA) and Ms. Susan Brown. Petitioners respectfully request that this Honorable Court grant their request for declaratory judgment and issue a preliminary injunction pursuant to Md. Code Ann. (CJP) Sec. 3-401, et seq., Md. Code Ann. (SG) 10-125(2), the Prince George's County Code, Section 3-101, et seq., "Animal Control," and Md. Rule 15-500, et seq.

Initially, Plaintiffs/Petitioners request that this court declare, adjudge and decree that the Animal Control portions of the Prince George's County Code (PGC) shall be construed so as to not impute "ownership" of free-roaming "feral" cats to Petitioners, pursuant to PGC Sec. 3-101(57), by virtue of their Good Samaritan actions in feeding and providing veterinary care for these animals.

Defendants'/Respondents' interpretation and implementation of the pertinent law is illogical and poor public policy as it penalizes Good Samaritans for rendering aid to free-roaming cats and promotes unnecessary government expenditure.

Secondarily, Plaintiffs/Petitioners (Petitioners hereinafter), respectfully request that this court declare, adjudge and decree that the Defendant/Respondent agencies (Respondents hereinafter), the Animal Management Division and the Commission for Animal Control of the Prince George's County Department of Environmental Resources are public bodies pursuant to Md. Code Ann. (SG) 10-502(h)(l)(ii) and that both are in violation of the Open Meetings Act, Md. Code Ann.(SG) 10-501, et seq.

Petitioners further request that this court declare, adjudge and decree that both the Animal Management Division and the Commission for Animal Control have failed to discharge their respective duties. Animal Management Division, an enforcement agency, is in violation of PGC 3-105(a)-(d) by failing to make any regulations, internal or otherwise. Similarly, the Commission for Animal Control, an adjudicative agency, is violation in of its duties set forth in PGC sec. 3-109(a)(1), (3)and (7) by failing to make rules, regulations and recommendations to the County Executive or the Director of the Department of Environmental Resources (DER).

Finally, Petitioners respectfully request that this honorable court grant their request to enjoin all Respondents from interpreting and enforcing the Animal Control provisions of the PGC in any manner that penalizes or deters Petitioners from feeding and providing veterinary care for free-roaming cats. The Respondent agencies' current enforcement interpretations and practices are not published, even internally, and are therefore illegal.

## II. JURISDICTION

1. Petitioner SPCA is a not-for-profit Maryland charitable corporation, in good standing, and has been a resident of Prince George's County, Maryland at all times relevant to this action.
2. Petitioner Susan Brown is a member of Petitioner SPCA and has been a resident of Prince George's County, Maryland at all times relevant to this action.
3. Respondent Prince George's County is a political subdivision of the State of Maryland.
4. The Commission for Animal Control (The Commission) 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., and is empowered to recommend rules and regulations concerning the operation of the Animal Control facility, standards for the care and custody of animals under Respondent's jurisdiction and to adjudicate all PCG provisions pertaining to animal control.
5. The Animal Management Division (Animal Management) of the Prince George's County Department of Environmental Resources is a duly appointed administrative agency pursuant to PGC 3-102, et seq. and is empowered to enforce all PCG provisions pertaining to animal control.
6. Pursuant to Md. Code Ann. (CJP) 3-409(2) Petitioners SPCA and Susan Brown bring this action against Respondent Prince George's County, Maryland. Antagonistic claims exist between Petitioners SPCA and Brown and Respondent Prince George's County; litigation is imminent and inevitable as Petitioners' stated goal is to provide nutrition and veterinary care for free-roaming cats without incurring penalties incident to "ownership".
7. Pursuant to Md. Code (SG) 10-125(2)(b) and (c) Petitioners SPCA and Susan Brown bring this action against the Commission. The Commission has exclusive

original jurisdiction to make regulations and recommendations to the County Executive and the Director of DER regarding all matters pertinent to free-roaming cats.

8. Pursuant to Md. Code (SG) 10-125(2)(b) and (c) Petitioners SPCA and Susan Brown bring this action against Animal Management. Animal Management has exclusive original jurisdiction to make regulations pertaining to all enforcement issues pertinent to free-roaming cats; these include but are not limited to feeding, veterinary care, and euthanasia.

### 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 AGAINST ALL RESPONDENTS

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

11. Respondent Animal Management has issued written warnings to Petitioners and other similarly situated Good Samaritans. The warnings state that feeding free-roaming cats is a violation of the Animal Control provisions of the PGC, 3-101 et seq. Specifically the warnings state that by feeding a free-roaming cat for an undetermined period of time, usually thirty (30) days or longer, the feeder becomes the cat's "owner" as defined by PGC 3-101(57). The warnings are misleading because feeding these animals is not prohibited anywhere in PGC 3-101, et seq. PGC 3-101, et seq. is quasi-penal in nature because it subjects citizens to fines and penalties for violations, so it should be strictly construed.

12. Respondents have subjected Petitioners and other similarly situated Good Samaritans to fines and civil penalties for providing veterinary care to free-roaming or "feral" cats on Petitioners' property, or the property of another with permission, and subsequently returning the cats to their original location. Providing emergency medical care, rabies vaccine and spay/neuter surgery is not prohibited by the plain language of the PGC; however, Petitioners and others have received fines and penalties for having not obtained licensure for the animals and have been cited for violating the PGC for returning the animal to their original location.

13. PGC 3-101(43) defines "feral" as "An animal existing in a wild or untamed

state, i.e., wild.” The definition appears behavioral and idiosyncratic to an individual animal, not to a group sui generis. A “feral” animal cannot be “owned” within the meaning of 3-101(57)(B) because the definition of “keeping or harboring” in PGC 3-101(50) excludes “feral” animals. Respondent Prince George’s County deems all free roaming cats “feral” for purposes of exercising Respondent’s (ownership) right to capture and euthanize free-roaming cats as “nuisance animals” without providing notice to any citizen. At the same time, Respondent imputes “ownership” of these same animals, en mass, to Petitioners without having ascertained whether the animals are “stray”, “feral” or pets at large. And without providing any identifying information to distinguish one cat from the next, Respondents fine and penalize Petitioners for creating a “public nuisance” without ever having identified the specific animal causing the nuisance.

14. An animal’s “owner” may be subjected to fines and criminal penalties for failing the duties of animal ‘ownership’ set forth in PGC 3-101, et seq. The term “owner” as set forth in PGC 3-101(57) subsections (C), “Has an animal in his or her care;” (D) “Acts as a temporary or permanent custodian of an animal;” and (E), “Exercises control over a particular animal on a regular basis” is vague in that it fails to properly notify citizens as to their legal rights and obligations vis a vis free-roaming cats. For this reason, these subsections violate Petitioners’ right to Due Process of law as guaranteed by the U.S. Constitution, Amend. 14 and the Maryland Declaration of Rights, Art. 20.

15. The term “owner” is unconstitutionally overbroad in that it subjects citizens engaged in lawful activity to fines and penalties. For this reason, these subsections violate Petitioners’ right to Due Process of law as guaranteed by the Due Process Clause of the U.S. Constitution, Amend. 14, and the Maryland Declaration of Rights, Art. 20.

#### V. DECLARATORY RELIEF AGAINST THE COMMISSION AND ANIMAL MANAGMENT

16. Paragraphs 1 through 15 are incorporated into this section, as though fully set forth herein.

17. Respondent Commission was created by Executive Order No. 39-1973 in accordance with Art.V, Sec. 502 of the Prince George's County Charter.

Respondent is a "Public Body" as defined by Md. Code Ann. (SG) 10-502, et seq.

18. The Commission never has made internal rules or regulations pertaining to enforcement of the PGC provisions pertaining to free-roaming or "feral" cats at any time. Similarly, Respondent never has published or adopted rules and regulations. Pursuant to Md. Code Ann. (SG) 10-125 (d)(3) Respondent's omission results in arbitrary enforcement which impairs, threatens and impedes Petitioners' right to engage in lawful activity.

19. The Commission has ignored its duties pursuant to PGC 3-109(a)(1) and (7). These provisions require the Commission 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 and to recommend changes in the law to accommodate new developments. Respondent's failure to adopt and publish rules and regulations violates Md. Code Ann. (SG) 10-128, et seq. This omission results in arbitrary enforcement which impairs, threatens and impedes Petitioners' right to engage in lawful activity.

20. The Commission has never held a public hearing on any proposed rule, regulation or recommendation. This omission violates the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) and (b) which require the Commission to provide the public with notice and opportunity for public comment.

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

22. Animal Management never has made internal rules or regulations pertaining to enforcement of the PGC provisions pertaining to free-roaming or "feral" cats at any time. Similarly, Respondent never has published or adopted rules and regulations. Pursuant to Md. Code Ann. (SG) 10-125 (d)(3) Respondent's omission results in arbitrary enforcement which impairs, threatens and impedes Petitioners' right to engage in lawful activity.

23. Animal Management has ignored its duties pursuant to PGC 3-105(a),(b) and (d). These provisions require Animal Management to make regulations pertaining

to enforcement of the PGC vis a vis free-roaming or "feral" cats, to make the operations of the animal control facility open to the public , including the administration of euthanasia. Respondent's failure to adopt and publish rules and regulations violates Md. Code Ann. (SG) 10-128 et seq. This omission results in arbitrary enforcement which impairs, threatens and impedes Petitioners' right to engage in lawful activity.

24. Animal Management has never held a public hearing on any proposed rule, regulation or recommendation. This omission violates the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) and (b) which require Animal Management to provide the public with notice and opportunity for public comment.

#### VI. PRAYER FOR RELIEF

A. Declare, decree and adjudge that Respondent Animal Management may not interpret or enforce PGC Animal Control 3-101, et seq. in any manner that impedes Petitioners' lawful right to provide free-roaming or "feral" cats with food and veterinary attention; and,

B. Declare, decree and adjudge that Respondent Commission for Animal Control violated PGC 3-109(1) and (7) by failing to make recommendations, 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; and,

C. Declare, decree and adjudge that the Commission and Animal Management are in violation of the Open Meetings Act, Md. Code Ann. (SG) 10-501(a) by failing to provide the public with notice and opportunity for public comment; and;

D. Order any further relief as this Court deems just and proper to this cause.

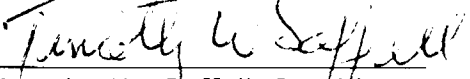
Respectfully Submitted,

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E. Anne Benaroya  
5625 Hogenhill Terrace  
Rockville, Maryland 20853  
(410) 977-3331  
Attorney for Petitioners


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 County Feral Friends, SPCA, Inc.

AFFIDAVIT OF SUSAN BROWN

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.

  
\_\_\_\_\_  
Susan Brown, Member,  
Prince George's County Feral Friends, SPCA, Inc.



## VII. PRELIMINARY INJUNCTION

25. Paragraphs 1-24 are incorporated by reference in this Section as though fully set forth herein.

26. Petitioners have no adequate legal remedy for any act or omission taken by Respondents complained of herein.

27. Petitioners should be excused from posting bond because neither party has any action for money damages, debt or other action that falls within the bond requirement of Md. Rule 15-502(a).

28. Respondents should be enjoined from enforcing the provision of 3-101, et seq. that pertain to feeding and providing veterinary care for free-roaming or "feral" cats. Despite a legal duty to do so, Respondents have failed to make any policy, rule or regulation pertaining to enforcement of the PGC vis a vis free-roaming or "feral" cats whatsoever. Additionally, Respondents have failed their duty to the public by failing to hold open meetings or allow public access to the Animal Control Facility.

29. Petitioners are more than likely to prevail on the merits in this action for declaratory relief against Respondent Prince George's County. Pursuant to Md. Code Ann. (SG) 10-125 this court will more likely than not find that Respondent Prince George's County violated Due Process Clause of the U.S. Constitution, Amend. 14, and the Maryland Declaration of Rights, Art. 20.

30. Petitioners are more than likely to prevail on the merits in this action for declaratory relief against Respondents Animal Management and The Commission. More likely than not this court will find that Respondents violated Md. Code Ann. (SG) 10-125(3) by failing to adopt regulations as required by PGC 3-105, et seq. and 3-109, et. seq. and violated Md. Code Ann (SG) 10-501 by failing to comply with the Open Meetings Act.

31. The potential harm that Petitioners would suffer if an injunction does not issue greatly outweighs any potential prejudice to Respondents. Petitioners care for and maintain many free-roaming cats in Prince George's County. These animals are likely to be arbitrarily and perhaps illegally starved to death, denied veterinary attention and euthanized if Respondent enforces its current practices. Since these animal's lives hang in the balance, the damage wrought by denying an injunction is

irreparable.

32. Respondents suffer no prejudice as Petitioners' interpretation of the law encourages public Stewardship and Good Samaritan practices which relieve the government of duties rather than imposing new ones. And, Petitioners challenge only the provisions of the PGC that pertain to "feral" cats so Respondents' other enforcement duties are in no way diminished while this dispute is litigated.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief.

- A. Enjoin Respondents Prince George's County and Animal Management from enforcing PGC 3-101 et seq. in any manner that impedes Petitioners' lawful right to provide free-roaming or "feral" cats with food and veterinary attention; and,
- B. Enjoin Respondent Commission 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; and,
- C. Enjoin Respondent Animal Management and Respondent Commission 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,
- D. Order any further relief as this Court deems just and proper to this cause; and,
- E. Order the Clerk of the Court to schedule the matters raised herein for an expedited hearing.

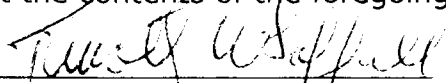
Respectfully Submitted,

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E. Anne Benaroya  
5625 Hogenhill Terrace  
Rockville, Maryland 20853  
(410) 977-3331  
Attorney for Petitioners


AFFIDAVIT OF TIMOTHY W. SAFFELL

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

AFFIDAVIT OF SUSAN BROWN

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.

  
\_\_\_\_\_  
Susan Brown, Member,  
Prince George's Feral Friends, SPCA, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July 2010 a copy of the foregoing Request for Issuance of Preliminary Injunction was hand-delivered to the Prince George's County Office of Law, Kristen Dorsey, Esquire, counsel for Respondents at 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772.

\_\_\_\_\_  
E. Anne Benaroya