

CURRENT ENFORCEABILITY OF THE HAYDEN LAW OF 1998

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INTRODUCTION

In 1998 California enacted a comprehensive set of laws, known as the Hayden Law, designed to move California's animal shelters in the direction of saving more animals' lives through consolidation of pre-existing legal requirements pertaining to animal shelters and emphasis on adoption and owner-redemption of lost pets. In 2000, the Hayden Law was challenged on financial grounds by city and county governments. The challenge was brought before the Commission on State Mandates (Commission), which is charged with deciding claims by local government that the State owes them money for the implementation of laws at the local level.

Although the California Legislature and the California Department of Finance had concluded that compliance with the Hayden Law would reduce the costs of animal sheltering by saving animals through adoption and owner-redemption, the Commission ruled that some of the individual laws in the Hayden Law require State reimbursement for costs local governments incur for compliance. (Commission on State Mandates, Statement of Decision, 98-TC-11). In accordance with that decision, the State has been paying local governments to comply with those parts of the Hayden Law that require state reimbursement.

During the recent state budget crisis, however, the Governor and the Legislature decided not to provide reimbursement during the 2009-2010 fiscal year. It is important to note that those laws have not been repealed and will become enforceable when funded in future budgets. For now, though, the unfunded laws are unenforceable for the period of time that the current budget is in effect. The primary change that has occurred is that the holding period for stray and owner-relinquished animals has dropped from 4 or 6 days, depending on the hours the shelter is open, to 72 hours. Even so, there may well be local laws or animal shelter policies/guidelines that require longer holding periods. Those

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laws or policies and guidelines must be followed even if the State requires no more than 72 hours.

Not all of the laws enacted as part of the Hayden Law were deemed by the Commission on State Mandates to require State reimbursement. Those parts of the Hayden Law remain in effect regardless of California's budgetary situation because they do not require State reimbursement of local government for compliance costs.

**HAYDEN LAW PROVISIONS THAT HAVE NOT BEEN SUSPENDED AND WHICH
REMAIN IN EFFECT.**

The Commission on State Mandates decided that the provisions below do not require State reimbursement. Since the following parts of the Hayden Law are not affected by the State's budget in any way, the following remain in effect:

A. Owner-relinquished animals.

A shelter may not kill an owner-relinquished animal without holding the animal for the minimum 72 hours that stray cats and dogs must be held under state law (Food and Agricultural Code section 31754). That is true regardless of the species of the owner-relinquished animal and regardless of an owner's expressed wishes that his/her animal be killed. The Commission decided that the law does not require shelters to take in owner-relinquished animals but does require shelters to provide a holding period if shelters decide to take in owner-relinquished animals. Shelters have the choice of rejecting owner-relinquished animals or accepting owner-relinquished animals and holding them for owner-redemption and adoption for the same period as stray cats and dogs. Shelters may not kill owner-relinquished animals before the statutory holding period of 72 hours has elapsed, with or without the owners' permission. (Food and Agricultural Code section 31754) Only animals who are irremediably suffering¹

¹ The question of what constitutes irremediable suffering was litigated in 2007. That lawsuit against Los Angeles County, resulted in the following definition:

An animal with a medical condition who has a poor or grave prognosis for being able to live without severe, unremitting pain despite necessary veterinary care.

from a serious illness or severe injury may be euthanized. (Food and Agricultural Code section 17006.)

Please note: A particular shelter may be obligated by local laws to hold animals longer than is required by state law. If a local law requires a longer holding period, then that local law controls the minimum holding period and not the state law of 72 hours. Owner-relinquished animals must be held for the same period of time as is required for stray cats and dogs.

B. Scanning animals for microchip information and informing owners that their animals are at the shelter.

The obligation to scan for microchips was added to the holding period statutes in 2000, two years after the Hayden Law was enacted. It remains fully in effect. Civil Code section 2080, which pre-existed the Hayden Law, requires finders of lost property to make reasonable efforts to notify the owner, when the owner is known. Therefore, if the required microchip scanning reveals information about an owner, the shelter must make reasonable efforts to inform the owner of the whereabouts of his/her lost animal and take reasonable care of the animal until the owner can reclaim the animal. Civil Code section 2080 provides that public shelters can charge the owner with the costs of maintaining the animal. Thus, the Commission found, public shelters have sufficient fee authority to capture the costs of providing reasonable care, including veterinary care, and the provision of caring for animals whose owner is known is not a state reimbursable expense. The obligations to scan animals for microchips, to make reasonable efforts to inform owners that their animals are at the shelter, and to maintain those animals remain in effect without regard to California's budgetary situation.

C. Feral cats.

A shelter must hold stray feral cats for the same holding period as non-feral cats. Feral cats must also receive the same opportunities for owner-redemption, adoption, and release to an IRC section 501(c)(3) animal rescue and adoption group if requested. The only provision of the Hayden Law that required reimbursement was temperament testing of cats, which would have excused shelters from holding feral cats for the extended holding period that the Hayden Law provided for stray and owner-relinquished cats. However, the statutory holding period for all cats, regardless of temperament, has been reduced to 72 hours.

Please note: To the extent that shelters were killing feral cats without holding them before the Hayden Law was enacted, those shelters were violating the law that pre-dated the Hayden Law. The law provided that all stray cats be held for 72 hours and did not distinguish among cats on the basis of temperament. A local law cannot override a state law by providing less protection than state law affords. Therefore, a local law that provides for immediate euthanasia of feral cats would not override the state law, which requires that feral cats be held for the same period of time as other cats.

Also note: Local laws or policies may provide for a longer holding period than state law provides. It is important to determine what the local law and policy is. The state law requires a minimum of 72 hours and not a maximum of 72 hours; animals can be held longer if local government decides to hold animals longer.

D. Internal Revenue Code 501(c)(3) animal rescue and adoption groups.

A shelter must allow Internal Revenue Code 501(c)(3) animal rescue and adoption groups to take animals from the shelter. (Food and Agricultural Code sections 31108, 31752, 31754) What this means is that a shelter cannot kill an animal if a rescue group or No Kill shelter is willing to save that animal's life. Rather than kill animals, shelters are still required to transfer these animals if those groups request it. Shelters are still not permitted to withhold animals because of temperament evaluation or add any other criteria beyond the requirement that the groups be recognized as non-profits under Internal Revenue Code section 501(c)(3).

Please note: The Commission decided that these laws provide for a shelter, at its option, to charge such groups the same price for adoption that members of the public pay. Because local government has sufficient fee authority, the State does not owe local government reimbursement. However, the fact that the state law allows shelters to charge rescue groups a fee does not mean that shelters must charge such a fee. The state law gives local government the option of requiring such a fee. If local government does assess a fee, it can be no higher than that required of members of the public.

E. Veterinary Care.

The Hayden Law provisions that require shelters to provide prompt and necessary veterinary care continue in effect when:

1. the animal is an injured cat and dog who requires emergency veterinary care;
2. the animal's owner is known (microchip information or tag information or by seizure of the animal from someone's property);
3. the animal is adopted or redeemed by the owner; or
4. the animal is released to a nonprofit animal rescue or adoption organization.

The reason that prompt and necessary veterinary care is required for cats and dogs in need of emergency medical care (1) is that providing such care was already required by law before enactment of the Hayden Law. The reason that prompt and necessary veterinary care is required for animals in the categories (2) through (4) is because local government has sufficient fee authority to collect those costs that the state need not reimburse local government for veterinary expenditures incurred for those animals.

Please Note: Local government may be reluctant to provide veterinary care under the circumstances of (2) through (4) above because shelters cannot predict which animals will be redeemed by their owners, adopted, or released to rescue groups. If an animal is redeemed, adopted, or released to a rescue group, the shelter could assess fees that enable the shelter to recapture the veterinary costs it incurred. However, if an animal who receives non-emergency veterinary care is not redeemed, adopted, or released to a rescue group, the shelter will not be able to recoup its expenditure the State or any other entity. That uncertainty may lead to a failure to provide any non-emergency veterinary care to animals. However, the Legislature and the Governor suspended only those parts of the Hayden Law that the Commission on State Mandates deemed to be reimbursable state mandates. The Commission decided that providing prompt and necessary veterinary care to the animals listed above did not trigger reimbursement by the State. Therefore, veterinary care should be rendered to those animals, especially to animals

whose owner is known or when someone has requested an animal for adoption or when a rescue group has placed a hold on an animal.

F. Records.

Shelters must maintain records of the whereabouts of animals and details of veterinary care as to those animals who receive veterinary care. (Food and Agricultural Code section 32003) That has not changed because those requirements pre-date the Hayden Law and are separately required under other laws that regulate veterinary medical practice. The following records must be kept for three years for each animal who receives veterinary care:

1. The date the animal was taken up, euthanized, or impounded;
2. The circumstances under which the animal is taken up, euthanized, or impounded;
3. The names of the personnel who took up, euthanized, or impounded the animal; and
4. The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party.

G. Policies in Favor of Adoption and Reasonable Treatment to Make Animals Adoptable.

California's state policies in favor of adoption instead of euthanasia of adoptable shelter animals and reasonable treatment of unadoptable animals who could become adoptable remain in effect. (Civil Code section 1834.4, Food and Agricultural Code section 17005, Penal Code section 599d). The Commission on State Mandates found that these statutes do not mandate reimbursable duties. They remain in effect to resolve ambiguities in particular laws or that arise when two laws appear to conflict with each other. In those cases, the interpretation that saves animals' lives is the interpretation that will be legally preferred to resolve any ambiguity or conflict between laws.

H. 14-Day Holding Period and Veterinary Care for Animals Seized under Penal Code section 597.1.

Penal Code section 597.1 provides for a 14-day holding period for animals seized under that section. The section also provides for veterinary care and treatment for those animals. The Commission on State Mandates decided that

these provisions do not require state reimbursement because the law also provides that the costs of providing care and maintenance of seized animals can be recovered from the owners of the animals.