



## Neighborhood Cats

# Proposed Trap-Neuter-Return Regulations By the New York City Department of Health

### Introduction

This past September, 2011, the New York City Council declared Trap-Neuter-Return (TNR) to be the city's official policy for the management of feral and stray cats. In addition, the Council gave the New York City Department of Health (DOH) the authority to create regulations on the practice of TNR.

Within the next few months, DOH is expected to officially publish their proposed TNR regulations in The City Record. There will then be a period of at least 30 days in which the public can submit written comments about the proposed rules. There will also be one hearing at which members of the public can speak. After the written comment period has passed and the public hearing held, DOH may alter the proposed rules or not at its discretion. The final version of the rules will then be published in The City Record and become law in 30 days. (For more on the City's rulemaking process, go to:

<http://www.nyc.gov/html/nycrules/html/about/process.shtml>).

The regulations are of critical importance to NYC's TNR community as they will govern our work for many years to come. To help ensure these new rules further the growth of TNR, and do not stunt and impede it, Neighborhood Cats has drafted our own set of proposed regulations, set forth below. We believe we are uniquely qualified to do so. We were the first animal welfare agency in NYC to introduce TNR on a large scale back in the fall of 1999. Over the ensuing years, we have helped guide the development of a city-wide TNR system that now alters thousands of feral and stray cats annually. We have instructed training workshops that have been attended by over 4,000 individuals. We pioneered new TNR techniques like mass trapping, produced leading educational materials on TNR and persuaded animal welfare organizations across the U.S. to adopt pro-TNR policies. In the legal area, we have assisted numerous municipalities in drafting TNR-enabling ordinances and regulations and have presented webinars and lectures on TNR and the law, including most recently at the NYC Bar Association's annual Animals & the Law conference.

As detailed further in the explanatory footnotes accompanying our proposed rules, we believe there are two essential elements the new regulations must contain. First, individuals and animal welfare groups must be authorized to practice TNR without first having to undergo any type of government-ordered approval, registration or permitting process administered by DOH or any of its agents. That is the state of affairs now and it has fueled the success of NYC's still expanding TNR movement.<sup>1</sup> If the rules give DOH or one of its agents the power to act as a gatekeeper before TNR activity can be conducted, this could result in intentional obstruction of TNR in general, bureaucratic delays and corruption. The regulations instead must pre-approve all adults and animal welfare nonprofits to engage in TNR, approval which can only be revoked if a violation of the Standards of Care for TNR activity is committed.

Second, the rules must allow the Standards of Care to be considered satisfied as long as the individuals or agencies practicing TNR have made reasonable, good faith efforts to meet these standards. In other words, if someone has done everything they reasonably can to comply with the rules and is unable to 100% satisfy them, they should not be deemed in violation. Otherwise, the Standards of Care will be too onerous and will discourage people from practicing TNR.

These new rules will be a big part of our lives in the very near future and now is our best opportunity to speak as a community and insist the new laws aid our efforts, not thwart them. We encourage everyone involved or interested in TNR in New York City to read through our proposed regulations carefully and let us know your thoughts and questions. We can be reached at [headcat@neighborhoodcats.org](mailto:headcat@neighborhoodcats.org). Thank you for caring!

## Proposed Regulations

### A. Definitions

1. "Animal welfare agency" is a charitable corporation approved for nonprofit status by the Internal Revenue Service pursuant to IRS Code section 501(c)(3) and whose primary mission includes the advancement of animal welfare.
2. "Cat" means a member of the species *Felis Catus*.
3. "Feral cat" means a cat that is unsocialized to humans.
4. "Stray cat" means a cat that is socialized to humans and unowned.

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<sup>1</sup> Under our proposed regulations, individuals may continue to be required by private agencies to undergo training and become TNR-certified before they could gain access to certain TNR-related services, such as feral cat spay/neuter appointments scheduled at the ASPCA's clinic. This is to be distinguished from a requirement of government approval before someone could engage in any TNR activity, which we oppose.

5. “Feral cat colony (colony)” means one or more feral or stray cats sharing a common location and food source.<sup>2</sup>
6. “Feral Cat Caretaker” means any person who provides care, including food, shelter and veterinary care, to a feral cat colony.
7. “Trap-Neuter-Return (TNR) Project” refers to a project to trap, spay/neuter, vaccinate for rabies, eartip and return the members of a feral cat colony to their original location, then provide food, shelter and veterinary care to the returned colony on an ongoing basis.
8. “Trap-Neuter-Return (TNR) Program” refers to a program which includes, promotes or supports the practice of TNR Projects and is administered by an animal welfare agency.

## **B. Approval of Trap-Neuter-Return Projects & Programs**

1. Any person over the age of eighteen years old who is willing to comply with the Responsibilities of the Feral Cat Caretaker and Standards of Care, as set forth in section C, may perform a TNR Project. Prior approval by the New York City Department of Health (DOH), New York City Animal Care & Control (ACC) or any other public or private organization acting as an agent of DOH or ACC is not required.<sup>3</sup>
2. Any animal welfare agency which is willing to comply with and promote the Responsibilities of the Feral Cat Caretaker and Standards of Care, as set forth in section C, may administer or supervise a Trap-Neuter-Return Program. Prior approval by the New York City Department of Health (DOH), New York City Animal Care & Control (ACC) or any other public or private agency is not required.<sup>4</sup>

## **C. Responsibilities of the Feral Cat Caretaker and Standards of Care**

1. Feral Cat Caretakers will make reasonable, good faith efforts to have all cats in the colony altered, eartipped for identification, vaccinated against rabies and returned to their original location following full recovery from surgery or placed into foster or adoptive care.<sup>5</sup>

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<sup>2</sup> For purposes of these regulations, a “colony” should include only one cat. TNR may include situations where over time, a colony of multiple cats is reduced to one. Or there may be a single free-roaming cat at a location and a Feral Cat Caretaker will spay/neuter, return and then provide ongoing care for that single cat.

<sup>3</sup> These proposed regulations envision the “default” being that any person or animal welfare agency is pre-approved to engage in TNR without having to first seek official permission from or register with DOH or any of its agents. A regulatory system which would prohibit any person or agency from engaging in TNR without prior approval or registration would be a severe step backwards in the development of TNR in NYC, in Neighborhood Cats’ opinion, and should be strongly opposed. TNR as currently practiced in NYC is open to all members of the public and all interested agencies and has thrived as a result. To make DOH, ACC or any group designated by DOH or ACC the gatekeeper for who can begin practicing TNR would invite suppression of TNR activity, favoritism and centralization of control that could be easily abused. DOH may need the authority to withdraw approval if anyone is failing to meet the Standards of Care set forth in section C, but should not decide who gets to start out practicing TNR in the first place.

<sup>4</sup> See fn. 2, supra.

<sup>5</sup> The use of the language “reasonable” and “good faith” when referring to a Feral Cat Caretakers’ efforts throughout section C is critically important. Without this qualifying language, a caretaker could be found to be in

2. Feral Cat Caretakers will provide adequate food, water and shelter to colony cats on a regular basis, year-round, minimizing as much as reasonably possible any nuisance or unsanitary conditions.
3. Feral Cat Caretakers will provide adequate shelter for colony cats whenever circumstances reasonably allow for the placement of shelter in the colony's territory, minimizing as much as reasonably possible any nuisance conditions.
4. Feral Cat Caretakers will make reasonable, good faith efforts to provide needed veterinary care to colony cats who are visibly ill or injured.
5. Feral Cat Caretakers will keep and maintain records for each colony cat, including each cat's rabies vaccination record/certificate.
6. Feral Cat Caretakers will make reasonable, good faith efforts to exclude colony cats from yards, gardens or similar property upon request of the property owner.
7. Feral Cat Caretakers will make reasonable, good faith efforts to address and resolve complaints concerning colony cats.
8. Feral Cat Caretakers will make reasonable, good faith efforts to ensure that a substitute Caretaker is in place during the Feral Cat Caretaker's temporary or permanent absence.

#### **D. Responsibilities of New York City Animal Care & Control (ACC)**

1. ACC will only trap and seize those feral or stray cats which pose an imminent health risk to the public or are severely injured or sick.
2. ACC will make reasonable, good faith efforts to notify animal welfare agencies administering TNR Programs of any eartipped cat admitted to ACC facilities, and will cooperate with efforts by an animal welfare agency to return the cat to his/her colony or place the cat in foster or adoptive care.
3. ACC will charge a surrender fee equal to one hundred dollars (\$100.00) or the average cost of maintaining a feral or stray cat in an ACC facility, whichever is greater, to any person who has previously surrendered six or more feral or stray cats to ACC within the past twelve months.<sup>6</sup>
4. ACC will make reasonable, good faith efforts to inform the public, including members of the public who utilize its facilities, of TNR services provided by animal welfare agencies in New York City.

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violation of the Standards of Care if one of the conditions is not met despite making every attempt to be in compliance. For example, C.1 requires all cats in a colony to be altered. Unless the "reasonable, good faith effort" qualifier is included, a caretaker who altered 19 of 20 colony cats and spent countless hours trying unsuccessfully to trap the last cat would be in violation.

<sup>6</sup> The purpose of D.3 is to end the practice of persons and private extermination companies of surrendering large numbers of feral and stray cats to ACC where most will be euthanized, at no cost to those responsible for bringing them in. If official New York City policy towards managing free-roaming cats now really is TNR, then the doors of the City's shelters should be shut to those who want to continue to engage in trap-and-euthanize as a form of feral and stray cat control or, at the least, these people should bear the costs of trap-and-euthanize, not the City.

#### **E. Responsibilities of New York City Department of Health (DOH)**

1. DOH will enforce the Standards of Care set forth in section C, applicable to Feral Cat Caretakers. A Caretaker has up to sixty (60) days to come into compliance with the standards of care, unless exigent circumstances impacting the welfare of the cats or human beings justify a shorter period of time before compliance is achieved.<sup>7</sup>
2. DOH may revoke approval of any person to perform a TNR project or any animal welfare agency to administer a TNR Program for failure to meet or promote the Standards of Care set forth in section C.<sup>8</sup>

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<sup>7</sup> Given the reality that DOH will be issuing regulations, the best system available is for persons and animal welfare agencies to be pre-approved to practice TNR. In order for this to work, DOH must have the authority to enforce the rules and revoke approval if someone is clearly in violation of the Standards of Care in section C.

<sup>8</sup> See footnote 6, supra.