

**II. THE CASE AGAINST
MANDATORY NEUTER AND SPAY**

Data Analysis

1. **PURPOSE:** Analyze the data per request of Board of Supervisors. Determine current situation and identify trends. Use Peninsula Humane Society data as reported to San Mateo County Animal Control.

2. **METHOD:** Linear regression analysis was used. It was obvious that the trends were not actually linear, but a close approximation was achieved by averaging the results of a 4-year base period and a 2-year base period. This allows for the more recent acceleration in the trend.

A 5-year projection was made, assuming no basic changes in present policies and/or laws. It was felt that the data base supported a projection of five years with reasonable accuracy.

Many different relationships were examined; however, only two are presented here. These are: 1. Incoming Live Animals, and 2. Total Euthanasias (in each case, euthanasia requests were deleted from the totals). These two statistics are good indicators of the numbers involved in the animal control problem.

3. **SUMMARY:** Both Incoming Live Animals and Total Euthanasias are decreasing rapidly, and the trend has accelerated in the past year. (This is in spite of the increasing human and animal populations of San Mateo County.)

Incoming Live animals, a valid overall indicator of the potential of the problem, has been decreasing at a rate of approximately 7.1% per year. It is projected that in five years it will be only 69% of the current number. See Chart F. (Supporting computer generated statistical calculations are located in Addendum.)

Total Euthanasias (less requests) includes unadoptable, i.e., sick, injured, behavior problems, etc., as well as unwanted animals. This number represents the undesired outcome for an animal which enters the shelter. The figure has been decreasing at a rate of

approximately 7.8% per year. It is projected that in five years it will be only 67% of the current number. See Chart G. (Supporting computer generated statistical calculations are located in Addendum.)

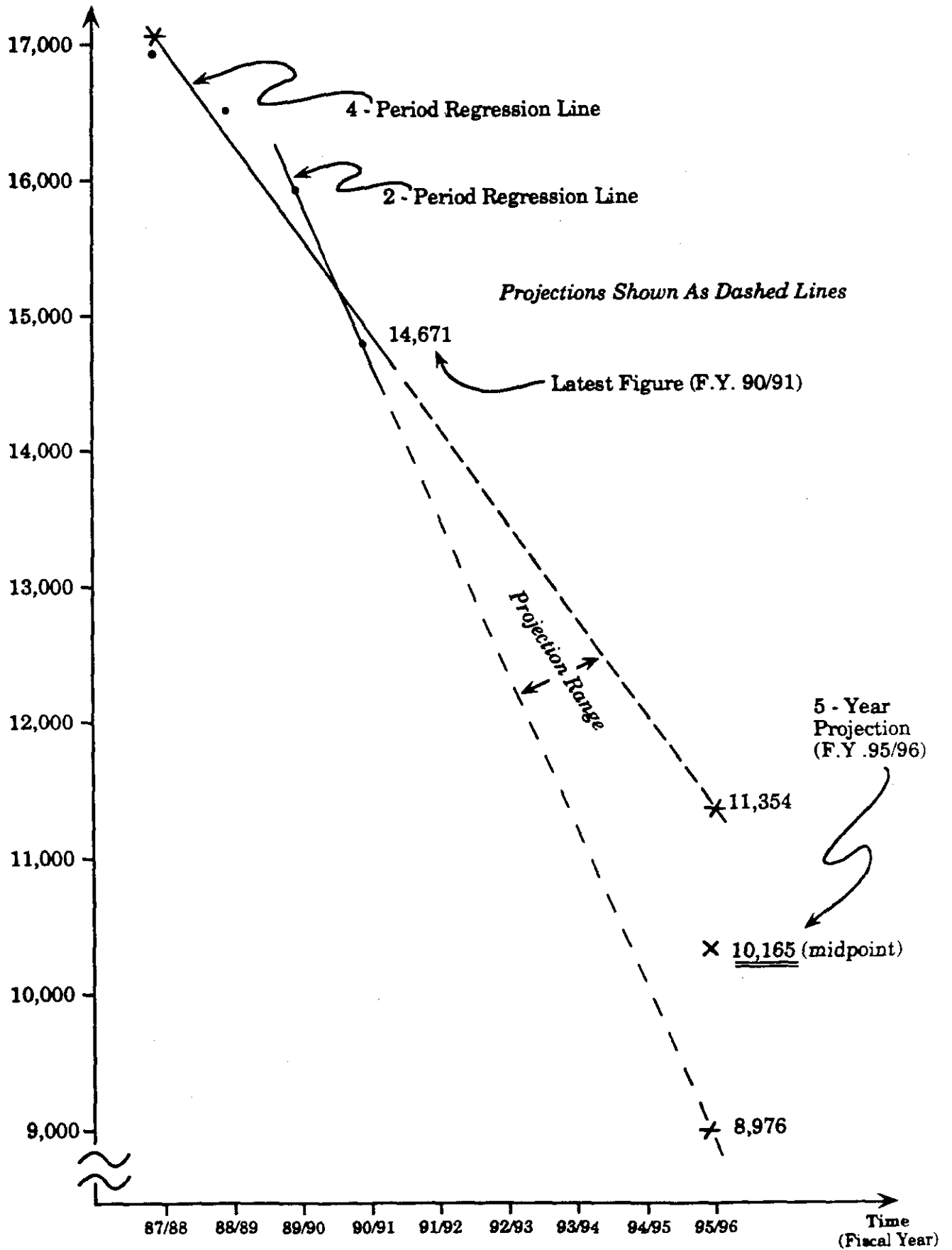
IN CONCLUSION: While the euthanasia of even a small number of animals is undesirable, it is important to keep the problem in perspective and realize that total elimination of euthanasia will never be achieved. Given that, the goal should be to reduce the number of animals which are euthanized.

From the data presented herein, it can be seen that fewer and fewer animals are euthanized every year. This trend is accelerating. Yet, the Peninsula Humane Society contends that present methods of public education are doing nothing to reduce the incidence of euthanasia. That contention is patently false. Obviously, the PHS never took the time to analyze their own data.

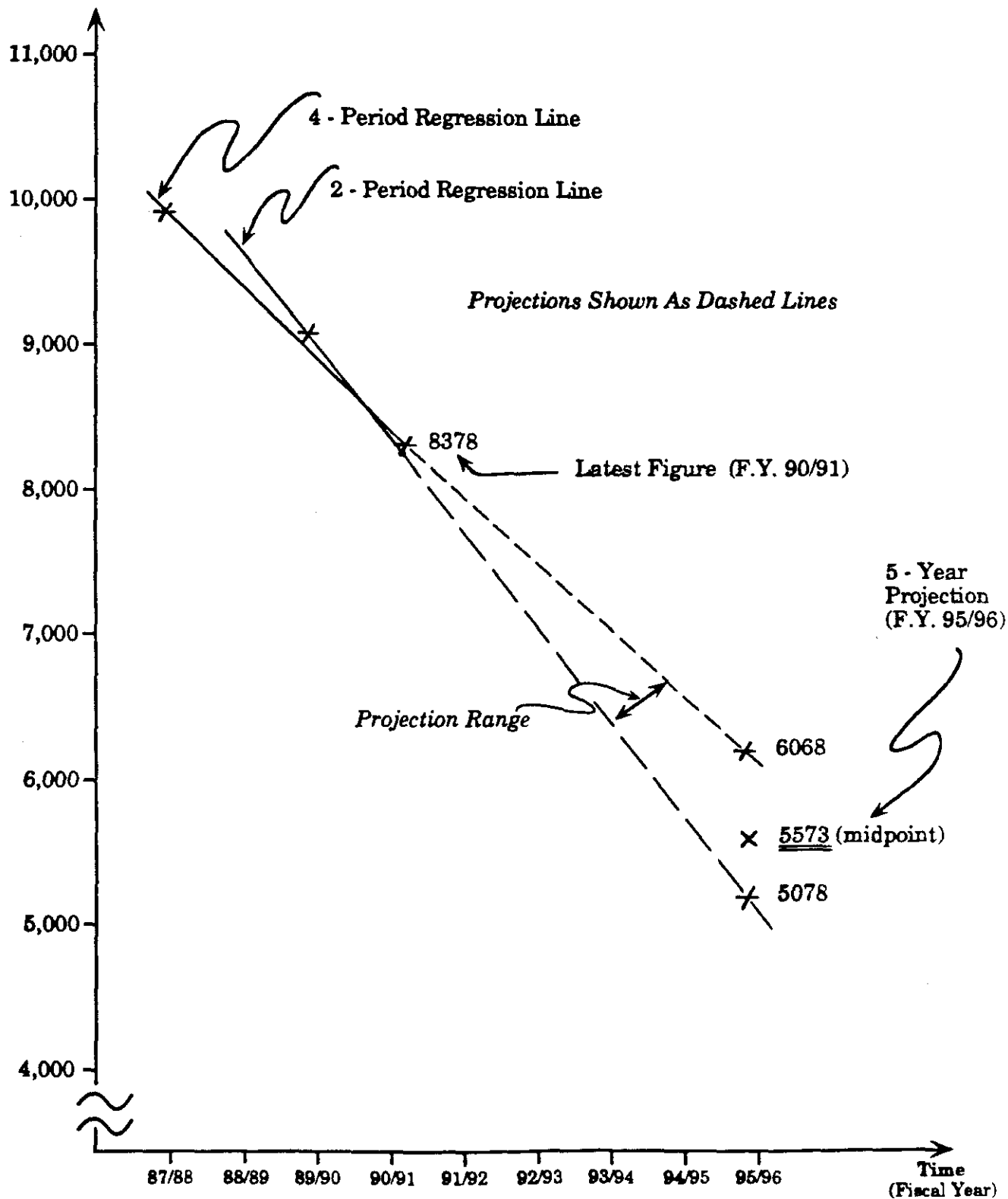
What PHS did do was "toss around" a number of 10,000 animals euthanized and then claim that all of those were healthy and adoptable. In fact, it was that number of "10,000 healthy, but abandoned" animals which was used as the justification for the approval of the breeding ordinance. From PHS's own data, that number is seen as being far from the truth.

Does something need to be done to reduce the numbers more rapidly? It would seem to be the humane thing to do. However, given that the problem is not nearly so severe as presented, and is in fact actually solving itself, extreme measures such mandatory spay/neuter with restrictive breeders' permits cannot be justified.

INCOMING LIVE DOGS AND CATS Historical Data And 5 Year Projection



TOTAL NUMBER OF DOGS AND CATS BEING EUTHANIZED Historical Data And 5 Year Projection



Constitutional Issues

In order to understand what is involved - indeed, at stake - in a mandatory spay/neuter law, it is necessary to address both philosophical and practical considerations, as well as their proper interrelationship. It is a closed-loop evaluation/decision process comprised of a series of questions, the answers to which will lead to a rational conclusion as to the appropriateness of such a law.

Quite often, in response to a perceived problem, there are those who would proclaim righteously, "There ought to be a law." In its most benign form, this simplistic approach is a tongue-in-cheek expression which merely ignores the fact that not all social problems can or should be "solved" through legislation. Often, however, it is the call-to-arms of those who truly believe that they have the right to impose their will on others through the tyranny of special-interest-group politics.

This type of situation leads to the first question:

1. Will the proposed legislation deprive anyone of his or her inalienable rights to life, liberty, and the pursuit of happiness?

In the case of mandatory spay/neuter laws, the answer is obvious. Anything which is mandatory is alien to the American way. Such a law would constrict individual liberties, and as such, it must pass several tests or it cannot be justified.

American political philosophy is based on the rights of the individual and the concept of limited government. The government "(derives its)...just Powers from the Consent of the Governed." The individual has a right to privacy, i.e., a right to live his or her life free from government interference. When the state interferes and limits an individual's rights, it may do so only after a careful analysis of the situation. Three additional questions should be asked:

2. Is there a genuine public welfare concern?

3. Does the proposed legislation meet this concern, i.e., will it solve the problem?

4. Is the proposed legislation limited to those measures which are necessary to solve the problem?

Unless these three questions can be answered with an unequivocal "Yes" in each case, the legislation has failed to pass the required constitutional muster and must be redrawn.

If the above three questions truthfully can be answered in the affirmative, one must go then to the next question:

5. Can the problem be solved by a less drastic method, i.e., one which is not so restrictive of personal liberties?

This needs to be explored thoroughly and with intellectual honesty. It is not enough to dismiss this question with a flippant, "Well, nothing else has worked before."

Finally, if it is certain that alternative solutions are not feasible, one must close the loop by asking:

6. Are the assured benefits of the proposed legislation worth the risk to our precious tradition of freedom?

Having established a framework for evaluation, we can now examine the concept of mandatory spay/neuter as it applies in the case of the Sturla/Nolan ordinance. We will take each question in turn.

Clearly, the answer to the first question is "Yes". Mandatory spaying and neutering would deprive certain individuals of the right to own an unaltered animal and thus infringe on their liberties and their pursuit of happiness. Anyone who would deny this is really denying that persons have such a right to begin with.

Turning to the second question, most would agree that there is a problem with the large number of animals being euthanized in San Mateo County. Whether it is a genuine public welfare concern is open to question. Anything can be called a public welfare concern, and it is a simple matter to put it in writing, but that doesn't necessarily make it true. However, because this is a judgment call and reasonable people could sincerely differ on this point, it will be left unanswered for the moment.

This brings us to the third question. Will mandatory spay/neuter solve the problem? For a variety of reasons, it is doubtful that it will.

a. It is unenforceable. With dog license compliance currently

estimated to be between 33% and 50% in San Mateo County, mandatory spay/neuter will only serve to keep more animals out of the licensing system, thus reducing the incentive for voluntary spay/neuter.

b. It is unlikely that San Mateo County, in these difficult fiscal times, will be willing to appropriate the funds necessary to insure even a partial compliance with such a law.

c. Mandatory spay/neuter applies only to animals which are owned and/or harbored by persons. It does not address the large population of feral cats - most of which (obviously) are unaltered.

No evidence has been offered to indicate that mandatory spay/neuter will solve the problem which it was meant to address. Both logic and the preponderance of evidence indicate that it will not do the job. Therefore, it fails the test of a valid law.

The idea of mandatory spay/neuter is also deficient in the context of the fourth question. Even if mandatory spay/neuter would accomplish the goal (which it will not), it reaches beyond those measures which would be necessary to solve the problem. To wit:

a. The overwhelming majority (currently 85%) of animals euthanized in San Mateo County every year are cats, yet mandatory spay/neuter applies equally to dogs.

b. There have been studies by recognized experts in the field of animal population control which indicate that sterilization of more than a certain percentage of the animals in an area will have only a very limited, if any, effect on the population. The decrease in births will be offset by immigration.

Thus, it is clear that a program of mandatory spay/neuter would go much further than is necessary (even if it would solve the problem - which it will not).

Having failed two tests of a valid law, the idea of mandatory spay/neuter should be discarded, but even if it had passed the previous two hurdles, it would have to be evaluated on the basis of the fifth question. Herein lies

the solution, for those who are willing to take a hard look at the situation and be honest with themselves. Yes, the problem can be solved with other, less drastic methods. These include, but are not necessarily limited to, the following:

a. Require the Peninsula Humane Society to "put their own house in order" by doing everything they can to reduce the necessity for euthanasia. Talk is cheap, and excuses are a-dime-a dozen, but the fact remains that the PHS policies have contributed to the number of animals euthanized in San Mateo County every year. (Until November of 1990, adult animals were placed into homes unsterilized even though PHS has had its own on-site spay/neuter clinic since 1973). Their wish to dictate to others rather than question their own practices is untenable.

There is ample anecdotal evidence of instances in which animals were euthanized rather than placed for adoption because of questionable PHS policies. Yet the PHS refuses to allow its policies to be publicly evaluated. They claim they are a private organization and thus immune from public scrutiny, but they are eager to impose their will on private individuals while obtaining 2.1 million dollars of taxpayer dollars for animal control yearly.

b. Establish incentive-based programs which will achieve the objective. There are any number of ideas which have been proposed, and they deserve the Board's careful consideration as acceptable alternatives to the unacceptable idea of mandatory spay/neuter.

Whatever results come from the fifth question need to be recycled through the third and fourth questions and then back into the fifth question. If the proposed program passes this time through, it can then be evaluated in terms of the sixth question. This is the ultimate test - the one in which we ask ourselves, "Is it worth it?"

By its very nature, this is open to debate because it involves a value judgment. Are the assured (not just the hoped for) benefits worth the risk we are taking by allowing our freedoms to be eroded? Government repression can develop in different ways. Sometimes it comes quickly, as in the form of a coup d'etat, but it can also arrive unannounced by the insidious erosion of freedom in small increments. **THE PRICE OF LIBERTY IS ETERNAL VIGILANCE.**

A Scientific Case Against Mandatory Neuter and Spay for the Dogs of San Mateo County

In analyzing a given population, you need to factor in the dynamics of the birth rate, the death rate, migration into and out of the population area, and the changing demographics of pet ownership.

A condition of stabilization of population is dependent upon many factors. One of the key factors is the percent of spayed and neutered dogs in the community. The overall population of dogs in a community may decline excessively in number unless there are other factors to overcome the increased percentage of dogs altered.

In the absence of proof to the contrary, the population of dogs in San Mateo County appears to be heading toward a stabilization point, and, if the trend shown by the County's Animal Count statistics continues, will eventually pass the point of stability and maintenance to a steady decline in the number of owned and wanted canines.

Licensing statistics in San Mateo County show that approximately 57% of the dogs (male and female combined) are already neutered and spayed. Forty percent of licensed males are neutered, and 70%(!!) of licensed females are spayed.

The number of dogs coming into the shelter, either as stray or surrenders, has been steadily declining. Between Fiscal Year '87-'88 and '88-'89, 387 total fewer dogs were handled by Peninsula Humane Society. Between Fiscal Year '89-'90 and '90-'91, there was a 707 drop in the total number of dogs handled, and the euthanasia rate was reduced by 25.2%. The stray and surrendered dogs that Peninsula Humane Society handles are both licensed and unlicensed, so the decline in total dogs handled is reflective of the entire dog community.

Education does work. The vast majority of the dog owners in San Mateo County are already working to eliminate dog overpopulation through a combination of keeping their dogs at home, and providing for their sterilization. The dog owners of this County are already bringing the population of canines to a point of stabilization.

One hundred percent sterilization of dogs would clearly lead to extinction.

There have been studies to indicate that a 90% or even a 80% sterilization rate may lead to a serious decline in the number of owned and wanted dogs.

Coercive legislation, intending to intimidate dog owners to achieve a substantially higher rate of sterilization in this County's canine population, does not seem to be warranted when the facts are examined. Continuing education, and enforcement of good leash and containment laws will gently and effectively bring the San Mateo County dog population to that desired point of stabilization.

The Humane Issues for Cats of Mandatory Neuter and Spay and Breeder Licensing

The vast majority of unwanted kitten births result from accidental, unplanned matings. Our aim should be to educate uncaring, unknowing people who allow "accidents" to happen, not to punish them with penalties and fines.

Punitive measures against citizens who, without a breeding permit, find themselves in possession of a pregnant cat or mother cat with kittens will result in cats and kittens being disposed of inhumanely. Cats are not universally cherished in our society. The uncaring people who allow unsterilized cats to roam freely do not value their cats and most probably will not be willing to pay fees or fines. They will choose instead to deny ownership and abdicate any further responsibility by disposing of the animal.

All who are concerned with the welfare and protection of cats seek to help people learn responsible care of the cats they own and to assume guardianship of the loosely owned cats who happen to come into their lives. The Sturla/Nolan ordinance and any plan that requires a permit to breed cats thwarts that goal by creating an incentive for people to abandon cats. It may also cause a deterrent to those who would offer shelter and sustenance to stray cats in need.

We who breed pedigreed cats care about ALL cats. We are not appeased by a process that allows us to buy a permit to breed. Although it ostensibly addresses our interest in breeding pedigreed cats, the process will ultimately result in greater suffering for the many randomly bred cats. We must object to mandatory neuter and spay or any plan that requires a permit for breeding cats on the HUMANE grounds that it will INCREASE the number of unwanted kitten births: abandoned kittens will beget more unwanted kittens.

We live in a society where many people are unable to control their own reproduction and often are unable to parent children responsibly. It is not surprising that people are sometimes unable to properly care for their animals or to control their reproduction. The problems that are faced in animal welfare are a symptom of a larger societal problem. The real solutions will not be easy to find.

This coercive, prohibitive kind of legislation simply WILL NOT achieve the educational goal that its supporters are hoping for.