

February 5, 2024

Michael Angelo Torres, Chairperson
Commission of Animal Control and Welfare
1 Dr. Carlton B. Goodlett Place (Room 362)
San Francisco, CA 94102
Sent by email to: michelangelo.torres@sfdph.org

**Re: Use of Video Third-Party Evidence in Enforcement of Cal. Penal Code § 597.3
(Second Follow Up to August 10, 2023 Meeting).**

Dear Chairperson Torres and Commissioners:

Animal Outlook appreciates your continued support in addressing animal cruelty in San Francisco's live animal markets. I am writing to reiterate Animal Outlook's request that San Francisco Animal Care and Control ("ACC") use video evidence, including evidence that Animal Outlook has previously submitted, to issue written warnings and citations to live market proprietors under California's Live Animal Market Law, Cal. Penal Code § 597.3. We understand there is concern at ACC that it cannot do so, but as we explain below, our review of the law shows that it can, and it should do so.

I. Background: ACC is not enforcing cruelty laws in LAMs due to misinterpretations of the law.

In February and March 2022, Animal Outlook recorded animal cruelty amounting to dozens of legal violations in San Francisco's live animal markets. Animal Outlook submitted an enforcement request to Virginia Donohue, the Director of ACC, and Deputy Director Amy Corso (then-Field Services Supervisor). In response to this footage and request, an ACC officer went to the live markets, where the officer witnessed an act of cruelty and issued a citation. However, no action was taken on the dozens of recorded violations.

On April 25, 2023, Animal Outlook submitted a letter to the Commission raising concerns about pervasive cruelty in the live markets, and requesting that ACC: (1) enforce cruelty laws at the live markets for all legal violations, regardless of whether an officer witnessed the event firsthand, and (2) regularly police them to ensure compliance with cruelty laws.

At the August 10, 2023 meeting of the Commission, Deputy Director Corso noted two perceived roadblocks to enforcement: (1) that, in her understanding, California's primary cruelty law (§ 597(a)&(b)) is inapplicable to the species of animals kept in live markets, and (2) that, in her

understanding, ACC, through its Animal Control Officers (“ACOs”),¹ cannot issue citations under § 597.3 unless its officers witness the violation in person, thus limiting the number of citations that ACC can issue.²

On August 16, 2023, Animal Outlook submitted its first follow-up letter to the Commission explaining why § 597 is applicable to the animals kept in live markets. We understand the City Attorney’s Office is still reviewing our August 16 letter and look forward to hearing back.

This letter, a second follow-up, addresses Deputy Director Corso’s latter concern—that ACC cannot issue citations unless its officers personally witness a violation of 597.3. Deputy Director Corso explained her frustration with this perceived limitation because ACC has a limited number of ACOs who can police the live markets on a regular basis.

II. ACC’s Officers do not need to witness violations of § 597.3 firsthand in order to issue a warning or a citation.

What follows is our explanation of why we think ACC can enforce § 597.3 based on reputable third-party video evidence, like that provided by Animal Outlook. As you can surely appreciate, the ability to rely on video evidence should make it easier and less resource-intensive for ACC to carry out its duties to protect animals in San Francisco.

a. Section 597.3 gives ACC broad powers.

Section 597.3 states that a person who operates a live market in violation of section 597.3(a) shall receive a written warning for the first violation and an infraction, punishable by a fine, for a second or subsequent violation.

According to San Francisco Health Code § 41.1(b)(3), ACC has the power to enforce specific animal care and control provisions prescribed by city ordinance as well as the broad power to enforce “. . . any other ordinances and laws that pertain to the care and control of animals.” Under Section 41.1(b)(4), ACC additionally has the power to “charge and collect the fees, fines, and deposits as required by . . . any other ordinances and laws that pertain to the care and control of animals.” Section 597.3 is a law which pertains to the care and control of animals, so ACC has the authority to enforce this statute.

¹ Cal. Health & Safety Code § 26221(d), citing Cal. Penal Code § 241(d)(8), defines ACOs as “any person employed by a county or city for purposes of enforcing animal control laws or regulations.” ACOs are therefore the mechanism by which ACC carries out its enforcement powers.

² In our understanding, ACC is in agreement that if 597 *does* apply to the animals in LAMs, ACC can use video evidence to seek a warrant for violations of this statute or to make an arrest when the violation is a felony. Cal. Penal Code § 830.9 (“Animal control officers are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 . . .”); 836(a) (setting forth arrest powers).

b. Nothing in the U.S. Constitution, California’s Constitution, or California’s Penal Code limits ACC’s power to issue citations based on video evidence.

Because ACC has the broad powers explained above, it can enforce § 597.3 on behalf of the executive branch barring constitutional limitations or specific statutory restrictions, none of which apply here.

As an initial matter, using video evidence to issue a fine does not implicate due process concerns under the United States Constitution or California Constitution because the fine can be challenged in court.³ As to statutory limitations, it is a tenet of statutory interpretation that “the Legislature kn[ows] how to create an exception if it wishe[s] to do so;” and, indeed, when California’s legislature intended to restrict ACC’s enforcement power, it made this clear in the text of the Penal Code.⁴ For example, Cal. Penal Code § 830.9 explicitly states that ACC’s ACOs, like peace officers, have the power to serve warrants and the powers of arrest pursuant to Cal. Penal Code § 836; Section 836(a), in turn, provides that peace officers, and therefore ACOs, can make arrests for “public offenses” only if they witness a crime in person. The legislature did not, however, draft any such restrictions on ACC’s authority to issue citations under § 597.3 or otherwise. Citations are enforcement mechanisms that do not require arrests and to which § 836 is therefore inapplicable. Likewise, the legislature did not include any language in § 597.3 indicating that an officer must be present and witness the violation firsthand, while it is occurring, to be able to issue the citation.

Because ACC has statutory authority to issue citations under § 597.3, and nothing in the Constitution or statutes requires an officer to witness the cruelty firsthand to issue these citations, ACC can and should issue these citations based on video evidence to the fullest extent of its legal power.

III. Conclusion

Enforcing animal cruelty laws is one of the reasons ACC exists,⁵ yet animal cruelty in LAMs is rampant and violates both California and San Francisco laws. One obstacle is ACC’s reluctance to

³ See *Knutson v. Village of Lakemoor*, 932 F.3d 572, 576-77 (7th Cir. 2019) (holding that a “relatively small” fine and the opportunity to contest a footage-based traffic citation meant due process was not implicated); *Worthy v. City of Phoenix City*, AL, 930 F.3d 1206, 1223 (11th Cir. 2019) (explaining that “the risk of an erroneous deprivation” is small because footage-based traffic citations can be challenged in court); *Mendenhall v. City of Akron*, 374 Fed.Appx. 598, 600 (6th Cir. 2010) (holding that because the traffic camera ordinance provided for notice of the citation, opportunity for and record of the hearing, and the right to appeal, footage-based traffic citations did not violate due process); *Hughes v. City of Cedar Rapids*, Iowa, 840 F.3d 987, 994, 996 (8th Cir. 2016) (holding that merely receiving a footage-based traffic citation did not violate procedural or substantive due process); Cal. Const. art. I, § 24 (“This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States . . .”).

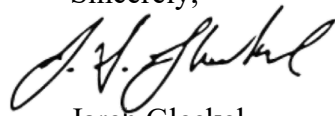
⁴ *DiCampli-Mintz v. Cnty. of Santa Clara*, 289 P.3d 884, 889 (Cal. 2012).

⁵ See S.F., Cal., Health Code § 41.1(b)(3) (stating that it is a function of ACC “[t]o enforce . . . any other ordinances and laws that pertain to the care and control of animals”).

issue citations under § 597.3 based on video evidence — but after a thorough review of relevant law, we believe that ACC can and should exercise this enforcement power. If ACC adopts this practice, it will more effectively protect animals without the resources required to consistently police the markets. Accordingly, we ask that ACC use video evidence, including evidence that Animal Outlook has previously submitted, to issue written warnings and citations to live market proprietors under California’s live animal market law.

If you have any questions or concerns or wish to discuss these issues, please let me know and I will find availability at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gleckel", written in a cursive style.

Jareb Gleckel

Staff Attorney, Animal Outlook

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