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November 15, 2010

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Gentlemen:

RE: COUNCIL FILE NO. 10-0982 – INCREASING DOG/CAT LIMITS IN RESIDENTIAL ZONING IN THE CITY OF LOS ANGELES (REDEFINING DOG/CAT KENNELS IN LA MUNICIPAL CODE)

The following opinions are based upon over 30 years' experience as an attorney, mainly in the city of Los Angeles, during which time I have litigated numerous cases involving animal-involved property/insurance issues, dog attacks, and public health and safety cases involving animals.

Redefining Dog/Cat Kennels in the LA Municipal Code; Increasing animal limits In Residential Zones:

The proposed change would redefine a Cat Kennel as six or more cats and Dog Kennel as six or more dogs and is a substantive change to the permissible use of residential property. This is a 66% increase over the current four (4) of either species and is a major change in how animals are kept and allowed in residential zoning. This would have a major impact on noise (barking/yowling), sanitation, public health and safety, and property values.

I strongly disagree with the General Manager Brenda Barnette's nebulous contention in her report of November 9, 2010, that, "The proposed ordinance may also fall within the exemption because the Planning Code changes are limited to the change in kennel definitions and as stated above there is no change in the manner of keeping dogs..."

After review of the City Charter, in particular Sec. 558, and pertinent Los Angeles Municipal Code sections regarding the definition and keeping of domestic animals, it is my opinion that any increase in the number of dogs allowed within residential property and related changes in the

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definition of dog and cat kennels in the Los Angeles Municipal Code MUST be considered by the Los Angeles Planning Department and the Los Angeles City Planning Commission. The maintenance of three dogs and/or three cats remains in the acceptable realm of household pets. The increase to ten (10) animals per residential lot and private residence introduces elements of disruption, noise, pollution, and potential danger that are unacceptable in communities and actually meet or exceed those of many commercial enterprises.

In fact, because of the numerous exemptions in the City's spay/neuter ordinance, this proposal would appear to condone and legitimize breeding operations in backyards and private homes citywide, which is the antithesis of the city's purported goal of reducing pet population and shelter euthanasia.

Environmental Considerations:

Contrary to arguments by the Department of Animal Services that hazards and nuisance is no different with ten animals than one, common sense supports the undeniable fact that the number of animals involved in this increase does matter—both to neighbors and to the environment. Any change of this magnitude will impact the environment in many ways and must be subjected to a full California Environmental Quality Act review in regard to both dogs and cats.

LAMC Sec. 64.70 refers to "animal waste" in kennels and its discharge as a pollutant into storm drains. In Los Angeles, as all cities in California, is mandated to reduce bacteria in its waterways for water-quality compliance. The main watershed basins that serve Los Angeles are the Los Angeles River, Ballona Creek, Dominguez Channel and the Santa Monica Bay. Ultimately, much of this pollution may empty into the ocean; or, if merely allowed to remain on green areas and not promptly and properly removed, the bacterial contamination may be absorbed into the soil and can potentially result in the transmission of zoonotic diseases, as well as transmissible diseases to other pets. This is of special concern if owners walk their dogs in public areas or access ways and do not pick up after them.

The City's water conservation program, itself, creates an impediment by severely limiting the ability to wash animal waste from concrete patios, driveways or wall areas, where offensive odors and contamination can develop, arising from a total of five dogs potentially urinating repeatedly in specific locations—males are inclined to relieve themselves on wood or other permeable fences that are shared with adjoining properties.

Not only is sanitation, noise and barking a serious concern, but the rates of escape --with inevitable aggressive encounters--can potentially turn a quiet family neighborhood into a community where parents are afraid to allow children to play and gather.

L.A. City Spay/Neuter Ordinance (Compliance is not compulsory/breeders' exemptions):

Although the City enacted a spay/neuter ordinance in February 2008, it is not compulsory and allows many exemptions-- including merely the purchase of a breeders' permit-- in order to

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allow dogs and cats to remain unsterilized and, therefore, capable of breeding. Since pups and kittens under the age of four months may be maintained on any premises without restriction, it is, impossible to accurately estimate the total impact of this proposed change in housing/maintaining dogs and cats, especially where residences are in close proximity.

In effect, the sheer numbers of animals that can be legally maintained under this proposal creates unenforceability by Los Angeles Animal Services. It could permit essentially unlimited breeding operations in residential communities.

It is important that the Planning Department and the City Council factor in the large number of breeding permits and unaltered dog licenses that have been issued since passage of the 2008 “spay/neuter” ordinance and not delude itself that this is a “mandatory” law.

LA Animal Services General Manager’s own statement does not support increase in dogs:

General Manager Brenda Barnette, in fact, makes an argument for **not increasing**, or even decreasing, the current three (3) dog limit in her report dated October 6, 2010, wherein she opines regarding “guard dogs” that “...it is not unusual to see too many dogs for one property.”

“Guard dogs” are defined in LA Municipal Code Sec. 53.66 as “...any dogs kept, used or maintained on any commercial or industrial premises...” This designation does not differentiate by size, breed, training or aggressive propensity (sentry dogs, are a separate category under Sec. 53.64.)

Ms. Barnette recommends imposing a limit of two (2) dogs on commercial property, based on her opinion that, “Incidents of dog bites [to humans] are more prevalent if the dogs are not spayed or neutered and there is also more dog to dog aggression among unaltered dogs.”

While the risk of bites and dog-to-dog aggression may be diminished, it is not eliminated by sterilization; and LAAS records show that many dogs maintained on residential property are unaltered. There is no requirement in this report that in order to maintain five dogs in residences they **MUST** be altered.

Why, then, would the LAAS GM support an increase to five (5) dogs per residence, if she considers over two (2) dogs “too many dogs for one property” on a commercial premises?

Further contentions by the General Manager in her October 6, 2010, report have no factual basis; i.e., Ms. Barnette states, “In random polling, community members know their limits and self regulate.” This flies in the face of the obvious—if all pet owners knew their limits and self-regulated, we would have no need for animal shelters.

Also, Ms. Barnette provides supposition as fact in her statement, “Dog and cat limits are unrelated to animal hoarding and fighting, which in the former case are the manifestation of mental illness and in the latter case deliberate illegal activities.” Unless Ms. Barnette has a degree in psychiatry, she is not qualified to make a legal determination that “animal hoarding” is exclusively the “manifestation of mental illness” and, in fact, recent convictions confirm that

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other motives may cause a person to collect an excessive number of animals. Even those with good intentions may place their devotion to animals above their concern for their own neighbors and neighborhood. It is not the intention of the person that it is in question; it is the effect that their behavior has upon our city.

While organized dog fighting is an illegal activity, serious multiple-dog fights occur from the "pack mentality" and competition which develops when numerous dogs are kept together and these often result in a serious injury/death to the dogs themselves and a danger to humans in that environment.

Contrary to the contention in the report that animal limits "are arbitrary," the current Los Angeles limits on dogs and cats have been imposed because experience in this and other jurisdictions indicates that a maximum of three dogs/cats lessens the dangers and hazards to the animals, the pet owners and the community and can be considered a manageable-risk situation.

Conclusion:

Proper oversight and legitimate regulation of the number of animals is essential to the safety of the humans and animals and the enjoyment of the life styles associated with Los Angeles. The use of the fiction that this proposed ordinance will only be changing the definition of kennel, and not the manner in which animals are kept or property used, is an effort to make an end run around the required legislative process and cannot be allowed.

I urge you to assure this matter is referred for review by the City Planning Department and Commission before any hearing before Council or committees of the City Council.

Very truly yours,
ZINDER & KOCH



JEFFREY E. ZINDER, ESQ.

cc: Gerry Miller, Chief Legislative Analyst
Miguel Santana, City Administrative Officer
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