

November 3, 2014

Via U.S. Mail and Email

Councilmember Paul Koretz
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Los Angeles City Council
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**Re: Council File 13-1513 – Number of Cats Owned by Residents
Citywide Cat Program (W.O. E1907610)**

Dear Councilmembers Koretz and O'Farrell:

I understand from the minutes of the October 14, 2014 Board of Animal Services Commissioners meeting that you are in receipt of a proposal from the Department of Animal Services on "cat limits." I have also learned from a phone message from the Department of Animal Services Assistant General Manager John Chavez to Dr. Travis Longcore that the proposal addresses "altered, indoor" cats. This proposal appears to be intended to increase the number of cats allowed at a residence under the City's cat kennel ordinance, presumably in response to your November 8, 2013 motion in Council File 13-1513. Given that Mr. Chavez indicated that this report would be submitted directly to the City Clerk for the Personnel and Animal Welfare (PAW) Committee, without going through the Board of Animal Services Commissioners first (and therefore associated with an open Council File), I offer the following comments on behalf of my clients, The Urban Wildlands Group and, as pertinent to the permanent injunction in *The Urban Wildlands Group et al. v. City of Los Angeles*, Endangered Habitats League, Los Angeles Audubon Society, Palos Verdes/South Bay Audubon Society, Santa Monica Bay Audubon Society, and American Bird Conservancy.

The current proposal is the latest in a series of efforts to increase the number of cats allowable per residence under the cat kennel ordinance.

- The City first proposed increasing the cat limit as part of the Trap-Neuter-Return (TNR) program in 2005. As you know, we successfully sued to ensure that program was not formally implemented without review under the California Environmental Quality Act (CEQA).

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- In 2010 (Council File 10-0982, expired), the Department of Animal Services proposed to increase the number of cats allowed per residence from 3 to 5, to exempt feral and stray cats from any limits, and to establish that if a household had more than 3 cats then all cats must be kept indoors. In response, then-Council President (now Mayor) Garcetti stated that before an increase in animal limits can be considered by the City, it must be demonstrated that a) a real need for the increase exists, b) the City can fulfill the obligations that come with additional animals, c) the impact on the environment, sewer and storm drain systems, City services and other agencies are evaluated under CEQA, and d) potential dangers to public health are investigated (letter dated November 30, 2010). That proposal did not move forward and was allowed to expire.
- Also in 2010, the Department of Animal Services circulated a survey containing a proposal for a TNR program that involved exempting stray and feral cats from the cat limits even if maintained at a property (e.g., being fed by the resident at a property, but not otherwise claimed to be "owned" by the resident), representing another attempt to increase the number of cats allowed to roam freely.
- In 2013, the City again proposed to increase the number of cats allowed per residence from 3 to 5 as part of the proposed "Citywide Cat Program" and prepared a draft Mitigated Negative Declaration (MND) to disclose and mitigate the impacts of that program. The MND was substantially criticized by the responsible agencies and others and has not moved forward, but it remains a pending project under review for compliance with CEQA. Indeed, on October 28, 2014, General Manager Brenda Barnette announced at the Board of Animal Services Commissioners meeting that, "Relative to the injunction on feral cats and the proposal of a cat program related to this issue, the Department continues to work with the City Attorney on this. As we get more details I will provide you with updates."
- Also in 2013, you proposed to increase the cat limit (Council File 13-1513) even though a cat limit increase was already under review as part of the Citywide Cat Program. The current proposal from the Department of Animal Services appears to pertain to November 8, 2013 motion requesting a plan to implement this proposal and outlining its contents.

Even assuming that the Department of Animal Services enforced animal limits (which it does either selectively or rarely), any proposal that envisions that some but not all cats would be kept indoors is thoroughly unenforceable. First, the City does not require that cats be licensed. It would therefore be impossible to keep track of how many cats are at any particular household, thereby indicating whether those cats should be kept indoors or not. Plus, the number of cats can change and with it would the requirement to keep cats indoors. Second, City law allows cats that are not in heat to roam freely outdoors. Because all cats are supposed to be spayed or neutered under City law, no owned cats should ever be in heat (unless owned by a breeder). This means that there are no restrictions on keeping cats confined and any cat that is not kept indoors can cause adverse environmental impacts both on and off the property where its owner lives.

No matter what the details of the proposal, unless the new ordinance were to require that all cats citywide be kept confined to the owner's property, the City will not be able to enforce a revised cat kennel ordinance. The Department of Animal Services has assigned a low priority to enforcing the cat kennel ordinance except in extreme hoarding situations, and then only on the basis of animal cruelty. The concerns of neighbors about excess numbers of cats are routinely and systematically ignored, and this is, in fact, one of the ways that the City tacitly continues to endorse TNR and forces aggrieved neighbors to seek private legal recourse to conflicts that could be avoided if the City enforced its existing laws. The City certainly does not currently have the will or the resources to enforce any new scheme in which the number of allowable cats is variable and in which some are required to be kept indoors while others are not. Without mandatory licensing, permits for additional cats, and a credible enforcement budget funded by license fees, such a proposal cannot be seen as a good faith effort to do anything other than increase the total number of cats in the City.

Any Increase in Cat Limit Requires Review Under California Environmental Quality Act

As I have explained in correspondence to the City previously, and will explain again below, before taking any further action to change the cat kennel ordinance, the City is required by the California Environmental Quality Act, Public Resources Code § 21000 et seq., to carefully analyze the potential environmental impacts of such amendments and associated changes in City rules. "CEQA defines a "project" as an activity that may cause a direct or reasonably foreseeable indirect physical change in the environment and that is either directly undertaken by a public agency, undertaken by another person with assistance from a public agency, or involves the issuance by a public agency of a permit or other entitlement. (Pub. Resources Code, § 21065; Guidelines,^{FNG} § 15378, subd. (a).) CEQA applies to any discretionary project proposed to be carried out or approved by a public agency, unless the project is exempt. (Pub. Resources Code, § 21080, subd. (a).)" Plastic Pipe and Fittings Ass'n v. California Building Standards Com'n, 124 Cal.App.4th 1390, 1412, 22 Cal.Rptr.3d 393, 407 (Cal.App. 2 Dist., 2004) ("Plastic Pipe"). As explained more fully below, the "project" has foreseeable direct and indirect impacts on the environment.

Secondarily, and importantly, any increase in the number of legally owned cats in the City would be a violation of the current injunction (Urban Wildlands Group et al. v. City of Los Angeles et al., Los Angeles Superior Court Case No. BS115483) which bars the City from "adopting or implementing any new ordinances, measures or policies in furtherance of TNR, including such ordinances, measures or policies as were identified in the June 2005 Report that was submitted to the Board of Animal Services Commissioners." The 2005 Report suggested amending certain City ordinances, including the limits on the number of cats allowed per property. Although Mr. Chavez indicated that the current report was regarding "indoor" animals, any increase in the number of allowable cats could increase the total number of outdoor cats, because the scheme would be completely unenforceable.

CEQA requires public agencies to consider the potential environmental impacts of their

discretionary actions prior to approval. Adopting or amending regulations may amount to a project within the meaning of CEQA. Plastic Pipe, supra. (“A regulation fitting the description of a discretionary project is a discretionary project under CEQA. citing Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 206, 132 Cal.Rptr. 377, 553 P.2d 537 [held that the enactment of regulations by the Fish and Game Commission fixing the dates of a hunting season was a project subject to CEQA]”). Any proposal to amend the Municipal Code to increase the number of cats that residents may lawfully own is a discretionary “project” within the meaning of CEQA because raising the limit on the number of cats a resident may own could and likely will increase the overall number of cats in the City, thereby significantly increasing the overall impacts of cats on the City’s environment and on City services such as waste and stormwater management.

The current proposal that you are considering contains at least one of the elements described in your November 8, 2013 motion, which means the City is piecemealing the Citywide Cat Program. Raising the cat limit was part of that program and intended to reduce euthanasia at City shelters. That program was criticized by the responsible agencies, departments, and local land managers, as well as by my clients. This project therefore requires independent CEQA review if it is to be carved out of the Citywide Cat Program. Its inconsistency with the permanent injunction must also be addressed.

CEQA requires the lead agency to devise and implement adequate and feasible mitigation measures to address a project’s significant impacts. To satisfy CEQA, proposed mitigation measures must be shown to be both effective and enforceable. See, Pub.Res.Code § 21081.6(b) (“A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures;”), Sacramento Old City v. City Council (1991) 229 Cal.App.3d 1011, 1027 (agency’s conclusion that mitigation measures will be effective must be supported by substantial evidence.) If, as I assume, keeping all cats indoors when more than 3 are allowed is intended to be a mitigation for the impacts of additional cats being allowed in the City, the City must demonstrate this measure’s adequacy and the City’s ability and willingness to enforce its implementation. Based on the City’s track record and current resources, it would appear that any proposal that specifies that some but not all cats be kept indoors will fail as a mitigation measure in that it would not be effective or enforceable.

It is worth noting that limiting the number of cats allowed per residence is itself an identified mitigation measure to reduce the adverse impacts of pet cats on the environment (see e.g., Calver, M. C., *et al.* Applying the precautionary principle to the issue of impacts by pet cats on urban wildlife. *Biol. Conserv.* 144, 1895–1901 (2011)). The City’s proposal to increase the number of cats will therefore increase environmental impacts.

Options Are Available to Reduce Impacts of Free-roaming Cats on Community

Although it is the City’s responsibility to identify and mitigate the impacts of any proposal to increase the number of cats allowed per residence, and to identify feasible mitigation measures to

Councilmembers Paul Koretz and Mitch O'Farrell
Los Angeles City Council
November 3, 2014
Page 5 of 5

avoid, reduce, or offset those impacts, we note the following policy options that have been inexplicably avoided by the City in its proposals on owned and unowned cats thus far.

First, and at a minimum, the City should require that all cats be licensed. The only possible way to enforce any program that assumes that cats are kept indoors must require all cats to be licensed and registered with the City. Otherwise there is absolutely no way even to know what cats are required to be kept indoors or whether people are even conforming to the limits on the number of cats per residence.

Second, the City must amend the archaic City code that allows cats to roam freely as long as they are not in heat. Things are very different today than when this law was enacted. The City used to control nuisance animals. People did not dump thousands of pounds of cat food out on the street each night as they do today. Stray cats could be caught and turned in a shelter without needing to obtain a permit. In a dense modern metropolis, however, with new additional laws designed to remove the ability to control stray and feral cats (the result of a vocal single-issue lobby), allowing cats to roam onto neighbors' properties and into open spaces results in significant adverse impacts on wildlife, public safety, public health, and community well-being. Therefore, Municipal Code Section 53.06 should be amended to delete the phrase "except cats which are not in heat or season."

The result of these two changes would be that all residents would be responsible for the actions of their owned cats, just as they are responsible for the actions of their owned dogs and other animals. Cats would have to be confined to their owner's property or secured if taken off the property. Land managers, school administrators, neighbors, and others would have recourse if owned cats were adversely affecting a property and with mandatory cat licensing it would be easy to know which cats were owned and which were not.

Even if the City were to propose cat licensing and institute a prohibition on roaming, the City must still analyze the impacts on City services of allowing additional cats, including the burden on sewer and storm drain systems (for disposal of waste from indoor and outdoor cats), number of animal control officers, impacts on wildlife, and other required areas of analysis under CEQA. Should the City desire to increase the number of owned cats per residence, it can only do so after fully complying with CEQA, including the right of the public to review and comment on any such compliance document.

Sincerely,


Babak Naficy
Attorney for The Urban Wildlands Group et al.

cc: Mary Decker (via email only)
Los Angeles Deputy City Attorney