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January 19, 2015

Personnel and Animal Welfare Committee
Councilmember Paul Koretz, Chair
Los Angeles City Council
200 North Spring Street
Los Angeles, CA 90012

Re: January 20, 2015, Item 4. Department of Animal Services report in response to Motion (Koretz – O'Farrell) relative to implementing changes to the Los Angeles Municipal Code to increase the number of cats that a City resident may own from three to five [Council File 13-1513 – Number of Cats Owned by Residents]

Dear Chair Koretz and Committee Members:

The Personnel and Animal Welfare (PAW) Committee has for consideration a report from the Department of Animal Services (Department) that proposes to remove limits on the number of cats that a City resident may own and/or maintain at a residence. The Department's General Manager has presented a proposal, with scant analysis of its feasibility or consequences, that would allow the Department to authorize an unlimited number of cats to be maintained at a residence. This proposal is ill-conceived and ill-advised, and is also illegal, in that it offers no analysis for compliance with the California Environmental Quality Act (CEQA) and violates the existing permanent injunction in *Urban Wildlands Group et al. v. City of Los Angeles et al.* (Los Angeles Superior Court Case No. BS115483).

Babak Naficy, attorney for plaintiffs in *Urban Wildlands Group et al. v. City of Los Angeles et al.*, submitted a letter to you on November 3, 2014 addressing the general elements of a proposal to increase the limit on the number of cats at a residence from three to five. Although written before the outrageous modification of the proposal to remove all limits on the number of cats per residence, the legal points made in that letter still apply and our letter today incorporates that letter by reference (http://clkrep.lacity.org/onlinedocs/2013/13-1513_pc_1_1-16-15.pdf). Mr. Naficy earlier provided comments to the City on a previous proposal to increase the limit on the number of dogs and cats per residence from three each to five each, also incorporated by reference (http://clkrep.lacity.org/onlinedocs/2010/10-0982_misc_11-10-10.pdf).

To summarize, Mr. Naficy's November 2014 letter made the following points:

1. An increase in the limit on the number of cats per household in the City of Los Angeles requires review under CEQA as a discretionary project with the potential to impact the environment;

2. An increase in the limit on the number of cats per household in the City of Los Angeles would violate the permanent injunction in *Urban Wildlands Group et al. v. City of Los Angeles et al.* (Los Angeles Superior Court Case No. BS115483);
3. The City included an increase in the limit on the number of cats per household in its proposed Citywide Cat Program, for which a draft Initial Study/Mitigated Negative Declaration (MND) was circulated (W.O. E1907610), and so moving forward with the cat increase outside the CEQA process constitutes piecemealing; and
4. A proposal that indicates that some subset of cats will be kept indoors as a means to mitigate the impacts of additional cats must be demonstrated to be feasible, effective, and enforceable, which this proposal does not do.

From a legal perspective, this proposal cannot go forward without the initiation, preparation, and approval of an analysis under CEQA.

Proposal Is Procedurally Flawed

Please note first that the title of the agenda item describes a motion in which the limit on the number of cats allowed per residence is increased from three to five, while the actual proposal would establish a mechanism to remove all limits on the number of cats per residence.

The proposal has not taken the proper route for development of policy in the City of Los Angeles. The report from the Department of Animal Services was not considered by the Board of Animal Services Commissioners. This is a thoroughly revised proposal, with new and distinctly different elements from any cat increase proposal that the Board of Animal Services Commissioners has considered. By failing to have the Board of Animal Services Commissioners review the proposal, the Department has denied the public the right to comment meaningfully on this new proposal in the appropriate venue. Its release on the Friday afternoon before a three-day weekend compounds this error and appears to be an intentional effort to avoid public scrutiny.

The proposal also undermines the authority and responsibility of the Board of Animal Services Commissioners. As described on the Department's own website (http://www.laanimalservices.com/ about-us-2/commission/):

> Pursuant to the Los Angeles City Charter and the Los Angeles Administrative Code, the Board of Animal Services Commissioners serves as the head of the Department of Animal Services. The Board is authorized to supervise, control, regulate, and manage the Department; make and enforce all rules and regulations necessary to exercise the powers conferred upon the Department by the Los Angeles City Charter; and provide instructions to the Department's General Manager. The Board also must review and approve contracts with a duration exceeding one year and a value greater than $20,000.
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> As provided in the City Charter, the Board's ability to direct staff is limited to providing direction to the General Manager. Commissioners only have authority when they act as a Board and not when they act individually. Accordingly, the Board is primarily concerned with making policy decisions, and the General Manager, as the chief administrative officer of the Department, manages the day-to-day department activities and makes and enforces rules and regulations necessary to exercise the powers conferred upon the Department.

The proposal that is ostensibly being submitted on behalf of the Department cannot be represented as such without having been considered and approved by the Board of Animal Services Commissioners. In the Department's own words, the Board is "concerned with making policy decisions," while that is not the responsibility of the General Manager. The proposal sent to the PAW Committee must be considered a policy decision, and the General Manager does not have the authority to inform the PAW Committee that it is the recommendation of the Department unless and until it is approved by the Board of Animal Services Commissioners at a duly scheduled meeting with the opportunity for the public to comment.

The item on the PAW Committee agenda is identified as continued from November 19, 2013. This is not a continuation of the same item, because the substance of the proposal has changed dramatically. By taking up the item as a continued item, the PAW Committee is misleading the public. The original motion contemplated increasing the cat limit to five (a measure we opposed), while the item on the agenda proposes a mechanism by which the limits can be eliminated altogether. A member of the public reviewing the agenda items would have no idea about the actual content of the proposal under consideration. Furthermore, as a continued item, it is possible that the PAW Committee will not take public comment at all, having already held a public hearing on November 19, 2013. That was, however, over a year ago, and the proposal has been changed in the intervening period. The public has an interest in these changes and a right to provide testimony to the PAW Committee on this new proposal. It would be prejudicial to the public to refuse to hear public comment at your January 20, 2015 meeting. This would not, however, correct the fundamental flaw that the Board of Animal Services Commissioners has not considered this policy proposal.

Proposal Represents Piecemealing of the Citywide Cat Program

The current proposal is a textbook instance of piecemealing under the California Environmental Quality Act. Piecemealing is defined as dividing a project up into pieces as to avoid environmental review of the totality of the project. We do not have to conjecture about the scope of the full project, because the City has defined its intentions already in the proposed Citywide Cat Program.

In response to the draft MND for the Citywide Cat Program, circulated in late 2013, the City received comments from at least six interested government entities expressing opposition to or significant substantive concerns about the proposed program. These governmental entities included:

California Department of Fish and Wildlife (Trustee Agency)
United State Fish and Wildlife Service
Los Angeles County Department of Public Health
Los Angeles Unified School District
Baldwin Hills Conservancy
Santa Monica Mountains Conservancy (late)

Since receiving the comments, the Department obviously has been grappling with how to address the Citywide Cat Program, as evidenced by statements made by the General Manager during Board meetings throughout the past year.

The comment period for the draft MND ended on November 4, 2013. At the March 25, 2014 meeting of the Board of Animal Services Commissioners, the General Manager gave an update on the status of the CEQA analysis. Her oral report on that day was as follows:

> And I will mention just briefly, we've been trying to sort of figure out what to do with the CEQA on the Cat Program. And, it's a very complicated matter. The self-proclaimed experts on both sides have — and of course we know those of us who are right, but — there are experts on both sides of this issue who have kicked so much sand up that there's a concern that we would never prevail in court with this CEQA, even though it's a Mitigated Negative Declaration. So we're sort of puzzling right now on what the next steps are going to be. So there will be more to come on that.

The General Manager and her legal advisors evidently realized that the MND would be vulnerable to legal challenge should it be approved.

At the May 2014 meeting of the Board of Animal Services Commissioners, the General Manager again addressed the question of the CEQA review of the Citywide Cat Program. At that time she acknowledged that the funds that had been raised for preparation of the MND had been spent and that the Department had been seeking advice from the City Attorney and the Mayor's Office. She stated:

> That money was specifically raised from grants and matching grant funds from some donors specifically to pay for the CEQA. If we have to do additional reporting we will have to raise additional money. So that took care of that one report. If we have to go to a full blown EIR we'll have to raise additional money.

This is an important statement, because it reinforces the point that the City knew that a full EIR might be required and illustrates that the Department lacked the funding to move the CEQA review forward.

The topic of the Citywide Cat Program came up again at the December 9, 2014 Board meeting, where the General Manager again gave an update in response to public comment:

> So here's what's going on. The CEQA report, the person who said that the CEQA report and public comment ended about a year ago was telling the truth. The injunction has been against the City for about five and a half or six years I believe at this point. It is very tedious. And the City Attorney's office is looking at, and some private citizens who are willing to help fund some expert opinion to move things to the next level. It's, all I can say is it's very tedious.
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> The Department does not go out and round up feral cats. We don't do catch and kill. People ... the injunction requires us to give people trapping permits, that if they have what they consider nuisance cats on private property they can get a permit from the Department, posted on their own property, and trap on their own property and then turn those cats in to us, and that's a requirement of the injunction.

The General Manager is very aware of the injunction and that the CEQA analysis for the Citywide Cat Program was insufficient to allow it to go forward. Within this context, it is obvious that the current attempt to move forward a change in the limit on the number of cats allowed per household is intended to circumvent the required CEQA review by splitting off this component from the Citywide Cat Program. As such, it is by definition an attempt to piecemeal the project by approving it in pieces without review.

An additional reason that separate approval of the increase in the number of cats allowed per residence is not acceptable is that it would immediately change the legal baseline for the number of cats in the City for subsequent CEQA analysis of any further elements of the Citywide Cat Program. It would change the legal context for analysis of any future proposed modifications to the Cat Kennel Ordinance that would allow more of the owned cats to be allowed outside. The proposal is therefore inseparable from the Citywide Cat Program as a whole and the elements addressing unowned cats in that program.

Proposal Lacks Substance Necessary to Support Policy Decision

The proposal itself is deficient in many ways. It is uniformly lacking in the substance, analysis, and evidence necessary to support the assertions made therein. It is wholly inadequate to provide the basis for a public policy decision.

The General Manager presents blanket statements about the City and County of San Diego without providing any sources, details, or means to verify information. She provides statements that she claims represent the opinion of "San Diego animal control officers" about cat limits. Which officers? What is the opinion of San Diego public health officials? The General Manager's assertions are so vague and self-serving as to be useless as evidence of anything.

The General Manager points to the City of Santa Monica and its lack of limits on indoor cats. She conveniently omits that the City of Santa Monica, unlike the City of Los Angeles, has an ordinance that bans owners from allowing animals (including cats) to "run at large in or upon any private property without the property owner's or occupant's permission, any unenclosed private property or any public property..." (Santa Monica Municipal Code Section 4.04.150). This ordinance puts checks and balances on the absence of a limit on owned cats, in that it requires cats to be confined to owners' properties and provides recourse should they be allowed to run at large. Notwithstanding the putative restriction on additional cats being kept indoors, the City of Los Angeles has no such ordinance or means of third party complaint and enforcement, and therefore presents an entirely different situation from that in Santa Monica.

The General Manager also purports to base her proposal on an ordinance in the City of Laguna Beach. Again, unlike Los Angeles, Laguna Beach has an ordinance that bans pet owners from allowing their animals to "trespass on the private property of another person without the consent of such person" (City of Laguna Beach Municipal Code Section 6.16.030).

In the last paragraph of the "Background" section, the General Manager references "evidence supplied by San Diego and Santa Monica" without providing any evidence or even any description of evidence in the form of statistics that might be relevant. But it is in this paragraph

that the true purpose of the ordinance is made clear. The General Manager asserts that the Department supports the proposed ordinance change because it would "allow the City to place more cats in temporary foster care to save cats' lives due to space constraints in shelters or rescues." ***This goal, to turn private residences into overflow animal shelters without limits on the number of animals or respect for planning and zoning codes, is the obvious intention of the proposal.*** This is made even more clear by the introduction of financial incentives for people who "foster" cats as part of the increased number allowed per residence.

Following the "Background" section, the details of the proposal are presented, which the General Manager alleges are based on the "private cattery" ordinance in the City of Laguna Beach. The General Manager, however, ignores that the City of Los Angeles proposal differs from the regulatory system for private catteries in Laguna Beach in almost every respect.

First, Laguna Beach has an ordinance that prohibits trespassing of cats onto other properties if permission has not been given; the City of Los Angeles does not have such an ordinance.

Second, Laguna Beach has an ordinance that requires that if pets defecate on public or private property, the owner must collect and dispose of the feces in a sealed or closed container (Laguna Beach Municipal Code Section 6.16.110). The City of Los Angeles has no such requirement and does not require owners to abate cat feces on neighbors' properties (the City allows cats to run at large without supervision of owners).

Third, Laguna Beach specifies in its ordinance the number of cats that can be kept by square footage of the property. A cattery license is required to have more than one cat at a property that is less than 2,500 square feet, to have more than two cats at a property 2,500–5,000 square feet, more than three cats at a property 5,000–6,000 square feet, or more than four cats at a property greater than 6,000 square feet. In all instances the number of cats is limited to six, not the unlimited number at any property of any size as proposed for the City of Los Angeles.

So to say that the General Manager's proposal, which has no limit at all on the number of cats and does not tie the number of cats to the square footage of a property, is based on one of these other "successful" ordinances is ridiculous. The proposal before the PAW Committee is nothing like the set of ordinances in place in the City of Laguna Beach and any "success" (as alleged by the General Manager) of that set of ordinances cannot be expected of her proposal, which differs in nearly every respect.

The current proposal, even as sketched out in rudimentary detail by the General Manager, would establish a set of regulations that would be impossible to enforce. As we have noted before, any scheme in which some cats living at a property are allowed outside and other cats must be kept inside is infeasible. What such a scheme means is that all cats beyond the first three must be restrained in some manner so that they do not go outside when cats 1–3 go outside. Some houses have cat doors. Under this scheme, the extra cats (numbers 4–20+) must be kept away from the cat door, lest they use it. Clearly, this is absurd and cat owners will not restrain cats in this manner.

The keeping of animals in large numbers and the associated maintenance and sanitation issues, as part of the overflow shelter system that this proposal would establish, is exactly what the Cat Kennel Ordinance was designed to address. The ordinance exists for a very good reason, in that it keeps the adverse impacts of maintaining large numbers of animals restricted to zones where such activities are appropriate. The current proposal would eviscerate the protections for residential neighborhoods provided to the public by rational zoning. It would also put an additional burden on City services such as sanitation, given the copious quantities of cat waste that would be generated. This proposal should, therefore, be evaluated by the Department of City Planning in addition to being reviewed under CEQA.

The indoor/outdoor cat scheme is also unenforceable because the City obviously does not have the resources to keep track of which cats are allowed to go outside and which must stay inside. The plain language of the proposal specifies that the first three cats can be let outdoors, but any additional cats must be kept indoors all of the time. It is preposterous to think that this restriction could be enforced; how would any observer know which cats are the three cats that have permission to go outdoors? How would anyone know that the resident was not simply letting a rotating subset of three cats outside at any given time? That situation would not be unlike an apartment that is occupied by people who are sleeping in shifts, maximizing the amount of time someone is using the apartment. Similarly, having more than three cats at a residence with only three allowed outside at any given time would likely mean that cats would be let out in shifts, maximizing the probability that three cats are outside at any given time. Furthermore, even if a cat owner were trying to comply with the scheme, what would happen when one of the outdoor cats at a residence died? Would the owner then have to notify the City that a different cat was now permitted to go outside? But more to the point, the General Manager has not provided any mechanism in her proposal on how this part of the regulations would be implemented or enforced, so one must conclude that the restrictions on cats being kept indoors would not be followed by cat owners and not enforced by the Department. As a result, the restriction on cats 4 through whatever number the City feels like permitting going outdoors can only be seen as an infeasible and ineffective mitigation measure for the proposed increase in the number of cats kept at dwellings in the City. This is why such a proposal must be reviewed under CEQA, where the effectiveness and feasibility of mitigation measures can be evaluated rationally.

Proposal Does Not Contain Honest Financial Analysis

The General Manager's statement that the proposed program would "provide additional General Funds through permit fees to help cover the expense of annual inspections" is not an honest analysis of fiscal impact. It lacks all detail and even the basic information that would be necessary to assess whether the program would represent an unfunded mandate for the Department, which already has difficulties fulfilling its responsibilities to the public. The only way that the proposed project would not be a drain on the Department's finances is if the Department does not intend to enforce the rules that would be put in place or undertake the inspections that would be required. A simple review of the proposed fee schedule shows this to be true. The maximum annual fee proposed would be $150 to permit a cattery of more than 15 cats. The fees for most catteries of this size would probably be waived because they would be used to foster cats for the Department (i.e., catteries acting as overflow animal shelters if the owners were willing to allow the Department to inspect the conditions in which they were

keeping the cats). So the average fee collected would likely be less, probably closer to $55 per cattery. For the sake of argument, however, assume that the average fee would be $75 per cattery per year. The total cost per hour including salary, training, overhead, retirement, and associated fees for an officer to conduct the inspection probably would far exceed $75/hour and each permit would require more than one hour's time per year to administer. The permit fee would have to pay for transportation to and from each site, time to write up a report, time to handle appeals, time to handle complaints, time to investigate whether only three and/or the right three cats were being allowed outside at a permitted cattery, time for staff to run the Board meetings to resolve appeals, etc., etc. The General Manager has proposed an expensive program and simply noted that it would generate income, without providing even a rudimentary assessment of the cost of the program. An honest assessment would probably reveal that the reasonably foreseeable new expenses that the Department would face would far exceed the new fees collected.

Proposal Is Misguided Attempt to Implement "No Kill"

The current proposal must be seen in context of the City's attempt to become "no kill." The proposal obviously is intended to allow the City to legalize a series of overflow animal shelters in residential neighborhoods where the Department can dump cats, which may or may not ever be adopted. The absence of limits on the number of cats could also allow "rescuers" to cage and maintain semi-tame cats in their dwellings that would otherwise be unadoptable. It is well known that the General Manager is under pressure to reduce the number of animals euthanized (whether or not they are adoptable) and this proposal reflects that pressure, especially the willingness to take on an expensive and cumbersome licensing process without disclosing the expense. Either the proposal will cost the Department money, or the Department will not fulfill its required duties to inspect and address compliance, but this apparently would result in no adverse consequence to the General Manager. Rather, if the newly proposed program can be used to dump more animals from shelters into private dwellings, she will be rewarded for "improving her numbers." But what is the long-term strategy when the limited number of people willing to warehouse additional cats is exhausted? With every kitten being fostered, and every feral cat entering the shelter being warehoused (if it is not illegally released), the number of appropriate homes for cats will remain less than the number of unowned or unwanted cats.

We have previously highlighted a series of steps that could be taken to reduce the number of unowned and unwanted cats over the long term: 1) require that all cats be licensed; 2) adopt a prohibition on cats running at large; 3) enforce the spay/neuter ordinance and provide low-cost spay/neuter for owned cats; and 4) continue to accept unowned stray and feral cats at shelters and euthanize them if suitable homes are not available. We strongly encourage the PAW Committee to consider these initiatives instead of the current proposal from the General Manager.

Sincerely,

Travis Longcore, Ph.D.
Science Director