THE URBAN WILDLANDS GROUP

EHL

February 16, 2015

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

Re: February 17, 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 Urban Wildlands Group (UWG) is a Los Angeles-based organization dedicated to the protection of species, habitats, and ecological processes in urban and urbanizing areas. Endangered Habitats League (EHL) is southern California's only regional conservation group. EHL is dedicated to the protection of our diverse species and ecosystems and to sensitive and sustainable land use for the benefit of all the region's inhabitants.

The Personnel and Animal Welfare (PAW) Committee has for consideration a report from the Department of Animal Services (Department) dated February 12, 2015 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 only minor changes from the report the PAW Committee considered one month ago, that is still grossly insufficient to support any sort of policy decision on your part and still continues to avoid or analyze significant issues surrounding the increase in the number of cats per residence in the City of Los Angeles. UWG's comments submitted on January 19, 2015 still apply, as does the letter sent to you by attorney Babak Naficy on November 3, 2014 on behalf of the plaintiffs (including UWG and EHL) in *Urban Wildlands Group et al. v. City of Los Angeles et al*.

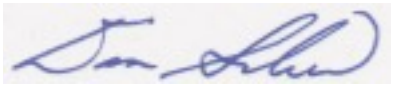
The proposal continues to be deeply flawed:

- It provides no mechanism to ensure that additional cats beyond three are kept indoors. Any scheme that mixes indoor, outdoor, and indoor/outdoor cats at an address is clearly not meant to be enforced. Annual inspections will do nothing to affect the day-to-day behavior of the people recruited by the Department to take "foster" cats.
- It ignores that the cities on which the proposal is based have laws that prohibit cats from running at large without permission of owners on whose property the cats trespass.
- It ignores that the City of Laguna Beach, allegedly a model for the program, limits the total number of cats to six and gives specific square-footage requirements to have two or more cats.
- It creates ambiguity about whether outdoor cats fed at a residence are owned and counted under the Cat Kennel Ordinance. The 2013 Citywide Cat Program proposed to amend the Cat Kennel Ordinance to exempt free-roaming outdoor cats from the Cat Kennel Ordinance so obviously the City's own interpretation of the law is that outdoor cats count toward the kennel limit.
- It fails to accurately assess the cost of the proposal or to provide a funding stream for enforcement. Without a realistic plan to fund enforcement, the program cannot be expected to be feasible or its limitations enforced.
- It conflicts with the permanent injunction in *Urban Wildlands Group et al. v. City of Los Angeles et al.* (Los Angeles Superior Court Case No. BS115483) in that feral cats would be among those adopted out to people under the new program, thereby making it an action in furtherance of the City's TNR program for feral cats, which is explicitly barred by the injunction.

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; 4) continue to accept unowned stray and feral cats at shelters and euthanize them if suitable homes are not available; and 5) enforce the existing ordinance that bans feeding of non-domesticated mammalian predators, which the feeding of unowned cats outdoors does by providing that food to raccoons, skunks, and coyotes. 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, The Urban Wildlands Group



Dan Silver, M.D.
Executive Director, Endangered Habitats League

THE URBAN WILDLANDS GROUP, INC.
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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.
>
> 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.
>
> 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

Travis Longcore, Ph.D.
Science Director

Law Offices of **Babak Naficy**

November 3, 2014

Via U.S. Mail and Email

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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 Wildands 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).

- 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,[FN6] § 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 the 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

avoid, reduce, or offset those impacts, we note the following policy options that have be 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

Babak Naficy
Attorney for The Urban Wildlands Group et al.

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