

## ***ANIMAL ISSUES MOVEMENT***

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July 6, 2015

Council President Herb Wesson  
All Councilmembers  
Los Angeles City Council  
200 N. Spring Street  
Los Angeles CA 90012

Councilman Paul Koretz, Chair  
All Members  
Personnel and Animal Welfare  
200 N. Spring Street  
Los Angeles CA 90012

Mayor Eric Garcetti  
City of Los Angeles  
City Hall  
200 N. Main Street  
Los Angeles CA 90012

Dear Mayor Garcetti and City Councilmembers:

### CF 13-1513 – OPPOSITION - CAT LIMIT INCREASE TO 20 PER PROPERTY – ESTABLISHING CAT “CLOWDERS”

CF 13-1513 has been introduced primarily as a method to move stray or feral cats from Los Angeles City animal shelters and place up to 20 per property inside residences or in cages called “clowders” in backyards throughout the city, while bypassing the surrounding property owners’ right to oppose. If this is approved, a quasi-animal shelter can be established in close proximity to neighbors anywhere in the City, endangering their health and quality of life of communities and violating Los Angeles Municipal Code.

LAMC Sec. 53.00 sets forth the following definition of a cat kennel: “Cat Kennel shall mean any lot, building, structure, enclosure, or premises where four (4) or more cats are kept or maintained.” Cat kennels are traditionally required to be at least 500 feet from the nearest residence. Should anyone seek to maintain a cat kennel in closer proximity to homes/businesses, a public hearing must be held and surrounding property owners notified so they can speak regarding the particular proposal. This is an important protection because of the potential for spread of airborne diseases, parasites, and nuisance noise disturbing the quality of life and peaceful enjoyment of property, as well as preserving property values citywide.

When a proposal to increase L.A.’s dog/cat limit to five (5) each per property was proposed in 2010, community groups, Neighborhood Councils and HOA’s, as well as individual property owners, were adamantly opposed and testified, wrote and signed petitions against it. CF13-1513 has not been subjected to public scrutiny. Although it has been suggested that the Commission hold one night meeting (in one area of the city) to have public discussion, the PAW committee and the Commission are well aware that few (if any) members of the public attend these meetings; and there is little advance notice to community groups. This issue must have numerous regional meetings held, with citywide advertising.

Also, the file on this matter is merely entitled “Increase cat limits for owned cats.” That is incomplete and misleading. The cats discussed by Ms. Barnette are unowned/unclaimed shelter animals (stray or feral) which will be “fostered” in the proposed cat “clowders.” The number will be 20, rather than five (5), as has been emphasized at meetings.

The matter of circumventing LAMC requirements for “kennels” was just addressed by Judge Joanne O’Donnell in Los Angeles Superior Court Case BS147232 (Daugherty vs. City of Los Angeles.) This decision was regarding Zoning Administrator’s Interpretation ZA-2013-3104-ZAI, which allowed “new business-model pet shops” to have an unlimited number of adult shelter dogs/cats in C-2 Zoning and potentially within 500 feet of residences. The Judge ruled that the Zoning Administrator had “exceeded her authority and abused discretion.” The approval of cat “clowders” without appropriate public hearings would equally violate the Charter because it eliminates the need for a Conditional Use Permit to exceed the City’s legal limit of three (3) cats, or the proposed increase to five (5) cats, per property.

- The report states the General Manager may waive such fees. With this “favor” being done for the shelter, GM Barnette has testified that she WILL waive the fees. Even the proposed \$155 permit fee would not cover processing and inspection costs..

- GM Barnette's claim that the fees for the "clowers" will pay for inspections has no analysis, comparisons, or other factual validity. The primary stated goal in her April 16, 2015 report is to move shelter animals into homes of "rescuers" and "fosters." The report states that these will be considered "temporary" but there is no "temporary"-time limit imposed.
- The prospect of hoarding is obvious. Hoarding is rife among "rescuers" who believe they must "save them all" and has become one of the most reported/prosecuted forms of animal cruelty. Ms. Barnette just announced at the last Commission meeting that impounds are up because of the number of hoarding cases in the city recently, including 71 cats at one home. No reasonable and humane person would keep 20 cats in a backyard "clower" as personal pets.
- Since "clowers" would be outdoor cat kennels (up to 20 cats each) the spread of airborne diseases (including toxoplasmosis) and infestation by parasites would create rampant health risks for neighbors, as well as owned cats.
- The cats in "clowers" and their food will attract predators; such as, coyotes, and other wildlife into yards and communities. This will endanger the cats themselves, as well as other nearby pets and possibly humans.

GM Barnette states in her April 16, 2015, report that the goal is to reduce the shelter cat population. However, the "clower" plan only proposes warehousing cats. It lacks any provisions to address the source of the problem, which can only be done by enforcing laws requiring responsible ownership; i.e., spay/neuter, licensing and keeping cats indoors--not by endangering residential or commercial areas, with no recourse to restore their quality of life. Noise and cat fighting/yowling (especially at night) cannot be avoided with cats in outdoor pens (or indoors) in close proximity to each other. Waste disposal will also create a serious (and offensive) problem.

There is no way for Los Angeles Animal Services to control the impact on surrounding homes by their "annual inspection," purported to be conducted by the two Permit Officers who serve 469 square miles. The most common report by GM Barnett and Director of Field Operations Mark Salazar has been that there are not enough officers to conduct humane investigations and meet other demands of almost 4 million residents of L.A. Even with 24 new officers, the complement will be inadequate.

The Budget Advocate's recommendation that the City should pass the motion in CF 13-1513 and that this will increase revenue to the City, though well intentioned, is based upon GM Barnette's assumption in her report, for which she has no factual basis—and, alarmingly, the PAW Committee has not demanded that facts or comparisons be produced.

If passed, this proposal will undoubtedly face a legal challenge by organization(s)/homeowners concerned about the adverse public health and environmental impacts, and, based upon Judge O'Donnell's May 27, 2015, decision, it is likely that it will be struck down by the court, at added legal costs to the City. (See attached.)

You are urged to **vote "NO" on CF13-1513** and to instruct the Department of Animal Services to propose and implement methods aimed at solving the cat overpopulation problem by increasing penalties for cat owners who fail to alter their pets and enforcing penalties upon those who leave unsterilized cats outside, or abandon any pet cat.

Such methods as TNR and cat "clowers" merely treat the symptoms of the City's failure to consider cats as important as dogs. As long as the City treats cats as disposable and free-roaming, cat overpopulation will increase far faster than temporary methods of warehousing; such as "clowers" or the inhumane practice of TNR, which merely re-abandons them into the streets.

Sincerely,



Phyllis M. Daugherty, Director

Attach.

cc: Miguel Santana, CAO  
Michael Feuer, City Attorney

## Judge O'Donnell: LA Zoning Administrator Exceeded Authority



ANIMAL WATCH-On October 30, 2013, LA's Chief Zoning Administrator

Linn Wyatt issued a Zoning Administrator's Interpretation (ZAI) exempting "pet shops" from the requirements for "kennels," if they offer four or more adult shelter or rescued dogs for sale. This contradicts LAMC Section 12.03 of the Zoning Code which defines a kennel as, "Any lot or premises on which four (4) or more dogs, at least four (4) months of age, are kept."

The ZAI was requested by LA Animal Services GM Brenda Barnette, according to the Planning Department.

A Writ of Mandate petition (BS147232) was filed in Los Angeles Superior Court on February 10, 2014, contending that the Zoning Administrator had exceeded her authority in granting special privileges to favored operators that would exclude them from the requirements of the zoning code.

The ZAI was the stepchild of the ordinance (CF11-0754), introduced by Councilman Paul Koretz, which banned the sale of commercially bred dogs, cats and rabbits in pet stores. It was passed by the Council with much "feel-good" media publicity on October 31, 2012.

In the justification for that ban to stop "puppy mills" (none of which are in Los Angeles) the Council also required pet shops "to obtain their animals from public and private shelters or rescue groups."

The Council was assured this "new business model" for pet shops was a successful part of such bans in other cities. That was not true. Other "mill-bred" puppy bans allow shelter animals to be offered in existing pet shops, primarily by rescue groups, but do not require pet shops to acquire them.

Historically, pet shops are in commercial (C-2) zones and only offer puppies under four months of age. They are automatically regulated as kennels by the LAMC zoning code if they maintain more than three dogs over that age (adults.) Similar kennel codes in other jurisdictions are not changed in conjunction with "mill-bred" puppy bans.

Without notice, the ZAI robbed every business citywide of important protections against having a dog kennel next door, maintaining an unlimited number of adult shelter dogs of any breed or temperament, 24/7. Residents within 500 feet also lost important quality-of-life, health and safety provisions previously imposed by LAMC Sec. 12.03.

However, any private boarding or training facility housing adult dogs in Los Angeles still needed to follow the Zoning Code and obtain a Conditional Use Permit to maintain four or more dogs on any property not in an M-1 industrial zone. This is to avoid nuisance and public/animal health hazards, including barking, waste disposal, drainage and the spread of disease/parasites.

The ZAI left all decisions as to excessive noise and number of animals up to the GM of Animal Services. It contained no qualifications for "pet shop" owners and was devoid of restrictions and requirements to protect the health and safety of the animals and the public.

Attorney Harold Holmes argued that the amount of noise, effluence and impact on the environment generated by shelter dogs at pet shop is equal to that of dogs boarded for owners at private kennels, and that the City was engaging in favoritism and failing to provide equal protection under the law.

Los Angeles Superior Court Judge Joanne O'Donnell issued an Order on May 27, 2015, that the, "City of Los Angeles Zoning Administrator's Interpretation which excludes "pet shops" from the definition of "kennels set forth in Section 12.03 of the Los Angeles Municipal Code (No. ZA-2013-3104-ZAI, issued October 30, 2013) exceeds the Zoning Administrator's authority and is thus an abuse of discretion." The judge also ordered that a Writ of Mandate issue. (Daugherty vs City of Los Angeles)

Who Really Orchestrated The ZAI? A California Public Records Act request to then-Mayor's Villaraigosa's office produced e-mails to and from legislative deputy Jim Bickhart which show he personally wrote the template wording and lobbied for changes to the LAMC that would remove "pet shops" with adult animals from zoning code sections enforced by the Department of Building and Safety.

He argued at the October 2, 2013, Personnel and Animal Welfare Committee (PAW), for adding a section to the pending "puppy mill" ordinance that would remove zoning impediments to non-profits opening shelter-dog pet shops by exempting this "new business model" from the Conditional Use Permit (CUP) requirement. He contended this was essential for Paul Koretz' "puppy mill" ban to have its desired effect.

Bickhart's proposal still faced the troublesome issue of the Charter-required Planning Department notification to the public of any zoning change. E-mails and documents obtained from the Planning Department reveal the involvement of Dov Lesel, Assistant City Attorney for Animal Services, to, instead, develop a ZAI adapting Bickhart's proposal.

The Mayor's Office initiated supplemental file (CF11-0754-S1) on 10/3/2013 to accomplish this goal.

That same day Jim Bickhart discussed in an e-mail to Richard Llewellyn, then-Chief of Staff to Councilmember Paul Koretz (now legal counsel to Mayor Garcetti) what he had verbally presented at the PAW meeting:

*"...[W]ith the assent and backing of a key player in the local humane community (Aimee Gilbreath, ED of the Found Animals Foundation), I suggested that there's a fixable problem in the LAMC that, left unfixed, could prevent a key aspect of Paul's pet shop...ordinance from falling flat on its face."*

Llewellyn wrote that this seemed like a land-use matter and inquired about environmental analysis, approval by the Planning Dept., Neighborhood Councils, HOA's, etc. Bickhart responded that he had not yet consulted with anyone except supporters of the "mill-bred" puppy ban ordinance.

He assured Llewellyn, *"As you will see, I think I've got a pretty simple solution that only needs a bit of review and wordsmithing from the City Attorney."*

That same day, Bickhart wrote to Found Animals Foundation:

*"I think it is a stretch (and a self-fulfilling disaster) to consider what I proposed a land-use amendment... Years of experience tells me that if they'd just go ahead with the kind of solution we're proposing, there's a 99% likelihood it would go through Council unnoticed and that would be the end of that."*

Was it an oversight that the March 26, 2013, report by former-City Attorney Trutanich advising that, "Amendments to the Planning Code must be referred to the Planning Department pursuant to the City Charter," were omitted in the October 23, 2013, report by new City Attorney Michael Feuer? The initials "DL" appear as author of both, and Dov Lesel approved two widely differing versions of a Draft Ordinance as to form and legality.

On November 16, 2013, CF11-0754-S1 ((Definition of Kennel and Pet Shop / Los Angeles Municipal Code / Amendments) was approved by Koretz' PAW Committee without public vetting because it did not indicate in the title that

zoning was affected. There was no Planning Director or Planning Commission review filed, and the City Council's Planning and Land Use Management Committee (PLUM), chaired by Jose Huizar, waived public hearing.

**No Council Questions**-*Guidestar* reveals the billions of dollars donated annually to humane organizations, whose high-profile legislative activities now contain reminders of how many votes can be affected by their endorsement. This explains why more than altruism can motivate the desire of politicians to promote, without question, the latest laws popular with animal lovers.

Mayor Garcetti signed CF11-0754-S1 on December 6, 2013. The cover sheet was marked "approved" by the Planning Commission and Director of Planning, and the City Attorney.

Jim Bickhart left City Hall at the end of Mayor Villaraigosa's term, but was recently hired (as Speedway Policy Associates) under a personal service contract to Councilmember Bob Blumenfield and currently under a contract with Paul Koretz. As LA Watchdog Jack Humphreville wrote on June 14, in *Worst Case! City Hall Leadership Pulls Off Sleazy Backroom Deal in K-Town*, the Mayor's Office and Council once more demonstrated that we cannot trust City Hall.

*(Phyllis Daugherty is an animal activist in Los Angeles and a contributor to CityWatch)*

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