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October 15, 2018

Date: 2/16/18
Submitted in PAN Committee
Council File No: 18-0538
Item No: 10
Deputy: Adam R. Lid

Michael N. Feuer, Esq.
Los Angeles City Attorney
James K. Hahn City Hall East
200 N. Main Street
Suite 800
Los Angeles, CA 90012-4131

Proposed L.A. Fur Ban

Dear Mr. Feuer:

We are writing on behalf of the Fur Information Council of America (FICA) in connection with proposed legislation to ban the manufacture and sale of fur in the City of Los Angeles. A motion directing the City Attorney to draft such a bill passed the City Council on September 18, 2018.

FICA is the national trade association that protects and promotes the interests of the retail and manufacturing sectors of the U.S. fur industry. A prohibition on the manufacture and/or sale in the City of Los Angeles will result in the forced shut down of several businesses owned by FICA members, which currently operate within the City. Some of these businesses have been operating in the City for decades; owning or leasing significant commercial office space; and employing dozens, if not hundreds of L.A. residents, while serving thousands of consumers.

FICA, through its counsel, is requesting a meeting with the Office of the City Attorney to discuss legal issues arising out of the proposed ban, in the hopes that such discussions can result in the draft of a bill that will not adversely affect the economic interests of existing businesses that currently sell fur products, but which might also advance the animal welfare objectives of the motion's sponsors. Many of these issues were raised when the first fur ban was enacted in the City of West Hollywood. That ordinance resulted in the dismissal of the only enforcement action arising out of ordinance, as well as the issuance of a ruling by a California State court, which held that portions of the West Hollywood ban were statutorily preempted by the State Fish and Game statute. As a result of that ruling, certain fur products can still be sold in the City of West Hollywood.

Michael N. Feuer, Esq.
October 15, 2018
Page 2

There are a number of legal and practical issues upon which a broad-based ban in Los Angeles could be challenged. Before entering into this phase, FICA representatives would respectfully request an opportunity to discuss these issues prior to the drafting of a bill by the City Attorney's office. Such issues include the following:

1. Would a ban on the manufacturing and sale of fur products constitute a burden on Interstate Commerce and therefore be constitutionally invalid? This is underscored by the extreme harm that would befall out-of-state fur producers and manufacturers, and the fact that the proposed ban is inherently discriminatory given the lack of fur production and manufacturing in the State of California. Local product bans have been overturned by both State and Federal courts on Commerce Clause grounds.
2. How does the City intend to address in the proposed ban the judicial ruling arising out of the West Hollywood ordinance that held that the California State Fish & Game statute preempts a ban on the sale of fur products taken under a valid trapping license? This is especially relevant to the sale of fur articles produced from ranched fur, which are indistinguishable from wild furs that are of the same species, but are trapped rather than ranched.
3. Given discussions that the proposed ban should include faux fur, how is the City going to define such products so as to overcome ambiguities related to the definition of fake fur? Similar issues arise out of other potential exceptions being discussed including exceptions for certain religious purposes, used sales and charitable purposes? Do these exceptions give rise to any Equal Protection or Due Process issues?
4. Will the City, as has been done in the past, use the Fur Product Labeling Act as the basis for defining a fur product? Will the exceptions discussed during the passage by the Committee of the Motion, give rise to a preemption issue as it relates to the federal definition of a fur product?
5. How will the City regulate the online sale of fur products, taking into account the fact that much fur is sold online, but shipped to destinations in Los Angeles from outside the City? For example would a retailer violate the ordinance by advertising a fur product on its website and does the location of the server hosting the website impact this conclusion?
6. Would a retailer physically located in Los Angeles violate the proposed ban if a customer purchases a fur product through the retailer's website and if:
 - (a) the customer is located outside Los Angeles and the fur product is shipped from a location outside Los Angeles to the customer?
 - (b) the customer is located inside Los Angeles the fur product is shipped from a location outside Los Angeles to the customer?

Michael N. Feuer, Esq.
October 15, 2018
Page 3

- (c) the customer is located outside Los Angeles and the fur product is shipped from a location inside Los Angeles to the customer?
- (d) the customer is located inside Los Angeles and the fur product is shipped from a location inside the City?

Would the location of the server hosting the retailer's website affects the answers to these questions?

7. Would a retailer that is not physically located in Los Angeles violate the proposed ban if a customer purchases a fur product through the retailer's website, and:

- (a) the customer is located inside Los Angeles and the fur product is shipped from a location outside the to the customer?
- (b) the customer is located outside Los Angeles and the fur product is shipped from a location inside Los Angeles to the customer?
- (c) the customer is located inside Los Angeles and the fur product is shipped from a location inside the City?

Would the location of the server hosting the retailer's website affect the answers to these questions?

8. Would a retailer physically located in Los Angeles violate the proposed ban by displaying a fur product for sale at the retailer's location in the City if all aspects of the transaction resulting from that display (*e.g.*, consummation of the sale, payment, shipment of the fur product) occur outside the City?

9. What department(s) of the City are (or will be) responsible for issuing citations for alleged violations of the proposed ordinance? In issuing a citation for an alleged violation of the proposed ban, how will the issuing official determine that the fur product does not fall within one of the exceptions to the proposed ban?

10. Will the City take into account the fact that much of the fur sold in the City is manufactured outside the United States, thereby giving rise to a potential international trade issue? For example, will imports of fur products through the Port of Los Angeles or sale of products manufactured outside the U.S. give rise to a violation under various global trade agreements?

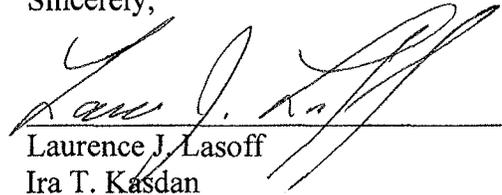
11. Does the City intend to compensate furriers who will be forced to shut down their businesses if the ban goes into effect? What about commercial realtors whose tenants will be forced to break their leases?

Michael N. Feuer, Esq.
October 15, 2018
Page 4

These are merely a sampling of the issues that may arise if the City Council enacts the proposed ban. The City should be especially concerned about the complex enforcement issues that will need to be addressed, including scientific testing for purposes of species identification; treatment of online sales involving non-LA entities and customers; and the administration of product exceptions that will further complicate implementation of any law. Many of these issues also provide legitimate legal grounds for judicial challenge, a challenge which FICA or one of the local furriers will be forced to pursue if the rights of these businesses to operate are denied.

We look forward to discussing these matters with you further. We also hope these discussions can lead to a balanced exchange of views with other interested parties that could result in a reasonable compromise that will allow these businesses to continue to operate within the City, while addressing the animal welfare objectives of other interested parties. We believe that there exist better alternatives to the complex enforcement regime of a ban, or even worse, costly litigation on behalf of those who will have to close their businesses as a result of this policy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence J. Lasoff", is written over a horizontal line.

Laurence J. Lasoff
Ira T. Kasdan
Joseph D. Wilson

Counsel to
Fur Information Council of America