

**City of Culver City, California
Agenda Item Report**

Meeting Date: 11/23/09		Item Number: <u>A-1</u>	
CITY COUNCIL AGENDA ITEM: Consideration of the Introduction of an Ordinance Adding Section 9.01 to the Culver City Municipal Code, Prohibiting the Declawing of Cats or Other Animals in The City of Culver City.			
Contact Person/Dept.: Shelly Wolfberg/ City Manager's Office		Phone Number: (310) 253-6008	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: Meetings and Agendas – City Council (11/19/09); (Telephone) Veterinarians with Culver City Business Tax Certificates (11/19/09)			
Department Approval: Martin R. Cole (11/17/09)		City Attorney Approval: Carol Schwab (by H. Baker) (11/17/09)	
Chief Financial Officer Approval: Mark Scott (by M. Noller) (11/18/09)		City Manager Approval: Mark Scott (11/19/09)	
<u>RECOMMENDATION:</u> Staff recommends the City Council consider introducing a proposed Ordinance (Attachment 1) which would prohibit performing, assisting in performing, and procuring onychectomies and flexor tendonectomies, which are declawing procedures, on cats in Culver City. <u>BACKGROUND:</u> In 2003, the City of West Hollywood adopted an ordinance regulating (and generally prohibiting) the practice of declawing animals. In 2005, the California Veterinary Medical Association (CVMA) filed suit to invalidate the ordinance, claiming that the ordinance was in conflict with and preempted by state law. While the CVMA prevailed at trial, West Hollywood appealed in 2006. The appellate court ultimately ruled in West Hollywood's favor and the California Supreme Court rejected further appeal which made the appellate court's ruling final. The appellate court held that the City of West Hollywood's ordinance prohibiting onychectomy and flexor tendonectomy was within the City's police power to prevent animal cruelty. On July 2, 2009, Governor Arnold Schwarzenegger signed SB 762 into law. SB 762 prohibits cities or counties from restricting any person from performing a procedure that falls within the scope of practice of a person licensed by the State Department of Consumer Affairs (DCA). Specifically, this bill:			

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1. Makes it unlawful for a city, county, or city and county to prohibit a licensed healing arts professional from engaging in any act or performing any procedure that falls within the licensee's professionally recognized scope of practice.
2. Authorizes the enforcement of a local ordinance in effect prior to January 1, 2010, related to any act or procedure that falls within a licensed healing arts professional's recognized scope of practice.
3. Authorizes a city, county, or city and county to adopt or enforce any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a licensed healing arts professional.

SB 762 addresses an issue that is raised by local municipalities to have the ability to ban specific practices of professions regulated by DCA and asserts that it is critical to have statewide oversight and ultimate authority over professional businesses, occupations, or professions.

DISCUSSION:

A change in state law, effective January 1, 2010, SB 762 will preempt cities from banning certain procedures provided by "healing arts practitioners" including cat declawing. Supporters of declawing bans assert that the declawing procedure is actually very painful and may not be necessary. The supporters argue declawed cats:

- Are deprived of the means to defend themselves or flee from danger;
- Have been injured or killed by other animals when they could not climb out of harm's way or had impaired ability to protect themselves;
- Are deprived of satisfying their instinctual behavioral impulses to climb, exercise, and mark territory;
- Are subject to the risks of general anesthesia and surgery, which include bleeding, infection, lameness, nerve damage, gangrene, extensive tissue damage, and death;
- Are disproportionately abandoned at shelters; and,
- May be euthanized more often because of the behavioral and physical problems that may result from declawing.

Supporters of SB 762 included organizations representing professions regulated by DCA. They believe that the legislature and the healing arts boards and bureaus should have the ultimate authority over medical scope of practice issues based on their education, training, and expertise. They argue that without legislation ensuring uniform statewide governance of licensed professions, professional standards will be dissimilar and discordant.

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Opponents of SB 762 who included animal rights organizations and the City of West Hollywood, believe that local jurisdictions have the right to make specific decisions relating to professions and that the appellate court's decision should be upheld.

So far, several California cities have considered or adopted declawing prohibitions. In addition to the City of West Hollywood, the City of Santa Monica had the first and second reading of the ordinance and the Cities of Los Angeles, Beverly Hills, Berkeley, and San Francisco have had first readings, all approved unanimously or nearly unanimously. The City of Malibu passed a resolution condemning the practice of declawing but did not adopt an ordinance.

Under the provisions of SB 762, state law will pre-empt local regulations in this area that are not in effect prior to January 1, 2010. Therefore, should the City Council determine it wishes to regulate this practice, the ordinance proposed would need to be introduced this evening with a second reading scheduled for November 30, 2009. Upon adoption of the ordinance, the law would become effective on December 30, 2009 (30 days after adoption). Should the City Council choose to adopt an Ordinance to ban the declawing of cats, City staff would inform Culver City based veterinarians of this new law. Further, City staff would be required to enforce the new Ordinance in addition to their current workload.

Any violation of the proposed prohibition against declawing would be a misdemeanor, with the City Attorney's office having authority to prosecute a violation as an infraction, consistent with the general penalty provisions in the Culver City Municipal Code. As an alternative, an administrative citation may be issued for a violation of the proposed declawing ban.

FISCAL ANALYSIS:

There would be no fiscal impacts associated with adopting the ordinance assuming that it would be promoted and enforced by existing City staff.

ATTACHMENTS:

1. Proposed Ordinance.

MOTION:

That the City Council:

1. Consider introducing a proposed ordinance which would ban performing, assisting in performing, and procuring onychectomies and flexor tendonectomies, which are declawing procedures, on cats in Culver City;

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OR

2. Provide other direction to staff as deemed necessary.