



Berkeley City Council

Action Calendar
November 10, 2009

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Jesse Arreguín and Susan Wengraf
 Subject: Banning Animal Declawing

RECOMMENDATION

Adopt first reading of an Ordinance prohibiting animal declawing, absent a therapeutic purpose.

FISCAL IMPACTS OF RECOMMENDATION

NONE.

CURRENT SITUATION AND ITS EFFECTS

Starting January 1, 2010, cities will no longer be able to enact local ordinances banning animal declawing and similar procedures due to the recent amendment of Business and Professions Code section 460. Therefore, Council must act now if it wishes to pass this ordinance. If the Council enacts this ordinance now, the second reading will be on November 17, 2009, and the ordinance would become effective on December 17, 2009, just before the first of next year.

There is widespread misunderstanding in the community regarding two surgical procedures performed on cats. Contrary to most people's understanding, onychectomy (declawing) is not a simple, single surgery, but ten separate painful amputations. Declawing involves more than removing just claws. Rather, the last bone of each toe is amputated, including the claw, bone, joint capsule, nerves, collateral ligaments, and the extensor and flexor tendons- all critical for normal paw functioning. In human terms, the procedure is analogous to cutting off each finger at the last joint. Tendonectomy involves surgically removing a portion of the flexor tendon in each of a cat's toes, thus preventing the cat from being able to extend the claws.

Declawing can result in serious complications, including excruciating pain for the animal, lameness, arthritis, damage to the radial nerve, infection, abscess, hemorrhage,

bone chips that prevent healing, painful re-growth of deformed claws, and chronic back and joint pain as shoulder, leg and back muscles weaken. The rate of complication for declawing procedures is relatively high compared with other so-called "routine" procedures; one study showed 50% of declawed cats developed short-term complications and 20% developed long-term complications. Often, cat owners are insufficiently informed or aware of the nature of the procedure and the serious complications and changes that may result.

Cats that undergo a tendonectomy procedure experience similar complications as those undergoing declawing, including bleeding, lameness, and infection. Further, claws continue to grow following tendonectomy; because the cat can no longer extend the claws to scratch, the cat will not wear down the claws as before. Without proper trimming and maintenance the nails can curl under into the paw and cause great pain for the animal. In addition, the nails on cats that have undergone a tendonectomy can get atypically brittle as the cat ages. Brittle nails are prone to splitting and shattering when trimmed which is quite painful for the cat.

Declawing and tendonectomy are elective procedures which cat owners request and veterinarians advocate primarily to prevent damage to property or minor personal injury. Reasonable and humane alternatives exist, including nail trimming, scratching implements such as carpeted posts and boxes, temporary soft nail caps, behavioral training for the cat, deterrent sprays, and such simple measures as covering furniture or limiting an animal's access to certain areas of the home.

Declawing is illegal in 25 nations, including the United Kingdom, France, Australia, Austria, Switzerland, Sweden, Brazil, Norway and Germany. Yet in the United States, an estimated 25% of cats are declawed. West Hollywood has a ban on declawing while San Francisco, Santa Monica, and other cities are currently considering a similar ban.

BACKGROUND

A similar ban was enacted in West Hollywood in 2003, which was subsequently challenged in court on the grounds that the ordinance infringed upon veterinarians' state-granted rights to practice within the scope of their licenses. However, the State Appeals court in Los Angeles ruled that local governments can, in fact, regulate the manner in which state licensees operate with regard to their business or profession.

As a result, SB 762 was signed into law by the Governor, which will make it unlawful for any city and county to prohibit a healing arts licensee from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee, but provided a grandfather clause for all such prohibitions that take effect before January 1, 2010.

On October 21, 2009, the Citizen's Humane Commission passed a motion: "To recommend to Council that the performance of non-therapeutic surgical procedures on companion animals be made illegal in the City of Berkeley, except for the purpose of

preventing reproduction.” However, this action could not be forwarded to Council at this time because the action exceeded the description of the Humane Commission’s published agenda for its October 21 meeting, which stated: “Discussion/Action: Ban on the declawing of cats in the City of Berkeley.” By exceeding the scope of the item listed on the agenda, the Commission ran afoul of the Brown Act requirement to only take action on items on the agenda. However, the Commission will not have time to place the matter on its next agenda, take it up again at its next meeting, and forward it to Council for passage before the December 31, 2009 deadline. For this reason, I am placing this item on the Council agenda directly.

RATIONALE FOR RECOMMENDATION

See current situation and its effects.

CONTACT PERSON

Kate O’Connor, Director of Animal Services 981-6600

Jesse Arreguín, Councilmember, District 4 981-7140

Attachment:

Ordinance Adding BMC Sections 10.04.145 and 10.04.250

ORDINANCE NO. -N.S.

ADDING SECTION 10.04.145 TO THE BERKELEY MUNICIPAL CODE, PROHIBITING
ANIMAL DECLAWING

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 10.04.145 of the Berkeley Municipal Code is added to read as follows:

Section 10.04.145 Onychectomy (declawing) prohibited.

A. No person, licensed medical professional or otherwise, shall perform or cause to be performed an onychectomy (declawing) or flexor tendonectomy procedure by any means on any animal within the city, except when necessary for a therapeutic purpose. "Therapeutic purpose" means the necessity to address the medical condition of the animal, such as an existing or recurring illness, infection, disease, injury or abnormal condition in the claw that compromises the animal's health. "Therapeutic purpose" does not include cosmetic or aesthetic reasons, or reasons of convenience in keeping or handling the animal. In the event that an onychectomy or flexor tendonectomy procedure is performed on any animal within the city in violation of this section, each of the following persons shall be guilty of a violation of this section: (1) the person or persons performing the procedure, (2) all persons assisting in the physical performance of the procedure, and (3) the animal guardian that ordered the procedure.

B. Any person who violates this section shall be guilty of a misdemeanor and shall be fined in an amount not to exceed \$1000.00 or be imprisoned for a period of six months, or both.

Section 2. That Section 10.04.250 of the Berkeley Municipal Code is amended to read as follows:

Section 10.04.250 Violation--Penalty

A. Any person violating any provision or failing to comply with any of the requirements of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code, in addition to any City impound and boarding fees, and in addition any fines required under state law Food and Agriculture Sections 30804.7(a-b) and 31751.7(a-b), except that a violation of Berkeley Municipal Code Sections 10.04.145 and 10.04.180 shall be punishable as a misdemeanor.

B. If the owner/guardian of an unaltered fertile dog or cat is issued a citation for a violation of any provision of this chapter other than Berkeley Municipal Code Sections 10.04.145 and 10.04.160 through 10.04.180 (concerning dangerous/vicious dogs and interfering with pound master), all infraction penalties and fines shall be nullified by the court, other than the court's administrative fee, if by the time of the court hearing, the owner/guardian provides written proof to the court that the animal was spayed or neutered within the 30-day period following the issuance of the citation.

C. The City of Berkeley encourages the spaying and neutering of dogs and cats. The dog and cat licensing requirements under this chapter will be the primary method of

encouraging the spaying and neutering of dogs that have not been impounded. No investigation of a dog or cat license violation that concerns a dog or cat kept on private property will be initiated, however, unless the animal is the subject of a complaint that is unrelated to its license status. Such unrelated complaints include but are not limited to a report of an animal bite, a barking dog, or an abused animal.

D. Whenever a dog is on public property or property open to the public, a peace officer, Animal Control Officer, or the Director of the Animal Shelter may at any time authorized by law initiate an investigation of a violation of the requirements that a dog be licensed and wear a dog license tag on its collar.

E. At the discretion of the court, the City of Berkeley is willing to accept as an alternative to the imposition of fines for infraction convictions for violations of this chapter, other than Berkeley Municipal Code Sections 10.04.145 and 10.04.160 through 10.04.180 (concerning dangerous/vicious dogs and interference with the impoundment of an animal), supervised community service at the direction of the Berkeley Animal Shelter Director in an amount of one hour of service for every \$7 in fines.

Section 3. Copies of this Ordinance shall be posted for two (2) days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen (15) days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.