AGENDA REPORT

Meeting Date: September 15, 2009
Item Number: F-6
To: Honorable Mayor & City Council
From: City Attorney
Subject: ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADD REGULATIONS REGARDING THE FEEDING AND CARE OF FERAL CATS
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted, as amended.

INTRODUCTION

This ordinance will define feral cats, feral cost colonies and establish and regulate a trap, neuter and return program in an effort to monitor feral cat feeding and care and control feral cat populations.

DISCUSSION

This item was discussed at the City Council meeting of August 18 and September 1, 2009. The City Council conducted a public hearing and on September 1, 2009, the was introduced for first reading.

FISCAL IMPACT

There will be an increase in Code Enforcement staff time to initiate and administer the TNR Program. Since the proposed TNR Permit is a no-fee permit, there would be no revenue generated to cover these costs. In view of the fact that staffing levels will not be adjusted, existing Code Enforcement response times will be increased.

Laurence S. Wiener, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADD REGULATIONS REGARDING THE FEEDING AND CARE OF FERAL CATS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS ORDAINS AS FOLLOWS:

Section 1. A new Article 5 (Regulations Pertaining to Feral Cats) is hereby added to Chapter 2 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"Article 5. Regulations Pertaining to Feral Cats

5-2-500: Trap-Neuter-Return Program Purpose and Applicability.

A program is hereby adopted to control feral cat populations in certain areas of the City of Beverly Hills ("City"), and to address associated health and safety hazards, and other impacts in the City. The program was developed in a collaborative effort with community residents and feral cat Trap-Neuter-Return (TNR) program professionals. The program shall be known as the City of Beverly Hills Feral Cat TNR Program.

5-2-501: Applicability of Feral Cat TNR Program.

A. Permits may be issued under this Article only for TNR activities in the Central Area of the City as depicted in the City's zoning map.

B. No feeding and/or trapping activity shall be permitted within 500 feet of the perimeter of any City park.

5-2-502: Definitions.

For the purposes of this Article, the words and phrases set forth in this section shall be construed as defined herein.

A. "Cat" means a member of the species *Felis catus*.

B. "Director" means the Director of Community Development or his/her designee.

C. "Feral Cat" means a cat that lives permanently outside of a domestic home and is not owned and cared for as a typical companion animal or pet, as a result of having been born feral, abandoned by an owner, or rendered homeless, wild or stray by any other means.

D. "Feral Cat Caregiver" means any person who:

1. feeds feral cats, humanely traps feral cats, provides care, including shelter or medical care, to the feral cats, or any combination of the foregoing activities, and works in cooperation with a TNR Partner permitted by the City; and

2. is registered with a permitted TNR Partner and has proof of such registration.

E. "Food" as well as "Feeding" includes water.

F. "Trap-Neuter-Return," also referred to as "TNR" is the practice whereby Feral Cats are humanely trapped by Feral Cat Caregivers or TNR Individuals, taken to a veterinary hospital or spay-neuter facility where they are sterilized and vaccinated, ear tipped, de-fleaed, and adopted or returned to their Colony to be cared for until the end of their natural life.

G. "Trap-Neuter-Return Program Regulations and Guidelines" or "TNR Program Regulations and Guidelines" means the rules adopted by the City Council allowing permitted organizations or individuals to undertake TNR activities, which rules include standards of care and guidelines for implementation activities.

H. "Feral Cat Colony" or "Colony" means a group of cats and the geographic location where that group typically live or where they forage or hunt for food, or are fed and generally cared for by a TNR Partner by associated Feral Cat Caregivers or by TNR Individuals.

I. "TNR Partner" means an organization permitted by the City to engage in implementing TNR via education, training, funding spay-neuter, providing traps, holding spay-neuter clinics, providing long-term Colony care through volunteers or otherwise implementing TNR.

J. "TNR Individual" means a person who is permitted by the City to engage in implementing the TNR Program Regulations and Guidelines on the property of their primary residence without being affiliated with a TNR Partner.

5-2-503: Feeding of Feral Cats Prohibited; Exceptions.

The feeding of feral cats is prohibited in the City of Beverly Hills unless otherwise permitted pursuant to this Article and conducted in accordance with the TNR Program Regulations and Guidelines.

5-2-504: TNR Permit and Application Requirements

A. An annual permit shall be required for any organization or individual that wishes to operate as a TNR Partner or TNR Individual in the City.

B. A separate permit shall be required for each Feral Cat Colony, even if multiple colonies are cared for by the same entity or person.

C. A permit application shall be submitted in the form and with the information required by the City, including the following:

1. TNR Partner Permit Requirements.

A completed TNR Partner Permit application form shall be submitted, and accompanied with the following supplemental information:

(a) Applicant contact and address information;

(b) TNR Partner contact and address information;

(c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;

(i) cats in colony;
(ii) successful spayed-neutered, de-flead, and ear tipped cats; and
(iii) successful adoptions;

(d) A map showing the location of each feeder and trapping location.

(e) A list of all Feral Cat Caregivers providing TNR support for the colony, and contact information for each Caregiver.

(f) Feral Cat Caregiver affidavit forms signed by each affiliated Feral Cat Caregiver confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines and stating that they have read, understand, and will comply with those regulations and guidelines.

(g) If feeding or trapping is proposed on private property, a copy of both the property owner's and the resident's consent agreeing to allow TNR activities on the private property.

(h) If feeding or trapping locations are proposed on public property, proof of comprehensive general liability insurance in a form acceptable to and in an amount determined by the City's Risk Management Department, with the City named as an additional insured. The insurance shall be maintained in force through the life of the permit, including any renewals, and coverage shall not be modified without the consent of the City.

(i) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by a duly authorized representative of the TNR Partner.

(j) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.

(k) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

2. TNR Individual Permit Requirements.

A completed TNR Individual Permit application form shall be submitted, and accompanied with the following supplemental information:

(a) Applicant contact and address information;

(b) TNR Individual's contact and address information;

(c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;

(i) cats in colony;
(ii) successful spayed-neutered, de-flead, and ear tipped cats; and
(iii) successful adoptions;

(d) A map showing the location of each feeder and trapping location.

(e) Feral Cat Caregiver affidavit forms signed by each TNR Individual confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines stating that they have read, understand, and will comply with those regulations and guidelines; and

(f) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by the TNR Individual.

(g) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.

(h) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

5-2-505: Notice and Comment Period—Feeding.

A. Upon determination that an application for a TNR permit is complete for processing, the Director shall provide notice of the application and a ten (10) day comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed feeding location.

B. The notice shall include, but is not limited to, the following:

1. The locations of feeding devices;
2. The feeding hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for feeding devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. During the ten (10) day comment period, interested parties may submit written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the feeder if it is proposed to be placed adjacent to their property.

5-2-506: Notice and Comment Period—Trapping.

A. Upon determination that an application for a TNR permit is complete for processing, the Director shall provide notice of the application and a three (3) day comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed trapping location.

B. The notice shall include, but is not limited to, the following:

1. The locations of trapping devices;
2. The trapping hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for trapping devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. During the ten (10) day comment period, interested parties may submit written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the trap if it is proposed to be placed adjacent to their property.

5-2-507: Determination on Permit.

A. The determination of whether to issue a permit is a ministerial action. The City shall review permit applications deemed to be in compliance with the TNR Program and Guidelines requirements. The Director shall approve the application unless,

1. The permit application does not comply with the TNR Program and Guidelines requirements;

2. The permit application does not include all of the required information as set forth in this Article;

3. A letter objecting to the location of feeder and/or trap has been submitted by a resident or property owner whose property is adjacent to the proposed location of the feeder and/or trap;

4. A permit has already been issued to another TNR Partner for the same feral cat colony or a feral cat colony located in the same area or general vicinity;

5. The applicant has been previously issued a permit pursuant to this Article and has violated the requirements of this Article or the TNR Program Requirements and Guidelines; or

6. The Director of Public Works has reported that the proposed location of a feeder or trap will interfere with public works activities.

B. Upon approval of a permit application, the Department of Community Development shall issue a permit card(s) to the TNR Partners, Feral Cat Caregivers, and TNR Individuals as applicable. The permit card shall be worn by the permittee and any person conducting TNR activity so that it is clearly visible to another person at all times while conducting TNR activity. Residents and/or property owners personally conducting TNR activity on their own property are not required to wear the permit card.

5-2-508: TNR Permit Conditions.

A. As a prerequisite to receiving approval of a permit for a TNR Partner or a TNR Individual, the TNR Partner or Individual shall agree to comply with the standard conditions of approval set forth in the adopted TNR Program Requirements and Guidelines.

5-2-509: Standards of Care and Responsibilities of TNR Partners, Feral Cat Caregivers, and TNR Individuals.

TNR Partners, Feral Cat Caregivers, and TNR Individuals shall comply with and fulfill the responsibilities and minimum standards of care as set forth in the TNR Program Regulations and Guidelines.

5-5-510: Return of Feral Cats.

The return of feral cats as part of a TNR program is exempt from any abandonment laws because the feral cat is trapped solely for the purpose of neutering or adopting.

5-5-511: Feeding and Trapping Times.

Food may be placed in authorized feeding stations and traps may be placed in permitted locations during the hours set forth in the TNR Program Regulations and Guidelines.

5-2-512: TNR Programs on Public Property; Restrictions.

A. Feeding locations shall be maintained in accordance with the adopted TNR Program Regulations and Guidelines.

B. Recipients of a TNR Individual permit shall not be allowed to feed Feral Cats on public property.

C. Feeding and trapping of Feral Cats in public parks shall not be permitted.

5-2-513: Request to Remove Feeders or Traps Located on Public or Private Property.

A. After the issuance of a TNR Partner Permit, a property owner or resident may submit a request to the Director to request removal of a feeder or trap that is located adjacent to their property or on their private property.

B. Upon receipt of the request, the Director shall notify the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If the feeder and/or trap is not removed, the City shall cause the feeder and/or trap to be removed without any further notice to the permittee.

C. The Department of Public Works shall receive copies of all applications involving placement or feeders or traps in the public right-of-way. The City at any time may request removal of a feeder or trap located on the public right-of-way by providing notice to the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If such feeder and/or trap is not removed, the City shall cause the feeder and/or trap to be removed without any further notice to the permittee.

5-2-514: Annual Permit Renewals.

A. Permits may be renewed annually, and requests for renewal shall be submitted at least thirty (30) days prior to expiration of the existing permit on forms approved by the City. The permittee shall have no property interest in the renewal and the permit shall not be renewed if the Director makes any of the determinations set forth in Section 5-2-507, subsection A.

B. Notice pursuant to Section 5-2-505 and 5-2-506 of this Article is not required unless changes in feeder or trap locations or new feeders or traps, or a combination thereof, are requested in conjunction with a renewal.

5-2-515: Permit Modifications.

A. A permittee may request modifications to an existing permit to add or otherwise change the approved locations for feeding, trapping or combination thereof. Modification applications shall be submitted on a form approved by the City.

B. Removal of feeding or trapping locations shall not require permit modification but the permittee shall inform the city of the removal of the location. The permit shall not be modified if the Director makes any of the determinations set forth in Section 5-2-507, subsection A.

C. Permit modifications shall be accompanied with the same documentation required for an initial permit application.

D. Noticing shall be required if a new location is requested for a feeder, trap, or combination thereof. Relocation of any feeder, trap, or combination thereof shall require a new notice to be sent as required by Section 5-2-505 and 5-2-506.

5-2-516: Enforcement.

A. The City may enforce the standards of care applicable to TNR Partners, Feral Cat Caregivers and TNR Individuals in accordance with the City's Administrative Penalty Process or may refer violations of the standards of care to the appropriate TNR Partner or TNR Individual for assistance in correcting the violations. Nothing in this paragraph is intended to restrict the remedies available to the City for a violation of the requirements of this Article or the TNR Programs Regulations and Guidelines.

B. In addition to any other remedy available to the City, the City may revoke the permit of a TNR Partner or TNR Individual if the Director determines that the TNR Partner, TNR Individual or a Feral Cat Caregiver have violated the provisions of this Article or the TNR Program Regulations and Guidelines.

C. Complaints. Any person may file a written complaint with the Department of Community Development regarding any permit issued under this Article. Upon receipt of such a complaint, an investigation will be initiated by the City regarding the allegations in the complaint."

Section 2. The City Council has considered the TNR Program and Ordinance and finds that this project is exempt from the requirements of the California Environmental Quality Act ("CEQA"). The project is exempt pursuant to State CEQA Guidelines, 14 Cal. Code Regs Sec. 15307 as an action taken to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. The project is also exempt pursuant to Guidelines Section 15308 as an action to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The project qualifies for these exemptions for the following reasons, among others:

A. The City currently has no regulations regarding feral cats or the management of any colonies that may exist in the City. If the existing condition is allowed to continue, the City Council finds there is a reasonable probability that feral cats will still be fed, but that the other TNR obligations in the Ordinance, which are intended to ensure the eventual decrease in the number of feral cats in the City, likely would not occur, including the trapping, spay/neutering, disease control measures, and removal of adoptable cats, such as kittens, from the colonies. As such, the new regulation of TNR activities in the City will maintain, restore, and enhance the City's natural

resources by reducing the number of feral cats, and thereby reducing the predation effects of feral cats on the bird populations in the City, and limiting the amount of fecal matter, including that which might contaminate waters in the City's public rights-of-way. The City Council also finds, for the same foregoing reasons, that the Ordinance constitutes an action to ensure the maintenance, restoration, enhancement or protection of the environment.

B. The City Council finds that TNR activities are appropriate in the Central Area of the City, but not in the Hillside Areas, because the Central Area of the City generally consists of higher density and more urban land uses, whereas, the Hillside Area of the City has more natural areas with the greater likelihood of birds and other wildlife that might be killed by feral cats. Although TNR activities in the Hillside Areas would not lead to a significant environmental impact, under the terms of the Ordinance, feeding of feral cats would be prohibited in the Hillside Area of the City. The City Council finds that limiting the areas of the City in which feeding of feral cats may be permitted further reinforces the conclusion that the Ordinance is a measure to protect not only natural resources but also the environment. The City Council also finds that no native riparian habitat, blueline streams, or sensitive natural communities are located in the City limits, and as such impacts on such resources will not occur. (*See*, Draft General Plan Environmental Impact Report, August 2008, at p. 4.3-1.) Nor have endangered or threatened species of birds been observed in the City.

C. The City Council finds that the Ordinance will strengthen the regulatory standards applicable to the management, care, or feeding of feral cats in the City, and based on the lack of existing regulations, the Ordinance does not represent a relaxation of any existing standards.

One goal of the Ordinance is, over time, to reduce the number of, and potentially eliminate, feral cats in the City. Based on the evidence in the record, the City Council finds that TNR programs are most successful in reducing feral cat populations when adoption of kittens and cats that can be socialized is emphasized in the Ordinance and program. The City's Ordinance and program expressly encourages cat adoptions to further the goal of decreasing the feral cat population.

D. The City Council considered the evidence in the record regarding the efficacy of TNR programs, and hereby finds that while there is no consensus as to how effective other TNR programs have been in reducing the number of feral cats, there is evidence, including the many comments from persons experienced in TNR activities, to support the conclusion that typical TNR programs can stabilize the number of and eliminate growth in colonies, and over time reduce the number of cats in a colony. The City Council reviewed, and finds credible, the study of the TNR program at the University of Central Florida, which documented a substantial reduction in the number of cats, as described in *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, 222 J. Am. Veterinary Med. Assn, 42 (2003), by Julie Levy, David Gale & Leslie Gale. The City Council finds that, with the additional restrictions, limitations, standards of operation, and emphasis on cat adoption, Beverly Hills' TNR Ordinance is designed to be more effective than the other less stringent TNR programs in existence.

E. The City Council finds that stabilizing feral cat populations through the TNR Program will ensure that current impacts that the cats may have on natural resources, including birds, animals, and water quality (from the fecal matter) will not worsen and will, over time, be reduced as colony populations decline.

F. The City Council finds that adopting standards applicable to feral cat caregivers and their activities will require use of best practices to eliminate nuisance or unsanitary conditions that might otherwise exist if the activities were not regulated. These standards include periodic removal of fecal matter from the City's public rights-of-way in the vicinity of feeders, and use of feeders designed to prevent other types of animals from being able to access the feeders. Further, the Ordinance limits the placement of food in the feeders to an amount appropriate to the size of the colony, and requires removal of excess food daily before the earlier of sunset or 8:00 p.m., such that no food may be left in the feeders over night. This will minimize the attraction of other animals to the feeders during nighttime hours.

G. The City Council finds that feeding stations must be designed, constructed, and managed to minimize the attraction of other animals and pests.

H. The TNR Program will result in vaccinations of feral cats to reduce the spread of disease and the risks associated therewith. The standards of the Program also require testing of certain trapped cats, and a prohibition on the return of cats that are infected with Feline Leukemia Virus (FeLV) or Feline Immunodeficiency Virus (FIV).

I. The Program requires persons conducting TNR activities to provide veterinary care to colony cats, thus if there is a flea infestation sever enough to indicate the need for veterinary care, those conducting the TNR activity would have the duty to provide the necessary care to the cat to address the flea infestation.

J. The City Council finds that there will not be any significant effects on the environment as a result of adoption and implementation of the Ordinance. Further, the City Council

finds that to the extent that could be any adverse impacts, such impacts would result from the typical circumstances surrounding the City's exercise of its police powers within a large urban area to protect the health, safety and welfare of the community, including but not limited to when regulating in the arena of animal control. As such the City Council finds that there is no evidence of unusual circumstances that would prevent the City from relying on the categorical exemptions from CEQA set forth in State CEQA Guidelines Section 15307 and 15308.

Based on the foregoing and other substantial evidence in the record, the City Council hereby finds and determines that the Ordinance and Program are exempt from the provisions of CEQA, pursuant to State CEQA Guidelines Sections 15307 and 15308.

Section 3. Persons and organizations currently feeding or otherwise caring for feral cats shall obtain permits within ten (10) days of the effective date of this ordinance, but may continue to feed or otherwise care for feral cats during this ten-day period. If a permit is not obtained within that period of time, feeding and other care activities must cease. Failure to cease activities will be deemed a violation of the City's ordinances and TNR Program.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence,

clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. The City Clerk is directed to forward a certified copy of this ordinance to the Director of the City of Los Angeles Department of Animal Services.

Section 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2009.

_____
NANCY KRASNE
Mayor of the City of
Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
RODERICK J. WOOD, ICMA-CM
City Manager

SUSAN HEALY KEENE, AICP
Director of Community Development