



AGENDA REPORT

Meeting Date: November 5, 2009
Item Number: E-1
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADD REGULATIONS REGARDING THE BANNING OF ONYCHECTOMY (DECLAWING) AND FLEXOR TENDONECTOMY PROCEDURES WITHIN THE CITY

Attachments:

1. Ordinance
2. October 6, 2009 Staff Report
3. Letter from California Veterinary Medical Association Dated October 13, 2009.

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

On October 6, 2009, City Council provided staff direction to move forward in developing an ordinance banning Onychectomy (Declaw) throughout the City. Furthermore, City Council provided staff direction to extend the declawing prohibition to all animal types and to include an alternate procedure known as flexor tendonectomy.

The City Council heard two speakers from the community who support the ban of onychectomy and flexor tendonectomy.

DISCUSSION

Legislation signed on July 2, 2009 by the Governor of California enacts Senate Bill 762. This measure, commencing January 1, 2010, will prohibit a city or county 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). Included in this prohibition is the adoption of a local law outlawing a veterinarian, or licensed

professional, from conducting or participating in an onychectomy (a surgical procedure to permanently remove the nails of an animal).

Although onychectomy is commonly expressed as the act of declawing domestic cats, the procedure is also done to other animals and pets, including dogs. Onychectomies are performed for various reasons ranging from non-medical to necessary medical treatments.

The City of West Hollywood is the only city in California that currently restricts cat declawing by local ordinance. The City of Santa Monica voted in September 2009 to draft an ordinance restricting the declawing of animals in the city. Similarly the City of Los Angeles and City of San Francisco are considering drafting an ordinance.

Another surgical alternative to onychectomy is a procedure known as digital flexor tendonectomy where the tendon to the cat's claw is severed which disables the cat's ability to extend or sharpen its claws. Alternatives to declawing cats for non medical reasons include behavioral training and a variety of products that cover or trim cat claws.

Any proposed ordinance after January 1, 2010 which proposes restrictions on any person from performing a procedure that falls within the scope of practice of a DCA licensed person (like a veterinarian) will be in direct violation of Senate Bill 762.

The City Council and staff received, on October 15, 2009, a letter of from the California Veterinary Medical Association dated October 13, 2009 which states their opposition to the City of Beverly Hills' consideration of an ordinance to ban the declaw of cats.

FISCAL IMPACT

There is no fiscal impact presented by this ordinance

Susan Healy Keene,
AICP, Director of Community
Development


Approved By

Attachment 1

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING
THE BEVERLY HILLS MUNICIPAL CODE TO ADD REGULATIONS
REGARDING THE BANNING OF ONYCHECTOMY (DECLAWING)
AND FLEXOR TENDONECTOMY PROCEDURES WITHIN THE
CITY

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

Section 1. A new Article 6 (Ban on Onychectomy (Declawing)) is hereby added to
Chapter 2 of Title 5 of the Beverly Hills Municipal Code to read as follows:

“Article 6. Ban on Onychectomy (Declawing)

5-2-600: Findings.

- A. There is a widespread misunderstanding in the community regarding a commonly performed surgical procedure known as onychectomy, or "declawing." Contrary to most people's understanding, declawing consists of amputating not just the claws but the whole phalanx (up to the joint), including bones, ligaments, and tendons.
- B. Declawing is not a simple cosmetic procedure akin to a manicure or a pedicure. On the contrary, to remove a claw, the bone, nerve, joint capsule, collateral ligaments, and the extensor and flexor tendons must all be amputated. Thus, declawing is not a "simple," single surgery but ten separate, painful amputations of the third phalanx up to the last joint of each toe. In human terms, this is akin to cutting off the last joint of each finger.
- C. Declawing robs an animal of an integral means of movement and defense. Because they cannot defend themselves adequately against attacks by other animals, declawed animals that are allowed outdoors are at increased risk of injury or death. Likewise, animals subjected to flexor tendonectomy, a procedure in which the animal's toes are cut so that the claws cannot be extended, are also robbed of an integral means of defense and thus imperils its health and safety.
- D. Research has demonstrated that the rate of complication with onychectomy is relatively high compared to other procedures considered “routine.” Complications can include excruciating pain, damage to the radial nerve, hemorrhage, bone chips that prevent healing, painful re-growth of deformed claw inside of the paw which is not visible to the eye, necrosis, lameness and chronic back and joint pain as shoulder, leg and back muscles weaken.

E. Although there is a widespread belief that declawing makes cats more “house-friendly” and, therefore, less likely to be abandoned and subsequently euthanized, a survey conducted by Forgotten Felines and Friends of Caddo Parish in Louisiana found that approximately 70% of cats surrendered to the city shelter were declawed. Declawed cats are generally not adoptable from shelters because of their behavioral and other problems, and they are therefore usually euthanized.

F. There are a number of alternatives to onychectomy (declawing) and flexor tendonectomy that involve no physical harm to the animal. Harmless alternatives include training the pet to use a scratch post, use of deterrent pheromone sprays, covering furniture, restricting the pet's access to certain areas of the home, use of plastic nail covers, and more.

G. In addition to the harm these procedures cause to cats, they also have detrimental consequences for humans. Declawing unnecessarily increases public health and safety risks. Research indicates that a substantial number of declawed cats become more prone to biting as a form of defense. Research has also shown that declawed cats tend to avoid use of litter boxes because the rough surface hurts their paws, and this causes sanitation problems.

H. Considering the wide array of alternatives, the City Council finds that the mere convenience of the onychectomy (declawing) and/or flexor tendonectomy procedures to the pet's guardian does not justify the unnecessary pain, anguish and permanent disability caused the animal.

I. The City of Beverly Hills enacts this ordinance pursuant to the authority vested in the City by article XI, section 7 of the California Constitution allowing a city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. At present, the law of the State of California does not prohibit the City from acting to prohibit onychectomy and flexor tendonectomy and therefore the City is not preempted by Business and Professions Code Section 460 from adopting this ordinance. *See also, California Veterinary Medical Ass'n v. City of West Hollywood*, 152 Cal.App.4th 536 (2007)(Court of Appeal 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 and such an ordinance was not preempted by state law.).

J. The City Council finds that prohibiting these procedures will protect and promote the general health, safety and welfare of cats and humans alike.

5-2-601: Onychectomy (Declawing) Prohibited

No person, licensed medical professional or otherwise, shall perform or cause to

be performed, assist in the performance of, or procure the performance of an onychectomy (declawing) or flexor tendonectomy procedure by any means on any cat or other animal within the City of Beverly Hills, 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 cat or other animal within the City of Beverly Hills 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) all persons or entities that procured the procedure, including but limited to any animal guardian, owner or other person that ordered, requested or paid for the procedure."

Section 2. The City Council finds that it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment. The proposed ordinance regulates certain procedures used to declaw cats and other animals and bans declawing of cats and other animals within the City. A ban on declawing animals in the City will not result in any physical changes in the environment. The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that this ordinance will have a significant impact on the environment.

Section 3. 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 4. 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 5. 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.

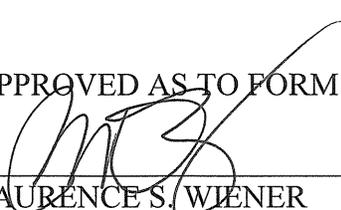
PASSED, APPROVED and ADOPTED this ____ day of _____, 2009.

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

Attachment 2

October 6, 2009 Staff Report



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: October 6, 2009

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: Councilmember John Mirisch request to consider direction to staff to propose ordinance to restrict onychectomy (declawing) of cats.

Attachments: 1. Los Angeles Times Article of September 24, 2009, "Santa Monica, L.A. ask for animal declawing restrictions", by Anne Colby.

INTRODUCTION

Legislation approved on July 2, 2009 by the Governor of California enacts Senate Bill 762. This measure, commencing January 1, 2010, will prohibit a city or county 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). Included in this prohibition is the adoption of a local law outlawing a veterinarian from conducting an onychectomy (a surgical procedure to permanently remove the nails of an animal).

DISCUSSION

Although onychectomy is commonly expressed as the act of declawing domestic cats, the procedure is also done to other animals and pets, including dogs. Reasons of onychectomies range largely from necessary medical treatment to non-medical.

Staff has found that the City of West Hollywood is the only city in California that currently restricts cat declawing by local ordinance. The City of Santa Monica voted in September 2009 to draft an ordinance restricting the declawing of animals in the city. Similarly the City of Los Angeles and City of San Francisco are considering drafting an ordinance.

Another surgical alternative to onychectomy is a procedure known as digital flexor tendonectomy where the tendon to the cat's claw is severed which disables the cat's ability to extend or sharpen its claws. Alternatives to declawing cats for non medical reasons include behavioral training and a variety of products that cover or trim cat claws.

Any proposed ordinance after January 1, 2010 which proposes restrictions on any person from performing a procedure that falls within the scope of practice of a DCA licensed person (like a veterinarian) will be in direct violation of Senate Bill 762.

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Santa Monica, L.A. ask for animal declawing restrictions

September 24, 2009 | 1:15 pm

The Santa Monica City Council voted this week to draft an ordinance to restrict animal declawing in the city. Los Angeles is considering a similar proposal, as is San Francisco.

The motion, introduced by council members Kevin McKeown and Gleam Davis, directs the city to have the ordinance in place by Dec. 31 because of a deadline imposed by a pending state law.

In Los Angeles, City Councilmen Paul Koretz and Bill Rosendahl this month presented a motion to ban onychectomy (declawing) or flexor tendonectomy on animals except to address the medical condition of the animal.

"We're going to go forward with making a major effort to see that this declawing business doesn't happen in the city of Los Angeles," Rosendahl said.

McKeown called cat declawing "an unacceptable act of animal cruelty."

The issue has gained urgency because of a law signed July 2 by Gov. Arnold Schwarzenegger that gives the state authority over medical scope-of-practice issues and prevents cities and counties from passing ordinances banning medical procedures starting Jan. 1.

Dr. Mark Nunez, president of the California Veterinary Medical Assn., which sponsored the state law, said his group is opposed to bans at the local level. "We believe that the decision to perform a medical or surgical procedure should be made by the owner of the cat in consultation with their veterinarian." The association represents more than 6,000 veterinary professionals in the state.

West Hollywood banned declawing except for medical purposes in 2003. The decision was overturned after a challenge by the veterinary association but was reinstated by a state appeals court in 2007. The state Supreme Court declined to hear the case. Under the new state law, West Hollywood's ban will stand, as would any other municipalities' bans that take effect before Jan. 1.

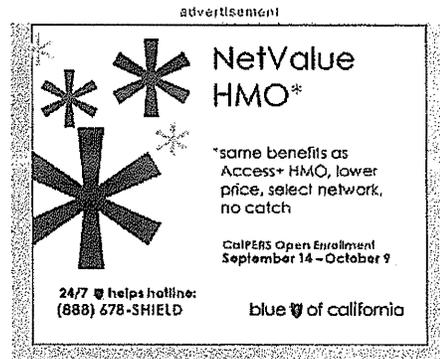
Madeline Bernstein, president of the Society for the Prevention of Cruelty to Animals of Los Angeles, said her group is not in favor of animal declawing but is neutral on the issue of city bans.

— Anne Colby

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Attachment 3

Letter from California Veterinary Medical
Association Dated October 13, 2009

October 13, 2009

Mayor Nancy Krasne
Beverly Hills City Council
City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210

RE: Proposed Cat Declaw Ordinance

Dear Mayor and Council Members:

The California Veterinary Medical Association (CVMA), representing more than 6,100 veterinary professionals in the state of California, is strongly opposed to the City of Beverly Hill's consideration of an ordinance to ban the declawing of cats.

This issue was brought before several city councils in Southern California in 2004, and was defeated. What was true then is still true today - the decision to declaw a cat should remain between the owner in consultation with his, or her, veterinarian on a case-by-case basis.

Sometimes the declawing of cats may become necessary for behavioral reasons and is used as a "last resort" after all other remedies have been considered. There are certainly alternatives to declawing a cat and veterinarians are obligated and do discuss risks, as well as, alternatives to the procedure. Cat declaw is not cruel or inhumane, and as a matter of fact our members primarily perform this procedure as a last resort -- to save an animal's life.

There are situations where declawing may be the only option for a cat owner. The elderly, or disabled, may lack the ability or resources to provide behavior modification training, or nail covers, while parents with an infant may believe it is necessary to declaw their indoor cat for the safety of their young child. Owners that are immune-compromised, such as with AIDS, may have critical medical consequences, due to a simple cat scratch.

This ordinance would prevent veterinarians practicing in Beverly Hills from offering their clients the best medical services possible for their pets. Veterinarians are highly trained to diagnose medical and behavioral problems, and need to be able to continue to educate and counsel clients on this issue. Further, many Beverly Hills residents who wish to have the procedure performed will simply drive to a border city for the declaw procedure if it means keeping their cat in a loving home.

According to the American Veterinary Medical Association (AVMA) position statement, "Declawing of domestic cats should be considered only after attempts have been made to prevent the cat from using its claws destructively or when its clawing presents a zoonotic risk for its owner(s). Point #6 from the AVMA statement mentions, "Scientific data do indicate that cats that have destructive clawing behavior

Beverly Hills City Council
October 13, 2009
Page 2

are more likely to be euthanized, or more readily relinquished, released or abandoned, thereby contributing to the homeless cat population. Where scratching behavior is an issue as to whether or not a particular cat can remain as an acceptable household pet in a particular home, surgical onychectomy may be considered."

The CVMA believes that it is inappropriate for the Beverly Hills City Council, or any other city or county government entity, to approve a blanket prohibition on a surgical procedure. Legislation supporting the premise that cities and counties should not regulate the practice of veterinary medicine or any other health profession was "strongly" supported by over 90% of California legislators this year and signed by Governor Schwarzenegger on July 2nd in the form of SB 762. This new law recognizes that state boards of medical professionals have the education, experience and the resources to make decisions regarding highly complex medical procedures. Bringing this issue before the City Council would circumvent the state law.

Thank you for your consideration. We would be pleased to talk with you about this issue and can be reached at 800.655.2862.

Sincerely,

A handwritten signature in black ink that reads "Mark T. Nunez". The signature is written in a cursive style with a large, stylized "M" and "N".

Mark Nunez, DVM
CVMA President

Cat Declaw...

CVMA Position Statement

The decision to declaw a cat should be made by the owner in consultation with their veterinarian. The declawing of cats may become necessary for medical, or behavioral reasons and should be used instead of abandonment, or euthanasia.

Facts

- Veterinarians are trained to distinguish medical and behavioral problems and need to be able to continue to educate and counsel clients.
- Veterinarians do not take the issue of declawing lightly and strive to educate pet owners about available alternatives.
- Claw removal is sometimes medically necessary for conditions such as tumors or chronic infections.
- Studies have proven that behavioral problems are the leading cause of unnecessary relinquishment of animals.
- Not all pet owners are able to successfully train a cat to refrain from using its claws in a destructive manner.
 - ⇒ Owners who are elderly or disabled may lack the ability or means to provide the needed training.
 - ⇒ Owners, or those living on or otherwise coming on to the premises, may be immunocompromised and thus more susceptible to diseases transmitted through feline clawing.
 - ⇒ Still, others may be faced with pets that are particularly resistant to training.
- Current surgical techniques and modern anesthetic and pain medications have greatly reduced the pain and discomfort associated with cat declawing.
- Euthanasia, abandonment, or other forms of relinquishment should not be the last resort for the cat owning public.



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EXECUTIVE BOARD COVERAGE

AVMA position statement on the declawing of domestic cats

Declawing of domestic cats should be considered only after attempts have been made to prevent the cat from using its claws destructively or when its clawing presents a zoonotic risk for its owner(s).

The AVMA believes it is the obligation of veterinarians to provide cat owners with complete education with regard to feline onychectomy. The following points are the foundation for full understanding and disclosure regarding declawing:

1. Scratching is a normal feline behavior, is a means for cats to mark their territory both visually and with scent, and is used for claw conditioning ("husk" removal) and stretching activity.
2. Owners must provide suitable implements for normal scratching behavior. Examples are scratching posts, cardboard boxes, lumber or logs, and carpet or fabric remnants affixed to stationary objects. Implements should be tall or long enough to allow full stretching, and be firmly anchored to provide necessary resistance to scratching. Cats should be positively reinforced in the use of these implements.
3. Appropriate claw care (consisting of trimming the claws every 1 to 2 weeks) should be provided to prevent injury or damage to household items.
4. Surgical declawing is not a medically necessary procedure for the cat in most cases. While rare in occurrence, there are inherent risks and complications with any surgical procedure including, but not limited to, anesthetic complications, hemorrhage, infection, and pain. If onychectomy is performed, appropriate use of safe and effective anesthetic agents and the use of safe peri-operative analgesics for an appropriate length of time are imperative. The surgical alternative of tendonectomy is not recommended.
5. Declawed cats should be housed indoors.
6. Scientific data do indicate that cats that have destructive clawing behavior are more likely to be euthanatized, or more readily relinquished, released, or abandoned, thereby contributing to the homeless cat population. Where scratching behavior is an issue as to whether or not a particular cat can remain as an acceptable household pet in a particular home, surgical onychectomy may be considered.
7. There is no scientific evidence that declawing leads to behavioral abnormalities when the behavior of declawed cats is compared with that of cats in control groups. 

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Statement on Declawing - November 2007

Scratching is a normal feline behavior. It is a means for cats to mark their territory both visually and with scent, and is used for claw conditioning ("husk" removal) and stretching activity. It is important for cat owners to understand that scratching is a normal behavior, and that it **can be directed to areas that owners consider appropriate.** The following steps should be taken to prevent destructive clawing and are alternatives to declawing:

1. Owners should provide suitable implements for normal scratching behavior. Examples are scratching posts, cardboard boxes, and lumber or logs. Many cats prefer vertical scratching posts, long enough or tall enough to allow full stretching, and firmly anchored to provide necessary resistance to scratching. Scratching materials preferred by most cats are wood, sisal rope, and rough fabric. Since cats often stretch and scratch upon awakening, the posts should be placed next to where the cat sleeps. Kittens and cats can be trained to scratching posts, by enticing the cat to the post with catnip, treats or toys, and rewarding behavior near or on the scratching post. If the cat scratches elsewhere, the cat should be picked up gently and taken to the scratching post, and then rewarded. Cats should be positively reinforced and never punished.
2. Appropriate claw care includes **trimming the claws** to prevent injury or undesired damage to household items. Proper utensils should be used to prevent splintering of the nails. Frequency of nail trimming varies, but may be as frequent as every 1-2 weeks in kittens. Trim nails in a calm environment, with positive reinforcement for the cat.
3. Temporary synthetic nail caps are available as an alternative to onychectomy to prevent human injury or damage to property. Plastic nail caps are usually applied every 4-6 weeks.

Onychectomy or surgical declawing is a highly controversial procedure. It is not a medically necessary procedure for the cat in most instances. While rare in occurrence, there are inherent risks and complications with any surgical procedure including, but not limited to, anesthetic complications, hemorrhage, infection, pain, and side effects of pain medications

The surgical alternative of tendonecomy can cause deleterious results due to the overgrowth of nails, the need for more extensive claw care to be provided by the owner, and the development of discomfort in some patients. Consequently, the surgical alternative of **tendonectomy is not recommended.**

Because property destruction and human injury less commonly occurs from the claws on the rear feet, **four-paw declaws are not recommended.**

The AAFP reviews scientific data and supports controlled scientific studies that provide insight into all aspects of feline medicine. The AAFP recognizes that feline

onychectomy is an ethically controversial procedure; however, there is no scientific evidence that declawing leads to behavioral abnormalities or chronic medical problems.

Physically, regardless of the method used, onychectomy causes a higher level of pain than spays and neuters. Patients may experience both adaptive and maladaptive pain; in addition to inflammatory pain, there is the potential to develop long-term neuropathic or central pain if the pain is inadequately managed during the perioperative and healing periods.

Where scratching behavior is an issue determining whether or not a particular cat should remain as an acceptable household pet in a particular home situation, the decision to perform surgical onychectomy should be considered. Declawed cats should be **housed indoors**, or in properly constructed outdoor enclosures designed to protect the cat.

In households where cats come into contact with **immunocompromised individuals**, extensive education about zoonotic disease potential should be discussed and documented in the medical record. Surgical onychectomy is an appropriate option in such households.

If surgical onychectomy is performed, appropriate use of safe and effective anesthetic agents and the use of safe and effective peri-operative analgesics for an appropriate length of time are imperative. A multi-modal pain management strategy is recommended. The AAFP believes that such **pain management** is necessary (not elective) and should be required for this procedure.

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STATE OF CALIFORNIA

Memorandum

To: SUE GERANEN, Executive Officer
Veterinary Medical Board

Date: December 1, 2004
Telephone: (916) 445-4216
CNET: 8-485-4216
FAX: (916) 323-0971

From: **Department of Consumer Affairs**
Legal Office

Legal Op. No. 04-04

Subject: Business and Profession Code section 460; Restriction of Licensed Practice by City

The Board has inquired whether the Veterinary Medicine Practice Act (Bus.& Prof. Code § 4800 et seq.) "supersedes" or preempts a local ordinance. Specifically, the following question is addressed:

Question

Is a local ordinance that imposes a ban on the "declawing" of domestic cats preempted by the State's licensing law that regulates the practice of veterinary medicine?

Conclusion

A local ordinance that imposes a ban on the "declawing" of domestic cats is preempted by the State's licensing law regulating the practice of veterinary medicine.

Background

In 2003, the City of West Hollywood enacted an ordinance prohibiting the veterinary medical procedure of onychectomy (declawing) or flexor tendonectomy, except for defined "therapeutic" purposes, on any animal within the city limits. Section 9.49.020 of the West Hollywood Municipal Code provides:

"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. (Ord. 03-656 § 1 (part), 2003.)”

The codified findings underlying this ordinance identifies and cites the legal authority for the ordinance:

“The City of West Hollywood enacts this ordinance pursuant to the authority vested in the city by Article XI, Section 7 of the California Constitution allowing a city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (City of West Hollywood Municipal Code § 9.49.010h.)

In addition the City Council’s findings state:

“The State Legislature has not endeavored to regulate, or delegate to any specified agency the authority to regulate, the types of veterinary procedures that may be performed within the State of California. Until the Legislature chooses to regulate these procedures, local governments are free to limit the types of procedures that may be performed within their jurisdiction for the protection of the public health, safety and general welfare.” (City of West Hollywood Municipal Code § 9.49.010i.)

Analysis

A municipality "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., Art. XL, § 7). However, pursuant to this provision, "local legislation in conflict with general law is void." (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484; see also *Robillwayne Corp. v. City of Los Angeles* (1966) 241 Cal.App.2d 57, 60.) Consequently, if local legislation conflicts with state law, it is preempted. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) Local legislation is “duplicative” of general law when it is coextensive therewith. (*In re Portnoy* (1942) 21 Cal.2d 237.) Similarly, local legislation is “contradictory” to general law when it is inimical thereto. (*Ex Parte Daniels* (1920) 183 Cal. 636, 642-645.) Finally, a conflict exists if the local legislation enters an area fully occupied by general law, either expressly or by legislative implication. (*People ex rel. Deukmejian v. County of Mendocino*, supra 36, Cal.3d 476, 484; *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 886.) The Attorney General concluded in a published 1979 opinion that a local ordinance contradicts a state law if it attempts to permit what the state law prohibits or to prohibit what state law permits. (62 Ops.Cal.Atty. Gen. 90, 95 citing *Monterey Oil Co. v. City Court* (1953) 120 Cal.App.2d 31, 36; *Markus v. Justice’s Court* (1953) 117 Cal.App.2d 391, 396; and 59 Ops.Cal.Atty.Gen. 461, 478 (1976).)

In addition to the aforementioned case law concerning state preemption and relevant to this specific inquiry, Section 460 of the Business and Professions Code provides:

"No city or county shall prohibit a person, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession *or any portion thereof*. Nothing in this section shall prohibit any city or county or city and county from levying a business license tax solely for revenue purposes nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation." [Emphasis added.]

Thus, Section 460 precludes a city or county from prohibiting those licensed by one of the agencies of the Department of Consumer Affairs, including the Veterinary Medical Board, from practicing their professions and occupations within the scope of their respective licenses without further regulation by a city or county except for a business tax for revenue purposes.

The City of West Hollywood's ordinance specifically states in its "findings" that the "State Legislature has not endeavored to regulate, or delegate to any specified agency the authority to regulate, the types of veterinary procedures that may be performed within the State of California." However this codified finding of the West Hollywood City Council is factually incorrect. The practice of veterinary medicine is highly regulated in California.

The Veterinary Medicine Practice Act (Act) specifically regulates the practice of veterinary medicine. The State Legislature has delegated to the Veterinary Medical Board authority with carrying out and enforcing the provisions of the Act. (Bus. & Prof. Code §§ 4800 et seq. and 4808.) Section 4825 of the Act makes it "unlawful for any person to practice veterinary medicine or any branch thereof in this State unless at the time of so doing, such person holds a valid, unexpired, and unrevoked license." In relevant part, pursuant to Business and Professions Code section 4826(d) the practice of veterinary medicine is defined to include any person who "performs a surgical or dental operation upon an animal." Similar to other "professional medical practice acts," the Act does not delineate or specify a comprehensive listing of all medical practices or procedures that are specifically restricted or authorized. However, the Act authorizes and restricts certain specific medical procedures conducted by registered veterinary technicians and unregistered assistants (unlicensed persons). (Bus. & Prof. Code §§ 4840 and 4840.2.)

Both an "onychectomy" (declawing) and "flexor tendonectomy" are common surgical procedures employed by veterinarians upon felines and the practice of this veterinary surgical procedure is restricted to appropriately licensed persons. Our reading of Business and Professions Code section 460 is that a city cannot prohibit a licensed veterinarian from practicing any aspect of veterinary medical work that falls within the perimeter of the state license.¹ Under this

¹ *Stacy & Wibeck, Inc. v. City and County of San Francisco* (1995) 36 Cal.App.4th 1074; and see 73 Ops.Cal.Atty.Gen. 28, 40 (1990): "This section would preclude a [municipality] from prohibiting those licensed by the ... Contractors State License Board ... from practicing their professions and occupations within the scope of their respective licenses without further regulation by the [municipality] except for a business tax for revenue purposes."

interpretation, a city cannot prevent a licensed medical professional from practicing his or her profession with respect to third parties.

The West Hollywood ordinance entered an area fully occupied by general law. Preemption (by implication) of an area of law to the exclusion of local regulation will be found where “(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local law on the transient citizens of the state outweighs the possible benefit to the municipality.” (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485, quoting *In re Hubbard* (1964) 62 Cal.2d 119, 128.)²

Section 9.49.020 of the West Hollywood Municipal Code concerns a subject matter (prohibiting the veterinary medical procedure of onychectomy (declawing) or flexor tendonectomy) that is fully and completely covered by general law restricting the practice of veterinary medicine as to clearly indicate that it has become exclusively a matter of state concern. The West Hollywood ordinance, itself, acknowledges that such medical procedures are valid for “therapeutic purpose” necessary 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. As standard veterinary medical procedures, onychectomy and flexor tendonectomy fall within the “portion” of veterinary practice which local municipalities are proscribed from prohibiting under Business and Professions Code section 460. Historically, surgical declawing is often necessary because of a severe medical or behavioral condition and has often been used as an alternative to abandonment or euthanasia.

The West Hollywood ordinance specifically defines “therapeutic purpose” so as to not include “cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the animal.” The decision to declaw a cat is typically made by the owner of the cat while consulting with a licensed veterinarian. According to the California Veterinary Medical Association, “licensed veterinarians are skilled professionals who have undertaken the necessary education and training affording them the ability to diagnose medical and behavioral problems. Veterinarians usually do not recommend surgical declawing to their clients without first recommending some form of behavioral modification training.”³ Regardless of whether or not the decision to declaw is based on a medical “therapeutic purpose” or for reasons of “aesthetics or convenience,” the procedure itself is a standard veterinary procedure. It cannot be regulated by local jurisdictions because it “is of such a nature that the adverse effect of a local law on the transient citizens of the state outweighs the possible benefit to the municipality.” Such local regulation of veterinary practice in different jurisdictions would ultimately create a chaotic and confusing situation where it would

² This remains the current test for determining whether state law has preempted local regulation by implication and the standard has been reiterated by the California Supreme Court in *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.

³ See Bill Analysis, AB 395, as amended April 10, 2003, Assembly Committee on Business and Professions.

be difficult for licensed veterinarians to know which veterinary procedures are legal or not depending on the jurisdiction. For local jurisdictions to regulate this aspect of veterinary practice is akin to local authorities imposing bans on physicians performing cosmetic surgery on people. Such a balkanization of professional practice ultimately would lead to different standards of practice throughout the state. Having different authorized and illegal veterinary medical practices throughout the state will inevitably make it very difficult for the Board to enforce the Veterinary Medicine Practice Act.

The city ordinance also does not accomplish its stated purpose of preventing the practice of onychectomy or flexor tendonectomy for non-medical reasons. Owners may freely go to a neighboring city and have the operation performed there and bring the cat back into the city. In this manner, the ordinance only adversely impacts the veterinarians in the City of West Hollywood. Whether the practice of performing an onychectomy or flexor tendonectomy for non-medical reasons should be prohibited or not is ultimately a state policy question that should be addressed before the State Legislature. Interestingly, there was legislation introduced in 2003 (AB 395, Koretz) that specifically addressed this subject and initially proposed to amend the Veterinary Medicine Practice Act in a manner similar to the objective of the West Hollywood ordinance. The bill originally applied to all domestic cats but was subsequently amended to only apply to native wild and exotic cats. Ultimately, this bill failed to pass out of the Legislature during its 2003-2004 session.

There is legal authority supporting the notion that where local legislation enters an area that is not “fully occupied” by general law local authority may use its police power to regulate those aspects not specifically addressed by general law. (See *California Rifle and Pistol Association, Inc. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302.) However, in such cases courts have found that the legislature had not expressly or by implication preempted local laws. In the *California Rifle and Pistol Association, Inc.* case, the Court of Appeal found that the Legislature enacted narrowly drawn legislation designed to regulate certain specific areas of firearms sales while preserving other areas, unregulated by state law, for local regulation according to local standards. In contrast, the practice of veterinary medicine is solely regulated by the California Veterinary Medicine Practice Act that grants jurisdiction to the Board to carry into effect the Act’s provisions. Unlike the complicated regulation system of firearms sales, where state and local authorities share jurisdiction and authority, Business and Professions Code section 460 expressly preempts the City of West Hollywood’s “declawing” ordinance.

We trust this is responsive to the Board’s inquiry.

DOREATHEA JOHNSON
Deputy Director
Legal Affairs

By GARY W. DUKE
Staff Counsel

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September 2, 2003

*PROFESSIONAL CORPORATIONS

Manuela Albuquerque
City Attorney, City of Berkeley
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704

Re: Contemplated Ordinance Regarding Animal Declawing

Dear Ms. Albuquerque:

I write on behalf of the California Veterinary Medical Association ("CVMA") in regards to the contemplated Berkeley ("City") ordinance condemning animal declawing. As I understand the situation, the City Council may be asked to consider passing an ordinance or resolution "deploring non-curative and cosmetic procedures" on animals (hereinafter referred to as the "ordinance"), including, apparently, feline declawing (onychectomy). As discussed in further detail below, CVMA strongly discourages the City Council's adoption of such an ordinance. CVMA's position on the matter is founded on a number of considerations that militate against the propriety of the contemplated ordinance.

Let me say at the outset that as an owner of three cats myself, I appreciate the concern of the City Council and City staff for the welfare of cats and other domestic animals, and believe that the City Council's possible consideration of the contemplated ordinance is surrounded by the best of intentions. However, it is precisely because of considerations of the best interests of animals that the contemplated ordinance is, respectfully, misguided insofar as it is directed towards declawing and similar procedures.

I initially wish to point out that the characterization of declawing as a "cosmetic" procedure is inaccurate, and unduly trivializes the nature of and rationale for the procedure. Indeed, no less of an authority than the American Veterinary Medical Association, which represents thousands of veterinarians across the country and is one of the leading torchbearers for animal welfare, concludes in its Policy Statements and Guidelines (attached hereto) that "[d]eclawing of domestic cats is justifiable when the cat cannot be trained from using its claws

destructively.”¹ This statement is important for two reasons. First, the AVMA’s statement indicates that preventing cats from using its claws in a destructive fashion is, in many cases, a question of *training*. Unfortunately, not all pet owners are able to successfully train a cat to refrain from using its claws in a destructive manner. Other pet owners, such as owners who are elderly or disabled, may lack the ability or means to provide the needed training. Still other owners (or those living on or otherwise coming on to the owner’s premises) may be immunocompromised, and thus more susceptible to diseases transmitted through feline clawing. Finally, some owners may be faced with pets who are particularly resistant to training. In each of these cases, the choice may be between onychectomy or relinquishment of the animal. As you know, homeless animals are a problem in Berkeley and other municipalities throughout the country.

Second, the AVMA recognizes in its policy statement that there *are* situations where there exists no practical alternative to declawing. It is, of course, suggested by some that the need for declawing is rendered nugatory by the availability of alternatives such as nail clipping and the use of temporary nail caps. However, once again, many owners are not able to provide regular nail grooming or deal with nail caps, both of which are *not* permanent solutions and need to be repeated in order to be effective (the latter at potentially substantial expense). Even more importantly, such alternatives are likely to be manifestly inadequate for pet owners who are elderly and/or immunocompromised. For such owners, the choice can quite literally come down to declawing, on the one hand, or euthanasia, abandonment, or another form of relinquishment, on the other.²

In this regard, and as stated by the American Association of Feline Practitioners in their September 2002 position statement on declawing (attached hereto), while there is no scientific evidence indicating that declawing leads to behavioral abnormalities when compared to control groups, there *is*, by contrast, scientific data showing that cats who have undesired claw behavior are more likely to be euthanized, or more readily relinquished, released, or abandoned.³ This contradicts the statements of some proponents of this and similar ordinances who claim that declawed cats are more likely to bite or are more dangerous and/or destructive than their non-declawed counterparts.

It should further be mentioned that although the onychectomy procedure does result in discomfort to the cat, this is also the case with other procedures such as spaying and neutering. One of the arguments made by proponents of measures such as the contemplated ordinance is that responsible pet owners should be able to train their cat to refrain from destructive claw

¹ This is also CVMA’s official position, as well.

² Additionally, in regards to the cats themselves, claw removal is sometimes medically necessary for conditions such as tumors or chronic infections.

³ Indeed, studies show that behavioral problems are the leading cause of unnecessary relinquishment of animals.

behavior, or otherwise prevent such behavior (i.e., through the use of nail caps), without resorting to declawing. Of course, responsible cat owners should, by keeping their pets indoors (which is recommended for domestic cats), be able to prevent unwanted reproductive behavior without resort to spaying or neutering. However, there does not appear to be any movement to prohibit veterinarians from performing these procedures, even on cats that remain entirely indoors. There is no material distinction between these procedures and onychectomy insofar as this issue is concerned. Moreover, any surgery involves some amount of pain and discomfort, and advances in surgical and pain management techniques have reduced the amount and duration of discomfort attendant to onychectomy and other surgical procedures, such as flexor tendonectomy.

It also cannot be gainsaid that those most knowledgeable about the propriety of onychectomy vis-à-vis a particular animal patient are veterinarians. While, once again, there can be no question that the City Council is considering the ordinance with the best interests of animals in mind, it is respectfully submitted that the area of veterinary practice is not one in which the City (or any other municipality) is well-equipped to act. Although onychectomy in certain circumstances may be ill-advised, a broad prohibition on such procedures is not the answer, and fails to adequately address the specific circumstances that inhere in each household. I can assure you that veterinarians, as a body, do not take the issue of declawing lightly, and strive to educate pet owners about available alternatives. Also, some veterinarians have themselves decided, as a general matter, not to provide declawing services. However, even in the latter circumstance, the decision of whether or not to declaw is one that *the veterinarian*, not a municipality or other governing body, should make. Ultimately, CVMA believes that the decision to elect onychectomy is best made by the professional veterinarian and the owner with the best interests of the cat—and the unique circumstances applicable to the owner and the owners' family—in mind. Veterinarians are trained to distinguish medical and behavioral problems and need to be able to continue to educate and counsel pet owners. To punish veterinarians for making appropriate veterinary decisions in conjunction with the pet owner interferes with the veterinarian/owner/animal relationship and, candidly, places politics before sound veterinary practice.

Note also that as a practical matter, the ordinance serves to uniquely operate to the detriment of veterinary practitioners within City limits. Owners who would otherwise seek the services of a Berkeley practitioner for a possible onychectomy will now simply go to one of the dozens, if not hundreds, of other veterinarians in the Bay Area who will, if appropriate, perform the procedure. Thus, the necessarily narrow scope of the ordinance, if enacted, would prejudice only those veterinarians who see fit to locate their practices in Berkeley.

In this regard, CVMA also has specific concerns regarding not only the advisability of the contemplated ordinance, but the ordinance's legality, as well. Although municipalities generally have broad authority to enact ordinances and regulations pursuant to their police power, the prosecution of a lawful and useful business may not be prohibited or entirely

suppressed if it is properly conducted and located. "It is fundamental a lawful business may not be destroyed under the guise of regulation." (Antonello v. City of San Diego (1971) 16 Cal.App.3d 161, 165; Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, 413.) On the other hand, of course, "the manner of [a business's] operation may be subject to regulation reasonably necessary to promote the public health, safety and general welfare, even though burdensome." (Antonello, supra, 16 Cal.App.3d at 165 (citations omitted).)

While CVMA does not argue that a prohibition on declawing within City limits would "destroy" the businesses of City veterinarians in their entirety, this is not the relevant touchstone. In Bravo Vending, the "business" at issue was that of selling cigarettes; an ordinance which prohibited the sale of cigarettes through vending machines was upheld due to the fact that "[a]nyone engaged in that business is free to continue to do so, as long as they do so in a permissible manner, i.e., through a live salesperson as opposed to a machine." (16 Cal.App.4th at 413.) Here, the "business" at issue is not veterinary practice in general (just like the "business" under review in Bravo Vending was not retail sales in general), but the "business" of performing declawing procedures. Unlike the ordinance held permissible in Bravo Vending, the contemplated City ordinance would *absolutely prohibit* this business, which business, as you know, is permissible under California law. It is thus respectfully submitted that the contemplated ordinance, though ostensibly a regulatory act, is actually an impermissible prohibition of a lawful business practice. (See, also, Ex parte Hayden (1905) 147 Cal. 649-650 (state and federal constitutional guarantees of liberty and the pursuit of happiness apply as fully to right to contract and to follow a legitimate vocation, untrammelled by unnecessary regulations, as they do to freedom from arrest or personal restraint).)

In the end, there is no question that pet owners and veterinarians should carefully explore all available courses of treatment in dealing with aggressive and/or destructive claw behavior in domestic animals. Veterinarians should educate pet owners about the ramifications of declawing and alternatives thereto. However, the contemplated ordinance would improperly interfere with the veterinarian/client relationship, hamstring owners in their available options for dealing with destructive animals, operate uniquely to damage the interests of veterinarians within City boundaries, and may lead to an increase in the homeless pet population within Berkeley. Simply stated, while the sentiments of the City Council are laudable, even the best of intentions cannot change the elementary legal and policy flaws in the contemplated ordinance.⁴ For these reasons, CVMA strongly discourages adoption of the contemplated ordinance.

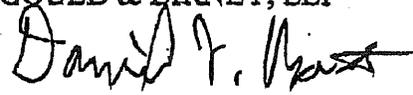
⁴ In this vein, it is instructive to note that recent proposed legislation aimed at banning declawing statewide (AB 395) failed to get out of the Assembly Business & Professions Committee.

Manuela Albuquerque
City Attorney, City of Berkeley
September 2, 2003
Page 5

Please do not hesitate to contact me if you have any questions or concerns, or if you would like to arrange a telephone meeting with CVMA representatives to discuss the matter further. Thank you very much for your attention and consideration.

Sincerely,

WILKE, FLEURY, HOFFELT,
GOULD & BIRNEY, LLP



Daniel L. Baxter

Attachments

117280.1

Different POV On Cat De-Clawing From WeHo Vet

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Thursday, September 17, 2009 - Dr. Patrick Mahaney VMD, CVA, West Hollywood

West Hollywood, California (Thursday, September 17, 2009) - In moving to West Hollywood over 3 years ago, I never imagined that performing a common elective surgical procedure on one of my animal patients could be illegal.

Yes, in West Hollywood, I would be committing a punishable act by performing a feline onchyectomy (cat de-clawing).

Before moving to CA, I practiced veterinary medicine in DC, VA, MD, and WA where similar exclusionary restrictions do not exist.

During my hospital orientation, the local vet hospital administrators informed me that the declaw procedure is not offered at their West Hollywood facility due to the local government ordinance.

Personally, I do not recommend the de-clawing to clients choosing to incorporate a feline companion into their domestic environment. The procedure removes the third phalanx ("tip of the finger") from each digit.



Dr. Jennifer Conrad, a vet, demonstrates for WeHo city council member John Duran and the press what de-clawing involves - removal of the tip of the cat's paws, or toes. Photo by WeHo News.

Insiders

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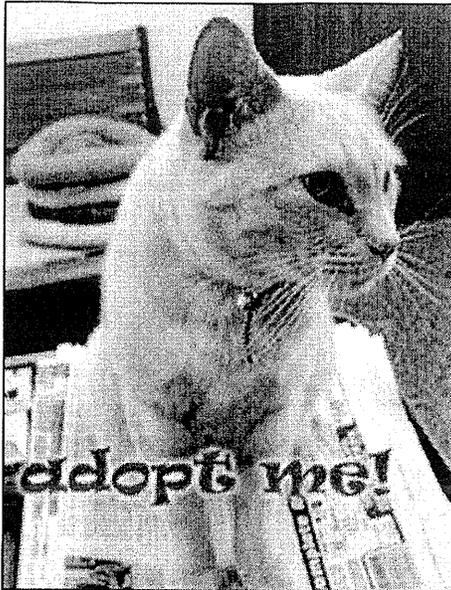
If done correctly, a declaw is a routine procedure requiring a 10-14 day convalescent period. Post-operatively, the patient is hospitalized for multiple days with protective bandages on the healing limbs to reduce swelling, bleeding, and potential for self-trauma.

Appropriate pain management protocols, such as nerve blocks and opioid pain medication and good surgical technique are essential to achieve optimal surgical outcome.

In my experience, cat owners seek the declaw procedure to improve the relationship they have with their feline friend.

Cat claws are potentially traumatizing to the home environment or capable of inflicting injury on pets or people with whom the cat resides.

Geriatric, immuneocompromised, and pregnant individuals are more likely to contract potentially life threatening illness from a cat's scratch.



Zoonotic bacterial organisms, such as Bartonella henselae (Cat Scratch Disease), can infect people via flea feces carried on an infected cat's claw.

If client seeks to declaw their cat, I educate them as to reasonable alternatives, including:

Frequent nail trims - Trim your cat's claws at least every 14 days to keep nail tips blunt.



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Nail caps - Temporary vinyl nail coverings, such as Soft Claws, are glued to your cat's claws and prevent trauma from scratching.

Scratching posts - Have multiple scratching posts available in your cat's environment. Make sure posts are taller

than other objects and surfaces on which you do not want your cat to scratch. Infuse the posts with catnip essence to make it more attractive.

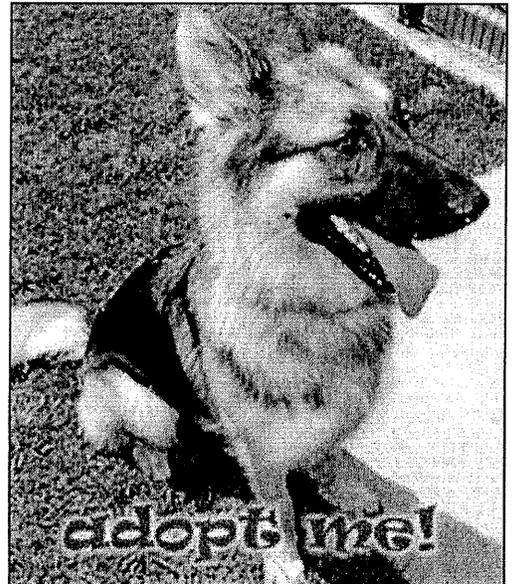
Double sided tape - When applied to surfaces on which a cat may scratch, double sided tape (such as *Sticky Paws*) will stick to the cat's paw and can dissuade scratching.

Feline Pheromone sprays/diffusers - Feline pheromones (such as Feliway) can reduce stress and modify undesirable behaviors.

Behavior consultation - Consultation with a board certified veterinary behaviorist can yield additional techniques or permit the ideal prescription of behavior modifying pharmaceuticals.

To find a behavior specialist, see the *American College of Veterinary Behaviorists website*.

Complementary therapies - Acupuncture, herbs, dietary modification, and other complementary therapies can address energetic abnormalities from a non-traditional perspective.



Click here for more information about Shasta | SS# 09-03602 | 09-03602 | 4 years old | Female | P.D. Pitchford Companion Animal Village and Education Center | 7700 E Spring St. | Long Beach, CA 90815 | 562-570-SPCA | I'm a very nice young lady who knows a lot of tricks. I know sit, heal, and down. I prefer to be the only child in the home because I love attention and I don't like to share it. Come see me and let me show you my tricks.



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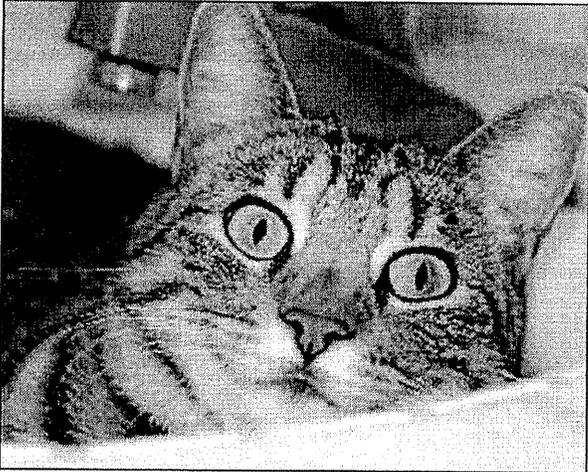
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If a client has diligently explored these options without success, then I feel as though pursuing de-clawing is an acceptable path.

Without the option for declaw, an owner may ultimately relinquish ownership, abandon the cat, or pursue euthanasia.



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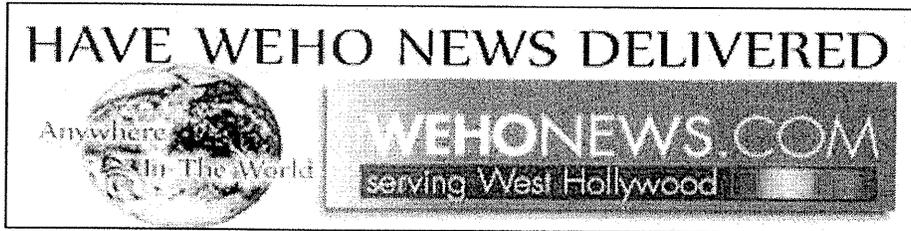
WeHo News.

The controversy surrounding the ethics of feline de-clawing has ultimately made it procedure no longer offered by veterinarians practicing in West Hollywood.

If a cat owner has a relationship with a West Hollywood veterinarian and intends on pursuing the declaw procedure, the legal implication creates an interruption in the continuum of patient care.

Additionally, the need for a client to seek the services of a non-West Hollywood veterinarian is financially disadvantageous to local business.

I feel that West Hollywood government should not have the authority to dictate what services a veterinarian can (or cannot) legally offer to clients. Such a decision should be determined on the state level.



|| CLICK FOR MORE ||

Additionally, a veterinarian's determination that a particular service is appropriate for a patient should result from an informed decision making process between the client and veterinarian.

-----WeHo News-----

Patrick Mahaney VMD, CVA founded California Pet Acupuncture & Wellness (CPAW), Inc.



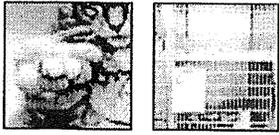
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(CPAW), Inc. offers conventional Western and Traditional Chinese Veterinary Medicine (TCVM) on a house call basis.

Fur flies over proposed ban on declawing cats

Marisa Lagos, Chronicle Staff Writer

Monday, September 7, 2009



In this pet-crazy town, it sounds like a no-brainer: a proposed ban on the declawing of cats, framed by supporters as a simple animal cruelty measure.

But the ban is opposed by the San Francisco Society for the Prevention of Cruelty to Animals and others. While the SFSPCA opposes declawing in general and does not practice it at its hospital, it argues that politicians shouldn't regulate the medical procedures. And the organization's director worries the proposed law could actually lead to more abandoned or euthanized cats.

Crafted by San Francisco's Animal Welfare Commission, an advisory body, and sponsored by Supervisor Ross Mirkarimi, the legislation would bar the onychectomy (declawing) and tendonectomy (removal of the flexor tendon) procedures in San Francisco, unless they are deemed medically necessary.

The measure would effectively halt the procedures that cat owners have used largely to save themselves and their furniture from scratches. The practice, veterinarians say, has widely fallen out of favor in recent years anyway and is already banned in West Hollywood and about 25 countries, including the United Kingdom.

If passed, the legislation would become effective before a new state law is enacted in January that would prohibit local jurisdictions from creating legislation to ban declawing. The proposal also comes six years after the Board of Supervisors passed a nonbinding measure opposing declawing, and two years after West Hollywood's similar ordinance survived a legal challenge by the California Veterinary Medical Association. The association, which represents more than 6,000 California vets, also opposes San Francisco's ordinance.

Mirkarimi noted that declawing involves not only removing claws but also the last bone of each toe; his measure compares the procedure to cutting off a person's finger at the last joint. The legislation also discusses the importance of claws to cats' health and well-being.

"It comes down to animal cruelty and mutilating an animal for the convenience of its guardian," said Sally Stephens, president of the Animal Welfare Commission, who raised the issue earlier this year.

Stephens and others - including SFSPCA President Jan McHugh-Smith - pointed out that there are many other ways to deal with a cat that scratches too much, including behavior training, scratching posts, trimming claws and "soft paws," temporary vinyl caps that can be glued to a cat's claws. Stephens pointed to federal health guidelines that show that even immune-compromised people can keep cats without declawing them as long as the cat more than a year old and the owner avoids rough play and washes any cut immediately.

But McHugh-Smith and Mark Nunez, president of the California Veterinary Medical Association, said they have concerns about legislating bans on medical procedures.

"We don't believe medical management procedures should be made by city council members. They should be made by professionals," Nunez said.

McHugh-Smith said the SFSPCA is also concerned about the propensity for abandonment.

"The SFSPCA is opposed to declawing ... but we are concerned about the option being taken away from the guardian," she said. "They could potentially give up the pet, and it could end up in a shelter and end up being euthanized."

Stephens said abandonment can occur anyway, as cats that scratch can often default to biting and other aggressive behavior once their claws are removed. She said training is a more reliable and humane option.

"Declawing a cat doesn't always keep it out of a shelter," she said.

E-mail Marisa Lagos at mlagos@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/09/07/BAFS19HLK2.DTL>

This article appeared on page **C - 1** of the San Francisco Chronicle

Council Doesn't Pounce on Feline Declawing Ban

By Olin Ericksen
Staff Writer

July 29 -- Despite impassioned pleas from nearly two dozen pet owners, local veterinarians and support from a state Assembly member, the Santa Monica City Council fell one vote shy Tuesday of following West Hollywood to become the nation's second city to prohibit the declawing of cats by local veterinarians.

Deadlocked three to three on how to craft the ordinance -- which some feared could trigger lawsuits against the city -- Council members put the issue off until they receive further information on the legality and enforcement of such a ban.

Supporters of the proposed ban stayed past midnight to cite studies and provide council members with sometimes graphic testimony about the surgical procedure -- described as the removal of a portion of a cat's toes -- but failed to sway a needed fourth vote to approve the measure.

"I believe this an issue of their [veterinarians'] profession, because we certainly can't talk to any cats about it," said Council member Robert Holbrook, a pharmacist. "I'm just not going to get involved in this any further."

Holbrook cited letters written against such a ban by the California Board of Veterinary Medicine and the California Association of Veterinarians.

Both groups argued that if declawing was not an option for pet owners, the owners may be more likely to abandon problem felines.

Not so, countered Jennifer Conrad, a Santa Monica veterinarian and co-founder of The Paw Project.

Conrad's group -- primarily involved in animal rights issues regarding larger, wild cats -- received national attention after helping to enact the West Hollywood de-clawing ban last year.

West Hollywood has yet to receive any legal challenge against the ban, according to lawyers for the city.

Conrad maintains that declawing a cat is the equivalent of "removing the tip of your finger at your knuckle" for a human. She said the procedure leaves lasting pain in cats' paws, eventually leading the pets to avoid using a litter box, which is even more likely to lead to a cat's being abandoned.

The Paw Project has also received the backing of West Hollywood Assemblyman Paul Koretz, who has introduced a similar bill in the state legislature.

Koretz's aide, Nicole Crena, asked the council to "set an example for the rest of the state."

Although moved by the testimony, which was in some cases tearful, both Mayor Richard Bloom and Council member Ken Genser said they needed more time to study the issue.

"I don't feel that we are equipped with the information that we need to make a decision on this," said Bloom. "We have to have a complete and full understanding of those two positions."

Across the dais, Council member Mike Feinstein disagreed.

"For those who want to preserve this barbaric treatment, I found their arguments wholly unconvincing," Feinstein said.

Mayor Pro Tem Kevin McKeown agreed. "I wasn't elected to the veterinary board, but I was elected to this city council and will vote against cruelty to animals here," McKeown said. "I think the fact that none of the (opposition) came down here in person to tell us it was okay to cut off a cat's toes tells you something."

Council member Herb Katz, describing himself as a devoted pet owner, said he was supportive of the declawing ban as well.

Council member Pam O'Connor was absent from the meeting.

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TEXAS A&M UNIVERSITY

College of Veterinary Medicine and Biomedical Sciences
Department of Small Animal Clinical Sciences

September 10, 2009

San Francisco Board of Supervisors
San Francisco, California

Ladies and Gentlemen:

It is my understanding that you are considering an ordinance to ban the declawing of cats within your City. I would like to comment briefly against such an ordinance.

As a bit of a background, I am a veterinarian and board certified behaviorist. I have done extensive research in cat behavior, authored three editions of a well respected textbook on cat behavior, and owned several cats over the years, none of which were declawed. In organized veterinary medicine, I am a past president of the American Veterinary Medical Association, past president of the American College of Veterinary Behaviorists, current Executive Director of the American College of Veterinary Behaviorists, and current president of the American College of Animal Welfare.

The bond between humans and their pets is a strong, meaningful one, so it is important to ensure that measures we promote help maintain that connection. It is also important that the relationship is mutually beneficial, and that the welfare of the animal is not compromised for the sake of the human's wants. While it is ideal for a cat to retain its claws so that it does not have to undergo an unnecessary surgical procedure, there are a few times when the surgical removal of the claws may actually be in the best interest of the cat. As examples: 1) an injury to the claw bone may necessitate amputation to prevent infection from spreading; 2) a tumor of the distal bone in a toe would necessitate amputation to prevent the spread of the tumor; 3) use of the claws to shred drapery or furniture would cause a frustrated owner to abandon the cat, turn it loose outdoors, or surrender it to an animal shelter (the majority of surrendered adult cats are euthanized) because the human/animal bond is broken; and 4) owners in fragile health might need to take extra precautions to prevent the introduction of bacteria via cat scratches and yet these individuals are the ones most in need of the companionship a cat offers.

There are individuals who feel very strongly that cats should not be declawed, but this should be a veterinary issue, not a political one. Just as ear cropping was banned in New York State, puppy owners that want the dog's ears cropped simply go to a state where it is legal or have it done by a non-veterinarian on the hush-hush. Those few citizens who want their cat's claws removed will go to another city or county where the



procedure is not illegal, abandon their cat, or suffer the consequences to their health that result from a scratch.

The American Veterinary Medical Association has developed a background paper on the subject (www.avma.org/issues/animal_welfare/declawing_bgnd.asp) which addresses the pros and cons of the procedure. In addition, the AVMA it has adopted the following position statement on this subject:

AVMA position statement on the declawing of domestic cats

Declawing of domestic cats should be considered only after attempts have been made to prevent the cat from using its claws destructively or when its clawing presents a zoonotic risk for its owner(s).

The AVMA believes it is the obligation of veterinarians to provide cat owners with complete education with regard to feline onychectomy. The following points are the foundation for full understanding and disclosure regarding declawing:

1. Scratching is a normal feline behavior, is a means for cats to mark their territory both visually and with scent, and is used for claw conditioning ("husk" removal) and stretching activity.
2. Owners must provide suitable implements for normal scratching behavior. Examples are scratching posts, cardboard boxes, lumber or logs, and carpet or fabric remnants affixed to stationary objects. Implements should be tall or long enough to allow full stretching, and be firmly anchored to provide necessary resistance to scratching. Cats should be positively reinforced in the use of these implements.
3. Appropriate claw care (consisting of trimming the claws every 1 to 2 weeks) should be provided to prevent injury or damage to household items.
4. Surgical declawing is not a medically necessary procedure for the cat in most cases. While rare in occurrence, there are inherent risks and complications with any surgical procedure including, but not limited to, anesthetic complications, hemorrhage, infection, and pain. If onychectomy is performed, appropriate use of safe and effective anesthetic agents and the use of safe peri-operative analgesics for an appropriate length of time are imperative. The surgical alternative of tendonectomy is not recommended.
5. Declawed cats should be housed indoors.
6. Scientific data do indicate that cats that have destructive clawing behavior are more likely to be euthanatized, or more readily relinquished, released, or abandoned, thereby contributing to the homeless cat population. Where scratching behavior is an issue as to whether or not a particular cat can remain as an

acceptable household pet in a particular home, surgical onychectomy may be considered.

7. There is no scientific evidence that declawing leads to behavioral abnormalities when the behavior of declawed cats is compared with that of cats in control groups.
-

Declawing is not a surgical procedure that veterinarians take lightly, but there are times when it is in the best interest of preserving the human animal bond. As a veterinary procedure, the decision to declaw a cat should be between the doctor and owner, not the San Francisco Board of Supervisors. Most cats are not declawed but for some cats, declawing can be a life-saving procedure.

I urge you to not pass a ban on declawing cats.

Respectfully,



Bonnie V. Beaver, BS, DVM, MS, DPNAP, DACVB
Professor
Head of the Community Practice Service

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September 8, 2009

VIA FACSIMILE - 916-646-9156 - 2 Pages

California Veterinary Medical Association
1400 River Park Drive – Suite 100
Sacramento, CA 95815

Re: Article on AOL News - San Francisco May Ban Declawing Cats

Dear Sir/Ma'am:

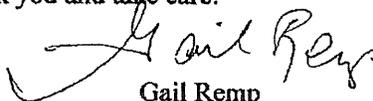
I live in Central Florida (24.3 miles too close to Disney). My spouse and I have been owed by several wonderful cats over a span of thirty-nine years. While living in the Philadelphia area, we had our special vet for over twenty-three years. Our particular passion was always the cats who had been ignored, abused, weren't "pretty" enough or were just a "little too old" for anyone to consider.

Originally, we adopted a six-month old kitten, Alexander. We were his 7th home in six months and he was frightened out of his gourd. But he was kind and funny and purred like a locomotive. Anytime we said his name (which was constantly), his nose turned as red as a certain reindeer. We figured he thought he was going to yet another "home" and he had done something to not earn our care, love and humor. Ten years later, his nose stopped turning red. We hoped he had forgotten the neglect and decided he would keep us. As others joined him over the years, Alex was the mother/father/litter box teacher, etc. He never raised a paw and watched closely as he allowed us to help him with their raising which, of course, always included being spayed/neutered and declawed. Everyone was happy and healthy and suffered no ill effects. The cats survived, the furniture survived and we survived. Eighteen years later we had to say good-bye and I still tear now while preparing this note to you.

Mainly, I wanted to ask you to keep up the effort in educating people on the benefits of taking care of a pet so it remains a pet that is loved and is an integral part of the family. I have enclosed the AOL News article I read today about Mr. John Duran of the West Hollywood City Council who had led the "push for the ban." It is distressing that CVMA lost at the state Court of Appeals. Mr. Duran probably is not a real pet owner as pets are never owned – as you know. Mr. Duran may have the idea backwards.

Personally, it is a private decision and in our experience (about nine cats over many years), it was not a problem since it was done at the time of the spaying or neutering. Within the next day our kittens were home and bouncing around the house with no ill effects. You couldn't slow them down even if you wanted to do so.

Again, I hope SF doesn't ban the declawing of cats – I don't care what PETA believes since if it were up to them, I would be in jail. Thank you and take care.



Gail Remp
(Pixster, Sabrina, Puffybutt [don't ask] and Pretty Girl)

:gmr
Enclosure



http://news.aol.com/article/san-francisco-may-ban-declawing-cats/659450?icid=main|htmlws-main|dl1...

San Francisco May Ban Declawing Cats

(Sept. 8) — Officials in San Francisco are considering whether to ban declawing cats on the grounds that the procedure is cruel. But the idea has run into opposition from a surprising source: the San Francisco Society for the Prevention of Cruelty to Animals.

The **San Francisco Chronicle** reports that while the group opposes declawing, it worries that a ban would result in more cats being abandoned or put to death.

Some pet owners have their cats declawed to stop them from damaging furniture. The surgery involves removing the claws and the last bone of each toe. San Francisco's Board of Supervisors is considering a measure that would bar the operation except in cases of medical necessity.

"It comes down to animal cruelty and mutilating an animal for the convenience of its guardian," said Sally Stephens, president of the city's Animal Welfare Commission, in an interview with the Chronicle.

But Mark Nunez, president of the California Veterinary Medical Association, told the newspaper that his group doesn't want lawmakers making decisions about medical procedures.

"We don't believe medical management procedures should be made by city council members. They should be made by professionals," Nunez said.

Kristin DeJournett, a cruelty caseworker for People for the Ethical Treatment of Animals, said she doesn't believe that a ban would trigger an increase in abandoned cats.

"Declawed cats are more often found in shelters and get passed from home to home," DeJournett told AOL News. She said declawing can lead to behavior problems, making cats more prone to biting because they feel insecure. They may also avoid their litter boxes because they feel the need to mark their territory and because the litter is uncomfortable on their paws.

"We're all for any legislation banning declawing," DeJournett said.

John Snyder, a vice president with the Human Society of the United States, told

AOL News his organization opposes declawing unless a cat is in an "absolute life or death situation." But he declined to comment on the San Francisco proposal, saying he didn't know enough about the specifics.

Another California city, West Hollywood, banned declawing in 2003. The California Veterinary Medical Association challenged the law, but the state Court of Appeal upheld it.

John Duran, the West Hollywood City Council member who led the push for the ban, said his city hasn't seen a surge in abandoned cats since the law took effect.

"That's a red herring," he told AOL News. "We have not seen an uptick in cats being abandoned, or feral cats living in neighborhoods. People continue to adopt cats."

Duran is interested in the issue because he had one of his pets declawed 20 years ago, a decision he came to regret. The cat became skittish and stopped using its litter box. "I didn't know what I was doing," he said.

Duran hopes bans on declawing will be common some day.

"I think a lot of this is about public education," Duran said. "To try to change the animal to make us more comfortable, we just consider that inhumane."

CVMA



September 3, 2009

To Whom It May Concern:

I am a board-certified veterinary internist and owner of Manhattan Cat Specialists, a feline-exclusive veterinary hospital in New York City. I am very aware of the controversy surrounding the declawing of cats and I understand the concern of those opposed to the procedure. I am also aware that destructive behavior is a common reason for relinquishing cats to a shelter. As the former Vice President of Animal Health at The American Society for the Prevention of Cruelty to Animals, I have seen this with my own eyes. Whether destructive behavior is or is not a valid reason for declawing remains debatable. I do think, however, that there are legitimate reasons for the surgical removal of the claws, for example, the prevention of transmission of Bartonella in immunocompromised persons. Bartonella is also the causative agent of Cat Scratch Disease in persons with competent immune systems. Cat Scratch Disease is diagnosed in an estimated 22,000 persons a year in the United States. In healthy people, Cat Scratch Disease typically causes fever, lymph node swelling, headache and fatigue. Immunocompromised people, particularly those with HIV/AIDS, are at higher risk for developing bacillary angiomatosis, a severe and potentially fatal disease, caused by the organism Bartonella.

The risk factors associated with a human contracting a Bartonella infection include being scratched by a cat. Persons with immune suppression are advised to avoid activities that may result in cat scratches. While the effect of declawing of cats on the likelihood of Bartonella transmission is unknown, it seems logical to assume that removal of the claws would decrease the risk of getting scratched, and therefore decrease the odds of Bartonella transmission.

Another reason that I am asked to declaw a cat is to prevent the cat from scratching a child in the house. Frankly, I think this is a very legitimate reason for requesting a declaw. A major concern I have is that if I refuse to declaw the cat, or if I offer alternative suggestions and the cat does indeed scratch the child, I am at increased risk of a lawsuit, not to mention the guilt I would carry if the child was significantly disfigured in any way. I have

made a career out of caring for cats, but I am rational enough to recognize that a child's safety takes precedence.

I understand the concern that people have, and the controversy surrounding declawing. I feel, however, that legislative bodies should have no role in regulating pet owners and their pets' needs regarding declawing. Medical and surgical decisions should be made in the examination room, and not by government bureaucracies. Those opposed to declawing have effectively educated the public regarding the negative aspects of declawing, and will undoubtedly continue to do so. As a feline-only practitioner, I can say that as a result of this campaign, declawing is a procedure that I hardly ever am asked to do. However, there are some circumstances where declawing is appropriate, and by stripping veterinarians of the ability to evaluate this procedure on a case-by-case basis, it threatens to destroy the human-animal bond that the veterinary profession has worked so hard to nurture and embrace.

Arnold Plotnick DVM
Owner, Manhattan Cat Specialists.