July 25, 2011

Los Angeles County Board of Supervisors
Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: Opposition to Proposed Amendments to Title 10 of the Los Angeles County Code, Pertaining to the Regulation of "Potentially Dangerous" and "Vicious" Dogs (Agenda Item No. 18)

Dear Supervisors:

We are a group of attorneys and residents of the County of Los Angeles who write in strong opposition to the amendments proposed by the Department of Animal Care and Control ("DACC") to Title 10 of the County Code, pertaining to the regulation of "potentially dangerous" and "vicious" dogs. The proposed amendments are misguided and unfair and they were introduced without affording the public any meaningful opportunity to comment. In fact, it appears they may have been deliberately pushed through without public notice to avoid public comment. To our knowledge, few if any members of the public knew the proposed amendments were pending until news of this Board's initial affirmative vote was reported by the media on July 19, 2011, even though DACC has been working on them for several months (as indicated in date stamp on County Counsel's version of the amendment appended to the July 19, 2011 Agenda). In the few days since the news broke, a petition against the amendments was circulated on the internet and has garnered more than 1,100 signatures as of our sending of this letter. (Petition, *Los Angeles County Board of Supervisors: Reject Unfair "Dangerous Dogs" Amendment to Title 10*, *available at* http://www.change.org/petitions/residents-of-los-angeles-county-let-your-voice-be-heard.)

We are aware that Patricia Learned, from DACC, and Aaron Nevarez, deputy for Supervisor Knabe, have sent out emails (virtually identical ones) to some of the concerned residents who signed the petition in an attempt to respond to the objections raised via the petition. However, neither Ms. Learned nor Mr. Nevarez addressed the fundamental problems with the proposed amendments, as this letter will explain. For the reasons set forth in this letter, we strongly urge you to reject these proposed amendments.

A. <u>There is No Valid Reason for the Proposed Amendments.</u>

First and foremost, DACC has presented no evidence that the present system is inadequate to deal with "potentially dangerous" or "vicious" dogs, leaving the public at risk of harm from such animals. While both Ms. Learned and Mr. Nevarez justify the proposed amendments based on the need to keep our neighborhoods safe, no showing has been made that our neighborhoods presently are unsafe due to the threat of dog attacks.

At a minimum, before the proposed amendments are adopted, DACC should be required to make a credible showing, backed by hard evidence, regarding the following questions:

- Has there been a sudden spike in dog attacks in L.A. County, particularly attacks resulting in the "horrific and devastating" injuries that Ms. Learned and Mr. Nevarez claim these amendments are designed to address?
- Have truly "dangerous" or "vicious" dogs been "let off" because the existing law is insufficiently strict?
- Was the problem that the dogs were moved to L.A. County after being declared "potentially dangerous" or "vicious" in another jurisdiction or something else? If the former, then why is it insufficient to limit the amendment to permit consideration of such adjudications from other jurisdictions?

Without presentation of this data, there is no basis for changing the present system for making "potentially dangerous" and "vicious" dog determinations in this County.

B. <u>The New Definition of "Severe Injury" Will Place Innocent Dogs at Risk.</u>

While Ms. Learned and Mr. Nevarez correctly point out that the proposed amendments do not change the definition of "potentially dangerous dog," both neglect to recognize that the proposed amendments do revise the definition of "severe injury," the infliction of which would qualify a dog to be labeled "potentially dangerous" or "vicious."[1] And the new definition extends far beyond what is traditionally and reasonably considered the type of harm that results from alleged "potentially dangerous" or "vicious" behavior.

The labels "potentially dangerous" and "vicious" should be reserved, as they are under state law, for instances in which a dog, unprovoked and off the property of his or her guardian, causes "any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrected or cosmetic surgery." (CAL. FOOD & AGRIC. CODE, § 31604.) The proposed revision broadens the scope of "severe injury" to include any "*physical harm* to a human being that results in a *serious illness or injury*." (Emphasis added.) This definition is simply too vague and it provides the opportunity for misapplication and abuse, as evidenced by DACC Director Marcia Mayeda's account of how the amendment would be applied by the Department:

> "There doesn't necessarily have to be a bite," said director of animal control Marcia Mayeda. "But if a dog's charging at you down the street and you jump on top of a car to get out of the way, that's a potentially dangerous dog."

[1] Although the definition of "severe injury" technically only applies to "vicious" dogs, it also affects the "potentially dangerous dog" designation because the injury required for the "potentially dangerous" designation is defined as something *less* than the injury required for the "vicious" dog label. (LOS ANGELES CNTY., CAL., CODE § 10.37.020 (2001).)

(CBS Los Angeles, *What Makes Spot 'Vicious'? LA County to Seize Dogs for Chasing People*, July 19, 2011, *available at* http://losangeles.cbslocal.com/2011/07/19/what-makes-spot-vicious-la-county-to-seize-dogs-for-chasing-people/.)

Mayeda also has provided the additional example of a person who suffers a heart attack as a result of being chased by a dog, stating that a heart attack occurring under such circumstances is the type of "severe injury" that would be considered sufficient to deem the dog "vicious" (not just "potentially dangerous") under the new definition, thus making the dog eligible for "euthanasia."[2] (Letter from Marcia Mayeda to the Board of Supervisors, *Amendments to Los Angeles County Code, Title 10 – Animals*, July 19, 2011, *available at* http://file.lacounty.gov/bos/supdocs/62298.pdf.)

Consider a big, playful, over-exuberant puppy who bounds playfully down the street after a person who has an unreasonable fear of dogs, misinterprets the puppy's behavior as menacing, and experiences a heart attack due to a preexisting heart condition. That puppy could be labeled "vicious" under Director Mayeda's own interpretation of the proposed revision of "serious injury," and potentially subjected to death, if the person submits an affidavit truthfully stating his or her impression that the dog's behavior was aggressive and the hearing officer (a DACC employee) chooses to believe that account of the incident. In reality, however, while an unfortunate occurrence such as this might justify citing the dog's guardian for violating the leash law, or a civil lawsuit against the guardian for negligence and damages, it would in no way indicate that the dog is dangerous, much less vicious. Note that in this scenario the dog never even touched the person.

This is precisely the danger posed by the revised definition, which sweeps within its ambit "harms" far beyond the types of injuries that are typically associated with "dangerous" or "vicious" dogs – namely, bite wounds. The broad proposed definition also opens the door for feuding neighbors to make false charges against innocent dogs to advance their private agendas. It is far easier to fake a "serious illness" from an alleged bite that left no physical mark, than to fake "muscle tears or disfiguring lacerations" that require "multiple sutures or corrective or cosmetic surgery."

C. <u>The Administrative Hearing Procedure Fails to Comport with Due Process.</u>

In addition to broadening the definition of "severe injury" so as to endanger dogs who are not in the least "vicious" or even "potentially dangerous," the proposed amendments create an administrative hearing procedure that is fundamentally unfair.

- ***Animal Control Officers Are Neither Neutral nor Qualified to Serve As "Judges."***

[2] While both Ms. Learned and Mr. Nevarez point out that "euthanasia" is not mandated for every dog determined to be "vicious," it is nonetheless an available penalty that the proposed amendments give DACC the option to impose at its discretion.

Ms. Learned and Mr. Nevarez argue that "experienced" animal control officers are qualified to serve as administrative judges because they have "some college education," and because the Code defines "potentially dangerous" and "vicious" dogs in a way that leaves little room for discretion. Extending this argument to its logical conclusion, animal control officers would be qualified to decide if someone is, for example, a "sexually violent predator" under state law, because the criteria for that designation are spelled out specifically in the Penal Code and leave little room for discretion. This, obviously, is an absurd proposition. Judging requires legal training, an understanding of how to apply myriad factual situations to the relevant law, and the ability to weigh evidence and assess credibility. "Some college education" certainly does not provide the necessary academic or legal foundation.

Moreover, the contention that animal control officers acting as administrative judges would not exercise discretion is plainly incorrect. They would have discretion to determine, among other things, whose version of events to believe, whether an "illness" allegedly resulting from an encounter with a dog is "serious," and what consequences should ensue from a particular adjudication that a dog is "potentially dangerous" or "vicious," including whether the dog will be killed.

Even if animal control officers were qualified to be administrative judges, neither Ms. Learned nor Mr. Nevarez seriously address the point that they are not impartial. The proposed administrative hearing procedure lacks safeguards against decisions being made by DACC employees based on loyalty to co-workers or fear of disagreeing with DACC, their employer. Under the proposed amendments, it would be DACC finding probable cause to file a petition (and thus finding probable cause that the dog is "potentially dangerous" or "vicious") and DACC reviewing that same petition to determine whether to make the classification permanent. We already know that DACC employees and volunteers have been reluctant to come forward on numerous occasions to report violations of state law concerning the treatment of impounded animals based on their fear of retaliation from DACC. Putting DACC employees in the position of making "potentially dangerous" and "vicious" dog determinations only compounds this problem.

Further, this Board should be well aware of numerous complaints by the public that animal control officers frequently deem shelter dogs to be "aggressive" or "unadoptable" because of behavior such as fear or shyness that is common in a kennel environment, or because of unsubstantiated allegations of biting. As just one example, animal control officers at the Carson shelter recently labeled a 20-pound, 2-year-old Shih Tzu as aggressive, and refused to make him available for viewing or adoption by the public, because he allegedly bit the person who found him either lost or abandoned in a park, surrounded by children who were attempting to feed him raisins (which are toxic to dogs). The animal control officers did not witness the alleged bite and no injury was reported. Ultimately, the dog was saved by an individual working through a rescue organization, who only by chance learned of the dog's existence (since he was kept in isolation at the shelter). Reports from his current foster home are that he is a sweet, friendly, and loving dog who has demonstrated no sign of aggression whatsoever. This longstanding willingness of animal control officers to label dogs aggressive based on

little or no evidence, often with life-threatening consequences for the dogs, demonstrates that animal control officers are not neutral on this issue.

Lastly, it must be noted that with current deficiencies in DACC staffing, animal control officers cannot even perform their present duties well. People visiting shelters for the purpose of adopting animals do not receive proper assistance, impounded animals are "lost," disease epidemics are common, and animals continue to be kept in filthy kennels full of feces and urine. Since DACC employees are unable to complete their current tasks satisfactorily, there is no justification for giving them additional responsibilities that they are not qualified to perform.

- ***The Amendment's Notice Requirement Is Inadequate.***

When a person is notified of a hearing to determine whether his or her dog is "potentially dangerous" or "vicious," nothing less than "return receipt" notice is acceptable, particularly given the enormous risk to the dog. The proposed amendments inexplicably remove this protection from Title 10. While we appreciate DACC's desire to address budgetary constraints, when the consequences are so enormous for the dog and the dog's family, nothing short of adequate notice is acceptable. The cost of a return receipt is typically less than $10.00, a cost DACC should be required to bear when the life of someone's beloved animal is at stake.

- ***The Removal of the Public Hearing Requirement Is Unjustified.***

There is no reasonable justification for the proposed amendments' revision to the requirement for a public hearing under Title 10, which would make the public hearing discretionary rather than obligatory. Given the controversial nature of these hearings, particularly if they are to be presided over by partial arbiters, they should be held fully in the public view rather than potentially behind closed doors. Closing a hearing from independent public scrutiny is tantamount to a police state towards companion animals and their guardians. There is simply no reasonable justification for this change.

- ***There Is No Justification for the Short Time for Appeal.***

DACC has proffered no justification for the short, five-day period for giving notice of appeal from an administrative hearing adjudication under the proposed amendments. In ordinary civil cases, litigants are given as much as 60 to 180 days to file such a notice, which affords them sufficient time to make decisions and procure legal representation. There is no reason that DACC needs to know within five days whether there will be an appeal from an administrative hearing determination. If DACC suggests that it must have the ability to "euthanize" dogs expeditiously after they have been adjudged "vicious" because it is "cruel" to keep them confined for extended periods, DACC should be required to explain why it is any less cruel for it to take months before bringing a dangerous/vicious dog case to trial or hearing. Only a perverse twist of justice would allow DACC to let dogs languish in impoundment while it takes its time deciding

whether and how to resolve a case, yet permit DACC to kill the dogs speedily once a determination is made in DACC's favor.

- ***If the Goal Is to Provide a "Less Intimidating Environment," Then the Selection of the Forum for the Proceeding Is Best Left to the Party Whose Rights are Affected.***

Ms. Learned and Mr. Nevarez indicate that the point of the new administrative hearing procedure is to make the process "less intimidating." If that is true, then people whose dogs are accused of aggressive conduct should be given a choice whether to have an administrative hearing or go directly to court.

If the point is, alternatively, to save DACC money, DACC should be required to demonstrate how that will actually happen. It is not readily apparent how a court proceeding would cost DACC more than holding an internal administrative hearing, given that superior court judges are not paid out of DACC's budget, and neither is county counsel (should DACC want legal representation in court).

Conclusion

The existing County Code provisions concerning "potentially dangerous" and "vicious" dogs adequately serve the interest of public safety without punishing innocent dogs and their guardians. The proposed amendments will not make our streets safer; they will only make it easier for DACC to needlessly kill animals. This, at a time when County residents are demanding shelter reforms that will lead to *less* killing, not more. Instead of wasting time and resources trying to change laws that do not need changing, DACC should be focusing on reforming its operations to respond to public dissatisfaction over its treatment of animals.

Sincerely,

Orly Degani
Shannon Keith
Simone Patterson
Vicki Steiner
Robert Cabral