B188723

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

CALIFORNIA VETERINARY MEDICAL ASSOCIATION,
Plaintiff/Respondent,
v.
CITY OF WEST HOLLYWOOD,
Defendant/Appellant.

Appeal from the Superior Court of the County of Los Angeles
Case No. SC084799
Honorable James A. Bascue, Presiding

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF APPELLANT

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AMENDED PROOF OF SERVICE

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PROOF OF SERVICE

I, MONICA QUATTRIN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, California, 94102.

On January 23, 2007, I served the attached:

AMENDED PROOF OF SERVICE

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

and served the named document in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY EXPRESS SERVICES OVERNITE**: I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed January 23, 2007, at San Francisco, California.

MONICA QUATTRIN

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION 7:

Pursuant to rule 8.200(c) of the California Rules of Court, the City and County of San Francisco respectfully requests permission to file the attached brief as amicus curiae in support of appellant City of West Hollywood.

Interest of amicus

The City and County of San Francisco is a charter city and county with a direct interest in the subject matter of this appeal – a special interest group's attack on a duly enacted ordinance in the guise of a state law preemption claim.

With approximately 800,000 residents, San Francisco is the fourth most populous city and county in California. It is a thriving and diverse metropolis with a diversified economic base and diverse demographics.

Partly as a result of this diversity, San Francisco is frequently at the forefront of positive social change. In particular, for over a decade San Francisco has engaged in a concerted effort to improve the status and treatment of animals. To this end, in 1994 the San Francisco Department of Animal Care and Control and the San Francisco Society for the Prevention of Cruelty to Animals memorialized in writing their common purpose to save animals' lives, prevent animal suffering, and eliminate animal abandonment. This historic "Adoption Pact" guarantees, among other things, that no adoptable dog or cat in San Francisco will be euthanized. (Adoption Pact, at <http://www.sfgov.org/site/acc_index.asp?id=6656> [as of Jan. 18, 2007].)

The City of San Francisco continues to work toward ensuring the humane treatment of animals. As part of this work, San Francisco advocates the abolition of non-therapeutic declawing of cats, which the City has determined is both cruel and unnecessary:

> Declawing is a painful and difficult operation. It is the same as removing the first joint on all your fingers. It impairs the cat's balance and causes weakness from muscular disuse. Declawed cats are defenseless . . . . It is unfair and inhumane to punish a cat for acting like a cat . . . . The stress resulting from being declawed creates more problems than it allegedly solves. Some declawed cats become more nervous biters; others are known to become even more destructive to furniture than before the operation; and many cats stop using the litterbox. There are alternatives to declawing.

(San Francisco Animal Care and Control: Frequently Asked Questions, at <http://www.ci.sf.ca.us/site/acc_index.asp?id=6661#16> [as of Jan. 18, 2007].)

This case concerns the authority of cities and counties to decide, based on expanding knowledge and changes in social values, that certain practices, including the non-therapeutic declawing of animals, are

inhumane and to regulate the practices under their police powers. The superior court's decision striking down West Hollywood's ordinance banning non-therapeutic declawing threatens this well-established, constitutionally-based authority. Unless this court reverses the superior court's ruling, numerous properly enacted ordinances in San Francisco and elsewhere may be in jeopardy. Thus, the issues raised in this case are of paramount importance to San Francisco.

Dated: January 22, 2007

Respectfully submitted,

By: 
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AMICUS CURIAE,
THE CITY AND COUNTY OF SAN FRANCISCO

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BRIEF OF AMICUS CURIAE CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF APPELLANT

INTRODUCTION

The California Constitution vests cities and counties with broad police power to legislate in the interests of public order, health, safety, morals, and the general welfare. Regulation of the treatment of animals, including the prohibition of animal cruelty, is a traditional application of that broad local police power. Exercising its constitutional police power to ban a practice it considers to be cruel to animals, the City of West Hollywood has enacted an ordinance prohibiting the declawing of animals for non-therapeutic reasons. West Hollywood enacted the ordinance after concluding that declawing is a painful and difficult procedure that causes

chronic health problems and frequently results in complications. Yet most declawing operations are performed merely for the convenience of the animal's owner, even though painless, non-surgical alternatives exist. (W.H. Mun. Code, §§ 9.49.010, 9.49.020.)

West Hollywood's ordinance exemplifies the critical role municipal police power plays in the American system of government – to respond to new values, standards and ideas as they develop locally, and thereby foster social and moral progress throughout the state and the nation as a whole. In recent years, more and more people have questioned the morality of non-therapeutic declawing, as knowledge about the procedure's effect on animals has grown and social attitudes about the proper treatment of animals have changed. In many countries, the practice has been banned for at least two decades. West Hollywood's non-therapeutic declawing ordinance is the first law of its kind in the United States, but it reflects a growing awareness that the practice is cruel. After the passage of West Hollywood's ordinance, similar laws – albeit narrower in scope – were enacted at both the state and national levels.

The trial court's ruling invalidating West Hollywood's ordinance undermines the ability of local governments to pass laws consistent with the evolving values of their communities. Moreover, the trial court's conclusion that state law preempts the ordinance is wrong as a matter of law.

First, the ordinance is not a regulation of veterinarians. It is an anti-cruelty measure of general applicability. California courts have held such laws are an appropriate exercise of local police power and are *not* preempted.

Second, state law does not preclude *all* local regulation of veterinarians. Section 460 of the Business and Professions Code only bars municipalities from imposing on veterinarians or other state-licensed

professionals any local prerequisites to practicing their professions, beyond what is required by their state licenses. West Hollywood's ordinance imposes no such prerequisites. And the Veterinary Medicine Practice Act ("VMPA"), Business and Professions Code sections 4800, et seq., specifically contemplates that local laws – particularly local anti-cruelty laws – will govern the conduct of veterinarians. The cases plaintiff California Veterinary Medical Association ("CVMA") cites support these conclusions, not CVMA's position.

Third, contrary to CVMA's contention, non-therapeutic declawing is not an integral portion of veterinary medicine, nor is it humane, simply because the procedure has become standard practice for veterinarians. Like other businesses, industries and professions, veterinarians can be compelled to modify their customary practices as social values and moral standards change.

The trial court's erroneous ruling invalidating West Hollywood's ordinance not only violates West Hollywood's right to enact laws that reflect the values of its citizens, it gives control over an important social policy decision to the very special interest that benefits from the regulated practice. This court should reverse.

LEGAL DISCUSSION

MUNICIPALITIES HAVE BROAD CONSTITUTIONAL AUTHORITY TO DETERMINE THAT NON-THERAPEUTIC DECLAWING IS CRUEL TO ANIMALS AND TO BAN THE PROCEDURE WITHIN THEIR JURISDICTIONS.

A. California's Constitution Grants Municipalities Broad Police Powers Which Courts Do Not Limit Lightly.

The importance of local governance is deeply embedded in California's system of government. The California Constitution itself

reflects a hard-fought history of protecting local government against overreaching State control and special interests. Recognizing that "the municipality itself knew better what it wanted and needed than the state at large," the drafters ultimately codified the right of local autonomy in the Constitution "to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature." (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-396.) Section 7 of article XI accordingly provides that municipalities enjoy broad police power: "'A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" (*Cacho v. Boudreau* (2007) ___Cal.4th __ [2007 WL 63991, *3]; *American Financial Services Assoc. v. City of Oakland* (2005) 34 Cal.4th 1239, 1251.)

Pursuant to article XI, section 7, while "[a] city's police power . . . can be applied only within its own territory and is subject to displacement [when exercised in a manner that conflicts with] general state law, . . . otherwise it is broad as the police power exercisable by the Legislature itself." (*Birkenfield v. City of Berkeley* (1976) 17 Cal.3d 129, 140.) Thus, a city may exercise its police power not only with respect to local matters, but also on matters of concern to the entire state. (*Chavez v. Sargent* (1959) 52 Cal.2d 162, 176 ["Even in matters of state-wide concern the city or county has police power equal to that of the state so long as the local regulations do not conflict with general laws"].)

Consistent with the Constitution, California courts traditionally have recognized that municipal autonomy is "essential to a great and free people." (*People v. Lynch* (1875) 51 Cal. 15, 29.) The Supreme Court has described local police power as "one of the most necessary powers of government" (*Fourcade v. City and County of San Francisco* (1925) 196 Cal. 655, 662), "an indispensable prerogative of sovereignty and one that is not to be lightly limited." (*Miller v. Board of Public Works* (1925) 195 Cal.

477, 484). For this reason, the courts employ a "policy against preemption." (*S.D. Meyers, Inc. v. City and County of San Francisco* (9th Cir. 2003) 336 F.3d 1174, 1177, citing *California Federal Savings & Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1, 16-17.) In every preemption case, courts start with the presumption that the local ordinance under attack is valid and does *not* conflict with state law. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Therefore, the burden is always on the party challenging an ordinance to prove a conflict with state law, and the courts resolve any doubts whether a conflict exists against finding preemption. (*Big Creek Lumber, supra,* 38 Cal.4th at p. 1149.)

B. The Local Police Power Responds To Changing Social Conditions And Values.

Municipal police power is not static; its scope necessarily expands as social conditions and values change. (See generally 6A McQuillan, The Law of Municipal Corporations (3d ed.), § 24.08.) Thus, the police power allows cities and counties to respond to novel issues and problems by enacting legislation consistent with the evolving values of their residents. As the Supreme Court put it in *Miller v. Board of Public Works, supra*, 195 Cal. 477:

> [T]he police power. . . is not confined within the narrow circumscription of precedents, resting upon past conditions which do not cover and control present day conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public; that is to say, as a commonwealth develops politically, economically, and socially, the police power likewise develops, within reason, to meet the changed and changing conditions. . . . [¶] Thus, it is apparent that the police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic,

> moral, and intellectual evolution of the human race. In brief, "there is nothing known to the law that keeps more in step with human progress than does the exercise of this power" . . ., and that power "may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

(*Id.* at pp. 484-485, internal citations omitted.)

The imperative that municipal authority "keep pace with [the] social, economic, moral, and intellectual evolution" of the local community helps ensure that laws at all levels of government adapt to reflect modern ideas and values, because local innovations frequently lead to corresponding changes in state and federal law. (*Miller v. Board of Public Works, supra*, 195 Cal. at p. 485.)

For example, "the first environmental laws in this country were local ordinances regulating smoke, sewage, garbage or animal wastes." (Peter H. Lehner, *Act Locally: Municipal Enforcement of Environmental Law* (1993) 12 Stan. Envtl. L.J. 50, 54 & fn. 15 ["'The first air pollution ordinance appears to be an 1881 Chicago ordinance that prohibited emissions of dense smoke.' . . . 'By 1912, twenty-three of the twenty-eight U.S. cities with populations over two hundred thousand had smoke abatement programs.' . . . 'Even in 'the early 1960s most air pollution laws were local government ordinances.'"].) Now, state and federal environmental laws are commonplace.

Similarly, the earliest and toughest smoking prohibitions were local regulations. (Damon K. Nagami, *Enforcement Methods Used In Applying The California Smoke-Free Workplace Act To Bars And Taverns* (2001) 7 Hastings W.-N.W. J. Envtl. L. & Pol'y 159, 161-162.) "The federal government, forty-nine states, and over 800 local municipalities now restrict smoking in some manner in public places." (Thaddeus Mason Pope, *Balancing Public Health Against Individual Liberty: The Ethics Of*

Smoking Regulations (2000) 61 U. Pitt. L. Rev. 419, 441.) "Across the country, smoking is restricted (and often banned) in airplanes, buses, elevators, workplaces, office buildings, retail stores, libraries, and restaurants, to list only a few examples." (*Ibid.*) Recently, the City of Calabasas, California, further expanded a smoking ban to outdoor areas, such as bus stops and parks, becoming the first virtually "smoke-free" city in the country. (See <http://www.nbc4.tv/newslinks/7963148/detail.html> [as of Jan. 17, 2007].)

Local governments – starting with the City of Berkeley – also were the first to establish domestic-partner registries in response to the growing acceptance of the rights of same-sex couples. (M. R. Carrillo-Heian, *Domestic Partnership in California: Is It a Step Toward Marriage?* (2000) 31 McGeorge L. Rev. 475, 478 & fn. 7, 481-83 & fn. 28.) Berkeley established its domestic-partner registry in 1981. (*Id.* at p. 483, fn. 28.) Years later, California established a state-wide domestic partner registry. (Fam. Code, §§ 297-299.6) The state law recognizes the continued validity of domestic partnerships previously created under local ordinances. (Fam. Code, § 299.6, subd. (b).)

These examples illustrate the critical role municipal police power plays in translating changing social attitudes into the legal framework we choose to govern our lives.

C. West Hollywood's Non-Therapeutic Declawing Ordinance Is A Proper Exercise Of Local Police Authority That Reflects Changing Social Attitudes About The Treatment Of Animals.

Regulating the treatment of animals is a traditional and proper application of municipal police power. (*San Diego County Veterinary Med. Ass'n v. County of San Diego* (2004) 116 Cal.App.4th 1129, 1134-35 [recognizing that municipalities have "expansive constitutional police power authority to act in the public interest in regulating domestic

animal[s]"].) In particular, laws prohibiting cruelty to animals fall squarely within the local police power. (*Johnson v. District of Columbia* (C.A.D.C. 1908) 30 App.D.C. 520 [1908 WL 27791, *1] ["'Laws for the prevention of cruelty to animals may well be regarded as an exercise of [local] police powers. That good government calls for the condemnation of such acts . . . ought not to be questioned. The subject is preeminently one for local municipal regulation'"].) West Hollywood's non-therapeutic declawing ordinance is animal cruelty legislation authorized by this traditional understanding of the local police power.

As CVMA correctly notes, veterinarians historically have declawed animals without any valid medical reason. However:

> "The ability of cruelty laws to expand their range of prohibited activities as society's views about appropriate treatment of animals changes allows for vigorous ethical debate about how animals should be treated. It also allows for inclusion within the class of legally prohibited behavior activities that come, over time, to be generally seen as inappropriate."

(Darian M. Ibrahim, *The Anticruelty Statute: A Study In Animal Welfare* (2006) 1 J. Animal L. & Ethics 175, 191-192.)

Whereas in the past, few doubted the propriety of non-therapeutic declawing, today the practice has been called into serious question as scientific knowledge about the ability of animals to experience pain has advanced, social attitudes about the treatment of animals have changed, and public awareness concerning what declawing actually entails has grown.

For example, many countries have recognized non-therapeutic surgical procedures on animals are unacceptable. Since 1987, the European Convention for the Protection of Pet Animals has prohibited "[s]urgical operations for the purpose of modifying the appearance of a pet animal or for other non-curative purposes . . . and, in particular . . . declawing." (European Convention for the Protection of Pet Animals, Nov. 13, 1987,

1704 U.N.T.S., art. 10, § 1(d), at <http://conventions.coe.int/Treaty/en/Treaties/Html/125.htm> [as of Jan. 18, 2007].) Among the Convention's signatories are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, the Ukraine, and the United Kingdom. (Signatories to the European Convention for the Protection of Pet Animals, Nov. 13, 1987, at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=125&CM =7&DF=1/19/2007&CL=ENG> [as of Jan. 18, 2007].)

Israel also banned non-therapeutic declawing, among other purely cosmetic surgeries on animals, in 1994. (Israel's Cruelty to Animals Law (Animal Protection), Jan. 11, 1994, Bills of 2127 of Mar. 11, 1992, § 2(d) at <http://www.israel-embassy.org.uk/web/pages/animprot.pdf> [as of Jan. 18, 2007.)

West Hollywood's non-therapeutic declawing ordinance, enacted in April 2003, is the first law of its kind in the United States. In January 2004, after the passage of West Hollywood's ordinance, and in response to intense pressure from animal protection groups, the American Veterinary Medical Association (AVMA) for the first time stated that it "opposes declawing captive exotic and other wild (indigenous) cats for nonmedical reasons." (AVMA Position Statement, Declawing Captive Exotic and Wild (Indigenous) Cats, available at <http://www.avma.org/issues/policy/animal_welfare/declawing_exotic.asp> [as of Jan. 13, 2007.) Several months later, the California Legislature enacted Penal Code section 597.6,

imposing a statewide ban on the declawing of wild or native exotic cats for non-therapeutic reasons.

In August 2006, the United States Department of Agriculture (USDA) followed suit, banning non-therapeutic declawing of *all* wild or exotic carnivorous animals, not just cats, under the federal Animal Welfare Act. (USDA Animal and Plant Health Inspection Service Animal Care Policy Manual (Aug. 18, 2006), Veterinary Care, Policy No. 3, p. 3.4, at <http://www.aphis.usda.gov/ac/publications/policy/policy3.pdf> [as of Jan. 11, 2007.) The USDA explained: "Declawing . . . in wild or exotic carnivores . . . is no longer considered to be appropriate veterinary care unless prescribed by the attending veterinarian for treatment of individual medical problems of the paws . . . . These procedures are no longer considered to be acceptable when performed solely for handling or husbandry purposes since they can cause considerable pain and discomfort to the animal and may result in chronic health problems. These procedures are no longer allowed under the Animal Welfare Act." (USDA Animal and Plant Health Inspection Service Animal Care Information Sheet on Declawing and Tooth Removal (Aug. 2006), at <http://www.aphis.usda.gov/ac/publications/declaw_tooth.pdf> [as of Jan. 11, 2007.)

As this chronology shows, West Hollywood's non-therapeutic declawing ordinance was a response to a gradual shift in public opinion about the previously-accepted practice of declawing animals merely for reasons of human convenience, and it was followed by the passage of similar laws at both the state and national levels.

D. A Municipal Ban On Non-Therapeutic Declawing Is Not Invalid Simply Because It Impacts Veterinarians.

1. State law does not preempt all local regulation of state-licensed trades and professions.

Notwithstanding the breadth of municipal police power to regulate the treatment of animals, and to respond to changing social attitudes about animal cruelty, CVMA contends municipalities lack authority to ban non-therapeutic declawing because state law – i.e., Business and Professions Code section 460 and the VMPA – preempts all local regulation of veterinarians. According to CVMA, "California courts have repeatedly held that local regulation of [state-]licensed trades and professions is impermissible because such regulation restricts the rights of licensees to conduct business in local municipalities." (RB 11; see also RB-35-36.) CVMA is mistaken.

First, the West Hollywood ordinance is a general police measure applicable to everyone, including veterinarians. (W.H. Mun. Code, § 9.49.020 [prohibiting anyone, "licensed medical professional or otherwise" from declawing an animal from non-therapeutic reasons, and punishing not only the person who performs the procedure but also "all persons assisting" with the procedure and "the animal guardian that ordered the procedure"].) In *People v. Mueller* (1970) 8 Cal.App.3d 949, the court explained that state law does not preempt generally-applicable ordinances that affect state-licensed trades or professions. There, state-licensed fishermen challenged a municipal water pollution ordinance that prohibited placing live or dead bait in the city harbor except when attached to a hook in the act of fishing. (*Id.* at pp. 951-952.) The ordinance had the effect of precluding fishermen from throwing dead bait into the water to attract fish to the surface. (*Id.* at p. 952.) Upholding the ordinance, the court stated: "It seems true that the state has preempted the field of regulation of [commercial] fishing.

[Citations]. That proposition, however, is not determinative of the validity of the challenged ordinance. Preemption by the state of an area of the law does not preclude local legislation enacted for the public safety which only incidentally affects the preempted area. Protection against pollution equates with protection of the public safety." (*Id.* at p. 954.)

Likewise here, protection of animals against cruelty equates with protection of the public morals. (See *Johnson, supra*, 30 App.D.C. 520 [1908 WL 27791, at *1] [recognizing that municipal animal cruelty legislation "conduces to the moral and general welfare of the community"].) Although West Hollywood's ordinance undoubtedly affects veterinarians, who traditionally have profited from declawing animals for non-therapeutic reasons, the ordinance is a cruelty measure aimed at everyone. It no more precludes veterinarians from practicing their profession than the ordinance in *Mueller* precluded state-licensed fishermen from practicing theirs.

2. Even direct local regulation of state-licensed trades and professions is permissible, so long as it does not impose additional local *licensing* or other prerequisites to working in the local jurisdiction.

Moreover, in contending that "California courts have repeatedly held that local regulation of licensed trades and professions is impermissible," CVMA dramatically overstates the holdings of the cases it cites in support of this assertion. (RB 11; see also RB-35-36.) In fact, the cases hold that state law preempts the field of *licensing* certain trades and professions, preventing municipalities from imposing additional, local *licensing* requirements on persons licensed by the state to engage in those trades and professions. At the same time, however, the cases recognize that *other* local regulation of state-licensed trades and professions is permissible and appropriate.

Horwith v. City of Fresno (1946) 74 Cal.App.2d 443, involved a preemption challenge to a city ordinance that required state-licensed electrical contractors to obtain a local license before engaging in business within the city. (*Id.* at pp. 444-445.) After reviewing the state Contractor's License Act (Bus. & Prof. Code, §§ 7000, et seq.), the court concluded: "It is apparent that the state has adopted a broad and comprehensive plan for *licensing* contractors throughout the entire state, for examination as to their qualifications and fitness to engage in their various activities, for licensing only those who prove themselves qualified by satisfactorily passing examinations, and for punishing those who prove themselves incompetent or unfaithful to the trust imposed in them." (*Horwith, supra,* 74 Cal.App.2d at p. 447, emphasis added.) The court held that the permission to conduct business conferred by the state license could "not be circumscribed by local authorities." (*Id.* at pp. 448-449.) However, the court emphasized its holding "does not limit the right of local governmental agencies to protect property and life through the enforcement of local regulations as to the quality and character of [electrical] installations. The right to enforce local ordinances is still in the hands of municipalities through the power of inspections and permits." (*Id.* at p. 449.)

The other cases CVMA cites also held only that state law preempted municipal ordinances that imposed additional licensing or other requirements on state-licensed professionals as a condition to working in the local jurisdiction. (*Boss v. City and County of San Francisco* (1948) 83 Cal.App.2d 445, 451-452 ["ordinance attempt[ed] to provide a means by which a contractor with a state license may be denied the right to contract or work in San Francisco"]; *Agnew v. City of Los Angeles* (1952) 110 Cal.App.2d 612, 621 ["Notwithstanding the state law which authorizes a contractor holding a state license to contract anywhere in the state, this ordinance limits his right to contract in Los Angeles unless he [fulfills

additional conditions enumerated in the ordinance]"]; *Robillwayne Corp. v. City of Los Angeles* (1966) 241 Cal.App.2d 57, 61 [Private Investigator and Adjuster Act preempts field of licensing insurance adjusters "to the extent that city ordinances, calling for additional licenses and imposing additional requirements, are invalid"]; *Verner, Hilby & Dunne v. City of Monte Sereno* (1966) 245 Cal.App.2d 29, 33 [because the State has preempted field of licensing civil engineers and land surveyors, "a municipal ordinance which attempts to impose additional or more stringent requirements upon persons engaged in those occupations is in conflict with the general law and therefore invalid"], emphasis added.) [1] However, two of these decisions, like *Horwith*, acknowledged that municipalities retain authority to regulate certain aspects of these professionals' work. (*Boss, supra,* 83 Cal.App.2d at pp. 449-450; *Agnew, supra,* 110 Cal.App.2d at p. 616.)

Thus, contrary to CVMA's contention, California courts have *not* held that state law preempts all local regulation of state-licensed trades and professions. The courts have held only that municipalities may not compel individuals licensed by the state to satisfy additional local licensing or other requirements before working in the local jurisdictions. Indeed, in most of the cases, the courts emphasized that *other* municipal regulation of state-licensed trades and professions is *appropriate*.

The most recent opinion on the subject, *Stacy & Witbeck, Inc. v. City and County of San Francisco* (1995) 36 Cal.App.4th 1074, confirms this reading of the case law, noting that prior decisions "firmly established that our state licensing laws fully occupy the field of *licensing* contractors." (*Id.* at p. 1092, emphasis added.) However, "some local regulation affecting

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[1] See also *Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1, which CVMA does not cite, in which the Supreme Court invalidated another local licensing ordinance because "the state has occupied the field of *licensing* electrical contractors." (*Id.* at p. 6, emphasis added.)

contractors is permitted under the police power," so long as the regulation does not "interfere with the state's sole power to *qualify and license* contractors." (*Stacy & Witbeck, supra,* 36 Cal.App.4th at p. 1093, emphasis added; see also see also *Northern California Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, 107, fn. 5 ["where the state has provided a comprehensive scheme for examining and licensing members of a trade or profession, municipalities may not impose additional qualifications before issuing licenses to exercise the trade or profession within the city"].)

Unlike ordinances struck down by the courts, West Hollywood's non-therapeutic declawing ordinance does not require state-licensed professionals to pass any local examination, obtain any local license, or fulfill any other local condition before practicing in the City. It simply prohibits anyone, including veterinarians, from performing a particular procedure that the City considers to be cruel to animals. The ordinance is no different from a local regulation of "the quality and character of the installations" of state-licensed contractors, which *Horwith* and cases following it explicitly approved.[2] (*Horwith, supra,* 74 Cal.App.2d at p. 449.)

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[2] CVMA also cites *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, which held that "the State Bar Act preempts the field of regulation of attorneys only insofar as they are 'practicing law' under the act-i.e., performing services in a representative capacity in a manner which would constitute the unauthorized practice of law if performed by a layman." (*Id.* at p. 543.) However, regulation of attorneys cannot fairly be compared to regulation of other state-licensed professionals because the *California Constitution* vests authority to regulate the practice of law exclusively with the *Supreme Court*, which has partially delegated that authority to the Legislature and the State Bar, not to municipalities. (See Rutter Group, Cal. Practice Guide, Professional Responsibility, ¶¶ 1:1, 1:2.10, 1:15, 1:41, 1:44-1:46.1, 1:86, and cases cited therein.)

3. Neither section 460 nor the VMPA preempt all local laws that affect or even directly regulate veterinarians, particularly not laws prohibiting cruelty to animals.

Like the state statutes analyzed in the cases discussed in the preceding section, section 460 and the VMPA preempt the field of *licensing and qualifying* state-licensed professionals (section 460) and, more specifically, state-licensed veterinarians (the VMPA). Thus, municipalities may not impose on state-licensed veterinarians additional local licensing or other prerequisites to practicing veterinary medicine. But neither section 460 nor the VMPA preclude local measures that affect or even directly regulate veterinarians in other ways. Specifically, the statutes do not preclude local ordinances that prohibit veterinarians from performing a previously-accepted, *non-therapeutic* procedure that the local community now views as a form of animal cruelty.

Section 460 is nothing more than the Legislature's express preemption of all local laws that purport to impose additional local licensing requirements on anyone licensed by the state to engage in any trade or profession. The statute specifically preserves local authority to regulate state-licensed trades and professions in other ways, and to collect license taxes to cover the cost of such other, permissible regulation. (Bus. & Prof. Code, § 460 ["Nothing in this section shall prohibit any city or county from . . . levying a license tax solely for the purpose of covering the cost of regulation"].) Section 460 was "a result of attempts by . . . cities . . . to require accountants or architects to meet local requirements as condition of engaging in certain types of work authorized by their state licenses." (AA 12 [legislative history].) Its "effect is to permit continuation of . . . the imposition of license taxes necessary to cover *otherwise permissible local regulation*, but to prohibit adoption or enforcement of ordinances which require compliance therewith as a condition of engaging in a business,

occupation or profession for which a license from an agency in [the Department of Consumer Affairs] is required." (AA 12, emphasis added; see also *Maloy v. Municipal Court* (1968) 266 Cal.App.2d 414, 418 [section 460 "declares a policy of preemption by the state of the *licensing* of all businesses, occupations, and professions" licensed by the state"], emphasis added; 73 Ops.Ca. Atty. Gen. 28, 29 (1990) [Business and Professions Code section 7032, a provision in the Contractor's License Law, "reiterates the prohibition of section 460" against local regulation of "'the qualification necessary to engage in the business'" of contracting].)

Even if, as CVMA contends, section 460 preempts not just local licensing laws, but also local laws that prevent state license holders from engaging in any "portion" of their trade or profession, section 460 does not preempt a local ban on non-therapeutic declawing because non-therapeutic declawing cannot be a "portion" of the practice of veterinary medicine when a municipal authority has determined that the procedure is cruel to animals. The VMPA specifically provides that cruel procedures are not a sanctioned part of veterinary medical practice. It sets as a "[m]inimum [s]tandard[]" the requirement that "veterinary care shall be provided in a . . . humane manner," and provides for revocation of veterinary licenses for "cruelty to animals, conviction of a charge of cruelty to animals, or both." (Bus. & Prof. Code, § 4883, subd. (m); 16 Cal. Code Regs., § 2032.) Moreover, no provision of the VMPA deprives local governments of their traditional police power to pass laws prohibiting animal cruelty or exempts veterinarians from having to comply with local cruelty laws.

The Legislature has not provided an exclusive definition of animal cruelty that precludes localities from forbidding practices the state has not specifically barred. While some of the VMPA's provisions incorporate the definition contained in Penal Code section 597 or the Penal Code's other anti-cruelty provisions (see Bus. & Prof. Code, §§ 4830.5, 4830.7),

Business & Professions Code, section 4883, subdivision (m) authorizes the revocation of veterinary licenses for "cruelty to animals" without limiting that term to practices prohibited by the Penal Code.[3] The only reasonable inference is that the Legislature intended to require veterinarians to comply with all anti-cruelty laws, not just state laws, and did not intend to preempt all local regulation of veterinarians.[4]

CVMA's argument – that non-therapeutic declawing is a portion of the practice of veterinary medicine that municipalities may not curtail – raises an obvious question: Why should the practice of veterinary medicine encompass a procedure that involves amputating the toes of healthy animals for no therapeutic purpose? After all, the dictionary definition of "veterinary" is "of, or relating to, or being the science and art of *prevention, cure, or alleviation of disease and injury* in animals," and the dictionary

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[3] Section 4830.7 imposes a duty on veterinarians "to promptly . . . report to appropriate law enforcement authorities" whenever they have "reasonable cause to believe an animal under [their] care has been a victim of animal abuse or cruelty, *as prescribed in Section 597 of the Penal Code*." (Bus. & Prof. Code, § 4830.7, emphasis added.) Section 4830.5 imposes a similar obligation to report any "reasonable cause to believe that a dog has been injured or killed through participation in a staged animal fight, *as prescribed in Section 597b of the Penal Code*." (Bus. & Prof. Code, § 4830.5, emphasis added.)

[4] The VMPA also contemplates that other local laws, in addition to anti-cruelty laws, will govern the conduct of veterinarians. For example, it requires that veterinarians "not disclose any information concerning an animal receiving veterinary services, the client responsible for the animal receiving the veterinary services, or the veterinary care provided to an animal, except . . . [a]s may be required to ensure compliance with any federal, state, *county, or city* laws or regulations." (Bus. & Prof. Code, § 4857, subd. (a)(4), emphasis added.) It also requires as a "[m]inimum [s]tandard[]" that all fixed veterinary premises have "[f]ire precautions [that] meet the requirements of *local* and state fire prevention codes," and that "disposal of waste material [from such fixed veterinary premises] shall comply with all applicable state, federal, *and local* laws and regulations." (16 Cal.Code.Regs., § 2030, subds. (f)(1), (f)(3), emphasis added.)

definition of "medicine" is "the science and art dealing with the *maintenance of health and the prevention, alleviation, or cure of disease*." (Webster's Collegiate Dictionary (10th ed. 1995) pp. 722, 1315, emphasis added.)

CVMA offers two reasons, neither of which withstands scrutiny: (1) section 4826 of the VMPA purportedly defines veterinary practice to include *any* "'surgical . . . operation upon an animal,'" regardless of whether the operation is "moral or immoral, ethical or unethical," and (2) veterinarians have historically performed, and to this day continue to perform, non-therapeutic declawing "surgery" on animals as a standard part of their veterinary practice, so the procedure must be humane. (RB 14, 65.)

In assessing CVMA's first argument – that veterinary practice under section 4826 includes any surgery on an animal, even if the surgery is inhumane – this court should apply the settled "rule of construction requiring consideration of all parts of a statutory scheme to allow harmonious operation and effectiveness for every provision." (*Viacom Outdoor, Inc. v. City of Arcata* (2006) 140 Cal.App.4th 230, 240.) Further, "'[t]he provision under scrutiny [section 4826] must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which, upon application, will result in wise policy rather than mischief or absurdity.'" (*S.D. Meyers, Inc. v. City and County of San Francisco, supra,* 336 F.3d at p. 1179, quoting *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 954.)

CVMA's interpretation of section 4826 reads that provision in isolation, ignoring the other provisions in the VMPA and its implementing regulations that require veterinary care to be delivered humanely and authorize revoking the license of any veterinarian who commits an act of animal cruelty and/or is convicted of a charge of cruelty to animals. (See

Bus. & Prof. Code, § 4883, subd. (m); 16 Cal. Code Regs., § 2032.) CVMA's interpretation also runs counter to the obvious purpose and intent of the VMPA – to protect the public and animals by ensuring that only qualified individuals practice veterinary medicine and that they do so in a humane manner. If adopted, CVMA's construction would result in mischief and absurdity, not wise public policy, because it would permit veterinarians to perform whatever procedures they please on animals, no matter how cruel and unnecessary, so long as the procedures can be characterized as surgery. That cannot be what the Legislature intended.

As for CVMA's second argument, it is false to suggest that non-therapeutic declawing is humane simply because veterinarians have performed the procedure for so long that it has become "standard" practice. If that were true, then veterinarians would never have to conform their conduct to evolving social and moral standards concerning the proper treatment of animals. They could always put their economic interests ahead of animals' welfare.[5] The Legislature cannot have intended that result either. No other profession or industry is permitted to completely regulate itself, or to operate entirely without regard to the prevailing social and moral standards of the day.

In sum, neither section 460 nor the VMPA prevents local governments from exercising their traditional, broad police authority to regulate the treatment of animals by enacting ordinances that compel veterinarians – like everyone else – to behave consistently with the evolving values of the community.

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[5] An example of such conduct by veterinarians can be found in *San Diego County Veterinary Med. Ass'n v. County of San Diego, supra,* 116 Cal.App.4th 1129 [rejecting veterinary association's challenge to county program providing low-cost dog vaccinations].)

4. Numerous municipal laws in California, besides West Hollywood's non-therapeutic declawing ordinance, properly regulate veterinarians.

A number of municipal laws, besides West Hollywood's non-therapeutic declawing ordinance, directly regulate veterinarians, further demonstrating the State has not preempted the field.

For example, a San Francisco ordinance requires "[e]very veterinarian who vaccinates or causes or directs to be vaccinated in the City any dog with anti-rabies vaccine" to notify the City licensing authority within 30 days of the vaccination. (S.F. Health Code, art. 1, § 41.18.)

Another San Francisco ordinance requires every veterinarian to provide written notification to San Francisco's Department of Public Health "of the existence of any and every case of . . . contagious or infectious diseases in animals, which may have come under his observation or to his knowledge. . . ." (S.F. Health Code, art. 1, § 1.)

Los Angeles County has a similar ordinance, requiring "[a]ll veterinarians . . . who have knowledge of or have reason to suspect that an animal is infected with . . . any . . . infectious disease which might become epidemic and transmissible to mankind" to make a report to the County director of public health within 24 hours. (L.A. County Code, § 10.72.010(A).) The ordinance further provides that, in specified cases, the director of public health may require veterinarians to submit to "a specimen of tissue for verification of diagnosis," and "[i]in the case of rabies, the director of public health may require the submission of the head of the animal detached from the body." (L.A. County Code, § 10.72.010.)

The City of Los Angeles requires veterinarians to notify the owner of any animal that dies under their care at their veterinary facility of the death of the animal within 24 hours after the death, and to hold the animal's

body for 12 hours after making the required notification (City of L.A. Mun. Code, §§ 53.44, 53.45.)

In addition, the City of Los Angeles requires veterinarians to maintain specified records of any vaccination they administer to any dog, and to report the information to the City's Department of Animal Services. (City of L.A. Mun. Code, § 53.53.)

San Diego County similarly requires veterinarians who vaccinate a dog for rabies to complete a rabies certificate form and forward a copy of the form to the County Department of Animal Control. (S.D. Code of Reg. Ord., § 62.612.)

These ordinances – all of which have been effective and unchallenged for some time – confirm that the State has not fully occupied the field of regulating veterinarians, either through section 460, the VMPA, or any other law.

CONCLUSION

Mahatma Gandhi said, "The greatness of a nation and its moral progress can be judged by the way its animals are treated." (See <http://en.wikiquote.org/wiki/Animals>, [as of Jan. 18, 2007].) By responding to the evolving values of its citizens and enacting its ordinance banning non-therapeutic declawing, West Hollywood has properly exercised its constitutional police power to improve the treatment of animals within its jurisdiction. No state law preempts West Hollywood's authority to enact such an animal protection measure.

Dated: January 22, 2007 By: _____
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CERTIFICATE OF WORD COUNT AND PRINTING ON RECYCLED PAPER PURSUANT TO CALIFORNIA RULES OF COURT, 8.204(C)

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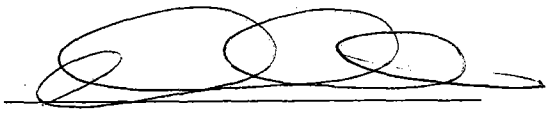

DANNY CHOU

PROOF OF SERVICE

I, MONICA QUATTRIN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, California, 94102.

On January 22, 2007, I served the attached:

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF APPELLANT

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

and served the named document in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY EXPRESS SERVICES OVERNITE**: I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed January 22, 2007, at San Francisco, California.

MONICA QUATTRIN

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