City of Long Beach
Working Together to Serve

The Office of Tonia Reyes Uranga
Council Member, Seventh District
Memorandum

R-11

Date: May 19, 2009

To: Honorable Mayor and Members of the City Council

From: Council Member Patrick O'Donnell, Fourth District
Council Member Tonia Reyes Uranga, Seventh District

Subject: **Support for Animal Protection Legislation SB 250 (Florez), AB 241 (Nava), AB 242 (Nava), and AB 243 (Nava)**

The City of Long Beach Bureau of Animal Care Services (ACS) strives to protect the animals that share our city by ensuring the welfare of all pets, companion animals and wild animals. The ACS provides adoption services, return animals to their owners whenever possible and provide animal owners with good advice on how best to care for their animal throughout the year. There is currently a set of animal protection legislation being considered by the California State Legislature that if enacted would enhance the City's efforts to protect the welfare of our pets.

SB 250 (Florez) - Spay and Neutering: All dogs must be spayed or neutered at 6 months of age unless their owner obtains an unaltered dog license. All cats must be spayed or neutered at six months of age, if the owner allows the cat to roam outdoors. This is not a mandatory spay/neuter bill.

AB 241 (Nava) - Breeding for sale: The Responsible Breeder Act of 2009. This bill limits the number of unaltered dogs and cats on a "sellers" property to 50 total unaltered animals, e.g. kittens, puppies, breeding adults.

AB 242 (Nava) - Dog Fighting: Legislation would make it a felony to be a willing spectator at a dog fight. California is the only Western state that does not make it a felony.

AB 243 (Nava) - Animal Abuse: Legislation would allow a judge to bar a felon convicted of animal cruelty from owning animals for a certain period after their release. This addresses a loophole in state law that allows a judge to prevent someone from possessing or having contact with animals while on probation, but not while they are paroled. The bill is sponsored by the Los Angeles District Attorney's office.

Recommended Action: **Request the City Attorney to draft a resolution in support of SB 250, AB 241, AB 242, and/or AB 243 and direct the City Manager to communicate the City's support to Long Beach legislative offices.**

Attachments

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL No. 250

Introduced by Senator Florez

February 24, 2009

An act to add ~~Section 30804.6~~ *Sections 30804.6 and 31751.4* to the Food and Agricultural Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as amended, Florez. Dogs and cats: spaying and neutering.

Existing law generally prohibits public pounds and private shelters from selling or giving away any dog or cat that has not been spayed or neutered; provides, under certain circumstances, for the sale or giving away of a dog or cat that has not been spayed or neutered upon the payment of a refundable deposit, as specified; provides for the imposition of fines or civil penalties against the owner of a nonspayed or unneutered dog or cat that is impounded by a public pound or private shelter; and immunizes cities and counties, societies for the prevention of cruelty to animals, and humane societies from an action by the owner of a dog or cat for spaying or neutering the dog or cat in accordance with the law. A violation of any of these provisions is an infraction, punishable as specified.

This bill would provide, in addition, that every dog owner shall secure a license for the dog, as required by state or local law, and that no person shall own, keep, or harbor an unaltered and unspayed dog, except as specified. It would make it unlawful for any person who owns, keeps, or harbors any unspayed or unaltered cat 6 months of age or older to allow or permit that unspayed or unaltered cat to remain outdoors. It would require any owner or custodian, as defined, of an unaltered dog

~~or cat~~ to have the animal spayed or neutered at 6 months of age or older, or provide a certificate of sterility. *It would require an owner or custodian of an unaltered cat to have the cat spayed or neutered or provide a certificate of sterility.* It would allow an unaltered dog license to be denied, revoked, and reapplied for, as specified, and the licensing agency to utilize its existing procedures for any appeal of a denial or revocation of an unaltered dog license.

This bill would require an owner or custodian who offers any unaltered dog or cat for sale, trade, or adoption to meet specified requirements. It would permit an administrative citation, infraction, or other authorized penalty for a violation of certain provisions to be imposed only if the owner or custodian is concurrently cited for another violation under state or local law, as specified. It would require, if an unaltered dog or cat is impounded pursuant to state or local law, the owner or custodian to meet specified requirements, including paying the costs of impoundment. It would require all costs, fines, and fees collected under the bill to be paid to the licensing agency for the purpose of defraying the cost of the implementation and enforcement of the bill. By creating new crimes and imposing new duties on local animal control agencies, this bill would impose a state-mandated local program upon local governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 30804.6 is added to the Food and
2 Agricultural Code, to read:
3 30804.6. (a) (1) Every dog owner shall secure a license for
4 the dog pursuant to Section 121690 of the Health and Safety Code
5 or as required by the local licensing agency.

(2) No person shall own, keep, or harbor an unaltered and unspayed dog in violation of this section.

(3) An owner or custodian of an unaltered dog shall have the dog spayed or neutered at six months of age or older, provide a certificate of sterility, or obtain an unaltered dog license in accordance with this section.

(4) This subdivision shall not apply to a dog with a high likelihood, due to age or infirmity, of suffering serious bodily harm or death if spayed or neutered. The owner or custodian shall obtain written confirmation of this fact from a veterinarian licensed in this state. If the dog is able to be spayed or neutered at a later date, that date shall be stated in the written confirmation. If the date for spaying or neutering is more than 30 days, the owner or custodian shall apply for an unaltered dog license.

~~(b) (1) It is unlawful for any person who owns, keeps, or harbors any unspayed or unaltered cat six months of age or older to allow or permit that unspayed or unaltered cat to remain outdoors.~~

~~(2) An owner or custodian of an unaltered cat shall have the animal spayed or neutered, or provide a certificate of sterility.~~

~~(3) This subdivision shall not apply to a cat with a high likelihood, due to age or infirmity, of suffering serious bodily harm or death if spayed or neutered. The owner or custodian shall obtain written confirmation of this fact from a veterinarian licensed in this state. If the cat is able to be spayed or neutered at a later date, that date shall be stated in the written confirmation.~~

~~(c)~~

(b) An unaltered dog license may be denied or revoked for one or more of the following reasons:

(1) The owner, custodian, applicant or licensee is not in compliance with all of the requirements of this section.

(2) The licensing agency has issued one citation verified by the agency pursuant to existing policies and procedures that the owner, custodian, applicant, or licensee has allowed a dog to be stray or run at large or has otherwise been found to be neglectful of his or her or other animals.

(3) The owner, custodian, applicant, or licensee has been previously cited for violating a state law, or a city, county, or other local governmental provision relating to the care and control of animals.

(4) The unaltered dog has been adjudicated by a court or an agency of appropriate jurisdiction to be potentially dangerous, dangerous, or vicious, or to be a nuisance within the meaning of the state or local law.

(5) Any unaltered dog license held by the applicant has been revoked.

(6) The license application is discovered to contain a material misrepresentation or omission of fact.

~~(d)~~

(c) The licensing agency shall utilize its existing procedures for any appeal of a denial or revocation of an unaltered dog license, which appeal procedure may include written notice of the denial or revocation and a reasonable opportunity for the owner or custodian to respond.

~~(e)~~

(d) An owner or custodian who offers any unaltered dog for sale, trade, or adoption at ~~the age of four months~~ *four months of age or older* or the age required by the licensing agency shall be required to include a valid unaltered dog license number with the offer of sale, trade, or adoption, or shall otherwise state and establish compliance with this section. The unaltered dog's license number, and any existing microchip number for the dog, shall appear on the document transferring ownership of the dog to the new owner.

~~(f) An owner or custodian who offers any unaltered cat for sale, trade, or adoption shall notify the licensing agency, if the jurisdiction requires the licensing of cats, of the name and address of the transferee within 10 days after the transfer. Any existing microchip number for the cat shall appear on a document transferring ownership of the cat to the new owner.~~

~~(g)~~

(e) (1) An administrative citation, infraction, or other authorized penalty may be imposed upon an owner or custodian of an unaltered dog ~~or cat~~ for a violation of this section only if the owner or custodian is concurrently cited for another violation under state or local law pertaining to the obligations of a person owning or ~~possessing a dog or cat, including, but not limited to, the following:~~

~~(A) Failure to possess a current canine rabies vaccination of the subject dog.~~

~~(B) Permitting the subject dog or cat to roam at large.~~

~~(C) Failure to license the subject dog.~~
~~(D) Leash law violations.~~
~~(E) Kennel or cattery permit violations.~~
~~(F) Tethering violations.~~
~~(G) Maintaining a dog or cat in unhealthy or unsanitary conditions.~~
~~(H) Failure to provide adequate care for the subject dog or cat in violation of cruelty to animal provisions.~~
~~(I) Rabies quarantine violations for the subject dog.~~
~~(J) Operating a business involving the subject dog or cat without a license or state tax ID number.~~
~~(K) Fighting dog activity in violation of Section 597.5 of the Penal Code.~~
~~(L) Unlawfully leaving animals unattended in a motor vehicle in violation of Section 597.7 of the Penal Code.~~
~~(M) Failure to comply with local jurisdiction requirements for the keeping of a dog that has been adjudicated by a court or an agency of appropriate jurisdiction to be potentially dangerous, dangerous, or vicious.~~ *possessing a dog, for one or more of the following:*

(A) Permitting the subject dog to roam at large.

(B) Failure to provide adequate care for the subject dog in violation of animal cruelty provisions.

(C) Rabies quarantine violations for the subject dog.

(D) Fighting dog activity in violation of Section 597.5 of the Penal Code.

(E) Failure to comply with the local jurisdiction's requirements for the keeping of a dog that has been adjudicated by a court or an agency of appropriate jurisdiction to be potentially dangerous, dangerous, or vicious.

(2) Any owner or custodian of an unaltered dog ~~or cat~~ who is found to be subject to a penalty under paragraph (1) shall be required to spay or neuter the unaltered animal in accordance with this section. The licensing agency shall utilize its existing procedures for any appeal of this requirement.

(3) At the time a citation is issued pursuant to paragraph (1) or (2), the licensing agency may provide the owner or custodian information as to the availability of spaying and neutering services for free or at a reduced cost.

~~(h)~~

(f) If an unlicensed unaltered dog ~~or cat~~ is impounded pursuant to state or local law, in addition to satisfying applicable requirements for the release of the animal, including, but not limited to, payment of impound fees pursuant to this section, the owner or custodian shall also do one of the following:

(1) Provide written proof of the dog's ~~or cat's~~ prior sterilization, if conditions cannot or do not make this assessment obvious to the licensing agency personnel.

(2) Have the dog ~~or cat~~ spayed or neutered by a veterinarian associated with the licensing agency at the expense of the owner or custodian. That expense may include additional fees due to any extraordinary care required.

(3) Arrange to have the dog ~~or cat~~ spayed or neutered by another veterinarian licensed in this state.

(4) At the discretion of the licensing agency, the dog ~~or cat~~ may be released to the owner or custodian if he or she pays a refundable deposit consistent with existing practices and procedures, or signs a statement under penalty of perjury representing that the dog ~~or cat~~ will be spayed or neutered and that he or she will submit a statement ~~within~~ *by the deadline set by the licensing agency, but in no case less than* 10 days ~~of~~ *after* the release, signed by the veterinarian, confirming that the dog ~~or cat~~ has been spayed or neutered or is incapable of breeding, or confirming that the veterinarian has scheduled the spaying or neutering operation within a reasonable time.

(5) Demonstrate that he or she is in compliance with this section.

~~(i)~~

(g) (1) The owner or custodian of the unaltered dog ~~or cat~~ shall be responsible for the established costs of impoundment, which shall include daily board costs, vaccination, medication, and any other diagnostic or therapeutic applications as required by this section.

(2) The costs of impoundment shall be a lien on the dog ~~or cat~~, and the unaltered animal shall not be returned to its owner or custodian until the costs are paid or payment arrangements have been made.

(3) If the owner or custodian of an impounded unaltered animal does not pay the lien against it in full or make payment arrangements within a reasonable time consistent with the licensing

agency's existing holding policies, the animal shall be deemed abandoned to the licensing agency in accordance with this section.

~~(j)~~

(h) All costs and fines collected under this section and the fees collected under subdivision ~~(i)~~ *(g)* shall be paid to the licensing agency for the purpose of defraying the cost of the implementation and enforcement of this section.

~~(k)~~

(i) Nothing in this section shall prohibit a local jurisdiction from enforcing or enacting local measures that require the spaying or neutering of all dogs ~~and cats~~, and *this section* shall not prohibit a local jurisdiction from enacting or enforcing other local measures pertaining to the obligations of a person owning or possessing a ~~dog or cat.~~ *dog.*

~~(l)~~

(j) For the purposes of this section, the following terms have the following meanings:

(1) "Licensing agency" means the municipal city or county animal control agency or other entity responsible for enforcing laws relating to animals.

(2) "Custodian" means any person who undertakes the personal care and control of a dog ~~or cat~~, or any person who intentionally provides care, security, or sustenance for a dog ~~or cat~~ on the person's property for any period exceeding 30 days. "Custodian" does not include a licensing agency.

SEC. 2. Section 31751.4 is added to the Food and Agricultural Code, to read:

31751.4. (a) (1) It is unlawful for any person who owns, keeps, or harbors any unspayed or unaltered cat six months of age or older to allow or permit that unspayed or unaltered cat to remain outdoors.

(2) An owner or custodian of an unaltered cat shall have the animal spayed or neutered, or provide a certificate of sterility.

(3) This subdivision shall not apply to a cat with a high likelihood, due to age or infirmity, of suffering serious bodily harm or death if spayed or neutered. The owner or custodian shall obtain written confirmation of this fact from a veterinarian licensed in this state. If the cat is able to be spayed or neutered at a later date, that date shall be stated in the written confirmation.

(b) An owner or custodian who offers any unaltered cat for sale, trade, or adoption shall notify the licensing agency, if the jurisdiction requires the licensing of cats, of the name and address of the transferee within 10 days after the transfer. Any existing microchip number for the cat shall appear on a document transferring ownership of the cat to the new owner.

(c) (1) An administrative citation, infraction, or other authorized penalty may be imposed upon an owner or custodian of an unaltered cat for a violation of this section only if the owner or custodian is concurrently cited for another violation under state or local law pertaining to the obligations of a person owning or possessing a cat, for either or both of the following:

(A) Permitting the subject cat to roam at large.

(B) Failure to provide adequate care for the subject cat in violation of animal cruelty provisions.

(2) Any owner or custodian of an unaltered cat who is found to be subject to a penalty under paragraph (1) shall be required to spay or neuter the unaltered animal in accordance with this section. The licensing agency shall utilize its existing procedures for any appeal of this requirement.

(3) At the time at which a citation is issued pursuant to paragraph (1) or (2), the licensing agency may provide to the owner or custodian information as to the availability of spaying and neutering services for free or at a reduced cost.

(d) If an unlicensed, unaltered cat is impounded pursuant to state or local law, in addition to satisfying applicable requirements for the release of the animal, including, but not limited to, payment of impound fees pursuant to this section, the owner or custodian shall also do one of the following:

(1) Provide written proof of the cat's prior sterilization, if conditions cannot or do not make this assessment obvious to the licensing agency personnel.

(2) Have the cat spayed or neutered by a veterinarian associated with the licensing agency at the expense of the owner or custodian. That expense may include additional fees due to any extraordinary care required.

(3) Arrange to have the cat spayed or neutered by another veterinarian licensed in this state.

(4) At the discretion of the licensing agency, the cat may be released to the owner or custodian if he or she pays a refundable

deposit consistent with existing practices and procedures, or signs a statement under penalty of perjury representing that the cat will be spayed or neutered and that he or she will submit a statement by the deadline set by the licensing agency, but in no case less than 10 days after the release, signed by the veterinarian, confirming that the cat has been spayed or neutered or is incapable of breeding, or confirming that the veterinarian has scheduled the spaying or neutering operation within a reasonable time.

(5) Demonstrate that he or she is in compliance with this section.

(e) (1) The owner or custodian of the unaltered cat shall be responsible for the established costs of impoundment, which shall include daily board costs, vaccination, medication, and any other diagnostic or therapeutic applications as required by this section.

(2) The costs of impoundment shall be a lien on the cat, and the unaltered animal shall not be returned to its owner or custodian until the costs are paid or payment arrangements have been made.

(3) If the owner or custodian of an impounded unaltered animal does not pay the lien against it in full or make payment arrangements within a reasonable time consistent with the licensing agency's existing holding policies, the animal shall be deemed abandoned to the licensing agency in accordance with this section.

(f) All costs and fines collected under this section and the fees collected under subdivision (e) shall be paid to the licensing agency for the purpose of defraying the cost of the implementation and enforcement of this section.

(g) Nothing in this section shall prohibit a local jurisdiction from enforcing or enacting local measures that require the spaying or neutering of all cats, and this section shall not prohibit a local jurisdiction from enacting or enforcing other local measures pertaining to the obligations of a person owning or possessing a cat.

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Custodian" means any person who undertakes the personal care and control of a cat, or any person who intentionally provides care, security, or sustenance for a cat on the person's property for any period exceeding 30 days. "Custodian" does not include a licensing agency.

1 *(2) "Licensing agency" means the municipal city or county*
2 *animal control agency or other entity responsible for enforcing*
3 *laws relating to animals.*
4 ~~SEC. 2.~~
5 *SEC. 3.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution for certain
7 costs that may be incurred by a local agency or school district
8 because, in that regard, this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty for a crime
10 or infraction, within the meaning of Section 17556 of the
11 Government Code, or changes the definition of a crime within the
12 meaning of Section 6 of Article XIII B of the California
13 Constitution.
14 However, if the Commission on State Mandates determines that
15 this act contains other costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

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AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 241

Introduced by Assembly Member Nava

February 10, 2009

An act to add Section 597.8 to the Penal Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

AB 241, as amended, Nava. Dogs and cats: ~~breeders.~~ *breeding for sale.*

Existing law ~~specifies that certain conduct~~ *proscribes specified acts* against animals ~~is criminal~~ *and imposes criminal penalties for a violation.*

This bill would make it a misdemeanor for ~~an individual or business that buys or sells dogs or cats~~ *any person* to have more than a combined total of 50 *unsterilized* dogs and cats ~~with intact sexual organs~~ *for breeding or raising them for sale as pets*, as specified. The bill would authorize certain officers ~~to investigate a violation of that provision, as provided, and~~ to lawfully take possession of an animal kept in violation of that provision, as specified.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Responsible Breeder Act of 2009.

SEC. 2. Section 597.8 is added to the Penal Code, to read:

597.8. (a) No ~~individual or business that buys or sells dogs or cats to the public or at wholesale~~ *person* shall own, possess, control, or otherwise have charge or custody of more than a combined total of 50 *unsterilized* dogs and cats ~~with intact sexual organs. An individual or business~~ *at any time used for the purpose of breeding or raising dogs or cats for sale as pets, or for the purpose of producing offspring from dogs or cats for sale as pets. Any person* that must reduce the number of ~~intact~~ *unsterilized* dogs or cats in order to comply with this section shall spay or neuter the excess animals or sell, transfer, or relinquish the excess animals *within 30 days following notification by authorities specified in subdivision (b)*. If necessary, any euthanasia procedures shall be performed by a *California* licensed veterinarian.

~~(b) A peace officer, humane society officer, or animal control officer may, upon receiving a complaint or upon his or her own motion, investigate a violation of subdivision (a). The investigation may include (1) the inspection of the books and records of an individual or business that buys or sells dogs or cats to the public or at wholesale and (2) the inspection of any place where dogs or cats are bred or maintained. In conducting the inspection, the officer may, during daytime operating hours, enter any premises where animals may be bred or maintained. If the place or premises include a home or residence, the officer shall obtain the consent of the owner, tenant, or resident before entering the home or residence. An individual or business that is the subject of an investigation under this section shall, upon request of the officer, provide assistance to the officer in making an inspection authorized by this section.~~

~~(c)~~

(b) A peace officer, humane ~~society~~ officer, or animal control officer may lawfully take possession of an animal kept in violation of this section when necessary to protect the health or safety of the animal or the health or safety of others. An officer that seizes an animal under this subdivision shall comply with *paragraphs (1) to (4), inclusive, of* subdivision (f) of Section 597.1.

(d) A person who violates this section is guilty of a misdemeanor.

(e) This section does not apply to any of the following:

(1) A publicly operated animal control facility or *duly incorporated private* animal shelter.

(2) A veterinary facility.

~~(3) A retail pet store.~~

~~(4)~~

(3) A research ~~institution~~ *facility, as defined in Section 2132(e) of Title 7 of the United States Code.*

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 242

Introduced by Assembly Member Nava
(Coauthor: Assembly Member Yamada)
(Coauthors: Senators Cox, DeSaulnier, Florez, and Strickland)

February 10, 2009

An act to amend Section 597.5 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 242, as amended, Nava. Dog fighting.

Existing law provides that the crime of dog fighting is a felony or a misdemeanor, punishable as specified. Existing law provides that the crime of being a spectator at a dog fight is a misdemeanor *punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not to exceed $1,000, or by both that imprisonment and fine.*

This bill would increase the penalties for these crimes by providing instead that the crime of dog fighting is a felony punishable by imprisonment in ~~a~~ *the* state prison for 16 months or 2 or 3 years and by ~~a specified~~ fine *not to exceed $50,000*, and the crime of being a spectator at a dog fight is ~~punishable as~~ a misdemeanor ~~or a felony, as specified~~ *punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed $5,000, or by both that imprisonment and fine.* Because ~~certain~~ *it would impose local* prosecution *and incarceration* costs ~~are added at the local level when a misdemeanor is made a felony,~~ this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.5 of the Penal Code is amended to
2 read:
3 597.5. (a) Any person who does any of the following is guilty
4 of a felony and is punishable by imprisonment in a state prison for
5 16 months, or two or three years, and by a fine not to exceed fifty
6 thousand dollars ($50,000):
7 (1) Owns, possesses, keeps, or trains any dog, with the intent
8 that the dog shall be engaged in an exhibition of fighting with
9 another dog.
10 (2) For amusement or gain, causes any dog to fight with another
11 dog, or causes any dogs to injure each other.
12 (3) Permits any act in violation of paragraph (1) or (2) to be
13 done on any premises under his or her charge or control, or aids
14 or abets that act.
15 (b) Any person who is knowingly present, as a spectator, at any
16 place, building, or tenement where preparations are being made
17 for an exhibition of the fighting of dogs, with the intent to be
18 present at those preparations, or is knowingly present at that
19 exhibition or at any other fighting or injuring as described in
20 paragraph (2) of subdivision (a), with the intent to be present at
21 that exhibition, fighting, or injuring, is guilty of an offense
22 punishable by ~~imprisonment in the state prison for 16 months, or~~
23 ~~two or three years, or by~~ imprisonment in a county jail not to
24 exceed one year, or by a fine not to exceed ~~one thousand dollars~~
25 ~~($1,000)~~ *five thousand dollars ($5,000)*, or by both that
26 imprisonment and fine.
27 (c) Nothing in this section shall prohibit any of the following:
28 (1) The use of dogs in the management of livestock, as defined
29 by Section 14205 of the Food and Agricultural Code, by the owner

of the livestock or his or her employees or agents or other persons in lawful custody thereof.

(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections 3286, 3509, 3510, 4002, and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 243

Introduced by Assembly Member Nava
(Coauthors: Assembly Members Lieu and Portantino)
(Coauthors: Senators DeSaulnier and Florez)

February 10, 2009

An act to amend Section 597.1 of, and to add Section 597.8 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, as amended, Nava. Animal abuse: penalties.

Existing law provides that upon the conviction of a person charged with animal abuse, as specified, the court is authorized to ~~enjoin~~ *prohibit* the defendant, *as a condition of probation,* from owning, possessing, caring for, or having any contact with, animals, as specified.

This bill ~~would instead provide that upon the conviction of a person charged with animal abuse, as specified, the court shall be required to enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for specified periods of time. The bill would further provide that any violation of an order shall be treated and punished as a criminal contempt of court or as a misdemeanor.~~ *would instead make it a misdemeanor, punishable as specified, for any person convicted for animal abuse to own, possess, maintain, have custody of, reside with, or care for any animal within a specified period after conviction, and would make relating changes.* By ~~revising the penalties for an existing~~ *creating a new* crime and by increasing the duties of local humane officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:
3 597.1. (a) Every owner, driver, or keeper of any animal who
4 permits the animal to be in any building, enclosure, lane, street,
5 square, or lot of any city, county, city and county, or judicial district
6 without proper care and attention is guilty of a misdemeanor. Any
7 peace officer, humane society officer, or animal control officer
8 shall take possession of the stray or abandoned animal and shall
9 provide care and treatment for the animal until the animal is
10 deemed to be in suitable condition to be returned to the owner.
11 When the officer has reasonable grounds to believe that very
12 prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer shall
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). The cost of caring for and treating any animal
17 properly seized under this subdivision shall constitute a lien on
18 the animal and the animal shall not be returned to its owner until
19 the charges are paid, if the seizure is upheld pursuant to this section.
20 (b) Every sick, disabled, infirm, or crippled animal, except a
21 dog or cat, that is abandoned in any city, county, city and county,
22 or judicial district may be killed by the officer if, after a reasonable
23 search, no owner of the animal can be found. It shall be the duty
24 of all peace officers, humane society officers, and animal control
25 officers to cause the animal to be killed or rehabilitated and placed
26 in a suitable home on information that the animal is stray or

abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) Any peace officer, humane society officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The cost of caring for and treating

any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to

conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(h) If any animal is properly seized under this section, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

(i) If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding officer. A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(j) No animal properly seized under this section shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can

demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the necessary care.

(k) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

The court may also order the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the release of seized or impounded animals upon a showing of proof of ownership. Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish, seized or impounded pursuant to any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(*l*) It shall be the duty of all peace officers, humane society officers, and animal control officers to use all currently acceptable

methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

~~SEC. 2. Section 597.8 is added to the Penal Code, to read:~~

~~597.8. (a) (1) Upon a first misdemeanor conviction of a person for a violation of subdivision (a) or (b) of Section 597, or Section 597a, 597b, 597h, 597j, 597s, or 597.1, the court shall, in addition to any other sentence or penalty imposed and as a condition of probation or term of release from custody, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of not less than three years nor more than seven years, commencing on the date of sentencing or release from custody, whichever is later.~~

~~(2) Upon a second or subsequent misdemeanor conviction of a person for a violation of subdivision (a) or (b) of Section 597, or Section 597a, 597b, 597h, 597j, 597s, or 597.1, the court shall, in addition to any other sentence or penalty imposed and as a condition of probation or term of release from custody, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of not less than five years nor more than 10 years, commencing on the date of sentencing or release from custody, whichever is later.~~

~~(b) (1) Upon a first felony conviction of a person for a violation of subdivision (a) or (b) of Section 597, or Section 597b or 597.5, the court shall, in addition to any other sentence or penalty imposed and as a condition of probation or term of release from custody, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of not less than five years nor more than 15 years, commencing on the date of sentencing or release from custody, whichever is later.~~

~~(2) Upon a second or subsequent felony conviction of a person for a violation of subdivision (a) or (b) of Section 597, or Section 597b or 597.5, the court shall, in addition to any other sentence or penalty imposed and as a condition of probation or term of release from custody, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of 20 years or more, commencing on the date of sentencing or release from custody, whichever is later.~~

~~(c) (1) Any violation of an order issued under this section shall be treated and punished as a criminal contempt of court, as specified in Section 166, or as a misdemeanor.~~

~~(2) Any violation of an order issued under this section shall result in the forfeiture of any animal unlawfully owned or possessed by the defendant.~~

SEC. 2. Section 597.8 is added to the Penal Code, to read:

597.8. (a) Any person who has been convicted of a misdemeanor violation of subdivision (a) or (b) of Section 597, or Section 597a, 597b, 597h, 597j, 597s, or 597.1, and who, within five years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any person who has been convicted of a felony violation of subdivision (a) or (b) of Section 597, or Section 597b or 597.5, and who, within 10 years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O