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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMERICAN CANINE FOUNDATION,

No. C-06-4713 MMC

Plaintiff,

**ORDER GRANTING COUNTY OF LOS ANGELES' MOTION TO DISMISS**

v.

BEN SUN, D.V.M., the Public Health Veterinarian for the State of California et al.,

Defendants

Before the Court is the motion by defendant County of Los Angeles ("County"), seeking dismissal of the claims asserted against it, for lack of standing and failure to state a claim, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff American Canine Foundation ("ACF") has filed opposition to the motion; the City has filed a reply. For the reasons set forth below, the Court rules as follows.

**BACKGROUND**

In the instant action, ACF challenges, *inter alia*, the legality of Los Angeles Ordinance No. 2006-0029 ("Ordinance"),<sup>1</sup> codified at Los Angeles County Code section

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<sup>1</sup>ACF also challenged the legality of California Senate Bill 861 ("SB861") and San Francisco Ordinance No. 268-05. The Court previously dismissed all causes of action relating to SB861 and to Ordinance No. 268-05. (See Order Granting State Defendants' Motion to Dismiss Second Amended Complaint, filed February 16, 2007, and Order Granting Defendant City and County of San Francisco's Motion to Dismiss Second Amended Complaint, filed March 21, 2007.)

1 10.08.155 et seq., which establishes a mandatory spay and neuter program for dogs and  
2 requires dogs over the age of four months to be implanted with an identifying microchip,  
3 subject to certain exceptions. See Second Amended Complaint (“SAC”) ¶ 1; see also  
4 Request for Judicial Notice (“RJN”) Ex. 1 (Ordinance). In particular, section 10.20.350  
5 provides: “No person may own, keep, or harbor a dog over the age of four months in  
6 violation of this section. An owner or custodian of an unaltered dog must have the dog  
7 spayed or neutered or obtain an unaltered dog license in accordance with Section  
8 10.20.355.” See Los Angeles County Code § 10.20.350. An owner or custodian of an  
9 unaltered dog over the age of four months may obtain an unaltered dog license if the dog is  
10 one of the following: (1) a competition dog, as defined in section 10.08.095; (2) a dog used  
11 by a law enforcement agency for law enforcement purposes; (3) a qualified service or  
12 assistance dog, as defined in section 10.20.090; or (4) a dog that cannot be spayed or  
13 neutered without a high likelihood of suffering serious bodily harm or death due to age or  
14 infirmity, as defined in section 10.20.350(B). See Los Angeles County Code § 10.20.355.

15 Plaintiff ACF contends the Ordinance: (1) is preempted by the federal Animal  
16 Welfare Act (“AWA”), (see SAC ¶¶ 28-30); (2) violates the federal and state constitutional  
17 rights to procedural due process, (see id. at ¶¶ 31-35); (3) violates federal and state  
18 constitutional rights to substantive due process and equal protection, (see id. at ¶¶ 36-38);  
19 (4) is an ex post facto law in violation of Article I, sections 9 and 10, of the United States  
20 Constitution, (see id. at ¶¶ 39-42); (5) violates the Takings Clause of the Fifth Amendment  
21 to the United States Constitution, (see id. at ¶¶ 43-46); (6) adversely affects interstate  
22 commerce in violation of the Commerce Clause of the United States Constitution, (see id.  
23 at ¶¶ 47-52); (7) violates “freedom of contract” by “infring[ing] on the business of selling  
24 canines in California and thus to the rest of the United States,” (see id. at ¶¶ 53-54); (8) is  
25 “unconstitutionally vague,” (see id. at ¶ 55); (9) violates the right to freedom of association  
26 under the First Amendment to the United States Constitution, (see id. at ¶ 56); and (10)  
27 violates the California Constitution, (see id. at ¶¶ 57-63).

28

## LEGAL STANDARD

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2 Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory  
3 or the absence of sufficient facts alleged under a cognizable legal theory. See Balistreri v.  
4 Pacifica Police Dep't, 901 F. 2d 696, 699 (9th Cir. 1990). Rule 8(a)(2) of the Federal Rules  
5 of Civil Procedure requires only “a short and plain statement of the claim showing that the  
6 pleader is entitled to relief.” See Fed. R. Civ. P. 8(a)(2). Consequently, “a complaint  
7 attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations.”  
8 See Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007). Nonetheless, “a  
9 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than  
10 labels and conclusions, and a formulaic recitation of the elements of a cause of action will  
11 not do.” See id. at 1965. “Factual allegations must be enough to raise a right to relief  
12 above the speculative level[.]” Id.

13 Generally, a district court, in ruling on a Rule 12(b)(6) motion, may not consider any  
14 material beyond the complaint. See Hal Roach Studios, Inc. v. Richard Feiner & Co., 896  
15 F.2d 1542, 1555 n. 19 (9th Cir. 1990). Documents whose contents are alleged in the  
16 complaint, and whose authenticity no party questions, but which are not physically attached  
17 to the pleading may be considered, however. See Branch v. Tunnell, 14 F. 3d 449, 454  
18 (9th Cir. 1994). In addition, a district court may consider any document “the authenticity of  
19 which is not contested, and upon which the plaintiff’s complaint necessarily relies,”  
20 regardless of whether the document is referred to in the complaint. See Parrino v. FHP,  
21 Inc., 146 F. 3d 699, 706 (9th Cir. 1998). Finally, the Court may consider matters that are  
22 subject to judicial notice. See Mack v. South Bay Beer Distributors, Inc., 798 F. 2d 1279,  
23 1282 (9th Cir. 1986).

24 In analyzing a motion to dismiss, a district court must accept as true all material  
25 allegations in the complaint, and construe them in the light most favorable to the  
26 nonmoving party. See NL Industries, Inc. v. Kaplan, 792 F. 2d 896, 898 (9th Cir. 1986).  
27 Nevertheless, a court may disregard factual allegations if such allegations are contradicted  
28 by the facts established by reference to exhibits attached to the complaint. See Durning v.

1 First Boston Corp., 815 F. 2d 1265, 1267 (9th Cir. 1987). Further, conclusory allegations,  
2 unsupported by the facts alleged, need not be accepted as true. See Holden v. Hagopian,  
3 978 F. 2d 1115, 1121 (9th Cir. 1992). Courts “are not bound to accept as true a legal  
4 conclusion couched as a factual allegation.” See Twombly, 127 S. Ct. at 1965 (internal  
5 quotation and citation omitted).

## 6 DISCUSSION

7 The County moves to dismiss all causes of action asserted against it for lack of  
8 standing and failure to state a claim.

### 9 A. Standing

10 The County’s first argument in support of dismissal of all causes of action asserted  
11 against it is that ACF has failed to adequately allege standing. The burden is on ACF, the  
12 plaintiff, “clearly to allege facts demonstrating that [it] is a proper party to invoke judicial  
13 resolution of the dispute.” See United States v. Hays, 515 U.S. 737, 743 (1995) (internal  
14 quotation and citation omitted).

15 An association, such as ACF, “has standing to bring suit on behalf of its members  
16 when: (a) its members would otherwise have standing to sue in their own right;<sup>2</sup> (b) the  
17 interests it seeks to protect are germane to the organization’s purpose; and (c) neither the  
18 claim asserted nor the relief requested requires the participation of individual members in  
19 the lawsuit.” See Hunt, 432 U.S. at 343. The first two elements are constitutionally  
20 required, while the third element is merely prudential in nature. See United Food and  
21 Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 555-56 (1996).

22 The County contends ACF has failed to adequately plead any of the three elements  
23 of the above-referenced test.

#### 24 a. First Element

25 An ACF member has standing to sue in his own right if (1) he has suffered an “injury

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27 <sup>2</sup> “The association must allege that its members, or any one of them, are suffering  
28 immediate or threatened injury as a result of the challenged action[.]” See Hunt v.  
Washington State Apple Advertising Commission, 432 U.S. 333, 342 (1977) (internal  
quotation and citation omitted).

1 in fact” that is “concrete and particularized,” and “actual or imminent, not conjectural or  
2 hypothetical,” (2) the injury is traceable to the challenged action of the defendant and not  
3 the result of the independent action of a third party not before the Court, and (3) it is likely  
4 that the injury will be redressed by a favorable decision. See Lujan v. Defenders of Wildlife,  
5 504 U.S. 555, 560 (1992) (internal quotation and citation omitted).

6 The County contends ACF’s allegations are insufficient to allege standing, as ACF  
7 “has not identified a specific member who is located within an area to which the ordinance  
8 applies; that is, within the unincorporated area of Los Angeles County, or in any contract  
9 city in the County which has adopted the ordinance.” (See Motion at 7.) ACF alleges it “is  
10 an organization based in the State of Washington, and has active members that are  
11 residents in the State of California.” (See SAC ¶ 6.) Although ACF also alleges that it  
12 “already has an affected member in Los Angeles which has been harmed by the law,” (see  
13 SAC ¶ 20), nowhere in its complaint does ACF describe the nature of such “harm,” see,  
14 e.g., Holden v. Hagopian, 978 F.2d at 1121 (holding conclusory allegations, unsupported  
15 by the facts alleged, need not be accepted as true), let alone describe an injury that is  
16 “concrete and particularized,” see Lujan, 504 U.S. at 560.

17 Accordingly, ACF has not established the first element of the test for associational  
18 standing.

19 **b. Second Element**

20 The County further argues that ACF has not adequately demonstrated the second  
21 element of the test for associational standing, namely, that the “interests it seeks to protect  
22 are germane to the organization’s purpose.” See Hunt, 432 U.S. at 343. In particular, the  
23 County asserts that ACF “fails to define the purposes of its organization, and, therefore,  
24 has not alleged that the interests it seeks to protect are germane to the organization’s  
25 purpose.” (See Motion at 7.)

26 As the County notes, ACF does not expressly define the organization’s purpose in  
27 its complaint. ACF alleges, in conclusory fashion, that it “is an interested party to these  
28 proceedings due to the legal issues presented in this action involving its members’ rights

1 and the protection of Constitutional rights and property.” (See SAC ¶ 6.) Although ACF  
2 further alleges that prior to the enactment of SB 861 as state law, ACF, along with a  
3 number of other organizations and individuals, took a position “in staunch opposition to SB  
4 861 and any other laws mandating spay and neuter for canines at an early age,” (see SAC  
5 ¶ 24), ACF has not alleged such activity or the interests it seeks to protect herein, are  
6 germane to its purpose.

7 Accordingly, ACF has not established the second element of the test for  
8 associational standing.

### 9 c. Third Element

10 The County further argues that ACF has failed to adequately allege the third element  
11 of the test for associational standing, namely, that “neither the claim asserted nor the relief  
12 requested requires the participation of individual members in the lawsuit.” See Hunt, 432  
13 U.S. at 343. In particular, the County argues that “the member(s) would be required to  
14 participate, at a minimum, in discovery, in order to confirm or deny alleged losses of  
15 property rights under the ten claims asserted.” (See Motion at 7.)

16 The County provides no authority for such argument, nor does it explain why such  
17 an individualized inquiry is necessary to adjudicate ACF’s claims for injunctive relief. As  
18 the Supreme Court has observed, “whether an association has standing to invoke the  
19 court’s remedial powers on behalf of its members depends in substantial measure on the  
20 nature of the relief sought.” See Warth, 422 U.S. at 515. Where an “association seeks a  
21 declaration, injunction, or some other form of prospective relief, it can reasonably be  
22 supposed that the remedy, if granted, would inure to the benefit of those members of the  
23 association actually injured.” See id. Thus, “individual participation is not normally  
24 necessary when an association seeks prospective or injunctive relief for its members” but is  
25 “required in an action for damages to an association’s members.” See United Food, 517  
26 U.S. at 546; see also Columbia Basin Apartment Association v. City of Pasco, 268 F.3d  
27 791, 799 (9th Cir. 2001) (holding injunctive and declaratory relief “do not require  
28 individualized proof”; finding third prong of Hunt test satisfied where plaintiff “sought only

1 injunctive and declaratory relief”); Associated General Contractors v. Metropolitan Water  
2 District of Southern California, 159 F.3d 1178, 1181 (9th Cir. 1998) (“Individualized proof  
3 from the members is not needed where, as here, declaratory and injunctive relief is sought  
4 rather than monetary damages.”). Here, plaintiff seeks declaratory and injunctive relief and  
5 does not assert any claims for damages.

6 Accordingly, the County has not demonstrated ACF has failed to establish the third  
7 element of the test for associational standing.

#### 8 **d. Conclusion: Standing**

9 For the reasons stated above, ACF has failed to establish the first and second  
10 elements of the test for associational standing, and, accordingly, the County’s motion to  
11 dismiss for lack of standing will be GRANTED.<sup>3</sup>

#### 12 **B. AWA Preemption**

13 As noted, the Ordinance permits ownership of an unaltered dog over the age of four  
14 months if, inter alia, the owner has obtained an unaltered dog license. See Los Angeles  
15 County Code § 10.20.350. In its First Claim for Relief, ACF alleges that the AWA preempts  
16 the Ordinance because “[t]he AWA rules allow for the breeding of minimal numbers of dogs  
17 without requiring licensing[.]” (See SAC ¶ 30.) The County moves to dismiss the first  
18 cause of action on the ground that the Ordinance is not preempted by the AWA. (See  
19 Motion at 8.)

20 The purposes of the AWA are: “(1) to insure that animals intended for use . . . as  
21 pets are provided humane care and treatment; (2) to assure the humane treatment of  
22 animals during transportation in commerce; and (3) to protect the owners of animals from  
23 the theft of their animals by preventing the sale or use of animals which have been stolen.”  
24 See 7 U.S.C. § 2131.

25 ACF has cited no authority suggesting that Congress intended the AWA to preclude  
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27 <sup>3</sup> Ordinarily, the Court would afford ACF leave to amend to remedy the above-  
28 referenced deficiencies. For the reasons stated infra, however, granting leave to amend  
would be futile.

1 state and local regulation of animals. Indeed, the statute itself expressly provides for such  
2 regulation. See 7 U.S.C. § 2143(a)(8) (“Paragraph (1) shall not prohibit any State (or a  
3 political subdivision of such State) from promulgating standards in addition to those  
4 standards promulgated . . . under paragraph (1).”).<sup>4</sup> Furthermore, the few cases that have  
5 considered whether the AWA preempts local regulation of animal ownership, breeding, or  
6 sale, have found no preemption. See, e.g., DeHart v. Town of Austin, 39 F.3d 718, 722  
7 (7th Cir. 1994) (rejecting AWA preemption challenge to local ordinance barring ownership  
8 of dangerous animals; finding “it is clear that the Animal Welfare Act does not evince an  
9 intent to preempt state or local regulation of animals or public welfare” and “expressly  
10 contemplates state and local regulation of animals”); Kerr v. Kimmel, 740 F. Supp. 1525,  
11 1529-30 (D. Kan. 1990) (rejecting AWA preemption challenge to state licensing scheme for  
12 sale and breeding of dogs; noting “Congress anticipated that states would remain active in  
13 this area of traditional state interest.”). The Court finds the reasoning of such cases  
14 persuasive.

15 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
16 to the extent it is based on AWA preemption.

### 17 **C. Procedural Due Process**

18 In its Second Claim for Relief, ACF alleges the Ordinance violates the right to  
19 procedural due process guaranteed by the Fourteenth Amendment to the United States  
20 Constitution, because it “allow[s] for citizens to be subjected to criminal sanctions and loss  
21 of their property (often beloved family dogs) without a hearing to determine if a dog is  
22 dangerous or before seizing the dog or a true right of appeal.” (See SAC ¶ 33.)

23 In its motion, the County argues that the reason the Ordinance “does not allow a  
24 hearing to determine if a dog is dangerous” is because “the issue is not dangerous dogs, it  
25 is unsterilized dogs.” (See Motion at 10.) As the County points out, the Ordinance requires  
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27 <sup>4</sup> Paragraph (1) provides for the promulgation of standards to govern the humane  
28 handling, care, treatment, and transportation of animals by dealers, research facilities, and  
exhibitors. See 7 U.S.C. § 2143(a)(1).



1 that any dog over the age of four months be microchipped and spayed or neutered, unless  
2 the dog is eligible for an unaltered dog license. (See id.; see also RJN Ex. 1, at 18.)  
3 Moreover, the Ordinance provides for notice of intent to deny or revoke, as well as a  
4 hearing for purposes of appealing the denial or revocation of an unaltered dog license.  
5 (See RJN Ex. 1, at 21-22.)

6 “The fundamental requirement of due process is the opportunity to be heard at a  
7 meaningful time and in a meaningful manner.” See Mathew v. Eldridge, 424 U.S. 319, 333  
8 (1976) (internal quotation and citation omitted). In considering whether an enforcement  
9 procedure complies with due process, courts look to several factors:

10 First, the private interest that will be affected by the official actions; second, the risk  
11 of an erroneous deprivation of such interest through the procedures used, and the  
12 probable value, if any, of additional or substitute procedural safeguards; and finally,  
13 the Government’s interest, including the function involved and the fiscal and  
14 administrative burdens that the additional or substitute procedural requirement would  
15 entail.

16 See Wilkinson v. Austin, 545 U.S. 209, 224-25 (2005).

17 With respect to the first Wilkinson factor, the “private interest” at issue, see id. at  
18 224, the Supreme Court has observed: “Even if it were assumed that dogs are property in  
19 the fullest sense of the word, they would still be subject to the police power of the state,  
20 and might be destroyed or otherwise dealt with, as in the judgment of the legislature is  
21 necessary for the protection of its citizens.” See Sentell v. New Orleans & C.R. Co., 166  
22 U.S. 698, 703 (1897); see also Nicchia v. People of the State of New York, 254 U.S. 228,  
23 230 (1920) (“Property in dogs is of an imperfect or qualified nature and they may be  
24 subjected to peculiar and drastic police regulations by the state without depriving their  
25 owners of any federal right.”). Consequently, any private interest in the ownership of  
26 unaltered dogs is subject to more limited procedural protections. See, e.g., Wilkinson, 545  
27 U.S. at 225 (holding “procedural protections to which [prisoners] are entitled are more  
28 limited than in cases where the right at stake is the right to be free from confinement at  
all”).

With respect to the second factor, “the risk of an erroneous deprivation,” see id. at

1 224-25, ACF alleges that the Ordinance “will likely result in the killing of family pets,  
2 immediately, if the pet’s owner does not comply with the government’s forced sterilization  
3 order.” (See SAC ¶ 33.) The Ordinance, however, contains no provision pertaining to the  
4 destruction of dogs that are not spayed or neutered. Rather, the penalties specified therein  
5 are (1) “a fine not to exceed \$250” for the first violation; and (2) “imprisonment in the county  
6 jail for a period not to exceed six months or [ ] a fine not to exceed \$1,000 or [ ] both,” for  
7 the second violation. See Los Angeles County Code § 10.20.375. Further, the Ordinance  
8 does not allow for “immediate” action. Rather, it expressly provides for notice and a  
9 hearing for the purposes of appealing the denial or revocation of an unaltered dog license.  
10 (See RJN Ex. 1, at 21-22.)

11 With respect to the third factor, “the Government’s interest,” see Wilkinson, 545 U.S.  
12 at 225, the Supreme Court, as noted, has held that all dogs may “be destroyed or  
13 otherwise dealt with, as in the judgment of the legislature is necessary for the protection of  
14 its citizens.” See Sentell, 166 U.S. at 703. Here, the County enacted the Ordinance in part  
15 to increase public safety, finding, after a public hearing, that “unsterilized dogs are more  
16 likely to stray,” and that “[s]tray dogs can bite or attack people or other animals, cause  
17 traffic accidents, spread disease, damage property and harm the quality of life for residents  
18 in a community.” (See RJN Ex. 1, at 8.)

19 ACF cites no authority even suggesting, much less holding, that in light of the  
20 County’s strong interest in public safety, the lesser property interests of dog owners in their  
21 dogs, and the availability under the Ordinance for notice and a hearing following revocation  
22 or denial of an unaltered dog license, due process requires the provision of additional or  
23 substitute process.

24 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
25 to the extent it is based on denial of procedural due process.

#### 26 **D. Equal Protection**

27 In its Third Claim for Relief, ACF alleges the Ordinance violates the rights to  
28 substantive due process and equal protection under the Fourteenth Amendment to the

1 United States Constitution. Specifically, ACF alleges that the Ordinance “will continue to  
2 bring about arbitrary, unreasonable and discriminatory law enforcement” and “serve[s] no  
3 legitimate government purpose.” (See SAC ¶ 37.) ACF’s claim of arbitrary law  
4 enforcement is directly related to its Eighth Claim for Relief, in which it asserts the  
5 Ordinance is unconstitutionally vague. Accordingly, the Court will consider such argument  
6 in connection with the Eighth Claim for Relief.

7 The Court next turns to ACF’s equal protection claim.<sup>5</sup> “In areas of social and  
8 economic policy, a statutory classification that neither proceeds along suspect lines nor  
9 infringes fundamental constitutional rights must be upheld against equal protection  
10 challenge if there is any reasonably conceivable state of facts that could provide a rational  
11 basis for the classification.” See Federal Communications Commission v. Beach  
12 Communications, Inc., 508 U.S. 307, 313 (1993). “[E]qual protection is not a license for  
13 courts to judge the wisdom, fairness, or logic of legislative choices.” See id. ACF does not  
14 contend the Ordinance’s neutering or spaying requirement involves a suspect classification  
15 or that there is any fundamental constitutional right involved in the neutering or spaying of  
16 dogs. Indeed, as noted, the Supreme Court has held that dogs may “be destroyed or  
17 otherwise dealt with, as in the judgment of the legislature is necessary for the protection of  
18 its citizens.” See Sentell, 166 U.S. at 703; see also Nicchia, 254 U.S. at 230 (holding  
19 “[p]roperty in dogs . . . may be subjected to . . . drastic police regulations”). If “plausible  
20 reasons” exist for the County’s enactment of the Ordinance, the Court’s “inquiry is at an  
21 end.” See Federal Communications Commission, 508 U.S. at 313-14 (internal quotation  
22 and citation omitted). Here, as noted, the County’s stated reasons for enacting the  
23 Ordinance are to increase the safety of its citizens, to reduce animal overpopulation, and to  
24 aid in animal identification and reunification. (See RJN Ex. 1, at 8.) Such reasons  
25 constitute a rational basis for the legislation at issue.

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27 <sup>5</sup> The County does not address ACF’s equal protection claim, other than to state that  
28 the third claim “does not include an allegation relating to equal protection.” (See Motion at  
11.)

1           Accordingly, the County is entitled to dismissal of ACF's second amended complaint  
2 to the extent it is based on denial of equal protection.

3           **E. Ex Post Facto Clause**

4           In its Fourth Claim for Relief, ACF alleges the Ordinance is an ex post facto law in  
5 violation of the federal Constitution because the Ordinance "impose[s] penalties for acts  
6 committed before the law was passed and that were legal at the time, without allowing an  
7 exemption for dogs that were purchased or owned prior to the implementation of these  
8 laws." (See SAC ¶ 42.)

9           Article I, § 10 of the United States Constitution provides that "[n]o State shall enter  
10 into any . . . ex post facto Law[.]" See U.S. Const. Art. I, § 10. An unconstitutional ex post  
11 facto law exists where the law (1) "makes an action done before the passing of the law, and  
12 which was innocent when done, criminal"; (2) "aggravates a crime, or makes it greater than  
13 it was, when committed"; (3) "changes the punishment, and inflicts a greater punishment,  
14 than the law annexed to the crime, when committed"; or (4) "alters the legal rules of  
15 evidence, and receives less, or different, testimony, than the law required at the time of the  
16 commission of the offen[s]e, in order to convict the offender." See Stogner v. California,  
17 539 U.S. 607, 612 (2003) (internal quotation and citation omitted).

18           Here, contrary to ACF's allegation, the Ordinance does not purport to impose  
19 penalties for acts committed before the County passed the law. As the County observes,  
20 "[t]he LA Ordinance does not punish those dog owners or custodians who did not comply  
21 with the law prior to its passage." (See Motion at 13.) Moreover, the Ordinance provides a  
22 grace period to allow additional time for current dog owners and custodians to comply with  
23 the law by having their dogs spayed or neutered or applying for unaltered dog licenses.  
24 (See RJN Ex. 3, at 46.)

25           Accordingly, the County is entitled to dismissal of ACF's second amended complaint  
26 to the extent it is based on a claim that the Ordinance constitutes an ex post facto law.

27           **F. Takings Clause**

28           In its Fifth Claim for Relief, ACF alleges the Ordinance constitutes an unlawful taking

1 in violation of the Fifth Amendment to the United States Constitution, because  
2 “Californians, including those who participate in the purebred dog shows, and hobby  
3 breeders, will be deprived of their property interests if they are forced to neuter or sterilize  
4 their dogs.” (See SAC ¶ 45.) Further, ACF alleges, “[o]nce any dog is surgically altered, its  
5 economic capacity is irreparably lost if it was to be used as breed stock” and “an altered  
6 dog may not be shown in United Kennel Club, American Dog Breeders Association or  
7 American Kennel Club events.” (See SAC ¶ 45.)

8         The Fifth Amendment prohibits governmental “tak[ing]” of private property “for  
9 public use without just compensation.” See U.S. Const. amend. V. “[W]here the  
10 government merely regulates the use of property,” rather than taking title thereto,  
11 “compensation is required only if considerations such as the purpose of the regulation or  
12 the extent to which it deprives the owner of the economic use of the property suggest that  
13 the regulation has unfairly singled out the property owner to bear a burden that should be  
14 borne by the public as a whole.” See Yee v. City of Escondido, 503 U.S. 519, 522-23  
15 (1992). Here, the Ordinance merely “regulates the use” of dogs, in that it requires owners  
16 to spay or neuter their dogs or obtain unaltered dog licenses for them. ACF fails to allege  
17 how either the purpose of the Ordinance, or the extent, if any, to which it deprives dog  
18 owners (breeders or show dog owners) of the economic use of their dogs, unfairly targets  
19 such owners. As the County notes, the Ordinance “does not single out a breed or a  
20 geographical area. All dog owners within the jurisdiction of Los Angeles County . . . are  
21 subject to it.” (See Motion at 15-16.)

22         Further, the Ordinance does not require breeders or show dog owners to sterilize  
23 their dogs. Indeed, the Ordinance expressly provides for the issuance of unaltered dog  
24 licenses for “competition dogs,” (see Motion at 14; see also RJN Ex. 1, at 19), which the  
25 Ordinance defines as:

26             “[A] dog which is used to show, to compete or to breed, which is of a breed  
27 recognized by and registered with the American Kennel Club (AKC), United Kennel  
28 Club (UKC), American Dog Breeders Association (ADBA), or other valid registry  
approved by the department and meets one of the following requirements,” namely,  
competes in a dog show or sporting competition once a year; has earned a

1 conformation, obedience, agility, or other title from a dog registry; or its owner is a  
2 member of a purebred dog breed club.

3 See Los Angeles County Code § 10.08.095.

4 Accordingly, the County is entitled to dismissal of ACF's second amended complaint  
5 to the extent it is based on violation of the Takings Clause.

### 6 **G. Commerce Clause**

7 In its Sixth Claim for Relief, ACF alleges the Ordinance violates the Commerce  
8 Clause of the United States Constitution because the Ordinance "substantially affect[s]  
9 interstate commerce." (See SAC ¶ 49.) In particular, ACF alleges, the Ordinance  
10 "adversely affect[s] the flow of business commerce as it relates to the sale of well-bred  
11 canines originating from California to the rest of the United States" and "substantially  
12 affect[s] interstate and intrastate travel because affected dog owners could no longer  
13 participate in sanctioned dog events, as many shows and events do not allow canines that  
14 have been altered." (See SAC ¶¶ 50-51.) The County moves to dismiss the Sixth Claim  
15 for Relief on the grounds that the Ordinance "does not discriminate between interstate and  
16 intrastate commerce" and "any incidental effect on interstate commerce is not excessive in  
17 relation to the benefits of the ordinance." (See Motion at 16-17.)

18 The Commerce Clause expressly grants Congress the power to "regulate  
19 Commerce among the several States." See U.S. Const. Art. I, § 8, cl. 3. The Supreme  
20 Court has held that the Commerce Clause "contains a further, negative command, known  
21 as the dormant Commerce Clause." See American Trucking Associations, Inc. v. Michigan  
22 Public Service Commission, 545 U.S. 429, 433 (2005) (internal quotation and citation  
23 omitted). Local regulations that "unjustifiably discriminate on their face against out-of-state  
24 entities" or "impose burdens on interstate trade that are clearly excessive in relation to the  
25 putative local benefits" violate the dormant Commerce Clause. See id.

26 The Ordinance does not "unjustifiably discriminate on [its] face against out-of-state  
27 entities." See id. Rather, as the County notes, the Ordinance "regulates evenhandedly," in  
28 that it requires all dogs owned or kept within the County's jurisdiction be spayed or

1 neutered. (See Motion at 16.) Further, the Ordinance does not impose significant, if any,  
2 burdens on interstate trade or travel; with respect to breeding, sale, and showing, the law  
3 simply requires that the owner or custodian obtain an unaltered dog license. (See RJN Ex.  
4 1, at 19.) “[S]uch a neutral, locally focused” regulation is consistent with the Commerce  
5 Clause. See American Trucking, 545 U.S. at 434 (finding no violation of dormant  
6 Commerce Clause where trucking company that engaged in both interstate and intrastate  
7 hauling challenged state law imposing \$100 annual fee on trucks engaged in intrastate  
8 hauling.)

9 Further, as noted, the purpose of the Ordinance is to “control animal overpopulation  
10 and reduce the euthanasia rate,” “reduce the incidence of public safety problems caused by  
11 stray dogs,” “reduce the cost to impound large numbers of stray dogs, and “aid in  
12 identifying dogs.” (See Motion at 17; RJN Ex. 1, at 8-9, 13.) As the Supreme Court has  
13 observed, the Constitution does not “displace[ ] States’ authority to shelter [their] people  
14 from menaces to their health or safety.” See American Trucking, 545 U.S. at 434  
15 (alteration in original; internal quotation and citation omitted). Consequently, even if the  
16 Ordinance could be said to impose some burden on interstate trade, any such incidental  
17 burden is not excessive in relation to the above-stated local benefits.

18 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
19 to the extent it is based on violation of the Commerce Clause.

#### 20 **H. Freedom of Contract**

21 In its Seventh Claim for Relief, ACF alleges that the Ordinance “infringes on the  
22 business of selling canines in California and thus to the rest of the United States.” (See  
23 SAC ¶ 54.)

24 The right to contract “is a part of the liberty protected by the due process clause.”  
25 See Advance-Rumely Thresher Co. v. Jackson, 287 U.S. 283, 288 (1932). Nevertheless,  
26 the right “is subject to such restraints as the state in exertion of its police power reasonably  
27 may put upon it.” See id. As noted, the Supreme Court has held that dogs are subject to  
28 the police power of the state. See Sentell, 166 U.S. at 703. Here, the Ordinance does not

1 bar the sale and purchase of unaltered dogs, provided the owner or custodian includes an  
2 unaltered dog license number with the sale. See Los Angeles County Code § 10.20.370.  
3 Moreover, as discussed above, the Ordinance was enacted in part to increase public  
4 safety. Consequently, even if the Ordinance “infringes on the business of selling canines,”  
5 (see SAC ¶ 54), the regulation falls squarely within the County’s police powers.

6 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
7 to the extent it is based on violation of freedom of contract.

### 8 **I. Vagueness**

9 In its Eighth Claim for Relief, ACF alleges the Ordinance is unconstitutionally vague.  
10 Specifically, ACF claims the Ordinance is “so poorly drafted it is impossible for the ordinary  
11 citizen to understand what [it] purport[s] to do” and that “arbitrary arrests and prosecutions  
12 of dog owners” will result from “the inability of dog owners to register their dogs with a  
13 specific ‘registry,’ while animal control enforcement goes house to house looking for intact  
14 dogs.” (SAC ¶ 55.) The County moves to dismiss the Eighth Claim for Relief on the  
15 ground ACF cannot allege the Ordinance is impermissibly vague, and further, that the  
16 Ordinance will not lead to arbitrary arrests.

17 “[A] party challenging the facial validity of an ordinance on vagueness grounds  
18 outside the domain of the First Amendment must demonstrate that the enactment is  
19 impermissibly vague in all of its applications.” See Hotel & Motel Ass’n of Oakland v. City  
20 of Oakland, 344 F.3d 959, 972 (9th Cir. 2003) (internal quotation and citation omitted).  
21 Here, ACF does not allege the Ordinance is vague in all its applications, nor could it do so.  
22 The Ordinance expressly and clearly applies to “[a]ll dogs over the age of four months,”  
23 (see RJN Ex. 1 at 17-18), and, contrary to ACF’s allegation, makes no reference to “house-  
24 to-house” searches.

25 The Court next turns to the allegation of arbitrary enforcement. “A statute can be  
26 impermissibly vague . . . if it authorizes or even encourages arbitrary and discriminatory  
27 enforcement.” See Hill v. Colorado, 530 U.S. 703, 732 (2000). Here, the Ordinance lists  
28 the specific grounds upon which an unaltered dog license may be denied or revoked: (1)



1 the applicant or licensee has not complied with the requirements for obtaining an unaltered  
2 dog license; (2) the department has received at least one verified complaint that the  
3 applicant or licensee has allowed a dog to run loose or escape, or has otherwise been  
4 found to be neglectful of his or her dog; (3) the applicant or licensee has been previously  
5 cited for violating a state law, county code, or other municipal provision relating to the care  
6 and control of animals; (4) the unaltered dog has been adjudicated by a court or agency of  
7 appropriate jurisdiction to be a potentially dangerous or vicious dog, or to be a nuisance  
8 under Los Angeles County or state law; (5) any unaltered dog license held by the applicant  
9 has been revoked; (6) a female unaltered dog has had more than one litter per year, or five  
10 or more litters in her lifetime; (7) the license application is discovered to contain a material  
11 misrepresentation of fact. See Los Angeles County Code § 10.20.360. Further, as noted,  
12 the Ordinance sets forth the penalties for violations of the law: a first violation is “an  
13 infraction punishable by a fine not to exceed \$250”; a second violation is “a misdemeanor  
14 punishable by imprisonment in the county jail for a period not to exceed six months or by a  
15 fine not to exceed \$1,000, or by both such fine and imprisonment.” See Los Angeles  
16 County Code § 10.20.375.

17 In sum, the Ordinance clearly sets forth the requirements for obtaining an unaltered  
18 dog license, the grounds for denying or revoking such license, and the penalties for  
19 violations. The Ordinance neither authorizes nor encourages arbitrary enforcement.

20 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
21 to the extent it is based on a claim that the Ordinance is unconstitutionally vague.

22 **J. First Amendment Right to Freedom of Association**

23 In its Ninth Claim for Relief, ACF alleges the Ordinance “violate[s] the right to  
24 freedom of association under the First Amendment by requiring affiliations with specific  
25 groups or organizations in order to fit within one of the exemptions provided for.” (See SAC  
26 ¶ 56.) In that regard, ACF alleges that “[i]n all cases [ACF’s] members will be forced to join  
27 a specific breed club.” (See SAC ¶ 56.)

28 “[A]mong the rights protected by the First Amendment is that to freedom of

1 association, and its corollary, the freedom from coerced association with groups holding  
2 views with which the nonmembers disagree.” See Besig v. Dolphin Boating and Swimming  
3 Club, 683 F.2d 1271, 1275 (9th Cir. 1981) (holding no First Amendment associational rights  
4 implicated where nonmembers of swimming and boating clubs, who “need not join any  
5 club,” were granted access to club facilities on less favorable terms than those granted to  
6 members). Here, membership in a specific breed club is not the only way in which owners  
7 of competition dogs can obtain unaltered dog licenses. Rather, an unaltered dog license  
8 may be obtained if the dog is registered with the American Kennel Club or other approved  
9 registry and has “competed in at least one dog show or sporting competition . . . within the  
10 last 365 days,” or has “earned a conformation, obedience, agility . . . or other title from a  
11 purebred dog registry.” See Los Angeles County Code § 10.08.095. Further, owners of  
12 unaltered dogs can comply with the Ordinance in other ways, namely, by having the dog  
13 spayed or neutered, by obtaining confirmation from a veterinarian that the dog is unable to  
14 spayed or neutered due to age or infirmity, or by providing documentation that the dog is a  
15 law enforcement dog or qualified assistance dog. See Los Angeles County Code §  
16 10.20.355. In sum, neither the benefits of an unaltered dog license nor compliance with the  
17 Ordinance “depend[s] on club membership or club association.” See Besig, 683 F.2d at  
18 1276.

19 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
20 to the extent it is based on violation of the freedom of association.

## 21 **K. California Constitution**

22 In its Tenth Claim for Relief, ACF alleges the Ordinance violates various provisions  
23 of the California Constitution. The County moves to dismiss the Tenth Claim for Relief in its  
24 entirety.

### 25 **1. Article I, § 1**

26 Article I, § 1, of the California Constitution provides that “[a]ll people are by nature  
27 free and independent and have inalienable rights,” including “enjoying and defending life  
28 and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining

1 safety, happiness, and privacy.” See Cal. Const. Art. I, § 1. ACF alleges the Ordinance  
2 violates Article I, § 1, of the California Constitution because it “restrict[s] dog owners from  
3 possessing canines capable of reproduction and protecting the inherent value of such  
4 canines, which are considered property.” (See SAC ¶ 59.)

5 The County moves to dismiss on the ground that the Ordinance does not prevent all  
6 dog owners from owning dogs capable of reproduction and that its spaying and neutering  
7 requirement serves to “reduce the large hordes of stray dogs which affect the health, safety  
8 and welfare of the citizenry.” (See Motion at 21.) In response to the Motion, ACF offers no  
9 argument other than to point to the allegations of the complaint. (See Opp. at 18.)

10 Under California law, counties have “plenary power to provide and enforce such  
11 police, sanitary and other local regulations as they may determine shall be necessary for  
12 the health, peace, comfort and happiness of their inhabitants.” See In re Ackerman, 6 Cal.  
13 App. 5, 9-10, 18 (3d. Dist. 1907) (holding ordinance providing for destruction of unlicensed  
14 dogs did not unconstitutionally interfere with right to possess property; noting ordinance did  
15 not “either expressly or by implication, attempt to interfere with the ownership of dogs”).  
16 Here, the Ordinance’s requirement that owners either spay or neuter their dogs or obtain  
17 unaltered dog licenses is a valid exercise of the County’s police powers.

18 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
19 to the extent it is based on violation of Article I, § 1 of the California Constitution.

## 20 **2. Article I, § 9**

21 Article I, § 9 states that an “ex post facto law . . . may not be passed.” See Cal.  
22 Const. Art. I, § 9. Under the California Constitution, “[i]nvalid ex post facto punishment  
23 occurs only when there are changes in the law that (1) retroactively alter the definition of a  
24 crime or (2) retroactively increase the punishment for criminal acts.” See People v.  
25 Huggins, 38 Cal. 4th 175, 212 (2006).

26 In response to the County’s motion to dismiss ACF’s Article I, § 9 claim, ACF does  
27 no more than point to its complaint. (See Opp. at 18.) In its complaint, ACF alleges that  
28 the Ordinance is an ex post facto law in violation of Article I, § 9 of the California

1 Constitution because it “impose[s] penalties for an act committed before the law was  
2 passed and that was legal at the time without allowing an exemption for dogs that were  
3 purchased or owned prior to the law’s implementation.” (See SAC ¶ 62.) As discussed  
4 earlier in connection with Article I, § 10 of the United States Constitution, the Ordinance  
5 does not retroactively make it unlawful to own an unsterilized dog.

6 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
7 to the extent it is based on violation of Article I, § 9 of the California Constitution.

8 **3. Article I, § 13**

9 Article I, § 13 of the California Constitution provides for “[t]he right of the people to  
10 be secure in their persons, houses, papers, and effects against unreasonable seizures and  
11 searches.” Cal. Const. Art. I, § 13. ACF’s final allegation is that the Ordinance violates  
12 Article I, § 13 because it “allows municipalities to arbitrarily inspect the premises of a  
13 licensed dog owner to make sure that the standards required to receive a permit are met.”  
14 (See SAC ¶ 63.)

15 The County moves to dismiss on the ground the Ordinance “does not include a  
16 provision for the inspection of dog owner’s premises.” (See Motion at 22.) In response,  
17 ACF again simply points to the allegations of its complaint. Having reviewed the Ordinance  
18 in detail, the Court finds no language either expressly or impliedly providing for inspection  
19 of an owner’s premises.

20 Accordingly, the County is entitled to dismissal of ACF’s second amended complaint  
21 to the extent it is based on violation of Article I, § 13 of the California Constitution.

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**CONCLUSION**

For the reasons set forth above, defendants' motion to dismiss is hereby GRANTED, and the second amended complaint is hereby dismissed without leave to amend.

**IT IS SO ORDERED.**

Dated: November 27, 2007

  
MAKINE M. CHESNEY  
United States District Judge