



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
April 30, 2013

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Referral to Animal Care Commission: Protected Primate Ordinance and Ban on Animal Testing

RECOMMENDATION:

Refer the following issues to the Animal Care Commission for review and request that the Commission make a recommendation on both issues to the City Council, after consulting with City staff:

1. The proposed Protected Primate Guardianship Ordinance; and
2. Establishing either an outright ban on animal testing, or restrictions on animal testing in the City of Berkeley. Such legislation could be either in the form of zoning amendments prohibiting animal research in certain zoning districts or a general city policy.

BACKGROUND:

The City of Berkeley has been on the forefront of protecting the welfare of animals, from banning the de-clawing of cats, to opposing invasive scientific research of animals. The proposed ordinance is consistent with the City of Berkeley's past positions and its commitment to the defense of animals. Specifically, it redefines necessary care and housing requirements for a special class of primates and bars their use for profit in entertainment, invasive scientific research, or the pet trade.

Additionally, while the City has in the past adopted policies prohibiting the use of draize testing on animals and urging the University of California to limit animal research, the City has never formally adopted a position on animal research, and research including on animals is allowed in several zoning districts. While Bayer had previously conducted animal research, it no longer conducts animal testing; however, with new research and development opportunities potentially coming into West Berkeley in the future, it is important to look at whether to permit animal testing and if so what limitations should exist on animal research.

FINANCIAL IMPLICATIONS:

Staff time involved with analyzing the proposed ordinance and commission recommendations.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. Proposed Ordinance

ORDINANCE NO. 0,000-A.A.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 10.24, PROTECTED PRIMATE GUARDIANSHIP

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 10.24 is added to the Berkeley Municipal Code to read as follows:

Chapter 10.24

Protected Primate Guardianship

Sections:

10.24.010 Purpose.

10.24.020 Definitions.

10.24.030 Severability.

10.24.040 Care and disposition of protected primates.

10.24.050 Proceedings to review or transfer guardianship of a protected primate.

10.24.060 Protected primates at large.

10.24.070 Penalty for violation.

10.24.080 Guardian ad litem.

10.24.090 Qualifications.

10.24.010 Purpose.

The purpose of this chapter is to promote the well-being and responsible guardianship of protected primates.

10.24.020 Definitions.

For the purpose of this chapter the following words shall have the following meanings:

A. "Approved protected primate sanctuary" means a facility for the care of protected primates that is in compliance with all federal and state laws and that provides standards of care consistent with the provisions of this chapter.

B. "At large" means off the premises of the protected primate guardian, and not under the control of the guardian.

C. "Protected primate" means any and all individuals belonging to the bonobo, capuchin, chimpanzee, gorilla, northern white-checked gibbon, orangutan, rhesus macaque, siamang, and yellow-checked gibbon species.

D. "Protected primate guardian" means a person who has control, custody, possession, title or other legal interest in a protected primate.

E. "Person" means any individual, firm, partnership, corporation or association.

10.24.030 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter or the application of the chapter to other persons or circumstances shall not be affected.

10.24.040 Care and disposition of protected primates.

A. Any facility housing protected primates shall be designed in a manner that addresses the protected primates' (1) need for the expression of natural behaviors, (2) basic physical and psychological needs, and (3) need to enjoy regular, daily exercise.

B. All protected primates shall be provided with a healthy diet and regular veterinary care.

C. No protected primate shall be housed without the opportunity to freely socialize with at least one other protected primate on a continual basis, unless a licensed veterinarian determines that it is in the best interests of a protected primate to be housed separately, or that the interaction of that protected primate with others poses a risk to the safety of the primate or other protected primates.

D. All protected primates shall have regular access to both indoor and outdoor areas, and to an area that allows the protected primate to be away from routine activities of the facility including maintenance, cleaning, and viewing, except when such restriction is in the best interests of the protected primate.

E. Protected primates may not be bred or used for profit.

F. Protected primates may not be used for studies or research except for (a) noninvasive behavioral studies or (b) noninvasive studies based on information collected during the course of normal veterinary care that is provided for the benefit of the protected primate. A study is invasive if it causes physical or mental harm, pain, distress, interruption of the daily routine, or disturbance to the protected primate or the social group in which the protected primate lives.

G. No protected primate may be sold. Voluntary transfer of possession and guardianship is allowed pursuant to proceedings under Section 10.24.050.

H. Euthanasia of a protected primate is permitted only upon recommendation by a licensed

veterinarian that euthanasia is in the best interests of the protected primate. Any authorized euthanasia shall only be performed by a licensed veterinarian.

10.24.050 Proceedings to review or transfer guardianship of a protected primate.

A. Whenever a protected primate guardian is found to have violated Section 10.24.040, convicted of animal cruelty against a protected primate, or in any situation where a protected primate is found to be abandoned, the protected primate shall be seized and placed in the temporary care and custody of an approved protected primate sanctuary, which will serve as the interim guardian of that primate. The city shall then commence proceedings in the superior court to review the ultimate disposition of the protected primate.

B. Whenever a protected primate guardian wants to transfer possession of a protected primate, they shall petition the superior court for approval.

C. In proceedings pursuant to this section, the superior court shall determine whether the current protected primate guardian should maintain possession of the protected primate or whether possession should be transferred to a new guardian. The matter shall be determined based upon the best interests of the protected primate. The protected primate guardian ad litem described in Section 10.24.080 shall represent the interests of the protected primate in all such proceedings under this section.

10.24.060 Protected primates at large.

If a protected primate is found at large, the city will immediately notify the protected primate guardian of the whereabouts of the protected primate and assist with efforts to regain control of the protected primate. Any protected primate subsequently recovered shall be seized and placed under the temporary care and custody of an approved protected primate sanctuary pending proceedings pursuant to Section 10.24.050. A protected primate at large may not be killed unless the protected primate presents an imminent danger to the public and capture cannot be effected safely.

10.24.070 Penalty for violation.

Any person violating any provisions of Sections 10.24.040 and 10.24.060 is guilty of a misdemeanor and shall be punished upon conviction by a fine of up to \$1,000 and one year in jail.

10.24.080 Guardian ad litem.

The City Manager shall appoint a qualified third party guardian ad litem to represent the interest of protected primates in all relevant legal proceedings under this ordinance. The guardian ad litem may bring suit on behalf of any protected primate in this jurisdiction to enforce the civil provisions of this ordinance. No person shall attempt to interfere with or improperly influence the guardian ad litem in the performance of his or her designated duties. The guardian ad litem shall serve in two year increments and without compensation.

10.24.090 Qualifications.

The protected primate guardian ad litem shall possess demonstrable sensitivity to animal welfare, relevant legal, scientific, and protected primate experience, and all necessary qualifications to discharge the duties described in Section 10.24.080. The City Manager shall appoint a guardian ad litem solely with respect to his or her qualifications.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.