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KAMALA D. HARRIS  
Attorney General

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OPINION	:	No. 14-603
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of	:	October 21, 2015
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KAMALA D. HARRIS	:	
Attorney General	:	
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LAWRENCE M. DANIELS	:	
Deputy Attorney General	:	
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THE HONORABLE DAVID E. TRANBERG, FORTUNA CITY ATTORNEY,  
has requested an opinion on the following questions:

1. Does state law authorize the City of Fortuna to adopt a comprehensive program that requires dogs within the city to be licensed and charges license fees to cover the cost of the program?
2. Does Food and Agriculture Code section 30951 prevent the City of Fortuna from enforcing its dog licensing program or exempt a dog owner from complying with its licensing requirements?

CONCLUSIONS

1. State law authorizes the City of Fortuna to adopt a comprehensive program that requires dogs within the city to be licensed and charges license fees to cover the cost of the program. Indeed, the Rabies Control Act requires the City of Fortuna to adopt and

implement such a program.

2. Food and Agriculture Code section 30951 does not prevent the City of Fortuna from enforcing its dog licensing program or exempt a dog owner from complying with its licensing requirements.

## ANALYSIS

The City of Fortuna has adopted a comprehensive set of ordinances governing dogs and other animals.<sup>1</sup> Collectively entitled the “animal control ordinance,” these laws were enacted to preserve the “public health, safety and welfare in connection with the protection of human beings from being bitten by dogs who do or might carry rabies virus” and “to regulate the public nuisance and sanitary conditions of certain animals.”<sup>2</sup> The ordinance creates an animal control officer to enforce state and local law on dog licensing;<sup>3</sup> requires a dog license and the payment of a dog license fee within 30 days after a dog reaches the age of four months;<sup>4</sup> provides for the issuance of an identifying dog-license tag to the dog’s owner;<sup>5</sup> sets forth procedures for impounding;<sup>6</sup> mandates rabies vaccinations;<sup>7</sup> and makes it an infraction to fail to properly license a dog, pay license fees, or vaccinate a dog for rabies.<sup>8</sup>

In this opinion, we consider two questions about the city’s animal control ordinance. First, does state law authorize the city to adopt it? Second, even if so, does Food and Agriculture Code section 30951 nevertheless prevent the city from legally enforcing the ordinance’s dog-licensing requirements? We conclude that state law authorizes, and indeed requires, the city to adopt such a scheme, and that section 30951 creates no impediment to its enforcement.

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<sup>1</sup> Fortuna Mun. Code, tit. 6, §§ 6.04.010-6.40.120, at <http://www.codepublishing.com/ca/fortuna/>.

<sup>2</sup> Fortuna Mun. Code, § 6.04.010; see also Fortuna Mun. Code, § 6.04.030, ¶ A.

<sup>3</sup> Fortuna Mun. Code, §§ 6.08.010, 6.08.020.

<sup>4</sup> Fortuna Mun. Code, § 6.16.020.

<sup>5</sup> Fortuna Mun. Code, §§ 6.16.010, 6.16.030, 6.16.040.

<sup>6</sup> Fortuna Mun. Code, §§ 6.20.020-6.20.070.

<sup>7</sup> Fortuna Mun. Code, § 6.24.050; see Health & Saf. Code, § 121690, subs. (a), (b)(1), (g); Cal. Code Regs., tit. 17, § 2606.4, subs. (a), (b).

<sup>8</sup> Fortuna Mun. Code, §§ 6.04.050, 6.16.020, ¶ E, 6.24.020; see Gov. Code, §§ 36900, 36901 (authorizing governing bodies of cities to designate infractions and establish penalties for violating ordinances).

## Question 1

We may quickly dispose of the first question whether state law permits the city to adopt its animal control ordinance. It does.

First, the California Constitution entitles a city or county to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”<sup>9</sup> Using this “police power,” cities and counties “have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law.”<sup>10</sup> Our high court has recognized that “the licensing of dogs and the regulation of the manner in which they shall be kept and controlled are within the legitimate sphere of the police power” granted to cities and counties in the state Constitution.<sup>11</sup>

Next, the Legislature has expressly provided that cities and counties may require dog owners to license and vaccinate their dogs.<sup>12</sup> A local governing body may also impose dog licensing fees in order to recoup the costs of providing dog-related services, including animal shelters and control, the issuance of dog license tags, and the enforcement of state and local dog-control laws.<sup>13</sup>

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<sup>9</sup> Cal. Const., art. XI, § 7; see *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1065.

<sup>10</sup> *Candid Enterprises, Inc. v. Grossman Union High School Dist.* (1985) 39 Cal.3d 878, 885.

<sup>11</sup> *Simpson v. City of Los Angeles* (1953) 40 Cal.2d 271, 278-279; *Ex Parte Ackerman* (1907) 6 Cal.App. 5, 15-20 (upholding dog-license fee under city’s police power); see also *Concerned Dog Owners of California v. City of Los Angeles* (2011) 194 Cal.App.4th 1219, 1235 (city ordinance requiring dogs to be spayed or neutered falls within the city’s police power); *cf. Nicchia v. State of New York* (1920) 254 U.S. 228, 229-231 (city law requiring dog license and fees does not infringe “any right guaranteed to the individual by the federal Constitution”).

<sup>12</sup> Food. & Agr. Code, §§ 30501-30502, 30652, 30801-30805; see *People v. Lowry* (1994) 29 Cal.App.4th Supp. 6, 11 (“State law also authorizes a county to pass a local dog licensing ordinance”), citing Food & Agr. Code, § 30801; 63 Ops.Cal.Atty.Gen. 562, 565 (1980), citing *Markus v. Justice’s Court of Little Lake Township* (1953) 117 Cal.App.2d 391, 395-396.

<sup>13</sup> Gov. Code, § 38792; Food & Agr. Code, § 30652; see 26 Ops.Cal.Atty.Gen. 194, 195 (1955).

Finally, under the Rabies Control Act, localities in those parts of the state designated as “rabies areas” are not only authorized, but required, to enact dog licensing schemes of the sort at issue here.<sup>14</sup> Since 1987, all 58 counties in the state of California have been designated as rabies areas.<sup>15</sup> Localities within a rabies area must, by ordinance, provide for the licensing of dogs starting at four months old, and fix license fees within specified limitations.<sup>16</sup> They must further ensure, as a condition of licensing, that dogs receive rabies vaccinations, no more often than annually, at three months of age or older, with vaccines approved, and at intervals prescribed, by the Department of Public Health.<sup>17</sup> They must also issue “a license tag or a vaccination tag bearing the license data” as part of the local licensing process.<sup>18</sup> Our review of the city’s licensing scheme reveals that it is the type of local legislation both permitted and, in this case, required under state law.

For these reasons, we conclude (1) that state law authorizes the city to adopt a comprehensive program that requires dogs within the city to be licensed and charges license fees to cover the cost of the program, and (2) that the Rabies Control Act requires the city to adopt and implement such a program.

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<sup>14</sup> Health & Saf. Code, §§ 121575-121710; 63 Ops.Cal.Atty.Gen. 8, 9 (1980).

<sup>15</sup> If the Director of the California Department of Public Health determines that “the existence of rabies constitutes a public health hazard” in a county, he or she will declare the county to be a “rabies area.” (Health & Saf. Code, § 121585.) Every year since 1987, the director has determined that each of the 58 counties in California is endemic for rabies and is, therefore, a “rabies area.” (Cal. Dept. of Pub. Health, Rabies Surveillance in California, Annual Report 2013 (Dec. 2014), p. 1, at <http://www.cdph.ca.gov/HealthInfo/discond/Documents/RabiesSurveillanceinCAAnnualReport2013.pdf>.)

<sup>16</sup> Health & Saf. Code, § 121690, subd. (a).

<sup>17</sup> Health & Saf. Code, § 121690, subd. (b)(1); Cal. Code Regs., tit. 17, § 2606.4, subd. (a)(1), (b); 63 Ops.Cal.Atty.Gen., *supra*, at p. 565.

<sup>18</sup> Cal. Code Regs., tit. 17, § 2606.4, subd. (a)(1); see generally Health & Saf. Code, §§ 131050, 131200 (Department of Public Health “may adopt and enforce regulations for the execution of its duties”); *Department of Public Health of Cal. v. Board of Supervisors of Lake County* (1959) 171 Cal.App.2d 99, 106 (section 2606.4’s requirements consistent with rabies statutes and reasonably necessary to effectuate statutes’ purpose). In addition, rabies-area jurisdictions must “maintain or provide for the maintenance of a pound system and a rabies control program” to carry out and enforce the licensing and vaccination requirements. (Health & Saf. Code, § 121690, subd. (e).)

## Question 2

We next examine the contention that a state statute involving dog-identification tags impliedly preempts the city's animal control ordinance and thus prohibits the city from exercising its licensing authority or exempts a dog owner from complying with its licensing requirements.

Food and Agriculture Code section 30951 (section 30951) makes it unlawful to own or keep a dog over four months of age unless the dog wears on its collar either "[a] metallic tag which gives the name and post office address of the owner" or "[a] metal license tag which is issued by the authority of a county, city and county, or any municipal corporation for the purpose of identifying the dog and designating the owner."<sup>19</sup> A dog owner in the city has refused to license his dog. He asserts that section 30951's state-approved option of utilizing a *non-governmental license tag* allows him not only to avoid affixing the city-issued license tag on his dog's collar<sup>20</sup> but, in essence, to bypass the city's entire animal control ordinance which, among other things, requires the licensing of dogs and the payment of license fees.<sup>21</sup> We disagree.

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<sup>19</sup> Section 30951 is understood as providing dog owners the choice of affixing to the dog's collar either (1) the license tag issued by the locality, or (2) another metallic tag with the owner's name and address on it. (*People v. Lowry, supra*, 29 Cal.App.4th Supp. at p. 11; 63 Ops.Cal.Atty.Gen., *supra*, at p. 564.)

<sup>20</sup> See Fortuna Mun. Code, § 6.16.010 (governing the issuance of dog-license tags).

<sup>21</sup> Fortuna Municipal Code section 6.16.020 states:

A. Each person owning any dog over the age of four months shall procure a license for such dog within 30 days after the dog reaches the age of four months, or within 30 days after the arrival of such dog in the incorporated area of the city, and shall be required to pay for such license at said time the sum set by resolution of the city council for a three-year period for each dog.

B. If the license fee is not paid within the specified periods of time, the owner shall be required to pay the sum set by resolution of the city council as a license fee for each dog owned.

C. The animal control officer may demand such proof as may be necessary to ascertain that the dog has in fact reached the age of four months within the 30 days next preceding the application for a license, or that the dog has arrived in the incorporated area of the city within the 10 days next preceding the application for a license.

D. On or before the first day of July, each person owning a dog required to be licensed shall procure a license for such dog and shall be required to pay for such license, at said time, the sum set by resolution by the city council

Generally speaking, if local legislation is in conflict with state law, it is preempted by state law, and is void to the extent of the conflict.<sup>22</sup> Apparently, the dog owner's theory is that the animal control ordinance conflicts with, and is therefore preempted by, section 30951. We perceive no such conflict.

As discussed above, state law not only permits, but requires, the city to adopt, implement, and enforce a dog licensing scheme of the sort embodied in the city's animal control ordinance.<sup>23</sup> Nothing in section 30951 is inconsistent with that ordinance.<sup>24</sup> A dog's owner may comply with both state and local requirements, even if the owner ultimately chooses not to have the dog wear the city-issued license tag in favor of another tag with identifying information.<sup>25</sup> Indeed, both the state tag-wearing law and the city's

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for each dog. If the license fee is not paid on or before July 31st, the owner shall be required to pay the sum and late fee set by resolution by the city council as a license fee for each dog so owned.

E. Each person owning a dog required to be licensed who fails to procure a license and pay the license fee required under this chapter shall be guilty of an infraction.

<sup>22</sup> *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897; 94 Ops.Cal.Atty.Gen. 39, 41 (2011); see also *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1243 (local ordinance preempted by state statute to extent the two conflict).

<sup>23</sup> See Health & Saf. Code, § 121690; City of Fortuna, Animal Control, at <http://friendlyfortuna.com/index.aspx?NID=75> ("Animal Control Services bears the state-mandated responsibility for ensuring that all dogs in the city of Fortuna are licensed and have current rabies vaccinations"); City of Fortuna, Animal Service Fees, at <http://friendlyfortuna.com/index.aspx?NID=77> (cataloguing "licensing fees" and "shelter impound and holding fees" for dogs).

<sup>24</sup> See *People v. Garth* (1991) 234 Cal.App.3d 1797, 1799-1801 (finding no preemption where local ordinance was not inconsistent with state statute); *Miller v. Murphy* (1983) 143 Cal.App.3d 337, 341-342 (same).

<sup>25</sup> Because section 30951 and the City's animal control ordinance are not inconsistent, we need not decide whether a hypothetical city ordinance could lawfully necessitate that a dog exclusively wear a city-issued license tag, notwithstanding the disjunctive language of section 30951. (See generally Health & Saf. Code, § 121695 [rabies-area statutes do not "limit the power of any city . . . in its authority in the exercise of its police power . . . to enact more stringent requirements, to regulate and control dogs within the boundaries of its jurisdiction"]; *Markus v. Justice's Court of Little Lake Township, supra*, 117 Cal.App.2d at pp. 396-397 [state law prohibiting roaming only of untagged dogs and all dogs on farms with livestock and domestic fowl did not preempt ordinance prohibiting roaming of all

licensing ordinance appear to share the same objective: to identify the owners of dogs that are running at large.<sup>26</sup> For these reasons, we find no conflict between section 30951 and the city’s animal control ordinance and therefore no preemption.<sup>27</sup>

We conclude that Food and Agricultural Code section 30951<sup>28</sup> does not prevent the City of Fortuna from enforcing its dog licensing program, nor does it exempt a dog owner from complying with the city’s licensing requirements.

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dogs]; *People v. Lowry, supra*, 29 Cal.App.4th Supp. at pp. 8, 11 [county ordinance requiring dogs wear county-issued license tag not applicable to members of Indian tribes].)

<sup>26</sup> Fortuna Mun. Code, § 6.04.030, ¶ A, pts. 1-4 (adopting animal control ordinance, in part, to “[p]revent dogs running at large at any time,” to “[r]equire the registration and licensing of dogs for identification purposes,” to “[p]rovide for the establishment of an animal control officer,” and to “[a]uthorize the seizure, impounding, or killing of dogs found running at large contrary to the provisions of this title”); *People v. Lowry, supra*, 29 Cal.App.4th Supp. at p. 11 (section 30951 “appears designed to facilitate the identification of the owner of a dog that is running at large or is bothering livestock or in some other way is causing problems in violation of the law”).

<sup>27</sup> As we find no conflict between local and state law in the first instance, it is unnecessary for us to determine whether the city, as a charter city, could in any event enforce its licensing ordinance on the ground that it does not address “a matter of statewide concern” or that section 30951 is not “reasonably related to . . . resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance . . . .” (*State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 556, internal quotation marks and citations omitted; see *Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 [“In broad outline, a court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two. If it does not, a choice between the conclusions ‘municipal affair’ and ‘statewide concern’ is not required”].)

<sup>28</sup> We are also asked whether any other law besides section 30951 prevents the City from enforcing its licensing requirements. We have found no other legal authority that would even arguably do so.