



Office of *Attorney's Matters 05/14/2019*
INDIAN RIVER COUNTY
ATTORNEY

Dylan Reingold, County Attorney
William K. DeBaal, Deputy County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: William K. DeBaal, Deputy County Attorney

DATE: May 7, 2019

SUBJECT: Request for Permission to Advertise: Retail Sale of Dogs and Cats

In October 2018, under Public Discussion Items, the Board of County Commissioners heard a presentation from Nicole Capobiaco seeking to ban the retail sale of puppies at pet stores that were born in "puppy mills". The Board also heard from Doherty, Inc. who spoke in opposition of the ban of the sale of puppy mill puppies. Doherty, Inc. is the operator of Pets Around the World II, located at the corner of US Highway 1 and 8th Street (former Cindi's Pet Store location). Pets Around the World II offered puppies and kittens for sale at retail. Since the time of the discussion, significant changes have taken place on a state and local level.

First, Pets Around the World II has stopped selling puppies and kittens at retail. Signs posted on their door at the Vero location and posting to their Facebook page indicate that puppies and kittens can be obtained for interested individuals but not via the retail store. Staff knows of no other pet store offering puppies and kittens at retail, except puppies and kittens from local shelters. Second, there was a failed attempt this legislative session at state regulation of puppies and kittens at retail. One bill would have provided for Florida Department of Agriculture and Consumer Services regulation of the sale of puppies at retail. Another bill would have provided for state regulation of the sale of puppies at retail while pre-empting local governments from enacting ordinances banning retail sales and striking down existing ordinances that banned the sale of puppies at retail. Neither bill was successful.

Staff has communicated with several outside sources on this issue including the US Humane Society, Sarasota County and Brevard County. Staff has also reviewed the various lawsuits that were filed in Florida and nationally, attempting to strike down ordinances that banned the retail sale of puppies at retail. The lawsuits were filed by owners of pet stores that actively sold puppies at their retail stores, challenging the validity of newly enacted ordinances that either banned the sale of puppies at retail immediately or the ban on retail sales was phased in over time. The lawsuits in Florida have focused on three main issues:

- The ordinance is unconstitutional because it violated the Commerce Clause. The Commerce Clause prohibits a state or local government from enacting laws which would unfairly burden goods or products produced in another state. An example of this would be that Florida could not prohibit the sale of or place a tariff on citrus grown in California. The retail pet stores claim in their law suits that a county or city wide ban on retail sale of puppies unfairly burdens an out of state breeder and thus violates the commerce clause.

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- The ordinance violates the Bert J. Harris Act. The retail store owners contend that the local government is taking away a right to use their property and therefore the value of their property is diminished by the government's actions.
- The ordinance impairs an existing contract and is therefore unconstitutional. The State and US Constitutions prohibit governments from passing laws that would impair an existing contract. Here the retail store owners claim that their existing contracts with in and out of state breeders would be adversely affected by the ban on retail sale of puppies.

The lawsuits also claim damages on other grounds and seek injunctive relief and those complaints are available for review at the County Attorney's Office.

All of the lawsuits featured a plaintiff with an active retail sale business of puppies. As there are no active businesses that offer the retail sale of puppies in Indian River County, the County Attorney's Office opines that the risk of a lawsuit, should the County go forward with a retail ban on sales of puppies and kittens is greatly reduced and the chance of a plaintiff prevailing on the suit is also greatly reduced.

Staff has reviewed ordinances from other jurisdictions and the model ordinance from the US Humane Society. Ordinances that focus on prohibiting retail sales are favored, but still allow for family and hobby breeders to sell puppies and kittens. A family breeder is a person who will breed their dog for a litter of puppies and sell or give them away to family and friends. A family breeder is also the owner of a female dog who met up with the sneaky neighbor dog and now has a litter of puppies to sell or give away. The breeding is not a regular occurrence with a family breeder. The hobby breeder can be categorized by breeding a specific breed of dog once a year or so and selling the puppies using the internet or social media. Hobby breeders will also take orders for puppies once their female is pregnant. The attached article, Amy Martinez, *Golden Opportunity*, FLORIDA TREND March, 2019 at 74, gives good insight to a local hobby breeder.

Brevard County has recently passed a comprehensive ordinance prohibiting retail sales of puppies and kittens but allowing for local shelters and humane societies to sell puppies and kittens at retail stores such as Petsmart and Pet Supermarket. The Brevard ordinance was drafted with the knowledge that at least one active pet store selling puppies at retail was in business. The ordinance went through several public hearings involving over 30 hours of public testimony. Since we have no active retail establishments selling puppies or kittens in the County, staff deems the ordinance used in Seminole County to be sufficient for our needs. The draft ordinance is attached for your consideration. This ordinance prohibits the sale of puppies at retail but allows the sale/adoption of Humane Society and shelter animals at retail stores.

Funding: There is no impact to County funds for this item but if the Board directs staff to advertise for a code amendment, the cost of an advertisement in the *Press Journal* is approximately \$250.00 and would be paid from Account No. 00125062-034910 (General Fund/Animal Control/ Legal Ads).

Recommendation: Discuss the proposed ordinance amendment and direct staff to either proceed with advertising with the code amendment or decide that no amendment is needed at this time.

Attachment: Proposed Ordinance
Florida Trend article

Copies to: Tad Stone, Emergency Services Director
Jason Ogilvie, Animal Control Manager
Ilka Daniels, Humane Society of Vero Beach/Indian River County