



*Office of*                      *Public Hearing*      06/18/2019  
**INDIAN RIVER COUNTY**  
**ATTORNEY**

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

MEMORANDUM

TO:                                Board of County Commissioners

FROM:                            William K. DeBaal, Deputy County Attorney

DATE:                            June 11, 2019

SUBJECT:                        Public Hearing: Ordinance Prohibiting the Retail Sale of Dogs and Cats

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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 8<sup>th</sup> Street (former Cindi’s Pet Store location). Pets Around the World II offered puppies and kittens for sale at retail. On May 14, 2019, staff presented a proposed ordinance that would prohibit the sale of puppies and kittens at retail unless they were offered by a not-for profit rescue organization, an animal shelter or the Humane Society of Vero Beach Indian River County. The ordinance would also allow the sale of puppies or kittens from a family breeder or a hobby breeder but not animals from a broker or puppy mill. The Board directed staff to advertise the ordinance and schedule a public hearing. The advertisement appeared in the Press Journal on June 7, 2019.

Since the initial discussion last October, Pets Around the World II has stopped selling puppies and kittens at retail and closed their business. Staff is not aware of any other businesses or pet store offering puppies and kittens at retail, except puppies and kittens from local shelters. There was also 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 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, challenging the constitutionality of 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 Florida lawsuits all came from pet stores that were actively selling puppies and kittens at retail. As there are no active businesses in Indian River County that are actively selling puppies and kittens at retail, staff feels that the risk in enacting this ordinance amendment has been significantly reduced and the chance of a plaintiff prevailing on the suit is also greatly reduced.

Permission to Advertise: Retail Sales Ordinance Amendment

June 12, 2019

Page | 2

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 hobby and family breeders rarely sell at retail stores and thus are not affected by the ordinance.

The draft ordinance is attached for your consideration. This ordinance prohibits the sale of puppies and kittens at retail but allows the sale/adoption of Humane Society and shelter animals at retail stores.

**Funding:** The only impact to County funds is the \$126.54 cost to advertise for a public hearing, and is being paid from Account No. 00125062-034910 (General Fund/Animal Control/Legal Ads).

**Recommendation:** Staff recommends the Board conduct the public hearing taking testimony from any interested parties. Staff further recommends the Board approve the proposed ordinance amendment with any changes deemed necessary.

Attachment: Proposed Ordinance Amendment

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