


PUPPY MILL MUNICIPAL LEGISLATION



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Nationwide Problem or Perceived Problem:

Stop "Puppy Mills" – which are generally described as places where the wholesale production of dogs occurs in an inhumane manner. By inhumane manner, the legislation seeking to address this issue describes them as facilities where overcrowding, poor sanitation, and inadequate veterinary care are rampant, and these "irresponsible breeding practices result in congenital and hereditary diseases"



Secondary purposes - combat pet overpopulation and protection of consumers from the emotional and financial hardships caused by the unwitting purchase of puppy mill puppies from a pet store.

Response from pet stores:

- 1. They buy pure bred and specialty-breed puppies and are meeting a consumer need
- 2. Puppies not available in sufficient numbers from other sources



FEDERAL LAW

The Animal Welfare Act (the "AWA"), 7 U.S.C. § 2131-2159 purports to regulate the sale of dogs and cats in interstate commerce.

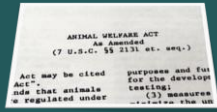
Specifically requires that any breeder who controls five or more breeding females hold a "Class A License" and that any entity that obtains or arranges for animals from a breeder be sold to a pet store hold a "Class B License"

Class A and Class B licenses are subject to inspection by the USDA for compliance with the AWA and regulations promulgated thereunder. 9 C.F.R. §§ 2.1-2.3.

Breeder who has less four or fewer breeding females is exempt from the AWA licensing scheme. 9 C.F.R § 2.1 (a)(3)(iii)

STATED PURPOSE OF FEDERAL LAW

Assure the humane treatment of animals during transportation in commerce and to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment. 7 U.S.C. § 2131(1)-(2).



AWA specifically contemplates state and local governments will enact animal welfare regulations by referencing that the AWA "shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary." 7 U.S.C. § 2143(a)(1), (B).

COLORADO LAW

PACFA

The Pet Animal Care Facilities Act, C.R.S. §§ 35-80-101 through 117 ("PACFA") and 8 C.C.R. 1201-11 govern the administration and enforcement of pet animal facilities, which are defined as "any place or premise used in whole or in part, which part is used for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals." C.R.S. § 35-80-102(11).



The Department of Agriculture is defined as the "Commission" under PACFA, and is authorized to adopt all reasonable rules and enforce the provisions of the Pet Animal Care Facilities Act. C.R.S. §§ 35-80-102(3) and 35-80-109. This includes the authority to inspect pet animal facilities, to issue cease-and-desist orders, to restrict or revoke licenses, and to bring suit for injunctive relief and/or civil penalties. See C.R.S. §§ 35-80-110 through 35-80-113. PACFA is authorized to deny any license to an individual that has been convicted of cruelty to animals. C.R.S. § 35-80-112.5.

Any individual can file a complaint with PACFA against a pet care facility. See: http://www.colorado.gov/cs/Satellite/ag_Animals/CBON/1251621145890

ANIMAL PROTECTION ACT

C.R.S. § 35-42-101, et seq., is referred to as the Animal Protection Act (the "Act"), and was created for the protection of companion animals and livestock.

The Act governs what is required for the care of confined animals, and protects against the mistreatment, neglect and abandonment of animals. See C.R.S. §§ 35-42-108 and 35-42-109.

ANIMAL PROTECTION ACT

The Department of Agriculture is again the state agency with jurisdiction (C.R.S. § 35-42-103(4)), and has the power to administer the provisions of the Article, and appoint agents to the Bureau of Animal Protection. C.R.S. §§ 35-42-105 and 35-42-106.

The Bureau of Animal Protection is given the authority to investigate and inspect mistreatment of animals, issue of cease-and-desist orders, and bring suit for injunctive relief. C.R.S. §§ 35-42-111 through 35-42-112.

Any individual can file a cruelty or neglect complaint with the Bureau of Animal Protection.

Typical Basis of Legal Challenges

1. Federal Preemption based on the AVMA
2. Equal Protection – treating pet stores and shelters differently
3. Dormant Commerce Clause – treating out of state breeders differently from in state breeders

145 municipalities with Retail Pet Sales Bans that combat commercial breeding operations (Bestfriends.org)



TWO GENERAL FORMS OF MUNICIPAL ORDINANCES:

Type 1. Addresses Pet Store Sales;

Type 2. Addresses and defines Puppy Mills in addition to Pet Store Sales.

HOW PUPPY MILL LEGISLATION GOT ON THE RADAR:

2015 - Las Vegas, NV
2014 - Sunrise, FL
2014 - Palm Beach Gardens, FL
2013 - Phoenix, AZ
2011 - Fountain, CO

LAS VEGAS ORDINANCE (NOV 2015)

7.40.295: (A) No pet shop shall display, sell, deliver, offer for sale, barter, auction, give away, broker or otherwise transfer or dispose of a dog or cat except for a dog or cat obtained from an animal shelter, nonprofit humane society or nonprofit animal rescue organization.

(B) Each pet shop shall maintain records sufficient to document the source of each dog or cat the pet shop acquires, for at least one year following the date of acquisition. Such records shall be made available, immediately upon request, to law enforcement officers and other City employees charged with enforcement of this Title.

8-3.06 Prohibition on sale of dogs or cats.

A. No pet shop or pet dealer shall display, sell, deliver, offer for sale, barter, auction, give away, broker or otherwise transfer or dispose of a dog or cat except for a dog or cat obtained from:

1. An animal shelter;
2. A private, nonprofit humane society or nonprofit animal rescue organization; or
3. An animal shelter, nonprofit humane society or nonprofit animal rescue organization that operates out of or in connection with a pet shop.

**PHOENIX
ORDINANC
E (2013)**



B. All pet shops and pet dealers shall maintain records, for a period of one year from the date of acquisition, listing the source of all dogs or cats under their ownership, custody or control. Records shall be immediately available, upon request, to law enforcement, code compliance officials, and any other City employees charged with enforcing the provisions of this section.


**PHOENIX
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C. This section does not apply to:

1. A person or establishment, other than a pet shop or pet dealer, which displays, sells, delivers, offers for sale, barter, auctions, gives away, brokers or otherwise transfers or disposes of only dogs and cats that were bred and reared on the premises of the person or establishment;
2. An animal shelter;
3. A private, nonprofit humane society or nonprofit animal rescue organization; or
4. An animal shelter, nonprofit humane society or nonprofit animal rescue organization that operates out of or in connection with a pet shop.

**PHOENIX
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D. Nothing in this section shall prevent a pet shop or pet dealer from providing space and appropriate care for animals owned by an animal shelter, nonprofit humane society or nonprofit animal rescue agency and maintained at a pet shop for the purpose of adopting those animals to the public.

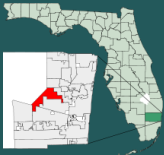
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SUNRISE (FL) ORDINANCE (2014)

Section 4-7. Retail Sale of Dogs and Cats

(2) Sale or transfer of dogs and/or cats. No pet store shall display, sell, trade, deliver, barter, lease, rent, auction, give away, transfer, offer for sale or transfer, or otherwise dispose of dogs or cats on or after the effective date of this section unless the pet store is exempt under subsection (3) below.



SUNRISE (FL) ORDINANCE (2014)

- (3) Exemptions. Section 4-7(2) does not apply to:
- a) Pet stores that (i) obtain their cats and dogs from a hobby breeder as defined above or who breed their own cats and dogs and (ii) comply with subsection (4) below.
 - b) An animal shelter.
 - c) An animal rescue organization.
 - d) An animal shelter or animal rescue organization that operates out of or in connection with a pet store or other retail store.
- ...

SUNRISE (FL) ORDINANCE (2014)

- (cont'd) Exemptions.
- (e) Pet stores that possess an active City of Sunrise local business tax receipt on April 22, 2014 shall have thirty (30) days from April 22, 2014 to comply with the certificate of source in subsection (4) below and shall be exempt from this ordinance through December 31, 2015.
 - (f) A hobby breeder as defined above.

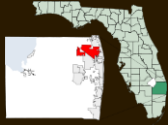
"Hobby breeder means any person or entity that causes or allows the breeding or studing of a dog or cat resulting in no more than a total of one (1) litter per calendar year whether or not the animals in such litter are offered for sale or other transfer."

Section 4-7(1)

Sec. 14-37. - Puppy mills/kitten mills prohibited.

It shall be unlawful for any person or entity to establish, operate, or maintain a puppy or kitten mill within the municipal boundaries of the City of Palm Beach Gardens.

PALM BEACH GARDENS ORDINANCE (2014)



Sec. 14-38. - Sale or transfer of dogs and/or cats.

No pet store shall display, sell, trade, deliver, barter, lease, rent, auction, give away, transfer, offer for sale or transfer, or otherwise dispose of dogs or cats within the city's municipal boundaries.

PALM BEACH GARDENS ORDINANCE (2014)

Sec. 14-40. - Adoption of shelter and rescue animals.

Nothing in this article shall prevent a pet store, its owner, operator, or employees from providing space and appropriate care for animals at the pet store, so long as such animals are owned by a publicly operated animal control agency, nonprofit humane society, or nonprofit animal rescue agency that is registered with the county, for the purpose of adopting those animals to the public.

PALM BEACH GARDENS ORDINANCE (2014)

DEFINITIONS

Puppy or kitten mill means a facility where dogs and cats are bred, whether such facility is licensed by the U.S. Department of Agriculture or not, and where any two (2) of the following conditions are found to exist:

- a. More than fifteen (15) puppies (under the age of twelve (12) weeks) or more than fifteen (15) kittens (under the age of sixteen (16) weeks) are kept at a single time;
- b. No genetic (heredity) health testing appropriate for the breed is conducted;
- ...

PALM BEACH GARDENS ORDINANCE (2014)

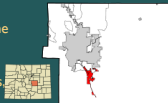
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- c. No long-term (over one year) guarantees are offered;
- d. A single female is bred every cycle;
- e. A single female is bred more than five (5) times during her lifetime;
- f. There are no records of the dogs' or cats' parents; and
- g. More than eight dogs or cats, regardless of age, are kept in a single cage or kennel enclosure.

PALM BEACH GARDENS ORDINANCE (2014)

FOUNTAIN, COLO (2011)

6.04.100 Unlawful Sale or Display of Dogs or Cats by a Pet Store. No pet store operator or pet store shall display, sell, deliver, offer for sale or adoption, barter, auction, give away, a dog or cat in the City of Fountain, Colorado, provided that this prohibition does not apply to organizations such as animal rescue groups, animal shelters or humane societies licensed by the State of Colorado who are using the premises of a Pet Store.



FOUNTAIN, COLO (2011)

Considerations in establishing a law beyond PACFA and AWA:

- 1) What are the objectives of the law?
- 2) If you include puppy-mill in the ordinance, how do you define it and what about cats and smaller breed animals?

FOUNTAIN, COLO (2011)

Considerations in establishing a law beyond PACFA and AWA:

- 3) What happens if you incorrectly define a business as a puppy-mill?
- 4) Who legislates and enforces the law?

FOUNTAIN, COLO (2011)

Considerations in establishing a law beyond PACFA and AWA:

- 5) Who inspects the breeders to determine whether they are a hobby breeder, a home breeder, or a puppy mill?
- 6) How many businesses does this affect? Aurora only has one full-time pet store that sells animals. However, it has multiple Pet Co and Pet Smarts that sell adopt out from shelters.

FOUNTAIN, COLO (2011)

Considerations in establishing a law beyond PACFA and AWA:

- 7) How does a buyer get a puppy, a purebred dog, or a specialty dog (hunting dog)?
- 8) What happens if animal shelter dog turns out to have problems or has vicious or aggressive tendencies? (Pet Smart sued)

OBSTACLES TO MUNICIPAL CODE:

- 1) Lawsuits:
Puppies N' Love, 116 F.Supp. 3d 971 (Arizona Dist. Ct. 2015)
Mo. Pet Breeders Ass'n v. Cnty. Of Cook, 119 F.Supp 3d 865 (Illinois Northern Dist. Ct. 2015)
Smith v. Humane Soc'y of the United States, 2015 Mo.App. LEXIS 684 (Mo. Ct.App., June 29, 2015)

OBSTACLES TO MUNICIPAL CODE:

- 2) House/Senate Bill allowing the state to preempt: Arizona Senate Bill 1248: Establishes State Preemption as to Pet Store Operators.

QUESTIONS?



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