



AGENDA REPORT
April 9, 2019

19-07

Amendment to the Brevard County Code of Ordinances to ban the retail sale of dogs and cats at pet stores unless the pets are obtained from specified sources., District 2

SUBJECT:

Authorize an amendment to the Brevard County Code of Ordinances to ban the retail sale of dogs and cats at pet stores unless the animal is from an animal shelter, animal rescue organization, hobby breeder or United States Department of Agriculture licensed commercial breeder.

DEPT/OFFICE:

District 2

REQUESTED ACTION:

It is requested that the Board adopt an ordinance amending Chapter 14 of the Brevard County Code of Ordinances to ban the retail sale of dogs and cats at pet stores unless the animal is from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeder.

SUMMARY EXPLANATION and BACKGROUND:

The American Society for the Prevention of Cruelty to Animals defines a "puppy mill" as "a large-scale commercial dog breeding operation where profit is given priority over the well-being of the dogs." According to the Humane Society of the United States, two million three hundred thousand puppies who originated from puppy mills are sold annually from commercial breeding facilities. Meanwhile, an estimated three million dogs and cats are euthanized by shelters every year in the United States.

While not all dogs or cats sold in retail pet stores are the product of puppy mills or kitten factories, it is widely believed that these commercial breeding facilities where dogs and cats are mass-produced in overcrowded and unsanitary conditions continue to exist, at least in part, because of the sale of dogs and cats in pet stores. An effective tool to eliminate the retail market for mill-bred dogs and cats is to require pet stores to humanely source dogs and cats offered for sale. Therefore, the Board finds that prohibiting the retail sale of dogs and cats in pet stores throughout the County will promote community awareness of the plight of animals in puppy mills and kitten factories and, in turn, will foster a more humane environment, as well as encourage consumers to adopt dogs and cats from shelters and rescue organizations, thereby saving the lives of animals while

reducing the cost to the public of sheltering or euthanizing animals.

Attached is an ordinance amending Chapter 14 of the Brevard County Code of Ordinances. With this amendment, the Board intends to establish and implement reasonable and necessary regulations to ban the retail sale of dogs and cats in pet stores throughout Brevard County in order to protect the health, safety, and welfare of both animals and pet owners in the County.

CLERK TO THE BOARD INSTRUCTIONS:

Attachment, Proposed ordinance

ATTACHMENTS:

Description

- ▢ **D2 Ordinance Modification (3-25-19) strikethrough**
- ▢ **D2 Ordinance Modification Clean**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 10, 2019

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item H.2., Amendment to the Brevard County Code of Ordinances to Ban the Retail Sale of Dogs and Cats at Pet Stores Unless the Pets are Obtained from Specified Sources

The Board of County Commissioners, in regular session on April 9, 2019, adopted Ordinance No. 19-07, amending Chapter 14 of the Brevard County Code of Ordinances to ban the retail sale of dogs and cats at pet stores unless the animal is from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeder. Enclosed is certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: Each Commissioner
Sheriff Ivey



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

April 11, 2019

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2019-07, which was filed in this office on April 11, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO. 2019- 07

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 14 OF THE BREVARD COUNTY CODE OF ORDINANCES, "ANIMALS"; CREATING A NEW SECTION IN ARTICLE II OF CHAPTER 14, SECTION 14-64, "RETAIL SALE OF DOGS AND CATS AT PET STORES"; PROHIBITING THE RETAIL SALE OF DOGS AND CATS AT PET STORES UNLESS THE ANIMAL IS FROM AN ANIMAL SHELTER, ANIMAL RESCUE ORGANIZATION, HOBBY BREEDER, OR UNITED STATES DEPARTMENT OF AGRICULTURE LICENSED COMMERCIAL BREEDERS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR RECORD KEEPING AND POSTING; PROVIDING FOR EXEMPTIONS; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes (2018), the Board of County Commissioners of Brevard County, Florida (hereinafter the "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, at the Federal level, the United States Department of Agriculture is responsible for enforcing the Animal Welfare Act, which establishes minimum standards of care for dogs bred for sale; and

WHEREAS, at the State level, Chapter 828, Florida Statutes (2018), deals with animal cruelty, animal sales, and animal protection regulations, but does not explicitly regulate all breeding facilities which may be referred to as "puppy mills" or "kitten factories," where dogs and cats are mass-produced for sale to the public, including through sale at pet stores; and

WHEREAS, puppy mills disregard the health of dogs in order to maintain a low overhead and maximize profits;¹ and

WHEREAS, the documented abuses endemic to puppy mills and kitten factories include over-breeding; inbreeding; minimal to non-existent veterinary care; lack of adequate and nutritious food, water and shelter; lack of socialization; lack of adequate space; and lack of adequate exercise; and

WHEREAS, socialization is critically important for the emotional health of dogs;² and

¹See, *Avenson v. Zegart*, 577 F.Supp. 958, 960 (D. Minn. 1984).

WHEREAS, dogs and cats, due to their sentience and capability of feeling, perception, and affection, ought to be afforded certain protections not necessarily afforded to non-sentient creatures; and

WHEREAS, according to the Humane Society of the United States, there are an estimated ten thousand puppy mills in the United States and, on an annual basis, around two million three hundred thousand puppies who originated from these puppy mills are sold throughout the country, while roughly three million cats and dogs are euthanized by shelters every year in the United States;³ and

WHEREAS, due to poor conditions at these mills, dogs and cats are often sick, subjected to inhumane conditions, and suffer from painful and/or life-limiting congenital disorders;⁴ and

WHEREAS, consumers unknowingly purchase mill-bred puppies or kittens from places like pet stores believing that the animal is healthy and genetically sound, only to find out that the dog or cat will often face an array of health problems, including communicable diseases and/or genetic disorders, that present themselves immediately or soon after sale, or that do not surface for years, costing the owner hundreds or thousands of dollars in expensive veterinary treatment;⁵ and

WHEREAS, the DeSoto County Board of County Commissioners recently recognized that Florida has the highest number of consumer complaints submitted to the Humane Society regarding sick puppies purchased from puppy mills;⁶ and

WHEREAS, Lyndsay Cole, a spokeswoman for the United States Department of Agriculture Animal and Plant Health Inspection Service (hereinafter the “Animal Inspection Service”), explained that a substantial recent drop in citations to research facilities, breeders, exhibitors, and dealers could be attributed, in part, to a shortage of Animal Inspection Service

²See, generally, 9 C.F.R. § 3.8(c)(2) (2018); see, generally, American Veterinary Medical Association (AVMA), *Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets*, available at: <https://www.avma.org/KB/Policies/Pages/Model-Bill-and-Regulations-to-Assure-Appropriate-Care-for-Dogs-Intended-for-Use-as-Pets.aspx> (last visited Feb. 28, 2019).

³The Humane Society of the United States, *Puppy Mills: Facts and Figures – August 2018*, available at: <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mill%20Facts%20and%20Figures%20August%202018.pdf> (last visited: Feb. 28, 2019).

⁴The Humane Society of the United States, *Puppy Mills and the Animal Welfare Act*, p. 1, available at: <https://www.humanesociety.org/sites/default/files/docs/puppy-mills-awa-booklet-lores.pdf> (last visited: Feb. 28, 2018).

⁵The Humane Society of the United States, *Puppy Buyer Complaints – A Ten Year Summary 2007-2017*, available at: <https://www.humanesociety.org/sites/default/files/docs/2018-puppy-buyers-complaint.pdf> (last visited Dec. 28, 2018).

⁶DeSoto County Code of County Ordinances, Chapter 4, Article III, Section 4-71, adopted on July 25, 2017, via Ordinance 2017-11, available at: https://librarystage.municode.com/fl/desoto_county/codes/code_of_ordinances?nodeId=COOR_CH4ANCO_ARTII_IRESADOCARA_S4-71FI (last visited Feb. 28, 2019).

inspectors⁷. The United States Department of Agriculture also said the drop was due to revamped enforcement; and

WHEREAS, inspection by the Animal Inspection Service does not ensure compliance with any applicable State statute(s) governing the humane treatment of animals, including, but not limited to, Section 828.12, Florida Statutes, “Cruelty to animals”; Section 828.126, Florida Statutes, “Sexual activities involving animals”; Section 828.13, Florida Statutes, “Confinement of animals without sufficient food, water, or exercise; abandonment of animals”; and, Section 828.16, Florida Statutes, “Contagious diseases”; and

WHEREAS, due to a publicly acknowledged shortage of inspectors and due to being tasked with enforcing only certain federal regulations, relying solely upon Animal Inspection Service inspections to ensure the ethical and humane treatment of animals is inadequate; and

WHEREAS, neither Brevard County nor the Brevard County Sheriff’s Office has any legal authority upon which to inspect or directly regulate out-of-county commercial breeders or brokers; and

WHEREAS, it is routine practice for pet stores operating within Brevard County to source puppies and kittens from out-of-county commercial breeders or brokers; and

WHEREAS, while the Board recognizes that not all dogs and cats sold in pet stores are products of inhumane breeding conditions and would not classify every commercial breeder selling dogs or cats to pet stores as the operator of a puppy mill or kitten factory, it is the belief of the Board that puppy mills and kitten factories continue to exist, at least in part, because of public demand for dogs and cats offered for sale at pet stores, and that the most effective way to stop puppy mills and kitten factories is to discourage the purchase and sale of animals produced at those inhumane facilities; and

WHEREAS, even the most ethical and humane treatment of puppies and kittens following procurement from out-of-county commercial breeders and brokers does nothing to disincentivize sub-standard unethical and inhumane conditions at out-of-county breeding locations; and

WHEREAS, the procurement of puppies and kittens by local pet stores from out-of-county sources subject to nonexistent or ineffective local regulation may actively encourage an abusive industry and incentivize that industry’s inhumane practices; and

WHEREAS, the Board has determined that an effective tool to reduce and, ultimately, eliminate the retail market for dogs and cats bred through puppy mills and kitten factories is to

⁷Karin Brulliard, *The USDA is issuing far fewer citations to zoos, labs and breeders for animal welfare violations*, WASH. POST (Feb. 26, 2019), <https://www.washingtonpost.com/science/2019/02/26/usda-is-issuing-far-fewer-citations-zoos-labs-breeders-animal-welfare-violations/> (last visited Feb. 28, 2019).

encourage that pet stores utilize an adoption-based business model, which ensures that the animals sold by retail outlets are sourced from shelters or animal rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, encouraging the adoption of homeless pets and reducing the financial and emotional toll on consumers who purchase mill-bred pets with latent physical and behavioral problems; and

WHEREAS, this Ordinance does not affect a consumer's ability to obtain a dog or cat of his or her choice directly from an animal rescue organization (including, but not limited to, breed-specific animal rescue organizations) or animal shelter, United States Department of Agriculture licensed commercial breeder, or reputable hobby breeder where the consumer can directly see the conditions in which the dogs or cats are bred, or can confer directly with the breeder concerning said conditions; and

WHEREAS, due to inadequate regulations governing the retail sale of dogs and cats in Brevard County, the Board finds that prohibiting the retail sale of dogs and cats in pet stores in the County will promote community awareness of the plight of animals in puppy mills and kitten factories and, in turn, will foster a more humane environment, as well as encourage consumers to adopt dogs and cats from shelters and rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, thereby saving the lives of animals while reducing the cost to the public of sheltering or euthanizing animals.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, as follows:

Section 1. Amendments to Chapter 14 of the Brevard County Code of Ordinances. Chapter 14 is hereby amended to include the following provisions:

Section 14-64. Reserved. is now hereby entitled **Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.** and shall read as follows:

Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.

(a) Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them below or as defined in Section 14-36 of the Brevard County Code of Ordinances, except where the context clearly indicates a different meaning:

Animal rescue organization means a duly incorporated nonprofit organization, properly organized under Section 501(c)(3) of the Internal Revenue Code, devoted to the rescue, care, humane treatment, and adoption of stray, abandoned, or surrendered animals, and does not

intentionally or willfully breed animals. This does not include any broker or any entity that obtains dogs or cats from any source for payment or compensation. While animal rescue organizations are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

Animal shelter shall have the same meaning as defined in Section 14-36 of the Brevard County Code of Ordinances. The term includes neither any entity that willfully causes dogs or cat to reproduce nor any broker. This does not include any entity that obtains dogs or cats from any source for payment or compensation. While animal shelters are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

Broker means any person or entity that obtains dogs or cats, for payment or compensation, from one or more breeders and subsequently transfers said dogs or cats for resale by a pet store. This does not include hobby breeders, as defined below.

Cat means an animal of any age that is a member of *Felis Catus*, or any genetic hybridization of this species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Dog means an animal of any age that is a member of *Canus Lupus Familiaris*, or any genetic hybridization of this species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Hobby Breeder means any person or entity that causes or allows the breeding of dogs or cats resulting in no more than forty-eight offspring within a 12-month period while permitting consumers access to directly see the condition in which the dogs or cats are bred and raised, or can confer directly with the breeder concerning said conditions. Hobby breeder sales to pet stores are expressly conditioned upon compliance with any and all registration and inspection

requirements lawfully enacted by any governmental entity or agency. The Brevard County Sheriff's Office shall be entitled to conduct inspection(s) of hobby breeders who sell to pet stores (to ensure they are hobby breeders). Nothing herein shall serve to prohibit the federal government (e.g., United States Department of Agriculture) or the State of Florida from imposing additional registration and/or inspection requirements as may be lawfully enacted. Nothing in this section is intended to create new inspection requirements insofar as hobby breeders are concerned.

Official certificate of veterinary inspection, which is defined in Section 828.29, Florida Statutes (2018), as may be amended, means a legible certificate of veterinary inspection signed by the examining veterinarian licensed by the state of origin and accredited by the United States Department of Agriculture that shows:

- (1) the age, sex, breed, color, and health records of the dog or cat;
- (2) the printed or typed names and addresses of the person or business from whom the animal was obtained, the consignor or seller, the consignee or purchaser, and the examining veterinarian, and the veterinarian's license number;
- (3) a list of all vaccines and deworming medications administered to the dog or cat, including the manufacturer, vaccine, type, lot number, expiration date, and the dates of administration thereof;
- (4) that the examining veterinarian warrants that, to the best of his or her knowledge, the animal has no sign of contagious or infectious diseases and has no evidence of internal or external parasites, including coccidiosis and ear mites, but excluding fleas and ticks.

The veterinarian shall be responsible for filling out the official certificate of veterinary inspection in accordance with Florida law.

Pet store means any retail establishment that: (1) has obtained a tax receipt, (2) is open to the public, and (3) sells or transfers, or offers for sale or transfer, dogs or cats, regardless of the age of the dog or cat, or the physical

location of the animal. Such an establishment may be a permanent, temporary, or virtual establishment.

Retail sale means a sale of an animal regardless of location. This term includes, but is not limited to: offering for sale; auctioning; bartering; displaying for sale, adoption, or re-home; exchanging for compensation; trading; delivering; advertising for sale; or otherwise disposing of dogs or cats to a person in a pet store or in association with a pet store.

United States Department of Agriculture Licensed Commercial Breeder means any person or entity that has more than forty eight offspring within a 12 month period and sells the offspring to pet stores, brokers, research facilities or over the internet and are licensed through the United States Department of Agriculture and, if required, the state in which the licensed commercial breeder is located and shall have no documented violation in the preceding 48 month period by any governmental agency or entity.

(b) Intent.

- (1) The intent of this Section is to prohibit the retail sale of commercially bred dogs and cats from puppy mills and kitten factories at pet stores. Rather, an adoption-based business model shall be encouraged for the retail sale of dogs or cats at pet stores in Brevard County, whereby all dogs or cats must be sourced from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders.
- (2) The Board finds it reasonable and necessary to establish regulations regarding the sale of cats and dogs at pet stores to protect the health, safety, and welfare of both animals and pet owners.
- (3) The Board intends for this Section to conform with and supplement Chapter 828, Florida Statutes, as may be

amended, relating to animal cruelty, animal sales, and animal protection regulations.

(c) Retail Sale of Dogs and Cats at Pet Stores.

(1) No pet store shall offer dogs or cats for sale in Brevard County, unless the dog or cat was obtained directly from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeder.

(2) Any dog or cat offered for sale in Brevard County must be accompanied by an official certificate of veterinary inspection issued by a licensed, accredited veterinarian. Upon sale, a copy of the certificate must be given to the buyer and the seller must retain one copy of the certificate for at least one year after the date of sale.

(3) Pet stores shall maintain records that include the name, address, telephone number, and email address of the animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders, from which each dog or cat was acquired for three years following the date of acquisition from the animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders. Pet stores shall post in a conspicuous location the following information: (1) Breed (2) Identification number (3) Name of breeder, city and state (4) United States Department of Agriculture number. The posting requirements apply regardless of the animal's place of origin.

(4) Any such records shall be made available, immediately upon request, to the County's animal control authority or any other County official(s) charged with enforcing the provisions of this Section.

(d) Adoption of Shelter and Rescue Animals. Nothing in this Section shall prevent a pet store, its owner(s), operator(s), or employee(s), from providing space and appropriate care for animals owned by an animal shelter or animal rescue organization, and maintained at

the pet store for the purpose of adopting those animals to the public.

(e) *Adoption Fee(s)*. Nothing in this Section shall be construed to prohibit an animal rescue organization or an animal shelter from recovering or offsetting costs, including feeding, sheltering, or providing care for an animal by means of an adoption fee.

(f) *Prohibition on Retail Sale in Public Places*. There shall be no retail sale of dogs or cats on any public thoroughfare, public common areas, public parks, or other places of public accommodations, unless such animals are from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders. If applicable, the individual or entity responsible for running the event must obtain any and all applicable permits required by Federal, State, County, or municipal law, rule, or regulation. The same rules, regulations, recordkeeping requirements, and limitations which apply to pet stores shall apply to any individual or entity responsible for running the event irrespective of whether said individual or entity is or should be in possession of a business tax receipt.

(g) *Enforcement and Penalties*.

(1) All found to be in violation of this Section may be subject to any applicable enforcement mechanism(s) available to the County. Such mechanisms may include, but are not limited to: prosecuting a violation of this Section in the same manner as a misdemeanor, as provided in Section 125.69, Florida Statutes (2018), as may be amended; prosecuting a violation of this Section in accordance with Section 1-7 of the Brevard County Code of Ordinances; and other forms of relief as may be granted by a court of competent jurisdiction.

(2) Each animal produced, reared, bred, kept, sold, or released in violation of this Section will be deemed a separate offense, and a separate offense will be deemed committed on each day during which a violation occurs or continues to occur.

(h) *Area Encompassed*. This Section shall apply throughout the incorporated and unincorporated areas of the County. A municipal

ordinance shall prevail over this Section within the municipality's jurisdiction to the extent of any conflict with this Section.

- (i) *Applicability.* This Section shall take effect one month after the date of its adoption. However, any individual or entity with a business tax receipt from the County for the retail sale of dogs or cats, issued on or before the date this Section is adopted, shall be given a twelve-month grace period from the date of adoption before being subject to the regulations provided for in this Section.

Section 2. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 3. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 4. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

DONE, ORDERED, AND ADOPTED in Regular Session, this 9th_ day of April____, 2019.

ATTEST:

By:



Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By:



Kristine Isnardi, Chair
(as approved by the Board on 4 / 9 /19)

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 14 OF THE BREVARD COUNTY CODE OF ORDINANCES, "ANIMALS"; CREATING A NEW SECTION IN ARTICLE II OF CHAPTER 14, SECTION 14-64, "RETAIL SALE OF DOGS AND CATS AT PET STORES"; PROHIBITING THE RETAIL SALE OF DOGS AND CATS AT PET STORES UNLESS THE ANIMAL IS FROM AN ANIMAL SHELTER, ANIMAL RESCUE ORGANIZATION, HOBBY BREEDER, OR UNITED STATES DEPARTMENT OF AGRICULTURE LICENSED COMMERCIAL BREEDERS; PROVIDING FOR RECORD KEEPING; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes (2018), the Board of County Commissioners of Brevard County, Florida (hereinafter the "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, at the Federal level, the United States Department of Agriculture is responsible for enforcing the Animal Welfare Act, which establishes minimum standards of care for dogs bred for sale; and

WHEREAS, at the State level, Chapter 828, Florida Statutes (2018), deals with animal cruelty, animal sales, and animal protection regulations, but does not explicitly regulate all breeding facilities which may be referred to as "puppy mills" or "kitten factories," where dogs and cats are mass-produced for sale to the public, including through sale at pet stores; and

WHEREAS, puppy mills disregard the health of dogs in order to maintain a low overhead and maximize profits;¹ and

WHEREAS, the documented abuses endemic to puppy mills and kitten factories include over-breeding; inbreeding; minimal to non-existent veterinary care; lack of adequate and nutritious food, water and shelter; lack of socialization; lack of adequate space; and lack of adequate exercise; and

WHEREAS, socialization is critically important for the emotional health of dogs;² and

¹See, *Avenson v. Zegart*, 577 F.Supp. 958, 960 (D. Minn. 1984).

WHEREAS, dogs and cats, due to their sentience and capability of feeling, perception, and affection, ought to be afforded certain protections not necessarily afforded to non-sentient creatures; and

WHEREAS, according to the Humane Society of the United States, there are an estimated ten thousand puppy mills in the United States and, on an annual basis, around two million three hundred thousand puppies who originated from these puppy mills are sold throughout the country, while roughly three million cats and dogs are euthanized by shelters every year in the United States;³ and

WHEREAS, due to poor conditions at these mills, dogs and cats are often sick, subjected to inhumane conditions, and suffer from painful and/or life-limiting congenital disorders;⁴ and

WHEREAS, consumers unknowingly purchase mill-bred puppies or kittens from places like pet stores believing that the animal is healthy and genetically sound, only to find out that the dog or cat will often face an array of health problems, including communicable diseases and/or genetic disorders, that present themselves immediately or soon after sale, or that do not surface for years, costing the owner hundreds or thousands of dollars in expensive veterinary treatment;⁵ and

WHEREAS, the DeSoto County Board of County Commissioners recently recognized that Florida has the highest number of consumer complaints submitted to the Humane Society regarding sick puppies purchased from puppy mills;⁶ and

WHEREAS, Lyndsay Cole, a spokeswoman for the United States Department of Agriculture Animal and Plant Health Inspection Service (hereinafter the “Animal Inspection Service”), explained that a substantial recent drop in citations to research facilities, breeders, exhibitors, and dealers could be attributed, in part, to a shortage of Animal Inspection Service

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³The Humane Society of the United States, *Puppy Mills: Facts and Figures – August 2018*, available at: <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mill%20Facts%20and%20Figures%20August%202018.pdf> (last visited: Feb. 28, 2019).

⁴The Humane Society of the United States, *Puppy Mills and the Animal Welfare Act*, p. 1, available at: <https://www.humanesociety.org/sites/default/files/docs/puppy-mills-awa-booklet-lores.pdf> (last visited: Feb. 28, 2018).

⁵The Humane Society of the United States, *Puppy Buyer Complaints – A Ten Year Summary 2007-2017*, available at: <https://www.humanesociety.org/sites/default/files/docs/2018-puppy-buyers-complaint.pdf> (last visited Dec. 28, 2018).

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inspectors⁷. The United States Department of Agriculture also said the drop was due to revamped enforcement;⁸ and

WHEREAS, inspection by the Animal Inspection Service does not ensure compliance with any applicable State statute(s) governing the humane treatment of animals, including, but not limited to, Section 828.12, Florida Statutes, "Cruelty to animals"; Section 828.126, Florida Statutes, "Sexual activities involving animals"; Section 828.13, Florida Statutes, "Confinement of animals without sufficient food, water, or exercise; abandonment of animals"; and, Section 828.16, Florida Statutes, "Contagious diseases"; and

WHEREAS, due to a publicly acknowledged shortage of inspectors and due to being tasked with enforcing only certain federal regulations, relying solely upon Animal Inspection Service inspections to ensure the ethical and humane treatment of animals is inadequate; and

WHEREAS, neither Brevard County nor the Brevard County Sheriff's Office has any legal authority upon which to inspect or directly regulate out-of-county commercial breeders or brokers; and

WHEREAS, it is routine practice for pet stores operating within Brevard County to source puppies and kittens from out-of-county commercial breeders or brokers; and

WHEREAS, while the Board recognizes that not all dogs and cats sold in pet stores are products of inhumane breeding conditions and would not classify every commercial breeder selling dogs or cats to pet stores as the operator of a puppy mill or kitten factory, it is the belief of the Board that puppy mills and kitten factories continue to exist, at least in part, because of public demand for dogs and cats offered for sale at pet stores, and that the most effective way to stop puppy mills and kitten factories is to discourage the purchase and sale of animals produced at those inhumane facilities; and

WHEREAS, even the most ethical and humane treatment of puppies and kittens following procurement from out-of-county commercial breeders and brokers does nothing to disincentivize sub-standard unethical and inhumane conditions at out-of-county breeding locations; and

WHEREAS, the procurement of puppies and kittens by local pet stores from out-of-county sources subject to nonexistent or ineffective local regulation may actively encourage an abusive industry and incentivize that industry's inhumane practices; and

⁷Karin Brulliard, *The USDA is issuing far fewer citations to zoos, labs and breeders for animal welfare violations*, WASH. POST (Feb. 26, 2019), <https://www.washingtonpost.com/science/2019/02/26/usda-is-issuing-far-fewer-citations-zoos-labs-breeders-animal-welfare-violations/> (last visited Feb. 28, 2019).

⁸Karin Brulliard, *The USDA is issuing far fewer citations to zoos, labs and breeders for animal welfare violations*, WASH. POST (Feb. 26, 2019), <https://www.washingtonpost.com/science/2019/02/26/usda-is-issuing-far-fewer-citations-zoos-labs-breeders-animal-welfare-violations/> (last visited Feb. 28, 2019).

WHEREAS, the Board has determined that an effective tool to reduce and, ultimately, eliminate the retail market for dogs and cats bred through puppy mills and kitten factories is to encourage that pet stores utilize an adoption-based business model, which ensures that the animals sold by retail outlets are sourced from shelters or animal rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, encouraging the adoption of homeless pets and reducing the financial and emotional toll on consumers who purchase mill-bred pets with latent physical and behavioral problems; and

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WHEREAS, this Ordinance does not affect a consumer's ability to obtain a dog or cat of his or her choice directly from an animal rescue organization (including, but not limited to, breed-specific animal rescue organizations) or animal shelter, United States Department of Agriculture licensed commercial breeder, or reputable hobby breeder where the consumer can directly see the conditions in which the dogs or cats are bred, or can confer directly with the breeder concerning said conditions; and

WHEREAS, due to inadequate regulations governing the retail sale of dogs and cats in Brevard County, the Board finds that prohibiting the retail sale of dogs and cats in pet stores in the County will promote community awareness of the plight of animals in puppy mills and kitten factories and, in turn, will foster a more humane environment, as well as encourage consumers to adopt dogs and cats from shelters and rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, thereby saving the lives of animals while reducing the cost to the public of sheltering or euthanizing animals.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, as follows:

Section 1. Amendments to Chapter 14 of the Brevard County Code of Ordinances. Chapter 14 is hereby amended to include the following provisions:

Section 14-64. Reserved. is now hereby entitled **Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.** and shall read as follows:

Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.

(a) *Definitions.* The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them below or as defined in Section 14-36 of the Brevard County Code of Ordinances, except where the context clearly indicates a different meaning:

Animal rescue organization means a duly incorporated nonprofit organization, properly organized under Section 501(c)(3) of the Internal Revenue Code, devoted to the

rescue, care, humane treatment, and adoption of stray, abandoned, or surrendered animals, and does not intentionally or willfully breed animals. This does not include any broker or any entity that obtains dogs or cats from any source for payment or compensation. While animal rescue organizations are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

Animal shelter shall have the same meaning as defined in Section 14-36 of the Brevard County Code of Ordinances. The term includes neither any entity that willfully causes dogs or cat to reproduce nor any broker. This does not include any entity that obtains dogs or cats from any source for payment or compensation. While animal shelters are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

~~*Breeder* means any person or entity that causes dogs or cats to reproduce, either willfully or through failure to exercise due care and control, regardless of the size or number of litters produced. Any person or entity offering male dogs or cats for stud purposes will be classified as a breeder. This classification will not apply to a hobby breeder, as defined in this Section, or to a pet owner who breeds his or her own pets and keeps all of the offspring.~~

Broker means any person or entity that obtains dogs or cats, for payment or compensation, from one or more breeders and subsequently transfers said dogs or cats for resale by a pet store. This does not include hobby breeders, as defined below.

Cat means an animal of any age that is a member of *Felis Catus*, or any genetic hybridization of this species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Dog means an animal of any age that is a member of *Canus Lupus Familiaris*, or any genetic hybridization of this

species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Hobby Breeder means any person or entity that causes or allows the breeding of dogs or cats resulting in no more than forty-eight offspring within a 12-month period while permitting consumers access to directly see the condition in which the dogs or cats are bred and raised, or can confer directly with the breeder concerning said conditions. Hobby breeder sales to pet stores are expressly conditioned upon compliance with any and all registration and inspection requirements lawfully enacted by any governmental entity or agency. The Brevard County Sheriff's Office - shall be entitled to conduct inspection(s) of hobby breeders who sell to pet stores (to ensure they are hobby breeders). Nothing herein shall serve to prohibit the federal government (e.g., United States Department of Agriculture) or the State of Florida from imposing additional registration and/or inspection requirements as may be lawfully enacted. Nothing in this section is intended to create new inspection requirements insofar as hobby breeders are concerned.

Official certificate of veterinary inspection, which is defined in Section 828.29, Florida Statutes (2018), as may be amended, means a legible certificate of veterinary inspection signed by the examining veterinarian licensed by the state of origin and accredited by the United States Department of Agriculture that shows:

- (1) the age, sex, breed, color, and health records of the dog or cat;
- (2) the printed or typed names and addresses of the person or business from whom the animal was obtained, the consignor or seller, the consignee or purchaser, and the examining veterinarian, and the veterinarian's license number;
- (3) a list of all vaccines and deworming medications administered to the dog or cat, including the manufacturer, vaccine, type, lot number, expiration date, and the dates of administration thereof;
- (4) that the examining veterinarian warrants that, to the best of his or her knowledge, the animal has no sign of

contagious or infectious diseases and has no evidence of internal or external parasites, including coccidiosis and ear mites, but excluding fleas and ticks.

The veterinarian shall be responsible for filling out the official certificate of veterinary inspection in accordance with Florida law.

Pet store means any retail establishment that: (1) has obtained a tax receipt, (2) is open to the public, and (3) sells or transfers, or offers for sale or transfer, dogs or cats, regardless of the age of the dog or cat, or the physical location of the animal. Such an establishment may be a permanent, temporary, or virtual establishment.

Retail sale means a sale, ~~regardless of whether any exchange of consideration for the of an animal takes place at the same time or regardless of~~ location. This term includes, but is not limited to: offering for sale; auctioning; bartering; displaying for sale, adoption, or re-home; exchanging for compensation; ~~giving away;~~ trading; delivering; advertising for sale; or otherwise disposing of dogs or cats to a person in a pet store or in association with a pet store.

United States Department of Agriculture Licensed Commercial Breeder – means any person or entity that has more than forty eight offspring within a 12 month period and sells the offspring to pet stores, brokers, research facilities or over the internet and are licensed through the United States Department of Agriculture and, if required, the state in which the licensed commercial breeder is located and shall have no documented violation in the preceding 48 month period by any governmental agency or entity.

(b) Intent.

- (1) The intent of this Section is to prohibit the retail sale of commercially bred dogs and cats from puppy mills and kitten factories at pet stores. Rather, an adoption-based business model shall be encouraged for the retail sale of

dogs or cats at pet stores in Brevard County, whereby all dogs or cats must be sourced from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders.

- (2) The Board finds it reasonable and necessary to establish regulations regarding the sale of cats and dogs at pet stores to protect the health, safety, and welfare of both animals and pet owners. ~~Furthermore, the Board finds these regulations will encourage pet consumers to obtain dogs and cats from animal shelters, animal rescue organization, hobby breeders, or United States Department of Agriculture licensed commercial breeders, thereby saving the lives of animals and reducing the cost to the public of sheltering and euthanizing animals.~~
- (3) The Board intends for this Section to conform with and supplement Chapter 828, Florida Statutes, as may be amended, relating to animal cruelty, animal sales, and animal protection regulations.

(c) Retail Sale of Dogs and Cats at Pet Stores.

- (1) No pet store shall offer dogs or cats for sale in Brevard County, unless the dog or cat was obtained directly from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeder.
- (2) Any dog or cat offered for sale in Brevard County must be accompanied by an official certificate of veterinary inspection issued by a licensed, accredited veterinarian. Upon sale, a copy of the certificate must be given to the buyer and the seller must retain one copy of the certificate for at least one year after the date of sale.
- (3) Pet stores shall maintain records that include the name, address, telephone number, and email address of the animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders, from which each dog or cat was acquired for three years following the date of acquisition from the animal shelter, animal rescue organization, hobby

breeder, or United States Department of Agriculture licensed commercial breeders. Pet stores shall post in a conspicuous location the following information: (1) Breed (2) Identification number (3) Name of breeder, city and state (4) United States Department of Agriculture number. The posting requirements apply regardless of the animal's place of origin.

(4) Any such records shall be made available, immediately upon request, to the County's animal control authority or any other County official(s) charged with enforcing the provisions of this Section.

(d) *Adoption of Shelter and Rescue Animals.* Nothing in this Section shall prevent a pet store, its owner(s), operator(s), or employee(s), from providing space and appropriate care for animals owned by an animal shelter or animal rescue organization, and maintained at the pet store for the purpose of adopting those animals to the public.

(e) *Adoption Fee(s).* Nothing in this Section shall be construed to prohibit an animal rescue organization or an animal shelter from recovering or offsetting costs, including feeding, sheltering, or providing care for an animal by means of an adoption fee. ~~A# itemized fee statement will be provided to buyer for each adoption.~~

(f) *Prohibition on Retail Sale in Public Places.* There shall be no retail sale of dogs or cats on any public thoroughfare, public common areas, public parks, or other places of public accommodations, unless such animals are from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders. If applicable, the individual or entity responsible for running the event must obtain any and all applicable permits required by Federal, State, County, or municipal law, rule, or regulation. The same rules, regulations, recordkeeping requirements, and limitations which apply to pet stores shall apply to any individual or entity responsible for running the event irrespective of whether said individual or entity is or should be in possession of a business tax receipt.

(g) *Enforcement and Penalties.*

(1) ~~Any pet store.~~ All found to be in violation of this Section may be subject to any applicable enforcement mechanism(s) available to the County. Such mechanisms may include, but are not limited to: prosecuting a violation of this Section in the same manner as a misdemeanor, as provided in Section 125.69, Florida Statutes (2018), as may be amended; prosecuting a violation of this Section in accordance with Section 1-7 of the Brevard County Code of Ordinances; and other forms of relief as may be granted by a court of competent jurisdiction.

(2) Each animal produced, reared, bred, kept, sold, or released in violation of this Section will be deemed a separate offense, and a separate offense will be deemed committed on each day during which a violation occurs or continues to occur.

(h) *Area Encompassed.* This Section shall apply throughout the incorporated and unincorporated areas of the County. A municipal ordinance shall prevail over this Section within the municipality's jurisdiction to the extent of any conflict with this Section.

(i) *Applicability.* This Section shall take effect one month after the date of its adoption. However, any individual or entity with a business tax receipt from the County for the retail sale of dogs or cats, issued on or before the date this Section is adopted, shall be given a twelve-month grace period from the date of adoption before being subject to the regulations provided for in this Section.

Section 2. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 3. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 4. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

DONE, ORDERED, AND ADOPTED in Regular Session, this 9th day of April, 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Scott Ellis, Clerk of Court

By: _____
Kristine Isnardi, Chair
(as approved by the Board on ___/___/___)

A Residents Analysis of the
Preemption/ Unconstitutionality
of the Proposed Brevard County Pet Sales Ordinance

OVERVIEW

"In short, a law 'beyond the power of Congress,' for any reason, is 'no law at all'"

The above quote is from Justice Ruth Bader Ginsburg in her specially concurring opinion to *Bond v. United States* 131 S. Ct. 2355, 564 US 211, 180 L. Ed. 2d 269 (2011) [at page 2368]. In *Bond*, Justice Kennedy delivered the unanimous decision of the United States Supreme Court granting standing to a citizen to challenge a statutes validity, stating [at page 2364] that "*Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions.*"

This treatise is presented by Scott Cuthbert¹, a citizen and long time resident of Brevard County. I submit this to state my concerns that the enactment of the proposed ordinance "Prohibiting the Retail Sale of Dogs and Cats at Pet Stores" unless the animal is from a shelter or a rescue is preempted by both Federal and Florida Law and is blatantly unconstitutional. I am further concerned that passage of this ordinance will expose the county's residents and the members the Board of Brevard County Commissioners to massive civil liability through a Title 42 United States Code, Section 1983 action.

In *Owen v. City of Independence*, 445 U.S. 622, 657, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980) – a case where the city fired its Chief of Police in violation of his constitutional rights to procedural and substantive due process – the U.S. Supreme Court held local governments have no immunity from damage liability flowing from their constitutional violations of citizens rights.²

¹ I present this treatise as an exercise of my 1st Amendment Rights to "Free Speech" and to "Petition" the Brevard Board of County Commissioners for a grievance. It is not meant as a "Legal Opinion". I consider myself to be nothing more then a reasonable, rational citizen of average intelligence.

² At 445 U.S. 654 the *Owen* Court recognized that "Congress enacted § 1983 precisely to provide a remedy for abuses of official power" and that "Elemental notions of fairness dictate that one who causes a loss should bear the loss." At 445 U.S. 649, the Supreme Court continued by stating "... a municipality has no 'discretion' to violate the Federal Constitution; its dictates are absolute and imperative. And when a court passes judgment on the municipality's conduct in a § 1983 action, it does not seek to second-guess the 'reasonableness' of the city's decision nor to interfere with the local government's resolution of competing policy considerations. Rather, it looks only to whether the municipality has conformed to the requirements of the Federal Constitution and statutes." *Owen* was cited and followed by the Florida Supreme Court in *Town of Lake Clarke Shores v. Page*, 569 So.2d 1256 (Fla. 1990). See also *Brown v. Jenne*, 941 So.2d 447 (Fla. 4th DCA, 2006), stating (at page 451) that "The Eleventh Circuit has also held that Florida counties and the counties' officers are not immunized from section 1983 claims. In addition, the United States Supreme

One only has to look to the recent headlines to see the enormous amount of damages Brevard County could be exposed to if it approves this ordinance:

- In August 2016, Terry Bollea (a/k/a Hulk Hogan) was awarded a *\$140 million jury verdict* against Gawker Media for invasion of privacy and emotional distress;
- The Covington Catholic High School student Nicholas Sandmann is suing *The Washington Post*, for *\$250 million*, saying it targeted the Covington Catholic High School student and defamed him for political purposes
<https://www.npr.org/2019/02/20/696245435/covington-catholic-teen-nick-sandmann-sues-washington-post-for-250-million>;
- Jerome Corsi's has filed a Federal suit against Special Prosecutor Robert Mueller accusing him of trying to badger Corsi into giving false testimony. The suit seeks \$350 Million in damages. <https://www.politico.com/story/2018/12/09/corsi-mueller-lawsuit-klayman-stone-wikileaks-1054204>

My research shows the proposed ordinance "Prohibiting the Retail Sale of Dogs and Cats at Pet Stores" is preempted by **BOTH** Federal and Florida Statutes and violates **BOTH** the Federal and Florida Constitutions and pet store owners civil rights in the following ways:

1. Article I; Section 8, Clause 3 of the Federal Constitution gives the U.S. Congress exclusive authority to regulate interstate commerce. This Brevard ordinance proposes restrictions on a business owner's property rights in contract to freely engage in interstate commerce.
2. Article I; Section 10, Clause 1 of the Federal Constitution prohibits any State from passing laws impairing the obligation of Contracts. This prohibition against impairing the obligation of Contracts is also stated within Article I; Section 10 of the Florida Constitution. This Brevard ordinance proposes restrictions on a business owner's property rights to engage in lawful contracts;
3. Article VI; Clause 2 of the U.S. Constitution is the "Supremacy Clause" and makes the U. S. Constitution and the laws enacted by the Federal Government the "Supreme Law of the land". The proposed Brevard County Pet Sales Ordinance specifically cites the Federal "Animal Welfare Act", codified as Title 7 United States Code, Section 2131 et seq. The restrictions in this proposed ordinance are in direct conflict with Section 2131's "Congressional Statement of Policy";

Court has several times asserted in various contexts that counties are independent entities and not arms of the state for purposes of Eleventh Amendment immunity or sovereign immunity (county not arm of the state); (county was not arm of state, even though state constitution declared it to be a legal subdivision of state). We also have come to the same conclusion that the county is not a mere extension of the state ("The Counties are political subdivisions but they are not the State itself."). Internal citations omitted.

4. The 4th Amendment to the U.S. Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The same protections are stated within Article I; Section 12 of the Florida Constitution;
5. The 5th Amendment of the U.S. Constitution protects the people's right to Due Process before a deprivation contractual property rights occur. Article I, Section 9 of the Florida Constitution provides the same "Due Process" rights;
6. The 14th Amendment to the U.S. Constitution in relevant part provides "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Again, Article I, Section 9 of the Florida Constitution provides these same "Due Process" protections. Further, Article I, Section 2 of the Florida Constitution. "Basic rights" follows the Federal 14th Equal Protection provisions, explicitly stating: "All natural persons, ... are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, *to be rewarded for industry*, and to acquire, possess and protect property."
7. Article I, Section 23 of the Florida Constitution – Floridian's enhanced "Right of Privacy" states in its plain, clear language that: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life ..."

SPECIFIC CLAIMS OF PREEMPTION AND UNCONSTITUTIONALITY

Before I start stating my reasons for believing this proposed ordinance is preempted by Federal and State Law and is facially unconstitutional, I will gladly stipulate that "puppy mills and kitty farms" are abhorrent! See the fact stated in *Brinkley v. County of Flagler*, 769 So.2d 468 (Fla. 5th DCA 2000)

With that stipulation made, no matter how much people love their pets – even considering them to be part of the family – they are not human beings! They are not "persons" that have the protections of the 14th Amendment to the Federal Constitution and they are not "natural persons" that are "Equal" before the law under Article I; Section 2 of the Florida Constitution!

Cruelty to animals is already fully addressed by Section 828.12 Florida Statutes. Enforcement of that section of law in Brevard would address **EVERY** type of animal abuse that Brevard County has jurisdictional control over.

Preemption

The 1st, 2nd and 3rd "WHEREAS" of this proposed pet sales ban ordinance recognizes the limits of the Board's authority "to enact ordinances not inconsistent with general law ..." and acknowledges both the Federal authority of the "Animal Welfare Act" and Chapter 828 Florida Statutes. It should go without saying that the Board knows it cannot

enact an ordinance that violates the Federal and/or Florida's Constitution. It should also go without saying that the Board knows it cannot enact an ordinance that is preempted by Federal or Florida. See *State v. JP*, 907 So. 2d 1101 (Fla. 2004)³.

On Its Face, Title 7, United States Code, Section 2131, the "Animal Welfare Act" – in its "Congressional statement of policy" states that:

"The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such or the free flow thereof, and that regulation of animals and activities as provided in this chapter **is necessary to prevent and eliminate burdens upon such commerce** and effectively regulate such commerce ... **The Congress Further finds** that it is essential to regulate ... [the sale and transportation of animals for] ... **holding them for sale as pets ...**" (See Attachment 1 hereto)

The above section of Federal Law is the "Supreme Law of the Land". Further, since the 1824 case of *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1(1824), the United States Supreme Court has held that states cannot pass legislation that interferes with interstate commerce. If states can't pass laws interfering in interstate commerce, Brevard County most assuredly cannot lawfully pass an ordinance restricting interstate commerce!

On Its Face, Section 828.27 Florida Statutes relating to "Local animal control or cruelty ordinances", in its paragraph (7) explicitly states:

"Nothing contained in this section shall prevent any county or municipality from enacting any ordinance relating to animal control or cruelty which is identical to the provisions of this chapter or any other state law, except as to penalty. **However, no county or municipal ordinance relating to animal control or cruelty shall conflict with the provisions of this chapter or any other state law...**" (Emphasis added by me). (See Attachment 2 hereto)

Nothing in Chapter 828 Florida Statutes as it is titled "ANIMALS: CRUELTY; SALES; ANIMAL ENTERPRISE PROTECTION" prohibits the sale of dogs and cats by retail business owners! See *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So.3d 924 (Fla. 2013) When a municipal 'ordinance flies in the face of state law' ... the ordinance cannot be sustained".⁴

³ In *State v. JP*, 907 So. 2d 1101 (Fla. 2004), the Florida Supreme Court ruled Tampa's and Pinellas Park's juvenile curfew ordinances unconstitutional, stating that: "When a statute or ordinance impairs the exercise of a fundamental right, then the law must pass strict scrutiny". 907 So. 2d 1109.

⁴ See also the *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So.3d 924 (Fla. 2013). Recognizing its past precedents, the Florida Supremes [at page 928] stated: "[W]e have held that 'preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject'." And, "a municipality's concurrent legislation must not conflict with state law." Further, the Court held "municipal ordinances are inferior to laws

By reason of the above cited laws and judicial precedents – however good intentioned, Brevard County's proposed banning of the sale of dogs and cats not acquired from an "animal shelter", "rescue organization" or "hobby breeder" by retail business stores is an interference in interstate commerce and is therefore expressly preempted by both Federal and State law!

Unconstitutionality

Laws Impairing the Obligation of Contracts

Article I; Section 10, Clause 1 of the Federal Constitution prohibits any State from passing laws impairing the obligation of Contracts. This prohibition against impairing the obligation of Contracts is also stated within Article I; Section 10 of the Florida Constitution.

Section 14-64(B) of Chapter 14 of this proposed Brevard County ordinance explicitly dictates where a pet shop owner can and can't get the pets it wants to sell. It expressly states: "(B) Intent. (1) ***The intent of this Section is to prohibit the retail sale of commercially bred dogs and cats ...***" It is almost impossible for me to imagine a more clear dictate from government as to what business owner cannot do in the operation of their business! I cannot think of a more tyrannical command from government that would impair "the obligation of Contracts" as the most basic of property rights to engage in interstate commerce and lawful business activities as allowed under Federal and Florida Law!

Just 10 years after the U.S. Constitution was ratified, Supreme Court Justice Samuel Chase⁵ writing for a unanimous Court opined that: "[T]hat any law of the Federal government, or of any of the State governments, contrary to the Constitution of the United States, is void." Justice Chase continued by holding that: "There are certain vital principles in our free Republican governments, which will determine and over-rule an apparent and flagrant abuse of legislative power". Justice Chase continued, "An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority... [and that] ... a law ***that destroys, or impairs, the lawful private contracts of citizens; ... is against all reason and justice,*** for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it. The genius, the nature, and the spirit, of our State Governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them." *Culder v. Bull*, 3 U.S. 386, 388 (1798).

In *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So.2d 55, 559 (Fla. 1975), in its discussion of the States legislative "police powers", the Florida Supreme Court recognized

of the state and must not conflict with any controlling provision of a statute. When a municipal 'ordinance flies in the face of state law' ... the ordinance cannot be sustained". So, despite the "broad home rule powers" claimed by Palm Bay, the Florida Supreme Court held the "superpriority" lien provision in its ordinance "invalid". Internal citations were omitted.

⁵ Justice Samuel Chase was a signor of the U.S. Declaration of Independence from Maryland and appointed to the Supreme Court by George Washington on January 27, 1796 -- making this decision truly representative of the Founders "Original Intent"

that “however broad” those police powers are, when they collide “with the constitutional ban on laws impairing contracts” the law is void. The Court continued by stating: “Virtually no degree of contract impairment has been tolerated in this state”. “We hold that the states interest in policing franchise agreements and other manifestations [of business activity] is not so great as to override the sanctity of contracts”.

This proposed ordinance *doesn't just* impair “the obligation of Contracts”, *it prohibits entering into contracts to engage in interstate commerce and business activity that is lawful under both Federal and Florida law!*

Illegal Searches and Due Process Violations

The 4th Amendment to the U.S. Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The same protections are stated within Article I; Section 12 of the Florida Constitution;

The 5th Amendment of the U.S. Constitution protects the people's right to Due Process before a deprivation contractual property rights occur. Article I, Section 9 of the Florida Constitution provides the same “Due Process” rights;

Section 14-64(C) (4) of Chapter 14 of this proposed Brevard County ordinance *mandates* that: “Any such records [required to be keep by this ordinance] shall be made available, immediately upon request, to the County official(s) charged with enforcing the provisions of this Section”.

Boyd v. United States, 116 U.S. 616, 630, 6 S. Ct. 524, 29 L. Ed. 746 (1886) is the Sentinel case in American jurisprudence standing to protect all against abuses of governmental power concerning illegal searches and seizures. The issue in *Boyd* was an act of Congress that compelled a business owner to produce their records on demand of the government (116 U.S. 620). In reaching its decision that this act of Congress was “unconstitutional and void”, The Court traced the origins of the Fourth Amendment back to the use of King George's “writs of assistance”, stating that:

“James Otis pronounced [these writs of assistance] ‘the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book;’ since they placed ‘the liberty of every man in the hands of every petty officer.’ This was in February, 1761, in Boston, and the famous debate in which it occurred was perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. ‘Then and there,’ said John Adams, ‘then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.’”

The *Boyd* Court continued by recognizing the “commission of offences against the law, are of this quasi-criminal nature”. Brevard's proposed ordinance makes violating its

provisions a misdemeanor (Chapter 14; Section 14-64 (H)). The *Boyd* Court further stated that when the government acts to charge a citizen with a criminal offense or proceeds against them in a "quasi-criminal" fashion:

"The Fourth Amendment of the Constitution and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure — and an unreasonable search and seizure — within the meaning of the Fourth Amendment." 116 U.S. 634, 635.

Also, various Florida Attorney Generals have opined extensively of the subject of the unconstitutionality of warrantless searches. See Florida AGO 82-07 (AG Jim Smith, 1982); AGO 84-32 (AG Jim Smith 1984); and AGC 2002-27 (AG Robert Butterworth).

Citing the long and clearly established principals of law stated within three United States Supreme Court, Florida Attorney General Jim Smith stated it was his legal opinion (within his AGO 82-07 formal opinion) that the "***constitutional guarantees of privacy and freedom from unwarranted search and seizure***" applied to business records. In reaching this formal legal opinion, AGO 82-07, specifically stated:

"Statutes, ordinances and rules purporting to authorize administrative searches of business premises without a warrant under regulatory statutes have been held violative of the Fourth Amendment. See, *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978), in which a section of the Occupational Safety and Health Act of 1970 was held to violate the Fourth Amendment insofar as it purported to authorize inspections without a warrant; *Camara v. Municipal Court*, 387 U.S. 523 (1967), holding that under the Fourth Amendment the defendant had a constitutional right to insist that building inspectors (in this case inspectors from the Department of Public Health) obtain a search warrant prior to inspecting his residence for housing code violations and *See v. Seattle*, 387 U.S. 541 (1967). In *See v. Seattle*, supra, in which a fire department inspector was refused entry to make a warrantless inspection of a locked commercial warehouse, the court discussed the privacy expectations of a business-person in commercial property:

'As we explained in *Camara*, a search of private houses is presumptively unreasonable if conducted without a warrant. The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant'." ⁶

⁶ The full citations for the three precedents cited in AGO 82-07 are:

In *Marshall v. Barlow's Inc.* the U.S. Supreme Court recognized that "The Warrant Clause of the Fourth Amendment protects commercial buildings as well as private homes. To hold otherwise would belie the origin of that Amendment, and the American colonial experience" [436 U.S. 311] and held that "Barlow's was entitled to a declaratory judgment that the Act is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent and to an injunction enjoining the Act's enforcement to that extent". *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495(2013) and *Collins v. Virginia*, 138 S. Ct. 1663, 584 US ___, 201 L. Ed. 2d 9(2018)

AGO's 84-32 and 2002-27 cited the same U.S. Supreme precedents and came to the same legal opinion as that stated within AGO 82-07. Further, both AGO 84-32 and 2002-27 noted that cities and counties must comply with the warrant requirements of Chapter 933 Florida Statutes relating to obtain search warrants prior to "inspections" or "searches" and cited *Jones v. City of Longwood*, 404 So.2d 1083 (Fla. 5th DCA 1981) where Florida's 5th DCA held it a "city's duty to inspect" under an ordinance "is subject to the overriding constitutional prohibition against governmental agents entering such private property without a warrant based upon probable cause".

The stated facts in the most horrific case of animal abuse that I could find in Florida were those in *Brinkley v. County of Flagler*, 769 So.2d 468 (Fla. 5th DCA 2000). In *Brinkley* the officers responding to a citizen complaint that a large number of animals were being kept in unhealthy conditions and that a puppy had been sold without an accompanying health certificate "were immediately struck by the undeniable reality of the horrid existence of inhumanity" at the Brinkley property.

This was truly a "puppy mill" and a "kitten farm" which the proposed Brevard ordinance wants to shut down. And rightly so! But it was not a pet store!

However, even with the horrors of the stated facts in *Brinkley*, the 5th DCA recognized that the defendants Fourth and Fifth Rights still had to be observed and protected.

CONCLUSION

Again, Article I; Section 23 of the Florida Constitution, Floridian's enhanced "Right of Privacy", states in its plain, clear language that: "***Every natural person has the right to be let alone and free from governmental intrusion into the person's private life ...***" In *State of Florida v. J.P.*, 907 So.2d 1101, 1112 (Fla. 2004), the Florida Supreme Court stated "Florida constitutional privacy right 'embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution'."

Camara v. Municipal Court of City and County of San Francisco 387 US 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967); *See v. Seattle* 387 US 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967)
Note: *Camara* and *See* were decided concurrently as companion cases; and, *Marshall v. Barlow's, Inc.* 436 US 307, 98 S. Ct. 1816, 56 L. Ed. 2d 305 (1978)

I fear the 22 "WHEREAS" statements set forth within this proposed ordinance and its stated "Intent" are a Civil Rights lawyers dream for establishing Brevard County's "willful, wanton and malicious" intent to deny a pet store owner of their constitutional rights to enter into contracts so that they may engage in "interstate commerce". I fear the residents of Brevard – and any County Commissioner voting to approve this ordinance – could be exposed to massive civil liability! The face of this proposed ordinance itself gives a civil rights attorney all the proof of "legal scienter" they would need to prove a willful, wanton deprivation of civil under color of law with -- I believe -- actual malice!

I Pray it is not necessary to remind the elected members of the Brevard County Board of County Commissioners that pursuant to the Florida Constitution's Article II; Section 5 as relating to "Public Officers", it states within subsection (b) that:


"Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

'I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God'."

As I believe the above research shows why Brevard County's proposed ordinance banning pet sales at pet stores is preempted by both Federal and Florida Law, and that said ordinance violates both the Federal and Florida Constitutions in several ways, I pray the Brevard Board of County Commissioners votes against approving this proposed ordinance.

Thank you for considering my concerns.

Sincerely


Scott Cuthbert

4/7/2019
Dated

Attachment 1 – The "Congressional statement of policy" on the face of Title 7 United States Code Section 2131.

Attachment 2 – The relevant provision of Section 828.27(7) Florida Statutes

The plain, clear language of these documents shows the preemption of the proposed Brevard ordinance by both Federal and Florida Law.

Subsec. (h). Pub. L. 101-624, § 1997(3), added subsec. (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 2117. Separability

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

(Pub. L. 89-502, § 18, July 13, 1966, 80 Stat. 286.)

§ 2118. Authorization of appropriations

There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this chapter. The funds so appropriated shall not be available for the payment of the expenses or expenditures of the Cotton Board in administering any provisions of any order issued pursuant to the terms of this chapter.

(Pub. L. 89-502, § 19, July 13, 1966, 80 Stat. 287.)

§ 2119. Repealed. Pub. L. 94-366, § 1, July 14, 1976, 90 Stat. 991

Section, Pub. L. 91-524, title VI, § 610, Nov. 30, 1970, 84 Stat. 1378; Pub. L. 93-86, § 1(23), Aug. 10, 1973, 87 Stat. 235, related to cotton development programs of the Commodity Credit Corporation, and funding for such programs.

EFFECTIVE DATE OF REPEAL

Section 1 of Pub. L. 94-366 provided that this section is repealed effective Oct. 1, 1977.

CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING OF CERTAIN ANIMALS

Sec.	
2131.	Congressional statement of policy.
2132.	Definitions.
2133.	Licensing of dealers and exhibitors.
2134.	Valid license for dealers and exhibitors required.
2135.	Time period for disposal of dogs or cats by dealers or exhibitors.
2136.	Registration of research facilities, handlers, carriers and unlicensed exhibitors.
2137.	Purchase of dogs or cats by research facilities prohibited except from authorized operators of auction sales and licensed dealers or exhibitors.
2138.	Purchase of dogs or cats by United States Government facilities prohibited except from authorized operators of auction sales and licensed dealers or exhibitors.
2139.	Principal-agent relationship established.
2140.	Recordkeeping by dealers, exhibitors, research facilities, intermediate handlers, and carriers.
2141.	Marking and identification of animals.
2142.	Humane standards and recordkeeping requirements at auction sales.
2143.	Standards and certification process for humane handling, care, treatment, and transportation of animals.
2144.	Humane standards for animals by United States Government facilities.

Sec.

2145.	Consultation and cooperation with Federal, State, and local governmental bodies by Secretary of Agriculture.
2146.	Administration and enforcement by Secretary.
2147.	Inspection by legally constituted law enforcement agencies.
2148.	Importation of live dogs.
2149.	Violations by licensees.
2150.	Repealed.
2151.	Rules and regulations.
2152.	Separability.
2153.	Fees and authorization of appropriations.
2154.	Effective dates.
2155.	Omitted.
2156.	Animal fighting venture prohibition.
2157.	Release of trade secrets.
2158.	Protection of pets.
2159.	Authority to apply for injunctions.

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) 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;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

(Pub. L. 89-544, § 1(b), formerly § 1, Aug. 24, 1966, 80 Stat. 350; Pub. L. 91-579, § 2, Dec. 24, 1970, 84 Stat. 1560; renumbered and amended Pub. L. 94-279, § 2, Apr. 22, 1976, 90 Stat. 417.)

AMENDMENTS

1976—Pub. L. 94-279 restated and expanded objectives of this chapter to include regulation of animals and activities in, or substantially affecting, interstate or foreign commerce in order to prevent and eliminate burdens on such commerce and to assure the humane treatment of animals during transportation.

1970—Pub. L. 91-579 restated objectives to include all animals as defined instead of only cats and dogs and expanded coverage to regulate animals intended for use for exhibition purposes or for use as pets.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-198, title XVII, § 1759, Dec. 23, 1985, 99 Stat. 1650, provided that: "This subtitle [subtitle F (§§ 1751-1759), enacting section 2157 of this title, amending sections 2132, 2143 to 2146, and 2149 of this title, and enacting provisions set out as notes under this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 23, 1985]."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 23 of Pub. L. 91-579 provided that: "The amendments made by this Act [enacting section 2155 of

At

Chapter 828 Florida Statutes

828.27 Local animal control or cruelty ordinances; penalty.—

(7) Nothing contained in this section shall prevent any county or municipality from enacting any ordinance relating to animal control or cruelty *which is identical to the provisions of this chapter or any other state law*, except as to penalty. *However, no county or municipal ordinance relating to animal control or cruelty shall conflict with the provisions of this chapter or any other state law.* Notwithstanding the provisions of this subsection, the governing body of any county or municipality is authorized to enact ordinances prohibiting or regulating noise from any domesticated animal, violation of which shall be punishable upon conviction by a fine not to exceed \$500 or by imprisonment in the county jail for a period not to exceed 60 days, or by both such fine and imprisonment, for each violation of such ordinance. This subsection shall not apply to animals on land zoned for agricultural purposes.

Donna Scott

From: Patty Van Sicklen <Patty.Van.Sicklen@akc.org>
Sent: Tuesday, April 09, 2019 3:11 PM
To: Commissioner, D2
Cc: Donna Scott; Bentley, Eden; Esseesse, Alexander; Wayne.Ivey@bcso.us; Scragg, Doug; Singleton, Dan
Subject: RE: "Pet Sales" Amendment Could Hurt Small Breeders & Rescues: Please Vote No

Dear Commissioner Lober,

Respectfully, the American Kennel Club submitted comments based on the version of the amendment that was made available in the online Agenda Packet found at <http://brevardcountyfl.igm2.com/Citizens/Default.aspx> . If there are subsequent versions of the amendment other than the one included in the current Agenda Packet, we would be very pleased to review and provide commentary on the more current version.

In reply to your message below, we note:

The definition of "Hobby Breeder" clearly states: "The Brevard County Sheriff's Office – shall be entitled to conduct inspection(s) of hobby breeders."

The definition of "Pet Store" contains no exemptions for hobby breeders, animal rescue organizations, animal shelters, or any other person or entity that meets the three conditions therein. "Establishment" is stated to be "permanent, temporary, or virtual", which potentially extends the definition of "pet store" to encompass animal rescue organizations and other pet sellers that do not operate in traditional "brick-and-mortar" facilities similar to those utilized by both animal shelters and pet store businesses.

Many 501(c)3 pet rescue groups are made up of a network of foster caregivers. Also, many such rescue groups have established an online or "virtual" presence, sell and/or transfer dogs ("adoption" fees are considered "sales" under this measure, federal regulations, and tax code), and conduct "temporary" adoption events open to the public for the purpose of adopting dogs.

As mentioned in our letter, the AKC represents 185 dog clubs in Florida. AKC clubs provide the largest volunteer purebred dog rescue network in the U.S. It is important to rescue organizations and their volunteers, as well as to home-based dog breeders, animal shelters, and other entities that may sell/transfer pets that the language in any proposal must be clear, non-contradictory, not subject to interpretation, and not subject to selective enforcement.

We wish to respectfully restate potential safety concerns related to the unclear provision of "permitting consumers access" to a "hobby breeder's" home or private property.

We would be very pleased to offer alternate language for your consideration that we believe will better protect dogs and persons who wish to obtain dogs in Brevard County.

Sincerely,

Patty Van Sicklen
Regional Manager
Government Relations



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From: Commissioner, D2 <D2.Commissioner@brevardfl.gov>

Sent: Tuesday, April 9, 2019 12:56 PM

To: Patty Van Sicklen <Patty.Van.Sicklen@akc.org>

Cc: donna.scott@brevardclerk.us; Bentley, Eden <Eden.Bentley@brevardfl.gov>; Esseesse, Alexander <Alexander.Esseesse@brevardfl.gov>; Wayne.Ivey@bcso.us; Scragg, Doug <douglas.scragg@bcso.us>; Singleton, Dan <dan.singleton@bcso.us>

Subject: Re: "Pet Sales" Amendment Could Hurt Small Breeders & Rescues: Please Vote No

Madam:

A number of your contentions are flatly incorrect and, thus, incredibly misleading. Your supposed concern, for instance, that a hobby breeder could be regulated as a pet store is simply wrong. You quoted a small tidbit of the definition of pet store but failed to include the portion specifically exempting hobby breeders from the definition.

You also suggest that BCSO would be granted additional inspection rights for hobby breeders. Wrong again.

I also draw issue with your introduction "on behalf of dog owners and prospective dog owners in Brevard County" as your signature indicates you are out of North Carolina.

I could go on addressing the fallacies and inaccuracies in your email but I'd prefer to dedicate the time to helping my constituents.

The lack of specificity in your vague allegations (e.g., that the ordinance is "unclear") is rather telling. If you oppose the ordinance, that's fine. Please, though, do not use misinformation to push your biased agenda.

Truly,

Bryan A. Lober

P.S.: Patty, please include this response with her original email when it is added to the agenda. Thank you!

From: Patty Van Sicklen <Patty.Van.Sicklen@akc.org>

Sent: Tuesday, April 9, 2019 12:44:41 PM

To: Commissioner, D1; Commissioner, D2; Commissioner, D3; Commissioner, D4; Commissioner, D5

Cc: donna.scott@brevardclerk.us

Subject: "Pet Sales" Amendment Could Hurt Small Breeders & Rescues: Please Vote No

Dear Brevard County Commissioners,

On behalf of dog owners and prospective dog owners in Brevard County, the American Kennel Club (AKC) writes to express concerns with a proposed amendment to Chapter 14 regarding sales of pets. We respectfully urge you to vote no on the measure as currently proposed. We are concerned that the proposed amendment is unclear, overreaching, and could put the safety of local breeders and consumers at risk. Further, it could be interpreted to require certain home-based hobby breeder and rescues to be regulated as "pet stores".

For your convenience, the text of the attached letter is inserted in this message, below. Please do not hesitate to contact me at 919-816-3645 or pvs@akc.org if you have questions or I may be of assistance.

Patty Van Sicklen
Regional Manager
Government Relations



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TEXT OF ATTACHED LETTER:

April 8, 2019

Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Building C, First Floor
Viera, Florida 32940

RE: “Pet Sales” Amendment Could Hurt Small Breeders & Rescues: Please Vote “No”

Dear Brevard County Commissioners,

On behalf of dog owners and prospective dog owners in Brevard County, the American Kennel Club (AKC) writes to express concerns with a proposed amendment to Chapter 14 regarding sales of pets. We respectfully urge you to vote no on the measure as currently proposed.

We are concerned that the proposed amendment is unclear, overreaching, and could put the safety of local breeders and consumers at risk. Further, it could be interpreted to require certain home-based hobby breeder and rescues to be regulated as “pet stores”.

Concerns with this proposal include, but are not limited to:

This amendment seeks to ban the sale of dogs and cats in pet stores unless the pet is sourced from an animal shelter, animal rescue organization, “hobby breeder”, or USDA licensed commercial breeder.

A “hobby breeder” would be defined as “any person or entity that causes or allows the breeding of dogs or cats resulting in no more than forty-eight offspring within a 12-month period while permitting consumers access to directly see the condition in which the dogs or cats are bred and raised, or can confer directly with the breeder concerning said conditions.” This definition would include every person who breeds and sells a single cat or dog.

It is unclear if hobby breeders would be required to allow persons representing themselves as “consumers” access to their homes and private properties. This could put the safety of a hobby breeder at risk and increase the possibility of disease transmission into areas where pets are housed.

Also of concern, a criminal could attempt to lure persons by falsely offering a puppy for sale or adoption, because under the unclear provisions of the amendment, potential puppy buyers could be denied the opportunity to examine a puppy in a neutral setting. There have been numerous community initiatives to provide safe spaces for individuals unknown to each other to meet in a neutral location for the purpose of exchanging goods and services. This legislation denies such protections to residents who may wish to choose this approach when rehoming or obtaining a pet.

The amendment further requires that the Brevard County Sheriff’s Office shall be entitled to conduct inspection(s) of hobby breeders. The amendment contains no guidelines regarding the frequency of inspections or what the scope would include.

The amendment defines a “pet store” as “any retail establishment that: (1) has obtained a tax receipt, (2) is open to the public, and (3) sells, transfer, or offers for sale or transfer, dogs or cats, regardless of the age of the dog or cat, or the physical location of the animal. Such an establishment may be a permanent, temporary, or virtual establishment.” *As written, this definition could include certain home-based hobby breeders and rescue organizations, making them subject to regulation as “pet stores”.*

Better solutions are available:

The American Kennel Club emphatically supports freedom of choice in selecting a pet. AKC actively promotes efforts to ensure that people are educated, understand the demands of responsible ownership and have access to a pet

that is right for them. AKC strongly opposes any measure that restricts choice by compelling people and/or retailers to obtain pets solely from shelter or rescue distributors.

We would be pleased to provide alternate language that we believe will better protect dogs and persons who wish to obtain dogs in Brevard County. We also would be pleased to provide timely and accurate information regarding issues this legislation is purported to address, and to refute incorrect findings that appear in the proposal.

Thank you for your attention to these concerns. We respectfully ask you to vote no on the proposed amendment.

Please contact me at pvs@akc.org or 919-816-3645 with questions or if I may be of assistance.

Sincerely,

A handwritten signature in black ink that reads "Patty Van Sicklen". The signature is written in a cursive, flowing style.

Patty Van Sicklen

Regional Manager, AKC Government Relations

Founded in 1884, the American Kennel Club (AKC) is a non-partisan, not-for-profit purebred dog registry dedicated to promoting responsible dog ownership, advocating for dogs as family companions, advancing canine health and well-being, and working to protect the rights of all responsible dog owners. The AKC represents more than 5,000 dog clubs nationally, including 185 clubs in Florida. In 2018, the AKC licensed and sanctioned 992 events in Florida in which more than 160,000 dogs participated.

Hita's Change 4/8/19 1:30

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 14 OF THE BREVARD COUNTY CODE OF ORDINANCES, "ANIMALS"; CREATING A NEW SECTION IN ARTICLE II OF CHAPTER 14, SECTION 14-64, "RETAIL SALE OF DOGS AND CATS AT PET STORES"; PROHIBITING THE RETAIL SALE OF DOGS AND CATS AT PET STORES UNLESS THE ANIMAL IS FROM AN ANIMAL SHELTER, ANIMAL RESCUE ORGANIZATION, HOBBY BREEDER, OR UNITED STATES DEPARTMENT OF AGRICULTURE LICENSED COMMERCIAL BREEDERS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR RECORD KEEPING AND POSTING; PROVIDING FOR EXEMPTIONS; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes (2018), the Board of County Commissioners of Brevard County, Florida (hereinafter the "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, at the Federal level, the United States Department of Agriculture is responsible for enforcing the Animal Welfare Act, which establishes minimum standards of care for dogs bred for sale; and

WHEREAS, at the State level, Chapter 828, Florida Statutes (2018), deals with animal cruelty, animal sales, and animal protection regulations, but does not explicitly regulate all breeding facilities which may be referred to as "puppy mills" or "kitten factories," where dogs and cats are mass-produced for sale to the public, including through sale at pet stores; and

WHEREAS, puppy mills disregard the health of dogs in order to maintain a low overhead and maximize profits;¹ and

WHEREAS, the documented abuses endemic to puppy mills and kitten factories include over-breeding; inbreeding; minimal to non-existent veterinary care; lack of adequate and nutritious food, water and shelter; lack of socialization; lack of adequate space; and lack of adequate exercise; and

¹See, *Avenson v. Zegart*, 577 F.Supp. 958, 960 (D. Minn. 1984).

Either omit or all animals
Keep

WHEREAS, socialization is critically important for the emotional health of dogs;² and

WHEREAS, dogs and cats, due to their sentience and capability of feeling, perception, and affection, ought to be afforded certain protections not necessarily afforded to non-sentient creatures; and *OK*

WHEREAS, according to the Humane Society of the United States, there are an estimated ten thousand puppy mills in the United States and, on an annual basis, around two million three hundred thousand puppies who originated from these puppy mills are sold throughout the country, while roughly three million cats and dogs are euthanized by shelters every year in the United States;³ and

WHEREAS, due to poor conditions at these mills, dogs and cats are often sick, subjected to inhumane conditions, and suffer from painful and/or life-limiting congenital disorders;⁴ and

WHEREAS, consumers unknowingly purchase mill-bred puppies or kittens from places like pet stores believing that the animal is healthy and genetically sound, only to find out that the dog or cat will often face an array of health problems, including communicable diseases and/or genetic disorders, that present themselves immediately or soon after sale, or that do not surface for years, costing the owner hundreds or thousands of dollars in expensive veterinary treatment;⁵ and

WHEREAS, the DeSoto County Board of County Commissioners recently recognized that Florida has the highest number of consumer complaints submitted to the Humane Society regarding sick puppies purchased from puppy mills;⁶ and

WHEREAS, Lyndsay Cole, a spokeswoman for the United States Department of Agriculture Animal and Plant Health Inspection Service (hereinafter the “Animal Inspection Service”), explained that a substantial recent drop in citations to research facilities, breeders,

²See, generally, 9 C.F.R. § 3.8(c)(2) (2018); see, generally, American Veterinary Medical Association (AVMA), *Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets*, available at: <https://www.avma.org/KB/Policies/Pages/Model-Bill-and-Regulations-to-Assure-Appropriate-Care-for-Dogs-Intended-for-Use-as-Pets.aspx> (last visited Feb. 28, 2019).

³The Humane Society of the United States, *Puppy Mills: Facts and Figures – August 2018*, available at: <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mill%20Facts%20and%20Figures%20August%202018.pdf> (last visited: Feb. 28, 2019).

⁴The Humane Society of the United States, *Puppy Mills and the Animal Welfare Act*, p. 1, available at: <https://www.humanesociety.org/sites/default/files/docs/puppy-mills-awa-booklet-lores.pdf> (last visited: Feb. 28, 2018).

⁵The Humane Society of the United States, *Puppy Buyer Complaints – A Ten Year Summary 2007-2017*, available at: <https://www.humanesociety.org/sites/default/files/docs/2018-puppy-buyers-complaint.pdf> (last visited Dec. 28, 2018).

⁶DeSoto County Code of County Ordinances, Chapter 4, Article III, Section 4-71, adopted on July 25, 2017, via Ordinance 2017-11, available at: https://librarystage.municode.com/fl/desoto_county/codes/code_of_ordinances?nodeId=COOR_CH4ANCO_ARTIIIRESADOCARA_S4-71FI (last visited Feb. 28, 2019).

OK exhibitors, and dealers could be attributed, in part, to a shortage of Animal Inspection Service inspectors;⁷ and *USDA Also Said Drop was Due to "Rampred Enforcement"*

WHEREAS, inspection by the Animal Inspection Service does not ensure compliance with any applicable State statute(s) governing the humane treatment of animals, including, but not limited to, Section 828.12, Florida Statutes, "Cruelty to animals"; Section 828.126, Florida Statutes, "Sexual activities involving animals"; Section 828.13, Florida Statutes, "Confinement of animals without sufficient food, water, or exercise; abandonment of animals"; and, Section 828.16, Florida Statutes, "Contagious diseases"; and

WHEREAS, due to a publicly acknowledged shortage of inspectors and due to being tasked with enforcing only certain federal regulations, relying solely upon Animal Inspection Service inspections to ensure the ethical and humane treatment of animals is inadequate; and

WHEREAS, neither Brevard County nor the Brevard County Sheriff's Office has any legal authority upon which to inspect or directly regulate out-of-county commercial breeders or brokers; and

WHEREAS, it is routine practice for pet stores operating within Brevard County to source puppies and kittens from out-of-county commercial breeders or brokers; and

WHEREAS, while the Board recognizes that not all dogs and cats sold in pet stores are products of inhumane breeding conditions and would not classify every commercial breeder selling dogs or cats to pet stores as the operator of a puppy mill or kitten factory, it is the belief of the Board that puppy mills and kitten factories continue to exist, at least in part, because of public demand for dogs and cats offered for sale at pet stores, and that the most effective way to stop puppy mills and kitten factories is to discourage the purchase and sale of animals produced at those inhumane facilities; and

WHEREAS, even the most ethical and humane treatment of puppies and kittens following procurement from out-of-county commercial breeders and brokers does nothing to disincentive sub-standard unethical and inhumane conditions at out-of-county breeding locations; and

WHEREAS, the procurement of puppies and kittens by local pet stores from out-of-county sources subject to nonexistent or ineffective local regulation may actively encourage an abusive industry and incentivize that industry's inhumane practices; and

WHEREAS, the Board has determined that an effective tool to reduce and, ultimately, eliminate the retail market for dogs and cats bred through puppy mills and kitten factories is to

⁷Karin Brulliard, *The USDA is issuing far fewer citations to zoos, labs and breeders for animal welfare violations*, WASH. POST (Feb. 26, 2019), <https://www.washingtonpost.com/science/2019/02/26/usda-is-issuing-far-fewer-citations-zoos-labs-breeders-animal-welfare-violations/> (last visited Feb. 28, 2019).

~~require~~ *encourage* that pet stores utilize an adoption-based business model, which ensures that the animals sold by retail outlets are sourced from shelters or animal rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, encouraging the adoption of homeless pets and reducing the financial and emotional toll on consumers who purchase mill-bred pets with latent physical and behavioral problems; and

WHEREAS, this Ordinance does not affect a consumer's ability to obtain a dog or cat of his or her choice directly from an animal rescue organization (including, but not limited to, breed-specific animal rescue organizations) or animal shelter, United States Department of Agriculture licensed commercial breeder, or reputable hobby breeder where the consumer can directly see the conditions in which the dogs or cats are bred, or can confer directly with the breeder concerning said conditions; and

WHEREAS, due to inadequate regulations governing the retail sale of dogs and cats in Brevard County, the Board finds that prohibiting the retail sale of dogs and cats in pet stores in the County will promote community awareness of the plight of animals in puppy mills and kitten factories and, in turn, will foster a more humane environment, as well as encourage consumers to adopt dogs and cats from shelters and rescue organizations, hobby breeders, or United States Department of Agriculture licensed commercial breeders, thereby saving the lives of animals while reducing the cost to the public of sheltering or euthanizing animals.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, as follows:

Section 1. Amendments to Chapter 14 of the Brevard County Code of Ordinances. Chapter 14 is hereby amended to include the following provisions:

Section 14-64. Reserved. is now hereby entitled **Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.** and shall read as follows:

Section 14-64. Retail Sale of Dogs and Cats at Pet Stores.

(a) Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them below or as defined in Section 14-36 of the Brevard County Code of Ordinances, except where the context clearly indicates a different meaning:

Animal rescue organization means a duly incorporated nonprofit organization, properly organized under Section 501(c)(3) of the Internal Revenue Code, devoted to the rescue, care, humane treatment, and adoption of stray, abandoned, or surrendered animals, and does not

Omit

intentionally or willfully breed animals. This does not include any broker or any entity that obtains dogs or cats from any source for payment or compensation. While animal rescue organizations are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

Omit

Animal shelter shall have the same meaning as defined in Section 14-36 of the Brevard County Code of Ordinances. The term includes neither any entity that willfully causes dogs or cat to reproduce nor any broker. This does not include any entity that obtains dogs or cats from any source for payment or compensation. While animal shelters are entitled to seek adoption fees to offset costs incurred in rehabilitating and caring for animals, they are not entitled to otherwise seek to profit from the sale of animals.

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Breeder means any person or entity that causes dogs or cats to reproduce, either willfully or through failure to exercise due care and control, regardless of the size or number of litters produced. Any person or entity offering male dogs or cats for stud purposes will be classified as a breeder. This classification will not apply to a hobby breeder, as defined in this Section, or to a pet owner who breeds his or her own pets and keeps all of the offspring.

Broker means any person or entity that obtains dogs or cats, for payment or compensation, from one or more breeders and subsequently transfers said dogs or cats for resale by a pet store. This does not include hobby breeders, as defined below.

Cat means an animal of any age that is a member of *Felis Catus*, or any genetic hybridization of this species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Dog means an animal of any age that is a member of *Canus Lupus Familiaris*, or any genetic hybridization of this species, not under the jurisdiction of the Florida Fish and Wildlife Conservation Commission.

Hobby Breeder means any person or entity that causes or allows the breeding of dogs or cats resulting in no more than forty-eight offspring within a 12-month period while permitting consumers access to directly see the condition in which the dogs or cats are bred and raised, or can confer directly with the breeder concerning said conditions. Hobby breeder sales to pet stores are expressly conditioned upon compliance with any and all registration and inspection requirements lawfully enacted by any governmental entity or agency. The Brevard County Sheriff's Office - shall be entitled to conduct inspection(s) of hobby breeders.

Nothing herein shall serve to prohibit the federal government (e.g., United States Department of Agriculture) or the State of Florida from imposing additional registration and/or inspection requirements as may be lawfully enacted. Nothing in this section is intended to create new inspection requirements insofar as hobby breeders are concerned.

Official certificate of veterinary inspection, which is defined in Section 828.29, Florida Statutes (2018), as may be amended, means a legible certificate of veterinary inspection signed by the examining veterinarian licensed by the state of origin and accredited by the United States Department of Agriculture that shows:

- (1) the age, sex, breed, color, and health records of the dog or cat;
- (2) the printed or typed names and addresses of the person or business from whom the animal was obtained, the consignor or seller, the consignee or purchaser, and the examining veterinarian, and the veterinarian's license number;
- (3) a list of all vaccines and deworming medications administered to the dog or cat, including the manufacturer, vaccine, type, lot number, expiration date, and the dates of administration thereof;
- (4) that the examining veterinarian warrants that, to the best of his or her knowledge, the animal has no sign of contagious or infectious diseases and has no evidence of internal or external parasites, including coccidiosis and ear mites, but excluding fleas and ticks.

ADD
who sell to pet stores
(to ensure they are
a hobby Breeder)
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ADD
Nothing in this section is
intended to create new
inspection requirements
in so far as hobby
breeders are concerned.
STRIKE

The veterinarian shall be responsible for filling out the official certificate of veterinary inspection in accordance with Florida law.

Pet store means any retail establishment that: (1) has obtained a tax receipt, (2) is open to the public, and (3) sells or transfers, or offers for sale or transfer, dogs or cats, regardless of the age of the dog or cat, or the physical location of the animal. Such an establishment may be a permanent, temporary, or virtual establishment.

Retail sale means a sale, ~~regardless of whether any exchange of consideration for the animal takes place at the same time or location. This term includes, but is not limited to:~~ offering for sale; auctioning; bartering; displaying for sale, adoption, or re-home; exchanging for compensation; giving away; trading; delivering; advertising for sale; or otherwise disposing of dogs or cats to a person in a pet store or in association with a pet store. *have*

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United States Department of Agriculture Licensed Commercial Breeder – ~~means any person or entity that has more than forty eight offspring within a 12 month period and sells the offspring to pet stores, brokers, research facilities or over the internet and are licensed through the United States Department of Agriculture and, if required, the state in which the licensed commercial breeder is located and shall have no documented violation in the preceding 48 month period by any governmental agency or entity.~~ *and shall have NO loss of USDA licenses in the past 24 months for uncured gross violations*

(b) *Intent.*

- (1) The intent of this Section is to prohibit the retail sale of commercially bred dogs and cats from puppy mills and kitten factories at pet stores. Rather, an adoption-based business model shall be encouraged for the retail sale of dogs or cats at pet stores in Brevard County, whereby all dogs or cats must be sourced from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders,.

White (2) The Board finds it reasonable and necessary to establish regulations regarding the sale of cats and dogs at pet stores to protect the health, safety, and welfare of both animals and pet owners. Furthermore, the Board finds these regulations will encourage pet consumers to obtain dogs and cats from animal shelters, animal rescue organization, hobby breeders, or United States Department of Agriculture licensed commercial breeders, thereby saving the lives of animals and reducing the cost to the public of sheltering and euthanizing animals. *not necessary*

(3) The Board intends for this Section to conform with and supplement Chapter 828, Florida Statutes, as may be amended, relating to animal cruelty, animal sales, and animal protection regulations.

(c) Retail Sale of Dogs and Cats at Pet Stores.

(1) No pet store shall offer dogs or cats for sale in Brevard County, unless the dog or cat was obtained from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeder. *directly*

(2) Any dog or cat offered for sale in Brevard County must be accompanied by an official certificate of veterinary inspection issued by a licensed, accredited veterinarian. Upon sale, a copy of the certificate must be given to the buyer and the seller must retain one copy of the certificate for at least one year after the date of sale.

(3) Pet stores shall maintain records that include the name, address, telephone number, and email address of the animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders, from which each dog or cat was acquired for three years following the date of acquisition from the animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders. Pet stores shall post in a conspicuous location the following information: (1) Breed (2) Identification number (3) Name of breeder, city and

state (4) United States Department of Agriculture number. The posting requirements apply regardless of the animal's place of origin.

(4) Any such records shall be made available, immediately upon request, to the County's animal control authority or any other County official(s) charged with enforcing the provisions of this Section.

(d) *Adoption of Shelter and Rescue Animals.* Nothing in this Section shall prevent a pet store, its owner(s), operator(s), or employee(s), from providing space and appropriate care for animals owned by an animal shelter or animal rescue organization, and maintained at the pet store for the purpose of adopting those animals to the public.

(e) *Adoption Fee(s).* Nothing in this Section shall be construed to prohibit an animal rescue organization or an animal shelter from recovering or offsetting costs, including feeding, sheltering, or providing care for an animal by means of an adoption fee. ~~An itemized fee statement will be provided to buyer for each adoption.~~

(f) *Prohibition on Retail Sale in Public Places.* There shall be no retail sale of dogs or cats on any public thoroughfare, public common areas, public parks, or other places of public accommodations, unless such animals are from an animal shelter, animal rescue organization, hobby breeder, or United States Department of Agriculture licensed commercial breeders. If applicable, the individual or entity responsible for running the event must obtain any and all applicable permits required by Federal, State, County, or municipal law, rule, or regulation. The same rules, regulations, recordkeeping requirements, and limitations which apply to pet stores shall apply to any individual or entity responsible for running the event irrespective of whether said individual or entity is or should be in possession of a business tax receipt.

(g) *Enforcement and Penalties.*

(1) ~~Any pet store~~ ^{All} found to be in violation of this Section may be subject to any applicable enforcement mechanism(s) available to the County. Such mechanisms may include, but are not limited to: prosecuting a violation of this Section in the same manner as a misdemeanor, as provided in Section

125.69, Florida Statutes (2018), as may be amended; prosecuting a violation of this Section in accordance with Section 1-7 of the Brevard County Code of Ordinances; and other forms of relief as may be granted by a court of competent jurisdiction.

(2) Each animal produced, reared, bred, kept, sold, or released in violation of this Section will be deemed a separate offense, and a separate offense will be deemed committed on each day during which a violation occurs or continues to occur.

(h) *Area Encompassed.* This Section shall apply throughout the incorporated and unincorporated areas of the County. A municipal ordinance shall prevail over this Section within the municipality's jurisdiction to the extent of any conflict with this Section.

(i) *Applicability.* This Section shall take effect one month after the date of its adoption. However, any individual or entity with a business tax receipt from the County for the retail sale of dogs or cats, issued on or before the date this Section is adopted, shall be given a twelve-month grace period from the date of adoption before being subject to the regulations provided for in this Section.

Section 2. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 3. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 4. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. Unless specified otherwise, this Ordinance shall take effect upon adoption and filing as required by law.

DONE, ORDERED, AND ADOPTED in Regular Session, this ____ day of _____, 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Scott Ellis, Clerk of Court

By: _____
Kristine Isnardi, Chair
(as approved by the Board on __/__/__)