

From: Christina Flores
Sent: Friday, November 13, 2020 8:18 AM
To: Karen Phillips
Cc: Bryan Pankhurst; Daisy Ruiz
Subject: FW: Concerns with Current Ordinance Proposal Restricting Retail Sale of Dogs and Cats
Attachments: [Port St Lucie Retail Sales of Animals and Breeders Ordinance ASPCA 11 12 20 final.pdf](#); BKG Pets v. Sarasota.pdf

Good morning Karen,

I know that this item on the November 9th agenda. If this item will come back before Council again, can you please add this to the backup?

Thank you,

Christina Flores

Executive Assistant

Office of the Mayor and City Council

City of Port St. Lucie

121 SW Port St. Lucie Blvd.

Port St. Lucie, FL 34984

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cflores@cityofpsl.com

From: Jennifer Hobgood <jennifer.hobgood@aspca.org>
Sent: Thursday, November 12, 2020 5:00 PM
To: Daisy Ruiz <DRuiz@cityofpsl.com>; Greg Oravec <Mayor@cityofpsl.com>; Shannon Martin <Shannon.Martin@cityofpsl.com>; Christina Flores <CFlores@cityofpsl.com>; Stephanie Morgan <Stephanie.Morgan@cityofpsl.com>; Christina Flores <CFlores@cityofpsl.com>; John Carvelli <John.Carvelli@cityofpsl.com>; Daisy Ruiz <DRuiz@cityofpsl.com>; Jolien Caraballo <Jolien.Caraballo@cityofpsl.com>; Christina Flores <CFlores@cityofpsl.com>
Subject: Concerns with Current Ordinance Proposal Restricting Retail Sale of Dogs and Cats

Dear Mayor Oravec and Councilmembers,

Please see the attached letter outlining the ASPCA's concerns regarding the proposed ordinance restricting the retail sale of dogs and cats. We have also included amendment language and relevant case law. We would welcome the opportunity to work with you to ensure Port St. Lucie adopts the strongest, most effective ordinance to address the risks to animal welfare and consumers posed by puppy-selling retail stores.

Respectfully,

Jen Hobgood, Ph.D.

Senior Director of State Legislation, Southern Division

ASPCA[®]

The American Society for the Prevention of Cruelty to Animals[®]

Tallahassee, FL

850.445.5245



Government
Relations

November 12, 2020

Mayor Gregory J. Oravec and City Council Members
City of Port St. Lucie
Office of the Mayor and City Council
Port St. Lucie City Hall
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984

<sent via email to: druiz@cityofpsl.com; mayor@cityofpsl.com; Shannon.Martin@cityofpsl.com; CFlores@cityofpsl.com; Stephanie.Morgan@cityofpsl.com; CFlores@cityofpsl.com; John.Carvelli@cityofpsl.com; DRuiz@cityofpsl.com; Jolien.Caraballo@cityofpsl.com; CFlores@cityofpsl.com>

RE: Opposition to pet sales ordinance with problematic loophole

Dear Mayor Oravec, Vice Mayor Martin, and Council Members:

The ASPCA is writing to express our opposition to the current version of the proposal to restrict the retail sale of dogs and cats. We share Council's concerns that the retail sale of dogs and cats present risks to both animals and consumers. We have worked across the country to support the passage of strong state and local laws aimed at shutting down the puppy-mill pipeline that supplies pet stores with inhumanely bred puppies. However, the current proposal before Council would allow pet stores to continue to sell puppies and kittens from certain sources – creating a problematic loophole that we have already seen exploited in other jurisdictions.

As you may know, California and Maryland structured their pet store restrictions differently: California allowed for the sale of dogs from certain sources, similarly to the proposal before Council. Unfortunately, instead of pet stores working to change their model, they immediately shifted to undermine the law's intent and exploit the allowance for the sale of pets from rescue organizations. Commercial breeders that had previously supplied California's pet stores formed 501c3s, fake "rescues" for the sole purpose of skirting the California (and other local) laws.¹ California pet stores continued operating essentially as they had before the legislation.² Ultimately, additional follow-up legislation was required to address the loophole created by the original law.

¹ **"Are sick 'puppy mill dogs being disguised as rescues to sidestep new California law?: Puppy Laundering Schemes Adapt to Keep High-Priced, Purebred, Puppy-Mill 'Products' Flowing into local pet shops, officials say"** *The Orange County Register*. Nov. 8, 2019. Accessed online Feb. 5, 2020 at: <https://www.ocregister.com/2019/11/08/are-sick-puppy-mill-dogs-being-disguised-as-rescues-to-sidestep-new-california-law/>

² Sforza, Teri. **"California steps up effort to crush flow of puppy mill dogs, disguised as rescues, into local pet stores."** *The Orange County Register*. April 09, 2020. Accessed online August 20, 2020 at:

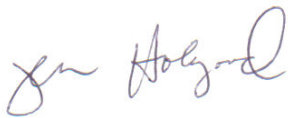
As we have seen first-hand, pet dealers will exploit poorly crafted language in order to continue selling puppy mill dogs.³ We want Port St. Lucie to avoid the pitfalls experienced by jurisdictions that have allowed the continued sale of dogs and cats in pet stores. There is no basis for this “adoption-based business model” sourcing exception. It does not benefit homeless animals. It does not benefit legitimate rescues and shelters.

The ASPCA strongly recommends that any law that regulates pet stores sales strictly prohibit all *retail sales* of dogs and cats but permit pet stores to partner with shelters and rescues to provide space in their stores to display adoptable animals. Under this model, ownership remains with the partnering non-profit or governmental organization. This is the model that many retail pet stores currently employ to great success and is the only model the ASPCA supports. It is the most effective way to prevent puppy mill cruelty and safeguard public health and consumers.

Absent this language, the ASPCA must oppose this version of the proposed ordinance. We further suggest removal of the hobby breeder exemption, which is unnecessary and was rejected by the Circuit Court of the 12th Judicial Circuit in and for Sarasota County.

Please contact me at jennifer.hobgood@aspc.org if you have questions or we can be of further assistance.

Sincerely,



Jennifer Hobgood, Ph.D.
Senior Director of Legislation, Southern Region
Government Relations

Enclosures

<https://www.oregister.com/2020/04/09/why-the-supply-of-puppy-mill-dogs-disguised-as-rescues-is-drying-up-in-california-pet-stores/>

See also:

Spielman, Fran. “**Alderman moves to close legal loophole in Chicago’s puppy mill ordinance.**” Chicago Sun Times. May 20, 2020. Accessed online August 20, 2020 at: <https://chicago.suntimes.com/city-hall/2020/5/20/21265137/puppy-mills-ordinance-loophole-chicago-city-council>

<https://www.desmoinesregister.com/story/news/crime-and-courts/2019/03/18/iowa-home-national-puppy-laundering-ring-iowa-attorney-general-tom-miller-lawsuit-says/3160148002/>

³ Iowa Department of Justice Office of the Attorney General Press Release. March 25, 2020. “Miller dismantles national ‘puppy laundering’ ring.” Accessed online August 20, 2020 at:

<https://www.iowaattorneygeneral.gov/newsroom/puppy-mill-laundering-ring-rescue-settlement-california-chicago>

Spielman, Fran. “**Alderman moves to close legal loophole in Chicago’s puppy mill ordinance.**” Chicago Sun Times. May 20, 2020. Accessed online August 20, 2020 at: <https://chicago.suntimes.com/city-hall/2020/5/20/21265137/puppy-mills-ordinance-loophole-chicago-city-council>

ASPCA Proposed Amendment

Replace current language with the following:

Retail sale of dogs or cats.—

(1) As used in this section:

(a) “pet store” means a for-profit place of business that sells or offers for sale animals to the public at retail.

(b) “sell” or “offer for sale” means to advertise or display for sale, barter, or trade.

(2) A pet store shall not sell or offer for sale a dog or cat.

(3) A sale or offer for sale of a dog or cat made in violation of subsection (1) of this section shall constitute a noncriminal violation, subject to fines pursuant to 775.083. Each sale or offer for sale shall constitute a separate offense.

(4) Nothing in this section shall prohibit the enactment or enforcement of a municipal or county ordinance restricting the sale or offer for sale of animals, provided that such ordinance is no less stringent than this section.

(5) Effective date. This law shall become effective [insert date].

(6) Severability. If any provision or clause of this law or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

BKG PETS, INC., d/b/a PETLAND SARASOTA,
a Florida corporation, and LAMAR B. PARKER, JR.,
Plaintiffs,

CASE NO.: 2016-CA-5533NC

vs.

SARASOTA COUNTY, FLORIDA, a political
subdivision of the State of Florida,
Defendant.

_____ }

**ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO
COUNTS III, IV, AND V and
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AS TO COUNTS III, IV, AND V**

This Cause came before the Court on January 4, 2018¹ on Motion of Plaintiffs For Summary Judgment on Counts 3, 4, and 5 of The Amended Complaint / Notice of Summary Judgment Evidence (e-filed October 18, 2017). Thomas Shults, Esq. and Jodi Ruberg, Esq. appeared on behalf of the Plaintiffs; David Pearce, Esq. represented the Defendant. The Court previously held a hearing on Defendant's Motion for Summary Judgment on October 26, 2017, but took the matter under advisement until plaintiff's motion could be heard. Therefore, the Court having heard argument of counsel, reviewed the submitted supporting documentation and case law (including Plaintiffs' Supplement To Its Motion for Summary Judgment on Counts 3, 4, and 5 of the Amended Complaint e-filed December 15, 2017), and being otherwise duly advised in the premises, does hereby state as follows:

Motion for Summary Judgment – General Legal Standard

As a general standard for a motion for summary judgment, the court's focus must be limited to whether disputed issues of material fact exist and, if not, whether the moving party is

¹ This case was reassigned to Circuit Civil Division E effective January 1, 2018. However, the undersigned judge agreed to hear plaintiff's Motion pursuant to the hearing held October 26, 2017 on Defendant's Motion for Summary Judgment.

entitled to judgment in their favor as a matter of law, not as a matter of fact. *See Arce v. Haas*, 51 So. 3d 530 (Fla. 2d DCA 2010).

A movant is entitled to summary judgment 'if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' *See Estate of Githens ex rel. Seaman v. Bon Secours-Maria Manor Nursing Care Ctr., Inc.*, 928 So.2d 1272, 1274 (Fla. 2d DCA 2006) (quoting Fla. R. Civ. P. 1.510(c)); *see also Bermont Lakes, LLC v. Rooney*, 980 So.2d 580, 586 (Fla. 2d DCA 2008). If the record reflects any disputed issue of material fact, a motion for summary judgment must be denied.

Brief Statement of Complaint

Plaintiff filed their initial Complaint on October 28, 2016 and their Amended Complaint on May 4, 2017. This is a case centered around county Ordinance No. 2015-089, which rendered the sale of dogs and cats by retail pet stores as unlawful and prohibited. Plaintiffs seek judgment in its favor with a finding that the Ordinance violates Florida law and in particular, Florida Statute 542.18 and 19 of the Florida Antitrust Act, along with an award for attorneys' fees and costs. In their Answer to Amended Complaint (e-filed May 17, 2017) Defendant filed a Counterclaim for Injunction Relief.

Findings from January 5, 2018 Proceedings

1. **Count III - Violation of Fla. Const. Art. I, § 2 Equal Protection - Declaratory and Injunction Relief - Petland and Parker:** This Court must apply a rational basis test for equal protection claims which specifically claim an adverse impact to the operation of a pet store.

While there can be a rational basis for the ban on the commercial sale of pets, this Court finds that the "Hobby Breeder" exemption is **not** rationally related to a legitimate public purpose.

However, the remainder of the ordinance survives under the severability clause. The prohibition against retail sale from a commercial establishment remains and applies to Plaintiffs. The prohibition is not dependent upon the validity of the hobby breeder exemption. The balance of the ordinance can be sustained. *See Edwards v. State*, 442 So. 2d 84, 86 (Fla. 2d DCA 1982) (striking penalty provisions of ordinance in conflict with state law, but sustaining the balance of the ordinance). The County is entitled to summary judgment as a matter of law on Count III.

2. Count IV - Violation of Fla. Const. Art. I, § 9 - Substantive Due Process - Declaratory and Injunction Relief - Petland and Parker: Florida courts often rely on federal due process cases as highly persuasive and reflective of the same principles embodied in the Florida Constitution. *See Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 962 (Fla. 1991). Federal and state courts have specifically rejected federal substantive due process claims involving ordinances prohibiting the sale of cats or dogs at pet stores. *New York Pet Welfare Ass'n, Inc. v. City of New York*, 143 F. Supp. 3d 50, 69 (E.D.N.Y. 2015); *Perfect Puppy, Inc. v. City of East Providence*, 98 F. Supp. 3d at 422; *D & G Ltd. v. City of Palm Beach Gardens*, case no. 2014CA014997 (Fla. 15th Jud. Cir. Dec. 17 2015) (granting summary judgment to the city).

Because Florida courts apply rational basis tests to legislation which affects use of property or the right to contract when that legislation does not result in a seizure without compensation, the Court will apply same to the ordinance in the instant case. The rational basis test under the Florida Due Process Clause is the same as the rational test under the Florida Equal Protection Clause. The Florida rational basis test is the same as the federal rational basis test. *See Silvio Membreno and Fla. Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13 (Fla. 3d DCA 2016).

To the extent there are property interests affected by the ordinance, courts have recognized amortization periods as viable and equitable means to reconcile competing private and public interests. *See Lamar Advet. Ass'n of East Fla. Ltd. v. City of Daytona Beach*, 450 So.

2d 1145, 1149 (Fla. 5th DCA 1984) (holding constitution did not require city to compensate billboard owner for removal of its billboards because of amortization period); *SDJ Inc. v. City of Houston*, 636 F. Supp. 1359, 1371 (S.D. Texas 1986) (concluding as reasonable a six-month amortization period for sexually oriented businesses to cease non-conforming use). Therefore, Court IV fails as a matter of law.

3. Count V - Violation of Fla. Const. Art. I, § 9 - Procedural Due Process - Declaratory and Injunction Relief - Petland and Parker: Procedural due process requires “notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government.” *Grayden v. Rhodes*, 345 F. 3d 1225, 1232 (11th Cir. 2003). The established elements that must be satisfied to state a claim alleging a violation of procedural due process are: 1.) a deprivation of constitutionally-protected liberty or property interest; 2.) state action; and 3.) constitutionally-inadequate process. Count V fails to state a cause of action for procedural due process violation.

There is no constitutionally-protected interest in the sale of cats and dogs. Plaintiffs have not argued a lack of procedural due process in the enactment of the ordinance. The County has not yet begun enforcement of the prohibition on retail sales at commercial establishments which would trigger an as-applied challenge. Instead, Plaintiffs wrongly argue that the ordinance retroactively impairs vested rights in violation of Florida’s Procedural Due Process Clause (Mot. Temp. Inj. ¶ 58, 47.). The Court finds no impairment of vested rights and finds Plaintiffs misunderstand the concept of retroactivity. The ordinance has no retroactive effect. It does not declare past sales unlawful. Rather, it prospectively regulates future sales of live cats and dogs.

The doctrine of vested rights is generally interchangeable with the doctrine of equitable estoppel. See *D&G Ltd. v. City of Palm Beach Gardens*, Case no. 2014CA014997 (Fla. 15th Jud. Cir. Dec. 17 2015 (granting summary judgment to the city in vested rights challenge to pet sales ordinance). In the absence of a specific right provided by law, there are no vested rights in

the continuance of existing law. *See Woodside Village Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452, 460 (Fla. 2002) (finding condo owner would be bound by subsequent adoption of amendments to declaration of covenants and restrictions). In the analogous context of retail sales of liquor, a license to sell a regulated product does not create a vested right. *See Walling Enter., Inc. v. Mathias*, 636 So. 2d 1294, 1296-97 (Fla. 1994) (observing that a liquor license is not property in a constitutional sense). If there is no vested right to sell alcohol created by the issuance of a liquor license, how can the Court find a vested right to sell live cats and dogs where the County has never issued a license for that purpose?

Re Equitable estoppel, Plaintiffs must establish the following: 1.) a representation by the County to Plaintiffs as to some material fact, which representation is contrary to the condition of affairs later asserted by the County; 2.) a reliance upon this representation by Plaintiffs; and 3.) a change in the position by Plaintiffs to its detriment, caused by the representation and its reliance thereon. *Greenhut Constr. Co. v. Henry A. Knott, Inc.*, 247 So. 2d 517, 524 (Fla. 1st DCA 1971). This detrimental reliance must be substantial and Plaintiffs must demonstrate they incurred such extensive obligations and expenses that it would be highly unjust and inequitable to destroy the right they acquired. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976).

There is no evidence Plaintiffs entered into their Franchise Agreement and Lease with any sort of reasonable reliance on any representation of fact by the County. There is no case law that holds that a party, acting in absence of any permit, has obtained some sort of vested rights prior to the adoption of the new ordinance. Additionally, Florida courts adhere to the "red flag" doctrine, where if a property owner had good reason to believe that government policy might change, reliance on the status quo is not possible. The County discussed the adoption of a pet sales ordinance prior to Plaintiffs entering into the agreements.

The ordinance includes procedural due process mechanisms for enforcement which include: 1.) the special magistrate code enforcement process in Chapter 162, Fla. Statutes; 2.) citation appealable to county court pursuant to Chapter 162, Florida Statutes; or 3.) a lawsuit in equity, including injunctive or declaratory relief. Am. Compl. Ex. E; SARASOTA COUNTY, FLA., CODE § 14-51 (2017).

A civil code enforcement proceeding is designed to bring property into compliance. The risk of erroneous deprivation of such interest is low because the code enforcement process involves two steps: 1.) an evidentiary hearing to determine whether a violation exists which includes a compliance order directing the violator to come into compliance after a designated time; and 2.) a penalty hearing if the violator has not brought the property into compliance after the time set in the compliance order. SARASOTA COUNTY, FLA., CODE § 14-51 (b)-(g) (2017). Thus, the violator is given notice and an opportunity to be heard before a fine would ever be imposed. The ordinance establishes all the safeguards necessary to provide for due process associated with enforcement.

Because Plaintiffs do not have a constitutionally-protected interest to sell live cats and dogs, and a rational basis exists for the ordinance (except for the “Hobby Breeder” exemption which the Court strikes, but finds that the remainder of the ordinance survives under the severability clause), the Defendant is entitled to judgment as a matter of law as to Counts III, IV, and V. Accordingly, it is hereby

ORDERED that:

1. The Motion of Plaintiffs For Summary Judgment on Counts 3, 4, and 5 of The Amended Complaint / Notice of Summary Judgment Evidence is ***Denied***.
2. Defendant’s Motion for Summary Judgment (as to Counts III, IV, and IV) is ***Granted***.

DONE AND ORDERED in Chambers, in Sarasota County, Florida on this 13 day of
February, 2018.


FREDERICK P. MERCURIO
CIRCUIT JUDGE

Copies to:

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