



Legislation Text

File #: 20-141, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Consider two options for an amendment to the City's municipal code pertaining to the local sale of dogs and cats and consider passing either the Option "A" ordinance or the Option "B" ordinance amending the Naperville Municipal Code.

DEPARTMENT: Legal Department

SUBMITTED BY: Kristen Foley, Senior Assistant City Attorney

BACKGROUND:

At the December 17, 2019 City Council meeting, under New Business, several Council members discussed the sale of dogs and cats in local pet stores and directed staff to provide Council with three items for its consideration: (1) a summary of any likely state legislation regulating dog and cats sold in pet stores; (2) an ordinance prohibiting the sale of dogs and cats sourced from commercial breeders in local pet stores; and (3) an ordinance incorporating into the City's code standards proposed by the Humane Society of the United States to the USDA for commercial breeders of dogs and cats.

On January 21, 2020, staff presented Council with an agenda item containing two draft ordinances and a legislative summary. 56 people spoke about the agenda item. Council chose to bring both ordinances to the February 4, 2020 Council meeting for its consideration of final action.

DISCUSSION:

Summary of State Legislation Regulating Animals Sold in Pet Stores

Several local legislators have introduced legislation attempting to ban the sale of dogs and cats in pet stores from commercially sourced breeders without success. In 2018, Senator Connelly filed SB 2280 prohibiting all pet stores in both DuPage and Will County from selling animals from commercial breeders. The bill was referred to committee and no further action was taken. In February 2019, Representative Karina Villa filed HB3620 creating a statewide ban on the sale of commercially sourced dogs and cats. The bill was also assigned to committee and no further action was taken.

On January 16, 2020, Representative Margo McDermed filed new legislation on the topic of animals sold in pet stores. McDermed's legislation, which is not supported by the Humane Society, requires pet stores to source dogs from breeders maintaining higher standards.

Option "A" Ordinance - Prohibits the Sale of Commercially Sourced Dogs and Cats in Local Pet Stores

Option “A” is an ordinance that amends the Naperville Municipal Code to prohibit local pet stores from selling dogs and cats sourced from commercial breeders and allows the sale of dogs and cats sourced from humane and rescue groups.

The adoption of an ordinance prohibiting the sale of dogs and cats sourced from commercial breeders has been a topic of discussion at City Council since September of 2014. When first discussed in September of 2014, there were several pending legal challenges to similar ordinances in Illinois. At that time, with the legal challenges and proposed legislation creating similar restrictions on pet stores, staff recommended that City Council not act until the pending litigation resolved or a statewide ban was adopted.

After the litigation over similar ordinances was resolved and no statewide ban had been enacted, staff presented City Council with an ordinance prohibiting the sale of commercially sourced dogs and cats in pet stores at the December 5, 2017 City Council meeting. Senator Mike Connelly spoke in Public Forum and advised Council that he would be filing new legislation banning the sale of dogs and cats sourced from commercial breeders in pet stores in DuPage and Will County. Based upon this information, Council did not vote on the proposed ordinance and tabled the issue.

Currently, ten (10) cities and counties in Illinois have adopted ordinances prohibiting the sale of dogs and cats in pet stores sourced from commercial breeders. Some ordinances include rabbits as well. Staff is aware of two local pet stores that currently sell commercially sourced dogs and cats, Petland and Happiness is Pets. If the Option “A” ordinance is adopted it will prohibit those stores from continuing to sell dogs and cats sourced from commercial breeders. The pet stores can sell animals obtained from rescue organizations, humane societies and other non-profit animal organizations.

The ordinance as proposed provides an effective date of January 1, 2021. To facilitate Council’s consideration of an effective date for Option “A”, both pet stores were contacted about the term of their current lease. Happiness is Pets’ lease expires July 31, 2024 and Petland’s lease expires September 22, 2025.

Option “B” Ordinance - Requires Local Pet Stores to Sell Dogs and Cats Sourced from Breeders Compliant with Increased Standards of Care

The Option “B” Ordinance incorporates ten standards of the care that the Humane Society of the United States (HSUS) has proposed to the United States Department of Agriculture (USDA) for all commercially licensed breeders. The HSUS, along with the Humane Society Veterinary Medical Association (HSVMA) and the American Society for the Prevention of Cruelty to Animals (ASPCA) jointly submitted a petition to the USDA and its Animal and Plant Health Inspection Service (APHIS), requesting “necessary enhancement to existing regulatory restrictions on the inhumane treatment of dogs living in dealer housing facilities.” Ten deficiencies in current federal regulations were identified and proposed solutions were recommended.

The USDA has minimal standards of care and treatment for dogs and cats bred for commercial sale. The humane groups are advocating for changes regarding (1) physical conditions at commercial breeding facilities, including the size, stacking, flooring of cages and temperatures inside the cages and (2) canine health and welfare in commercial breeding facilities, including access to exercise areas, socialization, breeding practices, preventive care, grooming, access to potable water and

treatment of retired dogs. For example, no wire flooring in cages, no stacking of cages, and mandatory yearly veterinary care. A summary of the problems raised by the HSUS is attached.

The HSUS petition stated that the changes were the result of discussions with pet industry representatives and pet stores coming to the table to negotiate with HSUS and ASPCA due to the “wave of ordinances at the local level banning or greatly restricting the retail sale of puppies.” There is no information on when or if the USDA will consider or possibly adopt these standards.

Option “B” Ordinance incorporates the ten standards proposed by the HSUS and would require pet stores in Naperville to only source from commercial breeders who are compliant with the standards.

There has been some discussion about a voluntary program for commercial breeders called Canine Care where commercial breeders can be certified by an independent auditor after they agree to maintain certain standards of care for their animals. This program is currently being offered by Purdue University and Dr. Candace Croney, the Director of the Center for Animal Welfare Science at Purdue. Dr. Croney has not shared the details of the program, including what standards the breeders must maintain, due to copyright / trademark concerns. Without signing a non-disclosure agreement, the City is unable to view the standards. Staff has submitted a FOIA request to the University to find out additional information but has not yet received a response.

Pet Purchasing Financing

During the Council’s first reading of these ordinances on January 21, 2020, the Council directed staff to look into whether there are limits on the interest rates financing companies may charge private parties who finance pet purchases. Staff contacted the Illinois Department of Financial Regulation, Consumer Credit Division and asked if there were any statutes or rules regulating the maximum amount of interest a store (or finance company) may charge on a financed retail purchase of a pet. According to the IDFR, there are no limits on the finance charges a seller (or third-party financier) may charge to a buyer. There are regulatory limits on the finance charges that may be charged on some specific types of loans (e.g., payday loans and small consumer loans), but pet purchase financing is considered a “retail installment transaction” for goods or services so there is no statutory limit on the finance charges applied. There are regulations that require the retail installment transaction to be clearly memorialized in writing, signed by the parties, and other disclosure requirements such as that the finance charge must be clearly disclosed by the seller to the buyer pursuant to the federal Truth-in-Lending Act.

Research confirmed the IDFR’s opinion is consistent with the Illinois Retail Installment Sale Act, [815 ILCS 405 <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2347&ChapterID=67>](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2347&ChapterID=67) et. seq. In particular, 815 ILCS 405/27 states “[n]otwithstanding the provisions of any other statute, retail installment contracts executed after the effective date of this amendatory Act of 1981, **there shall be no limit on the finance charges which may be charged, collected and received.**” (emphasis added)

FISCAL IMPACT:

N/A