




MEMORANDUM

TO: Trustee Anthony Puccio, Chairperson
Economic and Community Development Committee

FROM: William J. Heniff, AICP, Director of Community Development 
Jennifer Ganser, AICP, Assistant Director of Community Development

MEETING DATE: February 10, 2020

SUBJECT: **Humane Animal Ordinance Discussion**

Based on resident feedback at the December 5, 2019 Board of Trustees meeting, staff is bringing the subject of a Humane Animal Ordinance back to the Economic and Community Development Committee (ECDC). The speakers expressed concerns about the retail sale of animals in Lombard that may have been from facilities that are otherwise deemed inhumane. A Humane Animal Ordinance would prohibit the sale of dogs/puppies (and possibly other animals) from commercial breeders or “puppy mills.” The sale of animals at pet stores could still be allowed, but those in business would need to sell animals from recognized shelters or other identified means only.

This would be a business regulation, and therefore is before the ECDC for introduction and discussion. As is practice on other ECDC discussions on business regulations, staff did invite Happiness is Pets, Beach for Puppies, and Trop Aquatics. All three businesses sell animals.

EXISTING REGULATIONS AND ENFORCEMENT

Primary enforcement of the condition and care of animals in Illinois is done by and through the Illinois Department of Agriculture (IDOA). They are tasked with inspection and enforcement activities of both breeding site as well as retail shops and other locations in which the animal care occurs. The expressed concerns generally pertained to the conditions at the breeding facilities (or commonly referenced as “puppy mills”, which are located outside of the Village of Lombard, so any local regulations would not be applicable.

ZONING

Pet Stores are allowed in Lombard as a permitted use in the B2, B3, B4, B4A, B5, and B5A commercial zoning districts. Lombard has two pet stores that sell dogs/puppies: Happiness is Pets and Beach for Puppies. (Recently, a new pet store opened on Roosevelt Road in unincorporated DuPage County. As that business is not in Lombard the Village does not have jurisdiction over their zoning or regulations). Establishing business regulations or restrictions of the business use would not be a zoning regulation, as zoning does not regulate where an item for sales comes from, just the activity itself.

2013 DISCUSSIONS

The Committee may remember discussions from 2013 and attached are the memos from October and November 2013 in which similar concerns. As a result, in 2014 the Village Board approved the attached ordinance that prohibited the commercial sale of animals when done as part of a temporary event and provides exceptions for humane associations to have animals on site if associated with outreach efforts. It also requires a business selling animals to have a lease of at least one year.

LEGAL REVIEW

Staff sought a legal opinion from Village Counsel relative to the legal parameters associated with establishing regulations that would limit or restrict the retail sales of selected animals. As expressed in the attached opinion, our Counsel notes that many municipalities have passed a Humane Animal Ordinance. A few municipalities, like Downers Grove, even did so with an existing business open and selling animals. However, per a City of Chicago court case, there is case law that supports a home rule municipality from passing such an ordinance and passing such an ordinance and amortizing a business to no longer sell animals unless from a shelter. Lombard is not home rule. Though other non-home rule municipalities have passed such ordinances there is no case law to support the idea that a non-home rule has the authority to create “dog source restrictions” and it is uncertain as to whether such restrictions would stand up to judicial scrutiny if challenged.

OTHER MUNICIPAL REVIEWS

Naperville is currently reviewing a Humane Animal Ordinance, based upon similar requests and inquiries. They are reviewing the attached draft ordinances prohibiting the sale of dogs and cats sold in pet shops and 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. Naperville is a home rule municipality and has two pet stores. The second ordinance incorporates ten standards of 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. Ten deficiencies in current federal regulations were identified and proposed solutions were recommended.

ROLE OF THE ECDC

Staff is bringing this item for discussion to the ECDC. Staff would like ECDC input on the Village’s current regulations and if they believe additional regulations or review should be undertaken. If the ECDC recommends additional Village legislations, staff would like input on the kind of animals to be included, how a business would provide compliance, and what criteria should be used.

For initial guidance, staff offers the following possible options for the ECDC to consider:

1. Status Quo (Do Nothing)

This option would not change existing local codes. However, staff notes that this option can have varying justifications, which can include:

a. Consumer Choice Reasons

Staff notes that many businesses sell items that some would consider to be unhealthy, dangerous, or made under otherwise less than acceptable conditions (cigarettes, alcohol, and some clothing types as immediate examples). Consumers have the right to educate themselves about their purchases and make informed decisions, or not. If this concern is raised, public education could lead to a reduction in the demand for such products.

The ECDC may remember a discussion from 2016 about window lighting. In the end, the ECDC did not recommend any additional regulations but instead noted it is a personal choice to display the window lighting and to shop, or not, at those establishments.

This argument could also be extended to concerns about specific breed types – some purchasers may want a particular type of dog or cat and may not want to be limited to the breeds that are available at a given time.

b. Regulatory Authority/ Local Core Services

As noted earlier, primary enforcement of animal breeding activities falls to the IDOA. If there is a concern pertaining to their ability or inability to regulate such activities, that would be a matter for the IDOA to address, instead of local regulation. Additionally, the legal status of local regulation for non-home rule communities is unclear at present. This argument could also espouse that the role of local governments should be more focused upon the primary core and essential local government services.

c. Impact on Existing Businesses

As mentioned above, there are two stores that sell dogs/puppies in Lombard and one that sells fish and other “glass tank” pets such as crabs, reptiles, lizards and/or spiders. As noted earlier, these existing lawfully established businesses could be negatively impacted by such regulations, based upon how any such regulations are established.

2. Recommend an ordinance to similar to Naperville’s “Option B” ordinance that incorporates standards of care.

This option would establish local care provisions for on-site businesses specifically as to how dogs and cats will need to be housed and cared for by businesses within the Village. Many of the provisions are currently established within the IDOA provisions, but it would also establish local control and regulation of these items.

3. Recommend a Humane Animal Ordinance thereby prohibiting the sale of dogs/puppies (and possibly other animals) unless from a shelter.

This approach would limit the sales of dogs and cats to those in shelter organizations and the like.

Special Notes: Unlike the City of Naperville, the Village of Lombard does not have an Animal Control Department. Should Options 2 or 3 be considered, the Village will need to examine all aspects of this approach further, including determining processes for business regulation, inspection and enforcement staffing. Also, as referenced earlier, if prohibitions are established, the Village would also need to review the establishment and possible amortization provisions as it would relate to existing businesses in the Village.

4. Defer to legislative actions at the state level

A concern that has been raised in the past is that if a given municipality does limit or restrict the retail sale of animals, such sales would just occur elsewhere, or even on-line. To that end, the question here would be whether such regulations should be undertaken at the state level versus the local level.

COMMITTEE ACTION REQUESTED

Staff is bringing this matter to the ECDC at the February 10, 2020 meeting for introductory and discussion purposes. The ECDC will hear public input regarding the matter and staff will provide an introductory review of the topic. As this is an emerging issue and does not require immediate action, staff recommends this item be continued to the next ECDC meeting for additional discussion.



MEMORANDUM

TO: Trustee Laura Fitzpatrick, Chairperson
Economic & Community Development Committee Members

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

DATE: October 14, 2013

SUBJECT: **Animal Sale Regulations**

The Village has been approached by a non-profit animal welfare and rescue organization (Companion Animal Protection Society, or CAPS) regarding regulations that pertain to the care and sale of animals. The non-profit organization is advocating that the Village take additional regulatory steps to address their concerns pertaining to the care of animals for sale. Specifically, they would like the Village to adopt additional regulations to control and/or restrict the sale of animals (primarily dogs from puppy mills). As this request pertains to regulations of business activity, staff is bringing this matter to the Economic and Community Development committee (ECDC) for discussion and consideration.

BACKGROUND

The Village of Lombard regulates animals in two primary areas of the Village Code. The Zoning Ordinance (Chapter 155) establishes regulations as to the permissible location of animal sales (i.e., pet stores), while Chapter 90 establishes regulations regarding the nature, quantity and care of animals. Should an animal not be properly cared for or abandoned, Sections 90.42 through 90.46 of the Village Code provides the ability of the Police Department to investigate reported violations to the aforementioned sections. These provisions would pertain to animals that are within the corporate limits of the Village.

The State of Illinois Department of Agriculture has jurisdiction with respect to commercial animal operations and serves as a general clearinghouse for all inquiries pertaining to the health and quality of care for animals. The Department of Agriculture has a field staff that performs inspections of properties, represented to be at least three times a year, through their licensing and registration process.

REQUEST

CAPS has raised concerns regarding the care of animals, particularly puppies/dogs, that are housed and bred in a manner they deem to be inappropriate, or in common parlance "puppy mills", as well as stores that do not meet the provisions set forth in state statutes. They also expressed a desire to limit or restrict the commercial sale of dogs bred through puppy mills in retail shops. They note that they through public awareness campaigns they have had success in

reducing the number of dogs sold in retail stores in which they represent receive their animals through puppy mills.

One principal area of concern pertains to the temporary sale of dogs at events such as flea or farmer's markets. In these instances, they have raised concerns that the transport and sale of dogs by temporary operators is not desirable as the animals may not be properly cared for and cannot be readily checked for proper health. Of particular note, they reference a past instance in Villa Park where such activity was occurring and advocated that the Village of Villa Park adopt an ordinance placing limitations upon such sales. Their Village Board adopt an ordinance last year (Ordinance 3716) that, among other things, set forth the following requirements:

- A license issued by State of Illinois (Illinois Animal Welfare Act)
- Operators must be located entirely within a permanent building owned or leased for more than one year.
- Must comply with the Humane Care of Animals Act.

Per Villa Park staff, he stated the main purpose and intent of their ordinance was to limit the sale of animals in a flea market setting and the ordinance achieved this effect. They have not actively pursued the provisions set forth in their ordinance for compliance, as they work on a complaint basis and do not have staffing to proactively address other issues.

As noted earlier, CAPS would like to see Lombard take steps to actively and/or aggressively limit the sale of dogs from puppy mills. If such puppy mills were located within the Village, staff believes that existing regulations would be able to address such concerns. However, as these animals are located elsewhere, often out of state, the Village does not have jurisdiction to pursue the matter. However, they are seeking local regulations as they do not believe that the state has adequately met their responsibilities set forth within State Statute.

ISSUES FOR LOMBARD/ECDC

As the request would be a type of business regulation, staff is bringing the matter for review by the ECDC. Past practice is to invite all business affected by the legislation to be invited and provide testimony and comment on any such regulations. The ECDC would then make a recommendation to the Village Board. Such review of any such legislation will also require Village attorney review.

Staff offers the following issues:

- The need for local regulation to supplement/supersede state regulation. The aforementioned provisions fall under the provisions established by the State of Illinois. To ensure strict compliance with these provisions would require regular and ongoing inspections.

- If much broader regulations are adopted, Lombard will be also responsible for local enforcement. Active enforcement would likely require additional staff personnel, or contracted services, trained in animal care regulations. This will likely require full local licensure/registration process to help offset costs. However, such licensure/registration will likely not cover the full costs of enforcement.
- From Lombard's standpoint, the Village would not authorize flea markets as a matter of right within the Village. They could only be approved through a public hearing process (conditional use or text amendment) by the Plan Commission and Village Board approval.
- Prohibitions on the commercial sales of animals (i.e., prohibiting the pet shop use) would need to be addressed through the Plan Commission public hearing process. However, as a land use issue, it would be difficult to justify why the commercial sale of animals is not an appropriate land use, although the care and boarding of animals would be appropriate. Moreover, as an indoor retail commercial enterprise, the negative externality of pet shops is generally not any more prevalent than other land uses. Although an exemption was offered to allow for sales of animals through a 501c3 organization, as some do, the dog ownership status is not germane to the land use issue.
- While the argument has been made that prohibitions would decrease the activities, staff would argue that this could result in prospective business operators and their companion sales to locate elsewhere.
- The primary concern relates to the production of the animals themselves outside of the Village. Local governments traditionally do not have a role in banning the sales of product because of the manufacturing practices may not be acceptable (i.e., the Village would not reviewing all of the apparel shops in Lombard to check to see if the clothing was manufactured by child labor). However, if such activities were occurring in the Village, the Village can be more pro-active.

RECOMMENDATION

The State already has given the regulatory authority to the Illinois Department of Agriculture and that the State already has professional trained in the matter, staff's initial recommendation is to provide an informational outreach campaign to interested parties. This can include links on our web site as well as brochures available at the Village Hall. Most importantly, it will include the proper contact hot line number with the state (217)782-6657 that can respond to inquiries.

Regarding local regulatory issues, staff can conceptually support limitations and/or prohibitions on commercial sale of animals when done in the confines of temporary sales events, such as flea markets, farmers market and the like. The justification for such a regulation could be to help ensure that animals are humanely treated and concerns raised by CAPS or within existing code are met. Staff has discussed this matter with Village Counsel and counsel has recommended that such a regulation is possible.

ACTION REQUESTED

This item is being placed on the October 14, 2013 ECDC agenda for discussion and direction. Staff is seeking direction as to the level of desirability for additional regulations pertaining to the sale of animals within the Village. Staff is conceptually supportive of an additional provision within Section 90 of the Village code to limit or restrict the sale of animals associated with special events such as flea markets, farmer's market and the like. Staff can also support an exemption for humane associations to have animals on site if associated with the outreach effort of the organization (i.e., having a greyhound on site for a greyhound rescue organization, with the ability of said animals to be adopted separately from the temporary event).



Companion Animal Protection Society

Thank you for giving us this opportunity to discuss an ordinance we would like you to take into consideration. As representative of The Companion Animal Protection Society (CAPS), I am proposing the attached ordinance that Villa Park passed.

Founded by President Deborah Howard in 1992, CAPS is the only national non-profit organization dedicated exclusively to protecting companion animals from cruelty in pet shops and puppy mills. CAPS actively addresses the abuse and suffering of pet shop and puppy mill dogs through investigation, education, media relations, legislative involvement, puppy mill dog rescues, consumer assistance and pet industry employee relations.

Our West Hollywood California ordinance banning the sale of pet shop puppies and kittens received worldwide media coverage and was the genesis for the now growing ordinance movement in both the United States and Canada. There are ordinances banning the sale of pet shop puppies and kittens in 32 cities. Los Angeles being the biggest, and San Diego being the latest as of May 2013.

We understand Lombard is a non-home rule city, and so is Villa Park. We would like you to consider this ordinance to avoid future pet shops that sell commercially bred puppies and kittens from opening in Lombard. On that note, perhaps there is something we could adjust, add, change in this ordinance, to prohibit Happiness Is Pets from selling their puppy mill dogs.

We also have reason to believe there are puppy millers coming here from Missouri selling puppies in the old KMart parking lot and at the McDonald's on Roosevelt Road in Lombard. This ordinance would also cover dogs being sold in parking lots, farmers markets and flea markets.

In 2010, in Illinois alone, over 9565 dogs and 15,796 cats were euthanized. These figures are only from 6 kill shelters. We put down one dog every 10 seconds in the United States, approximately 4 million companion animals are killed in our country every year. On petfinder.com there are over 180,000 dogs up for adoption in Illinois. There is no reason for pet stores to sell commercially bred sick puppies to unsuspecting customers.

In 2006 Happiness Is Pets sold 8000 puppies. In 2011 they sold 4750. Sales are going

down, awareness is being spread. We wonder how many of those dogs are now in our shelters. Happiness Is Pets had a distemper outbreak at their stores in January 2012. Distemper is the leading cause of infectious disease deaths in dogs worldwide. It's highly contagious and spread through inhalation. Vaccination is nearly 100% effective against distemper. A vaccinated mother dog will pass it on antibodies to her babies. Puppy mill dogs are rarely, if ever, vaccinated. There is now a class action lawsuit pending against all 5 Happiness Is Pets locations. I have personally spoken to almost 200 people about the sick and dying dogs they have purchased from this pet store.

There is a wave of awareness spreading across the country. This dirty little secret is finally being exposed. Villa Park is the first city in Illinois to pass an ordinance, Oswego followed, and now we are asking Lombard to do the same. Let's do the right and humane thing. Help us speak up for the dogs who cannot speak for themselves.

If anyone has any questions, please feel free to contact me. Thank you again for giving us this opportunity.

Ida McCarthy
Companion Animal Protection Society
Chicago Campaign Coordinator
www.caps-web.org
Direct Line - 630-479-4673
idamccarthy@yahoo.com

After speaking to almost 200 people last year, here are the diseases the dogs were sold with:

Pneumonia, Liver Shunts, Hip Dysplasia, Perthes Disease, Distemper, Mouth Cancer, Tumors, Microvascular Dysplasia, Kennel Cough, Blindness, Umbilical Hernia, Urinary Tract Infections, Giardia, Behavior Issues, Wrong Breeds, Bacterial Infections, Mange, Skin Problems, Pelvic Bladder, Digestive Problems, Head Seizures, Hip Problems, Encephalitis, Yeast Infections, Luxating Patellas, Allergies, Thyroid Problems, Aural Atresia, ACL Surgeries, Cherry Eyes, etc.

A few people bought a dog during the distemper outbreak and when they brought the puppy home, the dog they already had caught distemper and died.

This is an ongoing issue, we receive complaints almost weekly.

Ordinance No. 3716

AN ORDINANCE OF THE VILLAGE OF VILLA PARK, DUPAGE COUNTY, ILLINOIS ESTABLISHING LICENSE AND SANITATION REQUIREMENTS FOR PET SHOPS AND KENNELS

WHEREAS, the Village of Villa Park (the "*Village*") is a duly organized and validly existing non home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, Section 11-20-9 of the Illinois Municipal Code (65 ILCS 5/11-20-9) authorizes the Village to license and regulate dogs and other animals in the Village; and,

WHEREAS, the Village desires to require pet shops and kennels to obtain licenses issued by the State of Illinois and to comply with animal welfare regulations; and,

WHEREAS, the Village desires that all pet shops be operated from a permanent building and not by itinerant merchants at temporary locations such as farmer's markets, flea markets or parking lots of other businesses.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Villa Park, DuPage County, Illinois, as follows:

Section 1. That Section 5-111 of the Villa Park Municipal Code, as amended, be and is hereby added to read as follows:

"Sec 5-111 Pet Shops and Kennels – License and Regulations

A. No person shall engage in the business of pet shop operator or kennel operator or any combination thereof without a license issued by the State of Illinois in accordance with the Illinois Animal Welfare Act (225 ILCS 605/1 et seq.)

B. No person shall operate a pet shop unless that pet shop is located entirely within a permanent building owned or leased for not less than one (1) year by the pet shop operator and in compliance with this Municipal Code.

C. All pet shop operators and kennel operators shall:

(1) Comply with all sections of the Humane Care for Animals Act (510 ILCS 70)

(2) Have covered, leak-proof containers available for storage of waste materials before disposal to control vermin and insects. Such containers shall be maintained in a sanitary condition.

(3) Take effective control measures to prevent infestation of animals and premises with external parasites and vermin

(4) Provide water from a source having sufficient pressure to properly sanitize and clean the facility and equipment.

- (5) Provide hand washing facilities**
- (6) All buildings shall be constructed so as to provide adequate shelter for the comfort of the animals and shall provide adequate facilities for their waste to avoid exposure to healthy and salable animals**
- (7) Floors of buildings housing or displaying animals shall be able to be thoroughly cleaned and sanitized. Cleaning shall be performed daily, or more often if necessary, to prevent any accumulation of debris, dirt or waste**
- (8) Cages shall be constructed of a material that is impervious to urine and water and able to withstand damage from gnawing and chewing. The cages must be cleaned and sanitized at least once daily or more often if necessary. All empty cages shall be kept clean at all times. Cages shall be of sufficient size to allow the animal to comfortably stand, sit, or lie and offer freedom of movement**
- (9) Runs shall be constructed of material of sufficient strength and design to confine the animals. They shall be kept in good repair and condition. For new construction or remodeling, the licensee shall provide runs surfaced with concrete or other impervious material. Surface of the run shall be designed to permit the surface to be cleaned and kept free from excessive accumulation of animal waste. Provisions must be made for adequate drainage, including gutters and discharge of any fluid or content into a sewer, septic tank or filter field, and shall comply with this Code.**
- (10) Cages or aquariums for housing of small animals, birds, or fish shall provide space not less than 2½ times the body volume of living creatures contained therein.**
- (12) Sufficient clean water and fresh food shall be offered to each animal daily as prescribed in the rules for the Federal Animal Welfare Act (9 CFR 3.5-3.7; 2006). In the case of young animals, they shall be fed more than once daily. Reptiles, fish or amphibians shall be fed and cared for in accordance with the eating patterns and environmental conditions compatible with each individual species.**
- (13) The licensee or his representative shall be present for general care and maintenance of the animals at least once daily.**
- (14) Aquariums containing fish shall be kept in a clean healthful condition. Live algae shall not be considered an unhealthful condition. Any dead fish shall be removed from aquariums.**
- (15) Adult cats shall be provided with litter pans at all times. The pans shall be cleaned and sanitized at least once daily or more often if necessary.**

Section 2. This Ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law.

Passed this 24 day of September, 2012.

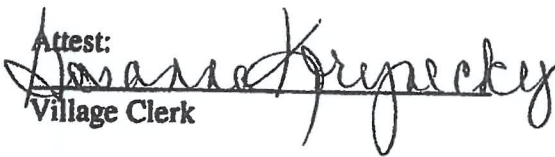
AYES: All

NAYS:

ABSENT:

Approved this 24th day of September, 2012.


Village President

Attest:

Village Clerk



Published in pamphlet form:

September 28th, 2012

Heniff, William

From: Ida McCarthy <idamccarthy@yahoo.com>
Sent: Tuesday, September 03, 2013 3:42 PM
To: Giagnorio, Keith; Heniff, William
Subject: Pet Store Ordinance

I hope everyone enjoyed their Labor Day Holiday! Thank you for taking the time to meet with us last week. We would like to continue working with you to accomplish our mission in a manner that is acceptable to all parties.

Perhaps you could consider language such that:

"Pet stores opening in Lombard can only adopt out animals from 501C non-profit rescue organizations?"

That way you are not deterring a pet store from opening, just not a pet store that sells puppy mill puppies.

You are saying you can only "adopt" dogs and work with licensed rescues. A reputable breeder would never put their puppies in a store to be sold to anyone with a credit card. And adoption helps address the number of unwanted dogs who can't find homes and are euthanized - reportedly over 4 million dogs in the United States every year.

If there was a pet store in Lombard that sold pet supplies and dogs, we would ask them to go humane and offer rescue dogs only. We know Happiness is pets would never do this, since their main "product" is dogs. Many years ago Petsmart, Petco, and Pet Supplies Plus sold puppy mill dogs. They went humane and only offer dogs for adoption events. Dog Patch in Naperville sold puppy mill dogs for decades yet they went humane (adopting out rescue dogs only) 2 years ago. It's been a huge success for them. And Jim's Pet World in Villa Park is now closing. They also sold puppy mill puppies for years. People are waking up and doing their research.

Hence...the new ordinance. Like we said, we understand HIP cannot be the issue. We have been hearing rumors of other puppy mill stores thinking of opening in Yorktown. And as stated in our meeting, pet stores follow other pet stores. There are only 6 pet stores in Dupage County that sell puppy mill dogs. Petland and Happiness is pets in Naperville, Furry Babies in Bloomingdale, Happiness is pets in Lombard and Downers Grove, and Puppy parlor in Lisle. All other pet stores offer adoption events only.

In our meeting Bill, you stated that this is an issue for the Illinois Department Of Agriculture. We have had years of experience with the Illinois Department Of Agriculture, and in my opinion, they should be investigated. They have approximately 7 inspectors for the entire state. They have let animals die on farms, in shelters, in pet stores, etc. and have walked away from dead animals not reporting any of them. The inspectors are responsible for every single living animal in Illinois and could care less about pet stores. They have left cows falling over dying and never said anything. There are pictures of farm animals that we could provide, but I think you get the point.

I am including a video of a pet store in Lisle, Puppy Parlor. It's very disturbing and the Illinois Department Of Agriculture thinks this is perfectly fine. That is why we cannot turn a blind eye and leave it in their hands. This could happen in Lombard at any time, there is nothing preventing this type of store from opening. After it opens, you will be able to do nothing to stop it.

The village of Lisle has repeatedly asked the Illinois Department Of Agriculture to address this issue. They say it passes the requirements and meets their standards.

<http://youtu.be/Xyw8qh5Rayg>

It's up to us to stop this. Our elected officials should know more than the average consumer and be educated in the stores that open in their town. They should protect the consumer against fraud and abuse, neglect and cruelty. We are hoping to work with the Village Of Lombard to obtain what we all deserve, including the dogs that can't speak for themselves.

Thank you and I look forward to hearing from you.

Ida

Ida McCarthy
Companion Animal Protection Society
Chicago Campaign Coordinator
<http://www.caps-web.org/>
Direct line - 630-479-4673



MEMORANDUM

TO: Trustee Laura Fitzpatrick, Chairperson
Economic & Community Development Committee Members

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

DATE: November 25, 2013

SUBJECT: **Animal Sale Regulations – Code Amendments**

At the October 14, 2013 meeting of the Economic and Community Development Committee (ECDC), the committee heard a presentation by a non-profit animal welfare and rescue organization (Companion Animal Protection Society, or CAPS) regarding regulations that pertain to the care and sale of animals. The non-profit organization is advocating that the Village take additional regulatory steps to address their concerns pertaining to the care of animals for sale. Specifically, they would like the Village to adopt additional regulations to control and/or restrict the sale of animals (primarily dogs from puppy mills).

Through the discussion, staff was directed to proceed with drafting an ordinance for the ECDC's consideration that specifically addresses some of the issues and concerns raised by CAPS and were identified in Villa Park's ordinance that was adopted last year pertaining to the temporary sale of animals.

Attached is the requested ordinance to address such activities. A copy of the existing Chapter 90 provisions is also attached for reference purposes. The draft ordinance would prohibit the commercial sale of animals when done in the confines of temporary sales events, such as flea markets, farmer's markets and the like. The justification for such a regulation could be to help ensure that animals are humanely treated and concerns raised by CAPS or within existing code are met. The draft amendment provides an exemption for humane associations to have animals on site if associated with the outreach effort of the organization (i.e., having a greyhound on site for a greyhound rescue organization, with the ability of said animals to be adopted separately from the temporary event).

ACTION REQUESTED

Per the ECDC direction, staff recommends that the ECDC consider the draft amendment to Section 90 of the Village Code to limit the sale of animals associated with temporary sales activity.

CHAPTER 90: ANIMALS

Section		90.43	Abandoned Animals
	<i>Prohibitions</i>	90.44	Poisoning of Animals
90.01	Definitions	90.45	Exhibition of Animals
90.02	Number of dogs allowed	90.46	Manner of Confining and Care of Confined Animals
90.03	Dangerous animals at large		
90.04	Keeping certain animals prohibited	90.47	Diseased or Injured animals
90.05	Dangerous, vicious, or wild animals	90.48	Fines
90.06	Dangerous, vicious dogs		
90.07	Animals kept pursuant to State or Federal License Exempt	90.99	Penalty
90.08	Trapping		
90.09	Business and Government agencies licensed by State Exempt		
			<i>PROHIBITIONS</i>
	<i>General Provisions</i>		
90.10	Collars Required	§ 90.01	DEFINITIONS.
90.11	Confinement and Redemption		
			For purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
	<i>Dogs</i>		
90.12	Vicious animals: Impoundment and where incapable of impoundment		ANIMAL. Every living creature, domestic or wild, not including man.
90.13	Registration		
90.14	Repealed Ord. 6745		
90.15	Leash Requirements		
90.16	Removal and disposal of excreta		ANIMAL CONTROL CENTER. A place designated by the Village Manager for the housing of animals in the temporary custody of the Village.
90.17	Loud frequent noises declared a nuisance		
	<i>Rabies Inoculation</i>		
90.18	Inoculation required		ANIMAL CONTROL OFFICER. A person performing duties prescribed by the Village Manager to effectuate this chapter.
90.19	Registration requirement		
	<i>Feeding of Wild/Feral Animals and/or Birds</i>		
90.30	Findings		ATTACK. Any aggressive, menacing or vicious physical contact between any dog and any person or other animal, including, but not limited to, contact of the mouth or teeth of a dog with the victim of the attack and any striking or scratching of the victim or an attack by the paws of any dog regardless of whether or not any such actions result in injuries of any kind sustained by a victim.
90.31	Definitions		
90.32	Feeding of Wild/Feral Animals and/or Birds Prohibited in Residential Areas		
90.33	Exceptions		
90.34	Nuisance Declared		
90.35	Penalty for Violation		
	<i>Cruelty to Animals</i>		
90.40	Definitions		BITE. Seizing with the teeth or jaws so that the person or other animal seized has been nipped, gripped, cut, wounded or pierced, and further includes the contact of saliva with any break or abrasion of the skin.
90.41	Duties of Owners		
90.42	Prohibited Acts		

CONFINEMENT STRUCTURE. A securely locked pen, kennel or other structure designed, constructed and maintained in accordance with the standards herein. Such pen, kennel or other structure must have secure sides and a secure top attached to the sides and must be locked with a key or combination lock while animals are within the structure. Such structure must have a secure bottom or floor attached to the sides, or the sides of the structure must be embedded in the ground no less than two feet (2'). All such structures must comply with all zoning and building regulations of the Village and be adequately lighted, ventilated and kept in a clean and sanitary condition.

DANGEROUS OR VICIOUS ANIMAL. Any animal, excluding a dog, which poses a danger or hazard to a human.

DOG. Except where specifically distinguished, includes all animals of the canine species of the age of four months or older.

DOG, DANGEROUS. Any dog which, while unmuzzled, approaches any person or other animal in a vicious or terrorizing manner displaying an apparent attitude of attack up any street, sidewalk or any public grounds or place, or any premises other than those of its owner, and which dog does not cause serious physical injury, provided, that such approach is unprovoked.

DOG, VICIOUS. Any dog which has, when unprovoked, bitten or attacked any person or other animal on public or private property; or has a known tendency, propensity or disposition to attack persons or animals without provocation; or has caused serious injury to a person or animal; or has been found to be a dangerous dog upon three (3) separate occasions in the Village; or has been declared a vicious dog as defined in the Illinois Animal Control Act, 510 Illinois Compiled Statutes 5/1 et seq., by a court of competent jurisdiction whereby an order was entered based upon that finding.

GUIDE DOG. A dog trained and used to aid the blind or hearing impaired; provided that the owner of any such dog complies with the provision contained in 510 Illinois Compiled Statutes 5/8.

INJURY, SERIOUS PHYSICAL. Any physical injury that creates a substantial risk of death or that causes death, serious disfigurement, protracted impairment of health, impairment of the function of any bodily organ, or plastic surgery.

INOCULATION. The injection, subcutaneously or in such other manner as may be approved by the Illinois Department of Agriculture pursuant to the Illinois Animal Control Act, 510 Illinois Compiled Statutes 5/1 et seq., of canine anti-rabic vaccine meeting standards approved by the Illinois Department of Agriculture and the United States Department of Agriculture.

K-9 DOG. A dog trained and used in the performance of official police duties authorized by the Chief of Police; provided that any such dog shall be currently inoculated against rabies as provided in 510 Illinois Compiled Statutes 5/8.

LEASH. A strap or chain, manufactured for use as a leash, securely fastened to the collar or harness of a dog, which shall in no case be longer than eight feet (8') and shall be of sufficient strength to keep such dog under control.

MATURE ANIMAL. A male or female animal, which has been weaned.

MUZZLE. A device constructed of strong, soft material or metal which will prevent a dog from biting any person or animal; provided that such muzzle must be made in a manner which will not cause injury to the dog or interfere with its vision or respiration.

NEUTERED ANIMAL. A male or female animal treated by a veterinarian to render it incapable of reproduction.

OWNER or KEEPER. Any person, who has a) a right of property in an animal; b) keeps an animal; c) has an animal in his care or custody; or d) who knowingly permits an animal to remain on or about any premises occupied by him.

RUN AT LARGE. To be free of restraint off the premises of the owner. Any dog not upon the premises of its owner or such other person having custody, possession or control over any such dog, which is not on a leash and under the control of a person physically able to control it, shall be deemed to be running at large.

VETERINARIAN. A veterinarian, duly licensed by the State of Illinois or any other state which, by law, licenses veterinarians.

VETERINARIAN HOSPITAL. Any place used for the treatment of animals, which is operated by a veterinarian and licensed by the State of Illinois.

§ 90.02 NUMBER OF DOGS ALLOWED.

It shall be unlawful for any person, family, or group of persons residing as a single housekeeping unit to keep, harbor, shelter, feed, or care for more than three (3) dogs, cats, or other domestic animals over three months old on any premises. Licensed pet shops, veterinary hospitals, and kennels shall be exempt from this section of the ordinance.

('70 Code, § 8.02.010) (Ord. 2896, passed 9-25-86, Ord. 3942, passed 12/15/94)

§ 90.03 DANGEROUS ANIMALS AT LARGE.

(A) It shall be unlawful for any person to permit any dangerous or vicious animal of any kind to run at large within the Village.

(B) It shall be unlawful for any dog to run at large.

(C) It shall be considered a separate offense of an owner to knowingly allow a dangerous or vicious dog to run at large, whereby said action results in injury to a person or animal.

('70 Code, § 8.02.020) (Ord. 2896, passed 9-25-86; Ord. 6134, passed 12/6/07)

§ 90.04 KEEPING CERTAIN ANIMALS PROHIBITED.

(A) Except as provided in Section 90.06 of this Chapter, it shall be unlawful for any person to keep any wild, dangerous, vicious animal, or animal listed in Section 90.05, in any place other than a properly maintained zoological park, circus, scientific or educational institution, research laboratory, veterinary hospital, or animal refuge.

('70 Code, § 8.02.030) (Ord. 2896, passed 9-25-86; Ord. 6134, passed 12/6/07)

(B) It is unlawful to maintain any stable or place for the maintenance of any cattle, horses, sheep, goats, pigs or swine, pigeons (except for carrier/racing pigeons), or poultry, or to house any such animals within the village, except in conjunction with the use of such animals in experimental laboratories.

(C) It is unlawful for any person to keep, cause or permit to be kept:

(1) livestock upon any residentially zoned premises within the Village or;

(2) any structure or place for the retaining, care, or shelter of any fowl or animals in an unclean, unsanitary, or filthy condition so as to produce and give offensive or disgusting, harmful, injurious, or noxious odors.

('70 Code, § 8.04.010) (Ord. 1010, passed 2-4-63, Ord. 4148, passed 4/11/96)

§ 90.05 DANGEROUS, VICIOUS, OR WILD/FERAL ANIMALS OR FOWL.

Dangerous or vicious animals are those animals that pose a danger or hazard to humans. Animals prohibited without a showing of danger or viciousness are: All carnivorous and omnivorous mammals, fowl, amphibians, and reptiles (except for common breeds of domestic, house cats, and dogs) including but not limited to: Lions, Tigers, Leopards, Ocelots, Jaguars, Cheetahs, Poisonous reptiles, Poisonous Insects, Primates, Wild/Feral animals and fowl, and all animals designated as an endangered species.

('70 Code, § 8.02.040) (Ord. 2896, passed 9-25-86; Ord. 3324, passed 11/1/90; Ord. 5545, passed 9/2/04)

§ 90.06 DANGEROUS, VICIOUS DOGS.

(A) Nuisance Declared: Each vicious or dangerous dog is hereby declared to be a public nuisance. Vicious dogs shall be prohibited from the Village and dangerous dogs shall only be kept, harbored, maintained, owned or possessed within the corporate limits of the Village in strict conformance with the provisions of this section.

(B) Report of Incidents; Investigation:

1. Any person or persons who witness an incident involving a bite, attempt to attack, or menacing behavior by any dog occurring in the Village shall file a sworn affidavit of complaint with the Police Department setting out the nature and date of the incident, a description of the dog, and,

if known, the owner of the dog and the address of the owner.

2. The Police Department, upon receipt of an affidavit of complaint, shall investigate the complaint to determine whether the dog is dangerous or vicious. If the Police Department finds that the dog is dangerous or vicious, the owner shall be notified by certified mail of such finding. No dog shall be found dangerous or vicious if the attack or menacing behavior was directed at a person who was, at the time in question, committing a willful trespass or other tort upon the premises of the owner; or was teasing, tormenting, abusing or assaulting the dog; or has in the past teased, tormented, abused or assaulted the dog; or was committing or attempting to commit a crime.

3. The owner of a dog found to be dangerous or vicious may, within seven (7) days of the mailing of notice by the Police Department, make a written request to the Police Department for a review of such finding. Such review shall be made by the Chief of Police within seven (7) days of such request and shall be based upon a preponderance of the evidence, including the sworn affidavit of complaint and any statements or evidence presented by the owner, witnesses to the incident, Police Department personnel or any other person possessing information relevant to such finding. The Chief of Police shall issue the written findings within five (5) days of receipt of the written request for review, sustaining or overruling the finding made by the Police Department, copies of which findings shall be served on, or sent to, the owner by certified mail.

4. If a dog is found to be vicious or upon three (3) findings that a dog is dangerous, said dog will be deemed to be a vicious dog, subject to all provision of Subsection (D) of this Section.

5. As provided under Section 15 of the Illinois Animal Control Act, 510 ILCS 5/15, a court of competent jurisdiction has authority to determine if a dog is dangerous or vicious and to enter a decree restraining the owner of a dangerous or vicious dog from maintaining such dog as a

public nuisance, and further decree strict restrictions on the maintaining of a dangerous dog or the humane dispatch of a vicious dog.

(C) Dangerous Dogs:

Prohibitions: 1. Requirements and

(a) It shall be unlawful for any dangerous dog to leave the premises of the owner, unless such dog is securely muzzled, restrained on a leash not longer than six feet (6') in length and under the direct control and supervision of the owner; provided that, in no event shall such dog be under the direct control or supervision of any person under the age of eighteen (18) years of age.

(b) It shall be unlawful for any dangerous dog to annoy, endanger or approach in an apparent attitude of attack, or cause injury to any person or animal.

(D) Vicious Dogs:

Prohibitions: 1. Requirements and

(a) It shall be unlawful to keep, harbor, maintain, own or in any way possess within the corporate limits of the Village any vicious dog.

(b) Exemptions: Notwithstanding any provisions of this Chapter to the contrary, K-9 and guide dogs shall be exempt from the provisions of this section.

(Ord. 6134, passed 12/6/07)

§ 90.07 ANIMALS KEPT PURSUANT TO STATE OR FEDERAL LICENSE EXEMPT.

Nothing in this Ordinance shall be deemed to prohibit the possession and keeping of any animal, fowl, amphibian, or reptile, kept pursuant to applicable federal or state issued, permit or license; provided the keeping of such animal, fowl, amphibian, or reptile.

remains an accessory land use as defined by the Lombard Zoning Ordinance. (Ord. 3324, passed 11/1/90)

§90.08 TRAPPING

(A) It is unlawful for any person to set a trap to hunt animals of any kind within the Village. It is unlawful for any person to set, in land or in water, any leghold, open-jaw type trap. Notwithstanding the foregoing, live traps may be used to capture dangerous or vicious animals at large, or for the purpose of capturing and relocating wild/feral animals which have become a nuisance.

(B) The Lombard Police Department shall have the authority to furnish a live animal trap for the capture of dangerous or vicious animals or to capture and relocate wild/feral animals which have become a nuisance to any village resident who agrees to indemnify and hold the Village harmless from damages and/or losses suffered in the use of the trap, and who provides a refundable deposit of \$50.00 which may be retained in part or whole by the Village if any repair or replacement are made necessary by the renter's use of the trap or if the trap is returned in an unclean condition. The Police Department shall provide written manufacturers' instructions with each live animal trap, but shall not provide individual instruction in its use.

(Ord. 4863, passed 9-7-00)

§90.09 BUSINESSES AND GOVERNMENT AGENCIES LICENSED BY STATE EXEMPT

Businesses in possession of a valid permit, license or agreement issued by the State of Illinois Department of Conservation, Division of Wildlife, to engage in the trade of trapping, removal and/or relocation of wild/feral animals which have become a nuisance, shall be exempt from the provisions of this ordinance. (Ord. 3368, passed 3/7/91)

GENERAL PROVISIONS

§ 90.10 COLLARS REQUIRED

Any animal kept within the Village shall have a collar around its neck which shall have attached to it all tags issued as proof of compliance with state, county or local ordinances to which the animal is subject.

§ 90.11 CONFINEMENT AND REDEMPTION

(A) The Chief of Police or his/her designee shall capture and cause to be confined in an animal control center any unlicensed dogs three (3) months of age or older; any dog found running at large; any abandoned animal; any dangerous or vicious animal that has acted in a threatening or terrorizing manner or has bitten or attempted to bite a person or animal; any dangerous or vicious dog; or any animal maintained in violation of this chapter.

(B) Fees for impoundment shall be as

follows:

(1) The fee for redeeming any dog or cat which has previously been implanted with a micro-chip showing ownership of the animal or for any other animal which is confined shall be \$25.00 for the first day and \$10.00 for each day thereafter.

(2) The fee for redeeming any dog or cat which is confined and which has not been previously implanted with a micro-chip showing ownership, shall be \$50.00 for the first day of impoundment and \$10.00 for each day thereafter. The first day's charge shall include the impounding fee and the implant of a micro-chip which will show the name and address of the owner for ease in future identification. After implant, the owners of such dog shall receive a current year's dog tag at no cost and the fine for any ticket issued for a first offense of running at large to a dog or cat owner shall be waived. As a condition of release, any redeemed dog, which is not inoculated against rabies, shall be inoculated by a veterinarian at the owner's expense.

(C) The Chief of Police or his/her designee shall cause any animal captured pursuant to

Subsection (A) of this Section to be confined in such a manner as to remain under the control of the Chief of Police or his/her designee for a period of not less than two (2) days from the date of capture, unless redeemed by the animal's owner. Animals not redeemed by their owner at the end of two (2) days shall be transferred to the DuPage County Animal Control Department, where said animal shall be disposed of in accordance with the rules and regulations of that office.

(Ord. 3570, passed 6/25/92, Ord. 4181, passed 7/18/96; Ord. 6134, passed 12/6/07)

DOGS

§ 90.12 VICIOUS ANIMALS: IMPOUNDMENT AND WHERE INCAPABLE OF IMPOUNDMENT.

If any vicious animal, including a vicious dog, cannot be safely taken and impounded when necessary for the protection of any person or property, such animal may be slain by a police officer or person authorized by the Village; provided, however, that in all cases where any animal so slain has bitten any person or caused an abrasion to the skin of such person, no injury shall be done to the head of the animal and it shall be the duty of the person slaying the animal to immediately deliver the carcass to a veterinarian to prepare the head and brain for delivery to the DuPage County Animal Control Department.
(Ord. 6134, passed 12/6/07)

§ 90.13 REGISTRATION.

Every owner, possessor, or person who keeps or harbors any dog within the limits of the Village shall, on or before the first day of January in each year, register such dog with the office of the Lombard Police Department, on a form that includes, but is not limited to, said person's name, address, telephone number, e-mail address and the dog's name, breed, age, and the veterinarian's name, address and telephone number, and the rabies vaccination number and date, and have affixed to such dog, a tag, with the owner's name, address and phone number, such as is commonly available at pet stores. There shall be no cost for such registration with the Village.
(70 Code, § 8.08.010) (Ord. 318, passed 6-1-31; Am. Ord. 1392, passed 6-3-68; Am. Ord. 1818, passed 8-8-74; Am. Ord. 2851, passed 5-22-86, Ord. 5248 passed 2/20/03; Ord. 6745, passed 9/6/12)

§ 90.14 METAL TAGS-Repealed Ord. 6745, passed 9/6/12

('70 Code, §8.08.020; Ord. 6134, passed 12/6/07)

§ 90.15 LEASH REQUIREMENTS.

It shall be unlawful for any person or persons owning, controlling, possessing or having the management or care, in whole or in part, of any dog to permit the same to run at large, unless such dog is securely tied by a leash, so as to effectively prevent such dog from biting, molesting, being with, or approaching any person or animal.

(Ord. 3570, passed 6/25/92; Ord. 6134, passed 12/6/07)

§ 90.16 REMOVAL AND DISPOSAL OF EXCRETA.

(A) Every dog owner shall be responsible for the removal and sanitary disposal of any excreta deposited by his dog. When accompanying the animal outside his premises he shall have on his person the suitable means for the removal of such excreta.

(B) It is unlawful for any person to cause or permit body wastes from fowl or animals to lay in the open upon any premises when the same may or does give off objectionable odors.
(70 Code, §8.08.055) (Ord. 1986, passed 8-12-76, Ord. 4148, passed 4/11/96)

§90.17 LOUD FREQUENT NOISES DECLARED A NUISANCE.

(A) It is hereby declared a nuisance for any person to keep, or permit to be kept or maintained upon any premises within the Village, any dog, cat, or other animal or fowl emitting loud, frequent, and continuous noises offensive to a reasonable person of normal sensitiveness, such that the Village receives from two (2) or more separate residences located within two hundred (200') feet of the residence or location of the offending animal, written, signed complaints of an offense occurring within a single twenty-four (24) hour period. The signature on a written complaint shall constitute agreement on the part of the signer to appear in court on behalf of the Village as a witness to the facts in the complaint.

(B) It shall be the duty of the Chief of Police or his/her designee, upon finding any dog, cat, or other animal or fowl disturbing the peace of others by emitting loud, frequent, and continuous noises offensive to a reasonable person of normal sensitiveness, to advise the owner of the such animal or fowl, or the person in charge or control of the property where such animal or fowl is kept, to exercise proper control and care of such animal or fowl to prevent it from disturbing the peace of others in such manner. If such owner or person refuses to cooperate with the Chief of Police or his/her designee, or his unable to prevent such animal or fowl from disturbing the peace of others in such manner. The Chief of Police or his/her designee shall be authorized to immediately issue a citation to such owner or person for the creation of a nuisance notwithstanding the two (2) complaint requirement of subsection "A" above. If the Chief of Police or his/her designee is unable to locate any person on the property where such animal or fowl is kept, it shall be the duty of the Chief of Police or his/her designee to take such animal or fowl into possession. The confinement and redemption provisions of Sections 90.11 and 90.12 of this chapter shall be applicable to and followed by the Chief of Police or his/her designee upon taking any animal or fowl into possession under this section.

(Ord. 3943, passed 12/15/94; Ord. 6134, passed 12/6/07)

Rabies Inoculation

§ 90.18 INOCULATION REQUIRED.

Every owner, possessor or person who keeps or harbors any dog within the limits of the Village shall cause such dog to be inoculated for rabies by a licensed veterinarian within twelve (12) months of each annual registration period which begins on January 1st.

('70 Code, §8.12.020) (Ord. 826, passed 5-25-59; Ord. 6745, passed 9/6/12)

§ 90.19 REGISTRATION REQUIREMENT.

No dog shall be registered under §90.13 unless a rabies vaccination number, along with the date of

the vaccination and the name, address and phone number of the vaccinating veterinarian is provided. ('70 Code, §8.12.030) (Ord. 826, passed 5-25-59; Ord. 6134, passed 12/6/07; Ord. 6745, passed 9/6/12)

FEEDING OF WILD/FERAL ANIMALS AND/OR BIRDS

§ 90.30 FINDINGS

9.30 - Findings. The Corporate Authorities of the Village of Lombard hereby find as follows:

(A) That wild/Feral animals and/or birds have been congregating in large numbers within the corporate limits of the Village of Lombard, particularly in residential areas, posing a danger to the health safety and welfare of those persons residing in close proximity to said congregations;

(B) That said wild/feral animals and/or birds, when congregating in large numbers, cause damage to property in and around the area where said animals and/or birds are congregating;

(C) That said wild/feral animals and/or birds are congregating in these areas as a result of the feeding of these wild/feral animals and/or birds;

(D) That said wild/feral animals and/or birds carry and/or assist in the spread of certain diseased, including, but not limited to histoplasmosis and cryptococcoses, which can infect human beings through physical contact with said wild/feral animals and/or birds, including, but not limited to, being bitten by said wild/feral animals and/or birds, by coming in contact with the droppings of these wild/feral animals and/or birds, or by coming in contact with soil that has been subject the droppings of these wild/feral animals and/or birds.

(E) That the complaints received by the Village, relative to the congregating of large numbers of wild/feral animals and/or birds within the corporate limits of the Village, have become more numerous in recent years.

(F) That pursuant to the Vector Control Act, 410, ILCS 95/2 and the Illinois Structural Pest Control Code, 77 Ill. Admin. Code, Chapter I, Section 830.410(C)(4)(C), certain animals and/or birds, including, but not limited to English house sparrows, pigeons and starlings, are defined as "pests".

(G) That 65 ILCS 5/1-2-1, 5/11-1-1, 5/11-20-5 & 5/11-60-2, grant the Village of Lombard the power to make regulations which may be necessary or expedient to promote health, safety and welfare, suppress diseases and define, prevent and abate nuisances; and

(H) That the Board of Trustees of the Village of Lombard deem it in the best interests of the Residents of the Village to regulate the feeding of wild/feral animals and/or birds, by restricting the feeding of said wild/feral animals and/or birds to specific locations in residential areas and limiting the number and size of feeding containers or receptacles.

§ 90.31 DEFINITIONS

For the purposes of this Chapter, the following words and terms shall be defined as set forth below:

FEED means any material, including, but not limited to bird feed, corn or any like or similar substance which can be utilized for consumption by wild/feral animals and/or birds to provide nourishment.

FEEDING means the spreading, casting, laying, depositing or dumping of feed on residential property within the Village.

PERSON means any natural person, association, partnership, organization or corporation.

RESIDENTIAL PROPERTY or RESIDENTIAL AREAS means any property within the Village which is currently zoned or used for residential purposes.

WILD/FERAL ANIMALS AND/OR BIRDS means any animal or bird not normally considered domesticated including but not limited to the following: gopher, chipmunk, squirrel, ground hog, rabbit, mole, field mouse, rat, eagle, pigeon, vulture, sparrow, morning dove, starling or crow, and which is not currently being kept as a pet within a residence or outside in a cage.

§ 90.32 FEEDING OF WILD/FERAL ANIMALS AND/OR BIRDS PROHIBITED IN RESIDENTIAL AREAS.

Except as provided in Section 90.33, no person shall feed, or cause the feeding of, any wild/feral animals and/or birds within the corporate limits of the Village of Lombard, on residential property.

§ 90.33 EXCEPTIONS

The feeding of wild/feral animals and/or birds shall be allowed in residential areas providing the following conditions are complied with:

(A) All feed must be placed within a container, receptacle or feeder designed for the feeding of wild/feral animals and/or birds.

(B) The containers, receptacles or feeders used for feeding the wild/feral animals and/or birds shall be a size such that the maximum volume of any container receptacle or feeder is no more than one-half (1/2) cubic foot.

(C) The total volume of all containers, receptacles or feeders used for feeding wild/feral animals and/or birds per residential lot of record shall not exceed one-half (1/2) cubic foot, however, an additional one-fourth (1/4) cubic foot in volume shall be allowed for every 3,750 square feet of lot area beyond the minimum residential lot size of 7,500 square feet.

(D) No container, receptacle or feeder used for feeding wild/feral animals and/or birds shall be located within thirty (30) feet of any residential building (house, condominium, townhouse, two-flat, apartment building) other than the residential building located on the same lot as said container, receptacle or feeder.

(E) All containers, receptacles or feeders used for feeding the wild/feral animals and/or birds shall be located at least four (4) feet above ground level.

(F) The ground area beneath and surrounding the containers, receptacles or feeders used for feeding

the wild/feral animals and/or birds shall be cleared of feed on a daily basis.
(Ord. 3453, passed 9/19/91)

§ 90.34 NUISANCE DECLARED.

It is hereby declared a nuisance for any person to engage in the feeding of wild/feral animals and/or birds other than in full compliance with the provisions of this Chapter.

§ 90.35 PENALTY FOR VIOLATION

ORDINANCE REPEALED 3517 PASSED 2/6/92.

CRUELTY TO ANIMALS

§90.40 DEFINITIONS

A. An 'Animal' is any non-human mammal kept or harbored by humans within the boundaries of the Village of Lombard.

B. An 'Owner' is any individual, firm, corporation, partnership, other business unit, society, association or other legal entity who, or which, has a right of property in an Animal; keeps or harbors an Animal; or acts as the custodian of an Animal.

C. A 'Person' is any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

D. A 'Wild Animal' is an Animal described or listed in Section 90.05 of this Chapter.

§90.41 DUTIES OF OWNERS

Each Owner shall provide for each Animal:

- A. Sufficient quantity of good quality food and water.
- B. Proper shelter and protection from the weather;
- C. Veterinary care when needed to prevent suffering;
- D. Humane care and treatment.

§90.42 PROHIBITED ACTS

No person shall beat, torment, overload, overwork or otherwise abuse an Animal.

No Owner shall abandon any Animal where it may become a public charge or may suffer injury, hunger or exposure.

§90.43 ABANDONED ANIMALS

Upon complaint, the Chief of Police or his/her designee may, pursuant to the Humane Care for Animals Act (510 ILCS 70/10 and 70/12), investigate any suspected violation of this Ordinance and, if the Owner cannot be located after reasonable search, or is known to be absent due to injury, illness, incarceration or other involuntary circumstances, impound any Animal which is found to have been without food, water or proper care and attention for a period of time sufficient to cause undue discomfort or suffering. Notice of removal of an opportunity to redeem the Animal shall be provided pursuant to Section 90.11 of this chapter.

§90.44 POISONING OF ANIMALS

No Person may knowingly poison or cause to be poisoned any animal. The only exception will be with written permit from the Illinois Department of Agriculture for the purpose of controlling diseases transmittable to humans or other Animals and only when all other methods and means have been exhausted. Such a permit shall name a person or persons conducting the poisoning, specify the products to be used, give the boundaries of the area involved and specify the precautionary measures to be employed to insure the safety of humans and other Animals. Any drugs used for euthanasia shall be administered by or under the direction of a licensed veterinarian.

§90.45 EXHIBITION OF ANIMALS

No Person shall keep, or permit to be kept, or display for exhibition purposes, any Wild Animal contrary to federal, state or local laws, ordinances, rules or regulations.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE IX, CHAPTER 90,
OF THE LOMBARD VILLAGE CODE
IN REGARD TO REGULATING THE SALE OF ANIMALS**

WHEREAS, the Corporate Authorities of the Village of Lombard (the “Village”) has established regulations set forth within Title IX, Chapter 90, pertaining to the care of animals within the Corporate limits of the Village; and

WHEREAS, the Village’s Economic and Community Development Committee (ECDC) Is responsible for providing recommendations to the Corporate Authorities on proposed business regulation activity; and

WHEREAS, the ECDC finds that in order to help ensure that the commercial retail sale of animals is conducted within a humane and appropriate manner, the ECDC recommends that the temporary sale of animals in temporary business endeavors such as flea markets, farmer’s markets and the like is inconsistent with the intent of the provisions set forth within Chapter 90; and

WHEREAS, to help ensure that the sale of animals is conducted within a humane and appropriate manner, the Village’s Economic and Community Development Committee (ECDC) recommends that Chapter 90 be amended to restrict such sales activity, and

WHEREAS, the President and Board of Trustees of the Village of Lombard concurs with the recommendations of the ECDC and deems it to be in the public interest to establish appropriate regulations pertaining to the sale of animals within the Corporate limits in a manner that is consistent with the intent of Chapter 90; and that amendments to Chapter 90 is in the Village’s best interest.

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 9, Chapter 90, Section 90.50 of the Lombard Village Code is hereby established to read as follows:

§90.50 COMMERCIAL SALE OF ANIMALS

- A. The commercial sale of animals shall occur exclusively within a permanent building or structure. The sale of such animals at temporary sales event such as flea markets, farmer’s markets, French markets and the like shall be expressly prohibited.

Ord. _____
Animal Care Regulations

B. The regulations set forth in Section 90.50(A) above, shall not apply to recognized 501c3 humane associations that may have animals on site of a temporary event, farmer's market or French market, if said animals are associated with the outreach effort of the humane organization and with the sale or adoption occurring separately from the event or market itself.

SECTION 2: That Title 9, Chapter 90, Section 90.48 of the Lombard Village Code is hereby established to read, as amended, as follows:

§90.48 90 FINES

Any Person or Owner convicted of violating Sections 90.41, 90.42, 90.44, 90.45, 90.46, ~~or~~ 90.47A or 90.50 of this chapter shall be fined a minimum of \$50.00 and a maximum of \$750.00 for each separate violation. A separate offense shall be deemed committed upon each day during which a violation occurs.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2013.

First reading waived by action of the Board of Trustees this _____ day of _____, 2013.

Passed on second reading this _____ day of _____, 2013, pursuant to a roll call vote as follows:

AYES : _____

NAYS : _____

ABSENT : _____

APPROVED by me this _____ day of _____, 2013.

Ord. _____
Animal Care Regulations

Keith T. Giagnorio
Village President

ATTEST:

Janet Downer
Deputy Village Clerk

Published by me in pamphlet form this _____ day of _____, 2013.

Janet Downer
Deputy Village Clerk

ORDINANCE 6915

AN ORDINANCE AMENDING TITLE 9, CHAPTER 90, OF THE LOMBARD VILLAGE CODE IN REGARD TO REGULATING THE SALE OF ANIMALS

WHEREAS, the Corporate Authorities of the Village of Lombard (the “Village”) have established regulations set forth within Title 9, Chapter 90 of the Lombard Village Code, pertaining to the care of animals within the corporate limits of the Village; and

WHEREAS, the Village’s Economic and Community Development Committee (ECDC) is responsible for providing recommendations to the Corporate Authorities on proposed business regulation activity; and

WHEREAS, the ECDC finds that in order to help ensure that the commercial retail sale of animals is conducted in a humane and appropriate manner, the ECDC recommends that the temporary sale of animals, at temporary business locations such as flea markets, farmer’s markets and the like, is inconsistent with the intent of the provisions set forth within Chapter 90 of the Lombard Village Code; and

WHEREAS, to help ensure that the sale of animals is conducted in a humane and appropriate manner, the Village’s ECDC recommends that Chapter 90 of the Lombard Village Code be amended to restrict such sales activity, and

WHEREAS, the President and Board of Trustees of the Village of Lombard concur with the recommendation of the ECDC, and deems it to be in the public interest to establish appropriate regulations pertaining to the sale of animals within the corporate limits of the Village in a manner that is consistent with the intent of Chapter 90 of the Lombard Village Code; and that amendments to Chapter 90, in relation thereto, are in the Village’s best interest;

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 9, Chapter 90 of the Lombard Village Code is hereby amended by adding a new Section 90.50 thereto, which shall read in its entirety as follows:

§90.50 COMMERCIAL SALE OF ANIMALS

- (A.) The commercial sale of animals shall occur exclusively within a permanent building or structure, either owned by the seller of the animals, or in relation to which the seller of the animals has a lease covering a period of at least one (1) year. It shall be unlawful to offer for sale, attempt to sell or sell any animal at temporary sales events such as, but not limited to, flea markets, farmer’s markets and French markets.

(B.) The regulations, set forth in Section 90.50(A) above, shall not apply to recognized 501(c)(3) humane society organizations, which have been in existence for a period of at least one (1) year, and which have animals on site at a temporary event, if said animals are associated with the animal preservation and protection outreach efforts of the humane organization, and provided that the actual sale or adoption of the animal occurs separately from the temporary event.

SECTION 2: That Title 9, Chapter 90, Section 90.48 of the Lombard Village Code is hereby repealed.

SECTION 3: That Title 9, Chapter 90, Section 90.48 of the Lombard Village Code is hereby amended by adding a new Section 90.90 thereto, which shall read in its entirety as follows:

§90. 90 PENALTY

Any Person convicted of violating Sections 90.41, 90.42, 90.44, 90.45, 90.46, 90.47(A) or 90.50 of this Chapter shall be fined not less than Fifty and no/100 (\$50.00) nor more than Seven Hundred Fifty and No/100 Dollars (\$750.00) for each separate violation. A separate offense shall be deemed committed upon each day during which a violation occurs. In addition, each animal offered for sale or sold in violation of Section 90.50 shall constitute a separate and distinct offense even if all of the sales take place on the same day.

SECTION 4: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this 19th day of December, 2013.

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Breen, Fitzpatrick and Ware

Nays: None

Absent: None

First reading waived by action of the Board of Trustees this ___ day of _____ 2013.

Passed on second reading this 16th day of January, 2014.

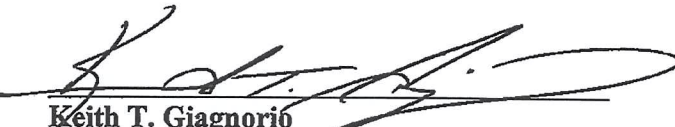
Ordinance 6915
Animal Care Regulations
Page 3

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Breen, Fitzpatrick and Ware

Nays: None

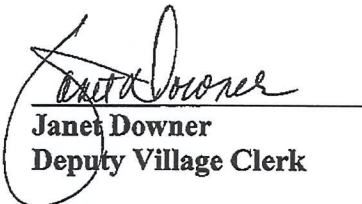
Absent: None

Approved this 16th day of January, 2014.



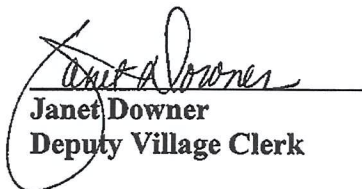
Keith T. Giagnorio
Village President

ATTEST:



Janet Downer
Deputy Village Clerk

Published by me in pamphlet form on this 17th day of January, 2014.



Janet Downer
Deputy Village Clerk



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444 T 708 349 3888 F 708 349 1506

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353

MEMORANDUM

TO: Thomas P. Bayer
FROM: Patrick J. Collins
DATE: January 16, 2020
RE: Restrictions on the Sale of Dogs

Lombard seeks guidance on the permissibility and feasibility of enacting an ordinance restricting the retail sale of dogs. There only appears to be two locations in Lombard to purchase a dog; Happiness Is Pets and Beach for Puppies. Lombard previously enacted an ordinance requiring the commercial sale of animals to occur exclusively within a permanent building or structure, and prohibiting the commercial sale of animals at any temporary event, such as a flea market or farmer’s market.

In Illinois, the sale of dogs is heavily regulated under the Federal Animal Welfare Act, Illinois’ Humane Care of Animals Act, Illinois’ Animal Welfare Act and the administrative regulations promulgated thereunder.

FEDERAL ANIMAL WELFARE ACT: 7 U.S.C.A. §§2131-2160 & 9 C.F.R. §§1.1-2.153

Retail pet stores are not subject to the Federal Animal Welfare Act, however pet and dog breeders are subject to the Federal Animal Welfare Act. It is important to note some of the governance and regulations dog breeders are required to follow under the Federal Animal Welfare Act. Specifically,

- They must be licensed by the U.S. Department of Agriculture

- Each individual applicant is supplied with a copy of the regulations and standards, must acknowledge receipt, and agree to comply before a license will be issued.
- Each applicant must be inspected and demonstrate their premises, animals, facilities, vehicles, and equipment are in compliance.
- There are different classes of dealers/breeders and each class has thorough regulations on tagging, timing and method of identification, sourcing of animals, and animal acquisition.
- A licensee must, in a reasonable and timely fashion, furnish and allow inspection of any information concerning the business or animals in the business' care.
- There are extensive specifications and conditions for:
 - The general housing of dogs; including indoor and outdoor housing requirements, construction standards, location, and temperature regulations.
 - The primary enclosures for dogs; including design and adequacy of construction, repair standards, cleanliness, and specifications and calculations for individual dog housing.
 - Animal health and husbandry standards; including harmonious grouping, exercise opportunities, daily feeding standards, daily cleaning and sanitization, providing adequate number of employees, and assurance employees are providing adequate care and supervision.
- There are also specific requirements and mandatory documentation for time, place and manner of when and how dogs can be transported.

ILLINOIS HUMANE CARE OF ANIMALS ACT – 510 ILCS 70/1, *et seq.*

The Illinois Human Care of Animals Act covers every living creature, domestic or wild, not including man.

- Each owner shall provide for each of his or her animals: a sufficient quantity of good quality, wholesome food and water; adequate shelter and protection from the weather; veterinary care when needed to prevent suffering; and humane care and treatment. There are also restrictions and limitations on when a dog can be tethered outdoors.
- There are definitions and punishment guidelines:

- For what constitutes cruel animal treatment, aggravated animal cruelty, animal torture, and depictions of animal cruelty;
- For what happens when an animal's owner is arrested for violations of the Illinois Humane Care of Animals Act, or when animals can be seized or forfeited;
- For prohibited acts, restrictions on how, when and where animals can be used in entertainment, animals and use of poison, and the handling of downed animals; and
- For the treatment and care of an animal when it is confined or detained during transport or confined in a motor vehicle;
- There are humane investigators to ensure proper care under the Illinois Human Care of Animals Act, and detailed explanations of how investigations and complaints are handled. Specifically mentioned, a corporation can be charged through acts of its employees or agents, and civil actions for damages are expressly authorized.

ILLINOIS ANIMAL WELFARE ACT – 225 ILCS 605/1, *et seq.*

Anyone wishing to become the operator of a pet shop, a dog dealer, a kennel operator, an animal day care operator, a dog breeder, the operator of a guard dog service, an animal control facility, or an animal shelter must obtain an Animal Health and Welfare License, which is regulated by the Illinois Department of Agriculture (“Department”). All the above individuals/entities must comply with the Illinois Animal Welfare Act and its provisions enumerated below:

- No dog dealer or breeder shall separate a puppy from its mother, for the purpose of sale, until the puppy is 8 weeks or older.
- A seller must maintain records of the origin and sale of all dogs, and records must contain proof of purebreds/pedigrees.
- Every dog breeder and dealer must provide information on every dog available for sale, including age, sex, weight, breed, vaccinations and veterinary records, sterilization records, name and address of breeder or any person who owned or previously harbored the dog, and microchipping information.
- A pet shop operator may not obtain a dog for resale, sell, or offer for sale any dog obtained from a person who is required to be licensed but is not.

- Every pet shop owner must provide the potential purchaser with the price, breed, age, sex, color, date of inoculations, any medical treatment, breeder information, if breeder is licensed, eligibility for pedigree registration, if the dog was previously returned, a copy of the store's return policy, the pet shop operator's license number, and microchipping information.
- A licensee must maintain sanitary conditions, insure proper ventilation, provide adequate nutrition, provide humane care and treatment of all animals, and take reasonable care to release for sale, trade, or adoption only those animals that are free of disease, injuries or abnormalities.
- A non-resident licensee applicant must file irrevocable consent that legal actions may be filed in any appropriate court of the State, and any foreign corporation will not receive a license until it is authorized to do business in the State.
- There are several grounds for discipline giving the Department the ability to refuse to issue or renew, and to suspend or revoke, a license, and the ability to conduct extensive investigations.
 - Violations of the Illinois Animal Welfare Act are Class C misdemeanors and every day a violation continues constitutes a separate offense.
 - Administrative fines –
 - First violation: \$1,000 fine;
 - Second violation: \$2,500 fine;
 - Third violation: mandatory probationary status and \$3,000 fine.

ILLINOIS ADMINISTRATIVE CODE – 8 Ill. Admin. Code § 25 et seq.

In the Illinois Administrative Code, implementing the provisions of the Illinois Animal Welfare Act, there are additional regulations for the treatment and sale of dogs as promulgated by the Department of Agriculture of the State of Illinois. Pertinent provisions in the Illinois Administrative Code include:

- The regulation and maintenance of buildings and premises in a sanitary condition, constructed so as to provide adequate shelter, contain proper flooring, and daily cleaning.
- There are specifications, conditions, and guidelines:
 - For how cages and runs must be constructed, sized, maintained, and cleaned daily.
 - For when and how animals may be group-housed.

- The licensee must consent and allow the Department of Agriculture access to the premises to conduct inspections and for its recommendations for remedying any deficiencies.
- There are requirements and mandatory documentation for time, place and manner of when and how dogs can be transported or shipped; with specifics regarding temperature restrictions, and feeding/water mandates.
- Guidelines and rules regarding when and how a dog can be deemed unfit for sale or release.

Other Municipalities with Restrictions on the Retail Sales of Dogs –

There are several municipalities in Illinois that have enacted ordinances governing the retail sale of dogs, including home rule municipalities; Downers Grove, Warrenville and Chicago, and non-home rule municipalities; Lisle, West Chicago, and Crest Hill.

Village of Downers Grove –

The Village of Downers Grove is a home rule municipality, and, as of March 3, 2019, Downers Grove enacted an ordinance restricting the sale of dogs:

Section 8.34: Restrictions on the Retail Sale of Dogs –

No retail pet store shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of dogs unless said animals are obtained from an animal care facility, animal rescue organization or humane society.

City of Warrenville –

The City of Warrenville is a home rule municipality, and, as of 2016, Warrenville enacted an ordinance restricting the sale of dogs:

25-1-2: Restriction on the Retail Sale of Animals –

A retailer may offer for sale only those dogs that the retailer has obtained from an animal control center, animal care facility, kennel, pound, or training facility operated by any subdivision of local, state or federal government, or a humane society or rescue organization.

City of Chicago –

The City of Chicago is also a home rule municipality and, as of March 5, 2015, the City of Chicago enacted an ordinance restricting the sale of dogs:

4-384-015: Retail Sale of Dogs –

A retailer may offer for sale only those dogs that the retailer has obtained from: an animal control center, animal care facility, kennel, pound or training facility operated by any subdivision of local, state or federal government; or a humane society or rescue organization.

Village of Lisle –

The Village of Lisle, a non-home rule municipality, cites several State statutes as the basis for the Village's authority to place restrictions on the retail sale of dogs:

- 65 ILCS 5/11-5-6: the corporate authorities of each municipality may prohibit cruelty to animals;
- 65 ILCS 5/11-42-10: the corporate authorities of each municipality may compel the owner of a grocery, cellar, soap or tallow chandlery, tannery, stable, pigsty, privy, sewer, or other unwholesome or nauseous house or place, to cleanse, abate, or remove the same and to regulate the location;
- 65 ILCS 5/11-60-1: the corporate authorities of each municipality may fix the amount, terms, and manner of issuing and revoking licenses; and
- 65 ILCS 5/11-60-2: the corporate authorities of each municipality may define, prevent, and abate nuisances.

As of July 15, 2019, Lisle enacted an ordinance restricting the sale of dogs:

3-22-2: Restriction on the Retail Sale of Animals –

No pet shop operator shall display, sell, deliver, offer for sale, barter, auction, give away or otherwise transfer or dispose of dogs. Nothing in this section shall prohibit pet shop operators from collaborating with animal control facilities or animal shelters to offer space for such entities to showcase adoptable dogs provided the pet shop operator shall not have any ownership interest in the animals offered for adoption and shall not receive a fee for providing space for the adoption of any of these animals.

City of West Chicago –

The City of West Chicago, a non-home rule municipality, cites two State statutes as the basis for the City’s authority to place restrictions on the retail sale of dogs:

- 65 ILCS 5/11-20-5: authorizing and empowering a municipality to regulate for the public health.
- 65 ILCS 5/11-1-1: authorizing a municipality, pursuant to its police powers, to carry out the powers delegated to it under its grants of authority.

As of April 1, 2019, West Chicago enacted an ordinance restricting the sale of dogs:

Sec. 11-88. - Restrictions on the sale of animals.

No pet shop shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of dogs. Nothing in this section shall prohibit pet stores from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs.

City of Crest Hill –

The City of Crest Hill, a non-home rule municipality, cites three State statutes as the basis for the City’s authority to place restrictions on the retail sale of dogs:

- 1) 510 ILCS 5/24: the power to control and regulate dogs or other animals within the municipality.
- 2) 65 ILCS 5/11-5-6: the corporate authorities of each municipality may prohibit cruelty to animals.
- 3) 65 ILCS 5/11-60-2: the corporate authorities of each municipality may define, prevent, and abate nuisances.

As of October 16, 2017, Crest Hill enacted an ordinance restricting the sale of dogs:

§ 5.72.030 Restrictions on the Retail Sale of Animals –

A pet shop may offer for sale only those dogs that the pet shop has obtained from or displays in cooperation with an animal care facility or an animal rescue organization. A pet shop shall not offer for sale a dog that is younger than eight weeks old.

Case Law and Analysis –

A home-rule municipality, like Downers Grove, Warrenville, and Chicago, under the Illinois Constitution, “may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.” ILL. CONST. Art. VII, § 6(a). This constitutional provision “was written with the intention that home rule units be given the broadest powers possible.” *Scadron v. City of Des Plaines*, 606 N.E.2d 1154, 1158 (Ill. 1992). The State Constitution further provides that a municipality with home-rule status may “exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive.” ILL. CONST. Art. VII, § 6(i).

The Illinois Constitution expressly requires a clear statement from the State legislature to limit a municipality’s home-rule power. *See* 5 ILCS 70/7 (2015). No State animal-control statute explicitly limits a home rule municipality’s power to regulate in this area. Rather, State law preserves municipal power to regulate animal care and welfare under the Illinois Animal Control Act:

Nothing in this Act shall be held to limit in any manner the power of any municipality or other political subdivision to prohibit animals from running at large, nor shall anything in this Act be construed to, in any manner, limit the power of any municipality or other political subdivision to further control and regulate dogs, cats or other animals in such municipality or other political subdivision provided that no regulation, policy or ordinance is specific to breed.

510 ILCS 5/24. As such, the Seventh Circuit held that the City of Chicago’s ordinance restriction on the retail sale of dogs does not exceed the City’s home-rule authority under the Illinois Constitution. *Park Pet Shop, Inc. v. City of Chicago*, 872 F.3d 495, 501 (7th Cir. 2017).

It is clear from case law that a home rule municipality has the authority and ability to enact ordinances restricting the retail sale of dogs, to only dogs from certain suppliers, within its jurisdiction. However, notwithstanding the various State statute provisions referenced in the aforementioned non-home rule municipality ordinances, it is unclear if a non-home rule municipality would have the same authority, as there is no case law in Illinois involving a non-home rule municipality's restriction on the retail sale of dogs. As such, while other non-home rule municipalities have enacted "dog source restrictions" and have yet to be challenged relative to said enactments, it is still uncertain as to whether such restrictions would stand up to judicial scrutiny, if challenged.

ORDINANCE NO. 20 - ____

**AN ORDINANCE AMENDING
CHAPTER 4 (ANIMAL CONTROL) OF TITLE 10 (POLICE REGULATIONS)
OF THE NAPERVILLE MUNICIPAL CODE**

WHEREAS, the Mayor and the City Council of the City of Naperville, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

WHEREAS, the City has been monitoring legislation and litigation affecting pet stores and the sale of animals from “puppy mills” for several years; and

WHEREAS, a significant number of puppies and kittens sold at pet shops comes from commercial breeding facilities where the health and welfare of the animals are not adequately provided for; and

WHEREAS, inadequate care and conditions at commercial breeders can lead to behavioral and health issues in the puppies and kittens and ultimately lead to increased financial and emotional costs for the purchasing consumer; and

WHEREAS, controlling pet overpopulation is a public health and safety concern as Naperville Animal Control impounded 262 animals in 2018 and 149 of those animals were relinquished to shelters, and

WHEREAS, restricting the retail sale of puppies and kitten to only those sourced from shelters, humane or rescue organizations is likely to decrease the demand for puppies and kittens bred at commercial breeders and is likely to increase the demand for animals from animal shelters and rescue organizations and protect consumers; and

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers that:

SECTION 1: Chapter 4 (Animal Control), of Title 10 (Police Regulations) of the Naperville Municipal Code is hereby amended deleting the stricken language and by adding the underlined language as follows:

Chapter 4 – Animal Control

10-4-1: - Definitions

Altered Animal through Animal * * *

Animal Rescue Organization

Any not-for-profit organization which has tax-exempt status under Section 501 (c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes. This term does not include any entity which, is or is housed on the premises of, a breeder or broker, obtains dogs, cats or rabbits from a breeder or broker in exchange for payment or compensation, or resells dogs, cats or rabbits obtained from a breeder or broker and provides payment or compensation to such breeder or broker

Animal Shelter through Wild Animals * * *

10-4-2: - ANIMAL CONTROL OFFICER through
10-4-16: - COMPANION ANIMALS LEFT IN CARS: * * *

10-4-17: SOURCING OF ANIMALS SOLD BY PET SHOP OPERATORS

1.) Restrictions on the Sale of Dogs and Cats

1.1.A pet shop operator may offer for sale only dogs and cats that the pet shop operator has obtained from or displays in cooperation with:

1.1.1. A duly incorporated humane society, animal welfare society or other nonprofit organization whose purpose is to provide for and promote the welfare, protection and humane treatment of animals or

1.1.2. An animal rescue organization

1.2.A pet shop operator shall not offer for sale a dog or cat that is younger than eight weeks old

2.) Record Keeping and Disclosure: A pet shop operator shall maintain records stating the name address of the animal shelter or animal rescue organization that each dog or cat was obtained from for at least two years following the date of acquisition. Such records shall be made available to City of Naperville Animal Control upon request and submitted annually, and no later than May 1 of each year to the City of Naperville Animal Control. Each pet shop operator shall display on each cage a label stating the name and address of the animal shelter or animal rescue organization of each dog or cat kept in the cage.

3.) Penalties: Any person violating any provision of this Section shall be subject to a fine of five hundred dollars (\$500.00) for the first citation, seven hundred fifty dollars (\$750.00) for the second citation, and no more than one thousand dollars (\$1000.00) for the third. A separate offense shall be deemed committed for every dog or cat sold in violation of Section 10-4-17.

SECTION 2: This Ordinance shall be in full force and effect on January 1, 2021.

PASSED this ____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED this ____ day of _____, 2020.

Steven Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk

ORDINANCE NO. 20 - ____

**AN ORDINANCE AMENDING
CHAPTER 4 (ANIMAL CONTROL) OF TITLE 10 (POLICE REGULATIONS)
OF THE NAPERVILLE MUNICIPAL CODE**

WHEREAS, the Mayor and the City Council of the City of Naperville, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

WHEREAS, the City has been monitoring legislation and litigation affecting pet stores and the sale of animals from “puppy mills” for several years; and

WHEREAS, a significant number of puppies and kittens sold at pet shops comes from commercial breeding facilities where the health and welfare of the animals are not adequately provided for; and

WHEREAS, inadequate conditions at commercial breeders can lead to behavioral and health issues in the puppies and kittens and ultimately lead to increased financial and emotional costs for the purchasing consumer; and

WHEREAS, creating greater standards of care for animals at commercial breeders who source dogs and cats sold at pet shops within the City will alleviate the increased financial and emotional costs for the purchasing consumer, as well as possible future relinquishments to shelters.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers that:

SECTION 1: Chapter 4 (Animal Control), of Title 10 (Police Regulations) of the Naperville Municipal Code is hereby amended deleting the stricken language and by adding the underlined language as follows:

Chapter 4 - Animal Control

10-4-1: - DEFINITIONS through 10-4-16 COMPANION ANIMALS LEFT IN CARS

* * *

10-4-17: SOURCING OF ANIMALS SOLD BY PET SHOP OPERATORS

1.) Restrictions on the Sale of Dogs and Cats

1.1. A pet shop operator may offer for sale only dogs and cats sourced from breeders and dealers that comply with the following standards for the care of their animals:

1.1.1. Primary enclosures for animals must have floors that protect the dogs' and cats' feet and legs from injury, that do not allow the animals' feet to pass through, or become wedged or entrapped in openings in the floor, provide sufficient space to allow each dog and cat to turn, stand, sit, lie and walk in a comfortable, normal manner and shall consist of grass, gravel, cement, solid plastic or vinyl, or slatted flooring. Tethering of dogs is not allowed as a primary enclosure.

1.1.2. Each animal housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog or cat in inches (measured from the tip of its nose to the base of its tail) plus 6 inches, then double that result to find the required floor space in inches. Then divide the product by 144 to find the required floor space in square feet. The calculation is: (length of the dog in inches+ 6) x (length of the dog in inches + 6) x 2 = required floor space in inches. Required floor space in inches / 144 = required floor space in square feet. The interior height of a primary enclosure must be sufficient to allow the tallest dog in the enclosure to stand on his or her hind legs without touching the roof of the enclosure.

1.1.3. Primary enclosures may not be stacked or otherwise placed above or below any other primary enclosure.

1.1.4. Indoor/sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. The ambient temperature must not fall below 45 °F (7.2 °C), or rise above 85 °F (29.5 °C) when animals

are present. For breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, the ambient temperature in the facility must not fall below 50 °F (10 °C).

- 1.1.5. Female dogs must be given adequate rest between breeding cycles and may not be bred to produce more than two litters in any 18 month period nor more than six litters during that dog's lifetime. Small breed female dogs (weighing less than 40 pounds when fully mature) may not be bred before they reach the age of 18 months, or after they reach the age of 9 years. Large breed female dogs (weighing 40 pounds or more when fully mature) may not be bred before they reach the age of two years, or after they reach the age of 7 years. Breeding dogs must be screened for known inheritable diseases that may be disabling or likely to significantly affect the lifespan or quality of life of the offspring. No dog shall be bred unless the dog is free from health conditions that may be disabling or likely to significantly affect the lifespan or quality of life of the offspring. Any canine caesarian section must be performed by a licensed veterinarian.
- 1.1.6. Provide adequate preventive care for dogs and cats to include at a minimum: core vaccinations recommended by the current version of the American Animal Hospital Association Canine Vaccination guidelines; rabies vaccinations for all dogs over the age of four months to be administered by a veterinarian; and regular administration of medications to prevent intestinal parasites, heartworm disease, fleas, and ticks. Each dog and cat must receive at least one hands-on comprehensive veterinary exam during each 12-month period.
- 1.1.7. Require adequate grooming that includes regular grooming of the fur, nail trimming, and dental care as needed for the safety and

comfort of each dog based on that dog's breed, or at least twice a year.

- 1.1.8. Provide animals daily access to exercise areas and meaningful socialization with humans and compatible animals. Forced exercise methods such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirement of this section. Socialization shall include positive physical interaction for every dog over the age of six weeks for a total of at least 30 minutes per day with at least one human. For adult dogs, the interaction may involve multiple dogs at a time, as long as those dogs are compatible with one another. For dogs younger than six months of age, the interaction may not involve multiple dogs at a time. Positive physical interactions include, but is not limited to, petting, stroking, grooming, feeding, playing with, exercising, or other touching which is beneficial to the well-being of the dog.
 - 1.1.9. Humanely treat animals no longer used for breeding and unsold offspring, to include reasonable efforts to place the dog or cat or offspring with adoptive families or rescue organizations. In no circumstances may auctions be used to place animals.
 - 1.1.10. Potable liquid water should continuously be available to dogs and cats. Water receptacles must be kept clean and sanitized.
- 1.2 Record Keeping and Disclosure: A pet shop operator shall maintain records stating the name and address of the breeder or dealer supplying the animal and sufficient proof that the breeder or dealer is following the standards set forth in 10-4-17. Such records shall be made available, immediately upon request City of Naperville Animal Control and submitted annually, and no later than May 1 of each year to the City of Naperville Animal Control.
 - 1.3 Penalties: Any person violating any provisions of this Section shall be subject to a fine of five hundred dollars (\$500.00) for the first citation, seven hundred fifty dollars (\$750.00) for the second citation, and no more than one thousand dollars (\$1000.00) for

the third. A separate offense shall be deemed committed for every dog or cat sold in violation of Section 10-4-17.

SECTION 2: This Ordinance shall be in full force and effect on January 1, 2021.

PASSED this ____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED this ____ day of _____, 2020.

Steven Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk