



**THE HUMANE SOCIETY
OF THE UNITED STATES**

August 26, 2019

Dear Attorney Emmett, Chairman Lee, Honorable Members of the Legislative & Rules Committee, and Honorable Members of the Stamford Board of Representatives,

The Humane Society of the United States respectfully asks that Stamford move forward with the humane pet store ordinance that will prohibit the sale of dogs and cats in pet stores (LR30.068), as we believe the ordinance is *not preempted* under Connecticut state law.

After our analysis of current statutes and case law, we recommend strengthening the findings section of the pet store ordinance that is under consideration and we recommend specific language for this below.

We believe that Connecticut municipalities have the authority to enact ordinances regulating pet shops because:

- There is no express preemption provision that would block local authority to regulate the sale of dogs and cats in pet shops. Pet shops are licensed and regulated under Title 22, Chapter 435, but that contains no provisions expressly limiting municipal authority over any subject matter, whether that subject matter pertains to commercial kennels, pet shops, training facilities, or grooming facilities.
- In several instances, state law cedes to local authority in certain areas. For example, before a pet shop can be initially licensed by the state, the Commissioner of Agriculture must confirm that a municipal zoning official “has certified that the pet shop conforms to the municipal zoning regulations.” CGS § 22-344(b).
- Provisions in state law explicitly recognize municipal authority to require licensure for dog breeders. § 22-344c. Such licensure is arguably a regulation of the sale of dogs given that the purpose of breeding dogs is generally to sell them for profit. Accordingly, if municipalities have the authority to place stringent requirements on breeder licensure, they arguably have the authority to regulate local sales of dogs.
- Since Connecticut is a Dillion’s Rule¹ state, localities within it may exercise powers in the following categories: (1) powers explicitly granted to them; (2) powers necessarily or fairly implied or incidental to the powers expressly granted to them; (3) powers deemed essential to the declared objects and purposes of the corporation.

¹ See National League of Cities, Local Government Authority at <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority>.

Towns are granted general authority to: regulate the keeping of wild and domestic animals and to prevent cruelty to animals ²; prohibit nuisances that are detrimental to the health, morals, safety, convenience, and welfare of citizens³; and regulate and prohibit any trade or business that harms consumers and citizens in general.⁴

According to these explicit powers, Stamford should reasonably be able to enact an ordinance that regulates the keeping of dogs in pet stores because:

- The vast majority of puppies sold in pet stores originate from puppy mills, a retail sales ban ordinance would advance the city's express authority to prevent animal cruelty;
- The sale of dogs in pet stores certainly impacts the public morals, health, and welfare where the vast majority of dogs come from substandard living conditions, and where consumers are often not aware of these conditions. A retail sales ban ordinance would help prevent such a nuisance in the community;
- Where consumers are often misled as to the origins and general health of dogs sold in pet stores, and often left with limited resources after purchasing a sick animal, a retail sales ban ordinance would advance the express authority of the municipality to regulate trade and businesses that are conducive to "fraud and cheating."
- The state statute expressly preempts a municipality from adopting breed-specific dog ordinances ("BSL") § 7-148(c)(7)(D)(i). Arguably, the inclusion of the BSL carve-out language supports our position that the legislature intended to confer significant power upon municipalities with respect to the regulation of animals and animal cruelty. Stipulating that municipalities may not enact BSL ordinances provides a particular instance in which the state legislature curbs local authority ("except that ...") as to one specific type of ordinance and no other. This provision strongly indicates that there is general municipal power to adopt ordinances in the arena of animal welfare, and the legislature must expressly limit such authority in order to restrain local regulation.

² Specifically, Chapter 98 provides the following authority: (D) Animals. (i) Regulate and prohibit the going at large of dogs and other animals in the streets and public places of the municipality and prevent cruelty to animals and all inhuman sports; (ii) Regulate and prohibit the keeping of wild or domestic animals, including reptiles, within the municipal limits or portions thereof;

³ Specifically, Chapter 98 provides the following authority: "(E) Nuisance. Define, prohibit and abate within the municipality all nuisances and causes thereof, and all things detrimental to the health, morals, safety, convenience and welfare of its inhabitants and cause the abatement of any nuisance at the expense of the owner or owners of the premises on which such nuisance exists;"

⁴ Specifically, Chapter 98 provides the authority to: "[r]egulate and prohibit the carrying on within the municipality of any trade, manufacture, business or profession which is, or may be, so carried on as to become prejudicial to public health, conducive to fraud and cheating, or dangerous to, or constituting an unreasonable annoyance to, those living or owning property in the vicinity..."

- If the legislature intended to limit municipal authority to regulate pet shop sales, it could have done so in one of the numerous times it has revisited the language of the state statutes on pet shops. *See also Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494, 513 (1986) (REHNQUIST, J., dissenting) (“Congress knew how to draft an exception covering the exercise of ‘certain’ police powers when it wanted to”); *Town of East Hampton v. Department of Public Health*, 834 A.2d 783 (Conn. 2003) (FLYNN, J., dissenting) (“[T]here has not been any general reference in the legislation itself to indicate that the [relevant] provisions...would prevail over any charter provision, special act or ordinance as the legislature knew how to do, and expressly has done, time and time again...”).
- A review of relevant statutes indicates there is no conflict preemption between existing state law and the Stamford pet store ordinance, which merely seeks to enlarge upon existing statutes. As the Connecticut Supreme Court ruled in *Modern Cigarette, Inc. v. Orange*, 256 Conn. 105 (2001), establishing standards stricter than what the state has established is generally allowable. In *Modern Cigarette*, the court upheld an ordinance banning cigarette vending machines within the town’s borders (in order to curb smoking by minors), finding the ordinance was not in conflict with state law, as it merely established standards more restrictive than the state standard. The court went further than the preemption question and noted that the town could outright ban cigarette vending machines altogether under its police powers granted under Title, 7 Chapter 98 (§ 7-148(c)(7)(H)(xi)), which confers upon municipalities the general authority to “[p]rovide for the health of the inhabitants of the municipality and do all things necessary or desirable to secure and promote the public health.” This case provides strong precedent for the right of a city to enact an ordinance that is stricter than state law, or even bans something regulated by state law. Similarly, the Stamford pet store ordinance would prohibit the sale of dogs and cats in pet stores—a more restrictive regulation than the state law that states if pet stores sell dogs they must come from a USDA-licensed breeder without certain violations.
- Additional case law supports Stamford’s authority to regulate pet stores:
 - At least one Connecticut case has asserted that “[i]t is well established that municipalities have the power to enact dog ordinances to protect public health and welfare and to prevent the disturbing of people in the enjoyment of their property.” *Sherman v. Westbrook Zoning Board of Appeals*, (Conn. Super. Ct. 1996 WL 176352) (Apr. 1, 1996), *citing to* E. McQuillin, *Municipal Corporations* (3rd Ed. Rev.1989) § 24.284.
 - Another case, interpreting § 7-148(c)(7)(H)(iv) (authorizing municipalities to prohibit and regulate the business of peddlers), concluded that the town of Stratford acted reasonably within its authority when it enacted an ordinance prohibiting vending from motorized vehicles upon streets or public property of the municipality. *Blue Sky Bar, Inc. v. Town of Stratford*, 523 A.2d 467 (Conn. 1987). This case may be particularly helpful because the court found the ordinance reasonable, in part, because it *did not preclude all vending, but rather regulated the*

method by which products could be vended. Similarly, Stamford’s pet shop ordinance could be interpreted as a means of regulating a particular method by which dogs and cats can be sold, and not as a complete ban on their sale. For instance, customers may still purchase dogs and cats from other sellers not meeting the definition of “pet shop,” e.g., directly from breeders.

Recommendation:

The HSUS recommends adding to the findings section in the Stamford pet store ordinance language that states the statutory basis of authority and the purpose/rationale for the ordinance. The test of whether a town possesses by implication the right to exercise any particular power is the **necessity of the power, and not its convenience.** *Fahy v. Town of Trumbull*, 163 A.2d 574 (Conn. 1960). Thus, Stamford should show that a pet shop sales ban *is necessary* to achieve purposes in line with the express grant of authority (i.e., to prevent animal cruelty or to protect consumers from fraud or to protect public health). We believe that the above cases and others construing municipal power in Connecticut give some guidance as to how a pet shop ordinance can be more likely to withstand challenge. *See Calve Bros. Co. v City of Norwalk*, 124 A.2d 881 (Conn. 1956) (In absence of convincing facts to the contrary, courts must accept a legislative intent expressed in an ordinance as having been made in good faith); *Hutchison v. Board of Zoning Appeals of Town of Stratford*, 100 A.2d 839 (Conn. 1953) (“In interpreting and construing enactments of a municipal body, the express intention of the legislative body is to be ascertained and given effect.”).

Specifically, we suggest the following language be added to the findings section (suggested changes are underlined and in blue):

WHEREAS Chapter 111 of the Stamford Code of Ordinances gives the City authority to regulate the sale of live animals;

WHEREAS the City has the authority to prevent cruelty to animals and documentation obtained from the state coupled with federal and state inspection reports reveal that pet stores obtain puppies from commercial breeders with horrible animal welfare records;

WHEREAS the documented abuses endemic to commercial breeders include over-breeding; inbreeding; minimal veterinary care; lack of adequate food, water and shelter; lack of socialization, exercise and enrichment; lack of sanitation;

WHEREAS the City has the authority to regulate and prohibit the keeping of domestic animals within the municipal limits or portions thereof;

WHEREAS it is in the interests of the people of Stamford to ensure that dogs and cats are raised in safe, humane conditions while waiting for adoption;

WHEREAS it is in the interests of the people of Stamford to ensure through regulation and prohibitions that citizens purchasing animals are protected from the risks associated with the pet trade industry being carried on in a manner prejudicial to public health or dangerous to, or constituting an unreasonable annoyance to, those living or owning property in the vicinity;

WHEREAS pet store puppies are often sick and have behavioral problems because of the substandard conditions they were likely born into; they were taken from their mothers at a very young age; they were transported in trucks filled with other young puppies; they were placed in a pet store cage with or near other puppies who are often sick;

WHEREAS pet stores often mislead consumers as to where the puppies and kittens in the stores came from and make false health and behavior guarantees. Many consumers end up paying hundreds or thousands of dollars in veterinary bills and suffer the heartbreak of having their new pet suffer, and in some cases pass away;

WHEREAS according to the U.S. Centers for Disease Control and Prevention, pet store puppies pose a health risk to consumers, as over one hundred Americans, including at least two Connecticut residents, have contracted an antibiotic-resistant *Campylobacter* infection from contact with pet store puppies;

WHEREAS there are many dogs and cats being held at the Stamford Animal Control Center that are in need of good homes;

WHEREAS prohibiting pet stores from selling dogs and cats is likely to decrease the demand for puppies and kittens bred in puppy and kitten mills and decrease the burden that pet store puppies and kittens that end up in animal shelters place on local agencies and taxpayers;

Thank you for your time and consideration.

Yours truly,



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