



STAFF REPORT CITY OF SOLANA BEACH

TO: Honorable Mayor and City Council members
FROM: Gregory Wade, City Manager
MEETING DATE: June 22, 2016
ORIGINATING DEPT: Community Development Department
SUBJECT: **Introduce (1st Reading) Ordinance 461 Regulating Retail Pet Sales**

BACKGROUND

On May 25, 2016, the City Council directed staff to prepare an ordinance regulating pet sales in the City of Solana Beach. The Council asked that the ordinance follow the City of San Marcos ordinance with two exceptions: 1) Not allowing animals to be sold in pet stores that are born and reared on-premises, and 2) No posting a certificate of source, as the Council directed that the ordinance allow fees for adoption, but no sales of dogs, cats and rabbits would be allowed.

In 1966 Congress passed the Animal Welfare Act (AWA), which outlines specific minimum standards of care for dogs, cats, and some other kinds of animals bred for commercial resale. The AWA is enforced by the United States Department of Agriculture (USDA). Under the AWA, certain large-scale commercial breeders are required to be licensed and regularly inspected by the USDA.

There are no State or Federal laws that prohibit retail pet stores from selling animals obtained through commercial breeding facilities, and retail pet stores are not separately regulated under the Solana Beach Municipal Code (SBMC).

On February 9, 2016, the San Marcos City Council unanimously adopted Ordinance 2016-1418 regulating the retail sale of dogs, cats and rabbits in the City of San Marcos. On May 3, 2016, the Carlsbad City Council unanimously approved a ban on the purchase of commercially bred pets by retail stores, similar to the pet ban ordinance adopted in the City of Oceanside.

DISCUSSION

The proposed ordinance would make it unlawful for any retail pet store or its operator to

CITY COUNCIL ACTION:

display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit in the City of Solana Beach.

The following would not be considered a retail pet store and would be exempt from the pet sale ban:

- A. Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared, excluding retail pet stores.
- B. A publicly operated animal shelter or animal control enforcement agency.
- C. A nonprofit humane society or nonprofit animal rescue organization.
- D. A publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization that operates out of or in connection with a retail pet store.

Table 1 below provides a comparison of the components of recent pet sales ordinances in the region. The column for Solana Beach reflects the Council's direction during the discussion on May 25, 2016. The Council did not want to allow on-premises breeding, disallow animals from non-commercial private/hobby breeders, and not require a certificate of source to be posted as there would be no pet sales, only fees for adoption of pets from animal shelters, animal control agencies, and non-profit animal rescue organizations.

Table 1- Pet Sales Ban Ordinances	San Marcos	Oceanside	Carlsbad	Solana Beach
APPLICABILITY:				
Dogs	Yes	Yes	Yes	Yes
Cats	Yes	Yes	Yes	Yes
Rabbits	Yes	No	No	Yes
POSTING:				
Certificate of Source	Yes	Yes	Yes	No
GRACE PERIOD:				
6 months to comply	Yes	Yes	Yes	Yes
EXEMPTIONS:				
Publicly Operated Animal Shelters	Yes	Yes	Yes	Yes
Animal Control Enforcement Agencies	Yes	Yes	Yes	Yes
Non-Profit Animal Rescue Org's	Yes	Yes	Yes	Yes
Animals Born & Reared On-Premises	Yes	No	Yes	No
Non-Commercial Breeders, Private/Hobby Breeders*	No	Yes	Yes	No
* defined as an entity that sells or transfers 3 or fewer litters, or less than 20 dogs, or 20 cats during the preceding 12 months.				

The limitations on the number of pets allowed in residential zones in Chapter 17.20 of the Solana Beach Municipal Code (SBMC) i.e. 4 cats and 4 dogs, would remain unchanged.

Animals born and reared on the premises of a pet store would not be allowed under the proposed ordinance. However, the ordinance would not preclude a family from selling puppies or kittens that are born and reared in their own household by their own pet.

CEQA COMPLIANCE STATEMENT:

The proposed Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

FISCAL IMPACT:

There is no direct impact to the General Fund.

WORKPLAN:

N/A

OPTIONS:

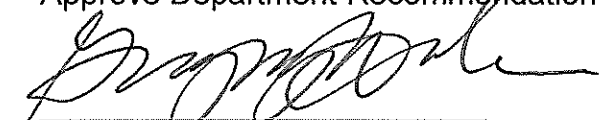
- Approve Staff recommendation.
- Approve Staff recommendation with alternative amendments/modifications.
- Provide alternative direction

DEPARTMENT RECOMMENDATION:

Introduce (1st reading) Ordinance 461 amending Chapter 4 of the Solana Beach Municipal Code regulating the retail sale of dogs, cats and rabbits.

CITY MANAGER'S RECOMMENDATION:

Approve Department Recommendation.



Gregory Wade, City Manager

Attachment: 1. Ordinance 461

ORDINANCE NO. 461

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, REGULATING THE RETAIL SALE OF DOGS, CATS AND RABBITS

WHEREAS, the City Council has been made aware of public protests occurring outside a retail pet store in the City, has been approached by animal rights activists regarding their opposition to the retail sale of dogs, cats and/or rabbits received from commercial breeding operations, and has received a number of requests from City residents to enact an ordinance prohibiting the retail sale of these animals, which contributes to the overpopulation of animals in the City; and

WHEREAS, the City Council desires to be supportive of existing local businesses while also addressing the animal welfare and pet population in the City; and

WHEREAS, the Solana Beach Municipal Code does not currently separately regulate the retail sale of dogs, cats and rabbits in the City of Solana Beach; and

WHEREAS, currently, there are no Federal or State laws that expressly prohibit retail pet stores from selling animals obtained through commercial breeders. However, there are Federal and State statutory provisions that regulate the conditions and practices of the breeding facilities and the retail pet stores; and

WHEREAS, the U.S. Congress passed the Animal Welfare Act in 1966 (7 U.S.C. § 2131 et seq.). The Act is the only Federal law that regulates the minimum standards of care and treatment for certain animals bred for commercial sale, including but not limited to dogs, cats and rabbits. The Act is upheld and enforced by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA), and requires all animal dealers to be registered and licensed; and

WHEREAS, California's Polanco-Lockyer-Farr Pet Breeder Warranty Act (Health and Safety Code § 122045 et seq.) requires certain dog breeders to maintain certain health and safety standards for animals, sell only healthy animals, and provide an animal's health record and status and other written disclosures to pet buyers. The Act also provides consumer protections for purchasing dogs if a California-licensed veterinarian provides written certification that the dog is unfit for sale. If after 15 days from the date of purchase, a dog becomes ill due to an illness that existed at the time of sale; or if within one year after purchase, the dog has a congenital or hereditary condition that adversely affects the health of the dog, or that requires or is likely in the future to require hospitalization or non-elective surgical procedures, then the owner may receive a refund for (i) the purchase price of the dog or another dog and reimbursement for reasonable veterinarian fees up to the purchase price of the dog; or (ii) reimbursement for veterinary fees up to 150 percent of the purchase price of the dog. The State's Lockyer-Polanco-Farr Pet Protection Act (Health and Safety Code § 122125 et seq.) offers similar consumer protections relating to purchasing animals unfit for sale

as those offered under the Lockyer-Polanco-Farr Pet Protection Act, except that it applies only to pet retailers selling more than 50 dogs per year (exempts animal shelters and humane societies), and also requires those pet retailers to have a permit and encourage the use of spaying and neutering services; and

WHEREAS, the City has reviewed the impact of retail pet stores engaged in the sale of dogs, cats and/or rabbits by evaluating various regulatory structures for these establishments, any negative effects these establishments might have on nearby businesses, property owners and residents of the City, as well as the federal and state regulatory structures set forth above, and has determined that there is a local interest in enactment of additional regulations to protect animal welfare; and

WHEREAS, other jurisdictions in the State of California have adopted local ordinances that prohibit the sale of dogs and cats in retail pet stores, including but not limited to the cities of Chula Vista, Oceanside, Encinitas, Vista, South Lake Tahoe, West Hollywood, Hermosa Beach, Turlock, Glendale, Irvine, Dana Point, Laguna Beach, Aliso Viejo, Huntington Beach, Burbank, Ventura County, Chino Hills, Garden Grove, and Palm Springs. Other jurisdictions in the State have banned the sales of rabbits, in addition to prohibiting the retail sale of dogs and cats, including but not limited to San Diego, San Marcos, Los Angeles, Rancho Mirage, Ventura County, and Long Beach; and

WHEREAS, in conducting its review of retail pet stores, the City has determined that these establishments generally pose a threat to the public welfare of animals, residents and businesses, and the approval of any permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, building permit, conditional use permit, or other land use approval for the establishment of any retail pet store that would engage in the sale of dogs, cats and/or rabbits within the jurisdiction of the City could result in the threat to the public welfare of animals, residents and/or businesses and the preservation of peace within the City's jurisdictional boundaries; and

WHEREAS, research shows that animals born and raised at puppy mills, kitten factories, and rabbit mills are more likely to have genetic disorders and lack adequate socialization. The American Society for the Prevention of Cruelty to Animals (ASPCA) asserts that animals used for breeding purposes at these facilities may be subject to inhumane housing conditions and indiscriminately disposed of when they reach the end of their profitable breeding cycle; and

WHEREAS, retail pet stores purchasing animals from a broker or distributor are one step further removed from the actual breeding of the animals it purchases, which could create the potential to obscure the conditions in which the breeding took place and where the animals were housed prior to coming to the retail pet store; and

WHEREAS, according to the Humane Society of the United States (HSUS), hundreds of thousands of dogs and cats are housed and bred at "puppy mills" or "kitten

factories," which it defines as inhumane and substandard breeding facilities that mass-produce animals for sale to the public, typically through retail pet stores. The HSUS claims that this results in the physical, psychological and/or behavioral needs of the animals not being fulfilled due to inadequate housing, shelter, staffing, nutrition, socialization, sanitation, exercise, veterinary care and/or inappropriate breeding. The HSUS "Guide to Using local Ordinances to Combat Puppy Mills" estimates that more than one million puppies are produced by USDA-licensed breeding facilities each year, while three to four million dogs and cats are euthanized by shelters every year in the United States. In 2014, the San Diego County Humane Society's Annual Report stated that more than 1,600 animals were euthanized in San Diego County area shelters, alone; and

WHEREAS, according to the House Rabbit Society, an international, non-profit animal welfare organization committed to reducing the number of unwanted rabbits and improving rabbits' lives, rabbits sold in retail pet stores are often sold as snake food or as a pet for a small child who soon "outgrows" the rabbit. Unwanted rabbits are often abandoned in fields, parks or on city streets to fend for themselves. This results in abandoned rabbits suffering from starvation and sickness and makes them easy prey for other animals or traffic accidents; and

WHEREAS, the City seeks to prohibit the sale of dogs, cats and/or rabbits in retail pet stores, including those animals purchased, supplied or otherwise obtained from dealers and/or breeders, except that animals may be sold at: (i) a city, county or any other governmental animal shelter; (ii) an animal control enforcement agency; (iii) a humane society; or (iv) an animal rescue organization, which may encourage pet consumers to adopt animals from shelters and rescue agencies, and could result in saving animals' lives, decreasing the shelter animal euthanasia rate and reducing public costs for sheltering animals.

NOW, THEREFORE, the City Council of the City of Solana Beach, California, does ordain as follows:

Section 1. All of the above statements are true; and

Section 2. Chapter 4.50 of the Solana Beach Municipal Code is hereby added to read as follows:

**CHAPTER 4.50
RETAIL SALES OF DOGS, CATS AND RABBITS**

4.50.010 Purpose.

It is the purpose and intent of this Chapter to promote animal welfare and encourage best practices in the purchasing of dogs, cats and rabbits offered for retail sale in the City of Solana Beach.

4.50.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "Animal shelter" means a public animal shelter operated by any city, county or other public agency or an entity operating under contract with any city, county or other public agency.
- B. "Breeder" means any breeder who owns breeding dogs, cats or rabbits, and who sells, provides or supplies the offspring for retail or wholesale.
- C. "Cat" means a *Felis domesticus* of either sex, altered or unaltered.
- D. "Dog" means a *Canis familiaris* of either sex, altered or unaltered.
- E. "Dealer" means any third party broker, distributor, supplier, animal wholesaler, and/or other source who buys and sells dogs, cats and/or rabbits that were not born and raised at their facility.
- F. "Existing retail pet store" means any retail pet store or its operator that displays, offers for sale, delivers, barter, auctions, gives away, transfers, leases, or sells dogs, cats or rabbits in the City of Solana Beach on the effective date of this Chapter, and that is in compliance with all applicable provisions of the Solana Beach Municipal Code on the effective date of this Chapter.
- G. "Non-profit rescue organization" means any non-profit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3), whose mission and practice is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits; or any non-profit organization that is not exempt from taxation under Internal Revenue Code Section 501(c)(3), but is currently an active rescue partner with the City of Solana Beach or any County of San Diego animal shelter or humane society, whose mission is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits.
- H. "Operator" means a person who owns or operates a retail pet store, or both, and/or who hires employees at a retail pet store to engage in the retail sale of dogs, cats and/or rabbits.
- I. "Rabbit" means an *Oryctolagus cuniculus* of either sex, altered or unaltered.
- J. "Retail pet store" means any for-profit establishment open to the public and located in a commercial zone or shopping center that is engaged in the retail sale of dogs, cats and/or rabbits.

4.50.030 Prohibition on the Sale of Certain Dogs, Cats and Rabbits.

A. It is unlawful for any retail pet store or its operator to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit in the City of Solana Beach.

B. No permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved and/or issued for the establishment of any retail pet store within the jurisdiction of the City of Solana Beach that would engage in the retail sale of dogs, cats and/or rabbits purchased, supplied or otherwise obtained from any dealer and/or breeder.

C. An existing retail pet store or its operator that displays, offers for sale, delivers, barter, auctions, gives away, transfers, leases, or sells any dog, cat or rabbit in the City of Solana Beach as of the effective date of the Ordinance codified in this Chapter and whose operations comply with all applicable provisions of the Solana Beach Municipal Code as of the effective date of the Ordinance codified in this Chapter may continue to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit for a period of six (6) months following the effective date of the Ordinance codified in this Chapter. During the six-month grace period, the remaining provisions of this Chapter 4.50 shall apply to the existing retail pet store.

4.50.040 Adoption of Shelter and Rescue Animals.

Nothing in this Chapter shall prevent a retail pet store or its owner, operator or employees from providing space and appropriate care for animals owned by a publicly operated animal control agency, nonprofit humane society, or nonprofit animal rescue agency and maintained at a retail pet store for the purpose of adopting those animals to the public.

4.50.050 Exemptions.

Notwithstanding any other provision of Chapter 4.50, the following shall not be considered a retail pet store and shall be exempt from the provisions of this Chapter:

A. Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared, excluding retail pet stores.

B. A publicly operated animal shelter or animal control enforcement agency.

C. A nonprofit humane society or nonprofit animal rescue organization.

D. A publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization that operates out of or in connection with a retail pet store.

4.50.060 Enforcement and Remedies.

- A. The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail pet store's premises to verify compliance.
- B. Unless otherwise provided, a violation of any provision of this Chapter or failure to comply with any requirement thereof shall be punishable as provided in SBMC Chapters 1.16 and 1.18.
- C. Each day or portion thereof that a violation of this Chapter exists shall constitute a separate violation.
- D. Each violation of this Chapter shall constitute a public nuisance.
- E. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- F. The remedies and penalties provided in this section are cumulative and in addition to any other remedies available at law or in equity.

Section 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Effective Date. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Solana Beach, California held on the ___th day of June 2016, and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the ___th day of June 2016, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

DAVID A. ZITO, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk