

ORDINANCE NO. 2019 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING
CHAPTER 8.38 TO THE NATIONAL CITY MUNICIPAL CODE PROHIBITING THE
RETAIL SALE OF DOGS, CATS AND RABBITS

WHEREAS, the City of National City (the “City”), pursuant to the police powers delegated to it by the California Constitution, has the authority to enact or amend laws which promote the public health, safety, and general welfare of its residents; and

WHEREAS, the U.S. Congress passed the Animal Welfare Act in 1966 (7 U.S.C. § 2131 et seq.), a 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, which is enforced by the United States Department of Agriculture and Animal and Plant Health Inspection Service (USDA) and requires all certain large scale animal breeders and dealers to be registered and licensed; and

WHEREAS, the Pet Rescue and Adoption Act, otherwise known as AB485, a newly enacted state law effective January 1, 2019, prohibits a pet store operator from selling a dog, cat or rabbit in a pet store unless they were obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group that is in cooperative agreement with at least one private or public shelter; and

WHEREAS, California Health and Safety Code section 122354.5(g) allows a local governing body to adopt requirements that are more protective of animal welfare than those set forth in the Pet Rescue and Adoption Act; and

WHEREAS, Investigations and research by the Companion Animal Protection Society (CAPS) have shown that California pet shops are using fake rescues to circumvent newly enacted state law and act as pass-throughs between puppy mills and pet shops; and

WHEREAS, CAPS and The American Society for the Prevention of Cruelty to Animals (ASPCA) report that puppy mills mass produce animals for the pet industry in overcrowded and unsanitary conditions without adequate food, water, exercise, socialization or veterinary care and many of the animals face an array of health problems that are discovered after purchase at a retail store; and

WHEREAS, according to The Humane Society of the United States there are approximately 2.4 million puppies sold annually who originated from puppy mills, USDA licensed and non-USDA licensed and there are an estimated 3 million dogs and cats euthanized by shelters every year in the United States; and

WHEREAS, the City Council has been approached by animal activists, animal shelters and City residents urging the City to enact further regulations which prohibit the retail sale of cats, dogs and rabbits and discourage the promulgation of unregulated and negligent

commercial breeders or pet shop operators which despite state law continue to offer animals throughout San Diego County for retail sale under the guise of non-profit rescue agencies; and

WHEREAS, pet stores often engage in offsite, even out of state, commercial breeding and/or purchase animals from offsite or out of state commercial breeders or brokers creating a degree of removal which obscures the ability of the City and/or the County of San Diego Humane Society to regulate the conditions in which the breeding took place and/or how the animals were cared for prior to being brought to the pet store; and

WHEREAS, the City of National City seeks to close the loopholes in California State law and enact greater protections for animal safety and welfare and for the public health, safety, and general welfare of its residents by prohibiting a pet shop or retail pet store or its operator from selling, delivering, or offering for sale, barter, auction or otherwise disposing of a cat, dog, or rabbit with exceptions for: (i) A publicly operated animal shelter or animal control enforcement agency, animal rescue organization or nonprofit humane society; (ii) A pet shop or retail pet store offering a cat, dog, or rabbit owned by an animal shelter or animal rescue organization for purposes of adoption of the cat, dog, or rabbit by a member of the public, so long as the pet shop does not receive any fee from the adoption and does not have any monetary or ownership interest in the cat, dog, or rabbit; (iii) The sale or offering for sale of a dog, cat or rabbit as part of an adoption event held by an animal shelter or rescue organization if the retail pet store or pet shop does not receive any payment from the sale or offering or for the use of the store or store resources in connection with the adoption event; or (iv) Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared or through a breeder, excluding pet shops or retail pet stores.

NOW, THEREFORE, the City Council of the City of National City does ordain as follows:

Section 1. All protests, if any, against said amendment to the Municipal Code and each of them be and hereby are denied and overruled.

Section. 2. Chapter 8.38 of the National City Municipal Code is hereby added to read as follows:

Chapter 8.38 Retail Sales of Dogs, Cats and Rabbits

8.38.01 Purpose.

It is the purpose and intent of the city council in this chapter to promote animal safety and welfare, public health, safety and welfare, and encourage best practices in the acquiring of dogs, cats and rabbits offered for retail sale or adoption in the City of National City.

8.38.020 Definitions.

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

- (A) “Animal Shelter”, means a public animal shelter or control facility operated by any city, county or other public agency or an entity operating under contract with any city, county or other public agency for the purpose of protecting animals from cruelty, neglect or abuse.
- (B) “Animal Rescue Organization”, means a nonprofit organization that has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and whose mission and practice is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits. The term does not include a breeder or broker for payment or compensation.
- (C) “Breeder” means a person that owns or maintains dogs, cats, or rabbits for the purpose of breeding and selling their offspring for retail or wholesale or a person required to hold a class A license pursuant to the Animal Welfare Act, 7 U.S.C. § 2131, et seq.
- (D) “Broker” means a person that transfers dogs, cats, or rabbits for resale by another person and is required to hold a class B license by the United States Department of Agriculture pursuant to the Animal Welfare Act, 7 U.S.C. § 2131, et seq.
- (E) “Cat” means a *Felis domesticus* of either sex, altered or unaltered.
- (F) “Dog” means a *Canis familiaris* of either sex, altered or unaltered.
- (G) “Operator” means a person who owns or operates a retail pet store, or both, and/or who hires employees at a retail pet store or pet shop to engage in the retail sale of dogs, cats and/or rabbits.
- (H) “Pet Shop” or “Retail Pet Store” means any place or premise where birds, mammals, or reptiles are kept for the purpose of either wholesale or retail sale, import, export, barter, exchange or gift.
- (I) “Rabbit” means an *Oryctolagus cuniculus* of either sex, altered or unaltered.

8.38.030 Prohibition

- (A) A pet shop or retail pet store or its operator shall not sell, deliver, offer for sale, barter, auction or otherwise dispose of a cat, dog, or rabbit except as provided in subsection (B).
- (B) The provisions of subsection (A) shall not apply to:
- (1) A publicly operated animal shelter or animal control enforcement agency, animal rescue organization or nonprofit humane society;

(2) A pet shop or retail pet store offering a cat, dog, or rabbit owned by an animal shelter or animal rescue organization for purposes of adoption of the cat, dog, or rabbit by a member of the public, so long as the pet shop does not receive any fee from the adoption and does not have any monetary or ownership interest in the cat, dog, or rabbit;

(3) The sale or offering for sale of a dog, cat or rabbit as part of an adoption event held by an animal shelter or rescue organization if the retail pet store or pet shop does not receive any payment from the sale or offering or for the use of the store or store resources in connection with the adoption event; or

(4) Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared or through a breeder, excluding pet shops or retail pet stores.

8.38.040 Inspection by officials

(A) Each pet shop or retail pet store shall maintain records sufficient to document the source of each dog, cat, or rabbit that the pet shop acquires for at least one year following the date of acquisition. Such records shall be made available, immediately upon request, to any police officer, code enforcement officer, animal control officer, humane law enforcement officer or other investigating official.

(B) The city, county, or any investigating official shall have the right to enter the premises of any pet shop or retail pet store from time to time during regular business hours to conduct reasonable inspections to ensure and verify compliance with this chapter. No person shall refuse to permit or interfere with a lawful inspection of any pet shop or retail pet store by city or county investigating officials.

8.38.050 Enforcement and Remedies

(A) A violation of any provision of this chapter or failure to comply with any requirement thereof shall be punishable as provided in National City Municipal Code chapters 1.20, 1.44, and 1.48. Each event or transaction in which a dog, cat, or rabbit is sold or offered for sale in violation of this section shall constitute a separate offense.

(B) Any person, operator, pet shop or retail pet store operating or conducting or maintaining a pet shop or retail pet store contrary to the provisions of this chapter and/or state and federal laws shall be and the same is hereby declared to be unlawful and a public nuisance. The city attorney may, in addition to the penalties proscribed in this section, commence an action or actions, proceeding or proceedings for the abatement, removal, or enjoinder thereof, in any manner provided by law.

(C) 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. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

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