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**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

Int. No. 0055-A 2014

Council Members Crowley, Johnson, Arroyo, Constantinides, Levine, Palma, Vacca, Koslowitz, Espinal, Rosenthal, Cornegy, Cabrera, Cumbo, Lancman, Mealy, Miller, Koo, Mendez, Levin, Richards, Rodriguez, Dickens, Torres, Lander and Weprin.

A LOCAL LAW to amend the Administrative Code of the city of New York, in relation to regulating pet shops.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation would amend Chapter 3 of Title 17 of the Administrative Code of the City of New York by adding a new subchapter 9 sections 17-371-382 establishing a permitting scheme under which all pet shops in New York City must obtain a permit from the City Department of Health and Mental Hygiene (the “Department”).¹ In connection with the permit application, each pet shop would be required to provide a certification executed under penalty of perjury including the following information: (i) the name and address of every source from which a pet shop obtained a dog or a cat; (ii) the total number of dogs and cats obtained from each source; and (iii) the United States Department of Agriculture (“USDA”) license number for each dealer from which the pet shop obtained dogs or cats. The proposed legislation would also prohibit the Department from issuing or renewing a license to an applicant with any finally determined uncorrected violations or unpaid fines and would allow the Department to suspend or revoke a pet shop’s license, following notice and hearing, for willful or continued violations.²

¹ We note that under existing law, New York City pet shops that sell only dogs or cats are exempted from the City’s pet shop licensing requirements. *See* 24 RCNY § 161.09(a)(1). Accordingly the proposed legislation is necessary to remediate this illogical exemption.

² We note that in the event of circumstances that pose a danger to the public health or welfare of the animals in the custody of the permittee, the Department may immediately suspend a permit subject to a prompt post-suspension hearing.

Further, the proposed legislation would add a new Chapter 17 (Pet Shops) sections 17-1702-1709. Section 1702 would prohibit pet shops from selling or offering for sale any dog or cat unless such animal was obtained from a USDA Class A licensed animal dealer that satisfies the following criteria:³

The dealer has not received

- (i) a license suspension in the past five years;
- (ii) a finally determined “direct” non-compliant citation by the USDA in connection with the license in the past three years;
- (iii) a finally determined citation for failure to provide USDA inspectors access to property or records pursuant to 9 C.F.R. §2.126 within the two most recent USDA inspection reports;
- (iv) three or more distinct finally determined non-compliant item citations pursuant to 9 C.F.R. §2.126 (other than failure to provide access) in the most recent USDA inspection report;
- (v) one or more finally determined repeat non-compliant items in the most recent USDA inspection report;
- (vi) a finally determined order to cease and desist relating to such license issued in the past five years; or
- (vii) a finally determined order to pay a civil penalty in connection with such license issued in the past five years; and

the dealer has provided the pet shop with a sworn affidavit attesting that it (i) has never been convicted of a violation of the minimum standards of animal care set forth under N.Y. AGRIC. & MKTS. LAW §401; and (ii) has never been convicted of an animal abuse crime.

Section 17-1702(b) of the proposed legislation would prohibit the sale or offering for sale of rabbits by pet shops.

The proposed legislation would create a new section 17-1703 that would require a pet shop to provide consumers who purchase dogs or cats from the pet shop with the following information in written form, to be signed by both the pet shop and the consumer at the time of sale:⁴

³ We note that the sourcing requirements of proposed section 17-1702 and the minimum care standards of section 17-1705 would not apply to a pet shop that allows an animal shelter or non-profit rescue group to use the pet shop’s premises for the purpose of making animals available for adoption, provided that the pet shop does not have an ownership interest in such animals.

⁴ We note that existing State law requires pet shops to provide certain information to purchasers concerning the identification of a dog or cat sold and provides consumers with certain rights for the return or refund for an animal that was “unfit for purchase.” *See* Article 35-D of the General Business Law. The proposed legislation would significantly enhance the required disclosures for pet shops operating in New York City.

- (i) the animal's breed, sex, color, identifying marks, and microchip registration information if microchipped, and identifying tag, tattoo, or collar number of such animal;
- (ii) the source of the animal, including the name, address, and USDA licensing information as known to the pet shop;
- (iii) a copy of the USDA inspection reports for the past three years for the breeder/dealer from which the animal was obtained;
- (iv) the date of birth of the animal and the date the pet shop received the animal;
- (v) a statement that the source from which the animal was obtained has not received any "direct" non-compliant item citations as indicated on any USDA inspection reports during the past three years;
- (vi) if the animal sold is a dog, notification that dogs residing in New York state must be licensed;
- (vii) a record of immunizations and worming treatments, including the dates and types of vaccines or treatments, administered to the animal while in the pet shop's possession;
- (viii) a record of any known disease, sickness or congenital condition that adversely affects the health of the animal;
- (ix) a copy of the animal's USDA Certificate for Health Examination for Small Animals;
- (x) a record of any veterinary treatment or medication received by the animal while in the pet shop's possession together with a signed statement from the pet shop or a licensed veterinarian concerning the animal's health condition; and
- (xi) a statement of the purchaser's rights under Article 35-D of the General Business Law.

Section 17-1703 would also require pet shops to conspicuously post a notice within close proximity to the cages of dogs and cats offered for sale containing the following information: "Information on the source of these dogs and cats and the veterinary treatments received by these dogs and cats is available for review by prospective purchasers. United States Department of Agriculture inspection reports are available upon request."⁵

The proposed legislation would require that a pet shop provide a prospective customer with the two most recent USDA inspection reports for the breeder of a dog or cat offered for sale by the pet shop.

The proposed legislation would create a new section 17-1704 that would require a pet shop to keep and maintain records and documentation (including information on purchase, sale, medical, transportation, breeding, and identification) for each dog or cat purchased, acquired, held, sold or otherwise disposed of by the pet shop for a period of ten years.

⁵ We note that the first sentence in the required notice is already required by New York State law, while the second sentence would be a new requirement. *See* N.Y. GBS. LAW § 753-b(4).

The proposed legislation would create a new section 17-1705 that would require pet shops to comply with certain minimum standards of care for every dog or cat in such pet shop's custody or possession, including with respect to humane housing and care standards.⁶

BACKGROUND

In January 2014, Governor Cuomo signed into law a bill allowing municipalities throughout New York to enact local laws governing pet dealers within their jurisdictions, provided such local laws are consistent with State law.⁷ The New York City Bar Association approved the passage of this law. Among other things, this law (codified at N.Y. AGRIC. & MKTS. LAW §407) now permits New York City to impose restrictions or requirements concerning dogs and cats offered for sale to the public by pet stores as well as greater standards of care for dogs and cats maintained by pet stores and breeders.

It is well documented that many of the puppies and kittens sold at retail pet stores, including those in New York City, come from puppy and kitten mills where the so called "breeding stock", the mothers and fathers of the puppies and kittens produced for sale, are subjected to such cruel and inhumane practices as inbreeding, overbreeding, minimal to non-existent veterinary care, lack of adequate food, water and shelter, lack of socialization, lack of adequate space and inhumane euthanization.⁸ These conditions oftentimes result in health and behavioral issues in the animals purchased by unwitting consumers, who have no idea that these puppies and kittens are the products of puppy mills or kitten mills.

The ability of the City to prohibit pet shops from selling puppies and kittens sourced from the worst offending puppy and kitten mills and to require pet shops to disclose to consumers information on the source and background of the animals offered for sale will ultimately result in a greater demand by the public for animals bred in compliance with more humane standards as well as increased adoption of the homeless animals in the City's shelters.

We support a ban on the sale of rabbits by pet shops. Following dogs and cats, rabbits are the third most commonly surrendered animal in the City shelter system. Rabbits reproduce in significant numbers in short periods of time.⁹ This overpopulating is exacerbated by the fact that

⁶ We note that the minimum standards contained in the proposed legislation are substantially similar to those required under N.Y. AGRIC. & MKTS. LAW §401.

⁷ A.740-A/S.3753-A, NYS L. 2013, Chp. 553.

⁸ See Report on A.1655-A/S.4799, Animal Law Committee, New York City Bar Association, June 2013 (would expand the definition of the term "pet dealer" to include wholesale pet breeders, define the term "retail pet store," improve humane housing and care standards for animals maintained by pet dealers, and add new record keeping, licensing and inspection provisions with respect to pet dealers), <http://www2.nycbar.org/pdf/report/uploads/20072530-PetDealerDefinitionExpansion.pdf>.

⁹ Rabbits are the third most commonly abandoned animal in the United States. See House Rabbit Society, at <http://www.rabbit.org/journal/4-9/bridges.html> (last visited November 11, 2014). Rabbits reach sexual maturity by 3-6 months of age and can produce a litter of 6-12 rabbits every three months. See Dana Krempels, Ph.D., *Why spay or neuter my rabbit? Some Scary Numbers*, House Rabbit Adoption, Rescue and Education, Inc., at <http://www.bio.miami.edu/hare/scary.html> (last visited November 11, 2014). See also "The Easter Bunny Problem," Pet Media Group, Inc., Mar. 29, 2013, at <http://www.tailsinc.com/2013/03/the-easter-bunny-problem-infographic/> (last visited November 11, 2014).

it is difficult to identify the sex of a young rabbit and pet stores commonly sell rabbits unsterilized to consumers. Consequently, a pair of rabbits purchased from a pet store frequently results in multiple litters of unwanted rabbits that are commonly dumped in City shelters and parks. A ban on the sale of rabbits by pet shops in New York City is therefore necessary to reduce rabbit overpopulation and shelter intake.

RECOMMENDATIONS

We note that section 17-1703 of the proposed legislation allows a pet shop to charge a fee to a consumer who requests copies of USDA inspection reports for the breeder of a dog or cat the pet shop has offered for sale. We find such a fee troubling as it may deter a prospective purchaser from obtaining relevant information about the breeder that the consumer would be entitled to receive under the proposed legislation. Additionally, any such printing or copying fees should be borne by pet shops as a cost of doing business and should not be passed on to the consumer. Therefore we recommend that the proposed legislation be amended to prohibit a pet shop from charging a purchaser or prospective purchaser any fee for obtaining copies of the two most recent USDA inspection reports for the breeder of a dog or cat offered for sale by the pet shop.

We note that section 17-1702 of the proposed legislation only requires the source of the animals obtained by a pet shop to certify to the pet shop that it has not been convicted of a violation of the minimum standards of animal care contained in N.Y. AGRIC. & MKTS. LAW §401. As many animals sold in New York City pet stores are obtained from out of state sources, we recommend that section 17-1702 of the proposed legislation be amended to require a source to certify that it has not been convicted of a violation of the minimum standards of animal care contained in any local, state or federal law in any jurisdiction in which such source operates.

We also recommend that section 17-373(d)(5) be amended to require a pet shop to certify compliance with the requirements of section 17-1601 of the City's Administrative Code relating to the City's Animal Abuse Registry with respect to the owner, operator, employee, agent or contractor of such pet shop. We also recommend that section 17-373(e) be amended to prohibit the Department from issuing or renewing a permit to any pet shop that fails to certify such compliance.

We further recommend that the proposed legislation be amended to prohibit pet stores from selling dogs or cats to Class B dealers or to any other person or entity for the purpose of research, experimentation or testing.¹⁰ We also recommend that the proposed legislation be amended to prohibit pet stores from selling dogs or cats to any person or entity that fails to satisfy the criteria of Section 1702.

Lastly we note that the Council also has the opportunity to pass legislation imposing enhanced standards of care for dogs and cats in pet shops. However, as the bill is currently drafted, the proposed minimum standards of care for animals in pet shops are merely a

¹⁰ We note that animal shelters and rescue groups are subject to a prohibition on the sale, transfer or release of dogs and cats to persons for the purpose of research, experimentation or testing. *See* N.Y. AGRIC. & MKTS. LAW §374(5)(b).

codification of those contained in Section 401 of the Agriculture and Markets Law which are already applicable to pet shops in New York City. Therefore we encourage the Council to pass legislation providing enhanced humane housing and handling standards¹¹ applicable to pet shops.

CONCLUSION

For the aforementioned reasons, the Committee supports the proposed legislation and recommends that the Council take into consideration the above recommendations.

Animal Law Committee
Christine Mott, Chair

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¹¹ See Report on A.1655-A/S.4799, *supra*.