

ORDINANCE D-2628-22

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA,
AMENDING CHAPTER 6, ARTICLE 5 DIVISION III, SECTION 6-99 AND SECTION 6-102**

Synopsis: This ordinance updates and strengthens the welfare protections provided to animals within the City’s corporate limits and regulates the sale of dogs and cats in commercial animal establishments.

WHEREAS, pursuant to Indiana Code § 36-8-2-4, the City of Carmel (the “City”) may regulate conduct, use, or possession of property that might endanger the public health, safety, or welfare;

WHEREAS, a significant number of puppies and kittens sold at pet shops come from large-scale, commercial breeding facilities where the health and welfare of the animals are not adequately provided for (“puppy mills” and “kitten mills,” respectively).

WHEREAS, the documented abuses endemic to puppy and kitten mills can lead to health and behavioral issues in the animals bred in those facilities, which many consumers are unaware of when purchasing animals from pet shops. These health and behavioral issues, which may not present themselves until sometime after the purchase of the animal, can impose exorbitant financial and emotional costs on consumers;

WHEREAS, prohibiting the retail sale of puppies and kittens is likely to decrease the demand for puppies and kittens bred in puppy and kitten mills, and is likely to increase demand for animals from animal shelters and rescue organizations;

WHEREAS, it is in the interest of public health, safety, and welfare of the citizens and animals residing in the City to update and strengthen the welfare protections provided to animals within the City’s corporate limits and to adopt reasonable regulations to reduce costs to the City and its residents, protect the citizens of the City who may purchase cats or dogs from an animal establishment, including pet shops, help prevent inhumane breeding conditions, promote community awareness of animal welfare, and foster a more humane environment in the City; and

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. Chapter 6, Article 5, Division III, Section 6-99 of the Carmel City Code is hereby amended and shall read as follows:

“§ 6-99 General Animal Care.

(a) *Definitions.* As used in this Section:

(1) “Adequate Food” means providing the appropriate quantity of non-contaminated and nutritionally adequate food, fed according to age, size, species and breed requirements, which is sufficient to prevent starvation, malnutrition, or risk to the Animal's health. Garbage or spoiled or rancid food is not considered Adequate Food.

- (2) “Adequate Shelter” means shelter that:
- (i) Is structurally sound, maintained in good repair, and constructed with material that protects the Animal from injury;
 - (ii) Allows the Animal easy access in and out;
 - (iii) Has a weather resistant top, bottom, and sides;
 - (iv) Has an opening on no more than one side that allows the Animal to remain dry;
 - (v) Has a floor that is level, dry, and, if necessary, raised to prevent water/snow from entering the structure;
 - (vi) Has a solid roof sloped away from the entrance, is free from cracks, depressions, and rough areas that might be conducive to insects, parasites, and other pests;
 - (vii) Will protect the Animal from all elements of the weather;
 - (viii) Provides access to adequate, dry bedding material, or other means of protection from the weather that will allow the Animal to retain body heat when the temperature is 40 degrees or lower or is colder than what an Animal of that breed and condition can comfortably tolerate, or, the Animal must have continued and uninterrupted access to a climate controlled facility;
 - (ix) Provides access to adequate shade during daylight hours—provided by trees, a tarp, or other means—that prevents overheating or discomfort to the Animal when the temperature is 80 degrees or higher or is warmer than what an Animal of that breed and condition can comfortably tolerate, or, the Animal must have continued and uninterrupted access to a climate-controlled facility; and
 - (x) Is adequately monitored during extreme weather conditions and temperatures (including a heat advisory, wind chill warning, or tornado warning that has been issued by a local, state, or national authority) by a competent person or, continued and uninterrupted access to a climate controlled facility.

(3) “Adequate Space” means any area in which an Animal is confined and is suitable for the Animal’s species, size, age, and breed—allowing the Animal to turn about freely, stand erect with the Animal’s head up, sit, lie, move comfortably, in a normal position, and sufficient so that the Animal is not forced to stand, sit, or lie in excrement. Sick and injured Animals should be confined as directed by an Authorized Veterinarian.

(4) “Adequate Veterinary Care” means care provided under the direction of an Authorized Veterinarian and includes medical care necessary to maintain an Animal’s health and prevent unnecessary suffering. Adequate care is based on age, species and breed, and the potential for a disease or condition to spread to other Animals or humans, including but not limited to:

- (i) ongoing infections;
- (ii) infestation of parasites;
- (iii) any disease; or
- (iv) any medical condition or injury where withholding or neglecting to provide such care would endanger the health or welfare of the Animal.

(5) “Adequate Water” means water that is clean, fresh, and potable water sufficient to prevent dehydration, properly sustain health, and prevent significant risk to the Animal's health. Snow, ice, rancid, or contaminated water is excluded from the definition of Adequate Water.

(6) “Animal” means every living non-human vertebrate creature.

(7) “Authorized Veterinarian” means any person licensed or permitted to practice veterinary medicine under the laws of the state, and having had no previous judgements related to their practice of veterinary medicine.

(8) “Backyard Breeding” or “Backyard Breeder(s)” means individuals who:

(i) Breed one (1) or more dogs and/or cats in the City’s corporate limits and do not comply with the breeder’s permit requirements under Carmel City Code Section 6-100; or

(ii) Breed one (1) or more dogs and/or cats outside the City’s corporate limits and who:

(A) Offer for sale, trade, or other compensation or for free giveaway dogs or cats that are un-weaned (under eight (8) weeks old) and/or diseased;

(B) Fail to timely obtain local breeder’s permit(s), if applicable;

(C) Fail to immunize all dogs and cats offered for sale, trade, or other compensation or for free give away against the most common contagious diseases, including, but not limited to, for dogs, canine distemper, hepatitis, Para influenza, and parvo virus, and, for cats, feline rhinotracheitis, calicivirus, and panleucopenia;

(D) Fail to provide Adequate Food, Adequate Shelter, Adequate Space, Adequate Veterinary Care, and Adequate Water, to all breeding dogs and cats and puppies and kittens;

(E) Fail to screen buyers to ensure the buyer can provide appropriate care and a safe home to the purchased dog(s) and/or cat(s);

(F) Fail to inform buyers of local mandatory spay and neuter laws and breeder’s permit option, if applicable;

(G) Fail to require that sold dog(s) and/or cat(s) be returned should the purchaser be unable to keep the purchased dog(s) and/or cat(s) for any reason;

(H) Fail to furnish a warrant of health for a period of not less than one (1) week with the recommendation to have the dog and/or cat examined by a licensed veterinarian for each dog or cat sold, traded, or given away; or

(H) Permit more than two (2) litters in a 12-month period, per female dog or cat.

This definition does not apply to humane societies, rescue groups, foster homes, or Commercial Breeders, as defined by Indiana Code § 15-21-1-4.

(9) “Livestock” includes horses, cows, goats, pigs, or any other four-legged Animal, excluding dogs and cats, used for pleasure or for profit. Fowl are expressly included within this definition. The regulation of Livestock is generally governed under Indiana Code Title 15 and Indiana Administrative Code Title 345.

(10) “Owner” means any person who owns, harbors, keeps, feeds, maintains, or has lawful possession of an Animal, or knowingly causes or knowingly permits an Animal to be harbored or kept in his or her care or to remain on or about his or her premises for thirty (30) consecutive days or more; provided, however, this shall not include a person hired or acting as custodian of the Animal for its Owner, and shall not include colony caretakers of registered colonies of feral cats.

(11) “Puppy Mill(s)” or “Breeding Mill(s)” means any sized Commercial Animal Establishment that breeds more than one (1) female dog and/or cat at a time and does not adhere to good breeding, care, and sale practices, including but not limited to the following:

(i) Selling puppies and/or kittens without screening the purchaser;

(ii) Selling puppies and/or kittens that are un-weaned (under eight (8) weeks of age) and/or diseased;

- (iii) Isolating breeding dogs and/or cats and/or puppies and/or kittens from human interaction(s);
- (iv) Housing breeding dogs and/or cats and/or puppies and/or kittens in crates, kennels, trailers, garages, barns, etc., without access to adequate light or exercise;
- (v) Failing to provide breeding dogs and/or cats and/or puppies and/or kittens with Adequate Shelter, Adequate Food, Adequate Water, Adequate Space, or Adequate Veterinary Care; or
- (vi) Keeping breeding dogs and/or cats and/or puppies and/or kittens in Unsanitary Conditions.

(12) “Unsanitary Conditions” means Animal housing or quarters, including exercise areas, that endanger or pose a risk to an Animal’s health, including but not limited to:

- (i) Excessive Animal waste, garbage, or trash;
- (ii) Excessive standing water or mud;
- (iii) Rancid or contaminated food or water;
- (iv) Fumes, foul, or noxious odor, air, hazardous chemicals, or poisons;
- (v) Decaying material;
- (vi) Uncontrolled parasite(s) or rodent infestation(s); or
- (vii) Areas that expose the Animal to the risk of injury, illness, or death from nails, screws, broken glass, broken boards, pits, poisons, sharp implements, or other potentially harmful items.

(b) Every person responsible for any Animal located within the City shall ensure that such Animal:

- (1) Has immediate access to Adequate Space.
- (2) Has Adequate Food and Adequate Water.
- (3) Has immediate access to Adequate Shelter (excluding Livestock).
- (4) Receives Adequate Veterinary Care by an Authorized Veterinarian.
- (5) Does not become a public nuisance.
- (6) Does not, unprovoked, bite, kick, butt, claw, assault, attack, or otherwise create a danger to the health and/or safety of:
 - i. Other Animals;
 - ii. A human being lawfully on the Owner’s property; or
 - iii. A human being on property other than the Owner’s property.
- (7) Is not left unattended in a vehicle when the conditions in that vehicle would constitute a health hazard to the Animal.
- (8) Is not transported in the open bed of a vehicle unless confined in an appropriate manner so as to reasonably prevent the Animal from jumping or being thrown from same.
- (9) Does not defecate on the property of another unless the person responsible for the Animal immediately thereafter removes or has removed from such property as much of the feces as is reasonably possible.
- (10) Is not kept in Unsanitary Conditions.

(c) Any person tethering an Animal (excluding Livestock) in the City’s corporate limits shall comply with the following requirements:

- (1) An Animal shall not be tethered for an excessive period of time, and may not be tethered between the hours of 11:00 p.m. and 6:00 a.m. In determining whether the tethering period is excessive, the officer shall take into account the Animal’s breed, age, and condition.
- (2) An Animal shall not be tethered or confined at a vacant structure or premises for any purpose or time when it is not monitored by a competent person who is present at the property for the duration of such tethering or confinement.

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- (3) During the duration of the tethering, the Animal must have Adequate Shelter from the weather.
- (4) During the duration of the tethering, the Animal must be free from becoming entangled with the tether.
- (5) The tether must have operational swivels on both ends.
- (6) The tether must be at least twelve (12) feet in length. If the Animal is attached to a trolley system, the running line must be at least twelve (12) feet in length and the tether length must be greater than the height of the running line.
- (7) An Animal shall not be tethered by use of restraint directly attached to the animal's neck, or in any manner that could harm or cause pain or discomfort to the Animal.
- (8) The tether must not cause physical damage to the Animal's neck or body.
- (9) The tether must be able to move freely in all directions and attached in a manner so that it cannot wrap around vertical items such as a barrel, pole, or tree.
- (10) An Animal shall not be tethered unless it is monitored by a competent person who is present at the property for the duration of such tethering.

A person violating this subsection may be fined up to \$500.00 per occurrence.

- (d) Backyard Breeding and/or Puppy Mills shall not be permitted in the City's corporate boundaries.
- (e) It is unlawful for any person or entity to intentionally or knowingly breed an Animal for the purpose of using the Animal or its offspring in an illegal activity, including, but not limited to, Animal fighting under Indiana Code Chapter 35-46-3.
- (f) It is encouraged that an Animal (excluding livestock), bears one of the following permanent means of identification:
 - (1) A durable collar with a permanent tag bearing the Owner's current name and telephone number; or
 - (2) An implanted microchip with a registered identification number that can be read by a standard microchip scanner.

If an Animal (excluding livestock) that is three (3) months of age or older is found running at large and the Animal is without one of the above permanent means of identification, its Owner shall be fined no less than \$250.00 per occurrence.

(g) Where appropriate, investigating law enforcement may use the Tufts Animal Care and Condition Scales as a tool to assist in determining the appropriate standard of care for a dog's safety and well-being based on its breed, age, body and health condition, and acclimation to the environment and weather conditions.

(h) Citations for violation of this Section may be issued by any City Code Enforcement Officer, Community Service Officer, or any sworn member of the Carmel Police Department, at the discretion of the officer. Any officer empowered to act by law may, at the officer's discretion, impound any Animal if the Owner is believed to have violated this Section and the officer believes that that impoundment is necessary to protect the Animal's welfare. The procedures set forth for under Indiana Code subsections 35-46-3-6(c) through (d), as the same may be amended from time to time, are incorporated herein by reference and shall apply to impoundments from alleged violations under this Section, and a court of competent jurisdiction, at its discretion, may appoint a licensed veterinarian or another appropriate individual to assist the court in this process.

- (i) A person finding and taking possession of a lost or stray Animal in the City's corporate limits must notify the Carmel Police Department within forty-eight (48) hours of finding and taking possession of the Animal. At the discretion of the Carmel Police Department, the lost Animal may be allowed to remain in the custody of the finder, be surrendered to the Hamilton County Human Society, or be cared for by other means. The cost of care, including veterinary and boarding care, for an Animal shall be the responsibility of the Animal's Owner(s). A person finding and taking possession of an Animal is obligated to comply with all rules and regulations of this Section while the Animal is in the finder's custody awaiting return to its actual Owner.
- (j) Nothing in this Section shall prohibit or restrict the use of livestock guard dogs, livestock working dogs, or dogs that are engaged in lawful hunting activities, if the dogs are accompanied and monitored by the Owner or custodian of the dogs.
- (k) Nothing in this Section shall restrict an Owner or keeper from allowing an Animal to be outside for reasonable amounts of time during extreme temperatures to relieve itself and exercise if the Animal is being monitored by a competent person.
- (l) Nothing in the Section shall be deemed to prohibit the humane slaughter of Livestock or poultry in conformance with all applicable rules and regulations of the state board of health and the United States Food and Drug Administration.
- (m) Nothing in this Section shall prohibit hunting or fishing, as permitted by the law of the state and the rules and regulations of the Indiana Department of Natural Resources.
- (n) Nothing in this Section shall prohibit the use of commercially sold poisons or devices for the control of rats, mice, groundhogs, moles, or other similar rodents as long as the person using the poisons or devices uses reasonable care to ensure that no other Animals are exposed to the risks imposed by the poisons or devices.
- (o) Except as otherwise stated in this Section, a person violating this Section may be fined up to \$2,500.00 per occurrence.
- (p) Except as otherwise set forth under this Section, any violation under this Section shall be deemed a strict liability offense. If a court finds that a person has violated this Section the court may, in its discretion, order other owned Animals be seized by law enforcement with ownership relinquished to the Humane Society for Hamilton County or another appropriate entity, order the forfeiture of future Animal ownership within the City of Carmel's corporate limits, order counseling, and/or order the Animal's Owner to pay restitution.
- (q) This Section does not to replace state laws but is considered supplementary and in addition to the laws of the state and is to be fully enforced where not inconsistent with those laws. Where a person recklessly, knowingly, or intentionally "abandons" or "neglects" an Animal, as those terms are defined under Indiana Code Chapter 35-46-3, it is a violation of Indiana Code § 35-46-3-7. Any violation that is a violation of state law shall be enforced under the state statute."

Section 3. Chapter 6, Article 5, Division III, Section 6-102 of the Carmel City Code is hereby amended and shall read as follows:

“§ 6-102 Commercial Animal Establishments.

(a) Definitions:

“**Animal Care Facility**” means an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations.

“**Animal Rescue Organization**” means 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 in 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 from a breeder or broker in exchange for payment or compensation, or resells dogs obtained from a breeder or broker and provides payment or compensation to such breeder or broker.

“**Commercial Animal Establishment**” or “**Establishment**” includes but is not limited to:

- (1) Auction;
- (2) Flea market;
- (3) Circus;
- (4) Riding school or stable;
- (5) Veterinary hospital;
- (6) Zoological Park;
- (7) Pet shop;
- (8) Pet grooming shop;
- (9) Kennels;
- (10) Permanent fairgrounds

The definition does not include an Animal Care Facility or Animal Rescue Organization.

(b) Standards for Commercial Animal Establishments include all of the following:

- (1) The Establishment must be operated in such a manner as not to constitute a public nuisance;
- (2) The Establishment shall provide an isolation area for animals that are sick or diseased to be placed in so as not to spread disease to healthy animals;
- (3) All animals must be kept caged within a secure enclosure that provides for Adequate Space as defined in Carmel City Code Section 6-99, or they must be under the control of the Owner at all times;
- (4) The Establishment must provide Adequate Shelter, Adequate Food, Adequate Water, Adequate Space, and Adequate Veterinary Care, as those terms are defined in Carmel City Code Section 6-99, to all animals kept on the premises, and must follow the requirements outlined in Section 6-99 as it pertains to animals kept outdoors;
- (5) The Establishment shall not engage in any acts of cruelty, mistreatment, or neglect;
- (6) The Establishment will not sell animals that are un-weaned or diseased;

- (7) The Establishment shall not sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of cats or dogs. Nothing in this section shall prohibit a Commercial Animal Establishment from collaborating with Animal Care Facilities or Animal Rescue Organizations to offer space for such entities to showcase adoptable dogs and cats; and
- (8) Animals are not kept in Unsanitary Conditions, as defined in Carmel City Code Section 6-99.

(c) Any City Code Enforcement Officer, Community Service Officer, or any sworn member of the Carmel Police Department may inspect any public area of a Commercial Animal Establishment's premises during business hours and may request of the Establishment the opportunity to inspect any other area of the Establishment's premises where animals are kept. If the Commercial Animal Establishment refuses to allow inspection, Corporation Counsel may petition a court of competent jurisdiction for an order allowing the inspection of the premises.

(d) All Commercial Animal Establishments, other than a circus temporarily located within the City's corporate limits for less than ten (10) days per year, shall be located at a permanent building or facility and shall be permitted at that location by a special use permit or other applicable zoning permit, commercial breeding, and/or local breeder's permit, where applicable.

(e) Citations for violation of this Section may be issued by any City Code Enforcement Officer, Community Service Officer, or any sworn member of the Carmel Police Department, at the officer's discretion.

(f) A person violating this Section may be fined up to \$2,500.00 per occurrence.

(g) This Section does not to replace state laws but is considered supplementary and in addition to the laws of the state and is to be fully enforced where not inconsistent with those laws. Any violation that is a violation of state law shall be enforced under the state statute."

Section 4. The remaining provisions of Carmel City Code Chapter 6, Article 5, Division III are not affected by this Ordinance and shall remain in full force and effect.

Section 5. All prior ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed, to the extent of such inconsistency only, as of the effective date of this Ordinance, such repeal to have prospective effect only. However, the repeal or amendment by this Ordinance of any other ordinance does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this Ordinance. Those rights, liabilities and proceedings are continued and penalties shall be imposed and enforced under such repealed or amended ordinance as if this Ordinance had not been adopted.

Section 6. If any portion of this Ordinance is for any reason declared to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

Section 7. This Ordinance shall be in full force and effect from and after the date of its passage and signing by the Mayor and such publication as required by law.

PASSED by the Common Council of the City of Carmel, Indiana, this ____ day of _____, 20____, by a vote of ____ ayes and ____ nays.

COMMON COUNCIL FOR THE CITY OF CARMEL

Kevin D. Rider, President

Jeff Worrell, Vice-President

Adam Aasen

Timothy J. Hannon

Laura D. Campbell

H. Bruce Kimball

Sue Finkam

Miles Nelson

Anthony Green

ATTEST:

Sue Wolfgang, Clerk

Presented by me to the Mayor of the City of Carmel, Indiana this ____ day of _____ 20____, at _____ .M.

Sue Wolfgang, Clerk

Approved by me, Mayor of the City of Carmel, Indiana, this ____ day of _____ 20____, at _____ .M.

James Brainard, Mayor

ATTEST:

Sue Wolfgang, Clerk