

Dear Councilmembers,

Attached are my client's responses to the Council's questions and the assertions made by HSUS in its responses. We will be providing some additional information and responses to other claims made in the "Summary of Working Group Research" as soon as possible.

Thank you.

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**Tempe Pet Sales Ordinance  
Responses to City Council Questions and Working Group Statements**

**1. *Are there legal restrictions on where pet stores may obtain puppies?***

- Arizona pet stores are not regulated in terms of where they may obtain puppies, but the following sources must be USDA licensed and agree to unannounced federal (and often state) inspections in order to sell to a pet store:
  - breeders with five or more breeding females
  - anyone buying, selling, or trading pets in wholesale channels
  - privately operated animal shelters, humane societies, and rescue groups.(See [https://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf).)

**2. *Of the "puppy mills" that get identified or "busted" that we see in the news, what percentage are licensed facilities?***

- As far as we are aware, there have been zero documented "raids" of USDA licensed breeders.

- Contrary to the misleading claim that “[i]t’s difficult to track them all or to give a percentage,” HSUS issues annual reports on USDA breeders and is easily able to identify whether a breeder that has been shut down is licensed by the USDA.
- Here’s what HSUS told the USDA in an August 15, 2012 letter:

*“Over the past 6 years, The HSUS has assisted in removing more than 8,000 dogs and puppies from substandard breeding facilities where the animals were found suffering in unsanitary, overcrowded and inhumane conditions. Almost all of the facilities were selling the dogs over the internet or by mail, and were not licensed by the USDA.”*
- In the Phoenix lawsuit, HSUS produced a list of breeders it has assisted in shutting down since 2006. Those records show that only two of the breeders ever sold to pet stores. One of them, a Virginia breeder, was shut down in 2007. The other, a New Jersey breeder, was shut down in 2010. Neither were licensed at the time.
- Ed Sayres testified that he authorized a dozen seizures at commercial breeding facilities during his 10 years as CEO of ASPCA and none involved USDA-regulated facilities. (Statement of Ed Sayres to Tempe City Counsel.)

- Even though USDA inspections prevent these horrific occurrences at licensed facilities, HSUS, ASPCA and other organizations use the media coverage of “raids” of unlicensed breeders to smear all commercial breeders.

- The Senior Director of HSUS’s “Stop Puppy Mills” campaign testified as follows in the Phoenix case:

Q: Do you agree with me that the term “puppy mill” is a derogatory term?

A: Yes

Q: So when you refer to a breeder as a puppy mill, you intend for the hearer of that term to react negatively toward that breeder, correct?

A: Yes

(Deposition of Melanie Kahn, *Puppies ‘N Love v. City of Phoenix*, at p. 50.)

- She also admitted, however, that commercial breeders as a group cannot be condemned as inhumane, and that what matters is how they care for their animals:

Q: Do you consider all USDA- licensed breeders puppy mills?

A: No

Q: How do you distinguish between USDA-licensed breeders that are puppy mills and those that aren’t?

A: Humane versus inhumane treatment of animals

....

Q: Is it possible for a breeder that has, let’s say, 50 adult dogs to be a responsible breeder?

A: Sure.

Q: How about a hundred?

A: Yes.

Q: 200?

A: Yes.

Q: The number of dogs isn’t the determining factor?

A: No.

Q: Okay. The determining factor relates more to how they take care of the dogs?

A: Correct.

....

Q: [I]s it possible to be a commercial kennel that’s licensed and inspected by the USDA to have a hundred adults dogs, to sell directly to a pet store, and in your mind to be a responsible breeder?

A: If they are treating their dogs humanely.

(Deposition of Melanie Kahn, *Puppies ‘N Love v. City of Phoenix*, at p. 50.)

- The sad reality is that most seizures, or “raids,” involve elderly, infirm, or mentally ill individuals that fail to recognize they can no longer care for their dogs. In many cases, the dogs are voluntarily surrendered to authorities.
  - The Missouri Pet Breeders Association and other breeder groups have programs to assist breeders unable to care for their dogs due to illness or other personal circumstances, and to help facilitate the closure of kennels when necessary.
  - USDA inspections identify such situations before they become critical. As part of the USDA’s enhanced enforcement plan (more on this below), cases can be designated “high priority” depending on the severity of animal suffering or history of noncompliance, resulting in more frequent inspections and expedited enforcement to ensure the welfare of animals in substandard facilities.
  - According to news reports, the Nebraska breeder mentioned in HSUS’s response voluntarily surrendered her 31 dogs. The director of the shelter where the dogs were taken reported that they “are mostly between three and nine years old, and needed haircuts and baths, but were in good shape for the most part. He says many are timid, but not terrified.” (See <http://www.nebraska.tv/story/30988504/grand-island-shelter-takes-puppy-mill-dogs>.)

**3. *Is there any evidence that puppy mill numbers are decreasing as a result of city ordinances banning puppy sales?***

- No evidence has been offered to support this claim. Instead, an overbroad ban harms responsible breeders by blocking their access to local markets and encouraging unregulated breeding and internet sales. Numerous animal welfare experts agree that implementing strong sourcing restrictions is a better option.
  - Petco and Petsmart oppose commercial pet sales bans because there is no evidence they work and are likely to have unintended negative consequences. Petco has advised the Tempe city council that it does “not believe pet sales bans effectively accomplish” the objective of combatting substandard dog breeding practices and instead “serve to drive the supply of pets out of public and regulatory view, onto the internet and out of the country, increasing the risk of animal mistreatment and ultimately contributing to the cruelty we seek to end.”
  - The American Veterinary Medical Association has issued “guidance for governments considering the creation or augmentation of policies regulating dog breeders and retailers.” The AVMA supports sensible breeding standards, not banning commercial pet sales. (See

<https://www.avma.org/Advocacy/StateAndLocal/Pages/state-issues-welfare.aspx>.)

- The Chicago Veterinary Medical Association issued a public statement strongly opposing that city's commercial pet sales ban. (See <http://www.chicagovma.org/cvma-statement-on-city-of-chicago-proposed-companion-animal-and-consumer-protection-ordinance/>.) According to the Chicago AVMA, "a pet sold in a pet store has the greatest chance of receiving the highest quality veterinary care should it become ill within the first year of its life as a result of IL Public Act 098-0509 [Illinois puppy lemon law]. The elimination of consumer choice through prohibiting puppy and kitten sales in reputable pet stores can result in consumers and pets suffering from a lack of regulation when seeking alternative, unregulated sources outside City of Chicago limits and/or outside the State of Illinois."
- The former CEO of the ASPCA, Ed Sayres, who once authorized spending millions to discourage purchasing from pet stores, now recognizes that banning commercial pet sales is misguided public policy based on narratives that are grossly misleading and rely on emotional rhetoric. Despite the criticism he has received, Mr. Sayres testified in the Phoenix case that he has taken this stand because he is genuinely concerned with the well-being of animals and believes it is important that animal policy in this country be made based on clear thinking, not logical flaws and appeals to emotion.
- After reviewing the evidence submitted in the Phoenix lawsuit, Judge David Campbell said that Puppies 'N Love, the Mineos' store in Phoenix, appears to be an "exemplary pet store" that "avoids buying from puppy mills and works hard to ensure that its puppies have been raised in a humane and caring environment." If that is the case, it stands to reason that banning the sale of puppies in Tempe will have the largest impact on humane breeders.
- The Mineos are almost certainly not unique. Pet stores are under enormous scrutiny from both the buying public and animal activists. Many states, including Arizona, require the disclosure of breeder names and location. USDA inspection reports have been available online since 2009. And HSUS and other activists routinely post reports on USDA breeders online. It is very easy to see who pet stores buy from. They are not buying from substandard breeders, and those who are do not stay in business very long. Even aside from personal ethics, it is not at all in their best interest from a purely financial perspective. Nothing can be more toxic to a store than to be offering poor quality puppies or to be associated with substandard breeders. With the pervasive nature of social media, responsible store owners work very hard to ensure they deal with humane breeders that exceed the USDA's standards.

- A sales ban will counterproductively drive consumers to the unregulated internet market, which cities and states have even less ability to regulate. By contrast, implementing sourcing standards will incentive breeders to meet higher standards.
  - Pet sales bans will not decrease the public’s desire to buy a pet of their choice.
  - The supply-demand imbalance for high-quality puppies from regulated sources has never been greater. As the economy has rebounded, the demand continues to grow. Since the Phoenix ban was passed in late 2013, the number of puppies sold at the Paradise Valley location has nearly *doubled*.
  - Breeders that are not able to sell to pet stores will simply advertise on internet sites (such as PurebredBreeders.com, PuppyFind.com, NextDayPets.com, Craigslist, etc.) where they are forced into direct competition with breeders that do not share their high standards and where consumers are less able to distinguish good breeders from bad.
  - According to a 2010 USDA report, 81% of large breeders who sold animals over the internet did not have a USDA license.
  - Although these breeders are now required to be licensed, the relatively small increase in the number of breeders that have become licensed over the past two years shows that many continue to flout the law.
  - By contrast, when Missouri and Pennsylvania enacted tough new standards for breeders, large numbers left the industry. In Missouri alone, the number of licensed breeders fell from over 1,400 in 2010 to fewer than 900 today.
  - Purdue University’s Center for Animal Welfare Science is developing science-based breeding standards, which are expected to be released soon. (See <http://vet.purdue.edu/CAWS/engagement.php>.) These standards are likely to be highly influential as the USDA considers a petition to revise its regulations in the near future.
  
- Leighton Oosthuisen, the owner of the largest dog training business in the Valley employing 25 dog trainers (Partners Dog School), has testified that a sales ban will primarily benefit poor quality unregulated breeders that do not take care to match suitable breeding candidates. According to his expert report in the Phoenix case:
  - “There simply aren’t that many good quality breeders in the Phoenix area, and those that do have high standards and offer high-quality puppies to the public do not breed their dogs that often, resulting in a limited supply of such puppies. These breeders also often have waiting lists of people who want to buy their puppies.”
  - “Unlike individuals, well-managed pet stores deal with breeders on an ongoing basis and know which breeders consistently have high standards and offer high-quality puppies.”
  - By contrast, “it is extremely difficult for prospective owners who might acquire a pet dog once every 10 years to determine which breeders are good and which are not.”

- “Prohibiting the sale of puppies from pet stores does nothing for consumers, which are essentially left to their own devices to ‘prospect’ for good breeders.”
- Though publicly proclaiming they are only seeking to promote humane treatment, some proponents openly promote overbroad pet store bans as a way to put economic pressure on the USDA and other states—precisely because such bans will harm responsible commercial breeders. This is both wrong-headed and not in keeping with our constitutional tradition under the Interstate Commerce Clause.
  - See, for example, *Nat’l Solid Waste Mgt. Ass’n v. Meyer*, 63 F.3d 652 (7th Cir. 1995), striking down a similarly-motivated Wisconsin law:

“Wisconsin’s solid waste legislation conditions the use of Wisconsin landfills by non-Wisconsin waste generators on their home communities’ adoption and enforcement of Wisconsin recycling standards; all persons in that non-Wisconsin community must adhere to the Wisconsin standards whether or not they dump their waste in Wisconsin. If the out-of-state community does not conform to the Wisconsin way of doing things, no waste generator in that community may utilize a Wisconsin disposal site. . . . The practical impact of the Wisconsin statute on economic activity completely outside the State reveals its basic infirmity: It essentially controls the conduct of those engaged in commerce occurring wholly outside the State of Wisconsin and therefore directly regulates interstate commerce.”

**4. *Is there any evidence showing a correlation between passing an ordinance like this and a decrease in euthanasia rates?***

- No evidence supports the claim that euthanasia rates are being impacted as a result of these ordinances.
  - The cited statistics only purport to show correlation, not causation. However, they fail to compare the lower euthanasia rates in cities that have adopted pet store bans with those that have not. Such a comparison shows that euthanasia rates have been decreasing significantly across-the-board, including in cities that have not banned commercial pet sales.
  - For example, the euthanasia rate in Maricopa County has fallen dramatically over the last ten years, largely as a result of spay-neuter initiatives and increases in adoptions and transfers to community groups. According to an MCACC press release, the euthanasia rate for dogs and cats in Maricopa County fell by 62% between 2005 and 2013, and no healthy dogs or cats have been euthanized since 2005. Because other cities are using the same methods, these factors (not pet store bans) likely explain the similar decreases other cities have seen.

- West Hollywood, CA is offered as an example of a city that was able to lower its euthanasia rate by enacting a pet store ban. However, the city had no pet stores at the time.
- Albuquerque had one pet store when it passed its ban, but the store moved to the nearby suburb of Rio Rancho, making it highly unlikely that Albuquerque's ban had anything to do with that city's lower euthanasia rate.
- There are many often overlooked factors that cast doubt on the assertion that banning pet stores will lead to an increase in adoptions and decrease in euthanasia, as well as potentially serious unintended consequences.
  - The demand for adoptable dogs in Maricopa County appears to exceed the available supply. For each of the past three years, the Arizona Animal Welfare League & SPCA (AAWL) has been importing between 600 and 800 dogs from outside the County, the great majority of which are from Los Angeles and Las Cruces, NM. According to the testimony of AAWL President Judith Gardner, AAWL is doing this because the dogs available for adoption at MCACC are "not the kinds of dogs people . . . are looking for." (Deposition of Judith Gardner at p. 148-49).
  - Documents produced by MCACC showed that 395 out of 522 dogs available for adoption in September 2013, or approximately 75%, were pit bulls, chihuahas, or related mixes. There is no reason to believe the numbers are different today.
  - There are serious public safety and consumer protection issues with decreasing euthanasia rates. According to MCACC statistics, 17,473 dogs were euthanized in 2013. However, of these, 15,473 were "Unhealthy & Unteatable," 1,828 were "Treatable-Manageable," and 602 were "Treatable-Rehabilitatable." The vast majority of euthanized dogs were pit bulls and Chihuahuas and related mixes, which are notoriously difficult to rehome because of their unknown origin and risk for aggressive behavior.
  - Albuquerque's shelter director was severely criticized and eventually removed from her position for allowing dangerous dogs to be adopted to the public. News coverage of the controversy is available here: <http://www.abqjournal.com/575533/news/dangerous-dog-coverup-alleged-by-awd-workers.html>. The City of Albuquerque Inspector General's report is at <https://www.cabq.gov/inspectorgeneral/documents/15-201-final-report-09042015.pdf>.
  - No studies or other evidence supports the assertion that puppies from pet stores are a significant contributor to the problem of homeless pets. According to one study, 22% of dogs relinquished to shelters were obtained from a shelter while only 3.9% were from a pet store. Dogs

whose purchase price exceeded \$400 were among the least likely to be relinquished. (See *Characteristics of Shelter-Relinquished Animals and Their Owners Compared with Animals and Their Owners in U.S. Pet-Ownning Households*, Journal of Applied Animal Welfare Science 3(3), 179-201 (2000), available at <http://shelterproject.naiaonline.org/news/characteristics-of-shelter-relinquished-animals-and-their-owners-compared-with-animals-and-their-own.>)

**5. What is the difference between direct and indirect violations? Aren't some violations more serious than others?**

- USDA regulations clearly distinguish between “direct” and “indirect” non-compliance items and treat direct violations more severely. Inspectors are trained in how to distinguish between the two types, and supervisors accompany inspectors and have conducted follow up inspections to ensure consistency.
  - A “direct” non-compliance item is one that “is currently adversely affecting the health and well-being of the animal, or has the high potential to adversely affect the health and well-being of the animal in the near or immediate future.” It includes problems like inadequate veterinary care, dental care, sanitation, grooming; insufficient or substandard housing or floor space; insufficient opportunity for exercise, etc.—i.e., the “puppy mill” conditions all sensible people oppose.
  - Indirect violations are minor noncompliance issues that do not meet this standard.
  - A facility with a “direct” violation is typically given no more than 14 days to correct the problem and must be reinspected within 45 days, even if the problem is corrected during the inspection, ensuring greater scrutiny of breeders with serious violations.  
(See USDA Animal Welfare Inspection Guide at 2-7, available at [https://www.aphis.usda.gov/animal\\_welfare/downloads/Animal%20Care%20Inspection%20Guide.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/Animal%20Care%20Inspection%20Guide.pdf)).
- Anyone reviewing a USDA inspection report can see that there is a significant difference between the two types of noncompliance. For example, Susie Reid, one of the Missouri breeders who testified at the study group session, was cited in March 2014 for an “indirect” noncompliance because one of her English bulldogs had pulled its bedding material from the inside portion of its kennel to the outside portion.
- Although USDA enforcement was criticized in the 2010 OIG Report, the agency has significantly changed its policy direction regarding enforcement since then.
  - It is important to recognize that the 2010 OIG Report addresses the USDA’s failure to ensure humane treatment by “problematic dealers,” i.e., those with serious and/or repeat violations.

- **None of the breeders that Animal Kingdom buys from had any direct noncompliance items on their three most recent inspection reports and no more than three non-serious indirect noncompliance items on their latest inspection report.** If a breeder receives a direct violation or a serious or repeat indirect violation, it is immediately placed on the company's Do Not Buy list. To date, the store's breeders have been highly motivated to comply with these standards.
- In response to the 2010 Report, the USDA has taken aggressive action to improve enforcement against problematic dealers and consistency in how violations are cited. More inspectors have been added, increased training and supervision has been employed, the number of enforcement actions has significantly increased, and the average fine has gone from \$3,713 to \$10,178.
- Information on the USA's enhanced enforcement program is available at [https://www.aphis.usda.gov/animal\\_welfare/downloads/awa/AWA\\_Enforcement.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/awa/AWA_Enforcement.pdf) [https://www.aphis.usda.gov/animal\\_welfare/downloads/meetings/ac\\_national\\_meeting\\_summary.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/meetings/ac_national_meeting_summary.pdf) and <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3358977/>
- HSUS's statement that it "has seen evidence that suggests the industry is putting pressure on the USDA to lay off the direct violations" is totally unsupported. Even if true, our proposed alternative would preclude buying from any breeder with an indirect noncompliance under Section 2.40 of the regulations related to inadequate veterinary care or three or more other indirect violations.
- The criticism that USDA standards are "shockingly" low might make for good rhetoric, but the regulations have primarily been criticized in two respects: (a) inadequate enclosure size, and (b) no requirement for exercise and socialization outside the primary enclosure. What is not stated, however, is that breeders only follow the minimum requirements. Anyone with knowledge of USDA breeders knows this is absolutely untrue. It is unfair to prejudge USDA breeders as unscrupulous based on a small minority of largely unlicensed breeders that do not provide humane care.
- **It is even more unfair to destroy a successful local business that creates good-paying jobs on the same basis.**  
<http://www.youobserver.com/article/puppies-trump-people>

**6. *Are there different types of legislation being tried in other places that don't involve a ban like this? What do they include instead and how are they working?***

- No states have adopted blanket bans. Several states have adopted sourcing restrictions based on USDA violations and/or disclosure requirements:
  - In 2014, Connecticut restricted purchases from USDA breeders with certain noncompliance items (i.e., no direct violations, no more than three indirect noncompliance items, etc.)
  - In 2015, Virginia adopted similar sourcing restrictions based on USDA violations.
  - In 2015, New Jersey adopted similar sourcing restrictions based on USDA violations and disclosure requirements.
  
- Cities have enacted a wide variety of laws other than blanket bans.
  - Some cities have passed a ban but exempted existing pet stores.
  - Some cities have not passed a ban but put a moratorium on new pet stores to allow further study. (See <http://www.miamiherald.com/news/local/community/miami-dade/article2232023.html>).
  - Some cities have passed a ban but delayed the effective date to avoid hardship to store owners. For example, Las Vegas recently enacted a ban but delayed the effective date for two years. (See <http://www.reviewjournal.com/news/las-vegas/las-vegas-votes-ban-some-dog-cat-pig-sales-video>).
  - Cities that have chosen to regulate, rather than ban, pet stores have largely adopted restrictions on purchasing tied to certain specified USDA violations. Others have adopted additional disclosure requirements. Orland Park, IL is an example. (See <http://www.chicagotribune.com/suburbs/orland-park-homer-glen/ct-orland-pet-shop-regulations-tl-ssw-0108-20150106-story.html>).
  - With only one exception, every city within Cook County that has a pet store opted out of Cook County's blanket ban. Discussions are ongoing with the one exception.
  
- HSUS's bald assertions that these cities' laws are "not being enforced and are having very little impact" and that New Jersey's law "is simply not working" are unsupported and self-serving. Why are they not working? Why are they not being enforced? How are pet stores supposedly evading these laws? HSUS's desire to "ban internet sales" is not realistic.

- Enforcement of sourcing restrictions tied to USDA violations would only require reviewing a report of the pet store's purchases with USDA inspection reports, which can be supplied by the pet store. This would not be difficult or inordinately time-consuming. This approach would have the benefit of ratcheting up the standards as USDA regulations are revised, as they are likely to be.

**7. *In the stores using a more humane model, what happens to the rescue dogs if they don't sell?***

- Ordinances that permit pet stores to sell dogs obtained from humane societies, rescues, etc. presume that pet stores can "buy" adoptable dogs from these sources. This could not happen unless the shelter or rescue is licensed and regulated as a Class B Dealer, as otherwise shelters and rescues would be prohibited by USDA regulations from selling to pet stores. (See [https://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf)). No shelters or rescues have done this.
- Some stores have made space available for shelters and rescues to adopt out dogs. The Mineos are already doing this at their *Trendy Pet & Rescue* store at the Scottsdale Fashion Square Mall. Even with greatly reduced rent, the store is not profitable.
- AAWL is currently importing adoptable dogs from other states because, according to its President, the dogs available at MCACC "are not the kinds of dogs people . . . are looking for." (Deposition of Judith Gardner at p. 148-49). In short, highly adoptable smaller dogs don't need help, and larger breed dogs are not appropriate for a pet store environment.
- Judge Campbell concluded that "Plaintiffs credibly assert that their only lawful choice under the Ordinance is to close the doors of Puppies 'N Love and lay off their employees. The Court finds that Plaintiffs have shown a likelihood of irreparable harm if the Ordinance is enforced." (Preliminary Injunction at p. 5, *Puppies 'N Love v. City of Phoenix*)