

ORDINANCE NO. O2016.45

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 6 OF THE TEMPE CITY CODE RELATING TO ANIMALS, IN GENERAL, BY AMENDING ARTICLE III, RELATING TO THE PROHIBITION ON THE SALE OF CATS AND DOGS.

WHEREAS, the purpose of this ordinance is to promote the health, safety and welfare of the residents of Tempe, Arizona, as the residents are affected by the treatment and rescue of sick, injured, abandoned and endangered animals, and bear the cost for shelter and veterinary services for animals within the Tempe city limits;

WHEREAS, the Arizona Constitution, Art. 13, Sec. 2, authorizes a charter city to exercise all powers granted to it by its charter;

WHEREAS, the Tempe City Charter vests policymaking authority in the Tempe City Council and provides for the amendment of the Tempe City Code (Sec. 2.04; 2.11);

WHEREAS, the prohibition on the sale of cats and dogs, except for private breeders, would result in a reduction of the number of abandoned and endangered animals that are forced into shelters such as those established by the Maricopa County Animal Care & Control Service Agency, the Arizona Humane Society and other privately-run shelters;

WHEREAS, the prohibition on the sale of cats and dogs, except for private breeders, would result in a reduction of the attendant costs to Tempe residents for abandoned and endangered animals' treatment and shelter;

WHEREAS, the prohibition on the sale of cats and dogs, except for private breeders, would result in an increased opportunity for the fostering and adoption of abandoned and endangered animals in Tempe;

WHEREAS, the State of Arizona passed legislation expressly claiming to preempt a city from imposing requirements on pet dealers that exceed the requirements of A.R.S. § 49-1799.10 or penalties prescribed by A.R.S. § 49-1799.08, and solely for this reason, the following amendments to the Tempe City Code are hereby enacted; and,

WHEREAS, the City of Tempe, Arizona, hereby expressly reserves all rights under the law and in equity, to dispute the authority of the State of Arizona to preempt the field of law concerning the sale of dogs and cats in the Tempe city limits as this is a matter of local, rather than statewide, concern.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 6, Article III, of the Tempe City Code is hereby amended to read as follows:

Sec. 6-54. Prohibition on sale of cats and dogs.

(A) Definitions:

- (1) *Animal rescue organization* means any nonprofit organization properly registered under § 501(c)(3) of the Internal Revenue Code, whose mission, in whole or in part is the placement of rescued dogs or cats and which does not obtain dogs or cats from a breeder or broker for payment or compensation.
- (2) *Animal shelter* means any establishment maintained by Maricopa County, the City of Tempe, or any other city, county, or state for the confinement and maintenance of rescued dogs, cats, and other animals that come into their custody in the performance of their official duties together with any establishment maintained by a nonprofit organization for the relief of suffering of dogs and other animals provided that such establishment maintains facilities under the supervision of a licensed veterinarian for the confinement, maintenance, safekeeping and control of dogs and other animals that come into its custody. FOR PURPOSES OF THIS SECTION, A PUBLICLY OPERATED POUND SHALL BE CONSIDERED AN ANIMAL SHELTER.
- (3) *Pet dealer* means any person who owns or operates a pet shop.
- (4) *Pet shop* means a commercial establishment that engages in a for-profit business of selling at retail cats, dogs, or other animals. Pet shop does not mean a publicly operated pound or a private, charitable nonprofit humane society. Pet shop does not mean a transaction of an isolated nature made by a person who neither represents himself or herself to be nor is engaged in a business subject to a tax imposed by the Tempe City Code, Chapter 16.

~~(b) No pet shop or pet dealer shall display, sell, deliver, offer for sale, barter, auction, give away, broker, or otherwise transfer or dispose of a dog or cat, unless that dog or cat was obtained from:~~

- ~~(1) An animal shelter;~~
- ~~(2) A private, charitable, nonprofit humane society or publicly operated nonprofit animal rescue organization; or~~
- ~~(3) An animal shelter, nonprofit humane society or nonprofit animal rescue organization that operates out of or in connection with a pet shop.~~

~~— (c) All pet shops and pet dealers are required to maintain records, for a period of one (1) year from the date of acquisition, listing the source of all dogs or cats under their ownership, custody or control, in a form prescribed by the City Manager. Records shall be immediately available, upon request, to law enforcement, code compliance officials, and any other city employees charged with enforcing the provisions of this section.~~

~~— (d) This section does not apply to:~~

~~— (1) A person or establishment which displays, sells, delivers, offers for sale, barter, auctions, gives away, brokers, or otherwise transfers or disposes of only dogs or cats, directly to the general public at retail, that were bred and reared on the premises of the person or establishment, of no more than two (2) litters per year total;~~

~~— (2) An animal shelter;~~

~~— (3) A private, charitable, nonprofit humane society or publicly operated nonprofit animal rescue organization; or~~

~~— (4) An animal shelter, nonprofit humane society or nonprofit animal rescue organization that operates out of or in connection with a pet shop for adopting animals to the public on a cost recovery basis only.~~

~~— (e) Nothing in this section shall prevent a pet shop or pet dealer from providing space and appropriate care for animals owned by an animal shelter, nonprofit humane society or nonprofit animal rescue agency and maintained at a pet shop for the purpose of adopting those animals to the public on a cost recovery basis only.~~

~~— (f) Records of acquisition and adoption pursuant to subsection (c) shall be retained for a period of one (1) year to confirm compliance with this section. Such records are subject to audit and review by the City Manager or designee, upon reasonable request by the city.~~

(B) A PET SHOP OR PET DEALER MAY NOT OBTAIN A DOG OR CAT FOR RESALE OR SELL OR OFFER FOR SALE ANY DOG OR CAT OBTAINED FROM A PERSON WHO IS REQUIRED TO BE LICENSED BY THE PET DEALER REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE UNDER THE ANIMAL WELFARE ACT (7 UNITED STATES CODE SECTIONS 2131 THROUGH 2159) IF ANY OF THE FOLLOWING APPLIES:

- (1) THE PERSON IS NOT CURRENTLY LICENSED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE UNDER THE ANIMAL WELFARE ACT (7 UNITED STATES CODE SECTIONS 2131 THROUGH 2159).

- (2) WITHIN TWO YEARS BEFORE OBTAINING THE DOG OR CAT THE PERSON COMMITS A DIRECT VIOLATION OF ANY OF THE PET DEALER REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE UNDER THE ANIMAL WELFARE ACT (7 UNITED STATES CODE SECTIONS 2131 THROUGH 2159).
- (3) THE PERSON RECEIVES AN INDIRECT NO ACCESS VIOLATION ON EACH OF THE TWO MOST RECENT INSPECTION REPORTS ISSUED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE UNDER THE ANIMAL WELFARE ACT (7 UNITED STATES CODE SECTIONS 2131 THROUGH 2159).
- (4) THE PERSON COMMITS THREE OR MORE INDIRECT VIOLATIONS OF THE PET DEALER REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE DURING THE TWO-YEAR PERIOD BEFORE OBTAINING THE DOG OR CAT FOR VIOLATIONS RELATING TO THE HEALTH OR WELFARE OF THE ANIMAL AND THE VIOLATIONS WERE NOT ADMINISTRATIVE IN NATURE. THE INDIRECT VIOLATIONS DESCRIBED IN THIS PARAGRAPH DO NOT INCLUDE A VIOLATION DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION.

(C) A PET SHOP OR PET DEALER MAY NOT OBTAIN A DOG OR CAT FOR RESALE OR SELL OR OFFER FOR SALE ANY DOG OR CAT OBTAINED FROM A PERSON WHO DIRECTLY OR INDIRECTLY OBTAINED A DOG OR CAT FROM A PERSON DESCRIBED IN SUBSECTION A OF THIS SECTION. A PET SHOP OR PET DEALER IS PRESUMED TO HAVE ACTED IN GOOD FAITH AND TO HAVE SATISFIED ITS OBLIGATION TO ASCERTAIN WHETHER A PERSON MEETS THE CRITERIA DESCRIBED IN SUBSECTION A OF THIS SECTION IF, WHEN PLACING AN ORDER TO OBTAIN A DOG OR CAT FOR SALE OR RESALE, THE PET SHOP OR PET DEALER CONDUCTS A SEARCH FOR INSPECTION REPORTS OF THE BREEDER ON THE ANIMAL CARE INFORMATION SYSTEM SEARCH TOOL MAINTAINED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE.

(D) NOTWITHSTANDING SUBSECTIONS B AND C OF THIS SECTION, A PET SHOP OR PET DEALER MAY OBTAIN A DOG OR CAT FOR RESALE OR SELL OR OFFER FOR SALE ANY DOG OR CAT OBTAINED FROM A PUBLICLY OPERATED POUND OR A PRIVATE, CHARITABLE NONPROFIT HUMANE SOCIETY OR FROM ANY ANIMAL ADOPTION ACTIVITY CONDUCTED BY A POUND OR HUMANE SOCIETY.

(E) A PET DEALER SHALL MAINTAIN RECORDS VERIFYING ITS COMPLIANCE WITH THIS SECTION FOR AT LEAST TWO YEARS AFTER OBTAINING THE DOG OR CAT TO BE SOLD OR OFFERED FOR SALE. RECORDS MAINTAINED PURSUANT TO THIS SUBSECTION SHALL BE OPEN TO INSPECTION ON REQUEST BY A MUNICIPAL OR COUNTY PEACE OFFICER OR ENFORCEMENT OFFICIAL.

(F) A PET DEALER SHALL DISPLAY THE SOURCE OF ANY DOG OR CAT OFFERED FOR SALE BY PROVIDING THE NAME OF THE BREEDER OF THE ANIMAL, THE UNITED STATES DEPARTMENT OF AGRICULTURE LICENSE NUMBER OF THE BREEDER IF THE ANIMAL IS FROM A BREEDER THAT IS LICENSED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE UNITED STATES DEPARTMENT OF AGRICULTURE WEBSITE WHERE INFORMATION ABOUT THE BREEDER MAY BE OBTAINED. THE PET DEALER SHALL DISPLAY THE INFORMATION DESCRIBED IN THIS SUBSECTION ON BOTH OF THE FOLLOWING:

- (1) THE CAGE OR ENCLOSURE FOR EACH ANIMAL.
- (2) ALL PRINTED OR ELECTRONIC MARKETING MATERIALS ABOUT A SPECIFIC DOG OR CAT THAT HAS BEEN OBTAINED BY THE PET DEALER AND THAT IS BEING OFFERED FOR SALE.

State law reference, ARS § 28-101.6.

(G) Violation of this article shall constitute a civil offense, and shall result in a penalty of ~~up to five hundred dollars (\$500) per occurrence~~ AS SET FORTH IN THE LAWS OF THE STATE OF ARIZONA, and shall be administered pursuant to Sections 1-7 through 1-10 of this code.

Section 2. Pursuant to the Tempe City Charter, Section 2.12, this ordinance shall be effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA this ___ day of _____, 2016.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney