

October 12, 2022

VIA Email swoods@martinfl.us

Sarah Woods, Esq.
Martin County Attorney's Office
2401 SE Monterey Road
Stuart, FL 34996

Re: Wags About You – Upcoming Workshop and Statutory Notice

Dear Ms. Woods:

As you know, this office represents Wags About You and its principal, Ryan Goessel, with respect to the recently adopted County Ordinance 1181 affecting pet stores (“Pet Store Ordinance”). We have been informed that a workshop will be taking place on October 19, 2022 to discuss possible revisions to the Pet Store Ordinance. You have proposed that you and I speak in advance of the workshop to discuss possible changes to the Pet Store Ordinance that might assuage my clients’ concerns. In advance of our discussion, I submit this letter.

The Pet Store Ordinance as drafted obliterates my clients’ business by completely prohibiting their primary source of income - the sale of dogs, cats and rabbits which accounts for approximately 90% of total revenue. It is anticipated that Wags About You will have no choice but to close its doors and layoff all employees if this Pet Store Ordinance is allowed to take effect. I am told the other affected pet store, Noble Paw, will likely need to layoff its entire staff as well. In total, sixteen (16) employees, their families and their children who rely on their income will be devastated by this new ordinance.

Mr. Goessel is an animal lover who detests Puppy Mills and the abusive practices that have become rampant among bad actors in the wholesale pet industry. Indeed, he takes great care to source his pets from reputable providers. While the Pet Store Ordinance, as currently drafted, is clearly an attempt to constrain Puppy Mills and other similar bad actors, it is actually having the effect of hurting good actors like Mr. Goessel who care deeply for animals and devote their professional and personal lives to providing proper care to animals in need. To shut down good actors like Mr. Goessel and Wags About You is a poorly targeted attempt to reach Puppy Mills.

Instead of prohibiting good actors from selling dogs, cats, and rabbits, the County should consider the following limitations which would more fully and effectively prohibit bad actors from profiting off the mistreatment of animals without improperly infringing on good actors in the operation of their businesses:

- Pet Stores could be required to post, in an area viewable by the public, certificates evidencing the source of each puppy, cat, or rabbit offered for sale.
- Pet Stores could be required to provide to each purchaser of a dog, cat or rabbit a certificate identifying the wholesaler or breeder from which the animal was sourced.

- Pet Stores could be prohibited from sourcing pets from any wholesaler which has received in excess of a specified number of complaints to, or citations from, the USDA.
- Pet Stores could be required to report to the USDA or specified county agency, within 48 hours, any animal evidencing signs of abuse or malnutrition by any wholesaler or other provider.

Changes to the Pet Store Ordinance as proposed above are necessary since the Pet Store Ordinance as drafted is an illegal law. Highly similar ordinances are currently in litigation in other parts of the state. Without limitation, I note the following:

- Manatee County is currently litigating an ordinance highly similar to Martin County's Pet Store Ordinance. The trial judge has already stayed implementation of the Manatee County Ordinance, declaring that the odds the ordinance will be struck down are "possible, even probable." The court also concluded the ordinance:

"[A]ppears to be largely driven by emotion...[and] the Court is concerned about the apparent lack of statistical data or specific evidence to suggest that the stores in Manatee County used 'puppy mills' and, in fact, whether the ordinance in question will actually have an appreciable effect on the purchase of puppies from such irreputable middlemen..."

The Court's order dated August 8, 2022 is available on the docket.

- Orange County is currently litigating an ordinance highly similar to Martin County's Pet Store Ordinance. Trial is set for early 2023.
- Without limitation, the following legal challenges have already been presented in the two cases referenced above and are likely to be presented in the future:
 - An ordinance which obliterates the primary income stream for existing pet stores without a sufficient amortization period violates the Contracts Clause of the U.S. Constitution.
 - An ordinance which prohibits the sale of dogs and cats conflicts with Florida law, sections 828.29 and 828.27, Fla. Stat.
 - An ordinance which attempts to indirectly regulate pet wholesalers subject to USDA regulations is pre-empted by federal law.
 - An ordinance preventing the sale of dogs and cats countywide, including on agricultural land, is at least partially pre-empted by Florida's Right to Farm Act, section 823.14(6), Fla. Stat.

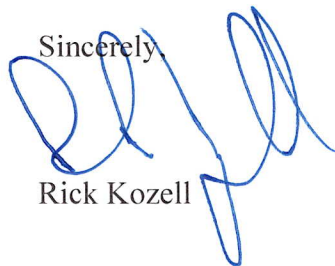
For the purposes of creating a record, I note that one Commissioner on the Martin County Commission appeared at my client's place of business last week and publicly stated that my client *should not have hired an attorney*. For your records, I enclose as Exhibit A a letter which my client had previously delivered to every member of the Commission requesting to speak with each about this ordinance. His letter received no response whatsoever until he retained an attorney. No member of the Commission should be implying that any adverse consequence will result from his exercise of his right to retain counsel here.

In accordance with section 57.112, Fla. Stat., the passage of any ordinance pre-empted by State law confers attorneys' fee and cost liability on the County if not repealed in the time proscribed in section 57.112(3)(b). This letter shall serve as notice, in accordance with section 57.112(3)(a), that the Martin County Pet Store Ordinance here is pre-empted by sections 828.29, 828.27, and 823.14 of the Florida Statutes. This letter is sent in an abundance of caution, and I do not believe it will be necessary to pursue attorneys' fees or costs here as the County has already signaled preliminary that it will be revisiting the Pet Store Ordinance.

I have not provided this letter to any member of the County Commission as you have requested that I treat the Commissioners as represented parties in litigation and not communicate with them directly. However, I request that you please provide all Commissioners with a copy of this letter so they can fully understand that my clients are in the utmost good faith and are eager to work together to resolve the challenges before us.

I remain eager to work with you to improve the Pet Store Ordinance and look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Kozell", written over the printed name.

Rick Kozell

08/26/2022

County Commissioners

Martin County, Florida

Subject: Pending Impacts due to the Adoption of Ordinance No. 1181

Dear Sir or Madam,

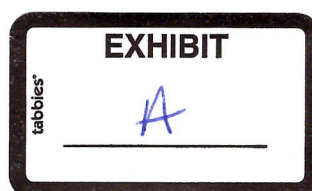
I am a resident of Martin County and a small business owner in the community. I own Wags About You, the pet boutique in the downtown Publix shopping center. I write to you today in concern of the future of my business, the community, and my personal financial wellbeing when banning the existence of well-kept businesses like mine with Ordinance No. 1181.

The adoption of this Ordinance will directly impact my business and others in our community. It will also impact me personally as my business, like many small businesses in our community, has a personally guaranteed five-year lease and with a decision to adopt the ordinance will force me into bankruptcy. As a resident and member of the community I request that you consider the impacts that the adoption of the ordinance will have on me personally.

During Martin County's ordinance reading, it was said my store is a health and safety violation to the community. I would like to explain how this statement is not only incorrect but also how my store supports other business in our community. Prior to opening my business, I worked diligently to ensure I would have adequate processes and local resources in place to ensure the safety of the community and animals. Dr. Wayne Diamond, Owner of Boulevard Animal Hospital and former Treasure Coast humane society veterinarian is a resource to my business to ensure that every animal brought into my store and sold are well cared for. Dr. Diamond comes to my business on a weekly basis to provide a physical exam to each pet, ensures that they are vaccinated and have no signs of illnesses before issuing a Florida State Health Certificate. Dr. Diamond has written a letter of support for my business and is willing to join us for a meeting or phone conversation if you have any questions for him.

I understand and support the need for adoption from our shelters and rescue groups but because of so many unknowns and uncertainties, rescue is not an option for some families. For instance, some have young children, some suffer from allergies, and some just have a specific need or a breed that a rescue can't provide. Adopt or Shop should be a decision each community member is able to make for themselves. The community has accepted my store and are grateful to be able to buy and support a local business offering healthy, happy, and guaranteed pets. Adopting this pet ban will force the community to look for pets outside of our community and potentially have them purchase unhealthy pets with no health guarantees from poor quality breeders who aren't licensed and bring them into our community. This would then become a real health concern.

Lastly, during the ordinance reading it was mentioned that other counties in our surrounding area have passed similar ordinances banning the retail sale of dogs, cats and rabbits but with far less restrictions. It is important to know that majority of the counties mentioned did not shut down any stores when



implementing their pet ban. The bellow bullets provide a few facts about those community's adoption of similar ordinances:

1. Palm Beach County: Ordinance passed- no more stores allowed to open but existing stores can continue to operate. Existing stores to be randomly inspected.
2. Pinellas: Ordinance passed- no more stores allowed to open but existing stores can continue to operate. Existing stores to be randomly inspected.
3. Pasco: Ordinance passed- no more stores allowed to open but existing stores can continue to operate. Existing stores to be randomly inspected.
- 4.. Osceola: Ordinance passed- no more stores allowed to open but existing stores can continue to operate. Existing stores to be randomly inspected.
5. Brevard: Ordinance passed restricting where pets are sourced but no stores shut down
6. Indian River: Ordinance passed, no existing stores to shut down
7. St. Lucie: Ordinance passed, no existing stores to shut down

These are just a few places in the State of Florida where no businesses were shut down in the process of adopting a retail pet ban.

I have been blessed to help many families add new pets to their homes and I welcome you to visit my business to see firsthand how well maintained and clean my business operates. I ask that you reconsider Martin County's Ordinance No. 1181 and you consider the impacts it will have on our community, my business, and me personally.

Sincerely,

Ryan Goessel

Phone: 561-222-1922

Email: ryan.goessel@icloud.com