



NATIONAL ANIMAL INTEREST ALLIANCE

Working for the People who look after America's Animals

Commissioner Addie Greene, Chairperson
Palm Beach County Board of Commissioners
Sent via facsimile 561-355-6332

January 14, 2008

RE: Letter in Opposition to Proposed Palm Beach County Pet Ordinance

Dear Commissioner Addie Greene, Chairperson:

I am writing on behalf of the National Animal Interest Alliance (NAIA), a broad-based national organization founded in 1991, made up of pet owners, dog and cat organizations, veterinarians and numerous other animal professionals and animal-related businesses. Our mission is to promote the welfare of animals, to strengthen the human-animal bond, and to safeguard the rights of responsible animal owners and professionals through research, public education and sound public policy. We have members in all 50 states, with many in Palm Beach County.

We are writing to express our concern over your proposed pet ordinance revision. Although we support the specific goals of the ordinance, our firsthand experience with similar ordinances all over the United States tells us that the approach being used in Palm Beach County will not achieve the goals you seek. With this in mind, we offer our assistance.

Breeder licensing and intact licensing fees are of particular concern to us. They have not proven successful in any of the communities where they've been tried and in many places they have introduced new problems. In the two or three communities that tout their success, Denver and Santa Cruz for example, improvements have not exceeded similar improvements elsewhere, such as in San Francisco and Portland Oregon where no such measures were used. This indicates a random rather than a causal relationship and suggests instead that these communities benefitted from a common trend. In addition, we are concerned that such licensing schemes target the poor and alienate the very citizens whose support is vital for municipal animal control agencies to accomplish their mission.

We are also troubled over several of the definitions in the draft proposal because they are unclear and subject to argument, misinterpretation and enforcement problems. If these shortcomings lead to the same outcomes in Palm Beach County that have occurred in other jurisdictions, it seems likely that there will be constitutional challenges. In short, if the Palm Beach draft ordinance is passed as it is currently written, it will lead to numerous unintended and unwanted consequences, and significantly higher animal control costs for Palm Beach County.

Government's role

Government can play a valuable role in helping to reduce the number of surplus puppies and kittens produced in a given community, provided they choose the right method. Programs and laws that build community support for animal control by giving all citizens an opportunity to be part of the solution are the most successful. Methods that work encourage licensing and reward responsible pet ownership. Successful methods don't alienate the very people they need to comply with animal control laws.

Punitive measures such as high licensing fees simply push citizens underground and out of the licensing system. Coercive measures like the "spay or pay" provision for unaltered dogs and cats in the proposed Palm Beach County ordinance penalize pet owners for not having major surgery performed on their pets. Pet owners should not be coerced into such an important decision by government, no matter how well intended such regulations may be. Rather, government's role should be to protect the rights of its pet-owning citizens to make such decisions and choices for themselves.

Most pet owners choose to spay or neuter their pet because they think it is in the best interest of the pet and their own lifestyle. Importantly, even among this large segment of responsible pet owners who currently spay or neuter, there is virtually no support for transferring this "personal choice" to government.

Define the problem to solve the problem

Professionals of all backgrounds know that in order to solve a problem, you must first define it; and the more accurately you define it, the more likely you are to solve it. There is no question that Palm Beach County has an animal control problem but the specific characteristics of that problem have not yet been defined. Unfortunately, the statistics cited in the preamble to the ordinance are misleading and demonstrate that more analysis is needed. As shown in the county's 2007 shelter statistics, the 28,000 animals sheltered, include 3,480 feral cats and another 3,708 animals that should not be included in a pitch for dog and cat licensing at all because they are livestock, wildlife and other species. The 18,248 animals euthanized include over 5 thousand livestock, wildlife and feral cats (unowned cats) that will not be affected by this ordinance. <http://www.naiaonline.org/pdfs/PalmBeachCountyShelterDataFY2007.pdf> The supporters of this ordinance, however, routinely recite these figures to the media without clarification when making the case for licenses and higher fees for dog and cat breeders. Examples can be found here:

http://www.palmbeachpost.com/localnews/content/local_news/epaper/2008/01/10/s3b_spay_0110.html and
http://www.palmbeachpost.com/opinion/content/opinion/epaper/2008/01/03/a17a_edletters_0103.html

The ordinance is also promoted on the basis of the success of other counties that have passed similar ordinances.

http://www.palmbeachpost.com/localnews/content/local_news/epaper/2007/12/26/s1a_spay_1226.html

One of the counties that is often lauded is Santa Cruz, but neither the actual shelter statistics <http://www.naiaonline.org/pdfs/SC%20big%20Lie%20Dogs.pdf> nor the Santa Cruz County Animal Services budget <http://www.naiaonline.org/pdfs/SC%20budget.pdf> support the premise.

Pet sterilization alone won't solve Palm Beach County's shelter problem

The assumption that drives mandatory and other coercive spay/neuter laws is that pets end up in animal shelters primarily because of overpopulation and that coercive sterilization laws will solve the problem. Proponents of such measures ignore the following well-documented facts. Most animals in shelters today:

- are not young puppies;
- a very high number of the animals being euthanized in shelters are stray and feral cats and their kittens;
- according to the *Journal of Applied Animal Welfare Science* (citing studies conducted by the *National Council on Pet Population Studies and Policy* <http://www.petpopulation.org/> and other organizations), about a third of shelter animals were given up by their owners because of personal issues such as moving, financial strain, or because the pet had a behavior or health problem;
- many pet owners use shelters as an alternative to a veterinarian when seeking euthanasia of an old, sick or dangerous animal;
- many shelter animals are already neutered; and
- the number of dogs entering shelters in Florida and nationwide has been steadily declining for decades without coercive legislation.

All these facts suggest that what we have is not a pet overpopulation problem but a pet retention problem. History suggests that public education, low-cost resources for the poor and reasonable licensing programs are working. Major changes in animal ordinances based on misunderstanding the problem could well reverse this long-standing trend.

Consumer choice and pet population dynamics

Some proponents of coercive pet laws deny the role of consumer choice in pet population dynamics, thinking that more sterilization of publicly owned pets and more marketing of shelter animals will solve the problem. They do not recognize that people choose purebred puppies and pedigreed kittens for valid reasons. Consumers want the predictability of a purebred and they want the opportunity to raise the puppy or kitten into the sort of family pet they desire. These are both values that encourage long-term pet retention, the pet-owner behavior we want.

NAIA supports animal shelters, and many of our members work in pet rescue. Nonetheless - and despite considerable efforts aimed at marketing shelter animals - consumers are aware that a substantial number of shelter dogs are there because of behavioral or medical problems. Hence, they actively seek intentionally bred pets with predictable traits from private sources.

On the other hand, spay and neuter campaigns have been so successful that some animal shelters in some parts of the country do not have a supply of dogs (and especially puppies) to meet the demands of the citizens wanting to adopt them. To meet the demand, some shelters, *including ones in Florida* have begun importing dogs from other states, territories and even developing countries. http://www.usatoday.com/news/nation/2007-10-21-dog-imports_N.htm?csp=34 Demand for puppies is so great that the CDC estimates that as many as 300,000 puppies a year are now being imported into the US. <http://www.abcnews.go.com/Health/story?id=3765973&page=1> Sting operations conducted by

the US Customs and Border Protection Agency discovered that 10,000 dogs a year were being smuggled into the US through that one border area alone.

http://www.cbp.gov/xp/CustomsToday/2006/jun_jul/other/puppies.xml Making responsible dog owners and breeders accountable for such irresponsible practices and raising their license fees to foot the bill is grossly unfair. Worse, enforcement of such a misguided policy would lead to the eventual elimination of the best sources of well-bred, healthy dogs in Florida and replace them with unhealthy dogs from other countries. As you think about this ordinance, please remember that demand drives supply. Unless you are trying to eliminate all pet ownership – not just irresponsible pet ownership – please scrap this ordinance revision and start over.

Nearly 40% of American households keep dogs, about half of which are purebreds. If the public wants purebred dogs – and they do – they will get them from somewhere. Having a good source of healthy well-bred, home-raised dogs to choose from is good for consumers in your community. By penalizing all breeding, rather than focusing on irresponsible breeding, you are inadvertently encouraging your citizens to obtain puppies from less reliable, more distant sources; from other states and even foreign countries.

Supply and demand and unintended consequences

Please consider the laws of supply and demand and unintended consequences in any attempt to reduce animal shelter populations. The breeder licensing and high fees for unaltered pets in the Palm Beach draft ordinance deal only with a small segment of the supply side of the issue and they target only that group of pet owners who are responsible enough to license their pets in the first place. This doesn't make sense because the only segment of the shelter population that is growing is made up of stray and feral cats: free-breeding animals with no owners to regulate. By contrast, dog intakes and euthanasia rates are already declining.

US pet ownership is growing. Passing this ordinance will not lower the demand for pets; it will simply shift consumers to outside sources. Any legislation that attempts to solve surplus shelter problems by further regulating the supply side of the problem is destined to fail. To make further reductions in shelter populations, efforts need to be focused on the consumer side – the pet-owner side of the equation, encouraging current owners to keep their pets. The county needs to provide licensing options and fees that encourage rather than discourage participation. It needs to work with volunteers in the veterinary community and local kennel and cat clubs, and rescue groups to supply and promote better sources of information to help pet owners achieve success; and it needs to provide low cost spay/neuter services and resources for low-income pet owners. In addition, lawmakers and other county officials need to recognize that the biggest challenge they face is feral and stray cats, and they need to fund feral cat programs. All of this is doable if the county has the support of its pet owning citizens – but virtually impossible to achieve if pet owners view Palm Beach County's pet laws as coercive and unfair. The current proposal is both.

Licensing fees as a funding source

If fees from breeders are seen as a funding source, this assumption needs to be reevaluated because passage is far more likely to chase potential licensees from the market place and drive scofflaws and criminals further into hiding than it is to serve as a funding source for the program. Imposing more regulations also runs the risk of diminishing the best source of dogs and cats available to Florida consumers, which, since demand is constant, will be replaced by out of state puppies and kittens at great cost to the Florida economy and without improving the

welfare of Florida pets one whit. In other words, using a risk-benefit model, this proposal offers lots of pain for virtually no gain.

Killing the goose that lays the golden egg

Further, because higher license fees push more poor people out of the licensing pool than others, they will be disproportionately targeted by the enforcement provisions of the bill. On the other hand, the citizens most likely to comply with the ordinance provisions are the registrants of American Kennel Club and Cat Fanciers Association and members of their local affiliate clubs. These are not for profit organizations that bring tens of millions of tourism dollars to Florida's economy each year. These are the same people whose volunteer efforts in dog training, pet rescue and public education have the greatest impact on lowering shelter impounds and euthanasia rates.

Through their clubs they work year-round to help the public make responsible choices in selecting, raising, training, socializing, permanently identifying, licensing and basically learning about how to become a responsible pet owner. They fund and provide rescue services, host microchip clinics and fund numerous animal welfare and health projects at no cost to Florida taxpayers. To over-regulate this group as the ordinance revision would do is a recipe for killing the goose that lays golden egg.

The punitive nature of this ordinance would foment a host of unintended consequences. In addition to harming responsible dog and cat breeders, it would also affect some service and working animals bred for specific characteristics and temperaments. It also would limit the breeding of certain animals that assist the public, such as guide, therapy and rescue dogs.

According to the American Pet Product Manufacturers Association, about 60% of households have a dog and/or a cat, a figure indicating that pet ownership is a widely held community value. If the problem being addressed by this ordinance is of the magnitude described, it doesn't appear right that the tax to pay for it be levied only against the people with intact pets who are responsible enough to get their pets licensed. They are no more guilty or responsible for causing problems than the non-pet-owning segment of the public. This proposal is analogous to increasing the cost of a driver's license in order to prevent people from driving without a license, rather than increasing the fine or other penalties for driving without a license.

This raises questions about the source and basis for the conclusion stated in the preamble to the ordinance: nowhere does it appear to be documented or otherwise verified that the actual source of "uncontrolled breeding" (line 35) has been identified. The absence of such critical information only underscores the errant notion of penalizing the existing law-abiding segment of the population instead of properly defining and addressing the real problem.

In Palm Beach County as in most scenarios, a few bad apples cause most of the problems, so the goal should be to identify the few bad apples. The Palm Beach ordinance has identified anyone who breeds a dog or cat as the source of the problem, even if they have never caused a problem and even if they donate their time and expertise to help solve the problem they didn't create. The pool of potential licensees envisioned by this ordinance include the irresponsible pet owners who won't properly care for or license their pets regardless of mandates; the low-income pet owners who need information and low cost services to become better pet owners; and it includes a very large pool of animals – feral cats – that have no owners to educate or regulate. Because none of these groups are good candidates for

regulation, this ordinance goes after the responsible group that is not causing the problem and asks them to pay for the whole mess. It won't work. This ordinance will simply create more scofflaws, ill-will toward government, and reduce public support for animal control.

Other serious concerns and constitutional issues raised by NAIA's legal team

The most cursory review of the proposed ordinance raises the following concerns and legal questions:

1. Current law defines animals as the "property" of the owner. The United States Constitution guarantees the fundamental right of property ownership. The ability of a property owner to make important decisions regarding their property is the most fundamental element of property rights. Mandatory or coercive spay/neuter laws undermine a pet owner's ability to care for his pet. Numerous peer-reviewed studies cite significant health risks associated with spaying and neutering pets:
<http://avmajournals.avma.org/doi/abs/10.2460/javma.231.11.1665>
<http://www.naiaonline.org/pdfs/LongTermHealthEffectsOfSpayNeuterInDogs.pdf>
The result of this ordinance would be to eliminate a property owner's right to make decisions about his or her pet's care, an abrogation of that right by local government entities. This interference of pet owners' rights to make decisions about their pets violates the due process clause of the Fourteenth Amendment of the United States Constitution, since pet owners would be denied control over their property without any semblance of overriding state interest in the outcome.
2. The proposed ordinance would subject pet owners to numerous violations of their constitutional rights. Those who obtain kennel or cattery licenses as this ordinance requires, because their pets are intact and produce as few as 20 offspring (during a poorly defined period of time), are subject to warrantless searches of their homes, while people with altered pets are not. This raises questions under the Eighth Amendment which protects citizens from unlawful searches and seizures, and under the equal protection clause of the Fourteenth Amendment
3. According to the American Pet Product Manufacturers, nearly two-thirds of American households have pets. A fair number of pet owners keep multiple pets. A threshold so low that it can transform a household with as few as 2 unaltered dogs or cats (producing as few as 20 offspring over the course of the year) into a business and make that household subject to inspection, is an expansion of police powers beyond anything supported by the exercise of power clause of the Eighth Amendment. Worse, someone anticipating breeding their pet is required to get a permit. Are they subject to search, too, even though their dog or cat has not yet had a litter?
4. The provision that states "encouraging breeding is prohibited" is unclear and unenforceable and violates the First Amendment of the US Constitution. Likewise, the requirement that breeders publish their permit numbers in advertisements is another violation of the First Amendment, one that has been successfully challenged as imposing restraint of free trade.
5. The provision that prohibits breeding pets with a known genetic defect as identified by a licensed veterinarian is overly broad and if it was enforced as it is written, it would eliminate dog and cat breeding. All or nearly all living organisms have genetic defects.

This is an absurd and unenforceable provision based on ideology, not science, and it is so extreme it does not advance the public good.

6. In Chapter 4 Section 2 an animal is defined as any living vertebrate except human beings. This is worrisome because when it defines harbinger, the word animal is used. A harbinger or caregiver is defined as a person who provides care, shelter, refuge, or nourishment to an animal. This section does not include intent to provide such shelter, refuge, or nourishment, thereby raising the question of whether you are a harbinger or caregiver of any and all animals on your property. If so, does it trigger affirmative duties to those animals under cruelty statutes? What if a property owner wants to hire an exterminator to remove pests?
7. Breeding includes not only the production of puppies but the use of a dog at stud. The objections to limitations, considering in-state versus out-of-state breeding, time spent in state residence and frozen semen storage possibilities alone invite endless clarification and litigation.
8. Commercial breeder is defined in such a way that it includes boarding and training kennels where breeding does not occur. Among many other problems, the definition of whoever engages in breeding is poorly drafted, potentially snaring co-owners doing breeding off the premises. Is breeding using frozen or chilled semen covered by this language and if so does it matter whether it originates in Palm Beach County but is inseminated elsewhere? It also talks about how many offspring commercial breeders can produce in a year but doesn't define it as a calendar year or a successive 12 month period of time. Which is it?
9. The definition of hobby breeder includes any person who intentionally causes breeding or studing of a dog, or is engaged in breeding. What does engaged in breeding mean? Would it include someone who owns an unaltered dog or cat, or someone who co-owns a dog that is used by someone else for breeding on their premises? This section defines a hobby breeder as someone who does not produce more than two litters within a consecutive 12 month period, a definition that does not mirror other sections that give time frames; and it does not include "whichever is greater" language.
10. Defining a cattery or kennel as a place of business where cats or dogs are kept for sale, breeding, boarding, or any person who breeds more than 2 litters per year, whichever is greater, is not clear and will lead to enforcement problems. Litter sizes vary and occasionally a breed that produces litters averaging 8 puppies will produce litters of 10-12. Would the language used in this proposed ordinance transform a hobby breeder into a business enterprise if their dog or cat produced two litters that totaled more than 20 offspring? Does the total derive from offspring produced by both dog and bitch? If so, would a person with two house dogs who produced more than 20 puppies or kittens be required to get a kennel or cattery license and meet the business kennel licensing provisions? If so, people who raise dogs in their home as pets may not be able to meet the engineering standards required for business kennels and catteries, and they could also become subject to inspections that would amount to warrantless searches in a home setting.

11. The language requiring rabies tags and vaccination needs to be clarified. It is confusing and if pet owners don't understand it they won't comply.

As an instructive note, the restrictions, requirements and permits being proposed in this bill are similar to the burdensome regulatory framework legislatively imposed on animal owners and breeders in Louisville, Kentucky, an ordinance that within a couple of years has been significantly amended by the City Council, and which is currently the subject of a court challenge based upon its constitutionality. This is an extremely expensive way for local government and private citizens to arrive at a reasonable set of regulations.

Please reconsider the consequences of passing breeder licensing and intact licenses and setting fees so high they will push potential licensees underground where the ordinance can only be enforced selectively. Please understand that the only effect such license fees will have is to discourage the most responsible breeders in your community from licensing at all. It won't solve the Palm Beach County feral cat problem. It won't help poor pet owners get the resources they need and it will do nothing to curb the ones you're trying to reach, the ones who don't license in the first place. Unreasonable laws and high license fees create scofflaws, and teach citizens that laws don't need to be obeyed.

The National Animal Interest Alliance urges you to oppose the coercive, unproductive and unenforceable provisions in the current Palm Beach County animal ordinance draft. We have accumulated a wealth of information and firsthand experience and observation in this arena, and would be happy to share the information we have acquired to improve the current draft ordinance. Please call on us if we can be of any assistance in this matter.

Sincerely,



Patti Strand, National Director