

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ADDING CHAPTER 6.32 TO THE SAN MARCOS MUNICIPAL CODE TO REGULATE THE RETAIL SALE OF DOGS, CATS AND RABBITS IN THE CITY OF SAN MARCOS

WHEREAS, the City Council has been made aware of public protests occurring outside a retail pet store in the City, has been approached by animal rights activists regarding their opposition to the retail sale of dogs, cats and/or rabbits received from commercial breeding operations, and has received a number of requests from City residents to enact an ordinance prohibiting the retail sale of these animals, which contributes to the overpopulation of animals in the City; and

WHEREAS, the City Council desires to be supportive of existing local businesses while also addressing the animal welfare and pet population in the City; and

WHEREAS, the San Marcos Municipal Code does not currently separately regulate the retail sale of dogs, cats and rabbits in the City of San Marcos; and

WHEREAS, currently, there are no Federal or State laws that expressly prohibit retail pet stores from selling animals obtained through commercial breeders. However, there are Federal and State statutory provisions that regulate the conditions and practices of the breeding facilities and the retail pet stores; and

WHEREAS, the U.S. Congress passed the Animal Welfare Act in 1966 (7 U.S.C. § 2131 et seq.). The Act is the only Federal law that regulates the minimum standards of care and treatment for certain animals bred for commercial sale, including but not limited to dogs, cats and rabbits. The Act is upheld and enforced by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA), and requires all animal dealers to be registered and licensed; and

WHEREAS, California's Polanco-Lockyer Pet Breeder Warranty Act (Health and Safety Code § 122045 et seq.) requires certain dog breeders to maintain certain health and safety standards for animals, sell only healthy animals, and provide an animal's health record and status and other written disclosures to pet buyers. The Act also provides consumer protections for purchasing dogs if a California-licensed veterinarian provides written certification that the dog is unfit for sale. If after 15 days from the date of purchase, a dog becomes ill due to an illness that existed at the time of sale; or if within one year after purchase, the dog has a congenital or hereditary condition that adversely affects the health of the dog, or that requires or is likely in

the future to require hospitalization or non-elective surgical procedures, then the owner may receive a refund for (i) the purchase price of the dog or another dog and reimbursement for reasonable veterinarian fees up to the purchase price of the dog; or (ii) reimbursement for veterinary fees up to 150 percent of the purchase price of the dog. The State's Lockyer-Polanco-Farr Pet Protection Act (Health and Safety Code § 122125 et seq.) offers similar consumer protections relating to purchasing animals unfit for sale as those offered under the Lockyer-Polanco-Farr Pet Protection Act, except that it applies only to pet retailers selling more than 50 dogs per year (exempts animal shelters and humane societies), and also requires those pet retailers to have a permit and encourage the use of spaying and neutering services; and

WHEREAS, the City has reviewed the impact of retail pet stores engaged in the sale of dogs, cats and/or rabbits by evaluating various regulatory structures for these establishments, any negative effects these establishments might have on nearby businesses, property owners and residents of the City, as well as the federal and state regulatory structures set forth above, and has determined that there is a local interest in enactment of additional regulations to protect animal welfare; and

WHEREAS, on April 28, 2015, the City Council adopted an interim urgency Ordinance imposing a temporary moratorium on the establishment of retail pet stores in the City of San Marcos for a period of 45 days, which temporary moratorium was extended by the City Council on June 12, 2015 for an additional period of 10 months and 15 days pursuant to California Government Code Section 65858; and

WHEREAS, other jurisdictions in the State of California have adopted local ordinances that prohibit the sale of dogs and cats in retail pet stores, including but not limited to the cities of Chula Vista, Oceanside, Encinitas, Vista, South Lake Tahoe, West Hollywood, Hermosa Beach, Turlock, Glendale, Irvine, Dana Point, Laguna Beach, Aliso Viejo, Huntington Beach, Burbank, Ventura County, Chino Hills, Garden Grove, and Palm Springs. Other jurisdictions in the State have banned the sales of rabbits, in addition to prohibiting the retail sale of dogs and cats, including but not limited to San Diego, Los Angeles, Rancho Mirage, Ventura County, and Long Beach; and

WHEREAS, in conducting its review of retail pet stores, the City has determined that these establishments generally pose a threat to the public welfare of animals, residents and businesses, and the approval of any permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, building permit, conditional use permit, or other land use approval for the establishment of any retail pet store that would

engage in the sale of dogs, cats and/or rabbits within the jurisdiction of the City could result in the threat to the public welfare of animals, residents and/or businesses and the preservation of peace within the City's jurisdictional boundaries; and

WHEREAS, research shows that animals born and raised at puppy mills, kitten factories and rabbit mills are more likely to have genetic disorders and lack adequate socialization. The American Society for the Prevention of Cruelty to Animals (ASPCA) asserts that animals used for breeding purposes at these facilities may be subject to inhumane housing conditions and indiscriminately disposed of when they reach the end of their profitable breeding cycle; and

WHEREAS, retail pet stores purchasing animals from a broker or distributor are one step further removed from the actual breeding of the animals it purchases, which could create the potential to obscure the conditions in which the breeding took place and where the animals were housed prior to coming to the retail pet store; and

WHEREAS, according to the Humane Society of the United States (HSUS), hundreds of thousands of dogs and cats are housed and bred at "puppy mills" or "kitten factories," which it defines as inhumane and substandard breeding facilities that mass-produce animals for sale to the public, typically through retail pet stores. The HSUS claims that this results in the physical, psychological and/or behavioral needs of the animals not being fulfilled due to inadequate housing, shelter, staffing, nutrition, socialization, sanitation, exercise, veterinary care and/or inappropriate breeding. The HSUS "Guide to Using Local Ordinances to Combat Puppy Mills" estimates that more than one million puppies are produced by USDA-licensed breeding facilities each year, while three to four million dogs and cats are euthanized by shelters every year in the United States. In 2014, the San Diego County Humane Society's Annual Report stated that more than 1,600 animals were euthanized in San Diego County area shelters, alone; and

WHEREAS, according to the House Rabbit Society, an international, non-profit animal welfare organization committed to reducing the number of unwanted rabbits and improving rabbits' lives, rabbits sold in retail pet stores are often sold as snake food or as a pet for a small child who soon "outgrows" the rabbit. Unwanted rabbits are often abandoned in fields, parks or on city streets to fend for themselves. This results in abandoned rabbits suffering from starvation and sickness and makes them easy prey for other animals or traffic accidents; and

WHEREAS, the City seeks to prohibit the the sale of dogs, cats and/or rabbits in retail pet stores, including those animals purchased, supplied or otherwise obtained from dealers,

breeders and hobby breeders, unless the animals are obtained from a (i) city, county or any other governmental animal shelter; (ii) animal control enforcement agency; (iii) humane society; or (iv) animal rescue organization, which may encourage pet consumers to adopt animals from shelters and rescue agencies, and could result in saving animals' lives, decreasing the shelter animal euthanasia rate and reducing public costs for sheltering animals.

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. SMMC Chapter 6.32. Chapter 6.32 of the San Marcos Municipal Code is hereby adopted to read as follows:

CHAPTER 6.32

RETAIL SALES OF DOGS, CATS AND RABBITS

SECTIONS:

6.32.010	Purpose
6.32.020	Definitions
6.32.030	Prohibition on the Sale of Certain Dogs, Cats and Rabbits
6.32.040	Exemptions
6.32.050	Adoption of Shelter and Rescue Animals
6.32.060	Certificate of Source

6.32.010 Purpose. It is the purpose and intent of this Chapter to promote animal welfare and encourage best practices in the purchasing of dogs, cats and rabbits offered for retail sale in the City of San Marcos.

6.32.020 Definitions. For purposes of this Chapter, the following definitions shall apply:

(a) ***Animal shelter*** means a public animal shelter operated by any city, county or other public agency or an entity operating under contract with any city, county or other public agency.

(b) ***Breeder*** means any breeder who owns breeding dogs, cats or rabbits, and who sells, provides or supplies the offspring for retail or wholesale.

- (c) **Cat** means a *Felis domesticus* of either sex, altered or unaltered.
- (d) **Certificate of source** means a document declaring the source of the dog, cat or rabbit sold or transferred by the retail pet store. The certificate of source shall include the name and address of the source of the animal.
- (e) **Dog** means a *Canis familiaris* of either sex, altered or unaltered.
- (f) **Dealer** means any third party broker, distributor, supplier, animal wholesaler, and/or other source who buys and sells dogs, cats and/or rabbits that were not born and raised at their facility.
- (g) **Existing retail pet store** means any retail pet store or its operator that displays, offers for sale, delivers, barter, auctions, gives away, transfers, leases, or sells dogs, cats or rabbits in the City of San Marcos on the effective date of this Chapter, and that is in compliance with all applicable provisions of the San Marcos Municipal Code on the effective date of this Chapter.
- (h) **Hobby breeder** means any small-scale breeder who owns three (3) or fewer breeding dogs, cats or rabbits, and who sells, provides or supplies the offspring for retail or wholesale.
- (i) **Non-profit rescue organization** means any non-profit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3), whose mission and practice is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits; or any non-profit organization that is not exempt from taxation under Internal Revenue Code Section 501(c)(3), but is currently an active rescue partner with the City of San Marcos or any County of San Diego animal shelter or humane society, whose mission is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits.
- (j) **Operator** means a person who owns or operates a retail pet store, or both, and/or who hires employees at a retail pet store to engage in the retail sale of dogs, cats and/or rabbits.
- (k) **Rabbit** means an *Oryctolagus cuniculus* of either sex, altered or unaltered.

(l) **Retail pet store** means any for-profit establishment open to the public engaged in the retail sale of dogs, cats and/or rabbits.

6.32.030 Prohibition on the Sale of Certain Dogs, Cats and Rabbits.

(a) It is unlawful for any retail pet store or its operator to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit in the City of San Marcos that is purchased, supplied or otherwise obtained from any source other than those permitted by Section 6.32.040 of this Chapter, including, but not limited to, from any dealer, breeder and/or hobby breeder.

(b) No permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved and/or issued for the establishment of any retail pet store within the jurisdiction of the City of San Marcos that would engage in the retail sale of dogs, cats and/or rabbits purchased, supplied or otherwise obtained from any dealer, breeder and/or hobby breeder.

(c) An existing retail pet store or its operator that displays, offers for sale, delivers, barter, auctions, gives away, transfers, leases, or sells any dog, cat or rabbit in the City of San Marcos, which was obtained from any source other than those permitted by Section 6.32.040 as of the effective date of the Ordinance codified in this Chapter, and whose operations comply with all applicable provisions of the San Marcos Municipal Code as of the effective date of the Ordinance codified in this Chapter, may continue to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit from sources other than those permitted by Section 6.32.040 for a period of six (6) months following the effective date of the Ordinance codified in this Chapter. During the six month grace period, the remaining provisions of this Chapter 6.32 shall apply to the existing retail pet store.

6.32.040 Exceptions – Permitted Sources.

(a) Nothing in this Chapter shall prevent a retail pet store or its operator from providing space and appropriate care for animals owned by or purchased directly from a publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization, and maintained at the retail pet store for the purpose of adopting and/or selling those animals to the public.

(b) Nothing in this Chapter shall prevent a retail pet store or its operator from selling dogs, cats and/or rabbits that are born and reared at the site of the retail pet store.

6.32.050 Certificate of Source. All retail pet stores permitted to engage in the sale of dogs, cats and/or rabbits pursuant to this Chapter shall post in a conspicuous place on each dog, cat or rabbit kennel, cage or enclosure, a certificate of source for such animal ensuring the animal was obtained in full compliance with this Chapter. The certificate of source shall be made available upon request to animal control, law enforcement, code enforcement official, or any other City employee charged with enforcing the provisions of this Chapter, and a copy of the certificate shall be provided to the purchaser or transferee of any such dog, cat or rabbit.

6.32.060 Exemptions. Notwithstanding any other provision of Chapter 6.32, the following shall not be considered a retail pet store and shall be exempt from the provisions of this Chapter:

(a) Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared.

(b) A publicly operated animal shelter or animal control enforcement agency.

(c) A nonprofit humane society or nonprofit animal rescue organization.

(d) A publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization that operates out of or in connection with a retail pet store.

Section 2. Recitals Made Findings. In adopting this Ordinance, the City Council finds and declares that the above recitals are hereby declared to be true and correct findings of the City Council, and the adoption of this Ordinance is necessary to regulate retail pet stores operating in the City and to minimize any negative effects retail pet stores in the City's jurisdiction might have on nearby businesses, property owners and residents of the City.

Section 3. Consistency with the SMMC. Any provision of the SMMC that is inconsistent with any provision of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified only to the extent necessary to effect the provisions of this Ordinance.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days following its adoption.

Section 6. Publication. Within fifteen (15) days following the adoption of this Ordinance, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of San Marcos, California, on January 26, 2016.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, on the _____ day of _____, 2016, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

James M. Desmond, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos