



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

TO: Mayor Jordan City Council

Kit Williams City Attorney

Blake Pennington Assistant City Attorney

Jodi Batker Paralegal

CC: Susan Norton, Chief of Staff Yolanda Fields, Community Resources Director Justine Lentz, Animal Services Superintendent

FROM: Kit Williams, City Attorney

[Handwritten signature of Kit Williams]

DATE: April 25, 2023

RE: Act 730 of 2023 Will Preempt Fayetteville Ordinance 6587 Codified as §92.01(C) of the Fayetteville Code

Act 730 of 2023 will become effective this summer. Its sponsor publicly stated that this law was drafted to invalidate Fayetteville’s ordinance which sought to prevent pet stores in Fayetteville from being outlets for mass puppy breeding facilities and dealers. This Act significantly changed the existing provision in the Retail Pet Store Consumer Protection Act which currently states that that “Nothing in this chapter shall be construed to prevent or limit the application of any other law” (such as the Fayetteville Code) into a specific “Preemption” of Ordinance 6587 and §92.04(C).

Act 730 of 2023 also amended the current state law by adding:

“(b) A local government shall not pass an ordinance... that prohibits a retail pet store from

...

(2) selling an animal that is acquired from a cattery, kennel, or dealer as defined in 7 U.S.C. §2132....

(c) An ordinance ... of a local government shall be rendered invalid if it is found to be in conflict with the language set out within this section.”

Petland sells puppies obtained from regulated puppy mass breeding operations in which the US Department of Agriculture through 7 U.S.C. §2132 allows the mother dogs to be kept in small wire cages almost all the time for their entire breeding life. As you were informed during consideration of the passage of Ordinance 6587, these man's best friends are treated (or mistreated) like livestock or just commodities, not pets. The witnesses told you these puppy mass breeding operations were "puppy mills" even with the USDA regulations.

We did our best to prevent Petland from being an outlet for what seems to be unacceptable, inhumane puppy mass breeding operations. I believe that the City would have prevailed if the Legislature had not changed the law explicitly to render Ordinance 6587 and any similar regulatory ordinance invalid and unenforceable.

However, now we must conform our *Fayetteville Code* to state law including Act 730 of 2023 by amending 92.04(C) so that it is not contrary to that Act when it becomes effective this summer. The Benton County Circuit Court has continued its injunction against our ordinance as this litigation has progressed so there will be no substantive change when our *Fayetteville Code* is changed to conform with this new law. Therefore, I believe that we need to voluntarily move forward and repeal our *Code* section to be replaced with language consistent with Act 730. Attached is my draft of such ordinance to accomplish this amendment.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1591

5 By: Representatives Ray, Beaty Jr.
6 By: Senator J. Dotson
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS RETAIL PET STORE
10 CONSUMER PROTECTION ACT OF 1991; TO CLARIFY THE
11 APPLICABILITY OF THE ARKANSAS RETAIL PET STORE
12 CONSUMER PROTECTION ACT OF 1991; TO PREEMPT CERTAIN
13 LAWS CONCERNING RETAIL PET STORES; AND FOR OTHER
14 PURPOSES.
15
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Subtitle

17 TO CLARIFY THE APPLICABILITY OF THE
18 ARKANSAS RETAIL PET STORE CONSUMER
19 PROTECTION ACT OF 1991; AND TO PREEMPT
20 CERTAIN LAWS CONCERNING RETAIL PET
21 STORES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 4-97-103, concerning the definitions used
28 under the Arkansas Retail Pet Store Consumer Protection Act of 1991, is
29 amended to add an additional subdivision to read as follows:

30 (12) "Local government" means a city of the first class, a city
31 of the second class, an incorporated town, or a county.
32

33 SECTION 2. Arkansas Code § 4-97-109 is amended to read as follows:
34 4-97-109. Applicability to other laws - Preemption.

35 (a) Nothing in Except as provided in subsection (b) of this section,
36 this chapter shall not be construed to prevent or limit the application of



1 any other law.

2 (b) A local government shall not pass an ordinance, resolution, or
3 regulation that prohibits a retail pet store from:

4 (1) Acquiring an animal from a:

5 (A) Cattery;

6 (B) Kennel; or

7 (C) Dealer as defined in 7 U.S.C. § 2132, as it existed on
8 January 1, 2023; or

9 (2) Selling an animal that is acquired from a cattery, kennel,
10 or dealer as defined in 7 U.S.C. § 2132, as it existed on January 1, 2023, to
11 a person.

12 (c) An ordinance, resolution, or regulation of a local government
13 shall be rendered invalid if it is found to be in conflict with the language
14 set out within this section.

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17 APPROVED: 4/12/23
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City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-740

AN ORDINANCE TO AMEND § 92.04 (C) OF THE FAYETTEVILLE CODE TO CONFORM THIS SUBSECTION WITH THE JUST ENACTED ACT 730 OF THE 94TH GENERAL ASSEMBLY

WHEREAS, when the City Council passed Ordinance 6587 and enacted §92.04(C) last year to prohibit pet stores in Fayetteville from selling puppies produced by mass breeding operations that treat dogs like livestock rather than pets, no state law was contrary to or in conflict with this ordinance; and

WHEREAS, the sponsor of House Bill 1591 which has now been passed to become Act 730 of 2023 publicly acknowledged that he sponsored this bill to invalidate and preempt the City of Fayetteville ordinance which enacted §92.04 (C) of the *Fayetteville Code*; and

WHEREAS, since Act 730 of 2023 does indeed preempt and invalidate our City’s former authority and power to regulate the sale of puppies obtained from mass breeding operations or puppy dealers which are regulated and in compliance with 7 U.S.C. §2132 and associated USDA regulations, the City of Fayetteville has no choice but to amend §92.04(C) to conform to the newly passed Act 730 of 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 92.04(C) of the *Fayetteville Code* by repealing it in its entirety and enacting a replacement (C) as follows:

“(C) A retail pet store shall only be allowed to sell a puppy or kitten if it has been acquired from a cattery, kennel or dealer as defined in 7 U.S.C. §2132 and pursuant to the dictates of Act 730 of 2023 codified as A.C.A §4-97-109 **Applicability to other laws – Preemption** and any later amendments thereto. A retail pet store may assist the Fayetteville and Washington County Animal Shelters and nonprofit dog and cat rescue organizations by displaying animals or their photos for adoption in the pet store.”