CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S Forrest Street, Stoughton, WI. 53589

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RODNEY J. SCHEEL
DIRECTOR

Date: January 31, 2022

To: Plan Commissioners and Common Council

From: Rodney J. Scheel
Director of Planning & Development

Michael P. Stacey
Zoning Administrator/Assistant Planner

Subject: Agenda Item for the February 14, 2022 Plan Commission Meeting and Common Council Meetings of February 22 and March 8, 2022.

**Proposed creation of ordinance section 6-16, Breeding or Possession of Cats and Dogs for Research or Experimentation Prohibited.**
This ordinance amendment is proposed to create a ban on possession of cats and dogs for research or experimentation. The organization called Dane4Dogs reached out to the City about this type of use in another area of Wisconsin. A review was done by the City Attorney (see provided memo). A recommendation to Council is necessary. The ordinance is provided.

StaffordRosenbaum LLP
Attorneys

Confidential Memorandum
Privileged Lawyer-Client Communication

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To Michael Stacey, City of Stoughton Zoning Administrator

From Jane Landretti

Date January 13, 2022

Re Animal Research Ordinance

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You asked me to consider whether your proposed animal research ordinance is a permissible regulation under the laws governing the City. The proposed ordinance would restrict the maintenance or operation of place or premises that uses, breeds or possesses cats or dogs for medical, surgical or chemical investigation or experimentation.

My conclusion is that the City may enact this animal research ordinance under its police power authority.

**Use of Police powers**

Other Wisconsin communities that have enacted a similar ordinance. Most have used police powers rather than zoning powers. My opinion is that the police power approach is also the best option for the City of Stoughton.

The City's grant of police power authority is broad, and applies except where the statutes specifically provide otherwise. Among other powers granted to the council, it shall have the power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public. Wis. Stat. § 62.11(5).

**Preemption**

My opinion is that the City's police power on animal research is not preempted by any state law. Other types of animal facilities trigger state licensing requirements in Wis. Admin. Code chapter 16. Those include animal shelters. A facility the City would regulate under this ordinance is not an animal shelter because it is not a facility that is operated to promote the welfare, protection, and humane treatment of animal. Wis. Admin. Code § ATCP

16.01(3). A dog breeder also triggers state licensing requirements. A person the City would regulate under this ordinance is not a dog breeder unless he or she sold at least 25 dogs from more than three litters within a license year. Wis. Admin. Code § ATCP 16.01(5). Similarly, a dog breeding facility also triggers licensing requirements. A facility the City would regulate with this ordinance would not be a dog breeding facility because it would not sell at least 25 dogs in a license year. Wis. Admin. Code § ATCP 16.01(6). In short, the persons and facilities within the City's proposed ordinance fall outside the state licensing requirements.

Other state statutes that deal with animals also do not apply to an animal research facility and so do not preempt the City's police power authority. Chapter 951 of the Wisconsin Statutes deals with crimes against animals. But it excludes research from its scope. Wis. Stat. § 951.015(3).

Another statute deals with transportation of animals across state lines. Any officer or pound with custody of an unclaimed dog may release the dog for scientific or educational purposes. Wis. Stat. § 174.13(2). Only a person licensed under the federal animal welfare laws can send living cat or dog across state lines for any medical, surgical or chemical experiment. Wis. Stat. § 174.13(4). As with other statewide requirements, the proposed ordinance does not present a conflict.

**Conclusion**

None of the statutes or statewide licensing requirements preempt the City police power to enact the proposed animal research ordinance. My opinion it is that the ordinance is a valid use of the City police powers. Wis. Stat. § 62.11(5).

**CITY OF STOUGHTON, 207 S. Forrest Street, Stoughton, WI 53589**

| **ORDINANCE OF THE COMMON COUNCIL** | | |
|---|---|---|
| CREATING SECTION 6-16 OF THE STOUGHTON MUNICIPAL CODE<br><br>Committee Action: Plan Commission recommends Council approval - 0<br>Fiscal Impact: N/A | | |
| **File Number:** | O - - 2022 | **Date Introduced:** |

The Common Council of the City of Stoughton do ordain as follows:

Section 1: Section 6-16 of the City of Stoughton Municipal Code is created as follows:

**6-16 BREEDING OR POSSESSION OF CATS OR DOGS FOR RESEARCH OR EXPERIMENTATION PROHIBITED**

(1) No natural person, corporation, Limited Liability Company or other legal entity shall maintain or operate any place or premises within the City of Stoughton where cats or dogs are used for the purpose of medical, surgical or chemical investigation or experimentation.

(2) No natural person, corporation, Limited Liability Company or other legal entity shall maintain or operate any place or premises within the City of Stoughton where cats or dogs are bred or possessed for the purpose of sending the cats or dogs outside the City for the purpose of medical, surgical or chemical investigation or experimentation.

(3) Nothing in this section shall be interpreted to limit the ability of the owner of a cat or dog residing in the City of Stoughton to enroll their permitted pet cat or pet dog in clinical trials which may provide benefit to the animal.

(4) PENALTY FOR VIOLATIONS. Any natural person or any officer of a corporation, member of a limited liability company, trustee of a trust person having control of any other legal entity who shall violate or fail or refuse to comply with this section shall be subject to section 1-3 penalty provisions, however the forfeiture for the first adjudication shall be a minimum of $250 and the forfeiture for the second and subsequent adjudications shall be a minimum of $500.

Section 2: This ordinance shall be in full force and effect from and after its passage and publication.

Dates

Council Adopted:_____

Mayor Approved: _____ _____

Tim Swadley, Mayor

Published:_____

Attest:_____ _____

Candee Christen, City Clerk