

**IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION**

BOYLE VENTURES, LLC

PLAINTIFF

v. **CASE NO. _____**

CITY OF FAYETTEVILLE, ARKANSAS

DEFENDANTS

COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Plaintiff Boyle Ventures, LLC (“Boyle Ventures”), pursuant to Arkansas Code Annotated §16-123-105, §16-111-101 *et. seq.*, and Ark. R. Civ. P. 65 submits the following Complaint and Motion for Injunctive Relief against the City of Fayetteville, Arkansas (“Fayetteville”):

INTRODUCTION, JURISDICTION AND VENUE

1) This action concerns a request for declaratory relief, a preliminary injunction, a permanent injunction, and one for damages against Fayetteville by Boyle Ventures for Fayetteville’s violation of the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105 in that Fayetteville (after Boyle Ventures was registered with the State of Arkansas Department of Health as a Retail Pet Store, and after Boyle Ventures was established as a business licensed to operate within Fayetteville) adopted Ordinance No. 6857, to be enacted August 20, 2022, which prohibits the display or sale of puppies or kittens, dogs or cats unless such animals are obtained from the Fayetteville Animal Shelter or a rescues agency in cooperation with the Fayetteville Animal Shelter. See Exhibits A (Arkansas DOH registered Retail Pet Stores), B (Business License Acquisition of

Plaintiff, 12/2021), C (Fayetteville Ordinance 6587).¹ Ordinance 6587 is patently inconsistent and contrary to Arkansas law and is therefore unconstitutional and unenforceable.

- 2) Boyle Ventures is a foreign limited liability company registered to do business in the State of Arkansas. It owns two operational registered Retail Pet Stores in Arkansas, one in Rogers and one in Fayetteville. Its member is Samantha Boyle, a resident of Rogers, Arkansas. Boyle Ventures citizenship is that of Arkansas. *Jet Midwest International Co., Ltd. v. Jet Midwest Group, LLC*, 932 F.3d 1102, 1104 (8th Cir. 2019) [The citizenship of non-incorporated entities like limited liability companies depends on the citizenship of their members.]
- 3) Fayetteville is an Arkansas municipal corporation of the first class created pursuant to the Arkansas Code and Arkansas Constitution, and the powers provided thereby. As the City of Fayetteville is aware, “municipal corporations have only the power bestowed on them by statute or the Arkansas Constitution.” *Protect Fayetteville v. Fayetteville*, 565 S.W.3d 477, 479-480; 2019 Ark. 30.
- 4) Jurisdiction is proper in this action under Ark. Code Ann. § 16-123-105 and Ark. Code Ann. § 16-111-101 *et. seq.* Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-101 in that the Plaintiff, being an entity, maintains its principal place of business in Rogers, Arkansas and that its member is a resident of Benton County.

¹ The Plaintiff may maintain additional claims, including but not limited to a claim that Ordinance 6587 is not applicable to its registered Retail Pet Store in Fayetteville (as it is already an open business with vested business and property interests in that store), and reserve the right to make that or any other claim by amendment to this Complaint.

STATEMENT OF FACTS

- 5) Boyle Ventures operates two Petland franchise registered Retail Pet Stores in Arkansas.
- 6) It sells puppies and kittens, obtained from United States Department of Agriculture regulated breeders and other sources.
- 7) In 2019, it opened its Rogers location, which is in operation today.
- 8) In December 2021, it obtained a business license to operate in Fayetteville. Exhibit B.
- 9) After building out its leased space, it began selling puppies in its Fayetteville location this July.
- 10) Earlier in July, as the Plaintiff completed its construction and prepared to open, the City Council, advanced an ordinance attempting to restrict a Pet Stores ability to sell animals obtained from anyone other the Animal Shelter or a rescue agency it approved. Exhibit C.
- 11) Upon review of Fayetteville employee and City Council member records provided in response to an Arkansas FOIA request, that Ordinance was written DUE TO Boyle Venture's opening a store in Fayetteville.
- 12) At the City Council Meeting on July 19, the Council introduced the Ordinance, waived the second and third readings (in contradiction to its Rules of Procedure ["Unless there is clearly no opposition or concern about the ordinance, it should be read and open for public discussion during at least two City Council meetings]) and adopted Ordinance 6587. See Exhibit C.
- 13) The ordinance adopted the following section to add to Fayetteville Ordinance, Title IX, § 92.04:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 92.04 by enacting a new subsection (C) as shown below:

“(C) It shall be unlawful for a pet shop to offer for sale or to display any dog, cat, puppy, or kitten unless obtained from and in cooperation with the Fayetteville Animal Shelter, a government or nonprofit animal shelter approved by Fayetteville Animal Services, or a nonprofit animal rescue organization approved by Fayetteville Animal Services. Every pet shop offering for sale or displaying any dog, cat, puppy, or kitten shall display a label stating the name and address of the organization supplying said animal on the animal’s cage”.

- 14) While the drafted Ordinance contained an emergency clause, as Plaintiff was about to start selling its animals, that clause failed to pass, resulting in an enactment date of August 20, 2022.
- 15) The Plaintiff continued its work completing its leased space, received its certificate of occupancy, and in late July, engaged in selling pets as a registered Retail Pet Store, including dogs to customers, in accordance with Arkansas law and in compliance with the regulations of the Arkansas Department of Health.
- 16) On August 12, the City Attorney wrote a memo to the City Council and Mayor about some of the potential claims of the Plaintiff which might be brought if the Ordinance went into effect should Fayetteville attempt to enforce the Ordinance against it, highlighting especially the risks related to Ark. Code Ann. § 14-54-1105. See Exhibit D, Memo from City Attorney, Pgs. 5-8.
- 17) That memo criticized and analyzed the possible causes of action, but recognized that the Working Animal Protection Act, Ark. Code Ann. § 14-54-1105, depending on the definition of Animal Enterprise, may be in violation of (or, in other words, contrary to) State Law and unconstitutional and unenforceable. Exhibit D at 5-8.
- 18) The memo also recognized that the Supreme Court had not ruled in favor of the City upon its enactment of a contrary Ordinance related to employment discrimination. See *Protect Fayetteville, supra*.

- 19) By its clear terms the Working Animal Protection Act prohibits a municipality from adopting an ordinance which bans, effectively bans, or creates an undue hardship on the operations of an Animal Enterprise. See Ark. Code Ann. § 14-54-1105(b)(2).
- 20) While it does permit a municipality to adopt an ordinance for public safety and welfare or to regulate animal care (which would have to be consistent with State law as explained above), it does not permit the municipality to pass an ordinance regulating Animal Enterprises – such as Pet Stores – as to where it must purchase or obtain inventory (here, the Fayetteville Animal Shelter or a rescue agency the Animal Shelter approves).
- 21) By the terms of Ordinance 6587, the Plaintiff would be theoretically prohibited from obtaining, displaying, or selling any bred animal (its primary enterprise) and would only be able to “sell” rescue dogs obtained from or with the approval of the Fayetteville Animal Shelter from an animal rescue agency (with that term undefined).
- 22) Such a restriction would not only cause an undue hardship on its enterprise but would also eliminate its ability to comply with the Retail Pet Store Consumer Protection Act (discussed *infra*).
- 23) While Ark. Code Ann. § 14-54-1105 does not define “Animal Enterprise,” the phrase is not ambiguous (or subject to one or more interpretation).
- 24) A pet store is an enterprise (or business) in commerce which sells animals.
- 25) Further, and overwhelmingly persuasive is that 18 U.S.C. § 43(d) does define Animal Enterprise. It includes in the definition for Animal Enterprise those who sell animals for profit and further specifically includes “Pet Stores.”

information required², and provides the requisite protection to each of its customers related to the animal's health. It is also subject to claims made under the act by consumers.

- 29) The Pet Store Act's regulations authorize the Plaintiff to receive animals from sellers, breeders, and brokers, among other entities. See Exhibit G, Section 5.
- 30) Failure to comply with the record keeping terms of the Act constitutes a Class A Misdemeanor. See Ark. Code Ann. § 4-97-108, Exhibit F at 5.
- 31) The Pet Store Act further requires consumer guarantees (at Ark. Code Ann. § 4-97-105) which would not be able to be provided for animals which were taken in by a rescue agency or the Shelter as Plaintiff would insufficient history or information to guarantee its health.
- 32) If the Plaintiff was mandated only to sell animals which were taken in by the Fayetteville Animal Shelter or other animal rescue agency (undefined) with the Fayetteville Animal Shelter's approval, it would not be able to satisfy its record keeping requirements under the Pet Store Act. See Note 2.

**CAUSES OF ACTION
COUNTS 1 & 2 – DECLARATORY JUDGMENTS**

- 33) The Plaintiff requests two declaratory judgments pursuant to Ark. Code. Ann. § 16-111-101 *et. seq.* which provides Courts to determine any question of construction or validity arising under...statute, ordinance, ... and obtain a declaration of rights, status or other legal relations thereunder.

² In compliance with the Pet Store Act Regulations, Section 5, Acquisition of Animals, the Plaintiff maintains a permanent record on the vital information (identifying number, description including birthdate, breed, sex, and color, date of arrival, date of exit, or death, information on the person from whom the animal was received, the name of the person who received the animal from the store, the information of the animal's breeder, and the name of any broker, dealer, or other agent from whom the animal passed prior to being acquired by the store), Upon FOIA to the City of Fayetteville for the scope of detailed records kept, a significant portion of these requirements were not available including birthdate, breed, breeder, broker's name, and dealer's name. See Exhibit G at Sec. 5.

- 34) Article 12, § 4 of the Arkansas Constitution (with this principle being reflected in both Ark. Code Ann. §§14-55-101, 102 as stated *infra*) states that "[n]o municipal corporation shall be authorized to pass any laws contrary to the general laws of the state." See also *Protect Fayetteville* at 479-480, *supra*.
- 35) "Municipal corporations have only the power bestowed on them by statute or the Arkansas Constitution." *Protect Fayetteville v. Fayetteville*, 565 S.W.3d 477, 479-480; 2019 Ark. 30.
- 36) Municipalities have the power to make ordinances, **not inconsistent with the laws of the state**, for carrying into effect or discharging the powers or duties conferred by the provisions of Subtitle 3 of Title 14 of the Arkansas Code. See Ark Code Ann. § 14-55-101 (emphasis added).
- 37) Municipal corporations have the power to make ordinances, **not inconsistent with the laws of this state**, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof. See Ark Code Ann. § 14-55-102 (emphasis added).
- 38) As it is claimed to pertain to this case, those municipal powers would include ordinances that are *not inconsistent* with the laws of this state (Ark. Code Ann. § 14-55-101, 102; Ark. Const. Art. 12, § 4) which protect against animal cruelty or provide for animal care, public health, or public safety. See Ark. Code Ann. § 14-55-1105(c)-(e), citing Ark. Code Ann. § 14-54-103.

COUNT 1

FAYETTEVILLE ORDINANCE 6587 IS CONTRARY TO AND INCONSISTENT WITH THE ARKANSAS RETAIL PET STORE CONSUMER PROTECTION ACT OF 1991

- 39) Retail Pet Stores and their procurement and treatment of animals, keeping of inventory, and sales are governed by Ark. Code Ann. § 4-97-101 *et. seq.* and regulated

by the Arkansas Department of Health. Exhibit F, Ark. Ann. § 4-97-101 *et. seq.* and the corresponding Department of Health Regulations, Exhibit E.

40) While Ark. Code Ann. § 4-97-109 does state that “[n]othing in this chapter shall be construed to prevent or limit the application of any other law,” in this instance, because Ordinance 6587 would make compliance with the Pet Store Act impossible and therefore subject the Plaintiff to criminal liability, its inconsistency and contrary nature renders the Ordinance unconstitutional. See Note 2 [detailing impossible compliance if the Plaintiff were forced to only sell rescue animals.]

41) Municipal corporations have not been bestowed the power to regulate pet sales and the attempt of Fayetteville to do so is entirely inconsistent and contrary to the Pet Store Act.

42) As a result, Ordinance 6587 is directly contrary to the Requirements of an Authorization to an Arkansas registered Retail Pet Store to sell pets at retail, bred and obtained from breeders, brokers, or any other source.

43) Ordinance 6587 is thus unconstitutional in violation of Article 12 § 4 of the Arkansas Constitution in that it is contrary to the Arkansas Retail Pet Store Consumer Protection Act of 1991.

COUNT 2
FAYETTEVILLE ORDINANCE 6587 IS CONTRARY TO AND INCONSISTENT WITH
THE WORKING ANIMAL PROTECTION ACT

44) Additionally, or alternatively, the Working Animal Protection Act states that any “ordinance or resolution shall not be enacted by a municipality that terminates, bans, effectively bans, or creates an undue hardship relating to [an] animal enterprise in commerce...entertainment, education, or exhibition.” See. Ark. Code Ann. § 14-54-1105 attached as Exhibit H.

45) Although Ordinance 6587 claims to derive from a desire to protect animals from cruelty and to be for the health and welfare of the public, it was adopted based upon no allegation that the Plaintiff or any Retail Pet Store in Fayetteville was engaging in cruelty to animals, but that the undefined term “puppy mills” were to blame. See Exhibit C, Preamble. It was further adopted with no information as to how the prohibition of the sale of bred puppies and/or kittens from an otherwise registered Retail Pet Store acting in compliance with the Pet Store Act would be in the actual interest of public health and welfare.

46) Even Council Member Mike Wiederkehr stated at the meeting that “the issue isn’t the sale of animals, the issue isn’t the puppies, the issue is the breed animals themselves, and that’s beyond our ability to regulate.” See https://accessfayetteville.granicus.com/player/clip/8168?view_id=14&redirect=true at 3:42:00-3:42:25.

47) In fact, Fayetteville’s City Ordinance § 92.04, prior to the adoption of Ordinance 6587, protected against cruel treatment to animals by “pet shops” in a way that was consistent with the Pet Store Act.

“92.04 - Sale of Diseased Animals; Kennel And Pet Shop Regulation

(A) It shall be unlawful for any person, pet shop, or kennel to sell, offer to sell, or expose any diseased or poisonous animal or any animal the sale of which is prohibited by federal law.

(B) Every place used as a kennel or pet shop shall be kept in a clean and sanitary condition, and no refuse or waste materials shall be allowed to remain thereon for more than twenty-four (24) hours. The owner or operator of a kennel or pet shop shall properly treat any diseased animal and shall properly isolate those animals having a disease contagious to animal or human life; provided, any animal which is diseased past recovery shall be euthanized. All animals in a kennel or pet shop shall be humanely treated and properly nourished. Animals shall not be confined in one area in such numbers that access to food and water is not readily available.”

48) Ordinance 6587 does not prevent direct cruelty to animals in any form.

- 49) The Ordinance merely forces an Arkansas registered Retail Pet Store, wholly controlled by state law and regulations in its obtaining and disposing of pets, to attempt to limit its sale of animals to those received from the Fayetteville Animal Shelter or from some undefined rescue agency that the Fayetteville Animal Shelter approves.
- 50) It therefore effectively bans and unduly burdens the Plaintiff's (a clear animal enterprise in commerce) ability to sell animals it purchases lawfully from regulated breeders or other sources as allowed by the State, which for the Plaintiff's enterprise are pure bred and designer hybrid puppies and kittens in compliance with the Arkansas Retail Pet Store Consumer Protection Act.
- 51) Ordinance 6587 is a type of ordinance prohibited by the Working Animal Protection Act and is patently contrary thereto. As such, it is unconstitutional in violation of Article 12 § 4 of the Arkansas Constitution.

**COUNT 3
VIOLATION OF THE ARKANSAS CIVIL RIGHTS ACT**

- 52) The Citizens of Arkansas have a right to be free from municipal ordinances that are contrary to the Arkansas Code. See Article 12 § 4 of the Arkansas Constitution.
- 53) Ark Code Ann. § 16-123-105(a) of the Arkansas Civil Rights Act ("ACRA") provides in relevant part that:
- (a) Every person who, under color of any...ordinance... of...any...political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.
- (b) In the discretion of the court, a party held liable under this section shall also pay the injured party's cost of litigation and a reasonable attorney's fee in an amount to be fixed by the court.
- 54) Here, Fayetteville, by and through the actions of its City Council, knew (by advice of the City Attorney Williams – including on television – at best, and because knowledge of the law is presumed at worst), knew, or should have known that the Ordinance 6587

was contrary to Arkansas Law at Ark. Code Ann. § 14-54-1105 which prohibits any ordinance banning, effectively banning, or unduly burdening an animal enterprise in commerce.

55) Further, the Council and Mayor knew or should have known that the ability to regulate animals sold by Retail Pet Stores as defined by Arkansas law was not authorized by the "Regulation of Animals" section (Ark. Code Ann. § 14-54-1101 *et. seq.*), and that any regulation adopted to regulate Retail Pet Stores could not be inconsistent with the Arkansas Retail Pet Store Act of 1991, and yet have done nothing following its passing on July 19th to prevent it from taking effect and being unlawfully enforced.

56) Instead, Mayor Jordan pushed the Council to pass Ordinance 6587 based on his own personal disdain for pet stores and further, he pushed the Council to pass the ordinance, certain of which at that council meeting members were requesting more time to consider the issues, by waiving recommended readings and passing it on the date it was introduced.

57) Council Member Turk, at the Council meeting approving the Ordinance stated "I think we need more information...I'm feeling like this is being really rushed...this issue was way more complex than I realized...I would like not to make the final vote tonight..." Then, Sonia Harvey asked to do the same. The matter went to the third reading. See https://accessfayetteville.granicus.com/player/clip/8168?view_id=14&redirect=true at 3:35:43-3:36:40.

58) The City then failed, after a memo alerting him and Fayetteville to the risk of violation of state law, and after televised advice from his City Attorney to call a special meeting, which he has the power to unilaterally do, to stop the enactment of the patently unconstitutional act, further causing Boyle Ventures damages.

59) As a result of this ordinance being adopted, Boyle Ventures has lost business, lost customer relationships, and suffered costs and attorneys' fees which should be all awarded to them under the Arkansas Civil Rights Act, in addition to any other damages proven at trial.

MOTION FOR PRELIMINARY AND PERMANT INJUNCTION

60) ACRA also permits the Plaintiff to seek and receive equitable relief. In this case, it moves for preliminary and permanent injunctive relief and incorporates the rules under which that is sought as its statement of law.

61) Pursuant to Ark. R. Civ. P. 65 and Ark. Code Ann. 16-113-201 *et. seq.*, the Plaintiff moves for a preliminary and permanent injunction, preventing Fayetteville from enforcing Ordinance 6587.

62) Plaintiff has provided notice of this request to Fayetteville's City Attorney, Kit Williams.

63) The irreparable harm that will be endured if this Preliminary Injunction is not granted is that Fayetteville may attempt through its Animal Control to seize the animals owned by the Plaintiff (if that may even be possible under the penalty section of the ordinance – Sec. 92.99 provides for a maximum penalty of \$100.00 per day for violation of Section 92.04 with each day as a separate offence). Plaintiff is unsure, other than that fine, what Fayetteville's mechanism of enforcement will be, and should seizure take place, the City of Fayetteville may not be capable of caring for those animals along with those at the Fayetteville Animal Shelter. Further, it is unclear as to any other mechanisms of enforcement of Fayetteville's Ordinance it may choose to employ, whether that be police intervention, closing the store with animals inside, or other measures, all while the Plaintiff acts in complete compliance with the requirements of the Pet Store Act. As stated above It is anticipated that the likely response will be to fine the Plaintiff each day by citation for a misdemeanor, which if this matter is

determined as the Plaintiff requests, would unnecessarily add to the District Court cases related to the “display” (also an unconstitutional violation of the Arkansas’ Constitutional protection of speech) or sale of these animals which are not obtained from the custody of the Fayetteville Animal Shelter. Such a charge would be a void criminal charge which the owner or potentially, the employees, would then be compelled to defend.

64) Considering that Mr. Williams has recognized the likelihood of this action and its reasoning and potential success, the City of Fayetteville will suffer no harm nor damage (in fact it would benefit by sales tax revenue) should the Plaintiff be permitted to continue its operation during the pendency of this action.

65) The Plaintiff is likely to prevail on the merits of this action in that *Protect Fayetteville v. Fayetteville* clearly set out that the City of Fayetteville cannot enact ordinances which are contrary to Arkansas law with Ordinance 6587 clearly contradictory to state law as set out above.

66) Finally, any bond which could be set should be minimal as the prospective “fines” related to violation of Ordinance 92.04 appears to be restricted to \$100.00 per day. The Plaintiff suggests a bond of \$1,000.00 for this preliminary injunction to compensate Fayetteville for potentially being wrongfully enjoined.

MISCELLANEOUS

67) Boyle Ventures reserves the right to request a jury trial on those issues in this case which may be so triable.

68) Boyle Ventures further reserves the right to amend this Complaint further.

69) Boyle Ventures, due to its request as to judgment of the constitutionality of Fayetteville’s Ordinance 6587 has notified the Attorney General of this matter.

WHEREFORE, Plaintiff Boyle Ventures requests that this Court grant the following relief:

- (1) Hear this matter and set it for an immediate hearing, if not otherwise determined or agreed, on the Plaintiff's request for Preliminary Injunction, accepting this verified complaint as an affidavit of the Plaintiff.
- (2) Declare that Fayetteville Ordinance 6587 is unconstitutional as contrary to either or both Ark. Code Ann. § 14-54-1105 and Ark. Code Ann. § 4-97-101 *et. seq.*
- (3) If the Ordinance may be found unconstitutional, award Plaintiff all damages suffered by the actions of the City Council caused by Ordinance 6587 permitting the unconstitutional act to impair the Plaintiff's rights to be free from such an unconstitutional violation.
- (4) Grant any and all other relief to which Plaintiff is entitled, including the award of attorneys' fees and costs if appropriate.

Respectfully Submitted,
Boyle Ventures, LLC

By: /s/George M. Rozzell IV, ABA # 2008032
Miller | Butler | Schneider | Pawlik | Rozzell PLLC
323 W. Spring St.
Fayetteville, AR 72701
Ph. 479-935-4995
Fax 479-631-6890
grozzell@arkattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that on the date of filing listed hereupon I served the foregoing Pleading and Motion upon the Arkansas Attorney General by electronic mail.

By: /s/George M. Rozzell IV, ABA # 2008032

