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March 14, 2012

TOWN OF GORHAM PLANNING BOARD  
PO Box 224  
4736 South St.  
Gorham, NY 14461

Re: Gorham Moratorium

Dear TOWN OF GORHAM PLANNING BOARD:

I am an advocate for the rights of puppies and dogs abused in Puppy Mills. You can review my work by Googling my name and you can review news videos regarding my case against puppy mills at YouTube LaskTV. I am providing this information as a concerned advocate for companion animals.

I reviewed the Town Minutes, the application and other information, regarding the request to open a “breeding” operation in Gorham. It appears the Town of Gorham needs to further review regarding the impact of that operation. Thus, the moratorium must remain in effect for a year as much information exists that has not been reviewed, requested nor appears to be known by the Town Council; including, but not limited to puppy mill statistics, environmental issues and Department of Agriculture issues.

Attached are my three memorandums of law that I urge all of you to read before voting next week: (a) *The Basic Facts about Puppy Mills: “Puppy Massacre” is not an Overstatement*, (b) *New York State Common Law Illogically Refers to “Man’s Best Friend” as “Personal Property”* and (c) *New York Courts’ Altered Attitude in Custody Determinations of Pets Simulates Custody Determinations of Children*. (**Exhibit “A”**) These memorandums prove an overpopulation of dogs and puppies already exists and is a problem in the United States as millions are tortured and killed because Puppy Mills are not operated properly, there is inadequate State and federal oversight and Puppy Mills do not serve any legitimate purpose. The memorandums prove Courts are more now than ever holding that dogs and puppies are companions and even their best interests in divorces are considered similar to children. Thus, the Town of Gorham must consider the best interests, health and welfare of the over 640 dogs requested to brought there in addition to what problems the Town ultimately will be faced with to clean up a potential mess at the citizen’s expense; such as paying for the rescuing of the animals. Also attached is an excerpt of points presented to me by Citizens Against Puppy Mills that presents further issues the Town should consider (**Exhibit “B”**).

The following further explains why such an operation should not be permitted.

### **I. The November 11, 2011 Application for a “Kennel Facility” Appears Flawed**

The applicant Curtis Martin requests an “agricultural use” at number question 3 and a special use license as a “kennel facility” at 4. What is not disclosed is that his wife Jolene Martin operates the same facility and has been subject to serious violations of harm to animals (Exhibit “C”-see Chart) runs a facility that has numerous violations. It appears Mr. Curtis is applying under his name to avoid raising those violations before the Town. The question is if they already have violations, what says they will not continue them in Gorham?

Violations are easy as, upon information and belief, there is only **ONE** USDA inspector for the entire State of New York named Andrea Ambrosio. She cannot properly monitor nor protect the welfare of the tens of thousands of dogs statewide, no less the dogs and puppies in this proposed facility that are stated at 640 breeding dogs but never accounting for the multiple litters that could result in thousands of dogs. Ms. Ambrosio apparently conducts inspections on average once a year. Thus, in the interim, breeder facilities such as proposed in Gorham can easily conceal many dog and puppy health issues, abuse and deaths and avoid following laws that ultimately the Town of Gorham will foot the bill when those issues and sanitation environmental and rescue issues arise. In fact, in the January 23, 2012 Town Mr. Martin states here that USDA inspections are only annually; thus, with over 640 dogs that could be double that with puppies bred, the oversight on this large scale facility is close to none. That admission reflects the findings in the USDA’s recent Audit Report 33002-4-SF May 2010 that they do not have the manpower to properly inspect these facilities and there are tens of thousands of dogs and puppies in these facilities that suffer, are abused, not properly cared for and killed needlessly. Begging the question then-why does Gorham need this facility when the USDA is overwhelmed and we suffer an overpopulation of dogs anyhow that need help now, not to be bred and cause more damage.

The Martin Kennel Biosecurity plan appears to be something anyone can draft and present. The issue is how can Gorham expect that will be enforced or monitored when only one USDA inspector conducts only annual inspections and the USDA admits in its Audit Report it does not have the manpower for proper oversight? Interestingly, Jolene Martin is listed as part of the business, which brings us back to Exhibit A and why she has those issues regarding the animals’ welfare in the first place? What makes Gorham believe they won’t occur there.

Mr. Curtis’ Environmental Assessment form states the use is actually “wholesale breeder” and at 11 thereof confirms he does not have a valid USDA permit yet. Part C regarding waste disposal states it will be transported off site, then claims at the last page the operation will not have an impact on the environment. The issue is his “Business Plan for Curtis and Jolene Martin” states there will be “640 adult breeding dogs”, but omits the amount of puppies they will breed, which could be double or more than 640 considering litters consist of many puppies. **Thus, the entire environmental plan and application relates at least half the story.** Gorham should be apprised of the entire story and how potentially thousands of dogs, including literally babies, the puppies, need serious attention and how more than 640 animals will be treated.

The application proposes a staff of 5 persons and the Martins intend for their children to be involved. Notably, a staff of 5 persons is inadequate for 640 dogs in the least and potentially thousands at most? And claiming children will tend to the animals is worse as they are not qualified for the care and attention needed in a facility where it is understood these animals are frightened and without proper human affection. The application as much admits they will not even have an outdoor run so we are unaware what outdoor stimulation they will receive other than being caged all day and maybe an indoor run for an unexplained time. Moreover, nowhere does he state if there will be an on-site veterinarian, 24 hour on-call veterinarian, how many days one will visit, the name of the vet and omits how he will transport the puppies or the care for them other than he will comply with the USDA standards; which is a hard pill to swallow when they have multiple times been cited for violations in what are only annual inspections (**Exh. C**). Consider if the inspections were more frequent, such as monthly—what would be found as the annual inspections show the inspector cannot even identify what dogs are there when and how long. In fact, nowhere has anyone produced a listing of the dogs by breed, identification or otherwise. And when litters are born, there appears to be no record of that reviewed by the Town as to how those litters may disappear other than the facility is prepared to “compost” dead bodies on the grounds. The trailer they show also is questionable as there is no information as to the care of the dogs and puppies that may be transported in that trailer.

The January 16, 2012 Planning Board Checklist Response is questionable as the Martins are already anticipating “dead” dogs and “composting” them on the grounds. The fact is that there should not be dead dogs if they are in the business of keeping them alive. Yet at the Town January 12, 2012 meeting, he discusses dead dogs and the overbred mother dogs with no compassion, referring to them as things they will “put down”: ““That we can put into a shelter if we have to, but a lot times they’re getting older and problems are coming on just because they’re getting older; if there is something wrong with them we’re going to have to put them down. (Town Minutes at p. 14)

## **II. The January 23, 2012 Minutes Show Many Issues Need Further Answers**

The Martins want to move their present “breeding facility” to Gorham. Again, that facility had many violations (Exh. C). At the Town meeting Mr. Martin did not explain how he would operate any differently in Gorham, and appeared to be evasive. First, for a facility of 640 adult dogs, not even counting what could be double that as puppies they breed, he states there will only be 5 employees. That does not appear adequate at all for so many dogs requiring care, and is certainly why these facilities ultimately become puppy mills harming animal lives that by law they are to protect. The pond issue raised shows there are environmental issues that can affect the citizens there requiring serious consideration into the environmental laws and the US Environmental Protection Agency regulations. I used to be a litigator involved in EPA issues and it is a serious problem when runoff seeps into the grounds and water. Finally, again, composting and burial is discussed which the fact is why are dead animals even raised? There should not be one dead animal; however, here, there is no explanation of how many there are expected and should a cemetery license be part of this process if this facility is going to be burying bodies on grounds?

**III. IF ROMULUS, NEW YORK ENACTED A ONE YEAR MORATORIUM THEN SO CAN GORHAM IN THIS CASE**

Attached are the Romulus moratorium and their resulting law protecting puppies welfare, health and safety that speaks for itself at Section I (**Exhibit “D”**) that Gorham should do the same:

“... the Town has been made aware that thousands of puppy mills exist all over the United States and, further that the numbers also appear to be increasing in other areas, including upstate New York. Further, it has been documented in the press that dogs rescued from puppy mills exhibit a wide array of veterinary and behavioral problems, including severe malnutrition, rotting teeth and severe periodontal disease, extreme matting of fur sometimes leading to skin lesions, mange, flea, tick, and parasite infestations, and serious foot and leg injuries from living an entire life on wire mesh flooring; that female dogs in puppy mills are typically bred at every opportunity until they are physically spent and can no longer reproduce; that puppy mill dogs live out their entire lives in tiny enclosures, never having a chance to get out of their cages for exercise or socialization. Therefore, it appears that it would be appropriate for the Town Board to review the standards under which large scale and/or commercial kennels or breeding facilities be permitted within the Town. It is with this in mind that this moratorium is hereby proposed.”

It would be prudent for the Town of Gorham to take the time to investigate further this important issue and use the moratorium to do that.

If you have any questions, please feel free to contact me at any time.

Very truly yours,  
LAW OFFICES OF SUSAN CHANA LASK  
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SUSAN CHANA LASK

# ***The Basic Facts about Puppy Mills: “Puppy Massacre” is not an Overstatement***

*By Susan Chana Lask, Esq.*

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In a country already suffering from an over population of dogs, cats and other companion animals, there are nearly six thousand commercial kennels or “puppy mills” in the United States licensed by the U.S. Department of Agriculture perpetuating the problem.<sup>1</sup> Approximately four million dogs are bred in puppy mills annually and an estimated four to five million die every year (almost 11,000 daily).<sup>2</sup> Causes of death include but are not limited to, neglect and starvation, untreated illnesses, and lack of heat or air conditioning in puppy mills.<sup>3</sup> The conditions in puppy mills are downright atrocious and inhumane. Dogs are forced to live in very small cages or enclosures, often with several others. The conditions of the enclosures are often unsanitary. Female dogs housed in puppy mills are bred as frequently as possible and the puppies are taken away from their mothers prematurely.<sup>4</sup> The result is an unhealthy and genetically defective puppy who suffers and millions of dollars in profits go to the cruel and careless individuals who own and operate puppy mills. According to the Humane Society of the United States, although laws exist regulating puppy mills,<sup>5</sup> there are inefficiencies in the system.<sup>6</sup>

The numbers supporting the cruelty are staggering as the following chart shows.

<b>Number of Puppy Mills in the United States</b>	<b>Number of Dogs Housed in Puppy Mills</b>	<b>Annual Number of Dogs Killed in Puppy Mills</b>	<b>Manner of Death</b>
6,000 USDA-licensed commercial kennels in the U.S. (and untold numbers of unlicensed.)	An estimated 4 Million dogs are bred in puppy mills every year	4-5 Million animals die in shelters every year (roughly 11,000 every day.)	No heat or air conditioning in a puppy mill (Dogs freeze in the winter and die of heat stroke in the summer)  Untreated Illness  Neglect and Starvation

<sup>1</sup> *Puppy Mill Information*, PUPPY MILL AWARENESS DAY, [http://www.awarenessday.org/national/pm\\_info.html](http://www.awarenessday.org/national/pm_info.html). (last visited Feb. 22, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> Sharon Seltzer, *Illegal Dumping of Dead Dogs – The Latest Puppy Mill Atrocity*, CARE2 MAKE A DIFFERENCE (Oct. 28, 2010) <http://www.care2.com/causes/illegal-dumping-of-dead-dogs-the-latest-puppy-mill-atrocity.html>.

<sup>4</sup> Sharyn Slant, *PUPPY MILLS, The Sad Truth: Facts and Statistics*, <http://sharynsslant.hubpages.com/hub/P-U-P-P-Y-M-I-L-L-S-F-a-c-t-s-A-n-d-S-t-a-t-i-s-t-i-c-s> (last visited Feb. 22, 2012).

<sup>5</sup> *See*, U.S. Animal Welfare Act, 7 U.S.C. §§ 2131 – 59 (2006). The Act is enforced by the U.S. Department of Agriculture and requires minimum standards of care for dogs and other animals bred for commercial resale and profit. The Act only applies to “wholesale operations” and not direct sales to the public.

<sup>6</sup> *Puppy Mills, Learn More about this Cycle of Cruelty*, HUMANE SOCIETY OF THE U.S. (Jun. 8, 2010), [www.Humanesociety.org/issues/puppy-mills/qa/puppy\\_mill\\_FAQs.html#Are\\_there\\_any\\_federal\\_laws\\_that\\_regulate](http://www.Humanesociety.org/issues/puppy-mills/qa/puppy_mill_FAQs.html#Are_there_any_federal_laws_that_regulate).

Puppy mills are notorious for dumping their dead puppies, or stock piling massive graves without a license to do so. Under New York law, puppy mills are committing state legal violations. The New York State, Division of Licensing Services oversees the operation of a pet cemetery or crematorium. New York's General Business Law, Article 35-C, § 750-b ("License Required") provides that "no person shall engage for a fee in the business of operating a pet cemetery or pet crematorium or hold himself or herself out as being able so to do unless he or she is licensed therefor pursuant to this article."<sup>7</sup> Furthermore, § 750-k ("Violations and Penalties") of the statute provides:

Any person not licensed pursuant to this article who shall directly or indirectly engage in the business of operating a pet cemetery or pet crematorium . . . shall for the first offense be guilty of a violation and, upon conviction thereof, shall be punished by a fine of not more than \$500 or by imprisonment for a term of not more than 15 days, or by both such fine and imprisonment.<sup>8</sup>

Although the penalties for violations are minor, local authorities need to step up and enforce the laws to ensure that puppy mills pay the price for any illegal activity. The United States is experiencing an over population of pets or companion animals, and puppy mills are the problem as they not only abuse the creatures we love, they also over breed them causing serious population issues.

\*\*The assistance of Law Student Brett Burnbaum to this article is greatly appreciated.

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<sup>7</sup> N.Y. GEN. BUS. LAW, § 750-b (McKinney 2011).

<sup>8</sup> N.Y. GEN. BUS. LAW, § 750-k (McKinney 2011).

# *New York State Common Law Illogically Refers to “Man’s Best Friend” as “Personal Property”*

*By Susan Chana Lask, Esq.*

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## I. INTRODUCTION

Dogs are commonly referred to as “man’s best friend,” the companion animals that for centuries have provided owners with unconditional love, dedication and protection. In the United States today, there are approximately seventy-eight million owned dogs and thirty-nine percent of U.S. households own at least one dog (forty-five million households).<sup>1</sup> Dogs are generally regarded not just as companions, but as family members and best friends. Research shows that dogs experience emotions such as happiness and sadness like their human counterparts.<sup>2</sup> In fact, it is not unusual for some people to choose to care for a dog as an alternative to having children. In addition to companionship, studies demonstrate that humans derive health benefits from their relationship with pets.<sup>3</sup> However, despite a dog’s ability to experience emotion and provide pleasure and health benefits to their owners, New York State common law continues to refer to dogs as “personal property,” no different legally from the recliner in your living room or the lawn mower in your garage. Those cases show the courts struggle with the “property” versus “living being” concepts as they also state that dogs do feel love and pain unlike inanimate objects.

In contrast to case law, New York State has numerous civil and criminal laws protecting pets, or as better stated “companion animals”, from harm and abuse and even permits trusts and dispositions in a will for the benefit of a family pet. These laws provide penalties for animal cruelty, neglect, and abandonment. However, because there is no current distinction between property and living beings with regard to pets, more essential tort protections are not available.

The contradictions between case law (itself struggling to claim pets are “property” while simultaneously stating they are loving beings) and statutes regarding pets can be corrected as a strong argument can be made that pets sold for profit, and presently defined in the law as “property” and/or “goods,” should instead be defined as a “living being,” not an inanimate

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<sup>1</sup>*U.S. Pet Ownership Statistics*, The Human Soc’y of the U.S., [http://www.humanesociety.org/issues/pet\\_overpopulation/facts/pet\\_ownership\\_statistics.html](http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html). (last visited Feb. 21, 2012).

<sup>2</sup> Adam Miklosi, (2007) *Dog Behaviour, Evolution, and Cognition*, Oxford University Press; K.Guo, C Hall, S Hall, K Meints, D Mills (2007) *Left Gaze bias in human infants, rhesus monkeys and domestic dogs*. *Perception* 36 (s) 148.

<sup>3</sup>*The Benefit of Pets*, BEST FRIENDS ANIMAL SOC’Y, available at, <http://www.bestfriends.org/theanimals/pdfs/allpets/benefitsofpets.pdf>. More specifically, some of the research highlights included: “Dr. Karen Allen, a researcher at the State University of New York at Buffalo, showed that people with hypertension who adopted a dog had lower blood pressure readings in stressful situations than did those who did not own a pet.” *Id.* “According to a study published in 1999 in the *Journal of the American Geriatrics Society*, older people who have pets tend to have better physical health and mental well-being than those who don’t.” *Id.* “Dr. James Lynch of the Life Care Foundation conducted a study that showed that heart patients who owned pets had a much better chance of long-term survival than patients who didn’t own pets.” *Id.*

object. Modifying the legal definition will allow for more effective judicial and public cognizance of animal rights, and could include a pet owner's ability to recover damages for past and future pain and suffering, and loss of enjoyment of life when a pet is inhumanely and unlawfully bred, treated, injured, or killed. This article discusses the relevant statutes and NY common law making the case for defining dogs or companion pets as "living beings" as opposed to "personal property."

## **II. NEW YORK STATE LEGISLATION EXISTS FOR THE PROTECTION AND HUMANE TREATMENT OF PETS TO THE EXTENT THEY ARE RECIPIENTS OF ESTATE TRUSTS**

New York State common law currently defines pets as "property". This definition is illogical considering that state law provides for civil remedies and criminal punishment protecting animals. There are several sources of New York State law that collectively strengthen the case for defining pets as "living beings." Some of these include the New York State Lemon Law,<sup>4</sup> Agriculture and Markets Law,<sup>5</sup> General Business Law,<sup>6</sup> General Municipal Law,<sup>7</sup> General Obligations Law,<sup>8</sup> Public Health Law<sup>9</sup> and New York General Business Law regarding pet cemeteries.<sup>10</sup>

The New York State Pet Lemon Law is "designed to safeguard the public and to ensure the humane treatment of dogs and cats by requiring pet dealers to guarantee the good health of any such animal sold by a pet dealer to a consumer."<sup>11</sup> Recognizing the value of pets as more than mere property, New York State Attorney General Eric Schneiderman's Pet Lemon Laws brochure affirmatively states "[p]ets are truly members of the American family. It is estimated that approximately 60% of households have at least one pet."<sup>12</sup> and "[p]ets offer unconditional love and their companionship can provide important physical and emotional benefits to us." As a result of the Pet Lemon Law, consumers who purchase an unfit dog or cat may be entitled to a refund, reimbursement for veterinary expenses or a replacement animal.<sup>13</sup> The Pet Lemon Law pitfall, however, is that the consumer must obtain a veterinarian's certification that the animal is unfit a mere 14 days from the date of purchase or receipt of the written notice of the owners' rights under the law, whichever is later. The Pet Lemon Law is insufficient to protect consumers from congenital defects that can go undetected and arise months or even years after the purchase of a new pet. Another potential pitfall is that pets, including dogs and cats, are considered "goods" under the New York Uniform Commercial Code, therefore providing a market value

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<sup>4</sup>*NY Pet Lemon Law*, OFFICE OF THE N.Y. ST. ATT'Y GEN., CONSUMER FRAUDS BUREAU, [http://www.ag.ny.gov/bureaus/consumer\\_frauds/tips/pet\\_lemon\\_law.html](http://www.ag.ny.gov/bureaus/consumer_frauds/tips/pet_lemon_law.html). (last visited Feb. 21, 2012). *See also*, N.Y. GEN. BUS. LAW §§ 753-54 (McKinney 2011).

<sup>5</sup>N.Y. AGRIC. & MKTS. LAW §§ 106 – 127; 331 - 32, 400 - 410 (McKinney 2011).

<sup>6</sup>N.Y. GEN. BUS. LAW §§ 399-aa, 751 – 755 (McKinney 2011).

<sup>7</sup>N.Y. GEN. MUN. LAW § 88, 209cc (McKinney 2011).

<sup>8</sup>N.Y. GEN. OBLIG. LAW § 11-107 (McKinney 2011).

<sup>9</sup>N.Y. PUB. HEALTH LAW § 1310, 505-a, 2140 – 46 (McKinney 2011).

<sup>10</sup> N.Y. GEN. BUS. LAW §750.

<sup>11</sup>*NY Pet Lemon Law*, OFFICE OF THE N.Y. ST. ATT'Y GEN., CONSUMER FRAUDS BUREAU, [http://www.ag.ny.gov/bureaus/consumer\\_frauds/tips/pet\\_lemon\\_law.html](http://www.ag.ny.gov/bureaus/consumer_frauds/tips/pet_lemon_law.html). (last visited Feb. 21, 2012).

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*



price tag limitation on each pet sold to consumers.<sup>14</sup> The Pet Lemon Law alone is meager protection for the pet and the consumer, and conflicts with the Attorney General's affirmations that pets are members of our family while simultaneously relegating them to a refund or replacement.

Somewhat more protection for the pet welfare and actually considering them as "living beings" is found in the State of New York's Department of Agriculture and Markets which imposes, enforces and collects monetary fines as a civil penalty against Pet Dealers who do not maintain proper standards of care for pets. Those laws demonstrate that pets, notably dogs, should be defined as "living beings" and not "personal property."

Section 350 of the Agriculture and Markets Laws actually defines certain pets as a "companion animal," i.e., any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal . . . "pet" or "companion animal" shall not include a "farm animal" . . .<sup>15</sup> The statute demonstrates that domesticated animals, such as dogs, are "companion animals," as distinguished from farm animals or wild animals. Further, the statute establishes that a companion animal is a friend, partner, or mate,<sup>16</sup> deserving of greater rights and protection and the title "companion." After defining dogs as companions rather than property, these laws provide further recognition for their well-being as Section 401 of New York's Agriculture and Markets Law provides for the minimum standards of animal care that pet dealers must comply with.<sup>17</sup> The statute specifically addresses housing, sanitation, handling, veterinary care, and humane euthanasia requirements<sup>18</sup> which are many of the basic requirements necessary for any "living being." By contrast, items of "personal property" do not require housing, and provisions for sanitation, handling and medical care. Violations of §§401-406 subject a pet dealer to "denial, revocation, suspension, or refusal of renewal of his or her license," and "violation of any provision . . . is a civil offense."<sup>19</sup>

Finally, §410 of New York's Agriculture and Markets Law ("Establishment of Animal Response Teams") provides that "[t]he commissioner is hereby authorized to establish state and county animal response teams to support the prevention of, preparedness for, response to, and recovery from emergencies and disasters affecting animals in New York State."<sup>20</sup> Although the statute does not specify that "companion animals" are to be rescued, a reliable assumption can be made that the government affords animals greater protection and security than "personal property" such as furniture or a personal computer. The conclusion is that animals are "living beings" and deserve to be saved, not destroyed.

Considering that animals and pets do have certain legal rights and protections, their right to be defined as "living beings" becomes more compelling when we consider they are also

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<sup>14</sup>See N.Y. U.C.C. LAW § 2-105 (McKinney 2011). Courts often use the market value of the pet to determine damages to its owner.

<sup>15</sup>N.Y. AGRIC. & MKTS. LAW§ 350 (McKinney 2011).

<sup>16</sup>"Companion" is defined as a mate or a partner, DICTIONARY.COM, <http://dictionary.reference.com/browse/companion>. (last visited Feb. 21, 2012).

<sup>17</sup>N.Y. AGRIC. & MKTS. LAW§ 401 (McKinney 2011).

<sup>18</sup>*Id.*

<sup>19</sup>N.Y. AGRIC. & MKTS. LAW§ 406 (McKinney 2011).

<sup>20</sup>N.Y. AGRIC. & MKTS. LAW § 410 (McKinney 2011).

entitled to estate benefits from willing owners to ensure the animal's well-being. The New York State Estates, Powers and Trusts Law § 7-8.1 ("Honorary Trusts for Pets") provides:

A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.<sup>21</sup>

The significance of §7-8.1 cannot be understated. The statute establishes that a domestic or pet animal is eligible as a trust beneficiary. In contrast, an inanimate object, or items of personal property, such as one's automobile, cellular phone, or flat screen television can never be the beneficiary of a trust, demonstrating that companion animals should be identified as "living beings" that have certain rights and defining them as "personal property" is contrary to their statutory rights and protections, and their treatment under the law. Strengthening the fact that our legislature recognizes pets as more valuable than "property" and that "owners' suffer nothing less than emotional distress from losing their pets is their confirmation of the humane treatment pets demand upon their death in New York General Business Article 35-C §750:

"The legislature hereby finds and declares that the relationships that humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special. These relationships can enrich our lives and increase our happiness. Even after the death of a pet, human attachment to the memory of the pet often remains very strong and many people feel the need to memorialize their love for their animal by burying their pet in a pet cemetery. Pet cemeteries, their managers and owners have a special responsibility to their customers who have entrusted their pets' remains with them. These pet cemeteries have a duty to act in an ethical and lawful manner to prevent grieving pet owners from experiencing further any emotional pain or financial manipulation. Perpetrations of fraud against grieving pet owners are unconscionable." (emphasis added)

### **III. NEW YORK STATE CASE LAW DEMONSTRATES ITS OWN INTERNAL CONFLICTS AND THE NEED FOR COURTS TO FOLLOW LEGISLATION THAT PROTECTS AND MANDATES HUMANE TREATMENT OF PETS**

"Pets are treated under New York law as personal property, and the loss of a dog by reason of negligence will not support claims by the animal's owners to recover for their resulting emotional injury."<sup>22</sup> This statement by the New York Supreme Court continues to reverberate in many related pet injury lawsuits. In countless cases, courts have held that a pet owner may recover the market value of a deceased pet; however, damages may not be recovered for an owner's emotional distress and loss of companionship, or the pain and suffering of pets. For

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<sup>21</sup>N.Y. EST. POWERS & TRUSTS LAW § 7-8.1 (McKinney 2011).

<sup>22</sup>See *Generally* Schrage v. Hatzlacha Cab Corp., 788 N.Y.S.2d 4 (App. Div. 2004). Where Plaintiff, dog owner, sued a cab company owner for the death of his dog attributable to the driver's negligent operation of a vehicle. Although Plaintiff demonstrated prima facie that the dog's death was due to the driver's negligence, the court found that the "loss of a dog by reason of negligence will not support claims by the animals owners to recover for their resulting emotional injury."

instance, where an airline passenger sued American Airlines for damages arising from the death of his dog after it suffered heat stroke in the cargo hold of an airplane, the court held that “under New York law, there is no independent cause of action for loss of companionship of a pet,” and no cause of action is recognized for the pain and suffering of animals.”<sup>23</sup> Additionally, in *Fowler v. Ticonderoga*, the New York Supreme Court held that plaintiff’s claim for damages for psychic drama resulting from the shooting of his dog by a Town Dog Control Officer unrecoverable.<sup>24</sup> The Court explained that “although plaintiff may have observed the killing of his dog, he was not in the zone of danger, was not himself physically injured, and the alleged tort ‘involved personal property, not a family member’.”<sup>25</sup> However, the New York Agriculture and Markets Law § 350 defines a domesticated pet, such as a dog, as a “companion animal.” The plain language of the statute clearly identifies dogs, as “companions”, yet courts nonetheless treat pets as “goods,” “personal property” or “inanimate objects” and have not expanded legal interpretations to make any further and obvious distinctions.

Significantly, not all courts uniformly believe that a pet is “personal property.” Some courts have held that “a pet is not an inanimate thing that just receives affection, it also returns it.”<sup>26</sup> In a 1979 Civil Court case in New York, the plaintiff Kay Corso, owner of a pet poodle, sought damages for mental anguish against a funeral arranger for pets when she found the remains of a cat in the casket that was supposed to be holding the remains of her deceased pet poodle.<sup>27</sup> One legal issue faced by the court was whether the plaintiff was entitled to damages beyond the market value of the dog.<sup>28</sup> In its decision the court first held that a pet “is not simply an item of personal property, but occupies a special place somewhere in between a person and a piece of personal property.”<sup>29</sup> Additionally, the court believed that “in ruling that a pet such as a dog is not just a thing . . . the plaintiff is entitled to damages beyond the market value of the dog . . . A pet is ‘not an inanimate thing’ that just receives affection, it also returns it.”<sup>30</sup> One year later, in a 1980 Civil Court tort lawsuit in New York, plaintiff’s eight-year-old trained watchdog died while boarding in the defendants kennel.<sup>31</sup> Plaintiff received the pet as a gift and therefore it had no ascertainable market value. The court held that “to this retired woman, who lived alone, this pet was her sole and constant companion,” and plaintiff “is not limited to a nominal award merely because the mixed breed dog was a gift and had no ascertainable market value, but instead entitled to damages for loss of companionship and protection since such factors are elements of the dog’s actual value to her.”<sup>32</sup> The courts in these cases recognized that regardless of “market value,” a pet is a living being that offers invaluable companionship, protection, love and support, the loss of which causes an owner grief and emotional distress.

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<sup>23</sup> *Gluckman v. American Airlines, Inc.*, 844 F. Supp. 151 (S.D.N.Y. 1994).

<sup>24</sup> *Fowler v. Town of Ticonderoga*, 516 N.Y.S.2d 368 (App. Div. 1987).

<sup>25</sup> *Id.* at 919-20.

<sup>26</sup> *Corso v. Crawford Dog & Cat Hospital* 415 N.Y.S.2d 182 (N.Y. Civ. Ct. 1979).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 183.

<sup>30</sup> *Id.*

<sup>31</sup> *See generally Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980).

<sup>32</sup> *Id.*

Most recently, in November 3, 2011, the Texas Court of Appeals sharply found dogs are “man’s best friend” and did its best to protect dogs by holding dogs have sentimental value when considering damages. In 2009, the Medlen family’s dog Avery escaped from their backyard in Texas and was picked up by animal control. When the Medlens went to pick up Avery from the shelter, they were notified that Avery was accidentally euthanized.<sup>33</sup> The sole issue in the case was whether a party can recover intrinsic or sentimental damages for the loss of a dog.<sup>34</sup> The Texas Court of Appeals overruled a 120-year-old case,<sup>35</sup> and held that “an owner may be awarded damages based on the sentimental value of lost personal property, and because dogs are personal property, the sentimental value of a dog is considered damages.”<sup>36</sup> In her opinion, Justice Lee Gabriel injected humanity into what is usually limited to property and said “[d]ogs are unconditionally devoted to their owners. Today, we interpret time sworn Supreme Court law in light of subsequent Supreme Court law to acknowledge that the special value of 'man's best friend' should be protected," and "[b]ecause an owner may be awarded damages based on the sentimental value of lost personal property, and because dogs are personal property, the trial court erred in dismissing the Medlens' action against Strickland.”<sup>37</sup>

Even the Internal Revenue Service is involved in the issue. During June of 2011, Jan Elizabeth Van Dusen successfully petitioned the Internal Revenue Service for the redetermination of an income tax deficiency arising from the disallowance of charitable-contribution deduction for her unreimbursed volunteer expenses while caring for about seventy foster cats in her private residence.<sup>38</sup> The Tax Court had to determine whether Van Dusen had provided services to a particular charitable organization for which she may deduct expenses.<sup>39</sup> The Tax Court ultimately held that Van Dusen may take charitable deductions for the expenses she incurred while caring for the cats in her home. According to the Wall Street Journal, “the decision . . . paves the way for volunteers of animal-rescue groups like the ASPCA and Humane Society of the U.S. to deduct unreimbursed expenses that further the groups' missions, such as fostering stray animals. It also clarifies rules for anybody deducting unreimbursed charitable expenses of \$250 or more, especially if they involve use of a home.”<sup>40</sup> The outcome of Van Dusen’s case is enormously significant for organizations dedicated to the protection of animals, prospective and current pet foster parents, as well as for establishing the

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<sup>33</sup> Medlen v. Strickland, 353 S.W.3d 576 (Tex. Ct. App. 2011).

<sup>34</sup> *Id.* at 577.

<sup>35</sup> See *Generally* Heiligmann v. Rose, 16 S.W. 931 (1891). The Supreme Court of Texas held that plaintiffs can only recover for the market value of their pets, “a damage award for the loss of a canine may be determined by either a market value, if the dog has any, or some special or pecuniary value to the owner, that may be ascertained by reference to usefulness and services of the dogs, and that they were of special value to the owner.”

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 31, at 580-81.

<sup>38</sup> See *generally* Van Dusen v. C.I.R., 136 T.C. 515 (2011).

<sup>39</sup> Internal Revenue Code, 26 U.S.C.A. § 170(c) (2006). The Tax Court considers the strength of the taxpayer's affiliation with the organization, the organization's ability to initiate or request services from the taxpayer, the organization's supervision over the taxpayer's work, and the taxpayer's accountability to the organization.

<sup>40</sup> Laura Saunders, *Stray Cat Strut: Woman Beats IRS*, THE WALL STREET JOURNAL, <http://online.wsj.com/article/SB10001424052702304778304576377744105236346.html>. (last visited Feb. 21, 2012).

concept that pets are actual living beings subject to a tax break similar to a child or any other dependant.

#### **IV. Conclusion**

The legal rights of animals, pets and pet owners in the United States are a work in progress. Improved legislation is necessary both on the federal and local levels. New York State statutes afford an abundance of protections for animals including civil and criminal penalties for violators, however courts have been reluctant to recognize the pain and suffering of a pet and consequently, its owner, yet within their own decisions they recognize that pets are not inanimate objects. As this article demonstrates, there exists a pressing issue requiring legislative reform concerning pets sold for profit. Presently defined as “property” and/or “goods,” legislation is needed to define pets or companion animals as “living beings,” and not inanimate objects. Modifying the definition in the law will allow for expanded rights including the recovery of damages for past and future pain and suffering, and loss of enjoyment of life when a pet is inhumanely and unlawfully treated, injured, or killed.

\*\*The assistance of Law Student Brett Burnbaum to this article is greatly appreciated.

## *New York Courts' Altered Attitude in Custody Determinations of Pets Simulates Custody Determinations of Children*

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### I. INTRODUCTION

In 2009 approximately one hundred and twenty thousand people were married in New York, and forty-six thousand people filed for divorce.<sup>1</sup> When children are involved in a divorce proceeding there are custody issues. A court must also allocate the marital property to each spouse equitably.<sup>2</sup> In addition to those considerations, an increasingly prevalent issue facing courts today is how to treat a family's beloved pet in a divorce proceeding. A recent poll of 1,500 members of the American Academy of Matrimonial Lawyers found that "nearly a quarter of divorce lawyers surveyed across the country have noticed an increase in pet-custody cases in the last five years."<sup>3</sup> Unlike a family's expensive leather couch, fine china, or valuable art, the family pet is a living being treated as personal property and chattel. According to the American Veterinary Medical Association, there were more than seventy-two million pet dogs in the U.S. and nearly eighty-two million pet cats in 2006.<sup>4</sup> Nearly half of pet owners considered their pets to be family members. In fact, a survey by the American Animal Hospital Association found that eighty-three percent of pet owners refer to themselves as their pets' "mom" or "dad."<sup>5</sup> New York law identifies pets as members of the family. The New York Family Court Act §842 permits pets or companion animals to be included as protected family members in orders of protection.<sup>6</sup> Yet in other situations, New York courts treat pets or companion animals as "personal property" and not "living beings." Conversely, in divorce proceedings or property disputes between housemates and separated couples, the scale has begun to tip in favor of treating pets or companion animals as living beings as courts consider the pet's best interest when custody is an issue. The standard in child custody is the acronym "BIC"-or "best interests of the child." It appears we now have "BIP", or best interests of the pet".

### II. CASE LAW DEMONSTRATES THAT NEW YORK COURTS HAVE CHANGED THEIR VIEW OF PET CUSTODY DETERMINATIONS

"Recognizing companion animals as a special category of property is consistent with the laws of the state and the underlying policy inherent in these laws to protect the welfare of animals."<sup>7</sup> As the Court in *Feger v. Warwick Animal Shelter* eloquently stated, New York laws

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<sup>1</sup> U.S. NAT'L CENTER FOR HEALTH STATISTICS, NAT'L VITAL STATISTICS REP.: BIRTH MARRIAGE, DIVORCES AND DEATHS (Aug. 2010), available at <http://www.census.gov/compendia/statab/2012/tables/12s0133.pdf>.

<sup>2</sup> See, N.Y. Dom. Rel. Law § 236(B) (McKinney 2011). The statute controls all divorce actions in the State of New York.

<sup>3</sup> Jane Porter, *Custody Battles over Pets Look Like a Dogfight*, THE HARTFORD COURANT (Oct. 1, 2006), available at <http://www.aaml.org/sites/default/files/Custody%20battles%20over%20pets%20look%20like%20a%20dogfight.pdf>

<sup>4</sup> *U.S. Pet Ownership & Demographics Sourcebook*, AM. VETERINARY MED. ASS'N, <http://www.avma.org/reference/marketstats/sourcebook.asp#Figures>. (last visited Feb. 21, 2012).

<sup>5</sup> *Supra* note 3, at 1.

<sup>6</sup> N.Y. FAM. CT. ACT § 842 (McKinney 2011).

<sup>7</sup> *Feger v. Warwick Animal Shelter*, 870 N.Y.S.2d 124 (App. Div. 2008).

regard companion animals as a “special category of property,” but New York courts treat companion animals as “personal property” in the context of a contract, tort or other lawsuit. However, in a divorce proceeding or other similar disputes over property rights, the opposite is true. Joyce Tischler, the founding Director of the Animal Legal Defense Fund stated “[t]here is a shift occurring in our society in which the . . . pet is considered more a member of the family . . . and therefore becomes sadly a part of the battle when the family disintegrates.”<sup>8</sup> As the following cases demonstrate, society’s shifting attitudes towards pets are altering the way New York courts and others view pets in property disputes between divorced parties, separated couples and housemates. In a 1999 action to determine the ownership of Lovey the cat, the New York Appellate Court found that:<sup>9</sup>

“Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years.”<sup>10</sup>

The *Raymond* case demonstrates that in an ordinary “property” dispute, the court stepped out of its boundaries and procured a decision based on the well-being of Lovey the cat. The court acknowledged that a pet or animal companion was at the heart of the dispute, and based its decision solely on where Lovey would most happily live out the remainder of his life.

In 2009, Adam LeConte received a Maltese puppy, Bubkas, as a gift from his parents. At the time of the gift, LeConte lived with his girlfriend Kyungmi Lee.<sup>11</sup> Prior to separation, the parties shared the care and custody of Bubkas. When the parties separated, LeConte left Bubkas with Lee, while he sought a suitable home for himself and Bubkas.<sup>12</sup> During that time, Bubkas remained with Lee from December 24, 2010 through January 19, 2011.<sup>13</sup> Lee argued that LeConte kept Bubkas in a crate, endangering Bubkas’ well-being, and she refused to surrender the pet. The Civil Court stated that:

“A dog owner's possessory right to his dog was superior to his former girlfriend's right, based on ‘the dog's best interests’, even though the girlfriend had sole custody of the dog for a total of almost two months, and she objected to the owner's crating of dog, and where the dog had only two brief dog-sitting visits with girlfriend, while the owner sought a suitable home for himself and his canine companion after he separated from girlfriend and while he was traveling. The dog was not in any danger from being placed

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<sup>8</sup> *Supra* note 3, at 1.

<sup>9</sup> *Raymond v. Lachmann*, 695 N.Y.S.2d 308 (App. Div. 1999).

<sup>10</sup> *Id.* at 309.

<sup>11</sup> *Leconte v. Kyungmi Lee*, 935 N.Y.S.2d 842 (Civ. Ct. 2011).

<sup>12</sup> *Id.* at 843.

<sup>13</sup> *Id.*

in a crate, and the dog was not in such poor condition that he needed medical treatment after residing solely with owner for seven months.”<sup>14</sup>

Furthermore, the court stated that since Bubkas was not conveyed to Lee as a gift or by contract, and abandonment is not a defense,<sup>15</sup> the court would therefore judge the case based upon Bubkas’ best interests. Similar to the *Raymond* case, *Leconte* demonstrates the court’s willingness to treat a pet in a property dispute as a living being requiring suitable and beneficial conditions, while also considering the pet’s “best interests.”

New York courts seem to be embracing the approach used in other jurisdictions. For example, in *Houseman v. Dare*, the New Jersey Appellate Court reversed a trial court decision for referencing the family pet at issue as being similar to “furniture.”<sup>16</sup> Doreen Houseman and Eric Dare were engaged to be married and subsequently separated. Their seven year old pug Dexter quickly became the center of the dispute. The court held that “judges can consider the human-animal bond in deciding who gets custody of companion animals when couples separate,” and that a pet has “special subjective value” that cannot be remunerated by money alone.<sup>17</sup> These cases share common outcomes with others across the United States as courts are altering their attitudes towards treating pets as “living beings” instead of “personal property” at least when deciding a property dispute.

### III. CONCLUSION

As pets or companion animals are more frequently viewed and socially accepted as members of the family, courts will repeatedly be faced with deciding whether to treat such pets as personal property or living beings in property disputes. As demonstrated in this memorandum, property disputes involving pets between separated couples and housemates are often decided by the courts based on the “best interests” of the pet. In other words, courts are beginning to view the family pet as having special subjective value to its owner contrary to ordinary personal property. However, New York courts have been reluctant to treat pets as living beings or place a price on a pet beyond its market value in other legal situations such as causes of action in tort or contract law. Conflicting legal categorizations given to pets or companion animals by New York statutes seeking to protect animals, as well as courts struggling with the treatment of pets under tort, contract and property common law, poses the question “just when will the courts or legislature get it right?” New York courts must begin to consistently view and consider companion animals as living beings and not personal property in all legal contexts which will level the playing field for our companionable beings who can’t speak for themselves.

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<sup>14</sup> *Id.*

<sup>15</sup> *Valenza v. Valenza*, 413 N.Y.S.2d 680 (App. Div. 1979). In a replevin action brought by husband during pendency of matrimonial action, the wife's conclusory assertion that husband had abandoned subject chattels when he left marital abode was insufficient to establish any real dispute as to husband's entitlement to such chattels. *Id.*

<sup>16</sup> *Houseman v. Dare*, 966 A.2d 24 (N.J. App. Div. 2009).

<sup>17</sup> Matthew Liebman, *Divvying up the Dogs?* ANIMAL LEGAL DEFENSE FUND BLOG (July 1, 2009), <http://aldf.org/article.php?id=1007>.



Name	USDA Customer ID	Date of Inspection	Violations	USDA Inspector
Curtis Martin	32693	Nov 1, 2007	Eskimo dogs foot pad split open pekingese sat in corner head shaking with excessive drooling. Appears seizure like	Andrea M Ball-Morawa, ACI Inspector 1075
		REPEAT VIOLATION	38 dogs have no microchip or other id #'s listed on record of dogs and cats whelping enclosure moving side to side as dogs moved and barked new puppy enclosures have rust as well as few water and food bowls back wall on main kennel and area of puppy room open exposing insulation several sections of wood chewed through on whelping box and adult enclosures	1075
		REPEAT VIOLATION	failure to carry out exercise plan large dogs being housed in exercise area so no access to exercise to run daily	
		REPEAT VIOLATION	building materials wire mesh on ground by main kennel and exercise pen not enough employees to carry out level of husbandry	
		Mar 3, 2008	few dogs matted and long nails 1 whelping box has small hole in floor, another showing signs of wear near mesh section. opening is chewed creating sharp edges	Andrea M Ball-Morawa, ACI Inspector 1075
		Jul 2, 2008	1 dog continuously scratching at ear possible ear mites 6 puppies transported 2 days before 8 weeks of age 2 whelping boxes have chewed areas 1 enclosure has gap allowing head or legs through large dog housing has more than a days feces accumulation pest problem in food area puppy room needs to be cleaned a lot of dust and hair throughout kennel and shavings by large breed enclosure	
		Jan 28, 2009	few dogs have long nails beginning to splay causing potential foot problems and can get caught in wire mesh few whelping box in disrepair 2 enclosures housing large breed puppies do not meet height requirements few whelping boxes very dirty	
Jolene Martin	321596-PRE LICENSE INSPECTION 1	Mar 10, 2010 Mar 10, 2010	over 30 dogs do not have identification numbers listed on records of animals on hand female boston at facility on breeding loan. dog very thin, obvious pelvic bone, ribs and lumbar vertebrae easily seen, no fat cover, and abdominal concave. been there 1 week, offered food no weight gain. dog also has crusty weeping left eye	Andrea D Ambrosio ACI 6003
			several matted dogs. few dogs have long nails beginning to splay causing potential foot problems and can get caught in wire mesh physical number of dogs does not match record of animals on hand. records are missing dogs purchased from several other facilities few enclosure in puppy room in disrepair small holes on back wall or middle divider few enclosures have broken wires 1 whelping box has crack in floor 2 enclosures separated by bowed plastic divider creating opening large enough for another dogs head closed pallet of dog food stored in main kennel area concrete floor needs to be sealed in puppy room holes in walls and ceiling in puppy room main kennel has holes in ceiling whelping boxes have section of wire mesh bowing upward creating gap allowing puppies feet through feces and green moldy food in several feeders many feeders had layer of grime and debris under lip of feeder few outdoor enclosures had feces not falling through mesh few whelping and outside boxes had feces second building had feces on floor ALL ITEMS NEED TO BE CORRECTED BY 2ND PRE LICENSING INSPECTION	
Curtis Martin	32693	May 11, 2010	no non- compliant items	
Jolene Martin	321596-PRE LICENSE INSPECTION 2	May 11, 2010	no non- compliant items	Andrea D Ambrosio ACI 6003
Curtis Martin	32693	Nov 23, 2010	no non- compliant items	Andrea D Ambrosio ACI 6003
Jolene Martin	321596	Nov 23, 2010	2 dogs matted, 1 matted with feces present in mats around feet and had long nails,  4 dogs have dirty ears with strong odor from ears. could be build up of yeast female husky in recent fight had multiple injuries to right ear and left front paw and was enclosed with 2 other females and 1 male. another husky favoring right paw several rusted chains used to anchor enclosure to support beam no longer allows effective cleaning. Could affect the structural integrity of enclosure if not addressed sharp wires protruding into enclosure could potentially injure dogs female geriatric pug housed with 2 juvenile pugs. older pug breathing shallow and sitting towards back of enclosure. juveniles were very active and knocked into older pug feeder full of feces that turned white and difficult for dogs to access uncontaminated food. several feeders had plastic and paper in food possibly due to manufacture error. several feeders dirty 2nd building has feces under building with strong ammonia odor metal shift doors on outside enclosures have oil, grime and debris not enough employees to carry out acceptable husbandry	Andrea D Ambrosio ACI 6003 Andrea D Ambrosio ACI 6003
Jolene Martin	321596	Jan 5, 2011	expired drugs	Andrea D Ambrosio ACI 6003
		REPEAT VIOLATION	maltese observed with dried blood on back fur coming from tail that was split open support bars on large breed enclosures rusted and in disrepair few whelping boxes dirty and had accumulation of rodent droppings adjacent to enclosure containing puppies	
Jolene Martin	321596	Jun 30, 2011	whelping box too small for mother and 7 puppies  insulation, dust and debris behind items along back wall Layer of grime on back wall and shift door of 1 enclosure	Andrea D Ambrosio ACI 6003
Jolene Martin	321596	Nov 8, 2011	no non- compliant items	Andrea D Ambrosio ACI 6003
Curtis Martin	32693	Nov 8, 2011	Several incomplete records for several breeds of dogs purchased. first name no last or address of seller. facility has been purchasing dogs from at least one breeder in area with more than 3 breeding dogs and selling wholesale without a license	Andrea D Ambrosio ACI 6003

## EXHIBIT C

### Citizens Against Puppy Mills.

First, the permit is in Curtis' name alone. From what I have been able to determine, he does not have a breeding license, only a broker's license. Jolene, has a breeder's license, but she is not on the request for a special permit. Based on this, it appears that information given to the Planning Board by Curtis, saying that his last inspection report from USDA showed no problems, is untrue. Jolene's last report showed no problems (for the first time that we have been able to find), but Curtis had continuous infractions, many of which were ongoing. Even after being told to correct the problems, they went on for years.

Jolene's last report showed no infractions, that is true, but that was after getting 10 infractions with over 18 individual comments on the previous two inspections. She also had all the dogs (up to 544) under her license (non-license) since 3/10/10 and the Second Pre-License Interview (May 2010) stated that she was not to do business under this proposed license until the Second Interview had been approved and she was informed of such and received issuance of a license number from the regional office. THEN, she received two back to back inspections which showed over 23 comments that were included in 14 Infractions and 4 Repeat Infractions. The main infractions are: not keeping records of where they get or send their dogs. No (or incomplete) names, addresses, phone contacts or licensing numbers in some cases and examples of them using the same tags and numbers for multiple animals before the legal elapsed time. And this goes on time after time. They also did not have some complete records (or had incomplete ones) to where their dogs go. Dead? Sold? To whom? And the other recurring issue was not having enough help to properly care for the animals. Other issues are many, and documented on the Inspection Spreadsheet. I gave the spreadsheet to Fred Lightfoote (in bad form, I must admit) and I gave him copies of all of the USDA reports that were mentioned on the spreadsheet.

Second, it should be noted that USDA had listed all the animals from Curtis' license onto Jolene's license BEFORE they even told her (at the second interview) that she could not do business until after that. So it goes to show that the USDA, though they do their best, are not able to keep up with these places. The fact that they were cited numerous times by the USDA for the same infractions and were never fined or arrested, should be sign enough that they

pretty much do what they want. I also gave Fred the USDA Inspector Generals' OIG Report that states that they (the USDA) cannot and are not doing the job and it shows the deplorable conditions of many of these places. This is a report of which the attorney should definitely be aware of and have in her arsenal.

Third, concerning whether any inspection or DEC evaluation would be needed concerning water and sewage does not sound at all right to me. When the group in my township requested a permit, the planning board, the town board and the codes inspector told me that the DEC had been called in to determine the appropriateness of the building, the waste and septic plans and the ground water and percolation concerns. Now this may have been requested by the town and not the state (I am not 100% sure), but it was my understanding that a SEQR evaluation was going to be run by the state and the town would review that information before they would give an okay. In the meantime, the town passed a law that would prevent more than four intact domestic animals on one property, so that nixed the whole deal. I just cannot fathom that the environmentally speaking, this would not fall under the state's purview. For instance, in Part II, Sections C1 and E of the Environmental Assessment Form - there are questions about water and septic issues and the answers given by the Martins were not definitive, nor were they verified by anyone of authority to do so. The septic capabilities and processes need to be clearly defined and

## EXHIBIT C

evaluated, especially for the new building. The water run-off issue was pretty much scanned over in the Planning Board Checklist saying that the only water would come from the roof and all other water would be handled by the septic system (which no one but the Martins have determined to be sufficient). They say that "the pond" will be able to hold anything from a 2" rainfall in addition to all other water that might be in the pond, but the water report from Seneca Well Drillers Report states that 2,100 GPH or 51,400 GPD were capable of being transmitted, but the Martins say they only expect to use 1000 GPD. What? With over 500 dogs, they should be using that much just for watering the dogs, not to mention cleaning the building, the animals, the caging, etc. And a report I read recently the average person INSIDE a house uses 94 gallons of water a day PER PERSON, and this doesn't include watering lawns or gardens, filling swimming pools, washing cars (or buggies or horses or whatever) and field machines, etc. I mean to say only 1000 gallons of water will be used per day is not only ridiculous, it would be abuse for the family and the animals. They just do not make sense and professionals (DEC) need to be brought in if this is going to go any further.

Jessica Welty  
District Representative  
CNY Citizens Against Puppy Mills  
585-409-0501  
[www.citizensagainstpupppymills.org](http://www.citizensagainstpupppymills.org)

**RESOLUTION INTRODUCING PROPOSED LOCAL LAW  
PROPOSED LOCAL LAW NO. 1 OF THE YEAR 2008  
ENACTING A ONE-YEAR MORATORIUM  
ON THE CONSTRUCTION OR OPERATION OF ANY NEW KENNELS AND/OR PET BREEDERS, AS WELL  
AS EXPANSION OF EXISTING FACILITIES IN THE TOWN OF ROMULUS**

WHEREAS, it has been recommended that it is in the best interests of the Town that there be introduced a Local Law enacting a one-year moratorium on the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus shall be prohibited, as follows:

**SECTION ONE: LEGISLATIVE INTENT**

When the Town Zoning Ordinance was originally enacted, the then Town Board did not provide for the regulation of the construction or operation of kennels or other dog or cat breeding or boarding facilities within the Town. Since then, the Town has been made aware that thousands of puppy mills exist all over the United States and, further that the numbers also appear to be increasing in other areas, including upstate New York. Further, it has been documented in the press that dogs rescued from puppy mills exhibit a wide array of veterinary and behavioral problems, including severe malnutrition, rotting teeth and severe periodontal disease, extreme matting of fur sometimes leading to skin lesions, mange, flea, tick, and parasite infestations, and serious foot and leg injuries from living an entire life on wire mesh flooring; that female dogs in puppy mills are typically bred at every opportunity until they are physically spent and can no longer reproduce; that puppy mill dogs live out their entire lives in tiny enclosures, never having a chance to get out of their cages for exercise or socialization. Therefore, it appears that it would be appropriate for the Town Board to review the standards under which large scale and/or commercial kennels or breeding facilities be permitted within the Town. It is with this in mind that this moratorium is hereby proposed.

**SECTION TWO: DEFINITIONS.**

For the purposes of this local law, the following definitions shall apply:

**KENNEL**— Any building or lot on which at least three (3) or more dogs or cats not owned by the property owner are trained, or boarded (but not bred or sold) for commercial purposes; this definitions shall not apply to: any facility operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

**PET BREEDER** — Any building or lot on which any of the following occurs:

- A. at least three (3) or more dogs or cats at any one time are bred or sold for commercial purposes; or
- B. there is found at any one time more than three (3) adult dogs and one (1) litter of pups under four (4) months of age at any one time; or
- C. there is found at any one time more than three (3) adult cats and one (1) litter of kittens under four (4) months of age at any one time; or
- D. any adult female dog or cat is bred more than once in any twelve-month period with the intent of selling or giving away said dog's or cat's pups or kittens; or
- E. more than two (2) litters of pups or kittens is sold or given away in any twelve-month period.

These definitions shall not apply to: any facility operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

### **SECTION THREE: MORATORIUM**

Upon the effective date of this Local Law and continuing for one year thereafter, the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus shall be prohibited, as follows:

### **SECTION FOUR: EFFECTIVE DATE**

This Local Law shall take effect immediately upon its filing with the Secretary of State of the State of New York in accordance with the Municipal Home Rule Act of the State of New York; and

**NOW, THEREFORE, BE IT RESOLVED** that proposed Local Law No. 1 of the year 2008 entitled "A Local Law enacting a one-year moratorium on the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus shall be prohibited ; and

**BE IT FURTHER RESOLVED** that copies of the aforesaid proposed local law be laid upon the desks of each member of the Town Board; and

**BE IT FURTHER RESOLVED** that the Town Board hold a public hearing on said proposed Local Law at the Town Office Building, 1435 Prospect Street, Willard New York at 7:30 p.m. on the 18<sup>th</sup> day of June, 2008; and

**BE IT FURTHER RESOLVED** that the Town Clerk publish or cause to be published a notice of said public hearing in the official newspaper of the Town at least five (5) days prior thereto.

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE 41 STATE ST, ALBANY, NEW YORK 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~

~~City~~

of Romulus ~~Town~~ ~~Village~~

Local Law No. \_\_\_\_\_ of the year 2008.

A local law enacting a one-year moratorium on the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus

*(Insert Title)*

Be it enacted by the

Town Board *(Name of Legislative Body)*

of the

~~County~~

~~City~~

of

Romulus

as Follows

~~Town~~  
~~Village~~

## SECTION ONE: LEGISLATIVE INTENT

When the Town Zoning Ordinance was originally enacted, the then Town Board did not provide for the regulation of the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus shall be prohibited.

Since then, the Town has been made aware that thousands of puppy mills exist all over the United States and, further that the numbers also appear to be increasing in other areas, including upstate New York. Further, it has been documented in the press that dogs rescued from puppy mills exhibit a wide array of veterinary and behavioral problems, including severe malnutrition, rotting teeth and severe periodontal disease, extreme matting of fur sometimes leading to skin lesions, mange, flea, tick, and parasite infestations, and serious foot and leg injuries from living an entire life on wire mesh flooring; that female dogs in puppy mills are typically bred at every opportunity until they are physically spent and can no longer reproduce; that puppy mill dogs live out their entire lives in tiny enclosures, never having a chance to get out of their cages for exercise or socialization. Therefore, it appears that it would be appropriate for the Town Board to review the standards under which large scale and/or commercial kennels or breeding facilities be permitted within the Town. It is with this in mind that this moratorium

is hereby proposed.

## **SECTION TWO: DEFINITIONS.**

For the purposes of this local law, the following definitions shall apply:

**KENNEL**— Any building or lot on which at least three (3) or more dogs or cats

not owned by the property owner are trained, or boarded (but not bred or sold) for commercial purposes; this definitions shall not apply to: any facility operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

**PET BREEDER** — Any building or lot on which any of the following occurs:

- A. at least three (3) or more dogs or cats at any one time are bred or sold for commercial purposes; or
- B. there is found at any one time more than three (3) adult dogs and one (1) litter of pups under four (4) months of age at any one time; or
- C. there is found at any one time more than three (3) adult cats and one (1) litter of kittens under four (4) months of age at any one time; or
- D. any adult female dog or cat is bred more than once in any twelvemonth period with the intent of selling or giving away said dog's or cat's pups or kittens; or
- E. more than two (2) litters of pups or kittens is sold or given away in any twelve-month period.

These definitions shall not apply to: any facility operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; any veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for such purpose in addition to its customary purposes; and any facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals.

**SECTION THREE: MORATORIUM**

Upon the effective date of this Local Law and continuing for one year thereafter, the construction or operation of any new kennels and/or pet breeders, as well as expansion of existing facilities in the Town of Romulus shall be prohibited.

**SECTION FOUR: EFFECTIVE DATE**

This Local Law shall take effect immediately upon its filing with the Secretary of State of the State of New York in accordance with the Municipal Home Rule Act of the State of New York.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2008 of the ~~(County)(City)(Town)(Village)~~ of Romulus was duly passed by the Town Board on \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions *(Name of Legislative Body)* of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the ~~(County)(City)(Town)(Village)~~ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and was (approved)(not approved)(repassed after *(Name of Legislative Body)* disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, *(Elective Chief Executive Officer\*)* in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the ~~(County)(City)(Town)(Village)~~ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and was (approved)(not disapproved)(repassed *(Name of Legislative Body)* after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_. Such local law *(Elective Chief Executive Officer\*)* was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2002 of the ~~(County)(City)(Town)(Village)~~ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and was (approved)(~~not disapproved~~)(~~repassed after disapproval~~) by the \_\_\_\_\_ on \_\_\_\_\_, *(Elective Chief Executive Officer\*)* 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20\_\_\_\_, in accordance with the applicable provisions of law.



**\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_, 20\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_, 20\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date:

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney or locality.)**

STATE OF NEW YORK  
COUNTY OF SENECA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Title: Attorney

Town of Romulus

Date:

**Local Law to be amended by creating Article VIII, Section 14 with special standards for the operations of commercial dog/cat breeding facilities**

**Article VIII**

**Section 14: Dog/Cat Breeding Facilities**

**A. Intent and Purpose:**

The purpose of this law is to protect and preserve the general health, safety and welfare of dogs and cats found in breeding facilities in the Town of Romulus by establishing regulations regarding the location, use and operation of said facilities in order to avoid and prevent detrimental effects on companion animals and the increase of dogs and cats found in the animal shelters and rescue organizations due to their poor conditions to becoming companion animals.

**B. Definitions: Local law to be amended by adding the following definitions to Articles II.**

1. Commercial Dog/Cat Breeding Facility:

Any building or lot upon which a person (or persons) breeds two or more litters of dogs/puppies in a calendar year and the facility is licensed by the USDA (United States Department of Agriculture) **or** :

Sells or transfers any dog to a dealer or pet shop kennel; **or**

Sells or transfers more than 50 dogs per calendar year

2. Dealer:

A person who

(1.) Publicly or privately sells or offers for sale any dog belonging to another person for consideration, a fee or a commission or percentage of the sale price;

(2.) Transfers dogs at wholesale for resale to another; or

(3.) Offers or maintains dogs at wholesale for resale to another

3. Private Breeding Facility:

Any building or lot upon which a person does not meet the definition of “commercial dog/cat breeding facility” where dogs/cats are bred by the owner, for the purpose of hunting, tracking and exhibiting in dog/cat shows, performance events or field and obedience trials.

4. Rescue Organizations:

Any facility where homeless, stray, abandoned, rescued or unwanted animals are received, harbored, maintained or made available for adoption to the general public and which is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of the cruelty to animals or other nonprofit or tax-exempt organization devoted to the welfare, protection or humane treatment of animals.

5. Rescue Organizations networks (fostering):

Any person or persons who houses animals at the request of a duly incorporated humane society, animal welfare society, society for the prevention of the cruelty to animals or other nonprofit or tax-exempt organization devoted to the welfare,

protection or humane treatment of animals who accepts companion animals for the purpose of finding permanent adoptive homes for animals and does not maintain a central facility for keeping animals, but rather uses a system of fostering in private homes or boarding or keeping pets in animal shelters.

(1.) May foster or board up to 20 animals at a time per year.

6. Dog: A live *Canis lupus familiaris* or any dog hybrid
7. Cat: A live *Felis catus* or any cat hybrid

**C. Standards: Local Law to be amended by adding the following chart to Article IV. Regulations of Established Zones, Section 1.**

**1. Regulations for Dog and/or Cat Breeding Facilities and Dealers:**

	Conservation/ Recreation	Agriculture	Lakeshore Residential	Industrial Warehouse	Hamlet Residential	Institution/ Governmental	E/D
<b><u>Private Pet Breeding Facility</u></b>	NA	NPR	NPR	NA	NPR	NA	NA
<b><u>Commercial Dog Breeding Facility</u></b>	NA	NA	NA	SP	NA	NA	NA
<b><u>Rescue Organizations</u></b>	NA	NPR	NPR	NA	NPR	NA	NA
<b><u>Rescue Organization Networks</u></b>	NA	NPR	NPR	NA	NPR	NA	NA
<b><u>Dealers</u></b>	NA	NA	NA	NA	NA	NA	NA

- NA - Not Allowed/Prohibited
- NPR - No Permit Required
- ZPR - Zoning Permit Required
- SP - Special Permit Required
- A - Allowed

**D. Standards:**

1. A commercial dog/cat breeder and/or dealer will be permitted in the Town of Romulus in its designated district only under the following conditions:
  - a. All animals shall be kept in clean and sanitary premises, structures or enclosures.

- b. The ambient temperature shall be consistent with the requirements of the specific companion animals. Heating shall be deemed necessary when the inside ambient temperature of the facility falls below fifty (50) degrees Fahrenheit for a period of four (4) consecutive hours and cooling shall be required when the temperature of the facility rises above eighty-five (85) degrees Fahrenheit.
- c. All facilities shall be adequately ventilated with fresh or filtered air to minimize drafts, odors and moisture condensation and to provide for the health and comfort of the animals at all times. Ventilation shall be provided by either natural or mechanical means. The necessary equipment or comparable means shall be provided to exhaust the air from the animal area to the outside of the building.
- d. Uniformly distributed natural and/or artificial lighting shall be provided to permit routine inspection and facilitate routine cleaning and the proper care and maintenance of the animals. Lighting shall be so arranged as to protect each animal from excessive illumination.
- e. One inside pen shall be provided for each dog or cat boarded or kept.
- f. For dogs, any inside pen shall have a minimum measurement of three (3) feet wide by four (4) feet in length for all dogs except for giant breeds which will have a minimum of three (3) feet by five (5) feet in area size. Any pen shall be of sufficient height for the dog to stand fully erect on all four legs with at least (6) inches of headroom.
- g. For cats, any inside pen shall have a minimum measurement of two (2) feet wide by two (2) feet in length for all cats. Any pen shall be of sufficient height for the cat to stand fully erect on all four legs with at least (3) inches of headroom.
- h. For every three (3) dog pens there shall be a minimum of one (1) outside run.
- i. There shall be a minimum of one (1) outside run per three (3) dogs boarded or kept, and there shall be no more than one (1) dog per run at any one time.
- j. Each outside run shall:
  - Have a concrete base;
  - Be enclosed by a minimum six (6) foot high chain link fence with shelter and with secure gates;
  - The size of the run shall be (3) feet in width and ten (10) feet in length except for dogs of the size of 100 lbs or more. For dogs 100 lbs or more, the run shall be four (4) feet width and ten (10) feet length.

k. Sewage and waste shall be disposed of by connection of drains to a sanitary sewer or a state, county or locally approved sewage disposal system. Drainage systems shall be provided with back flow prevention devices on submersible inlets and hair traps, if required by law, on all plumbing lines in animal areas where hoses may be attached for cleaning of the facility.

l. A facility can only be established on at least five (5) acres of property located at least one hundred (100) yards from any adjoining property lines. A facility cannot be established within a one mile radius of the property boundary of any existing commercial breeding facility.

2. Inspection Requirement:

a. As heretofore provided, a person may operate a commercial breeding facility in the Town of Romulus only with a special use permit.

b. Prior to the commencement of any use or upon any transfer of ownership or control of a facility the premises must be inspected by the Zoning officer, together with the local dog control officer found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for a commercial dog/cat breeding facility an/or dealers and in compliance with the Romulus Town Code, the New York State Agriculture and Markets Law, the New York State General Business Law and the Uniform Fire Prevention and Building Code.

c. All zoning officers shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of the inspection of the premises by such officials.

d. Any owner and/or operator, employee of the owner and/or operator, or agent of the owner and/or operator, shall permit representatives of the Town Zoning Officer, the Town Dog Control Officer, the Seneca County Health Department, the Seneca County Sheriffs Department, the New York State Police, and the State Health Department, the Department, or any other Town, county or state department or agency that has permitting authority regarding the use of the premises to inspect the premises of the commercial dog/cat breeding facility and/or Dealer the purpose of ensuring compliance with this article at any time it is occupied or open for business.

3. The duration of any special use permit shall be for a maximum period of one year. Any special use permit for uses under this Article shall expire on December 31 of each year unless stated. The special use permit shall run for the calendar year if so renewed by the Planning Board for the Town of Romulus. An application for renewal of any permit must be made no more than ninety (90) and no less than (60) calendar days prior to expiration of such permit.

4. If, upon inspection as described above, it shall be found that the operator has violated any provisions of this chapter, the Planning Board shall have the power to revoke or suspend the permit and order the animals removed or Commercial dog/cat breeding facilities and/or dealers closed after notice and an opportunity for the owner/operator to be heard.

5. In addition to the other provisions of the Town Code, it shall be deemed a violation of Town Zoning Code if the owner and/or operator, an employee of the owner and/or operator or an agent of the owner and/or operator:

- a. Has violated or is not in compliance with any section of the Town Code, the New York State Agriculture and Markets Law, the New York State General Business Law and/or any section of the New York Penal Law relating to mistreatment of animals; or
- b. Has refused to allow any inspection of the Commercial Breeding Facility as authorized by this article; or
- c. Operates with an expired special use permit.

**E. Substantive Requirements: Pre-Existing Commercial Dog/Cat Breeding Facilities and/or Dealers**

1. Pre-Existing facilities shall be considered non-conforming structures and must follow the terms under Article XI of the Town's Zoning Laws and be required to obtain a special use permit. Refer to Article IX for the Special Use Review.
2. Non-conformities shall be allowed no modification and/or expansion without a Variance except for expanding the size of kennel runs to meet requirements in section D. of standards. The facility may not increase the number of dogs bred within the facility.
3. Non-conformities must meet the standards set for all commercial dog/cat breeders and dealers in the Town of Romulus (see Sec. D: Standards above).
4. Such pre-existing commercial dog/cat breeding facilities and dealers shall be subject to the same regulations as specified in this local law with an annual renewal required which will include an annual inspection by the Code Enforcement Officer and the Animal Control Officer.
5. Pre-Existing facilities shall have 90 days after the date that the law has been passed to apply for their special use permit.

**F. Authority:**

1. Refer to Article XIV, Section 5.

2. The Code Enforcement Officer has the authority to examine the premises and locations of any buildings or structures in the Town of Romulus and shall determine whether or not they comply with the existing zoning laws. The Animal Control Officer has authority to inspect the premises and buildings and assess the conditions of the dogs/cats within the buildings and structures in the Town of Romulus. The Code Enforcement Officer shall keep a permanent record of all violations of this article, whether reported by private citizens or by any board agency; officer or employee of the Town and such record shall show the disposition of all such violations.

**G. Penalties:**

3. Courtesy Notice of Violation as seen in Article XII, Section 5 (Investigation and Report).
4. A violation shall be an offense, punishable by a fine not to exceed \$350 or imprisonment for a period not to exceed 15 days, or both, for a conviction for a first offense; a fine not to be less than \$350 nor more than \$700 or imprisonment for a period not to exceed 15 days, or both, for a conviction for a second offense within a period of five years from the date of the commission of the first offense; a fine not to be less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed 15 days, or both, for a conviction for a third or subsequent offense within a period of five years from the date of the commission of the first offense. Each day's continued violation shall constitute a separate additional violation.
5. In addition, any person who violates any provision of this code or who shall omit, neglect or refuse to do any act required thereby shall be subject to a civil penalty of not less than \$500.00 nor no more than \$3000.00 recoverable by the Town of Romulus in an action in the small claims court, part of the Town of Romulus justice court.
6. Whenever a suspected violation of the code occurs, any person may file a signed written complaint reporting such violation to the Code Enforcement Officer. The Code Enforcement Officer may also investigate any oral complaint made to his/her office. He /She may direct the Animal Control Officer to accompany or investigate alone in his/her place. All complaints, written or oral, shall be properly recorded, filed and immediately investigated by the Code Enforcement Officer and a local animal control officer.