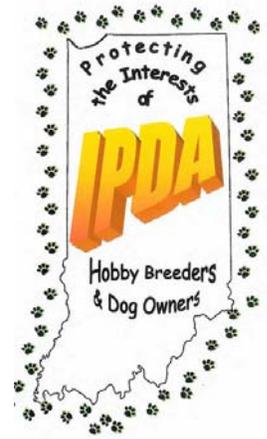


January 3, 2014

City of Marion Common Council Members
Mayor Wayne Seybold, City of Marion
Marion Municipal Building
301 South Branson Street
Marion, IN
Email: Kathleen Kiley, City Clerk: kkiley@marionindiana.us



RE: Proposed Animal Care Ordinance, Requiring the Sterilization of Dogs and Cats and Requiring a Breeder's Permit - Opposed

Dear Mayor Seybold and Respected Members of the Marion City Common Council:

The Indiana Purebred Dog Alliance (IPDA) the Indiana Federation recognized by the American Kennel Club (AKC) representing thousands of Indiana dog owners, is gravely concerned over the proposed ordinance that will have a profoundly negative impact on the community.

Since its inception, the IPDA has been deeply engaged in advancing animal welfare and the humane treatment of dogs, devoting significant time, effort and resources in educating the public on responsible dog ownership, and supporting to scores of animal rescue and sheltering organizations in Indiana.

The Indiana Purebred Dog Alliance is adamantly opposed to the cruel and inhumane treatment of dogs, the exploitation of innocent animals, and illegal, sub-standard breeding operations.

We, therefore, respectfully submit our official and unequivocal opposition to any bill which makes criminals out of law-abiding, tax-paying citizens and home and hobby breeders, or anyone owning intact dogs, This proposal contains multiple issues, including, but not limited to:

- **Criminalization of Dog Owners**
- **Unequal Protection**
- **Removal of Presumption of Innocence**
- **Selective Enforcement**
- **Violations of Due Process**
- **Violations of the 4th, 5th, and 14th Amendments**
- **Proxy For Warrantless Search & Seizure**
- **Wasting Valuable Tax-payer Dollars**

Primary Duty To Protect The Public Health & Safety

Protecting the public health and safety is the primary duty for the City of Marion, a priority shared by the Indiana Purebred Dog Alliance.

Dog bite incidents are highly preventable through basic dog bite prevention education of children, parents and elderly populations, as unsupervised children and the elderly are often victims of **loose, roaming dogs**, or because they fail to recognize when a dog feels threatened, is ill or exhibits aggressive canine behavior.

According to the **CDC**, the vast majority of dog bites that occur annually in the United States are minor in nature. Fewer than 24 fatalities occur each year due to dog attacks, and are extremely rare events.

The CDC and the AVMA issued a joint report entitled ***A Community Approach To Dog Bite Prevention***, which outlines in detail sound public health policy in the prevention of dog bites.

To protect the public health and safety, we strongly urge the City of Marion to focus on strict enforcement of local leash laws.

Intentional Criminalization Of Lawful Business & Activities

The City of Marion – with exemption only by revokeable permit –will criminalize and/or unnecessarily interfere with the normal and lawful activities of all dog owners, dog clubs and dog registries that organize and participate in lawful, sanctioned dog events and other legal activities.

- **Criminalize dog shows & dog sports and other canine activities**
- **Criminalize the breeding of dogs**
- **Criminalize the whelping of a litter without a permit**

Intentional Criminalization Of Dog Ownership –Eliminating Presumption of Innocence

Under this ordinance, the City of Marion is **deliberately creating a CRIMINAL CLASS** of dog owners – holding the owners of intact animals to a different and higher standard than those who choose to own altered animals.

This intentional criminalization of dog ownership, making dog owners automatically guilty of a crime if they own intact dog unless they meet specific exemptions.

The City of Marion **eliminates the presumption of innocence** by making **all targeted dog owners** “**automatically guilty**” of a crime for simply owning an intact dog.

This is in effect, as dog owners would have to “*prove their innocence*” by providing evidence to the City of Marion. However – it seems Due Process has been completely eliminated:

1. **Lack of Presumption of Innocence**
2. **Lack of Specific Hearing procedure**
3. **Lack of an Appeals procedure**

Violations of the 14th Amendment

The City of Marion would exceed its authority by attempting to regulate the ownership or possession of property – a violation of the 14th Amendment - with no rational basis.

The City Council, of course, is fully aware that the **14th Amendment** makes clear that:

14th Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The City of Marion would violate the 14th Amendment by predicating equal rights of animal ownership upon compliance with the unequal requirements of mandatory spay or neuter.

There is no rational basis for mandatory sterilization.

We take exception to any proposed ordinance that forces owners of unaltered dogs to purchase a "permit", which is equivalent to an **unequally-applied tax**.

The proposed City of Marion mandatory spay/neuter ordinance sets the stage for "Unequal Protection", as dog-owning citizens of unaltered pets", are **held to a different and higher legal standard** than other dog-owning citizens.

This unequal legal standard is then to be *subjectively and/or arbitrarily applied* via the *application process* for an unaltered permit by the Marion Animal Control.

Exemptions for police, therapy, search and rescue or show dogs are unconstitutional – as owners of such dogs are entitled to no greater constitutional protections than owners of other types of dogs.

We take exception to any proposed ordinance that forces owners of unaltered dogs to purchase a "permit", which is equivalent to an **unequally-applied tax**.

Louisville Kennel Club vs. Louisville Metro County

In a recent decision, *Louisville Kennel Club v. Louisville/Jefferson County Metro government*, the United States District Court held that there is "***no apparent reason why the owners of unaltered dogs should be treated differently than the owners of their neutered counterparts***", finding that a "written approval requirement" lacked a rational basis and striking it down as **unconstitutional**.

Limit Laws

Contrary to the intent of this ordinance, which seeks to address "pet overpopulation", studies show that pet "limit laws" actually increase shelter intake numbers, dramatically reduce the number of foster homes utilized by shelters and rescues, resulting in large spikes in the number of innocent animals euthanized due to owner surrenders.

The negative impact of this clause is extensive, and by limiting animal ownership, the City of Marion will violate numerous civil rights and constitutional protections, including the taking of private property – i.e., animals – without Due Process, and prohibits the ownership of animals, again without Due Process.

Criminalizing Dog Breeding

This ordinance seems to take aim at anyone engaged in the breeding of dogs, and makes criminals out of vast majority of home and hobby breeders who are responsible, law-abiding and caring individuals or establishments, deeply dedicated to the welfare of dogs. Unfortunately, this ordinance seems to stem from a misrepresentation that owners of breeding stock, intact dogs, or multiple dogs as de facto "puppy mills", which is certainly not the case.

Commercial dog breeders are already highly regulated by the USDA, and subject to the standards of the Animal Welfare Act.

Most home and hobby breeders – as well as the vast majority of commercial kennels – operate under a set of standards

set forth not just by the state, but by the very organizations to which we belong, concerning the care, treatment, feeding, and training of healthy dogs.

We would like to make very clear that any substandard and inhumane conditions at kennels – whether they be commercial operations or privately-owned home or hobby kennels – are still substandard and inhumane, and therefore subject to the strict enforcement of Indiana’s anti-cruelty statutes.

Sadly, it is the lack of enforcement, and the lack of state or municipal funding for enforcement, combined with a lacking of understanding of basic animal husbandry, that often is to blame for allowing such conditions to exist.

We, therefore, recommend that strong enforcement of the Indiana’s existing animal cruelty laws are the correct remedy to such filthy and cruel establishments, but that criminalizing the ownership and breeding of dogs – or criminalizing the ownership or breeding of any animals for that matter – is not only a misguided approach, but may in fact constitute a serious violation of the 14th Amendment.

Proxy For Warrantless Search & Seizure

It should be noted that the proposed City of Marion ordinance contains the proxy for warrantless searches and seizures, and seriously compromises the constitutional protections to which all citizens are entitled under the guise of animal protection or public safety.

We respectfully ask the Marion City Council just what constitutes “*probable cause*” under this proposal?

Will the City of Marion engage in traffic stops or other unwarranted searches of people or premises to do a “scar” check for spay/neuter compliance?

Government Interference In Practice Of Veterinary Medicine

By mandating sterilization procedures for all pets, unless paying an Unequal Tax or obtaining “permission” via a set of narrow exemptions- the City of Marion is creating a serious level of government interference in the private practice of veterinary medicine. The direct result of this will be that veterinarians will find themselves constrained in their practice by what any local legislature deems acceptable.

As responsible and caring dog owners, we depend on our veterinarians to work with us to make wise decisions concerning health of our dogs. Mandatory spay/neuter laws significantly interfere with the private and protected relationship between an animal owner and his or her veterinary healthcare provider.

Decisions about surgeries that carry risks are decisions that pet owners need to make in consultation with their veterinarians, not the local or even state legislature.

Negative Impact & Health Risks On Spay/Neuter Surgeries

The veterinary literature is overwhelmingly conclusive in finding that spay and neuter is not therapeutic in nature, but rather is extremely detrimental to the health and welfare of the dogs.

In the May 15, 2009 edition of the Journal of the American Veterinary Medical Association, the AVMA wrote:

AVMA: Mandatory Spay/Neuter A Bad Idea

“Prevention of unexpected litters; reduced incidences of some cancers and reproductive diseases; and prevention and amelioration of certain undesirable behaviors have been documented as benefits to spaying/neutering dogs and cats. However, potential health problems associated with spaying and neutering have also been identified, including an increased risk of prostatic cancer in males; increased risks of bone cancer and hip dysplasia in large-breed dogs associated with sterilization before maturity; and increased incidences of obesity, diabetes, urinary tract infections, urinary incontinence, and hypothyroidism”.
<http://www.avma.org/onlnews/javma/may09/090515j>.

Spay/neuter surgeries cause some cancers, hormonal interruptions, aggressive behavior and other maladies attributed to the spaying or neutering of dogs. Ultimately, most spay/neuter surgeries are “for the benefit of humans” and any positive effects are far outweighed by the impressive list of negative side effects.

Reduced Licensing Compliance & Loss of Revenue

Punitive anti-pet laws, Mandatory Spay/Neuter or Limit Laws reduce licensing compliance and negative impact revenue. Proponents of mandatory sterilization have relied on a punitive and permanently flawed “self-funding” revenue model which imposes high fees and/or fines which has a dismal track record.

Communities in which Mandatory Spay/Neuter laws have been enacted, have seen dramatic increases in the volume of surrenders to local shelters, and costs that spiral out of control – and the unwarranted euthanization of healthy, formerly-owned innocent dogs.

Enforcement: Difficult, Expensive & Ineffective

Numerous communities across the country have considered similar proposals, and have made the determination that **such laws are ineffective, expensive and difficult to enforce.**

Examples:

*Dallas, TX in 2008 had a result of 22% increase in animal control expenditures, as well as an overall decrease in licensing revenue of \$400,000.

*Santa Cruz, CA experienced a 56% cost increase over the first 12 years of implementation.

*Los Angeles’ budget ballooned from \$6.7million to \$18 million following implementation.

Enforcing existing laws, primarily roaming/loose dogs can solve the real issue of irresponsible owners.

Liability Issues

The City of Marion should be aware of potential legal/financial liability incurred under these proposed ordinances, including, but not limited to:

- A. Allowing non-experts to act in a capacity which would result in the unnecessary deaths of innocent animals**

- B. Allowing the taking of property, i.e. – the dogs, or in any way interfering with a citizen’s 14th Amendment rights to own property**
- C. Facilitating the arbitrary identification, registration and regulation of private personal property - thereby depriving citizens of the right to Due Process – all on the basis on a dog’s reproductive status.**

“Authorized agents”, whether they be actual members of the law- enforcement community, or members of local animal rights or rescue groups, or animal control “volunteers” become imbued with the authorization to “enforce the laws”, or to “investigate violations relating to animal control or cruelty”.

Closing Thoughts

In closing, the Indiana Purebred Dog Alliance rejects the criminalization of responsible dog ownership, the flawed concept of outlawing or eliminating through heavy-handed regulation the lawful breeding, ownership, and custody of dogs – or **ANY** animals.

We formally oppose the erosion of the civil rights and liberties guaranteed to all citizens of the United States under the guise of “animal protection” or “population control”.

We urge the City of Marion Council Members to reject any proposed mandatory spay/neuter ordinance in its entirety, and not allow this dangerous and misguided piece of legislation, no matter how well- intentioned, to bring about the destruction of innocent dogs, eliminate the responsible and ethical ownership of dogs, discriminate against owners of intact dogs, and deprive people of their civil rights.

We thank you for your attention to this very important matter and remain committed to providing the City of Marion with expert advice in matters of animal husbandry and the humane care and treatment of dogs.

Public Education, Education within the school system, 4-H Programs, and Marion Kennel Club, Inc. are economical solutions to the Marion Animal Shelter concerns. **Voluntary** participation by Marion residents in a funded Low Cost Spay or Neuter Clinic will also address the City’s concerns.

The Indiana Purebred Dog Alliance would be honored to be called upon to serve.

Very truly yours,

Carole Creech

Carole Creech
President

Indiana Purebred Dog Alliance, Inc.
5014 Granger Court
Indianapolis, IN 46268

Email: sassyroo1@yahoo.com

Website: <http://inpurebreddogalliance.org>

EXHIBIT A: American Veterinary Medical Association – Mandatory Spay Neuter A Bad Idea