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June 13, 2025

OPINION NO. 2025-02

ADMINISTRATIVE REGULATIONS:
ANIMALS; BOULDER; CITIES AND
TOWNS; COUNTIES; LOCAL
GOVERNMENT; PERMITS; STATUTES:
NRS 574.353 requires incorporated cities to create a permitting system for commercial animal breeders. However, NRS 574.353 does not pre-empt cities from addressing areas of local concern pursuant to NRS 268.0035 or from other express areas of authority granted to local governments under the NRS.

Brittany Walker, City Attorney
City Attorney's Office
City of Boulder City
401 California Ave.
Boulder City, NV 89005

Dear City Attorney Walker,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding NRS 574.353's requirement that incorporated cities adopt an ordinance requiring breeders to obtain permits on an annual basis. Specifically, you have asked whether the statute preempts a city from enacting a ban on breeding dogs and cats, and if so, if the city is also preempted from regulating breeding as a hobby.

QUESTION

Does NRS 574.353 preempt a city government from issuing an ordinance which would prohibit breeding of dogs and cats and, if so, does NRS 574.353 also preempt a city government from regulating non-commercial, hobby breeding of dogs and cats?

SHORT ANSWER

NRS 574.353 requires certain¹ incorporated cities to adopt an ordinance requiring commercial breeders to obtain a permit on an annual basis from the city. NRS 574.353's language does not merely permit the city to enact an ordinance but specifically requires it to do so. *Id.* at § (2). The statute also requires the issuance of a permit to those who qualify. *Id.* at § (3). NRS 574.353 thus preempts a city from prohibiting commercial animal breeding.

However, NRS 574.353 does not pose a prohibition on a city government's ability to regulate hobby breeding. Nevada has modified *Dillon's Rule* to permit local governments to address areas of local concern. A local government may be able to prohibit or limit animal breeding for non-commercial hobby breeders of dogs and cats if it addresses an area of local concern. Additionally, a city government may be able to regulate animal breeding within its express statutory authority to prevent cruelty to animals.

ANALYSIS

- I. NRS 574.353 preempts a city government from completely banning commercial animal breeding.

Incorporated cities are required to adopt an ordinance that regulates animal breeders within their jurisdiction. NRS 574.353(2) specifies that the local government "shall adopt an ordinance requiring each breeder in the incorporated area of the city to obtain an annual permit to act as a breeder. . ." NRS 574.353(3) also requires that after the adoption of the ordinance, the local government "shall issue a permit. . . to each breeder who" applies, pays applicable fees, and complies with other requirements of the ordinance. Nevada's courts interpret unambiguous statutes according to their plain and ordinary meaning. *See Barbara Ann Hollier Trust v. Shack*, 131 Nev. 582 (2015); *Nev. Dep't of Corrs. v. York Claims Servs.*, 131 Nev. 199 (2015). NRS 574.353's terms are clear in requiring city governments to enact a process by which law-abiding commercial breeders may obtain a permit. Thus, adoption of an ordinance that places a complete ban on breeding dogs and cats would conflict with the requirements of the statute.

¹ Interlocal agreements may impact which local governments are required to issue an ordinance regarding commercial breeding of animals. This Opinion is not intended to and does not analyze or consider any particular interlocal agreement.

However, NRS 574.353 does not prohibit a city from enacting other protections for dogs and cats in commercial breeding. NRS 574.353 contemplates that the permitting ordinance adopted by the local government may proscribe “other requirements” to obtain a breeding permit. *Id.* at (3)(c). City governments are also given express authority to regulate animals under NRS 266.325, including prohibiting cruelty to animals, as well as to regulate businesses, trades, and professions under NRS 266.355. NRS 574.353 specifically references these local government powers and thereby recognizes that a city council may go beyond simply creating a permitting process for animal breeders.

II. NRS 574.353 does not preempt regulation of non-commercial, hobbyist animal breeders under NRS 268.0035.

Your letter notes that “Nevada is a Dillon rule state[.]” *Dillon’s Rule* places limitations on the powers of a city government, defining them as limited to (a) expressly granted power under Nevada’s Constitution, statute, or city charter; (b) powers necessarily or fairly implied to express powers; and (c) essential and indispensable powers to accomplish declared objects and purposes of the city. NRS 268.001. However, Nevada modified *Dillon’s Rule* by enacting NRS 268.0035. *See id.*; *see also Endo Health Solutions v. Second Judicial Dist. Ct.*, 137 Nev. 390, 393-94, 492 P.3d 565, 568-69 (2021). NRS 268.0035 provides that:

1. Except as prohibited, limited or preempted by the Constitution, statutes or regulations of the United States or this State and except as otherwise provided in this section, the governing body of an incorporated city has:
 - (a) All powers expressly granted to the governing body;
 - (b) All powers necessarily or fairly implied in or incident to the powers expressly granted to the governing body; and
 - (c) All other powers necessary or proper to address matters of local concern for the effective operation of city government, whether or not the powers are expressly granted to the governing body. If there is any fair or reasonable doubt concerning the existence of a power of the governing body to address a matter of local concern pursuant to this paragraph, it must be presumed that the governing body has the

power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

NRS 268.0035(2) does limit a city government's power if there is a statute "requiring [the city] to exercise a power set forth in subsection 1 in a specific manner[.]" While NRS 574.353 does require a city to establish an ordinance to permit commercial breeding, it does not require a specific manner be used. Instead, NRS 574.353 permits the city with discretion as to enactment of a fee and also allows the city to prescribe "other requirements" for issuance of a breeder permit. *Id.* at (3)(c). Moreover, NRS 574.353's scope of regulation applies only to "commercial establishment[s]" and "does not include a person who breeds dogs or cats as a hobby." NRS 574.245. NRS 574.353 is thus silent on a statewide policy of regulation of non-commercial breeders. There is no prohibition elsewhere in the NRS of local government regulation of non-commercial breeders.

III. A city government may be able to prohibit non-commercial animal breeding under its express authority or under NRS 268.0035.

Given Nevada's modification of *Dillon's Rule* contained in NRS 268.0035, a city government may be able to prohibit non-commercial breeding under its express statutory powers or to address a matter of local concern. See *Endo Health Solutions*, 137 Nev. at 396, 492 P.3d at 570.

From the information presented it is unclear if Boulder City would seek to enact a ban or restriction on non-commercial breeding of cats and dogs pursuant to express authority, such as addressing animal cruelty under NRS 266.325. It is also unclear if there is a matter of local concern as defined in NRS 268.003 or NRS 268.0035 which Boulder City seeks to address. Thus, no opinion is offered as to whether a specific ban on non-commercial breeding of dogs and cats would be consistent with Boulder City's powers under the NRS.

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CONCLUSION

NRS 574.353 prohibits Boulder City from enacting an ordinance that would ban commercial breeding of dogs and cats. NRS 574.353, by its own terms, does not address non-commercial animal breeding. Thus, it is possible but unclear if Boulder City could use its express authority to regulate animal cruelty or its power to address matters of local concern to enact a ban on non-commercial animal breeding of dogs and cats.

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By: 
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