

Responsible Dog Owners of Louisville
Suggestions for Revising the 9th Draft Animal Control
Ordinance

September 7, 2006

(These suggestions are by no means all-inclusive, as the myriad problems with the 9th draft make it impossible to address all concerns in any kind of brief fashion.)

General Provisions

91.001 Definitions

Animal:

The word “*poultry*” in this definition is redundant under KRS 258.095, which defines poultry as livestock if kept for “breeding stock, food, fiber or other products.”

We also suggest the addition of the word “*vertebrate*” and the elimination of the word “*vermin*.” Otherwise, much of the 9th Draft prohibits the killing of bugs.

Animal Control Officer:

We suggest that “*All persons so designated shall qualify under KRS 61.300.*” Under KRS 436.605(1), any animal control officer empowered to enforce state laws must qualify as a peace officer under KRS 61.300.

Animal Dealer:

We suggest that *livestock auctions* and *claiming races* be specifically exempted from the requirement for an Animal Dealer’s license, and that this exemption be noted in the definition of Animal Dealer.

Animal Drawn Vehicle:

We suggest adding the words “*drawn by an animal.*” Otherwise, this overly broad definition applies to cars.

Animal Welfare Groups:

We recommend removing the requirement that such groups be corporations and have 501(c)3 status. Instead, we recommend that any group or organization which exists for the purpose of promoting human-animal interactions, responsible pet ownership, and which is involved in rehoming unwanted animals be recognized as an Animal Welfare Group.

Approved Rabies Vaccine:

KRS 258.005 defines vaccination as “the administration by a veterinarian or other qualified person of rabies vaccine approved by and administered in accordance with administrative regulations promulgated by the *secretary for health and family services*. KRS 258.075 specifically names the *Secretary for Health and Family Services* as the administrator of rabies law through local health departments.

We respectfully suggest that this definition be changed to come in line with KRS 258.005, and 258.075. For example, better wording would be:
Any vaccine approved as effective by the Secretary for Health and Family Services for protecting an animal from contracting rabies.

Boarding Kennel or Cattery:

We suggest that the word “*business*” be added before “establishment.” Otherwise, this definition includes private homes where a friend or family member might “pet-sit” a pet.

Boarding Stable:

We suggest that the following sentence be added: “*No farming operation shall be considered a boarding stable solely because it leases or loans pasture land for grazing.*”

Bona Fide Farming Operation:

We suggest that the “*10 contiguous acres*” requirement be struck. Instead, the words “*hobby or for-profit*” should be added to describe “*farm.*” KRS 413.072, which protects normal farming practices from being declared a “nuisance” does not stipulate that a farming operation must be 10 contiguous acres.

Circus or Theatrical Exhibition:

We suggest the following changes: Strike the word “*States*” from “*United States Kennel Club*” since there is no such entity. Insert the words “*including but not limited to:*” prior to the list of sanctioning organizations. Add at the end “*horse race, canine demonstration, canine competition or any exhibition of livestock.*”

Despite the protests of the authors of the 9th Draft that this definition already exempts such activities, the fact is that this ordinance must be clear and understandable by the average citizen. There should be no problem with adding or changing verbiage to clarify definitions. Since the county attorney’s representative had trouble explaining the ordinance to the Committee Members at the meeting on 9/5/06, we believe that clarification is desperately needed.

Class A Kennel or Cattery

Reducing the number of dogs covered by a kennel license doubles the cost of those kennels. This is unreasonable. The fatal dog attacks that occurred in Louisville in the fall of 2005 were not the acts of dogs from a Class A Kennel. This change punishes responsible dog owners and breeders, and will have the unintended consequence of removing legitimate breeders from the market. Instead, those breeders will be replaced by back-yard breeders who do not temperament test, check for health, properly socialize or even provide proper veterinary care for the puppies they produce. Instead of having a local source of well-bred puppies, the Council will find that there is an increase in irresponsible breeding of dogs, and an increase in the number of poorly bred and poorly socialized dogs which will eventually swell the shelter population.

Class B Kennel or Cattery

See above.

Class C Kennel or Cattery

We are mystified as to why the Metro Council would wish to make it more difficult to own and operate a business that helps people to have well-behaved pets in Louisville. We suggest striking the new language requiring a second license when the Kennel reaches a limit of 25 dogs.

Cruelty:

See KRS 525.125, 525.130 and 525.135. We feel that state law adequately addresses animal cruelty. We believe a definition of cruelty that would eliminate unintended consequences is: *“An overt act committed with the intent to harm or needlessly kill an animal or committed out of depraved indifference for the animal’s well-being, including but not limited to torture, maiming, beating, or otherwise committing violence that causes injury or death.”* We suggest this definition be substituted for the current definition, which is so broad someone could be charged with cruelty for choosing not to put their cancerous pet through chemotherapy.

Dangerous Dog:

We recommend changing the language in section (3) to state *“commission of a felony.”* Otherwise a hunter who accidentally trespasses on another person’s property could have his dog declared dangerous. We recommend adding a section (6) to state: *“No hunting dog, livestock guardian dog, herding dog or other working dog shall be declared to be dangerous solely due to any results of it performing its duties in its trained capacities.”*

Director:

We recommend adding the sentence: *“The Director shall qualify as a peace officer under KRS 61.300.”* See Animal Control Officer for reasons.

Enclosures:

(b) We recommend the removal of the breed specific language here. There is no rational justification for breed specific legislation. There is no reputable animal organization or canine behavior expert that supports breed specific legislation. Regardless of whether the County Attorney’s office believes it can defend BSL, it is a fact that BSL has been found unconstitutional very recently in a neighboring state and in several state Supreme Courts (AL, NY, OH). We, citizens and taxpayers of Louisville, do not support language in any ordinance that makes Louisville vulnerable to a lawsuit and serves so little purpose as does breed specific language. We are aware of national organizations that are poised to file suit in Louisville should this ordinance pass with breed specific language. The American Canine Foundation was a key player in the Ohio Tellings decision and has filed suit in every town where breed specific legislation has passed this year, usually within days. Please do not go forward with this language. This language is vague and unenforceable.

Exotic Species:

We recommend replacing the current definition with the following: *“An animal of a non-domesticated species not commonly kept as a household pet or for food and fiber production. Exotic animals may or may not be native to the area and may or may not be governed by existing wildlife regulations.”*

Livestock:

We are mystified at the reference to KRS Chapter 256, which regulates fencing, but refers only to cattle.

Microchip:

We suggest that MAS be required to have universal readers, and that the brands which MAS is capable of reading be listed. Otherwise, people have to guess at what brand of microchip to use.

Nuisance:

The definition of nuisance is still so overbroad and vague that it is incomprehensible to the average person. We suggest striking this definition and replacing it with the following language:

NUISANCE *A nuisance animal is one that:*

- i. frequently runs at large*
- ii. soils, or defecates on private property other than property possessed or controlled by the animal owner or on public walks and recreation areas unless such waste is removed and properly disposed of by the animal owner or handler;*
- iii. causes a disturbance by excessive and continual barking or other noise making, except when such noisemaking is in response to teasing, tormenting, or any perceived danger; or*
- iv. chases vehicles, or molests, attacks, or interferes with persons or other domestic animals on public property.*
- v. A working dog performing its duties, or returning from the performance of its duties, shall not be considered a nuisance animal.*

Pit Bull Dog

We strongly oppose this language for the reasons stated above. This language violates the due process and constitutional rights of law abiding dog owners in Louisville. There is no rational government purpose for this language. There is no verifiable way to determine the breed lineage of mixed breed or unregistered dogs (including genetics). This language renders the animal control ordinance unconstitutionally vague. It has been solidly opposed by an overwhelming number of responsible dog owners in this city. To put this language in this ordinance is a slap in the face of every dog owner who took the time to attend the public meetings. Please do not go forward with this language.

Potentially Dangerous Dog

We recommend adding an exemption which reads: *“No hunting, herding, livestock guardian or working dog shall be declared potentially dangerous solely because of any injury to any domestic animal resulting from the performance of its duties.”*

Restraint:

We strongly oppose the breed specific language for the reasons stated above.

(2) We recommend removing the words *“physically capable”* as this wording is subject to misinterpretation and misuse. It could lead to a service dog being removed from its disabled handler, which would eventually lead to severe fines and penalties for the city.

(7) We recommend that the following sentence be added: *“This does not apply to livestock being moved from one pasture or fenced area to another, nor does it apply to small livestock such as fowl that may be kept as free range organic stock.”*

(8) We recommend that the words *“kept as pets”* be added, as otherwise there is conflict with the Kentucky Right to Farm Act.

Vaccinations:

The proper authority to cite here is the **Secretary for Health and Family Services**.

Wildlife:

We recommend striking the sentence *“This includes any animal that is part wildlife.”* It would be expensive, difficult and sometimes simply impossible to prove an animal to be part wildlife.

Suggested Additions to Definitions Section:

We would like to suggest the addition of three definitions: Service Animal, Emotional Support Animal, and Therapy Animal. The definition of Service Animal should be in line with the Code of Federal Regulations. It is important to note that, although state law requires service dogs to be certified by a recognized agency or school and wearing a harness, federal law prohibits requiring certification or a harness as a condition of access. As a result, state law conflicts with federal law, and is therefore unenforceable. For more information on KRS 258.500 contact the Kentucky Commission on Human Rights (595-4024).

Service Animal

"Service animal means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability including, but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, minimal protection or rescue work, pulling a wheelchair or fetching dropped items." 28 CFR 36.104

Another resource is the ADA Business Brief, which may be found at:
<http://www.state.ia.us/government/dhr/pd/images/pdf/Serviceanimals.pdf>

Emotional Support Animal

Any animal that is owned by a person with a disability, and whose owner has a written statement or prescription from his/her doctor documenting the animal's role in treating or alleviating the owner's disability. Any animal solely used as a therapy and/or companion animal shall not be considered an Emotional Support Animal.

More information on case law concerning persons with mental disabilities and emotional support animals under Section 504 of the Rehabilitation Act of 1973 and the Federal Fair Housing Amendments Act of 1988 may be found at

<http://www.animallaw.info/articles/ovuspetsandhousinglaws.htm>

<http://www.animallaw.info/statutes/stusfd29usc705.htm>

<http://www.animallaw.info/statutes/stusfd29usc794.htm>

<http://www.animallaw.info/cases/topiccases/catolt.htm>

Therapy Animal

Any animal that has been certified by a nationally recognized agency and which, with its owner, makes visits to hospitals, nursing homes, or other public places to provide therapy for elderly, sick, injured or disabled people other than the owner.

For more information about therapy animals, go to
<http://www.kywags.org/20011206/about/about.html>

Working Dog

Any dog that has undergone extensive training or that is in training as a service animal, search and rescue dog, livestock guardian dog, police dog, drug detection dog, hunting, herding or tracking dog, bomb detection dog or to perform any other service to the community at large.

91.003 Confinement of Animal In Heat

We recommend adding the sentence *“This does not apply to working dogs or dogs being shown in any dog or cat show or competition, as long as the owner of such female ensures that she does not come into contact with a male except for a planned breeding.”*

91.004 Owner to Control Animals; Nuisances Prohibited

This section of the Animal Ordinance is rather complicated, as it has the potential to conflict with several areas of state law.

- Poultry are considered “farm animals” under state law (KRS 257.4015).
- Local governments may not make an agricultural operation, which includes the production of poultry, a nuisance. (KRS 413.072).
- State law protects landowners participating in the PACE program from complaints of nuisance (KRS 262.900-920).
- State law defines both public and private nuisances (KRS 411.500-570).
- Further, if the Council wishes to enact a Nuisance Code, that code must meet the requirements of KRS 82.710.

We believe that this section prohibiting “nuisances” should be struck, unless there is a Nuisance Code that meets the requirements of KRS 82.710 enacted already. Otherwise, such a code will need to be enacted, or this definition will have to be altered to mesh with the KRS 411.500-570.

91.005 Exhibition of Wild or Vicious Animals

This section is vague. There is no definition of “wild animal” or “vicious animal” in the ordinance. We recommend that this section be changed from “wild or vicious” animal to *“inherently dangerous animal as defined in KRS 65.877.”*

91.007 Interference Prohibited

We recommend the addition of a (C) which would state *“No person shall in any manner interfere with, hinder, molest or abuse any law enforcement, service or other working dog in the performance of its duties.”*

91.008 Keeping of Wildlife

(A) We recommend adding “*except as service animals.*” There are organizations which train monkeys as service animals for disabled handlers. If MAS were to attempt to enforce this section of the Animal Control Ordinance on a monkey service animal, MAS would be in violation of the federal Americans With Disabilities Act, thus subjecting the city of Louisville to severe fines and penalties.

(B) (1) We recommend striking “*or insect*” as this applies to bees, which are, by definition, venomous insects.

(C) We recommend striking “*shall include the European Polecat or any hybrid animal which is part wildlife.*” Ferrets are kept as pets by many people and should not be subject to greater barriers to ownership than guinea pigs or hamsters. The “*hybrid animal*” language needs to be struck because enforcement will be expensive (DNA tests) and likely impossible (DNA tests will often come back inconclusive, especially in the case of wolf-hybrids, because dogs are a subspecies of wolf.)

(F) (5) We recommend striking “*but only for animals that are in rehabilitation and are scheduled to be released to the wild.*” This section conflicts with KRS 150.183, which allows the Department of Fish and Wildlife Resources to issue a permit allowing possession of wildlife for purposes other than rehabilitation and release (i.e., education, research).

91.009 Prohibitions on Animal Ownership

The city of Louisville, being a metropolitan government within a non-home rule state, does not have the authority to ban property ownership of an entire class of animals in this manner. State law specifically gives cities in Kentucky the power to regulate “*inherently dangerous animals.*” We recommend that the power granted by the state be used here by replacing “*any animal not specifically permitted within any of the provisions of this Chapter*” to “*inherently dangerous animal as defined in KRS 65.877.*”

91.010 Fee Schedule

(B) No license or fee is required of any certified physical assistance altered pet; documentation of the certificate shall be supplied upon request.

We recommend that this sentence be changed to read: ***No license or fee is required of any service animal; documentation of disability (statement from medical professional) and proof of competent training (training log, certification, or statement from professional dog trainer) shall be supplied to MAS on request of handler for fee exemption. This documentation is protected under federal HIPAA law and may not be copied or permitted to be viewed by any person without specific written permission from the disabled service dog user.***

It is not legal to demand these documents except under certain circumstances. It is absolutely illegal under federal law to demand these documents as a condition of public access. Further, the federal definition of service animal does not specify that the animal be altered, and specifically states that a service animal is NOT A PET.

(C) We recommend returning to the original language here. This section was set up in accordance with state law, which does not permit the money to be returned to the General

Fund under any circumstances, nor does it permit the money to be used for any purpose not originally spelled out in the creation of the fund.

(D) Animal Control and Protection Fee Schedule.

We recommend the following changes to the current fee schedule:

<i>Type of License</i>	<i>Fee</i>
Altered dog license; or unaltered dogs that -are less than 2 years old -or-are currently show dogs -or-are working dogs -or-have earned titles in conformation and one other area and are owned by a Code of Ethics Breeder -or-are in a breeding program maintained by a 501(c)3 corporation to produce working dogs -and-are microchipped or tattooed	6.00
Unaltered dog license (dogs not conforming to conditions below)	18.00
Senior Citizen, two pets per household	3.50
Disabled person, one Emotional Support Animal per household	3.50

In the past, MAS has charged a much higher fee for intact animals than for animals which have been altered. We understand that this is an attempt to discourage indiscriminate breeding of animals. However, compliance with licensing requirements has not improved despite these measures. We feel it is time for a different approach.

We think it is reasonable to allow intact dogs or cats to be licensed at the same rate as altered dogs under the following conditions:

- The dog is less than 2 years old. *It is important to realize that some breeds face an increased risk of **osteosarcoma** (Rottweilers and other large or giant breeds) **hypothyroidism** (esp. Golden Retrievers) and other health problems if they are altered before the age of 2 years. References: <http://cebp.aacrjournals.org/cgi/content/full/11/11/1434> and <http://www.mmilani.com/spay-neuter-references.html>*
- -or- The dog or cat is any age and is shown in conformation, obedience, agility, or other competitive events.
- -or- The dog or cat is any age and is in training or in use as a service, search and rescue, livestock guardian or other working animal. *Note: most service animals are altered; however, the ability to maintain an intact dog during training allows non-profit organizations with breeding programs to make better choices about which dogs are especially suited to training and therefore most valuable as breeding animals. It also lowers the ultimate cost of service animals for disabled users, as well as lowering the cost of working animals for farmers, police, and rescue agencies.*

- -or- The dog or cat is any age and has earned titles in conformation or any other area. *Such dogs belong to owners whose responsibility has been demonstrated in the time and effort they have placed into breeding, showing and training quality animals.*
- -or- The dog or cat is in a breeding program maintained by a 501(c)3 organization to produce working dogs. *We do not wish to see a stipulation that the animal be purebred, as some service dog breeding programs have had great success with breeding 1st and 2nd generation crosses that are capable of alerting disabled persons to seizures and other impending medical crises. This is a valuable behavior which is very difficult to train.*
- -or- The dog or cat is microchipped or tattooed.

Proof that these conditions can be met (via documentation of the dog's pedigree, registration with the AKC, UKC or other recognized registry; proof of training either through a test or through trainer statements, certifications, or titles; proof of 501(c)3 status and mission statement; and microchip number or tattoo number) should be given before the lower fee is allowed.

Lowering the licensing fee will result in increased compliance, provided that a marketing strategy is used that (a) makes the public aware of the reduced fee and (b) convinces the public that a service is being received in exchange for the fee.

- A lower license fee makes taking a chance on not getting a ticket much less reasonable, as the cost if one is caught without an inexpensive license does not justify the risk.
- Enacting a policy of "one free ride home" meets the requirement of a service in exchange for a fee. The public then is paying a \$.050 per month for a guarantee of their pet's return in case of loss. Most pet owners will be happy to license their pets in that circumstance. Owners of intact dogs will pay \$1.50 per month for the same service.

We believe that, with a 15% compliance rate that has remained steady over a period of 20 years of increasing license fees, it is time for a different approach. It has been demonstrated, here and in other communities, that enacting a differential license fee results in a lower level of licensing compliance. The increase in compliance will more than make up for the decrease in fees when it comes to MAS's budget. Any economist will agree that lowering price is a much better plan (than increasing fees) for increasing "sales" of licenses.

(E) We recommend this section be struck. It complicates the ordinance unnecessarily.

(F) We recommend striking "*pursuant to KRS 258.500.*" According to the Kentucky Human Rights Commission, KRS 258.500 is in direct violation of the federal Americans With Disabilities Act and, therefore, unenforceable. The problem is the requirement under KRS 258.500 for certification. Certification cannot be required under federal law. To allow exemption from licensing fees only for certified service dogs is to violate the equal treatment clause of the Kentucky and U. S. Constitutions.

91.011 Sanitary Disposal of Animal Feces Required

(A) and (B) We recommend changing the last sentence in these two sections to read: “Equine animals being used for recreational, agricultural or law enforcement purposes are exempt.” Otherwise, the Mounted Patrol of the LMPD is violating the law.

(C) We recommend changing the wording to say, “This section shall not apply to blind or visually impaired persons accompanied by a service animal.” The new wording will better reflect state and federal definitions of service animals, which are not necessarily dogs, and are not all trained by the Seeing-Eye™ Foundation.

Licenses, Permits, and Vaccinations

91.020 Dog and Cat Licenses

(A) We recommend adding an exemption to the requirement to wear tags at all times for “working dogs in the performance of their duties, and for medical and safety reasons.”

(B) We recommend striking this provision entirely. There is no legitimate purpose for adding puppy and kitten licenses. The original purpose for licensing, as established in *Nicchia vs. New York* (United States Supreme Court, 1920) was to allow governments to require and enforce rabies vaccinations. Puppies and kittens cannot be vaccinated against rabies until they reach 4 months of age. **This provision shows a complete departure from the primary purpose of animal control—a purpose which, if forgotten, will have devastating consequences for the people of Louisville.**

(C) While we appreciate the author’s attempt to correct a problem in the requirements of this ordinance, the fact remains that this exemption does not go far enough. It still requires “unaltered pit bull dogs” to go to MAS and be registered because the exemption does not apply except on show or exhibition grounds. **There will still be an economic impact which will end the dog show within two years if this ordinance is passed. That economic impact will be the result of an all-breed boycott of Louisville because of the passage of what is perceived by many dog fanciers as a dog-unfriendly ordinance. Letters have been pouring in from all over the country stating the intention of hundreds of dog fanciers not to set foot in Louisville should the Metro Council pass a breed-specific ordinance. Dog fanciers oppose any measure of BSL—whether restrictions (as this ordinance proposes) or outright bans.**

(D) We recommend reducing the license fee for intact animals as described above (from \$35 to \$18). That will necessitate eliminating or reducing the amount of the spay/neuter rebate certificate to be issued with each unaltered dog license; however, it will not be necessary to issue a spay/neuter rebate certificate for dogs that qualify for the same price as the altered dog license. Further, if the Metro Council enacts an ordinance that is seen as community-friendly, it will gain community support for funding of low-cost spay/neuter programs, rather than forcing support from responsible owners by enacting what amounts to a “pet tax.”

(E) We oppose the breed specific language. We also vehemently oppose the provision allowing the Director of MAS to examine dogs that have a certificate from a veterinarian showing them to be spayed or neutered. This provision, by its very presence, suggests that responsible owners are criminals and demand they prove otherwise—further, it suggests that veterinarians are criminals too!

(G) We recommend this provision be struck, as it demands private citizens and business owners do the job of MAS for no compensation. It is conscriptive and completely antithetical to a Democratic society.

91.0201 Registration and Special Licensing of Pit Bull Dogs

91.0202 Pit Bull Dogs to be Enclosed or Under Restraint

91.0203 Pit Bull Dogs as Defined Dangerous Dogs or Potentially Dangerous Dogs

We oppose these sections in their entirety and recommend that they be struck. These sections of the animal control ordinance serve no legitimate purpose, are not supported by any legitimate canine organization, are based entirely on myth, and deny due process rights. These sections are unsupported by research or scientific evidence, serve no rational government purpose and are unconstitutionally vague. There is no method to determine the breed lineage of any mixed breed dog—genetics can only prove that a mixed breed dog is a dog, not what breed heritage it has.

If not struck, these sections are also in violation of the federal ADA because they require an extra burden of a service dog user who owns a service dog of the targeted breeds, and they restrict the movement of such service dog users (per Norb Ryan, ADA Advocate, Kentucky Human Rights Commission). The Government Administration, Rules, Ethics and Audit Committee has assured service dog users that live in Louisville that service dogs will be exempt from any breed specific requirements. We are reminding the County Attorney's office as well as the Committee members on this task force of that promise.

91.0204 Training of Pit Bull Dogs for Fighting Prohibited

This section should be reworded to say "Training of Dogs for Fighting Prohibited" otherwise the gaping loophole created by limiting the prohibition to "pit bull dogs" will be exploited by the very people the law is intended to stop.

91.0205 Additional Requirements Pertaining to Pit Bull Dogs

We oppose this section and recommend that it be struck for the reasons stated above.

91.0206 Determination of Breed by the Division of Animal Control and Protection

We oppose this section and recommend that it be struck in its entirety. Neither the Director of Animal Control, nor his staff is capable of determining lineage of mixed breeds, because it is simply an impossibility without documentation of the dogs pedigree. We cannot support this section without proof that the Director has an objective method to determine dog breeds, even in purebreds. We submit that this proof will not be forthcoming because the Director has neither the budget nor the scientific expertise required. The only way to determine a purebred dog's breed accurately and objectively without a pedigree is by analysis of microsatellite DNA using PCR and proteomic techniques. Even this method is still experimental, and not without error (there are only a few papers published on this method). Proteomics is a relatively new field of science in which there are only a handful of qualified technicians in Louisville, most of whom work at the University of Louisville. None of these scientists has any experience in determining dog breed using microsatellite DNA. It is not possible to determine a mixed breed dog's heritage by any objective method which MAS can afford.

Sources:

<http://genetics.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pgen.0010058>

<http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1287952>

<http://www.doggenetichealth.org/faq.php?PHPSESSID=f4d21dc64bf650a4d9d78b12484fc03c>

91.021 Other Required Licenses and Permits

We recommend striking the following unnecessary licenses:

(8) Theatrical Exhibit (should be combined with Circus)

(13) Swine Permit – serves no purpose.

(14) Unaltered Pit Bull Dog – unreasonable restriction on a few breeds

(15) Pit Bull Breeder – unequal application of the law, unreasonable restriction on a few breeds serves no rational government purpose

91.022 License Renewal; Revocation; Appeals

We appreciate being heard on our request for due process rights to be recognized.

91.023 Vaccination; Fixation of Tags.

(A) If the Secretary of Health and Family Services decides to approve a vaccine not approved through the NASPHV, then this ordinance will need to be revised.

(B) The appropriate authority to cite here is the Kentucky Cabinet for Health and Family Services. *We recommend striking the requirement for veterinarians or qualified persons to fill out the form in triplicate and send a copy to either the Louisville/Jefferson County Board of Health or its designee. This requirement is a disaster waiting to happen. Those who are out of compliance with license laws because of high fees will stop having their dogs vaccinated for rabies once they understand that rabies records allow them to be tracked. With the current outbreak of rabies in wildlife at the Ohio/Virginia border, this requirement will set Louisville Jefferson County up for a public health disaster!*

(C) We recommend striking this provision. There is no need for revaccination.

Revaccination within the time frame which the vaccine is known to be effective provides no added benefit, and can be harmful to the animal in question.

(E) We recommend adding an exception for working dogs on duty, or for safety reasons.

91.025 Certain Sales of Animals Prohibited

We believe there are problems with jurisdiction here. If an animal is bought by a person from out of state, then that sale is regulated by federal law, not city ordinance. The city cannot demand a non-resident to buy a license for a cat or dog that will not live in the Metro area. Further, only 36% of all advertisements selling animals are from within Louisville/Jefferson County. This section requires non-citizens of Louisville to know our ordinance before buying a pet here. Further, there is a question of illegal restraint of trade. We recommend striking this section in its entirety.

91.030 Number of Dogs on Residentially Used Property

(A, B, C) This is an unreasonable limitation which would apply to all dogs without consideration to the needs and requirements of said dogs. Three Great Danes are not equal to three Chihuahuas. This is, essentially, a limit law and is unlikely to stand up in court. It is an arbitrary limit, with no evidence whatsoever given to support the numbers decided upon. We recommend striking this section in its entirety.

91.032 Public Funds Authorized for Education, Training and Socialization Programs

We recommend the creation of an Animal Control Review Board to serve the purpose for Animal Control that the Code Enforcement Board serves for Inspections/Permits and Licenses. We believe that a nine member board, with members from various pet-related agencies in Louisville, would provide the expertise necessary to review and hear appeals and cases coming before it. It would certainly allow the Code Enforcement Board to continue dealing only with property issues, while providing citizens an avenue of appeal to an expert board that could consider all the issues when weighing its decisions. We would want this board's decisions to be appealed to the District Court in the event that an owner was unhappy with their decision.

(C) (b) This requirement for spaying or neutering is one which should have an avenue for appeal through the court, as it requires a devaluation of property. Further, spay/neuter surgery on an already-aggressive dog will do nothing to solve the behavior issues.

91.035 Impoundment Authorized; Euthanasia of Unclaimed Animals

(C) We think restricting this provision to "pit bull dogs" is not wise, as again, it leaves a gaping loophole. Those with dangerous dogs other than pit bulls would not be affected by this provision. We would like to point out that writing an animal control ordinance that specifically addresses dangerous dogs, without specifying breed or type, will include ALL dogs that exhibit dangerous behavior. There will be no inadvertent exclusions if breed or type is left out altogether.

(D) This penalty is entirely too harsh if the criminal act is simple trespass. We believe this provision should be restricted to felonies.

(E) We think this provision should be restricted to Dangerous or Potentially Dangerous dogs ONLY.

(F) We appreciate the insertion of this much sought after provision.

91.036 Reclaiming an Impounded Animal

We are concerned that people are to be required to show proof of vaccinations that are not required for licensing before they may claim their dogs. RDOL supports proper veterinary care for all animals; however, we are aware that yearly vaccinations are a controversial topic. Many responsible owners choose to have blood drawn for immune titers each year to determine a need for vaccination. Lab results dictate whether the animal will be vaccinated that year. While this is an oft-used technique, it still is not altogether accurate, as some animals are still vaccinated unnecessarily. Immunologists are well aware that an animal can have an immune titer that is below detectible levels, but still have vigorous immunity to a disease. There is no way to detect the number of B-cells (or memory cells) which produce the antibodies which give immunity. We therefore do not recommend requiring titers or vaccinations in order to reclaim a dog. We feel this is

an overstepping of governmental authority to require vaccinations/lab tests for reclaiming an impounded animal. Decisions about veterinary care for animals should rest with the animal, its owner, and the veterinarian.

We suggest that proof of an annual veterinary exam, with veterinary recommendations as to vaccinations, suffice to reclaim an impounded animal.

(E) We think a better incentive for citizens to adhere to the law is granting the ½ price reclamation fees to owners of LICENSED dogs. We also recommend that this provision be stipulated to not include dogs impounded for violations of the Cruelty, Dangerous Dog, or Potentially Dangerous Dog provisions. We have already made clear the fact that breed specific language has no legitimate place in any animal control ordinance.

(G) We would like clarification of the severity of the convictions that will result in prohibition of animal ownership. Unless this provision is restricted to the most severe violations, it is far too harsh and likely unconstitutional.

(H) This provision should contain an avenue of appeal, or the spay/neuter requirement should be struck. This provision requires a devaluation of property without any evidence that such devaluation will serve any public safety purpose.

91.038 Issuance of Citations; Violation Notices

(D) Hunting dogs participating in field trials are tied out as a more humane restraint method than crating in a hot vehicle. We recommend an exemption for hunting dogs, working dogs, and dogs in training or participating in canine demonstrations or canine competitions from this provision.

(H) The provision allowing the Director to waive fees if an owner spays or neuters his pet should be struck. This provision serves no public safety purpose. A better provision would require proof of completion of a training class or certificate to address the problem behavior that brought the animal to the attention of MAS to begin with.

91.040 Reporting of Animal Bites and Attacks Required

This provision should be struck in its entirety. Most animal bites are not serious and require no more care than a band-aid. There are an estimated 4.7 million bites per year in the United States, with Louisville/Jefferson County's portion an estimated 28,200, from dogs alone. When the vast majority of these bites harm no one, there is no reason to burden health care providers or public officials with the requirement to report these minor incidents. The result would be MAS overburdened with meaningless paperwork, and interference in the duties of health care workers that could lead to more harm than could possibly be prevented by this requirement.

91.050 Provision of Necessities

(A) This provision is too broadly worded. It attempts to apply reasonable requirements for dogs to all animals. Horses, for example, do not need a wooden floor. Neither do rabbits kept in outside hutches.

(B) We recommend adding an Animal Control Review Board to approve regulations promulgated by the Director. Without an expert panel to oversee and approve such regulations, such power should not be granted to the Director.

91.051 Restraint by Leash, Chain or Collar; Specifications

(A) We recommend exemptions for working dogs, or dogs participating in canine competitions or canine demonstrations.

(B) We recommend this provision be struck. Restraint is already well-defined. Why is there need for further regulations?

91.052 Abandonment

We recommend that a definition of Abandoned Animal be added. We recommend the replacement of “animal welfare group officer” with “citizen.” There is no reason to give anyone authority not granted normal citizens if that person is not an agent of the Metro Government.

91.054 Cruelty; Exhibition Fighting Prohibited

There needs to be an exclusion for legitimate activities such as Schutzhund-type events sanctioned by a legitimate club, and hunting activities or training for hunting.

91.057 Offering Animal as Prize or Award

There needs to be an exemption for hunting dogs offered at auction, or by charitable organizations.

91.058 Killing Dogs, Cats for Food or Fur Prohibited

The labeling requirement needs to be struck. It is unenforceable. Metro Louisville does not have jurisdiction in China, where many of these products come from.

91.059 Mutilation of Animals

There needs to be an exemption for the butchering of meat for human consumption on farms, at butcher shops, in groceries, or in homes. The current wording is so broad that even the Metro Council members have violated this provision on Thanksgivings past.

91.062 Confiscation of Victimized Animal

(A) Violation of precisely what provisions of Section 91.062 will result in confiscation? This new wording is very unclear.

(B) The new fees are far above what is necessary or reasonable to care for an animal. We feel this restriction may be unconstitutional, as it amounts to a requirement that a person forfeit their property before being proven guilty of any crime.

91.075 Boarding Kennels

(L) This provision should be struck entirely. Businesses are not the police, nor is their job enforcement; that job belongs to MAS. If MAS cannot enforce the law without conscription of average citizens without pay, then the animal control ordinance is too complex and over-reaching in the first place.

91.077 Class B Kennels and Catteries

There should be a requirement for seven days notice before inspection, after the initial license is granted, for Class B Kennels and Catteries that do not operate under a business license. People should not be required to be available at the whim of MAS simply

because they have show dogs. If MAS feels an unannounced visit is necessary, then MAS should be required to show probable cause and get a warrant.

91.079 Pet Shops

These requirements and standards (as well as those for Kennels and Catteries, and for Boarding Stables) need to be edited severely. The standards currently do not take into account different animal husbandry techniques and practices, nor do they consider different requirements for different species. These standards are arbitrary, and if followed exactly for every species in a pet shop, would result in the death of many animals.

91.080 Riding Schools or Stables

(C) Riding equipment comes in different sizes for different animals. Requiring equipment to fit each individual animal is unreasonable; instead, equipment should be required to fit the animal for which it is intended.

91.083 Sale of Animals from MAS

We recommend that a provision be added which states that sales of animals shall not unreasonably be refused to anyone. We feel that setting overly strict requirements for adoption of pets from MAS is unreasonable, especially given the proven health benefits of animal ownership, and the furor over the euthanasia rate at the shelter. If MAS is refusing sales of animals in its care to homes which are perfectly capable of caring for a pet, then MAS has no one to blame for its euthanasia rate but itself. Pets are not people, and adopting them should not be as difficult as adopting a child.

91.095 Exotic Species; Keeping of Records

What is the purpose of this section? What specific animals does MAS want to be able to track for a period of 3 years? Gerbils? Hamsters? Pythons? We feel this section needs clarification.

91.110 Dangerous Dogs and Potentially Dangerous Dogs

(B) (4) The sentence “Simple trespass by a person onto private property shall not be considered provocation for any attack” should be struck. This sentence violates the KRS in regards to owner liability in the case of dog bites. KRS 381.231 and 381.232 absolve a property owner from liability when a person is injured while trespassing on the property owner’s land. KRS 258.095 specifically absolves a dog from being declared vicious if it bites someone trespassing on its owner’s property. This includes all definitions of trespass, as defined under KRS 511.060-090 (including trespass as a violation only, which we assume is what is meant by “simple trespass” as it is not otherwise defined anywhere). Trespassers in Louisville Metro should not be able to file a complaint against a dog which, while on its own property, bit them while they were trespassing. This does not happen any where else in Kentucky! Louisvillians should not be subject to greater restrictions on their pets on their own property than other Kentuckians must endure!

We recommend adding a provision that exempts any working dog from being declared dangerous due to the performance of its duties.

91.112 Requirements for Ownership of a Dangerous Dog or Potentially Dangerous Dog

(C) We recommend the requirement for insurance be struck. This provision is one which is impossible to fulfill. Including it is exactly the same thing as prohibiting ownership of a dangerous or potentially dangerous dog. The Metro Council should decide to either allow or prohibit ownership, and to be honest about it. Requiring conditions that cannot be met is disingenuous.

Appendix A.

We recommend no change in fees other than suggested earlier. The increases suggested amount to a “pet tax.” This “tax” would then be used to enforce requirements making pet ownership more difficult and burdensome for every pet owner. Instead, MAS should focus on public safety—enforcing rabies vaccination and restraint requirements. This is the historical focus of MAS that has ultimately resulted in a reduction from 100 deaths due to rabies each year to less than one annually. Moving away from a public health purpose that has proven successful is a mistake, and will prove to the citizens of Louisville should the Metro Council approve it.