

BY LEDY VANKAVAGE

NEW DOJ RULES ON SERVICE DOGS

Communities prompted to repeal or amend breed-specific laws

Some local governments attempt to regulate dangerous dogs by enacting breed-discriminatory ordinances, most often “pit bull” bans. Recently, the federal government found a way to keep citizens safe without discriminating against breeds of dogs, particularly service dogs. “State and local government entities have the ability to determine . . . whether a particular service animal can be excluded based on that particular animal’s actual behavior or history—not based on fears or generalizations about how an animal or breed might behave.”¹

On the twentieth anniversary of the signing of the Americans with Disabilities Act (ADA), the U.S. Department of Justice (DOJ) released its “final rule in order to adopt enforceable accessibility standards.” The ruling addresses issues raised in Title II of the ADA, including state and local laws that regulate or prohibit certain breeds of dogs, particularly for disabled persons who have service dogs of the restricted breeds.

Understandably, the DOJ states that federal law trumps any local breed-discriminatory law, adding: “The [DOJ] does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs. . . .” This ruling clarifies that localities and states with breed-discriminatory ordinances must provide an exemption for service dogs of the prohibited breed.

In light of the new DOJ rule and because of the high cost of enforcing breed-specific legislation, localities are repealing their breed-discriminatory laws and replacing them with laws regarding reckless owners and breed-neutral dangerous dogs.

One such city is Topeka, Kansas. It

repealed a long-standing breed-specific law targeting pit bulls and replaced it with a comprehensive, generic dangerous-dog law. According to a memo from the Topeka city attorney’s office,² studies show that cities with breed-specific laws aren’t any safer than cities without such laws. Stronger laws against aggressive and dangerous dogs—laws that hold the owners responsible—were seen by the city as more effective.

The Topeka city attorney’s office also noted problems of determining the heritage of a mixed-breed dog in this era of DNA testing. After all, if a city enacts a breed-discriminatory law, it has the burden of proving the heritage of the dog.³ The Topeka memo states, “Mixed breed dogs make the breed specific legislation difficult to enforce. Absent cost-prohibitive DNA⁴ testing, it is difficult to prove beyond a reasonable doubt the breed.

The city attorney’s office in Topeka also cited the high cost of enforcing breed-discriminatory laws as a main reason to jettison them. The city believed the money could be better spent on dogs that it can show are dangerous rather than just punishing an entire breed.

The Platte Institute for Economic Research backed up that assessment by issuing a report entitled “Pit Bull Ban a Waste of Tax Dollars.”⁵ Saving tax dollars by repealing these laws reflects a national trend that has been tracked by Best Friends Animal Society.⁶

Economist John Dunham⁷ calculated the cost of enforcing a breed-specific law targeting pit bull terrier-type dogs for every city, county, and state in the United States.⁸ Since the fiscal impact calculator came online in May 2009⁹ (www.guerrillaeconomics.biz/bestfriends), an overwhelming majority of counties and

cities considering a breed-restrictive law have decided against it. Most have enacted generic dangerous-dog laws, and some rightly target reckless pet owners.¹⁰

Through a grant from the American Bar Association, the Tort Trial and Insurance Practice Section (TIPS) is offering a free copy (while the supply lasts) of its book, *A Lawyer’s Guide to Dangerous Dog Issues*,¹¹ to any public administrator or attorney working on the subject of dangerous dogs. If you are interested in receiving a copy, e-mail the chair-elect of the ABA TIPS Animal Law Committee at ledyv@bestfriends.org. **PM**

FOOTNOTES

1 “Nondiscrimination on the Basis of Disability in State and Local Government Services: Final Rule,” August 31, 2010, www.ada.gov/regs2010/titleII_2010/reg2_2010.html.

2 “Proposed Ordinance on Animal Cruelty and Dangerous Dogs,” City of Topeka, City Attorney’s Office, no date, www.topeka.org/pdfs/SummaryFAQs.pdf.

3 *City of Pierre v. Blackwell*, 635 N.W. 2d 581 (S.Ct. S.D. 2001).

4 Ledy VanKavage, Katie Barnett & Lauren Gallagher, *The Fiscal Impact of Breed Discriminatory Ordinances in the Era of DNA*, International Municipal Lawyers Association, Spring 2010.

5 Jessica Strutzel, “Pit Bull Ban a Waste of Taxpayer Dollars,” Platte Institute for Economic Research, Omaha, Nebraska, June 16, 2010, www.platteinstitute.org/research/detail/pit-bull-ban-a-waste-of-taxpayer-dollars.

6 “Best Friends BDL Fiscal Impact,” Best Friends Network, 2009, www.guerrillaeconomics.biz/bestfriends/.

7 John Dunham and Associates, Inc., “Fiscal Impact of Breed Discriminatory Legislation in the United States,” prepared for Best Friends Animal Society, May 13, 2009, www.guerrillaeconomics.biz/bestfriends/best%20friends%20methodology%20and%20write%20up.pdf.

8 Ledy VanKavage, *All Bark and Fiscal Bite - Are Breed Discriminatory Laws Effective*, Animal Law Committee of the American Bar Ass’n. Torts Trial and Insurance Practice Section, Winter 2009.

9 “Best Friends BDL Fiscal Impact”

10 Title 17, “Animal Control,” Tacoma Municipal Code, Tacoma, Washington, <http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title17-AnimalControl.PDF>.

11 Joan E. Schaffner, *The Lawyer’s Guide to Dangerous Dog Issues* (Chicago: American Bar Association, 2009), <http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5190448>.



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