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BRIEF
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Confirmation Nbr. 1222830

JENNIFER SCOTT

CV 17 885796

vs.

CITY OF LAKEWOOD

Judge: BRENDAN J. SHEEHAN

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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JENNIFER SCOTT, Appellant, v. CITY OF LAKEWOOD, Appellant.	CASE NO. CV-17-885796 JUDGE BRENDAN J. SHEEHAN Administrative Appeal
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**BRIEF OF APPELLANT
JENNIFER SCOTT**

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ASSIGNMENT OF ERRORS PRESENTED FOR REVIEW

- I. In this case, the City of Lakewood's ordinances prohibiting the ownership of dogs it considers pit bulls exceed the City's authority under the Home Rule Amendment to the Ohio Constitution because they prohibit that which State law permits and specifically licenses. (*See* Exhibit 2 to Notice of Appeal, Dog Determination Dated September 6, 2017, at 5.)
- II. The City of Lakewood erred by closing its breed determination hearing to the public in violation of the City's ordinances and State and federal law. (*See* Tr. 15, 17, Hearing Transcript at 11, 13.)
- III. Because the city allowed Ms. Scott to rescue Charlie, it is estopped from enforcing its pit-bull ordinances in this case. (*See* Tr. 163, Breed Determination Hearing Decision, City Ex. 1; Tr. 28, Hearing Transcript at 24.)
- IV. The City of Lakewood violated Appellant's substantive and procedural rights by conducting a breed determination hearing contrary to State law and seeking to enforce a decision based on evidence that is not reliable or substantial. (Tr. 251, 254, Breed Determination Hearing Decision at 1, 4.)

ISSUES PRESENTED FOR REVIEW

1. Whether the City of Lakewood's ordinances prohibiting the ownership of dogs the City considers pit bulls exceed its municipal home-rule authority by prohibiting that which the State permits and specifically licenses. (Assignment of Error I.)
2. Whether Lakewood's ordinances, Ohio's Sunshine Law and R.C. 955.222(A), and the First and Sixth Amendments to the Constitution require the City of Lakewood to open a breed determination hearing to the public. (Assignment of Error II.)
3. Whether the City may enforce its ordinances banning pit bulls after giving permission for the dog at issue to move to and reside in Lakewood. (Assignment of Error III.)
4. With respect to Assignment of Error IV:
 - a. Whether State law vests exclusive jurisdiction in the municipal court to determine whether a dog is vicious, dangerous, or a nuisance.
 - b. Whether conflicting and disputed evidence that does not meet the standards of Evid.R. 702 may support a determination of a dog's breed based solely on a visual identification.

INTRODUCTION

Appellant Jennifer Scott has lived the majority of her life in the City of Lakewood, currently resides there with her husband and 12-year-old daughter, operates a business in the City, and has educated her children in Lakewood. In February 2017, Ms. Scott and her family rescued a puppy from the Cleveland Animal Protective League (“APL”). Before doing so, Ms. Scott communicated with an animal control officer in the City of Lakewood, Jack Crawford, who advised her in writing that “[t]he puppy would be welcome in Lakewood at this time.” Based on this representation, Ms. Scott adopted the puppy, which she named Charlie. In June 2017, Charlie was dropped off at the Lakewood Animal Shelter after he escaped through an open gate. Within approximately twenty minutes, Ms. Scott picked Charlie up. As a result of this incident, the City notified Ms. Scott that Charlie was no longer welcome in Lakewood, not because of any conduct in which he engaged, but because a different Lakewood animal control officer, Kurt Bialosky, considered Charlie to be a pit bull—a breed Lakewood’s ordinances ban.

In a subsequent administrative hearing conducted in violation of Ohio law and the rights of Ms. Scott and the public, a hearing officer in the City of Lakewood determined that Charlie is not welcome in the City and, in a decision issued on September 6, 2017, ordered Ms. Scott to remove Charlie from Lakewood within thirty days. Among other things, the hearing officer’s determination, which usurped the exclusive jurisdiction to conduct such hearings State law vests in the municipal courts, is based on nothing more than one Lakewood animal control officer’s subjective, unreliable, and disputed visual identification of Charlie as a pit bull—after another Lakewood animal control officer determined Charlie was not a pit bull and advised Ms. Scott accordingly, that “[t]he puppy would be welcome in Lakewood at this time.” There is no behavior or conduct that supports the City’s unlawful determination that Charlie is dangerous.

In 2012, the State of Ohio enacted House Bill 14, which repealed breed-specific legislation declaring pit bulls vicious by default and instead changed the law to determine whether a dog is vicious or dangerous based on its behavior, not its breed. Nonetheless, Lakewood's ordinances continue to make such determinations based on breed. Because Lakewood's ordinances forbid that which the State permits and specifically licenses, they impermissibly conflict with State law in violation of the Home Rule Amendment to the Ohio Constitution and may not be enforced. Ms. Scott should not have to choose between her home and her companion animal, which she made a part of her family with Lakewood's express permission. Two Ohio appellate courts have considered this question and hold that local ordinances that go beyond Chapter 955 like the ones Lakewood has on the books, are unconstitutional. One struck down a municipal ordinance banning pit bulls that is materially indistinguishable from Lakewood's. *See Russ v. City of Reynoldsburg*, 5th Dist. Licking, 2017-Ohio-1471, 81 N.E.3d 493. The other held that local ordinances targeting pit bulls violate the Home Rule Amendment following the General Assembly's enactment of House Bill 14 in 2012. *See City of Lima v. Stepleton*, 3d Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721. No Ohio court holds otherwise.

For these reasons, as more fully explained below, Appellant disagrees with the City of Lakewood's determination that Charlie is a dangerous dog and respectfully seeks a ruling from this Court that Lakewood may not enforce its prohibition against owning, keeping, or harboring a pit bull in this case.

STATEMENT OF THE CASE

A. Statutory Background.

1. Ohio Adopts Breed-Specific Legislation.

The General Assembly has enacted a comprehensive legislative scheme to regulate ownership and control of dogs in Ohio. In 1987, the General Assembly amended this state-wide regulatory scheme by enacting Ohio's breed-specific legislation. Under that statute, codified in Chapter 955 of the Ohio Revised Code, the State of Ohio defined as "vicious" any dog that engaged in certain behaviors or "[b]elongs to a breed that is commonly known as a pit bull dog." R.C. 955.11(A)(6)(a)(iii) (1987); Addendum, A-004, A-016.¹ That statute further provided that "[t]he ownership, keeping, or harboring of such a breed of dog shall be prima facie evidence of the ownership, keeping, or harboring of a vicious dog." *Id.*

2. Lakewood Follows Ohio Law by Adopting Breed-Specific Legislation.

After the General Assembly enacted Ohio's statewide breed-specific legislation, the City of Lakewood followed suit in 2008 and conformed its ordinances to Ohio's statutes by adopting breed-specific legislation. Specifically, Lakewood defined a "dangerous dog" as "any Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog, any dog of mixed breed which is predominantly of one or more of such breeds, or any dog commonly known as a pit bull, pit bull dog or pit bull terrier; as determined by an Animal Control Officer." Section 506.03(b) of the Codified Ordinances of Lakewood, Ohio, A-131.

Lakewood went further than State law, which after 1987 provided that keeping, harboring, or owning a dog considered to be a pit bull, was "prima facie evidence of the ownership, keeping, or harboring of a vicious dog." R.C. 955.11(A)(4)(a)(iii) (1987), A-004,

¹ For the convenience of the Court and the parties, a copy of the former statute and House Bill 14 as enrolled are included in the addendum attached to this brief.

A-016. Lakewood flatly declared that “all pit bull dogs * * * are deemed to be dangerous animals.” Section 506.03(a) of the Codified Ordinances of Lakewood, Ohio, A-131. Lakewood simply banned any person from bringing a vicious dog, including a pit bull, into the city: “No person shall keep, harbor or own any dangerous or vicious animal within the City of Lakewood, or permit any dangerous animal to be kept within the City of Lakewood,” subject to certain exceptions not applicable here. Section 506.01 of the Codified Ordinances of Lakewood, Ohio, A-129. Violation of this ordinance constitutes a first-degree misdemeanor. *Id.* Section 506.99(a), A-144.

3. Ohio Repeals Breed-Specific Legislation in Favor of Conduct-Based Regulation.

Effective May 22, 2012, the General Assembly enacted House Bill 14. Among other things, House Bill 14 defines dogs as “dangerous” or “vicious” based on their conduct, not their breed. To accomplish this, the General Assembly repealed the breed-specific provisions it enacted in 1987. *See* A-014. In its summary of House Bill 14 as enacted by the General Assembly, the Final Analysis of the Legislative Service Commission confirms that the legislation “repeals the automatic inclusion of a pit bull dog as a vicious dog” and “[r]epeals the statement that the ownership, keeping, or harboring of a pit bull dog is *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog.” A-033, A-034. By removing pit bulls from the definition of “vicious dogs,” the General Assembly loosened the restrictions on those who own, keep, or harbor dogs that may be regarded as pit bulls.

4. Lakewood Continues to Ban Pit Bulls, Although State Law Regulates Based on a Dog’s Conduct.

Since the General Assembly enacted House Bill 14 in 2012, the City of Lakewood has not amended its local dog ordinances and has not conformed its local dog ordinances to State law. As a result, although State law does not classify pit bulls as vicious (or dangerous) or

impose limitations on their ownership absent certain conduct not based on their breed, Lakewood continues to prohibit any person from owning, keeping, or harboring any dog that an animal control officer determines to be a “Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog, any dog of mixed breed which is predominantly of one or more of such breeds, or any dog commonly known as a pit bull, pit bull dog or pit bull terrier” within the municipality. But under Ohio law, a municipality “may adopt and enforce ordinances to control dogs within the municipal corporation *that are not otherwise in conflict with any other provision of the Revised Code.*” R.C. 955.221(B)(3) (emphasis added). Ordinances that may not conflict with the Revised Code specifically include ordinances “concerned with the ownership, keeping, or harboring of dogs.” R.C. 955.221(A).

B. Relevant Procedural History.

After Lakewood animal control officer Jack Crawford advised Ms. Scott and her family in February 2017 in writing that “[t]he puppy would be welcome in Lakewood at this time,” the City formally served Ms. Scott on June 26, 2017 with notice that it intended to conduct a hearing to determine Charlie’s breed. (Tr. 253, Breed Determination Hearing Decision at 3; Tr. 173-74, City Ex. 10.) That hearing proceeded on August 23, 2017. (Tr. 251, Breed Determination Hearing Decision at 1; Tr. 5, Hearing Transcript at 1.)

Over Appellant’s objection, the City closed the hearing to the public and removed certain limited members of the public who wished to attend the hearing. (Tr. 15, 17, Hearing Transcript at 11, 13.) At the hearing, the City presented the testimony of two witnesses, Jack Crawford and Kurt Bialosky, each of whom is a Lakewood Animal Control Officer. (Tr. 19, 54, Hearing Transcript at 15, 50.) The City’s evidence of Charlie’s breed depended on the visual identification of Lakewood animal control officer Kurt Bialosky. (Tr. 61, Hearing Transcript at 57.) The City did not present DNA or any other scientific evidence establishing Charlie’s breed.

(Tr. 68-69, Hearing Transcript at 64-65.) In fact, one of the animal control officers (Jack Crawford) admitted that the City does not have the legal authority to request that residents perform a DNA test on a dog. (Tr. 49, Hearing Transcript at 45.) Appellant presented the testimony of three witnesses. (Tr. 99, 106, 110, Hearing Transcript at 95, 102, 106.) Appellant's witnesses were an experienced dog trainer, a dog day care provider, and Ms. Scott. (*Id.*) Both the City and Appellant presented various documents for consideration. (Tr. 22, 37, 58, 61, 64, 106, 114, 115, Hearing Transcript at 18, 33, 54, 57, 60, 102, 110, 111.)

At the conclusion of the hearing, Appellant presented a letter brief to the hearing officer and counsel for the City arguing that Lakewood's ordinances banning pit bulls are unconstitutional because (1) they exceed the City's authority under the Home Rule Amendment to the Ohio Constitution; and (2) they employ unconstitutional presumptions and unlawfully shift the burden of proof. A-146. Additionally, on August 29, 2017, Appellant submitted additional evidence by letter. A-148. That evidence consisted of a post-hearing change in policy that Lakewood's animal control officers no longer rely on visual identification of a dog's breed. True and correct copies of the letter brief and the letter dated August 29, 2017 are included in the Appendix to this brief. *See* A-146, A-148. Following the hearing, the City of Lakewood made a digital audio recording of the hearing available in response to a public records request.

C. The City's Dog Breed Determination Hearing Decision.

On September 6, 2017, the hearing officer issued her decision. As an initial matter, the hearing officer limited the issue before her to making a determination of Charlie's breed: "The sole matter before me is whether or not the dog 'Charlie' is a pit bull dog as defined in Section 506.03(b) as determined by an Animal Control Officer of the city and therefore deemed to be a dangerous dog in accordance with Section 506.01." (Tr. 251, Breed Determination Hearing

Decision at 1.) Accordingly, the hearing officer did *not* address any legal challenge or issue Appellant raised.

The hearing officer ruled that “there is competent and credible evidence to determine [Ms. Scott’s] dog ‘Charlie’ is a pit bull and no credible evidence that it is not a pit bull.” (Tr. 255, Breed Determination Hearing Decision at 5.) Therefore, the hearing officer ordered Ms. Scott to removal Charlie from Lakewood within thirty days, though this ruling is stayed pending appeal. *See* Section 506.09(b) of the Codified Ordinances of Lakewood, Ohio, A-138.

To reach her determination, the hearing officer relied on the visual identification of Charlie as a pit bull that Lakewood animal control officer Kurt Bialosky made in June 2017. (Tr. 254, Breed Determination Hearing Decision at 4.) The hearing officer did not attempt to reconcile ACO Bialosky’s visual identification with ACO Crawford’s conflicting visual identification, which resulted in the determination in February 2017 that Charlie was not a pit bull and was, therefore, welcome in Lakewood. Further, the hearing officer did not explain why she discounted the evidence of Appellant’s dog trainer, who possesses comparable experience identifying dogs by breed, or Charlie’s veterinarian. Appellant’s dog trainer opined that Charlie is an American bulldog, and Charlie’s veterinarian identified him as a boxer mix—both of which Lakewood does not ban. Nor did the hearing officer consider the post-hearing change in policy, that Lakewood animal control officers no longer rely on visual identification.

This timely appeal followed.

STATEMENT OF FACTS

A. When Lakewood Gives Permission, Ms. Scott Rescues Charlie from the APL.

In February 2017, Appellant Jennifer Scott considered rescuing a puppy from the Cleveland APL. (Tr. 122, Hearing Transcript at 108.) Before doing so, Ms. Scott communicated with Lakewood animal control officer Jack Crawford. (Tr. 112-13, Transcript at 108-09.) In the

course of those discussions, Ms. Scott sent a picture of Charlie (known as Reptar at the APL) to ACO Crawford to determine whether Lakewood's pit bull ban would prohibit her from rescuing the dog. (Tr. 113, Transcript at 109; *see also* Tr. 24, Hearing Transcript at 20.) ACO Crawford requested a picture of the dog, which Ms. Scott provided by email on February 11, 2017. (*Id.*; *see also* Tr. 163-65, Breed Determination Hearing Decision, City Exs. 1-3.) In response, ACO Crawford advised that "[t]he puppy would be welcome in Lakewood at this time." (Tr. 163, Breed Determination Hearing Decision, City Ex. 1.) In its entirety, he wrote:

Received your picture. The puppy looks very young to make a determination today. The puppy would be welcome in Lakewood at this time. I would also recommend a DNA test be done, per our conversation.

Should you have any further questions, please feel free to contact us.

(*Id.*; *see also* Tr. 252, Breed Determination Hearing Decision at 2.) Before advising that "[t]he puppy would be welcome in Lakewood at this time," ACO Crawford did not request any additional information from Ms. Scott or her family. (Tr. 24-25, 29, Hearing Transcript at 20-21, 25.) Nor did he seek any additional information from the Cleveland APL, though that information was available to him had he requested it. (Tr. 29-31, Hearing Transcript at 25-27.) Although ACO Crawford stated that the puppy was "very young to make a determination today," he did not advise Ms. Scott that he was not making a determination or could not make a determination. (Tr. 27-28, Hearing Transcript at 23-24.) ACO Crawford did not tell Ms. Scott or any member of her family that his approval for the puppy to live in Lakewood was conditional or subject to revision by himself, another animal control officer, or any other Lakewood official. (Tr. 28, 30, Hearing Transcript at 24, 26.)

When he advised that "[t]he puppy would be welcome in Lakewood at this time," ACO Crawford determined that Charlie was *not* a pit bull. (Tr. 28, Hearing Transcript at 24.) Based

on the email approval from ACO Crawford, Ms. Scott rescued Charlie, who then became a part of her family. (Tr. 113-14, Hearing Transcript at 109-10.) Charlie has a dog license, issued pursuant to R.C. 955.01, has been neutered and received all his shots, and has worked regularly with a dog trainer. (Tr. 75, 114, 115, Hearing Transcript at 71, 110, 111; *see also* Tr. 239, Breed Determination Hearing Decision, Def. Ex. 3.) In short, Ms. Scott has been a responsible dog owner. (*Id.*)

B. Lakewood Believes Charlie Is Dangerous Solely Because the City Thinks He Is a Pit Bull.

On June 15, 2017 at approximately 3:25 pm, Charlie was dropped off at the Lakewood Animal Shelter after he escaped through an open gate. (Tr. 58, 60, 119, Hearing Transcript at 54, 56, 115; Tr. 167, Breed Determination Hearing Decision, City Ex. 5.) At 3:45 pm, Charlie was released to Ms. Scott who picked him up after she called the Lakewood Animal Shelter to see if Charlie was there. (Tr. 61, 118, Hearing Transcript at 57, 114; Tr. 167, Breed Determination Hearing Decision, City Ex. 5.) When Ms. Scott arrived to pick up her dog, ACO Bialosky informed her that he believed Charlie was a pit bull and that the City would conduct a formal hearing to make that determination. (Tr. 64, 119, Hearing Transcript at 60, 115.)

Charlie has not threatened or caused injury to a person or another animal. (Tr. 31-33, 63, 72-74, 115-16, Hearing Transcript at 27-29, 59, 68-70, 111-12.) The City of Lakewood has not issued a citation with respect to Charlie other than the one giving rise to this dispute. (Tr. 116, Hearing Transcript at 112.)

STANDARD OF REVIEW

This Court “determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.” *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147,

2000-Ohio-493, 735 N.E.2d 433. This Court “may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with findings or opinion of the court.” *State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512, ¶ 8 (per curiam), quoting R.C. 2506.04.

With respect to constitutional and legal questions, this Court conducts *de novo* review. *See SMC, Inc. v. Laudi*, 44 Ohio App.2d 325, 328-29, 338 N.E.2d 547 (8th Dist.1975). Whether an ordinance is constitutional presents a question of law. *See, e.g., Scafaria v. Fairview Park*, 8th Dist. Cuyahoga No. 61008, 1992 Ohio App. LEXIS 5709, at *6 (Nov. 12, 1992); *see also Wilson v. AC&S, Inc.*, 169 Ohio App.3d 720, 2006-Ohio-6704, 864 N.E.2d 682, ¶ 61 (12th Dist.). “Questions of law are reviewed de novo, independently, and without deference to the trial court’s decision.” *Andreyko v. Cincinnati*, 153 Ohio App.3d 108, 2003-Ohio-2759, 791 N.E.2d 1025, ¶ 11 (1st Dist.). Application of the law to the facts also receives de novo review. *Pottmeyer v. Douglas*, 4th Dist. Washington No. 10CA7, 2010-Ohio-5293, ¶ 21. Legislative enactments, including municipal ordinances, enjoy a strong presumption of constitutionality. *See, e.g., Village of Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 71, 458 N.E.2d 852 (1984). A party challenging an ordinance has the burden of demonstrating beyond a reasonable doubt that the law violates the Constitution. *Hilton v. City of Toledo*, 62 Ohio St.2d 394, 396, 405 N.E.2d 1047 (1980).

LAW AND ARGUMENT

I. In This Case, the City of Lakewood's Ordinances Prohibiting the Ownership of Dogs It Considers Pit Bulls Exceed the City's Authority under the Home Rule Amendment to the Ohio Constitution Because They Prohibit That Which State Law Permits and Specifically Licenses. (Assignment of Error I)

The Ohio Constitution provides municipalities with “the exclusive power to govern themselves, as well as additional power to enact local health and safety measures not in conflict with the general law * * * .” *American Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 26. The Ohio Constitution provides:

Municipalities shall have authority to exercise all power of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.

Ohio Constitution, Article XVIII, Section 3. In this provision, the words “as are not in conflict with general laws” qualify the “local police, sanitary, and other similar regulations” within the power of a municipality to enact. *Rispo Realty & Dev. Co. v. City of Parma*, 55 Ohio St.3d 101, 103, 564 N.E.2d 425 (1990). In this way, Article XVIII, Section 3 of the Ohio Constitution “preserve[s] the supremacy of the state in matters of ‘police, sanitary, and other similar regulations.’” *City of Canton v. Whitman*, 44 Ohio St.2d 62, 65, 337 N.E.2d 766 (1975). It is axiomatic that a municipality’s home-rule authority “is not absolute.” *City of Tiffin v. McEwen*, 130 Ohio App.3d 527, 531, 720 N.E.2d 587 (3d Dist.1998).

To determine whether a municipal ordinance is constitutional under the Home Rule Amendment to the Ohio Constitution, the Ohio Supreme Court has articulated a three-part test:

The first step is to determine whether the ordinance involves an exercise of local self-government or an exercise of local police power. If the ordinance relates solely to self-government, the analysis ends because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. The second step, which becomes necessary only if the local ordinance is an exercise of police power, requires a review of the state statute to determine whether it is a general law under the court’s four-part test announced in *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963,

syllabus. If the statute qualifies as a general law under this test, the final step is undertaken to determine if the ordinance is in conflict with the statute.

In re Complaint of Reynoldsburg, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 24; *see also City of Dayton v. State*, ___ Ohio St.3d ___, 2017-Ohio-6909, ¶ 13.

Applying this analysis, the only two appellate courts that have considered the issue since enactment of House Bill 14 in 2012 have held that local ordinances banning pit bulls or otherwise targeting them violate the Home Rule Amendment to the Ohio Constitution. *See Russ v. City of Reynoldsburg*, 5th Dist. Licking, 2017-Ohio-1471, 81 N.E.3d 493; *City of Lima v. Stepleton*, 3d Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721. In House Bill 14, the General Assembly chose to regulate dogs based on their conduct, not their breed, and loosened restrictions on pit bulls. Nonetheless, Lakewood has not amended its ordinances, which continue to prohibit the ownership of pit bulls within the municipality. But the Home Rule Amendment and the Ohio Revised Code prohibit municipalities from enacting or enforcing ordinances in conflict with the State's general laws. Because Lakewood prohibits that which Ohio permits, the City's ordinances conflict with State law and exceed Lakewood's powers under the Home Rule Amendment to the Ohio Constitution and may not enforce its ordinances prohibiting the ownership of dogs it considers pit bulls.

A. Lakewood's Pit-Bull Ordinances Are an Exercise of Local Police Power.

Under the first prong of the analysis set forth by the Ohio Supreme Court for determining whether a local ordinance represents a valid exercise of local home-rule authority, there is no real question that Lakewood's prohibition against pit bulls is an exercise of police power, not an exercise of local self-government. An ordinance that is an exercise of local self-government "must relate solely to the government and administration of the internal affairs of the municipality." *In re Complaint of Reynoldsburg*, 134 Ohio St.3d at 33–34, 2012-Ohio-5270,

¶ 25 (quotation omitted). In contrast, the police power authorizes municipalities to enact ordinances “to protect the public health, safety, or morals, or general welfare of the public.” *Id.* at 34. It is well established that ordinances relating to animal control are enacted pursuant to a municipality’s police power. *State v. Anderson*, 57 Ohio St.3d 168, 171, 566 N.E.2d 1224 (1991); *Kovar v. Cleveland*, 102 N.E.2d 472, 474–75 (8th Dist.1951), paragraph one of the syllabus. Because Lakewood’s relevant ordinances are an exercise of police power, the analysis continues. *See In re Complaint of Reynoldsburg*, 134 Ohio St.3d at 33, 2012-Ohio-5270, ¶ 24 (“If the ordinance relates solely to self-government, the analysis ends because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.”).

B. Chapter 955 of the Revised Code, as Amended by House Bill 14, Is a General Law.

Under the Ohio Supreme Court’s four-part test announced in *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus, which the Ohio Supreme Court recently reaffirmed in *City of Dayton v. State*, ___ Ohio St.3d ___, 2017-Ohio-6909, ¶ 15, Chapter 955 of the Ohio Revised Code, as amended by House Bill 14, is a general law. A general law is one that (1) is part of a state-wide and comprehensive legislative enactment; (2) applies to all parts of the State alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations, rather than purporting to grant or limit legislative power of a municipality to set such regulations; and (4) prescribes a rule of conduct on citizens generally. *Id.* Using this standard, there is no question that Chapter 955, including its provisions for dangerous and vicious dogs, is a general law that applies uniformly throughout the State:

First, in Chapter 955, as amended by House Bill 14, the General Assembly enacted state-wide, comprehensive legislation for the regulation of dog ownership. Among other things,

Chapter 955 includes provisions governing the registration of dogs, R.C. 955.01; the issuance and wearing of dog tags, R.C. 955.08 & 955.10; the restraint or confinement of dogs to the owner's property, R.C. 955.22(C); particular procedures following a dog bite, R.C. 955.261; specific limitations on the destruction of impounded dogs, R.C. 955.16; the appointment of local dog control officers and periodic detailed reports of their activities, R.C. 955.12; certain paperwork and the disclosure of other information in connection with the sale or transfer of any dog, R.C. 955.11; restrictions where a person owns a dangerous dog, R.C. 955.22; that certain felons not reside with unaltered or dangerous dogs, R.C. 955.54; establishment of procedures for dog-related claims, R.C. 955.52; and the list goes on. Put simply, as the court held in *City of Toledo v. Smith*, Toledo M.C. No. CRB 09 16531, at 4 (Jan. 20, 2010) (included in the Addendum at A-099, A-102), in Chapter 955 “the state has comprehensively sought to regulate all things Dog.”

Second, Chapter 955 applies to all parts of the State. It does not establish different sets of rules for different areas. By its nature, Chapter 955 applies to the whole State without exception. This is also true of the amendments made by House Bill 14. Given the mobility of residents today, such uniform application makes sense.

Third, as stated above, it is well established that animal control laws are an exercise of the police power; therefore, Chapter 955 sets forth police, sanitary, or other similar regulations. Even a cursory review of Chapter 955 shows that the Revised Code does this directly rather than by granting or limiting a municipality's legislative power. Indeed, Ohio law restricts the ability of municipalities to enact local ordinances that conflict with Chapter 955. R.C. 955.221(B)(3) (“A municipal corporation may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with any other provision of the Revised

Code.”). No provision of Chapter 955 at issue in this case grants local governments any degree of authority. *See* R.C. 955.11(A)(1) (defining “dangerous dog”), R.C. 955.11(A)(3) (“nuisance dog”) & R.C. 955.11(A)(6) (“vicious dog”). State law makes specific classifications based on particular conduct specified in detail: a dog that causes injury to a person is treated differently than a dog which chases a person in a threatening fashion or a dog which kills or seriously injures a person. *Id.* These statutes admit of no exceptions or variance by local legislation. Nor do any of the state-wide, comprehensive regulations of dog ownership in Chapter 955 that bear on the inquiry here grant or limit municipal authority: for example, State law specifies the use of particular procedures for determining whether a dog is vicious, dangerous, or a nuisance, R.C. 955.222, and specifies particular confinement and control methods for dangerous dogs, R.C. 955.22(D). Significantly, State law imposes *no* restriction on the ownership of dogs beyond confinement and restraint requirements following due process in the designation of a dog as dangerous or vicious. These provisions of State law do not vary by location or permit exception by local legislation. Where the General Assembly wants to give local governments a degree of flexibility or authority, it makes its intent plain. *See, e.g.,* R.C. 955.01(A)(2) (providing that a county may charge higher registration fees than provided in Chapter 955 in certain circumstances).

Fourth, Chapter 955, as amended by House Bill 14, prescribes a rule of conduct on citizens generally. It does not apply different penalties for the same violation. Nor is it limited in its application, like the law at issue in *Canton*, to municipal legislative bodies. Instead, Chapter 955 sets rules that govern all Ohio residents who own dogs regardless of where in the State they live.

For these reasons, the only appellate court to address squarely whether Chapter 955 is a general law held that it is. *See Russ*, 2017-Ohio-1471, 81 N.E.3d 493, ¶¶ 13-22 (reversing ruling that Chapter 955 is not a general law). So self-evident is the conclusion that Chapter 955 is a general law that, in the first case addressing a municipal ordinance under the Ohio Constitution's Home Rule Amendment since enactment of H.B. 14, the municipality defending its ordinance conceded that Chapter 955 is a general law. *City of Lima v. Stepleton*, 3d Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721, ¶ 15. These rulings build on the other authorities that recognize Chapter 955 as a general law. Previously, two Justices of the Ohio Supreme Court opined that, under the *Canton* test, "Chapter 955 of the Revised Code appears to be a general law." *City of Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026, ¶ 34 (Pfeiffer, J. & Lanzinger, J., dissenting). The Office of the Ohio Attorney General agrees: "Dog ownership is clearly a subject that exists in and affects the people of every county of this state. * * * R.C. 955.22 is a law of a general nature that must have a uniform operation throughout the state." 2008 Ohio Atty.Gen.Ops. No. 6, at 13, A-123.

C. Lakewood's Pit-Bull Ordinances Conflict with Chapter 955 of the Ohio Revised Code, as Amended by House Bill 14.

Lakewood's local ordinances prohibiting the ownership of pit bulls conflict with Ohio's general laws, which allow the ownership of pit bulls and have abolished breed-specific determinations of whether a dog is dangerous or vicious in favor of conduct-based determinations. Enactment of House Bill 14 shows that the General Assembly intended to liberalize regulations regarding pit bulls specifically and to adopt a regime that treats dogs as vicious, dangerous, or a nuisance based on their conduct—not their breed. Following enactment of House Bill 14, State law permits Ohio residents to own any breed of dog they choose—even a dog designated as dangerous. R.C. 955.22(C); *see also* R.C. 955.03. In fact, Ohio residents may

obtain a license pursuant to State law to own a pit bull, as Ms. Scott did. R.C. 955.01(A)(1); Tr. 239, Charlie's Dog License. Effectively, State law provides that Ohio residents may own, keep, or harbor dogs so long as they abide by the requirements set forth in Chapter 955, as Ms. Scott does. Accordingly, the City's local ordinances prohibit that which State law permits. Lakewood's ordinances exceed the City's municipal home-rule authority and are void. *See In re Complaint of Reynoldsburg*, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 24.

1. The Authorities That Have Considered This Issue Agree That Ordinances Exceeding the Requirements of Chapter 955 Are Unconstitutional.

Since enactment of H.B. 14 in 2012, two Ohio appellate courts have considered whether local ordinances banning pit bulls or imposing requirements on their ownership beyond those in Chapter 955 exceed a municipality's home-rule authority. Each concludes that such local ordinances violate the Ohio Constitution and may not be enforced.

A

In *Russ v. City of Reynoldsburg*, 5th Dist. Licking, 2017-Ohio-1471, 81 N.E.3d 493, A-055, the Fifth District considered the constitutionality of a local ordinance that, like Lakewood's, prohibited any person from owning, keeping, or harboring any vicious dog and specifically defined a vicious dog to include any dog belonging to a breed commonly known as a pit bull dog. *Id.* at ¶ 23. Applying the Ohio Supreme Court's analysis in *City of Reynoldsburg*, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 24, the court determined that the local ordinances at issue represented an exercise of the police power, and did not relate to self-government, then engaged in an extensive analysis of whether Chapter 955 as amended by H.B. 14 constituted a general law. *Russ* at ¶¶ 11-20. The court unanimously held that the relevant State statutes are general laws. *Id.* Additionally, the court held that the local ordinances at issue

conflict with State law because they prohibit that which State law permits. *Id.* at ¶¶ 21-27.

Specifically, the court held:

While Reynoldsburg's Ordinances prohibit the ownership of pit bulls outright, Ohio Revised Code Chapter 955 has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog. Under Ohio law, Ohio residents may keep or own any dog they choose, provided that if the dog is determined to be "dangerous" as defined in R.C. 955.11(A)(1)(a), the owner must comply with R.C. 955.22. Thus, while a pit bull is automatically considered "vicious" under the Reynoldsburg Ordinances and ownership of the same is prohibited, a pit bull may or may not be considered "vicious" under Ohio Revised Code Chapter 955 based on its conduct. We find, on such basis, that there is a conflict between Reynoldsburg's pit bull Ordinances and Chapter 955, as amended by House Bill 14. The Ordinances prohibit that what is permitted by Ohio statutes (ownership of dogs identified as pit bulls).

Id. at ¶ 26. There is no material difference between the ordinance the Fifth District declared unconstitutional and the one Lakewood has enforced in this case. The Fifth District's analysis is persuasive here, and this Court should not create a conflict with *Russ*.

B

In reaching its holding, the Fifth District in *Russ* relied on the Third District's ruling in *City of Lima v. Stepleton*, 3d Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721, A-065. There, the defendant was convicted of failing to confine a vicious dog in violation of Lima's ordinance, which the defendant challenged as unconstitutional under the Home Rule Amendment to the Ohio Constitution. Lima's ordinances did not ban pit bulls outright, but imposed onerous confinement requirements that went beyond those provided for in Chapter 955. *Id.* at ¶ 27. Like Lakewood, Lima defined as inherently vicious "[a]ny dog which belongs to a breed that is commonly known as a pit bull dog." *Id.* The Third District noted that Chapter 955, as amended by House Bill 14, uses the term "dangerous dog" to refer to the same types of dog subject to regulation in Lima as vicious. *Id.* at ¶¶ 27, 29.

The Third District concluded that the Lima statute was “much more expansive” than allowed by Chapter 955. *Id.* ¶ 30. Among other things, the Lima statute defined pit bulls as vicious where State law does not. *Id.* Indeed, the Third District relied on the legislative history behind enactment of House Bill 14 as evidence of the General Assembly’s intent to exempt pit bulls from the types of local confinement requirements imposed by Lima. *Id.* ¶ 31, fn.7. Therefore, the Third District concluded that Lima’s ordinance applied certain confinement requirements to pit bulls that Ohio law does not, subjecting Lima residents to different standards of conduct and plainly proscribing conduct permitted by State law. *Id.* ¶ 35.

The Third District’s analysis is also persuasive here. The difference between the Lima and Lakewood ordinances is that Lakewood’s goes further: Lakewood outlaws the ownership of pit bulls. In contrast, Lima merely imposed additional confinement requirements. It is difficult to see how regulations Lima defended as reasonable restrictions on the ownership of pit bulls to promote public safety cannot stand under the Home Rule Amendment in the face of the General Assembly’s repeal of Ohio’s breed-specific regulations in House Bill 14, but Lakewood’s outright prohibition of owning a pit bull can. As the Third District noted, the General Assembly specifically intended to exempt pit bulls from the sorts of breed-specific confinement regulations enacted in Lima, absent specific conduct determined to be dangerous or vicious. If a city like Lima cannot impose additional confinement requirements on pit bulls, a city like Lakewood may not go even further by prohibiting their ownership altogether (absent specific exhibited conduct). Under the reasoning of *Stepleton*, Lakewood’s ordinances at issue violate the contrary directives test, subjecting residents of Lakewood to differing standards of conduct, in violation of the Ohio Constitution and R.C. 955.221.

C

Two additional authorities support the analysis and conclusions of the Fifth District in *Russ* and the Third District in *Stepleton*.

First, before the General Assembly enacted House Bill 14 in 2012, Toledo's municipal court considered the constitutionality of a local dog ordinance under the Home Rule Amendment to the Ohio Constitution in *City of Toledo v. Smith*, Toledo M.C. No. CRB 09 16531 (Jan. 20, 2010), A-099. There, the defendant was charged with various offenses arising from an incident in which his three pit bulls attacked and injured another dog. Employing the same three-part home-rule analysis set forth in *City of Reynoldsburg*, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 24, the court concluded that the Toledo dog ordinances at issue involved an exercise of police power and that Chapter 955 is a general law because it “applies to the whole state without exception,” is “comprehensive in scope” and “uniform in application,” and embodies the legislature’s intent to “regulate all things Dog” “comprehensively.” *Smith* at 4–5. Additionally, the court determined that the Toledo ordinance conflicts with Chapter 955 because State law provides various options for restraining dogs (pens, fences, muzzles) where the city mandated only one (muzzles). *Id.* at 5. For similar reasons, the court held Toledo’s limit on the number of pit bulls a person may own unconstitutional under the city’s home-rule authority. *Id.* at 5–6.

Again, Lakewood’s ordinances go well beyond those of Toledo struck down in *Smith*. Lakewood outright prohibits ownership of pit bulls. Toledo merely sought to limit the number of pit bulls any person could own to one. Even before enactment of House Bill 14, which changed the regulation of dogs in Ohio from breed-specific to conduct-based, the municipal court in *Smith* concluded that the General Assembly permitted, and did not specifically prohibit,

ownership of pit bulls. *Id.* Because Toledo sought to prohibit that which the State permitted (the ownership of more than one pit bull), the local ordinance conflicted with State law and exceeded the municipality's home-rule authority under the Ohio Constitution. *Id.* Following enactment of House Bill 14, the case is even stronger today: the General Assembly no longer classifies dogs by breed; Ohio residents may own pit bulls under State law; and Lakewood residents may obtain a license to own a pit bull pursuant to State law. Lakewood's ordinances prohibit that which State law permits. Just as Toledo may not limit the number of pit bulls a person may own to one, Lakewood may not limit it to zero.

Second, the Office of the Ohio Attorney General has given advice to local municipalities on the types of local dog ordinances they may enact. When it comes to regulating the ownership and control of dogs, the Office of the Attorney General has opined that local ordinances must be "identical to R.C. 955.11 and R.C. 955.22." 2008 Ohio Atty.Gen.Ops. No. 6, at syllabus, ¶ 3, A-110. Though not necessarily controlling, opinions of the Attorney General carry weight, particularly where, as here, the General Assembly has had the opportunity to amend the statutes at issue to express its disagreement with the Attorney General's opinion and has not disagreed. *See, e.g., Johnson v. State*, 54 Ohio Misc. 7, 19, 375 N.E.2d 1268 (Montgomery C.P.1977). Because Lakewood's ordinances at issue are not "identical" to the relevant provisions of Chapter 955, they exceed the city's home-rule authority under the Ohio Constitution.

2. Other Authorities Are Either Irrelevant or Superseded by the General Assembly's Enactment of House Bill 14.

In opposing this appeal, the City of Lakewood will likely rely on two cases upholding local dog ordinances against home-rule challenges. However, neither considered the amendments to Chapter 955 which the General Assembly made in House Bill 14. Additionally,

the City may point to various cases from the Ohio Supreme Court to defend its ordinance. Any such reliance is unavailing.

A

Two cases not discussed above have considered whether local dog ordinances violate the Home Rule Amendment. Neither interpreted Chapter 955 as amended by House Bill 14 in 2012, and neither has persuasive value in the analysis here. In *Tarquinio v. City of Lakewood*, N.D. Ohio No. 1:11 cv 325, 2011 U.S. Dist. LEXIS 108508, at *1 (Sept. 23, 2011), the Northern District of Ohio denied a declaratory judgment that Lakewood's ordinances banning pit bulls exceeded the City's home-rule powers. Reliance on *Tarquinio* suffers from several fatal flaws. Most notably, the General Assembly enacted House Bill 14 after *Tarquinio* was decided; therefore, its analysis does not apply to the current State statute. *Stepleton*, 2013-Ohio-5655, at ¶ 26. Further, this Court is not bound by a federal court's interpretation of the Ohio Constitution. Ohio courts are the final arbiters of the Ohio Constitution. *Id.*; *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 707, 627 N.E.2d 570 (10th Dist.1993) (“[T]his court is completely free to interpret the Ohio Constitution without adherence to the outcome of court decisions in similar cases on the federal level.”). In fact, because *Tarquinio* only involved a challenge to the constitutionality of a local ordinance under the Home Rule Amendment, 2011 U.S. Dist. LEXIS 108508, at *4, it is not at all clear that the Northern District of Ohio had jurisdiction to issue the ruling in that case.

In *City of Akron v. Ross*, 9th Dist. Summit No. 20338, 2001 Ohio App. LEXIS 3083 (July 11, 2001), the defendant was convicted of violating a local ordinance that prohibited owning, keeping, or harboring a dog that had bitten a person on the owner's premises. The defendant challenged his conviction under the Home Rule Amendment, arguing that the ordinance at issue

conflicted with various provisions of Chapter 955. The Ninth District concluded there was no conflict, reasoning that the Ohio Revised Code's silence on any penalty for a dog's first bite left the issue to localities in R.C. 955.221. *Id.* at *4. Again, *Ross* pre-dates the General Assembly's enactment of House Bill 14. Further, *Ross* did not consider an ordinance like that at issue here, which outright prohibits ownership of pit bulls even though House Bill 14 loosens the regulations on pit bulls and does away with breed-specific determinations of dangerousness in favor of basing such findings on exhibited conduct. Indeed, *Ross* did not consider an ordinance specifically concerned with regulation of pit bulls specifically.

B

Similarly, the City of Lakewood may point to certain rulings from the Ohio Supreme Court to try to defend their ordinances. But the Ohio Supreme Court has *not* upheld a local ordinance prohibiting the ownership of pit bulls under the Home Rule Amendment. To be sure, the Ohio Supreme Court has rejected *other* constitutional challenges to breed-specific ordinances. For example, in *State v. Anderson*, 57 Ohio St.3d 168, 173, 566 N.E.2d 1224 (1991), the Ohio Supreme Court rejected a void-for-vagueness challenge to an ordinance applying to dogs “commonly known as a pit bull dog,” but acknowledged there would be “close calls” that would require evidentiary determinations at trial. In *City of Toledo v. Tellings*, 114 Ohio St.3d 278, 2007-Ohio-3724, 871 N.E.2d 1152, ¶ 2, the Ohio Supreme Court did not have to consider these sorts of evidentiary issues because the parties stipulated that the dogs in question were pit bulls. In *Tellings*, the Ohio Supreme Court upheld the same municipal ordinance later at issue in *Smith* regarding confinement of vicious dogs against constitutional challenges based on procedural due process, substantive due process, equal protection, and void-for-vagueness

challenges, but no home-rule challenge was raised. Because neither case considered a local ordinance under a municipality's home-rule authority, neither controls here.

Outside the context of breed-specific legislation, the Ohio Supreme Court has not addressed the constitutionality of a municipal dog ordinance under the Home Rule Amendment either. In *City of Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026, ¶ 1, the Ohio Supreme Court upheld a local ordinance against a procedural due process challenge, but did not address home rule—as the dissenting Justices specifically noted, *see id.* at ¶ 35 (Pfeiffer, J. & Lanzinger, J., dissenting). Similarly, in *State v. Cowan*, 103 Ohio St.3d 144, 147, 814 N.E.2d 846 (2004), the Ohio Supreme Court addressed procedural due process issues in Chapter 955 and, in *City of Columbus v. Kim*, 118 Ohio St.3d 93, 2008-Ohio-1817, 886 N.E.2d 217, ¶¶ 7–11, a void-for-vagueness challenge to an animal noise ordinance.

With no definitive word from the Ohio Supreme Court on the home-rule authority of municipalities to enforce breed-specific ordinances in the wake of House Bill 14's amendments to Chapter 955, the only two appellate courts to address the issue are the Fifth District in *Russ* and the Third District in *Stepleton*. Under the persuasive analysis of these Districts, Lakewood's prohibition on the ownership of pit bulls exceeds its authority under the Home Rule Amendment to the Ohio Constitution.

II. The City of Lakewood Erred by Closing Its Breed Determination Hearing to the Public in Violation of the City's Ordinances and State and Federal Law. (Assignment of Error II)

Over Appellant's objection, the City closed the August 23, 2017 hearing to the public and removed certain limited members of the public who wished to attend the hearing. (Tr. 15, 17, Hearing Transcript at 11, 13.) By doing so, the City violated its own ordinances as well as State and federal law, resulting in a void determination that the City may not enforce and necessitating an injunction that the City comply with State, federal, and local law going forward.

A. Excluding the Public from the Hearing Violated Lakewood's Ordinances.

Lakewood's ordinances create a presumption that the hearing "shall be open to the public." Section 109.01(a) of the Codified Ordinances of Lakewood, Ohio, A-145. Specifically, Lakewood's ordinances provide, in relevant part:

Unless otherwise provided in the Codified Ordinances, all meetings of Council, the Board of Building Standards and Building Appeals, the Board of Zoning Appeals, * * * and other similar public bodies of the City or other citizens' committees as may be appointed from time to time, shall be open to the public, unless an executive session is expressly authorized under the applicable provisions of State law.

Id. Notably, this list of public bodies whose meetings are presumptively open to the public includes boards with adjudicative or quasi-adjudicative responsibilities, such as the Board of Building Standards and Building Appeals and the Board of Zoning Appeals. Lakewood's ordinances recognize that administrative bodies performing a quasi-judicial function must, like courts, conduct their business in public. Moreover, the ordinance provides that "other similar public bodies" must presumptively open their proceedings to the public. No ordinance provides that the City may exclude the public from a breed determination hearing. *See* Section 506.09 of the Codified Ordinances of Lakewood, Ohio, A-138 (governing breed determination hearings). Therefore, Lakewood's ordinances embody a presumption in favor of openness and require that the City conduct any breed determination hearing in public.

B. State Law Required Lakewood to Hold the Hearing in Public.

Similarly, State law requires the City to conduct its business in public. Under the State's public meetings law, a meeting of "any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any * * * municipal corporation" "are declared to be public meetings open to the public at all times." R.C. 121.22(B)(1)(a) & (C). Ohio's Sunshine Law requires "public officials to take official action and to conduct all

deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.” R.C. 121.22(A). The intent of the Sunshine Law is to prevent public bodies from discussing public business outside the hearing of the public. *See generally Holeski v. Lawrence*, 85 Ohio App.3d 824, 829, 621 N.E.2d 802 (11th Dist.1993). Ohio courts recognize that “information-gathering and fact-finding are essential functions of any board.” *Id.* No exception specifically enumerated in the statute exempts the hearing the City of Lakewood conducted from the State’s public meetings law. *See* R.C. 121.22(D). And State law “shall be liberally construed” in favor of openness. R.C. 121.22(A).

Moreover, State law vests jurisdiction in the municipal court to conduct breed determination hearings. R.C. 955.222(A). Although the City erred by usurping the jurisdiction given to the municipal court (an error discussed below), the fact that the General Assembly created a procedure for making such determinations in a public forum shows the legislative intent that breed determination hearings are to be conducted in public.

After it closed the hearing, the City confirmed that the hearing is a public proceeding by making the digital audio constituting the official record available in response to a public records request. Because the City of Lakewood closed its hearing to the public, and specifically removed certain members of the public from attending the hearing, State law provides that the action the City took “is invalid.” R.C. 121.22(H).

C. The First and Sixth Amendments, and Their Cognate Provisions of State Law, Provide a Public Right of Access, Which the City Violated.

Finally, federal law also requires the City of Lakewood to open the breed determination hearing it conducted to the public. The Supreme Court recognizes that the First Amendment creates a qualified right of public access to some governmental proceedings, such as the hearing at issue. *See Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 7, 106 S.Ct.

2735, 92 L.Ed.2d 1 (1986); *see also In re T.R.*, 52 Ohio St.3d 6, 556 N.E.2d 439 (1990), paragraph two of the syllabus. Basic fairness and “the appearance of fairness so essential to public confidence in the system” favor openness in adjudicatory and judicial or quasi-judicial proceedings. *Press-Enterprise* at 9.

Additionally, violation of the Lakewood ordinances at issue constitutes a first-degree misdemeanor. Codified Ordinances of Lakewood, Ohio, Section 506.99(a), A-144. The right to a public trial is a fundamental constitutional guarantee under the Sixth Amendment to the Constitution and Section 10, Article I of the Ohio Constitution. *See State v. Lane*, 60 Ohio St.2d 112, 119, 397 N.E.2d 1338 (1979). This right is a “cornerstone of our democracy which should not be circumvented unless there are extreme overriding circumstances.” *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 49. Any abridgement of the right to a public trial may occur only where necessary, and any closure must be narrowly drawn and applied sparingly. *See State ex rel. The Repository, Div. of Thompson Newspapers, Inc. v. Unger*, 28 Ohio St.3d 418, 421, 504 N.E.2d 37 (1986); *Lane* at 121. Violation of the right to a public trial is structural error and not subject to harmless-error analysis. *Waller v. Georgia*, 467 U.S. 39, 49-50, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984), fn. 9; *Johnson v. United States*, 520 U.S. 461, 468-69, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997); *see also Drummond* at ¶ 50; *State v. Woods*, 8th Dist. Cuyahoga Nos. 94141, 94142, 2011-Ohio-817, ¶ 27.

* * *

At the hearing, the City excluded the public over Appellant’s objection and removed members of the public from the proceeding. (Tr. 15, 17, Hearing Transcript at 11, 13.) Although the parties argued the issue extensively (Tr. 9-12, 17, 42, 53, Hearing Transcript at 5-8, 13, 38, 49), the hearing officer simply closed the proceeding *in its entirety* to the public and did

not explain her reasoning or undertake any sort of individualized determination of whether any “extreme overriding circumstances” warranted such a drastic step (Tr. 13, Hearing Transcript at 17). For these reasons, the City’s decision to close the hearing and exclude members of the public violated Lakewood’s own ordinances, as well as State and federal law. This violation of the rights of Appellant and the public constituted structural error, for which harmless-error analysis is not appropriate or required, and renders the City’s determination void.

III. Because the City Allowed Ms. Scott to Rescue Charlie, It Is Estopped from Enforcing Its Pit-Bull Ordinances in This Case. (Assignment of Error III)

In this case, Ms. Scott rescued Charlie only after consulting with ACO Crawford from the City of Lakewood and only after ACO Crawford advised her in writing that Charlie “would be welcome in Lakewood at this time.” (Tr. 163, Breed Determination Hearing Decision, City Ex. 1.) Before advising Ms. Scott that she could adopt Charlie, ACO Crawford determined that Charlie was not a pit bull subject to Lakewood’s ordinances banning that breed. (Tr. 28, Hearing Transcript at 24.)

Under the doctrine of equitable estoppel, “one who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted.” *Dickerson v. Colgrove*, 100 U.S. 578, 580, 25 L.Ed. 618 (1879). In Ohio, “[i]t is well-settled that, as a general rule, the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function.” *Ohio State Bd. of Pharmacy v. Frantz*, 51 Ohio St.3d 143, 145-46, 555 N.E.2d 630 (1990). This rule also applies to a political subdivision engaged in a governmental function. *Hortman v. City of Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 25.

This case provides the rare exception to the general rule that the doctrine of equitable estoppel does not apply to a political subdivision. Ordinarily, that general rule applies to limit

liability in contract or in tort, *see, e.g., Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 118 Ohio St.3d 392, 2008-Ohio-2567, 889 N.E.2d 521, ¶¶ 16, 17, *Danckaert v. Cuyahoga Community College Found.*, 8th Dist. Cuyahoga No. 104600, 2017-Ohio-1159, ¶¶ 23, 24, not to excuse conduct that induces a citizen to act in detrimental reliance, subjecting her to what amounts to a taking of property and potential criminal liability. Where a resident seeks to comply with the law, obtains permission before rescuing a dog, and acts in reliance on the government's consent, the City cannot later subject that person to loss or injury. Perhaps this case would be different had the City adopted the policy it put in place after the hearing, that it would no longer perform visual identification. *See* A-148. But having advised Ms. Scott that Charlie "would be welcome in Lakewood at this time," the City is estopped from enforcing its ordinances in this case.

IV. The City of Lakewood Violated Appellant's Substantive and Procedural Rights by Conducting a Breed Determination Hearing in Violation of State Law and Seeking to Enforce a Decision Based on Evidence That Is Not Reliable or Substantial. (Assignment of Error IV)

The City of Lakewood violated Appellant's substantive and procedural due process rights in this case in at least two respects.

A. The City of Lakewood Usurped the Jurisdiction of the Municipal Court, Which the General Assembly Vested with Exclusive Jurisdiction to Determine Whether a Dog Is Vicious, Dangerous, or a Nuisance.

The General Assembly established a procedure for determining the breed of a dog in cases where the issue is disputed. Under State law, only the municipal court has jurisdiction to determine whether a dog is vicious, dangerous, or a nuisance. Specifically, State law provides:

The municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog *shall* conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.

R.C. 955.222(A) (emphasis added). The General Assembly's use of the word "shall" creates a mandatory obligation. *See State v. Morgan*, ___ Ohio St.3d ___, 2017-Ohio-7565, ¶ 22, quoting *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), paragraph one of the syllabus ("In statutory construction, * * * the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage."). In the context of a statute such as this, providing that the municipal court "shall conduct any hearing" has the effect of vesting exclusive jurisdiction in the municipal court to determine whether a dog should be classified as vicious, dangerous, or a nuisance.

Because determining Charlie's breed in this case has the effect of designating him as dangerous under Lakewood's ordinances, State law mandates that the municipal court "shall conduct any hearing" on that issue. R.C. 955.222(A). Indeed, the City's hearing officer recognized that designating Charlie as dangerous was bound up with the "sole matter" for her determination: "The sole matter before me is whether or not the dog 'Charlie' is a pit bull dog as defined in Section 506.03(b) as determined by an Animal Control Officer of the city *and therefore deemed to be a dangerous dog* in accordance with Section 506.01." (Tr. 251, Breed Determination Hearing Decision at 1 (emphasis added).) But this is a matter the General Assembly directed municipal courts to handle, not local officials pursuant to administrative procedures. By conducting an administrative hearing to determine Charlie's breed and whether he is dangerous, the City of Lakewood usurped the jurisdiction of the municipal court in violation of Appellant's rights.

B. The City May Not Enforce a Determination, Such as the One at Issue, That Is Not Supported by Reliable and Substantial Evidence.

This Court's function in an appeal from the decision of a local administrative determination "differs substantially from that of appellate courts in other contexts." *Cincinnati Bell, Inc. v. Glendale*, 42 Ohio St.2d 368, 370, 328 N.E.2d 808 (1975) (per curiam). Before this Court, the Revised Code "makes liberal provision for the introduction of new or additional evidence," R.C. 2506.03, and requires this Court to examine the "'substantial, reliable, and probative evidence on the whole record,' which in turn necessitates both factual and legal determinations," *Cincinnati Bell* at 370, quoting R.C. 2506.04.

The Ohio Supreme Court recognizes that "[i]t is incumbent upon the trial court to examine the evidence." and "to weigh the preponderance of substantial, reliable and probative evidence." *Henley v. City of Youngstown Bd. of Zoning Appeals*, 90 Ohio St. 3d 142, 147, 2000-Ohio-493, 735 N.E.2d 433. Consistent with these principles, the Eighth District holds that the agency's factual findings "are by no means conclusive" on review. *Denk v. City of Lakewood*, 8th Dist. Cuyahoga Nos. 100812, 100828, 2014-Ohio-3725, ¶ 13, quoting *University of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980).

When it comes to weighing expert evidence that supports an administrative determination, Rule 702 of the Ohio Rules of Evidence provides the requirements that must be met for a finder of fact to consider an expert's opinion. Evid.R. 702. In particular, Rule 702 demands that the party proffering an expert's opinion establish that it is "based on reliable" information. Evid.R. 702(C); *Sigler v. American Honda Motor Co.*, 532 F.3d 469, 478 (6th Cir. 2008). The touchstone of the analysis is whether the expert evidence is reliable and not simply pulled out of a hat. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590, 125 L.Ed.2d 469, 113 S.Ct. 2786, & fn. 9. Further, the expert's opinion must be "objectively

verifiable” and “yield an accurate result.” Evid.R. 702(C)(1) & (3). This reliability requirement turns on whether the proffered expert evidence “has been the subject of peer review, and then whether the method has a known or potential error rate.” *Terry v. Caputo*, 115 Ohio St.3d 351, 2007-Ohio-5023, 875 N.E.2d 72, ¶ 25; *see also Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 42.

These same standards for reliance on expert evidence govern an administrative agency’s fact-finding and this Court’s weighing expert evidence in an appeal under Chapter 2506: “In determining when scientific evidence used to make an administrative decision is ‘reliable,’ the same considerations recognized for ‘good science’ in *Daubert* * * * are appropriately applied under Ohio law.” *Johnson v. State Med. Bd.*, 147 Ohio Misc.2d 121, 2008-Ohio-4376, 893 N.E.2d 565, ¶ 24 (Franklin C.P.). Here, however, the evidence on which the City’s determination relies (ACO Bialosky’s visual identification of Charlie as a pit bull) is *not* reliable because this method was, admittedly, never peer reviewed and never subjected to analysis to determine its actual or potential error rate.

First, ACO Bialosky conceded that he never had his visual identification of Charlie as a pit bull peer reviewed to determine its reliability. (Tr. 80, Hearing Transcript at 76.) Nor has he subjected *any* visual identification of any dog he has ever made to peer review. (Tr. 87, Hearing Transcript at 83.) In this respect, ACO Bialosky is not alone. The record establishes that no Lakewood employee involved in enforcement of its animal control ordinances ever sought peer review of a visual identification of a dog’s breed. (Tr. 90, Hearing Transcript at 86.)

Second, ACO Bialosky has never undertaken any analysis to determine the error rate when he visually identifies a dog by its breed. (Tr. 78, Hearing Transcript at 74.) As a result, he was not able to say whether his visual identification of a dog’s breed is accurate half the time,

less than half of time, or none of the time. (*See id.*) In fact, by his own admission, ACO Bialosky may not be able to identify *any* dog as a pit bull. ACO Bialosky volunteered that dogs “commonly known as a pit bull” do not belong to a specific breed: “Well, the thing about Pitbull, it is not a specific breed.” (Tr. 80, Hearing Transcript at 76.) Nonetheless, the ordinance he is charged with enforcing defines dogs by this “breed,” *see* Section 506.03(b)(3) of the Codified Ordinances of Lakewood, Ohio, A-131, which is apparently not a breed at all.

The conflicting testimony regarding what breed of dog Charlie is underscores the unreliability of the evidence on which the City bases its determination that Charlie is a pit bull. Three other experts disagree with ACO Bialosky’s determination that Charlie is a pit bull. First, ACO Crawford determined that Charlie was not a pit bull when he gave Ms. Scott written permission for Charlie to live in Lakewood. (Tr. 28, Hearing Transcript at 24.) Second, Charlie’s dog trainer, Maggie Gruner, who has seven years of experience in identifying hundreds of dogs by their breed, testified that in her opinion Charlie is an American Bulldog, a breed Lakewood does not ban. (Tr. 101-02, Hearing Transcript at 97-98.) Third, Charlie’s veterinarian, Dr. Constance Curran of Lakewood Animal Hospital, identified him in her veterinary records as a “boxer mix.” (Tr. 240, Breed Determination Hearing Decision, Def. Ex. 4.) In her breed determination decision, the hearing officer did not explain why she discounted the identification of ACO Crawford, Ms. Gruner, or Dr. Curran, and she did not attempt to reconcile these conflicting visual identifications. (Tr. 254-55, Breed Determination Hearing Decision at 4-5.)

This conflicting evidence demonstrates why the National Animal Control Association (the “NACA”)—the agency that trains and certifies Lakewood’s animal control officers (*see* Tr. 19, 55-56, 77, Hearing Transcript at 15, 51-52, 73)—opposes breed-specific ordinances like

Lakewood's. The NACA trains animal control officers on its guidelines, which provide that "[a]ccurately identifying a specific animal's lineage for prosecution purposes may be extremely difficult" and that "[b]reed-specific legislation may create an undue burden to owners who otherwise have demonstrated proper pet management and responsibility." (Tr. 83-84, Hearing Transcript at 79-80; Tr.201, Breed Determination Hearing Decision, Def. Ex. 2, at25.) ACO Bialosky received extensive and substantial training on these guidelines. (Tr. 77-78, 83, Hearing Transcript at 73-74, 79.)

Where an expert disagrees with the considered opinion of the organization that trains and certifies him, and other experts reach conflicting results based on the same evidence (visual identification, in this case), that expert's testimony is not reliable under Ohio law. Because the hearing officer's determination relies on ACO Bialosky's unreliable visual identification (Tr. 254, Breed Determination Hearing Decision at 4), that determination is *not* based on reliable or substantial evidence. Accordingly, this Court may not defer to that determination and must weigh the evidence, which supports reversal of the City's determination so that Ms. Scott may keep her dog. *See Johnson*, 147 Ohio Misc.2d 121, 2008-Ohio-4376, 893 N.E.2d 565, ¶¶ 24, 56; R.C. 2506.03.

CONCLUSION

For the foregoing reasons, Appellant Jennifer Scott respectfully requests that this Court declare that the City of Lakewood may not enforce its ordinances in this case because Section 506.03 of the Codified Ordinances of Lakewood, Ohio impermissibly conflicts with State law in violation of the Home Rule Amendment to the Ohio Constitution, R.C. 955.221, or both.

Alternatively, Appellant respectfully requests that this Court hold that the City of Lakewood violated the rights of Appellant and the public to have the breed determination

hearing in this case conducted in public and enjoin the City from committing such violations in future proceedings; declare that the City of Lakewood's ordinances and practice of conducting a breed determination hearing violate R.C. 955.222(A); find that the City's order that Ms. Scott remove Charlie from Lakewood is not based on substantial, reliable, and probative evidence; or find that the City is estopped from enforcing its pit-bull ordinances in this case because it gave Ms. Scott permission to rescue Charlie. To the extent this Court deems it necessary, Appellant respectfully requests a hearing pursuant to R.C. 2506.03.

Additionally, Appellant respectfully requests its costs and fees in pursuing this appeal and such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ J. Philip Calabrese

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A copy of the foregoing brief was electronically filed and served by the Court's electronic mail system on counsel of record this 13th day of November, 2017, with a courtesy copy by electronic mail to:

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APPENDIX

ORC Ann. 955.11

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 23 (HB 94) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 9: Agriculture — Animals — Fences > Chapter 955: Dogs > Dog and Kennel Licenses

§ 955.11 Transfer of ownership or possession of dog.

(A) As used in this section:

(1)

(a) “Dangerous dog” means a dog that, without provocation, and subject to division (A)(1)(b) of this section, has done any of the following:

(i) Caused injury, other than killing or serious injury, to any person;

(ii) Killed another dog;

(iii) Been the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.

(b) “Dangerous dog” does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) “Menacing fashion” means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

The dog warden of the county in which the seller resides shall furnish the form to the seller at no cost.

(3)

(a) Subject to division (A)(3)(b) of this section, “nuisance dog” means a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(b) “Nuisance dog” does not include a police dog that while being used to assist one or more law enforcement officers in the performance of official duties has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(4) “Police dog” means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(5) “Serious injury” means any of the following:

- (a) Any physical harm that carries a substantial risk of death;
 - (b) Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;
 - (c) Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;
 - (d) Any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.
- (6)
- (a) “Vicious dog” means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person.
 - (b) “Vicious dog” does not include either of the following:
 - (i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
 - (ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.
- (7) “Without provocation” means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.
- (B) Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of five dollars.
- (C) Prior to the transfer of ownership or possession of any dog, upon the buyer’s or other transferee’s request, the seller or other transferor of the dog shall give to the person a written notice relative to the behavior and propensities of the dog.
- (D) Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous dog, the seller or other transferor shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on which the seller shall furnish the following information:
- (1) The name and address of the buyer or other transferee of the dog;
 - (2) The age, sex, color, breed, and current registration number of the dog.

In addition, the seller shall answer the following questions, which shall be specifically stated on the form as follows:

“Has the dog ever chased or attempted to attack or bite a person? If yes, describe the incident(s) in which the behavior occurred.”

“Has the dog ever bitten a person? If yes, describe the incident(s) in which the behavior occurred.”

“Has the dog ever seriously injured or killed a person? If yes, describe the incident(s) in which the behavior occurred.”

(E) No seller or other transferor of a dog shall fail to comply with the applicable requirements of divisions (B) to (D) of this section.

History

GC § 5652-7c; 112 v 347; Bureau of Code Revision, 10-1-53; 135 v H 152 (Eff 11-21-73); 142 v H 352. Eff 7-10-87; 2012 HB 14, § 1, eff. May 22, 2012.

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2010 ORC Ann. 955.11

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Page's Ohio Revised Code Annotated: > TITLE 9. AGRICULTURE -- ANIMALS -- FENCES > CHAPTER 955. DOGS > DOG AND KENNEL LICENSES

§ 955.11. Transfer of ownership or possession of dog

(A) As used in this section:

- (1) (a) "Dangerous dog" means a dog that, without provocation, and subject to division (A)(1)(b) of this section, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harborer and not under the reasonable control of its owner, keeper, harborer, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top.
- (b) "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.
- (2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.
- (3) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.
- (4) (a) "Vicious dog" means a dog that, without provocation and subject to division (A)(4)(b) of this section, meets any of the following:
 - (i) Has killed or caused serious injury to any person;
 - (ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog.
 - (iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.
- (b) "Vicious dog" does not include either of the following:
 - (i) A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

- (ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.
- (5) "Without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.
- (B) Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of twenty-five cents.
- (C) Prior to the transfer of ownership or possession of any dog, upon the buyer's or other transferee's request, the seller or other transferor of the dog shall give to the person a written notice relative to the behavior and propensities of the dog.
- (D) Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous or vicious dog, he shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on which the seller shall furnish the following information:
 - (1) The name and address of the buyer or other transferee of the dog;
 - (2) The age, sex, color, breed, and current registration number of the dog.In addition, the seller shall answer the following questions which shall be specifically stated on the form as follows:
 - "Has the dog ever chased or attempted to attack or bite a person? if yes, describe the incident(s) in which the behavior occurred."
 - "Has the dog ever bitten a person? if yes, describe the incident(s) in which the behavior occurred."
 - "Has the dog ever seriously injured or killed a person? if yes, describe the incident(s) in which the behavior occurred."The dog warden of the county in which the seller resides shall furnish the form to the seller at no cost.
- (E) No seller or other transferor of a dog shall fail to comply with the applicable requirements of divisions (B) to (D) of this section.

History

GC § 5652-7c; 112 v 347; Bureau of Code Revision, 10-1-53; 135 v H 152 (Eff 11-21-73); 142 v H 352. Eff 7-10-87.

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Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 23 (HB 94) with the exception of file 14 (HB 49).

Page's Ohio Revised Code Annotated > Title 9: Agriculture — Animals — Fences > Chapter 955: Dogs > Impounding

§ 955.22 Confinement or restraint of dog; liability insurance; debarking or surgically silencing dog; obtain dangerous dog registration; notify the local warden.

- (A) As used in this section, “dangerous dog” has the same meaning as in section 955.11 of the Revised Code.
- (B) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper, or harbinger at any time the dog is in heat unless the dog is properly in leash.
- (C) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following:
 - (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
 - (2) Keep the dog under the reasonable control of some person.
- (D) Except when a dangerous dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous dog shall fail to do either of the following:
 - (1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
 - (2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:
 - (a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
 - (b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - (c) Muzzle that dog.

- (E) No person who has been convicted of or pleaded guilty to three or more violations of division (C) of this section involving the same dog and no owner, keeper, or harbinger of a dangerous dog shall fail to do the following:
- (1) Obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court and provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing this section;
 - (2) Obtain a dangerous dog registration certificate from the county auditor pursuant to division (I) of this section, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times;
 - (3) Notify the local dog warden immediately if any of the following occurs:
 - (a) The dog is loose or unconfined.
 - (b) The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.
 - (c) The dog attacks another animal while the dog is off the property of the owner of the dog.
 - (4) If the dog is sold, given to another person, or dies, notify the county auditor within ten days of the sale, transfer, or death.
- (F) No person shall do any of the following:
- (1) Debark or surgically silence a dog that the person knows or has reason to believe is a dangerous dog;
 - (2) Possess a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - (3) Falsely attest on a waiver form provided by the veterinarian under division (G) of this section that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.
- (G) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a dangerous dog. The written waiver form shall include all of the following:
- (1) The veterinarian's license number and current business address;
 - (2) The number of the license of the dog if the dog is licensed;
 - (3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;
 - (4) The signature of the owner of the dog attesting that the owner's dog is not a dangerous dog;
 - (5) A statement that division (F) of section 955.22 of the Revised Code prohibits any person from doing any of the following:

- (a) Debarking or surgically silencing a dog that the person knows or has reason to believe is a dangerous dog;
 - (b) Possessing a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - (c) Falsely attesting on a waiver form provided by the veterinarian under division (G) of section 955.22 of the Revised Code that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.
- (H) It is an affirmative defense to a charge of a violation of division (F) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (G) of this section and that attests that the dog is not a dangerous dog.
- (I)
- (1) The county auditor shall issue a dangerous dog registration certificate to a person who is the owner of a dog, who is eighteen years of age or older, and who provides the following to the county auditor:
 - (a) A fee of fifty dollars;
 - (b) The person's address, phone number, and other appropriate means for the local dog warden or county auditor to contact the person;
 - (c) With respect to the person and the dog for which the registration is sought, all of the following:
 - (i) Either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog;
 - (ii) Either satisfactory evidence of the fact that the dog has been neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated;
 - (iii) Satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning both minors and adults of the presence of a dangerous dog on the property;
 - (iv) Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.
 - (2) Upon the issuance of a dangerous dog registration certificate to the owner of a dog, the county auditor shall provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall renew the certificate annually for the same fee and in the same manner as the initial certificate was obtained. If a certificate holder relocates to a new county, the certificate holder shall follow the procedure in division (I)(3)(b) of this section and, upon the expiration of the certificate issued in the original county, shall renew the certificate in the new county.
- (3)

- (a) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within the same county, the owner shall provide notice of the new address to the county auditor within ten days of relocating to the new address.
- (b) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within another county, the owner shall do both of the following within ten days of relocating to the new address:
 - (i) Provide written notice of the new address and a copy of the original dangerous dog registration certificate to the county auditor of the new county;
 - (ii) Provide written notice of the new address to the county auditor of the county where the owner previously resided.
- (4) The owner of a dangerous dog shall present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing this section.
- (5) The fees collected pursuant to this division shall be deposited in the dog and kennel fund of the county.

History

GC § 5652-14a; 112 v 347; Bureau of Code Revision, 10-1-53; 131 v 387 (Eff 9-1-65); 142 v H 352 (Eff 7-10-87); 148 v H 350. Eff 10-10-2000; 2012 HB 14, § 1, eff. May 22, 2012.

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§ 955.22. Confinement or restraint of dog; liability insurance; debarking or surgically silencing dog

- (A) As used in this section, "dangerous dog" and "vicious dog" have the same meanings as in section 955.11 of the Revised Code.
- (B) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper, or harbinger at any time the dog is in heat unless the dog is properly in leash.
- (C) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following:
 - (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;
 - (2) Keep the dog under the reasonable control of some person.
- (D) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do either of the following:
 - (1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;
 - (2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:
 - (a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
 - (b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - (c) Muzzle that dog.

- (E) No owner, keeper, or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog.
- (F) No person shall do any of the following:
 - (1) Debark or surgically silence a dog that the person knows or has reason to believe is a vicious dog;
 - (2) Possess a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - (3) Falsely attest on a waiver form provided by the veterinarian under division (G) of this section that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.
- (G) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a vicious dog. The written waiver form shall include all of the following:
 - (1) The veterinarian's license number and current business address;
 - (2) The number of the license of the dog if the dog is licensed;
 - (3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;
 - (4) The signature of the owner of the dog attesting that the owner's dog is not a vicious dog;
 - (5) A statement that division (F) of section 955.22 of the Revised Code prohibits any person from doing any of the following:
 - (a) Debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog;
 - (b) Possessing a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - (c) Falsely attesting on a waiver form provided by the veterinarian under division (G) of section 955.22 of the Revised Code that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.
- (H) It is an affirmative defense to a charge of a violation of division (F) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (G) of this section and that attests that the dog is not a vicious dog.

History

GC § 5652-14a; 112 v 347; Bureau of Code Revision, 10-1-53; 131 v 387 (Eff 9-1-65); 142 v H 352 (Eff 7-10-87); 148 v H 350. Eff 10-10-2000.

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AN ACT

To amend sections 955.08, 955.11, 955.22, 955.99, 1901.18, and 1907.031 and to enact sections 955.222 and 955.54 of the Revised Code to remove pit bulls from the definition of "vicious dog" in state law, to establish a process by which owners, keepers, or harborers of dogs that have been designated as nuisance, dangerous, or vicious may appeal that designation, to define a "nuisance dog," to change the definitions of a "dangerous dog" and a "vicious dog," to require the owner of a dangerous dog to obtain a dangerous dog registration certificate, to prohibit certain felons from owning dogs under certain conditions, and to change the penalties involving ownership of nuisance, dangerous, and vicious dogs.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 955.08, 955.11, 955.22, 955.99, 1901.18, and 1907.031 be amended and sections 955.222 and 955.54 of the Revised Code be enacted to read as follows:

Sec. 955.08. In addition to the certificate of registration provided for by section 955.07 of the Revised Code, the county auditor shall issue to every person making application for the registration of a dog and paying the required fee therefor a metal tag for each dog so registered. The form, character, and lettering of the tag shall be prescribed by the county auditor. Each year the tag shall be a color distinctive from that of the previous year. If a tag is lost, a duplicate shall be furnished by the auditor upon proper proof of loss and the payment of ~~twenty-five cents~~ five dollars for each duplicate tag issued ~~or payment of an alternate fee for a duplicate tag, which the board of county commissioners may establish in an amount not to exceed one dollar and fifty cents.~~

Sec. 955.11. (A) As used in this section:

(1)(a) "Dangerous dog" means a dog that, without provocation, and

subject to division (A)(1)(b) of this section, has ~~chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harborer and not under the reasonable control of its owner, keeper, harborer, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top~~ done any of the following:

- (i) Caused injury, other than killing or serious injury, to any person;
- (ii) Killed another dog;
- (iii) Been the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.

(b) "Dangerous dog" does not include a police dog that has ~~chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person~~ caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3)(a) Subject to division (A)(3)(b) of this section, "nuisance dog" means a dog that without provocation and while off the premises of its owner, keeper, or harborer has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(b) "Nuisance dog" does not include a police dog that while being used to assist one or more law enforcement officers in the performance of official duties has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(4) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(4)(5) "Serious injury" means any of the following:

- (a) Any physical harm that carries a substantial risk of death;
- (b) Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;
- (c) Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;
- (d) Any physical harm that involves acute pain of a duration that results

in substantial suffering or any degree of prolonged or intractable pain.

~~(6)(a)~~ "Vicious dog" means a dog that, without provocation and subject to division (A)~~(4)(6)(b)~~ of this section, ~~meets any of the following:~~

~~(i) Has has killed or caused serious injury to any person;~~
~~(ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog.~~

~~(iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima facie evidence of the ownership, keeping, or harboring of a vicious dog.~~

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person ~~or that has caused injury, other than killing or serious injury, to any person~~ while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

~~(5)(7)~~ "Without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(B) Upon the transfer of ownership of any dog, the seller of the dog shall give the buyer a transfer of ownership certificate that shall be signed by the seller. The certificate shall contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the certificate may be obtained from the county auditor. A transfer of ownership shall be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of ~~twenty-five cents~~ five dollars.

(C) Prior to the transfer of ownership or possession of any dog, upon the buyer's or other transferee's request, the seller or other transferor of the dog shall give to the person a written notice relative to the behavior and propensities of the dog.

(D) Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous ~~or vicious~~ dog, he the seller or other transferor shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on

which the seller shall furnish the following information:

- (1) The name and address of the buyer or other transferee of the dog;
- (2) The age, sex, color, breed, and current registration number of the dog.

In addition, the seller shall answer the following questions, which shall be specifically stated on the form as follows:

"Has the dog ever chased or attempted to attack or bite a person? If yes, describe the incident(s) in which the behavior occurred."

"Has the dog ever bitten a person? If yes, describe the incident(s) in which the behavior occurred."

"Has the dog ever seriously injured or killed a person? If yes, describe the incident(s) in which the behavior occurred."

The dog warden of the county in which the seller resides shall furnish the form to the seller at no cost.

(E) No seller or other transferor of a dog shall fail to comply with the applicable requirements of divisions (B) to (D) of this section.

Sec. 955.22. (A) As used in this section, "dangerous dog" ~~and "vicious dog"~~ have has the same ~~meanings~~ meaning as in section 955.11 of the Revised Code.

(B) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper, or harbinger at any time the dog is in heat unless the dog is properly in leash.

(C) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following:

(1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

(2) Keep the dog under the reasonable control of some person.

(D) Except when a dangerous ~~or vicious~~ dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous ~~or vicious~~ dog shall fail to do either of the following:

(1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, ~~except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;~~

(2) While that dog is off the premises of the owner, keeper, or harbinger,

keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

(E) No person who has been convicted of or pleaded guilty to three or more violations of division (C) of this section involving the same dog and no owner, keeper, or harbinger of a vicious dangerous dog shall fail to obtain do the following:

(1) Obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dangerous dog if so ordered by a court and provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing this section;

(2) Obtain a dangerous dog registration certificate from the county auditor pursuant to division (I) of this section, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times;

(3) Notify the local dog warden immediately if any of the following occurs:

(a) The dog is loose or unconfined.

(b) The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.

(c) The dog attacks another animal while the dog is off the property of the owner of the dog.

(4) If the dog is sold, given to another person, or dies, notify the county auditor within ten days of the sale, transfer, or death.

(F) No person shall do any of the following:

(1) Debark or surgically silence a dog that the person knows or has reason to believe is a vicious dangerous dog;

(2) Possess a vicious dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(3) Falsely attest on a waiver form provided by the veterinarian under division (G) of this section that the person's dog is not a ~~vicious~~ dangerous dog or otherwise provide false information on that written waiver form.

(G) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a ~~vicious~~ dangerous dog. The written waiver form shall include all of the following:

(1) The veterinarian's license number and current business address;
(2) The number of the license of the dog if the dog is licensed;
(3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;

(4) The signature of the owner of the dog attesting that the owner's dog is not a ~~vicious~~ dangerous dog;

(5) A statement that division (F) of section 955.22 of the Revised Code prohibits any person from doing any of the following:

(a) Debarking or surgically silencing a dog that the person knows or has reason to believe is a ~~vicious~~ dangerous dog;

(b) Possessing a ~~vicious~~ dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(c) Falsely attesting on a waiver form provided by the veterinarian under division (G) of section 955.22 of the Revised Code that the person's dog is not a ~~vicious~~ dangerous dog or otherwise provide false information on that written waiver form.

(H) It is an affirmative defense to a charge of a violation of division (F) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (G) of this section and that attests that the dog is not a ~~vicious~~ dangerous dog.

(I)(1) The county auditor shall issue a dangerous dog registration certificate to a person who is the owner of a dog, who is eighteen years of age or older, and who provides the following to the county auditor:

(a) A fee of fifty dollars;

(b) The person's address, phone number, and other appropriate means for the local dog warden or county auditor to contact the person;

(c) With respect to the person and the dog for which the registration is sought, all of the following:

(i) Either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog;

(ii) Either satisfactory evidence of the fact that the dog has been

neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated;

(iii) Satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning both minors and adults of the presence of a dangerous dog on the property;

(iv) Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.

(2) Upon the issuance of a dangerous dog registration certificate to the owner of a dog, the county auditor shall provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall renew the certificate annually for the same fee and in the same manner as the initial certificate was obtained. If a certificate holder relocates to a new county, the certificate holder shall follow the procedure in division (I)(3)(b) of this section and, upon the expiration of the certificate issued in the original county, shall renew the certificate in the new county.

(3)(a) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within the same county, the owner shall provide notice of the new address to the county auditor within ten days of relocating to the new address.

(b) If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within another county, the owner shall do both of the following within ten days of relocating to the new address:

(i) Provide written notice of the new address and a copy of the original dangerous dog registration certificate to the county auditor of the new county;

(ii) Provide written notice of the new address to the county auditor of the county where the owner previously resided.

(4) The owner of a dangerous dog shall present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing this section.

(5) The fees collected pursuant to this division shall be deposited in the dog and kennel fund of the county.

Sec. 955.222. (A) The municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog shall conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.

(B) If a person who is authorized to enforce this chapter has reasonable cause to believe that a dog in the person's jurisdiction is a nuisance dog,

dangerous dog, or vicious dog, the person shall notify the owner, keeper, or harbinger of that dog, by certified mail or in person, of both of the following:

(1) That the person has designated the dog a nuisance dog, dangerous dog, or vicious dog, as applicable;

(2) That the owner, keeper, or harbinger of the dog may request a hearing regarding the designation in accordance with this section. The notice shall include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harbinger resides.

(C) If the owner, keeper, or harbinger of the dog disagrees with the designation of the dog as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harbinger, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing shall be in writing and shall be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harbinger. At the hearing, the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog has the burden of proving, by clear and convincing evidence, that the dog is a nuisance dog, dangerous dog, or vicious dog.

The owner, keeper, or harbinger of the dog or the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog may appeal the court's final determination as in any other case filed in that court.

(D) A court, upon motion of an owner, keeper, or harbinger or an attorney representing the owner, keeper, or harbinger, may order that the dog designated as a nuisance dog, dangerous dog, or vicious dog be held in the possession of the owner, keeper, or harbinger until the court makes a final determination under this section or during the pendency of an appeal, as applicable. Until the court makes a final determination and during the pendency of any appeal, the dog shall be confined or restrained in accordance with the provisions of division (D) of section 955.22 of the Revised Code that apply to dangerous dogs regardless of whether the dog has been designated as a vicious dog or a nuisance dog rather than a dangerous dog. The owner, keeper, or harbinger of the dog shall not be required to comply with any other requirements established in the Revised Code that concern a nuisance dog, dangerous dog, or vicious dog, as applicable, until the court makes a final determination and during the pendency of any appeal.

(E) If a dog is finally determined under this section, or on appeal as described in this section, to be a vicious dog, division (D) of section 955.11 and divisions (D) to (I) of section 955.22 of the Revised Code apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog

were a dangerous dog, and section 955.54 of the Revised Code applies with respect to the dog as if it were a dangerous dog, and the court shall issue an order that specifies that those provisions apply with respect to the dog and the owner, keeper, or harbinger in that manner. As part of the order, the court shall require the owner, keeper, or harbinger to obtain the liability insurance required under division (E)(1) of section 955.22 of the Revised Code in an amount described in division (H)(2) of section 955.99 of the Revised Code.

(F) As used in this section, "nuisance dog," "dangerous dog," and "vicious dog" have the same meanings as in section 955.11 of the Revised Code.

Sec. 955.54. (A) No person who is convicted of or pleads guilty to a felony offense of violence committed on or after the effective date of this section or a felony violation of any provision of Chapter 959., 2923., or 2925. of the Revised Code committed on or after the effective date of this section shall knowingly own, possess, have custody of, or reside in a residence with either of the following for a period of three years commencing either upon the date of release of the person from any period of incarceration imposed for the offense or violation or, if the person is not incarcerated for the offense or violation, upon the date of the person's final release from the other sanctions imposed for the offense or violation:

(1) An unsprayed or unneutered dog older than twelve weeks of age;

(2) Any dog that has been determined to be a dangerous dog under Chapter 955. of the Revised Code.

(B) A person described in division (A) of this section shall microchip for permanent identification any dog owned, possessed by, or in the custody of the person.

(C)(1) Division (A) of this section does not apply to any person who is confined in a correctional institution of the department of rehabilitation and correction.

(2) Division (A) of this section does not apply to any person with respect to any dog that the person owned, possessed, had custody of, or resided in a residence with prior to the effective date of this section.

Sec. 955.99. (A)(1) Whoever violates division (E) of section 955.11 of the Revised Code because of a failure to comply with division (B) of that section is guilty of a minor misdemeanor.

(2) Whoever violates division (E) of section 955.11 of the Revised Code because of a failure to comply with division (C) or (D) of that section is guilty of a minor misdemeanor on a first offense and of a misdemeanor of the fourth degree on each subsequent offense.

(B) Whoever violates section 955.10, 955.23, 955.24, or 955.25 of the

Revised Code is guilty of a minor misdemeanor.

(C) Whoever violates section 955.261, 955.39, or 955.50 of the Revised Code is guilty of a minor misdemeanor on a first offense and of a misdemeanor of the fourth degree on each subsequent offense.

(D) Whoever violates division (F) of section 955.16 or division (B) of section 955.43 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(E)(1) ~~Whoever violates section 955.21 or of the Revised Code, violates division (B) of section 955.22 of the Revised Code, or commits a violation of division (C) of section 955.22 of the Revised Code that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog~~ shall be fined not less than twenty-five dollars or more than one hundred dollars on a first offense, and on each subsequent offense shall be fined not less than seventy-five dollars or more than two hundred fifty dollars and may be imprisoned for not more than thirty days.

(2) In addition to the penalties prescribed in division (E)(1) of this section, if the offender is guilty of a violation of division (B) ~~of section 955.22 of the Revised Code~~ or a violation of division (C) of section 955.22 of the Revised Code ~~that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog~~, the court may order the offender to personally supervise the dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.

(F) ~~If (1) Whoever commits a violation of division (C) of section 955.22 of the Revised Code that involves a nuisance dog is guilty of a minor misdemeanor on the first offense and of a misdemeanor of the fourth degree on each subsequent offense involving the same dog. Upon a person being convicted of or pleading guilty to a third violation of division (C) of section 955.22 of the Revised Code involving the same dog, the court shall require the offender to register the involved dog as a dangerous dog.~~

(2) ~~In addition to the penalties prescribed in division (F)(1) of this section, if a violation of division (C) of section 955.22 of the Revised Code involves a nuisance dog, the court may order the offender to personally supervise the nuisance dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.~~

(G) ~~Whoever commits a violation of division (D)(C) of section 955.22 of the Revised Code that involves a dangerous dog, whoever violates that division or a violation of division (D) of that section~~ is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the

offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to division (E) of section 955.22 of the Revised Code. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense. With respect to a violation of division (C) of section 955.22 of the Revised Code that involves a dangerous dog, until the court makes a final determination and during the pendency of any appeal of a violation of that division and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with division (D) of section 955.22 of the Revised Code or at the county dog pound at the owner's expense.

~~(G)~~ (H)(1) Whoever commits a violation of division ~~(D)~~(C) of section 955.22 of the Revised Code that involves a vicious dog, whoever violates that division is guilty of one of the following:

~~(1)(a)~~ A felony of the fourth degree ~~on a first or subsequent offense~~ if the dog kills or seriously injures a person. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense.

~~(2)(b)~~ A misdemeanor of the first degree ~~on a first offense and a felony of the fourth degree on each subsequent offense~~ if the dog causes serious injury to a person. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society:

~~(3) A misdemeanor of the first degree if the dog causes injury, other than killing or serious injury, to any person.~~

~~(H)~~ at the owner's expense.

(2) If the court does not order the vicious dog to be destroyed under division (H)(1)(b) of this section, the court shall issue an order that specifies that division (D) of section 955.11 and divisions (D) to (I) of section 955.22 of the Revised Code apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog and that section 955.54 of the Revised Code applies with respect to the dog as if it were a dangerous dog. As part of the order, the court shall order the offender to obtain the liability insurance required under division (E)(1) of section 955.22 of the Revised Code in an amount, exclusive of interest and costs, that equals or exceeds one hundred thousand dollars. Until the court makes a final determination and during the pendency of any appeal of a violation of division (C) of section 955.22 of the Revised Code and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with

the provisions described in division (D) of section 955.22 of the Revised Code or at the county dog pound at the owner's expense.

(I) Whoever violates division (A)(2) of section 955.01 or division (E) of section 955.22 of the Revised Code is guilty of a misdemeanor of the first degree.

(H)(J) Whoever violates division (E)(2) of section 955.22 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(K) Whoever violates division (C) of section 955.221 of the Revised Code is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense. Fines levied and collected for violations of that division shall be distributed by the mayor or clerk of the municipal or county court in accordance with section 733.40, division (F) of section 1901.31, or division (C) of section 1907.20 of the Revised Code to the treasury of the county, township, or municipal corporation whose resolution or ordinance was violated.

(J)(L) Whoever violates division (F)(1), (2), or (3) of section 955.22 of the Revised Code is guilty of a felony of the fourth degree. Additionally, the court shall order that the vicious dog involved in the violation be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. Until the court makes a final determination and during the pendency of any appeal of a violation of division (F)(1), (2), or (3) of section 955.22 of the Revised Code and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with the provisions of division (D) of section 955.22 of the Revised Code or at the county dog pound at the owner's expense.

(M) Whoever violates division (E)(1), (3), or (4) of section 955.22 of the Revised Code is guilty of a minor misdemeanor.

(N) Whoever violates division (I)(4) of section 955.22 of the Revised Code is guilty of a minor misdemeanor.

(O) Whoever violates division (A) or (B) of section 955.54 of the Revised Code is guilty of a misdemeanor of the first degree.

(P)(1) If a dog is confined at the county dog pound pursuant to division (G), (H), or (L) of this section, the county dog warden shall give written notice of the confinement to the owner of the dog. If the county dog warden is unable to give the notice to the owner of the dog, the county dog warden shall post the notice on the door of the residence of the owner of the dog or in another conspicuous place on the premises at which the dog was seized. The notice shall include a statement that a security in the amount of one hundred dollars is due to the county dog warden within ten days to secure payment of all reasonable expenses, including medical care and boarding of

the dog for sixty days, expected to be incurred by the county dog pound in caring for the dog pending the determination. The county dog warden may draw from the security any actual costs incurred in caring for the dog.

(2) If the person ordered to post security under division (P)(1) of this section does not do so within ten days of the confinement of the animal, the dog is forfeited, and the county dog warden may determine the disposition of the dog unless the court issues an order that specifies otherwise.

(3) Not more than ten days after the court makes a final determination under division (G), (H), or (L) of this section, the county dog warden shall provide the owner of the dog with the actual cost of the confinement of the dog. If the county dog warden finds that the security provided under division (P)(1) of this section is less than the actual cost of confinement of the dog, the owner shall remit the difference between the security provided and the actual cost to the county dog warden within thirty days after the court's determination. If the county dog warden finds that the security provided under division (P)(1) of this section is greater than that actual cost, the county dog warden shall remit the difference between the security provided and the actual cost to the owner within thirty days after the court's determination.

(Q) As used in this section, "nuisance dog," "dangerous dog," and "vicious dog" have the same meanings as in section 955.11 of the Revised Code.

Sec. 1901.18. (A) Except as otherwise provided in this division or section 1901.181 of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings and to perform all of the following functions:

(1) In any civil action, of whatever nature or remedy, of which judges of county courts have jurisdiction;

(2) In any action or proceeding at law for the recovery of money or personal property of which the court of common pleas has jurisdiction;

(3) In any action at law based on contract, to determine, preserve, and enforce all legal and equitable rights involved in the contract, to decree an accounting, reformation, or cancellation of the contract, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties to the contract;

(4) In any action or proceeding for the sale of personal property under chattel mortgage, lien, encumbrance, or other charge, for the foreclosure and marshalling of liens on personal property of that nature, and for the

rendering of personal judgment in the action or proceeding;

(5) In any action or proceeding to enforce the collection of its own judgments or the judgments rendered by any court within the territory to which the municipal court has succeeded, and to subject the interest of a judgment debtor in personal property to satisfy judgments enforceable by the municipal court;

(6) In any action or proceeding in the nature of interpleader;

(7) In any action of replevin;

(8) In any action of forcible entry and detainer;

(9) In any action concerning the issuance and enforcement of temporary protection orders pursuant to section 2919.26 of the Revised Code or protection orders pursuant to section 2903.213 of the Revised Code or the enforcement of protection orders issued by courts of another state, as defined in section 2919.27 of the Revised Code;

(10) If the municipal court has a housing or environmental division, in any action over which the division is given jurisdiction by section 1901.181 of the Revised Code, provided that, except as specified in division (B) of that section, no judge of the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction;

(11) In any action brought pursuant to division (I) of section 3733.11 of the Revised Code, if the residential premises that are the subject of the action are located within the territorial jurisdiction of the court;

(12) In any civil action as described in division (B)(1) of section 3767.41 of the Revised Code that relates to a public nuisance, and, to the extent any provision of this chapter conflicts or is inconsistent with a provision of that section, the provision of that section shall control in the civil action;

(13) In a proceeding brought pursuant to section 955.222 of the Revised Code by the owner of a dog that has been designated as a nuisance dog, dangerous dog, or vicious dog.

(B) The Cleveland municipal court also shall have jurisdiction within its territory in all of the following actions or proceedings and to perform all of the following functions:

(1) In all actions and proceedings for the sale of real property under lien of a judgment of the municipal court or a lien for machinery, material, or fuel furnished or labor performed, irrespective of amount, and, in those actions and proceedings, the court may proceed to foreclose and marshal all liens and all vested or contingent rights, to appoint a receiver, and to render personal judgment irrespective of amount in favor of any party.

(2) In all actions for the foreclosure of a mortgage on real property

given to secure the payment of money or the enforcement of a specific lien for money or other encumbrance or charge on real property, when the amount claimed by the plaintiff does not exceed fifteen thousand dollars and the real property is situated within the territory, and, in those actions, the court may proceed to foreclose all liens and all vested and contingent rights and may proceed to render judgments and make findings and orders between the parties in the same manner and to the same extent as in similar actions in the court of common pleas.

(3) In all actions for the recovery of real property situated within the territory to the same extent as courts of common pleas have jurisdiction;

(4) In all actions for injunction to prevent or terminate violations of the ordinances and regulations of the city of Cleveland enacted or promulgated under the police power of the city of Cleveland, pursuant to Section 3 of Article XVIII, Ohio Constitution, over which the court of common pleas has or may have jurisdiction, and, in those actions, the court may proceed to render judgments and make findings and orders in the same manner and to the same extent as in similar actions in the court of common pleas.

Sec. 1907.031. (A) Except as otherwise provided in section 1907.03 of the Revised Code and in addition to the jurisdiction authorized in other sections of this chapter and in section 1909.11 of the Revised Code, a county court has original jurisdiction within its district in all of the following actions or proceedings and to perform all of the following functions:

(1) In an action or proceeding at law for the recovery of money or personal property of which the court of common pleas has jurisdiction;

(2) In an action at law based on contract, to determine, preserve, and enforce all legal and equitable rights involved in the contract, to decree an accounting, reformation, or cancellation of the contract, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties to the contract;

(3) In an action or proceeding for the sale of personal property under chattel mortgage, lien, encumbrance, or other charge, for the foreclosure and marshalling of liens on the personal property, and for the rendering of personal judgment in the action or proceeding;

(4) In an action or proceeding to enforce the collection of its own judgments and to subject the interest of a judgment debtor in personal property to satisfy judgments enforceable by the county court;

(5) In an action or proceeding in the nature of interpleader;

(6) In an action of forcible entry and detainer;

(7) In a proceeding brought pursuant to section 955.222 of the Revised

Code by the owner of a dog that has been designated as a nuisance dog, dangerous dog, or vicious dog.

(B) A county court has original jurisdiction in civil actions as described in division (B)(1) of section 3767.41 of the Revised Code that relate to a public nuisance. To the extent any provision of this chapter conflicts or is inconsistent with a provision of that section, the provision of that section shall control in such a civil action.

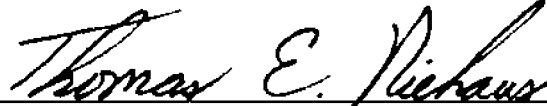
SECTION 2. That existing sections 955.08, 955.11, 955.22, 955.99, 1901.18, and 1907.031 of the Revised Code are hereby repealed.

SECTION 3. (A) Except as provided in division (B) of this section, an owner, keeper, or harbinger of a dog who was required to comply with the requirements pertaining to a vicious dog prior to the effective date of this act shall be required to comply with the requirements pertaining to a dangerous dog on or after the effective date of this act.

(B) Division (A) of this section does not apply to an owner, harbinger, or keeper of a dog who was required, with respect to that dog, to comply with the requirements pertaining to a vicious dog prior to the effective date of this act solely because the dog belongs to a breed that is commonly known as a pit bull dog.



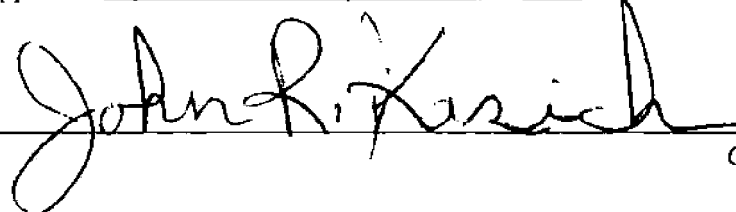
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed February 8, 2012

Approved FEB 21, 2012



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
21st day of February, A. D. 2012

John Husted

Secretary of State.

File No. 75

Effective Date May 22, 2012

File No. 75

(129th General Assembly)
(Substitute House Bill Number 14)

AN ACT

To amend sections 955.08, 955.11, 955.22, 955.99, 1901.18, and 1907.031 and to enact sections 955.222 and 955.54 of the Revised Code to remove pit bulls from the definition of "vicious dog" in state law, to establish a process by which owners, keepers, or harborers of dogs that have been designated as nuisance, dangerous, or vicious may appeal that designation, to define a "nuisance dog," to change the definitions of a "dangerous dog" and a "vicious dog," to require the owner of a dangerous dog to obtain a dangerous dog registration certificate, to prohibit certain felons from owning dogs under certain conditions, and to change the penalties involving ownership of nuisance, dangerous, and vicious dogs.

Introduced by

Representative Sears

Cosponsors: Representatives Winburn, Garland, Bubb,
Duffey, Gardner, Szallasi, Wachtmann
Speaker Baechleider
Senators Waggoner, LaRose, Coley, Jordan, Seitz

Passed by the House of Representatives,

June 28, 2011

Passed by the Senate,

January 31, 2012

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

21st day of February, A. D. 2012

Joe H. ...
Secretary of State.

*concurring in Senate
amendments
February 8, 2012*



Ohio Legislative Service Commission

Final Analysis

Andrea Holmes

Sub. H.B. 14

129th General Assembly
(As Passed by the General Assembly)

Reps. Sears, Winburn, Garland, Bubp, Duffey, Gardner, Szollosi, Wachtmann, Batchelder

Sens. Wagoner, LaRose, Coley, Jordan, Seitz

Effective date: May 22, 2012

ACT SUMMARY

- Defines a "nuisance dog" as a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.
- Defines a "dangerous dog" as a dog that, without provocation, has caused injury, other than killing or serious injury, to any person; has killed another dog; or has been the subject of a third or subsequent violation of a prohibition regarding general confinement and control of dogs.
- Defines a "vicious dog" as a dog that, without provocation, has killed or caused serious injury to any person and repeals the automatic inclusion of a pit bull dog as a vicious dog.
- Specifies that "nuisance dog," "dangerous dog," and "vicious dog" do not include a police dog that engages in specified behavior and that "vicious dog" does not include a dog that engages in specified behavior against a trespasser.
- Specifies that an owner, keeper, or harbinger of a dog who was required to comply with the requirements pertaining to a vicious dog prior to the effective date of the

* This version updates the effective date of the act; it also updates the list of sponsors.

act will be required to comply with the requirements pertaining to a dangerous dog on or after the effective date of the act but specifies that this provision does not apply if the owner, harborer, or keeper was required with respect to that dog to comply with those vicious dog requirements solely because the dog was a pit bull dog.

- Repeals the statement that the ownership, keeping, or harboring of a pit bull dog is *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog.
- Eliminates from the special confinement and control requirements that apply for a dangerous dog the option for a dangerous dog to be tied with a leash or tether so that the dog is adequately restrained while that dog is on the premises of the owner, keeper, or harborer and eliminates all references in the special confinement and control requirements to vicious dogs (but see last dot point).
- Amends the penalties for violations of the requirements governing general confinement and control of dogs (R.C. 955.22(C)) if the dog is a nuisance dog, dangerous dog, or vicious dog and requires that a dog that is subject to this violation as a dangerous dog or vicious dog be confined or restrained in accordance with the provisions describing confinement of dangerous dogs or at the county dog pound at the owner's expense until the court makes a final determination and during the pendency of any appeal of the violation.
- Requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C) involving the same dog and the owner, keeper, or harborer of a dangerous dog to obtain liability insurance with an insurer authorized to write liability insurance in Ohio providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court and eliminates references to vicious dogs in the requirement (but see last dot point).
- Requires a person required to have the liability insurance described in the preceding dot point to provide proof of the liability insurance upon request to any law enforcement officer, county dog warden, or public health official, and specifies that failure to do so is a minor misdemeanor.
- Requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C) involving the same dog and the owner, keeper, or harborer of a dangerous dog to do the following (the requirement does not include a reference to vicious dogs but see last dot point):

(1) Notify the local dog warden immediately if the dog is loose or unconfined, the dog bites a person (unless the dog is on the dog owner's property, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property), or the dog attacks another animal while the dog is off the dog owner's property.

(2) Notify the county auditor of the sale, transfer, or death of the dog.

- Requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C) involving the same dog and the owner, keeper, or harbinger of a dangerous dog to obtain a dangerous dog registration certificate from the county auditor, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times, and specifies that failure to do so is a fourth degree misdemeanor (the requirement does not include a reference to vicious dogs but see last dot point).
- Requires the county auditor to issue a dangerous dog registration certificate and a dangerous dog tag to a person who is the owner of a dog, who is 18 years of age or older, and who provides a fee of \$50 and certain specified information.
- Requires the owner of a dog who is issued a dangerous dog registration certificate to renew the dog's registration certificate annually for the same fee and in the same manner as the initial certificate was obtained, and sets up notification procedures for owners who move to new addresses.
- Requires the owner of a dangerous dog to present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing R.C. 955.22, and specifies that failure to do so is a minor misdemeanor.
- Eliminates the reference to vicious dogs in certain requirements that currently require special information to be provided when ownership or possession of a dangerous dog or vicious dog is transferred (but see last dot point).
- Prohibits a person who has been convicted of or pleaded guilty to a felony offense of violence or a felony violation of any provision of R.C. Chapter 959. (offenses relating to domestic animals), 2923. (conspiracy, attempt, and complicity; weapons control; corrupt activity), or 2925. (drug offenses) from knowingly owning, possessing, having custody of, or residing in a residence with an unspayed or unneutered dog older than 12 weeks of age, or any dog that has been determined to be a dangerous dog for a specified three-year period; specifies that the three-year period commences either upon the date of release of the person from any period of incarceration

imposed for the offense or violation or, if the person is not incarcerated for the offense or violation, upon the date of the person's final release from the other sanctions imposed for the offense or violation; specifies that the prohibition does not apply to a person who is confined in a Department of Rehabilitation and Correction correctional institution or to a person with respect to any dog that the person owned, possessed, had custody of, or resided in a residence with prior to the act's effective date; and specifies that a violation of the prohibition is a first degree misdemeanor (the prohibition does not refer to vicious dogs but see last dot point).

- Requires a person described in the preceding dot point to microchip for permanent identification any dog owned, possessed by, or in the custody of the person, and specifies that failure to do so is a first degree misdemeanor.
- Eliminates the reference to vicious dogs in current prohibitions regarding surgical silencing and debarking of vicious dogs, instead makes the prohibitions apply to dangerous dogs, and requires that a dog that is subject to the prohibitions be confined or restrained in accordance with the provisions describing confinement of dangerous dogs or at the county dog pound at the owner's expense until the court makes a final determination and during the pendency of any appeal of any of those prohibitions (but see last dot point).
- Requires the owner of a dog that has been confined at the county dog pound as a result of being the subject of a court determination on whether the dog has committed a violation of R.C. 955.22(C) involving a dangerous dog or a vicious dog, or certain violations involving a dog that has been debarked or surgically silenced provide a security of \$100 to the county dog warden to secure payment of all reasonable expenses incurred in keeping the dog during the pendency of the proceedings or appeal, and specifies that failure to provide this security will result in forfeiture of the dog.
- Specifies that, at the end of the confinement period of a dog described in the preceding dot point and upon the release of the dog to the owner, if applicable, the dog warden must provide the owner with the actual cost of the confinement of the dog; if the actual cost is more than \$100, the owner must provide the difference to the dog warden, and if the actual cost is less than \$100, the dog warden must provide the difference to the owner.
- Requires a person who is authorized to enforce Ohio's Dog Law and who has reasonable cause to believe that a dog in the person's jurisdiction is a nuisance dog, dangerous dog, or vicious dog to notify the owner, keeper, or harbinger of that dog, by certified mail or in person, that the person has designated the dog a nuisance

dog, dangerous dog, or vicious dog, as applicable, and that the owner, keeper, or harbinger of the dog may request a hearing regarding the designation.

- Specifies that the municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog must conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog and grants municipal courts and county courts original subject matter jurisdiction in proceedings of this nature.
- Grants the owner, keeper, or harbinger of a dog that has been designated a nuisance dog, dangerous dog, or vicious dog a right to a hearing on the determination and provides procedures for requesting the hearing and appealing a decision made at it.
- Permits a court, upon motion of an owner, keeper, or harbinger or an attorney representing the owner, keeper, or harbinger, to order that the dog designated as a nuisance dog, dangerous dog, or vicious dog be held in the possession of the owner, keeper, or harbinger until the court makes a final determination or during the pendency of an appeal, as applicable.
- Specifies that, if a dog is finally determined under the provisions described in the four preceding dot points to be a vicious dog, the act's provisions that apply with respect to dangerous dogs generally apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog.
- Increases the fee for replacement of a lost metal dog tag from 25¢ to \$5 and eliminates the option of paying an alternate fee for a duplicate tag set by the board of county commissioners.
- Increases the fee for recording a transfer of ownership certificate for a dog with the county auditor from 25¢ to \$5.
- Requires fees collected by the county auditor for dangerous dog registration certificates to be deposited in the dog and kennel fund of the county.
- The provisions described in the preceding dot points that specifically refer to this dot point apply with respect to vicious dogs involved in an R.C. 955.22(C) violation that are not to be destroyed and to dogs determined to be a vicious dog under the act's civil mechanism for classifying a dog, as if they were dangerous dogs.

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CONTENT AND OPERATION

Background

Continuing law provides rules that govern the keeping, confinement, and transfer of dangerous dogs and vicious dogs. The act modifies some of those rules and the definitions of those two categories of dogs, provides new penalties for violations of certain other rules that govern the general confinement of dogs when the dog in question is a nuisance dog and defines that category of dog, and makes other changes regarding the keeping, confinement, and transfer of dogs.

Definitions of "nuisance dog," "dangerous dog," "vicious dog," and "serious injury"

Definitions

The act defines "nuisance dog" and "serious injury" and alters the definitions for "dangerous dog" and "vicious dog." Under the act, these terms are defined as the following:

(1) "Nuisance dog" means a dog that "without provocation" and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a "menacing fashion" or an apparent attitude of attack or has attempted to bite or otherwise endanger any person. It does not include a "police dog" that while being used to assist one or more law enforcement officers in the performance of official duties has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person¹ (see below for definitions of the terms in quotation marks).

(2) "Dangerous dog" means a dog that, without provocation, has caused injury, other than killing or "serious injury" (see (4), below), to any person; has killed another dog; or has been the subject of a third or subsequent violation of R.C. 955.22(C) (see "**General confinement of dogs**," below). However, it does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of official duties.²

(3) "Vicious dog" means a dog that, without provocation, has killed or caused serious injury to any person. It does not include (1) a police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of official duties or (2) a dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.³

(4) "Serious injury" means any physical harm that carries a substantial risk of death; any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity; any physical harm that involves a permanent

¹ R.C. 955.11(A)(3), 955.222(F), and 955.99(Q).

² R.C. 955.11(A)(1), 955.222(F), and 955.99(Q).

³ R.C. 955.11(A)(6), 955.222(F), and 955.99(Q).

disfigurement or a temporary, serious disfigurement; or any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.⁴

The new definition of "nuisance dog" is essentially the same as the prior definition of "dangerous dog," except that it does not include the part of that prior definition that related to the dog, when engaging in the specified conduct, not being under the reasonable control of its owner, keeper, harbinger, or another responsible person or not being physically restrained or confined in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top. The new definition of "dangerous dog" is the same as one part of the prior definition of "vicious dog." It does not include the part of that prior definition that related to having killed or caused serious injury to any person, which is the definition under the act of a "vicious dog" or the part that defined as a "vicious dog" a dog belonging to a breed commonly known as a pit bull dog. The part of the prior definition of "vicious dog" that defined as a "vicious dog" a dog belonging to a breed commonly known as a pit bull dog is removed from the definition of "vicious dog" and is not included in any other definition. In many provisions of law where the term "vicious dog" formerly appeared, the act either removes or replaces that term with "dangerous dog."⁵

Continuing law, unchanged by the act, defines the following terms that are used in the definitions set forth above:⁶ (1) "menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person, (2) "police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties, and (3) "without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

***Prima facie* evidence rule – pit bulls**

Prior law provided in the existing definition of vicious dog that the ownership, keeping, or harboring of a breed of dog commonly known as a pit bull dog was *prima facie* evidence of the ownership, keeping, or harboring of a vicious dog. Under that provision, a person who owned, kept, or harbored a pit bull dog was considered to own, keep, or harbor a vicious dog without the need for additional evidence and solely

⁴ R.C. 955.11(A)(5).

⁵ R.C. 955.11(D), 955.22(A), (D), (E), (F), (G), and (H), and 955.99(L).

⁶ R.C. 955.11(A).

because of the breed of the pit bull dog that the person owned, kept, or harbored (contradictory evidence may be presented, though). The act repeals this *prima facie* evidence rule. Therefore, under the act a person cannot be found to own, keep, or harbor a vicious dog unless evidence is presented to prove that the dog, without provocation and subject to the "police dog" and "trespasser" exceptions specified within the definition of vicious dog, has killed or caused serious injury to any person.⁷

General confinement of dogs

Continuing law, unchanged by the act, requires the owner, keeper, or harbinger of any dog, subject to one exception, to keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape or to keep the dog under the reasonable control of some person. The exception to this requirement is a dog that is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog.⁸

Under prior law, a person who violated this requirement was fined not less than \$25 or more than \$100 on a first offense and on each subsequent offense was fined not less than \$75 or more than \$250 and could have been imprisoned for not more than 30 days. In addition, the court could order the offender to personally supervise the dog that the offender owns, keeps, or harbors, or cause that dog to complete dog obedience training, or to do both.⁹ The act makes this penalty provision apply only when the dog involved in the violation is not a nuisance dog, dangerous dog, or vicious dog. It adds new penalty language that applies to a person who violates this requirement when the dog involved is a nuisance dog, a dangerous dog, or a vicious dog. This new penalty language is described below in "**Penalties – general confinement.**"

Confinement of dangerous dogs

Prior law required the owner, keeper, or harbinger of a dangerous or vicious dog to confine and control the dog in any of several specified manners, except when the dog was lawfully engaged in hunting or training for the purpose of hunting and was accompanied by the owner, keeper, harbinger, or handler. The act eliminates the references in the requirements to vicious dogs (but see the last paragraph in this part of this analysis) and alters the requirements for the confinement of a dangerous dog by eliminating the option for a dangerous dog to be tied with a leash or tether so that the

⁷ R.C. 955.11(A)(6).

⁸ R.C. 955.22(C).

⁹ R.C. 955.99(E).

dog is adequately restrained while that dog is on the premises of the owner, keeper, or harborer. Therefore, under the act, except when a dangerous dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harborer, or handler of the dog, the owner, keeper, or harborer of a dangerous dog must do either of the following:¹⁰

(1) While that dog is on the premises of the owner, keeper, or harborer, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(2) While that dog is off the premises of the owner, keeper, or harborer, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

Under prior law, a violation of any of the special confinement and control requirements described above that involved a dangerous dog was a fourth degree misdemeanor on a first offense and a third degree misdemeanor on each subsequent offense. Additionally, the court could order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court could order the offender to obtain liability insurance. The court, in the alternative, could order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. The act retains the existing penalties for a violation of any of those requirements that involves a dangerous dog. Prior law provided more stringent penalties for a violation of any of those requirements that involved a vicious dog. Because the act eliminates the references in the requirements to vicious dogs, it also

¹⁰ R.C. 955.22(D).

eliminates references to vicious dogs in the penalties for a violation of the requirements.¹¹

Although the act removes the reference to vicious dogs from the dangerous dog confinement requirements described above and eliminates references to vicious dogs in the penalties for a violation of the requirements, if a violation of R.C. 955.22(C) involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order the offender or owner to comply with the dangerous dog confinement requirements, as if the dog were a dangerous dog¹² (see "**Penalties – general confinement**" and "**Due process for designation of nuisance, dangerous, and vicious dogs**," below).

Penalties – general confinement

R.C. 955.22(C), unchanged by the act, imposes certain general confinement requirements regarding any dog. The requirements are described above in "**General confinement of dogs**."

The act specifies that a violation of R.C. 955.22(C) involving a nuisance dog is a minor misdemeanor on the first offense and a fourth degree misdemeanor on each subsequent offense involving the same dog. Upon a person being convicted of or pleading guilty to a third violation involving the same dog, the court must require the offender to register the involved dog as a dangerous dog. Additionally, the court may order the offender to personally supervise the nuisance dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.¹³

A violation of R.C. 955.22(C) involving a dangerous dog is a fourth degree misdemeanor on the first offense and a third degree misdemeanor on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to the provision described below under "**Liability insurance**" (that provision, by its terms, expressly applies only to a person with convictions of three or more violations of R.C. 925.22(C)). In the alternative, the court may order the dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society, at the owner's expense. Until the court makes a

¹¹ R.C. 959.99(G) and (H).

¹² R.C. 955.99(H)(2) and 955.222.

¹³ R.C. 955.99(F).

final determination and during the pendency of any appeal of the violation and at the discretion of the dog warden, the dog must be confined or restrained in accordance with the provisions described above under "**Confinement of dangerous dogs**" or at the county dog pound at the owner's expense.¹⁴

A violation of R.C. 955.22(C) involving a vicious dog is a fourth degree felony if the dog kills a person. The court must order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense. A violation of R.C. 955.22(C) involving a vicious dog is a first degree misdemeanor if the dog causes serious injury to a person. Additionally, the court may order the dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society, at the owner's expense.¹⁵

If the court does not order a vicious dog involved in a violation of R.C. 955.22(C) as described in the preceding paragraph to be destroyed, the court must issue an order that specifies that the act's provisions that apply with respect to dangerous dogs and that are described above in "**Confinement of dangerous dogs**" and below in "**Insurance, notice, and registration requirements**," "**Transfer of ownership of a dangerous dog**," and "**Debarking or surgically silencing a dangerous dog**," apply with respect to the dog and the owner, keeper, or harbinger of the dog, as if the dog were a dangerous dog and that the provisions of the act that are described below in "**Possession of dogs by felons**" apply with respect to the dog as if it were a dangerous dog. As part of the order, the court must order the offender to obtain the liability insurance described below under "**Liability insurance**," in an amount, exclusive of interest and costs, that equals or exceeds \$100,000. Until the court makes a final determination and during the pendency of any appeal of the violation and at the discretion of the dog warden, the dog must be confined or restrained in accordance with the provisions described above under "**Confinement of dangerous dogs**" or at the county dog pound at the owner's expense.¹⁶

As described above in "**General confinement of dogs**," under the act, an existing penalty provision that currently applies to any person who violates R.C. 955.22(C) and that is unchanged by the act will apply only when the dog involved is not a nuisance dog, a dangerous dog, or a vicious dog.¹⁷

¹⁴ R.C. 955.99(G).

¹⁵ R.C. 955.99(H)(1)(a) and (b).

¹⁶ R.C. 955.99(H)(2).

¹⁷ R.C. 955.99(E).

The definitions of "nuisance dog," "dangerous dog," and "vicious dog" described above in "**Definitions**" apply to the penalty provisions described above.¹⁸

Insurance, notice, and registration requirements

Liability insurance

The act requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C), described above in "**General confinement of dogs**," involving the same dog and the owner, keeper, or harbinger of a dangerous dog to obtain liability insurance with an insurer authorized to write liability insurance in Ohio providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court. Additionally, the act requires the person to provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing that requirement or any other provision of R.C. 955.22. Failure to obtain, when ordered by the court, or present proof of liability insurance upon proper request is a minor misdemeanor.¹⁹

The act eliminates a prior requirement that an owner, keeper, or harbinger of a vicious dog always obtain liability insurance, a violation of which was a first degree misdemeanor under existing law.²⁰ However, if a violation of R.C. 955.22(C) involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order the offender or owner to comply with the liability insurance provision described above as if the dog were a dangerous dog²¹ (see "**Penalties – general confinement**," above, and "**Due process for designation of nuisance, dangerous, and vicious dogs**," below).

Notice to local dog warden and county auditor

The act requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C), described above in "**General confinement of dogs**," involving the same dog and the owner, keeper, or harbinger of a dangerous dog (1) to notify the local dog warden immediately if the dog is loose or unconfined, the dog bites a person (unless the dog is on the dog owner's property, and the person who is bitten is

¹⁸ R.C. 955.99(Q).

¹⁹ R.C. 955.22(E)(1) and 955.99(M).

²⁰ R.C. 955.22(E)(1) and 955.99(I).

²¹ R.C. 955.99(H)(2) and 955.222.

unlawfully trespassing or committing a criminal act within the boundaries of that property), or the dog attacks another animal while the dog is off the dog owner's property and (2) to notify the county auditor of the sale, transfer, or death of the dog, within ten days of the sale, transfer, or death. A violation of this requirement is a minor misdemeanor.²²

This requirement does not refer to vicious dogs.²³ However, if a violation of R.C. 955.22(C) involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order the offender or owner to comply with this requirement as if the dog were a dangerous dog²⁴ (see "**Penalties – general confinement**," above, and "**Due process for designation of nuisance, dangerous, and vicious dogs**," below).

Dangerous dog registration

Dangerous dog registration certificates

The act requires a person who has been convicted of or pleaded guilty to three or more violations of R.C. 955.22(C) involving the same dog and the owner, keeper, or harbinger of a dangerous dog to obtain a dangerous dog registration certificate from the county auditor, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times. Whoever violates this requirement is guilty of a fourth degree misdemeanor.²⁵

This requirement does not refer to vicious dogs.²⁶ However, if a violation of R.C. 955.22(C) involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order the offender or owner to comply with this requirement as if the dog were a dangerous dog.²⁷

²² R.C. 955.22(E)(3) and (4) and 955.99(M).

²³ *Id.*

²⁴ R.C. 955.99(H)(2) and 955.222.

²⁵ R.C. 955.22(E)(2) and 955.99(J).

²⁶ *Id.*

²⁷ R.C. 955.99(H)(2) and 955.222.

Under the act, the county auditor must issue a dangerous dog registration certificate to a person who is the owner of a dog, who is 18 years of age or older, and who provides the following to the auditor:²⁸

- (1) A fee of \$50;
- (2) The person's address, phone number, and any other appropriate means for the local dog warden or county auditor to contact the person;
- (3) With respect to the person and the dog for which the registration is sought, either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog; either satisfactory evidence of the fact that the dog has been neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated for the dog; satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning both minors and adults of the presence of a dangerous dog on the property; and satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.

Dangerous dog tags

The act requires the county auditor, upon the issuance of a dangerous dog registration certificate to the owner of a dog, to provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner must affix the tag to the dog's collar and ensure that the dog wears the collar and tag at all times.²⁹

Renewal of dangerous dog registration certificates

The owner of a dog who is issued a dangerous dog registration certificate must renew the dog's registration certificate annually for the same fee and in the same manner as the initial certificate was obtained. If an owner who is a certificate holder relocates to a new address within the same county, the owner must provide notice of the new address to the county auditor within ten days of relocating to the new address. If a certificate holder relocates to a new address within another county, the certificate holder must provide written notice of the new address and a copy of the original dangerous dog registration certificate to the county auditor of the new county and provide written notice of the new address to the county auditor of the county where the owner previously resided, within ten days of relocating to the new address. Upon the

²⁸ R.C. 955.22(I)(1).

²⁹ R.C. 955.22(E)(2) and (I)(2).

expiration of the certificate issued in the original county, the person must renew the certificate in the new county.³⁰

Failure to present dangerous dog registration certificate upon proper request

The owner of a dangerous dog must present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing R.C. 955.22. Failure to present this certificate upon proper request is a minor misdemeanor.³¹

Transfer of ownership of a dangerous dog

Under law unchanged by the act, upon the transfer of ownership of any dog, the seller must give the buyer a transfer of ownership certificate and, upon request of the transferee, must provide the transferee with information regarding the dog's behavior and propensities. A violation of the first requirement is a minor misdemeanor and a violation of the second requirement is a minor misdemeanor on a first offense and a fourth degree misdemeanor on each subsequent offense.³²

Law largely unchanged by the act also provides that, within ten days after the transfer of ownership or possession of any dog, if the transferor has knowledge that the dog is a dangerous or vicious dog, the transferor must give to the transferee, the board of health for the district in which the transferee resides, and the dog warden of the county in which the transferee resides a completed copy of a written form on which the transferee furnishes the transferee's name and address and the dog's age, sex, color, breed, and current registration number and specifically indicates whether the dog ever has chased or attempted to attack or bite a person, has bitten a person, or has seriously injured or killed a person (if the transferor indicates that any of those behaviors has occurred, the transferor must describe the incident or incidents in which the behavior occurred). A violation of this requirement is a minor misdemeanor on a first offense and a fourth degree misdemeanor on each subsequent offense. The act eliminates the reference in the requirements described in this paragraph to vicious dogs.³³ However, if a violation of R.C. 955.22(C) is committed that involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order

³⁰ R.C. 955.22(I)(2) and (3).

³¹ R.C. 955.22(I)(4) and 955.99(N).

³² R.C. 955.11(B), (C), and (E) and 955.99(A).

³³ R.C. 955.11(D) and (E) and 955.99(A)(2).

the offender or owner to comply with this requirement as if the dog were a dangerous dog.³⁴

Possession of dogs by felons

The act prohibits a person who has been convicted of or pleaded guilty to a felony "offense of violence" (defined in R.C. 2901.01) committed on or after the act's effective date or a felony violation of any provision of R.C. Chapter 959. (offenses relating to domestic animals), 2923. (conspiracy, attempt, and complicity; weapons control; corrupt activity), or 2925. (drug offenses) committed on or after the act's effective date from knowingly owning, possessing, having custody of, or residing in a residence with an unspayed or unneutered dog older than 12 weeks of age or any dog that has been determined to be a dangerous dog. The prohibition applies for a period of three years commencing either upon the date of release of the person from any period of incarceration imposed for the offense or violation or, if the person is not incarcerated for the offense or violation, upon the date of the person's final release from the other sanctions imposed for the offense or violation. The prohibition does not apply to a person who is confined in a correctional institution of the Department of Rehabilitation and Correction. It also does not apply to any person with respect to any dog that the person owned, possessed, had custody of, or resided in a residence with prior to the act's effective date.³⁵ A violation of this prohibition is a first degree misdemeanor.³⁶

A person described in the preceding paragraph must microchip for permanent identification any dog owned, possessed by, or in the custody of the person.³⁷ Failure to microchip the dog is a first degree misdemeanor.³⁸

Debarking or surgically silencing a dangerous dog

Law retained in part by the act prohibits a person from debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog, possessing a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced, or falsely attesting on a waiver form provided by a veterinarian under a specified waiver provision that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form. A violation of

³⁴ R.C. 955.99(H)(2) and 955.222.

³⁵ R.C. 955.54(A) and (C).

³⁶ R.C. 955.99(O).

³⁷ R.C. 955.54(B).

³⁸ R.C. 955.99(O).

the prohibition is a fourth degree felony, and the court must order that the dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. Continuing law provides a waiver form that a veterinarian may use as a basis for debarking or surgically silencing a dog and an affirmative defense for a veterinarian that relates to the waiver form. The act eliminates the references in the prohibitions and the related provisions to vicious dogs and instead makes them apply to dangerous dogs.³⁹ However, if a violation of R.C. 955.22(C) is committed that involves a vicious dog and the sentencing court does not order the dog to be destroyed, or if a dog is determined to be a vicious dog under the act's civil mechanism for classifying a dog, the court must order the offender or owner to comply with these provisions as if the dog were a dangerous dog.⁴⁰

Under the act, if a person debarks or surgically silences a dog that the person knows or has reason to believe is a dangerous dog, possesses a dangerous dog and the person knows or has reason to believe that the dog has been debarked or surgically silenced, or falsely attests on a waiver form provided by a veterinarian that the person's dog is not a dangerous dog or otherwise provides false information on that written waiver form, the person is guilty of a fourth degree felony. The court must order that the dog involved in the violation be humanely destroyed as under continuing law. Additionally, the act provides that until the court makes a final determination and during the pendency of any appeal of the violation and at the discretion of the dog warden, the dog must be confined or restrained in accordance with the provisions described above under "**Confinement of dangerous dogs**" or at the county dog pound at the owner's expense.⁴¹ As described in the preceding paragraph, although the debarking and silencing provisions no longer refer to vicious dogs, they apply to vicious dogs in certain specified circumstances, and, as a result, the sanction provisions described in this paragraph also apply with respect to vicious dogs that are within the scope of those other provisions.

Notice of confinement and security due

Notice and assessment

Under the act, if a dog is confined at the county dog pound while a court determines whether the owner has committed a violation of R.C. 955.22(C) involving a dangerous dog or a vicious dog, or a violation of R.C. 955.22(F) involving a person who has debarked or surgically silenced a dog that the person knew or had reason to believe

³⁹ R.C. 955.22(F) to (H) and 955.99(L).

⁴⁰ R.C. 955.99(H)(2) and 955.222.

⁴¹ R.C. 955.99(L).

is a dangerous dog, who possessed a dangerous dog when the person knew or had reason to believe that the dog had been debarked or surgically silenced, or who falsely attested on a waiver form provided by a veterinarian that the person's dog is not a dangerous dog or otherwise provided false information on that written waiver form (see above regarding the application of these provisions with respect to vicious dogs), the county dog warden must give written notice of the confinement to the owner of the dog. If the county dog warden is unable to give the notice to the owner of the dog, the warden must post the notice on the door of the residence of the owner or in another conspicuous place on the premises at which the dog was seized. The notice must include a statement that a security in the amount of \$100 is due to the county dog warden within ten days to secure payment of all reasonable expenses, including medical care and boarding of the dog for 60 days, expected to be incurred by the county dog pound in caring for the dog pending the determination. The county dog warden may draw from the security any actual costs incurred in caring for the dog.⁴²

Failure of owner to pay security

If the person ordered to post security under the provision described in the preceding paragraph does not do so within ten days of the confinement of the animal, the dog is forfeited, and the county dog warden may determine the disposition of the dog unless the court issues an order that specifies otherwise.⁴³

Actual cost of confinement

Not more than ten days after the court makes a final determination of whether an owner has committed a violation described above in "**Notice and assessment**," the county dog warden must provide the owner of the dog with the actual cost of the confinement of the dog. If the county dog warden finds that the security provided by the owner is less than the actual cost of confinement of the dog, the owner must remit the difference between the security provided and the actual cost to the warden within 30 days after the court's determination. If the county dog warden finds that the security provided by the owner is greater than that actual cost, the warden must remit the difference between the security provided and the actual cost to the owner within 30 days after the court's determination.⁴⁴

⁴² R.C. 955.99(P)(1).

⁴³ R.C. 955.99(P)(2).

⁴⁴ R.C. 955.99(P)(3).

Dogs considered vicious dogs prior to effective date of the act

The act specifies that, subject to the exception described in the next sentence, an owner, keeper, or harborer of a dog who was required to comply with the requirements pertaining to a vicious dog prior to the effective date of the act will be required to comply with the requirements pertaining to a "dangerous dog" on or after that effective date. This provision does not apply to an owner, harborer, or keeper of a dog who was required with respect to that dog to comply with the requirements pertaining to a vicious dog prior to the act's effective date solely because the dog belonged to a breed that is commonly known as a pit bull dog.⁴⁵

Due process for designation of nuisance, dangerous, and vicious dogs

Notice to dog owner

Under the act, if a person who is authorized to enforce R.C. Chapter 955. (Dog Law) has reasonable cause to believe that a dog in the person's jurisdiction is a nuisance dog, dangerous dog, or vicious dog, the person must notify the owner, keeper, or harborer of that dog, by certified mail or in person, that the person has designated the dog a nuisance dog, dangerous dog, or vicious dog, as applicable, and that the owner, keeper, or harborer of the dog may request a hearing regarding the designation. The notice must include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harborer resides.⁴⁶

Hearings

The act specifies that the municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harborer of a dog must conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog. Related to this, the act grants municipal courts and county courts original subject matter jurisdiction in proceedings of this nature.⁴⁷

If the owner, keeper, or harborer of the dog disagrees with its designation as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harborer, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing must be in writing and must be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harborer. At the hearing,

⁴⁵ Section 3.

⁴⁶ R.C. 955.222(B) and (F).

⁴⁷ R.C. 955.222(A) and (F), 1901.18(A)(13), and 1907.031(A)(7).

the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog has the burden of proving, by clear and convincing evidence, that the dog is a nuisance dog, dangerous dog, or vicious dog. The owner, keeper, or harbinger of the dog or the person who designated the dog as a nuisance, dangerous, or vicious dog may appeal the court's final determination as in any other case filed in that court.⁴⁸

Confinement of nuisance dog, dangerous dog, or vicious dog prior to hearing and during pendency of appeal

A court, upon motion of an owner, keeper, or harbinger or an attorney representing the owner, keeper, or harbinger, may order that the dog designated as a nuisance dog, dangerous dog, or vicious dog be held in the possession of the owner, keeper, or harbinger until the court makes a final determination or during the pendency of an appeal, as applicable. Until the court makes a final determination and during the pendency of any appeal, the dog must be confined or restrained in accordance with the provisions described above under "**Confinement of dangerous dogs**," regardless of whether the dog has been designated as a vicious dog or a nuisance dog rather than a dangerous dog. The owner, keeper, or harbinger of the dog cannot be required to comply with any other Revised Code requirements that concern a nuisance dog, dangerous dog, or vicious dog, as applicable, until the court makes a final determination and during the pendency of any appeal.⁴⁹

Treatment of dogs determined to be vicious dogs

If a dog is finally determined under the act's due process provisions described above to be a vicious dog, the provisions of the act that apply with respect to dangerous dogs and that are described above in "**Confinement of dangerous dogs**," "**Insurance, notice, and registration requirements**," "**Transfer of ownership of a dangerous dog**," and "**Debarking or surgically silencing a dangerous dog**," apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog. Also, the provisions of the act that are described above in "**Possession of dogs by felons**" apply with respect to the dog as if it were a dangerous dog, and the court must issue an order that specifies that those provisions apply with respect to the dog and the owner, keeper, or harbinger in that manner. As part of the order, the court must require the owner, keeper, or harbinger to obtain the liability insurance described above under "**Liability insurance**" in an amount, exclusive of interest and costs, that equals or exceeds \$100,000.⁵⁰

⁴⁸ R.C. 955.222(C) and (F).

⁴⁹ R.C. 955.222(D).

⁵⁰ R.C. 955.99(E).

Fees

Replacement of metal tags issued to dogs registered with the county auditor

The act increases the fee for replacement of a lost metal dog tag from 25¢ to \$5 and eliminates the option of paying an alternate fee for a duplicate tag set by the board of county commissioners.⁵¹

Transfer of ownership certificate

The act increases the fee for recording a transfer of ownership certificate for a dog with the county auditor from 25¢ to \$5.⁵²

Dangerous dog registration certificate fees

Fees collected by the county auditor for dangerous dog registration certificates must be deposited in the dog and kennel fund of the county.⁵³

HISTORY

ACTION	DATE
Introduced	01-11-11
Reported, H. Criminal Justice	06-15-11
Passed House (69-29)	06-28-11
Reported, S. Judiciary	01-12-12
Passed Senate (27-5)	01-31-12
House concurred in Senate amendments (67-30)	02-08-12

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⁵¹ R.C. 955.08.

⁵² R.C. 955.11(B).

⁵³ R.C. 955.22(I)(5).

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DARLENE RUSS

Plaintiff - Appellant

-vs-

CITY OF REYNOLDSBURG

Defendant - Appellee

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Craig R. Baldwin, J.

Case No. 16-CA-58

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County
Municipal Court, Case No. 2015 CVF
2039

JUDGMENT:

Reversed, Judgment Entered

DATE OF JUDGMENT:

April 19, 2017

APPEARANCES:

For Plaintiff-Appellant

J. PHILIP CALABRESE
Porter, Wright Morris & Arthur LLP
950 Main Avenue, Suite 500
Cleveland, Ohio 44113

For Defendant-Appellee

JOSEPH R. DURHAM
Eastman & Smith LTD.
100 E. Broad Street, Suite 2100
Columbus, Ohio 43215

And

JAMES E. HOOD
MATTHEW R. ROTH
Reynoldsburg City Attorney
7232 East Main Street
Reynoldsburg, Ohio 43068

Baldwin, J.

{¶1} Plaintiff-appellant Darlene Russ appeals from the July 18, 2015 Judgment Entry of the Licking County Municipal Court denying her complaint for declaratory judgment and entering judgment in favor of defendant-appellee City of Reynoldsburg.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Darlene Russ moved from upstate New York to the City of Reynoldsburg in Licking County, Ohio during Memorial Day weekend in 2014. At the time, she had a dog that she described as “a mixed Pit, some Terrier.” Transcript at 11. Appellant conceded that veterinary records classify the dog as a pit bull. Appellant testified that she obtained a license for the dog after registering it with the Licking County Auditor and that on the day she moved into her apartment, she was cited for keeping, harboring, or owning a vicious dog in violation of Reynoldsburg Codified Ordinance Section 505.35 (a), which prohibits owning, harboring or keeping a vicious dog. Section 505.01(m) defines a vicious dog, in part, as a pit bull. Ultimately, the case against appellant was dismissed.

{¶3} Appellant, on September 24, 2015, filed a verified complaint for declaratory judgment in Licking County Municipal Court, challenging the constitutionality of Reynoldsburg’s Ordinances prohibiting the ownership of dogs that the City considers pit bulls. Appellant specifically sought a declaration that appellee could not enforce its prohibitions against owning, keeping, or harboring a pit bull and that Section 505.01(m)(5) of the Codified Ordinances “impermissibly conflicts with State law in violation of the Home Rule Amendment to the Ohio Constitution, R.C. 955.221, or both...” After Appellee City of Reynoldsburg filed an answer, appellant filed a Motion for Judgment on the Pleadings.

The American Society for the Prevention of Cruelty to Animals filed an amicus curiae brief on November 23, 2015. Appellee filed a memorandum in opposition to the Motion for Judgment on the Pleadings and a Motion for Summary Judgment on December 15, 2015. As memorialized in a Judgment Entry filed on March 21, 2016, both the Motion for Judgment on the Pleadings and the Motion for Summary Judgment were denied.

{¶4} A bench trial was held on March 21, 2016. Both parties filed post trial briefs. The trial court, as memorialized in a Judgment Entry filed on July 18, 2016, denied appellant's complaint for declaratory judgment and entered judgment in favor of appellee. The trial court specifically found that R.C. 955.11(A)(6)(a) and 955.221(B)(3) were not general laws and that the City of Reynoldsburg did not exceed its authority under the Home Rule Amendment to the Ohio Constitution.

{¶5} Appellant now raises the following assignments of error on appeal:

{¶6} THE MUNICIPAL COURT ERRED WHEN IT BECAME THE FIRST COURT IN OHIO TO HOLD THAT CHAPTER 955 OF THE OHIO REVISED CODE, WHICH REGULATES DOG OWNERSHIP IN THE STATE, IS NOT A GENERAL LAW.

{¶7} THE CITY OF REYNOLDSBURG'S ORDINANCES PROHIBITING THE OWNERSHIP OF DOGS IT CONSIDERS PIT BULLS EXCEED THE CITY'S AUTHORITY UNDER THE HOME RULE AMENDMENT TO THE OHIO CONSTITUTION BECAUSE THEY PROHIBIT THAT WHICH STATE LAW PERMITS AND SPECIFICALLY LICENSES.

STANDARD OF REVIEW

{¶8} The constitutionality of a statute or ordinance presents a question of law and is therefore reviewed under a de novo standard. *Andreyko v. Cincinnati*, 153 Ohio App.3d 108, 2003-Ohio-2759, 791 N.E.2d 1025 (1st Dist). In determining the

constitutionality of an ordinance, we are mindful of the fundamental principle requiring courts to presume the constitutionality of lawfully enacted legislation. *Akron v. Molyneaux*, 144 Ohio App.3d 421, 426, 760 N.E.2d 461 (9th Dist. 2001), citing *Univ. Hts. v. O'Leary*, 68 Ohio St.2d 130, 135, 429 N.E.2d 148 (1981). The legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt. *Molyneaux*, 144 Ohio App.3d at 426, 760 N.E.2d 461.

I, II

{¶9} Appellant, in her first assignment of error, argues that the trial court erred in holding that the provisions of Chapter 955, as amended by House Bill 14 in 2012, are not general laws. In her second assignment of error, appellant contends that the City of Reynoldsburg's pit bull Ordinances conflict with state law and exceed its authority under the Home Rule Amendment to the Ohio Constitution.

{¶10} Article XVIII, Section 3 of the Ohio Constitution gives municipalities their powers of home rule. Article XVIII, Section 3 provides as follows: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The Ohio Supreme Court has established the following three-part test to determine whether a municipal ordinance must yield to the provisions of a state statute: "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Canton v. State of Ohio*, 95 Ohio St.3d 149, 151, 2002-Ohio-2005, 766 N.E.2d 963, citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244-245, 602 N.E.2d 1147 (1992), and *Auxter v. Toledo*, 173 Ohio St. 444, 183 N.E.2d 920 (1962).

{¶11} At issue in the case sub judice is whether or not R.C. Chapter 955 is a general law. The trial court, in its July 18, 2016 Judgment Entry, found that it was not.

{¶12} The Ohio Supreme Court has set forth a four-part test for evaluating whether a statute is a general law in *Canton, supra*: “To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.” *Id.* at syllabus. We note that, in *Lima v. Stepleton*, 3rd Dist. Allen No. 1-13-28, 2013-Ohio-5655, 5 N.E.3d 721, the City of Lima conceded that R.C. Chapter 955 was a general law.

{¶13} The trial court, in this matter, found that “the language in R.C. 955.11(A)(6)(a) and 955.221(B)(3) must be construed as being part of a statewide and comprehensive legislative enactment” and that the first and second prongs of the *Canton* test were met. We concur.

{¶14} Ohio Revised Code Chapter 955 is titled “Dogs” and contains state-wide comprehensive provisions relating to dog and kennel licenses, impounding, assistance dogs and other dog-related matters. R.C. 955.11(A)(6)(a), cited by the trial court, defines a “vicious dog” as follows:

(6)(a) “Vicious dog” means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person.

(b) “Vicious dog” does not include either of the following:

- (i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
- (ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

{¶15} In turn, R.C. 955.221(B)(3) states that a “municipal corporation may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with any other provision of the Revised Code.”

{¶16} As noted by the trial court, Chapter 955, as amended by House Bill 14, is part of state-wide comprehensive legislation for regulating ownership of dogs and applies to all parts of the state alike and “does not differentiate between regions of the state or contrast townships versus counties versus towns or cities.” R.C. Chapter 955 applies uniformly to the whole state without exception.

{¶17} However, the trial court found that the third prong of the *Canton* test was not met. As is stated above, under such prong, the statute must “set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulation.” The trial court specifically found that the provisions of R.C. 955.221(B)(3) “does not set forth ‘police, sanitary, or similar regulations’ so much as it establishes a definition” and that R.C. 955.221(B)(3) both grants and limits the legislative authority of municipalities.

{¶18} However, as noted by the Court in *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 at paragraph 27, “[S]ections within a chapter will not be considered in isolation when determining whether a general law exists. See

Clermont Environmental Reclamation Co. v. Wiederhold (1982), 2 Ohio St.3d 44, 2 OBR 587, 442 N.E.2d 1278. All sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally. *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 38.”

{¶19} As noted by the Ohio Supreme Court in *State v. Anderson*, 57 Ohio St.3d 168, 170, 566 N.E.2d 1224, [a]mong the regulations which have been upheld as legitimate exercises of police power are those regulations addressing the ownership and control of dogs.” See also *Youngstown v. T aylor*, 123 Ohio St. 3d 312, 2009-Ohio-4184, 914 N.E.2d 1026 at paragraph 9 in which the Ohio Supreme Court held as follows:

Although dogs are “private property to a qualified extent, they are subject to the state police power, and ‘might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. * * * [L]egislatures have broad police power to regulate all dogs so as to protect the public against the nuisance posed by a vicious dog.’ ” *135 *State v. Anderson* (1991), 57 Ohio St.3d 168, 170, 566 N.E.2d 1224, quoting *Sentell v. New Orleans & Carrollton RR. Co.* (1897), 166 U.S. 698, 701–704, 17 S.Ct. 693, 41 L.Ed. 1169.

{¶20} Moreover, as noted by appellant, “no provision of Chapter 955 at issue in this case relating to the designation of dogs as vicious, dangerous, or a nuisance, or to the ownership, keeping, or harboring of dogs, grants local governments any degree of authority.” R.C. 955.22 contains no language specifically granting or limiting municipal

action. We find, based on the foregoing, that Chapter 955 sets forth police regulations and does not purport to grant or limit the legislative power of a municipality.

{¶21} The last prong of the *Canton* test, which was not addressed by the trial court, requires that Chapter 955, as amended by House Bill 14, prescribe a rule of conduct on citizens generally. We find that it does because it establishes rules that govern all Ohio residents who own dogs.

{¶22} Having found that Ohio Revised Code Chapter 955 is a general law, we must next consider whether or not the Reynoldsburg Ordinances are in conflict with Chapter 955, as amended by House Bill 14. The trial court never reached such issue. “[I]n order for such a conflict [between state laws and local ordinances] to arise, the state statute must positively permit what the ordinance prohibits, or vice versa, regardless of the extent of state regulation concerning the same object.” *Cincinnati v. Hoffman*, 31 Ohio St.2d 163, 169, 285 N.E.2d 714 (1972).

{¶23} Reynoldsburg Codified Ordinance Section 501.01(m)(5) states that a dog that “[b]elongs to a breed that is commonly known as pit bull dog” is a “vicious dog.” Reynoldsburg Codified Ordinance Section 505.35(a) provides that “[n]o person shall keep, or harbor any vicious dog... as defined in section 505.01(m) within the municipality.” Thus, all pit bull dogs are labeled as “vicious” without regard to conduct and keeping or harboring them is prohibited.

{¶24} Prior to House Bill 14, R.C. 955.11(A)(6)(a)(iii) provided, in part, that a “vicious dog” meant “a dog that, without provocation....: (iii) Belongs to a breed that is commonly known as a pit bull dog...” R.C. 955.221(B)(3), which was not amended, states that a “municipal corporation may adopt and enforce ordinances to control dogs within

the municipal corporation that are not otherwise in conflict with any other provision of the Revised Code.”

{¶25} House Bill 14, which became effective May 22, 2012, repealed the automatic inclusion of a pit bull as a vicious dog. As is stated above, House Bill 14 amended Section 955.11(A)(6) to define a “vicious dog” as follows:

(6)(a) “Vicious dog” means a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person.

(b) “Vicious dog” does not include either of the following:

- (i) A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
- (ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer of the dog.

{¶26} While Reynoldsburg’s Ordinances prohibit the ownership of pit bulls outright, Ohio Revised Code Chapter 955 has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog. Under Ohio law, Ohio residents may keep or own any dog they choose, provided that if the dog is determined to be “dangerous” as defined in R.C. 955.11(A)(1)(a), the owner must comply with R.C. 955.22. Thus, while a pit bull is automatically considered “vicious” under the Reynoldsburg Ordinances and ownership of the same is prohibited, a pit bull may or may not be considered “vicious” under Ohio Revised Code Chapter 955 based on its conduct. We find, on such basis, that there is a

conflict between Reynoldsburg's pit bull Ordinances and Chapter 955, as amended by House Bill 14. The Ordinances prohibit that what is permitted by Ohio statutes (ownership of dogs identified as pit bulls). See *Lima v. Stepleton*, 3rd Dist Allen. No. 1–13–28, 2013 -Ohio- 5655, 5 N.E.3d 721.

{¶27} Based on the foregoing, we find that Revised Code Chapter 955 is a general law and that the Ordinances at issue in this case conflict with state law and exceed appellee's authority under the Home Rule Amendment.

{¶28} Appellant's two assignments of error are, therefore, sustained.

{¶29} Accordingly, the judgment of the Licking County Municipal Court is reversed and, pursuant to App.R. 12(B), final judgment is entered in favor of appellant.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

CITY OF LIMA,

PLAINTIFF-APPELLEE,

CASE NO. 1-13-28

v.

THEODORE T. STEPLETON,

O P I N I O N

DEFENDANT-APPELLANT.

**Appeal from Lima Municipal Court
Trial Court No. 12CRB03487**

Judgment Reversed and Cause Remanded

Date of Decision: December 23, 2013

APPEARANCES:

***Michelle L. Baumeister* for Appellant**

***Tammie K. Hursh* for Appellee**

ROGERS, J.

{¶1} Defendant-Appellant, Theodore Stepleton, appeals the judgment of the Lima Municipal Court convicting him of failure to confine a vicious dog and fining him \$50.00. On appeal, Stepleton argues that the trial court erred by: (1) failing to dismiss the criminal complaint due to lack of proper service; (2) denying him an opportunity to rebut the evidence suggesting that the subject dog was vicious in an administrative hearing; (3) ruling that the City of Lima’s vicious dog ordinance does not conflict with the Revised Code’s treatment of vicious dogs; (4) finding that the subject dog was “vicious” under the City’s ordinance; and (5) purportedly ignoring the Revised Code’s treatment of vicious dogs when performing its home rule analysis. For the reasons that follow, we reverse the trial court’s judgment.

{¶2} On November 19, 2012, a criminal complaint was filed in Lima Municipal Court charging Stepleton with one count of failure to confine a vicious dog in violation of Lima City Ordinance (“LCO”) 618.125(D), a minor misdemeanor. The complaint arose from an incident on November 16, 2012 in which Stepleton allegedly failed to keep his dog confined on his property. At the November 30, 2012 arraignment hearing, Stepleton pleaded not guilty to the count charged in the complaint.

{¶3} On January 3, 2013, Stepleton moved to dismiss the criminal complaint. The basis for the motion was the alleged lack of sufficient process and the purported conflict between LCO 618.125(D) and the Revised Code, which rendered the ordinance unconstitutional. On that same day, Stepleton requested a hearing to rebut evidence suggesting that his dog was “vicious.”

{¶4} On January 14, 2013, the magistrate granted Stepleton’s request for a hearing regarding the dog’s status as “vicious.” In granting the request, the magistrate “order[ed] a hearing date be set to hear evidence as to the proper designation of [Stepleton’s] dog * * *. The hearing date shall precede any date for the trial [in this matter].” (Docket No. 10). However, there is no indication in the record before us that the hearing was either scheduled for a specific date or actually held.

{¶5} On March 1, 2013, the City filed its response to Stepleton’s motion and request.

{¶6} On March 18, 2013, the magistrate issued a decision denying Stepleton’s motion to dismiss. It found that LCO 618.175(D) was not in conflict with the Revised Code and was therefore constitutional under the Home Rule Amendment to the Ohio Constitution. Stepleton filed objections to the

magistrate's decision on March 26, 2013. The trial court, however, overruled Stepleton's objections and adopted the magistrate's decision.¹

{¶7} On April 30, 2013, Stepleton withdrew his not guilty plea and instead entered a no contest plea to the criminal complaint.² On May 3, 2013, the magistrate issued a decision journalizing Stepleton's conviction and his \$50.00 fine. The magistrate's decision also included a separate section, signed by the trial court, indicating that it was the trial court's judgment to adopt the magistrate's decision as its own.

{¶8} Stepleton timely appealed the trial court's judgment, presenting the following assignments of error for our review.

Assignment of Error No. I

MUNICIPAL COURT ERRED BY NOT DISMISSING [THE] CASE DUE TO IMPROPER SERVICE, AS REQUIRED UNDER STATE LAW.

Assignment of Error No. II

MUNICIPAL COURT ERRED BY DENYING DEFENDANT AN OPPORTUNITY TO REBUT THE PRIMA FACIE EVIDENCE (ACCORDING TO LOCAL ORDINANCE) THAT THE DOG IN QUESTION IS VICIOUS WITHOUT AN ADMINISTRATIVE HEARING, AS REQUIRED BY STATE LAW (THUS, AUTOMATICALLY SUBJECTING APPELLANT TO EXTRA REQUIREMENTS BEFORE ANY HEARING).

¹ The trial court's adoption of the magistrate's decision was based on its independent review of only the briefs offered by the parties because a transcript of the hearing on Stepleton's motion was not prepared.

² The record does not contain a transcript of the change of plea hearing.

Assignment of Error No. III

MUNICIPAL COURT ERRED BY RULING THAT LIMA'S LOCAL DOG ORDINANCE IS NOT IN CONFLICT WITH THE NEW OHIO REVISED CODE STATUTES WHICH RE-DEFINES [SIC] A VICIOUS/DANGEROUS/NUISANCE DOG AND WHICH REQUIRES [SIC] AN OPPORTUNITY FOR AN ADMINISTRATIVE HEARING BEFORE THE OWNER IS CHARGED WITH A CRIMINAL OFFENSE.

Assignment of Error No. IV

MUNICIPAL COURT ERRED BY NOT DISMISSING THE CASE BASED ON LIMA ORDINANCE WHICH IS UNCLEAR, ASSUMING THE DOG IN QUESTION HAS BEEN DEEMED VICIOUS, NEEDS TO BE CONTAINED ON ONE'S PROPERTY.

Assignment of Error No. V

MUNICIPAL COURT ERRED BY RULING THAT HOME RULE ALLOWS THE CITY OF LIMA TO IGNORE THE NEW OHIO REVISED STATUTES.

{¶9} Due to the nature of the assignments of error, we elect to address them out of order and to discuss the third and fifth assignments together and the first, second, and fourth assignments of error together.

Assignments of Error Nos. III & V

{¶10} In his third and fifth assignments of error, Stepleton essentially argues that his conviction should be reversed because LCO 618.125(D) is unconstitutional under the Home Rule Amendment to the Ohio Constitution. Specifically, Stepleton asserts that LCO 618.125(D) conflicts with certain

provisions of R.C. Chapter 955. As such, he claims that the trial court erred in applying LCO 618.125(D). We agree.

Presumption of Constitutionality

{¶11} All legislative enactments, including ordinances enacted by a municipality, are entitled to a “strong presumption” of constitutionality. *Village of Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 71 (1984); accord *City of Columbus v. Kim*, 118 Ohio St.3d 93, 2008-Ohio-1817, ¶ 18; *City of Xenia v. Schmidt*, 101 Ohio St. 437 (1920), paragraph one of the syllabus. We grant such deference to legislative enactments because “the local legislative body is familiar with local conditions and is therefore better able than the courts to determine the character and degree of regulation required.” *Albrecht* at 71. Due to this presumption, the party challenging an ordinance has the burden of demonstrating, beyond a reasonable doubt, that the law is unconstitutional. *Hilton v. City of Toledo*, 62 Ohio St.2d 394, 396 (1980). Moreover, when considering the constitutionality of a legislative enactment, we are called to “liberally construe [it] to save it from constitutional infirmities.” *State v. Robinson*, 44 Ohio App.3d 128, 130 (12th Dist. 1989). However, in applying our liberal construction, we are not permitted to “simply rewrite laws in order to render them constitutional.” *Id.*

Home Rule Under the Ohio Constitution

{¶12} The Ohio Constitution provides municipalities with “the exclusive power to govern themselves, as well as additional power to enact local health and safety measures not in conflict with the general law * * *.” *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶ 26; *see also Cleveland Tel. Co. v. City of Cleveland*, 98 Ohio St. 358, 380-81 (1918) (describing the general contours of the authority granted to municipalities under the Home Rule Amendment). This authorization for municipalities is contained in Article XVIII, Section 3 of the Ohio Constitution, which provide as follows:

Municipalities shall have authority to exercise all power of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.

When considering the language of Section 3 of Article XVIII, it is important to note that “[t]he words ‘as not in conflict with general laws’ * * * modify the words ‘local police, sanitary and other similar regulations’ but do not modify the words ‘powers of local self-government.’ ” *Rispo Realty & Dev. Co. v. City of Parma*, 55 Ohio St.3d 101, 103 (1990). As such, Section 3 “preserve[s] the supremacy of the [S]tate in matters of ‘police, sanitary and other similar regulations’ while granting municipalities sovereignty in matters of local self-government, limited by

other constitutional provisions.” *City of Canton v. Whitman*, 44 Ohio St.2d 62, 65 (1975).

{¶13} Soon after the Home Rule Amendment’s adoption in 1912, the Supreme Court of Ohio stated that “[t]he object of the home rule amendment was to permit municipalities to use [their] intimate knowledge and determine for themselves in the exercise of all powers of local self-government how * * * local affairs should be conducted.” *Froelich v. City of Cleveland*, 99 Ohio St. 376, 385 (1919). The Court has continually identified this principle as the basic purpose of the Home Rule Amendment. *See, e.g., N. Ohio Patrolmen’s Benevolent Assn. v. City of Parma*, 61 Ohio St.2d 375, 379 (1980) (“The purpose of the Home Rule Amendments was to put the conduct of municipal affairs in the hands of those who know the needs of the community best, to-wit, the people of the city.”).

{¶14} Based on the expansive language of the Home Rule Amendment, reviewing courts have previously recognized that the amendment “grants a significant degree of sovereignty” to municipalities. *City of Tiffin v. McEwen*, 130 Ohio App.3d 527, 531 (3d Dist. 1998). Further, because of the important policy goals served by the Home Rule Amendment and the autonomy it secures for municipal citizens, we must be “sensitive to the home rule authority of municipalities.” *The Payphone Assn. of Ohio v. City of Cleveland*, 146 Ohio App.3d 319, 328 (8th Dist. 2001). As a result, the general laws of the State and

the challenged ordinance should be harmonized as much as the language allows. *N. Ohio Patrolmen* at 377. Nevertheless, we must also recognize that municipalities' home rule authority "is not absolute." *Tiffin* at 531; *accord Weir v. Rimmelin*, 15 Ohio St.3d 55, 56 (1984) ("The Home Rule Amendment to the Ohio Constitution confers a significantly high degree of sovereignty upon municipalities. However, the amendment does not provide cities the absolute power of self-government.").

{¶15} The Supreme Court of Ohio has issued a three-part test for courts to apply when determining whether a municipal ordinance is constitutionally sound under the Home Rule Amendment. This test was most recently defined as follows:

The first step is to determine whether the ordinance involves an exercise of local self-government or an exercise of local police power. If the ordinance relates solely to self-government, the analysis ends because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. The second step, which becomes necessary only if the local ordinance is an exercise of police power, requires a review of the state statute to determine whether it is a general law under the court's four-part test announced in *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus. If the statute qualifies as a general law under this test, the final step is undertaken to determine if the ordinance is in conflict with the statute.

In re Complaint of Reynoldsburg, 134 Ohio St.3d 29, 2012-Ohio-5270, ¶ 24.

Here, the City has conceded that LCO 618.125(D) is an exercise of the police

power and that R.C. Chapter 955 is a general law. Appellee's Brief, p. 8. Thus, the only issue before us is whether LCO 618.125(D) conflicts with R.C. Chapter 955.

Applicable Tests for Conflict Analysis

{¶16} Conflicts between local ordinances and state statutes may arise in a variety of circumstances. As such, three different tests may be employed to determine whether such an ordinance/statute conflict exists. *See generally Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 29-37 (describing the three tests). This matter implicates the “contrary directives” test, *id.* at ¶ 29, which requires a reviewing court to consider “whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa,” *Village of Struthers v. Sokol*, 108 Ohio St. 263 (1923), paragraph two of the syllabus. If we answer this question in the negative, then no conflict exists. *See id.* at 268 (“No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.”). When applying the contradictory directives test, we note that the degree of state regulation on the same issue as the local ordinance is immaterial. *See City of Cincinnati v. Hoffman*, 31 Ohio St.2d 163, 169 (1972) (“[I]n order for * * * a conflict to arise, the state statute must positively permit what the ordinance prohibits, or vice versa, regardless of the extent of state regulation concerning the same object.”).

{¶17} Before applying this test, we must address the proper scope of our conflict analysis. Here, Stepleton argues that LCO 618.125(D) conflicts with R.C. 955.11(A)(1), 955.221(B)(3), and 955.222(A). After reviewing these Revised Code provisions, we find that there are two difficulties with fitting them into a proper conflict analysis under the Home Rule Amendment. First, R.C. 955.221(B)(3) is inapplicable in a conflict analysis here insofar as it relates to a direct conflict between LCO 618.125 and the Revised Code. Rather than being a potential source of a direct conflict, R.C. 955.221(B)(3) is merely a truism that reasserts the Ohio Constitution’s limitation of municipalities’ home rule authority over police regulations. *Compare* Ohio Constitution, Article XVIII, Section 3 (“Municipalities shall have authority * * * to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.”) *with* R.C. 955.221(B)(3) (“A municipal corporation may adopt and enforce ordinances within the municipal corporation that are not otherwise in conflict with any other provisions of the Revised Code.”). Accordingly, we disregard R.C. 955.221(B)(3) when considering a direct conflict with LCO 618.125(D).³

³ This provision may be pertinent to an indirect conflict under the “conflict by implication” test since R.C. 955.221(B)(3) relates to the General Assembly’s intent to control the subject exclusively. *Mendenhall* at ¶ 31-32. However, unlike the dissent, we do not believe this matter implicates this test for conflicts so the provision is ultimately immaterial in our analysis.

{¶18} Second, both R.C. 955.222(A), which provides for an administrative determination of a dog’s designation as “dangerous,” and the statutory definition of “dangerous dogs” in R.C. 955.11(A)(1), are not proper starting points for the conflict analysis in this matter. In *City of Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, the parties and the court of appeals made the statutory definition contained in R.C. 955.11(E) “the focal point of their inquiry.” *Id.* at ¶ 11. However, the Supreme Court declared that rather than focusing on the statutory definitions, the parties should have focused on the statutory prohibition contained in R.C. 955.17(A) and the relevant definitions and other provisions that influenced its meaning. *Id.* at ¶ 12.

{¶19} We follow *Baskin*’s guidance in forming our analysis here. LCO 618.125(D) essentially proscribes individuals from allowing vicious dogs to go unconfined on their properties. The ordinance also has particular meanings for the terms “vicious dogs” and “unconfined.” After reviewing R.C. Chapter 955, we find that LCO 618.125(D)’s closest analogue is R.C. 955.22(D)(1), which likewise has its own particular definitions and counterparts within the Revised Code. As such, we start our conflict analysis by comparing LCO 618.125(D) with R.C. 955.22(D)(1) as opposed to the statutory sections cited by Stepleton.

Relevant Precedents in Conflict Analysis

{¶20} When considering the possible conflict between LCO 618.125(D) and R.C. 955.22(D)(1), we are unable to find much helpful guidance from the Ohio Supreme Court or other courts. In *City of Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, the Supreme Court of Ohio addressed the narrow issue of “whether a Youngstown ordinance that requires vicious dogs to be confined and requires the [S]tate to prove at trial that the dog is vicious or dangerous as an element of the offense violates procedural due process.” *Id.* at ¶ 1. As a result of this narrow issue, the Court merely held that the Youngstown ordinance “is rationally related to the city’s legitimate interest in protecting citizens from vicious dogs and is therefore constitutional.” *Id.* at syllabus. As noted by the dissenting justices, the majority did not address the Youngstown ordinance’s consistency with the Home Rule Amendment “in large part because the parties did not argue the issue.” *Id.* at ¶ 35 (Pfeifer & Lanzinger, J.J., dissenting).⁴ Since *Traylor* did not involve a home rule analysis, we are unable to find that it controls here.

{¶21} In support of its argument, the City has cited to a variety of other cases upholding local ordinances that regulate the keeping of vicious dogs.

⁴ We note that the dissenting justices in *Traylor* indicated they believed that the Youngstown ordinance, which is quite similar to the ordinance implicated here, was unconstitutional under the Home Rule Amendment. *Traylor* at ¶ 34 (Pfeiffer & Lanzinger, J.J., dissenting).

However, like *Traylor*, many of these cases are of limited import since they do not apply a home rule analysis to vicious dog ordinances in relation to the current version of R.C. Chapter 955. See *City of Columbus v. Kim*, 118 Ohio St.3d 93, 2008-Ohio-1817, ¶ 7-11 (upholding municipal ordinance regarding animal noise against a void for vagueness challenge); *City of Toledo v. Tellings*, 114 Ohio St.3d 278, 2007-Ohio-3724, ¶ 30 (upholding municipal ordinance regarding confinement of vicious dogs against procedural due process, substantive due process, equal protection, and void for vagueness challenges); *City of Steubenville v. Thorne*, 7th Dist. Jefferson No. 08 JE 3, 2008-Ohio-6299, ¶ 2 (upholding municipal ordinance regarding harboring of barking dog against void for vagueness and overbreadth challenges); *State v. Conte*, 10th Dist. Franklin No. 07AP-33, 2007-Ohio-5924, ¶ 18 (upholding vicious dog ordinance against due process challenge); *Singer v. City of Cincinnati*, 57 Ohio App.3d 1 (1st Dist. 1990), paragraph three of the syllabus (upholding municipal ordinance regarding ownership of pit bulls against equal protection and due process challenges).

{¶22} The only cases that we find in which courts have explicitly determined whether a dog ordinance violates the Home Rule Amendment are *City of Akron v. Ross*, 9th Dist. Summit No. 20338, 2001 WL 773235 (July 11, 2001), and *Tarquinio v. City of Lakewood*, N.D. Ohio No. 1:11 CV 325, 2011 WL 4458165 (Sept. 23, 2011). We discuss each of these cases below in turn.

{¶23} In *Ross*, the defendant was convicted of violating Akron City Code 92.25(B)(4), which prohibited owning, harboring, or possessing a dog that had bitten a person while off the owner's premises. * 1. The defendant appealed, asserting that the ordinance was unconstitutional under the Home Rule Amendment since it conflicted with certain provisions of R.C. Chapter 955. *Id.* at * 2. The Ninth District rejected the defendant's constitutionality challenge and found no conflict. *Id.* at * 4. Specifically, the court found no conflict even though the ordinance inculpated owners for their dogs' first bites while the Revised Code did not. *Id.* The court reasoned that "the Revised Code simply does not provide a penalty for the first bite of a dog; it does not permit or encourage it. * * * We can discern no conflict here, as the Revised Code simply does not speak to the issue of the first bite of a non-vicious dog; rather this issue is left to be resolved by local enactment pursuant to R.C. 955.221." *Id.*⁵

{¶24} Meanwhile, in *Tarquinio*, the plaintiff sought a declaratory judgment that a local ordinance banning the keeping of pit bull dogs was unconstitutional under the Home Rule Amendment. * 1. The federal district court for the Northern District of Ohio, however, denied the requested relief and instead found that the ordinance was constitutional. *Id.* The district court reasoned as follows regarding

⁵ The Ninth District also rejected the defendant's argument that there was an impermissible conflict due to the differing levels of criminal and civil liability imposed under the ordinance and Revised Code. *Ross*, *supra*.

the purported conflict between the ordinance and R.C. Chapter 955's requirements that owners of vicious dogs take certain safety precautions:

The state statute sets forth limitations and obligations that must be undertaken by any person who owns or harbors a vicious dog, which under the statute includes all pit bulls, including restrictions on how the dog must be contained, leashed, and handled. The state statute does not explicitly permit pit bulls, or any dogs for that matter, to be owned or harbored by every state resident. Therefore the ordinance banning pit bulls [sic] dogs from Lakewood does not prohibit anything that state law explicitly permits.

Id. at * 2.

{¶25} The district court also found no constitutional infirmity stemming from the ordinance's and Revised Code's differing definitions of pit bull dog. Former R.C. 955.11 indicated that R.C. Chapter 955's provisions applied to a dog that "[b]elongs to a breed that is commonly known as pit bull dog." However, the ordinance's definition of pit bull dog was " 'any dog known as pit bull, pit bull dog, or pit bull terrier,' which [was] further defined as 'any dog of mixed breed which has the appearance and characteristics of being predominantly of such breed.' " *Id.* at * 3. The district court viewed the statute's and ordinance's language to have, "in all practicality, * * * the same effect." *Id.* The district court also noted that "[t]he state statute does not limit the designation of dangerous [or] vicious dogs to a particular breed or type of dog, nor to any one particular

behavior. Therefore, the [ordinance] does not prohibit something that the state statute explicitly or implicitly allows.” *Id.* at * 4.

{¶26} While *Ross* and *Tarquinio* are helpful in illustrating the type of statutory distinctions between municipal dog ordinances and provisions in R.C. Chapter 955 that do not produce conflicts, we must note that there are several deficiencies in both cases that preclude us from considering them as being on-point. First, *Tarquinio* is a federal case interpreting the Ohio Constitution. This is problematic because Ohio courts, not federal courts, are the final arbiters of our Ohio Constitution’s proper interpretation. See *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 707 (10th Dist. 1993) (“[T]his court is completely free to interpret the Ohio Constitution without adherence to the outcome of court decisions in similar cases on the federal level.”). Second, neither case specifically interprets LCO 618.125(D) or an ordinance with substantially similar language to it. And, finally, neither case implicates the newly revised provisions of R.C. Chapter 955. Nevertheless, due to the dearth of other relevant case law, we must employ the illustrations of *Ross* and *Tarquinio*, as well as the home rule analysis principles announced by the Ohio Supreme Court, in resolving this matter.

LCO 618.125(D) and R.C. 955.22(D)(1)

{¶27} LCO 618.125(D) provides that “[n]o person who owns, harbors, or has the care, custody, or control of a vicious dog shall permit such dog to go

unconfined on the premises where such dog is located.” LCO 618.125(C)(1), meanwhile, defines a “vicious dog” as follows:

- (a) Any dog with a propensity, tendency, or disposition to attack, bite, cause injury to, or which otherwise endangers the safety of, or which attempts to attack, bite, cause injury to, or endanger the safety of, a human being or domestic animal; or,
- (b) Any dog which attacks, bites, causes injury to, or otherwise endangers the safety of, a human being or other domestic animal one or more times, with or without provocation; or
- (c) Any dog which belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, custody, control, or harboring of such a breed of dog shall be prima facie evidence of the ownership, keeping, custody, control, or harboring of a vicious dog.

The City also defines “unconfined” as follows:

- (a) When a vicious dog is indoors, “unconfined” shall mean not being restrained in a manner that will prevent the dog from being able to come into physical contact with anyone lawfully in such premises, unless the person lawfully in such premises has specifically consented to such dog being unconfined while in his or her presence.
- (b) When a vicious dog is outdoors, “unconfined” shall mean not being confined in a securely enclosed and locked pen or structure which prevents the dog from escaping therefrom. Such pen or structure must have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground not less than one foot deep.

LCO 618.125(C)(2).

R.C. 955.22(D)(1) similarly provides, in pertinent part, as follows:

[N]o owner, keeper, harbinger, or handler of a dangerous dog shall fail to do * * * the following:

While the dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top.

Although LCO 618.125(D) refers to “vicious dogs,” the Revised Code uses the term “dangerous dog” to refer to the same type of dogs as LCO 618.125(D). R.C. 955.11(A)(1) defines “dangerous dog” as follows:

(a) “Dangerous dog” means a dog that, without provocation and subject to division (A)(1)(b) of this section, has done any of the following:

(i) Caused injury, other than killing or serious injury, to any person;

(ii) Killed another dog;

(iii) Been the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.

(b) “Dangerous dog” does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

{¶28} “Without provocation” means that the “dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.” R.C. 955.11(A)(7).

{¶29} After reading LCO 618.125(D) and the relevant definitions of the terms used in it, we find that it essentially requires dog owners to keep “vicious dogs” in a “locked pen that has secure sides and a secure top” when the dog is outdoors, LCO 618.125(C)(2)(b), and “restrained” when the dog is indoors, LCO 618.125(C)(2)(a). This general requirement, taken at face value, is parallel to R.C. 955.22(D)(1)’s requirement that dog owners keep “dangerous dogs” in a “locked pen that has a top, locked fenced yard, or other locked enclosure that has a top.”

{¶30} However, when we delve more into the statutory language of LCO 618.125(D) and R.C. 955.22(D)(1), we find that LCO 618.125(D) proscribes conduct that is allowed by R.C. 955.22(D)(1). The ambit of “vicious dogs” is much more expansive under LCO 618.125(D) than the ambit of “dangerous dogs” under R.C. 955.22(D)(1). Pursuant to LCO 618.125(C)(1), vicious dogs include those with the propensity to cause injury, those that have previously attacked or endangered the safety of a person and caused injury, and those that belong to the pit bull breed. Supplying this definition to LCO 618.125(D), we find that the ordinance forbids the following dog owners, among others, from failing to confine a “vicious dog” in a secured pen:

- (1) The owner of a pit bull dog whose dog has never previously injured a person or killed another dog or was unrestrained on three previous occasions in violation of R.C. 955.22(C);

- (2) The owner of a dog with the disposition to attack, bite, cause injury to, or otherwise endanger the safety of a person or other animals, but has yet to actually do so;
- (3) The owner of a police dog that has previously injured a person or killed another dog in the course of assisting law enforcement with official duties;
- (4) The owner of a dog, who is lawfully engaged in hunting or is training his or her dog for the purpose of hunting;⁶ and
- (5) The owner of a dog who has previously injured a person or killed another dog, but the dog was provoked.

{¶31} In contrast, R.C. 955.11(A)(1) only defines dogs that, “without provocation,” have “caused injury” to a person, “killed another dog,” or have been unrestrained in violation of R.C. 955.22(C) on at least three previous occasions as “dangerous.” R.C. 955.11(A)(1) also includes a critical exemption for police dogs who injured a person or killed another dog while assisting law enforcement officers with their official duties. R.C. 955.11(A)(1)(b). Further, R.C. 955.22(D) contains an exemption for dogs that are lawfully engaged in training for the

⁶ We note that in Lima, an owner of a dog can never be *lawfully* engaged in hunting, since hunting is prohibited within the municipality. LCO 618.13. However, Lima does not have an ordinance which prohibits the training of animals to hunt within its municipal borders.

purpose of hunting. Thus, R.C. 955.22(D)(1) allows the dog owners described in the examples above to forego confining their dogs in a secured pen.⁷

{¶32} The dissent limits its analysis to whether LCO 618.125(D) conflicts with R.C. 955.22(D)(1), excluding the definitional sections contained elsewhere in both the ordinance and the Revised Code. In support of this position, the dissent, like us, relies upon *Baskin*. However, while we find that *Baskin* is distinguishable from the present matter, the dissent misinterprets *Baskin* and finds it analogous.

{¶33} In *Baskin*, the Revised Code prohibited carrying a concealed semiautomatic firearm capable of firing over 31 rounds, while the municipal ordinance proscribed carrying a semiautomatic firearm capable of firing over 10 rounds. 2006-Ohio-6422, ¶ 17-18. To find that a conflict existed, the statute had to have been interpreted “to not only prohibit the possession of any semiautomatic firearm that can fire more than 31 rounds without reloading, but to also *imply a right* to the possession of any semiautomatic firearm that can fire up to 31 rounds without reloading.” (Emphasis added.) *Id.* at ¶ 21. As the Court could not find that the right was implied, the statute and ordinance were not in conflict. *Id.* at ¶ 25. Further, the Ohio Supreme Court noted that there was no provision in the

⁷ We also note that the former version of R.C. Chapter 955 defined pit bulls as “vicious dogs,” but that definition was repealed in 2012 by Am.Sub.H.B. No. 14. The General Assembly’s explicit removal of the reference to “pit bulls” in R.C. Chapter 955 clearly signals its intent that pit bulls, which are still defined as “vicious dogs” in LCO 618.125, be exempted from confinement requirements like LCO 618.125(D) and R.C. 955.22(D)(1) unless they previously injured a person or killed another dog.

Revised Code which manifested an “intent to prevent municipalities from regulating the possession of semiautomatic firearms that hold fewer than 32 rounds.” *Id.* at ¶ 23. Nor was there a provision which stated that “municipalities may not prohibit the possession of lower-capacity firearms that are prohibited by the statute.” *Id.*

{¶34} *Baskin* is distinguishable to the present matter because the Revised Code expressly exempts certain dogs from being subject to confinement if: (1) it had never previously injured a person or killed another dog or was unrestrained on three previous occasions in violation of R.C. 955.22(C); (2) a dog with the disposition to attack, bite, cause injury to, or otherwise endanger the safety of a person or other animal, but has yet to actually do so; (3) a police dog that has previously injured a person or killed another dog in the course of assisting law enforcement with official duties; (4) a dog that is lawfully engaged in training for the purposes of hunting; and (5) a dog that injures a person or kills another animal but acted in response to provocation. Since LCO 618.125 prohibits conduct which the Revised Code expressly permits, it is in direct conflict.

{¶35} Based on these manifest differences in the language of LCO 618.125(D) and R.C. 955.22(D)(1), we find that the two provisions submit Lima city residents to different standards of conduct as the ordinance plainly proscribes conduct that is allowed by state statute. As such, we must conclude that under the

contrary directives test, there is an impermissible conflict between LCO 618.125(D) and R.C. 955.22(D)(1) that renders LCO 618.125(D) violative of the Home Rule Amendment.

{¶36} This matter is also distinguishable from *Ross* and *Tarquinio*, which compels us to reach the opposite conclusion from the ones reached in those cases. Unlike *Ross* and *Tarquinio*, the implicated ordinance in this matter explicitly proscribes that which the Revised Code explicitly allows, as discussed above. Further, *Tarquinio* is also distinguishable because the new version of R.C. Chapter 955 has a significantly different definition of dangerous and vicious dogs. The new statute, unlike the one addressed in *Tarquinio*, does not in all practicality have the same effect as LCO 618.125(D). Due to these clear distinctions from this matter, we find that *Ross* and *Tarquinio* do not support a finding that LCO 618.125(D) is constitutional.

{¶37} In sum, LCO 618.125(D) conflicts with R.C. 955.22(D)(1) and is therefore unconstitutional under the Home Rule Amendment to the Ohio Constitution. The trial court erred by finding otherwise and applying LCO 618.125(D). Thus, Stepleton's conviction under LCO 618.125(D) was improper and we must reverse both his conviction and his sentence.

{¶38} Accordingly, we sustain Stepleton's third and fifth assignments of error.

Assignments of Error Nos. I, II, & IV

{¶39} The resolution of Stepleton’s third and fifth assignments of error renders his remaining assignments of error moot and we consequently decline to address them. *See* App.R. 12(A)(1)(c).

{¶40} Having found error prejudicial to Stepleton in his third and fifth assignments of error, we reverse the trial court’s judgment and remand this matter for further proceedings consistent with this opinion.

*Judgment Reversed and
Cause Remanded*

SHAW, J., concurs.
/jlr

PRESTON, P.J., Dissents

{¶37} I respectfully dissent from the majority’s conclusion that LCO 618.125(D) violates Section 3, Article XVIII of the Ohio Constitution, the “Home Rule Amendment.” The majority errs in concluding that LCO 618.125(D) violates the contrary directives test, and the ordinance also does not violate the conflict by implication test, because the General Assembly did not intend R.C. 955.22 to govern dog confinement exclusively. LCO 618.125(D) does not, therefore, conflict with R.C. 955.22(D)(1) for purposes of the Home Rule Amendment.

{¶38} The only contested issue here is whether LCO 618.125(D) conflicts with R.C. 955.22(D)(1). *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus. The majority states that three separate tests may be employed to determine if a conflict exists, and then states that LCO 618.125(D) violates the “contrary directives” test. Majority Op. at ¶ 16, 35. The first step in determining whether a conflict exists is to identify the actual *conduct* that the statute and the ordinance target. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 30. Generally, LCO 618.125(D) prohibits the same type of *conduct* as R.C. 955.22(D)(1)—a person’s failure to confine a dog that is legislatively defined as “dangerous” (state statute) or “vicious” (local ordinance). Because the two legislative enactments prohibit the same conduct, they do not violate the contrary directives test. *Mendenhall* at ¶ 29-30.

{¶39} While LCO 618.125(C)(2) defines “confinement” more rigorously than R.C. 955.22(D)(1), and LCO 618.125(C)(1) defines “vicious dogs” more broadly than R.C. 955.11(A)(1)(a), that does not create a conflict under the contrary directives test. Home Rule enables a municipality such as Lima to enact ordinances that enlarge upon or supplement state law. *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, ¶ 23-24. “[A]n ordinance [that] enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own

prescription.”” *Id.* at ¶ 38 (O’Connor and Stratton, J.J., concurring) (quoting 56 American Jurisprudence 2d (1971) 408–409, Municipal Corporations, Section 374.); *Mendenhall* at ¶ 37, 42 (“complimentary” or “supplemental” ordinance does not conflict with state law).

{¶40} To find a conflict, the majority focuses not on the proscribed conduct but on dog owners who are affected differently under LCO 618.125(D) by examining the differing “confinement” requirements and differing definitions of “dangerous dog” and “vicious dog.” Majority Op. at ¶ 27-31. This is strikingly similar to the Appellate Court’s flawed analysis in *Baskin*. 158 Ohio App.3d 539, 2004-Ohio-5055, ¶ 14-23 (Painter, J., dissenting), overruled by *Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422.⁸ The majority also makes the same erroneous assumption as the Appellate Court made in *Baskin*—that by proscribing one form of conduct (i.e., failing to confine a “dangerous dog” is prohibited), the State has licensed all conduct outside of the specific proscription (i.e., failing to confine a dog other than a “dangerous dog” is permissible). 2004-Ohio-5055, at ¶ 14-23 (Painter, J., dissenting); 2006-Ohio-6422, at ¶ 21. This analytical assumption indicates that a conflict by implication analysis was required, but the majority did

⁸ The majority states “the two provisions submit Lima city residents to different standards of conduct as the ordinance plainly proscribes conduct that is allowed by state statute.” Majority Op. at ¶ 35. Yet in *Baskin*, the local gun ordinance was held constitutional, in part, because “if a person is in compliance with the city’s ordinance, he is also in compliance with the statute.” 2006-Ohio-6422, at ¶ 46. The same is true here: if a person is in compliance with LCO 618.125(D), he is also in compliance with R.C. 955.22(D).

not choose to conduct such analysis. *Baskin*, 2006-Ohio-6422, at ¶ 32 (“If this court were to adopt the concept of conflict purely by implication, we would essentially be holding that a statute’s prohibiting one thing is the same as permitting everything else.”).

{¶41} The question presented in a conflict by implication test is: “whether the General Assembly indicated that the relevant state statute is to control a subject exclusively.” *Mendenhall* at ¶ 32, citing *Baskin*, 2006-Ohio-6422, at ¶ 23; *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶ 41, 48. The General Assembly can explicitly or implicitly indicate its intent that the state statute controls a subject exclusively. *See Baskin* at ¶ 44, 47 (O’Connor, J., concurring). The former occurs when the General Assembly clearly states its intent to control a subject exclusively either in the statutory language or language in the Act. The latter may⁹ occur when the General Assembly enacts comprehensive regulation in a field, uniformity is necessary to address a statewide

⁹ I say “may” because the list of factors is not exhaustive but merely illustrative and has not been fully vetted in the case law. It is not clear whether all of these factors must be present to find a conflict by implication where the General Assembly has not explicitly indicated that intent. Given the “significant degree of sovereignty” the Home Rule Amendment provides municipalities, the sensitivity we must have to Home Rule authority, and our general duty to, whenever possible, harmonize a local ordinance with state law, courts should be hesitant to find a conflict by implication except when the General Assembly has explicitly indicated that intent or the implicit indication is overwhelming. *Tiffin v. McEwen*, 130 Ohio App.3d 527, 531 (3d Dist.1998); *Payphone Assn. of Ohio v. Cleveland*, 146 Ohio App.3d 319, 328 (8th Dist.2001); *N. Ohio Patrolman Benevolent Assn. v. Parma*, 61 Ohio St.2d 375, 377 (1980).

concern,¹⁰ and the General Assembly allocates fresh state resources to address the state-wide concern.¹¹ *See id.* at ¶ 45, 57; *Am. Financial Servs. Assn.* at ¶ 55-56, 61, 66, 73.

{¶42} The General Assembly did not explicitly indicate that R.C. 955.22 govern dog control exclusively in the statutory language, like it has in other statutes. For example, in R.C. 1.63, governing loans and other forms of credit, the General Assembly stated:

(A) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in the state and the manner in which any such business is conducted, and this regulation shall be in lieu of all other regulation of such activities by any municipal corporation or other political subdivision.

(B) Any ordinance, resolution, regulation, or other action by a municipal corporation or other political subdivision to regulate, directly or indirectly, the origination, granting, servicing, or

¹⁰ Two key factors signal that an issue is one of statewide concern: (1) a need for uniform regulation exists, and (2) any local regulation of the matter would have extraterritorial effects. *Am. Financial Servs. Assn.* at ¶ 56, citing *State ex rel. McElroy v. Akron*, 173 Ohio St. 189, 194 (1962) (an issue of statewide concern is one that “has become of such general interest that it is necessary to make it subject to statewide control so as to require uniform statewide regulation”) and *State ex rel. Evans v. Moore*, 69 Ohio St.2d 88, 90 (1982) (“municipal regulations which have significant extraterritorial effects are matters of statewide concern”).

¹¹ Although a majority of the justices on the Ohio Supreme Court have expressly declined to adopt a preemption analysis similar to that used to determine conflicts between state and federal law, the factors Justice O'Connor identified in *Baskin* and *Am. Financial Servs. Assn.* are, nevertheless, helpful to determine the General Assembly's intent in conflict by implication cases. *Mendenhall* at ¶ 38. This list is not exhaustive but illustrative.

collection of loans or other forms of credit constitutes a conflict with the Revised Code, including, but not limited to, Titles XI, XIII, XVII, and XLVII, and with the uniform operation throughout the state of lending and other credit provisions, and is preempted.

Am. Financial Servs. Assn., 2006-Ohio-6043, at ¶ 31, 33, 62-63, 68. *See also Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, ¶ 20 (“[T]he General Assembly, by enacting R.C. 9.68(A), gave persons in Ohio the right to carry a handgun unless federal or state law prohibits them from doing so. A municipal ordinance cannot infringe on that broad statutory right.”); *Baskin* at ¶ 47 (O’Connor and Stratton, J.J., concurring) (characterizing R.C. 9.68(A)’s language as “preemption language”). No such language appears in R.C. 955.22.

{¶43} The General Assembly, when enacting Am.Sub.H.B. 14, also did not amend R.C. 715.23 or 955.221(B)(3)—both affirming a municipal corporation’s ability to adopt and enforce dog-control ordinances—indicating that the General Assembly intended to maintain the status quo and allow continued local dog-control regulation. Had the General Assembly intended to exclusively regulate dog control, it would have removed these Revised Code sections, and at the very least, it could have amended these sections to remove from local control the ability to regulate dog confinement, specifically.

{¶44} Am.Sub.H.B. 14, which amended R.C. 955.22 and 955.11, lacks language indicating the General Assembly's intent to govern dog control exclusively. Am.Sub.H.B. 14's preamble states, in pertinent part, Am.Sub.H.B. 14's purpose is "to remove pit bulls from the definition of 'vicious dog' in *state law* * * *." (Emphasis added). Compare this language to Section 9 of H.B. 12 concerning concealed weapons:

The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly * * * to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the

places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

After examining the statutory language of R.C. 955.22, 955.11, 715.23, and 955.221(B)(3), along with the preamble to Am.Sub.H.B. 14, a reviewing court can readily conclude that the General Assembly did not explicitly indicate its intent that R.C. 955.22 exclusively govern dog control.

{¶45} In addition, the General Assembly did not *implicitly* express its intent to exclusively regulate dog control. There is no indication that the General Assembly believed that dog confinement was a matter of statewide concern for which uniformity was necessary. The likely genesis to Am.Sub.H.B. 14 was *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, wherein the Ohio Supreme Court struck down the prior version of R.C. 955.22 for violating due process—something the General Assembly sought to remedy by enacting R.C. 955.222. Am.Sub.H.B. 14's amendments to R.C. Chapter 955 all related to the definitions of various types of dogs, the designation and registration of various types of dogs, the confinement of various types of dogs, and penalties for failing to confine the various types of dogs as newly defined. Am.Sub.H.B. 14 did not enact a new comprehensive statutory scheme but merely modified the cooperative state and local dog control system that had been in place for years. As mentioned above, Am.Sub.H.B. 14 did not remove or amend R.C. 715.23 and 955.221(B)(3), which

allow for additional local control of dogs. Am.Sub.H.B. 14 also did not amend R.C. 955.01(A)(2), permitting the county commissioners to raise the dog registration fee from the \$2.00 set in R.C. 955.01(A)(1) for certain dogs.

{¶46} Finally, the General Assembly did not dedicate fresh state resources to the field of dog control by enacting Am.Sub.H.B. 14. *Am. Financial Servs. Assn.*, 2006-Ohio-6043, at ¶ 65, 73 (O'Connor, J., concurring). County Auditors are still responsible for issuing dog tags and maintaining records of registered dogs, though Am.Sub.H.B. 14 made county auditors also responsible for issuing dangerous dog registration certificates. R.C. 955.01(A)(1), 955.012, 955.013, 955.07, 955.08, 955.22(E)(4), (I). Instead of dedicating “fresh state resources,” like tax dollars to county auditors for the increased burdens Am.Sub.H.B. 14 imposed, the General Assembly increased the dog-tag-replacement fee and created a new fifty-dollar fee for dangerous dog registration certificates. R.C. 955.08, 955.22(I)(1)(a). County dog wardens¹² and local enforcement officers are still responsible for enforcing dog laws. R.C. 955.12; 955.22(E)(3), (I)(4). 1981 Ohio Atty.Gen.Ops. No. 81-037 (municipality may hire person(s) to enforce dog ordinances).

¹² County dog wardens are charged with enforcing state laws throughout their county, including within the municipal corporation limits, and may also enforce local ordinances through cooperative agreements. 1984 Ohio Atty.Gen.Ops. No. 84-034.

{¶47} Reviewing the applicable statutes, the preamble of Am.Sub.H.B. 14, and the other conflict by implication factors, I conclude that the General Assembly did not explicitly or implicitly indicate that R.C. 955.22 was to exclusively govern dog control. Therefore, LCO 618.125(D) does not violate the conflict by implication test.

{¶48} Because LCO 618.125(D) does not violate the contrary directives test or the conflict by implication test, it is a valid enactment pursuant to the Home Rule Amendment.¹³ I would, therefore, overrule Stepleton's third and fifth assignments of error and proceed to his remaining assignments of error.

/jlr

¹³ Stepleton did not argue that LCO 618.125(D) violated the "conflict regarding decriminalization" test, so I will not discuss this test herein. *Mendenhall*, 2008-Ohio-270, at ¶ 35.

FILED
IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO

State of Ohio/City of Toledo,) Case Number CRB 09 16531
2017 JAN 20 P 2:31
Plaintiff,) OPINION AND JOURNAL ENTRY
- ENGLISH)
vs.) **Judge Michael R. Goulding**
Hugh Smith,)
Defendant.)

This matter comes before the court upon motions challenging the constitutionality of provisions of the Toledo Municipal Code (TMC) and the Ohio Revised Code (ORC). The City of Toledo is represented by Assistant City Prosecutor Victoria Smith, Esq.,

Defendant is represented by Daniel R. Haude, Esq. and his wife, Kristi L. Haude, Esq.

Defendant, Hugh Smith, is charged with 13 violations of both aforementioned codes. The constitutionality of ten of these charges is challenged; three charges of failing to immunize against rabies remain unchallenged. The charges under analysis here involve four alleged violations of TMC 505 14(a), three alleged violations of ORC 955.22(D)(2), and three alleged violations of ORC 955 22(E). The court notes that TMC 505 14(b) will also be analyzed for reasons which will become apparent ¹

The charges stem from an incident that allegedly occurred on October 1, 2009. The complaints aver that Defendant failed to properly confine three dogs: a "female orange Pit Bull," a "male orange-sable Pit Bull," and a "female orange-brindle Pit Bull." The complaints also allege that Defendant "failed to obtain liability insurance" covering the dogs, and that while walking the dogs Defendant failed to properly muzzle them. Finally,

¹ TMC 505.14 Limitations on vicious dogs

- (a) No person or organization or corporation shall own, keep, harbor or provide sustenance for more than one dog commonly known as a Pit Bull or Pit Bull mixed breed dog, regardless of age, in the City of Toledo, with the exception of puppies commonly known as Pit Bull or Pit Bull mixed breed for which the owner has filed an ownership acknowledgement form in person with the Dog Warden of Lucas County, prior to reaching seven (7) days of age. The ownership of these puppies must be transferred according to Ohio R.C. 955.11(B) and (D) before they are three (3) months of age. Additionally, this section requires that all dogs commonly known as Pit Bull or Pit Bull mixed breed dogs are required, when off the owners' premises, to be securely confined as described in Ohio R.C. 955.22 and muzzled.
- (b) Any Pit Bull which is outside the premises of the dog owner shall be kept on a leash and muzzled until the dog's return to the premises of ownership.



Defendant is charged with possessing three Pit Bulls in violation of TMC 505.14(a). It has been stipulated that Defendant's dogs fought another dog, injuring but not killing it.

I. Preliminary Constitutional Considerations - Presumption and Burden

When a constitutional challenge is made to an act of a legislature (whether state or local as in this case) the laws so challenged enjoy a strong presumption of constitutionality. *State v. Anderson*, 57 Ohio St 3d 168, 171 (1991), citing *Jackman v. Court of Common Pleas*, 9 Ohio St 2d 159 (1967). "The legislature is the primary judge of the needs of public welfare, and [the court] will not nullify the decision of the legislature except in the case of a clear violation of a state or federal constitutional provision." *City of Toledo v. Tellings*, 114 Ohio St.3d 278, 281 (2007) (citing *Williams v. Scudder*, 102 Ohio St. 305 (1921), *Beagle v. Walden*, 78 Ohio St.3d 59, 61 (1997), *et al.*).

This presumption is overcome by proof beyond a reasonable doubt of the constitutional violation. *Anderson*, *supra*; *Hilton v. Toledo*, 62 Ohio St.2d 394, 396 (1980). However, where a statute or ordinance is constitutionally challenged *as applied* in a particular case, the challenger must provide "clear and convincing evidence of a presently existing state of facts[] which makes such act unconstitutional and void when applied thereto." *Belden v. Union Central Life Ins. Co.*, 143 Ohio St 329, 349 (1944). "The practical effect of holding a statute unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly inoperative." *Yajnik v. Akron Dept. of Health*, 101 Ohio St 3d 106, 109 (2004), citing *Ada v. Guam Soc. of Obstetricians and Gynecologists*, 506 U.S. 1011 (1992) (Scalia, J., dissenting).

II. Muzzling Charges

Defendant argues that TMC 505.14(a) is unconstitutional under Section 3, Article XVIII of the Ohio Constitution. the Home Rule Doctrine.² TMC 505.14(a) requires that dogs commonly known as Pit Bulls be confined pursuant to ORC 955.22 and muzzled. The applicable subsection, ORC 955.22(D)(2)³, does not make muzzling mandatory. The

² "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

³ ORC 955.22(D): Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of a dangerous or vicious dog shall fail to

(2) While that dog is off the premises of the owner, keeper, or harborer, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

court also notes that TMC 505.14(b) retains this muzzling requirement irrespective of the requirements of ORC 955.22.

Pursuant to ORC 955.22, a dog owner must do one or more of three things in addition to keeping a dangerous or vicious dog on a leash when off the owner's premises keep the dog penned, ensure the leash is held or fastened in the proper manner, and/or muzzle the dog. TMC 505.14(a) (as well as subsection (b)) does not provide any option – muzzling is mandatory. Defendant posits this local ordinance thus violates the Home Rule Doctrine. The City responds that its muzzling requirement does not so conflict, but rather simply adds a measure of protection to the public from harm, and is a legitimate exercise of its inherent police power.

A Home Rule Doctrine

The Ohio Supreme Court has outlined a three-step process for analyzing whether an ordinance violates the Home Rule Doctrine:

1. Does the ordinance involve an exercise of local self-government or local police power?
2. If the ordinance involves an exercise of local police power, is the state statute in question a general law?
3. If the state statute is a general law, is there a conflict in fact with the local ordinance?

Ohioans for Concealed Carry, Inc. v. City of Clyde, 120 Ohio St.3d 96 (2008) [hereafter, *OCC*].

Ohio law is clear: matters pertaining to the ownership and control of dogs is an exercise of police power. *Anderson*, at 170. “Regardless, however, of the possibility of strong sentimental attachment, a dog is still property. Therefore, dogs are subject to the state’s police power.” *State v. Cowan*, 103 Ohio St.3d 144, 147 (2004).

1 Canton Analysis

The second question *OCC* raises requires the application of the holding in *Canton v. Ohio* (95 Ohio St.3d 149 (2002)) to determine whether the state statute in question is a

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- (a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top,
 - (b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person,
 - (c) Muzzle that dog.

general law. In *Canton*, the Ohio Supreme Court accepted the invitation to establish more definite standards for determining whether a statute is “general” under the Home Rule Doctrine, advancing a four-part test. To constitute a “general” law, the statute must

- 1 be part of a state-wide and comprehensive legislative enactment;
- 2 apply to all parts of the state with uniformity,
- 3 set forth police regulations rather than grant or limit a locality’s ability to do so, and
4. prescribe a rule of conduct upon citizens generally

Chapter 955 of the Ohio Revised Code is entitled, quite simply, “Dogs.” The sections included in this chapter contain many dog-related laws touching on such subjects as licensing, dog wardens’ duties, kennel registration, dogs used to assist impaired persons, and the like, and many (if not most) of these sections were adopted from sections of Ohio’s General Code, the predecessor to the current Revised Code. It thus appears to this court that the state has comprehensively sought to regulate all things Dog.

The second *Canton* factor is satisfied as well. Ohio’s Dog laws are not just comprehensive in scope, they are also uniform in application. By its nature, Chapter 955, and specifically ORC 955.22, applies to the whole state without exception, and seeks to protect Ohio’s citizenry. Moreover, ORC 955.221 states that municipalities “may adopt and enforce ordinances . . . that are not in conflict with any other provision of the Revised Code.” Clearly the state legislature has intended that local dog ordinances not be at variance with its statutes. Though not dispositive of the issue, the Ohio Attorney General has opined that local ordinances enacted to regulate the ownership and control of dogs must be “identical” to state statutes. Ohio Attorney General Opinion 2008-006

Canton next requires that the state law in question must set forth police power regulations rather than simply grant or limit a local government’s ability to do so. ORC 955.22 does indeed meet this criterion. There is no language in this section which grants or limits any such municipal action. Compare ORC 955.01: in that section, a board of county commissioners may establish fees in excess of those required by the state for dog registration. The language of that section indicates the legislature’s intent to grant the various counties a limited amount of local authority in this regard. This latitude is lacking in ORC 955.22. The third *Canton* factor is satisfied.

Finally, the statute at issue must prescribe a rule of conduct upon citizens generally. ORC 955.22 does so. In *Canton*, the Ohio Supreme Court's analysis differentiated statutes which limit law making by a municipality with statutes which prescribe a rule of conduct upon citizens generally. As noted, ORC 955.22 does not simply provide different penalties for the same violation (cf. *Youngstown v. Evans*, 121 Ohio St. 342 (1929), cited in *Canton*, at 156), or otherwise fetter a municipal legislative body's activities; it applies to the citizens of Ohio generally.

Applying each *Canton* factor, then, this court finds that ORC 955.22 is a general law under the second step of the three-step *OCC* test.

2. Conflict in Fact

Finally, under *OCC*, the local ordinance must be in actual conflict with a "general" state law to violate the Home Rule Doctrine. "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Village of Struthers v. Sokol*, 108 Ohio St. 263 (1923), syllabus para. 2. Put another way, "the state statute must positively permit what the ordinance prohibits, or vice versa...." *Cincinnati v. Hoffman*, 31 Ohio St.2d 163, 169 (1972). In the instant case, the state provides an option (pen, fasten, and/or muzzle) where the city imposes a mandate (muzzle). The court finds that ORC 955.22 is in actual conflict with 505.14(a) and (b).

B. Conclusion

Given the foregoing, this court finds the muzzling requirement of TMC 505.14(a) and (b) unconstitutional. Charges 7, 9, and 10 are dismissed.

III. Limitations Charge – Number of Dogs

As noted, Defendant has been charged with violating another part of TMC 505.14(a), owning more than one dog commonly known as a Pit Bull. While this prohibition was not directly challenged by Defendant in his briefing, the matter was addressed at oral argument.

Given the court's rationale holding the muzzling requirement of TMC 505.14(a) and (b) unconstitutional above, the court, in applying that same reasoning, finds the 'one-per-household' limitation of TMC 505.14(a) unconstitutional as well. The Ohio General Assembly has enacted a comprehensive legislative scheme regulating ownership and

control of dogs in this state, which action is an exercise of police power. While the state statute does not specifically *permit* ownership of more than one dog ‘commonly known as a pit bull,’ it does not specifically prohibit it either.

As noted above, the state legislature has, in fact, granted limited self-government authority in Chapter 955 for certain purposes (e.g., ORC 955.01). It has not granted such authority to municipalities in either ORC 955.22 or ORC 955.11. And, again, ORC 955.221 specifically prohibits a local authority from enacting and enforcing laws which conflict with state statutes. And here, as above, there is a conflict; the city prohibits what the state permits.

Given the foregoing, the court finds the limitation as to the number of “vicious” dogs permitted to be owned, kept, harbored, etc. contained in TMC 505.14(a) unconstitutional under the Home Rule Doctrine. Charge 8 is dismissed.

IV. Limitations Charges – “Breed” vs. “Dog”

Although not mentioned in the briefs provided the court, Defendant raised at oral argument this purported inconsistency between ORC 955.11(A)(4)(a)(iii)⁴ and TMC 505.14(a). The former applies to breeds, while the latter applies to dogs. Defendant argues that the statute, in defining vicious dogs by breed and not on a dog-by-dog basis, removes from local determination whether a particular dog is to be considered vicious.

The local ordinance sweeps into its purview not only dogs “commonly known as” Pit Bulls, but also “Pit Bull mixed breed,” which definition expands a locality’s authority over the care and keeping of dogs beyond that which the state legislature has sought fit to regulate. This provision of the Toledo Municipal Code is unconstitutional under the Home Rule Doctrine as described above, and under the due process analysis which follows below.

V. Limitations Charges – Classification as “Vicious”

⁴ ORC 955.11(A)(4)(a). “Vicious dog” means a dog that, without provocation and subject to division (A)(4)(b) of this section, meets any of the following:

(iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

Finally, Defendant challenges the constitutionality of ORC 955.11(A)(4)(a)(iii) as that statute applies through ORC 955.22(D)(2) and (E)⁵ Defendant's argument can be summarized thus: the statute defining a "vicious" dog as, inter alia, one that "belongs to a breed that is commonly known as a pit bull dog" is unconstitutionally vague, and violates due process both facially and as applied.

Defendant posits that he owns three Cane Corso dogs. These dogs were purportedly involved in a fracas with another dog on October 1, 2009, and were seized by the Lucas County Dog Warden, who determined them to be "vicious" under ORC 955.11(A)(4)(a)(iii). Due to this determination and classification of the dogs as "vicious," Defendant was subjected to the confinement requirements of ORC 955.22(D) and the insurance mandate of ORC 955.22(E). In the instant case, Defendant has also been subjected to deprivation of his property pending this court's determination of these pretrial matters and pending trial.

A Relevant Supreme Court Cases

The Ohio Supreme Court has spoken on the constitutionality of the statutes in question at various times. In *Anderson*, the court determined that the phrase "commonly known as" Pit Bull was not void for vagueness. Pit Bulls, and breeds commonly known as Pit Bulls, were found to possess certain listed behavioral and physical characteristics, and a dog owner might reasonably ascertain whether the breed of his dog fits within these characteristics with little effort. The *Anderson* court admitted that while there might be 'close calls' in making such determinations, this defect did not rise to constitutional dimensions. But the "commonly known as" definition was found to facially comply with the requirements of substantive due process.

Then in 2004, the *Cowan* court ruled that ORC 955.11(A)(4)(a)(i) and (ii) violated procedural due process and were unconstitutional as applied via the confinement and insurance requirements of ORC 955.22(D) and (E). In that case, a deputy dog warden classified defendant's dogs as "vicious" under the state code after an investigation revealed that the dogs in question had bitten somebody, and that the dogs were not

⁵ ORC 955.22(E): No owner, keeper, or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog.

properly tethered under ORC 955.22(D) and were not properly insured under ORC 955.22(E). That court found that since the defendant was not given an opportunity to be heard before substantial regulatory burdens were placed upon her, and since her only meaningful opportunity to challenge the warden's unilateral classification was as a criminal defendant, the laws in question violated her procedural due process rights both facially and as applied to the defendant in that case. Notably, that decision was 4-3, and two of the majority justices have since retired (The three dissenting justices remain on the Court today). Nonetheless, *Cowan* remains the law of Ohio.

Next, in 2007, the *Tellings* court found the ordinance and statutes at issue in the instant case were constitutional. However, in *Tellings*, the parties stipulated that the dogs in question were in fact Pit Bulls. The court found that Pit Bulls are responsible for causing enough mayhem that regulating them was a legitimate exercise of police power.

Finally, in 2009, the *Traylor* court found that a certain Youngstown ordinance was constitutional since that case did not involve a unilateral classification as "vicious," since the criminal trial was (contra *Cowan*?) a meaningful opportunity to be heard at a meaningful time, and since the city ordinance at issue did not impose any additional obligations on dog owners. *City of Youngstown v. Traylor*, 123 Ohio St 3d 132 (2009).

B. Application of Supreme Court Holdings

Combining the foregoing holdings of the Ohio Supreme Court and applying them to the facts of this case, this court finds as follows:

1. Anderson

Defendant's Cane Corsos do not possess the physical and behavioral traits associated with Pit Bulls under *Anderson*. Nonetheless, ORC 955.11(A)(4)(a)(iii), while not void for vagueness, is unconstitutional as applied, violating the requirements of substantive due process. Defendant did his 'due diligence' as required by *Anderson* (see Defendant's Exhibits 1 through 39, comprising 208 pages), and the court finds that Cane Corsos do not exhibit the physical traits associated with Pit Bulls. There is moreover no practical and humane way to determine whether Cane Corsos possess enough of the behavioral tendencies mentioned in *Anderson*. The court finds the classification of Defendant's Cane Corsos as "vicious" by the dog warden unreasonable and arbitrary.

2. Cowan

Under the rationale in *Cowan*, Defendant's dogs were subjected to the unilateral classification made by the dog warden that his dogs fell within the definition of 'Pit Bulls.' As a result, Defendant was immediately subjected to the "substantial regulatory burdens" (*Cowan*, at 147) of ORC 955.22(D) and (E) without the opportunity to be heard before becoming a criminal defendant. So even if the "commonly known as" definition were to pass constitutional muster on a substantive basis under *Anderson*, it fails to provide the procedural due process demands of *Cowan*. "[T]he legislature. may not constitutionally authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards." *Cowan*, at 146, citing *Arnett v. Kennedy*, 416 U S 134, 167 (Powell, J., concurring in part). Given *Cowan*'s rationale, the statutes' constitutional defect is both facial and as applied to Defendant

3. Tellings

In 2004, the Ohio Supreme Court revisited the constitutionality of ORC 955 11, ORC 955 22, and TMC 505.14, concluding that these laws were constitutional. As noted, *Tellings* involved a stipulation at trial that the dogs in question in that case were, in fact, Pit Bulls. *Tellings* also distinguished *Cowan* thus: "Unlike the situation in *Cowan*, the General Assembly has classified pit bulls generally as vicious; there is no concern about unilateral administrative decision-making on a case-by-case basis. Therefore, the laws do not violate the rights of pit bull owners to procedural due process " *Tellings*, at 284.

Tellings is thus clearly distinguishable from the case at bar. Here, the dog warden did unilaterally decide that Defendant's dogs were "vicious" as they were, to his office, "commonly known as" Pit Bulls Defendant's Cane Corsos, which do not appear to possess the traits outlined in *Anderson*, are "vicious" under ORC 955 11(A)(4)(a)(iii) because the warden says so. The question in this case is not, as in *Tellings*, whether it's fair to conclude that Pit Bulls are inherently "vicious," but rather whether the state may classify Defendant's dogs as those "commonly known as" Pit Bulls without the procedural due process safeguards announced in *Cowan*

Compounding this case's distinction from *Tellings* is the different verbiage used in the ORC as compared to the TMC "breed commonly known as" versus "dog commonly known as a Pit Bull or Pit Bull mixed breed dog ..." (See Section IV, above.)

The “administrative decision-making” referenced in *Tellings* is more acutely “case-by-case,” or more accurately ‘dog-by-dog,’ in Defendant’s case

4. Traylor

Finally, the *Traylor* court in 2009 reviewed the constitutionality of a Youngstown ordinance which purportedly failed “to give notice to a dog owner that his dog will be considered vicious for purposes of criminal prosecution and/or by failing to allow the owner a meaningful opportunity to be heard on his dog’s classification as vicious.” *Traylor*, at 134 But in *Traylor*, the question was not whether the dogs were “vicious” because they were “commonly known as” Pit Bulls, the question was whether the dogs were “vicious” because they allegedly attacked a human or another dog

Moreover, the Youngstown ordinance did not attach “prehearing burdens on dog owners, such as requiring liability insurance for particular breeds.” *Traylor*, at 137. The Ohio Revised Code, however, does just this in Defendant’s case. The dog warden’s unilateral classification of Defendant’s Cane Corsos as ‘Pit Bulls’ placed Defendant in jeopardy for allegedly failing to properly confine and insure his dogs.

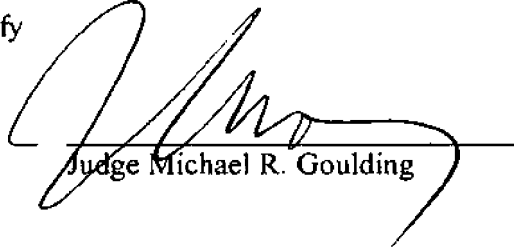
The court thus finds ORC 955 11(A)(4)(a)(iii) as applied in ORC 955 22(D) and ORC 955 22(E) unconstitutional. Counts 1 through 6 are dismissed.

VI. Conclusion

The court is aware of the current state of flux in which the law regarding the regulation of dogs finds itself. Certainly this issue has raised great and legitimate concerns at many levels among people of both care and compassion. Local and state legislative authorities are currently wrestling with amendments to these laws, and courts across the state continue to grapple with statutes, ordinances, and cases concerning the subject. Certainly a more uniform, practical, and humane method of regulating dogs, which both preserves the safety of the public and focuses on the dangers and misdeeds of irresponsible dog owners, would seem preferable to the status quo, especially given the Ohio Supreme Court’s opinion in *Tellings* “pit bulls are not inherently dangerous.” *Id.*, at 282. It is the duty of this court, however, to interpret the law as it stands today, and not to assume the role of policy making which is more properly the province of legislative authorities.

The court having found unconstitutional the law substantiating charges 1 through and including 10, those charges are dismissed. Counts 11 through and including 13, being minor misdemeanors, shall be set for a bench trial; the assignment commissioner is so directed. The assignment commissioner is also directed to set all other pending matters for pretrial as soon as practicable. Clerk to notify

Jan. 22, 2010
Date


Judge Michael R. Goulding

February 21, 2008

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

SYLLABUS:

2008-006

1. Pursuant to Article II, §§ 1 and 26 of the Ohio Constitution, the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) may not be remedied without legislative action by the General Assembly.
2. Pursuant to Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221, a board of county commissioners or legislative authority of a city may enact within its respective territory resolutions or ordinances that regulate the ownership and control of dogs in order to ensure the public health, safety, and welfare.
3. Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221 authorize a board of county commissioners or legislative authority of a city to adopt and enforce resolutions or ordinances that are identical to R.C. 955.11 and R.C. 955.22 and that afford a dog owner procedural due process when the resolutions or ordinances are enforced.



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February 21, 2008

OPINION NO. 2008-006

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have requested an opinion concerning the authority of county and city officials to enforce R.C. 955.22(D)-(F). Specifically, you wish to know:

1. May the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) be remedied without legislative action by the General Assembly?
2. If question one is answered in the affirmative, may the legislative authority of a city adopt an ordinance creating a dangerous and vicious dog appeals board to provide dog owners with an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether a dog is a "dangerous dog," as defined in R.C. 955.11(A)(1)(a), or a "vicious dog," as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), for purposes of R.C. 955.22(D)-(F)?
3. If questions one and two are answered in the affirmative, may a board of county commissioners pass a resolution authorizing a city's dangerous and vicious dog appeals board to provide dog owners in the unincorporated area of the county with an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether a dog is a "dangerous dog," as defined in R.C. 955.11(A)(1)(a), or a "vicious dog," as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), for purposes of R.C. 955.22(D)-(F)?

For the reasons discussed below, we conclude that, pursuant to Article II, §§ 1 and 26 of the Ohio Constitution, the lack of procedural due process afforded to dog owners under R.C.

955.22(D)-(F) may not be remedied without legislative action by the General Assembly. We conclude, further, that, pursuant to Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221, a board of county commissioners or legislative authority of a city may enact within its respective territory resolutions or ordinances that regulate the ownership and control of dogs in order to ensure the public health, safety, and welfare. Finally, we conclude that Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221 authorize a board of county commissioners or legislative authority of a city to adopt and enforce resolutions or ordinances that are identical to R.C. 955.11 and R.C. 955.22 and that afford a dog owner procedural due process when the resolutions or ordinances are enforced.

Regulation of Dangerous and Vicious Dogs under R.C. 955.22(D)-(F)

In order to address your questions we must examine R.C. 955.22(D)-(F) and the Ohio Supreme Court cases that have reviewed R.C. 955.22(D)-(F) in the context of the constitutional right to procedural due process. R.C. 955.22(D)-(F) require the owner of a dangerous or vicious dog to do the following:

(D) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do either of the following:

(1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;

(2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

(E) No owner, keeper, or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog.

(F) No person shall do any of the following:

- (1) Debark or surgically silence a dog that the person knows or has reason to believe is a vicious dog;
- (2) Possess a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
- (3) Falsely attest on a waiver form provided by the veterinarian under division (G) of this section that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.

For purposes of R.C. 955.22(D)-(F), the terms "dangerous dog" and "vicious dog" are defined as follows:

(1)(a) "Dangerous dog" means a dog that, without provocation, and subject to [R.C. 955.11(A)(1)(b)], has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harborer and not under the reasonable control of its owner, keeper, harborer, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top.

(b) "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

....
(4)(a) "Vicious dog" means a dog that, without provocation and subject to [R.C. 955.11(A)(4)(b)], meets any of the following:

- (i) Has killed or caused serious injury to any person;
- (ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog.

(iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

(b) "Vicious dog" does not include either of the following:

- (i) A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer of the dog.

R.C. 955.11(A). *See generally* R.C. 955.22(A) (as used in R.C. 955.22, "'dangerous dog' and 'vicious dog' have the same meanings as in [R.C. 955.11]").

The owner of a dangerous dog or vicious dog, as defined in R.C. 955.11(A)(1) or R.C. 955.11(A)(4), respectively, who pleads guilty to, or is convicted of, a violation of R.C. 955.22(D)-(F) is subject to the penalties set out in R.C. 955.99.¹ This means that a person who owns a dangerous dog or vicious dog, as defined in R.C. 955.11(A)(1) or R.C. 955.11(A)(4), respectively, is required to comply with the applicable provisions of R.C. 955.22(D)-(F) or face criminal prosecution for failing to do so.

R.C. 955.22(D)-(F) and the Constitutional Right to Procedural Due Process

The enforcement of R.C. 955.22(D)-(F) may not, however, impinge on a dog owner's constitutional right to procedural due process. This right, which is guaranteed by the Fourteenth

¹ R.C. 955.99 provides, in part:

(F) If a violation of [R.C. 955.22(D)] involves a dangerous dog, whoever violates that division is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to [R.C. 955.22(E)]. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

(G) If a violation of [R.C. 955.22(D)] involves a vicious dog, whoever violates that division is guilty of one of the following:

(1) A felony of the fourth degree on a first or subsequent offense if the dog kills or seriously injures a person. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

(2) A misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

(3) A misdemeanor of the first degree if the dog causes injury, other than killing or serious injury, to any person.

(H) Whoever violates ... [R.C. 955.22(E)] is guilty of a misdemeanor of the first degree.

....

(J) Whoever violates [R.C. 955.22(F)(1), (2), or (3)] is guilty of a felony of the fourth degree. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society.

Amendment to the United States Constitution and Article I, § 16 of the Ohio Constitution,² requires, at a minimum, an opportunity to be heard at a meaningful time and in a meaningful manner when the state seeks to infringe a protected liberty or property right. *State v. Cowan*, 103 Ohio St. 3d 144, 2004-Ohio-4777, 814 N.E.2d 846, at ¶8 (2004); *State v. Hochhausler*, 76 Ohio St. 3d 455, 459, 668 N.E.2d 457 (1996). Moreover, because the right to procedural due process is conferred by the United States and Ohio Constitutions, the General Assembly “may not constitutionally authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards.” *Cowan*, at ¶8.

The Ohio Supreme Court has twice addressed the procedural due process to be afforded an owner of a dog before the owner may be charged with violating R.C. 955.22(D)-(F). In *Cowan* a dog owner was “charged with two counts of failing to confine a vicious dog, violations of R.C. 955.22(D)(1), misdemeanors of the first degree; one count of failing to obtain the required liability insurance for a vicious dog, a violation of R.C. 955.22(E), a misdemeanor of the first degree; and one count of failing to restrain a dangerous dog, a violation of R.C. 955.22(D)(2)(b), a misdemeanor of the fourth degree.” *Cowan*, at ¶3. The dog owner argued that R.C. 955.22 could not be enforced because it violates a dog owner’s constitutional right to “procedural due process as there is no opportunity for a [dog owner] to be heard with respect to the labeling of a dog as either vicious or dangerous.” *Id.* at ¶11.

In its opinion the *Cowan* court first observed that a dog is the property of its owner. *Id.* at ¶9. The court next acknowledged that dogs, as property, “are subject to the state’s police power” and the state may use that power to regulate the ownership and control of dogs so as to protect its citizenry. *Id.*; accord *State v. Anderson*, 57 Ohio St. 3d 168, 169-70, 566 N.E.2d 1224 (1991);³

² The Fourteenth Amendment to the United States Constitution prohibits the state of Ohio from depriving any person of property without due process of law. Article I, § 16 of the Ohio Constitution proclaims that “every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”

³ As summarized in *State v. Anderson*, 57 Ohio St. 3d 168, 169-70, 566 N.E.2d 1224 (1991):

It is well-established that private property is held subject to the general police power of a state and may be regulated pursuant to that power. *Porter v. Oberlin* (1965), 1 Ohio St. 2d 143, 30 O.O. 2d 491, 205 N.E.2d 363. As the court noted in *Vanater v. South Point* (S.D. Ohio 1989), 717 F. Supp. 1236, 1241, Section 19, Article I of the Ohio Constitution specifically recognizes the subordination of private property to the general welfare. As a result of this subordination, police power regulations are upheld although they may interfere with the enjoyment of liberty or the acquisition, possession and production of private property. As we recognized in *Benjamin v. Columbus* (1957), 167 Ohio

see *City of Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152, at ¶23-24 (2007), *cert. denied*, 2008 U.S. LEXIS 2006 (Feb. 19, 2008). See generally Ohio Const. art. I, § 19 (“[p]rivate property shall ever be held inviolate, but subservient to the public welfare”).

The court then stated that the General Assembly has, in accordance with its police power, enacted R.C. 955.22 to regulate the ownership and control of dogs:

One way for the state to regulate dogs is found in R.C. 955.22. R.C. 955.22(D)(1) requires owners of a dangerous or vicious dog, as defined in R.C. 955.11(A)(1)(a) and (A)(4)(a), to confine the dog in a certain manner. R.C. 955.22(E) requires the owner of a vicious dog to obtain a certain amount of liability insurance. Any owner who fails to comply with these requirements is guilty of a misdemeanor of the first or fourth degree. R.C. 955.99(F) and (G)(2). (Footnote omitted.)

Cowan, at ¶10. The *Cowan* court thus found that while the General Assembly may use its police power to regulate the possession of dogs through R.C. 955.22(D)-(F), the General Assembly may not, in derogation of the United States and Ohio Constitutions, deprive a dog owner of his property interest in a dog without procedural due process. *Id.* at ¶8-9.

The *Cowan* court then considered whether R.C. 955.22(D)-(F) afford a dog owner procedural due process before labeling the owner’s dog as a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a), and placing substantial regulatory burdens upon the dog owner’s property interest in the dog. *Id.* at ¶11. In concluding that R.C. 955.22(D)-(F) violate a dog owner’s constitutional right to procedural due process, the *Cowan* court declared:

Once the dog warden made the unilateral decision to classify appellee’s dogs as vicious, R.C. 955.22 was put into effect and restrictions were placed upon appellee and her dogs. No safeguards, such as a right to appeal or an administrative hearing, were triggered by this determination to challenge the viciousness label or its ramifications. In fact, it was not until appellee was formally charged as a criminal defendant that she could conceivably challenge the viciousness designation under R.C. 955.22. We find it inherently unfair that a dog owner must defy the statutory regulations and become a criminal defendant, thereby risking going to jail and losing her property, in order to challenge a dog

St. 103, 4 O.O. 2d 113, 146 N.E.2d 854, paragraph five of the syllabus, any exercise of the police power will be valid “if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary.”

Among the regulations which have been upheld as legitimate exercises of police power are those regulations addressing the ownership and control of dogs.

warden's unilateral decision to classify her property. The statute does not provide appellee a right to be heard in a meaningful time and in a meaningful manner on the issue of whether her dogs were vicious or dangerous. Accordingly, we find that R.C. 955.22 violates procedural due process insofar as it fails to provide dog owners a meaningful opportunity to be heard on the issue of whether a dog is "vicious" or "dangerous" as defined in R.C. 955.11(A)(1)(a) and (A)(4)(a).

Id. at ¶13.

The *Cowan* court therefore held that R.C. 955.22(D)-(F) violate the constitutional right to procedural due process because they fail to provide dog owners a meaningful opportunity to be heard on the issue of whether a dog is a "dangerous dog," as defined in R.C. 955.11(A)(1)(a), or a "vicious dog," as defined in R.C. 955.11(A)(4)(a)(i)-(ii).

In *Tellings* the Ohio Supreme Court declined to extend its holding in *Cowan* to situations involving a "vicious dog," as defined in R.C. 955.11(A)(4)(a)(iii). In *Tellings* the court addressed, *inter alia*, whether R.C. 955.11(A)(4)(a)(iii) and R.C. 955.22(D)-(F) violate a dog owner's constitutional right to procedural due process because the statutes fail to provide a dog owner with an opportunity under R.C. 955.22(D)-(F) to offer evidence that his pit bull dog is not vicious.

In concluding that these statutes do not violate the right of pit bull owners to procedural due process, the *Tellings* court first determined that R.C. 955.11(A)(4)(a)(iii) and R.C. 955.22(D)-(F) are rationally related to the state's interest in protecting citizens from the dangers associated with pit bull dogs:

The evidence presented in the trial court supports the conclusion that pit bulls pose a serious danger to the safety of citizens. The state and the city have a legitimate interest in protecting citizens from the danger posed by this breed of domestic dogs.

[R.C. 955.11(A)(4)(a)(iii) and R.C. 955.22(D)-(F)] ... are rationally related to serve the legitimate interests of protecting Ohio and Toledo citizens. R.C. 955.11(A)(4)(a)(iii) states that "vicious dog" includes a dog that "[b]elongs to a breed that is commonly known as a pit bull dog" and that owning, keeping, or harboring a pit bull dog is *prima facie* evidence of owning, keeping, or harboring a vicious dog. In view of the unique problems posed by pit bulls in this state, the General Assembly requires owners of pit bulls, like owners of vicious dogs, to meet certain statutory requirements. In R.C. 955.22(E), all persons having vicious dogs are required to obtain liability insurance, and under R.C. 955.22(F), vicious dogs cannot be surgically silenced. These requirements are rationally related to the state's interest in protecting its citizens from pit bulls and in assuring those who are injured by a pit bull that they will be compensated for their injuries.

Tellings, at ¶27-28.

The court then distinguished the procedural due process to be afforded to dog owners when the enforcement of R.C. 955.22(D)-(F) turns on whether a dog is a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(iii), from that to be afforded to dog owners when the enforcement of R.C. 955.22(D)-(F) turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), and determined as follows:

[T]he court of appeals declared that the laws violated procedural due process pursuant to *State v. Cowan*, 103 Ohio St. 3d 144, 2004 Ohio 4777, 814 N.E.2d 846. In *Cowan*, a Portage County deputy dog warden determined two dogs to be vicious following a complaint that the dogs had attacked a woman. *Id.* at ¶1. The dogs were determined to be vicious because of the alleged attack, not because they were pit bulls. We held that when a dog is determined to be “vicious” under R.C. 955.11(A)(4)(a), procedural due process requires that the owner have notice and an opportunity to be heard before the owner is charged with a crime. *Id.* at ¶13.

In *Cowan*, the dogs were determined to be vicious under the first two subsections of R.C. 955.11(A)(4)(a) because they had caused injury to a person. Thus, the case concerned the dog warden’s unilateral classification of the dogs as vicious. However, in this case, the “vicious dogs” at issue are those classified as pit bulls under the third subsection of R.C. 955.11(A)(4)(a). Unlike the situation in *Cowan*, the General Assembly has classified pit bulls generally as vicious; there is no concern about unilateral administrative decision-making on a case-by-case basis. The clear statutory language alerts all owners of pit bulls that failure to abide by the laws related to vicious dogs and pit bulls is a crime. Therefore, the laws do not violate the rights of pit bull owners to procedural due process.

Id. at ¶31-32; accord *State v. Williams*, 2007-Ohio-4023, 2007 Ohio App. LEXIS 3642, at ¶20 (Coshocton County Aug. 1, 2007).

A review of the foregoing discloses that, under *Cowan* and *Tellings*, the Ohio Supreme Court has held that R.C. 955.22(D)-(F) violate the constitutional right to procedural due process because they fail to provide a dog owner with a meaningful opportunity to be heard on the issue of whether his dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). R.C. 955.22(D)-(F) do not, however, violate a dog owner’s constitutional right to procedural due process when the owner’s dog is included within the definition of “vicious dog” set forth in R.C. 955.11(A)(4)(a)(iii).

R.C. 955.22(D)-(F) on Their Face Violate the Constitutional Right to Procedural Due Process When Their Enforcement Turns on Whether a Dog Is a “Dangerous Dog,” as Defined in R.C. 955.11(A)(1)(a), or a “Vicious Dog,” as Defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii)

Let us now consider your first question, which asks whether the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) may be remedied without legislative action by the General Assembly. Under constitutional jurisprudence, a court may declare “a statute unconstitutional either because it is invalid ‘on its face’ or because it is unconstitutional ‘as applied’ to a particular set of circumstances.” *Women’s Med. Prof’l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997); *accord Belden v. Union Cent. Life Ins. Co.*, 143 Ohio St. 329, 55 N.E.2d 629 (1944) (syllabus, paragraph four). When a court determines that a statute is unconstitutional as applied, “the State may continue to enforce the statute in different circumstances where it is not unconstitutional.” *Women’s Med. Prof’l Corp. v. Voinovich*, at 193; *accord McKinley v. Ohio Bur. of Workers’ Compensation*, 170 Ohio App. 3d 161, 2006-Ohio-5271, 866 N.E.2d 527, at ¶9 (Washington County 2006), *appeal allowed*, 112 Ohio St. 3d 1489, 2007-Ohio-724, 862 N.E.2d 116 (2007). However, “if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances.” *Women’s Med. Prof’l Corp. v. Voinovich*, at 193; *accord McKinley*, at ¶9.

In *Cowan* the Ohio Supreme Court held that R.C. 955.22(D)-(F) on their face violate the constitutional right to procedural due process when their enforcement turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). As explained in *Cowan*, at ¶13:

Once the dog warden made the unilateral decision to classify appellee’s dogs as vicious, R.C. 955.22 was put into effect and restrictions were placed upon appellee and her dogs. *No safeguards, such as a right to appeal or an administrative hearing, were triggered by this determination to challenge the viciousness label or its ramifications.... [R.C. 955.22] does not provide appellee a right to be heard in a meaningful time and in a meaningful manner on the issue of whether her dogs were vicious or dangerous.* Accordingly, we find that R.C. 955.22 violates procedural due process insofar as it fails to provide dog owners a meaningful opportunity to be heard on the issue of whether a dog is “vicious” or “dangerous” as defined in R.C. 955.11(A)(1)(a) and (A)(4)(a). (Emphasis added.)

The court thus observed that every conceivable application of R.C. 955.22(D)-(F) that turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), results in a violation of the constitutional right to procedural due process because R.C. 955.22(D)-(F) fail to provide dog owners in all instances an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether the dog is a dangerous or vicious dog. As a result, the *Cowan* court concluded that R.C. 955.22(D)-(F) on their face violate the constitutional right to procedural due process when their enforcement turns on whether a dog is a “dangerous dog,” as

defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii).⁴ See generally *Members of City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984) (a statute is invalid on its face when “it is unconstitutional in every conceivable application”); *McKinley*, at ¶11 (a person challenging the constitutionality of a statute on its face “must establish that no set of circumstances exists under which the statute would be valid. The fact that a statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid”).

⁴ In *State v. Cowan*, 103 Ohio St. 3d 144, 2004-Ohio-4777, 814 N.E.2d 846 (2004), the court also found that, even if it is assumed that R.C. 955.22(D)-(F) are constitutional on their face, they are unconstitutional as applied in the set of circumstances before the court:

Even assuming that R.C. 955.22 provides a meaningful opportunity to be heard on a dog’s classification, it is certainly unconstitutional as applied here. Although appellant now argues that one aspect of its case at trial was to establish that the dogs were vicious and dangerous, a reading of the transcript reveals that the state did not believe that it had this burden. It is true that the state presented evidence at trial from the victim and an eyewitness relating the dog-bite incident and identifying the dogs as belonging to appellee. However, the state also presented testimony from the deputy warden that the determination that these dogs were vicious had already been made prior to trial. Moreover, the state repeatedly told the jury that the warden had already determined that the dogs were vicious and it was not the jury’s job to decide whether it is fair for the dog warden to make this determination. Thus, although the jury was given the definition of a “vicious” or “dangerous” dog, this element of the crime was removed from their consideration.

Previously, this court has stated that “[d]ue process of law implies, in its most comprehensive sense, the right of the person affected thereby to be present before the tribunal which pronounces judgment upon a question of life, liberty or property, to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, such is not due process of law.” *Williams v. Dollison* (1980), 62 Ohio St. 2d 297, 299, 16 O.O. 3d 350, 405 N.E.2d 714. *So even assuming that the statute provides a constitutionally adequate opportunity to be heard on this issue, appellee was not afforded this right.* (Emphasis added.)

Cowan, at ¶14-15.

The Constitutional Infirmary of R.C. 955.22(D)-(F) Must Be Remedied by the General Assembly

When the Ohio Supreme Court finds a statute unconstitutional on its face, the statute is void from the date of its enactment and incapable of any valid application. As explained in *City of Middletown v. Ferguson*, 25 Ohio St. 3d 71, 80, 495 N.E.2d 380 (1986):

[A]n unconstitutional law must be treated as having no effect whatsoever from the date of its enactment. This fundamental proposition has been expressed as follows:

“An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Norton v. Shelby County* (1886), 118 U.S. 425, 442. *Accord Ex Parte Siebold* (1879), 100 U.S. 371, 376; *Chicago, I. & L. Ry. Co. v. Hackett* (1913), 228 U.S. 559, 566.

Accord Rossborough Mfg. v. Trimble, 301 F.3d 482, 491 (6th Cir. 2002); *37712, Inc. v. Ohio Dep’t of Liquor Control*, 113 F.3d 614, 618 n.7 (6th Cir. 1997); *see Grieb v. Dep’t of Liquor Control*, 153 Ohio St. 77, 90 N.E.2d 691 (1950) (syllabus, paragraph two) (“[G.C. 6064-28], which authorizes the Department of Liquor Control summarily to seize alcoholic beverages which are found on the premises of one whose permit to sell them has been revoked or cancelled, and that part of [G.C. 6064-40], which provides for the destruction or disposition of lawfully held alcoholic liquors, without compensation to the owner, are unconstitutional and of no effect, being violative of Sections 16 and 19, Article I of the Constitution of Ohio and Section 1 of the Fourteenth Amendment to the Constitution of the United States, relating to the taking of property without due process of law and without compensation”); *Westenberger v. Indus. Comm’n*, 135 Ohio St. 211, 213, 20 N.E.2d 252 (1939) (when the Ohio Supreme Court “declared [G.C. 1465-68] unconstitutional, the duties of the Industrial Commission ceased with reference to such partner-employee claims, and the rights of claimants likewise terminated”).

As stated earlier, the Ohio Supreme Court in *Cowan* has determined that R.C. 955.22(D)-(F) on their face violate a dog owner’s constitutional right to procedural due process when their enforcement turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). R.C. 955.22(D)-(F) thus must be treated as having no effect whatsoever when their enforcement turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). Consequently, local officials may not enforce R.C. 955.22(D)-(F) when local officials must determine whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii).⁵ *See Women’s Med. Prof’l Corp. v. Voinovich*, at

⁵ The enforcement of R.C. 955.22(D)-(F) is not unconstitutional when a dog is a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(iii). *See City of Toledo v. Tellings*, 114 Ohio St. 3d

193 (“if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances”).

Moreover, under the Ohio Constitution, local officials may not enforce R.C. 955.22(D)-(F) when their enforcement turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), until the General Assembly cures the constitutional infirmity of R.C. 955.22(D)-(F) throughout the state. Section 26 of Article II of the Ohio Constitution provides that “[a]ll laws, of a general nature, shall have a uniform operation throughout the state.” This constitutional requirement of uniformity of operation is aimed at assuring that the provisions of a law of a general nature will be applicable in any area of the state where similar circumstances exist:

[E]very subject of legislation is either of a general nature on the one hand, or local or special on the other. It can not be in its nature both general and special, because the two are inconsistent. If it is of a general nature, the constitution requires that *all* laws—not *some* laws—on that subject shall have a uniform operation throughout the state.

But how are we to determine whether a given subject is of a general nature? One way is this: if the subject does or may exist in, and affect the people of, every county, in the state, it is of a general nature. On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special. A subject matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject matter which cannot exist in, or affect the people of every county, can not be regulated by general laws having a uniform operation throughout the state, because a law can not operate where there can be no subject matter to be operated upon.

So that practically this section of the constitution means that the legislation on a subject to which, in its nature, laws having a uniform operation throughout the state can be made applicable, must be by statutes having such uniform operation, and can not be by local or special acts. The subject of the statute being of a general nature, all laws without exception as to such subject, must have a uniform operation. The constitution makes no exception, and the courts can make none.

278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007), *cert. denied*, 2008 U.S. LEXIS 2006 (Feb. 19, 2008). Local officials therefore may enforce R.C. 955.22(D)-(F) when a dog “[b]elongs to a breed that is commonly known as a pit bull dog.” R.C. 955.11(A)(4)(a)(iii). *See generally* R.C. 1.50 (“[i]f any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable”).

The evident intention was, to restrict local and special legislation to such subjects as are in their nature not general, so as to compel as near as possible, uniformity of laws throughout the state.

Hixson v. Burson, 54 Ohio St. 470, 481-82, 43 N.E. 1000 (1896); *accord Desenco, Inc. v. City of Akron*, 84 Ohio St. 3d 535, 541-42, 706 N.E.2d 323 (1999); *State ex rel. Zupancic v. Limbach*, 58 Ohio St. 3d 130, 137-38, 568 N.E.2d 1206 (1991). Thus, for purposes of Article II, § 26 of the Ohio Constitution, if a subject does or may exist in, and affects the people of, every county in the state, the subject matter is of a general nature and, as such, must have a uniform operation throughout the state.

Dog ownership is clearly a subject that exists in and affects the people of every county of this state. In addition, R.C. 955.22(D)-(F) prescribe a rule of conduct for all dog owners in the state. *See* R.C. 955.99 (setting out criminal penalties for violations of R.C. 955.22(D)-(F)). Therefore, R.C. 955.22 is a law of a general nature that must have a uniform operation throughout the state. *See generally State v. O'Mara*, 105 Ohio St. 94, 136 N.E. 885 (1922) (syllabus, paragraph one) (“[t]he power to define and classify and prescribe punishment for felonies committed within the state is lodged in the general assembly of the state, and when so defined, classified and prescribed, such laws must have uniform operation throughout the state”), *overruled, in part, on other grounds by Steele v. State*, 121 Ohio St. 332, 168 N.E. 846 (1929).

In light of Article II, § 26 of the Ohio Constitution, the lack of procedural due process afforded to a dog owner under R.C. 955.22(D)-(F) must be remedied by the legislative body with authority to enact legislation that will be applicable throughout the state. *See generally Brinkman v. Drolesbaugh*, 97 Ohio St. 171, 183, 119 N.E. 451 (1918) (the power and duty to change the operation of a statute is with the legislature); *State v. Robinson*, 44 Ohio App. 3d 128, 130, 541 N.E.2d 1092 (Clermont County 1989) (“[a]lthough courts may liberally construe a statute to save it from constitutional infirmities, they cannot simply rewrite laws in order to render them constitutional”). Anything less will result in R.C. 955.22(D)-(F) not having uniform application throughout the state when their enforcement turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). *See generally Farmers Sav. & Trust Co. v. Ridenour*, 59 Ohio Misc. 128, 132-33, 394 N.E.2d 1039 (Crawford County Mun. Ct. 1979) (the constitutional infirmities of R.C. Chapter 2737 may not be cured by local rules of court since local rules of court cannot amend a statute).

Under Article II, § 1 of the Ohio Constitution, the General Assembly is the legislative body empowered to enact laws that operate uniformly throughout the state. This constitutional provision declares that “[t]he legislative power of the state shall be vested in a general assembly.” Thus, the General Assembly, rather than local legislative bodies, is responsible for providing dog owners throughout the state procedural due process when the enforcement of R.C. 955.22(D)-(F) turns on whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). *See generally Welch v. City of Cleveland*, 97 Ohio St. 311, 314, 120 N.E. 206 (1917) (“[s]ection 26,

Article II of the Constitution of Ohio, has no application to municipal ordinances. From their very language municipal ordinances are limited to the municipality, and those within its borders”); *Farmers Sav. & Trust Co. v. Ridenour*, at 132 (“the Ohio replevin statute fails to pass constitutional scrutiny. The fact that this court and other Ohio courts have instituted local procedures to cure the glaring defects in R.C. Chapter 2737 cannot save the statute”). This means that the General Assembly is responsible for enacting laws whereby dog owners throughout the state are afforded an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), for purposes of R.C. 955.22(D)-(F). Accordingly, Article II, §§ 1 and 26 of the Ohio Constitution require the General Assembly to remedy the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F).

County and City Officials May Enact Legislation to Regulate the Ownership and Control of Dogs

While the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) may not be remedied without legislative action by the General Assembly, it must be noted that a board of county commissioners or legislative authority of a city may enact legislation to regulate the ownership and control of dogs that affords procedural due process to dog owners. R.C. 955.221(B) authorizes a board of county commissioners, board of township trustees,⁶ or legislative authority of a municipal corporation to adopt and enforce resolutions or ordinances to control dogs within its territory, provided the resolutions or ordinances do not otherwise conflict with any statute.⁷ For purposes of R.C. 955.221(B), resolutions and ordinances to control dogs may include, but are not limited to, the following:

[O]rdinances or resolutions concerned with the ownership, keeping, or harboring of dogs, the restraint of dogs, dogs as public nuisances, and dogs as a threat to public health, safety, and welfare, except that such ordinances or resolutions as permitted in [R.C. 955.221(B)] shall not prohibit the use of any dog which is lawfully engaged in hunting or training for the purpose of hunting while accompanied by a licensed hunter. However, such dogs at all other times and in all other respects shall be subject to the ordinance or resolution permitted by [R.C.

⁶ A board of township trustees may adopt and enforce resolutions to control dogs within the township when the board of county commissioners has not adopted resolutions to control dogs within the unincorporated areas of the county under R.C. 955.221. R.C. 955.221(B)(2).

⁷ A dog owner who violates an ordinance or resolution adopted by a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation under R.C. 955.221 is guilty of a minor misdemeanor. *See* R.C. 955.221(C) (“[n]o person shall violate any resolution or ordinance adopted under [R.C. 955.221]”); R.C. 955.99(I) (“[w]hoever violates [R.C. 955.221(C)] is guilty of a minor misdemeanor”).

955.221], unless actually in the field and engaged in hunting or in legitimate training for such purpose.

R.C. 955.221(A).

In addition, the legislative authority of a municipal corporation has the authority “to enforce police regulations” within its territory. *City of Akron v. Smith*, 82 Ohio App. 3d 57, 59, 611 N.E.2d 435 (Summit County 1992). Article XVIII, § 3 of the Ohio Constitution provides that “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

Pursuant to the foregoing authorities, a board of county commissioners or legislative authority of a city may adopt and enforce resolutions or ordinances, respectively, to regulate the ownership and control of dogs within its territory in order to ensure the public health, safety, and welfare. *See, e.g., Tellings* (finding that a city has a legitimate interest in protecting its citizens from the dangers associated with pit bulls, and that a city ordinance that prohibits a person, organization, or corporation from owning, keeping, harboring, or providing sustenance to more than one vicious dog or a dog commonly known as a pit bull or pit bull mixed breed is constitutional). This includes resolutions or ordinances that are identical to R.C. 955.11 and R.C. 955.22.

Resolutions or ordinances adopted by a board of county commissioners or legislative authority of a city to regulate the ownership and control of dangerous or vicious dogs may set forth procedures that afford a dog owner an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether his dog is a dangerous or vicious dog for purposes of the resolutions or ordinances. By providing a dog owner with such procedures, a board of county commissioners or legislative authority of a city protects a dog owner’s constitutional right to procedural due process when county or city officials enforce resolutions or ordinances that regulate the ownership and control of dangerous or vicious dogs within its territory. *See generally Cowan* (the constitutional right to due process requires, at a minimum, that a dog owner be afforded an opportunity to be heard at a meaningful time and in a meaningful manner when the state seeks to place substantial regulatory burdens upon the owner’s property interest in a dog). Accordingly, Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221 authorize a board of county commissioners or legislative authority of a city to adopt and enforce resolutions or ordinances that are identical to R.C. 955.11 and R.C. 955.22 and that afford a dog owner procedural due process when the resolutions or ordinances are enforced.⁸

⁸ Resolutions and ordinances that regulate the ownership and control of dangerous or vicious dogs are not subject to Article II, § 26 of the Ohio Constitution, which requires all laws of a general nature to have a uniform application throughout the state. *See generally Welch v. City of Cleveland*, 97 Ohio St. 311, 314, 120 N.E. 206 (1917) (“[s]ection 26, Article II of the

Neither Article XVIII, § 3 of the Ohio Constitution nor R.C. 955.221, however, provides authority for a board of county commissioners or legislative authority of a city to cure the constitutional infirmity of R.C. 955.22(D)-(F) pinpointed in *Cowan*. For the reasons stated above, a resolution or ordinance that establishes procedures that afford a dog owner within the unincorporated area of a county or a city an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), is not effective statewide. Consequently, such a resolution or ordinance does not provide procedural due process to dog owners throughout the state. Because Article II, § 26 of the Ohio Constitution mandates that R.C. 955.22(D)-(F) be applied uniformly throughout the state, it follows that R.C. 955.22(D)-(F) remain unconstitutional on their face even though a board of county commissioners or legislative authority of a city may adopt a resolution or ordinance that establishes procedures that afford a dog owner within its territory an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii). *See generally State ex rel. Godfrey v. O’Brien*, 95 Ohio St. 166, 115 N.E. 25 (1917) (syllabus, paragraph five) (“[t]he provision of an act of the general assembly purporting to confer authority upon the county auditor, or the board of county commissioners, to fix the salary of county or township officers within certain limits, without providing a uniform rule for determining such compensation in the several counties of the state, are in conflict with Section 26 of Article II of the Constitution of Ohio, and void”).

Authority of City and County Officials to Create and Use a Dangerous and Vicious Dog Appeals Board to Provide Procedural Due Process to Dog Owners

Your second and third questions ask, if the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) may be remedied without legislative action by the General Assembly, whether city and county officials may create and use a dangerous and vicious dog appeals board to provide dog owners with a meaningful opportunity to be heard on the issue of whether a dog is a “dangerous dog,” as defined in R.C. 955.11(A)(1)(a), or a “vicious dog,” as defined in R.C. 955.11(A)(4)(a)(i) or R.C. 955.11(A)(4)(a)(ii), for purposes of R.C. 955.22(D)-(F). In light of our response to your first question, it is not necessary to address your second and third questions.

Constitution of Ohio, has no application to municipal ordinances. From their very language municipal ordinances are limited to the municipality, and those within its borders”).

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to Article II, §§ 1 and 26 of the Ohio Constitution, the lack of procedural due process afforded to dog owners under R.C. 955.22(D)-(F) may not be remedied without legislative action by the General Assembly.
2. Pursuant to Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221, a board of county commissioners or legislative authority of a city may enact within its respective territory resolutions or ordinances that regulate the ownership and control of dogs in order to ensure the public health, safety, and welfare.
3. Article XVIII, § 3 of the Ohio Constitution and R.C. 955.221 authorize a board of county commissioners or legislative authority of a city to adopt and enforce resolutions or ordinances that are identical to R.C. 955.11 and R.C. 955.22 and that afford a dog owner procedural due process when the resolutions or ordinances are enforced.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", with a stylized flourish at the end.

MARC DANN
Attorney General

Codified Ordinances of the City of Lakewood, Ohio

Complete to April 3, 2017

DISCLAIMER

The Codified Ordinances and other documents that appear in this FOLIO Infobase may not reflect the most current legislation adopted by the County. The Codified Ordinances are provided for informational purposes only and should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents vary from the formatting and pagination of the official copy. The official printed copy of the Codified Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any portion of the Codified Ordinances in this FOLIO Infobase, please contact the County directly.

506.01 KEEPING DANGEROUS OR VICIOUS ANIMALS.

No person shall keep, harbor or own any dangerous or vicious animal within the City of Lakewood, or permit any dangerous animal to be kept within the City of Lakewood except in accordance with the provisions in Section **506.04**.
(Ord. 58-08. Passed 7-21-2008.)

506.02 DANGEROUS ANIMALS AND VICIOUS ANIMALS DEFINED.

- (a) An animal is deemed to be a dangerous animal when:
 - (1) It has, without provocation, caused serious injury to a human being or domestic animal;
 - or
 - (2) It has a known propensity, tendency or disposition, without provocation, to cause serious injury to a human being or domestic animal; or
 - (3) It has been designated to be a dangerous animal after a hearing by the Director of Public Safety or his or her designee; and
 - (4) The public safety can be protected by the owner or custodian of the animal exercising reasonable control over the animal.
 - (b) An animal is deemed to be a vicious animal when:
 - (1) It has, without provocation, caused serious injury to a human being or domestic animal;
 - or
 - (2) It has a known propensity, tendency or disposition, without provocation, to cause serious injury to a human being or domestic animal; or
 - (3) It has been designated to be a vicious animal after a hearing by the Director of Public Safety or his or her designee; and
 - (4) The public safety cannot be protected by the owner or custodian of the animal exercising reasonable control over the animal.
- (Ord. 58-08. Passed 7-21-2008.)

506.03 PIT BULL DOGS OR CANARY DOGS.

(a) Notwithstanding the provisions of Section 506.02, all pit bull dogs and canary dogs (Perro de PresaCanario) are deemed to be dangerous animals.

(b) As used in this section, “pit bull dog” means any Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog, any dog of mixed breed which is predominantly of one or more of such breeds, or any dog commonly known as a pit bull, pit bull dog or pit bull terrier; as determined by an Animal Control Officer.

(c) As used in this section “canary dogs” or “Perro de PresaCanario Dogs” also include any dog of mixed breed which is predominantly of such breed as determined by an Animal Control Officer.

(Ord. 35-11. Passed 10-17-2011.)

506.04 EXCEPTION, REGISTRATION AND FEE.

(a) Any owner of a dangerous animal as defined in Section **506.03** on the effective date of this section who intends to keep such dangerous animal within the City shall have ninety days from the effective date of this section, or, on a showing of good cause for having failed to adhere to the provisions hereof within ninety days of the effective date of this section, thirty days from the date the owner is notified of his or her noncompliance, to register such dangerous animal with the Director of Public Safety or his or her designee. The fee for such registration shall be fifty dollars (\$50.00). Registration shall take place annually thereafter, except that no annual registration fee shall be required. Registration shall include providing the name and contact information of the owner of the dangerous animal, the location where the dangerous animal shall be kept, and any other information deemed necessary to ensure the safety of the public by the Director of Public Safety or his or her designee. Registration shall be rejected and the dangerous animal shall be removed from the City if the owner fails to show proof annually of compliance with the following conditions:

(Ord. 37-14. Passed 12-15-2014.)

(1) That the dangerous animal has been implanted with a microchip or similar device approved by the Director of Public Safety, for purposes of identification. Such information contained on the device shall be maintained in a database by the Division of Animal Control along with a photograph of the dangerous animal; (Ord. 2-12. Passed 3-5-2012.)

(2) That the dangerous animal has been spayed or neutered;

(3) That the owner has obtained liability insurance with an insurer authorized to write liability insurance in the State, providing coverage for each occurrence, subject to a limit, exclusive of interest and costs, in an amount approved by Council because of damage or bodily injury to, or death of, a human being caused by the animal and that such insurance policy is paid in full for the entire period of registration. The owner shall provide a certificate of insurance evidencing that the policy covers the dangerous animal to which this provision applies and that the insurer acknowledges the specific breed and that it has been declared dangerous.

(Ord. 30-14. Passed 9-2-2014.)

(b) The following terms, conditions and restrictions shall apply to the handling of a dangerous animal registered pursuant to this Section:

(1) The dangerous animal, while on the premises of its owner or custodian, shall be confined indoors or in a securely enclosed pen or “dog run” area which shall have sides six feet high and a secure top, and its bottom secured to its sides or imbedded at least one foot into the ground;

(2) The dangerous animal, while off the premises of its owner or custodian, shall be securely muzzled, leashed with a chain not longer than three feet having tensile strength of not less than 300 pounds, and under the control of a person eighteen years of age or older who is physically capable of restraining the animal;

(3) Any government or utility company employee and anyone else who comes on the property, with implied consent or peaceably and lawfully, shall immediately be informed of the animal’s dangerousness.

(c) The owner of a dangerous animal shall immediately notify the Director of Public Safety or his or her designee of the change of any information contained in the registration of the dangerous animal including but not limited to a change in the address where the animal is kept and if the animal has been removed from the City.

(d) Registration of the dangerous animal shall be revoked and such animal shall immediately be removed from the City, and cannot be returned under these exceptions, upon any of the following:

(1) The dangerous animal bites any person or any other animal;

(2) Failure to comply with any provision of this Chapter;

(3) Removal of the dangerous animal for more than seven calendar days from the City except for a reasonable period to permit boarding where the owner is unavailable to care for the animal, where the owner elects to travel with the animal in lieu of boarding, or when seeking medical attention by a licensed veterinarian for the animal;

(4) The owner provides false information for purposes of registration or fails to properly renew registration including the provision of information required in Sections 506.04(a) and 506.04(c) above;

An order to remove a dangerous animal shall be issued by the Director of Public Safety or his or her designee upon conviction of a violation of this Chapter by a court of competent jurisdiction or by a finding that any circumstance in Section 506.04(d) has occurred by the Director of Public Safety or his or her designee after a hearing.

(e) Notwithstanding the provisions of Section 506.01, any owner of a dangerous animal except for those defined in Section 506.03 may keep such dangerous animal within the City after 90 days from the effective date of this section, provided that the owner adheres to all lawful orders of Director of Public Safety or his or her designee which are deemed necessary to ensure the safety of the public, including but not limited to any precautions identified in Section 506.04(a) and (b).

(f) Notwithstanding the provisions of Section 506.01, any licensed veterinarian, any person or entity doing business as a stationary veterinary facility, and any person or entity doing business as an animal rescue organization that is organized and operated exclusively for exempt purposes set forth in Section 501(c)(3) of the Internal Revenue Code may keep a dangerous animal, including those defined in Section 506.03, within the City provided that the veterinarian, veterinary facility and animal rescue organization keeps the animal in the furtherance of legitimate business or charitable interests, adheres to all lawful orders of the Director of Public Safety or his or her designee which are deemed necessary to ensure the safety of the public, and keeps the dangerous animal for a period of not longer than 60 days. (Ord. 2-12. Passed 3-5-2012.)

506.05 KEEPING OR TRAINING ANIMALS FOR FIGHTING.

No person shall keep, harbor or own any animal for the purpose of fighting, or train any animal for the purpose of causing or encouraging such animal to make unprovoked attacks, cause injury or otherwise threaten the safety of human beings or domestic animals.
(Ord. 58-08. Passed 7-21-2008.)

506.06 SELLING, BREEDING OR BUYING DANGEROUS OR VICIOUS ANIMALS.

No person shall possess a dangerous or vicious animal with intent to sell, offer for sale, breed, buy or attempt to buy such animal.
(Ord. 58-08. Passed 7-21-2008.)

506.07 IMPOUNDMENT.

(a) Any Animal Control Officer, police officer or health officer shall have the authority but not the duty to summarily and immediately impound any animal which has attacked, bitten or otherwise injured any human being or domestic animal, or which has a known propensity, tendency or disposition, without provocation, to attack, cause injury or otherwise threaten the safety of human beings or domestic animals.

(b) When damage is imminent, any such officer may enter and inspect private property to enforce this chapter.

(c) Any person keeping or harboring an animal sought to be impounded shall surrender such animal to a police officer or health officer upon demand.

(d) If an animal cannot be safely taken up and impounded, it may be slain forthwith by a police officer. (Ord. 58-08. Passed 7-21-2008.)

506.08 ALTERNATIVE CONFINEMENT.

(a) In lieu of an animal being impounded pursuant to Section 506.07, the Animal Control Officer may direct that the animal be confined at the owner's or custodian's expense, either in an approved veterinary facility, at the owner's or custodian's residence or outside the City. In such case, the owner or custodian shall not remove the animal from the veterinary facility or residence or bring the animal into the City without the prior written approval of the Animal Control Officer, and shall make the animal available for observation and inspection by police officers and health officers of the City, including the Animal Control Officer.

(b) The Animal Control Officer may have such impounded or confined animal permanently identified by photo and other identification.
(Ord. 35-11. Passed 10-17-2011.)

506.09 HEARING BY DIRECTOR OF PUBLIC SAFETY; NOTICE.

(a) Within ten business days of an animal being impounded or confined pursuant to Section **506.07** or **506.08**, the Director of Public Safety or his or her designee shall conduct a hearing to determine whether or not the animal is a dangerous animal or a vicious animal. The City shall make residential service of notice of the time, place and purpose of the hearing, at least three days before the hearing, upon the owner or custodian of the animal, any person requesting notice and any person known to have relevant knowledge or information regarding the animal.

(b) Within forty business days of a dog being deemed to be dangerous pursuant to Section **506.03**, the Director of Public Safety or his or her designee shall conduct a hearing to determine whether or not the dog is dangerous as defined by that section. The City shall make residential service of such determination and the hearing date upon the owner or custodian of the dog at least thirty days before the hearing. The City shall provide the section of the Codified Ordinances under which the dog has been deemed dangerous. The notice shall inform the owner or custodian that the dog must be removed from the City within thirty (30) days of a written decision of the Director of Public Safety or his or her designee that the dog is a pit bull dog or canary dog, unless such removal date is reasonably extended by the City for good cause shown. On the request of the City or the owner or custodian, for good cause shown the hearing date may be continued by the Director of Public Safety or his or her designee. Any order to remove a dog from the City pursuant to this subsection shall be stayed pending appeal.

(c) Within five business days of such hearing, after considering all substantial, reliable and probative evidence accepted for review, the Director of Public Safety or his or her designee shall issue a written decision making a finding as to whether the animal is dangerous or vicious as defined in this chapter and shall serve the decision upon all parties. The decision shall be a final order and may be appealed to a court of competent jurisdiction.

(Ord. 35-11. Passed 10-17-2011.)

506.10 EVIDENCE.

(a) The Director of Public Safety or his or her designee may hear and consider evidence offered by any person desiring to provide such evidence at a hearing to determine whether or not an animal impounded or confined pursuant to Section 506.07 or 506.08 is a dangerous animal or a vicious animal.

(b) In making a determination as to whether or not an animal impounded or confined pursuant to Section 506.07 or 506.08 is a dangerous animal or a vicious animal, the following evidence may be considered:

(1) Any previous history of the animal attacking, biting or causing injury to human beings or domestic animals;

(2) The nature and extent of all injuries inflicted and the number of victims involved;

(3) The place where the bite, attack or injury occurred;

(4) The presence or absence of any provocation for the bite, attack or injury;

(5) The extent to which clothing or other property was damaged or destroyed;

(6) Whether or not the animal exhibits any characteristic of being trained for fighting or attack, or other evidence to show such training or fighting;

(7) Whether the animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or domestic animals;

(8) The manner in which the animal has been trained, handled and maintained by its owner or custodian;

(9) Any other relevant evidence concerning the animal; and

(10) Any other relevant evidence regarding the ability of the owner or custodian or the City to protect the public safety if the animal is permitted to remain in the City.

(c) At any hearing held pursuant to Section 506.09(b), the Director of Public Safety or his or her designee may consider any testimony of or evidence submitted by the City, the owner or custodian of a dog deemed dangerous, or a veterinarian, zoologist, specialist or other person as to whether the dog is a pit bull dog or canary dog. Competent, credible evidence accepted in support of the Animal Control Officer's finding that the dog is a pit bull dog or canary dog shall create a rebuttable presumption that the dog is of the type identified. Competent, credible evidence of the results of blood-drawn deoxyribonucleic acid testing submitted by the owner or custodian of the dog shall be accepted as evidence of whether the dog is a pit bull dog or canary dog. (Ord. 35-11. Passed 10-17-2011.)

506.11 DECISION OF THE DIRECTOR OF PUBLIC SAFETY.

Following any hearing held pursuant to Section 506.09(a):

(a) If the Director of Public Safety or his or her designee finds that the animal represents a continuing threat of serious harm to human beings or domestic animals, but that the public safety can be protected by the owner or custodian of the animal exercising reasonable control over the animal, the decision of the Director of Public Safety or his or her designee shall designate the animal to be a dangerous animal.

(b) If the Director of Public Safety or his or her designee finds that the animal represents a continued threat of serious harm to human beings or domestic animals, and that the public safety cannot be protected by the owner or custodian of the animal exercising reasonable control over the animal, the decision of the Director of Public Safety or his or her designee shall designate the animal to be a vicious animal.

(c) If the Director of Public Safety or his or her designee finds that the animal does not represent a continued threat of serious harm to human beings or domestic animals, the decision of the Director of Public Safety or his or her designee shall make no designation of the animal, and such animal shall be released to its owner or custodian. Such determination shall in no manner alter whether such animal may thereafter be deemed to be a dangerous animal under Section 506.03.

(Ord. 35-11. Passed 10-17-2011.)

506.12 DISPOSITION OF VICIOUS ANIMALS.

(a) Any animal designated by the Director of Public Safety or his or her designee, after a hearing, to be a vicious animal, if not already impounded by the City, shall be immediately surrendered to the Director of Public Safety or his or her designee, Animal Control Officer or a police officer.

(b) Any animal declared by the Director of Public Safety or his or her designee after a hearing, to be a vicious animal shall be humanely destroyed.

(c) The Director of Public Safety or his or her designee shall issue an order authorizing the destruction of the vicious animal to take place not earlier than five days following the written decision by the Director of Public Safety or his or her designee designating the animal to be a vicious animal. If the owner or custodian of the vicious animal, within such period, files a notice of appeal of the Director of Public Safety or his or her designee's decision with a court of competent jurisdiction, serves the Director of Public Safety or his or her designee with a copy of the notice of appeal and removes the animal from the City pending such appeal, the City shall stay the order of destruction, pending the appeal.

(Ord. 58-08. Passed 7-21-2008.)

506.13 DISPOSITION OF DANGEROUS ANIMALS.

Following any hearing held pursuant to Section 506.09(a):

(a) Unless the Director of Public Safety or his or her designee, after a hearing, issues an order in accordance with the provisions of Section 506.04, he or she shall issue an order for the owner or custodian to remove any dangerous animal from the City within seven (7) calendar days after a hearing.

(b) If the owner or custodian of the dangerous animal files a notice of appeal of the Director of Public Safety or his or her designee's decision with a court of competent jurisdiction, the order of the Director of Public Safety or his or her designee to remove the dangerous animal from the City or to impose reasonable terms, conditions and restrictions which the Director of Public Safety or his or her designee deems are necessary to protect the public health, safety and welfare shall not be stayed pending the appeal.

(c) If the owner or custodian of an impounded or confined dangerous animal wishes to reclaim and remove it from the City, the Director of Public Safety or his or her designee shall release it, provided that the animal is taken to its new location outside the City immediately and directly upon its release. No person to whom such animal is released shall fail to remove the animal immediately and directly from the City.

(Ord. 58-08. Passed 7-21-2008; Ord. 35-11. Passed 10-17-2011.)

506.14 POLICE DOGS; SERVICE DOGS.

The terms “dangerous animal” and “vicious animal,” as used in this chapter, do not include police dogs that have been trained and may be used to assist law enforcement officers in the performance of their official duties. Pit bull dogs and canary dogs do not include service animals as defined by the Americans With Disabilities Act and the regulations promulgated pursuant thereto.

(Ord. 35-11. Passed 10-17-2011.)

506.99 PENALTY.

(a) Whoever violates Section 506.01, 506.05 or 506.06 shall be guilty of a misdemeanor of the first degree.

(b) Whoever violates Section 506.04, 506.07, 506.08, 506.12 or 506.13 shall be guilty of a misdemeanor of the third degree.
(Ord. 58-08. Passed 7-21-2008.)

109.01 OPEN MEETINGS.

(a) Unless otherwise provided in the Codified Ordinances, all meetings of Council, the Board of Building Standards and Building Appeals, the Board of Zoning Appeals, the Board of Control, Civil Service Commission, the Planning Commission, the Citizens Advisory Committee and other similar public bodies of the City or other citizens' committees as may be appointed from time to time, shall be open to the public, unless an executive session is expressly authorized under the applicable provisions of State law.

(b) Nothing herein contained shall mandate that any public body permit public participation in such meetings unless specifically required by the provisions of the Second Amended Charter or the Codified Ordinances. (Ord. 64-12. Passed 11-4-2013.)

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August 23, 2017

VIA HAND DELIVERY

Shannon Strachan
Shannon.Strachan@Lakewoodoh.net
Hearing Officer
City of Lakewood, Ohio
c/o Mayor's Office
12650 Detroit Avenue
Lakewood, OH 44107

RE: Jennifer Scott
Dog Determination Decision

Dear Ms. Strachan:

If the City of Lakewood decides contrary to the evidence presented at the hearing on August 23, 2017 that it believes Jennifer Scott's dog, Charlie, is or may be a pit bull under Section 506.03 of the Lakewood Codified Ordinances, then there are at least three legal reasons the charges must be dismissed.

First, Section 506.10(C) of the Lakewood Codified Ordinances provides that competent, credible evidence supporting the Animal Control Officer's finding of a dog's breed creates a rebuttable presumption supporting that finding. This provision of Lakewood's Codified Ordinances is unconstitutional and, therefore, may not be enforced. Violation of Section 506.01 of the Lakewood Codified Ordinances, which prohibits keeping, owning, or harboring a dog defined in Section 506.03 as dangerous, is a criminal offense, a first-degree misdemeanor. *See* LCO 606.99(a) ("Whoever violates Section 506.01 * * * shall be guilty of a misdemeanor of the first degree."). Accordingly, the federal Constitution requires that the government prove every element of the offense beyond a reasonable doubt, and the government may not relieve itself of that burden by shifting the burden of proof. *See, e.g.,* In re Winship, 397 U.S. 358, 364 (1970). *See also* State v. Murphy, 168 Ohio App.3d 530, 2006-Ohio-4549, 860 N.E.2d 1068, ¶ 23 (3d Dist.) (reversing conviction based on Marion's breed-specific presumption of dog's viciousness absent evidence based on the conduct of the specific dog at issue).

Second, Section 506.10(C)'s presumption also violates Ohio law. R.C. 955.222(C) requires that the City prove *by clear and convincing evidence* that a dog at issue, Charlie in this case, is dangerous or vicious, as those terms are defined by State law. Therefore, the City may not relieve itself of the burden of proof established by Ohio law, and Section 506.10(C) violates R.C. 955.221(B)(3) because it is in conflict with R.C. 955.222(C).

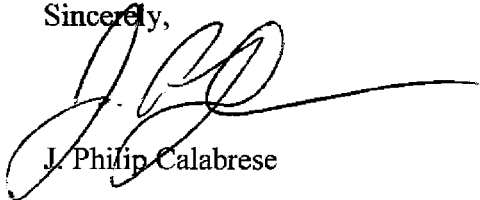
Third, enforcement of Section 506.03 of the Lakewood Codified Ordinances exceeds the City's home-rule authority under the Ohio Constitution. In 2012, the General Assembly changed Ohio law to classify the dangerousness of dogs based on their conduct—not their breed. Based on this legislative enactment, the Fifth District recently declared that the ordinances of another municipality that, like Lakewood, bans pit bulls are unconstitutional and may not be enforced:

While Reynoldsburg's Ordinances prohibit the ownership of pit bulls outright, Ohio Revised Code Chapter 955 has abolished breed-specific determinations of whether or not a dog is vicious or dangerous and focuses instead on the conduct of the individual dog. Under Ohio law, resident may keep or own any dog they choose, provided that if the dog is determined to be "dangerous" as defined in R.C. 955.11(A)(1)(a), the owner must comply with R.C. 955.222. Thus, while a pit bull is automatically considered "vicious" under the Reynoldsburg Ordinances and ownership of the same is prohibited, a pit bull may or may not be considered "vicious" under Ohio Revised Code Chapter 955 based on its conduct. We find, on such basis, that there is a conflict between Reynoldsburg's pit bull Ordinances and Chapter 955, as amended by House Bill 14. The Ordinances prohibit that which is permitted by Ohio statutes (ownership of dogs identified as pit bulls).

Russ v. City of Reynoldsburg, 5th Dist. Licking No. 16-CA-58, 2017-Ohio-1471, ¶ 26. For your convenience, a copy of this decision is attached. *See also City of Lima v. Stepleton*, 2013-Ohio-5655, 5 N.E.3d 721 (3d Dist.) (declaring unconstitutional on home-rule grounds provisions of ordinances imposing regulations on owners of dogs determined to be pit bulls that exceed the requirements of Ohio law in Chapter 955).

For these reasons, as well as the factual and legal reasons stated at the hearing on August 23, 2017, the City may not enforce Sections 506.01 and 506.03 in this case.

Sincerely,



J. Philip Calabrese

Copy: Kevin Butler, Law Director

Attachment

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August 29, 2017

VIA EMAIL

Shannon Strachan
Shannon.Strachan@Lakewoodoh.net
Hearing Officer
City of Lakewood, Ohio
c/o Mayor's Office
12650 Detroit Avenue
Lakewood, OH 44107

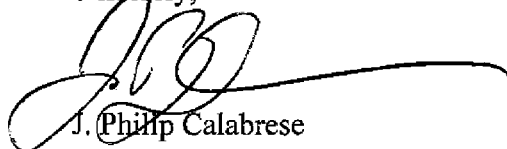
RE: Jennifer Scott
Dog Determination Decision

Dear Ms. Strachan:

On Monday, August 28, 2017, Lakewood Animal Control Officer Kurt Bialosky advised a prospective resident by email that "we do not do visual ID approvals of dogs anymore." Instead, the City now recommends a DNA test—even though Officer Crawford testified that Lakewood's ordinances do not provide authority for the City to require a DNA test.

This decision shows that Lakewood's Animal Control Officers do not view visual identification evidence as reliable or probative in determining a dog's breed. Because that is the only evidence the City presented at the hearing on August 23, the City has failed to carry its burden of proof.

Sincerely,



J. Philip Calabrese

Copy: Kevin Butler, Law Director