

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

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.

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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

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.