

NO. ~~07~~ **CI 003025**

JEFFERSON CIRCUIT COURT

THE LOUISVILLE KENNEL CLUB, INC.

DIVISION\_\_

and

HON. \_\_\_\_\_

THE LEAGUE OF KENTUCKY SPORTSMEN, INC.

and

KENTUCKY HOUNDSMEN'S ASSOCIATION, INC.

and

GREATER LOUISVILLE TRAINING CLUB

and

RUTH SNOW D/B/A ROSES FOR FELINES CAT CLUB

and

RUTH SNOW D/B/A DIMES AND DOLLARS CAT CLUB

and

NORMAN AUSPITZ D/B/A KENTUCKY COLONELS CAT CLUB

and

WAGGIN' TAIL KENNELS, INC.

and

ROYALTON KENNELS, LLC

and

PAUL LEE

and

H. PATRICK KING, JR., DVM

and

JEFFERSON CIRCUIT COURT  
DIVISION ONE (1)

FILED IN CLERK'S OFFICE

MAR 27 2007

DAVID L. NICHOLSON, CLERK  
By \_\_\_\_\_ D.C.

**KURT OLIVER, DVM**

**PLAINTIFFS**

v.

**COMPLAINT**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

**DEFENDANT**

**Serve: Irv Maze  
Jefferson County Attorney  
531 Court Place  
Suite 1001  
Louisville, Kentucky 40202**

\* \* \* \* \*

Plaintiffs, The Louisville Kennel Club, Inc., The League of Kentucky Sportsmen, Inc., Kentucky Houndsmen's Association, Inc., Greater Louisville Training Club, Ruth Snow d/b/a Roses for Felines Cat Club, Ruth Snow d/b/a Dimes and Dollars Cat Club, Norman Auspitz d/b/a Kentucky Colonels Cat Club, Waggin' Tail Kennels, Inc., Royalton Kennels, LLC, Paul Lee, H. Patrick King, Jr., DVM, and Kurt Oliver, DVM, by counsel, for their Complaint, state as follows:

**INTRODUCTION**

1. This is an action to void a local law that illegally and unconstitutionally infringes on freedoms of people in Louisville. The law at issue is Ordinance No. 233, Series 2006, "An Ordinance Amending and Reenacting Chapter 91 of the Louisville/Jefferson County Metro Government Code of Ordinances [LMCO] Pertaining to Animal Control and Welfare [Floor Substitute as Amended]" (hereafter, "the Ordinance").

2. The nearly 100-page Ordinance violates or threatens to violate the rights of all animal owners in Louisville. Some of the principal problems with the Ordinance are these: it deprives people of the liberty and property rights associated with animal ownership; it is so vague that people

cannot understand what it means; it lacks measurable standards; it encourages arbitrary and selective enforcement by Louisville Metro Animal Services ("MAS"); it encourages discriminatory enforcement by MAS; it imposes harsh criminal penalties for harmless conduct; it confers limitless power on the Director of MAS, Gilles Meloche, to infringe upon the rights of animal owners in Louisville in whatever manner he chooses; it illegally attempts to regulate the practice of veterinary medicine; its excessive schedule of fees is confiscatory; it contains certain false presumptions about animals, such as unaltered dogs, that are not supported by scientific fact; it does not advance whatever public purpose to which it was addressed.

3. The plaintiffs seek a declaration that the Ordinance violates the First and Fourteenth Amendments to the United States Constitution, the Commerce Clause of the United States Constitution, Sections One, Two, and Three of the Kentucky Constitution, and conflicts with Kentucky statutory law. As such, Plaintiffs ask this Court to declare the Ordinance illegal, enjoin enforcement of the Ordinance, and void the Ordinance in its entirety.

### **PARTIES**

4. Plaintiff The Louisville Kennel Club, Inc. is a non-profit Kentucky corporation. Its principal place of business is located at 1822 Portland Avenue, Louisville, Kentucky 40203.

5. Plaintiff The League of Kentucky Sportsmen, Inc. is a non-profit Kentucky corporation. Its principal place of business is located at 3759 Lisa Lane, Alexandria, Kentucky 41001.

6. Plaintiff Kentucky Houndsmen's Association, Inc. is a non-profit Kentucky corporation. Its principal place of business is located at 940 County Farm Road, London, Kentucky 40741.

7. Plaintiff Greater Louisville Training Club, is an unincorporated, non-profit association located at 4326 Robards Lane, Louisville, Kentucky 40218.
8. Plaintiff Ruth Snow d/b/a Roses for Felines Cat Club, is an unincorporated, nonprofit association located at P.O. Box 312, Pee Wee Valley, Kentucky 40056.
9. Plaintiff Ruth Snow d/b/a Dimes and Dollars Cat Club, is an unincorporated, nonprofit association located at P.O. Box 312, Pee Wee Valley, Kentucky 40056.
10. Plaintiff Norman Auspitz d/b/a Kentucky Colonels Cat Club, is an unincorporated, nonprofit association located at 110 Lodge Hill Road, Louisville, Kentucky 40223.
11. Plaintiff Waggin' Tail Kennels, Inc., is a Kentucky corporation. Its principal place of business is located at 2105 Lexington Road, Louisville, Kentucky 40206.
12. Plaintiff Royaltan Kennels, LLC, is a Kentucky Limited Liability Company. Its principal place of business is located at 8620 Old Bardstown Road, Louisville, Kentucky 40291.
13. Plaintiff Paul Lee is a resident of Jefferson County. His address is 731 M Street, Louisville, Kentucky 40208.
14. Plaintiff H. Patrick King, Jr., DVM, is a licensed veterinarian in Kentucky who practices veterinary medicine in Jefferson County.
15. Plaintiff Kurt Oliver, DVM, is a licensed veterinarian in Kentucky who practices veterinary medicine in Jefferson County.
16. Defendant Louisville/Jefferson County Metro Government is a consolidated local government under KRS 67C.101. Enforcement of the Ordinance by Louisville/Jefferson County Metro Government is an act performed under color of the laws of Louisville/Jefferson County and the Commonwealth of Kentucky and therefore constitutes state action within the meaning of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

### **JURISDICTION AND VENUE**

17. Jurisdiction and venue in this Court are proper pursuant to KRS 23A.010, KRS 418.040, and KRS 418.045, and because the acts complained of occurred in Jefferson County, Kentucky.

### **FACTUAL BACKGROUND**

18. Throughout 2006, the Louisville Metro Council (hereafter, “the Council”) considered passing an ordinance that its supporters promoted as a “dangerous dog ordinance.” The proposed ordinance was sponsored by Councilwoman Cheri Hamilton, who cited certain high profile dog attacks in Louisville as the impetus behind the proposal.

19. The Council's Government Administration, Rules, Ethics and Audit Committee (“the Government Administration Committee”) formed a work group, the purpose of which was to draft recommendations for a proposed ordinance. The work group included certain Council members as well as representatives of various interested groups such as The Louisville Kennel Club and the Kentucky Humane Society. Although one of the chief purposes of the work group was to consider the views of various interested groups in drafting the ordinance, many of those views were ignored or denounced by a small number of individuals who controlled the work group.

20. As a result of the work group's failure and refusal to address relevant and important views, the proposed ordinance that was ultimately drafted not only failed to rationally address its ostensible purpose of public welfare and safety but also illegally infringed upon the rights of animal owners in Louisville.

21. On or about December 12, 2006, the Government Administration Committee, by a vote of four to three, approved a proposed version of the ordinance. The proposed ordinance was scheduled for a full Council vote on December 19, 2006.

22. On the evening of December 19, 2006, the Council met for approximately nine hours concerning the proposed ordinance. The meeting lasted well into the morning of December 20, 2006. During the meeting, numerous last-minute amendments were made to the ordinance. Certain members of the Council made efforts to table the ordinance, but proponents of the ordinance forced a vote on it. It is likely that some or all members of the Council had not even read the proposed ordinance in its entirety when they voted on it.

23. In the early-morning hours of December 20, 2006, the Council passed the proposed ordinance by a vote of sixteen to eight.

24. Days after the vote, members of the Council who opposed the proposed ordinance asked Mayor Jerry Abramson to veto it. The opponents of the proposed ordinance explained that it would have a detrimental economic impact on Louisville and would violate the rights of animal owners, and that the process through which it was passed violated state law. The opponents asked the Mayor to send the proposed ordinance back to the Council for further analysis and debate. However, the Mayor signed the Ordinance on January 4, 2007. The Mayor noted publicly that the Ordinance was a "work in progress."

25. Since the Ordinance was signed into law, many people have voiced concern over its provisions. MAS, through its Director, Gilles Meloche, has attempted to assure the public that it will use its discretion to selectively enforce the Ordinance in a manner that Meloche deems appropriate. This promise of selective enforcement is illegal pursuant to KRS 258.225, which requires animal control officers to perform their duties. Further, any government's statement that it will selectively

enforce its laws where there are no regulations or standards in place to ensure consistent enforcement efforts is illegal and/or unconstitutional.

## THE ORDINANCE

### A. General Overview

26. The Ordinance is not a "dog law." It is a law that restricts the freedoms of people. One of the Ordinance's systematic restrictions pertains to owners of unaltered (not spayed or neutered) animals. People own unaltered animals for a variety of reasons, or for no reason at all; often, people own unaltered dogs for breeding, showing, hunting, herding, therapy, service or assistance purposes. The Ordinance falsely presumes that unaltered dogs pose public dangers, and it systemically discriminates against their owners. New requirements on enclosures, restraints, and permits for unaltered dogs, the increased possibility of confiscation or impoundment of an unaltered dog, and the unpredictable enforcement of these laws by MAS have made it prohibitive to own unaltered dogs in Louisville. To give just one example, the Ordinance's new four-foot leash requirement makes it impossible to even jog with an unaltered dog.

27. The Ordinance subjects people to the arbitrary exercise of power. The Ordinance authorizes and encourages selective enforcement and, indeed, MAS has announced that it will enforce the Ordinance selectively. The vague and overly broad language that permeates the Ordinance does not adequately inform the public what is permitted or not permitted under the Ordinance and results in the granting of unfettered discretion to MAS to enforce the Ordinance as it arbitrarily sees fit.

28. Many provisions of the Ordinance reflect an attempt to micro-manage animal ownership in ways that are clearly illegal. For instance, no animal may be sold or given away without the written permission of MAS (91.025(D)), an unaltered dog cannot be taken on vacation or

left with a pet-sitter without notifying MAS (91.0201(C)-(D)), and all dogs must be re-vaccinated for rabies each time they are removed from a boarding kennel (91.023(C)). These provisions do not serve any proper governmental purpose, and are illegal on their face.

29. Many other provisions of the Ordinance conflict with Kentucky law. Most notably, the Ordinance illegally attempts to regulate the practice of veterinary medicine. KRS Chapter 321 contains a comprehensive scheme of legislation relating to the practice of veterinary medicine. KRS 321.235 vests power in the Kentucky Board of Veterinary Examiners (KBVE) to “administer and enforce the provisions of [KRS 321].” The KBVE has created a comprehensive regulatory scheme for the practice of veterinary medicine at 201 KAR Chapter 16. Because the practice of veterinary medicine is subject to a comprehensive regulatory scheme under state law, provisions of the Ordinance that have the purpose or effect of regulating the practice of veterinary medicine are invalid. The invalid provisions include, but are in no way limited to, Sections 91.001 (the definition of “veterinarian” is incorrect), 91.020, 91.023, 91.036, and 91.079. Other provisions conflict with Kentucky law as well. The provisions relating to “cruelty” (Sections 91.001 and 91.054) are in conflict with the comprehensive scheme of regulation of animal cruelty at KRS 525.125, 525.130, 525.135, and the provisions relating to “nuisance” (Sections 91.001 and 91.004) are in conflict with the comprehensive scheme of regulation at KRS 411.500 *et seq.*

30. In spite of its substantial length and complexity, the Ordinance does not rationally advance any legitimate public purpose. If the purpose of the Ordinance is to control animal overpopulation, it fails to advance that purpose. Animal overpopulation is not a demonstrated problem in Louisville, and, even if it were, Louisville’s pre-existing laws would have adequately met such a problem with effective enforcement. If the purpose of the Ordinance is public safety, it fails to advance that purpose as well. Science does not support the Ordinance's false presumption that

unaltered dogs are more aggressive than unaltered dogs. Further, the Ordinance's definitions of "potentially dangerous" and "dangerous" dogs are so vague and overbroad that they effectively include every dog in Louisville, thereby granting to MAS the power to arbitrarily and illegally attempt to apply the Ordinance.

31. The following are set forth as examples of specific illegal provisions of the Ordinance.

32. Section 91.001 of the Ordinance defines an "at-risk" dog as, among other things, one which would "chase" a person, would "menace" a person, would display "aggressive" behavior, would cause physical injury to any domestic pet (defined elsewhere as including mice, rats, and rabbits), would cause physical injury to livestock, and any unaltered dog which is not licensed. This definition effectively includes every dog in Louisville. It is illegal and unconstitutional.

33. Section 91.001 of the Ordinance defines an "attack" as something that causes "a scratch, abrasion, or bruising, or on a domestic pet or livestock that causes death or injury." This definition contains no measurable standards. Under this definition, a person could be "attacked" regardless of the situation or manner in which the "scratch, abrasion or bruising" was received. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

34. Section 91.001 of the Ordinance defines "cruelty" as, among other things, "failing to provide adequate food and water," "failing to detect the need for or withholding veterinary care," "creating or allowing unhealthful living conditions," "striking" an animal, "infliction of suffering" through the use of "objects," and failing to provide "health related grooming." This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

35. Section 91.001 of the Ordinance defines "a dangerous dog" as any dog which would maim a domestic pet (defined elsewhere as including mice, rats, or rabbits), any dog declared by the director of MAS to be a dangerous dog, and any dog owned for the purpose of fighting or harming other animals (the latter provision would make all herding and livestock guardian dogs "dangerous" dogs). This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

36. Section 91.001 of the Ordinance sets forth certain requirements for enclosures. Among other things, this section prohibits the use of electric fences for unaltered, "potentially dangerous," and "dangerous" dogs and requires a fence or structure at least six feet tall and installed beneath ground level or in concrete or pavement for every "potentially dangerous" and "dangerous" dog. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

37. Section 91.001 of the Ordinance defines "nuisance" as any act of an animal that irritates or perturbs anyone, or any act of an animal's owner that irritates or perturbs anyone. Anyone committing a nuisance can be subject to criminal punishment, including a jail sentence. This definition is an illegal and unconstitutional infringement of the rights of liberty and property ownership enjoyed by the people of Louisville. The provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

38. Section 91.001 of the Ordinance defines a "potentially dangerous dog" as any which would bite, scratch, or bruise anyone, any dog which would injure another domestic pet (defined elsewhere as including mice, rats, and rabbits), and any dog declared by the director of MAS to be a potentially dangerous dog. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

39. Section 91.001 of the Ordinance sets forth certain requirements for the "restraint" of dogs and puppies. Among other things, this definition requires every dog off premises of the owner to be restrained by a "responsible person physically able to control the dog," prohibits owners of unaltered dogs from using "off-leash" areas designated by the Metro Department of Parks or Kentucky Department of Parks, and prohibits the use of any leash longer than four feet for an unaltered dog. This provision irrationally discriminates against owners of unaltered dogs, illegally infringes on the rights of all dog owners (perhaps most notably, owners of service dogs), and contains several highly restrictive requirements for "potentially dangerous dogs" and "dangerous dogs," the definition of which are so vague and overbroad that they include every dog in Louisville. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

40. Section 91.020 of the Ordinance contains licensing requirements for animals. Among other things, it authorizes the Director of MAS to designate anyone to inspect dogs to determine whether they have been spayed or neutered notwithstanding that a spayed or neutered certificate has been issued by a licensed veterinarian, and requires veterinarians to notify clients of licensing and permit requirements, both of which constitute an illegal attempt to regulation the practice of veterinary medicine. This provision is also internally inconsistent, providing that licenses are valid for the term of the vaccination but failing to provide for three-year licenses to match three-year vaccinations. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

41. Section 91.0201 of the Ordinance contains special registration and permit requirements for unaltered dogs, and sets forth several restrictions on the rights of owners of unaltered dogs, such as a requirement that the director of MAS be notified every time the person in

possession of an unaltered dog changes. This provision irrationally discriminates against owners of unaltered dogs without any rational basis in scientific fact. For instance, this section would require an owner of an unaltered dog to notify the director of MAS every time the unaltered dog was placed in a kennel, taken on vacation, or was left with a pet-sitter. This section also prohibits certain sales of unaltered dogs in a manner that affects individuals outside of Jefferson County. More broadly this section also attempts to eliminate all property rights of owners of unaltered dogs by attempting to change the ownership status of an unaltered dog from something that is owned and licensed, to something that the government merely “permits” a person to possess. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. It also violates the Commerce Clause. As such, it is illegal and unconstitutional.

42. Section 91.0202 of the Ordinance requires, among other things, that all unaltered dogs be kept in an enclosure that is approved by the Director of MAS in writing. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

43. Section 91.023 of the Ordinance requires, among other things, that any animal removed from a kennel or cattery must be re-vaccinated against rabies and must be re-licensed by MAS each time it is removed, and imposes certain vaccination and record-keeping requirements on veterinarians. This provision attempts to illegally regulate the practice of veterinary medicine. It is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

44. Section 91.025 of the Ordinance contains certain requirements pertaining to the sale of animals. Among other things, this section requires the written permission of the Director of MAS for any person to sell any animal, and for any person to purchase an unaltered, "potentially

dangerous" or "dangerous" dog. This section also requires that any advertisement for the sale of an animal include the license number of the animal for sale. This particular requirement is an unconstitutional infringement of protected speech under the First Amendment to the United States Constitution, and, to the extent it applies to sales of animals by non-Kentucky residents, it violates the Commerce Clause of the United States Constitution. This provision is also overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

45. Section 91.030 of the Ordinance prohibits an owner of one half acre or less of residential property from quartering more than three dogs outdoors on his or her property, and prohibits an owner of less than two acres of property from quartering more than seven dogs outdoors on that property. This section infringes on the rights of property owners in Louisville, including but not limited to, those who operate boarding kennels. It is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

46. Section 91.035 of the Ordinance sets forth provisions relating to impoundment of animals. Among other things, the provision empowers the Director of MAS to impound any dog he wants (91.035(C)) and to release, or not release, animals on whatever terms he wants (91.035(E)). This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

47. Section 91.036 of the Ordinance requires, among other things, that any dog or cat which is impounded shall not be released until it has had a microchip inserted, requires that any unaltered dog which has been impounded must be spayed or neutered before being released, and imposes certain vaccination requirements. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

48. Section 91.037 of the Ordinance requires, among other things, that any animal which has bitten or scratched person must be quarantined for ten days. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

49. Section 91.042 of the Ordinance requires that anyone who sells or transfers ownership of animals must notify MAS within 10 days, even if they are sold or transferred outside the jurisdiction. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. It also violates the Commerce Clause of the United States Constitution. As such, it is illegal and unconstitutional.

50. Section 91.050 of the Ordinance requires, among other things, that owners provide their animals with "wholesome food and water", "proper" shelter, "veterinary care when needed," "humane" care, a "healthful" shelter, and numerous other vague and immeasurable standards. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

51. Section 91.051 of the Ordinance appears to prohibit, among other things, restraining a dog or puppy by a tether or chain between the hours of 8:00 a.m. and 6:00 p.m. and during any eight hour period for more than one hour. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

52. Section 91.054 of the Ordinance prohibits "cruelty" against animals in a way that is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional. This section also prohibits people from being present at any "dogfight," but does not define dogfight, thus criminalizing anyone anywhere who is physically present when two dogs merely squabble.

53. Section 91.058 of the Ordinance requires, among other things, that all items made from or containing any type of fur must be labeled with the name of the species whose fur is used. This provision would require all retailers selling any item that includes fur to determine the origin of the fur and label the item accordingly. As such, the provision violates the Commerce Clause of the United States Constitution. This provision is also overly broad, irrational and/or encourages arbitrary and selective enforcement. It is illegal and unconstitutional.

54. Section 91.059 of the Ordinance prohibits the mutilation of any animal, whether dead or alive, without any effort to define the term "mutilate." This provision, for example, prohibits the dissection of animals in the educational setting at all levels. It is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

55. Section 91.075 of the Ordinance requires, among other things, that Boarding Kennels and Catteries maintain "comfortable" temperature, "adequate ventilation," an "adequate" exercise area, "clean" living space, "wholesome, palatable" food, veterinary care for "good health and general welfare and to prevent suffering." This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

56. Section 91.076 of the Ordinance provides, among other things, that Class C Kennels (defined elsewhere as, primarily, kennels for training animals) comply with the other requirements for kennels and also prohibits "cruelty." Sections 91.077 and 91.078 require, among other things, that Class B Kennels and Catteries (defined elsewhere as, primarily, kennels for show animals) and Class C Kennels (defined elsewhere as, primarily, kennels for breeding animals) comply with the other requests for kennels and catteries. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

57. Section 91.079 of the Ordinance provides, among other things, that Pet Shops must clean and disinfect all cages daily, and prescribes a specific feeding schedule applicable to all animals. This provision cannot apply equally to all animals because, under existing veterinary science, different standards for cleaning and feeding apply to different species. The provision will threaten the health of some animals. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. It also illegally attempts to regulate the practice of veterinary medicine. As such, it is illegal and unconstitutional.

58. Section 91.110 of the Ordinance sets forth requirements for impoundment of “potentially dangerous” and “dangerous” dogs that commit attacks (defined elsewhere as including attacks which result in a scratch). Because the definitions of “attack,” “potentially dangerous” and “dangerous” dogs are overly broad, irrational and/or encourage arbitrary and selective enforcement, so is this provision. This provision also provides that a dog that commits an “attack” may never be sold, which directly conflicts with 91.025 (requiring written permission of MAS for sale of a potentially dangerous or dangerous dog). This provision also exempts dogs that bite someone committing a criminal trespass, but does not exempt dogs that bite someone committing simple trespass, an irrational exemption that requires the dog to accurately perceive whether the trespasser has criminal intent.

59. Section 91.111 of the Ordinance sets forth alternative procedures for classification and impoundment of “potentially dangerous” and “dangerous” dogs. Among other things, the provision does not define its operative terms and thereby gives unfettered and arbitrary discretion to the Director of MAS to apply the laws relating to classification and impoundment of dogs. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

60. Section 91.112 of the Ordinance sets forth requirements for the enclosure, restraint, transport, and transfer of “potentially dangerous” and “dangerous” dogs . Among other things, the provision does not define its operative terms and thereby gives unfettered and arbitrary discretion to the Director of MAS to apply the laws relating to “potentially dangerous” and “dangerous” dogs. This provision is overly broad, irrational and/or encourages arbitrary and selective enforcement. As such, it is illegal and unconstitutional.

61. The fee schedule at Appendix A to the Ordinance illegally imposes taxes that are unreasonable, confiscatory, and arbitrary.

62. Plaintiffs expressly reserve the right to amend their complaint to allege additional illegal provisions of the Ordinance.

**COUNT I**  
**Substantive Due Process**

63. Plaintiffs incorporate paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. Under the Fourteenth Amendment to the United States Constitution, citizens have a substantive due process right not to be deprived of liberty or property by arbitrary or capricious governmental action. A law violates this standard when it is not rationally related to a legitimate governmental interest.

65. Some or all of the provisions of the Ordinance violate the Fourteenth Amendment.

66. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against Defendant. Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the United States Constitution and an injunction precluding the Defendant from enforcing those provisions. Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT II**  
**Procedural Due Process**

67. Plaintiffs incorporate paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that before an individual is deprived of property, he or she be provided notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

69. Some or all of the provisions of the Ordinance violate the Fourteenth Amendment.

70. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against Defendant. Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the United States Constitution and an injunction precluding the Defendant from enforcing those provisions. Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT III**  
**Vagueness**

71. Plaintiffs reassert paragraphs 1 through 70 of the Complaint as if fully set forth herein.

72. Some or all of the provisions of the Ordinance are unconstitutionally vague because they lack sufficient definiteness such that ordinary people could understand their meaning, or because they are worded in such a vague manner as to encourage arbitrary or discriminatory enforcement, in violation of the Fourteenth Amendment to the United States Constitution.

73. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against Defendant. Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the United States Constitution and an injunction

precluding the Defendant from enforcing those provisions. Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT IV**  
**Equal Protection**

74. Plaintiffs reassert paragraphs 1 through 73 of the Complaint as if fully set forth herein.

75. Some or all of the provisions of the Ordinance treat similarly situated animal owners differently. These provisions lack any rational relationship to a legitimate government interest, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

76. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against Defendant. Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the United States Constitution and an injunction precluding the Defendant from enforcing those provisions. Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT V**  
**Overbreadth**

77. Plaintiffs reassert paragraphs 1 through 76 of the Complaint as if fully set forth herein.

78. Some or all of the provisions of the Ordinance are unconstitutionally overbroad because they not only prohibit conduct which is impermissible but also conduct which is constitutionally protected, in violation of the Fourteenth Amendment to the United States Constitution.

79. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against Defendant. Plaintiffs are entitled to a declaration that some

or all of the provisions of the Ordinance violate the United States Constitution and an injunction precluding the Defendant from enforcing those provisions. Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT VI**  
**First Amendment**

80. Plaintiffs reassert paragraphs 1 through 79 of the Complaint as if fully set forth herein.

81. Some or all of the provisions of the Ordinance with regard to advertising, on their face or as applied, or both, violate the First Amendment to the United States Constitution. The provisions attempt to restrict protected speech in a manner that does not directly advance a substantial government interest and in a manner that is more extensive than necessary to serve a substantial government interest.

82. Therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory and injunctive relief against the Defendant. The Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the United States Constitution and an injunction precluding the Defendant from enforcing those provisions. The Plaintiffs are also entitled to an award of costs and reasonable attorneys' fees.

**COUNT VII**  
**Commerce Clause**

83. Plaintiffs reassert paragraphs 1 through 82 of the Complaint as if fully set forth herein.

84. The Commerce Clause of the United States Constitution, is violated when the burden imposed on interstate commerce by a local law clearly outweighs the putative benefits of the local law.

85. Defendant is enforcing or threatening to enforce some or all of the provisions of the Ordinance in violation of the Commerce Clause.

86. Therefore, pursuant to KRS 418.040 and 418.045, an actual controversy exists, and Plaintiffs are entitled to declaratory and injunctive relief against the Defendant. The Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the Commerce Clause and an injunction precluding the Defendant from enforcing the Ordinance.

**COUNT VIII**  
**Sections One, Two, and Three of Kentucky Constitution**

87. Plaintiffs reassert paragraphs 1 through 86 of the Complaint as if fully set forth herein.

88. Defendant is enforcing or threatening enforcement of the Ordinance, some or all of the provisions of which deprive individuals of liberty and property and constitute an arbitrary exercise of power over the liberty and property of individuals, and/or deny individuals of equal protection of the laws, all in violation of Sections One, Two, and Three of the Kentucky Constitution.

89. Additionally, some or all of the schedule of licensing fees contained in the Ordinance violates Section Two of the Kentucky Constitution because it imposes a tax which is unreasonable, confiscatory, and arbitrary.

90. Therefore, pursuant to KRS 418.040 and 418.045, an actual controversy exists, and Plaintiffs are entitled to declaratory and injunctive relief against the Defendant. The Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance violate the Kentucky Constitution and an injunction precluding the Defendant from enforcing the Ordinance.

**COUNT IX**  
**Conflicts with Kentucky statutes**

91. Plaintiffs reassert paragraphs 1 through 90 of the Complaint as if fully set forth herein.

92. Under KRS 82.082, a municipality may not enact laws which are expressly prohibited by Kentucky statute or if there is a comprehensive scheme of state legislation on the same general subject matter.

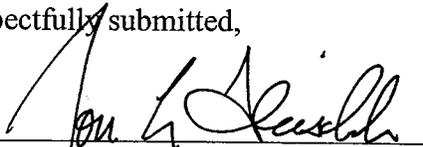
93. Some or all of the provisions of the Ordinance are in conflict with Kentucky law because there exists a comprehensive scheme of state legislation on the same subject matter addressed by those sections.

94. Therefore, pursuant to KRS 418.040 and 418.045, an actual controversy exists, and Plaintiffs are entitled to declaratory and injunctive relief against the Defendant. The Plaintiffs are entitled to a declaration that some or all of the provisions of the Ordinance conflict with Kentucky law and an injunction precluding the Defendant from enforcing those sections.

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- A. A declaration that some or all of the provisions of the Ordinance are void;
- B. An injunction precluding the Defendant from enforcing some or all of the provisions of the Ordinance;
- C. An award of costs, including reasonable attorney's fees, incurred in connection with this legal action;
- D. All other relief to which Plaintiffs may be entitled.

Respectfully submitted,

  
Jon L. Fleischaker  
Michael C. Merrick  
DINSMORE & SHOHL LLP  
1400 PNC Plaza  
500 West Jefferson  
Louisville, Kentucky 40202

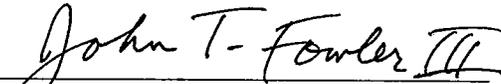
Telephone: (502) 540-2300  
Facsimile: (502) 585-2207

and



B. Ballard Rogers  
MIDDLETON REUTLINGER  
Brown & Williamson Tower  
401 S. Fourth Ave, Ste. 2500  
Louisville, Kentucky 40202  
Telephone: (502) 584-1135  
Facsimile: (502) 588-1942

and



John T. Fowler, III  
Fowler Law Firm  
121 S. Seventh St., Suite 3  
Louisville, Kentucky 40202  
Telephone: (502) 582-1347  
Facsimile: (502) 582-1349

COUNSEL FOR THE PLAINTIFFS

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CIVIL SUMMONS

07 CI 003025  
Case No. \_\_\_\_\_

Court  Circuit  District

County Jefferson

PLAINTIFF

THE LOUISVILLE KENNEL CLUB, INC., ET AL

JEFFERSON CIRCUIT COURT  
DIVISION ONE (1)

VS.

DEFENDANT

LOUISVILLE/JEFERSON CO. METRO GOVERNMENT

Serve: Irv Maze, Jefferson Co. Atty.

531 Court Place, Suite 1001

Louisville

Kentucky

40202

FILED IN CLERK'S OFFICE

MAR 27 2007

Service of Process Agent for Defendant:

DAVID L. NICHOLSON, CLERK  
By \_\_\_\_\_ D.C.

THE COMMONWEALTH OF KENTUCKY  
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: \_\_\_\_\_, 2\_\_\_\_\_

\_\_\_\_\_ Clerk

By: \_\_\_\_\_ D.C.

Proof of Service

This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Served by: \_\_\_\_\_

\_\_\_\_\_ Title