

NO. ~~07~~ CI 003025

JEFFERSON CIRCUIT COURT

DIVISION__

THE LOUISVILLE KENNEL CLUB, INC.

HON. _____

and

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

