

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN TARQUINIO
1431 Ridgewood Avenue
Lakewood, OH 44107

- and -

NICOLE TARQUINIO
1431 Ridgewood Avenue
Lakewood, OH 44107

Plaintiffs,

v.

CITY OF LAKEWOOD, OHIO
c/o Nora Hurley, Law Director
Lakewood City Hall
12650 Detroit Road
Lakewood, OH 44107

- and -

KURTIS BIALOSKY
Official and Individual Capacity
City of Lakewood Animal Control
Dept.
Lakewood City Hall
12650 Detroit Road
Lakewood, OH 44107

- and -

ELAINE D. HEARN
Official and Individual Capacity
City of Lakewood Animal Control
Dept.
Lakewood City Hall
12650 Detroit Road
Lakewood, OH 44107

Defendants.

] CASE NO.:

] JUDGE:

] **VERIFIED COMPLAINT FOR**
] **DECLARATORY AND INJUNCTIVE RELIEF**
] **AND DAMAGES**

] **(JURY DEMAND ENDORSED HEREON)**

Kevin Tarquinio and Nicole Tarquinio (“Plaintiffs”), by and through counsel, Kristi L. Haude, Esq., hereby file their Complaint and Jury Demand and seek declaratory and injunctive relief, damages, and attorney’s fees against Kurtis Bialosky (“Defendant Bialosky”), Elaine D. Hearn (“Defendant Hearn”), and the City of Lakewood, Ohio (“Defendant Lakewood”) (collectively, “Lakewood Defendants”) and for their Complaint state as follows:

INTRODUCTION

1. This is a constitutional and civil rights action for declaratory and injunctive relief, damages, and attorney’s fees arising under Article XVIII, Section 3 of the Ohio Constitution, 42 U.S.C. §1983, 1988, and 28 U.S.C. §2201.
2. This case arises from the Lakewood Defendants’ enactment and enforcement of Lakewood Codified Ordinance Chapter 506 (“LCO 506”), entitled *Dangerous and Vicious Animals*, which among other things, makes it unlawful to keep, harbor, or own any “pit bull dog” within Defendant Lakewood, and further arises from Defendant Lakewood’s municipal policy and custom of permitting and/or encouraging subjective, arbitrary, and unconstitutional enforcement of LCO 506.
3. LCO 506 is unconstitutional in that it violates Article XVIII, Section 3 of the Ohio Constitution (“Home Rule Doctrine”).
4. LCO 506 is unconstitutional in that it violates both the substantive and procedural due process rights of Plaintiffs and other dog owners who reside or did reside in Defendant Lakewood whose dogs have been unilaterally deemed “pit bull dogs” under LCO 506 and whose due process rights have been violated by the

Lakewood Defendants (“Other Dog Owners”) as guaranteed by 42 U.S.C. §1983.

5. LCO is unconstitutionally vague on its face and in all of its applications in that, among other things, it fails to give Plaintiffs and Other Dog Owners adequate notice of the prohibited activity and permits and even encourages subjective, arbitrary, and unconstitutional enforcement.

PARTIES

6. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

7. Plaintiffs are currently residents of Defendant Lakewood, but did not reside in Defendant Lakewood in July 2008.

8. At all times relevant hereto, Plaintiffs were and currently are residents of Defendant Lakewood whose dogs have been unilaterally classified as “pit bull dogs” under LCO 506.

9. Defendant Bialosky is an Animal Control Officer for Defendant Lakewood.

10. Defendant Hearn is an Animal Control Officer and Shelter Supervisor for Defendant Lakewood.

11. Defendant Lakewood is a home rule municipality located in the County of Cuyahoga County, State of Ohio, and bound by the provisions of the Home Rule Doctrine as well as the provisions of 42 U.S.C. §1983.

JURISDICTION AND VENUE

12. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

13. This action arises under Article XVIII, Section 3 of the Ohio Constitution, and 42 U.S.C. §1983. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §1331 and 1343. This Court has authority to grant the declaratory relief sought herein

pursuant to 28 U.S.C. §2201(a). Jurisdiction supporting Plaintiffs' claims for attorney's fees is conferred upon this Court pursuant to 42 U.S.C. §1988.

14. Venue in proper in this Court pursuant to 28 U.S.C. §1391.

GENERAL FACTUAL ALLEGATIONS

15. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

16. On or about July 21, 2008, Defendant Lakewood enacted Lakewood Codified Ordinance Chapter 506 ("LCO 506"), titled *Dangerous and Vicious Animals*, which among other things, defines and regulates dangerous and vicious dogs.

17. LCO 506 includes sections 506.01 through 506.14, all of which define and/or regulate dangerous and vicious dogs, and includes section 506.99, which sets forth the penalties for violations of the various subsections.

18. LCO 506, among other things, outlaws dogs the Lakewood Defendants deem to be "pit bull dogs" unless those dogs resided in Defendant Lakewood in July 21, 2008 and were registered with Defendant Lakewood within ninety (90) days from the effective date of LCO 506, and places severe restrictions and limitations on those dogs deemed "pit bull dogs."

19. LCO 506.01, titled *Keeping Dangerous or Vicious Animals*, provides that "[N]o 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 passed in Section 506.04."

20. LCO 506.03(a) and (b), titled *Pit Bull Dogs or Canary Dogs*, provides "(a) All pit bull dogs ... are deemed to be dangerous animals even in the absence of a hearing by the Director of Public Safety or his or her designee". "(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 has the appearance and characteristics of being predominantly of such breeds, any dog commonly known as a pit bull, pit bull dog or pit bull terrier; or a combination of any of these breeds”.

21. LCO 506.03(d) provides that “In the event of a dispute as to whether or not a dog is a pit bull dog ... or some other breed, the Director of Public Safety or his or her designee shall make the determination with or without a hearing, and the burden of proof that such dog is not a pit bull dog ... shall be upon the owner or custodian”.

22. LCO 506.04, titled *Exception, Registration and Fee*, permits an exception for dogs deemed or considered to be “pit bull dog[s]” by the Lakewood Defendants that were already residing in Defendant Lakewood at the time LCO 506 went into effect as long as the owners of those dogs registered the dog as “dangerous animals”, i.e., “pit bull dog”, and followed other restrictions, prohibitions, and rules codified in various provisions of LCO 506.

23. LCO 506.04(b), which seeks to regulate “pit bull dogs” and other so-called dangerous animals, further provides in pertinent part: “(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 a 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.”

24. LCO 506.99, titled *Penalty*, provides in pertinent part: “(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 ... shall be guilty of a misdemeanor of the third degree.”

25. LCO 506 is unconstitutional in that it violates the Home Rule Doctrine, procedural due process, and substantive due process.

26. In the enforcement of LCO 506, it is the policy and custom of the Lakewood Defendants to intentionally and willfully fail to advise dog owners that they can request a hearing to determine whether a dog is a “pit bull dogs” under LCO 506.

27. The Lakewood Defendants intentionally and willfully failed to advise Plaintiffs that they could request a hearing and Plaintiffs learned of this fact only after consultation with counsel and only after Plaintiffs Dogs were ordered removed from Defendant Lakewood.

28. In the enforcement of LCO 506, it is the policy and custom of the Lakewood Defendants to arbitrarily and subjectively decide whether to grant the dog owners request for a hearing. Some requests are granted and others are denied.

29. In the enforcement of LCO 506, it is the policy and custom of the Lakewood Defendants to accept different types of evidence as proof that a dog is not a “pit bull dog”. Letters from licensed veterinarians are accepted from some dog owners but not from other dog owners. DNA test results are accepted from some dog owners but not from others.

30. In the enforcement of LCO 506, it is the policy and custom of the Lakewood Defendants to subjectively and arbitrarily decide whether certain DNA test results are

enough to prove a dog is not a “pit bull dog”. If a portion of a DNA test comes back as an unknown breed, the Lakewood Defendants accept same as proof that a dog is not a “pit bull dog” for some dog owners, and refuse to accept the same DNA result for other dog owners.

31. In the enforcement of LCO 506, it is the policy and custom of the Lakewood Defendants to subjectively and arbitrarily decide whether certain DNA test results are enough to prove a dog is not a “pit bull dog”. If any portion of a DNA test comes back a “terrier” of any breed, the Lakewood Defendants deem the dog to be a “pit bull dog”.

32. Plaintiffs currently reside in Defendant Lakewood, but did not reside in Defendant Lakewood in July, 2008.

33. Plaintiffs are the owners of two (2) dogs named Ceaser and Sambucca (“Plaintiffs Dogs”).

34. Plaintiffs adopted Sambucca in July, 2009 from the Cuyahoga County Kennel located in Cuyahoga County, Ohio. At the time Plaintiffs adopted Sambucca, she was 1-1/2 years old and Plaintiffs were told by employees of the Cuyahoga County Kennel that Sambucca is a Boxer/Australian Shepherd mix.

35. Plaintiffs adopted Ceaser in September, 2009 from a rescue group located near Columbus, Ohio. At the time Plaintiffs adopted Ceaser, he was 1-1/2 years old and Plaintiffs were told that Ceaser is a Boxer mix.

36. On or about November 7, 2010, Plaintiffs’ two (2) minor children were stopped by a police officer for Defendant Lakewood while walking Plaintiffs’ Dogs near their home in Defendant Lakewood. The purported cause of the stop by police was illegal ownership of “pit bull dogs” in Defendant Lakewood and walking “pit bull dogs”

without a muzzle.

37. On or about November 9, 2010, Defendant Bialosky showed up at Plaintiffs' home and told Plaintiffs that he had to see and take photographs of Plaintiffs' Dogs. Under the impression that they had no choice but to oblige, Plaintiffs allowed Defendant Bialosky to photograph Plaintiffs' Dogs.

38. Defendant Bialosky left with the photographs, but called later that same evening to advise Plaintiffs that Defendant Bialosky had showed the photographs to Defendant Hearn who determined that both dogs are "pit bull dogs" under LCO 506 because both dogs display "predominate characteristics of pit bull dogs".

39. During this conversation, Plaintiffs disputed that their dogs were "pit bull dogs" and Defendant Bialosky intentionally and willfully failed to advise Plaintiffs that a hearing could be requested to determine whether Plaintiffs' Dogs are "pit bull dogs" under LCO 506.

40. Via letter dated November 9, 2010, and on subsequent occasions, Plaintiffs have been advised by Defendant Bialosky that unless Plaintiffs provide blood-drawn DNA results taken by a licensed veterinarian demonstrating that Plaintiffs' Dogs are not "pit bull dogs", Plaintiffs are in violation of LCO 506 and Plaintiffs' Dogs must be removed from Defendant Lakewood or criminal charges will be filed against Plaintiffs pursuant to LCO 506.

41. Plaintiffs will not be providing DNA test results and do not wish to give up their beloved pets, and as such, Plaintiffs face a continuing threat of future of criminal prosecution under LCO 506.

42. Defendants Bialosky and Hearn have directly participated in, and further have

encouraged, condoned, and knowingly acquiesced in the subjective, arbitrary, and unconstitutional enforcement of LCO 506 and in the violation of Plaintiffs' rights to both procedural and substantive due process.

43. Defendant Lakewood passed LCO 506, which is clearly in violation of the Home Rule Doctrine, and has a municipal policy and custom of permitting the ordinance to be enforced despite the violation.

44. Defendant Lakewood has a municipal policy and custom of permitting and encouraging ad hoc, subjective, arbitrary, and unconstitutional enforcement of LCO 506 by Defendants Bialosky and Hearn, as well as by all other Animal Control Officers for Defendant Lakewood.

45. Some or all of the actions of Defendants Bialosky and Hearn which give rise to this Complaint were committed outside the course and scope of employment with Defendant Lakewood and/or committed with recklessness, malice, and/or ill will.

46. As a result of the Lakewood Defendants' actions, Plaintiff Kevin Tarquinio has suffered a great deal of undue emotional stress which has resulted in physical injury, and both Plaintiffs have suffered emotional injury and/or financial loss.

47. As a result of the Lakewood Defendants' actions, Plaintiffs have been forced to change their behavior with respect to Plaintiffs' Dogs. Specifically, and among other things, Plaintiffs no longer walk their dogs or otherwise take their dogs off of Plaintiffs' property for fear of impoundment and criminal prosecution.

48. As a result of the actions of the Lakewood Defendants, Plaintiffs procedural and substantive due process rights have been violated.

FIRST CLAIM FOR RELIEF – DEFENDANT LAKEWOOD
**Article XVIII, Section 3 Ohio Constitution – Violation of the Home Rule Doctrine
as to Ownership of a Pit Bull**

49. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

50. Article XVIII, §3 of the Ohio Constitution provides that “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”.

51. A home-rule analysis involves three (3) steps, to-wit: The first step is to determine whether the ordinance at issue involves an exercise of local self-government or an exercise of local police power. The second step, which becomes necessary 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 four-part test announced in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005. If the state statute qualifies as a general law under this test, the local ordinance must give way if it conflicts with the general law. The final step in the analysis, therefore, is to determine whether the ordinance conflicts with the statute, i.e., whether the local ordinance permits or licenses that which the state statute forbids and vice versa.

52. LCO 506, which regulates animals, is an exercise of local police power.

53. O.R.C. §955.22 is a general law of the state of Ohio because it is police power, part of a statewide and comprehensive legislative enactment, which applies equally to all parts of the state of Ohio, and prescribes a rule of conduct upon the citizens of the state of Ohio.

54. If a local ordinance which is an exercise of police power conflicts with a general law of the state of Ohio, the local ordinance must yield to the state statute.

55. A conflict between a state statute and a local ordinance exists when the state statute permits or licenses that which the local ordinance forbids, or vice versa.

56. The Ohio General Assembly has enacted a comprehensive scheme regulating ownership and control of dogs in the state of Ohio, as codified in Ohio Revised Code Chapter 955.

57. Ownership and regulation of so-called dangerous and vicious dogs is set forth in O.R.C. §955.22 and the definitions of dangerous and vicious dogs are set forth in O.R.C. §955.11.

58. O.R.C. §955.11, titled *Transfer of Ownership Certificate*, defines a dangerous dog as “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 harbinger and not under the reasonable control of its owner, keeper, harbinger, 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”.

59. O.R.C. §955.11, titled *Transfer of Ownership Certificate*, defines a vicious dog as “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; or (iii) Belongs to a breed that is commonly known as a pit bull dog. ”

60. O.R.C. §955.22, titled "*Confinement of dogs; dangerous or vicious dogs; debarked or surgically silenced vicious dogs*", among other things, sets forth regulations and prohibitions relative to dangerous and vicious dogs.

61. O.R.C. §955.01, et seq. does not prohibit the ownership of a dangerous dog, vicious dog, or of a pit bull, and in fact, by virtue of its definitions and regulations regarding pit bulls, permits the ownership of a pit bull. Pursuant to O.R.C. §955.01, et seq., it is legal to own a pit bull.

62. LCO 506.01, titled *Dangerous or Vicious Animals*, provides that "No person shall keep, harbor or own any dangerous or vicious animal within the City of Lakewood" and LCO 506.03 provides that "all pit bull dogs ... are deemed to be dangerous animals even in the absence of a hearing by the Director of Public safety or his or her designee." Pursuant to LCO 506, it is illegal to own a pit bull.

63. O.R.C. §955.22 permits what LCO 506 forbids, and thus, LCO 506.01 and 506.03 violate Article XVIII, Section 3 of the Ohio Constitution and must be struck down as unconstitutional.

SECOND CLAIM FOR RELIEF – DEFENDANT LAKEWOOD
**Article XVIII, Section 3 Ohio Constitution – Violation of the Home Rule Doctrine
as to a Dangerous Dog On the Premises of Its Owner**

64. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

65. O.R.C. §955.22, titled "*Confinement of dogs; dangerous or vicious dogs; debarked or surgically silenced vicious dogs*", among other things, sets forth regulations and prohibitions relative to dangerous dogs. That section provides in pertinent part:

(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 to a leash or tether so that the dog is adequately restrained.**

66. LCO 506.03 defines all “pit bull dogs” as “dangerous dogs”.

67. LCO 506.04, titled *Exception, Registration and Fee*, requires that 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 secure top, and its bottom secured to its sides or imbedded at least one foot in the ground.”

68. O.R.C. §955.22 expressly permits a dangerous dog to be secured in a locked fenced yard and expressly permits a dangerous dog to be tied with a leash or tether so long as the dog is adequately restrained. Pursuant to O.R.C. §955.22, it is legal to restrain a pit bull in a locked fenced yard and to tie a “dangerous dog” with a leash or tether.

69. LCO 506.04 expressly prohibits a dangerous dog, i.e., a pit bull, from being secured in a locked fence yard, and further prohibits a pit bull from being tied with a leash or tether regardless whether the dog is adequately restrained. Pursuant to LCO 506, it is illegal to restrain a pit bull in a locked fenced yard and illegal to tie a pit bull with a leash or tether.

70. LCO 506.04 conflicts with O.R.C. §955.22 in violation of Article XVIII, Section 3 the Ohio Constitution and must be struck down as unconstitutional.

THIRD CLAIM FOR RELIEF – DEFENDANT LAKEWOOD
**Article XVIII, Section 3, Ohio Constitution – Violation of the Home Rule Doctrine
as to Muzzle Requirement**

71. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

72. O.R.C. §955.22, entitled “*Confinement of dogs; dangerous or vicious dogs; debarked or surgically silenced vicious dogs*”, among other things, sets forth regulations and prohibitions relative to dangerous dogs. That section provides in pertinent part:

(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:** * * *

(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.

73. Thus, O.R.C. §955.22 requires the owner of a dangerous dog to keep the dog on a leash or tether not more than 6' in length, but then gives the owner the option of either securing the dog in a locked pen, locked fence yard, or other locked enclosure, OR ensuring that the leash is controlled by a person of suitable age or tied to a stationary object, OR muzzling the dog. None of these three (3) options is mandatory as long as one (1) is followed.

74. LCO 506 provides in pertinent part:

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

(1) **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;

75. LCO 506 requires all dangerous dogs to be muzzled at any time when the dog is off the premises of the owner.

76. While O.R.C. §955.22 expressly permits a pit bull to be un-muzzled while off the premises of its owner, LCO 506 expressly forbids a pit bull from being un-muzzled while off the premises of its owner.

77. Pursuant to O.R.C. §955.22, it is legal to walk a pit bull off its property without a muzzle, but pursuant to LCO 506, it is illegal to walk a pit bull off its property without a muzzle.

78. O.R.C. §955.22 expressly permits what LCO 506 forbids. Thus, LCO 506

violates Article XVIII, Section 3 of the Ohio Constitution and must be struck down as unconstitutional.

FOURTH CLAIM FOR RELIEF – DEFENDANT LAKEWOOD
Violation of Article XVIII, Section 3, Ohio Constitution – Violation of the Home Rule Doctrine as to Requirement of Chain and Length of Chain

79. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

80. O.R.C. §955.22, titled "*Confinement of dogs; dangerous or vicious dogs; debarked or surgically silenced vicious dogs*", among other things, sets forth regulations and prohibitions relative to dangerous dogs. That section provides in pertinent part:

(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: * * ***

(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:

81. LCO 506.04(b)(2) provides in pertinent part:

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

(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;

82. O.R.C. §955.22 expressly permits the owner of a dangerous dog, while off his

property, to secure his dog with a chain-link leash or a tether that is anywhere between 1 foot and 6 feet, including of course, four feet, five feet, and six feet.

83. LCO 506.04(b)(2) expressly prohibits the owner of a dangerous dog, while off his property, to secure his dog with a chain-link leash or tether that is four feet, five feet, or six feet in length.

84. Pursuant to O.R.C. §955.22, it is legal to have a pit bull off its property so long as it is secured with a chain-link leash or tether that is between three (3) feet and six (6) feet in length. Pursuant to LCO 506.04(b)(2), it is illegal to have a pit bull off its property secured with a chain-link leash longer than three (3) feet and illegal to have a pit bull of its property secured with a tether longer than three (3) feet.

85. Further, O.R.C. §955.22 expressly permits the owner of a dangerous dog, while off his property, to secure his dog with a tether.

86. LCO 506.04(b)(2) expressly prohibits the owner of a dangerous dog, while off his property, to secure his dog with a tether regardless of length, and instead requires a chain.

87. Pursuant to O.R.C. §955.22, it is legal to have a pit bull secured with a tether while off its property, but pursuant to LCO 506, it is illegal to have a pit bull secured with a tether while off its property.

88. Because O.R.C. §955.22 expressly permits conduct which LCO 506.04 expressly prohibits, LCO 506.04 violates Article XVIII, Section 3 of the Ohio Constitution and must be struck down as unconstitutional.

FIFTH CLAIM FOR RELIEF – DEFENDANT LAKEWOOD

Violation of the Home Rule Doctrine as to the Inclusion of “Any Dog Commonly Known as a Pit Bull” within the Definition of “Pit Bull Dog”

89. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

90. O.R.C. §955.11 defines pit bull in terms of breed, i.e., “belongs to a **breed** commonly known as a pit bull.”

91. LCO 506.03 includes within the definition of “pit bull dog” “any **dog** commonly known as a pit bull, pit bull dog, or pit bull terrier”.

92. O.R.C. §955.11 defines a pit bull as including only those breeds of dog commonly known as pit bulls, and does not include within its definition of a pit bull a dog that is commonly known as a pit bull.

93. O.R.C. §955.11, by defining a pit bull by breed, removes from local determination whether a particular dog, as opposed to a particular breed, is a pit bull.

94. LCO 506.03 exceeds Defendant Lakewood’s home rule authority by grossly expanding the definition of a pit bull, and as such violates Article XVIII, Section 3 of the Ohio Constitution and must be struck down as unconstitutional.

SIXTH CLAIM FOR RELIEF – ALL DEFENDANTS

Violation of Fourteenth Amendment Procedural Due Process for Failure to Mandate a Hearing

95. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

96. LCO 506 provides that “In the event of a dispute as to whether or not a dog is a pit bull dog, a canary dog, or some other breed, the Director of Public Safety or his or her designee shall make the determination **with or without a hearing**, and the

burden of proof that such dog is not a pit bull dog ... shall be upon the owner or custodian.”

97. Once the determination is made by Lakewood Defendants that a particular dog is a “pit bull dog”, LCO 506 expressly provides that, if the dog owner disputes that determination, the final determination will be made by the Director of Public Safety or his designee and that he or she may make that final determination without providing any sort of hearing to the dog owner.

98. Once the determination is made by the Lakewood Defendants and/or by the Director of Public Safety or his or her designee that a particular dog is a “pit bull dog”, the dog is then ordered removed from the city of Lakewood, impounded by Animal Control, and/or the owner is cited for violation(s) of LCO 506.

99. LCO 506 violates procedural due process by failing to mandate that the owners of dogs deemed by the Lakewood Defendants to be “pit bull dogs” be given a hearing, or at least given notice that they may request a hearing, prior to a removal order, impoundment, and/or the issuance of criminal citations.

100. The Lakewood Defendants’ enforcement of LCO 506 violates procedural due process by intentionally failing to advise Plaintiffs and Other Dog Owners that a hearing can be requested as to whether Plaintiffs’ Dogs or other dogs are “pit bull dogs” under LCO 506 and/or by further refusing to grant a hearing even if requested.

101. As a result of the Lakewood Defendants’ actions, Plaintiffs and Other Dog Owners have been ordered to get rid of Plaintiffs’ Dogs or face criminal charges in violation of procedural due process.

SEVENTH CLAIM FOR RELIEF – ALL DEFENDANTS

Violation of Fourteenth Amendment Procedural Due Process for Failure to Provide Timely Notice and a Meaningful Opportunity to be Heard

102. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

103. If the owner of a dog deemed by the Lakewood Defendants to be a “pit bull dog” requests a hearing, Defendants, in an arbitrary and unfair manner, may or may not grant the dog owner’s request.

104. If the Lakewood Defendants grant a dog owner’s request for a hearing on whether a dog is a “pit bull dog”, it is the unwritten policy and practice of the Lakewood Defendants to provide that dog owner with a written notice of the hearing date by mailing notice of the hearing via ordinary U.S. Mail.

105. However, it is the unwritten policy and practice of the Lakewood Defendants to schedule the written notice within seven (7) days from the date of the notice. Even if the notice is mailed to the dog owner the same day it is written, it takes a couple of days for the notice to be delivered to the dog owner, which gives the dog owner, in actuality, a maximum of five (5) days to prepare for the hearing.

106. Procedural due process requires both timely notice and a meaningful opportunity to be heard.

107. Giving a dog owner only a few days’ notice of a hearing does not provide timely notice and fails to give the dog owner a meaningful opportunity to be heard because it is impossible for a dog owner to retain counsel within such a short period of time, if he/she chooses to do so, and if he/she does not choose to retain counsel, it is impossible for the dog owner to adequately prepare for the hearing within such a short time.

108. As such, the practice and policy of the Lakewood Defendants in providing dog owners with such short notice of a hearing deprives the dog owner of timely notice and of a meaningful opportunity to be heard in violation of their procedural due process rights.

EIGHTH CLAIM FOR RELIEF – ALL DEFENDANTS

Violation of Procedural Due Process – Burden on Dog Owner to Prove Dog is not a “Pit Bull Dog”

109. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

110. LCO 506.03(d) provides that “In the event of a dispute as to whether or not a dog is a pit bull dog, canary dog, or some other breed, the Director of Public Safety or his or her designee shall make the determination with or without a hearing, and the burden of proof that such dog is not a pit bull dog or canary dog shall be upon the owner or custodian.

111. Thus, LCO 506 does not require the Lakewood Defendants to come forth with any evidence whatsoever that a particular dog is a “pit bull dog” under LCO 506, despite that such a determination will result in a removal order and/or impoundment and/or criminal charges.

112. LCO 506 improperly places the burden of proof, i.e., the risk of non-persuasion on the dog owner, which is a violation of procedural due process.

113. LCO 506 fails to advise Plaintiffs and Other Dog Owners what type(s) of evidence may be used to determine whether a dog is a “pit bull dog” and fails to advise dog owners what quantum of evidence must be presented to prevail.

114. Based on the failures set forth above, LCO 506 encourages subjective and

arbitrary enforcement which violates the procedural due process rights of Plaintiffs and Other Dog Owners.

NINTH CLAIM FOR RELIEF – ALL DEFENDANTS
**Violation of Fourteenth Amendment Substantive Due Process –
Unconstitutionally Vague on its Face as to Definition of a “Pit Bull Dog”**

115. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

116. LCO 506.03 defines “pit bull dog” as, among other things, “any Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog, any dog of mixed breed which has the appearance and characteristics of being predominantly of such breeds, any dog commonly known as a pit bull, pit bull dog, or pit bull terrier; or a combination of any of these breeds.”

117. As to the “any Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog” portion of the definition, it is the Lakewood Defendants’ policy to never, ever deem a dog to be a pure bred Staffordshire Terrier, American Pit Bull Terrier, or American Staffordshire Terrier, and instead to always deem a dog to be a pit bull mix with the “appearance and characteristics” of being predominately the stated breeds.

118. Thus, there is never, ever a situation where a registered, pure-bred Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier is deemed to be a “pit bull dog” under LCO 506.

119. As to the “any dog of mixed breed which has the appearance and characteristics of being predominantly of such breeds” portion of the definition, LCO 506 does not reference what the appearance or characteristics of any of these breeds are, nor does it

reference any physical standards or behavioral traits set forth by the American Kennel Club (“AKC”) or United Kennel Club (“UKC”) for any of the breeds of dogs considered by Defendant Lakewood to be “pit bull dogs” so that Plaintiffs and Other Dog Owners can be properly put on notice as to what characteristics may cause his dog to be deemed a “pit bull dog” under LCO 506.

120. Even if a person of ordinary intelligence could access and review AKC and UKC breed standards, those standards are only for the “ideal” dog of that breed, i.e., dogs that have been specifically bred through generations to specifically comply with each of those specific breed standards, and the majority if not all dogs deemed “pit bull dogs” by Defendant Lakewood under LCO 506 were not specifically bred to comply with each of the specific breed standards, and in fact, do not comply with those standards.

121. LCO 506 does not state whether the term “characteristics” means physical characteristics, behavioral characteristics, or any other type of characteristics which may cause a particular dog to fall within the definition of “pit bull dog”.

122. LCO 506 does not define or set forth any guidelines whatsoever for which physical traits constitute the appearance or characteristics of a “pit bull dog” so that Plaintiffs and Other Dog Owners can properly be put on notice as to what characteristics may cause his dog to be deemed a “pit bull dog” under LCO 506.

123. LCO 506 does not define or set forth any guidelines whatsoever for which behavioral traits constitute the characteristics of a “pit bull dog” so that Plaintiffs and Other Dog Owners can be properly put on notice as to what characteristics may cause his dog to be deemed a “pit bull dog” under LCO 506.

124. Moreover, banning a mixed breed dog based solely on its looks, even if that dog is not actually a pit bull is not narrowly tailored to a compelling government interest, nor is it rationally related to a legitimate government interest.

125. As to the “any dog commonly known as a pit bull, pit bull dog or pit bull terrier” portion of the definition, LCO 506 fails to set forth any guideline or information as to the term “commonly known as”, which leave Plaintiffs and Other Dog Owners to wonder commonly known as by whom, i.e, by dog wardens, by animal control officers, by the general public, by dog enthusiasts, by dog breeders, etc.?

126. For the same reasons set forth in Paragraphs 116-125, LCO 506 fails to provide any guidelines for law enforcement when determining whether a particular dog falls within the definition of “pit bull dog”, and permits ad hoc and subjective determinations depending on which Animal Control Officer happens to be making the determination, and as such, LCO 506 encourages arbitrary, subjective, and unconstitutional enforcement.

127. For the reasons set forth in Paragraphs 116-126, LCO 506 is impermissibly vague in all of its applications and unconstitutionally vague on its face in that it fails to define the criminal offense with sufficient definiteness that an ordinary person can understand what conduct is prohibited and fails to guard against arbitrary, subjective, discriminatory, and unconstitutional enforcement.

128. Thus, LCO 506 violates the substantive due process rights of Plaintiffs and Other Dog Owners.

TENTH CLAIM FOR RELIEF – ALL DEFENDANTS

Violation of Fourteenth Amendment Substantive Due Process as to Ban on “Pit Bull Dogs” and Severe Regulations on “Pit Bull Dogs”

129. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

130. Under Ohio law, Plaintiffs’ Dogs are considered the property of Plaintiff.

131. Plaintiffs’ right to own and keep Plaintiffs’ Dogs is a fundamental right protected under Section 1 of the Fourteenth Amendment to the United States Constitution, which provides, among other things, that a State may not abridge “the privileges or immunities of citizens of the United States” or deprive “any person of life, liberty, or property, without due process of law.

132. Defendant Lakewood’s outright ban on pit bulls and other stringent restrictions on them are not narrowly tailored to serve a compelling government interest since: (a) there is no evidence that “pit bull dogs” pose a threat to public safety; and (b) no evidence of bites to residents by “pit bull dogs.”

133. Defendant Lakewood’s outright ban on pit bulls and other stringent restrictions on them are not narrowly tailored to serve a compelling government interest since: (a) breed standards for the breeds of dogs affected by LCO 506 as set forth by the American Kennel Club and United Kennel Club state that “[American Pit Bull Terriers] make excellent family companions and have always been noted for their love of children”, and further states that the American Pit Bull Terrier is an “extremely friendly breed even with strangers ... and ... “aggressive behavior toward humans is uncharacteristic of the breed”, and that the Staffordshire Bull Terrier “with its affection for its friends, and children in particular, its off-duty quietness and trustworthy

stability, [the Staffordshire Bull Terrier is] a foremost all-purpose dog”; (b) the American Temperament Test Society consistently reports year after year that the American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Bull Terrier breeds consistently score better than the majority of other breeds of dogs; and (c) the vast majority, if not all, of the dogs either forced to move from Defendant Lakewood, seized by Defendant Lakewood, and/or otherwise regulated by Defendant Lakewood are friendly, well-socialized, and easy-to-handle dogs.

134. Plaintiffs’ Dogs are friendly, well-socialized, easy-to-handle dogs that pose no danger to the public.

135. If Plaintiffs’ right to own and keep Plaintiffs’ Dogs is not a fundamental right, LCO 506 still violates substantive due process because there is no rational relationship between the outright ban and other regulations and restrictions on “pit bull dogs” set forth in LCO 506 for the same reasons set forth in Paragraphs 132-134.

136. Thus, LCO 506 violates the substantive due process rights of Plaintiffs and Other Dog Owners.

ELEVENTH CLAIM FOR RELIEF – ALL DEFENDANTS

Violation of Fourteenth Amendment Substantive Due Process as to Ban on Mixed Breed Dogs

137. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

138. LCO 506 defines “pit bull dog” as, among other things, “any Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier breed of dog, any dog of mixed breed which has the appearance and characteristics of being predominantly of such breeds...”

139. Thus, Defendant Lakewood bans all mixed breed dogs simply because those

dogs may look like a Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier, even if those mixed breed dogs are not, in whole or in part, Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

140. Banning a mixed breed dog, or any dog for that matter, simply because of the way it looks does not serve a compelling or legitimate government interest at all, and is certainly not narrowly tailored to serve a compelling government interest and is not rationally related to serve a legitimate government because: (a) there is no evidence that mixed breed dogs that look like the stated breeds pose a threat to public safety; (b) no evidence of bites to residents by such mixed breed dogs; (c) the vast majority of evidence in the dog breed identification arena concludes that the which breeds are present in a particular mixed breed dog cannot be gleaned with any certainty by simply looking at the physical characteristics of that dog, which is exactly how Defendant Lakewood determines the breed(s) present in mixed breed dogs under LCO 506; and (d) evidence reveals that the vast majority of dogs initially deemed by Defendant Lakewood to be “pit bull dogs” under LCO 506 that were later DNA tested revealed that Defendant Lakewood was incorrect in its initial determination.

141. Thus, LCO 506 violates the substantive due process rights of Plaintiffs and Other Dog Owners.

TWELFTH CLAIM FOR RELIEF
Injunctive Relief – Preliminary and Permanent

142. Plaintiffs reallege and reaver all allegations set forth in preceding paragraphs.

143. The Lakewood Defendants have specifically advised Plaintiffs that they must

either remove Plaintiffs' Dogs from Defendant Lakewood or criminal charges will be filed.

144. The Lakewood Defendants' demand that Plaintiffs get rid of Plaintiffs' Dogs pursuant to the unconstitutional enforcement of an already unconstitutional statute is a violation of Plaintiffs' due process rights.

145. While Plaintiffs' Dogs are considered property under the law, they are sentient beings and have intrinsic and sentimental value to Plaintiffs and to Plaintiffs' three (3) minor children. Plaintiffs' family loves Plaintiffs' Dogs and would be emotionally devastated if they were forced to get rid of their beloved family pets. Plaintiffs' Dogs are of such a unique value and character to Plaintiffs that Plaintiffs and their children simply could not be fully and adequately compensated for their loss.

146. Plaintiffs face the threat of criminal prosecution.

147. Should LCO 506, including its many subsections as set forth in this Complaint, continue to exist as-is and continue to be enforced as it is currently, Plaintiffs will suffer the loss of their beloved dogs and/or substantial financial hardship caused by being forced to move from Defendant Lakewood and/or criminal charges and Plaintiff Kevin Tarquinio will continue to suffer emotional stress that negatively impacts his health.

148. There is no adequate remedy at law that would enjoin the Lakewood Defendants from continuing to enforce an unconstitutional ordinance or from continuing to enforce the unconstitutional ordinance in an unconstitutional manner so as to refrain from violating the constitutional rights of Plaintiffs and other dog

owners in Defendant Lakewood.

149. Plaintiffs have demonstrated a substantial likelihood of success in this matter by setting forth facts and law that LCO 506 violates the Home Rule Doctrine and violates both the procedural and substantive due process rights of Plaintiffs and other dog owners in Defendant Lakewood, and by setting forth facts and law to demonstrate that the Lakewood Defendants are enforcing the already unconstitutional ordinance in a manner which violates both the procedural and substantive due process rights of Plaintiffs and Other Dog Owners in Defendant Lakewood.

150. Plaintiffs have further demonstrated a substantial likelihood of success by alleging specific facts that LCO 506 is not narrowly tailored to a compelling government interest and not rationally related to a legitimate government interest.

151. As such, Plaintiffs are likely to succeed on the merits of their claims and the relief requested herein will redress and/or prevent harm to Plaintiffs and Other Dog Owners.

152. Granting Plaintiffs' request for a preliminary injunction will not only benefit Plaintiffs but will benefit all residents of Defendant Lakewood whose dogs have been or will be deemed "pit bull dogs" under LCO 506. Specifically, an injunction will: (a) stop the Lakewood Defendants from enforcing an ordinance which so clearly violates the Home Rule Doctrine; (b) stop the Lakewood Defendants from enforcing the ordinance in an unconstitutional manner by intentionally failing to advise residents that a hearing can be requested on the issue of whether a dog is a "pit bull dog"; (c) stop the Lakewood Defendants from enforcing the ordinance in an

unconstitutional manner by failing to provide a hearing and failing to provide timely notice and a meaningful opportunity to be heard; (d) it will stop the Lakewood Defendants from impounding and/or filing criminal charges against residents of Lakewood who own mixed breed dogs that arguably look like “pit bull dogs” but are not; (e) stop the Lakewood Defendants from placing the burden to prove that a dog is not a “pit bull dog” on the dog owner; and (f) stop the Lakewood Defendants from enforcing an ordinance that violates the procedural and substantive due process rights of citizens.

WHEREFORE, Plaintiffs, Kevin Tarquinio and Nicole Tarquinio respectfully request that this Court:

- A. Issue a Declaratory Judgment that LCO 506 is unconstitutional in that it violates the Home Rule Doctrine;
- B. Issue a Declaratory Judgment that LCO 506 violates the procedural due process rights of Plaintiffs;
- C. Issue a Declaratory Judgment that LCO 506 violates the substantive due process rights of Plaintiffs;
- D. Issue a Preliminary and Permanent Injunction against the Lakewood Defendants ordering that all enforcement of LCO 506 be stopped while this action is pending;
- E. Award to Plaintiffs all compensatory damages;
- F. Award to Plaintiffs reasonable costs, expenses, and attorney’s fees associated with this action; and
- G. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby request a jury on all triable issues.

Respectfully submitted,

s/Kristi L. Haude _____

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