

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN TARQUINIO, et al.,)	CASE NO.: 1:11-CV-00325
)	
Plaintiffs,)	JUDGE DONALD C. NUGENT
)	
vs.)	<u>ANSWER OF DEFENDANTS</u>
)	<u>CITY OF LAKEWOOD, OHIO,</u>
CITY OF LAKEWOOD, OHIO, et al.,)	<u>KURTIS BIALOSKY AND</u>
)	<u>ELAINE E. HEARN TO PLAINTIFFS'</u>
Defendants.)	<u>COMPLAINT</u>
)	
)	<u>(Jury Demand Endorsed Hereon)</u>

Now come Defendants City of Lakewood, Ohio, Kurtis Bialosky and Elaine E. Hearn, by and through counsel Mazanec, Raskin & Ryder Co., L.P.A., and for their answer to the Plaintiffs' Complaint state as follows:

FIRST DEFENSE

1. Defendants admit the nature of the action being filed in Plaintiffs' Complaint. Further pleading, Defendants deny all remaining allegations contained in Paragraph 1 and expressly deny all liability in this matter.

2. In reply to the allegations contained in Paragraph 2 of Plaintiffs' Complaint, Defendants admit that Plaintiffs purport to bring this action regarding Lakewood Codified Ordinance Chapter 506. Further pleading, Defendants state that those Ordinances speak for themselves and deny all allegations contained therein to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 2.

3. Defendants deny all allegations contained in Paragraphs 3, 4 and 5 of Plaintiffs' Complaint.

4. In reply to the allegations contained in Paragraph 6 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

5. Defendants deny for want of information all allegations contained in Paragraph 7 of Plaintiffs' Complaint.

6. In reply to the allegations contained in Paragraph 8 of Plaintiffs' Complaint, Defendants admit that Plaintiffs' dogs were determined to have the predominant characteristics of pit bulls. Further answering said paragraph, Defendants deny for want of information all remaining allegations contained in said Paragraph 8.

7. Defendants admit all allegations contained in Paragraphs 9 and 10 of Plaintiffs' Complaint.

8. In reply to the allegations contained in Paragraph 11 of Plaintiffs' Complaint, Defendants admit that the City of Lakewood is a home rule municipality located in Cuyahoga County, Ohio. Further answering said paragraph, Defendants deny all remaining allegations contained in said Paragraph 11.

9. In reply to the allegations contained in Paragraph 12 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

10. In reply to the allegations contained in Paragraph 13 of Plaintiffs' Complaint, Defendants admit that the Court has jurisdiction over Plaintiffs' claims. Further pleading, Defendants deny the remaining allegations contained in said Paragraph.

11. In reply to the allegations contained in Paragraph 14 of Plaintiffs' Complaint, Defendants admit that venue is proper in this Court. Further pleading, Defendants deny the remaining allegations contained in said Paragraph.

12. In reply to the allegations contained in Paragraph 15 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

13. Defendants admit the allegations contained in Paragraphs 16 and 17 of Plaintiffs' Complaint.

14. In reply to the allegations contained in Paragraph 18 of Plaintiffs' Complaint, Defendants admit that the Ordinances restrict the ownership of pit bulls. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 18.

15. In reply to the allegations contained in Paragraphs 19, 20, 21, 22, 23 and 24 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves. Defendants deny all allegations contained therein to the extent those allegations depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

16. Defendants deny all allegations contained in Paragraphs 25, 26 and 27 of Plaintiffs' Complaint.

17. In reply to the allegations contained in Paragraph 28 of Plaintiffs' Complaint, Defendants deny all allegations contained therein. Further pleading, Defendants state that Plaintiffs requested and were granted a hearing with respect to the classification of their dogs. Plaintiffs' Complaint was filed prior to the scheduled time for the hearing.

18. Defendants deny all allegations contained in Paragraphs 29, 30 and 31 of Plaintiffs' Complaint.

19. Defendant deny for want of information all allegations contained in Paragraph 32 of Plaintiffs' Complaint.

20. Defendants admit all allegations contained in Paragraph 33 of Plaintiffs' Complaint.

21. Defendants deny for want of information all allegations contained in Paragraphs 34 and 35 of Plaintiffs' Complaint.

22. In reply to the allegations contained in Paragraph 36 of Plaintiffs' Complaint, Defendants admit that they received a Complaint about two boys walking unmuzzled pit bulls. Defendants responded to that call. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 36.

23. In reply to the allegations contained in Paragraph 37 of Plaintiffs' Complaint, Defendants admit that Defendant Bialosky responded to the Plaintiffs' residence and took photographs of the dogs. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 37.

24. In reply to the allegations contained in Paragraph 38 of Plaintiffs' Complaint, Defendants admit that Defendant Bialosky shared the photographs with Defendant Hearn and that a determination was made that the dogs displayed the predominant characteristics of pit bulls dogs. Further answering said paragraph, Defendants deny all remaining allegations contained in said Paragraph 38.

25. Defendants deny all allegations contained in Paragraph 39 of Plaintiffs' Complaint.

26. In reply to the allegations contained in Paragraph 40 of Plaintiffs' Complaint, Defendants admit that a letter was sent to Plaintiffs advising that their dogs had the predominant characteristics of pit bulls and must be removed unless a blood DNA test showed otherwise. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 40.

27. Defendants deny for want of information all allegations contained in Paragraph 41 of Plaintiffs' Complaint.

28. Defendants deny all allegations contained in Paragraphs 42, 43, 44 and 45 of Plaintiffs' Complaint.

29. Defendants deny for want of information all allegations contained in Paragraphs 46 and 47 of Plaintiffs' Complaint.

30. Defendants deny all allegations contained in Paragraph 48 of Plaintiffs' Complaint.

31. In reply to the allegations contained in Paragraph 49 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

32. In reply to the allegations contained in Paragraphs 50 and 51 of Plaintiffs' Complaint, Defendants state that the laws speak for themselves and deny all allegations contained therein to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

33. Defendants deny the allegations contained in Paragraphs 52, 53, 54, 55 and 56 of Plaintiffs' Complaint.

34. In reply to the allegations contained in Paragraphs 57, 58, 59, 60, 61 and 62 of Plaintiffs' Complaint, Defendants state that the Ordinances speak for themselves and deny all allegations contained therein to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

35. Defendants deny all allegations contained in Paragraphs 63 of Plaintiffs' Complaint.

36. In reply to the allegations contained in Paragraph 64 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

37. In reply to the allegations contained in Paragraph 65, 66, 67, 68 and 69 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained therein to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

38. Defendants deny all allegations contained in Paragraph 70 of Plaintiffs' Complaint.

39. In reply to the allegations contained in Paragraph 71 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

40. In reply to the allegations contained in Paragraphs 72, 73, 74, 75, 76 and 77 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained therein to the extent they depart from clearly established law. Further answering, Defendants deny all remaining allegations contained in said paragraphs.

41. Defendants deny all allegations contained in Paragraph 78 of Plaintiffs' Complaint.

42. In reply to the allegations contained in Paragraph 79 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

43. In reply to the allegations contained in Paragraphs 80, 81, 82, 83, 84, 85, 86 and 87 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

44. Defendants deny all allegations contained in Paragraph 88 of Plaintiffs' Complaint.

45. In reply to the allegations contained in Paragraph 89 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

46. In reply to the allegations contained in Paragraphs 90, 91, 92 and 93 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

47. Defendants deny all allegations contained in Paragraph 94 of Plaintiffs' Complaint.

48. In reply to the allegations contained in Paragraph 95 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

49. In reply to the allegations contained in Paragraphs 96 and 97 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

50. Defendants deny all allegations contained in Paragraphs 98, 99, 100 and 101 of Plaintiffs' Complaint.

51. In reply to the allegations contained in Paragraph 102 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

52. Defendants deny all allegations contained in Paragraphs 103, 104 and 105 of Plaintiffs' Complaint.

53. In reply to the allegations contained in Paragraph 106 of Plaintiffs' Complaint, Defendants state the Due Process clause and the cases interpreting it speak for themselves. Defendants deny all allegations contained therein to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 106.

54. Defendants deny all allegations contained in Paragraphs 107 and 108 of Plaintiffs' Complaint.

55. In reply to the allegations contained in Paragraph 109 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

56. In reply to the allegations contained in Paragraphs 110, 111, 112 and 113 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

57. Defendants deny all allegations contained in Paragraph 114 of Plaintiffs' Complaint.

58. In reply to the allegations contained in Paragraph 115 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

59. In reply to the allegations contained in Paragraphs 116 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraph to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 116.

60. Defendants deny all allegations contained in Paragraphs 117 and 118 of Plaintiffs' Complaint.

61. In reply to the allegations contained in Paragraph 119 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraph to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 119.

62. Defendants deny all allegations contained in Paragraph 120 of Plaintiffs' Complaint.

63. In reply to the allegations contained in Paragraphs 121, 122 and 123 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

64. Defendants deny all allegations contained in Paragraph 124 of Plaintiffs' Complaint.

65. In reply to the allegations contained in Paragraph 125 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraph to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said Paragraph 125.

66. Defendants deny all allegations contained in Paragraphs 126, 127 and 128 of Plaintiffs' Complaint.

67. In reply to the allegations contained in Paragraph 129 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

68. Defendants deny all allegations contained in Paragraphs 130, 131, 132 and 133 of Plaintiffs' Complaint.

69. Defendants deny for want of information all allegations contained in Paragraph 134 of Plaintiffs' Complaint.

70. Defendants deny all allegations contained in Paragraphs 135 and 136 of Plaintiffs' Complaint.

71. In reply to the allegations contained in Paragraph 137 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

72. In reply to the allegations contained in Paragraphs 138 and 139 of Plaintiffs' Complaint, Defendants state that the Ordinances at issue speak for themselves and deny all allegations contained in said paragraphs to the extent they depart from clearly established law. Further pleading, Defendants deny all remaining allegations contained in said paragraphs.

73. Defendants deny all allegations contained in Paragraphs 140 and 141 of Plaintiffs' Complaint.

74. In reply to the allegations contained in Paragraph 142 of Plaintiffs' Complaint, Defendants reaver and reallege all of their previous answers as though fully rewritten herein.

75. In reply to the allegations contained in Paragraph 143 of Plaintiffs' Complaint, Defendants admit that they advised Plaintiffs that the dogs must be removed from the City of Lakewood. Further pleading, Defendants deny all remaining allegations contained in Paragraph 143 of Plaintiffs' Complaint.

76. Defendants deny all allegations contained in Paragraph 144 of Plaintiffs' Complaint.

77. Defendants deny for want of information all allegations contained in Paragraph 145 of Plaintiffs' Complaint.

78. Defendants deny all allegations contained in Paragraph 146 of Plaintiffs' Complaint.

79. Defendants deny for want of information all allegations contained in Paragraph 147 of Plaintiffs' Complaint.

80. Defendants deny all allegations contained in Paragraphs 148, 149, 150, 151 and 152 of Plaintiffs' Complaint.

81. Defendants deny all allegations contained in Plaintiffs' Complaint which are not otherwise expressly admitted herein.

SECOND DEFENSE

82. Plaintiffs' Complaint fails to state a claim upon which relief can be granted in some or all respects.

THIRD DEFENSE

83. Qualified good faith immunity.

FOURTH DEFENSE

84. Immunity pursuant to Ohio Revised Code Chapter 2744 and/or Ohio common law.

FIFTH DEFENSE

85. Failure to exhaust administrative remedies.

SIXTH DEFENSE

86. Good faith/probable cause.

WHEREFORE, having fully answered, Defendants pray that Plaintiffs' Complaint be dismissed, and that they go hence without cost or delay.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

s/Tami Z. Hannon

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*Counsel for Defendants City of Lakewood, Ohio,
Kurtis Bialosky and Elaine E. Hearn*

JURY DEMAND

A trial by jury composed of the maximum number of jurors permitted under the law is hereby demanded.

s/Tami Z. Hannon

JAMES A. CLIMER (0001532)

TAMI Z. HANNON (0079812)

*Counsel for Defendants City of Lakewood, Ohio,
Kurtis Bialosky and Elaine E. Hearn*

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2011, a copy of the foregoing Answer of Defendants City of Lakewood, Ohio, Kurtis Bialosky and Elaine E. Hearn to Plaintiffs' Complaint was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Tami Z. Hannon

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*Counsel for Defendants City of Lakewood, Ohio,
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TRID-110045/Answer of Ds to Ps Complaint