

January 27, 2023

Merryville Town Council
Town of Merryville
1009 HWY, 110 West
Merryville, LA 70653

Re: Breed Specific Provisions of the Merryville Ordinance

Dear Merryville Town Council:

The American Society for the Prevention of Cruelty to Animals (“ASPCA”), on behalf of its 60,367 supporters in Louisiana, writes to share its concerns regarding the breed-specific law contained within Section 21 of the Merryville Ordinance, and offer suggestions for revisions which would help to protect both the safety and constitutional rights of all Merryville residents. It has recently come to our attention that Merryville is enforcing this ordinance, requiring the removal of dogs based upon claimed identification of a prohibited breed. As discussed below, we believe that the Town’s focus on pit bulls is based on erroneous and misleading information, that the ordinance in question does not provide the residents of Merryville with adequate due process, and that these breed-specific provisions otherwise fail to pass constitutional muster.

I. The Data Does Not Support Focus on the Pit Bull Breed

We are concerned that the Town’s current ordinance, which singles out American Pit Bull Terriers, Staffordshire Bull Terriers, American Staffordshire Bull Terriers, and dogs that “have the appearance and characteristics of being predominately of th[ose] breed[s],” is based upon misleading, and in many cases incorrect, information.

Data does not support breed specific legislation for dogs. In fact, there is no reliable evidence suggesting that pit bull breeds are inherently more dangerous than other dogs. Even in an oft-cited study of fatal dog attacks, researchers note that data collection related to bites by breed is fraught with potential sources of error. Sacks, J., Sinclair, L., Gilchrist, J., Golab, G., Lockwood, R., 2000. *Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998*, Journal of the American Veterinary Medical Association 217, 836-840. These researchers cite inherent difficulties in breed identification, and in calculating a breed’s bite rate due to lack of consistent data on breed population and the actual number of bites occurring in a community.

Rather than focusing on breed, experts note there are a variety of factors affecting a dog’s tendency toward aggression, including heredity, early experience, socialization, training, sex, and reproductive status. Lockwood, R., 1999. *The ethology and epidemiology of canine aggression, The Domestic Dog: Its Evolution, Behavior and Interactions with People*, Serpell, J. (ed), Cambridge University Press, 1995; republished in Favre, D., and Borchelt, P.L. (eds.), *Animal Law and Dog Behavior*, Tucson, Arizona: Lawyers and Judges Publishing Company, Inc., 132-134. Risk factors, across all breeds, which tend to correlate with canine aggression include failure to neuter or spay, breeding and raising a specific dog for

elevated aggression, abuse and neglect, and inadequate training or supervision. For example, unaltered males are 2.6 times more likely to bite than neutered dogs, and are involved in roughly three quarters of reported bite incidents. Sacks, et al. at 839.

As epidemiologist Dr. Gary Patronek succinctly states, “[m]ost [dog-bite related fatalities] were characterized by coincident, preventable factors; breed was not one of these.” Patronek, G., et al., *Co-occurrence of potentially preventable factors in 256 dog bite-related fatalities in the United States (2000-2009)*, 243 J. Am. Veterinary Med. Ass’n 1726. As such, a law intended to address issues surrounding dangerous dogs will be most effective when it focuses on the risk factors associated with aggressive canine propensities rather than breed.

A recent study, published in April 2022, confirmed that “dog breed is generally a poor predictor of individual behavior.” Morrill, Kathleen, et al., *Ancestry-Inclusive Dog Genomics Challenges Popular Breed Stereotypes*, Science, Vol. 376, No. 6592 (April 29, 2022), available at <https://www.science.org/doi/10.1126/science.abk0639>. After sequencing the DNA of 2,155 dogs and surveying 18,385 dog owners, the researchers determined that while pit bulls score among the highest breeds for human sociability, in reality breed accounts for only about 9% of the variations in a given dog’s behavior. *Id.*; see also Gorman, James, *They’re All Good Dogs, and It Has Nothing to Do With Their Breed*, New York Times (April 28, 2022), available at <https://www.nytimes.com/2022/04/28/science/dogs-breed-behavior-genes.html>. In covering the study, the Los Angeles Times noted, “A dog’s age and sex were often far better predictors of its behavior, and for some traits – most notably aggression – breed made no difference at all.” Purtil, Corinne, *What a Dog’s Breed Can, and Can’t, Tell You About Its Behavior*, Los Angeles Times (April 28, 2022), available at <https://www.latimes.com/science/story/2022-04-28/genetic-study-says-stereotypes-about-dog-breeds-are-wrong>.

We certainly agree that public safety is of paramount importance, but the breed-specific ordinance enacted by the Town of Merryville fails to adequately provide the protection sought. Further, as discussed in the next section, we contend that provisions of the ordinance impermissibly curtail the constitutional rights of resident dog guardians.

II. The Ordinance Fails to Provide Constitutional Due Process

Merryville’s dangerous dog ordinance is arguably unconstitutional because it fails to provide procedural due process to the residents of the Town. See *Mathews v. Eldridge*, 424 U.S. 319 (1976) (Stating procedural due process requires that there be opportunity to be heard “at a meaningful time and in a meaningful manner.”). Here, the ordinance provides residents no opportunity for a hearing before a neutral hearing officer prior to their dog being classified. Instead, at §21.22(C), the ordinance indicates that whenever a dog is determined to be a pit bull – through means not identified in the ordinance – it “shall be immediately impounded.” Further, at §21.22(F), the ordinance allows for a pit bull or other prohibited breed being kept within the Town to be “exterminated” after five days of impoundment, without indication of any sort of hearing or appeal at all. The absence of sufficient due process here is notable, and courts have not hesitated to strike down dangerous dog laws based on similar constitutional infirmities. See *County of Pasco v. Riehl*, 620 So. 2d 229 (Fla. Dist. Ct. App. 1993) (“[W]here there is no opportunity for a hearing whatsoever, prior to (or even after) substantial restrictions and penalties are placed upon the owner’s use and enjoyment of his property, the statute on its face and in its operation constitutes an unconstitutional denial of due process.”). In sum, the ordinance fails to provide Merryville residents with the due process protections to which they are entitled under the law.

III. The Ordinance is Unconstitutionally Vague

The breed-specific law contained within Section 21 of the Merryville Ordinance is also likely unconstitutional due to the vagueness of its terms. Specifically, the ordinance applies to “pit bull dogs” which are defined to include (a) American Pit Bull Terriers, (b) American Staffordshire Bull Terriers, (c) Straffordshire Bull Terriers, and (d) “[d]ogs that have the appearance and characteristics of being predominately of the breeds of dogs known as Straffordshire bull terrier, American Pit Bull, or American Straffordshire terrier.” This definition is impermissibly vague, as there is no indication whatsoever as to how one can determine whether a specific dog has “the appearance” of certain breeds. The ordinance does not specify how the dog must be adjudged to have this “appearance,” nor does it specify what training beyond a veterinary degree a person must have to enable them to properly identify such elements, appearance, or characteristics. Further, the ordinance allows initial enforcement based not upon identification by a veterinarian, but through visual identification by an Animal Control Officer with no required training in dog breed verification. In short, the ordinance fails to employ any guiding standards to assist citizens in determining applicability of the law. See *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (“A statute can be impermissibly vague . . . if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.”); *American Dog Owners Ass’n v. Des Moines*, 469 N.W.2d 416 (Iowa 1991).

IV. Conclusion

As per our Policy Statement on Breed Specific Legislation, the ASPCA “oppose[s] any state or local law to regulate or ban dogs based on breed. The ASPCA recognizes that dangerous dogs pose a community problem requiring serious attention. However, in light of the absence of scientific data indicating the efficacy of breed-specific laws, and the unfair and inhumane targeting of responsible pet guardians and their dogs that inevitably results when these laws are enacted, the ASPCA instead favors effective enforcement of a combination of breed-neutral laws that hold reckless dog guardians accountable for their dogs’ aggressive behavior.”

The ASPCA would be more than happy to work alongside the Town Council to formulate a breed-neutral ordinance which will focus on the behavior of individual dogs and their guardians, rather than taking a breed specific approach. A constitutionally permissible law will include specificity in its terms to avoid vagueness concerns, and guarantee the substantive and procedural due process rights to which all Merryville citizens are entitled. Should you be interested in revisiting your ordinance in light of the issues highlighted in this letter, I ask that you please contact me via email at paul.bauer@aspca.org, or telephone at (217) 552-8303 so that we can discuss further.

Sincerely:



Paul J. Bauer
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