

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE: Safety

A BILL

**For an ordinance amending section 55 of Chapter 8 of the Revised Municipal Code to allow for the affirmative defense that a pit bull is a service animal within the Americans with Disabilities Act and deleting obsolete language.**

**WHEREAS**, the Department of Justice has enacted new federal regulations regarding a new definition of "service animals" and prohibiting local government from excluding a "service animal" based on breed specific legislation; and

**WHEREAS**, Judge Eglehoff, in his 2004 District Court's decision, struck conflicting and obsolete language within D.R.M.C. 8-55 that would restrict cross-jurisdictional travel of a prohibited pit bull through Denver.

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** That Section 8-55, D.R.M.C., Pit bulls prohibited, shall be amended by adding the language underlined and deleting the language stricken, as follows:

**Sec. 8-55. Pit bulls prohibited.**

(a) It shall be unlawful for any person to own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the city any pit bull.

(b) Definitions.

(1) An "owner," for purposes of this chapter, is defined as any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports or sells an animal.

(2) A "pit bull," for purposes of this chapter, is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. The A.K.C. and U.K.C. standards for the above breeds are on file in the office of the clerk and recorder, ex officio clerk of the City and County of Denver, at City Clerk Filing No. 89457.

(3) A "secure temporary enclosure," for purposes of this chapter, is a secure enclosure used for purposes of transporting a pit bull and which includes a top and bottom permanently attached to the sides except for a "door" for removal of the pit bull. Such enclosure must be of such material, and such door closed and secured in such a manner, that the pit bull cannot exit the enclosure on its

1 owner.

2 (4) A "service animal," for purposes of this chapter and in accordance with the Americans  
3 with Disabilities Act (ADA), means any dog that is individually trained to do work or perform tasks  
4 for the benefit of an individual with a disability, including a physical, sensory, psychiatric,  
5 intellectual, or other mental disability. The work or tasks performed by a service animal must be  
6 directly related to the handler's disability. The crime deterrent effects of an animal's presence and the  
7 provision of emotional support, well-being, comfort, or companionship do not constitute work or  
8 tasks for the purposes of this definition.

9 (c) Exceptions and affirmative defense. The prohibition in subsection (a) of this section shall not  
10 apply in the following enumerated circumstances. Failure by the owner to comply and remain in  
11 compliance with all of the terms of any applicable exception shall subject the pit bull to immediate  
12 impoundment and disposal pursuant to subsection (e) of this section, and shall operate to prevent the  
13 owner from asserting such exception as a defense in any prosecution under subsection (a).

14 (1) The owner of a pit bull, who has applied for and received a dog license for such pit bull  
15 pursuant to section 8-61 at the Denver Municipal Animal Shelter on or before the date of publication  
16 of the ordinance enacting this section 8-55 [August 7, 1989], who has applied for and received a pit  
17 bull license in accordance with subsection (d) of this section, and who maintains the pit bull at all  
18 times in compliance with the put bull license requirements of subsection (d) of this section and all  
19 other applicable requirements of this chapter, may keep a pit bull within the city.

20 (2) The city's municipal animal shelter may temporarily harbor and transport any pit bull for  
21 purposes of enforcing the provisions of this chapter.

22 (3) Any humane society operating an animal shelter which is registered and licensed by the  
23 city may temporarily hold any pit bull that it has received or otherwise recovered, but only for so  
24 long as it takes to contact the city's municipal animal shelter and either turn the pit bull over to the  
25 municipal animal shelter employees or receive permission to destroy or have destroyed the pit bull  
26 pursuant to the provisions of subsection (e).

27 (4) A person may temporarily transport into and hold in the city a pit bull only for the purpose  
28 of showing such pit bull in a place of public exhibition, contest or show sponsored by a dog club  
29 association or similar organization. However, the sponsor of the exhibition, contest, or show must  
30 receive written permission from the manager, must obtain any other permits or licenses required by  
31 city ordinance, and must provide protective measures adequate to prevent pit bulls from escaping or  
32 injuring the public. The person who transports and holds a pit bull for showing shall, at all times  
33 when the pit bull is being transported within the city to and from the place of exhibition, contest, or  
34 show, keep the pit bull confined in a "secure temporary enclosure" as defined in subdivision (b)(3).

35 (5) Except as provided in subdivision (4), above, the owner of a pit bull may temporarily  
36 transport a pit bull through the city ~~a pit bull~~ only if such ~~owner has obtained a valid transport permit~~  
37 ~~from the manager. Upon request, the manager shall issue such permits only upon a showing by the~~  
38 ~~owner that the pit bull is being transported either from a point outside the city to a destination outside~~  
39 ~~the city, or from a point outside the city to an airport, train station or bus station within the city. In~~  
40 ~~the latter case, such owner must provide evidence of an intent to send or take the pit bull outside of~~  
41 ~~the city by producing an airline, train or bus ticket, or other equivalent document, showing a~~  
42 ~~departure time within six (6) hours of the time of the transport. At all times when the pit bull is being~~  
43 ~~transported within the city, it must be kept confined in a "secure temporary enclosure" as defined in~~  
44 ~~subdivision (b)(3) of this section. In all cases before issuing a transport permit, the manager must~~  
45 ~~find that the transport would not constitute an unnecessary or undue danger to the public health,~~

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~~welfare or safety, and shall not issue the permit where the manager cannot so find. All transport permits issued shall only be valid for the time, date and pit bull specified on the permit, and shall not be construed to permit any activity otherwise prohibited.~~

(6) It shall be an affirmative defense to charges brought under subsection (a) that a pit bull is a qualified service animal as defined in subsection b(4) above.

(d) The owner of any pit bull which had been licensed pursuant to section 8-61 on or before the date of publication of the ordinance enacting this section 8-55 (Ordinance No. 404, Series of 1989) shall be allowed to keep such pit bull within the city upon compliance with the terms of the exception contained in subdivision (c)(1) of this section only if the owner applies for and receives an annual pit bull license on or before January 1, 1990. As a condition of issuance of a pit bull license, the owner shall at the time of application comply with or otherwise provide sufficient evidence that the owner is in compliance with all of the following regulations:

(1) The owner of the pit bull shall provide proof of rabies vaccination and shall pay the annual pit bull license fee of fifty dollars (\$50.00).

(2) The owner of the pit bull shall keep current the license for such pit bull through annual renewal. Such license is not transferable and shall be renewable only by the holder of the license or by a member of the immediate family of such licensee. A pit bull license tag will be issued to the owner at the time of issuance of the license. Such license tag shall be attached to the pit bull by means of a collar or harness and shall not be attached to any pit bull other than the pit bull for which the license was issued. If the pit bull tag is lost or destroyed, a duplicate tag may be issued upon the payment of a two-dollar fee.

(3) The owner must be at least twenty-one (21) years of age as of January 1, 1990.

(4) The owner shall present to the manager proof that the owner has procured liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), covering any damage or injury which may be caused by a pit bull during the twelve-month period covered by the pit bull license. The policy shall contain a provision requiring the insurance company to provide written notice to the manager not less than fifteen (15) days prior to any cancellation, termination, or expiration of the policy.

(5) The owner shall, at the owner's own expense, have the pit bull spayed or neutered and shall present to the manager documentary proof from a licensed veterinarian that this sterilization has been performed.

(6) The owner shall bring the pit bull to the Denver Municipal Animal Shelter where a person authorized by the manager shall cause a registration number assigned by the department to be tattooed or otherwise marked on the pit bull. The manager shall maintain a file containing the registration numbers and names of the pit bulls and the names and addresses of the owners. The owner shall notify the manager of any change of address.

(7) At all times when a pit bull is at the property of the owner, the owner shall keep the pit bull "confined," as that term is defined in subsection 8-52(b). At all times when a pit bull is away from the property of the owner, the owner shall keep the pit bull either securely leashed and muzzled or in a "secure temporary enclosure," as that term is defined in subdivision (b)(3) of this section.

(8) The owner shall not sell or otherwise transfer the pit bull to any person except a member of the owner's immediate family who will then become the owner and will be subject to all of the

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1 provisions of this section. The owner shall notify the manager within five (5) days in the event that  
2 the pit bull is lost, stolen, dies, or has a litter. In the event of a litter, the owner must deliver the  
3 puppies to the Denver Municipal Animal Shelter for destruction or permanently remove the puppies  
4 from Denver and provide sufficient evidence of such removal by the time the puppies are weaned,  
5 but in no event shall the owner be allowed to keep in Denver a pit bull puppy born after the date of  
6 publication of Ordinance No. 404, Series 1989, that is more than eight (8) weeks old. Any pit bull  
7 puppies kept contrary to the provisions of this subdivision are subject to immediate impoundment  
8 and disposal pursuant to subsection (e) of this section.

9 (9) The owner shall have posted at each possible entrance to the owner's property where the  
10 pit bull is kept a conspicuous and clearly legible pit bull sign. Such pit bull sign must be at least eight  
11 (8) inches by ten (10) inches in rectangular dimensions and shall contain only the words "PIT BULL  
12 DOG" in lettering not less than two (2) inches in height.

13 (e) Notwithstanding the provisions of Article VIII of this chapter, the manager is authorized to  
14 immediately impound any pit bull found in the City and County of Denver which does not fall within  
15 the exceptions listed in subsection (c), above, and the municipal animal shelter may house or dispose  
16 of such pit bull in such manner as the manager may deem appropriate, except as the procedures in  
17 subsection (f), below, otherwise require.

18 (f) When the manager has impounded any pit bull dog pursuant to this section, and the owner of such  
19 dog disputes the classification of such dog as a pit bull, the owner of such dog may file a written  
20 petition with the manager for a hearing concerning such classification no later than seven (7) days  
21 after impoundment. Such petition shall include the name and address, including mailing address, of  
22 the petitioner. The manager will then issue a notice of hearing date by mailing a copy to the  
23 petitioner's address no later than ten (10) days prior to the date of the hearing. Where no written  
24 request from the owner for a hearing is received by the manager within seven (7) days of  
25 impoundment, the pit bull shall be destroyed.

26 The hearing, if any, will be held before the manager or a hearing officer designated by the manager.  
27 Any facts which the petitioners wishes to be considered shall be submitted under oath or affirmation  
28 either in writing or orally at the hearing. The manager or hearing officer shall make a final  
29 determination whether the dog is a pit bull as defined in subsection (b)(2) of this section. Such final  
30 determination shall be considered a final order of the manager subject to review under Rule  
31 106(a)(4) of the state rules of civil procedure.

32 If the dog is found to be a pit bull, it shall be destroyed, unless the owner produces evidence deemed  
33 sufficient by the manager that the pit bull is to be permanently taken out of Denver and the owner  
34 pays the cost of impoundment. If the dog is found not to be a pit bull, the dog shall be released to the  
35 owner. The procedures in this subsection (f) shall not apply and the owner is not entitled to such a  
36 hearing with respect to any dog which was impounded as the immediate result of an attack or bite as  
37 defined in section 8-51. In those instances, the dog shall be handled and the procedures governed by  
38 the provisions of article VIII of this chapter.

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41 COMMITTEE APPROVAL DATE: 2010.  
42 MAYOR-COUNCIL DATE: 2010.  
43 PASSED BY THE COUNCIL \_\_\_\_\_, 2010.

*Draft, August 11, 2010*

- PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2010.

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2010; \_\_\_\_\_ 2010.

PREPARED BY: Michael J. Joyce, ASSISTANT CITY ATTORNEY August 10, 2010.

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §3.2.6 of the Charter.

David R. Fine, City Attorney

BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

DATE: \_\_\_\_\_