

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2010

COUNCIL BILL NO. 724
COMMITTEE OF REFERENCE
Health, Safety, Education & Services

4
5 A BILL

6 For an ordinance amending section 55 of Chapter 8 of the Revised Municipal Code to
7 allow for the affirmative defense that a pit bull is a service animal within the Americans
8 with Disabilities Act and deleting obsolete language.
9
10

11 **WHEREAS**, the United State Department of Justice, through the recent adoption of regulations
12 codified at 28 CFR Part 35, has required all public entities to modify their policies, practices, or
13 procedures to permit the use of a service animal by an individual with a disability, and has defined the
14 term "service animal" to include any dog that has been individually trained as such without regard to
15 the breed of the dog; and
16

17 **WHEREAS**, the City's ordinance prohibiting pit bulls, section 8-55, D.R.M.C., does not currently
18 contain an exception for pit bulls that are used as service animals; and
19

20 **WHEREAS**, in Case No. 04CV3756, the Denver District Court ruled that certain provisions of
21 the City's existing ordinance regulating inter-jurisdictional transportation of pit bulls were preempted by
22 state law;
23

24 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
25 **DENVER:**
26

27 **Section 1.** That Section 8-55, D.R.M.C., Pit bulls prohibited, shall be amended by
28 adding the language underlined and deleting the language stricken, to read as follows:
29

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

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

33 (b) Definitions.

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

37 (2) A "pit bull," for purposes of this chapter, is defined as any dog that is an
38 American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or

1 any dog displaying the majority of physical traits of any one (1) or more of the above
2 breeds, or any dog exhibiting those distinguishing characteristics which substantially
3 conform to the standards established by the American Kennel Club or United Kennel
4 Club for any of the above breeds. The A.K.C. and U.K.C. standards for the above
5 breeds are on file in the office of the clerk and recorder, ex officio clerk of the City and
6 County of Denver, at City Clerk Filing No. 89457.

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

12 (4) A "service animal," for purposes of this chapter and in accordance with the
13 Americans with Disabilities Act (ADA), means any dog that is individually trained to do
14 work or perform tasks for the benefit of an individual with a disability, including a
15 physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks
16 performed by a service animal must be directly related to the handler's disability.
17 Examples of work or tasks include, but are not limited to, assisting individuals who are
18 blind or have low vision with navigation and other tasks, alerting individuals who are deaf
19 or hard of hearing to the presence of people or sounds, providing non-violent protection
20 or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting
21 individuals to the presence of allergens, retrieving items such as medicine or the
22 telephone, providing physical support and assistance with balance and stability to
23 individuals with mobility disabilities, and helping persons with psychiatric and
24 neurological disabilities by preventing or interrupting impulsive or destructive behaviors.
25 The crime deterrent effects of an animal's presence and the provision of emotional
26 support, well-being, comfort, or companionship do not constitute work or tasks for the
27 purposes of this definition.

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

34 (1) The owner of a pit bull, who has applied for and received a dog license for
35 such pit bull pursuant to section 8-61 at the Denver Municipal Animal Shelter on or
36 before the date of publication of the ordinance enacting this section 8-55 [August 7,
37 1989], who has applied for and received a pit bull license in accordance with subsection
38 (d) of this section, and who maintains the pit bull at all times in compliance with the pit
39 bull license requirements of subsection (d) of this section and all other applicable
40 requirements of this chapter, may keep a pit bull within the city.

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

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

1 subsection (e).

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

12 (5) Except as provided in subdivision (4), above, the owner of a pit bull may
13 temporarily transport a pit bull through the city ~~a pit bull~~ only if such ~~owner has obtained~~
14 ~~a valid transport permit from the manager. Upon request, the manager shall issue such~~
15 ~~permits only upon a showing by the owner that the pit bull is being transported either~~
16 ~~from a point outside the city to a destination outside the city, or from a point outside the~~
17 ~~city to an airport, train station or bus station within the city. In the latter case, such owner~~
18 ~~must provide evidence of an intent to send or take the pit bull outside of the city by~~
19 ~~producing an airline, train or bus ticket, or other equivalent document, showing a~~
20 ~~departure time within six (6) hours of the time of the transport. At all times when the pit~~
21 ~~bull is being transported within the city, it must be kept confined in a "secure temporary~~
22 ~~enclosure" as defined in subdivision (b)(3) of this section. In all cases before issuing a~~
23 ~~transport permit, the manager must find that the transport would not constitute an~~
24 ~~unnecessary or undue danger to the public health, welfare or safety, and shall not issue~~
25 ~~the permit where the manager cannot so find. All transport permits issued shall only be~~
26 ~~valid for the time, date and pit bull specified on the permit, and shall not be construed to~~
27 ~~permit any activity otherwise prohibited.~~

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

30 (d) The owner of any pit bull which had been licensed pursuant to section 8-61 on or
31 before the date of publication of the ordinance enacting this section 8-55 (Ordinance No.
32 404, Series of 1989) shall be allowed to keep such pit bull within the city upon
33 compliance with the terms of the exception contained in subdivision (c)(1) of this section
34 only if the owner applies for and receives an annual pit bull license on or before January
35 1, 1990. As a condition of issuance of a pit bull license, the owner shall at the time of
36 application comply with or otherwise provide sufficient evidence that the owner is in
37 compliance with all of the following regulations:

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

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

1 (3) The owner must be at least twenty-one (21) years of age as of January 1,
2 1990.

3 (4) The owner shall present to the manager proof that the owner has procured
4 liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00),
5 covering any damage or injury which may be caused by a pit bull during the twelve-
6 month period covered by the pit bull license. The policy shall contain a provision
7 requiring the insurance company to provide written notice to the manager not less than
8 fifteen (15) days prior to any cancellation, termination, or expiration of the policy.
9

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

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

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

24 (8) The owner shall not sell or otherwise transfer the pit bull to any person except
25 a member of the owner's immediate family who will then become the owner and will be
26 subject to all of the provisions of this section. The owner shall notify the manager within
27 five (5) days in the event that the pit bull is lost, stolen, dies, or has a litter. In the event
28 of a litter, the owner must deliver the puppies to the Denver Municipal Animal Shelter for
29 destruction or permanently remove the puppies from Denver and provide sufficient
30 evidence of such removal by the time the puppies are weaned, but in no event shall the
31 owner be allowed to keep in Denver a pit bull puppy born after the date of publication of
32 Ordinance No. 404, Series 1989, that is more than eight (8) weeks old. Any pit bull
33 puppies kept contrary to the provisions of this subdivision are subject to immediate
34 impoundment and disposal pursuant to subsection (e) of this section.

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

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

46 (f) When the manager has impounded any pit bull dog pursuant to this section, and the

1 owner of such dog disputes the classification of such dog as a pit bull, the owner of such
2 dog may file a written petition with the manager for a hearing concerning such
3 classification no later than seven (7) days after impoundment. Such petition shall include
4 the name and address, including mailing address, of the petitioner. The manager will
5 then issue a notice of hearing date by mailing a copy to the petitioner's address no later
6 than ten (10) days prior to the date of the hearing. Where no written request from the
7 owner for a hearing is received by the manager within seven (7) days of impoundment,
8 the pit bull shall be destroyed.

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

16 If the dog is found to be a pit bull, it shall be destroyed, unless the owner produces
17 evidence deemed sufficient by the manager that the pit bull is to be permanently taken
18 out of Denver and the owner pays the cost of impoundment. If the dog is found not to be
19 a pit bull, the dog shall be released to the owner. The procedures in this subsection (f)
20 shall not apply and the owner is not entitled to such a hearing with respect to any dog
21 which was impounded as the immediate result of an attack or bite as defined in section
22 8-51. In those instances, the dog shall be handled and the procedures governed by the
23 provisions of article VIII of this chapter.

24

25 COMMITTEE APPROVAL DATE: August 24, 2010

26 MAYOR-COUNCIL DATE: August 31, 2010

27 PASSED BY THE COUNCIL: _____, 2010

28 _____ - PRESIDENT

29 APPROVED: _____ - MAYOR _____, 2010

30 ATTEST: _____ - CLERK AND RECORDER,
31 EX-OFFICIO CLERK OF THE
32 CITY AND COUNTY OF DENVER

33 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2010; _____, 2010

34 PREPARED BY: Michael J. Joyce, Assistant City Attorney DATE: August 10, 2010

35 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
36 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
37 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
38 §3.2.6 of the Charter.

39 David R. Fine, City Attorney

40 BY: _____, Assistant City Attorney DATE: _____, 2010