

# Animal Control Issues for Code Professionals

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[poconnell@lynchdallas.com](mailto:poconnell@lynchdallas.com), [dherman@lynchdallas.com](mailto:dherman@lynchdallas.com)

Twitter: @lynchdallaslaw  
(319) 365-9101

# SERVICE ANIMALS?



## What is a Service Animal?

Americans with Disabilities Act (ADA): A service animal is a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

Iowa Code Chapter 216: "Service dog" means a dog specifically trained to assist a person with a disability, whether described as a service dog, a support dog, an independence dog, or otherwise. "Assistive animal" means a simian or other animal specifically trained or in the process of being trained to assist a person with a disability.

# WHAT IS NOT A SERVICE ANIMAL?



Americans with Disabilities Act (ADA): Generally speaking, emotional support, therapy, comfort, or companion animals are *not* considered service animals under the ADA.

Iowa Law: Tracks with the ADA. Emotional support, therapy and companion animals are *not* considered service animals under Iowa Law. Iowa Law also mentions “working animals” which could include animals such as cadaver dogs, detection dogs, disaster dogs, police dogs, search and rescue dogs, etc. Working animals are protected by different laws.

# PUBLIC ACCOMMODATIONS: SERVICE ANIMALS SHOULD BE ADMITTED



Americans with Disabilities Act (ADA): Generally requires that State and local government agencies, businesses, and non-profit organizations that provide goods or services to the public to make “reasonable modifications” in their policies, practices, or procedures when necessary to accommodate people with disabilities using a service animal.

Iowa Code Chapter 216: A person with a disability, a person assisting with a disability by controlling a service dog or an assistive animal, or a person training a service dog or an assistive animal has the right to be accompanied by a service dog or an assistive animal, under control, in any of the following places:

- Public Facilities: streets, highways, sidewalks, walkways, public buildings, public elevators, public facilities, and other public places.
- Accommodations: common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, hotels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited.

# HERE COMES FIDO... NOW WHAT?

- Does the service animal need to wear a vest, patch, or special harness identifying them as a service animal?
  - No
- Can a person have more than one service animal?
  - Generally, yes
- Do service animals need to be certified?
  - No

# HERE COMES FIDO... NOW WHAT?



- Can the City require a person to register their dog as a service animal?
  - No, but...
- The service animal is a Pitbull, can I keep it out?
  - No
- Does a service animal have to be allowed into a municipal pool with its handler?
  - No
- Does the service animal need to be on a leash/tether.
  - Normally yes, sometimes no

# WHAT CAN YOU DO WHEN FIDO CAUSES A PROBLEM?



Americans with Disabilities Act (ADA): The ADA does not require covered entities to modify policies, practices, or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited.

# WHAT CAN YOU DO WHEN FIDO CAUSES A PROBLEM?

## Other options for excluding a problematic service animal:

- If the service animal is not housebroken, it can be excluded.
- A service animal may be excluded if the animal is **out of control** and the animal's handler does not take effective action to control the animal.



# FIDO IS “OUT OF CONTROL,” WHAT CAN I ASK?

If the nature of the service animal is *not* readily apparent, what can you ask?

1. A public entity may ask if the animal is required because of a disability?
2. What work or task the animal has been trained to perform?

# FIDO IS “OUT OF CONTROL,” WHAT CAN I DO?

Remember, the ADA and Iowa Law require the service animal to be “under control.”

- There is no codified definition of “under control.”
- Under control means different things in different scenarios.

FIDO IS “OUT OF CONTROL,”  
WHAT CAN I DO?



DOCUMENT  
DOCUMENT  
DOCUMENT



Under the ADA, if a public entity properly excludes a service animal for the reasons previously mentioned, it **shall** give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

# SERVICE ANIMALS AND THE CITY CODE

- The reach of Title II of the ADA
  - “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.” *28 CFR Sec. 130(b)(7)*.
- Safe Approach? “Reasonable Accommodation”

# SERVICE ANIMALS AND THE CITY CODE

- As a general rule, service animals are *not* exempt from local animal control or public health requirements.
  - E.g. An ordinance requiring all dogs to be vaccinated does *not* violate the ADA.
  - E.g. An ordinance requiring all dogs to be registered and licensed does *not* violate the ADA.
  - E.g. An ordinance that requires a dog be registered as a “service animal” *does* violate the ADA.

# OTHER THINGS TO REMEMBER

- Under the ADA, a public entity is not responsible for the care or supervision of a service animal.
- The ADA and Iowa Law make clear that a person is liable for damage done to any premises or facility by a service dog or assistive animal.

# SERVICE ANIMALS AND HOUSING: ADA



- Title II
  - Offers protection to individuals who utilize service animals that are living in residential housing programs owned or managed by state or local government.
- Title III
  - Offers protection to individuals who utilize service animals that are living in or using places of public accommodation.
- Requirements track those under Section 504
- Exemptions?



# SERVICE ANIMALS AND HOUSING: FHA

- The Fair Housing Act (FHA) provides a broad scope of protection to individuals that utilize assistance animals in residential house, including both private and federally owned dwellings.
- Key components of the FHA:
  - “Assistance animals”
    - 1. Service Animals
    - 2. Other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.
  - “Dwelling” = Any building, structure or part thereof which is intended for occupancy as a residence by one or more families.

# QUALIFICATION UNDER THE FHA

- The tenant must have a disability.
- The tenant must utilize an animal whose function directly relates to his or her disability.
- If the disability is not clearly apparent or already known, the tenant may be asked for information that establishes existence of the (1) tenant's disability and (2) explains how the animal will mitigate symptoms or lessen the effects of the disability if it isn't visible.
- The tenant's request to have a service animal is not unreasonable.

# QUALIFICATION UNDER SECTION 504

- Section 504 of the Rehabilitation Act (1973) offers protection to individuals who utilize assistance animals (including service animals and emotional support animals) that are living in federally funded residential housing programs through the US Department of Housing and Urban Development.
- Qualifications:
  - The tenant must have a disability
  - The tenant is unable to participate in services, programs or activities
  - The reason for lack of participating is due to their disability
  - The tenant's request to have a service animal is not unreasonable.

# REVIEW: JUGGLING THE ANIMAL

- Remember – the definitions and requirements of a service animal are different under the ADA than they are under the FHA/504.
- The ADA on the other hand, requires animals to fit a specific definition of “service animal” to be allowed entrance.
- The FHA/504 categorize “assistance animals” as a request for a reasonable accommodation.
- Unlike the FHA/504, emotional support animals are NOT covered under Title II or III of the ADA.

# ACCOMMODATIONS

- Reasonable accommodation that a person with a disability may need in order to have equal opportunity to enjoy and use a dwelling.
- Keep in mind that reasonable accommodations for an assistive/service animal does not relieve the tenant from other housing requirements.
- Tenant v. Tenant
- A tenant with a service/assistive animal may still be held financially responsible for damages caused to the unit.
- The destructive tenant?

# CASE STUDIES



<https://video.nest.com/clip/7298fbc2afea4658abe0e0fcb0adf538.mp4>

2:45 through 3:27

# ANIMAL CONTROL CODE BASICS

What are the basics of a solid animal control code?

1. Simple to Understand
2. Reasonably Enforceable
3. Comprehensive
4. Protective of the animals and fair to owners
5. Funded by the Council (Code official, impoundment)

# ANIMAL CONTROL CODE BASICS

## Key Definitions in a Good Ordinance:

1. Abuse – Use a detailed exhaustive list, with “including but not limited to.”
2. Duties of owner – Use a detailed exhaustive list.
3. Definition of dangerous or potential dangerous animal – must be fact-driven
4. Breed-specific bans? Pitbulls?
5. Impoundment, seizure criteria.
6. Due process!



# ANIMAL CONTROL CODE BASICS

Share the Code with Community:

*Example:* Clinton Code, 91.02:

“(M) The city shall distribute to all licensed or established shelters, breeders, veterinarians, pet stores, and pet adoption businesses or pet adoption non profit agencies the substance of this section and encourage widespread dissemination of the same to all owners and responsible persons coming in contact with any of the above referenced entities.”

# ANIMAL CONTROL CODE BASICS

Clear Definitions of Dangerous and Vicious Animals:

Although sometimes used differently in different codes:

“Inherently Dangerous” usually means exotic or wild animals like lions, tigers, bears, giant pythons, etc. – usually banned or require a special license.

“Vicious” or “dangerous” is based upon animal behavior – while permitted to own as pets (dogs, cats, ferrets), they become illegal due to attacking and biting others.

# ANIMAL CONTROL CODE BASICS

Are breed-specific bans advisable? Pitbulls?

1. Depends upon local politics whether to ban particular breeds or require licensing:
  - a. Some statistical evidence suggests pitbull bites tend to be life-threatening vis-à-vis other breeds, even though other breeds account for more overall bites.
  - b. Genetic lineage can be challenged in court.
  - c. Always advisable to have strong definitions of “vicious” or “dangerous” animal as a backup if removal, euthanasia is desired to protect the community.
  - d. Single chance ordinances: microchipping and licensing after first instance when animal is declared dangerous. This is an intermediate alternative to removal and euthanasia.

# ANIMAL CONTROL CODE BASICS

## Basic Violation Types:

1. Abuse/Neglect
2. Annoyance or nuisance
3. Running at large/failure to restrain/leash laws
4. Keeping of livestock in the city limits against zoning laws
5. Aggressive attacks

Whether to use scheduled fines (no court appearance) verses municipal infractions citations in court is driven by the severity of the offense. If violations are repeated, seek injunctive relieve through Iowa Code 364.22.

“Any violation of this Chapter shall be a municipal infraction under this Code and Iowa Code Chapter 364.22.”

# ANIMAL CONTROL CODE BASICS

Appeal Process is REQUIRED!

1. IAC 17A – type hearing notice provided on ticket book form or violation letter:
  - Allowed to present testimony, photos, evidence before responsible public official.
  - Use waiver language – appeal in writing within ten days of order, or *waived*.
2. Final decision appealable to District Court.
3. Consider review and overhaul by City Attorney.
4. Keep the City Council out of the appeal process.
5. Use of Department Head, City Administrator or District Court for appeal is preferable.

# ANIMAL CONTROL CODE BASICS

## Animal Hoarding:

1. Some communities limit the number of pets by ordinance; others limit, but license additional pets or have no limit.
2. Hoarding: “The keeping of numbers of animals beyond the Code limit which endangers the health and welfare of the animals and the public.”
3. Animal hoarding often becomes an abuse and neglect issue – unsanitary conditions, sickness of animals, starvation, dehydration.
4. City Councils must either allocate funding to permit seizure, boarding, adoption, etc., or it must form 28E agreements with other cities and their county to accomplish the same. Without this, code staff is limited in what it can do.
5. Court orders to cover cost of boarding, judgment against responsible individual.
6. What do you do with a house full of cats or a house full of pythons and exotic snakes?

# ANIMAL CONTROL CODE BASICS

## Feeding of Stray Animals

1. Prohibition of feeding and care of strays is intended to drive strays away from residential areas, but is rarely effective and does not reduce breeding.
2. Trap, neuter and release programs may be a humane and more effective alternative, but costs money. Veterinarians usually require payment. Council funding is necessary.
3. Permission to feed TNR animals (notch in ear).

# ANIMAL CONTROL CODE BASICS

## Veterinarian Issues:

1. Licensing regulations likely interpreted to prevent disclosure of owner pet files without warrant or court order.
2. Vaccine records, however, are likely permitted to be obtained by public health officials and code enforcement, due to danger to the public in bite cases.
3. Code may require disclosure of rabies-carrying animal to Code Enforcement in bite cases.
4. Animals may be quarantined in bite cases where vaccinations are not current and where the animal is suspected to be diseased.



# ANIMAL CONTROL CODE BASICS

## Beekeeping:

1. Becoming more popular in urban areas, due to belief that pollination is necessary and healthy.
2. Requires a solid code, particularly on: a) number of hives, 2) setback requirements from sidewalks, streets, lot lines, etc.,
3. Use recommended national standards for beekeeping.

# ANIMAL CONTROL CODE BASICS

## Additional Penalties:

It may be advisable to specifically provide for reimbursement for impoundment.

## Clinton Code, 91.47:

Any person determined to have violated any portion of this chapter which results in costs incurred by the city as a result of the city needing to take possession of an animal, shall require the animal owner to reimburse the city for all costs incurred, including but not limited to: impoundment cost, feeding costs, veterinary care costs, euthanasia costs, and any other costs associated with the care of the animal. These costs shall be in addition to any penalty assessed under § [10.99](#) in a municipal infraction action in District Court, and said costs may be included as an element of civil damages in any such municipal infraction actions, or in a separate action of damages, at the option of the city.