

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

| | | |
|-----------------------------|---|---------------------------------|
| JAMES SAK and PEGGY LEIFER, |) | NO. 11-4111 |
| |) | |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| |) | MOTION FOR PRELIMINARY |
| |) | INJUNCTIONS |
| |) | |
| THE CITY OF AURELIA, IOWA |) | |
| |) | |
| |) | (EXPEDITED HEARING REQUESTED) |
| |) | |
| Defendant. |) | (EVIDENTIARY HEARING REQUESTED) |

COMES NOW Plaintiffs, James Sak and Peggy Leifer, a married couple, by and through the undersigned, and pursuant to Federal Rule of Civil Procedure 65, Local Rules 65, 7.j move the Court for a preliminary injunction and expedited relief, as state as follows in support thereof:

1. This is an action concerning the Defendant's discrimination under the Americans with Disabilities Act due to its enforcement of a city ordinance banning pit bulls against Plaintiff, James Sak's service dog, named Snickers who is a pit bull mix.

2. On or about December 14, 2011, Defendant, acting through its City Council and City Attorney and pursuant to the City of Aurelia Ordinance, chapter 58, titled "Pit Bull Dog" banned Mr. Sak's service dog Snickers from Aurelia city limits where Plaintiffs reside. See Exhibit D, attached to the Complaint.

3. Snickers is a service dog that is medically necessary for Mr. Saks due to Mr. Sak's permanent disability as a result of a hemorrhagic stroke. Snickers was adopted by Mr. Sak

at the age of eight weeks and is now five and a half years old. Snickers has no history of aggression or unprovoked violence. There are no allegations that Snickers has a history of violence or aggression. See Exhibits A and B, attached to the Complaint.

4. Snickers is subject to destruction pursuant to the Aurelia city ordinance if found within city limits.

5. Snickers is a service dog protected by the Americans with Disabilities Act ("ADA"). 42 U.S.C. 12101, *et seq.*

6. Plaintiffs have and will continue to suffer irreparable harm from this conduct. Specifically, Mr. Sak requires Snickers' aid as Mr. Sak is unable to control the right side of his body resultant from a hemorrhagic stroke. Mr. Sak and Snickers, together, participated in physical therapy enabling Mr. Sak to live independently, though he is permanently disabled. Snickers is a medical necessity, as determined by Mr. Sak's medical professionals who assisted in his recovery. The service dog Snickers enables Mr. Sak to move through the community and live independently in his home; the loss of service dog Snickers squarely impacts Mr. Sak's ability to undertake daily functions. Mr. Sak has already fallen once since the loss of Snickers and required emergency assistance from law enforcement. Mr. Sak does not have an adequate remedy at law because of the present and future risk that Mr. Sak be injured due to the loss of his medically necessary service dog.

7. The harm suffered by Plaintiffs far exceeds any potential harm to Defendant. Snickers has not been accused of any bad actions; rather, the Defendant's actions are wholly based on the fact that Snickers is a mixed breed that, upon information and belief, contains pit bull. Snickers presents absolutely no identifiable harm to the City of Aurelia or its residents, nor is there any factual evidence specific to Snickers to demonstrate otherwise, other than conjecture.

8. Plaintiffs seek a preliminary injunction against Defendants to enjoin its ongoing discrimination against Mr. Sak, who is protected under the ADA.

9. As explained in the accompanying brief, Plaintiffs have met their burden to establish the balance of equities weighs in favor of granting the preliminary injunction.

10. Plaintiffs request an evidentiary hearing to present additional evidence, including witness testimony.

11. Plaintiffs are filing a brief in support of this Motion, which is incorporated herein by its reference.

WHEREFORE, Plaintiffs, James Sak and Peggy Leifer, respectfully request the Court enter an Order:

1. Ordering an immediate return of the service dog, Snickers to Mr. Sak;
2. Enjoining the City of Aurelia from enforcing the city ordinance prohibiting pit bulls, with respect to Mr. Sak's service dog;
3. Ordering that Defendant is precluded from enforcing its city ordinance restrictions against Snickers that apply to pit bulls in Aurelia, Iowa that are "grandfathered in" because Snickers, as a service dog, cannot be held to the unreasonable restrictions that appear in the city ordinance if he is to do his job of protecting and assisting Mr. Sak; and
4. Scheduling an evidentiary hearing on the Motion to be held within five (5) days.

/s/Sharon K. Malheiro

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on December 22, 2011 by:

- | | |
|--|--|
| <input type="checkbox"/> US Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | X Other: CM/ECF |

Signature: /s/ Sharon K. Malheiro

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

| | | |
|-----------------------------|---|------------------------------|
| JAMES SAK and PEGGY LEIFER, |) | NO. 11-4111 |
| |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| |) | BRIEF IN SUPPORT OF |
| |) | PLAINTIFFS' MOTION FOR |
| |) | PRELIMINARY INJUNCTION |
| |) | |
| THE CITY OF AURELIA, IOWA |) | |
| |) | (EXPEDITED RELIEF REQUESTED) |
| |) | |
| |) | |
| Defendant. |) | |

COMES NOW Plaintiffs, James Sak and Peggy Leifer, a married couple, by and through the undersigned, and pursuant to Federal Rule of Civil Procedure 65, Local Rules 65, 7.j and submit the following Brief in Support of Plaintiffs' Motion for Preliminary Injunction:

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FACTUAL BACKGROUND

Plaintiffs, James Sak and Peggy Leifer are a married couple who relocated from Chicago, Illinois to Aurelia, Iowa in November of 2011. Ms. Leifer was born and raised in Aurelia and returned to live close by and provide care for Ms. Leifer’s ailing mother, age 87. Mr. Sak is a retired Chicago police officer and Vietnam Veteran (Army). Mr. Sak and Ms. Leifer dated for several years before becoming married in 2009.

In 2008, Mr. Sak suffered a hemorrhagic stroke which left him permanently disabled. Mr. Sak is unable to control the right side of his body and is confined to a wheelchair. As part of his physical therapy at the University of Illinois Medical Center, Mr. Sak and his family dog named Snickers learned how he could live independently after suffering this disability. Snickers became Mr. Sak’s service dog and assists Mr. Sak. Mr. Sak’s physical therapist described the assistance in that Snickers helps “with tasks which mitigate [Mr. Sak’s] disability, including walking, balance, and retrieving items around the house.” See Exhibit B, attached to the Complaint. Snickers is a certified service dog and appears on the National Service Animal Registry. See Exhibit A, attached to the Complaint.

Snickers is also a mixed breed dog, containing pit bull. Snickers was adopted by Mr. Saks at eight weeks old from a “backyard breeder” and has been a part of the family since that time. After the stroke, Snickers was transformed from a pet into a service dog. Snickers has no

history of aggression or unprovoked violence. In fact, there are no allegations that Snickers has acted in any way other than as a service dog.

Upon relocating to Aurelia, Iowa, Plaintiffs were summoned to a City Council meeting on November 21, 2011 wherein they were informed that Aurelia has a city ordinance prohibiting pit bulls. Plaintiffs explained to the City Council that Snickers is a service dog, to no avail. Plaintiffs obtained Snickers' registration as a service dog and written confirmation by Mr. Sak's physical therapist that Snickers is medically necessary given Mr. Sak's condition. These facts fell on deaf ears. Thirty-six residents signed a petition asking that there be no exceptions to the city ordinance—evidently, not even for service dogs, protected under the Americans with Disabilities Act. On December 14, 2011, a special City Council meeting was convened and the Plaintiffs were told that Snickers must be removed from city limits within 24 hours. The city ordinance provides that individuals not in compliance with the ordinance will face destruction of their animals.

Plaintiffs have been forced to incur the costs of boarding Snickers with a veterinarian outside of city limits since the City Counsel's decision. With the upcoming Christmas holiday, the veterinarian informed the Plaintiffs that holiday reservations have made it so there is no capacity to house Snickers past Friday, December 23, 2011. Plaintiffs are desperately seeking an alternative location to board Snickers or for a foster family in another municipality. However, Snickers should be returned to his home to provide the much needed assistance to Mr. Sak.

More importantly, however, since the City Counsel's unlawful decision, Mr. Sak has been denied access to his medically necessary service dog, and has suffered as a result thereof. Mr. Sak fell from his wheelchair, and without the assistance of his service dog to help him get back up, Ms. Leifer was forced to call 911, requiring an officer to emergently assist. Mr. Sak

and Ms. Leifer suffered and continue to suffer severe emotional anguish as a result thereof. Snickers provided a sense of safety, helping the Plaintiffs cope with Mr. Sak's disability. That safety was apparently deemed illegal by the City of Aurelia. Further, Ms. Leifer's ability to care for her ailing mother has been compromised since it is extremely precarious to leave her husband's side since Snickers was deemed *persona non grata* within city limits.

STANDARDS FOR A PRELIMINARY INJUNCTION

The Eighth Circuit has set forth four factors which must be considered in determining whether to grant injunctive relief under Fed.R.Civ.P. 65(a), referred to often as the *Dataphase* factors. Those factors are: (1) Plaintiffs' probability of success on the merits; (2) the threat of irreparable harm to Plaintiffs; (3) the balance between the harm to Plaintiffs and the potential harm to Defendant if an injunction is granted; and (4) whether an injunction serves the public interest. *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). No single factor is dispositive, requiring that each factor be considered to determine the balance of the equities. *Sanborn Mfg. Co., Inc. v. Campbell Hausfeld / Scott Fetzer, Co.*, 997 F.2d 484, 486 (8th Cir. 1993). The primary function of a preliminary injunction is to preserve the status quo until the final disposition of the case. *Id.* at 490. A district court has broad discretion in deciding whether a preliminary injunction should be issued. *Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006).

ARGUMENT AND AUTHORITIES

- I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIM AGAINST DEFENDANT, THE CITY OF AURELIA BECAUSE DEFENDANT DISCRIMINATED AGAINST PLAINTIFF IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT.

Plaintiffs need not show that they will ultimately succeed on its claims. *American Fin. Advisors, Inc. v. Yantis*, 358 F.Supp.2d 818, 826 (N.D. Iowa 2005). “Rather, the movant’s success on the merits must be at least...sufficiently likely to support the kind of relief it requests.” *Id.* (internal citations omitted). “Thus, a showing of likelihood of success on the merits requires simply that the moving party find support for its position in governing law.” *Id.* Plaintiffs have met the burden on this element for its claims against Defendant.

Federal law states, “no qualified individual with a disability shall . . . be subjected to discrimination by any such entity.” 42 U.S.C.A. § 12132. Mr. Sak is a qualified person as defined. *See* § 12131. Mr. Sak’s service dog is squarely covered by the Americans with Disabilities Act (“ADA”). It is wholly contrary to federal law and constitutes discrimination to deny him the same. Service dogs are expressly recognized as part of the ADA. *See* 28 C.F.R. § 35-136. The ADA is silent as to any breed requirements for service dogs. However, the general rule is that “a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” *Id.* The Department of Justice (“DOJ”), who is tasked with implementation of the ADA, *see* 42 U.S.C. section 12134(a), in its interpretation of the aforementioned Regulation has made direct statements about breed specific legislation. *See* 28 C.F.R. § 35(App. A); 75 F.R. 56164, 56194, *Nondiscrimination on the Basis of Disability in State and Local Government Services* (Sept. 15, 2010). Courts seek guidance from such implementing regulations, “which are entitled to substantial deference.” *Hahn ex rel. Barta v. Linn County, IA*, 130 F. Supp. 2d 1036, 1045 (N.D. Iowa 2001) (“to effectuate the statutory mandates of the ADA, the Department of Justice (“DOJ”) promulgated regulations regarding the responsibilities of state and local governments to disabled persons. *See* 42 U.S.C. §

12134(a). As will be demonstrated below, therefore, the court will seek guidance from Title II's implementing regulations, which are entitled to substantial deference.") (citations omitted).

In a Final Rule, made effective March 15, 2011, the DOJ responded to the impasse created by breed specific legislation and the right under the ADA to have a service dog. Specifically, the DOJ stated:

A few commenters suggested that certain breeds of dogs should not be allowed to be used as service animals. Some suggested that the Department should defer to local laws restricting the breeds of dogs that individuals who reside in a community may own. Other commenters opposed breed restrictions, stating that the breed of a dog does not determine its propensity for aggression and that aggressive and non-aggressive dogs exist in all breeds.

The Department does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks. Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others. Breed restrictions differ significantly from jurisdiction to jurisdiction. Some jurisdictions have no breed restrictions. Others have restrictions that, while well-meaning, have the unintended effect of screening out the very breeds of dogs that have successfully served as service animals for decades without a history of the type of unprovoked aggression or attacks that would pose a direct threat, e.g., German Shepherds. Other jurisdictions prohibit animals over a certain weight, thereby restricting breeds without invoking an express breed ban. In addition, deference to breed restrictions contained in local laws would have the unacceptable consequence of restricting travel by an individual with a disability who uses a breed that is acceptable and poses no safety hazards in the individual's home jurisdiction but is nonetheless banned by other jurisdictions. State and local government entities have the ability to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history--not based on fears or generalizations about how an animal or breed might behave. This ability to exclude an animal whose behavior or history evidences a direct threat is sufficient to protect health and safety.

Id. (emphasis added). Based on this express mandate from the DOJ, it is wholly clear that the City of Aurelia has no legal support for their continued discrimination against Mr. Sak and Snickers.

Aurelia, Iowa's city ordinance chapter 58 which stands in conflict with ADA does not prevail. See ADA, Title II, *Technical Assistance Manual*, II-1.4200 (2011) (stating, "Title II does not disturb other Federal laws or any State laws that provide protection for individuals with disabilities at a level greater or equal to that provided by the ADA. It does, however, prevail over any conflicting State laws."). See e.g., *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253, 1257 (D. Or. 1998). In fact, it is quite elementary that the Supremacy Clause favors federal law when state law conflicts with an area of law covered by federal legislation. Furthermore, since there are agency regulations squarely on-point, these regulations are entitled to *Chevron* deference. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842, (1984).

The *Chevron* two-step analysis initially asks whether the statute directly speaks to the precise question at issue. *Id.*; *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052, 1060-61 (5th Cir. 1997) (stating, "[w]e also defer to the Justice Department's commentary concerning service animals because it is not inconsistent with the plain language of the regulation."). If it is concluded that the statute does address the issue, then it is a matter of statutory construction; however, if the statute does not address the issue, then the analysis continues. "If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. "The agency's construction does not have to be the only permissible reading of the statute." *Johnson*, 116 F.3d at 1061 (citing *Chevron*, 467 U.S. at 843 n. 11). "Such legislative regulations are given

controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.” *Chevron*, 467 U.S. at 844; *Gonzales v. Oregon*, 546 U.S. 243, 255 (2006) (“An administrative rule may receive substantial deference if it interprets the issuing agency’s own ambiguous regulation. *Auer v. Robbins*, 519 U.S. 452 (1997). An interpretation of an ambiguous statute may also receive substantial deference.”); *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 598 (1999) (“the well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance”).

It is evident that the ADA is silent as to the breed requirements, or lack of requirement, as applied to service dogs. Thus, if the agency, here the DOJ, has promulgated a permissible construction that is not arbitrary, capricious or manifestly contrary to the statute, then great deference is afforded. The DOJ’s interpretation that localities cannot have breed specific restrictions for service dogs is founded within the spirit of the ADA which seeks to remove barriers affecting disabled persons. Here, the refusal to defer to local ordinances certainly cannot be characterized as arbitrary.

A public entity is required to make reasonable modifications to its ordinances pursuant to the ADA. *Hahn*, 130 F. Supp. 3d 1051.

The regulations promulgated pursuant to the ADA require public entities to “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.”

Id. (quoting 28 C.F.R. § 35.130(b)(7)). Here, Defendant is unable to show how allowance of a service dog would fundamentally alter the city’s policy of excluding pit bulls. This is

particularly true in light of the fact that the Defendant permits pit bulls in the City if they were present prior to the enactment of the ordinance at issue.

Furthermore, the unreasonable restrictions placed upon pit bulls who are grandfathered in are similarly unenforceable if Snickers is to operate as a service dog. The restrictions are onerous and completely undermine Snickers' role. As such, the fact that Mr. Sak is entitled to a service dog and accommodation thereof, regardless of breed, necessarily means that the restrictions must not be enforced.

Thus, Plaintiffs are likely to succeed on the ultimate merits based upon the precise language in the Regulations and interpreting rules which are afforded great deference under federal law and the Defendant's clear failure to make reasonable modifications to its policy in order to protect Mr. Sak, as required.

II. DEFENDANT'S CONDUCT THREATENS IRREPARABLE HARM TO PLAINTIFFS.

"Irreparable harm focuses on the harm or potential harm to the movant of the opposing party's conduct or threatened conduct." *Wachovia Sec., L.L.C. v. Stanton*, 571 F. Supp. 2d 1014, 1047 (N.D. Iowa 2008). Mr. Saks requires his service dog Snickers in order to sustain a better quality of life on a daily basis. Mr. Sak has already fallen once since Snickers was forcibly ousted from the city of Aurelia. Mr. Sak is able to operate in society and experience a higher quality of life when his medical accommodation, his service dog Snickers is with him. Without Snickers, Mr. Sak experiences greater and heightened fears, insecurity, and increased chances of injury from his disability. The Defendant's action is akin to taking away Mr. Sak's wheelchair, to which he also requires. Mr. Sak's ability to move through life has been seriously compromised and the perpetuation thereof results in an irreparable injury.

III. THE BALANCE OF THE HARMS WEIGHS IN FAVOR OF PLAINTIFFS.

When balancing the alleged harms at issue, it is clear that the Court does not entertain illusory harms, as compared to actual harm experienced. *Aventure Communications Tech., L.L.C. v. Iowa Utilities Bd.*, 734 F. Supp. 2d 636, 666 (N.D. Iowa 2010). It bears repeating that Snickers has absolutely no history of violence or aggression. The Defendant has not alleged that Snickers has acted in such a way. Rather, the Defendant points to illusory harms believed to be imminent based upon the misconception that a dog possessing character traits of a pit bull is somehow inherently dangerous. The Defendant cannot point to cognizable harm while Mr. Sak is without his medically necessary service dog. It is evident that the balance of the harms weighs in favor of Mr. Sak.

IV. A PRELIMINARY INJUNCTION WOULD SERVE THE PUBLIC INTEREST.

“The ‘public interest’ factor frequently invites the court to indulge in broad observations about conduct that is generally recognizable as costly or injurious. However, there are more concrete considerations, such as reference to the purposes and interests any underlying legislation was intended to serve, a preference for enjoining inequitable conduct, and the public's interest in minimizing unnecessary costs to be met from public coffers.” *Aventure Communications Tech.*, 734 F. Supp. 2d at 667. The return of a medically necessary accommodation to a disabled person wholly comports with public policy. “Access to civic life by people with disabilities is a fundamental goal of the Americans with Disabilities Act.” Furthermore, disabled individuals should not be denied the ability to move freely through the communities for fear of encountering a breed specific ordinance that makes the person's service dog contraband. As recognized by the DOJ, the disabled individual is to be able to utilize the

service dog and travel, like any other person. To find otherwise threatens to eviscerate the purpose and spirit sought to be achieved through the Americans with Disabilities Act.

CONCLUSION

Mr. Sak is entitled under the ADA to maintain his service dog, notwithstanding the perceived fears of residents and local ordinances. Mr. Sak is entitled to protection under federal law and has shown he is likely to prevail on the merits herein. Mr. Sak has already suffered one fall without the aid of his service dog and irreparable harm is certain. Mr. Sak's potential harm greatly outweighs the perceived and unfounded fears associated with a pit bull breed. Snickers has not been accused to be aggressive or violent, rather he has been stereotyped and blindly deemed dangerous. The City of Aurelia was fully informed that Snickers is a service dog and still removed this medically necessary accommodation from Mr. Sak. Public policy dictates that Mr. Sak be permitted to maintain his service dog. To deny the same is wholly impermissible under federal law. Plaintiffs are entitled to the immediate return of the service dog Snickers by way of injunctive relief. Plaintiffs respectfully move the Court for an evidentiary hearing and that the Court enjoin the Defendant, as requested in the Motion for Preliminary Injunction filed contemporaneously herein.

/s/Sharon K. Malheiro

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on December 22, 2011 by:

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| <input type="checkbox"/> US Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | X Other: CM/ECF |

Signature: /s/ Sharon K. Malheiro

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| JAMES SAK and PEGGY LEIFER, |) | NO. 11-4111 |
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| Plaintiffs, |) | |
| v. |) | |
| |) | |
| |) | COMPLAINT AND REQUEST FOR |
| |) | INJUNCTION |
| |) | AND |
| THE CITY OF AURELIA, IOWA |) | DECLARATORY RELIEF |
| |) | |
| |) | EXPEDITED HEARING REQUESTED |
| |) | |
| Defendant. |) | JURY DEMAND |

COMES NOW Plaintiffs, James Sak and Peggy Leifer, a married couple, by and through the undersigned, and for their Complaint against Defendant, the City of Aurelia, Iowa hereby state to the Court as follows:

Jurisdiction & Venue

1. Mr. Sak is an Iowa resident, domiciled in Aurelia, Iowa.
2. Ms. Leifer is an Iowa resident, domiciled in Aurelia, Iowa.
3. Defendant is an Iowa municipality.
4. The Court has jurisdiction over this case pursuant to 28 U.S.C. section 1331, federal question jurisdiction, and 28 U.S.C. section 1367, supplemental jurisdiction, as this matter pertains to 42 U.S.C. 12101, et seq.
5. Venue is proper pursuant to 28 U.S.C. section 1391(b).

Facts

6. Mr. Sak is a disabled, retired police officer, who recently moved to Aurelia, Iowa from Chicago, Illinois.
7. Mr. Sak is married to Ms. Leifer.
8. Mr. Sak became disabled after he suffered a hemorrhagic stroke in November of 2008.
9. Mr. Sak and Ms. Leifer dated for years before marrying in the hospital in March of 2009, once Mr. Sak recovered from his debilitating stroke.
10. Mr. Sak is permanently disabled as a result of the stroke.
11. The right side of his body is uncontrollable by Mr. Sak.
12. Mr. Sak is confined to a wheelchair.
13. Mr. Sak received treatment and rehabilitation at the University of Illinois Medical Center for the stroke.
14. Mr. Sak requires the use of a service dog, named "Snickers" in order to assist him.
15. The dog was adopted from a private, informal sale by another individual.
16. Mr. Sak has owned the dog, since the dog was eight weeks old.
17. Snickers is currently five and one-half years old.
18. Snickers has absolutely no history of aggression.
19. The service dog Snickers appears on the National Service Animal Registry as a certified service dog. See Exhibit "A".
20. The service dog Snickers has been trained to assist Mr. Sak with tasks which mitigate his disability, including walking, balance, and retrieving items around the house. See Exhibit "B".

21. When Mr. Sak suffers a fall, the service dog Snickers is able to assist Mr. Sak.

22. Mr. Sak and his wife, Ms. Leifer moved to Aurelia in November of 2011 to care for Mr. Leifer's elderly mother, age 87, who is an Aurelia resident.

23. Mr. Sak and Ms. Leifer were summoned to an Aurelia City Council meeting on November 21, 2011 because Aurelia maintains a breed-specific city ordinance against pit bulls. See Exhibits "C" and "D".

24. Service dog Snickers is believed to be a pit bull mix.

25. At the City Council meeting, a petition was presented, signed by 36 residents asking for enforcement of the city ordinance against service dog Snickers. See Exhibit "E".

26. Mr. Sak and Ms. Leifer were summoned to another Aurelia City Council meeting on December 14, 2011 and informed they had 24 hours to remove their service dog from city limits.

27. The Aurelia city ordinance states that pit bulls, in violation of the ordinance will be destroyed. See Exhibit "D", at 58.03(2).

28. Since that time, the service dog Snickers has been boarded at a veterinary's office outside of the City of Aurelia, incurring costs.

29. On December 15, 2011, Mr. Sak suffered a fall from his wheelchair and was unable to be pulled back into his wheelchair because he was without his service dog, Snickers.

30. As a result, Ms. Leifer had to call 911 and Officer Gene Shur arrived at the residence to assist.

31. Ms. Leifer's ability to care for her elderly mother has been compromised by the inability to leave Mr. Sak alone, for fear of another fall or injury.

32. Mr. Sak's physical therapist, Aileen Eviota, PT DPT NCS at the University of Illinois Medical Center wrote a letter, dated December 2, 2011 to the Aurelia City Council describing the medical necessity of the service dog, Snickers. See Exhibit "B".

33. Both Mr. Sak and Ms. Leifer have experienced tremendous worry and fear since the service dog Snickers was forced out of their home.

34. Notwithstanding the undisputed fact that Snickers is a service dog and a medical necessity, the City of Aurelia has enforced the city ordinance against Mr. Sak, thereby depriving Mr. Sak of the medical and emotional benefits provided by service dog, Snickers.

Causes of Action

Violation of 42 U.S.C. § 12133: Title II of the Americans with Disabilities Act

35. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 34 as if fully set forth herein.

36. Defendant is a public entity as a local government, acting through its City Council and City Attorney.

37. Mr. Sak is a disabled person who requires the assistance of his service dog, Snickers.

38. Mr. Sak has standing to bring this action under the Americans with Disabilities Act ("ADA") due to the injury suffered as a result of Defendant, the City of Aurelia's disregard of federal law.

39. Defendant, the City of Aurelia has a city ordinance prohibiting pit bulls. See Exhibit C.

40. Defendant, the City of Aurelia enforced the city ordinance against Mr. Sak requiring that his service dog, Snickers, be removed from city limits within 24 hours of the City Council meeting held on December 14, 2011, or Snickers would be destroyed.

41. Currently, Snickers is boarded at veterinary's office outside the city limits.

42. Defendant, the City of Aurelia, enforced the city ordinance against Mr. Sak with the full knowledge that the service dog, Snickers, is required due to Mr. Sak's health.

43. The Defendant's discrimination caused damage to Mr. Sak.

44. Mr. Sak has experienced considerable emotional distress as a result of the Defendant's discrimination.

Declaratory Relief

45. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 44 as if fully set forth herein.

46. Plaintiffs request that after notice and hearing that the Court enter judgment that Defendant, the City of Aurelia's policies, regulations, practices and conduct of interfering with the Mr. Sak's ability to utilize his service dog, Snickers is contrary to the Americans with Disabilities Act.

47. Defendant, the City of Aurelia, violated 42 U.S.C. 12101, et seq. through its refusal to recognize a reasonable accommodation under the ADA and by enforcing the pit bull prohibition against a service dog.

48. Defendant, the City of Aurelia, violated 42 U.S.C. 12101, et seq. through its refusal to remove the breed restrictions regarding his service dog from its city ordinance as applied to Mr. Sak, as a disabled person protected by federal law.

Injunctive Relief

49. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 48 as if fully set forth herein.

50. Plaintiffs seek an injunction restraining the City of Aurelia from enforcing the city ordinance prohibiting pit bulls, with respect to Mr. Sak's service dog and an immediate return of the service dog, Snickers to Mr. Sak.

51. A preliminary injunction is warranted because (1) at trial, Mr. Sak is likely to prevail on the merits because the ADA service animal provisions have been expressly interpreted to prevail over breed specific legislation and because the service dog is clearly a reasonable accommodation; (2) without the use of his service dog, Mr. Sak will suffer irreparable harm due to the fact that Snickers is a medical necessity and Mr. Sak has already fallen at least once since losing Snickers, coupled with the emotional distress of being denied his service dog which is essentially an extension of himself; (3) the harm Mr. Sak will sustain if this preliminary injunction is not granted is far greater than any potential harm the Defendant may sustain; and (4) the issuance of a preliminary injunction is in the public's interest.

52. Plaintiffs request that the Court order Defendant to permit service dog Snickers to be immediately returned to Plaintiffs.

53. Plaintiffs further request that the Court order that Defendant is precluded from enforcing its city ordinance restrictions against Snickers that apply to pit bulls in Aurelia, Iowa that are "grandfathered in".

54. Snickers, as a service dog, cannot be held to the unreasonable restrictions that appear in the city ordinance if he is to do his job of protecting and assisting Mr. Sak. See Exhibit "D" at 58.03(1)(A)-(G).

55. Plaintiffs are contemporaneously filing a Motion for Injunctive Relief and Expedited Hearing under Federal Rule of Civil Procedure 65 and Local Rule 65.

Spousal Consortium

56. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 55 as if fully set forth herein.

57. Ms. Leifer is the spouse of Ms. Saks.

58. As a result of the Defendant's discrimination, Ms. Leifer lost the value of services of Mr. Sak.

59. Ms. Leifer has been unable to attend to her mother or depend upon her husband as a result of the loss of the service dog Snickers.

60. With the aid of the service dog, Snickers, Mr. Sak is substantially more dependant.

61. Without the aid of service dog, Snickers, Mr. Sak's disability requires increased care which affects Ms. Leifer's abilities to tend to other matters.

Attorney's Fees & Costs

62. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 61 as if fully set forth herein.

63. Plaintiffs herein seek attorneys' fees and costs pursuant to the ADA. See 42 U.S.C. § 12133; 29 U.S.C. § 794a.

Jury Demand

64. Plaintiffs restate and incorporate by this reference each allegation contained in paragraphs 1 through 63 as if fully set forth herein.

65. Plaintiffs seek a jury for the issues pleaded within.

WHEREFORE, the Plaintiffs, James Sak and Peggy Leifer hereby request this Court: (1) grant Plaintiffs' request herein, and as found in the contemporaneously filed Motion for Injunctive Relief under Federal Rule 65, for a injunctive relief enjoining Defendant from denying Mr. Sak his rights under federal law by maintaining his service dog, regardless of the breed and as a reasonable accommodation for his disability, (2) grant Plaintiffs' request for an injunction specifying the immediate return of the service dog, Snickers, to his owner without the restrictions in the Aurelia city ordinance; (3) enter a declaratory judgment the Defendant's city ordinance is in violation of the Americans with Disabilities Act and is unenforceable; (4) enter judgment against Defendant that enforcement of the city ordinance at issue violates Mr. Sak's rights under the Americans with Disabilities Act and constitutes discrimination; (5) find that Ms. Liefer is entitled to damages for the effect of the Defendant's actions; (6) award attorney's fees, costs and expenses incurred by Plaintiffs in this action pursuant to statute; (7) award emotional distress damages for the discrimination pursuant to statute; and (8) for any further relief the Court deems just and appropriate under the circumstances.

/s/Sharon K. Malheiro

Sharon K. Malheiro, AT0004936

Michael C. Richards, AT0010828

Michele L. Warnock, AT0010068

The Davis Brown Tower

215 10th St. Suite 1300

Des Moines, Iowa 50309-3993

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

E-mail: sharonmalheiro@davisbrownlaw.com

E-mail: mikerichards@davisbrownlaw.com

E-mail: michelewarnock@davisbrownlaw.com

ATTORNEYS FOR PLAINTIFFS

Of Counsel:

Davis, Brown, Koehn,

Shors & Roberts, P.C.

The Davis Brown Tower

215 10th St. Suite 1300

Des Moines, Iowa 50309-3993

Dec 15 11 02:18p

p. 5



National Service Animal Registry

909 NW F. Street • Grants Pass • Oregon • 97526

Toll Free • (866) 737-3930 Fax • (541) 471-1122

NSAR CERTIFIED SERVICE ANIMAL

This document affirms that
"SNICKERS" (NSAR database ID **C12694**, see
adjacent photo) is certified as a qualified service
dog and registered with National Service Animal
Registry (NSAR) on the date listed below. This
service dog has been trained to assist **P LEIFER**,
the confirmed disabled handler. The handler and
service dog are listed in the National Service
Animal Registry (NSAR) database and may be
found on the following website:
www.nsarco.com/database.html.



SNICKERS

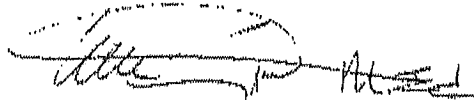
Service dogs are dogs that are specifically
trained to perform important life tasks for people
who have difficulty performing or are unable to perform the task themselves. These
tasks are directly related to the handler's disability. Service dogs are working animals,
not pets.

Under the Americans with Disabilities Act (ADA), businesses and organizations that
serve the public must allow people with disabilities to bring their service animals into
all areas of the facility where customers are normally allowed to go. This federal law
applies to all businesses open to the public, including restaurants, hotels, motels, taxis,
buses, shuttles, airplanes, grocery and retail stores, hospitals, medical offices,
theaters, health clubs, all parks, government buildings, and zoos.

For more information, please call the U.S. Justice Department ADA Information
Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY) or visit the ADA Business
Connection at www.ada.gov.

November 28, 2011

Date


Tim Livingood, M.ED. CEO



Dec 15 11 02:18p

P. 3

IL University of
Illinois
Medical Center
at Chicago

City of Aurelia
Town Council
Date 12/2/11

Re: Snickers, Service Dog

1740 W Taylor
Chicago, IL 60612
T (312) 996-0525
F (312) 996-1457
novot1@uic.edu

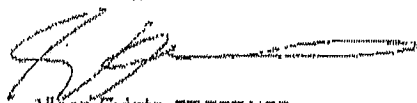
Dear Town Council,

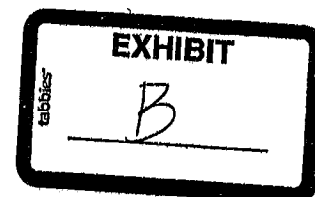
James Sak has been a patient under my care since January 2009. I have worked extensively with him to improve his functional capabilities. Although he has made significant improvements, he continues to demonstrate some disability in which the service dog, Snickers, allows him to live more independently.

Due to his stroke, James Sak has certain limitations regarding his entire right side of his body. In order to help alleviate these difficulties, and to enhance his quality of life, well being, and ongoing recovery, he requires a service dog, Snickers. As mentioned before, I have been involved in his care for more than 2 years. Our therapy sessions have also included rehabilitation with James Sak and Snickers, in which I was personally involved in. James and Snickers have worked together under my supervision in which his ability to live independently has improved. Snickers has been individually trained to assist James with tasks which mitigate his disability, including walking, balance, and retrieving items around the house.

Please contact me if you have any questions. Thank you.

Sincerely,


Alleen Evlota, PT DPT NCS



November 21, 2011

The Aurelia City Council met in regular session on November 21, 2011. Matt Fredericksen called the meeting to order at 7:00 p.m. with roll call as follows:

Present: Schulenberg, Fredericksen, Nelson

Absent: Keith, Bowen, Lindgren

Also Present: Messerole, Mark Sangwin, Dan Sinclair – Dakota Supply Co., Denny Allen, James Sak & Peggy Leifer, Mitch Langschwager, Pat Howey, Jim Tell, Jacob Schutt, Tim Dunn, Terry Holub, Anna Waddell, Randy Newlon

Nelson made motion to appoint Matt Fredericksen as the presiding officer for the meeting in the absence of the Mayor and Mayor Pro-Tem, second by Schulenberg. All members present voting "aye", motion carried.

Schulenberg made motion to approve consent agenda, second by Nelson. All members voting "aye", motion carried.

Minutes of previous meetings
Clerk/Treasurer & Investment Reports
Bills Payable
Police Report

October Revenues

| | |
|-----------------------------|-----------------|
| Property Taxes | 104,019.25 |
| Local Option Sales Tax | 7,733.43 |
| Licenses & Permits | 214.00 |
| Use of Money & Property | 1,775.78 |
| Road Use Tax | 7,598.33 |
| State & Local Grants & Reim | 815.07 |
| Water Utility | 9,568.58 |
| Sewer Utility | 8,851.72 |
| Sanitation | 6,262.79 |
| Storm Water Utility | 475.00 |
| Other Fees & Charges | 181.00 |
| Special Assessments | 1,993.96 |
| Miscellaneous | 110.30 |
| Transfers In | <u>7,894.50</u> |
| Total | 157,493.71 |

October Disbursements

| | |
|------------------------|-----------------|
| General Fund | 7,482.86 |
| Special Revenue | 0.00 |
| Local Option Sales Tax | 1,125.00 |
| Road Use Tax | 1,563.87 |
| Debt Service | 0.00 |
| Expendable Trusts | 0.00 |
| Water Utility | 2,197.07 |
| Sewer Utility | 624.04 |
| Sanitation | 6,074.56 |
| Storm Water Utility | 0.00 |
| Payroll | 15,213.38 |
| Transfers Out | <u>7,894.50</u> |
| Total | 42,175.28 |

November Bills Payable:

| | | |
|------------------------|---------------------------------------|----------|
| American Legion | Halloween Patrol | 100.00 |
| Aurelia Library | petty cash | 75.31 |
| Aurelia Lumber | antifreeze, batteries, misc. supplies | 104.90 |
| Aurelia Mun. Utilities | utilities | 2,507.62 |
| Aurelia Star | publications | 66.00 |
| B V Cat Rescue League | captured & removed cats | 440.00 |
| B V Stationery | office supplies | 7.90 |
| Baker & Taylor | Library books | 348.51 |
| Ballantyne, Craig | outside water meter sewer rebate | 11.46 |
| Berge, Anna | outside water meter sewer rebate | 24.36 |
| Bomgaars | ice melt for streets | 643.07 |
| Brown Supply Co. | gutter broom for st. sweeper | 216.01 |

EXHIBIT

C

| | | |
|--------------------------|------------------------------------|--------------|
| Bruns, Nadine | outside water meter sewer rebate | 3.27 |
| Cardmember Service | adwords, Sangwin CEU's | 352.19 |
| Casey's | Oct. fuel | 351.88 |
| Cherokee Co. Solid Waste | contract | 2,179.56 |
| Classy Mini-Storage | 1 load of black dirt | 142.95 |
| Countyline | 6 white goods citywide cleanup | 60.00 |
| Data Technologies | 2012 Summit License Fee | 1,730.05 |
| Ferguson Enterprises | water supplies | 29.18 |
| First Abstract | abstract 405 Ridgeview lane | 375.00 |
| First Coop | October fuel | 810.96 |
| Forbes, Bob | outside water meter sewer rebate | 18.15 |
| Grienke, Gilbert | outside water meter sewer rebate | 10.41 |
| Hach | water test supplies | 205.31 |
| Handwork, Craig & Kathy | outside water meter sewer rebate | 5.52 |
| Helen's Comm Laundry | commercial laundry | 83.60 |
| Heritage Bank | Renewal of CD | 50,000.00 |
| Hines, Doug | outside water meter sewer rebate | 15.63 |
| Hinkhouse Hearing | Sangwin hearing test | 23.06 |
| Holiday Inn | Kai fall IMFOA | 113.03 |
| HyVee | coffee, forks, napkins | 81.14 |
| Kai, Cindy | reimburse for mileage to IMFOA | 78.00 |
| Long Lines | cell phones | 154.86 |
| Lundell Construction | parts to repair storm drain | 31.68 |
| Lytle, Tom & Jodi | outside water meter sewer rebate | 9.87 |
| MET | wastewater tests | 133.00 |
| Michelle Swanson | police - update software | 345.00 |
| MicroMarketing | Library books | 99.96 |
| MidAmerican Energy | Oct. utilities | 55.39 |
| Modern Heating | replaced thermostat at CC | 109.55 |
| Nelson, Sherm | outside water meter sewer rebate | 3.66 |
| Nu-Telecom | Oct. phone/internet/long distance | 415.68 |
| Patton, Dave | outside water meter sewer rebate | 30.66 |
| Penworthy | library books | 128.00 |
| Perkins Office Solution | office supplies | 64.99 |
| Peterson, Harold | outside water meter sewer rebate | 79.08 |
| Plunkett's | pest control, City Hall & CC | 83.62 |
| Postmaster | postage | 254.67 |
| Radke, Erik | outside water meter sewer rebate | 9.18 |
| Rehab Systems | jet/vac & televise sewer lines | 5,163.90 |
| Richardson, Paul | outside water meter sewer rebate | 59.61 |
| Royers Jewelry | engrave plate for Library | 7.25 |
| Sanitary Services | contract | 4,092.50 |
| Steve's Window Service | clean CC windows | 38.00 |
| Suhr, Gene | outside water meter sewer rebate | 17.91 |
| Taste of Home Books | 2012 Taste of Home | 30.98 |
| Transamerica Life Ins. | Quarterly life insurance - Sangwin | 74.95 |
| Westphal, Nate | outside water meter sewer rebate | <u>39.78</u> |
| | TOTAL | 72,747.76 |

James Sak and Peggy Leifer appeared before Council concerning registering their mix breed pitbull. The City of Aurelia Ordinance Chapter 58 "Pit Bull Dog" states it is unlawful to harbor a pit bull or any mixed breed of pit bull. Nelson made motion to table

until next month's meeting in order to receive more input from longer term council members, second by Schulenberg. All members present voting "aye", motion carried.

Dan Sinclair, Dakota Supply Group, appeared before Council concerning radio read meters. A quote for Badger Model 25 water meters; Badger Model 25 Itron Radio Heads; Itron Handheld Radio Starter Kit; annual software and hardware maintenance; and GE electric meters was reviewed.

The Public Works Report was reviewed. Called to get brush pile ground; working at pool; Lundell's cleaned approximately 30 blocks of sewer lines and these were mapped; looking to televise what was cleaned. Televised sewer line in alley behind Heritage Bank to locate manhole; the shelter west of pool needs new roof, Fredericksen will look at it; Blake Trapp donated new toilets for Fire Station; finished CEU's for spraying license; winterized pool and bath house; snow plow back from TCY Machine. Nelson made motion to televise the blocks that Lundell's recently cleaned, second by Schulenberg. All members present voting "aye", motion carried.

Denny Allen appeared before Council proposing a location for a 7/10 of a mile walking trail near the wetlands. Schulenberg made motion to approve the walking trail, making sure that Adam Booth who farms the land is notified, second by Nelson. All members present voting "aye", motion carried. Discussion was held concerning removing or repainting the sign displaying lots for sale.

Nelson made motion to approve the Municipal Electric budget, second by Schulenberg. All members present voting "aye", motion carried.

Schulenberg made motion to approve Resolution #11-14 – Resolution to Acknowledge Offer to Buy property at 405 Ridgeview and set public hearing for December 19, 2011, second by Nelson. Roll Call Vote "aye", Schulenberg, Nelson, Fredericksen. "Nay" none, motion carried. Keith, Lindgren, Bowen absent.

Discussion was held concerning renting out back office in City Hall. Council will use the space for storage.

Two styles of new "Welcome to Aurelia" signs from Denny Holton were discussed. Council would like additional information and will discuss at December's meeting.

Burma-Shave signs compliments of Our Iowa magazine were discussed. Our Iowa magazine instigated a contest to place a set of signs near one town in each of Iowa's 99 counties and has asked readers to nominate their town and give reasons why they should have the signs. Jim Tell will look into the procedure for applying.

Clerk's Report was reviewed.

Police report was reviewed.

Schulenberg made motion to renew the City's Delta Dental of Iowa plan with increase of 3.1%, second by Nelson. All members present voting "aye", motion carried.

Code of Ordinances, Chapter 75 "All-Terrain Vehicles and Snowmobiles" and Code of Iowa 321.247 "Golf Cart Operation on City Streets" were tabled until next month's meeting.

Landfill report was not given, Bowen absent.

There being no further business to discuss, meeting was adjourned.

Matt Fredericksen

Barb Messerole, City Clerk

CHAPTER 58

PIT BULL DOG

58.01 Definitions

58.02 Keeping of Pit Bull Dogs Prohibited

58.03 Keeping of Licensed Pit Bull Dogs

58.01 DEFINITIONS. For use in this chapter the following terms are defined as follows:

1. "Pit Bull Dog" shall mean any dog over the age of six (6) months known by the owner to be a Pit Bull Terrier. Pit Bull Terrier shall mean any Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire Bull Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Bull Terrier, American Pit Bull Terrier Staffordshire Bull Terrier, or American Staffordshire Terrier so as to be identifiable as partially of the breed Bull Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire Terrier.

58.02 KEEPING OF PIT BULL DOGS PROHIBITED. It is unlawful to keep, or harbor, own or in any way possess a Pit Bull Dog within the City of Aurelia.

58.03 KEEPING OF LICENSED PIT BULL DOGS.

1. Provisions of this chapter shall not be applicable to any owners, keepers, or harborers of Pit Bull Dogs licensed within the City of Aurelia before the effective date of this chapter. The phrase "licensed within the City of Aurelia" and "licensed" when used in the chapter shall mean licensed pursuant to the terms of Chapter 57 of the Aurelia Municipal Code.

The keeping of such licensed dogs shall be subject to the following standards:

- A. **Sale or Transfer of Ownership Prohibited.** No person shall sell, barter, or in any other way dispose of a Pit Bull Dog licensed within the City to a person within the City unless the recipient person resides permanently in the same household and on the same premises as the licensed owner of such dog; provided, that the owner of a licensed Pit Bull Dog may sell or otherwise dispose of a licensed dog or the offspring of such dog to persons who do not reside within the City.
- B. **Animals Born to Licensed Dogs.** All offspring born to Pit Bull Dogs licensed within the City shall be removed from the City within six (6) weeks of birth of such animal.
- C. **Reporting Requirements.** All owners, keepers, or harborers of licensed Pit Bull Dogs shall within ten (10) days of the following occurrence report the following information in writing to the City Clerk and Animal Control Officer as required hereafter:



- (1) The removal from the City or death of a licensed Pit Bull Dog;
- (2) The birth of offspring of a licensed Pit Bull Dog;
- (3) The new address of the owner of a licensed Pit Bull Dog should the owner move within the City limits.

D. Leash and Muzzle. No person shall permit a licensed Pit Bull Dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length and otherwise comply with Section 57.04. No person shall permit a licensed Pit Bull Dog to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person is in physical control of the chain, rope or leash.

E. Confinement. All licensed Pit Bull Dogs shall be securely confined indoors or in a securely enclosed and locked pen, kennel, or structure and the owner must fully and completely comply with Section 57.04.

F. Confinement Indoors. No licensed Pit Bull Dog shall be kept on a porch, patio, or in any part of a house or structure which would allow such dog to exit such a building on its own volition. In addition, no such animal shall be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the dog from exiting the structure.

G. Identification Photographs and Tattoos. All owners, keepers, or harborers of licensed Pit Bull Dogs shall provide within ten (10) days of the effective date of this chapter, to the City Clerk and Animal Control Officer, two 3 x 5 inch color photographs of the licensed animal clearly showing the color and approximate size of the animal. The owner or keeper shall within the aforementioned ten (10) day period at his own expense have the license number assigned pursuant to Chapter 57 of the City of Aurelia Municipal Code tattooed upon such a Pit Bull Dog by a licensed veterinarian. The tattoo shall be placed either on the upper inner lip or inside the upper left rear thigh of the dog.

2. Failure to Comply. It shall be unlawful for the owner, keeper, or harborer of a Pit Bull Dog licensed with the City of Aurelia to fail to comply with the requirements and conditions set forth in this chapter. Each day of violation shall be a separate offense. Any Pit Bull Dog found to be the subject of a violation of this chapter shall be subject to immediate confiscation by the Animal Control Officer. Such animal shall be humanely destroyed within seven (7) days, unless a Judge of Court of competent jurisdiction orders its release or the owner provides adequate proof to the Animal Control Officer that such licensed dog shall no longer reside in the City of Aurelia.@

Petition to the Aurelia City Council

We the undersigned citizens of the City of Aurelia do respectfully request/urge the Aurelia City Council retain as written an without exception the existing City of Aurelia Ordinance, Chapter 58 - "Pit Bull Dogs." It is our concern that a change or any exceptions to the Ordinance could cause an unwanted safety/hazard to the general public, specifically/especially our children.

| | |
|--------------------------------|------------------------------|
| 1. Diane Dunson | 2. Marcus Koonse |
| 3. Ann Weather | 4. Mimi Maxwell |
| 5. Eleanor Minkelson | 6. Chuck Benson |
| 7. Michael Schumacher | 8. Nancy Webb |
| 9. Dan Wilson | 10. Ann Weather |
| 11. Todd Wilson | 12. Rosemary Buenger |
| 13. Greg T. Webb | 14. David R. Webb |
| 15. Kim J. Webb | 16. Cheryl Whitehead |
| 17. Wiley Wilson | 18. Pat Wilson |
| 19. Gary Johnson | 20. Karina Johnson |
| 21. Adele Peterson | 22. Lori Holpin |
| 23. Donna Koonse | 24. Carol Hansen |
| 25. Donna Koonse | 26. Gay Ann Patton |
| 27. Denise Mathias | 28. Gayle Patton |
| 29. Susan Krueger | 30. Susan Krueger |
| 31. Patricia Mervin | 32. Susan Krueger |
| 33. Mike Bala | 34. Pat Wilson |
| 35. Jack Wilson | 36. Donna Koonse |
| 37. | 38. |
| 39. | 40. |
| 41. | 42. |
| 43. | 44. |
| 45. | 46. |

99

EXHIBIT

E

JS 44
(Rev. 07/86)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

James Sak and Peggy Leifer

DEFENDANTS

The City of Aurelia, Iowa

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cherokee
(EXCEPT IN U.S. PLAINTIFF CASE)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Sharon K. Malheiro, Michael C. Richards, Michele L. Warnock
Davis Brown Law Firm
215 10th Street, Suite 1300
Des Moines, IA 50309
515-288-2500ATTORNEYS (IF KNOWN)
George W. Wittgraf
Sayre, Wittgraf & Meloy
223 North Pine Street
P.O. Box 535
Cherokee, IA 51012
712-225-6481

II. BASIS OF JURISDICTION (PLACE AN (X) IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. GOVERNMENT Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizenship of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizenship of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizenship or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 USC § 12101

Violation of Americans With Disabilities Act by denying service dog to disabled person.

V. NATURE OF SUIT (PLACE AN (X) IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Reqs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-THIRD PARTY 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutional of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |

VI. ORIGIN (PLACE AN (X) IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge From Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions)

JUDGE _____ DOCKET NUMBER _____

DATE 12/22/11 SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT