Investigative Report

STATE OF IOWA
CITIZENS' AIDE/OMBUDSMAN

INVESTIGATION OF MAQUOKETA'S PIT BULL BAN ORDINANCE AND ENFORCEMENT

TO: Maquoketa City Council

and

Chief Brad Koranda
Maquoketa Police Department

FROM: William P. Angrick II
Citizens' Aide/Ombudsman

RE: Case File 0603634

Issued: November 15, 2006

Released: December 21, 2006

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Role of the Ombudsman

The Office of Citizens' Aide/Ombudsman (Ombudsman) is an independent and impartial investigative agency located in the legislative branch of Iowa state government. Its powers and duties are defined in Iowa Code chapter 2C.

The Ombudsman investigates complaints against Iowa state and local government agencies. The Ombudsman can investigate to determine whether agency action is unlawful, contrary to policy, unreasonable, unfair, oppressive or otherwise objectionable. The Ombudsman may also decide to publish the report of the findings and conclusions, as well as any recommendations for improving agency law, policy, or practice. If the report is critical of the agency, the agency is given the opportunity to reply to the report, and the reply is attached to the published report.

Allegations

On September 13, 2006, Kelly Wilslef submitted a complaint to the Ombudsman about the Maquoketa City Council (Council). Ms. Wilslef stated a Maquoketa police officer served her an abatement notice for violating the city ordinance preventing owners from keeping pit bull terrier dogs in the city. The Council subsequently determined her dog was a pit bull mix, and ordered her to remove the dog from the city. Ms. Wilslef claimed the Council unreasonably relied on non-expert testimony supporting the city's position her dog was a pit bull mix. She further claimed that if her dog was in fact a pit bull mix, the city ordinance did not apply to mixed-breed pit bulls; therefore, the Council acted contrary to law when it concluded she violated the city ordinance and ordered her to remove her dog from the city.

Investigation

The investigation was assigned to Assistant Ombudsman Andy Teas. For purposes of this report, all investigative actions are ascribed to the Ombudsman. The Ombudsman researched kennel clubs, dog breeds, city ordinances in Iowa, and relevant case law relating to breed bans. In addition, the Ombudsman spoke with officials at the Animal Rescue League in Des Moines, Iowa about identifying pit bull terriers.

Background Facts

Ms. Wilslef's "Notice to Abate Nuisance" (Notice) was served by Maquoketa Officer Pat Fier on July 5, 2006. (Appendix A.) The Notice stated she was in possession of a pit bull, and ordered her to remove the dog from city limits. Maquoketa Police Chief Brad Koranda held a hearing on Ms. Wilslef's Notice on July 25, 2006. Chief Koranda found Ms. Wilslef's dog to be part pit bull, and subject to Maquoketa Ordinance § 4-1-7(22), making it illegal for any person to keep in their possession a "pit bull terrier dog" within city limits. (Appendix B.)

Ms. Wilslef appealed Chief Koranda's decision, and the Maquoketa City Council held a public hearing on September 5, 2006. At the hearing, city attorney Mark Lawson questioned Ms. Wilslef, Officer Fier, and Chief Koranda. Ms. Wilslef was not represented by counsel, but she presented evidence supporting her position the dog was not a pit bull in the form of veterinarian vaccination billings referring to her dog as a "Rott-Mix." She testified she did not know what breed her dog was because she received it from a man outside of town, and she did not know the parenting.

Officer Fier testified to the events leading up to the issuance of the Notice. He stated he was called to Ms. Wilslef's neighborhood on a report there was a dog running loose. Officer Fier was able to capture the dog, and take it back to Ms. Wilslef's house without incident. Officer Fier gave his opinion the dog was part pit bull. He based this opinion on photographs of pit bulls he had previously seen. During the Council's hearing, Chief Koranda testified he concluded Ms. Wilslef's dog was a pit bull. He based this conclusion on an initial veterinarian's intake form labeling the dog as a "pit mix" and his own experience with pit bulls.

On September 7, 2006, Mr. Lawson sent Ms. Wilslef a letter confirming the Council denied her appeal, and gave her until September 15, 2006, to remove her dog from the city limits. (Appendix C.)

After receiving Ms. Wilslef's complaint, the Ombudsman called Mr. Lawson on September 18, 2006. The Ombudsman asked Mr. Lawson about the ordinance and Ms. Wilslef's case. Mr. Lawson confirmed a police officer issued Ms. Wilslef a citation for keeping a pit bull within city limits. He stated the officer compared pictures of the dog to pictures of pit bulls, and made a determination the dog was part pit bull. Ms. Wilslef had a hearing before the city police chief, and appealed the chief's ruling to the Council. The Council determined Ms. Wilslef was in possession of a pit bull in violation of the city ordinance based on the officer's testimony and initial paperwork from Ms. Wilslef's veterinarian's office.

Mr. Lawson stated the Council had made its decision, and the dog was clearly a pit bull mix in violation of the city ordinance. When asked about whether the city ordinance specifically bans pit bull mixes, and to what degree, Mr. Lawson affirmed it banned all pit bull mixes, regardless of the amount of the mix. The Ombudsman pointed out the ordinance did not mention mixes, only "pit bull terrier dogs." Mr. Lawson stated he believed this language included mixes, and directed any further correspondence with him to be done in writing.

On September 19, 2006, this office received a letter from Mr. Lawson. (Appendix D.) The letter stated, in part:

> Section 4-1-7 makes it unlawful for any person to keep, maintain or have in his possession or under his control pit bull terrier dogs. Since "pit bull terriers" are not a registered breed, the city has taken the position that this precludes pit bull terrier mixed dogs.

> Mots (sic), if not all pit bulls are – by definition – a mixed breed. Therefore, the City of Maquoketa has taken the common sense position that mixed pit bull terrier dogs are banned under the ordinance.

Despite asserting the city took the common sense position that mixed pit bulls were banned under the ordinance, Mr. Lawson concluded his letter by saying the city was in the process of reviewing its ordinance regarding pit bull terriers.

On October 4, 2006, the *Maquoketa Sentinel-Press* published an article on the new ordinance dealing with the pit bull terrier ban. (Appendix E.) The article stated the ordinance had been revised and expanded to include "any dog which has the appearance and characteristics of being a pit bull terrier." In addition, Mayor Tom Messerli stated the city would rely on a veterinarian to determine a dog's breed.

Analysis and Conclusions

The Ombudsman identified four areas of concern in this case. The Ombudsman considered (1) whether the language of the ordinance satisfied due process rights and adequately provided a dog owner notice against whom the ordinance would be enforced, (2) whether the Council's reliance on law enforcement officers to determine dog breeds was reasonable, (3) whether the ordinance could legally be enforced against mixed breeds, and (4) whether the revised city ordinance remedied any problems the previous ordinance presented.

1. Ordinance Language Unconstitutionally Vague.

According to the Maquoketa City Ordinance § 4-1-7, as written when Ms. Wilslef was ordered to remove her dog, it was unlawful for,

> "any person to keep, maintain, or have in his possession or under his control within the City any of the following animals:
> . . . .
>
> 22. Pit Bull Terrier Dogs."

It is unclear what breed of dog the ordinance is referring to by stating "pit bull terrier dogs." In an argument that the ordinance's scope should be read broadly, Mr. Lawson asserted in his letter to the Ombudsman the pit bull terrier was not a registered breed. The Ombudsman found several types of pit bull terriers recognized by various kennel clubs. A search of kennel clubs' dog breed listings identifies the following breeds that could be considered "pit bull terriers":

1. Bull terriers,
2. Miniature bull terriers,
3. Staffordshire terriers,

4. American pit bull terriers, and
5. American Staffordshire terriers.

The American Kennel Club (AKC) recognizes each of the breeds listed except the "American pit bull." However, the United Kennel Club (UKC), the National Kennel Club (NKC), and the Continental Kennel Club (CKC) each recognize the American pit bull as a breed. If "pit bull terriers" are not a recognized breed, it would be because the term generally describes a type of dog, not a breed, and there are several recognized breeds under the term "pit bull terriers." Each of the breeds listed vary in size, shape and color.

Many city ordinances have breed-specific bans that reference the American pit bull. The City of Council Bluffs' ordinance 4.20.112 references "pit bulls," but further defines the term. The ordinance reads:

> A "pit bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one or more of the above breeds (more so than any other breed), or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds.

The City of Des Moines requires owners of vicious dogs to register their pets. Des Moines' definition for "vicious dog" under ordinance 18-47 includes:

> (6) Staffordshire Terrier breed of dog;
>
> (7) The American pit bull terrier breed of dog;
>
> (8) The American Staffordshire terrier breed of dog; or
>
> (9) Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.

The City of Des Moines previously tried to incorporate language in its ordinance that included the general term "pit bull." In 1991, the Iowa Supreme Court held in *American Dog Owners Association, Inc. v. City of Des Moines*, 469 N.W.2d 416 (Iowa 1991), a dog ban must reference a dog breed with specificity. In *American Dog Owners Association, Inc.*, the plaintiffs claimed the language of the ordinance was unconstitutionally vague, and sought to enjoin the city from enforcing the ordinance. Though the ordinance specifically referenced "Staffordshire terriers" and "American pit bulls," it also included the phrase "any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers, or combination of any of these breeds." *American Dog Owners Association, Inc.*, 469 N.W.2d at 417.

The Supreme Court found the ordinance's language regarding "Staffordshire terriers" and "American pit bulls" did not violate due process requirements because it enabled the reader to determine which dogs were included in the ordinance. The Court did not share the same conclusion about the words "pit bulls, pit bull dogs, or pit bulls terriers" and found this reference to be fatally vague. The Court stated:

> This language, unlike that discussed earlier, does leave the reader of ordinary intelligence confused about the breadth of the ordinance's coverage. Moreover, this language also gives improperly broad discretion to enforcement personnel, who are free to make the 'ad hoc and subjective' determinations condemned by *Grayned* [*v. City of Rockford,* 408 U.S. 104 (1972)]. *Id.* at 418.

Because the language did not provide sufficient clarity for a reader to determine what was prohibited, the ordinance did not satisfy the due process requirements. The Court further stated there was an unacceptable risk of arbitrary and discriminatory application to these parts of the ordinance. As such, the Court severed the sections of the ordinance that referred generally to "pit bulls, pit bull dogs, or pit bulls terriers."

Maquoketa's ordinance is similarly vague as the former Des Moines ordinance that the Court concluded was unconstitutional. It would be difficult for a person in Ms. Wilslef's situation to know what was considered a "pit bull terrier," what breeds it included, and what effect it had on mixed breeds.

Conclusion. The Ombudsman finds the Maquoketa city ordinance referencing "pit bull terrier dogs" was unconstitutionally vague. The ordinance did not give a reader sufficient notice of what action was prohibited. If the city wishes to ban specific dogs from city limits, it should identify the specific breeds of dogs it wishes to include in the ban.

2. Procedures Used to Determine the Breed of Dog.

Another concern involves the procedures used to identify dogs by their breeds. On July 5, 2006 Maquoketa Police Officer Pat Fier gave Ms. Wilslef a notice of abatement. A hearing before Maquoketa Police Chief Brad Koranda on the alleged violation was held on July 25, 2006. Chief Koranda found the dog to be a pit bull terrier, and upheld the abatement order. Ms. Wilslef then appealed to the Council. Based on the testimony of Ms. Wilslef's, Officer Fier, and Chief Koranda, the Council determined on September 5 the dog was a pit bull prohibited by the city ordinance. Ms. Wilslef stated she did not know her dog's breed or makeup because she had gotten the dog for free as a mixed breed.

The exchange between city attorney Mark Lawson and Officer Fier during this hearing went as follows:

Lawson: What, if anything, came up as far as whether or not the dog was a pit bull in your conversations with her the next morning?

Officer Fier: When I talked to her the next morning, in response to the call we had had. The person that called in reported they thought the dog was partially a pit bull. ***And in looking at the dog and pictures I had seen in the past it looked that it would be a possibility that it could be a pit bull.***

Lawson: Why do you say that? What do you base that on?

Officer Fier: I base that on the pictures that I've seen like out at the humane society in the vet clinic with the dog having a big blocky head, big shoulders in the front, and it gets smaller in the back.

[emphasis added]

Mr. Lawson questioned Maquoketa Police Chief Koranda about his decision to uphold the abatement notice. Mr. Koranda said he based his decision on pictures of the dog, Officer Fier's report, and prior knowledge of what pit bulls look like. His most relevant experience with pit bulls was enforcing the ordinance against three pit bulls in the past year.

Also introduced during the Council hearing was an intake form from Maquoketa Veterinary Clinic (Clinic) where Ms. Wilslef took her dog. The intake form, filled out by the Clinic's receptionist, said the dog is a "pit bull mix." This was the original intake form for the dog; subsequent forms issued by the Clinic for billing listed the dog as a "Rottweiler mix." One of the Clinic's veterinarians, Dale Risius, D.V.M., drafted a letter on Ms. Wilslef's behalf, which she presented during the hearing, explaining the discrepancies between the two forms. (Appendix F.) Dr. Risius did not reveal his impressions of the dog's breed, stating there was no way to determine the animal's genetic makeup without DNA testing.

The Ombudsman learned that the City of Des Moines contracts with the Animal Rescue League to determine a dog's breed when it is seized. A licensed veterinarian determines whether the dog is a Staffordshire terrier, an American Staffordshire terrier, an American pit bull, or a dog that has the appearance and characteristics of being predominantly any of those breeds. To aid in this determination, the veterinarian follows a 31-point characteristic chart about the dog's physical appearance. (Appendix G.) A few of the characteristics the veterinarian considers include the head, muzzle, back, body, legs, and shoulders. If the veterinarian still cannot determine the breed, he or she consults with other veterinarians on their opinions on the dog.

In this case, the Council did not consult or present any testimony from a veterinarian on his or her opinion of Ms. Wilslef's dog's breed. The Council heard testimony the dog was a pit bull only from Officer Fier, who compared pictures of Ms. Wilslef's dog with those of known pit bulls in the veterinarian's office, and Chief Koranda, who had seized

three pit bulls that year. According to an October 4, 2006 *Maquoketa Sentinel-Press* article on the most recent version of the city's dog ordinance, Mayor Tom Messerli said the city would begin relying on a veterinarian to make determinations whether a dog was a pit bull or pit bull mix. This provision is not in the revised city ordinance.

Conclusion. The Council relied only on the testimony of two law enforcement officers to determine the dog's breed. The Ombudsman finds the Council unreasonably concluded Ms. Wilslef's dog was a pit bull mix without consulting a veterinarian or other expert on dog breed bans. The Council did not have sufficient evidence to determine the dog's breed. It appears the Council recognized this as a problem when Mayor Messerli announced, a month after the hearing, that the city would begin relying on a veterinarian to determine a dog's breed.

3. Applying the Ordinance to Mixed Breed Dogs.

At the time of Ms. Wilslef's public hearing before the Council, the city ordinance prevented a person from keeping pit bull terriers within the city. The ordinance did not speak of dogs that were mixed breeds or those that had only some pit bull terrier in its genetics. During the Council's hearing, Ms. Wilslef stated she did not know her dog's breed. She claimed she "got him from someone outside of town." When Mr. Lawson asked her what she knew about the parenting of the dog, she replied, "I know nothing about him."

When introducing the issue before the Council, Mr. Lawson, on behalf of the city, stated:

> The issue before the city council today is whether or not Kelly Clark's (aka, Kelly Wilslef) dog is a pit bull terrier or a *pit bull terrier mix.* If you find by a greater weight of the evidence, or 51%, that the dog is a pit bull terrier or a pit bull terrier mix, then you should uphold the abatement because the ordinance does require all pit bulls be removed from the city.
>
> [emphasis added]

The City never asserted Ms. Wilslef's dog was a pure pit bull. At most, it was only part pit bull. When Mr. Lawson questioned Officer Pat Fier about how he came to conclude the dog was a pit bull, Officer Fier responded:

> They (veterinarian clinic) have charts on their walls that show the different breeds of dogs and stuff and I could take the pictures that I had and compare them to the pictures on the board they have of the different breeds of dogs, and it was my conclusion that I believe that that dog that I took pictures of was of a pit bull mixed breed.

Mr. Lawson also questioned Chief Koranda about his conclusion of the dog. When asked whether it was his opinion the dog was a pit bull, Chief Koranda replied, "It's got pit bull in it – it's a mix."

Mr. Lawson stated the city took the common sense position that since pit bulls are mixed breeds, mixed pit bull terriers are banned under the ordinance. However, if the city wanted to ban mixed pit bulls from the city, it should have explicitly stated this position in the ordinance. Mr. Lawson's position is further called into question since the city changed its ordinance to specifically include mixed pit bulls, discussed below.

Conclusion. The city ordinance did not address the issue of mixed breed dogs or dogs with part pit bull genetics or characteristics. Had the city intended the ordinance to include such dogs, it should have included language to that effect in the ordinance as the city has since done. The Ombudsman finds the Council acted contrary to law when it concluded Ms. Wilslef's dog, as a mixed breed pit bull, was included in the ordinance. If the Council concluded the dog was a mixed breed, it should not have found the dog was covered by the ordinance.

4. Continued Concerns with Revised Statute.

After Ms. Wilslef's hearing, and after Mr. Lawson sent a letter to the Ombudsman defending the ordinance and the Council's conclusions, Maquoketa changed its ordinance dealing with banning pit bulls. Maquoketa City Ordinance § 4-1-7 was expanded to include pit bulls and mixed breeds of pit bull. The ordinance now bans "Pit bull terrier dogs, or mixed pit bull terriers, or any dog which has the appearance and characteristics of being a pit bull terrier."

Though the ordinance has been changed to include mixed breed pit bulls, it continues to lack clarity as it does not describe what appearance or characteristic will be considered for each dog. It is not clear whether the city will limit its consideration to four legs and a tail, or if it is going to consider a similar 31-point characteristic list like that used by Des Moines. In addition, like the ordinance before the revision, it does not list the specific dog breeds the city is trying to ban.

A more specific law should include the specific dogs the city wishes to ban and language that directly affects dogs that share characteristics only found in breeds the city is trying to ban. Council Bluffs uses terms such as "any dog displaying the majority of physical traits." Similarly, Des Moines uses the language "any dog which has the appearance and characteristics of being *predominantly* of the breeds . . . ." [emphasis added]. Like the ordinance's use of "pit bull terrier," the current language for mixed breed dogs is fatally vague since it leaves the reader confused about what the law encompasses, and improperly gives enforcement personnel broad discretion.

Summary and Recommendations

Maquoketa did not have a valid ordinance to ban pit bulls from the city because the ordinance was too vague and did not make reference to specific breeds of dogs. Further, the ordinance did not address mixed breeds of dogs. It only attempted to address a specific kind of dog. The city did not rely on testimony from a veterinarian or other professional with extensive experience in dog breeds. The witnesses whose testimonies the city did rely on had compared the suspect dog to pictures of dog breeds at a veterinarian's office, or had very limited exposure to pit bulls.

The city has taken some steps to more accurately describe the dogs that are banned from the city, and efforts to identify those dogs. However, there are still fatal flaws in the language of the ordinance and the procedure used to determine if an owner is in violation of the ordinance.

The Ombudsman makes the following recommendations:

1. The present dog ban ordinance is unconstitutionally vague. If the Council wishes to ban certain dogs from city limits, the Council should draft an ordinance identifying the specific breeds it wishes to ban.

2. If the Council wishes to ban mixed breeds, it should incorporate language banning dogs that share characteristics predominantly found in those breeds banned by the city and provide guidelines detailing the characteristics looked for in the suspected dog.

3. The city should consult with a veterinarian in each case where the city considers whether a specific dog is a banned breed or a dog with the predominate characteristics of a banned breed.

4. The city should vacate its decision against Ms. Wilslef. The city should allow her to have physical possession of her dog within city limits. If the city still believes there is a factual and legal basis to serve Ms. Wilslef with an abatement notice, it should do so after the city has revised its ordinance to conform with the above recommendations.

Ombudsman's Comment

The Ombudsman issued his Report on November 15, 2006. Along with the Report, the Ombudsman enclosed a "Notice of Intent to Reply" form to the Maquoketa City Council Chair and the Police Chief. Iowa Administrative Rule 141-2.12(3)(b) directs an agency, officer or employee to notify the Ombudsman within 7 days from the date a report is received of any decision to make a reply, and 30 days from receipt to submit a written reply to the Ombudsman. Neither a notice of intent to reply nor a reply from either the City Council Chair or the Police Chief was received as of December 21, 2006.

Appendix A

1 0

NOTICE TO ABATE NUISANCE
CITY OF MAQUOKETA, IOWA

DATE: 7-05-2006

	PROPERTY OWNER	TENANT (IF APPLICABLE)
NAME:	KELLY SUE WILSLEF	
ADDRESS:	318 NORTH WALNUT	
CITY/STATE:	MAQUOKETA IOWA 52060	

LOCATION OF NUISANCE:
318 NORTH WALNUT, MAQUOKETA

DESCRIPTION OF CONDITION OR CONDITIONS THAT CONSTITUTE A PUBLIC NUISANCE:

	VIOLATION	CODE/ORDINANCE SECTION
1.	HAVE POSSESSION OF A PIT BULL DOG	4-1-7
2.	WITHIN THE MAQUOKETA CITY LIMITS	
3.		
4.		
5.		

ACTS REQUIRED TO ABATE THE NUISANCE:

1. REMOVE PIT BULL DOG FROM WITHIN CITY LIMITS
2.
3.
4.
5.

DATE BY WHICH ABATEMENT MUST BE COMPLETED: 07-20-2006

YOU MUST COMPLETE THE ABATEMENT OF THIS NUISANCE ON OR BEFORE THE ABOVE DATE, OR YOU MAY REQUEST A PUBLIC HEARING BEFORE THE OFFICER ORDERING THE ABATEMENT REGARDING THE NUISANCE. A REQUEST FOR HEARING MUST BE IN WRITING AND DELIVERED TO CITY MANAGER, CITY OF MAQUOKETA, 201 E. PLEASANT, MAQUOKETA, IOWA 52060 ON OR BEFORE THE DATE SET FORTH ABOVE.

IF THE NUISANCE IS NOT ABATED AS DIRECTED AND NO REQUEST FOR HEARING IS MADE, THE CITY MAY, AT ITS OPTION, ELECT TO ABATE THE NUISANCE AND ASSESS THE COSTS AGAINST YOUR PROPERTY, COMMENCE A LEGAL ACTION TO ABATE THE NUISANCE IN THE IOWA DISTRICT COURT FOR JACKSON COUNTY PURSUANT TO IOWA CODE CHAPTER 657, OR FILE ONE OR MORE MUNICIPAL INFRACTIONS AGAINST YOU.

SEE REVERSE SIDE FOR FURTHER INFORMATION.

SIGNATURE

TITLE: Chief of Police

C:\My Documents\maquoketa notice to abate nuisance form.wpd
Mark R. Lawson P.C. May 16, 2005

SERVED 7-05-06 AT 11:59 AM

Appendix B

652-2484

Maquoketa Police Department

102 South Niagara Street Maquoketa, Iowa 52060
Telephone (563) 652-2468 Fax (563) 652-2460

Brad Koranda
Chief of Police

Craig Jackson
Asst. Chief of Police

DECISION

A notice to abate nuisance was issued by the Maquoketa Police Department to Kelly Clark ordering that a pit bull be removed from the Maquoketa city limits. The dog's owner, Kelly Clark, has appealed this notice.

A hearing was held before Maquoketa Police Chief Brad Koranda on July 25, 2006. Present for the hearing were the following: Kelly Clark, Brad Koranda and Brian Wagner, City Manager.

Clark stated that she was unaware if her dog was a pit bull or not. Clark indicated that Nick Meyer from the Jackson County Humane Society had examined the dog and thought it was part pit bull. Clark also stated that her vet believes the dog is part pit bull. She explained the dog has never been aggressive to anyone.

The Police Chief finds that the dog in question is a pit bull terrier. Pursuant to Maquoketa Ordinance 4-1-7(22), it is unlawful for any person to keep or have in their possession a pit bull terrier within the city limits. The ordinance affords no latitude. Pit bull terriers must - by ordinance - be removed from the city limits.

IT IS THEREFORE ORDERED that Kelly Clark, as owner of the pit bull terrier, is required to remove the pit bull terrier from the Maquoketa city limits on or before the 29th day of August, 2006.

The owner is advised that she may appeal this decision to the Maquoketa City Council. The appeal must be in writing and delivered to the City Manager within ten (10) days of the date of this decision. Any such appeal would be heard at a time and place fixed by the city council.

The owner is advised that if she fails to remove the pit bull terrier as required by this decision, the city may undertake to abate the nuisance and assess the costs against the owner, or file one or more municipal infractions against the owner.

Dated this 7th day of August, 2006.

BRAD KORANDA,
Maquoketa Police Chief

Appendix C

MARK R. LAWSON, P.C.
ATTORNEY AND COUNSELOR AT LAW

Maquoketa Office:
114 W. Platt Street
Maquoketa, Iowa 52060
Phone: (563) 652-6801
Fax: (563) 652-7068

Mailing Address:
114 W. Platt Street
Maquoketa, Iowa 52060

Bellevue Office:
301 S. Riverview
Bellevue, Iowa 52031
Phone: (563) 872-4600
Fax: (563) 872-4702

September 7, 2006

Ms. Kelli Clark
318 N. Walnut
Maquoketa, Iowa 52060

Dear Ms. Clark:

As you know, the Maquoketa City Council denied your appeal of Chief Koranda's abatement order at the city council meeting on September 5, 2006. The city council voted to allow you to and including September 15, 2006 to remove your pit bull dog from the city limits.

Please consider this letter to be the official notice of the city council's decision and an official notification that you must remove the pit bull dog from the city limits on or before September 15, 2006. Failure to do so could subject you to criminal prosecution and/or prosecution of a municipal infraction against you carrying a penalty of up to $500.00.

The Maquoketa Police Department will be following up to insure that the pit bull dog has been removed from the city limits.

Thank you for your anticipated cooperation.

Sincerely,

Mark R. Lawson, P.C.

cc: Brian Wagner, Maquoketa City Manager
Brad Koranda, Maquoketa Chief of Police

MRL:drh

Appendix D

MARK R. LAWSON, P.C.
ATTORNEY AND COUNSELOR AT LAW

Maquoketa Office:
114 W. Platt Street
Maquoketa, Iowa 52060
Phone: (563) 652-6801
Fax: (563) 652-7068

Mailing Address:
114 W. Platt Street
Maquoketa, Iowa 52060

Bellevue Office:
301 S. Riverview
Bellevue, Iowa 52031
Phone: (563) 872-4600
Fax: (563) 872-4702

September 18, 2006

Office of Citizens Aid/Ombudsman
Ola Babcock Miller Building
1112 East Grand
Des Moines, Iowa 50319

ATTN: Andy Teas, Asst. Ombudsman

RE: City of Maquoketa

Dear Mr. Teas:

Thank you for your telephone call today. I did not have the file or the city code in front of me when you called.

Section 4-1-7 makes it unlawful for any person to keep, maintain or have in his possession or under his control pit bull terrier dogs. Since "pit bull terriers" are not a registered breed, the city has taken the position that this precludes pit bull terrier mixed dogs. Mots, if not all pit bulls are - by definition - a mixed breed. Therefore, the City of Maquoketa has taken the common sense position that mixed pit bull terrier dogs are banned under the ordinance.

You obviously had more information concerning the situation than you lead me to believe in our telephone contact. Therefore, I have asked you to put any request for information in writing and send it to me by way of letter. In the meantime, as I am sure you are aware, the City of Maquoketa is in the process of reviewing its current ordinance concerning pit bull terriers and I am sure this process will be ongoing.

Sincerely,

Mark R. Lawson, P.C.

cc: Brian Wagner, Maquoketa City Manager
Brad Koranda, Maquoketa Chief of Police

MRL:drl

Appendix E

[redacted]

10 activities as students dress in (563) 581-5043. High School gym.

Pit bull breed ban stands in Maquoketa

By DOUGLAS MELVOLD

Pit bulldogs, pit bull mixes and any dog that looks like a pit bull will continue to be banned from Maquoketa.

A proposal by City Councilman Marsha Myers to lift the pit bull prohibition got nowhere with the council Monday night, Oct. 2, as her motion to that effect died for lack of a second.

Myers raised the issue in response to communications the council has received from animal advocacy groups as it considered expanding the pit bull ban as part of a revised pet regulation ordinance.

The American Society for the Prevention of Cruelty to Animals and the U.S. Humane Society urged the council against "canine profiling," or enacting blanket bans based solely on a dog's breed.

The groups said the breed is only one of several factors that contribute to a dog's temperament. Other factors, such as the way the dog is raised and trained, are bigger contributors to the animal's ability to get along with people, the groups said.

They said that cities that have enacted bans based on breeds have not necessarily seen a reduction in dog bites and attacks.

The new ordinance expands what previously had been a ban on pit bulls to include pit bull mixes "or any dog which has the appearance and characteristics of being a pit bull terrier."

Myers said she has been asked by residents how the city will be certain whether or not a given dog is a pit bull.

Mayor Tom Messerli said the city will rely on a veterinarian to make the determination.

Myers said veterinarians can't always tell without doing DNA testing.

■ DOGS,
Please turn to page 22

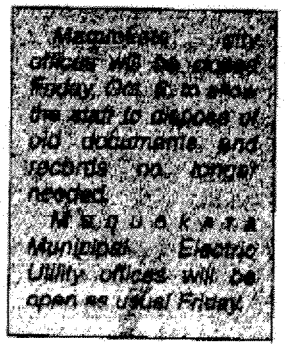
DOGS:

Continued from page 1

She suggested that the council remove the pit bull ban and instead rely on a separate "dangerous animal" clause in the ordinance to regulate dogs of any breed that pose a threat to residents' safety.

Messerli declared her motion to that effect dead for lack of a second.

The proposal came after the council last month gave final passage to the revised animal control ordinance. A companion ordinance established a mandatory licensing program for all dogs and cats at least 6 months old.



The City Hall staff began issuing licenses this week. Residents are being given until Jan. 1 to register their canines and felines.

In other business Monday, the council granted a request from Maquoketa State Bank for a two-year extension, giving the bank up to three years to construct a commercial building if it competes the purchase of a 1.4-acre lot in the Prairie Creek Center subdivision at the city's south edge.

The site is on the west side of 200th Avenue, or the extension of South Main Street, north of Carlisle Street. It is directly north of the Timber City Travel Plaza and across 200th Avenue from the Wal-Mart Supercenter store under construction.

The council is involved in the issue because of covenants placed on the lots, some by the city, in the commercial development, which includes the Travel Plaza and the Comfort Inn.

One of the restrictions requires that construction begin within one year after a parcel is sold.

City Manager Brian Wagner told the council he didn't know of any current plans by the bank to build a particular facility. No representative of the bank attended the meeting.

The developers of the subdivision are not opposed to the extension, Wagner said.

Council members discussed the idea of granting an extension for what may be an automatic teller machine drive-up facility rather than a more elaborate building, such as a staffed branch office.

Councilman Galen Saunders said if the bank planned to construct only an ATM fa one-year restriction. Mayc

Councilman Matt Wine, be more likely to constr extended time.

Councilman Jason Hute place an ATM in that area the new Wal-Mart store on chasing property.

"They must be serious a Hute said.

Councilman Neil Morel granting a one-year exten rather than three to develo

Granting a longer exten dent in which "every time more time to build than on

Wagner speculated that time to observe how quic

Appendix F

Original

Maquoketa Veterinary Clinic
615 So. Main Street
Maquoketa, Ia. 52060
563-652-3171

Dear Mayor and City Council Members:

When Kelli Wilslef Clark first brought her newly acquired pup "Little Bones" (now named 'Bee') in to our clinic, she and an employee looked at a book of dog breeds and determined there was a resemblance to a Pit Bull Terrier. A chart was started and the breed designation was listed as a Pit Bull mix.

Subsequently, when the pup was vaccinated on 3-29-06, the computer record and the rabies vaccination certificate both showed the breed as a Rottweiler mix. The dog appears to be a very well cared for family pet that has a good temperament, and has no history of aggression when in the clinic.

The only definitive way I know of to determine an animal's genetic make-up is through DNA testing. It would, in my opinion, be very unfortunate to have a family pet of mixed breeding destroyed because of our clerical discrepancy. Further, I would encourage you to read the attached paper by Dr. Beaver, Past President of the American Veterinary Medical Association, before enacting any breed-specific banning ordinances.

Sincerely,

Dale A Risius, DVM

Dale A. Risius, D.V.M.

Appendix G

CITY OF DES MOINES
ANIMAL CONTROL UNIT

DATE: _____

REFERENCE: ANIMAL HISTORY REPORT #_____

TO WHOM IT MAY CONCERN:

I have examined this dog and found it to have the predominant characteristics of the American Staffordshire Terrier breed. This decision is based on the following physical features of the dog:

HEAD: ___ MEDIUM LENGTH
___ DEEP TROUGH
___ BROAD SKULL
___ PRONOUNCED CHEEK MUSCLES

MUZZLE: ___ MEDIUM LENGTH
___ JAWS WELL DEFINED
___ BLACK NOSE

BACK: ___ FAIRLY SHORT
___ SLIGHT SLOPING FROM WITHERS TO RUMP

BODY: ___ WELL SPRUNG RIBS
___ FORELEGS SET RATHER FAR APART
___ CHEST DEEP AND BROAD

LEGS: ___ STRAIGHT FRONT LEGS
___ HINDQUARTERS WELL MUSCLED
___ MODERATE SIZE FEET

COLOR: _____

COMMENTS:

SHOULDERS: ___ STRONG
___ MUSCULAR

NECK: ___ HEAVY
___ SLIGHTLY ARCHED
___ TAPERS FROM BACK OF SKULL TO SHOULDERS

TAIL: ___ LOW SET
___ TAPERS TO FINE POINT
___ NOT CURLED OVER BACK

COAT: ___ SHORT
___ CLOSE
___ GLOSSY

EYES: ___ DARK AND ROUND
___ LOW DOWN IN SKULL
___ SET FAR APART

SIZE: _____ INCHES AT SHOULDERS
_____ LBS.