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ORDINANCES TARGETING PIT BULL DOGS MUST BE DRAFTED CAREFULLY

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As the *Charlotte Observer* reported in April of this year, statistics indicate that pit bull breeds are responsible for a significant portion of dog bite-related fatalities nationwide.[1] Experts disagree about whether to blame pit bulls' genetic history or individual dog owners.[2] As commentators widely acknowledge, any type of dog may become dangerous if mistreated or trained to be aggressive[3] while pit bull dogs that receive proper care can be safe, well-trained pets.[4] Furthermore, dog bite statistics cannot accurately measure the dangerousness of pit bulls relative to other types of dogs because no one has documented the number of each type of dog in the national population.[5] Nonetheless, public concern about pit bull dogs has led numerous local governments outside North Carolina to pass ordinances specifically restricting pit bull ownership within their jurisdictions.

Though no North Carolina local government has taken this step, North Carolina cities and counties have broad authority to enact ordinances regulating dog ownership.[6] The North Carolina General Assembly has delegated power to cities and counties to protect the health, safety, and welfare of the public. Cities and counties may use this power to place special restrictions on pit bulls' freedom or to ban pit bulls within their jurisdiction.[7] Unlike several other states,[8] North Carolina does not have a statute that prohibits a local government from enacting breed specific

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ordinances. However, to survive constitutional challenges in court, a North Carolina city or county ordinance that targets pit bull dogs must be drafted carefully.

Legislation that specifically targets pit bull dogs raises three constitutional issues. The first and most significant issue is vagueness. The term "pit bull" is notoriously difficult to define. This problem enables opponents of pit bull legislation to argue that pit bull ordinances do not provide dog owners and enforcement personnel sufficient guidance to determine whether an ordinance applies to a particular dog. Though courts have upheld the majority of pit bull ordinances, two state supreme courts have found pit bull ordinances unconstitutionally vague.

The second issue is the argument that legislation targeting pit bulls violates the state and federal equal protection clauses because the legislation is both underinclusive and overinclusive. Opponents of pit bull legislation point out that many dogs that do not fall within the category of "pit bulls" can be just as vicious as pit bulls. Furthermore, owners of well-trained pit bull dogs attest that some pit bull dogs are not dangerous. Nevertheless, every reported case to consider the fairness of ordinances targeting pit bull dogs has concluded that such ordinances do not, in fact, violate the federal equal protection clause or the equal protection clause of the relevant state. The courts find that local governments have a rational basis for regulating pit bull dogs and have no obligation to regulate all types of vicious dogs at once.

The final constitutional issue for pit bull legislation is due process. Opponents of pit bull legislation argue that a local government must provide a dog owner a hearing before interfering with the dog owner's property interest in his or her dog. However, North Carolina law suggests that local governments regulating pit bulls do not need to provide hearings to dog owners with a possible exception for situations where a local government seeks to order a dog's destruction.

This bulletin surveys the legal landscape for pit bull regulation. It first briefly examines two existing statutes that local governments may use to regulate ownership of pit bull dogs in lieu of enacting pit bull-specific legislation. It then reviews case law involving pit bull-specific legislation from other states to explore how North Carolina local governments seeking to enact ordinances targeting pit bulls can navigate the vagueness, equal protection, and due process obstacles to pit bull regulation.

Alternatives to Ordinances Targeting Pit Bulls

Because of the constitutional difficulties associated with legislation specifically targeting pit bulls, local governments contemplating pit bull regulation should consider whether they can accomplish their goals simply by increasing enforcement of existing statutory provisions. Several cities and counties already have dog registration and responsible dog ownership ordinances that they can enforce against irresponsible pit bull owners. There are also two state statutes that provide criminal mechanisms to deal with irresponsible ownership of dogs that pose a threat to public safety.

First, the dangerous dog statute enables local authorities to prosecute the owners of a "dangerous dog" if they fail to properly confine the dog on their property or fail to properly muzzle and restrain the dog whenever it goes beyond their property.[9] A dog is automatically a "dangerous dog" if it is trained, owned, or kept for the purpose of dog fighting or if it has killed or inflicted severe injury on a person without provocation. A dog also falls within the "dangerous dog" category when the authority designated by the city or county determines that the dog has (1) inflicted a bite on a person that resulted in broken bones, or disfiguring lacerations, or required cosmetic surgery or hospitalization; (2) killed or inflicted severe injury upon a domestic animal when not on the owner's property; or (3) approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.[10] An owner who fails to confine a "dangerous dog" on the owner's property or fails to muzzle and restrain the dog when it leaves the owner's property is guilty of a Class 3 misdemeanor.[11] The owner is guilty of a Class 1 misdemeanor if the dog attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars. By using the dangerous dog statute's provisions to classify individual dogs as dangerous, local governments may punish irresponsible dangerous dog owners without imposing blanket requirements that affect other dog owners.

Local governments may also address pit bull problems in their jurisdictions by rigorously enforcing the dog fighting and baiting statute.[12] Historically, British and American dog owners bred pit bull dogs for dog fighting and particularly encouraged traits such as biting strength, aggressiveness, and tenacity.[13] Pit bull dogs that continue to be bred and trained for fighting are quite likely the most dangerous pit bull dogs.[14] Local governments can target these dogs by rigorously enforcing the dog fighting statute. The statute criminalizes all forms of participation in dog fights, includ-

ing promoting, profiting from, permitting one's property to be used for, and merely watching, a dog fight.[15] Particularly important for local governments seeking to regulate dog ownership, the statute prohibits owning, possessing, or training a dog with the intent of using the dog in a dog fight.[16] All violations of the dog fighting statute constitute Class H felonies.[17]

North Carolina's dangerous dog statute and dog fighting statute provide cities and counties avenues to regulate pit bull dogs without enacting pit bull-specific ordinances that may give rise to the constitutional challenges that have plagued such ordinances in other states. The North Carolina Court of Appeals has upheld both the dangerous dog statute and the dog fighting statute against constitutional challenges, specifically finding that the statutes are not unconstitutionally vague and that their provisions do not violate the state and federal equal protection clauses.[18]

Ordinances Targeting Pit Bulls: The Constitutional Issues

Though existing local ordinances, the dangerous dog statute, and the dog fighting statute provide mechanisms for local governments to control dog ownership, some local governments may determine that they need an ordinance that specifically targets pit bull dogs or that they want to automatically classify all pit bulls as "dangerous dogs" under the dangerous dog statute. The remainder of this bulletin surveys North Carolina law as well as cases from other jurisdictions to explore how cities and counties may navigate the vagueness, equal protection, and due process obstacles to legislation that targets pit bull dogs.

The cases from jurisdictions that have litigated pit bull ordinances suggest than an ordinance would be most likely to survive a vagueness challenge when it

- lists the specific breeds to be regulated rather than simply relying on the term "pit bull";
- provides a uniform standard for determining when a mixed breed dog is subject to the ordinance;
- creates an administrative mechanism to allow dog owners to discover whether their dog falls within the ordinance; and
- provides for civil, rather than criminal, sanctions

Some courts have upheld pit bull ordinances with none of these characteristics, but no court has struck down an ordinance with all of them. Furthermore, the cases indicate that the equal protection and due process arguments against pit bull ordinances are very weak. A local government may overcome an equal protection challenge by presenting any rational reason for enacting the legislation. A local government may prevent a successful due process challenge by choosing never to destroy pit bull dogs that violate the ordinance or by providing a hearing to the dog's owner before ordering the dog's destruction.

Pit Bull Legislation Must Be Carefully Drafted To Avoid Being Found "Unconstitutionally Vague"

a. The problem of definition

Vagueness is a problem for pit bull legislation because it is difficult to clearly define "pit bulls." Though people widely use the term "pit bull" as if it possessed a singular definition, the term in fact is used in multiple ways. Sometimes, the term is a nickname that refers specifically to the American Pit Bull Terrier. Alternatively, the term refers to a group of two to five breeds that have histories related to dog fighting. To some dog aficionados, "pit bull" refers to the American Pit Bull Terrier when capitalized and to a larger spectrum of breeds when uncapitalized.[19] In the context of pit bull legislation, both "pit bull" and "Pit Bull" generally refer to three breeds: the American Pit Bull Terrier, the American Staffordshire Terrier, and the Staffordshire Bull Terrier. Occasionally, the term "pit bull" also includes the Bull Terrier.

To add to the confusion surrounding pit bull definitions, the two major organizations that categorize dogs by breed—the United Kennel Club ("UKC") and the American Kennel Club ("AKC")—disagree about how to classify the two breeds that local governments most often wish to regulate. The UKC does not acknowledge a genetic difference between the American Pit Bull Terrier and the American Staffordshire Terrier and registers both types of dogs as American Pit Bull Terriers.[20] By contrast, the AKC considers these two labels to reflect the existence of two distinct breeds. The AKC registers American Staffordshire Terriers but does not register American Pit Bull Terriers because of their unsavory reputation.[21] Owners of American Staffordshire Terriers contend that legislation regulating pit bulls should not apply to their dogs because the AKC maintains that the American Staffordshire Terrier is distinct from the American Pit Bull Terrier and less prone to violence.[22]

The vagueness problem is even more difficult for mixed breed dogs.[23] Opponents of pit bull legislation contend that ordinary people will be unable to determine whether a mixed breed dog qualifies as a pit bull. They assert that an untrained person could easily

misidentify mixed breeds and that even experts occasionally misidentify mixed breed dogs.[24] Opponents of pit bull legislation also point out that both dog experts and law enforcement personnel generally determine a dog's breed solely by its physical appearance, and subjective judgment is always involved because of the variation that exists within each breed.[25]

b. North Carolina's vagueness doctrine

North Carolina's vagueness doctrine requires city and county ordinances to be sufficiently precise for ordinary people to understand and for law enforcement officials to uniformly apply. The primary rationale behind the vagueness doctrine is the view that "criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed."[26] The secondary rationale is the need for legislation to provide uniform standards so that enforcement officials do not possess the ability to apply the law on an ad hoc and subjective basis.[27] In accordance with the rationales behind the vagueness doctrine, North Carolina courts deem legislation unconstitutionally vague when it "(1) fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or (2) fails to provide explicit standards for those who apply the law."[28]

North Carolina law does not demand, however, that laws be written with mathematical precision.[29] The North Carolina Supreme Court explains that "[s]tatutory language should not be declared void for vagueness unless it is not susceptible to reasonable understanding and interpretation."[30] As long as "reasonable persons would know that their conduct is at risk, the statute should be upheld."[31] A plaintiff challenging an ordinance on vagueness grounds must prove beyond a reasonable doubt that the ordinance falls below the acceptable standard for statutory vagueness.[32]

Courts have generally upheld laws against vagueness challenges involving language that, like pit bull ordinances, describe objects rather than conduct.[33] However, in a recent case, the North Carolina Court of Appeals found a statute that prohibited intentional wounding or killing of feral pigeons unconstitutionally vague because an ordinary person would not be able to distinguish between domestic and feral pigeons.[34] The court noted that domestic and feral pigeons are physically and genetically indistinguishable. The difference is merely that feral pigeons are a classification of domestic pigeons that have, over time, become wild. This case presents a textbook example of a situation where an ordinary person may be unable to determine whether his or her conduct (shooting a particular pigeon) is criminal.

c. Pit bull legislation has survived vagueness challenges in other states

It is impossible to know for certain how a North Carolina court would rule on a vagueness challenge to pit bull legislation, but such challenges have not fared well in other jurisdictions. Seven state supreme courts, four appellate-level state courts, and two federal district courts have determined that such legislation is not unconstitutionally vague.[35] These courts have concluded that, unlike feral pigeons, pit bull dogs possess unique and readily identifiable physical traits that both dog owners and enforcement personnel can recognize through visual inspection.[36] These courts have noted that most dog owners know whether their dog is one of the breeds considered to qualify as a pit bull breed[37] and if they are unsure, they can consult readily accessible reference materials including dictionaries and dog books.[38]

Most courts have concluded that the difficulty in identifying a dog by breed with absolute certainty does not render an ordinance unconstitutionally vague.[39] As the Supreme Court of Arkansas explains, the fact "that there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense."[40] Using this reasoning, many courts have concluded that the unavoidable uncertainty regarding whether particular dogs fall within the scope of a pit bull ordinance is not a vagueness problem of constitutional proportions.[41]

Only two reported opinions have found all or part of a pit bull ordinance void for vagueness. In *American Dog Owners Association v. Des Moines*, the Iowa Supreme Court upheld a portion of an ordinance providing that three terrier breeds fell within the ordinance's scope but struck down a portion referring to "[d]ogs of mixed breed or of other breeds than above listed which breed or mixed breed is known as pit bulls, pit bull dogs or pit bull terriers."[42] The court found this portion unconstitutionally vague because it would permit enforcement officers to use subjective, inconsistent standards to determine whether the ordinance applied to particular dogs.[43] In *American Dog Owners Association v. City of Lynn*, an advisory opinion,[44] the Massachusetts Supreme Court deemed two different pit bull ordinances unconstitutionally vague.[45] The court concluded that a pit bull ordinance "devoid of *any* reference to a particular breed" and

instead relying on the "common understanding and usage" of the term "pit bull" was unconstitutionally vague.[46] The court also approved a lower court's determination that a repealed ordinance that had defined a "Pit Bull" as an "American Staffordshire Terrier, Staffordshire Pit Bull Terrier, Bull Terrier or any mixture thereof" was unconstitutionally vague because the city's dog officers had used conflicting, subjective standards for ascertaining which dogs fell within the ordinance's scope.[47]

d. How may a local government draft a pit bull ordinance to best withstand a void for vagueness challenge?

Overall, the out-of-state case law suggests that a pit bull ordinance is most likely to survive a void for vagueness challenge when one or more of the following characteristics are present: (1) a list of the specific breeds covered by the ordinance rather that the term "pit bull" alone; (2) uniform standards for determining when a mixed breed dog is subject to the ordinance; (3) an administrative mechanism to allow dog owners to ask the city or county to determine whether their dog falls within the ordinance; and (4) civil, rather than criminal, sanctions. Courts have upheld ordinances that possessed none of these characteristics,[48] but no court has struck down an ordinance that possessed all of them. The following sections treat each of these characteristics in turn.

i. List specific breeds

The single most important way a city or county may guard against a vagueness challenge is by specifically naming the dog breeds subject to regulation rather than relying on the vague term "pit bull." While several courts have upheld legislation that failed to define the terms "pit bull dogs" or dogs "commonly known as pit bull dogs,"[49] the Iowa and Massachusetts supreme courts have found these terms unconstitutionally vague. As discussed above, the Iowa Supreme Court upheld part of an ordinance that specifically named three breeds but found the portion that referred to "any other breed commonly known as pit bulls" unconstitutionally vague.[50] Similarly, in an advisory opinion, the Massachusetts Supreme Court concluded that an ordinance was unconstitutionally vague when it regulated dogs that fell within the "common understanding and usage" of the term "pit bull" and lacked "*any* reference to a particular breed."[51] The court concluded that the lack of definition for the term "pit bull" left dog owners to guess at what dog "look" is prohibited and required enforcement officers to rely on their subjective understanding of which characteristics a dog must possess to be categorized as a "pit bull."[52] By contrast, with only a few exceptions,[53] the courts have consistently upheld ordinances that define their scope in terms of specific breeds such as American Pit Bull Terriers, Staffordshire Bull Terriers, American Staffordshire Terriers, and Bull Terriers.[54] Listing breeds by name also directly addresses the problem posed by the two kennel clubs' failure to agree about whether the terms "Pit Bull" and "American Pit Bull Terrier" refer to the American Staffordshire Terrier. A local government that wishes to regulate American Staffordshire Terriers may alleviate confusion by simply listing "American Staffordshire Terrier" as one of the regulated breeds.

ii. Provide clear standards for when mixed breeds fall within the ordinance

A local government may also shield a pit bull ordinance from vagueness challenges by providing enforcement officers clear standards for determining when a mixed breed dog falls within the ordinance's scope. One of the Massachusetts Supreme Court's reasons for deeming a pit bull ordinance unconstitutionally vague was that the ordinance, which covered dogs with "any mixture" of the listed pit bull breeds, failed to provide law enforcement officials with a consistent standard for deciding which dogs were regulated by the ordinance.[55] The court gave great weight to the trial court's finding that "the dog officers . . . used conflicting, subjective standards for ascertaining what animals are to be defined as 'pit bulls.'"[56] By contrast, the Supreme Court of Arkansas upheld an ordinance that applied to dogs with one parent belonging to one of the listed breeds.[57] Similarly, several courts have upheld ordinances that cover dogs exhibiting physical characteristics that "substantially conform" to a major kennel club's breed standards.[58] Many of these ordinances provide that a dog falls within the ordinance when there are technical deficiencies in a dog's conformance to the standards.[59]

In addition to providing a clear standard for when mixed breed dogs fall within the ordinance, local governments should ensure that enforcement officers understand and consistently adhere to the standard. The Supreme Court of Kansas upheld an ordinance that applied to dogs that were "predominantly of the [listed] breeds" because the local police department had adopted and consistently followed a detailed definition of the word "predominantly."[60] Similarly, the federal court for the Southern District of Ohio upheld an ordinance that regulated any mixed breed "containing suf-

ficient element of the named breeds to be identified as partially made up thereof by a qualified veterinarian" where the local government consistently verified the identification of dogs suspected to be pit bulls by either the owner or a qualified veterinarian.[61]

iii. Provide dog owners an opportunity to ask whether the ordinance applies to their dog

In addition to providing clear standards for enforcement officials, local governments can further shield their pit bull ordinances from vagueness challenges by giving dog owners an opportunity to ask whether their dog falls within the ordinance's scope. Providing this opportunity tends to neutralize the argument that an ordinance's imprecision prevents a dog owner from determining whether his or her particular dog violates the ordinance. One of the Utah Supreme Court's reasons for finding a pit bull ordinance not unconstitutionally vague was that the ordinance expressly permitted a dog owner to "make a written request to the city manager to determine whether and how the provisions of this ordinance apply to him or her."[62] The ordinance further provided that the city could take no criminal action while the city manager considered the request.[63] Similarly, when the federal district court for the Southern District of Florida upheld a pit bull ordinance, it noted that it applied a lower level of scrutiny to the ordinance's language because the county's animal control division had adopted a procedure whereby dog owners could ask whether their dog fell within the ordinance's scope.[64]

iv. Consider imposing civil rather than criminal sanctions

Another way a local government could guard against a vagueness attack is by enacting an ordinance that provides for civil, rather than criminal, penalties.[65] Legislation with civil penalties need not be as precise as legislation with criminal penalties "because the consequences of imprecision are qualitatively less severe."[66] As the North Carolina Court of Appeals explains,

> . . . a *civil* statute overcomes a challenge on grounds of vagueness merely by conveying a 'sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices,' . . . 'difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a [civil] statute unconstitutional for indefiniteness.'[67]

In *American Dog Owners Association v. Dade County*, the court explicitly applied a lower level of scrutiny to a pit bull ordinance that provided for civil penalties, explaining that "[t]he Constitution tolerates a greater degree of vagueness in enactments with civil rather than criminal penalties."[68]

In summary, pit bull ordinances should be drafted carefully to anticipate challenges that they are unconstitutionally vague. While no North Carolina court has considered whether a pit bull ordinance passes the test for vagueness, the cases from other jurisdictions suggest that pit bull ordinances are most likely to survive vagueness challenges when they contain a list of the breeds to which they apply, provide a clear standard to determine when a mixed breed dog falls within the ordinance, and permit individual dog owners to ask whether the ordinance applies to their dog. A local government could further shield a pit bull ordinance from a vagueness challenge by imposing civil rather than criminal penalties for violation of the ordinance. Though it is not certain that a North Carolina court would uphold a pit bull ordinance that contained each of these characteristics, cases from other jurisdictions suggest that the presence of these characteristics will likely enable the ordinance to survive a vagueness challenge.

The Overinclusiveness and Underinclusiveness of Pit Bull Legislation Does Not Pose an Equal Protection Problem

In comparison with the vagueness argument against pit bull legislation, the argument that pit bull legislation violates equal protection is a small concern. Though pit bull owners argue that ordinances targeting pit bulls are overinclusive and underinclusive, no reported judicial opinion has found that a pit bull ordinance violated the federal constitution's equal protection clause or any state constitution's equal protection provisions. Courts evaluate pit bull legislation under the equal protection clause's lowest level of scrutiny—rational basis scrutiny—because the category of persons who own pit bulls is not a category that triggers a higher level of judicial scrutiny (such as a category based on race or gender). Furthermore, pit bull ordinances do not impinge on a fundamental right (such the right to vote or the freedom of speech) that would require courts to apply strict scrutiny to the legislation.[69]

Under rational basis scrutiny, a court will uphold a legislative classification unless the classification is "patently arbitrary" and bears no rational relationship to

a legitimate governmental interest.[70] As the North Carolina Supreme Court explained in a recent opinion,

> Rational basis review is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.[71]

Thus, the proper inquiry is "whether distinctions which are drawn by a challenged statute . . . bear some rational relationship to a conceivable legitimate governmental interest."[72] A statutory discrimination between categories, such as dog breeds, complies with the equal protection clause "if any state of facts reasonably may be conceived to justify it."[73]

All the recorded opinions to consider equal protection challenges to pit bull legislation have agreed that local governments have a rational basis for targeting pit bull dogs for special regulation.[74] The courts cite evidence that pit bulls possess great biting strength, high insensitivity to pain, a unique "savageness and unpredictability,"[75] and a "propensity to catch and maul an attacked victim unrelentingly."[76] Opponents of pit bull legislation have countered with evidence that many of the individual dogs swept into the net of pit bull regulation do not exhibit these characteristics (the overinclusiveness argument), and that many individual dogs not considered "pit bulls" can be just as vicious as the dogs covered by pit bull ordinances (the underinclusiveness argument). However, rational basis scrutiny does not enable courts to decide whether pit bull ordinances are a good idea, but requires them to determine simply whether the local government had a rational reason for creating the ordinance.[77]

The courts have consistently rejected arguments that pit bull ordinances are unconstitutionally underinclusive or overinclusive. In the words of the New Mexico Court of Appeals, the underinclusiveness of pit bull ordinances is not a constitutional problem because "[t]o satisfy equal protection tenets, it is not necessary that [a local government] address all potential threats from all breeds of dog; instead, [a local government is] entitled to address a phase of the problem that [is] of acute concern."[78] Courts have also consistently rejected the argument that pit bull legislation should be unconstitutional because some individual pit bull dogs pose no threat to the community. Most courts refuse to even consider overbreadth challenges to pit bull legislation on the rationale that the overbreadth doctrine applies only to legislation that curtails a fundamental right such as the freedom of speech.[79] A North Carolina court would probably agree with these courts' conclusions that the overbreadth doctrine does not apply to legislation regulating dog ownership.[80] Even if a North Carolina court would be willing to entertain an overbreadth argument, it would likely hold that ordinances targeting pit bulls are not unconstitutionally overbroad.[81]

In summary, the equal protection argument against pit bull legislation poses a very small obstacle to local governments that wish to regulate pit bull ownership. To prepare for an equal protection challenge, however, localities adopting pit bull ordinances should gather evidence that pit bulls pose a danger to the health and safety of their community. The strongest evidence will include records of pit bull attacks in the jurisdiction,[82] but local governments may establish a rational basis for pit bull legislation by citing widely available information about pit bulls' unpredictable and vicious propensities.[83] An enacting government's failure to present any evidence of dangerousness, however, might result in a court agreeing with the dog owner that the government had no rational basis for singling out pit bulls for special regulation.[84]

Certain Types of Pit Bull Ordinances Should Provide Due Process Protections

The final argument that dog owners level against pit bull ordinances is that such legislation violates their due process right to a hearing prior to government interference with their property.[85] In most situations, these arguments fail. Of course, when a local government brings criminal charges against a dog owner, it must provide the owner with appropriate criminal due process protections. The government must prove all the elements of the dog owner's crime—including that the offending dog falls within the ordinance's "pit bull" definition—beyond a reasonable doubt.[86] Additionally, if a city or county regulates pit bulls through an existing statute or ordinance, it must comply with that statute or ordinance's procedural requirements. For example, if a local government chose to classify all pit bull dogs as "dangerous dogs" under the dangerous dogs statute,[87] it would have to comply with the procedural requirements of that statute when enforcing the statute against pit bull owners.[88]

However, if a local government enacts a new civil ordinance, the ordinance does not have to provide due process procedures to dog owners if it permits existing dog owners to keep their dogs by complying with the ordinance's requirements. In *Cannady v. North Carolina Wildlife Resources Commission*,[89] the North Carolina Court of Appeals held that a statute imposing reasonable regulations on black bear owners did not

necessitate due process protections. The statute required a bear owner to forfeit his or her bear without compensation only if the owner failed to voluntarily surrender the bear or construct an appropriate facility within a specified time period.[90] The court concluded that, because the statutory requirements for keeping a bear were not unreasonable, there was "no 'taking' of private property as to involve 'just compensation' or 'due process.'"[91] Based on *Cannady*, the Supreme Court of Colorado concluded that "[a] city ordinance prohibiting the possession of a pit bull . . . does not result in a taking of private property if a dog owner may keep the dog by obtaining a pit bull license and complying with the minimum standards for keeping the dog."[92]

An ordinance banning pit bull dogs without permitting existing owners to keep their dogs probably also would not necessitate a hearing to satisfy due process. As the federal court for the Southern District of Ohio explains, a dog owner's property interest in his dog must be balanced against the local government's interest in providing for public safety.[93] So long as the ordinance bears a rational relationship to a legitimate legislative purpose, a deprivation of private property is a valid exercise of a local government's police power.[94]

If a local government seeks to *destroy* a dog pursuant to a pit bull ordinance, however, the safest course would be to provide the dog's owner a hearing to determine whether the dog falls within the scope of the ordinance. Though North Carolina cases dating from 1880 and 1910 suggest that a local government need not provide a hearing to a dog's owner before destroying a dog pursuant to a local ordinance,[95] several courts in other jurisdictions have held that dog owners must have an opportunity to be heard before a city or county destroys a dog in a non-emergency situation.[96] Specifically within the context of pit bull regulation, a New Mexico Court of Appeals suggested that a pit bull ordinance would be unconstitutional if it failed to provide dog owners with a hearing where they could attempt to demonstrate that their dog did not fall within the ordinance's definition of "pit bull."[97]

Conclusion

In conclusion, North Carolina cities and counties have broad authority to enact ordinances regulating dogs and dog ownership.[98] A city or county may use this power to place special restrictions on pit bulls' freedom, to deem all pit bull dogs "dangerous dogs" under the state dangerous dog statute or a local dangerous dog ordinance,[99] or to ban pit bulls altogether.[100] However, any city or county ordinance that targets pit bull dogs for special regulation must be carefully drafted so as to withstand the argument that it is unconstitutionally vague.

Pit bull-specific ordinances are most likely to survive vagueness challenges when they list specific breeds, provide a uniform standard for determining when the ordinance applies to a mixed breed dog, create a procedure for dog owners to ask whether their dog falls within the ordinance, and provide for civil, rather than criminal, sanctions. Local governments can more easily overcome equal protection and due process arguments against pit bull legislation. To prepare for an equal protection challenge, a local government should have evidence to demonstrate a rational basis for regulating pit bull dogs. To prevent due process challenges, a local government should provide a hearing to a dog's owner if and when the government intends to destroy the owner's dog.

Even with a well-drafted ordinance, however, a local government should anticipate resistance to breed specific legislation. Though reported cases from other states suggest that a North Carolina court would probably uphold a well-drafted pit bull ordinance, the sheer volume of litigation surrounding pit bull ordinances in other states indicates that opponents of breed specific legislation are willing to litigate the issue. Thus, a local government seeking to regulate pit bull dogs should also explore the alternatives to breed specific legislation, such as increasing enforcement of the dog fighting statute and the dangerous dog statute.

1. Robert F. Moore, Pit bulls maul, kill boy in father's back yard, CHARLOTTE OBSERVER, April 17, 2004, at 1A. *See* Jeffrey J. Sacks et al., *Special Report: Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998,* 217 JAVMA 836, 837 tbl. 1, 838 tbl. 2 (2000), *available at* http://www.cdc.gov/ncipc/duip/dogbreeds.pdf (last visited Sept. 27, 2004). Together, pit bulls breeds and Rottweilers were responsible for 67% of fatal human attacks in 1997 and 1998. Id. at 839. For information about bite prevention, see American Veterinary Medical Association, A community approach to dog bite prevention, 218 JAVMA 1732 (2001), available at http://www.avma.org/pubhlth/dogbite/dogbite.pdf.
2. Moore, *supra* note 1, at 1A.
3. Sacks et al., *supra* note 1, at 839. Since 1975, dogs belonging to more than 30 breeds have been responsible for fatal attacks on people, including Dachshunds, a Yorkshire Terrier, and a Labrador Retriever. id.
4. Dean J. Monti, Responsible ownership the alternative to breed banning, other restrictions, JAVMA NEWS, Nov. 15, 2000, at http://www.avma.org/onlnews/javma/nov00/s111500c.asp (last visited Sept. 27, 2004).
5. Sacks et al., *supra* note 1, at 838. Without population numbers for each breed, it is difficult to accurately to characterize the relative dangerousness of different dog breeds. For example, a breed responsible for 10 deaths a year may appear more dangerous than a breed responsible for 2 annual deaths. However, if there are a thousand dogs of the first breed in the jurisdiction (10/1000 = 0.1%) compared to only a hundred dogs of the second breed (2/100 = 2%), the second breed is actually far more dangerous. *id.*
6. *See* N.C. GEN. STAT. § 67-4.5 (2003) (providing that a city or county many adopt its own program for control of dangerous dogs in addition to the Dangerous Dog Act provisions); N.C. GEN. STAT. §§ 153A-131; 160A-187 (2003) (providing that cities and counties may regulate, restrict or prohibit possession of animals that are dangerous to persons or property); N.C. GEN. STAT. §§ 153 A-121; 160A-174 (2003) (providing that cities and counties have general ordinance-making power to define, regulate, and prohibit acts and conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city or county); Sentell v. New Orleans & Carrollton R.R., 166 U.S. 698, 704 (1897) ("Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the State, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens."); Nicchia v. New York, 254 U.S. 228, 230 (1920) (noting that dogs "may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right"); State v. Clifton, 152 N.C. 800, 800, 67 S.E. 751, 752 (N.C. 1910) (holding that a municipality was authorized to enact and enforce an ordinance requiring dogs to be muzzled and authorizing police officers to kill dogs found at large and unmuzzled); Mowery v. Salisbury, 82 N.C. 175, at *2 (N.C. 1880) (holding that an ordinance authorizing the destruction of dogs roaming at large without a badge indicating that their owner had paid the dog tax was a proper exercise of the town's police power); Gray v. Clark, 9 N.C. App. 319, 321, 176 S.E.2d 16, 18 (1970) (concluding that a city ordinance making it unlawful to keep a dog that conducts itself as to be a habitual public nuisance was within the city's police power).
7. *See* N.C. GEN. STAT. §§ 67-4.5, 153A-131; 160A-187 (2003); Town of Atlantic Beach v. Young, 307 N.C. 422, 428, 298 S.E.2d 686, 691 (N.C. 1983) (upholding municipal ordinance that banned ponies and goats within the town limits as a valid exercise of the police power). Outside of North Carolina, at least five courts have upheld ordinances that entirely banned pit bulls as valid exercises of governmental police power. Vanater v. Village of South Point, 717 F.Supp. 1236, 1241–42 (S.D. Ohio 1989); Holt v. Maumelle, 817 S.W.2d 208, 210–211 (Ark. 1991); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. App. E.D. 2004); Singer v. City of Cincinnati, 566 N.E.2d 190, 192 (Ohio Ct. App. 1990); Garcia v. Village of Tijeras, 767 P.2d 355, 356 (N.M. Ct. App. 1988); *cf* State v. Peters, 534 So.2d 760, 765 (Fl. Ct. App. 1988) (holding than an ordinance's arguably oppressive insurance requirements for pit bull ownership were well within the city's police power because "it is likely that a governmental authority could ban pit bulls outright without offending the due process rights of the dog owner").
8. *See* CAL. FOOD & AGRIC. CODE § 31683 (West 2004); COLO. REV. STAT. ANN. § 18-9-204.5 (West 2004); FLA. STAT. ANN. § 767.14 (West 2004); ME. REV. STAT. ANN. tit. 7, § 3950 (West 2004); MINN. STAT. ANN. § 347.51(8) (West 2004); N.Y. AGRIC. & MKTS. LAW § 107(5) (McKinney 2004); OKLA. STAT. ANN. tit. 4, § 46(B) (West 2003); 3 PA. CONS. STAT. § 459-507-A(c) (West 2004); TEX. HEATH & SAFETY CODE ANN. § 822.047 (Vernon 2003); VA. CODE ANN. § 3.1-796.93:1(C)(2) (West 2004); *see also* N.J. STAT. ANN. § 4:19-36 (West 2004) (accomplishing the same result by providing that the state's breed-neutral dog statute supercedes local breed specific ordinances).
9. N.C. GEN. STAT. § 67-4.2 (2003). The act also requires owners to make certain notifications when the owner transfers ownership or possession of a "dangerous dog." *id.*
10. *Id.*
11. *Id.*
12. N.C. GEN STAT. § 14-362.2 (2003).

13. Karla J. Baumgartner, *A Research Guide on the Constitutionality of Regulating or Prohibiting the Ownership of Pit Bull Terriers*, 10 Legal Reference Services Quarterly 37, 38-40 (Winter 1990).
14. *Id*.
15. N.C. GEN STAT. § 14-362.2 (2003).
16. *Id*.
17. *Id*.
18. *See* State v. Arnold 147 N.C. App. 670, 557 S.E.2d 119 (2001) (holding that the portion of the dog fighting statute criminalizing the act of participating as a spectator is a valid exercise of the state's police power, does not violate the equal protection clause, and is not unconstitutionally vague); Caswell County v. Hanks, 120 N.C. App. 489, 462 S.E.2d 841 (1995) (holding that the dangerous dog statute is not unconstitutionally vague and does not violate the equal protection clause).
19. *See, e.g*., *Pit Bull Terms*, *at* http://www.realpitbull.com/terms.html (last visited Sept. 27, 2004).
20. Baumgartner, *supra* note 13, at 40.
21. The AKC maintains that the American Staffordshire Terrier has been carefully bred over the past fifty years to be a gentle and affectionate dog. American Kennel Club, *American Staffordshire Terrier*, *available at* http://www.akc.org/breeds/recbreeds/amstaff.cfm (last visited Sept. 27, 2004).
22. At least one court, however, interpreted a statute regulating American Pit Bull Terriers to apply to American Staffordshire Terriers, based on the UKC's position that there is no genetic difference between the two labels. Garcia v. Village of Tijeras, 767 P.2d 355, 358 (N.M. Ct. App. 1988).
23. Baumgartner, *supra* note 13, at 38.
24. *See* Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1047 (Wash. 1989); Garcia v. Village of Tijeras, 767 P.2d 355, 357 (N.M. Ct. App. 1988).
25. *See* Greenwood v. North Salt Lake, 817 P.2d 816, 819 (Utah 1991).
26. Malloy v. Cooper, 162 N.C.App. 504, 510, 592 S.E.2d 17, 22 (2004) (quoting United States v. National Dairy, 372 U.S. 29, 32–33 (1963)).
27. Grayned v. City of Rockford, 408 U.S. 104, 108–09 (1972).
28. State v. Green, 348 N.C. 588, 597, 502 S.E.2d 819, 824 (N.C. 1998) (quoting Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)).
29. Rhyne v. K-Mart Corp., 358 N.C. 160, 187, 594 S.E.2d 1, 19 (N.C. 2004) ("impossible standards of statutory clarity are not required") (quoting In re Burrus, 275 N.C. 517, 531, 169 S.E.2d 879, 888 (1969)).
30. *Id*. (quoting State v. Jones, 305 N.C. 520, 531, 290 S.E.2d 675, 681 (1982)).
31. Barringer v. Caldwell County Bd. of Educ., 123 N.C.App. 373, 378, 473 S.E.2d 435, 439 (1996) (quoting Maynard v. Cartwright, 486 U.S. 356, 361 (1988)).
32. *See* Rhyne v. K-Mart Corp. 358 N.C. 160, 186, 594 S.E.2d 1, 19 (N.C. 2004) ("It is the plaintiffs' burden to show, . . . that the statute is incapable of uniform judicial administration.") (internal citation omitted); In re Biggers, 30 N.C. App. 332, 340, 274 S.E.2d 236, 241 (1981) (noting that the party raising a void for vagueness argument "has the burden of showing that the statute provides inadequate warning as to the conduct it governs or is incapable of uniform judicial administration"); *cf* Guilford County Bd. of Educ. v. Guilford County Bd. of Elections, 430 S.E.2d 681, 684 (1993) ("In challenging the constitutionality of a statute, the burden of proof is on the challenger, and the statute must be upheld unless its unconstitutionality clearly, positively, and unmistakably appears beyond a reasonable doubt or it cannot be upheld on any reasonable ground.") (citing Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991)).
33. Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925) (kosher food); Stansberry v. Holmes, 613 F.2d 1285, 1289 (5th Cir. 1980) (school); Southeastern Fisheries Assn., Inc. v. Dept. of Natural Resources, 453 So.2d 1351 (Fla. 1984) (fish trap); State v. J.H.B., 415 So.2d 814 (Fla. 1982) (dogs customarily used for taking wildlife); Wilkerson v. State, 401 So.2d 1110 (Fla. 1981) (animal and "every living dumb creature"); State v. Kaneakua, 597 P.2d 590 (Haw. 1979) (animal and "every living creature"); Bridgeford v. U-Haul Co, 238 N.W.2d 443 (Neb. 1976) (truck); Stewart v. Trumbull Cty. Bd. of Elections, 296 N.E.2d 676 (Ohio 1973) (residence district); Potomac Sand & Gravel Co. v. Governor of Maryland, 293 A.2d 241 (Md. 1972) (tidal marshlands); Arundel Supply Corp. v. Cason, 289 A.2d 585 (Md. 1972) (gravel pit); *cf.* State v. Robinson, 541 N.E.2d 1092, 1094 (Ohio Ct. App. 1989) (noting that most cases that raise vagueness challenges concern laws that define conduct, not objects).
34. Malloy v. Cooper, 162 N.C.App. 504, 510, 592 S.E.2d 17, 22 (2004).
35. Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533, 1535 (S.D. Fla. 1989) (holding that an ordinance regulating any dog that "exhibits those distinguishing characteristics" which "substantially conform" to American Kennel Club or United Kennel Club standards was not unconstitutionally vague, even though the ordinance stated that technical deficiencies in a dog's conformance to the standards would not prevent it from being considered a pit bull);

Vanater v. Village of South Point, 717 F.Supp. 1236, 1244 (S.D. Ohio 1989) (holding that an ordinance prohibiting the possession or harboring of a "pit bull terrier" defined as any Staffordshire Bull Terrier or American Staffordshire Terrier, or any mixed breed containing sufficient element of these breeds to be identified as partially made up thereof by a qualified veterinarian was not unconstitutionally vague because an ordinary person could easily refer to a dictionary, a dog buyer's guide or any dog book for guidance); Holt v. Maumelle, 817 S.W.2d 208, 210 (Ark. 1991) (holding that a municipal ordinance was not unconstitutionally vague when it banned American Pit Bull Terriers, Staffordshire Bull Terriers, American Staffordshire Terriers, any dog whose sire or dam is of the aforementioned breeds, any dog whose owner registers, defines, admits, or otherwise identifies it as being of banned breed, any dog substantially conforming to listed breeds as defined by the United Kennel Club or American Kennel Club, and any dog that is of breed commonly referred to as a "pit bull" and commonly recognizable and identifiable as such); Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644, 650–51 (Colo. 1991) (holding that an ordinance was not unconstitutionally vague because the list of breeds and readily accessible standards made most dog owners able to determine whether their dog fell within the ordinance); State v. Anderson, 566 N.E.2d 1224, 1230 (Ohio 1991) (holding that a state statute that made ownership of a dog "commonly known as a pit bull dog" *prima facie* evidence of ownership of a vicious dog requiring confinement and insurance compliance was not void for vagueness); State v. Ferguson, 566 N.E.2d 1230, 1232 (Ohio 1991) (same); Greenwood v. North Salt Lake, 817 P.2d 816, 820 (Utah 1991) (holding that an ordinance that categorized various breeds of pit bulls as "dangerous dogs" subject to license, confinement, muzzle, and insurance requirements was not void for vagueness); Dog Fed'n of Wis. v. City of S. Milwaukee, 504 N.W.2d 375, 379, (Wis. Ct. App. 1993) (holding that an ordinance was not unconstitutionally vague when it defined "pit bull" to mean any American Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier, or any dog that is identifiable as partially of one or more of these breeds); Hearn v. Overland Park, 772 P.2d 758, 763 (Kan. 1989) (holding that an ordinance was not void for vagueness because its list of breeds enabled pit bull owners to determine whether their dogs fell within the ordinance's proscription); Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1047 (Wash. 1989) (holding municipal ordinance that banned new dogs of pit bull breeds and restricted the freedom of those already present in the city was not void for vagueness because identification of such dogs was governed by clearly defined standards); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004); (holding that an ordinance containing no definition for the term "pit bull" was not unconstitutionally vague); State v. Robinson, 541 N.E.2d 1092, 1095–97 (Ohio Ct. App. 1989) (holding that a statute regulating animals belonging "to a breed that is commonly known as a Pit Bull dog" was not void for vagueness because, although the statute lacked a specific definition of "Pit Bull dog," mathematical certainty is not essential to constitutionality); State v. Peters, 534 So.2d 760, 767 (Fl. Ct. App. 1988) (holding that an ordinance defining "pit bull dog" as any dog that substantially conforms to the American Kennel Club's standards for American Staffordshire Terriers or Staffordshire Bull Terriers or to the United Kennel Club's standards for American Pit Bull Terriers was not void for vagueness); Garcia v. Village of Tijeras, 767 P.2d 355, 358 (N.M. Ct. App. 1988) (holding that an ordinance banning ownership and possession of American Pit Bull Terriers was not unconstitutionally vague because the breed is recognizable by its physical appearance; further holding that the ordinance applied to American Staffordshire Terriers based on testimony that there is no difference between American Pit Bull Terrier and American Staffordshire Terriers); City of Lima v. McFadden, No. 1-85-22, 1986 WL 7474, at *1–2 (Ohio Ct. App. June 30, 1986) (unreported opinion) (holding that an ordinance was not unconstitutionally vague even though it contained no definition of "pit bull" because dog owners should know what kind of dogs they own and, if they do not, can find out by consulting readily available reference material); City of Akron v. Tipton, 559 N.E.2d 1385, 1388 (Ohio Mun. 1990) (holding that an ordinance was not unconstitutionally vague when it listed breeds).

36. State v. Anderson, 566 N.E.2d 1224, 1230 (Ohio 1991); Hearn v. Overland Park, 772 P.2d 758, 762 (Kan. 1989); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004).

37. Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533, 1535 (S.D. Fla. 1989); Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644, 652 n.6 (Colo. 1991); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004).

38. Vanater v. Village of South Point, 717 F.Supp. 1236, 1244 (S.D. Ohio 1989); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004).

39. *See* Hearn v. Overland Park, 772 P.2d 758, 761–62 (Kan. 1989) ("That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no [sic] sufficient reason to hold the language too ambiguous to define a criminal offense.") (citing *Miller v. California*, 413 U.S. 15, 27 n. 10 (1973); *United States v. Petrillo*, 332 U.S. 1, 7 (1947); *Robinson v. United States*, 324 U.S. 282, 285, 286 (1945)).

40. Holt v. Maumelle, 817 S.W.2d 208, 210 (Ark. 1991) (quoting *United States v. Petrillo*, 332 U.S. 1, 7 (1946).

41. *See, e.g.*, State v. Anderson, 566 N.E.2d 1224, 1228–9 (Ohio 1991) ("That there may be some situations where an individual is arrested pursuant to [pit bull legislation] even though the owner does not believe that he or she owns a dog

commonly known as a pit bull . . . is not a problem of constitutional dimensions [because] [w]hether a particular dog constitutes a pit bull is a matter of evidence, to be determined at trial.").
42. Am. Dog Owners Ass'n v. Des Moines, 469 N.W.2d 416, 418 (Iowa 1991).
43. *Id*.
44. The constitutionality of one ordinance was moot because it had been repealed by a new ordinance and the constitutionality of the other (new) ordinance was not before the court. Am. Dog Owners Ass'n v. City of Lynn, 533 N.E.2d 642, 647 (Mass. 1989).
45. Am. Dog Owners Ass'n v. City of Lynn, 533 N.E.2d 642, 647 (Mass. 1989).
46. *Id*. at 646 (emphasis in original).
47. *Id*.
48. *See* State v. Anderson, 566 N.E.2d 1224 (Ohio 1991); State v. Ferguson, 566 N.E.2d 1230 (Ohio 1991); State v. Robinson, 541 N.E.2d 1092 (Ohio Ct. App. 1989); City of Lima v. McFadden, No. 1-85-22, 1986 WL 7474 (Ohio Ct. App. June 30, 1986) (unreported opinion); City of Pagedale v. Murphy, 142 S.W.3d 775, 778-9 (Mo. Ct. App. 2004).
49. Holt v. Maumelle, 817 S.W.2d 208, 210 (Ark. 1991); State v. Anderson, 566 N.E.2d 1224, 1230 (Ohio 1991); State v. Robinson, 541 N.E.2d 1092, 1095–97 (Ohio Ct. App. 1989); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004); City of Lima v. McFadden, No. 1-85-22, 1986 WL 7474, at *1–2 (Ohio Ct. App. June 30, 1986) (unreported opinion).
50. Am. Dog Owners Ass'n v. Des Moines, 469 N.W.2d 416, 418 (Iowa 1991).
51. Am. Dog Owners Ass'n v. City of Lynn, 533 N.E.2d 642, 646 (Mass. 1989) (advisory opinion) (emphasis in orginal).
52. *Id*.
53. *See id*; Holder v. City of Hollywood, 81-13968-CR, at *2 (17th Cir. Broward Cty., Fla, Nov. 9, 1982) (unpublished opinion) (copy of opinion on file with the UNC School of Government library).
54. *See* Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533, 1535 (S.D. Fla. 1989); Vanater v. Village of South Point, 717 F.Supp. 1236, 1244 (S.D. Ohio 1989); Holt v. Maumelle, 817 S.W.2d 208, 210 (Ark. 1991); Greenwood v. North Salt Lake, 817 P.2d 816, 820 (Utah 1991); Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1047 (Wash. 1989); Hearn v. Overland Park, 772 P.2d 758, 760 (Kan. 1989); Dog Fed'n of Wis. v. City of S. Milwaukee, 504 N.W.2d 375, 379 (Wis. Ct. App. 1993); Garcia v. Village of Tijeras, 767 P.2d 355, 358 (N.M. Ct. App. 1988); City of Akron v. Tipton, 559 N.E.2d 1385, 1388 (Ohio Mun. 1990).
55. Am. Dog Owners Ass'n v. City of Lynn, 533 N.E.2d 642, 646 (Mass. 1989).
56. *Id*.
57. *See* Holt v. Maumelle, 817 S.W.2d 208 (Ark. 1991).
58. Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533 (S.D. Fla. 1989); Holt v. Maumelle, 817 S.W.2d 208 (Ark. 1991); Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644 (Colo. 1991); State v. Peters, 534 So.2d 760 (Fl. Ct. App. 1988).
59. Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533 (S.D. Fla. 1989); State v. Peters, 534 So.2d 760 (Fl. Ct. App. 1988).
60. The rules were not contained in the ordinance itself, but were instead adopted by the police department. Hearn v. Overland Park, 772 P.2d 758, 762 (Kan. 1989). These rules specified that the term
"predominantly" . . . shall mean that the officer has knowledge through identification procedures, admission by owner, keeper, or harborer, or otherwise that the animal is more than fifty percent pit bull. Predominantly shall further mean that the animal exhibits the physical characteristics of a pit bull more than that of any other breed of dog. If an officer cannot determine the predominant breed of the animal in question as pit bull, the animal shall not be subject to the [the ordinance] unless the animal is later positively identified as a pit bull by a licensed veterinarian.
Id. at 762–63.
61. Vanater v. Village of South Point, 717 F.Supp. 1236, 1244 (S.D. Ohio 1989).
62. Greenwood v. City of North Salt Lake, 817 P.2d 816, 818, 820 (Utah 1991).
63. *Id*.
64. Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533, 1540 (S.D. Fla. 1989) ("This administrative procedure reduces the level of scrutiny with which this Court will review the challenged Ordinance since such a procedure lessens the amount of precision in definition required by [the Constitution].").
65. *See* N.C. GEN STAT. §153A-123(c) (providing that a county ordinance may subject offenders to civil penalties); N.C. GEN STAT. § 160A-175(c) (providing that a city ordinance may subject offenders to civil penalties).
66. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498–99 (1982) (citations omitted).

67. Barringer v. Caldwell County Bd. of Educ., 123 N.C. App. 373, 378, 473 S.E.2d 435, 439 (1996) (emphasis added) (quoting Jordan v. De George, 341 U.S. 223, 231-32 (1951)).
68. 728 F.Supp. 1533, 1539 (S.D. Fla. 1989) ("The Constitution tolerates a greater degree of vagueness in enactments with civil rather than criminal penalties") (citing High Ol' Times v. Busbee, 673 F.2d 1225, 1229 (11th Cir. 1982); Winters v. New York, 333 U.S. 507, 515 (1948)).
69. *See* Vanater v. Village of South Point, 717 F.Supp. 1236, 1242 (S.D. Ohio 1989) ("As this [pit bull] Ordinance does not affect any fundamental rights such as voting or the freedom of speech and does not make a 'suspect classification' such as a law based on race or nationality, the test to determine its constitutionality is whether it has a rational relationship to a legitimate state interest."); City of Toledo v. Tellings, No. CRB-02-15267, at * 9 (Toledo Mun. Ct., Lucas Co., Ohio July 8, 2004) (copy of opinion on file with the UNC School of Government library) ("The right to own any animal is not a fundamental constitutional right but is a property right.").
70. Frontiero v. Richardson, 411 U.S. 677, 683 (1973).
71. Rhyne v. K-Mart Corp. 358 N.C. 160, 181, 594 S.E.2d 1, 15 (N.C. 2004) (quoting Nordlinger v. Hahn, 505 U.S. 1, 11 (1992)).
72. *Id*. at 180, 594 S.E.2d at 15 (emphasis in original) (quoting Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 11, 269 S.E.2d 142, 149 (1980)).
73. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 230, 134 S.E.2d 364, 369 (N.C. 1964).
74. Starkey v. Township of Chester, 628 F.Supp. 196, 197 (E.D. Pa. 1986); Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644, 652 (Colo. 1991); Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1049 (Wash. 1989); Garcia v. Village of Tijeras, 767 P.2d 355, 361 (N.M. Ct. App. 1988); Singer v. City of Cincinnati, 566 N.E.2d 190, 192 (Ohio Ct. App. 1990).
75. Hearn v. Overland Park, 772 P.2d 758, 765 (Kan. 1989).
76. Vanater v. Village of South Point, 717 F.Supp. 1236, 1240 (S.D. Ohio 1989).
77. *See id* at 1243 (noting that a [c]ourt should not substitute its judgment for the reasoned findings and decision of [a city or county legislative body]").
78. Garcia v. Village of Tijeras, 767 P.2d 355, 361 (N.M. Ct. App. 1988). *See* Vanater, 717 F.Supp. at 1245 (explaining that the equal protection clause "does not guarantee that all dog owners will be treated alike, but that all dog owners of defined Pit Bulls will be treated alike"); Starkey v. Township of Chester, 628 F.Supp. 196, 197 (E.D. Pa. 1986) (holding that an ordinance "does not have to regulate every dangerous animal at the same time in the same way to pass constitutional muster"); Greenwood v. City of North Salt Lake, 817 P.2d 816, 821 (Utah 1991) ("The fact that other breeds which might also threaten public safety are not included in the ordinance does not make the law violative of equal protection."); State v. Peters, 534 So.2d 760, 764 (holding that the local government "had no obligation to regulate *all* dogs when it regulated *some* dogs").
79. Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644, 650 (Colo. 1991); Hearn v. Overland Park, 772 P.2d 758, 764 (Kan. 1989); State v. Robinson, 541 N.E.2d 1092, 1097 (Ohio Ct. App. 1989); Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1048 (Wash. 1989); City of Toledo v. Tellings, No. CRB-02-15267, at * 9 (Toledo Mun. Ct., Lucas Co., Ohio July 8, 2004) (copy of opinion on file with the UNC School of Government library).
80. Caswell County v. Hanks, 120 N.C. App. 489, 492, 462 S.E.2d 841, 843 (1995) (noting that "the overbreadth doctrine is . . . designed only to strike down statutes attempting to regulate activity that the State is constitutionally forbidden to regulate").
81. Greenwood v. City of North Salt Lake, 817 P.2d 816, 821 (Utah 1991) ("Although it may be true that not all pit bulls are dangerous, the evidence supports the conclusion that, as a group, pit bulls are dangerous animals."); Am. Dog Owners Ass'n v. Yakima, 777 P.2d 1046, 1048 (Wash. 1989) ("The Yakima ordinance is constitutional even though some inoffensive pit bulls might be banned."); Garcia v. Village of Tijeras, 767 P.2d 355, 363 (N.M. Ct. App. 1988) ("That a harmless or inoffensive American Pit Bull Terrier may be banned in order to abate the threat to safety of the Village presented by other American Pit Bull Terriers does not render the ordinance invalid.").
82. *See* Garcia, 767 P.2d at 361 (noting that there was "substantial evidence of record that American Pit Bull Terriers presented a special threat to the safety of the residents of the Village over and above that presented by other breeds of dog); Singer v. City of Cincinnati, 566 N.E.2d 190, 192 (Ohio Ct. App. 1990) (concluding that an ordinance banning pit bulls entirely had a rational basis because the city's prior, less drastic measures to protect its citizens from pit bull attacks had proved ineffective).
83. *See* Vanater v. Village of South Point, 717 F.Supp. 1236, 1239 (S.D. Ohio 1989) (upholding ordinance banning all pit bull dogs despite fact that "[n]o pit bull attacks were ever reported in the Village").
84. *See* Holder v. City of Hollywood, 81-13968-CR, at *2 (17th Cir. Broward Cty., Fla, Nov. 9, 1982) (unpublished opinion) (copy of opinion on file with the UNC School of Government library).

85. *See, e.g.,* Vanater, 717 F.Supp. at 1241–42; *Garcia*, 767 P.2d at 363.
86. *See* Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644 (Colo. 1991).
87. Ohio and Wisconsin courts have upheld ordinances that deemed pit bull dogs *per se* dangerous dogs or vicious dogs under the state's dangerous dog or vicious dog statute. *See* State v. Anderson, 566 N.E.2d 1224 (Ohio 1991) (upholding a statute providing that ownership of a pit bull dog is *prima facie* evidence of ownership of a vicious dog requiring confinement and proof of liability insurance); State v. Ferguson, 566 N.E.2d 1230 (Ohio 1991) (same); State v. Robinson, 541 N.E.2d 1092 (Ohio Ct. App. 1989) (same); Dog Federation of Wisconsin v. City of S. Milwaukee, 504 N.W.2d 375 (Wis. Ct. App. 1993) (upholding an ordinance that banned new pit bulls and classified already registered pit bulls as dangerous dogs subject to registration, collar, and liability insurance requirements).
88. N.C. GEN. STAT. § 67-4.1 (2003) provides the following procedures for determining whether a dog is potentially dangerous:
The person or Board making the determination that a dog is a "potentially dangerous dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard *de novo* before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.
89. 30 N.C. App. 247, 226 S.E.2d 678 (1976).
90. The statute also provided that an owner with an existing permit issued by the Wildlife Resources Commission could immediately surrender the bear to the Wildlife Resources Commission and receive compensation in the amount actually paid for the bear not to exceed one hundred dollars per bear. *Id.* at 249, 680.
91. *Id.*
92. Colorado Dog Fanciers v. City and County of Denver, 820 P.2d 644, 653 (Colo. 1991) (citing Cannady v. N. Carolina Wildlife Res. Comm., 30 N.C. App. 247, 249, 226 S.E.2d 678, 680 (1976)). The requirements included annual license renewal, documentation that the dog had been spayed or neutered and vaccinated against rabies, confinement or secure leash and muzzle, and $100,000 in liability insurance *See* Am. Dog Owners Ass'n v. Dade County, 728 F.Supp. 1533, 1535 (S.D. Fla. 1989). Similarly, restrictions that are oppressive but that stop short of destroying a dog owner's property probably do not entitle dog owners to due process protections. In *State v. Peters*, 534 So.2d 760, 765 (Fl. Ct. App. 1988), a Florida Court of Appeals held that a municipal ordinance requiring pit bull owners to carry insurance, post a surety bond, or furnish other evidence of financial responsibility in the amount of $300,000 was constitutional even though the evidence demonstrated that no insurance company would write a policy covering the harms that might be wrought by pit bulls. The court reasoned that imposing an insurance requirement that prevented most pit bull owners from keeping their dogs was well within the state's power because "it is likely that a governmental authority could ban pit bulls outright without offending the due process rights of the dog owner." *Id.*
93. Vanater v. Village of South Point, 717 F.Supp. 1236, 1243–44 (S.D. Ohio 1989) (citing Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)).
94. *Id*. (citing Exxon v. Governor of Maryland, 437 U.S. 117 (1978)).
95. State v. Clifton, 152 N.C. 800, 800, 67 S.E. 751, 752 (N.C. 1910) (upholding an ordinance that authorized police officers to kill dogs found at large and unmuzzled without notifying the dog's owner); Mowery v. Salisbury, 82 N.C. 175, at *2 (N.C. 1880) (holding that an ordinance providing for the summary destruction of dogs roaming at large without a required badge was a valid exercise of the town's police power even though dog owners did not receive notice or a hearing prior to their dogs' destruction). Several states appear to agree with these opinions. *See generally* R.D. Hursh, *Validity of Statute or Ordinance Providing for Destruction of Dogs*, 56 A.L.R.2d 1025 (1957) (updated 2004); *see also* Sentell v. New Orleans & Carrollton R.R., 166 U.S. 698, 704 (1897) ("Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the State, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens.").
96. See generally Hursh, supra note 95; see also Van Patten v. City of Binghamton, 137 F.Supp. 2d 98 (N.D. N.Y. 2001) (holding that due process requires the government to permit a dog owner to appeal a hearing officer's decision to euthanize the owner's dog under a dangerous dog law); Rose v. Salem, 150 P. 276, 277 (Or. 1915) (holding that an ordinance providing for the summary destruction of dogs found running at large without a judicial hearing and without actual or constructive notice to the owner was void); People ex rel. Shand v Tighe, 30 NYS 368, 370 (1894) (holding that an ordinance providing that the mayor or police justice could order a dog owner to kill his or her dog immediately

when the dog attacked a person not on the owner's premises was unconstitutional because it did not provide the owner an opportunity to be heard).
97. Garcia v. Village of Tijeras, 767 P.2d 355, 363 (N.M. Ct. App. 1988).
98. See supra, note 6.
99. See supra, note 87.
100. See N.C. GEN. STAT. §§ 67-4.5, 153A-131; 160A-187 (2003); Town of Atlantic Beach v. Young, 307 N.C. 422, 428, 298 S.E.2d 686, 691 (N.C. 1983) (upholding municipal ordinance that banned ponies and goats within the town limits as a valid exercise of the police power). Outside of North Carolina, at least five courts have upheld ordinances that entirely banned pit bulls as valid exercises of governmental police power. Vanater v. Village of South Point, 717 F.Supp. 1236, 1241–42 (S.D. Ohio 1989); Holt v. Maumelle, 817 S.W.2d 208, 210–211 (Ark. 1991); City of Pagedale v. Murphy, 142 S.W.3d 775, 779 (Mo. Ct. App. 2004); Singer v. City of Cincinnati, 566 N.E.2d 190, 192 (Ohio Ct. App. 1990); Garcia v. Village of Tijeras, 767 P.2d 355, 356 (N.M. Ct. App. 1988); cf State v. Peters, 534 So.2d 760, 765 (Fl. Ct. App. 1988) (holding than an ordinance's arguably oppressive insurance requirements for pit bull ownership were well within the city's police power because "it is likely that a governmental authority could ban pit bulls outright without offending the due process rights of the dog owner").