

**TESTIMONY FOR NYCHA CHAIR JOHN B. RHEA
NYCHA'S PET POLICY
CITY COUNCIL SUB-COMMITTEE ON PUBLIC HOUSING
THURSDAY, DECEMBER 17, 2009, 10:00 A.M.
CITY COUNCIL HEARING CHAMBER – 250 Broadway, 14th Floor**

GOOD MORNING CHAIRPERSON MENDEZ AND MEMBERS OF THE SUB-COMMITTEE, I AM GLORIA FINKELMAN, NYCHA'S DEPUTY GENERAL MANAGER FOR OPERATIONS. JOINING ME THIS MORNING IS ALAN PELIKOW, AN ATTORNEY WITH OUR LAW DEPARTMENT. WE ARE PLEASED TO BE HERE TO PROVIDE THE SUB-COMMITTEE WITH A HISTORY AND OVERVIEW OF NYCHA'S PET POLICY.

OVERVIEW OF NYCHA DEVELOPMENTS

THE NEW YORK CITY HOUSING AUTHORITY CURRENTLY HAS 336 DEVELOPMENTS WITH OVER 403,000 RESIDENTS THROUGHOUT THE FIVE BOROUGHES. AS OF NOVEMBER 30TH, THERE WERE 5,214 DOGS REGISTERED WITH NYCHA.

HISTORY OF NYCHA'S PET POLICY

BEFORE I GO INTO DETAIL ABOUT THE HOUSING AUTHORITY'S CURRENT PET POLICY I WOULD LIKE TO PROVIDE SOME BACKGROUND AND SHOW HOW NYCHA'S PET POLICY EVOLVED.

HISTORICALLY, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) ALLOWED PUBLIC HOUSING AUTHORITIES TO BAN PET OWNERSHIP IN ITS RESIDENTIAL BUILDINGS. ACCORDINGLY, NEW YORK CITY HOUSING AUTHORITY RESIDENTS WERE PROHIBITED FROM OWNING DOGS BECAUSE OF CONCERNS ABOUT CLEANLINESS, NOISE, THE DANGER OF DOG BITES AND DENSITY PROBLEMS. HOWEVER "SERVICE ANIMALS," DEFINED AS ANIMALS THAT ASSISTS, SUPPORTS OR PROVIDES SERVICE TO A PERSON WITH DISABILITIES, WERE ALWAYS PERMITTED.

IN 1986 HUD REQUIRED THAT RESIDENTS LIVING IN DEVELOPMENTS DESIGNATED EXCLUSIVELY FOR THE ELDERLY, BE PERMITTED TO HAVE COMMON HOUSEHOLD PETS.

SOME YEARS LATER, THE US CONGRESS PASSED THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT (QHWRA), ALLOWING PUBLIC HOUSING RESIDENTS NATIONWIDE TO OWN COMMON HOUSEHOLD PETS. PURSUANT TO THIS CONGRESSIONAL MANDATE, HUD PROMULGATED REGULATIONS TO IMPLEMENT THE LAW IN YEAR 2000 AND NYCHA FOLLOWED ACCORDINGLY IN YEAR 2002 BY IMPLEMENTING ITS OWN PROCEDURES. THE NYCHA PROCEDURES ALLOWED THE RESIDENTS OF ANY HOUSEHOLD TO HAVE EITHER ONE DOG OR ONE CAT. RESIDENTS WERE REQUIRED TO REGISTER THEIR DOG OR CAT AND MOST RESIDENTS WERE REQUIRED TO PAY A ONE-TIME NON-REFUNDABLE PET REGISTRATION FEE OF \$25.

IN ORDER TO HELP ENSURE THE SAFETY AND COMFORT OF ITS RESIDENTS, NYCHA PROCEDURE IMPOSED OTHER REQUIREMENTS, SOME DERIVED FROM LOCAL LAW.

SOME OF THE PET PROCEDURE REQUIREMENTS ARE AS FOLLOWS:

- DOGS MUST BE PROPERLY LICENSED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND WEAR THEIR LICENSES IN PUBLIC.
- DOGS AND CATS MUST BE VACCINATED AGAINST RABIES.
- DOGS AND CATS MUST BE SPAYED OR NEUTERED.
- PET OWNERS ARE REQUIRED TO PREVENT THEIR PETS FROM BECOMING NUISANCES, CREATING EXCESSIVE NOISE OR CREATING AN UNSAFE OR UNSANITARY CONDITION,
- PET OWNERS MUST CLEAN UP AFTER THEIR PET AND PROPERLY DISPOSE OF PET WASTE, AND
- DOGS MUST BE KEPT ON A LEASH NO LONGER THAN SIX FEET LONG WHEN IN PUBLIC.

ANIMALS DEEMED VICIOUS OR THREATENING ARE FORBIDDEN.

BEFORE NYCHA ISSUED ITS PET PROCEDURES IN YEAR 2002, NYCHA CONSULTED WITH TENANT GROUPS AND PET ADVOCACY GROUPS, INCLUDING THE CENTER FOR ANIMAL CARE AND CONTROL (CACC). WE MET WITH THESE ADVOCATES IN ORDER TO FORMULATE REASONABLE REGULATIONS THAT WOULD ALLOW SENSIBLE PET OWNERSHIP WHILE RECOGNIZING THE PROBLEMS THAT ARISE FROM MAINTAINING A PET IN A HIGH-RISE, HIGH-DENSITY APARTMENT BUILDING. IN AN EFFORT TO ADDRESS THE DENSITY ISSUE - WHERE BOTH

RESIDENTS AND DOGS COMPETE FOR LIMITED PUBLIC SPACE IN HALLWAYS, LOBBIES, STAIRWAYS AND ELEVATORS - NYCHA ADOPTED CACC'S STRONG RECOMMENDATION AND IMPOSED A DOG WEIGHT LIMIT OF NOT MORE THAN 40 POUNDS WHEN FULLY GROWN.

EVEN THOUGH PET OWNERSHIP WAS GENERALLY PROHIBITED PRIOR TO YEAR 2002, NYCHA DID NOT WANT TO FORCE ITS RESIDENTS WHO PREVIOUSLY ACQUIRED DOGS OR CATS TO GIVE THEM UP. AS A RESULT, NYCHA INSTITUTED A "GRANDPARENT CLAUSE" WHICH ALLOWED RESIDENTS TO KEEP THEIR PETS IF PRIOR OWNERSHIP COULD BE VERIFIED, EVEN IF THE PERSON OWNED MORE THAN ONE DOG OR ONE CAT AND EVEN IF A DOG EXCEEDED THE 40 POUND WEIGHT LIMIT.

INCIDENTS OF ATTACKS BY DOGS

BEFORE GOING ANY FURTHER, I WOULD LIKE TO PROVIDE A FEW EXAMPLES OF THE TYPES OF INCIDENTS THAT PRECIPITATED THIS POLICY CHANGE:

FIRST, ATTACKS AGAINST RESIDENTS:

- ON JULY 8, 2009, A 17-YEAR-OLD OCCUPANT OF LA GUARDIA HOUSES ON MANHATTAN'S LOWER EAST SIDE, WAS PUSHING HER BABY BROTHER IN A STROLLER WHEN ANOTHER RESIDENT'S UNREGISTERED, VICIOUS PIT BULL APPROACHED THE STROLLER. THE DOG BIT THE 17 YEAR OLD ON THE ARM WHEN SHE TRIED TO PROTECT THE BABY. THE DOG'S OWNER WAS SUCCESSFUL IN PULLING THE DOG OFF THE VICTIM'S ARM. THE SAME DOG ALSO ATTEMPTED TO ATTACK THE SOCIAL WORKER WHO WAS ASSIGNED TO FOLLOW UP ON THIS CASE. THE RESIDENT REFUSES TO GIVE UP THE DOG, CLAIMING IT IS A 'SERVICE ANIMAL.' A HEARING IS IN PROGRESS.
- ON JULY 21, 2008 AT HARLEM RIVER HOUSES A RESIDENT'S UNREGISTERED DOG BIT ANOTHER RESIDENT AND HER GRANDDAUGHTER (AGE 6) AS THEY WERE WALKING PAST THE DAYCARE CENTER NEAR AUTHORITY GROUNDS. THE VICTIMS WERE BITTEN ON THEIR ARMS AND ONE VICTIM WAS BITTEN ON HER EAR. BOTH RECEIVED MEDICAL CARE AT HARLEM HOSPITAL. THE RESIDENT DEFAULTED AT HER HEARING, AND A REOPENING OF THE CASE WAS GRANTED. THE TENANT OF RECORD CLAIMED AT THE SUBSEQUENT INTERVIEW THAT THE DOG DIED IN DECEMBER 2008.

- IN DECEMBER 2008, A 60-POUND PIT BULL REGISTERED TO A RESIDENT OF EASTCHESTER GARDENS IN THE BRONX ATTACKED ANOTHER RESIDENT WHILE BEING WALKED THROUGH THE BUILDING'S LOBBY. THE VICTIM'S FACE WAS SEVERELY DISFIGURED BY PUNCTURE WOUNDS AND LACERATIONS; SHE LOST THE LATERAL PORTION OF HER RIGHT LOWER LIP. THE ADMINISTRATIVE CASE IS PENDING.

AS MENTIONED, THERE HAVE ALSO BEEN ATTACKS AGAINST EMPLOYEES. FOR EXAMPLE:

- ON JUNE 26, 2008 BROOKLYN MANAGEMENT DEPUTY DIRECTOR KEVIN NORMAN WAS BITTEN BY A ROTTWEILER WHILE PERFORMING A HUD-REQUIRED INSPECTION OF APARTMENTS AT THE GOWANUS HOUSES. HE WAS ACCOMPANIED BY A HUD INSPECTOR, BOROUGH ADMINISTRATOR, THE DEVELOPMENT'S MANAGER AND SUPERINTENDENT. THE DOG ESCAPED FROM A ROOM WHERE IT HAD BEEN SECURED, CHARGING MR. NORMAN WHO WAS WAITING IN THE HALL AND BITING HIM TWICE IN THE LEG. MR. NORMAN WAS TREATED AT LONG ISLAND COLLEGE HOSPITAL FOR MINOR ABRASION, GIVEN A TETANUS SHOT AND RELEASED. THE CASE HAS BEEN POSTPONED FOR NUMEROUS REASONS AND IS BEING RESCHEDULED FOR A DATE IN JANUARY.
- ON JULY 4, 2008, MAINTENANCE WORKER CARLOS RIVERA WAS FIXING A GARBAGE HOPPER DOOR AT TOMPKINS HOUSES IN BROOKLYN JUST OUTSIDE THE TENANT OF RECORD'S APARTMENT. THE TENANT OPENED THE DOOR AND CAME OUT WITH HER UNREGISTERED DOG, A 15-YEAR-OLD ROTTWEILER MIX WEIGHING 82 POUNDS. THE DOG JUMPED UP AND BIT RIVERA ON THE UPPER LEFT ARM. RIVERA WAS TAKEN TO THE HOSPITAL AND EVALUATED. AT A FOLLOW-UP VISIT WITH HIS OWN PHYSICIAN, HE WAS GIVEN SHOTS TO PREVENT RABIES. MR. RIVERA WAS LEFT WITH A 1.5 INCH SCAR AS A RESULT OF THIS ATTACK.

NYCHA'S CURRENT PET POLICY CHANGES

EARLIER THIS YEAR IN RESPONSE TO MANY DOG ATTACKS AND BITING INCIDENTS INVOLVING RESIDENTS AND EMPLOYEES, NYCHA DECIDED TO REVISE ITS LONG-STANDING PET POLICY.

THE POLICY CHANGES BEGAN WHEN NYCHA SENT A LETTER TO ALL RESIDENTS THIS PAST MARCH 2009, INFORMING THEM OF A NEW PET POLICY TO TAKE EFFECT ON MAY 1, 2009.

THE LETTER WAS WRITTEN IN ENGLISH AND AVAILABLE IN FOUR MAJOR LANGUAGES.

THE NEW MAY 1ST PET RULES CONTINUED TO LIMIT PET OWNERSHIP TO EITHER ONE DOG OR ONE CAT, BUT THE NEW POLICY DROPPED THE MAXIMUM WEIGHT LIMIT FOR FULLY GROWN DOGS FROM 40 POUNDS TO 25 POUNDS. NYCHA ALSO INSTITUTED A BREED RESTRICTION TO PROHIBIT A LIST OF 27 DOGS, EITHER FULL OR MIXED BREEDS. THE 27 PROHIBITED BREEDS WERE IDENTIFIED AS DANGEROUS DOGS OR DOGS HAVING DANGEROUS TENDENCIES. IN ANY EVENT, MOST OF THOSE DOGS WOULD EXCEED THE 25 POUND WEIGHT LIMIT.

AS IT DID WITH ITS 2002 "GRANDPARENT CLAUSE" NYCHA DID NOT WANT TO FORCE ITS RESIDENTS WHO ALREADY OWNED DOGS OR CATS TO GIVE THEM UP. AS A RESULT, THE MARCH 2009 LETTER GAVE RESIDENTS OVER ONE AND ONE HALF MONTHS NOTICE OF THE NEW POLICY AND PERMITTED RESIDENTS TO REGISTER DOGS UNDER THE OLD POLICY – DOGS WEIGHING UP TO 40 POUNDS WITH NO BREED RESTRICTION - UNTIL THE MAY 1ST DEADLINE.

SUSPENDING THE NEW POLICY

AFTER THE LETTER WAS RELEASED AND AFTER HEARING RESIDENTS' CONCERNS, NYCHA ONCE AGAIN DECIDED TO REVISE THE POLICY. NYCHA REALIZED THAT BANNING 27 BREEDS OF DOG WAS PROBABLY OVERLY BROAD AND UNWORKABLE. ACCORDINGLY, NYCHA LIMITED THE DOG BREED RESTRICTION TO JUST THREE BREEDS, WHICH BASED BOTH STATISTICALLY AND ON PAST EXPERIENCE, HAVE BEEN REGARDED AS DANGEROUS. THOSE PROHIBITED DOG BREEDS ARE: DOBERMAN PINSCHER, PIT BULL AND ROTTWIELER.

I'D JUST LIKE TO NOTE HERE THAT WE ARE WELL AWARE THAT THESE PARTICULAR BREEDS ARE NOT NECESSARILY INHERENTLY DANGEROUS.

HOWEVER, BECAUSE OF THEIR SHEER SIZE, WEIGHT AND STRENGTH, THESE BREEDS CAN POSE MORE OF A THREAT TO NYCHA RESIDENTS, EMPLOYEES AND VISITORS, THAN OTHER BREEDS.

THIS NEW PET POLICY REVISION WAS POSTED IN MANAGEMENT OFFICES, BUILDING LOBBIES AND STAIR HALLS, AS WELL AS PUBLISHED IN THE JUNE 2009 EDITION OF THE HOUSING AUTHORITY'S NEWSPAPER, *THE NYCHA JOURNAL*, WHICH IS HAND-DELIVERED TO ALL RESIDENTS LIVING IN OUR PUBLIC HOUSING DEVELOPMENTS.

CURRENT PET POLICY

THE NEW PET RULE DEADLINE WHICH SHOULD HAVE TAKEN EFFECT MAY 1, 2009 WAS ALSO SUSPENDED, AFTER HEARING FEEDBACK FROM RESIDENTS AND OTHER INTERESTED PARTIES. ON NOVEMBER 1ST, NYCHA SUSPENDED THE IMPLEMENTATION OF ITS MOST RECENT PET POLICY AND NOTIFIED RESIDENTS BY LETTER OF A NEW EXTENSION UNTIL JANUARY 31, 2010. THIS EXTENSION MEANS THAT NYCHA'S 2002 PET POLICY, OF ALLOWING DOGS THAT WEIGH UP TO FORTY POUNDS, REGARDLESS OF BREED, CAN STILL BE REGISTERED UNTIL JANUARY 31, 2010.

AFTER THE MORATORIUM, THE LATEST PET POLICY, WITH THE THREE PROHIBITED BREEDS AND THE 25- POUND WEIGHT LIMIT, GOES BACK INTO EFFECT.

OTHER PROVISIONS OF THE PET POLICY REMAIN IN EFFECT, SUCH AS PERMITTING SERVICE ANIMALS, AS WELL AS EXEMPTING FROM THE \$25.00 REGISTRATION FEE OWNERS OF SERVICE ANIMALS, RESIDENTS LIVING IN SENIOR CITIZEN DEVELOPMENTS AND RESIDENTS LIVING IN PROJECT BASED SECTION 8 BUILDINGS.

ENFORCING NYCHA'S PET POLICY

RESIDENTS WHO VIOLATE NYCHA'S PET POLICY ARE SUBJECT TO TERMINATION OF TENANCY, REMOVAL OF THEIR PET, OR BOTH.

NYCHA STAFF PERFORM ANNUAL INSPECTIONS OF ALL APARTMENTS, AND ARE ASKED AT THAT TIME TO NOTE THE PRESENCE OF ANY DOGS IN THE APARTMENTS ON WORK ORDER TICKETS. DEVELOPMENT MANAGERS ARE THEN REQUIRED TO FOLLOW UP TO VERIFY THAT THE ANIMAL IN QUESTION IS PROPERLY REGISTERED.

IF THE ANIMAL IS NOT PROPERLY REGISTERED, RESIDENTS RISK TERMINATION OF TENANCY PROCEEDINGS. HOWEVER, A RESIDENT CAN CURE A PET POLICY VIOLATION DUE TO AN UNREGISTERED PET AND REGISTER HIS/HER PET, PROVIDED THAT:

- THE ANIMAL CAN BE REGISTERED IN ACCORDANCE WITH THE PET POLICY CURRENTLY IN EFFECT;
- THE ANIMAL IS NOT OTHERWISE DANGEROUS OR THREATENING; AND
- THE ANIMAL HAS NOT CAUSED INJURY OR DAMAGE TO PERSONS OR PROPERTY.

IF THESE CONDITIONS CANNOT BE MET, A RESIDENT CAN CURE A PET POLICY VIOLATION BY REMOVING THE ANIMAL FROM THE APARTMENT. STAFF WILL REQUIRE THE RESIDENT TO SIGN AN AFFIDAVIT, PROVIDING PROOF OF THE REMOVAL, AND ALLOW NYCHA TO CONDUCT AT LEAST TWO UNANNOUNCED VISITS TO VERIFY THE PET'S ABSENCE.

A TENANT IS SUBJECT TO TERMINATION OF TENANCY FOR INSTANCES INVOLVING THE OWNERSHIP OR MAINTENANCE OF AN ANIMAL IN HER/HER APARTMENT THAT:

- VIOLATE THE NYCHA PET POLICY, OR
- CAUSE INJURY OR DAMAGE TO PERSONS OR PROPERTY.

REPORTING DANGEROUS DOGS

RESIDENTS ARE ENCOURAGED TO MAKE COMPLAINTS OR REPORT ANY DANGEROUS OR ILLEGAL ANIMAL ON NYCHA PROPERTY BY CALLING 3-1-1, THE CITY'S CITIZEN SERVICE CENTER, WHICH IS AVAILABLE 24 HOURS A DAY. IN THE CASE OF IMMEDIATE THREATS INVOLVING DANGEROUS OR ILLEGAL ANIMALS, RESIDENTS ARE ADVISED TO CALL 9-1-1.

CONCLUSION

NYCHA HAS WORKED HARD TO DEVELOP PET OWNERSHIP GUIDELINES THAT TRY TO PROVIDE A SAFE AND SANITARY LIVING ENVIRONMENT FOR OUR RESIDENTS, WHILE AT THE SAME TIME TAKING INTO ACCOUNT RESIDENTS' RIGHTS TO OWN PETS. WE ALSO TAKE STEPS TO ENSURE THAT ACTIONS RELATED TO PET POLICY ENFORCEMENT ARE PERFORMED HUMANELY.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY THIS MORNING. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE. BUT FIRST, I WOULD LIKE TO TURN THE TESTIMONY OVER TO MR. VICTOR GONZALEZ, A LONG-TIME RESIDENT AND RESIDENT ASSOCIATION PRESIDENT OF WISE TOWERS IN MANHATTAN, WHO WILL SPEAK BRIEFLY ABOUT HIS FEELINGS REGARDING NYCHA'S PET POLICY. MR. GONZALEZ...

**TESTIMONY FOR WISE TOWERS
RESIDENT ASSOCIATION PRESIDENT
VICTOR GONZALEZ
NYCHA'S PET POLICY
CITY COUNCIL SUB-COMMITTEE ON PUBLIC HOUSING
THURSDAY, DECEMBER 17, 2009, 10:00 A.M.
CITY COUNCIL HEARING CHAMBER – 250 Broadway, 14th Floor**

GOOD MORNING CHAIRPERSON MENDEZ AND MEMBERS OF THE SUB-COMMITTEE, I AM VICTOR GONAZALEZ, A RESIDENT OF THE NEW YORK CITY HOUSING AUTHORITY'S WISE TOWERS ON MANHATTAN'S UPPER WEST SIDE FOR 37 YEARS. I HAVE ALSO BEEN THE RESIDENT ASSOCIATION PRESIDENT AT THE DEVELOPMENT FOR THE PAST EIGHT YEARS. MY WIFE AND I HAVE RAISED FOUR DAUGHTERS AT WISE. I AM HERE TO TESTIFY IN SUPPORT OF THE HOUSING AUTHORITY'S CURRENT PET POLICY.

THE PET POLICY, AS FAR AS I AM CONCERNED, IS A GOOD POLICY. WE HAVE TO START SOMEWHERE TO

**ELIMINATE THE THREAT THAT DANGEROUS ANIMALS
POSE TO RESIDENT SAFETY.**

**I'M NOT AGAINST ANIMALS; I'M NOT AGAINST DOGS;
BUT THESE ANIMALS NEED TO BE REMOVED SO THEY
CAN'T ATTACK OUR SENIOR CITIZENS AND CHILDREN.
RESIDENTS ARE THREATENED NOT ONLY BY THE DOGS
BUT BY THEIR OWNERS WHO BEHAVE IRRESPONSIBLY.**

**ALL-IN-ALL, I'M REALLY ANNOYED THAT EVERYONE
IS MORE CONCERNED WITH DOGS THAN WITH THE
PEOPLE WHO LIVE AT NYCHA, NOT TO MENTION THE
WORKERS WHO HAVE TO GO INTO APARTMENTS WITH
RESIDENTS WHO WON'T LOCK UP THEIR DOGS.**

**THIS POLICY, WHICH WAS INTENDED TO PROTECT
THE SAFETY AND WELL-BEING OF RESIDENTS, GAVE
RESIDENTS TIME TO REGISTER THEIR DOGS. HOWEVER
SOME CHOSE NOT TO REGISTER THEIR DOGS. SO HOW
IS THIS POLICY UNFAIR?**

I THINK THIS IS A BEGINNING AND IT IS A PROPER BEGINNING. OTHERWISE, WHERE DO WE START TO ENSURE THE SAFETY OF PUBLIC HOUSING RESIDENTS AGAINST THESE LARGE DOGS?

THERE'S A TIME AND PLACE FOR EVERYTHING. THIS IS NOT THE TIME AND PLACE FOR LARGE DOGS IN PUBLIC HOUSING. TO BE FAIR TO THE DOGS, THEY SHOULD BE PLACED SOMEWHERE WHERE THEY CAN GET THE LOVE AND CARE THEY NEED. THIS PROBLEM ISN'T JUST IN PUBLIC HOUSING, IT EXTENDS TO PRIVATE HOUSING TOO.

I HOPE THE COUNCIL AND MEMBERS OF THE PUBLIC WILL JOIN NYCHA AND THE MAJORITY OF NYCHA RESIDENTS IN SUPPORT OF THE SAFETY OF PUBLIC HOUSING RESIDENTS.



THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS®

**Michelle Villagomez, Senior Manager of Advocacy and Campaigns
American Society for the Prevention of Cruelty to Animals**

**Testimony before the New York City Council Subcommittee on Public Housing
on The New York City Housing Authority's Pet Policy**



Statement by Michelle Villagomez, Senior Manager of Advocacy and Campaigns
American Society for the Prevention of Cruelty to Animals
Testimony before the New York City Council Subcommittee on Public Housing

Good morning. I am Michelle Villagomez, Senior Manager of Advocacy and Campaigns for the American Society for the Prevention of Cruelty to Animals (ASPCA). I would like to thank the Subcommittee on Public Housing and Madam Chairwoman Mendez, for the opportunity to testify on The New York City Housing Authority's revised pet policy.

The ASPCA urges NYCHA to adopt a more reasonable pet policy. The current pet policy reduces the permissible weight for full grown dogs from 40 pounds to 25 pounds, and prohibits Pit bull, Rottweiler and Doberman breeds either pure bred or mixed breed. We are concerned that breed-specific bans and weight restrictions result in people unnecessarily giving up their dogs. The ASPCA opposes policies that ban or discriminate against specific breeds. These policies unfairly discriminate against responsible dog guardians based solely on their choice of breed, and do grave damage to the efforts of shelters to place adoptable dogs.

One of the most heart-breaking calls we at the ASPCA must take is from tenants who are forced to relinquish their pet. The pets are well behaved, and some have lived in the home for many years. Tenants must make the anguishing choice of either relinquishing the animal to an already overburdened animal shelter, or risk losing their apartment.

The fundamental flaw of NYCHA's revised pet policy is that in casting such a sweeping net, the policy puts good owners and good dogs in harm's way while providing no assurance that the threat posed by reckless owners and dangerous dogs will be addressed.

NYCHA currently has rules requiring that pet owners spay/neuter cats and dogs over three months of age; keep rabies vaccinations and dog licenses current. Owners are also required to clean up and properly dispose of animal waste, leash or otherwise properly contain their pets, and generally ensure that their pets cannot "annoy or harm" other persons or animals. In addition, the rules make clear that pet owners are responsible for any property damage or bodily injury caused by their animals.

Violation of any of these rules is potentially grounds for tenancy termination.

In the wake of this policy, the ASPCA has engaged in a public information campaign making NYCHA residents aware of the new policy, registration deadlines and extensions, as well as made available a memo that outlines the rights of tenants who have dogs. Registration forms and instructions are available on our Mobile Spay Neuter Clinics, hospital, adoptions center, and on our website. In 2008 our clinics provided 3,439 free or lost cost surgeries at over 200 NYCHA developments; its presence in NYCHA offers a great access point to reach residents.

We are in discussions with NYCHA on how to improve their pet policy, but the issue has not yet been resolved. We are recommending that NYCHA return to their previous breed neutral pet policy which allowed for dogs weighing up to 40 pounds. We also recommend that NYCHA institute additional prohibitions on other practices inconsistent with the proper treatment of dogs. For example, it may be appropriate to ban the tethering of dogs, metal studded collars/halters, heavy chain leashes, and attaching weights to dogs. Among the policies we recommended in order to facilitate compliance with

NYCHA rules were: granting total amnesty to all dogs currently living in NYCHA housing provided they are in compliance with all rules other than those pertaining to breed and weight and permitting registration of these dogs; widely distributing dog license applications to residents; placing multiple “pooper scooper” bag dispensers at all NYCHA housing properties (to address sanitation concerns); and creating a working group comprised of community stake holders (residents with dogs, behaviorists, NYCHA representatives, shelters, etc.) to recommend reasonable and enforceable policies which can then be implemented as set out by federal guidelines including broad public participation in policy formulation.

The ASPCA will continue to work with NYCHA in hopes of creating a humane community.

Thank you.



**Statement by Debora M. Bresch, Esq., Senior Director, Government Relations
American Society for the Prevention of Cruelty to Animals**

Testimony before the New York City Council Subcommittee on Public Housing

Good morning. My name is Debora Bresch, and I am an attorney and Senior Director of Government Relations for the American Society for the Prevention of Cruelty to Animals (ASPCA). On behalf of our New York City membership – with whom we share a desire for fewer shelter animal deaths and more housing that allows people to live peaceably with their animal companions – I wish to thank Chairwoman Mendez and the Subcommittee on Public Housing for this opportunity to share the ASPCA's significant concerns with the New York City Housing Authority's Revised Pet Policy. Because of time constraints, my colleagues and I have divvied up the presentation of these concerns and our recommendations for future action. Specifically, my testimony will review: (1) the fatal procedural infirmities from which the Revised Pet Policy suffers – both in initial promulgation and subsequent execution; (2) the Revised Pet Policy's inconsistency – particularly, the Policy's breed-specific prohibitions - with New York State statutory and judge-made law; and (3) the failure of breed-specific policies in general to achieve the objective of creating a safer community.

Background

On March 30, 2009, the New York City Housing Authority (NYCHA) issued a Revised Pet Policy ("Revised Pet Policy"), effective May 1, 2009, reducing the permissible adult dog weight from 40 lbs. to no more than 25 lbs. and prohibiting pit bulls, Rottweilers, and Doberman Pinschers, purebred or mixed breed. NYCHA management did not involve residents in the development of the Revised Policy and issued it only in one language – English – with an expectation that NYCHA's many Spanish and Chinese residents would avail themselves of translators. Also, NYCHA's newsletter *Journal* announced the Revised Policy on the 11th page of the April issue, and it has also been reported that mail notification did not occur in every development.

Promulgation of Revised Pet Policy Did Not Comport with Federal Public Housing Law

In meetings and press statements regarding the Revised Pet Policy, NYCHA management has emphasized its interest in being responsive to resident concerns.¹ However, NYCHA drafted and implemented the Revised Pet Policy without broadly soliciting resident input as required by federal law. Specifically, under HUD rules, in any effort to significantly modify the Annual Plan – including the NYCHA pet policy – NYCHA is required to engage in "reasonable outreach activities to encourage broad...participation" by NYCHA residents as well as hold both a public hearing and also a public meeting of NYCHA's board of directors.²

Objectively, the Revised Pet Policy – which reduces the permissible dog weight by 15 lbs., or almost 40 percent, and institutes an entirely new and extremely expansive breed-specific prohibition, potentially

¹ "Big Dogs Get Fewer Spots in the City's Public Housing," *New York Times*, 2 May 2009:

"Howard Marder, a spokesman for the Housing Authority, said in a statement that the policy was modified "to address the concerns repeatedly raised by our residents and resident leadership...."

² 24 CFR 903.17.

affecting an unlimited pool of dogs and dog owners – constitutes a significant modification to the 2009 Annual Plan containing the prior pet policy, thus triggering the HUD-mandated resident participation requirement. And yet NYCHA management instituted the Revised Pet Policy without widely consulting residents or even making an express effort to advise non-English-speaking residents of the Policy's existence, instead relying on the judgment of a single body of tenant representatives unsupportive of dog ownership in NYCHA housing. Given the significant segment of dog-owning NYCHA residents (i.e., there are almost 180,000 apartments in NYCHA's 338 developments, and as you will hear from my colleague, the ASPCA each year spays and neuters thousands of canine companions belonging to NYCHA residents), as well as other tenant organizations apparently seeking a place at the table, NYCHA simply cannot be said to have satisfied its procedural obligation under federal law in the development of the Revised Pet Policy.

Revised Pet Policy Requires Arbitrary Veterinary Breed and Weight Assessments

The operation of the Revised Pet Policy is also procedurally unsound, its assignment of the responsibility for breed and weight certification to veterinarians – the cornerstone of the Policy – both arbitrary and unworkable.

According to the Revised Policy, a NYCHA resident registering a dog is required to submit a "Veterinarian Certification" form in which a veterinarian must "certify that the dog...is not a prohibited breed." An ASPCA behaviorist will speak to the scientific problems associated with visual identification of breed, but as a general matter, veterinarians are simply not dog breed identification experts by virtue of their veterinary training. Further, the U.S. Centers for Disease Control has noted the subjectivity of dog breed identification generally, stating that "even experts may disagree on the particular breed of dog," while the American Veterinary Medical Association (AVMA) has commented on the complexity of mixed breed identification.³ The likelihood of misidentification is further compounded where the subject dog is young and may or may not subsequently develop the characteristics of a prohibited breed. That the Revised Pet Policy would require knowledge of two prohibited breeds plus the "catch-all" category of "pit bull" – as well as any possible combination thereof – would make the task of identification especially daunting.

Weight assessments are similarly afflicted. A dog that is of acceptable weight upon entry into NYCHA housing may tip the scales with advancing years, or may simply weigh more as a function of having transitioned into adulthood. It is often impossible to know with sufficient certainty whether a dog will maintain a weight that comports with NYCHA policy.

Certainly, it is not difficult to imagine veterinarians simply declining to provide requested certifications out of concern for their own potential liability due to misidentification. As a result, even dogs not on the Revised Pet Policy's prohibited list could ultimately be banned from NYCHA Public Housing

Revised Pet Policy's Breed Bans Are At Best Inconsistent with New York State Statutory and Case Law and Will Not Improve Safety in NYCHA Housing

The New York State legislature has manifestly rejected the breed-specific regulation of dogs, enacting a breed-neutral dangerous dog law and directing that "no [municipal program for the control of

³ Sacks, J., Sinclair, L., Gilchrist, J., Golab, G., Lockwood, R., 2000. Breeds of dogs involved in fatal human attacks in the United States Between 1979 and 1998. *Journal of the American Veterinary Medical Association* 217, 836-840; American Veterinary Medical Association (AVMA) Task Force on Canine Aggression and Human-Canine Interactions, 2001. A community approach to dog bite prevention. *Journal of the American Veterinary Medical Association* 218, 1732-1746.

dangerous dogs] shall regulate dogs in a manner that is specific as to breed.”⁴ NYCHA disputes that it is an agent of New York City and thus subject to this state law. We will not decide that here. However, undisputed is that NYCHA is organized under the Municipal Housing Authorities Law, is overseen by mayoral appointees, and as a “corporate governmental agency,” exercises a “governmental function.”⁵ Thus, while the ASPCA believes NYCHA is a City agent and as such, subject to the state prohibition on breed-specific municipal dangerous dog programs, NYCHA, as a governmental agency, should at minimum promulgate policies consistent with the spirit of this state law, which is to ensure that government efforts to address dangerous dogs remain breed-neutral.

In this vein, New York courts have also expressly refused to recognize that certain dog breeds are inherently more dangerous. Specifically, they have held that judicial notice – which may be taken only as to matters “of common and general knowledge, well established and authoritatively settled, not doubtful or uncertain” – may not be taken on the subject of the allegedly vicious nature of a dog breed as a whole. Rather, an inquiry must be made into the specific dog at issue.⁶

This breed-neutral approach to the dangerous dog question by both the New York State legislature and the New York courts reflects the failure of breed-specific policies in other jurisdictions where those seeking to exploit aggression in dogs have simply turned to other unregulated breeds.⁷ For example, in Council Bluffs, Iowa, following enactment of a pit bull ban in 2005, Boxer and Labrador Retriever bites increased sharply, while total dog bites spiked.⁸ Also, communities that regulate dogs based on breed find their resources quickly depleted, reducing a community’s ability to ensure compliance with other important and potentially effective animal control policies (e.g., leash laws, anti-chaining laws, animal fighting/cruelty laws), while dog bites go undiminished.

By contrast, a concerted effort by New York City to enforce its leash law against all dog owners and dogs in violation of the law regardless of breed has contributed to a relatively steady citywide decrease in the dog bite rate between 2001 (5,300 bites) and 2007 (3,611 bites).

Every day, we hear more about the importance of companion animals to humans, some of the latest research showing that people who walk dogs are more consistent about regular exercise and are healthier – able, for example, to forfeit their canes and walkers.⁹

In conclusion, the ASPCA sincerely hopes to work with NYCHA to promulgate an effective, humane pet policy. Thank you for your time.

⁴ 7 NY CLS Agr & M § 107(5).

⁵ NY CLS Public Housing Law § 3(2); *Bass v. New York*, 38 A.D.2d 407, 411 (N.Y. App. Div. 2nd Dep’t 1972).

⁶ *Carter v. Metro N. Assocs.*, 255 A.D.2d 251 (N.Y. App. Div. 1st Dep’t 1998).

⁷ Sacks et al., 2000.

⁸ Council Bluffs, IA, Reported Bite Statistics, 2003-06.

⁹ Parker-Pope, Tara, “The Best Walking Partner: Man vs. Dog.” *New York Times* 14 Dec. 2009 <http://well.blogs.nytimes.com/2009/12/14/the-best-walking-partner-man-vs-dog/>.



THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS®

**Dr. Katherine Miller, Assistant Science Advisor
American Society for the Prevention of Cruelty to Animals**

**Testimony before the New York City Council Subcommittee on Public Housing
On the New York City Housing Authority's Pet Policy**



Statement by Dr. Katherine Miller, Assistant Science Advisor
American Society for the Prevention of Cruelty to Animals
Testimony before the New York City Council Subcommittee on Public Housing

I am Dr. Katherine Miller, the Assistant Science Advisor at the ASPCA. I have a Ph.D. in Animal Behavior, am a Certified Applied Animal Behaviorist and a Certified Professional Dog Trainer. I've worked at the ASPCA for the past five years, and I have my own private consulting practice counseling people whose pets are displaying behavior problems including aggression. I would like to thank the Subcommittee on Public Housing and Madam Chairwoman Mendez, for the opportunity to testify.

Regarding today's discussion, I would like to make three points:

1) First, claims that a dog's breed or breed mix can be validly determined by visually inspecting the dog's appearance are not supported by scientific evidence. A recent study demonstrated that visual breed determination is inconsistent with DNA analysis of genetic breed¹. In this study there was agreement between dogs' assumed breed using visual inspection and genetic breed using DNA analysis in only 25% (1 in 4) of the dogs. Therefore there is a very high likelihood of error when visually determining a dog's breed.

2) My second point is that there are many factors associated with aggressive behavior in dogs. Breed is not the predominant factor compared to a dog's up-bringing, training, physiological health, treatment by people and its environment. Breed does not equal behavior. When I perform a behavioral consultation for an aggressive animal, I spend at least 90 minutes asking

questions about all these factors to begin to understand the cause of the behavior. Breed is only one of about 100 questions that I ask. A Centers for Disease Control report supports this approach, stating that a variety of dog, human, and environmental factors influence a dog's propensity to bite and that "a dog of any breed can become dangerous when bred or trained to be aggressive."² A long-running study at the University of Pennsylvania agrees, by finding substantial variation in the behavior of dogs within each breed and substantial overlap between the behavior of different breeds.³

Which leads me to my third point:

3) Body size is not an important factor in predicting aggressive behavior in dogs. In the University of Pennsylvania study, some of the largest dogs scored at the bottom of the scale in aggression towards unfamiliar people. Large dogs are commonly used as service and assistance dogs. But in examining the dogs scoring highest and lowest on aggressive behavior, you will find a mix of large and small dogs at both ends of the scale.³ This is because neither a dog's breed -- even if it might be determined accurately, which is difficult -- nor his body size alone are good predictors of aggression or biting.

Thank you for the opportunity to appear before you today.

1. Voith VL, Ingram E, Mitsouras K, Irizarry K. Comparison of adoption agency breed identification and DNA breed identification of dogs. *Journal of Applied Animal Welfare Science* 2009;**12**:253-262.

2. Sacks JJ, Sinclair L, Gilchrist J, Golab GC, Lockwood R. Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998. *Journal of the American Veterinary Medical Association* 1999;**217**(6):836-840.

3. Duffy DL, Hsu Y, Serpell JA. Breed differences in canine aggression. *Applied Animal Behaviour Science* 2008;**114**(3-4):441-460.

12/17/09 New York City Council Subcommittee on Public Housing
10:00 A.M. 250 Broadway, New York, New York

Testimony of Darryl M. Vernon of Vernon & Ginsburg, LLP, 261 Madison Avenue, New York, New York 10016, (212) 949-7300, fax: (212) 697-4432, dvernon@vgllp.com, www.vgllp.com

Introduction

Over the past 25 years, we have been representing people in housing concerning companion animal issues. Our clients' housing has ranged from rent-regulated to co-ops and condominiums, Mitchell-Lama and other subsidized housing, as well as public housing. Most of our clients have fortunately been protected by the disability laws as well as §27-2009.1 of the Administrative Code of the City of New York (the "three month rule"), the latter of which does not apply to New York City Housing Authority. After seeing countless cases, we can safely say that the vast majority of cases concerning companion animals in housing are not about issues of nuisance or danger to other residents. Cases often arise because of other issues which can include retaliation arising from a building manager, ulterior motives to evict a tenant, or other issues unrelated to the companion animal.

NYCHA Cases Before 2002

Before NYCHA enacted rules allowing companion animals, we represented many people that were subjected to eviction proceedings as a result of companion animals. As with our cases in general, most all of those cases were unrelated to any nuisance caused by the NYCHA resident.

One prominent example was a case where we represented Elsie Barriera, who was legally blind, but not to the point where she would require a seeing-eye dog. There was essentially no good reason to bother her and her companion animal that helped her. We defended her, eventually successfully, but not before she was put through tremendous stress, as well as the expense of litigation. A copy of an article from the New York Post (December 7, 1994, p. 3) is attached. As can be seen from the article, and particularly page 1 of the paper that day, Mayor Giuliani suspended the various orders to evict NYCHA tenants on this basis.

NYCHA Cases Since 2002

From 2002, rules were enacted to allow companion animals in many, but not all, situations. This certainly went far to diminish the hardship of those who needed or wanted a companion animal, and still left NYCHA recourse in the situation where there was a nuisance. However, now it appears that NYCHA is regressing and not progressing in its policies. While a vast and persuasive medical literature shows the benefits of companion animals, which should cause NYCHA to expand the rules allowing companion animals, the opposite is occurring.

Now, NYCHA is enacting rules which include breed restrictions and unreasonably low weight limits. Moreover, the implementation of the policy is done in a way such that NYCHA residents are being denied their rights.

For example, many people who have attempted to register their companion animals, which they can lawfully do so under the regulations, have been turned away. Only after they, similarly to Elsie Barrera, go through the stress of believing they must get rid of their companion animal or lose their home, and go through the expense of getting counsel, are their rights at times vindicated.

As can be seen from the attached tenant interviews section of the NYCHA manual, tenants are to be given various opportunities to present their case and that their "side of the story be brought out in the course of the interview." Moreover, if, at the interview, "documentation is available but not at hand, the Manager should provide the tenant with the opportunity to submit documentation subsequent to the interview and prior to the submission of the case to Central Office." This is not happening.

Tenants who have had their animals for more than six years also have rights under a six-year statute of limitations under CPLR §213-a that applies to these situations. Our very recent case confirming this law is attached. The law concerning waiver also protects various NYCHA residents, and these residents are not advised of these rights. Further, anyone who had their companion animal before 2002 has no weight or breed restrictions, regardless of the recent enactments of NYCHA. Last, it does not appear tenants are being advised properly of their rights under the Federal, State and New York City laws that protect the disabled and allow them a reasonable accommodation in the form of a companion animal when appropriate. In short, the substance of the new rules with weight and breed restrictions is not appropriate, and the implementation process is seriously flawed.

DOGS HAVE THEIR DAY

Cruel rule beastly to animals' best pals

By JENNIFER HAVRAH

Lourdes Barrera, who has poor eyesight and speaks little English, depends on Boo-Boo as her companion and guide.

Last week her landlord — the city — told her Boo-Boo, Barrera's dog, had to go.

"My mother's pet is like a god to her," said Barrera's daughter, Elsie. "She's been crying and a nervous wreck since we got this news."

Barrera, of the Compton Plaza development on the Lower East Side, is among tens of thousands of residents who would have been affected by the authority's toughening of its no-pets rule, effective Dec. 31.

City Hall overruled the Housing Authority last night and announced the policy was being suspended pending a review.

Tenants received notice of the new policy Nov. 30.

Barrera's lawyer, Daryl Vernon, intended to appeal the order.

"We'd actually have a stronger case if she was completely blind," he said.

He said Barrera's situation was more outrageous because she was coerced into signing an affidavit that she didn't understand.

"She doesn't speak English and she can hardly see, yet the building manager had her sign a document promising to get rid of her pet within 30 days," he said.

Guzman's neighbors at the crime-ridden corner of 13th Street and Avenue C told The Post they're too frightened to get rid of their dogs.

Friends of Animals spokeswoman Sandy Lewis had urged pet owners to ignore the order.

"Those responsible for this policy should check themselves into an institution, preferably one where they may be fortunate enough to get into a pet-facilitated therapy program to heal their emotional ills."

Mayor's pooch in good graces at mansion

Mayor Giuliani and his family keep a pet dog, Gonale, at home — but aides last night couldn't immediately say what rules, if any, govern pets at Gracie Mansion.

"Nobody has voiced any objections to Gonale's presence," one aide said. "He's a very well-schooled dog."



Paul J. DeMoria

LOYAL COMPANION: Lourdes Barrera has "been crying and a nervous wreck" since learning she may have to lose her precious Boo-Boo, her daughter says.

LEGAL (B)EAGLES OFFER ADVICE

Here is some advice offered by lawyers to tenants ordered to get rid of their pets:

■ Don't sign anything.

■ Seek legal advice before meeting with building management to discuss pet concerns.

■ Check your lease. If the wording does not specifically warn that pet owners will be evicted, then the courts will not enforce the agreement.

If the wording of your lease is unclear, the courts will not allow the lease to be used in evidence.

■ Do not abandon the pet. That is against the law and carries a penalty of a \$1,000 fine and/or 12 months in jail.

■ Contact an animal shelter, such as the ASPCA, if you can no longer keep a pet.

Jennifer Havrah

Rudy curbs threat to evict pet owners

The city bent a hasty late-night retreat yesterday, suspending an order that would have forced thousands of tenants to choose between their pets or their apartments.

Pet owners, many of them frantic and not knowing where to turn, were told last week they had only until Dec. 31 to dump their dog or cat — or get out.

In a Nov. 30 letter sent to tenants in 180,000 apartments city-wide, the Housing Authority said it would "vigorously and strictly enforce the 'no pets' provision of your lease."

"If you have a dog, the manager of your development will begin proceedings to evict you from your apartment," the letter stated.

Mayoral aides — who claimed no one at City Hall was aware of the new policy — announced late yesterday that Mayor Giuliani was reviewing the order and, later, that he was halting it.

The about-face came after officials learned that the new policy was being reported in today's Post.

At issue are city housing regulations which prohibit pets in public housing. The rules are included in leases.

Tens of thousands of pets would have been affected by the Nov. 30 notices.

Officials stressed the purpose of the order was to protect tenants from dangerous dogs, not to harm tenants.

But many residents were alarmed.

Karin Dugan, who lives in the Bland Houses in Flushing, Queens, said her collie mix, Sam, rescued her from depression and a reclusive and lonely life.

"I wouldn't be able to live without him," Dugan said tearfully. "We've been together day and night. We've never been separated. I need my dog. I need Sam."

Asked for comment on the new policy, Randy Mastro, Giuliani's chief of staff, told The Post last night:

"Neither the mayor nor anyone else from City Hall has been made aware of this initiative until today."

He indicated the policy would be put on hold while it

By JACKIE ROTHENBERG

is "promptly reviewed with Housing Authority management."

"No steps will be taken to implement" the policy, pending "a thorough review," Mastro said.

Three hours later, Giuliani's spokesperson Cristyne Lategano reported that after further discussion, the policy had been suspended.

Tenants who received the Nov. 30 letters "will be receiving further notices," she said.

The Housing Authority was to announce the change today, she said.

While the city rules apply to all pets, they are primarily enforced against dogs. Because cats usually stay indoors, their presence often isn't detected.

The only people exempt from the Nov. 30 order were people with severe disabilities and senior citizens living in buildings exclusively for the elderly.

The letter was accompanied by a "resource list for dog placements," but it was riddled with errors.

A highly placed HA source who declined to be identified said, "This push is really meant to get at the pit bull and Rottweilers... the vicious dogs. People are intimidated by them."

Housing Authority Chairman Ruben Franco said he "can't confirm or deny" this information.

"But I should tell you the vicious and intimidating dogs are growing in number very rapidly," he told The Post. "They're taking over playgrounds and hallways."

Should city tenants be forced to get rid of their pets?

Mail or fax this coupon to The Post. Give us your opinion by checking the appropriate box.

☐ YES

☐ NO

Fax the coupon to: 212-815-8103

Or mail it to:
The Post
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New York, N.Y.
10002



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Page 20

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Page 2

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Page 12



NEW YORK POST

LATE CITY FINAL

WEDNESDAY, DECEMBER 7, 1994 / Light rain today, 47-52; flurry possible tonight, 30-35 / Details, Page 22 ★ ★

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EXCLUSIVE

THE BARK STOPS HERE

Rudy suspends order to evict tenants with dogs

NEW YORK CITY HOUSING AUTHORITY

250 BROADWAY
NEW YORK, N.Y. 10007
(212) 306-3000

November 30, 1994

Dear Resident,

Effective December 31, 1994, NYCHA will vigorously and strictly enforce the "no pets" provision of your lease. If you have a dog, the Manager of your development will begin proceedings to evict you from your apartment. The New York City Housing Authority is very serious about this rule.

For your convenience, we have attached a list of locations where you may place your dog if you wish.

Do not jeopardize the roof over your family's head. If you have a dog, get rid of it! If you are considering getting one, DON'T!

Sincerely,

Paul
Paul Graziano
General Manager



Tenants of city-owned housing, including Beatrice Guzman (above with dog Casey), yesterday received a letter, part of which appears at left, ordering them to give up their pets or face eviction. Story: Page 3.

Regulations, Chronic Delinquency in Payment of Rent, Non-Verifiable Income, Assignment or Transfer of Possession, and Misrepresentation.

1. Tenant Interview

When termination action is being considered, the Manager or the Assistant Manager must first interview the tenant in order to discuss the problem(s) which may lead to termination of tenancy, seek to ascertain the facts involved and, when appropriate, try to assist the tenant by securing outside help.

If, however, despite previous discussion, written notice or other remedial action, the Housing Manager believes that termination proceedings should be initiated against a tenant, First Call-In Letter, Form 040.185 shall be used to call the tenant to the office for an interview. This letter must be addressed to each tenant of record. At the interview, the tenant may be accompanied by someone, such as an attorney, to assist him/her.

The tenant must be given an opportunity to present his/her side of the story and shall be informed that any statement or document deemed pertinent may be submitted. It is important that the Manager document the tenant interview and that the tenant's side of the story be brought out in the course of the interview. If, at the interview, the tenant states that documentation is available but not at hand, the Manager should provide the tenant with the opportunity to submit documentation subsequent to the interview and prior to submission of the case to Central Office.

If as a result of the interview, the Housing Manager does not feel that a finding of ineligibility is warranted, (s)he may not proceed again on the same grounds without another interview.

In those cases where the Housing Manager, during the course of the interview, offers the tenant a specific time for compliance, as in the case of Breach of Rules and Regulations or Non Verifiable Income, the interview shall not be considered concluded but, rather, adjourned to a subsequent date. The adjournment may not be for more than sixty days.

If, despite the tenant's explanation, the Housing Manager decides to recommend termination, the facts or incidents upon which the Housing Manager may rely in recommending the proposed termination action must be revealed to the tenant. The source of this information, however, need not be revealed.

All of the administrative and legal procedures relating to termination of tenancy shall be explained to the tenant. The tenant shall be advised of his/her right to an impartial hearing before the Authority's Hearing Officer. At this hearing the tenant may be represented by counsel or by any other person and may present his/her own evidence or witnesses.

The tenant shall be advised that his/her entire record will be transmitted to the Office

of Resident Review and Counseling. At the interview the Housing Manager shall serve the tenant with the original of Form 040.187A, Letter Notifying Tenant of Manager's Recommendation for Termination. If the Manager decides to recommend to terminate tenancy after the completion of the interview, Form 040.187A is to be mailed to the tenant. In either case a copy of Form 040.187A is to be placed in the tenant's file and a notation made as to whether the original copy was given to the tenant personally or sent through the mail.

It is extremely important that the Housing Manager include in the file full documentation of all incidents and facts upon which a recommendation for termination of tenancy may be based. This shall include dates, names and addresses of witnesses or complainants and Housing Officer's name and shield number, when appropriate.

The Housing Manager shall record in the tenant's file all the details of the interview, particularly the following:

- a. Copies of all letters and notices to the tenant.
- b. A summary of the Housing Manager's statement to the tenant.
- c. A factual statement of the tenant's admissions, denials or explanations which the tenant claimed have a bearing on the case.
- d. A statement that the tenant was advised of all applicable procedures and of his rights of appeal.
- e. The Housing Manager's conclusion from the facts presented. Here the Housing Manager may indicate his evaluation of the tenant's statements, the attitude of the tenant toward the situation involved, his apparent recognition or lack of recognition of the problem, and resolving the problem or problems involved.

2. Failure of Tenant to Respond

In the event the tenant fails to respond to Form 040.185, First Call-In Letter, a second opportunity to appear for a termination interview shall be given. For this purpose, a Termination of Tenancy - Follow-Up Letter, Form 040.186, shall be sent. Thereafter, if the tenant fails to respond to this second opportunity to appear, Letter Notifying Tenant of Manager's Recommendation to Terminate, Form 040.187A, shall be sent to advise the tenant that the Housing Manager is recommending termination of tenancy.

3. Submission to the Office of Resident Review and Counseling(ORRC)

After the Housing Manager has served the tenant with Form 040.187A, the tenant's folder shall be transmitted to the ORRC accompanied by Form 040.276, Transmittal to ORRC-Termination of Tenancy Case.

- a. Non-Desirability Cases - The initial responsibility to determine whether the tenant's behavior has caused such an adverse impact on the project as to warrant termination proceedings rests with the project Manager. In certain cases, most typically off-project arrest, there may be some doubt as to whether the crime meets this criterion. These cases may be sent to ORRC for evaluation.

(1) If the submission involves an arrest, include all available information on the

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : PART A**

-----X
ELLIANA 76 LLC,

Petitioner-Landlord,

Index No. L&T 80433/09

-against-

DECISION and ORDER

**MARGARET SPIER
169 West 76th Street, Apt. 4R
New York, NY 10023,**

Respondent-Tenant,

-and-

"JOHN DOE" and/or "JANE DOE",

Respondents-Undertenants.

-----X
PETER M. WENDT, J.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion for summary judgment and petitioner's cross-motion for partial summary judgment, to strike respondent's affirmative defenses and to impose sanctions :

Papers	Numbered
Notice of Motion, Affidavit and Exhibits Annexed	1
Notice of Cross-Motion, Affirmation & Affidavit Annexed	2
Reply Affidavit in Support of Motion and Opposition to Cross-Motion	3
Reply Affirmation in Opposition to Motion and in Support of Cross-Motion	4
Memorandum of Law	5

Upon the foregoing cited papers, the Decision/Order in this motion is as follows:

This holdover proceeding against rent stabilized tenants is based on the claim that respondent Margaret Spier has violated her lease by harboring a dog in her apartment without prior written consent of the landlord. The Notice to Cure alleges that the landlord first learned about the dog in respondent's apartment on or about June 9, 2009. Petitioner

claims this is a violation of respondent's lease agreement. Respondent does not contest the claim that she has a dog in her apartment nor that such action would violate her lease.

Rather, respondent has moved for dismissal of the petition pursuant to CPLR 3211 (a) (5) because this proceeding is barred by the six year statute of limitations applicable to breach of contract (CPLR 213 [2]). Respondent further alleges that pursuant to §27-2009.1 of the Administrative Code of the City of New York, the petitioner waived any no-pet clause, in that respondent kept her dog openly in the apartment with the knowledge of on-site employees for seven and one half years. *Seward Park Housing Corp. v. Cohen*, 287 A.D.2d 157 (1st Dept 2001). Finally, respondent moves for attorneys fees and sanctions.

In support of her motion, respondent submits an affidavit based on personal knowledge that she purchased the subject dog, a Yorkshire terrier named "Tucker" in March, 2002, and that the dog moved into her apartment at that time. She also submits an invoice from Westside Veterinary Center, addressed to her at the subject apartment, for an appointment with a three month old black and tan Yorkshire Terrier on March 12, 2002. (See Exhibit E). She further submits a total of nine invoices from the same veterinary center for appointments for a brown and tan Yorkshire Terrier for the period of April 26, 2004 through July 3, 2009. (Exhibit E). The description of the dog and the recorded age in each invoice coincides with that of "Tucker", the subject dog in this proceeding.

Respondent also swears in her affidavit that she has kept the dog openly ever since she purchased it, including the many times through the years that petitioner's agent, the superintendent, was in her apartment to do repairs. Respondent states that she walked past

the superintendent and his wife on many occasions when she was walking her dog, which was at least twice each day, and that they have been aware of her dog since she first brought the dog to her apartment.

Petitioner opposes the motion and cross-moves for: legal fees, sanctions, and summary judgment in petitioner's favor on respondent's second counterclaim, which requests sanctions. Petitioner further moves to strike respondent's fourth, fifth and sixth affirmative defenses.

Respondent's Fourth Affirmative Defense cites defective notice, in that one sentence in the Notice of Termination states the wrong apartment number. The Fifth Affirmative Defense cites RPAPL §741, "...inasmuch as the inception of the tenancy is not stated, nor the rent-regulatory status of the respondent," and "no grounds are alleged in the petition." The Sixth Affirmative defense alleges, upon information and belief, that petitioner did not attempt to serve the respondent personally with due diligence, and the notice of petition and petition were not affixed to the door. However, the Sixth Affirmative Defense was withdrawn at argument of the motion.

Petitioner's superintendents, Jack and Carmella Perovic, swear in their respective affidavits that they neither saw the subject dog nor knew of its existence prior to June 9, 2009. As such, petitioner argues, "there is an issue of fact with regard to whether Respondent openly kept the dog in the Premises and whether Petitioner was on notice of the dog's existence prior to June 9, 2009." (See paragraph 14 of petitioner's Affirmation in Opposition to Motion and In Support of Cross-Motion). Petitioner further argues in

Paragraphs 15 and 16 as follows:

15. Copies of invoices from Westside Veterinary Center and the dog's license do not prove that Respondent openly kept the dog in the Premises or that Petitioner was on notice of the dog's existence prior to June 9, 2009.

16. Pursuant to the affidavits of Jack and Carmella Perovic, they never saw nor heard the dog prior to June 9, 2009 in direct contrast to what is alleged in Respondent's affidavit.

While petitioner's Affirmation and the affidavits of the superintendents Jack and Carmella Perovic are relevant to respondent's claims that she openly kept the dog in the subject premises and that petitioner's agents were aware of its existence, petitioner completely fails to address the issue of the six year statute of limitations. Respondent claims that the statute of limitations has expired, given that the violation of the lease upon which this proceeding is based, her dog moving into her apartment, occurred over six years ago. Petitioner appears to miss the fact that this is the primary ground upon which respondent's summary judgment motion is based. In fact, petitioner's affirmation studiously avoids denial of the dog coming into the apartment and suggests that the statute of limitations defense is dependent on whether or not petitioner had knowledge of the dog. It is not. The statute of limitations is not a waiver defense, where knowledge by petitioner is required. Failure to bring the action within the six-year statute of limitations is simply based on the passage of too much time, not actual or constructive knowledge by landlord or its agents.

While respondent does claim that she openly kept the dog for several years and petitioner's agents were aware of its existence for many of those years, and certainly more

than the three months required by Administrative Code §27-2009.1(b), her statute of limitations defense is a separate ground which does not require her to prove that she openly and notoriously kept the dog. Therefore, even if petitioner is successful in showing that there remains an issue of fact regarding whether or not the dog was kept openly and notoriously, this has no effect on the statute of limitations defense. The only issue to determine regarding this defense is whether or not the alleged violation of the lease took place more than six years before this proceeding was commenced. Petitioner nowhere denies this fact.

Violations of a lease are breaches of contract, governed by the six year statute of limitations in CPLR 213 (2). *833 Northern Corp. v. Tashlik & Associates, PC*, 248 AD2d 664 (2nd Dept 1998). Naturally, this applies to claimed breaches of a lease due to the unauthorized presence of a dog in a tenant's apartment. In *Westminster Properties, Ltd. v. Kass*, 163 Misc2d 773 (App Term, 1st Dept 1995), the Appellate Term held that where alterations pre-date the proceeding by more than six years, the six year statute of limitations (CPLR 213 [2]) began to run at the time of the alterations, not when the landlord learned of them. Such would be the case when a tenant obtains a dog in violation of a lease.

The violation of the lease in this case occurred in 2002, as indicated in respondent's affidavit sworn to on personal knowledge in support of her Motion to Dismiss, as well as in the supporting documentation. Although petitioner argues that the veterinary records do not prove that respondent kept the dog open and notoriously, petitioner does not argue that the affidavit stating that the dog was in the apartment is untrue or that the veterinary

records are not accurate. Petitioner has not produced a single affidavit from any of its agents or employees, or anyone else for that matter, denying the fact that the dog was in existence in respondent's apartment for more than six years before commencement of this proceeding. Petitioner's claim is simply that they were unaware of the dog. Petitioner has failed to put forth any proof to controvert respondent's contention that she has had her dog, thereby violating the lease, for over seven years before this matter was initiated.

Pursuant to CPLR §3212, a grant of summary judgment is permissible in cases where there is clearly no material and triable issue of fact presented. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957); *Di Menna & Sons, Inc. v City of New York*, 301 NY 118 (1950). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue, *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223 (1978).

To obtain summary judgment, the moving party must make a prima facie showing to the court that as a matter of law it is entitled to judgment in its favor. *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 (1979); CPLR 3212 (b). To defeat a motion for summary judgment, the opposing party must then show sufficient facts to require a trial on any issue. *DiSabato v Soffes*, 9 AD2d 297 (1st Dept 1959). Both parties must lay bare their evidentiary proof in admissible form. *Friends of Animals v Associated Fur Mfrs.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557 (1980).

The role of the motion court is merely one of issue finding, not issue determination. *Rose v Da ECIB USA*, 259 AD2d 258 (1st Dept 1999); *Pirrelli v Long Island RR*, 226 AD2d

166 (1st Dept 1996). The court must view the evidence in light most favorable to the opposing party and draw all reasonable inferences in the opposing party's favor. *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989). However, mere conclusory allegations regarding the existence of questions of fact are insufficient to defeat a motion for summary judgment. *Dillenberger v. 74 Fifth Avenue Owners Corp.*, 155 AD2d 327 (1st Dept., 1989).

Here, respondent has made her prima facie case in support of her statute of limitations defense through her Affidavit and the veterinary records which show that she had purchased the dog and kept it in her apartment since March, 2002. Petitioner, however, failed to put forth any proof whatsoever nor an affidavit based on anyone's personal knowledge to refute respondent's motion for summary judgment on this ground. Such lack of any proof by petitioner as to the statute of limitations defense essentially renders respondent's motion on this ground uncontroverted.

Notably, respondent asserts that there was never any attempt on her part to hide the dog, and while petitioner argues that it did not become aware of the dog until June 9, 2009, petitioner fails to convincingly establish how this would be possible for such a long period of time. In its reply affirmation, petitioner concludes that respondent must have hidden her dog if she has had it for seven and one half years and neither of the superintendents saw it prior to June 9, 2009 (Paragraph 10). Not only does this claim fail to ring true, as the hiding of a dog would be an extremely difficult task for a period of over seven years, but petitioner seems to concede that respondent had the dog as long as she said she did, despite the fact that petitioner was not aware of it until June 9, 2009.

If petitioner wished to complain of the presence of a dog in respondent's apartment as a lease violation, it had six years to do so. Instead over seven years have passed, in complete violation of the statute of limitations. The very purpose of a statute of limitations is to allow individuals some security that a situation that has existed for the statutory period of time without any complaint may continue. In this case, based on breach of a lease, which is a contract, that period is six years (CPLR 213 [2]).

For the foregoing reasons, respondent's motion to dismiss this proceeding pursuant to CPLR 3211 (a) (5) as time-barred by the six year statute of limitations for breach of the lease must be granted. Even if the petitioner was inexplicably unaware of the fact that respondent had a dog for over seven years, its lack of knowledge would not contravene the statute of limitations. *Westminster Properties, Ltd. v Kass, supra*, 163 Misc2d 773 (App Term, 1st Dept 1995). Accordingly, respondent's motion to dismiss the proceeding is granted. Petition dismissed.

This court need not reach the issue of whether respondent has proven that she kept the dog openly and notoriously and whether petitioner waived its right to bring this proceeding pursuant to the Administrative Code of the City of New York §27-2009.1 and *Seward Park Housing Corp. v. Cohen, supra*. Similarly, this court need not reach the additional grounds upon which respondent's Motion to Dismiss is based.

Respondent moved for sanctions against petitioner for bringing a baseless action. The very fact that respondent admits to violating her lease by harboring a dog in her apartment without her landlord's permission, notwithstanding her defenses, is a sufficient

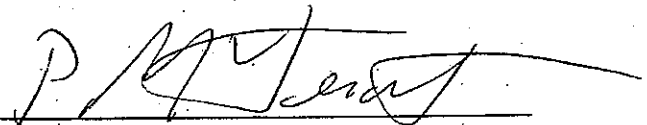
basis for petitioner's good faith in commencing the instant action. It is not sanctionable for petitioner to attempt, although belatedly, to enforce the prohibition against harboring of pets contained in the lease between the parties. Therefore, respondent's motion for sanctions is denied, and petitioner's cross-motion is granted to the extent that respondent's second counterclaim seeking sanctions against petitioner is stricken.

Respondent also moved for attorneys fees. Pursuant to Paragraph 20 (B) of the lease between the parties (exhibit "C" to respondent's motion), the tenant may obtain attorney's fees incurred in a successful defense of a lawsuit brought by the landlord, "to the extent provided by Real Property Law, section 234." Under RPL §234, tenant, if the prevailing party in a summary eviction proceeding, is entitled to a reciprocal right to recover attorney's fees where the lease entitles landlord to do so. Since this proceeding has been dismissed upon respondents' motion, she is clearly the prevailing party. For this reason, the matter is set down on January 19, 2010, in Part A for a hearing regarding respondent's right to recover legal fees.

Based on the court's decision herein, petitioner's cross-motion is denied, except to the extent specified herein.

The foregoing constitutes the decision and order of this Court.

**Dated: New York, New York
December 10, 2009**


PETER M. WENDT, J.H.C.

Subcommittee on Public Housing Oversight Hearing re NYCHA Pet Policy
12/17/09 at 250 Broadway 14th Floor Hearing Room

My name is Jane Hoffman and I am the President of the Mayor's Alliance for NYC's Animals a not for profit corporation. The Alliance was created in 2002 to work with the City of New York in a public private partnership to come up with innovative solutions to animal welfare issues.

In 2002, 74 out of every 100 cats and dogs who entered Animal Care & Control of NYC (the AC&C) were euthanized or killed.

In February 2005 Mayor Bloomberg held a press conference in City Hall to thank Maddie's Fund, a private family foundation, and the ASPCA for what is now a \$28 million dollar Maddie's Fund grant and what is now a \$7 million dollar ASPCA grant given to the Alliance to make New York City a no kill city...a city in which no cat or dog of reasonable health and temperament is killed simply because we do not have a home for them.

By the end of this year the fifth year in the Alliance's Ten Year Strategic Plan we are projecting that the AC&C, the Alliance and the Alliance rescue groups and shelters will have reduced that to 34 out of every 100 cats and dogs entering AC&C shelters.

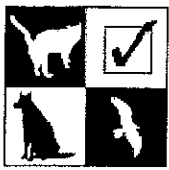
This impressive reduction in the number of cats and dogs killed is the result of working in collaboration. The AC&C by adopting out cats and dogs directly to the public and by transferring cats and dogs to the Alliance rescue groups and shelters including the ASPCA to assist in getting them adopted to loving homes.

Tragically the NYCHA Pet Policy imposed in May 2009 has and will continue to result in the death of family pets. It has resulted in the death of other dogs because these dogs from NYCHA housing who had homes ended up in the AC&C taking up cage space. It has and will continue to result in the loss of adoptive homes. It has and will interfere with the goal articulated by Mayor Bloomberg in 2005 at the City Hall press conference to make NYC a no kill city by 2015.

It is a shame that NYCHA did not, prior to the imposition of this policy, reach out to the animal welfare community for assistance with some of the easily addressed issues they articulated as to why they revised the Pet Policy.

Richard Gentles of AC&C will provide data on the family pets brought to AC&C by their owners as a result of this hastily implemented policy and the impact the policy has had on the AC&C.

What I would like to share with you in closing are the faces and pictures of the 58 family pets who despite the best efforts of the AC&C and the animal rescue groups and shelters to save them ended up in the freezer at AC&C; the kennel cards of the 58 family pets who lost their lives because of the NYCHA policy: let me name a handful: Apache, a ten year old dog who had lived his whole life with his family, Peaches, a seven year old dog, Breezy, an eleven month old puppy and Nya, one year and 4 month old female. Thank you.



**NEW YORK LEAGUE OF
HUMANE VOTERS**

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Remarks of John Phillips to NYC Council Public Housing Subcommittee 12/17/09

Good morning, Chairwoman Mendez and members of the Public Housing Subcommittee. Thank you very much for holding this hearing today. My name is John Phillips, I'm the Executive Director of the New York League of Humane Voters, the State's largest lobbying organization for animals.

I'm here today to stand with my colleagues at the ASPCA in firm opposition to the New York City Housing Authority's new pet policy which discriminates against pets based on breed and weight. Tellingly, this policy was adopted without public input, as the public is steadfastly opposed to breed-specific legislation. As we know, existing State law prevents municipalities from enacting breed-specific legislation. So then, why is it that those on Fifth Avenue can have pit bulls but those on Avenue D in NYCHA cannot?

The vast majority of the animals that have been banned from public housing would never hurt a human being and pose no threat, or even a nuisance. Stereotyping entire breeds of animals based on the misbehavior of a few is irresponsible and unfair. Not only is it true that many animals will be and have been separated from loving homes but this policy disproportionately harms low-income New Yorkers. It's apparent that it is not only unfair but deeply wrong.

Thousands of dogs are killed in NYC shelters every year for lack of good homes. Instead of forcing loving, responsible owners to relinquish their animals to shelters or to live on the street, shouldn't we be doing everything we can to ensure that well-behaved animals do not have to be killed?

The policy is arbitrary cuts with a dull blade. Most of the animals that will die as a result of it are not even remotely dangerous. Many dangerous animals will not be banned and will continue to cause problems. Smart, well-behaved dogs that provide protection and companionship are being separated from responsible owners, and this will continue unless this unfair policy is repealed. The devil is in the details. If we want to make public housing safer, we should address specific complaints. Arbitrarily damning entire breeds based on the actions of a few is not the solution.

Thank you.



Animal Care & Control of New York City

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NYCHA Revised Pet Policy Hearing – December 17, 2009

AC&C Testimony

Richard Gentles, Director of Administrative Services

Introduction

Thank you for allowing me the time to provide testimony before you on behalf of Animal Care & Control of NYC. As you can imagine, this is an important issue for dog owners living in NYCHA buildings, Animal Care & Control, and rescue groups throughout the City.

Background

Animal Care & Control of New York City (ACC) is the largest pet organization in the North East, with an estimated number of 43,000 animals rescued each year. As a not-for-profit organization since 1995, Animal Care & Control has been responsible for New York City's municipal shelter system, rescuing, caring for, and finding loving homes for homeless and abandoned animals in New York City. ACC facilities operate in all five boroughs.

AC&C is contracted by the City of New York to provide animal care and control services. It is the only animal rescue organization in the City that is required by law to take in all homeless and abandoned pets.

Impacts of the Revised Policy

Based on data compiled to date, ACC has taken in 157 dogs that were surrendered in response to the revised NYCHA policy. Of these 157 dogs, only 18 were adopted out to homes directly from ACC shelters and 58 were euthanized:

Outcome	
Adopted	18
Transferred	61
RTO	17
Dead	58
Pending	3
Total Dogs	157

- While 79 dogs were fortunate enough to be rescued from the City shelters either through adoptions or New Hope transfers, those placements came at a cost – these dogs took up valuable space and potential homes away from other dogs that were in the shelter or that came into the shelter around the same time.
- Moreover, the shelters had to devote medical and operational resources to these additional 157 dogs that were previously being cared for by their owners.
- The fact that 79 dogs were adopted or transferred demonstrates that these dogs were not dangerous. Instead, these 79 placements underscore the adverse impact of the NYCHA rule -- family pets may have been unnecessarily removed from their homes and families even though they were otherwise well cared for.
- The majority of the dogs that did not get alternative placement lost their lives due to lack of space and time.
- ACC is concerned with the potential loss of future homes for dogs due to this policy. New York City, like so many other cities around the country, is faced with a pet overpopulation problem. ACC rescues nearly 12,000 dogs each year. There are simply more dogs than we currently have homes for.

- The revised policy makes it more difficult for ACC to place dogs into loving, permanent homes. We conservatively estimate that *at least* 600 adoptable dogs from ACC shelters each year will not meet the weight restrictions of the NYCHA Revised Pet Policy and therefore could not be adopted by NYCHA residents in the future.
- Based on data collected to date, we anticipate that more than 600, and as many as one thousand, dogs per year may lose their lives in ACC shelters because there are simply no homes for them.
- ACC will continue to track the intake and euthanasia numbers and monitor the overall impact on shelter operations.

Conclusion

AC&C is in a unique position to witness the impact of the revised NYCHA pet policy. The data to date demonstrates an increase in euthanasia of many dogs and the long-term effect the NYCHA policy will predictably have on the lives of hundreds, even thousands of other dogs. Hopefully a compromise can be reached to avoid the surrender of currently owned dogs and otherwise adoptable dogs and the use of precious space at ACC shelters. The lives of hundreds, if not thousands, of dogs depend on the cooperation of those who are passionate about this policy.

Thank you for your time this morning.



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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL SUBCOMMITTEE ON PUBLIC HOUSING

"Oversight: NYCHA's Pet Policy."

250 Broadway
14th Floor Hearing Room
New York, NY 10007

December 17, 2009

My name is Dinah Luck. I am a staff attorney with MFY Legal Services, Inc. (MFY), and I work in MFY's Mental Health Law Project. The Mental Health Law Project has been funded by the New York City Department of Health and Mental Hygiene since 1983 to address the civil legal needs of people with mental illness living in the five boroughs of New York City.

The Mental Health Law Project is a general practice project in which we advise and represent individuals in various substantive issue areas, including housing law, public benefits, consumer rights, and family law. MFY Legal Services also represents elderly and other vulnerable New Yorkers. Today's testimony is based on our experiences representing poor, low-income, and disabled tenants who live in both public and private housing.

MFY opposes the proposed pet rule for three reasons. The proposed policy would make it more difficult for people who need emotional support animals or psychiatric service dogs to get permission to have them, NYCHA has not provided adequate notice of the proposed policy to its tenants, and the proposed policy is arbitrary and unnecessarily restrictive.

First, the proposed weight and breed limits add to the burden on NYCHA tenants with psychiatric disabilities when seeking permission to have emotional

support animals or psychiatric service dogs that are larger than 25 pounds. Emotional support animals and psychiatric service dogs are analogous to assistive animals for people with physical disabilities, such as guide dogs for the visually impaired.

What are emotional support animals?

An emotional support animal can help a person with a psychiatric disability live in the community by providing companionship and stability. The responsibility of caring for a pet can also provide purpose and motivation for some people with disabilities. Without the emotional support animal, a person's isolation or loneliness may cause her illness to become worse, necessitating increased psychiatric care, including hospitalization.¹ Emotional support animals provide important assistance to people with psychiatric disabilities simply by their very nature of being loving pets and companions. They do not require special training beyond that received by any well-behaved pet.

What are psychiatric service dogs?

Psychiatric service dogs differ from emotional support animals because they are trained to perform specific tasks related to the person's psychiatric disability. For example, dogs can be trained to remind people to take their medications. A medium to large dog can provide assistance to someone having a panic attack by being a buffer between the person and her surroundings. Dogs can also be trained to wake someone who does not respond to a fire alarm due to the sedative effects of their medications.²

¹ A Tenant's Guide to New York City's Pet Laws: Keeping Your Pet in a NYC Apartment, MFY Legal Services, Inc. 4 (2008).

² A list of psychiatric service dog tasks is available at the website of the Psychiatric Service Dog Society at www.psychdog.org/tasks/html (last visited December 15, 2009). Detailed explanations of some tasks psychiatric service dogs can perform are available at the website for the International Association of Assistance Dog Partners, at www.iaadp.org/psd_tasks.html (last visited December 15, 2009). For more information about Psychiatric Service Dogs, visit the website of the Psychiatric Service Dog Society at www.psychdog.org.

A person might need her emotional support or psychiatric service dog to be a larger dog for a variety of reasons. For example, a larger dog might be more stabilizing during a panic attack, an older person with balance issues could feel more confident walking with a larger dog, or a larger breed may be more amenable to certain types of training. The Psychiatric Service Dog Society emphasizes that the dog breed should be chosen based on a variety of factors, including the tasks needed by the particular individual, and the person's personality and activity level.³

Requesting permission to have an emotional support or psychiatric service dog

Although the Fair Housing Act, the Americans with Disabilities Act, and the New York City and State Human Rights laws require NYCHA to make reasonable accommodations to their policies, obtaining permission to have an emotional support animal or psychiatric service dog can be challenging. People with psychiatric disabilities may find it difficult to navigate bureaucracies like NYCHA's. In addition, requesting a reasonable accommodation requires a person to disclose their mental illness, which can subject them to judgment and stigma. It is MFY's experience that tenants who request permission to have an emotional support animal frequently face skepticism about the validity of the request and often have to deal with invasive requests for additional medical documentation. While MFY's experience on this issue comes from private landlords, we are concerned that a similar response is likely from NYCHA, given how common misconceptions are about mental illness and how few people are familiar with emotional support animals and psychiatric service dogs. Finally, a valid request can be unreasonably denied, leaving a tenant to choose between going without a much-needed form of

³ See Choosing the Right Dog, available at www.psychdog.org/lifestyle_ChoosingDog.html (last visited December 15, 2009).

assistance or appealing the denial—a prospect that can be overwhelming for a person with a psychiatric disability and can even exacerbate the symptoms of a mental illness.

If NYCHA were to have a reasonable pet policy with a higher weight limit and no breed restrictions, then tenants with psychiatric disabilities could register their emotional support or psychiatric service dogs, including larger dogs, under the regular registration procedures. This is simpler and less invasive for tenants with psychiatric disabilities.

Second, NYCHA tenants have not been given adequate notice that a new, highly restrictive pet policy will soon be put in place. Many NYCHA tenants have pets that were acceptable under the previous policy but will now be prohibited. The lack of notice means that many tenants will miss the chance to have their animals properly registered prior to the proposed policy taking effect, leading to the heart-wrenching outcome of having to surrender a beloved family pet to a city shelter, where it might be euthanized.⁴ Although the deadline to register a pet has recently been extended to January 31, 2010, MFY does not believe that NYCHA has given its tenants adequate notice of the impending change.

Finally, the 25 pound weight limit and breed bans are arbitrary and unnecessarily restrictive, and NYCHA has not adequately explained its reasoning behind the limit or the bans. The new weight limit is very low and would prohibit NYCHA tenants from having a number of popular, small or medium-sized dog breeds as pets. Indeed, the average size of the beagle, corgi, cocker spaniel, whippet, and many kinds of terriers is between 25 and 40 pounds, meaning these breeds will no longer be permitted in NYCHA housing. The weight restriction will also limit which dogs NYCHA residents can adopt from city shelters and no-kill rescue organizations. The

⁴ The Mayor's Alliance for New York City's Animals estimated in early 2009 that the 2008 euthanasia rate in the city shelters was 38%. See Sewell Chan, *Progress Cited in 'No Kill' Goal for Animals*, N. Y. Times, January 21, 2009.

arbitrary restrictions on weight and breed have already led to healthy animals being unnecessarily euthanized.⁵

CONCLUSION

MFY Legal Services opposes the proposed pet policy because it is arbitrary, tenants have not received adequate notice, and it will negatively impact people with psychiatric disabilities who need emotional support animals or psychiatric service dogs.

⁵ Manny Fernandez, *Large Dogs in Public Housing Are Now Endangered Species*, N. Y. Times, Sep 22, 2009.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: 12/17/09

(PLEASE PRINT)

Name: AMARILIS SOTO

Address: _____

I represent: GOLES

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Marguis Jenkins

Address: 169 Ave B

I represent: GOLES

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: DARYL M. VELLON

Address: 261 Madison Ave

I represent: Tenants w/ Companion Animals

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: Ellen A. Pelikow (PLEASE PRINT)
Political Man

Address: _____

I represent: NYCHA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: Alan Pelikow (PLEASE PRINT)

Address: _____

I represent: NYCHA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: Dickson Gonzalez (PLEASE PRINT)

Address: _____

I represent: NYCHA / Wise Towers TA Pres

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. NYCHA pet policy Res. No.

☐ in favor ☒ in opposition

Date: 12/17/09

(PLEASE PRINT)

Name: Dinah Lusk

Address: 299 Broadway 4th Floor

I represent: MFY Legal Services

Address: 299 Broadway 4th Floor

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Res. No.

☐ in favor ☒ in opposition

Date: 12/17/09

(PLEASE PRINT)

Name: Debra Gresch

Address: ~~235 West 102nd St~~ 235 West 102nd St

I represent: ASPCA

Address: 520 8th Ave.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Res. No.

☐ in favor ☐ in opposition

Date: 12-17-09

(PLEASE PRINT)

Name: KATHERINE MILLER

Address: 520 EIGHTH AVE.

I represent: ASPCA

Address:

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: 12-17-09

(PLEASE PRINT)

Name: Michelle Villagomez

Address: 520 8th Ave

I represent: ASPCA

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Richard Gentles

Address: 11 Park Place, Suite 805 NY NY 10007

I represent: Animal Care - Control of NYC

Address: as above

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☒ in opposition *Nycha*
Date: *12/17/09*

Name: *John Ph.* (PLEASE PRINT)

Address: *151 First Ave*

I represent: *New York League of Humane Voters*

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☒ in opposition *TO NYCAA*
Date: *perp. 12/17/09*

Name: *JANE HOFFMAN* (PLEASE PRINT)

Address: *55 W 14th St*

I represent: *Mayor's Alliance*

Address: *244 5th Ave*

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