



Comes now Plaintiff, Malane Wilson, of lawful age, upon her oath, and by counsel, and in support of her cause of action against the above Defendants, states as follows:

COUNT I

PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

1. That at all times herein mentioned, Plaintiff, Malane Wilson was and is a resident of the City of St. Louis, State of Missouri.

2. That Defendant, City of St. Louis, is now and at all times herein mentioned was a constitutional charter city duly organized and existing according to law.

3. That Defendant, Dian K. Sharma, is the Health Commissioner for the City of St. Louis Department of Health and Hospitals - Division of Health.

4. That Defendant, Richard Stevson, is the manager of the Animal Regulation Center, City of St. Louis Health Division, created by St. Louis City Ordinance No. 60878, Section 10.04.110.

5. That Defendant, William Webster is the duly elected Attorney General of the State of Missouri and is required to be joined in this action pursuant to RSMo. 527.110 and Missouri Supreme Court Rule 87.04.

6. On December 12, 1989 and thereafter, Plaintiff was and is currently the owner of three (3) American Pit Bull Terriers (hereinafter Terriers), to-wit: a 5-year old female named "Lady", a 9 month old female named "Missy", and a 3-year old male named

"Max".

7. That Defendants, City of St. Louis, Dian K. Sharma, and Richard Stevson (hereinafter throughout Count I and II collectively referred to as Defendants), individually, and as representatives of an unnamed class of persons whose identities are unknown, but who participated in the acts referred to herein, did on the 12th day of December 1989, upon discovering Plaintiff's neighbor's dog ("Bojangles") dead, willfully, intentionally, arbitrarily, capriciously, and without Plaintiff's permission, seize and confiscate Plaintiff's 3 Terriers from her residential property and surrounding area.

8. By letter dated January 5, 1990, Defendants subsequently declared one of Plaintiff's female Terriers to be potentially dangerous under St. Louis City Ordinance No. 60878, a copy of said letter is attached hereto as Exhibit A and herein incorporated by reference. A copy of St. Louis City Ordinance No. 60878 is attached hereto as Exhibit B and herein incorporated by reference.

9. By letter dated January 5, 1990, Defendants also declared Plaintiff's male Terrier, Max, to be dangerous under St. Louis City Ordinance No. 60878, a copy of said letter is attached hereto as Exhibit C and herein incorporated by reference. By way of Exhibit C, Defendants informed Plaintiff that if Ordinance No. 60878 was not complied with, Max would be destroyed on February 5, 1990.

10. Defendants, through their attorney, James Hartung -

Assistant City Counselor, have extended Max's execution date to February 20, 1990.

11. Defendants have since returned the female Terriers, Lady and Missy, to the Plaintiff, but have willfully and intentionally retained Max in a small metal cage at the Animal Regulation Center located at 2120 Gasconade in the City of St. Louis.

12. That by letter dated February 5, 1990, Plaintiff, through her attorney, formally requested that Max be returned or that an evidentiary hearing be held on his classification as "dangerous".

13. As of the filing of this petition, Defendants have failed and refused to release Max to Plaintiff or to grant her an evidentiary hearing as to Max's classification.

14. That there has been no judicial, quasi-judicial, nor administrative forum that has determined any of the issues presented in this petition.

15. That Max is not a "dangerous dog" as defined by St. Louis City Ordinance No. 60878, Section 10.04.10(3) as he has never:

- a. inflicted severe injury on a human being without provocation on public or private property,
- b. killed a domestic animal without provocation while off the owner's property, or
- c. been previously found to be potentially dangerous.

16. That Plaintiff's female Terrier is not a "potentially

dangerous dog" as defined by St. Louis City Ordinance No. 60878, Section 10.04.10(9).

17. There is no proof or indication that Max caused the death of Bojangles.

18. If Max was involved in a fight with Bojangles, Max was provoked by Bojangles' entry into Plaintiff's property and his subsequent actions, and such injury of Bojangles was sustained while Bojangles owners were committing a willful trespass and/or other tort upon both the premises occupied by Plaintiff, and upon Max.

19. That Defendants, by seizing and retaining Plaintiff's dogs, have violated Plaintiff's right to be free from unlawful and unreasonable searches, seizures and the destruction of property as set forth by the 4th and 14th amendments to the United States Constitution and Article I, Section 15 of the Missouri Constitution.

20. For the same reasons as stated in paragraph 19, St. Louis City Ordinance No. 60878 in general, and Sections 10.04.10(3), 10.04.10(9), 10.04.270 and 10.04.270(7) in particular are, on their face and as applied, unconstitutionally violative of the 4th and 14th amendments to the United States Constitution and Article I, Section 15 of the Missouri Constitution in that the ordinances seemingly allow for the seizure and destruction of Plaintiff's property without providing the above mentioned constitutional safeguards.

21. That Defendants have taken Plaintiff's property without

affording her due process of law in violation of the 5th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Missouri Constitution.

22. For the same reasons as stated in the previous paragraph, St. Louis City Ordinance No. 60878 in general, and Sections 10.04.10(3), 10.04.10(9), 10.04.270 and 10.04.270(7) in particular are, on their face and as applied, unconstitutionally violative of the due process and equal protection clause of the 5th and 14th amendments to the United States Constitution and Article I, Sections 2 and 10 of the Missouri Constitution in that they allow the taking of a person's property and do not provide for notice and a hearing prior to seizure and/or destruction of that property.

23. That St. Louis City Ordinance No. 60878, Sections 10.04.10(3), 10.04.270 and 10.04.270(7) in particular pertaining to dangerous dogs and Section 10.04.10(9) pertaining to potentially dangerous dogs are, on their face and as applied, unconstitutionally vague, overbroad and devoid of all standards and guidelines in violation of the due process and equal protection clauses of the 5th and 14th amendments to the United States Constitution and Article I, Sections 2 and 10 of the Missouri Constitution in that:

a. The decision to label a dog dangerous rests solely in the discretion of the Health Commissioner.

b. The terms and/or phrases "severe injury", "provocation", "domestic animal", "bites", "attacks" and

"endangers the safety of" as used in Section 10.04.10(3) are not defined and force the average citizen to guess at their meaning.

c. The terms and/or phrases "unprovoked", "bites", "domestic animal", "chases or approaches a person", "menacing fashion", "apparent attitude of attack", "known propensity, tendency or disposition to attack", "injury", and "otherwise threaten the safety of humans" as used in Section 10.04.10(9) are not defined and force the average citizen to guess at their meaning.

d. The terms and/or phrases "upon any attack or assault" and "vicious dog" as used in Section 10.04.270(7) are not defined and force the average citizen to guess at its meaning.

24. That acting under color of state law, Defendants have purposely and willfully violated Plaintiff's constitutional right to equal protection under the law as set forth by the 14th amendment to the United States Constitution and Article I, Section 2 of the Missouri constitution in that Defendants, by seizing and confining Max, have selectively and arbitrarily enforced St. Louis City Ordinance 60878.

25. That St. Louis City Ordinance No. 60878 in general, and Sections 10.04.10(3), 10.04.10(9), 10.04.270 and 10.04.270(7) in particular do not conform to State law as required by RSMo. 71.010.

26. That pursuant to St. Louis City Ordinance 60878 and the Revised Statutes of the State of Missouri, the Defendants are not

legally authorized and have no jurisdiction to destroy Max.

a. Section 10.04.270(7) attempts to empower the health Commissioner to destroy a "vicious dog", but the term "vicious dog" is not defined, nor has Max been declared a "vicious dog".

b. Section Four of said ordinance provides that a violation of Ordinance 60878 shall be punished only by a maximum fine of \$500.00 or by imprisonment for not more than 90 days or both.

c. RSMo. 82.300 provides that the maximum penalty for violation of a city ordinance is "by fine or imprisonment, or by both fine and imprisonment; but no fine shall exceed five hundred dollars nor imprisonment exceed twelve months for any such offense."

27. That Plaintiff values the companionship, affection and security provided by Max.

28. Max is a unique companion animal and could not be replaced by any other animal that Plaintiff could own or acquire, and there is no amount of money that could compensate Plaintiff for the loss of her beloved Max, as such no adequate remedy at law exists.

29. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer immediate, substantial and irreparable harm.

30. If Max is destroyed, Plaintiff would be irreparably injured.

31. If the Court were to grant a preliminary and permanent injunction in the matter at bar, neither Defendants nor the public interest would be harmed in any way.

WHEREFORE, in Count I Plaintiff prays judgment as follows:

a. That this Court by its order temporarily and permanently enjoin the Defendants, their servants and employees (including all others who are members of the class aiding, abetting and assisting those Defendants specifically named herein and all other individuals who may gain actual knowledge of such order) and each of them:

(1) From killing, euthanizing, destroying or harming Plaintiff's 3-year old American Pit Bull Terrier named Max.

(2) From classifying Max as "dangerous" or "potentially dangerous" under St. Louis City Ordinances.

(3) From classifying Lady or Missy as "potentially dangerous" under St. Louis City Ordinances.

b. That Defendants be ordered to return Max to his rightful owner, the Plaintiff - Malane Wilson.

c. That pending final determination of this cause the Court grant a preliminary injunction to the same effect.

d. That this Court award Plaintiff the cost of this action, including reasonable attorney's fees.

e. That this Court award Plaintiff fair and reasonable damages to compensate for the above mentioned actions of Defendants.

f. That this Court declare St. Louis City Ordinance No. 60878 in general, and in particular Sections 10.04.10(3), 10.04.10(9), 10.04.270, and 10.04.270(7), to be illegal, void, and unconstitutional on its face and as applied under the laws of the State of Missouri and under the United States and Missouri Constitutions, and thus prohibit Defendants from taking any action against Plaintiff or her dogs under this Ordinance.

g. For such other and further relief as the Court may deem just and proper in the premises.

## COUNT II

### PETITION FOR DECLARATORY JUDGMENT

32. Plaintiff restates, realleges and incorporates herein by reference the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Count I hereof.

33. That on or about the 23rd day of May, 1988, Defendant, City of St. Louis approved Ordinance No. 60878, a copy of which is attached hereto as exhibit B and herein incorporated by reference.

34. That section 10.04.10(3) of said ordinance attempts to define the phrase "dangerous dog".

35. That section 10.04.10(9) of said ordinance attempts to define the phrase "potentially dangerous dog".

36. That section 10.04.270 of said ordinance sets forth the City law pertaining to "dangerous dogs".

a. Subsection (7) of section 10.04.270 sets forth the

conditions under which a "vicious dog" can be destroyed.

37. Plaintiff restates, realleges and incorporates herein by reference the allegations contained in paragraphs 19, 20, 21, 22, 23, 24, 25, and 26 of Count I hereof.

38. If the Court were to grant Plaintiff the declaratory relief requested, neither Defendants nor the public interest would be harmed in any way.

WHEREFORE, in Count II Plaintiff Prays judgment as follows:

a. That this Court by its order declare Plaintiff's rights under St. Louis City Ordinance No. 60878.

b. That this Court declare St. Louis City Ordinance No. 60878 in general, and Sections 10.04.10(3), 10.04.10(9), 10.04.270 and 10.04.270(7) in particular, to be illegal, void and unconstitutional, on its face and as applied, under the laws of the State of Missouri and under the United States and Missouri constitutions, and thus prohibit Defendants from taking any action against Plaintiff or her Terriers under this Ordinance.

c. That this Court order Defendants to release and return Max to his rightful owner, the Plaintiff - Malane Wilson.

d. That this Court order Defendants to remove Max's classification as "dangerous" and to remove the female Terrier's classification as "potentially dangerous".

e. That this Court award Plaintiff the cost of this action, including reasonable attorney's fees.

f. That this Court award Plaintiff fair and reasonable damages.

g. For such other and further relief as the Court may deem just and proper in the premises.

### COUNT III

#### PETITION FOR REPLEVIN

39. Plaintiff restates, realleges and incorporates herein by reference the allegations contained in paragraphs 1, 2, 3, 4 of Count I hereof.

40. Plaintiff is now the owner of certain personal property or chattels located in the City of St. Louis, Missouri, to-wit: A 3-year old, male, white with dark brindle spots, American Pit Bull Terrier. Said property is presently in the possession of City of St. Louis, Dian K. Sharma, and Richard Stevson (hereinafter throughout Count III collectively referred to as Defendants), individually, and in their representatives capacities. Said property is being held at 2120 Gasconade.

41. On or about the 12th day of December, 1989, to the present, Defendants have wrongfully failed to surrender said property from their possession and return it to Plaintiff, and said property is now wrongfully detained by the Defendants.

42. That said property has a present sale value of approximately \$350.00, but is unique and irreplaceable.

43. Plaintiff has demanded from Defendants possession of the aforesaid property, but Defendants have failed and refused and continue to fail and refuse to give Plaintiff such rightful possession and wrongfully continue to detain such property.



