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United States District Court,
N.D. California.
COALITION OF HUMAN ADVOCATES FOR
K9'S AND OWNERS, Plaintiff,
v.
CITY AND COUNTY OF SAN FRANCISCO, et al.,
Defendants.
No. C-06-1887 MMC.
Docket No. 44.

Feb. 27, 2007.

[Eric G. Young](#), Law Offices of Eric G. Young, Santa Rosa, CA, for Plaintiff.

[Vince Chhabria](#), San Francisco City Attorney's Office, San Francisco, CA, for Defendants.

**ORDER GRANTING IN PART AND DENYING
IN PART DEFENDANTS' MOTION TO DIS-
MISS; VACATING HEARING**

[MAXINE M. CHESNEY](#), United States District Judge.

*1 Before the Court is the motion filed October 4, 2006 by defendants City and County of San Francisco, Gavin Newsom in his capacity as the Mayor of the City and County of San Francisco, Carl Friedman in his capacity as director of San Francisco Animal Care and Control, and San Francisco Animal and Control, seeking dismissal of the instant action for lack of standing and failure to state a claim, pursuant to [Rules 12\(b\)\(1\)](#) and [12\(b\)\(6\) of the Federal Rules of Civil Procedure](#). Plaintiff Coalition of Human Advocates for K9's & Owners ("CHAKO") has filed opposition to the motion; defendants have filed a reply. Having considered the papers filed in support of and in opposition to the motion, the Court finds the matter appropriate for decision without oral argument, *see* Civil L.R. 7-1(b), VACATES the March 2, 2007 hearing, ^{FN1} and rules as follows.

^{FN1} The hearing date on the instant motion was continued twice, the first time at plaintiff's request, and the second time pursuant to the parties' stipulation.

BACKGROUND

The instant action challenges the legality of San Francisco Ordinance No. 268-05 ("Ordinance"), which added sections to the San Francisco Health Code prohibiting the ownership of unsterilized pit bulls, subject to certain exceptions, but with no exception for pit bull service dogs. *See* First Amended Complaint ("FAC") ¶¶ 18-19 (citing San Francisco Health Code §§ 43-44.7); *see also* Defendants' Request for Judicial Notice ("RJN") Ex. D (Ordinance). In particular, San Francisco Health Code § 43.1 provides: "No person may own, keep, or harbor any dog within the City and County of San Francisco that the person in possession knew, or should have known, was a pit bull that has not been spayed or neutered," subject to certain exceptions. *See* San Francisco Health Code § 43.1. The itemized exceptions are: (1) the pit bull is under eight weeks of age; (2) the pit bull cannot be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to a physical abnormality; (3) the pit bull has been present in San Francisco for a period of less than thirty days; (4) the owner of the pit bull has submitted an application for a breeding permit; (5) the owner has appealed the City's determination that the dog is a pit bull; or (6) the pit bull is a registered show dog. *See id.*

Plaintiff contends the Ordinance violates the following federal and state statutes: (1) Title II of the Americans with Disabilities Act, [42 U.S.C. §§ 12131 et seq.](#), (2) § 504 of the Rehabilitation Act, [29 U.S.C. §§ 794 et seq.](#), (3) [California Government Code § 11135](#), (4) [California Civil Code § 51](#) ("Unruh Act"), (5) [California Civil Code § 54](#) ("Disabled Persons Act"), and (6) [California Food and Agriculture Code § 31683](#). (*See* SAC ¶¶ 27-67, 100-105.) Plaintiffs further allege the Ordinance is unconstitutional under the state and federal constitutions on the grounds that it (1) violates [Article 1 § 1 of the California Constitution](#) by unlawfully depriving Californians of their property interest in "intact dogs" obtained prior to the implementation of the Ordinance; (2) is impermissibly vague in violation of the Due Process Clause of the 14th Amendment to the United States Constitution; (3) bears no rational relationship to a legitimate government interest and thus violates the Equal Protection Clause of the 14th Amendment; and (4) adversely affects interstate commerce in violation of the