

## **“Did You Say That Chicken Was A Service Animal?”**

### **Service Animals In Public, Work, And Home: What’s A Local Government To Do?**

**By: Kelly Dempsey**

More than fifty-six million people in the United States have a disability of some kind, and that number continues to rise.<sup>1</sup> The number of people using service animals to assist with disabilities is growing as well.<sup>2</sup> With the return of mentally- and physically-wounded war veterans and an increase in the population of elderly people suffering from debilitating limitations, the number of people using service animals to assist with disabilities could exceed all expectations over the coming years.<sup>3</sup>

There are wide variations among federal, state, and local laws that address the permissible use of service animals. These laws differ across the multiple jurisdictions, and even within a singular jurisdiction, variations exist. In the federal branch, for example, laws and regulations under the Americans with Disabilities Act (ADA),<sup>4</sup> the Fair Housing Act,<sup>5</sup> Section 504 of the Rehabilitation Act (Section 504),<sup>6</sup> and others contain substantive differences regarding service animals. These differences include:

- 1) What constitutes a service animal;
- 2) What are “reasonable accommodations;” and
- 3) What documents and information can be requested.

For local governments, the three most common scenarios addressing disabled individuals and their service animals are: 1) issues involving access to public areas, 2) issues in the workplace, and 3) issues in government-subsidized housing. Depending on the location of the disabled individual and her service

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<sup>1</sup> See MATTHEW W. BRAULT, U.S. CENSUS BUREAU, AMERICANS WITH DISABILITIES: 2010, at 5 (2012), available at <http://www.census.gov/prod/2012pubs/p70-131.pdf> (estimating that from 2005 to 2010, the number of people with disabilities in the U.S. increased by 2.2 million).

<sup>2</sup> See Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1164 (2010).

<sup>3</sup> See BRAULT, *supra* note 1, at 5-6.

<sup>4</sup> Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§12101-12213 (2010).

<sup>5</sup> Fair Housing Act of 1968, 42 U.S.C. §§3601-3631 (2010).

<sup>6</sup> Rehabilitation Act of 1973 §504, 29 U.S.C. §794 (2012).

animal in public, at work, or at home, different laws will be invoked and different analyses by the local government may be required. Therefore, when confronted with a service-animal issue, the first consideration by the local government should be to identify the type of physical location (public area, workplace, or home) involved in the service-animal issue. Because the location determines the applicable law, this paper examines service-animal issues in terms of these respective locations.

### **A. Historical and Current Uses for Service Animals**

Use of dogs for human assistance has a long history. In the ruins of Pompeii, a fresco survived depicting a blind man being led by a dog.<sup>7</sup> Americans learned from the Germans during two world wars many of the benefits dogs can provide to the human race.<sup>8</sup> Those benefits have expanded exponentially, and today all types of animals serve a wide variety of functions. For example, dogs are used by children with autism to prevent them from running away and from walking into traffic.<sup>9</sup> Some canine caretakers help children and adults alike to timely take medications, to detect and warn of oncoming seizures or panic attacks, and to assist in concentration.<sup>10</sup> Veterans whose limbs have been lost or who suffer post-traumatic stress disorder (PTSD), among many other debilitating injuries, rely on service animals, including dogs, horses, monkeys, and chickens to assist with their needs.<sup>11</sup> These documented cases run the gamut and include helping veterans deal with fear of crowds and anger issues, and helping veterans by pulling wheelchairs, assisting with balance, retrieving items, opening doors, and almost anything else one can imagine. Service animals also assist with hearing disabilities by responding to doorbells, fire alarms, name-calling, and others. Israel currently pairs

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<sup>7</sup> John Ensminger, *Guide Dog in Pompeian Fresco?*, DOG L. R. (Jul. 19, 2010, 10:23 PM), <http://doglawreporter.blogspot.com/2010/07/guide-dog-in-pompeian-fresco.html>; *A History of Guide Dogs*, CNIB, <http://www.cnib.ca/en/living/safe-travel/Pages/history-dogs-0807.aspx> (last visited Jan. 24, 2013).

<sup>8</sup> *History of Guide Dogs*, INT'L GUIDE DOG FED'N, <http://www.igdf.org.uk/about-us/facts-and-figures/history-of-guide-dogs/> (last visited Jan. 24, 2014); *A History of Guide Dogs*, CNIB, <http://www.cnib.ca/en/living/safe-travel/Pages/history-dogs-0807.aspx> (last visited Jan. 24, 2014).

<sup>9</sup> *Autism service dogs*, Wikipedia.org (last mod 12-2-2013).

<sup>10</sup> *Service Dogs for People with Seizures Disorders* by Liz Rogers, DVM, orig. published in "Alert," National Service Dog center. Newsletter Vol. 6, No. 4 (1995) and [http://articles.sun-sentinel.com/2014-01-24/news/fl-school-service-dog-lawsuit-20140124\\_1\\_service-dog-broward-school-board-mom-sues](http://articles.sun-sentinel.com/2014-01-24/news/fl-school-service-dog-lawsuit-20140124_1_service-dog-broward-school-board-mom-sues)

<sup>11</sup> Beth Teitell, *Service Dogs Barred, Doubted, and Deeply Treasured*, BOS. GLOBE, Sept. 18, 2013, <http://www.bostonglobe.com/lifestyle/2013/09/18/the-growing-number-dogs-assisting-people-with-invisible-conditions-causing-conflict-and-some-cases-confrontation/igPnUBYHa97K07ccBGJVVJ/story.html>.

dogs with Alzheimer's patients.<sup>12</sup> These service dogs are trained to take a disoriented or incapacitated Alzheimer's sufferer home or to a facility when he is lost, disoriented, or too agitated to move.<sup>13</sup> While dogs are the most common type of service animal, other animals, including monkeys, chickens, guinea pigs, cats, parrots, and miniature horses have been used to provide services to people with disabilities, and use of these nontraditional animals is on the rise.<sup>14</sup>

## **B. Service Animals in Public Areas**

When a service animal is in a public area or an area generally accessible to the public, the type of authorized animal, the reasonable accommodations, and the scope of authorized inquiry are extremely limited.

1. What types of service animals are authorized for purposes of public access?  
**Short Answer: Only dogs and miniature horses for service, not therapy**

Title II of the ADA governs use of service animals by the disabled in the context of state and local government services, programs, and activities and the nondiscriminatory access to those services, programs, and activities,<sup>15</sup> while Title III of the ADA addresses access to public accommodations, commercial facilities, and certain private entities.<sup>16</sup> In a nutshell, public access under either title means access to areas, services, and programs where the general public is invited or allowed. Regulations for both titles limit the definition of "service animal" under the ADA to include only a dog.<sup>17</sup> This definition became effective on March 15,

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<sup>12</sup> <http://israel21c.org/health/israel-first-in-the-world-to-develop-alzheimers-guide-dogs>.

<http://www.kingsvalleycollies.com/about/alzheimers-aid-dogs>.

<sup>13</sup> See *id.*

<sup>14</sup> Nancy Kennedy, *Hen Picked: Chickens Are Service Animals*, CITRUS CNTY CHRON. ONLINE (Feb. 2, 2013, 12:00 AM), <http://www.chronicleonline.com/content/hen-picked-chickens-are-service-animals> (chickens); Liz Klimas, *Student Wins \$40K Settlement Against School...for Restricting Her from Carrying Around a Guinea Pig for 'Emotional Support'*, THE BLAZE (Mar. 8, 2013, 1:30 PM), <http://www.theblaze.com/stories/2013/03/08/student-wins-40k-settlement-against-school-for-restricting-her-from-carrying-around-a-guinea-pig-for-emotional-support/> (guinea pig).

<sup>15</sup> See 42 U.S.C. §12132 (2010).

<sup>16</sup> See 42 U.S.C. §§12181-12182 (2010).

<sup>17</sup> U.S. DEP'T OF HOUSING & URBAN DEV., FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS, at 1 (2013), available at [http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf); see 28 C.F.R. §§35.104, 36.104 (2013).

2011,<sup>18</sup> and despite the narrow construction of the definition, regulations for both titles of the ADA also added separate provisions permitting the use of “miniature horses.”<sup>19</sup>

Not all dogs and miniature horses, however, are authorized in public places under Titles II and III of the ADA. For example, service dogs that help with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors may be authorized, but dogs used for emotional support, well-being, comfort, companionship, or crime-deterrent effects are not considered “service animals” under the ADA.<sup>20</sup> These types of service dogs are often called “therapy animals” and are specifically excluded from the definition of “service animals” under the ADA.<sup>21</sup> Interestingly, miniature horses used for therapy are not specifically excluded from the definition of “service animals” under Titles II and III of the ADA. Consequently a black-letter reading of the law would exclude a therapy dog from public access but not a therapy miniature horse.

Titles II and III also recognize two exceptions to public-area access, regardless of whether the service animal is a dog or miniature horse. First, regulations for both titles require the dog or miniature horse to be under the handler’s control.<sup>22</sup> To be under the handler’s control, the animal must be harnessed, leashed, or tethered, unless the disability requires otherwise or those instruments would interfere in the animal’s performance.<sup>23</sup> In that case, the animal must be under the handler’s control by voice, signals, or other effective means.<sup>24</sup> If the animal is out of control and the handler does not take effective control of it, the animal may be excluded.<sup>25</sup> Second, if the animal is not housebroken, the disabled

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<sup>18</sup> See Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56,164, 56,177 (Sept. 15, 2010) (codified at 28 C.F.R. §35.104); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56,236, 56,250 (Sept. 15, 2010) (codified at 28 C.F.R. §36.104).

<sup>19</sup> See Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. at 56,178 (codified at 28 C.F.R. §35.136(i)); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. at 56,251 (codified at 28 C.F.R. §36.302(9)).

<sup>20</sup> See 28 C.F.R. §§35.104, 36.104 (2013).

<sup>21</sup> See *id.* §§35.104, 36.104.

<sup>22</sup> See *id.* §§35.136(d), (i)(3), 36.302(c)(4), (c)(9)(iii).

<sup>23</sup> See *id.* §§35.136(d), (i)(3), 36.302(c)(4), (c)(9)(iii).

<sup>24</sup> See *id.* §§35.136(d), (i)(3), 36.302(c)(4), (c)(9)(iii).

<sup>25</sup> See *id.* §§35.136(b)(1), (i)(2)(ii), 36.302(c)(2)(i), (c)(9)(ii)(B); see also §§35.136(i)(2)(iv), 36.302(c)(9)(ii)(D); *cf. id.* §35.139(a) (an individual may be denied access if she poses a direct threat to the health or safety of others), §36.208(a) (same).

individual may be asked to remove the animal from the premises.<sup>26</sup> However, it is only the animal that may be excluded. The disabled person must be allowed an opportunity to obtain goods, services, and accommodations without having the service animal on the premises.<sup>27</sup>

2. What are reasonable accommodations required for purposes of public access?

**Short Answer:** Generally none, unless the animal is disruptive or poses a real risk

Generally speaking, there are no accommodation issues with a service animal's presence in the public arena because if the service animal is a dog or miniature horse with a disabled person and that animal is under the handler's control and housebroken, access is to be granted. However, when the service animal poses a direct threat to the health and safety of others, modifications in policies, practices, or procedures, and/or consideration of auxiliary aids or services may be required.<sup>28</sup> One example may involve a potentially aggressive service dog who barks and snaps at fellow golfers on a city-run golf course.<sup>29</sup> The city, faced with complaints, would be required to make an individual assessment based on reasonable judgment that relied on the best available objective evidence to ascertain the nature, duration, and severity of the risk; the probability that potential injury would occur; and the potential modifications in policies, practices, and procedures.<sup>30</sup> Under that scenario, the service dog might be muzzled as a compromised solution.<sup>31</sup>

In the case of miniature horses, four assessment factors can assist entities in determining whether reasonable accommodations are possible. These factors include:

- 1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- 2) Whether the handler has sufficient control of the miniature horse;
- 3) Whether the miniature horse is housebroken; and

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<sup>26</sup> See *id.* §§35.136(b)(2), (i)(2)(iii), 36.302(c)(2)(ii), (c)(9)(ii)(C).

<sup>27</sup> See *id.* §§35.136(c), (i)(3), 36.302(c)(3), (c)(9)(iii).

<sup>28</sup> See *id.* §35.104 ("direct threat" is a significant risk to the health or safety of others that cannot be eliminated by modification of policy, practices, or procedures, or by provision of auxiliary aids or services), §36.104 (same).

<sup>29</sup> <http://www.chappellne.org/Chappell9.htm>; <http://www.things4yourdog.com/faq's-about-service-dogs>

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

4) Whether the miniature horse's presence in the specific facility compromises legitimate safety requirements that are necessary for safe operation.<sup>32</sup>

3. What documents and information can be requested regarding public access?  
**Short Answer:** No documentation, and if the disability and function of the animal is unclear, only two questions may be asked

When dealing with issues of public access, regulations under Titles II and III of the ADA authorize two limited questions that can be asked of the disabled person with a service animal: 1) Is the service animal required because of a disability? and 2) What work or task has the animal been trained to perform?<sup>33</sup> These questions can only be asked when it is not readily apparent what the answer would be.<sup>34</sup> For example, if the dog or miniature horse is guiding an individual who is blind or suffers from low vision, is pulling a person's wheelchair, or is obviously providing assistance with stability or balance, those two questions may not be asked.<sup>35</sup>

Not only are additional questions not authorized, but in the public arena, no request for documentation may be made, including but not limited to documentation of a disability or documentation demonstrating that the animal has been trained, certified, or licensed.<sup>36</sup>

### **C. Service Animals in the Work Place**

Title I of the ADA governs employment and recognizes broader and more diverse considerations as to the type of authorized animal, the required reasonable accommodations, and the types of inquiries that can be made by the employer.

1. What is an authorized service animal in the work place?  
**Short Answer:** Almost any animal

In the employment arena and under Title I of the ADA, a service animal is not narrowly defined as or limited to a dog or miniature horse, and the Equal Employment Opportunity Commission (EEOC) acknowledges this broader

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<sup>32</sup> 28 C.F.R. §§35.136(i)(2), 36.302(c)(9)(ii) (2013).

<sup>33</sup> See *id.* §§35.136(f), (i)(iii), 36.302(c)(6), (9)(iii).

<sup>34</sup> See *id.* §§35.136(f), (i)(iii), 36.302(c)(6), (9)(iii).

<sup>35</sup> See *id.* §§35.136(f), (i)(iii), 36.302(c)(6), (9)(iii).

<sup>36</sup> See *id.* §§35.136(f), (i)(iii), 36.302(c)(6), (9)(iii).

application.<sup>37</sup> This is because Title I of the ADA, unlike regulations under Titles II and III of the ADA, does not specifically define a “service animal.” Consequently a disabled employee’s service animal could run the gamut of those identified above and include many nontraditional animals. Moreover, therapy or emotional support animals, which may be excluded from public access, may be authorized in the employment arena, provided that the animal is needed for the disability and does not disrupt the workplace.

2. What are the reasonable accommodations required by the employer?

**Short Answer: Almost any**

Once a disabled employee requests to bring a service animal into the workplace for assistance and/or support, Title I of the ADA requires the employer to make “reasonable accommodations” for that employee. While the employer must consider inclusion of the service animal in the workplace, workplace access is not an automatic right and careful evaluation by the employer is required when making this decision. If access is granted, additional accommodations required to care for the animal, such as break times and access outside for the animal’s relief necessities, are typical additional accommodations.

Common mistakes by employers regarding service animals have resulted in expensive litigation, and these usually occur when the employer denies or limits service-animal access in the workplace after the employer believed it had determined alternative reasonable accommodations. For example, Dr. Chris Branson, who was a staff physician at a hospital when she suffered a spinal cord injury and became paraplegic, was required to use a manual wheelchair and had a canine assistant, Nolan, to help pick up dropped items, open and shut doors, and pull Dr. Branson’s wheelchair.<sup>38</sup> Dr. Branson filed a complaint and later a lawsuit in which she was awarded \$400,000, work access with Nolan, and the recovery of legal fees after the hospital excluded Nolan.<sup>39</sup> In that case, the court found that the hospital’s alternate reasonable accommodations were insufficient when compared to the benefits Nolan offered Dr. Branson.<sup>40</sup> In the face of the hospital’s arguments for exclusion of her animal, namely that Nolan would be disruptive and that Nolan’s size would make it difficult to maneuver in the hospital’s elevators and

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<sup>37</sup> <http://askjan.org/media/servanim.html>; [www.mhla.org/Docs/service\\_animals.pdf](http://www.mhla.org/Docs/service_animals.pdf)

<sup>38</sup> [www.iaadp.org/work\\_access6.html](http://www.iaadp.org/work_access6.html) *Reasonable accommodation and assistance dogs in the workplace* by Ed Earners (2008).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

patient's rooms, the court chastised the hospital by pointing out that Nolan had been quietly and calmly lying next to Dr. Branson's wheelchair throughout the trial with no disruptive demonstrations.<sup>41</sup> Likewise, the judge scoffed at the hospital's engineering diagrams and testimony regarding limited maneuverability concerns. The court concluded that if gurneys fit into these areas, a retriever should have no problem.<sup>42</sup>

Another lawsuit involved a school teacher who suffered from a neuromuscular disease, which required use of a cane for walking, stability, and picking up objects from the floor.<sup>43</sup> The teacher sued and won when the school's recommended accommodation was that Zoe, the service animal, could be brought to school no more than three times a week and after a 24-hour notice was provided to the principal.<sup>44</sup>

Finally, a city attorney, who repeatedly questioned his employee about the degree of her hearing loss and expressed concern that her service dog, Ice, might bite someone or bother others who may be allergic to dogs, recommended that Ice be kept in a kennel at work.<sup>45</sup> When Ice's trainers stated this was not a reasonable accommodation and that it prevented Ice from performing the task of alerting the employee, the EEOC agreed that the employee's claims were meritorious and should proceed to mediation.<sup>46</sup>

3. What documents and information can be requested by the employer?  
**Short Answer:** Other than medical records, almost anything that focuses on the service animal's function

Employers are authorized to request documentation that the accommodation of a service animal is necessary. However, the EEOC's informal guidance warns that this documentation may not always be from a doctor or healthcare provider. It may be from the service that provided and/or trained the animal. The focus for the employer is not the employee's disability but the service animal's function in assisting the employee. Consequently, the employer may inquire as to the animal's training to ensure that the animal can function in the specific workplace setting and to determine the exact function the animal is expected to perform.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



## **D. Service Animals in Housing**

In 1968, Congress passed the Fair Housing Act, which banned housing discrimination on the basis of race, color, gender, religion, or national origin.<sup>47</sup> Twenty years later, in the Fair Housing Amendment Act of 1988, Congress broadened the protected class to include those with disabilities.<sup>48</sup> The Fair Housing Act now prohibits discrimination because of a disability in the sale, rental, or advertising of dwellings.<sup>49</sup> In addition to the Fair Housing Act, which covers virtually all types of housing, including privately owned housing and federally assisted housing, Section 504 of the Rehabilitation Act of 1973 (Section 504) specifically applies to public housing, housing associated with places of education, and federally subsidized housing.<sup>50</sup>

### 1. What is an authorized service animal in the housing arena?

**Short Answer: Almost any**

While neither the Fair Housing Act nor Section 504 defines “service animal,” housing providers may not rely on the restricted definitions of the ADA as a justification for reducing their accommodation obligations under the Fair Housing Act.<sup>51</sup> Thus, for housing purposes, permissive service animals are not limited to dogs or miniature horses.<sup>52</sup> In addition, a service animal for purposes of

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<sup>47</sup> See Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§3601-3631 (2010)).

<sup>48</sup> See Fair Housing Amendment Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§3601-3631 (2010)).

<sup>49</sup> See 42 U.S.C. §§3601-3631 (2010).

<sup>50</sup> See 29 U.S.C. §794 (2012).

<sup>51</sup> See Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. at 56,166; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. at 56,240.

<sup>52</sup> See Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. at 56,194 (Under the Fair Housing Act, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. at 56,268 (same).

housing need not be individually trained nor certified,<sup>53</sup> and an animal whose sole function is for emotional support may qualify as a reasonable accommodation.<sup>54</sup>

2. What are the reasonable accommodations required by the housing provider?  
**Short Answer:** Almost any, unless the animal substantially impacts the provider financially or administratively, alters the provider's services, directly threatens others, or will cause property damage

If a person requests to use an assistance animal in housing, even where the provider prohibits pets or imposes other restrictions or conditions relating to animals, the following three-part inquiry is required under the Fair Housing Act:

- 1) Does the person have a disability?
- 2) Does the animal serve a function directly related to the disability?
- 3) Is the request to have the assistance animal reasonable?

If the answers to these questions are “yes,” the disabled individual and the assistance animal must be allowed in all areas of the premises where the individual lives and all areas where people are normally allowed to go, unless any of the following conditions exist:

- 1) Allowing the assistance animal would impose an undue financial and administrative burden;
- 2) Allowing the assistance animal would fundamentally alter the nature of the housing provider's services;
- 3) The specific assistance animal poses a direct threat to the health and safety of others and could not be reduced or eliminated by a reasonable accommodations; or
- 4) The specific assistance animal would cause substantial physical damage to the property of others that could not be reduced or eliminated by a reasonable accommodation.

If any of the conditions described above exist, the housing provider must consider reasonable accommodations to cure those concerns. A housing provider

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<sup>53</sup> U.S. DEP'T OF HOUSING & URBAN DEV., FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS , at 2 (2013), *available at* [http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>54</sup> *Id.* at 6; *see* Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. at 56,166; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. at 56,240.

may not deny a request based simply on the animal's breed, type, size, or weight.<sup>55</sup> The provider also may not require the resident to pay a pet deposit, fee or enter into other specialized terms or conditions.<sup>56</sup>

3. What documents and information can be requested by the housing provider?  
**Short Answer:** Some reliable documentation if the disability is not readily apparent but never medical records

While the housing provider may ask an individual whose disabilities are not readily apparent to submit reliable documentation of a disability and the disability-related need for an assistance animal, the provider may not ask for documentation from an individual whose disability is readily apparent and may not ask for medical records, the identity of medical providers, or for detailed and extensive information or documentation of the person's physical or mental impairment.

### **E. Recent Legislative Changes in Texas**

Recent legislative changes regarding service animals for the disabled under the Texas Human Resources Code and the Texas Health and Safety Code occurred in Texas in 2013 and became effective on January 1, 2014.

These changes included removal of the term "mental retardation" for "intellectual disability" and the addition of PTSD to both statutes. Under the Texas Health and Safety Code, only a canine is recognized as an authorized service animal, but both service and therapy dogs are authorized. Consequently all entities regulated under chapter 437, such as food service establishments and retail food stores, may not deny a service dog's admittance into those areas which are open to customers and which are not used to prepare food, provided, of course, that the dog accompanies the disabled person and is under his control or the dog is in training and controlled by an approved trainer.<sup>57</sup> The Texas Human Resources Code does not limit the type of service animal to a dog but does require the animal to be trained by an organization which specializes in rehabilitation for the disabled and in the specific training of that animal, regardless of what type of animal it is.<sup>58</sup> Since all public areas in Texas, from sidewalks to common carriers such as boats,

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<sup>55</sup> The Disability Law Low down Podcast Show 49 (2013) [www.dll.ada-podcast.com/shownotes/DDLPod49.Php](http://www.dll.ada-podcast.com/shownotes/DDLPod49.Php); "Service Animals 6 Houston" Tammi Bornstein and Susan L. Duncan (2013) [www.petpartners.org/page.aspx?pid=459](http://www.petpartners.org/page.aspx?pid=459).

<sup>56</sup> id

<sup>57</sup> Tex. Health and Safety Code §437 (Vernon Supp.2014).

<sup>58</sup> Tex. Hum. Res. Code § 121 (Vernon Supp.2014).

trains, planes and automobiles to commercial establishments, are subject to these provisions of the Texas Human Resources Code, “service animals” are not limited to dogs, but may include any trained animal. Interestingly, specific requirements of training-course completion were removed from the Texas Health and Safety Code.

Regarding the appropriate inquiry to be made, both statutes specifically restrict demands or inquiries into the animal’s qualifications or certifications except to determine the basic type of assistance provided by the animal. Finally, both statutes provide for criminal penalties for violation of the statutes.<sup>59</sup>

## **F. Conclusion**

A perfect storm may be on the horizon with the increase in demands and needs for service animals combined with the uncertainty and complexities surrounding various and potentially conflicting applicable laws. Local governments will be on the front line of this storm as they try to weather these discrepancies. Since the location of service-animal access determines which laws will be invoked, the local government should determine situs first in order to identify the analysis required for that site. The following chart may assist in this effort:

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<sup>59</sup> Tex.Health and Safety Code §437 (Vernon Supp.2014) Tex.Hum.Res.Code § 121 (Vernon Supp.2014)

Public  
Space

Work  
Place

Housing

Service  
Animal

Only a dog and  
miniature horse  
for service not  
therapy

\*Miniature horse  
therapy ok

Almost any  
including  
service and  
therapy

Almost any  
including  
service and  
therapy

Reasonable  
Accommodations

None unless  
dog/horse is  
disruptive or  
poses a real risk

Almost  
Any

Almost any unless the  
animal substantially  
impacts the provider  
financially or  
administratively, alters its  
services, directly  
threatens others or will  
cause property damage

Authorized  
Inquiry/  
Documents

1) Is the dog/horse  
required b/c of a  
disability?  
2) What work or task  
has the dog/horse been  
trained to perform?  
\*No documentation

May request  
documentation that  
service animal is  
NEEDED  
Focus is on animal's  
function, not  
employee's disability

Does the person have a  
disability?  
Does the animal serve a  
function directly related  
to the disability?  
Is the request to have the  
assistance animal  
reasonable?