STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DAMON HRYDZIUSZKO,

Appellant, Case No. 2024-210258-AA

v. Hon. Kwamé Rowe

VILLAGE OF BEVERLY HILLS,

Appellee.
_____/

OPINION AND ORDER RE: CLAIM OF APPEAL

At a session of said Court held in the
Courthouse, City of Pontiac, Oakland County,
Michigan, on March 20, 2025

PRESENT: THE HONORABLE KWAMÉ ROWE, CIRCUIT COURT JUDGE

This matter is before the Court on Appellant Damon Hrydziuszko's ("Hrydziuszko") Claim of Appeal. The Court has reviewed Hrydziuszko's brief, Appellee Village of Beverly Hills' ("Beverly Hills") brief, and Hrydziuszko's reply brief. The Court conducted oral argument on this matter on February 20, 2025, and took this matter under advisement at that time. The Court finds as follows.

I. Statement of Relevant Facts

At issue in this case is Beverly Hills ordinance 22.08.430 ("the Ordinance"), which is captioned, "KEEPING OF FARM ANIMALS AND OTHER ANIMALS", and which states,

> [t]he keeping, raising, or breeding of animals including farm animals and non-domestic animals and reptiles (except domesticated cats, dogs, canaries, parakeets, parrots, gerbils, hamsters, guinea pigs, turtles, fish, rabbits and similar animals commonly kept as pets) shall be prohibited, and except as may be permitted by and under conditions imposed by the Zoning Board of Appeals.

Hrydziuszko has kept chickens as pets since 2021. Upon discovering this, Beverly Hills issued a citation for an ordinance violation to Hrydziuszko on July 30, 2024. Hrydziuszko applied to the Beverly Hills Zoning Board of Appeals ("ZBA") for an interpretation of the Ordinance that would allow for the keeping of chickens. The ZBA addressed this issue at its September 9, 2024 meeting, at which time it adopted an interpretation of the Ordinance that chickens were not permitted because they are farm animals specifically prohibited by the Ordinance.

Hrydziuszko appeals the ZBA's decision to this Court, asserting that the ZBA's decision was not supported by competent, material, and substantial evidence, and also asserting that the Ordinance is unconstitutionally vague and therefore void under the Due Process Clause.

II. Standard of Review

Factual determinations of the ZBA are reviewed under the criteria set forth by MCL 125.3606, which states, in part, that this Court must ensure the ZBA's decision "[c]omplies with the constitution and laws of the state" and "[i]s supported by competent, material, and substantial evidence on the record." MCL 125.3606(1)(a), (c). However, "[o]rdinances are treated as statutes for the purposes of interpretation and review…[h]ence, the interpretation and application of a municipal ordinance presents a question of law, which this Court reviews de novo." *Great Lakes Soc v Georgetown Charter Tp*, 281 Mich App 396; 761 NW2d 371 (2008).

Because the instant matter involves the proper interpretation of the Ordinance—and does not involve any factual determinations by the ZBA—the proper review here is de novo, despite Beverly Hills' argument that this Court's review in this case is extremely limited.

III. Analysis

"Interpretation of a municipal ordinance is…a question of law reviewed de novo." *Exclusive Capital Partners, LLC v City of Royal Oak*, __ NW3d__ at *7 (2024) (Docket Nos.

366247, 366257). "This includes the constitutional question whether an ordinance is void for vagueness." *Id.* "The rules applicable to the interpretation of a statute apply to the interpretation of an ordinance." *Id.* "When interpreting an ordinance, we must discern the drafter's intent, which we accomplish by giving the words selected by the drafter their plain and ordinary meanings." *Id.* "If an ordinance is unambiguous, it must be applied as plainly written." *Id.*

"The 'void for vagueness' doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property without due process of law." *Proctor v White Lake Tp Police Dept*, 248 Mich App 457, 467; 639 NW2d 332 (2001). "A statute may qualify as void for vagueness if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in determining whether the statute has been violated." *Id.* "'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.'" *Exclusive*, supra, at *7. "Vague laws may trap the innocent by not providing fair warning." *Grayned v City of Rockford*, 408 US 104, 108; 92 S Ct 2294 (1972). Furthermore, "[a] vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.*

In short, "[a] 'statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required.'" *Exclusive*, supra at *8 (quoting *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 539; 669 NW2d 594 (2003)).

The Ordinance bans the keeping of farm animals and "non-domestic" animals and reptiles. The terms "farm animals" and "non-domestic animals and reptiles" are not defined. In the same sentence that bans "farm animals" and "non-domestic animals and reptiles", there is a

parenthetical, which exempts from the prohibition "domesticated cats, dogs, canaries, parakeets, parrots, gerbils, hamsters, guinea pigs, turtles, fish, rabbits and similar animals commonly kept as pets…"

The Ordinance explicitly lists eleven animals that, when domesticated, are allowed. These are cats, dogs, canaries, parakeets, parrots, gerbils, hamsters, guinea pigs, turtles, fish, and rabbits. Then, the Ordinance goes on to state that any other animal is allowed if they are both "similar" to these eleven and "commonly kept as pets".

It is in these two terms that the stumbling blocks to interpreting this Ordinance become apparent. What is "similar" to these eleven animals? For instance, the Ordinance specifically allows three kinds of birds: canaries, parakeets, and parrots. No other birds are allowed, unless they are "similar" to one of those three. But what is similar enough and what is not similar enough? What about commonly kept birds such as finches and cockatiels? These are also birds. Are these "similar" enough to canaries, parakeets, and parrots? If so, why? If not, why not? No guidance is given in the Ordinance.

The Ordinance also allows gerbils, hamsters, guinea pigs, and rabbits—but not ferrets or mice. Are ferrets or mice allowed? If so, why? If not, why not? No guidance is given in the Ordinance.

The Ordinance allows turtles—but not snakes or lizards. Are snakes or lizards allowed? If so, why? If not, why not? No guidance is given in the Ordinance.

To render a list of eleven animals that are widely disparate from one another (this relatively short list includes birds, mammals, and reptiles), and then approve animals that are "similar" to any one of these disparate eleven, gives unfettered discretion to the governing body to determine what is or is not allowed and also does not put the citizenry of Beverly Hills on adequate notice

concerning what conduct is lawfully allowed. In other words, the Ordinance "does not provide fair notice of the conduct it regulates" and "its prohibitions are not clearly defined." *Proctor*, 248 Mich App at 467; *Exclusive*, supra, at *7.

Therefore, the Court holds that this is sufficient on its own to find that the Ordinance is constitutionally void for vagueness.

However, beyond tying the word "similar" to a list of eleven disparate and distinct kinds of animals, the Court also finds the language "commonly kept as pets" to introduce another problematic variable. What does it mean to be "common"? At what point does a pet become "common"? And is it the law of Beverly Hills that the law shifts without amendment or declaration once an invisible line of "commonality" is crossed?

At oral argument, Beverly Hills argued that the proper metric for determining commonality is whether something is "common" in Beverly Hills itself, but there is no basis in the ordinance for this interpretation. "[T]he judiciary cannot read restrictions or limitations into a statute that plainly contains none." *Hackel v Macomb Co Comm'n*, 298 Mich App 311, 319; 826 NW2d 753 (2012). Therefore, is it relevant whether something is common in Beverly Hills, in Michigan, in the United States, or in the world at large? And is commonality defined by a majority, or is it common enough if 1 in 1,000 households keeps a particular animal as a pet? The Ordinance is silent as to all of this, and this silence is, once again, rife with opportunity for decision-makers to arbitrarily choose what conduct is proscribed on an ad hoc basis, while simultaneously giving the citizenry no guidance as to what conduct is prohibited.

These issues lead the Court to one inexorable conclusion: the Ordinance fails to give adequate notice of which animals are allowed to be kept as pets and which are not, and it allows decisions on this matter to be made on an ad hoc and subjective basis. Reading the Ordinance, the

Court honestly does not know if chickens are allowed. Chickens are common on farms, to be sure, but so are dogs. Chickens are also commonly kept in residential areas, although it is not clear if this commonality rises to the level required by the Ordinance. Chickens are birds, and so in that way are similar to parakeets, parrots, and canaries.

To be clear, the Court is not holding that the ZBA made an erroneous decision under this Ordinance; rather, this Court is holding that the Ordinance itself is defective because it is, on its face, unconstitutionally void for vagueness.

Therefore, the Court holds that the Ordinance is unconstitutionally vague and the Court declares it void.

IV. Conclusion

For these reasons, the September 9, 2024 decision of the Beverly Hills Zoning Board of Appeals is hereby vacated, and Beverly Hills Ordinance 22.08.430 is hereby struck down by this Court as unconstitutionally void for vagueness.

WHEREFORE, IT IS HEREBY ORDERED that the Village of Beverly Hills Ordinance 22.08.430 is hereby **DECLARED AND ADJUDGED** to be unconstitutionally void for vagueness pursuant to the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and therefore Ordinance 22.08.430 is hereby **STRICKEN** from the Village of Beverly Hills Ordinances;

IT IS FURTHER ORDERED that, as a result, the September 9, 2024 decision of the Beverly Hills Zoning Board of Appeals interpreting Ordinance 22.08.430 is also **VACATED**.

IT IS SO ORDERED.

THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM IN THIS MATTER AND CLOSES THE CASE.

Dated: March 20, 2025

/s/ Kwamé L. Rowe
Hon. Kwamé Rowe, Circuit Judge