

program modifications to mitigate the impact on other program participants due to the presence of the animal.

1. **Lack of Control.** A service animal or service animal in training generally may be excluded from accessing City programs, activities, services, buildings, and facilities when the handler is unable to exercise control of the animal, or if the animal is not housebroken²¹. There is no requirement that the service animal be leashed as long as the animal is otherwise under the handler's control. The individual with a disability must be permitted to participate in the service, program, or activity without the service animal on the premises.²²
2. **Fundamental Alteration.** A service or assistance animal, or service animal in training, may be excluded from a City program, activity, or service if its presence would fundamentally alter the nature of the program, activity, or service.²³ Such circumstances should be rare, and always individually assessed, but might include situations when the presence of the animal may affect the safety or welfare of other animals, such as an exhibit of predatory or endangered animals at the Oakland Zoo, or an adoption event hosted by Oakland Animal Services.
3. **Direct Threat.** As stated above, a service or assistance animal or service animal in training must be under the control of the handler at all times. Before excluding a service or assistance animal or service animal in training based on direct threat, staff must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, of the nature, duration, and severity of the risk of injury, the probability that injury will in fact occur, and whether modifications or the provision of auxiliary aids or services may mitigate the perceived risk. Stereotypes about particular species or breeds cannot form the basis of a finding of direct threat.²⁴

Any decision to exclude an alleged service animal, service animal in training, or assistance animal from a City program, activity, or service must be made in writing by the Department Head or designee, as set forth in AI 123, the City ADA Policy.

²¹ Animals that are housebroken can experience illness so accidents can occur; this possibility should be considered before excluding the animal from the premises. Similarly, a dog's limited barking should not serve as evidence alone of being out of control as the barking may be brought under control. [Title II 2010 Guidance and Section By Section Analysis](#), page 87.

²² 28 C.F.R. §35.136(c).

²³ 42 U.S.C. §12201(f). "At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo." [Frequently Asked Questions about Service Animals and the ADA](#).

²⁴ 28 C.F.R. §35.139.

