# SETTLEMENT AGREEMENT

# REGARDING ACCESS FOR INDIVIDUALS WITH DISABILITIES TO DRAGON CITY I, INC. DJ# 202-3-21

## I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America, Dragon City I, Inc. ("Dragon City"), and Yi Xiang Ou. Dragon City is an Alabama corporation which operates a privately owned restaurant located at 28611 U.S. Highway 98, Daphne, Alabama 36526. Yi Xiang Ou is the sole owner, shareholder, member or manager of the restaurant.

2. This Agreement is reached under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12181 *et seq*. and its implementing regulation, 28 C.F.R. Part 36, to resolve an investigation initiated by the United States Attorney's Office for the Southern District of Alabama after it was informed by Ms. Mamie Louise Everett (a resident of Fairhope, Baldwin County, Alabama; herein, "Ms. Everett") that she and her neighbor friend had been refused service and asked to leave Dragon City because Ms. Everett was accompanied by her service animal.

3. Dragon City is a place of public accommodation under 42 U.S.C. § 12181(7)(B) and 28 C.F.R. § 36.104.

## II. FACTS

4. The United States found in its investigation that on Thursday, April 27, 2012, complainant Ms. Everett, accompanied by her neighbor, visited Dragon City. Because she is blind, Ms. Everett's service animal accompanied her. The dog was in working harness at all times. While inside the restaurant, Ms. Everett and her neighbor asked to be seated and were then told by the hostess "no dogs were allowed." Further, the hostess informed Ms. Everett that they must leave the premises of Dragon City. Ms. Everett informed the hostess she was blind and that the dog was her service animal. The hostess nevertheless required Ms. Everett, her neighbor, and the service dog to leave the premises.

Outside the restaurant with her growing concern, being upset, and having experienced embarrassment and humiliation, Ms. Everett telephoned the City of Daphne Police Department. A Daphne Police Department Officer was dispatched to Dragon City. The Officer explained to Dragon City representatives that the customer had the right to be accompanied by her service dog, which was trained to assist Ms. Everett because she was blind, and so long as the dog was under control and accompanied its owner. Eventually, Dragon City allowed Ms. Everett, her service dog, and her neighbor to enter the restaurant. However, they were required to sit well away from all other customers, near a service area in the restaurant. Although they ate a meal, Ms. Everett remained upset and distraught.

5. As a result of its investigation, the United States has determined that when Ms. Everett first attempted to enter the restaurant, she was denied equal access to the goods and services of Dragon City when it failed to modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability. Even though Dragon City eventually allowed Ms. Everett and her service dog to enter following intervention by the city police, she was then restricted in where she could sit and her access to the buffet was limited. Accordingly, she was further denied equal access to the goods and services of Dragon City. 42 U.S.C. §§ 12182(a) & (b); 28 C.F.R. §§ 36.201(a), 36.202, 36.302(c).

6. The parties have determined their respective interests can be met without engaging in litigation, and this Agreement is made to provide access to persons with disabilities and avoid the costs as well as the burdens of litigation.

## III. ACTIONS TO BE TAKEN BY DRAGON CITY AND YI XIANG OU

7. Consistent with the law, Dragon City and Yi Xiang Ou shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Dragon City restaurant by failing to modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability.

8. Dragon City and Yi Xiang Ou shall adopt, maintain, and enforce the policy attached as Attachment A to this Settlement Agreement, which covers treatment of customers using service animals. Within 15 days after the effective date of this Agreement, Dragon City shall provide a copy of the policy in Attachment A to each employee or owner or contract worker ("staff") of Dragon

City. This restaurant shall post a copy of the policy in the area of the restaurant where staff are given information on company policy (e.g., Worker's Compensation, Wage and Hour Laws, etc.). The policy will be communicated to staff in English and in any additional language(s) necessary for all staff to understand the policy.

9. Within 30 days after the effective date of this Agreement, Dragon City and Yi Xiang Ou will also develop or procure signs, not less than 6" x 12" with a font of 48, stating "This Restaurant Welcomes Customers With Disabilities Who Are Accompanied By Their Service Animals," which will also include this message in Braille. The signs will be installed next to the two entry doors of the restaurant on the latch side of the door. The signs shall be mounted so that the bottom of the upper row of letters is at a height of 60 inches from the ground.

10. Dragon City and Yi Xiang Ou shall pay damages of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) by check made payable to "Mamie Louise Everett." 42 U.S.C. § 12188(b)(2)(c). This payment will be delivered with this signed Agreement to Assistant U.S. Attorney Gary Alan Moore, United States Attorney's Office, 63 South Royal Street, Suite 600, Mobile, Alabama 36602, for further delivery to Ms. Everett. This liability for damages is a joint and several obligation of Dragon City and Yi Xiang Ou.

11. To vindicate the public interest, Dragon City and Yi Xiang Ou shall pay a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) by check made payable to the "United States of America." 42 U.S.C. § 12188(b)(2)(c). This payment will be delivered with this signed Agreement to Assistant U.S. Attorney Gary Alan Moore, United States Attorney's Office, 63 South Royal Street, Suite 600, Mobile, Alabama 36602. This liability for a civil penalty is a joint and several obligation of Dragon City and Yi Xiang Ou.

12. All staff or owners who may be in contact with the public (including, but not limited to, hosts, hostesses, wait staff, bartenders, whether employees or contract workers, and similar personnel) of Dragon City shall undergo suitable training on the obligations of public accommodations to serve persons with disabilities. This training shall be concluded for current staff and Yi Xiang Ou within 30 days of the date of this Settlement Agreement. All future staff or owners shall be provided this same training within 30 days of their date of hire. The training, for purposes of this Settlement Agreement only, shall include each staff member or owner being provided a copy of the "Policy" attached hereto as Exhibit A; a copy of the explanatory items attached hereto as Exhibit B ("ADA 2010

Revised Requirements for Service Animals"). If the staff member or owner does not read and comprehend the English language, Yi Xiang Ou (or future owner of Dragon City), shall arrange for this information to be communicated to that staff or owner in their respective native languages so that each staff member or owner will have a full and complete understanding. Each staff member or owner shall date, sign and print their respective names legibly on the Policy indicating their understanding and agreement to abide by the Policy adopted by Dragon City.

For the duration of this Settlement Agreement, upon the anniversary of its effective date, Yi Xiang Ou or other future owner of Dragon City will provide copies of the signed Policy forms described just above to the U.S. Attorney's Office at the address provided herein below.

## IV. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

13. In consideration for this Agreement, the United States agrees to refrain from filing any civil lawsuit based on the incident that occurred April 27, 2012. The United States reserves, however, the right to file a civil lawsuit to enforce this Agreement under the terms of paragraph 14.

14. If Dragon City and/or Yi Xiang Ou fail to take any of the actions described in Section III of this Agreement under the terms and time periods specified, without obtaining sufficient advance written approval from the United States, Dragon City and Yi Xiang Ou will correct this noncompliance within 30 days of being notified of the noncompliance and shall be liable to the United States of America for a civil penalty of at least $1,000 for each required action not taken, in addition to any appropriate compensatory damages caused by the failure to comply. Payment of the penalty shall not be the exclusive remedy of the United States upon any breach of this Settlement Agreement by Dragon City and Yi Xiang Ou.

15. Failure by the United States Department of Justice to enforce this entire Agreement, or any provision thereof, with regard to any deadline or any other provision will not be construed as a waiver of its right to do so for other deadlines and provisions of this Agreement.

16. This Agreement is a public document. A copy of this document, or any information contained in it, may be made available to any person.

17. This Agreement is binding on Dragon City and Yi Xiang Ou. This Agreement is also binding on any successors in interest to Dragon City and Yi Xiang Ou, and each has a duty to notify all such successors in interest.

18. This Agreement is the entire agreement between the United States of America, Dragon City and Yi Xiang Ou. No other statement, promise, or agreement, either written or oral, made by either party or agents of either party, not in this written Agreement will be enforceable.

19. This Agreement is limited to the facts in it. This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law. This Agreement does not purport to list all violations of the Americans with Disabilities Act that may have occurred or are occurring at Dragon City.

20. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

21. Notices of any kind required or contemplated under this Agreement shall be made by mailing the notice via United States Postal Service, first class certified mail, return receipt requested. Notice will be considered given on the date of receipt identified on the return receipt. Notices to the United States Attorney's Office shall be mailed to the address in the signature block below of the undersigned Assistant U.S. Attorney. Notices to Dragon City and Yi Xiang Ou shall be mailed to 28611 U.S. Highway 98, Daphne, Alabama 36526.

22. Deadlines listed in this Agreement that fall on weekends or holidays will be extended to the next business day.

23. The effective date of this Agreement is the latest-dated signature below. The Agreement will remain in effect until three years after the Effective Date.

**FOR THE UNITED STATES OF AMERICA:**

KENYEN R. BROWN
United States Attorney

By: _____ Date: July 3, 2012.
Gary Alan Moore

Assistant United States Attorney
United States Attorney's Office
Southern District of Alabama
63 South Royal Street, Suite 600
Mobile, AL 36602

**FOR YI XIANG OU & DRAGON CITY I, INC.**

Yi Xiang Ou

Yi Xiang Ou

Date: July 3, 2012.

Dragon City I Inc

Dragon City I, Inc.
By: Yi Xiang Ou
Its President

Date: July 3, 2012.

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# POLICY REGARDING SERVICE ANIMALS FOR PEOPLE WITH DISABILITIES

Dragon City I, Inc. and Yi Xiang Ou are committed to making reasonable modifications in policies, practices, and procedures to permit the use of service animals by persons with disabilities. Service animals play an important role in ensuring the independence of people with disabilities, and it is therefore our policy to welcome into our restaurant any animal that is individually trained to assist a person with a disability.

**What is a Service Animal?**

Service animals include any dog that is individually trained to do work or perform tasks for individuals with disabilities, including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals do not always have a harness, a sign, or a symbol indicating that they are service animals. A service animal is **not** a pet. Service animals assist people with disabilities in many different ways, such as:

- Guiding people who are blind or have low vision and retrieving dropped objects for them;

- Alerting people who are deaf or hard of hearing to sounds and the presence of others;

- Carrying and picking up items, opening doors, or flipping switches for people with disabilities who have limited use of hands or arms, limited use of their legs, or limited ability to bend or stoop;

- Pulling wheelchairs;

- Alerting people with disabilities to the onset of medical conditions such as seizures, protecting them and cushioning them if they fall, reviving them, and performing other tasks that reduce the risk of disability-related injury;

- Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities, or psychiatric disabilities, such as reminding a person with depression to take medication or waking him up, alerting a person with anxiety to the onset of panic attacks, orienting people with schizophrenia to reality, and

helping people with intellectual or cognitive disabilities to locate misplaced items, find places, or follow daily routines; and

- Providing physical support and assisting people with physical disabilities with stability and balance.

**Requirements with Regard to Service Animals:**

Most of the time, people with disabilities who use service animals may be easily identified without any need for questioning. If we can tell by looking, it is our policy not to make an individual feel unwelcome by asking questions. If we are unsure whether an animal meets the definition of a service animal, it is our policy to ask the individual only two questions at the point that the individual seeks entry to the restaurant:

- ***Is the dog a service animal required because of a disability?***
- ***What work or task has the dog been trained to perform?***

If the individual says yes to the first question and explains the work or tasks that the animal is trained to perform, we will welcome the person and service animal into the restaurant without asking any additional questions about his or her service animal. We will **not** ask an individual questions about his or her disability. We will **not** ask an individual to show a license, certification, or special ID card as proof of their animal's training. We **must** permit service animals to accompany individuals with disabilities to all areas of our restaurant normally used by customers or other members of the public and will treat individuals with service animals with the same courtesy and respect that Dragon City I, Inc. affords to all of our customers.

**Manager Responsibilities:**
Dragon City I, Inc. and Yi Xiang Ou have the right to exclude a service animal from the restaurant if the dog is out of control and the handler does not take effective action to control it, or the dog is not housebroken. We will not exclude a particular service animal based on past experience with other animals or based on fear unrelated to an individual service animal's actual behavior. Each situation will be considered individually. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

Only the Manager on Duty can decide to exclude a service animal.

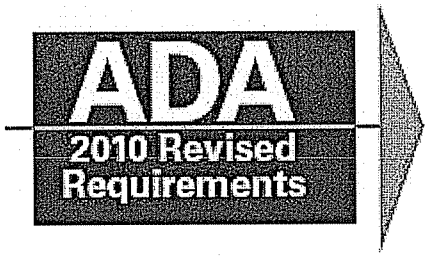
**********

My signature below indicates I understand and agree to abide by this Policy.

_____ (staff/employee signature) Date: _____, 20__.

(Printed Name: _____)

**U.S. Department of Justice**
Civil Rights Division
*Disability Rights Section*




# Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

## Overview

This publication provides guidance on the term "service animal" and the service animal provisions in the Department's new regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

## How "Service Animal" Is Defined

**Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.** Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Exhibit B

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the State attorney general's office.

## Where Service Animals Are Allowed

**Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.** For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

## Service Animals Must Be Under Control

**Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.** In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

## Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.

- Staff are not required to provide care or food for a service animal.

## Miniature Horses

**In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.** (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

## For more information about the ADA, please visit our website or call our toll-free number.

**ADA Website**

www.ADA.gov

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visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line

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24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011

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