

COMMITTEE OF THE WHOLE (WORKING SESSION) – NOVEMBER 29, 2005

ANIMAL CONTROL BYLAW DOG OWNERS' LIABILITY ACT / PIT BULLS

Recommendation

The Solicitor/Litigation recommends that this report be received for information and that Bylaw 53-2002, the Animal Control By-law, be amended:

- (i) To include provisions regarding the permitted location of "dog runs";
- (ii) To include provisions regarding fencing requirements; and,
- (iii) To delete the "aggressive dogs" section and replace it with provisions in compliance with the recently amended *Dog Owners' Liability Act*.

Purpose

To respond to Council requests for further reports.

Economic Impact

There is no economic impact resulting from this report.

Background

In February 2002, Council enacted Bylaw 53-2002, the City's comprehensive Animal Control Bylaw (hereinafter "the Bylaw"). The Bylaw presently includes provisions which regulate "aggressive dogs", defined as pit bulls and pit bull cross breeds. Council subsequently directed staff to report back regarding additional provisions to restrict aggressive breeds of dogs. Council further directed staff to provide additional information concerning issues such as dog runs and fencing requirements.

At the Council meeting of January 24, 2005, Council directed staff to prepare any necessary amendments to the Bylaw to ensure that the onus is on dog owners to provide appropriate fencing between properties.

At the Committee of the Whole meeting on May 24, 2005, Council directed staff to research the feasibility and merit of revising the Bylaw to include dog runs as one of the structures that shall be located not less than 1.4 metres from the property line.

At the Council meeting of June 27, 2005, staff reported that amendments to the *Dog Owners' Liability Act*, R.S.O. 1990, c. D. 16, were to go into effect on August 29, 2005 (hereinafter "the Act"). The Act bans the ownership of pit bulls, as well as the breeding, transferring, abandoning or importing of this breed of dog. The Act does permit the ownership of pit bulls that were already in the province on the date the Act came into effect, as well as pit bulls born in the province within 90 days thereafter. These are referred to as "restricted" pit bulls.

Analysis and Options

Under the new Act a 60-day transition period was provided for restricted pit bulls, wherein their owners were required to have them spayed or neutered. They must now also be leashed and muzzled while in public, and must comply with any additional requirements set by municipalities.

Enforcement

The York Regional Police have advised that they will be working cooperatively with municipalities in enforcing the new Act. A meeting was held on November 24, 2005 between the York Region

Police and Bylaw Enforcement Officers from all area municipalities in York Region. York Region Police have provided a telephone number to call should a resident have a complaint or inquiry, and the York Regional Police will respond accordingly. York Regional Police will act as the investigating agency and City staff will be asked to prepare related paperwork for any Court action. Kennel Inn has advised that it will not be responding to calls regarding pit bulls. A follow-up meeting will be scheduled to further discuss any enforcement issues and a possible central pit bull registry.

Many municipalities have yet to resolve enforcement issues. While the Act authorizes municipalities to enforce the provisions of the Act, it does not require them to do so.

York Region Police will respond to emergency calls, as will the Vaughan Fire Rescue Service.

The Act provides that a municipality may include provisions in its bylaw which are more restrictive than the Act. The Minister may make regulations regarding leashing and muzzling, and the City may include a provision in the bylaw requiring restricted dogs to be leashed and muzzled if not in an enclosed pen when on the owner's property. Such a provision will be included in the draft bylaw.

Court Challenge

An Application has been filed by the owner of a pit bull, seeking a declaration that the new provisions of the Act violate sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*. Section 7 guarantees the right to life, liberty and security of the person, and that no person shall be deprived of same except in accordance with the principles of fundamental justice. Section 11(d) provides that any person charged with an offence shall be presumed innocent until proven guilty, yet the Act provides for a reverse onus where it is alleged that a dog is a non-compliant pit bull.

Other allegations made in the Application include: that the definition of a pit bull is too vague and overbroad; that the Act fails to provide sufficient direction to those enforcing the law to prevent the arbitrary exercise of discretion; and, that it does not impair the rights of Ontario residents as little as possible. The Attorney General has the opportunity to file a Response. Thereafter a Hearing will be held, but this is not expected for several months.

Other Breeds

There have been questions about the feasibility of including other dog breeds within the definition of "aggressive dogs", thereby restricting the owners of such breeds. There are various breeds of dogs that people consider aggressive, and varied statistics regarding which breeds are involved in dog bites. No dogs other than pit bulls and pit bull crosses have been included in any Canadian legislation that staff is aware of. Dog identification poses difficulties. When tested, many individuals assume that large muscular dogs are pit bulls, when they are actually other breeds such as rottweilers.

Fencing

The *Municipal Act* gives the municipality the power to enact bylaws respecting structures, including fences. Pursuant to section 427 of the *Municipal Act*, if a municipality has authority by law or otherwise to direct or require that a thing be done, the municipality may, in default of the thing being done, direct that the thing be done at the person's expense. The municipality may enter upon land at any reasonable time for this purpose. The municipality may then recover the costs of doing the thing or matter by action, or by adding the costs to the tax roll and collecting them in the same manner as taxes.

Dog Runs

Concerns have been raised about dog runs, defined as an “enclosed pen”. The concern is that if the dog run abuts the property line, the run-off from cleaning causes waste to flow onto adjacent properties. Thus, the Bylaw can be amended to include a provision that dog runs must be a certain distance from the property line.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

Staff recommend that the Animal Control By-law be amended to include provisions regarding the location of dog runs, and to provide for the licensing of only the grandfathered pit bulls. Staff will provide a memo to Council summarizing the amendments.

Report prepared by:

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Respectfully submitted,

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NS/gg