

ITEM 9
MANAGER'S REPORT NO. 34
COUNCIL MEETING 85/05/13

RE: LETTER FROM MRS. ELIZABETH ELWOOD WHICH APPEARED ON AGENDA FOR THE
1985 MAY 06 MEETING OF COUNCIL (Item 5 e)
OFF-LEASH DOG AREA IN ROBERT BURNABY PARK

ACTING MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Chief Licence Inspector be adopted.

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TO: MUNICIPAL MANAGER
1985 May 07

FROM: CHIEF LICENCE INSPECTOR

RE: ANIMAL CONTROL
(CORRESPONDENCE, ITEM 5(e), 1985 MAY 06)

RECOMMENDATION

1. THAT without reference to the provision in Burnaby Dog Tax and Pound and Animal Regulation By-law No. 6191 which allows dogs to be off leash in designated areas of parks, the leash provision of By-law No. 6191 not be amended; and
2. THAT a copy of this report be forwarded to Mrs. Elizabeth Elwood, 8134 - 14th Avenue, Burnaby, B.C., V3N 2B8.

SUMMARY

This report examines the leash law provisions of the Burnaby Dog Tax and Pound and Animal Regulation By-law No. 6191, related statutory regulations dealing with animal control, and the municipality's possible liability in such matters.

REPORT

1. INTRODUCTION

On Council's agenda for the meeting of 1985 May 06 was a letter from Mrs. Elizabeth Elwood, 8134 - 14th Avenue, Burnaby, suggesting that the Burnaby Dog Tax and Pound and Animal Regulation By-law No. 6191 be amended to specify that dog owners must "control" their dogs in all areas of the municipality.

2. BACKGROUND

The following material has been extracted from Item 8, Report No. 48, 1983 July 11:

"By-law No. 6191 requires that the owner of a dog shall keep it on a leash while on a highway or public place. The "leash law" was enacted in 1972. Prior to that time the owner of a dog was required to keep it under the immediate control of a competent and responsible person when it was on a highway or public place.

The reason for enacting a leash law was that enforcement of the running at large provision of the by-law continually resulted in disputes as to what constituted immediate control; what are responsible actions on the part of a person in charge of a dog, and who would be competent to be in charge of a dog.

Based on the experience of staff over many years, and the experience of personnel in other jurisdictions, it was concluded that due to the variety of size and temperament of dogs, the degree to which owners train and maintain training of their dogs, and the age of a person who may be entrusted with a dog, that a leash law is the most effective means to achieve control of dogs.

Throughout the Greater Vancouver area, virtually every jurisdiction has a leash law for the control of dogs."

On 1984 July 23 (Item 7, Report No. 48), Council approved an amendment to By-law No. 6191 which allowed dogs off-leash in a designated area of approximately 75 acres of the 125 acre Robert Burnaby Park.

3. RELATED CONTROLS AND REGULATIONS

Dog owners who allow their animals to injure anyone or damage any property are civilly liable for the actions of their dogs, whether they are on leash or not. This aspect of civil law is consistent throughout our Province and places a clear onus of control on the dog owners.

In addition to this, by-laws such as our Burnaby Parks Regulation By-law No. 7331 make it an offence for any person to damage or destroy municipal parks property or grounds. It follows that any dog owners who allow their animals to damage parks property could be guilty of a summary conviction offence. In cases such as this, it would be immaterial as to whether or not the dog in question is on a leash.

4. DISEASED OR VICIOUS DOGS

Under the authority of the Health Act, the S.P.C.A. Act and Burnaby By-law No. 6191, various government agents may take steps to quarantine, seize or destroy any dog which has or which is believed to have any disease which is incurable, causing suffering or communicable to humans. In such cases, proper action taken under the authority of these regulations would prevent a diseased animal from being in a public place under any circumstances.

Where a dog can be proven to be vicious, application can be made under Section 8 of the Livestock Protection Act for a court order to seize and destroy that animal. Section 6 of this same Act gives "a person" the right to "kill" any dog which is "running at large; and attacking or viciously pursuing a person or domestic animal. . . ". Under these circumstances no court order is necessary.

It is also noted that several charges have recently been laid under Section 204 of the Criminal Code of Canada against dog owners in this Province. In at least two of these cases, the owners of dogs known to be vicious have been convicted of criminal negligence causing bodily harm for failing to control these animals in a safe manner.

In view of the Provincial, Federal and municipal laws already in place, a clause such as the one cited by Mrs. Elwood from West Vancouver's by-law appears to be unwarranted. The Municipality of West Vancouver has no general leash law in force and it is perhaps for this reason that they feel special recognition should be given to diseased or dangerous animals.

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5. THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

While West Vancouver has no general leash law, their by-laws do require a dog to be on a leash in specified business zones and specified parks. Certain other parks and piers prohibit dogs absolutely.

The remaining areas of West Vancouver, which include the residential zones and designated sections of ten parks, allow dogs to be present and not on a leash when under the supervision of a competent person.

The Municipal Solicitor for West Vancouver indicates that he is aware of no civil action enjoining that Corporation arising from incidents involving dogs in their parks.

6. LIABILITY

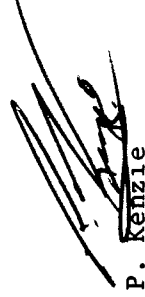
The question of whether or not the municipality could incur increased liability by permitting dogs to run off-leash in designated park areas can only be answered definitively by the courts. The Solicitor's opinion in this matter, as set out in the Director Recreation & Cultural Services' report of 1985 March 04 (Item 3, Report No. 18) is: "We cannot say with any assurance that a court would not assign some liability to the Corporation if a dog running off-leash in a park area under authority of a by-law were to injure a person." Under the existing laws, either as the result of civil action to recover loss through injury or damage, or related regulations dealing with control of dogs, the onus is clearly on dog owners to ensure that their animals do not injure persons or other animals, or damage public or private property.

7. CONCLUSION

Burnaby's existing leash law provides clear and specific regulations with respect to the manner in which dogs may be presented upon a highway or public place, including parks, in Burnaby. Beyond this, the conduct and condition of animals in our community are controlled and regulated by various municipal, Provincial and Federal sanctions.

It is a dog owner's responsibility to control his animal in such a way as to prevent damage or injury to property or people. Experience indicates that the most administratively effective way to achieve this control is to require dog owners to keep their animals on a leash. Anything more stringent is potentially unenforceable. Anything less becomes subjective and open to debate or abuse.

It is recommended that without reference to the provision in Burnaby Dog Tax and Pound and Animal Regulation By-law No. 6191 which allows dogs to be off leash in designated areas of parks, the leash provision of By-law No. 6191 not be amended.



P. Kenzie

CHIEF LICENCE INSPECTOR

cc: Director Finance
Director Recreation & Cultural Services
Municipal Solicitor

