

ITEM 21
MANAGER'S REPORT NO. 35
COUNCIL MEETING 86/05/26

RE: ANIMAL CONTROL

As noted in the Summary and in the Conclusion of the following report from the Director Finance, Council is requested to consider the following procedure:

- Move and second the first recommendation, and then table it to the 1986 June 23 Council meeting; and
 - Immediately adopt the second recommendation.
- This procedure, if followed, will give interested citizens an opportunity to provide an input on the recommendation not to amend the By-Law No. 6191 which is being advanced in this report.

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Director Finance be adopted.

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TO: MUNICIPAL MANAGER 86 05 15
FROM: DIRECTOR FINANCE FILE: D57
RE: ANIMAL CONTROL

RECOMMENDATIONS:

1. THAT the Burnaby Dog Tax and Pound and Animal Regulation By-law No. 6191 not be amended to provide off leash dog areas for Burnaby; and
2. THAT a copy of this report be sent to those persons who in the past have corresponded with Council on this matter.

SUMMARY

This report reviews the issue of an off leash by-law for dogs; it considers the problem of providing some open space where owners can exercise their dogs off leash; it recognizes that there is no consensus on this issue; it recognizes that there is a need by dog owners to have free run open space for their animals; that these owners may wish to undertake a private initiative to provide that space; and it recommends that no change be made to the existing leash by-law.

Recognizing that the public may want to have input to this issue, the report suggests that if Council concurs in the recommendation, that it move and second the recommendation, and then table the motion to the June 23rd Council meeting.

REPORT

1. Background

The debate on 'off-leash' or 'free-run' areas for dogs in Burnaby has been ongoing for several years. Since 1983 July, this issue has generated nine reports to Council, several petitions containing well over 1,000 signatures, and dozens of pages of correspondence.

The most recent animal control/off-leash report appeared on Council's agenda on 1986 April 30. In the report, the Director Recreation and Cultural Services notes that the Municipality does not have in place a firm decision or commitment from Municipal Council as to whether or not "on a societal basis, Burnaby should indeed allow dogs to run off-leash, albeit under controlled circumstances." The report also notes that in the Municipal Manager's view, there is an additional step which should be taken under the auspices of the Director Finance and the Chief Licence Inspector, who are responsible for animal control and that they should provide a report to Council addressing this central question.

This report addresses that central question of whether or not on a societal basis Burnaby should allow dogs to run off-leash.

2. History

Prior to the enactment of Burnaby's existing leash law, the owner of a dog was required to keep it under the immediate control of a competent and reasonable person when on a highway or public place. Attempts to enforce the running at large provisions of this bylaw resulted in ongoing disputes as to what constituted immediate control; what are responsible actions on the part of a person in charge of a dog; what is a reasonable distance to be from your dog and who would be competent to be in charge of a dog.

In 1972, in an attempt to eliminate the inequities and conflicts created by subjective interpretations of the existing regulations, a study was undertaken to develop a new animal control bylaw. 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 the training of their dogs, and the age of a person who may be entrusted with a dog, that a leash law is probably the only effective means to achieve control of dogs. To this end, Bylaw No. 6191 was enacted.

As it stands today, Bylaw no. 6191 requires that the owner of a dog shall keep it on a leash while on a highway or public place. It leaves little room for a subjective interpretation, it is seldom disputed in court, and it provides our pound officers with an effective tool for the protection of people and property throughout Burnaby.

3. The Debate

Having met with representatives of the interested groups, and reviewed the available documentation, it is clear that no consensus exists with respect to this issue. Public opinion on this matter appears to be strong and highly polarized. To obtain a clear understanding of this problem we must look at the fundamental issues in this debate.

3.1 Animal Welfare

Those who favour the off leash concept tell us that a dog needs to be allowed to run free in order to maintain an optimum level of physical and mental health. They also feel it provides a gratifying recreational experience for the dog owner. To support this position they make reference to a number of articles and statements made by veterinarians, animal psychologists and animal trainers.

Those opposed to dogs off leash in public believe that the municipality's primary concern should be for the well being of people. They note that the SPCA is the principal agency for animal welfare and they feel that this non-profit organization could raise funds to obtain and maintain areas for dogs to run free if they are convinced that it is a necessary service.

3.2 Geographic Space

The proponents of off leash sites state that a variety of sites must be made available to dog owners if we are to properly provide such a service.

Those opposed to this concept argue that animal welfare is not consistent with the mandate and goals of the Corporation of Burnaby. They feel that public funds should not be spent, nor should public lands be given over to such a program.

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3.3 Bitings

It is argued that dogs allowed to run free will be happier dogs and that happier dogs are less likely to bite people or other domestic animals. In conjunction with this, it has been stated that the primary cause of dog attacks is territorial instinct and defense of territory. Based on these assumptions, the proponents of off leash areas tell us that dog bitings will not be a problem in the "open territory" of a neutral off leash zone, and that dog bitings will be generally reduced throughout our community.

Opponents of this program rely on expert opinion which states that:

- Only about 1 dog in 100 is properly trained
- Dogs are pack animals and when banded together in a pack of three or more, even a normally placid dog may become vicious
- Very few owners really dominate and control their dogs
- Just one bitch in season in an off leash area would create mayhem.

Licence Department records provide no evidence to indicate that a dog running free, be it happy or otherwise, is less likely to bite than one that is on the end of a leash. A review of the records indicates:

Number of dog bitings while animal off leash and at large	32	31	26
Number of dog bitings on leash in a public place	0	3	3
Number of dog bitings while animal on private property	<u>10</u>	<u>5</u>	<u>15</u>
Total number of recorded dog bitings	42	39	44
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The Licence Department does not record incidents of dog attacks on other domestic animals but it does not seem unreasonable to conclude that a great majority of dog fights, dog attacks on cats and maulings of smaller dogs result from unleashed dogs running at large.

The question of territorial defense is difficult to address. It is hoped that any animal in an off leash area would have its owner close at hand and there is little doubt that the dog will be as quick to defend its owner as he will be to defend its yard.

The only conclusion that can be reached in this debate is that a dog owner does have a greater ability to prevent or limit dog bitings if his dog is securely leashed.

3.4 West Vancouver

West Vancouver's animal control bylaw states that "at large" when used with reference to a dog, means being upon a highway or any public place and not under the direct supervision and control of some competent person. As a result, no general leash law exists but dogs are required to be kept "on leash" in specified business and other commercial areas. In addition, dogs are prohibited absolutely from "all playgrounds, playing fields, beaches, fitness circuits, running tracks, golf courses, tennis courts, bowling greens, and from 17 other parks and the cemetery. Dogs are permitted "on leash" in 13 other designated parks areas, and are permitted "in full control of owners but not a leash in 10 other parks or park areas.

West Vancouver's off leash program has been in effect for approximately 10 years without noticable incident and it is often used as an example of a successful off leash experience. On the other hand, West Vancouver's program does ultimately lead us back to the question of 'control' and enforcement.

West Vancouver bylaw enforcement officers who have dealt with the question of what is direct supervision and control in court indicate that judges have found that if an animal can hear its owner and responds, that it is under direct supervision and control. As a result, West Vancouver bylaw enforcement officers do not routinely attend at the off leash park areas of their municipality. If a specific complaint is registered, they will attend but since there are no quantitative means to assess 'control' there is no justification for regular patrols or even spot checks at their off leash sites. They view the animals in off leash areas to be beyond the practical application of the bylaw.

Unfortunately the only absolute proof of a lack of control is an out of control situation. In situations such as these, the mischief that regulations are attempting to prevent must occur before we can prove a lack of control. It is obvious that a term like "direct supervision" is not quantitatively measureable, and therefore probably not enforceable to the degree that we might initially expect. If we are to attempt to develop a bylaw that will regulate the level of control to be employed by dog owners over their animals in a "no leash" situation, we must face the reality that an animal is either on a leash or it is not. Any attempt to restrict the degree to which an animal is not on a leash is virtually impossible.

Is an animal fetching a ball thrown by its owner under control if it is 150 feet from that owner? The dictionary defines control as "to keep within limits". If we limit the distance the animal can be from its owner, we must be prepared to measure that distance. If we cause an animal to be under direct or reasonable control, we must be prepared to define control in a way that is measurable and enforceable.

Regarding the control of dogs in parks, Mr. Frank Kurucz, Director of Parks and Recreation for the District of West Vancouver, stated in his letter of June 25, 1984 to Mr. Dennis Gaunt, Director Recreation and Cultural Services, that: "To summarize, our main problem is not with the dog regulations but the enforcing of these regulations."

If we accept the concept of off leash areas for Burnaby, we must recognize the fact that preventive enforcement is simply not possible and we must be prepared to accept the responsibility that flows from that knowledge.

3.5 Liability

The question of the Corporation's liability as it relates to off leash areas within the Municipality is difficult to establish.

However, certain trends have become apparent in recent years. Our entire country has become increasingly litigious. Injured parties are much more prone to seek compensation where they can find it, and large corporations such as Burnaby are inviting targets. Courts have become increasingly liberal in their assessment of liability and as a result liability insurance has become very difficult to obtain and very costly.

From a risk management perspective, we should do all we can to reduce our exposure to potential claims. Dogs off leash in public areas, even if that area is fenced, increase our exposure to liability. Therefore from a pure liability standpoint, dogs off leash should be discouraged.

3.6 Related Concerns

Those who oppose the free run program, argue with emphasis that these areas will promote environmental damage, will encourage user traffic from outside Burnaby, that there will be parking problems and a negative impact on wildlife in the vicinity. Those who support the concept of off leash areas lead us to believe that by providing such areas we will reduce the need for animal control in other areas of the municipality.

These matters are questions that cannot be directly dealt with or they represent details that could probably be overcome with proper planning and careful site selection and construction.

4. Off Leash Areas

After almost four years of ongoing debate, it would appear that all interested parties clearly agree on one point. If dogs are to be allowed to run off leash then it must be done in areas specifically designed and set aside for that purpose.

4.1 The Robert Burnaby Park Experience

1984 October, an experimental program was undertaken whereby an area of Robert Burnaby Park was designated to permit dogs to be off leash for a 12 month trial period. The parks bylaw and animal control bylaws were amended to permit this activity.

1985 May, as a result of complaints and correspondence from the residents in the area of Robert Burnaby Park, which included information on various dog attacks/threats on citizens and staff, the Parks and Recreation Commission resolved that this trial program be discontinued. In response to this resolution, in 1985 June, Council acted to repeal the bylaws in question, thereby eliminating the dog off leash areas in Robert Burnaby Park.

Section 932(s) of the Municipal Act empowers the municipality to enact bylaws with respect to animal control in public places and by so doing, places a degree of responsibility on the municipality. For 14 years, the Municipality of Burnaby has proven that it was willing and able to accept that responsibility by providing a comprehensive animal control program throughout the Municipality. Our community has come to expect and depend upon that program and to perceive of it as a basic duty of the Corporation.

The experience of the Robert Burnaby Park trial program makes it clear that any attempt to dilute our enforcement activities by creating a mixed use area in our existing parks will be viewed as a breach of that duty by a percentage of park users and area residents. In conjunction, the probability of dog attack, property damage, traffic hazard and animal injury, are all proportionately increased.

The creation of mixed use areas creates an unenforceable compromise for all concerned. If we are to accept the premise of off leash areas in Burnaby, then those facilities must without question be well separated from areas used by the public for other recreational purposes.

4.2 Development of Off Leash Sites

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A study undertaken by the Parks and Recreation department indicates that if off leash areas are to be developed in Burnaby the areas chosen must be carefully located and structured so as to ensure the protection of human health and safety. The criteria developed in this study makes the following conclusions:

- . That any off leash areas should be properly separated from areas used by the public for other recreational purposes;
- . That to ensure that no one area will experience an increase in either cars or dogs that off leash areas be provided in a number of locations throughout the municipality;
- . That off leash areas should not have a negative impact on the environment particularly as it relates to wildlife and potential health hazards from canine faeces;
- . That off leash areas must be large enough to provide exercise for dogs;
- . That access should be easy and space for parking be available;
- . That off leash areas should not result in a facility loss to the general public which cannot be conveniently compensated for; and
- . That off leash areas should be properly fenced and signed.

4.3 Public Funding

Many of the proponents of off leash areas feel that precedents have been set by Burnaby's direct and indirect funding of recreational facilities within the municipality. Simply put, this argument states that if we can provide a golf course for golfers and swimming pools for swimmers and tennis courts for tennis players, then we should provide dog parks for dog owners.

Those opposed argue that other special interest groups such as horsemen, gun clubs, and BMX bicycle riders have arranged privately to meet their specific needs.

If the dog park, or off leash area is to be fenced and signed as indicated in the Parks and Recreation study, and cost therefore funded by the Municipality as the proponents suggest, then we are looking at costs that could run anywhere from \$100,000 to \$200,000 plus. The actual cost would be dependent on the number of areas fenced and the size thereof. Proponents for the off leash area argue that the entire area need not be fenced. To not fence the area, would substantially increase our liability exposure.

5. Meetings

Prior to the preparation of this report, meetings were held with Mrs. Sharron Moraes, representing the Lakeview Ratepayers Association who oppose off leash parks for Burnaby; Michael Weeks of the SPCA and Elizabeth Elwood who supports the off leash concepts for Burnaby.

6. Conclusion

The fundamental question at hand is one of animal welfare. Throughout North America, animal welfare is the mandate of semi private institutions and/or humane societies.

The development and maintenance of off leash recreational areas for dogs has not been a traditional service provided by civic government.

To provide off leash areas would require funds to be allocated and would increase our liability exposure.

As a society, we have historically supported the moral concepts of the humane societies but there is little precedence for us, as a regulatory authority, to engage directly in animal welfare activities. Therefore, in spite of the articulate and well meaning comments put forward by proponents of publicly administered off leash areas for Burnaby, we cannot support the Corporation's participation in such a project.

As an alternative, it has been noted that a number of special interest groups have met their specific recreational needs independently. We see no reason why any group of people who feel a strong need for off leash recreational facilities in Burnaby could not, on their own initiative, undertake the private development of such a facility.

It is important to note that Burnaby's "off leash" bylaw does not apply to private property. Any "off leash" recreational activity sponsored by a group of people, a club, or a society on private property would be subject to the provisions of Burnaby's zoning bylaw but would not be subject to leash law regulations.

It is recommended that the Burnaby Dog Tax and Pound and Animal Regulation By-law not be amended to provide off leash dog areas for Burnaby.

7. Public Input

Recognizing that there is no consensus on this issue, and recognizing that interested parties may wish to have input to this issue, it is suggested that, if Council concurs in the recommendation, that it move and second the recommendation contained in the conclusion, and then table the motion.

In order to allow time for interested parties to have input, it is suggested that the issue be tabled to the June 23rd Council meeting.

It is recommended that a copy of this report be sent to those persons who in the past have corresponded with Council on this matter.



Howard Karras
DIRECTOR FINANCE

cc. Director Recreation & Cultural Services
Director Planning & Building Inspection

