

**TOWNSHIP OF BATHURST BURGESS SHERBROOKE
BY-LAW NO. 01-50**

ANIMAL CONTROL BY-LAW

WHEREAS pursuant to section 210 of the Municipal Act, Chapter M.45, R.S.O. 1990 By-Laws may be passed by the councils of local municipalities:

- (1) for regulating establishments for the breeding or boarding of animals, or any class thereof;
- (2) for prohibiting or regulating the being at large or trespassing of animals, and for providing for impounding them and for causing them to be sold, if they are not claimed within a reasonable time or if the damages, fines and expenses are not paid according to law;
- (3) for appraising the damages to be paid by the owners of animals impounded for trespassing;
- (4) for determining the compensation to be allowed for services rendered with respect to animals impounded;
- (5) for requiring an owner of a dog to keep the dog leashed or under the control of some person when the dog is on land other than that of the owner;
- (6) for requiring the owner of a dog to remove forthwith excrement left by the dog;
- (7) for requiring the muzzling or leashing of a dog after it has bitten a person or a domestic animal.
- (8) for licensing and regulating and requiring the registration of dogs and for imposing a licence fee on the owner;

Section 1.

DEFINITIONS

1. For the purpose of this By-Law the following definitions apply:

ANIMAL – shall mean any non-human mammal, fish, bird, reptile or amphibian include dog, cat, domesticated animal, livestock and wild animal.

ANIMAL CONTROL OFFICER - shall mean that person appointed by By-Law of the Corporation to undertake the control of small domesticated animals within the Township.

ANIMAL SHELTER - shall mean any premises designated by the Corporation for the purpose of impounding and caring for animals taken up by the agents of the Corporation.

AT LARGE – an animal shall be deemed to be running at large if found in any place other than the premises of the owner and not under the control of any person.

CAT - shall mean a domestic feline, cat or cats, male or female and includes any cat or cats complete, spayed or neutered.

DOG LICENCE ISSUER - shall mean a person or persons employed by the Corporation for the purpose of implanting, registration and/or issuance of a dog licence.

DOG TAG - shall mean a tag bearing a serial number and the year it was issued.

EXOTIC ANIMAL – shall mean any animal, other than animals kept as livestock, which is not native to North America.

GUIDE DOG - shall mean any dog trained as a guide dog for a blind person and having the qualifications prescribed by the regulations under the Blind Person's Rights Act, and shall also include a dog professionally trained as guide dog for other physically disabled persons.

IMPLANT - means a coded chip that contains permanent vital information about the animal in which the device is implanted.

KENNEL - means any premises where more than five dogs or more than ten cats, are lodged, bred, kept or boarded. A kennel facility will be classified as one of the following:

a) **COMMERCIAL KENNEL:** means a kennel used primarily for boarding dogs or cats not owned by family members, or for the breeding raising and sale of purebred or crossbred dogs or cats whether owned by family members or not.

b) **HOBBY KENNEL:** means a kennel where dogs or cats are housed for the primary purpose of pleasure (pets) or hunting, and where there is no boarding or revenue derived from the sale of the offspring of the dogs or cats.

LEASH - shall mean a restraining device of sufficient strength and material for holding a dog.

LEASHED - shall mean a restraining device securely attached to the dog and controlled by a person or securely attached to a stationary object.

LICENCED HUNTING DOG - shall mean the dog, licensed by MNR, has a valid hunting licence from the previous year.

LIVESTOCK – shall mean animals kept or dealt in for farm use or profit.

MUZZLED - shall mean a humane fastening or covering device of adequate strength over the mouth to prevent a dog from biting.

OWNER OF A DOG OR CAT - includes any person who owns, possesses, harbours or has the care and control of a dog or cat. "Owns" and "owned" have corresponding meaning.

RESTRAINED - shall mean being kept inside a building or house or in an enclosed pen of sufficient dimensions and strength to be humane and to prevent a dog from coming in contact with persons other than the owner of the dog.

SANITIZE - means to clean for the purpose of controlling disease-producing organisms and "sanitized" has a corresponding meaning.

TOWNSHIP - shall mean the Corporation of the Township of Bathurst Burgess Sherbrooke.

VICIOUS DOG - shall mean:

a) a dog which without provocation has bitten a person, domestic animal or domestic fowl, or

b) any dog with a known propensity, tendency or disposition to attack without provocation a person, domestic animal, or domestic fowl.

WASTE - shall mean: waste matter sent out from the body (excrement or faeces).

WILD - shall mean an animal which has not been made tame, nor has been taught to live with and under the control of humans.

Section 2. LICENSING OF DOGS

a) No person shall own, keep or harbour any dog within the limits of the Township, unless he/she has obtained a tag for such dog.

b) Every dog brought into the Township shall be tagged and registered by its owner with two (2) weeks of being brought into the Township.

c) Every dog born in the Township shall be tagged and registered by its owner within twelve (12) weeks after its date of birth.

d) Application for a tag for a dog shall be made on or before the first day of April to qualify for the lower fee listed in "Schedule B"

e) Upon payment of the tag fee in full, the Dog Licence Permit Issuer shall provide the owner with a dog tag and a record shall be kept by the Township showing the name, address and phone number of the owner and the serial number of the tag, and a complete description of the animal.

f) Each tag for a dog or kennel unless specifically expressed to be for a shorter period and unless suspended or revoked, shall remain in force until the 31st of March in the year following the year of issue.

g) The owner shall keep the dog tag securely fastened on the dog at all times until

the tag is renewed or replaced, but the tag may be removed while the dog is lawfully hunting.

- h) It is an offence to use a tag upon a dog, other than the dog for which it was issued.
- i) When the owner can show proof of an implant, the license fee will be waived.
- j) The Dog Tag Issuer shall turn over to the Treasurer all money paid to him/her under this bylaw.
- k) When a certificate is produced from the Canadian National Institute for the Blind, stating that a dog is being used as a guide dog for a blind person, no fee shall be charged for a license and tag.
- l) On application for a tag, the owner of a dog may be required to produce a certificate, signed by a practising veterinarian, that the dog has been inoculated with an anti-rabies vaccine within the period of twenty-four (24) months immediately prior to the date of application for a licence.

Section 3

KENNELS

- a) No person shall operate a commercial kennel in the Township unless he has obtained a licence for such kennel under the provisions of this By-Law and meets the requirements of the Zoning By-Law of the Township.
- b) No person shall establish a commercial kennel within the limits of any urban area (as set out in the Township Zoning By-Law) of the Township and in no case shall the commercial kennel be located closer than 152 metres from the nearest residence.
- c) When a commercial kennel is to be established, the owner of the kennel shall be required to enter into a Site Plan Control Agreement with the Township. This Agreement shall provide screening to the satisfaction of the Community Development Committee so as to minimize the effects of noise.
- d) Application for a licence for a commercial or hobby kennel shall be made to the Animal Control Officer on or before the 1st day of April in each year. All kennel licences are sold on an annual basis and all licences expire on March 31.
- e) The Animal Control Officer shall not issue the licence for a commercial or hobby kennel until the licence fee provided in this By-Law has been paid and he/she is satisfied that the applicant has complied with the provisions of this By-Law.
- f) Each licence for a kennel, unless specifically expressed to be for a shorter period, and unless suspended or revoked, shall remain in force until the end of March in the year following the year of issue.
- g) All fencing and runs for commercial dog kennels shall be built as follows:

1. A fence or its equivalent which is to form a kennel enclosure or part thereof shall be of:
 - i) Chain link construction, or
 - ii) Vertical board construction
2. A fence of chain link construction, six feet (6') (1.8m) high, shall:
 - i) have a mesh not greater than 2" (5.08cm) consisting of 12 ga. galvanized steel wire, or a 14 ga. steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 ga. steel wire.
 - ii) be supported by a minimum of 1/2" (1.27cm) galvanized steel posts, spaced not more than ten feet (10') (3.048m) apart. Such posts must extend at least three feet (3') (.914m) below grade or to bed rock and be encased in concrete at least two inches (2") (5.08cm) thick all around.
 - iii) have a top and bottom rails firmly fastened to the upright posts, made of a minimum of 1 1/4" (3.18cm) galvanized steel pipe. NOTE: Galvanized steel tension wire, 9 ga. may be substituted for the bottom rail.
3. A fence of wood construction six feet (6') (1.8m) high, shall:
 - i) have vertical boarding one inch (1") (2.54cm) thick minimum, attached to a top and bottom rail in such manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 1" x 4" (2.54cm x 10.16cm) minimum and must be spaced not more than 4" (10.16cm) apart.
 - ii) be supported by cedar posts at least 4" x 4" (10.16cm x 10.16cm) minimum, spaced not more than eight feet (8') (2.4m) apart. Such post shall extend at least three feet (3') (.914m) into the ground or to bedrock and be securely embedded therein.
 - iii) have that portion of the post below the ground level treated with an approved wood preservative.
 - iv) have top and bottom rails at least 2" x 4" (5.8cm x 10.16cm) minimum dimensions.
4. A fence (or its equivalent) of any other construction which might yield an equivalent or greater degree of security and strength, may be approved by the Animal Control Officer upon the receipt of completed plans and specifications for said fence.
5. Gates which form a part of the kennel enclosures shall be:
 - i) of such height and of such construction as to provide a degree of safety and rigidity equivalent to or greater than that of required fence.
 - ii) supported on substantial hinges;
 - iii) self-closing, self-latching with the latching device at the top of and on the inside of the gate.

6. Maintenance:

i) all fences, wall, gates and entrances forming part of a kennel enclosure shall be constructed or erected and shall be maintained at all times to the standards and specifications set out in this By-Law.

h) All other cat and hobby kennels operated in the Township shall maintain dogs and cats in a clean, secure and humane manner and shall comply with the following standards:

1) Dog/cat cages and/or dog/cat houses shall be constructed so as to be easily cleaned.

2) All surfaces of yards and runways shall be covered in concrete, asphalt, fine gravel or other material which can be easily cleaned or raked.

3) All doorways and windows and outside openings shall be screened and provide an effective barrier against the escape of any dog or cat.

4) All kennels must at all times be maintained in a clean, sanitary condition.

5) Excrement, dead animals and other waste resulting from the operation of a kennel shall be removed daily from the premises in an environmentally approved manner.

i) Any person when applying for a licence under the section regarding Waste shall satisfy the Animal Control Enforcement Officer that the kennel or proposed kennel complies with the provisions of this By-Law and such person shall furnish the Animal Control Officer with all information he may reasonably require and permit him to examine the premises where the kennel is located or is to be located in order to satisfy himself/herself that the kennel complies with the provisions of this By-Law.

j) If the Animal Control Office is not satisfied he/she will refer the matter to Council who, if they concur, may hire a qualified person to advise on the adequacy of the kennel in question.

k) 1) Where, in the opinion of the Animal Control Officer, any kennel does not comply with the provisions of this By-Law or creates or is likely to create a public health concern, nuisance or unsanitary condition, he/she shall require the owner of the kennel to abate the nuisance or rectify the conditions within a reasonable period of time after notice in writing to the owner.

2) If the owner fails to abate the nuisance or rectify the conditions specified by the Animal Control Officer, he/she shall be deemed to be contravening the provisions of this By-Law.

l) Any kennel licence may be suspended or revoked by Council on the recommendation of the Animal Control Officer, if in his/her opinion, the kennel does not comply with the provisions of this By-Law.

m) Whenever in this By-Law, any duty is imposed upon the Animal Control Officer related to the suspension or revocation of kennel licences or the inspection of kennel premises, the Animal Control Officer, at his/her discretion, considers that professional advice is necessary or desirable, he/she may retain the services of a qualified veterinarian entitled to practice his profession in Ontario to advise him/her and to make a report to him/her, to Council and then the kennel owner. The By-Law Enforcement Officer shall be guided by such professional advice and report. If the required corrections are not done by the owner the work will be done by the municipality and collected as taxes on the property.

Section 4. See Schedule B TAG FEES

The tag fees listed in this section are not to be interpreted as part of a release fee. Pound Release and Maintenance Fees shall be determined by the Animal Shelter and approved by the Township from time to time.

Section 5. NOISE

Every owner of a dog, or person responsible for the care of a dog, shall take all reasonable precautions necessary to prevent the dog from excessive barking or other disruptive behaviour, as to disturb the peace and quiet of any residence or persons in the vicinity. A Fine may be imposed for repeated offences of allowing the dog in the owner's charge to be a public nuisance.

Section 6. DOG BITES

- a) Every person or owner of a dog shall take all precautions necessary to prevent the dog from biting or attacking any person or fighting with, attacking, or biting any dog, domestic animal or domestic fowl, whether on private or public property.
- b) When a dog has bitten or attacked a person, or fought with, bitten or attacked a dog, domestic animal or domestic fowl, the owner shall cause the dog to remain muzzled or leashed until such time as the incident has been reviewed by the Animal Control Officer. As a result of his review, if in his/her opinion, the dog has fought, bitten or attacked without provocation, the Animal Control Officer may rule that the dog is a vicious dog, and at his/her discretion, may commence proceedings under the Dog Owner's Liability Act, whereby at the discretion of the Judge, penalties ranging from a fine to an order to destroy the dog, may be imposed.

Section 7.

VICIOUS DOG

a) The owner of a vicious dog shall at all times, when it is not in the owner's dwelling but otherwise within the boundaries of the owner's lands, be secured in one of the following manners so as to prevent the dog from causing injury to any person, dog, domestic animal, or domestic fowl entering onto the owners land.

1) The vicious dog shall be located wholly within a fenced area and any gate in such fenced area shall be locked at all times when a vicious dog is in the fenced area.

2) When the vicious dog is kept in an enclosed run or pen, such run or pen shall be built in accordance with the information in this By-Law pertaining to Commercial Kennels, except that said run shall be enclosed on all four (4) sides and its top shall be of material of the same or greater strength than that of the sides.

3) The dog shall be muzzled so as to prevent it from biting a person or animal and securely leashed or chained. The leash shall not exceed 9 metres in length.

b) It is the owner's responsibility to ensure that any person who is left with the charge of a vicious dog is fully capable of controlling the dog with strength and knowledge.

c) The owner of a vicious dog shall at all times when the dog is outside the boundaries of its owner's land keep the dog leashed and muzzled so as to prevent it from biting.

d) No person shall permit a dog to attack, or bite any person, or to attack, bite or fight with any dog, domestic animal or domestic fowl.

e) Every owner of a vicious dog shall at the time the dog is licensed inform the Animal Control Officer that the dog is vicious.

f) Immediately upon the transfer of a vicious dog from one owner to another, the owners shall notify the Animal Control Officer.

g) Every owner of a vicious dog shall post a sign in a conspicuous place on his property stating that there is a vicious dog on the premises.

h) If the dog owner fails to comply to any of the above, the Animal Control Officer may commence proceedings under the Dog Owners Liability Act.

Section 8

CONFINEMENT OF DOGS IN HEAT

Every female dog, when in heat, shall be kept confined in a building or secure enclosure or in a veterinary hospital or boarding kennel in such a manner that such female dog cannot come in contact with another dog except for previously agreed

upon breeding purposes.

Section 9

WASTE

- a) Every person or owner of a dog who allows waste (excrement/faeces) to be placed on public property owned by the Corporation without authorization is guilty of an offence.
- b) If a person who has deposited or allowed waste to be deposited on private property or property of the Corporation shall immediately and entirely without leaving the scene, cause such waste to be entirely picked up and thence removed to his own property, such person shall be deemed not to have committed an offence under this section.
- c) This section shall not apply to the owner of a guide dog while on a leash and actually in use in providing assistance to a legally defined disabled person.

Section 10.

ANIMALS RUNNING AT LARGE

- a) For the purpose of this section, an animal shall be deemed to be running at large when found straying from the property upon which it is normally kept and not under the control of any person.
- b) Every person or owner of an animal shall maintain sufficient control of the animal, so as to prevent the animal from running at large within the boundaries of the Township.
- c) Every person or owner of an animal who fails to maintain sufficient control of the animal while off the property of the owner, may be directed by the Corporation or agent, to leash or tether the animal.
- d) The Corporation or agent may seize any animal running at large in the Township and cause such animal to be returned to the owner or impounded.
- e) Animals running at large shall be taken up by the agents of the Corporation and impounded in an animal shelter and there confined in a humane manner for a period of not less than three days (Sundays and Statutory Holidays excluded) and may thereafter be disposed of in a humane manner if not claimed by their owner. Animals not claimed by the owner at the expiration of three days shall become the property of the Corporation and may be destroyed or placed for adoption by the Corporation or through an agency. All reasonable efforts shall be made to identify the animal and notify the owner.
- f) Any owner of an animal that has been seized or impounded shall be required to pay all impoundment fees prior to release of the animal.

g) Any owner of a dog that has been seized or impounded that has not obtained a dog licence for the current year shall do so before the dog is released. The shelter shall be responsible to collect the licence fee and for this service they shall be paid 50% of the fees collected.

h) Owners of animals remain responsible for all costs. In the event than the owner doesn't claim his/her animal, costs will be invoiced to the owner by the Township.

Section 11

ANIMAL PROVISIONS

KEEPING OF ANIMALS - GENERAL

1. Every animal shall be:

- a) treated in a humane manner, and
- b) kept so that:
 - (i) the transfer of pathogenic agents is minimized; and
 - (ii) there are no offensive odours, or odours which may attract animals.

ANIMAL ENCLOSURES

1. Every cage, pen or other such enclosure used for the housing of an animal when kept as a pet or for hobby purposes shall be so constructed and maintained that:

- a) every animal in a cage or pen may comfortably;
 - (i) extend its legs to their full natural extent;
 - (ii) stand;
 - (iii) sit;
 - (iv) lie down in a fully extended position; and
 - (v) be provided with adequate space for exercise purposes. The length of chain for tethering purposes shall be a minimum of three (3) meters.

Section 12. PROHIBITION – EXOTIC AND WILD ANIMALS

1. No person shall keep any wild or animals within the limits of the Township of Bathurst Burgess Sherbrooke, unless such animal has been domesticated and the facilities for keeping of same have been inspected for public safety by the Animal Control Officer. It shall be the responsibility of the owner of a wild or exotic animal which has been domesticated to contact the Animal Control Officer for inspection and written approval.

Section 13 CONTROL AND SALE OF YOUNG OR DISEASED ANIMALS

1. When an animal is known to have bitten a person the Medical Officer of Health may order the agent for the Corporation of the Township of Bathurst Burgess Sherbrooke to confine the animal under supervised quarantine for a period not to exceed ten (10) days in accordance with the Public Health Act.

a) Any animal suspected of being rabid, shall be placed in quarantine where possible, pending its disposition by the Food Production and Protection Branch of Agriculture Canada.

b) When an animal is seized, impounded or destroyed under the provisions of this section, no damages or compensation shall be recoverable by the owner thereof.

2. No person shall, upon the markets;

a) knowingly sell any diseased animal;

b) sell or give away any animal under the age of 6 weeks.

c) display any animal unless such animal is adequately protected from drafts, direct rays of the sun, excessive heat or cold and ample space is provided.

d) sell or give to or for any person under sixteen (16) years of age, any animal unless with the expressed consent of the child's parent(s) or legal guardian(s);
or

e) sell or keep for sale any wild animal or bird.

Section 14. INTERFERENCE

a) No person shall interfere with, hinder or molest any agent of the Corporation in the performance of any duty as such agent.

Section 15. DOG LICENCE ISSUER/KENNEL LICENCE ISSUER

a) At the beginning of every year the Corporation will contract a Dog Licence Issuer and/or Kennel Licence Issuer. He/She, under the direction of the Corporation shall collect the dog licence fee and kennel licence fee in a method approved by Council.

b) Where the Dog Licence/Kennel Licence Issuer is unable to contact the dog owner at home, he/she shall leave a card advising that he/she had visited the home and that payment of a dog licence fee is required and should be forwarded to the Township Office, within a specified time limit.

c) If payment is not received within the specified time, the Treasurer of the Corporation shall prepare and forward an invoice to the household.

Section 16.

ADMINISTRATION

- a) This By-Law shall be administered by the Municipal Animal Control Officer.

Section 17.

CATS

The animal control officer, upon receiving a complaint regarding cats, shall have the authority to investigate the complaint and if the cat is found to be damaging private property or attacking people, domestic fowl or other domestic pets, the owner may be fined the amount listed under Fines, Section 10 (a) (b). In extreme cases, the cat may be found a public nuisance and the owner may be fined the amount listed under Fines, Section 5. The bylaw control officer shall also have the authority, if requested, to remove feral cats from any premise and impound or euthanize them if necessary. If the cat is impounded, Section 6 (h) shall also apply to cat owners.

Section 18.

VIOLATIONS AND PENALTIES

- a) Every person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00, as set out in the Provincial Offences Act, R.D.O. 1990, Chapter P.331
- b) Upon registering a conviction for a contravention of any provision of this By-Law, the Ontario Court, Provincial Division, may in addition to any penalty imposed by this By-Law make an order prohibiting the continuation or repetition of the offence by the person convicted.
- c) Penalties and fines for the violation of this By-Law are as set out in **Schedule "A"** attached hereto and forming part of this By-Law.

Section 19.

VALIDITY


- a) If any section, clause or provision of this By-Law, including anything contained in any Schedule attached hereto, is for any reason declared by a court of competent jurisdiction, to be invalid, the same shall not affect the validity of the By-Law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of the By-Law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof shall have to be declared invalid.

c) This By-Law shall come into force and take effect on 23rd day of October, 2001 and the fees for the remainder of 2001 only shall be as follows: **All Dog Tags: \$5.00 each. All Kennel Fees: \$25.00 each.**

Section 20. PREVIOUS BY-LAWS

a) By-law No. 01-16 and any other by-law inconsistent with the provisions of this by-law is hereby rescinded.

Read a first and second time this 23rd day of October, 2001
Read a third time and passed this 23rd day of October, 2001


Mayor


Clerk

Schedule "A"

BY-LAW NO. 01-50

FINES

| Violation of: | Set Fine |
|--|-----------------|
| Section 2 (a) Being an owner of an Unlicensed dog | \$ 30.00 |
| Section 2 (h) Owner of dog bearing a dog tag issued for a different dog. | \$ 30.00 |
| Section 5 Being owner of a dog, allowed to be a public nuisance. | \$ 55.00 |
| Section 10 (b) Being an owner of an animal allowed to run at large. | \$ 55.00 |
| Section 9 (a)(b) Being an owner of a dog, allowed to urinate or defecate on private or public property. | \$ 30.00 |

Schedule "B"

BY LAW NO. 01-50

TAG FEES

a) Annual Tag Fees shall be as follows:

**DOG TAG FEE.....\$10.00 per year
\$15. after April 1st.**

REPLACEMENT DOG TAG.....\$2.00

GUIDE DOG TAG.....\$ N/C

**IMPLANTED DOGS.....\$N/C
(proof of implant must be provided)**

**COMMERCIAL OR HOBBY KENNEL LICENCE FEE
.....\$50.00 per year**

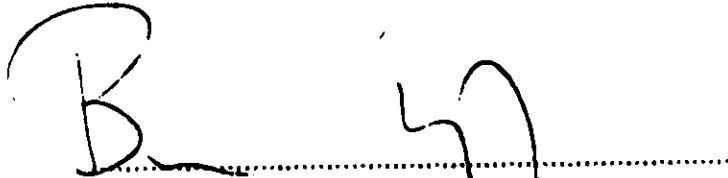
Delinquent licence fees will be charged at double the above-rates. The tag fees are not to be interpreted as part of a release fee. Pound release and Maintenance Fees shall be determined by the Animal Shelter and approved by the Township from time to time.

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 01-50 of the Township of Bathurst-Burgess-Sherbrooke attached hereto are the set fines, including costs, for those offences. This Order is to take effect August 28, 2002.

Dated at Ottawa this 28th day August 2002.


.....
Bruce E. MacPhee, Regional Senior Justice
Ontario Court of Justice
East Region

**TOWNSHIP OF BATHURST BURGESS SHERBROOKE
SET FINES FOR CONTRAVENTION**

**BY-LAW NO. 01-50
TITLE: ANIMAL CONTROL BY-LAW
Part I Provincial Offences Act**

| ITEM | COLUMN 1 SHORT FORM WORDING | COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE | COLUMN 3 SET FINE (including cost) |
|-------------|---|--|---|
| 1. | Fail to obtain dog tag | 2(a) | \$30.00 |
| 2. | Affix dog tag to different dog | 2(h) | \$30.00 |
| 3. | Allow dog to be a public nuisance | 5 | \$55.00 |
| 4. | Allow animal to run at large | 10(b) | \$55.00 |
| 5. | Fail to remove dog bio-waste from public or private property | 9(b) | \$30.00 |

THE PENALTY PROVISIONS OF THE OFFENCES INDICATED ABOVE ARE IN SECTION 18(a) OF BY-LAW NO. 01-50, AS AMENDED BY BY-LAW NO. 02-33, CERTIFIED TRUE COPIES OF WHICH HAVE BEEN FILED.

McConnell/Dyckman/ANIMAL CONTROL BY-LAW Set Fines.doc

Joanna ReedBYLAW
FILE | 01-50
62-33

From: brian donaldson [bdonaldson@cogeco.ca]
Sent: Friday, July 28, 2006 11:44 AM
To: Joanna Reed
Subject: Re: Fence Viewing

Hi Joanna,

I thought that it might be useful to summarize our conversation.

1. The *Line Fences Act* does not apply to a fence along a public highway, either provincial or municipal, so your fence-viewers do not have jurisdiction to deal with this particular situation.
2. The Courts have ruled over the years that owners of livestock have a responsibility to prevent their livestock from getting onto the property of others, and that they are liable for any damages that are caused if their livestock are trespassing. [For example, damage to a neighbouring farmer's crops or property.]
3. The difficulty with livestock getting onto a public highway is that the stakes are potentially much higher. If, for example, a car hits livestock on a municipal highway in the middle of the night and a young person became a paraplegic as a result of the accident, the potential costs of a successful lawsuit could be extremely high. The problem is that the owner of the livestock generally has very little money, so the Courts make the municipality or, in the case of a provincial highway, MTO responsible for paying the vast majority of these costs, regardless of the fact that the owner of the livestock is legally responsible for restraining them.
4. Since your municipality is aware that these livestock are getting onto its highway, I think that it would be wise to serve notice on the adjoining farmer [preferably by registered mail] formally advising him that the livestock are trespassing on a municipal highway and requiring him to repair or reconstruct the fence to make it capable of restraining these livestock.
5. Your municipality should probably also review its animal control by-law to see if it has sufficient teeth to deal with this situation. One option would be to impound the animals when they are on the road and to keep them until the farmer has repaired or reconstructed the fence. But that can be a difficult and costly business for the municipality; moreover, it can be very difficult to recover the municipality's costs from the owner of the livestock. The municipality has authority to sell the impounded animals if they are not claimed within a reasonable time. The key thing is to ensure that these matters are spelled out in the by-law. Your municipality should also make certain that the by-law is based on section 103(1) of the *Municipal Act, 2001* rather than on the provisions of the *Pounds Act*, which are archaic. [I should have emphasized that last point at the workshop in Kemptonville.]
6. Your municipality could, in its animal control by-law, require all owners of livestock to construct and maintain fences to keep their animals from trespassing onto municipal highways. If they failed to do so, your municipality could take "remedial action" under section 427 of the *Municipal Act, 2001* by constructing or repairing such fences. It could also recover its costs by adding them to the tax roll and collecting them "in the same manner as taxes". But, as I mentioned on the phone, this is a somewhat drastic approach which should be used only in extreme circumstances.
7. Under the *Line Fences Act*, your municipality has authority to enter into an agreement with the owner of a property immediately adjacent to a municipal highway with respect to a line fence, i.e., a fence on the lateral boundary of that highway. The municipality could, for example, provide the materials necessary for the farmer to repair or reconstruct the fence on the condition that the farmer made a commitment to keep the fence up in the future. The difficulty with such an approach is that it would set a precedent and might result in a demand for similar treatment from other property owners along municipal highways.

So there is no easy answer to this difficult and interesting problem. Nonetheless, I hope that these comments are helpful. I would be happy to discuss it further by phone at any time.

7/28/2006

Brian Donaldson
(613) 384-6805

----- Original Message -----

From: Joanna Reed
To: bdonaldson@cogeco.ca
Sent: Thursday, July 27, 2006 2:19 PM
Subject: Fence Viewing

Hello Mr. Donaldson,

I attended one of the Fence Viewing workshops you spoke at earlier this year. At the time you said that if we had any questions we could e-mail and ask. I hope this still stands!

At the workshop you spoke about problems arising when animals escape of private property and are running at large, on a municipal road. I believe you said that it was not necessarily the responsibility of the municipality but the responsibility of the private land owner to fix the broken fence. However, you also stated that the municipality could still be held liable if a person was injured or killed due to the animals on the road.

We have a situation here where there are some fences that need to be fixed up along the municipal road as animals are escaping. The private land owner is calling for fence viewers to come look at the property. Is this appropriate or can the Township deal with the issue by using an animal control by-law? If so, do you imagine the Township can go onto his land to repair the fence? Can we put this on his tax bill?

I hope this is clear. Please get back to me when you have the chance. Thank you for your time.

Joanna Reed

Joanna Reed
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7/28/2006