

**ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK**  
**COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**Proposed City Council Ordinance: Sec. 17 – 102**

**Council Members Vallone Jr., Gentile, Gennaro, Nelson, Recchia, Jr., and Weprin**

The City Council proposed ordinance, Sec. 17-102, would amend New York City’s Administrative Code by restricting tethering of dogs that takes place outdoors to no more than three continuous hours in any 12-hour period.

**THIS BILL IS APPROVED WITH RECOMMENDATIONS**

This Committee offers its strong approval of the proposed legislation Sec. 17-102 (the “Proposed Legislation”) with recommendations. One recommendation is for broadening the Proposed Legislation to also restrict tethering indoors, enforcement of which would have legal support.<sup>1</sup> Even in its present form, however, the Committee urges passage of the Proposed Legislation as an important first step in barring the practice of prolonged chaining, which threatens both public safety and the health and welfare of the affected dogs. We note that there is similar proposed legislation pending at the New York State level, *i.e.*, S-2052 and A-6553, which would amend the New York State Agriculture and Markets Law to add a section, Section 353-c, that would place restrictions on the length of time and manner in which dogs could be tethered and which is silent as to the place of tethering and, presumably, therefore, applies to tethering indoors as well as outdoors.

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<sup>1</sup> With regard to enforcement of indoor tethering, this is legally supported. Enforcement of the proposed state legislation against pet shops and kennels would not require a warrant, since the ASPCA has the authority to make warrantless inspections of those closely regulated businesses, the so-called “administrative search”. See, *Marshall v. Barlow’s, Inc.*, 436 U. S. 307, 98 S. Ct 1816 (1978) (a case involving OSHA inspectors). However, enforcement against a private dog owner would be difficult indoors inasmuch as warrantless entry onto a private premises absent consent, exigency or emergency is constitutionally prohibited. *Payton v. New York*, 445 U. S. 573, 100 S. Ct. 1371 (1980). However, a warrantless entry not to arrest or search for evidence of a crime but to prevent injury or save a life- the “emergency” exception” (see *Brigham City, Utah v. Stuart*, 547 U. S. 398, 126 S. Ct. 1943 (2006) - has been held to apply to animals. *People v. Rogers*, 184 Misc. 2d 419, 708 N. Y. S. 2d 795 (App. Term 2d Dep’t 2000); *Tuck v. United States*, 427 A2d. 1115 (D.C. Ct. of App. 1984). Therefore, a complaint that a tethered dog was in imminent danger of injury, or was becoming imminently dangerous, would justify law enforcement’s entry to enforce the proposed legislation and any other applicable anti-cruelty statute. See proposed Sec. 353-c (4).

The Committee recommends that the Proposed Legislation also include specific restrictions concerning chain length, type of tethering device, or collar, and require that the chained dog have access to covered shelter and water. The should be a minimum length in feet for a tethering device attached to a fixed point and a minimum ten feet for a running cable trolley system, *i.e.*, fifteen feet and ten feet, respectively, that would apply to small dogs only, with tethering lengths increased in proportion to the size of the dog. Finally, while a restriction of three continuous hours in a 12-hour period is an acceptable standard, this Committee would prefer a standard of three continuous hours in a 24-hour period. These provisions have all been incorporated in some sister state anti-cruelty statutes, which restrict tethering, as discussed below.

## **Discussion**

### **The Proposed Legislation Provides an Important Restriction on the Amount of Time that Dogs Can be Tethered but Should Include Key Protections Concerning Tethering Devices.**

The Proposed Legislation, an amendment to Title 17 of the New York City Administrative Code Sec. 17-192, commendably restricts outdoor tethering to no more than three continuous hours in any 12-hour period. We note that a limitation of three continuous hours in any 24-hour period is preferable, and this has been recognized as a reasonable time period for tethering a dog in other jurisdictions. *See e. g.*, Cal. Health & Safety Code. Sec. 122335 (b)(prohibits tethering a dog for more than a “reasonable” period of time. Section 122335(a)(4) of the California statute defines “reasonable” as no more than three continuous hours in any 24-four hour period with certain narrow exceptions, such as the dog’s participation in an activity or training for an activity licensed by the State. Sec. 122335(c)(4).

The Proposed Legislation, however, provides no specific restrictions concerning chain length, type of tethering device, or collar. These would be important safety provisions. For example, the legislation should provide that if the device is attached to a fixed point, it also must be attached in a manner that prevents injury or strangulation; that choke-type and prong collars may not be used with tethering devices; and that only harnesses and collars “made expressly for such purpose” are acceptable. These are necessary and reasonable limitations on the type and nature of acceptable tethering practices, and would constitute recognition that the manner of the tethering can affect the well-being of the dog as much as the duration of the tethering.

Further, it would be advisable for the Proposed Legislation to provide for a tether to be designed not only to prevent strangulation and injury, but also to be appropriate to the age and size of the dog. In this instance, one size does not fit all and, therefore, the Committee recommends that serious consideration be given to adopting a sliding scale for tether lengths, beginning with a minimum of ten feet (for a moving cable system) and fifteen feet (for a fixed point system) for small dogs, and increasing in length for larger dogs.

### **Chained Dogs Represent A Threat To Public Safety**

There is growing recognition nationwide that the chaining of dogs has negative physical and psychological effects. Past studies have shown that dogs which are chained up for long

periods of time are not properly socialized and have a tendency to be more aggressive. For example, the Center for Disease Control, the U. S. Department of Agriculture, the Humane Society of the United States, and the American Veterinary Association have all concluded that chaining or tethering of dogs creates dogs that are at a significantly greater risk to bite. According to the September 15, 2000 issue of the *Journal of the American Veterinary Medical Association*, seventeen per cent of dogs involved in fatal attacks on humans between 1979 and 1998 were restrained on their owners' property at the time of the attack. In addition, an article in the AVMA May 15, 2003 Newsletter, on dog biting prevention, opined that a dog should never be chained or tethered, since that led to aggressive behavior. See also *Fatal Dog Attacks*, Delise, Karen; Annubis Press, Nov.1, 2002, attributing twenty-five per cent of fatal attacks to chained dogs. According to one study by the Center for Disease Control, biting dogs were more likely to be male, unneutered and chained.<sup>2</sup>

### **The Proposed Legislation Accords with Growing National Recognition that Unregulated Tethering Leads to Inhumane Treatment of Dogs.**

The cruelty involved in prolonged tethering has been recognized by a number of authorities. The U. S. Department of Agriculture issued a statement in the July 2, 1996, Federal Register against tethering, as follows: "Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects; further restricting the dog's movement and potentially causing injury." The Humane Society of the United States has stated that the practice of continuous chaining "is both inhumane and a threat to the safety of the confined dog, other animals, and humans."<sup>3</sup>

In recognition of the danger posed by chaining both to the affected dogs and the public at large, a growing number of states and municipalities have either enacted statutes that place limitations on tethering or currently have such legislation under consideration. Such legislation also serves to provide law enforcement with another tool to invoke against promoters of dogfights, who chain their dogs in order to foster greater aggressiveness.

In recognition of the inhumane nature of dog chaining, these tethering laws not only limit the length of time that a dog can be tethered<sup>4</sup> but focus on the length and design of the tether. For example, some of these laws limit the tether's attachment to a "proper harness or buckle-type collar"<sup>5</sup> or "a well-fitted collar that will not cause trauma or injury to the dog,"<sup>6</sup> or prohibit

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<sup>2</sup> See K. A. Gershman, J. J. Sacks, and J. C. Wright, "Which Dogs Bite? A Case-Control Study of Risk Factors", *Pediatrics*, v. 93, no. 69 (June 1994).

<sup>3</sup> The Humane Society of the United States, "The Facts About Chaining or Tethering Dogs", see [http://www.hsus.org/pets/issues/affecting\\_our\\_pets/chaining/](http://www.hsus.org/pets/issues/affecting_our_pets/chaining/).

<sup>4</sup> See e. g. Cal. Health & Safety Code. Sec. 122335 (b) prohibits tethering a dog for more than a reasonable period of time. Sec. 122335 (a) (4) defines "reasonable" as no more than three continuous hours in any twenty-four hour period with certain narrow exceptions, such as the dog's participation in an activity or training for an activity licensed by the State. Sec. 122335 (c) (4).

<sup>5</sup> Nashua New Hampshire Ordinance, Sec. 5-12 (2) (b).

<sup>6</sup> 7 Del. Stat. 1704 (c) (4). 7 Del. Stat. 1704 is entitled specifications for the humane care, treatment and handling of dogs, and provides, *inter alia*, standards for required feeding, shelter, and veterinary care.

“pinch or choke collar.”<sup>7</sup> In Michigan, tethering a dog to any collar other than a “harness or nonchoke collar designed for tethering” is a violation of Michigan’s animal anti-cruelty statute.<sup>8</sup> Virginia’s statutes dealing with the humane treatment of animals has a very specific definition of the required collar for a tethered dog in its definitions section within the definition of “adequate space” which must be provided to companion animals. See Va. St. Sec. 3.1 – 796.66, which requires that a tether to be attached to a properly applied collar, halter, or harness, configured to protect the dog from injury and it or the tether from entanglement with other objects or animals, or from extending over an object or edge, causing strangulation or injury. That section also includes definitions of, *inter alia*, adequate care, which includes appropriate veterinary care, as well as definitions of adequate shelter, adequate feeding, and abandonment.

Two municipalities - Biloxi<sup>9</sup> and Pascagoula,<sup>10</sup> Mississippi - place an outright ban on tethering but allow for a grace period of 90 days if the dog owner or keeper is in violation, if the tether, collar, and living conditions of the dog are determined by the animal control officer to be non-dangerous and accord with specified humane standards.

### **Summary of Recommendations**

There is pending at the State level an anti-tethering proposal which, if passed, would bind the conduct of any New York City dog owner. However, there is no assurance that such proposal will become law and, in any event, the State proposal does not contain all the protections recommended by this Committee. In addition, while there is also State law that requires feeding, watering, and sheltering of companion animals, where failure to do so properly would constitute neglect if not outright cruelty, this law requires interpretation and application in each instance. Therefore, it is recommended that the Proposed Legislation specify that an owner, caretaker, or keeper of any tethered dog must:

- (1) always keep water within reach of the tethered dog; and
- (2) always keep a covered shelter accessible to the tethered dog.<sup>11</sup>

It would be advisable for the Proposed Legislation to provide for a tether to be designed not only to prevent strangulation and injury, but also to be appropriate to the age and size of the dog by adopting a sliding scale for tether lengths, which would increase minimum tether lengths as the size of the dog increased.

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<sup>7</sup> California Health & Safety Code Sec. 122335 (c)(1).

<sup>8</sup> Mich. Cons. Laws. Sec. 750.50(2)(g). Violations of this section are punishable under subdivision (4) of MCL 750.50 as either a misdemeanor or felony, depending on the severity of the injury to the animal and the number of animals involved. Certain revisions to Mich. Cons. Laws. Sec. 750.50 became effective April 1, 2008, increasing penalties for animal cruelty.

<sup>9</sup> Biloxi Ord. Sec. 4-1-21

<sup>10</sup> Pascagoula Ord. Sec. 10-8.

<sup>11</sup> See e.g., Delaware’s anti-cruelty statutes, which provides in 7 De. St. Sec. 1704 (4) that a dog tethered out-of-doors must have access to the dog house and to food and water containers.

## **Conclusion**

The passage of the Proposed Legislation will enhance animal welfare by prohibiting tethering practices that constitute a well-recognized form of animal cruelty at the same time that it protects the public from a dangerous practice. New York City will join a growing number of jurisdictions that have recognized the inhumane nature of unrestricted tethering and the threat that it poses to the safety and welfare of both dogs and humans.