



NEW YORK  
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE  
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**Int. 0425-2010**

**Council Members Vallone, Brewer, Cabrera, Dromm, Ferreras, Foster, Gentile and Koppell**

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting pet owners from restraining animals outdoors for longer than three hours in any continuous twelve hour period.

**THIS BILL IS APPROVED WITH RECOMMENDATIONS**

This Committee urges approval of the proposed legislation Int. 0425-2010 (the Proposed “Legislation”), with recommendations. 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.

The Committee recommends broadening the Proposed Legislation to also restrict tethering indoors, enforcement of which would have legal support.<sup>1</sup> In addition, the Committee recommends that the Proposed Legislation 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. There 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.

---

<sup>1</sup> With regard to enforcement of indoor tethering, this is legally supported. The ASPCA has the authority to make warrantless inspections of closely regulated businesses (such as pet shops and kennels), 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 appear to justify law enforcement’s entry to enforce the proposed legislation and any other applicable anti-cruelty statute. See proposed §17-196(c).

## 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, which amends Title 17 of the New York City Administrative Code by adding a new section 17-196, commendably restricts outdoor tethering to no more than three continuous hours in any 12-hour period. A limitation of three continuous hours in any 24-hour period, however, 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), which 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-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 fails to provide 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, the Proposed Legislation does not provide for a tether to be designed not only to prevent strangulation and injury, but also in a way that is appropriate to the age and size of the dog. In this instance, one size does not fit all. This omission can be addressed by 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 “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 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

---

<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 .

<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.

<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.

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**

While State law 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>

We also recommend that the Proposed Legislation be broadened to restrict tethering indoors. The maximum duration for any period of tethering should be as specifically discussed, above.

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 by adopting a sliding scale for tether lengths, which would increase minimum tether lengths as the size of the dog increased.

## **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.

December 2010

---

<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.