

Animal Control-Put A Leash On It

By David Wesner, Corporation Counsel, Danville, Illinois

I am currently involved in a situation centering on animal regulation in my municipality. The situation got me to thinking about the extent of animal regulation that a municipality may think is feasible as compared to the extent that the citizens expect or need.

My municipality contracts out for animal control services. We have used a local not-for-profit since before I began working for my municipality, which was over seventeen years ago. Recently, they have gone through a transition of directors which has led to many severe problems. The problems resulted in almost all of the Board members resigning from the Board. The resulting chaos has caused them to terminate their contract with the City for animal control services. My Mayor immediately began conversations with the Chairman of the County Board to determine if the City and County could work together through the County Animal Shelter to provide those services, to an extent based on the fact that the County provides such services to other municipalities within the County. Those discussions have led to an interim agreement which will exist until an Intergovernmental Agreement can be prepared setting out the detail of how the City and County will work together to allow for animal control within the City. Considering the extent to which those services will be required (since my municipality is the largest in the County), the conversation questioned how extensively the City will be asking the County to enforce the City's animal control ordinance. The result of that conversation was that we would look over our ordinance and make a determination on which provisions would be important to continue enforcing.

The following types of regulations are in my ordinance, which are likely typical of most ordinances on animal regulation: licensing; running at large or leash law; cruelty; dangerous; vicious; females in heat; hoarding; farm animals; and exotic animals. Some of these provisions are a given and must be enforced, such as classifying and regulating dangerous and vicious dogs. To not continue those regulations would leave the public at risk. Other provisions will receive significant attention because they cover animals at risk, such as cruelty and hoarding. The remaining provisions, covering such things as licensing, farm animals, exotic animals and female animals in heat, may be less critical to enforce, although not without debate from citizens.

One of the provisions that I believe to be a lower priority is licensing. I recognize that licensing may be beneficial for proving ownership and getting impounded animals back to their rightful owners. However, having another agency issue and track licenses with limited staff availability may be difficult at best. And, as the County is responsible for rabies tags, we may be able to work with the issuance of those tags to hopefully achieve the same result as if licenses specific to my municipality were still being issued. So, that requirement is likely to fall by the wayside.

Another provision that could be eliminated from enforcement, or at least minimized depending on the actual circumstances of a call, would be a dog running at large. My experience is that, many times, these calls involve dogs that may be roaming the neighborhood but aren't being aggressive or causing issues with people. An animal running at large involves significant staff time in trying to locate the animal and impound it. Depending on staffing levels, the County would likely not be able to manage dealing with these types of calls.

One of the items that came up in our initial discussions with the County was related to cruelty. The Director of the county shelter indicated that they would not be doing welfare checks. She indicated that their experience was that most calls concerning no food or water did not rise to the level of what would be considered cruelty. My experience was the same. Most owners that we cited indicated that they provided water and food. They would indicate that the dogs would turn their food and water bowls over such that it might appear to an enforcement officer or a neighbor that the owner was not taking care of the animal. Any enforcement officer or municipal attorney who has dealt with the public for a long period of time can get a sense from talking to someone if they appear to be a good or bad owner. Having said that, if the situation described involves other potential serious issues, an enforcement officer would likely be sent to observe the conditions and assess whether actual enforcement is necessary. Another aspect of cruelty that I believe would need to continue to be addressed and enforced is hoarding. As we know, hoarding is a situation that may result from the mental condition of the person involved, which seriously impacts the health of the animals living with the person. If not addressed, the health and welfare of both the hoarder and the animals are placed in serious jeopardy.

One of the regulations which may

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Practice Tips *Cont'd from page 21*

Id. at *30.

6. Not discussing document retention. Many states have laws that require the government to keep certain documents forever or for a certain period of time. Now that governments use many software programs and sometimes store data in a cloud or on a server, it is imperative that the client think about retaining that information. Even if there is no state law on retention of e-mails, text messages or drafts of word processing documents, the municipal government should consider a policy to address the retention of this information. Many state courts have looked unfavorably upon governments that have been unable to produce a record in response to a request for information because the information originally stored electronically has not been retained. As a rule of thumb, consider keeping electronic information at least as long as you would keep similar paper information.

5. Not asking the requestor to narrow the scope of the request. In most states there is a mechanism for narrowing the scope of broad requests, either under the law itself or in practice. This can be done for electronic requests by asking the requestor to narrow the timeframe for documents sought, or the number of senders or recipients. A key-word search can be used to pull only responsive documents or e-mails.

4. Searching only e-mails. If your request seeks all "electronic documents" remember that most states have very broad definitions of a "public record." Those broad definitions likely encompass more than just e-mail. There are texts, pins, IMs, tweets, Facebook pages, etc. Do not forget word processing files, spreadsheets and electronic calendars. Tell your client to search all of these when there is a request for electronic documents.

3. Not searching everyone's documents. While we may all sit in front of a computer doing our own typing, having long since abandoned paralegals and perhaps even secretaries and receptionists, our clients likely still work in hierarchical offices. Remember this when you receive a request asking for all documents from a municipal agency. The complete universe of information may not be solely in the files of those *you* regularly contact. The secretaries, subordinates, and manual laborers who fill out the client's workforce may all have documents relevant to a request.

2. Not encouraging your municipality to manage its public relations. Less information is requested by citizens and the press if abundant information is already available on-line. Consider counseling your client about a website where forms, documents, and schedules of government hearings and meetings are readily available. In a controversial situation, encourage your client to make the media its friend and release all the relevant documents that legally can be released and take that opportunity to shape the story. Give the documents context and highlight when there has been careful deliberation about the choices made. Silence breeds distrust and overuse of public information requests.

And the number one pitfall to avoid . . .

1. Not understanding your client's IT structure. Do not be ignorant about how your client creates and stores its electronic information. Each government, and perhaps even each agency within your government, has its own e-mail server and may store documents on the internet or a shared drive. The most important thing to know is whether there is a central agency that has access to all of your client's e-mails or electronic files. Not only will this educate you about where your client's documents are located, but it may matter if your state requires a request to be addressed to the custodian of the documents sought. Is the custodian of the records sought the agency or the government's central information technology office?

Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct mandates, in Comment 8, that a lawyer "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." Avoiding these pitfalls is a good first step. ML

Code Enforcement *Cont'd from page 15*

have some good debate on whether to enforce or not to enforce is the regulation prohibiting the keeping of farm animals within City limits. With more and more communities seeing an increase in the desire for backyard chickens, goats and similar type of animals, more citizens may advocate for not enforcing this restriction. At the same time, citizens will still voice concern over noise, smell and other impacts they may have on neighbors and the surrounding neighborhood.

One of my most memorable cases involved animal regulation. When I first began working for my municipality, I prosecuted violations in circuit court. My cases were set for one afternoon a week. Each of those afternoons, I would bring my binder to court. My binder usually consisted of approximately 120-150 cases, several of which were scheduled for trial. I would always prepare for the trials. But, most often, I would not look at the cases set for initial appearance ahead of time. One afternoon, as the judge and I worked our way through the cases, he opened a file and I turned in my binder to the next case. As I saw the charge, I looked at the judge. He was looking back at me with an expression that said all that needed to be said. I quickly dismissed the case and moved on. The charge was for "cat running-at-large." Needless to say, that was one animal regulation that fell by the wayside a long time ago. ML

Amicus Corner *Cont'd from page 37*

precursor to its more familiar statutory second cousin–RLUIPA, the Religious Land Use and Institutionalized Persons Act. RFRA had been enacted by Congress to confirm religious protections; when the Supreme Court ruled that RFRA could not apply to the states due to 11th Amendment constraints, Congress passed RLUIPA to ensure that state and local activity was also covered. To anyone involved in municipal land use and zoning, the protections afforded religious organizations under RLUIPA are very consequential. It bars state and local governments from enforcing land use regulations that impose a "substantial burden" on "the religious exercise of a person" unless