

<b>TO:</b>	<b>CHAIR AND MEMBERS Community and Protective Services Meeting on March 30<sup>th</sup>, 2016</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>Outdoor Tethering of Dogs</b>

<b>RECOMMENDATION</b>
-----------------------

That on the Recommendation of the Managing Director, Development & Compliance Services and the Chief Building Official, **NO ACTION BE TAKEN** to amend the Dog Licensing & Control By-law, PH-4, with respect to tethering, and that the London Humane Society be requested to continue to enforce under the Ontario Society for the Prevention of Cruelty to Animals Act with respect to tethering.

<b>BACKGROUND</b>
-------------------

Municipal Council, at its meeting held on October 27, 2015 resolved:

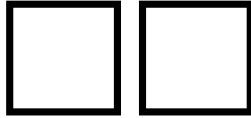
*That the matter of a proposed chaining/tethering/penning of dogs by-law BE REFERRED to the Civic Administration for review and consideration, with a report back at a future meeting of the Community and Protective Services Committee; and it being noted that the Community and Protective Services Committee received a communication dated September 18, 2015, and heard a verbal delegation from V. Van Linden, Director, Animal Alliance of Canada, and received a communication dated October 16, 2015, from Vera van Diepen, with respect to this matter. (12/11/CPSC)*

Tethering or chaining refers to the fastening of a dog to a stationary object or stake using a rope or a chain, usually in the owner's yard, as a means of keeping the animal under control. These terms do not refer to periods when a dog is walked on a lead (leash) or penned.

Protection of animals is identified in the Criminal Code of Canada (Appendix "A") as well as the OSPCA Act (Appendix "B").

The following information was obtained from the London Humane Society (LHS), OSPCA affiliate serving London & Middlesex:

- The Ontario Society for the Prevention of Cruelty to Animals Act (OSPCA Act) under Standards of Care currently addresses tethering and penning. This is enforced by the London Humane Society. London Police also have the authority to enforce this legislation
- The OSPCA has greater powers, stronger legislation with heavier fines and penalties including possible jail time for offenders in certain circumstances
- The OSPCA Act has no time limit on tethering therefore an animal in distress does not have to wait for a specific time period for action to be taken
- An OSPCA Officer can seize an animal in distress (eg. dog in hot car), whereas the Province of Ontario does not give municipal pounds and Animal Control Officer's (ACO) that authority. An ACO is limited to issue a verbal warning, Notice of Caution and/or Provincial Offence Notice (fine)



- The creation of a municipal by-law may complicate the OSPCA process as well as create a duplication of service. This may lead to public confusion as to who to call or report the incident, or will both an ACO and OSPCA officer be responding to a single call. Municipalities such as Windsor/Essex contract out to a Humane Society that provides by-law enforcement as well as enforcement of OSPCA Act. London's Animal Care Centre and London Humane Society are two separate agencies
- Municipal involvement may hinder or interfere with OSPCA cruelty investigations

In 2014, London Humane Society investigated 41 complaints related to pets being tethered outdoors. This represented approximately 3% of the calls received pertaining to animals being outdoors. In 2014 no charges were laid as the result of a tethering complaint, therefore there were no findings of cruelty or neglect.

In 2015 London Humane Society investigated 40 complaints related to pets being tethered outdoors. This represented approximately 3% of the calls received pertaining to animals being outdoors. In 2015 no charges were laid as the result of a tethering complaint, therefore there were no findings of cruelty or neglect.

Proposed tethering time limits will be challenging to enforce. Specific details are required; date, time, address, location, description of the dog, evidence of a tether, and evidence to support the continuous tethered state in excess of the specified time. A civilian witness may provide the evidence through the provision of a "witness statement" which would be a record of the same information the officer would be required to gather. This would require the civilian witness to attend court proceedings should the matter proceed to trial.

On October 20, 2015, before the Community and Protective Services Committee "rebuttable presumption" was suggested by Ms. V. Van Linden of Animal Alliance of Canada as an enforcement method. The concept allows the assumption that if an ACO witnesses a dog outside, leaves to do other duties, and then returns to see the dog outside when the time period elapses, then the assumption is that dog was outside throughout the whole period. There may not be legislative authority to include "rebuttable presumption" in a by-law.

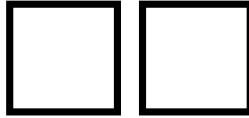
In Ontario, Windsor, Mississauga and Oshawa have adopted a maximum time allowance for tethering (Appendix "C"). In Toronto, Markham, Vaughan, and Ottawa tethering regulations, without a time limit, similar to the regulations set out within the OSPCA act have been included in their animal control by-laws (Appendix "D").

Some City's such as Calgary have banned unattended tethering entirely (Appendix "E").

Each province has its own Society for the Prevention of Cruelty to Animals Act. New Brunswick and Nova Scotia have opted to include lengthy time limits or spans of time within their Act (Appendix "E").

<b>CONCLUSION</b>
-------------------

Some municipalities have passed by-laws or the inclusion of regulations within a by-law to address the tethering of a dog. The set limit of time for the tethering of a dog ranges from "none" to "not between 11:00 p.m. and 6:00 a.m." or somewhere in between. Currently London's Dog Licensing and Control By-law does not include tethering regulations however the few complaints received per year are forwarded to the London Humane Society where they are investigated.



Should Council direct Civic Administration to draft a by-law for public consultation, there are a few factors that will also need Council’s consideration and endorsement. In 2015 the number of licensed dogs in London was 27,222 and that number continues to grow annually.

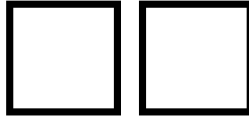
Enforcement of animal cruelty complaints is currently not the mandate of Animal Control Officers.

In the event that a tethering by-law or regulations were to be enacted it may make the most sense to engage the London Humane Society in the enforcement of such regulations to avoid duplication with the OSPCA regulations. London Humane Society has the ability to remove an animal from a harmful environment or situation where an Animal Control Officer enforcing a municipal by-law cannot. London Humane Society would need to consider if the by-law would yield an increase in complaints as well as hours of service. Additional staffing and vehicle costs would need to be explored.

Should, however, enforcement of tethering by London Humane Society not be an option then the City would need added resources which would include another position (Animal Control Officer), as well as an additional enforcement vehicle and communication equipment. The projected cost for the life of the 2016 – 2019 budget would be \$227,000.

<b>PREPARED BY:</b>	<b>PREPARED BY:</b>
<b>R. OKE, ANIMAL WELFARE COORDINATOR</b>	<b>H. CHAPMAN, MANAGER MUNICIPAL LAW ENFORCEMENT SERVICES</b>
<b>CONCURRED BY:</b>	<b>RECOMMENDED BY:</b>
<b>O. KATOLYK, CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>

cc: L. Marshall, City Solicitor’s Office



## APPENDIX “A”

### An Act to amend the Criminal Code (cruelty to animals)

S.C. 2008, c. 12

Assented to 2008-04-17

An Act to amend the Criminal Code (cruelty to animals)

#### SUMMARY

This enactment amends the [Criminal Code](#) to increase the maximum penalties for animal cruelty offences. R.S., c. C-46

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Sections 444 to 447 of the [Criminal Code](#) are replaced by the following:

Injuring or endangering cattle

**444.** (1) Every one commits an offence who willfully

- (a) kills, maims, wounds, poisons or injures cattle; or
- (b) places poison in such a position that it may easily be consumed by cattle.

Punishment

(2) Everyone who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.

Injuring or endangering other animals

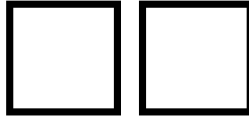
**445.** (1) Every one commits an offence who, willfully and without lawful excuse,

- (a) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose; or
- (b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose.

Punishment

(2) Everyone who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.



## **CRUELTY TO ANIMALS**

### Causing unnecessary suffering

#### **445.1 (1) Every one commits an offence who**

- (a) willfully causes or, being the owner, willfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;
- (b) in any manner encourages, aids or assists at the fighting or baiting of animals or birds;
- (c) willfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, willfully permits a poisonous or an injurious drug or substance to be administered to it;
- (d) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or
- (e) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (d).

#### Punishment

#### (2) Everyone who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.

#### Failure to exercise reasonable care as evidence

(3) For the purposes of proceedings under paragraph (1)(a), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering or injury was caused or was permitted to be caused willfully, as the case may be.

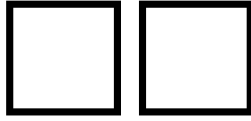
#### Presence at baiting as evidence

(4) For the purpose of proceedings under paragraph (1)(b), evidence that an accused was present at the fighting or baiting of animals or birds is, in the absence of any evidence to the contrary, proof that he or she encouraged, aided or assisted at the fighting or baiting.

### Causing damage or injury

#### **446. (1) Every one commits an offence who**

- (a) by willful neglect causes damage or injury to animals or birds while they are being driven or conveyed; or
- (b) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or willfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.



Punishment

(2) Everyone who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding five thousand dollars or to imprisonment for a term of not more than six months or to both.

Failure to exercise reasonable care as evidence

(3) For the purposes of proceedings under paragraph (1)(a), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it damage or injury is, in the absence of any evidence to the contrary, proof that the damage or injury was caused by willful neglect.

Keeping cockpit

**447.** (1) Every one commits an offence who builds, makes, maintains or keeps a cockpit on premises that he or she owns or occupies, or allows a cockpit to be built, made, maintained or kept on such premises.

Punishment

(2) Everyone who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.

Confiscation

(3) A peace officer who finds cocks in a cockpit or on premises where a cockpit is located shall seize them and take them before a justice who shall order them to be destroyed.

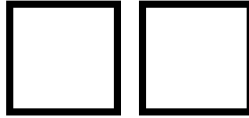
Order of prohibition or restitution

**447.1** (1) The court may, in addition to any other sentence that it may impose under subsection 444(2), 445(2), 445.1(2), 446(2) or 447(2),

- (a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal or a bird during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years; and
- (b) on application of the Attorney General or on its own motion, order that the accused pay to a person or an organization that has taken care of an animal or a bird as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal or bird, if the costs are readily ascertainable.

Breach of order

(2) Everyone who contravenes an order made under paragraph (1)(a) is guilty of an offence punishable on summary conviction.



## APPENDIX “B”

### Ontario Society for the Prevention of Cruelty to Animals Act ONTARIO REGULATION 60/09 standards of care

Note: On May 1, 2016, the title to the Regulation is revoked and the following substituted: (See: O. Reg. 438/15, s. 1)

#### STANDARDS OF CARE AND ADMINISTRATIVE STANDARDS

**Consolidation Period:** From December 21, 2015 to the [e-Laws currency date](#).

Last amendment: O. Reg. 438/15.

*This is the English version of a bilingual regulation.*

Note: On May 1, 2016, the Regulation is amended by adding the following heading immediately before section 1: (See: O. Reg. 438/15, s. 2)

#### PART II GENERAL STANDARDS OF CARE FOR ANIMALS

##### Basic standards of care for all animals

2. (1) Every animal must be provided with adequate and appropriate food and water. O. Reg. 60/09, s. 2 (1).

(2) Every animal must be provided with adequate and appropriate medical attention. O. Reg. 60/09, s. 2 (2).

(3) Every animal must be provided with the care necessary for its general welfare. O. Reg. 60/09, s. 2 (3).

(4) Every animal must be transported in a manner that ensures its physical safety and general welfare. O. Reg. 60/09, s. 2 (4).

(5) Every animal must be provided with an adequate and appropriate resting and sleeping area. O. Reg. 60/09, s. 2 (5).

(6) Every animal must be provided with adequate and appropriate,

(a) space to enable the animal to move naturally and to exercise;

(b) sanitary conditions;

(c) ventilation;

(d) light, and;

(e) protection from the elements, including harmful temperatures. O. Reg. 60/09, s. 2 (6).

(7) If an animal is confined to a pen or other enclosed structure or area,

(a) the pen or other enclosed structure or area, and any structures or material in it, must be in a state of good repair;

(b) the pen or other enclosed structure or area, and any surfaces, structures and materials in it, must be made of and contain only materials that are,

(i) safe and non-toxic for the animal, and

(ii) of a texture and design that will not bruise, cut or otherwise injure the animal; and

(c) the pen or other enclosed structure or area must not contain one or more other animals that may pose a danger to the animal. O. Reg. 60/09, s. 2 (7).

(8) Every animal that is to be killed must be killed by a method that is humane and minimizes the pain and distress to the animal; an animal's pain and distress are deemed to be minimized if it is killed by a method that produces rapid, irreversible unconsciousness and prompt subsequent death. O. Reg. 60/09, s. 2 (8).

##### Standards of care for dogs that live outdoors

3. (1) Every dog that lives primarily outdoors must be provided with a structurally sound enclosure for its use at all times. O. Reg. 60/09, s. 3 (1).

(2) The enclosure must be weather-proofed and insulated. O. Reg. 60/09, s. 3 (2).

(3) The size and design of the enclosure must be adequate and appropriate for the dog. O. Reg. 60/09, s. 3 (3).

(4) A chain, rope or similar restraining device used to tether a dog that lives primarily outdoors,

(a) must be at least three metres long;

(b) must allow the dog to move safely and unrestricted (except by its length); and

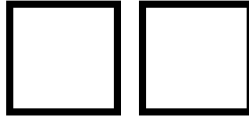
(c) must allow the dog to have access to adequate and appropriate water and shelter. O. Reg. 60/09, s. 3 (4)

--	--

**APPENDIX “C”**

Who enforces Municipal By-laws?	Who enforces OSPCA Act?	Relies upon Rebuttable Presumption	By-law Enactment date	Time limit on tethering	Number of complaints received
Windsor Essex Humane Society	Windsor Essex Humane Society	No	Oct. 2014	4 hours	Less than 100
Windsor Enforcement notes:	Two fines since enactment. One proceeded to legal action. The officer <b>remained on site</b> for the full 4 hours to collect solid evidence				
Mississauga	OSPCA agent	No	Dec. 2014	4 hours	9
Mississauga Enforcement notes:	Officer does not stay on site the entire 4 hours however <b>civilian witness</b> must also attend if matter escalates to a trial				
Oshawa	OSPCA agent	No	Dec. 2015	4 hours	none
Oshawa Enforcement notes:	n/a due to newness of the by-law				





## **APPENDIX “D”**

### **Municipal tethering regulations which do not include a time limit on tethering**

#### **TORONTO**

TETHER - A rope or chain or similar restraining device that prevents an animal from moving beyond a localized area, and the words "tethered" and "tethering" have a similar meaning.

#### **§ 349-7. Enclosures for animals kept out of doors.**

If an animal, other than a cat, is, at any time, kept outside on the owner's premises for any continuous period exceeding thirty minutes, then the person having the custody or control of the animal shall provide for that animal's use, at all times, a weather-proofed and insulated enclosure that includes sufficient space to allow for the normal postural and behavioural adjustments and adequate amounts of ventilation and intensity of light for the animal.

#### **§ 349-8. Tethers.**

A. No person shall keep any animal in the City tethered on a chain, rope or similar restraining device of less than three metres in length.

B. Every person who has tethered an animal shall ensure, at all times, that the animal has unrestricted movement within the range of the tether, and that the animal cannot suffer injury resulting from the tether.

#### **MARKHAM**

##### **TETHERS**

2.3 (1) No person shall keep an animal tethered on a rope, chain or similar restraining device, unless:

- (a) the tether is of appropriate length for the species tethered
  - (b) the animal has unrestricted movement within the range of such tether;
- and

(c) the animal cannot suffer injury as a result of tethering.

(2) Notwithstanding subsection 2.3(1)(a), the minimum length of a tether for a dog shall be three (3) meters provided that the tether does not permit the dog to go beyond the limits of the person's property.

#### **VAUGHAN**

##### **PART 5 CARE OF ANIMALS**

(3) No person in the City shall keep a dog or cat tethered on a chain, rope or similar restraining device of less than 3 metres in length.

(4) Every person who has tethered an animal on a leash shall ensure that the animal has unobstructed movement within the range of the tether and that the animal shall not suffer an injury resulting from the tether.

#### **OTTAWA**

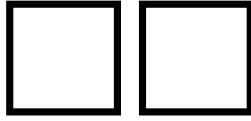
“tether” means a rope or chain or similar restraining device that prevents an animal from moving away from a localized area and the words “tethered” and “tethering” have a similar meaning;

(1) No person shall keep an animal tethered on a rope, chain or similar restraining device unless:

- (a) the tether is of appropriate length for the species tethered,
- (b) the animal has unrestricted movement within the range of such tether, and
- (c) the animal cannot injure itself as a result of the tethering,

--	--

- (2) Despite clause (a) of subsection (1), in the case of dogs, the tether shall be a minimum of three (3) meters in length provided that the tether does not permit the animal to go beyond the limits of the person's property.
- (3) Despite subsection (1), no person shall keep an animal tethered where a choke collar, a choke chain or a pronged collar forms part of the tether.



## **APPENDIX “E”**

### **Out of Province: Municipal & Provincial tethering regulations which do include a time limit on tethering**

#### **CALGARY**

##### **UNATTENDED ANIMALS**

17. (1) The Owner of an Animal shall ensure that such Animal shall not be left unattended while tethered or tied on premises where the public has access, whether the access is express or implied.
- (2) The Owner of an Animal shall ensure that such Animal shall not be left unsupervised while tethered or tied on private property.

#### **NEW BRUNSWICK (Provincial Legislation) - Tethering Restrictions**

Tethering dogs for an extended period of time increases their level of stress, protectiveness and vulnerability, as well as their potential for aggression.

Effective December 1, 2014, the *Society for the Prevention of Cruelty to Animals Act* (SPCA Act) will restrict province-wide tethering of dogs during the nighttime. The tethering of dogs will not be permitted for more than 30 minutes between the hours of 11 p.m. to 6 a.m., unless the owner or person responsible is outside and within 25 metres of the dog.

The associated fine for not complying with this restriction will be a minimum of \$500 to a maximum of \$200,000.

Restricting tethering will ensure that dogs are not tethered 24 hours a day

#### **Nova Scotia (Provincial Legislation)**

##### **Standards of Care for Cats and Dogs Regulations**

**made under Section 39 of the**

***Animal Protection Act***

**S.N.S. 2008, c. 33**

**N.S. Reg. 182/2014 (November 27, 2014, effective December 2, 2014)**

##### **Standards of care for tethering:**

- 8 (1) An animal's owner or caretaker may tether the animal for only up to 12 hours in any 24-hour period.
- (2) If an animal has been tethered for 12 consecutive hours, the owner or caretaker of the animal must untether the animal for 12 consecutive hours before tethering the animal again.
- (3) An animal's owner or caretaker must ensure that the minimum length of a tether used on the animal is the greater of
  - (a) 5 m; and

--	--

- (b) 5 times the length of the animal, as measured from the tip of its nose to the base of its tail.
- (4)** In addition to the length requirement of subsection (3), an animal's owner or caretaker must ensure that a tether used on the animal meets all of the following requirements:
- (a) it must allow the animal to reach its food and water and a clean, dry, place to lie down in a shaded area or shelter, if required by these regulations;
  - (b) it must allow the animal to move in a manner that is safe and, except by the length of the tether, is unrestricted;
  - (c) it must be configured to prevent the animal from doing any of the following:
    - (i) becoming entangled with other objects or animals,
    - (ii) moving over an edge, such as the edge of a wall or stairway, in a manner that could result in strangulation or injury of the animal;
  - (d) it must not cause discomfort for the animal because of its type or weight.