

1989 BILL 254

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 254

**AN ACT TO AMEND THE
MUNICIPAL GOVERNMENT ACT**

MR. PASHAK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 254
Mr. Pashak

BILL 254

1989

AN ACT TO AMEND THE MUNICIPAL GOVERNMENT ACT

(Assented to , 1989)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

1 The Municipal Government Act is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (h):

(h.1) "judge" means a judge of the Provincial Court of
Alberta, a justice of the peace or a person designated in a
bylaw passed pursuant to clause 164(b.2).

(b) by adding the following after clause (r):

(r.1) "owner", with respect to a dog,

(i) includes a person who keeps, possesses or harbours
a dog, or, where a minor is the owner of a dog, the person
responsible for the custody of the minor, and

(ii) does not include

(A) a veterinarian registered pursuant to the
Veterinary Profession Act who is keeping or
harbouring a dog for the prevention, diagnosis or
treatment of a disease or an injury, or

Explanatory Notes

1 This Bill will amend chapter M-26 of the Revised Statutes of Alberta, 1980.

2 Adds new definitions to provide for judges to be designated to deal with dog by-laws and define "owner" with respect to a dog.

(B) a municipal officer acting in his duties in respect of an animal shelter or impoundment facility operated by it.

3 *Section 164 is amended by adding the following after clause (b):*

(b.1) declaring any type or breed of animal or class of animals to be dangerous and establishing requirements for the owner to keep it under proper control;

(b.2) designating a person within a category of persons prescribed by the regulations made pursuant to section 146.9 as a judge for the purposes of section 164.2;

4 *The following is added after section 164:*

164.1 In sections 164.2 and 164.3, "provocation" means an act done intentionally for the purpose of provoking a dog.

164.2(1) Subject to subsection (2), if a complaint is made that a dog in an urban municipality is dangerous, a judge on hearing the complaint shall declare the dog to be dangerous where it is proved that:

(a) the dog, without provocation, in a vicious or menacing manner, chased or approached a person or domestic animal in an apparent attitude of attack;

(b) the dog has a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise threaten the safety of persons or domestic animals;

(c) the dog has, without provocation, bitten, inflicted injury, assaulted or otherwise attacked a person or domestic animal;

(d) the dog is owned primarily or in part for the purpose of dog fighting or is trained for dog fighting.

(2) A council may, by by-law, require that any complaints made pursuant to subsection (1) be made to and be heard by a

3 Allows by-laws dealing with dangerous animals and designating judges.

4 New sections provide for a judge to deal with complaints relating to dog attacks, prescribe exemptions and grant remedial and punitive powers to the judge. Offences, appeals and enforcement provided for.

person designated in a by-law passed pursuant to clause 164(b.2).

(3) No dog shall be declared dangerous where an action described in clause (1)(a), (b), or (c) occurs while the dog is:

(a) acting in the performance of police work; or

(b) working as a guard dog on commercial property:

(i) securely enclosed on the property by a fence or other barrier sufficient to prevent the escape of the dog and the entry of children of tender years; and

(ii) defending that property against a person who is committing an offence.

(4) The owner of a dog complained of, if known, shall be served with notice of a hearing pursuant to subsection (1), but the judge may make an order pursuant to subsection (5) in the absence of the owner if he fails to appear.

(5) Where a judge declares a dog to be dangerous, the judge shall make an order requiring the owner:

(a) to keep the dog in an enclosure which complies with criteria prescribed by by-law;

(b) if he removes the dog from the enclosure, to muzzle and leash it in as prescribed by by-laws and keep it under his direct control and supervision;

(c) to obtain and keep in effect liability insurance in the amount ordered to cover damage or injury caused by the dog;

(d) to display a sign on his property warning of the presence of the dog, in the prescribed form and manner prescribed by by-law.

(e) to comply with the *Animal Disease and Protection Act (Canada)*, and the regulations thereto with respect to the detection and control of rabies;

(f) where a by-law pursuant to paragraph 164(b.2) is in effect in the urban municipality, to report any sale or other disposition of the dog to the person appointed for the purpose of the by-law;

(g) where the dog is moved to a different municipality, to notify the clerk of that municipality.

(6) The judge may also order the owner:

(a) to have the dog tattooed in the manner provided in the by-laws.

(b) to have the dog spayed or neutered;

(c) to take any other measures the judge considers appropriate.

(7) Notwithstanding subsection (5), where the judge is a judge of the Provincial Court of Alberta or a justice of the peace, he may, in the alternative, order that the dog be destroyed or otherwise disposed of at the owner's expense and shall give directions with respect to the destruction or other disposition.

(8) Where an order has been made pursuant to subsection (5) against an owner, the owner may apply to the judge who made the order that compliance with the provisions of clause (5)(c) be waived.

(9) On an application pursuant to subsection (8), the judge may waive compliance with clause (5)(c), on any terms and conditions he considers reasonable, where he is satisfied that the owner is unable to comply with the requirements of that clause for a reason other than his financial circumstances.

(10) An owner or complainant who feels aggrieved by an order made pursuant to subsection (5) or (7) may appeal the order:

(a) to a judge of the Provincial Court of Alberta by way of a trial de novo where the order was made by a person designated in a by-law passed pursuant to clause 164(b.2) or by a justice of the peace; or

(b) on the grounds that the order:

(i) is erroneous in point of law;

(ii) is in excess of jurisdiction; or

(iii) constitutes a refusal or failure to exercise jurisdiction;

to the court where the order was made by a judge of the Provincial Court of Alberta.

(11) A person desiring to appeal an order pursuant to subsection (10) shall, within 7 days of the order being appealed from, file a notice of appeal with the judge or court being appealed to and the provisions of Part XXIV of the *Criminal Code (Canada)*, apply mutatis mutandis to the appeal.

164.3(1) Any person who owns a dog for the purpose of dog fighting, or trains, torments, badgers, baits or otherwise uses a dog for the purpose of encouraging the dog to make unprovoked attacks on persons or domestic animals is guilty of an offence.

(2) Any person who does not comply with an order made against him pursuant to subsection 164.2(5) is guilty of an offence.

(3) Any person who owns a dog that, without provocation, attacks, assaults, wounds, bites, injures or kills a person or domestic animal, is guilty of an offence.

(4) A person who is guilty of an offence pursuant to this section is liable on summary conviction to a fine of not more than \$10 000, imprisonment for not more than 6 months and to an order that his dog be destroyed or otherwise disposed of in accordance with the terms and conditions ordered by the judge.

164.4(1) Unless the owner otherwise agrees, every order for destruction of a dog shall state that it shall not be implemented for 8 days.

(2) Where an appeal order is taken against an order for the

destruction of the dog, the application of the order is stayed pending the disposition of the appeal.

164.5 Where the judge on appeal overturns the order for destruction of the dog, the dog shall be released to the owner after the owner has paid the costs of impounding the dog pending the hearing.

164.6 If an action brought to recover damages for injuries to persons or property caused by a dog, it is not necessary for the person injured to prove that the dog is, or that the owner knew that the dog was, of a dangerous or mischievous nature or is accustomed to doing acts causing injury.

164.7 A peace officer as defined by the *Criminal Code (Canada)*, may destroy any dog that he finds injuring or viciously attacking a person or domestic animal.

164.8(1) Where a peace officer as defined by the *Criminal Code (Canada)*, or a municipal official designated by a by-law has reasonable grounds for believing that a dog is dangerous or has been ordered to be destroyed is:

- (a) in or on any premises other than a dwelling house; or
- (b) in any vehicle or other chattel;

the peace officer or official may, with or without a warrant and by force if necessary, enter the premises, vehicle or chattel, search for the dog and impound it or, if there is an order to destroy or otherwise dispose of the dog, deliver the dog to the person appointed in the order to destroy or otherwise dispose of it.

(2) Where it appears to a judge, on information laid before him on oath, that there is reasonable and probable grounds for believing that a dog that has been ordered to be destroyed or otherwise disposed of is in a dwelling place or any other premises or vehicle or chattel, the judge may issue a warrant, authorizing a peace officer to enter, by force if necessary, the dwelling place or other premises or vehicle or chattel specified in the warrant and search for the dog, and the peace officer may impound and deliver the dog to the person appointed by the judge to destroy or otherwise dispose of it.

164.9 The Lieutenant Governor in Council may make regulations prescribing a category of persons for the purpose of a by-law pursuant to clause 164(b.2).

