

Recommendation

THAT the City of Greater Sudbury uphold the Vicious Dog Notice #754470, issued to Eric Foerter, 2164 Mildred St., City of Greater Sudbury.

Background

City of Greater Sudbury By-law 2017-22, as amended, became effective on March 1, 2017 and regulates the keeping of animals and the registration of dogs and cats. Part III of the by-law entitled "Vicious Dogs"; section 28 of the by-law, contains provisions for the issuance of a Vicious Dog Notice to owners of dogs that have attacked a person or domestic animal without provocation.

The effect of the notice is to ensure the owner of a dog deemed vicious by receipt of the notice, erect vicious dog signs on the owner's property, muzzle and leash the dog when not inside the owner's dwelling at all times, provide that the dog is microchipped and requires the owner to obtain additional liability insurance.

The by-law is specific about how the process is carried out and the contents of the notice. Several provisions in the by-law for the issuance of the notice are mandatory requirements of the Registrar and of the recipient of the Notice.

This section also provides for an appeal of the notice by the owner of the dog requesting a hearing of the matter by Council or Committee of Council. The Committee may uphold the notice and its contents, exempt the owner from the erecting of the signs, muzzling, leashing, microchipping or obtaining insurance requirements or from all, or may modify the conditions for any of these conditions.

By-law Procedure Vicious Dog Notice - 754470

Part 3 of By-law 2017-22 designates the Manager of Security and By-law Services for the City of Greater Sudbury as the License Issuer pursuant to the By-law, and By-law Officers in Compliance and Enforcement have been appointed by the License Issuer to perform the task of issuing Vicious Dog Notices pursuant to the by-law.

Subsection 28(1) of the by-law states "*The License Issuer may conduct an investigation to determine if a Dog should be found to be a Vicious Dog, where the License Issuer receives:*

- (a) A written complaint, signed by the complainant, that a Dog has Attacked or Bitten a Person or a Domestic Animal without provocation or mitigating factors;*
- (b) Particulars of the name and address of the owner of the Dog or adequate information to ascertain the Owner of the Dog which is subject of the complaint; and*
- (c) Particulars of the Incident or Incidents giving rise to the complaint.*
and if deemed to be a vicious dog, requiring the owner to comply with any or all of the requirements set out in sections 28, 29 and 30."

A written complaint was received by the License Issuer from [REDACTED] of [REDACTED] Mildred St., Greater Sudbury, requesting that the dog named "[REDACTED]", kept at the address of [REDACTED] Mildred St., Greater Sudbury, be deemed vicious, based on an incident on April 22, 2017 where [REDACTED] dog was attacked and bitten. (See attachment of the Victim statement, letter of complaint to this report.)

The complaint and accompanying statement describes the incident, which happened on Saturday, April 22, 2017 at approximately 10 am, where [REDACTED] older dog, named "[REDACTED]" was attacked and bitten. [REDACTED] states in the complaint that [REDACTED] was in her own fenced in back yard with "[REDACTED]", who was lying down. [REDACTED] then observed the neighbor's dog, "[REDACTED]", had jumped over the fence between [REDACTED] property and that of [REDACTED] Mildred St., where "[REDACTED]" is from. "[REDACTED]" then ran towards and attacked and bit "[REDACTED]", unprovoked. It took the complainant, [REDACTED] father, another friend and "[REDACTED]" owner to stop "[REDACTED]" attack.

Immediately after, the owner [REDACTED] brought [REDACTED] dog "[REDACTED]" to seek medical attention and saw the Veterinarian at Walden Animal Hospital. At this appointment it was noted that wounds were found on the left hind leg. [REDACTED] was provided with "medication for pain and for prevention from infection as well as stitches and a drainage tube" as stated in the complaint.

Greater Sudbury By-law Enforcement Officer (BEO), Philip Smyth, investigated this incident, where the owner of the dog "[REDACTED]", [REDACTED], was served a Certificate of Infraction for the offence of "Owner of Dog or Cat Permit Dog or Cat to be at Large" on April 23, 2017. (See CGS BEO Smyth Investigation report attached to this report.)

On April 22, 2017, BEO Smyth, as part of his investigation in Case #754470, the written complaint letter and statements were reviewed and the results of that investigation were presented to the License Issuer. It was determined that there was no provocation to the attack and bite on "[REDACTED]" by "[REDACTED]" as "[REDACTED]" was lying down in his own yard at the time of the attack when "[REDACTED]" leapt over the fence and went directly at "[REDACTED]".

During the conversation with [REDACTED], the owner of the dog "[REDACTED]", it was determined that "[REDACTED]" was not registered with CGS. "[REDACTED]" was subsequently registered 22 April 2017, tag # 6243, a white Husky/Shepherd cross, 6 months old.

A Vicious Dog Notice, #754470, dated Sunday, April 23, 2017, was prepared and delivered to the registered owner of the dog, [REDACTED]. (See the Vicious Dog Notice attached to this report.) One copy of the notice was hand delivered by BEO Smyth to the owner and another copy was delivered registered mail. The notice contains the requirements of Subsections 29, 30 and 31 of the by-law; ensuring vicious dog signs are posted, the dog is muzzled and leashed when not inside the owner's dwelling unit, the requirement of having liability insurance, notifying the owner of his requirement to provide a change of address, the owner's right to appeal the notices and the effective date of the notice, pursuant to subsections 32, 33 and 34.

On July 21, 2017, the owner of vicious dog contacted the Licence Issuer to request an amendment to the order in hopes to allow for [REDACTED] dog to run off leash in its own back yard and to allow for the vicious dog signage be removed from their residence. BEO Smyth attended the vicious dog residence on 25 July 2017. [REDACTED] was not home but [REDACTED] was. I advised [REDACTED] I was here to inspect the repairs that [REDACTED] had made, removal of the stump and repairs to the fence. I was unable to enter the backyard at [REDACTED] Mildred as I could not get the gate to unlock. I then went next door to [REDACTED] Mildred, knocked, no one home. I entered their back yard to view the fence and into the back yard of [REDACTED]. The fence had the broken pieces repaired and the stump was lowered. I was the opinion of BEO Smyth that the fence would not protect from the vicious dog jumping over and further there were still objects to assist the canine with jumping over.

Relating to the Part I Certificate of Infraction that was issued to [REDACTED] for the offence of "*Owner of Dog or Cat Permit Dog or Cat to be at Large*", the matter is scheduled for Early Resolution to be heard in Provincial Offences Court on October 06, 2017. Early Resolution is a formal court process, whereby a defendant has the option to meet with the municipal prosecutor to discuss the charge(s). Early Resolution meetings are typically used to ask the position of the prosecutor,

to discuss the time to pay a fine, to request disclosure for the charge(s) or to discuss the possibility of pleading to a lesser offence supported by the facts.

Appeal Notice

A letter of appeal of the Vicious Dog Notice was received by the owner of the dog and the hearing was scheduled. (See Letter of Appeal is attached to this report.) A notice was sent to the owner of the dog advising of the date and time of the hearing.

Conclusion

In consideration of this report, the witnesses and the appellant, pursuant to subsection 33(1) the Hearing Committee may decide one of three options below;

1. Uphold the Notice;
2. Modify the Notice - exempting the owner from erecting vicious dog signs, muzzling or leashing, obtaining liability insurance or modifying any of these conditions; or
3. Quash the Notice - exempting the owner from all requirements to muzzle and leash.

The License Issuer is confident that the Vicious Dog Notice issued to [REDACTED] Mildred St., City of Greater Sudbury, satisfies the requirements of By-law 2017-22, Part III, Section 28, a by-law to regulate the keeping of animals and the registration of dogs and cats. The purpose of the notice is to mitigate the recurrence of a similar incident and provide an assurance of safety for the area residents and the general public. The Registrar recommends that the Vicious Dog Notice be upheld by the Committee.

Supporting Documents

1. Victim Statement - [REDACTED] 754470
2. Victim Statement- [REDACTED] 754470
3. Request to Deem Vicious- [REDACTED] 754470
4. Eleven (11) photos of investigation
5. Certification of Infraction- Permit Dog at Large- April 23, 2017- PON #6776832B
6. Animal Registration 2071-6243
7. Vicious Dog Notice
8. Letter of Appeal