

What is WRONG with the new CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY BY-LAWS RELATING TO DOGS AND CATS?

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What's WRONG with the new By-Laws?

The recent Joburg Municipality Animal By-Laws have met with resistance, as they did in Cape Town, where very similar By-Laws were repealed. There are many and varied reasons for the resistance, and I will explain these under three headings:

1. Constitutional and other Legal Problems.
2. Consequences arising from their Implementation.
3. Resourcing Issues

I will then summarise, after which I will make some suggestions regarding the way forward.

1 Constitutional and other Legal Problems

- 1.1 The first glaring error from a Constitutional perspective is not contained in the document, but in the process. It is claimed that, 'The recently promulgated "Dog and Cat" By-law followed the full process required by law and notices were published in various media calling for comments from interested parties. A substantial response was received and the matter was broadly covered in a variety of media.' How then is it possible that the majority of the animal welfare community completely missed this important information? Where was it published? Were flyers distributed in neighbourhoods? Were adverts for the process placed in community centres? Was the process advertised on radio?

More importantly, why was the enacted law so different from the draft, and were these changes also published and announced for review? We need proof that this took place. Apparently, certain welfare organisations were included when these By-Laws were formulated. The fact that an entire segment of the Animal Welfare Community was excluded is suspicious, even more so given that it is the "Pro-Life" fraternity that has been marginalised. We demand inclusion in this process. It is clear from the nature of the By-Laws that Pro-Life members of the public have not been involved, because if they had been, these laws would have looked very different.

People who did e-mail their objections through after seeing very small ads in local newspapers received a standard response thanking them for their e-mail and saying they were still in the process of evaluation. If due process was not followed, the by-law is null and void. I would like proof that it was followed and how were objections evaluated? Lastly, the Veterinary Council was not consulted? How is this possible?

In addition, one would expect that the precedent set when similar By-Laws to these were vigorously opposed and subsequently repealed in the Western Cape would have informed the Joburg Council. Instead, they ignored the objections raised in the Cape.

- 1.2 Our Constitution supports freedom of expression, freedom from violence, right to psychological integrity and property rights, and yet this legislation violates these in several ways. The most obvious in this instance is that animals, in our law, are property, and yet this law seeks to set limits on how much property we may own? Could the law, for example, prescribe how many cars I can have, or how many houses? No it cannot – it is difficult to see how this law is not in conflict with our Constitution. In addition, in our law there is no provision for expropriation without compensation, and there is no provision in the By-Law for compensation to pet owners who have more cats or dogs than the By-Law allows. No property owner can legally or indeed reasonably be expected to seek a permit of the kind envisaged in the By-Law for the status quo which he or she already enjoys. If the status quo is illegal, it cannot be made retrospectively illegal to have more than the newly prescribed number of animals on the given premises. This is in effect expropriation of the excess animals without compensation contrary to the guaranteed rights to property contained in the Bill of Rights.

- 1.3 The Constitution does not provide for the licensing of a property on which animals are kept and specifically does not provide for the licensing of cats at all. The cat 'permit' is simply a license to keep more than 4 cats, and it is not within the powers of the City to issue any such permit to a person or premises upon which cats are kept. With regard to dogs, the Constitution provides for licensing of dogs, but not a property on which a dog is kept. In the case of both dogs and cats, the By-Laws fail to satisfy Constitutional requirements.
- 1.4 Our bill of rights includes the rights to dignity and psychological integrity, property, an environment which is not harmful to health or well being and the paramount right of children to have their best interests served in all matters relating to them. The by-law would contradict our bill of rights considering that most people who own cats and dogs consider them as part of their family and by imposing this by-law it would cause unnecessary trauma to a family which would be harmful to ones wellbeing. The by-law is in contradiction of our country's moral fibre and Bill of Rights. In addition, it is part of our culture to keep pets, we believe they should be treated with compassion and respect, and their welfare is a matter of conscience, in that we feel responsible for them and cannot betray their trust. To deny us these rights is direct discrimination as specified in the Bill of Rights.
- 1.5 The numbers of animals allowed as specified in the By-Laws are arbitrary. How were these numbers arrived at? What is the statistical basis for the determination that, for example, 2 dogs and 2 cats are appropriate for a 'dwelling unit', a strange term for what everyone else knows as a 'flat'? These numbers are arbitrary because the nature of one's accommodation is no indication whatsoever of one's ability, both in respect of willingness and finances, to see to one's animals' needs. Surely other factors such as financial resources, provision of shelter, and space for the animals to enjoy a natural life should have been included? The numbers are also patently arbitrary in respect of the fact that a Pekinese and a Great Dane are regarded as placing equal demands on the owner's resources, a ludicrous assumption. Two Great Danes in a flat would be tantamount to cruelty, yet these By-Laws find this acceptable. In addition, the By-Laws are inflexible. The limitation to 2 dogs and 2 cats an anomaly, an unusual condition, since most people tend to want cats or dogs but not both, is a strange base for the By-Laws to set. Surely it would have been more appropriate to real world conditions to specify 4 dogs and/ or cats; i.e. one dog and three cats, or three dogs and one cat, for instance, since it would be inconsistent to argue that 2 dogs and 2 cats would carry less potential for negligence than, say, 4 dogs? It can be argued that numbers are actually irrelevant and offer no insight into the likelihood of negligence or abuse. Again, it is a multifaceted equation, not the hopelessly simplistic one suggested by these by-Laws.

This is even more evident when one considers the requirement in the By-Law for a report "as to whether the dog for which the permit is required is likely to cause a public health hazard or the keeping of such dog may result in a contravention of section 5" (Section 3 (5)) How can it possibly be determined in advance whether a dog will become a noise nuisance, and in the case of welfare organisations and workers, where larger numbers of dogs will be present, how could the official predict that a health hazard would result? In addition, on the one hand we are applying for a permit for premises, and yet here it is a dog that requires the permit? It is difficult to see why the requirement to report on the likelihood of a health hazard arbitrarily starts when someone wants more than the number of animals prescribed by the nature of the building they live in? Surely the building is irrelevant? And the By-Law is inconsistent with it's own provisions in this case, since the need to report regarding a health hazard is determined the excess to the allowed number of animals living in particular place, different in each case. I maintain that one dog on a farm could pose a greater risk than 10 dogs in a flat. The nature of the building and the number of animals is always irrelevant.

In conclusion there is no causal link that can be established between cruelty or neglect of animals and the number of animals owned by one family.

- 1.6 Finally, the bylaws are indiscriminate: they throw responsible pet owners into the same category as backyard breeders. Responsible pet owners do not need laws to tell them how to look after their animals. Irresponsible owners and breeders are unlikely to change their behaviour because of these bylaws; they will simply evade them. Therefore the laws punish responsible pet owners with an additional council tax (the permit fees, which are very high) and does nothing to address the problems cited by the council itself that the laws are supposed to solve

2 Consequences

- 2.1 Apparently the intent of these By-laws is the following: '...the by-law attempts to address animal related problems that cost the city huge amounts of time, manpower, effort and money, i.e. stray animals, disturbance of communities by animals, unsanitary conditions caused by animals, injury to persons and property by animals, animal abuse and indiscriminant breeding of animals.' Astonishingly, with one simple, broad stroke, that of limiting numbers of animals, we will automatically address all these animal-related problems? This is demonstrably simplistic, since the underlying causes of all of these problems are in the first place complex, arising from a number of factors, and secondly changing the allowed capacity of individuals is extremely unlikely to affect any of these to any degree. Perhaps those who formulated these laws can show the cause-effect relationship between limiting the numbers of animals anyone may have, and ANY of the problems above? Try as I might, I have not been able to work out how this will happen?

Stray animals, disturbance of communities by animals, and injury to persons and property by animals are the result of inadequate fencing and control and have less than zero to do with numbers of animals at any particular location. Animal abuse can take place if there is only one animal and has done on so many occasions as to make the remedy of reducing numbers laughable. Abuse must not be confused with negligence; it may be argued that negligence is more likely to result if there are more animals on a given property, but one would have to include another factor, that of the means available to the animal's owner as well as their attitude towards animals. The numbers on their own will tell you nothing at all. To penalise those who do take responsibility by removing their civil liberty when they have not committed a crime is to claim that most people are irresponsible. This would be unsupported by evidence.

Unsanitary conditions caused by animals are once again not caused by sheer force of numbers. It's caused by a lack of attention to fundamental hygiene coupled with a lack of resources, and by no means can be solely attributed to the single factor of volume, otherwise we should assume that the more animals you have the more likely it is that you will have unsanitary conditions. Nonsense. There are altogether 11 dogs on the property where I live, and we have no sanitation problems...

The most serious problem is that of indiscriminate breeding, the root cause of the overwhelming numbers numbers of animals that find their way into Animal Shelters nationwide. How these By-laws will change this is beyond imagination, since it requires only two animals to breed: a male and a female. There is no By-law stipulating sterilisation and these laws only apply to animals over the age of 6 months, ample opportunity for the home breeder to get rid of the pups or kittens before they reach six months so that no permit is required. The new By-laws do not inhibit the breeding process, they enable it. They will contribute to an increase of the problems they seek to solve...

It is important to understand the nature of the big picture with regard to domestic animal

populations and the effect this kind of legislation will have on people's behaviour. The largest single cause of the overpopulation of dogs and cats is the lack of sterilisation of domestic animals. It is estimated that only 1 in every 15 dogs will find a home, and the statistic is likely to be very similar for cats. There are more animals than homes. Since there is no legislation to prohibit home breeding, the input into the population will continue. Place a capacity limit on the end user, the private owner, and where is the excess capacity likely to land up? Many animals already find themselves abandoned, where they may or may not be found and rescued, some die, and the balance land up at an Animal Shelter. For those who arrive at 'Kill' Shelters where euthanasia is practiced, they will probably remain alive for another 7 to 10 days. We have no statistics for the total population of South Africa, since none of the 'Kill' Shelters will not publish theirs, but we estimate that conservatively 500 000 domestic animals are euthanased a year in 'Kill' Shelters. By placing a limit on the numbers of animals that may be absorbed by the end-user community, you will add massively to this number. One does not have to be a mathematical genius to work this out.

One of the important processes used by the Animal Welfare Community is that of Fostering – placing animals in a provisional home until permanent homes can be found. These By-Laws create the untenable situation where a foster home will be committing a crime by temporarily providing an animal with a home if the number of animals at the home is on the limit. This effectively turns people into criminals who are trying to help by absorbing additional needy animals. How can this be justified?

- 2.2 The by-laws state that impounded animals may be destroyed or sold. They do not state under what conditions such a sale might take place. They do not specify that there should be checks on potential purchasers. This specifically enables a trade in animals where they might be deliberately taken from owners to be sold into the security business or for experimentation or to the pet meat trade. Under the laws, owners have no recourse to prevent this. The fact that the council has given itself the power to expropriate people's pets and sell them on into unspecified circumstances raise revenue is particularly offensive in that it considers animals as commodities deserving of no more compassion than say, a TV set or a car. Even to threaten to treat people's pets this way is to cause pet owners tremendous stress and emotional pain. It reveals a profound callousness and lack of understanding by the people who drew up these bylaws towards a significant proportion of the city's residents.

3 Resourcing

- 3.1 How are these by-laws to be policed? Our initial understanding is that it they will be implemented in a reactionary manner to complaints from the public, which is understandable given that neither the police nor the SPCA have the capacity or the facilities to monitor numbers of animals on individual properties. But there is an additional factor: these By-Laws will give opportunities to those who dislike animals to use the legislation as an excuse to target animal lovers. We are already busy with several cases of this nature, and there is no doubt that both police and the courts will soon be busy with these petty cases, using up valuable capacity that should be dedicated to dealing with real problems of negligence and abuse.
- 3.2 Financially, the permit creates an additional burden and as always in any financial scenario, there is an opportunity cost. In this case, it is defined by the prerequisite that will be given up because funds are scarce, and so people will pay the legal requirement, i.e. the permit, and not have the animal sterilised, continuing the cycle that has led to the current problems.
- 3.3 Foster homes will now have to shell out additional money which should go towards the upkeep of the foster animals – effectively, this is money that welfare

organisations will be providing, and it penalises welfare organisations for taking responsibility, a strange state of affairs if the intention of the By-Laws is to help solve the problems concerning domestic animals.

Summary

These By-laws have focused on the wrong part of the process. It's as simple as that. They target the wrong people and punish those who take responsibility as well as remove a civil liberty without just cause. Organisations should focus on the root cause of the existing problem when conducting problem-solving exercises. These new By-Laws, as a Strategy, are what we refer to as a Half-Baked Solution, solving part of the problem at the expense of the whole, and in addition possibly leading to even greater problems later, because they focus on symptoms and then try to address root causes by altering the symptoms. Changing the Outcomes by altering the Capacity for those Outcomes is not, in any imaginable scenario, going to magically change the Inputs. If the Breeding Input into the Animal Population is not addressed, you're going to effectively make every symptom worse, not better. It makes no sense to use the Band-Aid approach to these By-Laws. Scrap them and start again with the focus in the correct place, the core of the problem: Stop the carnage by stopping the breeding. Everything else is secondary and can be worked out in time.

The City is faced, if this By-Law is not repealed, with litigation testing the legality, rationality and constitutionality of all its aspects, placing huge demands on a legal system which may have more important issues to deal with. We will certainly advise people to challenge this By-Law and not surrender their animals.

The Way Forward

It is necessary that the perspective be changed so that the By-laws focus on the interests of the animals, and then make the humans custodians of that interest.

1. Make it illegal for Pet Shops to sell animals; they have neither the know-how nor the infrastructure to look after the animals' interests. They cannot do home checks, they are not going to do vaccinations and sterilisations because the cost factor eats too far into their margins. They are not interested in the animals, only in the profit accruing from the sale of the animal. Outlaw them, period.
2. Make home breeding illegal and make the ownership of an unsterilised animal illegal unless you are a registered breeder. Make the barriers for entry for becoming a breeder high by setting stiff criteria and expensive permits. The registering authority should not be aligned to any existing organisation and the 'pedigrees only' criterion should not be a determining factor – mixed breeds should not disappear, the obvious result of restricting breeding to, for example, KUSA-registered breeders.
3. Make documented home checks a prerequisite of any sale or adoption of an animal, which will prevent animals falling into the wrong hands from the outset.
4. If all animals have to be sterilized and inoculated before adoption only responsible shelters and pet shops will stay be able to operate legally. This is the really simple and logical way of preventing unwanted animals. Australia has successfully adopted this paradigm. India also introduced a proactive sterilization policy into certain provinces and within 7 years managed to stem the tide of unwanted animals. This will also keep the vets happy as it is business for them. There will need to be subsidized sterilizations in disadvantaged areas.
5. Pay Welfare Organisations for every animal they HOME, and pay nobody anything for euthanizing – this gives the incentive to organisations and individuals to act in the animals' interests. No more paying the SPCA's as the pound – that gives them incentive to avoid homing and kill more animals.
6. Licensing of all animals may be a bridge too far at this stage, but it goes a long way towards creating a barrier to those who would take on more animals than they can afford.

- Remove the permit for additional animals, and make the license fee nominal but affordable so that people can spend money on the animal.
7. Remove the requirement in respect of numbers and replace it with requirements in respect of sterilisation, vaccination and home checks, thereby providing governance that protects the animals and prevents humans from taking on more than they can from a resource point of view.
 8. There should be proper consultation with all involved parties to sort out these bylaws, so that the result is fair and acceptable to everybody and in accord with our constitutional rights.

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