

Dangerous Dog Review Tribunal 2021 Annual Report

Date: March 10, 2022

To: Economic and Community Development Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

The Chair of the Dangerous Dog Review Tribunal must submit an annual report on the Tribunal's activities to the appropriate standing committee in accordance with its governance structure. Attached to this report is the Tribunal Chair's 2021 Annual Report.

The Tribunal is an adjudicative board and city and local board of the City of Toronto under the authority of the *City of Toronto Act, 2006*. Tribunal hearings are conducted in accordance with the *Statutory Powers Procedure Act, 1990* and the Tribunal's rules of procedure. The Tribunal provides an independent consideration of appeals to Dangerous Dog Orders issued by Municipal Licensing and Standards under the authority of Section 349-15 of Toronto Municipal Code Chapter 349, Animals. The Tribunal has the authority to either confirm the dangerous dog designation or rescind the dangerous dog designation and exempt the owner from requirements of a Dangerous Dog Order.

In 2021, MLS responded to 1,994 service requests related to a dog's potential dangerous act and issued 103 Dangerous Dog Orders. Twelve Dangerous Dog Orders were appealed to the Dangerous Dog Review Tribunal in 2021, with three Orders being rescinded by the Tribunal. The Tribunal also received eight Requests for Review of its earlier decisions and reheard four appeals, resulting in two Tribunal decisions being reversed.

This report also responds to the recommendations in the Chair's Annual Report to amend Chapter 349, Animals, to allow for the appeal of a first non-severe dangerous dog act that results in written warning, to not issue a Dangerous Dog Order when a dangerous dog act is found by the Tribunal to be in self-defence, and to allow the Dangerous Dog Review Tribunal to customize the conditions attached to a license as it sees fit when confirming an Order.

Staff are recommending an amendment to Chapter 349, Animals, to clarify the language around how dangerous dog acts determined to have been done in self-defence are

counted when combined with a second or subsequent act. This amendment would specify that a dangerous act done in self-defence would not "count" against a dog when determining whether to issue a dangerous dog order if coupled with a subsequent dangerous act. This aligns with the Chair's second recommendation and will provide greater clarity to Animal Services staff should this situation arise.

Staff have reviewed the other recommendations made by the Chair and, at this time, do not recommend amending Chapter 349, Animals, to allow for the appeal of written warnings or customize the conditions of a Dangerous Dog Order as they would fundamentally change the scope and purpose of the Tribunal.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. The Economic and Community Development Committee receive the 2021 Annual Report from the Chair, Dangerous Dog Review Tribunal, for information.
2. That City Council amend Municipal Code Chapter 349, Animals, to add the following as subsections 349-15C(3) and (4):

(3) Where an officer has concluded that a dog was acting in self-defence and elected not to issue an order to comply under Subsection C(2), that dangerous act will not be counted when determining if a subsequent dangerous act is the second or subsequent on record with the City under Subsection B(3).

(4) Where the Dangerous Dog Review Tribunal concludes that a dog was acting in self-defence at the time a dangerous act occurred and rescinded the determination of a dangerous dog on that basis, that dangerous act will not be counted when determining if a subsequent dangerous act is the second or subsequent on record with the City under Subsection B(3).

FINANCIAL IMPACT

There is no financial impact arising from the recommendation contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of May 5 and 6, 2021 City Council adopted EC21.13 Dangerous Dog Review Tribunal 2020 Annual Report, which transmitted the Dangerous Dog Review Tribunal Chair's Annual Report and provided the Executive Director, Municipal

Licensing and Standards delegated authority to waive fifty percent of the Dangerous Dog Order appeal fee for low income households who meet the necessary criteria. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EC21.13>

At its meeting of July 23, 24, 25, 26, 27 and 30, 2018 City Council adopted, with amendment, LS27.1 Improved Dangerous Dog Review Tribunal, where it amended Toronto Municipal Code Chapter 349, Animals to establish the Dangerous Dog Review Tribunal as an Adjudicative Board. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.LS27.1>

COMMENTS

Dangerous Dog Orders

Toronto Animal Services is a part of Municipal Licensing and Standards and is responsible for promoting responsible pet ownership, compliance with animal-related laws, and pet adoption and pet licensing. Toronto Animal Services also responds to domestic animal and wildlife issues, investigates dog bite complaints, and provides shelter and veterinarian care.

Under Section 15 of Chapter 349, Animals, MLS Animal Control Officers investigate complaints of dangerous acts committed by dogs. If an officer has reason to believe that a dog engaged in a dangerous act against a person or another domestic animal, they may:

- issue a written warning if it is the first such act on record and the dangerous act is not severe; or
- issue a Dangerous Dog Order if:
 - the dangerous act is found to be severe; or
 - the dangerous act is the second or subsequent act on record with the City; or
 - the dangerous act occurred while the dog was subject to a previous order under a City by-law or provincial legislation.

In 2021, Toronto Animal Services officers responded to 1,994 service requests related to a dangerous act by a dog, as shown in Table 1 below.

Table 1: Dangerous Act Service Requests in 2021

Dangerous Act Type	Service Requests
Animal to Animal (Bite)	268
Animal to Human (Bite)	567
Animal to Animal (Attack)	115
Animal to Human (Attack)	53

Dangerous Act Type	Service Requests
Menacing Behaviour	194
Dangerous Act Investigations	1,197
Unable to Verify Dangerous Act*	797
Total	1,994

*Includes investigations where a dog owner could not be identified, the victim did not want to cooperate, or the complainant provided incorrect information.

These investigations resulted in 294 written warnings for non-severe dangerous acts and 103 Dangerous Dog Orders in 2021.

If a Dangerous Dog Order is issued the owner of the dog has certain requirements that they must follow for the duration of the dog's life, including the following:

- The dog must be muzzled at all times when off the owner's property;
- The dog is not permitted in any designated leash-free area of a City park;
- The dog must be microchipped and must wear a dangerous dog tag, issued by the City;
- A warning sign must be posted on the owner's property, in a form and location determined by MLS; and
- The dog must receive training within 90 days of the Order.

Owners who receive a Dangerous Dog Order have a right to appeal the decision to the Dangerous Dog Review Tribunal by submitting a written request and paying the applicable fee to Toronto Animal Services. When a Dangerous Dog Order is issued, the officer provides the owner with information and a brochure about the appeal process. In 2021, as a result of the Tribunal Chair's recommendation in the 2020 Annual Report, the information that officers provided and the text of the brochure was reviewed to ensure plain language was used, and material was also made available online on the City's [Dogs in the City](#) webpage. In 2021, also as a result of the Chair's recommendation, staff were given authority to waive 50% of the appeal fee for low income households, if they meet certain criteria.

Dangerous Dog Review Tribunal Overview

The Dangerous Dog Review Tribunal is an adjudicative board and city and local board of the City of Toronto under the authority of the *City of Toronto Act, 2006*. It is comprised of five members of the public appointed by Toronto City Council for a four-year term.

The Tribunal conducts itself in accordance with the *Statutory Powers Procedure Act, 1990* and its rules of procedure. Its members are bound by the *Municipal Conflict of Interest Act, 1990*. The Tribunal provides an independent consideration of appeals to

Dangerous Dog Orders issued by Municipal Licensing and Standards under the authority of Section 349-15 of Toronto Municipal Code Chapter 349, Animals.

The Tribunal has the authority to:

- confirm the determination of a Dangerous Dog Order; or,
- rescind the determination of a Dangerous Dog Order and exempt the owner from compliance with Section 349-15.1 of Toronto Municipal Code Chapter 349, Animals.

The Tribunal receives administrative support from the City Clerk's Office. Meeting dates, agendas and written decisions are posted on the Tribunal's webpage online at www.toronto.ca/council.

Where the Tribunal has made a decision on an appeal, a party can request that the Tribunal review that decision and hold a review hearing on the matter. The Tribunal then considers whether to grant a request for a rehearing, determining whether any of the following conditions apply:

- the Tribunal acted outside its jurisdiction;
- the Tribunal violated the rules of natural justice or procedural fairness, including those against bias;
- the Tribunal made an error of law or fact such that the Tribunal would likely have reached a different decision but not for that error;
- the Tribunal heard false or misleading evidence from a party or witness, discovered after the hearing, which may have affected the result; or
- the Tribunal should consider new evidence not available at the time of hearing, which may affect the result of the appeal.

In 2021, twelve Dangerous Dog Orders were appealed to the Dangerous Dog Review Tribunal, resulting in nine Orders confirmed and three Orders rescinded. Additionally, the Tribunal received eight requests for a rehearing to review a previous Tribunal decision. Four of these requests for a rehearing were granted by the Tribunal, resulting in two previous Tribunal decisions being reversed.

One of the Chair's duties is to prepare and submit an annual report about the Tribunal's activities to the appropriate standing committee. The 2021 Dangerous Dog Review Tribunal Chair's Annual Report is appended to this report as Attachment 1.

Recommendations of the Tribunal Chair

In the Annual Report, the Chair makes several recommendations about Dangerous Dog Orders and the Dangerous Dog Order Tribunal. Staff have reviewed these recommendations and have provided responses below.

Appeals of Non-Severe Dangerous Dog Acts Warnings

The Chair of the Dangerous Dog Review Tribunal has requested that City Council amend Chapter 349, Animals, to allow for the appeal of a written warning for a first non-severe dangerous act to the Tribunal.

When investigating a dangerous dog act, if the officer finds the act was not severe, and it is the first such act on record, the officer serves the owner of the dog with a written warning. This warning does not require any action on the part of the owner and is not appealable to the Dangerous Dog Review Tribunal. Following a warning, if the dog is found by an officer to have committed a second or subsequent dangerous act, a Dangerous Dog Order is issued.

Staff have reviewed this request and do not recommend that the bylaw be amended to allow for the appeal of a written warning to the Tribunal. The investigation of dangerous dogs and the issuance of Dangerous Dog Orders are conducted in the interest of public safety for people in the community, which is the prime consideration. However, staff acknowledge that Dangerous Dog Orders have a significant effect on dogs and their owners, and conduct investigations with all due diligence to ensure that warnings and Orders are only issued where warranted. This is reflected in the data where, in 2021, 103 Dangerous Dog Orders were issued, yet only twelve appeals were received by the City, with only three Orders ultimately reversed by the Tribunal.

Animal Control Officers receive comprehensive training about all aspects of the dangerous dog provisions found in Chapter 349, Animals, including steps to take when conducting an investigation to ensure thoroughness and fairness. Additionally, when reviewing dangerous dog act investigations, officers consult with Animal Services management staff when determining whether to issue a warning. However, if a dog owner feels that there were any issues with the officer's investigation and subsequent issuance of a written warning, they may escalate their concerns directly to Animal Services management for consideration.

Written warnings have no immediate consequences for dogs or dog owners and are only relevant to a Dangerous Dog Order when coupled with a subsequent dangerous act. Allowing for the appeal of written warnings could lead to a significant increase in resource requirements for Animal Services staff to prepare for and attend hearings before the Tribunal and could lead to a higher number of cases heard. It would also fundamentally change the purpose and scope of the Tribunal past its current mandate. Staff believe that the avenue of escalation to management staff is the appropriate level of oversight for written warnings, particularly given the lack of requirements or conditions on the part of the owner stemming from a written warning. Although a written warning would only be issued for a non-severe dangerous act, it plays an important role in maintaining the safety of the public by providing incentive for owners of potentially dangerous dogs to maintain proper care and control of their dog when in public.

Dangerous Dog Acts Found to be in Self-Defence

The Tribunal Chair has also requested that when an act is found to be in self-defence, it not count towards a Dangerous Dog Order when coupled with a single subsequent dangerous act.

Self-defence plays a role in both investigations conducted by officers and appeals heard by the Tribunal. Under section 349-15C, an officer must consider whether a dog was acting in self-defence at the time of a dangerous act, and where self-defence is established, the officer may determine that no Dangerous Dog Order will be issued. This means that if, as part of an investigation, an officer determines that the dog was acting in self-defence, the officer may not issue a Dangerous Dog order even if the other requirements for an order are present.

The Tribunal also has the ability to consider whether a dog was acting in self-defence when hearing an appeal under section 349-16B. The Tribunal can rescind the determination of a dangerous dog where the dangerous act at issue is found to be in self-defence.

As noted above, Chapter 349 generally requires that where a dangerous act is the second or subsequent dangerous act on record with the City, a dangerous dog order must be issued. Where a previous dangerous act was found by an officer or the Tribunal to be in self-defence, however, the by-law does not state whether that dangerous act in self-defence should "count" towards the dog's total acts on record when coupled with a subsequent non-severe dangerous act.

Staff are recommending that this situation be clarified with an amendment to Chapter 349, Animals, to specify that if a dangerous dog act is determined by an officer or the Tribunal to have been in self-defence, that self-defence act not "count" towards a dog's total when determining whether to issue a dangerous dog order when coupled with a subsequent dangerous dog act.

When an officer or the Tribunal finds an act to have been done in self-defence, it is acknowledging that the act occurred, but that the dog was reacting to a need to defend itself and not in a malicious manner. That act of self-defence, being found to be a reasonable reaction to a situation and not an indication of an increased threat to public safety, should therefore not be counted towards a Dangerous Dog Order when combined with a subsequent non-severe dangerous act. The proposed amendment recommended by this report will provide greater clarity to staff should this situation arise.

It is important to note that if the subsequent dangerous act is found by the officer to be severe, or is coupled with multiple other non-self-defence dangerous acts, it would still lead to a Dangerous Dog Order under the provisions of Chapter 349-15. It is also important to note that even if a dangerous act was initiated out of a need for self-defence, if the act escalates past a proportional response for self-defence (for example if one dog is significantly larger than another but causes a substantial injury), a Dangerous Dog Order may still be issued.

Allowing the Tribunal to Attach Conditions to Orders

The Tribunal Chair has requested that Chapter 349, Animals, be amended to allow the Dangerous Dog Review Tribunal to attach conditions it sees fit when upholding an Order.

In the past four years, the appeals process for Dangerous Dog Orders has been updated to improve transparency and administrative fairness based on the recommendations of the Ombudsman Toronto. Under the existing bylaw, the Tribunal has the authority to either rescind or confirm a Dangerous Dog Order, and there is no current mechanism to allow for variance of the Dangerous Dog Order requirements nor is there policy-backing that would guide the alteration of possible conditions on Orders.

Staff do not support the amendment of Chapter 349, Animals, to alter the scope of the Dangerous Dog Review Tribunal as it would fundamentally change the mandate of the Tribunal from an independent reviewer of whether a Dangerous Dog Order was properly issued under Chapter 349 to an independent body more actively making policy judgements as to what conditions could be appropriate in the context of a specific dog and its owner(s). Allowing the Tribunal to vary the condition of a Dangerous Dog Order would likely increase the number of appeals as owners seek relief from Order requirements such as muzzling or the lifetime duration. This may in turn weaken the primary purpose of Dangerous Dog Orders, namely protection of the general public.

Staff also note that for certain other requirements of an Order, such as the signage requirement, there is already some flexibility to work with the owner to accommodate case-specific issues so that compliance can occur in a contextually-sensitive manner.

The issuance of a Dangerous Dog Order is not taken lightly, and ultimately the Order is about the nature of the dangerous act(s) that led to its issuance, not based on any behavioural changes that may be seen with the dog. Public health and safety are the focus of all Orders. The requirements of Dangerous Dog Orders are designed to prevent dogs from committing further dangerous acts, as they are required to be muzzled and restricted from accessing off-leash dog areas in parks. As the dog is physically prevented from conducting further dangerous acts while an Order is in effect, it is difficult to determine whether a dog has in fact been rehabilitated. Staff would have public health and safety concerns if the conditions of Dangerous Dog Orders were significantly loosened or lifted during the lifetime of the dog.

Although staff acknowledge that a Dangerous Dog Order can cause a significant change in the daily life of a dog and its owner, for the reasons stated above, staff do not recommend changing the Tribunal's authority to loosen or lift any requirements of a Dangerous Dog Order.

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Dangerous Dog Review Tribunal 2021 Annual Report

SIGNATURE

Carleton Grant
Executive Director, Municipal Licensing and Standards

ATTACHMENTS

Attachment 1 - 2021 Annual Chair's Report for the Dangerous Dog Review Tribunal