Regulation of Animals

Municipalities may regulate animals through nuisance ordinances, as a general public nuisance, or through zoning regulations. These ordinances may regulate keeping of exotic animals, dogs running at large, animal noise, and, under specific conditions, dangerous animals and, provided that a nuisance in fact can be established, the number of pets in a dwelling.

The Pennsylvania Dog Law[1] regulates dogs running at large and dangerous dogs, and provides that most municipal ordinances that regulate "dangerous dogs" are abrogated.[2] The Dog Law provisions related to dangerous dogs may be enforced by all municipalities except counties. Although a municipality may not regulate the ownership of certain breeds of dogs, the Commonwealth Court has upheld a nuisance ordinance prohibiting the frequent and habitual disruption of the comfort, repose or health of persons in the neighborhood by dogs or cats.[3] Furthermore, Title 34 of the Pennsylvania Consolidated Statutes (the Game and Wildlife Code) contains provisions relating to exotic wildlife permits, but these provisions do not preempt a municipality from obtaining injunctions to remove wildlife properly deemed to be public nuisances.

More problematic to a municipality is its ability to regulate by a nuisance ordinance the number of pets a constituent may keep. An ordinance that arbitrarily declares a number of animals a nuisance without establishing nuisance conditions has been held to be outside of a municipality's powers.[4]

In *Commonwealth v. Creighton*,[5] the Borough of Carnegie enacted an ordinance limiting the number of cats and/or dogs that a person could keep within the borough to a total of five. Violators were subject to fines and confiscation of the excess animals. Mary Creighton, who housed anywhere between 25 and 30 cats, was cited for violation of the ordinance and appealed the decision. In its analysis, the Commonwealth Court made an analogy between the authority of a municipality to limit the number of cats and dogs that a person may have and its authority to regulate other kinds of nuisances, such as the accumulation of junk. The court found that, in both cases, the critical consideration was whether the regulated activity constitutes a nuisance or is otherwise contrary to the public health, safety or general welfare.

Just as a municipal ordinance that seeks to abate the storage of wrecked, junked or abandoned vehicles cannot declare the mere presence of such vehicles on any given piece of property to be a nuisance *per se*, neither can a municipal ordinance simply declare that keeping more than a fixed number of cats or dogs is a nuisance *per se*. Rather, in both cases, the ordinances must be phrased in such a way as to require the municipality to affirmatively establish that a nuisance in fact exists. In the case of an ordinance prohibiting the keeping of junked vehicles, once a person is found to

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1 Act 225 of 1982 (3 P.S. § 459-101 et seq.).

2 *See* The Dog Law, § 507-A(c); *Lerro ex rel. Lerro v. Upper Darby Tp.,* 798 A.2d 817 (Pa. Cmwlth. 2002).

3 *See Widmyer v. Commonwealth,* 458 A.2d 1048 (Pa. Cmwlth. 1983).

4 *Commonwealth v. Creighton,* 639 A.2d 1296 (Pa. Cmwlth. 1994).

5 *Id.*

come within the purview of the ordinance, it is necessary to look to the ordinance itself to determine if it states not only that junked vehicles may create a nuisance, but also why they are a hazard and a danger to the health and welfare of the municipality's citizens. Furthermore, the municipality should provide evidence that the conditions giving rise to the nuisance do, in fact, exist. Similarly, in the case of an ordinance regulating the number of cats and dogs, the ordinance should indicate why keeping more than a given number of cats or dogs might constitute a nuisance or a risk to the public health and safety. Furthermore, the municipality should provide some evidence that the animals did create a nuisance in fact.

As noted in *Creighton*, subject to its enabling legislation and pursuant to its police power, a municipal governing body has the authority to enact laws that it perceives necessary to protect the public health, safety and general welfare. Nevertheless, an ordinance must go further than merely declaring that the public health, safety and general welfare will be served by limiting the number of animals that may be kept by any one person. It must set forth the legitimate public health, safety and welfare goals that will be advanced by its enactment. A municipal ordinance seeking to prevent a "nuisance"—regarding the keeping of animals or otherwise—must provide sufficient information to permit a court to determine whether it represents a reasonable means to effectuate a legitimate governmental goal. It is insufficient simply to declare some thing or activity a nuisance and then to prohibit it.[6]

[6] "Municipalities should be cautious and consider whether municipal regulation of outdoor animals cared for by constituents implicate constitutionally-protected property interests. A 2020 federal district court held that a plaintiff sufficiently alleged that the seizure and destruction of stray cats he cared for infringed on his property rights. The court held that the success of his claim may turn on the degree of "dominion and control" he exerted over what would otherwise be considered "wild animals." *See Madero v. Luffey, 439 F.Supp.3d 493 (W.D. Pa., Feb. 13, 2020).*