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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1360**

Sara Solomonson,
Relator,

vs.

City of Austin,
Respondent.

**Filed February 3, 2020
Affirmed
Rodenberg, Judge**

City of Austin

James Heiberg, St. Paul, Minnesota (for relator)

David V. Hoversten, Austin City Attorney, Craig M. Byram, Assistant City Attorney,
Hoversten, Johnson, Beckmann & Hovey, LLP, Austin, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

RODENBERG, Judge

In this certiorari appeal, relator Sara Solomonson challenges a decision by
respondent City of Austin (the city) declaring relator's dog dangerous and ordering that the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

dog be euthanized. Relator argues that the city's dangerous-dog ordinance is preempted by state statute and that the city violated her procedural-due-process rights. We affirm.

FACTS

Relator's female dog, Rain, twice bit a dog owned by relator's neighbor. On June 7, 2019, Rain attacked the neighbor's dog. Although the attack was not fatal, the neighbor's dog suffered internal injuries. After this attack, the city issued relator a "Notice of Potentially Dangerous Animal or Dangerous Animal." On July 23, 2019, Rain again attacked the neighbor's dog, and the city issued another notice on July 26, 2019, designating Rain to be a dangerous animal. The city's dangerous-dog ordinance authorized the city's animal control officer to "order the destruction" of any animal so designated. Relator requested a hearing to contest this designation.

A hearing was held before the city council on August 5, 2019. At the hearing, the city council was presented with evidence concerning the two attacks, including veterinarian records, incident reports, and notice forms. The police officer who wrote the incident report after the second attack was also present. He testified that he believed relator's dog was dangerous. Relator testified at the hearing that Rain has anxiety, but is not a threat to human beings. She further testified that she had ordered a muzzle for Rain and was going to have her spayed.

After relator's testimony, the city attorney reminded the city council that the city's dangerous-dog ordinance does not distinguish between a dog's aggression toward human beings and aggression toward other domesticated animals. The city attorney also noted that, unlike Minn. Stat. §§ 347.50-.54 (2018), the city's ordinance provides that, once a

dog is declared dangerous, the city council has the authority to order that the dog be euthanized.¹

The city council voted unanimously that the evidence supported a declaration that Rain is dangerous, and it ordered Rain to be euthanized. Relator appealed by writ of certiorari. Rain remains alive during this appeal and is being boarded by the city. The city has notified relator that it may seek to recover the costs of boarding Rain during the appeal if the city prevails here.

D E C I S I O N

At the outset, we reject relator’s argument that the city violated her due-process rights by failing to provide her with an “appeal form.” The record shows—and relator does not dispute—that she received the written notices designating Rain potentially dangerous and dangerous, she appealed in her own handwriting, and she was afforded a review hearing before the city council where she presented evidence and testimony. The city accepted relator’s appeal as sufficient, after which the city provided relator with the basic requirements of due process: notice and the opportunity to be heard. *See Sisson v. Triplett*, 428 N.W.2d 565, 568 (Minn. 1988).

Similarly, we do not consider relator’s argument that the city violated her due-process rights by failing “to give [relator] the statutorily required notices . . . for the costs

¹ The ordinance provides that the animal control officer “is authorized to order [that a dangerous dog] be destroyed.” Austin, Minn., Code of Ordinances (ACO) § 10.10, subd. 20.F (2019). The city council’s order in this case used the word “euthanized.” The parties also use the verbs “kill” and “terminate” in their arguments on appeal. We use the term “euthanize” in this opinion, consistent with the city council’s order from which relator appeals.

of the care, keeping, and disposition of Rain.” As noted, Rain lives during this appeal. No costs of her care have been determined or assessed. Counsel for the city committed at oral argument that the city will not determine whether and in what amount costs will be assessed against relator until *after* the conclusion of this appeal. This issue therefore is not now ripe for our consideration. *See Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949) (holding that “issues which have no existence other than in the realm of the future possibility are purely hypothetical and are not justiciable”). We therefore do not address it.

The city’s dangerous-dog ordinance is not preempted by state statute.

Relator argues that the city’s dangerous-dog ordinance conflicts with state law and is therefore preempted. The city asserts that, as a home rule charter city, it “may locally regulate the ownership and keeping of dangerous dogs in a manner more restrictive than described in state statute[s].”

Whether a state statute preempts a municipal-charter provision “present[s] a legal question subject to de novo review.” *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 469-70 (Minn. 2016). This appeal presents the legal issue of the scope of authority of a home rule charter city to regulate dangerous dogs within the city.

The Minnesota Constitution grants local governments the authority to adopt a home rule charter. Minn. Const. art XII, § 4; *see Bicking v. City of Minneapolis*, 891 N.W.2d 304, 306 (Minn. 2017) (explaining how a city charter is framed and amended). A city may frame a charter for its own government under Minn. Stat. §§ 410.01-.33 (2018), and “may provide for any scheme of municipal government not inconsistent with the constitution.” Minn. Stat. § 410.07. “[C]ities without home rule charters” are governed by chapter 412

of Minnesota Statutes. Minn. Stat. § 412.015, subd. 2 (2018). That chapter provides a “single code of statutes” for municipalities. *Id.* Here, it is undisputed that the city is a home rule charter city.

Municipalities have no inherent powers and “can enact regulations only as expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.” *Bicking*, 891 N.W.2d at 312 (quotations omitted). Local ordinances must be consistent with the law, and “will be preempted when the legislature has fully and completely covered the subject matter, clearly indicated that the subject matter is solely of state concern, or the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects on the general populace.” *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 285 (Minn. App. 2001).

The city’s dangerous-dog ordinance provides that “[t]he Animal Control Officer, upon finding that an animal is dangerous . . . , *is authorized to order* . . . that the animal be [euthanized]” ACO § 10.10, subd. 20.F (emphasis added).

Relator argues that “the city’s ordinance[] on dangerous animals conflict[s] with state statutes[,]” and asserts that whether Rain may be terminated is governed by state law. While it is true that Minn. Stat. §§ 347.50-.54 do not expressly grant an animal-control officer the authority to order that an animal be euthanized, that does not prohibit a home rule charter city from lawfully granting such authority.

Concerning dangerous dogs, a subject which logically would be a matter for local control, we have held that “the legislature has neither expressly nor impliedly indicated that the subject matter is solely a matter of state concern.” *Hannan*, 623 N.W.2d at 285.

Instead, the statutes concerning the regulation of dangerous dogs expressly permit additional local regulation. “Any statutory or home rule charter city . . . may regulate potentially dangerous and dangerous dogs.” Minn. Stat. § 347.53. The only restriction the legislature has placed on the regulation of dangerous dogs is that a city “may not adopt an ordinance regulating dangerous or potentially dangerous dogs based solely on the specific breed of the dog.” Minn. Stat. § 347.51, subd. 8. Except for this narrow restriction, “nothing in sections 347.50 to 347.565 *limits any restrictions that the local jurisdictions may place on owners of potentially dangerous or dangerous dogs.*” Minn. Stat. § 347.53 (emphasis added). Because section 347.53 is unambiguous, the city’s ordinance providing for designation and euthanization of a dangerous dog is not preempted.

Relator argues at length that the statutory history underlying sections 347.50-.54 demonstrates the legislature’s intent to preempt local regulation in this realm. Because the statute unambiguously permits local regulation, we have no occasion to speculate about what the legislature meant. “When the words of a law . . . are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2018).

Relator argues that, because Minn. Stat. § 347.541 (2018) refers to an “impartial hearing officer,” error infects this case. She argues that the city council having acted as the hearing officer was improper and invalidates the decision. But nothing in the statute prohibits a home rule charter city from adopting processes different than that provided by statute. The legislature knows how to prohibit municipal ordinances inconsistent with state statutes. This very statute prohibits cities from regulating dogs based on breed. Minn. Stat.

§ 347.51, subd. 8. Other than that specific prohibition, the legislature granted local jurisdictions broad discretion concerning regulation of dogs. Nothing in the statutes prohibits the city council of a home rule charter city from presiding at dangerous-dog hearings. That is the process provided by this home rule charter city's ordinance, and the process provided by ordinance was followed.

Because home rule charter cities are not prohibited from implementing local dangerous-dog regulations other than breed-specific restrictions, the city had the authority to regulate dangerous dogs by ordinance. It did so. The city here complied with its ordinances and did not violate relator's constitutional or other rights.

Affirmed.