



# Welcome Bienvenue

*Leveraging collective knowledge and experience to help directors manage their condominium operations more effectively and efficiently.*

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# AGENDA

## **Topics: Deep Dive on Pets in Condos**

- Pet Rules
- Accommodation requests
- Pet evictions
- Pet cases



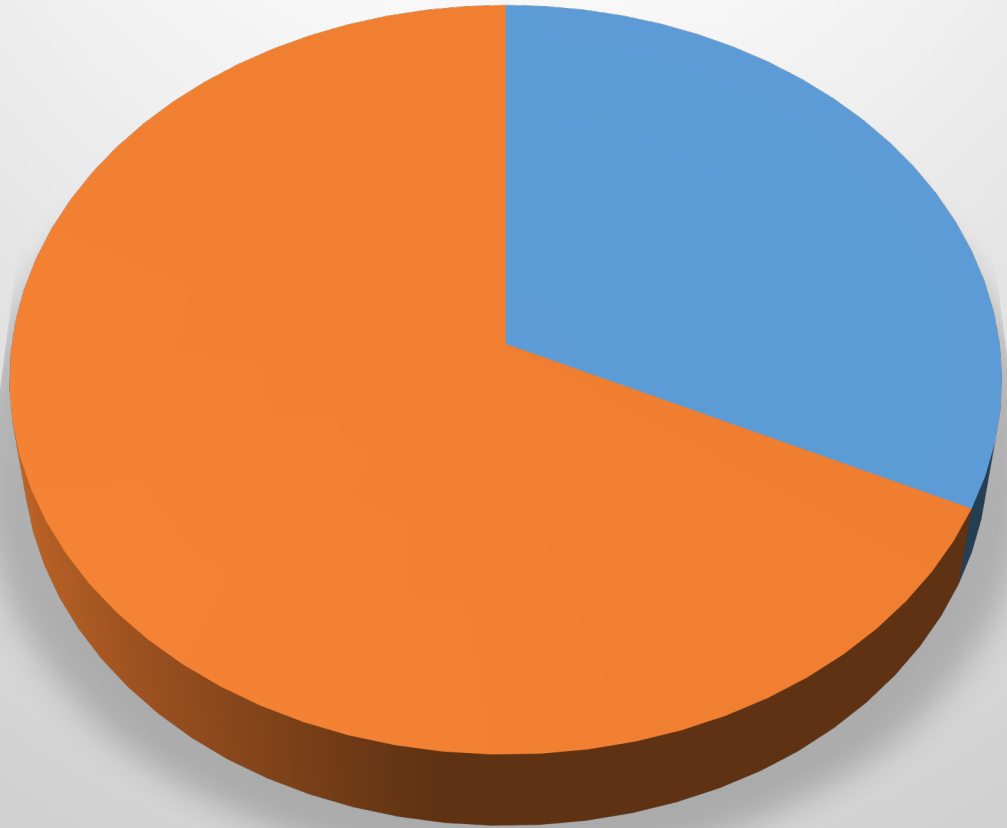
**Call a friend...**

**Looking to renew the Leadership team**

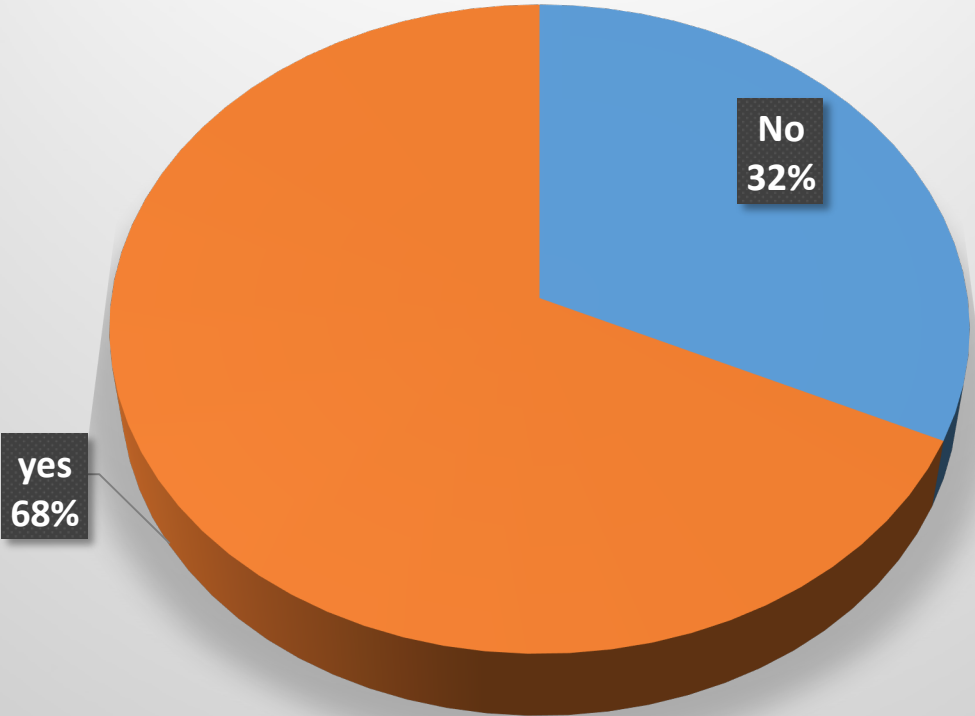


# Survey Results

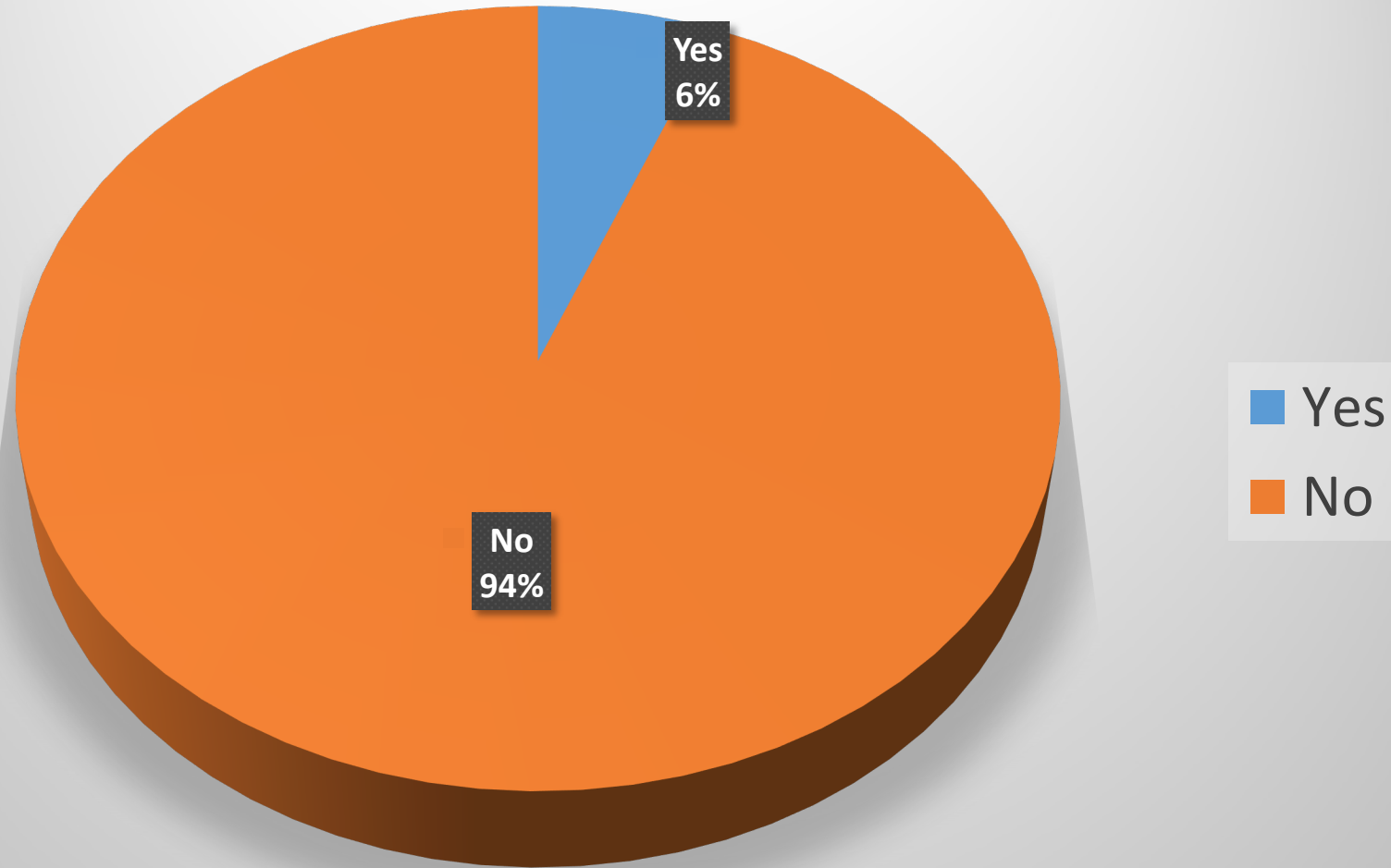
# Should condo be allowed to go "Pet Free"? Yes or no?



# Should condo be allowed to go "Pet Free"?

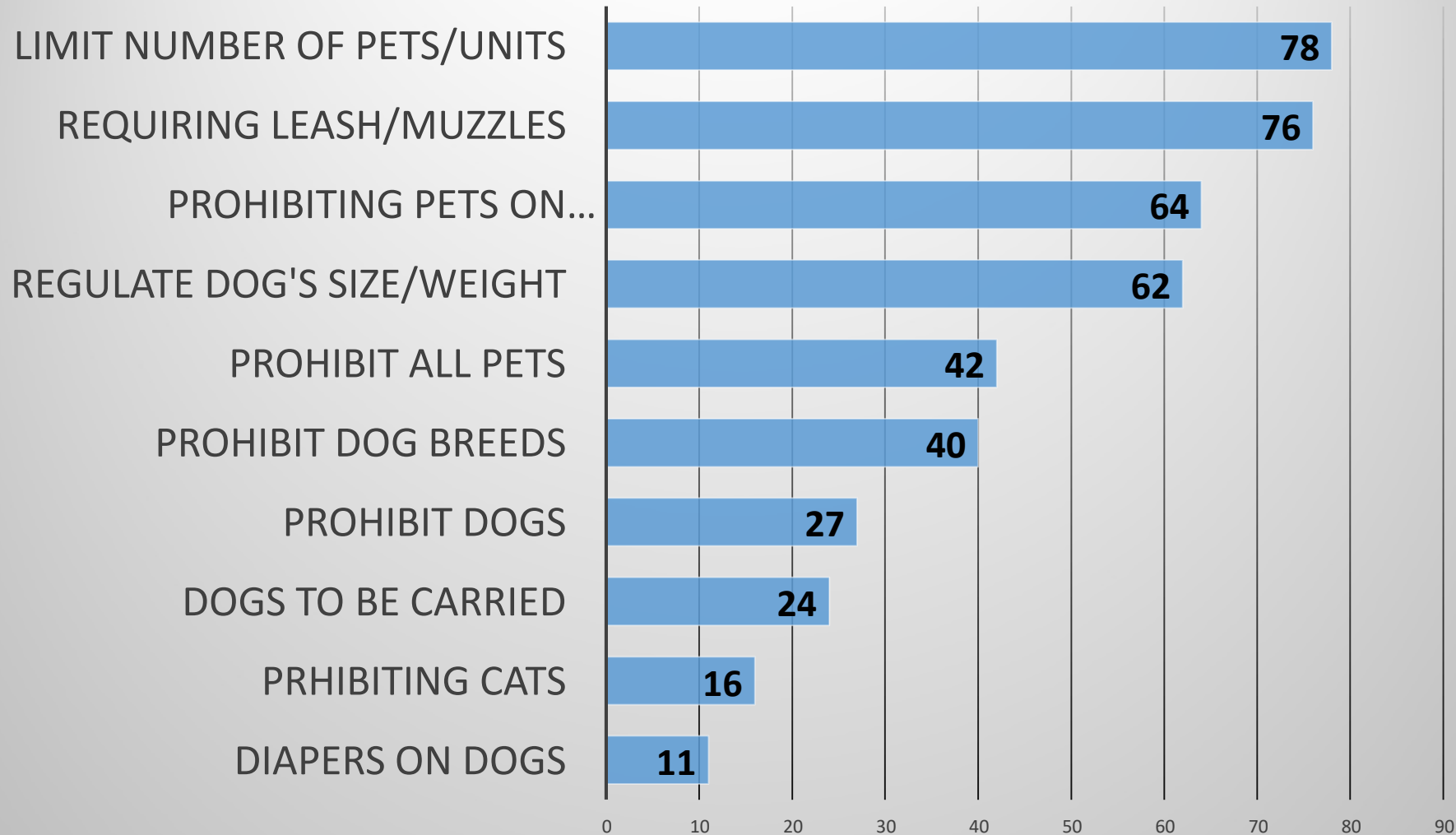


## But is your condo Pet Free?



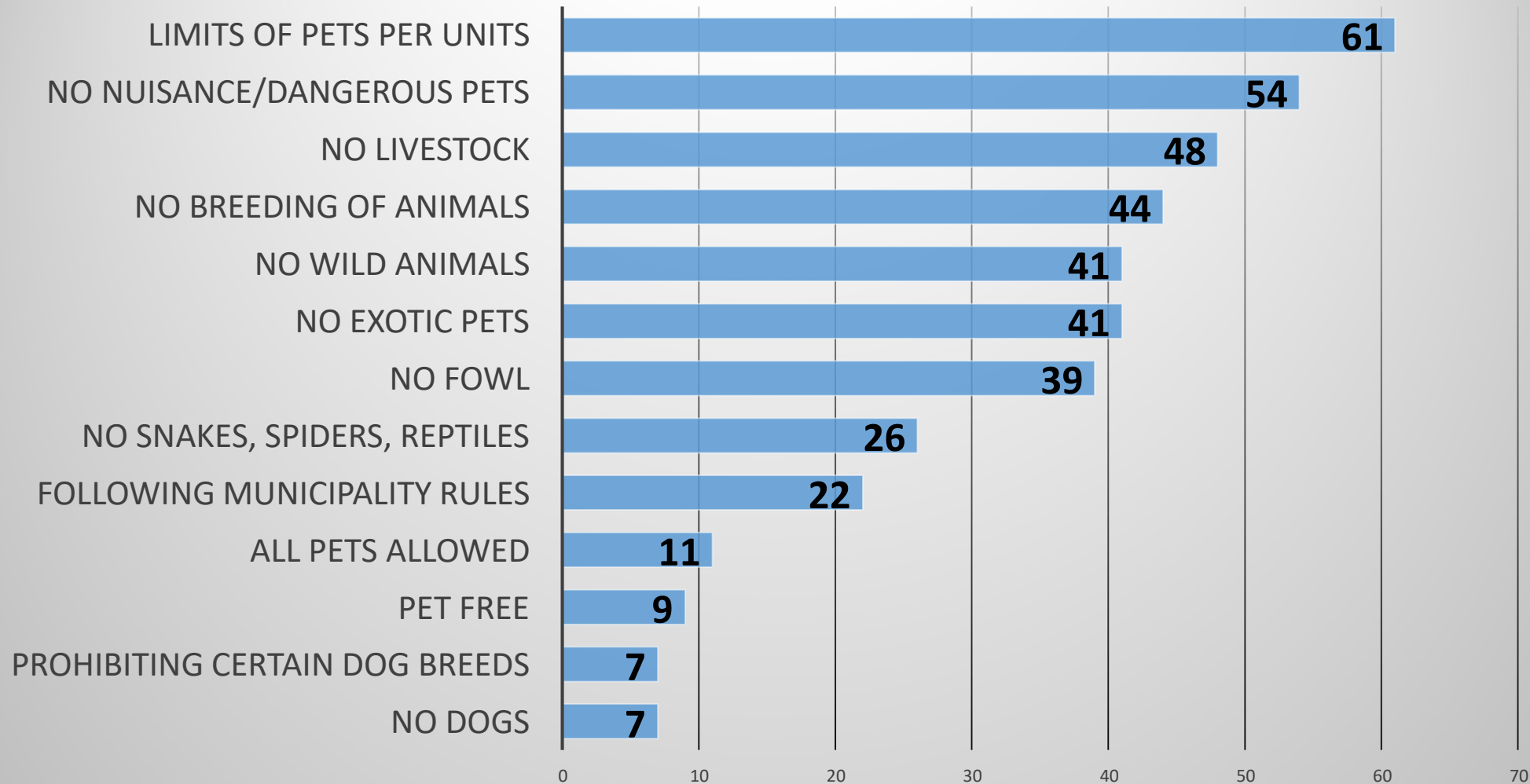
None in  
Ottawa  
answered  
the survey  
(Limited  
survey  
results)

# Condos should be able to regulate...

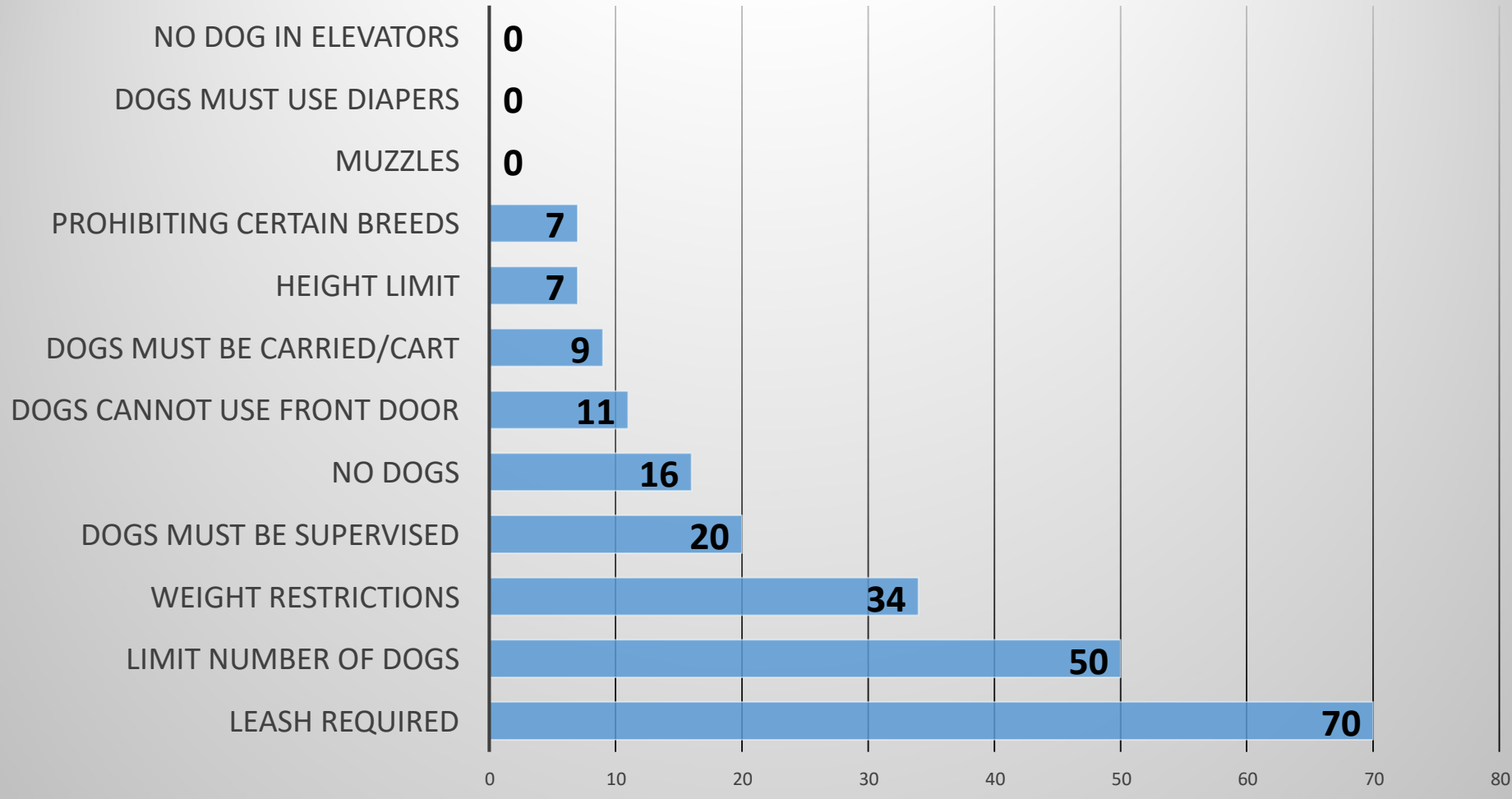




# Which pets are prohibited in your condo?



# Dog rules at your condo...





# Pet Rules

- **Scope and purpose of rules**
- **How to adopt / change rules**
- **How to enforce rules**
- **Common rules**

# Regulating pets

- **Condos can regulate pets:**
  - In declaration
  - Rules

# Regulating pets

- **Rules can be adopted to:**
  - Promote the safety, security or welfare of the owners and of the property
  - To prevent unreasonable interference with the use and enjoyment of the units/common elements
- **How to adopt / amend rules:**
  - Circulate to owners for 30 days
  - Rule is adopted if no requisition (or no quorum or not voted down)
  - Pre-circulation may help
  - Grandfathering is (nearly) a must

# Regulating pets

- **Rules** prohibiting all pets are likely unreasonable / unenforceable
- **Declaration** does not have to be « reasonable »

The words "no animal" in the prohibitive paragraph are wide enough to include not only cats and dogs but such animals as hamsters, canaries and goldfish. Can it be said that the broad prohibition against any animal being allowed upon or kept in or about the units is for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units? In my opinion it cannot. I am unable to conclude that goldfish, for example, would cause such unreasonable interference.

Re York Condominium Corp. No. 42 and Melanson, 1975 CanLII 352 (ON CA)



# Declaration language

# Regulating pets – Example of declaration language

## Ex #1: No Pets

No animal, livestock, fowl or pet or any kind shall be kept in or allowed to enter any unit or the common elements, including those parts thereof of which any Owner has the exclusive use. This restriction, of course, does not apply to animals such as guide dogs where required by law.



# Regulating pets – Example of declaration language

## Ex #2 – Pets allowed

No owner or occupant of any dwelling Unit shall maintain, keep or shelter any animal, livestock or fowl therein other than a household pet as herein defined. For the purpose of this restriction upon the use and occupation of dwelling Units, the term “household pet” shall mean a caged bird, aquarium fish, two (2) domestic cats or two (2) dogs, or one (1) dog and one (1) cat. If such household pet becomes a nuisance and causes unreasonable interference with the use and enjoyment by owners of other dwelling Units and the common elements, the Corporation may require the pet owner to permanently remove such pet from the property upon two (2) weeks written notice.



# Common (?) Rules

# Regulating pets – Common rules?

- Prohibiting livestock, poultry, fowl, breeding, selling...
- Dogs (or pets) on leash at all times (do you regulate length?)
- Carrying/carting dogs
- Weight restrictions 20-25 pounds?
- Number of pets/unit? [City by-law](#)
  - 3 dogs
  - 5 cats
  - If both: no more than 5 animals (and only 3 dogs)
- « Pit bulls » prohibition? (See [Dog Owners Liability Act](#))
- Nuisance / dangerous provision

# Regulating pets – Common rules?

## **Panelists will comment the following rules:**

- No pets in gym, party room, roof top patio...
- Pick up after pets and not using balcony/yard as litter box
- Pets to relieve themselves off property
- Vaccination, licensed and insurance coverage?
- Providing for service animal / emotional support animal exceptions
- Pet registry?
- Indemnification provision



# Enforcement

# Enforcing pet rules

- Usual enforcement process
- **Condo Authority Tribunal**
  - Disputes over governing docs prohibiting, restricting or governing pets or other animals in units, or common elements
  - Also over pet-related human rights issues
- **Superior court of Justice**
  - Dangerous conditions that is likely to damage the property or the assets or to cause an injury or an illness to an individual
- **Human Rights Tribunal**
  - Over pet-related human rights issues (usually disabilities)
  - Concurrent jurisdiction



# Accommodations

# Accommodations

- Condos must accommodate disabilities up to undue hardship
- The duty is to accommodate the disability, not preferences
- There must be a disability:
  - **Physical disability**, infirmity, malformation, disfigurement, paralysis, amputation, blindness, deafness, muteness, **physical reliance on a service animal**, wheelchair or other device.
  - **Mental disability**: an impairment, developmental disability, learning disability, mental disorder



# What is a disability

- There needs to be a:
  - « working diagnosis »
  - of a « recognized mental disability »
  - or an « articulation of clinically-significant symptoms »
  - with « specificity and substance »

*SCC 89 v. Dominelli, 2015*

# Service and emotional support animals

- **Service animal** is usually
  - one easily identifiable as relating to the disability
  - one providing physical reliance
  - trained to perform specific tasks for people with disability
  - certified
- **Emotional support animal:**
  - provides comfort and security
  - Not trained for a specific task
  - Do not need to be certified

# Duty to Accommodate

## What is the duty to accommodate?

- 1. Procedural duty:** Includes the duty to
  - Listen and acknowledge the individual needs;
  - Inquire about the accommodation needs
  - Investigate options;
  - Communicate in a timely and respectful manner
  - Keep the process moving
  - Give an answer
  - Explain why the accommodation is granted or denied
- 2. Substantive duty:** reasonable accommodation, unless “undue hardship” would result

# What Medical Evidence can we ask for

## **The type of information the condo corporation is entitled to seek:**

- That the person has a disability
- The limitations or needs associated with the disability
- Whether the person can perform essential duties/requirements of a condo occupant
- The type of accommodation that may be needed
- Adequate alternatives to the accommodation being sought
- Regular updates
- In certain cases, confirmation or additional info from qualified health care professionals

**2016 Policy on ableism and discrimination based on disability**

2016

**CondoAdviser.ca**



# Duty to Accommodate preferences?

- **According to the OHRC Ableism Policy:**

...human rights case law makes it clear that the purpose of the [Code](#) is to **accommodate a person's needs, not their preferences**. This statement is supported by the case law cited as authority for it. (see also *Graham v Underground Miata Network*, 2013 HRTO 1457)

If there is a choice between **two accommodations that respond equally** to the person's needs in a dignified way, then the accommodation provider is **entitled to select the one that is less expensive** or less disruptive to the organization. (see also *Ellis v. General Motors of Canada Ltd.*, 2011 HRTO 1453)

- **Application to CondoLand: *Martis v PCC No 253*, [2021 ONCAT 110](#)**

1. Owner's son had medical requirement for emotional support animal;
2. Condo had a no pets rule;
3. The dog was a 60-70 pound Labrador
4. Tribunal found that the condo could not use its policy to impose a weight restriction on the dog; however the condo could impose "reasonable conditions" on the accommodation under the *Code*, including weight.



## Recent key cases

# Key (recent) Pet cases

- **Teno v. Essex CC No. 28, [2022 ONCAT 43](#) (CanLII):**
  - Pet-free but had allowed cats, needed to return to compliance
- **Tamo v. Metropolitan Toronto CC No. 744 et al., [2022 ONCAT 40](#) (CanLII)**
  - Owner « deadly allergic » to dogs vs. Owner requiring support animal
- **Niagara South CC No. 12 v. Spicer, [2022 ONCAT 21](#) (CanLII)**
  - Not an emotional support dog; removed from pet-free condo
- **Toronto Standard CC No. 1767 v. Isa Ahmed et al., [2022 ONCAT 35](#) (CanLII):**
  - Dog urinating/defecating on balcony: who should pay the cost

# Key (recent) Pet cases

- **Metropolitan Toronto CC No. 736 v. Verstova, [2022 ONCAT 1](#) (CanLII)**
  - Cat eviction; Cat urinating on balcony
- **MTCC 1260 v. Singh , [2022 ONSC 1606](#)**
  - Viciously dangerous dogs removed from condo





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