RECOMMENDATION

That a by-law be enacted to amend Animal Care and Control By-law 2019-43 for the purposes of introducing a Variance Process as outlined in Schedule A of Staff Report 2019-0114;

That a by-law be enacted to amend Delegated Authority By-law 2016-106, as amended, to delegate authority to the Manager, Regulatory Services to administer the variance process within the proposed By-law; and

That the 2019 Fees By-Law 2019-1 be amended to update Schedule C to include a new non-refundable fee in the amount of $350 plus HST for the animal control variance application and review process in accordance with the Municipal Act, 2001 effective October 29, 2019.

REPORT HIGHLIGHTS

- The Town’s new Animal Care and Control By-law took effect on September 1, 2019.
- Staff was directed by Council to review and report back on the feasibility of implementing a variance process for the new By-law.
- The purpose of a variance process is to allow residents an opportunity to bring forward a proposal for the Town to consider should they seek relief from certain aspects of a By-law.
- The Town has included variance processes in several recently enacted By-laws including the Fence By-law and Sign By-law.

DISCUSSION

Background

At a Town Council Meeting held on June 25, 2019, members of Council debated the adoption of a new Animal Care and Control By-law. While the By-law was ultimately approved and took effect on September 1st, as a result of the discussion Staff were directed to review and report back on the feasibility of adding a variance process to the By-law. Therefore, the purpose of this report is to outline a proposed variance process which Staff recommend be included in the Animal Care and Control By-law.

Purpose of a Variance Process

While a By-law normally applies a set of rules to everyone equally in a municipality, residents will realistically face unique and differing circumstances. Therefore, strict application of a By-law may not always be appropriate or fair in every case. Varying the
requirements of a By-law to accommodate a resident’s special circumstances offers flexibility and, when used carefully, may better meet the needs of the community. This can be achieved by developing a transparent process through which residents can bring forward a request for relief from certain Sections of a By-law.

Processes Review

Staff have considered different variance processes to develop the most effective option for the Animal Care and Control By-law. First, it is important to note that if a process is not set out in the By-law then a report must be prepared and provided to Council every time a variance is requested. For example, this is currently the case with the Noise By-law where multiple exemption reports are prepared by Staff annually. As reports are subject to the Council meeting schedule, providing a decision to an applicant in a timely manner can be challenging. Further, as significant Staff resources are required, a considerable fee of $706.25 must be paid by an applicant. From a customer service standpoint, this process may be perceived as being overly beaurocratic especially if the scope of the requested variance is limited.

As an alternative, a variance process can be added directly to a By-law with authority delegated to Staff to oversee the administration including application intake, public notifications, review and approval. Recently, this approach has become more commonly used by the Town as both the Sign By-law and Fence By-law, each updated in 2017, include a variance processes. *To date….add in a sentence about how many have been processed successfully*

Stakeholder Consultation

As part of this review Staff followed-up with residents who expressed interest in the Animal Care and Control By-law project to provide notification of the proposed changes. Specific groups that previously identified interest in the By-law were notified of the proposed changes (community cat groups etc.). However, the pigeon groups were carefully consulted as they have voiced concerns previously. *Add in their feedback and some information about how the process below will impact them including the requests that should be expected to come forward regarding the lot size restriction*

Recommended Variance Process

It is recommended that the Town’s Animal Care and Control By-law 2019-43 be amended to include the variance process as set out in Schedule A attached to this report. The proposed process will create a clear, transparent and objective review which balances variance requests against potential impacts on the community. Key aspects of the variance process are explained in detail below.

Applicable Sections

Staff conducted a review of the Animal Care and Control By-law and determined that there are specific Parts that warrant consideration of a variance. Such areas include Part 4 –
Dogs (with the exception of Dangerous Dogs as appeals to such Orders are managed by the Appeal Board), Part 5 – Cats, and Part 6 – Hens and Pigeons. Other Sections of the By-law are excluded as the content is largely administrative or it addresses minimum standards of care that should not be modified. As a result, the proposed By-law includes language that would restrict applications for variances to these Parts.

Application Submission

To ensure a consistent approach, the By-law makes a single individual responsible for overseeing the variance process as authority is delegated specifically to the Manager, Regulatory Services (defined as Director within the By-law). Further, the method for submitting a variance request and the information required is set out to create an efficient and clear application process for both residents and Staff to follow. Applicants will have the opportunity to explain their circumstances by providing a detailed description of why the variance is required and, as necessary, the Manager may ask for additional information to evaluate a request. Applications will only be reviewed when complete ensuring Staff have all necessary information to make a decision.

Neighbour Notification

As noted above, when evaluating a variance request it is crucial to consider the potential impacts on the broader community. A key way to achieve this is by providing residents with the opportunity to give feedback on a request. With this input Staff can better evaluate a request and, if approved, apply appropriate conditions to mitigate potential impacts.

- Therefore, a clear notification process has been included in the By-law.
- Based on the scope of a request the Manager will determine if specific lots or residents may be impacted.
- Those individuals will then be contacted and provided a comment form to give written feedback.
- These forms will be returned to Regulatory Services and the public input will then help inform the decision of the Manager.
- This notification process is similar to the one approved in the Fence By-law and follows statutory examples such as for changes to the Town’s Zoning By-law.

Approval Process

- The By-law provides the responsibility to the Manager, Regulatory Services to decide whether a variance is approved or refused.
- As identified above, conditions can be applied by the Manager which will permit approvals to be carefully designed to ensure that they are balanced with concerns received through the public notice process.
- However, it is crucial that the criteria on which a decision will be based is clearly set out for both Staff and the public to ensure that decisions are objective and transparent.
- Therefore, the By-law specifically outlines the factors that the Manager will consider in making a decision including:

(1) whether it is in accordance with the general intent and purpose of the By-law;
(2) if approved, would the resulting variance cause harm or a negative impact to any animals;
(3) if approved, would the resulting variance be in keeping with the surrounding area and would there be any negative impact on adjacent residents;
(4) are there any special circumstances and would strict application of the provisions of this By-law result in unnecessary difficulty or hardship for the applicant; and
(5) would approval of the variance result in any impacts to the health, safety or welfare of the public.

-While the decision of the Manager will be final, the criteria above will create a consistent and standardized decision making process.
-Finally, in the event that a recipient does not comply with the conditions of their variance, the Manager will have the power to revoke it and reapply the original Sections of the By-law.

**Next Steps**

Should Council approve the recommendations within this report Staff will take the following next steps:

1. By-laws will be brought forward to the next Town Council meeting to amend Delegated Authority By-law 2016-106, as amended, Animal Care and Control By-law 2019-43 and Fees By-law.
2. Develop an application form and other required resources to implement the new variance process.
3. Staff will monitor the type of variances requested to identify any changing trends that may warrant further updates to the By-law.

**FINANCIAL IMPLICATIONS**

There are no immediate financial implications to this report. Based on the amount of staff time expected to administer the proposed variance process, it is recommend that a non-refundable fee of $350.00 plus HST be added to the Fees By-law for 2019 as shown below.

The required resources and associated cost are broken down as follows:
<table>
<thead>
<tr>
<th>Preparation of an approval or denial letter, tracking and recording results</th>
<th>1 hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Staff Time</td>
<td>5.5 hours</td>
</tr>
<tr>
<td>Total Cost</td>
<td>$350</td>
</tr>
</tbody>
</table>

As each request will present unique circumstances, it is difficult to accurately assess the average resources required. However, based on an initial conservative assessment, Staff estimate that the time necessary to process an average variance request may range between 5-7 hours. Further, the cost will vary by case based on the time required, potential mileage and other overhead expenses. Staff conducted a review of variance and exemptions fees in other municipalities for a variety of by-laws and noted that the fees range between $120 to $1,200.

Staff will continue to monitor the variance process and, as experience is gained through its administration, the fee may be further adjusted if necessary to reflect the average Staff time and associated resources with the variance process. Currently, there is no material impact expected to the Regulatory Services budget as a result of this new process.

COUNCIL WORK PLAN

Improved Service Delivery

ATTACHMENTS

Schedule A: Proposed Amendment to Animal Care & Control By-law 2019-43