

Staff Report 2019-0114

Meeting Date: December 3, 2019

Subject: Animal Care and Control By-law Variance Process

Submitted By: Laura Hall, Manager, Regulatory Services

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; and

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 a new non-refundable fee in the amount of \$350.00 plus HST for the Animal Care and Control By-law variance application and review process be added to the 2020 Fees by-law.

REPORT HIGHLIGHTS

- While the Town's new Animal Care and Control By-law took effect on September 1, 2019, Council directed Staff to review the feasibility of adding a variance process.
- Varying the requirements of a By-law can accommodate differing circumstances and an efficient process can be set out directly in a By-law with authority delegated to Staff to oversee administration.
- The Town has recently included similar variance processes in the Fence By-law and Sign By-law.
- Stakeholder consultation was completed with national pigeon groups and their local members as their concerns over certain By-law requirements was a key factor in consideration of a variance process.
- It is recommended that the variance process outlined in the By-law attached as Schedule A be included in the Animal Care and Control By-law.
- The proposed variance process includes clear application requirements, a public notification procedure and criteria is set out to ensure objective decision making when evaluating if a variance should be granted.

DISCUSSION

Background

At the 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 approved and took effect on September 1, as a result of the discussion Staff were directed to review and report back on the feasibility of adding a variance process. Therefore, the purpose of this

report is to explain a proposed variance process, outlined in Schedule A, which is recommended for inclusion in the Animal Care and Control By-law.

Purpose of a Variance Process

While a By-law applies rules to everyone equally, realistically residents will face unique and differing circumstances. Therefore, strict application of a By-law may not be appropriate in every case. Varying requirements to accommodate 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.

Process Review

To develop the most effective option for the Animal Care and Control By-law, Staff have reviewed different methods for considering variance requests. First, it is important to note that if a process is not set out in the By-law a report must be prepared and provided to Council when a variance is requested. This is currently the case with the Noise By-law where multiple exemption reports are prepared by Staff annually. A considerable fee of \$706.25 is applied for each request due to the Staff time required to bring a report forward. As reports are subject to the Council meeting schedule, providing a decision to an applicant in a timely manner can be challenging. From a customer service standpoint this process may be seen as onerous especially if the nature of the requested variance is minimal.

Alternatively, a variance process can be added directly to a By-law. Section 23.2 of the *Municipal Act, 2001*, provides that certain powers can be delegated by Council to an employee of the municipality. Therefore, a Staff member may be provided the authority to oversee and administer a variance process including application intake, public notifications, review and approval. This approach has become common as both the Town's Sign By-law and Fence By-law, each updated in 2017, include similar processes. While only one fence variance has been requested, to date 9 sign variances have been successfully processed.

Stakeholder Consultation

Significant public consultation was conducted in spring 2019 as part of the Animal Care and Control By-law review. Discussions were held with representatives from national pigeon organizations including the Canadian Pigeon Racing Union, the Canadian Pigeon Fancier's Association and their local members. As concern regarding the one (1) acre lot size requirement to keep pigeons was a key reason for considering a variance process, Staff have completed additional consultation with these groups to gain feedback.

While there was support for the proposed variance process, several suggestions were provided. One respondent identified that to maintain objectivity, investigating Officers should not be responsible for granting or denying variances. Further, there was agreement that a neighbour notification process was valuable to gather input broadly, provide context to comments received from complainants and create fairer decision making. Another individual offered that Staff responsible for granting or denying a variance should seek

information from the applicant to ensure they are adequately educated. While concern over the one (1) acre lot size persisted, there was recognition that the variance process could address this on a case by case basis as necessary and that mitigating impacts on neighbours was crucial. Finally, one respondent did continue to voice strong opposition to the regulation of pigeons generally. The proposed variance process reflects the feedback received.

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 set out in the draft By-law attached as Schedule A to this report. The proposed process will create a clear, transparent and objective review balancing variance requests against potential community impacts. Key aspects of the process are explained in detail below.

Applicable Sections

Staff reviewed the Animal Care and Control By-law and determined that there are Sections within certain Parts which warrant consideration of a variance including:

- 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.

Sections of the By-law that are generally administrative, provide minimum standards of care or address certain issues such as prohibited animals or running at large are excluded. The proposed By-law clearly sets out the Parts for which a variance request can be submitted.

Application Process

To ensure a consistent approach, authority to oversee the application and review process is solely delegated to the Manager, Regulatory Services (defined as Director within the By-law). Further, the way a variance request may be submitted, and the information required, is set out in the By-law to create a 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

To properly evaluate a variance request it is crucial that the public has the opportunity to provide input. This can identify and mitigate potential impacts on the community. Therefore, the draft By-law includes a procedure for seeking feedback from residents.

Depending on the nature of a variance request, impacts may be limited to specific lots or more widespread. Therefore, the Manager, Regulatory Services will assess requests on a case by case basis and individuals that may be affected will be contacted. Notice will be delivered by mail and include a brief outline of the variance and a comment form for resident to provide written feedback. Comments returned to Regulatory Services will be used to inform the decision of the Manager on whether the variance should be granted. This notification process is similar to the one approved in the Fence By-law and follows statutory examples such as those set out in the *Planning Act* for zoning variances.

Approval Process

The draft By-law provides the Manager, Regulatory Services with the responsibility for deciding if a variance is approved or refused. Conditions may also be applied to approvals allowing the Manager to ensure they are balanced with concerns received through the public notice process. However, to maintain transparency the criteria on which a decision will be based must be clearly set out. Therefore, the By-law specifically outlines the factors the Manager will consider in making a decision on a variance 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 creates a consistent and objective decision making process. Finally, if the conditions of a variance are not complied with, the Manager will have the power to revoke approval 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.
2. An application form, comment form and other required resources will be developed 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 2020 Fees By-law.

Each request will present unique circumstances making it difficult to accurately determine the average resources required. However, based on an initial conservative assessment, Staff estimate that the time necessary to process a variance request may range between 5-7 hours. Cost will increase if additional time is required and may vary based on potential mileage and other overhead expenses. Staff conducted a review of variance and exemption fees in other municipalities for a variety of By-laws and noted that the fees range between \$120.00 to \$1,200.00.

Staff will continue to monitor the variance process and, as experience is gained through its administration, the fee may be further adjusted in a future budget if necessary to reflect the average Staff time and associated resources required. Currently, there is no material impact expected to the Regulatory Services 2020 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