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Date: January 14, 2019

To: Mayor and Council

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RE: By-law Appeal Committee

Report No.: CS-2019-01

AIM

To provide Council with information regarding the establishment of a By-law Appeal Committee (the “Committee”) and to recommend the adoption of By-law 05-2019, being a by-law to establish the Committee, including the Rules of Procedure which will govern all proceedings before it.

BACKGROUND

Late in 2018, Corporate Services received a request to appeal a muzzle order that was issued during the summer of 2018. By-law 103-2003 provides for a right of appeal in limited circumstances. However, section 105 of the *Municipal Act, 2001* (the “Act”) requires that the Council of the municipality shall, upon request of the owner of the dog, hold a hearing to determine whether or not to exempt the owner in whole or in part from the requirement of a Muzzle Order.

Section 284.1 of the *Act* authorizes a municipality to provide for a review or appeal of a decision made by a person or body in the exercise or intended exercise of a power or the performance or intended performance of a duty delegated to him, her or it by the municipality under the *Act*.

Moreover, section 23.1 of the *Municipal Act, 2001* permits Council to delegate the power and duty to hear appeals of administrative decisions made pursuant to certain by-laws. With the exception of the Property Standards Committee, established to hear specific *Building Code Act* appeals, and the Court of Revision, which hears assessment appeals from property owners under the *Drainage Act*, no other appeal bodies have been established by the Town.

For the reasons discussed below, Administration recommends the establishment of a Committee to hear appeals flowing from administrative decisions under Town by-laws, where the by-law grants a right of appeal to that decision.

DISCUSSION

Late in 2018, the Town received an appeal request from an administrative decision under licensing of dogs by-law no. 103-2003, as amended. A muzzle order was issued on or about June 22, 2018, and the owner of the dog now wishes to appeal that decision.

A right of appeal exists under the *Act* for these types of decisions. Moreover, the Town may grant a right of appeal from certain administrative decision. Many municipalities across the province have established appeal committees to hear appeals flowing from decisions made under various by-laws (i.e. business licencing, taxi, animal control etc.), where those by-laws provide a right of appeal. Currently, the by-law regulating the licensing of dogs is the only by-law which provides for a right of appeal. However, as Administration conducts a review of its various by-laws, recommendations to Council may include the parameters within which a person can file an appeal to a decision.

Council meetings are convened to deal with the business of the Town and not a proper forum to address these types of matters. Moreover, the Procedure By-law would not provide the requisite procedural oversight to establish rules for the conduct of appeal hearings. This quasi-judicial function is more properly delegated to a by-law appeal committee and separate procedural rules established. The committee would be a quasi-judicial committee responsible to hear appeals flowing from administrative decisions, where the applicable by-law grants a right of appeal. The *Statutory Powers and Procedure Act* provides a framework for the creation of the procedural rules in these types of circumstances.

Establishing Rules of Procedure (the “Rules”) fulfills the Town’s transparency and accountability obligations. It ensures that the public is aware of the process for appealing a decision and the framework within which a hearing will be conducted. It ensures that the Committee has a set of rules to follow to ensure the consistent handling of appeals and it provides Administration with the rules to follow when processing those appeals.

Attached at Appendix A is the proposed By-law, including Schedule 1 (Rules of Procedure) to establish the Committee and at Appendix B are the draft Terms of Reference.

As outlined in the draft Terms of Reference, the following particulars are recommended:

- The Committee be composed of not less than three (3), and not more than five (5) Councillors, who shall be appointed in accordance with the Town’s committee appointment process;
- The Committee shall meet as required, following the filing of an appeal with the Clerk; and
- Members shall be compensated \$100 per hearing;

As described in the draft Rules of Procedure (the “Rules”), the Committee would have the power to do the following:

- Hearing and determining all applications made, proceedings instituted and matters brought before it and for such purpose to make such orders, give such directions, issue such approvals, deny or vary applications and otherwise do and perform all acts, matters, deeds and things as may be necessary or incidental to the exercise of the powers conferred upon it.
- Performing such other functions and duties as are now or hereafter conferred upon or assigned to it by a Town by-law or under statutory authority.
- Making, giving or issuing or refusing to make, give or issue any order, directions, regulation, rule, permission, approval, certificate or direction, which it has power to make, give or issue.
- Hearing and determining, with respect to matters within its jurisdiction, all questions of law or of fact.

It is important to note that the Committee does not have the power or authority to award costs flowing from a hearing.

In addition to granting the Committee the power to make a final determination on an appeal, the draft Rules provide instruction on the following procedural matters:

- Commencement of an appeal;
- Notification, and publication of the hearing;
- Quorum and conflict of interest;
- Presentation of evidence; and
- Decision timing and format.

Finally, Administration recommends that a non-refundable fee of \$100 be paid by persons wishing to file an appeal. This fee would be brought to Council for consideration when the fees and charges by-law is updated at a future meeting.

LINK TO STRATEGIC PLAN

There is no direct link to the strategic plan.

FINANCIAL CONSIDERATIONS

Remuneration in the amount of \$100.00 per hearing for the members of the 2018-2022 term.

The recommended filing fee is nominal and would not significantly reduce the cost to the Town associated with holding such a hearing.

CONSULTATIONS

Jennifer Astrologo, Director of Corporate Services/Clerk

RECOMMENDATION

That Council receives the By-law Appeal Committee report;

And That By-law 5-2019 be adopted;

And That the Terms of Reference for the By-law Appeal Committee be approved;

And That, Council appoint three or five Council members to sit on the By-law Appeal Committee;

And Further That, Council adopt, in principle, an appeal fee of \$100 to be paid by those persons making an appeal, which fee shall be proposed at the next Fees & Charges By-law update.

Roberta Baines

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