



STAFF REPORT ACTION REQUIRED

Feasibility of Licensing Wildlife Control Operators

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| Date: | March 4, 2014 |
| To: | Licensing and Standards Committee |
| From: | Executive Director, Municipal Licensing and Standards |
| Wards: | All |
| Reference Number: | P:\2014\Cluster B\MLS\LS14003 |

SUMMARY

At its March 19, 2013 meeting, the Licensing and Standards Committee requested staff to report back on the feasibility of licensing wildlife control operators. Committee expressed concern that without regulation, individuals performing wildlife control activities pose a risk to both consumers (e.g. disease and fraud) and wildlife (e.g. injury and death).

A review of relevant legislation indicates that there are provincial laws in place to protect wild animals and residents of Toronto from unqualified wildlife removal companies. These laws are enforced by the Ministry of Natural Resources, Ontario Society for the Prevention of Cruelty to Animals (OSPCA) and Ministry of Consumer Services.

Stakeholder consultations and research revealed some concerns with the activities of wildlife control operators, although the issues cannot be generalized to the entire industry.

Accordingly, this report recommends referring the matter to the Province of Ontario for consideration because it is the level of government with direct responsibility for wildlife management and the regulation of wildlife control activities such as hunting and trapping.

Referral to the provincial government is also advisable because a municipal licensing by-law for wildlife control operators could be declared invalid by the courts for conflicting with existing provincial legislation, the Fish and Wildlife Conservation Act, 1997 (the "Act"). Although the Act establishes a licensing regime for persons that hunt or trap wildlife, it also provides an exemption to this licensing requirement. The Act allows a person to harass, capture or kill wildlife *without* a licence where the person reasonably believes that wildlife is damaging or is about to damage that person's property. The Act

extends this exemption to persons in the business of removing nuisance wildlife for the same purpose.

Municipal Licensing and Standards through Toronto Animal Services will provide resources on its website to educate the public on what rules govern wildlife control and what factors to consider when hiring a wildlife control operator.

Legal Services was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council request the Province of Ontario to consider expanding its licensing requirements to include wildlife control operators

Financial Impact

There is no financial impact expected from this report beyond what has already been approved in this year's budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of October 29, 2013, the Licensing and Standards Committee received for information an update on the licensing of wildlife control operators.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS24.3>

At its meeting of September 19, 2013, the Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards to provide an update to the Committee at its October 29, 2013 meeting on the licensing of wildlife control operators.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS23.5>

At its meeting of March 19, 2013, the Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards to report back to the Licensing and Standards Committee on the feasibility of licensing wildlife control operators.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS19.6>

ISSUE BACKGROUND

The City of Toronto is home to a variety of wildlife animals, such as birds, raccoons, skunks and squirrels. Although most residents enjoy their interactions with wildlife, sometimes these interactions result in conflict particularly on private property such as squirrels nesting in attics or raccoons digging up lawns and gardens.

When dealing with wildlife conflict on private property, residents of Toronto have two options: responding to it themselves or seeking the assistance of a wildlife control operator. The "do-it-yourself" approach includes the use of deterrents such as ammonia-soaked rags or live traps to capture and remove the wildlife animal.

In general, wildlife control operators will take one of three approaches (or a combination thereof) when responding to wildlife issues:

- **No Trapping:** Some operators will not trap animals except as a last resort. Their preferred approach is to install one-way doors at access points to allow animals to leave the building, but prevent re-entry. Once the animals have left the buildings, the operator will seal the access point.
- **Live Trapping:** Some operators and individual property owners will trap and release animals using various types of live traps. Provincial regulation requires animals to be released within 1 km of the capture site.
- **Lethal Trapping:** Some operators will use lethal trapping or live trapping in combination with euthanasia. Under the Fish and Wildlife Conservation Act, 1997 only trappers and hunters licensed through the Ministry of Natural Resources can kill wildlife. The Act and its accompanying Regulations also specify acceptable methods of trapping and euthanasia.

Many wildlife control operators provide home repair services to prevent future wildlife conflicts. Some wildlife control operators are also trappers licensed by the Ministry of Natural Resources under the Fish and Wildlife Conservation Act, 1997. Operators that use one-way doors or live traps are not currently licensed by any level of government.

Wildlife control operators in Canada are also not organized into a professional trade association. Some operators in Toronto however, are members of the National Wildlife Control Operators Association in the United States, which requires the completion of accredited training to receive certification.

COMMENTS

Consultation

Municipal Licensing and Standards organized a public meeting on December 4, 2013. Announcements about the public meeting were disseminated through the Municipal Licensing and Standards website, City of Toronto's official Twitter account, as well as post-mail. The division also conducted two online surveys to solicit feedback on the industry; one for the public, and the other, for wildlife control operators. 30 members of the public attended the meeting and 58 completed the online surveys, including wildlife control operators, wildlife rehabilitation centres and members of the public. Staff also consulted with the Ministry of Natural Resources, Ministry of Consumer Services and the Ontario Society for the Prevention of Cruelty to Animals (OSPCA).

Most of the consulted stakeholders echoed the Committee's concerns regarding the activities of some wildlife control operators; although they emphasize that these issues cannot be generalized to the entire industry. Of particular concern are so-called “fly by night” companies that are not trained in wildlife removal, lack knowledge of wildlife biology, and do not follow or, are not aware of government regulations. It is believed that their poor qualifications results in poor customer service, inhumane treatment of wildlife and potential risks to public health and safety. Some of the most referenced concerns include:

- Leaving cages unchecked for long hours and unprotected from weather conditions, which can cause undue stress for the animal and lead to injury/death.
- Relocating wildlife beyond 1 km of its capture site, which separates wildlife from food and shelter, increases their risk of conflict with animals in other environments and can potentially spread diseases to other communities.
- Burdening wildlife rehabilitation centres with orphaned wildlife because of trapping and relocation during birthing season, which can separate animals from their dependant young.
- Removing wildlife from buildings and inadvertently leaving behind their offspring in the attic or in between walls where they die and decompose. Wildlife separated from offspring can also become aggressive and cause severe property damage. These scenarios can result in additional costs for the homeowner.
- Failing to effectively recognize and clean up areas or material contaminated with wildlife faeces. Animal faeces can carry a number of diseases or parasites, to which humans can become exposed through direct contact (e.g. raccoon roundworm).

Notwithstanding the examples above, there is no indication that these concerns are widespread or severe enough to warrant the creation of a municipal licensing regime. The Toronto Wildlife Centre does not collect information on how many orphaned animals they receive as a result of operator malpractice. Toronto Animal Services (TAS) advised that the majority of injured or dead animals they retrieve are either hit by a car or suffering from an illness. The Ministry of Consumer Services has only received 3 inquiries in the last two years in regards to wildlife control operators. The Healthy Environments program at Toronto Public Health has investigated zero raccoon round worm complaints in the past three years.

Provincial Controls

The Fish and Wildlife Conservation Act, 1997 and its Regulations already contemplate and provide for some measure of animal protection. The Act sets out a licensing regime for trappers and hunters, which prescribes in great detail when and how people can trap or hunt wildlife in Ontario. These regulations are based on standards outlined in the Agreement on International Humane Trapping Standards, of which Canada is a signatory.

Section 31 of the Fish and Wildlife Conservation Act, 1997 also requires that the harassing/capturing/killing of wildlife shall not “cause [the wildlife] unnecessary suffering.” The Ministry of Natural Resources enforces this provision on a complaint

basis, including cases of illegal relocation of wildlife and animals being held in traps for longer than 24 hours. When determining humane methods of euthanasia, the Ministry follows standards established in the Canadian Council on Animal Care Guidelines.

The Ontario Society for the Prevention of Cruelty to Animals (OSPCA) is also responsible for protecting wildlife from inhumane treatment. The agency may enforce any law pertaining to the prevention of cruelty to, and the welfare of, animals under the Ontario SPCA Act, 1990 as well as the Fish and Wildlife Conservation Act, 1997. OSPCA inspectors respond on a complaint basis to issues concerning the treatment of wildlife including illegal relocation, animals being sealed in the attic or killed with the use of poison (i.e. sulphur sticks, anti-freeze). Veterinarians are often consulted to examine the animal and determine whether it has endured inhumane treatment.

The Ministry of Consumer Services responds to public complaints against businesses that use practices that infringe on consumer rights such as fraud and misrepresentation of services. To resolve complaints between consumers and businesses, the Ministry can provide practical advice, investigate complaints, mediate between parties, or lay charges. Residents of Toronto concerned about their business interactions with a specific wildlife control operator can contact the Ministry of Consumer Services for assistance.

Municipal Authority

An important factor in determining whether the City of Toronto has the authority to establish a licensing regime for wildlife control operators is whether there is a conflict between a licensing by-law and provincial/federal legislation. Section 11 of the City of Toronto Act, 2006 ("COTA") deems a city by-law without effect to the extent of any conflict with superior legislation. Conflict is defined in COTA to include frustration of purpose.

The Fish and Wildlife Conservation Act, 1997 (the "Act") is the main provincial law that oversees the protection and management of wildlife in Ontario. Under the Act, a person that hunts or traps wildlife requires a licence. At the same time, the Act provides an exemption to this licensing requirement. According to subsection 31(6), a person who reasonably believes that wildlife is damaging or is about to damage their property may harass, capture, or kill the wildlife *without* the need for a licence. The exemption is extended to persons in the business of removing nuisance wildlife. Staff at the Ministry of Natural Resources explain that this exemption is intended to give landowners the flexibility to respond to immediate issues with wildlife on private property without the "undue burden" of obtaining a licence.

As a result, there is some risk that a by-law requiring wildlife control operators to obtain a City of Toronto licence could be declared invalid for frustrating the Province's legislative intention to exempt this category of persons from any licensing requirements.

It is also important to note that there are no municipalities in Canada that license wildlife control operators. The City of Markham is holding consultations in the near future on the

regulation of wildlife control operators and will be seeking legal advice to confirm whether the City has the authority to license.

Public Awareness

Municipal Licensing and Standards through Toronto Animal Services is dedicated to protecting Toronto's wildlife and supporting a positive relationship between residents and wild animals. The division fulfills this mandate through its Animal Services website, which offers information to the public on how to interact with distinct wildlife in our city so that residents, animals and private property are protected.

The division can also play an important educational role to ensure wildlife control companies respect consumers and treat animals humanely. Cities like Mississauga and Ottawa have posted questions to ask wildlife control operators on their website so that residents can make informed decisions.

Toronto Animal Services will use these examples to develop a similar resource on its website. The resource will also clarify what rules govern wildlife removal and who to contact if they have concerns about the practices of wildlife control companies.

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SIGNATURE

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