



CITY OF KINGSTON  
**REPORT TO COUNCIL**

Report No.: 10-248

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**TO:** Mayor and Members of Council

**FROM:** Terry Willing, Acting Commissioner, Community Services

**RESOURCE STAFF:** Kim Leonard, Acting Director, Building & Licensing

**DATE OF MEETING:** August 24, 2010

**SUBJECT:** A By-Law to Delegate Authority for the Purposes of Administering the Livestock, Poultry and Honey Bee Protection Act and the Line Fences Act

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**EXECUTIVE SUMMARY:**

The Municipal Act authorizes the Council of a Municipality to delegate its authority for the purpose of appointing valuers for the Livestock, Poultry and Honey Bee Protection Act and also for appointing fence viewers for the purposes of the Line Fences Act. The delegated authority can be appointed to a department or to an individual of the Corporation.

**RECOMMENDATION:**

**THAT** By-Law 98-13, "A By-Law To Designate The Authority Of The Clerk To The Commissioner of Community Development And Client Services For The Purposes Of The Livestock, Poultry And Honey Bee Protection Act, R.S.O. 1990, c. L. 24" be repealed, and;

**THAT** By-Law 2003-406 being "A By-Law To Provide For the Arbitration Of Fencing Disputes Between Adjoining Property Owners be repealed, and;

**THAT** no fence viewing will take place between the 1st of November of one year and the 31st of March of the next year, and;

**THAT** the draft By-Law attached as Exhibit A to Report 10-248 be approved.

**AUTHORIZING SIGNATURES:**

<p>ORIGINAL SIGNED BY COMMISSIONER</p> <p>Terry Willing, Acting Commissioner, Community Services</p>
<p>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</p> <p>Gerard Hunt, Chief Administrative Officer</p>

**CONSULTATION WITH THE FOLLOWING COMMISSIONERS:**

Cynthia Beach, <i>Sustainability &amp; Growth</i>	N/R
Denis Leger, <i>Transportation, Properties &amp; Emergency Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/R

*(N/R indicates consultation not required)*

**OPTIONS/DISCUSSION:**

On January 20, 1998 Council enacted By-Law 98-13, "A By-Law to Appoint Valuers For The Purposes Of the Livestock, Poultry And Honey Bee Protection Act". By-Law 98-13 designated the authority to administer the Act to appoint valuers to Lance Thurston as Commissioner of Community Development and Client Services. The Manager of Building & Licensing has been responsible for the administration of the Act through the Commissioner of Community Development and Client Services and the Clerk since the By-Law came into effect on January 20, 1998. Staff are requesting that the designated authority to appoint valuers be delegated to the Manager of Licensing & Enforcement. The authority to administer the act has been appointed to the Manager of Licensing & Enforcement by the Clerk.

The Livestock, Poultry and Honey Bee Protection Act designates the responsibility to a Municipality to process claims where injuries and kills have occurred within the municipal boundaries and to make payment to the applicant where it has been determined that livestock or poultry has been injured or killed by a dog or wolf. The Act also gives the Municipality the authority to enact by-laws to carry out these responsibilities.

The owner of the livestock or poultry is responsible for contacting a livestock valuator and this must be done within ten days of the loss to investigate the loss or damage to livestock or poultry. The Municipality is required to make payment for any loss to the owner within thirty days after the valuator has determined that the loss was a result of a wolf or dog kill or injury and the amount of the loss has also been determined by the valuers. The Act does set a maximum loss payable to the owner. These regulations do not apply to livestock or poultry killed or injured while running at large upon a highway or unenclosed land, or in the case of poultry, where the weight of the poultry killed or injured is less than twenty-five kilograms.

The Municipality submits an application for all monies paid out to the owners for their loss and the Ministry of Agriculture and Food reimburses the Municipality for losses paid. Loss payments are determined by the valuers. The Municipality is not compensated for the payment to the valuator for their services. A \$75.00 fee is paid to the valuers for their service and that fee is not recoverable and therefore the cost to valuate is borne by the Municipality.

On November 4, 2003 Council enacted By-Law 2003-406 being a By-Law To Provide For The Arbitration of Fencing Disputes Between Adjoining Property Owners. The current by-law requires staff to submit a report to Council requesting appointments of fence viewers. The Municipal Act authorizes City Council to delegate the authority to appoint fence viewers to a municipal employee who is not a member of council. Staff are recommending that By-Law 2003-406 be repealed and in its place By-Law 2010-XXX attached to the report as Exhibit A be enacted to provide the authority to appoint fence viewers to the Manager of Licensing and Enforcement.

Fence Viewers perform a type of judicial function and the Act does not permit a Council to provide instructions to fence-viewers or to review their decisions. The Act itself provides an appeal procedure and councils have no role in this regard. Council does however, have a number of important roles and responsibilities under the Act. A council or its designate is required to appoint fence-viewers. The Municipality has to appoint fence-viewers for a fencing dispute to be arbitrated. A council may ban proceedings requiring the attendance of the fence-viewers for all or part of the period between the 1st of November of one year and the 31st of March of the next year. A council may establish reasonable administrative fees to be paid to the municipality by the two owners involved in arbitration. The fees can reflect the municipality's actual costs in arranging a viewing, or they can be in the form of a flat fee. The City of Kingston currently charges a \$100.00 fee for fence viewing. Although the Act makes the clerk responsible for the administration of the arbitration procedure, it permits a council to designate another person for the purpose of giving certain notices. Subsection 228(4) of the Municipal Act, 2001 provides another option: it authorizes the clerk to delegate, in writing, any of his or her powers and duties under any Act to any person, other than a member of council. This provision permits another staff member, such as the Manager of Licensing and Enforcement, to be made responsible for the administration of the entire arbitration procedure.

An appointment of authority to a specific person proves cumbersome as retirements, job promotions or any type of vacancy in a position will result in further requests for by-law amendments to name that specific person. By appointing a specific position, the person filling that position will be responsible for the administration and the appointment of livestock valuers and fence-viewers and that authority will be passed to their replacement in the event that he or she leaves the position for any reason. The preparation of the proposed by-law is more of a housekeeping matter to designate the requirement to appoint livestock valuers and fence viewers under the Act to the department who has been carrying out the administration of the Act.

**EXISTING POLICY/BY LAW:**

The Council of every local municipality or its designate shall appoint persons as livestock and poultry valuers for the purposes carrying out the requirements of the Livestock, Poultry and Honey Bee Act and the Council or their designate of every municipality shall appoint fence viewers for the purposes of the arbitration of fencing disputes in accordance with the Lines Fences Act.

**NOTICE PROVISIONS:**

None

**ACCESSIBILITY CONSIDERATIONS:**

None

**FINANCIAL CONSIDERATIONS:**

Valuers and Fence Viewers are paid \$75.00 per claim. An application fee of \$100.00 is charged for fence viewing.

**CONTACTS:**

Kim Leonard, Acting Director, Building & Licensing

**OTHER CITY OF KINGSTON STAFF CONSULTED:**

Mark McLaughlin, Associate Legal Counsel

Carolyn Downs, City Clerk

**EXHIBITS ATTACHED:**

Exhibit A – By-Law to delegate authority to the Manager of Licensing & Enforcement

Exhibit A

BY-LAW NO. 2010-XXX

A BY-LAW TO DELEGATE THE AUTHORITY FOR THE APPOINTMENT OF LIVESTOCK VALUERS AND FENCE VIEWERS PURSUANT TO SECTION 23.1 OF THE ONTARIO MUNICIPAL ACT, 2001

PASSED:

**WHEREAS** Section 23.1 of the *Municipal Act, 2001* permits the delegation of municipal powers and duties to any person or body subject to the restrictions set out in that legislation, and;

**WHEREAS** the Council of The Corporation of the City of Kingston may delegate to an employee of the municipality, the power to appoint livestock valuers and fence viewers;

**THEREFORE** the Council of The Corporation of the City of Kingston enacts as follows:

1. That, in accordance with Section 23.1 of the *Ontario Municipal Act, 2001* and despite any other by-law, the Manager of Licensing & Enforcement (the "Manager"), or in his or her absence the Director of Building and Licensing, may appoint livestock valuers and fence viewers for the following purposes:
  - (a) To appoint livestock valuers to investigate the loss or damage to livestock or poultry in accordance with the provisions of Livestock, Poultry and Honey Bee Act, and;
  - (b) To appoint three or more fence viewers to arbitrate fencing disputes between adjoining owners in accordance with the provisions of the *Line Fences Act*.
2. This by-law shall come into force and take effect on the date of its passing.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND PASSED

CITY CLERK

MAYOR