



**Community Planning and Development Department**

Wednesday, July 05, 2023

**Subject:** Backyard Hen Licensing By-law

**Recommendation:**

**BE IT RESOLVED THAT Council receive Report #2023-0152, for information;**

**AND THAT Council direct Planning and By-law Staff to prepare the Licensing By-law to permit, regulate and license hens in the Town of Pelham for the next Council meeting.**

**Executive Summary:**

The purpose of this report is to provide Council and the public with information and recommendations regarding the keeping of hens in the Town of Pelham on residential properties where they are currently prohibited.

**Location:**

The proposed By-law to licence, regulate and govern the keeping of a maximum of 6 hens in the Town of Pelham ("Backyard Hen By-law") will apply to all areas within the Town on residential properties subject to meeting the minimum lot size and setback requirements and which are not considered to be agricultural properties.

**Background:**

At its October 3, 2022 Council meeting, Council considered Community Planning and Development Report #2022-0220: Urban Hens. This report provided a policy analysis, best practice review and general information on the keeping of hens outside of traditional agricultural settings and proposed requirements such as setback and lot size requirements, hen coop and run requirements, feed and waste storage and disposal requirements and fees in the urban area of the Town. As part of this report, Staff detailed methods for permitting and regulating hens in the urban area.

Council elected to continue to prohibit hens in the urban area but directed Staff to review and report back with recommendations regarding the keeping of hens in the rural areas of the Town.

At its November 7, 2022 Council meeting, Council considered Community Planning and Development Report #2022-0252: Rural Hens Licensing By-law. This report provided specific details on the structure of a licensing by-law including key provisions such as setback and lot size requirements, hen coop and run requirements, feed and waste storage and disposal requirements and fees in the rural area of the Town only, i.e., outside of the urban area boundary. The report also outlined the application process, including the fee structure, licensing requirements, enforcement options and education materials.

As Council was nearing the end of its term, following the 2022 fall election, Council deferred this matter until January to allow the new Council to decide on the matter.

At its January 9, 2023 Council meeting, Council once again considered Planning and Development Report #2022-0252 and referred the matter to the newly created Agricultural Advisory Committee for its review and recommendations with respect to the keeping of hens on a townwide basis (urban and rural) prior to Council making a decision.

### **Analysis:**

The proposed draft Backyard Hen Licensing By-law seeks to permit the keeping of up to 6 hens (defined as a female chicken over the age of 4 months) on properties within the Town that are a minimum 0.4ha (1 acre) in size; no other type of hens would be allowed, and roosters are also prohibited. The licensing By-law proposes specified parameters including a coop size which would not trigger Minimum Distance Separation (MDS) calculations among other matters including setbacks from adjacent properties. The keeping of hens would be an accessory use to a residential use and would not apply to poultry keeping as part of an agricultural or farm use.

### **Proposed Hen Licensing By-law:**

The keeping of hens in accordance with the proposed licensing By-law would be in keeping with the policies of the Provincial Policy Plan, the Growth Plan and the Region of Niagara Official Plan. In terms of the Town's Official Plan and Zoning By-law the keeping of hens would be considered an accessory use to a permitted residential use. Hen coops and hen runs would be considered accessory structures in the Town's Zoning By-law, however additional setbacks are considered appropriate to ensure land use compatibility. Further a maximum size for hen coops and runs is being proposed to ensure that a building permit is not required.

*Key Provisions – Draft Licensing By-law*

A copy of the proposed draft Licensing By-law is attached as Appendix "A" to this report, but a summary of the key provisions are listed below:

- No person shall keep hens without obtaining a licence;
- The minimum lot size shall be 0.4 hectares (1 acre);
- Hen coops and hen runs shall be located a minimum of 5.0 metres from any interior lot line, a minimum of 10 metres from a rear lot line, shall not exceed 3 metres in height and shall be fully enclosed;
- Maximum of 6 hens per lot are permitted;
- Hens must be at least 4 months old when acquired because prior to this it cannot be determined whether the chick is a hen or a rooster;
- The keeping of roosters is prohibited;
- Hens shall be kept in locked hen coops from sunset to sunrise;
- Hens are only permitted in the rear yard;
- Hens shall be confined in an enclosed hen coop or hen run at all times;
- Home slaughter of hens is prohibited;
- Manure shall be kept in an enclosed structure such a compost bin;
- Feed shall be stored in rodent proof containers and secured at all times to prevent rodents and other animals from accessing it;
- The owner or applicant must declare that they have reviewed the educational resource material;
- the combined floor area of the Hen Coop and Hen Run shall be less than 10.0m<sup>2</sup>.
- Payment of a one-time \$100 licence fee (to cover administration and inspection costs); and
- Right of Entry Permission to Town Staff to attend and inspect the property (as necessary) to ensure compliance with the requirements.

#### *Application Process and Licensing Requirements*

Interested applicants would be required to review the regulations outlined in the By-law and to educate themselves about issues associated with the keeping of hens. Applicants would be required to complete an application, including the following:

- Name and contact information including an email, phone number(s) and the address of the property where the hens will be kept;
- In the case that the applicant is not the legal owner, written approval from the owner in support of the application;
- The number of hens to be kept on the property;
- A site plan of the property, showing all buildings and structures including the proposed location of the hen coop and hen run, as well as dimensions and appropriate setbacks;

- Declaration that the applicant has reviewed the prescribed educational materials; and
- The prescribed fee as set out in the Fees and Charges By-law.

### *Education Materials*

Staff is proposing that as part of the application process, an education resource package would be provided to interested applicants. This package would include information provided by the Canadian Food Inspection Agency, Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) and the Ministry of Health. Applicants would be required to review this material and sign an acknowledgement/declaration that they have read and reviewed the materials provided as part of the complete application. The following materials are proposed to be including in the education package:

- Bird Health Basics Video and Bird Health Basics Fact Sheet (Canadian Food Inspection Agency);
- Biosecurity Recommendations for Small Flock Poultry Owners (OMAFRA);
- Small Flock Poultry: Raising Healthy Birds (OMAFRA);
- Rodent Control in Livestock and Poultry Facilities (OMAFRA); and
- Keeping your family healthy with backyard poultry, including chickens and ducklings (Ministry of Health).

As organizations and ministries may update their resource kits from time to time, Staff have included a provision in the proposed By-law that will authorize Staff to make updates to the education package as required without an amendment to the Licensing By-law.

### *Licensing Fee Structure*

As the keeping of hens on residential lots are intended for personal use and not for the sale of meat or eggs as a business, Staff is of the opinion that a one-time licensing fee is appropriate. The best practice review prepared and outlined in Community Planning and Development Report #2022-0220 revealed that the licencing fee structure varied from municipality to municipality and Staff are recommending a one-time fee of \$100.00 be required to cover the cost of the application processing and inspections by Staff.

### *Inspections*

An initial inspection of each property will be completed by Town of Pelham By-law Enforcement Staff to ensure that the hen coops and hen runs are appropriately constructed and to check compliance with all regulations prior to issuing a license under the proposed By-law. Additional inspections would take place as needed if a complaint is filed.

## *Enforcement*

Once Staff have reviewed the application and inspected the property, applicants would be issued a license to allow the keeping of hens. Under the By-law, a license may be revoked for any reasonable grounds as deemed fit by the Town, including if complaints are not able to be resolved.

Under the proposed By-law applicants will be required to hold a license to keep hens on properties where the use is not currently permitted and that are used for residential purposes. If a license is revoked, the applicants would be in contravention of the Town's Zoning By-law, which prohibits the keeping of chickens outside of larger agricultural properties. Municipal By-law Enforcement Staff would issue a notice indicating the contravention and would provide the date by which owners would be required to remove the hens. Although it would be the responsibility of the owner to relocate the hens, the Town would assist by providing options.

Currently, the Welland Humane Society does not generally accept surrendered hens as it is difficult to adopt out abandoned birds. If this becomes an issue, Staff will suggest the adoption of hens to other license holders. Staff would work with the owner to provide options however it is ultimately the responsibility of the owner to relocate the hens accordingly.

## **Agricultural Advisory Committee Comments:**

As directed by Council, Staff provided the draft Hen By-law to the Agricultural Advisory Committee for their review, comment, and recommendations. The Committee met and reviewed the by-law at their meeting in April and had a lengthy discussion on the By-law, brainstorming ideas and trying to find a balance between permitting the use, while protecting existing commercial farm operations. Their discussions included:

- Avian flu and biosecurity and how to ensure that backyard hens do not create any adverse impact on larger commercial poultry operations or public health and safety;
- Education around proper husbandry procedures;
- Licensing requirements and the fear that if it is too difficult or expensive to get a license, people will just continue to have chickens illegally;
- Education and compliance timeframes if a By-law were to be adopted;
- Setback requirements, lot size, location and land use compatibility;
- Minimum Distance Separation (MDS) requirements; and
- Rural vs. urban properties and the desire to have one by-law that applies to the Town as a whole.

Staff then took their feedback and revised the draft By-law to reflect the discussions. At its meeting in June, the Committee reviewed the revised By-law and requested the following to be included:

- Rather than lot dimension requirements (proposed 30m frontage by 100m depth) for properties that would be an adequate size to permit hens, the Committee would like to see a minimum lot area requirement of 0.4 hectare (1 acre), this will address lots that are irregular in shape, but still provide adequate space for the keeping of hens;
- Hen runs should be completely enclosed, i.e., fenced on all sides and the roof with chicken wire or similar material;
- An additional requirement that if the occupant of the property is a tenant and not the property owner, written permission from the owner to keep chickens must be provided before a licence may be issued.

The Committee also discussed delaying the by-law for a year to monitor and address avian flu concerns, but ultimately determined that the regulations put in place through the licencing By-law should mitigate concerns and that waiting to pass the By-law would not result in any added benefit to the Town.

The Committee has ultimately endorsed the draft Hen Licencing By-law, as amended. The draft By-law as reviewed and supported by the Committee, and if approved by Council, would be applicable to all areas of the Town of Pelham, i.e. no distinction between urban and rural areas, subject to meeting the requirements.

### **Conclusion:**

Generally, the Agricultural Advisory Committee was pleased with the outcome of their discussions and the revised draft Licensing By-law. The desire to see something that would be applicable Town-wide and based on a lot area requirement rather specific lot frontage and depth requirements was evident, and the recommended changes reflect this.

Staff is supportive of the recommendations of the Committee. The 0.4 hectare (1 acre) minimum lot area requirement would permit the limited keeping of hens in the urban and rural areas, on lots that can support the use, while minimizing potential impacts on neighbouring properties. It is recognized however that the number of lots in the urban area that meet this requirement is limited. The proposed rear and side yard setbacks should ensure that the hen coop and run would be located away from neighbouring properties, while still maintaining adequate amenity space for the occupant of the property. By licencing this use, the Town will have a greater understanding of where these uses are occurring which can assist when the Town becomes aware of an avian flu outbreak. Licencing will

also provide Staff with better enforcement options, overall control over the use and land use compatibility. Staff are of the opinion that subject to compliance with the regulations, allowing hens in the rear yards of residential properties in accordance with the provisions of the proposed Licencing By-law should not cause adverse impacts to neighbouring properties or the community.

### **Financial Considerations:**

As noted, Staff is recommending that a one-time \$100.00 processing fee be charged to cover the cost of Staff having to process the application and conduct site inspections.

### **Alternatives Reviewed:**

Council could continue to prohibit hens on residential properties and only allow hens as part of a bona fide agricultural use.

Council could move forward with a Hen Licensing By-law with modifications.

### **Strategic Plan Relationship: Community Development and Growth**

Allowing for the keeping of hens contributes to the character of the Town, which supports building strong communities. At the same time, the proposed Licencing By-law provides for the appropriate protection of the quality of life enjoyed by residents. Further, the keeping of hens supports access to fresh eggs and a healthy food source of individuals and families.

### **Consultation:**

This report and draft Hen By-law have been prepared in consultation with the Town's Solicitor, Fire Chief, Municipal By-law Enforcement Staff, and the Town Agricultural Advisory Committee.

### **Other Pertinent Reports:**

- Community Planning and Development Report #2022-0220
- Community Planning and Development Report #2022-0252
- Community Planning and Development Memo dated December 16, 2022 (received by Council at the January 9, 2023 Council Meeting)

### **Attachments:**

Appendix "A" – Draft Backyard Hen Licensing By-law

### **Prepared and Recommended by:**

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