



TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES MEETING ON OCTOBER 10TH, 2018
FROM:	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	Nuisance Feeding of Wildlife – Proposed Amendments to Public Nuisance By-law PH-18

RECOMMENDATION

That on the Recommendation of the Managing Director, Development & Compliance Services and the Chief Building Official,

the attached proposed by-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting to be held October 16th, 2018, to amend the Public Nuisance By-law PH-18, to address nuisance feeding of wildlife.

BACKGROUND

On June 12th, 2018 Council resolved:

That, on the recommendation of the Managing Director, Parks and Recreation, the following actions be taken with respect to the Parks and Recreation Area By-law PR-2

- a) the proposed By-law, as appended to the staff report dated May 29, 2018, BE INTRODUCED at the Municipal Council meeting on June 12, 2018, to amend the Parks & Recreation Area By-Law PR-2 to address the feeding of wildlife in city parks and other administrative amendments; and,*
- b) the attached communication from Councillor P. Hubert BE REFERRED to the Civic Administration for review and a report back to the appropriate standing committee on the matter; (Schedule “A”).*

it being noted that no individuals spoke at the public participation meeting associated with this matter.

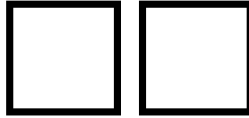
Communications and Petitions

That the following communications regarding the feeding and treatment of wildlife BE RECEIVED and BE REFERRED as noted on the Agenda:

* Note: this correspondence can be found at pages 98 and 100 of the Council Minutes of June 12, 2018:
<https://pub-london.escribemeetings.com/FileStream.ashx?DocumentId=46993>)

On July 5th, 2018 at the Animal Welfare Advisory Committee meeting Civic Administration discussed the matter of wildlife feeding on private property with the members of the committee. The City of Hamilton’s By-law to Regulate the Feeding of Wildlife was presented to AWAC with the request for review and future feedback on the matter.

On August 23rd, 2018 the Chair of AWAC forwarded Civic Administration a communication on this matter indicating the AWAC is in favour of regulating the feeding of wildlife on



private property. AWAC also indicated that emphasis needs to be placed on public education.

Civic Administration submits that excessive wildlife feeding complaints on private property are relatively low. Within the past five (5) years it is approximately 3 – 5 complaints annually. Albeit the complaints are low, Civic Administration does recognize that the excessive feeding of wildlife can be problematic for a variety of reasons including threats to people by the attraction of unwanted animals to the property. In addition animals will learn to associate humans with food and can become a problem to neighbours. Habituated animals can become aggressive and the feeding of animals in an urban area may increase the risk of motor vehicle accidents, resulting in property damage, injury or death. Wildlife is, for the most part, regulated by the Ministry of Natural Resources and Forestry (MNR). See additional wildlife feeding “dos and don’ts” posted by the MNR.

<https://www.ontario.ca/page/feeding-wildlife-dos-and-donts>

Municipal by-laws can be struck down if they are found not to have a proper municipal purpose (see for example [Eng v. Toronto \(City\), \[2012\] O.J. No. 5661](#); [Xentel DM Inc. v. Windsor \(City\), \[2004\] O.J. No. 3656](#)). In *Eng*, the court determined that a ban on the sale of shark fins had no proper municipal purpose for the City of Toronto. In *Xentel*, a by-law that prohibited entertainment involving exotic animals was struck down by the court; the court determined that the pith and substance of the by-law was animal welfare and not public safety, and the City had insufficient evidence to show that exotic animal performances were a threat to public safety. Further, it is open to a person to allege their *Charter* rights (e.g. freedom of expression) were violated by prohibiting the feeding of wildlife; a court would review the legislation to determine whether a restriction on a *Charter* right was reasonable.

Where Council is of the opinion that a matter is or could become or cause public nuisances, if such opinion is arrived at in good faith, it is not subject to court review (per s. 128 of the *Municipal Act, 2001*).

CONCLUSION

Civic Administration recommends the proposed draft amendment to the Public Nuisance By-law where excessive feeding of wildlife creates a public nuisance which can negatively impact the social and environmental well-being of the municipality; or the health, safety and well-being of persons, or the protection of persons and property. With the adoption of such regulations, City of London Municipal Law Enforcement Services could then respond to such complaints should Council deem this necessary.

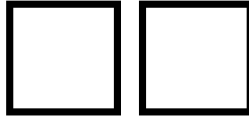
In the draft by-law, “food” does not include composting materials, plants, trees, shrubs berries nor fruit. Not all feeding of wildlife is prohibited; only feeding that constitutes a public nuisance whether on public or private property. There are exceptions for: land zoned for agricultural uses; leaving food for an ear-tipped feral cat colony for trap, neuter or spay and release program approved by the City; or leaving food as bait in a trap to capture wildlife if the person has the legal authority to do so. Persons are required to remove food if it constitutes Nuisance Feeding, and if the person fails to remove it, the City may remove it at the person’s expense.

Civic Administration would request an application be forwarded to the Regional Senior Justice seeking a set fine of \$125.00 for the offence of nuisance wildlife feeding.

--	--

PREPARED BY:	
H. CHAPMAN, MANAGER MUNICIPAL LAW ENFORCEMENT SERVICES	
CONCURRED BY:	RECOMMENDED BY:
O. KATOLYK, CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

cc: L. Marshall, City Solicitor's Office



APPENDIX “A”

Bill No.
2018

By-law No. PH-18-

A by-law to amend By-law PH-18 entitled, “A by-law to prohibit and regulate public nuisances within the City of London.” to prohibit nuisance feeding of wildlife.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25 (“*Municipal Act, 2001*”), provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: 5. Economic, social and environmental well-being of the municipality; 6. Health, safety and well-being of persons; 8. Protection of persons and property; and 9. Animals;

AND WHEREAS section 128 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10, a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances, and the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS, in the opinion of Council, nuisance feeding of wildlife is or could become or cause a public nuisance;

AND WHEREAS section 446 of the *Municipal Act, 2001* provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law PH-18 is amended by deleting the sixth recital and replacing it with the following:

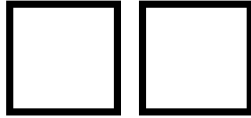
AND WHEREAS, in the opinion of Council, nuisance parties, public urination and defecation, knocking over objects on the Highway, unnecessary interference with use and enjoyment of public places, and nuisance feeding of wildlife are or could become or cause public nuisances;

2. Section 1 of by-law PH-18 is amended by inserting the following definitions after the definition of “Dwelling”:

“**feed**” and “**feeding**” includes the regular or intermittent supply of food;

“**food**” means anything that can be consumed by an animal for sustenance, but does not include:

- (a) composting materials kept in accordance with all applicable laws, regulations and by-laws;
- (b) landscaping materials or plants, trees or shrubs (including shrubs, berries on shrubs, trees, herbs, vegetables on vegetable plants, fruit on trees);



3. Section 1 of by-law PH-18 is amended by inserting the following definition after the definition of “Highway”:

“Nuisance Feeding of Wildlife” means feeding or permitting the feeding of wildlife, or leaving food that is accessible by wildlife, which results in one or more of the following occurring so as to constitute a public nuisance whether occurring on public or private property:

- (a) excessive accumulation of food, including bird seed and seed casings;
- (b) excessive accumulation of wildlife feces;
- (c) unreasonable interference with the normal use and enjoyment of nearby premises;
- (d) excessive attraction of rodents (including mice or rats) or predatory wildlife (including coyotes) to the premises;

4. Section 1 of by-law PH-18 is amended by inserting the following definition after the definition of “Premises”:

“wildlife” means an animal that belongs to a species that is wild by nature.

5. By-law PH-18 is amended by inserting the following new Section 4.2 as follows:

4.2 NUISANCE FEEDING OF WILDLIFE

- (1) No person shall engage in or permit Nuisance Feeding of Wildlife.
- (2) Subsection (1) shall not apply to:
 - (a) land zoned for agricultural uses;
 - (b) a person leaving food for an ear-tipped cat or a feral cat colony for the purposes of a trap, neuter or spay and release program approved by the City; and
 - (c) a person leaving food as bait in a trap to capture wildlife if they have the legal authority to do so.
- (3) Every person who engages in or permits Nuisance Feeding of Wildlife shall immediately remove such food when directed to do so by the City, and if the person fails to do so, the City may enter upon the Premises at any reasonable time to remove the food at the person’s expense. The City may recover the costs (plus interest) of removing the food from the person required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The amount of costs including interest constitutes a lien on the land upon the registration in the proper land registry office of the notice of lien.

6. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on _____, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading -
Third Reading -

Agenda Item # Page #

--	--

Schedule "A"