



Report to: General Committee

Meeting Date: January 20, 2020

SUBJECT: Extension of Ontario SPCA Contract
PREPARED BY: M. Killingsworth Ext. 2127
C. Lehman Ext. 2131

RECOMMENDATION:

- 1) That the report entitled “Extension of Ontario Society for the Prevention of Cruelty to Animals (OSPCA) Contract” be received; and,
- 2) That Council approve a one year extension until March 31, 2021 with the Ontario SPCA for the provision of animal sheltering and control services; and,
- 3) That staff report back to Council with options for a new animal service delivery model to be implemented when the one year term is complete with the Ontario SPCA; and further,
- 4) That staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to:

- 1) Provide an update on recent legislative changes in Ontario related to Animal Protection;
- 2) Identify and explain changes to the Ontario SPCA enforcement model that will have an impact on the City, requiring a change to the provision of Markham’s Animal Services in 2021 and beyond.

BACKGROUND:

The City of Markham (the City) has a comprehensive animal services delivery model that includes enforcement of City by-laws, animal patrols, education and public outreach through community engagement opportunities, as well as wildlife rehabilitation services.

The Ontario SPCA has been providing the City with contracted animal services, including sheltering and enforcement patrols, for the past 10 years at a cost of approximately \$588,000.00 annually. The Ontario SPCA also operates the Cat Adoption and Education Centre (CAEC) at the Thornhill Community Centre on behalf of the City at a cost of \$100,000.00 annually. The current contract for both animal sheltering and enforcement and the CAEC operation expires on March 31, 2020.

As part of a separate contract, wildlife rehabilitation services are provided to the City by Shades of Hope Wildlife Refuge. This agency provides wildlife rescue, rehabilitation, and

education services at a cost of approximately \$40,000.00 annually. This partnership has been in place for 3 years and expires on December 31, 2020.

1) Recent Provincial Legislative Changes

In January of 2019, and in response to a constitutional challenge in *Bogaerts v. Attorney General of Ontario*, the Ontario Superior Court struck down the province's animal protection law enforcement regime, declaring that it was unconstitutional for the Ontario SPCA (as a private charity not subject to reasonable oversight measures) to enforce public animal protection laws.

The decision recognized a new principle of fundamental justice, declaring that under the *Charter of Rights and Freedoms*, it is unconstitutional for the province to assign police and other investigative powers to a law enforcement agency not subject to reasonable standards of transparency and accountability. The Ontario SPCA is not subject to freedom of information laws or the *Police Services Act* that apply to other law enforcement bodies.

The courts gave the province one year to develop a new animal protection regime. In March of 2019, the Ontario SPCA announced it would no longer be investigating cases of animal cruelty in Ontario as of June 28, 2019. In response, the provincial government appointed a Chief Inspector from the Ontario Provincial Police to provide interim oversight of animal cruelty issues within Ontario until the new legislation was finalized.

The provincial government appealed the decision and the appeal was heard in the fall of 2019. In November of 2019, the *Bogaerts v. Attorney General of Ontario* decision was overturned at Appeal Court, upholding the constitutionality of the provisions within the *Ontario SPCA Act*. Despite the overturning of the decision, the Ontario SPCA has advised City staff that the organization will not be involved in animal cruelty investigations or new animal control contracts in the future.

Subsequently, the Solicitor General introduced Bill 136, the *Provincial Animal Welfare Services Act (PAWS Act)* in the Ontario Legislature, which repeals the current *Ontario SPCA Act* and provides for increased regulations as they relate to animal welfare. The new *PAWS Act* received Royal Assent on December 5, 2019 and came into effect on January 1st, 2020. Oversight of the *PAWS Act* will be the responsibility of a provincially appointed Chief Inspector, with similar powers as per the previous *Ontario SPCA Act*. One of the main differences affecting municipalities is that any organization that is subject to *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) regulations, may appoint Inspectors and therefore enforce this Act's provisions. This framework does not confer the ability for the Ontario SPCA to appoint Inspectors under the *PAWS Act*, as they are not subject to MFIPPA regulations. However, this does mean the City may, in future, apply to have staff appointed as Inspectors who could enforce the regulations outlined within the *PAWS Act*.

2) Changes to Ontario SPCA Service Delivery Affecting Markham

At the August 21, 2019 meeting of the Municipal Liaison Committee attended by staff from Markham, Richmond Hill and the Ontario SPCA, staff were informed (by the Ontario SPCA) that in addition to not undertaking cruelty investigations, the agency was also considering moving away from enforcement services. This shift in business practice would include removing themselves from enforcement service contracts they have held with municipalities – including those they have with Markham and Richmond Hill. This move would allow the Ontario SPCA to focus on education, animal welfare, and sheltering services throughout the province.

In September of 2019, this information was verified by Deputy City Clerk Michael Killingsworth with senior officials of the Ontario SPCA. It was confirmed that the Ontario SPCA was indeed planning to remove itself from all municipal enforcement business as of April 1, 2020. It is expected that the Ontario SPCA will continue to provide sheltering services moving forward and will provide consulting services to enforcement agencies requiring assistance with animal removals, education, housing, and support services on a fee for service basis.

DISCUSSION:

Care and control of animals is a unique area of public service that contributes to current and future sustainability of the quality of life within the City. The timing of the Ontario SPCA's decision to extract itself from the enforcement services business is unfortunate. Nevertheless, with the expiration of the City's contract with the Ontario SPCA on March 31, 2020, the City must take action.

Staff have been investigating the City's options for the future of our animal service delivery, but given the time constraints with the contract end date, staff have approached the Ontario SPCA regarding a possible one year extension to our current animal services and sheltering contract.

Based on preliminary work conducted by staff, it has been determined that the municipal trend is moving towards in-house animal service delivery. The City of Markham remains one of the few municipalities of its size yet to implement this type of change in service delivery. In York Region specifically, the Town of Aurora began in-house patrol services in January of 2018, with the Town of Whitchurch-Stouffville implementing a similar program in January of 2019. The City of Richmond Hill has recently announced a partnership with the City of Vaughan which will provide animal services and sheltering effective December 1, 2019 for two years with the option to extend for two additional two-year terms. The cost to Richmond Hill will be \$450,000 for the first year, with three percent fee increases year over year for the remainder of the agreement term.

At a future meeting, Staff will report back with a more detailed review of alternative options for the City's animal services delivery, including an in-house model or a partnership with a neighbouring municipality. As part of this review, a comprehensive

municipal jurisdictional scan of animal services delivery models in the Greater Toronto and Hamilton Area will be completed by staff.

CONCLUSION:

The relationship between the Ontario SPCA and the City remains cooperative and has worked effectively over the past 10 years. Given the multiple changes to animal welfare legislation in Ontario, coupled with the substantial changes to the Ontario SPCA's business model, staff require further time to review, prepare, and implement a more sustainable animal services model.

Based on the success of the current partnership with the City and the potential to partner for sheltering services in the future, the Ontario SPCA has agreed to a one-time extension for animal control provisions, but will not commit to continuing this partnership past March 31, 2021. In the interim, staff recommend extending the current partnership with the Ontario SPCA for a one year term expiring on March 31, 2021.

FINANCIAL CONSIDERATIONS

It is expected that an increase of approximately \$60,000 will be required to secure a one year contract extension. This cost is expected to be offset through a vigorous approach to the recovery of Pet Licensing Fee revenue in 2020 and beyond. Staff will seek approval for a 2021 budget increase if required.

HUMAN RESOURCES CONSIDERATIONS

No impact for a one year contract extension.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Finance and Legal Departments have been consulted in relation to this report.

RECOMMENDED BY:

Kimberley Kitteringham
City Clerk

Trinela Cane
Commissioner, Corporate Services