

**SUBJECT:** Committee of Adjustment Procedural By-law Amendment  
File #: PR 20 112899

**WARD:** All Wards

**PREPARED BY:** Geoff Day, MCIP RPP - Ext. 3071,  
Senior Planner, Zoning and Special Projects

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Manager, Zoning and Special Projects

**REVIEWED BY:** Francesco Santaguida, Ext. 3583  
Assistant City Solicitor, Legal Services Department

Ron Blake, M.C.I.P., R.P.P., Ext. 2600  
Senior Development Manager

**RECOMMENDATION:**

1. That the report titled “Committee of Adjustment Procedural By-law Amendment File #: PR 20 112899”, be received;
2. That Staff be directed to reconvene Committee of Adjustment meetings to consider applications utilizing electronic meeting participation;
3. That the amendment to Bylaw 2014-170 (A By-law to Establish a Procedure for the Committee of Adjustment of the City of Markham) as attached in Appendix ‘B’ be enacted and,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**BACKGROUND:**

Section 238 of The *Municipal Act*, 2001, SO 2001, c. 25, as amended (the “*Municipal Act*”) requires all committees and local boards to adopt a procedural by-law to govern the calling, place and proceedings of meetings.

Although the City of Markham has adopted a general procedural by-law intended to apply to all municipal boards and committees, the Committee of Adjustment (the “COA”) is a special, quasi-judicial body operating at “arms-length” from City Council, and as such, has its own procedural by-law.

In 2014, Council adopted procedural by-law 2014-170, respecting the operation of the Committee of Adjustment.

Bill 187, *Municipal Emergency Act*, 2020

The Ontario Government passed Bill 187, *Municipal Emergency Act*, 2020, on March 19, 2020. Bill 187 provides municipal Councils with the ability to amend their procedural bylaws to set out alternative procedures to be followed during an emergency situation, when declared by the Province. The Bill permits municipal Councils to ensure that local decision making, to every extent possible, is not adversely affected during emergency situations. Amendments under Bill 187 were not required respecting the

Committee of Adjustment since the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, already authorizes tribunals, including the Committee of Adjustment, to hold meetings in person, electronically, or by written hearing.

*Planning Act* Notice Requirements

Regulations under the *Planning Act* offer two alternatives to provide notice of hearing for both Minor Variance applications and Consent applications.

In both cases, the Regulations give a municipality the option to satisfy the requirements of public notice requirement by:

- a) giving notice by personal service or ordinary mail to every land owner within a prescribed distance of the subject lands AND posting of notice on the subject lands clearly visible and legible from the public street; OR,
- b) publishing a notice in a newspaper that sufficiently circulates to the area surrounding the subject lands that would provide reasonable notice of the application.

**DISCUSSION:**

**Amendment to Bylaw 2014-170 (A By-law to Establish a Procedure for the Committee of Adjustment of the City of Markham) is required**

Markham's procedural by-law (Bylaw 2014-170) for the COA was enacted in 2014 (See Appendix 'A'). It sets out the procedures relating to the calling of meetings, administration, quorum, conduct of meetings, voting, and decision making powers.

Sections 2.1, 2.3 and 2.4 "Calling of Hearings", of the Procedural By-law state the following:

- 2.1 All hearings of the Committee shall be called by the Secretary-Treasurer, and notice of any hearing shall be given by pre-paid mail as well as posting of a notice sign, in accordance with the *Planning Act*.
- 2.3 A sign or signs, prepared by the City and providing notice of the public hearing, shall be placed on all properties subject to a Committee application in accordance with the *Planning Act* and section 2.4 if applicable.
- 2.4 In the case of a corner lot or such other lot with frontage on more than one public or private street, a notice sign as referred to in section 2.3 shall be erected on each street, in a location where it can be clearly seen from such street.

*Note: For clarity, Section 2.2 refers to the public availability of Committee agendas of at least five (5) calendar days prior to the scheduled meeting, and available through the City of Markham website. **This section is not proposed to be amended.***

The *Planning Act* provides for several methods of notice, including physical mail, on-site signage and, notice in local newspapers. During a state of emergency these methods may be amended to permit notice

through other means. During the current, or any possible future declared state of emergency, it may not be feasible or physically safe for a municipality to provide notice in accordance with the current practice that meets the requirements of the procedural by-law for the Committee of Adjustment.

In order to ensure the health, safety and well-being of the public, applicants and municipal Staff, it is recommended that Procedural By-law 2014-170 be amended to include the following new sections:

- 2.5 Notwithstanding 2.1, 2.3, and 2.4 above, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as may be amended or replaced, notice of any hearing may be given in accordance with the *Planning Act*, R.S.O. 1990, c. P.13 and its regulations, all as amended, and/or any by-laws, legislation, and/or regulations related to the declaration of an emergency, where appropriate.
- 2.6 Any modification to notice in accordance with section 2.5 above shall be authorized by the Commissioner of Development Services or designate.
- 2.7 Notwithstanding Section 2 above, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as may be amended or replaced and where permitted by law, the Committee may issue a direction related to the provision of notice for a hearing, but may not allow for no notice of a hearing to be issued.
- 2.8 Nothing in this by-law shall prevent the holding of a meeting of the Committee of Adjustment after a declaration of emergency has been lifted, where notice of the meeting was provided in accordance with section 2.5 or 2.7.

Section 3.1 “Location of Hearings” of By-law 2014-170, states the following:

- 3.1 The location of all hearings of the Committee shall be identified on the notice of hearing referred to in Section 2.1.

Staff propose the following revision to section 3.1 to ensure the location of hearing is included in all notice:

- 4.1 The location of all hearings of the Committee shall be identified on the notice of hearing referred to in Section 2.

Section 5.1 “Quorum” of By-Law 2014-170, states the following:

- 5.1 A minimum of three (3) members of the Committee shall be present to constitute a quorum.

While Section 5.2 of the *Statutory Powers Procedure Act* currently authorizes Committee of Adjustment to hold meetings electronically, Staff are proposing the following amendment to ensure clarity in conforming with the requirements of quorum.

- 5.1.1 Notwithstanding 5.1, a member of the Committee who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time, in accordance with the *Planning Act*, *Statutory Powers Procedure Act* and *Municipal Act*.

Section 6 “Conduct of Meetings” in By-law 2014-170 describes in detail, the conduct of meetings in accordance with the *Planning Act*, and other policy directives of the City. Staff have provided further clarification that meetings shall be held in accordance with the *Statutory Powers Procedure Act*. Staff are further proposing the addition of Section 6.12, authorizing meetings held through written means.

- 6.12 Notwithstanding 6.2 to 6.11 inclusive, all or portions of meetings in accordance with this By-law may be held through written means, as determined by the Committee.

- (1) Should the Committee wish to hear an application through a written hearing,
- a. the Committee may make rules or issue directions with respect to the written hearing setting out:
    - i. the timelines for the submission of materials by the applicant;
    - ii. the posting of those materials online at [www.markham.ca](http://www.markham.ca) for public review;
    - iii. the timeline for the submission of materials by any person or party in support or opposition to the application;
    - iv. the timeline for reply submissions by the applicant.
  - b. After the matters set out in subsection (a) are complete, the Committee may make rules or issue directions with respect to the written hearing setting out:
    - i. the deliberation of the application by the Committee members;
    - ii. voting on the application by the Committee; and
    - iii. the issuance of a decision by the Committee.

Section 8 “Decisions of Committee” of By-Law 2014-170, describes the methods by which the Committee of Adjustment provides notice of decision to interested or affected parties.

- 8.4 Notwithstanding 8.2 and 8.3, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, all decisions shall be prepared and posted on the City of Markham’s website, and may provide notice of such decision by electronic means to the applicant and each person or public body required in accordance with Section 45(10) or 53(17) of the *Planning Act*, as amended.

- 8.4.1 In accordance with Section 8.4, any person who wishes to be provided notice of a decision by the Committee shall provide an electronic mail (e-mail) address to provide service. Any person who refuses to, or otherwise does not provide an e-mail address to the Secretary-Treasurer shall be deemed to have withdrawn a request for notice of the decision of the Committee.

While it is not anticipated that the COA will hold meetings through written means as a matter of course, it provides additional flexibility which may be needed during the current emergency or possible future emergencies that may affect the operation of the COA. The proposed Section 6.12 also supports the City’s Business Continuity Plan.

**CONCLUSION:**

The proposed amendments will clarify procedures should the COA wish to hold digital or written meetings. The amendments will further ensure that notice will continue to be provided as required pursuant to the *Planning Act*, *Statutory Powers Procedure Act*, *Emergency Management and Civil Protection Act*, or any other Act or Regulation enacted as a temporary measure during this, or any future declared emergency.

The current practice of the COA is to provide notice earlier, and at a greater circulation distance than what is required under the *Planning Act*. COA Staff provide agendas, Staff memos, and copies of submitted documents on the City's website prior to meetings. To enhance any notice provided under the current declared emergency, COA Staff will provide notice to the local Ward Councillor via email to allow further distribution via email to any residents groups or mailing list deemed appropriate by the Ward Councillor. COA Staff will further seek opportunities to post notice on the City's website.

**FINANCIAL CONSIDERATIONS AND TEMPLATE:**

Not applicable.

**HUMAN RESOURCES CONSIDERATIONS:**

Not applicable.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Not applicable.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Markham's Legislative Service Department was consulted in preparing this report.

**RECOMMENDED BY:**

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Biju Karumanchery, M.C.I.P., R.P.P.,  
Director, Planning and Urban Design

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Arvin Prasad, M.C.I.P., R.P.P.,  
Commissioner of Development Services

**ATTACHMENTS:**

**APPENDIX 'A'**     Procedural By-law 2104-170

**APPENDIX 'B'**     Proposed amendment to By-law 2014-170

**APPENDIX 'A' Procedural By-law 2104-170****By-law 2014-170****A By-law to Establish a Procedure for the  
Committee of Adjustment of the City of Markham**

Whereas the Council of the Corporation of the City of Markham has passed By-law 2011-194 to constitute and appoint a Committee of Adjustment; and,

Whereas Section 238(2) of the *Municipal Act, 2001, S.O. 2001, c. 25* (the "*Municipal Act*"), as amended, requires every municipality and local board to adopt a procedure by-law for governing the calling, place and proceedings of hearings; and,

Whereas Section 239(1) and Section 239(5) of the *Municipal Act* requires all meetings to be open to the public and state that a meeting shall not be closed to the public during the taking of a vote; and,

Whereas the Committee of Adjustment for the City of Markham has been established pursuant to the *Planning Act, R.S.O. 1990, c.P. 13*, as amended; and,

Now therefore the Council of The Corporation of the City of Markham hereby enacts as follows:

**1. Application**

1.1 The procedures contained in this By-law shall be observed in all proceedings of the Committee of Adjustment (the "Committee") and shall, subject to Section 1.2, be the procedures for the order and dispatch of business conducted by the Committee.

1.2 The Committee may also pass Committee policy directives respecting the conduct of business ("Policy Directives"), provided they are in accordance with the *Planning Act, R.S.O. 1990, c.P. 13*, as amended and the applicable regulations thereunder, (the "*Planning Act*"), and the provisions of this By-law.

**2. Calling of Hearings**

2.1 All hearings of the Committee shall be called by the Secretary-Treasurer, and notice of any hearing shall be given by pre-paid mail as well as posting of a notice sign, in accordance with the *Planning Act*.

2.2 All agendas of hearings of the Committee shall be made available to the public at least five (5) calendar days prior to the scheduled meeting, and such agendas shall be made available through the City of Markham website.

2.3 A sign or signs, prepared by the City and providing notice of the public hearing, shall be placed on all properties subject to a Committee application in accordance with the *Planning Act* and section 2.4 if applicable.

2.4 In the case of a corner lot or such other lot with frontage on more than one public or private street, a notice sign as referred to in section 2.3 shall be erected on each street, in a location where it can be clearly seen from such street.

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**3. Location of Hearings**

- 3.1 The location of all hearings of the Committee shall be identified on the notice of hearing referred to in section 2.2.

**4. Committee of Adjustment Administration**

- 4.1 The members of the Committee shall elect from among themselves both a Chair and a Vice-Chair.
- 4.2 In the absence of the Chair, the Vice-chair shall carry out the responsibilities of the Chair required by this By-law and the Policy Directives. In the absence of both the Chair and the Vice-chair, the members of the Committee present shall elect a Chair for the meeting.
- 4.3 The Committee shall appoint as Secretary-Treasurer and as Assistant Secretary-Treasurer the current employees of the City of Markham Planning and Urban Design Department so designated by the City.

**5. Quorum**

- 5.1 A minimum of three (3) members of the Committee shall be present to constitute a quorum.
- 5.2 Subject to subsection 5.1 above, the inability of a member to act due to a declared Conflict of Interest in accordance with section 9 does not impair the powers of the Committee or of the remaining members of the Committee.
- 5.3 If no quorum is present thirty (30) minutes after the time appointed for the meeting of the Committee, the Secretary-Treasurer shall record the names of the members of the Committee present and the meeting will stand adjourned until the next appointed time. If all those members of the Committee who are present remain until a quorum is present, then the meeting shall proceed.

**6. Conduct of Meetings**

- 6.1 The meeting Chair shall conduct meetings in accordance with this By-law, the Policy Directives, and the *Planning Act*.
- 6.2 The meeting Chair shall:
- Call the meeting to order;
  - Call for disclosures of Conflict of Interest in accordance with section 9;
  - Call for confirmation of Minutes of the previous Committee meeting;
  - Call for any requests for deferral of an application;
  - Direct the Secretary-Treasurer to call each application in the order in which it appears on the agenda, or in any other order, at the Committee's discretion.
- 6.3 The Chair shall ask the applicant, the authorized agent, or the owner's representative (the "Applicant") to identify their name and address and present the application. The Applicant shall be provided with a maximum of ten (10) minutes to present information respecting the application to the Committee. Any presentation beyond the maximum time period shall be at the discretion of the Chair.
- 6.4 The Chair will address the public and invite comments from the public with respect to the application being heard. The Committee may limit the length of a public submission to ensure that all members of the public may be heard. Members of the public shall confine their remarks to the subject application.

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- 6.5 The Committee may ask questions of the Applicant at this time, during or after the presentation.
- 6.6 At any time, the Chair or Committee members may ask the Secretary-Treasurer to:
- Read aloud any comments received from agencies who responded to the circulation of the notice of the application;
  - Read aloud any comments received from persons expressing an interest in the application;
  - At the direction of the Chair, summarize the nature of the interest being expressed;
  - Read aloud any proposed conditions of approval. The Committee may delete from, add to or revise such proposed conditions.
- 6.7 Following public input, the Committee may give the Applicant an opportunity to respond to any comments received from commenting agencies or interested parties, and to provide a summary of the substance of the application (the "Applicant's Reply").
- 6.8 The Chair and Committee may ask additional questions at this time.
- 6.9 Following the Applicant's Reply, the Committee shall consider the issues raised by the application and the evidence heard by the Committee. The Chair shall:
- Ask whether the members of the Committee wish to conduct further discussions on the merits of the application;
  - Ask the members of the Committee for a motion to either approve or deny the application;
  - Upon a receipt of a motion from a member of the Committee, ask for a remaining member of the Committee to second the motion;
  - Permit discussions on the motion;
  - Call for a vote by the Committee on the motion in accordance with section 7.1; and
  - Announce the decision of the Committee, as determined in accordance with section 7.3.

Following satisfaction of the requirements of sections 6.9(a) to (f), the Chair may, in his or her sole discretion, summarize any dissenting decisions orally.

- 6.10 A request for deferral of a matter on the scheduled hearing date by the Applicant, City Staff or any commenting agency, must be for reasonable cause and must be made at the hearing. If granted, the Committee, in consultation with the Secretary-Treasurer, shall either:
- set a new meeting date at the meeting, in which case no further notice will be provided; or,
  - adjourn the hearing sine die, in which case notice of the new meeting date shall be provided to all persons who provide the Secretary-Treasurer with a written request for such notice.
- 6.11 A request for withdrawal of a matter on the scheduled hearing date by the Applicant shall be recorded by the Secretary-Treasurer, and the Committee will take no further action on the matter.
- 7. Voting**
- 7.1 Each member of the Committee, when requested by the Chair to vote in accordance with section 6.9(e) on a motion seconded in accordance with section 6.9(c), shall indicate by show of hands, or any other form of acknowledgement, his or her position on such motion.


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- 7.2 In the event that the initial motion tabled in accordance with section 6.9(c) is defeated, the Chair shall ask the members of the Committee for a new motion, in accordance with the following:
- a) if the defeated motion was a motion to approve, the Chair shall request a motion to deny; or
  - b) if the defeated motion was a motion to deny, the Chair shall request a motion to approve; and
  - c) Sections 6.9 c) to f) shall apply to such new motions referred to in a) and b) above.
- 7.3 The majority decision of the Committee on a motion voted on under section 7.1 or 7.2 shall constitute the decision of the Committee, and shall be announced in accordance with section 6.9(f).
- 7.4 The Chair is entitled to all rights of a Committee member, including voting. The Chair is required to vote in the event that it is required in order to break a tie vote.
- 8. Decisions of the Committee of Adjustment**
- 8.1 No decision of the Committee on an application is valid unless it is approved by the Committee in accordance with section 7, and the decision of the Committee, whether granting or refusing an application, shall be in writing and shall set out the reasons for the decisions, and shall be signed by the members who concurred in the decision.
- 8.2 A copy of the Committee's written decision will be prepared and issued in accordance with the provisions of the *Planning Act*.
- 8.3 A copy of the Committee's written decision shall be sent to each Applicant, and any other person who requests a copy of the decision by providing a written request to the Secretary-Treasurer.
- 9. Conflict of Interest**
- 9.1 Any member of the Committee required to do so by the provisions of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M. 50, as amended, shall disclose any direct or indirect pecuniary interest for themselves or a family member respecting any application(s) listed on the agenda referred to in section 2.2 (a "Conflict of Interest") and shall state the general nature of such interest, and it shall be recorded by the Secretary-Treasurer accordingly. Any member of the Committee who declares a Conflict of Interest shall leave the hearing room for the duration of the hearing of any application(s) for which he or she has declared a Conflict of Interest, and shall not be entitled to vote on the matter.

Read a first, second, and third time and passed on November 25, 2014.



Kimberley Kitteringham  
City Clerk



Frank Scarpitti  
Mayor

**APPENDIX 'B'**  
**Proposed amendment to by-law 2014-170**

**By-law 2020-XXX A By-law to Amend the Procedure for the Committee of Adjustment of the City of Markham**

Whereas the Council of the Corporation of the City of Markham has passed By-law 2011-194 to constitute and appoint a Committee of Adjustment; and,

Whereas Section 238(2) of the Municipal Act, 2001, S.O. 2001, c. 25 (the “Municipal Act”), as amended, requires every municipality and local board to adopt a procedure by-law for governing the calling, place and proceedings of hearings; and

Whereas Section 5.1 and Section 5.2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c S.22 allow for the conduct of electronic or written hearings; and

Whereas the Province of Ontario has enacted the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*, S.O. 2020, c. 5, Sched. 3, allowing for a Tribunal subject to the *Statutory Powers Procedure Act*, to conduct electronic and/or written hearings as it considers appropriate, to issue directions and/or orders with respect to the conduct of hearings and matters ancillary, and make any rules related thereto; and,

Whereas Section 239(1) and Section 239(5) of the Municipal Act requires all meetings to be open to the public and state that a meeting shall not be closed to the public during the taking of a vote; and,  
Whereas the Committee of Adjustment for the City of Markham has been established pursuant to the Planning Act, R.S.O. 1990, c.P. 13, as amended; and,

Now therefore the Council of The Corporation of the City of Markham hereby amends as follows:

**By adding the following Sections 2.5, 2.6, 2.7, and 2.8 after Section 2.4:**

- “2.5 Notwithstanding 2.1, 2.3, and 2.4 above, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as may be amended or replaced, notice of any hearing may be given in accordance with the *Planning Act*, R.S.O. 1990, c. P.13 and its regulations, all as amended, and/or any by-laws, legislation, and/or regulations related to the declaration of an emergency, where appropriate.
- 2.6 Any modification to notice in accordance with section 2.5 above shall be authorized by the City Solicitor or their Designate.
- 2.7 Notwithstanding Section 2 above, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as may be amended or replaced and where permitted by

law, the Committee may issue a direction related to the provision of notice for a hearing, but may not allow for no notice of a hearing to be issued.

- 2.8 Nothing in this by-law shall prevent the holding of a meeting of the Committee of Adjustment after a declaration of emergency has been lifted, where notice of the meeting was provided in accordance with section 2.5 or 2.7.”

**By amending Section 3.1 as follows:**

- “3.1 The location of all hearings of the Committee shall be identified on the notice of hearing referred to in Section 2.”

**By adding the following Section 5.1.1 after Section 5.1:**

- “5.1.1 Notwithstanding 5.1, a member of the Committee who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time.”

**By amending Section 6.1 as follows:**

- “6.1 The meeting Chair shall conduct meetings in accordance with this By-law, the Policy Directives, the *Planning Act*, and the *Statutory Powers Procedure Act*, all as amended.”

**By adding the following Section 6.12 after Section 6.11:**

- “6.12 Notwithstanding 6.2 to 6.11 inclusive, all or portions of meetings in accordance with this By-law may be held through written means, as determined by the Committee.

- (1) Should the Committee wish to hear an application through a written hearing,
  - a. the Committee may make rules or issue directions with respect to the written hearing setting out:
    - i. the timelines for the submission of materials by the applicant;
    - ii. the posting of those materials online at [www.markham.ca](http://www.markham.ca) for public review;
    - iii. the timeline for the submission of materials by any person or party in support or opposition to the application;
    - iv. the timeline for reply submissions by the applicant.
  - b. After the matters set out in subsection (a) are complete, the Committee may make rules or issue directions with respect to the written hearing setting out:
    - i. the deliberation of the application by the Committee members;
    - ii. voting on the application by the Committee; and
    - iii. the issuance of a decision by the Committee.”

**By adding the following Section 8.4 and 8.5 after Section 8.3:**

“8.4 Notwithstanding 8.2 and 8.3, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*, all decisions shall be prepared and posted on the City of Markham’s website, and may provide notice of such decision by electronic means to the applicant and each person or public body required in accordance with Section 45(10) or 53(17) of the *Planning Act*, as amended.

8.4.1 In accordance with Section 8.4, any person who wishes to be provided notice of a decision by the Committee shall provide an electronic mail (e-mail) address to provide service. Any person who refuses to, or otherwise does not provide an e-mail address to the Secretary-Treasurer shall be deemed to have withdrawn a request for notice of the decision of the Committee.”

All other provisions of By-law 2014-170, as amended, shall continue to apply.

Read a first, second, and third time and passed on \_\_\_\_\_.