



Report to: General Committee

Meeting Date: November 1, 2021

SUBJECT: Proposed Amendments to the City of Markham’s Appeal Process Relative to Tree Preservation By-law 2008-96, Stationary Business Licensing By-law 2018-90, Mobile Licensing By-law 2012-96, and Animal Protection & Services By-Law 2018-91

PREPARED BY: Kimberley Kitteringham, City Clerk
Martha Pettit, Deputy City Clerk
Hristina Giantsopoulos, Election and Committee Coordinator

RECOMMENDATION:

- 1) That the report entitled “*Proposed Amendments to the City of Markham’s Appeal Process Relative to Tree Preservation By-law 2008-96, Stationary Business Licensing By-law 2018-90, Mobile Licensing By-law 2012-92 and Animal Protection & Services By-Law 2018-91*” be received; and,
- 2) That Markham City Council authorize the use of a Hearing Officer(s) to conduct appeals under the Tree Preservation By-law 2008-96, Stationary Business Licensing By-law 2018-90, Mobile Licensing By-law 2012-92, and Animal Protection & Services By-Law 2018-91; and that all decisions made by the Hearing Officer be considered final and binding; and,
- 3) That Licensing Committee By-law 203-1999 be repealed in its entirety; and,
- 4) That Tree Preservation By-law 2008-96, Stationary Business Licensing By-law 2018-90, Mobile Licensing By-Law 2012-92, and Animal Protection & Services By-Law 2018-91 be amended to reflect the new appeal process; and further,
- 5) 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 recommend amendments to the appeal process contained in the Tree Preservation By-law, Stationary Licensing By-law, Mobile Business Licensing By-law, and Animal Protection & Services By-law such that an independent Hearing Officer will conduct appeals and make final and binding decisions on same. The proposed amendments will streamline the decision-making process and enhance customer service.

BACKGROUND:

The City’s current Licensing Committee is a quasi-judicial body established in 1999 by By-law 203-1999 (*see Attachment “A”*) to hear appeals with respect to the denial of a tree

permit pursuant to the Tree By-law or a denial or revocation of a business license pursuant to the Stationary and Mobile Business Licensing By-laws as well as appeals with respect to a Notice to Muzzle pursuant to the Animal Protection and Services By-law. The Committee is comprised of three Members of Council who participate on a rotational basis based on their availability. Staff make an effort to not schedule a Councillor on the panel for matters that fall within their Ward.

Current Process – Tree Preservation By-law 2008-96 Appeals

Tree Preservation By-law appeals are heard by the Licensing Committee. Upon receipt of a request for an appeal of a tree permit denial decision, Public Realm staff notify Legislative Services and Corporate Communications staff to schedule a hearing at a mutually agreeable time for Licensing Committee Members, the appellant, and staff. At the hearing, the Tree Preservation Technician presents the City's rationale for denying the tree permit. The appellant has an opportunity to present their case to the Licensing Committee and to provide supporting evidence.

The Licensing Committee is required to reach a unanimous decision to recommend the denial or approval of a permit and accompanying conditions. Licensing Committee recommendations are based on the unique characteristics of each case and are not intended to be precedent setting or used as a basis for future cases. If the Licensing Committee approves the permit, they will provide tree re-planting conditions or as an alternative, a cash-in-lieu option to the appellant as part of their recommendation. Licensing Committee decisions are placed on a Council agenda for final approval by Markham City Council.

The City receives an average of six appeal hearing requests per year. A breakdown of applications, denials and appeals in the previous two years is provided below:

| Year | Tree Permit Applications | Cancelled Applications | Denials | Appeals to Committee |
|----------------|---------------------------------|-------------------------------|----------------|-----------------------------|
| 2018 | 545 | 35 | 185 | 7 |
| 2019 | 685 | 23 | 199 | 5 |
| 2020 | 683 | 65 | 210 | 4 |
| 2021 (to date) | 182 | 9 | 48 | 4 |

****PLEASE NOTE:** The Tree Preservation By-Law is currently under review in its entirety by Public Realm Staff. This report is dealing solely with the appeal provisions in the By-law.

Current Process – Business Licensing Appeals

Business Licensing By-laws and Animal Protection & Services By-law appeals are administered the same way as Tree Preservation By-law appeals with the following exception:

Decisions made by the Licensing Committee are final and binding at the conclusion of the hearing and do not go to Council for ratification.

The City has not received any appeals under the Animal Protection & Services By-law in over a decade. The City also has not received many business licensing appeals. A breakdown of applications, denials and appeals in recent years is provided below:

| Year | Business License Applications | Denials | Approvals with Conditions | Appeals to Committee |
|----------------|-------------------------------|---------|---------------------------|----------------------|
| 2018 | 4311 | 1 | 1 | 2 |
| 2019 | 3962 | 0 | 0 | 0 |
| 2020 | 3470 | 0 | 0 | 0 |
| 2021 (to date) | 2168 | | | |

DISCUSSION

Over the past few years, the Legislative Services and Corporate Communications Department has received concerns/complaints about the City’s Tree Preservation By-law and Business Licensing By-laws appeal process – primarily related to the following:

- The appeal process in the Tree Preservation By-law differs from that contained in the Stationary and Mobile Business Licensing By-laws – this causes confusion. While decisions made by the Licensing Committee for Tree Preservation By-law appeals are required to go to Council for final ratification, decisions made by the Licensing Committee for Business Licensing By-laws are final and binding and do not go to Council for ratification.
- Members of Council may not be perceived as independent decision makers (i.e., there could be a perceived conflict of interest).
- When Tree Preservation By-law appeal decisions go to Council, they are often “re-heard”– this can result in a lengthy appeal.
- The scheduling of hearings is problematic – it is often difficult to achieve a quorum of the required number of Councillors to sit on the Licensing Committee.

At the September 15, 2020 meeting, Markham City Council adopted a resolution requesting that staff review the City’s appeal process for licensing and tree permit appeals. In May 2020, staff distributed a survey to Members of Council to obtain feedback on the current appeal process. Nine Councillors responded to the survey. The survey results indicated that there is strong support to: 1) change the current appeal process to abolish the Licensing Committee (thereby removing Members of Council from the appeal process); and: 2) implement a process whereby appeals are considered by an independent Hearing Officer or a Council-appointed Citizen Appeals Committee.

Based on a jurisdictional review of Ontario municipalities, Members of Council generally do not participate in tree by law or licensing by-law appeals. Instead, appeals are typically heard by either a Hearing Officer or by a Council-appointed Appeal Tribunal comprised of citizens (see *Attachment “B”*). Staff has reviewed both models and have discussed each with the municipalities using them. Based on this feedback the primary benefits and potential drawbacks of each model are noted below:

Hearing Officer Model

A sample job description for a Markham Hearing Officer is included as *Attachment “C”*.

Benefits

- Aligns with practices conducted in other municipalities.
- Appeal process is easy to understand.
- Eliminates perceived conflict of interest concerns relative to a Councillor’s participation in the appeals process.
- Enhanced customer service, as decisions are rendered expeditiously.
- Hearing decisions are final and binding.
- Allows Members of Council to reclaim time for other business.
- The City currently has a roster of 3 qualified independent Hearing Officers that are contracted to hear parking ticket appeals under the Administrative Monetary Penalties (AMPs) program – they can assume responsibility for Tree By-law and Licensing By-law appeals as well.
- Reduced staff time to support Hearings.

Potential Drawbacks

- Decisions are made by one individual and not through a consensus of multiple individuals.
- Hearing Officers are paid positions.

Citizen Appeal Tribunal Model

A sample Council-appointed Citizen Appeal Tribunal by-law is included as Attachment “D”.

Benefits

- Aligns with practices conducted in other municipalities.
- Appeal process is easy to understand.
- Eliminates perceived conflict of interest concerns relative to Councillor’s participation in the appeals process.
- Hearing decisions are final and binding.
- Decisions are made through a consensus of Tribunal members.

Potential Drawbacks

- Recruiting multiple experienced and qualified individuals who are interested in serving on a tribunal for modest compensation may be problematic.
- Scheduling Tribunal Members may be difficult.
- Tribunal Members are typically paid positions (nominal fee per meeting)
- More administration for City staff in terms of training, meeting support, and payment of Tribunal members.
- Removal of Tribunal members for performance reasons may be more onerous/time consuming.

Staff are recommending that the City's Licensing Committee be dissolved and that all tree preservation, business licensing and animal protection service appeals be considered by one of the City's existing Hearing Officers. Staff believe that the Hearing Officer model is the preferred option for hearing these types of appeals and will have a number of positive benefits, including the following:

- Enhanced customer service through a more expeditious appeal process;
- Hearing Officers are independent, experienced adjudicators -well equipped to make objective, informed and well-reasoned decisions.
- Greater alignment of the City's appeal process with those found in other municipalities;
- Members of Council are removed from the appeal process which eliminates actual or perceived conflict of interest concerns; and,
- Members of Council can re-claim some time to focus on other matters.

This proposed Hearing Officer model is quite similar to the City's Administrative Monetary Penalty System (AMPS) whereby a Hearing Officer considers all of Markham's parking ticket appeals. The AMPS model was implemented in 2015 and has been very successful in reducing wait times associated with the adjudication of parking matters. The City currently has a roster of three independent, and experienced Hearing Officers that can consider parking appeals as well as Tree Preservation, Animal Protection Services and Licensing by-law appeals. Should an appellant wish to appeal a Hearing Officer decision, they have a right to apply to the Ontario Divisional Court for judicial review.

FINANCIAL CONSIDERATIONS

The City's Hearing Officers are paid on a full day rate of \$400, and a half day rate of \$200 plus mileage. Based on the average number of 7 hearings per year, it may take one full day and a half day to administer these appeals at a cost of approximately \$700/year.

The Citizen Tribunal Model would typically consists of 5 members with 3 constituting quorum for a hearing. Each member will receive a per hearing fee of \$75. Based on the average number of 7 hearings per year, the cost to administer these appeals under the Tribunal Model may be approximately \$1,575/year depending on the number of meetings held.

HUMAN RESOURCES CONSIDERATIONS

The City has a roster of Hearing Officers that can consider appeals under the Tree Preservation By-law, Business Licensing By-laws and the Animal Protection Services By-law.

ALIGNMENT WITH STRATEGIC PRIORITIES:

This initiative aligns with the BMFT strategic goal in providing Exceptional Services by Exceptional People and improve the current level of service provided to residents and business owners. Recent public feedback indicated a need for innovative solutions by City staff.

BUSINESS UNITS CONSULTED AND AFFECTED:

Clerks, Legal, By-Law, Operations, Members of Council

RECOMMENDED BY:

Trinela Cane, Commissioner of Corporate Services

Kimberley Kitteringham, City Clerk

Claudia Storto, City Solicitor and Director of Human Resources

ATTACHMENTS:

Attachment “A” – Licensing Committee By-Law 203-199

Attachment “B” – Survey of Ontario Municipalities

Attachment “C” - AMPs Hearing Officer Job Description for Markham

Attachment “D” - Sample Council-appointed Citizen Appeal Tribunal By-law

Attachment “E” – Tree Preservation By-Law 2008-96

Attachment “F” – Mobile Business Licensing By-Law 2012-92

Attachment “G” – Stationary Business Licensing By-law 2018-90

Attachment “H” – Animal Protection and Services By-law 2018-91