



Proposed Amendments to Markham's Appeal Process for the Tree Preservation, Business Licensing & Animal Protection By-laws

**General Committee
November 1, 2021**



Presentation Agenda

1. Background
2. Jurisdictional Scan
3. Proposed Changes to Markham's Appeal Processes
 - Hearing Officer Model
 - Citizen Appeal Tribunal Model
4. Preferred Option
5. Financial Considerations
6. Recommendations
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1. Background

- At the September 15, 2020 meeting, Markham City Council passed a resolution requesting staff to review the City's appeal process for business licensing & tree permit appeals.
- The City's Licensing Committee is a quasi-judicial body established in 1999 via By-law 203-1999 to hear appeals with respect to tree permits, business licences & a notice to muzzle a dog.
- The Licensing Committee is comprised of 3 Members of Council who participate on a rotational basis & who don't live in the Ward in which the matter falls.





1. Background (Cont'd)

- Currently, the City's appeal processes for tree permit denials, business licence denials/revocations & dog muzzle notices are all different, which creates unnecessary confusion &, in some cases, a delay in achieving a final decisions.
- Business licence denials/revocations & dog muzzle notice appeals are heard by the Licensing Committee & at the conclusion of the hearing, the Committee decision is final & binding (i.e., they do not go to Council for ratification).
- Tree Permit denial appeal decisions are also heard by the Licensing Committee. However, these Committee decisions are still required to go to Council for ratification - often resulting in a "re-hearing" of the entire matter at the Council meeting, often with multiple deputations.



Background (Cont'd)

Councillor Survey

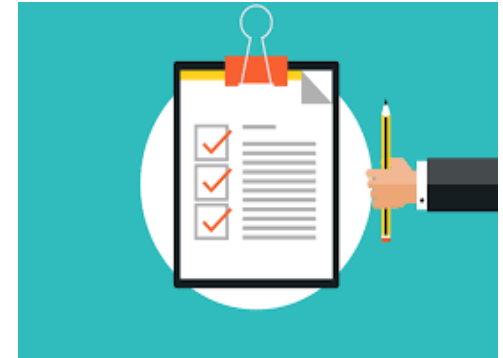


- In May 2020, staff distributed a survey to Members of Council to obtain feedback on the current appeal process.
- 9 Councillors responded to the survey - survey results indicated strong support for:
 1. Changing the current appeal process to abolish the Licensing Committee (i.e., removing Members of Council from the appeal process); &
 2. Implementing a process whereby appeals are considered by an independent Hearing Officer or a Council-appointed Citizen Appeals Committee.



2. Jurisdictional Scan

Scan of Municipal Appeal Practices



- Staff conducted a jurisdictional scan of 13 Ontario municipalities to determine their appeal processes (see **Appendix “B”** of the Staff Report).
- Based on this scan, staff determined the following:
 - Members of Council generally do not participate in tree by-law or business licensing by-law appeals; &
 - Appeals are typically heard by either a Hearing Officer or by a Council-appointed Appeal Tribunal comprised of citizens.



Proposed Changes to Markham's Appeal Processes

- Staff are recommending that appeals no longer be considered by the City's Licensing Committee & that this body be dissolved.
- Benefits of the above action include:
 - Members of Council are removed from the appeal process which eliminates actual or perceived conflict of interest concerns.
 - Members of Council can reclaim time to focus on other matters.
 - Greater alignment of the City's appeal process with those found in other municipalities.
- Staff have investigated alternative methods to administer appeals.



Hearing Officer Model

Hearing Officer - 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 made that day, after the hearing.
- Hearing decisions are final & binding.

Hearing Officer - Potential Drawbacks

- Decisions are made by one individual & not through a consensus of multiple individuals.
- Nominal costs to the City as Hearing Officers are paid positions.



Citizen Appeal Tribunal Model

Citizen Appeal Tribunal - 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 & binding.
- Decisions are made through a consensus of Tribunal members.

Citizen Appeal Tribunal - Potential Drawbacks

- Finding multiple experienced & qualified individuals who are interested in serving on a tribunal for modest compensation may be problematic.
- Scheduling Tribunal Members may be challenging
- Nominal costs to the City as Tribunal Members are paid positions.
- Increased administrative burden for City staff – to train & support Tribunal members.



4. Preferred Option

- Staff are recommending the City implement the Hearing Officer model – this 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.
- In addition to the benefits already noted:
 - Hearing Officers are independent, experienced adjudicators - well equipped to make objective, informed & well-reasoned decisions.
 - The City already has a roster of experienced Hearing Officers on contract.





5. Financial Considerations

- The City's existing Hearing Officers are paid on a full day rate of \$400, & a half day rate of \$200 plus mileage.
- Based on the approximate average number of 7 hearings per year, it may take 1 full day & a half day to administer these appeals at a cost of approximately \$700/year.
- This cost can be absorbed within the current budget envelope in Legislative Services.



6. Staff Recommendations

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.



7. Questions?



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2020 – 2023 Strategic Plan



Municipality	Tree Permit Appeal Body	Licensing Appeal Body
Aurora	N/A	Aurora Appeal Tribunal
Barrie	N/A Permits not required for private property.	Business Licensing Appeal Committee-Citizens
Brampton	N/A Permits issued by Commissioner subject to outlined criteria.	Citizen Member Appeal Tribunal
Guelph	N/A Permit not required for trees on private property less than 0.2 hectares.	Business Licence Appeals Committee
Kingston	Appeal Committee of Council	Appeal Committee of Council and Citizens
London	Hearing Officer	Hearing Officer
Markham	Licensing Committee of Council	Licensing Committee of Council
Mississauga	Planning and Development Commission	Citizen Appeal Tribunal
Newmarket	N/A Permit not required for trees on private property.	Citizen Appeal Tribunal
Oakville	Oakville Appeals Committee - Citizens	Oakville Appeals Committee - Citizens
Oshawa	N/A Permit not required for trees on private property.	Hearing Officer
Ottawa	N/A Permit not required for trees on private property.	Licensing Committee of Emergency & Protective Services Committee
Vaughan	Hearing Officer	Hearing Officer
Waterloo	N/A Permit not required for trees on private property.	Citizen Appeal Tribunal