



## BY-LAW 2022-XX

**Being a By-law to amend By-law 2008-96, to Regulate or Prohibit the Injury or Destruction of Trees within the City of Markham**

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**WHEREAS** the Council of The Corporation of the City of Markham enacted By-law 2008-96 on June 24, 2008 to Regulate or Prohibit the Injury or Destruction of Trees within the City of Markham; and,

**AND WHEREAS** By-Law 203-199 Licensing Committee, has been repealed; and,

**AND WHEREAS** Council has directed that Hearing Officers will conduct appeal hearings for Tree By-law matters in place of the Licensing Committee;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM ENACTS AS FOLLOWS:

1. That Section 9.0 be repealed and replaced as follows::

### **9.0 TREE PERMIT DENIAL APPEAL**

9.1 An Applicant may appeal the Administrator's decision to refuse, cancel, revoke, suspend, or to impose any Condition on a Tree Permit Denial by sending a request for appeal to the City within ten (10) days of the written notice.

9.2 Where no appeal is registered within the required time period, the decision of the Administrator shall be final.

9.3 An appeal of a decision does not act as a stay of that decision.

9.4 The City Clerk, upon receipt of the notice of appeal, shall determine and give notice in writing to all parties:

- (a) the place, date and time of the Hearing;
- (b) the purpose of the Hearing ; and
- (c) a statement that if the party notified does not attend at the Hearing, the Hearing Officer, may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

9.5 The provisions of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended, apply to all appeal Hearings by the Hearing Officer under this By-law.

9.6 The powers and authority to hear appeals from decisions made by the Administrator pursuant to Section 9 are hereby delegated to the Hearings Officer.

(a) The Hearings Officer shall hear all appeals from decisions made by the Administrator pursuant to section 9.

9.7 There shall be a Secretary to the Hearing Officer, who shall attend all meetings of the Hearing Officer and shall keep all necessary records and perform such other duties required by the Hearing Officer.

9.8 At a Hearing the onus shall be upon the Appellant to show cause why the Permit should be granted, or why it should not be cancelled, refused, revoked or suspended, with or without Conditions.

9.9 The Hearing Officer may dismiss a proceeding without a hearing if the proceeding is frivolous, vexatious or is commenced in bad faith.

9.10 When the Appellant who has been given written notice of the Hearing does not attend at the appointed time and place, the Hearing Officer may proceed with the Hearing in the Appellant's absence and the Appellant shall not be entitled to any further notice of the proceedings.

9.11 A Hearing shall be open to the public except where the Hearing Officer is of the opinion that:

- (a) matters involving the public security may be disclosed; or
- (b) intimate financial or personal or other matters may be disclosed at the Hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that Hearings be open to the public; in which case the Hearing Officer may hold the Hearing, or portion thereof, in the absence of the public.

9.12 The Hearing Officer shall have regards to the following matters where relevant, as may be raised at a Hearing:

- (a) this By-law and other applicable law;
- (b) circumstances and facts raised by the evidence of the parties;

9.13 The Hearing Officer has the power to make any decision that the Administrator was entitled to make in the first instance, and the Hearing Officer has the power to:

- (a) modify, rescind or confirm a decision or any Condition; or
- (b) extend time for complying with a decision or any Condition.

9.14 At the conclusion of a Hearing, the Hearing Officer may give its decision orally or reserve its decision, but in any case shall provide its decision in writing, with reasons, within fourteen (14) days of the Hearing to each party to a Hearing, or to the Person who represented the party by:

- (a) regular mail; or

(b) email or facsimile.

9.15 A decision that has been confirmed, modified or rescinded by the Hearing Officer, as the case may be, shall be final and binding upon the Appellant or City who shall comply with the decision within the time specified and in the manner specified in the decision where applicable.

2. That the following definitions be included:

- a. **“Applicant”** means a person that is appealing a decision of the Administrator under the provisions of this By-law.
- b. **“Electronic Technology Devices”** includes all computers, personal electronic and digital devices, and mobile, cellular and smart phones
- c. **“Hearing” or “Appeal Hearing”** means a proceeding held in person, by conference telephone, or by some other City-approved form of communication using Electronic Technology Devices allowing persons to communicate with one another.
- d. **“Hearing Officer”** means a person duly appointed to conduct Hearings under the Hearing Officer Appointment By-law 2022-15, as amended.
- e. **“Clerk” or “City Clerk”** means the Clerk of the City, as appointed under the authority of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
8<sup>th</sup> DAY OF MARCH, 2022.

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KIMBERLEY KITTERINGHAM  
TOWN CLERK

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FRANK SCARPITTI  
MAYOR