

# City of Markham

## By-law 2022-XX

### A By-law to Appoint Hearing Officers to hear Appeals under Regulatory By-laws

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**WHEREAS** Council of The Corporation of the City of Markham considers it necessary and desirable to appoint Hearing Officers to conduct appeal hearings for various City By-laws and;

**WHEREAS** sections 23.2, 23.3 and 23.5 of the Municipal Act authorize the City to delegate its administrative powers; and

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

#### 1. Definitions

1.0. In this By-law:

**“Administrative Fee”** means any fee specified in this By-law or set out in **Schedule “A”**

**“Child”** means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of her or his family

**“City”** means The Corporation of the City of Markham;

**“City Solicitor”** means the City Solicitor or her or his designate;

**“Clerk”** means the City Clerk, her or his delegate, or anyone designated by the Clerk to perform duties under the Hearing Officer Appointment By-law;

**“Council”** means the Council of the **City**;

**“Delegated Power of Decision”** means a power or right, conferred by or under a **City** By-law to make a decision or prescribing,

- i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or
- ii) the eligibility of any person or party to receive, or to the continuation or, a benefit or licence, where the person is legally entitled to or not

**“Electronic Technology Devices”** includes all computers, personal electronic and digital devices, and mobile, cellular and smart phones

**“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.

**“Hearing Officer”** means a person appointed from time to time in accordance with section 3.2 of this by-law to perform the functions of a **Hearing Officer** in accordance with section 3 of this By-law;

**“Parent”** means a person who has demonstrated a settled intention to treat a child as a member of her or his family, whether or not that person is the natural parent of the child;

**“Person”** includes an individual or a business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof;

“**Spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

### 3. **Hearing Officer**

- 3.0 The position of **Hearing Officer** is established for the purpose of exercising the Delegated **Power of Decision** to hear appeals of decisions made under various City By-laws
- 3.1 A decision by a **Hearing Officer** is a statutory power of decision within the meaning of the *Statutory Powers and Procedures Act*, R.S.O. 1990, C. S.22
- 3.2 A **Hearing Officer** shall be appointed by **Council** on the recommendation of the **Clerk**, which recommendation shall give preference to an eligible candidate:
- (a) with knowledge of, and experience in, administrative law; and,
  - (b) of good character.
- 3.3 A **Hearing Officer** shall be appointed for such period and subject to such terms and conditions as may be determined by the **Clerk**, thereafter until a **Hearing Officer** is reappointed or a successor is appointed pursuant to the By-law or is no longer required by the **City**.
- 3.4 A **Hearing Officer** shall be remunerated at the rate established by the **Clerk** from time to time.
- 3.5 The following are not eligible for appointment as a **Hearing Officer**:
- (a) An Employee or member of **Council** of the **City**
  - (b) The **Child** of a person referenced in paragraph 4(a)
  - (c) The **Parent** of a person referenced in paragraph 4(a)
  - (d) The **Spouse** of a person referenced in paragraph 4(a)
  - (e) A person indebted to the **City** other than
    - i) in respect of current real property taxes; or
    - (ii) pursuant to an agreement with the **City** the terms with which the person is in compliance

### 4. **General**

- 4.1 A **Hearing Officer** shall have no authority to further delegate her or his powers or duties.
- 4.2 No **Person** shall attempt to directly or indirectly, communicate with or influence a **Hearing Officer** respecting the determination of an issue in a proceeding that is or will be pending before the **Hearing Officer**, except a person who is entitled to be heard in the proceeding or the **Person's** lawyer or licensed representative and only by the **Person** or the **Person's** lawyer or licensed representative during the hearing of the proceeding in which the issue arises.
- 4.3 Nothing in section 4.2 of this By-law prevents a **Hearing Officer** from seeking or receiving legal advice.
- 4.4 Every **Person** who contravenes any provision of this By-law is guilty of an offence and is liable, upon conviction, to a fine, and such other penalties, as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and the Municipal Act.

### 5. **Hearings**

- 5.1 **The Hearing Officer** may hold:
- (a) An oral Hearing
  - (b) A written Hearing
  - (c) an electronic Hearing or
  - (d) a **Hearing** which combines one or more of the above formats
- 5.2 If a person requires an interpreter for the purpose of any proceedings before a **Hearing Officer**, the person must provide the interpreter at the person's expense
- 5.3 In any process or **Hearing** before the **Hearing Officer**, a statement respecting any matter related to the process or hearing purporting to be signed by the **City Clerk** or by a person authorized by a **City** by-law to undertake inspections, is, without proof of the office or signature of the **Clerk** or such person receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the statement for all purposes in the process or hearing
- 6. Severability**
- 6.1 Should any provision, or any part of a provision, of this By-law be declared invalid, or to be of no force and effect, by a court of competent jurisdiction, it is the intent of **Council** that such a provision, or part of a provision, shall be severed from this By-law, and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.
- 7. Interpretation**
- 7.0 The provisions in Part VI of the Legislation Act, 2006, S.O. 2006, c.21, Sched. F, shall apply to this By-law.
- 8. Short Title**
- 8.0 This By-law may be referred to as the Hearing Officer Appointment By-law.
- 9. Repeal**
- 9.0 That By-Law 203-199 be repealed in its entirety.
- 10. Effective Date**
- 10.0 This By-law shall come into force and effect on the day it is passed.

Read a first, second, and third time and passed on March 8<sup>th</sup>, 2022

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Martha Pettit  
Deputy Clerk

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Frank Scarpitti  
Mayor

**Schedule "A"**

**Hearing Officer Appointment By-law**

**Administrative Fees**

<b>Administrative Fee Description</b>	<b>Fee Amount</b>
Hearing Non-appearance fee	\$100.00