



BY-LAW 2022-XX

A By-law to amend By-Law No. 2018-90, being a by-law to provide for the Licensing and Regulation of Stationary Businesses in the City of Markham

WHEREAS Section 11 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (“*Municipal Act*”) provides that a municipality may pass by-laws respecting health, safety and well-being of persons and protection of persons and property, including consumer protection; and

WHEREAS Section 150 of the *Municipal Act* defines a business as any business, activity or undertaking wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality; and

WHEREAS Section 151(1) of the *Municipal Act* provides that a municipality may provide for a system of licenses with respect to a business, as defined in section 150 of the *Municipal Act*, and may prohibit the carrying on or engaging in the business without a license, refuse to grant a license or revoke or suspend a license, impose conditions as a requirement of obtaining, holding, or renewing a license, and license, regulate or govern real and personal property used for a business and the persons carrying it on or engaged in it; and

WHEREAS Section 391(1) of the *Municipal Act* provides that a municipality may impose fees and charges on persons for services or activities provided or done by or on behalf of it; and

WHEREAS Section 434.1 of the *Municipal Act* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the *Municipal Act*; and

WHEREAS Section 434.2(1) of the *Municipal Act* provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

NOW THEREFORE the Council of The Corporation of the City of Markham enacts as follows:

That the Stationary Licensing By-law #2018-90 be amended as follows:

(1) That Schedule 1, Section 2.3 be amended as follows:

- A) That the renewal date for all categories be changed from December 31st to January 31st

- (2) That Section 1 (DEFINITIONS AND INTERPRETATION) be amended to include the following:

"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 and in accordance with the process set out in Section 15 of this By-law;

"Hearing Non-appearance Fee" means an Administrative Fee established by Council from time to time in respect of a Person's failure to appear at the time and place scheduled for a review before a Hearing Officer

"Hearing Officer" **"Hearing Officer"** means a person duly appointed to conduct Hearings under By-law 2022-15, as amended

- (3) That in Section 1 (DEFINITIONS AND INTERPRETATION), the following definitions be deleted:

"License Appeal Committee"

- (4) That Section 17.2(d) be repealed and replaced as follows:

"State that the Applicant or Licensee is entitled to request a Hearing to be conducted by the Hearing Officer."

- (5) That Section 18.1 be repealed and replaced as follows:

"An Applicant or Licensee may appeal the Licencing Officer's decision to refuse, cancel, revoke, suspend, or to impose any Condition on a Licence to the Hearing Officer by sending a request for appeal by email, within ten (10) days of the written notice"

- (6) That Section 19.1 be repealed and replaced as follows:

"Where a decision by the Licensing Officer is appealed to the Hearing Officer, the decision shall not take effect until the final decision of the Hearing Officer, except in the case of a decision by the Licensing Officer to refuse a licence application which shall take effect immediately and remain in effect unless and until a licence has been duly issued"

- (7) That Section 21 (LICENSE APPEAL COMMITTEE) be amended as follows:

"LICENSE APPEAL HEARING"

- (8) That Section 21.1 be repealed and replaced as follows:

“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) That Section 21.2 be repealed and replaced as follows:

“The Hearing Officer has the powers to hold hearings concerning appeals of decisions made by the Licensing Officer”

(10) That Section 21.3 be repealed and numbering adjusted accordingly

(11) That Section 21.4 be repealed and numbering adjusted accordingly

(12) That Section 21.5 be repealed and replaced as follows:

“The Hearing Officer shall hear the parties to a Hearing or afford the parties an opportunity to be heard, and make decisions from Hearings in an accessible, transparent and timely manner with due process in accordance with this By-law”

(13) That Section 21.5(a) be repealed and replaced as follows:

“The parties to a Hearing before the Hearing Officer shall include the Appellant, the City and such other persons as the Hearing Officer may determine”

(14) That 21.6 be repealed and numbering adjusted accordingly

(15) That Section 21.7 be repealed and replaced as follows:

“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”

(16) That Section 21.8 be repealed and replaced as follows:

“The Secretary shall arrange the sittings of the Hearing Officer”

(17) That Section 21.8(a) be repealed and replaced as follows:

“The Secretary shall provide written notice of Hearings before the Hearing Officer no less than fourteen (14) days prior to the commencement of a Hearing

(18) That Section 21.9 be repealed and numbering adjusted accordingly

(19) That Section 21.10 be repealed and replaced as follows:

“The oral evidence given before the Hearing Officer at a Hearing shall be recorded in such manner as the Hearing Officer may determine”

- (20) That Section 21.11 be repealed and replaced as follows:

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

- (21) That Section 21.12 be repealed and replaced as follows:

“Where the Hearing Officer dismisses an appeal without a full hearing, the appeal fee is non-refundable”

- (22) That Section 22.1 be repealed and replaced as follows:

“Not less than seven (7) days before the commencement of the Hearing or, as otherwise ordered by the Hearing Officer, the appellant shall be provided with full disclosure of every document or thing that the City intends to refer to, or give in evidence at the Hearing”

- (23) That Section 23.1 be repealed and replaced as follows:

“Where the Hearing Officer is satisfied that an Appellant has been given written notice of a hearing in accordance with this By-law, but the Appellant or duly appointed representative does not attend at the appointed time and place, the Hearing Officer may:

(a) proceed with the Hearing in the Appellant’s absence, in which case the Appellant shall not be entitled to any further notice of the proceedings; or

(b) dismiss the appeal.”

(c) require the Appellant pay to the City a Hearing Non-appearance Fee pursuant to By-law 2022-15, Schedule “A”

- (24) That Section 24.1 be repealed

- (25) That Section 25 be repealed and amended as follow:

“At the conclusion of a Hearing, the Hearing Officer may give their decision orally or reserve their decision, but in any case shall provide their decision in writing, with reasons, within fourteen (14) days of the Hearing to the Appellant and the City”

- (26) That Section 26 (POWERS OF THE LICENCE APPEAL COMMITTEE) be amended as follows:

“POWERS OF THE HEARING OFFICER”

- (27) That Section 26.1 be repealed and replaced as follows:

“On an appeal, the Hearing Officer has all the powers and functions of the Licensing

Officer who made the decision and may make any decision that the Licensing Officer was entitled to make in the first instance, and the Hearing Officer may do any of the following things if, in its opinion, doing so would maintain the general intent and purpose of the By-law:

(a) modify, rescind or confirm a decision or any Condition; or

(b) extend time for complying with a decision or any Condition.”

(28) That in Section 26.2, the words “License Appeal Committee” be repealed and replaced with “Hearing Officer”.

(29) That Section 26.2(e) be repealed and replaced as follows:

“Any other matter which the Hearing Officer is authorized by law to consider”

(30) That in Section 26.3, the words “License Appeal Committee” and “Committee” be repealed and replaced with “Hearing Officer”

(31) That Section 27.1 be repealed and replaced as follows:

“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 who shall comply with the decision within the time specified and in the manner specified in the decision where applicable”

(32) That Section 30.1 be repealed and replaced as follows:

“When a Licence has been revoked, cancelled or suspended, the holder of the Licence shall return the Licence to the Licensing Section within twenty-four (24) hours of service of “Written Notice” of the decision of the Licensing Officer or, where an appeal had been filed, the decision of the Hearing Officer, and the Licensing Officer may enter the Business premises belonging to the Licensee for the purpose of receiving, taking, or removing the said Licence”

