



By-law 2022-15

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

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 8th, 2022.



Kimberly Kitteringham
City Clerk

Frank Scarpitti
Mayor

Schedule “A”

Hearing Officer Appointment By-law

Administrative Fees

| Administrative Fee Description | Fee Amount |
|---------------------------------------|-------------------|
| Hearing Non-appearance fee | \$100.00 |