



By-law 2015-94

A By-law to Appoint Screening Officers and Hearing Officers for the Administrative Monetary Penalty System

Whereas section 102.1 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, (the "Municipal Act") and Ontario Regulation 333/07 (the "Regulation") authorize The Corporation of the City of Markham (the "City") to require a person to pay an administrative penalty for a contravention of any by-law respecting the parking, standing or stopping of vehicles; and,

Whereas paragraph 151(1)(g) of the Municipal Act authorizes the City to require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality; and,

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

Whereas under section 8 of the Regulation, a person who receives a penalty notice shall have the right to request a review of the administrative penalty by a Screening Officer appointed by the municipality; and,

Whereas under section 8 of the Regulation, a person who receives a Screening Officer decision shall have the right to request a review of the Screening Officer's decision by a Hearing Officer appointed by the municipality; and,

Whereas the Council for the City considers it desirable and necessary to establish the position of a Screening Officer and a Hearing Officer which are required for the operation of the City's administrative monetary penalty system; 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 the **AMPS By-law**;

"Administrative Penalty" means an administrative penalty established by the **AMPS By-law**;

"AMPS By-law" means the **City's** By-law 2015-94, A By-law to Implement an Administrative Monetary Penalty System, as amended, or its successor, being a by-law to establish a system of administrative penalties;

"AMPS" means Administrative Monetary Penalty System;

"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 Administrative Monetary Penalty System;

"Council" means the Council of the **City**;

“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;

“Power of Decision” means a power or right conferred by or under this By-law and the **AMPS By-law**, to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of any person:

- (i) in the case of a **Screening Officer**, in respect of a request to review a Penalty Notice; and
- (ii) in the case of a **Hearing Officer**, in respect of a review of a **Screening Decision**.

“Regulation” means Ontario Regulation 333/07 under the Municipal Act;

“Relative” includes any of the following persons:

- (i) spouse, common-law partner, or any person with whom the person is living as a spouse outside of marriage;
- (ii) **Parent** or legal guardian;
- (iii) child, including a step-child and grandchild;
- (iv) siblings and children of siblings;
- (v) aunt, uncle, niece and nephew;
- (vi) in-laws, including mother, father, sister, brother, daughter and son; or
- (vii) any person, including any dependant, who lives with the person on a permanent basis.

“Screening Decision” means a notice which contains the decision of a **Screening Officer**;

“Screening Officer” means a person appointed from time to time by the **Clerk** to perform the functions of a Screening Officer pursuant to section 2 of this By-law; and

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

2. Screening Officer

2.0 The position of **Screening Officer** is established for the purpose of exercising the **Power of Decision** in the Screening review of an **Administrative Penalty** as set out in the **City’s AMPS By-law**.

2.1 The **Screening Officer** shall have all the powers of Review by a Screening Officer as set out in the **City’s AMPS By-law** and the **Regulation**.

2.2 A **Screening Officer** shall be appointed for such period and subject to such terms and conditions as may be determined by the **Clerk**, and thereafter until a **Screening Officer** is reappointed or a successor is appointed pursuant to the By-law or is no longer required by the **City**.

2.3 A **Screening Officer** has no authority to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability or operability of any statute, regulation or by-law.

3. **Hearing Officer**

3.0 The position of **Hearing Officer** is established for the purpose of exercising the **Power of Decision** in a review of a **Screening Decision** as set out in the **City's AMPS By-law**.

3.1 The **Hearing Officer** shall have all the powers of Review by a Hearing Officer as set out in the **City's AMPS By-law** and the **Regulation**.

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 A **Hearing Officer** has no authority to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability or operability of any statute, regulation or by-law.

4. **General**

4.0 The following persons are not eligible for appointment as a **Screening Officer** or a **Hearing Officer**:

- (a) a Member of **Council**;
- (b) a **Relative** of a Member of **Council**;
- (c) in the case of a **Hearing Officer**, an employee of the City; or
- (d) 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**, where the person is in compliance with the terms thereof.

4.1 A **Screening Officer** and 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 **Screening Officer** or a **Hearing Officer** respecting the determination of an issue in a proceeding that is or will be pending

before the **Screening Officer** or **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 **Screening Officer** or **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.
- 4.5 For the purposes of subsection 23.2(4) of the Municipal Act, Council has determined that the powers delegated to the **Screening Officer** and the **Hearing Officer** pursuant to this By-law are of a minor nature.

5. Severability

- 5.0 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.

6. Interpretation

- 6.0 The provisions in Part VI of the Legislation Act, 2006, S.O. 2006, c.21, Sched. F, shall apply to this By-law.

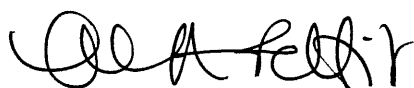
7. Short Title

- 7.0 This By-law may be referred to as the Screening and Hearing Officer By-law.

8. Effective Date

- 8.0 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 June 15 and 16, 2015.



Martha Pettit
Deputy Clerk



Frank Scarpitti
Mayor