

Committee of the Whole (2) Report

DATE: Tuesday, June 6, 2023 **WARD(S):** ALL

TITLE: ADMINISTRATIVE MONETARY PENALTIES ADJUDICATION
REVIEW

FROM:

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor
Gus Michaels, Deputy City Manager, Community Services

ACTION: DECISION

Purpose

To transfer the delegated authority to appoint Hearing Officers under the Administrative Monetary Penalties system (AMPs) from the Director of By-law and Compliance, Licensing and Permitting Services to the City Clerk.

To confirm that the Hearings Officer appeal process under AMPs will be administered under a designated 'Adjudicative Services' service area within the Office of the City Clerk (OCC) commencing Q1 2024.

Report Highlights

- In 2009, Council approved the implementation of the Administrative Monetary Penalties system for the City.
- In 2021, the Legal & Administrative Services Portfolio and By-law and Compliance, Licensing and Permit Services (BCLPS) undertook a review of adjudicative functions within their respective service areas with the goal of consolidating/aligning these functions under one service area for the purposes of good governance.
- To support Service Excellence & Accountability and strong governance, it is recommended that delegated authority to appoint Hearing Officers for AMPs be transferred from the Director of BCLPS to the City Clerk and that the Hearings Officer appeal process be administered under a designated Adjudicative Services service area within the OCC.
- Amendments to various bylaws will be required to put this change into effect.

Recommendations

1. THAT the authority to appoint Hearing Officers under the Administrative Monetary Penalties system be transferred from the Director of By-law and Compliance, Licensing and Permit Services to the City Clerk.
2. THAT all necessary bylaws, including any amendments required to existing bylaws, be enacted to give effect to Council's direction.

Background

The Legal & Administrative Services Portfolio and BCLPS have undertaken a review of adjudicative functions within their respective service areas, with the goal of consolidating/aligning matters of adjudication under one centralized service area for the purposes of enhancing good governance.

The Office of the City Clerk currently administers the following adjudicative boards:

- Committee of Adjustment
- Property Standards Committee
- Compliance Audit Committee

Adjudicative boards are quasi-judicial tribunals, committees and other bodies which operate independently from the City (under applicable legislation) and hold hearings to resolve disputes, regulate activities, decide on matters, and determine legal rights and benefits. These boards make final and binding decisions with limited exceptions.

On April 14, 2009, Council approved the implementation of a system of Administrative Penalties for the City. Under AMPs, penalty notices issued for bylaw infractions are administered within the City, taking the penalty administration process out of the provincial court system. If a contravener wishes to dispute a penalty notice, they may request a review by a Screening Officer within fifteen (15) days of the service date of the penalty notice.

The Screening Officer may affirm, cancel, or vary the penalty on the following grounds:

- a) where the contravener establishes, on a balance of probabilities, that the contravener did not commit the act described in the penalty notice;
- b) where the contravener establishes, on a balance of probabilities, that the motor vehicle was not parked, standing or stopped as described in the penalty notice;
- c) the cancellation, reduction or extension of the time for payment of the Administrative Monetary Penalty, including any late payment administrative fees, is deemed necessary to relieve undue hardship; and
- d) where the Screening Officer determines the existence of mitigating or extenuating circumstances.

If the contravener is not satisfied with the decision of the Screening Officer, they can appeal the decision to a Hearing Officer.

On average, approximately 3% of Screening Officer decisions are appealed to a Hearings Officer per year as shown in Table 1. The number of appeals is expected to increase due to additional by-laws being designated under AMPs and the anticipated addition of the automatic speed enforcement program under the AMPs program.

YEAR	AMPS ISSUED	# OF SCREENINGS	# OF HEARINGS	% OF SCREENINGS APPEALED
2018	49981	6775	94	1.39%
2019	52804	7686	113	1.47%
2020	33963	6110	52	0.85% ¹
2021	44176	7429	532	7.16%
2022	47348	7060	272	3.85%

Table 1: % of Screening Decisions Appealed per year.

¹Reduced number of hearings may be a direct result of the Covid-19 Pandemic

Previous Reports/Authority

[Administrative Penalties report](#) from the March 9th, 2009, Committee of the Whole (Working Session) meeting.

By-law [063-2019](#), as amended, being a By-law to establish a comprehensive system of Administrative Monetary Penalties for the City of Vaughan.

Analysis and Options

The administration of AMPs, including the Hearings process, currently resides under BCLPS. Under AMPs, the City retains two Hearings Officers on a contract basis, to hear appeals. Hearings Officers act at arms-length to the City's administration. An appeal to a Hearings Officer is considered adjudicative as it is governed under the *Statutory Powers and Procedure Act* and the decision of the Hearings Officer is final. The Hearings process, being an adjudicative function, is operationally more aligned with the City's adjudicative boards/tribunals managed through the Office of the City Clerk.

A comparison of municipal practices for administering the AMPs By-law and delegated authority was completed, which included the City of Mississauga, City of Brampton, City of Richmond Hill, City of Markham, and Town of Newmarket. The results of this review provided that in all cases, except for the City of Vaughan, the authority to administer the adjudication component of AMPs is delegated to positions/offices that reside outside of By-law Enforcement.

To support Service Excellence & Accountability and governance through transparent and accountable local decision-making, in consultation with BCLPS, staff recommend that the authority to appoint Hearings Officers be transferred from the Director of BCLPS to the City Clerk. Staff further recommend that appeals to Hearings Officers be administered under a designated Adjudicative Services service area within the OCC.

The OCC, operating under the Legal & Administrative Services Portfolio, plays an important role in building public trust and confidence in local government, through involvement in administering the election, managing the Council and committee decision-making process, making information accessible to the public while protecting privacy, and by providing leadership in matters of protocol.

The establishment of a designated Adjudicative Services section will enhance this role with the consolidated administration of existing adjudicative boards and AMPs appeals for the purposes of providing governance and oversight over statutory decisions.

To facilitate the transfer of appeals to Hearings Officers from BCLPS, delegated authority to appoint Hearings Officers will be transferred from the Director of BCLPS to the City Clerk.

The administration of Hearings under Adjudicative Services is expected to commence Q1 2024. At this time, the OCC will continue to collaborate with BCLPS to establish process and staffing requirements to facilitate a seamless transfer of this function. The screening process, considered more administrative in nature, will be maintained within BCLPS.

As a next step in governing adjudicative functions within the City, staff from OCC, Legal Services and BCLPS are considering the establishment of an Appeal Tribunal to hear appeals relating to licensing and other matters where an administrative decision is being appealed/challenged. Currently they are heard by the same hearing officers for AMPs albeit taking into account different considerations due to the different nature of the appeals. An Appeal Tribunal would operate under the authority of the *Statutory Powers and Procedure Act* and hold independent hearings where the issues identified are more complex. Staff will bring a report to Council at a future date on this, with the potential creation of the Tribunal anticipated to take place in 2025.

Financial Impact

There are no additional costs associated with the transfer of delegated authority to appoint Hearings Officers from the Director of BCLPS to the City Clerk.

Revenue generated by AMPs funds the enforcement, administration and adjudication of by-law, licensing and permit services within the City. An internal transfer of funds from BCLPS to the OCC will be required to facilitate the administration of the Hearings process.

Any additional resources required to support an increased workload resulting from the expansion of by-laws designated under AMPs and the anticipated addition of the automatic speed enforcement program under the AMPs program will be captured in the 2024 budget process.

Operational Impact

The establishment of an Adjudicative Services section within the OCC, including the transfer of the Hearings process, is proposed to occur in stages, fostering internal collaboration and information sharing to ensure seamless transition of service delivery.

Staff from the Legal Services, BCLPS and the OCC have reviewed and provided input for this report.

Broader Regional Impacts/Considerations

There are no regional impacts/considerations.

Conclusion

Staff are seeking Council's approval to transfer the appointment of Hearing Officers under the Administrative Monetary Penalties system (AMPs) from the Director of By-law and Compliance, Licensing and Permitting Services to the City Clerk. Staff are also confirming that the Hearings Officer appeal process under AMPs will be administered under a designated 'Adjudicative Services' service area within the OCC commencing

Q1 2024. These changes are being recommended to support Service Excellence & Accountability through transparent and accountable local decision-making and consolidation of the various adjudicative functions of the City under one administration.

For more information, please contact: Christine Vigneault, Manager of Development Services & Secretary Treasurer to the Committee of Adjustment.

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