

## CITY OF VAUGHAN

### **EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 25, 2024**

Item 32, Report No. 25 of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on June 25, 2024.

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#### **32. HEARING OFFICER APPOINTMENT POLICY**

**The Committee of the Whole recommends approval of the recommendations contained in the following report of the Deputy City Manager, Legal and Administrative Services & City Solicitor, dated June 18, 2024:**

##### **Recommendations**

1. That Council approve the Hearing Officer Appointment Policy substantially in the form as provided in Attachment 1; and
2. That a by-law be enacted to amend the Administrative Monetary Penalties By-law 063-2019, as amended, in accordance with this report.

## Committee of the Whole (2) Report

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**DATE:** Tuesday, June 18, 2024

**WARD(S):** ALL

**TITLE:** HEARING OFFICER APPOINTMENT POLICY

**FROM:**

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

**ACTION:** DECISION

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### **Purpose**

To make certain amendments to the Administrative Monetary Penalties By-law 063-2019, as amended, and to establish a policy to support the appointment of Hearing Officers under the Administrative Monetary Penalties system (AMPs) by the City Clerk.

### **Report Highlights**

- On June 20, 2023, Council approved the Administrative Monetary Penalties Adjudication Review, which provides the City Clerk with delegated authority to appoint Hearing Officers under AMPs By-law 063-2019, and the enactment of all necessary bylaws, including any amendments required to existing bylaws, to give effect to Council's direction.
- Hearing Officers have historically been appointed through a formal Request for Proposal (RFP) process facilitated by Procurement Services.
- Staff recommend transitioning from the current RFP process to a specialized and tailored appointment approach overseen by the Office of the City Clerk.
- In addition to the Hearing Officer Appointment Policy, staff determined an amendment to By-law 063-2019 is required to update eligibility requirements for Hearing Officers to be considered as part of this newly proposed appointment process.
- Staff recommend that the Hearing Officer Appointment Policy (Attachment 1) be endorsed to replace the existing RFP process.

## **Recommendations**

1. That Council approve the Hearing Officer Appointment Policy substantially in the form as provided in Attachment 1; and
2. That a by-law be enacted to amend the Administrative Monetary Penalties By-law 063-2019, as amended, in accordance with this report.

## **Background**

On June 20, 2023, Council approved the Administrative Monetary Penalties Adjudication Review, which provides the City Clerk with delegated authority to appoint Hearing Officers under AMPs By-law 063-2019, and the enactment of all necessary bylaws, including any amendments required to existing bylaws, to give effect to Council's direction. In the course of implementation of Council's direction, staff believe that a new appointment process and policy should be put in place for Hearing Officers.

## **Previous Reports/Authority**

[Administrative Monetary Penalties Adjudication Review](#) Report from the June 6, 2023, Committee of the Whole 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**

AMPS Hearing Officers provide services as independent contractors and are not considered employees. They maintain autonomy in adjudicating disputes under AMPs to uphold the principles of impartiality and procedural fairness.

Hearing Officers are currently appointed through a formal Request for Proposal (RFP) process facilitated by Procurement Services. While this process is designed for acquiring goods and services, it is not ideal for obtaining personnel with specialized skills, such as Hearing Officers. The associated requirements can present disadvantages due to the inherent complexity of the process, and may disincentivize qualified individuals from applying. Additionally, it is important to ensure that qualifications and experience are prioritized over cost savings when selecting the most suitable candidate.

Considering this, staff recommend transitioning from the current RFP process to a specialized and tailored appointment approach overseen by the Office of the City Clerk in accordance with a new Hearing Officer Appointment Policy (Attachment 1). This approach will provide the necessary layer of scrutiny to ensure impartiality and process integrity, while streamlining administration and expediting the appointment timelines.

Under this proposed policy, the City Clerk will oversee the appointment process, including establishing selection criteria, advertising vacancies, receiving applications, and coordinating the evaluation and selection of candidates. The Clerk will execute appropriate retainer agreements with the Hearing Officers.

In addition, staff determined that AMPs By-law 063-2019, as amended, should be further amended to update eligibility requirements for Hearing Officers as part of the appointment process. This includes that a Hearing Officer cannot be in litigation against the City, act or continue to act as the legal representative in litigation against the City, or appear as an agent before any City tribunal, and that they must maintain a clear criminal record. Other applicable bidder's eligibility requirements in the City's standard RFP will also be incorporated into the bylaw.

### **Financial Impact**

There are no additional costs associated with the implementation of this policy.

The cost of the Hearings process under AMPs, including administration and appointment of Hearing Officers, will continue to be funded through the AMPs program through established user fees and charges.

Remuneration for Hearing Officers will be set by the City Clerk under the new Policy and will be aligned with established market rates to ensure competitiveness. A jurisdictional scan of market rates for municipal Hearing Officers is set out below:

	<b>Half Day</b>	<b>Full Day</b>	<b>Per Hour</b>
Vaughan		\$500	
Mississauga	\$250	\$400	
Windsor			\$250
Brampton		\$500	
St. Catharines	\$350	\$600	
Newmarket	\$300 (proceedings up to 3 hours)	\$600 (3-to-6-hour hearings)	\$90 for each additional hour beyond the initial 6 hours included in the daily rate;  Newmarket also pays \$90/hour to write a decision up to a max of 3 hours.

	<b>Half Day</b>	<b>Full Day</b>	<b>Per Hour</b>
Markham	\$200	\$400	
London	\$200	\$400	

Table 1: 2024 Hearing Officer Compensation Review

**Operational Impact**

Implementation of the policy will provide a consistent and transparent framework for the appointment of Hearing Officers pursuant to the AMPs By-law.

Staff from Legal Services, By-law and Compliance, Licensing and Permit Services and the Office of the City Clerk have reviewed and provided input for this report.

**Broader Regional Impacts/Considerations**

There are no regional impacts/considerations.

**Conclusion**

Staff are requesting approval to enact the Hearing Officer Appointment Policy and an amendment to the Administrative Monetary Penalties By-law 063-2019 to facilitate the Hearing Officer appointment process.

These proposed changes aim to enhance service excellence and accountability by promoting transparent and responsible decision-making.

**For more information**, please contact: Christine Vigneault, Manager of Development Services & Secretary Treasurer to the Committee of Adjustment ext. 8332.

**Attachment**

1. Draft Hearing Officer Appointment Policy

**Prepared by**

Christine Vigneault, Manager of Development Services & Secretary Treasurer to the Committee of Adjustment, ext. 8332

# THE CITY OF VAUGHAN

## CORPORATE POLICY

**POLICY TITLE:** HEARING OFFICER APPOINTMENT

**POLICY NO.:** 03.C.17

<b>Section:</b>	Administration & Legal		
<b>Effective Date:</b>	Click or tap to enter a date.	<b>Date of Last Review:</b>	Click or tap to enter a date.
<b>Approval Authority:</b> Administration	<b>Policy Owner:</b> DCM, Legal and Administrative Services & City Solicitor		

### POLICY STATEMENT

The City Clerk has been delegated authority to appoint Hearing Officers under the Administrative Monetary Penalty By-law 063-2019 (“AMPs By-law”) to hear appeals of a Screening Decision.

Decisions of a Hearing Officer are considered final and are subject to the *Statutory Powers Procedure Act*, (“SPPA”).

Hearing Officers play a crucial role in ensuring fairness, impartiality and adherence to due process in resolving disputes relating to Administrative Monetary Penalties.

### PURPOSE

To provide a consistent and transparent framework for the appointment of Hearing Officers pursuant to the AMPs By-law.

### SCOPE

Policy guidelines will apply to the appointment of Hearing Officers under the AMPs By-law.

### LEGISLATIVE REQUIREMENTS

1. *Ontario Regulation 333/07: Administrative Penalties.*
2. *Statutory Powers & Procedures Act, R.S.O. 1990, c. S.22.*
3. *Municipal Act, 2001, S.O. 2001, c. 25.*
4. *City of Vaughan By-law 063-2019, Administrative Monetary Penalties.*

**POLICY TITLE: HEARING OFFICER APPOINTMENT**

**POLICY NO.: 03.C.17**

## **DEFINITIONS**

- 1. Administrative Monetary Penalty:** A monetary penalty as set out By-law 063-2019 or in a Designated By-law.
- 2. City:** The Corporation of the City of Vaughan.
- 3. City Clerk:** The person appointed by Council pursuant to section 228 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act*") or their designate.
- 4. Council:** The Council of the Corporation of the City of Vaughan.
- 5. Delegated Power of Decision:** A power or right, conferred by a City By-law, to prescribe the legal rights, powers, privileges, immunities, duties and/or liabilities of any person or party.
- 6. Designated By-law:** A by-law that is designated under By-law 063-2019, as a by-law under which a contravention is subject to an Administrative Monetary Penalty.
- 7. Employee:** A person who performs work for the City for wages or who is defined as an employee under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 including some trainees, students, interns and temporary employees.
- 8. Hearing:** The process set out in By-law 063-2019, as amended.
- 9. Hearing Officer:** A person who performs the functions of a Hearing Officer in accordance with By-law 063-2019, as amended.
- 10. Independent Contractor:** A person engaged to provide a contract for service to the City but who is not under the control of the City or considered an employee of the City.
- 11. Retainer Agreement:** A contract between the Corporation of the City of Vaughan ("the City") and a Hearing Officer, specifying terms for retaining services, including but not limited to, responsibilities, term of office and adherence to procedural requirements.
- 12. Screening Decision:** A notice that contains the decision made by a Screening Officer and delivered in accordance with By-law 063-2019, as amended.
- 13. Screening Officer:** A person who performs the functions of a Screening Officer in accordance with By-law 063-2019, as amended.

**POLICY TITLE: HEARING OFFICER APPOINTMENT**

**POLICY NO.: 03.C.17**

**14. Services:** Has the same meaning as in the Retainer Agreement, but shall include, at a minimum:

- The hearing of appeals pursuant to the City's By-laws, including but not limited to any appeals of decisions rendered by the City's Screening Officer(s);
- The hearing of testimony, receipt and assessment of evidence, interpretation of relevant statutes and By-laws;
- The provision of written and oral decisions in accordance with relevant legislation, including but not limited to the *Statutory Powers and Procedures Act*, R.S.O. 1990, s. 22, the *Municipal Act*, 2001, S.O. 2001, c. 25, and the City of Vaughan Administrative Monetary Penalties By-law 063-2019, as amended; and
- The fulfillment of all duties provided in this Policy.

## **POLICY**

### **1. RETAINER AGREEMENTS**

- 1.1. The City Clerk is authorized to execute Retainer Agreements on behalf of the City, including any amendments as may be required from time to time, to retain the Services of a Hearing Officer, in a form satisfactory to Legal Services, including setting terms and remuneration.
- 1.2. The City Clerk shall establish remuneration for Hearing Officers in alignment with established market rates, as reviewed from time to time.
- 1.3. The Hearing Officer shall provide Services as an Independent Contractor and not as an Employee of the City and shall conduct Hearings on behalf of the City, as may be assigned by the City Clerk, for the duration of their term as specified in the Retainer Agreement.
- 1.4. The term of a Hearing Officer shall be identified in the Retainer Agreement.
- 1.5. Remuneration, including allowable expense reimbursements, shall be set out in the Retainer Agreement.

### **2. ELIGIBILITY**

- 2.1. A Hearing Officer appointed by the City Clerk must satisfy the eligibility criteria outlined in the AMPs By-law.

### **3. DUTIES**

- 3.1. Hearing Officers shall:



**POLICY TITLE: HEARING OFFICER APPOINTMENT**

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- 3.1.1. Conduct hearings in accordance with the *SPPA* and exercise the Delegated Power of Decision in the review of Screening Decisions, as set out in the AMPs By-law.
- 3.1.2. Review case documentation in accordance with established policies, procedures and guidelines.
- 3.1.3. Issue oral and written decisions in accordance with the AMPs By-law, including decisions on whether to affirm, reduce or cancel Administrative Monetary Penalties and/or to extend the time to pay Administrative Monetary Penalties in accordance with the AMPs By-law and established policies, procedures and guidelines.
- 3.1.4. Ensure equal access, fair treatment and due process for all parties.
- 3.1.5. Ensure that all rulings and decisions are independent and free of outside influence.
- 3.1.6. Regularly review and comply with all applicable by-laws, policies, procedures, guidelines, legislation and regulations.
- 3.1.7. Maintain and upgrade their knowledge and competence by participating in training and education courses, as required.
- 3.1.8. Perform all other services as outlined in the Retainer Agreement.
- 3.1.9. Have the necessary computer hardware, software and high-speed internet service together with all of the necessary computing skills to be able to conduct a virtual Hearing in a professional and skilled manner.
- 3.1.10. Have flexibility to provide service on a part-time basis (approximately 6 - 8 days per month) or as required.

**4. QUALIFICATIONS**

- 4.1. Preferred Hearing Officer Qualifications:
  - 4.1.1. Formal post-secondary education in law enforcement, regulatory law, public administration, or related and/or have an equivalent combination of education and experience.
  - 4.1.2. Experience in administrative law, adjudication, or mediation.

- 4.1.3. A member of the Society of Ontario Adjudicators and Regulators and/or the Law Society of Ontario.
- 4.1.4. Knowledge of, and experience in interpreting and applying, appropriate legislation, including municipal bylaws, the *Municipal Act*, and the *SPPA*.
- 4.1.5. Ability to formulate reasoned decisions and communicate them clearly and effectively, both orally and in writing.
- 4.1.6. Effective leadership, facilitation, communication, presentation, interpersonal and organizational skills.
- 4.1.7. Demonstrated respect for diversity and inclusivity in maintaining a fair and transparent process for all persons, regardless of physical or mental abilities.
- 4.1.8. Commitment to ongoing professional development, to enhance expertise and remain current in the field.
- 4.1.9. Computer & software literacy (Microsoft Suite applications, Adobe).

## **5. APPOINTMENT & SELECTION PROCESS**

- 5.1. The City Clerk shall establish and coordinate the appointment and selection process in a manner deemed to be appropriate.

## **6. TERMINATION OF RETAINER AGREEMENT**

- 6.1. Upon written notice in a form satisfactory to Legal Services, the City Clerk may terminate the Retainer Agreement prior to its expiry in the event of a failure by a Hearing Officer to comply with any material provision of the Retainer Agreement or to perform Services in a manner satisfactory to the City.
- 6.2. A Hearing Officer may terminate the Retainer Agreement by giving 14 calendar days' notice to the City Clerk.

## **7. IMPLEMENTATION**

- 7.1. Procedures may be established by the City Clerk to address specific implementation of this Policy.

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<b>ADMINISTRATION</b>			
<i>Administered by the Office of the City Clerk.</i>			
<b>Review Schedule:</b>	SELECT If other, specify here	<b>Next Review Date:</b>	Click or tap to enter a date.
<b>Related Policy(ies):</b>			
<b>Related By-Law(s):</b>	063-2019 – Administrative Monetary Penalties		
<b>Procedural Document:</b>			
<b>Revision History</b>			
<b>Date:</b>	<b>Description:</b>		
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