

## 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