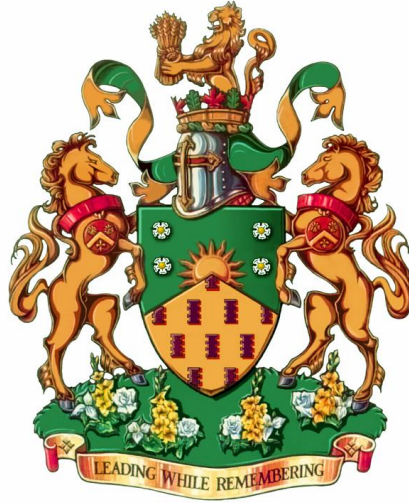


**City of Markham**

**Ontario**



**By-law 2015-94**

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

**(No Schedule/Attachment)**



## By-law 2015-94

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

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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"

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Martha Pettit  
Deputy Clerk

"Frank Scarpitti"

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Frank Scarpitti  
Mayor