



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

Number 48-2008

A By-law to create the Brampton Appeal Tribunal  
and to establish its Rules of Procedure

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**WHEREAS** Council wishes to create the Brampton Appeal Tribunal, which is to be composed of citizens of Brampton;

**AND WHEREAS** Section 23.1 of the *Municipal Act*, as amended by the *Municipal Statute Law Amendment Act, 2006* (Bill 130), permits Council to delegate appeals under the Licensing By-law 1-2002 and Dog By-law 250-2005 to an independent Tribunal;

**AND WHEREAS** the creation of this Tribunal permits the City to separate its quasi-judicial functions from its legislative and executive functions;

NOW THEREFORE the Council of The Corporation of the City of Brampton  
ENACTS AS FOLLOWS:

## DEFINITIONS

1. In this By-law:

"**appellant**" in the case of a license appeal, includes an applicant for a license, a holder of a license, a partner of the partnership applying for or holding the license, an officer or director of the corporation applying for or holding the license and in the case of a designation of a dog appeal, the owner of the dog or agent of the owner;

"**City**" means the City of Brampton;

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

"**Dog By-law**" means Dog By-law 250-2005, as amended;

"**Licensing By-law**" means Licensing By-law 1-2002, as amended;

"**member**" means a member of the Tribunal;

“**Tribunal**” means the Brampton Appeal Tribunal.

**BRAMPTON APPEAL TRIBUNAL**

2. The Brampton Appeal Tribunal is established.
3. The Tribunal shall be composed of not fewer than three (3) individuals who shall be appointed in accordance with the City’s Citizen Appointment Procedures .
4. Honoraria shall be paid to members of the Tribunal in accordance with Schedule 2 to this by-law.
5. The Tribunal shall meet once a month or as often as it decides is necessary for the expedient resolution of its case load.

**RULES OF PROCEDURE**

6. The Rules of Procedure governing the Tribunal are set out in Schedule 1.

**JURISDICTION**

7. The Tribunal shall hear:
  - (1) appeals from the decision of the License Issuer. The types of decisions that carry a right of appeal to the Tribunal are set out in the Licensing By-law.
  - (2) appeals from decisions of the poundkeeper. The types of decisions that carry a right of appeal to the Tribunal are set out in the Dog By-law.

**HOW THE TRIBUNAL IS TO MAKE ITS DECISION**

8. The Tribunal shall make a decision that furthers the public interest and is consistent with the purpose and intent of the relevant By-law.
9. The decision of the Tribunal is final and there is no right of further appeal to Council.

**EXCEPTION**

10. If a quorum of Tribunal members cannot be convened, nothing prevents Council from convening a Committee of Council to hear a specific appeal arising under Section 7.
11. The Tribunal has no power to deal with a matter that has been referred to a Committee of Council convened under Section 10.
12. A Committee of Council convened under Section 10 has all the powers with respect to that matter that the Tribunal would have under Section 7, and despite Section 252 of the *Municipal Act*, the Committee of Council may make a final decision, without being required to have its decision ratified by Council.

**LICENSING BY-LAW APPEALS**

13. After the hearing of an appeal from the decision of the License Issuer, the Tribunal may make any decision the License Issuer could have made, including any of the following, separately or in combination:
  - (1) grant a licence, with or without conditions;

- (2) refuse an application for a license;
- (3) refuse to reinstate a license;
- (4) revoke a license;
- (5) suspend a license; or
- (6) alter, cancel or impose a term or condition of a license.

#### **DOG BY-LAW APPEALS**

14. After the hearing of an appeal from the decision of the poundkeeper, the Tribunal may make any decision the poundkeeper could have made, or direct that the owner do anything under that By-law, as the Tribunal considers proper and for such purpose may substitute its opinion for that of the poundkeeper.

#### **HEARING PROCEDURE**

15. An appeal is commenced by the filing of a written notice of appeal with the City Clerk, accompanied by the payment of the fee, within fifteen (15) days after the date the appellant:

- (1) receives the decision; or
- (2) is deemed to have received the decision,

whichever is earlier.

16. On receipt of a written request for a hearing from the appellant, the City Clerk shall schedule a hearing and shall give reasonable notice to the appellant, as set out in the Rules of Procedure.
17. A decision by the Tribunal is a statutory power of decision within the meaning of the *Statutory Powers Procedure Act* and that Act, except for Sections 17.1 (power to award costs), 18 (requirement to send copies of final decision and order) and 19 (enforcement of order by filing with Superior Court of Justice), applies to the Tribunal and the hearing conducted by it.
18. If the panel of the Tribunal requires, it may meet privately to inspect the property, to deliberate, or to write a decision or order.
19. When an appellant who has been given written notice of the hearing does not attend at the appointed time and place, the Tribunal may proceed in his or her absence, and the appellant shall not be entitled to any further notice of the hearing.
20. Notice of the Tribunal's decision shall be given to the parties present at the hearing before the panel, and any other persons as the Tribunal may direct, and notice shall be given within ten (10) days after the date the Tribunal makes its written decision.

#### **LATE APPEALS**

21. A person who has the right of appeal under Section 7 may bring a motion before the Tribunal to extend the time for filing the appeal, either before or after the fifteen (15) day period.
22. The Tribunal may extend the time for filing the appeal if it is satisfied that there are apparent grounds for the appeal and that there are reasonable grounds for an extension.

**NO LIABILITY**

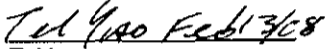
- 23. No member of the Tribunal or Council, or any City employee is personally liable for anything done by it, or him or her, under authority of this by-law.
- 24. This by-law may be called the "Brampton Appeal Tribunal By-law".

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 13<sup>th</sup> DAY OF FEBRUARY, 2008

  
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**Susan Fennell, Mayor**

  
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**Kathryn Zammit, City Clerk**

Approved as to Form and Content

  
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 T. Yao  
 Legal Counsel

## RULES OF PROCEDURE

### To Govern the Proceedings of the Brampton Appeal Tribunal

#### DEFINITIONS

1. In these Rules, unless the context requires otherwise,

“**applicant**” means a person applying for a license or a renewal of a license;

“**Dog By-law**” means Dog By-law 250-2005, as amended;

“**file**” means to transmit a document to the City Clerk, except for a notice of appeal, which must be transmitted pursuant to Rule 19;

“**hearing**” means a hearing in any proceeding;

“**Tribunal Coordinator**” means the member of City staff who has been assigned to perform the administrative tasks required by the Tribunal;

“**licensee**” means the holder of a license issued pursuant to the provisions of the Licensing By-law, as amended;

“**Licensing By-law**” means Licensing By-law 1-2002, as amended;

“**motion**” means an application for a specific order or decision of the Tribunal made in the course of a proceeding;

“**member**” means an member of the Tribunal;

“**proceeding**” means a matter brought before the Tribunal under the provisions of the Brampton Appeal Tribunal By-law;

“**Respondent**” means the City person who has made the decision that is the subject of the appeal, which may be the appropriate License Issuer or poundkeeper, as the case may be;

“**Rules**” mean the Rules of Procedure of the Brampton Appeal Tribunal and “**Rule**” refers to Sections of these Rules;

“**Tribunal**” means the Brampton Appeal Tribunal.

#### INTERPRETATION

2. (1) These Rules shall receive such fair and liberal interpretation as will best ensure the most expeditious and just determination of every proceeding on its merits.
- (2) Where matters are not provided for in the Rules, the practice shall be determined by the panel of the Tribunal hearing the proceeding.

**APPLICATION**

3. (1) Hearings of the Tribunal are conducted under the authority of Brampton Appeal Tribunal By-law.
- (2) These Rules apply to all proceedings of the Tribunal in the exercise of its statutory power of decision, as defined in the *Statutory Powers Procedure Act*.

**SUBSTANTIAL COMPLIANCE**

4. Substantial compliance with the Rules is sufficient, and it is not intended that a technical objection based on the Rules should defeat an otherwise just result.

**TRIBUNAL CHAIR**

5. At its first meeting, the members of the Tribunal shall decide who is to be the Tribunal chair. The Tribunal chair will preside over hearings of the Tribunal and give direction to staff respecting any of the Tribunal's administrative duties.

**PROCEDURAL ORDERS**

6. (1) In any proceeding, the Tribunal may issue procedural orders to govern the conduct of the proceeding.
- (2) The Tribunal may, at any time during a proceeding amend any procedural order.
- (3) If circumstances of the proceedings so require, the Tribunal may vary or waive compliance with all or part of any Rule, at any time by making a procedural order.
- (4) A procedural order shall prevail over any provision of the Rules to the extent that the provision is inconsistent with the procedural order.
- (5) Subject to any procedural order issued by the Tribunal, the parties to a proceeding may, on consent, waive any of the provisions of the Rules.
- (6) A party seeking a waiver of any of the provisions of the Rules shall do so on a timely basis.

**FAILURE TO COMPLY**

7. (1) Where a party to a proceeding has not complied in full with any Rule or procedural order, the Tribunal may,
  - (a) adjourn the proceeding until it is satisfied that such Rule or order is complied with, or
  - (b) take any other step as it considers just and reasonable.
- (2) No proceeding is invalid by reason only of a defect or other irregularity.

**TIME**

8. In the computation of time under the Rules or a procedural order, except where a contrary intention appears,
  - (1) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
  - (2) where the time for doing an act under the Rules or under an order expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (3) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
9. Where a time of day is mentioned in the Rules or in any document or order in a proceeding, the time referred to shall be the time observed locally.
10. The Tribunal may extend or abridge any time prescribed in the Rules or established by a procedural order during a proceeding, on such terms as are just.
11. Under these Rules, "holiday" means,
  - (1) any Saturday or Sunday;
  - (2) New Year's Day;
  - (3) Family Day;
  - (4) Good Friday;
  - (5) Easter Monday
  - (6) Victoria Day;
  - (7) Canada Day;
  - (8) Civic Holiday;
  - (9) Labour Day;
  - (10) Thanksgiving Day;
  - (11) Remembrance Day;
  - (12) Christmas Day;
  - (13) Boxing Day; and
  - (14) any day on which the City's offices are closed.

**SERVICE OF DOCUMENTS**

12. (1) The Tribunal may require any party or the Tribunal Coordinator to cause the service of any document on any party in any of the following ways, or using any combination thereof:
  - (a) by personal service by delivering the document to the person;
  - (b) by regular or registered mail to the person's last known address;
  - (c) by courier to the person's last known address;
  - (d) by fax transmission at the person's last known fax transmission number;
  - (e) by e-mail at the person's last known e-mail address; or
  - (f) as directed by the Tribunal conducting the hearing.
- (2) Documents transmitted by personal service or by courier are deemed to be served on the day that they are given to the recipient.

- (3) If a document is sent by regular or registered mail, it is deemed to be served four (4) days after mailing.
- (4) If a document is sent by fax transmission or e-mail after 4:30 p.m., it is deemed served on the next day that is not a holiday.
- (5) The Tribunal may direct the Tribunal Coordinator or any other party to take steps to confirm that service has been effective.
- (6) The Rules regarding deeming of receipt date for fax transmission or email do not apply to the filing of the notice of appeal with the City Clerk because that document must be filed pursuant to Rule 19.

### **FILING AND FAXING**

13. (1) Filing of any document by any party to a hearing (i.e. transmitting it to the City Clerk) may be effected by personal delivery, by ordinary or registered mail, by fax transmission, by courier or otherwise as the Tribunal may order.
- (2) A document that is more than twenty (20) pages may not be served by fax on other parties unless prior consent from the intended recipient for this faxing is obtained.
- (3) Where a document is filed with the City Clerk, the date of the receipt stamp on the document shall be deemed to be the date of the filing, unless the Tribunal orders otherwise.
- (4) Where the Tribunal Coordinator has no record of the receipt of a document alleged to have been filed with the City Clerk, the document shall be deemed not to have been filed, unless the Tribunal orders otherwise.

### **EXHIBITS**

14. All parties to a hearing, particularly solicitors and agents, shall bring to the hearing a sufficient number of copies of documents for the Tribunal members, the Tribunal Coordinator, counsel to the Tribunal and the other parties.
15. Photos shall be clear.

### **FORMAT OF DOCUMENTATION**

16. Every written document in a proceeding shall be on 8 ½ by 11 inch paper and the text shall be printed, typed written or reproduced legibly with spaces between the lines, or in such alternate format as may be directed by the Tribunal in order to accommodate the needs of a party to the hearing.

### **CONTENT OF NOTICE OF APPEAL**

17. Where an applicant requests a hearing before the Tribunal, the notice of appeal shall be in writing to the City Clerk and shall include:
  - (1) the original signature of the applicant, or representative;
  - (2) the reasons in support of the appeal;



- (3) the applicant's address, telephone number and, where available, fax number;
- (4) the name of the Respondent;
- (5) the name, address, and telephone number of any agent, representative, or lawyer representing the applicant;
- (6) whether special services or accommodation are required, including translation services or services for the visually or hearing impaired; and
- (7) the required fee.

### NOTICE OF APPEAL

18. In the following sections, the last day of the fifteen (15) day period after the deemed date of service of the decision of the License Issuer or poundkeeper is called the "appeal deadline".
19. An appeal is commenced by the delivery or transmitting of a notice of appeal to the City Clerk by:
  - (1) personally delivering it to a person in the City Clerk's Office;
  - (2) registered mail;
  - (3) ordinary mail; or
  - (4) courier.

A notice of appeal is ineffectual to create a right to a hearing unless it is received by the City Clerk on or before the appeal deadline. A notice of appeal cannot be delivered by fax transmission or email.

20. If a notice of appeal is received after the appeal deadline, the Tribunal Coordinator shall refuse the notice of appeal and advise the sender by registered mail that:
  - (1) the appeal is denied based on the late filing; and
  - (2) the decision under appeal is final and binding.
21. A person wishing to bring a motion to extend the time for filing an appeal shall make a written request (the "request"), supported by reasons, to the Tribunal Coordinator.
22. The Tribunal Coordinator may then schedule a time for the hearing of the motion and shall forward a copy of the request to the persons listed in Rule 28.
23. The person making the request has a right to attend the motion and further explain the particulars of the request to the Tribunal.
24. The Respondent and the Tribunal also have the right to ask questions of the person bringing the motion.

### DISCLOSURE

25. The Tribunal may, at any stage in a proceeding, make such order as it considers just and necessary for:
  - (1) the exchange of documents;
  - (2) the exchange of witness statements;
  - (3) the provision of particulars; and
  - (4) any other form of disclosure.

**PLANNING THE HEARING**

26. Upon receipt of a notice of appeal that is received on or before the appeal deadline, the City Clerk, through the Tribunal Coordinator, will process the appeal by scheduling a hearing for the next available hearing date. If a party to the hearing advises Tribunal Coordinator of unavailability for that date, the Tribunal Coordinator, in consultation with the chair of the Tribunal, may set a later hearing date; however, in the event of repeated unavailability the Tribunal Coordinator may proceed to set a hearing date, despite the inconvenience to that party.
27. The Tribunal Coordinator shall set the time and place of a hearing.
28. The Tribunal will have a standard standing hearing date each month, on a basis to be determined by the Tribunal. If no appeals are submitted by 3:30 p.m. on the day that is two weeks prior to the standing hearing date, the meeting for that month is cancelled and notification via email or telephone is sent to the following:
- (1) the Tribunal members;
  - (2) the City Solicitor;
  - (3) counsel to the Tribunal;
  - (4) in the case of hearings under the Licensing By-law, the appropriate License Issuer;
  - (5) in the case of hearings under Dog By-law, to the Poundkeeper; and
  - (6) the Manager of Prosecutions;
29. If the Tribunal Coordinator receives a withdrawal of appeal prior to the hearing date, notice of cancellation of the hearing shall be sent to all persons who received notice of the hearing.
30. The Tribunal Coordinator shall prepare an agenda package for each appeal consisting of:
- (1) the schedule of all appeals to be heard on that day;
  - (2) the notice of each hearing;
  - (3) in the case of a licensing appeal, the decision of the License Issuer;
  - (4) in the case of a dog designation, the decision of the Poundkeeper;
  - (5) the letter of appeal;
  - (6) any related information such as reports or correspondence, if any;
  - (7) an extract of the relevant portion of the by-law in question.

The agenda package is sent to all persons set out in Rule 28 and to the person who has filed the appeal.

31. On the day of the hearing the Tribunal Coordinator shall post the schedule of all appeals to be heard, in some visible place outside the hearing room.
32. Once a date has been set for a hearing, it may not be adjourned except by order of the Tribunal, except if an appeal is withdrawn as set out in Rule 29.

**CONFLICT OF INTEREST**

33. The Tribunal is subject to the *Municipal Conflict of Interest Act*. Reference shall be made to that Act as to what constitutes an indirect pecuniary interest (Section 2 of the Act). The pecuniary interest, direct or indirect, of a parent or the spouse, same-sex partner or any child of the Tribunal member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

**PRE-HEARING**

34. The Tribunal may, at the request of a party or on its own initiative, direct that a pre-hearing conference be held in any proceeding and that the parties participate in the conference.
35. (1) The purpose of the pre-hearing conference will be to:
- (a) exchange information between the parties, including disclosure of particulars, physical or documentary evidence, lists of witnesses and witness statements;
  - (b) narrow or simplify any issues of law and fact;
  - (c) identify agreed upon facts, evidence or law;
  - (d) provide notice of any preliminary motions;
  - (e) establish dates by which any steps in the proceeding are to be started or completed;
  - (f) determine the estimated duration of the hearing;
  - (g) determine any other matter that may assist in the just and expeditious disposition of the proceeding; and
  - (h) mediate any or all of the outstanding issues in dispute.
- (2) A pre-hearing conference may be conducted in person, in writing, or by telephone conference call at the discretion of the Tribunal or as may be agreed upon by the parties.
- (3) The Tribunal chair may designate any person to preside at the pre-hearing conference.
- (4) Quorum for a pre-hearing conference may be reduced to one member of the Tribunal at the discretion of the Tribunal chair.
- (5) If a member of the Tribunal presides at the pre-hearing conference, he or she shall not be a member of the panel making the final decision unless all parties consent in writing.
- (6) At the conclusion of the pre-hearing conference the parties or their representatives may sign a memorandum setting out the results of the pre-hearing conference to be given to the Tribunal to form the basis of a consent order.
- (7) No information about the prehearing conference shall be provided to the Tribunal making a decision on the merits except as set out in Rule 35(6).

**SUMMONSES**

36. The Tribunal may require any person, including a party, by summons to attend at the hearing to give evidence on oath or affirmation.
37. A summons shall be in the following form:

**Summons in form prescribed by Regulation 116/95 of the *Statutory Powers Procedure Act***

Summons to a witness before the Brampton Appeal Tribunal

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on *(day)*, *(date)*, at *(place)*, and to remain in attendance until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: (*Set out nature and date of each document and give sufficient particulars to identify each document and thing.*)

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed by Counsel to the Tribunal

NOTE: You are entitled to be paid the same fees or allowance for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice of Ontario.

38. To obtain a summons, a party must satisfy counsel to the Tribunal that the evidence of the person to be summonsed is relevant to the issues in dispute at the hearing
39. The summons shall be personally served by a provincial offences officer or any other person over the age of eighteen (18) years. Service shall be proved by a written affidavit.
40. The person summonsed is entitled to receive the same fees and travel allowances as set out in Tariff A (Lawyers Fees and Disbursements) of the Rules of Civil Procedure.

#### THE HEARING

41. The hearing is held as follows:
  - (1) A minimum of three (3) members must be present to achieve quorum. In the following sections, the "panel" means those members that are present to conduct the hearing or procedure.
  - (2) If quorum is not achieved within thirty (30) minutes of the scheduled start time, all hearings are rescheduled to the next standing date and notice shall be sent as if it were the first notice of the hearing.
  - (3) When the Tribunal chair is unable to attend a hearing, the panel may select amongst themselves the member who will chair the hearing ("the hearing chair").
  - (4) The hearing chair will call the hearing to order and may advise the appellant of the hearing procedure.
  - (5) The Tribunal Coordinator will swear or affirm the witnesses.
  - (6) A member of the City Solicitor's Office who is not privy to the case of either party may be present as counsel to the Tribunal to assist and give legal advice to the Tribunal hearing the case. However,

counsel to the Tribunal does not have power to decide the appeal, which rests with the Tribunal.

- (7) The hearing process is informal, but the *Statutory Powers Procedure Act* applies.
- (8) The Tribunal may decide which of the parties it wishes to hear from first, but it is customary that the City proceeds first.
- (9) The City's agent should be called "City's Case Presenter" and not "prosecutor".
- (10) The process for each witness to give testimony is: evidence in chief, cross-examination and reply, if any.
- (11) Each member of the Tribunal may ask questions of the witness at any time.
- (12) The Tribunal may recall a witness for the purpose of clarifying a point that has arisen since the witness has concluded his or her main presentation.
- (13) The parties have the right to make opening and closing statements. It is customary that the City proceeds first; however the Tribunal may rule otherwise.
- (14) These Rules, except for Rule 41(1), are subject to change by the Tribunal, if the Tribunal finds that there is a fairer way of proceeding.

#### **DECISION**

42. The panel will attempt to make a written decision no later than fifteen (15) days after the hearing is completed.
43. The counsel to the Tribunal will prepare the Notice of Decision and the Tribunal Coordinator shall ensure that the members of the hearing Tribunal sign it.
44. The Tribunal Coordinator will send a copy of the Notice of Decision to:
  - (1) the members of the Tribunal;
  - (2) the parties to the hearing;
  - (3) any person that the Tribunal directs; and
  - (4) City staff as listed in Rule 28.

#### **COSTS**

45. The Tribunal does not have the power to award costs of the proceedings to a party.

#### **MINOR ERRORS**

46. The Tribunal may at any time and without prior notice to the parties, correct a typographical or any other minor error, clarify an ambiguity or misstatement or revise an incidental matter contained in a written decision or order.

February 13, 2008

Schedule 2 to By-law 48-2008

**Honoraria to Members of the Brampton Appeal Tribunal**

Each member who participates in a meeting to hear appeals under this by-law shall be paid an honorarium of \$75.00