



**By-Law 26-2008
of The Corporation of the City of Oshawa**

Being a By-law to establish the position of Hearings Officer.

Whereas:

1. Council of The Corporation of the City of Oshawa considers it desirable and necessary to establish the position of a Hearings Officer to whom may be delegated quasi-judicial and other authority under various City By-laws.

Now therefore the Council of The Corporation of the City of Oshawa enacts as follows:

1. In this By-law,
 - (a) "Child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of her or his family;
 - (b) "City" means The Corporation of the City of Oshawa;
 - (c) "Council" means the council of the City;
 - (d) "Delegated Power of Decision" means a power or right, conferred by or under a City By-law, to make a decision deciding or prescribing,
 - i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
 - ii) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not.
 - (e) "Hearings Officer" means each person from time to time appointed by Council pursuant to section 3 of this By-law; (37-2010)
 - (f) "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; and
 - (g) "Spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
2. The positions of Hearings Officers are established for the purpose of exercising Delegated Powers of Decision. (37-2010)
3. Hearings Officers shall be appointed by Council on the recommendation of the City Manager in consultation with the City Solicitor which recommendation shall give preference to eligible candidates: (37-2010)
 - (a) with knowledge of and experience in administrative law; and
 - (b) of good character.
4. The following are not eligible for appointment as a Hearings Officer:
 - (a) An employee or member of Council of the City;
 - (b) The Child of a person referenced in paragraph 4(a);
 - (c) The Parent of a person referenced in paragraph 4(a);
 - (d) The Spouse of a person referenced in paragraph 4(a); or
 - (e) 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 the terms with which the person is in compliance.

5. Each Hearings Officer shall hold office for the term or remainder of the term of the Council that appointed the Hearings Officer and thereafter until the Hearings Officer is reappointed or a successor is appointed pursuant to this By-law. (37-2010)
6. Each Hearings Officer shall be remunerated at the rate from time to time established by Council. (37-2010)
 - 6.1 The City's Director, Municipal Law Enforcement and Licensing Services, shall determine the scheduling of proceedings before any Hearings Officer having regard to the efficiency and timeliness of hearings processes and to the availability of Hearings Officers. (37-2010)
 - 6.2 In any process or hearing before the Hearings Officer, a statement respecting any matter related to the process or hearing purporting to be signed by the City's Director, Municipal Law Enforcement and Licensing Services or by a person authorized by a City by-law to undertake inspections is, without proof of the office or signature of the Director or such person, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the statement for all purposes in the process or hearing. (37-2010)
 - 6.3 A representative may act on behalf of and represent a person in respect of a proceeding or hearing before the Hearings Officer where the Hearings Officer is satisfied that: (37-2010)
 - (a) the person is entitled to be heard by the Hearings Officer;
 - (b) the representative is a lawyer, a licensed paralegal or a person who is exempt from the requirement to be licensed by By-law passed pursuant to the *Law Society Act*, R.S.O. 1990, c. L.8;
 - (c) the person has authorized in writing the representative to act on behalf of and to represent the person in the particular proceeding or hearing;
 - (d) the written authorization specifies the representative's qualification for the purpose of paragraph 6.3(b) including, in the case of a representative who claims to be exempt from the requirement to be licensed, the particular ground prescribed by By-law passed pursuant to the *Law Society Act*, R.S.O. 1990, c. L.8 upon which the representative purports to be exempt; and
 - (e) the written authorization has been filed in the proceeding or hearing before the Hearings Officer and remains in effect.
 - 6.4 If a person requires an interpreter for the purpose of any proceeding before a Hearings Officer, the person must provide the interpreter at the person's own expense. (37-2010)
 - 6.5 No person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or aural representations by electronic means or otherwise, at any proceedings of the Hearings officer otherwise open to the public, except in the following circumstances: (37-2010)
 - (a) No fewer than three (3) days prior to the proceeding, the person gives written notice to the City of the person's intention to request the Hearings Officer for permission to record the proceeding which notice specifies the proposed means of recording;
 - (b) The person bears all costs related to the proposed recording;
 - (c) Where the person proposes verbatim transcription:
 - i) the recording is undertaken by a qualified verbatim reporter;
 - ii) all testimony and submissions respecting the proceeding are recorded; and

- iii) the person delivers to the City no fewer than two (2) certified copies of the transcript prepared by the qualified verbatim reporter within three (3) days of the reporter's completion of the transcript;
 - (d) the Hearings Officer determines that the proceeding will not be disrupted or delayed if approval is given;
 - (e) the Hearings Officer determines that the approval will not result in any prejudice to any party to the proceeding;
 - (f) prior to the commencement of the proceeding, the Hearings Officer authorizes the recording and has not revoked the authorization; and
 - (g) the recording is undertaken only in accordance with the Hearings Officer's approval including any terms or conditions to such approval.
7. No person shall attempt, directly or indirectly, to communicate with or influence a Hearings Officer respecting the determination of an issue respecting a Delegated Power of Decision in a proceeding that is or will be pending before the Hearings Officer except a person who is entitled to be heard in the proceeding or the person's lawyer or licensed paralegal and only by that person or the person's lawyer or licensed paralegal during the hearing of the proceeding in which the issue arises. Failure to comply with this section constitutes an offence.
8. Section 7 does not prevent a Hearings Officer from seeking and receiving legal advice including from a lawyer in the City's Legal Services.
9. The functions of a secretary-treasurer shall be provided for Hearings Officers by City civic administration including, without limitation, the making and keeping of minutes and records of all applications and the decisions thereon and of all other official business of Hearings Officers. (37-2010)
10. Section 253 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (Inspection of Records) applies with necessary modifications to documents made or kept pursuant to section 9.
11. Proceedings before Hearings Officers shall be subject to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. (37-2010)
12. This By-law is in effect on the date of its passing.
- By-law passed this twentieth day of February, 2008.