

Staff Report



Corporate Services Department

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REPORT TO: Finance and Corporate Services Committee

DATE OF MEETING: March 17, 2025

SUBMITTED BY: Amanda Fusco, Director, Legislated Services/City Clerk, 519-904-1402

PREPARED BY: Dianna Saunderson, Manager, Council and Committee Services / Deputy Clerk, 519-904-1410

WARD(S) INVOLVED: All

DATE OF REPORT: February 24, 2025

REPORT NO.: COR-2025-111

SUBJECT: 2025 Dog Designation Appeal Committee Composition Review

RECOMMENDATION:

That staff be directed to proceed with _____ as the preferred committee structure/composition as outlined in Corporate Services Department report COR-2025-111; and further,

That staff be directed to prepare the necessary council policy or by-law to implement the preferred committee structure/composition, prior to June 2025 for Council's consideration.

REPORT HIGHLIGHTS:

- The purpose of this report is to review the current composition of the Animal Designation Appeal Committee and the Dog Designation Appeal Committee.
- The Animal Designation Appeal Committee and the Dog Designation Appeal Committee convene hearings and make recommendations to Council on dog designations appeals and restricted animal exemption requests (as outlined in Chapter 408 (Animal Regulation) and Chapter 420 (Dog - Designation) and Chapter 421 (Dog - Responsible Ownership) of the City of Kitchener Municipal Code).
- Dog Designation Committee and Animal Designation Appeals generally are infrequent.
- The Dog Designation Committee is responsible for hearing and deciding appeals against decisions made by The Humane Society of Kitchener Waterloo and Stratford Perth to designate a dog as dangerous or restricted.
- The Animal Designation Appeal Committee is responsible for rendering decisions related amending the restricted/prohibited list of animals as outlined within the By-law.

BACKGROUND:

The City currently has five Quasi-Judicial Committees/Tribunals of which two meet regularly; Committee of Adjustment and Property Standards, and three meet infrequently; the Licensing Appeal Tribunal, the Animal Designation Appeal Committee and Dog Designation Appeal Committee. All five of the Quasi-Judicial Committees render decisions based on various

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legislation, specifically the Statutory Powers of Procedure Act, Planning Act, Building Code and Municipal Act. The term "quasi-judicial tribunal" refers to a body created by law with a mandate to settle matters in an impartial manner by applying rules of law without regard for expediency or administrative policy. The Committee of Adjustment and Property Standards Appeal Committee render final decisions on behalf of the City and their appeal mechanisms are to the Ontario Land Tribunal or Superior Court. Decisions made by the Licensing Appeal Tribunal, Animal Designation Appeal Committee and Dog Designation Appeal Committee are ratified by Council.

Dog Designation/Animal Designation Appeal Committee

The Dog Designation/Animal Designation Appeal Committee is made up of three Councillors (currently two appointed members and two alternate members). The Committee's responsibility is to consider, without bias, evidence provided at the appeal hearing, and make a decision to uphold, rescind, or alter the dog designation or conditions of the dog designation. The decision of the Committee is forwarded to the first available Council meeting for ratification.

Typically, the Committee convenes approximately four meetings each year, and currently there is no associated fee for pursuing an appeal. Since 2017, there have been 32 (thirty-two) dog designation appeals and 0 (zero) animal designation appeals, on average the Tribunal meets 5 times. It is important to note that the same members who serve on the Dog Designation Appeal Committee also serve on Council for ratification of the decision.

REPORT:

At Special Council meeting earlier this year, Council considered Council and Committee appointments and directed staff to review the current committee composition of the Dog Designation/Animal Designation Appeal Committee, noting previously the Committee had an individual that was a Canadian Kennel Club member who has since resigned and since that time there have been challenges conducting the hearings from an adjudicative or animal behaviourist perspective.

The existing structure for the Dog Designation/Animal Designation Appeal Committee also presents further challenges, specifically related to matters including but not limited to: hearing scheduling, expertise in animal behaviour, expertise in by-law interpretation and establishing enforceable decisions/conditions that are within the authority of the Committee, familiarity with the provisions in the Statutory Powers and Procedures Act, procedural fairness and potentially bias. In some instances, members of Council hear from constituents related to the incidents, which could also result in concerns about impartiality.

Based on the current practice, Dog designation appeals are supposed to be scheduled for consideration by the Committee within 45 days and are usually held on the same day as Council. The current schedule has also become problematic as there have been a number of other priority meetings that identified for similar scheduling, resulting in the need to find alternative dates for the Committee to meet, often beyond the preferred guidelines of 45 days. In 2023 and 2024 there were 10 hearings scheduled and of those hearings; none of which were within the preferred 45-day timeline, and only three of the meetings proposed on the 2024 schedule were able to be maintained on the Monday morning of Council.

Additionally, the Committee composition previously included one appointment reserved for an individual who was a member of the Canadian Kennel Club, to bring experience with dog/animal behaviour to the Committee. The appointment of the member was ad hoc in nature as the By-law previously identified the appointment of a Canadian Kennel Club member but did not require appointment of a specific individual. That requirement was removed from the By-law when it was revised in 2014. Since that revision, Council members make up the entirety of the Committee.

While the Dog Designation/Animal Designation Appeal Committee meetings are public meetings and are open to the public to attend, there is discretion taken with meeting records due to the sensitive nature of the matters being discussed. Following the Committee meeting, the decision of the Committee is forwarded to the next available Council meeting for ratification. Additionally, the Committees receive a copy of the meeting minutes, as well as a public staff report, outlining the Committee's recommendation the Committee and a summary of the hearing proceedings.

Council at their meeting, then consider the Committee's decision and can ratify or amend the decision. By virtue of the matter being referred to the Council meeting, procedurally, there is nothing procedurally to prevent parties to the hearing appearing as delegates to address Council and potentially seek changes to the Committee's recommendation. For delegations, this step can be very confusing, as the Dog Appeal hearing is conducted in an informal court like fashion, whereas delegating at Council, delegations are subject to the procedural by-law time allocation of 5-minutes. Since 2017, Council has considered all decisions of the Committee and have approved all decisions as recommended, save and except for one, that resulted in an amendment to the deadline for spay / neutering. In hopes to sway Council to amend the Committee's decision, delegations typically share a significant amount of personal information during the Council meeting, which would be available in the Council meeting minutes and on the archived livestream.

A summary of the current process for Dog Designation Appeal Committee is below:

Current Process
1. Appeal the Dog Designation
2. Attend Dog Designation Appeal Hearing – Committee renders a decision
3. Appellant may attend Council to address the Committee decision
4. Council renders a decision
5. Appellant may appeal a Council decision through Judicial Review

Staff are proposing three options to amend the current structure of the Dog Designation/Animal Designation Appeal Committee:

Option 1: Implement a Hearing Officer as the Animal Designation Appeal Committee, the Dog Designation Committee

A hearing officer could be appointed as the Animal and Dog Designation Appeal Committee for the purpose of dealing with any dog or animal designation appeals. The Hearing Officer would be an independent, impartial individual who is trained in the relevant legal and procedural matters. They would hear evidence, make findings of fact, issue their own procedural rulings as required and issue a decision. The decision of the Hearing Officer would be final and would not come to Council for ratification. Staff propose that the already approved Hearing Officer

contracted by By-law Enforcement for the Administrative Monetary Penalty System (AMPS) could be utilized on an ad hoc basis, for any dog and/or animal appeal requests.

This proposed process would be similar to the City of Kitchener's By-law Enforcement's use of the Hearing Officer through AMPS which transfers parking disputes from the courtroom to the municipality. This has resulted in a streamlined process for both staff and the citizens and has reduced the administrative impact on the court system. There are numerous advantages to aligning both the animal and dog designation appeals with AMPS, these benefits include:

- **Impartiality:** A Hearing Officer is a neutral third-party who is not involved in the enforcement or regulatory process. They can provide an objective perspective on the case, ensuring fairness in the decision-making process.
- **Expertise:** A Hearing Officer would have experience in the adjudication process and by-law interpretation which would add fairness and consistency to the decision-making process.
- **Red-Tape Reduction:** The use of a Hearing Officer will expedite the timing and decision-making process, while also ensuring a fair and just hearing for the Appellant.
- **Timeliness:** Hearing Officers are currently scheduled two times a month for current business, including Dog Designation/Animal Designation appeals to that schedule would help to improve the timeliness of their consideration.
- **Efficiency:** Utilizing a Hearing Officer would allow Council members to save valuable time and resources that would otherwise have been allocated towards participation in the tribunal process. Council's involvement in the decision-making process is minimized, allowing them to focus on other constituent matters. The appeal process would also offer an online option, facilitated by the Hearing Officer, to provide greater convenience for the person requesting the appeal.
- **Transparency:** The use of a Hearing Officer can provide greater transparency in the decision-making process, as the hearing and the decision are usually public. This can increase confidence in the regulatory system and ensure accountability.

By utilizing a Hearing Officer, appeals can be resolved in a manner that is both fair and efficient and is consistent with the way other city by-laws are handled under AMPS.

Option 1 – Hearing Officer - Process
1. Appeal the Dog Designation or Restricted Animal request
2. Attend Dog Designation Appeal Hearing – Hearing Officer renders a decision
3. Appellant may appeal a Hearing Officer decision through Judicial Review

This option is being used currently by other municipalities including but not limited to Richmond Hill and London.

Option 2: Amend the structure of the Animal and Dog Designation Appeal Committee to have a total of 5 members, 3 members with expertise in adjudication and/or animal/dog behaviour expertise and 2 members of Council

The Committee could operate in a similar fashion as it is currently operating to date, but rather than being comprised solely of members of Council, staff could be directed to build a Terms of Reference for the Committee, that would confirm the operational function of the Committee and confirm the membership of the Committee and preferred expertise. The Terms of Reference would be brought back to Council for further consideration and once approved, the hearings could be scheduled to always ensure that there is one Council member and one animal behaviourist in attendance at each meeting.

This option would still result in the Committee's decision being forwarded to the next available Council meeting for ratification. For individuals that decide to delegate at Council meetings, it typically results in sharing information beyond what was presented during the hearing that hearing that may be sensitive in nature, in a public forum. Council since 2017 ratified all but one decision of the Committee unchanged. Following Council's ratification of the decision, the Appellant would have the opportunity to appeal Council's decision to Divisional Court if they were unsatisfied.

Option 2 – Councillor & Expert Appeal Committee - Process
1. Appeal the Dog Designation
2. Attend Dog Designation Appeal Hearing – Committee renders a decision
3. Appellants may attend Council to address the Committee decision
4. Council renders a decision
5. Appellant may appeal a Council decision through Judicial Review

Option 3: Amend the structure of the Animal and Dog Designation Appeal Committee to have a total of 5 members who are proposed to be all citizen members with adjudication and/or animal/dog behaviour expertise

The Committee could operate in a similar fashion as it is currently operating to date, but rather than being comprised members of Council, staff could be directed to build a Terms of Reference for the Committee, that would confirm the operational function of the Committee and would confirm the membership of the Committee and preferred expertise. The Terms of Reference would be brought back to Council for further consideration and once approved, the hearings could be scheduled.

This option would still result in the Committee's decision being forwarded to the next available Council meeting for ratification. For individuals that decide to delegate at Council meetings, it typically results in sharing information beyond what was presented during the hearing that may be sensitive in nature, in a public forum. Council since 2017 ratified all but one decision of the Committee unchanged. Following Council's ratification of the decision, the Appellant would have the opportunity to appeal Council's decision to the Divisional Court if they were unsatisfied.

While staff are supportive of all three options, it would be staff's recommendation that the Dog Designation Appeal Committee structure be replaced with a Hearing Officer, given the ability to expedite the timing and decision-making process, while also ensuring a fair and just hearing for the Appellant. Pending Council's decision, staff will continue to seek opportunities to improve the administration of the Committee and report back to Council where additional approvals may be required.

Option 3 – Citizen Experts Appeal Committee - Process
1. Appeal the Dog Designation
2. Attend Dog Designation Appeal Hearing – Committee renders a decision
3. Appellants may attend Council to address the Committee decision
4. Council renders a decision
5. Appellant may appeal a Council decision through Judicial Review

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

There is an operating budget of \$1,000.00 for the Dog Designation/Animal Designation Appeal Committee that is likely to cover the majority of the expenses related to the Committee. There is no current fee to request an appeal, as the cost is mainly involved the time commitment of various city staff, council members, and committee members. Pending Council’s decision, staff following the implementation of a potential new structure may seek to make a minor increase to the budget in future years, or review whether a modest appeal fee should be imposed. Previously, the budget was used to provide a honourarium to the Canadian Kennel Club member prior to their resignation from the Committee.

Option 1: Implement a Hearing Officer as the Animal Designation Appeal Committee, the Dog Designation Committee

The proposed recommendation is expected to have a negligible effect on the operating budget. If a dog appeal is requested, the cost of a Hearing Officer would be \$260 per half day or \$520 per full day. There is currently no fee to request an appeal, as the cost is mainly involved the time commitment of various city staff, council members, and committee members. The use of the Hearing Officer would significantly reduce this temporal cost.

Option 2: Amend the structure of the Animal and Dog Designation Appeal Committee to have a total of 5 members, 3 members with adjudication and/or animal/dog behaviour expertise and 2 members of Council AND Option 3: Amend the structure of the Animal and Dog Designation Appeal Committee to have a total of 5 members who are proposed to be all citizen members with adjudication and/or animal/dog behaviour expertise

The proposed recommendations to amend the committee composition to include citizen members is expected to have a negligible effect on the operating budget. The Committee currently has its own operating budget that is allocated \$1,000 to cover honourariums. To ensure the Committee is in line with the previously approved honourariums, it is recommended that any citizen members scheduled to attend a meeting, be paid the same rate that is paid to members of the Property Standards Committee, \$125 Chair (s) and \$100 Member (s).

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the council / committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

There are no previous reports/authorities related to this matter.

APPROVED BY: Victoria Raab, General Manager, Corporate Services