



## REPORT FOR ACTION

# Improved Dangerous Dog Review Tribunal

**Date:** June 27, 2018

**To:** Licensing and Standards Committee

**From:** Executive Director, Municipal Licensing and Standards

**Wards:** All

## SUMMARY

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The City of Toronto has the authority to issue a Dangerous Dog Order under Municipal Code Chapter 349, Animals. Dog owners who receive a Dangerous Dog Order, and do not agree, can appeal this designation to the Dangerous Dog Review Tribunal. Currently, Tribunal membership consists of five City staff: one from Children's Services, two from Paramedic Services, and two from Public Health. Municipal Licensing and Standards staff provide administrative support to the Tribunal.

This report recommends that the membership and administration of the Tribunal be changed. It recommends that membership now be comprised of public members appointed by City Council through the City's Public Appointments process and that the Tribunal be administered by the City Clerk's Office. To achieve this, staff recommend the establishment of a new external Adjudicative Board in Municipal Code Chapter 349, Animals. The new Adjudicative Board, which will also be referred to as the Dangerous Dog Review Tribunal, will hear appeals from dog owners who receive a Dangerous Dog Order from the City. The existing Dangerous Dog Review Tribunal would be dissolved.

The changes are intended to:

- improve administrative fairness for individuals appealing a Dangerous Dog Order; and,
- increase transparency of the Dangerous Dog Review Tribunal.

Since January 1, 2014, the Tribunal has dealt with 188 matters and has met 41 times.

The new Tribunal would come into effect once the members are appointed by City Council, expected in March 2019.

The City Clerk's Office, City Manager's Office, Financial Planning, and Legal Services were consulted in the preparation of this report.

## RECOMMENDATIONS

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The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council establish a Dangerous Dog Review Tribunal as an Adjudicative Board comprised of 5 public members appointed by City Council, including a Chair, to hold hearings pursuant to Toronto Municipal Code Chapter 349-16, Animals, and approve its governance structure as set out in Attachment 1 of this report, effective on the date of City Council's appointment of public members to the Tribunal.
2. City Council authorize the City Clerk to recruit members for the Dangerous Dog Review Tribunal for review by the appropriate Nominating Panel for recommendation of appointment by City Council.
3. City Council direct that the City Clerk be appointed as the Secretary of the Dangerous Dog Review Tribunal.
4. City Council amend Chapter 349, Animals, so that, effective March 31, 2019:
  - a. the Dangerous Dog Review Tribunal is defined as an Adjudicative Board with five public members appointed by City Council for a term specified by City Council which shall hear appeals under section 16 of this Chapter.
  - b. a new section is added that states that the Dangerous Dog Review Tribunal is established in accordance with the Governance Structure for the City of Toronto's Dangerous Dog Review Tribunal approved by City Council.
  - c. the term "Executive Director" is deleted from sections 16A, 16B and 16C and replaced with the term "Dangerous Dog Review Tribunal".
  - d. a new section is added that states that hearings under section 16 shall be heard by a panel comprised of a minimum of three members from the Dangerous Dog Review Tribunal.
5. City Council direct that remuneration for members of the Dangerous Dog Review Tribunal is as follows:
  - a. members receive a per diem of \$350 for a full day of hearings,
  - b. members receive \$200 for a half day of hearings, where a half day is defined as three and a half hours or fewer,
  - c. members receive \$200 for attendance at a business meeting or training, as required; and,
  - d. the Chair be remunerated \$1,000 annually for performing the duties of Chair of the Tribunal.

6. City Council deem the existing Tribunal dissolved effective March 31, 2019.

## **FINANCIAL IMPACT**

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There are no financial impacts for 2018.

The 2019 financial impact is expected to be \$84,166, with an annual cost of \$83,000 for subsequent years.

Remuneration costs are estimated to be \$23,000 annually. For 2019, the prorated amount, based on a March 2019 implementation date, would be \$19,166. In addition, there will be a one-time recruitment cost of \$5,000 in 2019. As a result of transferring the administration of the tribunal from Municipal Licensing and Standards to the City Clerk's Office, staff estimate that there will be an annual cost of \$60,000. These changes are will be reported through the 2019 Operating Budget.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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On December 13, 14, and 15, 2016, City Council adopted [LS15.1: Amendments to Chapter 349, Animals - Dangerous Dogs](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS15.1) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS15.1). This report recommended the creation of the current dangerous dog provisions set out in Chapter 349, Animals. In particular, it defined dangerous act and dangerous dog, and outlined the requirements that owners must follow when served with a dangerous dog order. It also established the appeal process that the current Dangerous Dog Review Tribunal follows.

On March 31, 2015, City Council adopted [CC5.4: 2014 Annual Report of the Ombudsman](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CC5.4) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CC5.4) which directed the Executive Director, Municipal Licensing and Standards to report back with recommendations on how the City can effectively respond to incidents of dog bites and dangerous and/or vicious dogs.

On June 11, 12, and 13, 2013, City Council adopted [LS21.2: Amendments to Municipal Code, Chapter 349, Animals](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS21.2) (http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS21.2) which made amendments to Toronto Municipal Code, Chapter 349, Animals, including definitions for "hearing", "muzzle", and "notice to muzzle".

On February 4, 1999, City Council adopted [By-law No. 28-1999: A By-law respecting animals](https://www.toronto.ca/legdocs/bylaws/1999/law0028.htm) (https://www.toronto.ca/legdocs/bylaws/1999/law0028.htm) which repealed the animal-related bylaws of the pre-amalgamated constituent municipalities of the City of Toronto and created Chapter 349, Animals. In it, the bylaw states that a resident that has been served with a Notice to Muzzle is entitled to a hearing by the Medical Officer of Health.

## COMMENTS

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In an effort to balance, manage, and address dog owners' responsibilities and rights, dog behaviour, the safety of people and their pets, and public safety across Toronto, the City has requirements for owners of a dangerous dog as defined under City of Toronto Municipal Code Chapter 349, Animals.

The Dangerous Dog Review Tribunal is a quasi-judicial body that is responsible for hearing appeals from dog owners who are served with a Dangerous Dog Order from the City. The Tribunal's role is to either confirm the determination of a dangerous dog order or to rescind that determination.

This report does not recommend or require changes to the appeal process, other than that the Tribunal be comprised of public members appointed through the City's public appointments process instead of City staff and that the Tribunal be administered by the City Clerk's Office.

### **Background: Current Dangerous Dog Review Tribunal**

Since 1999, the Dangerous Dog Review Tribunal, previously called the Caution and Muzzle Notice Review Tribunal, has been in place.

Currently, the Dangerous Dog Review Tribunal membership consists of five City staff; one from Children's Services, two from Paramedic Services, and two from Public Health. There is a minimum of three members of the Tribunal on the panel (including the Chair) during a hearing. Members adjudicate on Dangerous Dog Orders issued by the Executive Director, Municipal Licensing and Standards. Hearings are currently scheduled on an as-needed basis based on the number of appeal applications received.

The current Tribunal hears an average of 44 applications annually and meets approximately 10 times per year.

Since January 1, 2014, the Tribunal has dealt with 188 matters and has met 41 times.

### **Jurisdictional Scan**

Staff conducted a jurisdictional scan of dangerous dog hearing processes in four large Ontario municipalities: Brampton, Hamilton, Mississauga, and Ottawa.

Brampton and Mississauga have all-citizen tribunals, whereas Hamilton and Ottawa have processes in place where City staff adjudicate. Further details can be found in Table 1.

Table 1: Jurisdictional Scan of Ontario Municipalities' Dangerous Dog Hearing Process

| Municipality       | Adjudicator  | Governance Structure and Process  |
|--------------------|--|---|
| <b>Brampton</b>    | Brampton Appeal Tribunal<br>(All-citizen tribunal) | If the City's Pound Keeper deems a dog to be dangerous or potentially dangerous, the owner may appeal to the Brampton Appeal Tribunal, which is an all-citizen tribunal that has been in place since 2008 and consists of five people. Members are appointed by Brampton City Council. A minimum of three members must be present to achieve quorum. It was established by By-law 48-2008 and operates under the Statutory Powers and Procedure Act. The City Clerk acts as the committee administrator for the Brampton Appeal Tribunal.   |
| <b>Hamilton</b>    | Hearing by the Pound Keeper<br>(City staff)        | A dog owner who receives a "potentially dangerous dog" designation notice has the option to request a hearing by the City's Pound Keeper, provided that the request is received within 15 days. The Pound keeper is City's Senior Director of Parking and Bylaw Services and makes a decision whether to uphold or rescind the order. This person is appointed administratively through By-law 12-031.  |
| <b>Mississauga</b> | The Appeal Tribunal<br>(All-citizen tribunal)      | A muzzle order is issued where the City has reason to believe that a dog has bitten a person or animal. The owner of the animal has the option to apply for a hearing from The Appeal Tribunal. The Appeal Tribunal is an all-citizen tribunal, created in 2008, and made up of five people. It may uphold or exempt the owner from the muzzle order, either in whole or in part. Members are appointed by Mississauga City Council. A majority of the Tribunal's members must be present to achieve quorum. It was established by By-law 98-04 and operates under the Statutory Powers and Procedure Act. The Appeal Tribunal is administered by the City Clerk.   |
| <b>Ottawa</b>      | Animal Control Tribunal<br>(City staff)            | Ottawa uses the term "vicious dog" and defines this as a dog that has bitten or attacked without provocation a person or a domestic animal. If the City determines that a dog is vicious, the owner is served a notice advising they must comply with all requirements related to owning a vicious dog. The owner is entitled to a hearing by the Animal Control Tribunal, provided that the request is received within 14 days. In the City of Ottawa, the Issues Management Specialist in Bylaw and Regulatory Services is the Tribunal Chair. This individual is appointed administratively through By-law 2003-77. Staff who issue the muzzle orders do not report to the Tribunal Chair. The City is represented at a Tribunal hearing by the Manager of Enforcement and Inspections or a representative from the Legal Services Branch. |

## Recommended Changes to the Dangerous Dog Review Tribunal

City staff are recommending improvements to the Dangerous Dog Review Tribunal following a jurisdictional scan and a review of the City's existing Tribunal. The recommendations are listed in Table 2.

Table 2: Recommended Changes to the City of Toronto's Dangerous Dog Review Tribunal

| Change  | Rationale  |
|---|--|
| <p><b>Dissolve the existing Tribunal and establish a new Dangerous Dog Review Tribunal, with public members appointed by City Council</b></p> | <p>The new Dangerous Dogs Review Tribunal would be comprised of 5 public members including the Chair and established in accordance with the City's Public Appointments process and the governance structure in Attachment 1. This governance structure format is consistent with structures of other tribunals in the City, such as the Toronto Licensing Tribunal and Administrative Penalty Tribunal. City staff would draft the Rules of Procedure; these would be adopted at the first meeting by members of the Tribunal.</p> <p>Using public members will increase administrative fairness and transparency in this decision-making process. This governance structure supports the independent and arm's length nature of the Dangerous Dog Review Tribunal in order for it to effectively carry out its mandate.</p> |
| <p><b>Initiate recruitment under the City's Public Appointment Policy</b></p>   | <p>City Council authorize the City Clerk to initiate a recruitment process for the Dangerous Dog Review Tribunal members for review by the appropriate Nominating Panel for recommendation of appointment by City Council.</p> <p>This recommendation would direct staff in the City Clerk's Office to begin the recruitment process so that publically-appointed Tribunal members can be approved by Council for Tribunal implementation, expected March 2019.</p>  |
| <p><b>Appoint the City Clerk the Secretary of the Dangerous Dog Review Tribunal</b></p>   | <p>Staff recommend that the administration of the Dangerous Dog Review Tribunal be done by the City Clerk. The City Clerk's Office has the resources to increase transparency, consistency, and administrative fairness in the appeal process because the Clerk's Office has significant experience administrating Council, Committees and other Tribunals.</p>  |
| <p><b>Updates to Chapter 349, Animals</b></p>   | <p>Changes include establishing the Dangerous Dog Review Tribunal, including its governance structure, deleting reference to the Executive Director in specific sections, and requiring that hearings be conducted by a panel of three members.</p> <p>These changes to City of Toronto Municipal Code Chapter 349, Animals, are recommended in order to facilitate the implementation of publically appointed members to the Tribunal, expected March 2019, and to clarify that the Executive Director of Municipal Licensing and Standards will no longer be responsible for overseeing the adjudication of appeals.</p>   |

| Change  | Rationale   |
|---|---|
| <p><b>Establish remuneration for members, including the Chair</b></p> | <p>It is recommended that members of the Tribunal are compensated as follows:</p> <p>\$350 per diem for a full day of hearings,<br/>           \$200 for a half day of hearings, where a half day is defined as three and a half hours of hearings or fewer; and,<br/>           \$200 for attendance at a business meeting or training</p> <p>These rates align with the remuneration paid to members of the Administrative Penalty Tribunal, which is the most recent Tribunal created.</p> <p>In addition, it is recommended that the Chair receive \$1,000 annually for performing the duties of Chair of the Tribunal. This is aligned with the remuneration paid to the Chair of the Committee of Adjustment.</p> |

**Implementation**

The current Dangerous Dog Review Tribunal is administered by the City's Municipal Licensing and Standards division. Staff are recommending transitioning responsibility for the administration of this Tribunal to the City Clerk's Office.

Staff recommend that the proposed changes to the establishment of the external Dangerous Dog Review Tribunal and the review process under Toronto Municipal Code Chapter 349, Animals come into effect on the date of City Council's appointment of public members to the Tribunal (expected March 2019).

**CONTACT**

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**SIGNATURE**

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## **ATTACHMENTS**

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Attachment 1: Governance Structure of the City of Toronto's Dangerous Dog Review Tribunal



# **Attachment 1: Governance Structure of the City of Toronto's Dangerous Dog Review Tribunal**

## **1. Mandate**

The Dangerous Dog Review Tribunal (the "Tribunal") is an independent quasi-judicial tribunal that reviews the decisions of Municipal Licensing and Standards' Animal Services staff and has the authority to:

- a. confirm the determination of a Dangerous Dog Order; or,
- b. rescind the determination of a Dangerous Dog Order and exempt the owner from compliance with Toronto Municipal Code Chapter 349, Animals ("Chapter 349"), Section 15.1.

The Tribunal is established as an Adjudicative Board and local board of the City of Toronto under the authority of the City of Toronto Act, 2006. The Tribunal is established to provide an independent review of Dangerous Dog Orders issued by the City's Municipal Licensing and Standards division, under section 15.1 of Chapter 349. Tribunal hearings will be conducted in accordance with the Statutory Powers Procedure Act.

## **2. Member Responsibilities**

Tribunal members are responsible for:

- Reviewing materials filed with each application they hear;
- Presiding over hearings and rendering a written decision based on the information presented;
- Attending business meetings of the Tribunal; and,
- Attending training sessions, as required.

## **3. Chair Responsibilities**

In addition to the member responsibilities identified in Section 2, the Chair of the Tribunal is responsible for:

- Chairing any necessary Business Meetings of the Tribunal in accordance with the Tribunal's procedures by-law;
- Acting as the lead representative and spokesperson for the Tribunal
- Preparing the Annual Report to Licensing and Standards Committee on the Tribunal activities;
- Ensuring that hearing practices of the Tribunal are fair and effective;
- Ensuring quality and consistency of Tribunal decisions;
- Obtaining legal advice as needed from the City's Legal Services;
- Liaison with City staff on administrative support matters;
- Coordinating member training and professional development; and,
- Responding to information and privacy related matters respecting the Tribunal.

#### **4. Board Size and Composition**

The Tribunal is comprised of 5 public members including one member appointed as Chair by City Council. Each hearing is conducted by a tribunal panel of three members.

#### **5. Eligibility Requirements**

Public members are eligible for appointment to the Tribunal, and eligible to remain on the Tribunal after appointed, if they satisfy the eligibility requirements for appointment as set out in the City's Public Appointments Policy. Former Council Members who served in the immediately preceding term of Council are ineligible for appointment. The Tribunal members will be required to meet the eligibility requirements pursuant to the City of Toronto Act, 2006.

A member of the Tribunal cannot act as an agent for applicants before the Tribunal or other local boards of the City, and would be required to resign from the Tribunal before doing so. Individuals who act as agents for applicants or individuals appearing in Provincial Offences Court or in matters related to the Dog Owners' Liability Act are not eligible for appointment where these matters are related to the City.

#### **6. Member Qualifications**

Tribunal members shall have the following skills and expertise:

- Experience in adjudication and mediation;
- Ability to write clear and concise decisions;
- Excellent listening skills and ability to analyze complex information received;
- Sound judgement, tact, fairness, and decorum;
- Demonstrated high ethical standards and integrity;
- Ability to adjudicate without bias and free from the influence of advocacy groups;
- Ability to work under pressure to ensure timely hearing decisions;
- Respect for access to justice, diversity, and accommodation;
- Knowledge of the proper care and handling of domestic animals, particularly related to the care, training, behaviour, and handling of dogs would be an asset; and,
- Society of Ontario Adjudicators and Regulators (SOAR) certificate or Alternative Dispute Resolution (ADR) training is an asset.

#### **7. Chair Qualifications**

In addition to Member Qualifications, the Chair shall also exhibit:

- Demonstrated leadership and administrative skills;
- Highly developed chairing and facilitation skills;
- Demonstrated ability to work effectively with others;
- Knowledge of access to information and privacy legislation; and,
- The ability to effectively represent the Tribunal and communicate with City Council, City committees, the media, and the general public.

## **8. Public Appointments Process**

The public members and Chair are recruited in accordance with the City's Public Appointments Policy. Applicants need to indicate whether they are applying for recruitment as a member or as Chair.

City Council, on the recommendation of the appropriate Nominating Panel, appoints the Chair and Members of the Tribunal. The Nominating Panel will review applications, determine which candidates are to be interviewed, conduct the interviews and assessments, and make a recommendation to City Council on which members and a Chair should be appointed to the Tribunal.

The City Clerk may administer a written test to help assess the competencies of the candidates to be used by the Nominating Panel.

The term of appointment of members of the Dangerous Dog Review Tribunal is four years coincident with the term of Council. Members continue to serve until their successors are appointed.

## **9. Tribunal Hearings**

Hearings are subject to the Procedure By-law requirements adopted by the Tribunal. Hearings are open to the public with the exception of situations where the Tribunal is of the opinion that s. 9(1)(a) or (b) of the Statutory Powers Procedure Act applies to the information submitted. Members of the public are entitled to reasonable access to all information submitted to the Tribunal, where the Tribunal is of the opinion that s. 9(1)(a) or (b) of the Statutory Powers Procedure Act applies.

## **10. Members and Chair Remuneration**

### *Members*

\$350 per diem for a full day of hearings;

\$200 for a half day of hearings, where a half day is defined as three and a half hours of hearings or fewer; and,

\$200 for attendance at a business meeting or training.

### *Chair*

In addition to receiving the remuneration of a member, the Chair will be remunerated \$1,000 annually for performing the duties of Chair of the Tribunal.