

City Manager's Report on Toronto Local Appeal Body Chair's 2019 Annual Report

Date: May 6, 2020

To: Planning and Housing Committee

From: City Manager

Wards: All

SUMMARY

This report responds to City Council's direction for the City Manager to review and report back to Planning and Housing Committee on the recommendations in the Toronto Local Appeal Body Chair's 2019 Annual Report, included as Attachment 1 to this report.

RECOMMENDATIONS

The City Manager recommends that:

1. Planning and Housing Committee receive this report for information

FINANCIAL IMPACT

The recommendations contained in this report have no financial impact.

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

DECISION HISTORY

City Council, on July 28 and 29, 2020, received for information the 2019 Annual Report from the Chair of the Toronto Local Appeal Body, from the Director, Court Services. City Council directed the City Manager, in consultation with the Director, Court Services, the Chief Planner and Executive Director, City Planning and the City Clerk, to review the recommendations in the Annual Report and report back to the Planning and Housing Committee by the first quarter of 2021 on the feasibility of implementing the Chair's recommendations.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH15.4>

COMMENTS

Background

Court Services provides administrative support to the Toronto Local Appeal Body (TLAB) as mandated by City Council. Under the Guiding Principles and Court Services' TLAB communication protocol, Court Services meets regularly with the TLAB Chair on administrative matters, emerging issues and annual budget submissions. Court Services connects the tribunal with City divisions to address issues and provide information and support.

This communication framework has proven to be effective and efficient in response to the COVID-19 emergency. Court Services staff have provided an extraordinary level of administrative support to the TLAB that informed the tribunal's emergency response and business continuity plan. Court Services staff administered the tribunal's emergency business continuity plan and connected the tribunal with multiple stakeholders and City divisions. Many other City divisions have also played pivotal roles in supporting TLAB's resumption of services including the City Clerk's Office, City Manager's Office, Strategic Communications, 311 Toronto, Purchasing & Materials Management, Pension, Payroll and Employee Benefits, Technology Services, People and Equity, Corporate Real Estate Management, Corporate Security and City staff assigned to the COVID-19 Emergency Task Force.

Court Services continues to facilitate public communication and public access to the Tribunal through support of public facing customer service channels.

2019 Annual Report

The TLAB Chair's 2019 annual report was received by City Council on July 28, 2020 (Attachment 1). The report was submitted by then Chair, Ian Lord. A new Chair of the TLAB was appointed effective December 14, 2020.

The City Manager's Office consulted with the Director, Court Services, the Chief Planner and Executive Director, City Planning and the City Clerk on the following responses to the recommendations in the report.

Recommendation 1: Review of TLAB Guiding Principles to provide enhanced communication opportunities and creation of a vehicle to meet with City staff.

The Chair's Annual Report notes that regular Court Services Operations Meetings with the Chair and Vice Chair has provided a vehicle for the identification and resolution of issues and that Court Services have been diligent throughout in satisfactorily addressing tribunal support on matters within its mandate and annual budget. It suggests that there are instances where that mandate and the Guiding Principles are not fully sufficient and that a review of the principles may enable TLAB to broaden its ability to communicate pressing issues to staff.

The City Manager's Office and appropriate divisional staff will meet with the new Chair of the TLAB to discuss any potential improvements in communications and avenues for the Chair to raise issues or concerns. This meeting will include a discussion of whether a review of the Guiding Principles is required or if other solutions are able to address any gaps.

Recommendation 2: Stipends for decision writing

The Annual Report notes the length of many TLAB decisions and suggests that the City stipend allocation is not commensurate with the role and responsibilities of TLAB members in decision writing. The current stipend for preparing, writing and issuing a Decision and Order is \$200.

Rates of remuneration for public members of City tribunals were reviewed and reported on as part of the 2019 Budget process. The review was informed by consultations with divisional leads, Chairs for each tribunal, the Human Resources Compensation Unit, and other municipal, provincial and federal jurisdictions. Recommended revisions to rates of remuneration were to reflect the job knowledge, experience, and qualifications necessary to successfully serve as a member; the impact of the tribunals' decisions; the complexity of the issues before the tribunal and the time and effort required to render a decision (<https://www.toronto.ca/legdocs/mmis/2019/ex/bgrd/backgroundfile-130089.pdf>).

Revised rates of remuneration were adopted as part of this process which increased remuneration for full- and half-day TLAB hearings and added an annual stipend to help compensate members for additional time spent fulfilling their role. TLAB members are compensated for business meetings and a range of hearing types and decisions. Amending the rates for written decisions could be considered as part of future reviews including of remuneration with a financial impact assessment.

Recommendation 3: Provide information to City Council on its role and individual councillor responsibility

The 2019 Annual Report describes an instance in which a sitting Council member wrote the TLAB urging the disposition of a matter under review in a direction supported by the Councillor, causing the member to excuse himself from further participation in the Review Request. It recommends that the City Manager could consider communicating advice to Council and notes that advice was previously provided by the Integrity Commissioner in 2016.

The City Manager's Office has discussed this recommendation with the Integrity Commissioner's office, and confirmed that issues that could involve compliance issues with a Code of Conduct should be directed to the Integrity Commissioner.

Recommendation 4: Delegation of Site Plan approval to the TLAB

Currently, the only appeals that the TLAB has carriage over are appeals to minor variance and consent applications that fall under Sections 45 and 53 of the Planning Act, respectively. The Chair's Annual Report recommends that consideration be given to

delegating site plan control approval jurisdiction to the TLAB independent of whether or not minor variance or consent jurisdictions are involved. Site Plan Control authority provides a process that examines the design and technical aspects of a proposed development to ensure it is attractive and compatible with the surrounding area and contributes to the economic, social and environmental vitality of the city. Features such as building designs, site access and servicing, waste storage, parking, loading and landscaping are reviewed.

The following considerations would inform any decision to delegate appeals involving site plan approvals to the TLAB:

- Site Plan Control approvals either come forward in conjunction with rezoning applications or as standalone applications at sites with zoning in place. Appeals of combined rezoning and site plan control applications must be heard by the Local Planning Approval Tribunal, so the scope of potential appeals to the TLAB is limited to standalone site plan applications that are appealed. Currently, these appeals are relatively uncommon (approximately one per year on average in Toronto).
- Site Plan Control approvals are often more technical in nature than consent or minor variance appeals. Despite the small number of these appeals that could be expected to be considered by the TLAB, they would be on average more complex and challenging and therefore add to the TLAB's workload.
- This change would require legislative amendment and stakeholder consultation. Some stakeholders may prefer that decisions be in front of locally appointed TLAB members who have more knowledge of local issues. If the change extended the timeline to schedule and resolve these cases, the change may not be supported.
- A small number of current cases would be in scope, and considerable work would need to be undertaken to assess, consult on, and implement such a change, including assessing the potential impacts of adding more complex and technical cases to the TLAB portfolio. Staff do not recommend making this change.

Recommendation 5: Amend Fees, Licenses and Charges By-law to incorporate a TLAB Review Request Fee

Under Rule 31 of the TLAB Rules of Practice and Procedures, a party may request that the Chair review a final decision or final order of the TLAB. As the Annual Report notes, this is a right offered under provincial enabling legislation. The Annual Report also notes that Review Requests occurred in 2019 at a rate of two per month and that responding to these requests typically requires significant resources.

The Annual Report suggests that reviews are being requested simply to reargue a case for a second and different decision, when the purpose of a Review request is to identify any errors, omissions of fact, law or natural justice that might result in a different decision.

Under the Rules of Practice and Procedure, the Chair has the ability to dismiss a Review request for a number of reasons, including if the request relies upon the same evidence or re-argues the same issues that were covered at the hearing. Fifteen of 23

Review requests were dismissed in 2019, confirming the TLAB's original decision, as per the annual report. In 2020, seven of ten Review requests were dismissed.

Currently, there is no fee for invoking a Review request under Rule 31 of the TLAB. City Council could add a fee for this process by amending the Fees and Charges by-law. The addition of a new fee is not recommended at this time despite the potential reduction in the number of reviews requested. The TLAB was created to make appeals more accessible, and a new fee would negatively affect access to this process. Staff will monitor trends associated with review requests and consider whether a fee should be added in the future.

Recommendation 6: Public appointment measures

The Annual Report recommends that public appointments staff identify a member's intention to seek re-appointment one year in advance of the end of term, and maintain a roster of on-call candidates so that vacancies can result in a replacement in active service within four months.

The Public Appointments office currently identifies a member's intention for reappointment in advance of a recruitment process to confirm their interest in seeking re-appointment. Typically, this occurs three to four months before a member's term expires.

Similar to all agencies, committees, and Adjudicative Boards, the application to serve as a member of the TLAB is always active on the Public Appointments website and staff have on-going outreach for all the City's opportunities. Additional targeted recruitment is done as vacancies arise to find highly-qualified candidates for these bodies.

Appointments are typically filled within four months of a position becoming vacant, either due to a term ending or a resignation. The timing of appointments depends on the availability of nominating panels, staff workload and the Council meeting cycle.

Identifying a member's interest in seeking re-appointment one year in advance of a term ending is of limited advantage as the member's availability, interest and other circumstances may change significantly over that timeframe. Staff would still need to contact members again three to four months in advance of their term ending to reconfirm interest as part of the standard process. The Public Appointments office remains available through the entirety of a Member's term to answer any questions on the public appointments process, policies and any other inquiries related to their appointment.

Among other efforts to support continuity and retention, in 2018, City Council approved an increase in the TLAB member composition from seven to 10 members. This change was made in order to address the volume of applications and members' workload. In December 2020, in the first larger round of appointments since the TLAB was established, four of the five members appointed were incumbents previously appointed in 2016 who wanted to serve another term, providing good retention.

CONTACT

Susan Garossino, Director, Court Services Division
Susan.Garossino@toronto.ca, 416-392-3835

Michael Mizzi, Director, Zoning and Committee of Adjustment, City Planning Division
Michael.Mizzi@toronto.ca, 416-392-0888

Robyn Cook, Acting Manager, Public Appointments Secretariat, City Clerk's Office
Robyn.Cook@toronto.ca, 416-338-1911

Meg Shields, Director, Governance and Corporate Strategy, City Manager's Office
Meg.Shields@toronto.ca, 416-392-0523

SIGNATURE

Chris Murray
City Manager

ATTACHMENTS

Attachment 1: 2019 Annual Report from the TLAB Chair received by City Council July 28 and 29 2020